

**Affidavit**

No. AM2014/305

Fair Work Commission

2014 Four Yearly Review of Modern Awards – Penalty Rates

**Re Application by:** The Australian Industry Group

Affidavit of: *Nicola Nick Agostino*

Address: 1899 Albany Highway Maddington Western Australia

Occupation: **Director**

Date: *Nicola Nick Agostino*

I, *Nick* Agostino of 1899 Albany Highway, Maddington in the state of Western Australia, Director affirm:

1. I make this affidavit based on my own knowledge, information and belief unless otherwise stated. Where I make statements based on information provided to me, I identify the source of that information and otherwise believe it to be true and correct.
2. Along with my wife, Kylie Agostino, I am one of two directors of Agostino Group Holdings Pty Ltd (**Company**). I am also the company secretary of the Company. I have held these positions since 14 July 2010.
3. The Company is a franchisee under the McDonald's franchise system operated by McDonald's Australia Limited. As at the date of this statement, the Company operates three franchised McDonald's stores in Western Australia at the following locations:

Store name / location	Operated by Company since	Type of store
1899 Albany Highway, Maddington, Perth, Western Australia ( <b>Maddington Store</b> )	14 July 2010	Free standing Store
95 Forest Lakes Drive, Forest Lakes, Perth, Western Australia ( <b>Forest Lakes Store</b> )	18 November 2012	Free standing store
2150 Albany Highway, Gosnells, Perth, Western Australia ( <b>Gosnells Store</b> )	17 April 2014	Free standing store

4. A free standing store is a restaurant located by itself on a street. A free standing restaurant it is not affixed to any other business (such as a petrol station) or located in a shopping centre. Free standing stores generally have drive through services as well.

Filed on behalf of (name & role of party) The Australian Industry Group  
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(include state and postcode)

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5. As at 15 July 2015, the Company employed the following numbers of employees to operate its stores:

Store name / location	Number of Employees
Maddington Store	142
Forest Lakes Store	142
Gosnells Store	92
<b>Total</b>	<b>376</b>

6. As a Director of the Company, I have ultimate authority for each of the Store's operations and administrative functions. I also work in each of the Stores on a daily basis, including training and coaching staff as well as performing general "hands on" duties such as cooking and cleaning.
7. My wife, Kylie also works in all of the stores overseeing the customer service standards of each of the stores. I describe Kylie's role as being to "oversee the polish" of each of the stores. She performs this role by coaching and training staff with respect to the customer service standards expected of our staff. Kylie also performs general duties in each of the stores, such as cooking and cleaning.
8. My sister in law, Jodie Smart, is employed by the Company in the position of Supervisor – People Resources Manager. Jodie works in all of the stores. Jodie's role is to oversee the full operations of the three stores, such as sales, marketing and profit margins. Jodie is also responsible for the payroll and financial operations and for overseeing the rostering for each of the stores (although the actual rostering is performed by the Rostering Managers at each of the stores). Jodie also performs general duties such as cooking and cleaning in each of the stores.
9. In addition to Kylie, Jodie and myself, my two children, niece and nephew also work in the Forest Lakes Store.

#### Data Analysis

10. In performing the payroll and financial operations of both stores, Jodie has access and control over all of the Company's payroll and financial reports. In order to prepare this statement, I directed Jodie to use these payroll and financial reports to compile a range of data about the operations of the Company. I have reviewed this data and am satisfied that it has been properly generated.

#### Company's Operations

11. Since 14 July 2010, the Company has employed employees covered by the *Fast Food Industry Award 2010 (Fast Food Award)*. However, as at the date of this statement the Award does not apply to the employees. Instead, the *McDonald's Australia Enterprise Agreement 2013 (McDonald's EA)* applies.
12. The Company uses McDonald's intranet system, called "metime". For the purposes of this statement, I directed Scott Paterson, Human Resources Business Partner at McDonald's to generate a report using the metime system to compile information about the date of birth, gender, age, position type, employment type and store location of employees working in the stores as at 12 July 2015. Exhibited and marked "**Confidential Exhibit NA-1**" is a true copy of an excel spreadsheet setting out this information.

13. Based on the spreadsheet exhibited at NA-1, as at 12 July 2015, the Company employed employees in the following classifications under the McDonald's EA (which I note does not contain a Level 1 classification):

Store	Level 2	Level 3	Level 4	Total
Maddington Store	129	7	6	142
Forest Lakes Store	129	6	7	142
Gosnells Store	85	1	6	92
<b>Total</b>	<b>343</b>	<b>14</b>	<b>19</b>	<b>376</b>

14. Based on the spreadsheet exhibited at NA-1, as at 12 July 2015, the Company employed the following numbers of males and females:

Males	Females
191	185
<b>Total</b>	<b>376</b>

15. Based on the spreadsheet exhibited at NA-1, as at 12 July 2015, the Company employed the following number of employees as casual, part-time and full time:

Store	Casual	Part-time	Full-time	Total
Maddington Store	78	42	22	142
Forest Lakes Store	87	37	18	142
Gosnells Store	51	29	12	92
<b>Total</b>	<b>216</b>	<b>108</b>	<b>52</b>	<b>376</b>

16. I regard a casual employee as an employee who works irregular hours with no set limit each week. I regard a part time employee as a person who works a minimum of ten hours per week.

17. Based on the spreadsheet exhibited at NA-1, as at 12 July 2015, the ages of employees employed by the Company were:

Age	Casual	Part-time	Full-time	Total
<b>14 to 17 Years</b>				
Maddington Store	43	16	2	61
Forest Lakes Store	47	10	1	58
Gosnells Store	38	13	2	53
<b>Total aged 14 to 17 years</b>	<b>128</b>	<b>39</b>	<b>5</b>	<b>172</b>

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Age	Casual	Part-time	Full-time	Total
<b>18 to 24 years</b>				
Maddington Store	27	15	10	52
Forest Lakes Store	39	14	2	55
Gosnells Store	21	12	1	34
<b>Total aged 18 to 24 years</b>	<b>87</b>	<b>41</b>	<b>13</b>	<b>141</b>
<b>25 years or older</b>				
Maddington Store	12	7	10	29
Forest Lakes Store	6	6	15	27
Gosnells Store	3	2	2	7
<b>Total aged 25 years or older</b>	<b>21</b>	<b>15</b>	<b>27</b>	<b>63</b>

18. Prospective employees of the Company are required to apply for positions with the Company through the metime system. As part of the application process, they are also required to identify whether or not they are students. They are also required to enter their availability into the metime system as part of the application process.
19. For the purposes of this statement, I directed Jodie to extract from the metime system information identifying which of the Company's employees are students. Based on the data extracted by Jodie, as at 12 July 2015, the following employees of the Company were students:

Age	Casual	Part-time	Full-time	Total
<b>14 to 17 Years</b>				
Maddington Store	40	14	0	54
Forest Lakes Store	48	6	0	54
Gosnells Store	38	7	0	45
<b>Total aged 14 to 17 years</b>	<b>126</b>	<b>27</b>	<b>0</b>	<b>153</b>
<b>18 to 24 years</b>				
Maddington Store	18	8	0	26
Forest Lakes Store	24	10	0	34
Gosnells Store	16	11	0	27
<b>Total aged 18 to 24 years</b>	<b>58</b>	<b>29</b>	<b>0</b>	<b>87</b>
<b>25 years or older</b>				

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Age	Casual	Part-time	Full-time	Total
<b>14 to 17 Years</b>				
Maddington Store	3	1	0	4
Forest Lakes Store	2	0	0	2
Gosnells Store	1	0	0	1
<b>Total aged 25 years or older</b>	<b>6</b>	<b>1</b>	<b>0</b>	<b>7</b>

20. For the purposes of this statement, I also directed Jodie to use the metime system to generate "Employee Availability Reports" (which set out the availabilities of the Company's employees) to generate data about which employees of the Company can only work on a Saturday, a Sunday or both a Saturday and a Sunday. Exhibited to this statement and marked "Confidential Exhibit NA-2" is a copy of the Employee Availability Reports.

21. Based on the data compiled by Jodie, as at 12 July 2015, the following employees of the Company only work on a Saturday, a Sunday or both a Saturday and a Sunday:

Age	Casual	Part-time	Full-time	Total
<b>14 to 17 Years</b>				
Maddington Store	8	2	1	11
Forest Lakes Store	10	2	0	12
Gosnells Store	3	0	1	4
<b>Total aged 14 to 17 years</b>	<b>21</b>	<b>4</b>	<b>2</b>	<b>27</b>
<b>18 to 24 years</b>				
Maddington Store	7	1	2	10
Forest Lakes Store	6	1	0	7
Gosnells Store	2	0	0	2
<b>Total aged 18 to 24 years</b>	<b>15</b>	<b>2</b>	<b>2</b>	<b>19</b>
<b>25 years or older</b>				
Maddington Store	2	0	2	4
Forest Lakes Store	3	0	3	6
Gosnells Store	2	0	2	4
<b>Total aged 25 years or older</b>	<b>7</b>	<b>0</b>	<b>7</b>	<b>14</b>

22. Based on the spreadsheet exhibited at NA-1, as at 12 July 2015, the length of service of employees of the Company was:

Age	Less Than One Years' Service	More Than One Year But Less Than Three Years' Service	More Than Three Years Service
<b>Casual Employees 14 to 17 Years</b>			
Maddington Store	33	42	5
Forest Lakes Store	33	38	3
Gosnells Store	23	19	2
<b>Casual Employees 18 to 24 Years</b>			
Maddington Store	6	19	19
Forest Lakes Store	11	25	16
Gosnells Store	3	23	0
<b>Part Time Employees 14 to 17 Years</b>			
Maddington Store	1	4	2
Forest Lakes Store	3	3	1
Gosnells Store	4	4	2
<b>Part Time Employees 18 to 24</b>			
Maddington Store	3	4	4
Forest Lakes Store	2	5	2
<b>Part Time Employees 18 to 24</b>			
Gosnells Store	5	6	1

#### Typical Operations of the Company

23. Each day, customers of the Company order fast food, such as hamburgers, beverages, desserts and coffee at a counter at each of the stores. In addition, each of the stores has a drive through facility, whereby customers can drive their cars through a customer drive, and order their food at a speaker. They can then pay for and collect their food at customer windows located on the customer drive. Workers of the Company prepare the food and other workers of the Company sell the food to the customers. I estimate that on average:
- about 90% of customers eat their meals away from the Maddington Store (comprised of 70% drive through sales, and 20% takeaway sales);
  - about 80% of customers eat their meals away from the Forest Lakes Store (comprised of 70% drive through sales and 10% takeaway sales); and
  - about 85% of customers eat their meals away from the Gosnells Store (comprised of 70% drive through sales and 15% takeaway sales).

**Saturday Rostering**

24. As a principal of McDonald's, I have access to McDonald's "My Restaurant" database. The MyRestaurant database is an administrative platform whereby principals of McDonald's are able to generate a series of documents such as rosters and sales reports. Jodie also has the authority to access the MyRestaurant database and generate various reports. For the purposes of this statement, I directed Jodie to run a "roster linebar report" from the My Restaurant database for the period 1 June 2015 to 28 June 2015 (**Audit Period**) for each of the stores. Roster linebar reports essentially set out the rosters for a particular period in a graph format. I have reviewed the roster linebar reports generated by Jodie and I am satisfied that the rosters are typical rosters implemented at the stores and can be used as a sample for the purposes of this statement.
25. Employees of the Company generally work their rostered hours unless they swap their shift with another employee of the Company or are too unwell to do so. In these instances, another employee will work the same rostered shift as that employee.
26. I also directed Jodie to compile a range of data regarding the average number of employees rostered on Saturdays and their shift lengths by adding all of the relevant figures together in the roster line reports and then dividing by the number of Saturdays during the Audit Period, (being four Saturdays). I further directed Jodie to compare this data against the spreadsheet exhibited in NA-1 and the employee availability reports exhibited at NA-2 to provide further analysis with respect to the classifications and employment status of employees and rostered on Saturdays during the Audit Period. I have reviewed the data compiled by Jodie and I am satisfied that it has been properly compiled. This data is set out in paragraphs 27 to 33 below.
27. Based on the roster linebar reports, during the Audit Period, the Company engaged on average the following number of employees on Saturdays:

Store	Numbers of Employees Rostered on Saturday
Maddington Store	59
Forest Lakes Store	63
Gosnells Store	37
<b>Total</b>	<b>159</b>

28. Based on the spreadsheet exhibited to this statement at NA-1 and the roster linebar reports during the Audit Period, the classifications of the employees rostered to work on Saturdays was as follows:

Store	Level 2	Level 3	Level 4	Total
Maddington Store	52	4	3	59
Forest Lakes Store	56	3	4	63
Gosnells Store	32	2	3	37
<b>Total</b>	<b>140</b>	<b>9</b>	<b>10</b>	<b>159</b>

29. Based on the spreadsheet exhibited to this statement at NA-1 and the roster linebar reports, the number of Level 2 employees who worked on Saturdays during the Audit Period who were casual, part time or full time was:

Store	Casual	Part Time	Full Time
Maddington Store	39	11	2
Forest Lakes Store	43	11	2
Gosnells Store	23	7	2
<b>Total</b>	<b>105</b>	<b>29</b>	<b>6</b>

30. Based on the spreadsheet exhibited at NA-1 and the roster linebar reports exhibited at NA-2, the number of Level 3 employees who worked on Saturdays during the Audit Period who were casual, part time or full time was:

Store	Casual	Part Time	Full Time
Maddington Store	0	3	1
Forest Lakes Store	1	2	0
Gosnells Store	0	1	1
<b>Total</b>	<b>1</b>	<b>6</b>	<b>2</b>

31. Based on the spreadsheet exhibited at NA-1 and the roster linebar reports, the number of Level 4 employees who worked on Saturdays during the Audit Period who were casual, part time or full time was:

Store	Casual	Part Time	Full Time
Maddington Store	0	0	3
Forest Lakes Store	0	0	4
Gosnells Store	0	0	3
<b>Total</b>	<b>0</b>	<b>0</b>	<b>10</b>

32. Based on the roster linebar reports, during the Audit Period, Level 2 employees worked the following shifts and shifts durations:

Store	4 Hours	6 Hours	8 Hours	11 Hours
Maddington Store	50	0	2	0
Forest Lakes Store	49	0	7	0
Gosnells Store	27	0	5	0
<b>Total</b>	<b>126</b>	<b>0</b>	<b>14</b>	<b>0</b>

33. Based on the roster linebar reports, during the Audit Period, Level 3 employees worked the following shifts and shifts durations:

Store	4 Hours	6 Hours	8 Hours	11 Hours
Maddington Store	0	0	4	0
Forest Lakes Store	0	0	3	0
Gosnells Store	0	0	2	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>9</b>	<b>0</b>

34. Based on the roster linebar reports, during the Audit Period, Level 4 employees worked the following shifts and shifts durations:

Store	4 Hours	6 Hours	8 Hours	11 Hours
Maddington Store	0	0	3	0
Forest Lakes Store	0	0	4	0
Gosnells Store	0	0	2	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>10</b>	<b>0</b>

**Saturday Sales**

35. Based on my experience in working on each of the stores, I have observed that Saturdays are much busier than any other day of the week at each of the stores.

**Sunday Rostering**

36. For the purposes of this statement, I directed Jodie to use the roster linebar reports to compile a range of data regarding the average number of employees rostered on Sundays and their shift lengths by adding all of the relevant figures together and then dividing by the number of Sundays during the Audit Period, being four Sundays. I further directed Jodie to compare this data against the spreadsheet exhibited in NA-1 and the employee availability reports exhibited at NA-2 to provide further analysis with respect to the classifications and employment status of employees and rostered on Sundays during the Audit Period. I have reviewed the data compiled by Jodie and I am satisfied that it has been properly compiled. This data is set out in paragraphs 38 to 43 below.
37. Employees of the Company generally work their rostered hours unless they swap their shift with another employee of the Company or are too unwell to do so. In these instances, another employee will work the same rostered shift as that employee.
38. Based on the roster linebar reports, during the Audit Period, the Company engaged on average the following number of employees on Sundays:

Store	Numbers of Employees Rostered on Sunday
Maddington Store	46
Forest Lakes Store	59

Gosnells Store	38
<b>Total</b>	<b>143</b>

39. Based on the spreadsheet exhibited at NA-1 and the roster linebar reports, during the Audit Period, the classifications of the employees rostered to work on Sundays were:

Store	Level 2	Level 3	Level 4	Total
Maddington Store	40	4	2	<b>46</b>
Forest Lakes Store	53	4	2	<b>59</b>
Gosnells Store	34	2	2	<b>38</b>
<b>Total</b>	<b>127</b>	<b>10</b>	<b>6</b>	<b>143</b>

40. Based on the spreadsheet exhibited at NA-1 and the roster linebar reports the number of Level 2 employees who worked on Sundays during the Audit Period who were casual, part time or full time was:

Store	Casual	Part Time	Full Time
Maddington Store	33	5	2
Forest Lakes Store	41	7	5
Gosnells Store	28	5	1
<b>Total</b>	<b>102</b>	<b>17</b>	<b>8</b>

41. Based on the spreadsheet exhibited at NA-1 and the roster linebar reports the number of Level 3 employees who worked on Sundays during the Audit Period who were casual, part time or full time was:

Store	Casual	Part Time	Full Time
Maddington Store	0	2	1
Forest Lakes Store	2	2	0
Gosnells Store	1	1	1
<b>Total</b>	<b>3</b>	<b>5</b>	<b>2</b>

42. Based on the roster linebar reports, during the Audit Period, Level 2 employees worked the following shifts and shifts durations:

Store	4 Hours	6 Hours	8 Hours	11 Hours
Maddington Store	37	0	4	0
Forest Lakes Store	50	0	3	0
Gosnells Store	31	0	2	0

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<b>Total</b>	<b>118</b>	<b>0</b>	<b>9</b>	<b>0</b>
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43. Based on the roster linebar reports, during the Audit Period, Level 3 employees worked the following shifts and shifts durations:

Store	4 Hours	6 Hours	8 Hours	11 Hours
Maddington Store	0	0	4	0
Forest Lakes Store	0	0	4	0
Gosnells Store	0	0	2	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>10</b>	<b>0</b>

44. Based on the roster linebar reports, during the Audit Period, Level 4 employees worked the following shifts and shifts durations:

Store	4 Hours	6 Hours	8 Hours	11 Hours
Maddington Store	0	0	2	0
Forest Lakes Store	0	0	2	0
Gosnells Store	0	0	2	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>0</b>

#### Sunday Sales

45. Based on my experience in working in each of the stores, I have observed that Sundays are busier than weekdays at each of the stores in terms of the amount of sales generated. However, Sundays generally are not as busy as Saturdays.

#### Evening Rostering

46. As at the date of this statement:
- (a) the Gosnells Store is open every single day of the year, including all public holidays; and
  - (b) the Maddington and Forest Lakes Stores are open every single day of the year, apart from Christmas Day (including all other public holidays).
47. In addition, each of the Stores will be closed for approximately four hours every six months for exhaust cleaning.
48. For the purposes of this statement, I directed Jodie to use the roster linebar reports to calculate the number of employees that were rostered to work at each of the stores between 9 pm and 10 pm on weekdays during the Audit Period.
49. Based on the roster linebar reports during the Audit Period, the number of employees rostered to work at each of the stores between 9 pm and 10 pm on a weekday was:

Store	Number of Employees
Maddington	113
Forest Lakes	110

Gosnells	72
<b>Total</b>	<b>295</b>

**Systems for Employees to Express Preferred Working Hours**

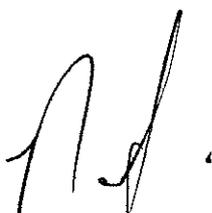
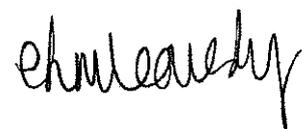
50. The Company uses a number of systems for employees to express their preferred working hours as set out below.
- (a) under the metime system, job applicants apply for employment on the metime system. As part of the application process, applicants enter their availabilities into the metime system. During the interview process the Company will then generally discuss the applicant's availability, as an applicant's availability to work is a significant determining factor as to whether or not the Company will decide to engage that particular applicant. If the applicant is subsequently employed by the Company, the Company will roster around their availabilities, with employees only being rostered for shifts which they have stated they have availability for under the metime system;
  - (b) if employees wish to make a temporary change to their availability (for example because they have an event on during a particular shift), they are required to notify their Roster Manager or enter it into a hard copy diary called the "Time Out Book". There is at least one person employed as a Roster Manager at each restaurant, and a Time Out Book located at each restaurant; and
  - (c) if employees wish to make a permanent change to their availability, they are required to complete a "change of availability form" which they obtain in hard copy from the shift manager. Then will then return the form to a shift manager. Part time and full time employees are required to obtain approval from their managers before changing their availability, whereas casual employees are entitled to change their availability on a permanent basis without obtaining any approval.

**Health Impact of Weekend Work**

51. I work in the Maddington, Forest Lakes and Gosnells store during weekdays. I also work in the Maddington store on Saturdays and Gosnells on Sundays. I have not observed any greater rate of injuries in the Maddington, Forest Lakes and Gosnells store on Saturdays or Sundays in comparison to weekdays.
52. I have reviewed the injuries register of the McDonald's Maddington, Forest Lakes and Gosnells store for the period from April to June 2015. The injuries register recorded in total 3 injuries over weekdays. The injuries register recorded in total 2 injuries over a Saturday or Sunday.

**Career vs Non-career workers**

53. In my view, the Company's employees can be distinguished into "career" and "non-career" employees. When I refer to a "career" employee, I am referring to an employee who intends for their employment with the Company to be their main source of work for a long period of time. When I refer to "non-career" employees, I am referring to employees who are only likely to work for the Company for a short period of time and view their employment with the Company as transitional while they complete study, or obtain employment in another field.
54. I estimate that approximately 20% of the company's employees are career employees, with the remaining 80% being non-career employees. In my role as Director of the Company, I have observed that career employees are more likely than non-career employees to be:
- (a) full time or part time employees as opposed to casuals;
  - (b) be in the process of either obtaining a Certificate 3 or 4 in Business;

- (c) managers; or
- (d) return to work mothers.

55. I have observed that non-career employees are more likely to be university students who are working towards their long term employment goal.

**Complaints about weekend work**

56. The company maintains the following systems for receiving complaints from employees and/or for employees to raise concerns with their supervisor:

- (a) Personal Action Letters or emails (known as PAL Letters): PAL letters are written and submitted to either myself or McDonald's Head Office detailing complaints, queries or compliments. I will then meet with the employee to discuss the matters raised in the PAL letter;
- (b) metime process: Under the McDonald's metime portal, employees are able to lodge internal emails lodging their complaints;
- (c) face to face meetings and performance review updates: At scheduled times, myself and other senior managers will meet with employees on an individual basis to talk about the business, employee performance and hours of work. In addition to the scheduled meetings, we will also conduct unplanned meetings if requested by the employee. At these meetings, the parties work together to communicate on best outcomes for both the employee and the Company. These meetings generally run anywhere from approximately 15 minutes to 45 minutes. The items discussed during these meetings are documented and filed in employee files.

57. I am not aware of receiving any formal complaints from employees about weekend work. Employees are generally only rostered to work for the times which they identify as being available through the methods set out in paragraph 50 above. I do receive complaints about employees wishing to work more hours than they are rostered for. However, I am unable to roster many employees for the number of hours they would like to be rostered for as I cannot afford to do so. I estimate that I receive these types of complaints approximately three to four days per week.

Affirmed by the deponent

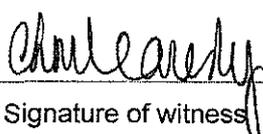
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in Western Australia

on 10 August 2015

Before me:

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 ) Signature of deponent  
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 \_\_\_\_\_  
 Signature of witness

*CARA HELENE MAIR LEAVESLEY*  
 Australian Legal Practitioner  
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