



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009
TRANSCRIPT IN CONFIDENCE

1052414

**JUSTICE ROSS, PRESIDENT
VICE PRESIDENT CATANZARITI
DEPUTY PRESIDENT ASBURY
COMMISSIONER HAMPTON
COMMISSIONER LEE**

AM2014/305

s.156 - 4 yearly review of modern awards

**Four yearly review of modern awards
(AM2014/305)**

Melbourne

9.17 AM, TUESDAY, 22 SEPTEMBER 2015

Continued from 18/09/2015

PN7186

JUSTICE ROSS: Thank you. For the first witness this morning the Bench is slightly reconstituted.

PN7187

MR DOWLING: Good morning, Vice President. Just two very short matters, if I may. Firstly, you might recall on Friday there were some directions made in respect of some documents arising from Mr Parker's cross-examination.

PN7188

JUSTICE ROSS: Yes.

PN7189

MR DOWLING: Can we say that consistent with the direction we emailed a draft order to the Commission and to Mr Clarke. He consented, or did not oppose the order. I don't believe the order has formally been made but nevertheless we made the request of Mr Clarke to provide the documents. We have still not received the documents. The only reason we raise it this morning is that we are concerned that we may need to recall Mr Parker and we have anticipated that the only time that that might be done will be during tomorrow's hearing which is the last of the lay evidence in respect of hospitality at least. So there was some urgency, we thought.

PN7190

JUSTICE ROSS: That would be before the hearing on the objections to notice to produce?

PN7191

MR DOWLING: Yes.

PN7192

JUSTICE ROSS: That should not be a problem. I've got the letter in relation to the request to issue the orders. Given that Mr Parker is aware of them, we will just formalise them in the course of the day. Is there any problem with Mr Parker turning up?

PN7193

MR DOWLING: We don't know yet, Vice President, I'm sorry, but we will make enquiries. We haven't made a final decision as to whether we will recall him because we haven't seen the document.

PN7194

JUSTICE ROSS: Depending on what the documents say.

PN7195

MR DOWLING: Yes.

PN7196

JUSTICE ROSS: Okay.

PN7197

MR DOWLING: Only one other issue and that is - I think it was the position of all of the parties. The three dates, which are 30 September and 1 and 2 October, would be in Melbourne.

PN7198

JUSTICE ROSS: Yes.

PN7199

MR DOWLING: I'm not sure whether that has been formalised or whether that is
- - -

PN7200

JUSTICE ROSS: That is the case.

PN7201

MR DOWLING: Thank you. We had some anxious experts and we wanted to let them know, so we'll do that. Thank you very much. Nothing else.

PN7202

JUSTICE ROSS: Mr Stanton.

PN7203

MR STANTON: May it please. Yes, Your Honour. I call Darren Lee Brown, who will take oath.

<DARREN LEE BROWN, SWORN

[9.19 AM]

EXAMINATION-IN-CHIEF BY MR STANTON

[9.19 AM]

PN7204

Mr Brown, can you confirm you are the manager of the Shoreline Hotel at Howrah, Tasmania?---That would be Howrah and, yes, I am.

PN7205

I beg your pardon, thank you. Sir, for the purposes of these proceedings, is it the case you have made two statements?---That's correct.

PN7206

One of those statements is of three pages and consists of 24 paragraphs and another statement is of one page and consists of three paragraphs?---That's correct.

PN7207

Do you have those with you today?---I do.

PN7208

Do you say in relation to each of those statements that they are true and correct to the best of your knowledge and belief?---Yes, I do.

*** DARREN LEE BROWN

XN MR STANTON

PN7209

Your Honour, I'd seek that the statements be entered in the proceedings as the witness' evidence-in-chief. I can hand up to the Bench copies of the statement. Certain objections have been dealt with and I understand that they are resolved. If it assists, the paragraphs affected are paragraphs 13 and 21, or at least 21B.

PN7210

JUSTICE ROSS: So that will be, given that the statement of Mr Dabner was withdrawn, that will be AHA65 and AHA66.

PN7211

MR STANTON: May it please.

EXHIBIT #AHA65 THREE PAGE STATEMENT OF MR DARREN LEE BROWN.

EXHIBIT #AHA66 ONE PAGE STATEMENT OF MR DARREN LEE BROWN.

CROSS-EXAMINATION BY MS BURKE

[9.22 AM]

PN7212

MS BURKE: Mr Brown, can you see and hear me all right?---Yes.

PN7213

I just want to start by asking you some questions about your staff. I understand you've got 12 employees on a salary?---Yes.

PN7214

That's still the case, you've still got 12?---Yes, we do.

PN7215

Are those 12 staff managers or are they not managers or are they a combination of the two?---Managers and supervisors.

PN7216

When you say supervisors and, sorry, just to be clear, I'm asking you about whether they're managers under the award or whether they are classified as one of the non-managerial classifications under the award?---There are four - sorry, four as managers under the award and the others are salaried but are supervisors.

PN7217

Of those four who are managers under the award, they are paid at least about \$54,000 a year, that's right?---Actually all of those 12 are paid at least that.

PN7218

Do the managers work in all sections of the pub - the hotel, I'm sorry?---No. Some - that's okay. Some are more focused on one area than the other. There are a number of us that work obviously across all sections but some, they're more focused, say, in our bistro or in our bar as opposed to both.

*** DARREN LEE BROWN

XXN MS BURKE

PN7219

For those - I think you said there's four that are classified as managers under the award and then there's the other eight who are still paid at least, I think you said, 54,000 but they're not classified as managers. So for those eight employees, you're aware, aren't you, that under the award that they are required to be paid a salary of at least 25 per cent above the minimum wage and that that salary has to encompass the entitlements that they would otherwise receive, including overtime and penalty rates?---Yes. Every year we review that and all of those people are paid far and above that amount so there is no issue with them being paid less than 25 per cent.

PN7220

So when you say you review that, you're aware, aren't you, of the requirement to keep a daily record of start and finish times for your salaried employees?---Yes. All of them produce a time sheet as do our other staff and that's the basis of the review that we undertake.

PN7221

That's signed at the end of the week by each employee?---Each employee signs off that daily and it's audited by myself weekly as well.

PN7222

So when you refer in your statement to reducing award covered staff on Sundays and public holidays, and to be fair I'm talking here about paragraph 16 of your statement, you're not suggesting there that you use staff that aren't covered by the award, are you?---No, not at all.

PN7223

You're referring to these 12 salaried employees?---The salaries and then - in the first level, and then the second level being the permanent staff who are obviously not quite as costly as then going to casuals, so yes, firstly the salaries.

PN7224

You have given some evidence also about offering reduced services on public holidays and I just want to confirm that it is just on public holidays that you offer reduced services. That's right, isn't it?---Look, we do that on Sundays as well but it's more dramatic on a public holiday.

PN7225

I'm a bit confused because I think in your statement at paragraph 19 you refer to offering a full service on Sundays?---Certainly we offer the guests a full service on Sundays but we reduce some of the activities that we can leave over that we would normally do on a normal day, we leave over until the Monday rather than doing those on a Sunday.

*** DARREN LEE BROWN

XXN MS BURKE

PN7226

So where you're talking about offering reduced or considering offering a full service on Sundays, what you're talking about there is sort of behind the scenes services?---No, not - yeah, not just behind the scenes. I mean, we don't clean

motel rooms that we have available for sale but we don't take the risk necessarily of cleaning all rooms that won't be sold. We certainly don't offer the same hours that we do on other days. We close earlier on a Sunday than we would on a Saturday or a Friday for instance.

PN7227

But just sticking to services, and I'm just trying to understand because you talk about on one hand in paragraph, the service on Sundays and then at paragraph 23 you talk about considering offering a full service on Sundays. So I'm just trying to be clear about what it is that is - - -?---Yeah.

PN7228

- - - what it that happens on a Sunday?---Okay We - - -

PN7229

Does one of those - one of those paragraphs need to be clarified or corrected?---It possibly needs to be clarified from what I've written there. What I mean by that is the fact that we offer the services of the hotel, our food and beverage is open in each area, but we reduce the hours of that offering.

PN7230

Your hotel has got a number of sections. Is it fair to say that the lowest earnings come from the bistro?---No. The bistro is a substantial area of earnings but the lowest margins are probably achieved in that - in that area. It's still a substantial part of our business.

PN7231

Lowest margins meaning lowest net profit?---Yes.

PN7232

Then the highest earnings, would that be the gaming section, and I'm including there both the pokies and the retail outlet?---Gaming and bars together, yes.

PN7233

You've got three bars, that's right?---That's correct.

PN7234

Then you've got the function centre and the accommodation. They're sort of in the middle there?---Yes.

PN7235

Sorry, I'm just getting a little bit of feedback and I just wanted to make sure it wasn't me. You have expressed some concern about increased wages. You know, don't you, that no one is seeking to increase penalty rates in this application?---Correct.

PN7236

Is the increase that you are referring to the increase in the minimum wage?---(Indistinct) increase the minimum wage - - -

*** DARREN LEE BROWN

XXN MS BURKE

PN7237

Sorry, Mr Brown. Can I just ask you to move your papers off the microphone stand there? Thank you?---Apologies.

PN7238

No, that's fine. I just couldn't hear properly. I'll ask the question again. The increased wages that you refer to, is that the increase in the minimum wage?---The increase in the minimum wage and what the impact would have if we were to attempt to offer the services that we would like to offer on both the Sundays and public holidays.

PN7239

But there is no proposal to increase wages in this application?---No, I understand that, but if I was to offer full services I would be increasing my own wages.

PN7240

You would be increasing your wages cost, I see. Just one more question - are you aware of an order by this Commission that you produce some document recording the basis of the loss-making exercise that you have referred to in paragraph 20 of your statement?---Yes, I was asked if I could provide that and at the time I had actually been away from the business for a period of 3 weeks and was unable to provide it at the time. Actually for part of that time I was actually overseas.

PN7241

But you have been back for a couple of weeks, that's right, isn't it?---I've been back for about 6 days, yes.

PN7242

You haven't produced anything?---I wasn't aware that I still needed to.

PN7243

Thank you. I don't have any more questions.

PN7244

JUSTICE ROSS: Thank you. Mr Stanton, any re-examination?

PN7245

MR STANTON: No, there's nothing further, your Honour.

PN7246

JUSTICE ROSS: Thank you. The Commission will take a short adjournment. You're excused.

<THE WITNESS WITHDREW

[9.31 AM]

SHORT ADJOURNMENT

[9.31 AM]

RESUMED

[9.41 AM]

*** DARREN LEE BROWN

XXN MS BURKE

PN7247

MR STANTON: Yes, your Honour, I call Mr Dan Cronin, who will take oath.

<DANIEL CRONIN, SWORN [9.41 AM]

EXAMINATION-IN-CHIEF BY MR STANTON [9.42 AM]

PN7248

MR STANTON: Sir, you are the hotel owner and manager of the Western Hotel at Sturt Street, Ballarat, Victoria?---Yes.

PN7249

How long have you held that position?---How long have I had it? Since November 2010.

PN7250

For the purposes of these proceedings you've done two statements?---Yes.

PN7251

One is a statement of, say, 3 pages?---Mm-hm.

PN7252

And the other a single page statement of the 25th of August?---Yes.

PN7253

Do you have those with you this morning?---I do, yes.

PN7254

In relation to each of those statement, do you say that they are true and correct to the best of your knowledge?---To the best of my knowledge, yes, at the time.

PN7255

Can I ask that the statements be received into the proceedings as the witness's evidence? I can hand up five copies of the first of those statements, the 3-page statement, which deals with results and objections; paragraph 12 is the relevant paragraph.

PN7256

JUSTICE ROSS: No objection to the tender?

PN7257

MS BURKE: No objection.

PN7258

JUSTICE ROSS: We'll mark the 3-page statement as exhibit AHA67 and the supplementary as exhibit AHA68.

**EXHIBIT #AHA67 WITNESS STATEMENT OF DANIEL CRONIN
COMPRISING 3 PAGES**

*** DANIEL CRONIN

XN MR STANTON

**EXHIBIT #AHA68 SUPPLEMENTARY SINGLE PAGE
STATEMENT OF DANIEL CRONIN DATED 25/08/2015**

PN7259

MR STANTON: May it please, my friend has some questions.

PN7260

JUSTICE ROSS: Cross-examination?

CROSS-EXAMINATION BY MS BURKE

[9.43 AM]

PN7261

MS BURKE: Mr Cronin, let me know if you can't see me, given distance, or can't hear?---Sure.

PN7262

The Western Hotel doesn't close every public holiday, does it?---No, it doesn't, no.

PN7263

You were open on Easter Saturday and Sunday this year?---Yes.

PN7264

And Anzac Day?---Yes.

PN7265

And the Queen's Birthday holiday?---Yes.

PN7266

You've given some evidence about rostering on Sundays and public holidays. I understand that you've got six full-time staff who are on a salary?---Yes.

PN7267

And three who are on an hourly rate but they're full-time?---Yes.

PN7268

And those six salaried staff, are they managers under the award?---They are, yes.

PN7269

All six of them?---All six of them are managers, yes.

PN7270

So they will be paid at least \$54,000 a year?---Yes - well, no, not all – sorry, no, not all of them no, not at \$55,000 a year, no.

PN7271

How much are they paid then?---They vary from \$48,000 a year to \$55,000 a year.

*** DANIEL CRONIN

XXN MS BURKE

PN7272

Do you understand that under the award there are two kinds of salary classification? There's managerial staff and there's non-managerial staff, so somebody's job might be manager colloquially but under the award being a manager is a different concept. Do you understand that difference?---I'm not 100 per cent across that, no, sorry.

PN7273

Are you aware if any of your salaried staff are classified as managers under the award?---My head chef is, yes, definitely, and the others are classified as managers in their job.

PN7274

In their job?---Yes.

PN7275

You understand, don't you, that if you're paid a salary under the award that that employee – this is a non-managerial salaried employee under the award – that that person has to be paid at least 25 per cent above the minimum wage?---Yes.

PN7276

And that that salary should include – or it must include the penalty rates and the overtime that they would otherwise receive?---Yes.

PN7277

Can I take it that it means that - - -

PN7278

JUSTICE ROSS: Did he answer that question?

PN7279

MS BURKE: Yes, I heard yes, I'm sorry.

PN7280

JUSTICE ROSS: Yes, all right, thank you, I didn't hear it.

PN7281

MS BURKE: Can I take it that it means – I'm just going back to the rostering question – that your salaried staff regularly work on weekends?---Regularly, yes, and they have regular weekends off as well.

PN7282

So it's a kind of rotating pattern of shifts?---Yes.

PN7283

How many weekends would they regularly work, say, in a month?---In a month, three.

PN7284

Okay, and then when they work weekends they would have Monday and Tuesday off, for example?---Yes, it varies during the week, but yes, as an example, yes.

*** DANIEL CRONIN

XXN MS BURKE

PN7285

It would be two week days?---It would be two week days, correct.

PN7286

How many casual hours would you normally have rostered to work on a Saturday?---On a Saturday?

PN7287

Mm?---It varies anywhere from – I don't have those exact numbers now, right now with me, I'm sorry, but - - -

PN7288

That's fine, what about an approximation?---An approximation of roughly about 30 hours on a Saturday.

PN7289

And on a Sunday?---On a Sunday, rostered, roughly about 25 hours.

PN7290

Is it all or most of your casuals – I think all - they're all grade 2 under the award?---Most of them are. Some of them are grade 3 because they are TAB operators.

PN7291

I see. You've given some evidence about what you might do if penalty rates are reduced as proposed by the Australian Hotels Association?---Sure.

PN7292

And I think you talk about employing more staff to work on the weekends?---Yes.

PN7293

And you'd obviously only do this if this was affordable, wouldn't you?---Absolutely, yes.

PN7294

So can I take it that means that you've calculated what you would save in dollar amounts if staff wages were cut in the way proposed?---I have; I don't have those figures at hand at the moment, I'm sorry, but we certainly done an analysis based on what those rosters would look like.

PN7295

Had you done that analysis – when you say 'we' have done that analysis, do you mean you or you and someone else?---Myself and my business partners. As I state there, I'm a part owner of the hotel.

PN7296

Had you done those calculations at the time that you made your first statement?---No, we did them post the statement – of the actual - - -

*** DANIEL CRONIN

XXN MS BURKE

PN7297

Sorry, I didn't mean to cut you off?---Sorry, no, that's okay – of the actual calculations, we did post the statement.

PN7298

How far post the statement did you do those calculations?---It was within a week – within a week.

PN7299

When you said in your statement that you would employ more people, you weren't saying that knowing how much it would cost to employ more people, did you?---Not an exact amount, no.

PN7300

Well not at all, I'm suggesting?---Well we didn't know an exact amount, no, but we will certainly employ more people, on Sundays particularly, and certainly on Saturday nights as well which is our peak time.

PN7301

But if you don't know how much it would cost, you can't say that you certainly would employ more people? At that point in your statement it's just a preference, isn't it?---At that point in my statement I would – yes, it would be, but we – I guess at the end of the day we acknowledge that a reduction in rates will increase our labour hours available, absolutely.

PN7302

By how much?---I don't have those figures unfortunately.

PN7303

Thank you, Mr Cronin.---Sure.

PN7304

JUSTICE ROSS: Mr Cronin, in response to a question that was just put to you when you said that you'd employ more people definitely on Sundays and on Saturday nights, why would you employ more people on Saturday nights?---Well Saturday nights is one of our busier nights – Friday, Saturday and Sunday - Sunday after lunch and afternoon - are our peak times, and Saturday nights we would employ more staff because of, you know – it would, Sundays being a lower rate - if it was successful, Sundays being a lower rate would give us more flexibility to offer more hours over a longer period of time.

PN7305

In relation to Sundays, what would be different about your staffing arrangements if the AHA's claim were granted?---Yes, well we would service our accommodation rooms on Sundays as opposed to – we don't – well we would certainly service more; we don't service any accommodation rooms on Sundays unless we have pre-bookings. I would have extra casual staff on for lunch and for dinner services and for longer periods of time in the afternoon, and it would also give me flexibility to offer my permanent staff more hours off on the weekends.

*** DANIEL CRONIN

XXN MS BURKE

PN7306

So there would be both the engagement of additional staff overall and the substitution of your full-time staff for casuals?---It would give us that ability to offer that, for sure. Definitely.

PN7307

And at paragraph 10 of your statement you say that, "The hotel is closed on some public holidays."?---Yes.

PN7308

If we take the last 2014, which public holidays were you closed on?---On 2014 we were closed on Good Friday. On 2015 we were closed Good Friday and Easter Monday.

PN7309

All right.

PN7310

Any re-examination? Anything arising first?

RE-EXAMINATION BY MR STANTON

[9.52 AM]

PN7311

MR STANTON: Why was it you were closed on Easter Monday of this year?---Easter Monday, again because of the additional public holiday on the Sunday as opposed to a normal - well, what has traditionally been Sunday rates for Easter Sunday.

PN7312

Thank you.

PN7313

JUSTICE ROSS: Anything further for the witness?

PN7314

Thank you for your evidence, you're excused?---Thank you.

<THE WITNESS WITHDREW

[9.52 AM]

PN7315

JUSTICE ROSS: The next witness?

PN7316

MR STANTON: Yes, Your Honour, I call Dennis Madden who will take an oath.

PN7317

THE ASSOCIATE: Sir, could you please state your full name and address?

PN7318

MR MADDEN: My name's Dennis Peter Madden and my address is (address supplied).

*** DANIEL CRONIN

RXN MR STANTON

<DENNIS PETER MADDEN, SWORN

[9.53 AM]

EXAMINATION-IN-CHIEF BY MR STANTON

[9.53 AM]

PN7319

MR STANTON: Sir, you are the director and manager of Madden's Commercial Hotel, Camperdown?---Yes I am.

PN7320

Sir, for the purposes of these proceedings you have done two statements?---Yes.

PN7321

And one of those is a statement of four pages that you made on 29 June and can you confirm that the other is a single page statement made 26 August?---Yes, I can.

PN7322

Yes, if you just bear with me? If I could just have a moment with my friend.

PN7323

JUSTICE ROSS: Sure.

PN7324

MR STANTON: Sir, can I just take you to the first of those statements, that's the four page statement?---Yes, starting where, sir?

PN7325

Yes, yes, if it assists if you could just go to paragraph 17 which is on the second page of that statement?---Right.

PN7326

And, sir, if you could just read that to yourself?---Yes.

PN7327

And, sir, I take it what you have to say there is about your hotel?---Yes.

PN7328

Nothing further?---Well, I daresay our hotel is very - there would be a number of hotels similarly - with similar layouts. It's just the - it's the way the hotel's evolved. So if I'm speaking on my own hotel there would be a number of other hotels in the same - - -

PN7329

If we take it though that the content of this statement at 17 is in relation to your hotel?---It certainly is.

PN7330

Yes, and do you say in relation to both of those statements that you've made that they are true and correct to the best of your knowledge and belief?---Yes they are.

*** DENNIS PETER MADDEN

XN MR STANTON

PN7331

Your Honour, if I could have the statements entered into the proceedings as the witness's evidence-in-chief. I can hand up copies of the statement. There are several paragraphs that are affected, 20, 21, 22, 27 and 28 if it assists. Thank you.

PN7332

JUSTICE ROSS: No objection?

PN7333

MR DOWLING: No, your Honour.

PN7334

JUSTICE ROSS: I'll mark the four page statement as exhibit AHA69.

**EXHIBIT #AHA69 WITNESS STATEMENT OF DENNIS PETER
MADDEN COMPRISING FOUR PAGES DATED 29 JUNE**

PN7335

JUSTICE ROSS: The supplementary statement is exhibit AHA70.

**EXHIBIT #AHA70 SUPPLEMENTARY WITNESS STATEMENT OF
DENNIS PETER MADDEN DATED 26 AUGUST**

PN7336

MR STANTON: May it please.

PN7337

JUSTICE ROSS: Cross-examination?

CROSS-EXAMINATION BY MR DOWLING

[9.57 AM]

PN7338

MR DOWLING: Yes, your Honour.

PN7339

Mr Madden, if I could firstly ask you some questions about your staff. If you look at the longer of your statements you'll see there at paragraph 7 you give some evidence about the staff in the hotel and I think you say:

PN7340

There are 42 employees, seven of whom are full-time and 35 of whom are casual.

PN7341

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

PN7342

And that was, I take it, the position on 29 June, is that right?---I believe so.

*** DENNIS PETER MADDEN

XXN MR DOWLING

PN7343

You've then provided a supplementary statement by you in August, 26 August, but said to be the position on 30 June and you'll see there the casuals, there are now 39 casuals. So was there an increase of four casuals between the time of your first - - -?---No, the reason for that is that we would have taken those on the people that worked on those dates. So we have got a pool of people. There could be - I think there's, say, 46 people. Some of those people have weekends off. They work every second week. So our casuals fluctuate. The number of people that work fluctuate as to which shifts they're on, and certainly you know we've got function areas so, you know, it may vary as many as 10 people in one week.

PN7344

So the total pool of casuals that you employ from time to time is what?---Well, it's up - you know, we just take that off our wage sheet. So they may work, you know - they might - may work every week. They may work two out of four, so that's the pool of people. We actually have our wages of - those are the pool of people that are actually on our wage sheets and they don't work every week.

PN7345

What is the pool of people? Is it 39 or is it something more than that?---It'd be more like 47.

PN7346

47?---Yes.

PN7347

Okay, and in terms of the full-timers I think you said in your first statement there were seven but in the supplementary statement there are eight. That's not a fluctuating figure, that's - - -?---No, it doesn't fluctuate, but I'm - as an employee of the business there are two other directors that are employees of the business, but they don't work, they're not functioning. So that - that statement takes into account my brother and sister, myself and the other - the other employees. I think there's two chefs, permanent maintenance man, and the rest are casual.

PN7348

So have you not included some of those people in the first statement where you said there were seven?---As I said there - there were seven if you take in the non-working directors. So the people that get a fixed wage, which includes myself, my brother, his wife and my sister, they're the people that are considered full-time, and in addition to that there's the two chefs, or there may be there, and Phillip Robinson our maintenance staff. So they're the ones that get full-time, they're the ones that get holiday pay, so the others are all casual.

PN7349

So the four, your family members you have described plus what you think are three chefs and a maintenance person, that makes a total of eight?---Well, seven or eight.

*** DENNIS PETER MADDEN

XXN MR DOWLING

PN7350

You are not sure whether it's seven or eight?---Well, you know, if I had - if I had the wage sheets in front of me I could tell you exactly, but it's in that vicinity, and as I said the maintenance fellow, Trent and Jayden, the chefs, and I think there's a third chef that's just been put on to full-time. So they're the people who are actually eligible for holiday pay and sick leave.

PN7351

Plus the four family members you describe, those people - - -?---Well, they don't actually - they're outside that parameter - you know, I don't - as full-time we're employed by JL & J Madden, but as I explained three of those, three of those people are non-working, but they still get a salary, an income.

PN7352

All right. Have you got your supplementary statement in front of you?---Yes, I do.

PN7353

So you will see there are eight full-timers and we should understand that eight full-time employees - we should understand that four of those are the family members that you have described?---That's me included, yes.

PN7354

And they're in the, what, the over-award rate category?---I would imagine.

PN7355

You would imagine?---Well, we - we just get a salary, so whether it's an award rate salary, you know, I can't answer that. I work more than 40 hours a week I can assure you.

PN7356

Did you complete this document or was it someone else?---I did - I did complete that document.

PN7357

But you are not sure whether it's accurate?---I am sure that it's accurate and I've just explained why.

PN7358

I am sorry, I must just be misunderstanding you. Are you saying that the four over-award rate employees are the four family members?---I am saying they would be included in the full-time. As I said our wages are processed in Ballarat and that just comes out of the wage sheet.

PN7359

All right. Those four receive annual leave?---The four members of the family, as I said three are actually - - -

PN7360

Non-working?---Non-working, so if you're non-working I don't think you'd get annual leave surely.

*** DENNIS PETER MADDEN

XXN MR DOWLING

PN7361

You have included them in your list of employees?---Well, because technically they're paid by the company.

PN7362

What do you mean technically, are they paid or are they not paid?---Well they're paid by the company.

PN7363

They are paid?---I'm sorry I'm not an accountant, but all I can tell you on the wage sheets they - they get a wage per week, as do I.

PN7364

Now, the annualised salary, the four you've got in the annualised salary column are they what you describe as managers or not?---Well, there's - as I said three are
- - -

PN7365

Three are chefs?---Sorry, are you - are you talking about the four people, myself, brother, sister and brother's wife, or are you talking about - they don't work in - they don't work in the hotel, they don't perform - they get a salary or it could be - whether it's rental or however you determine that. Our accountants do all that. I am the only person that actually works in the hotel out of those four on a permanent managerial role.

PN7366

Okay. I am now in the next column on your supplementary statement where you have number of employees on annualised salary and you have four listed there. Do you see that column?---If you just point me to which - is it number 9, number 7?

PN7367

It's the second statement at paragraph 3, you will see there's a table?---No, I don't seem to have that - yes.

PN7368

So you see you have got eight full-timers; four of them you have under the column saying "Number of employees on annualised salary". Do you see those four?---Yes, I do.

PN7369

So now you have got that in front of you the first four under the number of employees on over-award rate they're the four family members?---No.

PN7370

Who are those four?---That would be Trent, Jayden, Yolinda and Phillip.

PN7371

That's the three chefs and the maintenance person?---Yes.

*** DENNIS PETER MADDEN

XXN MR DOWLING

PN7372

All right. And the next four on annualised salary that's the four family members?---Yes.

PN7373

Are you advertising for a position at the moment?---As in?

PN7374

Are you advertising for any employees at the moment?---Not that I'm aware of, but we are constantly like every hotel looking - we are always on the alert for anybody that's qualified as a chef. So you would say that we're constantly looking for people that are qualified, because in the - in the country they're very hard to come by.

PN7375

Can I show you a document, please. Is this an advertisement you placed for experienced hospitality staff?---That would be off our Facebook I'd imagine, and we do that - yes, we're always looking for qualified staff.

PN7376

So you are presently looking for experienced hospitality staff?---We always have a net out there for somebody that's experienced because we find that there's very few people in Camperdown that have had any hospitality experience whatsoever. We train - we train a lot of junior staff, and most of - the vast majority of the kids that we employ are doing university or they're moving - - -

PN7377

I just asked you Mr Madden if you are currently looking for staff, is that correct?---We are constantly looking for staff.

PN7378

And the staff you are currently looking for you would like them to work flexible hours including weekend shifts, is that correct?---Yes, that'd be correct.

PN7379

You say that your hotel has different hours in winter than it has in summer, is that correct?---Yes.

PN7380

Is it fair to say that winter is a period of slightly lower demand and slightly less traffic in your hotel?---That would be - winter would - it's certainly - our winter trade is not as - you know, the people are not moving around, so our winter trade is less and it's very dependent on the weather.

PN7381

The worse the weather the less the traffic, is that - - -?---That's all - that's true except with gaming.

*** DENNIS PETER MADDEN

XXN MR DOWLING

PN7382

And why is that not true of gaming, is there a sort of constant local gaming revenue?---Well it's certainly not constant, but gaming is very - it's affected by weather. If it's really sunny outside and it's quite pleasant people will go, well, no, we're not going to go and sit in a gaming room. They go there for relaxation and normally if they go there it's because they're looking for something to do, and if it's nice and sunny and whatever gaming's not right up there in their priorities.

PN7383

You say at paragraph 28 of your longer statement:

PN7384

If I could trade on additional public holidays as a normal day in terms of payment to my casual employees I would certainly roster them on to work.

PN7385

It's the very last sentence of your longer statement?---Yes. Yes. Yes, that's a - well, with the bitter experience we've had with public holidays - - -

PN7386

Hang on, I haven't asked you a question yet, Mr Madden?---Okay then. Right. Sure.

PN7387

Are you saying there that you would like for all public holidays to be paid the normal Monday to Friday rate, and if that was so you would trade or you would offer more hours to your casual employees?---With our structure which I said - well, with our structure we have gone casual and in hindsight that was something that was recommended, that we employ casuals. Most of the hotel - or a lot of hotels now elect to employ part-time and the - with the casual you can't offset if they work time - if you're part-time you can actually - or full-time, you can offset the public holiday with a day off in lieu. You cannot do that with casuals. So that statement ties in the effect that with our casuals we have got no flexibility. We can't give them time in lieu because they're casuals.

PN7388

Perhaps I'll ask my question again. Do you mean by that statement that you would like for the purposes of your casuals all public holidays to be paid at the same rate as Monday to Friday?

PN7389

MR STANTON: Objection.

PN7390

MR DOWLING: I'm asking him what he means.

PN7391

MR STANTON: I'm sorry, the question - the witness is being examined about paragraph 28. The witness refers to the additional public holidays not all public holidays.

*** DENNIS PETER MADDEN

XXN MR DOWLING

PN7392

MR DOWLING: Excuse me. I have asked the witness to explain what he means by the paragraph. He can do that without being prompted by my learned friend in a completely improper way.

PN7393

JUSTICE ROSS: Yes. Yes, there's no substance in the objection. Put the question.

PN7394

THE WITNESS: I wouldn't - no, I would not expect the casuals to work at that rate on a public holiday.

PN7395

MR DOWLING: So you don't seek as part of this application for public holidays to be paid on the normal Monday to Friday rate, any of them?---No, not a public holiday. No.

PN7396

All right. Now - - -?---What I would say is the public holidays - - -

PN7397

No I don't - - -?--- - - - at this rate - - -

PN7398

No, your job is just to answer my question, Mr Madden?---Okay. Okay, sure.

PN7399

Rather than - - -?---Yes.

PN7400

Now can I ask you some questions about paragraph 10. You talk there about rostering your regular employees to cut costs. I just want to be clear what you mean by rostering your regular employees. Who are your regular employees you're referring to at paragraph 10?---Our regular employees are out of that pool of 46 people or 47 people that we regularly employ.

PN7401

The casuals?---Yes.

PN7402

So you say:

PN7403

We usually open the hotel on public holidays as there is a community expectation. On those days I roster my regular employees and I work myself to cut costs.

*** DENNIS PETER MADDEN

XXN MR DOWLING

PN7404

So is what you mean by that you roster your casuals and then in order to cut your costs you work yourself?---Well, I will explain that. Our regular employees are people that work regular shifts or gaming over a number of days on a regular rotating roster. They're paid as casual so that they're our regular - they're casuals but they're the more permanent shift. So they've got regular shifts and they're paid as casuals. So I would - and they do that shift every day and they may work four days a week, they may work five days. They're on a rotating roster. So those people have got an expectation they will come in every day on their rostered - on the regular roster. So those people would - they would get their shifts and I would work with them. But the people that are actually rostered on are - there's a shift that starts from eight till close, I would more than likely close early or do that shift myself.

PN7405

But you don't save any money by rostering those regular casuals. You still have to pay them the penalty rates consistent with the award?---Yes.

PN7406

Do you accept that?---Yes.

PN7407

You're not saving any money at all by rostering those people?---No, because they're - I can't do everything. They are required. They are the people that actually - most of them in the gaming room, they would be the person in the gaming room and I'm the second person on. So they're - you know, they're - yes, they're there to work in that particular area over those set of hours.

PN7408

So just so that I can - - -?---And then the set of hours is normally 9 o'clock - they start at nine and finish at four or five.

PN7409

All right but just - - -?---And then the other - the regular - the other regular casual would come in either at four to close or five to close.

PN7410

Just so I can understand what you mean, when you're talking about cutting costs in that second sentence, the reference is not to the regular employees. The reference is just to you, is it? Is that the way you cut your costs, just by rostering you?---I would work in - yes, I would work rather than get a casual in. I would actually perform that function.

PN7411

I'm not sure you're clear on my question. When you're referring to cutting costs in that sentence?---Yes.

PN7412

Is the method by which you cut your costs, it is only referring to the fact that you would roster yourself. Is that right?---Yes, I would do that actual task.

*** DENNIS PETER MADDEN

XXN MR DOWLING

PN7413

All right?---So if it was cleaning in the morning, rather than getting a cleaner in I would do the cleaning.

PN7414

I think you've put yourself under the annualised salary group in the award, is that right, when we went through your first statement?---Yes.

PN7415

All right, and what's the salary you pay yourself annually?---My salary is - I think it's 73, 73,000.

PN7416

All right?---It's around the \$1500 a week.

PN7417

Now you give some evidence about the Queen's Birthday weekend in 2015. Can I just ask you - again I just want to be clear that I understand the position as you put it. Now you say you adopted a minimum opening approach?---Right, if you could just tell me which - - -

PN7418

Yes, paragraph 15 of your longer statement is where you say that?---Right. Okay, yes.

PN7419

And you say you opened the back bar, drive-in and TAB service as well as the gaming room?---Yes.

PN7420

I just want to be clear on how many areas that is. Is that three? Is that the TAB bar?---No, that's two.

PN7421

That's two?---So the TAB bar, the bottle - the drive-in bottle shop and the TAB bar are connected.

PN7422

I see?---So there's one person.

PN7423

I see?---That works that area.

PN7424

I see?---So that's two distinct areas that we open, which is the gaming and the back bar. So that's - they're two staff members including myself.

PN7425

I think I understand. So where it says "Back bar, drive-in and TAB service"?---Yes.

*** DENNIS PETER MADDEN

XXN MR DOWLING

PN7426

"As well as the gaming room"?---Yes.

PN7427

That's effectively two for the purposes of this - - -?---Yes, two separate areas.

PN7428

- - - proposition that's two separate areas, all right, and the first of those you open from 12 noon until 6 pm?---Yes.

PN7429

And the second of those, the gaming room you open from noon until 8 pm?---Yes.

PN7430

Okay, now in terms of the staff that you had working, did you just say a moment ago you had one working in the back bar, drive-in and TAB area?---Yes.

PN7431

Okay, and you had one working in the gaming room?---Well, as - yes but that gaming room shift and the other shift may have been split on that day. Because there's a five hour rule, so we try to add - to be even to the people that regularly work, that shift may have been split into two four hour divisions. So there could have been two people. I went in there and did all the pre-opening so, you know, that pre-opening is doing all our floats, getting the gaming ready - area ready, which is you've got to do your pre-balance and it's - - -

PN7432

All right, I don't need to know about that for the moment?---Okay.

PN7433

Just in terms of the hours that people worked. We think there was either one or two people that did a total of six hours in the back bar drive-in and TAB service?---I think the back bar stood alone.

PN7434

Yes. One person?---That was one person did that shift.

PN7435

Okay. So one person does six hours there, then in the gaming room, it might be that one person did eight or it might be that two - - -?---No, no, it would've been - - -

PN7436

- - - people did four each?---Two people, because once you close in - - -

PN7437

Right?---The gaming room there's at least an hour to do the actual procedure, to shut down, to secure the cash, to balance so that even though the trading times say 12 till 6 or whatever it is, you can add at least an hour or maybe an hour and-a-half to the end, and certainly two hours which I did at the beginning.

*** DENNIS PETER MADDEN

XXN MR DOWLING

PN7438

All right. Despite whether there's two people, there's a total of eight hours done in the gaming room by this person or persons?---Yes. Yes, persons.

PN7439

Okay?---Persons.

PN7440

And do you know what level the person in the back bar drive-in and Tab area was? What level, what casual level. There's an introductory level, or level 1, a level 2?---That would've been the girl that actually works there as a casual, but she has got regular shifts and she would have done that shift on the Queen's Birthday weekend.

PN7441

And do you know whether she's an introductory level or a level 1 or a level 2 or - -?---She would be a level 2. Yes.

PN7442

And - -?---She's certainly not a junior.

PN7443

Okay. And the person, or the two people that worked – shared the eight hours in the gaming room, do you know whether they're introductory level 1, level 2 or - -?---They wouldn't be introductory. They've worked there for some years.

PN7444

They're not introductory level?---I said they wouldn't be introductory.

PN7445

Okay?---To my knowledge they've worked there for some years.

PN7446

Do you know what level they are at? Are they 1 or 2 or beyond?---As I said, we – all our wages are processed in Ballarat. And it's not something that, you know, I regularly check.

PN7447

Right. You don't know?---I don't know.

PN7448

All right. Now, I think your evidence is that over that weekend you made a loss?---Yes.

*** DENNIS PETER MADDEN

XXN MR DOWLING

PN7449

All right. And is it your evidence that if repeating that exercise resulted in a loss, it's not something you'd do again?---It would be. As I said in the evidence, there are community expectations that we do open, and that was something that our regular customers question. And certainly when staff are missing out on wages, and that's, you know, their income and their expectations, you know, given the

Easter exercise, they would normally be expecting to work. And of course the work wasn't available to them because we decided not to open. That's a consideration we're going through with the grand final coming up, and it's a hot topic of debate in the hotel. And, you know, the offer is can we do something so we can open. And I said, "Well, the way things are, the answer to that is no."

PN7450

Just in respect of – if we could just concentrate on the Queen's birthday and if you could just answer my questions rather than - - -?---Okay.

PN7451

- - -talk about other issues?---No, it's the same issue.

PN7452

Just in respect of the Queen's birthday weekend, is it your evidence that whether you make a loss or not you would still open on that weekend, or is it your evidence that, if it's going to make a loss, I won't open on that weekend? I'm not clear?---If there's going to be continued losses, as I said, we have to balance that with community expectation. And, as I said, our staff are very unhappy not to open, so that's a balance that – Queen's Birthday is probably, given that it's right in the middle of June, that may be different to something that's, you know, later in the year when we've got an opportunity to make money. So it's, you know, different holidays have got different impacts on our business.

PN7453

I'm still not sure you've answered my question. My question is, if you're going to make a loss on that weekend, will you open anyway, or if you're going to make a loss, will you not open?---I'd consider the impact on our business.

PN7454

What does that mean?---Well, it - - -

PN7455

Is that a yes or a no or you'll wait and see?---That means if I'm going to lose a substantial amount of money by opening - - -

PN7456

Yes?--- - - -the choice I would make would be not to open.

PN7457

All right?---And the consideration – taking into consideration that people are going to miss out, and the expectation of our customers.

PN7458

All right. Okay. Now, are you aware that, in respect of paragraphs 15 and 16, you were ordered to produce some documents?---I missed that, sorry?

PN7459

Are you aware that in respect of those two paragraphs, 15 and 16, you were ordered to produce some documents?---Was I ordered?

PN7460

Yes?---By who?

PN7461

By the Commission. This Commission?---Not that I'm aware of.

PN7462

Not that you're aware of. You provided to the AHA a document called Queen's Birthday Public Holiday Trading Analysis. Do you remember this document?---That would have been produced by our office.

PN7463

You didn't produce this?---It would've been produced by Angela, who is our office manager.

PN7464

Are you saying you did not produce this?---I didn't produce it. I would've seen it, but I'm not familiar with it. It's not part of my evidence.

PN7465

All right. You were asked to produce records showing rosters and overall profit and loss, including wage bills for the Queen's birthday weekend, public holiday weekend in 2015 referred to in paragraph 15 and 16 of your affidavit. Did someone tell you you were asked to produce those things?---Did somebody tell me? I'm not familiar with the document, I'm sorry.

PN7466

My question was, did somebody tell you that you were required, in respect of paragraph 15 and 16, to produce records showing rosters and overall profit and loss and wage bills for the Queen's birthday public holiday weekend? Were you told to do that or not?---Told by whom?

PN7467

By anyone?---I – there may have been a request. If I produced a document, obviously it was requested.

PN7468

Is there a reason that you did not produce rosters for the Queen's birthday public holiday weekend?---As I said, I'm unaware of the actual documentation you're talking about, and our rosters are – you know, they're posted on the wall. That's not a problem. Our rostering, as in any hotel, is posted in our timesheet book as to who is rostered to work, and the actual hours that they're expected to work. So - -

-

PN7469

Should I understand from that answer that there is no good reason why the rosters for the Queen's birthday weekend were not produced? There's no reason why it could not have been done?---No, not from my point of view. No.

*** DENNIS PETER MADDEN

XXN MR DOWLING

PN7470

I wonder if we might – if there might be an order made in respect of those rosters?

PN7471

JUSTICE ROSS: Well, there was an order made in respect of those rosters.

PN7472

MR DOWLING: Yes. Yes, there was.

PN7473

JUSTICE ROSS: Why hasn't the material been produced in compliance with the order?

PN7474

MR STANTON: If we can just take a - - -

PN7475

JUSTICE ROSS: The witness says it's freely available.

PN7476

MR STANTON: I understood that some – that there was a profit and loss or a document, a trading analysis produced.

PN7477

JUSTICE ROSS: No, that's right.

PN7478

MR STANTON: Yes. Yes.

PN7479

JUSTICE ROSS: But it doesn't include all of the material that was required to be produced.

PN7480

MR STANTON: Yes.

PN7481

JUSTICE ROSS: Have you got a copy of the order to produce, Mr Dowling?

PN7482

MR DOWLING: I do. Yes.

PN7483

JUSTICE ROSS: Can you give it to Mr Stanton.

PN7484

MR STANTON: I can't assist, your Honour. I don't – I understand it was sought.

PN7485

JUSTICE ROSS: By whom?

*** DENNIS PETER MADDEN

XXN MR DOWLING

PN7486

MR STANTON: By my instructing solicitors.

PN7487

MR DOWLING: Your Honour, in terms of the best way forward I wonder if the witness might be able to obtain the documents, provide them to Mr Stanton, and Mr Stanton provide them to us.

PN7488

JUSTICE ROSS: Sure.

PN7489

MR DOWLING: And we'll reserve our rights as to whether the witness needs to be re-called.

PN7490

JUSTICE ROSS: Yes. Well, I don't see much utility to issuing another order since the last one wasn't complied with, but we'll adopt that course. Sure.

PN7491

MR STANTON: May it please.

PN7492

MR DOWLING: Now, just to be clear on what you can produce, producing the rosters for that weekend is no difficulty? They are available?---Possibly not. And the reason being that - - -

PN7493

Well, one moment, Mr Madden. I thought you said a moment ago they were freely available and up on the wall. Is it now your evidence that they might not be?---They're posted on the wall, but once that week – once we transition past that week, you know, another roster goes up. The rostering – our rostering is, you know, it's a fluid thing, so it actually goes up. Some people retain their shifts, other people rotate through their shifts. It changes on weekends. You know, we've got – our rotational – our rosters are rotational, and that's mainly because a lot of our casual staff want weekends off.

PN7494

But your payroll - - -?---There's no mystery to it.

PN7495

Your payroll of course will tell you the hours that anybody worked at any time and will be able to tell you the hours that people worked over the Queen's birthday weekend, won't they?---We would request that information from our accountants, yes.

PN7496

So that if the document that was up on the wall is no longer available you will be able to - - -?---It wouldn't be available.

*** DENNIS PETER MADDEN

XXN MR DOWLING

PN7497

- - - you will be able to request from your accountant who worked what hours over the Queen's Birthday weekend of 2015 and what wages were paid to them?---Yes.

PN7498

So you will do that for us?---I could do that for you.

PN7499

And you will also be able to provide to us the wages that were paid to staff for that Queen's Birthday weekend?---Yes, some of the - some of the permanent staff obviously would have been paid even though they didn't work. So the chefs would have been paid, the maintenance fellow would have been paid.

PN7500

You will be able to produce to us the wage bills, what was paid in wages for the Queen's Birthday weekend of 2015?---I can request that information and have it forwarded to you, yes.

PN7501

Can I just show you the document that was produced, because you can tell me if you know nothing about it. We do have copies of this document. This is the one document that was produced. I am happy to hand up - - -

PN7502

JUSTICE ROSS: It's just the one page document, isn't it, headed "Commercial Hotel Queen's Birthday public holiday trading analysis"?

PN7503

MR DOWLING: Yes. If not every member of the Commission has that I am happy to hand up a copy.

PN7504

JUSTICE ROSS: Yes, we have got it.

PN7505

MR DOWLING: Everyone has it. Thank you. (To witness) Do you see this document, it's headed - - -?---Yes, I do.

PN7506

Is this a document you have seen before?---I don't recall.

PN7507

Is this a document that you had any hand in the preparation of?---That document would have - if it was requested by the AHA through John Sweetman it would have - it would have been acted upon by our office manager, Angela Preece. Angela would have - - -

PN7508

I don't want to know what would have happened, my question was - - -?---Well, that's exactly what - - -

*** DENNIS PETER MADDEN

XXN MR DOWLING

PN7509

Just listen to my question, Mr Madden, and answer it. Is this a document you had any role in preparing?---Indirectly, yes, our figures are there. So, yes, if I'm responsible for the figures and our takings - - -

PN7510

That's not my question, Mr Madden. I think you understand my question - - - ?---That particular - that particular document, no, that came from our accountant or our office manager.

PN7511

Did you see it before it was provided to the Commission?---More than likely I would have had a discussion with our office manager as to the contents of it. Did I go back and tick it off and say, yes, that's 100 per cent right, no, because I believe it to be right and correct.

PN7512

All right. Are you able to explain how it is that the labour cost figure for the day of \$2,780 is calculated?---The labour cost there as I said it may - it may include those family members that - that are a constant cost, and certainly include my wages, salary. So that - there could be the combined - - -

PN7513

You said it may?---Well, there'd be the combined cost. Actually - I haven't got the documents in front of me, but it's based on a five day thing. So the cost of my - - -

PN7514

Sorry, can I just stop you there for a moment because I want to be clear as you answer. Should we understand that that labour cost of \$2,780 is the labour cost for five days?---No.

PN7515

I thought you said it's based on a five day thing?---On our accounting process - you know, it is on a five day because - you know, even though we work seven it's on a five day things, so for whatever reason I don't know, but it's - from the documents I've seen the labour costs are Monday to Friday, they're actually costed. That's - that's - we are talking about the four annualised wages are costed on that basis. So I would say looking at that given the number of people that worked, my brother, his wife and my sister and myself would be included in that - in that figure.

PN7516

Is that the salary just for the Queen's Birthday public holiday itself, for one day?---Yes. Well it says public holiday, yes, so that's the one day.

*** DENNIS PETER MADDEN

XXN MR DOWLING

PN7517

So the labour cost for that one day was \$2,780 and there were two casual employees working on that day?---No, no. I said that includes those family members.

PN7518

Yes?---Right. So over and above that, over and above that it would have been the actual cost of the people that worked, and I'm happy enough to give you those figures.

PN7519

All right, but just so I understand what's incorporated in this figure the \$2,780 for this one day includes the family members, in addition to the family members I understand there was one person working a six hour shift and another eight hour shift done by two people. So the only proportion of that \$2,780 that is for casual employees is in fact 14 hours, is that right?---I would have to qualify that. As I said - - -

PN7520

Qualify with what?---The start time, the actual time that you saw the gaming room as being open is the actual customer time, it doesn't take in pre-opening or the closing procedures, which could add anywhere between two hours and four hours onto that particular day. If the - with the bottle shop even though it's open from whatever the time specified they do set up a tab and there's probably a good hour on top of that, because that - we just don't walk in turn the key and the place is open.

PN7521

I asked you before, Mr Madden, what hours the person working in the bar worked and I understood you say the person works six hours?---No, I said we're open for six hours, so you've got a pre-opening time and a closing time.

PN7522

Are you saying they now work seven hours, is that your evidence?---No, I'm saying it could be anywhere. I would have to look at the documentation, it could be anywhere between - if it was six it could be - in fact they may have been there for eight, eight hours. That's quite possible, because when they - when they go in - - -

PN7523

But no more than eight, is that right?---I'll just explain it to you. When you go in you open the bar, they've got to actually set the bar up. In relation to the TAB bar they've got to do all their race sheets and do their pre-opening in the TAB, and that normally takes in excess of an hour.

PN7524

I thought it was your evidence that you did all the pre-opening work. Are you now saying the casuals did it?---No, no, I can't do pre-opening in the drive-in bottle shop, a TAB bar and the gaming - - -

PN7525

Let's just concentrate - if you let me ask the question let's just concentrate for the moment on the number of hours worked arising from that six hours. You say that six hours might in fact be seven or might - - -?---No, I - - -

*** DENNIS PETER MADDEN

XXN MR DOWLING

PN7526

Hang on, just let me ask you the question before you answer. That six hours might in fact be seven or it might be eight - - -?---Yes.

PN7527

- - - but it would be no more than eight. Is that fair?---Approximately, yes. Look I'm happy enough to give you those figures. There's - there's no - - -

PN7528

You will do that for us?---We're happy enough to share all that with you.

PN7529

Now let's deal with the eight hours, are you saying in the other area, are you saying that might have been nine or it might have been 10?---My - my guess is normally even the second person on, so I do the pre-opening and gaming, that person - if we're opening at 12 o'clock that person would start normally at 11 o'clock, an hour before their shift. Before the actual customers walk into the venue the staff member there other than me, because I would have been there at, you know, probably early, 8-ish, the other staff member would have started at 11 o'clock not 12.

PN7530

Are you saying that that eight hours might in fact have been nine?---And possibly more.

PN7531

It might have been 10, is that your evidence?---Yes.

PN7532

All right. So should we understand that the most - the outer limit of the number of casual hours worked in respect of this day would be 18?---Look, I can't recall whether there was - there would have been cleaners in, so that's in addition. We've got to get the venue clean, so that's - the venue would have been cleaned and that means, you know, normal process of cleaning, so it's got to be vacced(sic), all the machines are wiped down, all the benches are wiped. Normally our - our cleaning staff normally start on a normal day at 7 o'clock in the morning and finish at 11 in the gaming, and then there's other - other staff in the bistro, but if that lady had of came in on the Sunday to do - or on the public holiday to do the bar she would have started that day at 8 o'clock and would have worked till 10 or later.

PN7533

Are you not sure whether the cleaning person worked or not worked? You don't mention that at all at paragraphs 15 and 16 when you set out the number of staff members - - -?---Well, that's - - -

*** DENNIS PETER MADDEN

XXN MR DOWLING

PN7534

Let me finish the question. When you set out the number of staff members that worked on the Queen's Birthday weekend. You make no mention of cleaning staff. What you say is, "I worked, with the addition of one staff member in

gaming and one staff member in the back bar/TAB/bottle shop. Are you now saying that evidence might not have been correct and there might have been some others?---Well, there would have been. There would have been a cleaner, or cleaners.

PN7535

Even though you say you'd adopted the minimum opening approach, you're now saying there were also cleaners?---Well, unfortunately, I can't clean as well as do the pre-opening, so there would have been a cleaner and that would have been documented and as I said, I'm happy enough to give the Commission all those wage records for that particular day.

PN7536

Did you calculate in respect of 8 June 2015 what you would have paid in labour costs had the award rates been as sought by the AHA in this proceeding?---I don't recall doing that.

PN7537

Shall we take that as a no?---I said I don't recall.

PN7538

Are you able to say, looking at what - I take it you're not confident what the 2,780 represents, how many people are in there?---I said - I am confident at that figure that it would include certainly the cost of my remuneration and possibly that of the - my brother, sister and his wife.

PN7539

But you don't know how many casuals it includes?---As I said, it would have included a cleaner, certainly two - from memory, the two people that actually shared the shift in the - in the gaming room, and I believe the girl that - Jasmine, that worked out the back. It would have included her, so - - -

PN7540

Can I tell you that if the two people that worked - the two people that you identify in paragraph 16 worked 18 hours, that the difference in wage costs under the AHA proposal and the current award would be approximately \$500, so that you'd still be making a loss of nearly \$2,400. Should we take it on the evidence you've given already that that is a venture you would not repeat even under the AHA proposal?---Well, I'm not familiar with the - your figures and the AHA proposal.

PN7541

Are you not familiar with the proposal that the AHA put forward in terms of the variation sought to the award?---Yes, but I haven't done any calculations on that.

PN7542

So you haven't worked out what you pay in penalty rates on any day and what you might pay under the AHA variation?---I haven't - I haven't modelled that, no.

*** DENNIS PETER MADDEN

XXN MR DOWLING

PN7543

Thank you. Nothing further, Your Honour.

PN7544

JUSTICE ROSS: Any re-examination?

PN7545

MR STANTON: Nothing arises.

PN7546

JUSTICE ROSS: Thank you for your evidence, Mr Madden. You're excused?---Thank you.

PN7547

MR STANTON: Your Honour, I understand that the witness will be providing some material and Mr Dowling has reserved his rights for further examination.

PN7548

JUSTICE ROSS: Yes.

PN7549

MR STANTON: Yes.

<THE WITNESS WITHDREW [10.43 AM]

PN7550

MR STANTON: Your Honour, I call Mr Tim Bilston who will take oath.

<TIMOTHY MICHAEL FLETCHER BILSTON, SWORN [10.44 AM]

EXAMINATION-IN-CHIEF BY MR STANTON [10.45 AM]

PN7551

Sir, can I confirm you are the general manager of the Amora Hotel, Riverwalk, Melbourne?---Yes, I am.

PN7552

For the purposes of these proceedings, you have made two statements, one of 29 June of this year and one of 26 August of this year?---Correct, yes.

PN7553

You have those with you?---Yes, I do.

PN7554

Do you say that in respect of each of those statements they are true and correct to the best of your knowledge and belief?---Yes, I do.

PN7555

There were no objections to the statements, Your Honour. If I could have them entered into the proceedings?

PN7556

MS BURKE: No objection.

*** TIMOTHY MICHAEL FLETCHER BILSTON

XN MR STANTON

PN7557

JUSTICE ROSS: The longer statement is exhibit AHA71, the supplementary is exhibit AHA72.

EXHIBIT #AHA71 LONGER STATEMENT OF MR TIMOTHY MICHAEL FLETCHER BILSTON.

EXHIBIT #AHA72 SUPPLEMENTARY STATEMENT OF TIMOTHY MICHAEL FLETCHER BILSTON.

PN7558

MR STANTON: May it please.

CROSS-EXAMINATION BY MS BURKE

[10.46 AM]

PN7559

Mr Bilston, you have 89 staff working at the hotel, that's right, isn't it?---Yes.

PN7560

So is it correct that you've put on nine new casuals between the time that you gave your first statement in late June and the time you gave your second statement in late August?---Most likely. Our casual employees go up and down based on the needs of the business.

PN7561

So the needs of the business having increased in that two month period then, is that what that would mean?---I couldn't tell you exactly but some of those casuals may do a small amount of hours, some may do a large amount of hours.

PN7562

Right, but more people are more people?---Correct.

PN7563

You have given some evidence about what you would do in the hotel if penalty rates were reduced as proposed by the Hotels Association. Now, can you just confirm for me, would those changes be in relation to Sundays or public holidays, or both?---Both.

PN7564

It is both. So I take it that means that you have worked out how much it would cost, for example, to open the lobby bar on a Sunday?---Yes.

PN7565

What is that amount?---It would be - generally we operate that bar with one employee and sometimes, if it's busy, we supplement that with someone else from another department. So there would be however many hours we operate, so that bar, on a Monday to Friday, operates from 7.00 am to approximately 11.00 pm, so we would call that sort of two full-time shifts. On a Saturday, it operates from approximately 3.00 pm until 11.00 pm. It is currently closed on a Sunday.

*** TIMOTHY MICHAEL FLETCHER BILSTON

XXN MS BURKE

PN7566

So on a Sunday, if you were to open, it would open from three until 11?---That would be most likely, yes. So it would be whatever the award rate for a Sunday, which would be in the vicinity of upwards of \$35 per hour, multiplied by how many hours the employee worked.

PN7567

By eight hours. You said that you had worked out how much it would cost to open the bar, so I take it that means you know what level that employee who works on a Sunday would be paid at?---Yes.

PN7568

What is that?---Well, it's approximately 30 - I've got a copy of the award. Do you want me to refer to it?

PN7569

I just need you to tell me what level?---It's approximately \$35 or \$36 per hour.

PN7570

So whatever level is associated with that amount per hour?---Generally it would be a food and beverage attendant grade 2, 32.32.

PN7571

So 32.32, that's a level 2?---Yeah.

PN7572

Where did you get that figure from just then, sorry? Have you got something in front of you there?---I do.

PN7573

What is that?---It's a copy of the Hospitality Industry (General) Award 2010.

PN7574

That's a little bit different to my award. Do you think you could just hold it up so I could have a look? Okay. Is there anything else you've got there in front of you other than your statements?---I've got a couple of emails from the AHA in my folder but I don't plan to refer to them. I think I had to bring the two affidavits.

PN7575

If you're going to look at anything else in your folder, perhaps just hold off?---I did mention to you that I will check it.

PN7576

Yes, and I said you don't need to?---Okay. Well, if you ask me a question I'm trying to answer it as accurately as I can.

*** TIMOTHY MICHAEL FLETCHER BILSTON

XXN MS BURKE

PN7577

I understand that. All right so if you were going to open the lobby bar you would need to pay a level 2 casual \$32.32 an hour under the current award for eight

hours. That's about \$260, does that sound about right?---I don't have a calculator in front of me but it sounds about right.

PN7578

And of course you must then have worked out if you could afford that if the Sunday rates were cut as proposed by the AHA?---Yes.

PN7579

Yes, so how many casuals do you currently have working on a Sunday?---In the hotel?

PN7580

Yes?---It depends on what events and functions are on.

PN7581

What about just a Sunday with no events or functions, just a standard Sunday?---Well, it would depend on the occupancy of the hotel. Generally at breakfast time on a Sunday we'd do in excess of 150 to 160 people if we've done good occupancy with, you know, a number of people staying in each room, and how many of those rooms were on, you know, packages that included breakfast. So we would generally have four to five casual employees on a Sunday morning. We do a jazz lunch on a Sunday afternoon so we have roaming jazz musicians in the restaurant and depending on how many people are booked for that lunch, it would be some of those casuals would continue on and work over the lunch period. But sometimes in spring and summer, because we are a hotel on the banks of the Yarra River, it's more popular in summer and spring than it is in winter.

PN7582

Do you do that lunch every Sunday?---Yes.

PN7583

Do you do that lunch on other days?---We operate for lunch seven days per week.

PN7584

But with the musicians and so on, that's a special Sunday thing?---Only on Sundays, yes.

PN7585

And so my question was I take it then that you worked out how much money you would save if staff wages are cut on a Sunday as proposed by the AHA?---I haven't worked it out to the dollar amount but it would mean that we could operate the hotel at a full or a fuller staffing level if I - - -

PN7586

If you haven't worked it out to the dollar amount how do you know that it would mean that you could operate the hotel on a full level?---Because it's a significant reduction from the current rate.

*** TIMOTHY MICHAEL FLETCHER BILSTON

XXN MS BURKE

PN7587

You think a reduction of about \$4.62 an hour is a significant reduction?---Well, if you've got five or six casuals, and we're only a small hotel operating a restaurant.

PN7588

You're a small hotel with over 80 staff and - - -?---The Sofitel Melbourne is what I would call a large hotel. We're a small accommodation hotel. We're a four and a half star hotel.

PN7589

And about how - - -?---So a reduction of \$4 an hour multiplied by the casuals that would work 52 Sundays per year would - I would call that a significant impact.

PN7590

And if it is a significant impact that of course would also be a significant impact on the take-home wages of those staff, wouldn't it?---I think it would be an impact, yes.

PN7591

They would need to work more hours to make the same amount of money that they currently work?---I think that's probably accurate.

PN7592

Thank you.

PN7593

MR STANTON: Nothing arising.

PN7594

JUSTICE ROSS: Nothing further for the witness?

PN7595

Thank you for your evidence. You're excused.

<THE WITNESS WITHDREW

[10.54 AM]

PN7596

MR STANTON: The next witness - - -

PN7597

JUSTICE ROSS: Do you want a moment?

PN7598

MR STANTON: I wonder if we could just have a five minute indulgence, your Honour?

PN7599

JUSTICE ROSS: Sure. When we come back can you indicate what the order of the witnesses is likely to be?

*** TIMOTHY MICHAEL FLETCHER BILSTON

XXN MS BURKE

PN7600

MR STANTON: Yes.

PN7601

JUSTICE ROSS: Yes. Thanks. All right, we'll adjourn for five minutes.

SHORT ADJOURNMENT

[10.54 AM]

RESUMED

[11.05 AM]

PN7602

JUSTICE ROSS: Yes, Mr Stanton.

PN7603

MR STANTON: Your Honour, could I just - in terms of the timetable for witnesses today, the next witness is Mr Burke, Mr Michael Burke. Following Mr Burke is Mr Cakmar, who is currently scheduled for 11:30, then at 12 Mr Ryan. That would make the adjournment at 12:30. 1:30 Mr Williams, Mr Peter Williams, followed by Belinda Usher and then Michelle Morrow and they are the AHA witnesses and then - - -

PN7604

JUSTICE ROSS: I think we've got Andrew Sanders at 3:30 from United Voice.

PN7605

MR STANTON: Yes, your Honour.

PN7606

JUSTICE ROSS: Might see during the break if Mr Sanders is available to come in a little bit earlier but we'll see how we go.

PN7607

MR DOWLING: We have arranged for him to come earlier, so he'll be available if required earlier.

PN7608

JUSTICE ROSS: All right, thank you. All right, next witness.

PN7609

MR STANTON: Yes, I call Mr Michael Burke, who will take oath.

<MICHAEL BURKE, SWORN

[11.06 AM]

EXAMINATION-IN-CHIEF BY MR STANTON

[11.07 AM]

PN7610

MR STANTON: Sir, you are the part-owner of the Hotel Malvern - I should say Hotel Malvern Pty Ltd, which trades as the Malvern Hotel at Malvern Road, Malvern, in Victoria?---Malvern Road Toorak, that's right.

*** MICHAEL BURKE

XN MR STANTON

PN7611

Yes, and you're also the owner of Curve Bar Pty Ltd, which trades as the Belgian Beer Café at 5 Riverside Quay Southbank?---That's right.

PN7612

Yes. Sir, for the purposes of these proceedings, you have made two statements?---Yes.

PN7613

Do you have those in front of you?---Yes.

PN7614

Is that all you have in front of you, just the two - - -?---Yes.

PN7615

Thank you. Sir, I understand in relation to one of those statements at paragraphs 5 and 6 - do you have that before you?---Yes.

PN7616

I understand that there are corrections to be made?---That's right, from the - the corrections were made on the second statement but I'm not sure if the Belgian Beer Café amendment came through.

PN7617

Yes. In relation to paragraph 5, how should those - what is the extent of the corrections?---So it should read, "I employ nine full-time staff on a salary and 20 casual employees at the Malvern Hotel."

PN7618

So, replace 11 with nine and replace 12 with 20?---Correct.

PN7619

Then in relation to 6?---"I employ 11 full-time staff on a salary and 14 casual employees," at the Belgian Beer Café.

PN7620

Thank you for that. And that's the extent of the corrections?---Yes.

PN7621

With those corrections and in relation to both statements, you say they are true and correct to the best of your knowledge and belief?---As at 30 June this year, yes.

PN7622

Yes. Your Honour, I would see that the statements be entered into the proceedings as the witness's evidence in chief. I could hand up to the bench five copies of the first of those statements. The corrections haven't been marked; I can take the bench to those and it deals with various redactions at several paragraphs.

*** MICHAEL BURKE

XN MR STANTON

PN7623

JUSTICE ROSS: I'll mark the longest statement as exhibit AHA73.

**EXHIBIT #AHA73 WITNESS STATEMENT OF MICHAEL BURKE
(LONGER STATEMENT)**

**EXHIBIT #AHA74 ONE PAGE STATEMENT OF MICHAEL
BURKE**

PN7624

JUSTICE ROSS: Cross-examination?

CROSS-EXAMINATION BY MR DOWLING

[11.10 AM]

PN7625

MR DOWLING: Mr Burke, can I just ask you – you've amended your statement in respect to the casual employees – can I just ask you in respect of the Malvern Hotel firstly, the casual employees numbered in your statement was originally 12 and is now 20. Is that because there was an increase in the number of casuals that hotel now employs?---No, there was an error.

PN7626

It was just a mistake?---Yes.

PN7627

It shouldn't have been 12, it should've been 20?---That's right, yes.

PN7628

And in respect to the full-timers, is that the case also? It shouldn't have been 11, it should've been 9 in the first place, rather than there being any change in the number of full-time staff?---At the Malvern?

PN7629

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

PN7630

Should we understand the same from the Belgian Beer Café? There were no change in the numbers, there were just incorrect figures used?---That's right.

PN7631

Have you formally held a position with the AHA?---Yes.

PN7632

Do you still hold a position with the AHA?---Yes.

PN7633

What's that position you hold?---So I'm on the state executive and on the national board.

*** MICHAEL BURKE

XXN MR DOWLING

PN7634

How long have you held a position with the AHA?---I think – I'm unsure, but I've been a councillor for – if I can guess?

PN7635

Yes.---Twelve years.

PN7636

Have you been a participant in any committee meeting where there's been resolutions or discussions about this case?---There's been discussions about the – about this case specifically I'm not sure. I'm not trying to be evasive, I'm trying to be precise. We certainly discussed the case generally - - -

PN7637

At the national level and the state level?---No, just the state level.

PN7638

Just the state level?---Yes. I should say that's over lunch, not in a formal setting, yes.

PN7639

Have there been resolutions or motions passed in respect of a case at the Victorian committee level?---Not in front of me, no.

PN7640

Thank you. Can you tell me the hours of your liquor licence at the Malvern Hotel?---Seven am till 1 am, 7 days.

PN7641

And at the Belgian Beer Café?---Sorry, I should be clear. That's general. There's restrictions on Anzac Day, Good Friday – it's a standard general licence, yes, and the same with the Belgian.

PN7642

The licence will say Monday to Sunday 7 am until 1 am?---Yes.

PN7643

But it will also say subject to the restrictions in the Act about particular public holidays?---Correct, yes.

PN7644

And the Belgian Beer Café is the same, is it, 7 am until 1 am?---That's right, with the same restrictions.

PN7645

Yes. In respect of both venues, your evidence is from Monday to Thursday they're open 11 am until 11 pm?---Yes, that's standard trading for those venues, with the opportunity of staying until 1 if it's busier or there's a function or what have you.

*** MICHAEL BURKE

XXN MR DOWLING

PN7646

Okay, so it might be that if it's particularly busy you'll stay open a little bit later?---That's right.

PN7647

In respect of Friday to Saturday I think you say 11 am till late. Shall we take it that the late means no later than 1 am?---Correct, yes.

PN7648

Then again, that might depend a bit on the traffic?---Trade.

PN7649

Trade?---Yes, so the Belgian Beer Café's always open until 1 o'clock, it's a CBD venue.

PN7650

It's always busy?---And the Malvern will close when it feels like it, you know - before 1 o'clock though.

PN7651

But depending on trade?---Trade, correct – yes, trade-dependant, yes.

PN7652

You've given some evidence about the effect of penalty rates, I think at paragraphs 14 through to – and thereafter in your statements?---Yes.

PN7653

You understand of course that this proceeding is not intended to remove penalty rates?---Right.

PN7654

Did you know that or did you not know that?---No, I didn't know that but go on, yes.

PN7655

Was it your understanding that this proceeding was designed to remove penalty rates?---No, I just thought it was a discussion around penalty rates.

PN7656

All right. The AHA has made an application in respect of penalty rates in this proceeding.---Mm-hm.

PN7657

Do you know the detail of that application? Do you know whether they've sought to remove them or vary them, or what they've sought to do?---They've sought to vary them, I understand.

PN7658

Do you know the level of that variation? Do you know how they've sought to vary them?---My understanding is it's to make Sunday the same rate as Saturday and then some very specific changes around public holidays.

*** MICHAEL BURKE

XXN MR DOWLING

PN7659

Should we understand that as part of the process of giving your evidence you have worked out across your two venues what it is you pay in penalty rates on, for example, any Sunday? Have you worked out the penalty rate component that you pay on a Sunday?---Not the penalty rate component but the total rate that we pay on an average, because the business we're in is imprecise - you know, every day is different – yes but our average Sunday wage bill - - -

PN7660

Do you know what your Sunday – sorry?---Our average Sunday wage bill in each venue versus a Saturday wage bill versus, for example, a Monday wage bill.

PN7661

All right. You haven't worked out in terms of that average Sunday wage bill or Saturday wage bill the component that is penalty rates?---No, but I can tell you difference if they were to be Saturday rates, for example, on a Sunday.

PN7662

But have you worked out across a week – perhaps you've already answered this – sorry, tell me if - - -?---Yes.

PN7663

Well I'll just ask it anyway. Do you know across a week, any given week, what your penalty rate component would be? Off an average week how much do you pay in penalty rates - Saturday, Sunday, across the whole week?---No, I'd have to go and calculate that.

PN7664

Should we understand also then that you haven't looked across the same average week and said this is what I would pay in penalty rates under the AHA proposal?---I have, yes, I know the difference between paying Saturday rates on a Sunday versus paying Sunday rates on a Sunday – current Sunday rates on a Sunday.

PN7665

My question's a little bit different.---Yes.

PN7666

I'm asking whether you've worked out the component of your total wage bill that is paid in penalty rates, across a week - - -?---Which I haven't.

PN7667

Which you haven't, and I'm asking you then whether you have looked at, across the average week, the component that you would pay in penalty rates under the AHA proposal?---No. No, sorry, I think it's almost the same question.

*** MICHAEL BURKE

XXN MR DOWLING

PN7668

All right, so you haven't been able to compare those two positions - this is what I currently pay, this is what I would pay, then compare the two positions in dollar terms?---Well, yes, I can, so the difference between – on the AHA's proposal, on

the average Sunday, the Malvern would save around \$180 a week, and the Belgian Beer Café would save around \$480 a week, paying Saturday rates on a Sunday.

PN7669

I'm talking about what you pay in penalty rates over an entire week – your entire penalty rate wage bill under the one current system, and the entire penalty rate wage bill component under the AHA system. You don't know those two figures?---No, but I can find them for you.

PN7670

Well, sorry, I think I got an answer as I was sitting down so I might just clarify it. When you say you could find them, you weren't aware of those two figures when you prepared your statement?---We do averages per day per week, so an average for Monday and an average for Tuesday, so on and so forth - - -

PN7671

I'm not asking you what you do, I'm asking you whether you were aware of those two figures when you prepared your statement?---Yes. The actual penalty component, so the amount over \$22.73 an hour, I'd have to calculate that.

PN7672

You weren't aware of what that calculation was when you prepared your statement, that's my question?---No.

PN7673

Thank you.

PN7674

DEPUTY PRESIDENT ASBURY: Mr Burke, can you look at paragraph 18 of your first statement, that is, the longer statement?---Yes.

PN7675

You there talk about consumer spending per head - - -?---Yes.

PN7676

- - - both on the difference on Sunday and public holidays. Can I firstly get an idea of the order of magnitude? What are you talking about there?---So in my experience - I've had 25-odd years, 26 years in hospitality – the consumer on a Sunday generally spends less than Monday to Saturday, Saturday being the highest spend per head, and public holidays even less, anecdotally.

PN7677

To what degree?---The precise figure I couldn't give, but I can give an estimate. It would be 70 per cent less – sorry, 70 per cent of the average spend Monday to Saturday on a Sunday, and a public holiday would be slightly less.

*** MICHAEL BURKE

XXN MR DOWLING

PN7678

Is that a consistent pattern?---Yes. Yes, if there's activity to generate business on a public holiday then those figures can go up, meaning you're driving more people into the business or coming in for a purpose, but the rule of thumb is on a Sunday

or a public holiday people are killing time, as opposed to Monday to Friday they've got a purpose, and on a Saturday there's an added purpose when they go out.

PN7679

Is that across the business?---My two businesses, yes.

PN7680

Thank you.

PN7681

JUSTICE ROSS: Can I take you to paragraph 19 of that statement. You say there:

PN7682

The anticipated increase in penalty rates on 1 July 2015 - - -

PN7683

?---Yes.

PN7684

What are you talking about there?---So it will cost us on a public holiday now \$60 an hour with on-costs. So on a public holiday so once you include staff in the kitchen - so the Belgium Beer Café has a two-storey venue, it's - - -

PN7685

Sorry, I am asking about what was the anticipated increase in penalty rates?---I've got it here in paragraph 14. With on-costs public holidays cost us \$59.17, whereas prior to 1 July \$54.60 I think. I'd have to check that.

PN7686

So it's the annual wage review increase, not the increase in penalty rates?---That's right, yes. Yes, that's right.

PN7687

All right. Thank you. Any re-examination?

PN7688

MR DOWLING: Nothing arising.

PN7689

MR STANTON: No, your Honour.

PN7690

JUSTICE ROSS: Thank you for your evidence, Mr Burke.

<THE WITNESS WITHDREW

[11.21 AM]

PN7691

MR STANTON: So I call Mr Tony Cakmar who will take an oath.

*** MICHAEL BURKE

XXN MR DOWLING

<TONY CAKMAR, SWORN

[11.22 AM]

EXAMINATION-IN-CHIEF BY MR STANTON

[11.22 AM]

PN7692

MR STANTON: Yes, sir, can I just confirm you are the general manager of Clarion Suites Gateway at William Street, Melbourne?---That's correct, yes.

PN7693

For the purpose of these proceedings you have made a statement of 29 June and a further statement of 27 August this year?---Yes, sir.

PN7694

Do you have those with you this morning?---I do, sir, yes.

PN7695

Is that all you have with you? Yes, all right. In relation to each statement do you say that they are true and correct to the best of your knowledge and belief?---Yes, sir.

PN7696

Can I ask that the statements be entered into the proceedings, your Honour.

PN7697

JUSTICE ROSS: Any objection?

PN7698

MS BURKE: No objection, your Honour.

**EXHIBIT #AHA75 TWO PAGE STATEMENT OF T CAKMAR
DATED 29/06/15**

**EXHIBIT #AHA76 SUPPLEMENTARY STATEMENT OF T
CAKMAR DATED 27/08/15**

PN7699

MR STANTON: May it please.

PN7700

JUSTICE ROSS: Cross-examination?

CROSS-EXAMINATION BY MS BURKE

[11.24 AM]

PN7701

MS BURKE: Mr Cakmar, you're the general manager of the hotel?---Yes, ma'am.

*** TONY CAKMAR

XN MR STANTON

*** TONY CAKMAR

XXN MS BURKE

PN7702

And your role there does that include doing the payroll?---No, it does not, ma'am.

PN7703

Do you do the rostering?---No, I do not.

PN7704

Are you responsible for hiring staff?---Well, we delegate that to some extent.

PN7705

Who do you delegate that to?---To our managers.

PN7706

I see. Do managers then hire staff without consulting you?---No, on occasions they do consult me if it's more so middle management level or up.

PN7707

And who then is responsible, or is it a hybrid for deciding what classification new staff should be?---Well, it's based on the work.

PN7708

Yes, but who works out whether you need a Level 1 or a Level 6 person?---It all depends on what position that they're applying for. That's how we determine the work classification.

PN7709

But they must be applying for a position that you're advertising, is that right?---Absolutely. We go through seek.com.

PN7710

Is it you in conjunction with middle managers that decide for example we need a Level 6 person or we need a Level 1 person and we will advertise that position?---We don't make a determination based on levels, we make a determination about the job role. If it's a receptionist then of course we go back to the award based on what the award stipulates.

PN7711

But that decision-making process in terms of the needs of your hotel that's something you do in conjunction with your managers?---Well, it is to a certain extent. If we have a vacancy within a department they consult me and then they take it on their onus to proceed with an advert in seek.com or by other means.

PN7712

Do you make decisions also about what parts of the hotel to open on any given day?---That - that would be within my jurisdiction, yes.

PN7713

I think you have given some evidence about the number of staff that you have, which is 70. You've got - is this still accurate, you've got 41 casual staff members?---Mostly because of the fact that the business is not steady, it goes up and down based on occupancy.

*** TONY CAKMAR

XXN MS BURKE

PN7714

But in terms of casuals, the pool of casuals that you can call on at any given time is it accurate to say you've got 41 phone numbers that you can ring if you need to?---Yes, ma'am.

PN7715

Are you able to say what grade those casuals are under the award or what level?---Mostly in housekeeping, they would be on Grade 2 under cleaning.

PN7716

I think you also say with your full-time staff you have eight who are above the award rate?---That's correct, yes.

PN7717

Why do you pay them above the award rate?---We have to bring it in line with the 457 visa holders that we have.

PN7718

So are those eight all 457 visa holders?---No, they're not. There are some of them that are within that context and therefore it would be unfair if we had it any other way.

PN7719

I see. So how much do those eight get paid on average?---About 55. Well, it's not all eight, but we start from 55, a bit above 55.

PN7720

Up to about how much?---Senior management get about 62.

PN7721

And you have also got 12 salaried full-time employees?---That's correct, yes.

PN7722

Are any of those 12 classified as managers under the award?---No, they're not, ma'am.

PN7723

So they're all what the award describes as non-managerial staff?---That's correct, ma'am.

PN7724

And so you know of course that they are to be paid at least 25 per cent above the minimum wage?---No, they're not annualised salaries, they're basically strictly per hourly rate.

PN7725

Can you have a look at your second statement, please. That's the shorter one. If you look at the bottom of that table in paragraph 3 you have got six full-timers who are on the award rate, and I haven't asked you about those people yet. Then going across you have got eight above the award rate and those are the eight we were just discussing that include the 457 visa holders?---That's right.

*** TONY CAKMAR

XXN MS BURKE

PN7726

And then you have got 12 on an annualised salary?---That's right, yes.

PN7727

So those are the 12 I was asking you about and you said that they were not managerial under the award?---No, no, sorry, I've misunderstood your question. The 12 that are on an annualised salary they're basically - on the basis of that we pay a little bit more based on our 457 visa holders.

PN7728

I see?---Not by a great deal.

PN7729

The 12 doesn't include any 457 visa holders?---It does.

PN7730

It does?---It does, yes.

PN7731

As does the eight?---It does, yes.

PN7732

And what's the average amount that you pay those 12, are you able to say?---A bit over 55.

PN7733

But none of those 12 are classified as managers under the award?---They are.

PN7734

They are?---They are, yes.

PN7735

Okay. All right. So when you said earlier that you've got some full-timers who aren't on annualised salaries they're just full time, you were referring to the six?---That's right. They are full time. They are basically just hourly rate.

PN7736

Okay. And do your full-timers work mostly on weekends?---That – we have a semi-rotating roster.

PN7737

Yes. And would it be fair to say that the majority of your full-timers work most weekends?---Not necessarily, no.

PN7738

And is the majority of your workforce then on weekends full-timers?---No. We don't open the restaurant on Sunday nights because of rates. And we do not open the restaurant on public holidays because of the rates.

*** TONY CAKMAR

XXN MS BURKE

PN7739

Just having a look at paragraph 12 of your first statement, that's the two-page statement, or – sorry, three – no, two pages. At paragraph 12 you say that:

PN7740

Where possible casuals are not rostered on.

PN7741

And here you're talking about Sundays and public holidays. So does that mean that – but you've said that full-timers don't necessarily work more than casuals on weekends, so I'm just trying to understand who is working on Sundays for example?---Based on the roster it's a rotating roster.

PN7742

Yes?---As such. We try not to roster casuals on public holidays due to the fact that you still have to pay a full-timer one time.

PN7743

What about Sundays?---Sundays we're a bit more flexible as such.

PN7744

So you would ordinarily have a mix of casuals and full-timers working on a Sunday?---Well, we do, but we do close the restaurant on Sunday nights.

PN7745

Okay. But nevertheless my question is you would have a mix of full-timers and casuals working on - - -?---We would do that. Yes, that's correct. We would do that. Yes.

PN7746

All right. And you have the same sort of mix working on a Saturday?---No, Saturday we're a bit more lenient based on the 125 per cent increase.

PN7747

So but on Saturdays, in terms of percentages, would you have, say, 50 per cent full-timers, 50 per cent casuals working, or is it a bit more of a - - -?---We don't really drill down that much on Saturdays. We let it flow as based on how the management roster. We would be more so concerned about Sundays as opposed to Saturdays based on the rates.

PN7748

But you must know in advance who you're rostering to work on Saturday and Sunday; is that right?---Well, due to the fact that we have casuals and those casuals work in specific departments, we would not have a casual, for instance – sorry, if I can just elaborate a little bit. Will you allow me to elaborate, or?

PN7749

Yes?---Okay. So on – at reception we have full-timers. In the F&B area mostly they are casuals and students, as well as in housekeeping. So these respective employees need to fulfil a certain role. And those roles are based on a minimum of four to five hours per se.

*** TONY CAKMAR

XXN MS BURKE

PN7750

Yes?---So based on that, if we do have a requirement to have two or three staff on working in the restaurant in the morning or at night-time then those people would be casuals apart from the supervisor. We do not have full-time staff in the F&B area and where we - - -

PN7751

Sorry, I'm just struggling to hear you a little bit. Did I hear you properly, you don't have full-time staff in the F&B, as in, food and beverage area?---No, we have supervisors there on a full-time basis. Yes.

PN7752

Right. Okay. So on the – I'm just trying to get a sense of the comparison between Saturday and Sunday, and I appreciate you can't give me exact numbers, and I'm not asking you for exact numbers, I'm just asking for your impression, you are the general manager, do you have, say, 50-50 in terms of full-timers and casuals hours worked on Saturday, and about the same on Sunday, or is it different proportions all together?---No, you're right. Sorry, maybe let me just elaborate. In fact, I'll give you a particular incident that happened on Sunday?

PN7753

Well, I'm really looking for the overall pattern - - -?---Okay. My - - -

PN7754

- - -rather than specific examples here and there?---Yes. We tend to be a bit more lenient as far as rostering is concerned on the Saturday, and that is mainly because of the rates.

PN7755

And what does "lenient" mean, in terms of rostering?---Well, we let the management roster as they wish to roster and not much interfere, but on Sundays because of the rates we tend to be a bit more strict in how we administer the rostering.

PN7756

You supervise the rostering on Sundays more?---Informally, yes.

PN7757

Well, what would be a formal – well, perhaps that doesn't matter?---Well, if it's a regular habit I would perhaps say to one of the managers, "Don't you think that you should be rostering a full-timer based on the rates."

PN7758

And why would you roster a full-timer on a Sunday rather than a casual? Because of the rates?---Well, you need to look after the full-timers as such, so that they are rewarded accordingly.

*** TONY CAKMAR

XXN MS BURKE

PN7759

And these full-timers are all on at least \$55,000 a year?---No. The \$55,000 a year individuals are annualised salary, and they are – they don't – they are – they do

not get paid penalty rates as such, but reception staff and people of that nature do get penalty rates.

PN7760

I think out of your full-timers you've got eight who are paid above the award, and you said earlier that they are paid between 55 and 60-ish. And then you've got 12 who are on annual salaries who are also paid a bit above 55?---Approximately, yes.

PN7761

Okay. So the majority of your full-timers are paid above \$55,000 a year?---Well, let's make a distinction between annualised salary and just normal wage staff. The wage staff get paid per hour based on what shift that they work.

PN7762

This is the – and I'm just talking here about the full-timers?---Well, there is two types of full-timers: the ones that are paid the 38 hour a week.

PN7763

Yes?---And the ones that are annualised salary.

PN7764

Yes?---The ones that are annualised salary we don't pay them any additional penalty rates.

PN7765

And you said earlier, just to confirm if you don't mind, that those annualised salary employees are all classified as managers under the award?---That's correct. Yes.

PN7766

And if – I'm not trying to trap you here, but if I tell you that I'm talking about clause 27.2 of the award, does that mean anything to you?---Sorry, what was that?

PN7767

Clause 27.2 of the award?---Is that under the manager's clause?

PN7768

Yes?---Yes. I'm familiar with that.

PN7769

You've given some evidence about what you might do at the hotel if penalty rates were cut, and at the time you prepared your first statement, so that's the end of June this year, did you know what the cost of, for example, opening the restaurant on Sunday nights would be?---Well, we do our – yes, we do have an understanding of that.

PN7770

And when you say "we" who are you talking about there?---Well, the management at the hotel.

*** TONY CAKMAR

XXN MS BURKE

PN7771

And does that include you?---Of course, yes.

PN7772

Yes. All right. So at the time you prepared this statement in June you had a sense of what the cost of opening the restaurant would be on a Sunday night?---That's correct. Also in our past experience relative to our daily reports, based on costs of sales and labour, very difficult to generate a profit on those particular days, therefore we took the view it may be better to close and which we have.

PN7773

When did you close the restaurant on Sundays?---It was a decision that we played with a very long time.

PN7774

When was that decision made?---I would say about two years ago.

PN7775

I'm sorry, two days or - - -?---About two years ago.

PN7776

Two years?---Two years ago. We didn't achieve that determination easily because there's a service aspect that we need to consider.

PN7777

Yes. So given that you are aware of what the cost of opening the restaurant on Sundays would be for dinner, you nevertheless did not put anything in your statement about that cost?---Well, I didn't think that it was necessary because we closed anyway, so – because of the cost of opening on a Sunday just to prove that there's no profit to be made there.

PN7778

And does that also mean that you've calculated that you could afford to open the restaurant on Sundays if wages are cut as proposed?---No. We did not. That would be a determination that we would make if and when there's adjustment. So we haven't put a figure in there at this time. No, we have not.

PN7779

All right. Thank you, Mr Cakmar?---Thank you, ma'am.

PN7780

No more questions for this witness.

*** TONY CAKMAR

XXN MS BURKE

PN7781

JUSTICE ROSS: Mr Cakmar, I'm just having trouble reconciling paragraphs 10 and 14 of your statement. At paragraph 10 you say the restaurant is closed for dinner on Sundays. And at paragraph 14 you talk about that you may be able to open the restaurant for lunch on Sundays if the proposal was accepted. They seem to be dealing with two different things. Is it the case that the restaurant at present

is not open on Sunday at all for lunch or dinner?---No, sir. We're open for breakfast and we're open for - we close for dinner, for sure. Yes.

PN7782

And what about for lunch?---Lunch we're kind of a bit flexible with that, or if we have any guests that do come in. Because some of the staff are on a full-time basis so they need to do the eight hours so therefore they will stay behind to service lunch. Yes.

PN7783

All right, so in paragraph 14 when you say if the AHA's proposal was accepted it means that you may be able to open the restaurant for lunch on Sundays, does that mean you would open it on all Sundays as opposed to the current arrangement where - - -?---That's correct.

PN7784

- - - you open on some Sundays?---That's correct, sir. We would open on all Sundays based on that. Yes.

PN7785

VICE PRESIDENT CATANZARITI: Mr Cakmar, just related to that. At paragraph 10, the decision to close the restaurant on public holidays was that made at the same time as the decision to reduce the trading on Sunday?---That is so. It took us a bit of a while to make that determination but we finally come to the determination that it was just not viable to open up on Sunday. Conversely we didn't want to have a negative guest impact as well, so that was our concern in dealing with that. We had to think about this for a long period of time. That applies to public holidays as well.

PN7786

So about two years ago?---About two years ago. We finally were courageous enough to make that determination.

PN7787

So do I understand from that that the penalty rates were operating for a period of time but - - -?---The penalty rates have - - -

PN7788

- - - two years ago you then made a decision to - - -?---Well, we were courageous enough to make that step, yes.

PN7789

Okay and - - -?---Please understand that sometimes, you know, it's all environment, you need to not think of cost all the time. You need to also consider guest experience, and therefore that was a decision that we made. Yes.

PN7790

Thank you?---Thank you, sir.

*** TONY CAKMAR

XXN MS BURKE

PN7791

JUSTICE ROSS: Anything arising?

PN7792

MS BURKE: Just briefly.

PN7793

Mr Cakmar, you said you might open for lunch for all of Sunday - sorry, for Sunday lunch every Sunday?---Sunday and dinner.

PN7794

Yes?---Sunday lunch and dinner, yes.

PN7795

And if you were going to open for all Sundays - I'm just talking about lunch here - you would have to go through the same decision making process that you would have to engage in when considering whether to open for dinner or not, wouldn't you? And I'll just explain what I mean by that. You would have to consider whether you could afford it?---Correct, ma'am.

PN7796

And based on the penalty rates that are proposed to be cut, and that's not an exercise you've done yet?---No we haven't undertaken that exercise.

PN7797

Thank you?---Yes.

PN7798

JUSTICE ROSS: Any re-examination?

PN7799

MR STANTON: Nothing arises.

PN7800

JUSTICE ROSS: Thank you for your evidence and your time today, Mr Cakmar?---Thank you, sir.

PN7801

You're excused.

<THE WITNESS WITHDREW

[11.43 AM]

PN7802

MR STANTON: Your Honour, I call Jim Ryan.

<JAMES THOMAS RYAN, SWORN

[11.44 AM]

EXAMINATION-IN-CHIEF BY MR STANTON

[11.44 AM]

*** JAMES THOMAS RYAN

XN MR STANTON

PN7803

MR STANTON: Sir, can I just confirm that you are the owner manager of the Gippsland Hotel located at 153 York Street, Sale?---That's correct.

PN7804

And, sir, for the purposes of these proceedings you've made two statements, one of 29 June and a further statement of 25 August 2015, is that the case?---Correct.

PN7805

And do you have those with you this morning?---I have the final statement here.

PN7806

And when you say final, what are you referring to?---The latest one.

PN7807

Is that the one page statement? It's clearly not?---No, that's - it's the whole statement.

PN7808

Right, and in relation to both statements do you say that they are true and correct to the best of your knowledge and belief?---I do.

PN7809

Your Honour, we have dealt with some objections. If I could hand up five copies and seek that they be entered as the witness's evidence.

PN7810

JUSTICE ROSS: Any objection?

PN7811

MR DOWLING: No, your Honour.

PN7812

JUSTICE ROSS: I'll mark the longer statement as exhibit AHA77.

EXHIBIT #AHA77 WITNESS STATEMENT OF JAMES THOMAS RYAN DATED 29 JUNE

PN7813

JUSTICE ROSS: And the supplementary one page statement as exhibit AHA78.

EXHIBIT #AHA78 SUPPLEMENTARY WITNESS STATEMENT OF JAMES THOMAS RYAN DATED 25/08/2015

PN7814

MR STANTON: May it please.

PN7815

JUSTICE ROSS: Cross-examination?

CROSS-EXAMINATION BY MR DOWLING

[11.46 AM]

*** JAMES THOMAS RYAN

XXN MR DOWLING

PN7816

MR DOWLING: Yes, your Honour.

PN7817

Mr Ryan, you're the owner and manager of the Gippsland Hotel?---Correct.

PN7818

You've given some evidence in your statement at paragraphs 17 through to 19 of the effect of penalty rates on Sundays and public holidays. Should we understand that in respect of an average Sunday you have worked out what the component of your wage bill that is penalty rates - sorry, let me ask that again. I'm sorry it wasn't very clear. In respect of the wage bill on an average Sunday do you know what component of that wage bill is paid in penalty rates?---Other than my wife and myself the rest of the staff.

PN7819

And do you know what the dollar figure is in terms of the component you pay is attributable to the penalty rate rather than their normal wage?---The casuals would be an extra \$200 on a Sunday.

PN7820

All right, and have you worked out what it is that you would pay in penalty rates under the AHA proposal?---Of the?

PN7821

The AHA as part of this proceedings seek to vary penalty rates. You understand that?---Yes, that's right. Yes.

PN7822

And have you compared what you'd pay under their proposal with what you currently pay?---No, I compared a holiday with a normal day.

PN7823

All right, you haven't compared what the AHA want on a Sunday with what you currently pay on a Sunday?---I have done a complete comparison on a normal day and a public holiday day - a normal week day, sorry, and a public holiday day. I've done that comparison.

PN7824

And that's the only comparison you've done?---That was the only I'd say dissected comparison I've done.

*** JAMES THOMAS RYAN

XXN MR DOWLING

PN7825

All right, so in terms of if we look at a public holiday, they want the public holiday rate to change. Have you looked at what the AHA wants the rate to be and worked out what you'd pay under their proposal, and looked at what it currently is and worked out what you pay in penalty rates under the current situation? Is that an exercise you've done?---No, I'll repeat. I've done it on a normal week day, which is normal wages, salaried and casuals, and what I would

be paying if I opened on a public holiday, which I don't open the bistro, restricted hours in the bar and the bottle shop on a public holiday.

PN7826

That's for a public holiday. Have you done any exercise for a Sunday or a Saturday?---Not dissected like I've done the normal week day and a public holiday.

PN7827

All right?---For instance at Easter there was four public holidays so we closed.

PN7828

I see. I see, and I think you say one of the things that might happen if there was a change is that you might be able to offer more hours to casual staff members. Should we understand from that that what you would seek to do first is to offer any additional hours that there might be to your existing casual workforce?---Correct.

PN7829

Nothing further, your Honour.

PN7830

VICE PRESIDENT CATANZARITI: Mr Ryan, at paragraph 19 of your statement you speculate about an increase that was anticipated to occur on 1 July 2015. Do I understand from that that was the annual wage review adjustment?---That's the adjustment, which would have had a flow-on effect. I thought there would be a flow-on effect to the public holiday rates, which is obvious.

PN7831

I understand you completed that prior to that adjustment coming about. An adjustment did come about?---That's right.

PN7832

You speculated in here that you might make a further change to trading hours. Have you done so?---Not in that period, no.

PN7833

Has there been a public holiday in that period?---Not since then. The last public holiday was the Monday of Queen's Birthday weekend.

*** JAMES THOMAS RYAN

XXN MR DOWLING

PN7834

Have you made a decision about any upcoming public holiday in light of that change?---Yes. The upcoming holiday on Friday, Grand Final Friday, the bistro will be closed. There will be restricted hours in the bar and full-time will be doing the bottle shop and the - we clean the hotel ourselves, my wife and myself, and the casual staff on that Friday will miss out on 52 hours casual pay due to my closing the bistro, restricted hours, et cetera, et cetera. That's the exercise that I tried to explain where I did a complete comparison of a normal weekday to what I've closed down. There's 52 hours casual wages that I won't be paying.

PN7835

Thank you.

PN7836

JUSTICE ROSS: Anything arising?

PN7837

MR STANTON: Nothing arises.

PN7838

MR DOWLING: No, Your Honour.

PN7839

JUSTICE ROSS: Any re-examination?

PN7840

MR STANTON: Nothing further.

PN7841

JUSTICE ROSS: Thank you for your evidence and your time, Mr Ryan. You are excused.

<THE WITNESS WITHDREW

[11.52 AM]

PN7842

JUSTICE ROSS: Any other witness who is scheduled before - - -

PN7843

MR STANTON: Mr Ryan was the last of the, if you like, morning witnesses. I can still say that. Mr Williams is scheduled for 1.30. I don't know whether he's here or not.

PN7844

JUSTICE ROSS: Let's just check and if he is, we can let him go, save inconveniencing him.

PN7845

MR STANTON: Excuse me, Your Honour. I believe he's having a coffee. So I'll see if I can get him.

PN7846

JUSTICE ROSS: I think we'd rather get him so he doesn't then have to stay around until 1.30. We'll just stand down for five minutes, if you wouldn't mind - in fact, if you find any other witnesses in the coffee shop that are scheduled, you might round them up as well. Thanks very much. We'll adjourn for five minutes.

SHORT ADJOURNMENT

[11.53 AM]

RESUMED

[12.11 PM]

*** JAMES THOMAS RYAN

XXN MR DOWLING

PN7847

MR STANTON: Your Honour, I call Mr Peter Williams who will take oath.

<PETER RODNEY WILLIAMS, SWORN [12.12 PM]

EXAMINATION-IN-CHIEF BY MR STANTON [12.12 PM]

PN7848

Sir, you are the owner and manager of the San Remo Hotel at 145 Marine Parade, San Remo in Victoria?---That's correct.

PN7849

Sir, for the purposes of these proceedings, you have made two statements, one a three page statement of 14 paragraphs and a further single page statement dated 26 August?---That's right.

PN7850

You have those with you this morning?---I do.

PN7851

This afternoon, I should say. Do you say that the content of the statements is true and correct to the best of your knowledge and belief?---It is, yes.

PN7852

If I can hand up five copies of the longer of the two statements, Your Honour, and if it assists, paragraphs 10, 11, and 14 were affected by what I understand to be now resolved objections.

PN7853

JUSTICE ROSS: I will mark the longer statement exhibit AHA79, and the supplementary statement exhibit AHA80.

EXHIBIT #AHA79 LONGER STATEMENT OF MR PETER RODNEY WILLIAMS.

EXHIBIT #AHA80 SUPPLEMENTARY STATEMENT OF MR PETER RODNEY WILLIAMS.

PN7854

MR STANTON: May it please.

PN7855

JUSTICE ROSS: Cross-examination?

CROSS-EXAMINATION BY MR DOWLING [12.14 PM]

*** PETER RODNEY WILLIAMS

XN MR STANTON

*** PETER RODNEY WILLIAMS

XXN MR DOWLING

PN7856

Thank you, Your Honour. Mr Williams, you are the owner and manager of the San Remo Hotel?---That's right.

PN7857

You're also a council member of the AHA Victoria, is that right?---Yes.

PN7858

And an executive committee member of AHA Victoria?---That's right.

PN7859

How long have you held those two roles?---I've been on the council for about - I would say about 12 years, 13 years, and executive, I've only just come on in the last year.

PN7860

You have given some evidence in both statements, in fact, about your staff. Your total staff is 24 which includes 20 casuals and four annualised salaried employees, is that correct?---That's right.

PN7861

Of the casuals, I think you say they're a mix of grade 1, grade 2, and grade 3?---Yeah.

PN7862

Can you say, are you able to estimate for us, the break up of level 1, level 2 and level 3 of those casuals?---Yeah. The vast majority are level 3. With the TAB accreditation we have one level 3. So there'd be about - I would say three-quarters of them would be level 3 and there'd be - the rest would be level 2 and there might be - it's only when we have a new staff casual sort of thing, they might be level 1 but at the moment, I don't think there is any level 1s left.

PN7863

You give some evidence about your busiest period and I think you say you're busiest during the peak season. Can you define the peak season for us?---Okay. Well, our main peak period is probably from Christmas through to the end of January. We have a very big influx for the Moto GP in October. And it's sort of busier between I guess Christmas - from the end of January to Easter is busier and then gets very quiet for the period from Easter through to pretty much the grand prix in October.

PN7864

The warmer periods between December through Easter - - -?---The warmer period is the busy period, yeah.

PN7865

- - - and people are heading to the island and San Remo?---Yeah. Yeah.

PN7866

You said the grand prix, which is in October, mid to late October?---Yeah.

PN7867

That's a busy time?---Yeah, it is.

*** PETER RODNEY WILLIAMS

XXN MR DOWLING

PN7868

That's, what, a three or four day period, is that right?---Yeah. The main race is on - I think this year it's the 17th of October but they have it the Thursday, Friday, Saturday are all quite busy, yeah.

PN7869

I think your evidence is, too, public holidays are generally busy for you?---They are. Yeah, they are busier.

PN7870

You've given some evidence about the effects of penalty rates. Are you able to say, to take an example of an average Sunday, what proportion of your Sunday wage bill is attributable to penalty rates?---Okay. I don't have a proportion. Basically what happens on a Sunday is I have - I've got my two main staff who are full-time on a salary. They - one of them, Ben, opens normally in the bar.

PN7871

Sorry to interrupt you?---Yeah.

PN7872

I'll make my question a bit clearer. In terms of your wage bill, the dollars that represents your wage bill, do you know what part of that wage bill is penalty rates on an average Sunday?---So you're saying as opposed to - I'm just a bit confused about the question, sorry. The number of hours would be done by people on - is that what you're asking?

PN7873

No?---No.

PN7874

I'm just talking about in dollar terms?---Okay.

PN7875

In dollar terms, you realise on a Sunday you're meant to pay people their normal wage plus an additional proportion because they're working on a Sunday?---Yeah.

PN7876

You understand that?---Yeah.

PN7877

I wonder whether you've calculated what that additional proportion is in terms of a Sunday that represents the penalty rate component in terms of your wage bill on a Sunday?---I haven't - I haven't done a calculation on that but - yes.

PN7878

Should we understand then that you have also not looked at the same period and calculated what you would be paying in penalty rates under the variation as sought by the AHA?---I haven't done a specific calculation on the Sunday, no.

*** PETER RODNEY WILLIAMS

XXN MR DOWLING

PN7879

Or any other day, public holiday or a Saturday?---No. Well, look, basically what happens is that we do a lot, most of the hours, ourselves on those days, so that's the reason I probably - it's a difficult situation. So the two salary staff and myself and my wife do a bi proportion of the hours on those days so it's difficult to get an apples with apples comparison, I guess.

PN7880

But one of the things you say is you might roster more of your casual staff. Firstly, should we understand if there are some more hours to be done, you would first allocate that to your existing casual workforce?---I would if the penalty rates weren't so severe, yeah, I would because basically my wife doesn't - she normally just counts the tills and that sort of thing. But if on public holidays and on Sundays she works and myself, I wouldn't probably work at all or I wouldn't work as much anyway on those days. I'd spend - you know, doing family stuff or whatever instead. But basically it's - I take the choice to work on those days and I make sure that my salary staff also work those days.

PN7881

I take it from what you say you'd prefer not to work on those days and be able to roster casuals?---Yes.

PN7882

So you can do family things I think you said, is that right?---Yes, I would do whatever I - look I - these days I haven't been doing long hour - you know, as longer hours because I'm more in the office. But yes, I would give casuals more work on those days if - that's right, yes.

PN7883

And just in terms of those casuals that you talk about, they're part of the existing 20 casuals that you've already identified in your statement. Is that right?---That's right.

PN7884

All right, now what I just want to clarify, have you worked out what it's going to cost with these extra casuals under the new variation?---Well, look - - -

PN7885

The penalty rates you will be paying them when they do work? Do you know what that cost is?---Well, at the moment, I've done calculations of what it is at the moment and I guess the reduction - I haven't done a specific calculation. As I've said to you it's a - it would change the way we work so I haven't - you can't really compare apples with apples in terms of the total wage bill because we would do less - we'd give the staff more hours if - - -

PN7886

But have you worked out - - -?---And, like, we'd make the - when we do our motels and that sort of thing I'd get the - we don't get them to make them up on a Sunday. We probably would if the penalty rates weren't so severe.

*** PETER RODNEY WILLIAMS

XXN MR DOWLING

PN7887

You probably would. Have you worked out exactly how many hours these casuals might work and what that will cost you in wages? Is that an exercise you've carried out?---I've got the current situation. Like we do - - -

PN7888

No, no, perhaps if you listen more carefully to my question?---I have a - yes.

PN7889

Have you worked out what it might cost you to engage these new casuals that you say - sorry, that the existing casuals might work additional hours under the variation; have you worked out what that is going to cost the hotel?---Well, the - what I do know is that the standard rate is - I think it's a bit over \$19 or so. If - for a grade 3, and so basically any reduction would significantly - you know, if it was - if for example it was 2.7 - if you dropped it by point five or whatever of an hour, well you're going to save nearly \$10 an hour.

PN7890

But have you worked out how many of these new casual hours there might be and what your wage bill is going to be after you do it?---Well the - yes, well the casual hours would be for example on a Sunday - or actually a better example would be a public holiday, it would be 20-odd hours that I specifically work those hours so that I don't have to pay such high rates. So if there was a - if I was to work less of those hours and my wife and the salary staff worked less of those hours, which we would you know do 20 to 30-odd hours depending on our availability ourselves, those hours - many of those hours would go back to the casual staff. So I haven't got a - I don't think there's a - you know, we'd have to see where it ends up to find out an exact figure. But working by the hours, that would be my choice to work less hours and give more hours to my staff.

PN7891

I see. So you're not sure exactly what it will look like but what you're saying is what you anticipate what might happen is you might work less hours (indistinct) of the hours that would go to the existing casuals?---Yes, and my salary staff would be more flexible to do different days. It might suit them. We're pretty - we try to work with our staff to give them a - as it suits them. You know, a lot of staff like to work on the weekends because they've got other jobs during the week, or whatever. So we would give them - - -

PN7892

And do you know what the difference between the Sunday rate as it presently is and what the Sunday rate is under the AHA proposal?---So?

PN7893

In dollar terms?---I haven't got the dollar terms, no.

*** PETER RODNEY WILLIAMS

XXN MR DOWLING

PN7894

But have you looked at the dollar difference between the Sunday rate under the current award and the Sunday rate under the AHA variation?---Yes. Well, look,

at the moment they - the grade 3 people pay - it's 33 - it works out at 30 something an hour. Under a - whether it was - - -

PN7895

Do you know what it is under the variation? That's what I'm asking you?---I don't know the exact rate of all the different things, no.

PN7896

All right. So should we take it that you'd really have to wait and see how all of this unfolds and how many hours you might choose to work on a Sunday and how many might be left over for your existing casual staff? Is that fair?---I'd have to wait and see how it pans out, yes. But definitely the less of a penalty the lesser hours I would do and the more hours that the staff would get.

PN7897

All right. Thank you.

PN7898

Nothing further.

PN7899

JUSTICE ROSS: Mr Williams, can I just take you to paragraph 13 of your longer statement, if you have it there. You say there about halfway through paragraph 13, "I would offer patrons our usual services on Sundays". What do you mean by that?---Just on Sundays as opposed to a Saturday, like we would open later and open earlier -sorry, we'd close later and open earlier. So instead of opening at 11 o'clock we'd open at - may open at 10. We'd - instead of closing at 9 o'clock we might close at 10 or 11, or if it's a - in an Easter situation or whatever, we might go through to 1 o'clock sort of thing if the people have got the day off the following day. But we tend to close earlier and open later because of the penalty rates.

PN7900

And you say in that paragraph that you would - this is about public holidays - roster an additional casual hours on a public holiday. Have you calculated how many additional hours you'd be rostering on a Sunday?---Look, based on - I would - I haven't got the different - I guess explaining the seasonality of our business, it's not the same every Sunday or every long weekend, depending on the season. You know, in June the long weekend is not as big as obviously the long weekend in January or that type of thing. So it would be very - quite variable but the rate would be or the hours would be basically reduced by the amount of hours we do ourselves is probably the key to it. So you know, I would think we'd probably be, you know, 15 hours more to go back to the staff than any other day. So I don't work any hours on a Monday, Tuesday or Wednesday sort of thing - so in the actual bar. I'm in the office sort of thing. But I tend to take those hours myself on those Sundays and public holidays.

PN7901

Anything arising or any re-examination?

*** PETER RODNEY WILLIAMS

XXN MR DOWLING

PN7902

MR DOWLING: Yes, your Honour.

PN7903

You said, your words were you may open longer hours. Should we understand from that that it's again you'd have to wait and see what the difference in payment might be and whether it's worth opening longer hours, and that's still an exercise you'd have to undertake and you haven't yet determined?---Well it would have to be reasonably - look, I guess every change would mean that I would do less hours. If it was a small change I might do a couple of hours less, and if it's a big change I might not work at all on those days and give it all to the staff. So it just depends on how big a change there is to the penalty rates as to how many - - -

PN7904

I didn't ask about your hours?---Well, that's the - basically that's how it - - -

PN7905

Mr Williams what - - -?---That's the reason.

PN7906

You said you may open longer hours?---Sorry, yes. Yes.

PN7907

And what I'm asking you is that something you'd have to assess when you saw the costs and any additional amount you might make as the result of the penalty rates? You'd have to assess it, is what I'm suggesting to you?---We would have to assess it, yes.

PN7908

That's not something you've done yet?---Well, we haven't got anything specifically to work on yet. There hasn't been an outcome so I guess from our point of view if - if there was a significant change then we would be making changes to our hours, we would - it makes - basically what happens is if you've got three - on a public holiday if you've got three staff working it's costing us \$160 an hour, so if we're - if we're only taking \$100 an hour in those periods - so as I said it is a seasonal venue so we can't really - we can't really talk specifically about every long weekend as the same as another one, but in certain situations if - - -

PN7909

But they're your busiest times, aren't they?---It depends on what we expect our turnover will be in those - in those hours. So if I've got per staff member, if I've only got one person on and it's costing me \$60 an hour and they're going to take \$40 it's no point opening. If that rate - sorry, if it's costing \$50-odd an hour if that rate was \$40-odd an hour I'd have to assess it based on the turnover of the venue at the time. So if we're making enough money to justify opening then I would do it. If we're not making enough money, well it's foolish to open.

*** PETER RODNEY WILLIAMS

XXN MR DOWLING

PN7910

So it would depend on the trade at the particular time firstly, yes?---So that - that's basically how we would assess it, yes. So when we've got the - - -

PN7911

But in terms of - you said, well we don't really know what we're working with yet or words to that effect, you know what the proposal is in terms of the variation, but you haven't calculated exactly how many additional hours there might be. That's still something for you to work out. Even though you know what the proposal is you haven't yet worked out what those additional hours might be if there are any, is that right?---Well if there are - as I said it's not going to be a cut and dried situation, so if - - -

PN7912

I am just asking you whether you had worked out what those additional hours might be, how many they might be, or whether that's still something that's still in the wait and see basket?---You're saying if we get the full - if we get the AHA proposal?

PN7913

Yes. Have you worked out how many additional hours there might be or are you just going to wait and see?---Well it would depend on how busy - how busy we are on each individual occasion, so it's not going to be the same every time. So for example if I was - if I was talking about the Queen's Birthday weekend in June and on a Sunday we've got one person working if they're getting paid \$55 an hour or if they're getting paid \$35 an hour or something similar to that it makes a big difference because if you've got three or four customers in there that are drinking, drinking or eating or doing something for that hour then it would justify to be worthwhile to open for those people, if it was \$30-odd an hour rather than \$50, so - - -

PN7914

You are not going to work out in advance how many hours. If someone is really busy on the day you might think about it. If they're not really busy on the day you are unlikely to think about it. Is that what we should understand from all that?---So if - - -

PN7915

You are not going to change your opening hours, you are just going to see if there's busy trade on one day I might stay open a little bit longer, is that what you're saying?---If - if it is busy on those - busy enough to justify based on the wage, yes, we would open more hours.

PN7916

But you are not going to change your trading hours?---Yes, we would.

*** PETER RODNEY WILLIAMS

XXN MR DOWLING

PN7917

So you're saying you are going to make a decision to change your trading hours in some concrete or permanent way or it's just still a wait and see?---Well we haven't

- our hours are not - our closing time is not concrete, so basically we base it on how busy we are.

PN7918

You do a wait and see anyway?---We'd have to.

PN7919

So it would be no different?---Yes. Well we can't afford to be open if we've got no customers and paying wages I guess, yes.

PN7920

Thank you.

PN7921

JUSTICE ROSS: Re-examination?

PN7922

MR STANTON: Nothing arising.

PN7923

JUSTICE ROSS: Thank you for your evidence and your time, you are excused.

<THE WITNESS WITHDREW [12.34 PM]

PN7924

JUSTICE ROSS: So 1.30?

PN7925

MR STANTON: 1.30, your Honour, yes.

LUNCHEON ADJOURNMENT [12.34 PM]

RESUMED [1.36 PM]

PN7926

MR STANTON: Your Honour, I call Belinda Usher, who will take oath.

<BELINDA SHARON USHER, SWORN [1.37 PM]

EXAMINATION-IN-CHIEF BY MR STANTON [1.37 PM]

PN7927

Ms Usher, you are the owner and manager of Dragon's Door Pty Ltd which trades as The Fitzroy Beer Garden located at Gertrude Street, Fitzroy?---Yes, that's correct.

PN7928

For the purposes of these proceedings you have done two statements?---Yes.

*** BELINDA SHARON USHER

XN MR STANTON

PN7929

One is a statement of 26 June 2015 and a further supplementary statement of 25 August 2015?---Yes, that's correct.

PN7930

Do you say in relation to the content of each of those statements that they are true and correct to the best of your knowledge and belief?---Yes, that's correct.

PN7931

Your Honour, if I could hand up five copies for the Full Bench of the statement with some redactions shown at paragraphs 10 and 15, if it assists.

PN7932

JUSTICE ROSS: Any objection?

PN7933

MS BURKE: No objection, Your Honour.

EXHIBIT #AHA81 WITNESS STATEMENT OF BELINDA SHARON USHER.

EXHIBIT #AHA82 SUPPLEMENTARY STATEMENT OF BELINDA SHARON USHER.

PN7934

MR STANTON: May it please.

PN7935

JUSTICE ROSS: Cross-examination?

CROSS-EXAMINATION BY MS BURKE

[1.39 PM]

PN7936

Ms Usher, your evidence is that you have got five full-time staff members. That's right, isn't it?---That was correct at the time, yes. I think we have less now.

PN7937

Sorry, you said?---That was correct at the time. I think we have one less now.

PN7938

Those full-time staff, of whom there are now four, are any of those on salary?---Yes.

PN7939

All four?---Yes.

PN7940

Your bar is closed Monday and Tuesday, that's right, isn't it?---Correct.

*** BELINDA SHARON USHER

XXN MS BURKE

PN7941

So your full-timers, they would work Wednesday, Thursday, Friday, Saturday, Sunday and that's how they work their 38 hours?---That's correct. Yes.

PN7942

And then they have Monday and Tuesday off?---Yes.

PN7943

Do you know if those full-time staff are classified under the award as managerial or non-managerial?---Some are and some aren't.

PN7944

How many are?---One is and the rest would – under the, like, relevant award for their grade.

PN7945

I see. Are you one of those four?---No.

PN7946

So the managerial staff person, they would be paid more than \$54,000 a year, that's right, isn't it?---Yes.

PN7947

And on top of that their superannuation?---Yes.

PN7948

And the non-managerial staff would be paid at least 25 per cent above the minimum wage for their classification?---Yes, as per the award for their grade.

PN7949

Of course, that salary has to incorporate the penalty rates and the overtime that they would receive if they were not on salaries?---That's correct.

PN7950

So we know that your full-time staff work on weekends. What about your casuals? How many casual – or firstly, do you have casuals working on Saturdays?---Yes.

PN7951

About how many casual hours do you have allocated on Saturdays?---Sorry just give me a second to – we have four casuals working and the hours vary; it would probably be – sorry, I've got to count it.

PN7952

That's all right.---Approximately 28 hours, just offhand, depending on the day and how busy and – yes.

PN7953

I understand, and on Sunday, do you have casuals working on Sundays?---We do, yes.

*** BELINDA SHARON USHER

XXN MS BURKE

PN7954

About how many casual hours do you have on Sundays as well?---Approximately eight.

PN7955

How many of your full-timers are working on Saturday?---Saturday?

PN7956

Yes?---All of them.

PN7957

All four, right, and it's the same on Sunday?---I have two of them.

PN7958

Okay.---Sorry, I have only three full-timers left out of the five that were there, not four.

PN7959

And is one of those full-timers a manager?---No, no longer. Sorry, she left a month ago – four weeks ago, so it's changed a bit, and one of the other full-timers was let go, so within the same time.

PN7960

So you've got three full-timers and they're all paid minimum wage plus 25 per cent under the award?---That's correct.

PN7961

So all three work on Saturday?---Yes, that's correct.

PN7962

And just two on Sunday?---Yes.

PN7963

That must mean, mustn't it, that the one full-time person who doesn't work on Sunday makes up their 38 hours by doing - - -?---On a Tuesday.

PN7964

On Tuesday?---Some hours on a Tuesday, because there's ordering and stock and things like that, because he works in the kitchen so - - -

PN7965

So earlier when you explained that you weren't open on Monday and Tuesday and that normally your full-timers have those - - -?---Sorry, we're not open for trade, yes.

PN7966

Okay, and your full-timers don't all have Monday and Tuesday off – one of them works on Tuesday?---He does a couple of hours and then makes up the rest during his week, yes, sorry.

*** BELINDA SHARON USHER

XXN MS BURKE

PN7967

Are Sundays quieter than Saturdays?---That's correct.

PN7968

You've given some evidence about what you would do if penalty rates were reduced as proposed by the AHA?---Mm-hm.

PN7969

Just sticking with this rostering on the weekend and in particular on Sunday, can I take it that means that you've worked out how much it would cost you to offer extra shifts on Sunday?---That's correct.

PN7970

You have worked that out?---Yes, because basically my husband and I would pick up shifts and we would then let them go.

PN7971

So how many hours do you and your husband work?---During the week?

PN7972

No, on Sunday?---On Sunday, at the moment six.

PN7973

Each?---No, we alternate.

PN7974

Okay, so you would expect that, if penalty rates were reduced, whichever of you is doing that 6-hour shift on Sunday, those 6 hours would be taken by one of your existing casuals?---That's correct.

PN7975

So you're not actually paying yourself the penalty rates?---No.

PN7976

I think with your casuals you've got a mix of grades?---Mm-hm.

PN7977

So which casual would be - - -?---F and B2.

PN7978

Can I take it that means that you have worked out what the current penalty rate is on Sunday for that person?---Yes.

PN7979

What is that?---I believe it's around 33 – sorry, I can't remember offhand.

PN7980

And you've worked out what it would be if the penalty rates are reduced as proposed?---Sorry, do you mean if – at the moment with my – sorry, could you say that again?

*** BELINDA SHARON USHER

XXN MS BURKE

PN7981

At the moment how much do you pay a food and beverage attendant on a Sunday?---Thirty-three.

PN7982

And my question was then whether you'd worked out how much you would pay that person if penalty rates were reduced?---No, I hadn't, sorry, or I might have but I don't think so. I just know it would be a reduction.

PN7983

So when you say you would roster somebody on to replace the hours that you or your husband work on Sundays, you don't know at the time you wrote your statement whether the cuts would mean you could actually afford to do that? You'd have to wait and see?---I believe that I must have worked it out or I wouldn't have swapped us out or reduced us. I know that I've worked everything out as a – probably not an individual day - as a whole for the week, so to find out where we could drop hours and other staff could pick them up.

PN7984

And you're only talking about you and your husband dropping hours, not other staff?---No, just us.

PN7985

You say you believe you must've worked it out but you haven't put any of those calculations into your statement, have you?---I don't think so, no. No, I haven't.

PN7986

Does it mean if either you or your husband's working on Sunday that you never get to spend a Sunday together?---Usually. If it's a special occasion we do, but we generally tend to say, you know - yes, if there's a good reason we will but - - -

PN7987

Like if it's a party or someone's birthday - - -?---Or a wedding or something like that.

PN7988

- - - or something like that?---Yes. We can always roster staff on, but if you're not hitting your targets then it's best not to.

PN7989

And targets, you mean sales targets?---KPIs, like your staff versus – what your staff costs should be running at for the week. We don't tend to do it daily, we tend to do it weekly, so it's over a week.

PN7990

I see, and you do it over a week because that gives you a better picture of how the business is travelling, rather than looking at it on a day-to-day basis, is that fair?---That's correct.

*** BELINDA SHARON USHER

XXN MS BURKE

PN7991

Thank you, no further questions.---Thank you.

PN7992

JUSTICE ROSS: Ms Usher, can I just ask you a question about paragraph 11 of your longer statement?---Sure.

PN7993

Do you have that in front of you? It says until recently your establishment was open for limited hours only on Sundays.---Mm-hm.

PN7994

Can you just explain what the change has been and when that took place?---For a couple of years we didn't find it viable to – and plus we, to be honest, didn't want to be there by ourselves, which we were at the time all day on a Sunday, so we opened limited hours. I think it was – sorry, my memory's terrible unless things are written down – I think it was 12 until 7 o'clock at night, but to be competitive you've got to be really consistent so it just – you know, people would come but it's not competitive enough so we now open 12 till 11 pm which is very much what the market's doing and – so it's definitely maintained a much steadier rate of income.

PN7995

So it's 12 till 11 on Sundays now?---Currently, yes.

PN7996

Can I take you to paragraph 2 of your statement? It talks about Sunday being 12 till 10, so has it changed from 10 till 11 recently or - - -?---Yes, but I can't remember when, sorry.

PN7997

All right. And in paragraph - - -?---Sorry, no we - I mean we currently open from 12 till 10 now, not 11.

PN7998

Right?---The staff finish at 11. We close at 10. So it was 12 till seven and then we are just recently now to work 12 till 10.

PN7999

Right, then in paragraph 14 you say that you would offer your patrons your usual services on Sundays and public holidays. What's the difference between what you describe there as your usual services and what you offer now on those days?---We're licensed to trade till 1 am.

*** BELINDA SHARON USHER

XXN MS BURKE

PN8000

Yes?---So we do every other day except Sunday and public holidays, for example the upcoming public holiday we won't be open till 6 pm whereas we normally would open a lot earlier, depending on the day. For example we open at 12 o'clock on Fridays but we won't be on - it just - it doesn't make, you know, sense for us when we know that most of our crowd won't be there. So we try and limit trade for when we know it's going to be busy on those days.

PN8001

And I'm not clear from paragraph 14 whether you would open on more public holidays or you'd just offer - - -?---We'd - - -

PN8002

- - - more services and hours on the public holidays you do open?---We'd like to do both. We'd like to open at our - as I said, we believe that consistency is the way to go. So we'd like to open at our regular time of 12, and there are some public holidays we don't open at all because we don't find - like most of our - it might be different for some places but our crowd goes away for long weekends, so.

PN8003

Yes, that's what you say earlier in the statement. So when the public holiday is on a Monday so they get a long weekend - - -?---Yes. Yes, they tend to pack - - -

PN8004

Your usual clientele - - -?----- - - up on the Friday and - - -

PN8005

Yes, pack up and go?---Yes.

PN8006

Yes, so it's not those public holidays you're looking to open on. It's the others that - - -?---We'd still like to because we have a local crowd but we're very much an evening based on a Friday, Saturday. So if you lose your local crowd during the day - for example Friday lunches are very busy for us and if it's a public holiday no one comes from Friday lunch because no one's at work, so.

PN8007

Thank you?---Thank you.

PN8008

Anything arising or any re-examination?

PN8009

MR DOWLING: Nothing arising.

PN8010

JUSTICE ROSS: Anything from you, Ms Burke?

PN8011

MS BURKE: Nothing arising.

PN8012

JUSTICE ROSS: No?

PN8013

MS BURKE: Thank you.

*** BELINDA SHARON USHER

XXN MS BURKE

PN8014

JUSTICE ROSS: Thanks for your evidence, Ms Usher?---Thank you.

PN8015

You're excused.

<THE WITNESS WITHDREW

[1.52 PM]

PN8016

MR STANTON: Yes, your Honour, I call Michelle Morrow - and who will take oath, I'm sorry.

PN8017

THE ASSOCIATE: Could you hold the Bible in your right hand and state your full name and address for the Commission?

PN8018

MS MORROW: Michelle Marcella Morrow (address supplied).

<MICHELLE MARCELLA MORROW, SWORN

[1.53 PM]

EXAMINATION-IN-CHIEF BY MR STANTON

[1.53 PM]

PN8019

MR STANTON: Ms Morrow, can I just confirm you are the financial controller and human resources manager of Hunter Management Services Pty Ltd?---Correct.

PN8020

Yes, and for the purposes of these proceedings you have done two statements, one a statement of 29 June and a further supplementary statement of the - well, a further supplementary statement?---Yes.

PN8021

Do you have both of those statements before you Ms - - ?---No, I don't. I don't. I've got the second one, the updated one. I am aware of what it is though.

PN8022

Yes. Now in respect of the second statement are there some corrections to be made?---Can I just confirm what document you're looking at?

PN8023

Yes?---So it was more so the notations regarding the number of employees and awards, so the summary page? Is this what you're referring to?

PN8024

Yes, that document?---Yes.

PN8025

The single page?---Yes.

*** MICHELLE MARCELLA MORROW

XN MR STANTON

PN8026

Yes, what needs to be corrected on that?---So - well I misread what the information was requesting. So "Number of total employees, number of employees over an award and number of annualised salaries". So what I've initially done is put the full-timers as 60. That was the total, and I broke that down between number of employees over an award, which was 55, and then number of total employees on salary I put as 60 but the miscommunication of what this document was actually asking, it was then changed to 55 and five.

PN8027

Yes, all right?---So we've got a total of 60 or had at this point in time a total of 60 full-time staff.

PN8028

All right, so is this correct that that right-hand column where it currently reads 60 should read five?---Correct.

PN8029

And there's no change to the 55 in the middle column?---No.

PN8030

And the number 60 where it's shown on that left-hand, just after the words "full-time" how should we deal with that?---Sixty full-time staff in its entirety.

PN8031

I see?---So I've misconstrued what this document was asking me, which is why on the first document it says 60 and 60. I thought they were the same number.

PN8032

All right?---That you were asking you many full-time staff that we had.

PN8033

All right, we understand that 55 and five gives you the 60?---Correct.

PN8034

With that addressed in terms of correction, do you say that that statement and the earlier statement are true and correct to the best of your knowledge and belief?---Yes.

PN8035

Yes, your Honour, if I hand up the five copies for the Full Bench of the first of those statements, and if it assists it's paragraphs 39 and 41 affected by redactions.

PN8036

JUSTICE ROSS: Any objection?

PN8037

MR DOWLING: No, your Honour.

*** MICHELLE MARCELLA MORROW

XN MR STANTON

PN8038

JUSTICE ROSS: I'll mark the longer statement exhibit AHA83.

EXHIBIT #AHA83 WITNESS STATEMENT OF MICHELLE MORROW DATED 29 JUNE

PN8039

JUSTICE ROSS: And the one page statement as exhibit AHA84.

EXHIBIT #AHA84 AMENDED FURTHER WITNESS STATEMENT OF MICHELLE MORROW COMPRISING ONE PAGE

PN8040

MR STANTON: May it please.

CROSS-EXAMINATION BY MR DOWLING

[1.58 PM]

PN8041

MR DOWLING: Ms Morrow, can I just clarify the evidence you've given in relation to the second statement which is the amendments you have made to the full-timers. I take it that you also intend that that will affect the total number that appears above the table that there says 329 staff?---Yes.

PN8042

So we should reduce that by the 115 that are double counted in the bottom row, is that right?---Correct.

PN8043

So in fact it is 214 staff?---Correct.

PN8044

You now have a copy of the longer statement there with you as well?---I do.

PN8045

All right, and you there set out some information about the staff with respect to the four different hotels within the group?---Yes.

PN8046

I just want to clarify staff numbers again to make sure we have an accurate picture. In respect of the Gladstone Park Hotel you'll see at paragraph 11 you say there are 55 casual staff?---Yes.

PN8047

Is that still accurate?---As in today or as in the date that this was written?

PN8048

Today?---I would have to check because we have - it's quite a transient industry. We've got lots of staff now applying for example because they're on university holidays. So we've actually just probably put on, at an estimate, four, five more staff.

*** MICHELLE MARCELLA MORROW

XXN MR DOWLING

PN8049

So that number might be larger. What I am seeking to clarify, you will see that paragraph there of 55 casuals, paragraph 19 you will see in respect of The Olive Tree there are 47 casuals. Then there is the Derrimut, which you will see in paragraph 27, has 28 casuals?---Yes.

PN8050

And the Pinsent, in paragraph 35 - - ?---Thirty-five.

PN8051

Sorry, in paragraph 34, has 35 casuals. If we add all of those numbers together, we get 165 casuals?---We've got 142 written on the document, is that what you're saying?

PN8052

On the other document. Does that mean that that number - the smaller document was as at 30 June. Might it be that that number has gone up?---Definitely. And it will be different again today if I was to give you the same document.

PN8053

So the longer statement, which was signed by you on 29 June, was as accurate as you could make it then and things changed with respect to 30 June and things have changed again since?---Definitely. Definitely.

PN8054

When things change, is the most likely change that there is now more casuals rather than less? Is that fair?---It would be fair to say, yes. We tend to grow rather than lose.

PN8055

But in respect of all of the employees that you have, which is the casuals - well, the maths show that it's clearly the significant number of staff are casuals, yes?---Yes.

PN8056

But in respect of all of the employees you have, be they casual, part-time, or full-time, they are all covered by the award?---Yes.

PN8057

There is no enterprise agreement with respect to any of them?---No.

PN8058

I take it as the human resources manager you are aware that there is the ability to negotiate an enterprise agreement under the Fair Work Act?---Yes.

PN8059

That agreement can be used to tailor the needs and requirements of the group in respect of its labouring needs and other allowances and penalties and those sorts of things? You're aware of that process?---I'm aware of that.

*** MICHELLE MARCELLA MORROW

XXN MR DOWLING

PN8060

But that's a process that the group has chosen not to engage in?---Correct.

PN8061

Is there a reason that it has chosen not to engage in negotiating an enterprise agreement?---Primarily I guess the ease of being comforted by the notations and the statements and the requirements of the award. It means that we can apply the same to everybody. So I guess it's just a position that we've taken with regards to fairness. We believe that the award covers everything that we need to cover. It's got all of the different opportunities within the award, so we were satisfied that the award does the job required.

PN8062

It's flexible enough for your business needs, the award, as it currently stands, is that your evidence?---It's flexible and most people have access to it, so I guess it helps us with communication as well. We communicate any aspects of the award with regards to our employment contracts and so forth but then the staff have equal opportunity to go and find any concerns they may have. So it's just I guess for access of ease.

PN8063

Of course, you know under the enterprise agreement process before that, that would be - before that would be agreed, you would have to give a copy to all of your employees?---Yes.

PN8064

There is no reason you couldn't make that document equally available to all of your staff as well?---No, there's not, except for the fact that we wouldn't have it online and a lot of people in this day and age use online processes. So we've got a copy of the award in our staff rooms.

PN8065

Why wouldn't you have the agreement online?---We don't have that capacity at this point with our internal systems. So we're building a data base internally but we don't have that. It would be a closed intranet, I guess.

PN8066

But you're saying that the award is on such a system?---The award's on the Fair Work so they - - -

PN8067

Your agreement could be on the Fair Work site as well, are you aware of that?---No, I wasn't.

PN8068

Does that change your thinking about whether you should negotiate an enterprise agreement?---Not primarily. It's a discussion point but it's not going to add too much weight. I mean, again it's a discussion point for us.

*** MICHELLE MARCELLA MORROW

XXN MR DOWLING

PN8069

Are you aware that the agreement also has a provision in it - sorry, the award has a provision in it that allows you to vary the penalty rates to suit the genuine individual needs of the employer and the individual employee?---Not specifically related to penalty rates, no, I wasn't aware.

PN8070

So I take it then that that is not something that the group has ever sought to exercise?---No.

PN8071

You have given some evidence about any additional hours that might arise if there was a variation in the number of hours you offer to your staff. Should we understand that if there was a change in the number of hours offered to staff, that that would at least in the first instance be offered to the existing casual workforce within the group?---Sorry, can you explain that question again?

PN8072

If there was a change in the number of hours offered to your staff within the group, should we understand that any additional hours that might arise would first be offered to your existing casual workforce?---Yes.

PN8073

In terms of any changes that the group might make, has the group made an assessment as to what it pays in penalty rates across the four hotels on, for example, a given Sunday?---Yes. We don't break it down necessarily every week to what is paid on a weekly basis but we have got a weekly budget with regards to rostered hours. So the roster system itself will cost out the values prior to posting a roster. So three weeks before we post a roster, we have a good indication of what that roster is going to cost us and we will tweak that then.

PN8074

When you say what it will cost you, I take it you mean what the total wage bill will be from that roster?---Correct. Correct, per week.

PN8075

Do you then know within that total wage bill what proportion of that wage bill is attributable to penalty rates?---You would, yes.

PN8076

In respect of that same example, that wage bill, have you worked out what proportion of that wage bill, how it might change under the proposal made by the AHA in this application?---No, I haven't.

PN8077

Thank you. Nothing further, Your Honour.

PN8078

JUSTICE ROSS: Any re-examination?

*** MICHELLE MARCELLA MORROW

XXN MR DOWLING

PN8079

MR STANTON: Nothing arises.

PN8080

JUSTICE ROSS: Thank you for your evidence. You are excused.

<THE WITNESS WITHDREW

[2.00 PM]

PN8081

MR STANTON: That is the evidence today for the AHA. I'm sorry. I just was reminded by Ms Wellard that there is one further lay hospitality witness. I think from memory the name is Martin, the surname, who as I understand is currently travelling, perhaps overseas, and may be required. I understand if she was here, she would be, but I just raise that because although Ms Morrow was the last of those witnesses, there are two that may be recalled for further purposes. But I just raise that.

PN8082

JUSTICE ROSS: What do you want to do about it?

PN8083

MR STANTON: Nothing in particular. I just - - -

PN8084

JUSTICE ROSS: Where is she travelling? When will she be back? When will she be available to give evidence?

PN8085

MR STANTON: I am instructed that she will be back in October.

PN8086

JUSTICE ROSS: Is she required for cross-examination? Have you had that discussion?

PN8087

MR STANTON: Perhaps what we'll do is perhaps bookmark that and Mr Dowling, Ms Burke, and I, we can discuss it. I'm sorry, I just raised it. There was nothing to be resolved in relation to it but we've been ticking off the witnesses.

PN8088

JUSTICE ROSS: Yes. Well, have the discussion but if she is to be cross-examined, we will need to fit her in the program somewhere.

PN8089

MR STANTON: Yes. May it please.

PN8090

JUSTICE ROSS: Yes, Mr Dowling?

<ANDREW JAMES SANDERS, AFFIRMED

[2.10 PM]

*** MICHELLE MARCELLA MORROW

XXN MR DOWLING

PN8091

MR DOWLING: Mr Sanders, could you please repeat your full name?---Andrew James Sanders.

PN8092

And your occupation?---Food and beverage attendant.

PN8093

And your address?---(Address supplied).

PN8094

Have you prepared a statement for the purposes of this proceeding?---Yes.

PN8095

Can I hand you a document, please. I have discussed with my learned friend, your Honour, some corrections that have been made to this statement so I have handed five copies of the statement with the corrections marked on it.

PN8096

JUSTICE ROSS: Thank you.

PN8097

MR DOWLING: Can I ask you to look at the statement that you have there in front of you, Mr Sanders. It should be a statement that is identified on the first page as a statement of Andrew Sanders and signed by you on the sixth page and dated 11 August. Is that the document you have before you?---Yes.

PN8098

Can I take you firstly to paragraph 16 which appears at the bottom of page 2, and the second last line should that read:

PN8099

I believe I am classified under the award as Level 2 food and beverage attendant Grade 2.

PN8100

?---Yes, that's correct.

PN8101

JUSTICE ROSS: Grade 2 or Grade 1?

PN8102

MR DOWLING: Grade 2. I am sorry, the first 2 has been changed and the second 2 hasn't been marked. They should both appear as 2. (To witness) If I can ask you to then turn to paragraph 27, please. Should that paragraph read:

*** ANDREW JAMES SANDERS

XN MR DOWLING

PN8103

In an average week working 18 hours over Friday and Saturday I earn between \$450 and \$480 gross. In that scenario about 15 per cent of my weekly take home pay comes from penalty rates.

PN8104

?---Yes, that's correct.

PN8105

VICE PRESIDENT CATANZARITI: Sorry, can I just for clarification you said Saturday, did you; are you changing it to Saturday, are you?

PN8106

MR DOWLING: Sorry, if I did say Saturday my apologies. I meant to read what is there, Sunday. Thank you, Vice President. (To witness) If I can ask you then, Mr Sanders, to turn to paragraph 34, please. Should that paragraph read:

PN8107

I have calculated that if penalty rates are reduced in this way then I would lose approximately \$4.45 per hour if I work a Sunday shift, or about \$40 on a nine hour shift.

PN8108

?---Yes, that's correct.

PN8109

And the following paragraph should read:

PN8110

I have calculated to earn back that \$40 I would have to work an extra 1.5 hours on Saturday or an extra two hours on Thursday or Friday.

PN8111

?---Yes, correct.

PN8112

Before I tender that, your Honour, there are a couple of other matters that I have raised with my learned friend that are really not by way of clarification but that are by way of changed circumstances since this statement. So I might just with leave take some further evidence from Mr Sanders.

PN8113

MR STANTON: No objection, your Honour.

PN8114

MR DOWLING: Mr Sanders, you will see - if I could take you back to the start now and paragraph 3 you will see there it says:

PN8115

The estate is selling the house so I will be moving back to my parents' house in the next few weeks.

*** ANDREW JAMES SANDERS

XN MR DOWLING

PN8116

Can you explain to the Commission what has happened in that regard since you signed this statement?---Yes. So since I signed this statement on 11 August I have moved back to my parents' house in Mulgrave, which is a few suburbs across from Hughesdale.

PN8117

If you could next turn to paragraph 11 you will see there in the second line of paragraph 11 it reads:

PN8118

I was working towards a Certificate III in hospitality.

PN8119

Again can you tell the Commission how that, or if that situation has changed since the signing of your statement?---Yes. So that Certificate III has been signed off on and I have received that qualification from that company.

PN8120

That is the same Certificate III that you're referring to in the very last line of paragraph 13, is that correct?---Yes, that's correct.

PN8121

Thank you. Two more things; paragraph 20 you say there:

PN8122

I often work two days a week, Fridays and Saturdays. Sometimes I work on Thursday or Sundays.

PN8123

Again can you tell the Commission how that position has changed since signing your statement?---So since I've signed this statement I have taken up another job with ALH, Australian Leisure and Hospitality, and now work anywhere from Wednesday to Sunday between Peter Rowland Catering and ALH at their Young & Jackson site in Melbourne.

PN8124

What days remain as university days?---Monday and Tuesday.

PN8125

Then lastly arising from what you have just said you will see at paragraph 23 you say:

PN8126

I do not have a roster because I am a casual.

*** ANDREW JAMES SANDERS

XN MR DOWLING

PN8127

Has that situation changed as the result of the further employment that you have described?---So with Peter Rowland Catering I'm still considered a casual and do

not receive a roster. At Young & Jackson's with ALH I receive a roster approximately one to one and a half weeks beforehand.

PN8128

Thank you. With the corrections that I have identified and that additional information that you have provided are the contents of your statement true and correct?---Yes.

PN8129

Thank you. I tender that, your Honour.

PN8130

MR STANTON: No objection.

EXHIBIT #UV8 STATEMENT OF A J SANDERS

PN8131

MR DOWLING: Thank you, your Honour. Could you just wait there, Mr Sanders.

PN8132

JUSTICE ROSS: It might be UV9. Thank you, Mr Stanton, cross-examination.

CROSS-EXAMINATION BY MR STANTON

[2.17 PM]

PN8133

MR STANTON: Mr Sanders, I understand from your evidence you started working for Peter Rowland Catering in January of this year?---Yes, correct.

PN8134

Did you apply for the job; did you make the application, did you fill in a form, how is it that you came to be employed by that employer?---So I was originally employment by Ment Group which had a contract for their casual labour force. That contract was cancelled and I then had the opportunity and took up the opportunity to transfer myself across to Peter Rowland Catering.

PN8135

Did you have discussions with any representative of Peter Rowland Catering in that transfer process?---I don't quite understand, sorry.

PN8136

Your evidence is you transferred across, I think that was the expression you used?---Yes.

PN8137

Do you recall what was involved in that transfer, did you fill in an application form or any forms?---Yes, I filled an application form.

PN8138

Yes, for Peter Rowland?---Yes.

*** ANDREW JAMES SANDERS

XXN MR STANTON

PN8139

On those forms did you indicate the hours of work that you're available to do each week?---Yes.

PN8140

What did you indicate on that form in term of the hours and the days that you're available?---At that time I had Monday to Sunday put down because I was not attending university in January of this year, I only went back in March this year.

PN8141

Yes. So I can understand what you completed there was that you're available Monday to Sunday?---Yes.

PN8142

Have you had to revisit that form?---No.

PN8143

At paragraph 20 of the statement you have indicated that you work two days a week, and I know that you have given some further evidence that you have taken on another job, but insofar as working often two days a week for Peter Rowland Catering is that still the case, you most often work two days a week for that employer?---Yes.

PN8144

And those days are Fridays and Saturdays?---Typically, yes.

PN8145

Yes, and sometimes according to your evidence you'd work Thursday or Sundays?---Yes.

PN8146

Can you just explain "sometimes", how frequently sometimes would be? For example would it be once a month or twice a month that you'd work for example the Sunday?---The frequency is very variable. It's very difficult to measure but typically it could be sometimes fortnightly or sometimes every few weeks. I can't really give a solid answer on that, I'm sorry.

PN8147

I see. Because it's so variable?---Yes.

PN8148

Yes I see, and on those occasions - if I've understood your evidence at 21 you've indicated there that the shifts vary in length from four to 12 hours. Is that shift variation true also of the Sunday shifts?---Yes.

PN8149

Yes, and is it the case that you would work say afternoon and into the night on a Sunday?---Again it's very variable but it's not uncommon.

*** ANDREW JAMES SANDERS

XXN MR STANTON

PN8150

Right, so what we could say is that being rostered or asked to work on a Sunday varies and it could be as little as four hours and as much as 12 hours?---Yes.

PN8151

Thank you. Now you've also given evidence that you get a text - and I'm at paragraph 23 of the statement, if it assists. You get a text when the employer wants you to work and do you contact the employer if you haven't heard from the employer? If you haven't received a text do you - - -?---Yes, I do follow that up.

PN8152

- - - typically ring them? I'm sorry?---Yes, I do follow that up. Yes.

PN8153

Who do you speak to?---The HR department in South Yarra.

PN8154

And would you do that if you haven't received a text?---I'm sorry?

PN8155

If you haven't received a text that you're required for work or there's work available, do you usually call the employer and speak to them directly?---Yes.

PN8156

And how frequently would you do that, actually calling the employer?---The roster's usually done on a Monday, I believe they are handed out. So if I haven't heard by Monday afternoon then I do contact my employer.

PN8157

Have there been occasions when you have declined a shift? I'll refer to them as shifts, is that how you see them?---Yes.

PN8158

So if I use the word shift, you understand? Just so we're on the common ground, that's all. I'm not trying to trick you, I'm just saying if we use the word shift I mean a shift that you've been offered to work on a Thursday or Friday or Saturday?---(No audible reply)

PN8159

Yes. Have there been occasions when you declined a shift that has been offered to you?---There have been occasions but they are very, very rare cases.

PN8160

What would be the reasons for declining a shift?---Sickness, family issues.

PN8161

Yes?---Family commitments.

*** ANDREW JAMES SANDERS

XXN MR STANTON

PN8162

And those occasions which you've described as rare, do you recall which particular shifts were affected? Was it a Sunday shift or a Saturday shift?---I would not be able to recall, sorry.

PN8163

All right. Now you've indicated at paragraph 34 that you've made a calculation and you've said there you would lose approximately \$4.45 per hour on a Sunday shift. How did you make that calculation?---If penalty rates were reduced in the way that has been proposed to this Commission.

PN8164

Yes?---Then I would lose \$4.45 from the hourly rate that I currently receive under the modern award.

PN8165

Yes, so you've made the calculation based upon the current casual hourly rate for a Sunday?---Yes.

PN8166

And do you recall how much that is or was when you made that calculation?---Currently my Sunday rate is \$31.54 I believe.

PN8167

So would you get around about a seventh? \$4.45 represents about a seventh of the casual hourly rate for a Sunday?---I'm not good with mathematics so I can't really do that on my feet.

PN8168

All right, I won't - no one is?---Sorry.

PN8169

And with the current work that you've taken on, this other job that you've referred to, what sort of work is that?---Exactly the same. I am still doing food and beverage, just at a different site with a different employer.

PN8170

I see. Is it catering or is it in a hotel, or?---Yes, in a restaurant.

PN8171

In a restaurant. So is it the case you're still available for work on Sundays with Peter Rowland Catering?---Again of late because my shifts do vary with both employers there are cases where I will work for one company that weekend and not the other. But I cannot give you a solid answer on that, I'm sorry, because this has only been a thing over the last month that this has occurred.

PN8172

Yes. Yes, but you're still receiving shifts from Peter Rowland?---Yes.

PN8173

Yes, nothing further.

*** ANDREW JAMES SANDERS

XXN MR STANTON

PN8174

VICE PRESIDENT CATANZARITI: Yes, Mr Sanders, can I just draw your attention to paragraph 20 of your statement where you've said, "I often work two days a week, Fridays and Saturdays." You then were asked a question about how often you worked on a Sunday and you said you couldn't actually say how often it was but maybe every few weeks, or it's variable, it could be once a month. Do you recall that?---Yes.

PN8175

And in paragraph 27 of your statement you then say an average week you work 18 hours over Friday and Sunday. That's not really correct, is it Mr Sanders? You aren't working in an average week at Peter Rowland on a Sunday?---Well, I'd have to agree with you there. Yes.

PN8176

Yes, so therefore when you say that the penalty rates affect you, in the rest of that paragraph, that your take-home pay has been cut, that also is not correct because you're not actually working the hours?---I would say that an average week for the type of employment that I'm doing would be hard to measure, considering that my shifts across the week do vary so much.

PN8177

Yes. Thank you.

PN8178

JUSTICE ROSS: Do I take it when you refer in paragraph 27 to 18 hours over Friday and Sunday - this is an average week - should that be 18 hours over Friday and Saturday? Is that what makes it consistent with what you say earlier at paragraph 20?---I would probably say Friday, Saturday and Sunday, personally.

PN8179

Anything arising?

PN8180

MR DOWLING: Yes - sorry.

PN8181

MR STANTON: No, you go.

PN8182

JUSTICE ROSS: Any re-examination?

RE-EXAMINATION BY MR DOWLING

[2.29 PM]

PN8183

MR DOWLING: Yes, your Honour, just to clarify this point I think that two members of the Commission have raised.

*** ANDREW JAMES SANDERS

RXXN MR DOWLING

PN8184

I think you've said perhaps paragraph 27 should better read "Over Friday, Saturday and Sunday". Can you explain what you mean when you say "an average week" and then you say "over Friday, Saturday and Sunday"?---I'm sorry, I don't quite understand the question.

PN8185

When you're talking about what you earn in an average week, what days are you referring to when you're talking about your average week?---In this section of the statement I would – like, these figures would be referring to – I'm sorry - - -

PN8186

I think you said it perhaps should read, Friday, Saturday and Sunday?---Yes.

PN8187

And in a week you might work any one of those three, or more than one?---Yes.

PN8188

Is that right?---Yes, correct.

PN8189

So when you're talking about an average week, are you talking - - -

PN8190

JUSTICE ROSS: Don't lead.

PN8191

MR DOWLING: Thank you. What do you mean, when you – you've got an average week, you've got those three days. What do you mean when you say an average week?---Average week could factor in other days as well, but typically with PRC, as I'll refer to them as, those three days are primarily the days that I work for them. An average week could include anywhere between Wednesday and Friday as well.

PN8192

All right. Thank you. And what do you say then about the accuracy now, having heard the questions that you've been asked, about the accuracy of the average gross earnings you refer to in the second line?---Sorry, can you repeat the question?

PN8193

What do you say about whether you say that's still accurate, the 450 to 480 that you refer to in the second line of paragraph 27?---Are you meaning whether I – I'm not meant to ask a question here, but - - -

PN8194

I'm asking whether you say it's still accurate, the second line? Is it still accurate to say that your gross is between 450 and 480 in an average week?---Okay. Yes. Since I have taken on a second job that has increased to approximately 700 a week.

*** ANDREW JAMES SANDERS

RXN MR DOWLING

PN8195

All right. And in respect of the Peter Rowland component is this figure still accurate?---Yes.

PN8196

Thank you. Nothing further.

FURTHER CROSS-EXAMINATION BY MR STANTON

[2.32 PM]

PN8197

MR STANTON: So when I asked you the questions earlier about Sunday, you had difficulty. In fact, you weren't able to nominate the number of hours because of the variation. Do you recall that?---Yes.

PN8198

Yes. What was the number that you had in mind when you made the statement at paragraph 27?---When I was - - -

PN8199

What number did you have in mind in relation to Sunday when you made that statement?---I don't know what number you're meaning, I'm sorry.

PN8200

When you made the statement:

PN8201

In an average week working 18 hours over Friday and Sunday, I earn –

PN8202

And you've set out the amount there. What number did you have in mind for Sunday when you made this statement?---I still don't know what number you're referring to, I'm sorry.

PN8203

I'm not giving a number. I'm asking you what number you had in mind when you made that statement?---Are you referring to hours or pay, I'm sorry?

PN8204

The number of hours? Does that assist? The number of hours on a Sunday, did you have a figure in mind. When you worked out this average?---I can't recall, I'm sorry. I did write this statement a month ago.

PN8205

Nothing further.

PN8206

JUSTICE ROSS: Thank you.

PN8207

MR DOWLING: Nothing.

*** ANDREW JAMES SANDERS

FXXN MR STANTON

PN8208

JUSTICE ROSS: Thank you for your evidence, Mr Sanders. You're excused.

PN8209

MR STANTON: Sorry, your Honour. I - - -

PN8210

JUSTICE ROSS: You wanted to ask him a question or - - -

PN8211

MR STANTON: No, I didn't. I thought someone for the restaurant and caterers had – obviously not. I'm sorry.

PN8212

JUSTICE ROSS: Well, no-one has asked or - - -

PN8213

MR STANTON: No-one else is there. No.

PN8214

JUSTICE ROSS: Does anyone else have any questions for the witness? No?
Thank you, Mr Sanders, you're excused.

<THE WITNESS WITHDREW

[2.34 PM]

PN8215

JUSTICE ROSS: Yes. I thought so as well.

PN8216

MR STANTON: Yes, sorry. I didn't - - -

PN8217

JUSTICE ROSS: If you might just hold Mr Sanders there for a moment. Are restaurant and catering under the impression he was going to be heard at 3.30?

PN8218

MR STANTON: That might be the case.

PN8219

JUSTICE ROSS: I don't know.

PN8220

MR STANTON: That probably would explain why there was no-one there.

PN8221

JUSTICE ROSS: All right.

*** ANDREW JAMES SANDERS

FXXN MR STANTON

PN8222

MR DOWLING: If it assists, your Honour, I was told that the other person that appears in the video link was someone who was observing from Canberra. I might be wrong about that, but that's I was told.

PN8223

JUSTICE ROSS: Yes, I'm sure that's right.

PN8224

MR DOWLING: And it's not anyone from the Restaurant and Catering Association. They might be about to tell us. Maybe not.

PN8225

JUSTICE ROSS: Is Mr Sanders still in the vicinity? Look, we'll stand down for five minutes. Get on to Restaurant and Catering, but – yes, and see what they want to ask. It may be that you've already covered it, but if you can't get on to them, well, I wouldn't propose holding the witness till 3.30.

PN8226

MR DOWLING: Can I add this into the equation, your Honour: from the evidence it seems clear that Mr Sanders is covered by the Hospitality Industry General Award 2010. That's what his payslip says. That's consistent with his evidence, so - - -

PN8227

JUSTICE ROSS: Well, I'm not sure of whether it's consistent with his evidence. He said he worked in food and beverage in a restaurant setting in the other.

PN8228

MR DOWLING: Yes. Yes, I accept that, your Honour.

PN8229

JUSTICE ROSS: So I don't know. That's the only thing that's causing me to hesitate. It really flowed from his evidence, not from his statement, so I was - - -

PN8230

MR DOWLING: Yes. Yes.

PN8231

JUSTICE ROSS: On his statement I'm not sure why they wanted to ask him questions, but on his evidence he may be covered by the restaurant award. I don't know.

PN8232

MR DOWLING: Yes, I'd accept that.

PN8233

JUSTICE ROSS: But let's see how we go with the inquiry and see where we end up. Five minutes.

SHORT ADJOURNMENT

[2.36 PM]

RESUMED

[3.31 PM]

PN8234

JUSTICE ROSS: I understand there's an additional appearance for the Restaurant and Catering Industry, is that right?

PN8235

MR P CROSSWELL: Crosswell, initial P, appearing today on behalf of the Restaurant and Catering Industry.

PN8236

JUSTICE ROSS: And you wanted to cross-examine, Mr Sanders, is that right?

PN8237

MR CROSSWELL: That's correct.

PN8238

JUSTICE ROSS: All right. Can we bring Mr Sanders back?

PN8239

MR DOWLING: We can, your Honour, and we will.

PN8240

JUSTICE ROSS: Did I excuse him on the last occasion? Do I need to have him re-sworn?

PN8241

MR DOWLING: I think he was excused.

PN8242

JUSTICE ROSS: As an abundance of caution we will re-swear him.

PN8243

MR DOWLING: Can I say whilst he is on his way - too late.

PN8244

JUSTICE ROSS: Do you want him outside, Mr Dowling, is there something you want to raise without the witness present?

PN8245

MR DOWLING: No, I don't think it needs to be raised without Mr Sanders present. Perhaps to be prudent.

PN8246

JUSTICE ROSS: Can you wait outside.

PN8247

MR DOWLING: It's my instructions that Mr Sanders in the additional job would not be covered by the Restaurant Industry Award because he's working in a restaurant within a hotel, and so in those circumstances he would still be covered by the Hospitality Industry General Award.

PN8248

JUSTICE ROSS: Is his evidence only to be relied on in relation to the Hospitality Award applications?

PN8249

MR DOWLING: Dealing with sort of the broad issue of the inconvenience to him of working Saturdays and Sundays and those consequences the answer is no. In respect of those parts dealing with the calculations as to loss I think it must be that the answer is yes because it's referable only to the rates that appear within the Hospitality Award.

PN8250

JUSTICE ROSS: Yes. But it can't be said that the Restaurant and Catering Industrial doesn't have an interest.

PN8251

MR DOWLING: Not given my answer to the first question. That's right.

PN8252

JUSTICE ROSS: No. All right. Was there anything else you wanted - - -

PN8253

MR DOWLING: That's all, thank you.

<ANDREW JAMES SANDERS, RECALLED ON FORMER AFFIRMATION [3.34 PM]

CROSS-EXAMINATION BY MR CROSSWELL [3.34 PM]

PN8254

JUSTICE ROSS: Mr Crosswell.

PN8255

MR CROSSWELL: Good afternoon, Mr Sanders. Can I take it you have a copy of your statement?---Yes, I do.

PN8256

Can I just quickly refer you - I will try to be brief - to paragraph 28 of that statement. In paragraph 28 you say that your only source of income is wages?---Yes.

PN8257

Can I take that to mean the hourly rate pay that's paid to you by your employer?---Are you able to explain that again.

PN8258

When you say wages you're referring to the rate of pay on an hourly basis paid to you by your employer?---Yes.

PN8259

And that's your only source of income?---Yes.

*** ANDREW JAMES SANDERS

XXN MR CROSSWELL

PN8260

Do I take that to mean then that you receive no additional income on top of that hourly rate of pay through tips?---I do receive tips from my new employer ALH, but I do not receive tips from Peter Rowland Catering at all, no.

PN8261

So at no point during your employment with Peter Rowland Catering have you received tips?---No. No, I have not.

PN8262

Roughly in a week how much would your income be assisted by tips?---Very minimally, maybe around the \$20 mark.

PN8263

Twenty dollars per week or per day?---Per week.

PN8264

No further questions.

PN8265

MR DOWLING: Nothing, your Honour,

PN8266

JUSTICE ROSS: Nothing further for the witness?

<THE WITNESS WITHDREW

[3.36 PM]

PN8267

JUSTICE ROSS: Is it 9.30 tomorrow morning, the first witness?

PN8268

MR DOWLING: No, it isn't, your Honour, and I can explain why. Mr Harvey - we only heard moments ago, we were waiting to hear from clubs who were the only party not to tell us whether they wanted to cross-examine Mr Harvey and they have just moments ago told us they don't want Mr Harvey.

PN8269

JUSTICE ROSS: So that means we are at 10 o'clock and you will attend to Mr Harvey's statement at some point?

PN8270

MR DOWLING: That's right, yes.

PN8271

JUSTICE ROSS: But the objection has been settled with all of them, is that right?

PN8272

MR DOWLING: They have, with everyone.

*** ANDREW JAMES SANDERS

XXN MR CROSSWELL

PN8273

JUSTICE ROSS: All right. Thank you very much. We will adjourn until 10 am tomorrow morning.

ADJOURNED UNTIL WEDNESDAY, 23 SEPTEMBER 2015 [3.37 PM]

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