



TRANSCRIPT OF PROCEEDINGS

*Fair Work Act 2009*

1053215

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

**AM2014/196 AM2014/197**

**s.156 - 4 yearly review of modern awards**

**Four yearly review of modern awards**

**(AM2014/196 and AM2014/197)**

**Casual Employment  
Part-time Employment**

**Sydney**

**10.10 AM, MONDAY, 21 MARCH 2016**

**Continued from 18/03/2016**

PN6353

VICE PRESIDENT HATCHER: Are there any new or changed appearances?

PN6354

MR WARD: Your Honour, I have returned, if that could be noted.

PN6355

VICE PRESIDENT HATCHER: But unchanged, though. Are there any new or changed appearances in Melbourne? No.

PN6356

MR CHESTERMAN: Your Honour, it is Bill Chesterman from the VACC representing the Motor Trades Organisation. I have just relocated and I am with Ms Dessmann.

PN6357

VICE PRESIDENT HATCHER: Is Ms McMillan the first witness for today?

PN6358

MR FAGIR: Yes, but before she is called could I flag two administrative issues?

PN6359

VICE PRESIDENT HATCHER: Yes.

PN6360

MR FAGIR: Firstly, we filed two expert reports in reply which were at one stage the subject of an objection.

PN6361

VICE PRESIDENT HATCHER: Yes.

PN6362

MR FAGIR: I understand your Honour's indication was that you are inclined to let them in unless unavoidable prejudice could be identified.

PN6363

VICE PRESIDENT HATCHER: Yes.

PN6364

MR FAGIR: The matter seems to have laid bare and we assume that means no prejudice can be identified and the objection has dissipated. But if we are wrong about that, could we invite any objecting party to let us know as soon as possible because it impacts, of course, on the cross-examination of Professor Rivers.

PN6365

VICE PRESIDENT HATCHER: Mr Ferguson, is there likely to be any issue about that now?

PN6366

MR FERGUSON: We have raised the objection we have, but I had understood that the Bench was going to rule on whether or not the statement was admitted.

PN6367

VICE PRESIDENT HATCHER: I understood that you maintained your objection formally, but in respect of the position if the statements were admitted, the question was whether you would be able to deal with them this week.

PN6368

MR FERGUSON: Yes, I anticipate we will, yes.

PN6369

MR FAGIR: The second matter involves Ms Narelle Jenks who is the second ACTU witness scheduled for this morning. We have just been told that Ms Jenks has entered into a deed of some kind which contains confidentiality provisions of some kind. I don't have any more information than that, but can I just flag that we will have to explore witness Jenks at the appropriate time, but I suspect that Ms Jenks will take a global objection to answering any questions covered by the confidentiality provision. She is then compelled to answer. Well, she will.

PN6370

VICE PRESIDENT HATCHER: When is she going to give evidence today?

PN6371

MR FAGIR: Not before 2 o'clock.

PN6372

VICE PRESIDENT HATCHER: She is in Perth, is she?

PN6373

MR FAGIR: Yes.

PN6374

VICE PRESIDENT HATCHER: We will deal with that issue when we come to it, but is she going to object to the admission of her statement? Like, is she going to attest to her own statement?

PN6375

MR FAGIR: Yes, she is.

PN6376

VICE PRESIDENT HATCHER: Sorry, Mr Ward.

PN6377

MR WARD: It is difficult to hear at the back. In relation to the additional expert reports, can I just indicate this, that as to whether or not we will be ready to go with those on Wednesday, I can't answer that question now. We will be reviewing the additional material tonight as best we can and we will be able to tell the Commission tomorrow where we stand with that. We are doing everything we can at this stage to be ready for Wednesday with all of Professor Markey's material, but I can't confirm at this stage that we will be ready with the additional reports at this time.

PN6378

VICE PRESIDENT HATCHER: Mr Fagir, can we revisit this issue tomorrow or to the extent that any issue emerges, I think we can deal with this issue tomorrow morning even if Mr Ward hasn't got an issue by tomorrow morning, we can assume that we will go ahead.

PN6379

MR FAGIR: If the Commission pleases.

PN6380

MR WARD: Sorry, I think I am the only person cross-examining Ms Jenks. Can I ask just ask my friends in the intervening period, perhaps during lunch, if there are any issues they need to raise with me before I cross-examine her, it will be useful that we have some discussion about that.

PN6381

VICE PRESIDENT HATCHER: While we are dealing with procedural issues, can I just raise the possibility that on Thursday whether there is any objection to us starting at 9 o'clock in an attempt to finish early to ensure that any person, including members of the Bench, who have to catch planes that evening can catch them without difficulty.

PN6382

MR FAGIR: On that topic, your Honour, we have made Dr O'Brien and Dr McIvor available for cross-examination. Dr McIvor hasn't actually published a report of his own. He has contributed to Professor Markey's report.

PN6383

VICE PRESIDENT HATCHER: Yes.

PN6384

MR FAGIR: Mr Ward tells me he is not required for cross-examination. I wonder if anyone else requires him.

PN6385

VICE PRESIDENT HATCHER: Mr Nguyen.

PN6386

MR NGUYEN: Your Honour, we have been advised by the AI Group that they no longer require Mr Simon Hines for cross-examination. So on that basis, the AMWU will be advising him that he is no longer required unless any other party lets us know in the next five minutes. If the Commission pleases, I will be seeking to tender the statement as an exhibit.

PN6387

VICE PRESIDENT HATCHER: Has any other party previously advised that he is required for cross-examined?

PN6388

MR NGUYEN: No, not that we are aware of.

PN6389

VICE PRESIDENT HATCHER: Does any party seek leave to alter its position in that respect? I think you can take it that Mr Hines won't be required to attend to give evidence. I will return later in the day to mark his statement.

PN6390

MR NGUYEN: Thanks.

PN6391

VICE PRESIDENT HATCHER: Mr Gee, is the first witness yours?

PN6392

MR GEE: Thank you, your Honour, yes. The RCSA calls Kathryn MacMillan.

**<KATHRYN MACMILLAN, SWORN** [10.17 AM]

**EXAMINATION-IN-CHIEF BY MR GEE** [10.17 AM]

PN6393

MR GEE: Ms MacMillan, could I ask you to state your full name and address for the record, please?---Kathryn MacMillan, Suite 305, 3-5 Stapleton Avenue, Sutherland.

PN6394

Ms MacMillan, have you prepared a written statement in this matter?---Yes, I have.

PN6395

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

PN6396

Is that statement dated 29 February 2016 and of some 33 paragraphs?---Correct.

PN6397

Do you have any changes you would like to make to that statement?---Yes, in clause 33, I believe, in the second line my business name is incorrectly written. It states "Nine3Three", instead of "Nine2Three".

PN6398

Any other changes, Ms MacMillan?---No.

PN6399

With that amendment, is this statement true and correct to the best of your knowledge and belief?---Yes.

PN6400

I seek to tender the statement, your Honour.

\*\*\* KATHRYN MACMILLAN

XN MR GEE

PN6401

VICE PRESIDENT HATCHER: If there is no objection, the statement of Kathryn MacMillan, dated 29 February 2016, will be marked exhibit 75.

**EXHIBIT #75 STATEMENT OF KATHRYN MACMILLAN DATED  
29/02/2016**

PN6402

MR GEE: That is the evidence-in-chief, your Honour.

PN6403

VICE PRESIDENT HATCHER: Mr Fagir.

**CROSS-EXAMINATION BY MR FAGIR**

**[10.18 AM]**

PN6404

MR FAGIR: Ms MacMillan, I appear for the Australian Council of Trade Unions and I have just a short number of questions for you about your statement. Do you still have paragraph 33 in front of you there?---Yes, I do.

PN6405

I would just like to understand a bit more about the process of notification?---Mm-hm.

PN6406

You tell us that at the moment, you already notify all candidates on your database who are in the same region as the client and invite them to express their interest effectively in the assignment. How is that done?---That is done through a job alert system via email.

PN6407

There is some obligation for every candidate to supply an email address to you, is there?---Correct.

PN6408

You let them know that you will notify them of assignments by email and it is up to them to check it to make sure they are aware of all the work that is available at least through you?---Correct.

PN6409

When you say candidates who are in the same region, what are the regions?---The regions could be geographic, but they will also be skill based.

PN6410

Can you tell me a little bit more about that?---Skill based meaning suitability for the job.

PN6411

You have some classification of employees based on their skills or training or whatever it might be and a classification by region and you send out this email to the employees who fit the criteria in terms of location and capabilities?---Correct.

\*\*\* KATHRYN MACMILLAN

XXN MR FAGIR

PN6412

Is that an automated process or does someone sit down and draft each email?---The email is an automated process.

PN6413

There is some software program that does that, is there?---There is.

PN6414

How long have you had that process in place?---For 13 years since the business has been running.

PN6415

Do you know, tell me if you don't, but is this a standard sort of package that is used in the industry?

PN6416

MR GEE: I object to that. The witness is not here to give evidence about the industry. It is not led as an expert in that regard.

PN6417

VICE PRESIDENT HATCHER: I will allow the question.

PN6418

MR FAGIR: Do you need me to ask the question again?---Yes, please.

PN6419

I think I said tell me if you don't, that was the first thing that I said, but if you do know, do you know if this is a standard package that is used in the industry or is it something specific to your business?---No, it is a proprietary database that I created in our business.

PN6420

Can I ask you to turn to paragraph 31? I am sorry. You have some ability when it comes to database design or something, do you?---Basic ability.

PN6421

Was this created in Excel or a database program or how did you create this program?---Microsoft Access.

PN6422

That is a basic sort of desktop database management system?---Yes, it is.

PN6423

At paragraph 31, you have given some estimate of the administrative impact of the introduction of a casual conversion clause. Do you see that?---Yes.

PN6424

You, of course, track the commencement date of employees on your database?---Correct.

\*\*\* KATHRYN MACMILLAN

XXN MR FAGIR

PN6425

You have a record of the hours worked from week to week?---Correct.

PN6426

From day to day as well?---Correct.

PN6427

If you need to review an employee's hours of work over a period, you are able to pull that up and create some kind of SQL query, I suppose?---Through using a number of different softwares, not just the one.

PN6428

If you needed to, you would be able to pull up that information and have a look at the employee's work patterns over a period of time?---With some effort, yes.

PN6429

What effort would be involved?---Because our database does not track everything in terms of hours worked, so we would have to use alternative software as well.

PN6430

Explain that to me. What do you mean the database doesn't track everything in terms of hours worked?---Our database tracks roles and clients and candidates and we have different software that tracks hours worked for candidates for employees.

PN6431

If you needed to know what hours an employee had worked across however many clients over a period of time, that would be a straight forward exercise?---Utilising a few different platforms.

PN6432

I am sorry. I am missing something here. You have a program that tracks hours worked by employee?---Mm-hm.

PN6433

Then you have a different program that disaggregates that by client and so on. Is that what you have said or am I misunderstanding?---No, that's correct. So we would first look at our own database to locate the employee and the client and then we would have to look at a different software program to find out the actual hours worked by that employee over a period of time.

PN6434

Why do you have to start by working out the employee and the client? Why can't you just go to the second database and pull up Mr Joe Bloggs' hours of work?---Because I wouldn't personally know Mr Joe Bloggs or where he works. I would have to look him up first.

PN6435

You know the names of your employees, don't you? You have only got 58 of them?---Sorry, not everyone, no, I don't.

\*\*\* KATHRYN MACMILLAN

XXN MR FAGIR

PN6436



But you have a list of your employees?---Yes.

PN6437

You could, if you wanted to, start with number one, John Smith?---Correct.

PN6438

And have a look at that database, yes, he has worked 40 hours, three hours, 27 hours, and so on?---Correct.

PN6439

You could repeat that process for each employee?---Correct.

PN6440

Given that you have some database skills sufficient to set up the program that you described in the beginning of your evidence, you would be able to automate that process if you wanted to?---I would not be able to automate it now because our database has gone beyond my basic skills.

PN6441

Who administers the database now?---I have to employ a programmer.

PN6442

That programmer would certainly be able to automate a process of pulling up every employee and their hours worked over different periods, you would accept that, of course?---Possibly, yes.

PN6443

That would be a very basic database query type of task, wouldn't it?---Yes.

PN6444

What I want to suggest to you is that if you actually had the motivation to go through this process, it wouldn't take you anything like the one to two hours you have estimated at paragraph 31. It would be a tiny fraction of that time?---I actually disagree with that because we would have to track the starting date of each employee which we don't have the capabilities to do currently. So we would have to track that and then we would have to have a system that would give us some sort of alert to notify us when those dates fell due, which we don't currently have. So there would be some work in doing that. Then I would have to apply a staff member to do that work. So I actually believe that from my estimation that is probably fairly correct.

PN6445

That is if you did nothing. If you just continued as you are now, you say it would take you one to two hours. What I am suggesting to you is with some basic adjustments you could dramatically reduce the period of time involved?---I don't agree it would be dramatically reduced. It would possibly be reduced a little, yes.

\*\*\* KATHRYN MACMILLAN

XXN MR FAGIR

PN6446

VICE PRESIDENT HATCHER: Ms MacMillan, in paragraph 10 of your statement, you refer to 58 group tax certificates to on-hired temporary employees; do you see that?---Yes.

PN6447

Is that the same number as the modest number of on-hire casual employees referred to in paragraph 31?---I believe so, yes.

PN6448

All right, thank you. Any re-examination, Mr Gee.

PN6449

MR GEE: No, your Honour.

PN6450

VICE PRESIDENT HATCHER: Thank you for your evidence, Ms MacMillan. You are excused and you are free to go?---Thank you.

<THE WITNESS WITHDREW

[10.26 AM]

PN6451

MR GEE: Your Honour, we have one more witness statement for Carly Fordred. Ms Fordred was not required for cross-examination, but – excuse me, your Honour – Ms Carly Fordred prepared a statement on 9 October 2015 of some 13 paragraphs. Your Honours, Commissioners, may be aware that a notice to produce was served by the ACTU, but orders to produce were served by the Commission at the ACTU's request in relation to Ms Fordred's statement. A bundle of documents was produced in answer to that request and some further informal request for documents. By agreement between the parties, we would seek leave to tender the statement of Ms Fordred and have attached to that statement documents that were produced at the request of the ACTU. I have copies here for the Bench.

PN6452

VICE PRESIDENT HATCHER: Just give me a second.

PN6453

MR FAGIR: I am sorry, your Honour. I haven't seen these documents and I don't know about this agreement. I wonder if this matter could be – do you want to take some instructions from your Melbourne chambers? Yes, I am content to do that now, but it might be more efficient to deal with this later on.

PN6454

VICE PRESIDENT HATCHER: If there is a difficulty, Mr Gee, we will just defer it until later in the day to allow Mr – sorry, did you plan to leave or anything, Mr Gee?

PN6455

MR GEE: I am sorry?

\*\*\* KATHRYN MACMILLAN

XXN MR FAGIR

PN6456

VICE PRESIDENT HATCHER: Did you plan to excuse yourself after this?

PN6457

MR GEE: Actually after Mr Francis's evidence.

PN6458

VICE PRESIDENT HATCHER: Sorry?

PN6459

MR GEE: Not until later this morning, your Honour.

PN6460

VICE PRESIDENT HATCHER: All right, well, perhaps we will come back to this later in the day when Mr Fagir has got an opportunity to look at the documents and confirm instructions.

PN6461

MR GEE: If your Honour pleases.

PN6462

VICE PRESIDENT HATCHER: Mr Boncardo.

PN6463

MR BONCARDI: May it please the Commission. Your Honours, I wondered if I could interpose to tender documents that I undertook to tender during the cross-examination of Ms Last on Friday. I prepared the documents which are the casual conversion letters that were produced pursuant to a notice by Ms Last. I also need to make a correction. I put to Ms Last that on eight separate dates between January 2010 and the present that casual conversion letters had been sent by her company. I have reviewed those again this morning and discovered that it was, in fact, nine separate occasions. I have included as an aide-memoire to the documents a note of what the relevant dates are and I seek to tender the documents and attached to them is a copy of the aide-memoire.

PN6464

VICE PRESIDENT HATCHER: Is there any objection to this?

PN6465

MR FLEMING: Your Honour, Mr Gee may wish to be heard on this.

PN6466

VICE PRESIDENT HATCHER: Yes, Mr Gee, you might have just missed something, but Mr Boncardo is tendering the casual conversion letters together with an aide-memoire relating to the evidence of Ms Last. Are you familiar with these documents?

PN6467

MR GEE: May I have a look at them? As with the last request may I take an opportunity without delaying proceedings?

PN6468

VICE PRESIDENT HATCHER: Can we defer this until later in the morning, Mr Boncardo, and allow Mr Gee to get some instructions about those documents

PN6469

MR BONCARDO: Certainly, your Honour.

PN6470

VICE PRESIDENT HATCHER: Who is the next witness?

PN6471

MR FLEMING: Your Honour, the ACTU calls Ms Vicki Ann Stewart.

PN6472

VICE PRESIDENT HATCHER: Yes, all right. Can we administer the oath or affirmation to Ms Stewart, please?

**<VICKI ANN STEWART, AFFIRMED** [10.33 AM]

**EXAMINATION-IN-CHIEF BY MR FLEMING** [10.33 AM]

PN6473

MR FLEMING: Good morning, Ms Stewart. My name is James Fleming and I appear for the Australian Council of Trade Unions. Is your name Vicki Ann Stewart?---Yes.

PN6474

Is your address, 106 Victoria Street, West End, Queensland?---That's my workplace address.

PN6475

Have you made a written statement in these proceedings?---Sorry, I am having difficulty hearing you.

PN6476

Can you hear me better now?---A little bit. I am just trying to resolve the issue.

PN6477

Have you made a written statement in these proceedings?---Yes, I have.

PN6478

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

PN6479

Can I just check that statement has 24 paragraphs was signed on 16 October last year and contain five attachments?---Yes.

PN6480

Do you need to make any corrections to that statement?---Yes, I do.

\*\*\* VICKI ANN STEWART

XN MR FLEMING

PN6481

What is the first correction?---It is in statement 16.

PN6482

Is that paragraph 16?---Yes, paragraph 16. I just wanted to confirm, on the third line or second line where it says, "T verbally requested permanency to both her area manager and the hospital director", I wanted to just clarify that that was on at least two occasions in the previous 12 months. So that was previous to the conversation I had had with her in January 2014.

PN6483

Are there any other corrections?---No.

PN6484

All right, thank you. That is the examination-in-chief for this witness, your Honour.

PN6485

VICE PRESIDENT HATCHER: Are there any objections?

PN6486

MR WARD: Yes, there are. Your Honour, we have set out a series of objections in our correspondence of 8 March. I am comfortable that most of them are dealt with in a manner that objections generally have been dealt with, with one exception, in particular. That is, we would strongly press the objection to paragraph 3. It is highly prejudicial and, in our view, seems to serve no probative value in this case whatsoever. There is a variety of similar paragraphs to that, but we will try and deal with them as best we can. But three, in particular, seems to be highly prejudicial.

PN6487

VICE PRESIDENT HATCHER: It anticipates the later fact that the statement refers to employees whose name is not given and the name of employer is not given. Paragraph 3 really only arises to this level, as I read it, that the employees hold a concern. Whether that concern has any basis in reality is an entirely different thing and I don't think anything in paragraph 3 could be read as suggesting or supporting a conclusion that there is any rational basis for the concern without something more.

PN6488

MR WARD: If the Commission pleases.

PN6489

VICE PRESIDENT HATCHER: Unless Mr Fleming wants to tell me otherwise.

\*\*\* VICKI ANN STEWART

XN MR FLEMING

PN6490

MR FLEMING: Your Honour, just in response to that, we are content for this statement to be dealt with as previous statements have been in relation to hearsay except that we would submit that it should be given some additional weight given that it is backed up by documents that would be treated as business documents relevant to the exemption to the hearsay rule.

PN6491

VICE PRESIDENT HATCHER: I am not sure they would be if they were anonymised but, anyway.

PN6492

MR FLEMING: Notwithstanding, those emails, your Honour - - -

PN6493

VICE PRESIDENT HATCHER: Mr Ward's specific objection was about paragraph 3. So do you agree it is to be read in the way I have suggested or do you seek to get more out of it than that?

PN6494

MR FLEMING: Your Honour, could I just note that one of the emails does contain evidence about supporting that statement, the reasons why casuals have made those statements to Ms Stewart.

PN6495

VICE PRESIDENT HATCHER: So which email is that?

PN6496

MR FLEMING: It is referred to at five. It is referred to later in the statement.

PN6497

VICE PRESIDENT HATCHER: Which one

PN6498

MR FLEMING: VS5, I believe it is called. It is referred to later in the statement.

PN6499

MR WARD: That arises from paragraph 24 of the statement.

PN6500

VICE PRESIDENT HATCHER: VS5. I don't have a VS5.

PN6501

DEPUTY PRESIDENT KOVACIC: It is the last page.

PN6502

VICE PRESIDENT HATCHER: I see. It is the last page. But where does it do that?

PN6503

MR FLEMING: I apologise, your Honour. I am just skim-reading myself. The final email speaks to some of those concerns.

PN6504

DEPUTY PRESIDENT KOVACIC: Is there a particular passage you want to refer to, Mr Fleming?

\*\*\* VICKI ANN STEWART

XN MR FLEMING

PN6505

MR FLEMING: The second sentence of the final email and the third sentence.

PN6506

DEPUTY PRESIDENT KOVACIC: Is that the email that starts, "Hi, Vicki"?

PN6507

MR FLEMING: Yes, your Honour, dated 11 May at 7.23 pm.

PN6508

VICE PRESIDENT HATCHER: They raise different issues, but they don't raise the issues referred to in paragraph 3, do they? That is, fear of adverse action from

- - -

PN6509

MR FLEMING: Not specifically, your Honour. I won't put it any higher than that.

PN6510

VICE PRESIDENT HATCHER: Mr Ward, I am inclined to admit paragraph 3 on the limited basis of identifier. That is, it could not be read as supporting a finding that, in fact, any unnamed employer would take adverse action based as identifier.

PN6511

MR FLEMING: If the Commission pleases.

PN6512

VICE PRESIDENT HATCHER: Mr Ferguson, you wanted to say something?

PN6513

MR FERGUSON: Yes. I don't want to take this too far, your Honour, but I just note in the context of this statement we have a raised particularly large number of objections on the basis of hearsay, but also on the basis that the parties referred to are anonymous.

PN6514

VICE PRESIDENT HATCHER: Yes. I mean, I would anticipate a submission that those matters would limit its weight and I would also note that an alternative approach could have been that this statement could have been advanced with names but with appropriate confidentiality orders. That course has not been taken and that may also found a submission about its weight. But beyond that, I am inclined to admit this statement subject to those matters.

PN6515

MR FERGUSON: Yes, your Honour.

PN6516

VICE PRESIDENT HATCHER: The statement of Vicki Ann Stewart dated 16 October 2015 will be marked exhibit 76.

\*\*\* VICKI ANN STEWART

XN MR FLEMING

**EXHIBIT #76 STATEMENT OF VICKI ANN STEWART DATED  
16/10/2015**

PN6517

Mr Ward.

PN6518

MR WARD: Thank you, your Honour.

**CROSS-EXAMINATION BY MR WARD**

**[10.41 AM]**

PN6519

Ms Stewart, can you see me in Sydney?---I am not sure. I don't believe so. Are you just on the top left?

PN6520

I am standing up. I am standing up and waving?---Yes, yes. Yes, I can see you waving.

PN6521

Can you hear me?---Yes, I can. It has been a little faded, but I believe they are trying to resolve it in this room.

PN6522

If at any stage you can't hear me, please just say so?---Certainly.

PN6523

My name is Nigel Ward. I appear in these proceedings for a number of employer interests and I am going to ask you some questions?---Certainly.

PN6524

Do you have a copy of your statement in front of you?---Yes, I do.

PN6525

Can I take you to paragraph 5 for a moment?---Certainly.

PN6526

In paragraph 5, you make some observations in the first sentence about three-hour shifts. Then you say this:

PN6527

*Unfortunately, it is a feature of many of the enterprise agreements operating in private hospitals, so I have to tell them that it is lawful.*

PN6528

I understand that to refer to the three-hour shifts?---Yes.

\*\*\* VICKI ANN STEWART

XXN MR WARD

PN6529



When you say, "Enterprise agreements operating in private hospitals", do I take it that it is a common feature of enterprise agreements in private hospitals to have three-hour minimum shifts?---I believe so.

PN6530

I am right, am I, in saying that the hospital sector is a heavily unionised sector?---I would like to think so.

PN6531

Would it be the case then that most enterprise agreements in private hospitals, the union – that is your union – negotiate the agreements?---For many of them, yes, for the larger employers.

PN6532

In paragraph 6, you say the minimum shift length of three hours is in many of these enterprise agreements because it was in the underpinning state award. Do you agree with me that you are not limited in bargaining to conditions that operate in an award?---Yes, I would agree with you. However, it certainly, I believe, would be optimum if we had it as a four-hour minimum engagement because then it is a minimum standard.

PN6533

I will come back to that in a minute. You agree with me that you are not constrained to negotiate for over-award conditions in enterprise agreements?---No, I agree with you on that.

PN6534

You would agree with me that your members are entitled to pursue protected industrial action to try and make an employer agree to claims?---Yes, I agree with that.

PN6535

At the end of the day, I assume your union when it negotiates cuts the best deal it can for its members?---Certainly we try.

PN6536

Later on, on paragraph 6, you say this:

PN6537

*If there was a four-hour minimum shift in the Nurses Award 2010, I think that the QNU would be more successful in arguing to have the same minimum in the enterprise agreements.*

PN6538

I take it, therefore, if the ACTU claim succeeds, you believe your union will be more successful in its bargaining process, will it?---Yes.

PN6539

Can I take you to paragraph 7?---Yes.

\*\*\* VICKI ANN STEWART

XXN MR WARD

PN6540

Can you tell me who "M" is?---No.

PN6541

I would ask the Bench to direct the witness to say who "M" is?

PN6542

VICE PRESIDENT HATCHER: Mr Fleming, do you want to be heard on this?

PN6543

MR FLEMING: Your Honour, all of the members who wrote those emails were approached and asked if they would be willing to give evidence to the proceedings and they have all declined for the reasons outlined in the statement. In those circumstances, I would ask that the witness be permitted to not answer. We have heard about the weight that information will be given.

PN6544

VICE PRESIDENT HATCHER: The problem with this submission is, one, that the statement has been filed, so it would have been reasonably anticipated that the witness would be subject to cross-examination and these would be the questions asked. Secondly, there is no admissible evidence that the witnesses have some proper basis for them not to have disclosed their names. We know that they don't want to, but there is no admissible evidence before the Commission to suggest that there is a rational proper basis for that, is there?

PN6545

MR FLEMING: Only the contents of those emails, your Honour.

PN6546

VICE PRESIDENT HATCHER: I mean, why shouldn't the question be asked and answered and the Commission make a confidentiality order with respect to the answers?

PN6547

MR FLEMING: I concede that, your Honour.

PN6548

MR WARD: Do you want an adjournment on that basis?

PN6549

VICE PRESIDENT HATCHER: Do you want to give a considered response? I don't want to do this on the run. Do you want to be given a short time to consider that and think about what should be done?

PN6550

MR FLEMING: All right, thank you, your Honour.

PN6551

VICE PRESIDENT HATCHER: I might ask the witness.

\*\*\* VICKI ANN STEWART

XXN MR WARD

PN6552

Ms Stewart?---Yes.

PN6553

You have been asked to identify the name of one of the persons in the statement and I presume there will be further questions asking you to identify other persons. Do you have any objection to answering those questions if the Commission makes a confidentiality order that the names of the persons not be published or disclosed to anybody not currently participating in the proceedings without the permission of the Commissioner?---I would like to, I guess, speak to somebody in regards to that. My understanding is that the names of the members and the facility could be provided to the Commissioners only. I certainly don't have any consent to provide those names at this point and I don't feel comfortable doing so. But I am certainly happy - - -

PN6554

MR WARD: Your Honour, I am not going to press the question. We will let it go. We will let it go.

PN6555

VICE PRESIDENT HATCHER: The question is not pressed, so we will move on. Mr Ward.

PN6556

MR WARD: You say there is a person who is unidentified called "M", is that right?---Yes, yes.

PN6557

You say that they work at a Brisbane private hospital, but you haven't told us what hospital it is; is that right?---Yes.

PN6558

Am I right in saying that this unidentified person working at an unidentified private hospital, you say they are covered by an enterprise agreement?---Yes.

PN6559

I take it that that is an agreement with your union?---Yes.

PN6560

That agreement contains three-hour shifts in it, does it?---Yes.

PN6561

At paragraph 8, you indicate that this unidentified person had various conversations with other unidentified people and those conversations seem to be around the hours unidentified person "M" was working; is that correct?---Yes.

PN6562

Are you alleging in this statement that the unidentified employer breached their enterprise agreement?---No.

\*\*\* VICKI ANN STEWART

XXN MR WARD

PN6563

You would agree with me then that the employer, whoever they were, was complying with their enterprise agreement?---Yes.

PN6564

Do you have any evidence to support the view that the employer was changing the unidentified employee's hours just for fun?---I don't have any evidence from the employer at all. I wouldn't say it was for fun. I am unsure of what their motive was. But, no, I wouldn't say it was for fun.

PN6565

You have no knowledge as to why the unidentified employer wanted to change the unidentified employee's hours?---I can make assumptions, but I have no evidence.

PN6566

No, I am not asking you to do that. I am asking you if you have any factual knowledge?---No.

PN6567

Could you go to paragraph 11, please, Ms Stewart?---Yes.

PN6568

You say in paragraph 11, casual employment is common in private sector health?---Yes.

PN6569

Is that statement made for private sector health across Australia or only Queensland?---Queensland.

PN6570

What is meant by "private sector health"?---Those employees who are employed by a private employer, whether or not they are a major group or a medical practice. So it is anybody that is a private enterprise basically.

PN6571

What does the word "common" mean?---Frequent.

PN6572

What does the word "frequent" mean?---A lot.

PN6573

Are you saying that 51 per cent of all employees in private sector health in Queensland are casual?---No, I wouldn't say 51 per cent. I don't have access to all that information, but certainly I have many members who speak to me regarding professional and industrial matters and when it is discussed how they might raise those issues, I get advised that they are casuals and that they are reticent, as I have indicated in the statement, for fear of reprisal. Whether that is real or perceived, I don't know, but that is certainly - - -

\*\*\* VICKI ANN STEWART

XXN MR WARD

PN6574

I think your evidence is you have got no factual basis for making that statement other than from time to time some of your members tell you they are casuals?---I would say it more than some time to time. It would be a conversation that I would have minimum of at least once a week.

PN6575

Your understanding of the industry is based on a member of your union once a week telling you they are a casual employee?---No, that was a minimum. I have many occasions where the discussion with members is about the casual workforce and the difficulties that they face as a casual for many reasons.

PN6576

Do you know how many private hospitals are registered in Queensland?---I think at least 150 – 158.

PN6577

Have you personally visited every one?---I have visited a lot, but, no, not every single one.

PN6578

How many have you visited?---Over what period of time?

PN6579

Let's go last year?---Last year probably at least 25.

PN6580

Could you name one of them, please?---Sunshine Coast University Private Hospital in Birtinya.

PN6581

On what basis do you know how many full time, part time and casual employees that hospital has?---I don't. I can only know by figures given previously during enterprise agreements. But, no, I have no confirmed numbers of employees, only of members.

PN6582

VICE PRESIDENT HATCHER: Just to be clear, Ms Stewart, we are talking about nursing employees, aren't we, not other types of employees?---Yes, no, no, only nursing employees. I have no idea about the figures for any other group like the allied health workers or anything.

PN6583

MR WARD: You don't have any factual documentary material to understand how many employees in private health are, in fact, casual employees, do you?---No, I don't.

\*\*\* VICKI ANN STEWART

XXN MR WARD

PN6584

Can I take you to paragraph 12, if I could? You say there in private hospitals with operating theatres, there is a particularly high reliance on casuals, casually

employed nurses. Again, you don't have any factually based documentary material to base that statement on. That is just something you have assumed from being involved in the industry, isn't it?---Well, certainly at times I have been advised of staff rostering and certainly in many of the discussions, a lot of workplace activists work in operating theatres for many reasons. So I can only go on the information provided to me by members.

PN6585

From time to time, you have had conversations with members in operating theatres who have told you that?---I have had many conversations with members from operating theatres that have told me this and, in fact, a number of occasions it has been confirmed at nursing forum meetings where workload management issues are raised and it gets down to casual workforce and ways that we can address shortfalls at times within the operating theatres.

PN6586

You have formed this view from general discussions with some members from time to time?---From a lot of members across a lot of sites across different employer groups.

PN6587

Is it your evidence that employers in private hospitals use casual employees for philosophical reasons rather than operational reasons?---No, I would probably say that the employer would say it was operational. I really can't say whether or not they are philosophical. I think that it is certainly easier if you are a casual to advise you are no longer advised for a shift.

PN6588

I think your evidence was that they do this for operational reasons and I take it that those operational reasons are from time to time theatre lists change and their staffing needs change?---It's not from – it's - - -

PN6589

MR FLEMING: Your Honour, that is a complicated question.

PN6590

VICE PRESIDENT HATCHER: Sorry, just hold on, Ms Stewart?---Sorry.

PN6591

MR FLEMING: Perhaps if that question could be broken down. I did not understand her evidence to be (indistinct) in the first part of that question.

PN6592

VICE PRESIDENT HATCHER: So what was the question again, Mr Ward?

PN6593

MR WARD: You said that private hospital employers use casual nurses in operating theatres for operational reasons?---Well, that is the advice that they provide.

\*\*\* VICKI ANN STEWART

XXN MR WARD

PN6594

MR FLEMING: Your Honour, that is not precisely what she said.

PN6595

VICE PRESIDENT HATCHER: Sorry, Ms Stewart, just hold on?---Sorry.

PN6596

Ms Stewart, there is just an objection to the question?---Yes, okay.

PN6597

What is the objection to that?

PN6598

MR FLEMING: That is not how I understand her evidence. Her answer was more complicated than that.

PN6599

VICE PRESIDENT HATCHER: I thought the question was, was it for philosophical or operational reasons and she said operational reasons.

PN6600

MR WARD: She said operational.

PN6601

MR FLEMING: Her answer said, "Operational and it is certainly hard to say no to a shift when you are casual", and that has been reduced to one factor.

PN6602

MR WARD: I then put it again to the witness that it was operational and the witness agreed with me.

PN6603

VICE PRESIDENT HATCHER: Yes, I think the second element of that related to employees' motives, not the employer motive, so I will allow the question.

PN6604

MR WARD: I will ask it a different way.

PN6605

Ms Stewart, can I just ask you to go to paragraph 12, please? You say this in paragraph 12:

PN6606

*This is because the employers want to be able to cancel their shifts at short notice if the surgeon changes his or her theatre list. This also has an impact on nurses who work in post-surgery awards who often have their shifts cancelled when there is less surgery to perform.*

PN6607

Do you see you say that?---Yes, I see what I have said.

\*\*\* VICKI ANN STEWART

XXN MR WARD

PN6608

I take it that there are changes in demand in the hospital that require the employer to change the amount of labour they need for that day?---That's correct. However, it occurs on a daily basis. It is not something that is an unusual event.

PN6609

No, and it is quite common, isn't it?---Very, very common.

PN6610

VICE PRESIDENT HATCHER: Ms Stewart, do private sector enterprise agreements have provisions about a period of notice that is required to cancel a shift?---Yes, they do, but often it may vary from one hour to two hours or they come in for a minimum engagement and it may only be two hours. A number of the EBs are varying slightly. So often a casual employee will be put on a roster and that is deemed a guideline and then it will be cancelled at the last minute if they are no longer required.

PN6611

That is something the enterprise agreements typically permit, is it?---Well, they say that a rostered shift is a guideline only. However, many permanent casual employees feel that they are on a roster and therefore it is a given that they will work it, but of course it isn't particularly in operating theatres this is more prevalent that shifts will be cancelled very frequently depending on the length of the list, whether or not the surgeon is not working that day for various reasons, whether there are staff off sick. There many reasons why the requirement for a casual or a permanent changes.

PN6612

Thank you.

PN6613

MR WARD: At paragraph 14, you then talk about an unidentified person called "T" working at an unidentified private psychiatric hospital?---Yes, yes.

PN6614

To be honest with you, Ms Stewart, I sort of struggled with T's story. But can I just ask this, was T's story an allegation that the employer was in breach of their employment contract?---No, that wasn't the initial allegation from T. T contacted me regarding a professional practice issue and when I identified the way - - -

PN6615

Sorry, can you just help me out? When you say professional practice, you mean the employer was doing something - - -?---A nursing issue.

\*\*\* VICKI ANN STEWART

XXN MR WARD

PN6616

A nursing issue?---Yes, a nursing issue, and the advice that I gave was varying strategies, whether it was individual or collective, and that is when I was advised that she was a casual nurse for many years who had tried to get permanency and she advised until she got permanency she didn't feel comfortable at all escalating her workplace issues.



PN6617

She engaged you as her union official?---She contacted me for advice on how she could manage this situation and that was how the conversation initially started. It was about nursing issues.

PN6618

You then tell a story about seven unidentified people in paragraph 21?---Yes.

PN6619

Do I take it that those seven people were working at the unidentified eye hospital by choice? They chose to work there?---Yes, they were employees who had been there for many years prior to that current owner. So the previous owners, they had not had any issues with the workplace. However, things changed quite considerably for them in the previous 12 months to when I met them.

PN6620

The eye hospital was sold, was it?---Yes, it was.

PN6621

Your dispute was about what happened when the hospital was sold, was it?---No, that was the changes in some of the workplace practices when the new owner, I guess, wanted to implement their rules, regulations, or whatever it was, and so that is when they had started to notice and feel a distinct change in the workplace environment.

PN6622

Do I take it that the new employer was a bad guy, not a particularly nice employer?---I am not saying he was a bad guy or not a nice guy, but I would say that he certainly didn't know much about nursing law. Very different from medical staff what our obligations are at times.

PN6623

A lot of your anxiety was around professional issues, was it?---I wouldn't say anxiety, but certainly the anxiety was from the members and, yes, it certainly was about professional practice and again it was about the use of rostering practices that had changed since the new owner had taken over the facility.

PN6624

You are not prepared to tell me who the employer was and what the hospital was?---No, I am not at this point, sorry.

PN6625

That is all right. Lastly, can I take you to paragraph 24?---Yes.

PN6626

Paragraph 24 takes us to your attachment, VS5. I think that is right, isn't it?---Yes, it is.

PN6627

Can I just read this out, if I can?

\*\*\* VICKI ANN STEWART

XXN MR WARD

PN6628

*Hi, Vicki. I really do need to chat and I will call you tomorrow. I appreciate the support. I am a little lost. I am shocked and really are having a terrible time. The continuation of the ongoing issues and my own professionalism and registration being put at risk has really hit me hard. I just can't believe I have been forced into an environment I consider unsafe for patients and staff and one in which will not listen to legislative requirements.*

PN6629

?---Yes.

PN6630

I will pause there. I take it that this member of yours, the dispute they were having with their unnamed employer, I take it that that was all about whether or not the employer was actually complying with their legal requirements under some legislation, was it?---Yes, it was. Unfortunately, the member was the senior manager, nursing manager, and had been advising the doctor of her obligations under her registration with AHPRA which is our regulatory body. And that had been escalated as far as she could take it and that is when she has made reference to the environment and "not listen to legislative requirements" because she had escalated that to the peak body at the time within Queensland to get - - -

PN6631

I am a lay person, bear with me?---Yes.

PN6632

This sounds like issues of malpractice and things like that?---I wouldn't say it was malpractice, but we certainly have an obligation as a registrant of AHPRA to advise our employer or our line managers if we believe we are breaching them or we are potentially breaching our obligations and that is what this member had done and she had advised the doctor that she felt that the changes he was making were putting her staff and therefore patients at risk. They were certainly practices that were going on that perhaps could have been escalated.

PN6633

Can I ask you this? I take it that what you have just described is a most serious issue?---Yes, it is.

PN6634

No further questions.

PN6635

VICE PRESIDENT HATCHER: Does anyone else wish to cross-examine this witness?

PN6636

DEPUTY PRESIDENT BULL: Ms Stewart, just on paragraph 12 of your statement which you have spoken about?---Sorry, I am having trouble understanding you. Paragraph 12, did you say?

\*\*\* VICKI ANN STEWART

XXN MR WARD

PN6637

Yes?---Okay, hang on.

PN6638

You talk about the difficulty of theatres and surgeons having to cancel their theatre list?---Yes.

PN6639

What is it in the ACTU claim that will resolve that issue for your members?---Certainly if you have accepted a shift or you believe you are going to be working at one employer and then that shift is either shortened or cancelled, the impacts are great for you and on your family financially, emotionally, for many of the things that I had identified within here. I hope that is what you are asking.

PN6640

What is it in the union's claim that will sort this issue out with your members?---Well, instead of being employed and being sent home after two hours, then they will get four hours of work. Therefore, they might at least cover their costs of petrol and childcare and anything else that might arise out of having to go to work multiple days for minimum hours.

PN6641

VICE PRESIDENT HATCHER: Ms Stewart, I am unclear about that. Are you saying that under the typical enterprise agreements if a shift gets cancelled at short notice they are sent home, but they just get the minimum guaranteed by the enterprise agreement?---Yes.

PN6642

They will get, what, three hours pay?---No, some instances it might only be two.

PN6643

If there is a two-hour minimum?---I believe so, yes.

PN6644

COMMISSIONER ROE: The award is a two-hour minimum, is it, is that correct?---Well, look, to be truthful, I think it is two, but they do vary greatly and I cannot recall if they are all the same. They do vary in between two hours or three hours for a casual.

PN6645

DEPUTY PRESIDENT BULL: But what you are suggesting is that the employer should pay for four hours for work that is not performed; is that right?---Look, yes, I would say that for many reasons.

PN6646

Thank you.

PN6647

VICE PRESIDENT HATCHER: Any re-examination, Mr Fleming?

\*\*\* VICKI ANN STEWART

XXN MR WARD

PN6648

MR FLEMING: Just on that last point, Ms Stewart, you said: "For many reasons." Did you need to complete your answer?---I think that the impact for nurses is very great and often this focuses on the employer and the employer needing to meet the obligations for their shareholders, et cetera, and it doesn't take into account if you believe you are going to be going to work for four hours instead of two, then you can be at least rest assured that you will be financially not completely bereft than if you are getting two-hour shifts that are cancelled or longer shifts that are cancelled because suddenly the surgeon hasn't been managed appropriately in the use of the operating room. So I think it is difficult, particularly as many of our members are female. They are primary care givers, they have to organise childcare, they are paying for a whole day often for childcare and then to find that you actually have only worked two hours then you are actually at a loss. You are not – you are actually at a loss financially. And I was going to say there is always work to do in a hospital, all right? There is so much that you can be doing even if you don't actually – you are not giving direct patient care.

PN6649

You were asked about paragraph 14 of your statement to clarify T's story. Could you please just if you need to complete your answer and if you don't, you can leave it there. But if you need to complete your answer, could you please explain T's story?---So T had contacted me in 2013 regarding some issues on site. I had had a discussion. I ascertained that she was a casual and so I gave some advice regarding how to go about becoming permanent. So when I received an email from her in January 2014 to say that she had difficulties converting from casual to permanent, she had already requested that a number of times to her area manager and that was verbally declined.

PN6650

I then advised her that she needed to read her EB, her EA, and that it needed to be in writing and that it shouldn't be sent to her area manager, it should be sent to the Director of Clinical Services/Hospital Director because he had dual role. And from there it was ascertained that it actually was affecting a number of staff members in that area which is when I then met with them in February to advise about how they could address it as a collective if they wanted to do so. And they all had the same – had had the same experiences in regards to verbally asking if they could convert to permanent part time. And I established that all of those staff that did want to convert had been an employee there for many years, as in T's instance it was six. Some of them had – or one of them had been there longer and one of them had been there on a short timeframe. So they had been casuals for many years.

PN6651

MR FLEMING: You were also asked about the factual basis for the claims you make in a number of paragraphs and your experience with private hospitals. Is there anything further you wanted to say?

\*\*\* VICKI ANN STEWART

RXN MR FLEMING

PN6652

MR WARD: I object to that. It is entirely unclear what my friend is talking about. Which issues did I put to the witness? Not just, "You are asked some things." It needs to be more precise than that.

PN6653

VICE PRESIDENT HATCHER: Mr Fleming, what precise topic is this question directed to?

PN6654

MR FLEMING: I apologise, your Honour. I will be more specific. I will withdraw the question.

PN6655

VICE PRESIDENT HATCHER: All right. Thank you for your evidence, Ms Stewart. You are now excused and you are free to go?---Thank you very much; bye bye.

**<THE WITNESS WITHDREW**

**[11.13 AM]**

PN6656

Mr Fleming, just arising out of that witness, I am just looking at the draft determination for the Nurses Award. For casuals it simply claims that they be paid a minimum of four hours pay for each engagement. Does that deal with any issue concerning cancellation of shifts at short notice and what might be paid in that circumstance? I wouldn't have read it that way. And this arises out of, of course, the evidence Ms Stewart gave.

PN6657

MR FLEMING: Yes, your Honour. Could I take that question on notice and consult with - - -

PN6658

VICE PRESIDENT HATCHER: Yes. Who is the next witness?

PN6659

MR FLEMING: Your Honour, the ACTU calls Matthew Francis who is giving evidence, I understand, by telephone.

PN6660

VICE PRESIDENT HATCHER: We might just have to adjourn for a short while, while we organise that. So we will adjourn to permit that to happen.

**SHORT ADJOURNMENT**

**[11.14 AM]**

**RESUMED**

**[11.00 AM]**

PN6661

VICE PRESIDENT HATCHER: All right, Mr Francis, are you there?

\*\*\* VICKI ANN STEWART

RXN MR FLEMING

PN6662

MR FRANCIS: Yes, I am.

PN6663

VICE PRESIDENT HATCHER: The court officer is just going to administer the affirmation to you now.

**<MATTHEW JAMES FRANCIS, AFFIRMED [11.20 AM]**

**EXAMINATION-IN-CHIEF BY MR FLEMING [11.20 PM]**

PN6664

MR FLEMING: Mr Francis, can you hear me? Mr Francis, can you hear me?---Yes.

PN6665

My name's James Fleming, and I appear for the Australian Council of Trade Unions. Is your name Matthew Francis?---Yes, it is.

PN6666

And is your address (address supplied)?---Yes, that is correct.

PN6667

And have you made a written statement in these proceedings?---Yes, I have made a written statement.

PN6668

Do you have that statement there in front of you?---I certainly do.

PN6669

And can I just check that it's 33 pages in total, including attachments?---Yes, that is correct, 33 including attachments, yes.

PN6670

And excluding the attachments, it's 48 paragraphs?---Correct.

PN6671

And just to confirm that we have the same version, it contains some hand annotations, for example, at paragraph 4, "Hail Creek" has been changed to "Way Point" - Pay Point, sorry?---Yes, Pay Point, yes.

PN6672

All right, thank you. And do you need to make any corrections to that statement?---No, I do not.

PN6673

Has there been any change in your employment circumstances since the making of the statement?---Since this statement was done last year, I have changed jobs. I'm at the same mine site and I've gone from casual to permanent employment with Wisely Group still, just in a different area.

\*\*\* MATTHEW JAMES FRANCIS

XN MR FLEMING

PN6674

Thank you, your Honour, if I can tender this statement.

PN6675

VICE PRESIDENT HATCHER: All right, if there's no objection?

PN6676

MR WARD: Your Honour, we filed objections, but we're happy for them to be taken as objections that have generally been taken.

PN6677

VICE PRESIDENT HATCHER: All right, well I note the objections that have been made. The statement will be admitted, subject to weight. So the statement of Matthew James Francis, dated 27 October 2015 will be marked Exhibit 77.

**EXHIBIT #77 WITNESS STATEMENT OF MATTHEW JAMES FRANCIS DATED 27/10/2015**

PN6678

VICE PRESIDENT HATCHER: And just before we start, Mr Ward, just to be clear, Mr Francis. So you're, when you say doing a different job, what do you mean?--Well, I'm not working on heavy earth moving equipment anymore, I'm working on lighting plants, highwall pumps, little bobcats, still doing a similar role, but just on different equipment in a different area on the mine site. You've got the main admin building where the large diesel fitting happens up there, like on the dozers, the graders, the dump trucks etc, and I'm an ancillary now, so it's the under - like the litter stuff on the mine site that they still need, like lighting plants, water pumps to pump water out of the ground etc, and that's about 20 kilometres south of the actual main workshop.

PN6679

And can you explain why that work is, or that job is permanent, as distinct from the casual work you were doing on the heavy equipment?--Well, last year in November, BMA decided to contract out the main workshop where I was originally based and we asked - I asked the superintendent from BMA, Mr Joe Brown, if - what was happening with us as contractors. He said he wasn't sure. So I put - I asked my company, I was working for what I could do and they said well, you're either going to stay on casual in the main workshop and not knowing if Downers will keep us on or they might fire us within three or four weeks, because that - we aren't the sort of people that they want. So I said, "No, I don't want that option. What else have you got?" And they said that I could go to another mine site. I said, "I don't really want to go any further west than what I have to". So they said you can go down to Kenmare. So that's where I am now, down at Kenmare. It's still on Blackwater, but just doing the ancillary. That's the only reason why I've taken that job, because I wanted to stay within the vicinity of Blackwater, which is only 2 hours west from my house, and at least I have - because I've got a house I've got to pay off, so I didn't want that resting in the back of my mind thinking, well, Downers could sack me a week and a half later and then I've got no job.

\*\*\* MATTHEW JAMES FRANCIS

XN MR FLEMING

PN6680

And what's your hourly rate of pay now?---\$49 an hour. And I get holidays and sickies as well. That's what it is at the present time.

PN6681

All right, thank you, Mr Francis. Mr Ward?

PN6682

MR WARD: Thank you, your Honour.

**CROSS-EXAMINATION BY MR WARD**

**[11.25 AM]**

PN6683

MR WARD: Mr Francis, can you hear me?---Yes, I can.

PN6684

Mr Francis, my name is Nigel Ward. I appear in this matter for some employer interests, and we're opposed to the ACTU claim. I'm going to ask you some questions about your statement. Do you have it in front of you?---Yes, I do.

PN6685

Thank you. If at any stage you can't hear me, just please say so?---Yes, will do.

PN6686

Thank you. Can I just take you to paragraph 4 to start with?---Paragraph 4, yes.

PN6687

You say:

PN6688

In around 2001, I started doing shut down work with a range of contractors.

PN6689

Were you employed by those contractors?---Yes, I was employed by - there was GNS as casuals, GNS. There would have been Monadelphous, there would have been Frame Engineering as well.

PN6690

And were they specialist contracting firms undertaking specialist work?---Not so much specialist work, no. Like GNS was shut downs on drag lines in the mine site and also wash plants. Monadelphous I worked for out at Q Mag, and Frame Engineering were doing wash plants down at South Blackwater.

PN6691

And when you say you were employed by them, I take you were an employee of those contractors?---Yes - yes.

PN6692

And were you at all times a casual employee or were you sometimes a full-time employee?---No, that was all casual.

\*\*\* MATTHEW JAMES FRANCIS

XXN MR WARD



PN6693

Okay. So you then say you went full-time with GNS. Does that mean you were a full-time with GNS. Does that mean you were a full-time employee?---2002 I was getting holidays and sick leave, yes.

PN6694

Right, so does that mean you were a full-time employee?---Yes.

PN6695

And you worked for them, I take it, for 5 years?---Yes, correct.

PN6696

And again, GNS are a contracting firm?---Contracting firm, yes.

PN6697

And they're mostly doing heavy industry shutdown work, are they, in the mining sector?---Yes, correct. They've branched out into construction now, as well, but back in those days, it was wash plants and drag lines, shutdowns and down days.

PN6698

You then say in 2007 you started doing construction work with McConnell Dowell. I take it you left your employment with GNS?---Yes, that is correct.

PN6699

Why did you leave GNS to go to McConnell Dowell?---Because I was covering for the area manager. He was shonky, if I can say that in those sort of terms.

PN6700

You can, I don't know him, so you can say it, sir?---Yes. No, he was shonky. He was like covering his footsteps and I had to make up for that. So he would win contracts but he wouldn't send anybody out to do the work.

PN6701

Okay, so you decided they weren't a good company to work for and you went to work for somebody else?---Well, I told the owners what I - what I knew of the area manager and they said that I was lying, rah, rah. I said, "Well, that's fine, see youse later".

PN6702

Okay. So you then went to work for McConnell Dowell?---Yes, for about 8 months.

PN6703

And was that full-time work?---Yes, it was. I was on construction, yes.

PN6704

Okay. And then you come to this company called Precision- - -?---Earth Moving Repairs, yes.

\*\*\* MATTHEW JAMES FRANCIS

XXN MR WARD

PN6705

- - -Earth Moving Repairs. And is that a contractor, just like GNS Engineering was a contractor?---Yes, it is.

PN6706

Okay, so they take contracts to perform certain work at certain places, do they?---Yes. They had the contract down at Dawson Mine site, which is about 2 south-west of Rockhampton, and they were looking after dump trucks.

PN6707

When you say "the contract" they were contracted to do what?---To the Dawson Mine site. So that was Anglo, Anglo used to own them. So Precision were contracted to Anglo to perform maintenance on the dump trucks, the graders etc, etc.

PN6708

Okay, so they had a contract to make sure the dump trucks and the graders were working properly on the mine site?---Correct.

PN6709

And so that means that you'd be doing routine repair and maintenance on that equipment?---Yes.

PN6710

And I take it that if something broke down, you'd have to fix it as well?---Correct.

PN6711

And Precision Earth Moving Repairs had the commercial contract to provide that service?---I don't know what you mean by commercial, but they had a contract. There would have been other contractors out there, like Hastings and all that, but they would have been up in the main workshop.

PN6712

That's okay. If you don't understand what I mean, just don't answer the question, that's fine. You then moved to Blackwater Coal Mine site with Precision Heavy Earth Moving?---Yes.

PN6713

I take it it's the same company we've just been talking about?---Yes, same company.

PN6714

So do I take it that Precision Heavy Earth Moving won a contract to do some work at the mine site, BMA's mine site?---They - how can I put it? There was - not so much a contract - well, it is like a contract, but to supply labour hire to BMA Blackwater, yes.

PN6715

So they don't supply supervisors and managers?---No.

\*\*\* MATTHEW JAMES FRANCIS

XXN MR WARD

PN6716

They don't have a contract to fix kit, they just have a contract to put human beings on the mine site to do whatever the mine wants to do?---Yes. Yes, more or less, yes.

PN6717

Okay. Why did you go there?---Because it's something - well, because I didn't like Dawson. I didn't like the mine site down there.

PN6718

Why didn't you like that?---It was just something, a gut feeling that you don't like about something. You don't want to be there.

PN6719

Okay, so you just didn't enjoy being there?---No.

PN6720

Okay, and how did you get to move to BMA's mine site? Did you get a choice, did you ask them to move you? How did you get to move?---They said - well, I said to them, I said, "I don't like it down here anymore at Dawson, what are my other options?" They said, "We've got about 6 weeks' work out at Blackwater Mine site, if you're interested". I said, "Yes, that'll be fine". So I went out there.

PN6721

Okay, and I think you said something a while ago - I might not have heard it properly. Is working at the Blackwater Coal Mine site fly in, fly out, or do you drive there?---No, I drive in, drive out.

PN6722

Okay. And I take it, do you drive in and drive out every day?---No. I have accommodation out there, so like I will drive - I've got to go out to work tomorrow afternoon, so I'll drive out tomorrow afternoon and I'll start work Wednesday.

PN6723

So how far do you drive?---200 kilometres.

PN6724

Okay, and how long do you actually stay in the accommodation on the mine site?---It's not on the mine site, the accommodation isn't. It's in Blackwater itself. The mine site's 20 - about 27 kilometres south of the township of Blackwater.

PN6725

Okay, and do I take it that you've organised your accommodation, or has the mine site organised that?---As present, the company I work for, Wisely, they organise that. But when I first started out at Blackwater, I had my own accommodation that I had to organise.

\*\*\* MATTHEW JAMES FRANCIS

XXN MR WARD

PN6726

Okay. And is it a 14 day roster? Are you there for 14 days and the off for 14 days? What's the roster?---No, the roster will be - it's called a Lifestyle roster, so you would work five on, five off, four on, five off, five on, four off.

PN6727

Okay. And is that a standard roster you've generally worked, while you've been at that site?---Yes, most definitely. Since I've been there, I've gone from - well, when I started in 2008 in Blackwater, 2008 - yes, 2008, I've been on the same roster, but I'll be doing two days, three nights, five off, three days, two nights, five off and then like two days, two nights, four off. But now, since I'm down the - down at Kenmare, it's all just dayshifts. It used to be day and nights, where I used to work up at the main, but down at Kenmare it's all dayshifts now.

PN6728

Thank you, Mr Francis. Now, you then go on to say that Precision Heavy Earth Moving lost the contract and a company called Down Under Mine Site Maintenance- - -?---Down Under Mine Site, yes.

PN6729

- - -they win the contract?---Okay, with- - -

PN6730

Why didn't you leave the site and go and work somewhere else after Precision Heavy Earth Moving lost the contract?---The only reason why - Precision didn't lose the contract. Precision went into receivership, okay? So the person who owned it got in too much debt and went into receivership. And then he put his wife's name forward as Down Under Mine Site Maintenance, right, so it was more or less just a change of the name.

PN6731

Okay, so you want from working for company A to company B?---Yes.

PN6732

And you decided it was a good thing to stay on the mine site, did you?---Yes, because I enjoyed it out there. I enjoyed - the people I worked with were good. I enjoyed the roster, I enjoyed the work.

PN6733

Okay, that's fine, Mr Francis. And then if I take you to para 14, you then say that:

PN6734

*Down Under Mine Site lost the contract to HM Group.*

PN6735

So Down Under have it, on my counting, about 5 years, is that right?---Yes, 13 - yes, it would have been close, yes.

PN6736

Okay, and then a company called HM Group take over?---Yes.

\*\*\* MATTHEW JAMES FRANCIS

XXN MR WARD

PN6737

I take it again, you stayed because you liked the roster, you liked the work, you liked the pay?---I liked the work, I liked the job, I liked the time off and I liked the people I worked with.

PN6738

So- - -?---Money - the money- - -

PN6739

Money's not important to you, is it?---I didn't mind the pay. Beg your pardon?

PN6740

Money's not important to you?---It is, but it's not. Do you know what I mean? Like, I do like the money that I get, but yes, I'd rather be somewhere where I'm happy.

PN6741

Right. Okay, and you're happy, are you?---At the present time, not really.

PN6742

Okay. You're now unhappy are you?---Just the things that have happened and the stuff that's going on, that's all.

PN6743

Okay?---Like the uncertainty of contracts, the uncertainty of tomorrow and all that sort of thing.

PN6744

Let me ask you this, Mr Francis, you could at any stage have left this and gone and worked somewhere else, couldn't you?---Where else is there going to be?

PN6745

Well, I don't know, sir, but you- - -?---There's no other - there's - go on.

PN6746

Have you ever looked for another job in the mining industry?---I always do.

PN6747

MR FLEMING: If the witness could answer the question.

PN6748

VICE PRESIDENT HATCHER: Mr Ward, I don't think he finished answering the last question.

PN6749

MR WARD: Sorry?---Always have.

\*\*\* MATTHEW JAMES FRANCIS

XXN MR WARD

PN6750

Sorry, Mr Francis, I didn't hear that?---I always do. Every week I get on Seek and whatnot and see what else is around out there in the mining industry. You know, I

like the mining industry, don't get me wrong, but just the uncertainty of being casual is scary, because if you've got a house mortgage and whatnot that you've got to pay off, and you're the only bread maker in the family. I'm single and I've got a house I've got to pay off, so one day you could be fine, the next day the company might say "We don't want you no more". That's the part I'm uncertain about.

PN6751

Mr Francis, you don't have a wife or a partner?---No, don't have a wife, don't have a partner.

PN6752

Do you have any children?---I have no children - no children.

PN6753

No, so you keep looking on the internet for jobs, but you never found anything that would make you leave what you've got?---That I like, no. No.

PN6754

No?---No.

PN6755

Now, you then say, at paragraph 20, that HM Group lost the contract?---Yes.

PN6756

And the Reserve Group took over. You talk there about the fact that you had a choice as to what to do and you chose the Reserve Group. Is that right?---We had a choice of four contractors that we could go to, okay, and we could choose who we wanted to be employed by.

PN6757

You're very luck?---I read through them all, okay, to see what was going to be best for me. Okay, so some were permanent and some were casual, right? But when you read deeper into some of the contracts, it wasn't - they would outweigh each other, if you know what I mean.

PN6758

So you ultimately chose one that you thought was best for you?---Yes.

PN6759

And it was still better to work at that mine site than try and find work somewhere else?---Correct, yes.

PN6760

Okay, that's fine. And when you were working for the Reserve Group, you say here you got \$55.27 an hour?---Yes, correct.

PN6761

Can I just - how many hours a week do you work?---It averages out to be about 42 hours a week over the whole year.

\*\*\* MATTHEW JAMES FRANCIS

XXN MR WARD

PN6762

And when you say "over the whole year" does that mean you were working 52 weeks a year?---Yes.

PN6763

So you were earning about \$121,000 a year?---It'd be about that, yes.

PN6764

Okay. And you then say, at par 29, you moved to the Wisely Group?---29, yes.

PN6765

You see that?---Yes.

PN6766

And again, you chose to do that?---Yes, I did.

PN6767

Okay, that's fine. And you were earning \$54 an hour. Is that right?---Correct, with no holidays and no sick leave.

PN6768

That's all right. But again, was it \$54 an hour times 42 weeks times - sorry, times 42 hours times 52 weeks a year, like we had before?---It would have been, yes.

PN6769

So you were earning again, aroundabout 115 to 120,000 a year?---Correct, yes.

PN6770

Can I take you all the way to paragraph 43?---43, yes.

PN6771

You say:

PN6772

I do not understand why I'm not employed directly with BMA as I would prefer this.

PN6773

Who do BMA employ directly on the site?---They've got their own BMA employees. Like they've got diesel fitters in the main workshop, okay? They've got their own mechanics in the wash plant, in field maintenance, their own stores, they've got their own managers and all that up in the top offices.

PN6774

Okay, and have jobs, from time-to-time become vacant with BMA at the mine site?---There was. There was people who went on long service leave and retired when they were on long service leave. Other people left on their - like decided to quit, because they found other work down in Brisbane that they wanted to pursue more. So we, as contractors, we're just put - we were put in those roles, but not as BMA employees, as contractors.

\*\*\* MATTHEW JAMES FRANCIS

XXN MR WARD

PN6775

Let me ask you a different question, Mr Francis. Did you ever apply to BMA to become one of their employees?---Yes, I did.

PN6776

And you failed?---I failed, yes.

PN6777

Were you told why you failed?---No. I asked why and they couldn't give me an answer. Even though I was out there for - I applied for those jobs in 2014, so I was out there for 6 years doing the same role as what I was doing that I applied for and unsuccessful.

PN6778

I take it that the job was filled by somebody else?---Possibly, I'm not a hundred per cent sure.

PN6779

So the job might not have been filled by anybody?---No, might not have. Not that I'm aware of, no.

PN6780

Now, a minute ago, you said you're "still not happy". Those were your exact words?---Yes.

PN6781

I'm just trying to understand that, because you say in your statement, you'd prefer to be a permanent employee?---Yes, with BMA.

PN6782

And you now are a permanent employee?---Yes. I'm not a permanent employee with BMA. Okay? I'm a permanent employee with Wisely. I signed a contract and the contract will only last 2 years, so what happens after those 2 years is that BMA could say, "Well you're contract's null and void". Wisely will say, "That's it, we've got no work for you, you're down the road again".

PN6783

SO let me understand this if I can, Mr Francis. You've been on the mine site now since about 2007?---2008, roughly, yes.

PN6784

2008. You've been earning aroundabout \$120,000 a year and you're not happy because you don't work for BMA?---That's right.

PN6785

No further questions?---Okay, so if you worked as- - -

PN6786

Thank you, Mr Francis.

\*\*\* MATTHEW JAMES FRANCIS

XXN MR WARD



PN6787

VICE PRESIDENT HATCHER: Let him finish his answer, Mr Ward. If you want to ask another question if you can.

PN6788

Just finish that answer, Mr Francis?---Beg pardon?

PN6789

Just finish what you were going to say?---I was going to say, like I would like to - I would love to work for BMA because of the all the entitlements that they will get. Okay? Like I know that their fitters are on about 140 to \$150,000 a year. They get long service leave, which we don't accrue. I've only started accruing it this year, right? They get holidays and sick leave. As a contractor, when you're on a casual basis, you don't get holidays, you don't get sick leave. So I would like that as security, so if I do become sick or ill, I can stay at home and not worry about going out to work when I'm, you know, like sweaty, hot, fatigued, everything else, if you know what I mean? Like- - -

PN6790

All right, thank you?--- - - -to me, they want their cake and they want to eat it too.

PN6791

Any further questions?

PN6792

MR WARD: No, your Honour.

PN6793

VICE PRESIDENT HATCHER: All right, Mr Fleming?

PN6794

MR FLEMING: Mr Francis, you were asked about- - -

PN6795

MR WARD: I'm sorry, your Honour, I think Mr Gee wants to ask something.

PN6796

VICE PRESIDENT HATCHER: Sorry, Mr Gee?

**CROSS-EXAMINATION BY MR GEE**

**[11.45 AM]**

PN6797

MR GEE: Mr Francis, could you turn to paragraph 37 of your statement?---37, yes.

PN6798

So you say there that when you were offered your contract with HM Group in August of 2013, you were not told about your right to convert to permanent work. Do you see that?---Yes, I certainly do.

\*\*\* MATTHEW JAMES FRANCIS

XXN MR GEE

PN6799

Now, I suggest to you that when you started with the HM Group in August 2013, you started full-time, not casual. Is that correct?---Yes. And then we got - about 6 months later we got told that we were going back to casual.

PN6800

Yes, well if I suggest to you that when you started work at HM Group in August of 2013 as a full-time employee, there would have been no need to let you know of any right to apply for permanent employment at a later time. Would you agree with that?---Well, if you're full-time, you're full-time. But if they change the contract and you've been out there for 6 months, or for however you have been out there for, why do they need to change the contract for?

PN6801

Well, could you answer the question, please? That was something quite different. What I asked was, if you started work for HM Group in August of 2013 as a full-time employee, there would have been no need to tell you about any right to apply to convert from casual to permanent employment. Would you agree with that?---No, I wouldn't.

PN6802

It's also your evidence at paragraph 16, that you were advised by Mr Boyce of a need to change to casual rates in August of 2014. Do you see that at paragraph 16?---Yes, came to the worksite, yes.

PN6803

So you would have worked for 12 months as a full-time employee?---Yes, roughly, correct.

PN6804

And your evidence you had no choice. Now, I'd suggest to you that you did have a choice. You could have said no?---And then you would have been victimised and told to get off the mine site, because you either take the contract or you don't because there's that many people out there that are chasing work, you wouldn't have a job. And that's the way- - -

PN6805

But Mr Francis- - -?---Yes, go.

PN6806

Sorry, go on. No, no, please, I've interrupted you?---That's the way the mining industry is. If you don't like it, you know, they'll just get rid of you until they get someone that doesn't speak up and doesn't say a word.

\*\*\* MATTHEW JAMES FRANCIS

XXN MR GEE

PN6807

Well, Mr Francis, it was your evidence earlier today that you asked your current employer, Wisely Group, for permanent employment, and you received it?---In November last year when Downers took over the contract in the main workshop, I was casual then. Okay? Now, when I asked them what else was around for me, they gave me two options. One was to move to another mine site, and that was

still going to be casual, doing the same job as what I was doing, or I could go down to Kenmare, which is a totally different contract, and be permanent. So I chose that one.

PN6808

Would you describe that response as victimising you in any way?---Well if I didn't - if I didn't take that job, I would have been out at another mine site. Not so much victimising, no. But this is a different contractor too, mind you.

PN6809

Yes. So let's go back to your time at HM Group. You are full-time until August of 2014. Your evidence is that you switched to casual rates in around August of 2014?---Yes.

PN6810

And you continued to work for HM Group at the BMA Mine until around April of 2015?---Yes.

PN6811

Now, just for clarity, you've attached a couple of payslips to your statement marked B and C. Do you see that?---B and C, yes.

PN6812

Yes, B for Bravo, C for Charlie. Now, I'm just trying - help me to understand if I have this correct, Mr Francis. If we look at attachment B?---Yes.

PN6813

Around the middle of the page, there's a row with the heading "Description" and at the bottom of that it says "Holiday Hourly". And across to the far right, there's a number, "\$6,185.67". Do you see that?---Yes.

PN6814

What does that amount refer to?---That was from when I was permanent, okay? But that would have been the third of 2015, right? So this here would have been the financial year. That is all to do with the financial year of 2014/2015. So I took holidays in about December, I think, if I remember rightly, of 2014, and that's what I got paid out, because they were what I accrued when I was full-time.

PN6815

So Mr Francis, I'm not trying to trick you. If you turn back to paragraph 16 and the last sentence reads, "You were paid out your annual leave"?---Yes, and that's what I got paid out. Yes.

PN6816

So do I understand it to be that in around August of 2014, it's your evidence you moved from full-time to casual. Is that when you would have been paid that sum at attachment B?---Yes, that would have been correct, I think.

\*\*\* MATTHEW JAMES FRANCIS

XXN MR GEE

PN6817

And if I read attachment B correctly, that was worth 112.28 hours of annual leave. Would that be right?---Hang on, I've got to try to get to that B. I've lost myself here and my paperwork. Yes, that's what I used. Yes, that's what I got paid out, 112 hours and 28- - -

PN6818

While we're on attachment B, just above the reference to "Holiday Hourly" there's a reference to "Personal Hourly"?---Yes, that's sick leave, so I would have got paid that out as well, because you can't accrue it. Like that contract's out, that's it, it's null and void, you get paid out.

PN6819

Thank you?---So when we went from full-time back to casual, we got paid out our personal leave and our holiday.

PN6820

And you then worked as a casual for HM Group from August of 2014 until about April of 2015. That's your evidence, isn't it?---Yes.

PN6821

I suggest to you that, whether you were casual or not - sorry, I withdraw that. Whether you were a casual employee or a permanent employee in April of 2015, it would have had no impact on the decision by BMA to cease HM Group's contract at the mine. Do you agree with that?---No, I wouldn't, because BMA, they stipulate who's going to be there or not. They can null and void their contract at the drop of a hat, if they wanted to.

PN6822

Yes, and if that's correct, it doesn't matter if you're permanent with HM Group or casual, it will still end the contract?---That's right, yes.

PN6823

Nothing further. Thank you, Mr Francis?---You're welcome.

PN6824

VICE PRESIDENT HATCHER: Thank you, Mr Gee. Re-examination, Mr Fleming?

**RE-EXAMINATION BY MR FLEMING**

**[11.53 AM]**

PN6825

DEPUTY PRESIDENT BULL: Mr Francis, paragraph 37 where you talk about you weren't told about your right to convert to permanent work. You see that?---37, yes.

\*\*\* MATTHEW JAMES FRANCIS

RXN MR FLEMING

PN6826

Where what do you say the right comes from?---Well, if you - it's just moral, in my eyes. Right? If you show good workmanship and you turn up to work on time every day and you do the right thing every day all the time, should you have

the right to be asked if you can go permanent or not? I know I would, I would love that choice.

PN6827

Thank you. Mr Fleming?

PN6828

MR FLEMING: Mr Francis, you were asked about two instances where you were working on a permanent basis and then you were changed to a casual basis, and in the context of whether you were notified of a right to convert to permanent employment, I just seek to clarify, when you were changed to casual employment, in either of those instances, did you work for 6 months as a casual employee?---Did I work - I didn't hear that last part, sorry.

PN6829

Did you then go on to work as a casual employee for at least 6 months?---Yes, I did. Yes, I did. Like when I first started out there with Precision, I was on casual and I was out there for a good 6 months. And Down Under, I started off with permanent and then we went back to casual and I would have been on casual for about a year. With HM, I was on casual for a while and then Wisely, I was on casual for about 4 to 5 months.

PN6830

And you were also asked about your normal rostered hours of work and does your answer to that apply to those positions? You were working that same roster that you mentioned, of the Lifestyle roster?---Yes, I worked the same roster since I started out there in 2008.

PN6831

Okay, and at either times where you've worked for more than 6 months as a casual on that roster, were you notified of a right to convert to permanent employment?---No, I wasn't. I was not told anything about the right to go to permanent on that roster.

PN6832

All right. And you gave evidence that - you were asked about why you chose certain jobs over other jobs that you were offered, or certain contracts over other contracts and you gave evidence that a lot of people at the mines are competing for the same contracts and you said words to the effect, "If you don't like it, if you don't put up with it, they get rid of you". You didn't explain the basis for that. Can you please explain why it is that you think, if you don't like it, you don't put up with it, they get rid of you?---Because you're made out to be a troublemaker. If you ask questions and they don't like it, you get made out to be a troublemaker. They don't want troublemakers on the mine sites, because they want the contract and that's all they're interested in.

\*\*\* MATTHEW JAMES FRANCIS

RXN MR FLEMING

PN6833

But what have you directly observed to make you think that?---Well, I got called in the office a couple of times because some of the things that I got asked by

certain people who worked for BMA and my employer, at that time, called me in the office and more or less said for me to shut my mouth, and I said "Why?" He said, "If you don't like it, you can find work elsewhere and we will put someone else out in your position where you are".

PN6834

Have you ever observed anything else directly to make you think that?

PN6835

MR WARD: I object to this question. It doesn't arise from anything I asked the witness.

PN6836

MR FLEMING: Your Honour, I'd submit, my friend asked a number of questions about whether he's happy with his job choices.

PN6837

VICE PRESIDENT HATCHER: I'll allow it. If anybody wants to ask leave to ask further questions, they can. Mr Fleming?

PN6838

MR FLEMING: Please continue, Mr Francis. Were there any other instances where you directly observed something to make you think that?---There was another time there would have been another person working for another contractor that was out there at the time. He would not so much argue a point, he would put his point across, and he got asked to leave the mine site because he was deemed as a troublemaker.

PN6839

All right. You were also asked a number of questions about your preferences relating to casual or permanent employment, and your preference - you gave evidence about your preferences relating to working directly for BMA compared to working as a labour hire employee. Just to clarify, could you please explain your preferences in relation to all of those. So, working for BMA, working as a permanent, working as a casual?---I would like - my preference would be to work for BMA or the host employer of the mine, which is BMA, just because you have security. You're not on a yearly or 4 yearly contract with a contractor. You're employed - I would like to be employed by BMA because of those reasons, because you know you're secure. And if they do, like for Downers, contract the work stuff out, they will put you on another mine site and give you accommodation up there, move your family and whatnot, if you have wife and children, to another town, and you will start up there. But like if it was with Wisely, if you lost the contract, well then who knows where you're going to go, what you're going to do. And casual, well, they can just say "See you later, we don't need you out here anymore" within 24 hours. They don't even need to give you 24 hours' notice to kick you off site.

\*\*\* MATTHEW JAMES FRANCIS

RXN MR FLEMING

PN6840

So your Honour, this has been - just a minute, Mr Francis. This has been raised as an issue about how preferences relate to each other. I'm just not sue how to put this as a non-leading question. I'd just like to know how those preferences compare between those three options. Could I be- - -

PN6841

VICE PRESIDENT HATCHER: You want him to rank the preferences.

PN6842

MR FLEMING: Yes, could I be permitted to ask him directly about preferences?

PN6843

VICE PRESIDENT HATCHER: Put it this way, Mr Francis, between permanent employee with BMA, permanent employment with a contractor or casual employment with a contractor, how would you rank them in order of preference, one, two, three?---My first preference would be to work for BMA directly, as a permanent employee. My second preference would be to work as a permanent employee for a contractor and my third preference would be the casual.

PN6844

MR FLEMING: No further question.

PN6845

VICE PRESIDENT HATCHER: All right, does anyone want to ask any further questions arising out of that re-examination? No? All right, well that finishes your evidence, Mr Francis, so we thank you for that and you're now free to go, which means you can simply hang up the telephone?---Okay, no worries. Thank you very much for your time. Bye, bye.

<THE WITNESS WITHDREW

[12.01 PM]

PN6846

VICE PRESIDENT HATCHER: Mr Fleming, there's nothing in the ACTU claim that helps Mr Francis' first preference, is there?

PN6847

MR FLEMING: No, your Honour, there isn't.

PN6848

VICE PRESIDENT HATCHER: And Mr Fleming, you can take it on notice, if you want, but can you provide with advices as to what Modern Award you think would apply to Mr Francis' employment?

PN6849

MR FLEMING: Yes, your Honour, I'll take that on notice.

PN6850

VICE PRESIDENT HATCHER: All right, thank you, who's next?

\*\*\* MATTHEW JAMES FRANCIS

RXN MR FLEMING

PN6851

MR GEE: Your Honour, I'm just going to interpose, then certainly to withdraw for today, if I can. We just have two very short administrative matters to attend to, he says with a huge bundle of paper. I just return to the issue of Ms Carly Fordred, who is a witness for the Recruitment Consulting Services Association. I had an opportunity to confer with Mr Fagir. There's now no objection to what I propose.

PN6852

VICE PRESIDENT HATCHER: All right. I think we marked them separately, Mr G, so - Carly Fordred, dated 3 October 2015.

PN6853

MR GEE: We were hoping, if as a matter of convenience, your Honours, we could attach the bundle of documents that have been produced under order, to the back of that statement, so that the documents and the statement could be regarded together, rather than separate exhibits, if that's convenient?

PN6854

VICE PRESIDENT HATCHER: No, I'm not sure it is convenient. So the statement will be marked Exhibit 78.

**EXHIBIT #78 WITNESS STATEMENT OF CARLY FORDRED  
DATED 03/10/2016**

PN6855

VICE PRESIDENT HATCHER: And now you tender this bundle of documents.

PN6856

MR GEE: Thank you.

PN6857

VICE PRESIDENT HATCHER: Now, these are all- - -

PN6858

MR GEE: I can explain, your Honour, that the bundle of documents- - -

PN6859

VICE PRESIDENT HATCHER: It might be easier for you to tender them - probably too late to say this - to tender them together with the order to produce bundle, in any event. Sorry, Mr Gee.

PN6860

MR GEE: The bundle of documents, barring the last three pages, were produced under an order that the Commission, in relation to Ms Fordred. The last three pages were, in fact, informally produced at the request of the ACTU and together, comprise the agreed bundle, if I could put it that way.

PN6861

VICE PRESIDENT HATCHER: All right, we'll just call this agreed bundle of documents produced in relation to the evidence of Carly Fordred, Exhibit 79.



**EXHIBIT #79 AGREED BUNDLE OF DOCUMENTS IN RELATION  
TO THE EVIDENCE OF CARLY FORDRED**

PN6862

MR GEE: And lastly, your Honour, Mr Boncardo has sought to adduce or tender a bundle of documents. We have asked for and gained his permission today, to look at those documents. We've undertaken to correspond with the CFMEU today and we expect that bundle can be produced, without objection, tomorrow morning, just subject to us going through the material.

PN6863

VICE PRESIDENT HATCHER: Right, thank you. Yes.

PN6864

MR FLEMING: Your Honour, the ACTU calls Ms Judith Wright.

**<JUDITH WRIGHT, AFFIRMED** [12.06 PM]

**EXAMINATION-IN-CHIEF BY MR FLEMING** [12.06 PM]

PN6865

MR FLEMING: Hello, Ms Wright. Can I just confirm your name is Judith Wright and you live at Level 1, 39 Renwick Street in Redfern, New South Wales?---That's my work address, yes.

PN6866

And have you made a statement in these proceedings?---I have.

PN6867

And do you have that in front of you?---I do.

PN6868

Can I just check, it runs to seven pages?---That's correct.

PN6869

And contains some track changes?---I've got the clean version in front of me, but I think the one that you've got has the track changes.

PN6870

All right. Can I just check which version the Bench has?

PN6871

VICE PRESIDENT HATCHER: I have both version. I have the track change version and the older version.

\*\*\* JUDITH WRIGHT

XN MR FLEMING

PN6872

MR FLEMING: Just for the benefit of the Bench, could you please explain why those changes were necessary?---Yes, the secretary of my branch is Natalie Lane, who's currently on maternity leave and I have been the acting secretary since December last year, and will continue to act in that position until August and she

has a 2 month old baby and wasn't able to attend the Commission today for that reason.

PN6873

And having made those changes, do you attest that the statement is true and correct to the best of your knowledge?---Yes, I do.

PN6874

Thank you. I seek to tender that.

PN6875

VICE PRESIDENT HATCHER: The statement of Judith Wright dated 18 March 2016 will be marked Exhibit 80.

**EXHIBIT #80 WITNESS STATEMENT OF JUDITH WRIGHT  
DATED 18/03/2016**

PN6876

MR WARD: Sorry, your Honour, I did rise. We have a series of objections to this statement. Predominantly, large parts of the statement are nothing but a submission, but your Honour's been dealing with these objections in a particular way. We're content that they be dealt with in that way.

PN6877

VICE PRESIDENT HATCHER: All right, I note the objections made by the chamber. The statement will be admitted, subject to weight.

PN6878

MR FLEMING: Sorry, which exhibit, your Honour?

PN6879

VICE PRESIDENT HATCHER: 80.

**CROSS-EXAMINATION BY MR WARD**

**[12.09 PM]**

PN6880

MR WARD: Ms Wright, it's been a long time since I've seen you. Just to refresh your memory, my name's Nigel Ward and I appear in these proceedings for the Australian Chamber of Commerce and Industry and a number of employer organisations.

PN6881

I don't say this facetiously, I'm just interested, you've amended the statement to say that the members in the SACS Branch of 7,000, or 6,000 - - -?---Yes.

\*\*\* JUDITH WRIGHT

XXN MR WARD

PN6882

- - - that's not a delightful membership drive that's achieved a thousand members in a short period of time, it was just the number was wrong?---The number was wrong and when I was speaking to them in the statement, I did actually check our

membership records, and so the number was actually wrong when Natalie Lane produced the statement.

PN6883

And in checking your membership records, do you keep records of how many of those members are full-time, part-time and casual?---Not directly, no.

PN6884

And can you help me what "not directly" means?---Our membership fees are based upon a sliding scale, according to income. And so with the top membership fee for - are members who earn 33,000 per year and over. And generally, we would expect that members who earn less that amount would not be full-time.

PN6885

And so it is possible, given your membership fee scale, that somebody could earn \$33,000 as a full-time, a part-time or a casual. That's why you can't be precise in answering the question?---That's correct.

PN6886

Okay. Now, before I get too far in, can I just ask this. In being the acting Branch Secretary, and I'm not trying to be mischievous when I ask this question, am I right in saying that that is like a chief executive officer. It's an administrative management role?---It does have aspects of administration and management in it, yes.

PN6887

You don't still occupy and run a sort of territory for the union?---I still have involvement in industrial and campaign matters.

PN6888

But you don't have a slice of members that you personally look after?---If the question is, do I spend every day talking to members about their particular issues, I don't.

PN6889

Thank you for that answer as well, but that wasn't quite the question. An organiser of your union, they would be given, I take it, dedicated territory or a dedicated group of members to look after?---Yes.

PN6890

Yes. And you don't have that?---No.

PN6891

No. Am I right in saying you don't have that as the Deputy Secretary?---That's correct. As the Deputy Secretary, I have oversight of compliance, finance and industrial matters.

PN6892

Okay. And compliance means what?---Compliance with our obligations as a trade union under the Fair Work- - -

\*\*\* JUDITH WRIGHT

XXN MR WARD

PN6893

As a registered organisation?---Yes, that's correct.

PN6894

Okay. And finance, you mean the financial functioning- - -?---Yes.

PN6895

Sorry, what was your last?---The last one was industrial matters.

PN6896

Okay. So I take it then that, in terms of preparing campaigns and running campaigns and things like that, you're the figurehead for that for the union?---Yes, but I do have some day-to-day involvement in those matters as well.

PN6897

Yes, yes. And I take it then you have organisers and industrial officers who work underneath you?---That's correct.

PN6898

Yes. Do you have a copy of your statement there?---I do.

PN6899

Thank you. Could I ask you to go to paragraph 12? You say at paragraph 12:

PN6900

*The SACS industry nationally, is a highly casualised workforce.*

PN6901

Do I take it that you- - -?---I'm sorry, I've got a clean copy of- - -

PN6902

VICE PRESIDENT HATCHER: Para 13.

PN6903

MR WARD: My apologies, your Honour?---Yes.

PN6904

I only got that given to me this morning. Just bear with me, I'm going to have to cross-reference. Let me take you to paragraph 13?---Yes, yes.

PN6905

You say:

PN6906

*The SACS industry nationally is a highly casualised workforce.*

PN6907

Do I take it that is largely based on the evidence that was in the equal remuneration case for the SACS industry?---Yes.

\*\*\* JUDITH WRIGHT

XXN MR WARD

PN6908

Can I take you to paragraph 15? You say here:

PN6909

*The branch has witnessed a growing number of casual contracts for work which is actually of a permanent nature as the old employment practices which existed prior to 2001 in these roles, have come back in since the commencement of the Modern Award.*

PN6910

How many casual employment contracts have you personally reviewed in that regard?---Look, I couldn't tell you how many. I mean, in terms of my role with the union, since I commenced employment, during the bulk of that time, I oversaw the industrial services team, which at the moment is comprised of four industrial officers which prior to becoming Deputy Secretary, reported to me. And during the course of talking to industrial officers, I wouldn't review casual employment contracts, as such, but I would regularly have those industrial officers approaching me to say, "Look, we have a member who's contacted us who is a casual employee. They have worked for a considerable period and the employer is now seeking to reduce their hours and is relying upon the fact that the person, as a casual, to do that".

PN6911

So this is you giving - your evidence is that you've been told by one of your staff that a member has told them something?---That's correct. There would have also been cases where I would have also spoken to members directly.

PN6912

And when you spoke to members directly, did you actually review their employment contracts?---Well, in the case of one of the people that gave evidence in this case, John Perry, I did review his employment contract.

PN6913

So you personally managed Mr Perry's case?---No, I didn't personally manage it, but I did review his employment contract.

PN6914

And was that part of his unfair dismissal case, was it?---Well, it was also part of collating evidence for this case.

PN6915

Is he the only one that you can recall?---There would definitely be other people's documents associated with their employment that I would have reviewed, but in terms of giving you exact numbers, I wouldn't be able to do that.

PN6916

That's fine. Now again, on paragraph 14, you say:

\*\*\* JUDITH WRIGHT

XXN MR WARD

PN6917

This has a detrimental effect on workers where the work is regular and predictable and that these workers can suffer disadvantage in securing accommodation in the rental market or obtaining a loan.

PN6918

Can you name the last employee you spoke to who's told you they'd failed to obtain rental accommodation or failed to obtain a loan?---Jacki Dredge in relation to rental accommodation.

PN6919

MR FLEMING: I object to this, because Ms Dredge, it appears is not going to - I withdraw that.

PN6920

VICE PRESIDENT HATCHER: She just answered your question.

PN6921

MR FLEMING: No, no, I was worried that the witness might - no, it's fine. Carry on, I apologise.

PN6922

VICE PRESIDENT HATCHER: It depends what you're asking.

PN6923

MR FLEMING: I apologise.

PN6924

MR WARD: I'll ask the question again. Can you name somebody who has spoken to you about failing to receive rental accommodation or a loan?---Jackie Dredge in relation to failing to receive rental accommodation and John Perry in relation to failing to secure a loan.

PN6925

And are they the two people you able to name - are you able to name anymore?---I can't name anymore without looking at the union records.

PN6926

And in Ms Dredge's case, was it she failed to get a loan or she failed to get rental accommodation?---She - my memory is that she had - she told me that she had difficulty getting rental accommodation and for that reason, she lived with her parents. But then when she repartnered, she was able to get rental accommodation through her partner's income.

PN6927

Okay. And in Mr Perry's case, you're saying he was disqualified from getting a loan?---I'm not saying he was disqualified, my memory is that he would have had difficulty getting a loan unless his employer confirmed that his employment was regular and ongoing.

\*\*\* JUDITH WRIGHT

XXN MR WARD

PN6928

That's a large part of what his unfair dismissal case was about, as I recall?---Yes.

PN6929

Yes. Now, can I take you to paragraph 30? I think - tell me if I'm wrong - I think you're talking about here something relevant to what used to be SACS Award in New South Wales, following the *New South Wales Secure Employment case*?---That's correct, yes.

PN6930

The you say this:

PN6931

*I strongly believe that this has had a very positive impact on the industry in New South Wales, assisting with recruitment and retention of employees.*

PN6932

Do you see that?---Yes.

PN6933

What studies, empirical studies, have you done about recruitment in the New South Wales SACS industry?---I haven't personally done any empirical studies.

PN6934

What empirical studies have you done about retention rates in that industry?---I personally haven't done any studies.

PN6935

VICE PRESIDENT HATCHER: So what are the basis for those statements then?---The basis is, your Honour, that prior to the commencement of the Modern Award, we had a few employers who were approaching us about problems in relation to casual employment. And we experienced greater numbers of employers approaching us after the commencement of the Modern Award when there was no longer casual conversion clause.

PN6936

Casual conversion clause?---In the Modern Award.

PN6937

So the Federal conversion clause went into the SACS Award as a result of the *Secure Employment Test* case. But that was immediately followed by the work choices, either (indistinct) and the like. Is that right?---Yes, but that only applied to a very small portion of the SACS industry. So the majority of the SACS industry stayed within the New South Wales system until 2004.

PN6938

MR WARD: You don't have any factual basis to understand costs of recruitment, before or after the *New South Wales Secure Test* case?---That's correct.

\*\*\* JUDITH WRIGHT

XXN MR WARD

PN6939

And you don't have any factual basis to understand the labour turnover rates in the industry, before or after the test case?---That's correct.

PN6940

Paragraph 31, you say:

PN6941

*I've witnessed that these provisions also improve the employment practices of many employers.*

PN6942

?---Yes.

PN6943

COMMISSIONER ROE: It's paragraph 32.

PN6944

MR WARD: My apologies, thank you, Commissioner. Thank you paragraph 32.

PN6945

MR FLEMING: Your Honour, would it be possible to give the witness the copy that we're all looking on that has the track changes, to make it easier?

PN6946

VICE PRESIDENT HATCHER: I think it's Mr Ward's problem.

PN6947

MR FLEMING: Yes.

PN6948

MR FLEMING: Well, it's creating some difficulty for me following, also.

PN6949

MR WARD: Commissioner, thank you for helping me. It is my problem.

PN6950

VICE PRESIDENT HATCHER: You're right. If you think that assists, I'm not sure it does, Mr Fleming, hand it to the witness.

PN6951

MR WARD: I seem to be a paragraph behind. I apologise to the Commission. I think the witness has kept up with me - I think they have. So I think I'm referring to your paragraph 32, is that- -?---That's right.

PN6952

You say that:

PN6953

*These provisions also improve the employment practice of many employers.*

\*\*\* JUDITH WRIGHT

XXN MR WARD



PN6954

What do you mean by "improved the employment practices"?---Well, many employers, because of the nature of the industry being funded by governments, would look to what base was the easiest way of employing people in that kind of environment and bearing in mind that many of those employers are small organisations run by voluntary management committees who don't have access to HR advice and so they would employ people as casuals to deal with the short term funding aspects of the industry. But as a result of the casual conversion clause existing from 2006 to 2011, we saw employers engaging people as permanent employees and we actually were told by the major employer organisation who advises the committees to Jobs Australia that, in fact, they did tell their members that the way to employ people in this industry was to employ them as permanent employees if their pattern of work better reflected that type of employment practice.

PN6955

I'm going to break a rule now and ask a question I don't know the answer to. Did Jobs Australia say that because they thought the employers could save money, or?---I don't know, I just remember Keith Godfrey saying that to me during a meeting.

PN6956

Okay, so when you say "improved" it's not that you've got factual evidence that employees saved money, in terms of their rostering practices?---When I say "improved employment practices" I mean employees more appropriately.

PN6957

From your perspective?---Yes.

PN6958

So it's from your perspective?---Yes.

PN6959

That's fine. So it's not - you're not trying to say this from the employer's perspective, you're saying it from your union's perspective?---Yes, but employing employees more appropriately will have an effect on recruitment and retention rates.

PN6960

Which you don't know anything about, because you've admitted that?---Well, I do know about it in relation to the equal pay case and the fact that employers gave evidence during that case that recruitment and retention in the sector was very poor, because of the poor pay and poor conditions. So it would seem to me that any practice that improved recruitment and retention would have to have a positive effect on employers and the service users that they support.

PN6961

So it's your evidence that the equal remuneration order has improve retention in the sector, has it?---Yes.

\*\*\* JUDITH WRIGHT

XXN MR WARD

PN6962

And is there any data to support that proposition?---Not that I personally have got access to right at the moment.

PN6963

DEPUTY PRESIDENT KOVACIC: Ms Wright, can I just ask a question?---Yes.

PN6964

I think you referred to the funding arrangements that commonly operate or that Government funding is a large source of funding for this particular sector, two questions flow from that. What is the sort of duration of the contractual arrangement, in terms of Government funding?---Yes.

PN6965

And in terms of employment practices, to use your words, is that manifested in perhaps greater use of fixed term employment?---Your Honour, the funding cycles really do vary amongst programs. My understanding is that most of the Commonwealth funding programs operate under three-year funding cycles. There was a prohibition on using fixed term contracts without any limitations under the New South Wales SACS Award before the commencement of the Modern Award, so since that award has ceased, we are seeing more fixed term contracts being used. But equally, there are many employers in the sector that have operated on a very long-term and are used to these funding cycles and have been able to manage the various funding contracts and manage their business in a way which optimises the possibility of permanent employment and are also ready to pay employees redundancy entitlements, should they see fit. So the fact that there is short-term funding cycles does not, in itself, lend itself to insecure employment if employers have been around for a long time and appreciate the benefits of on-going employment, and I guess, manage their businesses accordingly.

PN6966

MR WARD: Can I take you to what is now paragraph 34? You say the branch has been in dispute with employers, then you give an example of the Mercy Centre?---Yes.

PN6967

How many disputes are you aware of that your union's notified to the Fair Work Commission relating to casual employment?---So we have been in dispute with the Mercy Centre. We have been in dispute with Lifestyle Solutions. We have been in dispute with Narcy House. Those are the three that we've notified in the last year or so that I can remember.

PN6968

Okay, and just for my benefit, who's the Mercy Centre?---The Mercy Centre is a large faith-based disability organisation. In my paragraph 34 of my statement, indicates that it provides a range of services to people with disabilities in Albury, Wodonga, Orange, Narrabri and Coffs Harbour.

\*\*\* JUDITH WRIGHT

XXN MR WARD

PN6969

And Lifestyle?---Lifestyle Solutions? Lifestyle Solutions is one of the largest providers of disability support in Australia.

PN6970

And Nardy House?---Nardy House is a small organisation in Bega that employed John Perry.

PN6971

And are those disputes about existing award conditions or existing enterprise agreement conditions?---Those disputes - yes.

PN6972

Enterprise agreements?---In the case of Mercy, they do have an enterprise agreement, yes.

PN6973

And in the case of Lifestyle, do they have an enterprise agreement?---No.

PN6974

In the case of Nardy House?---No.

PN6975

So they're disputes where you're alleging the employer's not complying with their existing obligations?---Those would be disputes where the employer is purporting to employ casual employees in a way, which we say, is inconsistent with the Modern Award, because the Modern Award says that an employee who is casual, can't be a part-time or full-time employee, ergo, if a person's working witness predictable hours, they should be - and they're working less than 38 hours a week, they should be part-time rather than casual.

PN6976

Let me understand that. Your union has a legal view as to how to interpret the Modern Award?---Yes.

PN6977

That legal view is inconsistent with the employer's view?---Well, I think it's fair to say that the employer has initially disagreed with us, but in some cases has offered solutions which would tend to indicate that maybe they do agree with us without actually admitting that they do.

PN6978

And so in terms of Mercy Centre, are you saying that you started from the position where you had a legal view about their enterprise agreement and they had a different view and you then settled that dispute?---I think that we've settled a number of cases or a number of individual matters with Mercy. But in terms of settling the overall problem in relation to the prolific use of casual employment, we have not.

\*\*\* JUDITH WRIGHT

XXN MR WARD

PN6979

Okay, so they still have a different view as to how their enterprise agreement is to be applied to you?---Just to clarify it, they do have an enterprise agreement that's one of those old New South Wales system agreements which incorporates many of the terms of the award. So I don't believe that the enterprise agreement deals specifically with casual employment, or if it does, we would be looking at both the Modern Award and the enterprise agreement.

PN6980

I'm just trying to understand. You've got an ongoing dispute with that employer because you hold a different legal view about how the legal regulation applies to them?---Well, I don't know whether they hold a different legal view to us or whether they're just totally disregarding the law.

PN6981

Okay. You don't know enough about it?---I do know that they employ a lot of people as casual employees on a regular and ongoing manner.

PN6982

And they say they're entitled legally to do that?---Well, they say that these employees are - who are casual, are filling positions where the incumbent's on leave and our members say to us, in many cases, that's not always the case.

PN6983

So can I just understand this, your union's got a view that where an employee has regular and systematic hours under the SACS Award, they are a part-time employee?---Well, I think the wording is reasonably predictable.

PN6984

Okay, and if they fit that criteria, you say no matter what the employer calls them, they are part-time?---Generally speaking, yes.

PN6985

Right, okay.

PN6986

VICE PRESIDENT HATCHER: And that will arise again from the provision you referred to which says a casual is a person who is not full-time or part-time?---That's correct, your Honour.

PN6987

MR WARD: Now, can I just ask some questions about the equal remuneration case? Am I right in saying that that decision and ultimate determination only covers part of the SACS industry?---It covers all of the classifications, all of the social and community service- - -

PN6988

In the Modern Award?--- - - -classifications of the Modern Award.

\*\*\* JUDITH WRIGHT

XXN MR WARD

PN6989

Okay. And am I right in saying that it requires payments to be made, in addition to those in the Modern Award?---That's correct.

PN6990

And just generally, what sort of percentage above the Modern Award are they?---They range from - well I mean, it's being phased in over a 9 year period.

PN6991

When you get to the end?---When you get to the end, it's between 23 and 45 per cent.

PN6992

Okay. And those rates, those equal remuneration rates are enjoyed whether you're full-time, part-time or casual?---That's correct.

PN6993

Yes. Now, the industry at the moment's talking - this is the SACS industry- - - ?---Yes.

PN6994

- - -is talking almost nothing, except about the National Disability Insurance Scheme?---Yes.

PN6995

I know you've been heavily involved in that. Do you understand that the funding arrangements under the National Disability Insurance Scheme are changing?---Are changing?

PN6996

When the NDIS comes in?---Yes.

PN6997

Yes. Can you just explain your understanding of those funding arrangement changes?---Well, basically at the moment, the funding is provided to the organisation and it's going to be provided to individual employees who'll sit down and make a plan and then be provided with specific funding in relation to specific services or supports, rather, that they are entitled to.

PN6998

So am I right in saying that at the moment, the funding goes to the employing organisation?---Yes.

PN6999

And they effectively, with the client, work out the service needs?---Yes.

PN7000

And under the National Disability Insurance Scheme, the funding goes directly to the client, and is it your understanding that the purpose of that is to give the client greater say as to when they want services?---Yes.

\*\*\* JUDITH WRIGHT

XXN MR WARD

PN7001

Yes. And do you also understand that employers will have to be responsive to how they provide those services, when clients want them?---Yes. But I mean, subject to - I mean, people with disabilities are not unreasonable compared to people without disabilities. I mean, there's not an- - -

PN7002

I wasn't suggesting they were?---Yes.

PN7003

Just obviously the employer will still have to respond to the client's needs?---Yes, but not without any limitation whatsoever.

PN7004

I didn't suggest it wasn't.

PN7005

VICE PRESIDENT HATCHER: Is that likely to make hours of work more unpredictable than they currently are because the employers will not be, as it were, in full control over when services are provided?---Well, not necessarily, your Honour, because the way that the plan's work is that it makes it very clear between the client, the person with the disability and the funding provider that the person with the disability will be given so many hours, for example, for supports in the morning. So when an organisation offers supports to that service user, they will actually understand that morning services are required. And it's really then, many of these people have, you know, have a same or similar routine every morning, so the employer will actually know well, this particular person with a disability requires supports between 8 and 10 every morning. So it is more flexible, but there's an ability to actually work with the plan and work with the client to identify a pattern of work that's not totally unpredictable.

PN7006

SENIOR DEPUTY PRESIDENT HAMBERGER: With the SACS Award, with the particular provisions, for example, what scope is there to - say if hours need to change because the client's need change- - -?---Yes.

PN7007

- - -what scope is there to change the- - -?---Under the current part-time clause, your Honour, the employer and the employee can agree to change the house.

PN7008

And is that something that happens fairly quickly?---My understanding is that it does change from time-to-time, yes.

PN7009

Thanks.

\*\*\* JUDITH WRIGHT

XXN MR WARD

PN7010

MR WARD: If I can just come back to the NDIS, because I think your evidence to the Commission, from its questions was, that what we might describe as sort of routine client services- - -?---Yes.

PN7011

- - -will remain fairly predictable. That's helping the client up in the morning, maybe bathing, feeding, those sorts of services?---Yes.

PN7012

Am I right in saying though, that the client - for instance if the client decided they wanted to go on an excursion in the afternoon, they've got greater freedom now to say "I want to go out now"?---They do. However, they do have to be specifically funded for that excursion, and so the plan would actually specify what needs of the client, the supports we're trying to meet and would generally specify that that would be. So it wouldn't be a case where a person with a disability could just say "I want to do this" one day and it's something that's not in their plan.

PN7013

Okay but the funding would be allocated for the activity, it wouldn't be allocated on the basis that that activity must happen on Thursday between 2 o'clock and 4 o'clock in the afternoon?---Well, it might because - and I'm just thinking of a plan that I've seen recently. The pricing does change if the activities are on in the evening, so the plan would have to specify if it was in the evening.

PN7014

So it's your evidence that under the National Disability Insurance Scheme, each client has to have a fixed plan for the service they want, every week?---Not every week. They are - the NDIA sits down with the client and makes a plan based upon what supports it's prepared to provide to the person with the disability and then that's all set out in a plan and if the person wants to go on excursions and the particular excursion is something which is identified as meeting their particular needs, that would be spelt out in the plan and if it's in the evening, because the pricing is different, it would be specified.

PN7015

Okay, and I take it that sitting down with the client and discussing their needs is not a static thing. You don't do that and then put it in the drawer, you'd be reviewing the client's needs on a regular basis?---My understanding is that the plans are reviewed annually unless the person with the disability's needs changes. So for example, a person with a disability might be living with their family and might have a particular plan, but the person's family member, who's a carer, might suddenly have a sudden illness and not be available to care for the person anymore, in which case their plan would be reviewed on an urgent basis to find an alternative carer.

PN7016

So I'm just trying to understand. I think your evidence was that the introduction of the NDIS funding scheme would introduce increased variability, but not dramatic changes in variability for employers rostering people?---That's correct.

\*\*\* JUDITH WRIGHT

XXN MR WARD

PN7017

Right. Are you familiar with the ACTU's claims in relation to the Social and Community Award?---In relation to this case, I have read those, yes.

PN7018

Okay. Can I show you a copy? I'm just going to the ACTU's draft determination for the Social Community Home Care and Disability Services Industry Award 2010. Can I ask you to turn to the last page of the document I've given you? I think it's paragraph 5(b). I withdraw that - sorry, para 5 and then it refers to a variation to clause 10.6 and it's "10.6(b)". And it's in these terms:

PN7019

*An employer shall not increase the number of casual or part-time employees without first allowing an existing casual or part-time employee, engaged on similar work, whose normal working hours are less than 38, an opportunity to increase their normal working hours.*

PN7020

Now, I don't want to be unfair to you?---Yes.

PN7021

So have you given this clause much thought?---I mean, I've read the clause. Have I pondered it for hours, no I haven't.

PN7022

Okay, do you have any understanding as to how this clause is meant to work in practice? I'll give you an example. Let's say I had three part-time employees and four casuals working for me?---Yes.

PN7023

And I've got an extra 20 hours to roster next week?---Yes.

PN7024

Do you understand whether or not I've got to ask - who do I ask first? Do I have to offer the 20 to 1, do I divide the 20 by 5 and offer them all four? Do you understand how it's meant to work?---Well, the clause does not prescribe to that level of detail, so presumably it's up to the particular employer to determine what's fair and equitable, having regard to their existing workforce.

PN7025

Do you understand whether or not there's any level of reasonable effort the employer needs to go to, to contact all of the people? So can I try and ring them on the phone, if I don't get them, that's good enough? What's your view of the practical operation of it?---Well, the obligation is simply to, without first allowing an existing casual or part-time employee an opportunity.

PN7026

So I've got to make contact with them and offer them to give them the opportunity, even if they're difficult to get?---Well no, it says "an opportunity".

\*\*\* JUDITH WRIGHT

XXN MR WARD



PN7027

Right?---So I would have thought that most employers would follow these sorts of practices already.

PN7028

Let me ask this then. Let's say that I had 40 hours of work to hand out?---Yes.

PN7029

It's your union's preference that that work goes to existing employees rather than an unemployed person?---Well, yes it's important that existing employees are able to work enough hours to have a reasonable standard of living, and yes.

PN7030

I'll just make sure say this. It's your union's preference that those 40 hours would go to existing employees and not an unemployed person?

PN7031

MR FLEMING: Your Honour, it's a bit of a false dichotomy, isn't it? I object to the question.

PN7032

MR WARD: There is nothing false about it at all. I'm an employer, I've got 40 hours. I can either offer those 40 hours to somebody who doesn't work for me, or I can offer them to somebody who does.

PN7033

VICE PRESIDENT HATCHER: I thought you got a - you asked the first time, you got a fairly clear answer, so I don't know whether you're trying to seek- - -

PN7034

MR WARD: If your Honour believes I got a clear answer, I'm fine. No further question.

PN7035

VICE PRESIDENT HATCHER: Does anyone else wish to cross-examine Ms Wright? Re-examination, Mr Fleming?

PN7036

MR FLEMING: Just one minute, your Honour.

**RE-EXAMINATION BY MR FLEMING**

**[12.43 PM]**

PN7037

MR FLEMING: Just on that last point, your Honour. You were asked if the union's preference was that available hours of work be given to existing employees rather than the unemployed - rather than an unemployed person?---Yes.

\*\*\* JUDITH WRIGHT

RXN MR FLEMING

PN7038

So is it your understanding that that is the choice that exists?---No, I mean I should qualify what I said, by saying that. We're a membership-based organisation that acts in the interests of our members and so our preference is that employees who are members of the ASU get a decent number of working hours and therefore a decent income. And there would be a concern about a lot of employees working very few hours and unable to get a decent income than employees being able to work adequate hours per week to get a decent income and other employees being able to get income support through Centrelink.

PN7039

And do you have any knowledge of employer practices about offering work as an opportunity to take up hours on offer?---Yes. There is a view in this sector that it's really in the interest of service users to have consistency, which means that it's in their interests to have the same group of employees who are regularly working with them. So most employers, in line with that view, do tend to offer existing employees shifts before they would, you know, employ another person to offer shifts, because it's in the interests of consistency and it's in the interests of the clients.

PN7040

And how would they do that?---Well, it really depends upon the individual employer as to, I guess, the order in which people get work. I'm just thinking of a recent example in relation to John Perry, who we've been talking about during these proceedings, he told me that because he was always available and always wanting to do the work, he was known by his employer as someone who would be readily available if he was contacted, and so he got a lot of work that way. So I think you'd find some employers would give preference to employees who they knew would be readily available. Other employers would give preference to employees who they knew worked for the particular client and who the client liked working with. Other employers might give employees with a longer period of service, preference. So it really depends upon the particular practices of the employer and their client's needs.

PN7041

And do you know - if you don't know, then don't answer, but do you know of any - I'm not sure why my friends laughed at that question, but if you don't know, don't answer. If you know of any other practices, could you please tell the Commission, relating to offering employees an opportunity to take up work that's on offer?---I mean, in this industry, there are incidents of employees, you know, not being available because of sick or carer's leave and needing to get in an employee as soon as possible. And so the answers that I've given with respect to how - which employee would be chosen, that those are the practices that apply.

PN7042

Do you have knowledge of what form giving that opportunity might take?---Usually a telephone call.

\*\*\* JUDITH WRIGHT

RXN MR FLEMING

PN7043

And any other that you're aware of?---There could be - I'm just off the top of my head - my understanding is that usually if an employer, at the last - as opposed to rostering. Sometimes casual employees are rostered on so the communication would take the form of a roster being shown in the workplace or being emailed, but in terms of filling shifts at the last minute, usually it's by telephone.

PN7044

No further questions, your Honour.

PN7045

VICE PRESIDENT HATCHER: Thank you for your evidence, Ms Wright, you're excused. You're now free to leave.

**<THE WITNESS WITHDREW**

**[12.48 PM]**

PN7046

VICE PRESIDENT HATCHER: Who will the next witness be?

PN7047

MR FLEMING: Crystal Limbrey.

PN7048

VICE PRESIDENT HATCHER: Would it better to take an early lunch and resume at say 1.45?

PN7049

MR FLEMING: Yes.

PN7050

VICE PRESIDENT HATCHER: All right, we'll adjourn now and resume at 1.45.

**SHORT ADJOURNMENT**

**[12.48 PM]**

**RESUMED**

**[1.48 PM]**

PN7051

MR FERGUSON: Your Honour, I call Christa Limbrey.

PN7052

MR FAGIR: I'm sorry, before Ms Limbrey comes in, can I just return to the matter of the evidence of Ms Jenks. We now understand that Ms Jenks is party to a deed that was entered into before her statement was drafted and filed. The deed requires her to keep confidential certain matters relating to the end of her employment with her previous employer. The statement doesn't travel into those areas and, as I said earlier, Ms Jenks would prefer not to give evidence about those matters. She objects globally to giving evidence along those lines but if she is compelled by the Commission to answer questions on those topics, so be it and that would not be a breach of the deed.

\*\*\* JUDITH WRIGHT

RXN MR FLEMING

PN7053

VICE PRESIDENT HATCHER: All right, we will deal with that when we see what the questions are.

PN7054

THE ASSOCIATE: Please state your full name and address.

PN7055

MS LIMBREY: Krista Limbrey, (address supplied).

**<KRISTA THERESE LIMBREY, AFFIRMED [1.50 PM]**

**EXAMINATION-IN-CHIEF BY MR FERGUSON [1.50 PM]**

PN7056

MR FERGUSON: Could you please say your full name for the benefit of the Commission?---Krista Therese Limbrey.

PN7057

Ms Limbrey, have you prepared any statements for the purpose of these proceedings?---I've prepared two.

PN7058

Do you have a copy of those statements with you?---I do.

PN7059

Is one of those statements dated 12 October 2015?---Yes, it is.

PN7060

Are there some 119 paragraphs in the (indistinct)?---Yes, it is.

PN7061

Is there any corrections that you would like to make to paragraphs 65?---Yes, there is. In 65?

PN7062

Yes, is there any?---In paragraph 65 I refer to an annexure being KTL8, this should refer to the annexure KTL5, the title of the annexure is correct.

PN7063

VICE PRESIDENT HATCHER: Sorry, what paragraph was that?---Sorry, 65, just the reference to that Annexure KTL8 should be KTL5, the title of that annexure is correct.

PN7064

MR FERGUSON: Are there any other corrections made in that statement?---The other corrections I've made in my second statement.

PN7065

Have you got a copy of that statement with you?---Yes, I do.

\*\*\* KRISTA THERESE LIMBREY

XN MR FERGUSON

PN7066

Is that dated 24 February 2016?---Yes, it is.

PN7067

And there are some 41 paragraphs in that?---That's correct.

PN7068

Where have you identified your corrections?---The corrections are identified in the fourth paragraph.

PN7069

Do they set out those corrections (indistinct)?---That's correct.

PN7070

Are there any amendments to that statement you would like to make?---Yes, there is.

PN7071

What are they?---So, the first one is in paragraph 4 then point (e), I'd like to delete that because it's dealt with in a following point. So, (e) I would like to delete and then of the same point - so, point 4 - sorry, paragraph 4 then point (h), I'd like to keep that in there but change where it's the reference to 9 pm to 10 pm.

PN7072

"On weekdays after 10 pm"?---10 pm, that's correct.

PN7073

Are there any other corrections?---I have one more. In paragraph 18, in the table that is set out there, in the fourth column across, so the column titled "Active casual level to employees at McOpCo restaurants", the two numbers in the columns should be reversed, so the number there in that column for July 2014 should in fact read "14,533" and the number for January 2016 should in fact read "8,811".

PN7074

Are there any other corrections?---That's all.

PN7075

Are both those statements otherwise true and correct to the best of your knowledge?---Yes.

PN7076

I tender those, Your Honour.

PN7077

VICE PRESIDENT HATCHER: The statement of Krista Therese Limbrey dated 12 October 2015 will be marked exhibit 81. The further statement of Krista Limbrey dated 24 February 2016 will be marked exhibit 82.

\*\*\* KRISTA THERESE LIMBREY

XN MR FERGUSON

**EXHIBIT #81 WITNESS STATEMENT OF KRISTA THERESE LIMBREY DATED 12/10/2015**

**EXHIBIT #82 WITNESS STATEMENT OF KRISTA THERESE LIMBREY DATED 24/02/2016**

PN7078

MR FERGUSON: I just note for the Bench's benefit, there are a number of attachments that are set out on the divided pages in the bundles we have handed up.

PN7079

With leave, Your Honour, there is just one point of clarification we want to raise with the witness.

PN7080

Can I take you to your statement dated 12 October, paragraph 104, within that - so, paragraph (f). You say there that on weekdays between 4 pm and 8 pm a very high proportion, between 60 and 68 per cent of 14 to 17 year olds inclusive that all statuses are available to work. Just by way of clarification, does that mean that that percentage are available for all hours between 4 pm and 8 pm or does it mean something different?---No, it doesn't, it's done by hour, so just during - it doesn't mean that someone's necessarily available for that whole period of time. In each hour there's that many people available to work, so someone might be available from 2 pm to 5 pm and they'd be included in that hour of 4 to 5 or someone might be available from 6 pm to 10 pm and they'd be included in that time from 6 till 8.

PN7081

It means that they're available at some point within that - - -?---Yes.

PN7082

Nothing further.

**CROSS-EXAMINATION BY MR BLISS**

**[4.22 PM]**

PN7083

MR BLISS: Ms Limbrey, my name is David Bliss, I am here on behalf of the Shop Distributors and Allied Employees Association today. Ms Limbrey, have you been given an opportunity at some point to view the amended draft determination filed by the Australian Industry Group in these proceedings for the Fast Food Industry Award?---No, I haven't.

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS

PN7084

Might I present a copy to the witness, please. I understand your evidence in the second statement was directed towards the ACTU's claim for a four-hour minimum engagement and you've had something to say in your statement about that. Are you familiar with the change below at the draft clause 13.4 where it says the minimum daily engagement of the casual is three hours and what the AIG seeks to do as part of these proceedings is to vary that clause for it to say "An

employer and employee may agree to an engagement for less than the minimum of three hours", are you familiar with this claim?---No.

PN7085

You're not, okay. I note in your second statement you have had something to say about minimum engagements. At the bottom of page 8 it says "Impact of increasing minimum engagement"?---What paragraph is that, sorry?

PN7086

Your second statement dated 24 February?---Yes.

PN7087

Bottom of page 8 there's the words "Impact of increasing minimum engagement" and on page 9 you have made a number of statements in respect of that?---Yes.

PN7088

Do you still stand by the position that a minimum shift is of three hours' engagement which is in your first - sorry, I withdraw. I'll take you to paragraph 41, I knew it was there somewhere?---Of the second statement?

PN7089

Yes, sorry. You say there:

PN7090

*If the minimum engagement period was to increase to four hours it is likely the McDonalds restaurants would not be able to continue to employ these quantitative employees because we would be forced to give more hours to existing employees.*

PN7091

What do you say about the current engagement of three hours in the award and also in the current enterprise agreement - McDonalds enterprise agreement?---What was the question about that, sorry?

PN7092

VICE PRESIDENT HATCHER: Can I just clarify one thing first. So, the McDonalds enterprise agreement, does it have a minimum engagement period for casuals?---Yes, for three hours.

PN7093

MR BLISS: So you say that increase into four hours it's likely that restaurants would not be able to employ this quantity of employees because "we would be forced to give more hours to existing employees"?---Mm.

PN7094

You currently have a three-hour minimum engagement. What do you say about the minimum engagement currently in the enterprise agreements?---Not in any specific terms. I suppose our minimum engagement is three hours, which I've got in there.

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS

PN7095

MR FERGUSON: I object. I'm not sure what the question about it is.

PN7096

MR BLISS: Is the current minimum engagement of three hours adequate or not adequate from your point of view?---Increasing it could definitely have some negative impacts on - - -

PN7097

What about maintaining the existing three-hour minimum engagement, is it adequate or not adequate from your point of view?

PN7098

MR FERGUSON: I object. Perhaps my friend can explain what he means by "adequate".

PN7099

VICE PRESIDENT HATCHER: I think - does it mean McDonalds' commercial needs, is that the sort of - - -

PN7100

MR BLISS: In one essence does it meet both the McDonalds needs and also the employees' needs.

PN7101

VICE PRESIDENT HATCHER: I think you are asking it from McDonalds' perspective.

PN7102

MR BLISS: That's correct.

PN7103

VICE PRESIDENT HATCHER: What do you say about the three-hour minimum by reference to McDonalds' commercial needs?---So, I suppose within my statement we look at - one of the things that we look at is our peak periods of operation and our peak periods of operation, I think they are outlined in one of the paragraphs which I can refer you to in a minute, are over two hours at three times during the day, so there's a breakfast period from 7 am to 9 am, a lunch period from midday to 2 pm and then an evening period of 5.30 till 7.30 which we consider to be our peak times, so ideally we like to be able to roster people and more people around those times.

PN7104

MR BLISS: And you say that's a two-hour period, do you?---In most restaurants that's the standard approach that we take, it obviously differs from restaurant to restaurant.

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS

PN7105



But not exclusively? So, it's not exclusively a two hour in every restaurant?---Not necessarily, they could be at slightly different times, but as a business that's where we would look at our peak periods.

PN7106

At paragraph 38 of your statement you say:

PN7107

*The current three-hour minimum engagement period for employees currently means that employees can be rostered over those peak periods with some time before and after the peak to restock and reorganise the shifts.*

PN7108

?---Yes.

PN7109

You would say that obviously it is adequate in the sense I proposed to you before for your current needs, the three-hour engagement?---To say it's adequate is probably different to "could it be improved", so it could be - is it operational okay

- - -

PN7110

SENIOR DEPUTY PRESIDENT HAMBERGER: But would you prefer to have it shorter?---Probably. I haven't considered that before today, so I don't have a strong opinion of it, but could it be better for some restaurants? Yes.

PN7111

MR BLISS: Has your view changed between - and I'll take you to your earlier statement dated 12 October 2015, looking at paragraph 18 of that statement, you have said:

PN7112

*If a restaurant was able to vary the current three-hour minimum engagement they may be able to roster more employees over the restaurant's busiest periods.*

PN7113

Has your view changed between writing that on 12 October versus what you said in paragraph 38 when you produced this document regarding the three-hour engagement, have you changed your view?---No, I'd say what it says there in paragraph 18 is similar to what I said then. I haven't necessarily thought about a particular time, but it could be - if restaurants didn't have that minimum three hours it could change the way that they roster.

PN7114

In your statement - you are obviously a restaurant manager at the Thornleigh restaurant?---For some time, yes.

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS

PN7115

You would consider that one of the busiest restaurants in the country?---Yes, that's correct.

PN7116

And that restaurant is located just at the south end of the M1 freeway, isn't it?---That's correct.

PN7117

You have also said in your statement you have 943 McDonalds restaurants of which 165 were what I would call McOpCo, which are company-owned stores, is that correct?---At that time, at the time of writing, that's correct.

PN7118

And 778 which are franchisee-operated restaurants?---That's correct.

PN7119

You have furthermore said in your statement that you have somewhere in the vicinity of 98,000 employees across the country who are working in restaurants?---At the time of writing, that's correct.

PN7120

And you have used the term that they are employed directly or indirectly. What do you mean by "indirectly"?---So, "indirectly", where I've used that is if they are employed by a franchisee, so they're working for McDonalds but they're actually employed by the franchisee.

PN7121

So you're not talking about a labour hire situation in that instance?---No.

PN7122

You have put, therefore, at your statement, you've got an average of around about 104 employees per restaurant?---At that time, yes.

PN7123

And it would be correct to say that approximately 70 to 80 employees per restaurant would be casuals?---In here I don't look at particular restaurants and which ones, but if we were to look at the numbers I'd need to work out exactly what that was.

PN7124

But you would consider - - -?---I'd say what's probably best to look at that is in paragraph 35 and 36, we look at how many casuals there are versus full time and part time.

PN7125

DEPUTY PRESIDENT KOVACIC: Is this your first witness statement or second witness statement?---First one, sorry.

PN7126

MR BLISS: So, paragraph 31 says you have - - -?---Sorry, 35 and 36.

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS

PN7127

I take you to paragraph 31 first"

PN7128

*McDonalds employ directly the following employees: 19,358 employees at level 2.*

PN7129

That is full-time/part-time and casual?---Yes.

PN7130

And the following figure is at level 2, 71,749 which is full-time/part-time and casual for the franchisees?---Yes.

PN7131

And the breakdown at paragraph 35 has obviously 15,953 of that 19,000 workers in McDonalds are casuals?---No, because that's got all of the level 2, level 3 and level 4 are put together down there, so I'd need to look at that particularly for you.

PN7132

And at paragraph 36 there's just shy of 60,000 casuals working in the franchisee business. It would be correct to say that we're talking around about 80 per cent of the head count in your business would be casually employed?---It would be an approximation from that, I'd need to work it out.

PN7133

At paragraph 11 of your first statement you have listed some 14 restaurants in food courts and their trading hour?---Yes.

PN7134

Earlier in the statement you said you've got 125 food court restaurants in the business at the time the statement was made, is that correct?---Yes, there was 125 food courts and then plus some in-store restaurants as well.

PN7135

Would it be correct to say - these 14, can you explain the reasons why you selected these 14?---Yes, we just asked our finance team to pick two to three from each state, so there's a couple from New South Wales, a couple from Victoria et cetera.

PN7136

You wouldn't say it is necessarily representative sample of 125, this is a random selection?---I would say that it's fairly representative.

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS

PN7137

These trading hours, obviously a number of them you have identified in your statement, obviously close, I would describe it, earlier in the day and one of the things that your statement complains or comments on is that for stores which close earlier in the day there's not sufficient time at the end of the shift for young casual workers coming from school to do a full three-hour shift, is that

correct?---It can be tricky to roster a three-hour shift now and if it was longer it would be even harder.

PN7138

Would you accept that obviously that there are other duties or things to be done after a store ceases trading?---Yes, there can be, I suppose, closing tasks that need to be completed but normally it wouldn't necessarily need to be completed by everyone on a shift, there might be 10 people that are there until it closes and then there might be only one or two that need to stay afterwards.

PN7139

One or two employees?---It would depend on a restaurant and the size of the restaurant but it would not necessarily need to be all of them.

PN7140

From your direct experience at the Thornleigh restaurant, to close a store of that size when the - was that a 24/7?---That's a 24/7, that's correct.

PN7141

So, another store of similar size which might trade, how long would it take to close the store and how many employees would you require?---So, obviously food court restaurants are actually - they don't have things like a McCafé or a drive-through, so they're actually a lot smaller, so it's actually a lot quicker and faster to do most of that, so typically a restaurant would have a manager and then a person in each area, say, so to the front area and then for the kitchen area completing close tasks and that might be half an hour for all of them or it might be up to an hour.

PN7142

There would be some duties, particularly some elements where standard operating procedures might suggest that it needs 45 to 60 minutes to allow things to cool down?---Yes. So, it would depend on - some of the things, yes, so I'd say up to an hour most of the time it would be and the manager would not leave for up to an hour afterwards.

PN7143

So, managers would schedule in up to an hour or an hour and a half for a full closedown procedure?---I don't know of anything that does a full hour and a half.

PN7144

With your me-time system which you have spoken of in some detail in your statement, I would just like to clarify an issue with paragraph 12 of your statement where you say:

PN7145

*As at 2 October 2015 McDonalds food court and in-store restaurants employ approximately 12,808 employees of which 9,516 are casuals.*

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS

PN7146

That seems to be different to the figure you quote in paragraph 28 where you have a total staff of 98,911. Is it possible just for clarity so that we're dealing with the same figures here that you're dealing just with food court and not in-store restaurants there?---No, so the date is different that that information is - so in paragraph 12 that information is from 2 October because it was pooled later and then when you look at paragraph 28 you're looking at a number from 19 May.

PN7147

But your business would have gone from 98,000 workers on 10 May to just 12,000 workers on 2 October?---Yes, but in paragraph 12 it is just referring to those food court and in-store restaurants that we talked about earlier, in paragraph 7 where it identifies that there's 207 of those restaurants.

PN7148

VICE PRESIDENT HATCHER: So, in paragraph 6 it says "definitions of sub-categories" and I understood paragraph 12 to deal with two particular sub-categories, not all the restaurants.

PN7149

MR BLISS: Can I take you to paragraph 45 of your first statement?---Yes.

PN7150

Where you speak about the response for student policy?---Yes.

PN7151

It is McDonalds' position that the corporate stores that's a binding policy which applies to everyone?---Sorry, any legislative - most states have other legislative things that come over the top of our responsible student policy and they obviously come first before that, so most of the states actually have something over and above that. In states where there isn't further legislation then that is our restaurants must go by that.

PN7152

Can I just stick with the policy rather than the legislation for a moment?---Yes.

PN7153

The responsible student policy, as far as McOpCo or corporate stores are concerned, that's a binding policy which you obviously require all managers to abide by, is that correct?---Yes.

PN7154

The policy itself for franchisees, that's a recommended policy not a binding policy, is that correct?---No, it's still something that we check that they adhere to.

PN7155

If they breach it are there consequences?---Yes, it's part of a people review that we do on all of our restaurants.

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS

PN7156

What consequences would there be for a franchisee who does not follow that policy?---It would depend on what the breach was but, yes, there would be consequences.

PN7157

With respect to legislation, you do understand that obviously Queensland, as you have said in your later statement, obviously has provisions but New South Wales, do you have an understanding of the legislative requirements for young workers in New South Wales?---Yes.

PN7158

What are those?---So, there aren't any particular requirements in New South Wales around times that young people work.

PN7159

In the absence of a legislative régime similar to Queensland and New South Wales, the policy therefore would be the only document which binds the operator, is that correct?---By times that a young person can work, yes.

PN7160

Can I take you to your "my restaurant" system. Would it be correct to say that this is an automatic rostering system which the business has put into place for 850 out of the 930-odd restaurants you have in place?---It's not automatic, so it's a computer system, but it's still a manual process for a manager to complete the roster.

PN7161

What happens for each hour of the day there's an availability which employees have given an indication of, is that correct?---Yes.

PN7162

And when the manager sits down to obviously organise a roster they will see who is available for particular times and then select the employee who is available at those times, is that correct?---That's correct.

PN7163

And there is no difference between casual and part-time employees in that regard?---No.

PN7164

VICE PRESIDENT HATCHER: Ms Limbrey, do various type of restaurants have a core number of staff if they have to have to stay open?---Yes, there would definitely be like a minimum number of employees that they have to have to operate regularly.

PN7165

Just, for example, your standard drive-through restaurant stand alone with a drive-through, how many employees might that require at a minimum?---Do you mean like at one particular time?

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS

PN7166

Yes, say it requires at the quietest time of the day, how many people do you need in that sort of restaurant to keep the place going?---At the quietest time of the day is normally overnight time, so they would probably have five or six people.

PN7167

Six?---Including a manager, probably at one of the restaurants that hasn't a café and drive-through.

PN7168

Then in you compare it to the busiest time of day, how much do you ramp up to?---At your busiest restaurants you would get to 45/50 people all at once.

PN7169

Just for daytime, for example, how does, say, a non - leaving aside the night time period, how does a non-peak period compare to a peak period? So, for example, mid-afternoon compared to lunchtime?---Yes, quite different. You would end up - you still need people to operate all of the areas of the restaurant but it's at a much smaller scale, so if you're a restaurant that had up to that many people at the lunchtime period you would more than halve it for the afternoon, maybe a third or something like that.

PN7170

MR BLISS: Ms Limbrey, there's a substantial part of your first statement from around about paragraph 70 through to paragraph 100 or so, which is devoted to some reports you have generated which determine, obviously - look at percentage of workers who are available weekdays broken down by age and on weekends?---Yes.

PN7171

I would like to take you to the methodology you have adopted at paragraph 71(b) of your first statement where you say:

PN7172

*To derive the weekday availability you divide the result for each hour by five to achieve an average percentage.*

PN7173

?---Yes.

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS

PN7174

Can I take you to the example of a person who may not have made themselves available to work on Monday to Friday and as part of your evidence I put it to you that you have made comments about young workers who have sporting commitments and study commitments and other commitments in the afternoon who may not make themselves available every day of the week. Let's take an employee, for instance, who might be available only three out of the five days. I put it to you that in that circumstance adopting a methodology where you divide it by five actually artificially reduces the number of hours they say they are available?---I don't - can you give me an example how that might happen?

PN7175

Okay. Let's say we have a worker who is available to work three four-hour shifts on a Monday, a Tuesday and a Wednesday, they have other commitments on a Thursday and Friday?---Yes.

PN7176

So, they make themselves available for 12 hours effectively from Monday to Friday and, using your methodology, you will divide that by five which says on average they're only available 2.4 hours per shift?--- Yes.

PN7177

Do you accept then that dividing by five rather than the number of days they are actually available artificially reduces the number of average hours they are available per shift?---I would say that if you were to look at each hour that we're looking at a five-day period and they're only available for three of them, so I think it's accurate of what they are available for. I would say that in your scenario it's probably better represented by when we look at the average number of hours that they're available for a particular day.

PN7178

I'll take you then to paragraph 103 where you provide that information to the Commission and you say, for instance, a 14 year old casual is available on average 5.17 hours per day on a weekday?---Yes.

PN7179

And in your part time, four hours per day on a weekday?---Yes.

PN7180

That was derived using that methodology which you spoke about there at paragraph 71(b)?---So, that's different. So, in that methodology of 71, that's where we're looking at the previous paragraphs by hour by hour by hour. In 103 what we're looking at is of all the people that were available to work, of all of the 14 year old casual employees that were available to work on a weekday that's the average number of hours that they were available for, so we're not including the ones that aren't available - done have any hours of availability on that day.

PN7181

So you haven't divided by five for those figures?---We have, but that's a separate - that's a different calculation, I suppose. What this is looking at is of all of the 14 year olds that are casual and available on each week date, so discluding the ones that aren't available on a particular day, what's their average number of hours that they're available.

PN7182

I put it to you that if you adopt the methodology where you divide by five, irrespective of how many days a person has been made available, you will come out with an artificially lower figure than actually what the person is available to work.

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS

PN7183



VICE PRESIDENT HATCHER: Mr Bliss, which calculation are you talking about here?

PN7184

MR BLISS: I'm talking about paragraph 103, Your Honour.

PN7185

VICE PRESIDENT HATCHER: I just thought the witness was saying that that methodology isn't used for this calculation.

PN7186

MR BLISS: The proposition which I put, Your Honour, is does this methodology still divide by five, and I think the witness's answer was "Yes".

PN7187

THE WITNESS: But only - in a different - so that's not the same. So, in this example if there was a 14 year old casual employee that was only available to work on Mondays for five hours and then they weren't available any of the other weekdays then those times that they're not available at all would not be included in this. It is only where they have availability to work at all what they average - -  
-

PN7188

VICE PRESIDENT HATCHER: (Indistinct) not last year. So when you have got, for example, 14 year olds 5.17 hours for weekdays, that's 5.17 hours across the whole of Monday to Friday, not for each day?---For each day.

PN7189

So they are available five hours each day?---Yes, of the people that are available that's their average.

PN7190

MR BLISS: So in that instance there wasn't a division by five at all, that's just - -  
-?---Well, there was over the - because we've included Monday to Friday as weekday, but only after you've discluded the people that aren't available on those days at all.

PN7191

VICE PRESIDENT HATCHER: In essence, is the methodology you get an average for Monday then Tuesday, Wednesday, Thursday, Friday and then you average that out, those averages?---And then divide it by five, yes.

PN7192

MR BLISS: It is not done on a global basis, it is done daily?---Yes.

PN7193

At paragraph 111 of your statement you say - - -

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS

PN7194

VICE PRESIDENT HATCHER: I doubt very much, Mr Bliss, whether you have cleared that up at all. Can you just take us step by step through it?---Yes.

PN7195

Just say, for example, using the 5.17 figure for 14 year olds, how did you calculate that figure?---So, on each day - so, look at Monday - of all the 14 year old casuals which I think there's only like - hardly any, on Monday of the ones that are available what's the average hours that they have available to work, so discluding anyone that has zero against their name; then on Tuesday all the ones that are available to work which have - what's their average hours of availability on that day - - -

PN7196

DEPUTY PRESIDENT HAMBERGER: So what would that mean? What hours are they putting in there to get an average of 5.17? Are they putting in five to 10 - -?---There will be some that might only be three hours; there might be some that are available all the way up till midnight or something like that, so that's why - - -

PN7197

VICE PRESIDENT HATCHER: Can you get 14 year olds that are available for that many hours?---Pardon?

PN7198

Can you get 14 year olds that are available for that many hours?---Well, if they're available at all then they put themselves in a position where they're available - so if they start work at four o'clock and finish at nine o'clock it would be quite a regular occurrence - or 10 o'clock.

PN7199

So, is this the number of hours they are available to work or the span of hours in which they can work?---So when an employee puts down their availability they say "I will be either available from this to work - from this time until this time" so that's what's included in that. It's not particularly how many hours that they - - -

PN7200

DEPUTY PRESIDENT BULLL: But the 5.17 is not the average hours works by a 14 year old on one day?---No, it's not the average worked at all, it's when they're available.

PN7201

VICE PRESIDENT HATCHER: So, you get an average among the 14 year olds for each day, Monday to Friday?---Yes.

PN7202

Add them all up for the five days?---Yes.

PN7203

And then you divide it by five to get a daily average?---Yes.

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS

PN7204

MR BLISS: Can I take you to paragraph 111 of your statement where you make the statement "In my view, casual crew members can be classified as non-career employees". That wouldn't be exclusively so, would it?---No, I believe in paragraph 115 I clarify that further and say that there will be some scenarios where someone who was a casual employee was possibly staying for business for a long time.

PN7205

And there would be plenty of people who, for instance, may have plans for another career but for whatever reason, even if because their studies fall over or other opportunities don't arise but continue to work for the business even though in their earlier years they didn't propose to be a long-term employee?---Yes, definitely.

PN7206

At 116 you make the statement "McDonalds is primarily a casualised workforce despite recent efforts to increase the level of part-time employment". Can you explain what steps the business has taken to increase part-time employment?---Yes, sure. So, what I direct to you of that is in my second statement at paragraph 17. I look at what steps our restaurants in the business has been working through to increase part-time employment and some of the things that they'll look at if a person is available for enough hours to be worked if they're a high performer, if they're someone that wants a career with the business who wants to go further, so there's a number of different things that they look at.

PN7207

What if I was a competent performer who did my job, came to work, no performance issues and I worked in excess of 10 hours a week on a regular basis, why wouldn't I be considered under those criteria?---Yes, it would depend on what the restaurant's needs were. If the restaurant couldn't necessarily commit to - if they had already committed half hours in other places or to other people they might not be able to commit a specific number of hours to you.

PN7208

Let's assume for a moment I'm regularly working in excess - or, as your language - consistently working in excess of 10 hours per week but I'm not considered high performer, why shouldn't I have the right to convert or be given an opportunity to convert?---It wouldn't necessarily - you wouldn't not necessarily have the right, but it would be a discussion with the management at the restaurant.

PN7209

Is there any reason why you therefore limit your policy just to high performers and not to people who are regularly working and might wish to convert?---It's not - what I put here is not necessarily our policy per se, it's just the approach that most restaurants take. Because we do have lots of young employees there can be performance problems that we do have on a regular basis, so they want to make sure that they're converting the right people to part-time employment.

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS

PN7210

Do you ever advertise part-time jobs?

PN7211

SENIOR DEPUTY PRESIDENT HAMBERGER: For being recruited externally?---Initially when we hire people we don't advertise a particular kind of employment. Most people start as casual because they're not sure if they're going to like it or hang around.

PN7212

I suppose I'm thinking about - I can understand your point about young people who are school students or even university students who want to work casual and want the flexibility, but of course there are also employees who may be older - or you do have some - older employees, potential employees who maybe older, maybe towards retirement in the later part of their working life who might quite like a job at McDonalds who would probably be happy for probably more regular work?---Yes.

PN7213

Do you do anything to try and attract those kind of employees? I'm not talking about somebody who has been working for McDonalds for 40 years starting as a kid, I'm talking about somebody who may never have worked at McDonalds but would quite like it?---Yes, some of our restaurants definitely do do that and they'll use different methods, like they'll just put - if they're looking for something in particular often those kind of people have particularly like a host role and interacting with employees and they'll actually just get a job on Seek or something like that.

PN7214

Would they be advertised as part-timers as opposed to casuals?---If they were doing - we don't typically advertise positions because we just always accept applications from people for different restaurants so we don't particularly advertise a position unless someone actively goes and puts one on Seek and in those cases they would advertise for full time or part time if they wanted to. But it's definitely something that they would discuss at an interview with someone if someone came and had - in the scenario that you've - and they'd discuss at an interview if there was something that they thought would be beneficial for both of them.

PN7215

MR BLISS: Do you have any employees in McOpCo to your direct knowledge who started off on a part-time basis?---Yes.

PN7216

And how many employees out of every cohort of 50,000 per year would that be?---I can't put a number of that. But particularly if we ever have someone that starts in a role of - some of the specialised roles, like a maintenance person or someone that's going to work in the McCafé or someone that is going to be a manager quite quickly, then they would be the scenarios that they would be looking at doing that.

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS

PN7217

VICE PRESIDENT HATCHER: So, the part-timers, do they have fixed times when they work?---No, not under our enterprise agreement.

PN7218

They just get a fixed minimum number of hours?---Yes.

PN7219

And then their roster at various times - - -?---Within their availability. So, they would accept their availability and they would be rostered within that, yes.

PN7220

MR BLISS: And on the enterprise agreement obviously the business is entitled to change rosters with five days' notice in terms of the arrangements under that agreement, is that correct?---Rostered are posted with five days in advance in the enterprise agreement and so I suppose changes could be made within that.

PN7221

Referring to Clause 14.4, "the employer shall give at least five days' notice to an employee of their rostered hours for the week"?---Yes.

PN7222

And that is the same notice you give for changing rosters for casuals each week, isn't it?---It's the same notice that we give for their roster - they must give.

PN7223

Earlier in the proceedings Mr Ferguson obviously referred to a change in paragraph 18. For benefit of these proceedings I have prepared a sheet which actually picked up the same point but I would just like to extend on it a little bit.

PN7224

VICE PRESIDENT HATCHER: Change in paragraph 18 of what?

PN7225

MR BLISS: Paragraph 18 of Ms Limbrey's second statement, obviously switching the percentages over. I have prepared a document which I would just like to look at that in a little further depth.

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS

PN7226

For your benefit, what I've done is I've highlighted in green the material which you provided in your first statement and accepting the change which Mr Ferguson has identified and switched the figures, I put it to you that the figures which we supply are slightly different in terms of the percentages but they switch slightly. I put it to you that during the period in reporting from January 16 to January 14, McDonalds had actually reduced the number of - McOpCo has reduced the number of full-time employees it employees at level 2 by 7.2 per cent?---As I've explained further on, just underneath the table in that paragraph, the reason for that is not because there's less employees, as you can see there's also been a huge reduction in casual employees during that time, it's because of the sale of restaurants from McOpCo to licensee restaurants.

PN7227

Perhaps we can clarify that then, because Mr Ferguson obviously identified a switch in the percentages?---Yes.

PN7228

Is it correct to say that the reason for that switch in percentages is that the casual employee numbers are the wrong way around?---So yes, that's what we said. We didn't switch the percentages; we switched the casual employee numbers.

PN7229

VICE PRESIDENT HATCHER: Not the percentages?---Yes, so the 14,533 should be for July '14, and the 8811 should be for January '16.

PN7230

MR BLISS: Thank you. At paragraph - - -

PN7231

VICE PRESIDENT HATCHER: Just before we move on, why has a greater proportion been put to franchise?---I suppose they're just restaurants that have transferred over to licensee - they've been bought by a franchisee, sorry. So I suppose it happens from time to time both ways, so there's also probably some that we've bought back, but during this time we've sold (indistinct) them.

PN7232

So is that particular policy the reason behind it?---No, I suppose, from a strategic perspective, there's probably from our business - I'm not across it - but there was a conscious to sell particular restaurants, but nothing particularly to do with employees.

PN7233

MR BLISS: Just so I'm clear, the only figures which are the wrong way around are the active casual employees?---That's correct.

PN7234

The other figures are correct?---Yes.

PN7235

Then my proposition still is correct, that you've actually reduced the number of full-time heads in that period, is that correct?---That's due to the sale of restaurants.

PN7236

And you've increased part-time employment by 10.6 per cent during that same period?---Yes.

PN7237

At paragraph 16 you make the points of your second statement - you make the point that between 54 per cent and 57 per cent of casual employees work less than 10 hours per week?---Yes, I'm just going to it.

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS

PN7238

VICE PRESIDENT HATCHER: What paragraph was that, Mr Bliss?

PN7239

MR BLISS: Paragraph 16 of the second statement, your Honour?---So that's based off just some reporting that our payroll team pulled together for five specific weeks last year.

PN7240

If that's accurate, would you accept the proposition then that 43 to 46 per cent worked more than the 10 hours per week on a regular basis during that period?---they aren't necessarily the same casuals is what I would say, so yes, in each week, 43 to 46 per cent of casuals worked more than 10 weeks, but one person might do more than 10 hours one week and then not the next four, and vice versa.

PN7241

But the proposition which you rely upon is that if 54 to 57 per cent of the casual employees worked less than 10 hours per week, then would the proposition still then be correct that 43 to 46 per cent worked more than 10 hours per week over that period?---In a particular week, yes, but not over - they wouldn't necessarily work more than 10 hours every week.

PN7242

But that was over that five-week period, is that correct?---But not the same employees - yes, that's correct, but not the same employees would necessarily work more than 10 hours in week 1 and every other week in that. They might work 15 hours one week and then work five the next week and then nine for a couple of weeks.

PN7243

So what your proposition there is is that 54 to 57 per cent of casual employees worked less than 50 hours in that five-week period, is that more accurate?---I don't think so because they could be - no, because you'd need to look at what each employee did on each week in order to work that out.

PN7244

DEPUTY PRESIDENT KOVACIC: What you're saying is that at least - well, in terms of the five-week period, 54 per cent or 57 of casuals may have worked more than 10 hours in one of those five weeks, if not more in one of those weeks?---Yes, they could work different hours every week, but it's just during that time that percentage didn't work more than 10 hours every week, but it could be different people in each week, so I don't know over a whole period whether or not someone did work more than 10.

PN7245

COMMISSIONER ROE: So would it be correct to say that paragraph 16 is simply a re-statement of the table in paragraph 48 of your first statement?---Yes.

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS

PN7246

So paragraph 48 of your first statement looks at each week on a stand-alone basis?---Yes, that's correct.

PN7247

And you're not changing that at paragraph 16?---No.

PN7248

MR BLISS: At paragraph 29, you raise some administrative concerns about increasing part-time employment?---Yes.

PN7249

But in your first statement you talk about efforts made by the business, obviously to increase part-time employment?---Mm-hm.

PN7250

What's your position or McDonald's position on increasing permanent part-time employment? Are you for it or against it?---I suppose, as I've outlined, we're for it for the right people, so for the people that are high performers that are available for that many hours that consistently work those hours and have availabilities that will allow us to roster them those. But that's not to say that it's necessarily right for all of our employees.

PN7251

Is it safe - - -

PN7252

COMMISSIONER ROE: Sorry, could I just ask you a question about that? So in paragraph 18 of your second statement, it shows that - as corrected - it shows a probably 40 per cent reduction in casuals - about 40 per cent reduction in casual employees over that period from July 2014 to January 2016 and at the same time a 10 per cent increase in the part-time employment, so a very substantial - that's a very substantial increase in the proportion who are part-time, isn't it, in a relatively short period?---Yes, there has been a significant increase and that's why, I suppose, I've looked at them, because the base number of employees changes; that's why we've looked at it as the percentage of part-time and full-time employees. But, yes, there's been a - in there it's got about a 10 per cent increase of overall employees.

PN7253

VICE PRESIDENT HATCHER: So just to be clear, why is that seen to be a good thing by McDonald's?---Because part-time employment for us, and as I said before is, for us is to benefit, because often we have employees that don't stay with us for a very long time and aren't committed necessarily to working for us - we know that, with young people and also with a high number of casuals - we have people that will just, you know, say that they can't work for the next six weeks or over the exam period at school - you know, we won't have any employees. By having some part-time employees and full-time employees, it allows us to have a base level of employees with commitment to work for us and then we commit to hours for them.

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS



PN7254

So from the employee's perspective the guarantee of hours would improve retention?---Yes, definitely.

PN7255

SENIOR DEPUTY PRESIDENT HAMBERGER: And you don't have problems with people - I mean, this might be a difficult question but, you know, when you have these discussions with people offering them part-time work, who presumably they don't get the casual loading, they get some - - -?---All the time.

PN7256

Sorry?---Sorry, all the time. So whilst there has been an increase, a huge proportion of young employees if you were to have that discussion with them would straight away, "no way, not interested", because of that significant difference. And often we get lots of questions - if someone does change to part-time - that we often get calls from our end at a corporate level; they ask why they're getting paid less all of a sudden. It might be one of their parents or it might be the employee calling to find out why all of a sudden he used to get, you know, \$100 a week and now he's getting a lot less.

PN7257

VICE PRESIDENT HATCHER: What would be the profile of a person more likely to accept part-time employment?---Normally after they've been with us for a couple of years.

PN7258

Right?---They have decided that they'll be working for us for a little while probably, be it while they're at uni or finishing school, they've enjoyed working there, so they're happy there, except that change in pay for holidays and - - -

PN7259

SENIOR DEPUTY PRESIDENT HAMBERGER: Did you start as a casual at McDonald's?---I definitely did, yes.

PN7260

Good?---Good guess. Yes, so often after they've been there for a little bit longer and kind of see a bit of a career progression or whatever it may be.

PN7261

VICE PRESIDENT HATCHER: Do I take it that university seems probably more likely to have more available hours than a school student?---They're different hours, I suppose, from a business point of view, because a school student, obviously we know that they're not available for the majority of the day. A university student would have more flexible hours within a week, so it might be mornings or evenings or - that's quite different to the school students.

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS

PN7262

DEPUTY PRESIDENT KOVACIC: In terms of part-time employees, are they deployed, if I use that term, at particular times of the day, just going back to the question that the Vice President asked before? So outside busy times, would they

more likely be the sort of the core staffing of a store?---More likely, so more likely during your daytime periods; you're more likely to have a range of different employees who aren't at school, obviously, who work during the day, and the same thing probably of a late evening and overnight period of time - you're more likely to have part-time and full-time employees that work those shifts regularly.

PN7263

MR BLISS: Just going back to your administrative concerns, obviously - you put a proposition that obviously McDonald's has made active efforts to convert people to permanent part-time employees but they must be the right people, I think were your words, is that correct?---It's up to a restaurant to determine what that right fit is, but - - -

PN7264

We heard evidence earlier in these proceedings from Ms Linda Rackstraw in which she'd been working for McDonald's for I think a period of around about two-and-a-half years and she hadn't been given that opportunity. Is it fair to assume she was not the right sort of person, is that correct?---I'm not across the specific details of her.

PN7265

But once again, if a person is not - and in your statement's words "a high performer" but they're just a competent employee, they're not necessarily going to be given that opportunity under the current policy, is that correct?---I'd probably go back, and a high performer's one of the points there. I've put in four different points there about why they might be considered. A high performer is one of those points, so I wouldn't say - I wouldn't necessarily say they have to be.

PN7266

Is there any reason why McDonald's wouldn't have a position if I'm competent and I've been working for the business for a reasonable period of time that I should be given an opportunity to convert also?---As I said before, it needs to be - they might not have hours to commit to a particular person; they might have already committed them elsewhere. That person's availabilities might not be - we might not be able to guarantee that they can be rostered enough hours during that time.

PN7267

If I'm regularly working more than 10 hours a week as - I think I suggested before that there were questions about the figures - roughly half the workforce might be on a regular or semi-regular work basis working more than 10 hours per week - that would meet the requirements of the enterprise agreement, wouldn't it?---They could if they were working more than 10 hours a week, which is the minimum for a part-time employee, so they could, but whether or not a restaurant could necessarily commit to rostering, that is different.

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS

PN7268

Just, we're obviously at the end - administrative burden - I don't have too many more questions, but the administrative burden which you've spoken about, obviously you say at paragraph 29:

PN7269

*Part-time employment requires a significantly greater amount of administration.*

PN7270

In terms of rostering, you'd agree with the proposition that essentially the same rostering process is adopted by your restaurant managers for the part-time and the casual employees?---When allocating shifts, yes, but then they would need to go through a process of making sure that a full-time employee had exactly the right number of hours scheduled. For a part-time employee they'd need to do the same thing and make sure that that was the case. They'd also need to manage any leave requests differently.

PN7271

I'll come to the leave. Do you consider making sure the minimum hours under the part-time contract or the full-time contract is a significantly greater amount of administration, would you?---If you were to - with the numbers that we're talking about, the numbers of employees per restaurant, if you were to take that number of employees and have to go through that process for that number of employees, I would say that it could be.

PN7272

Are you familiar with the claim made by the ACTU in terms of casual conversion for the Fast Food Industry Award?---Loosely.

PN7273

You're aware then that it is not a deeming provision, and I'm happy to explain what that means. It is an opportunity for employees to elect to convert?---Yes.

PN7274

Would you agree with the proposition that not every worker in a McDonald's store is necessarily going to elect to convert to permanent part-time employment?---They wouldn't - I would agree that lots of them wouldn't want to do that, but the process of going through and offering that to them would be a burden.

PN7275

We're not talking about offering at the moment?---Yes.

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS

PN7276

We're just talking about obviously the administrative burden if you were required to do so. So if not every casual employee in a McDonald's store is going to convert, you'd agree with the proposition that a greater amount of administrative burden is certainly only going to apply to a proportion of the employees working at McDonald's?---Yes, that would be the case, but we would have no idea of how many people would necessarily elect that - - -

PN7277

You'd have statistics on how many people have got less than 12 months' service in the business, wouldn't you?---Yes.

PN7278

So you'd agree that given the nature of the clause proposed by the ACTU, you would not have to offer permanent employment to those people?---Yes (indistinct).

PN7279

Regarding at paragraph 31 the administrative burden which you speak of?---Mm-hm.

PN7280

You currently have arrangements or payroll arrangements in place which convert or trigger wage increases on people's birthdays, is that correct?---Only for our company-owned restaurants. They've got a centralised payroll system, so that would apply.

PN7281

There's arrangements in place where at a particular anniversary date you have the technology for McOpCo to automatically trigger an event within the payroll system, is that correct?---It would automatically trigger a change in their pay.

PN7282

So it would be, I propose, relatively simple to use the same technology to notify automatically through the metime system a notification to a casual employee with more than 12 months' service they have the opportunity to elect to become permanent part-time?---I suppose I'm not totally across those systems and how the technology would work, but our payroll system doesn't currently communicate to our employees. Our metime system is different to our payroll system, so that might trigger something in the payroll system but that doesn't actually communicate to an employee.

PN7283

VICE PRESIDENT HATCHER: But would the franchises use the same pay system as you?---No, they don't, so our franchisees are able to elect one of a number of payroll systems that we've allowed them to select, and they manage that themselves.

PN7284

MR BLISS: With respect to the trading hours you speak about, obviously you've indicated that not all stores are the same, you have three different types of stores. You would agree with the proposition that obviously the peaks and troughs in trade would also depend upon the location of the site, is that correct?---There is some variation, but in terms of, you know, if you look at a 24-hour period across the restaurants, we've identified - the business has identified those times as our peak periods, and have for some time.

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS

PN7285

But there'd be locations like the airport, for instance, where it would be busy at all sorts of times, not necessarily at peak trading type - at meal times, depending on when commuters or travellers are coming through, is that correct?---Yes, they can be but they're still typically - people still typically eat at breakfast, lunch and dinner, which is what our peaks are.

PN7286

And you would have shopping centre locations co-located with cinemas where there'd be different patterns of trade depending on when people come out of the cinemas?---Again there is, but we still see that those three periods across every day are the peak times.

PN7287

You would agree with me with the proposition that McDonald's in a sense is not a seasonal business because you're open 24/7 across the year; you don't close down for three months at a time or six months at a time, depending on demand?---We don't close down, but I disagree that we're not seasonal. To your point before around different restaurants being different, I would say that many of our restaurants are very seasonal.

PN7288

But you don't have a close-down period, do you?---No.

PN7289

And you don't close your stores between meals, do you?---Well lots of our restaurants close at night.

PN7290

If you open at 6.30 in the morning and you finish breakfast at 10.30, you don't shut down the site between 10.30 and 12.30 when the next peak meal time, as you might describe it, starts?---No, we don't.

PN7291

I'll just take you back finally to the draft determination, which I've provided to you before. Just looking at the words proposed by the Australian Industry Group:

PN7292

*An employer and employee may agree for an engagement less than a minimum of three hours.*

PN7293

Would you agree that under that proposition you could reach an agreement - I use that term loosely - but reach an agreement with a young worker to do a half-hour shift?---I think it would be very unlikely that they would agree to that.

PN7294

But you agree with the proposition it could be done?---I don't think it would be very fair to the restaurant either, but - - -

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS

PN7295

But you agree it could be done under this clause?---It could be done.

PN7296

You agree that in a business with an average of 78 casuals per site, based upon the number of employees you've put per number of restaurants, that under this clause I could approach one worker and if they say no I can approach another 77 casuals who may agree to this, is that correct?---It could be the case but I don't think that there would be any benefit for anyone in our business to attempt to do that, and to attempt to roster someone for such a short period of time.

PN7297

What about a two-hour minimum engagement, which I think you've gone to in your evidence somewhat? If I approached a young worker and said I have a two-hour shift and they said no, do you agree with the proposition, based on the number of casuals in your business, there's another 77 I could go and speak to within that business on average who may agree to it, is that correct?---I think that it is likely that many people would agree to do that, if they wanted to do it, so it would probably be more of a case of less going to one person at a time and more going to a number and saying, hey, this is a shift that we regularly need that's shorter than three hours, is this something that anyone's interested in, and then if people are interested in that, then you could deal with that.

PN7298

You'd agree then with my - - -

PN7299

VICE PRESIDENT HATCHER: Does that mean that if you allowed him to go down to a two-hour minimum, those who elected or who opted or who said that they were prepared to work two hours might get more work or more likely to be allocated work than those who work two or three hours?---It's hard to say, but at the moment all of our shifts are different lengths anyway, so they range anywhere from three hours up to nine-and-a-half hours, and the shifts are different lengths depending on what areas of the business people are required in at that time. So it will depend on so many different factors, on when people are available, what they can do, so what tasks they can do in the restaurant and that kind of thing. So I don't think that they'd be more likely necessarily, just based on that, to get more shifts. I think that it might mean that more people get rostered, because there's probably restaurants that would want to roster more people over that time than they do now but can't because they have to keep them for that period of time.

PN7300

COMMISSIONER ROE: But if you go to your statement where you said - I'm just trying to find the paragraph - but you talked about the two-hour peak periods and you said that what happened now was there's a bit of work beforehand, setting up for the peak period, and closing down and that, so obviously there's some people you are rostering for three hours to cover the peak period now using the three-hour minimum?---Mm-hm.

\*\*\* KRISTA THERESE LIMBREY

XXN MR BLISS

PN7301

Is it possible that if there was a two-hour minimum available, essentially you would be substituting three-hour shifts for two-hour shifts?---I think it's probably more likely, because those tasks still need to be done, right - the tasks before and after still need to be done. I think if anything it's more likely that they'd roster - just add people for just that period of time, because they actually need more people in that time but they don't roster because they have to give them three hours at the moment. So I think they'd keep those people that are doing the task before and after and keep them on their shifts, but then add additional people over the busiest times, if they were able to have choices.

PN7302

MR BLISS: So you agree with the proposition then that for those employees who said no, and given the clause doesn't give that guarantee, those people who say no to a shorter shift or a two-hour minimum shift they may miss out on work completely because they didn't agree?---I don't think it would stop them from being rostered shifts that they would already be rostered.

PN7303

You're talking about what the business might do - - -?---Yes.

PN7304

- - - versus what this clause allows?---So what's - - -?

PN7305

The clause doesn't obviously put that premise on it, does it?---Yes.

PN7306

It doesn't put a restriction on on obviously continuing to offer existing work to employees, does it?---No.

PN7307

So you then agree with the proposition that if the two-hour engagement was offered to one worker and that worker agreed to work it, another worker may miss out on the work they currently enjoy?---I don't think it - you'd need to look at a specific scenario for that. I can't agree to that, across the board.

PN7308

Just a moment, your Honour. I have no further questions, thank you, your Honour.

PN7309

VICE PRESIDENT HATCHER: Thank you. Does Mr Ferguson?

**RE-EXAMINATION BY MR FERGUSON**

**[2.53 PM]**

PN7310

MR FERGUSON: Yes. Ms Limbrey, you were asked questions about paragraph 103 of your first statement?---Yes.

\*\*\* KRISTA THERESE LIMBREY

RXN MR FERGUSON

PN7311

Could I just take you back to that? Ms Limbrey, you were asked questions about how those numbers were calculated, and the example of 5.17 for a 14-year-old was the subject of some discussion. Can I ask you, are those 5.17 hours necessarily consecutive hours of availability?---Not necessarily. Employees have the opportunity to have multiple availabilities within one day, so they would be included in that. So someone might be available - someone that has children at school or something might be available at the time that they're at school and then they might not be available in the afternoon and might be available again of an evening. They won't be rostered those shifts because they can't be under our enterprise agreement, but they could be available for more than one period of time.

PN7312

So just looking at that table more broadly, are those figures there - does that give consecutive hours and availability?---Not necessarily.

PN7313

A question was put to you about circumstances of a regularly working casual employee and why in those circumstances the business potentially can't convert the employee to permanent part-time employment?---Yes.

PN7314

You indicated it depends on the needs of the business?---Mm-hm.

PN7315

Are you able to explain what the needs of the business might be?---Yes, so there might be someone - so the needs would change depending on the restaurants, so I suppose - do you mean in terms of when they need people to work or - - -?

PN7316

Well what might be the needs of a business that could influence their ability to convert to - - -?---Yes, so it could be a particular need in terms of where they need people to work, so a particular area, so they might need people that consistently work in the café for example, so they might look at, you know, is that person able to fulfil that position, do they have that availabilities to be rostered that many hours, is it something that we can meet and that they can commit to, and then if they're suitable for part-time.

PN7317

You were asked questions about the payroll system and may not have this knowledge, but you were asked about whether the payroll system would have the capacity to notify McDonald's, if you will, when their employees reach their anniversary date, and also 12 months' service. Would the payroll system have the ability to identify whether an employee has been working on a regular, systematic basis and notify you in an automated way?---No. The payroll system - you'd have to look at each employee and go through and look at that employee's hours over that period of time to see if they work on a regular basis.

\*\*\* KRISTA THERESE LIMBREY

RXN MR FERGUSON

PN7318



So what would that entail specifically?---So you'd have to look at that employee's history for the last - someone would have to go in and look at that employee and that employee's hours of work for the last year I suppose, because if you were to look at an average it wouldn't be reflective of what they regularly did, because particularly with our employees they might be not available for a whole period of five - you know, four, five, six weeks, for exams or holidays or whatever, so if you looked at an average it's probably not reflective, so you'd have to go in and look at that person and each week.

PN7319

Would that be a difficult or an easy task?---I'm not in payroll but I'd say it would probably be not necessarily difficult but time-consuming, yes.

PN7320

You were asked questions about the length of close-downs?---Yes.

PN7321

We were just dealing with a close-down at a particular store?---Yes.

PN7322

Does the length of time actually taken to complete the close-down potentially vary from day to day?---Yes, it does. It obviously varies depending on the size of the restaurant and the different things that they have in the restaurant, but then also what tasks they have to do. There might be some days where they have additional tasks to do and some days where they don't have to do those tasks, so I think there was particular reference to some variables around grills and vats. There's some tasks that you might only have to do once a week, for example, to those pieces of equipment, so it would be shorter on the other days.

PN7323

But on a given day, is there any variance?---Yes, and typically, as I said, typically, that I know of and in my experience with restaurants, there's only a couple of people would be there after close, so somewhere between 30 minutes and an hour.

PN7324

Are all employees able to perform the close?---No, so particularly with the close tasks, lots of them are tasks that you can't do when there's customers and other employees running around, so there's things that are probably more skilled than other tasks. There'll be things like cleaning hot vats and that kind of thing which require sometimes a particular employee.

PN7325

You were asked questions about whether you or McDonald's were for or against part-time employment. Would the company's ability to offer part-time employment to an individual be solely based on that individual's suitability or would there be other factors?---Whether or not those hours were required or they could be rostered would also be a factor.

\*\*\* KRISTA THERESE LIMBREY

RXN MR FERGUSON

PN7326

Would there be any factors independent of the individual which might - - -

PN7327

MR FLEMING: I object. It's a leading question, your Honour.

PN7328

VICE PRESIDENT HATCHER: It's a leading question? I suppose it was, yes.

PN7329

MR FERGUSON: I withdraw. There are no further questions.

PN7330

VICE PRESIDENT HATCHER: All right. Thank you for your evidence, Ms Limbrey. You're excused. You're now free to leave.

**<THE WITNESS WITHDREW**

**[3.00 PM]**

PN7331

MR FLEMING: Your Honour, the ACTU calls Narelle Jenks.

PN7332

MR FERGUSON: Your Honour, if I may, I'll leave for the day if that's all right. Ms Bhatt will be here.

PN7333

VICE PRESIDENT HATCHER: Yes.

PN7334

MR BLISS: Your Honour, I'll just clarify for the purpose of the previous evidence that I don't seek to tender that document given the change in statistics.

PN7335

VICE PRESIDENT HATCHER: Ms Jenks, can you sit up in the witness box? Ms Jenks, a court officer in Sydney will now administer the affirmation to you.

**<NARELLE MAREE JENKS, AFFIRMED**

**[3.02 PM]**

**EXAMINATION-IN-CHIEF BY MR FLEMING**

**[3.02 PM]**

PN7336

MR FLEMING: Hello, Ms Jenks, my name is James Fleming and I appear on behalf of the Australian Council of Trade Unions. Is your name and address Narelle Jenks, PO Box 5120, Busselton in Western Australia?---Yes.

PN7337

Have you made a written statement in these proceedings?---Yes.

PN7338

Does it number some 21 paragraphs and dated 15 October 2015? Can you hear me, Ms Jenks?---No.

\*\*\* NARELLE MAREE JENKS

XN MR FLEMING

PN7339

Can you hear me now, Ms Jenks?---That's better.

PN7340

Do you have a copy of that statement in front of you?---No.

PN7341

Ms Jenks, if there's a copy of the statement with the United Voice officer with you, could you please be passed that statement?---I think she's just stepped out to try and get the voice fixed, because there's no one else in here.

PN7342

VICE PRESIDENT HATCHER: Is there another witness we can go to while this is fixed up?

PN7343

MR FLEMING: It's the first of the motor trades witnesses, your Honour.

PN7344

VICE PRESIDENT HATCHER: Mr Baum-Gartner, do you have a witness we can deal with while we're waiting for this, or Mr Chesterman in Melbourne?

PN7345

MR BAUM-GARTNER: I think Mr Chesterman has them in Melbourne - the witnesses are in Melbourne.

PN7346

VICE PRESIDENT HATCHER: Mr Chesterman, do you have - is he there?

PN7347

MS N DESSMANN: Your Honour, he's just stepped out. This is Dessmann, initial N. He's just out but I'll organise for the witnesses.

PN7348

VICE PRESIDENT HATCHER: All right. Ms Jenks, we're going to postpone your evidence for a little while while we fix up the technical problems. So we're going to hear another witness in Melbourne first, and while we're doing that hopefully you'll get a copy of your statement and we'll have fixed up the sound problems. Hopefully you heard that?---Thank you.

<THE WITNESS WITHDREW [3.05 PM]

<MARIA MEILAK, SWORN [3.06 PM]

EXAMINATION-IN-CHIEF BY MR CHESTERMAN [3.06 PM]

PN7349

MR CHESTERMAN: Ms Meilak, for the benefit of transcript, can you repeat your name, address and occupation, thanks?---Yes, my name is Maria Meilak and I reside at 146 Mason Street, Newport Victoria 3015, and I'm the office manager for Melita Auto Electrical Services Pty Ltd.

\*\*\* MARIA MEILAK

XN MR CHESTERMAN

PN7350

Thank you very much. For the purposes of these proceedings you have prepared an affidavit?---Yes.

PN7351

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

PN7352

If you could look at the affidavit, and it's dated 22 February 2016 and it has paragraph numbers 1 to 18, correct?---Correct, yes.

PN7353

Do you wish to make any changes to this affidavit?---No, I don't.

PN7354

Thanks very much, and would you say the copy is a true and accurate record of the affidavit you'd signed for these proceedings to the best of your knowledge?---Yes.

PN7355

Thank you. Thank you, your Honour, I'd like to tender a copy of the affidavit.

PN7356

VICE PRESIDENT HATCHER: No objections to the - - -

PN7357

MR CHESTERMAN: The original.

PN7358

MS MOUSSA: Your Honour, we did file objections in a written form. (Indistinct) number of paragraphs, but we're happy for them to be dealt with when we (indistinct).

PN7359

VICE PRESIDENT HATCHER: Thank you. I note the objections to the affidavit. The affidavit will be admitted subject to any submissions about weight to be given to it. So the affidavit of Maria Meilak, I think it's sworn on 22 February 2016, will be marked exhibit 83.

**EXHIBIT #83 AFFIDAVIT OF MARIA MEILAK DATED 22/02/2016**

PN7360

MR CHESTERMAN: Thank you, your Honour. The witness is available for cross-examination.

PN7361

VICE PRESIDENT HATCHER: Thank you, Mr Chesterman. Mr Fagir?

**CROSS-EXAMINATION BY MR FAGIR**

**[3.08 PM]**

\*\*\* MARIA MEILAK

XXN MR FAGIR

PN7362

MR FAGIR: Ms Meilak, can you see and hear me okay?---Sorry?

PN7363

Can you see and hear me okay?---I cannot see you but I can hear you.

PN7364

That's something. You don't really need to see me I don't think. Can I just tell you, I appear for the Australian Council of Trade Unions and I just have a small number of questions for you about your statement?---Okay.

PN7365

I'm just interested - I'm sorry, did I interrupt you?---No, please continue.

PN7366

I just want to know a bit more about the junior employees that you describe in your statement. Can you first tell me how many of these juniors do you have employed at any one time?---We have currently one at the moment.

PN7367

How many days a week does he or she work?---Well, sorry, he was employed as a casual but now he became a full-time apprentice.

PN7368

So you don't have any school kids or juniors working now but you used to have one but he's now an apprentice?---That's correct.

PN7369

When did he become an apprentice?---He became an apprentice on 20 November 2014.

PN7370

Before 20 November 2014 how long had he been working for you?---He worked for us as a casual for about a year-and-a-half.

PN7371

Was he studying at that stage?---Yes. He came to us as work experience year 10 and he was about 16 years of age, so he worked with us for a week as work experience and then from there we put him on as a casual, after school, about 3.45 till about 5-5.30 twice a week, because our business is open from 8 am to 5-5.30 from Monday to Friday, and he remained a casual for about a year-and-a-half and then we saw the potential and his enthusiasm and his passion in the industry, so we offered him an apprenticeship when he obviously commenced year 12. So through year 11 he was working for us as a casual, and then at the commencement at year 12 we offered him the apprenticeship, which he took on.

PN7372

You said he was 16 when he started and he must have been about 17 or 18 when he became an apprentice, is that right?---That's correct.

\*\*\* MARIA MEILAK

XXN MR FAGIR

PN7373

And he worked a little bit less than two hours a day twice a week, maybe between three-and-a-half and four hours a week?---That's correct.

PN7374

I think the current award rate for a 16 year old is \$10.50 going up to about \$13.50 for an 18 year old. Was that the sort of general area of the hourly rate that you paid this fellow?---That's correct.

PN7375

So it was, let's say for the sake of argument, \$13.50 times four - four hours?---Yes.

PN7376

About \$54 a week, was it?---Yes. Well when he was working as a casual I think it was about \$10 or \$9 an hour.

PN7377

So it might have been something up to \$50 a week that you paid this fellow?---Yes, even less.

PN7378

If you had to pay him four hours per start, you'd end up paying him maybe \$100 a week?---Yes.

PN7379

It's that increase in \$50-odd that you say at paragraph 12 would be crippling to your business?---It's the opportunity that these young students will have to enter the workforce and experience what an auto electrician business does, that's what's crippling to our business.

PN7380

Sorry, you're going to have to explain that for me. How does that cripple your business?---Are you asking about the money or the opportunity?

PN7381

Well, you tell me?---Well, over a period of time the money would affect our business, but what will affect our business more is not having someone there that we can train to become a future auto electrician for the industry.

PN7382

VICE PRESIDENT HATCHER: So just to be clear, Ms Meilak, if it went up to four hours, would it cripple your business because it would cost you more, or would it cripple your business because you wouldn't engage the person at all?---It would cripple my business because it will – it will cost me more.

PN7383

So you would still engage them but the additional cost would be the problem?---Yes.

\*\*\* MARIA MEILAK

XXN MR FAGIR

PN7384

COMMISSIONER ROE: You currently employ two apprentices, you say, in clause 6 of your statement; is that correct?---Point 6.

PN7385

Yes. You currently employ two junior auto electrical apprentices?---Correct.

PN7386

Yes. And presumably you pay those apprentices apprentice rates of pay, that is, the discounted rate of pay for apprentices; is that right?---Yes.

PN7387

So you continue to believe that it's viable for your business to employ apprentices?---Yes, it is.

PN7388

VICE PRESIDENT HATCHER: Is there a minimum engagement period you have to pay to apprentices?---Sorry, can you repeat that again?

PN7389

Yes. Is there a minimum number of daily hours that you have to pay to your apprentices?---Well, if they work a 38 hour week plus any overtime that they do.

PN7390

Right. Thank you. Mr Fagir?

PN7391

MR FAGIR: Ma'am, I just want to suggest to you that apart from crippling your business this would be about the most minor imposition imaginable, this four hour minimum; do you accept that?---No, I don't, because it's the opportunity that these young children won't have because in our industry we have mechanics that we service and I have spoken to them with regards to this proposal, and they won't put on casuals to work in their business because they believe that if a person works two hours they're to be paid for two hours. If they work 10 hours then they are to be paid for 10 hours.

PN7392

They're so committed to that principle that they'll allow their business to be crippled rather than pay an extra 50 bucks a week?---Well, it's fair exchange for the work that the apprentices are doing. And with apprentices the employer, he has to spend a lot of time guiding them and teaching them, and showing them how a business operates, because when young people leave school, and go into the workforce, they don't quite have life skills. Work teaches them life skills.

PN7393

Now, I won't keep you much longer. Can you just tell me what was this young fellow doing for you in the afternoons? I assume it's the - - -?---The young boy, who's a second year apprentice?

\*\*\* MARIA MEILAK

XXN MR FAGIR

PN7394

Yes?---Is that what you're asking?

PN7395

Yes. What was he doing before he became an apprentice?---He was at school.

PN7396

What was he doing for you?---He was working as a casual after school.

PN7397

No, I'm sorry, I'm not being very clear. What sort of work was he doing for you after school?---Okay. In the workshop, he was assisting the auto electricians. He would sweep the floor. He was taught how to strip, buff and clean alternators and starter motors. He was taught how to change the batteries on the cars. He was taught by the auto electrician how to rewire trailers, and he assisted the auto electricians with their work, for example, to go and get a certain tool, or just to hold things, and to help with the fixing of the cars.

PN7398

Okay. Thank you, Ms Meilak. They're my questions.

PN7399

VICE PRESIDENT HATCHER: Ms Meilak, can you just go to paragraph 13 of your statement?---Yes.

PN7400

So at 13 you give three examples of the young people your business has employed. Do you see that?---Yes.

PN7401

And number (b) is the one we've just been discussing, I see. The one who is now an apprentice?---Yes.

PN7402

So the first one, what work was he or she doing? You say it's in the office. What were they doing?---She was just doing some data entry for me in the office.

PN7403

And how many hours per day, when they worked, did the person do that for?---She would come in after school, so she'd probably arrive quarter to 4 – 4 o'clock. She'd stay about an hour, hour 15 minutes, and she would data enter.

PN7404

All right. And what about the third one? What sort of work, and how long a day?---Okay. This young man, he worked Monday and Friday after school, say, about quarter to 4 till about 5 to 5.30.

PN7405

And was he in the workshop?---Yes, he was.

\*\*\* MARIA MEILAK

XXN MR FAGIR

PN7406



And doing the same sort of thing as you described for the other fellow?---That's correct.

PN7407

All right. Thank you. Any questions arising out of that?

PN7408

MR FAGIR: No.

PN7409

VICE PRESIDENT HATCHER: Mr Chesterman, do you want to re-examine the witness?

PN7410

MR CHESTERMAN: No, your Honour. I have no questions in re-examination. Thank you.

PN7411

DEPUTY PRESIDENT BULL: Ms Meilak, in response to an earlier question you said that – I think you said at least that if the hours of minimum engagement went up to four you would still employ these persons; is that right?---If the minimum hours went up to four I would still employ them.

PN7412

I think you gave someone, the Vice President, whom you can't see, I don't think, that you would still employ these school students?---I would employ them based on – I would pay them based on the hours that they work, because our organisation closes at 5 – 5.30 of a evening, so there's only really two hours of window of opportunity for them to gain some experience and some knowledge about how a business runs.

PN7413

All right. So when you answered earlier that there would be an opportunity loss, what opportunity are you talking about, if they're still going to be employed?---Opportunity lost?

PN7414

SENIOR DEPUTY PRESIDENT HAMBERGER: Sorry, can I just clarify, Ms Meilak. You're saying if you can only employ them for two hours after school, you know between the - - -?---Yes.

PN7415

- - -time school finishes and they get to your premises and the business closes down, it's only a couple of hours or so?---Yes.

PN7416

And the award said you had to pay them for four, can you just clarify, would you not then engage them? If you had to pay them for four hours yet you could only actually – they could only do work for two hours, would you employ them or not?---No, I wouldn't.

\*\*\* MARIA MEILAK

XXN MR FAGIR

PN7417

No, okay?---Because the business closes at 5.30.

PN7418

Yes, okay?---Five – 5.30.

PN7419

DEPUTY PRESIDENT BULL: On that basis then, Ms Meilak, where would you get your apprentices from?---Well, the most successful way of us getting our apprentices was them coming through as casuals working, you know, the hours that they could work, and then when they were ready to take on the apprenticeship then I would offer them the apprenticeship, so those two hours, even though they're only a small amount of time, would give them the opportunity to see if they would like to get into the industry and have a – and to experience what it's like to work in the workplace, but also for us, as employers, we can see if that person has the passion to want to work in our industry, because we're looking for the engagement of, you know, thinking skills, and problem solving skills, and if we can see that in the young person, well, then we'll invest in helping them to achieve and grow and teach them.

PN7420

Yes, Ms Meilak, that's very admirable but what I'm asking is, if you didn't employ these people because you had to pay them four hours and there's only two hours' work, would you then employ apprentice auto electricians from somewhere else, or simply not employ them?---I would still employ apprentices. I would have to; I have no choice, because we need to sustain our industry.

PN7421

Thank you.

PN7422

VICE PRESIDENT HATCHER: Are there any questions arising out of that?

**RE-EXAMINATION BY MR CHESTERMAN**

**[3.25 PM]**

PN7423

MR CHESTERMAN: Yes, thank you, your Honour. I just have one question. So if you can't employ these people because your business is closed at 5 – 5.30, where would you be able to go to find other apprentices? In other words, if you can't employ these people coming out of school, where else would you look for apprentices?---I actually don't know where else to look.

PN7424

Can I ask you why you say that; you don't know where else to look?---No, I don't know where else to look.

\*\*\* MARIA MEILAK

RXN MR CHESTERMAN

PN7425

But why is that?---I don't know where else to look? Because it's just – it's very difficult to find conscientious workers, and people that have that passion to work in our industry.

PN7426

Could I ask you with auto electrical tradespeople?---Tradesmen

PN7427

Yes, tradesmen. What's the situation these days with the availability of those tradespeople?---There is an incredible shortage of auto electricians in our industry. At one point I was advertising for a tradesman for over two years in our local newspaper, and not one person replied. A couple of years ago – actually 14 months ago I had a – I advertised in Seek for an auto electrician and we got one applicant, so we are struggling to find fully qualified auto electricians in our industry, and that's why I've had to take it back to the grass roots and go back to the schools and move through having young men and women as casuals just to give them the opportunity to see what an auto electrician has available to teach them and to help them. And I've had to totally strip it right back and take it back to that level. Because I've got no response to good quality, dedicated, passionate auto electricians to come and work for us.

PN7428

Thank you very much, Ms Meilak.

PN7429

VICE PRESIDENT HATCHER: All right. Thank you.

PN7430

MR CHESTERMAN: I have no more questions.

PN7431

VICE PRESIDENT HATCHER: Thank you, Mr Chesterman. Thank you for your evidence, Ms Meilak. You're excused and you're now free to go?---Thank you.

**<THE WITNESS WITHDREW**

**[3.28 PM]**

PN7432

VICE PRESIDENT HATCHER: All right. Now, are we able to go back to Ms Jenks?

PN7433

MR FLEMING: I believe we are, your Honour

PN7434

VICE PRESIDENT HATCHER: She's not there.

**<NARELLE MAREE JENKS, RECALLED ON FORMER  
AFFIRMATION**

**[3.29 PM]**

**EXAMINATION-IN-CHIEF BY MR FLEMING**

**[3.29 PM]**

\*\*\* NARELLE MAREE JENKS

XN MR FLEMING

PN7435

VICE PRESIDENT HATCHER: All right. Ms Jenks, you remain on your previous oath or affirmation. Do you have your statement with you, now?---I do.

PN7436

All right. Thank you. And can you hear us clearly now?---Yes.

PN7437

All right. Mr Fleming?

PN7438

MR FLEMING: Thank you. So, could I just confirm that statement you have in front of you is three pages long, 21 paragraphs and dated 15 October 2015?---Yes.

PN7439

Thank you. And I understand you have a correction to make to paragraph 11?---Yes.

PN7440

What is that correction? What is the correction you wish to make to paragraph 11?---I started as a casual.

PN7441

So paragraph 11, could you just –

PN7442

*While I was employed at Bluebird –*

PN7443

Can you tell me which words need to be changed?

PN7444

VICE PRESIDENT HATCHER: So should it say – I'm sorry, go on, Ms Jenks.

PN7445

MR FLEMING: Can you hear me, Ms Jenks?---Yes.

PN7446

Yes. So which words need to be changed in that paragraph?---It should say that I started as a casual.

PN7447

So just confirming you wish to insert a new sentence at the beginning of that paragraph:

PN7448

*I started as a casual.*

PN7449

?---Yes.

\*\*\* NARELLE MAREE JENKS

XN MR FLEMING

PN7450

Thank you. Are there any other changes you wish to make to your statement?---No.

PN7451

And where are you working now, Ms Jenks?---Pardon?

PN7452

Where are you working now?---I work at the Education Department.

PN7453

And what is your role and status?---As education support.

PN7454

And is that on a - - -?---And I'm casual.

PN7455

Okay. And what hours of work are you working now?---So when I work I work a whole day when required.

PN7456

In your statement you state your previous hours of work. What are your ordinary hours of work now, typically?---So I work between two and four days a week.

PN7457

Thank you. I seek to tender the statement?---On average.

PN7458

VICE PRESIDENT HATCHER: All right. The statement of Narelle Jenks dated 15 October 2015 will be marked exhibit 84.

**EXHIBIT #84 WITNESS STATEMENT OF NARELLE JENKS  
DATED 15/10/2015**

PN7459

MR FLEMING: I apologise, your Honour, I forgot to ask the witness to attest to the truth of the statement. Ms Jenks, having made those corrections that you told me about, do you attest that the statement is true and correct to the best of your knowledge?---Yes, I do.

PN7460

Thank you. That's the examination-in-chief, your Honour.

PN7461

VICE PRESIDENT HATCHER: Thank you. Mr Ward?

**CROSS-EXAMINATION BY MR WARD**

**[3.32 PM]**

\*\*\* NARELLE MAREE JENKS

XXN MR WARD

PN7462

MR WARD: Ms Jenks, can you see me in Sydney? I'm waving my arm?---Yes. Yes.

PN7463

I just wanted to make sure you could see me. My name is Nigel Ward, Ms Jenks. I appear for the Australian Chamber of Commerce and Industry and some other parties. I'm going to ask you some questions. If at any stage you can't hear me just please let me know?---Okay.

PN7464

Thank you. Have you got your statement in front of you?---Yes.

PN7465

You have. Okay. You say you've worked in childcare for nine and-a-half years. Do you see that at paragraph 5?---Yes.

PN7466

What did you do before you worked in childcare?---Retail.

PN7467

Retail. And who did you work for?---When are you – when do you mean did I - -  
-

PN7468

So you said you worked in retail?---Yes.

PN7469

Who have you worked for in retail?---Betts and Rockman's.

PN7470

And were those jobs full-time, casual or part-time jobs?---Casual and part-time.

PN7471

And what led you to want to work in the childcare industry?---I have a child.

PN7472

That's what drove you to decide to work in childcare? Sorry, we just lost you there for a minute. Can you see me now?---Okay. Yes.

PN7473

Yes, okay. When you said you had a child, do you mean that you developed a passion for childcare because you had a child, or do you mean the work and the hours suited you when you had a child?---The hours suited me more, because finding childcare on the weekend was too difficult.

PN7474

Okay. Okay. And do you have a partner, Ms Jenks?---No.

\*\*\* NARELLE MAREE JENKS

XXN MR WARD

PN7475

Okay. When did you get your diploma in children's services?---Two thousand and thirteen – 2014. One of those two.

PN7476

So you were working at Bluebird when you got that, were you?---I was.

PN7477

Okay. And your certificate IV in outside of hours school care, were you working at Bluebird when you got that?---No.

PN7478

Where were you working when you got that?---I was working at Wanslea Family Services.

PN7479

Okay. And do I take it that when you started to work at Wanslea Family Services you went to work there on a part-time basis?---Casual.

PN7480

A casual. Is there any reason why you haven't looked for full-time work?---Now or then?

PN7481

Well, let's start with then?---Then? I have a child that has post-traumatic stress disorder.

PN7482

So your caring needs prevented you from working full time?---Yes.

PN7483

Okay.

PN7484

SENIOR DEPUTY PRESIDENT HAMBERGER: Can I just ask some questions. You said at Bluebird, you were – am I right, you were working – well, you started as a casual initially. You were then working as a part-timer; that's right, isn't it?---Yes.

PN7485

Yes?---Yes, and full time on school holidays.

PN7486

And full time during the school holidays.

PN7487

But when you were working as a part-timer, did you have an agreement with your employer about your hours of work; about, you know, which days you would work; how many hours you'd work a day; and when you would start and finish work?---No.

\*\*\* NARELLE MAREE JENKS

XXN MR WARD

PN7488

You didn't. So you had no – okay, so how did you know what hours you were going to have to work?---I would get a roster on the Friday for the next week.

PN7489

Right?---And then if they needed someone they would just call me for relief.

PN7490

So in the roster you would – it would tell you what hours you were going to work, so you might be asked to work extra hours; is that right?---Yes. And I might also work less than what was on the roster.

PN7491

Not by agreement; they would just tell you that you weren't needed?---That's right.

PN7492

Okay. Thanks.

PN7493

DEPUTY PRESIDENT KOVACIC: Just, Ms Jenks, one question following up out of that, in what sort of circumstances did they tell you that they didn't need you?---If the number of children that were booked didn't turn up, or they'd overstaffed.

PN7494

Did it happen very often?---It – I guess it happened less probably for me than other people.

PN7495

And how often did it happen to you, can I ask? Once a week, once a month?---Probably once a week.

PN7496

Thank you.

PN7497

VICE PRESIDENT HATCHER: So, Ms Jenks, I'm still a bit unclear as to the basis upon which you were employed at Bluebird. You said you started off as a casual; is that right?---Yes.

PN7498

And did that change after some period, or you were always a casual at Bluebird?---No, that changed – I was casual for a short period of time and then I was put on part-time, and then for the school holidays, because I was outside school hours care, the school holidays involved full-time work.

\*\*\* NARELLE MAREE JENKS

XXN MR WARD

PN7499



So in terms of the part-time work inside school terms, did you have a minimum number of hours that you were engaged for, or was that never specified?---It just varied.

PN7500

Thank you.

PN7501

MR WARD: Ms Jenks, can I just take you back to an answer you gave me a moment ago. I asked you whether or not your employment at Wanslea was part-time, and you said it was casual. Do you remember saying that?---No. I started as a casual at Wanslea. Yes.

PN7502

And can you go to paragraph 7 of your statement?---Yes.

PN7503

See what it says there:

PN7504

*I worked part-time at Wanslea Family Services.*

PN7505

?---Yes.

PN7506

So were you a part-time or were you casual?---I started as a casual and then went to part-time and worked full-time over the school hours – over school holidays.

PN7507

Okay. Let me understand - - -

PN7508

COMMISSIONER ROE: So it was the same at Bluebird as it was at Wanslea; is that what you're saying?---That is correct.

PN7509

Okay. Thank you.

PN7510

MR WARD: So just so I understand, Ms Jenks, can I take you to paragraph 11. You say at paragraph 11 - and I apologise, you amended paragraph 11. I think you said:

PN7511

*I started as a casual. While I was employed at Bluebird I worked part-time during the school term and was only given full-time work during the school holidays.*

\*\*\* NARELLE MAREE JENKS

XXN MR WARD

PN7512

Was that the same arrangement that you had at Wanslea Family Services?---Yes.

PN7513

Okay. So you were doing, out of hours school care at Wanslea Family Services; is that right?---Yes.

PN7514

Right. And you also say, at paragraph 7:

PN7515

*And at that time I also worked at a neighborhood crèche.*

PN7516

Do you see that?---Yes.

PN7517

And what hours did you work there?---That was casual, and it was when they had programs that they needed a crèche worker.

PN7518

Okay. And, again, was that outside of school care or was that something else?---No, that's predominantly mornings, although some afternoons just parenting. It was a neighbourhood parenting centre.

PN7519

Okay. So am I right in saying this: that you had a part-time job at Wanslea Family Services and you left that part-time job for, what was originally, a casual job at Bluebird?---Wanslea is in Albany and I moved to Busselton.

PN7520

Okay. So the reason why you moved to Bluebird was you changed where you lived; is that right?---That's correct.

PN7521

Okay. And is there any reason, when you moved, that you didn't look for part-time work? Why did you accept the casual job?---Because that was the job that was available.

PN7522

So best job you could find?---Yes.

PN7523

Okay. Can I just ask you this about paragraph 12: you say Bluebird offered long daycare and out of hours. I take it that the out of hours service offered by Bluebird, was that for a local school or was that just at a long daycare centre?---Can you repeat that? You just dropped out.

PN7524

Okay. That's okay. I'm looking at paragraph 12. You say:

\*\*\* NARELLE MAREE JENKS

XXN MR WARD

PN7525

*Bluebird offered both long daycare and out of hours.*

PN7526

Was the out of hours program purely for the long daycare centre or was the out of the hours program for other children as well?---The OSHC is outside school hours care. So after school, before school, vacation care.

PN7527

So the children who came in for that service could have come from anywhere?---So they come from school. They have to be school age.

PN7528

That's right. So they came from various schools in the local area, did they?---Yes, that's right.

PN7529

Right. Okay. And in paragraph 13 you say:

PN7530

*I was regularly rostered to work short hours in out of school hours care.*

PN7531

Were those hours reflective of when the children needed looking after?---Sometimes.

PN7532

When wouldn't they have been that?---Depending on numbers I guess, because if you're – to keep the children and staff ratio.

PN7533

Can you explain what you mean by that?---So for every so many children you need one staff member, so if more children would turn up that weren't actually booked in prior to the beginning of the session then they would need an extra staff member.

PN7534

Okay. You then say, at paragraph 14:

PN7535

*At Bluebird my roster changed each week, and I was regularly rostered to work shifts of two or three hours which was not my preference.*

PN7536

Can I ask you, Ms Jenks, why didn't you leave Bluebird if it wasn't working for you?---I guess because – I don't know.

\*\*\* NARELLE MAREE JENKS

XXN MR WARD

PN7537

Right. So you didn't think about looking for another job somewhere else?---I was looking for other jobs but to fit in - and I also was doing some study at the same time.

PN7538

Okay. So let me understand this. So the Bluebird job was still the best fit for looking after your child and doing your study?---I suppose so.

PN7539

Is that a yes?---Yes.

PN7540

And Mr Fleming asked you some questions about what you're doing now, and I think you said you're working for the Education Department; is that right?---That is correct.

PN7541

And that's a government job?---Yes.

PN7542

Yes. Okay. And I think you said it was casual?---It is casual.

PN7543

So you've left a part-time job to go and work in a casual job, have you?---Yes.

PN7544

And do I take it you've gone to the casual job because that's better to balance your study and looking after your child?---That's correct.

PN7545

No further questions.

PN7546

VICE PRESIDENT HATCHER: Yes. Were there any issues surrounding – I mean, I don't want to delve into the confidentiality – were there issues surrounding the departure from the job, or was it about something else?

PN7547

MR FLEMING: I think the question to be addressed, without going in to the issues that she can't - - -

PN7548

VICE PRESIDENT HATCHER: So Mr Ward's questions didn't touch upon the issues that were the subject of confidentiality.

PN7549

MR WARD: No. No.

PN7550

MR FLEMING: Not that I'm aware.

\*\*\* NARELLE MAREE JENKS

XXN MR WARD

PN7551

MR WARD: No.

PN7552

VICE PRESIDENT HATCHER: Re-examination, Mr Fleming?

**RE-EXAMINATION BY MR FLEMING**

**[3.47 PM]**

PN7553

MR FLEMING: Just a few questions, your Honour. You were asked whether your current job that's casual fitted your life circumstances better than the permanent job you previously had. What is it about the current job that fits your life circumstances better or worse than what you had before; as a permanent job?---So now I know in advance when I'm working, and I always work a full day; a full school day.

PN7554

And why does that fit your circumstances better?---Because I can arrange life around it. The advance notice means that my child knows where I am and it's predictable.

PN7555

And is that a consequence of the status of the job; that predictability that you mentioned?---Yes.

PN7556

And your ability to plan your life that you mentioned, is that a consequence of the job being casual, or what is it a consequence of?---Just the hours that I work.

PN7557

Yes. And you were asked about the number of jobs that you applied for given that Bluebird didn't suit your circumstances. Could you provide some context by explaining the number of - - -

PN7558

MR WARD: I object to that question. The witness didn't say she'd applied for any jobs. She said she looked for jobs. She didn't say she'd applied for any.

PN7559

VICE PRESIDENT HATCHER: I don't think the previous answer dealt with applications but - - -

PN7560

MR FLEMING: I withdraw the question, your Honour. It was put to you that the job that you accepted was the best available given your life circumstances. Can you explain more about what jobs were available in your town, and can you give us some context about your town and the availability of the jobs there?---Are you talking about when I applied for Bluebird?

\*\*\* NARELLE MAREE JENKS

RXN MR FLEMING

PN7561

That's correct?---Okay. There isn't a lot of employment, and predominantly they want to have a really large pool of people that they can call and utilise at short notice for short shifts. That's just how Busselton is, I guess. I'm not sure about other places.

PN7562

To give us that context what is the size of Busselton? What is the population of Busselton, to the best of your knowledge?---I'm not sure.

PN7563

Is it sort of towards the bigger end or the smaller end of the town?---

PN7564

VICE PRESIDENT HATCHER: I'm sure we can google it, Mr Fleming.

PN7565

THE WITNESS: It's not very big.

PN7566

MR FLEMING: No further questions.

PN7567

VICE PRESIDENT HATCHER: All right. Thank you for your evidence, Ms Jenks. You're now excused, and you're free to go.

<THE WITNESS WITHDREW

[3.51 PM]

PN7568

MR CHESTERMAN: Your Honour, I understand that the next witness would be Ross Maxwell Kealy in Melbourne.

PN7569

VICE PRESIDENT HATCHER: Okay. We'll get Mr Kealy in, please.

PN7570

MR CHESTERMAN: Could I just say one thing, your Honour, we're struggling with counsel at the table, in terms of hearing them. They appear to be quite muffled.

PN7571

VICE PRESIDENT HATCHER: All right. Well, I'll note that. I'll just see if we can do anything about it.

PN7572

MR CHESTERMAN: Thanks, your Honour.

PN7573

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

\*\*\* NARELLE MAREE JENKS

RXN MR FLEMING

PN7574

MR KEALY: Ross Maxwell Kealy (address supplied).

<ROSS MAXWELL KEALY, SWORN [3.53 PM]

EXAMINATION-IN-CHIEF BY MR CHESTERMAN [3.53 PM]

PN7575

MR CHESTERMAN: Mr Kealy, for the benefit of transcript, can you repeat your full name, address and occupation, please?---Yes. Yes, I've got it. Yes.

PN7576

Can you repeat it for the benefit of transcript?---Sorry?

PN7577

Can you repeat your full name - - -?---Sorry.

PN7578

Yes?---Yes.

PN7579

Address and occupation?---Yes. Okay. Yes, Ross Maxwell Kealy (address supplied). My occupation is work human resources manager at Jefferson Automotive Group.

PN7580

Thanks. Thanks, Mr Kealy. Now, for the purposes of these proceedings you've prepared an affidavit which you have before you?---Yes.

PN7581

And that affidavit is numbered paragraphs 1 to 12 and dated 18 February 2016?---That's correct.

PN7582

Do you wish to make any changes to this affidavit?---There are a couple of just minor changes in relation to the staffing numbers, if we could.

PN7583

Right?---Paragraph 2, third line where it says 580 employees. That's currently 569. They're only minor changes.

PN7584

And the second change?---The second change to paragraph 7, third line. Instead of 16 casuals, there's now 17.

PN7585

And they're all the changes you wish to make?---Paragraph 8, just the first line where it says 32 part-time employees, there's now 31.

PN7586

And that finalises the changes?---That's all the changes, yes.

\*\*\* ROSS MAXWELL KEALY

XN MR CHESTERMAN

PN7587

Yes. And the copy that you have before you is a true and accurate copy of the affidavit that you signed for these proceedings to the best of your knowledge?---Yes.

PN7588

I seek leave to tender the affidavit executed by Mr Kealy.

PN7589

VICE PRESIDENT HATCHER: Yes. The affidavit of Ross Maxwell Kealy sworn and/or affirmed on 18 February 2016 will be marked exhibit 85.

**EXHIBIT #85 AFFIDAVIT OF ROSS MAXWELL KEALY DATED  
18/02/2016**

PN7590

MR CHESTERMAN: Thank you, your Honour. The witness is now available for cross-examination.

PN7591

VICE PRESIDENT HATCHER: Thank you. Mr Fagir?

**CROSS-EXAMINATION BY MR FAGIR**

**[3.55 PM]**

PN7592

MR FAGIR: Mr Kealy, can you hear me okay?---Pardon? Could I get the volume turned up? I've got a hearing impairment.

PN7593

VICE PRESIDENT HATCHER: Right. Just hold on Mr Kealy, we'll see if we can do something about it. Well, it appears to be turned up to the max?---Yes, I'm still having a problem hearing that's all. Whether I can get closer to the speaker or not, but - - -

PN7594

MR CHESTERMAN: There's a bit of an issue with Mr Kealy - - -

PN7595

VICE PRESIDENT HATCHER: I can hear you, Mr Chesterman. Just hold on a second. Mr Kealy, can you hear me now?---Yes, I can. Yes, thank you.

PN7596

What, clearly?---Yes.

PN7597

All right. We will try a bit further. I'm just going to ask Mr Fagir to speak very loudly and straight into the microphone. If it doesn't work we might try and do your evidence by telephone, but we'll start off and see how we go?---Okay.

\*\*\* ROSS MAXWELL KEALY

XXN MR FAGIR

PN7598



MR FAGIR: How's this, Mr Kealy? Can you hear me at all?---Yes, I can hear you, but it's very fuzzy. You might have to speak clearly, sorry.

PN7599

I'll try to?---Thank you.

PN7600

Can I start by asking the Associate to hand you a small bundle of documents that are with her in Melbourne. Just try to keep those in order if you can. I see they're not stapled. Just try to keep them in the same order that they're in, and we'll start from the first page and work our way through?---Okay.

PN7601

Now, is the first page titled Form F52 order requiring production of documents?---Yes.

PN7602

The very first page, Mr Kealy?---Sorry. Yes, that is the first page. Yes.

PN7603

And do you recognise this as an order requiring production of documents that was delivered to you at some point in the past few weeks?---Yes. Yes.

PN7604

Can you turn over the page – I'm sorry, flick forward one, two, three, four pages. Do you see a heading there, schedule?

PN7605

VICE PRESIDENT HATCHER: Mr Fagir - - -

PN7606

THE WITNESS: Which page did you say it was? Two? Okay, I've got that. Yes.

PN7607

MR FAGIR: Is this a page headed schedule, Mr Kealy?

PN7608

MR CHESTERMAN: We have no schedule in front of us. We have attachments. Appendices, sorry, 1 to 5. No, sorry, I'm incorrect. It's the second page.

PN7609

VICE PRESIDENT HATCHER: No, not the second page, Mr Chesterman. It's the - - -

PN7610

DEPUTY PRESIDENT KOVACIC: It's the second schedule.

\*\*\* ROSS MAXWELL KEALY

XXN MR FAGIR

PN7611

VICE PRESIDENT HATCHER: No. It's the fifth page.

PN7612

DEPUTY PRESIDENT KOVACIC: It's another schedule?---There's three pages on the schedule that I have. I've got three pages and then I've got the - - -

PN7613

MR FAGIR: Mr Kealy, I must just read out some categories and some answers and I think these are answers that you gave in response to the order, and just tell me if this is consistent with your recollection of your answers. Now, the second category of documents sought was this: "Copies of all documents, notes or letters sent to the five long term casual employees identified at paragraph 7 of your affidavit notifying them of their right to convert to permanent employment"?---Yes.

PN7614

And I understand the effect of your answer was, "We don't have any documents" but you gave some explanation of what had happened with these five employees and - - -?---That's what - yes.

PN7615

You explained, I think, that you have four of those five employees are covered by the Clerks Private Sector Award, was that right?---That's correct.

PN7616

And although you don't have an obligation to offer to convert them to permanency, you do that as a matter of your own policy or practice?---That's correct.

PN7617

You do that if they've worked, what you describe as, standard hours for a period of six months?---That's correct, yes.

PN7618

To the extent that an Award obligation were introduced to that effect, it would make no difference to you because you're doing that anyway, is that right?---That's correct, yes.

PN7619

Thank you. Now I want to move to a different topic. The fourth category of documents sought was this, "Copies of all documents, notes, letters or other records confirming that part time and casual employees have been offered the option to increase their hours as identified at paragraph 8 of your affidavit." And your answer, as I understand it, was to the effect; your organization operates at 15 locations across metropolitan Melbourne. In most circumstances it's not practicable for employees to work at multiple locations because of the disbursement of the sites and discussions are generally limited to one location and conducted informally between local management and staff." Is that right?---Yes, that's correct. Yes.

\*\*\* ROSS MAXWELL KEALY

XXN MR FAGIR

PN7620

You go on to explain, and look, I'll read this. "On occasions where local efforts to fill a role are unsuccessful, positions are advertised more broadly across the group and all staff are invited to apply" and you refer to a document. "A list of advertised job vacancies is also maintained on the company's intranet site. This provides existing part time and casual employees the opportunity to increase their hours of work or to transfer to a new role." Do you remember giving that answer?---Yes, I do. That's correct.

PN7621

Am I understanding this correctly? When work comes up there's first a sort of informal discussion at the site, the manager might just have a chat with whoever works at the site and see if they want to pick up an extra shift or whatever's going?---If - if a - if a vacancy comes up at a particular site the line manager or the department manager would usually look at the resources and the staffing within that department or within that area. If - if it meant an opportunity for existing part time staff or casual staff to take up a more permanent role or increase their hours, they would look at that. From time to time the managers actually consult with me in respect to those staffing structures and the changes. So yes, they would look internally first or locally first, but then if they couldn't staff that locally, is it that they would come to me and we'd advertise it more broadly across the group. And perhaps if we couldn't get something within the group we'd look externally.

PN7622

Look, I don't need you to turn to this, but you produce an email. It's from you and it's addressed to "allstaff@jeffersongroup.com.au"?---That's - that's an all staff bulletin. That would go across all the different 15 locations.

PN7623

So you draft up an email, you explain the position that's going and you press a button and it goes to everyone that works for the Jefferson Group, is that right?---It goes to everybody with email access, and then managers are instructed that those who don't have email access, like the - some of the operations staff, is to actually broadcast it on the notice boards. So it goes widely across the group, yes.

PN7624

I see. So to the extent it's possible, you distribute it by email and then it goes on a notice board and one way or the other everyone working in the group is likely to see it?---They should see it, yes.

PN7625

Mr Kealy, doesn't this sound pretty similar to what's proposed by the Award variation?---It probably does. And for that reason I think we're probably operating well within the existing regulations and structures, so, you know, we do things as a - as a matter of course to try to give everybody the opportunity to - to either increase their hours or vary their work, what they do.

\*\*\* ROSS MAXWELL KEALY

XXN MR FAGIR

PN7626

Why do you do that?---It's more efficient for us to promote from within.

PN7627

Why is that?---People have experience and understanding of the business.

PN7628

To the extent that you say at paragraph 11 that, "The requirement to offer work to existing casuals and permanents would impose an unreasonable burden on the company", we have to consider that in light of the fact that you do something very very similar, if not identical, already?---I suppose it's - the reason I wrote that was in relation to advertising all positions - like, positions across the entire group at all times. It would be an additional burden on the company if we could staff within that local area or department.

PN7629

Thank you, Mr Kealy. They're my questions. Thank you, Mr Kealy.

PN7630

VICE PRESIDENT HATCHER: Any re-examination, Mr Chesterman?

PN7631

MR CHESTERMAN: No, thank you, Your Honour.

PN7632

VICE PRESIDENT HATCHER: All right, thank you very much, Mr Kealy. You're now excused and free to go.

<THE WITNESS WITHDREW

[4.08 PM]

PN7633

DEPUTY PRESIDENT KOVACIC: Mr Fagir, did you want to have those - - -

PN7634

MR FAGIR: Yes. I tender that bundle of documents.

PN7635

VICE PRESIDENT HATCHER: Mr Chesterman, Mr Fagir's tendering the bundle of documents. Is there any objection?

PN7636

MR CHESTERMAN: No, Your Honour.

**EXHIBIT #86 BUNDLE OF DOCUMENTS PRODUCED BY MR KEALY OF THE JEFFERSON AUTOMOTIVE GROUP IN RESPONSE TO ORDER FOR PRODUCTION**

PN7637

MS MOUSSA: Your Honour, I realise the statement's already been tendered of Mr Kealy, but I might just note for the record that we did file objections to certain parts of it but prepared to address it on the basis of the same - - -

\*\*\* ROSS MAXWELL KEALY

XXN MR FAGIR

PN7638

VICE PRESIDENT HATCHER: Yes. You can take it for granted, Ms Moussa, that all the objections that have been filed and calls for directions are noted.

PN7639

MS MOUSSA: Thank you.

PN7640

VICE PRESIDENT HATCHER: Mr Chesterman, your next witness?

PN7641

MR CHESTERMAN: Yes, thank you, Your Honour. I call Mr Glen DeClase.

PN7642

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

PN7643

MR DECLASE: Glen DeClase (address supplied).

**<GLEN DECLASE, SWORN [4.10 PM]**

**EXAMINATION-IN-CHIEF BY MR CHESTERMAN [4.11 PM]**

PN7644

MR CHESTERMAN: Thanks, Mr DeClase. For the benefit of transcript, could you repeat your full name, address and occupation, please?---Glen DeClase. I live at (address supplied). And I'm the National Human Resources Manager for Pre-car.

PN7645

For these proceedings, Mr DeClase, you prepared an affidavit?---That's correct.

PN7646

You have a copy of that affidavit in front of you, and the copy of the affidavit that you have in front of you is numbered paragraphs 1 to 20?---That's correct.

PN7647

And dated 19 February?---Yes.

PN7648

It has three attachments labelled GD1, 2 and 3?---Yes.

PN7649

Do you wish to make any changes to that affidavit?---No changes.

PN7650

Thank you. You say that the copy that you have before you is a true and accurate account of the affidavit you signed for these proceedings to the best of your knowledge?---Yes.

\*\*\* GLEN DECLASE

XN MR CHESTERMAN

PN7651

Thank you. I seek to tender the affidavit signed by Mr DeClase.

PN7652

VICE PRESIDENT HATCHER: All right. Any filed objections are noted.

**EXHIBIT #87 AFFIDAVIT OF MR GLEN DECLASE SWORN ON  
19/02/2016**

PN7653

MR CHESTERMAN: Thank you, Your Honour. The witness is available for cross-examination.

PN7654

VICE PRESIDENT HATCHER: Thank you. Ms Moussa.

**CROSS-EXAMINATION BY MS MOUSSA [4.12 PM]**

PN7655

Mr DeClase, I'm just going to ask you a few questions in relation to your evidence that you've given in these proceedings. So - - -

PN7656

VICE PRESIDENT HATCHER: Ms Moussa, can we just do a hearing check, please.

PN7657

MS MOUSSA: Mr DeClase, can you hear me?---I can hear you but it's a bit muffled, but it's okay, I can manage it.

PN7658

VICE PRESIDENT HATCHER: All right. You'll just have to keep voice up, Ms Moussa.

PN7659

MS MOUSSA: Okay. Mr DeClase, you have casual employees working for you, don't you?---That's a bit too loud.

PN7660

That's too loud.

PN7661

VICE PRESIDENT HATCHER: There's a first.

PN7662

MS MOUSSA: I'm going to have a bit of difficulty judging my sound. I've got blocked ears at the moment?---That's better.

\*\*\* GLEN DECLASE

XXN MS MOUSSA

PN7663

Okay. All right. You have casual employees working for you, don't you?---That's right.

PN7664

When it comes to conversion, you generate a monthly report which shows the number of casual employees working for you that have reached six months separate?---That's right. Prior to the six months, yes.

PN7665

And then you speak to the state manager to identify whether they're regular or irregular casuals?---That's correct.

PN7666

And once identified, you then issue a casual conversion letter to that particular employee?---That is correct, yes.

PN7667

You say this process works well?---Yes, that process works pretty well, yes.

PN7668

I'm going to talk to you now about the enterprise agreement. The Associate in Melbourne has a copy of that enterprise agreement. I'd like to ask you a few questions about that?---Yes. Thank you.

PN7669

So you've got in front of you a copy of the Pre-car Services Pty Ltd Enterprise Agreement 2013?---Yes I do.

PN7670

Can I take you to clause 3 of that agreement, which is on page 4?---Yes.

PN7671

Just confirming that the agreement incorporates the terms of the Vehicle Manufacturing, Repair Service and Retail Award 2010?---Yes.

PN7672

And point 3 of clause 3 notes that, in the second sentence, where, "This agreement only incorporates a section of an award clause for the purposes of simplicity, the whole of the award clause shall continue to apply as though it is incorporated into the agreement"?---Yes, I can see that. Yes.

PN7673

And if you can turn to clause 31 of the agreement, which is on page 19. This is the clause that sets out the casual conversion requirement?---Yes.

\*\*\* GLEN DECLASE

XXN MS MOUSSA

PN7674

And that's paragraph 3 of clause 31. That requires: "A casual employee other than an irregular casual employee who is engaged by the company for a (indistinct) period of employment under this agreement, during this period of six months, thereafter has a right to elect to have their contract of employment

converted to full time or part time if their employment is to continue beyond the conversion process"?---Yes.

PN7675

Just confirming, this is the clause that applies to employees in your workplace?---Can you repeat that please?

PN7676

Just confirming that this is the clause that applies to casual employees in your workplace?---Yes, that's right. Yes.

PN7677

So you're also aware, Mr DeClase, that the Award requires that four weeks before a casual employee reaches the six month qualification period, they're required to be notified of their right to convert?---Yes, under the Award. Yes. Yes.

PN7678

I'd like to now take you to paragraph 14 of your statement. So in this paragraph - do you have a copy of that statement in front of you?---Yes I have.

PN7679

In this paragraph you say, "I note that as evidenced by Exhibit GD1 and GD2, Pre-car has managed conversion of its regular casual employees prior to its correspondence with the Australian Manufacturing Workers Union, Vehicle Division, in May 2014." Is that correct?---That's right.

PN7680

The Associate has some further documents which I'd like to take you to now. There's a copy of the letter that was sent to you, Mr DeClase, by the AMWU?---Yes.

PN7681

And then there's also copies of a bundle of documents that was produced by you subject to an order?

PN7682

MR CHESTERMAN: We haven't got those documents yet.

PN7683

MS MOUSSA: The Associate will, Mr Chesterman.

PN7684

(To witness) Do you have the bundle of documents in front of you, Mr - - -

PN7685

VICE PRESIDENT HATCHER: I don't think the Associate has given the second document to Mr Chesterman yet.

PN7686

MS MOUSSA: Yes, okay?---I only have one page.

\*\*\* GLEN DECLASE

XXN MS MOUSSA



PN7687

So, Mr DeClase, just confirming what you should have in front of you. You should have a copy of the letter sent to you dated 7 May 2014 from the AMWU?---Yes. Yes, I do have, yes.

PN7688

You should have a copy of the order requiring production of documents that was issued on 4 March?---I have that now, yes.

PN7689

And you have a copy of an email which was printed by Natasha Desmond, which has two emails included on it?

PN7690

MR CHESTERMAN: Just - can we just - we just need to catch up on the documentation, Your Honour. We haven't got all the documentation.

PN7691

VICE PRESIDENT HATCHER: Mr Chesterman, do you have the letter of 7 May 2014 and order requiring production of documents?

PN7692

MR CHESTERMAN: Sorry, Your Honour. The last document I got was the order - yes, the order requiring production of documents. I now have that.

PN7693

VICE PRESIDENT HATCHER: So you have two. So we don't have the third document.

PN7694

MS MOUSSA: Your Honour, they're all - - -

PN7695

VICE PRESIDENT HATCHER: It's attached, is it? As a bundle?

PN7696

MS MOUSSA: All attached, yes, as a bundle. For you guys they are, but when I emailed - sorry, for the bench, sorry, that was very informal. For the bench they've been attached as a bundle, but for the - when they were sent to the Associate they were just attached as separate electronic files.

PN7697

VICE PRESIDENT HATCHER: So the order's two pages and then the rest of it is the third category you referred to, is it?

\*\*\* GLEN DECLASE

XXN MS MOUSSA

PN7698

MS MOUSSA: The rest - so there's one separate email which would have been delivered as one separate document, which is an email from - it's got Natasha Desmond's name at the start, but it actually has at the bottom and email from Karen Uell to Glen DeClase, and then there's a bunch of letters behind it. Did you

follow that, Mr DeClase?---Yes I have - I have three letters in front of me now at the moment. I've got one dated 7 May 2014 from AMWU, I have the order requiring production of documents, and the third one is the email to myself and Natasha Desmond from myself, yes. I have that, yes.

PN7699

Do you also have a copy of the letters sent to all the casual employees?---Yes. Yes, I do have that.

PN7700

Great. Okay.

PN7701

VICE PRESIDENT HATCHER: Now, Mr Chesterman, do you have all those?

PN7702

MR CHESTERMAN: I do, Your Honour, thanks very much.

PN7703

VICE PRESIDENT HATCHER: Good. Let's go.

PN7704

MS MOUSSA: So if you have a look, Mr DeClase, as the letter that was sent from the AMWU?---Yes.

PN7705

You'll see, when you go through the letter, the list of names that are included in that letter?---Yes.

PN7706

They're the same names that are referred to in the email from Karen Uell to yourself dated 8 March, that's correct, isn't it?---That's right, yes.

PN7707

Can I take you to the letters that were sent to the casual employees?---Yes. Yes.

PN7708

The date that's marked on those letters is incorrect, isn't it?---Yes, the date - - -

PN7709

Sorry, the date - yes - - -?---The reason - can I answer that?

PN7710

Sure?---All right. The reason the date is the incorrect date, if you notice that when we sent out the letters to the employees, right, it's got the original date there. When - when the Word document is produced a second time, it updates it to the most recent date that's in there.

\*\*\* GLEN DECLASE

XXN MS MOUSSA

PN7711

Okay. So when it's populated the most recent date is included in the letter?---That's right. The most recent date is there but if you go back to the - to the email, it was originally produced on 3 June 2014.

PN7712

The first letter?---Yes the - - -

PN7713

Okay.

PN7714

VICE PRESIDENT HATCHER: Can you hear us in Melbourne? No, they're not moving. Right, we might adjourn while this problem is fixed.

**<THE WITNESS WITHDREW** [4.23 PM]

**SHORT ADJOURNMENT** [4.23 PM]

**RESUMED** [4.29 PM]

**<GLEN DECLASE, RECALLED ON FORMER OATH** [4.29 PM]

**CROSS-EXAMINATION BY MR MOUSSA, CONTINUING** [4.29 PM]

PN7715

VICE PRESIDENT HATCHER: All right. Ms Moussa.

PN7716

MS MOUSSA: Thank you, Your Honour. Mr DeClase, before the adjournment I had taken you to paragraph 14 of your statement, where you say that you were managing the conversion of your employees before the AMWU correspondence of 7 May?---Yes.

PN7717

Looking at the email from Ms Uell to yourself, the correct date stamps of all of the letters bar two are 8 May, isn't that correct?---Yes. Yes. I can see, yes.

PN7718

So these letters were drafted and sent to employees after the date of the AMWU correspondence of 7 May 2014?---That's right, yes.

PN7719

So you didn't notify these employees of their right to convert until the AMWU got involved in the matter, did you?---No. The reason being, that was - as you know - as you will note, we do not issue these letters till we find out whether they're regular, irregular casuals.

\*\*\* GLEN DECLASE

XXN MR MOUSSA

PN7720

Can I take you to one of the letters that was sent to Mr Phuart Ozcan, which I believe would be page number - for the bench it will be page number 8 in the bundle. A piece of paper, page number 8?---Yes.

PN7721

Mr Ozcan - can you see his start date records it being 20 September 2012?---Yes.

PN7722

It was a full - based on the start date, I put to you that it was a full 14 months after he qualified for conversion that he was notified of his right to convert under the enterprise agreement?---Yes.

PN7723

And the only reason he was sent a letter was because the AMWU sent a letter to Pre-car Services on 7 May 2014?---Yes, that will be right. But can I - can I clearly state here, during that particular time when we were doing these letters at that particular time or prior to that, Pre-car had opened a site at Webb Dock West and we were trying to get people to transfer across to that site and we made it available for casuals from our Altona site to get full time employment at Webb Dock West, and we were negotiating with quite a lot of casuals to get them across to Webb Dock West. At the end of the day Mr Phuart Ozcan was one of the people that decided he didn't want to go to Webb Dock West, and at the end of the day when we offered him this letter on the 8 March or whatever the date - what date was that? 8 May, he was one of the people that was highlighted to go across to Webb Dock West.

PN7724

But the fact remains, Mr DeClase, that these employees, the subject of 7 May correspondence from the AMWU, had not been notified of their right to convert, as required by the Award, up until the AMWU advocated on their behalf?---Yes, the AMWU did raise it with me on 7 May. I investigated it and made sure that all the letters went out.

PN7725

I have no further questions, thank you, Your Honour.

PN7726

VICE PRESIDENT HATCHER: How many of these elected to convert, Mr DeClase?---I cannot recall, your Honour, but quite a number of them did get back in touch with our payroll department rather concerned that they were losing their 25 per cent loading and didn't want to change from - from casual status. A number of them did change and managed to - we managed to get them jobs at Webb Dock West, and since then a number have already resigned as well.

PN7727

Thank you. Any re-examination, Mr Chesterman?

PN7728

MR CHESTERMAN: Yes, thanks, Your Honour.

\*\*\* GLEN DECLASE

XXN MR MOUSSA

PN7729

I just have one question, Mr DeClase, relating to a reference made by Ms Moussa to clause 3 in the Pre-car Services Pty Ltd Enterprise Agreement 2013, which says, and I'll repeat it, Mr DeClase, again, "In the event of any inconsistency between any terms of the Award and this agreement, this agreement shall prevail to the extent of any inconsistency. Where this agreement only incorporates a section of Award clause for the purposes of simplicity the whole of the Award clause shall continue to apply as though it was incorporated in this agreement." Are you aware - can I ask you whether - can you explain the casual conversion clause under the Award, in terms of how that works?---Well my understanding - my understanding is that I've only got to offer conversion to people that are regular casuals, and that's after a period of six months, and what we then do is we then find out the number of hours they've worked over the - over the six month period, and if they've worked something like 30 hours, I would offer them a part time role (indistinct), or if 38, then I would offer them a full time role. That's my understanding. And - and in relation to whether they're regular or irregular, that could only be sourced from the branch itself because that's where the clock cards were.

PN7730

Would you be aware of the circumstances in that clause where the notice of election to convert wasn't given within four weeks after the six month period had expired?---I was not aware of that.

PN7731

Right. Now, I - - -?---I thought it was after six months that you offered.

PN7732

Would you be aware what rights an employee has after that six month period where that employee would not have received the four week - the notice from the employee for leave to convert?---My understanding is that once the offer is to the employee, he has a certain period to come back to us and let us know whether he wanted to come - go to full time or part time, and if he decided not to do that then we will never offer it again.

PN7733

I don't have any further questions, thanks, Your Honour.

PN7734

VICE PRESIDENT HATCHER: Right. Thank you for your evidence, Mr DeClase. You're excused, you're now free to leave?---Thank you. Thank you, Your Honour.

**<THE WITNESS WITHDREW**

**[4.35 PM]**

\*\*\* GLEN DECLASE

RXN MR CHESTERMAN

PN7735

VICE PRESIDENT HATCHER: Now, Ms Moussa, do you want to tender these documents?

PN7736

MS MOUSSA: Yes, Your Honour.

**EXHIBIT #88 PRE-CAR SERVICES PTY LTD ENTERPRISE AGREEMENT 2013**

**EXHIBIT #89 LETTER FROM AMWU TO MR GLEN DECLASE, HUMAN RESOURCES MANAGER OF PRE-CAR SERVICES PTY LTD DATED 07/05/2014**

PN7737

VICE PRESIDENT HATCHER: The next one is just a bundle, is it?

PN7738

MS MOUSSA: Yes, Your Honour.

**EXHIBIT #90 BUNDLE OF DOCUMENTS PRODUCED IN RESPONSE TO ORDER REQUIRING PRODUCTION OF DOCUMENTS**

PN7739

MS MOUSSA: Your Honour, just a brief request in relation to Exhibit 89, we had tendered a copy of this letter initially as an exhibit to one of our witness's statements but had redacted the names of the individuals concerned to protect their confidentiality. So I just ask that this particular exhibit not be published on the website.

PN7740

VICE PRESIDENT HATCHER: So it's already Exhibit 2, is it?

PN7741

MS MOUSSA: It's already an exhibit in - it is already an attachment to one of the statements of the organisers, which hasn't been tendered yet because the organiser's due to give evidence tomorrow.

PN7742

VICE PRESIDENT HATCHER: Do we need to then mark it at all?

PN7743

MS MOUSSA: Well, you can for the purposes of comparison to the bundle of documents that was produced by Mr DeClase for the Commission's purposes.

PN7744

VICE PRESIDENT HATCHER: All right. I will order that Exhibit 89 not be published on the FWC website.

PN7745

MS MOUSSA: Thank you, Your Honour.

PN7746

VICE PRESIDENT HATCHER: All right, so just the outstanding issues. So first of all we've got the statement of Simon Hynes, not required for cross-examination.

**EXHIBIT #91 STATEMENT OF SIMON PETER HYNES DATED  
12/10/2015**

PN7747

VICE PRESIDENT HATCHER: So Mr Ferguson the AIG no longer rely upon the statement of Scott Patterson, is that right?

PN7748

MR FERGUSON: That's right, Your Honour.

PN7749

VICE PRESIDENT HATCHER: Now did the parties have any discussions about the statements of Jacquie Dredge and Mario Brkic?

PN7750

MR FAGIR: No is the short answer.

PN7751

VICE PRESIDENT HATCHER: All right. Well until such discussions occur I don't think we'll endeavour to embark on the task of ruling upon the objection, so we'll leave it to the parties to have those discussions and we won't return to it until you tell us that those discussions have occurred.

PN7752

MR FAGIR: Yes, certainly.

PN7753

VICE PRESIDENT HATCHER: Is there anything else we can deal with today?

PN7754

MR FAGIR: Could I ask a question - raise a concern. Did the bench propose to deal with the admissibility of the expert evidence, that is the expert evidence in the true sense not the Australian Industry Group sense, in a different way to the balance of the non-expert evidence?

PN7755

VICE PRESIDENT HATCHER: No. Should we?

PN7756

MR FAGIR: On one view, yes. But only for the reasons that I outlined in respect to Mr Goodsall's statement, which was that it creates difficulties in cross-examination when the basis for reasoning isn't exposed and so on.

PN7757

VICE PRESIDENT HATCHER: What do the other parties say about this? That is, should we adopt a stricter approach in respect of the experts?

PN7758

MR WARD: Well, Your Honour, to date we've taken the assumption that that would not be the case. There can be some debate as to what weight might be attributed to various statements made by the experts in submissions. We're content for the expert evidence to be put on, for us to test it as best we can, and to

deal with it in that way. If there's to be a far more strict approach, then we're going to have to spend some time tomorrow going through a great deal of material, which we have not done at this stage. So we don't see any need to do that at this stage in these proceedings.

PN7759

I think at the end of the day this is a review. The Commission is trying to inform itself as best as it can. It will have the benefit of seeing the experts in the box. There will obviously be some issues of time in terms of the amount of time we'll need with them, but I think we're all trying to be as efficient as we can, so I don't think it's a question of knocking out evidence just to simply save an hour or two. So we just suggest the bench continue the way they're proceeding.

PN7760

VICE PRESIDENT HATCHER: Do you want to say anything about this, Mr Ferguson?

PN7761

MR FERGUSON: We have exactly the same approach, I think. And we'd have the same difficulty in the sense of some of the new material. We probably haven't been through a process of carefully identifying all of the elements of it that wouldn't be properly admissible, and I am conscious of not unnecessarily pushing the time frame back for concluding the hearings till we're content with that more lenient approach.

PN7762

VICE PRESIDENT HATCHER: Mr Fagir, you've heard that. So does that give you any level of comfort or do you want to take a radically different approach?

PN7763

MR FAGIR: I'm just not sure there is a time saving because we either spend the time dealing with objections and eliminating things or, one suspects, spend the same amount of time, or more, in cross-examination asking witnesses why they haven't explained the basis for some broad proposition or another.

PN7764

VICE PRESIDENT HATCHER: That assumes the objection to be successful. We can hear the objection, they can end up being unsuccessful and then we hear the cross-examination. But in any event, look, if you want to press any objections to expert evidence then it might be advisable that we - if you really want to do that, to deal with that perhaps at the end of tomorrow. But you might want to, again, confer with the other applicants about that matter.

PN7765

MR FAGIR: There's an allied issue which is that there are ten witnesses listed for Wednesday, including the two main experts.

PN7766

VICE PRESIDENT HATCHER: Yes.

PN7767



MR FAGIR: I'd say, for my own part, if Professor Withers begins at 2, cross-examination of Professor Withers begins at 2, there won't be a great deal of time left in the day for eight further witnesses listed.

PN7768

VICE PRESIDENT HATCHER: So there's Professor Markey. He'll be called in the morning, will he?

PN7769

MR FAGIR: Yes.

PN7770

VICE PRESIDENT HATCHER: How long were you thinking of taking with him?

PN7771

MR WARD: Your Honour, I haven't finished preparing for Professor Markey but I think on any reasonable basis, and I don't know him personally, it's going to be two to three hours.

PN7772

VICE PRESIDENT HATCHER: Will you cross-examine him as well, Mr Ferguson?

PN7773

MR FERGUSON: To some extent. Probably not for more than an hour.

PN7774

MR WARD: Can I just say this, Your Honour? I don't wish to sound mischievous when I say it. We've taken a particular approach with the Professor's evidence, Professor Markey's evidence. If my friend's now going to start to take a stricter approach with Professor Withers' evidence, then we'll find ourselves very quickly tomorrow in a tit-for-tat game come Wednesday morning and we'll be seeking to press a lot of objections to Professor Markey. I was just hoping to avoid all of that by having it put on and having a debate about weight later. But it's inviting a tit-for-tat, which I didn't want to get into.

PN7775

VICE PRESIDENT HATCHER: Mr Ryan - Mr Ryan's not here anymore. All right, well I'll note that and we'll have to see what can be done. Have any of you employer parties had any liaison with the Hair & Beauty Australia Industry Association?

PN7776

MR WARD: We've tried. We haven't been very successful, but we'll endeavour again. They've had a great deal of staff turnover, unfortunately.

PN7777

VICE PRESIDENT HATCHER: Yes. I'm not saying this pejoratively but the contact my Chambers have had with the Association doesn't make it clear to me that they have a full comprehension of the process.

PN7778

MR WARD: I understand what Your Honour's saying. Yes.

PN7779

VICE PRESIDENT HATCHER: So any assistance about what's happening with those five witnesses might aid us with the timetable.

PN7780

MR WARD: Your Honour, we'll undertake to contact them again.

PN7781

VICE PRESIDENT HATCHER: Mr Bliss?

PN7782

MR BLISS: Your Honour, we did require those witnesses for cross-examination. We haven't had opportunity to speak with all (indistinct) at this stage as to the range of questions being asked, but I do note that the statements are not signed. They do appear to be in a tempered form, if I can describe it that way. So the range of questions I would anticipate are rather limited, and we're in your hands whether or not we can get to that evidence on Wednesday or not. We don't have a particular objection if it's put off to another date, that's up to them, I guess.

PN7783

MR WARD: Sorry, Your Honour, I've just been informed of something. I don't know if this will help or hinder, but Professor Withers is now available both Wednesday and Thursday, so if there was any desire to shipping him to Thursday, apparently he's available to do that if you wanted.

PN7784

VICE PRESIDENT HATCHER: Okay, well we'll have to keep on monitoring that as we go, but if people can liaise both with the Hair & Beauty people and also, Mr Ryan's gone, but with the AHA to confirm that those witnesses will be available on that day and whether they have any other availability - - -

PN7785

MR WARD: I'll undertake to do that, Your Honour.

PN7786

VICE PRESIDENT HATCHER: Mr Ferguson?

PN7787

MR FERGUSON: Yes, Your Honour, just one minor issue. Dr MS Skladzion is down for either the 23rd or the 24th. It's not clear what day he'll be dealt with.

PN7788

VICE PRESIDENT HATCHER: He simply indicated that he was available on both of those days and I think only both of those days. But having - unless there's any radical change to position of the AHA and Hair & Beauty, it seems likely that he will be on the Thursday.

PN7789

MR FERGUSON: Yes. And that would be our preference. I just wanted to foreshadow that.

PN7790

VICE PRESIDENT HATCHER: Yes. All right. Anything else we can deal with? We'll now adjourn, resume at 10 am tomorrow.

**ADJOURNED UNTIL TUESDAY, 22 MARCH 2016**

**[4.47 PM]**

**LIST OF WITNESSES, EXHIBITS AND MFIs**

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<b>EXHIBIT #75 STATEMENT OF KATHRYN MACMILLAN DATED 29/02/2016 .....</b>	<b>PN6401</b>
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<b>EXAMINATION-IN-CHIEF BY MR FLEMING.....</b>	<b>PN6663</b>
<b>EXHIBIT #77 WITNESS STATEMENT OF MATTHEW JAMES FRANCIS DATED 27/10/2015 .....</b>	<b>PN6677</b>
<b>CROSS-EXAMINATION BY MR WARD .....</b>	<b>PN6682</b>
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<b>EXHIBIT #78 WITNESS STATEMENT OF CARLY FORDRED DATED 03/10/2016 .....</b>	<b>PN6854</b>
<b>EXHIBIT #79 AGREED BUNDLE OF DOCUMENTS IN RELATION TO THE EVIDENCE OF CARLY FORDRED .....</b>	<b>PN6861</b>
<b>JUDITH WRIGHT, AFFIRMED .....</b>	<b>PN6864</b>
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<b>EXHIBIT #80 WITNESS STATEMENT OF JUDITH WRIGHT DATED 18/03/2016 .....</b>	<b>PN6875</b>
<b>CROSS-EXAMINATION BY MR WARD .....</b>	<b>PN6879</b>
<b>RE-EXAMINATION BY MR FLEMING .....</b>	<b>PN7036</b>
<b>THE WITNESS WITHDREW .....</b>	<b>PN7045</b>
<b>KRISTA THERESE LIMBREY, AFFIRMED.....</b>	<b>PN7055</b>
<b>EXAMINATION-IN-CHIEF BY MR FERGUSON .....</b>	<b>PN7055</b>
<b>EXHIBIT #81 WITNESS STATEMENT OF KRISTA THERESE LIMBREY DATED 12/10/2015 .....</b>	<b>PN7077</b>
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<b>CROSS-EXAMINATION BY MR BLISS .....</b>	<b>PN7082</b>
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