# DECISION

*Fair Work Act 2009*
s.739 - Application to deal with a dispute

**National Tertiary Education Industry Union**
**v**
**Flinders University of South Australia**
(C2023/6485)

COMMISSIONER THORNTON ADELAIDE, 1 JULY 2024

*Alleged dispute about any matters arising under the enterprise agreement and the NES;[s186(6)]*

**[1]** This decision deals with an industrial dispute in respect of three members of the National Tertiary Education Industry Union (**NTEU**) who are academics employed at Flinders University of South Australia (the **Respondent**, the **Employer** or the **University**): Doctors Wyra, Skrzypiec, and Rogers (the Doctors).

**[2]** The Doctors assert that the University has consistently allocated them excessive workloads which has resulted in them working excessive hours. The NTEU, on behalf of the Doctors, have asked the Commission to find that the University incorrectly applied the clause in the *Flinders University Enterprise Agreement 2023 to 2026* (the **Agreement**) that sets an annual limit on the hours of work performed by employees, resulting in the Doctors working excessive hours. The NTEU also asks that the Commission order a remedy to compensate the Doctors for the excessive hours worked by them for the years 2022 and 2023.

**[3]** At the time of the hearing, the roles performed by Doctors Wyra, Skrzypiec and Rogers were being made redundant. Seven academic roles in total from Continuing Professional Education of the College of Education, Psychology and Social Work (**the College**) were made redundant including those performed by the Doctors. Doctors Wyra, Skrzypiec, and Rogers accepted that their roles were redundant and that when their redundancies took effect they would receive the relevant industrial entitlements.

**[4]** The Doctors assert that they have an entitlement to be compensated for the work they performed in addition to their full-time hours. As is the practice for all academic staff the Doctors do not keep time sheets or other records of the actual hours they work. The Doctors claim that they have quantified the additional hours they worked in reference to the workload they were allocated under a workload model established by the University.

**[5]** The establishment of a workload model is provided for under the Agreement, but the contents and application of the model are matters left to the University to develop in policy.

**[6]** The University disputes that the workload model can be interpreted and applied in a way that translates the units of work allocated (referred to as Work Allocation Units or WAUs) under that model to actual hours of work performed. They assert that a WAU measures work outputs taking into account a number of factors beyond the hours it may take an academic to achieve the expected work outputs.

**[7]** The University also submits that even if the WAUs could be measured as hours worked, there is no remedy available to the Doctors beyond the entitlements to address workload concerns already contained in the Agreement. In general terms the Agreement provides a process by which an academic who is aggrieved about the application of the workload allocation model to them can raise these concerns with increasingly higher levels of management. The Agreement also provides that in setting an academic's annual workload, consideration will be given to their workload in previous and possibly future years. The University argues that these options are the remedies under the Agreement that are available to the Doctors.

**[8]** In addition, the University argues that the NTEU's claim for compensation is seeking to create a new entitlement not currently provided for in the Agreement that would amount to a claim for improved entitlements prevented by the 'no further claims clause' in the Agreement.

**[9]** The NTEU brought this application under section 739 of the *Fair Work Act 2009* (Cth) (the **Act**) on behalf of the Doctors, asking the Commission to deal with the matter as an industrial dispute.

**[10]** The Act grants power to the Commission to deal with an industrial dispute if the Agreement that covers the parties contains a term setting out a procedure for dealing with the dispute. The Agreement contains a dispute settlement term at Clause 16. That clause grants power to the Commission to arbitrate the dispute "*and make a determination that is binding on the parties*."[1] In dealing with the dispute the Commission "*must not exercise any powers limited by the term*".[2]

**[11]** A hearing was held in person as part of the process adopted by the Commission in arbitrating the dispute. The Doctors were represented by the NTEU and gave evidence on their own behalf. Dr Chevaun Haseldine, Senior Project Officer, Dr Mary Katsikitis, Dean of People and Resources, and Professor Pablo Munguia, the Dean of Education of the University's College of Education, Psychology & Social Work, gave evidence on behalf of the Respondent.

**[12]** The University sought permission under section 596 of the Act to be legally represented in the proceedings and the NTEU objected to permission being granted. I granted permission and informed the parties that I would provide reasons as part of this decision. Those reasons are included in Annexure A to this decision.

**[13]** This decision and the reasons that follow is the binding determination the Commission is empowered to make by clause 16 of the Agreement.

**The Agreement**

**[14]** There are a number of relevant clauses in the Enterprise Agreement:

Clause 67 of the Enterprise Agreement sets out the following:

**"67 ACADEMIC WORKLOADS**

**67.1 [General principles]** The University and its staff recognise the importance of a balance between working life and personal commitments. Allocation of individual workload will be consistent with equal opportunity legislation.

**67.2** Workload models will be developed by the Deans (People and Resources), in collaboration with academic staff and the College leadership team, using an active, consultative and transparent process. Such a process will also apply where major changes to current or future models are proposed or necessitated for compliance with the terms of this Agreement. As part of the process all major activities undertaken by staff will be identified for inclusion. The resultant workload models will inform workload allocation in each College/portfolio/discipline.

**67.3** Consultation and collaboration provide the means and opportunity for staff to provide feedback on the workload model. Deans (People and Resources) or equivalent will facilitate input or feedback from relevant academic staff. The employer will provide an overview of the feedback received and how it has influenced the final model. Collaboration does not require unanimity of views.

**67.4** Prior to implementation, workload models will be reviewed by the relevant senior leadership team of the College for consistency with the terms of this Agreement.

**67.5** The University will establish workload models that use clear and accessible language. The University will provide staff with workload information and allocations in a timely manner by, where possible, providing provisional workload allocations for the coming year, with opportunity for a staff member and their manager to meet to discuss the allocation before it is finalised.

**67.6** If, during the life of this Agreement, the average workload increases for a particular College/portfolio/discipline, the Dean (People and Resources), in consultation with the Vice- President and Executive Dean, will:

a) analyse the reasons for the increase in workload; and

b) implement suitable amelioration strategies consistent with the University's commitment to quality in teaching and research.

**67.7** The University is committed throughout the term of this Agreement, as part of its ongoing management strategies, to investigating and devising strategies that ensure safe and reasonable workloads. Any resulting initiatives will

seek to support and enhance the University's commitment to quality in teaching and research.

**67.8** The model is based on a combination of basic workload components dependent on the nature of the academic position:

a) Research and Creative Activity,
b) Teaching, and
c) University Service and Leadership (including administration and professional and community engagement).

An academic staff member's workload will comprise an appropriate mix of some or all of these components, taking account of their academic positions.

**67.9** Workload relative weightings for these components will take account of the needs and priorities of each College/discipline/portfolio.

**67.10** Adequate scholarship time will be appropriately accommodated under the basic components of workload models taking into account the staff member's academic position and role.

**Research**

**67.11** For Balanced teaching/research and Research-only appointments, the workload model will provide reasonable and sufficient opportunity for research and/or creative activity. Workload allocations for this component of workload will have regard to the diversity of academic roles, the University's strategic priorities and the College/portfolio/discipline's operational requirements. Workload models will include reasonable opportunity for early career balanced teaching/research staff to establish both their teaching and research profiles.

**67.12** A staff member's research and creative activity outcomes will be assessed based on relevant contribution to their field of research. Such contributions may include but are not limited to: refereed publications; non-traditional or creative outputs; books, book chapters or edited books; peer-reviewed conference publications; research funding; higher degree research completions; other recognised measures of impact and engagement.

**67.13** An agreed research plan will be developed between the staff member and their academic supervisor. The plan will be cognisant of different contributions to fields of research and an individual's performance relative to opportunity. Research plans will be reasonable and appropriate for the discipline area, level of academic appointment and position. The research workload allocation will provide sufficient time to reasonably carry out the activities detailed in the agreed research plan.

**67.14** Where a staff member and their supervisor cannot agree a suitable research plan, the matter will be referred to the Dean (People and Resources) or equivalent in the first instance. If the matter is not resolved following consultation with the Dean (People and Resources), the staff member may refer the matter to the Vice- President and Executive Dean.

**Teaching**

**67.15** Workload models will provide measures for teaching and teaching related activities that are commensurate with the time reasonably required to do the work.

**67.16** As teaching activities may vary across Colleges/portfolios/disciplines, the aggregated measure of activities may encompass but are not limited to:

a. Preparation and development of teaching materials for all modes of delivery;
b. Topic creation and/or significant redevelopment;
c. Delivery of teaching materials in all modes for undergraduate, honours and postgraduate coursework programs;
d. Supervision of undergraduate, honours and postgraduate coursework projects;
e. Preparing, marking and moderation of student assessment;
f. Student consultation related to learning;
g. Work-integrated learning (WIL) supervision.

**Service and Leadership**

**67.17** All academic staff will be provided with sufficient service/leadership time allocations. This includes, but is not limited to, time for administrative tasks, and professional development. Where there are required tasks (such as accreditation, program coordination and leadership roles), an explicit and reasonable service/leadership workload allocation above the base allocation provided in the workload model will be made. Where an activity is discretionary but brings benefit to the University, a workload allocation above the base will be a matter of negotiation between the staff member and supervisor or Dean People and Resources but will not be unreasonably withheld.

**HDR Supervision**

**67.18** HDR supervision workload allocation will be made according to the number of students supervised in the current year on the basis of a reasonable workload allocation for the period of the degree (not longer if the student takes longer to complete). Workload allocations for Masters Coursework and Honours Research supervision will be explicitly accounted for in non-HDR supervision.

…

**67.19** Annual hours of work for a full-time academic are 1725, based on a nominal 37.5 hour working week. Individual workload allocation will be such that a full-time academic is able to undertake their workload in 1725 hours per year (this figure incorporates an adjustment for four (4) weeks' annual leave and ten (10) public holidays).

**67.20** Workload allocations will be sufficient to enable a staff member to fulfil their related responsibilities consistent with Clause 67.19.

…

**67.23** In determining each annual workload, consideration will be given to individuals' workloads in the previous year and possibly future years.

…

**Resolving Workload Allocation Concerns**

**67.27** Where a staff member feels aggrieved about the application of the workload allocation model in respect of their own workload, and these concerns have not been resolved in discussions with their supervisor, the staff member will raise their concern with the Dean (People and Resources) or equivalent in the first instance.

**67.28** If the matter is not resolved following consultation with the Dean (People and Resources), the staff member may refer the matter to the Vice-President and Executive Dean. If the matter is not resolved at the Vice-President and Executive Dean level, the staff member may pursue the matter via another relevant jurisdiction."

**[15]** The Agreement sets the annual hours for a full-time academic at clause 67.19. That clause relevantly says: "*Annual hours of work for a full-time academic are 1725, based on a nominal 37.5 hour working week."*

**[16]** The development of workload models is provided for by the Agreement. Clause 67.2 provides that those models will be developed by the Deans of People and Resources, along with leadership teams of the relevant College in "*collaboration with academic staff*". The same clause provides that the development of the workload models will involve an "*active, consultative and transparent process*" that will apply to any major changes to the existing or future workload models.

**[17]** Clause 67.2 also says "*As part of the process all major activities undertaken by staff will be identified for inclusion. The resultant workload models will inform workload allocation in each College/portfolio/discipline*."

**[18]** At clause 67.6, the Agreement provides a process for review and implementation of strategies to address any "*average workload increases for a particular College/ portfolio/discipline*".

**[19]** The Agreement then goes on to provide further detail with respect to broad areas considered in the workload model which include research, teaching, service and leadership, and supervision of postgraduate students.

**[20]** Clauses 67.27 and 67.28 are under the heading "*Resolving Workload Allocation Concerns*". These two clauses provide a process where a staff member can raise grievances in respect of their own workload. It provides a cascading process for an academic to raise the concerns initially with their supervisor, proceeding to the Dean (People and Resources) then to the Vice Presidents and Executive team level or "*via another jurisdiction*".

**[21]** With respect to addressing workload concerns, clause 67.23 also provides that "*In determining each annual workload, consideration will be given to individuals' workloads in the previous year and possibly future years*."

**[22]** The Agreement does not otherwise address the contents of the workload model.

**The Workload Model**

**[23]** Dr Haseldine, Senior Project Officer in the College of Education, Psychology and Social Work, gave evidence about the development of the workload model. Her role currently involves responsibility for the administration of the College's Workload Equalisation Model (**the workload model**).

**[24]** Dr Haseldine in her evidence says that the model was developed to allocate workloads via 'Workload Allocation Units', referred to as WAUs, with 30 WAUs representing a full-time staff member's workload. Her evidence was that the model "*was intended not only to equalise workloads across staff members but also to negotiate workload from one year to the next*."

**[25]** The workload model is set out in a document titled "*Workload Equalisation Model Guide 2023*". It is a document of 25 pages that contains information about:

(a) the principles that form a basis for the model;
(b) the databases that feed data into the model to inform the work allocation;
(c) references to the formula used for work allocation;
(d) the reporting software available for the academic to see and understand their workload allocation; and
(e) detail as to how the model works in respect of the broad areas of responsibility for each academic including research and supervision of postgraduate students, teaching and topic coordination, and additional service and leadership responsibilities.

**[26]** In the section addressing the principles behind the model, it specifies "The Model is a **non-granular, unit-based framework** using key indicators to determine and allocate academic workloads in each of the relevant academic activities. **Importantly, the Model** (sic) **load-**

**based, not activity-based. The Model does not measure all activities in an itemised manner**"[3] (emphasis in original).

**[27]** The NTEU disagrees that the model is not granular. In their submissions the NTEU says: "*Formulae for the teaching component of load provide incrementally increased allocations for each additional student. The WAU allocation is made to two decimal points. This is not a blunt workload instrument designed to "notionally capture the activities required to be performed by an academic in any given year" as asserted by management*."[4]

**[28]** At the core of this dispute is firstly whether the workload model can be used to determine whether work has been allocated based on the hours of work it takes to achieve the workload outputs so that the work of a full-time academic does not exceed 1725 hours per year. Secondly, and alternatively, this decision must deal with whether the workload model allocates work to various areas of responsibility within the role of an academic that is not based on hours but is rather based on the expectations of work to be performed and the allocation of responsibilities to be achieved within 1725 hours per year.

**[29]** The evidence of the NTEU's witnesses was that prior to the introduction of the current workload model their workload was allocated according to a model where 1725 points constituted a full-time workload.[5] From 2020, the new workload model that was introduced by the University and applied across the institution, is called the Workload Equalisation Model. The Model allocates workloads of academic staff across the areas of their work that include teaching, research, service and leadership, and 'other' which includes leave.

**[30]** The witnesses for the University assert that the model reflects and facilitates the apportionment of work of an academic within the 1725 hours that an academic is required to work per year in accordance with the Agreement.[6] The University submits that "*WAUs do not, and are not intended to, directly correlate to hours of work*"[7] and deny that a WAU represents a certain number of hours of work required to be performed by the academic.

**[31]** Dr Haseldine is responsible for the administration of the College's workload model. She gave evidence that the allocation of WAUs draws on data from various computerised systems within the University including databases that contain the employees' employment details, information about research income and publications, details of numbers of lectures, seminars and tutorials, and student enrolment numbers. The data is uploaded and refreshed each day.[8]

**[32]** The University says that the workload model is 'load-based rather than activity based'[9] and is calculated on output of work performed, not the hours it takes for the outputs to be achieved.

**[33]** The NTEU takes an alternative view. They submit that there is direct correlation between units allocated to an academic in the workload model and the hours of work: "*The ... Workload Model states that a full workload for a full-time academic staff member is 30 Workload Allocation Units ('WAU') per annum and that a full-time individual workload allocation is based on 1725 annual hours ('FTE').*"[10]

**Questions to be determined**

**[34]** Both parties submitted the questions that in their view the Commission must determine in order to deal with the dispute. There was no agreement on the form of the questions to be answered to deal with the dispute. The parties' questions are set out separately below.

**[35]** The NTEU provided the following questions for determination:

1. Does clause 67.19 of the Agreement limit annual hours of work for a full-time academic employee to 1725 per annum?

2. Does clause 67.19 prohibit an individual full-time academic employee from being allocated a workload of more than 1725 annual hours of work?

3. If the answer to question 2 is yes, where a higher workload has been allocated, what is the appropriate remedy to resolve the dispute?

4. Does the 30 WAU annual workload allocation for full-time employees as set out in the Workload Model made in accordance with clause 67 of the Agreement equate to a full-time workload in accordance with the provisions of clause 67 of the Agreement?[11]

**[36]** The Respondent responded to the NTEU's questions, and submitted the following questions for determination:

1. Whether the Enterprise Agreement limits annual hours of work for a full-time academic employee to 1725 per annum?

2. If it does – what entitlements arise under the Enterprise Agreement for staff who have been allocated more than 30 WAUs?

3. If it does – whether an allocation of more than 30 WAUs evidences a requirement to work more than 1,725 hours per annum? [12]

**[37]** I now address each issue in turn.

**Clause 67.19 limits the annual hours of work for a full-time academic employee to 1725 per year**

**[38]** The relevant clauses of the Agreement are extracted above.

**[39]** The approach and the principles relevant to the task of construing the terms of an enterprise agreement were set out in a Decision of a Full Bench of the Commission in *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union' known as the Australian Manufacturing Workers' Union (AMWU) v Berri Pty Ltd*[13]. The relevant passage setting out the principles is well known, and it is not necessary to cite it.

**[40]** More recently, in *AMA (Victoria) Ltd and Australian Salaried Medical Officers Federation v The Royal Women's Hospital*[14], a Full Bench of the Commission distilled the

principles from the Full Court of the Federal Court majority in *James Cook University v Ridd*[15] as follows:

> "*The starting point is the ordinary meaning of the words, read as a whole and in context.*
>
> *A purposive approach is preferred to a narrow or pedantic approach – the framers of such documents were likely to be of a practical bent of mind. The interpretation turns upon the language of the particular agreement, understood in the light of its industrial context and purpose.*
>
> *Context is not confined to the words of the instrument surrounding the expression to be construed. It may extend to the entire document of which it is a part, or to other documents with which there is an association.*
>
> *Context may include ideas that gave rise to an expression in a document from which it has been taken.*
>
> *Recourse may be had to the history of a particular clause where the circumstances allow the court to conclude that a clause in an award is the product of a history, out of which it grew to be adopted in its present form.*
>
> *A generous construction is preferred over a strictly literal approach but agreements should make sense according to the basic conventions of the English language.*
>
> *Words are not to be interpreted in a vacuum divorced from industrial realities but in the light of the customs and working conditions of the particular industry*."[16]

**[41]** Principle 7 in *Berri* has relevance here and provides that *"[i]n construing an enterprise agreement it is first necessary to determine whether an agreement has a plain meaning or it is ambiguous or susceptible of more than one meaning."*[17] However, principle 1 in *Berri* also makes clear that in deciding whether an agreement has a plain meaning, context and purpose should be considered. Further, principle 8 provides that regard may also be had to surrounding circumstances, to assist in determining whether an ambiguity exists, and principles 11 and 12 provide for consideration to be given to objective background facts to interpret an agreement.

**[42]** The NTEU explains in their submissions that academic workload allocation is undertaken on an annual basis rather than a weekly basis "*to accommodate the rhythm of academic work*" but is, as stated in clause 67.19, "*based on a nominal 37.5 hour working week*."

**[43]** The NTEU submits that there is no ambiguity in the clause. The University also agrees that the effect of clause 67.19 is "*to limit the annual hours of work for a full-time academic to 1,725 per annum*."[18]

**[44]** The parties agree that the answer to whether the Agreement limits hours of work for full-time academic employees to 1725 per year is yes. The parties have not made submissions or provided evidence about any contextual matters or objective background facts upon which a finding could be made, that contradicts the plain meaning of clauses 67.19 and 67.20.[19]

**[45]** The parties agree that clause 67.19 has a plain meaning with respect to the required hours of work of a full-time academic at the University each year. The clause first refers to *'annual hours'* being *'1725'* and later confirms that workload allocation 'will be such that a full-time academic' can undertake their workload in *'1725 hours per year.'* In addition, the words *"annual hours are 1725"* (emphasis added) make clear that the hours to be worked by a full-time academic are 1725 per year.

**[46]** Although there are no words that indicate that 1725 hours are the approximate number of hours to be performed each year, the clause is not expressed as an absolute in the sense that the clause does not state that the maximum number of ordinary hours is 1725 in a year and the Agreement does not provide for any penalty if hours in excess of that number are worked. Clause 67.19 says that although the hours worked by an academic are 1725 per year, they are also based on a "*nominal 37.5 hour working week*." The Agreement allows for the "rhythm" or fluctuations in demands on workload of an academic by providing for nominal hours of weekly work that may exceed the nominal hours one week and be less than the nominal hours in the following week. This is also reflected in the Agreement clauses setting out details of the operation of the workload model referred to in the Agreement. Those clauses make clear that the workload model includes an allowance for activities such as research and professional development, which benefit both staff and the University and are not considered as teaching or other direct forms of work such as marking and preparing and developing course materials.

**[47]** Further, the use of the term "*sufficient*", in clause 67.20, is indicative that while 1725 hours is a limit, it is not a hard limit, and the process in clauses 67.27 – 67.28 are also indicative that while there is a limit, it is not absolute.

**If a higher number of hours have been worked the entitlements that arise for employees who have worked extra hours are contained in the Agreement**

*Whether a higher number of hours have been worked*

**[48]** Each of the Doctors Wyra, Skrzypiec and Rogers provided very detailed evidence about the work they performed, the effect on their work of the change from 1725 units of work to the WAU measurement of work under the workload model and the difficulties they experienced with the workload model accurately reflecting their workload and the hours of work they performed.

**[49]** Dr Rogers set out the deficiencies in the workload model as they impacted her role as a Teaching Specialist and then a Deputy Teaching Program Director. Dr Rogers explained that she was consistently allocated a load greater than 30 WAUs and despite that, her workload had never been reviewed by management.[20]

**[50]** Dr Wyra gave detailed evidence about how over her long employment with the University she had experienced high workloads. In particular, since 2018, she says her "*workload was significantly over 100% of a full-time load*."[21]

**[51]** Dr Skrzypiec's evidence was that she "*had been working well above my workload for years*"[22] and during her career at the University she has "*found it necessary to work most evenings during the week and at least one day during the weekend. This was unavoidable in*

*order for me to undertake the work I am required to do. … While I have been successful … I have been left with no option but to put my work before family. I have routinely either not attended family functions or attended and left early to return to work. Despite my efforts, I found that I could not sustain the workload and in the last semester of 2021 I took long service leave at part-time rate … in order to reduce my stress. From 2020 onwards I have sought counselling support concerning my workload and stress*."[23]

**[52]** The NTEU argues that the Doctors each worked a significant number of hours in excess of 1725 hours each year in recent years. The Doctors each gave detailed evidence of what they say were the hours they worked in excess of 1725 hours in each year over different periods of time. Each witness supported their claims of work hours significantly beyond a full-time load with reference to their allocated WAUs exceeding 30 WAUs each year. In some years, the witnesses had a load well above 30 WAUs.

**[53]** The Doctors set out the additional hours they claim they worked in excess of ordinary full-time hours in the following time periods:

(a) Dr Rogers – 2337.4 hours or the equivalent of 62.3 weeks between 2021 to 2023;
(b) Dr Skrzypiec – 1337.43 hours or the equivalent of 35.7 weeks between 2019 and 2023; and
(c) Dr Wyra – 3,416.08 hours or the equivalent of 91 weeks between 2018 and 2023.[24]

**[54]** These hours were calculated in the main by considering the number of WAUs allocated, translating the WAUs to hours and then calculating the hours worked in excess of 30 WAU considered a full-time load.

**[55]** However, the University does not require academic employees to record their hours worked in any system or otherwise keep timesheets. The evidence of the University's witnesses was that they do not manage or look at how many hours a staff member is working.[25] In essence, it is the position of the University that a workload allocation model is used to establish the expectations of work output from each academic in various areas of their work, but that the overall expectation is that the work outputs are achieved within the 1725 hours of work that the Agreement allows an academic to work each year.

**[56]** The NTEU in its submissions confirmed that academic staff do not record timesheets. Therefore, no record exists of the actual hours being performed as work by the Doctors. The NTEU say that timesheets are unnecessary to show how many additional hours were performed by the Doctors because *"[e]ach College of the University has an academic workload model made in accordance with clause 67 of [the Agreement] and the model stands in lieu of time-based recording of work*."[26]

**[57]** It is central to the NTEU's case that a WAU, as the unit of measurement of work performed under the workload model used by the University, is based on time and reflects hours actually worked by an academic staff member.

**[58]** The NTEU relies on the words in the Workload Model itself where it says: "*The Model represents an academic staff member's full-time equivalent (FTE) workload as 30 Workload*

*Allocation Units (WAU). WAU calculations consider the FTE ratio of each staff. Individual workload allocation is based on 46 weeks or 1725 hours per year (FTE).*"[27]

**[59]** The University submits that "*an allocation of more than 30 WAUs does not evidence a requirement to work more than 1725 hours a year*."[28] The NTEU disagrees with this proposition and accounts for each WAU as 57.5 hours of work allocated and performed by an academic. In considering the words of the workload model extracted above, the NTEU assert that as 1725 hours a year is the agreed and defined workload of an academic, and if 30 WAU constitutes a full-time workload, then each WAU must be 57.5 hours of work performed.[29]

**[60]** The evidence of the Doctors was, in general terms, that they had been allocated excessive workloads, usually in excess of 30 WAUs, and that their work had interfered to varying degrees in their non-working hours.

**[61]** The witnesses for the University, again in general terms, accept that each of the Doctors had been allocated more than 30 WAUs as their workloads on a regular basis. However, it is the position of the University that WAUs are not time-based units of measurement of workload. In support of that argument the University notes that in determining the WAUs various factors are taken into account that have "*little (or no) direct connection to hours worked*".[30]

**[62]** Whether the Doctors can establish the hours they worked in excess of 1725 for each year in the scope of their claim depends on whether the Commission finds that WAUs are a time-based measurement that equate to 57.5 hours per unit and therefore that the workload model can be substituted for a timesheet. The Doctors did not keep a record of the actual hours they worked but it appears from their evidence that their calculations of hours worked in excess of what they say is their full-time load are based on WAUs ascribed to them at the end of each year, multiplied by 57.5 hours for each WAU above 30.

*Whether there is a remedy for additional hours*

**[63]** In addition to the dispute about whether the Doctors did work excessive hours to be determined in reference to the number of WAUs allocated to them each year, there is a dispute as to whether, even if this were the case, any remedy or compensation is available to them as a result.

**[64]** The NTEU accepts that there is "*no industrial provision applicable to academic employees covered by the [Agreement] that contemplates 'reasonable additional hours' above a full-time workload. In particular there is no overtime provision*."[31] The NTEU says the Commission can order remedies in dealing with the industrial dispute by arbitration and seeks the Commission order the following remedies:

(a) "Time compensation" be paid to the Doctors for the hours worked in excess of full-time hours. This claim can be described as an extension of or maintenance of employment of each Doctor without the requirement to perform work for the hours allegedly worked in excess of full-time hours.
(b) In the case as originally put by the NTEU, Dr Rogers would have maintained her employment for a further of 62.3 weeks, Dr Skrzypiec for 35.7 weeks and Dr Wyra 91 weeks. However, I note that in closing submissions the parties submitted that

they had come to an agreed view that the past period for which the Doctors were seeking compensation in some form was to be limited to the years 2022 and 2023. This will likely notably reduce additional hours for which the employees seek compensation.

(c) That the above paid time commence at the conclusion of the notice and transition period applying to the employees as part of their redundancy entitlements.

(d) Each Doctor retain their right to accept a voluntary redundancy payment at the end of the extension of their employment.

**[65]** The University argues that in the absence of entitlements to remedies for additional hours worked currently existing in the Agreement, the NTEU is making additional claims for improved entitlements during the life of an agreement contrary to a 'no further claims' clause that applies under the current Agreement.[32]

**[66]** Further, the University asserts that the Commission is prohibited by the operation of section 739(5) from making a decision inconsistent with the Agreement as it applies to the parties in dealing with an industrial dispute.

**[67]** The University cites clauses 67.23, 67.27 and 67.28 of the Agreement as providing the only available remedies to any academic whose workload is in excess of 1725 in a year. Those clauses offer consideration of the workload of an academic in previous and future years in setting workload for the current year, and a process for raising any complaints about workload with management.

*Findings regarding remedy applicable*

**[68]** The workload model is not set or measured in hours. It is designed to understand what work has to be performed by an academic and divide or allocate units to the work to ensure the overall load is captured. It is a tool that takes into account a number of complex factors that make up workload that are not limited to how many hours it takes an academic to meet the workload expectations. It is accepted by both parties that 30 WAU are equivalent to a full-time workload, but it does not follow that 30 WAU equals 1725 hours per year. The model also takes into account activities that are not work performed for the University but rather which assists academic staff, such as research and professional development.

**[69]** I accept the evidence of Dr Haseldine and the submissions of the University that WAU measure work output and the work that is expected to be completed by an academic within their full-time equivalent hours annually rather than that each WAU, or a combination of WAU, equal a certain number of full-time hours.

**[70]** I also accept that the workload model cannot be used in lieu of a recording of actual hours worked to calculate hours for which compensation is claimed because WAUs are not measurements of time.

**[71]** Although I accept the evidence of the Doctors and am concerned about the excessive workload they have described, to assert an entitlement to compensation for hours worked arising from the allocated WAUs is unreliable and imprecise. An entitlement to be paid for hours worked must be from the hours actually worked, not by drawing a link between workload

allocated under the workload model and the actual hours worked. I therefore reject the submission of the NTEU that the workload model stands in lieu of time-based recording of work.

**[72]** It is also common ground between the parties that the Agreement does not include any entitlements for an academic to be paid over-time or receive any other compensation for working hours in addition to 1725 per year. Again, the entitlement is to work up to 1725 hours per year. Although I do accept in general terms that the Doctors worked hours in excess of their 37.5 per week and may have done so on a regular basis, and that there is a likelihood that they worked more than 1725 hours per year, there is no evidence on which I can rely to determine the total hours worked and when they were worked.

**[73]** Even if these hours could be calculated, there is no entitlement arising from the Agreement that could be awarded to the Doctors as compensation for hours actually worked. The Agreement simply makes no provision for compensation by way of payment for the hours or time in lieu of the hours worked.

**[74]** The industrial entitlement the employees in this matter have arising from the terms of the Agreement is the entitlement to work up to but no more than 1725 per year. The entitlement under the Agreement is not expressed as an entitlement not to be allocated any more than 30 WAUs. The entitlement is not expressed in terms that indicate that it is an absolute maximum and that it must not be exceeded. Further, there is no penalty for work in excess of 1725 hours per year.

**[75]** The outcome sought by the NTEU would effectively require that I imply a term into the Agreement to provide for a penalty for work in excess of 1725 hours per annum. For the reasons set out above I am not satisfied that work in excess of this limit was performed by the Doctors. Even if I was satisfied that such work had been undertaken, the outcome is impermissible. In *Kucks v CSR Ltd* (1996) 66 IR 182, Madgwick J said:

> *"It is trite that narrow or pedantic approaches to the interpretation of an award are misplaced. The search is for the meaning intended by the framer(s) of the document, bearing in mind that such framer(s) were likely of a practical bent of mind: they may well have been more concerned with expressing an intention in ways likely to have been understood in the context of the relevant industry and industrial relations environment than with legal niceties or jargon. Thus, for example, it is justifiable to read the award to give effect to its evident purposes, having regard to such context, despite mere inconsistencies or infelicities of expression which might tend to some other reading. And meanings which avoid inconvenience or injustice may reasonably be strained for. For reasons such as these, expressions which have been held in the case of other instruments to have been used to mean particular things may sensibly and properly be held to mean something else in the document at hand.*
>
> *But the task remains one of interpreting a document produced by another or others. A court is not free to give effect to some anteriorly derived notion of what would be fair or just, regardless of what has been written into the Agreement. Deciding what an existing award means is a process quite different from deciding, as an arbitral body*

*does, what might fairly be put into an award. So, for example, ordinary or well-understood words are in general to be accorded their ordinary or usual meaning."*

**[76]** This is encapsulated in principle 14 in *Berri* which provides that:

"*Admissible extrinsic material may be used to aid the interpretation of a provision in an enterprise agreement with a disputed meaning, but it cannot be used to disregard or rewrite the provision in order to give effect to an externally derived conception of what the parties' intention or purpose was*."[33]

**[77]** As discussed above, the Agreement does not provide for a penalty for hours worked in excess of 1725 per annum. It is impermissible to imply a term into the Agreement on the basis of an argument that it is unfair for employees not to receive additional remuneration for work they claim to have performed in excess of the maximum annual hours in the Agreement. A contextual analysis of the Agreement, or the surrounding circumstances in which it was made, does not support the implication of a penalty into the Agreement. Further, the parties have not placed any evidence of relevant extrinsic material before the Commission to establish that such a provision should be implied.

**[78]** I accept the submissions of the University that to order a remedy to compensate the Doctors for any extra hours worked would be inconsistent with the Agreement and infringe section 739(5) of the Act. That section provides: "the FWC must not make a decision that is inconsistent with this Act, or a fair work instrument that applies to the parties." The Agreement is a fair work instrument in accordance with the definition in section 12 of the Act.

**[79]** In making the submission regarding s.739(5) of the Act, the University relied on the authority of *Lloyd v Australia Western Railroad Pty Ltd T/A ARG an Aurizon Company*[34] (Lloyd). In that decision, the Full Bench held that "*section 739(5) of the Act only limits the range of outcomes which the Commission may make. The provision does not limit the jurisdiction of the Commission in dealing with a dispute about the terms of an Agreement, but it may impact on the nature of remedy that may be determined under the dispute resolution procedure*."[35]

**[80]** The University argued that any remedy ordered must remain within the parameters of the Agreement and not act to alter the terms in the Agreement. In support of that proposition, the University referenced further reasoning of the Full Bench in Lloyd: "*Provided that any determination made to that end would operate within the parameters of the agreed provisions in [the relevant clause], the terms of the agreement and that determination could coexist and be applied without modifying or contradicting the terms of that instrument*." The University argues that to order the remedy requested would result in an amendment to the terms of the Agreement.

**[81]** If I made an order that the Doctors were to be paid for the additional hours or that the employees continue to be paid without being required to perform any work, it would infringe section 739(5) of the Act.

**[82]** It is also likely, as submitted by the Respondent, that the NTEU seeking compensation for additional hours worked is a further claim that is prohibited by the 'no further claims' clause

of the Agreement.[36] Given I consider that the remedies sought cannot be ordered because of the operation of section 739(5), and because there is no basis to imply such terms into the Agreement, it is unnecessary for me to make a determination with respect to the no-claims clause and its relationship to the proposed remedies.

**[83]** Given my earlier findings that a basis for making payment or providing time in lieu for certain hours worked beyond 1725 a year cannot be established on the evidence and that such remedies are not available in the Agreement, I decline to make an order for a remedy in the terms sought by the NTEU.

**[84]** In any event, I also agree with the submissions of the University that the Agreement contains remedies to address workload concerns.

**[85]** Clauses 67.27 and 67.28 both provide a process to raise concerns through increasingly higher levels of management and allow an academic whose concerns have not been addressed through an escalation to the Vice-President or Executive Dean, to pursue the dispute *"via another relevant jurisdiction."* In addition, clause 67.23 enables consideration of workload of a previous year to be considered with respect to determining workload in a following year. Although I agree with submissions put by the University that the clause lacks specificity as to how it will be considered and whether it will result in a reduction in workload[37], it is nevertheless a remedy in that it enables the aggrieved academic to seek a resolution to workload concerns. In summary, the remedy available in the Agreement to a concern about overwork is to have a review of the academic's workload.

**[86]** Dr Skrzypiec gave evidence in this matter about how she had raised workload concerns which were ultimately addressed by reducing her workload. She said in her statement: "*I had insisted that my workload be reduced to a point where it was closer to the 30 Workload Allocation Units (WAUs), as I was close to being burnt out and no longer able to sustain the high level of working hours*."[38] She then explained that three of her topics were cancelled and other colleagues took over her other topics (some were cancelled only after she had undertaken the preparation for teaching the topic), resulting in a reduction in her workload, but not to the 30 WAU load.

**[87]** I accept the evidence of Dr Skrzypiec and references made by Dr Rogers[39] about the deficiencies in the process of review to reduce workload, including the lack of engagement of senior management, the unrealistic expectations placed on Teaching Program Directors and Deputy Directors (as Dr Rogers was) to find solutions to overloading of academics in a culture of chronic overwork, and delays that caused Dr Skrzypiec substantial additional stress.

**[88]** However, the fact that the process itself was difficult does not change that it is still the remedy available under the Agreement to resolve concerns about excessive workload.

**[89]** The senior management at the University who gave evidence in this proceeding, appeared to have taken a very 'hands-off' approach to managing the workloads of the academics in this matter. Dr Haseldine confirmed in her evidence that she did an analysis of the workloads of the Doctors in this matter for 2022 and 2023 and reconciled their WAUs at the end of the year. As a result of the review Dr Haseldine concluded that the WAUs of the respective Doctors were in fact lower than previously thought, taking into account changes to their teaching loads

and other responsibilities during the year.[40] However, Dr Haseldine still determined that each of the Doctors worked in excess of 30 WAUs in 2022 and 2023.[41]

**[90]** Dr Haseldine in her oral evidence says that it is the responsibility of the Teaching Program Director or Deputy Teaching Program Director to "*make sure their staff are working within a 30 WAU workload"*[42] and if they cannot address workload in excess of this amount then the Teaching Program Director or Deputy Teaching Program Director must escalate the issue to the Dean of People and Resources. When asked about oversight that senior management have over workloads, Dr Haseldine agreed that there is "*no-one more senior [than a Teaching Program Director or Deputy Teaching Program Director] looking regularly at workloads*".[43]

**[91]** I was concerned about the evidence given by Dr Haseldine that there is little oversight of the workload of academics and especially of actual hours worked. When asked about how the allocation of workload is managed with the expectation that the workload will be managed in 1725 hours per year, Dr Haseldine confirmed that they don't "*micromanage*" academics and "*we don't look at how many hours a staff member is working*."[44] Noting that as an example Dr Rogers had a history of carrying a load notably higher than 30 WAU, Dr Haseldine confirmed that there was no review of Dr Rogers' workload and that workload is only addressed when "*an academic comes to speak to us*".[45]

**[92]** Dr Katsikitis, the Dean (People and Resources) of the College, when also questioned about how the College complies with the limit on hours of 1725 said: "*We expect our staff to work at 1725 hours or up to 1725 hours and we leave it to them… we expect them to be able to manage that workload to 1725 should they wish to look at it that way*" and then clarified that there is no expectation that academics work more than 1725 hours in a year.[46]

**[93]** The academic employees employed by the University have an entitlement to work up to but no more than 1725 hours per year. But it seems there is no system in place to record or check hours worked by academics to both ensure clause 67.19 is being complied with or to ensure excessive hours are not being worked by academics.

**Summary of the questions answered**

**[94]** I have decided to answer the questions submitted by the NTEU as follows:

> *Does clause 67.19 of the Agreement limit annual hours of work for a full-time academic employee to 1725 per annum?*
>
> Yes, subject to the limit being a soft rather than a hard limit.
>
> *Does clause 67.19 prohibit an individual full-time academic employee from being allocated a workload of more than 1725 annual hours of work?*
>
> Yes, noting that the limit is not a hard limit.
>
> *If the answer to question 2 is yes, where a higher workload has been allocated, what is the appropriate remedy to resolve the dispute?*

Where there is a dispute about workload allocation, including where the workload allocation is likely to cause an employee to work greater than 1725 hours in a year, the only remedies provided for by the Agreement are:

(a) a process to escalate the employee's concerns through discussion with various levels of University management contained in clauses 67.27 and 67.28 of the Agreement; and

(b) consideration of an "individual's workloads in the previous year and possibly future years" when determining an employee's workload on an annual basis, in accordance with clause 67.23.

The Commission is prevented by section 739(5) of the Act from ordering the alternative remedies sought by the NTEU. The Agreement provides a remedy to address concerns about overwork and does not provide for the remedies sought by the NTEU.

*Does the 30 WAU annual workload allocation for full-time employees as set out in the Workload Model made in accordance with clause 67 of the Agreement equate to a full-time workload in accordance with the provisions of clause 67 of the Agreement?*[47]

No. It is agreed by the parties that the workload model provides that 30 WAUs is a full-time workload. It is also agreed that the Agreement allows for the creation of a workload model. However, a deemed full-time workload under the workload model considers a number of factors relating to workload and does not translate in hours actually worked, such that it has a relationship to hours of work in the Agreement.

The Agreement does not set out the terms of the workload model, create the WAUs or establish a relationship between a WAU and the hours of work of an academic at the University. The workload model that creates WAUs is a policy document created by the University that establishes a framework and sets out a formula used by the University to determine the workload of professional academic staff having regard to a number of factors.

The workload model measured in workload allocation units does not trigger an industrial entitlement. It is a tool to manage and allocate workload across a range of areas of responsibility within the parameters of the industrial entitlement of an academic to work 1725 hours per year.

The industrial entitlements of academic employees at the University relevant in this case is the entitlement to work up to but no more than 1725 hours a year, to have their workloads reviewed if they are aggrieved about the application of the workload model to them and to have their past year's workload considered when setting the following year's workload.

**[95]** With respect to the University's questions for determination:

*Whether the Enterprise Agreement limits annual hours of work for a full-time academic employee to 1725 per annum?*

Yes, subject to the limit being a soft rather than a hard limit.

*If it does – what entitlements arise under the Enterprise Agreement for staff who have been allocated more than 30 WAUs?*[48]

As set out above, the entitlements that arise under the Agreement for academics who have been allocated more than 30 WAUs are contained in clauses 67.23, 67.27 and 67.28.

*If it does – whether an allocation of more than 30 WAUs evidences a requirement to work more than 1,725 hours per annum?*

No, for the reasons set out above, a WAU does not have a relationship to hours actually worked.

**Conclusion**

**[96]** On the basis of the above reasons, I decline to make any orders and dismiss the application.


COMMISSIONER

*Appearances*:

*A Buchecker* and *Smith* for the National Tertiary Education Industry Union.

*C Murdoch* instructed by *D Hunt* of MinterEllison *with permission*, with *C Jennings* on behalf of Flinders University of South Australia.

*Hearing details:*

Adelaide
1 and 2 February
2024.

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## ANNEXURE A

**Permission to be legally represented granted to the Respondent**

**1.** Prior to the hearing the Respondent sought permission from the Commission to be legally represented at the hearing under section 596 of the Act.

**2.** In correspondence sent before the hearing, I granted permission to the Respondent to be legally represented under s.596 of the Act. In the correspondence I expressed my preliminary views about why permission should be granted and committed to setting out my reasons in this decision.

**3.** The Respondent submitted that permission to be legally represented should be granted because:

(a) Lawyers could enable the matter to be dealt with more efficiently considering the complexity of the matter.[49] The University set out that the complexity in the matter arises from the need to interpret a number of clauses in the Agreement, understand the relationship between those clauses and the University's Workload Equalisation Model Guide and address the claim for a remedy as it had been sought by the NTEU.

(b) Their officers are unable to represent themselves in the hearing.[50] The University submitted that their Associate Director of Workforce Strategy, who had been managing the dispute, had recently left her role at the University and no replacement had been appointed. Further, the University says that no employee in their internal legal team had expertise in workplace relations or experience appearing before the Commission. The Respondent submitted that the fact they have in-house lawyers does not preclude it from being represented by external lawyers before the Commission.[51]

(c) It would be unfair for the University not to be represented because the NTEU will be represented by a Senior Industrial Officer with considerable advocacy experience before the Commission and familiarity with the matter.[52] The Respondent submitted that it would create inequity between the parties[53] if they had to rely on an inexperienced representative who was unfamiliar with the matter. The Respondent argued that the consideration as to unfairness was particularly critical as the Commission is being asked to determine whether there has been a contravention of an industrial instrument. The Respondent raised their concerns that any decision reached by the Commission may have implications for them if the NTEU was able to refer to the findings in seeking civil remedies under section 50 of the Act in a Court for an alleged breach of the Agreement.[54]

**4.** The NTEU filed submissions objecting to the Respondent being legally represented at the hearing. They argued that:

(a) The matter does not involve any particular legal complexity, but is rather a factual dispute about the application of the workload provisions in the Agreement;[55]

(b) The University's employees would be better able to explain the Respondent's position than its legal representatives;

(c) Any 'slight efficiency' that may result from the Respondent being legally represented by a law firm with speciality in industrial law is not sufficient to overcome the "*presumption created by the scheme of section 596 as a whole … that the approval of legal representation ought to be the exception and not the standard*."[56] The NTEU asserted that allowing the Respondent, as a very large employer with specialist human resource staff and in house legal expertise, to be represented is inconsistent with the scheme of s.596;

(d) The NTEU did not accept on face value, the submission of the Respondent that there was no-one employed by the University that was capable of conducting the proceedings; and

(e) There is no unfairness for the Respondent if they were not to be legally represented as the NTEU is represented by a union employee, not a legal representative.

**5.** I accept the submissions of the Respondent that the matter does involve complex issues and that the matter will be able to be dealt with more efficiently with the involvement of the Respondent's legal representatives.

**6.** I also find that it would be unfair not to allow the University to be represented because the officer with the long-term oversight of the matter has left their employ. The NTEU has the benefit of being represented by a person who has had a long-standing involvement in the dispute and an intricate knowledge of both the Agreement and the Workload Equalisation Model. The differences between those positions would in my view lead to unfairness.

**7.** As I have found that there is a valid basis to grant permission for the University to be legally represented under sections 596(a) and (c) it is not necessary to make a finding regarding the argument advanced by the University that they are unable to represent themselves in the hearing.

**8.** I grant permission for the Respondent to be represented by a lawyer.

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[1] The Agreement at clause 16.8.1(ii).

[2] See sections 738(b) and 739(3) of the Act.

[3] Workload Equalisation Model Guide 2023 at point 2, page 4.

[4] NTEU's Outline of Submissions at paragraph 24, referencing the Workload Model Guide at page 16.

[5] See Statement of Dr B Rogers at paragraph 26.

[6] Respondent's Outline of Submissions at paragraph 18(a).

[7] Submissions of Respondent at paragraph 18(c).

[8] Statement of Dr C Haseldine at paragraphs 13 – 14.

[9] Statement of Dr C Haseldine at paragraph 16.

[10] NTEU's Outline of Submissions at paragraph 19.

[11] NTEU's response to Directions requiring specific questions for Determination, dated 15 December 2023.

[12] The Respondent's Questions for determination – Response, dated 19 December 2023.

[13] [2017] FWCFB 3005 at [114].

[14] [2022] FWCFB 7.

[15] [2020] FCAFC 123, 298 IR 50 at [65] per Griffiths and SC Derrington JJ at [65]; see also *WorkPac Pty Ltd v Skene* [2018] FCAFC 131, 264 FCR 536 at [197].

[16] [2022] FWCFB 7 at [29].

[17] [2017] FWCFB 3005 at [114].

[18] Respondent's Outline of Submissions at paragraph 7.

[19] See NTEU Outline of Submissions at paragraph 72.

[20] Statement of Dr B Rogers at paragraph 54.

[21] Statement of Dr M Wyra at paragraph 22.

[22] Statement of Dr G Skrzypiec at paragraph 7.

[23] Statement of Dr G Skrzypiec at paragraphs 25 – 27.

[24] I note an amendment was made to the compensation sought, see below but the hours of overworked were maintained at the hours set out.

[25] Transcript – Day 2, PN 975 – 978 and PN 999.

[26] NTEU's Outline of Submissions at paragraph 14.

[27] Workload Equalisation Model Guide 2022 College of Education, Psychology and Social Work at page 6.

[28] Respondent's Outline of Submissions at paragraph 18(d).

[29] The NTEU also relies on evidence from an earlier industrial dispute from 2021 to support this assertion. See NTEU's Outline of Submissions at 34 – 38.

[30] Respondent's Outline of Submissions at paragraph 19(a).

[31] NTEU's Outline of Submissions at paragraph 76.

[32] The Agreement at clause 4.3.

[33] [2017] FWCFB 3005

[34] [2017] FWCFB 143.

[35] Ibid at [36].

[36] The Agreement at clause 4.3.

[37] Transcript – Day 2, PN 1585 – 1594.

[38] Statement of Dr G Skrzypiec at paragraph 7. Dr Skrzypiec also addressed this matter in oral evidence, see Transcript – Day 1, PN 95.

[39] Transcript – Day 1, PN 625 – 626.

[40] Statement of Dr C Haseldine at paragraph 5: Dr Haseldine also addressed this matter in oral evidence, see Transcript – Day 2, PN 947 – 950.

[41] Statement of Dr C Haseldine at paragraph 53.

[42] Transcript – Day 2, PN 969.

[43] Transcript – Day 2, PN 989.

[44] Transcript – Day 2, PN 999.

[45] Ibid, PN 974.

[46] Ibid, PN 1202 – 1203.

[47] NTEU's response to Directions requiring specific questions for Determination, dated 15 December 2023.

[48] The Respondent's Questions for determination – Response, dated 19 December 2023.

[49] Act at section 596(a).

[50] Act at section 596(b).

[51] *Hopper v Goodyear and Dunlop Tyres (Australia) Pty Ltd* [2010] FWA 2550.

[52] Act at section 596(c).

[53] Respondent's Submissions on Permission to Appear, dated 19 December 2023, at paragraph 15.

[54] Respondent's Submissions on Permission to Appear, dated 19 December 2023, at paragraph 17.

[55] Applicant's Submissions in Reply on Representation, at paragraphs 1-4.

[56] Ibid, at paragraph 7.