



Ai GROUP WORKPLACE LAWYERS

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20 October 2015

Associate to President Ian Ross
Fair Work Commission
Level 4, 1 Exhibition Street
Melbourne VIC 3000

By email: amod@fwc.gov.au

Dear Associate

**FWC Matter No. AM2014/305
4 YEARLY REVIEW OF MODERN AWARDS – PENALTY RATES (“Proceedings”)**

We have today filed, on behalf of The Australian Industry Group (**Ai Group**), the **attached** supplementary affidavits of:

- (1) Julie Toth, affirmed on 16 October 2015;
- (2) Marcus Dunn, affirmed on 20 October 2015; and
- (3) Krista Limbrey, affirmed on 20 October 2015.

Ai Group respectfully seeks leave to rely upon the affidavits in the Proceedings.

Yours sincerely

A handwritten signature in black ink that reads 'L Cruden'.

Leanne Cruden
Senior Lawyer
Ai Group Workplace Lawyers

Fair Work Commission

2014 4 Yearly Review of Modern Awards – Penalty Rates

Re Application by: The Australian Industry Group

Second Affidavit

Affidavit of: Julie Christina Toth

Address: 441 St Kilda Road, Melbourne

Occupation: Chief Economist for The Australian Industry Group

Date: 16 October 2015

On 16 October 2015 I, Julie Christina Toth, Economist, of 441 St Kilda Road, Melbourne in the State of Victoria declare and affirm:

1. I affirmed an affidavit in relation to proceedings in the Fair Work Commission bearing matter number AM2014/305 on 29 June 2015 (**First Affidavit**).
2. In paragraph 26 of my First Affidavit, I refer to a publication produced by the Australian Bureau of Statistics (**ABS**) known as '6359.0, *Forms of Employment, Australia, November 2013*' (the **Forms of Employment Publication**). A copy of the Forms of Employment Publication is annexed to my First Affidavit as Annexure JT15.
3. I wish to make one correction in relation to paragraph 26(g) of my First Affidavit. The reference to "total workers" should read "total employees". Therefore, paragraph 26(g) of my First Affidavit should be as follows:

I noted Table 7, appearing on page 31 of the Form of Employment publication, which indicated that the ABS estimated that 23.5 per cent of total employees are 'without paid leave entitlements'.

(with the amendment underlined)

4. In paragraphs 27 and 28 of my First Affidavit, I refer to the fact that on 25 June 2015 the ABS website stated that the Forms of Employment Publication would be replaced by a

Filed on behalf of (name & role of party) The Australian Industry Group

Prepared by (name of person/lawyer) Leanne Cruden, Senior Lawyer

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new publication titled *Characteristics of Employment, Australia (cat. No. 6333.0)*, which was due to be released in mid-2015 however as at 24 June 2015 had not been released.

5. As of 16 October 2015, the new publication referred to in the previous paragraph has not been released to the public by the ABS.
6. I am aware that the ABS has also produced a publication known as '6306.0 – *Employee Earnings and Hours, Australia, May 2014*' (the **Employee Earnings and Hours Publication**). The Employee Earnings and Hours Publication stated that, as at May 2014 casual employees accounted for 21.6 per cent of employees. As at 16 October 2015, the date of the most recent Employee Earnings and Hours Publication issued by the ABS is May 2014.
7. I am aware of a report published by the Australian Government, Office for Youth in 2009 titled "State of Australia's Young People" (the **Young People Report**). Page 43 of the Young People Report cites data from "ABS Time Use Survey 2006". This data is from '4153.0 – *How Australians Use Their Time, 2006*'. In relation to this data series, as at 16 October 2015 the ABS website stated that this was the most recent publication of 4153.0 – *How Australians Use Their Time, 2006*' and that there are no future releases scheduled. I accessed the information referred to in the preceding sentence by following the below actions.
 - a. On 16 October 2015, I went to the website www.abs.gov.au and typed '4153' into the search box at the top of the page.
 - b. I saw on my computer screen a webpage containing a list of search results.
 - c. I clicked on the first link in the search results, which was to 'How Australians Use Their Time, 2006'.
 - d. I then clicked on the 'Past & Future Releases' tab.
 - e. I saw a heading 'Past Releases', under which the words '*How Australian Use Their Time 2006 (Latest)*' appeared. This indicated that the '4153.0 – How Australians Use Their Time, 2006' data series is the most recent publication from the ABS in this series.
 - f. I did not see any information regarding future releases for this series. This indicated that as at 16 October 2015 there are no future releases scheduled by the ABS.

Affirmed by the deponent)

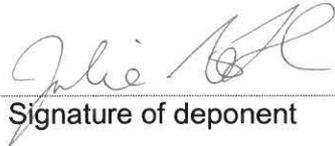
at Melbourne)

in Victoria)

on 16 October 2015

Before me:


Signature of witness


Signature of deponent

Benjamin Waugh
Level 2, 441 St Kilda Road Melbourne Vic 3004
An Australian Legal Practitioner
(within the meaning of the Legal Profession Act 2004)

Fair Work Commission

2014 4 Yearly Review of Modern Awards – Penalty Rates

Re Application by: The Australian Industry Group

Second Affidavit

Affidavit of: **Marcus Dunn**

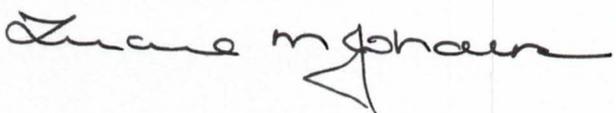
Address: **1/481 Scottsdale Drive Varsity Lakes QLD 4227**

Occupation: **Director**

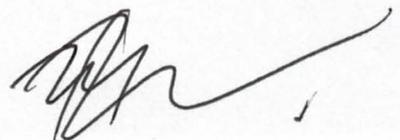
I, Marcus Dunn, of 1/481 Scottsdale Drive Varsity Lakes in the State of Queensland, Director of Jamadu (QLD) Pty Ltd say affirm:

1. I affirmed an affidavit in relation to these proceedings in the Fair Work Commission on 11 August 2015 (**First Affidavit**).
2. I refer to paragraph 70 of the First Affidavit. There are two sorts of complaints that can be made by an employee. The first one is a more formal process which involves the employee notifying McDonald's in writing. The notice in writing may take a number of forms. One form may be using a template letter. This can be done anonymously. There are template letters available in the crew room that an employee can send to McDonald's to make a complaint of this nature. I am not aware of those letters ever needing to be used in relation to weekend work. An employee could also contact McDonald's via the 'metime' system (which I describe in paragraph 61 of my First Affidavit), or the McDonald's 'contact us' form which is electronically available to the public on the internet. McDonald's has never notified me of any complaint being made in relation to weekend work using one of these three forms.
3. The second one is that an employee may raise an issue with me, or a Manager or supervisor. These issues are often items which are very easily addressed. Most commonly, the issues raised by an employee in this way relate to errors in rostering (for example, an employee accidentally being rostered on when they were unavailable), an

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Leanne M Johansen
JP 105021



employee indicating they no longer wish to be rostered on certain days, or employees indicating they want more hours. These matters may relate to work on weekends. I am not aware of complaints of this nature being made in relation to weekend work. No employee has raised an issue relating to weekend work with me and no manager or supervisor has notified me of an employee raising a complaint in relation to weekend work with them.

Affirmed by the deponent)

at VALSETH LAKES)

in Queensland)

on 10 October 2015)

Before me:)



Signature of deponent



Signature of witness

Leanne M Johansen
JP 105021

Fair Work Commission

2014 4 Yearly Review of Modern Awards – Penalty Rates

Re Application by: The Australian Industry Group

Second Affidavit

Affidavit of: Krista Terese Limbrey

Address: 21-29 Central Avenue, Thornleigh, NSW 2120

Occupation: HR Business Partner NSW / ACT

Date: 20 October 2015

I Krista Terese Limbrey of 21 – 29 Central Ave, Thornleigh NSW 2120, HR Business Partner NSW / ACT with McDonald’s Australia Ltd (**McDonald’s**), affirm:

1. I affirmed an affidavit in relation to proceedings in the Fair Work Commission bearing matter number AM2014/305 on 10 August 2015 (**First Affidavit**).
2. I wish to make the following corrections to my First Affidavit:
 - (a) In paragraph 28 I refer to the percentage of male employees as being “47.77” per cent. The correct figure is “48.77” per cent.
 - (b) In paragraph 39 the reference to “paragraph 38” should be a reference to “paragraph 37”.
 - (c) In paragraph 165(b) it should be deleted and replaced with “*On weekdays before 4PM, a slightly higher number (around 2 to 13 per cent) of casual and part-time 16 and 17 year old employees are available to work before 4PM.*” (changes underlined).
 - (d) The now corrected paragraph 165(b) should also have the following sentence included at the end of the paragraph “*A significant number (around 78 to 85 per cent) of full time 16 and 17 year old full time employees are available to work during this time.*”

Accordingly: the totality of paragraph 165(b) (having regard to the changes identified in 2(c) and (d)) should now read as follows:

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Prepared by (name of person/lawyer) Leanne Cruden, Senior Lawyer

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"On weekdays before 4PM, a slightly higher number (around 2 to 13 per cent) of casual and part-time 16 and 17 year old employees are available to work before 4PM. A significant number (around 78 to 85 per cent) of full time 16 and 17 year old full time employees are available to work during this time."
(changes underlined)

- (e) In paragraph 165(c) it should be deleted and replaced with "On weekdays before 4PM, a slightly higher number again (around 25 to 39 per cent) of part-time and casual 18 year old employees are available to work before 4PM. (changes underlined)
 - (f) In paragraph 165(o) I refer to the time of "9pm" the correct time should be "10pm".
 - (g) The third line in paragraph 168 refers to a date range "5 April 2015 to 26 April 2015" this should instead state "the week ending 5 April 2015 to the week ending 26 April 2015" (change underlined)
 - (h) The second line in paragraph 171 refers to a date range "5 April 2015 to 26 April 2015" this should instead state "the week ending 5 April 2015 to the week ending 26 April 2015" (change underlined)
 - (i) The second line in paragraph 173 of my First Affidavit states "worked on Saturdays...". This should instead state "worked on Sundays" (change underlined).
 - (j) The second line in paragraph 173 refers to a date range "5 April 2015 to 26 April 2015" this should instead state "the week ending 5 April 2015 to the week ending 26 April 2015" (change underlined).
3. In addition to the content of the First Affidavit, I wish to make the following statements about rostering at McDonald's.
4. I have held a number of roles at McDonald's which have involved dealing with rosters:
- (a) I was employed as the Assistant Manager at the Thornleigh Restaurant from January 2006 to April 2009. In this role, for a period of approximately 15 months I was responsible for creating weekly rosters for crew that worked at the Thornleigh Restaurant.
 - (b) I was employed as the Restaurant Manager at the North Ryde Restaurant between April 2009 and September 2010 and I was Restaurant Manager at the Thornleigh Restaurant between October 2010 and January 2012. In these roles I oversaw and checked weekly crew rosters for each of the respective restaurants and created management rosters for each of the respective restaurants.
 - (c) I was employed by McDonald's as National Operations Consultant between February 2012 and December 2012, which did not involve dealing with rosters.
 - (d) I was employed in the position of National Training and HR Design Consultant between December 2012 and December 2014, in which I designed and maintained training courses for managers for corporate and licensee stores on creating crew and management rosters. In this role I also trained other Training Consultants on the delivery of these courses.
 - (e) I am currently engaged by McDonald's as a HR Business Partner which requires me to advise McDonald's corporate and licensee stores on rostering issues. I have performed this role, and advised on rostering issues, since December 2014.



On-Call Work

5. I consider an employee to be engaged in on-call work when they are required to hold themselves in readiness to come into work during a particular period of time and are paid an allowance in respect of doing so.
6. To my knowledge and in my experience, McDonald's corporate and licensee stores do not currently engage any employees on an 'on-call' basis.
7. To my knowledge and in my experience, McDonald's licensee and corporate stores have not previously engaged any employees on an 'on-call' basis.

Rotating Shifts

8. I consider an employee to be working on rotating shifts when they rotate from day to afternoon to evening to overnight shift (or some other combination of shifts) in a cycle.
9. To my knowledge and in my experience, there are no McDonald's employees in either corporate or licensee stores currently working rotating shifts.
10. To my knowledge and in my experience, there are no McDonald's employees in either corporate or licensee stores who previously worked rotating shifts.

Compressed Shifts

11. I consider a compressed working week to occur when a full-time employee works 38 ordinary hours in less than five consecutive days. Employees are able to work compressed working weeks under the *McDonald's Australia Enterprise Agreement 2013 (EA)*, given that the daily maximum number of hours is 9.5 hours and ordinary hours can be averaged across a four week cycle.
12. However, to my knowledge and in my experience, McDonald's employees working in corporate stores do not commonly work compressed working weeks. I do not know of any employee, either currently or previously, who works a compressed working week in corporate stores. I am not aware of what the position is in licensee stores in relation to compressed shifts currently or previously.

Emails

13. In all of my roles with McDonald's I have used McDonald's internal platform 'metime' to send emails to employees. Emails sent via 'metime' appear in an employee's 'metime' inbox. Based on this experience and to my knowledge, I am aware that employees sending emails via 'metime' are able to nominate whether the recipient will also receive a notification to the employee's personal email address that they have received a message in their 'metime' inbox. To my knowledge and in my experience, all employees are required to (and do) provide McDonald's with a personal email address when they apply for a position with McDonald's. To my knowledge and in my experience, McDonald's or a licensee then uses this personal email address, both during the application process and during the employee's employment, as a means of communication with the employee.
14. I am aware that on 26 June 2015, 11 July 2015 and 24 July 2015 Marek Kopias, National Training and HR Design Consultant at McDonald's, sent emails to employees of McDonald's corporate and licensee stores via 'metime' in relation to a survey. I have made enquiries of the administrator of the 'metime' platform on whether the three emails sent via metime by Marek Kopias were sent only as a message via the 'metime' platform or whether they were also sent with an email



notification to the personal email addresses of employees. I have been informed by the administrator that the three emails were also sent with an email notification to the personal email addresses of the employees.

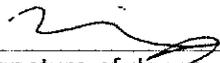
Affirmed by the deponent

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at

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Signature of deponent

Thornleigh

)

in New South Wales

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on 20 October 2015

Before me:


Signature of witness

Meghann Robinson
Solicitor