



TRANSCRIPT OF PROCEEDINGS

Fair Work Act 2009

1053639

**VICE PRESIDENT HATCHER
SENIOR DEPUTY PRESIDENT HAMBERGER
DEPUTY PRESIDENT KOVACIC
DEPUTY PRESIDENT BULL
COMMISSIONER ROE**

AM2014/196 AM2014/197

s.156 - 4 yearly review of modern awards

Four yearly review of modern awards

Casual Employment and Part-time Employment

(AM2014/196 & AM2014/197)

Sydney

9.13 AM, MONDAY, 11 JULY 2016

PN1

VICE PRESIDENT HATCHER: Yes, can I take appearances in Sydney, please. Mr Crawford?

PN2

MR CRAWFORD: Yes, from the AWU.

PN3

VICE PRESIDENT HATCHER: Yes, Ms Bhatt.

PN4

MS BHATT: If it pleases, Bhatt for the Ai Group.

PN5

VICE PRESIDENT HATCHER: Mr Easton, you appear for the National Farmer's Federation?

PN6

MR EASTON: I do, with Ms Pearson.

PN7

VICE PRESIDENT HATCHER: Mr Arndt, you appear for the Costa Group and the ABI in that crowd?

PN8

MR ARNDT: In so many words, your Honour.

PN9

VICE PRESIDENT HATCHER: Yes, all right. We'll turn to Melbourne. Mr Fleming, you appear for the ACTU?

PN10

MR FLEMING: Fleming, initial J, your Honour. That's correct.

PN11

VICE PRESIDENT HATCHER: Then in Canberra Ms Sostarko, is that right, for the MBA?

PN12

MS SOSTARKO: Yes your Honour, that's correct.

PN13

VICE PRESIDENT HATCHER: Then in Adelaide, Mr Spreckley for United Voice, is that right?

PN14

MR SPRECKLEY: That's correct, sir.

PN15

VICE PRESIDENT HATCHER: And Ms Hills for SA Wine?

PN16

MS HILLS: That's correct, sir, your Honour.

PN17

VICE PRESIDENT HATCHER: Thank you. Does anybody want to say anything in opening before we go into the witnesses?

PN18

MS BHATT: If I may, Vice President?

PN19

MS HILLS: Hills, initial S, for the South Australian Wine Industry Association in Adelaide, your Honour. One of my witnesses for the Wine Industry Award, Mr Richard VanRuth has advised me this morning that he is unwell and not able to attend today. Therefore I would request of the Commission along with our correspondence on 6 July that he appear as a witness in the hearing scheduled for the 15th to the 19th along with Kirsty Belnaise and Jeremy Danean for the South Australian Wine Industry Association.

PN20

VICE PRESIDENT HATCHER: What was the name of that witness again?

PN21

MS HILLS: The one for today is Richard VanRuth. He was appearing second under the Wine Industry Award for Sawyer.

PN22

VICE PRESIDENT HATCHER: All right, can you keep us advised as to when he can give evidence and we'll have to fit that in within a revised witness list for next month, if we can.

PN23

MS HILLS: Okay, thank you.

PN24

VICE PRESIDENT HATCHER: All right, thank you. Ms Bhatt?

PN25

MS BHATT: Thank you Vice President. There are three procedural issues. I wonder if I might identify to the Bench what they are?

PN26

VICE PRESIDENT HATCHER: Yes.

PN27

MS BHATT: The first being the manner in which the Commission deals with closing submissions regarding the award's specific claims in respect of which evidence will be heard this week, which I understand is a matter your Honour raised during the proceedings on 16 June.

PN28

The second being the manner in which closing submissions are received regarding award specific claims in respect of which no evidence has been called.

PN29

The third being the evidence of Mr Tegg, the AMWU witness and any reply evidence that Ai Group seeks to call. I'm not sure if this is a convenient time for me to deal with those matters or whether you - - -

PN30

VICE PRESIDENT HATCHER: No, go ahead.

PN31

MS BHATT: In respect of closing submissions regarding those claims in respect of which evidence will be heard this week, Ai Group has an interest in the Horticultural Award and we support the variation proposed by the SA Wine Industry Association to the Wine Industry Award. In correspondence that was sent to chambers on Friday, we've proposed a course of action as to how closing submissions could or should be received.

PN32

I think there's some consensus amongst the parties that the most efficient way to deal with it might be via written submissions, rather than dealing with oral submissions this week. That way parties are given an opportunity to consider the transcript and the evidence that will be adduced during these proceedings.

PN33

Attached to that correspondence is draft directions that were developed in consultation with the AWU and we've endeavoured to accommodate the AWU's concerns as well as our own as to an appropriate timetable. I'm not sure if the Commission is minded to deal with it now, or - - -

PN34

VICE PRESIDENT HATCHER: Yes, so that has in effect applicants by 5 August and responses by 2 September?

PN35

MS BHATT: Yes.

PN36

VICE PRESIDENT HATCHER: Does that envisage any further oral submissions or that the matters would proceed wholly on the basis of written submissions.

PN37

MS BHATT: We envisage, and we hope that this process will do away with the need for certainly, lengthy oral submissions, if any at all.

PN38

VICE PRESIDENT HATCHER: All right, so that's purely the Horticultural Award is it?

PN39

MS BHATT: Yes. The directions were proposed in respect of the Horticultural Award given that that's the award that Ai Group has a primary interest in.

PN40

VICE PRESIDENT HATCHER: All right. Does any other party want to say anything about those proposed directions if they've seen them? Mr Easton, have you seen them?

PN41

MR EASTON: Yes, I saw them on Friday. We would seek a similar accommodation for the Pastoral Award as well, so that they can be dealt with in a batch.

PN42

VICE PRESIDENT HATCHER: Mr Crawford, do you agree with that approach?

PN43

MR CRAWFORD: Your Honour, we don't necessarily have a problem with those dates, but we think a brief amount of time for oral submissions may also assist. I understood the NFF wasn't opposed to that.

PN44

VICE PRESIDENT HATCHER: All right, does anyone else want to comment upon those directions if they've seen them, particularly Mr Spreckley and Ms Hills?

PN45

MS HILLS: Your Honour, I haven't seen them, but I'm familiar with the proposal and I guess we would be seeking similar orders in relation to the Wine Industry Award. I'll leave Mr Spreckley to speak as well.

PN46

MR SPRECKLEY: Your Honour, members of the Commission, the preferred position of United Voice in relation to the Wine Industry Award would be that the submissions would be primarily dealt with, with written submissions but a short hearing convened to enable brief oral submissions to highlight particular aspects of the written submissions, but also to deal with any queries or questions that the Bench might have. If the Commission pleases.

PN47

VICE PRESIDENT HATCHER: All right, well we'll consider the approach to be taken, but prima facie, we don't see any reason not to make the directions in relation to those three awards and the parties can keep us advised as to whether they seek the further opportunity to make oral submissions.

PN48

MS BHATT: Thank you, Vice President. Can I just raise one issue in respect to the Wine Award that's just occurred to me? If there are additional witnesses to be called during the week commencing 15 August, then some accommodation might need to be made in respect of these dates on account of the fact that the first set of

submissions by any proponents would be due on 5 August, which is before the next set of hearings.

PN49

VICE PRESIDENT HATCHER: All right, we'll take into account that fact, so that might require some adjustment for that award.

PN50

MS BHATT: Can I deal also with the second issue, and that being any award specific claims in respect of which no evidence has been called. To our knowledge there are two of those. There is a claim made by Ai Group, the MBA and the HIA to vary the Joinery Award and a variation sought by Ai Group to the Black Coal Mining Industry Award.

PN51

In correspondence to your Honour's chambers on 27 June, we proposed that the proponents of those variations be provided with an opportunity to file submissions in reply to those that were filed by the unions that oppose our claim. We propose that such submissions be filed by 22 July. We understand that the CFMEU Construction and General Division does not oppose that course of action in respect of the Joinery Award and the file correspondence to that effect. The caveat being that our submissions don't raise any fresh material.

PN52

We've had discussions with the relevant representative from the CFMEU Mining & Energy Division and we understand their position to be the same. So if the Commission were minded to issue a direction to that effect, we would seek one in those terms.

PN53

VICE PRESIDENT HATCHER: All right, well can you supply us with a minute of the direction that you propose and we'll give consideration to that.

PN54

MS BHATT: Yes, Vice President, well we'll endeavour to do so by the end of the day.

PN55

VICE PRESIDENT HATCHER: That would have to take into account the CFMEU's condition or consent?

PN56

MS BHATT: Yes, your Honour.

PN57

VICE PRESIDENT HATCHER: Ms Sostarko, do you want to say anything about that?

PN58

MS SOSTARKO: Your Honour, this morning we forwarded correspondence to the chambers to that effect, so we would concur with AiG's position on that.

PN59

VICE PRESIDENT HATCHER: All right, thank you.

PN60

MS SOSTARKO: Sorry, your Honour, that was with regard to the Joinery Award and the hearing set down for Friday.

PN61

VICE PRESIDENT HATCHER: Yes all right, well we have that. Thank you.

PN62

MS BHATT: The final matter, your Honour, is that of the evidence of Mr Tegg, the AMWU witness. We've given some further consideration to this issue since we were last before you. We think that it might be desirable that Mr Tegg's evidence and any evidence that we seek to call in reply, be tendered prior to perhaps Mr Tegg and our witness, if required for cross-examination, could be called during the week in August. That then poses the difficulty that those matters are not in evidence when we file our final written submissions.

PN63

Accordingly, we would propose that the matter be dealt with in this way. If we seek to file a supplementary reply statement, that we do so by the end of this week. That the Commission then direct - - -

PN64

VICE PRESIDENT HATCHER: Sorry, can you remind me, had we made a direction about that yet?

PN65

MS BHATT: No, Vice President.

PN66

VICE PRESIDENT HATCHER: No.

PN67

MS BHATT: That we file any statement in reply by the end of this week. That the Commission direct the parties to advise the Commission by 26 August, some ten days later as to whether Mr Tegg or our witness is required for cross-examination.

PN68

COMMISSIONER ROE: Do you mean in August or July?

PN69

MS BHATT: August.

PN70

COMMISSIONER ROE: Okay.

PN71

MS BHATT: I must have misspoken, Commissioner, I apologise.

PN72

COMMISSIONER ROE: No, no, you did say August, but all right, I misunderstood.

PN73

MS BHATT: No. Let me restart. Ai Group file reply evidence by the end of this week, being 15 July, that any party that seeks to cross-examine Mr Tegg or other witness, advise the Commission by 26 July, being 10 days later. But if those witnesses are required for cross-examination, that discrete matter be listed either before the Full Bench or a member of the Full Bench, if your Honour was so minded, on a single day prior to 5 August. That way those matters can be dealt with before we file our submissions in reply.

PN74

VICE PRESIDENT HATCHER: I doubt that's going to be possible, but anyway.

PN75

MS BHATT: This is a matter that we haven't yet had an opportunity to discuss with the AMWU. The other difficulty that has been brought to our attention only this morning, is that our witness, if he were required for cross-examination is on a period of leave, commencing 15 August. I understand it's an overseas trip that was planned some time ago, which poses another difficulty.

PN76

Perhaps it's a matter that we can have further discussions with the AMWU and report back, but we bear in mind your Honour's comments about the fact that it may not be possible to list the matter for hearing prior to 5 August.

PN77

VICE PRESIDENT HATCHER: Again, can you prepare a minute to the direction you propose and send it to my chambers?

PN78

MS BHATT: Yes, Vice President.

PN79

VICE PRESIDENT HATCHER: Mr Fleming, do you want to say anything in response to that?

PN80

MR FLEMING: If I could have a moment to look at that minute, what it says and respond?

PN81

VICE PRESIDENT HATCHER: All right, well we can come back to that later in the week, so there's no urgency.

PN82

All right, is there anything else anybody wants to say before we deal with the first witness?

PN83

All right, so the first witness is who?

PN84

MR EASTON: Well, I can update the members of the Commission on progress as to witnesses in relation to the Pastoral Award and the Horticultural Award. There originally was a very long line of witnesses and that has been substantially reduced by consultation between the parties. At current count, in relation to the Pastoral Award, there are three witnesses not required for cross-examination, that is Mr Simon Fiddelaers, Mrs Ann Wearden and Ms Cheryl McCartie.

PN85

There's one witness statement that the NFF seeks leave to withdraw, and that is for Ms Nicole Jolley and there are two witnesses required for cross-examination and they are the first two witnesses that the parties proposed to seek the permission of the Commission to hear from this morning. That's Ms Leigh Shearman and Mrs Susan Wearden.

PN86

In relation to the common proceedings, there are some 14 - - -

PN87

VICE PRESIDENT HATCHER: What happened to Noel Campbell?

PN88

MR EASTON: Sorry, yes, and Mr Campbell is currently uncontactable and as we understand it, overseas. We're hopeful that we can talk with the other parties who are listed for witnesses on Thursday to reach some agreed position that we would then seek the leave of the Commission to have Mr Campbell be heard on Thursday. But we're still in discussions about that.

PN89

VICE PRESIDENT HATCHER: So he won't be available today?

PN90

MR EASTON: He's not available today. Ms McKinnon from the Farmers Federation sent a letter on 8 July to your Honour's chambers with a proposed list of witnesses for today. There's one further amendment to that list, because the number 13 on the list, Mr Lachlan Donovan, his statement has been withdrawn and we seek leave to withdraw his statement and so he won't therefore be in the list for cross-examination.

PN91

There are some 14 witness statement that we've been advised those witnesses are not required for cross-examination. That's in addition to the three for the Pastoral Award. Three have been withdrawn, or we seek leave to withdraw, that's Mr Donovan, also Mr Schreurs and also Ms Pearsall. That will then leave the witnesses who are on the list as at 8 July.

PN92

Now I'm not quite certain whether the members of the Commission would seek to receive and mark each of the statements of the witnesses not required for cross-examination.

PN93

VICE PRESIDENT HATCHER: We might do that at the outset.

PN94

MR EASTON: Thank you.

PN95

VICE PRESIDENT HATCHER: So Mr Crawford, do you confirm all of that in terms of who is required for cross-examination?

PN96

MR CRAWFORD: Yes I do, your Honour.

PN97

VICE PRESIDENT HATCHER: All right, well Mr Easton perhaps you can slowly start tendering the statements of those who are not required for cross-examination.

PN98

MR EASTON: The first one is Mr Fiddelaers SIGNED 12 October 2015.

PN99

VICE PRESIDENT HATCHER: All right, the statement of Mr Simon Fiddelaers dated 12 October 2015 will be marked exhibit 150.

EXHIBIT #150 WITNESS STATEMENT OF MR SIMON FIDDELAERS DATED 12/10/2015

PN100

MR EASTON: Thank you, the next one is - - -

PN101

VICE PRESIDENT HATCHER: Just slow down. Yes.

PN102

MR EASTON: The next one is of Cheryl McCartie. It's a statement signed 9 October 2015.

PN103

VICE PRESIDENT HATCHER: All right the statement of Cheryl McCartie dated 9 October 2015 will be marked exhibit 151.

EXHIBIT #151 WITNESS STATEMENT OF CHERYL McCARTIE DATED 09/10/2015

PN104

MR EASTON: The next is a statement of Ann Wearden, not to be confused with Susan Wearden, who is appearing today.

PN105

VICE PRESIDENT HATCHER: Right the statement of Ann Wearden undated will be marked exhibit 152.

**EXHIBIT #152 WITNESS STATEMENT OF ANNE WEARDEN
UNDATED**

PN106

MR EASTON: The statement of Ms Jolley, is formally withdrawn to the extent required.

PN107

The next is Mr Bulmer.

PN108

MR CRAWFORD: Your Honour.

PN109

VICE PRESIDENT HATCHER: Yes, just let me find it first Mr Crawford.

PN110

MR CRAWFORD: It's not to do with Mr Bulmer, if that helps. I was just going to point out that the NFF have just taken you to the witnesses that relate to the partial award. We also have one witness statement and the witness is not required for cross-examination. So do you want to number them together, or how do you want to - - -

PN111

VICE PRESIDENT HATCHER: Not particularly. I think I'll hear all Mr Easton's witnesses who are not required and then we can turn to yours.

PN112

MR CRAWFORD: Okay.

PN113

MR EASTON: Yes, Mr Bulmer.

PN114

VICE PRESIDENT HATCHER: So the statement of Andrew Bulmer dated 22 February 2016 will be marked exhibit 153.

**EXHIBIT #153 WITNESS STATEMENT OF ANDREW BULMER
DATED 22/02/2016**

PN115

MR EASTON: Next one is statement of Mr Steve Chapman.

**EXHIBIT #154 WITNESS STATEMENT OF STEVE CHAPMAN
DATED 22/02/2016**

PN116

VICE PRESIDENT HATCHER: The statement of Steve Chapman dated 22 February 2016 will be marked exhibit 154.

PN117

MR EASTON: Ms Kylie Collins, statement dated 16 February 2016.

PN118

VICE PRESIDENT HATCHER: Was that Kylie Collins?

PN119

MR EASTON: Yes.

PN120

VICE PRESIDENT HATCHER: The statement of Kylie Collins dated 16 February 2016 will be marked exhibit 155.

**EXHIBIT #155 WITNESS STATEMENT OF KYLIE COLLINS
DATED 16/02/2016**

PN121

MR EASTON: The next Mr John Cranny.

PN122

VICE PRESIDENT HATCHER: The statement of John Crannie dated 19 February 2016 will be marked exhibit 156.

**EXHIBIT #156 WITNESS STATEMENT OF JOHN CRANNIE
DATED 19/02/2016**

PN123

MR EASTON: Next is Mr Mick Dudgeon.

PN124

VICE PRESIDENT HATCHER: The statement of Mick Dudgeon dated 19 February 2016 will be marked exhibit 157.

**EXHIBIT #157 WITNESS STATEMENT OF MICK DUDGEON
DATED 19/02/2016**

PN125

MR EASTON: Next is Ms Susan Finger, signed 16 February 2016.

PN126

VICE PRESIDENT HATCHER: The statement of Susan Finger dated 16 February 2016 will be marked exhibit 158.

**EXHIBIT #158 WITNESS STATEMENT OF SUSAN FINGER
DATED 16/02/2016**

PN127

MR EASTON: The next is of Mr Vicki Forsyth signed 16 February 2016.

PN128

VICE PRESIDENT HATCHER: VICE PRESIDENT HATCHER: Witness statement of Vicki Forsyth dated 16 February 2016.

**EXHIBIT #159 WITNESS STATEMENT OF VICKI FORSYTH
DATED 16/02/2016**

PN129

MR EASTON: The next is Mr Chris Fullerton.

PN130

VICE PRESIDENT HATCHER: The statement of Christ Fullerton undated will be marked exhibit 160.

**EXHIBIT #160 WITNESS STATEMENT OF CHRIS FULLERTON
UNDATED**

PN131

MR EASTON: Next is Ms Rhonda Jurgens.

PN132

VICE PRESIDENT HATCHER: The statement of Rhonda Jurgens dated will be marked exhibit 161.

**EXHIBIT #161 WITNESS STATEMENT OF RHONDA JURGENS
UNDATED**

PN133

MR EASTON: Next is Mr Nick Leitch

PN134

VICE PRESIDENT HATCHER: The statement of Nick Leitch dated 12 February 2016 will be marked exhibit 162.

**EXHIBIT #162 WITNESS STATEMENT OF NICK LEITCH DATED
12/02/2016**

PN135

MR EASTON: Next is Ms Tracey McGrogan signed 15 February 2016..

PN136

VICE PRESIDENT HATCHER: The statement of Tracey McGrogan dated 15 February 2016 will be marked exhibit 163.

**EXHIBIT #163 WITNESS STATEMENT OF TRACEY MCGROGAN
DATED 15/02/2016**

PN137

MR EASTON: Next is Mr Brendan Miller, statement signed 22 February 2016.

PN138

VICE PRESIDENT HATCHER: Statement of Brendan Miller dated 22 February 2016 will be marked exhibit 164.

**EXHIBIT #164 WITNESS STATEMENT OF BRENDAN MILLER
SIGNED 22/02/2016**

PN139

MR EASTON: Next is Mr Stephen Pace, statement signed 18 February 2016.

PN140

VICE PRESIDENT HATCHER: The statement of Stephen Pace dated 18 February 2016 will be marked exhibit 165.

**EXHIBIT #165 WITNESS STATEMENT OF STEPHEN PACE
DATED 18/02/2016**

PN141

MR EASTON: The next is Ms Pennie Patane.

PN142

VICE PRESIDENT HATCHER: The statement of Pennie Patane undated will be marked exhibit 166.

**EXHIBIT #166 WITNESS STATEMENT OF PENNIE PATANE
UNDATED**

PN143

MR EASTON: Next is Mr Andreas Reahberger, statement undated.

PN144

VICE PRESIDENT HATCHER: The statement of Andreas Reahberger undated, will be marked exhibit 167.

**EXHIBIT #167 WITNESS STATEMENT OF ANDREAS
REAHBERGER DATED**

PN145

MR EASTON: Next is Mr Ross Turnbull.

PN146

VICE PRESIDENT HATCHER: Statement of Ross Turnbull undated is marked as exhibit 168.

**EXHIBIT #168 WITNESS STATEMENT OF ROSS TURNBULL
UNDATED**

PN147

MR EASTON: Next is Mr Tim Wollens, undated statement.

PN148

VICE PRESIDENT HATCHER: Statement of Tim Wollens is marked exhibit 169.

**EXHIBIT #169 WITNESS STATEMENT OF TIM WOLLENS
UNDATED**

PN149

MR EASTON: Next is the statement of Ms Ann Young.

PN150

VICE PRESIDENT HATCHER: Statement of Ms Ann Young will be marked exhibit 170.

**EXHIBIT #170 WITNESS STATEMENT OF ANN YOUNG DATED
15 FEBRUARY 2016**

PN151

MR EASTON: Finally, a statement of Mr Andrew Young signed 22 February 2016.

PN152

VICE PRESIDENT HATCHER: Statement of Andrew Young signed 22 February 2016 is marked exhibit 171.

**EXHIBIT #171 WITNESS STATEMENT OF ANDREW YOUNG
DATED 22 FEBRUARY 2016**

PN153

MR EASTON: To the extent required, we formally seek to withdraw the statements of Lachlan Donovan, Chris Schreurs and Ms Pearsall.

PN154

VICE PRESIDENT HATCHER: Right, that leave is granted.

PN155

MR EASTON: Then as per the letter of 8 July that leaves Ms Shearman, Mrs Susan Wearden, Mr Edwards, Mr Dollisson, Mr Sutton, Ms Mogg and Mr De Jonge for evidence today.

PN156

VICE PRESIDENT HATCHER: We might just deal with Mr Crawford's witnesses before we deal with the first witness.

PN157

MR CRAWFORD: Your Honour, in relation to the Pastoral Award, there's a statement of Kim Shepherd dated 19 February 2016. It's attachment 2 to our reply submissions.

PN158

VICE PRESIDENT HATCHER: Yes, we've heard that. Is that Mr or Ms Shepherd.

PN159

MR CRAWFORD: That's mister.

PN160

VICE PRESIDENT HATCHER: Right, so he's not required for cross-examination Mr Easton?

PN161

So the statement of Kim Shepherd dated 19 February 2016

**EXHIBIT #172 WITNESS STATEMENT OF KIM SHEPHERD
DATED 29/02/2016**

PN162

MR CRAWFORD: Attachment 3 to those reply submissions is the statement of Mark Bell and that statement is withdrawn.

PN163

VICE PRESIDENT HATCHER: Yes.

PN164

MR CRAWFORD: In relation to the Horticulture Award, the statement of Mr Adam Algate.

PN165

VICE PRESIDENT HATCHER: He's not required I assume?

PN166

MR CRAWFORD: He's not required in relation to the Horticulture Award. He's given a separate statement for the Wine Award.

PN167

VICE PRESIDENT HATCHER: So which one is not required?

PN168

MR CRAWFORD: It's not required for horticulture which is the - - -

PN169

VICE PRESIDENT HATCHER: So that's the statement of 13 October 2015, is it?

PN170

MR CRAWFORD: Correct, 20 paragraphs.

PN171

VICE PRESIDENT HATCHER: The statement of Adam Algate dated 13 October 2015 will be marked exhibit 173.

**EXHIBIT #173 WITNESS STATEMENT OF ADAM ALGATE
DATED 13/10/2015**

PN172

MR CRAWFORD: There's the statement of Keith Ballin.

PN173

VICE PRESIDENT HATCHER: Yes.

PN174

MR CRAWFORD: Now there are some agreed amendments to this statement. We've agreed - - -

PN175

VICE PRESIDENT HATCHER: Just hold on a second - yes.

PN176

MR CRAWFORD: So we have agreed to withdraw paragraphs 7 and 8 and the documents attached to the statement.

PN177

VICE PRESIDENT HATCHER: So that's just the annexure KB1 which is document attached is it?

PN178

MR CRAWFORD: Yes, all the documents attached are withdrawn and paragraph 7 and 8 of the statement.

PN179

VICE PRESIDENT HATCHER: All right, so in relation to the statement of Keith Ballin dated 9 October 2015 paragraphs 7 and 8 are not read. The annexure KB1 does not form part of the tender. The statement is otherwise marked exhibit 174.

**EXHIBIT #174 STATEMENT OF KEITH BALLIN DATED
09/10/2015**

PN180

MR CRAWFORD: Finally, your Honour, there's a statement of Ron Cowdrey. Mr Cowdrey falls into the same category as Mr Algate, in that he's not required for cross-examination in relation to the Horticultural Award statement, be he is for a Wine Award statement.

PN181

VICE PRESIDENT HATCHER: So this is the statement of 13 October 2015?

PN182

MR CRAWFORD: Correct.

PN183

VICE PRESIDENT HATCHER: The statement of Ron Cowdrey of 13 October 2015 is marked exhibit 175.

**EXHIBIT #175 WITNESS STATEMENT OF RON COWDREY OF
13/10/2015**

PN184

VICE PRESIDENT HATCHER: Mr Arndt.

PN185

MR ARNDT: Your Honour, just for the record, and perhaps for completeness. While Mr Algate, Ballin and Cowdrey aren't required in respect of the Horticulture Award on 8 March, our offices notified objections to that evidence. Keeping in mind, the view of the Bench and how evidence is led, I guess, how evidence will be dealt with in the proceeding so far, I think it's just best to note that.

PN186

VICE PRESIDENT HATCHER: All right, well the objections to those three statements are noted and can be dealt with as matters of weight in final submissions.

PN187

Right, are there any other statements of the parties today that are of witnesses that are not required for cross-examination, that can be tendered?

PN188

MR ARNDT: Your Honour, Costa has a statement of Richard Neil Roberts which is in relation to the Horticulture Award.

PN189

VICE PRESIDENT HATCHER: Just let me find that. Right, so the statement of Richard Roberts dated 22 February 2016 will be marked exhibit 176.

**EXHIBIT #176 WITNESS STATEMENT OF RICHARD ROBERTS
DATED 22/02/2016**

PN190

VICE PRESIDENT HATCHER: Right, so is that all the statements that can be tendered at this stage?

PN191

Yes, all right, so who's calling the first witness?

PN192

MR EASTON: Thank you, your Honour, I am. That is Ms Leigh Shearman and I understand that Ms Shearman is in Brisbane and has heard the proceedings so far. And I should just indicate your Honour, that for our part, for our witnesses, we'll be making arrangements so that witnesses aren't in the court room when other witnesses are giving evidence.

PN193

VICE PRESIDENT HATCHER: Right, thank you. So can we administer the oath or affirmation to Ms Shearman please?

<LEIGH SHEARMAN, SWORN

[9.49 AM]

EXAMINATION-IN-CHIEF BY MR EASTON

[9.49 PM]

*** LEIGH SHEARMAN

XN MR EASTON

PN194

VICE PRESIDENT HATCHER: All right, Mr Eastman.

PN195

MR EASTON: Thank you. Ms Shearman, you look to have a range of material there in front of you, can I ask you to just have your statement and then put whatever other materials you have just to one side for the moment. So keep your statement available and on 12 October 2015, you made a statement in these proceedings. Is that statement true and correct to the best of your knowledge and belief?---It was sir, at that time. My circumstances have changed and staffing numbers and ages and so forth have changed. But the bulk of the evidence I have given has not changed.

PN196

Yes, you're referring I think to paragraph 3, where you describe your employees at the time of making the statement. Can you update the Commission as to what is the make-up of your workforce now?---Certainly, and I'll refer to my piece of paper that I just wrote it down, so I don't forget someone. I have two school employees that are 17 years of age, one young casual fellow that's 20 years with a disability, one university student and one unemployed 30 year old and two single mature women and one retired man.

PN197

VICE PRESIDENT HATCHER: Ms Shearman, I lost track of that after the university student, can you start?---Sorry.

PN198

One university student?---One unemployed 30 year old and two single mature women. Actually sorry, it's only one mature single woman, the other one is actually on a part time basis.

PN199

Thank you?---The other retired man is actually part time as well.

PN200

MR EASTON: The first two that you referred to there, I think you called them school employees, or something similar. Do you mean that they're attending school and working for you as well?---That's correct. They are both in year 12.

PN201

Thank you, that's the evidence-in-chief. Sorry, I seek to tender Ms Shearman's statement, noting her current, updated staffing arrangements.

PN202

VICE PRESIDENT HATCHER: All right, the statement of Leigh Shearman dated 12 October 2015 will be marked exhibit 177.

**EXHIBIT #177 WITNESS STATEMENT OF LEIGH SHEARMAN
DATED 12/10/ 2015**

*** LEIGH SHEARMAN

XN MR EASTON

PN203

VICE PRESIDENT HATCHER: Are you next Mr Crawford?

CROSS-EXAMINATION BY MR CRAWFORD

[9.53 AM]

PN204

MR CRAWFORD: Thank you, your Honour. Ms Shearman, is there a folder with some documents with you in the room there?---Yes, that's correct.

PN205

Your Honour, if I may, can I hand up a copy of the same folder to the Bench and the other parties?

PN206

VICE PRESIDENT HATCHER: Yes, you may.

PN207

MR CRAWFORD: Ms Shearman, in the folder you have with you, are there numbered tabs?---Yes, in one of them there's - the AWU one, yes, that's correct.

PN208

Yes, and is tab 1 headed Australian Farm Survey Results 2013/14 to 2015/16?---Yes, that's correct.

PN209

And is tab 2 a document entitled Australian Dairy Financial Performance of Dairy Farms 2011/12 to 2013/14?---That's correct.

PN210

Thank you, it's only those two documents that I'll be taking you to Ms Shearman?---Okay.

PN211

Firstly, can you go back to tab 1?---Yes.

PN212

Turn to page 39?---Yes.

PN213

On page 39 is there a table 8 Financial Performance Dairy Industry by State?---That's correct.

PN214

Can you see in the second column of that table there's a section headed Farm Business Profit?---yes.

PN215

I understand that your farm is in New South Wales, is that correct?---That's correct.

*** LEIGH SHEARMAN

XXN MR CRAWFORD

PN216

Can you look at the New South Wales figures whereby the profit figure for 2013/14 is around 4,000 and then for 14/15 it moves to around 80,000 and then in 2015/16, it drops back to 33,000. Can you see that?---Yes, correct.

PN217

Are those types of fluctuations in terms of profit consistent with what you've experienced within your business?---Yes, that would be correct.

PN218

What is the main cause of those types of fluctuations?---Season, a lot of it season and milk price as well and costs going up and no increase in milk price.

PN219

Would you accept - obviously we're here talking about a minimum engagement for casual and part time employees. Are you aware of that?---Yes, that's correct.

PN220

And are you aware that the current modern award applies equally across Australia?---Yes, that's right.

PN221

Can you see in the table of Farm Business Profit that there is quite dramatic fluctuation on a state-by-state and even year-by-year basis?---Yes, definitely.

PN222

So I put it to you that given the minimum engagement period is the same across Australia, that it's clear from that table that the minimum engagement period is not a significant factor in terms of determining profit levels for businesses in the dairy industry, would you agree with that?

PN223

MR EASTON: I object to that question. I'm not sure how Ms Shearman can answer that, except for her business.

PN224

VICE PRESIDENT HATCHER: I'll allow the question.

PN225

WITNESS: Could you say the question again please.

PN226

MR CRAWFORD: Yes Ms Shearman, do you agree that in the table headed Farm Business Profit the figures jump around quite a lot, state by state and year by year?---Yes they do.

PN227

Yes and you've accepted that the minimum engagement period is the same across Australia?---Yes, that's right.

*** LEIGH SHEARMAN

XXN MR CRAWFORD

PN228

So on that basis, do you accept it's implausible that the minimum engagement period could be a significant factor in determining profitability in this industry?---It might not be significant, but it certainly makes a difference and I don't believe that employing, especially young people for three hours and having to pay them for three hours when they know they're only working for two, two and a half hours, I don't think that's a fair indication for them for the future. It's not setting them up for correct work ethics for the future. When you're running a dairy farm, you're looking at every cost and if you're spending money on employing someone and you're having to do that work yourself, well that's - you know - all these little things add up.

PN229

But on your assessment in New South Wales where your farm is, what would be the main factors in terms of the profit level firstly being so high in 2014/15?---Yes, seasons and milk price.

PN230

Then the drop in 2015/16 would be due to what?---Season.

PN231

VICE PRESIDENT HATCHER: So Ms Shearman when you say season, what are you referring to?---If you get a season that's actually too wet or too dry, it means that you've actually got additional costs, your Honour, of irrigating or buying in feed for cattle. Your production drops, so your milk drops, which means then that you're milking less cows. A lot of your costs are still there, depending on production. It also depends on what your milk price is. If your milk price is the same and your costs are going up, whether they be electricity or running an irrigator, yes, we don't have any control over our milk price.

PN232

Thank you.

PN233

DEPUTY PRESIDENT KOVACIC: Ms Shearman, can I just perhaps ask a question. You referred to costs there, what are the key costs from the business perspective. You touched on some of them in terms of electricity. Feed I presume is another one, are there others as well?---Well wages is a very big cost to a dairy because you just physically cannot do everything yourself. So you're looking at paying people. Because we have to milk 365 days of the year and twice a day, and plus if you have got a season where things aren't going as well, if it's wet say, it does take you to longer to milk. So, depending on - or it takes you longer to get cows in, everything takes longer, so wages is a very big part of the dairy. But you've got just the running costs of the dairy from fuel, diesel - if you're irrigating, you've got all that time and whether it's a diesel irrigator or electrical irrigator. There's a lot of costs on a dairy farm.

*** LEIGH SHEARMAN

XXN MR CRAWFORD

PN234

So just in terms of your business, what proportion do you think wages would comprise of your total costs?---Last year, this would be a big stab in the dark, but

probably a seventh or an eighth of my actual expenditure. But I would have to check that.

PN235

So probably in the order of 15 percent, sort of at the top end?---Yes, that would be about right.

PN236

Thank you.

PN237

MR CRAWFORD: Thank you, your Honour. Ms Shearman, can you now please turn to page 62 of that same document?---yes.

PN238

Do you have that? Can you see the heading Dairy Productivity?---Yes.

PN239

Can I ask firstly, how long have you operated the farm there?---10 years.

PN240

Can you see in the first sentence there, there's reference to productivity, growth, across the Australian dairy industry being 1.6 percent a year between 78/79 to 2013/14. Can you see that?---Yes.

PN241

The final sentence in that first paragraph reads "This is faster than the broad acre sector as a whole" can you see that?---Yes.

PN242

Are those statistics consistent with I guess your experiences from your farm, in that productivity has been consistently improving over the years?---Yes and no. It actually does depend on season and conditions and when you get looking at milk price, sometimes you actually drop down cows because it's sometimes, you hope to get more production out of the cows that you're milking, but you don't necessarily increase numbers, because if you do, sometimes, you make less money because you're buying in more feed. So yes, a lot of farms have increased productivity, but some farms on average, haven't.

*** LEIGH SHEARMAN

XXN MR CRAWFORD

PN243

I put it to you that statistics indicating that productivity has been improving consistently in the industry aren't really - are consistent with the current minimum engagement period being a substantial problem are they?---Well it depends whether you look at what farmer make in a cost factor, or profit factor, or you look at the age of farmers in our industry and how many of them could actually employ more people if that minimum engagement was reduced. Because there are jobs that some people would love to do that do not go to three hours. So when you're looking at an aging population in the farming community, if they could actually get more relief, they can continue to do that job for longer, and also have a better work - less hours that they are working, so that they have a bit better

quality of life. Because Dairy farmers work extraordinary long hours, so anything that we can do to sustain them for longer and actually keep families together and more of a family life, I think is a bonus.

PN244

Okay, I mean, I accept your point that these things can probably vary farm to farm, but do you accept that the statistics I just referred to you are based on the whole industry across Australia and they're not indicating that the current minimum engagement period is a problem in terms of productivity in the industry are they?

PN245

MR EASTON: I object to the question because I'm not sure how Ms Shearman can answer it.

PN246

VICE PRESIDENT HATCHER: Well, she's doing an okay job so far, so I'll allow the question. Ms Shearman.

PN247

WITNESS: Well, we don't know what the productivity could be if that minimum hours sum could be reduced. Most farms have to actually try and do things a lot smarter to increase productivity by trying to increase the rations they give their cows and all different ways of actually getting that. So we don't know, do we, what - if we reduce the minimum hourly rate, what the increase in production could actually do. Whether people could actually increase - you could get that productivity up even higher. Nobody knows until we try going back to two hours.

PN248

MR CRAWFORD: Okay, thank you. Can you now turn to the document in tab 2?---Yes.

PN249

Can you please turn to page 24?---Yes.

PN250

Is that headed Appendix A, Selected Estimates by Region?---That's correct.

PN251

This relates to the questions Deputy President Kovacic was putting to you previously, but I just want to quickly run through this document and highlight the hired labour costs in the different regions and then the total cash costs. So starting with page 24, can you see that about half way down the page there's a figure for hired labour?---Yes, that's correct.

PN252

And it's around \$29,000 and then about three quarters of the way down, there's a figure for total cash costs?---Yes that's correct.

*** LEIGH SHEARMAN

XXN MR CRAWFORD

PN253

The figures are around \$380,000 and \$403,000, is that right?---Yes, that's correct.

PN254

I mean, obviously you don't have the chance to do the calculations yourself, but I've done them, and that equates to hired labour being a cost of around seven percent. Does that look roughly right to you?---Yes.

PN255

Just quickly on the next page, page 25, we can see, it will be in about the same spot on the page. The hired labour figures are \$31,072 and then \$35,234. Then you can see the total cash costs \$487,623 and then \$524,355, you see that?---Yes that's right.

PN256

That equates to 6.7 percent. Does that look right?---Yes.

PN257

On the next page the figures on page 26 are around \$55,000 and around \$58,000 for hired labour and then for total cash costs around \$770,000 and \$813,000. Can you see that?---Yes, that's right.

PN258

The calculations equate to about 7.2 percent, is that right. Well, do you accept that?---Yes.

PN259

To save time, I won't run through in details for the rest of the pages, but for page 27, my figure is 8.8 percent. On page 28, it's 10 percent. On page 29 it's 4 percent. Page 30 it's 4.3 percent and then page 31 it's 7.2 percent. So are those figures generally consistent with your experience that labour costs in this industry are actually pretty consistently below 10 percent of total cash costs?---Well I know my labour is a lot higher than the labour hire here for northern New South Wales and Queensland and I don't know how many farms you've actually based this on. So there's a lot of farms that - some farmers do a lot of the work themselves and some farmers cannot, depending on ages and other circumstances, don't do as much. So, how many farms are in each of these statistics I'm not sure whether the ones in bracket mean there's nine or four or five. I'm not sure what the statistics are based on, how many farms.

PN260

I should have alerted you to this earlier, Ms Shearman, but the figures I've taken you to in tab 1 and tab 2 are not AWU figures, they're Commonwealth Government figures from the Australian Bureau of Agriculture and Resource Economics and Sciences?---Yes. How many are they based on?

PN261

Okay, I take that point. Now finally in tab 2, can you please turn to page 20?---Yes.

*** LEIGH SHEARMAN

XXN MR CRAWFORD

PN262

You'll see there that there's some figures in that table 2 about the time that milking takes. Can you see those?---Yes, that's right.

PN263

How many cows on your farm Ms Shearman?---On an average 180, but that does change depending on the time of year and seasonal conditions does alter it just a little bit. But time of the year is a big thing. We don't always milk exactly the same cows all the way through. It does alter depending on calving patterns.

PN264

Given you've got around 180 cows, you agree that that size farm falls in the first column, less than 200 cows milked?---That's correct.

PN265

The figures down below in terms of milking time, you can see the total tasks included in the milking process there equate to an average of 4.3 hours, don't they?---For milking time? If it took me 4.3 hours to milk 180 cows I'd go broke. It's definitely not 4.3 hours.

PN266

Yes, okay, but when you say that, are you including time bringing the cows in and time taken for cleaning, or are you only talking about time taken for milking?---It's not time bringing cows in, but it's definitely milking feeding calves and cleaning. There's different levels of cleaning in the night compared to in the morning. Morning is definitely a lot longer because you are cleaning calf pens and you do hose out all the dairy. Whereas at the night you do not. Getting cows in is not a job that I would get a casual person to do. You need someone that is skilled because you're not just bringing cows in, you're looking to make sure – see what paddock conditions are, what cow condition is, if a cow is on – coming, what we call, on heat, so they're coming into season, and a casual person that is only there two or three afternoons a week will not know that. They might not note that a water trough is dry, and things like that. So it was only normally my partner and myself that would get the cows in, and the kids and the casual milkers would just milk, because number 1, if they're under 18 they cannot go on a quad bike, to start off with.

PN267

Okay, so has your experience been that casual employees are less skilled than permanent employees? Is that your evidence?---Absolutely. And depending on the person that – they don't know the herd, as well, so that is why you normally have one skilled employee with, say, a casual employee, being – and that's where – I think you've got here the number of operators is 1.7, so that's why it's really good to have a school based person with a skilled person because you don't necessarily need two totally skilled people but you do need more than one skilled person, so using school based employees is a really good economical – and it's actually skilling them up also. Like, I've got one young fellow that's been with me for – I think he's been there about seven, eight months, and he's been casual out of school – I've now asked him, when he finishes his HSC, if he'd like a permanent job, but it – yes.

PN268

Okay, and - - ?---Sorry.

PN269

Just briefly, if you can, from your experience why are casual employees less skilled than permanent workers? Is it that they don't get the same training opportunities, that type of thing?---Well, they're going school, so they don't have the same time but when it's around cows, it's not actually training. There's a lot of training that you can't actually say, okay, go to a workshop and learn about this. It's knowing your cows. It's knowing which cows do different things and it's only something you can learn by experience. It's not something you can learn out of a book. So that's why usually casual employees don't know the herd, don't know the routines, and from one week to the next week, the cows can change. New cows come in. One cow – they can have totally different circumstances. Everything changes, sometimes daily, from weather conditions making cows really, really wet or cows that are getting lame and you've got to needle them or – or different things, so casual employees can't know what's going on from a day to day - - -

PN270

Okay, and at paragraph 5 of your statement you've said, "Milking at our dairy takes two to 2.5 hours depending on the time of year". Is that right?---Time of year and conditions, yes.

PN271

Okay. Do you agree that those figures are quite a degree lower than the figures cited in the report that I've just taken you to?---Yes.

PN272

MR EASTON: I object.

PN273

MR CRAWFORD: Thank you. Ms Shearman, do you accept that there's currently a skills shortage in the Australian dairy industry?---That's exactly right. That's why I try to employ school-based kids so that – like I just said before, that young fellow, and he's not the first one that I've actually put on, on a permanent basis. I did it to two young girls, probably five – I'm only guessing, years, five years ago. They did – worked after school, just unskilled milking, and I then put them on a traineeship and I then employed them on a permanent part-time basis after that. So they start off at school, and that is why I definitely like employing school kids because they actually get skilled up and I think it's really important for kids when they are at school, because they're not young when they are in year 11 and year 12, they're actually – they need work ethic and to learn other things, and learn to work in a team and learn to work under supervision, so I totally agree. And that is why I believe that the hours should be dropped back to two so that we can employ more school-based employees to fit in with our award.

*** LEIGH SHEARMAN

XXN MR CRAWFORD

PN274

Okay, and do you have to pay your employees higher rates when they work on the weekend?---No, we don't.

PN275

And do you ever have to pay - - -?---Not unless they work over 38 hours in the week, and they're casual so they don't do that.

PN276

Okay, and do you ever have to pay your employees higher rates when they work early in the morning or in the evening?---No. They're casual employees mostly in the evenings.

PN277

And would you describe those conditions where there's no extra amounts to work on the weekend or whatever time of the day you work, would you say that those conditions are attractive for a working person?---For some people they really like it because they can work with animals.

PN278

But there's a skills shortage, isn't there, so obviously there's not a lot of people being attracted to the industry, is there?---I don't know about that. I just put an ad on Gumtree for an employee and I would have had probably 30 or so people wanting to come and work on my farm. And I was talking to another gentleman the other night and he said that he put an ad in the paper and he got 52 people wanting to work on his farm. So I don't know that people don't want to work on farms. I actually believe they do.

PN279

Right, well, about two – sorry - - -?---They've got to be able to fit in with school.

PN280

About two questions ago you agreed unequivocally that there is a skill shortage in this industry, didn't you?---I did but - - -

PN281

Yes, thank you?---That's different to saying that there's not people that don't want to work on farms.

PN282

Right.

PN283

SENIOR DEPUTY PRESIDENT HAMBERGER: Senior Deputy Hamberger, here. Can I just ask, Ms Shearman, can you just explain to me what the skilled worker does on a dairy farm, as opposed to somebody who's just doing the milking?---Yes. The skilled worker would set up paddocks and do tractor work. They – the skilled worker's got more – because they're there more often they've got more of a knowledge of the cows and what the running is, and what changes from day to day. They might AI cows and they might, you know - - -

*** LEIGH SHEARMAN

XXN MR CRAWFORD

PN284

So what does that mean, sorry - - -?---Pick up a cow or treat a cow, things like that. Usually on our farm the skilled worker is – is my partner or myself, so that we –we're actually – we actually manage it so we're actually the one that calls the shots, whether we want to put cows where we want to put them, and if we want to treat a cow or if I want to sell a cow, or whatever.

PN285

Thanks. Can I just ask - - -?---So the person coming in really is just, you know, following our instructions and doing what they are asked to do. They don't have to make decisions. There's only limited decisions they have to make. They – you know, they get to come in and work for a couple of hours and get some money. And they're in, you know, open air spaces. I don't think the conditions are too bad at all.

PN286

MR CRAWFORD: Another witness from the National Farmers' Federation has described milking as a unique pastime, early mornings, often dirty, split shifts and other tasks that may not appeal to many. Do you disagree with that description?---Yes, some people would actually rather milk and work with cows than work with people, because it doesn't matter what job you get, like the young girl that works with me actually would rather milk cows. She's also worked at Subway and some of the people that come in can be actually quite, yes, unpleasant, to be honest and she actually quite likes coming in and she might – yes, she might get a bit of cow poo on her but that doesn't bother her.

PN287

Okay, but you don't – I mean, people have to start early in the morning, don't they?---Yes, they do but some people like to get up early and you actually fit the people in with what they want to do and, you know, we don't – if they do one or two shifts early in the morning, that's all they do. They don't do every morning. But you know, I know the ones that I wouldn't even ask to work a morning, because they like working afternoons. And it fits in with their schedule. Like, I've got one girl that milks morning and then she goes home and she does other jobs on her farm. Or, you know, fits in with getting kids off to school, or being there with the kids in the afternoon if they just milk mornings. They can actually go off – the unemployed girl works only one morning with me but she actually works another job as well and she can actually do that job and then go off to her second job that she's trying to actually build up to get a full time job out of one.

PN288

Okay, and - - -?---So it can actually offer a lot of flexibility with people.

PN289

Yes. Are you aware that the – I think Dairy Australia has sought a labour agreement so they can use overseas workers in this industry?---I think I've heard something about it, yes.

*** LEIGH SHEARMAN

XXN MR CRAWFORD

PN290

Yes, and the reason they've asked for that is because they're saying they can't find enough local workers. Are you aware of that?---That might depend on different regions. Different regions is – are very different, as well, depending on your closeness to, like a city. Like, where I am there's quite a pool of people out there, but I would actually say that if the minimum hours could be reduced to two, that actually gives you a bigger pool of people that you could employ, so that would actually help the unskilled labourer in this country.

PN291

Okay, so your view is, suddenly if people can earn even less money per shift, the whole skills shortage in this industry will fall away? Is that seriously your evidence?---No. I'm looking at, say, the young fellow that is – he has a disability, he is 20 years of age, when he first came to me he was very – he has no social skills at all and I paid him a lot of the time for three hours, when he might go home after two and a half hours. Now he has developed over the last six months, into a really good little milker. He's now told me that he's got a job in a nursery. Now I don't believe, six months ago he'd even try doing that. But it offers people options, as well. It doesn't – if you've got someone – he lives five minutes away from me so his costs of getting to work is very limited. So if they can get two hours work and build up their skills and put that on their resume, I think that's an absolute plus. And the same with school kids. If they can put on their resume when they're going for a full time job out of school, that they've been working three afternoons a week at a dairy farm, they'll think, oh, okay, well they can work. And I think that's a positive, not a negative. It's not all about - - -

PN292

Okay, and you have the - - -?---It's not all about money.

PN293

And you have been engaging school children, haven't you, on your farm?---I have been.

PN294

Yes?---And it's because you then build up that pool and they are available afternoons and they're keen to learn, they want to. It's not only school that – I've got one uni fellow.

PN295

VICE PRESIDENT HATCHER: Ms Shearman, what are your milking times?---They do alter, your Honour, and that's why it's very hard to find extra jobs in winter time because I milk a lot earlier in winter time. I'd start at 3 o'clock in winter because it gets dark and very cold earlier. Summer time, it's later so the kids can fit in with that a lot easier. And they can, you know, mow a bit of lawn or something like that, but winter time, once we finish we all want to go home and go inside and – yes, and I also look at, you know, the kids that are in year 12, once the job's done they need to go home if they've got assignments and things like that to do.

*** LEIGH SHEARMAN

XXN MR CRAWFORD

PN296

So the school kids don't do the morning shift?---No, they do not, no.

PN297

So who typically does - - -?---No, not unless it was a weekend and not normally, no.

PN298

So who typically does the morning milking?---Yes, the mature age lady and the uni student does one day, so I have a variety of people that work, you know, different shifts at different times.

PN299

SENIOR DEPUTY PRESIDENT HAMBERGER: What proportion of people that you employ do both the morning and the afternoon, or do they generally not, they do one or the other?---Generally not.

PN300

They generally do one or the other, is that what you're saying?---Yes, that's correct.

PN301

VICE PRESIDENT HATCHER: So I mean, if the minimum engagement was reduced does it follow that you'd be paying less to your staff?---Maybe, maybe not. Maybe I'd get somebody else to come in and just feed the calves in the morning and clean out and do more jobs. I don't think it would change a real lot, where you look at what you're paying school based kids, but it means that when they've finished they can go home and they know that they get the job done and they go home. They're going to get paid normally, more than two hours but it's teaching them that you get it, get the job done and you get paid for what you've done. I don't think paying them for three hours when they know they've only done two and a half hours, is not setting them up for very good work ethic in the future.

PN302

In paragraph 10 of your - - -?---Everybody - - -

PN303

In paragraph 10 of your statement you say it would save you \$130 a week?---Yes.

PN304

Presumably that's one or more staff that are getting paid \$130 a week less, doesn't it?---Yes, that's – yes, possibly. It all starts - - -

*** LEIGH SHEARMAN

XXN MR CRAWFORD

PN305

So who would that affect?---Just mainly the younger school based kids, and the – say my current situation now may be half an hour for the young fellow with the disability, but then I might get him to do a morning shift or do something else for a couple of hours. Yes, it changes, too, from farm to farm. It changes with your circumstances. It changes – yes. But it possibly would save you a little bit of money. \$130 is not a lot but it gives you flexibility.

PN306

DEPUTY PRESIDENT BULL: Now Ms Shearman, how do the school students get to and from the dairy?---Some of them drive sometimes and some of them come on the bus.

PN307

And the average period people spend travelling to your dairy, is there one?---Yes, from five minutes to probably 20 minutes, and that's usually – the 20 minute one is the lady that does the mornings. The afternoon ones, I'd say the maximum they travel to my dairy is 15, but a couple of them are seven, and one – one young fellow is only five minutes away.

PN308

Thank you.

PN309

COMMISSIONER ROE: Can I just ask one question, Ms Shearman. So you say that milking at your dairy takes two to two and a half hours, depending on the time of the year. I just wanted to clarify, that's just the actual milking process, not getting the cows into the shed or cleaning up after?---It's not getting the cows in but it is cleaning up and feeding the calves, yes. That can change, depending on if you've got a really wet season.

PN310

You might – you know, every milking is totally different sometimes, depending on the cows and how – I suppose you could say, how they're feeling, and sometimes it depends on how much feed is around. If they've had a lot of feed that day they don't necessarily race into the dairy, so it can take a little bit longer, or if it's really wet and muddy out there it'll take longer to milk. So where I say two and a half hours, sometimes that's three and a half hours because they're all muddy and we've got to wash every cow. So you know, things change from season to season, from year to year. But two and a half hours, if everything goes really well, yes, you can get in and milk 180 cows in two and a half hours, clean up, feed calves, everything. And I like that. I think that's efficiency and it's teaching kids really good work ethic, get in, get it done, and I think that holds them in good stead for the rest of their life.

PN311

MR CRAWFORD: Nothing further.

PN312

VICE PRESIDENT HATCHER: Right. Does anyone else wish to ask this witness any questions? No? Any re-examination, Mr Easton?

PN313

MR EASTON: Yes, thank you, I'll be brief.

RE-EXAMINATION BY MR EASTON

[10.35 AM]

*** LEIGH SHEARMAN

RXN MR EASTON

PN314

MR EASTON: Ms Shearman, can you go back to the folder that you were provided with, if you go back to tab 1, and you were asked some questions about page 39. Can you just have a look at page 39 again, for me?---Yes.

PN315

You were taken to the top line of the table in the farm business profit section, do you recall that?---Yes, that's right.

PN316

And you were shown the numbers there for farm profit from 3000, to 80,000 to 33,000 and asked about fluctuations, do you recall that?---Yes, that's right.

PN317

Yes. Now does herd size fluctuate in the same way that profits fluctuate in dairy?---Not normally, but if you've got a really dry time, yes, that's the first thing you do is actually dry cows off or sell cows. I know the farms down in Victoria at the moment will be looking very seriously at how many cows they are milking. I know in dry times there's a lot of cows that are culled because it's no good feeding cows if it costs you money to actually feed them, whereas in really good times you might hang onto that cow for a little bit longer, so yes, it can change but not as much as season and milk price.

PN318

Does it change anything like going from something like three, to 80, to 33, you know, that kind of scale?---Three to – not normally.

PN319

Well, it's 30 times increase and then a third, back again. And how much does labour fluctuate with herd size? Is there a connection there between how many staff you'd need if there's changes in herd size?---Not necessarily. For some – I can milk – sometimes I get down to 150 cows but you still struggle to do that with one person. So you'll still have two people there. You can actually sometimes milk 190 cows, nearly as quick as you can milk 150, depending on the conditions and how everything goes, so you – yes.

PN320

Okay. Now could I ask you just quickly to go to tab 2 and page 20 again because you were asked questions about the table on page 20 in tab 2?---Yes.

PN321

You made the observation that if it took you 4.3 hours to milk the cows, your herd, that you'd go broke?---Yes.

PN322

If that figure was 4.3 hours per day, rather than per milking, is that consistent with your experience?---That'd be really good if I could just spend 4.3 in the day, yes, but I'd - - -

*** LEIGH SHEARMAN

RXN MR EASTON

PN323

No but if - - -?---I'd be a little bit more than that. I'd be probably – well, mornings, it's nearly always three hours, sometimes a little bit less than three, it might be 15 minutes less, it might be two and three quarters, but afternoons, yes, so if you went three for – yes, I'd be – I'd be happy if I could get the cows in and out in 4.3 for the day. Because you're not only looking at the time that you're paying people, the longer the cows are standing in the yard, the less that they're actually out in the paddock, so you really don't want them standing in the yard any longer than you do, so that's why you want efficiency. The sooner you get your cows in and out, the better it is for the cows that are not standing on concrete and that are actually out grazing.

PN324

Thank you, and just one last question. You mentioned AI, before, and I assume you're not talking about artificial intelligence for cows, you're talking about insemination, is that right?---That's correct.

PN325

All right, thank you. No other questions.

PN326

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

<THE WITNESS WITHDREW

[10.40 AM]

PN327

VICE PRESIDENT HATCHER: Right, who's next?

PN328

MR EASTON: Thank you. The next witness is Ms Susan Wearden and I think she's available by telephone.

PN329

VICE PRESIDENT HATCHER: Mr Easton, is that date on the statement correct? Is that 2015, or should it say 2016?

PN330

MR EASTON: Yes, I think that is the correct date on it.

PN331

VICE PRESIDENT HATCHER: Yes.

PN332

ASSOCIATE: Hello, Ms Wearden, is that you on the line?

PN333

MS WEARDEN: Speaking.

*** LEIGH SHEARMAN

RXN MR EASTON

PN334

VICE PRESIDENT HATCHER: Good morning, Ms Wearden, it's the Fair Work Commission here. Are you ready to give your evidence now?

PN335

MS WEARDEN: I am.

PN336

VICE PRESIDENT HATCHER: All right.

PN337

MS WEARDEN: Can you hear me okay?

PN338

VICE PRESIDENT HATCHER: Well, we're going to administer the – sorry?

PN339

MS WEARDEN: Sorry, I said, can you hear me okay? I have you on speaker phone, I find it easier - - -

PN340

VICE PRESIDENT HATCHER: Yes.

PN341

MS WEARDEN: If you can still hear me okay.

PN342

VICE PRESIDENT HATCHER: That sounds fine. So we're going to ask you to take an affirmation now, and then you'll be asked some questions from the various representatives here in the courtroom. Is that okay?

PN343

MS WEARDEN: Okay.

PN344

VICE PRESIDENT HATCHER: And do you have your statement of evidence with you?

PN345

MS WEARDEN: I do.

PN346

VICE PRESIDENT HATCHER: All right, thank you. Well, we'll administer the affirmation now.

<SUSAN VALERIE WEARDEN, AFFIRMED

[10.42 AM]

EXAMINATION-IN-CHIEF BY MR EASTON

[10.42 AM]

PN347

VICE PRESIDENT HATCHER: All right, Mr Easton?

*** SUSAN VALERIE WEARDEN

XN MR EASTON

PN348

MR EASTON: Thank you. Ms Wearden, you've made a statement in this matter and you've already indicated that you have that with you. Is the contents of that statement true and correct, to the best of your knowledge and belief?---It is.

PN349

I seek to tender the statement of Ms Wearden, signed April 15, 2015.

PN350

VICE PRESIDENT HATCHER: So the statement of Susan Wearden dated 15 April 2015 will be marked exhibit 178.

**EXHIBIT #178 WITNESS STATEMENT OF SUSAN WEARDEN
DATED 15/04/2015**

PN351

MR EASTON: Thank you, and that's the examination-in-chief.

PN352

VICE PRESIDENT HATCHER: All right. Mr Crawford, do you wish to ask the witness any questions?

PN353

MR CRAWFORD: Yes, I'll try and be quicker, your Honour.

CROSS-EXAMINATION BY MR CRAWFORD

[10.43 AM]

PN354

MR CRAWFORD: Ms Wearden, did you receive by email a couple of documents, this morning?---I did.

PN355

And do you have those with you?---I do.

PN356

Before we get to that I just wanted to clarify, there was another witness in these proceedings, Anne Wearden. Is that a relative of yours?---She's the wife of my brother-in-law, yes.

PN357

Sorry?---She's the wife of my brother-in-law.

PN358

Right, and is it separate farms you operate or the same farm?---It's basically separate, they're 40 kilometres apart.

PN359

Okay, now just quickly, one of the documents I sent to you this morning is headed, "Australian farm survey results, 2013/14 to 2015/16", do you have that?---I do.

*** SUSAN VALERIE WEARDEN

XXN MR CRAWFORD

PN360

Can you quickly turn to page 39?---Yes.

PN361

Can you see in the second column of that table, the farm business profit figures?---Yes.

PN362

Do you accept that those figures seem to fluctuate considerably, state by state and year by year?---Yes, I do.

PN363

And do you accept that the minimum engagement period under the award is the same throughout Australia?---I do.

PN364

Are those figures generally consistent with your experience from your farm?---That they fluctuate considerably?

PN365

Yes. Your farm's in Victoria, isn't it?---Yes.

PN366

So '13/14 was quite a good year, '14/15 was also quite a good year, but '15/16 is projected to be not much so. Is that consistent with your experience?---With our particular farm I would say that that's reasonable, yes.

PN367

And just quickly, can you turn to page 62 of that document. There's a heading, "Dairy productivity", do you have that?---Sixty-two – yes, dairy – yes, I do.

PN368

Yes, and the first sentence reads, "The productivity growth across the Australian dairy industry was 1.6 per cent a year between '78/79 and '13/14", can you see that?---Yes, I can.

PN369

And has that been consistent with your experiences, that productivity has improved a lot over the years?---I would say that productivity has improved, yes.

PN370

Now in relation to the other document, firstly, are you able to estimate the portion of your total cash costs that labour represents?---Again, per cent – not on hand with me at the moment that I'd be accurately keen to give a figure, no.

PN371

Okay, well - - -?---But we find it. I'd need to – yes.

*** SUSAN VALERIE WEARDEN

XXN MR CRAWFORD

PN372

The document headed, "Australian dairy, financial performance of dairy farms 2011/12 to 2014", there's an appendices at the back of that document that indicate that generally in this industry labour costs as a proportion of total cash costs would range from around 4 to 10 per cent. Would that be consistent with your experience?---As I said, I'm not actually confident to actually state a figure. But I would have thought that 4 per cent would be on the extreme low.

PN373

Okay, are you suggesting that your figure may be above 10 per cent?---No, but I just suggested that 4 per cent did seem low.

PN374

Okay, and did you look into those types of figures before you prepared your statement for this case?---We do a lot of analysis on our business. I didn't actually look into the percentage of our labour costs, as such. Well, I do actually have an awareness of most of our operational costs, but as I'm not at home at the moment – I've been away for the week and have lots of other things going on, I probably could have had that more in the forefront but I don't have that with me at the moment.

PN375

Okay, fair enough. Can you now turn to page 20 of that same document?---Yes.

PN376

Can you see it's at – table 2 is headed, "Dairy characteristics by farm size, Australian dairy farms, '12/13"?---I do, yes.

PN377

And as I understand it, your farm has around 350 cows?---Currently at the moment, yes, we peaked at 380 this year, yes.

PN378

Okay, well can we use the second column which is statistics for farms of the size of 200 to 35 cows milked, can you see that column?---Yes, I can.

PN379

And can you see down the bottom that the statistics indicate the total hours for milking are 4.8 hours, can you see that?---I can see that. I did see that, yes. I did.

PN380

Yes, so I think in the – your statement is not numbered but in around the fourth paragraph you've referred to milking taking about 2.5 to three hours in peak season?---Yes.

PN381

And then as I understand it, 1.5 to 2 hours during the quieter season, is that right?---That's correct, so when I prepared this statement we would have been milking probably close to two – 300, 280 to 300 cows.

*** SUSAN VALERIE WEARDEN

XXN MR CRAWFORD

PN382

Right, so if you were up to 380, those figures would be higher, would they?---They would be marginally higher because there'd be a few more runs in the head, yes.

PN383

Yes?---So our milking – our milking time, maximum milking time at the moment, just with the cups on, that's not pre and post, would be a maximum of around two hours.

PN384

Okay, and so the figures you've included in your statement, do they include all the components in that table I've just shown you or are they only figures of the time?---So I would say – yes, so those figures that are in that statement were true and correct as to what it takes in the off season, and the number of cows we were milking at that time. And that did include – well, often – so when you read through this statement it says, "time bringing cows in", which is included in the 4.9 hours. It's got 1.1. Often our cows are in the heat, or soforth, or up on a feed pad or under the shade, or there's sprinklers in the dairy for the heat, so there's no time to bring the cows in, they're already there. So that time is reduced, but at the moment our farm is very wet so it could take up to an hour to get our cows in, so that fluctuates extremely, from one hour to almost nothing.

PN385

Do you use the milking staff to bring the cows in or do you do that yourself?---We often do that with our permanent staff because there's assessments to make about pasture growth, observing cows, moving fences and soforth, so we usually – milkers come in to a herd that's already out. There is other management things being done on the farm but not necessarily the milker might necessarily be qualified or involved in.

PN386

All right, so I'm not sure I'm entirely clear. The figures in your statement, they include bringing the cows in, time taken for milking, time taken for cleaning, is that right?---Yes.

PN387

Do you accept that the figures then in your statement appear to be quite a degree lower than the average for the industry?---Well, when I did look at this table this morning I was actually quite shocked because I could not believe that that – but yes, I would say that there's quite a difference, but I would say that the – from my experience I would say that what we do on our farm is much more the average of what I'm aware of, so that doesn't describe what I'm aware of.

*** SUSAN VALERIE WEARDEN

XXN MR CRAWFORD

PN388

You might be blessed with some very efficient workers, Ms Wearden?---I don't know if it's necessarily efficient. I'm not sure why it would take 1.4 hours to clean the dairy afterwards and I'm not sure why it would take 1.1 hours, but maybe there's a lot of farms that they have to walk much longer distances than they do on ours. I do know that there's practices for keeping cows in the shed should be a

maximum of one and a half to two hours because after that there's considerations with foot and discomfort and lack of grazing time if you keep them in the dairy for too long. So to maintain herd health and optimise their grazing time you want them in and out of the dairy as quickly as possibly.

PN389

Okay, and do you accept there's currently a skills shortage in this industry?---I would identify that it is an industry that is hard to attract skilled labour, yes.

PN390

Yes, and why do you think that is?---I just think that in – most people – there's a lot of people that don't necessarily have a propensity for the manual labour, and I think it's an industry that you have to have an aptitude and a desire to be in. And I think also the other thing is that because people see farmers suffering in the – in the media and so forth, they tend to perceive it as an industry that may be burdened with hardship so therefore not as attractive.

PN391

Yes, and are you at all concerned that – well, firstly, do you pay your workers anything extra when they work on the weekend?---We don't pay them any extra when they work on the weekend but we – we remunerate them at the above-award, regardless.

PN392

Okay, and are there higher rates that apply for work early in the morning or during the evening?---No, we can't afford to do higher rates. We just find people that find working these – working – milking cows and so forth is something that they have a desire to do.

PN393

Yes, and are you concerned that - - -?---We appeal - - -

PN394

Sorry?---So we try to make our environment a condition that sort of suits – that works with people's lifestyle and their own propensity for that sort of work.

PN395

Yes, and are you at all concerned that if the conditions in this industry are further lowered it will only become even harder to attract people?---I actually don't think that we're actually lowering it. I – from my perspective I actually think we're trying to enhance it by providing flexibility. If we don't – I'm very much aware that if we don't keep our working conditions and our attractiveness as good as we can, we don't attract people and we were finding that by trying to ask people to stay on longer than what they needed to, just to make up their three hours, they were becoming frustrated, so we were trying to work with them. So we absolutely agree that we have to keep our positions and our jobs as attractive as possible. That's a very high priority in our business.

*** SUSAN VALERIE WEARDEN

XXN MR CRAWFORD

PN396

Okay, do you see - - -?---It's the only way to attract the people. If we don't - - -

PN397

And do you accept generally that employees prefer more money than less?---Definitely.

PN398

Now on the second page of your statement there's reference to someone called Nicole?---Correct, yes.

PN399

Is that Nicole Jolly?---That's correct.

PN400

Okay, and as I understand it, Nicole Jolly ceased working on your farm because it was difficult to get to her hospitality job, is that right?---It was a contributing factor. She was going back to uni and so, of course, anyway, she – it was – if we wanted her to do the three hours it wasn't really going to suit her, to enable her to go to another job, but she was leaving anyway and she's – she's always welcome to come back and we don't need any extra staff at the moment but we've maintained a very good relationship and we'd have Nicole back whenever it suited both us at the same time, so we have to have work available to her. She's a great staff member.

PN401

I'm just curious as to why she seemingly chose the job at the local pub instead of continuing to work on your farm?---I don't think she did.

PN402

Okay, and just finally, I think in the third last paragraph of your statement you've given an example of a person called Bill?---Yes.

PN403

And you talked about his experiences recently and the paragraph ends, "with a win for him, a win for the industry and the community, in general", is that right?---Correct.

PN404

So are all wins that have been achieved under the current award, aren't they?---The three hour minimum?

PN405

Well - - -?---Or just in general?

PN406

Yes?---I would say that – no, I would – what I would say to you is that we – as we become more aware of the award we are not employing children any more.

*** SUSAN VALERIE WEARDEN

XXN MR CRAWFORD

PN407

All right, but you accept you've described whatever's happened and realised it's a win for him, and win for the industry and the community in general, haven't

you?---Yes but not any – not any longer because we won't be paying three hour minimums to school children who don't give us enough value for money.

PN408

Okay?---We can't afford it.

PN409

All right, thank you, nothing further?---Thank you.

PN410

VICE PRESIDENT HATCHER: So Ms Wearden, in your statement, in the third paragraph you said you had one regular milker. Is that one of the persons you've named or is that another person?---I'm just looking in the third statement, sorry. Can you just tell me what that statement – I might have a different - - -

PN411

Yes, so the third paragraph begins, "My husband and I", can you see that?---Yes.

PN412

And then you say you've got one full-time trainee and one regular milker, as well as three others?---Yes.

PN413

Is the regular milker - - -?---Yes, but at that - - -

PN414

At that time?---At that time, that regular milker was a casual milker.

PN415

Was that one of the people you've named and described their circumstance?---Yes, it's – that was Christie.

PN416

Yes?---That was the first person.

PN417

Right. And is Chris still there?---Christie's now a full time staff member.

PN418

Right. Would the – if the minimum staff is reduced to two hours would that have the effect of reducing the income of any existing people? Presumably it would, wouldn't it?---I think if I was going to – so we have a girl that's only 16 and I pay her the award wage, and if we were to go back to the two hour minimum I would increase her wage to reflect that because I'm happy to pay her that rate because I think that's what she should be paid to get out of bed. So I would always adjust anyone's pay to make sure we covered it but at some stages there would be some casual staff that would be on less money if they worked less time, but I think that they would prefer that, they're not there for the – they have stated to me that they'd rather less money and be allowed to go home when it suits them.

*** SUSAN VALERIE WEARDEN

XXN MR CRAWFORD

PN419

And did I hear you say that you paid some of your milking staff above award wages?---I have, and we do.

PN420

Is that all, or some of them or - - -?---Well, for example, that – the young person that was employed at the moment, I don't pay her above the award because she's actually there the least amount of time. She's never worked over two hours. So I multiply her rate out at what – she gets paid for three hours but what -I calculate it that her rate is better than it was with the - - -

PN421

I see, so it's the – when you say above award, it's the cost of paying three hours award wages for two hours work?---Yes. Yes, yes.

PN422

Yes, I see?---But she – she only ever works – well, at the moment, she only ever works – all her timecards have never – never gone over two hour – two and a half hours, 2.5 hours, but she usually works between 1.5 to 2 and that's because she has got less responsibility on her and she's more of an assistant. But she's still paid for the three hours, at the award rate.

PN423

Thank you, any re-examination, Mr Easton?

RE-EXAMINATION BY MR EASTON

[11.02 AM]

PN424

MR EASTON: Just one brief question. Ms Wearden, you were asked about fluctuations in annual profits for dairies?---Yes.

PN425

And you were shown some tables from the first document?---Yes.

PN426

What, from your experience, are the variables that go into variations in profitability from year to year? What things affect that profitability?---Most significantly is production costs, so water, irrigation, fodder or feed costs, and milk price.

PN427

Thank you.

PN428

VICE PRESIDENT HATCHER: All right, thank you for your evidence, Ms Wearden, you're now excused so you can simply hang up the phone?---Thank you.

PN429

All right, thank you.

*** SUSAN VALERIE WEARDEN

RXN MR EASTON

<THE WITNESS WITHDREW

[11.03 AM]

PN430

VICE PRESIDENT HATCHER: Who's next?

PN431

MR CRAWFORD: I think it's South Australia, your Honour, for the wine.

PN432

VICE PRESIDENT HATCHER: Ms Hills, do you have the next witness?

PN433

MS HILLS: Yes, Anthony Grundel, we're calling him.

<ANTHONY GRUNDEL, AFFIRMED

[11.04 AM]

EXAMINATION-IN-CHIEF BY MS HILLS

[11.04 AM]

PN434

MS HILLS: Mr Grundel, can I ask you to – well, you've already stated your full name and address. You've submitted an affidavit in this matter dated 8 October 2015, and of some 14 paragraphs?---I have.

PN435

Do you have a copy of that there?---I do.

PN436

Is there anything that's changed since you made that statement, initially?---Only just in that we currently have four casual employees with the company, due to some internal changes and some casuals leaving the business so - - -

PN437

Okay, so that would be paragraph 5?---Correct.

PN438

Not 8, that's now four casuals?---Now four, yes.

PN439

Okay, thank you. Is it a correct statement?---Yes.

PN440

I would seek to tender the statement, your Honour.

PN441

VICE PRESIDENT HATCHER: Yes, so the affidavit of Anthony Grundel dated 8 October 2015 will be marked exhibit 179.

**EXHIBIT #179 AFFIDAVIT OF ANTHONY GRUNDEL DATED
08/10/2015**

*** ANTHONY GRUNDEL

XN MS HILLS

PN442

VICE PRESIDENT HATCHER: Right, so who wishes to cross-examine this witness?

PN443

MR SPRECKLEY: Mr Spreckley in Adelaide, your Honour.

PN444

VICE PRESIDENT HATCHER: Mr Spreckley?

CROSS-EXAMINATION BY MR SPRECKLEY

[11.06 AM]

PN445

MR SPRECKLEY: Mr Grundel, in paragraph 5 you say you have 12 full-time employees and four casual employees?---Correct.

PN446

You don't have any part-time employees, at all?---We – no, not at this point in time.

PN447

Have you ever had any part-time employees?---Yes.

PN448

And when did you have those?

PN449

VICE PRESIDENT HATCHER: Mr Spreckley, can you ensure you speak into the microphone? We're just having difficulty hearing the questions.

PN450

MR SPRECKLEY: When did you previously employ part-time employees?---From my last recollection, our last part-time employees would have been approximately four years ago.

PN451

Four years ago. And what sort of minimum engagement did they have?---They were minimally engaged between 10 to 20 hours.

PN452

Per week?---Per week, yes.

PN453

And what about per day?---I can't recollect. I wouldn't be able to recollect that number, off the top of my head.

PN454

Was it more than four hours?---Possibly.

*** ANTHONY GRUNDEL

XXN MR SPRECKLEY

PN455

Possibly more than four hours. IS it difficult to attract suitably skilled employees to your business?---Yes.

PN456

Okay, what difficulties?---The – the thing with it at the moment is actually finding suitable – people that are suitable for the – for the cellar door business side of things, is people that are suitably trained in wine knowledge, as a primary example, but it just – the skill with being a really good cellar door person is actually the ability to hold a decent conversation with people and actually find out what their interests are, but you would need to have a certain sales skill that goes with that, so basically to be able to convert that conversation into sales. Because at the end of the day it's about, you're not only delivering experience, you need to sell wine to keep the business going, so that in itself is a specialist skillset in itself and it's quite a hard one to find.

PN457

So your more regular and permanent employees are more likely to hold those skills, is that right?---Yes, we tend to find that when we've got someone that's got the skillset that we desire, we like to hang onto them as best as we can.

PN458

And do your employees work across more than one area and become multi-skilled?---They do. The nature and the size of our business, we certainly like to – we encourage our employees to work across all aspects of the business, so from dirt, to bottle, to market. So from – like, for myself, I was doing a wine dinner in Whyalla Saturday night just gone, but we've got – we may be out doing vintage harvesting and we encourage the cellar door guys and the staff to go out and pick fruit. We do get the winery guys to go and help sell in cellar door, and things like that. So in a business our size, if they're multi-skilling it's all hands on deck.

PN459

So for cellar door employees there's certainly other jobs and tasks over and above those directly engaged with customer service at the cellar door?---Sorry, repeat that?

PN460

There's other tasks for cellar door employees, over and above those duties specifically associated with customer service at the cellar door?---They're – they can be a little bit restricted by location so it's not a case of, if someone's working at cellar door they couldn't pop up to the winery and work in the winery for now, because the two locations are mutually exclusive, and there are sometimes certain staff that you just wouldn't let work in a winery, or to pick stock in the warehouse or things like that, so - - -

PN461

But the cellar door staff would do stock control?---Yes.

PN462

And packaging, posting off - - -?---Yes, they do everything out of the cellar door.

*** ANTHONY GRUNDEL

XXN MR SPRECKLEY

PN463

Yes, all those sort of things. So paragraph 6 of your statement, you say, "The tasting room, the cellar door and the (indistinct) is open from 10 am to 6 pm, seven days per week"?---That's correct.

PN464

Do your employees work outside of those hours, before or after those hours, at all?---The cellar door, they would – depending on the even that's going on, on the day, certainly there's someone in the cellar door from 9 am in the morning, and hours operation are 6 pm when we shut, but the staff would be there till potentially, anywhere as late as 7 o'clock at night, doing close-up for the end of day.

PN465

And as a situation like that, those sort of hours, has that been the case for some time? How long has it been - - -?---Yes, we've been operating – the cellar has been open from a 10 am to a 6 pm operation for approximately four years.

PN466

Four years, and what were the hours before that?---We used to operate 10 am till 4.30 pm.

PN467

So the hours have extended over the past four years?---Yes. And the jump was made from 4.30 pm to 6 pm, and the decision to operate till 6 pm was based mainly on our location and where we are in Greenock, in the north-western corner of the Barossa, and what we find is our neighbours – our neighbouring cellar doors, which are the likes of Two Hands, Torbreck, Seppeltsfield, their cellar doors shut at between 5.00 and 5.30 and we found that we were getting last minute referrals. We find that people visiting us in the Barossa either come and see us first thing in the morning, or they're seeing us on the way out, because of our location next to the highway. So we found that by staying open till 6 o'clock it was a competitive advantage for us because we were getting direct referrals from our peers, and we believe our wines are as good as what they make and quite often – and customers tend to reciprocate that affirmation for us. But for our point of view it's just an advantage to stay open later. We get that end of day traffic coming out.

*** ANTHONY GRUNDEL

XXN MR SPRECKLEY

PN468

And you don't have any – what sort of hours do the employees work? Do they work that full whole shift, or parts of those shifts?---They work parts of the shift. So we'll rotate through the day. So we may have someone – we'll have a permanent – the cellar door manager will be in there and we'll either have someone there in the morning to assist with – if the cellar door manager has other duties that she needs to attend to, which will be things like running errands, going to the supermarket to get food, things for our platters, things like that – someone will be in, in the morning for a four hour shift and then that person may stay to cover a lunch break, and then there'll be some days that that person works all day, and there'll be other days when that person will leave and then someone else will

start in the afternoon and cover the afternoon shift, so there'll be a period for a couple of hours where there's no-one in cellar door, other than the cellar door manager themselves.

PN469

You'd have periods of staff overlapping for the more busy periods, I presume?---Yes. The days of the week, the busy days of the week are obviously the weekend, and then sort of, Monday, Thursday, Friday, tend to be the busy days during the week.

PN470

So in relation to the casual employees, so the four hour minimum engagement, you've got no difficulties in filling up the four hours with suitable tasks for those persons, do you?---The – up to a point. The issue starts when you have enough hours in the shift – enough work in the shift for four hours, but you've really got other little blocks of work where it's only two hours or three hours or things like that, not four, not enough for four, so rather than bringing in another person for four hours, you basically make the two that are working stay later, work longer, which is the reason why we're open till 7.00 – they can stay there till 7 o'clock at night, because they're still cleaning things up.

PN471

But you find the existing staff don't have the difficulty in fulfilling all of those shorter tasks and those - - -?---The more – more often than not, if they can't complete the task at the night because we don't want them staying for reasons of safety and other bits and pieces, we get them to defer the jobs till the next morning.

PN472

So is the main issue that you have, if I could summarise it, in your statement that your primary concern isn't that you don't have enough work to accommodate existing casuals to fill four hours, but you feel that you might have more flexibility to offer shorter shifts to some people who might like that, is that a fair summation of it?---Yes, there's certainly that side of it, as well. Part of the nature with the cellar door business too is, we'll take in bookings during the week or on the weekend for larger groups and we'll have a staff – we'll bring someone in for – to try and cover off that – assist with that shift for a four hour period. But then during that period in the afternoon we may get another six groups walk in during that period, so the ability to have – and the larger groups vary in size from 10 to 50 people and they're only there for an hour, so at the moment we're bringing in someone for a four-hour shift to cover off - which is just two hours' work, which is basically half an hour inside, half an hour prep, an hour doing the tasting, half an hour the other side.

*** ANTHONY GRUNDEL

XXN MR SPRECKLEY

PN473

Do you have any predictability of that?---We have predictability with the bookings certainly. We've got certain groups that come in every day at certain times. We try and manage the bookings as best we can. What we can't predict accurately is the number of walk-ins we're going to get at any one period of time.

We do see consistently - you know, we get data reports every day from our cellar door staff at the end of the day; it's one of the tasks we have them do, which tells us where we get our direct referrals from, what we've sold - all the ABCs are running the business but we also get them to report on the day's activities, and quite often we see it was quiet until 3 o'clock this afternoon and then we had six groups come in. More often than not we see that sort of consistent - there's a certain time of the day where they get slammed, but the time of day they get slammed isn't always consistent - sometimes it's lunchtime, sometimes it's late in the day; it varies from the time of the year and time of the week. But to be able to have that scenario where you could actually bring an extra staff person in just for that two hours to cover off that larger group tasting - and that's not just one person; we work on a ratio of about one staff member to about 20 people in a large group environment.

PN474

If you didn't know they were going to turn up how would you be able to predict that you needed someone?---We assume that they're going to come.

PN475

VICE PRESIDENT HATCHER: Mr Grundel, could I just ask you this question? What's the profile of a person who would be able to do a cellar door shift at fairly short notice for two hours? What sort of person is that? Presumably it's not a school student?---Sorry, repeat the question, sorry.

PN476

Yes, I'm just looking at the sort of profile of the sort of person who might want to or would be able to come in at fairly short notice to do two hours of doing a cellar door activity. What sort of person is that?---From previous history from employing staff in cellar door there, quite often they're either people wanting to learn more about the wine industry, so they're keen to just get experience and work in cellar door and get a hands-on role; they're semi-retirees, so we've got, for example, I have a lady that works for me at the moment, one of my casuals who's a retired school teacher, and she just loves engaging with people, so she's happy to work casual shifts for us on a needs basis. The other side of it is we've had parents that just want a couple of afternoons in a shift just to work around sporting commitments and things like that. So there's an interesting mix of demographics that we have working for us.

PN477

Right, thank you.

PN478

MR SPRECKLEY: If I can just go back, Mr Grundel, to this notice of the peak times?---Yes.

*** ANTHONY GRUNDEL

XXN MR SPRECKLEY

PN479

So you may have, say, a one hour or two hour window where you anticipate there's going to be more visitors. Isn't it possible to cover for that by staggering your start and finish times, like we discussed earlier, where you have the overlap,

so you'd make sure the staff overlap during those peak periods so you have more people on?---Up to a point. The nature of the way we do our tastings in cellar door, we're not a traditional stand-up type scenario; we do a seated tasting - we sit on leather lounge chairs around on our deck and it's more like an intimate conversation type - well our tastings take between three-quarters of an hour to an hour, and then people are encouraged to stay as long as they want to. What I was saying before about the we know people are going to come, we're currently number one rated on Trip Advisor and have been for two years, so we know that we're going to get more than your average number of walk-ins that come through on any given day. From our point of view, we're happy to put extra staff on on the weekend. We'll run between two-and-a-half to three-and-a-half to four equivalent on a Saturday and Sunday for the extra foot traffic that we're likely to get; however, the ability just to bring in an extra staff member for a short period of time to look after the large groups, because at the moment we'll turn away large groups on a weekend, and a pre-booking on the weekend, just because we don't want to run the risk to our reputation at the end of the day, or dilute our experience because we can't deliver a premium experience to four groups of people that have walked in sort of unannounced because we've got all our staff tied up doing a - I don't have any spare staff because I don't have anyone allocated just to doing the large group that we've already pre-booked in. So it's all about managing people and time, and for us it's about making sure that we always deliver the premium experience to everyone that walks into the cellar door.

PN480

But predominantly you'd be regularly rostering staff, wouldn't you, in advance? You're not going to pick the phone up and just call them in because you see a bus turn up?---No.

PN481

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

PN482

In relation to secondary school students, you've mentioned in your evidence that you might like to have that option?---Mm-hm.

*** ANTHONY GRUNDEL

XXN MR SPRECKLEY

PN483

Have you any particular examples where secondary school students have applied for jobs and you've refused them the job because of the four-hour engagement?---Over the years we've had secondary school students that work for us that are children of dependants of our staff, and being a family-owned business we're quite happy to push that family engagement. But it's part of that developing the next pool of staff to come up in through the ranks, so to speak, so by doing that we can give them - whilst they're working in the kitchen, maybe preparing food platters and cleaning glasses, because every glass needs to be washed, cooled, polished before it goes back in the glass and checked to make sure it doesn't smell like cleaning fluid before you put wine in it, that's a very labour-intensive purpose. But what you also, in teaching the new staff, is the disciplines that come with running a cellar door and offering a premium experience. The sooner you can teach people that the better, and at the moment

the ability to work with them in an intense short period - and again it's the ability to be able to teach them during the week, because quite often on a Saturday or Sunday you just don't have time to sit down and - - -

PN484

You don't have a particular record or circumstance of people that have applied that you've had to refuse? What I'm saying to you, there's examples of where someone said, look, I'd like to have a job but you said no I can't give you one because I can't accommodate the four-hour engagement, do I have any particular record of anything like that?---Not that I could put on record for the sake of this hearing, no.

PN485

And if it was a secondary student, where they have work with you being a part of a family member of an existing employee, would it be more likely the case that they travel with the other family member, or would they try and get there under their own steam?---No, they all have their own transport or work at different shifts.

PN486

I don't have any further questions. Thank you very much. Thank you, your Honour, that's all I have.

PN487

VICE PRESIDENT HATCHER: Mr Grundel, just for future reference, what's the brand name of your wine? Is it Murray Street?---We are Murray Street Vineyards.

PN488

Yes, all right, thank you. Any re-examination, Ms Hills?

RE-EXAMINATION BY MS HILLS

[11.23 AM]

PN489

MS HILLS: Just a couple of questions, your Honour. Mr Grundel, you talked about other employees working across the business. What sort of employees predominantly would they be in terms of you talk about 12 full-time and four casuals?---So we have - the combination of our other employees are our wine maker, assistant wine maker, logistics manager, administration staff, functions manager, and we have sales brand ambassadors out on the road, and our national sales marketing manager.

*** ANTHONY GRUNDEL

RXN MS HILLS

PN490

So the opportunity to work in other parts of the business is sort of a programmed thing, or maybe it's not structured but - is it the case that those people would get an opportunity to work in a different area at certain times, under certain circumstances?---We will do that by request. Certainly everyone's encouraged to work in the cellar during vintage to get their hands-on in the wine-making process, and likewise we like to get our wine-making staff and cellar crew down in the cellar door to assist down there with the larger groups, and it's always nice

for people to meet the wine-maker and engage with them down there. For the rest of the staff it's really - the opportunities to work down there are really limited by the amount of - they're generally required in other areas, so quite often if we're short in a period, if the cellar door, for example, is all of a sudden slammed by a lot of walk-in - groups that have walked in, it's quite often myself or our national sales manager will actually go down and cover off the extra groups, because we're one of the few that actually drop what we're doing and actually go down there and not have an effect on other operations of the business.

PN491

In terms of those employees you like to hang on to, how do you get to that point in terms of determining that they may have entered the business in what capacity?---We readily measure their performance against KPIs as best we can. Cellar door staff are a little bit easier to measure in that respect as far as hitting sales targets, but as far as other areas, it's just engagement with other staff and their feedback to us through other means and other channels, so whether that's feedback through after doing wedding events, whether that's just talking to - with my administration staff I'll talk to our key suppliers about what sort of response they get from the administration team when they've got queries and things like that. So there's a whole metric of various - a lot of them are sort of intangible measures. The nature of the size of our business, a lot of it is personal one-on-one relationships, so it's all about being a nice person at the end of the day.

PN492

And the employee you referred to the retired school teacher, would she be someone that could come in at short notice to do a tasting perhaps if you got someone off the street, so to speak?---She's probably more likely to be able to come in than some of our other staff. I couldn't say quantitatively that yes she could.

PN493

But possibly?---Yes, and Heather's just a nice employee to have and her heart's definitely in that business, so given the opportunity if she's available to come in and help us at short notice, she will if she can.

PN494

Thank you very much. That completes my questions.

PN495

VICE PRESIDENT HATCHER: Thanks for your evidence, Mr Grundel. You're excused, you're now free to go?---Thank you very much.

<THE WITNESS WITHDREW

[11.26 AM]

PN496

VICE PRESIDENT HATCHER: Ms Hills and Mr Spreckley, we're having a little trouble hearing the questions, so can you make sure you're talking into the microphone, and if it's easier to stay seated doing that, feel free to do so.

*** ANTHONY GRUNDEL

RXN MS HILLS

PN497

MR SPRECKLEY: I'll see how I go with standing, your Honour.

PN498

VICE PRESIDENT HATCHER: All right, thank you. Is - - -?

PN499

MS HILLS: Calling Steven Todd, your Honour.

PN500

VICE PRESIDENT HATCHER: Steven Todd, all right.

PN501

MS HILLS: Richard Van Reeth is the witness who was next appearing but he's ill.

PN502

VICE PRESIDENT HATCHER: Yes.

<STEVEN TODD, AFFIRMED

[11.28 AM]

EXAMINATION-IN-CHIEF BY MS HILLS

[11.28 AM]

PN503

MS HILLS: Mr Todd, you've made a written statement or an affidavit in these proceedings?---I have.

PN504

And you have a copy of that with you?---Yes, I do.

PN505

That comprises of 11 paragraphs and was sworn on 8 October 2015?---Yes.

PN506

Is there any corrections to the content of that statement?---No.

PN507

So you take that as a true and correct record?---I do.

PN508

We would seek to tender Mr Todd's affidavit, thank you.

PN509

VICE PRESIDENT HATCHER: The affidavit of Steven Todd sworn on 8 October 2015 will be marked exhibit 180.

EXHIBIT #180 AFFIDAVIT OF STEVEN TODD DATED 08/10/2015

PN510

VICE PRESIDENT HATCHER: Ms Hill?

*** STEVEN TODD

XN MS HILLS

PN511

MS HILLS: Thank you.

PN512

VICE PRESIDENT HATCHER: Right.

CROSS-EXAMINATION BY MR SPRECKLEY

[11.29 AM]

PN513

MR SPRECKLEY: Mr Todd, you have 13 staff members. Are four of those casual, is that how I'm to read your statement?---I'd have to go through the numbers of the changes with the number of casuals, but that's approximately right. That includes 13 staff members is all staff, through to the winery as well as cellar door.

PN514

And four of those are - - -?---Are the casual staff in cellar door.

PN515

You don't have any part-time employees at all?---Yes - no, we have two permanent part-time; one is an admin clerk, another one is a member of staff who works as grounds maintenance and cellar door, so he's a sort of split role.

PN516

So they are amongst the 13 and then non-casual?---Yes.

PN517

Do you know if any of your staff have to travel very far to get to work?---I'm the furthest; I work in town, but everyone else is relatively local, apart from my sales manager. He also lives in town and travels down every day.

PN518

Do you know how far they would travel?---I'm guessing, they're sort of McLaren Flat/Willunga, that sort of area, so 15 minutes.

PN519

Do you find it difficult to find available skilled employees for the work you require?---I've only been there two years. We have a very low turnover of staff, so for cellar door particularly I haven't found it difficult because we haven't had to go and find them, so they haven't much personal experience. A little bit difficult in the vineyard and winery for vintage, that's been a bit more problematic.

PN520

So those employees were already there when you - - -?---Most of them, yes, in the cellar door. The only one we've had to recruit is the actual cellar door manager since I've been there.

PN521

And are those employees fairly multi-skilled and work across different parts of the operation?---Which particular employees?

*** STEVEN TODD

XXN MR SPRECKLEY

PN522

The regular staff that you have?---No. They're very much in cellar door skills and vineyard winery skills, the two don't tend to cross over that range.

PN523

So in relation to the cellar door work I presume there's other tasks other than just the customer service part of the cellar door operations?---Yes, the cellar door includes taking and packing of orders, preparing for - if we have an event on, in the weekends like a (indistinct) vines event, that sort of thing, but primarily they're there for customer service and taking orders.

PN524

For most of those casual staff you would have no difficulty finding enough work to do on a four hour engagement, would you?---No, we do struggle. Depending what they do, we recruit to fill a day, but even now when a casual member of staff has to be there all day, at the end of the day they can be sort of scratching around for things to do because they've had a quiet day, there's not been many staff in just because of whatever reason.

PN525

That's just to do with the unpredictability - - -?---That's just - that's unpredictability of people walking through the door.

PN526

So do the staff normally work more than four hour shifts, casual staff?---We try and get staff to have a fuller day if need be and that depends on what the cellar door manager is doing and how much it will balance with his role, because he tends to cover customer service as well as his own managing role in terms of website maintenance and that sort of thing. So it varies depending from staff member to staff member.

PN527

Could I just ask you to clarify what you mean by a full day when you say provide them a full day?---So typically - typically it would be a 9 till 5, that's - that's our full day.

PN528

So that would be most weekends, would it?---Not weekends, no. Weekends we don't open the cellar door from 9 till 5, so our cellar door is 9 to 5, but weekends is more 11 till 5.

PN529

And mostly the casual staff are regularly rostered on the weekends?---As with any roster the staff will have their regular shifts. So, yes, that tends to be weekends. One permanent part-time member works the Saturday shift and that's part of his normal routine.

*** STEVEN TODD

XXN MR SPRECKLEY

PN530

What hours does the permanent part-time member work on the Saturday?---Eleven till 5.

PN531

The whole shift. So the number of visitors that you get would fluctuate significantly, wouldn't it?---Yes.

PN532

Could you possibly encounter a large group of unexpected visitors, say up to 10 people?---You have to be careful what you mean by group, do you mean an organised group?

PN533

What I mean one that you're not expecting as distinct from where you've got a booking?---It's unusual, and that's because over the time, we've been there a long time, we have trained the people who organise those groups to organise them with us. So they tend to come in an organised group via a bus, so that they can obviously take wine, and we discourage that ad hoc turning up, because 10 people in our cellar door would fill the cellar door quite quickly, it's not a huge space. So we don't tend to get a lot of unannounced groups. What we will get is you might get three families of four turn up, so you effectively get 12 people, not together, but they just happen to turn up, you know, within 15 minutes of each other as a private - - -

PN534

Does it happen very often?---More in summer than winter and more sort of Thursday, Friday, weekend, than Monday, Tuesday, Wednesday, but it's difficult to put a number to it.

PN535

So there's a fair degree of unpredictability in the regular customer, whether there's a coach booking or a group booking or not?---(Indistinct) in the non-booking side. Booking obviously is more predictable because you can plan it.

PN536

So how many casual staff do you usually roster on a Saturday shift when you don't have a group booking?---We would have two people rostered on all the time at the weekend, that's it.

PN537

That's it?---Yes.

PN538

Whether you've got a coach booking or not?---So if we have a coach booking then normally we would have one person allocated to manage those groups and the other person deals with the walk-ins if you like. If there's a special booking and it's something that we deem we can manage the cellar door manager will often come in and do that booking himself and then take some time off in lieu, another time if need be, but it's fairly rare.

*** STEVEN TODD

XXN MR SPRECKLEY

PN539

Most times you find that the regular rosters are able to accommodate the coach bookings - - -?---Only because we manage the bookings. So, you know, if

somebody rings up because (indistinct) and say, "Okay, I want to bring a group of 10 on a Sunday", we'll take that (indistinct) down. If somebody else later rings and said, "I want to bring a group of 10 on Sunday" we'll say, "Well I'm already busy at 2, can you make it 11, can you make it 12", so you try and manage that - that roster, so that you've always got one person free and one person can try and manage the groups.

PN540

DEPUTY PRESIDENT KOVACIC: Mr Todd, it's Deputy President Kovacic here, just a couple of questions. How far in advance would you take bookings for groups?---It can be anything from weeks away if it was a special event, so often people who are trying to do something special like a birthday will book several weeks or months away. It could be you will take a booking this week for the weekend.

PN541

So do you have a cut-off date say for the weekend which might be something like Thursday or Wednesday or something earlier?---No, we will take the phone call and have a look at the time of the phone call.

PN542

All right. So basically up until about 5 o'clock on a Friday night you could take a booking for the following day?---Absolutely. Practically they don't - don't tend to do it on the day of the weekend because the staff at the weekend usually are too busy to be taking the phone calls, but it could be as you say up to 5 o'clock on Friday when we sort of knock off for the day we will put it in the diary.

PN543

In terms of - just if I take you to paragraph 7 of your witness statement you say you can't necessarily get consecutive bookings. Is that largely because it depends on what time the group wishes to visit the winery or can you say, "Look we can't do 2 o'clock but we can do 3 o'clock for this reason", and do you have any degree of control over it?---No, it's first in best dressed situation. So if somebody's already booked one at 2 o'clock and somebody rings up for 2 o'clock then you will try and negotiate either side, because that's convenient for them, so obviously around about that time, but that's the only control you've got.

PN544

I suppose what I am getting at is to what extent can you say, well try and make them consecutive in terms of the timing, just sort of say we can't do that particular time, but if you came at this time we can accommodate you?---The situation you just explained it's a request, but it's not really - I wouldn't put it that we can control it. We can try and manage it when we get the request at the time, but if - if somebody rang up and wanted a booking at 11 o'clock and we said yes, the next person rings up and wants one at 2 o'clock we don't try and persuade them to come at 12, we'll say, "Yes we can do 11, we can 2". It's only when they conflict that you try and manipulate the time either side.

*** STEVEN TODD

XXN MR SPRECKLEY

PN545

Thank you.

PN546

MR SPRECKLEY: I am just trying to work out how you manage the day. So do you find that you stagger the start times and finish times of staff so that you've got some overlap in the more busy periods?---Only the weekends. So our normal roster for the weekends would be 11 till 5 for the permanent part-time on Saturday, and then the other person would come in at midday or 1 o'clock, depending on the time of year because we try and restrict it, and on Sunday when it's just two casuals it will be 11 till 4 and 12 till 5 or 1 till 5. So we try and keep that middle of the day the maximum, so the first person in will set up cellar door, which means getting the wines out, cleaning the toilets, that sort of preparatory work, knowing that at 11 o'clock you don't tend to get many, and then at the end of the day you're finishing up tidying up, putting the glasses through the washer, that sort of stuff as well, just lock up.

PN547

Does that sort of system, that would be better than trying to locate someone who's available to work just a two hour engagement, wouldn't it?---It works the normal run of the mill. The problem it restricts what extra you can do. So my problem with that is that you then say, well, okay, I've only got that staff member available so if I've got an extra visit that visit can't accommodate it timewise we lose that visit, we lose that custom, they don't come - - -

PN548

You mean if an unexpected visit?---No, even somebody rings up and says, "I want to be there at 2 o'clock" or "I want a special 10 person trip", and we say, "Well, we haven't got the 2 o'clock because somebody else is there, can you move?" "No, I can't. Okay, I'll go somewhere else." So I have no flexibility to say, "Well I can, but I can get somebody else to come in and serve you."

PN549

But you do have the flexibility to ask a staff member to stay longer, don't you, because the four hours is just a minimum so if it was busy - - -?---And our staff have that flexibility. So if it's really busy at 4 o'clock they won't walk out. So the cellar door can be just naturally busy, they wouldn't walk out at 4 o'clock, but that's different to a group booking.

PN550

So you don't have sort of records or anything of declined bookings, do you?---No, we haven't. We wouldn't record a declined booking. You have a conversation at the time and when you accept the booking you write it in the diary so the staff know what's expected.

PN551

Would I be correct in presuming that's a fairly rare occasion where you'd have to do something like that?---I've got to be honest I don't take the bookings, so I find it difficult to comment on that one because I'm not the one that's often taking a phone call.

*** STEVEN TODD

XXN MR SPRECKLEY

PN552

Okay. So where did you get your information from the group bookings that are declined?---From my cellar door manager and talking to cellar door staff.

PN553

I just want to ask you a couple of questions about the training?---Yes.

PN554

So the documents that were provided to the union regarding your amount of training provided, about three training events over the past three years. Does that accord with your - - -?---Yes, I was using the training of our new safety systems as an example.

PN555

The new safety system - you wouldn't implement a new safety system very often, would you?---No, you don't do it very often, so it's a good example, but of course like any system like that we refresh it and have to have refreshment training. So it's not a case of one off and that's it, we would redo certain amounts of training every now and then.

PN556

The circumstances you set out in your statement where you say you've had some difficulties at times where you've had to call casual staff to come in and do short training sessions. They're very rare events, aren't they?---No, no - - -

PN557

It's not a huge problem?---No, I don't agree with that. I think it's a huge problem. The difficulty is it's a catch 22. So I want to have what I consider good management practices which is trying to get the staff in to have that communication, tell them what's going on in the business, it's the same as I'm talking about, the staff training, that was just one example of that. So every time I want to try and get my casual staff in I have the same problem that I might want to talk to them for two hours, because four hours is a huge long session, and the four hour requirement naturally makes it - you (indistinct) time to do that. So I probably don't talk to my casual staff as a group as often as I would like to, just because there is that financial pressure if you like to not have to do it. The safety example was one of those where there was a lot of training to do in one - one go, so it probably made it - while it was essential because we had to do it, but probably easier than I would do in other ones, but I would like to do more discussions, more training, get the staff more involved in a group than I do now.

PN558

And you don't have any significant additional costs, training costs, that you can identify that's caused by four hour engaged for casual employees?---I'm not sure what - - -

*** STEVEN TODD

XXN MR SPRECKLEY

PN559

Where you say that having a four hour engagement adds to your costs of training you don't have any figures of what that might be?---It's just a financial cost of

having to pay them for four hours work when it's a two hour training session for example. So it's - you know, \$25 an hour times by four people times by two hours, it's whatever (indistinct) came up to it - 80 per cent - - -

PN560

One event per year?---No, it's not one event per year, it's each event. I would like there to be more of them. What I'm saying is it might be one event per year now because we have that natural restriction to not want to do it.

PN561

Okay. The casual staff that we're talking about they are normally predominantly on the weekends, don't even work during the day - - -?---No, some of them work during the week as well.

PN562

- - - Monday to Friday. So they would actually already be there?---No, they're not - don't work for me at that time, so I have to call them in on extra shifts. So it's always difficult to try and get all the casual staff together at one time because of all the commitments they have.

PN563

So the trainings are actually not scheduled within regular people's working hours, they're outside, are they?---No. Some of the meetings they've had have been outside regular hours because that's the only time I can get them all together because of their other commitments, whether it be education or whatever they're doing. Training sessions I've tried to do within the normal Monday to Friday 9 to 5 because I've been doing all the staff training, so that's all the permanents as well. So it depends on what the training session is, whether it's just cellar door specific in this example, or whether it's all the staff which was the training, the safety was.

PN564

Okay. All right. And most cases currently your employees are engaged for shifts longer than four hours, aren't they?---Yes.

PN565

I don't have anything further. Thank you.

PN566

VICE PRESIDENT HATCHER: Ms Hills, do you have any re-examination?

PN567

MS HILLS: Just a couple of questions.

RE-EXAMINATION BY MS HILLS

[11.45 AM]

*** STEVEN TODD

RXN MS HILLS

PN568

In relation to that where you say that your staff are generally on for longer than the four hours, is it the case that there are opportunities to be able to call them in, if the engagement was less?---Yes. Occasionally we will bring staff in for events

or setting up for events and things like that. It's our routine roster, we try and make people to suit their lifestyle. So we have some staff that are Monday to Thursday, which are full-time, or they're down, depending on what we need at the time.

PN569

Okay. The other thing I was going to mention is that with the group booking that you mentioned, why is it that you cannot always control it? What's the group doing, I guess in terms of ringing you up and asking for a time, it's about fitting in with them?---Yes. Most people have got in their head a plan of what they want to do today, so they'll be visiting cellar door X, Y, then (indistinct), or they're going somewhere for lunch and then doing something else and planning the day out.

PN570

Yes?---And they start making the phone calls, and depending where you are on that list of phone calls is where they go, because other people, I assume, are the same as us. So I can't do that, but I can do this, and they'll swap around and the only one that doesn't get moved is lunch. That's always the first phone call, so that's the fixed time. And so you're trying to, you know, to organise around them. I mean, it just depends where you are on that list of how flexible they can be. So you could be lucky and you say, "Well, I can't do that, but I can do 22". Ok great, we'll see you first. If you can't it's a case of no.

PN571

And if it was the case that you could engage someone for two hours, would that mean that you might be able to take two bookings- - -?---Yes.

PN572

- - -at the same time?---Yes.

PN573

Thank you. That's all. Thank you.

PN574

VICE PRESIDENT HATCHER: All right, thank you for your evidence, Mr Todd, you're now excused and you're free to leave?---Thank you.

<THE WITNESS WITHDREW

[11.47 AM]

PN575

VICE PRESIDENT HATCHER: So Ms Hills, the next witness is Mr Peacock on the telephone, is that right?

PN576

MS HILLS: That's correct, your Honour.

PN577

VICE PRESIDENT HATCHER: Right.

<FRED PEACOCK, AFFIRMED

[11.49 AM]

*** STEVEN TODD

RXN MS HILLS

EXAMINATION-IN-CHIEF BY MS HILLS

[11.49 AM]

PN578

MS HILLS: Mr Peacock, you have made a written statement for the purposes of these proceedings today?---I have.

PN579

Do you have a copy of that statement with you?---Yes, I do.

PN580

And it contains 22 paragraphs and was sworn on 19 October 2015?---That's correct.

PN581

Okay. Thank you. Is the statement, have you got any corrections to your statement?---I can only make one minor correction and that is in paragraph 6. I stated I employ four permanent employees. That figure is now five.

PN582

Okay. Thank you. Otherwise your statement is true and correct?---I believe so.

PN583

Okay. I would seek to tender Mr Peacock's affidavit, thank you.

PN584

VICE PRESIDENT HATCHER: The affidavit of Fred Peacock sworn on 19 October 2015 will be marked Exhibit 181.

EXHIBIT #181 AFFIDAVIT OF FRED PEACOCK DATED 19 OCTOBER 2015

PN585

VICE PRESIDENT HATCHER: Mr Spreckley?

CROSS-EXAMINATION BY MR SPRECKLEY

[11.50 AM]

PN586

MS SPRECKLEY: Mr Peacock, your evidence is specifically related to Tasmania, so you don't suggest that your evidence has any relevance outside of the State of Tasmania, do you?---It would be difficult for me to say how much relevance it would have outside the State of Tasmania. But I believe that in essence, hand picking and hand pruning is much the - a similar operation right across the country.

PN587

Can I just clarify with you, in paragraph 5, the small labour hire agency you referred to, is that Fred Peacock Viticulture and Consulting?---Yes, it is.

*** FRED PEACOCK

XXN MR SPRECKLEY

PN588

Okay. So in your statement you provide information about the casual workforce. So is all of that evidence in relation to the labour hire agency?---It is, but we also pick Bream Creek Vineyard and Bream Creek Vineyard pays for that.

PN589

Right. But I just want to clarify that all of the employees that we're talking about are employees of Fred Peacock Viticulture and Consulting?---No, there are some employees that would be employees only of Bream Creek Vineyard.

PN590

Okay. All right, we might have to deal with that as we go then. So during the peak period between February and September, so is it the labour hire company that then employs up to 18 casual employees?---That is correct.

PN591

So does the Bream Creek Vineyard employee numbers pretty much stay the same?---They increase for the harvesting period. Otherwise, the permanent employees stay much the same.

PN592

So how many casual employees does your labour hire - does the labour hire agency employ during the off peak season?---During the off peak, around - well, it varies a little bit, depending on work in the vineyards, but usually somewhere between four and about six.

PN593

Can I just clarify, you don't have any part-time employees at all?---No, we don't. Not formal part-time employees on set part-time hours, no.

PN594

No, no permanent part-time employees?---No.

PN595

So your predominant concern with the four minimum engagement is the potential for unpredictable certain inclement weather events. Is that right?---That is one of my concerns. There are others as well.

PN596

Is that the main concern?---That would be one of the main concerns. I'm happy to expand on those others.

PN597

We'll get to those. The incidence of inclement weather wouldn't have altered much over your 40 years' experience in the Tasmanian wine industry, would it?---No, I wouldn't think it has, no.

PN598

Nor say since the - in the last, say since 2010?---Weather is cyclical in nature, but in essence, there is probably not a major difference.

*** FRED PEACOCK

XXN MR SPRECKLEY

PN599

The potential for unpredictable weather events hasn't altered much over those two periods I've asked you about?---There is a general sense amongst most people reliant on weather that weather events with global warning are becoming a little less predictable and a little more extreme in both, on the up side, in other words high wind, high temperature, and on the low side, with very dry conditions or very wet conditions or very cold temperatures.

PN600

So you don't believe that Bureau of Meteorology's increased its capacity to predict inclement weather events?---I've got to be honest, I'd have to say that I don't think that they've increased their ability to do this markedly, no. And given that Tasmania's also - we're an island surrounded by water, we have sometimes very little forewarning of weather as opposed to a situation where there is a large continent to the west from which observations can be more readily be taken.

PN601

Right. So are you aware that you have, as an employer, the right to stand employees down with pay for, in certain circumstances, unexpected inclement weather events?---Yes. My understanding is a minimum engagement of four hours for which they can expect to be paid. I assume that's the situation to which you refer.

PN602

No, if I could clarify, I was trying to get an understanding of whether you're aware that under the Fair Work Act 2009 there are actually a stand-down provisions included which accommodate for unexpected circumstances for which the employer could not be held responsible. So you weren't aware of that option?---I'm not aware of that option, no.

PN603

So if, for example, you took all reasonable steps to predict what the weather might be from examining forecasts in your experience in the industry and assigned again or a team of employees to work on a block, and then halfway through say a four-hour expected time period to complete the task there was a completely unpredictable, unexpected weather event you couldn't be held responsible for anticipating that event, you will be entitled to send those employees home without pay under section 524 of the Fair Work Act? So under those circumstances, if that were the case, then your concerns about the minimum engagement might, in relation to inclement weather, would then disappear, wouldn't they?---That would greatly assist in terms of the inclement weather, yes, certainly.

*** FRED PEACOCK

XXN MR SPRECKLEY

PN604

Could I also just - I want to talk to you about the breakdown of machinery. At paragraph 15 of your statement you do also mention there's unforeseen machinery breakdowns that are not common but could also cause a problem in the sense of a four-hour engagement. So if I were to advise you that the Act also gave you the right of an employer to stand employees down for unforeseen breakdown of machinery, that would also dispense with the concern under those less common

circumstances, wouldn't it?---If that covers machinery both on my operation and at the winery or transport, that would certainly alleviate some of my concerns, yes.

PN605

Thank you. Can I just ask you so it's clear, in paragraph 14 of your statement you provide some information about small holdings and the four-hour minimum, as you describe, doesn't reasonably allow more than one employer to use the team per day. From my understanding of what your statement is saying is that you might have a team of employees working on one block and they're able to complete that block in less than four hours, but then they could not be able to immediately move into another employer's block. If I understand correctly what you're saying there, what reason do you say a team can't finish working on one block in less than four hours and then move to straight onto working onto another block?---The intent of my comment in paragraph 14 was that where a team finishes a block even after the four hours, say in five hours, for example, and another employer has asked us if we can send a team there, or if we can send them our team, that employer would probably have difficulty in completing their task in that time. Mostly we were asked to send additional help when it became obvious that another employer couldn't finish their block, which would mean that they wouldn't probably have four hours of daylight left.

PN606

That's not a concern with the four-hour engagement, is it? What's the relevance to the minimum four-hour engagement to your concerns you set out in paragraph 14?---Well if we were to, for example, send a team at 3 pm in the afternoon or thereabouts, it would mean that there would not be four hours' work left on the block to which they were heading before either it was dark or the block was finished.

PN607

Do you think that for each block there needs to be a four-hour minimum engagement of work provided?---My understanding is that there is a four-hour minimum payment, given that there is no weather or machinery breakdown, but that there is an expectation that a four-hour minimum payment will be made once casual labour is employed.

PN608

Okay, so just to get an understanding of this, are we talking about employees of your labour hire company?---No, we're not - well, I beg your pardon, they would initially be employees of my labour hire company, which I would be harvesting a block, but they would be then going to a block where the owner of the block themselves would be hiring them separately.

PN609

So in those circumstances you're not actually the employer?---I would not be the employer in that second vineyard, no.

*** FRED PEACOCK

XXN MR SPRECKLEY

PN610

Okay, that explains it. But you could have a capacity, couldn't you, with your labour hire company, you could engage, particularly in the peak season, you could employ say a team of casual employees for a whole day and they could then travel as directed across one or more blocks, couldn't they?---They could, yes.

PN611

In the circumstances that you've indicated that there might be some benefits of engaging people on a two-hour engagement to do some of those additional tasks, so irrespective of the weather concerns, would you agree that in many cases it would not be viable for an employee to only work for two hours - only be provided with two hours' work?---I can completely understand that that may be the case with some employees, particularly if they had a distance to travel, but the comment was more made in relation to local employees in areas where we work, where most of them are maybe only five minutes or a maximum of 10 minutes by car from a block; and in fact we have employees at our disposal that we sometimes don't hire because we don't have that minimum four hours available.

PN612

They're not the sort of circumstances that you keep records about that you're able to provide at all, are they?---Harvest time is a fairly busy time and written records really are the timesheets, but we don't keep written records of conversations.

PN613

No, so it would be more likely to be the case though that in your experience that casual employees are provided with shifts of longer than four hours, and anybody who might wish a shorter shift is the exception rather than the rule, would that be right?---That would be the broad circumstance, but I mean I can outline incidents where in this last season, since I made the affidavit, where we were desirous of getting employees during mid-afternoon when we had more fruit than we expected, but we also had to consider that they might only be there for two to three hours to help us finish and we would fall foul of the four-hour minimum.

PN614

So you mean you might have some unexpected work that you want to actually call somebody in on the day for, rather than predict, is that right?---Absolutely. Unfortunately with harvesting it's often very difficult to calculate the expected finish time. It's not until one starts to pick into the crop that the rate of progress becomes apparent, and that can be affected by, for example, the number of leaves on the vines, the volume of the fruit, how the canopy or the vines have been trained, in other words how easy it is to get to the fruit to pick. It can also be governed by the length of the rows and the time it might take to empty buckets, and also if there is a requirement to, for example, remove any diseased fruit, and that can slow the picking up considerably, as can weather conditions if it is particularly hot, particularly windy, or indeed particularly cold and showery even.

*** FRED PEACOCK

XXN MR SPRECKLEY

PN615

So a number of those variables would be able to be predictable though, wouldn't they?---Not very many of them. Despite our best efforts in estimating crops, which we need to do for winery capacity, I'm afraid even after my experience it

never ceases to amaze me sometimes how far we are out, but I also have to say that there are times when I'm very happy to report that we get fairly close. But in those instances we're not looking for extra labour because the maths works out fine. It's the circumstances where we find that 3 o'clock in the afternoon, for example, when we start to assess the situation, we realise that we have got very little chance of completing that crop with the current crew before knock off or before dark or whatever other circumstance, for example, the truck needing to leave the site.

PN616

In those sort of circumstances you wouldn't have the capacity to just pick up the phone and get extra staff at short notice, would you?---Yes, we do. Most rural areas, there are a number of people that we know that have worked for us in the past that either work small hobby farms or are semi-retired, and quite a few of them are quite happy, in fact they rather enjoy coming and picking and meeting the new pickers of the season, and this year in fact we did that on a couple of occasions. We called in at Bream Creek - we were picking on the Bream Creek Vineyard site and we called in a casual at 1.30 from Hobart, who was very happy to come down and had worked with us regularly in the past. I thought that would be sufficient to get us through; by 3 o'clock it became pretty obvious that we weren't going to make it and I agonised over whether I should ring two or three of the locals who live within five minutes' drive and have also worked for us in years gone by to get them to come in; but in looking at whether we'd actually make the minimum four hours, and it would appear that we're only going to be able to pick for another two-and-a-half to three hours because of daylight, that I decided it was preferable to take a chance and if necessary leave the final rows of fruit.

PN617

VICE PRESIDENT HATCHER: So in that scenario, with what consequence? That is, when were they done?---I beg your pardon, your Honour?

PN618

You said you'd decided not to call them in and leave the final rows of fruit, so what's the consequence of that? That is, when was that work done?---The final rows of fruit weren't picked.

PN619

At all?---No, because when we pick the fruit for the winery we normally have to have a minimum batch size, which means if that fruit couldn't be added to the batch we were picking, then it would fall below the minimum batch size that the winery would accept.

PN620

Right, thank you.

PN621

MR SPRECKLEY: I don't have anything further. Thank you, Mr Peacock. Your Honour.

*** FRED PEACOCK

XXN MR SPRECKLEY

PN622

VICE PRESIDENT HATCHER: Any re-examination, Ms Hills?

RE-EXAMINATION BY MS HILLS

[12.09 PM]

PN623

MS HILLS: Just a couple of questions. Just briefly, in relation to weather events, is it the case that when it's in harvest and you need to pick that you might know the weather's going to change but you're not sure exactly at what point, is it better to pick some than not?---Yes, we have to take advantage of every available envelope during harvest time, and unfortunately at harvest time our decision to start at 8 am in the morning normally has to be made between 6 am and 6.30 am when Tasmania with daylight saving - and given that we pick later in the season - is often still dark, so it is very difficult for us to get that information to the best of our ability, and we have been caught out many a time. But we do need to take every opportunity to pick, because you don't often get that many opportunities down here in adverse seasons.

PN624

And the other question, in terms of the rain, and a rain event I guess or inclement weather, is there any conditions where it's not ideal to pick the fruit?---We can have situations where if we're working on a slope, and most of you who are familiar with Tasmania will know it's pretty slopey, we can have situations where there are safety concerns, both regarding the machinery and its ability to operate on slope, and also for pickers working on slopes, where it can become slippery, and we also find that when people's hands are wet and cold they are more likely to make mistakes and get nicks in their hands from picking secateurs.

PN625

Okay, thank you, Mr Peacock. That's all from me, thank you.

PN626

VICE PRESIDENT HATCHER: Thank you for your evidence, Mr Peacock. You're now excused, which means you can simply hang up the phone?---Thank you very much, your Honour.

PN627

Thank you.

<THE WITNESS WITHDREW

[12.11 PM]

PN628

VICE PRESIDENT HATCHER: Right, Mr Crawford, are you next?

PN629

MR CRAWFORD: Yes. Can we do Mr Algate on the phone perhaps first?

*** FRED PEACOCK

RXN MS HILLS

PN630

VICE PRESIDENT HATCHER: Yes, all right. Mr Algate, it's Vice President Hatcher from the Fair Work Commission. We're ready to receive your evidence. Do you have your statement with you?

PN631

THE WITNESS: Yes, I do.

PN632

VICE PRESIDENT HATCHER: All right. We're going to administer the affirmation to you and then you'll be asked some questions.

<ADAM ALGATE, AFFIRMED [12.12 PM]

EXAMINATION-IN-CHIEF BY MR CRAWFORD [12.13 PM]

PN633

VICE PRESIDENT HATCHER: Mr Crawford.

PN634

MR CRAWFORD: Mr Algate, you've prepared a statement in relation to the Wine Award for these proceedings, is that right?---Yes, that's correct.

PN635

Is that a statement with 13 paragraphs that you signed on 18 February 2016?---Yes.

PN636

To the best of your knowledge is the content of that statement true and accurate?---Yes, it is.

PN637

Thank you.

PN638

VICE PRESIDENT HATCHER: The statement of Adam Algate dated 18 February 2016 will be marked exhibit 182.

**EXHIBIT #182 WITNESS STATEMENT OF ADAM ALGATE
DATED 18/02/2016**

PN639

VICE PRESIDENT HATCHER: Ms Hills?

CROSS-EXAMINATION BY MS HILLS [12.14 PM]

PN640

*** ADAM ALGATE

XN MR CRAWFORD

*** ADAM ALGATE

XXN MS HILLS

MS HILLS: Thank you, your Honour. Mr Algate, it's Sarah Hills here from the South Australian Wine Industry Association, the employer association in relation to this claim.

PN641

VICE PRESIDENT HATCHER: Mr Algate, can you hear that clearly?---Yes, I can.

PN642

Thank you.

PN643

MS HILLS: Thank you. How long have you been working for the AWU as an organiser?---I've been working for the AWU as an organiser for four-and-a-half years.

PN644

How long have you had responsibility for assisting your AWU members at the wineries listed in paragraph 2 of your statement?---Four-and-a-half years. However I have worked for Treasury Wine Estates for seven years prior to becoming an organiser with the AWU, so I have nine years' experience in the wine industry prior to becoming an organiser.

PN645

Thank you. At any of those listed in that paragraph 2 - sites?---Meaning being employed at any of those sites?

PN646

Yes?---Yes, Karadoc Winery and Buronga Hill Winery.

PN647

VICE PRESIDENT HATCHER: Sorry, what was the second one?---Buronga Hill.

PN648

Right. Thank you.

PN649

MS HILLS: And I'm assuming Buronga Hills referenced in paragraph 2 is the same - is the company - sorry - the site covered by the EA that you state in paragraph 8, Australian Vintage Limited?---Correct. Yes, correct.

PN650

So you've worked for Treasury and also Australian Vintage?---Yes.

*** ADAM ALGATE

XXN MS HILLS

PN651

Thank you. So as an organiser, how do you assist your members; as in what sort of issues?---Okay. That's a very broad question. Obviously we assist in all sorts of issues; whether it be industrial relations, whether it be adhering to the

conditions of agreements or, you know, down to helping with social issues in the workplace. So it's a, yes, pretty difficult question to answer.

PN652

Okay. Thank you. Are you able give us a sense of the size of some of these wineries that you look - that you have responsibility for, in terms of - yes, employees or - - - ?---Yes. So Wingara is quite a small winery, the one on the top of the list.

PN653

Small in terms of - - - ?---In terms of volume and employees.

PN654

Right?---I would only be guessing. I wouldn't be able give a very accurate number of people employed there.

PN655

Yes?---Whereas Zilzie is quite a sizeable winery.

PN656

Yes. They would employ - I'm only guessing, but approximately - I would say about 70 or 80 people. And then Treasury obviously is in one - meaning the Karadoc winery itself, would employ approximately 40 or 50 people, I would say, at the moment; although Treasury, being a much larger business across the country, employs a considerable amount of people.

PN657

Yes?---Would you like me to keep going on? I'm only sort of guessing here.

PN658

Yes, please. I appreciate that's your opinion, but it would just be useful to get a sense of - - - ?---Yes. Look, I would say across - if I put them all together, of the ones that I particularly organise, I would say approximately 2000, 1500 to 2000 people.

PN659

Across all those listed in paragraph 2?---Across all of them, yes, approximately.

PN660

And within each of those wineries that you've listed there, what is - that your members are - what sort of classification or streams of businesses are involved? Are you familiar with the terms "classification and streams"?---Yes. Obviously the wine stream, packaging, so wine meaning - sorry, the cellar stream - - -

PN661

Cellar production?---The packaging stream - yes, cellar production - packaging stream, maintenance stream, lab stream.

PN662

Yes?---I believe that's all.

*** ADAM ALGATE

XXN MS HILLS

PN663

(Indistinct) that's a combination for all of those listed in paragraph 2?---Yes, I think so.

PN664

I will just take you to paragraph 4 of your statement where you say you're not aware of any employees at a winery being sent home after they start work due to rainfall. Are you able to tell me why these employees wouldn't be sent home due to rainfall?---It doesn't seem to stop any work or production in the wineries, therefore there's always plenty to do that they continue to do their duties.

PN665

Is that because they're inside?---No, not all employees. Some of them would be, but probably in the cellar stream, the wine production stream, the majority of it is outside work.

PN666

And what kind of jobs are done in the cellar production, both in and outside; like, the variety of jobs that there are to do?---There's wine - - -

PN667

- - - that your members are involved in?---Yes, sure. There's wine transfers; wine additions; centrifuging; loading and unloading tankers full of wine; all sorts of different activities of pumping wine around the cellar itself; a lot of work up and down catwalks, walking across the top of tanks about 15 metres above on those catwalks in the weather. It's a pretty broad job.

PN668

But if there was an inclement weather event or rain, would someone who was working outside find something else to do within their area?---If the weather was extreme. A lot of the time they're working in the rain and, you know, inclement weather. However, if it was extreme, yes, generally they would - for the period that it was, there would be other forms of work that they could do.

PN669

And is it fair to say that they're big enough to, I guess, find alternative work for large numbers of people?---Some - well, there is plenty of alternative work for them to do, whether it be one of the larger wineries or one of the smaller wineries, there always seems to be no issue with finding that work. In speaking to many employees across many different wine businesses, it seems that this isn't an issue.

PN670

So are you talking about the wineries you've listed in paragraph 2, or broader than that?---I would have to say the ones listed in paragraph 2.

PN671

Okay. Thank you. So in paragraph 6 you talk about you've negotiated enterprise agreements at a number of the sites listed above in recent years. Do you mean all of them?---No.

*** ADAM ALGATE

XXN MS HILLS

PN672

Okay. So which sites can you specifically - or which of those wineries can you specifically tell me you've assisted with the bargaining process?---So Wingara Wines don't currently have an enterprise agreement and Zilzie Wines don't have an enterprise agreement. However, all of the others do.

PN673

So are they - you've been involved with - - - ?---I've been involved with them.

PN674

- - - with bargaining for all those others there, other than Wingara and - - - ?---And Treasury Wines.

PN675

Beg your pardon?---Yes.

PN676

Okay. So Qualia Wines, Australian Vintage, Buronga Hill site, Accolade Wines, Stanley Winery?---Yes.

PN677

Okay. And are you saying that the two at the top, Wingara Wines and Zilzie Wines, in paragraph 2 don't have enterprise agreements?---That's correct.

PN678

Right. And how many agreements would that - in the last four and a half years that you've been at AWU, you would have done each of those sites once or twice?---I believe all of them twice, yes.

PN679

VICE PRESIDENT HATCHER: Mr Aldgate, in relation - - - ?---Some are currently in the process of bargaining; two in particular, Merbein Packaging and Buronga Hill AVL sites are currently in negotiation.

PN680

Mr Aldgate, in relation to paragraph 9, the Qualia agreement, it says that it allows an employee to agree to a lesser period than four hours. Do you know if that has ever happened? That is, are there any employees have agreed to work less than four hours?---No, I'm not aware of it ever happening.

PN681

Thank you.

PN682

MS HILLS: I guess taking up from that, do you know why it would have been included in the enterprise agreement, in relation to the Qualia EA?---No. It wasn't something that we have ever discussed in negotiation, so it must have been in there prior to me negotiating the agreement.

*** ADAM ALGATE

XXN MS HILLS

PN683

So it wasn't something that was part of the bargaining specifically you were involved in?---That's correct.

PN684

And it wasn't removed at the last EA negotiations?---No, it wasn't discussed at all.

PN685

Okay. In paragraph 12 you say you've noticed the wine industry becoming increasingly casualised in recent years and you are concerned that allowing casuals to be engaged for less than four hours on a shift would further accelerate the decline of permanent employment by making casual employment too attractive. Attractive to an employer, I assume?---Yes.

PN686

Are you able to tell me whether there are opportunities for casual employees to become permanent or part-time or full-time employees?---I think the award has a 12 month conversion. However, a lot of these businesses use casual employees and understand the conversion and know how to avoid that obligation under the award.

PN687

Okay. So that's a matter for that specific instance, but you're aware that in the award, that there is ability for a casual to be converted, with the requirements of seven minimum - or regularity and et cetera?---Yes, I am aware of that provision of the award.

PN688

So have you ever assisted a member in implementing that clause?---No.

PN689

Okay. And your observation at 12 is just based on your experience within the wineries set out in paragraph 2?---Sorry, could you just repeat that, please.

PN690

Sorry. In paragraph 2 you say that you've noticed the wine industry becoming increasingly casualised?---Yes.

PN691

Are you making that reference in relation to the two and a half thousand employees that you specified probably across those wineries listed in paragraph 2?---Yes.

PN692

You would say the majority of them are casuals?---I would say the majority of the staff being utilised in all of those wineries over the course of the year are casual, yes.

*** ADAM ALGATE

XXN MS HILLS

PN693

Paragraph 13, I will take you to now. You would have said a few years back that you estimated around 90 per cent of the workers at the wineries that you look after

were permanently employed. I guess this leads on from your last answer, you would say now it's fifty-fifty, not the majority?---Well, obviously these are estimations.

PN694

Your estimations?---Correct.

PN695

Do you keep numbers of those sorts of - that sort of information?---This is based on the experience of the decline that I've seen over the course of my employment on how many full-time employees were in the industry and how much of a decline it has actually had since.

PN696

And would that be the case all year round in the wine industry, that there would be this fifty-fifty type scenario?---All year round, no, probably not.

PN697

Okay. So when would paragraph 13 apply? At what time of the year or - are you able to summarise that?---Obviously at different times of the year there are all different numbers of people, but a lot of the work ongoing all year round is now being utilised - being done by casual workforce and not the traditional permanent workforce that it used to be done by.

PN698

And what would you put that down to? Has there been a contraction of employees overall in the industry, or - - -?---I would actually say yes, there has been a contraction of employees. However, there has also been an increase of casual employees doing the work.

PN699

And that would be for less than 12 months. You would say that most of those casuals - there would be an increase in casuals, but they would be mostly employed for less than 12 months?---Yes, but not in all circumstances. There are an increasing number of casuals that are being utilised all year round to fill the void that is needed for all year round work.

PN700

And so in those cases would - if they had been offered casual conversion, is it possible that they may have decided to remain casual?---I'm assuming - yes, of course it is entirely possible.

PN701

Okay. Thank you. That's all I have.

PN702

VICE PRESIDENT HATCHER: Right. Any re-examination, Mr Crawford?

PN703

MR CRAWFORD: No, thank you, your Honour.

*** ADAM ALGATE

XXN MS HILLS

PN704

VICE PRESIDENT HATCHER: Thank you for your evidence, Mr Aldgate. You're now excused, which means you can simply hang up the phone.

<THE WITNESS WITHDREW

[12.31 PM]

PN705

MR CRAWFORD: Your Honour, I will just confirm that there was a statement of Mahmut Melkic that has been withdrawn that was previously filed.

PN706

VICE PRESIDENT HATCHER: Yes.

PN707

MR CRAWFORD: And now I would ask to call Mr Cowdrey.

PN708

VICE PRESIDENT HATCHER: Mr Cowdrey is where? Outside.

PN709

THE ASSOCIATE: Please state your full name and address.

PN710

MR COWDREY: Ron Cowdrey, (address supplied).

<RON COWDREY, SWORN

[12.33 PM]

EXAMINATION-IN-CHIEF BY MR CRAWFORD

[12.34 PM]

PN711

MR CRAWFORD: Mr Cowdrey, have you prepared a statement in relation to the Wine Award for these proceedings?---I have.

PN712

Have you got a copy there with you?---I have.

PN713

Are there 10 paragraphs on the statement?---Yes.

PN714

And did you sign it on 18 February this year?---I did.

PN715

And to the best of your knowledge is the content true and accurate?---To the best of my knowledge, it is.

PN716

Can I tender that, your Honour.

*** RON COWDREY

XN MR CRAWFORD

PN717

VICE PRESIDENT HATCHER: Yes. The statement of Ron Cowdrey dated 18 February 2016 will be marked exhibit 183.

**EXHIBIT #183 STATEMENT OF RON COWDREY DATED
18/02/2016**

CROSS-EXAMINATION BY MS HILLS

[12.34 PM]

PN718

MS HILLS: Mr Cowdrey, it's Sarah Hills from the South Australian Wine Industry Association, the employer - - -

PN719

VICE PRESIDENT HATCHER: Just pause. Ms Hills is on the second screen to the left?---Yes, got you.

PN720

Sorry, Ms Hills.

PN721

MS HILLS: Thank you.

PN722

Yes, I act for the South Australian Wine Industry Association, the applicant in the reduction of the minimum engagement. I just have a few questions in relation to your statement, Mr Cowdrey. How long have you been working at the AWU for?---Just over three years.

PN723

In terms of your role specified there in paragraph 2, you say that you're responsible for recruiting and servicing AWU members. What does servicing your members mean?---Helping them out - - -

PN724

Specifically?---Specifically; helping them out in disciplinary matters, safety matters, and their industrial rights.

PN725

Yes. Thank you. And during your time at AWU you have had responsible for servicing those AWU members at the wineries listed in paragraph 2?---In paragraph 3.

PN726

Sorry, paragraph 3?---Yes.

*** RON COWDREY

XXN MS HILLS

PN727

Are you able to give us some sense of the size of these wineries, perhaps by reference to employees?---Yes. Casella's is probably the biggest winery in our area, but their employees sort of fluctuate through vintage and after vintage, like the whole four wineries there. Casella's is probably 250; De Bortoli's would be

around between 50 and 100; same with McWilliams and Warburn Estate, yes, around there.

PN728

Thank you?---I wouldn't be able to tell you exactly.

PN729

Yes. No, that's okay. Thank you. In terms of the four that you've specified there, predominantly what kind of activities do they have on site? What sort of operations within the winery?---Cellar operations, bottling operations and packaging, warehouse, inventory, the whole lot.

PN730

So cellar door sales?---As in coming in to buy a bottle of - - -

PN731

A cellar door?---Yes.

PN732

Yes. Which ones specifically? All of them?---Yes, the four of them do.

PN733

At that site that you look after?---Casella's, De Bortoli's McWilliams, and Warburn Estate, yes.

PN734

And have you been involved in the enterprise bargaining - do any of these companies have EAs?---Three of the four do.

PN735

Okay. That being the top three?---No. The first two, Casella's, De Bortoli's and Warburn Estate. However, theirs is sort of - it's a bit of an old one. It hasn't been redone yet, so yes. McWilliams are on the award.

PN736

Are you involved in the enterprise bargaining for those sites?---Yes, I am.

PN737

And those enterprise bargain agreements cover - at Castella's, what does that cover?---The whole lot; inventory, warehouse, bottling, cellar, maintenance, the whole lot.

PN738

Cellar door sales?---I couldn't tell you exactly, no. I don't think so.

PN739

Right?---To the best of my knowledge.

PN740

Okay. Good. Vineyards?---Vineyards, no.

*** RON COWDREY

XXN MS HILLS

PN741

De Bortoli, again, the same sort of thing?---Same setup, yes.

PN742

Cellar door sales in that case?---Yes.

PN743

Okay. Vineyards in the EAs?---Not in the EAs, no.

PN744

Right. But cellar door in the EAs?---I'm assuming so. I wouldn't be able to tell you exactly. I do - it's mainly the cellar operations, as I said before.

PN745

Yes, okay. And Warburn Estate?---The same.

PN746

Again, the same?---Yes.

PN747

So not likely to include cellar door or vineyards to the best of your knowledge?---Possibly not, no. I don't - yes. However, what I will say is I've got members in the vineyards itself that - - -

PN748

Okay?---All right.

PN749

Yes. No. Thank you. Have you got any examples - I guess looking at paragraph 5 under the heading Weather Factors - are you aware of any sort of activities that you expect to find maybe your members or employees where weather events may have the potential to impact on the work being performed by that employee or member?---No. What I would say is that further on down in my statement where I say that the farmers and wineries are watching the weather closely. With technology these days every farmer worth his salt sort of knows what weather is coming probably two days prior, so he's able to program his work; so he knows whether he has got to harvest two days before the rain hits, which in turn will affect the winery with the grapes coming in for vintage. So, you know, they know when it's coming, any weather event, so they can pre-plan what they're going to do two days in advance.

PN750

So your view would be that if the weather - the baumade in the grapes, for example, you will know two days out from picking or harvesting?---Well, what I will say is I'm not an expert on that, so I wouldn't be able to answer that.

PN751

Okay. So in terms of the grapes, are these farmers - I assume you're talking about farmers with vineyards?---Yes.

*** RON COWDREY

XXN MS HILLS

PN752

They would use mechanical harvesting or - - - ?---Yes.

PN753

- - - labour?---Look, a lot of the area around where I service is all mechanical, yes.

PN754

Right. So someone driving in a cab?---Yes.

PN755

Possibly in the rain?---Yes, in the rain or in the heat - - -

PN756

If it is raining that day?---Yes, in the heat.

PN757

So it would be the case that perhaps those grapes could be - well, they're planning two days out, they're rostering, and the day comes, and they will proceed to harvest those grapes by the harvester?---I assume so.

PN758

Yes. Okay. So in your opinion you would say weather forecasts are 100 per cent accurate?---No, I wouldn't say that.

PN759

Okay?---But what I will say is when you're out in a rural area, weather forecasting is really important, especially in those type of industries. So no, they're not - - -

PN760

And there are variable?---No, they're not 100 per cent, but every cocky goes off - sorry, every farmer - - -

PN761

Okay. And there would be variables on the day that may be unpredictable?---Of course. Of course. They might forecast 20 mil and you only get 10.

PN762

Yes. Or the converse, yes. Okay. Thank you. So going back to that issue, if they're using harvesters, probably if - it's possible if it's fine to pick the grapes and there's not a threat to their quality, that type of weather is not going to need to send an employee home because they can still operate the harvester?---No. Well, they're in a cab, you know. The only time that harvester would stop, if they got, like, a downpour that - you know, that they wouldn't be able to drive through, you know.

PN763

Yes, sure - - - ?---Again - once again, the farmer - yes. Once again, the farmer would be checking that out before he would even have a crack at it, you know.

*** RON COWDREY

XXN MS HILLS

PN764

Okay. In paragraph 8 you discuss the situation of employment during harvest?---Yes.

PN765

Which in Griffith is normally around January to March. What happens in other times of the year in terms of the employment of casuals?---Yes, it's mainly a permanent workforce. They do have casuals sprinkled in between the labs and obviously leftovers from the cellar. I know Casella's like to keep the good working casuals as long as they can and then try and turn them into full-time employment. De Bortoli's, they're a bit different, they just sort of use the casuals for vintage and that's about it. The other two use labour hire companies from in Griffith itself, so it's just a backpaker workforce, you could say, around vintage.

PN766

During the harvest?---Yes.

PN767

Okay. Thank you. You would be familiar with the categories or types of employment an employer can seek to engage an employee as under the Wine Industry Award?---To the best my knowledge it's permanent, full-time, part-time and casual, I think.

PN768

So they're all categories of employment that are open to an employer to employ someone?---Yes.

PN769

Depending on their operational needs?---Yes.

PN770

You mentioned there before that a lot are either permanent with a sprinkling of casuals, or - and those that are good casuals perhaps are kept on. So you're familiar with the ability for a casual to become a permanent under the Wine Industry Award?---I'm not sure if it's in the award. I know it's in some agreements, where there's, like, a six-month period where they can apply for full-time work. That's based on whether the company wants them. I'm not quite sure of the award. I couldn't tell you.

PN771

Okay. Thank you. In relation to paragraph 9, you talk about casuals predominantly working 12-hour shifts?---Yes.

PN772

So the four hour minimum doesn't arise. Would you say that if it was a two hour minimum, that 12 hour - the fact that casuals predominantly work 12 hours would change?---What do you mean?---So you say casuals predominantly work 12-hour shifts?---Yes.

*** RON COWDREY

XXN MS HILLS

PN773

And so the four hour minimum - - - ?---Isn't an issue.

PN774

Sorry, I'm saying if - - - ?---So what you're saying is a two-hour shift wouldn't be an issue.

PN775

Wouldn't change that?---That's just changing words around, but yes. I mean, I can't disagree with you, but all you're doing is just changing the words around there, so.

PN776

What I'm trying to say is that - sorry?---You're right.

PN777

You go?---No, you're right. Go.

PN778

Yes. So most casuals, in your experience, get 12 hours. So the two-hour minimum engagement wouldn't actually change that, that just then doesn't prevent an employer from rostering more than two or four hours. But I'm just asking if you - - - ?---Out of that - the way that sentence is written, yes, you're right.

PN779

Okay. Thank you, that's all that I have.

PN780

VICE PRESIDENT HATCHER: Got any re-examination, Mr Crawford?

PN781

MR CRAWFORD: No, your Honour.

PN782

VICE PRESIDENT HATCHER: All right. Thank you for your evidence, Mr Cowdrey. You're excused, you're free to go?---No worries.

<THE WITNESS WITHDREW

[12.46 PM]

PN783

VICE PRESIDENT HATCHER: So the next witness is Mr Edwards. Mr Easton, is it worth starting him before lunch, or should we adjourn?

PN784

MR EASTON: Mr Edwards is available by phone and we've pencilled him in for 2 o'clock. Mr Dollisson is here, and so if you're of a mind to press on, then we could start with Mr Dollisson, or we can start with - - -

PN785

VICE PRESIDENT HATCHER: Are you ready to deal with Mr Dollisson, Mr Crawford?

*** RON COWDREY

XXN MS HILLS

PN786

MR CRAWFORD: I will be a reasonable amount of time with Mr Dollisson out of all the witnesses. My preference would - it's obviously up to the Bench - but to perhaps break and then do all the horticultural witnesses after lunch.

PN787

VICE PRESIDENT HATCHER: All right. We might adjourn for lunch and then resume at 1.45. Is that suitable?

PN788

MR SPRECKLEY: Your Honour, might I respectfully request to be excused for the remainder of the day?

PN789

VICE PRESIDENT HATCHER: Yes, you're excused. And, Ms Hills, if you want to leave, likewise.

PN790

MS HILLS: Thank you, your Honour.

PN791

VICE PRESIDENT HATCHER: All right. WE will adjourn and resume at 1.45.

LUNCHEON ADJOURNMENT **[12.47 PM]**

RESUMED **[1.50 PM]**

PN792

VICE PRESIDENT HATCHER: I understand we have Mr Edwards on the phone. Is that right, Mr Edwards?

PN793

MR EDWARDS: That's correct.

PN794

VICE PRESIDENT HATCHER: It's Vice President Hatcher from the Fair Work Commission. We're ready to take your evidence now. Do you have a copy of your witness statement with you?

PN795

MR EDWARDS: I do, yes.

PN796

VICE PRESIDENT HATCHER: All right. The court officer is now going to administer the affirmation to you, and then you will be asked some questions.

PN797

THE ASSOCIATE: Could you please state your full name and address.

PN798

MR EDWARDS: Clint Edwards, (address supplied).

<CLINT EDWARDS, AFFIRMED

[1.51 PM]

EXAMINATION-IN-CHIEF BY MR EASTON

[1.51 PM]

PN799

MR EASTON: Mr Edwards, it's Mr Easton here. We've spoken before today?---Yes. Good morning.

PN800

You have your statement in front of you. Is it true and correct to the best of your knowledge and belief?---Yes.

PN801

Thank you. We seek to tender that.

PN802

VICE PRESIDENT HATCHER: Yes. The statement of Clint Edwards dated 18 February 2016 will be marked exhibit 184.

**EXHIBIT #184 STATEMENT OF CLINT EDWARDS DATED
18/02/2016**

PN803

MR EASTON: That is the evidence-in-chief.

PN804

VICE PRESIDENT HATCHER: Thank you. Mr Crawford.

CROSS-EXAMINATION BY MR CRAWFORD

[1.51 PM]

PN805

MR CRAWFORD: Mr Edwards, it's Stephen Crawford from the Australian Workers Union. I just have some questions about your witness statement. Firstly can you please turn to paragraph 8. Do you have that?---It's only a short one, is it? Is that correct?

PN806

No, it's reasonably long. It starts with, "We employ approximately 12 casuals"?---Yes. I've got, "We employ approximately 15 to 20 employees in mid-October. Is that right?"

PN807

No, that's paragraph 9 on my - - - ?---Sorry.

PN808

Do you have the - - - ?---"We employ approximately 12 casuals in late August to mid-October."

*** CLINT EDWARDS

XN MR EASTON

*** CLINT EDWARDS

XXN MR CRAWFORD

PN809

Yes. Thank you, that's the paragraph I'm talking about. Now, towards the end of that paragraph you talk about if overtime were introduced on weekends, that you would look to work longer hours during the week where possible. Is that right?---To an extent, yes.

PN810

Okay. Is it fair to say your main concern with this case is overtime rates being paid to casuals for any work they do on the weekend?---It is to that, but the job has to be done in a certain amount of time. For that job to be completed, sometimes the job that we're doing, the wind can knock us off early, it's unworkable to work in those conditions, and so we have that time frame to do that job before the next job has to be started. If we're a couple of days behind or three days behind, I might have to work on weekends, that was the point I was trying to make. So the days that I get blown out through the wind through the week and then have to work on the weekend instead, yes, that's what I'm trying to get at with the overtime comment.

PN811

Yes. So in that circumstance you would be worried about having to pay all overtime worked by casuals on the weekend at overtime rates. Is that right?---Yes.

PN812

Can I just ask you if, instead, you only had to pay overtime rates to casual employees when they worked more than 38 hours in a week, would that pose any problems for you?---What do you mean by problems?

PN813

Would you consider that that would have dramatic consequences for your business, if you had to pay casual employees overtime rates, but only when they worked more than 38 hours in a week?---Yes, that would be a problem.

PN814

Okay. And how often do your casuals work more than 38 hours?---Only during harvest time, which is in March and April.

PN815

Okay. And on average, how many hours do they work - - - ?---But not - - -

PN816

Sorry?---Sorry, you go.

PN817

I was asking how many hours, on average, are your casuals working a week during harvest?---It ranges from the first week when we do a different type of variety. The day shift crews, as we call them, they might work up to 50, 54 hours of the week, that's the main bulk of them. The night crews, they would probably work less, they're doing less hours; but after the first week their hours would come down to maybe 35 hours a week.

*** CLINT EDWARDS

XXN MR CRAWFORD

PN818

Okay. And is it correct that - - - ?---So out of the whole - out of the whole 12 months it would probably be about a week, or maybe 10 days - maybe a week or two weeks when they work over 38 hours.

PN819

There would only be one or two weeks for the year?---Yes.

PN820

Okay. And is it fair to say during those two weeks for the year when you're obviously very busy, you would also generally be accessing more income at those times as well?---I get one pay cheque a year, so it is a busy time for everyone.

PN821

Right. Can I just ask, the casual employees, when they work 50 to 54 hours in a week, you pay that all at the ordinary time rate. Is that correct?---Yes, as per the Horticulture Award.

PN822

Do you pay superannuation on all of those hours?---Yes. We also pay every lunch hour during harvest. Through the award, I believe - correct me if I'm wrong - that we have to take out the lunchtime break, which is a half hour every day. Through harvest we pay from the minute they start to the minute they finish, including all lunch breaks, and we believe that gives us a bit of flexibility in case we have a breakdown; we say, "Go have your lunch break then." We might finish early one day regardless, but that's the sort of way we operate at home. That gives us a bit of flexibility and it gives the employees a bit more as well, so they can understand that we need that flexibility during the busy time.

PN823

So that's an additional condition that's more beneficial to employees than the award. Is that what you're saying? That you pay them for the break when you don't have to?---Yes.

PN824

Okay. And - - - ?---We're paying every single person, yes.

PN825

Sorry, are you finished?---We're paying every person, yes, that extra half hour that we're maybe required to do. That also gives us the flexibility to say, "We need to stop now for an hour for a breakdown. Take your lunch break now." They know that we're under a bit of stress at that time of year, and we sort of need that extra flexibility, and so that has been - that process has been done by me, my grandfather, my father as well, and the employees see that as a sort of a - yes, us sort of doing a bit more by them so they can give us a bit of flexibility as well in return.

*** CLINT EDWARDS

XXN MR CRAWFORD

PN826

Okay. And can I just check, for the night crews that you referred to earlier, are they getting a night shift loading or anything like that?---No, they're on the same rate.

PN827

Can I just ask what - you pay your employees under the award?---Yes.

PN828

And what classification level do you pay most of your casual workers at?---The level 1, the basic labour rate.

PN829

Okay. Now, returning back to the start of paragraph 8 where you express some concern, I think, about the impact of weather conditions on working hours. Is that evidence related to the claim for a four-hour minimum engagement?---Yes. The four-hour minimum engagement is a sort of a topic that would impact our business, yes.

PN830

Are you aware that there may be scope under the Fair Work Act to stand down employees without pay when work ceases due to unexpected weather events? Are you aware of that?---Sorry, what was the question?

PN831

Are you aware that there may be scope in the Fair Work Act for you to stand down employees without pay if work ceases due to unexpected weather event?---No.

PN832

Okay. And if that were to be the case, would that alleviate your concern with the four-hour minimum engagement?---To some degree, it might.

PN833

Okay. What concerns would remain for you?---Well, the concern would be why would the four-hour minimum be put into the award when it has already been looked at during the Fair Work - what you just suggested.

PN834

Okay. Would you normally - aside from weather events, would you normally get your workers in for a shift of at least four hours?---Sometimes. Through the - mainly the stringing season and - maybe across the whole season there would be some days where we start a job and we're unable to continue after one hour.

*** CLINT EDWARDS

XXN MR CRAWFORD

PN835

Okay. And how do you arrange your rosters for casual employees? Do you roster them for a week in advance?---No. What we have is we put the term as permanent casuals, the people that have been around the town, in the local area for years, working on the farm. I've just completed for the year. They're just regulars that live around the town, I don't have any backpackers. They're people that are close by, so with the rostering, they know the situation is that if we get blown out,

we get blown out. There's nothing I can do about it. What I do do is try and make sure that the people that I do hire are as close as possible so they're less affected by the short days. It gets to the stage where we might start at 7.30 in the morning, and it takes the person who lives the furthest away 20 minutes to get to work, so I have a limit of about 7.00 am in the morning to let them all know by text message to say we're not working today, so that they haven't left home, they're not at any sort of disadvantage. But they know that the job - the roster is that you keep working till the job is completed.

PN836

Okay. So your arrangement, presumably, during harvest is you proceed on the basis that they're required for work, and if you're going to cancel them, you will let them know by 7.00 or 8.00 in the morning. Is that right?---Yes, I will let them know as early as I know.

PN837

Yes. I've got nothing further, your Honour. Just might want to check if the ACTU wants to - - -

PN838

VICE PRESIDENT HATCHER: Mr Flemming, do you have any questions?

PN839

MR FLEMMING: No, your Honour.

PN840

VICE PRESIDENT HATCHER: Mr Edwards, what are the crops that your operation grows?---Hops.

PN841

Hops. Right. And where is it located?---In the north-east of Tasmania.

PN842

Sorry, where?---North-east Tasmania, in Branxholm.

PN843

North-east Tasmania, yes. All right. Thank you. Any re-examination, Mr Easton?

PN844

MR EASTON: Just one quick question.

RE-EXAMINATION BY MR EASTON

[2.03 PM]

*** CLINT EDWARDS

RXN MR EASTON

PN845

MR EASTON: Mr Edwards, you've used the phrase you "only get one cheque a year". What did you mean by that?---We sort of start the season, I would say in August. What it means is that out through the whole year, you know, expenses going through, whether it be wages for the stringing, the training, the harvest; through sprays, chemicals, fertiliser, string; maintenance to buildings and

machinery; all that is outlaid at a risk to myself, not knowing that the crop is going to good enough or, you know, the quality is not going to be good enough, and I have to try and, you know, put that risk in place and hoping that I get a good crop for the year to pay for all those outlayings that I've put out through the year.

PN846

Thank you?---So if the question you were asking about the pay cheque, we get paid once a year.

PN847

Just on that, at paragraph 4 of your statement you say, "We are on fixed contracts, sometimes for up to four years at a time"?---That's correct.

PN848

What does that refer to?---Like any person who wants a job, they want security with their employment or through business arrangements. We sit down with our buyers. The hop industry is pretty small, so you sort of have to be genuine and get along with a small group of people. We sit down with them and try and work out a price that we're comfortable with that gives us a bit of security and a bit of relief for the future of, sort of, what we can do on the farm. So we organise a price that we're happy with and the contract - the people that we sell to, the cost that they're happy with, and that price is then fixed. And then we have 50 tonne or whether we have 100 tonne, that's the price that we get paid on.

PN849

Thank you. I have no other questions.

PN850

VICE PRESIDENT HATCHER: Thank you for your evidence, Mr Edwards, you're excused, which means you can simply hang up the phone?---All right. Thanks very much.

<THE WITNESS WITHDREW

[2.05 PM]

PN851

VICE PRESIDENT HATCHER: Mr Easton.

PN852

MR EASTON: Thank you, your Honour. The next witness is Mr John Dollisson, D-o-l-l-i-s-s-o-n, and he is outside - now inside.

PN853

THE ASSOCIATE: Please state your full name and address.

PN854

MR DOLLISSON: John Anthony Dollisson, (address supplied).

<JOHN ANTHONY DOLLISSON, AFFIRMED

[2.06 PM]

EXAMINATION-IN-CHIEF BY MR EASTON

[2.06 PM]

*** JOHN ANTHONY DOLLISSON

XN MR EASTON

PN855

MR EASTON: Mr Dollisson, I notice you come empty-handed, which is helpful, but I will give you a copy of your statement?---Thank you.

PN856

If you look at paragraph 3 of the statement, the final sentence of paragraph 3 refers to an attachment. Do you wish to withdraw that sentence?---Yes.

PN857

And apart from the reference to an attachment that's not there, is the rest of your statement true and correct to the best of your knowledge and belief?---It is.

PN858

Thank you. I would seek to tender that with the extraction or exclusion of that last sentence of paragraph 3.

PN859

VICE PRESIDENT HATCHER: The statement of John Dollisson dated 22 February 2016, excluding the last sentence in paragraph 3, will be marked exhibit 185.

**EXHIBIT #185 STATEMENT OF JOHN DOLLISSON DATED
22/02/2016 AS AMENDED**

CROSS-EXAMINATION BY MR CRAWFORD

[2.07 PM]

PN860

MR CRAWFORD: Mr Dollisson, my name is Stephen Crawford from the Australian Workers Union. I've just got some questions for you. Given that in your statement you've talked a lot about the industry generally and financial issues, I've got a folder that I would like to hand to you, just with some data in it.

PN861

VICE PRESIDENT HATCHER: Is this the folder we already have, Mr Crawford?

PN862

MR CRAWFORD: It is, your Honour.

PN863

VICE PRESIDENT HATCHER: Thank you.

PN864

MR CRAWFORD: Does that need to be marked, your Honour?

PN865

VICE PRESIDENT HATCHER: Yes. Is there any objections to us - if we mark this folder? We will just call it - does this one relate to the Horticultural Award, Mr Crawford?

*** JOHN ANTHONY DOLLISSON

XXN MR CRAWFORD

PN866

MR CRAWFORD: The first two documents from this morning were the Pastoral - - -

PN867

VICE PRESIDENT HATCHER: Pastoral Award, all right. So if we call it tender bundle relating to horticultural and pastoral awards, is that - - -

PN868

MR CRAWFORD: That's correct.

PN869

VICE PRESIDENT HATCHER: All right. The bundle of documents which I will term AWU bundle concerning horticultural and pastoral industry awards will be marked as exhibit 186.

EXHIBIT #186 AWU BUNDLE CONCERNING HORTICULTURAL AND PASTORAL INDUSTRY AWARDS

PN870

MR CRAWFORD: Mr Dollisson, initially can you please turn to tab 3 of that folder. Now, by way of background, tab 3 is some statistical tables prepared by the Australian Bureau of Agricultural and Resource Economics and Sciences. They put out - you might be familiar with - quarterly reports?---Yes.

PN871

Have you seen these types of tables before?---I have, yes.

PN872

Okay. So can you firstly turn to page 148 on table 1. You will see there are some indexes of prices received by farmers?---I have, yes.

PN873

Can I refer you to the notes down the bottom of that table which indicates:

PN874

The indexes for commodity groups are calculated on a chained weight basis using Fisher's Ideal Index with a reference year of 1997 to 98 equals 100.

PN875

?---Yes.

PN876

All right. So my understanding is that means that you use whatever the price was in 1997-98 is 100, and then these - the figures above refer to, I guess, a comparison of the prices in the relevant years with those 97-98 prices. You follow?---Correct, yes.

*** JOHN ANTHONY DOLLISSON

XXN MR CRAWFORD

PN877

So can we - if you look at fruit, for example, the figure was highest in 11-12, and then it reduced significant in 12-13, and then it has gradually been increasing since then. Do you see that?---I do.

PN878

And then for vegetables it's more of a consistent increase over the years. Do you see that?---I do.

PN879

Then if we turn to the next page in table 2, which is Indexes of Prices Paid by Farmers in Terms of Trade, and if you look down the bottom, the same note appears in relation to what 100 means. Do you see that?---I do, yes.

PN880

If we look at the labour figure, you see it started at 155.6 and it has risen over the years to 171.7. You see that?---I do.

PN881

Do you accept if we look at the 2014-15 figures, that - you will need to look at table 1 and table 2 - but for 2014-15 the rate for both fruit and vegetables is higher than the index rate for labour, isn't it?---The index rate for prices?

PN882

Correct?---Yes. Although you must remember the 2011-12 was the year of Cyclone Yasi, when the bulk of the banana crop was destroyed, so prices there are sort of artificially inflated. It's very hard to use these figures as a base.

PN883

Okay. That's a reasonable point, but nevertheless, if you look at 2014-2015, which is, I guess, close to the last complete figures, and then we start looking at estimates and forecasts, but for 14-15 the rate is higher in terms of prices for fruit and vegetables than it is for labour, isn't it?---The rate of increase?

PN884

Correct?---It is for that specific year, yes.

PN885

Yes. And then if we look at the 15-16 and 16-17 years, the figures for both fruit and vegetables remain higher than the figure for labour, don't they?---The index rate does, yes. But again, it depends on your base year and what happened in that year that's important. It's all very well to look at comparisons over a period, but you've got to look at the base year and see whether it was down or up. Agriculture prices go up and down each year depending on extreme weather conditions, depending on what the major retailers are doing with those commodities. So you've actually got to have a look at the base year and just see what the impact of that base year is. Our own analysis over 10 years shows that fruit and vegetable prices have run at a rate lower than the National Horticulture Award rate over the 10-year period.

*** JOHN ANTHONY DOLLISSON

XXN MR CRAWFORD

PN886

Would you accept that that proposition you've just given is inconsistent with the data I've just shown you?---I would, yes.

PN887

And do you accept - I mean, you're in quite a prominent role in the industry - that these types of materials from the government are generally given a significant amount of weight in the industry?---They are, but unfortunately in horticulture the data is very poor. You will notice that they only cover a small percentage of horticulture. They don't cover the nut industry, they don't cover a number of the other major commodities that are within the horticultural sector, which includes turf and it includes non-edibles, it includes the nut industry; and we've always had a problem in collecting data out of horticulture. It's one of the reasons why the Voice of Horticulture was formed, to try and get better data analysis across horticulture. It's much more comprehensive when you get a homogeneous crop like grains or wheat or something of that nature.

PN888

Do you accept that in terms of holistic data collected by the government, this is about as good as we've got?---I think there's probably better data out of the ABS.

PN889

Anything in particular?---I think if you just look at the annual production data which is produced every year out of the ABS and take a similar time period, you will probably see different results.

PN890

Okay?---Yes.

PN891

All right. Now, can we turn to - - -

PN892

DEPUTY PRESIDENT KOVACIC: Can I just ask the question of the relevance of that given that these tables go to prices and rather than volumes of production?---Well, partly because the - - -

PN893

The price is probably a reflection of volume?---And it depends on where the price is measured. One of the concerns is that these prices often are measured at a retail level or at the wholesale level not at the farmgate level which is what the farmer receives and it's the income that he uses to pay the labour, so we've got to be very careful what price we take. You can measure retail prices over the last 10 years and you can see a growth in the CPI of fruit and vegetable but if you actually have a look at the price paid to the farmer there hasn't been anywhere near the same change.

*** JOHN ANTHONY DOLLISSON

XXN MR CRAWFORD

PN894

VICE PRESIDENT HATCHER: That's what table 1 says it is, prices received by farmers. Unless you've got some reason to doubt that?---It's a - yes, I think it's a - it used to be a wholesale price index.

PN895

What used to be?---The ABS data used to be based – well, I presume it still is – based on a wholesale price index, so price received from the wholesale market.

PN896

Yes, but the tables you were shown, table 1 is an index of prices actually received by farmers; is that - - -?---It's a price received by consolidators at the wholesale markets. Some farmers sell their goods to the markets. Most sell their goods through a consolidator or a pack shed where they do the packing and then the pack shed then sends those – that fruit or vegetables to the market. Not necessarily the farmer.

PN897

MR CRAWFORD: Okay. Now, when you, in your witness statement, you talk about labour costs in the industry and that it was a competitive industry that can't afford cost increases, now in that same tab 3 document, can you turn to page 150 and table 3?---Yes.

PN898

You found that?---I have, yes.

PN899

And can you see that about half-way down the page there's a figure for labour which is the category of farm costs?---This is page 150?

PN900

Correct?---Yes.

PN901

Yes. And you see the figure ranges from 4,170 which is merely – and so I think that's around 3.4 billion and then it goes up reasonably gradually over the years, ultimately the forecast figure for 16/17 being 4,306. Can you see that?---I can.

PN902

And I did a calculation that indicated that was a 3.3 per cent increase over that period. That looks about right?---If you say so, yes.

PN903

And then - - -?---And that's for total farm costs. That's not for horticulture farmers.

PN904

Correct?---Yes.

PN905

But horticulture is included?---It is.

PN906

Yes. So, we'll go to some more specific data shortly. And then if you look at the total farm costs figure in the same table?---Yes.

*** JOHN ANTHONY DOLLISSON

XXN MR CRAWFORD

PN907

You'll see there it's in 11/12 37,249, and it's not consistent but generally sort of increases reasonably gradually over the years; do you agree with that?---It does, yes.

PN908

Now, if we take a look at those two figures being labour as a proportion of the total farm costs my calculations arrive at a figure of around 11 per cent. Does that look roughly right to you based on those figures?---And it's probably right for total farming in Australia. It's not right for horticulture.

PN909

Okay. You agree the total in the agricultural industry that the indication is labour is around 11 per cent of the total farm cost?---Across the – across total farming I agree, but not in horticulture.

PN910

Okay. I take that point.

PN911

VICE PRESIDENT HATCHER: Mr Dollisson, you might not be able to answer this, but the figure for labour peaks at 2013/14 and then has lower figures. Do you know any reason why that would be the case?---No. Other than it's – it looks like a – as an estimate or something of that nature, no.

PN912

No?---Much of the balance of agriculture is moving to more mechanical harvesting. Horticulture hasn't reached that stage yet and we're still very very manual, but most of our crops are picked by hand, and a lot of our processing is, whilst it's machine driven, is still very labour intensive.

PN913

All right. Thank you.

PN914

MR CRAWFORD: Now, Mr Dollisson, in that same table 3 on page 150 you'll see down the bottom there are some figures for net returns and production?---Yes.

PN915

Now, the one I've focused on is real net value of farm production. Can you see that?---I can.

PN916

And that has a little "c" next to it. And if you look down below the table we can see that "c" represents that it's a figure in 15/16 Australian dollars. Can you see that?---I can.

*** JOHN ANTHONY DOLLISSON

XXN MR CRAWFORD

PN917

Okay. So looking at that figure over the years, do you agree that there's reasonably dramatic increases in the net value of farm production over that period?---Across the total farming sector I agree.

PN918

Yes. And on my calculations the increase from 11,436,000 to, and I'm only using the 14/15 figure because I think that's the last figure based on actual data, that increases to 16,159. That's an increase of 41 per cent?---Correct. Probably due to the insubstantial increase in exports with the falling Australian dollar, particularly in sectors other than horticulture.

PN919

Well, we'll get to that?---Yes.

PN920

So we've got the net value of farm production increasing by 41 per cent from 11/12 to 14/15; correct?---Correct.

PN921

And then there's another dramatic increase in this table for 15/16, isn't there? I mean, I calculate it at 15 per cent?---Right.

PN922

Do you accept that's another significant increase?---Across the total agriculture sector, yes.

PN923

Yes?---In the case of horticulture, no.

PN924

All right. So do you accept that with the caveat that you've emphasised that these figures are not limited to only horticulture?---Yes.

PN925

That whilst the labour expenses have only increased very marginally over this period by around three per cent, the net value of farm production figures have increased dramatically over the same period, haven't they?---They have, particularly in commodities other than horticulture, yes.

PN926

Yes.

PN927

VICE PRESIDENT HATCHER: So what proportion of the total farm sector does horticulture consist of?---It's probably about 40 per cent of the total horticulture, but it's probably the largest employer, and so it's very labour intensive and that's the fundamental difference. It's also fairly low in terms of export income where much of the growth has come from.

*** JOHN ANTHONY DOLLISSON

XXN MR CRAWFORD

PN928

MR CRAWFORD: Well, we'll have a look at that shortly. So unsurprisingly, given you've raised some concerns about that data, including more than just horticulture, if you turn to tab 5. So, Mr Dollisson, you have tab 5?---Yes.

PN929

Yes, which is headed Australian Vegetable Growing and Farm Business and Economic Survey 13/14 to 14/15?---I do.

PN930

And I couldn't locate a comparable report for the fruit industry so this is the best that I could find, but can you please turn to page 9 of that document? Do you have that?---Yes, I do.

PN931

All right. So you'll see in the cash costs section that there is a hired labour figure. Do you see that?---I do, yes, starting at 105,000. Yes.

PN932

Yes. But to be fair there is also a contracts paid category that's below that. Do you see that?---I do.

PN933

And you need to look at the glossary at the back of this report to understand what some of these terms mean. And I have looked at it, and contracts paid seems to include amounts that you may pay to a contractor, for example, labour hire to do your harvesting work. Is that your understanding?---That's correct.

PN934

Okay. All right. But would you accept that not the entire amount of that contracts paid figure would represent labour costs for a contractor; that there would be other components like a margin for the labour hire company, et cetera, built into that?---There should be, yes. Yes.

PN935

Okay. But at its absolute highest for the vegetable industry you would calculate the total labour costs by adding hired labour and contracts paid together?---In terms of paid labour costs, yes.

PN936

Yes. And that would be the absolute highest figure because it's including all of the contracts paid component?---Yes, look, I haven't had a chance to go through the data but that seems to be true.

PN937

Yes. All right. So we've got those two figures to add, and then we have the total cash costs figure down the bottom. Well, not right down the bottom, but about three-quarters of the way down?---Yes.

*** JOHN ANTHONY DOLLISSON

XXN MR CRAWFORD

PN938

And I can tell you that adding 105,759,530 together for 2012/13 comes to 165,230. You can probably see that looks about right. Then for 13/14 we've got a total of 194,500. And then for 14/15 we've got a total of 178,000. Now, I've applied those figures as a proportion of the total cash costs and my figures are for 2012/13 27 per cent, for 13/14 27 per cent, and for 14/15 28 per cent. All right. So it does appear fair. It's accurate that labour costs in the horticultural industry are probably higher than in other farming sectors?---Absolutely. And I think the other thing you must remember is that what's not included in here is the cost of the farmers' labour and the farmers' family labour. These are paid labour costs and one of the things about the vegetable industry is there are many small families, particularly Vietnamese families in small crops, that do the vast majority of the work themselves and that's why sometimes the figure is not 27 per cent, but it's significantly higher if you value your own labour.

PN939

Well, that's not actually right because the family labour is valued in these tables, and I was going to get to that, but basically that comes off, if you look at the farm cash income further down, and then the farm business profit figure?---The 48,000 there?

PN940

Yes, for 12/13. The value of family labour is applied to reduce the farm cash income down to the farm business profit figure, so it is factored into these tables?

PN941

VICE PRESIDENT HATCHER: Well, Mr Crawford, rather than ask the witness to assume that, are there notes to document which demonstrate this?

PN942

MR CRAWFORD: Yes, there are. So if we turn to the glossary which starts on page 36, there's a definition on page 37 of total cash costs.

PN943

VICE PRESIDENT HATCHER: So if you go back, hired labour does not include the farmers' labour, as it were, and the farmers' - - -

PN944

MR CRAWFORD: Correct.

PN945

VICE PRESIDENT HATCHER: So how does it come in as a cost to be taken off the cash income?

PN946

MR CRAWFORD: Yes, so if you look at, on page 38, the definition of farm business profit.

PN947

VICE PRESIDENT HATCHER: Thirty-eight?

*** JOHN ANTHONY DOLLISSON

XXN MR CRAWFORD

PN948

MR CRAWFORD: Yes. You see there's a definition of farm business profit that says:

PN949

Farm cash income plus build up in trading stocks less depreciation and the imputed value of the owner/manager/partner and family labour.

PN950

And then if you look at the lower imputed labour costs, it says:

PN951

Payments for owner/manager and family labour may not indicate actual work input. An estimate of the labour input of the owner/manager/partners and their families is calculated in work weeks and the value is imputed at the relevant partial award rates.

PN952

Arguably that wouldn't be the correct award, but I think the rates are reasonably similar.

PN953

VICE PRESIDENT HATCHER: Yes, I see. All right. Thank you.

PN954

SENIOR DEPUTY PRESIDENT HAMBERGER: That's only used in that calculation of farm business profit, is it?

PN955

MR CRAWFORD: Correct.

PN956

SENIOR DEPUTY PRESIDENT HAMBERGER: It's not used in the other - - -

PN957

MR CRAWFORD: Correct, yes.

PN958

VICE PRESIDENT HATCHER: Yes, okay.

PN959

MR CRAWFORD: Now, just on the labour figures, are you able to explain why the figures would increase from 12/13 to 13/14 and then decrease into 14/15?---I'm not across the economics of the vegetable industry in those years. It could have been a lower crop. I'm just not sure. As I say, at the moment, they could only be estimates anyway.

PN960

Yes. I mean, if you look at the total cash receipts up the top it - - -?---It dropped dramatically.

*** JOHN ANTHONY DOLLISSON

XXN MR CRAWFORD

PN961

Well, there's a significant increase from 12/13 to 13/14 and then there's a decrease for 14/15 so it looks like there's a connection between the cash receipts and the labour costs?---Could well be, but it just depends on production. If I take my own industry, apples and pears, we make more money in the years we have a lower volume than we do in the years we have a greater volume, because we're basically supplying an oversupplied domestic market and if we have a short crop prices increase, if we have a large crop prices decrease, because we have no alternative for our market. We supply Coles, Woolies and Aldi.

PN962

Yes?---And if there's an oversupply the prices fall, so it depends very much on the economics behind this. Is it an overproduction? Is it a different pricing regime? Because at the moment Coles, Woolies and Aldi, if it's domestic market, you know, it's all down, down, down, cheap, cheap, cheap, cheap, and there's not much opportunity for a farmer to increase his margin or increase his price.

PN963

Yes. But if we look at the farm business profit figures down the bottom, on average, and bear in mind those are figures after a deduction for family labour is made?---Yes.

PN964

They're making profits, aren't they?---Not a lot, but, yes, I wouldn't like to be working for 48,180 and the amount of hours these guys put in, it's not a lot of money.

PN965

But bear in mind there's been a deduction for the value of the family labour already?---Sure. Yes, but still.

PN966

So effectively that's the clear amount of profit that is going into the business?---In what looks like a couple of good years that followed, you know, numerous years of drought, yes.

PN967

Yes. We'll have a look at the production figures shortly or now. Now, in that same document can you turn to – sorry, not that same document, back to tab 3, on page 160. So you see that's table 13, gross value of production figures?---Yes.

PN968

Okay. And working through those, for fruit and nuts, you see a reasonably consistent, aside from 13/14, increase over the years, do you agree with that?---Where's fruits and nuts? It's - - -

PN969

It's second below the bold heading of Horticulture?---Horticulture, yes. Yes.

*** JOHN ANTHONY DOLLISSON

XXN MR CRAWFORD

PN970

So you see from 11/12 it's 3,050 and it increases to the 14/15 figure of 3,512, which I calculated as a 15 per cent increase?---Yes.

PN971

And then for the 15/16 and 16/17 there's further significant increases forecast?---Yes.

PN972

And then if we look at vegetables it's been a more moderate increase from 3,339 in 11/12 through to 3,350 in 14/15?---Yes.

PN973

But if you look at the forecast figures for 15/16 and 16/17 there's significant increases forecast, do you agree with that?---I agree that's what the figures show, yes.

PN974

Yes. And then if we look at the total horticulture figure down the bottom we see 8,334 in 11/12 through an increase to 8,689 in 14/15, which is an increase of 4.3 per cent. Does that look about right?---It does.

PN975

And in terms of the forecast there are very significant increases forecast for 15/16 and 16/17, aren't there?---There are, yes, particularly driven by nuts, and the shortage of the Californian crop which was the main reason for the big increase in 14/15 and 15/16 if you look at nuts and fruit. The Californian and almond crop was decimated and we've got exceptionally high prices last year and will probably continue to get high prices this year which is the major driver for that, so it's a sort of one-off, unfortunately a negative for the Californian almond grower but obviously a positive for us. And that's the vagaries of agriculture.

PN976

VICE PRESIDENT HATCHER: Is that caused by drought in California?---Yes.

PN977

MR CRAWFORD: And nevertheless, you've – although I would expect there's more than one explanation for these figures, given they're holistic, but there are significant increases forecast for 15/16 and 16/17, aren't there?---There are.

PN978

Yes?---Whether they come through or not is another matter, but again there's so many vagaries in agriculture with weather and other things you just don't know what will happen.

PN979

Yes, fair enough. And then can you please turn to tab 4 which is an article from the March version of the agricultural commodities report?---Yes.

*** JOHN ANTHONY DOLLISSON

XXN MR CRAWFORD

PN980

So this is an article about the outlook for horticulture through to 2020 to 2021. Now, in the first dot point you'll see the gross value of horticultural production is expected to increase from 9.3 billion in 14/15 to 10.2 billion in 2021 in 2015/16 dollars. Do you see that?---Sorry, whereabouts is that? On - - -

PN981

It's right up the top, the first dot point?---Yes. Yes.

PN982

Yes. You see that?---This is horticulture including wine grapes?

PN983

I believe so, yes?---Yes. Yes.

PN984

And the, I think it's about the third paragraph down, there's reference to trade agreements with China, Japan and the Republic of Korea resulting in reduced import tariffs on several Australian horticultural products and further reductions are scheduled over the coming years. And the Trans-Pacific partnership agreement, once it comes into effect, is expected to provide further trade benefits for Australian horticultural exports; is that right?---It should on the proviso that we get market access. The trade agreements actually haven't been a great deal of help to horticulture because without market access, without a protocol to get those products into those markets they're not much help. We have a problem called fruit fly in Australia and that stops a lot of the fruit being exported so until you get a protocol where China and Korea and Japan will actually accept our fruit it's no help to us. So the trade agreements themselves aren't a great benefit unless we get market access that goes along with it. It certainly helps the nut industry for example.

PN985

Well, we'll have a look at some figures in a minute, but I think you'll find that there have been dramatic increases in the fruit going to China so obviously a large amount of it is finding its way through that?---Certainly in the case of oranges, yes. Yes.

PN986

Anyway, we'll get to that. Now, at paragraph 12 of your statement you've talked about costs increases having an adverse impact on employment opportunities; is that right?---Correct.

PN987

Now, can we go just quickly back to tab 3, which is the June quarter statistical tables?---Yes.

*** JOHN ANTHONY DOLLISSON

XXN MR CRAWFORD

PN988

Now, obviously you've made the point that these figures include more than just horticulture but returning to the previous point in table 3, the real net value has been going up quite dramatically since 11/12 to 14/15?---What page are we on now?

PN989

Sorry, that was page 150, table 3 that we were looking at before?---Yes.

PN990

So I'll just re-summarise, table 3, do you agree, it's showing that labour across the whole agricultural sector is not increasing that dramatically but the real net value of farm production is increasing quite dramatically; that's correct?---I agree, across the whole farm sector, yes.

PN991

Yes. Now, if we turn to table 6, which is page 153, which contains employment figures, again for the whole of the sector, but do you accept that the increased profitability levels across the industry are not translating to higher employment levels, are they?---This is table 6?

PN992

Correct. The agriculture figures. So we have, for example, in 10/11 294, and that number actually decreases down to 275 in 14/15?---That's correct for the whole of horticulture which is becoming - - -

PN993

Well, for the whole of agriculture you mean?---Sorry, the whole of agriculture.

PN994

Yes?---Which is becoming less and less labour intensive.

PN995

Just so it's more comparing like-for-like if we go back to table 3, so 11 to 12, to 14 to 15 is the span we're looking at there?---Yes.

PN996

And the net value of production rose dramatically over those years. I think you've agreed with that?---Yes.

PN997

Now, if you look at the same time period in table 6, which is 11/12 to 14/15, we actually see a reduction in the employment, don't we?---We do, but we're comparing apples and bananas. I think we've got to talk specifically about horticulture because our industry is very different to the rest of agriculture and I think people fail to understand, unlike beef and unlike grains, we actually not only grow all of our own fruit, but we process our own fruit, so a lot of our labour costs are not, as this measures at the farmgate, but they're post farmgate, so most Australian farmers actually have a packing shed and a processing shed and a cool room, and they do all the packing of the fruit from the time they harvest it on their orchard to the time they supply it to either exports or to a distribution centre with Coles, Woolies or Aldi, so there's a lot of labour cost that aren't in these because these are farmgate costs, not post farmgate or the secondary processing, the packing, the cooling, the presenting, the sort of bags of six apples or 10 oranges or one kilo of fruit that you see in the supermarkets.

*** JOHN ANTHONY DOLLISSON

XXN MR CRAWFORD

PN998

Okay. But, I mean, these aren't my figures?---Sure.

PN999

These are Commonwealth Government figures, aren't they?---No, I agree, but they are across all farming.

PN1000

Yes, and I've accepted that repeatedly?---And we need to bear that in mind horticulture is very different.

PN1001

Yes.

PN1002

VICE PRESIDENT HATCHER: So these functions you're now talking about outside the farmgate is that horticultural award work? I think I did a case about this, but - - -?---If the processing shed is on the orchard, they're normally employed under the horticultural award.

PN1003

Yes?---Some of the bigger operators, the Thompson family who produce apples in Shepparton, they're employed under the Australian Workers' Union because they're not on the farm, but the vast majority are employed under the horticultural award.

PN1004

Right.

PN1005

MR CRAWFORD: All right. Now, turning more towards trade, at paragraphs 7 and 12 of your statement you've talked about the threat of imports; is that right?---Correct.

PN1006

Now, can we go to tab 4 which is the horticulture article from the March agricultural commodity figures or the report?---Yes.

PN1007

Now, if you look at page 87.

PN1008

VICE PRESIDENT HATCHER: Sorry, what tab are we on now, Mr Crawford?

PN1009

MR CRAWFORD: Tab 4.

PN1010

VICE PRESIDENT HATCHER: Tab 4.

*** JOHN ANTHONY DOLLISSON

XXN MR CRAWFORD

PN1011

MR CRAWFORD: All right. So in the second paragraph on page 87 we see in recent years around 30 per cent of horticultural imports by value have been fresh with the remaining 70 per cent processed, however around 80 per cent of Australia's horticultural exports are fresh produce; is that correct?---That's correct.

PN1012

All right. So is it fair to say that in summary in terms of fresh fruit Australia generally supplies the Australian market through Australian grown produce? We're talking about just fresh fruit and vegetables?---No. If you have a look at the paragraph above, since 2003/4 the total value of imports of horticultural products has exceeded the value of exports. The gap has widened over time.

PN1013

Yes, but - - -?---There are more imports coming in.

PN1014

No, but what we have to – I'm making the distinction between fresh produce and processed?---Yes.

PN1015

So my understanding is what the second paragraph is saying is, in terms of fresh produce, we grow most of our own for the Australian market, and we export a lot. In terms of processed produce, it's the other way around, we get a lot of it in. Is that consistent with your understanding?---No, we grow in season and supply the Australian market, but when those fruits are out of season, when cherries are out of season we import them, when grapes are out of season we import, when oranges are out of season we import, so that we can supply fresh fruit - or the supermarkets can supply fresh fruit all year around.

PN1016

Yes and that's largely I guess reflected in the third paragraph, that says:

PN1017

Trade of some fresh products follows a counter-seasonal pattern, with products being exported during the Australian season and imported at other times of the year. Counter-season trade is important for many fresh fruits and vegetables as the year round consumer demand can be met by imports when fresh local produce is not available.

PN1018

Was that the point you were making?---Correct. Yes.

PN1019

Can I now take you to tab 7 of the folder, which is a prospectus put out by the Costa Group. Now, can you turn to page 23 of that document. So about halfway down, can you see it reads:

*** JOHN ANTHONY DOLLISSON

XXN MR CRAWFORD

PN1020

The fresh produce industry in Australia generally has a high level of protection from imported produce due to Australia's geographic isolation and Australian quarantine regulations.

PN1021

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

PN1022

Do you agree with that?---Yes, I do.

PN1023

And then if you turn to page 25, up the top you'll see:

PN1024

Fresh fruit and vegetables grown in Australia predominantly supply the Australian market. Import and export volumes of fresh fruit and vegetables are low.

PN1025

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

PN1026

Then if you go to 2.4.2, immediately below that heading:

PN1027

Supply of fresh produce to the Australian market is predominantly domestically grown, with limited supply from imported produce.

PN1028

Then in the next paragraph:

PN1029

Generally there are moderate barriers to entry -

PN1030

Sorry, I wanted to go to the last paragraph?---Of 2.4.1?

PN1031

Yes. It's the last paragraph on page 25.

PN1032

Australian fresh fruit and vegetable supply is largely protected from international supply competition due to Australia's geographic isolation and biosecurity regulations imposed by the Department of Agriculture. As a result, fresh fruit and vegetable imports in to Australia are generally limited and often confined to time periods outside the local production season. At present there is limited import supply across most of Costa's core produce categories.

*** JOHN ANTHONY DOLLISSON

XXN MR CRAWFORD

PN1033

Again, do you agree with - aside from the reference to Costa, do you agree with that comment?---No, look, I don't agree with that at all. In the case of apples we have Chinese product coming in to the market, we have New Zealand product coming in to the market. They can produce apples significantly cheaper than we can. It has been our protection through Woolworths and Coles, by saying buy Australia, we only supply and support Australian farmers, that's been our greatest protection. But we could - Coles or Woolies could import apples, oranges, and a range of other fruit from New Zealand tomorrow, if they decided to, or if the costs of production in Australia rose to a significant level that it make economic sense for them to bring in cheaper fruit from overseas.

PN1034

So you're not accepting the information from the Costa prospectus that - - -?---No.

PN1035

- - - in terms of fresh fruit and vegetables we're largely shielded?---I don't think we are. We're in the process of fighting off American apple imports as we speak.

PN1036

Now, just in - - -

PN1037

VICE PRESIDENT HATCHER: What do you mean fighting off?---They basically have said if you've allowed New Zealand fruit to come in, we can meet all the same protocol requirements of New Zealand fruit, so why are you keeping us out. And if they went probably to the World Trade Organisation and took an action against us, we would probably have to allow them to come in. Whether they would come in in volumes - we produce 300,000 tons of apples, they produce 4.5 million tons of apples. China produces 38 million tons of apples. So we're still on a bit of a precipice. If our costs go up, and that's our primary concern with labour, if our costs go up we're going to become uncompetitive in the international world. And that's our real concern. Labour rates in the US are, you know, around \$13 an hour, we're sitting at 24, New Zealand is sitting at 18, and they're much bigger volume producers, so they've got much greater economies of scale.

PN1038

Where do they grow apples in the US?---In Washington State, down about three hours from Seattle, in Yakima, and across in New York State, are big areas for apple growing.

PN1039

MR CRAWFORD: Mr Dollisson, can I now turn back to tab 3, and some export figures. You'll find those at page 166. Table 17, can you see that?---I do, yes.

PN1040

So for fruit, which is under the bolded heading of horticulture, can you see?---Yes.

*** JOHN ANTHONY DOLLISSON

XXN MR CRAWFORD

PN1041

So we've got 505 million in 11/12 to 14/15 up to 755 million, which I calculated as an increase of nearly 50 per cent. And then there's even more dramatic increases scheduled for 15/16 and 16/17. Do you see that?---I do. This is primarily driven by oranges and table grapes, with their access to China.

PN1042

And then for vegetables, we see 276 million in 11/12 through to 293 million in 14/15, which is only a six per cent increase, but there are significant increases forecast again for 15/16 and 16/17. Do you agree with that?---I agree the figures show that. Whether they materialise is another matter.

PN1043

Yes. And then the total horticulture figure, which is just a bit further down, 1294 in 11/12 through to 2060 in 14/15, which is an increase I calculated at 59 per cent?---Yes. Again, driven by those two fruits and the nut industry, because of the collapse of the Californian industry. But, yes, I agree.

PN1044

Okay. So leaving individual issues aside, do you accept that based on these figures there has been a dramatic increase in the amount of exports in recent years?---In the case of access to a couple of markets, yes, I do. Not in vegetables, obviously, not in nursery, not in other horticulture, but in nuts and fruits. And those fruit are quite specific.

PN1045

VICE PRESIDENT HATCHER: And where is it going to? What market?---China.

PN1046

China?---China. A Chinese company came in and bought up the Mildura Fruit Packing Company, which opened access to the Chinese market, and that's taken us from about ten containers a year to close to six or seven hundred 40 foot containers of oranges going in to China.

PN1047

MR CRAWFORD: Yes and then if we just, in terms of China, look at the next page, page 168, table 18, we can see the export figures for China. There's no estimates here. 9/10 to 14/15, it's up from 6 million to 64 million, isn't it? For fruit, sorry?---For fruit, yes.

PN1048

Do you accept that's about a one thousand increase per cent increase in terms of fruit exports to China?---Off a very small base, yes. Off a very, very, small base, yes. Starting off with a figure of six. So the percentage is irrelevant when you start with a base that low.

PN1049

Just finally, are you relatively familiar with award conditions in this industry?---Broadly, yes.

*** JOHN ANTHONY DOLLISSON

XXN MR CRAWFORD

PN1050

Are you aware that there's a claim being made by the ACTU for a four hour minimum engagement period for casual and part time workers?---I have.

PN1051

Now, if it is correct that under the Fair Work Act a farmer can stand down employees without pay if there's unexpected weather events, so if you accept that do you see a major problem with a four hour minimum engagement period?---Yes, I do. I think you've got to understand, a typical farmer is sitting on a farm, he's about to harvest, for example, his cherries. If there's a slight chance of rain he's got to be able to turn that labour away fairly quickly. He then has to go down through stand down procedures. This guy's working off a set of overalls on a telephone. He's not sitting in a corporate office like Costa. Most of these farms on average are three hectares in size to seven hectares in size, they're run by mum and dad and a couple of kids, and they bring in the labour. For that guy then to stop process and start making applications, etcetera, we've got to have a lot more flexibility in our business to be able to run a viable farm. You know, it's a bit like the immigration process, you can stop every person coming in and check their VISA on VEVO, but by then half the crop is gone. So I don't think that really addresses the flexibility that the horticulture industry needs.

PN1052

But there's no - - -?---Big corporations, I agree, but smaller corporations, which is the vast majority of the 30,000 enterprises in horticulture, just don't have that flexibility.

PN1053

But there isn't an application that's made for a stand down?---There hasn't been, or there isn't?

PN1054

No, there doesn't need to be. There's no system for an application to stand employees down, it's just something that happens?---Yes. I just think these guys have got so much on their plate, it's very hard to ask them to go through that process.

PN1055

But I don't understand that point, because presumably they're working, unexpected weather event, it's not possible to work, so they cease work and stop paying employees. Where's the - - -?---Often they're on their way to harvest, they're not even on the farm at this stage, and then there's potentially inclement weather and we have major issues. We can't run most of our farming equipment if it starts to rain. If you go to the Adelaide Hills and try and process grapes or apples, you're on the side of hills of this nature, you can't run any farm equipment, you've got occupational health and safety issues. You need to be able to call a halt to that and say, look, leave it and come back tomorrow when we hope the weather will be better and we can run our equipment, and climb up ladders, etcetera, to harvest apples and other products.

*** JOHN ANTHONY DOLLISSON

XXN MR CRAWFORD

PN1056

Before harvest, a lot of the time we're talking about reasonably large amounts of casual employees or labour hire coming in, aren't we?---Depending on the farm size, yes.

PN1057

So surely there's someone, whether it's the farm owner or a manager, that's sort of keeping an eye on what they're doing. Wouldn't that be right?---In terms of what the farm - what the - - -

PN1058

Well, monitoring what that casual workforce is doing?---Yes.

PN1059

They're not going to be left to their own devices, are they?---No, no, no. No, they have team leaders, they'll be out there doing that.

PN1060

So there's someone there with decision making authority, isn't there?---But often you've got to make that call before they come out.

PN1061

Well, you can, and then the four hour minimum engagement won't be a problem, because you've cancelled them. Because there's no requirement to roster them in advance, is there?---Well there is in a sense it's so hard to get labour on a farm. It's very competitive to actually find labour in Australia today, and that's our biggest problem. So often you've got to do deals in advance. If I've got a cherry crop ready to harvest, and there's rain coming, if the rain hits before I've got it harvested I walk away from the crop. It's destroyed. I don't even harvest it. I just leave it on the tree to rot. Because once a cherry splits it's of no value. So we've got to have advance notice, but it's so hard to get that labour. Go in to Mildura today and try and secure some labour at short notice, it's very hard to do. Secure labour at long notice, similar. So you've got to have that flexibility in horticulture.

PN1062

Just on that point, why do you think it is so hard to find workers in this industry?---I just think it's not work that a lot of people want to do. It's hard work. You're rewarded if you work hard and that's why the backpacker commitment has been such an important one for harvesting Australian crops. At short notice we need to - we don't - in an apple crop I can't tell you whether I harvest today, tomorrow, or next week. It depends on the sun, it depends on the sugar levels of the apple, it depends on the firmness of the apple, it depends on the colour of the apples. You just can't forecast that two or three weeks out. Often you've got to make that decision within 48 hours, 72 hours.

*** JOHN ANTHONY DOLLISSON

XXN MR CRAWFORD

PN1063

So are you saying that the working conditions are generally, I guess, unattractive to a level that you can't actually find local workers who will do that work, so you

have to rely on the backpackers, is that correct?---Exactly, yes. We go out of our way to try and employ local workers, and we employ a lot of local workers, particularly school casual workers in our processing sheds. That's more stable, it's an indoor environment, but for a lot of Australians going out and working in the sun, and picking apples, and strawberries, and watermelons, it's hard work.

PN1064

I realise you'll say that the industry can't handle any cost increases, but aside from that wouldn't it make sense that if you improve conditions in this industry you might find it easier to attract local workers. Is that a sound proposition?---I don't think the industry can afford to improve conditions. Again - - -

PN1065

That aside, leaving whether it is affordable aside, as a general proposition do you accept that if the conditions were better it might be easier to attract local labour?---No, I just don't think the local labour is available. Picking a watermelon is hard work. Whether you have a roof over you, or you don't have a roof over you, it's basically hard work, and you're working, you know, out in the Australian sun. It's not - what can you do to improve conditions?

PN1066

Well - - -?---Put a sun roof over so the fruit doesn't grow.

PN1067

I mean, I agree, about 60 hours of that hard work without any penalty payments in a week is pretty unattractive, isn't it?---It's quite attractive to the workers. They might work 60 hours. They might do nothing the next week. So it gives them flexibility. If I've got to pack fruit, Woolworths calls me on a Friday night and says tomorrow I need X bins of apples produced, I've got to be able to get that labour in and come in and produce it. They might have the next couple of days off because Coles and Woolies tend to work in discount cycles.

PN1068

But you've just said that you can't get local workers, so how is it that it's attractive?---That's in the pack shed. I'm saying we tend to have more local workers in the pack shed, because they're more of a long term relationship. Because we're packing - in the case of apples we pack 365 days a year. Apples can be stored, unlike the rest of fruit.

PN1069

Right. But in your view, given your prominent role in the industry, is it acceptable in Australia in 2016 to have employees working 60 hours a week during difficult work in difficult conditions and not getting any overtime payments?---I think if we want to be competitive in a world market, we've got to do what our competitors do in the United States, in New Zealand, in South Africa, and we've got to be competitive. Our survival depends on us being competitive, and that means we've got to have competitive labour rates, with similar conditions.

*** JOHN ANTHONY DOLLISSON

XXN MR CRAWFORD

PN1070

Well, it seems like on your logic our survival is dependent on overseas labour?---For harvest, it is, yes. And that's why we're so concerned about potential increases in tax on labour, on backpacker tax, on the backpacker tax.

PN1071

From what I heard someone heard your concerns, I think, didn't they?---In fact they did, yes. They delayed it for six months.

PN1072

Thank you, Mr Dollisson, I've got no further questions.

PN1073

VICE PRESIDENT HATCHER: Mr Fleming, did you have any questions? I'll take that as a no. All right, any cross-examination, Mr Easton?

PN1074

MR FLEMING: Sorry, your Honour, can you hear me in Melbourne?

PN1075

VICE PRESIDENT HATCHER: Yes, we can, did you have some questions, Mr Fleming?

PN1076

MR FLEMING: No, I do not, your Honour.

PN1077

VICE PRESIDENT HATCHER: All right. Thank you. Thanks for your evidence, Mr Dollisson, you're excused and free to go?---Thank you.

<THE WITNESS WITHDREW

[3.02 PM]

PN1078

MR EASTON: The next scheduled witness, your Honour, is Brock Sutton, who I'm hoping is in Brisbane.

PN1079

VICE PRESIDENT HATCHER: All right, so we'll organise the link to Brisbane.

PN1080

DEPUTY PRESIDENT BULL: Mr Crawford, while we're waiting for this witness, on a number of occasions you put to the witnesses that it may be possible under the Act, or it is correct under the Act to stand down people for inclement weather. What is the position of your union, is it lawful to stand down people if it rains, without pay?

*** JOHN ANTHONY DOLLISSON

XXN MR CRAWFORD

PN1081

MR CRAWFORD: Our position, Commissioner, is that if it is a genuinely unexpected weather event - because I think the Act does use the word reasonable

in there, in terms of
the - - -

PN1082

DEPUTY PRESIDENT BULL: It doesn't talk about unexpected weather event. It says a stoppage of work for any cause for which the employer cannot reasonably be held responsible. I'm just wondering why you were hesitant to say it's possible to stand people down under the Act, without - you were always cautious about saying if it is correct, or it may be possible.

PN1083

MR CRAWFORD: I agree, Commissioner, that it looks to me like an unforeseen weather event that makes it impossible for outdoor workers to keep working does appear to fall within a stoppage.

PN1084

DEPUTY PRESIDENT BULL: What do you mean by unforeseen? If they start working and it starts to rain, is that an unforeseen weather event? If they knew it was going to rain that afternoon?

PN1085

MR CRAWFORD: Yes. But the alternative situation I'm more referring to is if it's forecast to rain, you know, for a few days, and for some reason the employee gets people in, and sure enough it's pouring, then perhaps the stand down provision couldn't apply in those circumstances, because the employer could reasonably be held responsible. But if it is an unforeseen event, I think the situation is probably different.

PN1086

VICE PRESIDENT HATCHER: While you're on your feet, does the Horticulture Award allow for averaging of overtime hours?

PN1087

MR CRAWFORD: It allows for averaging. Part of the problem that we have, or as we perceive it anyway, is the casual employment part of the award does refer to ordinary hours, the maximum of an average of 38. It's not entirely clear from the award what the averaging period is, which I think is part of the problem that we currently face.

PN1088

VICE PRESIDENT HATCHER: On your variation, so we know what its effect would be, would, if it was granted, allow for averaging of overtime hours so that a 60 hour week in one week might be balanced against shorter weeks in another week?

PN1089

MR CRAWFORD: Your Honour, to be frank, given we're talking about this now, our current proposed variation would, as I recall, extend the span of ordinary hours, which is Monday to Friday for permanent workers, to casual employees. Which would mean any hours on the weekend would be overtime. I can indicate to the bench that the union would consider it acceptable if the entitlement was

only for in excess of 38 hours in the week, for casual employees. We would consider that. I mean we have read the concerns raised by farmers that they have to operate every day of the week and get the fruit or vegetables off when they do. So we have heard those concerns, but we're certainly not comfortable with the situation whereby there's some reference to averaging, and no period over which that average is calculated. Because an average is a genuine mathematical calculation, it shouldn't just - - -

PN1090

VICE PRESIDENT HATCHER: Well, it's your application, I'm simply asking what it's effecting. That is if overtime is payable for work in excess of an average 38 hour week, well what does that mean in practice? And if you need to give this some thought, just tell me, but I'm just wondering whether it means that any single week in which the work is over 38 overtime is payable, or whether it's possible to average it out over a longer period, and what that period might be.

PN1091

MR CRAWFORD: Well, either would be possible in an award. We prefer overtime for any hours in excess of 38 in a week, but we do think if the bench is even considering averaging periods it's very important that there is a period specified, because at the moment it's not clear and it can be abused.

PN1092

COMMISSIONER ROE: But does your proposal include averaging, I think that's the question.

PN1093

MR CRAWFORD: I believe it would, because it's effectively extending the same conditions that currently exist for full time and part time workers to casual employees, including the span of ordinary hours, Monday to Friday, and the maximum of an average of 38 hours over a four week period.

PN1094

COMMISSIONER ROE: So the average would be over a four week period.

PN1095

MR CRAWFORD: Correct, if the claim was granted as per the draft determination, yes.

PN1096

VICE PRESIDENT HATCHER: All right. Well, can we call the next witness?

PN1097

MR EASTON: Yes, thank you. The next witness is Mr Brock Sutton, but I'm told that Ms Mogg is also in the room at the moment, and she hopefully can hear this and will understand that she's leaving the room. And so I call Mr Brock Sutton.

PN1098

VICE PRESIDENT HATCHER: All right, can we administer the oath or affirmation to Mr Sutton, please? I think we should be right now.

PN1099

THE ASSOCIATE: Can the Commission hear Brisbane?

PN1100

VICE PRESIDENT HATCHER: Yes, we can now, thank you. So can we administer the oath or affirmation, please?

PN1101

THE ASSOCIATE: Yes, please state your full name and address.

PN1102

MR SUTTON: Brock Peter Sutton (address supplied).

<BROCK PETER SUTTON, AFFIRMED

[3.09 PM]

EXAMINATION-IN-CHIEF BY MR EASTON

[3.09 PM]

PN1103

VICE PRESIDENT HATCHER: Mr Easton.

PN1104

MR EASTON: Mr Sutton, you look like you've got a range of things in front of you there. Can you move everything aside except your statement?---Sure.

PN1105

Now, in relation to your statement, is it true and correct to the best of your knowledge and belief?---Yes. Some of the details of employee numbers and the like have changed since the original statement, but they were true to the time.

PN1106

Thank you. By way of update then, when you say at paragraph 3, "We employ 47 workers directly, and use labour hire firms", do you have a more up to date figure?---Yes, the directly employed number of workers is closer to 70 employees.

PN1107

And in paragraph 4 you give a breakdown of what was the 47 there, to include 23 overseas workers. What would be the number of the 70 workers that you employ directly who are overseas workers?---Sure. I don't have the exact figures, but the number of overseas workers would now be around the 50 mark.

PN1108

Thank you. Is there any other figures in your statement that need to be updated?---I think I mentioned about any full time or salaried employees, which will have increased since the time of the original statement.

PN1109

You don't seem to give any numbers of those. Are they included in the 70 direct workers, in any event?---Yes, they are.

*** BROCK PETER SUTTON

XN MR EASTON

PN1110

Thank you. So with those two updated numbers in paragraphs 3 and 4, is your statement true and correct, to the best of your knowledge and belief?---Yes.

PN1111

Thank you. I seek to tender Mr Sutton's statement, signed 22 February 2016.

PN1112

VICE PRESIDENT HATCHER: Statement of Brock Sutton dated 22 February 2016 will be marked exhibit 187.

EXHIBIT #187 STATEMENT OF BROCK SUTTON DATED 22/2/15

PN1113

MR EASTON: Thank you. That is the evidence in chief.

PN1114

VICE PRESIDENT HATCHER: Mr Crawford?

CROSS-EXAMINATION BY MR CRAWFORD

[3.12 PM]

PN1115

MR CRAWFORD: Good afternoon, Mr Sutton, my name is Stephen Crawford from the Australian Workers' Union?---Good afternoon.

PN1116

Good afternoon. Does your family operate the farm that you work on?---Yes, that's correct. Yes.

PN1117

And how long have you personally been involved in the managing of the farm?---Full time employment started towards the end of 2012, but in a part time and casual capacity for over ten years.

PN1118

Okay. So is it fair to say you've been reasonable across the state of affairs for the farm since around 2006?---My knowledge from 2006 to 2012 mightn't be as accurate as I'd like it to be, but since then, yes.

PN1119

Fair enough. On your farm have you ever had an enterprise agreement, or a workplace agreement, or have you always paid under an award?---We currently have a collective agreement, the Sutton Employment Collective Agreement made in 2009.

PN1120

You're still currently paying employees under that 2009 agreement?---That's correct, yes.

PN1121

Is it correct that you use a lot of labour hire on your farm?---Yes, correct.

*** BROCK PETER SUTTON

XXN MR CRAWFORD

PN1122

And are you aware whether they use the award, or an agreement?---To my knowledge they - we have an agreement in place now between ourselves and the labour hire contractors. Whether they have their own collective agreement or not, I'm not sure.

PN1123

Do you mean you've got a contract with the labour hire company, is that what you mean?---What happened is we use a template provided from Growcom, to outline our expectations and divisions of responsibility. That was signed towards the start of this year, as provided to us by Growcom at the time, and now four labour hire companies that we engage are to be part of those agreements.

PN1124

Okay. You may have already indicated this in examination-in-chief, but do you directly employ any casual workers, or is it only labour hire companies that you use for casuals?---No, yes, we employ our own casuals as well.

PN1125

How many is that?---I don't have the exact figures, but it would be close to, I would assume, 80 per cent or more of our employees.

PN1126

Are you able to estimate the total number of casual employees directly engaged by the business?---Using the figures provided I would assume that that - with rough calculations, that would be around 50 employees.

PN1127

Do those employees currently receive any overtime benefits?---Under our collective agreement they have signed some voluntary additional hours, which they've agreed to, you know, willingly, and so we don't currently supply any overtime benefits.

PN1128

Right?---Sorry, there are - there are - sorry, there are, I think, three employees that have some form of overtime benefits.

PN1129

Why do they have overtime benefits and the other employees don't?---Agreements were made prior to the collective agreement.

PN1130

So they're entitled to overtime because they're not covered by the '09 agreement, is that right?---I'm not sure of the history of that agreement, that was before my managerial role.

*** BROCK PETER SUTTON

XXN MR CRAWFORD

PN1131

Is it the case that under the 2009 agreement there's scope for individual employees to voluntarily forego their overtime entitlements, is that correct?---That's correct.

PN1132

Is it correct that aside from the three you just mentioned, every single one of those workers has volunteered to forego their overtime entitlements, is that correct?---To my knowledge, yes.

PN1133

Are you aware whether the agreement whereby they presumably sign and agree to forego overtime entitlements, is that handed to them when they commence employment?---Yes. Yes, it's part of the induction process, where most of the time I'm doing the induction process and it's explained to them the situation about the voluntary additional hours.

PN1134

Do you explain to them they don't actually have to sign the document?---Yes, that's correct.

PN1135

I put it to you that if you do explain that to them it's somewhat surprising that they all volunteer to forego the overtime entitlements. Do you agree with that?---It's not surprising to me. The way I explain it is that I say in Australia we have a 38 hour usual working week. You're not required to, but for us to let you work more than the 38 week, for it to be viable for the company, we require you to sign the voluntary additional hours clause. Or something to those effects.

PN1136

But you indicate that they are required to sign the document?---At their own discretion.

PN1137

SENIOR DEPUTY PRESIDENT HAMBERGER: Actually, can I just ask, how many hours do your casuals typically work a week? Obviously it fluctuates, but - - - ?---It varies depending on the responsibilities. In the packing sheds I would - I don't have the exact figures, but it wouldn't necessarily be more than the 38 hour working week, depending on the responsibilities outside of the packing shed. There might be regular occurrences of overtime.

PN1138

Can you give me an idea of what that might mean?---So some of our farm managers can work up to 45 to 50 hours a week.

PN1139

Every week?---Not every week, no.

PN1140

These are the managers, you say?---Yes.

PN1141

Right. You don't employ the harvesting staff?---Not all the harvesting staff, no. Most of the harvesting workers are outsourced to labour hire companies.

*** BROCK PETER SUTTON

XXN MR CRAWFORD

PN1142

MR CRAWFORD: So could I ask you this, if all employees of your business were entitled to overtime rates when they work over 38 hours in a week, how often would you actually have to pay that?---Sorry, could you repeat the question?

PN1143

If there was an entitlement for all the employees that the business directly employs to get overtime when they work more than 38 hours in a week, how often would you actually have to pay that?---To each employee?

PN1144

Well, how often do they work more than 38 hours in the week, so they would have that entitlement?---Again, it depends on the employee. If it was the farm managers that we've just been talking about, it might be two to three weeks of the month.

PN1145

VICE PRESIDENT HATCHER: What do farm managers - what do they do?---It's pretty varied work, but usually supervising harvesting crews, tilling, fertilising, planting, and overseeing a lot of the farm crews that are doing the manual labour type of work.

PN1146

MR CRAWFORD: Can you answer this, Mr Sutton, when employees do work more than 38 hours a week, and they've signed that voluntary arrangement whereby they forego overtime payments, do you pay superannuation on the hours in excess of 38?---I'm actually not sure. I don't handle our payment - our wage.

PN1147

So you're not actually very across the wage expenses for the business?---To an extent I am. With regards to the superannuation question that you just asked me, I'm not 100 per cent sure, so I don't want to give misleading information.

PN1148

At paragraph 5 of your statement you talk about wanting to rely less on labour hire companies and bring more employees on directly, is that right?---That's correct.

PN1149

You say although it will present a more complicated HR sort of challenge, the main reason for the change is to ensure the quality of work and ensure the workers are treated well, is that right?---That's correct.

*** BROCK PETER SUTTON

XXN MR CRAWFORD

PN1150

Is that an indication that you had some problems in terms of how the labour hire workers were treated?---No. It's more of a safeguard against the potential for that instance. There has obviously been a number of unfortunate circumstances that have been highlighted in the media over the past couple of years, and that paragraph is more a statement towards our risk management, and, as it says, to the benefit of the workers, to make sure that the right thing is being done by them.

PN1151

So it's more a response to stories you've seen in the media, rather than experiences on your own farm?---That's correct.

PN1152

At paragraph 15(a) you list some effects of the changes proposed to the Horticulture Award, and at (a) you say Australian farming businesses are being pushed in to employing many less local workers. Is that correct?---That's correct.

PN1153

Why do you say an effect of the changes to the award would be for less local workers to be employed?---Basically because we would have to change the way that we perform our work, and it could mean a reduction in production to account for the changes, such as the penalty rates on weekends, for that to be implemented and still have the business remain viable.

PN1154

But wouldn't that lead to a lower number of workers in general, rather than any distinction between local and foreign workers?---Yes, that's true.

PN1155

Because my understanding is the employment conditions, in theory, apply equally to local and foreign workers, don't they?---Yes, definitely.

PN1156

So contrary to your statement, the changes shouldn't actually really impact upon the split between local and foreign workers, should they?---I think my intention with that paragraph was to say that overall employees could be reduced due to the production to accommodate for the changes.

PN1157

Which is more what you've referred to in 15(b)?---Slightly, yes.

PN1158

Can I just explore, just quickly, your rostering arrangements. So how does it work with your casual workers, are they given a roster like a week in advance? How do they know when they're going to work?---As per our induction forms, our supervisor of each crew lets the workers know each afternoon for the next day, what work will be required.

PN1159

So you tell them when they're finishing up in the afternoon, whether they're required for the next day?---That's correct.

*** BROCK PETER SUTTON

XXN MR CRAWFORD

PN1160

If you're aware that there's a bad weather forecast, at what point would you cancel them at the moment?---If there was a guarantee that there was a large rain even to

occur, then we would advise them that there's a high possibility that they won't be required for the next day.

PN1161

But if you just told them that would they be expected to turn up to work, or they wouldn't?---It's dependent on whether the actual weather event occurred or not.

PN1162

And your concern with the four hour minimum engagement is presumably if they commence working - I'll step back, presumably they've only actually made it in to work if you think there's a reasonable likelihood they're going to get through a normal day's work, is that right?---Sorry, could you repeat that?

PN1163

You would only get the employees to come in if you think there's a reasonable chance they'll get a normal day's work?---Yes.

PN1164

Say they are in, and they're working for a couple of hours, an unexpectedly the weather deteriorates and they can't continue working, is that your main concern with the four hour minimum engagement?---In that context, yes.

PN1165

So if that actually wasn't right, and you could stand down the employees without pay, because they cannot continue working due to an event outside of your control, would that alleviate your concerns?---Again, in that context, yes.

PN1166

Back to the overtime issue, is it fair to say you would be particularly worried if all work on the weekend for casuals had to be paid at overtime rates?---Yes.

PN1167

What about if instead casuals were entitled to overtime payments, but only when they work more than 38 hours in a week. Would that be more manageable for you?---Yes.

PN1168

Just finally, do your casual employees ever work more than six months at a time?---Yes. Local ones do. Under the 417 VISAs, who a lot of our transient workers are a part of, it's against the regulations.

PN1169

Right, so the foreign workers wouldn't work for more than six months, is that right?---No.

PN1170

So they wouldn't be ever captured by a casual conversion provision that applied after six months?---No.

*** BROCK PETER SUTTON

XXN MR CRAWFORD

PN1171

Mr Sutton, does your farm export much produce?---Not at this stage, not directly, no.

PN1172

Do you see that - - -?---There may - - -

PN1173

Sorry?---Sorry. There may be an instances where we send to the central markets and our agent organises an export, but at this stage nothing directly.

PN1174

Are you aware of additional export opportunities that might be opening up, either currently, or over the coming years, due to trade agreements?---Not directly due to trade agreements, but, yes, there are some opportunities that are opening up.

PN1175

Thank you, Mr Sutton. Nothing further, your Honour.

PN1176

VICE PRESIDENT HATCHER: Mr Fleming?

PN1177

MR FLEMING: No, your Honour, my questions have been covered.

PN1178

VICE PRESIDENT HATCHER: Thank you. Mr Easton?

RE-EXAMINATION BY MR EASTON

[3.30 PM]

PN1179

MR EASTON: Thank you. Mr Sutton, you were asked a question and you gave an answer about what you tell casual employees at an induction and what you tell them about working additional hours. I think you said something to the effect of to let you work above the 38 hours we require you to sign a voluntary agreement. Do you recall saying something to that effect?---To that effect, yes, it's not constant every time.

PN1180

What's the alternative that the worker has at that point?---Due to our financial restrictions in average margins we would probably limit the amount of work that they were able to work to the 38 hours length.

PN1181

You would still hire them, would you, for the 38 hours?---I don't see a reason not to, if they were capable of doing the task.

*** BROCK PETER SUTTON

RXN MR EASTON

PN1182

You were asked a question about paying overtime over 38 hours a week, other than overtime on weekends, or penalty rates on weekends, and you were asked whether that's more manageable. You'll recall giving an answer there that you

thought it was more manageable, even though only overtime on the weekdays would be better than weekends, presumably, from your point of view. When you say it's - - -?---That's correct.

PN1183

When you say it's more manageable, do you see that as a viable option for your business?---Not necessarily, due to the financial constraints under our business.

PN1184

What do you mean by that?---If we were to - if there was to be a hard and fast rule of over 38 hours, there would have to be penalty rates included. Depending on the penalty rate it may mean that we would have to reduce those hours as well.

PN1185

From your understanding of the labour market that you recruit from, what impact is that going to have on your supply of labour?---It would limit it. I think we would find it difficult to keep some of our existing employees.

PN1186

Why do you say that?---If they were limited to a 38 hour working week, their earning capacity would be reduced by not a - I don't want to say a significant - a large percentage, but a large portion, meaning that they would be worse off.

PN1187

Thank you. You were asked about converting your overseas workers to permanent, and that not really arising, but you've got other casuals there that you've had for a long period of time, I think you've indicated that?---Yes.

PN1188

Have you ever had a request for any of those casual employees to become permanent?---In the past we have given the option for those casual employees to be put on a full time or full time equivalent basis. I think there was maybe one employee that took that option up. The rest of the employees chose to stay on a casual basis.

PN1189

Thank you very much. No other questions.

PN1190

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

<THE WITNESS WITHDREW

[3.35 PM]

PN1191

Mr Arndt, are you next?

PN1192

MR ARNDT: The Costa Group would seek to call Mr Peter McPherson, who's outside.

*** BROCK PETER SUTTON

RXN MR EASTON

PN1193

THE ASSOCIATE: Please state your full name and address.

PN1194

MR McPHERSON: Peter John McPherson (address supplied).

<PETER JOHN MCPHERSON, AFFIRMED [3.36 PM]

EXAMINATION-IN-CHIEF BY MR ARNDT [3.37 PM]

PN1195

VICE PRESIDENT HATCHER: Mr Crawford, Ms Mogg is present in Brisbane, is there any objection to her remaining in the room? Otherwise we'll have to disconnect.

PN1196

MR CRAWFORD: No, that's all right.

PN1197

VICE PRESIDENT HATCHER: Yes, all right. We'll proceed.

PN1198

MR ARNDT: Mr McPherson, I want to start with a very easy question. You've variously been referred to as Peter McPherson, or John McPherson, in these proceedings so far. Can I just confirm with you that you go by Peter McPherson?---That's correct.

PN1199

Mr McPherson, have you made a statement in these proceedings, it's signed and dated 22 February 2016, and it's of 56 numbered paragraphs?---Yes, that's correct.

PN1200

Are there any corrections or additions you'd like to make to that statement?---No.

PN1201

And the statement is true and correct to the best of your knowledge and belief?---It is.

PN1202

I seek to tender that statement.

PN1203

VICE PRESIDENT HATCHER: Yes, the statement of Peter John McPherson, dated 22 February 2016, will be marked exhibit 188.

**EXHIBIT #188 STATEMENT OF PETER JOHN MCPHERSON
DATED 22/2/2016**

PN1204

MR ARNDT: That's the evidence-in-chief.

*** PETER JOHN MCPHERSON

XN MR ARNDT

PN1205

VICE PRESIDENT HATCHER: Yes, Mr Crawford.

CROSS-EXAMINATION BY MR CRAWFORD

[3.38 PM]

PN1206

MR CRAWFORD: Afternoon, Mr McPherson, I'm from the Australian Workers' Union?---Hi.

PN1207

So in relation to your statement, at paragraph 10 - have you got your statement there?---Yes.

PN1208

You refer to an enterprise agreement?---That's correct.

PN1209

So most of the - aside from senior management, all the workers that you sort of deal with aren't under the Award, are they?---That's correct.

PN1210

Then at paragraph 11 you refer to the breakdown of your employees, and on my calculation 76 per cent of the workforce are casual piece workers. Does that sound about right?---That's correct.

PN1211

And casual piece workers aren't paid overtime rates, are they?---That's correct.

PN1212

And they're just paid for work performed, aren't they? They're not paid by the hour?---That's correct.

PN1213

VICE PRESIDENT HATCHER: Are they engaged in harvesting?---Yes, they are.

PN1214

What's the piece rate? What's the unit of production?---It changes all the time. It can change five or six times a day. We have a number of crews that are picking, different varieties, different productivity rates.

PN1215

But it's per punnet or something, is it?---Yes, it's per kilo of weight.

PN1216

MR CRAWFORD: Mr McPherson, is there a folder somewhere near you in the witness box?---Excuse me?

PN1217

Is there a folder somewhere near you?

*** PETER JOHN MCPHERSON

XXN MR CRAWFORD

PN1218

VICE PRESIDENT HATCHER: Apparently not.

PN1219

MR CRAWFORD: Is it possible to get one to him? You have that?---Yes.

PN1220

Can I refer you to tab 7?---Yes.

PN1221

That's a share prospectus from the Costa Group, is that right?---That's correct.

PN1222

Have you seen that document before?---Yes.

PN1223

Can you please turn to page 23?---Page 23, correct.

PN1224

Can you see about halfway down, the second paragraph under the pie charts, it reads:

PN1225

The fresh produce industry in Australia generally has a high level of protection from imported produce due to Australia's geographic isolation and Australian quarantine regulations.

PN1226

Can you see that?---I can.

PN1227

Do you agree with that statement?---That's correct.

PN1228

Just below that, under the heading 2.2., the first sentence is "The Australian fresh fruit and vegetable industry has exhibited consistent long term growth." Is that correct?---That's correct.

PN1229

You essentially only deal with berries, is that correct?---That's correct.

PN1230

Can you refer to page 26?---Thirty - - -

PN1231

Sorry, 26?---Yes.

Can you please go to the last paragraph on that page, which reads:

*** PETER JOHN MCPHERSON

XXN MR CRAWFORD

PN1232

Quarantine regulations restrict the import of fresh berries in to Australia. Importation of fresh raspberries is prohibited due to the risk of disease. Importation of fresh blueberries is permissible from New Zealand, but only occurs for a limited period each year.

PN1233

That's all correct?---That's correct.

PN1234

I've got a document to hand to the witness, your Honour.

PN1235

VICE PRESIDENT HATCHER: Yes.

PN1236

MR CRAWFORD: Do you have that, Mr McPherson?---I do.

PN1237

Have you seen that article before?---Not this particular article, no.

PN1238

The date is, if you look underneath the heading, 25 February 2016?---Mm.

PN1239

The heading is obviously Costa Groups Doubles Profit. Forecast 1 billion in Full Year Sales. Then just reading under the photograph of the tomatoes:

PN1240

Australia's biggest horticulture company Costa Group has doubled its net profit, defying hail storms and a glut of field tomatoes.

PN1241

And it goes on from there. Does that all sound right?---That's correct.

PN1242

Business is going pretty well at the moment?---Mm.

PN1243

Can you refer back to the folder and turn to tab 8?

PN1244

VICE PRESIDENT HATCHER: Do you want to tender that, Mr Crawford?

PN1245

MR CRAWFORD: Yes, please.

*** PETER JOHN MCPHERSON

XXN MR CRAWFORD

PN1246

VICE PRESIDENT HATCHER: News article, 25 February 2016 re: Costa Group will be marked exhibit 189.

**EXHIBIT #189 NEWS ARTICLE RE: COSTA GROUP DATED
25/02/2016**

PN1247

MR CRAWFORD: Do you have tab 8, Mr McPherson?---Yes.

PN1248

So this is an article from the Country News, dated 5 July 2016. So quite current. If you look at the second page, it's written by Tony Mahar, CEO of the National Farmers' Federation. Can you see that?---Yes.

PN1249

Can you turn back to the first page and look at the bottom paragraph, where it says:

PN1250

Using China as an example, in 14/15 it bought 90 billion of Australian export, to make up more than a quarter of our total exports and to be our leading market for agriculture resources and services. For agriculture, forestry and fisheries products specifically, exports to China was worth 9 billion in 14/15, up from 5 billion in 10/11, and as wealth increases the demand for the premium food and fibre products we are so talented at producing is forecast to continue on this rise.

PN1251

Then at the top of page 2 it goes on:

PN1252

In fact, IBISWorld says that of the top 20 Australian industries by growth in export, agricultural products make up at least 10. The growth potential of the sector simply cannot be refuted.

PN1253

Then just finally:

PN1254

Australia has wealth thought out free trade agreements already in place that stand to deliver billions of dollars to the economy, to generate jobs, and to allow key industries like agriculture to fill the void left by a declining resources sector. Any attempts to meddle with these deals in the name of playing politics or appeasing the unions would be a costly mistake, both financially and in terms of Australia's reputation as a reliable trading partner.

PN1255

Do you see all that?---Yes.

*** PETER JOHN MCPHERSON

XXN MR CRAWFORD

PN1256

Do you generally support the comments made by the NFF CEO in that article?---There's no doubt that, you know, China, if we get access to that market - I underline the meaning of access, the FTA doesn't give you access to the market.

You must have phytosanitary approvals in place and the berry business does not have that, as such. There's no doubt that China is a huge market. That cannot be underlined.

PN1257

Right. Would you agree with what I would say is the sentiment of that article, that there's an extreme amount of growth potential in the agricultural sector in Australia?---There is.

PN1258

Nothing further. Thank you, Mr McPherson.

PN1259

VICE PRESIDENT HATCHER: Mr McPherson, while you're here, the price of blueberries seem to be high in recent months. Why is that?---It's off season at the moment.

PN1260

I see. All right. Thank you.

PN1261

SENIOR DEPUTY PRESIDENT HAMBERGER: Where are they coming from?---Far north Queensland.

PN1262

Okay.

PN1263

VICE PRESIDENT HATCHER: Anything from you, Mr Fleming?

PN1264

MR FLEMING: No, your Honour.

PN1265

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

PN1266

MR ARNDT: Nothing arising.

PN1267

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

<THE WITNESS WITHDREW

[3.47 PM]

PN1268

MR EASTON: If it assists, your Honour, blueberries freeze fairly well, so if you buy low and eat high you'll be okay.

*** PETER JOHN MCPHERSON

XXN MR CRAWFORD

PN1269

VICE PRESIDENT HATCHER: Yes, I thought they had a sanitary scandal with frozen blueberries.

PN1270

MR EASTON: The next witness is Ms Mogg in Brisbane.

PN1271

VICE PRESIDENT HATCHER: All right. Can we administer the oath or affirmation to Ms Mogg, please, in Brisbane? No one there. Sorry, Ms Mogg, we'll just have to find someone to - so just relax and sit back until we find someone.

PN1272

THE ASSOCIATE: Can the Commission hear Brisbane?

PN1273

VICE PRESIDENT HATCHER: Yes.

PN1274

THE ASSOCIATE: Please state your full name and address.

PN1275

MS MOGG: Donna Louise Mogg (address supplied).

<DONNA LOUISE MOGG, AFFIRMED [3.48 PM]

EXAMINATION-IN-CHIEF BY MR EASTON [3.48 PM]

PN1276

MR EASTON: Ms Mogg, first thing is first, you look like you've got a number of papers there in front of you. Can you move them all aside, except for your statement signed 21 February 2016? Thank you?---Okay.

PN1277

Now, in relation to your statement, do you need to update paragraph 1, and the first few words of paragraph 1?---Yes, just that I'm no longer employed with Growcom at the moment.

PN1278

Thank you. Perhaps if we change the second word "and" to "was".

PN1279

VICE PRESIDENT HATCHER: We don't have to change it, this is an update, isn't it?

PN1280

MR EASTON: Indeed. With that notation, is the content of that statement true and correct?---Yes, it is.

*** DONNA LOUISE MOGG

XN MR EASTON

PN1281

Thank you, I seek to tender that.

PN1282

VICE PRESIDENT HATCHER: The statement of Donna Mogg dated 21 February 2016 will be marked exhibit 190.

EXHIBIT #190 STATEMENT OF DONNA MOGG DATED 21/02/2016

PN1283

MR EASTON: Thank you. And that is the evidence-in-chief.

PN1284

VICE PRESIDENT HATCHER: Mr Crawford.

CROSS-EXAMINATION BY MR CRAWFORD

[3.50 PM]

PN1285

MR CRAWFORD: Thank you, your Honour. Good afternoon, Ms Mogg, I'm from the Australian Workers' Union?---Good afternoon.

PN1286

Good afternoon. Can I refer to paragraph 4 of your witness statement. You seem to be saying there that prior to the modern award coming in to effect in 2010, the Queensland - presumably generally it was a NAPSA, provided overtime entitlements for casual employees when they worked more than 38 hours in a week, is that correct?---That's correct.

PN1287

I think your comment is it wasn't ideal, but it was manageable, because the flexibility within the award allowed ordinary hours of work to be done on any day of the week. Is that correct?---That's correct.

PN1288

So your understanding is in Queensland most - I'll step back. Is your understanding through your role that most farmers in the horticulture industry in Queensland would have been paying under that Award prior to 2010?---The majority would have been, yes.

PN1289

Ms Mogg, is there a folder of documents around you?---Yes, there are two folders, actually.

PN1290

What does the one you just picked - - -?---I take it you mean the AWU materials folder.

PN1291

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

*** DONNA LOUISE MOGG

XXN MR CRAWFORD

PN1292

Can you please turn to tab 6 in that folder?---I've got a dodgy folder, sorry. Okay. Yes.

PN1293

Do you have that?---Yes, I do.

PN1294

So there should be a spreadsheet, but ahead of the spreadsheet there should be a page that gives information about where the document came from. Do you have that?---It's just a spreadsheet, one piece of paper. Agricultural Gross Value of Production by Commodity.

Well that's not a big problem. If we just - by way of background, so you're aware, the spreadsheet has come from Queensland Government figures regarding the gross value of agricultural production. Right, so if we look at the spreadsheets, can you see that about a third of the way down there's a section for fruit and nuts?---Yes.

PN1295

So can you just look at the total fruit and nuts figures, which appear down the bottom of that grouping? So they're the total value of fruit and nut production in Queensland, over a lengthy period. Can you see that?---Yes.

PN1296

Do you accept that starting in 84/85, where the figure is 158.6, there's a gradual sort of increase in the gross figures, peaking in 06/07, do you see that? With 14459.30?---Yes, I can see that.

PN1297

Then sort of after 06/07 you see a return to a more stable level a bit, around the region of one thousand. Do you agree with that?---Yes. Yes, I can see that.

PN1298

So it's correct, isn't it, that the highest figure out of all those figures for fruit and nuts was in 06/07, when most employees in Queensland would have been paying overtime entitlements to casual employees. That's right, isn't it?---Well, the document speaks for itself. Whether that's how it translated in to practice, I'm not sure.

PN1299

Based on your earlier evidence, we can accept that the payment of overtime to casual employees ceased in 2010, that's right, isn't it?---With the implementation of the horticulture award, yes.

PN1300

Yes. And the 10/11 through to 14/15 figures don't generally reflect any dramatic increase in production as a result, do they?---No. Well, using these things, no.

*** DONNA LOUISE MOGG

XXN MR CRAWFORD

PN1301

I just want to point out the - can you see down the bottom of that spreadsheet, there's some footnotes? And in relation to (d), which you can see from the fruit and nuts section applies for the fruit and nuts bit, it states, "Prior to 08/09 only fruit was included." Can you see that?---Yes. Yes, I can see that.

PN1302

So prior to 08/09 only fruit was included. After that period fruit and nuts are included, but despite that we don't see a significant increase after the modern award takes effect in 2010, do we?---No.

PN1303

Now, can you please turn to the vegetable section, which is immediately below, and the total vegetables figures. Do you agree that from a figure of 173 in 84/85 there's a pretty gradual increase, consistently, all the way to, again, 06/07, which is a high figure? So it's obviously a good season?---Yes.

PN1304

And then from 06/07 onwards, pretty consistent results?---Yes.

PN1305

So, again, there's no evidence from those figures that the removal of overtime entitlements for casuals in Queensland had much of an impact on the production levels, is there?---No, but it may not be the removal of the overtime provisions.

PN1306

They were my questions on the spreadsheet. Can I ask, I realise you recently presumably ceased working for Growcom, but when you were working for them, did you give advice to employees in the horticulture industry?---To employers in the horticulture industry, yes.

PN1307

Was that - - -?---Employers, not employees.

PN1308

Yes, employers, thank you.

PN1309

VICE PRESIDENT HATCHER: Employers.

PN1310

MR CRAWFORD: Did I say employees again? We're definitely talking about employers, I can confirm that. Employers. So when you were working with Growcom, did you advise employers from 2010 that they didn't have to pay overtime rates to casual employees?---Yes, we did, from July when the matter was determined by the Fair Work Commission or the Ombudsman. Yes.

*** DONNA LOUISE MOGG

XXN MR CRAWFORD

PN1311

Probably the Commission. Can I just ask, did you give advice to employers about whether they had to pay superannuation on hours in excess of 38 in a week, for casuals?---Yes, we gave advice around those issues. Yes.

PN1312

And what was the advice in relation to superannuation?---The provisions as we - provisions allowed for superannuation to be paid on ordinary amounts of work, except for piece workers, because they were not hours employees, superannuation - unless there was a specific provision built in to a workplace agreement, of which there are many in Queensland, that restricted superannuation to the 38 hours. Then our advice in the absence of that was that superannuation was paid on all hours worked, to piece workers.

PN1313

But only to piece workers? Not people paid by the hour?---Correct.

PN1314

Right. So your advice to employers was that they - for someone paid by the hour, that worked in excess of 38 hours in a week, that employers did not have to pay superannuation on those hours?---Correct.

PN1315

And you accept that that in effect means that an employee is effectively earning less from hours in excess of 38 than they do for hours less than 38?

PN1316

VICE PRESIDENT HATCHER: Do you mean a casual employee?

PN1317

MR CRAWFORD: Yes. Do you want me to repeat that?---Sorry, could you just say that again?

PN1318

Do you accept that the outcome of that advice is that a casual employee who works more than 38 hours in a week is actually remunerated at a lower rate for hours over 38 in a week than they are for hours below 38 in a week?---I'm sorry, it doesn't make sense. The question doesn't make sense to me.

PN1319

Okay, well if they're not receiving superannuation when they work more than 38 hours in a week, that's right, isn't it?---Yes, for hourly paid employees, and that was according to the legislation. Yes.

PN1320

To make it simpler, say I'm a casual employee, I'm working my 40th hour for the week. I'm not getting superannuation on that hour?---Correct.

*** DONNA LOUISE MOGG

XXN MR CRAWFORD

PN1321

I'm not getting any penalty payment on that hour?---Under the current Award, do you mean?

PN1322

Yes?---Yes.

PN1323

So I'm actually earning less, in terms of my total remuneration, for that 40th hour than I'm earning for, for example, my 36th hour for the week. That's correct, isn't it, because I'm not receiving super?---Yes, sorry, I'm still not following. You're saying that you're earning less if you're working more. Is that what you're saying?

PN1324

I'm saying that you - - -

PN1325

VICE PRESIDENT HATCHER: I think the proposition is this, that per hour, because you're not getting super after 38 hours your effective remuneration per hour has dropped because you're not getting overtime penalties if you're a casual. Do you understand that?---So effective - so what you're doing is adding all of the sums of money together.

PN1326

MR CRAWFORD: Correct?---Right. Okay. And are you talking about piece workers or casuals?

PN1327

VICE PRESIDENT HATCHER: Casual workers on an hourly rate?---Right. So ask me the question again.

PN1328

MR CRAWFORD: So do you accept that a casual employee paid by the hour actually earns less, including super, for hours over 38 than they do for hours below 38?---Yes. The sums would suggest.

PN1329

Given you're obviously pretty involved, you have been, in industrial relations, do you think that's a satisfactory state of affairs?---Well, it is the provisions provided under the legislation and the Award. So we give advice in line with those regulations. It matters not what I think, in terms of fairness.

PN1330

Yes, I accept that. It's correct that the horticulture industry in Queensland survived despite paying overtime rates to casuals when they worked more than 38 hours in a week prior to 2010, didn't it?---Well, I'd suggest to you that there were probably plenty of examples where overtime rates were not paid. That in fact what was occurring was that more employees were being employed. And there's evidence to back that up.

*** DONNA LOUISE MOGG

XXN MR CRAWFORD

PN1331

So it was boosting employment?---It was boosting employment.

PN1332

VICE PRESIDENT HATCHER: What's the evidence for that?---There were about - there were probably over 280 or 300 workplace agreements made in Queensland from about 2007 through to 2010 which provided for voluntary additional hours undertaken at the employee's request. So there were a number of businesses that had those provisions in workplace agreements. And the evidence that we had in a matter in 2010, which involved AWU, that was on appeal against a number of agreements that we had in place, also brought evidence from both employers and employees to say that what was occurring in the majority of cases was that once employees had hit the 38 hour mark they would no longer have work available to them, and that employers would largely bring on additional employees to assist with those additional hours, where they might have been required. And that has to do with the price taking nature, I guess, of this industry. There was evidence presented in that matter, to that effect.

PN1333

Sorry, was that the Queensland of the Australian commission?---It was the Australian Industrial Relations Commission at the time, under Richards SDP.

PN1334

Mr Easton, you might supply us with a reference for that in due course.

PN1335

MR EASTON: I've got copies.

PN1336

VICE PRESIDENT HATCHER: All right. Sorry, Mr Crawford. Go on.

PN1337

MR CRAWFORD: That's fine, your Honour. Ms Mogg, firstly do you accept that there's a lot of foreign workers used in this industry?---Yes, I - yes, there are. A lot of backpackers.

PN1338

Why do you think that's the case?---Well, I think it's largely the case because they're available. The framework was established I think around 2006/7 to recognise that the industry was suffering a growing shortage of large numbers of short term workers. I think that goes to the, you know, to the heart of this matter, is that what's required is large numbers of short term workers, and you cannot get those large numbers in most of the, you know, regional areas. They're just not available. So, yes, there are large numbers of international workers in our industry.

*** DONNA LOUISE MOGG

XXN MR CRAWFORD

PN1339

It's, from your experience, hard to attract local labour?---It can be hard to attract the labour that you require. Particularly if you need, you know, 50, or 100, or 200, or even 400 people to work for you for six weeks. That can be difficult.

PN1340

Are you aware that part of the claims in these proceedings is for a four hour minimum engagement period for casual and part time employees?---Yes.

PN1341

Can I ask, have you ever considered the ability of an employer to stand down employees without pay when work has to cease due to weather events?---We've had occasion, particularly during 2011 and 12, when we had big cyclones and floods in Queensland, where we had to provide advice that was based on the legislation, based on the Act, not on the Award, around stand down in those situations.

PN1342

And if the right does exist for employers to stand down employees without pay when unforeseen weather events occur, if that exists do you see a problem with a four hour minimum engagement period for this industry?---Yes, I do.

PN1343

Why is that?---Because I think that it's a - (1) four hour minimum engagement periods are far too difficult to manage in this industry. There are plenty of real life examples. I won't bore you with those. The other issue, I think, is inevitably when these types of provisions are made in awards, they require agreements, or approvals, or whatever, between employers and employees, or there is a set of, you know, fairly rigorous, you know, kind of guidelines that have to be followed. The last thing I think that we need is more of, you know, argy bargy in our Award, that we need to be able to know what it is we're dealing with up front, without having to think every time we've got a bit of an issue that we have to go through a whole set of regulations and justify it. These things are always open to challenge. You know, we've got broad knowledge of how these things are always challenged, or often challenged. So I don't see much point in adding something in to an award which can be, as you suggest, struck out, unless, you know - except that there's usually a lot of regulation built in around it.

PN1344

In this industry, when harvest occurs it's normally employees doing a reasonably large amount of hours per week during that harvest period, isn't it?---It could be. It depends on the product and the environment.

PN1345

Given employees are, from other statistics in this case, often working around 50 hours a week, it doesn't appear they're getting called in for less than four hours very often, does it?---No, it probably doesn't happen very often. Yes.

PN1346

Just finally, can I refer you to tab 8 in the folder?---Yes.

PN1347

Do you have that?---Yes, I do.

*** DONNA LOUISE MOGG

XXN MR CRAWFORD

PN1348

So that's an article in the Country News dated 5 July 2016, written by Tony Mahar, the CEO of the National Farmers' Federation?---Yes.

PN1349

On page 2, up the top, it refers to IBISWorld saying that, "Of the 20 Australian industries by growth in export, agricultural products make up at least 10. The growth potential of the sector simply can be refuted." Do you see that?---I can see that, yes.

PN1350

Is that consistent with your understanding?---Yes, the growth potential is enormous, but I would suggest that the focus there is the word "potential".

PN1351

Thank you, Ms Mogg. Nothing further?---Thank you.

PN1352

VICE PRESIDENT HATCHER: Ms Mogg, just going back to paragraph 8 of your statement, those 250 agreements. Did Growcom prepare a template agreement, did it? Is that what happened?---Yes, we had a couple of standard provisions. The agreements differed, you know, depending on the particular farm, but there was a template that we had developed with the AWU as a result of that case in 2010.

PN1353

I'm sorry, I thought you said the agreements went from 2007 to 2010. Were they - -?---There were a number of appeals against agreements in 2010, in early 2010. We had numerous meetings and discussions with the union over those appeals, and those appeals were subsequently withdrawn, and we agreed that we would have a template agreement in place. Which we do. Did.

PN1354

That was agreed with the AWU?---Yes.

PN1355

All right. Thank you. Mr Easton.

PN1356

COMMISSIONER ROE: And that - - -

PN1357

VICE PRESIDENT HATCHER: Sorry.

PN1358

COMMISSIONER ROE: And that template agreement, that's not the agreement that has voluntary additional hours in it?---Yes, that is the agreement.

*** DONNA LOUISE MOGG

XXN MR CRAWFORD

PN1359

For both casuals and non-casuals?---Yes, that's correct.

PN1360

VICE PRESIDENT HATCHER: All right. Anything arising out of that, Mr Crawford?

PN1361

MR CRAWFORD: Well, this is the first I've seen of this document, your Honour. So not at this stage.

PN1362

VICE PRESIDENT HATCHER: Mr Easton, any re-examination?

RE-EXAMINATION BY MR EASTON

[4.12 PM]

PN1363

MR EASTON: Yes, thank you. Just in relation to the - you mentioned a moment ago, Ms Mogg, the 2010 proceedings. Were they proceedings before Richards SDP?---Yes, they were.

PN1364

Was that in the matter of Application by Fanoka, F-a-n-o-k-a, Proprietary Limited, trading as Fairview Orchards and Another?---Yes, that's correct.

PN1365

Now, I know this is logistically a bit awkward, but do you have a copy of that decision with your materials today?---Yes, I do.

PN1366

Thank you. I have copies for the bench, and I've obviously just provided one to my friend as well. The document you're referring to, is that a neutral citation [2010] FWA 2139? Top left corner?---Yes, that's correct.

PN1367

I'm not sure if we need to tender this, given it's a decision of the Commission.

PN1368

VICE PRESIDENT HATCHER: No.

PN1369

MR EASTON: You referred to appeal proceedings. What was the appeal of, or from, do you recall?---Yes, the appeal was actually against this decision. So we had made representations to Richards SDP around these 102 agreements. And then there was a subsequent appeal by the AWU against that decision. Then subsequent to that, on 29 June, the AWU withdrew their appeal.

PN1370

I see?---So there was a notice of discontinuance, dated 29 June 2010.

*** DONNA LOUISE MOGG

RXN MR EASTON

PN1371

In answer to a question from his Honour the Vice President, you referred to an agreement with the AWU?---We had a number of meetings with the AWU, and whilst I have a memorandum of understanding, you know, there is that usual clause in there about not relying, necessarily, on these for further proceedings, but there was certainly about six or eight meetings with the union during that time. Including the union, the assistance secretary, attending a board meeting, a Growcom board meeting. Those meetings were around those appeals, and around, you know, talking about the needs of the industry within the confines of both the old award and the new award, and these agreements. After those meetings that appeal was withdrawn.

PN1372

Do you have a copy of that memorandum of understanding with you?---Yes, I do.

PN1373

Is that a document dated - or signed on 29 June 2010, by Mr Ludwig?---Yes, that's correct.

PN1374

I can't show you a document, but I can provide a copy of what I'm understanding is the same document here.

PN1375

MR CRAWFORD: I'll have to object based on the witness' own evidence that there's something in there about it not being used in any other proceedings. I mean, I haven't seen the document, but that was her evidence.

PN1376

MR EASTON: It's not being relied upon as a precedent the making of an agreement now.

PN1377

MR CRAWFORD: It's not to be handed up.

PN1378

MR EASTON: But it completes the loop of what has been - - -

PN1379

VICE PRESIDENT HATCHER: Why is this all coming forward in re-examination?

PN1380

MR EASTON: It arose in terms of the proceedings from 2010, that was asked about - - -

*** DONNA LOUISE MOGG

RXN MR EASTON

PN1381

VICE PRESIDENT HATCHER: That was my question, I think. I don't think it was cross-examination. Anyway, look, we won't allow the tender now. You can

show it to Mr Crawford, he can seek instructions about it, and we'll deal with it at a later time.

PN1382

MR EASTON: Thank you. Then that's the evidence.

PN1383

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

<THE WITNESS WITHDREW

[4.16 PM]

PN1384

MR EASTON: One more witness for today, your Honour, is De Jonge, who I understand is in Melbourne.

PN1385

VICE PRESIDENT HATCHER: Right.

PN1386

THE ASSOCIATE: Can you please state your full name and address?

PN1387

MS DE JONGE: Alice De Jonge (address supplied).

<ALICE DE JONGE, AFFIRMED

[4.17 PM]

EXAMINATION-IN-CHIEF BY MR EASTON

[4.17 PM]

PN1388

MR EASTON: Ms De Jonge, you have made a statement in these proceedings, have you not, on 22 February?---Yes, a short statement.

PN1389

I appreciate that your statement is essentially an analysis and a summary of a particular survey, but is it true and correct to the best of your knowledge and belief?---It's true and correct to the best of my knowledge.

PN1390

Thank you, I seek to tender the statement of Ms De Jonge, with the attachment A report on VOH survey, the statement dated 22 February 2016.

PN1391

VICE PRESIDENT HATCHER: All right. The statement of Alice De Jonge, dated 22 February 2016, and the attached report, is marked exhibit 191.

**EXHIBIT #191 STATEMENT AND ATTACHED REPORT OF
ALICE DE JONGE DATED 22/2/2016**

*** ALICE DE JONGE

XN MR EASTON

PN1392

MR EASTON: That is the evidence-in-chief.

PN1393

VICE PRESIDENT HATCHER: Mr Crawford.

CROSS-EXAMINATION BY MR CRAWFORD

[4.18 PM]

PN1394

MR CRAWFORD: Thank you, your Honour. Ms De Jonge, my name's Stephen Crawford, I'm from the Australian Workers' Union. I've just got some questions about your statement. So is it correct that you analysed some results of a survey that was undertaken by the Voice of Horticulture?---Correct.

PN1395

Did you have any involvement in designing the survey for the Voice of Horticulture?---I did not.

PN1396

Are you aware of any safeguards that were in place to ensure the accuracy of responses, or anything like that?---I'm aware that the survey was sent out via SurveyMonkey, which is an anonymous survey tool available for commercial purchase. That's - it has certain safeguards built in to it. Apart from that I don't think there were any additional safeguards used.

PN1397

You don't think there were any additional safeguards, or you just wouldn't know either way?---I'm not aware of any. SurveyMonkey is considered to be of good repute, and it has safeguards built in to it.

PN1398

What about safeguards that would ensure that only members of the Voice of Horticulture could complete the survey?---I don't necessarily think that it was designed only for the members of Voice of Horticulture. There were some responses sent out, distributed via AusVeg, and collected by AusVeg, that were included in the responses that I analysed.

PN1399

Do you know that independently, or are you just relying on what AusVeg told you? Or the Voice of Horticulture, sorry?---That's correct, I'm relying on responses passed on to me by Voice of Horticulture.

PN1400

Okay. Now, I've read through the data that you've summarised. I didn't locate any data about production levels in the industry, is that correct?---The survey starts with basic crops and (indistinct).

*** ALICE DE JONGE

XXN MR CRAWFORD

PN1401

Where in particular does it talk about production levels?---Where does it talk about production crops?

PN1402

Yes, like the level of - - -?---Well, the first few questions talk - ask respondents to indicate their crops, and their seasons, harvest seasons.

PN1403

Yes, but there's no data about how much produce was produced in any particular season, or over a course of time, was there?---How much quantities?

PN1404

Correct?---There's no data on quantity, no.

PN1405

I couldn't find any data about income levels from farmers. Is that correct, there's nothing?---Total income levels were indirectly indicated by indications of the levels of viability that would be breached, should expenses be increased.

PN1406

Well, there's no data in there about how much a particular farm made in a particular year, is there?---No.

PN1407

There's nothing about profit levels in any particular year, is there?---No, no, that data would be available from the Tax Office.

PN1408

There's no data in there about growth in, for example, export numbers, is there?---No, no, there's not.

PN1409

So as an academic, how would you assess this survey in terms of giving a complete economic picture of the horticulture industry?---If that was the objective of the survey, to give a complete economic picture of the horticulture industry, it would not be an appropriate survey, but my belief is that the aim of the survey was to obtain a picture of the labour used by farmers, and the type of labour they used, and the labour costs involved, and the proportion of total costs that were absorbed by labour costs. And since that was the aim of the survey, the survey is relatively well targeted at that particular purpose.

PN1410

Labour cost figures don't mean that much, without knowing how much income or profit a farmer's receiving, do they? I mean, your labour costs might increase by 10 per cent but your profits increase by 100 per cent. So what does that actually mean?---Responses indicate that if certain labour costs increase the farm would be below viability, and that would seem to suggest that profits are not more than somewhat small.

*** ALICE DE JONGE

XXN MR CRAWFORD

PN1411

So just in terms of the actual data, can you go to page 1, which is the first page after your statement?---Mm.

PN1412

There's an average duration cited for five different crops. Is that correct?---Yes.

PN1413

And the highest average is only 21 weeks. That's correct, isn't it?---That's a mean average. So you'll understand that a mean could be - mean that the highest is closer to - is much higher and the lowest is much lower, and if you put the two together you get a mean in the middle. So it doesn't necessarily mean that the highest is 21, no.

PN1414

That's not all that clearly reflected in the document, is it?---Perhaps I missed - expressed myself in a way that the lay-reader could not understand, but average is usually taken to mean "mean". I should have put the word "mean" in brackets.

PN1415

So turning to page 3 of the results, which is page 3 of 10 of your statement, so that's easy enough. I understand that what the data under VOH Survey Workforce Composition Overview, what that is indicating is that most employees in this industry, according to the survey, are paid under the Horticulture Award. Is that correct?---Yes, that would seem to be what the results suggest.

PN1416

Below the six dot points, the indication is that the predominant form of employment is casual. That's correct, isn't it?---Yes.

PN1417

Turning to page 4, there's an indication that the average hours worked a week in peak season is around 50, is that correct?---Page 4?

PN1418

Yes?---That must be - after my statement, you mean? So that must be my page.

PN1419

Sorry, I might have confused you earlier. It's page 4 of 10 of the document that includes your statement?---Okay, so that would be page - what number are we looking for?

PN1420

Four of 10?---Horticultural awards, peak harvest season, casuals and the largest full time employees is about 10 per cent. Average employment employed 49 workers, 41 on a casual basis.

PN1421

VICE PRESIDENT HATCHER: Next page. Turn to the next page?---Yes, so on the next page after that, you're after which question? The number of hours?

*** ALICE DE JONGE

XXN MR CRAWFORD

PN1422

MR CRAWFORD: Yes. So the response is in peak season, an average of 50 hours per week. Is that correct?---Yes.

PN1423

Are you aware that part of the contentious issues in these proceedings is a four hour minimum engagement for casual and part time employees?---Yes.

PN1424

If the average weekly hours are 50, that doesn't indicate people are coming in for less than four hours very often, does it?---It could, depending on, again, your mean.

PN1425

Just using that figure of 50, if you're working each day of the week, seven days a week, then you're doing at least seven hours on those seven days, aren't you?---That's if you are working that - if it was evenly distributed, but the responses suggest that work is not evenly distributed, and that some days, by reason of the weather, power failure, and other reasons, employees can be sent home after one or two hours, because the weather, or power failure, or other adverse circumstances makes work impossible for the rest of that day.

PN1426

Thank you, Ms De Jonge. Nothing further.

PN1427

VICE PRESIDENT HATCHER: Any re-examination?

RE-EXAMINATION BY MR EASTON

[4.28 PM]

PN1428

MR EASTON: Just one quick question, Ms De Jonge. You were asked about the first page of your report, and references there to crop 1, crop 4, 2, 3, 4, 5, etcetera. Is the crop 1 the same crop for each of the respondents, or is that their primary crop?---That's a bit misleading, it's the main crop for that farm. So it refers to your main crop, how many weeks does your main crop take. And the main crop overall was avocados, and then there were tomatoes, and pears, and apples, and other fruits. There were almonds in there as well. But the largest crop, the main crop, was avocados, from the survey respondents.

PN1429

Thank you. No other questions. Thank you.

PN1430

VICE PRESIDENT HATCHER: Thank you for your evidence, Ms De Jonge, you're excused and you're free to leave?---Thank you.

<THE WITNESS WITHDREW

[4.29 PM]

*** ALICE DE JONGE

RXN MR EASTON

PN1431

So that's all the witnesses for today. Any procedural issues that we can deal with, or need to deal with? No? All right. We will now adjourn, and we'll resume at 9 am tomorrow morning.

PN1432

MR CRAWFORD: Sorry, your Honour. Just for my benefit, I'm trying to get an idea of when I need to come back.

PN1433

VICE PRESIDENT HATCHER: We can't assist you with that. So we'll now adjourn.

ADJOURNED UNTIL FRIDAY, 12 JULY 2016

[4.30 PM]

LIST OF WITNESSES, EXHIBITS AND MFIs

EXHIBIT #150 WITNESS STATEMENT OF MR SIMON FIDDELAERS DATED 12/10/2015	PN99
EXHIBIT #151 WITNESS STATEMENT OF CHERYL MCCARTIE DATED 09/10/2015	PN103
EXHIBIT #152 WITNESS STATEMENT OF ANNE WEARDEN UNDATED.....	PN105
EXHIBIT #153 WITNESS STATEMENT OF ANDREW BULMER DATED 22/02/2016	PN114
EXHIBIT #154 WITNESS STATEMENT OF STEVE CHAPMAN DATED 22/02/2016	PN115
EXHIBIT #155 WITNESS STATEMENT OF KYLIE COLLINS DATED 16/02/2016	PN120
EXHIBIT #156 WITNESS STATEMENT OF JOHN CRANNIE DATED 19/02/2016	PN122
EXHIBIT #157 WITNESS STATEMENT OF MICK DUDGEON DATED 19/02/2016	PN124
EXHIBIT #158 WITNESS STATEMENT OF SUSAN FINGER DATED 16/02/2016	PN126
EXHIBIT #159 WITNESS STATEMENT OF VICKI FORSYTH DATED 16/02/2016	PN128
EXHIBIT #160 WITNESS STATEMENT OF CHRIS FULLERTON UNDATED.....	PN130
EXHIBIT #161 WITNESS STATEMENT OF RHONDA JURGENS UNDATED.....	PN132
EXHIBIT #162 WITNESS STATEMENT OF NICK LEITCH DATED 12/02/2016	PN134
EXHIBIT #163 WITNESS STATEMENT OF TRACEY MCGROGAN DATED 15/02/2016	PN136
EXHIBIT #164 WITNESS STATEMENT OF BRENDAN MILLER SIGNED 22/02/2016.....	PN138
EXHIBIT #165 WITNESS STATEMENT OF STEPHEN PACE DATED 18/02/2016	PN140

EXHIBIT #166 WITNESS STATEMENT OF PENNIE PATANE UNDATED.....	PN142
EXHIBIT #167 WITNESS STATEMENT OF ANDREAS REAHBERGER DATED	PN144
EXHIBIT #168 WITNESS STATEMENT OF ROSS TURNBULL UNDATED.....	PN146
EXHIBIT #169 WITNESS STATEMENT OF TIM WOLLENS UNDATED	PN148
EXHIBIT #170 WITNESS STATEMENT OF ANN YOUNG DATED 15 FEBRUARY 2016	PN150
EXHIBIT #171 WITNESS STATEMENT OF ANDREW YOUNG DATED 22 FEBRUARY 2016	PN152
EXHIBIT #172 WITNESS STATEMENT OF KIM SHEPHERD DATED 29/02/2016	PN161
EXHIBIT #173 WITNESS STATEMENT OF ADAM ALGATE DATED 13/10/2015	PN171
EXHIBIT #174 STATEMENT OF KEITH BALLIN DATED 09/10/2015	PN179
EXHIBIT #175 WITNESS STATEMENT OF RON COWDREY OF 13/10/2015	PN183
EXHIBIT #176 WITNESS STATEMENT OF RICHARD ROBERTS DATED 22/02/2016	PN189
LEIGH SHEARMAN, SWORN	PN193
EXAMINATION-IN-CHIEF BY MR EASTON	PN193
EXHIBIT #177 WITNESS STATEMENT OF LEIGH SHEARMAN DATED 12/10/ 2015	PN202
CROSS-EXAMINATION BY MR CRAWFORD.....	PN203
RE-EXAMINATION BY MR EASTON	PN313
THE WITNESS WITHDREW	PN326
SUSAN VALERIE WEARDEN, AFFIRMED.....	PN346
EXAMINATION-IN-CHIEF BY MR EASTON	PN346
EXHIBIT #178 WITNESS STATEMENT OF SUSAN WEARDEN DATED 15/04/2015	PN350
CROSS-EXAMINATION BY MR CRAWFORD.....	PN353

RE-EXAMINATION BY MR EASTON	PN423
THE WITNESS WITHDREW	PN429
ANTHONY GRUNDEL, AFFIRMED	PN433
EXAMINATION-IN-CHIEF BY MS HILLS	PN433
EXHIBIT #179 AFFIDAVIT OF ANTHONY GRUNDEL DATED 08/10/2015	PN441
CROSS-EXAMINATION BY MR SPRECKLEY	PN444
RE-EXAMINATION BY MS HILLS	PN488
THE WITNESS WITHDREW	PN495
STEVEN TODD, AFFIRMED	PN502
EXAMINATION-IN-CHIEF BY MS HILLS	PN502
EXHIBIT #180 AFFIDAVIT OF STEVEN TODD DATED 08/10/2015.....	PN509
CROSS-EXAMINATION BY MR SPRECKLEY	PN512
RE-EXAMINATION BY MS HILLS	PN567
THE WITNESS WITHDREW	PN574
FRED PEACOCK, AFFIRMED	PN577
EXAMINATION-IN-CHIEF BY MS HILLS	PN577
EXHIBIT #181 AFFIDAVIT OF FRED PEACOCK DATED 19 OCTOBER 2015	PN584
CROSS-EXAMINATION BY MR SPRECKLEY	PN585
RE-EXAMINATION BY MS HILLS	PN622
THE WITNESS WITHDREW	PN627
ADAM ALGATE, AFFIRMED.....	PN632
EXAMINATION-IN-CHIEF BY MR CRAWFORD.....	PN632
EXHIBIT #182 WITNESS STATEMENT OF ADAM ALGATE DATED 18/02/2016	PN638
CROSS-EXAMINATION BY MS HILLS	PN639
THE WITNESS WITHDREW	PN704

RON COWDREY, SWORN	PN710
EXAMINATION-IN-CHIEF BY MR CRAWFORD.....	PN710
EXHIBIT #183 STATEMENT OF RON COWDREY DATED 18/02/2016	PN717
CROSS-EXAMINATION BY MS HILLS	PN717
THE WITNESS WITHDREW	PN782
CLINT EDWARDS, AFFIRMED.....	PN798
EXAMINATION-IN-CHIEF BY MR EASTON	PN798
EXHIBIT #184 STATEMENT OF CLINT EDWARDS DATED 18/02/2016 .	PN802
CROSS-EXAMINATION BY MR CRAWFORD.....	PN804
RE-EXAMINATION BY MR EASTON	PN844
THE WITNESS WITHDREW	PN850
JOHN ANTHONY DOLLISSON, AFFIRMED	PN854
EXAMINATION-IN-CHIEF BY MR EASTON	PN854
EXHIBIT #185 STATEMENT OF JOHN DOLLISSON DATED 22/02/2016 AS AMENDED.....	PN859
CROSS-EXAMINATION BY MR CRAWFORD.....	PN859
EXHIBIT #186 AWU BUNDLE CONCERNING HORTICULTURAL AND PASTORAL INDUSTRY AWARDS	PN869
THE WITNESS WITHDREW	PN1077
BROCK PETER SUTTON, AFFIRMED	PN1102
EXAMINATION-IN-CHIEF BY MR EASTON	PN1102
EXHIBIT #187 STATEMENT OF BROCK SUTTON DATED 22/2/15	PN1112
CROSS-EXAMINATION BY MR CRAWFORD.....	PN1114
RE-EXAMINATION BY MR EASTON	PN1178
THE WITNESS WITHDREW	PN1190
PETER JOHN MCPHERSON, AFFIRMED	PN1194
EXAMINATION-IN-CHIEF BY MR ARNDT	PN1194

EXHIBIT #188 STATEMENT OF PETER JOHN MCPHERSON DATED 22/2/2016	PN1203
CROSS-EXAMINATION BY MR CRAWFORD.....	PN1205
EXHIBIT #189 NEWS ARTICLE RE: COSTA GROUP DATED 25/02/2016.....	PN1246
THE WITNESS WITHDREW	PN1267
DONNA LOUISE MOGG, AFFIRMED	PN1275
EXAMINATION-IN-CHIEF BY MR EASTON	PN1275
EXHIBIT #190 STATEMENT OF DONNA MOGG DATED 21/02/2016.....	PN1282
CROSS-EXAMINATION BY MR CRAWFORD.....	PN1284
RE-EXAMINATION BY MR EASTON	PN1362
THE WITNESS WITHDREW	PN1383
ALICE DE JONGE, AFFIRMED	PN1387
EXAMINATION-IN-CHIEF BY MR EASTON	PN1387
EXHIBIT #191 STATEMENT AND ATTACHED REPORT OF ALICE DE JONGE DATED 22/2/2016	PN1391
CROSS-EXAMINATION BY MR CRAWFORD.....	PN1393
RE-EXAMINATION BY MR EASTON	PN1427
THE WITNESS WITHDREW	PN1430