



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

COMMISSIONER JOHNS

AG2023/3401

s.320 - Application to vary a transferable instrument - agreement

**Application by Victorian Tertiary Admissions Centre Limited T/A Victorian Tertiary
Admissions Centre Limited
(AG2023/3401)**

Monash University Enterprise Agreement (Academic and Professional Staff) 2019

Melbourne

10.00 AM, FRIDAY, 10 NOVEMBER 2023

PN1

THE COMMISSIONER: Yes, thank you. I will take the appearances, please.

PN2

MR A FARR: Good morning, Commissioner. My name is Farr, initial A. I appear as a legal practitioner on behalf of VTAC Limited. I am instructed by Ms Wise, initial R and representatives from VTAC today is Ms Tija who is the CEO of VTAC Limited and our witness today, initial T. Peterson, initial S and Lawson, initial J who are all in the room with me this morning, Commissioner.

PN3

THE COMMISSIONER: Thank you, Mr Farr.

PN4

MR HACK: Good morning, Commissioner. My name is Anthony Hack and I am here with the employer organisation and National Tertiary Education Union. I've got with me Sophie Onorato who is an organiser with the NTEU as well. They are the only two present right now, however we do have the three witnesses we advised that we would call at the time that they need to attend.

PN5

THE COMMISSIONER: Thank you. Mr Hack, is there any opposition to the applicant being represented by a lawyer in the matter.

PN6

MR HACK: No. We don't oppose that.

PN7

THE COMMISSIONER: Mr Farr, I am satisfied the matter is invested with some complexity. I am further satisfied that I will be assisting the efficient conduct of the matter if I grant the applicant, the Victorian Tertiary Admissions Centre Limited permission to be represented and I grant you permission pursuant to section 596 of the Fair Work Act.

PN8

MR FARR: Thank you, Commissioner.

PN9

THE COMMISSIONER: Gentlemen, there has been distributed a digital Tribunal book. Staring with you, Mr Farr, is there anything missing from the digital Tribunal book?

PN10

MR FARR: Not from our review. Thank you, Commissioner.

PN11

THE COMMISSIONER: Mr Hack?

PN12

MR HACK: No, there isn't.

PN13

THE COMMISSIONER: What I propose to do is mark as an exhibit in the proceeding each of the document as they correspondence with the tab in the digital Tribunal book. So for example, behind tab 1 is the form F41 and that will be exhibit 1.

EXHIBIT #1 FORM F41

PN14

Behind tab 1.1 is the first witness statement of Teresa Tija and that will be exhibit 1.1 in the proceedings and so forth and so on. Can I just ask Mr Hack, is Ms Tija required for cross-examination?

PN15

MR HACK: Yes. She will be.

PN16

THE COMMISSIONER: Thank you. Mr Farr, are any of the witnesses of the NTEU required for cross-examination?

PN17

MR FARR: They will be, Commissioner. Only briefly though.

PN18

THE COMMISSIONER: But all three?

PN19

MR FARR: All three. Thank you, Commissioner.

PN20

THE COMMISSIONER: All right. Then let's commence. Mr Farr, I just have one question. Can you please turn to page 75 of the digital Tribunal book? This is the marked up version of the proposed EA.

PN21

MR FARR: Commissioner, I apologise. There seems to be some technical issue that we just all follow, so our apologies.

PN22

THE COMMISSIONER: That's all right. Do you have that in front of you now?

PN23

MR FARR: I do. Thank you, Commissioner.

PN24

THE COMMISSIONER: So in the proposed paragraph 40.1, it says as from 1 January 2024 and in paragraph (a) it lists public holidays. I understood the proposition was to reinstate Labour Day and Cup Day. But I don't see them written there.

PN25

MR FARR: Yes. You are absolutely right, Commissioner. That is the proposal. That is an oversight. They would be and are public holidays under our proposed, and therefore should be all three of the public holidays; Labour Day, King's Birthday, which is referenced and Melbourne Cup Day should be referenced in that clause.

PN26

THE COMMISSIONER: In 40.1(a)?

PN27

MR FARR: Yes, 40.1(a).

PN28

THE COMMISSIONER: Thank you for clarifying that. It makes sense to me now. That was the only question I had in relation to that document Mr Farr, is it convenient that we call Ms Tija?

PN29

MR FARR: It is. Thank you, Commissioner. How do you propose to affirm Ms Tija, Commissioner?

PN30

THE COMMISSIONER: I can't t see her. Is she there in the room with you?

PN31

MR FARR: She is sitting there on my immediate right.

PN32

THE COMMISSIONER: It might just be the way the screens are. I can't see you, Mr Farr. That's a bit better. Good.

PN33

Ms Tija, do you have a copy of your first witness statement there, dated 22 September 2023?

PN34

MS TIJA: Yes, I do.

PN35

THE COMMISSIONER: All right. Can I administer the affirmation to you?

<TERESA TIJA, AFFIRMED [10.17 AM]

EXAMINATION-IN-CHIEF BY MR FARR [10.17 AM]

PN36

THE COMMISSIONER: Starting with your first witness statement dated 22 September 2023, are there any amendments you'd like to make to the statement?---No.

*** TERESA TIJA

XN MR FARR

PN37

Are its contents true and correct?---Yes

PN38

And would you have me receive it as your evidence in this proceedings?---Yes.

PN39

The first witness statement of Teresa Tija is marked exhibit 1.1.

EXHIBIT #1.1 STATEMENT OF TERESA TIJA

PN40

MR HACK: Excuse me, Commissioner?

PN41

THE COMMISSIONER: Yes.

PN42

MR HACK: Is it appropriate now to raise any objections to some of the points in that witness statement?

PN43

THE COMMISSIONER: Yes. Let me just go to it. Yes, I have it in front of me. Which paragraph?

PN44

MR HACK: Thank you, Commissioner. Paragraph 45(a). We believe that this is just speculative and hearsay, the whole – almost the entirety of that paragraph.

PN45

THE COMMISSIONER: Well, you'd agree with the first sentence, would you? transferring employees expressed a preference for retaining the existing arrangements concerning public holidays and end-of-year shutdown.

PN46

MR HACK: Yes. That's almost all of the clause. Almost all of the paragraph.

PN47

THE COMMISSIONER: If you look at paragraph 45(a)(i), the first paragraph, all of that's correct isn't it?

PN48

MR HACK: The first paragraph?

PN49

THE COMMISSIONER: Yes.

PN50

MR HACK: It's mostly correct. I mean, it seems to be a bit of an opinion, the last part of it, but yes.

*** TERESA TIJA

XN MR FARR

PN51

THE COMMISSIONER: Well, it's correct, isn't it, that transferring employees do not need to request to take annual leave at this time, because they have the five days.

PN52

MR HACK: My apologies. Yes, that is correct that first one.

PN53

THE COMMISSIONER: What's wrong with the second paragraph? 'VTAC has advised the transferring employees that the organisation does not run to academic timetables.' They have advised them of that. That's just telling me what they've advised transferring employees, which is probably true

PN54

MR HACK: Yes. My apologies.

PN55

THE COMMISSIONER: Do you withdraw the application to excise 45(a) on page 18 of the digital Tribunal book?

PN56

MR HACK: Yes. I just think it's – sorry, the second paragraph, I just think that's hearsay and speculative. It's saying that - - -

PN57

THE COMMISSIONER: It says 'VCAT has advised the transferring employees', that is what they have advised them. You might not agree that VCAT doesn't run academic timetables and it's no longer reasonable justification, but all that is saying is, 'This is what we've told transferring employees.'

PN58

MR HACK: Yes. So they've told the transferring – okay. If that's the case, if it's only related to what they've told people, I can understand why that can remain in there in the statement. However, I hope that it wouldn't be given very much weight.

PN59

THE COMMISSIONER: Is there any other paragraph you want to object to?

PN60

MR HACK: Paragraph 58 refers to 47(a)(i), which doesn't exist.

PN61

THE COMMISSIONER: Slow down. Paragraph 58.

PN62

MR HACK: I assume it might be typo and it might be referring to this clause we were just discussing. However, it's referring to – I will wait until you find it.

*** TERESA TIJA

XN MR FARR

PN63

THE COMMISSIONER: I think it means 45.

PN64

MR HACK: I would say it must.

PN65

THE COMMISSIONER: Mr Farr, do you agree with that?

PN66

MR FARR: Yes. It's an incorrect cross reference, Commissioner. So it should be a cross reference to 45(a)(i).

PN67

THE COMMISSIONER: All right. Anything further, Mr Hack?

PN68

MR HACK: Not in the first witness statement. Thanks, Commissioner.

PN69

THE COMMISSIONER: Ms Tija, subject to that one amendment at para 58, is that the only amendment you want to make to the statement now?---Yes, please.

PN70

All right. Very good. Let's go to the second witness statement, which is dated 6th of the 11th 2023 that appears at page 239 of the digital Tribunal book. Do you have a copy of that there with you, Ms Tija?---Yes. I do.

PN71

And are there any amendments you'd like to make to that statement, noting that there is a correction in your third witness statement marked then?---Yes. I just wanted to note that there is a correction. We make a correction, so we put in a third witness statement dated - - -

PN72

So other than the correction recorded in the third witness statement, are there any other amendments you'd like to make to your second witness statement?---None, thank you.

PN73

Are it's contents true and correct?---Yes.

PN74

Would you have me receive it as your evidence in these proceedings?---Yes, please.

PN75

Thank you. Any objections, Mr Hack?

*** TERESA TIJA

XN MR FARR

PN76

MR HACK: Yes, thank you. Firstly in relation to paragraph 13.

PN77

THE COMMISSIONER: Yes. I have that in front of me now.

PN78

MR HACK: Again, we just believe that's hearsay, paragraph 13.

PN79

THE COMMISSIONER: Well, we go to the second-last line where it says, 'My own view that the requirements to work the three public holidays can be removed and minimised by operational planning, you couldn't object to that, could you? The witness' own view?

PN80

Mr Farr, do you agree that all of that paragraph up to the phrase starting, 'My own view that the requirement to work the three public holidays can be removed to minimise bi-operational planning, should really come out on the basis that it's hearsay?

PN81

MR FARR: I don't agree, Commissioner, that it should come out on the basis that it's hearsay. Commissioner, it's a matter of weight that you give, given that the Commission is not bound by the Rules of Evidence, but Ms Tija can independently and has independently formed her own view. But equally she's informing the Commission as to how she has sought to confirm, perhaps, her views as to this. So it's a matter of weight rather than a matter of it being removed from the witness statement.

PN82

THE COMMISSIONER: Yes, Mr Hack, if I make a note here that it's a matter of weight, you're content for me to leave that in? I can assure you, it's of very little weight.

PN83

MR HACK: Yes. Yes. Thank you, Commissioner. That would be fine.

PN84

THE COMMISSIONER: All right. Any other objections to paragraph - sorry, to the second witness statement?

PN85

MR HACK: Paragraph 14, the next paragraph.

PN86

THE COMMISSIONER: I have that in front of me. What's the problem there?

PN87

MR HACK: We just believe that's only an opinion and not relevant.

*** TERESA TIJA

XN MR FARR

PN88

THE COMMISSIONER: Well, it's the statement of managerial prerogative, isn't it?

PN89

At the end of the day, employees do not establish their own work patterns.

PN90

Well, that must be right:

PN91

(Indistinct) work patterns are established by the employer in consultation with employees.

PN92

That's probably right.

PN93

VTAC Limited wish to operate in a way that three public holidays are observed as and when they occur.

PN94

Surely the CEO can say that.

PN95

MR HACK: Potentially. It might be a political view, a difference of views in terms of employers and unions in general.

PN96

THE COMMISSIONER: (Indistinct) business, Mr Hack.

PN97

MR HACK: Yes. Yes, all right. We're content to leave that in if you're happy with that.

PN98

THE COMMISSIONER: All right. Yes, anything further?

PN99

MR HACK: No, Commissioner. Thank you.

PN100

THE COMMISSIONER: All right then. The second witness statement of Teresa Tija is marked exhibit 5.2.

EXHIBIT #5.2 SECOND WITNESS STATEMENT OF TERESA TIJA

PN101

We then have the third witness statement which is really a corrective one.

*** TERESA TIJA

XN MR FARR

PN102

Do you have that in front of you, Ms Tija?---Yes, I do. Thank you.

PN103

Perfect. And are there any corrections that you'd like to make to your corrective witness statement?---No. Thank you.

PN104

All right. Are its contents true and correct?---Yes. Thank you.

PN105

And would you have me receive it as your evidence in these proceedings?---Yes. Thank you.

PN106

Thank you. If you'd wait there Mr Hack might have some questions for you.

PN107

Mr Hack?

CROSS-EXAMINATION BY MR HACK

[10.28 AM]

PN108

MR HACK: Yes. Thank you, Commissioner.

PN109

Hello, Ms Tija?---Hi, Mr Hack.

PN110

Yes, hi. I do have some questions for you. So if you - first of all, on your first statement, just turn to the very first paragraph, you mention you've been the CEO of VTAC since May 2022?---That's so.

PN111

Yes, over a year now and just - so if you can confirm during that time you've been operating under the Monash EA that whole time?---Yes, we have.

PN112

Yes. No worries. Thank you. Now, in relation to - - -

*** TERESA TIJA

XXN MR HACK

PN113

THE COMMISSIONER: Well, I guess - sorry. Sorry to interrupt. I guess as a follow-on question from that for me, if you've been operating under the Monash Enterprise Agreement and it's applied to the Monash seconded staff inter VTAC, it's the case that you've been able to work with these clauses 45 and 46?---We have but with quite a lot of amendments to our work patterns particularly during our peak time at the end of the year. So - and that - this has been a longstanding issue, if I just say, that this is - because the way the work patterns for VTAC, as you can imagine, always falls towards the end of the year because that's obviously when the results are released and that's when we make other types of process

offers or make offers and that has changed also even more so in the last few years where we have made a significant number of offers in the (indistinct) which is a new thing so that - but the work patterns has changed mostly but it has also been an issue for a long period of time in VTAC.

PN114

But what's the operational impediment if - but that sounds to me as though you do want staff to work on Melbourne Cup Day, for example?---Melbourne Cup Day is less of an issue because we actually make offers from about November onwards, it's December is the big issue because what happens in December is that we have results that come in from the VCAA, so the State Government Authority that issues year 12 results. We then - we have a joint result service with them so we issue the results and the ATAR at the same time. We then process that so that our institutions can then decide who is eligible for offers, in what order of offers and then in the past few years once prior COVID and since then - since COVID, we make what's called December round offers and that's to ensure that we are keeping very much in the same sort of practices as our two other large states, New South Wales and Queensland who also, for quite some time, have made December round offers. So where previously most of the offers were made in January, we now make a significant number in December just prior to Christmas and just after the results that we issue together with the VCAA in early December. Does that make sense?

PN115

(Indistinct) but - so do you require staff to work in what would otherwise be the five days that they get in lieu of the three public holidays, Labour Day, Queen's Birthday and Melbourne Cup Day?---The main issue is the days just prior to Christmas, so it's the 23rd, the 24th or anywhere from the 21st to the 24th. So Monash seems to typically close either the 20th, the 21st and that's still when we are busy. Not so much in-between Christmas and New Year but it's those days just prior to Christmas and because of the way Monash operates, they close around the 21st, 20th. I think the ones I've seen is around that time and we essentially work right up to Christmas Eve.

PN116

Yes, because I mean in paragraph 33 at paragraph - sorry, page 15 of the Tribunal book, which is your first witness statement, you talk about the five days off work from approximately the 22nd of December to the 2nd of January, but you've been able to accommodate that all of these years. I mean, the agreement commenced operation on 9 July 2020, you've been able to accommodate that in all of the subsequent years?---It's been always challenging and there's a long history in VTAC of making adjustments and seeking adjustments and trying to make arrangements that fit VTAC in keeping with the Monash EA. So this has been a longstanding issue and it has become even more significant because we have - we do now make the December round offers. So we make about 50,000 offers in that December round.

*** TERESA TIJA

XXN MR HACK

PN117

Yes?---So that has become the - essentially become almost the main round, this is the (indistinct). So that's why it's become more of a significant operational kind of challenge but also our operation has also changed because the December round is now a significant round and that gets made before Christmas but this year, I think Monash closes from the 21st of December so we actually make offers on that day, on the 21st of December as we did last year and then we obviously have to be open for the next two or three days because what we have is a change of preference which then closes a couple of days after that and then we have to process the files ready for the January round.

PN118

And so when - say you have to work up to the 24th as you've just said to me?---Yes.

PN119

When do the employees come back?---They usually come back whatever the first kind of day in January, so if it's the 2nd or the 3rd, depending on when the public holidays fall.

PN120

Yes, but when do you need them to come back?---At that time because we then go into populations for the January rounds.

PN121

I guess what I'm (indistinct) at and I should be more express about it, is in terms of the five days, if the five days are problematic because a couple of them fall before the 24th of December and you want to work right up to that date, could you move the five days to after Christmas?---No, because - well, currently that would be problematic because we need to be back very much in time to process the January offers and the January change preference and currently also we have what's called the international baccalaureate. We get their results around the 1st or the 2nd of January.

PN122

Yes?---We have to process that and provide what is called a stage in approval in the ATAR ranking around that time, around the 3rd, 4th of January and that's a national process that we do together nationally. We issue that and then there's a very small window for the RD students to do their change of preference so that they're in time for the January rounds. So we do need to come back exactly - we can't go back, like, say on the - you know, the week after or anything. We have to come back on that - in that very much after New Year because we then have to process the RD results, in particular, but also any change of preferences that has come in during that period and then ready for the January rounds because we start the simulations for the January rounds pretty much in that week that we come back.

*** TERESA TIJA

XXN MR HACK

PN123

So if you need staff to work right up to the 24th of December, and you need them back as soon as possible in early January, why do you need this stand down provision?---You mean - are you talking about the shutdown? Sorry.

PN124

Yes. Why do you need the shutdown provision?---We're asking for a shutdown to be - to enable us to be flexible. We're not indicating - even though we have given examples of that period, we're not indicating we will definitely use - or we'll do in that period, we want that flexibility to enable the staff to - for us to be able to say to staff, 'Look, you know, we can't all take time out, we can manage leave', all those sorts of things, so we want some flexibility. We may decide, for example, that Easter is a better time because that is truly the time that it is the quieter time for us. That's when all the offers have been made out and before we start again. So what we would like is the flexibility to be able to do that though we have given examples around Christmas but that isn't the only way that we could affect that clause if, in fact, that was included.

PN125

So are those - the proposed clause 41.1 expressly refers to Christmas and New Year period, your evidence before me is it's unlikely that it will be then, it would be more likely that it would be around Easter?---It's an option we would consider depending on operational requirements and it may be that would be the better option or - yes. We just want that flexibility.

PN126

Yes, because I mean, you can see the point, can't you, that you're saying remove the five days that they currently get over Christmas and New Year, but we want the right to send them home over Christmas and New Year and make them use their annual leave?---Yes, I understand.

PN127

You see the difficulty with that argument?---Yes, I understand. Yes, I understand.

PN128

Sorry to interrupt, Mr Hack. Back to you.

PN129

MR HACK: No, that's fine, Commissioner. Very good questions.

PN130

I'll just follow on from what was just being discussed, if I may, and flip forward to the third witness statement and I will come back to the first, if that's all right.

PN131

THE COMMISSIONER: Yes.

*** TERESA TIJA

XXN MR HACK

PN132

MR HACK: Paragraph 19 of the third - of the second, sorry, second witness statement. Have you found that, Ms Tija, paragraph 19 of the - - -?---Yes, I have. Page 242.

PN133

Yes, that's right?---Yes, page 242. Yes.

PN134

Yes. So as, you know, some of our witnesses have provided evidence that they do work during the Christmas close down, our evidence is that those workers would be disadvantaged under the proposed variations because they are actually required to work during that time, however, yes, in your statement, you've explained that that's a minority of employees and how many - do you know how many staff actually are required to work during Christmas at the moment, the Christmas shutdown?---Yes. It is a minority. We do have around - in terms of permanent staff, there's only around six staff who may work partial days, not all days and only one of the days. There may be some casuals, if we require them, on the phones and that varies from time-to-time depending on what kind of volume that we would expect around that time. So it is a small number that would be required to work.

PN135

All right. Thank you. And why is it that not - like that more staff are not working during the Christmas close down?---I think there's a - and can I just say it's one day often that they are only working which is around the 22nd, the 23rd, so it's not - they're not working necessarily between Christmas and New Year. So I just want to just make a note of that given what I said previously, that's very much around that - the fact we do make offers around that time just prior to Christmas that they're required.

PN136

All right?---I think there are a couple of reasons for this. One is obviously we have been trying to manage with as minimal staff as possible to work on that day because given the arrangements that has happened to Monash EA, so we have made sure that there is a minimal - or VTAC has made sure that all the work is very much being dealt with as small group as possible of staff. The only staff really that are required to work are the ones that are the supporting an IT system, supporting the change of preference or supporting the contact centre to make sure we can receive any inquiries, and then to process the files once the change of preference has been done.

PN137

Thank you. I'm still trying to understand – there seems to be some complexity there in terms of your statement's saying that you're not able to have a close-down at that time because you are requiring the staff to work, and yet up until now and even including this year you've only required around six staff, you're saying, to work during this time?---There's only six staff. I'm not including, by the way, sorry, apologies, I'm not including management in that.

PN138

Okay?---Do you want me to include management? Because we obviously equate slightly differently.

*** TERESA TIJA

XXN MR HACK

PN139

Yes, I don't - - -?---So, I'm not sure whether – you know, obviously I'd be working on that day. There's a number of managers that would be working on that day, as well. On those days, I should say.

PN140

Thank you. And under the current provisions is there any restriction to having the extra staff working that you require during that time?---I think the main consideration here, and there's a lot of planning that goes into it to really see who is really, really needed to work on those days and how many hours are required to those days, and that's partly a management exercise, partly, you know, just to make sure that we do minimise it because it is meant to be a shut-down. Obviously it's – yes, so there is a bit of planning. I can't say for sure, yet, how many will be required this year.

PN141

Okay, thank you. And now you're thinking that with the proposed variation you would require all staff to work during that time, most likely, and have shut-downs at other times?---I think that always varies from one question to a question. I think at any time of the year, you know, there's always a variation of how many people are needed on any given time. And also people do need to take leave. And people are owed and they should take leave so at the appropriate times, you could take leave during that time. I'm not sure if any organisation requires a hundred per cent people at all times to work. So, that will vary from team to team, from requirement to requirement. So, I can't – I don't think that – I don't think any organisation or any CO would say they require a hundred per cent of people on any given day.

PN142

So, if we go to paragraph 18, just following on from the same discussion, paragraph 18 and the paragraph before, which I've just realised might have an incorrect clause - - -?---Incorrect clause?

PN143

Yes?---Apologies for that. I - - -

PN144

Yes, I've just realised. Paragraph 18, I think it should be clause 41 of the proposed - - -

PN145

THE COMMISSIONER: Yes, I think that's right.

*** TERESA TIJA

XXN MR HACK

PN146

MR HACK: I've only just realised that. So, in relation to that paragraph it seems very broad, doesn't it? That's been backed up by the answers to the question, so far just now. But I'm just wondering what is your intention, like which groups and at what times are you planning on having these shut-downs?---I think it would vary from the requirements and something we would be planning to do with our

staff, particularly obviously with our managers and directors. There are, as I said, there's two key times where there are some more downtimes at the organisation. Easter is one of them and for some of the teams it possibly would be the Christmas period. It will vary and we will do some planning around that. And we will consult with staff, obviously when we do that planning.

PN147

All right, thank you. And what about timeframes? Because there was no set timeframe in that, in the proposed clause about how long the shutdown could be for. So, what's your intentions?---I think it would be a minimum of days. I don't think we're thinking a big – not like some other industries, like the building industry where they might have two or three weeks. I think it would be days, not weeks because we are – you know, we're not in the business of shutting down for weeks. It'd be days. So, if you - - -

PN148

Thanks for clarifying your intention?---Yes. Yes.

PN149

Just, do you agree that the clause allows for you to ask any group of workers at any time of the year, as long as reasonable notice is provided, to adhere to a shut-down for any length of time?---Look, I think that was just put in as for flexibility. Obviously, if you want us to – if we get a direction that we need to – we need to amend that, we'd be happy to consider it.

PN150

THE COMMISSIONER: Sorry, Mr Tija, I don't think that answers the question?---Sorry. Apologies. Apologies for that. I think that wasn't my intention, so I apologise if the statement - - -

PN151

The question wasn't, what was your intention. The question was do you accept that as it is currently drafted it enables you to have a close-down at any time for any period of time?---Yes, it does.

PN152

MR HACK: Also, for any group of workers. It doesn't have to be the whole workforce?---Yes, it does.

PN153

Thank you. It seems basically like open-ended stand-down provisions that you can stand down employees at any time, any group of employees. It could be a small number of employees and they would have to comply with it, in which we would definitely oppose - - -

PN154

THE COMMISSIONER: Mr Hack, is that a question or a statement?

*** TERESA TIJA

XXN MR HACK

PN155

MR HACK: Apologies, it's a statement. I'll see where I was up to, so – yes, are you able to flick back to your original statement, paragraph 61?---On page 22?

PN156

Yes. Apologies, I'm getting things together. So, you've mentioned increased costs to VTAC in this paragraph. Are you able to explain that further? There doesn't seem – there's very little detail about what these costs are in evidence. I'm wondering if you could explain the increased costs that VTAC would be finding?---Yes. Yes, I think, you know, we're going from essentially a significant several million dollar kind of organisation, to very much stand-alone and essentially a much small budget with a sort of ten million dollar business. And the lack of possibility for us to be able to work in one is really now our peak time and our crucial peak time, particularly around those December offers will lead to increased costs if it – because that is now – that has become our significant key period. It also means that we're still having to work and juggle and plan later for the (indistinct) at the very minimal workforce for the increased costs because we require more staff and that's not optimal for our operation. Because our operation is – requires us to be essentially functioning and fully functioning around that peak time, particularly around that December time.

PN157

Have you done anything budgeting for these costs? Like, do you know any specifics about what costs you're talking about that will increase?---I'll have to take that on notice, if possible.

PN158

THE COMMISSIONER: No, you get to answer questions now?---Okay.

PN159

Yes?---Apologies. Apologies, again. Look, we've done some rough estimates. It does vary. It depends on what level of staff are working, what hours that they're working, you know, and they do provide a significant – for us, as a small organisation and being - wanting to be more flexible, more nimble, and being able to provide the best service possible. For us, we feel that is an impost because it does mean that we can't be flexible, we think, look, can we provide more staff, more teams. We have to really work through very much towards what is – you know, what is the best solicited advice and at what cost can we provide it at.

PN160

MR HACK: Okay, thanks. Is it a significant economic disadvantage for a business this size, a ten million dollar business, as you say?---It's - for a small organisation trying to do its business at its best at peak time and minimizing the risks, yes, it is.

*** TERESA TIJA

XXN MR HACK

PN161

Are you able to explain why? Like, we understand there are some costs going both ways. Our witnesses have made statements in regards to this, as well. There are some increased costs. For instance, under the current arrangements you would need to pay overtime for those – sorry, penalty rates for those minimal, you know,

five or six employees that are required to work during the Christmas close-down. Whereas under the proposed variation that would be normal time. So, we can understand there are some minimal costs associated with this clause but that's obviously offset by other factors of the variation. For, as you say, a ten million dollar business I'm wondering if that is significant and I'm just hoping you can explain that?---Yes, it isn't only – the significance isn't only around the monetary value, but also I think in the planning and the thinking that we have to go to in, ever year, balancing what is essentially the needs of the business, whether it's fit for purpose for us given the business we're in, versus always having to consider this clause, like, that isn't really fit for purpose as we go forward. I think that's one of the things, so that process of thinking and planning when, in fact, what we try to do here as we become a stand-alone the (indistinct) needs to become a fit for – have instruments or have conditions or have, you know, a set of circumstances that will mean that we can be fit for purpose. And we really much have changed even in the last few years, but also we're going to be changing some more and that peak time is when we do need us to be an organisation that isn't always considering, well, actually we're meant to be shutting down when in fact it's our peak time. So, I think it's not just around just that or that cost of the finances. It is also about what an organisation we are and what the business is doing and what the kind of – the services and the business that we're in. And literally that we can do that and the conditions that will enable us to do that as effectively and efficiently as possible.

PN162

Okay, thank you. If we return to paragraph 63?---Thank you.

PN163

Or 63 and 64, really. They're both included in this?---Yes.

*** TERESA TIJA

XXN MR HACK

PN164

Where you're talking about the social benefit and public interest of the institution. That's your contention in these paragraphs, that – that's what you're talking about. But are you able to explain specifically in terms of the variations, like how that will assist VTAC to, like you say, better facilitate access to tertiary education in Victoria?---Yes, so the whole process of the transformational change, and it is a once in a generation change for VTAC, is very much loop and (indistinct) change, so we're making changes at every level of the organisation, everything from governments to system to processes, and that's really – that has come obviously not from me as CEO. I've been employed to ensure that these changes actually happen. It's coming very much from the owners and stakeholders which are the institutions and government. So, they very much want to see this service very much about becoming a learner centred digital and data (indistinct) which contemporary organisation that can connect any learner at any age and any stage to their tertiary education pathway programs and opportunities for both personal and professional development and growth. So, they and we want to become very much that contemporary learner centred digital and data driven particular organisation. And in order to do that there's been a range of changes that have already been obviously commenced, implemented and there's a range of others that are coming up. So, they include the governments, hence with

the company (indistinct) limited, and obviously there are a number of things that we need to make sure that can work with what is essentially a smaller, or much smaller organisation and that is required to be very much nimble, flexible, agile, innovative, as well as the digital learning centre, as well as data to them.

PN165

Okay, thank you for that. So, now in relation to the reply statement first of all I wish to ask you a question in relation to your representative's response in the applicant's reply at paragraph 6. So, that would be page 237. Let me know when you've found that?---Yes.

PN166

The submission clarifies how the clause should be operated in accordance with the Act. I'm just - are you able to explain how you have been - like, operating? You've been there for over a year already and have plans, but this year there's been public holidays all through this time. What have you been doing to comply with the Act during that time?

PN167

MR FARR: Commissioner, if I may. I just wonder how that is pertinent to the matters that are before the Commission here, which is an application to vary section 320, not about historical compliance with the national employment standards.

PN168

THE COMMISSIONER: Yes. Mr Hack, how is this relevant to the matters before me?

PN169

MR HACK: I think, from my understanding, VTAC has been complying with the Act through this time and has been operating under the existing Monash enterprise agreement, and I wanted to confirm that with the applicant.

PN170

THE COMMISSIONER: Mr Farr?

PN171

MR FARR: We're happy to accept the NTEU's statement from the Bar table and move on, on the basis that there's an acknowledgement of compliance and we can go to questions relating to the application.

PN172

THE COMMISSIONER: Yes, all right. Thank you, Mr Hack. Next matter.

PN173

MR HACK: Okay. Thanks. So in the reply, your witness statement, Ms Tija, paragraphs 7 to 12?---Yes. Page 277 to 278. Yes.

PN174

Yes. Just getting to that myself.

*** TERESA TIJA

XXN MR HACK

PN175

MR FARR: I have the page - 240, isn't it? Paragraph 7 on page 240 of the - - -

PN176

MR HACK: Yes. Yes. Apologies. I need to find it myself. Yes, paragraphs 7 to 12, that's right, 240 to 241. So there's a lot of points here in paragraphs 7 to 12. These are all aspirational, or mostly. Just - I wonder if you could explain. It might take you some time to read through them, or you could go paragraph by paragraph if you like. But just explain about when - what your plans are in implementing such changes?---Okay. Well, maybe if - and you're looking at paragraphs 7 to 12, is that right?

PN177

Yes?---Okay. So first of all, as you can see I think if you even look at paragraph 9, as you can see in relation to Melbourne Cup, there are already some parts of the organisation that have been able to organise their work so that they didn't actually have to work on that day were able to take that as a public holiday. Given already that in fact we - it has been a quite consistent practice that those phone lines are not often open during those public holidays but is (indistinct) on others, because we do find that learners, potential prospective students often are taking that public holiday and not expecting us to be open on a public holiday. So there are kind of ways for us to already manage that work during the current public holidays, even though at the moment we are working those public holidays. So what we're saying, given those sorts of practices that are already in place, given the way that we can arrange the work, that we can actually make adjustments to any work program, particularly early in the year in order to make sure that there's no disadvantage or impact on staff being able to take those public holidays as per the, you know, gazetted public holidays that they are there for. We also have some additional (indistinct) system process changes that we're making. They are commencing because they - they are planned for the next cycle, not this upcoming cycle but the next one, and again, that will lead to more changes and again, ability for us to plan around those public holidays, particularly the later one.

PN178

Thanks. Are you able to explain a little bit more - because this is something I'm aware of as well, that you referred to in - this in relation to paragraph 9, that yes, some changes have already taken place in 2023, that contact centre will not receive any calls on Melbourne Cup Day. However, you've just said that this has been a long-standing process, is that correct?---It's - it's - I gather it's happened previously as well. So it happened this year definitely, but it's also happened in previous years on other public holidays but also on Melbourne Cup. But it's varied year to year, depending on a range of factors, but I gathered that this has been a common practice and has been done from year to year, holiday to holiday. But hasn't been necessarily done for every public holiday and for, you know, all years. But it has been done quite regularly.

PN179

Yes, that's right. Thank you.

*** TERESA TIJA

XXN MR HACK

PN180

THE COMMISSIONER: Sorry, can I just better understand then, what happened on Melbourne Cup Day a few days ago?---So essentially our contact centre, so the main contact centre, essentially did not take calls. They had a message service. The expectation is from previous years was that they - they - they essentially said, 'Look, we weren't proceeding to take calls because given previous years, we get very few calls on that day because most people will be taking that holiday and also during that time, year 12 students in particular will be in exams so they're not likely' - we actually have a, what's officially termed as a blackout period during that time in that we don't necessarily actively communicate with students because we're trying to make sure they have the best possible environment for their exams. So we also don't expect to receive that many calls until the end of exams. So they - they said, 'We can actually manage the work pretty much around the fact there is no calls, we can all take leave and we can take it as a public holiday, we don't need casuals', all those sorts of things. So they can take leave during that public holiday. In previous years, what I gather's happened, occasionally what they've done is they might have had additional staff having to work to do what they call catch-up work, so they may have the calls - the contact centre itself closed to calls but they'll have staff working - some, not all - working on the work they call catch-up work. But this year, they way they planned out their work, there was no requirement for any staff in that area to come in at all, essentially. A number of my - - -

PN181

Sorry, sorry. Does that mean that Ms Ciccone didn't work on Melbourne Cup Day?---No. Ms Ciccone is a member of the selection and assessment team and she actually works on a part-time basis, a point-six, and that wasn't her designated work day that day, so she didn't work that day. So this is not that team, this is a different team that didn't make the - one member of that team made a comment, but they're not - they're part of the broader team, I should say. The contact centre team is part of a team that's part of marketing and communications. That is part of - - -

PN182

But thinking - sorry. Thinking then just about the selection and application services, SAS department, Ms Ciccone's evidence is:

PN183

We are required to complete over 1,000 tasks every day to meet the deadline for SEAS assessments which allow universities and other tertiary institutions to consider whether applicants are eligible for special consideration.

PN184

She goes on to say at paragraph 7, page 231 of the digital tribunal book:

PN185

This is a difficult deadline to meet already, and working on Melbourne Cup Day is an important work day for processing, as tasks must be completed by November 17.

*** TERESA TIJA

XXN MR HACK

PN186

At paragraph 8:

PN187

There is a lot of pressure on the SAS department, including myself, at this time of year, and losing Melbourne Cup Day as a work day (the loss of time which could be used to complete 2,000 SEAS assessments) will add further burden on me and my colleagues to keep in track with our work as I and my colleagues will need to complete these tasks within a shorter time frame.

PN188

So did the SAS department work on Cup Day?---Some members did, but not all. So some members were able to take that as their annual leave, and some members worked. So we have essentially about 20 - I actually came in that day, just so you're aware. I think we have about 20 people in the office, it's one of our anchor days so we have about - I think approximately about 20 people or so in the office. The majority were from the SAS team and from the - some parts of the IT team. But not all of them were in. Some people were able to take leave on that day because they were able to manage the work and (indistinct). Some of that work is getting increasingly automated as well, so in time there won't be as many of those kind of tasks and some of those tasks are in fact done by casuals, and what we have done even this year is we front-ended some of the casual work earlier so we can get to those tasks much earlier.

PN189

Sorry for interrupting, Mr Hack. Back to you.

PN190

MR HACK: No. Thank you, Commissioner. So following on from this conversation, it segues into my next question. It's in relation to paragraph 15 of your second statement, talking about the workload and timelines being mitigated and smoothed over by proper planning and relevant changes and improvements to the work processes. I just have a question about the deadline, in specific of SEAS, the deadline to provide the file to the institutions. Is that something that is set by VTAC?---It's something that we work with the institution to set. Yes, we do do that so they can be - yes. And we do that on an annual basis.

PN191

Okay. Can you explain that process? How much input does VTAC actually have in determining when that deadline is?---We - we work - we document the whole year essential calendar or schedule, and then we essentially do a, you know, a draft, and then we work with institutions to make sure that they're all comfortable with it, and then we then finalise it and set it. It's a pretty standard operating sort of schedule form year to year so we kind of, you know, make sure we do make improvement son it every year, both from the system process and the timeline perspective. Some of the dates later in the year are driven partly by when the VCAA produces their results as well. So there is a - there's three pieces to this. There's VTAC, the institutions, and the VCAA.

*** TERESA TIJA

XXN MR HACK

PN192

Okay. Thank you. Now, click forward to paragraph 23, the last one of that statement. Again - so you're talking about the requirements of your business and how the clauses don't fit with that. Putting aside that you've been working under these conditions for a significant amount of time already, what's your plan? When is - again, it's aspirational. I'm wondering, when are you planning to implement these changes that you're talking about?---If - if these changes were - sorry, I apologise if I don't use the correct words. But if they're approved or deemed to be - yes, approved, I guess, we will want to put them in for - in place next year, so we would commence the planning very much essentially from now because already planning for next year now. So we'll be commencing that planning straight away, and ensuring we can do that. We already have a - - -

PN193

It's cut out. It's cut out for me?---Sorry?

PN194

THE COMMISSIONER: Yes. Ms Tija, you just keep freezing for some reason. Just bear with us a minute?---Apologies.

PN195

No, no. It's not your fault.

PN196

MR HACK: We're back on now, Commissioner.

PN197

THE COMMISSIONER: All right. Good.

PN198

MR HACK: Sorry, Ms Tija. Do you mind repeating that last part of what you were saying?---Sorry. So apologies about that. Look, if this was approved, these changes, we would want to commence them next year and we would commence the planning as soon as we hear. Obviously we already have started and have got some plans already in place for next year, some estimated dates for various activities, but we would refine those and improve them based on whatever the outcome of this session will be. So we'll make adjustment as accordingly. We also have some system changes that are underway, so we've already got arranged plans along including some efficiencies and effectiveness of our practices as well.

*** TERESA TIJA

XXN MR HACK

PN199

Okay. Thanks. In relation to that, in the previous question I asked with the SEAS when you're working with the institutions to determine the deadlines throughout the year, what - has that already happened for 2024 or when does that take place?---We've got the high-level dates at the moment. Again, I just mentioned with the discussion around the fact this is a (indistinct) activity. We, in fact, have got some very high-level dates until when offers and when results are going to go out at the end of next year, only because the VCAA every six or seven years

there's a confluence of religious holiday dates that impact on the VCAA and their exams.

PN200

Yes?---So we've had already to have some discussions with them and that will now go backwards to - I mean, they will work backwards to all the other dates that we need to have but some of those dates are in place, high-level standard, so tend to open the offers at a - or the applications at (indistinct) point of time so there are some kind of routine but we can adjust the actual details of the work processes and some specific dates within those high-level timelines that we have in place each year.

PN201

Is there any outstanding dates to be determined for 2024?---The detailed ones, how we're going to manage the work, exactly what some of the deadlines are, those sorts of things because obviously we're going to work to all the different aspects and we'll be working to that with the teams and the teams do that quite continuously because there are some adjustments that have to be made, you know, on a sort of continuous basis, so we'll have another review session even in March - or February, March after we finish the rounds because we also learn a lot from the rounds that we're just about to go into, so the big rounds, because then we learn what worked well and what didn't work well and we'll go back to the institutions, we'll go and talk to them and then there'll be some more adjustments of the dates - so those (indistinct) dates.

PN202

Yes?---So what we have is the high level because they're kind of the knowns at a high level, then we work down into the details and we work with both the staff and institutions and post the review of this current cycle that we're in or about to go into in peak time.

PN203

So there's - yes, there's two levels of dates?---Yes, there are.

PN204

So are these levels something that then staff would understand and be aware of or is this - - -?---Yes.

PN205

Yes?---So yes, the staff work very closely, so Ms Ciccone, in particular, with the support of her director, they're the ones that actually work often with our institutions to actually, you know, develop the dates, they (indistinct) the review sessions, those sorts of things and then they'll come back and then say, 'All right. Here is what we need to do on the more detailed kind of timeline and if there's any significant issues, we take it back to a committee, so there's some formal committees that we have to take it back to, those sorts of things. But Ms Ciccone, in particular, would understand that because she's been part of that review process for quite some years now.

*** TERESA TIJA

XXN MR HACK

PN206

All right. Thank you. Just bear with me for a moment I'm just writing some notes?---That's all right. No, that's good. Thank you.

PN207

All right. Thank you. I've only got one more question but it's covering over old ground so I don't think we really need to spend much time on it?---That's fine.

PN208

So in relation to the third witness statement, I understand that's just a - it's mainly an acknowledgement that you're adhering to the current Monash EA?---Yes. Yes.

PN209

Yes. And that's fine?---Yes, we just thought we better clarify that.

PN210

Yes. All right. Thank you. Well, I've got no further questions, Commissioner.

PN211

THE COMMISSIONER: Just bear with me one moment.

PN212

Ms Tija, can I take you to page 227 of the digital Tribunal book?---Yes.

PN213

Do you have that?---I've got that; 227. Yes.

PN214

Yes, yes?---The statement from Peter Hovenga, yes.

PN215

That's correct. So at paragraph 8 he says, talking about the proposal:

PN216

In essence, we're exchanging five public holidays for three.

PN217

Do you accept that proposition if your amendments are accepted?---Yes.

PN218

Yes?---Yes.

PN219

He goes on to say further that:

PN220

Those employees that are required to work over the shutdown period also lose penalty rates under this proposal.

*** TERESA TIJA

XXN MR HACK

PN221

Do you agree with that proposition?---Yes.

PN222

And he said at paragraph 10:

PN223

Paragraph 20 seems to claim that VTAC are adding Easter Tuesday as an additional public holiday but this is already recognised as a public holiday under the current Monash EA.

PN224

Do you accept that?---Yes.

PN225

At paragraph - and over to page 228, paragraph 11 about halfway down he says:

PN226

VTAC does not provide the example of other independent tertiary admission centres such as UAC.

PN227

Who is UAC?---UAC is the New South Wales HTT admission centre. They're called the University Admissions Centre but they cover New South Wales and ACT.

PN228

Yes. And he says that:

PN229

You fail to mention that UAC staff get all New South Wales public holidays plus two concessional days over the Christmas/New Year period.

PN230

Do you - are you aware of that? Do you accept that?---I believe that's the case. I believe so.

PN231

So if you - if VTAC were to retain the five days as currently provided in the Monash EA, that would be consistent with UAC, is that correct?---I'd have to - we have to actually do these calculations. I think we get close to but there may be an additional day, I think that we're giving but I just need to go back to the - we have done this, so apologies, I should have this right in front of me.

PN232

No, that's all right. And then at paragraph 14 in the last sentence he says:

PN233

Under the current arrangement, staff do not sacrifice any annual leave over the shutdown. Under the proposed variation, staff will be forced to take annual leave.

*** TERESA TIJA

XXN MR HACK

PN234

You accept that proposition, don't you?---Well, if there is a shutdown during that time, yes, or any shutdown. Yes, then we'll have to take annual leave. Yes.

PN235

All right. Anything arising, Mr Farr?

PN236

MR FARR: No re-examination. Thank you, Commissioner.

PN237

THE COMMISSIONER: Ms Tija, can I thank you for your evidence today, I've been greatly assisted by it?---Thank you.

PN238

You are now excused as a witness.

PN239

Mr Farr, as I understand it, that completes the case on behalf of the applicant, VTAC.

PN240

MR FARR: It does. Thank you, Commissioner.

PN241

THE COMMISSIONER: Thank you. We'll move to the evidence of the NTEU. I'm conscious that we've been going for a little while, we'll take a five-minute adjournment and come back at 11.25.

PN242

MR FARR: Thank you, Commissioner.

PN243

THE WITNESS: Thank you.

PN244

MR HACK: Thank you, Commissioner.

<THE WITNESS WITHDREW [11.19 AM]

SHORT ADJOURNMENT [11.20 PM]

RESUMED [11.27 AM]

PN245

THE COMMISSIONER: Thank you. Mr Hack, who are we going to hear from first?

*** TERESA TIJA

XXN MR HACK

PN246

MR HACK: I think it would be relevant to contact Ms Ciccone given the discussions we were just having. I haven't - she's not here right now.

PN247

THE COMMISSIONER: That's all right.

PN248

MR HACK: I wanted to wait and see what the plan was, thanks, Commissioner, but I'll contact her now and ask her to join.

PN249

THE COMMISSIONER: Yes.

PN250

MR HACK: Ms Ciccone will be joining us shortly. Thank you.

PN251

THE COMMISSIONER: Thank you.

PN252

Ms Ciccone, it's Commissioner Johns. Can you hear and see me?

PN253

MS CICCONE: Yes, I can. Thank you.

PN254

THE COMMISSIONER: All right. Thank you. I'm going to administer the affirmation to you.

<BELINDA CICCONE, AFFIRMED [11.29 AM]

EXAMINATION-IN-CHIEF BY THE COMMISSIONER [11.29 AM]

PN255

THE COMMISSIONER: Yes. Thank you. Do you have a copy of your witness statement there, that's dated the 1st of November 2023?---Yes, I do. Yes, I do.

PN256

Are there any amendments you'd like to make to the statement?---No, there's no amendments.

PN257

Are its contents true and correct?---Yes, they are.

PN258

And would you have me receive it as your evidence in these proceedings?---Yes.

PN259

Exhibit - sorry, the witness statement of Belinda Ciccone is exhibit 4.3 in the proceedings.

*** BELINDA CICCONE

XN THE COMMISSIONER

EXHIBIT #4.3 WITNESS STATEMENT OF BELINDA CICCONE

PN260

In paragraphs 4 to 8 dealing with public holidays, you talk about the work of the selection and application services SAS Department, did you work on Melbourne Cup Day this year?---No. This year I did work on Melbourne Cup Day. I'm a part-time employee, so this year it wasn't a working day for me.

PN261

Did any of your colleagues in the SAS Department work on Melbourne Cup Day?---Yes, they did.

PN262

Do you know how many of them, what proportion?---That's a very good - - -

PN263

If you don't know, don't say so, but you know, I don't want - I'm not asking you to guess?---Yes. No, I don't know.

PN264

Yes. If you just wait there, Mr Farr might have some questions for you?---Sure.

PN265

MR FARR: Thank you, Commissioner.

PN266

THE COMMISSIONER: Sorry. Sorry, Mr Farr, before you do that I should - - -

PN267

MR FARR: Of course.

PN268

THE COMMISSIONER: When you talk in paragraphs 9 through to 19, you talk about the shutdown clause?---Yes.

PN269

So notwithstanding the fact that you're required to work on the three public holidays and then you get the five days off, you're saying that in those five days off, you regularly worked them anyway, at least two of them?---Yes. Yes, at least two of them.

PN270

Yes. And do you get paid penalty rates or something for working on those dates?---Yes, we do. During that period we do get penalty rates.

PN271

And have you been told what to expect this coming year?---In terms of employment like when we would be working during that period?

*** BELINDA CICCONE

XN THE COMMISSIONER

PN272

Yes?---No, not at this stage. I guess we're working on the dates and we've got a fair idea when we will be working based on our timelines that we need to complete internal testing for released institutions, so no, we haven't officially had a discussion on that but we do know when the anticipated days will be or hours will be.

PN273

Well, when will those anticipated days be?---All right. So if our shutdown - so it'll be the first two days of the shutdown period which is the 21st and the 22nd.

PN274

And how has that been communicated to you?---Previously or do you mean in the upcoming cycle?

PN275

Sorry, in relation to the coming year, the 21st and the 22nd of December 2023, how has that been communicated to you?---Yes. That hasn't been directly communicated, but we've looked at the dates in which we need to release files or data to institutions, so we know based on when our internal days are, when we would need to work, as I mentioned, based on external dates.

PN276

All right. Thank you. I have nothing further at this point.

PN277

Mr Farr, please?

CROSS-EXAMINATION BY MR FARR

[11.33 AM]

PN278

MR FARR: Thank you, Commissioner.

PN279

And good morning, Ms Ciccone. I just have a couple of questions. Firstly, in respect of your statement, do you have that in front of you at the moment?---Yes, I do. Yes.

PN280

I just wonder - I'm just a little confused between paragraph 6 and paragraph 8?---Yes.

PN281

I think in paragraph 6 you talk to the fact that you're required to complete over a thousand tasks every day to meet deadlines?---Yes.

PN282

And then in paragraph 8 you talk to the Melbourne Cup workday and that the loss of working that day which could be used to complete 2000 SEAS assessments?---Yes. Yes.

*** BELINDA CICCONE

XXN MR FARR

PN283

Are they one and the same that you're talking to?---Yes. Like in terms of item 6, I'm referring to the amount of tasks that we need to complete every day so I've mentioned every day so I've mentioned like over a thousand. in terms of item 8, that refers to when we're getting closer to our internal deadline, we need to complete that many SEAS assessments so that we have met are internal deadline so that we can provide data to institutions. So, yes, that is what item 6 and item 8 are referring to.

PN284

All right. Thank you. So I take it from your statement you don't have any particular workload issues that require you because of deadline, to work the Labour Day public holiday, would you agree with that?---Yes, that's right.

PN285

And could the same be said for the King's Birthday public holiday that there's no particular workload issues that require you to work those days or that day?---No. Yes, that's right. So we have looked at that particular public holiday, so that holiday wouldn't have a huge impact on our assessments that we need to complete. So on our workload. So it's still - - -

PN286

So really - apologies?---Yes.

PN287

My apologies, please?---Yes. So it would still affect our workload but it would more - it would be easier for us to handle compared to the Melbourne Cup holiday. Yes.

PN288

And so it is fair to say that your main concern is really directed to the Melbourne Cup public holiday?---That's right, yes. Because we are getting to a very important time. I mean, the King's Birthday is also important but in terms of our strict assessments that we need to complete by the deadline, it's mainly Melbourne Cup.

PN289

And are you working weekends during the period from sort of early October through to the Christmas closedown at all, Ms Ciccone?---No, not the SAS Department. We aren't.

PN290

All right. And is your or any of your team working any overtime during that period?---There is overtime that we do but the overtime doesn't relate to the assessments so it relates to a separate process that we do but, yes, it doesn't relate to the assessments that we need to complete.

*** BELINDA CICCONE

XXN MR FARR

PN291

All right. And so if a day moved such that you either opened the process a day early or you closed the process a day late, so you found an additional day in the

processes you're currently administering, that would therefore offset the ability for you to observe the Melbourne Cup public holiday. You would agree with that?---Yes. If there was an extra day to make up the Melbourne Cup, then yes. Without having an extra day, then puts more assessments that need to be completed within that time frame.

PN292

All right. Thank you. And in terms of the working the shutdown period?---Yes.

PN293

So as I understand it, Monash University's very traditional approach with those five days is that they always put the extra days, the days that can't be taken between Christmas and New Year, they front end that prior to Christmas and so in this year it's the - is it, did you say, the 21st and the 22nd of December were the shutdown days?---That's right. Yes.

PN294

All right. And if - and your workload continues right up until the Christmas period, doesn't it?---That's right, yes. Yes.

PN295

So you're not coming back to work between Christmas and New Year period?---No. So we're not actually going into work during that period, but there'll be periods where we will have to check emails which will all be done working from home to support institutions so officially, no, we won't be going into work, but there will still be work expectations that will need to be done within a group of colleagues in SAS.

PN296

And are you aware of the provisions of the Monash Enterprise Agreement?---In terms of what in particular?

PN297

Well, just generally speaking?---There are some parts, yes.

PN298

And are you particularly aware of clause 46 which is the provision that we're really focussing in on, which is the three public holiday being Labour Day, King's Birthday as it's now known and Melbourne Cup Day. You're aware of that particular provision?---Yes.

PN299

And I think it goes on its own terms that Monash University in determining what is the five-day mandated shutdown period, could back end those additional days after New Years if there are additional days, rather than putting them in front of Christmas, couldn't they?---Yes.

*** BELINDA CICCONE

XXN MR FARR

PN300

And if they, as a university, because they've got to do it as a single decision across the whole university, if those additional days were in the New Year period, then

when you work on the 20th or the - sorry, the 21st or the 22nd this year, they would just be ordinary workdays for you, wouldn't they?---Yes. Like I'm aware of that situation, yes.

PN301

And you wouldn't get any special penalty or payment along those lines?---Yes.

PN302

And you're aware that the reason for giving the five days is in lieu of working a public holiday that would otherwise attract a penalty payment of 250 per cent, is that right?---Yes.

PN303

So you sort of get eight days for working three public holidays if you actually, under the new proposal, do you understand that if you work those three public holidays, you'd be paid 750 per cent under the new proposed clause that VTAC is seeking in this application?---Yes.

PN304

So realistically, from a VTAC perspective, it's almost the worst timing that Monash University decides that the five mandated days are the two days prior to Christmas, isn't it?---Yes.

PN305

And it sort of reflects that the Enterprise Agreement is a university-wide enterprise agreement that applies to academics, it applies to professionals who support academic teaching but it also covers administrative units like VTAC as it currently sits under the Monash umbrella?---Yes.

PN306

So you'd accept, would you not, that if there's more time available to you and deadlines were shifted so that we could accommodate Melbourne Cup Day and if there was more time available where files were uploaded and provided through to university stakeholders prior to the Christmas break, that in fact, your need to work even between Christmas and New Year would be diminished significantly?---Yes. Yes, definitely. So if those dates were sort of rescheduled, then yes, I understand that.

PN307

All right. And you're aware that VTACs intending to improve its systems in respect of the delivery of its services?---Yes. In the future, yes, I do understand that that will be happening. I guess I'm basing it on the current practice at the moment.

PN308

Of course. And do you understand what type of things VTAC is looking to achieve through its system improvement?---Yes. Yes, I do.

*** BELINDA CICCONE

XXN MR FARR

PN309

And could you tell the Commission what those improvements are likely to be or are intended to be?---I mean, overall, it's definitely meant to be a much simpler and better system in terms of - at the moment, we're doing a lot of, like, report checking, a lot of human intervention so I know that the plan is with what is proposed, there'll be less parts of human involvement. It doesn't mean all parts won't include human involvement but there will be less human involvement in terms of checking, checking of data, which we are all pleased about.

PN310

Perfect. Thank you. And, of course, if we can adjust the dates, I'm assuming at the other end of the process, so VTAC does its work and it pushes the file through to each of the different universities. Is my thinking correct at this point in time with that?---Do you mean in terms of SEAS assessments the Melbourne Cup.

PN311

Yes?---Yes. So yes, there's a file that we provide to institutions and that's why we've got that deadline because internally we need to produce that file, we need to do thorough testing so that when that file is provided to institutions, we have confidence in that file and that's why we've got that internal deadline that we need to complete SEAS assessments by.

PN312

Perfect. And so from - if I'm a receiving tertiary institution, if I'm getting something on the 24th of December, you know, just in an average year then I'm going to have to do work between Christmas and New Year as well, you'd accept that as a proposition?---I would - yes, I'm not too sure. I know that two universities do do work during that period. We don't hear from other institutions during that period so I'm unsure if they do do work during that period but there are a couple of institutions that we're aware of that do work during that period in terms of selection.

PN313

And so if VTAC is - the university, the schools administration, is it VA - VCAA, my apologies, were able to adjust the dates so that information was being received prior to Christmas and that would diminish workloads obviously at the other end and then user experience at the university as well between Christmas and New Year?---Yes. Yes, I understand that. Like it's in terms of that particular work, it's all dependent on the VCAA release date and that sort of flows through to what needs to be done.

PN314

And so if I said it sounds like a bit of a win-win, you're not putting a - being put under enormous pressure in the lead up right to the last second prior to a Christmas break and your end users are also having a different experience. That seems to me as a proposition that that's a win-win for everybody in this matter?---Yes. Do you mean in terms of adjusting, like, looking at adjusting dates?

*** BELINDA CICCONE

XXN MR FARR

PN315

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

PN316

Thank you. Ms Ciccone, in terms of the taking of annual leave, how much annual leave do you have at the moment?---I have approximately 30 annual leave days.

PN317

All right. And how much long service leave do you currently have at the moment?---I couldn't give you the exact figure, but it would be approximately 120 days.

PN318

All right. So you've got quite substantial leave balances then, are they FTE equivalent or is that at your point 6?---That's at my point 6.

PN319

All right. But even so, you've still got a substantial leave balance, haven't you?---Yes. Yes, I do. Yes.

PN320

All right. And so the taking of leave, you'd agree with me, is a very important part of your health and wellbeing as an employee?---Yes, it is. Yes.

PN321

All right. And is there something preventing you from using your annual leave on a year-to-year basis?---On year-to-year basis I do use annual leave but somehow my leave just grows so in terms of - I've taken, like, two weeks' leave this year which maybe to others isn't substantial but usually every year I do take at least a couple of weeks of leave.

PN322

All right. And you'd agree with me that the notion of taking regular breaks from work is important for your health and wellbeing?---Yes. Yes, yes.

PN323

And so therefore the opportunity to observe Labour Day, King's Birthday as well as Melbourne Cup notwithstanding it's a difficult and busy period, are important for you, from your health and wellbeing?---Yes, I understand that. Like, in terms of health and wellbeing, yes. I guess when we have strict timelines, it can be difficult for staff to take leave when we need to complete assessments by a deadline.

*** BELINDA CICCONE

XXN MR FARR

PN324

Of course. And you'd also agree with me that there are quieter periods throughout the calendar year in terms of workload, that there are genuine peaks and there are genuine troughs?---There are peaks and troughs. We - I know, in terms of SAS we haven't really experienced that a great deal this year just with other activities that were going on during our quiet periods, our slightly quiet periods. I couldn't say 'Quiet periods', but yes, the period in which we can take leave does become

smaller and smaller, just because of activities that are on, but yes, we definitely do encourage all staff to take leave.

PN325

All right. And have you read the proposed shutdown clause that permits VTAC Limited to direct employees to take a period of annual leave, are you familiar with the clause that's been proposed?---I have read it briefly.

PN326

All right. And you, I think you'd agree with me, it gives a discretion to VTAC to shut down and ask some or all employees to take annual leave?---Yes.

PN327

So for example, would you agree with me like a period of annual leave shut down perhaps around an Easter period might be a quieter period within the organisational cycle?---It's difficult to say without looking at our own internal timelines. I don't have them handy. It may work, yes, it's just difficult to say at this stage.

PN328

All right. And Ms Ciccone, as a very small administrative unit within Monash University, the ability to get additional resources, you'd agree with me that that had a very administrative process that VTAC within Monash University had to follow in order to get funding for new positions or additional casual hours or anything along those lines, was quite a hierarchical and very bureaucratic process to obtain those additional resources?---Yes. So we definitely did encounter that, yes, this year-round.

PN329

And one of the hopes perhaps is VTAC now is a limited standalone organisation, is that it can make its own decisions about resourcing. That's a benefit from the change here?---Yes. It would definitely be a benefit from what we've encountered this year.

PN330

And so therefore if you were under significant workload pressures around the, you know, SEAS offers, that you could now ask for additional resources and you would agree with me that you'd be in a position to get a response directly from the management of VTAC Limited?---Yes. We would need ample time to do that though, it wouldn't be as simple as we're not meeting a deadline and in a couple of days we need new staff so - yes, there's definitely a period where we would have to go through that process and in terms of, like, appointing staff, if - in relation to, like, SEAS assessments that we need to complete, yes, it's - we can definitely employ additional staff. We just need ample time to do that.

*** BELINDA CICCONE

XXN MR FARR

PN331

Thank you. And it's highly predictive, isn't it, as I understand it, what happened last year happened very closely to the year before and the year before that and the year before that and so you have a very high degree of predictability about what is

the likely workload in the work that you do, would you agree with that?---Yes, like in terms of the SEAS assessments, yes, because it's based on when SEAS assessment - SEAS application closes. We then know how many tasks have been generated and how many will need to be completed by our internal deadline and we work from that to determine how many need to be done each day to meet that deadline.

PN332

All right. And if the world was falling apart, there's a change, the Commissioner grants the application and everybody now observes Melbourne Cup public holiday but the world is falling apart and people are asked to work Melbourne Cup by way of overtime, you'd agree that that's an additional possibility that VTAC could ask employees to do that if required?---Yes. Yes, if required.

PN333

And that you would then receive payment of 250 per cent for working that Melbourne Cup Day or you could take a time off in lieu?---Yes, one or the other.

PN334

Commissioner, I have nothing further.

PN335

THE COMMISSIONER: Yes. Thank you.

PN336

Mr Hack, anything arising?

RE-EXAMINATION BY MR HACK

[11.52 AM]

PN337

MR HACK: Yes. Thanks, Commissioner.

PN338

I'd just like to ask a little bit - for a little bit of clarification in regards to something that was just mentioned in terms of the high predictability and workloads and hi, Belinda, are you - you're - - -?---Hi.

PN339

Yes. Hi, you've responded to say that it's predictable because of the deadlines and the closing dates, so is that right that it's out of VTACs control when those closing dates are, so there's a closing date and that's when you can start the work and then you have to finish it by the deadline, is that right?---Yes. Like in terms of SEAS assessments, there is a deadline so when SEAS applications close and then we work from that deadline, how many tasks have been generated and how many need to be completed for our internal deadlines so that we can start generating the file and doing our own checking of that file before it's released to the public to institutions.

*** BELINDA CICCONE

RXN MR HACK

PN340

Yes. And those dates - there's no wiggle room, you're not able to move those dates one day either side?---Yes. It would require a lot of discussion, so in terms of like, the SEAS deadline it would require a lot of discussion with schools, in particular, and also in terms of the file that we provide to institutions, again, it would require a lot of discussion with institutions but they have their own processes that they need to do after the file is released to them.

PN341

Yes. Thank you. So, yes, actually Ms Tija commented before that you would understand this process really well in terms of how the deadlines are determined and she referred to high-level dates for 2024 are already decided and are you able to explain the process there, like, I understand that Ms Tija explained that VTAC proposes the dates and then they're adopted, is that right, in your view or like - - -?---Yes. Yes.

PN342

So what's the process in terms of the institutions when they consider those dates?---Yes. So we propose the dates. So initially VTAC starts with the dates if that makes sense, so we initiate those dates and then there are discussions with institutions on agreeing with the proposed dates.

PN343

Do they usually agree with those proposed dates or - - -?---Sometimes they don't agree. Sometimes we need to come up with a different option in terms of dates. They may decide to move, you know, one or two dates either forward or back so there is always the discussion with institutions but we initially start the discussion or start the first sort of draft of dates and then that is provided to institutions for their agreement.

PN344

Yes. All right. Thank you?---Thanks. I just - this has already been covered off by Ms Tija, but I think it came up in the questioning just now as well in relation to how many staff are going to be - would usually be required to work during the Christmas shutdown. Are you able to confirm how many of your colleagues there usually would be?---So I mean, in terms of the SAS Department, there would be approximately four of us.

PN345

Yes?---Three to four of us. And do you want me just to focus on SAS?

PN346

No, that's fine. Yes, that's fine?---Yes.

PN347

That's what you understand?---Yes.

PN348

That's your area. Yes?---Yes.

*** BELINDA CICCONE

RXN MR HACK

PN349

That's similar to what Ms Tija was suggesting as well?---Sure.

PN350

I think the only thing I wanted to ask about - I'm not sure if you have the applicant's reply in terms of paragraph 13. It's page 3 - I'm not sure if you have this - of Ms Tija's second witness statement?---I can get that.

PN351

Okay. Thanks.

PN352

THE COMMISSIONER: What page in the digital tribunal book?

PN353

MR HACK: 241. I'm not sure if Ms Ciccone has the digital book.

PN354

THE WITNESS: And, sorry, which part of that, sorry, was that?

PN355

MR HACK: Paragraph 13?---Okay.

PN356

Page 3 of the second statement?---Yes. Okay, what would you like to know about that?

PN357

The first part is just about who Ms Tija has spoken to in terms of this?---Yes.

PN358

But in relation to the last sentence of that paragraph where she says:

PN359

I am informed by Ms Peterson and also my own view that the requirement to work for three public holidays can be removed or minimised by operational planning.

PN360

Are you able to just explain your view on that proposal?---Yes, sure. Like in terms of this and the three - the three public holidays, I mean I can mainly focus on the Melbourne Cup in terms of - because that is the one that really affects our workload. In terms of like operational planning I guess it depends on what that actually means. I mean if we are looking at changing dates, which would be difficult for institutions, then, yes, that could be possible. So it really depends on, yes, what operational planning in particular that statement is referring to.

*** BELINDA CICCONE

RXN MR HACK

PN361

From your experience it would be difficult to expect the institutions to agree with changes to those dates?---Especially with, yes, the kind of file that they are dealing with and the data that they need to load into their systems. So, yes, there

would need to be agreement with all institutions that they will be receiving the file much later than usual, but there would be no way in which we could still provide them with that file at that deadline, and also not working Melbourne Cup because that would impact SAS in particular and also impact IT because that would mean less time for IT to produce the file and for their own testing.

PN362

Thank you, Ms Ciccone. I've got no further questions, Commissioner.

PN363

THE COMMISSIONER: Thank you, Ms Ciccone. Can I thank you for your attendance here today. I have been assisted by your evidence and you're now excused as a witness?---Thank you.

<THE WITNESS WITHDREW

[12.00 PM]

PN364

Who's next, Mr Hack?

PN365

MR HACK: Thanks, Commissioner. I would call Ross Hansford. It's another segue. He works in IT, so Ms Ciccone just mentioned. I will give him a call now. Thank you for your patience. Ross will be logging in shortly.

PN366

THE COMMISSIONER: Mr Hansford, it's Commissioner Johns, can you hear and see me.

PN367

MR HANSFORD: Yes. This is Ross Hansford.

PN368

THE COMMISSIONER: Very good. I'm going to administer the affirmation to you.

<ROSS HANSFORD, AFFIRMED

[12.03 PM]

EXAMINATION-IN-CHIEF BY THE COMMISSIONER

[12.03 PM]

PN369

THE COMMISSIONER: Do you have a copy of your witness statement there, it's at page 233 of the digital tribunal book?---I've got my version of it.

PN370

Yes, that's all right. I'm just saying that for the purpose of the transcript to assist me later actually?---Okay.

PN371

Are there any amendments you would like to make to the statement?---No. I don't want to make any amendments, no.

*** ROSS HANSFORD

XN THE COMMISSIONER

PN372

Are its contents true and correct?---Yes, it is.

PN373

And would you have me receive it as your evidence in these proceedings?---Yes, I do.

EXHIBIT #4.4 WITNESS STATEMENT OF ROSS HANSFORD

PN374

In paragraph 6 you say:

PN375

The peak period for establishing systems is during the lead up to Christmas, including the estimated close down period of 22-24 December.

PN376

They're currently part of the five days you would get off, aren't they?---Yes, they are.

PN377

Do you not have them off?---Pardon?

PN378

Do you not have them off?---No, generally, yes, I have to work on those days.

PN379

The deal is you work on three public holidays, Labour Day, King's Birthday and Melbourne Cup under the enterprise agreement in exchange for getting five days off. But in any case you at least work two of the five days?---Correct.

PN380

And what are you paid for working those days?---I can't remember. I didn't actually calculate the hourly rate. Yes, I was paid additional money for those days.

PN381

Okay, thank you. Mr Farr?

CROSS-EXAMINATION BY MR FARR

[12.05 PM]

PN382

MR FARR: Thank you, Commissioner. Good afternoon, Mr Hansford. My name is Andrew Farr, I'm the advocate lawyer on behalf of VTAC Limited. Can I just understand a little bit about workload issues, if that's okay. Do you have any particular concerns with workload around the Labour Day public holiday in or about the middle of March each year, Mr Hansford?---Labour Day is usually not a busy day for the IT department.

*** ROSS HANSFORD

XXN MR FARR

PN383

THE COMMISSIONER: Sorry, Mr Hansford, I'm going to ask you to repeat that answer slowly, because I just didn't hear it?---Sorry. Yes, Labour Day is not a busy day for the IT department.

PN384

Thank you. Mr Farr.

PN385

MR FARR: Thank you, Commissioner. And similarly King's Birthday in the early or the middle part of June how does that public holiday or the working of that public holiday affect your workload issues in the IT department?---From memory I can't think of any busy days, or busy period during that time. So we don't really have any urgent tasks on that day.

PN386

So observing those public holidays is not going to materially impact your workload for Labour Day and King's Birthday. You would agree with that?---Yes, I'd agree.

PN387

So your main concern as I understand it from your witness statement is really the latter part of the year which incorporates the Melbourne Cup public holiday running into the Christmas shutdown period. Is that fair to say?---Yes, that's fair.

PN388

And from an IT department perspective if we were to observe Melbourne Cup day as a public holiday how would that currently affect your workload?---So during that day it's either the day we're setting up the work list, or we've just opened the work list for the institution. So, yes, it can be a busy day for the IT department.

PN389

And if VTAC with agreement with the tertiary institutions changed its dates around all of its process, so for example we move the dates forward a day or two to allow some additional time in the process, you'd agree with me that that would allow you to therefore adjust your timing and therefore allow you the opportunity to observe the Melbourne Cup public holiday?---Yes, that would - yes, that would assist us, yes, in being able to get the work done, and observe the Cup day holiday.

PN390

And if the world fell apart, as I'm sure in the IT world it sometimes does, thank you, Optus, if it does fall apart there is a public holiday day that you could work and be paid under the proposal essentially as overtime for working that additional day. You'd agree with that?---Yes. Yes, we could do that if necessary.

PN391

But hopefully it's not necessary of course?---Yes.

*** ROSS HANSFORD

XXN MR FARR

PN392

But as I understand it it gets very busy in the lead up to the last few days prior to Christmas. That's a fair comment?---Yes, that's - yes, that's fair.

PN393

So as I understand it, Mr Hansford, how long have you been employed at the university for?---I think it's at least 26 years by now. I started in 1996, August 96.

PN394

I suspect therefore you are in a position of authority and expertise on this. As I understand it Monash University when it sets the five days to be taken off in lieu of the three public holidays worked - I just might call them the mandated five days - it's common and almost always the university puts the additional days that can't be taken between Christmas and new year and puts them prior to Christmas. So it's often one or two days prior to Christmas are part of the five mandated days?---Yes. Yes, I understand. Yes, that's usually what happens, yes.

PN395

Okay. And are you familiar with the enterprise agreement itself, Mr Hansford, the Monash Enterprise Agreement?---I guess - well, sort of, yes. I know about the close down dates for Monash Uni.

PN396

Well, let's focus in on that, on those particular dates. You appreciate that the clause allows Monash University to mandate the five days, and those additional days can either be before Christmas or in fact they could actually be reshuffled and come after new year's?---Yes. I think that has happened a few times, yes.

PN397

Yes, okay. And so if Monash University therefore changed its operation - I'm not talking about VTAC here for the moment, I'm just talking about Monash University - if they changed its operation and backdate the dates rather than put them before Christmas, when you're working up to the Christmas deadline that would just be ordinary working time for you. You'd agree with that?---Yes, that's - yes, (indistinct), yes.

PN398

And there's no penalty rate payment for the fact that it's the day before Christmas or two days before Christmas other than the mandated five days?---Yes. Yes, I agree.

PN399

IT departments do have to work 365 days 24 hours per day. I'm assuming things come up occasionally between the Christmas and the new year period?---Yes, it does, yes. Yes, some months we've had issues all - the businesses need the support of IT during that time.

*** ROSS HANSFORD

XXN MR FARR

PN400

But that's more a response to an issue that's arising rather than planned and scheduled work that you need to undertake in respect of the VTAC

processes?---Yes. Yes, because most of the time we've done all the work up to between 21 and 24 December.

PN401

So it's ad hoc, it's unplanned, but we all accept it occurs occasionally?---Yes, that's correct.

PN402

But if what we could do, Mr Hansford, is - let's say for example, and I'm just being speculative here, but let's say, I think this year Christmas is the Monday, so the mandated days at this point in time of 2023 from Monash University is 21 and 22 December are part of the five days. If we were able to move those days again to allow more time you would be hopeful that your workload would be complete prior to the Christmas break. That's a fair comment?---Yes, if we could - yes, if we could move some of the other dates, yes, that would be fair comment.

PN403

So, Mr Hansford, what's your current annual leave balance?---I guess it's probably over - it'd be over 40 days by now.

PN404

So that your current leave balance is over 40 days?---Yes.

PN405

That's approximately two years of accrued annual leave that you currently hold; is that correct?---Yes. Yes, I think so, because I've only taken about five, I think five days so far this year.

PN406

I'm sure you've very tired running into the Christmas period. What about your long service leave balance, what does that sit at, at the moment?---I'm not sure because I've never - I've never taken any long service leave.

PN407

So in 26 years you haven't taken long service leave?---Yes. So I mean it probably (indistinct) the 20 year. I think (indistinct) from the 20 year anniversary, and I haven't (indistinct).

PN408

And I think you get, is it three months long service leave after 10 years under the Monash Enterprise Agreement?---Yes, I think that's what it was.

PN409

So it's fair to say that you hold substantial leave balances at the moment?---Yes, I do.

PN410

And you'd agree with me that taking regular breaks throughout the year is an important element of your health and wellbeing as an employee of VTAC Limited?---Yes, I agree with that.

*** ROSS HANSFORD

XXN MR FARR

PN411

And so therefore the opportunity of observing perhaps Labour Day, King's Birthday and Melbourne Cup Day are important to give you a mini break to ensure that your health and wellbeing is being considered by VTAC?---Yes. Yes, I'd agree.

PN412

I have nothing further, thank you, Commissioner.

PN413

THE COMMISSIONER: Thank you, Mr Farr. Mr Hack, anything arising? You get the prize, you're on mute, sir.

RE-EXAMINATION BY MR HACK

[12.15 PM]

PN414

MR HACK: Thank you, Commissioner. Yes, hi, Ross, I would like to ask a couple of questions. In relation to your leave - this has been brought up and your leave balances - when do you like to take annual leave?---Generally I prefer to take it during the period, the immediate period like after February, February to May would be the time I usually try to take it.

PN415

Yes, no worries. It sounds like you do have quite a lot of leave available to you?---Yes.

PN416

I have to agree there. Has management taken it upon themselves to have any discussions with you about reducing the leave balances?---There has been discussions on, yes, me taking long service leave. Yes, that was never formally arranged when that would happen.

PN417

What about annual leave?---There has been a few discussions. Like obviously I took - I took some days this month and late last month. Yes, it's never been a significant amount, just because I'm usually covering gaps in other - when other staff leave or are unavailable. I've just been filling a lot of gaps. It's really been hard to take leave.

PN418

Okay. Great, thanks. So they haven't made any formal arrangements with you to reduce your leave?---No.

PN419

Okay, thank you for that. Yes, I've got no further questions, Commissioner.

PN420

THE COMMISSIONER: Mr Hansford, can I thank you for your attendance here today. You're now excused as a witness?---Okay. Thank you. Bye.

*** ROSS HANSFORD

RXN MR HACK

<THE WITNESS WITHDREW

[12.17 PM]

PN421

Mr Hack, I understand your last witness is Mr Hovenga.

PN422

MR HACK: Yes, thank you. I will take a moment and I will call him. Thank you for your patience, Peter will be attending in a moment.

PN423

THE COMMISSIONER: Mr Hovenga, it's Commissioner Johns, can you hear and see me?

PN424

MR HOVENGA: Yes, I can see and hear you, Commissioner, yes.

PN425

THE COMMISSIONER: Very good. Do you have a copy of your witness statement there with you?

PN426

MR HOVENGA: I do. I printed it out here.

PN427

THE COMMISSIONER: All right. I will administer the affirmation to you.

<PETER HOVENGA, AFFIRMED

[12.19 PM]

EXAMINATION-IN-CHIEF BY THE COMMISSIONER

[12.19 PM]

PN428

If I can take you to your witness statement, are there any amendments you'd like to make to the statement?---No. I've had a read through this morning and I think everything is correct there, yes.

PN429

That's my next question, are its contents true and correct?---They are, yes.

PN430

And would you have me receive it as your evidence in these proceedings?---Yes, I will.

PN431

Thank you.

EXHIBIT #4.2 WITNESS STATEMENT OF PETER HOVENGA

PN432

Just wait there, Mr Farr may have some questions for you.

*** PETER HOVENGA

XN THE COMMISSIONER

CROSS-EXAMINATION BY MR FARR

[12.19 PM]

PN433

MR FARR: Good afternoon, Mr Hovenga. So my name is Andrew Farr, I'm the lawyer acting on behalf of VTAC Limited in this matter. I just have a few questions both around the survey and around the sort of leave and the arrangements within the workplace?---Yes.

PN434

So firstly in respect of the staff survey that you've sent out how many staff surveys did you actually send out?---We only sent one out. I was on leave - - -

PN435

I apologise, I just missed that number, I'm sorry?---I only sent out one survey.

PN436

Sorry, one. To how many employees did you send it out to?---How many? I think it was about - I think it was 26 - 25, 26, around that number.

PN437

So of that 25 or 26 as I understand it 16 responded; is that correct?---That's correct, yes.

PN438

And there's approximately 70 employees at VTAC on secondment across from Monash University at the moment?---I'm unsure how many are seconded over from Monash to be honest.

PN439

So if I put it to you that there's approximately 70 that wouldn't surprise you in terms of the number?---It sounds - unless there's casuals included in that number, I'm not sure about casuals seconded from Monash, but there must be quite a few casuals in that number I would imagine.

PN440

And so if there are and it does include casuals then the 16 response of approximately 70 employees represents about 25 per cent of the employee population who have responded to your survey?---Yes. Yes, that's right, but it was only sent out to, I guess, less than, or a bit over a third of that number.

PN441

*** PETER HOVENGA

XN THE COMMISSIONER

*** PETER HOVENGA

XXN MR FARR

And why did you choose not to send it to all of the employees?---I think - well, I only chose to send it to the people who turned up to the last meeting on the S320. Well, it was not everyone that turned up to that meeting. It was only the people that accepted the last S320 meeting, so I had a record of who attended. There were many more - there were many others that attended that meeting as well, but I didn't have their details. Like I wasn't sure which staff members have attended. I guess I only chose to send it to those people, because the survey was more to gather individual perspectives on the opposed clauses

rather than being some kind of all staff vote in favour or opposition to the clauses. It wasn't really the intention to canvas a, you know, overall staff opinion of the staff.

PN442

So not even all those who attended a particular meeting, you've had some - you've applied some filter to who you were going to send the survey to unilaterally. So why should we take the results of this survey as safe or reliable in any way given those particular circumstances?---It depends on which evidence you're talking about. I think there are numbers of individual statements within there that I think are from like those 16 people, and that's all mostly what we chose to present as evidence I think.

PN443

But you've chosen not to even provide the Commission with the survey, so how are we to assess the validity of any of the information that's been provided?---Are you saying that those quotes that we've included in paragraph 28 are not relevant? I think they're individual kind of perspectives on the shutdown clauses on - - -

PN444

THE COMMISSIONER: No, sorry, Mr Hovenga, it's a simple proposition. You have not provided a copy of the survey. You have not provided the full responses. It's a simple question, how are we to be assured of the veracity of it? I mean you could have attached to your statement, couldn't you, a copy of the survey?---Perhaps, yes.

PN445

Why do you say perhaps, you could have, couldn't you?---Yes, we could have. I came into the survey rather late. I was the one who sent it around. I was under the impression that the purpose of the survey was to submit individual perspectives on the shutdown and public holiday clauses.

PN446

All right. Sorry, Mr Farr.

PN447

MR FARR: Thank you, Commissioner. So we don't have the source evidence. You agree with that?---You don't have the source, yes, that's correct.

PN448

And so you'd agree with me that we are not in any position to assess the context of any of these statements; you'd agree with that?---Well, I think the statements are all true statements of VTAC staff. So I'd probably disagree with that assertion I think.

*** PETER HOVENGA

XXN MR FARR

PN449

I'm not suggesting that they're not a direct quote from the survey, because I don't know whether they are or they're not, so I'm not suggesting that. What I'm suggesting to you is that we are unable to assess the context of how that statement

was made, because we don't know the question and we don't know the answer that was provided by the individual respondent. Would you agree with that?---Well, the question is listed in paragraph 27, 'Will the forced shutdown adversely affect you?' And then we've provided individual responses to that question. So I think it's - the question is there, all the statements are true. So I think the evidence is still relevant.

PN450

Let me take you to paragraph 26 then perhaps?---Yes.

PN451

Part of this survey. So how many questions were in the survey?---I think it was - if you include statements such as 'Are you a union member', 'What department you're in', I think there were perhaps five questions in total.

PN452

And have you put a response to each of the five questions in your witness statement?---No, I haven't, no.

PN453

So you'd agree with me that the Commissioner is unable to assess the context of these statements because the Commission is not appraised of all of the information in respect of this survey?---I think that the evidence we've presented are the most relevant parts of that survey unless you're interested in breaking down which department people came from and whether they were union members or not.

PN454

But to be fair, Mr Hovenga, it's your assessment of what is the most relevant, it's not the Commission's assessment of what is the most relevant. You'd agree with that?---It is my interpretation – yes, it is my interpretation and my summary of the responses within the survey.

PN455

Who prepared your witness statement, Mr Hovenga?---I did. I wrote it, yes.

PN456

Okay, and you sought support from your union in respect of filing this statement?---I submitted my statement to the union, yes.

PN457

And so, at all times you have had the opportunity of having support? I do understand that there have been some internal difficulties - - -?---Yes.

*** PETER HOVENGA

XXN MR FARR

PN458

With the NTU and obviously we acknowledge that and offer our condolences in respect of that. But at all times you have been supported by the union in preparing your statement?---No, I haven't, no. To be honest, the original reason I wrote such an elaborate statement was because of Jackson's passing away. There was a time I came back from leave, I'd found out about Jackson's passing away. We didn't

have any contact at the union or support of the union at that stage, so I decided to try to canvass staff used and union members used to write a statement on their behalf. Because I think there was a time when we were concerned that we were going to have to represent ourselves at this hearing, so therefore I wrote this statement. And then when we did again have that support which was relatively late in the piece, then we kind of went through the process of this is my statement, yes.

PN459

Thank you. And so it would be fair to say there's 16 surveys out of a population of 25 or 26 who were offered the opportunity to participate in the survey, of a population of approximately 70 employees. You'd agree with me that this is not a representative sample of commentary from employees?---I don't believe that's the case. We've had multiple meetings on the S320 including that one I mentioned where there were probably about 40 staff present. I think in the course of those meetings we agreed on areas of concern and I think we gave everyone the opportunity in those meetings to elaborate their concerns and come up with a position that people that attended that meeting agreed on.

PN460

So, in respect of these concerns from employees you'd agree with me that the predominant concern around the working of public holidays is directed to working the Melbourne Cup public holiday as opposed to – or observing the Melbourne Cup public holiday, as opposed to working or observing the Labour Day or the King's birthday public holiday?---I think the main concern of staff is the very basic objection that we are currently in a situation where we exchange what is in essence, five public holidays for three public holidays, and therefore if these changes go through we have essentially two less public holidays. That's kind of the main concern of staff. That's the main overarching concern of staff. I think with the Melbourne Cup Day comments, I don't think – people are obviously concerned about the additional workload from an operations perspective but that is not the main objection. I think the main objection is around the difference between the five public holidays versus the three.

PN461

Okay. And you appreciate under the proposed variation that if the public holidays observed – obviously, there's no longer these five days, as you say, the five to three, but if an employee worked one of those three public holidays they would then be paid penalty rates under the proposed variation for working that day at 250 per cent? You're aware of that?---Yes, I'm aware of that, yes.

PN462

And they would elect, rather than receiving the additional payment to time off in lieu?---Yes, I guess that's their prerogative, yes.

PN463

And an advantage of time off in lieu rather than a mandated set of dates is that the employee could use that time off in lieu at a day of their choosing rather than mandated dates assigned by Monash University, you'd agree with that?---Sorry, what is the question? That that's a date – so, if I'm an employee - - -

PN464

I might just - - -?---If you take it out of the context of the five for three, perhaps, but given that that's the context, I don't think I agree with that.

PN465

But if I've worked those three public holidays - - -?---Mm-hm.

PN466

I'll have three - four and a half days of TOIL, you'd agree with that?---But that's not the proposal, is it? The proposal is that no one works on those three public holidays. And it's very unlikely that we'd be working on two of those holidays. Is that what - I think that's the proposal.

PN467

Let me take you a step back?---Right.

PN468

So, you would agree with me that the five days that is provided is in lieu of paying an employee being required to work a day that is otherwise a gazette public holiday?---Yes, that's right, yes.

PN469

Okay, and so under industrial arrangements you'd agree with me that when you work a public holiday there is a penalty provided because you are working a public holiday, do you agree with that?---Yes, I understand that, yes.

PN470

And so the additional five days is in lieu of additional pay that would otherwise be provided to the employer if they worked Labour Day, King's birthday and Melbourne Cup Day in a particular year?---Under the current arrangements?---Under the current arrangements.

PN471

I'm not sure if the enterprise agreement spells it out like that. I think it's just a swap of one point two – or one point – one and two thirds days for every day worked on the public holidays. I don't think it's related to Toya(?) law penalty rates or anything like that.

PN472

Correct, so at some point in the industrial arrangements between Monash University and its employees it's agreed that it will require its employees to work on those three days, and rather than paying them a premium for doing so, it will grant them one and two third days of additional leave that they will then be required to take in a Christmas/New year period. Do you agree with that?---Does it say somewhere in the enterprise agreement that they're paying a premium for this? I don't know if that's - - -

PN473

I think the question though, Mr Hovenga, is you'd agree with me that if I have a public holiday under the current enterprise agreement, put aside Labour Day, King's birthday and Melbourne Cup, let's just call it Easter Monday for the sake of the argument – if I work that day because Monash University who is your current employer requires you to work that day, under the enterprise agreement you have the option of being paid for that day at 250 per cent, or you have the election to approve TOIL for working that day and you get paid your normal 100 per cent for the public holiday and you'd have 1.5 days put into your TOIL balance. You'd agree with that?---Well, that's correct but that's different to the public holidays that we're actually working at the moment. That's a different arrangement for that public holiday versus those other – there's a specific clause about those three holidays as opposed to the other public holidays.

PN474

Of course, so what I'm putting to you, Mr Hovenga, is that at some time in the industrial arrangement between Monash University and its employees it has reached agreement with its employees that it can require the employee to work those three days, labour day, King's birthday and Melbourne Cup Day, and rather than paying that 250 per cent or having a TOIL election it will give five days of additional leave mandated to be taken between Christmas and New Year. That's my proposition. Do you agree with that?---Well, that sounds a bit speculative to me about what occurred over a particular agreement of a particular time in history. Is there anything to suggest that that's the agreement that was reached between the two parties?

PN475

Well, would you agree with me that that is the outcome of whatever agreement was reached between the parties?---The agreement was very, I think, clearly spelt out in the enterprise agreement that we get one and two thirds days for working each of those days. It's not – I think it's a pretty straight-forward – like a straight-forward clause.

PN476

It is but you'd agree with me it doesn't deal with the fact if somebody actually does observe the public holiday and doesn't approve of one and two third days, does it?---Well, it's their prerogative to take annual leave if their manager agrees to it, I think, yes.

PN477

Except for the fact, Mr Hovenga, that you're not permitted as a matter of law to require an employee to take annual leave on a public holiday. You'd agree with that?---I'm not sure about the law on that point, to be honest.

PN478

So, you're familiar with the enterprise agreement?---Well, yes. I mean, I'm not - -
-

PN479

And familiar with clause 46, because we're spending a lot of time worrying about clause 46?---That's right, yes.

PN480

Do you happen to have clause 46 anywhere near you at the moment?---Is clause 46 - - -

PN481

Of the Monash enterprise agreement?---The Monash - - -

PN482

Sorry, I'll just make sure I'm using the right numbering, I apologise. Because there are two sets of numbers I don't wish to confuse everybody. Let me just get my documents open, so bear with me just for a moment?---Yes.

PN483

Give me just a moment, just so we're talking apples and apples?---Yes.

PN484

Yes, it's clause 46 which is the Christmas/New Year close down arrangement clause?---Mm-hm.

PN485

Do you have that available to you?---Yes, I'm just finding it now.

PN486

Yes, of course?---Yes. Yes, I have that now.

PN487

Okay. So, you can see it talks about, 'without limiting' – this is clause 46.1, 'any substitution permitted by the Fair Work Act', blah, blah, blah, 'the provisions of this clause 46 apply on the basis that the university operates on Labour Day, Queen's birthday and Melbourne Cup Day.' So, that's the proviso of the clause that the university is operating?---Yes.

PN488

That's correct?---That's right, yes.

PN489

And so, in VTAC world, if VTAC wasn't operating on those days there has to be, you'd agree with me, at least some uncertainty as to whether this clause in fact actually even applies, you'd agree with that?---Well, I think the clause – yes, I mean, if kind of, we – if we don't open on those days you're saying that that clause - - -

PN490

That the clause has no work to do. Because you keep going in that clause and all staff are ordinarily required to work as normal on these days. But VTAC says all staff are not required to work as normal on these days, again in combination with the fact that the university in new world VTAC does not operate on those days, the clause has no work to do. Do you agree with that?---Well, in the – if we go down that path I think we would be arguing that that clause needs to be changed in – when we open new negotiations over the enterprise agreement.

PN491

And you'd agree that the whole purpose of the section 320 application is to vary the Monash enterprise agreement to that it may meet the operational requirements of VTAC upon the transfer of business. You understand that is the purpose of this application?---It's -- yes, part of it, yes. I think part of that -- it's my understanding that it's part of the - yes, 320 application, yes.

PN492

And waiting for another round of bargaining allows some period between the transfer of business and whenever that period of time occurs of ambiguity and uncertainty about the operation of this clause?

PN493

MR HACK: Can I object to this question?

PN494

THE COMMISSIONER: Yes, Mr Hack, objection.

PN495

MR HACK: Thank you. We know that VTAC has been operating on those days and the clause clearly states that - it's not on the proviso that the university operates on those days. It's on the basis that the university operates on those days, and VCAT has been operating on those days and can continue to. I don't think these questions are fair for one of the staff members.

PN496

THE COMMISSIONER: I guess, Mr Farr, the problem I have with the question is that it's requiring the witness to make an assessment about matters which I'm required to make an assessment about in the exercise of my discretion under the legislative provisions. The legislative provisions provide for the removal of ambiguity. I think I'm best to assess that, rather than this witness.

PN497

MR FARR: Thank you, Commissioner. I won't press the issue. What I will press is, this is not VTAC running this operation. This is Monash University, these are Monash University employees who are being directed by Monash University. They are not employees of VTAC Limited, that won't occur until the transfer of business. So it's not VTAC operating, it's an administrative unit within the Monash University umbrella until such time as the transfer of business occurs and that's a very important distinction in this matter.

PN498

THE COMMISSIONER: I understand the structure.

PN499

MR FARR: No. Thank you, Commissioner. In your statement, Mr Hovenga, you talk to the UAC and the QTAC arrangements?---Yes.

PN500

Are you familiar with those arrangements, other than what you've put into your statement?---I'm not familiar - I'm not familiar with the QTAC arrangement and I don't think I mentioned QTAC. I think I mentioned UAC. I only mentioned UAC and QTAC in reference to, I think, the applicant's witness statement who referenced UAC and QTAC, I believe.

PN501

Okay. But I think in paragraph 11, don't you state that one of our witnesses, Ms Tija, fails to mention the UAC staff get all the New South Wales public holidays plus two concessional days over the Christmas/New Year period?---That's - yes, I have put that in. Yes.

PN502

And are you aware that here in Victoria and under your Monash enterprise agreement you get an additional public holiday, being Easter Tuesday, compared to New South Wales?---I am unaware, but I - yes. I can't say whether they do or not, sorry.

PN503

Okay. And you're aware, in Victoria, we enjoy the Grand Final Eve public holiday which is an additional public holiday over and above what New South Wales employees enjoy?---That's probably understandable, but I don't see what relevance - - -

PN504

MR HACK: Yes. I was about to object to it because I don't see that this is relevant?--- - - - in the Victorian system.

PN505

THE COMMISSIONER: Hang on, hang on. Sorry, Mr Hovenga. Your advocate is objecting to the question on the basis of relevance. Mr Farr.

PN506

MR FARR: Thank you, Commissioner. It's that the witness is comparing the terms and conditions under one admission centre verses the witness material that we've filed, when in fact they are like-for-like but just done in a different way. The employees here in Victoria under the Monash enterprise agreement enjoy an additional two days for other reasons, over and above people employed at UAC who enjoy the two days at Christmas. They are different days, but it's the same total leave for that purpose. That's my only point, Commissioner.

PN507

THE COMMISSIONER: Yes. Well, Mr Hack, that does seem relevant.

PN508

MR HACK: Okay. Thanks, Commissioner.

*** PETER HOVENGA

XXN MR FARR

PN509

THE COMMISSIONER: Mr Hovenga, I require you to answer the question?---Sorry, could you repeat the question please.

PN510

Mr Farr.

PN511

MR FARR: Of course. Thank you. Are you aware of the fact that here in Victoria, under the Monash enterprise agreement and because you are employed in Victoria, you would enjoy two additional days, one being Easter Tuesday as a public holiday and one being the Grand Final Eve public holiday, which provides you two additional days' leave over and above employees employed under or by UAC in New South Wales?---Without knowing all of the public holidays in New South Wales versus all of the public holidays in Victoria, I probably can't answer that question.

PN512

Of course. And so in preparing this witness statement, you didn't go to the source documents to substantiate that analysis that you've provided there?---So my statement says that UAC staff get all New South Wales public holidays plus two concessional days over the Christmas/New Year period.

PN513

But you then say:

PN514

The proposed changes do not bring employee conditions into line with those of our New South Wales counterparts, but instead leave employees worse off by them.

PN515

You've made a comment about the terms and conditions and that's what I'm directing my questions to?---Well, I think that statement is more in terms - not how many overall public holidays Victorians or New South Wales employees get. It's more in line with how many public holidays that UAC staff get and what they get in addition to those public holidays. And in that sense, if we lose - if we work on those public holidays like people in UAC do, plus we lose the days over the Christmas break, I think we're in a worse position than they are. I think that's the kind of statement I was making.

PN516

Okay?---Isn't that the proposal? That we work those public holidays and we lose those days over Christmas, where as UAC staff - - -

PN517

No. The proposal, Mr Hovenga, is that you observe the public holidays - - - ?---Yes.

*** PETER HOVENGA

XXN MR FARR

PN518

- - - but consistent with the national employment standards, that you observe the public holidays as and when they fall, and you would then forego the penalty arrangement that is baked into the Monash enterprise agreement which is the five days for having worked those three days. That's the proposal that's been put forward for variation?---It seems, from my perspective and from the employees' perspective that I've spoken to, that essentially we are losing two days. That's the objection. I think New South Wales seems to work - sorry, have all of the public holidays plus two concessional days, plus a half-day on Christmas Eve, and in the changes that are proposed we will observe the public holidays and, as a consequence of observing those public holidays, we lose the five days that we currently have, which is a net kind of difference of losing three days or losing two days, sorry.

PN519

But if you would agree with me that if we change - and it's varied so that we observe each of the three public holidays, Labour day, King's Birthday and Melbourne Cup on their day, and employees are not required to work. But if they did work all three days for operational reasons, they would accrue either - and be paid 250 per cent for each day, so three-times that is 750 per cent for those three days of pay - versus the eight days - they currently get three days of pay plus they get the five days off, so it's 800 per cent versus 750 per cent. Alternatively, I just get paid my normal pay for my working day on that public holiday, and I bank 1.5 days into TOIL, which gives me 4.5 days into TOIL - it's not 5 days, it's 4.5 days. Do you agree with that?

PN520

MR HACK: Can I object to this? We're just repeating questions. We've already gone over this earlier?---That's a hypothetical rather than - sorry, I'm not supposed to respond.

PN521

MR HACK: That's exactly the same question as was asked earlier?---I thought so. Yes.

PN522

THE COMMISSIONER: Mr Farr, you have sort-of tested this proposition, haven't you?

PN523

MR FARR: But the witness was saying that it's not the same, and maintaining not the same, notwithstanding that he had conceded on this point. And so I wanted to re-establish the fact of what is the agreement, post the variation, so that we could operate on fact rather than supposition.

PN524

THE COMMISSIONER: But the document speaks for itself, doesn't it?

PN525

MR FARR: It does. I won't take it any further, Commissioner. Thank you. I think you - in terms of the taking or observing of public holidays and observing of

leave periods, you talked to your own experience and your family arrangements I think, Mr Hovenga, in your witness statement?---Yes.

*** PETER HOVENGA

XXN MR FARR

PN526

It's fair to say, and you would agree with me, that of 70 employees, there's probably one variation of every single theme in a family environment and how they wish to observe or not observe a public holiday?---I was speaking to my own personal circumstances, yes. But that doesn't mean that - I think - are you trying to say that because it only applies to my circumstances, the rest of the staff may want to take public holidays or may want to throw out the current arrangements in favour of the one they're proposing? Is that the question you're asking?

PN527

No. I'm just asking you to accept or not accept that there is the possibility that there are alternative motivations or needs amongst the whole of the employee population that may be different to your personal circumstances?---I - I agree, but that sounds like a rather banal statement.

PN528

So you'd agree with me, if I'm a single parent and I have young school-aged children, and the school observes Labour Day or King's Birthday or Melbourne Cup Day - - -

PN529

MR HACK: I object to this. We're speculating. Do we know that these circumstances exist at VTAC?---No, they don't. But yes.

PN530

THE COMMISSIONER: I think he's agreed with the general proposition.

PN531

MR FARR: Thank you, Commissioner. So you'd agree with me, the opportunity to take leave throughout the break - throughout the year, sorry. Not throughout the break. You'd agree with me that taking leave throughout the year is an important piece of maintaining employee health and wellbeing?---It is, according to individual circumstance. Yes.

PN532

And therefore, the opportunity of observing Labour Day, King's Birthday and Melbourne Cup provide those mini breaks to employees if those days are observed as public holidays?---As I've mentioned in respect to the shutdown, our opposition to the shutdown clause, we do believe that wellbeing is an individual matter and if - under the current arrangements it actually provides more opportunity to take days off for staff wellbeing. If the shutdown clause also goes through, they actually lose some annual leave which they can use for staff wellbeing, so I think we feel that staff wellbeing is an individual concern, it's - you know, it may through some chance fall on Labour Day or King's Birthday or Cup Day, but I don't know. That would be a circumstance, it wouldn't kind of be a vital thing for a person to take, to look after their wellbeing, I wouldn't imagine.

PN533

And you generally use your leave as you accumulate it throughout the year, as I understand your witness statement. Is that a fair comment?---I take it generally during school holidays, yes.

PN534

Yes. Of course. And you're a long-standing employee too, as I understand it?---Yes. I've worked at VTAC for 18 years. Yes.

PN535

Okay. No problem. And what's your current long service leave balance, Mr Hovenga?---I don't know off the top of my head. But I presume it - I think it's around 100 days or so. It's probably four and a-half months, something like that. Four and a-half to five.

PN536

And it's not something that you've - have you accessed your long service leave in the time you have been employed?---Once, when my second daughter was born.

PN537

Thank you. Commissioner, I have nothing further.

PN538

THE COMMISSIONER: Yes. Mr Hack, anything arising?

PN539

MR HACK: Thanks, Commissioner. Not much, I've just got one question.

RE-EXAMINATION BY MR HACK

[12.56 PM]

PN540

It was brought up at some point about potentially needing to wait for enterprise bargaining to commence, and I understand, Peter - Mr Hovenga, you are an elected delegate of the NTEU in the workplace, one of the key representatives there. That's correct, yes?---That's correct. Yes.

PN541

Yes. So what's your intention about commencing bargaining? Obviously the enterprise agreement has already expired?---We'd like to commence bargaining as soon as possible and we feel that - the clauses that we're objecting to can be easily negotiated between the employer and employee and that should commence as soon as possible, and they don't really - we feel they don't need to go through - in a s320 application and it's better for these to be negotiated between employees and employers.

PN542

Yes. Okay, thank you. Yes. No further questions. Happy.

PN543

THE COMMISSIONER: Thank you, Mr Hovenga. And I thank you for your attendance here today. You're now excused as a witness?---Thanks, Commissioner.

<THE WITNESS WITHDREW

[12.57 PM]

PN544

THE COMMISSIONER: And Mr Hack, as I understand it, that completes the case on behalf of the NTEU.

PN545

MR HACK: Yes, thank you, Commissioner.

PN546

THE COMMISSIONER: All right. Gentlemen, what I propose to do is have an adjournment for half an hour and then come back for final oral submissions. You should take it that I've read the written submissions. It's an opportunity to supplement them, having regard to the evidence that we've heard today. In fairness to both sides, I do want you to address me on a public interest consideration. In particular, Mr Farr, it's one that's been exercised by the NTEU and actually just picked up in the evidence then by Mr Hovenga. It's previously dealt with at page 225 of the submissions of the NTEU. Sorry, page 225 of the digital Tribunal Book, under the heading 'Public interest'. And it goes to this issue about enterprise bargaining.

PN547

You'll be aware that one of the objects of the Fair Work Act, if you look at section 3, is an emphasis on enterprise level collective bargaining. You'll be aware that that object is also picked up in the objects of the part dealing with enterprise agreements. Section 171 there of the Act is there to enable collective bargaining, particularly at the enterprise level.

PN548

And second, 228 dealing with good faith bargaining. Parties are required not to engage in conduct which undermines collective bargaining. What I want to be addressed on is a concern that I have that if the Commission accedes to the proposed variation in clause 45 and 46, it is essentially removing from employees a current right that they already have and have bargained for. It also then absolves the employer – their proposed employer – from having to negotiate with its employees about those existing rights. And therefore, consequently, it might be said that in the – with the Fair Work Commission intervening to remove those established rights, there's an undermining of collective bargaining and that would be contrary to the public interest. I'd like you to address me on that when we return. Do any of you need more clarification from me about that issue?

PN549

MR FARR: No, I think that's been very clear. Thank you, Commissioner.

*** PETER HOVENGA

RXN MR HACK

PN550

THE COMMISSIONER: Thank you. We are adjourned until 1.30.

PN551

COUNSEL: Thank you, Commissioner.

LUNCHEON ADJOURNMENT [1.00 PM]

RESUMED [1.38 PM]

PN552

THE COMMISSIONER: Thank you. Mr Farr.

PN553

MR FARR: Thank you, Commissioner. This is a highly unusual application, as the Commission would be well aware. The use of section 320 of the Fair Work Act has only been used in very limited circumstances. It would be very common for an employer in the circumstances of VTAC Ltd to have made an application under section 318 and sought to stop the transfer of the industrial instrument across to it holus bolus. However, in respect to the employees and the path well-trodden in terms of the bargaining arrangements that predate VTAC Ltd, it chose to receive the enterprise agreement from Monash University and to make an application under 320 to vary it so that it may work efficiently and effectively as an industrial instrument to apply to it.

PN554

I think that context is really important when we turn our mind to some of the issues that we'll discuss around the public interest. I think it's also very important to note that a future employer in this circumstance – because they're definitely not the current employer – has sought for many months to consult with its employees about these changes. I think it's a testament to both the employer and their representative that the fact that we only in such a large document have two matters that are opposed between the parties before the Commission. Now, that's not to say that the Commission can merely ignore all the other matters that are proposed to be varied but it's our submission that those variations should be made where they're not opposed by the NTEU for the reasons that are set out in the submissions to date, Commissioner.

PN555

In respect to the public interest, it is a matter to weigh for the Commission within the context of section 320. The applicant does accept the objects of the Act regarding achieving productivity and fairness through collective bargaining and the stability that is bought through that particular object. However, section 320 does sit within part 2.8 of the Fair Work Act and section 309 has its own objectives in respect of the making of these applications and the operation of that part. As the Commission would be well familiar with, the object of these transfer of business provisions in part 2.8 is to provide the balance between – and subsection (a) of section 309 – the protection of employees' terms and conditions of employment under enterprise agreements, certain modern awards and certain other instruments and the interests of employers in running their enterprises efficiently if there is a transfer of business from one employer to another employer. So it is a balancing object that the Commission must consider when interpreting the public interest in

section 320. So the change that we're seeking upon which you need to assess this is that employees get the time off consistent with the national employment standards.

PN556

That is a fundamental safety net to all employees within Australia. That is a very important public interest consideration. Secondly, if we were needing our employees to work as per our submissions in respect of current Full Court decisions, it is a request from the employer to those employees. An employee may refuse that request where it is reasonable to do so. Now, I note, Commissioner, as I understand it that decision is subject to special leave application to the High Court but the law as it presently stands does provide an invitation requirement or request and then an acceptance on the part of the employee, which as the Commission will note is not currently built in to the process in regard to the Monash enterprise agreement.

PN557

It is a prescriptive that you must work and in return for working you will be provided the five days. This is in the context of if the change is made, and employees do need to work one of those three public holidays or any other public holiday, for that matter, there is a penalty arrangement that results in a 250 per cent pay environment or a 1.5 day of TOIL. So the fact of the matter is that it is not the same. It's acknowledged. But it's 4.5 days of TOIL if the employee was required for operational reasons to – and agreed – to work those three public holidays. This is also in the context where VTAC, as the new employer – because it's not currently the employer – would have the ability to mandate the shut-down days either side of Christmas.

PN558

So it could still be the current Monash University status quo under clause 46.1 or it could be the two days after New Years. As French J said in *Hogan v Hinch* [2011] 243 CLR 506 at paragraph 31, the public interest used in a statute derives its context from the subject matter and the scope and purpose of the enactment in which it appears. Acknowledge that employee entitlements should be protected. That's why this is a section 320 application, not a section 318 application. But the objects of the part require the Commission to balance that against the interests of an employer running their business efficiently.

PN559

There's a public interest test as part of the considerations of section 319, Commissioner. Of course 319 is where an application is made that a transferring instrument apply to new employees of the organisation. Not a matter before this Commission but if the public interest was merely that the status quo of an enterprise agreement flowing and apply without change then the legislature would have turned its mind such that there would be no need for a 319-type of order because the enterprise agreement comes across with a transfer of business and it binds old and new employees.

PN560

Clearly public interest must mean something than the mere continuity of an object of the status quo of the collective arrangements as they sat with the old employer

versus the new employer. That is why it is merely one of the factors to weigh in section 320 whilst applying the objects set out in section 309. So in our submission, the public interest can only be served by allowing the organisation to operate efficiently, consistently with those objects of the part. The Commission would not be given such a broad discretion under section 320 to vary an enterprise agreement and, Commissioner, as we know under the Fair Work Act the ability to alter in any way a quasi-statutory instrument is very narrowly defined.

PN561

There is change by employees, effectively remaking the agreement by virtue of the variation; there is the ability to remove ambiguity or uncertainty in very limited circumstances, the new provisions in respect of change arising from obvious error that arises or a discretion given to the Commission in very limited circumstances of transfer of business and then you must only apply that discretion where one of three circumstances arise, which are the circumstances set out in section 320(2), remove ambiguity, uncertainty, to allow it to operate efficiently, et cetera.

PN562

In our submission, in assessing the public interest you need to balance this fact that you have been given this discretion in extremely limited circumstances, a broad and unfettered discretion to vary the enterprise agreement. That must be considered in light of the type of application, the industrial context, whilst noting the objects of the Act but primarily noting the objects of the part. Commissioner, if there is something else on public interest I'm happy to address that but otherwise I intend to address the relevant matters more broadly for you.

PN563

THE COMMISSIONER: No, thank you. I've been assisted, thank you, Mr Farr.

PN564

MR FARR: In the evidence before the Commission is a couple of key factors. One is that employees don't take a lot of annual leave or don't use the leave that is provided to them. We have employees with extensive leave balances. We have the evidence from Mr Hovenga in respect of the safeness and reliability of the survey and we invite the Commission to give Mr Hovenga's evidence due weight based on that reliability. So in our submission balancing all of the factors set out in section 320(4), the Commissions should grant VTAC's application in respect of the broad variations but particularly for the matters that we've dealt with today: the change by removal of clause 46 and the insertion of the shut-down provision.

PN565

So set out in the witness statement of Ms Tija, we've got this issue about the national employment standards, we've got evidence that changes are underway, work flows are being reviewed and these changes will be aided by further systems and processes. We have the evidence of particularly the two impacted areas in respect of work pressure – so from our IT department and the SAS – that says Labour Day and Kings Birthday are not relevant workload issue concerns for them but their primary concern is in respect of Melbourne Cup Day and we have an acknowledgement that if dates were altered, such that the working period could

be maintained, the number of available working days, that that would relieve the concern or the need to work on Melbourne Cup Day.

PN566

We then have the issue about working to the Christmas shut-down period, which as the evidence is that it's common for Monash University to put the additional days at the front end prior to Christmas in the peak period that is a VTAC work peak period under current dates and current arrangements, without the streamlining, as the evidence is before you, and without the opportunity to change those dates. That just shows perhaps the enormity of the task that is in front of VTAC Ltd here, Commissioner. We have an enterprise agreement that was built specifically for a higher education provider that provides educational services to students who then build an infrastructure of support to do that.

PN567

There are operational areas, clearly. VTAC is one of those operational areas but it's a very specific and different clientele and it is a minnow of a minnow within the whole Monash University umbrella. If we look to Monash University, it has other alternative industrial arrangements for its student council, for its colleges, because those cannot operate within the umbrella of the Monash University enterprise agreement because it was built as an education provider not as a student union, not as a college, and in our respectful submission, the same analogy applies to a tertiary admissions centre, which is an administrative unit to support students and educational institutions in terms of the offering of places at the university, not in terms of the provision of educational services.

PN568

We also know for the first time VTAC Ltd will be its own employer. It will no longer be this minnow of the minnow. It can manage its own resources within a tight budget, as the evidence is before you. It can manage staff workloads, it can change staff workloads, it can change structures. It has all of the management prerogative that is available to it as an employer whilst respecting all of the tradition that has gone before and clearly respecting its obligations in respect of consultation. But effectively we have the ability to manage workloads in a way that facilitates employees enjoying and observing public holidays as and when they arise.

PN569

And in lieu of that they then get that time away and if they have to work then they are still remunerated or provided with an entitlement that all but matches the entitlement of the five additional days for the three. It's the timing of when they use that. And if they accrue TOIL, subject to workloads that will be at a time of their choosing. And for many employees, or some employees or even possibly one employee, there might be different intentions or different needs and this provides them that flexibility.

PN570

In respect of the close-down the evidence before you is that it is a matter of discretion. It's not their views, Christmas and New Year period as an example of that. You've heard the workflows in respect of really the lead up to Christmas for the IT department. It becomes reactionary between the Christmas and New Year

period and if work flows were to change for SAS no doubt the requirement to be required to attend for duty between Christmas and New Year could be relieved and in circumstances where employees have large leave balances.

PN571

In terms of disadvantage to employees they get their public holidays back and we shouldn't underestimate that and the ability to have proper rest for an employee's health and wellbeing. We know that they (indistinct) regular breaks in the working cycle. We acknowledge, Commissioner, that this is a change that is not popular. But this is not a popularity test. What is required is for you to assess the provisions of the enterprise agreement in light of the ability to change and take into account the factors set out in section 320 subsection (4). It is not a popularity test.

PN572

We trust that with time and with improved systems and improved processes there is an unlocking of a different mindset for our employees. We understand that the Monash University environment has been very same, same, for a very long time. But what we don't have is an environment that is purpose built for a tertiary admissions centre.

PN573

It's not as evidence before you, Commissioner, but you do have the ability to inform yourself about the enterprise agreement arrangements that are in place for UAC and QTAC, and they are stark in their difference to the environment which VTAC is willingly inheriting because it chose not to make a 318 application, is willingly inheriting in respect of the history of the arrangements here.

PN574

And the QTAC enterprise agreement, your Honour, if we were putting it on a balancing scale it might be point one of a gram. In the Monash enterprise agreement it's about 33 kilos in this particular example. But we suggest to the Commission it's our submission that you should review that because when assessing the operational requirements this is the competitor that a tertiary admissions centre is up against.

PN575

You've had evidence about impact on productivity on the workplace and that change around, particularly Labour Day and King's birthday, will not have a material impact on productivity, that the change around Melbourne Cup Day there's going to need to be change but the evidence before you is that there is change in the system, changing process and a willingness to change the workflows at work.

PN576

And one of the considerations is whether or not without the variation the employer would incur significant economic disadvantage. And Ms Tija gave evidence that it's a small organisation with a small budget. We haven't done the work to understand the significant financial impact. Ms Tija gave evidence about the context of that significant economic disadvantage for the Commission to consider.

PN577

So, Commissioner, on the balance here the need of the organisation to operate efficiently which is the objective of part 2(a), and taking into consideration the matters that the Commission must do so in subsection (4) of section 320, the change that we're proposing in respect of clause 46, which is its removal, and then in the insertion of the ability to shut down part or all of the organisation, relies on the fact that the Commission may vary the industrial instrument to enable the Monash enterprise agreement to operate in a way that is better aligned to the working arrangements of VTAC Limited.

PN578

You have all the evidence before you about the way it operates and the way it wants to operate. Unless there's anything further, Commissioner - - -

PN579

THE COMMISSIONER: Mr Farr, the shutdown provision, I mean, I – is it right that – I mean, I might in my decision agree to the variations in relation to what are currently 45 and 46 and that doesn't obligate me then to agree to the variation which has proposed 41 during the shutdown, does it?

PN580

MR FARR: Correct, yes. It's not a package deal here, Commissioner, all or nothing.

PN581

THE COMMISSIONER: No.

PN582

MR FARR: You have the power to alter clause 41 as proposed. You have the ability not to include it. You have the ability to make the decision as per the application that's been made. It's unfettered in the way that you respond.

PN583

THE COMMISSIONER: Yes. But my concern in relation to the shutdown provision is that it is significantly different in its operation to the model shutdown provision which is included in about 78 modern awards.

PN584

MR FARR: Yes.

PN585

THE COMMISSIONER: Including by amendment in May of this year in the Higher Education Industry General Staff Award.

PN586

MR FARR: Yes.

PN587

THE COMMISSIONER: That model clause only relates to shutdown periods which are in conjunction with the Christmas and New Year holiday, whereas the

shutdown provision proposed by VTAC, we have it at any period of the year, at any time. It's much broader.

PN588

MR FARR: It is, Commissioner. And it may be a matter of discretion that you may choose to insert the model clause upon - - -

PN589

THE COMMISSIONER: Do I have that power?

PN590

MR FARR: In my view you do, Commissioner, because you have an unfettered power to vary the industrial instrument for one of the three circumstances set out in subsection (2), and then consistent with your views of potential airing of concerns around the objects of the Act, that with the model clause that could be a matter for future bargaining between the parties.

PN591

THE COMMISSIONER: Yes.

PN592

MR FARR: So, that may tick both of those boxes, Commissioner, in our submission.

PN593

THE COMMISSIONER: Would VCAT oppose me substituting as the proposed clause 41, for the model term? Do you want to get some instructions on that?

PN594

MR FARR: Commissioner, just bear with me, just one moment.

PN595

THE COMMISSIONER: Yes.

PN596

MR FARR: Commissioner, I have instructions that that would be acceptable to VTAC.

PN597

THE COMMISSIONER: Thank you. I don't have any further questions, thank you.

PN598

MR FARR: Thank you, Commissioner.

PN599

THE COMMISSIONER: Mr Hack? Maybe I can start with the same question. I note that the NTU currently opposes the proposed clause 41 shutdown provision. Would the NTU also oppose me inserting the model term relating to shutdown as it currently appears in the Higher Education Industry General Staff Award 2020?

PN600

MR HACK: Thank you, Commissioner. Our view is that the current agreement already has the clause which deals with the Christmas and New Year closedown arrangements.

PN601

THE COMMISSIONER: Yes. But what I'm asking is I'm asking you to assume, if I accede to the amendments to clause 45 and 46 I then need to consider whether I'm going to insert the new clause 41. If I am so minded I understand that the NTU opposes the current drafting of 41.

PN602

MR HACK: Yes.

PN603

THE COMMISSIONER: But the (indistinct) insertion of the model clause from the Higher Education Industry General Staff Award 2020. Would you like a short adjournment to have a look at it?

PN604

MR HACK: No, that's fine. Like, we would have preferred that model clause than the proposed 41 shutdown clause.

PN605

THE COMMISSIONER: Yes, all right, thank you.

PN606

MR HACK: That's clear. However we still submit that the current clause deals with the shutdown and should be retained.

PN607

THE COMMISSIONER: Yes, I understand that submission.

PN608

MR HACK: Yes. So, yes, my statement in closing?

PN609

THE COMMISSIONER: Thank you. Please.

PN610

MR HACK: Yes. Mainly we're very concerned that this is an attempt to circumvent the bargaining process in relation the clauses which have been negotiated between employer and staff, and effectively for a number of years. That's our main concern with everything here. In relation to the employees covered by the agreement which was raised in the terms of a section 319 application we suggest it's not relevant to this application.

PN611

However, it also should be considered that scope can be negotiated at a future date, as well and through the bargaining process. And at present at VTAC there are no other employees. There are (indistinct). There will clearly be new

employees in the future but there's no other employees being considered at the moment.

PN612

VTAC may wish to alter the ways they conduct business as most employers might like to do from time to time. But it is not the purpose of the section 320 application to facilitate this. At paragraph 62 of Ms Tija's first statement it's confirmed that VTAC has no employers working under any other instrument. Usually a 320 would be for the circumstances of including transferring employees into a workplace with existing practices which are contrary to the transferring instrument.

PN613

So, you might have a factory where there's workers working under a particular roster with breaks at certain times and their new employers coming in and they have breaks at different times and it's not going to work, you know, so we need to vary the agreement so that all the workers can work in the same way. But it's not the situation here and there's no other workers. VTAC is still doing the same work as they've always done under this agreement which has been operating effectively.

PN614

There is talk of changing the deadlines to accommodate the new proposed clauses for variations for the removal of the current (indistinct) clauses. First of all that seems like it's subjective and it seems like it's mostly out of control of VTAC. That's clarified by Ms Ciccone today who explained that it's not only the deadline of when the work needs to be submitted back to the institutions but it's also reliant on when the institutions send the work to them. That's another date which is important. They've only got a short timeframe in between those two dates to do the work.

PN615

Now, VTAC is suggesting that will attempt to influence the institutions to change these dates and yet 2024, it was confirmed by Ms Tija, 2024 dates are already in place at the higher level. It's only the work practices which need to be worked around that. It doesn't seem like a simple process but it's also subjective. We don't know if they're going to be able to – they're just talking about aspirational changes which – to section 320. Variations shouldn't be made to facilitate that.

PN616

It can't be contended that this variation will result in diminution of the workers' employment conditions. It's very clear that currently they receive five days off and the proposal is that they would only receive three days off for the same periods. Obviously they can take leave on the public holidays now if they wish, they can take leave at times that suit them, you know, like, whereas the proposal is that they would be able to dictate when the employees take their annual leave.

PN617

There - also I should just mention quickly, the current closedown clause actually intends specifically in writing that the five days are to be between Boxing Day and New Year's Day. That's the five days. It's only moved to before Christmas or

after New Years if that's not able to be put in place due to perhaps a weekend falling during that time. This is not every year and yes, the work can be before or after.

PN618

So we have - I will just touch on the proposed shutdown clause as well, acknowledging though that comments made just prior to me starting this statement but, yes, obviously the proposed shutdown clause - well, it's misleading, first of all, by suggesting it can be used around Christmas because it was clarified today that the intention is for it to be used at any time during troughs in workload.

PN619

Now, it provides for the employer to be able to request groups of workers of any size to take annual leave at any time as long as there's reasonable notice provided for any duration. That seems completely unreasonable. I gather that that's understood. It was confirmed today by Ms Tija obviously.

PN620

So on that, the Enterprise Agreement at clause 40.5, it already contains provisions for the employer to manage excessive staff annual leave if they wish. The clause - or as for the employee to provide a plan for taking the leave if requested to do so by the employer. As confirmed by Mr Hovenga today, it's important for staff to have agency around when they use their annual leave. The new clause is dictating when they must use the annual leave.

PN621

In relation to requesting staff to work the public holiday, VTAC has already been complying with that act which was acknowledged by everybody here today. Ms Tija's third statement demonstrates how VTAC has applied the clauses in relation to the act this year in 2023 and it's worked fine, to our knowledge, and in addition to that, yes, the workers are allowed to have the three public holidays if they wish.

PN622

And my friend accepts these changes are not popular with the workers, as mentioned today, and suggests that this isn't a popularity contest, however, it's our submission that the views of the workers are extremely important and is clearly a consideration to be taken when making the decision.

PN623

THE COMMISSIONER: Well, Mr Hack, it seems apparent that it's a very small sample size.

PN624

MR HACK: Of the views of workers?

PN625

THE COMMISSIONER: Yes.

PN626

MR HACK: I mean, it's (indistinct) delegate and held meetings with workers where he stated today in evidence that there was - I forget the exact number, but around 40 workers at these meetings, where they discussed the proposed clauses and came to consensus decisions. There was a - yes, the meetings resolved with the views that he then presented in his witness statement.

PN627

THE COMMISSIONER: Yes, but there wasn't a survey of all employees.

PN628

MR HACK: Not - yes, sorry. Not the survey, at the meeting with - and we're talking about 70 employees but it was clarified today that a large number of those are casual employees. There is roughly around 40 permanent employees and those would have been the ones likely to be at the meetings that Mr Hovenga was discussing today. His views are from speaking to a huge majority of staff at VTAC and he is their representative. He's an elected delegate of the NTEU which is stated in his witness statement and not controversial.

PN629

Yes, I hope that clarifies that part. So in relation to financial issues, both parties have raised financial issues. They seem to be fairly insignificant. I should add the likely result of a couple - like, have been able to work out today - Ms Tija confirmed there was roughly only about six workers that worked during the closedown period and get penalty rates.

PN630

We've had submissions or statements from two workers that received penalty rates during that time who talk about how significant that is for them as individuals to be able to lose penalty rates when working during those times. However, for an organisation which was stated today, has a 10 million budget, doesn't seem to be significant. So I asked Ms Tija for (indistinct) regarding the cost implications and the ones she mentioned at paragraph 61.

PN631

She wasn't able to quantify them at all. My friend also mentioned that they haven't done the work yet to determine if there has a significant economic disadvantage. Ms Tija stated that the significance is not in monetary value but more around flexibility. They need to be able to have flexible working arrangements in terms of directing staff to take leave when they wish.

PN632

There's no evidence of cost implications or budget, let alone significant disadvantage. Any effects on costs seem to be offset by other changes such as employees using their leave for days they ordinarily would get off as part of clause 46.

PN633

As a union, our intention is to commence negotiations for this agreement as soon as possible. We have already commenced negotiations with Monash University in relation to the agreement which is transferring to VTAC and it's our intention to

commence negotiations as soon as we are able to, when VTAC comes into operation as the new employer for this agreement.

PN634

In relation to the public interest, I have obviously already made submissions in my response from paragraphs 39 to 43 and I take that as read, as you said, Commissioner, thank you, but I asked Ms Tija about the public interest and she wasn't able to provide adequate info. It's not enough that institutions have social benefit, they need to prove the EA terms have benefit.

PN635

As you've quite rightly pointed and was in our submission, these - there is a - it is in the public interest for enterprise agreements to be negotiated between employees and employers. We suggested that any proposed variations to public holiday and shutdown clauses ought to be put for discussion during enterprise bargaining.

PN636

In closing, the workers would appreciate an opportunity to negotiate these clauses. They have been hard fought for over a long period of time, you know, like it's not - yes, it's not the employer's agreement. This is an agreement between the parties and workers - our members have told us that they want to be able to influence the decisions through enterprise bargaining and yes, we request that you allow that to happen, that we put these clauses off to be negotiated ASAP.

PN637

The agreement's already expired. That's one of the considerations. If perhaps, like, if the agreement wasn't expiring for another three years, then perhaps there might be more need to vary these clauses, from someone's perspective. Not mine or the workers, but there might be more reason to vary those clauses but considering the agreement's already expired, we're not having to wait long to be able to allow workers to have input into these decisions which is going to have a major effect on their lives. Thank you.

PN638

THE COMMISSIONER: Thank you.

PN639

Mr Farr, anything in reply?

PN640

MR FARR: No, Commissioner. There's nothing in reply. Thank you.

PN641

THE COMMISSIONER: All right. It's necessary for me to reserve my decision and I do so. I note that the transfer is scheduled to take place tomorrow week, on 18 November. I will use my best endeavours to have a decision published next Friday.

PN642

MR HACK: Thank you, Commissioner.

PN643

MR FARR: Thank you, Commissioner.

ADJOURNED INDEFINITELY

[2.18 PM]

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