



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**

**10.09 AM, TUESDAY, 25 JUNE 2019**

**Continued from 20/06/2019**

PN2708

VICE PRESIDENT HATCHER: What is the first order of business today?

PN2709

MR TAYLOR: Well, I thought I'd just run through what we're doing today and also identify some material that we'd like to tender which arises out of us not sitting yesterday. One of the things that we're going to do at the outset is call a witness in respect of whom there is some supplementary statement and I understand from the material that we got yesterday, towards the end of the day, that will generate an application by my friend Mr Fagir. But I just thought before we get there we might just run through what we're doing. So the first witness is Jenny Finlay who is an early childhood teacher and director from Emerald in Queensland, and the supplementary - she has a statement that was filed on 21 November 2018 and then yesterday morning we provided in draft form a supplementary statement that updated her evidence in some respects and attached some documents. There's going to be, I think, an argument about this so I just hand copies of it up now without asking the Bench to necessarily go to it now, but just so that it's available to you at the point where that arises.

PN2710

VICE PRESIDENT HATCHER: That's the statement dated 24 June 2019?

PN2711

MR TAYLOR: Correct, yes. You might already have copies of it. If there's going to be an argument about it, it seems sensible that that occur before Ms Finlay actually comes into the witness box. There were three other witnesses scheduled for today. The next one was to be Mr Mark McKinnon a New South Wales secondary school teacher. We were advised yesterday that he would not in fact be required for cross-examination and so in a moment I intend to tender some statements including his.

PN2712

Then we have two other witnesses, an early childhood teacher Amanda Sri Hilaire, who has provided statements - initial statements in December 2017, a reply statement in July 2018 and then last week on the 18th a supplementary statement which the Commission would have, which describes the day to day activities of an early childhood teacher in her experience that we will be seeking to rely on. Then the last witness is Mr Kenan - K-e-n-a-n - Toker, professional engineer, who has given two statements, one in December 2017 and one in - I've got that date wrong but two statements. I think one in December 2017 and a second in the middle of 2018.

PN2713

As the Bench is aware we didn't sit yesterday in circumstances where we were advised on Friday afternoon that contrary to previous advice those appearing for the employers did not in fact require any of them for cross-examination, and at that point it was too late for us to be able to schedule anyone else which led to the letter that you got from ACA on Friday afternoon, indicating that there would be no evidence available to be called yesterday. I'd like to be able to tender that material. I can do that now if it's convenient to the Commission and the material's

to hand. Alternatively, if the Commission prefers I can identify the material at a more convenient time.

PN2714

VICE PRESIDENT HATCHER: Well, I think we'll do that now.

PN2715

MR TAYLOR: Yes.

PN2716

VICE PRESIDENT HATCHER: Just take it slowly so I can put them on - - -

PN2717

MR TAYLOR: I will. The first statement is that of Professor Sue Dockett - D-o-c-k-e-t-t, Professor of Early Childhood Education from Charles Sturt University. She filed a single statement on 3 - it's dated 3 December 2017 in the ERO proceedings. It's just one statement. We tender that statement.

PN2718

VICE PRESIDENT HATCHER: The statement of Professor Sue Dockett dated 3 December 2017 will be marked exhibit 44.

**EXHIBIT #44 STATEMENT OF PROFESSOR SUE DOCKETT  
DATED 03/12/2017**

PN2719

MR TAYLOR: The next witness was a statement filed in the Work Value proceedings on 23 November of Ruth Pendavingh, if I've got the pronunciation right. It's P-e-n-d-a-v-i-n-g-h, a Victorian secondary school teacher, 23 November 2017.

PN2720

VICE PRESIDENT HATCHER: What was the date of that?

PN2721

MR TAYLOR: My note is 23 November 2017 - of 18, my apologies. My apologies, 18.

PN2722

VICE PRESIDENT HATCHER: The statement of Ruth Pendavingh dated 23 November 2018 will be marked exhibit 45.

**EXHIBIT #45 STATEMENT OF RUTH PENDAVINGH DATED  
23/11/2018**

PN2723

MR TAYLOR: The next is a statement of Mr Anthony Cooper, C-o-o-p-e-r, a Queensland secondary school teacher, also dated 23 November 2018, filed in the Work Value proceedings.

PN2724

VICE PRESIDENT HATCHER: The statement of Anthony James Cooper dated 23 November 2018 will be marked exhibit 46.

**EXHIBIT #46 STATEMENT OF ANTHONY JAMES COOPER  
DATED 23/11/2018**

PN2725

MR TAYLOR: The next statement is that of Grumley, Mr Larry Grumley, G-r-u-m-l-e-y, a New South Wales secondary school teacher. The statement itself is undated and I am told it was filed on 23 November 2018.

PN2726

VICE PRESIDENT HATCHER: Statement of Larry Grumley undated but filed 23 November 2018 will be marked exhibit 47.

**EXHIBIT #47 STATEMENT OF LARRY GRUMLEY UNDATED  
BUT FILED 23/11/2018**

PN2727

MR TAYLOR: Then turning to McKinnon, Mark McKinnon, who is to be called today. Mark McKinnon, a New South Wales secondary school teacher and I understand his statement is dated 23 November 2018.

PN2728

VICE PRESIDENT HATCHER: Sorry, what was that date again?

PN2729

MR TAYLOR: Mr Mark McKinnon, it was filed - New South Wales secondary school teacher, filed along with the other material on 23 November 2018. The statement itself appears to be undated though.

PN2730

VICE PRESIDENT HATCHER: Statement of Mark Andrew McKinnon undated but filed on 23 November 2018 will be marked exhibit 48.

**EXHIBIT #48 STATEMENT OF MARK ANDREW McKINNON  
UNDATED BUT FILED ON 23/11/2018**

PN2731

MR TAYLOR: Just while we're talking about schedule, in circumstances where we're generally finding that we are not using the hearing days, I'm making inquiries as to whether Lisa James who's currently scheduled for Thursday afternoon can come tomorrow, so that if necessary we - if we're able to deal with her tomorrow we can and I'll let you know whether that's possible. So that then deals - - -

PN2732

VICE PRESIDENT HATCHER: It seems to me that on the current pace of cross-examination you could quite easily do six witnesses a day.

PN2733

MR TAYLOR: Yes, indeed, and obviously when witnesses aren't actually required at all, that opens up opportunities as well. So we'll do what we can to move Lisa James. Some of the witnesses, many of them, of course are not our employees and moving them has proved difficult but Lisa James is in a category where we'd like to think she can be moved but we haven't yet spoken to her to make sure that that's possible. That takes us then to calling Ms Finlay. As I indicate - - -

PN2734

VICE PRESIDENT HATCHER: We'll hear from Mr Fagir. With respect to Thursday - - -

PN2735

MR TAYLOR: Yes.

PN2736

VICE PRESIDENT HATCHER: So it will be desirable if we could finish by two on that day. So even if you can't move on of the witnesses forward, I think we'll start at 9 am on Thursday.

PN2737

MR TAYLOR: We will - Ms Cullen is joining us on Thursday morning by video link from Norfolk Island but it may well be, I think, that Ms Gleeson is able to come earlier. So it may well be then Ms Gleeson is the first witness. If Ms Cullen and the video link require exact timing then that might complicate matters if Ms Gleeson hasn't finished. But that seems sensible and then we will then - if we can deal with Ms James tomorrow that will leave us commencing the cross-examination of Ms Kearney, and we've given an estimate of about an hour and a half for that cross-examination.

PN2738

VICE PRESIDENT HATCHER: Mr Fagir, can she be moved forward to the morning?

PN2739

MR FAGIR: Ms Kearney will be appearing by video link from Victoria and we think she can - she is flexible. I should say though that moving Ms James to Wednesday creates a difficulty for me.

PN2740

VICE PRESIDENT HATCHER: Right.

PN2741

MR FAGIR: In terms of being ready to cross-examine and deal - in terms of being ready to deal with the new evidence. A lot of this it seems to us depends on the fate of the new evidence and whether it's admitted or rejected, but if it is admitted I'll have a difficulty dealing with her on Thursday. On Wednesday, I'm sorry.

PN2742

VICE PRESIDENT HATCHER: Yes, all right.

PN2743

MR TAYLOR: Ms James' evidence has already been admitted. It was admitted when she gave evidence-in-chief and it was then postponed on the basis that Mr Fagir would have time to prepare the cross-examination, and then of course since then there's been considerable half days and full days where we haven't sat, so we for our part would think it's sensible that we move her to tomorrow. That's a matter for the Commission in light of any submission Mr Fagir might make about that. But if we don't move her then we, I suspect, are not going to be able to complete the cross-examination of Ms Kearney by 2 o'clock, although that does depend on quite how short Mr Fagir is with our three witnesses.

PN2744

VICE PRESIDENT HATCHER: Right, Mr Fagir.

PN2745

MR FAGIR: The Bench has I hope received a statement and submissions circulated yesterday. Could I firstly tender the statement of Mr Mondo. That is strictly speaking the statement of Paul Alexander Mondo signed on 24 June 2019.

PN2746

VICE PRESIDENT HATCHER: The statement of Paul Alexander Mondo dated 24 June 2019 will be marked exhibit 49.

**EXHIBIT #49 STATEMENT OF PAUL ALEXANDER MONDO  
DATED 24/06/2019**

PN2747

MR TAYLOR: Can I just indicate there were a number of things in this statement which we take issue with. I understand that what my friend is effectively doing is making an interlocutory application and it's not uncommon in those circumstances for there not to be any cross-examination - - -

PN2748

VICE PRESIDENT HATCHER: That probably understates the position but - - -

PN2749

MR TAYLOR: Yes. But there is certainly material in there that we would challenge as accurate but I thought that I could deal with that by way of submission, but as long as it's understood that the lack of cross-examination is not indicative that we accept the material that's contained in there in totality is correct.

PN2750

VICE PRESIDENT HATCHER: Mr Fagir.

PN2751

MR FAGIR: Could I ask whether the Bench has received and this is a dangerous question, and had the opportunity to read the submission that was circulated with the statement yesterday?

PN2752

VICE PRESIDENT HATCHER: We received it. Read might put it slightly too highly but we've looked at it.

PN2753

MR FAGIR: Well, I had hoped to avoid rehearsing anything that appears in it and just deal with one issue as a practical illustration of the problem. Could I perhaps try to summarise the effect of the submission in this way. Firstly, it appears to be common ground that any adjournment of this proceeding now would be unacceptable for a variety of reasons, and it appears to us that that's not an option that anyone regards as being on the table. We put that to one side. That being the case, the short point is that for a series of reasons which we have outlined the evidence is admitted, there is unavoidable and incurable prejudice to my client which is the innocent party in all of this.

PN2754

Now we see it the starting point is that in the absence of an explanation for the failure to provide this evidence sooner, particularly in light of the history of the proceeding, the adjournment last year, the submission in which we flagged this issue loud and clear, we didn't have to. We could have waited until closing submissions to identify the problem but we flagged it loud and clear months ago. In that context we say the absence of any explanation is sufficient basis to reject the evidence.

PN2755

Now if we're wrong about that, we've identified the species of unavoidable prejudice in our written submissions and they are in effect that firstly, by reason of resourcing difficulties which when Mr Mondo deals with, my client will not be able to put its best foot forward in responding to the evidence. Now separate to that issue and even if my client had all the money in the world, as a matter of time both my time, Ms Whish's time and the time of the potential witnesses and the people who are able to respond to this material, again my client cannot put its best foot forward in responding to this evidence in the time that's allowed. Now there's more in the written submission but that is really the heart of what we say.

PN2756

Could I just attempt to make that good by reference to a particular statement, the statement of Ms Connell and I say this in light of a submission that's been made a couple of times to the effect that this really isn't that big of a deal when it should be able to be dealt with in-between hearing days and in-between cross-examination of witnesses. Could I just deal with that very specifically by reference to Ms Connell's statement.

PN2757

VICE PRESIDENT HATCHER: I'm not sure I have that to hand, Mr Fagir.

PN2758

MR FAGIR: I might have a copy with a couple of markings, none of them offensive and I can use an electronic copy if that's convenient. We have a second hard copy if - - -

PN2759

VICE PRESIDENT HATCHER: Yes, thank you.

PN2760

MR FAGIR: This is the fourth statement from Ms Connell and it was received last week. Now if I could just run through it, your Honours will see on the first page under the heading "Updates and Corrections", there's an update that deals with an issue that apparently came to pass at the end of 2018, shortly after the evidence-in-chief when this matter was filed, and well before the reply evidence was filed. There is then some description of the fate of various teachers. It's not at all clear when this was said to occur but we have between two and seven, some grossly inadmissible evidence about things other people have done and problems that other preschools have done rests on some fairly profound factual misapprehensions, but we can deal with that in due course. But the point is nothing to do with this day to day work issue, just an opportunity to - - -

PN2761

VICE PRESIDENT HATCHER: I mean I understand why you would object to things perhaps like the second sentence in the third paragraph but to the extent that it involves factual updating, why would that be prejudicial?

PN2762

MR FAGIR: Well, it's prejudicial because we got it last week. It's not at all clear that it is updating. It's not at all clear that this is something that came after the opportunity to file evidence in accordance with the directions that happened. It's not indicated one way or another. In any case, the fact that it does deal with something that came after the date in April or May this year doesn't deal with the prejudice but I'll just say that this is - we can deal with this, this isn't really the heart of the issue.

PN2763

Your Honours will then see under the heading, "Critical Reflection", again this is not updating or anything to do with day to day work. It's just a new set of high level opinions expressed by Ms Connell. Then on page 3-1 comes the day to day work. There is then something that perhaps falls within the rubric of the - you can call it invitation but the issue that has been discussed. There's then a reference in paragraph 15 to annexure GC1, which is said to be an example of how Ms Connell might develop a learning program. Your Honours will see that from pages 5 onwards, no doubt it's my lack of understanding of pedagogy but this means nothing at all to me and I have no idea what to make of it. There is then at paragraph 16 a reference to a table which Ms Connell says sets out the day to day duties before and after 2012. That begins at page 10 and runs for the following 15 pages.

PN2764

Now if I could just start with the first entry in that first of the 15 pages.

PN2765

*8 am to 8.30 arrive at work, sign in as responsible person, sign in wages book, sign into room. Prior to 2012 previously only signed into staff attendance/wages book.*



PN2766

This immediately throws up questions unanswered in this statement as to whether this is said to be some general practice or the practice at this particular service. Whether it's said to be a requirement of the National Quality Framework and if so what aspect of the National Quality Framework requires it and so on and so forth. In order to respond to this we firstly need to identify the proposition, then work out if there is some section of the national law or the EYLF or the NQS or something else that might possibly require this change, as our people who are instructing us about it and invite their responses. In inviting their responses as it seems to us, if we're going to respond to this properly, we need to do our very best to demonstrate that this is not a widespread practice, and that means not one person is saying this doesn't happen at my service but as many people as we possibly can saying I don't know why this change happened at this service in 2012, but it hasn't happened at ours.

PN2767

Now that is one of - we've actually gone through the exercise and it took quite a bit of time of trying to isolate each of the propositions that's set out in this table and there are about 85 of them put on a big A3 sheet of paper and now we need to invite responses consistent with the first ones simplest in a way, there are much more complicated issues about whether, for example, a play-based curriculum was an innovation in 2012, not a straight forward - well, perhaps it is a straight forward question but the evidence dealing with it isn't straight forward, particularly when one's dealing with a total failure to identify what existed before 2012, in all of the evidence. Not just this, the experts, everyone. No one's told the Commission what was in place before. It's as if this all came out of the blue. Now we have a play-based curriculum before 2012 we didn't need to do it.

PN2768

That's a - if we are in one view entitled to sit back and say we don't have an onus of proving anything and we know because Professor Press acknowledged that there was, for example, in New South Wales a curriculum and there was something called the quality improvement accreditation system, and if the applicant doesn't bother to deal with that, it's not our problem. But we're not quite that brave. We need to do something to deal with it and is not a simple exercise. We need to do that time and again in responding to Ms Connell alone, as I say, 80-odd different propositions.

PN2769

The idea that this is something that can just be done at lunch time or after hearing, in my respectful submission, is not one which would be accepted. We're told well we didn't sit yesterday so that gave us time. A major part of the reason that we decided not to cross-examine yesterday's witnesses is that we need the time to deal with everything we have to deal with. So it's already the case that our forensic decisions are being compromised or our preferred approach to this is being compromised as a result of the work that we are not required to do, not because of something we failed to do but because the union failed to properly reflect that any point in the past several years, on the evidence that might be required to make good a work value application.

PN2770

I won't go on and I'll try not to slip into speechifying but my point simply is, this isn't a matter of grand standing of our procedural fairness or taking some point about a failure to comply with directions. There's a real practical difficulty that we have, if the Commission please. If I need to expand on that by reference to the other statements I can. The fact that some of them are short doesn't really make any difference. The statement of Ms Finlay which I should say is in a different category because this came - we got a sort of half a statement in the morning and then the full statement in the evening, and I can hand up the draft that we got in the morning, if there's some controversy about that.

PN2771

VICE PRESIDENT HATCHER: The morning of what?

PN2772

MR FAGIR: I'm sorry?

PN2773

VICE PRESIDENT HATCHER: When you say the morning, the morning of when, yesterday?

PN2774

MR FAGIR: The morning of yesterday. That's in a totally different proposition. So that in my respectful submission needs to be dealt with separately and not come in in accordance with the direction. But even though the statement is short it sets out in one paragraph a series of four or five conclusions. For example, workload has increased compared to what it was in the past. Well, again, we can either say that's a conclusion that bears no weight if we are brave, or if we want to respond to it, it might be one sentence but responding to it meaningful is not a straight forward exercise.

PN2775

I emphasise that when it comes to the additional statement of Ms Finlay we'd seek to be heard separately, but the point that I'm making is Ms Connell's statement is longer than some of the others but the brevity of some of the other evidence doesn't necessarily make the task of responding to it easier. Commission please.

PN2776

VICE PRESIDENT HATCHER: Mr Fagir, what are you actually asking us to do, just pre-emptively not admitting any further statements? Is that the implication?

PN2777

MR FAGIR: Yes. Yes. I thought - I'm sure it was my fault, I thought I had made this clear last week when I said I don't want it to be thought that we're not resisting this evidence, I must say I'm a bit unclear for myself on the fate of the statement of Ms James. If it's been admitted before we've said what we had to say, so be it, I'm not trying to cavil with a decision that's already been made. But to the extent that the issue remains alive at all, we object to the admission of the evidence and we would ask the Commission to determine the question now because that dictates what we will do, and it may dictate the way that the schedule unfolds over the next few days. Commission please.

PN2778

VICE PRESIDENT HATCHER: Mr Warren.

PN2779

MR WARREN: Your Honours, we rise to support the application now made by my learned friend Mr Fagir, with respect to the additional evidence. We make a number of short points. Directions are made for a purpose, among others, for the orderly management of proceedings and that neither party are prejudiced or surprised by evidence, that all parties are treated fairly. This isn't a case where the applicant is unrepresented or represented by inexperienced advocates. We note that one of the points in the statute which needs to be met when the Commission considers whether to allow a legal representative is that it will more efficiently lead to more efficient conduct of the proceedings. This isn't an efficient conduct of the proceedings. The applicants are represented by very experienced counsel and similarly counsel. For all the reasons promulgated by Mr Fagir, my learned friend Mr Fagir, the Commission should reject the receipt of this additional evidence which is so far out of time from the original directions given, which were given so that parties could be treated fairly and parties are not surprised by additional evidence and haven't got a chance to respond to it. Commission please.

PN2780

VICE PRESIDENT HATCHER: I take it the position remains that you don't intend to cross-examine any witnesses, whether these statements go in or not?

PN2781

MR WARREN: That isn't the case, your Honour. It depends on where Mr Fagir's cross-examination goes to whether we rise to cross-examine.

PN2782

VICE PRESIDENT HATCHER: Mr Taylor.

PN2783

MR TAYLOR: Thank you, if the Commission please. I just start by noting the irony of the fact that in the complaint about the fact that Mr Fagir has only had a week to deal with most of this material, we are rising to deal with a statement and submissions that were filed at 4.15 yesterday afternoon. I think generally this complaint about prejudice somewhat misunderstands and is somewhat hard to reconcile with the material itself, and its genesis. I do want to turn to some of these statements in a moment but it seems to proceed on some view that we think is misguided that these proceedings are entirely inter parties and the Commission can only receive material if it is presented by a party and cannot request any other material.

PN2784

What of course happened, it's part of our opening is that the Commission identified an area of material it would like to have some further evidence on. In particular, what the ECT witnesses say they do day to day. About 90 per cent of this material is that, so as I said I'll turn to the statements, some of them are shorter than Ms Connell's but Ms Connell is saying - - -

PN2785

VICE PRESIDENT HATCHER: Well, can we start at the beginning. So the direction was to file any further statements within seven days.

PN2786

MR TAYLOR: Yes.

PN2787

VICE PRESIDENT HATCHER: So we've received two after those seven days. Why would we even entertain admitting those?

PN2788

MR TAYLOR: So the - - -

PN2789

VICE PRESIDENT HATCHER: I mean that was an extraordinary indulgence.

PN2790

MR TAYLOR: Yes, no I understand that. To understand that is to understand two things. One we did say that to assist Mr Fagir and his client where we had time to do so if witness evidence needs to be corrected or updated we would attempt to do that in writing so he'd see it in advance rather than hear it from the witness in the witness box. And so in respect of Ms Finlay that has occurred. Otherwise, Ms Finlay has attached and Ms Gleeson, who's giving evidence on Thursday has - we prepared a further statement of hers which simply attach some of these individual education plans. Now we think that's of some utility.

PN2791

VICE PRESIDENT HATCHER: Well, hold on before you get to that.

PN2792

MR TAYLOR: That's all.

PN2793

VICE PRESIDENT HATCHER: Sorry, before you get to that, what about paragraph five of Ms Finlay's statement? How could that conceivably be fairly admitted now? It's also reopening the case, isn't it?

PN2794

MR TAYLOR: Look, I accept that paragraph five does identify evidence which doesn't. I mean on one view she is simply saying this has continued since I gave my evidence but I accept what your Honour says about paragraph five.

PN2795

VICE PRESIDENT HATCHER: And six and seven. Why couldn't these documents simply have been provided as part of the primary statement?

PN2796

MR TAYLOR: They could have been provided by primary statement. I don't have any reason to suggest they couldn't have been. The primary statement itself identified that these individual education plans exist. They're described in a

number of paragraphs and similarly and through to paragraph seven the evidence - the primary evidence describes the fact that there are risks and risk assessments.

PN2797

Mr Fagir says that he is fundamentally prejudiced. The documents are simply providing a documentary example of the evidence that he has had since November 2018. We think it would be useful for the Commission to understand that evidence to have those documents. Now if the Commission says it's not useful then that's different but we just thought it would be useful to have the documents. We don't understand why there's some fundamental prejudice arising from the provision of the documents which are nothing more than examples in individual education plans and risk assessments which the witness has spoken about.

PN2798

VICE PRESIDENT HATCHER: Well, I suppose it definitely may be that the ACA may say, "Well, they're not examples because they're entirely atypical of what everyone else in the industry does." And I don't know but that's the sort of prejudice that can arise from a document of that nature.

PN2799

MR TAYLOR: It might. And that comes to this issue of the capacity of ACA to respond to this material. The notion that there is some incurable prejudice. Mr Mondo, in his statement, whilst at one point saying they're unable to respond, at paragraph 20 says, "We expect we can respond to this material." And Mr Fagir, in his submission, identifies that that response might come in relatively close to them giving evidence or it might even be led from them in the witness box.

PN2800

And, indeed, your Honour identified when we sought the opportunity to file this material, your Honour identified that that may well be what my client has to accept as the price of it going in and we had no difficulty with that. It's what we expect to occur. And if one looks at the material and when one identifies the amount of half-days and days we haven't been in court since this very short statements have been provided, the thought that ACA - with great respect to them - are unable to provide some instructions and to give some evidence about it, with all that time, at their disposal is - would be perhaps something that you could accept if the material was wild and huge and complex. But it really isn't. You've got some witnesses saying what they do to day to day and then in a couple of respects updating material. There might be the odd paragraph if one comes to it, that Mr Fagir can properly object to, but the notion that having been given the leave, having in Ms James's case - we've checked the transcript, that evidence has gone in and it's gone in on the basis that any prejudice would be cured by Mr Fagir having a week to prepare cross-examination. It turns out that there has been quite a bit of time to do that.

PN2801

ACA in its evidence complains about all this litigation it's involved in. The award modernisation proceedings it's involved in, it's chosen to be involved in, it's indeed an applicant and made a number of applications and it may well be that some of their witnesses would prefer not to give evidence. Indeed, in that proceeding, I understand a number of them ultimately their evidence wasn't read.

Whether that's fatigue with proceedings, that's really by the by. That really isn't a good reason why ACA is unable to deal with this relatively short material that is useful and won't, we think, substantially add to the length of the proceeding. We can clearly deal with it in the time that we have and the way we're going.

PN2802

So it can be dealt with. The notion that it's incurable prejudice, it can be dealt with - Mr Mondo says so - we can deal with anything that arises as it arises from the witnesses. It is material which we think is of some relevance and assistance and on that basis there is no good reason why it shouldn't be - it shouldn't be admitted. And as they say that's particularly the case once one actually looks at the material.

PN2803

Now it may well be the Commission doesn't have all of these statements because some of them are coming. Well, Ms Sri Hilaire is coming this afternoon. So this one is one that if we - if I could hand this to the Commission.

PN2804

VICE PRESIDENT HATCHER: So just to be clear, including Ms James I have nine statements that were filed on or after the 12 June?

PN2805

MR TAYLOR: Yes. So I can run through them. There's the one I have just handed you.

PN2806

VICE PRESIDENT HATCHER: Ms Sri Hilaire was filed on the 18 June?

PN2807

MR TAYLOR: That's the 18 June. So you will see I have handed you an eight-paragraph statement dated - that was filed on 18 June which deals with day to day work under two headings. "Day to day work 2001." "Day to day work 2017-2019." So you have eight paragraphs. Some of them have sub-paragraphs that go over four pages. So that was filed in response to what we thought was going to assist the Commission and filed within the time that had been identified.

PN2808

The second statement - well, this is in no particular order but another statement is a supplementary statement of Emma Cullen also filed on 17 June. We don't have copies of that with us to hand up. That is in statement that triples over to an eighth page and has 18 paragraphs and only deals with day to day work. So it describes her day at work. The third statement that I wish to identify is that of Ms Connell which my friend has taken the Bench to. That was also filed on 17 June.

PN2809

Can I indicate that this does have, in a sense, four aspects. The first aspects are updates and corrections and commences with the words, "Since I filed my previous statements." And that deals with the first eight paragraphs. Then there is a heading "Critical Reflection". There are four paragraphs there and I accept that that - while subject to what - of critical reflection and that it must be done - was

dealt within her second and third statement. These four paragraphs expand on what that means and how it differs. To some extent - well, to some extent, it is a certain ground that was dealt with in her previous statements. And this witness requested that she be - have an opportunity to explain what she meant in those paragraphs and that's - those four paragraphs were what were asked to be included so that the Bench can understand what she meant by 'critical reflection'. And then is day to day work. I said there were four aspects of this statement.

PN2810

Day to day work in a sense has two aspects. There is the second annexure which is day to day duties and whilst Mr Fagir says that one must break it down and understand precisely how these changes arose and whether they arose due to regulatory reasons or otherwise, that seems to misunderstand. Our case is not based entirely on changes that are required or otherwise by regulatory change although a certainly large part of our case. But this witness isn't attempting to say why they've changed. She's simply saying, "This is what my day to day duties were and this is what they are now." And she's talking about herself - "My day to day duties." She's not attempting to do what Mr Fagir would no doubt find objectionable and say, "This is a day to day duty of every early childhood teacher." She also - - -

PN2811

VICE PRESIDENT HATCHER: Well, if you look at GC2. I mean the problem with this is on one view the left-hand column - - -

PN2812

MR WARREN: Yes.

PN2813

VICE PRESIDENT HATCHER: Or probably the middle column is a description of the things that this witness does during the day but then you had the right-hand column and it becomes some sort of new word value comparison. I mean I just don't understand why it's sought to be done in that way. But - - -

PN2814

MR WARREN: As I think the witness understood that what she was being asked to do was describe what she does today and what she did as an early childhood teacher at an earlier point in time and she has identified prior to 2012 as that earlier point in time, so that the Commission can see in respect of this particular witness, changes to the way in which the day to day work has changed. And from our recollection, was that the understanding that a day in the life of a preschool teacher is what the Commission was hoping to understand that that encompassed the notion of a day in the life today, versus a day in the life in the past. So that's the approach that this witness has taken to this statement.

PN2815

And the other thing that she has done in GC1 is identified a particular aspect of her day to day work which is to develop programs, plans and then she's annexed documents which - so that the Commission could get a practical - and in this case two - two practical examples of how that - how that is done by her as an early childhood teacher.



PN2816

So just understanding the nature of the work and what it involves, that it's certainly work that's more complex than simply turning up and having play time between 9.30 and 10.30 - morning tea - but there is actually a level of planning and teaching in a directed manner. And she's giving it the description of how that's done.

PN2817

There is - your Honour was asking about the number of statements. Lily Ames - A-m-e-s - was filed on 17 June. It's a five-page statement which sets out - which starts with the words, "I describe my day to day work below." And then sets out over 19 paragraphs on five pages, that day to day work. There's no other material that's dealt with in that statement.

PN2818

Lisa James - I've already dealt with - and has been admitted and then there is the supplementary report of Associate Professor Susan Irvine, and I think we have that - - -

PN2819

VICE PRESIDENT HATCHER: Well, I'm not sure we want to go through them seriatim now Mr Taylor.

PN2820

MR TAYLOR: No, thank you. So that was the six that were filed within that period that the Commission gave us. And then there have been the additional statement of Ms Finlay that we've looked at and Ms Gleeson which - who was to come - who annexes some template individual education plans so that one can see what they look like and doesn't do much more than simply identifying a one-page statement what it is that she is annexing.

PN2821

So that's the material. We don't understand that there's any incurable prejudice. ACA, with great respect to them seem to work on the misguided view that they can - that their witnesses will not be called upon at any time during the proceeding to assist to give instructions.

PN2822

In a large complex proceeding like this, it's inevitable that things will arise from time to time, instructions will need to be obtained and in circumstances where the case has been proceeding the way it has we don't see that there's any basis to say that there's some difficulty with being able to respond to this very limited material, given the time that it's occurred and we moved the witnesses into this week to give that week of preparation. We don't accept under those circumstances there's any incurable prejudice.

PN2823

And the only other thing I'd like to say is that an issue of non-production of material is going to arise. There seems to be a complaint that the non-production of material by Mr Fagir's clients hasn't been raised with them until recently and that somehow that's causing them prejudice. If they haven't produced material



which they're ordered to produce then it's hardly our fault that we are identifying that prior to cross-examination that Mr Fraser, for example, who appears to be their main witness gives extensive evidence as to profit and loss, does not choose to attach any profit and loss material. An order for production was made for them to produce it, and he seeks to set it aside. It's not set aside. Time is extended and we still don't have the material. All we're doing is politely asking for the material that should have been produced and, ideally some time before he gives evidence, so that we have an opportunity to cross-examine him on that material. We don't see that that's of course of any prejudice that can be sheeted home to us with great respect.

PN2824

So that's the position, your Honour. We think that the appropriate course is that having heard this material, having heard these submissions, the Commission is in a position to indicate a general approach. And we accept Mr Fagir might have reserve to himself an opportunity to object to any particular paragraph if there is a particular paragraph in respect of the supplementary statement that causes a concern, not for the reason that's been identified so far, such as paragraph five in Ms Finlay.

PN2825

MR FAGIR: Sorry, could I just say one thing? I should have said - - -

PN2826

VICE PRESIDENT HATCHER: Before you do, before I forget, I note the invitation in paragraph 17 of Mr Mondo's statement. Is that offer open regardless of the rulings made?

PN2827

MR FAGIR: Yes.

PN2828

VICE PRESIDENT HATCHER: All right. Well, we might - - -

PN2829

MR FAGIR: I didn't suggest that to him and which included a bit of intrepidation for my own part but that was a genuine invitation from Mr Mondo himself, but if that's - if that can be done? If that's what the Full Bench wants, then that'll be done. It's not conditional. Could I say - I should have mentioned this earlier. We said in our written submission that if concrete to the extraordinarily persuasive submission that I have just made - the evidence is admitted - but one of our concerns is that the sanguine sort of attitude to evidence vive voce or late statements which has been expressed now will not continue up to the point that the evidence is actually produced. And if the evidence is to be admitted we respectfully submit that that should be done on the basis of the understanding that if there is some practical difficulty occasioned to the union, through late receipt of responses from my client that that is, I think, Mr Taylor will put it - the price that had to be paid - if the Commission pleases.

PN2830

VICE PRESIDENT HATCHER: Yes. Well, I think we made it reasonably clear earlier that a complaint of that nature would - might not fall on entirely deaf ears but certainly hearing impaired ears. We might take a short adjournment and resume at about a quarter past 11.

**SHORT ADJOURNMENT** [11.00 AM]

**RESUMED** [11.19 AM]

PN2831

VICE PRESIDENT HATCHER: We don't propose to grant a blanket application to peremptorily refuse to admit the statements filed after our ruling on 12 June. The course we propose is as follows. Firstly, the two statements which were filed after the seven day period which we allow will not be admitted, except insofar as they contain genuine updating of information that was contained in earlier statements.

PN2832

In respect of those statements that were filed within the seven day period, we will rule on a case by case basis whether those statements are to be admitted either in whole or in part. But we emphasise again that the purpose of allowing the IEU to file these additional statements was for us to be provided with a neutral fact-based description of the day to day activities of early childhood teachers. To the extent the statements do that, they will be admitted and to the extent they don't, they won't be.

PN2833

MR TAYLOR: If the Commission pleases.

PN2834

VICE PRESIDENT HATCHER: Insofar as paragraph 17 of Mr Mondo's statement can we invite counsel to have a discussion about that; work out how that might conveniently be arranged. Mr Taylor.

PN2835

MR TAYLOR: Yes, just as to that, there's the notion of a visit. Ms Saunders advises me that at Macquarie University the preschool there which is a teaching event, a place where people are taught how to be teachers has a set-up which involves a one-way mirror facility so that people can observe without the children themselves being necessarily conscious that the teaching is being observed. We'll speak to Mr Fagir about that.

PN2836

But do I take it from what your Honour's just said that the Bench would like the opportunity to have a view of an early childhood centre, at least one, at some stage prior to submissions?

PN2837

VICE PRESIDENT HATCHER: Well, I think yes, we think that would be useful if it gives us some opportunity in a non-disruptive way to actually observe the day to day work of early childhood teachers.

PN2838

MR TAYLOR: Yes. Thank you, your Honour for that indication. We will have a discussion with Mr Fagir about the approach that is taken in light of that statement from the Bench. One of the statements is from Associate Professor Irvine who is not currently slated to come back. But there was an understanding that if evidence was to be admitted from her that required her to cross-examination, then we would be advised. So, I'll speak to Mr Fagir about that as well.

PN2839

We now move to our next witness who is Jenny Finlay who is present in court.

PN2840

THE ASSOCIATE: Please state your full name and address.

PN2841

MS FINLAY: Jennifer Marleen Finlay (address supplied).

**<JENNIFER FINLAY, SWORN** [11.28 AM]

**EXAMINATION-IN-CHIEF BY MR TAYLOR** [11.28 AM]

PN2842

MR TAYLOR: Is your full name Jenny Finlay F-i-n-l-a-y?---My full name is Jennifer Marleen Finlay, but I go under the name Jenny.

PN2843

Thank you. Can you give the Commission your work address?---My work address is at Borilla Community Kindergarten which is at 178 Borilla Street, Emerald.

PN2844

What's your position at that Borilla Community Kindergarten?---My position at Borilla Community Kindergarten is that of teacher and director.

PN2845

For the purpose of these proceedings, you prepared a statement that's dated 21 November - just let me get this right. 21 November 2018, a 19-page statement, is that right?---Yes, it is.

PN2846

You have a copy of that with you?---I do.

PN2847

I understand that there were three matters you wished to update, that is things that have occurred since you prepared that statement. But before I come to that, do you say that the contents of the statement are true and correct to the best of your knowledge and belief?---Yes, I do.

\*\*\* JENNIFER FINLAY

XN MR TAYLOR

PN2848

I tender that statement.

PN2849

VICE PRESIDENT HATCHER: All right, the statement of Jenny Finlay dated 21 November 2018 will be marked exhibit 50.

**EXHIBIT #50 STATEMENT OF JENNY FINLAY DATED 21/11/2018**

PN2850

What I think - if it's not inconvenient, I intended to ask this witness to update the three matters which are currently set out in paragraphs 2 to 4 of the supplementary statement. One way of dealing with that is to tender just those paragraphs. I'm also more than happy to simply ask the witness to give oral evidence as to those three things. If the Commission has a preference, I'm content to take either course.

PN2851

VICE PRESIDENT HATCHER: Well, Mr Fagir, are you content that we admit paragraphs 1 to 4 of the supplementary statement and exclude the rest?

PN2852

MR FAGIR: We're content for 1 to 3 to be admitted. Four doesn't seem to be an update. I note the original statement was signed in November 2018.

PN2853

VICE PRESIDENT HATCHER: Is that controversial what's said in that permit?

PN2854

MR FAGIR: I've got no way to know whether that's true or not in respect of Ms Finlay's service. But the issue is that there's been no - as far as we can see, attempted at any statistical information about special needs children until this case started. Since then, we've had a couple of these ad-hoc statements. One from Mr Donnelly; this is another and it's just a new issue as we see it, that we have to deal with. We're in the Commission's hands.

PN2855

VICE PRESIDENT HATCHER: We propose to admit paragraphs 1 to 4 of the supplementary statement of Jenny Finlay dated 24 June 2019 and that will be marked exhibit 51.

**EXHIBIT #51 PARAGRAPHS 1 TO 4 OF THE SUPPLEMENTARY STATEMENT OF JENNY FINLAY DATED 24/06/2019**

PN2856

MR TAYLOR: Ms Finlay, do you have a copy of the supplementary statement with you? Can I have this copy provided to you? Ms Finlay, I've just handed to you the supplementary statement that's been marked exhibit 51. You've heard that what has been admitted is just the first four paragraphs. Do you say that the contents of the first four paragraphs of that statement are true and correct to the best of your knowledge and belief?---Yes, I do.

\*\*\* JENNIFER FINLAY

XN MR TAYLOR

PN2857

Yes. They're the questions for this witness. Thank you.

PN2858

VICE PRESIDENT HATCHER: Mr Fagir.

**CROSS-EXAMINATION BY MR FAGIR**

**[11.32 AM]**

PN2859

MR FAGIR: Ms Finlay, Emerald is west of Rockhampton, is it?---Yes, that's correct.

PN2860

Coal mining country?---It's actually a very mixed community, so it has coal mining, but it also has cotton farming, citrus farming, cattle, grain. So it's actually a very mixed town. It's not just one - it's not just coal; it's much more.

PN2861

Could I just run through your professional background Ms Finlay. Firstly, in terms of education, you have a Diploma in Primary Teaching and a Graduate Diploma in Early Childhood Teaching. Is that right?---That's correct.

PN2862

Some years after you obtained those qualifications, you studied a Master of Education?---Yes.

PN2863

You tell us that you did that because you thought it would be useful given the extent to which you're dealing with families?---Yes.

PN2864

Your work history you tell us is that in 1980 to 1981, you were a teacher at a kindergarten preschool in Emerald. Is that right?---Yes, correct.

PN2865

You then did other things until 1993 through to 1995 when you were director/teacher at Springsure Kindergarten?---Yes.

PN2866

Then you had a year at Coolabah Early Childhood Development Centre. Is that a community kindergarten?---No, that was a long day care.

PN2867

You were then back at TAFE or perhaps you were at TAFE at the same time and in 1997 to date, you've been the director/teacher at Borilla Community Kindergarten in Emerald?---That's correct.

\*\*\* JENNIFER FINLAY

XXN MR FAGIR

PN2868

Apart from the year that you spent at Coolabah Early Childhood Development Centre, your experience is either in community kindergartens or elsewhere in TAFE or wherever else?---That's correct.

PN2869

For the last 22 years your experience is in the one community kindergarten which you've been managing, in effect. You explain, Ms Finlay, that your centre has high numbers of special needs children. Why is that?---We're not sure.

PN2870

Ms Finlay, you deal with the issues that you address in your statement under these headings - introduction of universal access funding, children with special needs, children at risk, guidance and counselling, teaching. They're the five matters that you've addressed in the statement?---Yes.

PN2871

You say that the first of those, the introduction of universal access funding, you say at 11 is the biggest change that's occurred in the early childhood sector over the past two decades?---Yes, I do believe that.

PN2872

Having carefully thought about all of this and the changes that have occurred, it's your view that that introduction of universal access funding is the biggest change to your sector?---I believe that it's allowed more children access and in Queensland we call it kindergarten, to kindergarten because of the funding restraints. So up until universal access was brought in, kindergarten was only for those that could afford the fees. So universal access is about allowing every child a kindergarten education. Every child.

PN2873

In your statement you set out what you say are a series of the consequences of the expansion of that pool of children that are in kindergarten now who weren't before. Is that a fair summary of the first part of your statement?---Absolutely, because we've got our - in Queensland and our AEDC data has come out for 2018 and we're in the mid to high 90's of kindergarten-aged children are now attending kindergarten. That has come up substantially.

PN2874

What was the document you just referred to?---The AEDC data, the Australian Early Developmental Census. That is an Australia-wide census that refers to the data in all the different domains.

PN2875

I see. Now, in your statement you refer to only two documents, as far as I can see. The first is something called Quality Schools - Commitment to Quality Preschool Education. You remember referring to that document?---Yes.

\*\*\* JENNIFER FINLAY

XXN MR FAGIR

PN2876

That is a press release from the IEU dealing with this issue. That's right, isn't it?---The 2018 AEDC data was not out when I made this statement. So that was

actually undertaken in 2018 and it takes sometime for that to be published. So, in our sector now, we are just starting to examine the AEDC data from 2018, so I could not refer to it at that time.

PN2877

The second document you refer to in your statement is called Accessing Kindergarten Queensland. You refer to that at paragraph 50. That's right, isn't it?---Yes.

PN2878

That document explains that disadvantaged children, children from disadvantaged families, access kindergarten less frequently than other children?---That's correct, because of the monetary component prior to universal access and the government subsidies.

PN2879

Aside from those two documents, what we have in the statement is your description of your experience at Borilla Community Kindergarten over the years?---Yes.

PN2880

You explain that last year you accessed \$175 000 in disability funding. You see you deal with that at paragraph 16, at the end of paragraph 16?---Yes.

PN2881

That enabled you to employ extra staff in the room or perhaps rooms?---Yes, in rooms. So we are a triple unit kindergarten.

PN2882

What does that mean?---That means there are three rooms and six kindergarten groups. So with kindergarten being funded for 15 hours a week, or 30 hours a fortnight, each room takes two groups. That is six groups of children over the week attend Borilla Community Kindergarten.

PN2883

In relation to the demands of dealing with special needs children, you say later in your statement that the increase in the number of special needs children means that teachers require additional skills. You remember saying that?---Yes.

\*\*\* JENNIFER FINLAY

XXN MR FAGIR

PN2884

Can I suggest to you two or three things about that. Firstly, teachers are in no different position to any other educator in terms of the demands of dealing with special needs children?---I would disagree with that. It is the teacher that leads the room, so the teacher needs to be upskilled across a lot of areas. So we pride ourselves on evidence based practice, which is using resources that are evidence based so there is research. It's not just made up. Some of those things that need - we lead the way with as the early childhood teacher is firstly, the developmental level of the child and then determining where that child needs support, depending where that child's additional need is. It may be if they're non verbal then we might need to go down the path of visuals. So if we go down the path of visuals

then that early childhood teacher will liaise with the teachers at the school where they're going to, to ensure a consistent approach. Different schools may use different forms of communication. So if a school is going to use POD, which is a type of augmented communication then the kindergarten teacher will implement POD in that room.

PN2885

Can I just go back to the beginning of your answer, Ms Finlay. You said, and tell me if I've understood you correctly, that teachers were in a different position because they're the room leaders?---The teacher is the one that has the knowledge and skills to guide the staff in the room.

PN2886

Can we just be clear about this. Your answer was teachers are in a different position because they're the room leaders. Have I misunderstood that?---They are the ones that lead their staff.

PN2887

At your service?---At any service.

PN2888

Is that right?---Well, we are the ones, the teacher is the one who has the responsibility to write the individual education plan. The teacher is the one whose role it is to write the behaviour management plan. The teacher is the one whose role it is to liaise with the early childhood developmental program or the occupational therapist, or the speech therapist or whoever members of that transdisciplinary team are, it is the teacher's role.

PN2889

You're speaking from your experience in community kindergartens in Queensland?---I'm speaking from my experience across - yes, in services but as a Gowrie service it is the teacher's role to write the IEP that gets the funding. So if the teacher doesn't write the IEP then the disability funding does not come through.

PN2890

VICE PRESIDENT HATCHER: The IEP is the Individual Education Plan?---That was not allowed. A copy of that was in that supplementary document and that - as an affiliated kindy with the Gowrie service, that has to be sent through when the funding for additional needs is applied for. If that IEP is not provided that additional needs funding does not come through.

PN2891

MR FAGIR: Ms Finlay, the second point I want to put to you is that we don't find in your statement any reference to data or statistics about special needs children and the extent to which they have become more or less present in early childhood over the years. That's right, isn't it?---(No audible reply)

\*\*\* JENNIFER FINLAY

XXN MR FAGIR

PN2892



If we just take this step by step. Is that right, you don't deal with that in your statement?---No, I deal with my experience in my - over my teaching career since 1980.

PN2893

But there is in fact statistical information dealing with this issue?---The AEDC data is coming out, bearing in mind the AEDC data talks about children presenting in schools, so that is based on the prep year, the year of formal schooling. We are talking about kindergarten where that universal access has changed the disability figures because of the children who are now accessing kindergarten.

PN2894

Thirdly, Ms Finlay, and please don't think this is a criticism but you haven't made an attempt to describe the entire infrastructure around special needs children in terms of funding, what's available, how that's changed over time, how it's obtained and so on. It's just not something that you really deal with in this statement?---That's not my job. My job is to explain to you my role and as an early childhood teacher and how I work with special needs children in the service, and how that has become more complex over the years.

PN2895

Certainly, but what we do know from your statement is that last year you obtained \$175,000 in funding that you didn't have previously?---Well, the year before that was 169 and then it - going backwards I can go back to 2010 with my data.

PN2896

I see. Now finally, Ms Finlay, in relation to special needs children, this is right isn't it that all educators in a classroom will interact with special needs child or children in that classroom?---In a classroom it is everybody will interact but it is the early childhood teacher's role to devise the individual education plan, or the behaviour management plan which guides the team into what they will do with that child and how they will do it.

PN2897

One scenario is that you might have three or four additional needs children in a classroom and typically in that scenario you would have a teacher, a non bachelor degree qualified educator and two additional educators which you called inclusion support staff?---Yes.

PN2898

That's a typical sort of arrangement?---Yes.

\*\*\* JENNIFER FINLAY

XXN MR FAGIR

PN2899

All of those educators, including the teacher, will interact with the child or children at different times and tend to their needs?---Under the guidance of the early childhood teacher's individual education plan, that is based on the goals for that child and how those goals are to be achieved. So the early childhood teacher actually - he or she will lead that team and after - in our service we call them

micro team meetings where we meet as a team and formulate how we're going to work with a child. They are led by the early childhood teacher who has that deeper knowledge of child development and how to implement different strategies with the child. Led by the early childhood teacher as outlined with either the individual education plan or the behaviour management plan or both.

PN2900

Is there anything else you want to say about the leadership and knowledge of early childhood teachers?---I think that that role has become even more important and certainly more complex. We have to have a deeper knowledge than we had before. Speaking from my own experience in Queensland, we used to have what was called advisory visiting teachers, AVTs, who would come into our service to observe children and give us advice on how we could work with those children and what goals. Those positions have been taken away. So we stand alone in how we work with those children and what we do. So we have had to upskill in those areas and I'm speaking personally for myself, I have had to do - I have done many additional courses on top of that to upskill my knowledge to be able to impart to my team about how best to cater for the needs of all children and some of these have special needs. So that we can make our program truly inclusive, and that's what kindergarten is to provide, an inclusive educational setting.

PN2901

If we could just come back to the questions that I was asking you about the - what I'd suggested to you was the typical set up. If in the scenario that I put to you one of the children had for example the most severe level of autism spectrum disorder, typically there would be an inclusion support person who attended to that child on a one on one basis?---No. So we work with level 3 children. So autism level 3 is a child that requires very substantial support, and the goal actually is not to have a one on one because that child then will become dependent on that person and if that person is away or when they transition to school, autism - children on the spectrum can be very rigid. So all team members would work with it under the guidance of the early childhood teacher who has got all the data collated and a plan has been devised. I work with children - I'm working with a child autism level 3 at the moment, in a team of four as we are talking about, and all members of that team, I work with that child. My room educator works with that child as do the two inclusion assistants.

PN2902

VICE PRESIDENT HATCHER: Can you just describe the specific roles of the room educator and inclusion support person and how they're distinct from the role of the teacher?---The teacher is the one - - -

\*\*\* JENNIFER FINLAY

XXN MR FAGIR

PN2903

I want you to focus on what the other people do. What's their function?---All right. So in every kindy room there's a teacher and an educator, so the educator's role is she will get the morning tea ready, she will prepare tables under the guidance of the teacher about what activities are to be presented based on my developmental knowledge of - my knowledge of child development, and the individual children in the room. She will prepare lunches, she may come and sit

with a child, with the group at music and at language time to support all children to be included. As the teacher I will be the one who is directing it. The inclusion assistants may not do the - they don't do the setup in the morning because they're - unfortunately they're not funded to be there until the day begins. So if - I'm actually currently teaching in a two long day kindergarten session which means we go from 8 to 3.30, so our 15 hours a week is done over two days. So those inclusion assistants only start at eight, when the room starts, whereas my room educator starts at 7.30 to have a half hour preparation time to prepare the room for the day, or the outside for the day as I have determined.

PN2904

Yes, so the inclusion - - -?---The inclusion will do - - -

PN2905

- - - support persons they come later but what do they - what's their function when they get there?---Yes, so they may be sitting in the home corner, for example, to facilitate play. We know our children on the spectrum, that is usually one of the areas where they have - require facilitation because of often danger to others with their aggression with sharing, so they will be sitting in close proximity. It may be that they're helping with the toileting, the nappy changing because we still have children who are not toilet trained and some of them may never be. Things we have in common I guess from the teacher's role to ask them about - to train the staff so it might be that we're using visuals to support the child, so the teacher trains the other staff in how to use those visuals and we're currently using visual schedules, and this particular child needs a - his morning schedule is on Velcro. So when he comes any of the staff then under the direction of myself who determined how that is can walk that child through it. So we deliberately try not to have the one staff member working with the one child all the time, because as I said if that staff member gets sick or when that child transitions, it can really be a train wreck.

PN2906

Is there some analogy between that role and a teacher's aide in a school classroom?---Similar.

PN2907

Yes?---Yes, similar.

PN2908

Thank you?---The medications can only be administered under Gowrie policy, so this isn't Borilla Community Kindergarten making this up. Gowrie, we have to have a diploma trained person or a teacher to be able to administer medications. So in the case of my level 3 young person on the spectrum who also happens to have severe allergies; anaphylaxis and epileptic, I have to myself and our diploma trained person, we have to witness so it needs two to witness medication. He also requires PEG feeding, so we are all trained in PEG feeding although I'm the one that is ultimately responsible in that room for that.

\*\*\* JENNIFER FINLAY

XXN MR FAGIR

PN2909

Thank you.

PN2910

MR FAGIR: Ms Finlay, can I just make sure I'm understanding this. When you have an inclusion support person in the room, they don't work purely 100 per cent of the time with a particular child. Is that the point that you're making?---That's absolutely correct. That is Gowrie policy as well. They need to be in the room to work with all children.

PN2911

Ms Finlay, Ms Finlay, could I just ask that you answer the questions that I'm asking you?---Yes, that's correct.

PN2912

Try to limit your answers to what I'm actually asking you?---Yes.

PN2913

Now the question that I asked you, did I understand what you were saying to be that an inclusion support person doesn't work with one child 100 per cent of the time?---Yes, as per Gowrie policy.

PN2914

As I suggested to you earlier in fact the teacher, an educator, whatever number of educators are present in the room will all interact with the child at different times?---Yes.

PN2915

VICE PRESIDENT HATCHER: When you say "the child", you mean a given child.

PN2916

MR FAGIR: I mean a particular special needs child who might be in the room?---Yes, everybody - as we would with every child in the room.

PN2917

Now when you have, for example, a child with severe autism you apply for funding on the basis that you explain to the authority that this is a child who needs to be supervised one on one 100 per cent of the time and that's why we need funding for an additional inclusion support person to be in this room?---No, that's not correct. There are different levels of funding. So there are three levels of funding that I applied for. So the first level is only to give minimal facilitation, so that's at a \$2500 level.

PN2918

VICE PRESIDENT HATCHER: But I think the question is directed at the level 3 was it not, Mr Fagir?

\*\*\* JENNIFER FINLAY

XXN MR FAGIR

PN2919

MR FAGIR: It was?---Well, that's an additional level, so there are very few children, I'm only applying for two children this year that will get that additional

level of funding. Well, they may not get it that I've applied for. So the children that you get the addition funding for are very rare and that means that there is someone with them or nearby at all times. It does not necessarily mean that it is that one person, and in fact Gowrie have written in their kindergarten inclusion support application that it not be one person. They are very clear on that.

PN2920

Thank you, Ms Finlay. Now you deal with mandatory reporting at paragraph 44 and following of your statement. Do you remember seeing something about that?---I'll have a look. Yes.

PN2921

You referred to section 13E of the Child Protection Act 1999. Do you see that in paragraph 44?---Yes, I do.

PN2922

Have you read that Act or did someone tell you about what it contains?---We had training, training was given from the Gowrie prescribed trainers, when in - up until July 2017 early childhood teachers in Queensland became mandatory reporters.

PN2923

You know the person who has reporting duties under section 13E is a teacher as defined?---Early childhood teachers are now mandatory reporters.

PN2924

Can I suggest to you that the definition of teacher for the purposes of that Act is a primary, secondary or special education school teacher?---Well, can I suggest to you that you might need to go and have a look because early childhood teachers in Queensland became mandatory reports on 1 July 2017. We have to and it's because of Mason's law, where a young child in Townsville died. So the early childhood teachers are now mandatory reporters.

PN2925

You have a very, very firm view about this issue, Ms Finlay, do you?---I do. I do, because well all I know is that I am now a mandatory reporter as are all my teachers, as we were trained statewide and as the Early Childhood Education and Care Department from Queensland government across Queensland on July 1, 2017.

PN2926

Now the proposition that I put to you was that the definition of teacher for the purposes of the Child Protection Act 1999 means teacher in a school, primary, secondary or special education. Do you agree with that proposition or disagree or do you not know?---I do not know. All I know is that early childhood teachers became mandatory reporters on 1 July 2017.

\*\*\* JENNIFER FINLAY

XXN MR FAGIR

PN2927

Yes, you keep saying that based on something that someone told you in this training?---No, that was statewide in Queensland.

PN2928

You've got very, very firm views about all these issues don't you, Ms Finlay?---Absolutely. Absolutely. Because we - we are assessed on this. This was changed across Queensland on that day.

PN2929

VICE PRESIDENT HATCHER: Mr Fagir, I've just looked it up. So section 13E(1)(f) has a reference to an early childhood education and care professional.

PN2930

MR FAGIR: So it does. I'm sorry, Ms Finlay, you are quite right. Finally, can I ask you about paragraph 61 of your statement please. Here you deal, don't you, with the implementation of the National Quality Framework and the Queensland Kindergarten Learning Guideline?---Yes.

PN2931

What you say about that is that with the implementation of those two things the complexity of the teaching role of ECTs has become more evident?---Yes.

PN2932

That's right, isn't it?---I believe that now there has to be more evidence provided by the early childhood teachers with their teaching role and I base that on my experience within the sector.

PN2933

Well, what you're saying in paragraph 61, is that the complexity of the role has become more obvious?---It's what I'm saying is the assessment cycle is more dynamic, that the teacher has to be able to be responsive to children. We can't just plan from year to year as with the ACA curriculum. It has to be based - - -

PN2934

Ms Finlay, I'm asking you about the first sentence of paragraph 61. The point that you're making, you say, is that the complexity of the role - - -?---I'm aware of that.

PN2935

- - -has become more obvious?---It has become more obvious and it's become more complex.

PN2936

You don't suggest, do you, that intentional teaching, for example, was a development that was introduced by the NQF and the Queensland Kindergarten Learning Guideline?---No, I don't. Intentional teaching has always been there, however, the documentation of what is intentional teaching has - now has to be evidenced.

PN2937

Has always been there since when?---It has been there but it has not had to be evidenced, which means more work, in writing, what your intentional teaching is going to be - - -

\*\*\* JENNIFER FINLAY

XXN MR FAGIR

PN2938

Has always been there since when?---Since I've been teaching. But the intentional teaching is deliberate, purposeful and it has to be documented now under the National Quality Framework and our QKLG.

PN2939

Thank you, Ms Finlay. They're my questions.

PN2940

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

PN2941

MR WARREN: Nothing, thank you, your Honour.

PN2942

VICE PRESIDENT HATCHER: That's all right. Mr Taylor?

**RE-EXAMINATION BY MR TAYLOR**

**[12.01 PM]**

PN2943

MR TAYLOR: Yes, first you were asked some questions about your qualifications and started with a question about the original qualification - a diploma of teaching. What was the institution that you obtained that from?---It was the Capricornia Institute of Advanced Education which has now become the University of Central Queensland, or Central Queensland University. It's had a few name changes.

PN2944

And are you able to say where that qualification was at the time a recognised qualification to be a teacher?

PN2945

MR FAGIR: I object. It doesn't arise. All I asked was whether the witness had that qualification.

PN2946

VICE PRESIDENT HATCHER: I won't allow it.

PN2947

MR TAYLOR: You were asked some questions and in response you identified that your understanding of the position was drawn from a report by the Australian Early Development Census that you said was a 2018 report but that it had come out recently. Now, I'm not going to tender Ms Saunders' iPad but I do want to identify a document which we will seek to tender in a hard copy form. I'm just wondering, may be the first thing I can do is just show it to my friend. So if I could ask the Associate to provide you with this iPad which has opened - - -

PN2948

VICE PRESIDENT HATCHER: I assume these documents are identifiable on its face. Do we need the witness to identify them?

\*\*\* JENNIFER FINLAY

RXN MR TAYLOR

PN2949

MR TAYLOR: No, I'm content to simply tender it. I just will need copies?---The ADC diary is something that I use regularly in terms of developmental domains.

PN2950

MR FAGIR: I object to the answer of this witness. It is non-responsive given - -  
-

PN2951

VICE PRESIDENT HATCHER: Mr Taylor, you'll produce will you a hard copy of this document?

PN2952

MR TAYLOR: Yes.

PN2953

VICE PRESIDENT HATCHER: And then you can give a copy to Mr Fagir.

PN2954

MR TAYLOR: Of course.

PN2955

VICE PRESIDENT HATCHER: And tender it at an appropriate stage.

PN2956

MR TAYLOR: I will. Now, just a matter of detail, Ms Finlay, you referred at one point to the work done by early childhood teachers in respect of children who are non-verbal and assistance that might be given when they are moving to primary school and you specifically referred at one point to something called POD - P-O-D - is how I wrote it down but what is that?---P-O-D-D.

PN2957

P-O-D-D. And what is P-O-D-D?---It's a communication book using visuals. So there are different forms of visual communications. That's just one type.

PN2958

VICE PRESIDENT HATCHER: Is P-O-D-D an acronym for something?---Yes, it is. But I can't tell you what it is today I'm sorry - because everyone calls them PODD books.

PN2959

MR TAYLOR: You were at various points asked questions about the role of teachers in respect of special needs students and you identified at various times that one of the things they do is write an individual education plan and they get funding. Can I ask you to look at, if you still have in the witness box, your supplementary statement. It's been marked Exhibit 51. At the moment only the first four paragraphs are in evidence and can you turn to Annexure JF2?

PN2960

MR FAGIR: I object. It doesn't arise.

\*\*\* JENNIFER FINLAY

RXN MR TAYLOR



PN2961

VICE PRESIDENT HATCHER: How does this arise?

PN2962

MR TAYLOR: Well, it - - -

PN2963

VICE PRESIDENT HATCHER: I presume you're about to try and get the document in again, are you?

PN2964

MR TAYLOR: I am going to get the document. Well, I am going to tender the document if it's admitted over objection. It arises - this witness - a large part of the cross-examination dealt with the role of teachers and the witness repeatedly talked about writing an IEP to get funding. Then there was a separate series of questions which I am about to take the witness to about the teacher applying for funding, specifically questions about level three autism funding, and what the teacher has to do to do that. And that - I was going to take the witness next to JF3. In my respectful submission what arises squarely from the evidence that was given in cross-examination is evidence about teachers writing these documents and so it's entirely appropriate.

PN2965

VICE PRESIDENT HATCHER: There was evidence given about the fact that having to write an IEP to get the funding, but I didn't hear any questions or evidence about the content of an IEP.

PN2966

MR TAYLOR: Yes, I accept that.

PN2967

VICE PRESIDENT HATCHER: I won't allow it. I won't allow it.

PN2968

MR TAYLOR: Your Honour, can I just understand whether that would extend to questions that arise out of the - because I had foreshadowed where I was going next. This witness giving evidence about applying for funding - different types of funding applications, including applications in respect of those who are level three. Can I take the witness to JF3 which - and I ask the witness whether this is an example of such a funding application document.

PN2969

VICE PRESIDENT HATCHER: Well, again there's reference to the fact of having to make such an application but I didn't hear any questions directed or answers concerned with the content of the application.

\*\*\* JENNIFER FINLAY

RXN MR TAYLOR

PN2970

MR TAYLOR: There were very specific questions about whether the application was specifically for one on one and the witness gave her evidence about that and it was specifically put to her that this is one on one funding. That's what is granted

and the witness dealt with that. I accept that there could have been further questions as to the precise form of the way in which it's applied for but nevertheless, in my respectful submission, it arises.

PN2971

VICE PRESIDENT HATCHER: No.

PN2972

MR TAYLOR: Thank you. Ms Finlay you then were asked some questions arising out of this subject matter of the role of special needs teachers in respect of notification of - let me get the paragraph right - in respect to paragraph 44, child protection notification. You specifically talked about statewide training. What was the nature of the statewide training you were talking about?---It's about the change in the legislation that involved - then - early childhood teachers to be reporters and what were the areas that we needed to report on. So what that - that harm looked like - whether it be physical, sexual or emotional and how to write - how to submit those reports. It is a quite complex area and it's - - -

PN2973

VICE PRESIDENT HATCHER: Did that amendment, I'm just looking at it, go beyond just teachers. Like are educators non-degree qualified educators also?---There's still a grey area there because the Act actually says, "Early childhood teachers".

PN2974

I don't think it does, actually. The first one "Early childhood education and care professional", and then it gives a definition of that which doesn't appear to use the word "teacher". But do you know - - -?---But what's what a professional is.

PN2975

- - -what's the practise?---The practise is - - -

PN2976

Are educators treated as persons subject to mandatory reporting?---The practise is that the teachers do the report because the educators will go to their team leader who is their teacher who has the higher expertise and discuss if that particular incident requires that step of mandatory reporting.

PN2977

MR TAYLOR: Right?---It is quite a difficult step to make.

PN2978

Just on this training. Firstly, who provided it and who was receiving it?---It was provided - Gary organised it. In our particular case through an organisation called, "In Safe Hands". It was compulsory for teachers in our service with educators - all educators encouraged to attend but it was compulsory for our teachers. If they were unable to attend the face to face there is an online - or there was. And we do this every year.

\*\*\* JENNIFER FINLAY

RXN MR TAYLOR

PN2979

Thank you. They're the questions in re-examination.

PN2980

VICE PRESIDENT HATCHER: All right. Thank you for your evidence, Ms Finlay. You're excused and you're free to go?---Thank you.

**<THE WITNESS WITHDREW**

**[12.12 PM]**

PN2981

VICE PRESIDENT HATCHER: Right is that the conclusion of the morning's business?

PN2982

MR TAYLOR: We have witnesses available. So it's a matter for the Commission  
- - -

PN2983

VICE PRESIDENT HATCHER: Oh, right.

PN2984

MR TAYLOR: - - -as to whether we keep going.

PN2985

VICE PRESIDENT HATCHER: We'll keep going.

PN2986

MR TAYLOR: I'll just identify our next - Mr Kenan Toker who has provided two statements is our next witness.

PN2987

THE ASSOCIATE: State your full name and address.

PN2988

MR TOKER: Kenan Daniel Toker (address supplied).

**<KENAN DANIEL TOKER, AFFIRMED**

**[12.13 PM]**

**EXAMINATION-IN-CHIEF BY MR TAYLOR**

**[12.13 PM]**

PN2989

MR TAYLOR: Mr Toker, can you just again give the Commission for the record, your full name?---Kenan Daniel Toker.

PN2990

And Mr Toker, what's your current work address?---It's 14/7 Narabang Way, Belrose.

PN2991

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

\*\*\* KENAN DANIEL TOKER

XN MR TAYLOR

PN2992

The first statement, a statement of 13 pages, which is undated but was prepared in late or in December 2017. Is that right?---Yes. Yes.

PN2993

And then a second statement. A statement in reply of four pages which bears a date of 18 July 2018?---Yes, I agree with that.

PN2994

And do you have those two statements with you in the witness box?---I do, yes.

PN2995

In respect of the first statement is there one matter of detail that we should correct in paragraph 10?---Yes. There was that mail.

PN2996

Can I just identify it? In paragraph 10, the fourth line has a sentence which starts, "Distribution stations". And later in that sentence are these words, "Where electricity is converted from 11 kilovolts to 240 kilovolts." Should that be corrected to 11 kilovolts, 240 volts.

PN2997

VICE PRESIDENT HATCHER: Mr Taylor, what paragraph is this?

PN2998

MR TAYLOR: The numbering does alter. I've just noticed.

PN2999

VICE PRESIDENT HATCHER: I see.

PN3000

MR TAYLOR: I'm sorry about that. So we need to use page numbering as well as paragraph numbering. So it's the second paragraph 10 which is on page eight.

PN3001

VICE PRESIDENT HATCHER: Mr Taylor, can you just run that passed us again, please?

PN3002

MR TAYLOR: Yes. So the correction is that in about the sixth line - the word "kilovolts" appears twice - the second time it should be "volts" and not "kilovolts". Is that right, Mr - - -?---That's correct, yes.

PN3003

- - -Toker - thank you. With that correction do you say that the contents of your first statement are true and correct to the best of your knowledge and belief?---I do. Yes.

PN3004

I tender that statement.

\*\*\* KENAN DANIEL TOKER

XN MR TAYLOR

PN3005

VICE PRESIDENT HATCHER: So the first statement, undated, of Kenan Daniel Toker will be marked Exhibit 52.

**EXHIBIT #52 WITNESS STATEMENT UNDATED OF KENAN DANIEL TOKER**

PN3006

MR TAYLOR: And then your second statement which is dated 18 July 2018 in reply to a statement of Nicola Johnson, do you say the contents of that statement are true and correct to the best of your knowledge and belief?---Yes.

PN3007

I tender that statement.

PN3008

VICE PRESIDENT HATCHER: The statement in reply of Kenan Toker dated 18 July 2018 will be marked Exhibit 53.

**EXHIBIT #53 WITNESS STATEMENT IN REPLY OF KENAN DANIEL TOKER DATED 18/07/2018**

PN3009

MR TAYLOR: They're the questions for this witness.

PN3010

VICE PRESIDENT HATCHER: Mr Fagir?

PN3011

MR FAGIR: Just as an aside, while I think of it I can indicate that the answer to your Honour's question of Ms Finlay may lay in subsection (4) of section 13E. Don't use the BarNet Jade version of the Act because the amendments will not appear in it and they may lead to embarrassment during cross-examination.

PN3012

VICE PRESIDENT HATCHER: I use AustLii, Mr Fagir because it's free.

**CROSS-EXAMINATION BY MR FAGIR**

**[12.17 PM]**

PN3013

MR FAGIR: Mr Toker, I have a few questions for you about your two statements. I suspect I am going to use the wrong terminology and get some things messed up because a lot of what I know comes from Wikipedia, as opposed to study. Could I first ask you about the SCADA - S-C-A-D-A?---Yes.

PN3014

That stands for Supervisory Control and Data Acquisition System?---It does, yes.

\*\*\* KENAN DANIEL TOKER

XXN MR FAGIR

PN3015

And is that a kind of interface that allows remote access to local control modules?---If my local control modules you might mean control modules generally in the field, then - yes.

PN3016

Those modules might be manufactured by different companies at different times?---Yes.

PN3017

And there might be a difficulty in getting the consistent data from them? They might output data or receive data in different formats?---Yes.

PN3018

And the point of SCADA is to take all of that potentially diverse data and convert it into a single protocol. Is that the gist of it?---Vaguely. That's one purpose of SCADA. More generally, it's to allow that sort of data to be collated and then if some sort of response to that data is acquired to also provide that response.

PN3019

Right?---Say, for instance, if some SCADA equipment which is attached to a circuit breaker indicates that the breaker is tripped some external software might be able to be programmed to make that breaker switch back on.

PN3020

But someone like you might write a program that receives data from a variety of modules and if a particular form of data is received it might actually send a signal back to the module and tell it to switch back on or - - -?---Yes. No, not me personally. That's not my particular job but that's one of the main purposes of SCADA preliminarily, yes.

PN3021

I see. And it might be a matter of controlling a valve or - - -?---Yes.

PN3022

- - - switching a circuit breaker back on or whatever it is?---Yes.

PN3023

That the variety of modules in the field might do?---Yes, that's correct. Yes.

PN3024

I mean is this the way the system works? You have modules which, in your case, might typically measure voltage?---Voltage, power, energy, amps, generally the units that we measure.

PN3025

And they communicate with PLCs or remote terminal units?---Yes. So usually either by 3G or 4G or by fibre is generally the manner of communication process. Yes.

\*\*\* KENAN DANIEL TOKER

XXN MR FAGIR

PN3026

There might be a physical connection or it might be - - -?---Yes, or it might be wireless.

PN3027

Or just three or 4G?---Yes.

PN3028

And the PLCs or the RTUs communicate with the - what's called a supervisory computer which is where the SCADA system actually lives?---Yes, yes.

PN3029

That converts that data which might come in different formats or in different protocols into a single protocol?---Yes.

PN3030

Then on the other side of that is type of program that you write which might take that data or either put it into a database or respond. You send the signal back through the SCADA interface to - eventually to the modules?---Yes. Because often I write very rarely response, but we do mainly those database components. So, collating all that data and then reprocessing it and presenting it back to users in a useful way.

PN3031

I see. You take the data, you put it into a database and then your program allows it to be perhaps produced in the form of a graph which a human might be able to understand. Or it might be machine intelligible or something, but another program that can process and deal with?---That's right.

PN3032

Does your job require you to program the PLCs or the RTUs?---No, not my job, no.

PN3033

Do you know what language that's done in?---It's variable. I think that it's often C, possibly C++. Sometimes it's in a machine description language called VHDL or Verilog I think are the most popular ones.

PN3034

I see. Now, you refer to your client as being PPC. That's a sort of an anonymous acronym?---That's right, yes.

PN3035

It's an electrical distributor that we don't need to identify?---That's right.

PN3036

Your client delivers electricity to houses, substations, manufacturing plants and what have you?---Yes, that's right.

\*\*\* KENAN DANIEL TOKER

XXN MR FAGIR

PN3037

Is this right that the load that's delivered, the voltage will vary from time to time?---Yes. It should be depending on the voltage level around - if the low voltage is around 240 volts, otherwise it will be 11 000 volts, 33 000 volts, 132 000 volts. But it depends on the voltage level, but it should be around those particular levels.

PN3038

Is this right, that the voltage will fluctuate or the voltage requirement will fluctuate depending on what's actually happening?---That's right.

PN3039

For example, if you come home and turn on your TV or turn all the lights on, the load delivered has to adjust?---That's right.

PN3040

And that has to happen within a matter of less than seconds?---Yes. Generally, the way that the distribution network works is that with the network being connected to a number of synchronous generators which are usually things like coal-fired power stations, there's a lot of control available in the network, just because these machines are spinning and there's a lot of inertia behind them. That actually provides a lot of that control. But in general, the more load that's being pulled off the network by users, the lower the voltage. To make all of our appliances work correctly, we have to maintain a certain level of voltage between say 238 to 242 volts or thereabouts, when that can fluctuate.

PN3041

What happens if you fall outside that range that the appliances for example can deal with?---It depends on the appliances, but it will often mean failure of a particular appliance or the appliance will - it won't work correctly. Say if it's a refrigerator, if you blow a refrigerator into a 250 volts, it might just - it might trip your breaker and then fail.

PN3042

Hopefully it will trip the breaker?---Hopefully it will trip the breaker, yes.

PN3043

The same goes perhaps on a different scale for manufacturing plants or whatever else it is that the electricity is being delivered to?---That's right, yes.

PN3044

Now, just dealing with your side of the equation. Your program receives data about electrical load via the SCADA interface that we discussed?---Yes.

\*\*\* KENAN DANIEL TOKER

XXN MR FAGIR

PN3045

It then stores that data in a database, or two databases?---That's correct, yes. One database contains the actual data in time series format. So, just a certain time associated with a particular kind of value as well as the value itself. The other database contains metadata about that data. So, some additional values like the unit of measure, the location of the asset, which is basically just used to make a bit more sense of the data that's been stored.



PN3046

Is the second tranche of data refined from the raw data in the first database, or does it come from a different source?---Both - it depends on the asset. Sometimes the asset gives you some details about say the location of the asset itself. Other times we maintain basically maps of where those assets are. Usually that second database will contain details about what the measurement actually is and that comes directly from the asset generally.

PN3047

I see. Do I take it from all that, that the data that's being input into the database comes in various forms depending on where it's actually being taken in the network?---Yes, yes.

PN3048

The database administrator or the database manager has to effectively adapt all those different varieties of data and plug them into the database in a way that's properly organised and comprehensible?---Yes.

PN3049

You don't have a separate database administrator or DBM, you are that person?---As far as organising this data is concerned, I'm that person, although the administration of the database software is not part of what I do.

PN3050

I see. You have to know something about SQL structured query language?---Yes.

PN3051

That's not a programming language perhaps, but a protocol that inputs and is used to input and receive information from a database?---Yes, it's a declarative language which is used to say I want to have this particular data presented to me in a certain way and then the database takes care of how that is actually done.

PN3052

You explain in your statement that information in databases can be muddled fairly easily. Can you explain what you mean by that?---I think when I made that statement, I was making a reference to the Cassandra database which is what we use to store our time series data. We use Cassandra because it is very well suited to data which is coming in thick and fast, basically. Since we have a lot of data coming in and a lot of data being read by users simultaneously. The way that it works is by taking all the data and sticking it into memory on the computer and then at some interval when the resource is available, writing it to the hard disc. When I say that it can be muddled fairly easily, the way that it's architected is such that the best way for it to receive data is in a perfect time order. So, it generally likes to have data received which is - it likes to have data received sequentially. If for some reason we have to say, reply data, which has been entered incorrectly previously, the database can - it will take it, but it doesn't really like it as much.

\*\*\* KENAN DANIEL TOKER

XXN MR FAGIR

PN3053

That's something that's one of the issues that you have to deal with on your side of the database management exercise?---Yes, that's right, yes. I work much more closely with the management of the actual database software as far as Cassandra is concerned, but less so with Oracle.

PN3054

Did the scenario that you've described to be the data is not going in perfectly chronologically, that might arise because of a failure somewhere in the network which means that data hasn't come through chronologically?---Sometimes. Usually, it's honestly because there's been some kind of a bug in the software which has meant that the data that we've received, while it was presented in perfectly correct raw format, we've just processed it incorrectly.

PN3055

A bug in your software or Cassandra's software?---A bug in my software. Sometimes it was me that made the bug; sometimes it was someone else.

PN3056

When this issue arises, there might be a variety of reasons. One is it could be a problem in the code or it could be a hardware failure in the field, or perhaps there might be some other reason?---Yes, that's correct.

PN3057

One of the issues that you have to do is work out which of those it is and then what steps are required to fix the problem?---That's right, yes.

PN3058

Now, can I deal with what I understand to be the sort of groups of tasks that you have in your role. The first one as I understand it is systems and network maintenance. Is that a fair label for one group of duties that you have?---I would say so, yes.

PN3059

You explained that when you come into work first thing in the morning, you will typically check the readings that have been taken overnight?---Yes.

PN3060

And see if there are problems with the readings?---Yes.

PN3061

Again, the reasons for a problem might vary from a hardware failure to a software bug to perhaps other reasons?---Yes.

\*\*\* KENAN DANIEL TOKER

XXN MR FAGIR

PN3062

The first thing you need to do if there is a problem, find out what the reason is. If it's network failure, hardware failure, software bug, whatever it is. If there is a problem, you then have to conduct some sort of triage, work out whether it's urgent, whether it needs to be dealt with immediately, or it can be dealt with later?---That's right. Depending on the urgency, it may be prudent to deal with it

immediately. Otherwise we may be able to continue our health checks and see if there are any other pressing matters.

PN3063

You also decide whether it's something you need to pass on to your supervisor and in what way? Whether it's an informal comment or something that needs to be more formal?---Yes, yes.

PN3064

Now, if that's all okay, you then have a look at the database?---Yes.

PN3065

Then you check the messaging queues?---Yes.

PN3066

Which is where the data is received. It effectively can build up in a kind of buffer?---Yes. It's kind of like a - it's a queue sorry. The data will go in and if there's nothing pulling from the queue for whatever reason, it will just sit there awaiting processing.

PN3067

Right. What sort of problems can you get in the messaging queues?---Usually those are software related, so they're rarely an issue in the field itself. That could be for instance, because there's been some issue of connectivity with the Oracle database which stores our metadata. So, if we can't - if the software can't reach that database for whatever reason, then the messaging queues will often back-up because if it can't get to the metadata then it doesn't quite know how to process the data so it will just leave it there rather than throw it away.

PN3068

If you discover a problem in one of these stages, as I've suggested to you, you need to work out where the problem is?---Yes.

PN3069

You may need to deal with the client, depending on the nature of the problem?---Yes.

PN3070

You might need to deal with the engineers and technicians that administer the modules that we spoke about earlier to see if something's come unplugged or been hit by lightning or whatever it might be?---Yes. You usually only deal with one other person at the (indistinct). I'd call him my contact at the company.

\*\*\* KENAN DANIEL TOKER

XXN MR FAGIR

PN3071

What's his role at the company?---His work - well, the field that we all work in is called OT - Operational Technology and he is kind of a one-man army really. He's got a lot of different roles over there. But one of them is - I mean, in his role is contact for me, I suppose. He provides a way for me to - I kind of - it's not so much that I'm asking him what I should do about this. It's more that I know where this particular issue is and I think it's in say, this particular area of the network. I

might palm that off to him and he'll say okay, I'll talk to the relevant people and liaise with you about that.

PN3072

Then he will try and get someone to check it out and then he'll come back and say to you I've gone down and had a look at it physically or whatever else and this is what we've discovered?---That's right, yes.

PN3073

If there's a problem at that end and you deal with that fellow; if it's a problem with the code or on your side with the code or the network that you maintain, that's your problem?---Yes.

PN3074

Roughly speaking, right?---Yes.

PN3075

Aside from the management task, you have a role in developing as well, do you?---Yes.

PN3076

Is this a later version of the program that you administer?---It is, and there's also other projects that come up from time to time which don't necessarily add on to the program as it currently exists. But, it can be kind of thought as another - kind of another program that sits in the same environment that has some new functionality.

PN3077

Are you talking about for example, the air conditioner project and the estimator project?---Yes.

PN3078

They're sort of not unrelated, but not part of the key services that provide?---Yes, that's correct.

PN3079

You explained that you build and configure virtual machines, configure the network and configure rolling updates and so on and so forth. Ultimately you say you run the software to ensure that it performs the same as the production environment but does not impact the production environment in any way?---Yes, so there's this software that runs the development environment. I ensure that it operates in the same way as it would in production, but without actually impacting production. It gives us an environment to play with, I guess.

PN3080

Without the risk of something going wrong in the field then?---That's right, yes.

\*\*\* KENAN DANIEL TOKER

XXN MR FAGIR

PN3081

I'm sorry, were you going to say something?---Just so that something doesn't go wrong in the field or that we don't introduce any bad data for instance in the production environment.

PN3082

How might the software impact the production environment?---The development is designed so that it doesn't impact the production environment. One way that it could is if its virtual machines in that environment have access to the production environment databases and we cordon those databases off. So, anything the development environment can't get to the production environment because there are various firewalls in place. That's done partially for security reasons. So if we consider the development environment to be a less secure zone than production in the sense that if there was some kind of intruder it would not be possible to get from the development environment into the production environment.

PN3083

Right, and of course, just speaking of security, this is a constant preoccupation across all of these tasks. Is that fair?---Yes.

PN3084

Whether it's at the SCADA level which has particular vulnerabilities to your network to the program itself?---Yes.

PN3085

In terms of the process of development, you explained that the requirements of the development environment build were outlined to you, but implementation was left to you. Is that right?---Yes.

PN3086

The supervision was an informal progress report every couple of days?---Yes.

PN3087

Can you just tell us what is the design environment for the development environment?---I think that the design environment I would consider basically to be my own computer. So I run an IDE.

PN3088

What does that stand for?---Integrated desk top environment which is basically it just combines an editor. It takes editor with a compiler, a run time environment. It basically lets me run these programs on my own computer rather than on the development environment or in the production environment. It's kind of like a pre-test environment just for me to sand-box my applications in.

PN3089

I see. Is the development environment build the same thing as the design environment?---No. No. The design environment would be my own computer, whereas the development environment is a mirror image of the production environment without having any impact on production systems.

\*\*\* KENAN DANIEL TOKER

XXN MR FAGIR

PN3090

The place that you might first do something is your own computer and run it locally?---Yes.

PN3091

Then at some point you try to do the same thing; hopefully do the same thing in the design environment?---In the development environment.

PN3092

I'm sorry, in the development environment?---Yes.

PN3093

Although perhaps you think it should be the same as you try to replicate what you're doing on your PC elsewhere, that often throws up challenges if something goes wrong and you have to work out where exactly in your code or in your logic that the problem has happened?---That's right, yes. And then the design environment is where I've got more ability to kind of see into different parts of the system as opposed to the development environment which I can look in different parts of the system but it's a lot easier when you've got a desktop and a debugger and all that sort of thing.

PN3094

In your design environment you can sort of run the program step by step and see - work out that way exactly what's gone wrong. Whereas once you're in the design environment, it's more difficult?---In the development environment yes.

PN3095

In the development environment it's more difficult?---That's right, yes.

PN3096

Then the same set of issues arise but with more at stake once you move from the development environment into the production environment?---Yes. By that stage you would hope to have your code pretty-well ready for production. So there's a lot of testing before it goes into production.

PN3097

You would hope so, but history tells us - - -?---Sometimes things will go wrong.

PN3098

No matter how much testing you do, things can go wrong?---Yes.

PN3099

Now the third broad category of tasks that you have is network maintenance. Is that right?---Yes.

PN3100

You tell us that your responsibility or you have responsibility for maintenance of the network which requires setting up and modification of IT systems?---Yes. To clarify, this is in the context of my own office rather than on site.

\*\*\* KENAN DANIEL TOKER

XXN MR FAGIR

PN3101

You explained that you set up a new internet connection system over 4G?---Yes.

PN3102

While maintaining the security integrity of Langdale's internal infrastructure and connection to the client?---Yes.

PN3103

Again, security is absolutely critical in this type of thing to make sure that you don't open a door for someone?---Hackers basically.

PN3104

For hackers or bots or whatever it might be. And then again, that security is a particular issue during maintenance. Is that right?---Yes.

PN3105

You explained that if your reconfiguring your mail server or whatever it might be, part of your job is to keep an eye on the traffic that's coming in through the router to make sure that you're not getting any outside connections that you're expecting?---That's right.

PN3106

That again, it could be a hacker or a program running out there looking for vulnerabilities and so on?---Yes, yes.

PN3107

If you don't do that properly and access is obtained to your system that can have serious consequences in terms of data privacy, intellectual property, theft and so on and so forth?---That's all correct, yes.

PN3108

If there is an external connection that you're not expecting you need to work out whether that's a misconfiguration or something more sinister?---Yes.

PN3109

I asked you about the air conditioner project and estimator projector earlier. Is this the summary, that's development work that you're doing on two side projects or ancillary projects?---Yes. This was at the time that I made this statement so a little while ago, I sometimes do work on these projects now but they've been in production for some time.

PN3110

Are you doing something different now or was that done and - - -?---I'm doing something a bit different now, yes. Other projects come up, some projects kind of settle and just run correctly.

PN3111

The air conditioner project required you to build an interface for air conditioner management?---Mm-hm.

\*\*\* KENAN DANIEL TOKER

XXN MR FAGIR

PN3112

There was some kind of program existed but it was heavily outdated and you effectively needed to bring it up to code?---Bring it up to scratch, yes.

PN3113

When you did that, no one at Langdale checked it but the client ran some sort of factory acceptance testing and on that basis it was adopted?---Yes.

PN3114

And has been in production, it's been implemented for some time has it?---Yes, that's right.

PN3115

You describe what that actually involved at paragraph 9. This is paragraph 9 on page 7. Can I just ask you this, you were given a bit of a lead about this but really you had to educate yourself in what was required and you had to - you were sort of self-starter on this one?---Yes, yes.

PN3116

Is it written in Python or - - -?---This one is written - - -

PN3117

- - - PHP or something or is it Java as well?---This one's written in Java.

PN3118

You then were working on an estimator project, or you were, and the - perhaps the interesting thing about that program is if it worked it would potentially save the client from having to replace transformers that are not actually defective, is that right?---That's right, yes.

PN3119

That's a multi-million dollar saving potentially?---It's a money saving - yes.

PN3120

You also deal with documentation and the short point is that if your codes going to be useful for more than a few months it needs to be properly documented?---Yes, if anyone else should come and look at it a couple of years down the line it might not be immediately obvious what I'm done or the code might be that outdated that they need to figure out how it was supposed to work in the past, and how they might be able to update it.

PN3121

Sometimes you look at your own code that you wrote six months earlier and you're not sure how it all - - -?---Yes, sometimes I'm just leaving notes for myself.

PN3122

It's an irritation because you're trying to fix the problem but you actually need to make sure that you're doing this at every step otherwise you've got something that's going to become redundant or is going to create a problem for someone else down the track?---That's right.

\*\*\* KENAN DANIEL TOKER

XXN MR FAGIR



PN3123

That might be a matter of including comments actually in lining the code or a more formal documentation of the system?---Yes, both, yes.

PN3124

Mr Toker, you program in Java, that's one of the languages that you use?---Mm.

PN3125

That's a full blown object oriented program language?---Programming language.

PN3126

You use Python as well?---Yes, for some scripting tasks I use Python.

PN3127

That's what Python is, it's a scripting language?---Yes. You can make more fully fledged programs out of it but it's often used for scripting just because it's less (indistinct) than Python and it's got a lot of built in tools.

PN3128

You do some scripting in Bash as well on Linux for your system administration type of jobs?---That's right.

PN3129

SQL when you're mucking around with the database?---That's right, yes.

PN3130

In terms of your actual Java development, you use Karaf and Tomcat as your runtime environments?---Yes, generally, yes.

PN3131

That involves some - there are different options in terms of runtime environments. These are the ones that you use?---Yes, so Tomcat is generally used for building web applications and Karaf is a modular runtime environment that you can use to deploy applications which might have dependencies on one another. It makes managing dependencies a lot easier.

PN3132

One of the things that you have to do in developing the program is work out whether your particular program is better suited to which runtime environment?---That's right, yes.

PN3133

Can I just ask you some questions about your degree. What was your UAI?---About 93, thereabouts.

PN3134

You studied - the engineering part of your degree was four years?---Yes.

\*\*\* KENAN DANIEL TOKER

XXN MR FAGIR

PN3135

Three or four subjects per semester?---Four subjects per semester. I did a double degree, so it was usually two engineering, two arts, or three engineering, one arts subject.

PN3136

Your maths might be better than mine but over the course of the degree did you do something like 30 engineering subjects?---I'd believe that. I can't think of the exact number but it was about that.

PN3137

How many of them were programming subjects?---In total, the only programming subjects which were just programming, so learning how to program were probably about four of them. And then after we'd done those we used the different kind of programming languages or programming skills in other units of study.

PN3138

The job that you're in now, you're really only drawing on a portion of your training as an electrical engineering?---I am. It's - the job that I'm doing right now requires a specific domain knowledge in the field of electrical power engineering. But I wouldn't go about calling myself a power engineer.

PN3139

You describe yourself as a software engineer?---Yes.

PN3140

There's such a subject nowadays as software engineering but that's not what you studied. You studied electrical?---That's correct.

PN3141

That phrase software engineer doesn't necessarily have a fixed meaning. Sometimes it means a person who studied an engineering degree in software engineering, that's one meaning that attaches to it?---Yes.

PN3142

But it's also sometimes used to describe a software developer who solves engineering problems?---Yes, I'd say that.

PN3143

You may not know but for example at NASA their computer program was the first person to demand that they be called a software engineer because they were writing software but dealing with engineering problems every day?---Yes.

PN3144

Thank you, Mr Toker, they're my questions, if the Commission please.

PN3145

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

PN3146

MR WARREN: Can I ask some questions please, your Honour?

\*\*\* KENAN DANIEL TOKER

XXN MR FAGIR

PN3147

VICE PRESIDENT HATCHER: Yes.

**CROSS-EXAMINATION BY MR WARREN**

**[12.48 PM]**

PN3148

MR WARREN: Thank you. Mr Toker, you made your first statement in 2017?---Yes.

PN3149

Which is now exhibit 52. You there described yourself as a graduate software engineer. Was that a title that was given to you by your employer?---That was the title in my contract, yes.

PN3150

It remains the same, graduate software engineer?---It does. But that being said though, my contract hasn't changed but being a small company there's - like it's kind of a word of mouth situation. For instance we'll be hiring some more people fairly soon and there'll be an understanding that I'll be playing a part in training them.

PN3151

You'll be playing a part in training them?---Yes, which wouldn't be the role of a graduate.

PN3152

So your job's evolved over this period of time?---Yes.

PN3153

You've now been there nearly three years. I assume your salary's increased since you gave this - made this statement of \$72,000?---Yes.

PN3154

What's it gone to now?---It's 85 now.

PN3155

Thank you. You initially started on a casual basis. What hours were you working then?---I first started working about three days a week, so three 8 hours days a week and for about a year and a half it was between three and five days, and then when I went full-time it was five days, 9 to 5.

PN3156

I think you also - no, thank you. Thank you very much. Thank you for that.

PN3157

\*\*\* KENAN DANIEL TOKER

XXN MR WARREN

\*\*\* KENAN DANIEL TOKER

RXN MR TAYLOR

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

**RE-EXAMINATION BY MR TAYLOR**

**[12.50 PM]**

PN3158

MR TAYLOR: Just one matter of detail. You described your current salary \$85,000. Is that 85,000 package or is that 85,000 plus superannuation or other benefits?---It's 85,000 plus superannuation and other benefits.

PN3159

Thank you. No other questions.

PN3160

VICE PRESIDENT HATCHER: Yes, thank you for your evidence, Mr Toker. You're excused and you may step down.

**<THE WITNESS WITHDREW**

**[12.50 PM]**

PN3161

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

**LUNCHEON ADJOURNMENT**

**[12.50 PM]**

**RESUMED**

**[2.01 PM]**

PN3162

MR TAYLOR: Our next witness if it please the Commission is Amanda Sri Hilaire, there are three statements that we filed in respect to - - -

PN3163

VICE PRESIDENT HATCHER: Sorry, before we get to the witness box. So having regard to our general ruling this morning, Mr Fagir, is there any objections to the supplementary statement of Ms Sri Hilaire? Is Sri a middle name or part of the last name?

PN3164

MR TAYLOR: Sri is the middle name but it's also the name that she goes by as her first name. So Hilaire is the surname.

PN3165

VICE PRESIDENT HATCHER: Right, so Ms Hilaire.

PN3166

MR TAYLOR: Yes.

PN3167

VICE PRESIDENT HATCHER: Mr Fagir.

PN3168

MR FAGIR: No, well, I can deal with it in part in cross-examination and we'll hopefully have some evidence in response. I don't take separate objection now.

\*\*\* KENAN DANIEL TOKER

RXN MR TAYLOR

PN3169

VICE PRESIDENT HATCHER: Sorry, what was that?

PN3170

MR FAGIR: I don't take any objection beyond this morning's objection.

PN3171

VICE PRESIDENT HATCHER: Thank you. So Ms Hilaire can come forward.

PN3172

MR TAYLOR: Yes, thank you. Ms Hilaire, if you could come to the witness box.

PN3173

THE ASSOCIATE: Please state your full name and address.

PN3174

MS HILAIRE: Amanda Sri Hilaire (address supplied).

**<AMANDA SRI HILAIRE, AFFIRMED [2.02 PM]**

**EXAMINATION-IN-CHIEF BY MR TAYLOR [2.02 PM]**

PN3175

MR TAYLOR: Again now for the transcript can we just confirm your full name?---Yes, it's Amanda Sri Hilaire.

PN3176

Sri is the - your middle name but also the name that people tend to refer to you as?---That's correct.

PN3177

Ms Hilaire, your current address, (address supplied)?---That's correct.

PN3178

Now for the purpose of these proceedings you've prepared three statements. Is that right?---Yes.

PN3179

Do you have all three of them there with you?---I do.

PN3180

Just in order of the time they were prepared, the first was filed in November 2017. It's undated, 19 page statement that starts with the words, "Statement of Amanda Sri Hilaire". Do you have that with you?---Yes, I do.

PN3181

At the time you prepared that statement you were employment at Kamalei Children's Centre in Bowral?---Yes.

\*\*\* AMANDA SRI HILAIRE

XN MR TAYLOR

PN3182

Then following the filing of that statement, Anne-Marie Wolf of Kamalei Children's Centre filed a statement that responded to your evidence, did she not?---Yes, she did.

PN3183

You then in a reply statement that's dated 19 July 2018 of five pages, you responded to what she said about your evidence?---Yes, I did.

PN3184

In part you in your reply statement, you accepted some matters that she said and other matters you sought to clarify or reject certain things that she said. Is that right?---That's true.

PN3185

Just on your first statement then, turning back to that, when one reads it with the reply statement which is excepting certain matters that were put, do you say that when one reads the two together that they are - that they convey to the bests of your knowledge and belief that which is true and correct?---Yes.

PN3186

I tender each of those two statements.

PN3187

VICE PRESIDENT HATCHER: The first statement, undated, of Amanda Sri Hilaire will be marked exhibit 54. Ms Hilaire's statement in reply will be marked exhibit 55.

**EXHIBIT #54 WITNESS STATEMENT OF AMANDA SRI HILAIRE,  
UNDATED**

**EXHIBIT #55 WITNESS STATEMENT IN REPLY OF AMANDA  
SRI HILAIRE**

PN3188

MR TAYLOR: Sorry, your Honour, Mr Fagir's is just identifying that the copy of - Ms Hilaire the first statement at paragraph 4 ends with the words:

PN3189

*A copy of my position description is attached and marked annexure A.*

PN3190

At the end of paragraph 5 are the words:

PN3191

*Attached and marked annexure B is a copy of my curriculum vitae.*

\*\*\* AMANDA SRI HILAIRE

XN MR TAYLOR

PN3192

The copy that I'm looking at neither of those two attachments. I think at least one of them is in the bundle. What I might need to do is seek leave at an appropriate time to identify and tender those documents separately. I don't pause to do so, I

just identify for the record that notwithstanding what the statement says, they're not actually attached to the copy that's been tendered at this stage.

PN3193

VICE PRESIDENT HATCHER: Right.

PN3194

MR TAYLOR: Ms Hilaire, can I turn to the third statement titled "Supplementary statement", dated 18 June 2019. Do you have a copy of that with you as well?---Yes, I do.

PN3195

Do you say the contents of that statement are true and correct to the best of your knowledge and belief?---Yes.

PN3196

I tender that statement.

PN3197

VICE PRESIDENT HATCHER: The supplementary statement of Amanda Sri Hilaire dated 18 June 2019 will be marked exhibit 56.

**EXHIBIT #56 SUPPLEMENTARY WITNESS STATEMENT OF  
AMANDA SRI HILAIRE DATED 18/06/2019**

PN3198

MR TAYLOR: Finally Ms Sri Hilaire, you say in paragraph 1 of your second statement, exhibit 55, that you no longer work at Louis Woods Childcare Centre. What is - are you currently employed?---Yes, I am.

PN3199

What position do you hold and where?---I am a kindergarten teacher employed in an independent school, Southern Highlands Christian School.

PN3200

The word kindergarten is one that means different things in different states. What age are you teaching?---So the very first grade of primary school.

PN3201

VICE PRESIDENT HATCHER: What was the name of the school that you're in? Southern Highlands Christian School, yes, thank you.

PN3202

MR TAYLOR: Thank you, they're the questions for this witness.

PN3203

VICE PRESIDENT HATCHER: Mr Fagir.

**CROSS-EXAMINATION BY MR FAGIR**

**[2.08 PM]**

\*\*\* AMANDA SRI HILAIRE

XXN MR FAGIR

PN3204

MR FAGIR: Ms Hilaire, can I just run through with you your professional background, at least as at the time of making the first statement?---Certainly.

PN3205

At the time you made that statement you had worked for Anne-Marie Wolf for 12 months?---Yes, I think that's, yes, correct.

PN3206

Two days a week?---Yes.

PN3207

Previously in 2001 worked in a long day care centre?---Yes.

PN3208

For January through to December 2001?---Yes.

PN3209

That was also part-time?---Yes, it was.

PN3210

How many days?---I think it was two days a week as well. Two to three, sorry, long time, I should have checked my CV.

PN3211

The upshot of all that is that at the time that you made this statement your experience in long day care was a bit less than 12 months, two days a week in 2001 and again two days a week for 12 months in 2017?---Yes.

PN3212

Dealing with Ms Wolf's service, this is the position isn't it? That there was another ECT employed there named Rebecca?---Yes, correct.

PN3213

She was the director?---Nominated supervisor.

PN3214

And the educational leader?---Yes.

PN3215

She was the room leader for the 4 to 5 year olds?---She - yes, she was.

PN3216

You suggest in your first statement that you were the room leader for the 4 to 5 year old room?---I do say that because Rebecca directed me to act as the room leader on the two days a week that I was replacing her.

PN3217

Can I suggest to you that that's not right?---It is. She told me on at least three occasions.

\*\*\* AMANDA SRI HILAIRE

XXN MR FAGIR



PN3218

I suggest to you that you might perhaps have some responsibility for a room at times where she's off programming or otherwise off the floor, but the room leader, there was one, was Rebecca?---Well, her actual words to me were "You are to work as the room leader when I'm off the floor", and that's the way that my nominated supervisor directed me.

PN3219

Right. Can I suggest to you that to the extent you had supervisor responsibilities, they were in respect of trainees?---Well, as the room - when I was working as the room leader I would supervise all staff within the room.

PN3220

What I'm suggesting is something different. Is that to the extent you had any supervisory responsibility was in respect of trainees only?---Sorry, I'm just thinking about what you said.

PN3221

Sure?---Okay. Okay.

PN3222

Don't just agree with me because I'm putting it to you?---Well, I guess I'm not quite sure what you mean by supervisory. If you could explain what you mean by that, that would be helpful.

PN3223

The requirement to direct and in some way oversee the work of another person?---Excellent. Okay, then no, I disagree with you. When I was working I was responsible to supervise all the people that were within either the room that I was working within or outdoors, there was often more staff, then that was - well, it was part of my role too.

PN3224

I want to suggest to you that all qualified staff had a supervisory role in relation to trainees. There was no difference between you and any other qualified educator in that respect?---Well, when working in the room I was often the only one with the trainee, so it really fell to me.

PN3225

You deal with the NQF and NQS at paragraph 8 of your statement?---Yes.

PN3226

Turn that up if you need to. You see in the third sentence beginning at the top of page 3 you say that:

PN3227

*My role requires that I ensure compliance in the centre with the national law and regulations and that the centre is meeting the standards of the NQS.*

\*\*\* AMANDA SRI HILAIRE

XXN MR FAGIR

PN3228

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

PN3229

You'd now accept that to be incorrect?---Are you referring then to the next - my next statement that I've made?

PN3230

I'm just asking you now, you would agree with me that that statement is not correct?---(No audible reply)

PN3231

Let me see if I can shortcut this, Ms Hilaire. I'll read out a paragraph from your reply statement?---Sure.

PN3232

*I refer to paragraph 16(a) of Wolf's statement in which she denies I have a role for ensuring compliance with the national law. A contractual obligation (in section C) is to work according to the Education and Care Services National Regulations under the national law as determined by the New South Wales Department of Education. I consider that this delegates responsibility to me as an ECT to uphold the national law and regulations. This in turn is a responsibility to ensure compliance.*

PN3233

?---Yes, I read that.

PN3234

Does that assist you in any way?---Yes, does that not just reinforce what I said in the first one. I think that's a reinforcement of what I said in my first statement.

PN3235

That paragraph that I just read to you, is that your language or something someone else suggested that you include in that statement?---No, that was my - that's my language.

PN3236

Can I see if I understand the proposition. Because you have an obligation you say under your contract to work according to the national law, it follows that you have a responsibility to ensure compliance in the centre with the national law?---So in terms of my work and my practice I would be ensuring that I am complying with the national law, yes.

PN3237

Sure, you have to comply with the national law. Your responsibility doesn't extend to the centre. It's only - you've got to look after yourself. You don't have to make sure the whole centre's complying with the law. You've got to make sure that you're complying with the law?---And anybody that's working with me that I'm supervising, I would be directing them to ensure that they're complying with the law too.

\*\*\* AMANDA SRI HILAIRE

XXN MR FAGIR

PN3238

Can I suggest to you firstly that there is no requirement arising under the national law regulations that you as ECT ensure compliance in the centre with the national law and regulations?---Well, in my contract that I signed I had to work according to those, so if I was to work according to the national - the Education and Care Services Regulations and the law then I feel that that is upholding it and making sure that the service and the activities within it are complying on that day to day basis. Where my practice influences and impacts that, and those that I'm supervising.

PN3239

Can I ask you about the quality improvement plan?---Of course.

PN3240

That you deal with at paragraph 9?---Yes.

PN3241

The position is that your role in relation to the quality improvement plan was no different to any other educator or indeed any other staff member employed in the centre?---I don't think that I've said that.

PN3242

Don't worry about your statement. I'm just asking you now?---Yes.

PN3243

Your responsibility in relation to the QIP was no different to anyone else who worked in the centre?---Anybody could contribute to it.

PN3244

Educators, ECTs, parents were all entitled to contribute?---Yes.

PN3245

In fact all did contribute?---Well, they may well have, I'm not sure about that.

PN3246

You say at paragraph 10 that you under this heading - - -?---Yes.

PN3247

- - - "Creating and maintaining a QIP", you say that you assess the centre's relationship with parents?---Yes, sorry, I was on the wrong page. Yes.

PN3248

You say that you analyse whether the centre was providing them with information they need?---Yes.

PN3249

Can I suggest to you, to the extent that you did any such analysis it wasn't at Ms Wolf's direction?---Yes, you can. It was Rebecca's directive.

\*\*\* AMANDA SRI HILAIRE

XXN MR FAGIR

PN3250

Can I suggest to you Rebecca didn't give you that direction either?---No, you can't because she did.

PN3251

Can I suggest to you that whatever results emerge from that analysis were never provided to Ms Wolf or Rebecca or anyone else?---No, because they were provided to Rebecca and she looked over them and as nominated supervisor I would expect it would be up to her to discuss that with the director.

PN3252

In relation to policies, can I suggest to you that your obligation was to know them and comply with them and that is all?---No, Anne-Marie - my boss required that I read them, that I understood them and that we were able to be part of the review process and make suggestions for change and improvement if we saw fit.

PN3253

So you, the educators and anyone else at any time was entitled to say I think this policy could be improved in this way or that that way?---Yes, they were.

PN3254

When you say you had the responsibility to read and review up to four policies per week, that's quite wrong isn't it?---Per month. My statement should say per month.

PN3255

I'm sorry, perhaps it is per month?---It is per month. It says that in section 10 of my statement in reply.

PN3256

Can I suggest to you that your obligation was nothing more than what I've put to you and that you had no responsibility to read and review up to four policies per month?---I can't agree with you because I did have to read them and I had to understand them and I did have to review them. We were invited to contribute to change.

PN3257

Again in relation to ratios, can I suggest to you that your responsibility was to ensure that you were teaching no more than the permitted number of children?---Yes, and I was also as a room leader, I was ensuring that there were the correct number of staff within the room to cater for the number of children that were there.

PN3258

In relation to children's safety, again you had no obligational responsibility that extended any further than any other educator working in the service?---(No audible reply)

\*\*\* AMANDA SRI HILAIRE

XXN MR FAGIR

PN3259

Your responsibility in relation to safety was just the same as all the other educators and teachers working in the service?---Yes, I would have to agree with that.

PN3260

The daily equipment checks that you describe are not a task for ECT's. It was a task for whoever was rostered on open?---Yes. And I was regularly on open. So I did do it once a week.

PN3261

And similarly a fortnightly WHS checklist, completing that was a task that was rotated amongst all the educators?---Yes, it was.

PN3262

Ms Waugh estimated that you'd do it every 12 to 14 weeks. In your reply statement you suggest it might have been close to every two months?---Yes.

PN3263

You say in 2018 you did it on 25 January, 20 April?---Yes.

PN3264

And 21 June?---Yes. I double-checked those dates.

PN3265

All right. Now checking the first aid kits you now accept was a job for an external contractor who came in and did that?---Once that was explained to me that that change had been I was not aware it was listed as a part of the duties. So I did the duty that was requested.

PN3266

Okay. And I will - in relation to analysis of risk to learning ratio, again, you had no different responsibility than any other educator working in the service?---No, I didn't have a different responsibility to anybody else. But as an early childhood teacher the staff that worked with me would often ask my - for my professional opinion - on any kind of risky play and in helping them to assess the level of risk.

PN3267

I kind of notice you keep referring to your statement. Are you having some difficulty recalling these things without the benefit of your statement?---I feel nervous. So referring to my statement is helpful.

PN3268

Now in relation to food allergies, can I suggest to you that the arrangement of the centre was as follows, and firstly, if you had a child with a food allergy or another medical condition, either Rebecca or Ann Marie would discuss that issue with the parents of the child at enrolment. That was step one?---Yes.

PN3269

Step two either Rebecca or Ann Marie would, if necessary, develop a medical conditions action plan for the child?---Okay. Yes. They would - - -

\*\*\* AMANDA SRI HILAIRE

XXN MR FAGIR

PN3270

Is that right?---Yes, they could do that. Yes.

PN3271

Your responsibility was to abide by whatever plan they had created?---Yes.

PN3272

In that sense, again, you were in no different position to any other educator in the service?---No, I wasn't. But I - you know - I did try to be vigilant and make sure that I was checking lunch boxes daily and removing foods that came in that weren't okay.

PN3273

Sure?---Particularly with the training in the room it did fall to me to do that.

PN3274

In relation to the special needs child that you describe at paragraph 16 to 17?---Yes.

PN3275

Again, I'm sorry to be repetitive about this but - - -?---Sure.

PN3276

- - -the responsibilities that you described were no different for the responsibilities of any other educator who was caring for that child?---I will agree with you that is correct, however, the level of expertise that an early childhood teacher can bring in dealing with children with special needs is high above that. They did a diploma or a Certificate III or a trainee might have. So I would be supporting everybody to support that child.

PN3277

That's your professional opinion based on your experiences we discussed it earlier?---Yes.

PN3278

Right. And in relation to the occupational therapist that you deal with at 17. Now the fact is - - -?---Yes.

PN3279

- - - that it was the centre that arranged for the occupational therapist to come to the service - not you. That's right, isn't it?---Yes. That's right. And I dealt with that in my reply statement as well.

PN3280

So to the extent that you say you liaised with a local organisation of occupational therapists?---Mm-hm.

PN3281

What you mean is that you spoke to the occupational therapist when they came to the service?---Yes, that's right. And I did say that in my reply statement.

\*\*\* AMANDA SRI HILAIRE

XXN MR FAGIR

PN3282

You deal with the EYLF of teaching from paragraphs 20 and following. Do you see that?---Yes, I do.

PN3283

Now, the final sentence of paragraph 20 you refer to the curriculum that you provide?---Mm-hm.

PN3284

Can I suggest to you that the development of the curriculum was a job for Rebecca and Ann Maria?---No, I wouldn't agree with you on that because in the EYLF document there is a statement that explains what curriculum covers and it actually covers all of the interactions that happen daily. So the curriculum that a teacher provides also covers the relationship - the way they relate to their students - to the children. So it covers everything. So they gave me the format on which to write things down on - certainly, but I am bringing my expertise in delivering the curriculum.

PN3285

And I suggest to you that in relation to development of the curriculum - well, development and implementation of the curriculum - your role was restricted to programming for six children who were assigned to you?---So - no, I disagree with you on that as well. I was responsible for specifically developing sort of individual plans for the six children though I spoke to you - that I wrote about at that time. But also I was responsible for programming for across the day. So the activities for all children plus any teachable lessons.

PN3286

I want to suggest to you that your responsibilities in relation to programming were no different to any other educator?---They - well, I worked mostly with the trainees, so yes, they definitely were different because she was - did not have the skills to do what I could do.

PN3287

Okay. Now paragraph 21 you deal with a variety of obligations that you say arise from the need to work consistently with the EYLF?---Yes.

PN3288

Again, that's an obligation that applies to all educators, teachers, diploma or Certificate III?---Yes, it is.

PN3289

The same is true for the obligations that you describe at paragraph 23?---Yes.

\*\*\* AMANDA SRI HILAIRE

XXN MR FAGIR

PN3290

Twenty-four is in the same category. In fact can I suggest to you that everything from 24 to 31 is in the same category. That is all the responsibilities or obligations that you describe applied to educators equally?---Other educators were involved in this process but they didn't have the same level of skill. And that's where early childhood teachers can support them in developing those - those skills

- and to be able to access the resources that they need to provide a program for children.

PN3291

Now you say about the EYLF that it's written in similar language and structure to what, in your experience, is used in school curriculum and syllabus documents. Do you remember saying that?---Yes, I do.

PN3292

Now, that's quite wrong isn't it?---No.

PN3293

I suggest to you that the National Curriculum is a very - if it could ever be reduced to a document it would be a very long and complicated document?---Well, I'm currently teaching as a kindergarten teacher in an independent school and in New South Wales while there is the Australian Curriculum we have to follow the New South Wales Board of Studies Curriculum and those outcomes are written as outcomes with indicators - very, very similar style - to the EYLF. So it made a very easy transition for me.

PN3294

One of the differences between curriculum as it applies in schools and the EYLF is that the school's curriculum includes both broad outcomes and much more specific outcomes for it to be pursued?---School outcomes are very specific and detailed. So we have syllabus. We have a syllabus like for the English syllabus, Maths syllabus and then there's outcomes for each area and that - so there's not really anything broad about a syllabus. It's very specific.

PN3295

What I'm suggesting to you is that the school's curriculum requires that you pursue both broad, generic-type outcomes like EYLF. You agree with that, firstly?---Can you give me an example of a broad school outcome that you're thinking of?

PN3296

Just agree or disagree with what I'm putting to you now?---Okay. Sorry, could you say that again, please?

PN3297

I'm suggesting to you that the school's curriculum includes, firstly, broad or generic outcomes similar to EYLF - that's one aspect of it?---No, I don't think that I do agree. I think the school outcomes are very specific. They're very specific to content areas or skills that are required.

PN3298

Of course the school's curriculum prescribes both content and outcomes?---Yes, it does.

\*\*\* AMANDA SRI HILAIRE

XXN MR FAGIR

PN3299



In relation to the content. It's not as though it's all laid out. You, as a teacher, have to make decisions about what content you deploy in your classroom?---Yes, that is true. And that's the same in early childhood settings as well.

PN3300

And you have to decide how to differentiate that curriculum or that content according to the abilities of your students?---Absolutely the same as you would in an early childhood setting.

PN3301

And you're also required to assess students in terms of their achievement against the outcomes?---Yes, correct.

PN3302

Formally and informally?---That is correct. But that's across both settings as well.

PN3303

Well, is that right? What assessment do you say is required in early childhood?---You do assessment for learning so you would look at what a child can do. So you would be looking at each of the outcomes, the behaviours that they're displaying, the play, the knowledge that they're bringing forth. So you would see what do they know and what can they do and then how can you develop a program that can support them to moving towards achieving those five outcomes before they leave the school.

PN3304

Whatever reason we keep dealing with this issue in this kind of abstract language. In fact, the assessments that are required take the form of - number one - observations. Correct?---Yes. Correct.

PN3305

And number two - there might be an end of term report that's required once or twice a year?---Twice a year, yes.

PN3306

That's what's required in terms of assessment?---Sometimes there's also developmental checklists.

PN3307

You would agree with me that that's chalk and cheese with the assessment that's required in schools?---No, I wouldn't.

PN3308

Can I ask you some questions about your workload at Kamalei?---Yes.

PN3309

I suggested to you earlier that you're responsible for planning and programming and documentation for six children?---That was the individual plans but I still was responsible for programming for the entire class as well as group times.

\*\*\* AMANDA SRI HILAIRE

XXN MR FAGIR

PN3310

Rebecca was the room leader for four and five? You'd accept that?---Yes.

PN3311

Or a room leader?---Yes.

PN3312

She was the educational leader?---She was.

PN3313

It was her job to develop the curriculum?---No, that was up to me to put those things on to the program to develop my group times and to observe and plan for individual children. That was my responsibility on the two days that I worked.

PN3314

And whatever it was that you had to do in addition to what Rebecca did you had 40 minutes off the floor completely to do that?---Yes, that's true.

PN3315

Out of your two days' work?---Yes, that's true.

PN3316

And your - - -?---Under the Award it's 24 minutes per day.

PN3317

You also had the opportunity to use quiet time when children were resting to get up to date with your documentation and so on?---No. That's not true because I was also responsible to assist with cleaning the room. My boss liked for everybody to share the load.

PN3318

Can I suggest to you that there was a significant amount of that documentation work that could be done in real time?---No.

PN3319

Right. And you ultimately say that inevitably you did planning and programming at home outside of your work hours?---Yes, I did, until I was told that I was not to do that.

PN3320

Then what happened?---Then I tried my best to fit it in as best as I could.

PN3321

And you did?---Yes. I would have to say it was difficult to complete it to the same - to the same standard - with the same depth and scope for critical reflection because the time pressures increased.

PN3322

You suggest later in your statement that you worked autonomously?---Yes.

\*\*\* AMANDA SRI HILAIRE

XXN MR FAGIR

PN3323

Now I have suggested to you that you worked with another ECT who was also the educational leader. She wasn't on the floor so I didn't get to work with her. When you say you worked autonomously you mean you didn't work shoulder to shoulder with Rebecca. Is that what you mean?---Well, yes I guess so. No, I didn't get that opportunity to work as closely with her as I would have liked.

PN3324

You actually go on to say that in the structure of long day care there's no scope to provide mentorship or assistance to graduate teachers. Do you remember saying that?---Yes.

PN3325

Do you think that's a pretty big call for someone who's worked two days a week for 12 months to make?---I guess I have. Well, that's my opinion. The time pressures that are there are so much that it's difficult to have the level and depth of conversation that you might have because when I was a primary school teacher by contrast, I had a supervising teacher and we team-taught a lot of the time. So I upskilled quickly. She always had time for me after the end of each day to debrief and there's not that same level of mentorship in long day care.

PN3326

The proposition you put was in the structure of long day care, there is no time or scope to provide mentorship or assistance to graduate teachers. And you'd agree with me that that's quite wrong?---Perhaps I would - it would be better said - but there's not enough time to provide - you know - adequate mentorship.

PN3327

And you saw Ann Marie's statement where she suggested that perhaps because you were only at work two days a week and you weren't the educational leader or director. You weren't really in a good position to deal with this issue?---Well, I had trainees - I had trainees in my room and then there was a period of time that I did have a graduate teacher in my room. So I'm basing it on my experience in those two times.

PN3328

When did you have the graduate teacher in your room?---I can't remember the dates exactly.

PN3329

How long was it?---It would be an estimate.

PN3330

Sure?---It's probably a few months.

PN3331

Was this graduate full time or part time?---I couldn't answer that I'm sorry.

\*\*\* AMANDA SRI HILAIRE

XXN MR FAGIR

PN3332

Is this a graduate who worked with you, when you were in charge, or with - and with Rebecca when she was in charge of the room?---I believe - I believe so. I think she worked across the two centres. So I did have her on some of the days that I worked - on the days that I worked.

PN3333

So that grad, for example, wouldn't work autonomously within your definition? Or she did not, in fact, work autonomously within your definition?---She did defer plenty of times to me for assistance and she asked lots of questions and things. So I guess - no, she wasn't sort of at that autonomous level where she could make her own decisions with that mentorship.

PN3334

Did you answer her questions?---Yes.

PN3335

Did you provide the assistance that she sought?---Yes.

PN3336

Well, if that graduate would disagree entirely with what you've said at paragraph 42?---Right. I guess she would.

PN3337

But this is a person who had the benefit of your assistance while she was working with you?---Yes.

PN3338

And she had the benefit of Rebecca's assistance whenever she was working with Rebecca?---Yes.

PN3339

You now know, don't you, that Rebecca is assigned as a mentor to new graduates?---No, I didn't. But that's fantastic. She would do a good job of that.

PN3340

And you saw that in Ann Marie's statement didn't you?---I don't - I didn't - I don't recall that, no.

PN3341

All right. Now you were also prepared to say that in your experience there's simply not enough time given to teachers to properly plan and program in early childhood settings?---Yes.

\*\*\* AMANDA SRI HILAIRE

XXN MR FAGIR

PN3342

Now, again, you're prepared to make that call about early childhood settings in general on the basis of two days a week for 12 months and two days a week for 12 months, 16 years earlier?---Yes, I would because I have many collegial relationships that extend beyond Kamalei. I have worked in Gumnut Preschool in Bowral and I've also worked in Bundanoon District Community Preschool and it's

a very, very, very common thing for early childhood teachers to say. And that is our lived experience.

PN3343

All right?---Because unlike school teachers we don't - we're not supposed to take our work home.

PN3344

And you know Rebecca was the educational leader at your service when you worked for Ann Marie?---Yes, I do know that.

PN3345

And you understand that she was available to give you pedagogical support and assistance as required?---Yes. And I did try to make use of that as much as I could but I couldn't always get - go off the floor to ask her questions.

PN3346

Ms Wolff, you know, has had a long experience in early childhood education?---Yes.

PN3347

You know she has a diploma?---Yes.

PN3348

She's a person who you would accept is very knowledgeable about early childhood education and care?---Yes.

PN3349

That was another person you could approach if you felt that you needed - you might not - but if you felt you needed pedagogical or programming support she was available to you?---Well, not always. She wasn't always on site - rarely.

PN3350

Now you were operating a comparison of work in early childhood teaching and primary teaching?---Yes.

PN3351

You say - and I'll just read it out to you.

PN3352

*The main difference you say is that you needed to have more comprehensive and detailed knowledge of child development across the various domains.*

PN3353

Beyond that, teaching was doing exactly the same, simply at different levels?---Yes.

\*\*\* AMANDA SRI HILAIRE

XXN MR FAGIR

PN3354

Do you think you've left out a few of the things that school teachers have to do that early childhood teachers don't?---I think I've covered all the developmental domain.

PN3355

But you don't suggest that that's a serious comparison of the work of early childhood teachers to school teachers, do you?

PN3356

MR TAYLOR: Objection. It's not an appropriate question.

PN3357

VICE PRESIDENT HATCHER: I'll allow the question.

PN3358

MR FAGIR: Do you need me to repeat the question? I suggest to you that's not a serious comparison of the work of an ECT to the work of a school teacher?---I have done both roles. I have worked as an early childhood teacher and I've worked in schools. So I think I'm well positioned to make this comment that the work is very similar. We teach and we plan in very similar ways. We assess in similar ways and it's just the knowledge and the skills that differ from setting to setting.

PN3359

I'll ask you some questions doing my best about the supplementary statement. This is the one that you signed or prepared last week?---Sure.

PN3360

At paragraph 6 you say "Having returned to the sector after some years away, you are now required to complete a detailed individual educational program for each child"?---Yes.

PN3361

Every child in the service?---For those - well, I guess if it was in reference back to when I worked at Kamalei, then it was for the children that were allocated to me. When I have worked - - -

PN3362

The six children that were allocated to you?---Yes. And then when I have gone on to work in other settings, depending on how that service is set up, it could be for all of the children that are in there.

PN3363

You're not suggesting at 6(a) that you're required to produce a separate observation for each child every day, are you?---No, I'm not suggesting that.

\*\*\* AMANDA SRI HILAIRE

XXN MR FAGIR

PN3364

You're not suggesting that observation is some new development that came from the EYLF?---No, observations were something that we definitely had learnt about at university, but with the EYLF guiding the way that we were to observe and the

things that we were to look for, that definitely increased the complexity of that task.

PN3365

You know of course, before the EYLF there was something known as the New South Wales curriculum?---In my experience in, I think it's 2001, no, I wasn't aware of that.

PN3366

You were aware that there was something called the QYAS quality improvement and accreditation system that's been in place since 1994?---No, I wasn't aware of that.

PN3367

Right. Now, in any case, the obligation that you describe - the duty that you describe at 6(a) is one that applies to all educators, not just ECT's?---It depends on the service and what the director wants.

PN3368

At 6(b) you deal with critical reflection?---Yes.

PN3369

Can I suggest to you firstly, that critical reflection is part and parcel of the work of any professional?---Definitely it's the work of professionals, yes.

PN3370

To the extent that there's some new requirement to critically reflect, it's new to non-bachelor degree educators. It's not new to teachers at all?---No, it's not new, but it's been formalised as a process through the EYLF.

PN3371

Again, can I suggest to you that in formal critical reflection conversations between educators regarding pedagogy and practice are not a new development?---No, they probably are not, but I find that it's something that's now expected.

PN3372

What's new is that there's now an educational leader required in every service who's available to lead those conversations?---They're not the only person that has those conversations.

PN3373

Sure, sure. But there's now a requirement to have someone whose job it is to be available to deal with pedagogy and program issues?---Yes, that is true, and that's new.

PN3374

Again, at (d), play-based learning you would accept as being around for a long, long time?---Yes.

\*\*\* AMANDA SRI HILAIRE

XXN MR FAGIR

PN3375

Recording and updating the room program and children's individual programs is an obligation firstly of all educators, not just ECT's?---Again, it does depend on the service. But at Kamalei, we did share those with staff that were appropriately trained.

PN3376

The requirement to communicate with parents - again, that's nothing new. That's been a requirement for many, many years?---But about outcomes? So, how the child is working towards the outcome and the involvement of parents and families in actually collaboratively planning was new to me when I returned to work.

PN3377

Can I suggest to you that the requirement that staff and parents consult on the program and evaluate it together, has been in place since at least 2000, probably earlier?---I wasn't aware of that.

PN3378

Now portfolios are something that have always been produced in early childhood?---They weren't in my first service.

PN3379

Can I suggest to you that what's different now is that the portfolio is much more easily put together using Kindyhub or Explore or whatever app might be used in a service?---I find that the use of the digital technologies takes up more time, not less. And that it can interfere with people's supervisory duties if their heads are down looking at an iPad rather than watching the students when they should be.

PN3380

Sure, and there are some services who think you should keep the iPads away from the children; others who think it should be more integrated. No doubt about that. But the process of taking pictures, plugging in, observations linking to the EYLF is now all done much more easily than it was in the olden days where you would be with the glue pasting things onto bits of paper. You would agree with it?---I think it takes about the same amount of time, really.

PN3381

Excuse me for a moment Ms Hilaire. Thank you Ms Hilaire; they're my questions. If the Commission please.

PN3382

VICE PRESIDENT HATCHER: Mr Warren.

PN3383

MR WARREN: Yes, just one short question.

**CROSS-EXAMINATION BY MR WARREN**

**[2.47 PM]**

\*\*\* AMANDA SRI HILAIRE

XXN MR WARREN

PN3384



MR WARREN: Ms Hilaire, you indicate in exhibit 54 which is your first statement that you, in paragraph 4, that you teach 18 children within the preschool room?---Yes.

PN3385

How many children do you currently teach at your Southern Highlands Christian School?---17.

PN3386

17, and they are aged - they're kindergarten, so they're aged?---Between four and six. Yes, four and a half to six.

PN3387

Fine, thank you. Thanks so much?---That's okay.

PN3388

VICE PRESIDENT HATCHER: Mr Taylor?

**CROSS-EXAMINATION BY MR TAYLOR**

**[2.47 PM]**

PN3389

MR TAYLOR: Mr Warren just asked you how many children in the room when you were an early childhood teacher and you gave an answer. How many children over the course of a week?---That's difficult for me to describe because they do change from day to day. They're not all enrolled full time. There's varying attendance patterns.

PN3390

You mentioned that in addition to the time that Mr Fagir asked you about that you had been an early childhood teacher prior to giving your first statement, he identified that the previous times you had been an early childhood teacher you indicated in one of the answers that you have also been an early childhood teacher at Gumnut and Bundanoon, if my notes are correct?---Yes, that is correct.

PN3391

When are we talking that you were working there and what sort of time were you working there?---So, I worked at Gumnut preschool two days a week for term one and I was responsible for 20 students for a two day program. So, I had that entire responsibility of programming and planning.

PN3392

When was that?---That was this year, term one. And I also was working at Bundanoon District Community Preschool with a two day a week contract this year, just for term one. Then since I had resigned from Kamalei I had picked up some casual work at a variety of early childhood services and preschools in the southern islands.

PN3393

So what period are we talking about that you were doing that casual work?---So, I think I left in mid-2018, so beyond that, up to recent, up till now.

\*\*\* AMANDA SRI HILAIRE

XXN MR TAYLOR

PN3394

I see, and term one of this year, you were - I'll just make sure I've got this right. It was term one of this year that you were working two days at Gumnut and two days at Bundanoon?---Yes, both term time preschools.

PN3395

And in the period between leaving Kamalei and starting term one, you were doing casual work?---Yes, I was.

PN3396

Do you know roughly how many days a week you were averaging during that period?---Between two and three.

PN3397

Now, you were asked about documentation and responsibility in respect of individual education matters?---Yes.

PN3398

You said at Kamalei you shared that with other appropriately trained staff?---Yes.

PN3399

That's our reference. What did you mean by appropriately trained?---Well, obviously the training was not expected to do any of that work. So, I would be picking up the children, the rest of the children. So it did increase from six children to I think maybe eight, once we had the training there rather than a certificate III or a diploma in the room.

PN3400

Yes and when you say a training, what are they training in?---So they're working towards their certificate III; so they're brand new.

PN3401

You were asked some questions by Mr Fagir about assessment in early childhood and he suggested to you that there's observations that must be made?---Yes.

PN3402

There are two further assessments that might occur twice a term. Am I getting this right? Maybe you could just clarify?---So I think he was explaining - - -

PN3403

MR FAGIR: I object. There was no lack of clarity about this evidence whatsoever. There's nothing to be clarified in re-examination.

PN3404

MR TAYLOR: No, no. There's just my note as to - I just want to - see, I might have put it wrongly to the witness. I'm not suggesting there's a lack of clarity. I'm just making - I want to move on to - the witness then went on to say there's a third issue, developmental checklist - I'll get that word out and I want to ask about that. I just want to be clear that I was reminding there were three levels, were there not?---Yes.

\*\*\* AMANDA SRI HILAIRE

XXN MR TAYLOR

PN3405

What did you mean by that last level when you said no, there's also these checklists. What are they?---When I was working at Kamalei we had a checklist for just different skills that would be apparent in the different domains. So cognitive skills, social and emotional skills, physical skills. So for example, assessing the running, hopping, skipping. Those are general basic skills and where children were on a sort of continuum of proficiency.

PN3406

When would you use this checklist and how often?---Yes, so we would do that definitely sort of half-way in the year. I believe that - I'm sorry, I'm drawing on my memory here, but I think there was the second time you could do it in the year as well, just to help inform those written reports. So you had some observable data that's just checked straight off.

PN3407

I see. And having taken you to those specific types of assessments and you having added that third, he then suggested to you that it is chalk and cheese to the type of assessment that happens in schools and you answered no, you wouldn't accept that proposition. Why wouldn't you accept that proposition?---For example, when I do my - when PE assessments are done, we've got the skills listed just the same and we tick them off with a level of proficiency that our kindergartens can perform them. When I want to record the handedness of children, I develop a checklist and I tick that off. If I want to record how their pencil grip is developing, I've got a checklist, I tick it off. It is similar, and the same as, you know as I was observing the children in early childhood education and care, working towards outcomes. I'm doing exactly the same in schools. I might collect a work sample of written work in kindergarten, but I collect a photograph in early childhood education and care settings. So it's two sources of evidence for the achievement of that outcome.

PN3408

Thank you. They're the questions in re-examination.

PN3409

VICE PRESIDENT HATCHER: Thank you for your evidence Ms Hilaire. You're excused; you're free to go?---Thank you.

<THE WITNESS WITHDREW

[2.54 PM]

PN3410

MR TAYLOR: I notice it's 2.55. Ms Connell who is due to give evidence tomorrow is available. Something that became known to me over lunch. I indicated to my friend that my proposal was to call her and certainly lead evidence and tender her statements, deal with any argument as to admissibility of the supplementary statement and then she would be available for cross-examination today. If that caused him some difficulty, then she can also be made available tomorrow.

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AMANDA SRI HILAIRE

XXN MR TAYLOR

PN3411

That was the proposal, but if it's not convenient to the Commission, the Commission prefers to adjourn now, then she's also simply available tomorrow to deal with all of that.

PN3412

VICE PRESIDENT HATCHER: If she could be cross-examined today that would be useful, but if Mr Fagir says he's embarrassed in that situation, well then I think we should just defer it. But it might be useful if we can deal with any objections to the supplementary statement.

PN3413

MR TAYLOR: Yes, of course.

PN3414

VICE PRESIDENT HATCHER: Mr Fagir, how are you placed?

PN3415

MR FAGIR: I need to think about that and check my note of your Honour's comments earlier. I'll be as efficient as I can about it tomorrow.

PN3416

VICE PRESIDENT HATCHER: Are you talking about the objections now?

PN3417

MR FAGIR: I'm talking about the objections, yes.

PN3418

VICE PRESIDENT HATCHER: You're not in a position to cross-examine the witness today?

PN3419

MR FAGIR: I have a lot of work to do before that can be done.

PN3420

VICE PRESIDENT HATCHER: Mr Fagir is it possible that at least at some time before we start tomorrow, you can just send an email identifying which paragraphs, if any of the supplementary statement you object to? Just the numbers. You don't have to identify the basis.

PN3421

MR FAGIR: Yes, I will.

PN3422

VICE PRESIDENT HATCHER: Well, otherwise, we'll simply adjourn till 10 am tomorrow morning.

**ADJOURNED UNTIL WEDNESDAY, 26 JUNE 2019**

**[2.56 PM]**

**LIST OF WITNESSES, EXHIBITS AND MFIs**

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<b>EXHIBIT #45 STATEMENT OF RUTH PENDAVINGH DATED 23/11/2018.....</b>	<b>PN2722</b>
<b>EXHIBIT #46 STATEMENT OF ANTHONY JAMES COOPER DATED 23/11/2018 .....</b>	<b>PN2724</b>
<b>EXHIBIT #47 STATEMENT OF LARRY GRUMLEY UNDATED BUT FILED 23/11/2018.....</b>	<b>PN2726</b>
<b>EXHIBIT #48 STATEMENT OF MARK ANDREW MCKINNON UNDATED BUT FILED ON 23/11/2018.....</b>	<b>PN2730</b>
<b>EXHIBIT #49 STATEMENT OF PAUL ALEXANDER MONDO DATED 24/06/2019 .....</b>	<b>PN2746</b>
<b>JENNIFER FINLAY, SWORN.....</b>	<b>PN2841</b>
<b>EXAMINATION-IN-CHIEF BY MR TAYLOR.....</b>	<b>PN2841</b>
<b>EXHIBIT #50 STATEMENT OF JENNY FINLAY DATED 21/11/2018.....</b>	<b>PN2849</b>
<b>EXHIBIT #51 PARAGRAPHS 1 TO 4 OF THE SUPPLEMENTARY STATEMENT OF JENNY FINLAY DATED 24/06/2019.....</b>	<b>PN2855</b>
<b>CROSS-EXAMINATION BY MR FAGIR.....</b>	<b>PN2858</b>
<b>RE-EXAMINATION BY MR TAYLOR .....</b>	<b>PN2942</b>
<b>THE WITNESS WITHDREW .....</b>	<b>PN2980</b>
<b>KENAN DANIEL TOKER, AFFIRMED .....</b>	<b>PN2988</b>
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<b>EXHIBIT #52 WITNESS STATEMENT UNDATED OF KENAN DANIEL TOKER.....</b>	<b>PN3005</b>
<b>EXHIBIT #53 WITNESS STATEMENT IN REPLY OF KENAN DANIEL TOKER DATED 18/07/2018.....</b>	<b>PN3008</b>
<b>CROSS-EXAMINATION BY MR FAGIR.....</b>	<b>PN3012</b>
<b>CROSS-EXAMINATION BY MR WARREN.....</b>	<b>PN3147</b>
<b>RE-EXAMINATION BY MR TAYLOR .....</b>	<b>PN3157</b>

<b>THE WITNESS WITHDREW .....</b>	<b>PN3160</b>
<b>AMANDA SRI HILAIRE, AFFIRMED.....</b>	<b>PN3174</b>
<b>EXAMINATION-IN-CHIEF BY MR TAYLOR.....</b>	<b>PN3174</b>
<b>EXHIBIT #54 WITNESS STATEMENT OF AMANDA SRI HILAIRE, UNDATED.....</b>	<b>PN3187</b>
<b>EXHIBIT #55 WITNESS STATEMENT IN REPLY OF AMANDA SRI HILAIRE .....</b>	<b>PN3187</b>
<b>EXHIBIT #56 SUPPLEMENTARY WITNESS STATEMENT OF AMANDA SRI HILAIRE DATED 18/06/2019 .....</b>	<b>PN3197</b>
<b>CROSS-EXAMINATION BY MR FAGIR.....</b>	<b>PN3203</b>
<b>CROSS-EXAMINATION BY MR WARREN.....</b>	<b>PN3383</b>
<b>CROSS-EXAMINATION BY MR TAYLOR.....</b>	<b>PN3388</b>
<b>THE WITNESS WITHDREW .....</b>	<b>PN3409</b>