



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

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

C2013/6333 AM2018/9

s.302 - Application for an equal remuneration order

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

Sydney

9.08 AM, THURSDAY, 4 JULY 2019

Continued from 3/07/2019

PN9096

VICE PRESIDENT HATCHER: So who is the first witness for today?

PN9097

MR FAGIR: The first witness is Ms Viknarasah.

PN9098

VICE PRESIDENT HATCHER: Can she come forth?

PN9099

MR FAGIR: I understand there's to be some controversy about her statement filed yesterday, and perhaps it might be convenient to deal with that before she's sworn in if that suits the Commission.

PN9100

VICE PRESIDENT HATCHER: Have we been provided with this statement yet?

PN9101

MR FAGIR: It's been provided electronically in the customary way.

PN9102

VICE PRESIDENT HATCHER: I don't think electronically after 5 pm is the customary way, but anyway.

PN9103

MR FAGIR: It's been provided electronically and there are hard copies which I'm told will be here soon.

PN9104

VICE PRESIDENT HATCHER: Has the IEU got a hard copy yet?

PN9105

MR TAYLOR: I can just indicate that I haven't had an opportunity to review it yet. I read the statement I should say but not the annexures including the substantial annexure which apparently is one of the main reasons for the statement.

PN9106

MR FAGIR: Could we just be clear about whether that's the result of the absence of a hard copy or for some other reason?

PN9107

VICE PRESIDENT HATCHER: Presumably because it arrived at 7 pm last night.

PN9108

MR TAYLOR: I didn't see it till this morning. I'm not saying it wasn't sent at some point last night, but I saw it when I got into Chambers this morning at about 7.30 - 8 am.

PN9109

VICE PRESIDENT HATCHER: So you want to admit it, Mr Fagir?

PN9110

MR FAGIR: Yes.

PN9111

VICE PRESIDENT HATCHER: Mr Taylor?

PN9112

MR TAYLOR: I think we need to see it so that I can say some things about it.

PN9113

MR FAGIR: I don't understand this complaint. Every single bit of evidence has been filed electronically in this case. I don't understand why the absence of a hard copy is now said to be taking on some significance.

PN9114

MR TAYLOR: No, no, I think the Bench needs to have a copy so that I can address - yes, I don't think they can address it with me simply describing what I have on my electronic screen.

PN9115

VICE PRESIDENT HATCHER: We've got the hard copy so let's hand them up.

PN9116

MR FAGIR: That's a fair point. I apologise.

PN9117

VICE PRESIDENT HATCHER: Yes, Mr Taylor?

PN9118

MR TAYLOR: Can I just say immediately that there is another argument that we understand needs to be had as well about admission of evidence. That's the supplementary statement of Professor Irvine which it may well be that there's link between the two for reasons that aren't immediately apparent, other than what we understand to be a broad proposition that this material should be allowed in in response to material that's been filed.

PN9119

VICE PRESIDENT HATCHER: So have we received the supplementary statement of Mr Irvine?

PN9120

MR TAYLOR: Yes, I understand it was filed electronically on about 19 June, but I have some hard copies if it's convenient.

PN9121

VICE PRESIDENT HATCHER: All right.

PN9122

MR TAYLOR: But as to this additional statement that's just been handed to the Bench I think a fair way of describing what occurred with Ms Prendergast and

now is occurring here is that the evidence that we filed dealing with - sorry I withdraw that. Let me just start at the beginning. The commencement of this is that we filed some supplementary material, in particular a statement of Ms Connell on 17 June, more than two weeks ago, and the Bench gave us permission by the ruling to file evidence dealing with day-to-day activities of early childhood teachers. Attempts to present other evidence including individual education plans, which were not a new issue but were simply examples of such plans demonstrating a similarity between the work done at early childhood level and primary level were rejected on the basis of it just came too late, out of timetable and so forth. The day-to-day activity evidence was allowed in.

PN9123

There's been now 16 days to put on response material. We now are receiving it effectively now as the witness walks in and there are two aspects of the evidence can I identify. Firstly, this and the evidence of Ms Prendergast is in this category, the supplementary statement of Ms Connell who gave evidence as to what happened in a preschool, who had nothing to do with the quality system in place prior to 2012 has used in a sense as a Trojan horse to put in a wide range of evidence as to a previous regulatory system. Notwithstanding that that previous regulatory system was something that was discussed albeit briefly but discussed and identified by our experts, something that obviously ACA would have been aware of at all relevant times and certainly from the time that we filed her evidence in 2017.

PN9124

That's one thing. That's the evidence that one finds in Ms - if you have the statement - Ms Viknarah's statement from paragraphs 3 through to 9. She then deals with day to day work at 10 to 14 and deals with educational program at 15 to 22. Now the fact of the matter is that when Ms Connell's statement was prepared prior to the ruling, Ms Connell's statement also annexed some information about how she prepares an educational program. I don't recall there being material as to how that changed but she's described what she did. The ruling would have - if pressed would have not allowed that it but it did go in, so I accept that while we object to all this material going in at this point, that consistent with the ruling that this Commission has already made in respect of Ms Prendergast, based on the fact that it would be of assistance to the Commission in the review of an award to understand some further material, that that material that goes through to paragraph 22 may well, notwithstanding our objection at this late stage, go in.

PN9125

As to that, if it does go in I will need time to read it before I can cross-examine on it. That includes an opportunity to read annexure 11, which is the fold out which looks rather like Ms Prendergast's document, wherein this witness says something about what appears to be - well I haven't read it but from what I read from the statement is said to be a response to Ms Connell who describes what happened in a preschool, and so I'll need some time to do that. I can't - I have not had that opportunity yet.

PN9126

VICE PRESIDENT HATCHER: When you say some time what does that mean?

PN9127

MR TAYLOR: Sometimes it's hard to know how much time until you've read it because it may well be that I have to find something information or obtain some instructions. It may well be - what I was going to suggest as to that aspect is that if I could at least have an hour to read it, I'd then be in a position to identify whether I would need more time or that should be sufficient but I would need at least some time to just read the material. My recollection is that when I read Ms Connell's material it took some two or three hours to just literally read it before going to other materials and I think you might have gathered from the cross-examination yesterday, the capacity to go to other materials was somewhat limited in the time that we had and there were some difficulties trying to find the right materials and the like, and I anticipate that sort of issue arising again if we try and do this on the run. I'm not sure we would necessarily have materials here copied that I'd like to be able to put to her that go to those issues.

PN9128

I need time to look at it.

PN9129

Then there's the second aspect of the statement which goes from documentation onwards, so there's a large amount of material on documentation. There's hierarchy, additional needs children, quiet time, technology, teacher registration, kindergarten teaching and funding. None of those issues arise out of any evidence we filed as I can see it, and in any event all of them were clearly issues in material that was filed by our witnesses at the outset. If this material is to go in then again I'd need time to consider it. There is some - it ranges from material which is how we work to material that goes to the way in which teachers are registered in respect of ECTs, and the final category opens up the whole subject matter of funding in New South Wales, which presumably there are various documents which can describe these things in fairly objective terms. I haven't had an opportunity yet to find out to what extent I'd be instructed that the material in those paragraphs is incomplete or there is other material that would need to be understood to get a proper understanding of that issue.

PN9130

I do object to the statement going in and secondly, separately object to anything going in from paragraph 23 onwards. If over objection it goes in I will time initially to read the material and then an opportunity to identify whether with that time I'm in a position to be able to cross-examine immediately as to the totality. Clearly I can commence the cross-examine because there's other material which we've had for some considerable time that I can ask questions about but I don't anticipate that without some time there's any capacity for me to cross-examine on the balance of the material without that approach being taken.

PN9131

That's the position. Now can I just - in respect of Ms Irvine, we don't know what parts are being objected to but I can identify that the way Ms Irvine has set out material, includes material which having provided the context for the NQF then deals with impacts of reforms on the day to day work in that material and deals with the associated impacts of other matters. This is in a sense why I can see some potential for the issues to be linked and so I thought it was appropriate that

we identify the two areas of debate but certainly for our part, the notion that because we filed some evidence that was strictly - and the ruling was strictly to be limited to day to day material, that the response ought to be that you know on the morning of the last day of hearing a witness can give evidence as to any subject that appears to be considered to be of some relevance at the time we say is not appropriate and wouldn't be allowed. Thank you.

PN9132

VICE PRESIDENT HATCHER: Mr Fagir.

PN9133

MR FAGIR: Firstly, the evidence that has been admitted not only in the additional statements but viva voce and so on is not limited to the day to day activities of ECTs and your Honours might recall that individual education plans were tendered through witnesses without warning, viva voce and after that happened several times I eventually complained and that brought that to an end. But it is not right to say that the evidence which was introduced either in the statements or ad hoc was limited to day to day activities. In any case - - -

PN9134

VICE PRESIDENT HATCHER: Mr Fagir, when you - a reply statement usually is in the format where it identifies the person who gave evidence and the part of the evidence that is contested, and then sets out the response for that identified piece of evidence. So paragraphs 10 to 14 in the annexed table are in that form but beyond that I can't quite work out what this evidence is actually responding to.

PN9135

MR FAGIR: Well, if we had more time we might have made that clear but on the face of the statement, in my respectful clear it's perfectly clear. The starting point is the table and one could not imagine - - -

PN9136

VICE PRESIDENT HATCHER: I've dealt with the table. I'm talking about beyond the table.

PN9137

MR FAGIR: No, no, but it's the same issue because the material that's in the statement is material that started off in the table and rather than have in an awkward format a description of the reasons why the program is not fundamentally different in a column of a table and repeat that five or six times throughout it. We would remove the picture issues or the recurrent themes into the body of the statement, but could it seriously be said, I mean, the responding - and I give an example. This is from Ms James's supplementary statement. Having set out what she says is the morning indoor learning program she goes on to say:

PN9138

This is a much more complex and structured process than before the NQF and teacher accreditation were introduced.

PN9139

She goes on to say some more things about that:

PN9140

The documentation requirements have also increased. When I was in a preschool my weekly program would fit on one page, now teachers are keeping detailed programs about that for a day. In addition detailed portfolios for each individual child are maintained.

PN9141

The difference between that evidence and ours is that we haven't introduced our evidence in the form of useless high level conclusory assertions of that kind. We have tried very hard to explain why those conclusions ultimately are reached. That is all that's happening here and I could go on and deal with every paragraph with the same - save for kindergarten funding. I accept that's in a different category.

PN9142

But to use another example we're told that - - -

PN9143

MR TAYLOR: Quiet time.

PN9144

MR FAGIR: I'm sorry, what? Okay, quiet time. We're told quiet time is some non-responsive - Ms James:

PN9145

Sleep: previously all children had a standard rest time after lunch for an hour. This was important programming time for teachers who could use this relatively quiet time to work on their programming and daily journals.

PN9146

I can go on, but it goes on for another five paragraphs along those lines, and that is why this statement deals with quiet time.

PN9147

VICE PRESIDENT HATCHER: That's in Ms James's supplementary statement, is it?

PN9148

MR FAGIR: Yes. That's a starting point, and it's a bit difficult to understand why the loosey-goosey approach adopted by the union should be permitted and my client, on the other hand, should be required to precisely respond to identify paragraphs of the supplementary evidence. But even if that approach is taken our evidence falls well within it. If we need to cut paragraphs out of the statement and paste it into the table we'll do that, or if we need to identify specific paragraphs that are being referred to we can do that in very short order. We'll do that in half an hour, but it's inevitably leading to the conclusion that this is directly responsive to the additional material. I could give other examples.

PN9149

VICE PRESIDENT HATCHER: What about Professor Irvine's statement?

PN9150

MR FAGIR: Professor Irvine's statement, although she was asked to explain what the NQS meant for day-to-day activities and she says that's what she's doing, in fact the report is nothing more than another series of high level assertions about the NQS and the expectations it introduced disconnected from any document.

PN9151

VICE PRESIDENT HATCHER: Are there objections to it is really what I'm asking?

PN9152

MR FAGIR: Yes, the objection is on the basis that it is wholly disconnected from any description of day-to-day activities. It is merely a continuation of the Professor's high level views about the expectations which have emerged from the NQF.

PN9153

VICE PRESIDENT HATCHER: So is that an objection to the entirety of her statement and report?

PN9154

MR FAGIR: Yes.

PN9155

VICE PRESIDENT HATCHER: Anything further?

PN9156

MR FAGIR: If I need to go through the exercise I just did with, for example, sleep time for each paragraph I can, but I hope the point is made, if the Commission pleases.

PN9157

MR TAYLOR: Can I just - there's a couple of - I mentioned these things but I didn't necessarily give you the datum. You might recall that Mr Fagir identified that if the material was to go in he would need some time, and we moved witnesses accordingly. Our record is that Ms Connell, for example, was cross-examined nine days after her material went in. Mr Fagir's client has had 17 days since Ms Connell's statement was provided to provide us with this material, and the expectation is that we apparently respond to it instanter. It can be seen to be substantially greater in volume, and during of course those 17 days, putting aside this week where we've sat some extended hours, there's been considerable hours that we haven't sat.

PN9158

Can I also identify one other thing, that we identified, at least so far from just reading the statement, not reading from the annexure, is that by filing the material after we cross-examined Ms Prendergast it has either by remarkable prescience or otherwise dealt with material which I put to Ms Prendergast, such as whether there was under the previous system a need for an educational program, whether

that educational program dealt with individual children, matters which were put to Ms Prendergast yesterday and now 17 days after we filed material we receive it overnight. There's - - -

PN9159

MR FAGIR: If you want evidence about that we can put on evidence about the form of this statement and what's been done, how long it's then taken to dig up all these documents, trying to interrogate the broad assumptions that are put and the extent to which this statement was created after the cross-examination yesterday. If you want an affidavit about that that can all happen.

PN9160

MR TAYLOR: I just indicate the nature of the prejudice, if indeed from what Mr Fagir has just said, that he's had this material for some considerable amount of time, at least in some form, it clearly would've removed the need for us to have some time to read it if we had at least had some material earlier than, in Mr Prendergast's case, effectively 5 pm yesterday, and in this case effectively 9 am this morning. All I'm indicating is that the consequence of what's happened is that we're now in a position where we just - there's a lot of material. We do need an opportunity to have a look at it before we can ask any questions that would elicit something useful for the Commission arising out of it.

PN9161

VICE PRESIDENT HATCHER: That practically means that it couldn't be done today, doesn't it?

PN9162

MR TAYLOR: It depends how much of it goes in, but I think, in fairness - - -

PN9163

VICE PRESIDENT HATCHER: So assuming it all went in - - -

PN9164

MR TAYLOR: Yes.

PN9165

VICE PRESIDENT HATCHER: - - -that practically means that you could not deal with it today?

PN9166

MR TAYLOR: Correct.

PN9167

VICE PRESIDENT HATCHER: So what's your proposal then in the event that we decide to admit it?

PN9168

MR TAYLOR: That we deal with this witness at the next convenient opportunity. Given the nature of the Commission's capacity, if that means that the evidence is taken on referral by a single Member then that might be one option, but we'd be - if we were able to deal with it some time in the near future I think

we ideally would need the weekend and so it would be a matter of some time, maybe if it's convenient Monday, Tuesday or Wednesday next week.

PN9169

VICE PRESIDENT HATCHER: We'll just adjourn briefly to consider what's been put.

SHORT ADJOURNMENT [9.31 AM]

RESUMED [11.03 AM]

PN9170

VICE PRESIDENT HATCHER: Yes, Mr Warren.

PN9171

MR WARREN: Your Honours, Mr Egan is available to give evidence in cross-examination.

PN9172

VICE PRESIDENT HATCHER: Can Mr Egan come forward.

PN9173

THE ASSOCIATE: Could you please state your full name and address for the record?

PN9174

MR EGAN: John Vincent Egan, (address supplied).

<JOHN VINCENT EGAN, AFFIRMED [11.03 AM]

EXAMINATION-IN-CHIEF BY MR WARREN [11.03 AM]

PN9175

MR WARREN: Mr Egan, once again your name is John Vincent Egan of (address supplied). Is that correct?---Yes, correct.

PN9176

Thank you. Mr Egan, you prepared a statement and annexed an expert opinion report to that statement. The original statement was dated 14 May 2018 as was the report. It has a number of annexures. Do you have that statement and all its annexures with you in the witness box?---I do.

PN9177

Since that date you've caused to amend your report to take account of amendments to or updates to research documents et cetera?---I have.

PN9178

Also within your report there are errors with respect to reference to annexure numbers?---There were some, yes, and they've been corrected.

*** JOHN VINCENT EGAN

XN MR WARREN

PN9179

They've all been corrected. Your Honours, there has been filed the amended report of Mr Egan. It's now dated July 2019. I understand that what has been filed is a marked up version but it hasn't - there has not been filed a clean version per se.

PN9180

VICE PRESIDENT HATCHER: Sorry, when was that filed?

PN9181

MR WARREN: Yesterday, I believe. The amended on was - - -

PN9182

VICE PRESIDENT HATCHER: Do you have hard copies?

PN9183

MR WARREN: I have two hard copies and my friend's got the third.

PN9184

MR TAYLOR: You can use this.

PN9185

MR WARREN: Can I?

PN9186

MR TAYLOR: Yes.

PN9187

MR WARREN: Thank you. I've got three hard copies. If I can just take you briefly to it please. The amendments are all noted in red ink as you move through the report and principally there's been a number of annexure numbering changes. The last two pages of the hard copy that your Honours have been handed now contains the changes to the numbering of the annexures et cetera. We undertake to file a conclusion at today's proceedings a clean copy of the whole report but it was filed as a marked up version to assist the Commission to see where the changes occurred.

PN9188

VICE PRESIDENT HATCHER: Right.

PN9189

MR WARREN: I tender the report and the statement.

PN9190

VICE PRESIDENT HATCHER: The statement of John Egan dated 14 May 2019 and the amended report dated July 2019, together with the annexures, will be colloquially marked exhibit 115.

*** JOHN VINCENT EGAN

XN MR WARREN

**EXHIBIT #115 WITNESS STATEMENT OF JOHN EGAN DATED
14/05/2019, TOGETHER WITH AMENDED REPORT DATED JULY
2019 AND ANNEXURES**

PN9191

MR WARREN: Commission please, that is the evidence of Mr Egan.

PN9192

MR TAYLOR: Just on housekeeping matters, just before I ask Mr Egan some questions, can I just identify for the benefit of the Commission, in case it wasn't clear from what Mr Warren said that the annexure numbers, it's not just the annexure numbers have changed but there's some additional annexures as well and I don't know if Mr Warren has thought but if we need to go to them, it may well be they have to be provided.

PN9193

MR WARREN: Mr Egan has them in the box. I don't know whether we have any additional copies.

PN9194

MR TAYLOR: I'm not - I'm just foreshadowing this. There's no objection to the additional material, I'm not suggesting that either, just that to complete the fact that it's not just changes in numbers, there's actually some additional annexures as well.

PN9195

VICE PRESIDENT HATCHER: Yes. Yes, all right, Mr Taylor.

CROSS-EXAMINATION BY MR TAYLOR

[11.08 AM]

PN9196

MR TAYLOR: Thank you. Mr Egan, can I start with a document which the Bench if they have the whole copy will find behind their annexure 20, but which under your document you will now find behind annexure 23 due to renumbering. It's your curriculum vitae?---Yes, I have that in front of me.

PN9197

So you are someone who commenced work and spent many years working for an organisation known as Cullen Egan & Dell. Is that right?---I did.

PN9198

Often reduced down to the three letters CED?---Correct.

PN9199

That system of sizing jobs is now a system that is owned and used by an organisation called Mercer?---That is correct.

PN9200

And Ms Issko whose evidence you replied to is someone who comes from Mercer, is that right?---That is my understanding.

*** JOHN VINCENT EGAN

XXN MR TAYLOR

PN9201

What you did was you read her report and you saw that she used the CED job valuing system although I think they now call it the Mercer system, is that right?---I'm not sure that is correct. The CED system is a system which I wrote and developed when I was with Cullen Egan Dell. It is essentially deployed in the public sector and in positions of that nature. Mercer today have their own system which was developed in the United States and that is progressively being deployed in Australia with their clients. It has different factors and different weightings. So that gives Mercer the opportunity to have a global system but because of the entrenchment of the CED methodology they are still retaining its use, particularly in the public sector.

PN9202

The methodology that Ms Issko used in her report which generated certain job size numbers was the CED system?---That is correct.

PN9203

You similarly used the CED system as you understand it to generate the points that you produce in your report?---That is correct.

PN9204

I want to come back to that but let me just stick with your curriculum vitae. One of the things you have done in your report is do some job sizing of teachers, both early childhood teachers and primary school teachers. Is that right?---That is correct.

PN9205

You don't identify in your CV or anywhere in your report that you have had any previous experience in respect of valuating teacher job sizes. Do you agree with me?---That would be correct.

PN9206

Is it the case that you in fact have prior to being asked to do this task, never had any experience in evaluating teacher job sizes generally?---In the context of early childhood and primary school, that is correct.

*** JOHN VINCENT EGAN

XXN MR TAYLOR

PN9207

Again, there is nothing in your report or your curriculum vitae suggesting that you have engaged in an exercise of researching the question of job size of teachers generally. Do you accept that?---It's not in my report but I have read material written by academics and others where they comment on the attributes of teachers. Most of that research at this point in time has not been incorporated in evaluation methodologies which are longstanding, not at this point in time widely accepted but they - that research is useful as was reading the evidence from a number of individuals in gaining an understanding or an appreciation of the work which an early childhood teacher undertakes, and that process is not different from the process that is adopted generally by those with some knowledge of work value and job evaluation that they would adopt. I think you were provided, were

you not, with a document which set out what you needed to do in order to provide an expert report?---I was.

PN9208

And you understood that one of the things you needed to do is identify the source of any material that you draw on in order to come to the opinions that you come to?---I can't recall that precisely but I understand in principle that that was an obligation.

PN9209

Yes. And you identified a moment ago that you have read some reports, academic reports, as to the attributes of teachers. Is that something you've read since you provided - did the analysis in respect of your 2018 report?---No.

PN9210

Do you say that you drew in any way on any of those articles in doing the job sizing exercise that you did?---No, I didn't because I didn't accept that the work that was being postulated and developed had been developed to a sufficient extent and had a sufficient foundation of engagement in the world of work to be embraced or adopted. I found it interesting as opposed to informed my opinion.

PN9211

Can I take you to your report itself? It's now in its amended form. I think that's the form you have it in in the witness box, so in that form I'm taking you to page 12 of 17. The numbering in the previous one was different. Tell me when you have page 12?---Yes, I have page 12.

PN9212

There's a heading towards the bottom of that page, Market Driven Facts Behind Pay Levels and Irrelevance of Gender Pay Gap. Do you see that?---Yes, I do.

PN9213

Just under that heading, Irrelevance of Gender Pay Gap, is it your view that as a matter of generality before one comes to the specifics, gender pay gap is or isn't relevant when one is trying to understand why various occupational groups maybe being paid more or less?---In undertaking an assessment of work value the gender of the occupant, the age of the occupant, their background prior to assuming the job you're evaluating should not be taken into account unless it adds relevance to the uniqueness of the position you're evaluating?---Yes.

PN9214

Yes. That's an answer that addressed the question of work value. The heading deals with pay levels and irrelevance of gender pay gap, so my question again, is it your view that the gender pay gap has any relevance when one is considering pay levels for various occupational groups?---It could have.

PN9215

Can I just take you to that sentence in paragraph 55 that's the second sentence:

*** JOHN VINCENT EGAN

XXN MR TAYLOR

PN9216

Although two separate jobs could have the identical or comparable work value this does not mean they should be remunerated at the same level.

PN9217

Firstly, when you use the word "work value" what do you mean?---I mean the outcome of a job evaluation analysis. So if you have two positions for example with a work value of 200 that does not automatically mean that those positions which may be in different industries, in different professional streams, different occupational streams, different locations, should be paid the same.

PN9218

Yes. That was the next thing I wanted to come to, the "should be" part. You're not suggesting that there might not be situations where jobs with identical or comparable value should, as a matter of what is appropriate, be paid the same. You're simply saying that as a matter of fact they're often not?---One of the challenges of that observation hasn't - - -

PN9219

I'm just asking, is that what you're saying in that sentence?---A factor, if the jobs are identical, and they're occupied by a male or female, which could differentiate the payment of two individuals, will often relate to performance. I don't believe in this sector performance is widely adopted as a point of differentiation.

PN9220

So just when you say the fact that two jobs with Identical or comparable work value doesn't mean they should be remunerated, just so I can understand what you mean by "should", are you saying that simply - are you simply observing as a matter of fact it doesn't mean that they are as a matter of fact remunerated at the same level, or are you suggesting, as a value judgment, that as a value judgment the fact that two jobs are identical or comparable does not, as a value judgment, mean they ought to be paid the same?---If you have two positions that are in the same sector, in the same organisation, the indicative level of pay, if pay is being adjudicated on the basis of work value, should be comparable. The things which will differentiate pay will be performance, length of experience, and the employer's capacity to pay based upon whether they're a not for profit or a for profit entity and that will often dictate where they position that role. So while there's an acceptance that work value is identical the organisation might decide that an accountant and an actuary both occupying positions of similar work value would not be paid the same because the market dictates that one of those would be paid more highly than the other.

PN9221

Yes. And you think that is something that is appropriate? As a value judgment that's an appropriate thing you would be saying; is that right?---I think if I was giving advice to any organisation it would be inappropriate to have an alternate view.

*** JOHN VINCENT EGAN

XXN MR TAYLOR

PN9222

At paragraph 65 you deal with this subject matter, and you quote from a document. I note that I think there's been a change on this paragraph that hasn't been marked up; is that right? I think the original document - well, let me just have a look. Yes. No, sorry, I withdraw that. My apologies, I was just moving from one to the other. You say in paragraph 65 that the Fair Work Commission had stated something. That's in the middle, "In the second case study provided under the work for same value the Fair Work Commission states", but I think what you're doing is referring to a document of the Fair Work Ombudsman; is that right?---I can't clarify that unless I can go and find the source document. But the principle that's set out in that statement I would accept as being a sound principle.

PN9223

One assumes that otherwise you wouldn't have put it in. Indeed I think you say so, but the source document is, is it not, and you don't need to confirm this, I just - for the record I note, that the source document is an annexure which was 19 and is now 22, and - - -

PN9224

VICE PRESIDENT HATCHER: So it's - - -?---It's the Ombudsman.

PN9225

- - -the Ombudsman document?---The Fair Work Ombudsman.

PN9226

Not the Commission's document.

PN9227

MR TAYLOR: Yes?---Yes.

PN9228

VICE PRESIDENT HATCHER: I was just worried I might've written that for a second, but - - -?---You are correct.

PN9229

MR TAYLOR: That is precisely the case, it's the Ombudsman document, isn't it?---You are correct.

PN9230

And in that document what you're doing is quoting from a part of the Fair Work Ombudsman document in which a case example is given involving Johan, a geologist, and Mary, an HR professional who are both employed by the same company. Do you recall that?---Not specifically, because I've read a lot of documents. I can respond to the question based on the occupations you're referring to. If they're both not working in Pitt Street I can understand the differential.

*** JOHN VINCENT EGAN

XXN MR TAYLOR

PN9231

Just wait. Mr Egan, it's going to be much quicker if you actually just respond to the questions rather than respond to a subject matter that I've raised in the question but I'm not actually asking you about. So let's just keep focusing on what I'm

asking you about, and maybe it's easier, seeing as you cannot now apparently recall this document, for you to simply open it. It's behind tab 22 of your new numbering.

PN9232

VICE PRESIDENT HATCHER: So what's the old numbering?

PN9233

MR TAYLOR: Nineteen.

PN9234

MR FAGIR: Nineteen.

PN9235

MR TAYLOR: Do you have that document now?---I do, indeed.

PN9236

And you see it's a Fair Work Ombudsman's document, and on the second page there's a case study, and the words that you have quoted in paragraph 65, "I can tell you", come from the bottom of that column. Is this something that you recall finding yourself and then inserting into your statement, or has someone helped you prepare?---I get assistance in undertaking research, and I would have had assistance in going through a very significant number of documents as reflected by the number of annexures.

PN9237

So do I take it from that, and I'm not being critical, but I take it from that that this paragraph of your statement and its reference to an annexure, and a bit of the annexure was prepared by someone else for your assistance, which you then endorsed by including it in your report?---I certainly would have endorsed it. It wouldn't have gone in the report without me reviewing where it came from and the relevance of its context.

PN9238

This particular case example involves Yohan, a geologist, and Mary, an HR professional, who both have the same amount of work experience, the same employer, have the same number of employees reporting to them, and the Fair Work Ombudsman has identified in the paragraph under the heading, "Work of the same value", the third paragraph:

PN9239

This may be an example of gender pay inequity, as Yohan and May are performing work of comparable value but are receiving different pay.

PN9240

You've quoted one aspect of the document, but the other aspect of the document is this may indeed be a gender-based difference in pay, that's correct, isn't it?---The use of the words "may be", I would have to accept, yes.

*** JOHN VINCENT EGAN

XXN MR TAYLOR

PN9241

VICE PRESIDENT HATCHER: Mr Egan, does the CED methodology take into account the environment in which the work is performed? So say with this example, what's his name, Yohan, as a geologist, has to travel to the Pilbara or something and work in remote areas and be away from his family for long periods of time. Is that something that the CED methodology would take into account or not?---Your Honour, to the best of my knowledge, it does not, but there are methodologies today which do take the work environment into account and would also give consideration to the level of risk, which the CED methodology doesn't directly take into account in order to determine work value.

PN9242

Thank you.

PN9243

MR TAYLOR: Can I now ask you to go back to your report and open up page 6? I think it's the same numbering in the old report and this page doesn't have, as far as I've been able to identify, any changes. It's a little easier to read in the 2018 version because the text is a bit bigger. I just mention that for the benefit of the Commission, if they're noting that the text on the new version, because it's in mark-up, has shrunk, but nothing has changed in those two. So what you did, as identified on this page, Mr Egan, is do a job site analysis for three types of workers, an early childhood teacher, a primary school teacher, and an engineer?---Yes, I did.

PN9244

And you did it at two points in their career, at a graduate point and at a five-year experience point?---I did.

PN9245

And you, as we've already identified, used the same CED methodology as Ms Issko did when she did her analysis?---I did.

PN9246

Although as you know, she didn't do analysis of a primary school teacher, that's right, isn't it?---It is correct.

PN9247

And you, on this page, have set out your conclusion, and to the extent to which Ms Issko had a conclusion, you've set out hers directly underneath with the word, "Mercer", against it?---Correct. I accept on the basis of your earlier observations I could have put "CED."

PN9248

Well I think you did actually. If you look at the very top, it starts with "CED evaluation conducted by"?---Yes.

PN9249

And in the first case it was - in the first column - sorry, the first row after that is "Egan", and the second is "Mercer"?---Yes.

*** JOHN VINCENT EGAN

XXN MR TAYLOR

PN9250

So let's just look - - -

PN9251

VICE PRESIDENT HATCHER: Just to be clear, when it says "Mercer", in fact Ms Issko was also using "CED?"

PN9252

MR TAYLOR: Yes. Yes, she was using - - -?---Yes, your Honour, I used the CED methodology, which I wrote many years ago, and Ms Issko used the CED methodology. She is employed by Mercer, which acquired Colin Egan Dell(?), and I work with Egan Associates.

PN9253

VICE PRESIDENT HATCHER: But has it evolved since you've - - -?---To the best of my knowledge, the CED system has not, because of its client base, but the Mercer organisation has another job evaluation methodology, which at this point in time doesn't have the client exposure that CED does.

PN9254

Just again, CED was designed for a public sector organisation?---Well, it was designed more broadly, but Mercer are now trying to have their global job evaluation methodology adopted in the private sector. CED probably has 500 clients, as a methodology, so like any organisation, if you're endeavouring to transition an organisation that's fully familiar with a technique, they've got to embrace it, and if they really understand CED, they can still match it in work value and paid terms to support their client's information requirements.

PN9255

So we have two people using the same methodology and getting different results?---Yes. Our interpretation of the demands of the job are different.

PN9256

MR TAYLOR: That's exactly where I was going, if it please, your Honour. So can we just identify, a graduate early childhood teacher first is graduate engineer, which is the exercise that both of you did. You get different points, and can I just firstly with the graduate early childhood teacher, the expertise that you identify for an early childhood teacher is the same expertise that you identify for a graduate engineer?---That is correct. We both agreed on the coordinates for that element of the job evaluation.

PN9257

VICE PRESIDENT HATCHER: Sorry, Mr Taylor. Just looking at your numbers, Mr Egan, for graduate early childhood teacher, primary school teacher at engineer, so you've got 222, 230 and 236. I hope I'm not misphrasing this, but we had an earlier job evaluation witness which suggests having regard to the degree of subjectivity imposition with these methodologies that that is more or less the same score?---Yes.

*** JOHN VINCENT EGAN

XXN MR TAYLOR

PN9258

That is, it doesn't produce a meaningful distinction when you've got numbers that close?---There's not a dramatic difference. The difference between our assessment, using the CED methodology, is marginal - well, no, that's not quite right. We're indicating that the level of judgment, reasoning and analysis for an engineer is a greater demand in that job than it is in an early childhood teaching role. We formed the view that the level of independence in oversighting the day-to-day work of the early - that is, the young graduate, the just appointed graduate - either an engineer or an early childhood teacher were less than Mercer. We didn't believe that the graduate straight out of university had the autonomy in making decisions about the resources that they had oversight of that Mercer did. Mercer gave them more independence.

PN9259

I'm not concerned at this stage with what Mercer said?---Sorry.

PN9260

I'm pointing to an earlier witness who said something to the effect that even with your scores, 222, 230, 236, that, having regard to the element of subjectivity involved, that that is really not a meaningful difference in work value when the numbers are that close. Do you agree with that, or do you disagree with that?---I don't disagree in principle. I think one of the challenges as job evaluation methodologies are being applied to technical, administrative, graduate positions in the workforce is that the degree of granularity using a 15 per cent differential for any element isn't sufficient to evaluate difference between a cleaner, an administrative officer, a customer service person, or a school teacher, because the systems don't establish that granularity at the very low levels of roles in the workforce. That may become increasingly more complex with increased mechanisation, robotics and technology.

PN9261

Yes, but we're not talking about - - -?---It's not upon us today.

PN9262

- - -that sort of job here?---No, no. Yes.

PN9263

But with this sort of job is that a meaningful difference or not?---I would say it is meaningful but I would equally say that the methodologies don't have the level of granulation to reveal a significant difference. I believe there's a difference based upon my 30-odd years' work in this field, but the way there would be a difference in the world of work would be how they use those points to band them. In other words, if they have jobs between 100 and 120 as one band and 120 and 140 as another band, that may indicate a difference, whereas if you're just looking at the absolute point scores, you might say, they're broadly comparable, and I don't think that's an unreasonable judgment at that level, your Honour.

PN9264

Thank you.

*** JOHN VINCENT EGAN

XXN MR TAYLOR

PN9265

MR TAYLOR: You've read, I think, tell me if you have, Ms Issko's reply statement in which she responds to what you've said in your statement?---I read it some time ago.

PN9266

Yes. You recall that she referred to Weber's law. Are you familiar with Weber's law?---I do. I am.

PN9267

A fundamental law of psychometrics?---It is a model developed by - a model embraced in the 1930s and 1940s. It has been maintained for a significant period of time as a differential in looking at work value factors and job factors. In my judgment that differential today doesn't have the level of granularity that you need at this level in the workforce, but it is a methodology which really comes out of the Hay system which was established in the 1940s in defence forces in the United States.

PN9268

Ms Issko says that Weber's law, as it relates to job evaluation, uses a minimum perceivable difference between levels of 15 per cent?---Psychologists have a view
- - -

PN9269

Firstly, do you agree with that? That is - - -?---Well, I'm just going to tell you how it arose.

PN9270

Well, no, can you just answer my question, please. Do you agree that that is the effect of Weber's law in respect of job sizing?---That is the effect of Weber's law.

PN9271

Thank you. Can I take you back to page 6, and the difference between a graduate early childhood teacher and a graduate engineer as you have determined it. You have given a rating for each of the three areas which is derived from a score for the sub-categories under that heading. So, for example, for graduate early childhood teacher you've given a rating for expertise which is made up of three scores E minus, 2 plus, B plus; is that right?---That is correct.

PN9272

And that is exactly the same in your view as a graduate engineer?---Yes.

PN9273

Would you accept this proposition, that one of the sub-categories of expertise is interpersonal skills?---Yes.

PN9274

Would you accept this proposition - sorry, which of those three is the interpersonal skills score?---The B plus.

*** JOHN VINCENT EGAN

XXN MR TAYLOR

PN9275

And would you accept this proposition, that an early childhood teacher who has to interact with small children and parents and other staff members needs a high level of interpersonal skill?---I didn't and I don't, but the reason for that is your question reflects dealing with significant individual differences and it may be an element of an early childhood teacher where a modest proportion of their engagement is with young people and parents that are difficult to deal with, as they might be with someone that's in customer service or selling on the phone.

PN9276

We're talking about an engineer. It's like a software engineer sitting in front of a - - -?---Well, an engineer is normally dealing with rational - - -

PN9277

- - -computer?---A graduate engineer would normally be supervised by another engineer in a rational setting.

PN9278

I do want to come to that issue, but just can we stick with interpersonal skills for a moment?---Yes.

PN9279

You accept the proposition, don't you, that an early childhood teacher, whose - not just part of their job but their entire job involves dealing with lots of children, their fellow educators, and on a regular basis, daily, parents, need to have a high level of interpersonal skill?---They need to have some skill. That's why they're rated as B plus.

PN9280

I see?---I wouldn't put them in C.

PN9281

And you've rated them the same as an engineer who might be sitting in front of a computer doing data analysis and writing code?---But might also be on a site supervising 30 people.

PN9282

Yes. So on that basis - but, anyway, you've given them the exact same interpersonal skill. Accountability, again, you've given the exact same accountability?---Yes, I have.

PN9283

A moment ago you said something about the fact that the difference between the early childhood teacher and the engineer is a difference in autonomy?---Yes.

PN9284

If there was a difference in autonomy that would show up under that heading; would it not?---Well, it shows up in the five year experienced graduate. This is a fresh graduate out of university - - -

*** JOHN VINCENT EGAN

XXN MR TAYLOR

PN9285

Yes?--- - - -that - and I've spent a long time at university, and if you believe that young graduates have got the interpersonal skill you've referred to on leaving university you've been in a different world from one where I spent 15 years at the University of Sydney.

PN9286

Mr Egan, interpersonal skill comes under expertise. It doesn't come under accountability?---No, I'm understanding that, but I'm just talking about the issue. I'm saying as young graduates they would have comparable accountability. As experienced graduates the nature of an experienced engineer's work would be different from an early childhood teacher whose role hasn't changed.

PN9287

Didn't you say two things earlier: (1) that early childhood teachers have more autonomy; and, secondly, that graduate engineers are going to be supervised. Do you accept that you've said both of those things?---The early childhood teacher, from the material that I've read, whose autonomy is influenced by the degree of supervision they have, certainly when they've got 18 kids running around the playground or they've got to manage them in the class they are accountable. The graduate engineer is accountable but in a more narrowly based activity generally.

PN9288

I see. You have notwithstanding that difference in accountability given them the exact same score for that category. Can I turn to the third category of judgment. This is the only one where you have identified a difference between the two?---Mm-hm.

PN9289

The difference is in the second sub-category in which the teacher has a 3 minus and the engineer has a three plus. Can you recall the nature of that category?---Yes.

PN9290

What is it?---Well, it deals with the organisational setting and complexity and the level of judgment that is required to be exercised in that context.

PN9291

Do you remember the heading of this sub-category?---Look, it's changed over time. I don't remember what - I think they called it judgment or reasoning or something like that. The fact - the elements haven't changed but the headings have.

PN9292

I see. This is the facet of judgment which focuses on requirements in the position of reasoning, analysis and creativity?---Correct.

PN9293

And the emphasis is on the need to analyse and solve problems?---Correct.

*** JOHN VINCENT EGAN

XXN MR TAYLOR

PN9294

You have identified in paragraph 17 of your report what is the only difference that you've been able to discern between a primary school teacher - sorry, I withdraw that. Let me just come back to - I need to approach this slightly differently in this - can I just take you back to page 6. I'm sorry, I'm jumping around a little?---Yes.

PN9295

The graduate primary school teacher sits on your analysis between early childhood teacher and graduate engineer in total points?---Yes.

PN9296

The only difference that you identify between a graduate primary school teacher and an early childhood teacher is in this judgment category?---Yes.

PN9297

You have effectively given them a judgement level that is midway between the levels you have given for an early childhood teacher and a graduate engineer?---Yes.

PN9298

That is again on the basis of this reasoning sub-factor?---Yes.

PN9299

The reason for that, that is the only reason that you've identified for there to be any difference between early childhood teacher and a primary school teacher is what you've set out in paragraph 17?---Yes.

PN9300

Specifically you've identified a difference in reasoning because of what you say is a higher level of analysis and reasoning skills of a primary school teacher?---Yes.

PN9301

I think we identified earlier that you hadn't relied on any research in respect of teaching to prepare this report. You had no previous experience of ever analysing teacher work. On what basis do you come to the view that a primary school teacher has a higher level of analysis and reasoning skills than an early childhood teacher?---The subject matter that they are accountable to be familiar with in preparing children for secondary education and it's more sophisticated, the learning demands are more sophisticated. They must prepare those children for higher learning demands as they progress through primary school into secondary school. I don't believe that their engagement with carers would be anymore or less demanding from a reasoning point of view. Now - - -

PN9302

Yes, I'm not interested in your beliefs - - -?---Well, I'm about to offer you some explanations.

*** JOHN VINCENT EGAN

XXN MR TAYLOR

PN9303

- - - I'm asking you about what basis you have - my question was directed to what is the basis that you express this opinion. What facts or information do you have

available to you that allowed you to come to this view?---I have used the documentation adopted by the Bureau of Statistics and Ansoff I think it is, in defining the key and primary tasks of an early childhood teacher and a primary school teacher. I have also been undertaking research on behalf of the Department of Education in relation to primary school teachers, which is quite separate from this task.

PN9304

Firstly, let's deal with these matters that you're identifying. You have not annexed to your report any document that describes the work of primary school teachers?---I thought there was an annexure in relation to the role of a primary school teacher in the Ansoff definitions.

PN9305

Mr Egan, did you read your report before you came today?---I didn't read all of this. I read my report.

PN9306

MR WARREN: He's taking you to the Australian Bureau of Statistics Report.

PN9307

THE WITNESS: But I have loose leaf material that isn't in six folders and one of the elements that I did read before I came here today was the ABS data.

PN9308

MR TAYLOR: Mr Warren tells me that I might have misled you because there is an annexure, so I need to make sure that if that's the case I correct that, so let me have a look at a document that is apparently to be found - the trouble is the annexure numbers keep changing so what was it, it was annexure 5 was it? Yes. No, I do need to correct that, so annexure number 5 has a document that was - is now 6 I think but for the Commission's benefit it was 5, has a primary school teacher - - -

PN9309

VICE PRESIDENT HATCHER: Behind tab 7.

PN9310

MR TAYLOR: Mr Warren tells me it used to be tab 5 but anyway it's an Australian Bureau of Statistics document that has underneath it 1220.0 and that has some information about the tasks of primary school teachers.

PN9311

VICE PRESIDENT HATCHER: Mr Egan, is there an equivalent document for early childhood teachers?---Yes, there is.

PN9312

Is that annexed to your statement?---I don't think it's in the annexure but I have read it and have a copy of it. In relation to the role of an early school - early childhood - - -

*** JOHN VINCENT EGAN

XXN MR TAYLOR

PN9313

Just wait for the next question, Mr Egan.

PN9314

MR TAYLOR: Sorry Mr Egan, won't be a moment. Just to come back to your expertise, are you expressing what you think is a well-founded expert opinion that having research the matter - I'm trying to be fair to you - that as having read that document that you've been directed to that you're able on the basis of that to form a considered view that there's some higher level of analysis and reasoning skills than that of an early childhood teacher?---It is a one step difference. I am - yes, I do form that view.

PN9315

You're not being influenced are you at all by a view that early childhood teachers are predominantly providing care to young children rather than actually giving them educational outcomes to prepare them for primary school?---No, I am not because if you read the material that has been submitted through documents prepared by early childhood teachers, it's quite evidence that they're very much immersed in commencing the journey of young people on learning and developing their ability to deal with primary school education.

PN9316

There's a need, is there not, for an early childhood teacher to both analyse the outcomes, the learning outcomes that children are able to do pre-primary school and then using reasoning skills determine the best way to guide them to achieve higher learning outcomes so that they are prepared for primary school?---Well, one of their tasks is clearly to engage in that. Both assessments, that is the assessment undertaken by Mercer and ours have them in the same category of 3. So we're saying it's at the level of reasoning defined by 3. What I indicated in my judgement is that it is at the lower level, not at the mid level. So there's an acknowledgement that the early childhood teacher does need to engage in reasoning.

PN9317

Yes, but you just don't think early childhood teachers have the same level of reasoning analysis and creativity?---Well, I can't comment on the teachers, but in terms of the job demand that would be my assessment.

PN9318

Let's just go back to page 6 and look at the - again at this one area of difference between this point and I now want to go back to the comparison between graduate teachers and graduate engineers. You accept do you not that graduate early childhood teachers must have a level of - sorry, I'll withdraw that, I think I've actually dealt with that, my apologies. I've noted - yes. When it comes to the graduate - sorry the early childhood teacher with five years' experience and the experienced primary school teacher, at that point the gap between them has narrowed it would appear to be not just comparable but almost identical. Do you accept that?---In relation to expertise?

*** JOHN VINCENT EGAN

XXN MR TAYLOR

PN9319

Sorry, I was looking at the total CED points? Sorry - - -?---I've got a more significant gap using the CED methodology between the five-year person at 319 versus 362.

PN9320

Yes, I think - - -?---That's a big gap.

PN9321

Just listen to my question. My question is directed at the gap between early childhood teacher with five years' experience and an experienced primary school teacher?---I'm sorry, I thought it was an engineer. The gap is minuscule. It doesn't exist.

PN9322

And so notwithstanding what you said about a graduate early childhood teacher having something that you've managed to discern as having a lower level of judgment, when you get to the experienced level on your analysis, your careful analysis, you now find that the two are essentially identical?---On the basis of the material that was submitted by those, it described their role, particularly those that had been in early childhood teaching for a number of years. My judgment is that their experience gives them authority of knowledge and authority of engagement with parents and children in dealing with the challenges that are faced in those centres.

PN9323

Is that a long way of saying you agree with the proposition I put to you?---For the experienced teacher, I do.

PN9324

Thank you. They're the questions.

PN9325

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

PN9326

MR WARREN: Nothing arising, your Honour, thank you.

PN9327

VICE PRESIDENT HATCHER: Thank you for your evidence, Mr Egan. You're excused and free to go?---Thank you.

<THE WITNESS WITHDREW

[11.55 AM]

PN9328

VICE PRESIDENT HATCHER: Mr Fagir?

PN9329

MR FAGIR: Thank you, your Honour. I call Ms Karthika Viknarasah.

*** JOHN VINCENT EGAN

XXN MR TAYLOR

PN9330

THE ASSOCIATE: Could you please state your full name and address for the record?

PN9331

MS VIKNARASAH: Karthika Viknarasah, (indistinct).

<KARTHIKA VIKNARASAH, AFFIRMED [11.55 AM]

EXAMINATION-IN-CHIEF BY MR FAGIR [11.56 AM]

PN9332

MR FAGIR: Once more for the transcript, your name is Karthika Viknarasah?---Yes.

PN9333

Your address for work purposes is (indistinct)?---Yes.

PN9334

Have you prepared three statements for the purposes of these proceedings?---Yes.

PN9335

Could I begin with the earliest in time? Is that a statement marked on its first page, "Statement of Karthika Viknarasah"?---Yes.

PN9336

Is it signed by you on page 28?---Yes.

PN9337

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

PN9338

I tender the statement of Ms Viknarasah signed on 23 May 2018.

PN9339

VICE PRESIDENT HATCHER: The statement of Karthika Viknarasah dated 23 May 2018 will be marked exhibit 116.

EXHIBIT #116 WITNESS STATEMENT OF KARTHIKA VIKNARASAH DATED 23/05/2018

PN9340

MR FAGIR: Ms Viknarasah, do you have a second statement there marked - - -

PN9341

VICE PRESIDENT HATCHER: Sorry, Mr Fagir, the version I have has a big confidential stamp on it, so what's the position with all that?

*** KARTHIKA VIKNARASAH

XN MR FAGIR

PN9342

MR FAGIR: There's no controversy.

PN9343

VICE PRESIDENT HATCHER: So can we just assume that the existing order will continue to operate?

PN9344

MR FAGIR: Yes, until we prepare the minute that we've promised to prepare this week.

PN9345

VICE PRESIDENT HATCHER: Yes. Thank you.

PN9346

MR FAGIR: Ms Viknarasah, do you have a second statement headed, "Work value statement of Karthika Viknarasah"?---Yes.

PN9347

Is that statement signed by you on the 12th and final page?--Yes.

PN9348

Above the date 29 March 2019?---Yes.

PN9349

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

PN9350

I tender the work value statement of Ms Viknarasah.

PN9351

VICE PRESIDENT HATCHER: The work value statement of Karthika Viknarasah dated 29 March 2019 will be marked exhibit 117.

EXHIBIT #117 WORK VALUE STATEMENT OF KARTHIKA VIKNARASAH DATED 29/03/2019

PN9352

MR FAGIR: Ms Viknarasah, do you have a third statement titled, "Supplementary statement of Karthika Viknarasah"?---Yes.

PN9353

Signed on the seventh page?---Yes.

PN9354

Above the date 3 July 2019?---Yes.

*** KARTHIKA VIKNARASAH

XN MR FAGIR

PN9355

Could I just ask you about paragraph 58 in particular? You identify there what you describe as a funding disparity as between community preschools on the one hand as compared to long day-care on the other?---Yes.

PN9356

Do you suggest that those two figures are a complete picture of the funding differences between the two categories, or is there more to it?---There's more to it.

PN9357

And just as briefly as you can, can you explain what else there is to it?---So long day-care centres are eligible for federal government funding under the childcare subsidy system, and community preschools do not get that funding.

PN9358

What's the effect of that phenomenon in terms of the gap that you identify at paragraph 58?---Based on my experience and my understanding of the childcare subsidy system, it's 85 per cent of the rate cap. At my centre that works out to be around \$8 an hour per child, and under the community preschool funding, which is a strong funding here, that works out to be around \$11 an hour per child for the 600 hours, or if they have an additional need, then that's almost double.

PN9359

Yes. Are the contents of this statement true and correct - - -

PN9360

VICE PRESIDENT HATCHER: Sorry, I'm not sure I understand that. So for long day-care centres, are you saying that the total funding effect is, in long day-care centres, it's a subsidy of \$8 per hour per child? Is that what you just said?---That's - well at my centre it is. At some centres which charge a higher fee, it might be a little bit more.

PN9361

Yes. And at preschools, the total subsidy effect is about \$11 per child per hour, is that what you said?---That's right, unless they have an additional need, and there are other fundings that come into play as well, so like, you get an additional funding if you're in a regional area. The maximum that a community preschool could get is \$24 an hour per child.

PN9362

Thank you. Mr Fagir?

PN9363

MR FAGIR: Ms Viknarasah, are the contents of the supplementary statement true and correct to the best of your knowledge and belief?---Yes.

PN9364

I tender the supplementary statement of Ms Viknarasah.

*** KARTHIKA VIKNARASAH

XN MR FAGIR

PN9365

VICE PRESIDENT HATCHER: The supplementary statement of Karthika Viknarasah dated 3 July 2019 will be marked exhibit 118.

EXHIBIT #118 SUPPLEMENTARY STATEMENT OF KARTHIKA VIKNARASAH DATED 03/07/2019

PN9366

MR FAGIR: Thank you, your Honour. Could I just point out - this is unusual, but it's another symptom of the circumstances in which the statement was produced - at paragraph 9, Ms Viknarasah gives some evidence about the proportion of centres that were rated high quality under the QIAS system, and she deals with two particular points in time. As our research progressed, we have located reports at other points in time that might interest the Full Bench. The earliest we could find was 2003, and there are reports immediately before and after the shift from the QIAS system to the NQS. I just want to make clear that we have some of them here. They can be tendered. I don't want to start a new debate about more evidence, but it's - - -

PN9367

VICE PRESIDENT HATCHER: Apart from the fact that there have been ratings over the period identified, what's the relevance of the actual percentage proportion rated at the top level?

PN9368

MR FAGIR: Your Honour might recall in reviewing, for example, of 2005 documents that there are indicators for three levels, which are satisfactory, good and high quality, and it may be that ultimately a submission is made that there's a difference between the old system and the new system. Also if one compares to the lowest level under the old system to what appears in the NQS, the requirements were less demanding.

PN9369

VICE PRESIDENT HATCHER: For the satisfactory level?

PN9370

MR FAGIR: The satisfactory level. And our submission ultimately we expect to be will be, whether that's right or not - we'll have a debate about it - but in fact, the evidence will reveal that a high proportion of centres were in fact operating at high quality level as opposed to the basic level. The reason that I'm raising this now is just to make it clear that we acknowledge there's more to it; there's more information that could be introduced about it, and we just want to make it clear that we don't suggest that's a complete account of the issue. It was what we could get to in the time that we had by the time we filed the statement and we have more information and we can provide it to the Commission at whatever point is convenient.

PN9371

VICE PRESIDENT HATCHER: Thank you.

*** KARTHIKA VIKNARASAH

XN MR FAGIR

PN9372

MR FAGIR: Commission please, that's the evidence-in-chief of Ms Viknarasah.

PN9373

VICE PRESIDENT HATCHER: Mr Taylor.

CROSS-EXAMINATION BY MR TAYLOR

[12.03 PM]

PN9374

MR TAYLOR: Ms Viknarasah, just before I get into the matters that I was preparing in respect, before I forget it, of this additional evidence that was just led about funding disparities. I think in answer to the Vice President you said that the effect of federal funding at your centre works out at about \$8 an hour because of - and that's because of the rates that you charge?---(No audible reply)

PN9375

You have to say yes or no otherwise - - -?---Sorry, yes.

PN9376

But you're aware, are you not, that other long daycare centres charge more than you?---Yes.

PN9377

The maximum subsidy that can be obtained is - have I got this right - \$11.55?---So since 2 July this year it's been upgraded to \$11.98, 85 per cent of that.

PN9378

Eight-five per cent of \$11.98?---\$11.98.

PN9379

Thank you. Ms Viknarasah, do you have a view that long daycare centres such as yourself should not be required to employ an early childhood teacher?---No, I don't have that view.

PN9380

Do you have the contrary view that it's appropriate for the regulatory system to require all long daycare centres to employ a teacher by reference to the number of children as it currently occurs?---Degree qualified teacher?

PN9381

Yes - no, sorry. Yes, let's start with a degree qualified teacher and if you want to say something else about this issue then I'll let you do that but yes?---So whether they should be required to have a degree qualified teacher?

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9382

Yes?---I think that depends on the service. There's a significant number of small services in New South Wales. I believe we have about 1000 services that are under 29 places which was the cap for requiring an early childhood teacher. Previously there were about 1000 services that did not have an early childhood teacher that still were able to achieve a very high rating under the old system. So

I think that they were able to provide effective education and care for children without an early childhood teacher but I'm not saying that we wouldn't use one if we could afford one.

PN9383

I just want to understand, in respect of a larger centre that has more than 29 children, there's currently a requirement for there to be an early childhood teacher in attendance?---Yes.

PN9384

So that, for example, is a requirement that falls upon one of your centres, the Lidcombe Centre?---Yes.

PN9385

That requirement, that is the government requiring you to have an early childhood teacher regardless of your preference?---Yes.

PN9386

Is that something you accept is an appropriate regulatory approach?---No.

PN9387

Your view is, is it, that a centre such as yours with the educational leadership that you provide should be able as a matter of its own choice to decide whether to have a teacher or not?---Yes.

PN9388

You don't value, do you - is this the case - you don't see there's any value in having a degree qualified teacher in the centre or am I wrong about that?---I value not the qualification of the person but their ability to work with children.

PN9389

Your approach is that you would in an ideal world be able to select your educators based on your personal assessment of their individual characteristics without regard to their qualifications?---Yes, I would expect them to have some knowledge of the regulatory system that we work under and child development and so on, but the most important thing would be their ability to create relationships and teach and educate young children.

PN9390

I am going to pause from time to time, Mr Viknarasah, as I cross-examine you because I've got a variety of scribbled notes so I apologise in advance for doing that. This just one of those occasions, just give me a moment. Your role is the - just explain what your position is in respect of the two centres?---So I'm the director and educational leader.

PN9391

For both centres?---For both centres.

PN9392

Do you also have the role of an authorised supervisor?---No.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9393

Who has that role?---So they're called nominated supervisors now.

PN9394

I'm sorry, nominated supervisor?---So there's other staff who have that role at each centre.

PN9395

Can you - we don't need their names but can you identify - is it the case that you have a different nominated supervisor in each of the two centres?---Yes.

PN9396

So in your role are you nevertheless the person who is guiding the approach at the two centres?---Yes.

PN9397

Is it your view that the appropriate approach is to focus only on the minimum requirements for regulations?---In terms of the work we do?

PN9398

In terms of the regulatory requirements that are placed upon your centres?---Yes.

PN9399

You're familiar of course with those?---Yes.

PN9400

The National Quality Framework which includes the National Quality Standards?---Yes.

PN9401

It's your view that you focus only on the minimum requirements for the regulations?---No, I don't focus only on the minimum requirements.

PN9402

Isn't this the case that you will do the minimum that's needed to comply with the regulations?---Where it's appropriate, yes.

PN9403

That is your approach, that you do the minimum that's required to comply with the regulations?---No, in some cases we do a lot more than the regulations because we think that in some places they're not adequate.

PN9404

Is this not your overall approach to the management of your centres to do the minimum needed to comply with the regulations?---So the approach is to do the minimum we need in terms of paperwork and documentation, which is taking staff away from the children, so we want to have the staff with the children for a maximum time.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9405

You recall being a panel member on an Australian Leaders Lounge Podcast?---Yes.

PN9406

You recall saying in that podcast when asked a question about what should be done in the industry, you said these words, "We focus only on the minimum requirements for regulation" You do not seek the highest rating?---Yes, I vaguely recall that. In context though it was about the paperwork that we do. So the minimum requirements in terms of paperwork, yes.

PN9407

Can I suggest to you that that was not the context of the question?---I do not recall at the time - - -

PN9408

You said that "We will do the minimum that we need to do to comply with the regulations". Do you recall saying that?---No, I don't.

PN9409

If I play something into the microphone will it - apparently your Honour's Associate has a link to the podcast. Could - is that something that's available to be played now, can I ask your Honour.

PN9410

VICE PRESIDENT HATCHER: Theoretically. Yes, we'll do that, Mr Taylor.

PN9411

MR TAYLOR: Thank you. Could I ask if your Honour's Associate would be so good as to go to the minute 29, I think if we go back there, there's a little bit of a lead-up to what's said. Yes, I think it's just around 1:29 if I could.

DVD PLAYBACK

[12.14 PM]

PN9412

Ms Viknarasah, that last speaker we heard was you; was it not?---That's right.

PN9413

What is the rating that your two centres have at the moment?

PN9414

MR FAGIR: I object to questions on this topic. The trouble is that the question and answer came at the end of some - what seems to be a 29 minute discussion. If the answers are to be meaningful and if the questions are to be fair to Ms Viknarasah, that matter needs to be identified.

PN9415

VICE PRESIDENT HATCHER: The question was what ratings for the centres. That's got nothing to do with the tape, has it?

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9416

MR FAGIR: It's got nothing to do with it. Perhaps I'm jumping at shadows but I expect that questions about what was said will follow shortly. If I'm wrong about that I'll sit back down.

PN9417

VICE PRESIDENT HATCHER: Of course you can take the witness to the other parts of the recording in re-examination if you want to.

PN9418

MR FAGIR: I'm sorry, your Honour?

PN9419

VICE PRESIDENT HATCHER: I said you're entitled to take the witness to other parts of the recording in re-examination if you wish to if it's responsive to some unfairness you perceive in cross-examination.

PN9420

MR FAGIR: I'll do my best to get to the recording in the time that we have.

PN9421

MR TAYLOR: So Ms Viknarasah, what are the current ratings of your two centres?---So one centre is rated at meeting and one centre is rated at working towards.

PN9422

And which is which?---So our Lidcombe centre is rated at meeting and the Choice Centre is rated at working towards.

PN9423

And when were they last reviewed in each case?---Last year.

PN9424

I'm going to come back to this issue of quality ratings because you've given some evidence including in your most recent statement about it.

PN9425

VICE PRESIDENT HATCHER: Are you moving on from the recording?

PN9426

MR TAYLOR: I have moved on from the recording, yes.

PN9427

VICE PRESIDENT HATCHER: So, Ms Viknarasah, I was also interested in the earlier thing you said about accepting prac students from university?---Yes.

PN9428

So these are persons studying for an early childhood teaching qualification, are they?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9429

So what stage in their studies would they be when you take them on?---It could be at any stage. So a degree for early childhood teachers is usually four years, and they usually have to do a prac placement in each year.

PN9430

So I think I understand the regulatory requirements. At some point past a certain point in the degree the person will count as a teacher; is that right?---Yes.

PN9431

So at what point in the degree is that?---Fifty per cent I believe.

PN9432

So when you - - -?---Well, that might be changing shortly.

PN9433

- - -were you giving that answer were you talking about persons who were counted as teachers for the purpose of the requirements?---No, they're only there for a short time to do their practicum.

PN9434

Their practical course?---Yes. Yes.

PN9435

Yes, all right. Thank you.

PN9436

MR FAGIR: Sorry to interrupt again, but could whatever email was sent to your Honour's associate be sent to us so that we can do our best to - - -

PN9437

MS SAUNDERS: It's been done actually.

PN9438

MR FAGIR: When?

PN9439

MS SAUNDERS: About 20 minutes ago.

PN9440

MR FAGIR: Thank you.

PN9441

MR TAYLOR: That pod cast was something that was recorded in about February of this year?---Yes.

PN9442

Moving to your qualifications, and how you came into the role, before you moved into working in the early childhood sector you were an accountant?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9443

Then you obtained qualifications in respect of early childhood. Is this the case, that you started firstly with a Certificate III qualification?---Yes.

PN9444

And then you obtained a Graduate Diploma?---A Graduate Certificate, yes.

PN9445

A Graduate Certificate. And is a Graduate Certificate the same as a Diploma or is that something different?---That's something different. So I did the Graduate Certificate because that allowed me to be counted as an early childhood teacher, a Degree qualified early childhood teacher.

PN9446

Is that because the Graduate Certificate gave you something in the order of more than 50 per cent of the Degree?---Well, it was - I did it at University of South Australia. It was a six month full-time course, but it was just on the - it was the shortest course I could find on the ACECQA's list because I - we just needed an early childhood teacher for ratio purposes.

PN9447

Such so we're clear, that Graduate Certificate was - just what year was that, about?---I believe it was 2014.

PN9448

That is something that someone can obtain if they already have a Degree and they wish to qualify to be a teacher?---Correct.

PN9449

I see. And in addition to that you have obtained a Masters Degree in what you described as teaching leadership?---It's a Master of Education and Leadership.

PN9450

That title suggests that its focus is on managing educational institutions - - -?---Correct.

PN9451

- - -rather than teaching, in a sense, how to be a teacher?---Correct.

PN9452

Yes. And is it the case that as you obtained these further qualifications each of them increased your skills as an educator?---As an educator, no, but as a manager, yes.

PN9453

I see. So when you moved from a Certificate III - firstly, when you obtained a Certificate III the process of obtaining that, did that increase your skills as an educator?---It made me more aware of the regulatory requirements, yes.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9454

I see. And then when you became qualified to be a teacher did the training that you obtained in order to do that make you someone who had better skills as an educator?---It was primarily focused on management in organisations, so it wasn't
- - -

PN9455

I'm talking about the grad certificate course you did?---Yes, that was also primarily focused on management.

PN9456

VICE PRESIDENT HATCHER: The Graduate Diploma?---Graduate Certificate.

PN9457

I'm just looking at paragraph 5 of your first statement it just refers to a Graduate Diploma in Education in the University of South Australia. Are we talking about the same thing?---Yes, I believe that might be an error.

PN9458

So it should be - - -?---Graduate Certificate in Education.

PN9459

So you obtained that qualification which entitled you to be treated as a teacher?---Correct.

PN9460

But you say it didn't teach you anything about teaching?---Correct.

PN9461

MR TAYLOR: Have you identified, having had prac students and having mentored early childhood teachers to achieve proficient status, which I think you've said in your evidence that you've done, that the university courses that they do provide them with pedagogical knowledge of the sort that apparently you didn't get in your Graduate Certificate training?---Correct.

PN9462

You've already identified you're the educational leader for the two centres, and I take it from your evidence that you are someone who has a passion for early education?---Correct.

PN9463

You've taken a very analytical approach to the best way to achieve early education in preschool children?---Yes.

PN9464

You have a personal - as a personal project you've developed an educator program for two to five-year-olds?---Yes.

PN9465

That is a program based on the Australian curriculum for primary school?---Correct.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9466

So you did two years research and in that research you compared the Early Years Learning Framework to the Australian early stage 1 curriculum for primary school?---Correct.

PN9467

And you then developed a curriculum document which is then used and utilised in your centres?---Yes. Not only based on the early stage 1. I looked at early years frameworks from around the world, so the leading early years frameworks, yes.

PN9468

These are matters that you describe in your statements; are they not?---Yes.

PN9469

You haven't attached this curriculum document to any of your material?---No, I don't believe so. No.

PN9470

But you supply this document to all your educators?---Yes.

PN9471

Can we have some idea of its length? Is it a single page? Is it a little longer than that?---It's probably about 10 pages.

PN9472

This document is one that you expect all your educators from those who are working towards Cert III up to ECTs to understand and implement?---Correct.

PN9473

You describe it as a curriculum?---Yes.

PN9474

Does the curriculum by its nature have certain learning outcomes that you're looking for children at your centres to achieve?---That's not the way it's meant to be used. It's meant to be used as a guide for educators and teachers, because I don't believe that the training that they get is sufficient for them to know how to teach or what to teach children. So it will tell them things like at two years old you could teach children how to do maths by stacking blocks. You could teach children how to do literacy by, you know, sounding out letters, reading lots of books. They should be able to name three of their friends. They should be able to have this many nursery rhymes, they should be able to say this many nursery rhymes, so those kinds of things, which I don't believe that they are getting enough information in their studies.

PN9475

So is there some aspect of this document which has the form of a checklist which allows staff to identify whether children are reaching milestones?---So, like I said, it's not meant to be used as an assessment of children. It's more about informing staff what they could be doing.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9476

There were aspects of the Australian curriculum for primary school and both stage 1 and higher levels that you drew upon. Can you identify what those aspects are?---So I believe I drew upon the early stage 1 aspects which is the kindergarten level because that would be where most of our children would be going after they leave us. So working backwards to say at kindergarten level if they needed to know how to, I don't know, do one plus one, right, then I would work back to say, okay, before that what skills do they need at five years' old, at four years' old, at three years' old so that we make sure that children are able to achieve what they need to achieve when they go to kindergarten.

PN9477

And this is a comprehensive guide for your educators?---Comprehensive in the sense that it's 10 pages long, but it wouldn't - there's no way it could cover everything that they would need to know.

PN9478

I see?---But it's just a guide.

PN9479

When you say it's just a guide I'm just quoting from your statement:

PN9480

The first comprehensive guide for educators on key learning areas for the early years.

PN9481

?---Yes, it's as comprehensive as you could put into paper I guess.

PN9482

It's a document which you've shared with others outside of your centres?---Some people, yes.

PN9483

You describe it as a "comprehensive guide for educators on key learning areas for the early years"?---Yes.

PN9484

Can I now show you a document which is some pages from your website? So what I've handed you is a printout of pages that you'd recognise. If you just start with the first page, do you recognise that as a page from your website?---Yes.

PN9485

This indeed is the first page, Choice Childcare Holdings Pty Ltd. This is - what you see on the first page is what you see if you go to the home page of Choice Childcare?---It probably looks a little different on screen, but, yes.

PN9486

I see. Yes, it probably does. It says it's owned and operated by Mrs Bala. Is that your mother?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9487

In what sense is Mrs Bala operating the centre?---She's the approved provider.

PN9488

Does that involve her doing work?---Not at the moment. She is semi-retired at the moment, yes.

PN9489

I see. So I think, amongst other things, we asked for certain remuneration material to be provided?---Yes.

PN9490

You recall that?---Yes.

PN9491

Is Mrs Bala someone who is receiving remuneration for work done in respect of her role as the authorised provider?---Yes.

PN9492

Can I take you to page 3. So what we've done is we've numbered the pages. Sometimes because of the print it's hard to read the number, but the numbering I'm talking about is at the bottom middle of the document?---Yes.

PN9493

Here it was a page that you'd recognise from your website, it's titled, Our Program. One of the things that your centres incorporate is a third dot point, an advanced academic program. That's something apparently different to the National Quality Framework and the Early Years Learning Framework. Is that advanced academic program a program that arises from the curriculum that you have specifically developed for these centres?---In part, yes.

PN9494

In what other part is there an advanced academic program?---So even prior to me developing this curriculum we used to do things like teach children to write, which many centres do not. I recall a time years ago when we used to hide our teaching materials when the regulatory authority came just because they would - you know, didn't like to see that, so we just put it away in a cupboard somewhere and only show them the documents that they were interested in.

PN9495

Just going back to that podcast, just after the bit that was played - - -?---Yes.

PN9496

- - -the person speaking to you chuckles and says something to the effect of that you are a rogue in the industry?---Correct.

PN9497

And you agreed with that proposition?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9498

So you've been a rogue in this industry for some time, it would appear, at least in respect of the approach you take to academic programs as well?---Yes.

PN9499

I see. Then the page that is six, the numbering is very hard to see, but it's obviously the page before 7 where you can see that. Again, the philosophy of the centre includes the second - it's the very last sentence, again, there's a reference to "a strong academic focus and believe in learning through play". Do you in your centre view those two things as one and the same or is there some aspect of academic focus which is different to learning through play?---Academic focus can be achieved through learning through play.

PN9500

Yes, and is it in your centres achieved through some other method as well?---In my opinion, it's achieved through play. It depends on what you define as play.

PN9501

VICE PRESIDENT HATCHER: What do you define as play?---Something that the children enjoy, that they're not forced to do as long as the teacher or educators can make it fun and interesting for them, and for children, they don't know that they're learning, they just enjoy doing what they're doing and we know that they're learning.

PN9502

Is there some different interpretation of play out there?---Yes, so some people will say, you know, don't give children any colouring in worksheets, that's not - that stifles their creativity but for us I see children enjoying colouring in so we do give it to them.

PN9503

But what's the philosophical difference between what you've just described?---So there are centres and there are I know some universities that suggest that stencils - colouring in worksheets should be banned. There are centres that don't allow those kinds of things but we do.

PN9504

So is there some philosophical difference that you might only facilitate types of play which are regarded as promoting learning as distinct from other types of play which kids might be interested in but perceived as not promoting learning? Is that the distinction you're making?---I guess in our case what we do is we try to have an academic focus to most of the things that we set up in the environment, whereas some other services might say let's take academics out of it and just let them play. They will learn what they want to learn, that's the philosophical difference.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9505

So how do you determine what play has an academic focus - - -?---So the materials we buy, the resources we set up, like we give them writing pencils, like lead pencils to write with if they like, whereas a lot of centres won't, they will just

give them crayons or colour pencils. So just setting up those subtle things; puzzles, sort of mats, tables, those kinds of things which have numbers on them so they can play with it but they're still absorbing some kind of numeracy through that. You know, lots of letter charts and things around the room. A lot of centres don't allow letter charts anymore, like the A, B C charts.

PN9506

MR TAYLOR: At what point were you providing pencils and writing materials?---Not pencils and writing materials but some of the work that the children had done - - -

PN9507

When was that?---It would be put away when - you know, when we were having a validation visit, for example.

PN9508

So the NQIS system?---NQIS, yes.

PN9509

You put it away during the NQIS system, yes okay?---So we wouldn't - in the sense, if the validator asked what were the children doing, we'd show them the things that the validator wanted to see, not the books that they were writing in.

PN9510

Can I take you to page 8, the heading "Our Team". Down the bottom of the page it says:

PN9511

Staff qualifications include -

PN9512

The first one is, "Master of teaching"?---Correct.

PN9513

Who's that?---So that would have been a staff member that we had at the time who has since left.

PN9514

"Staff qualifications include Bachelor of Education"?---Correct.

PN9515

Who's that?---That's Jenny at our Lidcombe Centre.

PN9516

I might have misread your supplementary statement but I thought I read that the only ECTs you have at the moment are working towards their qualification?---No, they're working towards their registration but they already have their degree.

PN9517

So Jenny is at which - did you say Lidcombe?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9518

Then if we could turn to page 11, there's an advertisement for an immediate start date for an early childhood teacher at Lidcombe Preschool Kindergarten?---Yes.

PN9519

So you're currently looking to recruit someone who is either degree qualified or working towards a teacher?---Correct.

PN9520

Upon their commencement they will assume the position of educational leader?---No, this is an old advertisement so they wouldn't assume the position of educational leader.

PN9521

So was there a previous person that applied for this position who was appointed to the position of educational leader?---No, we didn't get any suitable applicants.

PN9522

But you do have an early childhood teacher at Lidcombe?---Correct.

PN9523

That person didn't assume the position of educational leader?---No.

PN9524

The position of educational leader, is that something that you anticipated would be filled by someone from day one who hadn't yet got a degree if they were a suitable person?---No, I thought that it would be someone who would eventually become the educational leader once they'd completed their degree.

PN9525

I'm just looking at the words, "You will initially assume the position of educational leader", it does tend to suggest - - -?---Yes, that's probably a little misleading but I would have explained it at the interview.

PN9526

So notwithstanding what you put on the website it was never your intention that someone would be an educational leader from day one in your organisation?---Well, we hope if we had a suitable - because the advertisement is for a degree qualified teacher and if we'd had a suitably qualified enthusiastic teacher - - -

PN9527

Or working towards?---Well, working towards wouldn't have been the educational leader from day one.

PN9528

I see, notwithstanding that it says it would?---Like I said that was a bit misleading and I would have explained it at the interview.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9529

I tender that document.

PN9530

VICE PRESIDENT HATCHER: Choice Childcare Holdings Pty Ltd website extract will be marked exhibit 119.

**EXHIBIT #119 CHOICE CHILDCARE HOLDINGS PTY LTD
WEBSITE EXTRACT**

PN9531

MR TAYLOR: Can I take you to your statement at paragraph 114 and following, just give me a moment. This is your first statement that I'm referring to now, the one prepared in May 2018, there's a heading, "Daily duties at my centre". Do you see that?---Yes.

PN9532

This description here you accept doesn't convey that there is a strong academic aspect to the work, you don't convey that in any part of this description?---In 114?

PN9533

Well 114 is where it starts. You describe the work from 114 through to 128, so if you haven't read it recently you might just need to look at it again?---Yes.

PN9534

Tell me when you have?---Yes. Sorry, could you repeat the question?

PN9535

Yes, this description of your daily duties doesn't, do you accept, convey the fact that there is a strong academic focus in the work that's being done by the educators?---It depends on what you consider an academic focus. If it's sitting down at a table and writing, that's not conveyed here but I believe at 127 I say children are constantly learning and it's important for all staff to engage at all times of the day, from changing nappies to playing outside.

PN9536

Yes, and so you refer in that paragraph to the fact that what - helping children to play outside and then you say - sorry, let me start this again. You say this in the second sentence:

PN9537

This is why it's important for the duties of staff to range from changing nappies, helping children to play outside to performing teaching duties.

PN9538

Are you drawing a distinction between playing outside and performing teaching duties?---No, teaching happens all the time from the moment the child sets foot in our centre but that's a reference to sort of intentional teacher, when you're doing group time or I guess a specifically allocated piece of work. Working on some project or - I don't know.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9539

Is it not the case that at your centre when children are playing outside that they are nevertheless still engaged in directed educational activities?---Correct.

PN9540

Can I move to the subject of teacher accreditation? Firstly, there have been requirements to have early childhood teachers, that is, qualified teachers in preschools and long day-care centres in NSW for decades?---Correct.

PN9541

That hasn't - NSW is different to the rest of the country. That wasn't a requirement that came in in 2012?---Correct.

PN9542

The nature of the industry is such that one finds - sorry, in 2012 at the time that the NQS commenced, one finds that early childhood teachers in NSW were predominantly employed in the preschool sector rather than a long day-care centre; that is, more than half were?---I don't know that.

PN9543

Just give me a moment, I need to find something. What commenced in 2015 is a requirement that early childhood teachers in NSW be accredited, is that right?---Correct. 2016 was the first time that early childhood teachers were accredited.

PN9544

Prior to then, accreditation only applied to the primary and secondary school teachers?---Yes.

PN9545

And from July 2016, all teachers working in an early childhood setting now must be accredited?---Yes.

PN9546

To be accredited they must meet the Australian Professional Standards for Teachers?---Yes.

PN9547

Those standards have been in place in respect of primary school teachers since about 2009?---I believe so, yes.

PN9548

In April of last year you became one of the first early childhood teacher accreditation supervisors for NESAs?---Yes.

PN9549

And you have in that role, have you, supervised or supported one or more graduates to reach the "proficient" status?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9550

How many have you done that for?---I've completed one and I'm working with three at the moment.

PN9551

Were any of those four people your employees at the time or now?---No.

PN9552

And all of them are early childhood teachers at a graduate level seeking to become proficient?---Yes.

PN9553

Are you able to identify the age range of their - the four individuals - degrees? You know, how a degree, you can be qualified - you can do a degree that's nought to five, or nought to eight, or nought to 12?---I believe two of them are zero to 12, and two of them are zero to five, but I don't fully recall at the time, so I might be wrong.

PN9554

I take it that as an accreditation supervisor of this nature, you yourself have become intimately familiar with the Australian Teacher Standards?---Yes.

PN9555

Including the guide that is published to identify what must be done in order to become rated as "proficient" as an early childhood teacher?---Yes.

PN9556

Are you also familiar with the fact that there are two further guides that have been printed as to what is necessary for an early childhood teacher to become rated as "highly accomplished" and "lead teacher"?---Yes.

PN9557

Before I move to the "proficient", can I just have MFI2 and MFI3 shown to you? Do you recognise those as the publications produced by NESA to guide early childhood teachers to become, in respect of MFI2 a "lead teacher", and in respect of MFI5 a "highly accomplished teacher"?---Yes. I haven't read them, but I do recognise them.

PN9558

Yes. I tender those documents.

PN9559

VICE PRESIDENT HATCHER: So what was it, MFI1, 2 - - -?

PN9560

MR TAYLOR: 2 and 3.

PN9561

VICE PRESIDENT HATCHER: Just 2 and 3?

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9562

MR TAYLOR: Just 2 and 3, yes.

PN9563

VICE PRESIDENT HATCHER: MFI2, which is the document headed, "Early childhood evidence guide lead teacher, August 2018", will be marked exhibit 72.

EXHIBIT #72 EARLY CHILDHOOD EVIDENCE GUIDE LEAD TEACHER, AUGUST 2018

PN9564

And the document, "Early childhood evidence guide highly accomplished teacher, August 2018" will be marked exhibit 73.

EXHIBIT #73 EARLY CHILDHOOD EVIDENCE GUIDE HIGHLY ACCOMPLISHED TEACHER, AUGUST 2018

PN9565

MR TAYLOR: You might have a lot of paper in that box. I'm not going to ask you questions about those documents, so if you want to push them to one side you can. What I am going to ask you to do now is see whether, perhaps with assistance if you need it, we can - actually we were going to provide the assistance, aren't we - of course, we're in the same room; I keep forgetting, compared to the poor witnesses in the other states who had to do this themselves. What I'm going to do is ask Ms Saunders to open a document in a moment, document 107, but I might just jump ahead. So Ms Viknarasah, can I just ask you some broad questions about the Professional Standards for Teachers and then I'll come to the specifics? The Professional Standards for Teachers are a set of standards which guide professional learning practice and engagement?---Yes.

PN9566

They facilitate the improvement of teacher quality?---Yes.

PN9567

The standards and their descriptors represent an analysis of effective contemporary practice by teachers throughout Australia?---Yes.

PN9568

And they have been developed as a synthesis of the descriptions of teacher's knowledge, practice and professional engagement?---Are you reading from a document? I assume that's correct, yes.

PN9569

Yes. If you want to know what a teacher does, a good way to find out is to go to the Australian Professional Standards, and it sets out what a proficient teacher does, is that right?---If a lay person wants to know, is that what you're asking?

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9570

If a person, whether they're a lay person or not - are you adding the word "lay person" because some of the language here is something that perhaps is better understood by someone in the teaching profession?---Yes. So if somebody wants

to know what a teacher does, this will give them some idea, but it's definitely not an accurate picture.

PN9571

The standards are described, are they not, as a public statement of what constitutes teacher quality?---Yes.

PN9572

And by that, the notion is that teachers are held to the standards. They're held to the standard of proficiency as a minimum standard if they don't maintain - if they don't achieve or maintain that, then they're not allowed to teach any more?---Correct.

PN9573

And the standards document itself describes itself as defining the work of teachers and making explicit the elements of high quality, effective teaching in 21st Century schools?---Correct.

PN9574

Can I now show you the document 107? What I'm doing is handing you an iPad on which document 107 is displayed. It's a publication of the Australian Institute for Teaching and School Leadership, and is titled, "Australian Professional Standards for Teachers", and the format of the document identifies that there are four levels - I withdraw that. The document identifies that there are four levels: graduate teachers, proficient teachers, highly accomplished teachers and lead teachers?---Yes.

PN9575

So if you turned, as an example, to page 8 of the document, 208 if you're looking at the bundle reference in red at the bottom of the page?---Yes.

PN9576

What one sees there is the first standard. In this case, Know Students and How They Learn?---Yes.

PN9577

And there are focus areas for that standard, 1.1 through, if you go over to the next page, 1.6?---Yes.

PN9578

The quality level of a teacher in respect of each of these sub-standards that they must meet in order to be assessed at that level is found underneath the headings, graduate, proficient, highly accomplished and lead?---Yes.

PN9579

In order for - just give me a moment. I do want you to hold on to that document for a moment. Just give me a - and one key aspect of the standards is that there is a focus on what is referred to as intentional teaching?---Are you asking me if that's correct?

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9580

Yes, I am. I'm sorry, I should've made that clearer?---I'm not sure that's - is intentional teaching referred to?

PN9581

What I wanted to suggest to you, is that one of the things that the standards do is in respect of a number of different standards emphasise that intentional teaching is the way in which the teacher should go about teaching students?---Yes. Hopefully every teacher does that.

PN9582

Intentional teaching is a deliberate, purposeful and thoughtful approach to decisions and actions of teachers?---Yes.

PN9583

It can be contrasted to teaching by rote or teaching simply because that's the way things have always been done?---Yes.

PN9584

It involves identifying the needs of the particular children and focusing on how best to teach those children to achieve the learning outcomes mandated by the Early Years Learning Framework?---So I think there's probably a misunderstanding about what constitutes intentional teaching. Intention is necessary for anyone to be a good person in their career, so if you're - - -

PN9585

Yes?--- - - -an intentional cleaner or you're an intentional lawyer hopefully you're doing a better job than somebody who just comes into work and marks their time and goes home.

PN9586

Yes?---So you're trying to do the best for the situation that you're in. So you're always thinking how can I do this job better, and that's what we hope that every teacher is doing as well.

PN9587

Do you accept this proposition, that the day-to-day work of a teacher as required by the standards is one that involves a cycle that might be said to be as follows: observing and documenting children and their needs, and then planning an educational activity which then leads to a learning outcome?---Yes.

PN9588

But in early childhood you can't plan far in advance, can you?---It depends on what you're planning for, so I have some children who have a speech delay. I'd like them to be able to have articulate speech, clear speech, by the end of the year, so then we work towards that.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9589

You identify a need in a child and then you develop a plan for that child?---Mm-hm.

PN9590

But the actual way you implement that plan may well depend upon what is the interest of that child on that particular day?---Correct.

PN9591

You wouldn't come with a pre-prepared plan to have that child speak about a particular subject or the contents of a particular book if the child is actually interested in something completely different on that day?---So you need to have a balance of both. So sometimes you will do what is interesting on that day, and you will also have projects that you're working on long term, for example, we've got science week coming up in August, so our children are preparing for that.

PN9592

I see?---So they're practising speeches and learning songs and dances well in advance so that we can have a really good performance for parents during science week.

PN9593

Is science week in a sense that that week is a themed week where you're - - -?---So that's national science week.

PN9594

Yes, national science week. But in your centres the theme for the week is science?---It will be the major theme. We might have other things going on as well based on other children's interests as well.

PN9595

Apropos your role as an accreditation supervisor and mentor - - -

PN9596

VICE PRESIDENT HATCHER: Are you moving to a new topic now, Mr Taylor?

PN9597

MR TAYLOR: Pardon?

PN9598

VICE PRESIDENT HATCHER: Are you moving to a new topic?

PN9599

MR TAYLOR: I am. In fact, it's quite convenient, because I was going to ask the witness to open another document and we'll be able to do that over the lunch break.

PN9600

VICE PRESIDENT HATCHER: We'll adjourn now and we'll resume at 2 o'clock.

<THE WITNESS WITHDREW

[12.59 PM]

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

LUNCHEON ADJOURNMENT [12.59 PM]

RESUMED [2.02 PM]

<KARTHIKA VIKNARASAH, RECALLED [2.02 PM]

CROSS-EXAMINATION BY MR TAYLOR, CONTINUING [2.02 PM]

PN9601

VICE PRESIDENT HATCHER: Thanks, Ms Viknarasah. Mr Taylor?

PN9602

MR TAYLOR: Thank you, your Honour. Could I have the witness given document 105 in our master index bundle, Proficient Teacher Evidence Guide?

PN9603

VICE PRESIDENT HATCHER: What was it, 107?

PN9604

MR TAYLOR: 105.

PN9605

VICE PRESIDENT HATCHER: 105.

PN9606

MR TAYLOR: Document number 105. Ms Viknarasah, you have, do you, in front of you now a document that is titled, Proficient Teacher Evidence Guide, Early Childhood Teachers?---Yes.

PN9607

You are familiar with this document given your role of assisting teachers to achieve the proficient status?---Yes.

PN9608

If you go to page - maybe I'll use the numbers at the middle of 33, red 33, you see there firstly there's a general description of the standards as being a public statement of what constitutes quality teaching. Tell me if you've got this page, page 33?---Yes.

PN9609

Yes. The second sentence, "The standards define the work of teachers", and it goes on. If one wants to understand the nature of the work of a proficient early education teacher this is a useful document, is it not, to get some understanding of that?---In a very broad way, yes.

PN9610

It sets out a description of the evidence that demonstrates that an early childhood teacher is to be considered proficient?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9611

Of course all early childhood teachers must be rated proficient within a certain period of time otherwise they'll lose their registration?---Yes.

PN9612

For a full-time teacher they have three years after graduation to achieve this status unless they get some extension?---Correct.

PN9613

For a part-time or casual teacher five years unless they get an extension?---Yes.

PN9614

The next page 34 identifies that there's a structured process through which teachers are recognised. So they start as a graduate and then the second stage of the career is when they demonstrate achievement at a proficient level?---Yes.

PN9615

The next page says this, and this is the case, to achieve that accreditation they've got to demonstrate they're going to meet all the standard descriptors?---Yes.

PN9616

Let's go to one of the pages so we see how this document works, and you can make sure we understand it properly. Page 42 is the very first of the relevant pages. This is the page that has the heading, Know Students and How They Learn, and to the left-hand side is the relevant sub-standard descriptor, 1.1.2:

PN9617

Use teaching strategies based on knowledge of children's physical, social and intellectual development and characteristics to improve child learning

PN9618

That's the standard; is it not?---Yes.

PN9619

It's numbered point 2, that is 1.1.2, because this is the standard for a proficient teacher?---Yes.

PN9620

Point 1 is graduate, point 3 highly accomplished?---Highly accomplished and then lead, yes.

PN9621

And so forth. And then the evidence that a graduate teacher much demonstrate in order meet this standard is then set out to the right-hand side under the heading, Evidence of Teacher Practice in Early Childhood Setting?---Yes. This is only a guide though. These are examples. They don't have to meet every standard in here.

PN9622

They do have to meet every standard?---Sorry, every standard, but not every dot point in this document, yes

PN9623

These dot points though are dot points which record, do they not, what evidence a teacher must in fact demonstrate in order to meet the standard?---These are examples of what they could demonstrate. It's very unlikely they're going to demonstrate all of them in one go.

PN9624

They must use material from their actual practice, from their actual work?---Correct.

PN9625

They use actual plans that they have developed for children as part of their evidence?---They may.

PN9626

Can I take you to the next page, 43. Just, sorry, staying on page 42. The very first one is - the very first dot point:

PN9627

Records of children's learning and development including both formative and summative assessment that reflects the five learning outcomes of the EYLF.

PN9628

This is referring to the Early Years Learning Framework that commenced being used in New South Wales when? Can you recall when that was first being used in New South Wales?---I believe it was around 2011 or 2012.

PN9629

And became a mandatory part of the curriculum from the time that the NQS commenced in 2012?---Correct.

PN9630

Can you just go to the next page, 43. There you have a couple of dot points of - sorry, you have a number of dot points of evidence that would meet the descriptor of structured teaching programs using research and collegial advice. The second of those:

PN9631

Plans for learning and play that reflect and demonstrate evidence of current research and theory about how children learn and develop.

PN9632

The need for that is something that a service needs to demonstrate in order to meet the national quality standards?---They could use that to demonstrate, yes.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9633

Part of the National Quality Standards involve - I'll withdraw that. You have referred in your most recent statement to the previous regulatory system. Was it a feature of the previous regulatory system you say that there was a principle which

required educators to demonstrate evidence of current research and theory about how children learn and develop?---There's one very similar, yes.

PN9634

A number of the evidence requirements - sorry, I'll withdraw that - evidence examples, I think to use your expression, refer to critical reflection. It's a common expression throughout this guide, isn't it?---Yes.

PN9635

And that is something which is now deeply imbedded in the approach that educators must take under the National Quality Standards, that is, the concept of critical reflection is a very central part of the National Quality Standard requirements?---It is a part. It's always been a part of teaching though.

PN9636

If you go to page 46, this is dealing with standard 1.5, and this is not the only place one finds it, I think, but if you look at the second dot point, there is intentional teaching decisions and care routines that respond to specific learning and development needs of children across the full range of abilities. Again, that activity that a teacher would demonstrate that they do in order to meet that descriptor is something that is a central part of quality standard 1 that services must demonstrate are being done by educators?---Under the NQS you're asking?

PN9637

Yes?---So that could be one of the things that services demonstrate, yes. Do you want me to explain the accreditation process a little bit for you?

PN9638

No?---You're okay.

PN9639

Thank you. I'm trying to do this as quickly as I can, but there are some documents which explain some of these things, and where that is occurring, I'm trying to move to other areas so that we can minimise the amount of time you need to sit in the witness box. So just give me a moment?---Sure.

PN9640

Can I take you to page 51? A number of the pages, in fact many of them, start with - that one of the things that a teacher must demonstrate is having plans. Plans for learning and play is this particular one, but many of them commence with that idea that there must be some planning; you must be able to demonstrate planning of learning and play, linking to such matters as the EYLF. In this case it's linking to observations and planning and assessment, do you see that?---Yes.

PN9641

And this idea of planning particular educational activities to obtain learning outcomes based on observation, that's not something which just the educational leader does; it's something that you would say all educators do, is that right?---Correct.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9642

And teachers, you would accept, nevertheless, given their training, are able to do that at a higher level than other educators?---Not necessarily.

PN9643

Not necessarily, in the sense that there might be less educated people with a lot of experience, who might be as adept at it as a teacher with not a lot of experience?---Yes. It could be just somebody who is absolutely really passionate about what they're doing as well. They could be really good at it. They don't need to have extensive experience.

PN9644

Your view of tertiary-educated teachers is that they come out of university with a sound knowledge of theories and pedagogies for teaching?---Yes.

PN9645

But they don't come out of university with a sound knowledge of the regulations and compliance requirements for the industry?---Yes.

PN9646

And that can be contrasted to what you believe to be the case in respect of those who have completed a Certificate III or Diploma in Early Childhood Education; you take the view that those people do know about regulations and compliance with the regulations?---Yes.

PN9647

But have little knowledge of the day-to-day aspects of teaching children, such as numeracy and literacy for two-year-olds?---Not necessarily. That's part of their training as well.

PN9648

Teachers come out of university with the knowledge as to how to go about teaching children concepts such as numeracy and literacy?---Some theoretical knowledge, yes.

PN9649

Let me show you a publication. I've got three copies and one for the witness. What I've handed you are two pages from what I understand to be a journal or magazine that bears the name on the top of the second page, "Perspectives, Number 1, 2019"?---Yes.

PN9650

And the text that appears on these two pages is written by you?---Yes.

PN9651

When did you write this? It appears to be this year. It's dated 2019?---It would have been around October or November of last year, I think.

PN9652

At the bottom of the two pages, 34, on the left-hand side, we have these words:

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9653

As a result of these different approaches, we end up with degree-qualified teachers with a good knowledge of the theories and pedagogies of teaching, but minimal knowledge of the regulations and compliance requirements. At the same time, we have Diploma and Certificate III-qualified educators with a sound knowledge of compliance requirements, but little knowledge of the key aspects of teaching children, such as numeracy and literacy for two-year-olds.

PN9654

That's a view that you maintain?

PN9655

VICE PRESIDENT HATCHER: Where's that, Mr Taylor?

PN9656

MR TAYLOR: I'm sorry, your Honour. I was rushing. I apologise. It's at the bottom of page 34. The bit I was reading started at the very bottom of the column on the left and continued on to the top of the right-hand column. When I put the proposition to you, you accepted it. When I put the second proposition to you a moment ago, you didn't seem to accept it, but this is your view, isn't it, that there's a significant difference in knowledge between teachers and those who are diploma and Cert III-qualified as to their knowledge of key aspects of teaching?---There are some educators like that, yes. This doesn't say that all diploma and Cert III-qualified educators are that way, but there are some. So this piece was about the importance of their training.

PN9657

Yes?---Because we have good training organisations and very poor training organisations as well, so some of them come out with very limited knowledge, and some educators come out with a very good knowledge.

PN9658

The next page, page 35, the second paragraph, you refer to a survey by ACA of educators and teachers. There's so much material in this case I could be corrected, but I don't think I've seen this document itself, if it has been published, but it says here that educators and teachers are spending 40 per cent of their time doing paperwork?---Correct.

PN9659

I think as a general proposition, certainly at your centre, no one does paperwork at home?---No.

PN9660

And is that what you understand to be the industry practice?---Not necessarily, no.

PN9661

You're aware of services where educators and teachers need to do paperwork at home?---I'm aware of services where they do take paperwork home, yes. I'm not sure that they need to, but I'm not sure why they do.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9662

So when the survey says "40 per cent of their time", is that their paid time, or a 24-hour-day?---I believe it's their paid time. That was the survey.

PN9663

And so we're not just talking teachers here; we're talking about the Cert III and Diploma people spending as much as - my maths is slow, but something in the order of - is it more than two-and-a-half hours a day doing paperwork?---It could be, yes.

PN9664

Given ratio requirements, presumably they're doing this, are they, while they're in the room with the children?---I don't know. I don't think the survey went in that deep, to ask where they were doing the paperwork.

PN9665

Just one more thing on this before I move off this document. There's a reference in the final paragraph to the work of - and I'll probably mispronounce here - Pasi Sahlberg, Finnish educator/academic, and having referred to that, you say this:

PN9666

That is why it is so important for teachers to be part of peer networks like ACEL.

PN9667

And at this point, teachers you're referring to are registered, qualified teachers?---I wasn't particularly referring to them, but this publication is directed at them.

PN9668

And ACEL, just tell us who that is?---Australian Council for Educational Leaders. That's who publishes this magazine.

PN9669

Yes. And it's important for teachers to be part of such peer networks. Is that in part because, at least for many small centres, teachers may be the only teacher, professionally qualified teacher, in the service?---Well, I think it's important for everyone working in our sector to be a part of peer networks including teachers, because we always learn a lot from each other whenever we meet at any forum.

PN9670

I think you might need that iPad again but can you put it to one side for the moment?---Okay.

PN9671

The Lidcombe Centre you tell us in your first statement operates 50 weeks a year. Is that still the case?---Yes.

PN9672

It has authorisation for 44 children?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9673

But you ensure, do you not, that it doesn't go over 39?---Correct.

PN9674

And you ensure that because if it went over 39 you would be needing to have an additional early childhood teacher in attendance?---We did at some - at one point but now we have allowed for 44 children, because we do have additional early childhood teachers available.

PN9675

So at the time this statement was being prepared you deliberately were keeping the numbers below 40?---Yes.

PN9676

And the reason you were deliberately doing that was because otherwise you'd be required to employ an extra teacher?---Correct.

PN9677

And consistent with the view you expressed earlier that you'd prefer not to be required to employ teachers, you took a view that one way to avoid that is to keep the numbers just a bit below 40?---Correct. I'd prefer to employ the best person for the job.

PN9678

But at the time of the statement you indeed actually had two early childhood teachers that you were paying at award rates?---Correct.

PN9679

The reason you had two, you explain in your statement, was not because you wanted to, it was simply because they were existing employees who had graduated who you liked and you decided you wanted to keep them on?---Correct.

PN9680

Sorry, won't be a moment?---Because you wouldn't let go of a very good teacher regardless of their qualification.

PN9681

Sorry, while I'm finding a document, I thank my friend for reminding me, I haven't tendered the prospectus document. I do tender that.

PN9682

VICE PRESIDENT HATCHER: Article by Karthika Viknarasah will be exhibit 120.

EXHIBIT #120 ARTICLE BY KARTHIKA VIKNARASAH

PN9683

So Ms Viknarasah, you said you had, at the time you made the statement, two teachers who weren't - you didn't need two for regulatory requirements but they'd graduated and you kept them?---Correct.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9684

So were they being employed and paid as teachers?---Yes.

PN9685

Thank you.

PN9686

MR TAYLOR: I want to bring us up-to-date in a moment, but can I just move momentarily to the other centre, Choice, in Auburn, also operates 50 weeks a year; is that right?---Yes.

PN9687

And also authorised for 44 children but only 24 at preschool age?---Yes.

PN9688

And because it is less than 29 you don't require - sorry, you don't - the regulations don't require there to be an early childhood teacher in attendance?---Correct.

PN9689

What they do require is that an early childhood teacher be available 20 per cent of full-time hours?---Correct.

PN9690

That requirement is met by that centre by you being available for some percentage of your time?---Correct.

PN9691

You are available by phone and also visit the centre presumably from time-to-time?---Yes. At least weekly.

PN9692

You gave evidence in the award modification proceedings in May of this year, not that long ago. Do you recall that?---Yes.

PN9693

At that time you had, and this may still be the case, just one early childhood teacher still employed. Is that still the case, you just have one?---Yes.

PN9694

Is that one of the same two that were employed in May 2018?---Yes.

PN9695

And what happened to the other one?---She moved quite far away so travel was difficult for her and her children were going to school near her place.

PN9696

That, at least in May, it may be still the case, that the ECT you had was working four days a week?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9697

Is that still the case?---Yes.

PN9698

And how is the in attendance requirement met on the fifth day?---By me.

PN9699

Can I just take you to your first statement at paragraph 141. You here identify that under the heading, Recruitment and Retention of Teachers, that you have some experience in finding it difficult to find high performing early childhood teachers because a lot of them wish to work in primary schools?---Yes.

PN9700

Is that an experience that you have obtained only in the last very limited period or is that an experience that goes over a longer period?---For the last few years, yes.

PN9701

And you identify a couple of reasons for that, fewer contact hours and school holidays. Firstly, just dealing with fewer contact hours, your staff, as I understand it from your statement, don't take work home?---Correct.

PN9702

Primary school teachers, tell me if you know this or not, don't finish work at 3 pm and then start again at 9 the next day. They do work outside of those hours?---I believe so.

PN9703

Yes. Can I suggest to you there's a third factor that may have impeded your capacity to find high performing teachers because they may wish to work in primary, and that is that primary schools in New South Wales have rates of pay which is something in the order of 30 per cent more than the rates that you would be paying?---I'm not sure about that. Possibly.

PN9704

Do you accept the proposition that - no, I'll withdraw that. Can I just have a look at paragraph 143. You explain here how your preference is to in effect upskill your existing workforce to obtain the qualification?---Correct.

PN9705

And so you actively encourage your staff, do you, to obtain, if they're a Cert III, to become a Diploma qualified?---Yes.

PN9706

And for those who are Diploma qualified you actively encourage them to become Degree qualified?---Yes.

PN9707

And are you doing that simply to meet ratio requirements or is there some actual benefit to having better educated staff?---It's partly to meet ratio requirements but I believe in ongoing learning, so you can't ask a Diploma trained person to study their Diploma again. You can only ask them to study something at a higher level.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9708

You believe in ongoing learning as a benefit to the business or is it simply an altruistic view about what's in the interests of an individual?---Well, I believe it will benefit children, so ultimately it will benefit the business too.

PN9709

The benefit to the children arises, does it, because better educated educators, to use the generic expression, produce higher quality educational outcomes for the children?---Well, you'd hope that anyone who's passionate about what they're doing will engage in ongoing learning, whether it's professional development or an actual qualification, it would be something, so, yes, ongoing learning is important for a high quality education.

PN9710

It's beneficial for the educational outcomes of the children to have better educated staff?---Yes.

PN9711

You identify in this paragraph that you had a first preference of upskilling Diploma qualified and a second preference of zero to five, and you give a reason for that:

PN9712

This is because I can at least be sure that these individuals are passionate about teaching in the early childhood education sector and not simply working here as a place holder until they're able to secure a job in the primary school setting.

PN9713

?---Correct.

PN9714

And is that something that you have identified in the industry, that it's common for there to be teachers who are either upskilling within the industry or having just graduated take a job in the industry until they can find a primary school job?---I have heard that from some people, yes. Some people don't like to work in early childhood. They don't like to work with children this young. But I don't understand, because in a primary school you've probably got one teacher in a room of 30, and in an early childhood centre in NSW you've got one teacher with 10, so in my opinion, you're better off, but - - -

PN9715

How many centres would have only 10 children in a room?---Well, the ratios are like that, so the ratios are one educator or teacher to 10 children.

PN9716

Yes, but I think you said the teacher will only have 10 children. That's not right, is it?---Well, they will have 10, and maybe a diploma staff would have another 10, depending on the number of children.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9717

Is that the way it works in any centre, that you divide the children into two halves and deal with only one half at a time?---So the reason that you have the early childhood degree - - -

PN9718

Can you answer my question? Does that work in any centre, that the two educators divide the children into two halves and deal with only half at a time?---Yes, it works in many centres. Some of the children will be outside and the other half will be inside, because research shows that it's better to have smaller groups than larger groups.

PN9719

At a particular point in time, but over the course of a day, if you're talking about the children in the room, that a teacher in early childhood setting is going to have more than 10 children in their room, are they not?---In their room, but they're not solely responsible for all the children in their room. They've got other people working with them, whereas in a primary school you're there alone for the whole day.

PN9720

Yes, and ratio requirements, and as you get to younger children the ratios get even higher, do they not, so (indistinct) more staff, that is, per child?---That's right.

PN9721

And that's directly relating to issues of the level of supervision needed at the various age points?---Yes.

PN9722

When you said 30 children at primary school, you're not going to find that in a kindergarten class, are you?---I don't know what the ratios are kindergarten, but it's definitely a lot more than early childhood.

PN9723

Just on this issue of a concern about staff moving to primary schools and the degree qualifications, you have a view, I understand, that you would prefer that early childhood teachers' only qualification would be zero to five, which would mean that they wouldn't be able to work in a primary school?---Correct. It also means that they spent four years focusing on that age group, whereas a zero to 12, that's a lot of content to cover in four years and I don't believe that they would be able to adequately cover the zero to five age.

PN9724

Yes. I'm going to hand you a document and I'll ask you to identify it. Do you recognise this as a two-page submission that you provided to the Productivity Commission?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9725

I don't think it bears a date, but just knowing what we know about the Productivity Commission process, was this something that you would have written in about 2014 or 2015?---Possible earlier than that. I'm not sure.

PN9726

You can't recall either the date?---No.

PN9727

When did you take over the responsibility of running the centres in a practical day-to-day sense?---2009, I believe.

PN9728

It wasn't as a result of the NQS coming in that you decided that you were - your parents encourage you to take over the centres?---It was partly because of that, because my mum had seen so many changes in the sector over the years, and she said one more I just don't want to have to deal with, will you come and help me.

PN9729

Had she anticipated the change in 2009? Could she see it coming down the track, or was in fact that you started a little later than 2009?---I believe that there was some documents around at that time saying that this change was going to come.

PN9730

So you date - I'm just trying to get this clear, because some of the things you later say are things that you say you've observed?---Yes.

PN9731

Doing the best you can in the witness box, are you able to give a clearer date as to when you commenced the role of running these two centres?---It might have been 2010. I'm not sure, but it was around that time.

PN9732

So just turning back to this document I've handed you, can I start by identifying, just in the second page, you express a view to the Productivity Commission in the sentence after the dot point:

PN9733

Until there's an adequate supply of university-trained zero to five year early childhood teachers who cannot go on to work in a school setting, the requirement to have ECTs on site for six hours a day should be removed for smaller centres.

PN9734

So at this stage, there was a problem, was there - at the point you were writing this, there was a problem with teachers going off to primary school settings?---Yes.

PN9735

One way of relieving that issue was to remove the requirement to have ECTs at that - for smaller centres such as the one you were operating?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9736

You mention in the next sentence that it's to encourage universities - I think we've dealt with that, so I won't pause on that. And then just one thing that I wanted to understand, the last dot point before you get to that sentence, "removal of preschools from the scope of NQF", prior to the National Quality Framework, preschools weren't part of the regulatory system, were they, the NQIS system?---Correct.

PN9737

One of the significant changes in the industry was that for the first time, preschools were required to meet accreditation standards?---Yes.

PN9738

You have a view that they should be removed from that obligation. Is that because you have a view that there was no need for them - - -?---No, that's - the opening paragraph for those dot points, it's on the previous page, says "I disagree with the below recommendation."

PN9739

Yes, I see. Thank you for clarifying that. My apologies. I tender that document.

PN9740

VICE PRESIDENT HATCHER: Letter from Ms Karthika Viknarasah to the Productivity Commission will be marked exhibit 121.

EXHIBIT #121 LETTER FROM KARTHIKA VIKNARASAH TO THE PRODUCTIVITY COMMISSION

PN9741

MR TAYLOR: In your first statement, you identified some significant changes that have occurred in the industry, significant regulatory changes, and at paragraph 91(a) you identified the biggest of them all, being the national law, although you do say this: "The biggest change that I have experienced." Have there been any other regulatory changes that you've experienced?---I mean, regulations are changing all the time.

PN9742

But the introduction of the NQF was a huge change for the industry, was it not?---Well, not in NSW particularly, as I've mentioned in my statement. It was the first time that we had a national law for the whole country as opposed to each state having their own laws and regulations.

PN9743

I see. Am I wrong in reading that the effect of this paragraph, that what you are doing here was identifying that the introduction of the national law was a very significant regulatory change for the industry in New South Wales?---It wasn't a regulatory change - it wasn't a significant regulatory change for New South Wales, no.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9744

So in paragraph 90 it says this - just looking at the second sentence:

PN9745

We've experienced a lot of regulatory change in the industry over the years with a very high degree of regulation in our sector. Examples of significant changes include the following; national law, the biggest change I've experienced is introduction of the national law.

PN9746

?---Third line down it says:

PN9747

The impacts of this change were mitigated somewhat given that New South Wales was already very highly regulated.

PN9748

Yes, and read on?---

PN9749

However, there are new and different obligations.

PN9750

Yes.

PN9751

Yes, and so the national law certainly was a big change even in New South Wales creating new and different obligations?---I wouldn't call it big in New South Wales, no.

PN9752

Not now that we have your supplementary statement, which takes a different view but at the time you prepared your first statement you thought it was a very big change.

PN9753

MR WARREN: Is that a fair proposition to put?

PN9754

MR TAYLOR: Including the proposition at the time you prepared your first statement, you considered it a very big change?---No, I did not. That's why I put that line in that says:

PN9755

The impacts of this change were mitigated given that New South Wales was already very highly regulated.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9756

VICE PRESIDENT HATCHER: So it was the biggest change but it wasn't a big change?---It was the biggest change for the country but it wasn't particularly for

New South Wales. For many other states it was a huge change but in New South Wales it wasn't necessarily a very big change.

PN9757

MR TAYLOR: One of the changes you identify is that your record keeping obligations significantly increased?---Yes.

PN9758

That part of - that's not affected by anything in the supplementary statement. The fact of the matter is there was some significant increase in documentary requirements?---Yes. Record keeping requirements, yes.

PN9759

You say there:

PN9760

At the same time there's no codified checklist in place for business owners to follow in order to comply.

PN9761

?---Correct.

PN9762

Is that contrasting the way the NQIS worked?---Yes.

PN9763

Under the NQIS there was in effect for the people like you trying to run small businesses, the NCAC gave you what was in effect a checklist that so long as you could show that you were doing each of those things you would get accredited?---Yes.

PN9764

Whereas under the new system you get broad quality standards that you must meet but it's very much left to you as an operator to work out how best to link those standards and demonstrate them to an assessor?---Yes, although all this that we're talking about is very much in the background of our actual work of caring and educating for children which hasn't changed. You know, at the end of the day that's the main thing that we're here for.

PN9765

At the end of the day you're looking after zero to five year olds and you always have been?---That's right.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9766

Yes, I understand?---So the paperwork in the back end, the way people sign in and out, having to identify a responsible person, some of those things have changed and there are increased requirements as far as I can see now, and in the past we did have a very comprehensive checklist. I think there was 700-odd points that we had to comply with under the NQIS, but the fundamental work, what takes up most of my time looking after children hasn't changed. Maybe the other big

change that happened was that we went from the QIS system of accreditation to the state being the accreditor or regulatory authority, so those different approaches and different philosophies, those affected the way we operate as well.

PN9767

Do you accept - do I take it that you agree with me that the introduction of the National Quality Framework made the job more difficult for the operator?---If you just go by the letter of the law it actually didn't. In fact there's - I think there's several documents that refer to the NQF being introduced in order to reduce the regulatory burden for service operators.

PN9768

The increase regulation and high quality standards, the introduction of those, was intended to produce higher quality outcomes?

PN9769

MR FAGIR: I object. There are two propositions rolled up in that. The first is that higher quality standards were introduced and then the second followed from it.

PN9770

MR TAYLOR: I accept that. When the National Quality Standards came in they introduced higher quality standards than had been found in the NQIS?---I think that was the intention, yes.

PN9771

The intention was to improve quality in the industry?---That was the intention, yes.

PN9772

The introduction that the National Quality Framework had made the job more difficult for the industry as a whole?---It's not the introduction of the National Quality Framework necessarily that's made the job more difficult for the industry. It's really the regulatory approach that's made the job more difficult.

PN9773

Do you recall you gave some evidence about this - you were asked some questions on these same sort of areas in the award modification proceedings?---Yes.

PN9774

You recall just one of the questions - well, I'm just trying to remember. Let me show you a document. What I've done is hand you a document which is a transcript of the proceedings before the Full Bench constituted by Ross J, Clancy DP and Lee C. What we've done is we haven't got the entire transcript of your evidence but we've extract the first page and then some transcript that what occurs at about 3.55 pm. Would you mind for me, please, just reading to yourself that part of it which starts on the left-hand side of PN1190 and then tell me when you've got through to PN1198? Sorry, 1200 please?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9775

Having read that, in particular the last three paragraphs, can I ask you whether this is the case given in your personal experience:

PN9776

The introduction of the National Quality Standards has made it more difficult for everyone, people who operate, the providers and also the educators, the workers in the centre.

PN9777

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

PN9778

The reason it's more difficult is because there were more standards?---Yes, that was one of the reasons, yes.

PN9779

They are more complex?---More complex in the sense, I think I explain it further down. That they were less prescriptive so we didn't have the checklist that we could tick off against the standards. They were quite open to interpretation which is why it was more difficult to understand what was expected, because it would depend on the assessor on the day.

PN9780

I tender that document.

PN9781

VICE PRESIDENT HATCHER: The extract from Four Yearly Review of Modern Award Proceedings 6 May 2019 will be marked exhibit 122.

EXHIBIT #122 EXTRACT OF FOUR YEARLY REVIEW OF MODERN AWARD PROCEEDINGS DATED 06/05/2019

PN9782

MR TAYLOR: You explain in your first statement that you operate in a particular way. In your centres all staff participate equally and you don't have room leaders?---Correct.

PN9783

Is that something that, as far as you understand, is somewhat different to the way most early childhood centres operate?---I know several centres that do have room leaders, but I also know other centres that do not.

PN9784

You are, when paying award wages, paying as a matter of fact teachers at a little more than you are paying your Diploma and Cert III qualified staff; is that right?---Yes.

PN9785

You expect a little more from your teachers too; do you not?---No.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9786

You try and get them to do more?---No. In our centre everyone is the same. We all share the work equally.

PN9787

It's the case, isn't it, that you do ask your teachers to do a little more than the rest of your staff?---In some areas they might, but in some areas other staff might do more.

PN9788

I see. What areas would they do more?---They may do more writing in terms of if we had to write up a plan or a document or something they might do more of the writing just because they have better writing skills after being at university for four years.

PN9789

I see. And when you say they write a plan, what sort of plan would they write?---The only one who's written so far is me, but I have had a teacher write sort of a letter for a student who's going on to school for the school that they were going to.

PN9790

Is there not an obligation to have an educational program that would require plans to be written on a regular basis?---So the way we do that is we have a diary and it's specific for childcare diary.

PN9791

Yes?---And it's got different sections in it that talks about music time, or outdoor time and things like that, and you can just write in there what you're doing on each day and anyone can fill that in, so they take it in turns to fill that in.

PN9792

Yes, I see. Maybe this doesn't happen in your centre but I understood that an educational plan of a long daycare centre will include material of plans that are intended to focus on groups or even individual children to achieve certain learning outcomes that are appropriate for those children?---So the regulations require us to write or to have an assessment of each child's learning and development and their participation in the program. There's no requirement for a group plan or anything like that.

PN9793

Is there no record, as a matter of practice, that you keep of the developmental goals for individual children and plans for activities, educational activities, that will guide them to achieve those outcomes?---So we have a few different types of documentation that we use. One is this diary that I explained earlier.

PN9794

Yes?---We also write a term plan for the room, and a report for each child every three months.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9795

Yes. So the report is reporting on what?---On their learning and development and that's shared between all the educators and teachers.

PN9796

I see. But those first two documents sound like they are group documents, are they?---Yes. So it's for the room, yes.

PN9797

For the room. So the teachers, the additional tasks that you might get them to do over other staff including writing tasks, which include planning material. What other additional tasks would you get your teachers to do?---Like I said, I only have one teacher, so just based on her interests and her capabilities she might be given some additional work to do. She's particularly interested in dancing so she leads a lot of the dance that we do. But other educators have got other interests like gardening and they would lead the gardening.

PN9798

At the time you prepared your first statement you said that your teachers at that stage, I reminded you earlier you had two that had recently - - -?---Yes.

PN9799

- - -graduated. You indicated that they don't communicate much with parents. That was just the feature of those two individuals, was it?---Because they were still relatively new so they had only recently graduated, yes.

PN9800

VICE PRESIDENT HATCHER: Ms Viknarasah, so your centres are located in Auburn and Lidcombe?---Correct.

PN9801

Do you have a lot of parents who are non-English speaking?---Yes.

PN9802

So how do you deal with that?---So we have lots of staff who speak different languages. So we always try to employ staff that reflect the children that we have in our centre. And if we happen to not have a staff at one particular centre who speaks that language I might have it at the other centre and then we might do a swap for a day two so that we can communicate with those parents.

PN9803

And in terms of interaction with the children is that all done in English or not that- - -?---It's mostly done in English. We do encourage staff to use different languages and teach children things in different languages as well.

PN9804

Thank you.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9805

MR TAYLOR: Can I show you a document which you produced which I understand demonstrates in 2017 the income and expenditure of the Lidcombe centre. And if that understanding is wrong then correct me. So I've handed you a document which starts with an order of the Vice President to produce certain material in respect of more than one entity and then behind that the third page bears the name of one or is it perhaps both of your parents?---Yes.

PN9806

Both of them?---Both of them.

PN9807

So a partnership is the owner of the Lidcombe centre?---Correct.

PN9808

What we see here are profit and loss for the Lidcombe Centre in 2016 and 2017?---Yes.

PN9809

If I look at the second page, salaries, ordinary, admin staff and associated persons. Putting ordinary aside for a moment, can you recall who was admin staff and who's associated?---So we have a bookkeeper who works four days a week, so she would be the admin staff. Associated persons, it's just me.

PN9810

That's you?---Yes.

PN9811

I see. And the bookkeeper working four days a week is paid more than you were paying your teachers?---I believe that it might've been two of them. I'm not sure. I - - -

PN9812

You had two bookkeepers working simultaneously during the same year?---We had a bookkeeper and an assistant, I guess, who helped with IT. He did maintenance.

PN9813

I see?---All those kinds of things.

PN9814

A second person - - -?---A second person.

PN9815

- - -with different duties?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9816

I see. I misunderstood you. If I understood your evidence as to what was happening in two thousand and - at the time you prepared your statement in about May 2018 correctly, at that point you had Lidcombe operating 50 weeks a year,

five days a week, with an occupancy that was just a fraction under 40, so you were maintaining it around 39. Am I right about that?---In 2017?

PN9817

Well, let's say 2017, yes?---I mean, we usually operate at about 80 per cent capacity for a lot of the year.

PN9818

Yes, but 80 per cent of 44 though, isn't it?---Yes - it depends. So for example, in the first three months of the year, we might be operating at around 25 to 30 children max each day. As we get close to the end of the year, we tend to be quite full, so we'd be closer to 39.

PN9819

Just give me a moment. At the time you prepared your statement, you had two teachers. One was at level 4 and one was at level 3 at that time?---If that's what I wrote, yes, that would have been correct.

PN9820

Now you only have one?---Yes.

PN9821

And the changes that are to occur in the industry in February 2020 - January 2020 - across the country are not going to affect NSW; they already have the higher ratios, is that right?---Correct.

PN9822

And so you won't in January 2020 have to go to a second ECT? You might, but are not required to?---Correct.

PN9823

Have you done any calculation as to what it would cost you to increase the pay of the single ECT that you engage to the value of the claim that my client is putting forward in the ERO case?---I did see something about that some time ago, but I don't recall.

PN9824

What level is that person now?---She would have just moved to level 5, I believe.

PN9825

The occupancy level that you were describing earlier, what's the current average occupancy level for Lidcombe?---Right now we're at about 39 every day.

PN9826

And 39 an average over the course of a year?---No.

PN9827

What would the average occupancy be over the course of a year?---Maybe 30.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9828

So if we took the 50 weeks and multiplied them by 30, and then again by five days a week, that would give us approximately how many child fee days that you would be earning over the course of the year?---Yes.

PN9829

I presume that the idea that if the claim were granted in full, the highest claim, that the difference that would then flow, that you would then have to pay, the difference in pay for your level 5, is something that you could recoup if you made that decision by charging parents an additional amount per child per day to meet the added cost?---I guess that we could, but - that's one way to recoup the money, yes.

PN9830

And the childcare subsidy, given that you are charging somewhat less than \$11.55 per hour, those parents who qualify for the maximum subsidy of 85 cents in the dollar, the subsidy would effectively pay for 15 cents out of every dollar of increase that would apply?---Yes. It's not quite 85 per cent, but yes.

PN9831

Have you got some notion - and if you don't that's fine - but have you got some notion of what percentage of your families the subsidy is at the level of 85 cents in the dollar?---At Lidcombe?

PN9832

Yes?---It may be 20 per cent.

PN9833

And then the balance have some lower levels of subsidy, do they?---Yes.

PN9834

I tender the bundle of material that I provided to the witness, starting with your Honour's order of 10 July 2018.

PN9835

VICE PRESIDENT HATCHER: Yes. The documents produced pursuant to order of the Commission by Bala Balendra will be marked exhibit 123.

**EXHIBIT #123 BUNDLE OF DOCUMENTS PRODUCED
PURSUANT TO ORDER OF THE COMMISSION BY BALA
BALENDRA**

PN9836

MR TAYLOR: Now, I'm going to do my best to deal with the last statement in the time we have left, and before I actually - - -

PN9837

VICE PRESIDENT HATCHER: Are you moving on from these documents?

PN9838

MR TAYLOR: I am, if it pleases.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9839

VICE PRESIDENT HATCHER: Ms Viknarasah, can I just - I'm just trying to understand the profit and loss statement?---Sure.

PN9840

So just looking at the staff, the salaries for staff ordinary, so that's the actual people involved in - - -?---Teaching.

PN9841

- - - teaching and childcare?---Yes.

PN9842

So that went up significantly from 2016 to 2017. Why was that?---I believe that's when the early childhood teachers graduated. So they would have been on the early childhood teacher's wage.

PN9843

So those amounts are for the same number of staff?---I can't say definitively, but roughly the same, yes. We didn't have any significant change in the number of staff or children across the two years.

PN9844

With administrative staff, that has gone down from 174 to 68. What happened there?---I believe my salary was included in admin staff in the 2016 document, but in the 2017 profit and loss, you can see it's separated.

PN9845

So the other admin staff is a bookkeeper?---A bookkeeper and an IT maintenance person.

PN9846

Did I understand you to say before lunch that your mother is the - I think the registered provider was also - - -?---Approved provider, yes.

PN9847

Approved provider was also receiving a salary?---Not from this centre. She takes it from the other centre.

PN9848

From the other centre. And is your salary solely from this centre?---Yes.

PN9849

Yes, all right. Thank you.

PN9850

MR TAYLOR: Just one thing arising out of what the Vice President was asking, at the point where those teachers moved to being paid as teachers, before then what level were they being paid at?---They would have been paid under the children's services, I believe as a Cert III.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9851

So at the day before they were fully qualified teacher, you were paying them at a Cert III level? There's no diploma rate that - - -?---No.

PN9852

- - -applied at a certain point in their education?---To my recollection, when they started we offered them 3A, which is an equivalent of an unqualified person doing Cert III work.

PN9853

So they were paid as an unqualified Cert III right up to the day they became a teacher?---Yes.

PN9854

Turning to your most recent statement, what I want to start by asking you about is paragraph 9, in which you refer to a percentage of centres being rated high quality in 2009, and then a further document about what was occurring in 2011. Do you see that?---Yes.

PN9855

To be rated "high quality" didn't mean that you were high quality in respect of every standard, did it?---No.

PN9856

You could be rated at the lowest level in some standards, some of the individual standards, and yet still achieve an overall high quality rating?---Yes.

PN9857

Can we just have a look at these two documents that you annex, number 9 and number 10. I'm just not sure which one I'm going to ask you to look at first. So give me a moment, and indeed I think the numbering that I've got has the number 8 and a number 10, so sorry an 8 and - I just have to spend some time to make sure we're all looking at the same document. What I want you to open first is the 2009 document, Quality Trends Report July 2009 to December 2009?---Mm-hm.

PN9858

I don't know which of the annexures that is because of the - I'm working off an electronic copy and the numbering of the statement I'm not entirely sure marries up with the electronic numbering that we were given.

PN9859

VICE PRESIDENT HATCHER: What was that document again?

PN9860

MR TAYLOR: It looks like an NCAC document, Quality Improvement and Accreditation System, Quality Trends Report and it bears a date to distinguish it from the other document that looks the same of July 2009 to December 2009. Do you have that document?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9861

VICE PRESIDENT HATCHER: That's KV10.

PN9862

MR TAYLOR: I see, when I got it was marked KV8, but in any event.

PN9863

MR FAGIR: KV8 and KV9, should be 9 in the hard copy.

PN9864

MR TAYLOR: Yes, so I'm just looking over Mr Fagir's shoulder. In the hard copy that the Commission is looking it's behind tab 9?---Yes.

PN9865

This is a trend report published by the NCAC and can I just take you to the executive summary on page 3 and see if I can understand how this works. There's a - in the first paragraph, the second sentence is a reference to:

PN9866

Ninety-eight per cent having achieved high quality in all seven quality areas.

PN9867

Is that what you were referring to in your statement?---Yes.

PN9868

Then just dropping down a bit on the page it says:

PN9869

Of the centres that received accreditation decision, the principles for which centres most often achieved a high quality standard or more include -

PN9870

Now just where one sees the first one, 90 per cent, is it the case that 90 per cent of the centres got the highest rating - sorry, the high quality standard rating for interacting with children in a warm and friendly way?---That's my understanding, yes.

PN9871

That's how you read the document?---Yes.

PN9872

Do you accept the proposition that what - where the centres at this particular point in time were being particularly successful is in areas which focused on what staff were doing. So in the first one, staff interacting with children. Next one staff guiding children's behaviour. These are - most of these refer to measures of the way in which staff do things. Do you accept that?---Yes.

PN9873

One of the key aspects of the National Quality Standard is that there is a focus on identifying where each child is up to in their development and then planning to achieve further learning outcomes. Is that right?---That's part of the NQF, yes.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9874

Can I just ask you to turn to the next page. Here we have a page which identifies centres that in respect of certain principles were not meeting the satisfactory standards. Now the satisfactory standards is the lowest level is it not?---Yes.

PN9875

So if you look at the second one, principle 3.2:

PN9876

Some 25 per cent of those assessed in that six month period didn't meet the lowest standard requirement for each child's learning being documented and being used in planning the program.

PN9877

Is that how you read the document?---Although it says 3.2, within that there are lots of sub-points, and so not meeting one of the sub-points or a few of the sub-points might have resulted in this - an unsatisfactory or not meeting satisfactory. But it doesn't mean that they didn't meet most of them.

PN9878

Do you want to just come back to my question?---Yes.

PN9879

I just want to make sure we are reading - this is the right way. You've introduced this into evidence?---Yes.

PN9880

You're introduced it to demonstrate that 90 per cent of all childcare centres are reaching high quality?---Yes.

PN9881

I just want to make sure that we understand how this works. At the point of this assessment there were 25 per cent of long daycare centres that were not meeting the satisfactory standard for each child's learning being documented and being used in planning a program. Is that a fair way of reading this document?---Yes.

PN9882

Similarly, the next principle:

PN9883

The program assists each child to be a successful learner, 20 per cent weren't even meeting the satisfactory level.

PN9884

?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9885

These things are necessary requirements under the current system to be accredited are they not. Those two things there must be done by all accredited providers?---Well, there are services now that have got this at working towards

and are still accredited, so that's a similar principle. I'm not sure what the percentages are or how many services are at working towards at this level, but it's likely to be quite similar, perhaps more.

PN9886

Let me come to current statistics in a moment. Let's just move to the other document which I might just have Mr Fagir help me identify the number. Tab 10. The next one is 2011, January to June 2011, that's the other document you've put into evidence?---Yes.

PN9887

Again, if you look at page 3, what one finds is that centres at 2011 are doing well in areas of judging whether staff are doing certain things; interacting with children, guiding children and the like?---Yes.

PN9888

Very large percentages are hitting the highest quality standard in that respect?---Yes.

PN9889

But again if one goes to the next page, one continues to find does one not significant numbers who are, I think, the rating name has changed, that are now unsatisfactory?---Yes.

PN9890

They're unsatisfactory in respect of principles including 3.2 and 3.3 which are things that centres must now do in order to be accredited under the National Quality Standards?---They have to do this even to be accredited under the old standards as well, but if you didn't get it, it doesn't mean - if you didn't get the tick for those standards, it doesn't mean that you are not accredited, you would be given the opportunity to improve your - whatever you had to improve. Similarly that's what happens now. So you are either met or not met now and there are several centres that are not met in these areas.

PN9891

So we've got to be careful don't we when we look at the NQIS standards, one can't assume that just because it's written in the standards that the long daycare centres across the country uniformly were in fact doing all the things that those standards said you must do in order to be accredited?---Correct. Similarly, under the current system we have no idea. We have less idea under the new system.

PN9892

Is that right? Okay. I'll come back to the checklist concept in a moment but just give me a moment. These ideas, principle 3.2 and principle 3.3, do you still have that page open?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9893

Documenting a child learning and using it in planning a program, those are two steps which are central to the work of a teacher under the Australian Professional Teacher Standards?---It's part of the work, yes.

PN9894

Developing a program that's assisting every child to learn is again a key part of what teachers are rated as proficient - in order to be proficient they must satisfy that they do that?---Are you reading from the professional standards evidence guide?

PN9895

No, I'm not, I am paraphrasing. I am not trying to - I'm not suggesting that's a direct quote. I think my poor language would have indicated that but as a broad proposition what the Australian Professional Standards identify is that what teachers do, what teachers need to do to be considered proficient is have and teach learning programs which are assisting every child to become successful at learning, certainly at an early childhood level?---Yes.

PN9896

Is this the case, that back here in 2009 and 2011, many long daycare centres across the country didn't employ teachers?---I don't think so because we had the same regulations in New South Wales, the same ratios, so I'm not sure what happened in other states.

PN9897

Yes. Notwithstanding your knowledge again through ACA as a committee member and the work you've done in this industry you're not aware that New South Wales was the only state that had ratio requirements for teachers prior to NQS commencing - sorry, South Australia as well, my apologies. New South Wales and South Australia were the only states that had requirements for teachers to be employed in long daycare centres?---NO, I was not aware.

PN9898

These assessments of course are only of long daycare centres. They're not of preschools. These NQIS - - -?---That's my understanding, yes.

PN9899

Yes. And is this the case, that you accept that one of the reasons why long daycare centres across the country - sorry, I withdraw that - firstly, these assessments that are being summarised here are of - they could be of centres anywhere in Australia, not just New South Wales?---That's my understanding, yes.

PN9900

So there would've been centres that were being assessed under this NQIS that did not employ teachers?---Yes.

PN9901

And can I suggest to you that one the reasons why long daycare centres might have been unsatisfactory in areas like principle 3.2 and 3.3, which are so central to what teachers do, is simply because those centres didn't have teachers in them?---No, because that's part of the Cert III and Diploma training as well. They need to do those, 3.2 and 3.3.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9902

But perhaps not to a satisfactory level?---Well, I don't know, you know, what causes these people to not have satisfactory level, but similarly you have to look at today's NQF reports to see what services are being rated at, because - - -

PN9903

I see. I - - -?---- - -they have a list of which elements are not being met as well.

PN9904

Let me show you a document in light of what you've just said. I have three copies and one for the witness. Do you recognise the format of this document as being - I'm sorry, I haven't tendered - no, I don't need to tender it, they're your documents. Do you recognise this document as a report of ACECQA which provides a snapshot of the nature of the accreditation in Australia at that point in time?---Yes.

PN9905

The third paragraph under Introduction says this:

PN9906

The new National Quality Standard has raised the bar on quality and continuous improvement in children's education and care services.

PN9907

You accept that proposition?---I accept that was the intention.

PN9908

And do you - - -?---But I don't agree that that's what happened.

PN9909

I see. ACECQA was wrong about that. It didn't raise the bar at all?---It might've raised the bar in some things but not in others. I have seen a decline in some areas.

PN9910

I see. But the bar is something you need to get over rather than judge where people are at a particular point in time. This suggestion is they've raised the bar that must be met. Not everyone will meet it. Some people exceed it, but as a broad proposition it's correct that the National Quality Standards raised the bar that had to be met in order to be accredited?---So a working towards level is still an accredited service. So normally when they say the bar for meeting, it's one level above that.

PN9911

I see?---So that would be the equivalent of the satisfactory level under the old system. So working towards and satisfactory would be, I'm guessing, similar.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9912

When you say you're guessing, what do you mean by that?---I mean, I haven't done an element by element analysis but those were both lowest level that you

could get accredited at and still receive funding. If you were rated lower than that you wouldn't be eligible for Federal Government funding.

PN9913

Yes. So what was the lowest that you could get and still get funding under the old system?---Satisfactory.

PN9914

So can I ask you to turn to page 6 of 14. It's a table that shows that nationally over 55 per cent of rated services are rated as either meeting or exceeding, and identifies some 43.8 per cent at the working towards level?---Yes.

PN9915

And is that your understanding of the nature of the ratings that have occurred in recent times, that you have getting close to half are still at the working towards level?---I believe so, yes. I believe that the number of centres at exceeding has significantly dropped in the last few years as well. I note this is 2013 this document.

PN9916

So there would actually be, if we got a more recent document, there'd be an even greater percentage that would be in the working towards category?---I'm not sure about working towards, it might be quite similar but I know the exceeding, from my recollection, our percentage has decreased.

PN9917

Can I ask you to turn to table 6. Table 6 has rating outcomes in respect of each quality assurance area numbered 1 through 7. Number 1 is the quality area associated with delivering educational program and practice; is that right?---Yes.

PN9918

We see there, do we, that something - more than a third of those assessed were still working towards the required standard for educational program and practice?---Yes.

PN9919

I tender that document.

PN9920

VICE PRESIDENT HATCHER: The ACECQA snapshot document dated 1 May 2013 will be marked exhibit 124.

**EXHIBIT #124 SNAPSHOT OF ACECQA DOCUMENT DATED
01/05/2013**

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9921

MR TAYLOR: I've been provided, Ms Viknarasah with another snapshot that's a bit more recent lest there be any view that there's something to be said about the previous document. Can I provide you with this? When I say more recent it's still 2014. Here I think what's been done, and just indicate to the Commission, it looks

to me that this is the first page and one page of the document, and if my friend ultimately wants to tender the balance of it, of course we'd have no difficulty, but can I just - Ms Viknarasah, you identified this document again as indicating that in respect of quality assurance 1 as at 31 March 2014 again something in the order of a third of services were still working towards quality area 1?---Yes.

PN9922

I tender that document.

PN9923

VICE PRESIDENT HATCHER: Extract from NQF snapshot first quarter 2014 will be marked exhibit 125.

EXHIBIT #125 SNAPSHOT FROM NQF FIRST QUARTER 2014

PN9924

MR TAYLOR: Finally, a 2019 snapshot document. Could I ask you to just look at this? So I've now handed you a document called NQF snapshot Q1 2019 dated May 2019?---Yes.

PN9925

On the second page under Overview it identifies it's the 25th national report. Can I just direct your attention to the fourth page. This page identifies the number of services that operate under the NQF and the number that have a quality rating of "meeting NQS or above". Do you see that?---Yes.

PN9926

So some 21 per cent at this point were - had a quality rating below meeting NQS, so that'd be working towards rating I presume. Is that your understanding of how the rating system works?---Sorry, where are you looking?

PN9927

I'm sorry, so snapshot highlights, 15,902 is the total number?---Yes.

PN9928

Then dropping down two - well first 94 per cent have a quality rating and 79 per cent of that quality rating is meeting NQS or above?---Right, yes.

PN9929

The balance would be those who are working towards or don't have a rating at all?---Or significant improvement, yes.

PN9930

Or significant improvement. If you drop down to the second to last - the 66 per cent, it says 66 per cent of services rated working towards improved their quality rating at re-assessment?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9931

Two thirds lifted their game and the other third presumably didn't so, one reads from that. Can I just - in showing you some tables - those figures are broken

down, are they not, on the 11th page in table 6 by state, so that one can see in each state and territory the quality ratings for each of the services?---Yes.

PN9932

Can I just ask you to turn to page 15, there's a heading "Standard level ratings" under 2018 NQS. It says that the figure there ranks the 15 standards in descending order based on the proportion of services rated working towards. The standard which has the highest percentage of services still working towards is the assessment and planning standard?---Yes.

PN9933

If you'd go to the previous page, that particular standard 1.3 falls within QA1 and QA1 is again the area which has the largest amount of working towards?---Yes.

PN9934

So if there has been, it would appear, a significant improvement in the amount of services which are meeting QF1 since 2009, I showed you those figures, there's been a significant reduction in those who are marked working towards. Sorry 2013, my apologies?---For quality area 1?

PN9935

Yes?---Do you want me to compare those numbers, is that what you're asking me to do?

PN9936

Yes, when I showed you the ACECQA snapshot for May 2013, I identified that at that stage there was something a little more than a third of all services rated as working towards in quality area 1. It's now 16 per cent?---Yes.

PN9937

So there has been it would appear in this industry significant improvement in the area of quality assurance 1, in respect of those being assessed by ACECQA?---I think you need to take into consideration that this 2013 document would have been the first time that services were assessed under the new system, which most people were not very familiar with.

PN9938

Yes?---So it would take some time for the sector to understand what was expected and then obviously in the subsequent ratings most of them were able to improve. I also note though if you look at the overall quality ratings by jurisdiction, New South Wales with four early childhood teachers as opposed to every other state with one or two, is not performing significantly better.

PN9939

When you say four teachers as against one or two, are you talking - - ?---For an 80 place centre, New South Wales requires four early childhood degree qualified teachers. Whereas - - -

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9940

Are we able from those documents to identify that they are talking about centres of that size?---No, but New South Wales has higher requirements for early childhood teachers broadly.

PN9941

Yes, but these statistics are dealing with services that you can't tell from them whether we're dealing with a service that only has 30 or has more than 80?---No, of course not but you would expect broadly a state with a higher requirement for early childhood teachers who are being paid significant salaries would be performing significantly better than other states.

PN9942

I want to show you one more document on this particular subject matter. It dates from 2016, ACECQA of course is rating the various services both preschools and long daycare centres amongst others, against the various quality standards. It actually publishes documents does it not which identifies whether and to what extent long daycare centres are achieving standards versus preschools for example?---Correct.

PN9943

I've handed you a document headed - it's an ACECQA document that hasn't been stapled and I apologise to the Commission and to you Ms Viknarasah, for that to make sure I'm moving at speed. It's titled "Educational program and practice". What I want to do is firstly ask you to turn to page 12. Now on my copy the numbering of page 12 doesn't appear. Thankfully page 13 does so if you just go to 13 and go back a page. Towards the bottom of that page, this page is dealing with quality area 1 in particular and the heading describes it as being:

PN9944

An analysis of differences according to jurisdiction, service, sub-type, management type, socioeconomic status and remoteness.

PN9945

You'll see if you have page 12, do you have that?---Yes.

PN9946

Thank you. Just under the word "table 3" which is about two thirds of the way down:

PN9947

ACECQA recognises that the introduction of learning frameworks has raised the benchmark for educational programs and practice.

PN9948

Now that's what ACECQA thinks. Do you have any difficulty accepting that the introduction of the EYLF has raised the benchmark for educational programs?---Yes, I do.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9949

You don't accept that proposition?---I don't accept that.

PN9950

They say that quality area 1 is the most challenging of all the quality areas for services to meet. Is that something you accept as a proposition or not?---It is, because of the way that it's assessed.

PN9951

It's ACECQA's problem rather than yours or have I misunderstood you?---Well, it's not actually ACECQA that does the assessment. It's the state regulatory authority that does the assessment.

PN9952

I'm sorry, yes, of course. Can I take you to page 17. Now maybe if you go back one page, quality area 1 and service sub-type, so that we know what the document's discussing at this point, it's discussing quality area 1, the educational program, and at figure 7 on page 17, its rating - it's the percentage of those who achieved a quality rating, and there are three quality ratings: "working towards meeting or exceeding", and you see that the first of the three columns has the letters "LDC" underneath them. That's long day-care centres, and the next one, PSK, that's preschools?---Yes.

PN9953

It's preschool/kindergarten I think, to use all letters, and ACECQA rating is identifying that those locations which are meeting or exceeding the quality area one are more likely to be found in preschools than they are in the long day-care centre?---I can see that, yes.

PN9954

I tender that document.

PN9955

VICE PRESIDENT HATCHER: And did you want to tender the one before that too, Mr Taylor?

PN9956

MR TAYLOR: Yes, I'm sorry - yes, please.

PN9957

VICE PRESIDENT HATCHER: The Increff snapshot document, first quarter 2019, will be marked exhibit 126, and the ACECQA education program and practice document, January 2016, will be marked exhibit 127.

EXHIBIT #126 INCREFF SNAPSHOT DOCUMENT, FIRST QUARTER 2019

EXHIBIT #127 ACECQA EDUCATION PROGRAM AND PRACTICE DOCUMENT, JANUARY 2016

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9958

MR TAYLOR: Can I now ask you to turn to another one of your annexures, which I will have Mr Fagir help me number? It's the one is titled, "Managing

childcare service, a hands-on guide for service providers", tab 7. This was a document first published in 2004, it says on the second page. Do we take it then that this is a document that pre-dates the change to the NQIS standards that came in in 2005?---Yes.

PN9959

You've only given us part of this document. Do you have the whole of the document?---Yes.

PN9960

The part of the document you've given us has at page 58.1 the heading, "Quality improvement and accreditation system, QIAS", and it's that section which you've provided as your annexure, is that right?---Yes.

PN9961

Can I take you to page 50, if it is 50, or not "S" - I think it's 58.4 in that section. It might be actually S8.4, now I look at it. It has the words, "What documentation will the validator need to review", do you see that?---Yes.

PN9962

So at this point of the document, the guide is giving centres such as - well long day-care centres who are being accredited - some guide as to what they will need to show the validator?---Yes.

PN9963

And it says amongst other things, the third paragraph under that heading:

PN9964

It's the centre's responsibility to have available the documentation which it believes supports its quality practices. Please refer to the aspects of quality care as outlined in the QIS source book and use the checklist of documents below.

PN9965

Is what we see on the right-hand side a checklist of the documents that had to be provided?---Yes. There are some examples of that, yes.

PN9966

So when it says, "and use the checklist of documents below", is it not this checklist? Is there some other checklist that's to be used?---Well, it says, "Listed opposite are some examples of aspects of quality care for which documentation."

PN9967

Yes, but I'm referring to the previous sentence, "and use the checklist"?---Yes, and it says, "Please note this is not an exhaustive list." So yes, this is some of them, but there could be more.

PN9968

Were you running a childcare centre in 2004?---I wasn't. I was assisting my mum, informally.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9969

Assisting informally?---Yes.

PN9970

So were you familiar at all with what had to be done in 2004?---Yes.

PN9971

Were you working off a checklist?---Yes.

PN9972

Was it this checklist?---It was this checklist and some more.

PN9973

And when you say, "and some more", where will we find that checklist?---So that would come from the validator's report. That's quite a comprehensive checklist as well.

PN9974

When you say, "the validator's report", the way this works is there's a self-assessment at the beginning of the process?---Yes.

PN9975

So the self-assessment, would itself need a checklist, would it not?---Yes.

PN9976

Was it this checklist or was it some other checklist?---This was part of it, yes.

PN9977

Where will we find the other part of it?---I don't recall exactly what it looked like, but it would be in the self-assessment form that we would have been asked to fill in.

PN9978

You're using the word "would have." I'm just trying to get clear whether you actually have a knowledge of these things yourself?---So back in 2004, I was assisting when one of our centres went through accreditation at the time, and I do recall a very comprehensive checklist that we used to tick off to make sure we had all the right documents, the right signs up in the rooms, the right - whatever else they might look for.

PN9979

And did the NCAC provide this checklist?---Yes. I don't know whether they provided it, or it was what we used from the previous time that we had been assessed - or I'm not sure where we got it from, but we did have a checklist.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN9980

This particular page under the heading, "Aspects of quality care checklist", so certainly there seems to be some suggestion that this itself is a checklist, boxes that one might tick, has that thing too. It does refer - they're not numbered, so bear with me - but it does refer to centre programs, (indistinct) long-term

programs, weekly, daily programs and timetables. It's one aspect of material that had to be provided, and another one was records of children's learning and wellbeing. That also had to be provided. But the checklist approach that NCAC was going for did not require evidence - tell me if I'm wrong - of whether the word, "certain learning outcomes", that were sought and whether they were being achieved?---Not certain learning outcomes, no.

PN9981

It didn't require you to demonstrate that you had a particular curriculum?---No. There was a suggested curriculum. I believe it was called "The NSW curriculum" or something like that.

PN9982

But you weren't accredited as to whether you had that or not?---You might have received a higher rating if you were using that.

PN9983

An educational program required under the NQS, can I suggest to you, has the following features: it must firstly reflect the learning framework, the early years learning framework?---Yes.

PN9984

It must show evidence of a planning cycle?---Yes.

PN9985

It must be developed in conjunction with the children and families and all educators?---Yes.

PN9986

It has got to show evidence of planned and spontaneous experiences?---Yes.

PN9987

It must have links to individual documentation?---Yes.

PN9988

It would include projects, events, excursions and visitors?---It may, yes.

PN9989

It would include evaluation and reflection used to inform future planning and practice?---Yes.

PN9990

And in all respects it's linked to the Early Years Learning Framework?---Not necessarily, but in some respects it might be.

PN9991

That type of educational program was not a feature of the NQIS system?---Everything that you've just said, apart from the very first point you made, everything else is exactly what was in the NQIS system - in the QIAS system.

PN9992

There's no - I mean - - -?---Apart from having to link to a specific learning framework, we did have document children's learning, we did have to have different types of documentation for each child. We did have to collaborate with children and families and educators. We did have to reflect on the program.

PN9993

Yes, but what you didn't do is have an educational program that contained each of those things including the links to individual documentation?---There is no requirement to have links to individual documentation.

PN9994

You say now there isn't at the moment?---Yes.

PN9995

Returning to that annexure, which I will when I can find it, the checklist of documents didn't include that process of reflecting and showing evidence of planning cycle based on the outcomes of the individual children?---There was a requirement to show individual children's developmental outcomes, yes. That it needed to be linked to the EYLF, no, or any kind of learning framework.

PN9996

Can I show you a document that was published by the NCAC about gathering evidence of quality practice. What I've handed you is a document that bears on the top left-hand side that it's published by the NCAC and refers to the validation step of the QIAS process, providing an opportunity to demonstrate quality practice and says there's a variety ways in which those quality practices can be demonstrated. One of the things that had to be done by centres being assessed was to provide documentation which demonstrate to the validator that the quality standards were being - that were being sought to be assessed were being met. Is that right?---(No audible reply)

PN9997

Sorry, I've just - - -?---Could you repeat the question.

PN9998

I know, I've given you a document and then I've asked you a question. I should have asked you a question and then given you the document, I appreciate that. Part of the QIAS process involved validators viewing documents that demonstrated that quality standards were being met?---Yes.

PN9999

This author has identified a tendency to gather evidence for everything that happens in the centre just in case, which could be time consuming and place a great deal of pressure on already busy directors and staff?---Correct.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN10000

The type - what I want to suggest to you is the type of documentation that validators were looking for is identified on the next page under the heading "Making evidence useful and accessible". What they were looking for are the

matters there. Could you just read that from under the heading "Making evidence useful and accessible" and through to each of the dot points, the last one is on the next column?---Yes.

PN10001

Amongst other things this document identifies that documentation alone is not going to be sufficient but certain documents are going to be sought. The examples of what NCAC were suggesting be provided, none of them involve individual child records of development. The ones that we're dealing with here are scrap books or portfolios for each child or group of children providing evidence for the validator. I'm looking at the second dot point, "Staff respect".

PN10002

A collection of photographs might be sufficient of children's experiences and the like.

PN10003

That type of documentation, it's sort of broad types of scrapbooks and portfolios is a lower level of analysis of children's learning and development that was required then than one finds under the NQS, do you agree?---No. This is not a comprehensive document. This is one document that supported like a fact sheet for educators to use. But if you look at the actual QIAS source book or the guide, it has a lot of detailed information on how each child's learning needs to be documented and followed through and researched and it has to be underpinned by current theories.

PN10004

The documents that the validators were looking for to accredit were documents that are described in this fact sheet are they not?---No, this is not all of them. If you look at the QIS guide it'll show you the minimum documents you needed for satisfactory rating, good quality rating and high quality rating, and that's a lot more than what's described here.

PN10005

I tender the document.

PN10006

VICE PRESIDENT HATCHER: The document produced by the NCAC headed, "Gathering evidence of quality practice" will be marked exhibit 128.

**EXHIBIT #128 DOCUMENT PRODUCED BY THE NCAC HEADED
"GATHERING EVIDENCE OF QUALITY PRACTICE"**

PN10007

Mr Taylor, how much longer do you think you'll be?

PN10008

MR TAYLOR: I was thinking exactly the same thought, your Honour. Just give me a moment.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN10009

VICE PRESIDENT HATCHER: It's only if you'll be a fair bit longer I think we should have a break for the benefit of at least the witness.

PN10010

MR TAYLOR: Yes, I understand. Let me just - I want to try and give your Honour an accurate estimate. I think about 20 minutes.

PN10011

VICE PRESIDENT HATCHER: Right, we'll take a short adjournment and resume in approximately 10 minutes.

<THE WITNESS WITHDREW [4.00 PM]

SHORT ADJOURNMENT [4.00 PM]

RESUMED [4.16 PM]

<KARTHIKA VIKNARASAH, RECALLED [4.16 PM]

CROSS-EXAMINATION BY MR TAYLOR, CONTINUING [4.16 PM]

PN10012

VICE PRESIDENT HATCHER: Mr Taylor.

PN10013

MR TAYLOR: Thank you. Your supplementary statement, at paragraph 19 you deal with quality area 3 and you set out what the guide provided. Where do you find that text? Paragraph 19 is a quote. Where did you get that from?---So that's the NCAC guidelines, I think it's called.

PN10014

Is that a document that you had still kicking around the office was it?---That's right, yes.

PN10015

The balance of your statement I want to suggest to you displays in some - a number of different ways that you are as I think I put to you earlier a rogue, or at least outlier in this industry. Can I start with documentation. As you say in your statement you've moved back to a paper based system. That's right isn't it?---First of all, if I could clarify a rogue in the sense - I don't think I'm the only one but there are many people who don't agree with the kind of regulation that we're under and believe in doing the minimum that we need to to meet regulations but having our focus as the care and education of children.

PN10016

So one of the things, can I suggest to you, you do differently than the vast bulk of the industry is that having tried an electronic system you've moved back to a paper based system?---Correct.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN10017

Secondly, another thing you do differently which you describe in paragraph 30 is that having surveyed parents, that the information you provide them doesn't link experiences to EYLF learning outcomes and theory?---It doesn't explicitly link to each of the dot points in the EYLF, in a broad sense it does.

PN10018

There's no - when you say it does?---The documentation.

PN10019

Yes, and is this - you're not providing electronic access like some services do, so what are you providing a parent in respect of each child?---So for day to day documentation, I guess, we have a Facebook group, a closed Facebook group that parents are a part of.

PN10020

Yes?---And then we share photos of what's happened in the day there. Then once every three months or so we provide a report on each child.

PN10021

On the Facebook page there are photos. Is there any text about identifying learning outcomes or anything of that nature?---No.

PN10022

Is there any text at all beyond we went to the park today?---No, it's pretty much just like a short description, a few words. Most of my families are not fluent in English or don't speak English, so we try to keep it as simple as possible for them.

PN10023

You annex a document which is KV12, which sets out as I understand it in effect the rules that you give your staff about documentation?---Yes.

PN10024

Consistent with - I withdraw that. The first dot point is "Only document what's necessary"?---Yes.

PN10025

The second dot point, "Only document if it will definitely be read by someone in the future"?---Yes.

PN10026

One of the things that needs to be documented under the NQS system are observations of children which wherein at a particular point in a day they demonstrate that they are moving towards a particular learning outcome. Is that's not part of the NQS system?---Could you refer me to where you're - - -

PN10027

I'm just asking whether you accept that proposition or not?---No.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN10028

You don't accept that?---No.

PN10029

Can we just drop down to:

PN10030

Program documentation requirements for the national regulations.

PN10031

You must have an educational program?---Yes.

PN10032

You conveniently set out the relevant regulation on the next page that mandates that of paying a penalty. That program must contribute to the outcomes and you achieve that in two ways. Firstly, something called our termly curriculum plan. What does the word termly mean?---So once a term we write a plan for each room, I think we've talked about that earlier.

PN10033

That is a plan that requires for the whole of that term by definition?---Yes.

PN10034

It's not a living document which is manipulated on a day to day basis that take into account any emerging issue that might arise that the teacher thinks or educator thinks needs to be dealt with?---It may be. Mostly the educators will just write dates or some references to when those particular activities or outcomes or whatever was on the plan or achieved. So if it was something about children learning about numbers 1 to 10, for example, I'll give a very simple example then we can say we've done it on - in March, we did it again in April and by May all the children were able to say one to 10.

PN10035

Is that something that's written down on the curriculum plan?---Yes.

PN10036

Physically written onto the document itself?---It's - yes.

PN10037

I see. And then the next thing says, "programming diary entries". What does programming diary entries mean?---So the diary that I described a little while ago with - - -

PN10038

Yes?---It's got each day, so Monday to Friday, and then it's got little boxes for, you know, the outdoor experience, the spontaneous experience, music or whatever, and then we just write in there what we've done for the day in those areas.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN10039

It's a record of what has been done?---It will include some planning as well, so we might say, tomorrow we plan to, I don't know, have an obstacle course outside.

PN10040

I see. And when it comes to assessment of a child's developmental needs there's something called a Termly Assessment Form?---Mm-hm.

PN10041

Is that once a term there is a - each child is assessed?---Yes, so once a term we write a report on each child.

PN10042

Bit like happens in school you have a term report?---Similar to that, yes.

PN10043

Do parents get a copy of the report of - - -?---That's right. It's got a follow up for what we're going to do next term for that child in the centre as well as what parents can do to follow up at home and then they sign off on it.

PN10044

Then as for assessments against EYLF outcomes, there's a termly assessment form?---Mm-hm.

PN10045

So is that - - -?---That's the same form.

PN10046

It's the same form. So once a term the children are assessed in progress against EYLF?---Yes.

PN10047

Rather than a continuous monitoring approach?---So that's part of it. Like, you can see, we have lots of other ways we document including the program diaries and, you know information from parents and so on.

PN10048

I see. The diary I thought was a record of what you were going - you know, the activities you're going to do and maybe a note of what you actually did. Are you saying that there's something else to this diary as well?---So that's what the program is. The program is the activities that we're going to do.

PN10049

As a room?---It could be as a room, it could be we're going to set up an area of dinosaurs because there are some - a couple of children who are very interested in dinosaurs, so this week we're going to be looking at dinosaurs.

PN10050

I see. The last dot point:

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN10051

If a parent asks they must be given a copy of the education program for their child's class.

PN10052

Is that going to give them, in circumstances where I understood an educational program is linked to individual learning outcomes, are they going to get a document which from which one sees the individual learning outcomes of their child?---So they will see in the report that we provide - - -

PN10053

Yes?--- - - -what the child has achieved and what they're working on, as well as what we're planning to do with them in the coming few months.

PN10054

So when they get a copy of the educational program is that they get a copy of the two documents against point 1, your termly curriculum plan and programming diary entries. Is that what they get?---And the termly assessment forms, yes.

PN10055

And they get the termly assessment forms?---Yes. Although we've never had anyone ask for that. They only take the termly assessment form. That's the one they're interested in.

PN10056

And this approach to minimal documentation is an approach which puts you somewhat outside of the majority in this industry; are you not?---So this approach I actually fully implemented it after attending a lecture by a very respected consultant, an advocate in the area who suggested that this would be a more meaningful way of documenting.

PN10057

It puts you as a bit of an outlier in the industry though, doesn't it?---Well, I'm not sure how many people follow his advice but he's very, very popular, so - - -

PN10058

I see. And then when it comes to technology your approach is to limit the access of children to technological devices?---In the sense of screen time, yes.

PN10059

Is there some other way in which they have access to technology that doesn't involve screen time?---So I guess for a layperson it might not sound like it - - -

PN10060

No, no, that's fine?--- - - -but for us in the early childhood sector technology is not about screen time. Technology is about machines, how things work, taking apart an old phone or a computer. All that is part of learning about technology.

PN10061

I see. I have this image of three and four-year-olds taking a computer apart. But that is indeed what occurs in your childcare centre?---In a lot of centres, yes.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN10062

I see. Can I now - just make sure I - turn to an annexure. The last annexure which I haven't asked you about, which is a spreadsheet, and - it's 10. Sorry, for me it was 10. It might not be 10 for you. The spreadsheet?---Yes, 11, I think.

PN10063

Eleven. Thank you. Just so I understand how you did this, were you given a document which had the words up to the "comment" column? Were you given that document?---Correct. Yes.

PN10064

And then you added comments into that column?---Correct.

PN10065

You didn't, can I suggest to you, you didn't have an understanding that where the column says "now" that the person was necessarily - sorry, I'm putting that poorly. You approached it on the basis that the material under the word "now" was suggested to be all a series of new activities that weren't done at a previous time?---Not necessarily all. I mean, everyone arrived at work for example, signed into the room or those kinds of things.

PN10066

Yes. I'm not - - -They've always happened, so - - -

PN10067

I'm just saying when you were preparing your comments - - -?---Yes.

PN10068

- - -you were preparing comments on the basis that you were commenting on whether what was in the first column was new or not. That was how you approached your task?---So it was either new or it was done by an ECT is what I was understood to - when I saw this.

PN10069

Yes. Did you understand that this was what an early childhood teacher working in a preschool had said was what happened in her preschool now and prior to 2012?---Yes.

PN10070

Yes. And so when you respond to say something like, "This is not new", is it - you're not suggesting that it wasn't a change in respect of that witness. It's just not a change in your experience in your centre?---Yes.

PN10071

You understand that at various points you refer to certain principles, so, for example, at number 14 you quote NCAC principle 1.6. You understand that those principles didn't apply to preschools?---I didn't realise it at the time, but subsequently I did, yes.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN10072

I see. And at the time is being when you prepared this document?---When I initially started preparing this document, yes.

PN10073

And did you realise that at any time before you finished it?---I probably had a question because I wasn't 100 per cent sure whether the preschools were assessed under the NCAC and I - - -

PN10074

I see?--- - - -had a question. I'm not sure whether this person would have been, because from - as I went through her document and then thought, "Well, it's unlikely that she would've been assessed under the old principles if that's the way that they were operating".

PN10075

Where you've said at various points, "It does not need to be done by an ECT" - - -?---Yes.

PN10076

- - -you're not - and I appreciate I'm dealing with this globally, but you're not suggesting that an ECT doesn't do it. You're just saying it's not something that can only be done by an ECT?---Correct.

PN10077

In respect of the first line item, number 1, there's a reference to a room sign in system being discussed with you at a compliance visit that you are told is not compulsory. Is the reason why to your knowledge a number of services have moved to a room sign in, is so that they are able to demonstrate to any assessor that they have met ratio requirements at particular points in time?---My understanding is that's why some centres do it, yes.

PN10078

Ratio requirements were not part of the assessment under the NQIS system?---I don't believe so, no. It would have been a compliance assessment because we had two assessments under the old system.

PN10079

Yes. Notwithstanding that under the old system there were assessments, I think you've said in your first statement there's actually more work and paperwork that's now required now than there was when there were two systems?---In the sense that because people are not sure what the assessor is going to look for, I think in the document you've provided earlier there's tendency to gather evidence for everything that happens just in case, and I think that's gotten worse now.

PN10080

Can I take you to number 23. There you refer to some performance criteria for those who are trained to be a Cert III or diploma qualified?---Correct.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN10081

You have some titles in italics and then some series of letters and numbers?---Correct.

PN10082

Are they - is that a reference to what are units in current vocational training courses?---Correct.

PN10083

Similarly at number 29, the last - the third dot point:

PN10084

Cert III and diploma educators performance criteria include -

PN10085

And you've quoted. Is that criteria which you find from training outcomes that are currently required to accredit someone at Cert III or diploma level?---Correct.

PN10086

In number 46 you identify that Munch and Move was introduced in 2008 before the NQF. It may have been introduced as a concept but you accept the idea, don't you, that it certainly wasn't found throughout the long daycare centre of Australia in 2008?---It might have been found in some centres, I'm not sure.

PN10087

Yes. There has indeed been a steady increase over years in the number of centres who are in fact applying the Munch and Move approach?---Correct.

PN10088

Indeed even as today there are centres who still haven't moved to it?---Correct. It's not a requirement to have Munch and Move, and in fact last year when I had my assessment and rating, the assessor had never heard of Munch and Move.

PN10089

Is that a reflection on the assessor do you think or on the fact that it's relatively uncommon still?---I have no idea. I would think that it's to do with the training that the assessors receive or the assessor, I'm not sure, but - - -

PN10090

Now in paragraph 66, you say we are now - sorry, what's happened now - against 66:

PN10091

We are now educating families on the importance of early childhood education, what we do it and why we do it.

PN10092

Was the thing you were responding to and you say:

PN10093

This is not a requirement and not the role of an ECT.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN10094

Firstly, educating families on early childhood education, explaining to them the nature of the education is part of the communication with parents that the National Quality Standards seek all services to engage in, is it not?---It's a recommendation, yes.

PN10095

Its services are judged against whether they were achieving that outcome?---I don't believe anyone's judged against how well they have informed parents about early childhood education.

PN10096

Just on that number 66, I'm a little confused. You say it's not a requirement, just looking at those words, "it's not a requirement", does that mean you say it's not a requirement of the NQS?---It's not a regulatory requirement and - it's not a requirement under the NQS in that we can't be assessed against that is my understanding.

PN10097

The next dot point says:

PN10098

Ensuring that families understand their child's learning has always been the requirement.

PN10099

?---Yes, so she talks about - the first sentence is about educating parents about the importance of early childhood education.

PN10100

Yes?---And the second sentence is about informing parents about their child's learning. So there's two different aspects there.

PN10101

I see. What perhaps wasn't clear is that the first dot point was dealing with one and the second dot point was dealing with a different one?---Yes.

PN10102

I see. Just give me a moment. Can I take you to number 54. You're responding to something in the first column and just so I understand the process, did you when doing this sit down with the 2005 NCAC principles and then try and identify as best you could, wherever you could the principle that you thought related to the issue in question?---Yes, that was part of the process, yes.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN10103

When you did so, did you try and identify whether you were picking one that was at a standard level only sufficient for accreditation or were you at times picking those that were at higher level beyond that which long day centres actually needed to meet to even be accredited? Were you careful about that or not?---So the

standard level of the - the satisfactory level, sorry, is the minimum standard that you needed to meet to be accredited.

PN10104

Yes?---So the way that guide book looks, for each quality area it's got one or two pages of sort of a broad overview and then it goes principle by principle to give a broad overview of the principle, and then gives some dot points for what you need to have for each standard.

PN10105

Correct?---So I picked from different parts of that, as I recalled things that we had done in our centres in the past, and tried to refer to where - the exact wording for what we were doing.

PN10106

Yes. So in some cases is it the case that the quotes you had pulled out are quotes from levels above that which a long day-care centre would need to meet to be accredited?---It could be, yes.

PN10107

We haven't had a chance to go through this document carefully, but at 54 you have identified the third dot point: NCAC 1.2 required that staff receive regular in-service(?) on positive behaviour guidance. That wasn't a requirement. It was something that the NCAC was seeking to drive centre to doing. They didn't need to do that to be accredited. It was a higher standard than was necessary to be accredited?---I can't recall exactly where I picked that particular sentence from. It could have been from the preamble I'm guessing, because I'm sure it - having positive behaviour guidance would have been a requirement. I mean - - -

PN10108

It says NCAC 1.2, so it's not from the preamble; it's from - - -?---No, there's a preamble for each of those points as well.

PN10109

Yes, I see what you mean. Anyway, we can do that exercise, but I just wanted to clarify what exercise you had done, and consistent with what I put to you earlier, under the old system there would be NCAC principles that were not being met by a long day-care centre that wouldn't prevent them being accredited?---Yes.

PN10110

A particular sense, it might be sufficiently good to be accredited, without meeting every standard at a particular point in time at the level said to be required to be accredited?---Yes, although what we're talking about here, positive behaviour guidance, that would - - -

PN10111

Just can you answer my question, and then, please, you can say what you say what you want to say about that? Do you agree with that proposition?---That there are some standards that you didn't have to meet to be accredited?

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN10112

Yes. That's correct, wasn't it?---Yes.

PN10113

So what did you want to say about that particular - - -?---Yes, so positive behaviour guidance is very important in the long day-care, or any kind of early childhood setting. In fact, it's even referred to in the regulations. So you would have been in breach if you didn't have some kind of positive behaviour guidance strategies.

PN10114

When you were preparing this statement, did you have available to you a 2005 guide, or a list of 2005 principles under the NCAC?---I believe it's a guide.

PN10115

And it was the 2005 one?---2005, yes.

PN10116

You've said, I think in your supplementary statement, that the principles didn't change much between 1993 and 2005. They renumbered them?---Yes.

PN10117

Have you actually done an analysis which would allow you to make that statement with any confidence?---No.

PN10118

And you yourself never operated under the NCAC guidelines prior to their form in 2000-whatever form they were in - in 2004?---Not on my own, no.

PN10119

And not as an operator who needed to actually comply with them?---No. I would have only assisted my mother.

PN10120

When you say assisted your mother, some sort of voluntary capacity prior to 2004, or even - - -?---Yes.

PN10121

And even at 2004, it was in that capacity?---It's a family business, so you know - if it's a family business, everyone in the family is involved in it. If you're a baker's daughter, you're going to know about how to bake bread, so you know, if you have to help out in the kitchen, you go and help out in the kitchen.

PN10122

Yes. My daughter would disagree with that proposition. Being a dancer's son, she has a view that I haven't managed to take on the skills of my parents. But let me just check, I think that's as far as we need to go. Yes, thank you. Thank you, Ms Viknarasah.

*** KARTHIKA VIKNARASAH

XXN MR TAYLOR

PN10123

VICE PRESIDENT HATCHER: Mr Fagir?

PN10124

MR FAGIR: Thank you, your Honour.

RE-EXAMINATION BY MR FAGIR

[4.47 PM]

PN10125

MR FAGIR: Could I show you a document, Ms Viknarasah? Just before you open up the document, Ms Viknarasah, you recall being asked questions about a checklist that appeared in the document behind the first tab of your later statement?---Yes.

PN10126

Can you recall it being suggested to you that that was a checklist of the documents required, and there was a bit of a to and fro on that topic?---Yes.

PN10127

And you referred a couple of times I think to a checklist that might have been used the year before that was available to you?---Yes.

PN10128

Does the document I've just given you have anything to do with that subject?---It was probably a very similar document that we might have used as a checklist.

PN10129

What's the document I've just given you?---So this one, it's dated 2005, so I'm not sure.

PN10130

I'm sorry, say it again?---It's dated 2005.

PN10131

Yes?---And you were asking me about 2004?

PN10132

No, I'm just asking you what this document is?---Yes - no, this is a checklist that the validators used. So that's what we used. Most services would keep a copy of this so that they can make sure they're following all the requirements, and especially just before the validator comes. When they announce that they're going to do an accreditation visit, we'd go through and make sure - have we got all these things - yes, and this was the checklist that we would use.

PN10133

Do you know if this document dealt with a particular service?---Yes, this is from a friend's service.

PN10134

I tender that document. It is headed, "Guidelines for completing this validation report." At least that's the text that appears on the front page.

*** KARTHIKA VIKNARASAH

RXN MR FAGIR

PN10135

VICE PRESIDENT HATCHER: Document entitled, "Guidelines for completing validation report", will be marked exhibit 129.

EXHIBIT #129 GUIDELINES FOR COMPLETING VALIDATION REPORT

PN10136

MR FAGIR: Ms Viknarasah, it was a while ago now, but you were asked some questions about the Australian Professional Standards for Teachers?---Yes.

PN10137

And it was suggested to you that the standards communicated to the reader the professional expectations of teachers?---Right, yes.

PN10138

In your responses, you seemed to draw a distinction between the position of a lay reader and a professional perhaps, and you ultimately said that, if my note is correct, that for a lay person reading the standards it would give some idea but not necessarily an accurate picture?---Correct.

PN10139

Can you just explain why you say that?---I guess with any job, you can have the written description of the job and then the actual work that you do, even the work that you're doing right now. If someone wants to write it and put it on a website somewhere, you might say that that's not exactly what I spend my day-to-day time doing. Yes, it's a big picture overview of what I do, but the hours that I spend working might look - it's not accurately depicted in that overview.

PN10140

This was quite some time ago and you may not be able to recall, but just doing your best, you were asked some questions about ratios?---Yes.

PN10141

And you were asked whether a scenario that you had put where a class was divided 10 children with a teacher and 10 children with a diploma educator would ever occur, and you said something about that?---Correct.

*** KARTHIKA VIKNARASAH

RXN MR FAGIR

PN10142

As part of your answer, you started to say to Mr Taylor that the way ratios work is - and then you were interrupted. If you can remember what you were trying to say, could you please say it now?---I believe there might have been a misunderstanding, I'm not sure, that an early childhood teacher is in the room looking after the children regardless of how many children there are, but it's actually not - the early childhood teacher is one of the staff that you use for ratios. So the maximum ratio we can have here is 10, so you would have one staff to 10 children, and that could be the early childhood teacher, the diploma, the Cert III, whatever. If it was in the baby's room, it would be one to four. So you would have the one early childhood teacher with four babies, and maybe another diploma staff with another four babies. In the context of the ratios for a primary

school, where you would have only the teacher with however many children were in the class.

PN10143

You were asked some questions about assessment under the old system and the new system?---Yes.

PN10144

And it was put to you that the fact that a service was accredited under the old system didn't necessarily mean that it had met every indicator for every principle?---Correct.

PN10145

I think you accepted that as being correct but you said something to the effect of we'd have even less idea now?---Correct.

PN10146

Do you recall that discussion?---So I'm just going to refer to the snapshot that we provide and hopefully it's got the answer in there. You don't have to be accredited even under the current system to have met every element in every principle, or however you want to use the words. It's more often weighted average I guess is the way the current system works and the old system works, or worked.

PN10147

Why do you say we'd have less idea now then?---Because at least in the old system we had this comprehensive 700 plus checklist to say you have or you don't have these documents, whereas in the new system we don't have such a comprehensive checklist, we have vague statements and it can depend on the assessor on the day. As an example at my two centres which were assessed last year, the thing that one assessor said was really excellent high quality, the other assessor said was very poor quality. So it's very hard to make up your mind as to what practice you're going to follow.

PN10148

Finally, it was suggested to you that your approach to documentation was an outline. You mentioned that you went to a seminar conducted by a particular consultant?---Yes.

PN10149

Now I rather got the sense that you were trying to avoid identifying the consultant by name but I'm afraid the name appears in the statement which has been admitted into evidence, so the horse has I think bolted. You identified the consultant as Anthony Semen?---Siemen.

PN10150

Siemen. Do you know if - - -

*** KARTHIKA VIKNARASAH

RXN MR FAGIR

PN10151

VICE PRESIDENT HATCHER: Sorry where in the statement? Which statement's that?

PN10152

MR FAGIR: Paragraph 30 of the supplementary statement.

PN10153

VICE PRESIDENT HATCHER: Yes, thank you.

PN10154

MR FAGIR: Tell me if you don't know but do you know if Anthony Siemen has any connection to Siemen and Slattery, the consultancy which has created the series of workshops for the G8 Teacher Development Program?---Yes, Siemen in Siemen and Slattery is Anthony Siemen.

PN10155

Thank you, Ms Viknarasah, they're the questions, Commission please.

PN10156

VICE PRESIDENT HATCHER: Thank you for your evidence, Ms Viknarasah, you're excused and you're free to go.

<THE WITNESS WITHDREW

[4.55 PM]

PN10157

MR FAGIR: I have some documents to tender.

PN10158

VICE PRESIDENT HATCHER: First of all there's the outstanding statement of Sarah O'Donnell? No, she wasn't called was she?

PN10159

MR FAGIR: I was going to make some attempt to persuade the Bench to admit the two statements of Ms O'Donnell and Ms Wolf, despite the fact that they weren't available for cross-examination.,

PN10160

VICE PRESIDENT HATCHER: Well, no, just hold on. There was the - - -

PN10161

MR FAGIR: Ms Johnson was not required for cross-examination.

PN10162

VICE PRESIDENT HATCHER: Yes, all right. Let me just find that first. So the statement of Nicola Suzanne Johnson dated 23 May 2018 will be marked exhibit 130.

**EXHIBIT #130 STATEMENT OF NICOLA SUZANNE JOHNSON
DATED 23/05/2018**

PN10163

MR FAGIR: There's a document currently marked for identification - - -

*** KARTHIKA VIKNARASAH

RXN MR FAGIR

PN10164

VICE PRESIDENT HATCHER: Just hold on a second, Mr Fagir. Yes.

PN10165

MR FAGIR: There's a document marked for identification, the number of which I don't have. It's the AEDC 2018 the report dealing with - - -

PN10166

VICE PRESIDENT HATCHER: Yes, that's MF11.

PN10167

MR FAGIR: There's no objection to the tender of that statement. I have a related document that I wish to tender which is - - -

PN10168

VICE PRESIDENT HATCHER: Let me just deal with that. The document entitled Australian Early Development Census National Report 2018 will be marked exhibit 71.

**EXHIBIT #71 AUSTRALIAN EARLY DEVELOPMENT CENSUS
NATIONAL REPORT 2018**

PN10169

MR FAGIR: Thank you. The document which I've just handed up and which I tender is a document from a related series, it's in the nature of a summary which captures as the title suggests Trends over the period 2009 to 2018.

PN10170

VICE PRESIDENT HATCHER: Is there any objection?

PN10171

MR TAYLOR: No.

PN10172

VICE PRESIDENT HATCHER: So the document entitled "Trends from the AEDC" will be marked exhibit 131.

**EXHIBIT #131 DOCUMENT ENTITLED TRENDS FROM THE
AEDC**

PN10173

MR FAGIR: Finally, I have documents produced by one of my client's members for an order for production. This is Ms Viknarasah's corporate entity that operates some part of the business, a profit and loss statement in relation to one of the relevant entities was tendered but not this document.

PN10174

VICE PRESIDENT HATCHER: Any objection?

PN10175

MR TAYLOR: Firstly, I'm not sure this is - is this document complete? That is, is this in fact all the documents that were produced in answer to this order?

Secondly, I mean if Ms Viknarasah wanted to give evidence about these things she could have and so it's not entirely clear why after she's left the witness box we should now have evidence introduced as to her financial affairs and operations. I think it's a bit late with great respect.

PN10176

MR FAGIR: Documents produced under subpoena, there can be no questions about their provenance and if they're relevant, we'd rather suggest we're entitled to tender them on that basis.

PN10177

MR TAYLOR: There are two requirements; they have to be relevant but there's more than just relevance in a case. I mean to start tendering material relevant to a particular witness after they've left the witness box is just frankly too late. But also, and if we're wrong about that, it should be complete.

PN10178

VICE PRESIDENT HATCHER: Are these all the documents produced, Mr Fagir?

PN10179

MR FAGIR: Yes.

PN10180

MR TAYLOR: Sorry, I apologise to my friend. Part of the order required records of payments including wages to various people including directors and other relatives. Ms Viknarasah gave evidence that are such people and indeed they were receiving remuneration. There's nothing produced in respect of that material. I chose not to go down this path but it's one of the things that arise out of an attempt to tender a document after the event, after the witness has left.

PN10181

VICE PRESIDENT HATCHER: Well, she's still here.

PN10182

MR TAYLOR: Right, yes, I accept that.

PN10183

VICE PRESIDENT HATCHER: Where's the rest of the documents, Mr Fagir. That is on its face, assuming the business was orderly and had records of wages page, why aren't they produced?

PN10184

MR FAGIR: I don't know. This issue's new to me. I'm just trying to tender a profit and loss statement.

PN10185

VICE PRESIDENT HATCHER: Well, no, you're tendering it as documents termed pursuant to an order for production.

PN10186

MR FAGIR: I'm quite to tear the order for production off the front of the document and tender it as the profit and loss statement which was produced pursuant to an order for production. I'm not suggesting there's not some issue behind all this that I'm not aware of but I'm just not sure why it bears on the question of tender of this document.

PN10187

VICE PRESIDENT HATCHER: Mr Taylor, we'll admit the document. We note that the witness is still in court. If you want to ask her anything about that document.

PN10188

MR TAYLOR: Thank you. Let me have a moment to consider that.

PN10189

VICE PRESIDENT HATCHER: We'll just remove it from the order and just have the single document as the profit and loss statement. So I'll mark the document headed, "Choice Childcare Holdings Pty Ltd year ending 30 June 2017", as exhibit 132.

EXHIBIT #132 CHOICE CHILDCARE HOLDINGS PTY LTD YEAR ENDING 30/06/2017

PN10190

MR TAYLOR: Yes, I'd like to cross-examine.

PN10191

VICE PRESIDENT HATCHER: You do want to cross-examine?

PN10192

MR TAYLOR: Yes. Yes, Ms Viknarasah, can you come forward to the witness box again, please? We'll just swear you in again, Ms Viknarasah.

<KARTHIKA VIKNARASAH, RECALLED AND REAFFIRMED [5.04 PM]

FURTHER CROSS-EXAMINATION BY MR TAYLOR [5.04 PM]

PN10193

VICE PRESIDENT HATCHER: Mr Taylor?

PN10194

MR TAYLOR: Thank you.

PN10195

VICE PRESIDENT HATCHER: So you have a copy of the document in front of you?--I do.

PN10196

MR TAYLOR: Yes, and does that include the pages that have been tendered, the order requiring production as well?--I don't have that page.

*** KARTHIKA VIKNARASAH

FXXN MR TAYLOR

PN10197

Could that be provided to the witness as well? The document that has been tendered, a profit and loss statement of Choice Childcare Holdings, this is in respect of the Choice centre that has partly children over preschool age and partly children that are preschool age?---Correct.

PN10198

And that centre didn't employ an early childhood teacher at this time, did it?---Correct.

PN10199

You were made accessible to the centre to meet ratio requirements?---Correct.

PN10200

So when one looks at the increase in salaries between 2016 and '17, no part of that increase is referable to hiring ECTs or promoting staff to an ECT level?---No. There might have been some casual or part-time staff who came for a short term, but - - -

PN10201

Yes. Do I understand your earlier evidence that part of the salaries here contained is amounts that were paid to your mother?---Correct, my mother and father.

PN10202

Your mother and father. And superannuation has a dash "- associated persons." Are those associated persons your parents?---Yes.

PN10203

Can you recall now what percentage of the salaries ordinary were paid to your mother and father?---So they received directors fees. They don't receive a salary.

PN10204

But what about superannuation, were they receiving that?---Yes. So they got - they're over retirement age, so it's more like a voluntary contribution, I believe.

PN10205

I'm now confused. I asked you I think twice whether salaries were being paid to your parents and that the figures here include the salaries paid to your parents. Are they or are they not?---Sorry, my mistake. It's not a salary. It's a directors fee. There are payments made to my parents, but it's not a salary.

PN10206

And are those fees to be found contained within the salaries line item?---No. It's listed as directors fees on the first page of the - - -

PN10207

Where do I find that?---The first page of the - - -

*** KARTHIKA VIKNARASAH

FXXN MR TAYLOR

PN10208

Yes. So in these figures, in each year there's \$30,000 paid to your parents in fees?---Yes.

PN10209

And in the first year a further \$98,000 paid to your parents in superannuation payments?---Yes.

PN10210

And in the more recent of the two years, \$52-and-a-half thousand paid to your parents?---Yes.

PN10211

As I understood it - tell me if I'm wrong - from your earlier evidence, at this point your parents weren't actually working for the business?---Correct.

PN10212

And nevertheless they were receiving large lump sum payments to them in the form of superannuation contributions?---Well, they are the owners of the business.

PN10213

Yes?---And this is for their ownership of both businesses, because they don't draw anything from the other centre.

PN10214

So these aren't - but the superannuation payments are not some dividends being paid by the company; they are payments that are made to employees, are they not?---I'm not sure how it's reflected in their tax returns.

PN10215

Nor are we, which is one of the difficulties we're dealing with.

PN10216

VICE PRESIDENT HATCHER: But how do they - how does this become - - -

PN10217

MR TAYLOR: Can I just turn you to - yes, go on - sorry, your Honour.

PN10218

VICE PRESIDENT HATCHER: Ms Viknarasah, how does this become an expense to the business?---I believe that this becomes an expense - well my dad does the accounts, so he does - he prepares this profit and loss statement for the accountant, as well as he does - he looks after the business. It's their building; it's their business, so that's a payment to them.

PN10219

But they're retired?---Semi-retired. Dad still is there every weekend doing maintenance and repairs.

PN10220

Yes, all right.

*** KARTHIKA VIKNARASAH

FXXN MR TAYLOR

PN10221

MR TAYLOR: Can you look at the other document? They have been separated now, so there's another document, which is the order. See number 22 of the schedule, it required records of payments, including wages made during the financial year to June 2017. Two - the second one is directors. That would capture both of your parents?---Correct.

PN10222

And one then hardly needs to go to (c), which also would have captured your parents: any spouse, children or relatives of the proprietors. Are you aware that as recently as last Friday we wrote to those who are appearing for ACA asking whether anything was going to be produced in response to number 22?---I'm not aware. I know that I was asked about these issues, and I said well all I have is the profit and loss and it clearly states payments made to my parents. So that's all that there is. There's nothing else.

PN10223

There's no other written record of the superannuation payments made?---I don't know. I assume that their superannuation fund would have some record.

PN10224

The company doesn't keep a record of a payment made to people in the last six years in respect of superannuation, are you seriously suggesting that?---I don't know what other records there are for this, but as far as I know, this is all there is.

PN10225

Did you make any inquiries to find out whether there were in fact records that met the order of this Commissioner that you were required to produce?---So my mother is overseas at the moment and she has been for most of the year, and I asked my father, because he was travelling in and out of Australia, and he said look, there's this or there's a tax return; that's pretty much all that there is.

PN10226

And a tax return being a tax return of - - -?---I guess their personal tax return. I'm not sure.

PN10227

Did you not inform those appearing for ACA that you had another document?---A tax return?

PN10228

Yes?---Well, I said that this - because this is what my father said: in terms of if you want to know what payments were made to directors or relatives or anything, it's written here in the profit and loss. So he wasn't sure what else you would need.

*** KARTHIKA VIKNARASAH

FXXN MR TAYLOR

PN10229

There's nothing on the face of the document that would have allowed any reader to know that these were payments to relatives, is there?---I mean, it says directors fees and superannuation associated person, so - - -

PN10230

Yes, but the document itself doesn't identify them to be your relatives?---No.

PN10231

That's something that we have discovered today, is that right?---Well, this was produced as a response to that, and I don't know, I explained at the time this is what there is to show payments to relatives.

PN10232

VICE PRESIDENT HATCHER: So, Ms Viknarasah, you're not an employee of this company?---No.

PN10233

MR TAYLOR: And you nevertheless need to spend at least a day of your time doing work for this company?---Yes.

PN10234

And do we find the cost of doing that work in here as a consultancy or anything else?---No. The only payment I get is in the other profit and loss statement that I showed you.

PN10235

So the partnership that does employ you - - -?---Yes.

PN10236

- - - provides your consulting services at least a day a week?---Yes.

PN10237

At no cost at all to this business?---Yes.

PN10238

Thank you, those are the questions.

PN10239

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

PN10240

MR FAGIR: No.

PN10241

VICE PRESIDENT HATCHER: Thank you for your evidence once again, Ms Viknarasah. You're excused.

<THE WITNESS WITHDREW

[5.13 PM]

PN10242

VICE PRESIDENT HATCHER: Yes, where were we?

PN10243

MR FAGIR: That was the last document I needed to tender.

*** KARTHIKA VIKNARASAH

FXXN MR TAYLOR

PN10244

VICE PRESIDENT HATCHER: All right, so on your side, Mr Taylor, there was the - if I can put my hand on it - the further report of Professor Irvine?

PN10245

MR TAYLOR: Yes, correct. If I could tender that?

PN10246

VICE PRESIDENT HATCHER: All right, so the statement and report of Susan Irvine dated 19 June 2019 will be marked exhibit 133.

**EXHIBIT #133 STATEMENT AND REPORT OF PROFESSOR
SUSAN IRVINE DATED 19/06/2019**

PN10247

MR TAYLOR: And we have an updated document. Document number 102 in our master index is a Professional Engineers' Employment and Remuneration Report for I think it would have been 2017. I seek to tender the more recent version of that document, the 2018 report.

PN10248

VICE PRESIDENT HATCHER: So what number was the original document?

PN10249

MR TAYLOR: I'm told it was 102.

PN10250

VICE PRESIDENT HATCHER: All right, Professional Engineers' Employment and Remuneration Report 2018 will be marked exhibit 134.

**EXHIBIT #134 PROFESSIONAL ENGINEERS' EMPLOYMENT
AND REMUNERATION REPORT 2018**

PN10251

MR TAYLOR: I think that from my side of the bar table completes the evidence that we have to tender.

PN10252

VICE PRESIDENT HATCHER: All right, just hold on a second. So there's no application to mark any of those - to tender any of those calculation documents? Do we - - -

PN10253

MR TAYLOR: No, I treat them as aide memoire documents.

PN10254

VICE PRESIDENT HATCHER: Yes, all right.

PN10255

MR TAYLOR: And we will refer to them in our submissions but I don't think they can properly be said to be evidence.

PN10256

VICE PRESIDENT HATCHER: All right.

PN10257

MR TAYLOR: But they were nevertheless used in cross-examination and since each witness has commented on them it's useful of course for them to be marked. So we don't seek to tender them.

PN10258

VICE PRESIDENT HATCHER: All right, so that's all the evidence?

PN10259

MR TAYLOR: It appears so.

PN10260

VICE PRESIDENT HATCHER: Have the parties had any discussions about inspections?

PN10261

MR TAYLOR: No, our sitting hours and the nature of the extra evidence meant that I had keep meaning to send a note to my friend to identify whether he had a response. We put our position I think on the record. I just haven't had a chance to speak to Mr Fagir about it.

PN10262

Is there something you want to say or is it something we need to have a discussion about and then communicate with the Commission?

PN10263

VICE PRESIDENT HATCHER: Well, if there's no consensus reached - - -

PN10264

MR TAYLOR: It's not that - yes, not yet.

PN10265

VICE PRESIDENT HATCHER: - - - and it hasn't been discussed, well, I think we should continue to let you do that.

PN10266

MR TAYLOR: Yes.

PN10267

VICE PRESIDENT HATCHER: Can the parties tell us whether all three days for closing submissions will be required? And I only ask that because one option may be that we could use at least part of the first day to do inspections, knowing that Mr Fagir will be available on that day.

PN10268

MR FAGIR: I am available on 1 August, which was one of the somewhat available dates.

PN10269

VICE PRESIDENT HATCHER: All right.

PN10270

MR TAYLOR: But for our part we think it would be much safer to have three days for submissions. The two parties at the bar table have been dominating the case but there are of course other parties as well and I can certainly anticipate that for our side we'll take at least a full day to put what we want to put. So I think the three days would be much more appropriate.

PN10271

VICE PRESIDENT HATCHER: Is it convenient simply for us to pencil in 1 August as a day for inspections?

PN10272

MR TAYLOR: Yes.

PN10273

VICE PRESIDENT HATCHER: And wait for further communication from the parties?

PN10274

MR TAYLOR: I think that would be sensible in light of what Mr Fagir said about his availability. We were available on either day but that would be sensible, if it please, yes.

PN10275

VICE PRESIDENT HATCHER: All right, well, if there's nothing further we'll now adjourn.

PN10276

MR FAGIR: I'm sorry to raise this at the 11th hour but would the Full Bench be assisted by written submissions?

PN10277

VICE PRESIDENT HATCHER: I don't really want to put the parties to the task of requiring them to do that, particularly as you'll be turning your minds now to the statement of agreed facts between now and the submissions, which we all look forward to, and it's going to deal in a comprehensive way I hope with the regulatory regime both in its current form and its previous iterations. But obviously if a party wishes to hand up a document when they make their submissions, whether it's an outline or whether it's comprehensive, obviously the parties are entitled to do that.

PN10278

MR FAGIR: If the Commission please.

PN10279

VICE PRESIDENT HATCHER: All right, we'll now adjourn.

ADJOURNED TO A DATE TO BE FIXED

[5.19 PM]

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