



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

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

AM2014/305

s.156 - 4 yearly review of modern awards

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

Melbourne

10.03 AM, WEDNESDAY, 28 SEPTEMBER 2016

Continued from 14/04/2016

PN28187

JUSTICE ROSS: Can I have the appearances, please?

PN28188

MR H J DIXON: If it please the Commission I continue to appear with my learned friend, Mr Gotting for the Ai Group in the Fast Food Industry matter.

PN28189

JUSTICE ROSS: Thank you, Mr Dixon.

PN28190

MR S MOORE: If the Commission pleases, I continue to appear with Ms Forsyth for the SDA.

PN28191

JUSTICE ROSS: Thanks, Mr Moore. Yes, Mr Dixon?

PN28192

MR DIXON: May it please the Commission, in response to the most recent directions issued by the Commission, Ai Group has submitted three statements or affidavits and an outline analysing that material. The first of those witnesses is Ms Limbrey, and unless there are any preliminary matters, we would seek to call her.

PN28193

JUSTICE ROSS: All right.

PN28194

MR DIXON: May we call Ms Limbrey?

PN28195

JUSTICE ROSS: Certainly.

PN28196

THE ASSOCIATE: Can you please state your full name and address?

PN28197

MS LIMBREY: Krista Terese Limbrey (address supplied).

<KRISTA TERESE LIMBREY, AFFIRMED

[10.05 AM]

EXAMINATION-IN-CHIEF BY MR DIXON

[10.05 AM]

PN28198

MR DIXON: Thank you, your Honour. Ms Limbrey, are your full names Krista Terese Limbrey?---Yes.

PN28199

And is your address (address supplied)?---That's correct.

*** KRISTA TERESE LIMBREY

XN MR DIXON

PN28200

Are you employed by McDonald's Australia Limited?---Yes, I am.

PN28201

And in what capacity are you employed?---My current role is as the people insights and recruitment manager.

PN28202

And in that capacity did you affirm an affidavit in respect of these proceedings on 23 September 2016?---Yes, I did.

PN28203

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

PN28204

And does it consist of 43 paragraphs with your signature appearing where you affirmed that affidavit on 23 September 2016, page 11?---Yes, it does.

PN28205

And may I ask you just to clarify a matter, please? Can I ask you to turn to paragraph 10 of your affidavit of 23 September?---Yes.

PN28206

Do you have that in front of you?---Yes, I do.

PN28207

And one notes in paragraph 10 that you make reference to 234 employees whose birth date you did not have?---Yes. That's correct.

PN28208

At the time of doing the analysis of the data in this affidavit?---Yes.

PN28209

And you indicate there that there is a system called the MeTime System, in which dates of birth are entered into?---Yes. That's correct.

PN28210

When did the MeTime System come into operation?---Approximately 2009.

PN28211

And so when you have calculated and provided the tables at paragraph 11, 13 and 15, have you assumed that the 234 employees are over the age of 25?---Yes, I have.

PN28212

And what is the reason for that assumption?---The reason for that is because we've had the system for so long and they were employed with us at the time of changing over to the system, that in those paragraphs we've assumed that they are likely to be over 25.

PN28213

So that if one looks, for example, at paragraph 11, the figures in the left-hand column, the age column, for 25 plus there are some included in – of the 234 there's some employees included in that calculation?---Yes, there are.

PN28214

And is it still the case that you don't precisely know the ages of those particular category of employees?---Yes, that is still the case.

PN28215

And have you considered whether, if you were to exclude the 234 employees, whether it would have any significant impact on any of the figures in paragraph 11, 13 or 15 for the 25 plus ages?---I have gone through and excluded them, and had a look at what impact that would have, and, as a percentage of the totals, it makes a very minimal impact. The highest is about .3 of a per cent that it makes a difference.

PN28216

And can I ask you to turn to paragraph 15? When you referred to point 3, the difference in .3 per cent does that relate to paragraph 15?---Yes, it does.

PN28217

And just explain to us how? Would that relate to level 4, full time?---Full time and part time.

PN28218

Yes. And in relation to the .3 per cent difference that you were referring to, which column were you referring to?---So if you looked at the – if we were to exclude those employees for the level 4 part time, the total of the number of employees that make up in here is 12.33. If we were to exclude them the change that it would make would be The 12.68.

PN28219

And in the fourth column, level 4?---Yes, so that would change the 87.67 to 87.32 if we were to exclude those.

PN28220

And when you earlier referred to a - - -

PN28221

JUSTICE ROSS: I'm sorry, just before you leave that, that means you know the numbers?---Yes, we do.

PN28222

And what were the numbers?---So for that particular one, yes, so we've just – I've just worked it out. So if you were to read across the 25 plus there, this is where the most – predominantly the 234 come from, so the casuals still zero, but then the column, the level 4 part time column, would in fact be – sorry, I haven't got it front of me – 213, and the level 4 full time column would in fact be 2044.

KRISTA TERESE LIMBREY

XN MR DIXON

PN28223

MR DIXON: Which indicates if my calculations are correct on that, that the reduction on level 4 full time would be by 196?---That's correct. The level 4 totally would be - - -

PN28224

Sorry, the level - - -?---Yes, level 4 in total would be 196.

PN28225

So the 2231 reduces to 2044?---Yes.

PN28226

Which is a figure of a difference of 196?---Yes. One hundred and eighty-seven, is it?

PN28227

Sorry, 187 is it?---Yes.

PN28228

And 187, when you said it's a majority level 4, that would be 187 out of the 234?---So that was 187 full time level 4s.

PN28229

Yes?---Yes.

PN28230

So of the 234 - - -?---Yes.

PN28231

- - -that you identify in paragraph 10, 187 are at level 4 full time in the column 25 plus on page 15?---Yes.

PN28232

And when you earlier referred to a percentage drop of .3 per cent were you referring to a difference between 87.67 reducing to 87.3 per cent?---Yes.

PN28233

Now, subject to those explanations, may we read the affidavit if the Commission pleases? It's already been affirmed.

PN28234

JUSTICE ROSS: Any objection?

PN28235

MR MOORE: No, your Honour.

PN28236

JUSTICE ROSS: I will mark that exhibit Ai Group 30.

EXHIBIT #Ai GROUP 30 AFFIDAVIT OF KRISTA TERESA LIMBREY

PN28237

JUSTICE ROSS: Just before – I wouldn't normally do it in this sort of a – I just want to deal with the question that deals with the numbers that we've just dealt with. Ms Limbrey, you've dealt with the numbers in relation to level 4?---Mm-hm.

PN28238

On my calculation that means that 196 of the 234 employees were level 4 employees?---Yes.

PN28239

The other 38, were they level 3 employees?---Eleven of them 2343 level 3 employees.

PN28240

Right. And how were they distributed?---So there's three casual employees.

PN28241

Yes?---Six part-time employees.

PN28242

Yes?---And two full-time employees.

PN28243

And what about the 27 remaining?---Yes, so they're level 2 employees, so of those - - -

PN28244

I'm sorry, they're - - -?---Level 2 employees, sorry.

PN28245

Right. Yes?---Of those, 10 are casual, four are part-time and 13 are full-time.

PN28246

Thank you. Thanks, Mr Moore.

CROSS-EXAMINATION BY MR MOORE

[10.13 AM]

PN28247

MR MOORE: Thank you, your Honour. Good morning, Ms Limbrey. I just want to ask you some questions about the section of your affidavit which starts at paragraph 26 dealing with employees regarded as career employees. I take it that when you're referring to career employees in your affidavit you're using that term in the same sense in which you used it in your first affidavit of 10 August, which is Ai Group 3, where you said:

*** KRISTA TERESA LIMBREY

XXN MR MOORE

PN28248

Career employees are employees who intend to be with McDonald's for a number of years.

PN28249

That's what you mean when you refer to career employees?---Yes.

PN28250

Thank you. So at the heart of the distinction between career and non-career employees is the employee's future intentions?---Probably not just their future intentions but also what working at McDonald's means for them at the moment, if it's their primary - if it's something that is their primary focus, for example, at the moment, and is something that they are considering pursuing as a career, so into the future.

PN28251

Yes, it's to do with their intentions into the future at its heart?---Yes.

PN28252

Because those intentions into the future are obviously subjective and we're dealing with - I can't recall the number - 90-odd thousand employees, those intentions are not readily or reliably able to be definitively ascertained by McDonald's?---So whilst we might not know each individual employee and I haven't asked them particularly myself what their intentions are, we can make certain distinctions because of the positions that they're in and also the type of employment that they're undertaking with us.

PN28253

Yes, and I'm coming to that and I understand that, and you talk about indicators and factors, I understand that, but just before we get to that point, short of actually surveying each employee and asking them the question, what are your future intentions with McDonald's, short of doing that, McDonald's is in a position to know definitively whether or not a particular employee intends to be working in the company for some time into the future?---There are some reasons why we wouldn't be able to do that, but we also have - there are some employees that we can exclude as being career employees because of their current position, so if someone's a 14-year-old employee, even though in 10 years' time they might be looking at something with McDonald's, at the moment we wouldn't consider them a career employee.

PN28254

But that 14-year-old employee that you just referred to might be a career employee because the 14-year-old has an intention to have a career with McDonald's, do you accept that might be so?---At some stage in the future they could be. At that time we wouldn't consider them one.

KRISTA TERESE LIMBREY

XXN MR MOORE

PN28255

Well at some stage in the future is looking back with the benefit of hindsight, isn't it, about what has actually happened? The question of career employees, looking at your workforce now, as you identify, the career employees as you put it are

employees who intend to be with McDonald's for a number of years. You don't know definitively whether or not any particular employees, whatever their age, whatever their classification, might be, whether or not they are, have an intention to be with McDonald's for a number of years; that's got to be the case, isn't it?---Can you ask the question again? I'm trying to - - -

PN28256

All right, I'll come at it in a slightly different way. You can't peer into the minds of your workers so you don't know definitively whether or not any one of the 90-odd thousand employees actually have an intention to be with McDonald's for a number of years, that's so?---We couldn't look at everyone, but because of different factors or indicators about those people we can make distinctions about them. But we don't know what's inside their minds, yes.

PN28257

You make inferences, you draw conclusions based upon a number of indicative factors?---Yes.

PN28258

I'll ask you some questions about that. The indicators or factors which you refer to in your affidavit are factors or indicators which may indicate that an employee has an intention to work with McDonald's for some time into the future?---That's correct.

PN28259

They're not black and white?---In most cases not. There's a few that you would say, based on their level, are probably black and white.

PN28260

Some of the factors you refer to - I think you deal with this in paragraph 32 - as you say there:

PN28261

McDonald's typically considers a non-career employee to be an employee who does not intend to pursue a career with McDonald's, and McDonald's considers that the following factors are indicative of a non-career employee.

PN28262

And then you've set out five factors. Do you accept that none of those individual factors alone are necessarily determinative course of whether or not they are a career employee in the sense you've described?---What was that, sorry?

*** KRISTA TERESE LIMBREY

XXN MR MOORE

PN28263

Let's perhaps deal with it in a more specific way. If you look at (a), that's one of the factors you identify is if the employee is aged between 14 and 17. You accept that it doesn't necessarily follow from the fact that an employee is aged between 14 and 17 that they are a non-career employee?---At this stage, if they are right now between 14 and 17 we would probably consider them in almost all cases non-career employees because they're required to be at school. Most of them are required to be at school or are undertaking some kind of education or training.

PN28264

You treat them in that way, that's what you're saying? You treat them as non-career employees?---In most cases most of them would be non-career employees.

PN28265

Well you accept that the mere fact that a person is aged 15, it doesn't necessarily follow that they're a non-career employee in the sense of not intending to pursue a career with McDonald's?---As I said before, they might be intending to pursue one in the future but at this stage, if we had to say right now are they a career or a non-career employee, we would say that they were a non-career employee.

PN28266

You choose to treat them in that way, but you don't know, do you?---Into the future we can't see what they will be doing.

PN28267

Well you can't see into their minds, can you?---No.

PN28268

One of the examples that was drawn to my attention is the former managing director and CEO of McDonald's, Catriona Noble, you know of her?---Yes, I do.

PN28269

No doubt you've met her along the way?---Yes, I have.

PN28270

And she's reported in the Financial Review of 8 April 2014, the article reports that she started flipping burgers - that's how it's expressed - at McDonald's when she was 14. Did you know that?---Yes, I did.

PN28271

And she went up the ladder to become the CEO, that's right?---Yes.

PN28272

So as it emerged she's plainly a career employee?---I suppose she developed a career with McDonald's, but the whole way through, at 14, we don't know that about them, so at that point in time we wouldn't be able to consider them as a career employee.

PN28273

You make an assumption that anyone aged between 14 and 17 by reason of their age can't be a career employee?---Not into the future, but if we needed to decide at that point in time what are they right now, most of them probably wouldn't be.

PN28274

So the effect of that is that for your own internal purposes McDonald's treats 14 to 17-year-olds as non-career employees, even if they happen to have an intention to have a career with McDonald's?---I suppose there isn't a way that we would treat them differently, so I'm unsure about what you mean by treating them differently.

PN28275

Well you regard them - I'm not saying you treat them differently in any adverse way, I'm just saying you regard them or classify them as non-career employees just because of their age?---So it's not a classification that we share with them or anything like that.

PN28276

No?---It's probably just - yes.

PN28277

If I look at (c), being engaged as a casual employee, do I take it then that the same applies there that McDonald's, for its own purposes, internally if you like, decides to classify - treat - internally employees who are engaged as casuals as non-career employees?---At the time at which they're casual most people wouldn't be a career employee.

PN28278

Yes?---At that point in time. If, down the track, they then went on to be a different classification of employee, that would change.

PN28279

And there are – all right. So is the answer to my question yes, that when they are casual you treat them - McDonald's regards them as non-career employees?---At that point in time they're likely to be non-career employees.

PN28280

And but they're not all non-career employees when they're 19, are they?---When they're 19 being what - - -

PN28281

If they're 19 and a casual?---In – it would depend on what their – so, at that point in time, if they're a casual employee we would think that they were a non-career employee.

PN28282

All right?---If they were a level 2 employee.

PN28283

If they were 19 and a casual you'd treat them as a non-career employee just by way of example?---If they were a level 2 employee?

PN28284

Yes?---That's how we've defined them in this, yes.

PN28285

Yes. So my attention was also drawn to a conference coming up convened by the Farmers National Congress for 26 to 27 October at which McDonald's current CEO, Andrew Gregory, that's McDonald's current CEO?---Yes, it is.

*** KRISTA TERESE LIMBREY

XXN MR MOORE

PN28286

Yes. And the biography of Mr Gregory records him as having joined McDonald's as a 19 year old casual crew member. Are you aware of that?---Yes.

PN28287

Yes. And he's had an illustrious career with McDonald's, hasn't he?---Yes.

PN28288

Yes. So can I suggest to you that your treatment of workers as career employees, if they are casual, or if they are aged between 14 to 17, is a treatment which served McDonald's own convenience and purpose in classifying employees that it employs. Do you accept that?---No, I don't because we need to make a distinction at that point in time of that employee's classification, that employee's circumstances. We can't see what's going to happen to that employee in the future.

PN28289

No?---For every one example that we have of an employee who starts at that age and fits those classifications then down the track might decide to do something, there are hundreds of thousands of others that are non-career employees and they're not with us for a long time, and do not pursue that. So we need to make a point in time distinction about our employees, or we've had to, about our employees, based on their age and their position, and the number of different factors where right at that point in time they wouldn't be considered as a career employee. Down the track something might change about their level of classification all of that, and they may be considered a career employee into the future. But at that point in time they wouldn't necessarily be.

PN28290

So the effect of that approach is that at that point in time, just to take the 15 year old example, who's aged 15 or the casual, the 19 year old casual, they're treated as a non-career employee, you'd accept even if it happens, that that 15 year old or 19 year old has the intention to have a career with McDonald's?---I – well, we've made a point in time, assumption of it.

PN28291

Well, it must be so, mustn't it?---Yes.

PN28292

Do you accept the proposition I've just put to you?---Yes, because we can't read into their minds.

KRISTA TERESE LIMBREY

XXN MR MOORE

PN28293

All right. Thank you. Now, I just want to ask you some questions about paragraphs 33 and 34. You say that part-time level 2 employees may be categorised as either career or non-career employees, and you go on to say, in paragraph 35, that part-time employees over the age of 18 at level 2 may be considered career employees in certain circumstances. And you set those circumstances out. Do you accept that, again, those matters that you identify are

merely factors which may indicate that an employee intends to undertake a career?---Yes.

PN28294

Yes. And a person may intend to undertake a career, being a part-time level 2 employee over 18, without having any of those characteristics?---They do.

PN28295

Yes?---It would depend on the scenario.

PN28296

I'm sorry?---These are the – they could do. These are the likely ones that I'm aware of.

PN28297

I see. Thank you. Can I ask you a general question, in your experience and knowledge of McDonald's operations and its workforce, is it the case that most of the career employees, when they're classified or treated by McDonald's as career employees, commence their employment with McDonald's at level 2?---The majority do, yes.

PN28298

Yes. All right. Thank you, Ms Limbrey. Nothing further, your Honour.

PN28299

JUSTICE ROSS: Thanks, Mr Moore. Any re-examination?

PN28300

MR DIXON: No, if the Commission pleases. Thank you.

PN28301

JUSTICE ROSS: Thank you for your evidence, Ms Limbrey. You're excused.---Thank you.

<THE WITNESS WITHDREW

[10.28 AM]

PN28302

JUSTICE ROSS: Next witness?

PN28303

MR GOTTING: Your Honour, I might deal with the next witness. The witness is Domit, D-o-m-i-t Makhoul, M-a-k-h-o-u-l. The witness affirmed an affidavit on 23 September 2016. It comprises 64 paragraphs and is 16 pages in length.

PN28304

JUSTICE ROSS: Yes.

*** KRISTA TERESE LIMBREY

XXN MR MOORE

PN28305

MR GOTTING: Hopefully that affidavit has made its way to the Members of the Commission and someone has arranged for Mr Makhoul to come to the courtroom now.

PN28306

THE ASSOCIATE: Please state your full name and address.

PN28307

MR MAKHOUL: Domit Makhoul, 15 – 19 Swanston Street, Melbourne.

<DOMIT MAKHOUL, SWORN

[10.29 AM]

EXAMINATION-IN-CHIEF BY MR GOTTING

[10.30 AM]

PN28308

JUSTICE ROSS: Yes, Mr Gotting?

PN28309

MR GOTTING: Mr Makhoul, could you please state your full name?---Domit Makhoul.

PN28310

Could you please state your working address?---15 to 19 Swanson Street Melbourne.

PN28311

Could you please state your current employer?---Hungry Jack's.

PN28312

And could you please state your current occupation with that employer?---HR manager.

PN28313

Have you prepared an affidavit for use in these proceedings?---I have.

PN28314

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

PN28315

Would you turn to the last page of that affidavit?---Yes.

PN28316

It's the last page marked page 16?---Yes.

PN28317

And is the last paragraph, paragraph 64?---Yes.

PN28318

Is there anything that you wish to change in that affidavit?---No.

*** DOMIT MAKHOUL

XN MR GOTTING

PN28319

I tender the affidavit.

PN28320

MR MOORE: No objection, your Honour.

PN28321

JUSTICE ROSS: I'll mark that exhibit Ai Group 31.

EXHIBIT #Ai GROUP 31 AFFIDAVIT OF DOMIT MAKHOUL

PN28322

JUSTICE ROSS: Thank you, Mr Gotting. Mr Moore?

CROSS-EXAMINATION BY MR MOORE

[10.31 AM]

PN28323

MR MOORE: Thank you, your Honour. Good morning, Mr Makhoul, I just want to ask you some questions about your affidavit. Now, your affidavit tells the Commission that you've been employed by Hungry Jack's for 19 years?---Yes, correct.

PN28324

And you commenced employment 19 years ago as a crew member?---Yes.

PN28325

Yes. And before becoming an assistant manager followed by various other management positions?---That's correct.

PN28326

And can I just ask you to tell the Commission how old you were, taking your mind back 19 years, when you started as a crew member?---I was just coming up to 17 years old.

PN28327

So you were 16, were you, nearly 17?---No, 17.

PN28328

Seventeen, sorry?---Yes.

PN28329

And you started as an assistant manager when you were 19, so you were a crew member for two years?---Correct.

PN28330

Just thinking back to those two years, when you were a crew member, were you employed on a casual, full-time or part-time basis?---Part time.

PN28331

For the whole of that two years?---Correct.

*** DOMIT MAKHOUL

XXN MR MOORE

PN28332

And in that two years did the number of hours you worked a week, was it pretty typical or did it vary?---It varied.

PN28333

It would vary?---Yes.

PN28334

I see. So what was the range that it would vary?---It would just depend on my availability, school hours, sporting commitments, studies and so forth.

PN28335

I see. So it would vary quite a lot week to week then?---Yes. Yes.

PN28336

So you were at secondary school, were you?---Yes, I started – I was in VCE at the time.

PN28337

And did you complete a traineeship with Hungry Jack's?---No.

PN28338

Now, was the pursuit of a career with Hungry Jack's something that you decided to follow consciously at some point or other?---Well, when I first started it was more just for a bit of pocket money, extra bit of money on the side just to play – because I used to play football or in sports, so it was just more to pay for my sporting and obviously school, books and so forth. It was only towards later on, as I was completing my VCE, that's when I thought there was an opportunity there, and I took on an opportunity to become an assistant manager when it presented itself.

PN28339

I see. So when you perceived that an opportunity, you mean you perceived that this would be an opportunity for a potential career with Hungry Jack's?---Later on, yes.

PN28340

I see?---Yes.

PN28341

When you say "later on" is that a view - - -?---Well, at the start I was only 17 and focusing on my school.

PN28342

Yes?---It wasn't on my mind. I stayed at school and I was studying so it was only after the – like, once I turned 18 going into 19, I was still obviously studying as well, and then that's when I thought it was an opportunity, yes, when it presented itself to then take on a role as a manager then.

*** DOMIT MAKHOU

XXN MR MOORE

PN28343

And that's when you took up the position of an assistant manager?---Yes. Yes.

PN28344

I see?---It was offered to me, yes.

PN28345

Thank you. And I gather that Hungry Jack's encourages its crew members to make a career with the company if they're interested?---Absolutely, yes.

PN28346

Yes. And some like you do that?---Yes.

PN28347

A good number?---Yes, a good number. Yes.

PN28348

And of course you don't know if a crew member is going to become a career employee with Hungry Jack's until you'll see whether or not they actually end up having a career with Hungry Jack's? You don't know until it happens?---Through their -- they start asking questions and -- while they're employees. The full time ones tend to go on to become career managers. The part-time crew tend just to study and then once they've finished their studies obviously leave the business to pursue their career in what they've studied. We tend to have a lot of the full-timers that once they go through as crew members they show some interest and ask a lot of questions, and then become career managers.

PN28349

Yes. I suppose coming into the question another way, you're a career man with Hungry Jack's?---Correct.

PN28350

But when you started as a 17 year old you weren't a career -- you didn't think of yourself as a career employee at that time?---correct. Once I finished my studies I came on -- I started working full time.

PN28351

Yes?---Once I finished VCE and schooling and that's when I went on to become a career manager.

PN28352

Yes. So a crew member, a 15/16 year old crew member might end up being a career person, even though they don't know at the age of 15 or 16?---Yes.

PN28353

Yes. The proof is in the pudding whether or not they end up actually having a career?---We can't exactly say yes or no until -- yes, you know, as you can see, most of them do continue on. Some then just move on into their studies.

*** DOMIT MAKHOUL

XXN MR MOORE

PN28354

When you say "most of them do move on" do you mean by that that most crew members do end up progressing for some number of years with Hungry Jack's?---No, I say some will move on meaning that they leave the business and following their career paths.

PN28355

I see?---What they studied.

PN28356

Yes?---Yes.

PN28357

Can I just ask you to look at paragraph 39 of your affidavit? So in paragraph 39, this is dealing with the characteristics of employees as at 12 September 2016. You see that, the heading?---Yes.

PN28358

And if you look at the third column, Crew Member Part Time. You see that column?---Yes.

PN28359

And what you've set out there is the number of part-time crew members as at 12 September 2016 according to age; that's correct?---Sorry, repeat that again.

PN28360

I'm just clarifying that what you've set out in that table in the third column - - -?---Yes.

PN28361

- - - are the number of part-time crew members as at 12 September 2016 according to age?---Correct.

PN28362

Yes. So if you look at the part-time crew member column and look at the age 19, you'll see that there's 1700 set out there?---Yes.

PN28363

Now, if you add together, I'm not going to ask you to do the arithmetic in your head but I've done it, if you add together the number of part-time crew members aged 19, 20, 21 to 24, 25 to 30 and more than 30 that equals 4917. I'm not asking you to -- you could just assume that my calculations are accurate?---Yes.

PN28364

And that equals some 36 per cent of all part time crew members. All right. Is it fair to say that most of those, so those part time crew members aged 19 or older, would have started employment with Hungry Jack's somewhere between the ages of 14 and 17?---Some start older in terms of if they're Uni students as well.

PN28365

Yes?---Still studying at a part-time basis.

PN28366

Yes?---And their availability suits the business needs. That's where we'll have those 19 year olds plus working for us.

PN28367

Yes. Yes?---The juniors with the numbers there predominantly work obviously during the week after school hours and weekend, shift work.

PN28368

Yes, I understand that. And you may not know the answer to the question but is it fair to say that around half of part-time crew members aged 19 or above would have started their employment with Hungry Jack's somewhere 14, 15, 16?---Sorry, I can't answer that.

PN28369

You don't know. All right?---I don't have those numbers.

PN28370

All right. Do you agree that putting everything else to one side, a part-time crew member with a longer period of employment would have a greater likelihood that they would be a career employee?---Sorry, repeat that again. Sorry.

PN28371

Do you accept that part-time crew members who have a longer period of employment than a shorter period of employment are more likely to end up being career employees?---No, normally our full-timers would become career managers.

PN28372

I see. So becoming a full-time crew member is the usual step to becoming a career employee; is that right?---Yes. Yes.

PN28373

Did you take that step or not?---Yes. I went full time and then that's when I became a full-time manager. So I had to go full time.

PN28374

Full time as crew member?---Correct.

PN28375

I see?---Yes.

PN28376

And then you went on to become the assistant manager?---Correct.

PN28377

I see?---My availability changed and I had finished my studies.

PN28378

I see. Now, I just want to ask you, going back earlier into your affidavit, paragraph 11, I think, you say that:

PN28379

Since June 2015 Hungry Jack's corporate stores have engaged employees at three different levels; restaurant manager, assistant manager and crew member.

PN28380

It's the case, isn't it, Mr Makhoul, that when you refer to the level of crew member that actually includes up to seven specific classification levels?---There's the three classifications.

PN28381

I'm just asking you to focus on -- you refer in paragraph 11 to three levels; restaurant manager, assistant manager and crew member. You see that?---Yes.

PN28382

And just focusing on crew member?---Yes.

PN28383

There's actually seven specific classification levels which does exist within the crew member broader classification; isn't that the case?---I'm not too -- I'm not -- what are you referring to?

PN28384

All right. Well, I'm referring to - thank you. Excuse me a moment, your Honour.

PN28385

An affidavit was filed in the proceeding by a Gina Feast. Do you know her?---Yes.

PN28386

So Gina Feast filed an affidavit of 10 August 2015, which for the record is exhibit Ai Group 23, and she's the - at that time at least she was the state human resources manager for Hungry Jacks, you're aware of that?---Yes.

PN28387

She stated in paragraph 2 of her affidavit:

PN28388

I was appointed as a survey administrator for a survey made available to all Hungry Jacks employees working in Hungry Jacks' stores in the following classification levels: (a) new employee, (b) crew, (c) special kitchenhand, (d) certificate II retail, (e) certificate III retail, (f) certificate II/III retail (Qld and NSW only), and (g) team leaders -

PN28389

which she then states in her affidavit:

PN28390

collectively referred to as crew members.

PN28391

So what I'm suggesting to you is that according to Ms Feast, crew members actually embraces seven classification levels which I've just read out to you. Is that not correct?---The crew members' classification is still the one we go by and they're getting paid at that classification. In terms of different classifications, I can only answer to you in the State of Victoria, we don't have any crew on traineeships, as you may refer to probably our training classification where they're set up for training purposes, but not due to this classification.

PN28392

So the seven classifications that I just read out to you, you're unfamiliar with those in relation to Victoria, is that right?---Correct.

PN28393

And your human resources responsibilities are specific and confined to Victoria?---State-specific, yes.

PN28394

Is that right?---Yes.

PN28395

Are you aware that Hungry Jacks pays some crew members an allowance of 50 cents per hour to work as crew trainers?---I'm not aware.

PN28396

That doesn't happen in Victoria?---No.

PN28397

Has it happened in your time as a human resources manager?---No.

PN28398

Are you aware of crew members who sometimes in shifts have a responsibility to supervise and train other employees?---Crew members?

PN28399

Yes?---The manager's responsibility is to do the training, and the restaurant managers. Crew members would probably not assist but sort of be there with them, but not in charge of their training; it would be the manager that does the training.

PN28400

So you're not aware of crew members supervising and training other new crew members?---No.

PN28401

Excuse me a moment, your Honour. Looking at paragraphs 13 through to 15 of your affidavit, you talk about assistant managers and restaurant managers. I want to ask you some questions about that?---Yes.

*** DOMIT MAKHOUL

XXN MR MOORE

PN28402

It's right, isn't it, that in most restaurants - or all restaurants, I'm sorry, in all restaurants there is one person who holds the position of restaurant manager?---Correct.

PN28403

In simple terms the restaurant manager is in charge of the restaurant?---Correct.

PN28404

And they have responsibility for the matters you set out or describe in paragraph 15?---Correct.

PN28405

When a restaurant manager isn't working, because there's only so many hours in a week someone can work, one of the assistant managers stands in his or her shoes as the restaurant manager?---Yes, but they're assistant managers, yes.

PN28406

I'm sorry, yes, their title is assistant manager, but when the restaurant manager isn't on, the assistant manager is in charge of the store?---They're running the shift and they're running the business, but ultimately the restaurant manager is still in charge, so - - -

PN28407

But during - I'm sorry, please finish - did you finish your answer?---No. So if there's any related issue then they would contact the district managers, but ultimately they're there to run their shifts and they've got a specific job they need to do on their shifts.

PN28408

Presumably someone's got to be in charge of the store at all times?---Which is the assistant manager, yes.

PN28409

Yes?---Yes.

PN28410

So the assistant manager is in charge of the store when the restaurant manager is rostered off, that's correct?---Yes.

PN28411

In paragraph 16 you say you viewed the classifications contained in the Fast Food Industry Award and you consider that the levels used by Hungry Jacks corresponds with the classifications in the award as follows, and you've then set out how you align the award classifications with the Hungry Jacks' classifications, yes?---Yes.

PN28412

Do you recall - and I'm happy to show this to you if you don't recall - do you recall that the definition of level 3 in the award states:

DOMIT MAKHOUL

XXN MR MOORE

PN28413

An employee appointed by the employer to be in charge of a shop, food or delivery outlet.

PN28414

Do you recall that?---Yes.

PN28415

And do you also recall that the definition of level 2 under the award does not refer to an employee being in charge of a shop, food outlet or delivery outlet, that's correct?---Yes.

PN28416

Do you agree that because assistant managers are in charge of a restaurant when the restaurant manager isn't working that at those times at least the proper alignment between the assistant manager classification for Hungry Jacks is with level 3 under the award and not level 2 as you suggest?---No, I don't agree.

PN28417

Nothing further, if the Commission please.

PN28418

JUSTICE ROSS: Re-examination, Mr Gotting?

RE-EXAMINATION BY MR GOTTING

[10.50 AM]

PN28419

MR GOTTING: Mr Makhoul, do you still have your affidavit in front of you?---Yes.

PN28420

Could I ask you to look at paragraph 2 of your affidavit, please?---Yes.

PN28421

In paragraph 2 you refer to being a restaurant manager for a period of approximately one year and three months?---Correct.

PN28422

During that period were you, as a restaurant manager, were you engaged as a full-time employee or a part-time employee?---Full-time.

PN28423

And in the same paragraph you refer to being an assistant manager for approximately two years?---Yes.

PN28424

During the period that you were an assistant manager were you employed on a full-time or a part-time basis?---Full-time.

*** DOMIT MAKHOUL

RXN MR GOTTING

PN28425

Thank you. Nothing further.

PN28426

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

<THE WITNESS WITHDREW

[10.51 AM]

PN28427

MR GOTTING: I respectfully request a short adjournment just to get instructions in relation to the next witness. I anticipate five minutes. If it's not too much trouble, could I contact one of your Honours' associates to indicate when we might be ready to proceed, and I apologise if it causes any inconvenience.

PN28428

JUSTICE ROSS: No, that's fine. We will stand down for five minutes.

SHORT ADJOURNMENT

[10.52 AM]

RESUMED

[11.02 AM]

PN28429

MR DIXON: If it please your Honour, we appreciate the Commission's indulgence. We next wish to call as the third witness this morning is Ms Deasy. And before she goes into the witness box may I indicate to the Commission that she has since the last time the Commission formally sat has affirmed two affidavits; one on 19 August 2016 which dealt with the prior inquiry of the Commission, and then the next one is one filed on 23 September 2016. We'll seek to ask her to confirm that those are the two affidavits for these proceedings this morning. May we call Ms Deasy?

PN28430

JUSTICE ROSS: Just bear with me for a moment.

PN28431

MR DIXON: Your Honour, we may be able to assist. Is your Honour short of the 19 August - - -

PN28432

JUSTICE ROSS: No, I've got that now. It was just in a separate folder, I think, yes.

PN28433

MR DIXON: Yes, if the Commission pleases. May we ask Ms Deasy to go to the witness box? She is required for cross-examination as we understand.

PN28434

THE ASSOCIATE: Please state your full name and address.

PN28435

MS DEASY: Patricia Ann Deasy (address supplied).

<PATRICIA ANN DEASY, AFFIRMED

[11.04 PM]

EXAMINATION-IN-CHIEF BY MR DIXON

[11.05 AM]

PN28436

MR DIXON: Ms Deasy, are your full names Patricia Ann Deasy?---Correct.

PN28437

And your work address 258 Centre Road, Bentley in the State of Victoria?---Correct.

PN28438

And are you employed as a consultant by the Australian Survey Research Group Pty Limited?---I am.

PN28439

And do you hold the position of principal consultant within that firm?---I do.

PN28440

And you've previously given evidence in these proceedings, but since then you have prepared, in your capacity as the principal consultation of that firm, and affirmed an affidavit of 19 August 2016?---I have.

PN28441

And attached to that affidavit of some five paragraphs you have prepared an analysis of some of the early survey data that you analysed and tabulated it in a number of tables; is that correct?---It was additional analysis to the work done earlier.

PN28442

Yes?---At the request of the Commission.

PN28443

Yes?---Yes. Yes, I have performed additional analysis.

PN28444

Yes. May I ask you in relation to your affidavit of 19 August 2016 just to explain an aspect of how you've gone about tabulating in the various tables the data and ask you to turn to the annexure PAD1 which would be starting with table 101 and then table 102. Do you have that in front of you?---I do.

PATRICIA ANN DEASY

XN MR DIXON

PN28445

And one sees in table 101 that you did an analysis, Days Usually Worked by Employment Status with column totals, and then in 102 you use the same figures it appears, but you did so in respect of employment status with row tables. Would you mind explaining first of all in relation to table 101 just how that tabulation worked?---Yes. Just a precursor to that I was not 100 per cent clear about the request. I could read the request so I provided information in as many ways as possible, so that's why there are two versions of the same data. So in table 101 if you look at -- there are counts and those counts have been added up with -- down a

column, so if we look at permanent full time in the – this is second column from the left, the count goes 1001, 686, 657 with a total of 1011. So the counts have been added up of each column and in addition in that table each row count has been added, so under week days we have 1001, 3866, 11, 101, 1288 and with a total of 17,256. In this particular table the proportions of the counts have been worked out by looking at a column total, so the 99 per cent in permanent full-time week days is the count of 1001 divided by 1011. So the total of a column adds up to 100 per cent. So this is done to look at the data from the perspective of tell me about permanent full-timers and what days they work; tell me about permanent part-timers and tell me about what days they work. So we're looking at the perspective from a column heading. So the totals add up as they have column proportions. Do you want me to go on to the next one?

PN28446

No, just before that?---Mm.

PN28447

So can we just understand that if you look, for example, at permanent full-time employees in the third column from the left under percentage in relation to Saturdays there's a figure of 68 per cent, and 65 per cent for Sundays?---Mm.

PN28448

Can one take it from that that 68 per cent of all permanent full-time employees who responded work on Saturdays?---Yes, and all – and 65 per cent of all permanent full-time employees work on Sunday. And they don't add to 100 per cent in this case because it's a multi-choice question.

PN28449

Okay. And then - - -?---So you could have multiple answers to that question.

PN28450

And so would you then explain table 102?---Yes. So using exactly the same count numbers as the previous table, so 101 and 102 have exactly the same count numbers throughout the tables, we've taken the proportions of permanent full-timers that work weekdays, and so we've taken that as a proportion of the total. So in this case it's the total on the far right, so we're using 1001 divided by the total of 17256 in that first row, so - - -

PN28451

To give you 5.8 per cent?---To get 5.8 per cent. So in this table we're taking a perspective from week days. So we're taking a perspective from the left-hand side saying, tell us about a week day. What proportion of permanent full-timers work on a – what proportion of the people that work on week days are permanent full time, what proportion are permanent part time. So it's just a different perspective of looking at the same information. And it's a very common method used in any social or market research to either examine by column total or row total. It depends on what's being examined.

*** PATRICIA ANN DEASY

XN MR DIXON

PN28452

And you adopted that same method throughout?---Throughout.

PN28453

Yes?---So in fact there's a duplication in this affidavit. The tables could've been 50 per cent less but I wasn't sure of the perspective required for interpretation so I presented both.

PN28454

And then, Ms Deasy, do you have with you an affidavit you affirmed on 23 September 2016?---Yes, I do.

PN28455

And of some seven paragraphs with an attachment in which you include a report, PAD4, which consists of tables and up to table 204 on page 8 of that attachment?---Yes, I have that.

PN28456

Yes. I tender and read the two affirmed affidavits, if the Commission pleases.

PN28457

JUSTICE ROSS: No objection? We'll mark the affidavit of 19 August as exhibit Ai Group 32.

**EXHIBIT #Ai GROUP 32 AFFIDAVIT OF PATRICIA ANN DEASY
DATED 19/08/2016**

PN28458

JUSTICE ROSS: And the affidavit of 23 September 2016 as exhibit Ai Group 33.

**EXHIBIT #Ai GROUP 33 AFFIDAVIT OF PATRICIA ANN DEASY
DATED 23/09/2016**

PN28459

JUSTICE ROSS: Mr Moore?

CROSS-EXAMINATION BY MR MOORE

[11.13 AM]

PN28460

MR MOORE: Thank you, your Honour. Good morning, Ms Deasy?---Good morning.

PN28461

I just want to ask you some questions about your affidavit of 23 September 2016, AiG 33. And if you could go to PAD4, which is the report and turn to paragraph 4, please, of the report. Do you have that there, on page 6?---I do. I do. Chart 200?

PN28462

Yes. That's right?---Yes.

PN28463

And before the chart you say, from the third line into paragraph 4, at the end of that line there's a sentence which reads as follows:

PN28464

Refer to chart 200, chart below, which clearly indicates that as employees age their employment status moves from predominantly casual to predominantly permanent.

PN28465

You see that?---Yes.

PN28466

And in broad terms, what chart 200 shows is that between the ages of 14 and 17, about 75 per cent of employees are engaged on a casual basis with that proportion dropping progressively to around 35 per cent at age 25 and above?---Yes.

PN28467

And the survey that we're here dealing with is, of course, a survey of McDonald's and Hungry Jack's employees?---Yes.

PN28468

Now, I can tell you that evidence has been given to the Commission today by a Mr Makhoul, who's a Hungry Jack's human resources manager, and his evidence is that generally speaking Hungry Jack's corporate stores do not employ many casual employees and that – and I'm summarising here his evidence, but I ask you to assume it to be an accurate summary of what he says – and that as at 12 September 2016, 7 July 2015 and 23 June 2015 the proportion of crew members employed by Hungry Jack's across all age groups on a casual basis was less than one per cent, with the part-time proportion being between 95 and 96 per cent?---Is that the permanent part time?

PN28469

Yes?---Mm.

PN28470

So his evidence is that the proportion of crew members employed by Hungry Jack's corporate stores across all age groups for the three dates that I identified was less than one per cent. Do you follow me so far?---Yes. I would ask the question, does corporate stores mean some or all stores?

PN28471

Well, he's giving evidence about all corporate stores, Hungry Jack's corporate stores?---Mm.

PN28472

All corporate stores?---So do corporate stores represent all or some of Hungry Jack's stores?

*** PATRICIA ANN DEASY

XXN MR MOORE

PN28473

There are non-corporate stores?---Mm

PN28474

Franchisee stores as I understand them and he's giving evidence in relation to corporate stores, that is, employees directly employed by Hungry Jack's who work in those restaurants?---All right.

PN28475

And your survey was in relation to corporate stores of Hungry Jack's?---I can't answer that question. I don't know. I believed it was all stores.

PN28476

All right. Well, just bear with me a moment?---That's why I'm asking the question.

PN28477

Certainly?---Because I could interpret that corporate stores represent five per cent or 10 per cent of all stores, and the other stores are the remainder, so it depends what he means by – well, it depends how representative that information is of all Hungry Jack's employees.

PN28478

Your Honour, could I just ask for a few moments to find - - -

PN28479

JUSTICE ROSS: Sure. Do you want us to stand down for five or 10?

PN28480

MR MOORE: If that's convenient. Thank you, your Honour.

PN28481

JUSTICE ROSS: Yes. All right. Thanks.

<THE WITNESS WITHDREW

[11.17 AM]

SHORT ADJOURNMENT

[11.17 AM]

RESUMED

[11.25 AM]

<PATRICIA ANN DEASY, RECALLED

[11.25 AM]

CROSS-EXAMINATION BY MR MOORE, CONTINUING

[11.25 AM]

PN28482

JUSTICE ROSS: Good to go.

*** PATRICIA ANN DEASY

XXN MR MOORE

PN28483

MR MOORE: Thank you, your Honour. Ms Deasy, just to clarify and to assist you so you understand the questions I'm about to ask you, you swore an affidavit of 23 October 2015 which is, for the record, marked as Ai Group 11, in which you

depose to various matters concerning the survey and also appended a report and in paragraph 10 of that affidavit you state that:

PN28484

I understand that in June 2015 the online survey links were distributed by McDonald's Australia Limited (McDonald's) and Hungry Jack's Proprietary Limited (Hungry Jack's) to its employees.

PN28485

And just to complete the picture so that you understand the evidence that's before the Commission, the Commission also has evidence before it by a Ms Gina Feast in an affidavit of 10 August 2015, which is exhibit AiG 23 and Ms Feast deposes to being the State human resources manager at Hungry Jack's and without reading you the whole affidavit she states that she was appointed as a survey administrator for a survey made available to all Hungry Jack's employees working in Hungry Jack's stores in, what she sets out, to be classification levels, which she refers to as crew members. And in paragraph 9 of her affidavit Ms Feast states – she refers to the distribution of a notice about inviting participants to participate in the survey, and she states in paragraph 9:

PN28486

On or about 23 June 2015 Hungry Jack's employed 13,292 crew members in its restaurants, all of whom had access to JEDI.

PN28487

Which is an internal training and communication platform that she refers to. And she states that the notice was sent to 13,292 crew members and the survey was made available to 13,292 crew members. So do you understand from that, that the survey, about which you've given evidence in this proceeding, insofar as it concerned Hungry Jack's was a survey of persons employed directly by Hungry Jack's?---From what you've said it was a survey of Hungry Jack's employees.

PN28488

Yes?---That's all I know.

PN28489

That's right. Thank you?---Whether they were – how they were employed, I don't have any knowledge of that.

PN28490

No. No. And so coming back to chart 200 in your affidavit of 23 September this year, before the break I was informing you about evidence which has been given to the Commission today by another human resources manager in the employ of Hungry Jack's, a Mr Makhoul, who has given evidence that generally speaking Hungry Jack's corporate stores do not employ many casual employees. And his evidence was that the proportion of crew members employed by Hungry Jack's across all groups on a casual basis was less than one per cent. Do you understand what I have just said to you?---Yes.

PATRICIA ANN DEASY

XXN MR MOORE

PN28491

All right. And assuming the summary of the evidence I have given to you is correct, do you accept that the statement in paragraph 4 of your report, which I drew your attention to before where you stated that chart 200 clearly indicates that as employees age their employment status moves from predominantly casual to predominantly permanent, cannot be regarded as in any way an accurate or reliable representation in respect of employees employed by Hungry Jack's?---No.

PN28492

You don't accept that?---No. Because I don't know what the proportion of employees that are employed by corporate stores is of all Hungry Jack's employees.

PN28493

But the persons who participated in your survey were employees of Hungry Jack's; yes?---Yes. But there can be a difference about who the employer is. Is it a corporate Hungry Jack's employee or a franchisee employee?

PN28494

All right. So you - - -?---And so I don't – until I have further information about what the break down was of corporate employment status employees versus all employees I wouldn't know. I'm not doubting what the HR manager said.

PN28495

JUSTICE ROSS: Perhaps if you put the question on the basis of if you assume that all of the respondents to the survey were directly employed by Hungry Jack's.

PN28496

MR MOORE: Yes. Thank you, your Honour. Ms Deasy, if you assume that all of the Hungry Jack's respondents to your survey were directly employed by Hungry Jack's do you accept that your conclusion in paragraph 4 can in no way be regarded as reliable or accurate in respect of representing the employment circumstances for the Hungry Jack's workforce?---No. And the reason why is because this is what employees have told us. I can only interpret the information that has been given to me in this survey that has been provided by the respondents to the survey. And this is what employees said. I understand if employees didn't

- - -

PN28497

JUSTICE ROSS: That's not the question you're being asked though. You're being asked whether it's - - -?---I'm asked whether this is reliable.

PN28498

No, you're being asked whether it's true of Hungry Jack's in the light of the other evidence, not overall. Perhaps if you repeat the question?---Is it in relation to Hungry Jack's?

PN28499

Just a moment.---Then if Hungry Jack's - - -

*** PATRICIA ANN DEASY

XXN MR MOORE

PN28500

Just a moment, Ms Deasy.---Yes.

PN28501

Just reput the question, thanks.

PN28502

MR MOORE: Assuming that all of the Hungry Jack's respondents to your survey were directly employed by Hungry Jack's, do you accept that your statement in paragraph 4, that employment status moves from predominantly casual to predominantly permanent is not and cannot be an accurate or true picture of the Hungry Jack's workforce?---If all – yes, I would accept that statement.

PN28503

All right. Thank you.---But - - -

PN28504

Now, having accepted that statement do you accept also that your survey results more broadly cannot be accepted to be a reliable or accurate representation of the view of Hungry Jack's employees or the composition of the Hungry Jack's workforce?---I can – if I can accept that the casual – the employment status may not reflect the – may, and it's a very strong may not reflect the actual employment status, I have no information as to whether – but I can't make that as a global statement about their views, so they may not – it may not reflect their employment status, but it may reflect their views, their attitude. So answering one question incorrectly or – which is what you're implying, answering one question incorrectly does not mean they answered all questions incorrectly. So discounting on one answer, given that a proportion didn't know anyhow, does not discount all answers.

PN28505

If I look at chart 200, to take the youngest age group just for convenience, that's telling the Commission that of survey respondents 75 per cent of survey respondents who were aged less than 14, less than or equal to 14 were employed on a casual basis?---Seventy-five per cent said they were – yes.

PN28506

Yes, and likewise for the next age group, for 15 years, it's 78 per cent?---Yes, that's correct.

PN28507

And 16, 77 per cent?---That's correct.

*** PATRICIA ANN DEASY

XXN MR MOORE

PN28508

Are you seriously suggesting to the Commission that in circumstances where the evidence from Hungry Jacks' state human resources manager that at three time points in 2015 to 2016 there were less than 1 per cent of employees employed on a casual basis, that the difference between that 1 per cent and your 75/78/77 per cent for those age groups is just about respondents giving inaccurate answers? Is that what your evidence is?---For Hungry Jacks, that they didn't understand their employment status.

PN28509

They just misunderstood the question, did they?---Well until I spoke - I could only answer that question if I spoke to people as to why they answered that way. I have got no information about why they chose to answer that way.

PN28510

So you stand behind the reliability of your survey and just blame the understanding of the survey respondents, is that how you put it?---No. I didn't make up the numbers.

PN28511

Thank you. If the Commission pleases.

PN28512

JUSTICE ROSS: Re-examination?

RE-EXAMINATION BY MR DIXON

[11.36 PM]

PN28513

MR DIXON: Ms Deasy, in relation to the questions you were asked in relation to chart 200, you answered the question about employment status and, in answering the question, on more than one occasion, you said that you were answering one question incorrectly. Do you recall saying that?---Yes.

PN28514

If you look at chart 200 following paragraph 4 on your report, when you categorised casual employees what was the source of your data? Did it come from both Hungry Jacks and McDonald's?---Correct.

PN28515

So when you refer to answering one question incorrectly, what were you referring to?---The Hungry Jacks - well, given that Hungry Jacks have come up with a figure that says only 1 per cent of people are casual. So in these figures here, the survey figures combined, and this was outlined in the affidavit of 23 October, the figures' combined surveys responses from McDonald's and from Hungry Jacks. There were more McDonald's employees than Hungry Jacks employees and therefore the results will reflect the larger proportion of answers - well tend to reflect the larger proportion of answers. It could be that there are 1 per cent of people that are casuals at Hungry Jacks. I don't know. But I know that the Hungry Jacks employees comprised around - - -

PN28516

Less than 1000?---Less than 1000 of the 20,000.

PN28517

And McDonald's over 20,000?---So the McDonald's responses would have predominated all - this is reflected predominantly as McDonald's responses.

PN28518

That's the re-examination, if the Commission pleases.

PN28519

JUSTICE ROSS: Thank you, Ms Deasy. You're excused.--Thank you.

<THE WITNESS WITHDREW

[11.39 AM]

PN28520

JUSTICE ROSS: Mr Dixon? We've had the opportunity to read the submission that you filed accompanying the affidavit material, so you don't need to read that. Did you want to put a short oral submission, or did you want another process?

PN28521

MR DIXON: Your Honour - - -

PN28522

JUSTICE ROSS: Do you want to have a chat to - - -

PN28523

MR DIXON: Ms Deasy, you may be excused. Thank you. Sorry, your Honour.

PN28524

JUSTICE ROSS: Did you want to have a chat with your colleague?

PN28525

MR DIXON: My learned friend, Mr Moore, indicated that he wished to say something about the evidence in the submission.

PN28526

JUSTICE ROSS: Sure.

PN28527

MR DIXON: And if that's acceptable to the Commission we thought it would be appropriate that we would respond to that and add anything else that we wanted to say, if that is appropriate.

PN28528

JUSTICE ROSS: We're content with that course. Are you happy with that, Mr Moore?

PN28529

MR MOORE: Yes, your Honour. Thank you. I'll hopefully be brief, if the Commission pleases.

PN28530

JUSTICE ROSS: Don't make any promises you can't keep, Mr Moore.

PN28531

MR MOORE: To the best of my ability. The current hearing has been prompted by the indication given by the Full Bench that it wishes to consider whether employee preferences, as revealed in the affidavit by Ms Deasy, vary depending upon classification. That information, as is clear, is unable to be obtained from the survey itself conducted by Ms Deasy, and the question which arises is whether age of employees and/or type of employment are a suitable and reliable proxy,

and we proceeded today on the basis that this hearing is confined to and directed to that specific question in light of the further evidence that's been filed, and we outlined in our submissions of 26 August why, on the material then before the Commission, age and status in the context of the survey were not a reasonable and reliable proxy, and I won't repeat those submissions.

PN28532

We've now got some further evidence. In light of having considered that further evidence, we're unmoved in our assessment of it, and it does not alter our previous position that neither age or employment are a reasonable or reliable proxy. Before coming to tell the Commission why we have that view, can I just say something further briefly about Ms Deasy's evidence in AiG 33 and the further report that she has provided? That evidence provides further detail about employee preferences by age and employment status, and that evidence is effectively based on the asserted proxies for classification level, that is, that evidence can, in our respectful view, can only be given any weight if the Full Bench accepts the anterior question, that is, that age and/or employment status are suitable proxies for classification. So in other words - - -

PN28533

JUSTICE ROSS: Why is that?

PN28534

MR MOORE: As I said a few moments ago, your Honour, we're here considering whether or not there are proxies for classification level.

PN28535

JUSTICE ROSS: We can consider this evidence for whatever purpose we want to consider it.

PN28536

MR MOORE: I accept that, your Honour.

PN28537

JUSTICE ROSS: Yes, but I don't follow how the anterior question goes to the reliability of these tables?

PN28538

MR MOORE: No, your Honour, I apologise if I've given that misunderstanding. We don't say that the anterior question affects the reliability of those tables in that analysis.

PN28539

JUSTICE ROSS: Okay.

PN28540

MR MOORE: We accept that they're separate intellectual questions. The only point I'm trying to make, albeit laboriously, is that what Ms Deasy has to say and the revelation of preferences according to age and status presumes, in terms of its utility in the current inquiry or issue being considered by the Full Bench, assumes

that the Commission finds that status or age are a suitable proxy. That's why we're here, as we understand it, your Honour.

PN28541

JUSTICE ROSS: Sure, yes. My point was really these charts may have some utility whether or not you make the preliminary finding.

PN28542

MR MOORE: Well they may.

PN28543

JUSTICE ROSS: It's just that you couldn't - on your case, you couldn't take the additional step in relation to the link between, for example, age and preferences; you couldn't make the additional link and say, well, that's an indication of preference by classification.

PN28544

MR MOORE: That's right.

PN28545

JUSTICE ROSS: Yes. Though it says what it says about age.

PN28546

MR MOORE: Yes, it says what it says, but - - -

PN28547

JUSTICE ROSS: Yes, but it's the additional step in the reasoning chain that you say, for the reasons you've already articulated and those you elaborate, that you can't make that additional point.

PN28548

MR MOORE: That's right.

PN28549

JUSTICE ROSS: And I suppose for completeness, there's the general proposition around the survey that you've run before.

PN28550

MR MOORE: Yes.

PN28551

JUSTICE ROSS: But as to the utility of these charts, you say - well, they say what they say, but you can't use them as a basis for drawing an inference about the preferences of particularly classification levels.

PN28552

MR MOORE: That's right.

PN28553

JUSTICE ROSS: Yes, I follow.

PN28554

MR MOORE: So can I deal with the two central controversies which is whether or not firstly age is a proxy for classification level and, again, I'm not repeating what's in our earlier submissions about that. I just deal with the supplementary evidence that's been given. Now, the Ai Group submits that age of employee is a proxy for classification at least at the crew member level 2 level.

PN28555

Now, we make a general point that the Ai Group has not seen fit to articulate the precise nature of this claimed proxy relationship between different ages and different classifications levels, but they do assert, as we acknowledge, that at least at crew member level 2 there is some – age is a proxy for classification level. Now, we say about that that the evidence that the Commission has heard today makes clear that that proxy relationship is not borne out.

PN28556

In terms of McDonald's the high water mark of the Ai Group's case about age as a proxy is Ms Limbrey's evidence that 58 per cent of McDonald's level 2 employees were aged between 14 and 17. That's as good as it gets for the Ai Group. And the inherent difficulty with that is fairly self-evident, in my respectful view, because it follows that there is a very large proportion, namely 42 per cent of level 2 employees who are actually 18 or older. And we say that when you square up to that evidence there can be no rational or logical basis for the Commission to rely on the claim preferences of 14 to 17 year olds said to be revealed by Ms Deasy's survey as providing an accurate measure of the preferences of McDonald's level 2 employees. Those preferences are incapable, we say, of being prohibitive of 42 per cent of McDonald level 2 employees because that 42 per cent are adults.

PN28557

The position, we say, is even starker with Hungry Jack's. Depending upon the point of time selected and you'll recall that Mr Makhoul's affidavit addresses three time points, and which one is immaterial for present purposes. The evidence he gives is that either 48 per cent or 45 per cent, depending upon the date one picks, so 48 or 45 per cent of all crew members were aged between 14 and 17 years. And that's at paragraphs 24, 32 and 40 of his affidavit. So it follows that the majority, between 52 and 55 per cent of crew members are in fact adult workers. So again we say there can be no rational or logical basis for the Commission to make findings about the claim preferences of crew members by considering the preferences of 14 to 17 year olds because the majority are adults.

PN28558

Now, that's what we say about age as a proxy. In terms of employment status or type of employment as a proxy, and, again, Ai Group submits that employment status is a proxy for classification level at least at crew member level 2. Now, we say that although again the precise nature of that relationship is not fully articulated by the Ai Group it's not supported by the evidence.

PN28559

Can I deal first with McDonald's. Ms Limbrey's evidence at paragraph 20 is that as at September 2016, 77.5 per cent of level 2 employees were casual, and the remainder, 22.5 per cent were permanent, either part time or full time. And we say that in circumstances where about a quarter of McDonald's level 2 employees

were permanent employees relying on the preferences of casual as a proxy for the preferences of level 2, which is what we understand the Ai Group is contending for, is unsound because there's a significant cohort, about a quarter, of level 2 employees are, in fact, permanent.

PN28560

And, again, the position is starker at Hungry Jack's. Mr Makhoul says at paragraph 20 that Hungry Jack's generally doesn't employ many casuals and his evidence establishes that, in relation to the three time points to which he deposes, less than one per cent of crew members were employed on a casual basis. It's self-evident then we say, at least in relation to Hungry Jack's, that the casual status of employees is incapable, even arguably, of being a proxy for classification.

PN28561

So that's the specific substantive points we wanted to make about age and classification, but I want to make a few other general observations if I may. The further evidence the Commission has heard today highlight two significant differences in the workforces of McDonald's and Hungry Jack's. McDonald's is generally casual but Hungry Jack's is overwhelmingly permanent. Secondly, McDonald's employs a large number of juniors whereas the majority of Hungry Jack's workforce is adult. Now, we say that these two differences present insurmountable difficulties in using either age or type of employment as a proxy for classification level, and I won't repeat what I've already said, but the difficulty when one looks at Ms Deasy's survey is that the preferences said to emerge from it are the result of the pooling together of McDonald's and Hungry Jack's employees. That's the difficulty. We've got structurally different workforces but one pool set of survey data. So, for example, if one was to treat casual status as a proxy for the base crew member level classification in looking at preferences that Ms Deasy sets out you wouldn't pick up effectively any of the Hungry Jack's respondents because they're all permanent and you'd also miss out on the 25 per cent of the McDonald's workforce. So we would say that the structural difference in the workforces means that when one looks at applying either of those proxies to the revelation of preferences said to occur through Ms Deasy's survey one would end up with a distorted and unreliable picture.

PN28562

And more generally we say, and I'll just make this point briefly, because I don't wish to step outside of what we're here making submissions about, but we do wish to make this short point. This difference in the structural composition of the workforces highlights a point we made in our original submissions that the Ai Group's case structured as it is around the McDonald's and Hungry Jack's workforces does not permit broader findings to be made about the rest of the fast food industry. Now, we made that point and that's set out in our submissions and I won't go through that. What's now clear though - - -

PN28563

JUSTICE ROSS: Sorry, that's the proposition that you can't extrapolate from the survey to all fast food industry employees?

PN28564

MR MOORE: Yes. In short terms, your Honour, that is right. The fast food industry is a different beast and is not comprised – obviously McDonald's and Hungry Jack's are large players in that industry. That's acknowledged. But the fast food industry embraces many more employees and employers than those two. The AiG has run its case based on those two and we said in our submissions one can't project and make assumptions about, the composition and the various other arguments that the Ai Group advances, drawn from a McDonald's/Hungry Jack's world into the rest of the fast food industry. And the additional point I'm now making is that we now see that even in relation to these two majors, there's big differences about workforce composition, and that highlights the point we make. One cannot adopt a generic approach to the fast food industry, and the evidence the Commission's received today highlights that in relation to the two major employers.

PN28565

The next point I make, which flows from the structural differences, picking up the evidence Ms Deasy gave a few moments ago, is that it highlights an underlying weakness in Ms Deasy's survey. Her conclusion in paragraph 4 of the report appended to today's affidavit is simply wrong in terms of its accuracy. It cannot be representative of the Hungry Jacks workforce. The Commission's now assisted by knowing from Hungry Jacks, this is our workforce. Her conclusions that 75 per cent of 14-year-olds are casual was only 1 per cent of the whole Hungry Jacks workforce - less than - that are casual. Ms Deasy was very reluctant but ultimately did accept my understanding of her evidence that her statement in paragraph 4 of her report was not accurate or reliable in relation to Hungry Jacks, and we say that that criticism highlights the inappropriate projection of her results across McDonald's and Hungry Jacks.

PN28566

I think the last point I want to make is to deal with a matter addressed in the affidavits, and in the oral evidence, to do with the distinction between career and non-career employees. I just want to say a few things about that, if I may. We say fundamentally it's not clear to us how the Commission could usefully have regard to that distinction in considering the matters currently before it. We don't understand of course how any such distinction might inform the Commission's deliberations; all we know is that the Commission sought some further information about that matter and that - - -

PN28567

JUSTICE ROSS: About career and non-career I don't think we did.

PN28568

MR MOORE: I'm sorry, your Honour.

PN28569

JUSTICE ROSS: I thought it was more about classification levels.

PN28570

MR MOORE: I wish it was, your Honour. Where I'm referring your Honour to is in the statement and directions - - -

PN28571

JUSTICE ROSS: The first one?

PN28572

MR MOORE: - - - of 8 September, your Honour.

PN28573

JUSTICE ROSS: Just bear with me one moment.

PN28574

MR MOORE: Paragraph 14, third dot point.

PN28575

JUSTICE ROSS: Yes.

PN28576

MR MOORE: That inquiry has been made by the Bench.

PN28577

JUSTICE ROSS: Yes.

PN28578

MR MOORE: And you've heard further evidence from the employer witnesses and I've cross-examined about that. Our fundamental position is that it's an insufficiently definite or clear basis, that is, the claimed distinction between career and non-career, for the Commission to do anything with in considering the question of penalty rates, and we say that because the touchstone of career/non-career distinction, as Ms Limbrey made clear in her evidence, is a question of intention, and that's obviously a subjective matter and one can only know if an employee is a so-called career employee after the fact. So there are the leaders - the current and former leaders of McDonald's were those 14 and 19-year-olds. They turned out to be career employees. This distinction that Ms Limbrey spoke of is one which McDonald's utilises for its own internal purposes, and no criticism can be made of that, but that's neither here nor there. One can't assume - because one only knows after the fact if a person is going to have a career with McDonald's or Hungry Jacks, work with them for a number of years - one can't, we say, make assumptions that all or most casuals are non-career, or all or most teenagers are not career employees. The evidence shows that some are.

PN28579

We also make the point, and this perhaps builds on some evidence from the proceedings last year, that by the time employees are, say, 19 many McDonald's and Hungry Jacks employees, not all but a good portion, will have been employed by the company for three perhaps up to five years, and more fundamentally the SDA rejects any thesis that penalty rates should be set on the basis of whether employees are employed for a short or a long time. The obligation is to fix a fair and minimum relevant safety net and there is no mandate in the Act for why any penalty rate should be fashioned having regard to the length of employment and any claim descriptors around being so-called career or non-career. Such an approach would, in my respectful submission, be a radical departure from the way

in which penalty rates have been set and, I might say, is an approach which the employers have not sought.

PN28580

Unless members of the Bench have any questions for me that is all I wish to say today.

PN28581

JUSTICE ROSS: Thank you, Mr Moore.

PN28582

MR MOORE: Thank you, your Honour.

PN28583

JUSTICE ROSS: Mr Dixon?

PN28584

MR DIXON: May it please the Commission. May we just draw the Commission's attention by reference to firstly the evidence and then our client's submissions to some matters from which one can draw the conclusions that Ai Group has put forward. May I firstly ask the Commission to turn to Ms Limbrey's affidavit of 23 September 2016, AiG 30, and the Commission will see that she deals with the question of career and non-career employees in paragraph 26 and following, and what my learned friends do not do is to have regard for all the elements of her evidence. You will see in paragraph 31, and when one is talking here exclusively about McDonald's there can be no argument at all that it is, as she says in paragraph 31, primarily a casualised workforce, and she refers back to the earlier paragraphs 11, 13 and 15 for that proposition and you've already looked at those earlier when she gave evidence.

PN28585

The Commission will then see at paragraph 32 that she addressed the question, which is framed in response to the manner in which she was asked to address the evidence, as to what McDonald's considers to be the case, and when one looks at paragraph 32 where she addresses what McDonald's typically considers as a non-career employee, there are a number of indicative factors. Yes, one might not know that a 14-year-old subjectively, ultimately regards him or herself as, when they work two to three hours a week, that they are going to be the managing director of McDonald's, but if one looks at all the factors in paragraph 32, either individually in some cases, or in combination, they are indicative factors based on the makeup of the workforce, the employment status, and what the employees are doing elsewhere and whether they've expressed a desire to make an employment career, those are indicative factors which either, in some cases individually or in combination, are indicative of what McDonald's considers as a non-career employee.

PN28586

Although Mr Makhoul gave evidence about his career in Hungry Jack's, he was perhaps the very best example, a practical example of someone who starts earning money while he's doing his sporting activities, while he's studying, and eventually after he comes to make a career choice, after he's finished his schooling, he makes

an application to become a permanent employee, and he's moved from the, in the Hungry Jack's case, part time, versus casual, in the McDonald's situation, and he then gets promoted and works in level 2 under the award level and then level 3.

PN28587

When one looks at paragraph 33 of Ms Limbrey's affidavit you will see also that there is, within McDonald's, a clear delineation as to whether employees have moved beyond level 2 to level 3 or level 4, and you will recall McDonald's level 3 is a level 2 under the Fast Food Award equivalent or level 4 was level 3. And then in paragraph 34 the McDonald's evidence clearly supports the fact that as not only what McDonald's considers to be the case, but part 2 level employees under the age of 18 are likely to be considered non-career due to their youth and because they are usually undertaking full education and not making career choices at that stage in their life. One can't in any credible fashion challenge that observation in our respectful submission.

PN28588

Now, over the age of 18 the position, at least for level 2 part-time employees, alters in the consideration of McDonald's for the reasons set out in paragraph 35, and this is at a stage where employees obviously are committing to a career; traineeships. They've been there employed for a considerable period of time or they have moved, as is 35(d), off full time to part time because of career responsibilities.

PN28589

In relation to age and employment status, the Commission will note in paragraph 39 some significant factual material that concerned McDonald's and you will note that almost all of level 3 and level 4 employees employed by McDonald's and its franchisees are over the age of 18, and the Commission will note in subparagraphs (a) to (d) the very, very small numbers of employees that are not in that category. If one looks, for example, at subparagraph (a), six out of 4565 level 4 employees are under the age of 18 and then 34 level 3s and so on. Those are significant factual material that goes to the question of age and employment status; employment status relevant to the relevant levels under the award. And if one then looks at paragraphs 41 to 43 the Commission will note that as at 19 May there were no employees, either directly or indirectly, employed as a casual at level 4, and she says that almost certainly that an employee employed as a casual employee is a level 2 or a level 3 employee. And then of course she extrapolates that in relation to the later dates in which she did the evidence or the analysis.

PN28590

Can I then ask the Commission to turn to Mr Makhoul's statement, exhibit AiG 31 and the Commission will note that he did the exercise from the date as he sets out in paragraph 9 on three separate dates. I'm just going to highlight the 23 June figure. Paragraph 16 he deals with the award classification, so when he talks about a crew member, it's level 1. McDonald's would've been referring to that as a level 2.

PN28591

JUSTICE ROSS: Under their agreement.

PN28592

MR DIXON: Under their agreement. And assistant manager level 2 McDonald's was referring to level 3 under its agreement and level 3 level 4 and so on. The Commission will note in paragraph 22 that level 1 employees, and the crew members, out of a total of just under 15,000 employees 88 per cent were employed at level 1, and by that I'm saying the award level 1, and you will note the very small numbers in paragraph 22 in relation to level 3, that is the restaurant manager, or level 2. And the number of level 1s, that's crew members, that are not casual because it's clear that there is a – the non-full-time employees in Hungry Jack's are all effectively, or 95 per cent of them as appears in paragraph 23, are at level 1, and 95 per cent of those are part-timers. And there is a breakdown in paragraph 23 from which you will note, for example, that between the age of 14 and 17 some 48 per cent of employees are, that's 6400, level 1 and they are in the part-time category.

PN28593

When he deals with the level 2s, assistant manager and above, the Commission will see at paragraph 25 that there are no 14 to 17 year olds that are assistant managers in any categories, either casual, part time or full time, and at paragraph 27 there are no level 3s, restaurant managers, either casual, part time or full time under the age of 18 who are in level 3s. And the numbers of restaurant managers who are full time obviously 96 per cent of those are on a full-time basis.

PN28594

Mr Makhoul deals with the career and non-career aspects at 46 and following and there are just a couple of paragraphs to which I want to draw your attention. He says at paragraph 46 that employees generally engaged as assistant manager, that's level 2 and level 3 as restaurant manager are over the age of 18. And he deals with the licence requirement. But then at 53 he says that on 23 June 8736 employees who worked for Hungry Jack's corporate stores were 18 years or older or less which represented 58 per cent of employees. And if you go 56 on the non-career point he says that non-career employees are engaged as crew members on either a casual or part-time basis. In his experience assistance managers and restaurant managers are generally undertaking secondary – such non-career crew members are generally undertaking secondary or tertiary study.

PN28595

And then when he comes to deal with age and employment status again can I just highlight a couple of matters? Paragraph 59, where he's dealing with the question of a proxy for classification levels, the Commission can, of course, look at employees who are not in particular categories and that goes to paragraph 59. So paragraph 59 effectively is to read that level 2 and level 3 employees in Hungry Jack's are over the age of 18. You will see that all assistant managers were 18 years of age and older as at 23 June, and the same is the case on the later dates. And in respect of paragraph 60 where he deals with all level 3 employees, that's restaurant managers, all were 18 years of age or older.

PN28596

And when he comes to deal with level 2 employees, the assistant managers, at paragraph 62, the vast majority were engaged on a full-time basis. And 63, level 3 engaged on a full-time basis. And 64, the vast majority of crew members or

level 1s were on a part-time basis, and the part-time basis there obviously is reflective of, for this exercise it seems that there is a correlation between the part-time in Hungry Jack's and casual in McDonald's.

PN28597

Can I then just highlight some matters in our submissions if the Commission pleases. These are the submissions filed on 23 September. And you will note from paragraph 5 onwards that there is a summary and analysis of the age and employment status at McDonald's, and paragraph 6(a), and this of course is not challenged, 92 per cent of employees working for McDonald's in a store in May were level 2 employees. Now, if one – all I'm wanting to do at this stage is to draw the contrast between level 2 and level 3s and I'm talking about the McDonald's enterprise agreement levels. Level 3 would be three per cent, level 4 is five per cent, and when one goes beyond level 2 employees between the ages of 14 and 24, the Commission will see that 92 per cent are employees working at level 2 were in that category being level 1 on the Fast Food Award.

PN28598

So all the factors that go to the question of age and employment status within McDonald's were set out in paragraph 6, and the Commission will note in subparagraph 6(k) that 99 per cent of casual employees working at McDonald's and aged 14 to 17 were level 2 employees. And the same analysis is then carried out for Hungry Jack's. There is not a significant differential in some of the categories for Hungry Jack's. If you look at paragraph 8(a), 88 per cent were crew members, that's level 1. That's versus the 92 for McDonald's and so on. And in relation to Hungry Jack's if you look at the analysis in paragraph 8(f) and following 95 per cent were part time and then again the very small levels in the positions that follow.

PN28599

I just wanted to say I think I've dealt pretty much with career employees within McDonald's and in Hungry Jack's. You will note in our submissions paragraph 16 and following that there are assistant managers and restaurants, there are no level 1 employees, the point that I made earlier. When one comes to the proxy point the Ai Group has obviously submitted that age and employment status as a proxy, these can't be perfect, but the factors in paragraph 21 should not be taken in isolation has our learned friends appeared to have looked at the question. When one looks at each of the factors in paragraph 21, particularly, for example what is in paragraph 21(c), 40 employees only were at level 3 and 4, and the other material, and we haven't set out in paragraph 21 what is in paragraph 6(e) of the submissions dealing with the 92 per cent. Of course, that may just add some more elements to the 58 per cent. So the same pattern is set out in relation to age and employee status working in Hungry Jack's. That's at paragraph 23 and following.

PN28600

I just wanted to say something in relation to the idea that one can't rely on the statistics to extrapolate into the industry more widely. Now, that's a matter of course which has been extensively dealt with earlier. We've heard expert evidence and you don't have the advantage of the experts responding to what our learned friends have said this morning. But, in our respectful submission, you will recall that the Ai Group's case set about looking at the typical workforce and

the typical employee 1919, and it compared it with the typical employee in the fast food industry, not confined it says to Hungry Jack's or McDonald's in 2015, and we set out in paragraph 86 of our closing submissions, what constitutes a typical employee in that industry. Now, all of that is available, in our respectful submission, to extrapolate out to the industry more widely.

PN28601

If one looks even at individual aspects about typical employees working in the fast food industry, the age; that they start young on a causal basis while they're studying at school or University, those factors apply. The fact that they are not full-time employees, those factors apply. So if one looks at the statistical data recognising a distinction between McDonald's and Hungry Jack's, McDonald's casuals and Hungry Jack's part time, there is no reason to suggest that, in the wider sense, employees in franchisees might not be employed in either of those categories. So we reject the suggestion that the Commission cannot extrapolate from all the data that is available from the survey on a broader sense.

PN28602

May I then in conclusion just indicate and remind the Commission that the AiG's primary group position was and remains that, given the nature of the industry and the workforce, the Commission should reduce the penalty rates payable to all employees covered by the award on Sundays, as set out in our written submissions. And when one comes to identify the original purposes on all the earlier cases as to why there should be penalty rates, one does not find, in our respectful submission, a distinction drawn on factors such as age, the employment status, classification level, preferences, or career or non-career. When one comes, for example, to look at the evidence in respect of preferences of employees one finds the only category of employees really who don't have a preference for more hours on a Saturday or a Sunday are those that are full-time employees or, in very limited respects, permanent part-time employees. But if one goes to the tables that Ms Deasy prepared at 101 and 102, you will see that the permanent full-time employees and permanent part-time employees already work on Saturdays and Sundays, so one would not readily suggest that the preference for those employees not working additional hours does not flow from the fact that they already work hours on those days.

PN28603

If the Commission pleases, those are our submissions.

PN28604

JUSTICE ROSS: Anything further? No?

PN28605

MR MOORE: No thanks, your Honour.

PN28606

JUSTICE ROSS: Thank you for your submissions. Just on another matter, we'll issue a statement later today which attaches an update of the earlier material that we provided profiling the various industries to reflect more recent ABS data. That's not a factor that just affects these parties, but all parties, and the statement provides anyone who wishes to say anything about them to make a comment

within the specified time period, and if anyone wants to say anything in reply there's a time period for that as well with liberty to apply. So we'll just draw your attention to that, but it will be published this afternoon. You'll recall there was the profile material - I think there were three documents, and I think we released them either early this year or late last year, and now some of that data is a bit dated is the reason for the update. Thank you for your submissions. We will adjourn.

ADJOURNED INDEFINITELY

[12.28 PM]

LIST OF WITNESSES, EXHIBITS AND MFIs

KRISTA TERESE LIMBREY, AFFIRMED.....	PN28197
EXAMINATION-IN-CHIEF BY MR DIXON	PN28197
EXHIBIT #AI GROUP 30 AFFIDAVIT OF KRISTA TERESE LIMBREY	PN28236
CROSS-EXAMINATION BY MR MOORE	PN28246
THE WITNESS WITHDREW	PN28301
DOMIT MAKHOUL, SWORN.....	PN28307
EXAMINATION-IN-CHIEF BY MR GOTTING.....	PN28307
EXHIBIT #AI GROUP 31 AFFIDAVIT OF DOMIT MAKHOUL	PN28321
CROSS-EXAMINATION BY MR MOORE	PN28322
RE-EXAMINATION BY MR GOTTING	PN28418
THE WITNESS WITHDREW	PN28426
PATRICIA ANN DEASY, AFFIRMED	PN28435
EXAMINATION-IN-CHIEF BY MR DIXON	PN28435
EXHIBIT #AI GROUP 32 AFFIDAVIT OF PATRICIA ANN DEASY DATED 19/08/2016	PN28457
EXHIBIT #AI GROUP 33 AFFIDAVIT OF PATRICIA ANN DEASY DATED 23/09/2016	PN28458
CROSS-EXAMINATION BY MR MOORE	PN28459
THE WITNESS WITHDREW	PN28481
PATRICIA ANN DEASY, RECALLED	PN28481
CROSS-EXAMINATION BY MR MOORE, CONTINUING.....	PN28481
RE-EXAMINATION BY MR DIXON	PN28512
THE WITNESS WITHDREW	PN28519