



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009
TRANSCRIPT IN CONFIDENCE

1052404

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

AM2014/305

s.156 - 4 yearly review of modern awards

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

Sydney

9.05 AM, THURSDAY, 10 SEPTEMBER 2015

Continued from 9/09/2015

PN2097

JUSTICE ROSS: Let's deal with the objections to the statement of Mr Tait first. What do you want to say about those?

PN2098

MR WARREN: Your Honour, by way of preliminary, we have sorted out our difficulties with respect to a number of the proposed witnesses.

PN2099

JUSTICE ROSS: All right, just go through what's agreed to be retracted and then what's left.

PN2100

MR WARREN: From the other witnesses we have prepared a document in line with your Honour's comments earlier in the week. That is the new clean one, and when the witnesses go the witness box we'll be handing up a new clean copy on each occasion.

PN2101

JUSTICE ROSS: Yes. No that's fine, but what have you agreed on? You don't need to take me through it, but are you saying that the objections in respect to Mr Tait have been resolved?

PN2102

MR WARREN: No. No, your Honour. No. No, I was just preliminarily saying we've fixed up a number of them. We've still got Tait and Reeves to go. With respect to Mr Tait it will be apparent from his affidavit the clauses that are unobjected to, and we note those are 1 to 10. Mr Tait is a senior executive, the senior executive of Clubs Australia Industrial. He has put in the position of this organisation in this 4 yearly review.

PN2103

JUSTICE ROSS: Why can't his organisation do that in a submission?

PN2104

MR WARREN: Your Honour, if your Honour upholds the objections that will occur.

PN2105

JUSTICE ROSS: Well, let me take you to an obvious example.

PN2106

MR WARREN: Yes, your Honour.

PN2107

JUSTICE ROSS: Paragraph 13.

PN2108

MR WARREN: Yes, your Honour.

PN2109

JUSTICE ROSS: So:

PN2110

CAI are seeking a penalty rate structure that does not impede the objectives of clubs to serve their members and their communities.

PN2111

Paragraph 20:

PN2112

CAI is seeking that the Sunday rate be lowered to a penalty of 150 per cent.

PN2113

MR WARREN: Yes, your Honour.

PN2114

JUSTICE ROSS: I mean you're perfectly entitled to put the material at 12, 13, 14, 16 and 20 for example as submissions. If you look at 15, the sentence:

PN2115

These groups are often only able to work on weekends.

PN2116

MR WARREN: We accept that that is objectionable.

PN2117

JUSTICE ROSS: Yes.

PN2118

MR WARREN: And we do not press that.

PN2119

JUSTICE ROSS: Okay. What do you say about the paragraphs 12, 13, 14, 16 and 20?

PN2120

MR WARREN: Those paragraphs outline the reasoning behind Clubs Australia Industrial putting their case to this Commission. Can we liken it this way, your Honour, over many years this Commission and its predecessors have heard union secretaries give evidence of what their members want and why their members want what they want, and this indeed can be seen in similar terms to that. Here is the chief executive of an industrial union of employers coming to the Commission and saying just that.

PN2121

JUSTICE ROSS: But the fact that it's given as evidence, should we give it any more weight than if it was in a submission and, if so, why?

PN2122

MR WARREN: Can I answer that, your Honour, in the reverse? We do not want to be putting a submission to this Commission and the Commission to be saying, "Well, how can you say that?" We want to be able to put to this Commission the

reasoning behind and the strong position of the Clubs Australia Industrial as to why they are putting it, the movement within the club industry, the dire straits within the club industry and the need to address the penalty rates. They're not saying to eliminate penalty rates.

PN2123

JUSTICE ROSS: No, no, but let me just explore the proposition you've just put. You say at 12:

PN2124

Clubs don't have the option of not being open on weekends and public holidays

-

PN2125

et cetera. That's a hearsay statement. It's his opinion. It doesn't provide any information about the basis, how he has come to that view, anything like that, and it's the sort of thing you could have had individual clubs give evidence about those issues. So it's a general statement. I'm not sure how far it takes you.

PN2126

MR WARREN: Your Honour, he does speak of the consultation process that Clubs Australia went through in arriving at this application.

PN2127

JUSTICE ROSS: Where does he say that?

PN2128

MR WARREN: 21:

PN2129

Over the last 12 months I have consulted widely with the club industry (indistinct) specified () to discuss what CIA would be seeking to - - -

PN2130

JUSTICE ROSS: Yes, and none of that is objected to.

PN2131

MR WARREN: Sorry, I thought it was.

PN2132

JUSTICE ROSS: Well, I don't - is it?

PN2133

MR WARREN: I'm sorry, that - - -

PN2134

MR DOWLING: Yes it is, your Honour.

PN2135

JUSTICE ROSS: All right. Okay.

PN2136

MR DOWLING: Amongst other things it's clearly hearsay.

PN2137

MR WARREN: Your Honour, that's why as I understand it everything - - -

PN2138

JUSTICE ROSS: No, no, but what you don't do, Mr Warren, in the statement is you don't link 12 to the consultation process.

PN2139

MR WARREN: Your Honour, if 21 stays we don't need 12. The position of the union was they were objecting to every paragraph beyond and including paragraph 11. Now if that's a different situation I will - - -

PN2140

JUSTICE ROSS: No, it doesn't sound like it. All right.

PN2141

MR WARREN: I mean, in 22:

PN2142

...at a State-wide seminar series to discuss things.

PN2143

23 et cetera. Clubs Australia Industrial spoke widely to their clubs and their membership and this is what Mr Tait is saying we found out in our discussions with our members. Yes, it is hearsay to that extent. Yes, the Commission does have discretion to consider and put in that sort of - or allow that sort of evidence to come in.

PN2144

JUSTICE ROSS: We can either accept it and then it can be a matter of weight.

PN2145

MR WARREN: Yes.

PN2146

JUSTICE ROSS: Or we can reject it.

PN2147

MR WARREN: Exactly. But if it is that 21 is in and 22 et cetera, then my address to the Commission right now is probably a bit redundant.

PN2148

JUSTICE ROSS: What do you say about 11? Can I take you to that? Yes?

PN2149

MR WARREN: The census - well, the - - -

PN2150

JUSTICE ROSS: No, the census - I think you've provided the full copies.

PN2151

MR WARREN: Yes.

PN2152

JUSTICE ROSS: And you can seek to tender them.

PN2153

MR WARREN: Yes.

PN2154

JUSTICE ROSS: As separate documents. But is the comment in the second and third sentence, that's related to what is in the census, is it?

PN2155

MR WARREN: I'm instructed it is, your Honour.

PN2156

JUSTICE ROSS: Then why do we need it?

PN2157

MR WARREN: And I accept what your Honour says.

PN2158

JUSTICE ROSS: All right, so you could delete the second and third sentence.

PN2159

MR WARREN: We could delete - yes.

PN2160

JUSTICE ROSS: And leave the first.

PN2161

MR WARREN: Yes.

PN2162

JUSTICE ROSS: And I take it that you would either seek to attach or replace the attachment to this statement or just tender separately the two documents?

PN2163

MR WARREN: Yes, your Honour.

PN2164

JUSTICE ROSS: All right.

PN2165

MR WARREN: These substantial documents.

PN2166

JUSTICE ROSS: Yes.

PN2167

MR WARREN: Yes.

PN2168

JUSTICE ROSS: Okay, so you're seeking to tender those.

PN2169

MR WARREN: Yes, your Honour.

PN2170

JUSTICE ROSS: And you seek it, subject to the removal of the second and third sentence in 11, and you say 12 to 14 would not be necessary if 21 - - -

PN2171

MR WARREN: 21 and following there.

PN2172

JUSTICE ROSS: 21 and remains. All right. Thanks Mr Warren.

PN2173

MR WARREN: Thank you, your Honour.

PN2174

JUSTICE ROSS: Mr Dowling?

PN2175

I'm sorry, Mr Warren, I should say also you've agreed to delete that sentence:

PN2176

These groups are often only able to work on weekends.

PN2177

In paragraph 15?

PN2178

MR WARREN: Yes. Yes, absolutely, your Honour.

PN2179

JUSTICE ROSS: Yes Mr Dowling?

PN2180

MR DOWLING: I'm not sure what we're left with, your Honour.

PN2181

JUSTICE ROSS: What you're left is what has been agreed to be deleted is the second and third sentence from 11.

PN2182

MR DOWLING: Yes.

PN2183

JUSTICE ROSS: In paragraph 15 the sentence:

PN2184

These groups are often only able to work on weekends.

PN2185

And look, I might be extending slightly the discussion with Mr Warren but I had understood that really the bits I took him to, 12, 13, 14, 16 and 20, would not be necessary if the balance remained and the consultation process was described.

PN2186

MR WARREN: Thank you, your Honour.

PN2187

JUSTICE ROSS: That seems to be where we're up to.

PN2188

MR DOWLING: Thank you, your Honour. I think just so both Mr Warren and the Full Bench is clear, we have objected to 21 through to 28.

PN2189

JUSTICE ROSS: Yes.

PN2190

MR DOWLING: In respect of 19, 21, 22 and 23 those dealing with something that's described as a seminar series, we do press that objection. It's clearly hearsay. There is sought to be conveyed some responses from some unnamed people in response to that seminar series. Clearly it's not the best evidence. Clearly, as your Honour said, the association could have called people to give the evidence rather than a hearsay account of what some unnamed people said at a seminar series.

PN2191

We've got no way of testing it. We don't know who the people are. We don't know any detail on the comments and it's objectionable on its face as it's hearsay. So we maintain that objection. We're content for the annexures or what were annexure A, B and C and what are now the two full copies of the club census, the national club census and the New South Wales club census to be tendered. We maintain our objection with respect to those paragraphs that your Honour hasn't taken Mr Warren to, 24 through to 28.

PN2192

JUSTICE ROSS: Yes.

PN2193

MR DOWLING: But I'm unclear whether your Honour has not taken him to them because you've ruled on them or - - -

PN2194

JUSTICE ROSS: No, no, no. No, no, my marked-up copy didn't have your objections to those paragraphs, that's all.

PN2195

MR DOWLING: I'm sorry, your Honour.

PN2196

JUSTICE ROSS: No, no, it's not your fault.

PN2197

MR DOWLING: I'm reading from the table and perhaps for the record I should say that paragraphs - - -

PN2198

JUSTICE ROSS: Well, it's just that it has been a bit of a moving feast so it's a bit hard to keep - it's even worse in relation to Mr Hart's evidence. I'm not sure what the current position is on that but we'll find out in a moment.

PN2199

MR DOWLING: We'll do our best, your Honour. 11 through to 14 and then 15, given what has been said in relation to the attachment we'd press the objection after the numerals "2011". I'm not sure whether it's said those things arise from the census but those things that immediately follow the census, "It is clear clubs are a significant employer", those sentences - - -

PN2200

JUSTICE ROSS: Yes. No, no, I follow. I can ask Mr Warren about that. It's the same point I took him to - - -

PN2201

MR DOWLING: Yes.

PN2202

MR WARREN: Your Honour, I won't press those.

PN2203

JUSTICE ROSS: Okay, so - - -

PN2204

MR WARREN: After 2011.

PN2205

JUSTICE ROSS: So after 2011 we'll delete the rest of that and really the census material will - - -

PN2206

MR DOWLING: Speak for itself.

PN2207

JUSTICE ROSS: - - - speak for itself, and we'll replace the annexures with the full - or do you want to tender them as separate documents - - -

PN2208

MR WARREN: No, your Honour, quite content to have them attached there.

PN2209

JUSTICE ROSS: All right, and you're content with that course, Mr Dowling?

PN2210

MR DOWLING: Yes. Yes, your Honour.

PN2211

JUSTICE ROSS: So the rest of that, there's nothing on 15 that's an issue.

PN2212

MR DOWLING: No. 16 is gone and - - -

PN2213

JUSTICE ROSS: That's caught up in the other - - -

PN2214

MR DOWLING: Yes. 17 and 18 for our part are just submission:

PN2215

Having to pay higher penalties than restaurants, hotels and other services is unfair to clubs.

PN2216

It's self-evidently we say of submission and nothing else. 18 there's some reference to consultation with individual State IR practitioners. I'm not sure what follows - whether it's meant to be something coming out of that consultation process. If it is, it's hearsay. If it isn't, it's submission, and that takes us through to 20 is gone. That takes us through to 19, 21, 22 and 23 and I've already made - - -

PN2217

JUSTICE ROSS: Which all relates to the consultation - - -

PN2218

MR DOWLING: Yes.

PN2219

JUSTICE ROSS: Okay.

PN2220

MR DOWLING: The balance, 24 through to 28 in our submission are really just submission, "Public holidays have a significant impact".

PN2221

JUSTICE ROSS: Yes, all right.

PN2222

MR DOWLING: "Unlike other sectors" et cetera. Thank you, your Honour.

PN2223

JUSTICE ROSS: Okay, Mr Warren can I just ask you about, I understand what you say about the consultation process; 24 through to 28 really doesn't seem to relate to the consultation process. That's really a submission as to - - -

PN2224

MR WARREN: 28 certainly could, your Honour, but the - - -

PN2225

JUSTICE ROSS: All right, so that comes from the consultation process, you say?

PN2226

MR WARREN: Yes. Yes, your Honour.

PN2227

JUSTICE ROSS: Right. But not the balance?

PN2228

MR WARREN: No.

PN2229

JUSTICE ROSS: All right, thanks, Mr Warren. Look, we might just adjourn for a minute or so.

SHORT ADJOURNMENT

[9.19 AM]

RESUMED

[9.25 AM]

PN2230

JUSTICE ROSS: We deal firstly with those aspects of Mr Tate's statement that's agreed will be removed. Paragraph 11, the second and third sentences; paragraph 15, all of the material appearing after the words 'undertaken in 2011' in the third line, and the annexures will now be for the national club census 2011 and the NSW club census 2011; they will replace the existing annexures. We would uphold the objections in relation to paragraphs 12, 13, 14, 16, 17 and 20. We acknowledge what's said about the balance of the material either being hearsay or in the form of a mix of hearsay and submission, but they can be dealt with as a matter of weight. Can we go to Mr Reeves' statement?

PN2231

MR DOWLING: Your Honour, my apologies, just before we get to Mr Reeves?

PN2232

JUSTICE ROSS: Yes?

PN2233

MR DOWLING: Can I just revisit one matter, and I apologise for this, and that is the last sentence at paragraph 19? Just to be clear. That seems to be in a very different category.

PN2234

JUSTICE ROSS: Yes, that would probably go on the same basis, Mr Warren.

PN2235

MR WARREN: Yes, absolutely, your Honour.

PN2236

JUSTICE ROSS: So that last sentence would come out as well.

PN2237

MR WARREN: Yes, I understand, your Honour.

PN2238

MR DOWLING: Thank you, your Honour.

PN2239

JUSTICE ROSS: Yes, thanks, Mr Dowling.

PN2240

MR WARREN: Your Honour, the objections from the union are from paragraph 6 following. We recognise that what is put in there is in essence a submission as to the parlous state of the club industry in the ACT and that's where it sits, and we would be content to put that in submissions.

PN2241

JUSTICE ROSS: So what would you delete?

PN2242

MR WARREN: Everything from 6 onwards.

PN2243

JUSTICE ROSS: Okay.

PN2244

MR WARREN: If that shortens these proceedings.

PN2245

JUSTICE ROSS: Certainly would.

PN2246

MR WARREN: But we reserve the position to put that situation in submission as to the difficulty that the ACT's having.

PN2247

JUSTICE ROSS: All right. Mr Warren, and I don't want to revisit the agreement between you, let me be clear about that - - -

PN2248

MR WARREN: There isn't an agreement on that.

PN2249

JUSTICE ROSS: Sorry?

PN2250

MR WARREN: There was no agreement on that, until I stood up now, sorry.

PN2251

JUSTICE ROSS: No, but I don't want to revisit the concession, okay?

PN2252

MR WARREN: Mm.

PN2253

JUSTICE ROSS: So that's what Mr Reeves's evidence will be. We have no evidence from any ACT club directly.

PN2254

MR WARREN: Right.

PN2255

JUSTICE ROSS: Now that's a matter for you, and when we come to Mr Hart's evidence, depending on where you've got to with your hearing, we want to make some observations about some of the survey material that he refers to. If having removed that you do want to provide direct evidence from a club in the ACT then let us know that you seek leave to do that and we'll deal with that application if and when it's made.

PN2256

MR WARREN: I appreciate your Honour's comments.

PN2257

JUSTICE ROSS: Okay. What's convenient to deal with next? Mr Izzo, are you raring to go or are you happy for someone else to go first?

PN2258

MR IZZO: I'm happy to go, your Honour. I think my objections are very brief.

PN2259

JUSTICE ROSS: They are. Just bear with me for a moment. Mr Izzo, do you mind if we just come back to you?

PN2260

MR IZZO: Certainly, your Honour.

PN2261

JUSTICE ROSS: For some reason I don't have yours in front – I went through them this morning but I don't have yours in front of me, I'm just getting them, but let's deal with where the objections to Mr Hart's statements are up to. We've got this, the latest iteration – this is a function of me getting older but I'm having a fair bit of trouble picking up the shading. I gather the shading is where the objection – where there's no resolution and the objection is maintained.

PN2262

COUNSEL: That was our best attempt to represent that, your Honour.

PN2263

JUSTICE ROSS: All right, well perhaps if you identify where you think the only remaining issues are and just take us to those, and then we'll get that confirmed by United Voice.

PN2264

COUNSEL: Yes, your Honour. We actually forwarded some submissions through - - -

PN2265

JUSTICE ROSS: No, I've got that but - - -

PN2266

COUNSEL: - - - as well, yes, but we say there's three brackets. There's one bracket that relates to survey material.

PN2267

JUSTICE ROSS: No, take us to the paragraphs of his statement and identify what's still in dispute.

PN2268

COUNSEL: Paragraph 8, and that's the dining out data.

PN2269

JUSTICE ROSS: Yes.

PN2270

COUNSEL: Paragraph 9, we retract the second sentence, 'UV maintain the objection to sentence 1'.

PN2271

JUSTICE ROSS: What, they're objecting to the ABS data? Let's just go through this one at a time, Mr Dowling. In paragraph 8 what's your objection?

PN2272

MR DOWLING: It's just submission, your Honour. We don't have the survey. There just seems to be an extrapolation drawn from the survey. The survey will speak for itself if it's tendered.

PN2273

JUSTICE ROSS: Well you're content for the survey material to be tendered?

PN2274

MR DOWLING: Well only other than we haven't seen it, and we're not – I don't want to make a concession if it's stated admissibility without having seen it.

PN2275

JUSTICE ROSS: Sure.

PN2276

MR DOWLING: But subject to that reservation.

PN2277

JUSTICE ROSS: Yes. Did you say you attached that now?

PN2278

COUNSEL: Yes we do, and just dealing with this point because it comes up with a number of others. We've drawn a number of – there's a number of Mr Hart's evidence that are just direct data lifts, as we call them, from ABS.

PN2279

JUSTICE ROSS: Yes.

PN2280

COUNSEL: There's a group, and this is one, where Mr Hart's gone to some trouble to assess that data and to come to some sort of conclusions, if you like, or extrapolations on that data, and it's those group that we've said that ought to be maintained and can be asked questions on.

PN2281

JUSTICE ROSS: Extrapolations and comments on the data are submissions about certain survey evidence or ABS evidence.

PN2282

COUNSEL: Yes.

PN2283

JUSTICE ROSS: Leave aside what this material might be, but certainly ABS material you would be able to tender and you can make submissions about that. It's not as if Mr Hart is an expert statistician and is going to be able to answer questions about the ABS data - what's the standard error deviation and those sorts of things.

PN2284

COUNSEL: That's correct.

PN2285

JUSTICE ROSS: Sampling error, and you may as well just tender – it's not precluding you from putting the material in, it's on what basis – is he commenting as an expert?

PN2286

COUNSEL: He's commenting as someone who's gone through the data and made some calculations on that data, and in his statement he's presented some figures on those calculations, and we'd say it's something that could be cross-examined on and should be cross-examined on.

PN2287

JUSTICE ROSS: Yes, but you haven't provided the – well, okay, let's look at paragraph 8 for the moment. Let's go through it one at a time. Have you got that survey? All he's saying there is – he's not making any comment at all, he's just setting out a table from a fuller document.

PN2288

COUNSEL: And extrapolating on it, but I'm taking your point, your Honour, but yes he is - - -

PN2289

JUSTICE ROSS: Where is he extrapolating?

PN2290

COUNSEL: In his statement he comes to the 16.04 per cent figure. That figure is not in the table.

PN2291

JUSTICE ROSS: How does he arrive at that figure?

PN2292

COUNSEL: That's what we're saying is a matter for cross-examination.

PN2293

JUSTICE ROSS: No, it should be a matter for his evidence. I mean, what are we to make of it? If there's no cross-examination how would I have any idea how he's arrived at that figure?

PN2294

COUNSEL: Yes.

PN2295

JUSTICE ROSS: And can't you make a submission saying, based on this data which was exhibit x we calculate that at 16.04 per cent and we've arrived at it this way?

PN2296

COUNSEL: Yes, your Honour.

PN2297

JUSTICE ROSS: Okay. And this material, which tab is it? Is it JH2?

PN2298

COUNSEL: No, it isn't currently attached. We've indicated that we will provide that material, and it's been objected to as common material, because there's some of the material that's been agreed to go in, or consented to go in, as common material, and that's at the bottom of the two-page submissions we provided this morning, what that is, and they're set out throughout this document.

PN2299

MR DOWLING: Can I offer some assistance, your Honour, and I can tell you that we agree that the following documents can go in as common material, and these are referred to in Mr Hart's statement – the ABS Retail Trade Australia report, the - - -

PN2300

JUSTICE ROSS: Which paragraph is that referred to in his statement?

PN2301

MR DOWLING: That's referred to in paragraph 7.

PN2302

JUSTICE ROSS: Yes.

PN2303

MR DOWLING: The ABS 2006-2007 industry material.

PN2304

JUSTICE ROSS: That's in paragraph 9, is it?

PN2305

MR DOWLING: That's correct. The Department of Employment report, which is referred to at paragraph 15.

PN2306

JUSTICE ROSS: Yes.

PN2307

MR DOWLING: The ABS Counts of Australian Business 2010/2014, which is referred to at paragraph 20, and lastly the NSW Government report re the visitor economy taskforce, which is referred to at paragraph 28.

PN2308

JUSTICE ROSS: Okay.

PN2309

MR DOWLING: We understood that if they went in, the paragraphs referring to them wouldn't need to remain insofar as their submission or if they're necessary at all. Would you have any objection if the points remain? They're just highlighting bits from the material. They're not commenting, they're not extrapolating or seeking to say anything further.

PN2310

UNIDENTIFIED SPEAKER: Some of them do I think seem to extrapolate.

PN2311

JUSTICE ROSS: Which of those ones that you've just identified?

PN2312

MR DOWLING: My learned friend tells me that they've agreed to withdraw the balance of the paragraphs referring to those where there's a reference to those documents anyway, so that the paragraph will simply annex the document, or alternatively - - -

PN2313

JUSTICE ROSS: Yes, so it will say ABS retail trade data is annexed at et cetera and that's all it will say?

PN2314

MR DOWLING: Yes, subject to what your Honour says in relation to the balance of the statement. Our view of course is there's nothing left in the balance and then the documents can just go in as part of the common material, and then there's no need for the statement at all, but if we come to a position where there's something remaining of course we don't oppose line saying I attach - - -

PN2315

JUSTICE ROSS: Okay. So, paragraph 8, what else remains in dispute?

PN2316

MR CLARKE: Paragraph 10, your Honour, it goes to the Elections Australia survey.

PN2317

JUSTICE ROSS: Presumably paragraph 11 as well for that reason?

PN2318

MR CLARKE: Paragraph 11 as well for that reason, although we withdraw – we retract the second sentence of paragraph 11.

PN2319

JUSTICE ROSS: 'This equates to'?

PN2320

MR CLARKE: Yes, your Honour.

PN2321

JUSTICE ROSS: Can I take you to - can I just give you that? The organisation you represent would be familiar with this because it's directed at them.

PN2322

MR CLARKE: Yes.

PN2323

JUSTICE ROSS: It's an extract from the 2013 annual wage review, and it identifies issues in relation to the reliability of surveys, and you'll see there's also an observation in the 2013/2014 decision. Leave aside the objection that's taken to you, the Elections Australia data that you're seeking to attach doesn't give us any information about the survey so why would we give any weight to it? It doesn't tell us the sample size, how it was arrived at. You can contrast that with I think Mr Parker's evidence where he goes through how the survey was conducted. We don't have response rate sample size, no material about it, so on the basis of past authority – now the other way of doing it is you can get someone who conducted that survey, seek leave to put in a statement from them, and we'll work out scheduling and rights to object and responses and all the rest of it, but even if we admitted that material, how could we rely on it because it tells us nothing about the survey and its reliability.

PN2324

MR CLARKE: Sorry, your Honour, the Elections Australia survey and the attachment to Mr Hart's affidavit does attach a – I'd call it a certificate in the normal course from Mr Phil Lewis of Elections Australia.

PN2325

JUSTICE ROSS: Where is that?

PN2326

MR CLARKE: That's at the start of the data in the attachment to the statements.

PN2327

JUSTICE ROSS: I don't have any of that. I've got JH3, which is Elections Australia Pty Ltd.

PN2328

MR CLARKE: Yes, your Honour, and it says in that first sentence, if you like, this survey was conducted online.

PN2329

JUSTICE ROSS: Yes, but so what? It doesn't – it was said to 2606 people. Who were they? How did they arrive at that? Where were the businesses conducted? How was the sample size determined? Where's any of that information, which is what we've told you before you need to do in order for us to assess the reliability of the survey.

PN2330

MR CLARKE: Yes, your Honour.

PN2331

JUSTICE ROSS: It's not about precluding you putting it in. It's about trying to get it in in a way that's meaningful for us, and you can persist with this and if we admit it you're on notice that it doesn't tell us anything that allows us to assess the reliability of it.

PN2332

MR CLARKE: Yes, your Honour.

PN2333

JUSTICE ROSS: So you need to get some instructions about how you want to proceed in relation to it, because we want to give you the opportunity to put forward the best case that you can, and similarly United Voice and the other unions involved the best case they can.

PN2334

MR CLARKE: Yes.

PN2335

JUSTICE ROSS: It is a review and we want the best information we can get, but what you're giving us is not that, so the risk you run is if you do it this way it doesn't tell us anything about the 2606 people, where they came from; it doesn't even tell us whether they're restaurants, or if they were restaurants in one state, or of a particular size. How did they structure the sample?

PN2336

MR CLARKE: Yes, your Honour, point taken, and I'll get some further instructions on how we can get some more information. I'm just conscious that Mr Hart is to give evidence tomorrow afternoon, so it may not - - -

PN2337

JUSTICE ROSS: No, he's not going to give evidence about the survey. It will be whoever conducted it.

PN2338

MR CLARKE: Yes.

PN2339

JUSTICE ROSS: As you've done with Mr Parker and you've done with one of your other witnesses on the telephone survey that was done by Restaurant Catering.

PN2340

MR CLARKE: Yes, your Honour.

PN2341

JUSTICE ROSS: They've given direct evidence and they were the ones who did it, so they can answer any – Mr Hart's not going to be able to answer any questions about the structure of this survey because he didn't conduct it or wasn't involved in it.

PN2342

MR CLARKE: Yes, your Honour.

PN2343

JUSTICE ROSS: You've got in 12 and 13, why do we need anything on the jetty research award. We've got a whole witness dealing with that next week.

PN2344

MR CLARKE: Sorry, your Honour, the association has agreed to withdraw 12 through to 14.

PN2345

JUSTICE ROSS: Okay.

PN2346

MR CLARKE: Would it help if I take you to the ones that we've agreed to withdraw? Would that quickly - - -?

PN2347

JUSTICE ROSS: No, no - - -

PN2348

MR CLARKE: No, that's right, go through it again.

PN2349

JUSTICE ROSS: I'm happy – eventually I'm going to want to revise his statement. I just want to focus on where the objections remain, so at the moment it's 8, 10 and 11. Where's the next set of objections that remain?

PN2350

MR CLARKE: We withdraw 15, and that goes to the Department of Employment data that's consented to going in as common material.

PN2351

JUSTICE ROSS: Okay, yes.

PN2352

MR CLARKE: United Voice maintain the objection to 16 and just because 15 comes out, or we've offered to retract it, we're seeking a slight amendment to it because at the moment paragraph 16 says 'this data also' when we wanted to sort of point to the name of the data and the page – the reference number.

PN2353

JUSTICE ROSS: Okay, yes.

PN2354

MR CLARKE: So UV maintain their objection to that.

PN2355

JUSTICE ROSS: And I think 18 and 19 are out, is that right?

PN2356

MR CLARKE: 18 and 19 we've offered to retract, yes.

PN2357

JUSTICE ROSS: Yes.

PN2358

MR CLARKE: And 17 UV are still objecting to, and in that we've offered – and this goes to a line of them coming through where we've offered to add the wording 'in my experience'.

PN2359

JUSTICE ROSS: Yes, so that's 17.

PN2360

MR CLARKE: Yes, your Honour.

PN2361

JUSTICE ROSS: Okay, that's still contentious.

PN2362

MR CLARKE: That's it. I tried to use the darkest shading I could without scrubbing out the font.

PN2363

JUSTICE ROSS: No, that's fine.

PN2364

MR CLARKE: That's contentious. 18 and 19 are retracted. 20 is retracted – or a part is retracted and the parties have agreed to the ABS stats for that category going in.

PN2365

JUSTICE ROSS: So which parts - is it a full stop after 2014?

PN2366

MR CLARKE: Sorry, your Honour, just give me one second. It's – Mr Hart has retracted JH1, so yes, it's a full stop. It's the sentence:

PN2367

Annexed and marked JH1. Independent analysis of the Association's - - -

PN2368

JUSTICE ROSS: Well, there is only one sentence in that paragraph. Does the paragraph go?

PN2369

MR CLARKE: No, the paragraph is – from ABS count of Australian Business we seek to maintain, although I'm aware of your comments that you've made in relation to what we call calculations or extrapolations, because that's not a straight data link from the ABS statistics.

PN2370

JUSTICE ROSS: It's not a straight data link?

PN2371

MR CLARKE: No, the 15.5 per cent is not a straight data link. And it's on that basis that we're seeking to maintain.

PN2372

JUSTICE ROSS: Well, if it - - -

PN2373

MR CLARKE: I'm aware of your comments.

PN2374

JUSTICE ROSS: - - -remains what would we make of it? I've got no idea how he arrived at it, and if he's not asked any questions about it?

PN2375

MR CLARKE: Yes, your Honour.

PN2376

JUSTICE ROSS: Yes. Well, perhaps if you give some thought to that as well as the earlier matter I spoke to you about.

PN2377

MR CLARKE: Yes.

PN2378

JUSTICE ROSS: Okay. What's the next area of contention?

PN2379

MR CLARKE: Twenty-one.

PN2380

JUSTICE ROSS: Because that relates to the ABS as well?

PN2381

MR CLARKE: Yes. No that relates to both jetty research and the ABS.

PN2382

JUSTICE ROSS: Twenty-one?

PN2383

MR CLARKE: Yes. The 12 per cent in 21.

PN2384

JUSTICE ROSS: Right.

PN2385

MR CLARKE: Relates to the jetty research report.

PN2386

JUSTICE ROSS: Yes.

PN2387

MR CLARKE: Twenty-two, 23 and 24 – sorry, 22 UV maintain their objection to, we're seeking to add "in my experience".

PN2388

JUSTICE ROSS: In 22?

PN2389

MR CLARKE: Yes, your Honour. Twenty-three, we've offered to retract sentence two. Sorry, 23, we've offered to retract sentence two.

PN2390

JUSTICE ROSS: Right.

PN2391

MR CLARKE: And to put "in my experience" at the start. And in 24 we've suggested putting in my experience at the start of 24.

PN2392

JUSTICE ROSS: Well, isn't 24 just simply a submission, that's your case? It's not in his experience, it's a submission that he's putting. Look, I can see how you might put:

PN2393

reduced operating hours reduces the efficiency of restaurant business.

PN2394

That might be put.

PN2395

MR CLARKE: Yes.

PN2396

JUSTICE ROSS: On the basis of his experience but 24, it's not based on his experience, it's a submission of your organisation.

PN2397

MR CLARKE: We withdraw 24, your Honour. Yes.

PN2398

JUSTICE ROSS: Yes. The I-view survey?

PN2399

MR CLARKE: The I-view survey we press, your Honour. We've sought to get some – I-view survey we press, but I note your comments with regards to the elections Australia survey.

PN2400

JUSTICE ROSS: So that'll be a choice that you'll make?

PN2401

MR CLARKE: Yes.

PN2402

JUSTICE ROSS: To either put it in and deal with the observations made about survey reliability or run the risk. And you've been put on notice about the risk.

PN2403

MR CLARKE: Yes. I understand the comments, your Honour.

PN2404

JUSTICE ROSS: Okay. All right.

PN2405

MR CLARKE: Twenty-six and 27 we retract.

PN2406

JUSTICE ROSS: Yes.

PN2407

MR CLARKE: Twenty-eight we retract and some material goes in consented as common material.

PN2408

JUSTICE ROSS: Yes.

PN2409

MR CLARKE: Twenty-nine is retracted.

PN2410

JUSTICE ROSS: Yes. And 30 relates to the I-view survey?

PN2411

MR CLARKE: Thirty relates to the I-view survey. Thirty-one sentence one we retract.

PN2412

JUSTICE ROSS: Yes.

PN2413

MR CLARKE: And the remainder we're seeking to maintain based on Mr Hart's experience. Sorry, and 31 the third sentence comes out.

PN2414

JUSTICE ROSS: The sentence:

PN2415

Those working in industries other than.

PN2416

MR CLARKE: Yes, your Honour.

PN2417

JUSTICE ROSS: So it would simply have:

PN2418

Dining out on weekends and public holidays more popular than ever.

PN2419

MR CLARKE: That's correct.

PN2420

JUSTICE ROSS: And that's based on what? It just sort of stands out, I'm saying, that's all. Are you relating it to the I-view survey, or what are you - - -

PN2421

MR CLARKE: We're relating it to Mr Hart's experience and we noted in the submissions we provided only shortly before the commencement this morning that Mr Hart does have extensive experience. I note the comments that my friend representing clubs with regards to unions coming towards the Commission to provide a similar sort of evidence. We also note the amount of time UV have suggested was needed to cross-examine Mr Hart until only recently; that changes were made to the schedule to accommodate that, and then, at this late stage it seems that we're sort of in a position where they're trying to not have Mr Hart heard, if I could put it as shortly as I could.

PN2422

JUSTICE ROSS: All right.

PN2423

MR DOWLING: Your Honour, I think then the first paragraph I'm required to deal with is paragraph 8. I'm just trying to summarise what I've already said with respect to that. We don't have the material so I reserve my right to object as to whether it's properly admissible but insofar as it replicates the survey, the survey should speak to itself, and insofar as it extrapolates the evidence as it stands is really of no probative value at all, and is nothing other than submission.

PN2424

In respect of paragraphs 10 and 11 I'm not sure whether your Honour requires anything further from me on those because it seems - - -

PN2425

JUSTICE ROSS: No, I think we'll wait and see where we get to. We'll adjourn and you'll get instructions and we'll see where the position of restaurant and catering is in relation to that. Now, that's also the case in relation to the I-view survey.

PN2426

MR DOWLING: Yes.

PN2427

JUSTICE ROSS: So let's see where we get to on that.

PN2428

MR DOWLING: Yes. That leads me to 16, I think, your Honour, which seeks to extrapolate on the Department of Employment statistics, which we're agreed can go in as common material.

PN2429

JUSTICE ROSS: I'm not sure it's extrapolating or it's just – it's a statement of what's in there, but - - -

PN2430

MR DOWLING: I'm not sure either, your Honour.

PN2431

JUSTICE ROSS: All right.

PN2432

MR DOWLING: But either way it doesn't serve much purpose if it's extrapolating there's no explanation. It's not probative. If it's simply repeating the survey then there's no need for it.

PN2433

JUSTICE ROSS: Yes.

PN2434

MR CLARKE: I can help.

PN2435

JUSTICE ROSS: Yes.

PN2436

MR CLARKE: It is – anything that we've maintained is an extrapolation as opposed to a straight data link.

PN2437

JUSTICE ROSS: Okay.

PN2438

MR CLARKE: It's a common position we - - -

PN2439

JUSTICE ROSS: Well, then - - -

PN2440

MR CLARKE: I note your comments.

PN2441

JUSTICE ROSS: Yes. We'll reflect on that when we adjourn.

PN2442

MR CLARKE: Yes.

PN2443

JUSTICE ROSS: But there are two ways of dealing with that: either remove it and put in a submission, or if you're extrapolating it would need to explain how the witness has arrived at that figure. And this is similar to Mr Harvey's evidence. If this witness has done that work and he exposes the reasoning then why can't that be in the statement?

PN2444

MR CLARKE: Well, if it's simply reasoning from data that is admissible and that is tendered, I'm not sure how it's evidence and it's not a submission.

PN2445

JUSTICE ROSS: The same issue might arise with Mr Harvey.

PN2446

MR DOWLING: It might, your Honour, and we'll have to deal with it, but that's not a reason for making this admissible. If it's a submission it's a submission.

PN2447

JUSTICE ROSS: All right. But you'll consider your position in relation to that when we have the break. All right. What's the next one?

PN2448

MR DOWLING: Seventeen. As I understand it it's sort to be maintained on the basis of adding in "my experience".

PN2449

JUSTICE ROSS: Yes, that's right.

PN2450

MR DOWLING: It's not apparent what experience is being referred to; how these things are the result of his experience; and really how it's anything other than a submission.

PN2451

JUSTICE ROSS: Well, we're going to ask for this statement to be recast and refiled in any event in the light of where we come to this morning, so it may be that the experience is expanded on then, but let's see where we go.

PN2452

MR DOWLING: Yes. We'd have to reserve our right, and I don't mean to suggest - - -

PN2453

JUSTICE ROSS: Sure.

PN2454

MR DOWLING: - - -that their file would become admissible.

PN2455

JUSTICE ROSS: No, no, no, I appreciate that.

PN2456

MR DOWLING: Twenty-one insofar as – well, as I understand what my learned friend says, and so far as it refers to the ABS material it is an extrapolation and that's why it's sought to be maintained.

PN2457

JUSTICE ROSS: So the same point I've made before, that either it's in a submission and it's set out or it's in a witness statement, and the witness has done it, and you expose how they've done it?

PN2458

MR DOWLING: Yes.

PN2459

JUSTICE ROSS: Okay.

PN2460

MR DOWLING: The "in my experience" in paragraph 22 and 23 I don't think I can add to what I've already said.

PN2461

JUSTICE ROSS: Okay. The I-view survey I think we've canvassed and the association will consider its position when we have a short break. I think 26 to 29 are out and then 30 is the I-view survey.

PN2462

MR DOWLING: Sorry, can I just go back, your Honour, I apologise. In respect of 21, from what my learned friend said, there might be a slightly additional issue arising from paragraph 21, and that is, as I understood it this morning, the 12 per cent is a reference to the jetty research, so - - -

PN2463

JUSTICE ROSS: That's true.

PN2464

MR DOWLING: - - -that's going to stand and fall with that issue.

PN2465

JUSTICE ROSS: Well, the jetty research has been, my understanding is, 12, 13 and 14 have been withdrawn.

PN2466

MR DOWLING: Yes, because of the jetty research issue now to be consistent it might be that the first sentence in paragraph 21 should go.

PN2467

JUSTICE ROSS: Yes. You might need to think about that. And that might be put in through Mr Parker.

PN2468

MR DOWLING: Yes, your Honour. Paragraph 30 falls in the I-view camp. Sorry, if your Honour already said that, just leaves 32 to 33 and 34, again I think it's intended to add "in my experience" to those and maintain the view that it's simply submission. It might be that there's amendments made arising from what's been said today.

PN2469

JUSTICE ROSS: Okay. Look, we'll adjourn for five minutes then, if you can consider your position and when we come back we'll ask you where you're up to with that. What have you been - - -

PN2470

MR CLARKE: Your Honour, can I just raise a couple of – I mean, it just strikes me from your comments and where we're at with the statement, which we acknowledge, that whether we're going to – where the part of the consideration, whether Mr Hart's going to be in a position to give evidence tomorrow afternoon and, you know, it's something that's on my mind without the instructions, I was just sort of raising that before I speak obviously with Mr Hart.

PN2471

JUSTICE ROSS: Well, I mean, we haven't ruled on the remaining matters that he wants to put on in relation to his experience.

PN2472

MR CLARKE: Yes.

PN2473

JUSTICE ROSS: But there are the issues that I've identified with you and that's a consideration that the association needs to make about the I-view survey and the other survey material.

PN2474

MR CLARKE: Yes.

PN2475

JUSTICE ROSS: About how to best put that.

PN2476

MR CLARKE: Yes.

PN2477

JUSTICE ROSS: So that we're able to take it into account.

PN2478

MR CLARKE: Yes, your Honour.

PN2479

JUSTICE ROSS: Why don't we do it this way, why don't we just have a 10 minute adjournment, have a discussion, come back and let us know where you're up to and then we'll go away and consider where we're up to. If you want to sort of vacate and we can knock over Mr Izzo, so to speak while you're doing that.

PN2480

MR CLARKE: Mr Izzo's unrelated in some ways to some of the evidence that's before the restaurants as I understand the objections. Yes.

PN2481

MR IZZO: So my objections to the restaurant witnesses by the United Voice. If it's possible to deal with my objections now that would be appreciated.

PN2482

JUSTICE ROSS: Yes. And do you need to stay for that. I was really just saying whilst we're doing that you could go outside and talk about that or do you want to stay?

PN2483

MR CLARKE: Look, your Honour, our general proposition is that people should come here and be heard, and we don't know what position the Commission will adopt with regards to some of those matters.

PN2484

JUSTICE ROSS: Neither do we, but - - -

PN2485

MR CLARKE: No, sorry, if we're outside the room we'll be more in the dark.

PN2486

JUSTICE ROSS: No, okay. That's fine.

PN2487

MR CLARKE: Sorry, your Honour. I'm not trying to - - -

PN2488

JUSTICE ROSS: No, that's fine. No, no, no, that's fine. You're entitled to - - -

PN2489

MR CLARKE: Yes.

PN2490

JUSTICE ROSS: I just wasn't sure if you had an interest in what Mr Izzo was going to - you're not - - -

PN2491

MR CLARKE: Yes. For that reason we - - -

PN2492

JUSTICE ROSS: The short answer is you do.

PN2493

MR CLARKE: Yes.

PN2494

JUSTICE ROSS: So that's that. We will adjourn for 10 minutes and then you can let us know where you're up to and then we'll consider where we're at.

PN2495

MR CLARKE: Thank you.

SHORT ADJOURNMENT

[10.00 AM]

RESUMED

[10.23 AM]

PN2496

MR CLARKE: Your Honour, would it help to take you to the paragraphs that we are offering to withdraw first of all?

PN2497

JUSTICE ROSS: Sure.

PN2498

MR CLARKE: In a subset, they would be the ones with the extrapolations or the calculations which we have referred to and they'd be paragraphs 16.

PN2499

JUSTICE ROSS: Yes.

PN2500

MR CLARKE: Paragraphs 20.

PN2501

JUSTICE ROSS: Yes.

PN2502

MR CLARKE: And paragraph 21.

PN2503

JUSTICE ROSS: Yes.

PN2504

MR CLARKE: The paragraphs - and I can take you to the numbers with regards to Elections Australia v I-View - they would be paragraph - - -

PN2505

JUSTICE ROSS: 10 and 11 and 25 and 30, I think. Is that right?

PN2506

MR CLARKE: Yes. All I can say at this stage is we understand the comments from the Bench and we can only do what we can do. I haven't got any - we haven't been absolutely to have discussions with those people. To get the sort of information that's been sought.

PN2507

JUSTICE ROSS: I'm not suggesting you have to lodge it now, today or - it's really a choice and to let us know what you want to do. And if it means it is lodged, that you indicate now that you are going to seek leave to lodge it within a certain time period, then we deal with that application. That's all.

PN2508

MR CLARKE: Yes. Maybe if I could let you know at the start of Mr Hart's evidence or let the Bench know tomorrow, because I've got to have some discussions with external parties with regards to that.

PN2509

JUSTICE ROSS: Sure.

PN2510

MR CLARKE: And so that is not something that I can do right now, but I could certainly let the Full Bench know, prior to the start - and my friends know - prior to the start of Mr Hart's evidence, whether we'd be seeking leave to provide additional information.

PN2511

JUSTICE ROSS: All right. What is to be done about paragraph 8?

PN2512

MR CLARKE: Paragraph 8 we make this comment that - - -

PN2513

JUSTICE ROSS: There's the extrapolation there as well.

PN2514

MR CLARKE: There's the extrapolation there. There is also the reference to the dining out data, which we say we provided to the union on the 4th. We also say it was subject to their notice to produce themselves, and they asked a return date of the 4th. Without the notice, without the order we'd provided that data to them. We say they have had adequate time to assess that information, since Mr Hart is giving evidence tomorrow and we'd say that the whole paragraph stays. We understand the extrapolation concern, but in the alternate that a reference to that material stay in in paragraph 8.

PN2515

JUSTICE ROSS: Okay.

PN2516

MR CLARKE: Yes, and then I think out of what's left is what we'd commonly refer to as "in my experience".

PN2517

JUSTICE ROSS: Yes. No, all right. Well, we think the course will adopt is this that in relation to the "in my experience" additions on 17, 22 and 23, we would allow that material. We would delete paragraphs 32, 33 and 34, as it seems to us that's just plainly a submission.

PN2518

MR CLARKE: Yes.

PN2519

JUSTICE ROSS: In relation to the other three categories, the paragraph 8 matter, the Elections Australia and the I-View, well, we're not in a position to make an assessment about that at this stage. We don't have the food services material in paragraph 8 for example. You need to consider your position in relation to Elections Australia v I-View. What would assist us is if you could - perhaps if we do this at the start tomorrow morning so that everyone knows where we are going to with Mr Hart's evidence

PN2520

MR CLARKE: Yes.

PN2521

JUSTICE ROSS: If you can come along with the documents you are going to tender as common material, and whether that is the food services or not and a revised statement from Mr Hart, which takes out all of the material we've identified and you've agreed and where there are the extrapolations, for example, in 8 you will have considered your position about whether - what you are going to do about that, whether it is going in as submission or whether it's going to be expanded on, and you are going to explain how you arrived at the extrapolation, and then we will rule on that. Because I am just conscious that - I mean I've got a note about what's in it, but I would rather see the document and see what we are left with. Based on the rulings we've given you about those paragraphs that were objected to, but you wanted to maintain the "within my experience", that some of those are in. The submission bit at the end is out and you have removed a range of them and made amendments, so we would want to see an amended statement.

PN2522

MR CLARKE: Yes, your Honour.

PN2523

JUSTICE ROSS: So if you can get that in by close of business today and then started proceedings tomorrow morning we will revisit when Mr Hart is up to, so everyone knows when he comes on for his evidence what it is that he will be talking about, rather than at the start of his evidence you telling the union and us, "Oh, well, it's going to be all the survey stuff and all the I-View stuff." Let's just get a bit of notice about where it's up to.

PN2524

MR CLARKE: Point taken, your Honour. I just - Mr Hart is in Sydney today, so we might need to provide an unsigned statement by late today.

PN2525

JUSTICE ROSS: No, that's absolutely fine. It can be without - you know, that's all fine. I just want to get some sort of document that records where we're up to and what it is you want to press. That's all.

PN2526

MR CLARKE: And just one other administrative matter. There is a range, that my friend is pointing to, of five other documents as common material that we would provide them tomorrow morning as well, because - - -

PN2527

JUSTICE ROSS: That's fine. Just tender them - - -

PN2528

MR CLARKE: Get them in.

PN2529

JUSTICE ROSS: Deal with any objections and get all that on the record, that's fine.

PN2530

MR CLARKE: Okay. Thank you, your Honour.

PN2531

JUSTICE ROSS: An issue was raised about transcript and the sensible point put that if it's loaded on the web site, witnesses might see it because the web site in this case is of fascinating interest to the general public, so no doubt they might trawl through it.

PN2532

What we will do is we will provide - can I ask, perhaps, Mr Rizzo, if you can coordinate the employer's side and just get us the list of email addresses and who we should send it to. If I can ask you to do the same, Mr Dowling, who should we send that transcript to? So we want to make sure the advocates get it.

PN2533

MR DOWLING: Yes.

PN2534

JUSTICE ROSS: But we will wait until the evidence is completed over the three-week period and then we will put it on to the web site.

PN2535

MR DOWLING: Yes, noting that all of the advocates understand that it is not to be provided to any persons who are going to give evidence.

PN2536

JUSTICE ROSS: Yes, we will put that on the note that goes to them that it's provided in-confidence to them and is not to be provided to any witness.

PN2537

MR DOWLING: Thank you.

PN2538

JUSTICE ROSS: Everyone happy with that? All right. Well, let's - just bear with me for a moment, Mr Rizzo. So I think yours have resolved into - we received a document on 9 September and some objections are maintained in relation to Jennifer Miller, Angus Lonrigan and Alexandra Kindness, is that right?

PN2539

MR RIZZO: That's right.

PN2540

JUSTICE ROSS: And in relation to Jennifer Miller, it's been agreed that the words "If I disputed the hours, I wouldn't have a job" be deleted from paragraph 14.

PN2541

MR RIZZO: Yes, your Honour.

PN2542

JUSTICE ROSS: And there's an issue about paragraph 20, the characterisation of the hours as irregular and antisocial, and a similar point is taken with the others.

PN2543

MR RIZZO: Yes, your Honour.

PN2544

JUSTICE ROSS: And a similar point is taken with the others.

PN2545

MR RIZZO: Yes, your Honour.

PN2546

JUSTICE ROSS: Can I just raise with Mr Dowling something about that? Mr Dowling, I had a slightly different issue with the characterisation. I wasn't sure what hours the witness is referring to. Can I take you to and can I offer a suggestion and see how you react to that.

PN2547

If I can take you to Ms Miller's statement at paragraph 20, if you remove the words "irregular and antisocial" and inserted - what hours is she talking about? Is she talking about - is she saying, "I can't think of any positive benefits from me for working on weekends and in the evenings" and "on public holidays"? Is that what - and if that's said there, well, she is entitled to give that evidence, but what does the "irregular and antisocial" - that's her opinion of how she would describe those hours. I am more interested in what hours is she talking about and what is her reaction to those hours, and the impact on there.

PN2548

MR DOWLING: Yes. Well, the way we've responded to this, to my learned friend is to refer him to paragraphs 11 and 12, and 13 where she sets out the hours she works, and to say really her evidence has been given in that context, in the context of the hours that she works, and can't mean anything else.

PN2549

JUSTICE ROSS: No, no, I agree but then why do you need the words "irregular and antisocial"? Why doesn't it just say:

PN2550

I can't think of any positive benefits for me from working the hours I work.

PN2551

MR DOWLING: Yes.

PN2552

JUSTICE ROSS: Would that be - that removes the objection, it provides the link and, without foreclosing argument on it, it seems to me that would be admissible. She is explaining, "The hours I work have this impact on me and this is what I think of them". She doesn't need to characterise them.

PN2553

MR DOWLING: Yes we agree, your Honour. We thought in the context it could mean nothing else, but if there's - - -

PN2554

JUSTICE ROSS: Yes, but that seems to be a way through it.

PN2555

MR DOWLING: Yes.

PN2556

JUSTICE ROSS: So if paragraph 20 said:

PN2557

I can't think of any positive benefits for me from working the hours I work except for the penalty rates.

PN2558

JUSTICE ROSS: And then it would be understood that the reference to "The hours I work" is as you say a reference to the earlier parts of her statement.

PN2559

MR DOWLING: Yes.

PN2560

JUSTICE ROSS: Is that all right?

PN2561

MR IZZO: I have absolutely no objection to that, your Honour.

PN2562

JUSTICE ROSS: Okay, well I think that might also, if we go to Angus Lonergan's statement - your issue is paragraph I think - - -

PN2563

MR IZZO: Paragraph 34, your Honour.

PN2564

JUSTICE ROSS: The irregular hours:

PN2565

Since it is difficult to balance work and study while working the hours I work.

PN2566

MR DOWLING: Yes, we have cross-referenced that to paragraph 21, your Honour, and that's in paragraph 20 and 21 and 22.

PN2567

JUSTICE ROSS: Yes.

PN2568

MR DOWLING: So again - - -

PN2569

JUSTICE ROSS: Yes, so if it was, "The hours I work" then it's clearly a reference to the earlier evidence. That's okay for both of you?

PN2570

MR IZZO: I'm comfortable with that approach, your Honour.

PN2571

MR DOWLING: Yes, your Honour, save that this one is slightly different because Mr Lonergan actually goes on to say what he's talking about.

PN2572

JUSTICE ROSS: He does.

PN2573

MR DOWLING: "Irregular hours over weekends and public holidays".

PN2574

JUSTICE ROSS: It could say:

PN2575

Since it is difficult for me to balance work and study while working on weekends and public holidays.

PN2576

MR DOWLING: Yes.

PN2577

JUSTICE ROSS: That's - yes. That's the only point taken to Mr Lonergan's?

PN2578

MR IZZO: It is, your Honour.

PN2579

JUSTICE ROSS: And then Alexandra - here we are.

PN2580

MR DOWLING: Sorry, can I just confirm the amendment your Honour made to paragraph 34?

PN2581

JUSTICE ROSS: Yes, it would say - I'm sorry, I haven't - yes, bear with me for a moment:

PN2582

The biggest thing I lose from working the hours I work over weekends and public holidays.

PN2583

I was actually looking at a different paragraph, Mr Dowling. Let me just go back to this.

PN2584

MR DOWLING: Yes. Yes, there was a concern at our end that that might have been the case.

PN2585

JUSTICE ROSS: Yes. No, that's my mistake. Where is it said that the hours are irregular, because at paragraph 21:

PN2586

I tend to be rostered similar shifts each week. I regularly work both days. I tend to work a seven hour shift on one weekend day and two 7.6 hour shifts on the other days.

PN2587

So isn't it really a reference to:

PN2588

The biggest thing I lose from working the hours I work over weekends and public holidays -

PN2589

And that's a cross-reference to 21? How do you marry the two up?

PN2590

MR DOWLING: Yes, your Honour. I don't think that the witness can give any evidence about anything other than his experience of the hours that he works.

PN2591

JUSTICE ROSS: Yes.

PN2592

MR DOWLING: That's what we've always said.

PN2593

JUSTICE ROSS: So if it says:

PN2594

The biggest thing I lose from working the hours I work -

PN2595

And then it goes on:

PN2596

- over weekends and public holidays -

PN2597

et cetera. Is that - - -

PN2598

MR DOWLING: Yes.

PN2599

JUSTICE ROSS: And that resolves your problem?

PN2600

MR IZZO: It does, your Honour.

PN2601

JUSTICE ROSS: All right, and then I think - yes, this was the one I had leapt to. Then if you go to Ms Kindness's - a pleasant name - paragraph 25, then it's the unsociable hours point and it's whether you can - the hours that she's referring to are presumably the hours that she works which are detailed - - -

PN2602

MR DOWLING: 10, 11, 12.

PN2603

JUSTICE ROSS: Yes. So if that was a reference:

PN2604

Since it is difficult to balance work and study while working the hours I work.

PN2605

MR DOWLING: Yes, your Honour.

PN2606

JUSTICE ROSS: You've got two other - in the last sentence I'm not sure what she's saying. Seeking to make a general statement that it would - but that seems to be her assessment if she stopped studying. I can't remember whether it identifies what she's studying.

PN2607

MR IZZO: It does identify what she's studying. I believe it's a Bachelor degree in History at the University of New England, your Honour. That's in paragraph 6.

PN2608

JUSTICE ROSS: I'm having trouble getting excited about it one or the other, I must admit, Mr Izzo but - - -

PN2609

MR IZZO: I acknowledge, your Honour, I think the statement doesn't take us very far. It's her view about - - -

PN2610

JUSTICE ROSS: About what the effect would be on her career prospects.

PN2611

MR IZZO: About what the effect would be. It is on her but the reality is she's surmising as to the views employers would take about her with respect to whether she completed tertiary studies or not. It's a bit difficult to understand how she would be in the position to express such an opinion unless she's an expert on this topic. Even if it is about her, I'm not sure how that gives her expertise to comment on the views of prospective employers about her. So really that's the basis of the objection, that it is an opinion and a conclusion. But even beyond that I just don't know how far the statement takes the Commission in terms of assessing the matters in - - -

PN2612

JUSTICE ROSS: I think yes, if it's admitted then I'm not sure what we could say other than the fact that one witness was of the view that discontinuing her study would diminish her career prospects. Look, I think it's a broad proposition. You might make the case for the alternate, that generally speaking engaging in further education and study may be said to enhance your career prospects. But it is contextual. It can depend. If you're studying an area that's a dying industry then it might not. I'm not suggesting history is, but all right, we'll hear what Mr Dowling says about that in a moment. In relation to 27 she's talking about her experience and that might be she has made efforts to - standing behind that might be that she has tried and hasn't succeeded. Again it's her experience and only one witness.

PN2613

MR IZZO: Yes, your Honour. One of the difficulties I have with that is that she doesn't set out the basis upon which she makes the statement that she has made attempts or something like that, and she seems to be making somewhat of an economic assessment of the prospects of the town, and that is simply that "You can't get a job in this town". Now if that's the nature of the evidence being given due to these barriers to entry, without experience and limited jobs, again unless she's an expert on these types of matters I'm not sure whether she could give that conclusion or that opinion unless she's going to set out the basis for it, and there is no basis set out.

PN2614

JUSTICE ROSS: Yes. Yes.

PN2615

MR IZZO: In the paragraph.

PN2616

JUSTICE ROSS: Yes.

PN2617

Mr Dowling, what do you want to do with this?

PN2618

MR DOWLING: Thank you, your Honour.

PN2619

JUSTICE ROSS: Let's start with the second one first.

PN2620

MR DOWLING: Yes.

PN2621

JUSTICE ROSS: If it was admitted what would we make of it, given it doesn't say what's the basis for her conclusion that there were limited jobs in the town? It doesn't say that there are three places that employ people and I've been to all three and no one's employing anyone.

PN2622

MR DOWLING: Yes. Well, I wonder if we might be given leave to ask her the basis upon which she, consistent with what's happened to date, consistent with which – or that she can give the evidence to the basis upon which- - -

PN2623

JUSTICE ROSS: Yes, the leave that was given to – yes. All right, what about – and really, I suppose it's also a question of how the other objection, "Discontinuing (indistinct) would drastically limit my career prospects". Well, where does that- - -

PN2624

MR DOWLING: We accept what your Honour says about the probative value of it. We say it's admissible in the circumstances. She can say, from her perspective, in her experience, knowing what she knows about what she's studying, where she lives, that it's not going to enhance her career prospects. As to how far my client can take it into submissions, that's another issue, but- - -

PN2625

JUSTICE ROSS: I don't think you can take it beyond this one witness that said this, even if that's where the evidence is left. I don't think you can extrapolate it beyond that.

PN2626

MR DOWLING: Not without some expert evidence, your Honour.

PN2627

JUSTICE ROSS: No. Anything further you want to say, Mr Izo?

PN2628

MR IZO: No, your Honour.

PN2629

JUSTICE ROSS: So those are the only two we've got left?

PN2630

MR IZO: Yes, your Honour.

PN2631

JUSTICE ROSS: Okay. Look, the position we've arrived at is this, Mr Dowling. You might want to consider whether you want to retain those sections. From our perspective, we think – the approach we would adopt is if you do retain them, we'd allow the limited leave we've allowed previously- - -

PN2632

MR DOWLING: Yes.

PN2633

JUSTICE ROSS: - - -to ask the question about the basis of it and obviously the witness will be cross-examined on that. We accept though, Mr Izo's argument about the sort of marginal probative value of this evidence. We see that it can only relate to the witness' own experience and perhaps once you ask her about that, then it may not be pressed, a retention in the statement.

PN2634

MR DOWLING: Yes.

PN2635

JUSTICE ROSS: All right?

PN2636

MR DOWLING: Thank you, your Honour.

PN2637

JUSTICE ROSS: And the matter can be – we'll see where we're up to when we get back and the witness is put in the box. But we don't want to waste a lot of time on those issues, because we do see that they're going to be of marginal probative value in the end.

PN2638

MR DOWLING: Yes.

PN2639

JUSTICE ROSS: All right? Okay, now so where are we up to? Now we've dealt with all of those, is it – are we back with – is the AHA represented? When are they blocking up?

PN2640

MR DOWLING: They're back this afternoon with Mr Dowd, who's a witness allocated at 3.45.

PN2641

JUSTICE ROSS: Okay. Do you want- - -

PN2642

MR DOWLING: Sorry, there was one other document between Mr Clarke and ourselves that we'd sought and was provided in redacted form. We'd sought the full form, but I think, from what's been said, there's going to be some further discussion about it, so I won't raise it.

PN2643

JUSTICE ROSS: That's fine. So are we then going to proceed with Mr Tait? Do you require Mr Reeves for cross-examination?

PN2644

MR DOWLING: I've let my friend know, Mr Warren know, that I don't require Mr Reeves for cross-examination and Mr Tait is available for cross-examination, I understand.

PN2645

JUSTICE ROSS: All right. Well, do you want a moment to get yourself organised and then we'll- - -

PN2646

MR DOWLING: If you wouldn't mind, your Honour.

PN2647

JUSTICE ROSS: Yes, so we'll adjourn for – we'll come back at 11 and then we'll deal with Mr Tait. And what would be the running order then?

PN2648

MR WARREN: Mr Della who is in Melbourne – it would be important, of course, that Mr Della who – I don't know whether he's arrived in Melbourne yet, but he not be present in the Melbourne courtroom when Mr Tait's giving his evidence.

PN2649

JUSTICE ROSS: No, no, we'll make sure that happens.

PN2650

MR WARREN: Thank you. Mr Della and then Mr Cox.

PN2651

JUSTICE ROSS: Okay, when's Mr Della?

PN2652

MR WARREN: Mr Della has actually been put forward to 11 o'clock, but he's obviously going to be a bit later than that.

PN2653

JUSTICE ROSS: All right, well we'll make some arrangements to contact them and we'll schedule a time. We'll say 11.30.

PN2654

MR WARREN: Fine, thank you.

PN2655

JUSTICE ROSS: And we'll ask for a registry person to be there so there's no one – so he's excluded.

PN2656

MR WARREN: Thank you.

PN2657

JUSTICE ROSS: And then is it?

PN2658

MR WARREN: Mr Cox who was present in Sydney- - -

PN2659

JUSTICE ROSS: Mr Cox at 12.30.

PN2660

MR WARREN: - - -and will be back here again, probably about another half an hour, but he can wait outside. And then Mr Casu, who's going to be for a video conference in Canberra, is set for 3 o'clock. He's driving across from Narooma so we couldn't have moved him any earlier.

PN2661

JUSTICE ROSS: No, that's fine. That's fine. Yes, all right. Okay, well we'll come back at 11.

PN2662

MR WARREN: Thank you, your Honour.

SHORT ADJOURNMENT

[10.49 AM]

RESUMED

[11.05 AM]

PN2663

MR WARREN: Thank you, members of the Commission, I call Mr Tait.

<RICHARD IAN DAVID TAIT, SWORN

[11.06 AM]

EXAMINATION-IN-CHIEF BY MR WARREN

[11.06 PM]

PN2664

MR WARREN: Mr Tait, you swore an affidavit on 29 June 2015 which has been filed in these proceedings. Do you have a copy of that with you in the witness box?---I do.

PN2665

Could I take you please, and just check to ensure that the parts that have been redacted are redacted from your affidavit. In paragraph numbered 11, after the first sentence, four of the paragraph?---Yes.

PN2666

Paragraphs numbered 12, 13 and 14 in total are redacted?---Yes.

RICHARD IAN DAVID TAIT

XN MR WARREN

PN2667

In paragraph 15, all the words after "2011", which appears on the third line are taken out and in addition, the annexures that you refer to in that paragraph have

been replaced by the full reports of the New South Wales Club Census 2011 by KPMG and the National Club Census 2011 by KPMG?---Yes.

PN2668

All of paragraphs 16 and 17?---Yes.

PN2669

In paragraph 19, the last sentence which occurs after the word, "rates"?---Yes.

PN2670

All of paragraph 20, and those are the amendments. With those amendments, is it your evidence that your – the document styled affidavit of Richard Ian David Tait dated 29 June is true and correct to the best of your knowledge and belief?---Yes.

PN2671

I tender that document as redacted.

PN2672

JUSTICE ROSS: Do you have it?

PN2673

MR WARREN: Sorry, I thought the – we are getting a cleaner, unmarked copy. I hand this – thank you. They might be coming through the door now, your Honour, with a bit of luck. They're unredacted. I'll tender that. We will replace that as soon as we have that document. That's the evidence of Mr Tait.

PN2674

JUSTICE ROSS: Thank you. With those amendments, there's no objection to the statement?

PN2675

MR DOWLING: No, your Honour.

PN2676

JUSTICE ROSS: We'll mark the statement as Exhibit CAI 1, and that will include the two annexures which are referred.

**EXHIBIT #CAI1 AFFIDAVIT OF RICHARD IAN DAVID TAIT
DATED 29 JUNE 2015**

PN2677

MR WARREN: If the Commission pleases.

CROSS-EXAMINATION BY MR DOWLING

[11.09 AM]

PN2678

MR DOWLING: Mr Tait, it's your evidence that you are the Executive Manager of Workplace Relations for ClubsNSW?---That's correct.

*** RICHARD IAN DAVID TAIT

XXN MR DOWLING

PN2679

And also the Executive Director for Clubs Australia Industrial?---That's correct.

PN2680

Since its inception in or about 2011?---That's correct.

PN2681

And the position you hold with ClubsNSW, the Executive Manager of Workplace Relations, is that a position you held when the documents that you've been referred to this morning, the National Club Census and the NSW Club Census, were undertaken?---Yes.

PN2682

All right. And should we understand from those documents described as a census, that they were undertaken by KPMG at the request and as the result of the payment by ClubsNSW?---Payment?

PN2683

To KPMG?---Yes.

PN2684

And that goes in respect of both documents, the National Club Census 2011 and the NSW Club Census 2011?---That's correct.

PN2685

Right. And are you familiar the terms of both of those documents, broadly speaking?---Reasonably.

PN2686

And is it the case that there was an agreement between ClubsNSW and KPMG as to how they should conduct the questionnaire and what it was that they would produce from it?---I couldn't tell you directly in that regard. This is a document organised by our policy department, a different executive manager. So he had direct conversations with KPMG that I'm now aware of.

PN2687

All right, so you weren't privy to the KPMG conversations?---No.

PN2688

But I assume, as the Executive Manager of Workplace Relations, you were involved in the decision-making process as to engaging of KPMG to carry out the work?---In the broader strategic perspective of it, yes.

PN2689

Okay. And the work that KPMG did, and is contained in these two documents, was based on a series of questions that were asked of clubs, firstly in New South Wales, and is it right to say that they asked those questions or at least sought to, of clubs in New South Wales that were registered with the Office of Liquor, Gaming and Racing?---That's correct.

*** RICHARD IAN DAVID TAIT

XXN MR DOWLING

PN2690

And in respect of the National Census, they sought to ask those questions of clubs that were registered with the equivalent State and Territory bodies, such as that office?---That's correct.

PN2691

And I mentioned a series of questions. I take it that ClubsNSW had in mind the sorts of things that they wanted to learn about clubs, both in New South Wales and Australia-wide. Is that correct?---That's correct.

PN2692

And is it correct also that ClubsNSW assisted KPMG with the questions that they would ask so as to make sure that they were getting the information that they wanted and learning what it was they wanted to learn about clubs?---They assisted in relation to questions, yes.

PN2693

And in terms of what was produced, is it also fair to say that a principal source of data upon which these documents are based, is that questionnaire that was sent to ClubsNSW in particular, and then more broadly, in respect of the national one?---That is my understanding.

PN2694

All right. And I think - I'm going to give you some detail, so if you're unaware of the detail, please let me know. But as I understand it, in respect of the New South Wales census, there was 1,471 clubs that were invited to answer the questions. Does that approximately accord with the number of clubs that you would expect would be provided or invited to answer the questions?---I couldn't say yes or no. There's more clubs than that.

PN2695

Perhaps it might be fairer if I provide to you firstly a copy of the NSW Club Census. Now, your Honour, I'm working on the assumption that the Bench has a copy of these documents.

PN2696

JUSTICE ROSS: We do.

PN2697

MR DOWLING: Thank you. In respect of New South Wales, can I take you to page 87? In some respects the report speaks for itself but I want to make sure this accords with your understanding of the way things were carried out. It describes there being 1,471 registered clubs being invited to participate and 421 completing the survey, a response rate of 29 per cent. That accords with your recollection of the process that was followed, or you don't have one?---I don't have. I couldn't argue about that.

PN2698

There is nothing that you can recall that would contradict those figures?---No.

*** RICHARD IAN DAVID TAIT

XXN MR DOWLING

PN2699

In respect of the other document, the national document, again, I am only asking you whether there is anything that you are aware of that would suggest there is any inaccuracy. If you turn to p.101, there you will see two-thirds of the way down the page there were 6,577 licensed clubs in Australia invited to participate and 1,015 completed the survey, representing a total response rate of 15 per cent. Nothing you know that would suggest those figures are not accurate?---No.

PN2700

In your statement, at paragraph 11, you refer to the census there and what you describe as results that the club industry is reducing in the number of clubs and the reasons for this are many. Firstly, can I clarify there whether you are referring to the national documents or the New South Wales document?---My greater experience comes in New South Wales. I think it's both in New South Wales and nationally but I know clubs in New South Wales are definitely contracting and I think that is the one I'm referring to there, yes.

PN2701

So you think there you are referring to the New South Wales documents and the many reasons that there is a reduction as you describe it. Feel free to take time to look at the New South Wales document but does it accord with your understanding of the survey that there was no conclusion anywhere in that survey that indicated that penalty rates that is one of the reasons that there is a reduction in the number of clubs in New South Wales?---That's correct.

PN2702

That is nowhere in the survey, you agree with that proposition?---That's what I said.

PN2703

All right?---I might add in that regard - - -

PN2704

Well - - -?---The survey - - -

PN2705

- - - if there is something you want to add, your counsel will be able to re-examine you and you can clarify anything that you might wish to arising from my questions. Can I ask you to turn to page 41 of the national document and you will see there under the heading "Financial viability", it there prescribes, "In the club industry, a club is generally considered financially viable if it can generate sufficient funds from its operating activities," et cetera, and there is a reference to the IPART report, the New South Wales Independent Pricing and Regulatory Tribunal Report. Is that a report that you are broadly familiar with?---Not overly.

PN2706

You will see there in the second dot point, at the bottom of the page - or the very last dot point that appears at the bottom of the page:

*** RICHARD IAN DAVID TAIT

XXN MR DOWLING

PN2707

Individual clubs were prospering or declining for a variety of reasons including access to volunteer labour, the skills and effectiveness of its board and management teams, competition within the local community both from other clubs and alternative forms of entertainment, and demographic or social changes within their local communities.

PN2708

Does that accord with your - I know and I accept you said you are not overly familiar with the IPART report but does that accord with your understanding of their findings?---I wouldn't disagree with it, that's for sure.

PN2709

I suggest to you, and tell me if you don't know, there is nothing in the IPART report that provides anywhere that the reasons for clubs prospering or declining was related to penalty rates? Do you know or do you agree or disagree?---My understanding with that report, that it didn't go into the issue of penalty rates. All right. Can I just, out of fairness to you, suggest that the same conclusions are set out at paragraph 31 of the New South Wales report, page 31, sorry, page 31 of the New South Wales report and again suggest to you that there is nothing in the IPART report in respect of New South Wales that dealt with the issue of penalty rates?---The questions in that report, as with the KPMG report, does not look at the issue of penalty rates.

PN2710

I think it is your evidence that understandably Clubs New South Wales wanted some - or had some involvement in the drawing of the questions that were being asked by KPMG of the clubs. Can I ask you to turn to the very back of the document?

PN2711

JUSTICE ROSS: Which document?

PN2712

MR DOWLING: Sorry, my apologies, Your Honour. The national document. Perhaps before I do that, you can clarify for the Bench if you are able to, as I understand it the same set of questions were asked in respect of the national document in respect of New South Wales, although there were parts in the questions that peculiarly dealt with New South Wales that only a New South Wales person might answer but as a general proposition the same questions were being asked and the same data was used to create the two reports, is that correct?---That would seem right.

PN2713

If I ask you to turn - I think the easiest way to do this is to go to the very back of the document and work backwards, work in from there.

PN2714

JUSTICE ROSS: Is it the document that appears after page 109? Are you taking him to the survey, the questionnaire?

*** RICHARD IAN DAVID TAIT

XXN MR DOWLING

PN2715

MR DOWLING: Yes, Your Honour. Sorry.

PN2716

JUSTICE ROSS: No, the numbering re-starts.

PN2717

MR DOWLING: Yes, that's why I was working from the back but Your Honour has given me a useful starting point. So perhaps doing it the way His Honour suggests. If you go to page 109, you might already be there, Mr Tait?---Yes, I am, thank you.

PN2718

You will see after page 109, two pages over there is an identification, "Part A - General Questions". Do you see that?---The survey instrument, after 109, Club Census 2011?

PN2719

Yes?---Measuring the contribution of the Australian registered clubs industry.

PN2720

Then the next page starts - - -?---Yes.

PN2721

- - - Part A - General Questions, do you see that?---Yes, I've got it. Yes.

PN2722

When we were talking about input into the questions, these are the questions that we were talking about, I understand. Is that right?---Yes, that would be right.

PN2723

If I can ask you to turn ahead to the numbering - looking at the numbering at the bottom right-hand corner of these pages, to page 18?---Yes.

PN2724

You will see there Question 46 that says, "Please indicate how you view these future potential regulatory changes" and there are four items identified in which you can answer between insignificant, somewhat significant, very significant, and don't know and those four items are mandatory pre-commitment legislation, changes to indoor and outdoor smoking, allowing casino style gambling online, limits or bans on ATMs in venues. Do you see those four potential regulatory changes?---Yes.

*** RICHARD IAN DAVID TAIT

XXN MR DOWLING

PN2725

Should we understand from that question that Clubs New South Wales made a decision in terms of gauging reactions to future regulatory changes that these were the four most significant issues amongst its club members?---Not if you're including penalty rates into that. This is in relation to a document and a report which is intended on influencing or lobbying government in relation to aspects which they have a strong control over. You will notice there's very few issues in

relation to workplace relations issues, if any, as this document did not go into that area. This is a policy-based document, organised by our policy team and had very little input from the workplace relations team except in relation to the number of employees, whether they are part-time, casual and full-time in relation to a document going into helping the workplace relations department undertaking their job or their lobbying, it was not a document designed in that way at all and that is why I had very little input into it.

PN2726

There are some other issues about employment that I will take you to?---Yes.

PN2727

There is a series of questions that deal with employment and I will take you to those?---Yes.

PN2728

But there was nothing to stop Clubs New South Wales from gauging - in this document from gauging the attitude of its members in respect of penalty rates, was there?---Yes.

PN2729

There was nothing to prevent a question of that sort being asked?---Well, we decided not to because it is a - it is a lobbying document in relation to showing the social contribution clubs have to their community and to - and for government to understand that contribution. And that is where the employment levels go to. It is a significant employer but we do not go into the miniscule of rates of pay and other such factors in that regard.

PN2730

You describe it as a lobbying document, so it was prepared with that in mind, as a lobbying document and unrelated, do you say, to issues of penalty rates?---That is right. The penalty rates are not included in this document.

PN2731

The Commission here should have no regard at all to this document when they are considering the issues of penalty rates, is that what you are saying?---Not at all. They have got to have regard to the industry and this document is a very strong picture of the issues facing the industry from a global perspective.

PN2732

So you'd like to give some evidence drawing on this about the industry, is that right, but not - sorry, I'll let you answer that question first. You would like to give some evidence about the industry generally and you would like to draw on this document to do so?---I think it provides context for the Commission in relation to the situation that the industry is in at the moment.

*** RICHARD IAN DAVID TAIT

XXN MR DOWLING

PN2733

It is a document from 2011, so should we understand that broadly its findings about the industry have broadly continued? Should we understand that?---I couldn't tell you for sure. My understanding of working in the industry would

indicate, from a contraction perspective, the industry has continued to contract as we speak.

PN2734

But this is a document from 2011 and you produce it to the Commission in a hearing in 2015 and are you saying whether you are not sure the findings in 2011 still hold for 2015?---Well, I can't be sure. I didn't undertake the report and I haven't undertaken a report in the last four years. There is one that has been commissioned as we speak. There is one that is done on a four yearly basis. But in relation to my experience in the industry and from talking to - - -

PN2735

If I can interrupt you. I am sorry. I am not asking for your experience for the moment. You come here and rely on this document. I want to know whether it is you say to the Commission that they should have any regard to it given its findings were in 2011 and it is now 2015 and - - -?---Absolutely.

PN2736

- - - nothing has been done in the meantime?---Absolutely.

PN2737

They should? All right. Now, in respect of the national document, if we could just have a look at that for the moment. Excuse me one moment, Mr Tait. The key findings, I am happy for you to turn to page 54 of the national document, they key findings in respect of the economic contribution in respect of clubs is that licensed clubs I am reading from the second dot point on page 54:

PN2738

Licensed clubs generate an estimated combined revenue of approximately 9.6 billion across their operations.

PN2739

That was the position in 2011 and should we understand that that is still relevant for the purposes of 2015?---I dare say things have changed in four years but in relation to 2011, it would have been that.

PN2740

In terms of the sources of that revenue, you will find that at page 31, and perhaps if we can deal with the state that you are most familiar with. If you look at table 3.2 "Sources of Revenue by State and Territory", you will see under New South Wales that the document describes 61.7 per cent of the revenue of clubs as coming from gaming machines. I suggest to you that that is still an appropriate proportion for 2015, is that right?---The industry is diversifying away from gaming and has been for quite some time but it probably wouldn't be too far from what it would be at the moment I would hazard a guess.

PN2741

It would still be around 60 per cent to the best of your understanding?---I couldn't say definitively but I wouldn't argue with that.

*** RICHARD IAN DAVID TAIT

XXN MR DOWLING

PN2742

Mr Reeves provided a statement from the ACT and in respect of the ACTU the gaming machine revenue is 62.5. Are you able to say what the position is in the ACT?---I couldn't in relation to they are larger clubs down in the ACT compared to the rest of Australia.

PN2743

So is it your best evidence that you would expect it would still broadly be consistent with that level of revenue from gaming machines?---Larger clubs probably diversify more than smaller clubs into other streams of income, so I couldn't tell you one way or the other.

PN2744

You will see, too, at the very top of the page, it gives what I understand to be the national percentage and it describes gaming machine percentage revenue as 52.7. Is it your evidence that that is still broadly the case for 2015?---That would be correct. It would be lesser across Australia than in New South Wales because some states, such as Western Australia, don't have gaming machines.

PN2745

Just while we are dealing with the issue of gambling, and keeping in mind I understand you say this was a lobbying document, what you asked KPMG to do was to do an analysis of the gross benefits of clubs potentially Australia-wide rather than the net benefit. Is that a fair thing to say?---I understand that is what the report says, yes. I don't know if we asked that but from what I garner from the report is the report says it is harder to do the net compared to the gross. So the KPMG have indicated, from my understanding of this report, that the gross is the one that they should concentrate on.

PN2746

Is it fair to say that one of the reasons it is harder to do the net is because if you are doing a net analysis, one of the considerations you might take into account is the net effect on society of problem gambling?---It could be and it also could be we don't have the money to pay KPMG to go that far.

PN2747

Well, to be fair, perhaps if you turn to page 67 of the report. You will see there at the bottom under the heading "Limitations" it says,

PN2748

It's important to note that the analysis undertaken as part of this project focuses on the gross benefits of Clubs to the Australian economy, as opposed to the net benefits.

PN2749

What I'm suggesting to you is that is what you asked for. You asked for the gross benefits, not the net benefits. Are you able to say?---No, I can't say that definitively.

*** RICHARD IAN DAVID TAIT

XXN MR DOWLING

PN2750

All right, and it goes on to say,

PN2751

A gross analysis differs from a net analysis in the following two ways. Firstly, it has been widely acknowledged that problem gambling creates a social cost or disbenefit driven by addictive behaviour and its subsequent social cost. A net analysis of benefits of Clubs would measure the benefits of the Clubs as the sum of the direct and indirect economic benefits net of any disbenefits including those driven by problem gambling.

PN2752

What I am suggesting to you is that you expressly asked KPMG not to factor in and not to do a net analysis that would include the social cost of problem gambling. Are you able to say?---No, I can't tell you. I did not instruct KPMG in any way in relation to this report.

PN2753

I think you said that you were part of the decision making process that made the decision on behalf of ClubsNSW to undertake this project?---I was part of the strategic planning process in relation to the benefit of such a project, not in relation to the direct questions of KPMG, and I never met with KPMG directly myself.

PN2754

All right, but you're the one that produces the report. You have not sought to bring anyone else along from ClubsNSW?---No, I'm not the one that produces the report.

PN2755

You are the one that has provided the report to this Commission and seeks to rely upon it?---Absolutely. It gives the perfect context of the industry.

PN2756

All right, but there are some parts of it that you can't explain?---Exactly.

PN2757

All right. You will see that there is a second dot point that deals with the limitations, and that is that gambling involves a transfer of wealth between two parties, and if I can summarise that, the reason that the gross benefit doesn't take account of the second dot point is because the money not spent on gambling might be spent elsewhere in the economy, and if you were going to do a net analysis you would have to take that into account. Are you able to say whether you're aware of any instructions in that regard?---No, I'm not aware of any instructions.

*** RICHARD IAN DAVID TAIT

XXN MR DOWLING

PN2758

Your evidence is that as the executive manager of workplace relations, policy issues might be outside of your field of influence, but those - is it correct to assume that those issues dealing with employment in these documents might be something that you had more involvement in or more interest in?---Had more interest in it.

PN2759

All right. So is it your evidence that as the executive director of workplace relations for New South Wales you didn't ask for any input into what information was being sought about employment and employment conditions?---This has been a rolling report over a number of years and we had tried to keep it consistent, and the main thing that we look at from an employment perspective is numbers in the industry and hence their social contribution. So outside that I've had very limited involvement in relation to a lot of those issues.

PN2760

It's not the only thing you look at though, is it? Perhaps I can take you to some parts of it. If you go to page 56 of the document?---Which document?

PN2761

The national document, sorry. Thank you. You will see there that one of the pieces of information, the very top of the page, there's a distribution of employment type, and one of the pieces of information that it sought to ascertain were the type of employees, whether they're full-time, part-time, casual, trainee or apprentice. Do you see that?---I do.

PN2762

It was important for you to know that, was it?---Absolutely.

PN2763

All right, and you'll see the result there is that 47,000 of the 96,000 are casual employees. That represents a smidgeon under half. Is that what you would understand to be broadly consistent with the concentration of casuals in 2015?---It could have gone further unfortunately. We'd been arguing for a long time before this Commission to maintain part-time work. Unfortunately the union prefers to see work moved towards casualisation. So it's - my suspicion is that the casual figures would have increased but not through our work.

PN2764

All right. For whatever reason you say that you think there's more casuals than the 49 per cent that are indicated in this report. The level is higher?---I suspect so, emanating from a decision earlier in the year.

PN2765

All right. In terms of the age group of your employees, again staying with the national document, if you go to page 660 you will see there halfway down the page, there's a reference to the age profiles of employee across jurisdictions?---Yes.

PN2766

And you'll see that the largest group are those aged between 25 and 44. That's described as being approximately 40 per cent?---Yes.

PN2767

You'll see that, that's the first dot point halfway down the page?---Yes.

*** RICHARD IAN DAVID TAIT

XXN MR DOWLING

PN2768

All right. Again are you able to say whether you think that's consistent with where we sit now, approximately the largest proportion are above 25 and below 44?---I couldn't see why that would have changed. I agree.

PN2769

If you turn over the page to page 61, you'll see there a series of questions about the conditions of employment. So should we understand from that that ClubsNSW thought it was important to get some information about the conditions of employment of those employees that the clubs employed?---Yes.

PN2770

All right, and the bottom of page 61, there's a number of dot points which describe the types of employment. You'll see the one from the - second from the bottom is the Registered and Licensed Clubs Award. That's a reference to the modern award that's the subject of this proceeding so far as your association is concerned?---That's correct.

PN2771

If you turn the page you'll see "club employment agreements" it's described as. Then the acronyms that were used on the previous page are across the top row, and the numbers across each state and territory are identified, and the seventh column across has "RCLA" which is the Registered and Licensed Clubs Award that we identified. Do you see that?---I do.

PN2772

The proportion at the bottom there is 46 per cent. So should we understand that - firstly you understand that to mean 46 per cent of the relevant employees are covered by the award?---Yes.

PN2773

Sorry, perhaps I should ask that more clearly. It's the award that regulates the employment of those 46 per cent?---Yes.

PN2774

All right, and again are you able to say whether you think that is consistent with where things sit in 2015, or do you think it would be higher or lower, or don't you know?---Looking at some of those features such as AWAs would have dropped off, the union collective agreements would have dropped off.

PN2775

So do you think - - ?---People - people have put down there 21 per cent on State or Federal award, so there might be a misunderstanding maybe by some of the people that have answered that because there was only - at that stage in 2011 it was during the award modernisation process - is that I would be very surprised that it's 46 per cent. I think you might be able to add the 21 to that and it could even be slightly north of that.

*** RICHARD IAN DAVID TAIT

XXN MR DOWLING

PN2776

So you think - adding the two together is 67. You think it could be as high as 70 or more per cent of the employees of the clubs that are covered by the award?---Yes.

PN2777

Can I ask you one other issue in respect of employees or persons that work for these clubs, and you will see this at page 86 of the report, the national report?---Still on the national one?

PN2778

Still on the national one?---Yes.

PN2779

Thank you. That page there deals with volunteers?---Yes.

PN2780

And there's a table at 6.6, again it sets out all of the relevant States and Territories and then there's "Volunteers across types. Director, trading, sporting, other" and a "Total of volunteers" and then there is at the very bottom, there's an "Average per club" in the last column, and then there's an "Average per club" down the very bottom, right at the bottom, which I understand indicates if we get to "Total" there's 39 there. That indicates that the average number of volunteers per club nationally is 39. Is that as you understand that document?---I'd agree with that.

PN2781

All right, and again are you able to say that that is broadly consistent with where we'd find ourselves in 2015; any reason why that would change?---I couldn't see any reason why that would have changed.

PN2782

All right, and if you go back up to the paragraph - - -?---It might have actually - if anything, it might have increased.

PN2783

All right. Okay, so again that's a category that you think since 2011 there might be more volunteers and there's an explanation about volunteers, and under heading 6.8 it provides:

PN2784

Clubs are able to provide low-cost facilities and fund local community activities because of large networks of volunteer labour. Using volunteer labour enables clubs to reduce labour costs and pass on savings to their members and the community.

PN2785

I take it that those two propositions in those sentences are still broadly correct for 2015?---That's correct, but also because they have to.

*** RICHARD IAN DAVID TAIT

XXN MR DOWLING

PN2786

Now if I can ask you to return to your witness statement you give some evidence at paragraph 19 which is on the fourth page of your statement about a New South Wales State-wide seminar series. Were any documents produced as the result of that seminar series?---Not that I can recall.

PN2787

And were any of the participants in that seminar series asked whether they wanted to participate in this proceeding?---No.

PN2788

Is there any reason that they weren't asked to participate?---We were just garnering the support of the industry in relation to the industry taking it up. It was more of a fact-finding expedition I suppose, and then we would look at that at a later stage. That might form our policy, our strategy behind it, and then we would look at individuals after that.

PN2789

Did you say it was an exercise to garner the support; is that your evidence?---No, no, to garner the views whether we should be - - -

PN2790

You said support. Are you now withdrawing that? Is it garner the views?---Well, no I'm maintaining what I put in my statement which is garner the views of the member clubs.

PN2791

All right, and after garnering the views did you decide to produce any one of the people that you describe making a comment in relation to this seminar series?---Sorry, could I - can you - - -

PN2792

Yes, you describe some comments that were made and you don't identify who they're made by. Did you decide that those people who had made a comment would be called to give evidence or did you decide - - -?---No.

PN2793

Sorry?---No, that I would give the evidence in that regard, in relation to the discussions that I had with those people.

PN2794

And why is that? Why would you not call the people directly?---Look, I think a lot of people are quite scared of being involved in this case and - - -

PN2795

Is that your speculation, is it?---No. No, no, that's what I've been told. We've spoken to a number of clubs and they said, "We'd much rather stay out of that because of any negative publicity could affect our club dramatically".

*** RICHARD IAN DAVID TAIT

XXN MR DOWLING

PN2796

Well, that's not something you've included anywhere in your statement, is it?---No, that's just what you asked me.

PN2797

I'm asking you about why it is these people were not produced. There's no explanation in your statement as to why they're not produced and you're giving some explanation today for the first time. Is that right?---Upon your question, yes.

PN2798

All right. Thank you. Nothing further.

PN2799

JUSTICE ROSS: Re-examination?

RE-EXAMINATION BY MR WARREN

[11.50 AM]

PN2800

MR WARREN: Mr Tait, early on in your cross-examination with respect to your evidence in paragraph numbered 11 you started to say, "Can I add to that regard". In light of the answers you have given to various questions in cross-examination to date, do you still wish to add anything or is your evidence as it stands?---I think I made the point that those documents did not look at the issue of penalty rates, and that's my position.

PN2801

Thank you. Nothing further.

PN2802

JUSTICE ROSS: Nothing further for the witness?

PN2803

Thank you for your evidence and your time, Mr Tait. You're excused.

<THE WITNESS WITHDREW

[11.51 AM]

PN2804

JUSTICE ROSS: We now have the witness from Melbourne, is that correct?

PN2805

MR WARREN: Yes, that's right, your Honour. Yes, Mr Della.

PN2806

JUSTICE ROSS: We'll stand down for a couple of minutes while we sort out the links and make sure the witness is there.

PN2807

MR WARREN: Thank you, your Honour.

*** RICHARD IAN DAVID TAIT

RXN MR WARREN

PN2808

JUSTICE ROSS: And has their statement.

PN2809

MR WARREN: Thank you, your Honour.

PN2810

JUSTICE ROSS: Or his statement. Thanks.

SHORT ADJOURNMENT

[11.51 AM]

RESUMED

[11.53 AM]

PN2811

MR WARREN: Your Honour, I call Mr John Della to give evidence. I understand Mr Della is the person sitting at the Bar table in Melbourne.

PN2812

Is that you, Mr Della?

PN2813

MR DELLA: Yes.

PN2814

MR WARREN: Thank you. Mr Della, you have prepared or had prepared an affidavit and a statement in relation to these proceedings. Is that correct?

PN2815

MR DELLA: It is correct.

PN2816

MR WARREN: Yes. I think there's a need to either swear you in or make an oath - an affirmation, at least. Is there someone in Melbourne who will be doing that?

PN2817

THE ASSOCIATE: We're doing it here.

PN2818

JUSTICE ROSS: We're doing it from here.

PN2819

MR WARREN: I'm sorry. Thank you. Maybe that should be done now.

PN2820

THE ASSOCIATE: Mr Della, could I please ask you to state your full name and address for the record?

PN2821

MR DELLA: My name is John Richard Della and my address is (address supplied).

<JOHN RICHARD DELLA, SWORN

[11.55 AM]

PN2822

JUSTICE ROSS: Just be careful with the microphone there, Mr Della, because I think you're bumping some newspaper against it or some paper and it's creating a bit of a sound effect at our end.

PN2823

MR WARREN: Thank you, Your Honour. Mr Della, as I stated earlier, you have with you a document titled "Affidavit of John Della" which is unsworn in as much as it has been altered from the one that was originally filed. Is that correct?---It is correct.

PN2824

It's a document entitled affidavit of some 20 paragraphs spread over five pages?---Correct.

PN2825

You also have with you a document titled "Statement of John Della" which was signed by you and it has some four paragraphs. Do you have that with you?---I do.

PN2826

For the record, Your Honours and Commissioners, can I just indicate before I - what I will do is I will hand up the clean copies. Can I indicate, Your Honour, with reference to the affidavit of Mr Della, in paragraph 19 - this is respectfully the original one filed, Your Honour, and I'm just trying to indicate what parts have been deleted if that is of any assistance to you. In paragraph 19 on the fourth line all words after the word "as" have been deleted and the word in - - -

PN2827

JUSTICE ROSS: Sorry, just bear with me for a moment.

PN2828

MR WARREN: Sorry, Your Honour.

PN2829

JUSTICE ROSS: I see.

PN2830

MR WARREN: I'm just not reading them because they have been deleted.

PN2831

JUSTICE ROSS: No, that's fine.

PN2832

MR WARREN: You will also note in the first line of that paragraph the word "exasperated" now reads "exacerbated".

*** JOHN RICHARD DELLA

XN MR WARREN

PN2833

JUSTICE ROSS: Yes.

PN2834

MR WARREN: In paragraph number 20 in the third line there are one, two, three, four, five words deleted after the word "club" and the last sentence of paragraph 20 has also been deleted.

PN2835

JUSTICE ROSS: Can I get you to file electronically the revised affidavit?

PN2836

MR WARREN: The clean one?

PN2837

JUSTICE ROSS: Yes.

PN2838

MR WARREN: Yes, certainly, Your Honour.

PN2839

JUSTICE ROSS: I have also got the statement. Is there any change to that?

PN2840

MR WARREN: No, there is no change to that, Your Honour.

PN2841

JUSTICE ROSS: All right. Does that resolve all the objections?

PN2842

MR WARREN: It does.

PN2843

JUSTICE ROSS: On that basis you seek to - well, perhaps if you get the witness to swear up to them.

PN2844

MR WARREN: I will just do that now. Mr Della, you have with you a document entitled "Affidavit of John Della" and you have another document entitled "Statement of John Della". Is it your evidence that those two documents are true and correct to the best of your knowledge?---It is.

PN2845

I tender those documents.

EXHIBIT #CAI2 AFFIDAVIT OF JOHN DELLA

EXHIBIT #CAI3 ONE PAGE STATEMENT OF JOHN DELLA

PN2846

Thank you, Your Honour. That is the evidence of Mr Della.

*** JOHN RICHARD DELLA

XN MR WARREN

PN2847

MS BURKE: Mr Della, can you see and hear me all right?---I can.

PN2848

Can I start by asking you just some questions about your role at Club Hawthorn? You're the club manager. Do you have responsibility there for rostering staff?---I do.

PN2849

And for decisions to hire staff?---Yes, I do.

PN2850

When you are deciding whether or not to hire staff or what staff you might need it's your responsibility to determine whether you need someone who is full time or part time or casual?---Yes, it is. Sorry, I should also say in consultation with one of the committee or board members with that responsibility.

PN2851

Is that consultation limited to whether that person is full time, part time, et cetera or does that consultation apply to rostering and hiring generally?---Referring to hiring and just justification of the hiring.

PN2852

So is it the process that you determine a need and then make the recommendation and have a discussion with the committee member about that?---That's correct.

PN2853

Do you also have responsibility for determining the opening hours of the club?---It is left to me, but again I do make reference to - I refer it to the Board and it's always ratified.

PN2854

But on a day to day basis it's your call. Is that right?---Yes, that is right.

PN2855

Then if there were broader issues like, "Are we going to open on a particular day or are we going to change opening hours," then you do that in consultation with the Board?---That's correct.

PN2856

When you're making those recommendations and decisions you do that based on revenue and profit. I think that's your evidence at paragraph 18 of your statement. Is that correct?---That is right.

PN2857

There is a few paragraphs in your statement where you say this. The first one is at paragraph 6, so perhaps we can start there?---Yes.

*** JOHN RICHARD DELLA

XXN MS BURKE

PN2858

Your evidence is that because of penalty rates you close on public holidays. Is that right?---Yes, it is.

PN2859

So you say - I didn't mean to misquote you. You say, "We are generally closed"?---Yes, that's - yes, a fairer comment on the grounds that I think I make reference in other places that we don't close for the whole of the Easter break.

PN2860

Because you do open on some public holidays, don't you?---That's right. That's what I said. The best example being Easter because it's so many days.

PN2861

And the reason you don't open on some other days, you say, is because you trade at a loss?---That's right.

PN2862

But you can trade at a loss on an ordinary day, can't you?---It's possible. It does happen, that's right.

PN2863

Mr Della, you produced some documents in response to a notice to produce - sorry, an order for production issued by the Commission. Do you have those documents with you?---I do. Bear with me.

PN2864

Does the Full Bench have copies? Perhaps it would help if I told you what the documents were. One is this document titled "Daily Management Report" and looks like this and one is a bundle of documents described as "Group Sales" and they look like this.

PN2865

JUSTICE ROSS: I don't have the Group Sales one. I've got the other one.

PN2866

MS BURKE: That's all right. I can probably proceed without the Group Sales one. Mr Della, just looking at the Daily Management Report document there, have you got that in front of you?---I have three. Depending which one you're referring to.

PN2867

Yes, you've got three different weeks. So I'm looking at the one that's - the first column is headed "Sunday, 12 July 2015"?---Yes.

PN2868

There is three big rows and in the middle of the second row there is a line there describing "Venue Revenue"?---Yes.

*** JOHN RICHARD DELLA

XXN MS BURKE

PN2869

Have you got that there?---Yes.

PN2870

Looking at - for example, if you follow that line all the way down to Friday 17 July - - -?---Yes.

PN2871

You can see there that you made a loss of \$2981.94?---Yes.

PN2872

So that's a loss that just occurs on an ordinary trading day and like I said, this is - - -?---Well - - -

PN2873

This is within the confines of venue revenue from gaming. Is that right?---That's right, that is purely - this report is only gaming.

PN2874

But gaming is the source of the bulk of your revenue, isn't it?---That's true.

PN2875

I think you say in paragraph 3 of your statement that your turnover for the last full financial year was about 1.6 million and gaming revenue - - -?---Yes.

PN2876

Of that, gaming revenue accounted for 1.2 million?---Yes.

PN2877

So looking at gaming figures gives you a pretty accurate sense of the overall revenue?---Yes. These were purely random samples to give an indicator.

PN2878

Then if you follow that back to Monday 13 July - - -?---Yes.

PN2879

- - - you have a revenue on that day of \$4883.93?---Yes.

PN2880

So that's a day that was very profitable even though it's a Monday. I withdraw that it was even though it's a Monday?---Exactly. It could be any day of the week. It's - that's the randomness, I guess, of the gambling industry. Some days a - the player wins, some days he loses.

PN2881

That's right. And the reverse for your club, of course?---Correct.

PN2882

Some days punters win and that's not the best day for you?---That's right.

*** JOHN RICHARD DELLA

XXN MS BURKE

PN2883

So for that reason, because there is that sort of variety, when you're looking at profit and loss of a particular club, you would look at it over a year, wouldn't you?---Yes, I do.

PN2884

Because looking at just a day in isolation doesn't give you the whole picture?---I'm sorry, I couldn't hear that.

PN2885

Looking at just a day of revenue in isolation doesn't give you the whole picture?---No, it does not.

PN2886

You can put that document - can I tender this document?

PN2887

JUSTICE ROSS: No objection?

PN2888

MR WARREN: No objection, Your Honour.

PN2889

JUSTICE ROSS: That's the two page document that was provided and it's headed Daily Management Report?

PN2890

MS BURKE: My copy is three pages.

PN2891

JUSTICE ROSS: Three, is it? Yes.

PN2892

MS BURKE: And that's CAI - - -

PN2893

JUSTICE ROSS: No, if you're tendering it, it won't be.

EXHIBIT #UV1 DAILY MANAGEMENT REPORT (3 PAGES)

PN2894

JUSTICE ROSS: If you can provide a copy of that document to my associate as well so we can (indistinct).

PN2895

MS BURKE: Thank you, Mr Della, you can put that document to one side. Turning now to paragraph 15 of your statement, you say that if penalty rates were reduced you would expect that your club would trade for longer hours on a Sunday?---Yes, I do.

*** JOHN RICHARD DELLA

XXN MS BURKE

PN2896

That is your decision in consultation with the Board?---That's right.

PN2897

Looking at the hours that you operate Monday to Saturday, is it fair to say those longer hours would be that you would open at 10.00 am, which is when I believe you open every other day of the week?---Yes.

PN2898

So that's 10.00 am instead of 12.00 and that you would close at somewhere between 10.00 and 11.00 pm?---That would be right.

PN2899

So is it fair to say that if you were going to open for longer hours on a Sunday, it would be about four hours? Sorry, an additional four hours?---Yes, it would be.

PN2900

And that's at most?---No, I can't say that, but that would - that would be my best assumption without trialing it.

PN2901

Sundays are your quietest day, aren't they?---They certainly are.

PN2902

At paragraph 7 I think you say that your daily revenue on average on Sundays is \$1900?---That's right.

PN2903

That's compared to your biggest day which is Friday \$8000?---Mm'm.

PN2904

Saturday \$5000 and then the average Monday to Thursday is \$3125?---Yes.

PN2905

So Sundays are about 60 per cent of the average revenue on Mondays to Thursdays?---Without calculating that, I will just - yes, I'll take that as a given.

PN2906

Well, perhaps knowing my maths, you might want to take that one on notice, but the figures are what they are?---Okay.

PN2907

So you're trading for an extra - you would consider trading for an extra four hours on the quietest day. You wouldn't expect to make very much money in revenue from those extra hours, would you?---Probably not, but it wasn't all about gaming on any day of the week. It was also in reference to our members and their access to other facilities being the sporting activities.

PN2908

But they're not a high source of revenue for you, are they?---No, they're not a high source of revenue, but they are - they're certainly the reason for our being.

*** JOHN RICHARD DELLA

XXN MS BURKE

PN2909

You also say that if penalty rates were reduced and - sorry, I'm now looking at paragraph 17 of your statement. You would anticipate an increase in total revenue?---Yes.

PN2910

So this is an increase in revenue quite apart from the increase in revenue on Sundays?---That's right.

PN2911

So I take it you have calculated what that greater revenue might be separate from Sundays?---No, I haven't. That comment is purely based on my experience and expectation of changing the trading, changing the offerings to the customer and the service level because we could probably - not probably. Because we would put more people on in the midweek period.

PN2912

Putting more people on in the midweek period would lead to greater revenue during the midweek period even though you wouldn't be open for any longer. Is that what you're saying?---That's what I'm saying.

PN2913

You also say at paragraph 16 that there would be - if penalty rates were reduced there would be an overall reduction in the wages bill?---Yes.

PN2914

Can I take it that you have calculated what that overall reduction would be?---I have done it at times going back a couple of years ago. How do I say this? When I first was there in around four years ago part of my charter was to improve the trading of the club and in doing so, that was a reference to checking all the rosters and yes, I did do calculations back then based on the hours they were trading back then which were longer.

PN2915

But at around the time that you prepared and then swore your affidavit - - -?---No, I'm sorry, I can't hear you.

PN2916

I'm sorry. Around you the time you prepared and swore this affidavit, that's late June, you had not done that calculation had you?---No.

PN2917

Just looking back up again at paragraph 15, you say that you would apply this wage saving that you hope to make to opening longer hours on Sunday?--- Yes.

PN2918

This would obviously require staff to be rostered on for those longer hours?---Yes.

*** JOHN RICHARD DELLA

XXN MS BURKE

PN2919

And that would be your existing staff, wouldn't it?---The last piece I missed again, sorry.

PN2920

That would be your existing staff. That's right, isn't it?---Yes, it would be. Yes, it would.

PN2921

You also say that the wage savings would enable you to employ more people on all days, not just on the weekend?---That's right.

PN2922

The reason you want to do that is because weekdays are much busier for you than Sundays. That's right, isn't it?---Yes, it is.

PN2923

Can I take it that you have made an assessment of what - well, no, I won't take it because I think you've said you didn't make an assessment of what those wage savings would be, but can I take it you have made an assessment or a calculation of how many new employees you might be able to hire?---The modelling that I did, I was looking to employ what I would term, and used to be termed, midday employees and I was looking to changing the way we did our luncheon trade and have an extra person over the lunch period Monday to Friday.

PN2924

What is that modelling, sorry, Mr Della, that you did?---Rosters. Just remodelling on rostering and having an extra person providing a different service and a different style of offering of a lunch time Monday to Friday and the modelling was my beliefs on what that would do in revenue as modelling is, it's not hard fact, I guess.

PN2925

When did you do that modelling?---Again, I'm saying four years ago.

PN2926

Thank you. And if I can ask you to look briefly at paragraph 19 of your statement, please?---Yes.

PN2927

You say that the penalty rate burdens that the club currently experiences are also exacerbated by the late and early work penalties, under clause 29.4 of the award?---Mm-hm.

PN2928

Those penalties are not payable on days where you are required to pay penalty rates are they?---No, they're not.

PN2929

And there is no application before this - before the Commission to amend clause 29.4 in the Clubs Award, is there?---I don't know the answer to that, I'm sorry.

*** JOHN RICHARD DELLA

XXN MS BURKE

PN2930

I don't have any more questions. Thank you very much, Mr Della?---Thank you.

PN2931

JUSTICE ROSS: Mr Della can I take you to paragraph 15 of your statement?---Yes.

PN2932

As I understand your evidence, it is that if there was the change to the current penalty rate structure that you've identified then on a Sunday you would trade for an additional four hours. That is, you would extend the current trading hours which are 12 midday to 9 pm, you would change that to 10 am to 10.00 or 11 pm, is that right?---Yes, the answer to the four hours is yes. It may actually even be an hour earlier than that and I think as I made comment earlier, it wasn't necessarily related around retail trade, it was to give another opportunity for people to access things like the squash courts at an earlier time.

PN2933

Yes. In that additional four hours, I think usually you engage - this is from paragraph 9 of your statement, one permanent employee and three casuals on a Sunday, is that right?---Yes, yes.

PN2934

You were asked the question, "Those four additional hours, would they be allocated to your current employees?" Of those four employees that currently work on a Sunday, how many of them would be working the additional four hours? All of them or only some of them?---Well, depending on the length of the shifts, it may need another person to come on to create the ability to do so. The answer is those four would certainly still be there, whether they are there longer or I bring an extra person in. I am not sure.

PN2935

So you would have four people working over the longer period and it might not be the same four people, is that right?---Well, I'm saying yes, the same four, but there may be an additional person, depending on again availabilities of the actual staff to get somebody in earlier. Being such a small venue, we don't have a lot of staff and if they, for example, close late the night before I wouldn't expect them to come back and be first person on deck the next morning.

PN2936

Yes. Okay, thank you. Any re-examination?

PN2937

MR WARREN: Nothing arising, your Honour. Thank you.

PN2938

MS BURKE: No. Thank you, your Honour.

*** JOHN RICHARD DELLA

XXN MS BURKE

PN2939

JUSTICE ROSS: Thanks very much for your evidence, Mr Della and for your time. You're excused?---Thank you.

<THE WITNESS WITHDREW

[12.19 PM]

PN2940

MS BURKE: Your Honour, can I ask for an indulgence about 15 minutes before the next witness?

PN2941

JUSTICE ROSS: I think the next witness was scheduled at 12.30, is that right?

PN2942

MS BURKE: Well, in that case, I ask for us to run on time.

PN2943

JUSTICE ROSS: Always happy to agree with that. Can I just direct your attention to - Mr Reece's amended statement will need to be tendered at some point and marked.

PN2944

MR WARREN: Thank you, your Honour. I'll do it now.

PN2945

JUSTICE ROSS: You can take care of it now, certainly.

PN2946

MR WARREN: Certainly. I note Mr Reece's affidavit, your Honour, sworn on 26 June 2015. I tender it with respect to the first five paragraphs.

PN2947

JUSTICE ROSS: All right. Well, we will redact everything from the end of the fifth paragraph and mark that as exhibit CAI4.

EXHIBIT #CAI4 AFFIDAVIT OF MR REECE DATED 26/06/15

PN2948

MR WARREN: Thank you, your Honour.

PN2949

JUSTICE ROSS: We will adjourn to 12.30.

SHORT ADJOURNMENT

[12.20 PM]

RESUMED

[12.33 PM]

PN2950

JUSTICE ROSS: Yes, Mr Warren.

*** JOHN RICHARD DELLA

XXN MS BURKE

PN2951

MR WARREN: Yes, thank you, your Honour. I call Geoffrey Cox.

<GEOFFREY WAYNE COX, SWORN

[12.34 PM]

EXAMINATION-IN-CHIEF BY MR WARREN

[12.34 PM]

PN2952

MR WARREN: Mr Cox, you have two documents with you in the witness box?---Yes.

PN2953

One of them is described as "Affidavit of Geoffrey Cox". It's a document of some four pages and 18 paragraphs?---Yes.

PN2954

The other document is called "Statement of Geoff Cox" which is one page and some four paragraphs?---Yes.

PN2955

Could I just take you please to the first document. For the record, your Honour, your Honours and Commissioner may be looking at an earlier filed affidavit of Mr Cox. If I could just take you please to paragraph numbered 18, the last sentence has been deleted. So everything after "bill dramatically increases", there's a full stop?---"We have also experienced" - - -

PN2956

Yes, they're the words that are not read, and I'll hand up a clean copy of that document with those words omitted. Just before I do, Mr Cox, you have those two documents with you. Is it your evidence that those documents are true and correct to the best of your knowledge?---They are.

PN2957

Thank you. I tender those documents.

PN2958

JUSTICE ROSS: With that omission there's no objection, is that right?

PN2959

MR WARREN: I'm sorry, your Honour, there is one change. I apologise.

PN2960

Mr Cox, could you go to paragraph numbered 2 in the affidavit. The second sentence reads,

PN2961

Coffs Ex Services is an RSL and sports club.

PN2962

Should that read,

PN2963

Coffs Ex Services is an ex-services and sports club.

*** GEOFFREY WAYNE COX

XN MR WARREN

PN2964

?---That's correct, yes.

PN2965

So you wish to delete the words "RSL"?---I do.

PN2966

There is a difference between an RSL and an ex services club?---Yes.

PN2967

Thank you. With that amendment I tender the document. The documents I'm handing up has not had that "RSL" deleted, your Honour.

PN2968

JUSTICE ROSS: So we make that an attachment.

PN2969

MR WARREN: Yes, please.

PN2970

JUSTICE ROSS: Mark the affidavit document as exhibit CAI5 and the one-page statement as exhibit CAI6.

EXHIBIT #CAI5 AFFIDAVIT OF GEOFFREY WAYNE COX

EXHIBIT #CAI6 ONE-PAGE STATEMENT OF GEOFFREY WAYNE COX

PN2971

MR WARREN: With the amendment in the first line of paragraph 2 of exhibit 5 with "RSL" to read "Ex Services". That is the evidence of Mr Cox.

PN2972

JUSTICE ROSS: Thank you.

PN2973

MR WARREN: Thank you, your Honour.

PN2974

JUSTICE ROSS: Cross-examination.

CROSS-EXAMINATION BY MS BURKE

[12.37 PM]

PN2975

MS BURKE: Mr Cox, can I hand you a document please, and I've got copies for the Full Bench. Sorry, I have full copies for the Full Bench because of course I need to give one to my friend.

PN2976

MR WARREN: Thank you.

*** GEOFFREY WAYNE COX

XXN MS BURKE

PN2977

MS BURKE: (To witness) Can I just confirm for the transcript that I have handed you a copy of the Coffs Ex Services Memorial & Sporting Club Enterprise Agreement 2015?---Yes.

PN2978

And can you just please have a look at paragraph 4 of the decision on the second line. Are you the "J Cox"(sic) there?---I am.

PN2979

So this agreement applies to the Coffs Ex Services Club, doesn't it?---Yes, to the group of clubs.

PN2980

And it was approved by the Commission on 24 August this year?---Yes.

PN2981

And it was submitted for approval on 18 August this year?---Yes.

PN2982

Voting on the agreement took place on 27 July 2015?---It took place - I'm not sure of the exact date but - - -

PN2983

In fairness, I'm taking that from paragraph 2 of the decision?---Yes.

PN2984

And employees were last notified of their representational rights on 20 May 2013, so over two years ago?---Yes.

PN2985

You swore your statement - it's now marked CAI5 - on 24 June this year. That's right, isn't it?---Yes.

PN2986

And you didn't think it was relevant to mention this agreement in your statement?

PN2987

MR WARREN: I object to that - in that statement - no, no, fine, thank you. I recall that objection.

PN2988

MS BURKE: Thank you.

PN2989

(To witness) Do you need me to ask the question again?---Yes, which paragraph are we looking at, any of them?

PN2990

The whole statement?---The whole statement.

*** GEOFFREY WAYNE COX

XXN MS BURKE

PN2991

You didn't think it was relevant to include the fact of this agreement in your statement?---Not necessarily because the EBA is above and beyond the award anyway in terms of payment rates and things like that.

PN2992

This EBA applies to all of your employees except for horticultural and maintenance staff and managerial staff. That's right, isn't it?---Yes.

PN2993

And Clubs Australia are not seeking any amendment to the clause in the award dealing with penalty rates payable to horticultural and maintenance staff, are they?---Not that I'm aware of.

PN2994

So for the purposes of this application the penalty rates that you pay your employees are in this agreement, aren't they?---They are up until 2018.

PN2995

I will come to that. I will just take you through the agreement starting at paragraph 4 - sorry, clause 4.1. The objective of this agreement is to ensure the future financial sustainability of the Coffs Ex Services Club. That's right, isn't it?---Yes.

PN2996

At clause 3.2 the agreement applies to the exclusion of any award?---Yes.

PN2997

Turning now to clause 22.3, this is under the heading "Public holidays"?---Yes.

PN2998

It says,

PN2999

Employees who work on a public holiday should be paid double time and a half of the ordinary hourly rate of pay.

PN3000

That's right, isn't it?---Yes, it is, yes.

PN3001

Under the award employees who work on a public holiday are paid that amount, double time and a half?---They currently are, yes.

PN3002

So this does not depart from the award at all?---No, only the hourly rates of pay.

PN3003

And they're higher, aren't they?---They are higher, yes.

*** GEOFFREY WAYNE COX

XXN MS BURKE

PN3004

So turning now to part E which is on page 19, clause 31.2, "Weekend penalties" says that

PN3005

Employees will be paid a penalty rate of time and a half of their ordinary hourly rate of pay for ordinary hours worked on a Saturday.

PN3006

So in other words, employees get 150 per cent on a Saturday. That's right, isn't it?---Under this agreement, yes.

PN3007

And that's the same as the award?---It is.

PN3008

And that's quite different to the amendment that Clubs is seeking which is - - - ?---0.25 per cent, I think it is.

PN3009

At clause 32.2 - - -?---Yes.

PN3010

Employees will be paid a penalty rate of time and three-quarters of their ordinary hourly rate of pay for ordinary hours worked on a Sunday.

PN3011

That's 175 per cent?---Yes, as per the award.

PN3012

Same as the award?---Yes.

PN3013

Despite the fact that Clubs is seeking a reduction to the award?---Yes.

PN3014

I tender this document.

PN3015

JUSTICE ROSS: No objection?

PN3016

MR WARREN: It is a document (indistinct) the Commission, your Honour.

PN3017

JUSTICE ROSS: Exhibit UV2.

EXHIBIT #UV2 COFFS EX SERVICES MEMORIAL & SPORTING CLUB ENTERPRISE AGREEMENT 2015

*** GEOFFREY WAYNE COX

XXN MS BURKE

PN3018

MS BURKE: I want to ask you about a couple of other matters in your statement or matters in your statement - I beg your pardon, affidavit. At paragraph 13 and paragraph 18 you refer to the fact that you are unable to trade in the black - speaking colloquially - on Sundays and public holidays because, among other reasons, they are your lowest income days?---Correct.

PN3019

At paragraph 7 of your affidavit, you state there that your average total club revenue can be broken down as follows, Sundays \$60,000, public holidays \$65,000. That's what that says, isn't it?---On average, yes.

PN3020

They are your highest daily revenues. That's right, isn't it?---On - - -

PN3021

In that entire table?---They're the average revenues for certain days.

PN3022

That's right, so Monday to Wednesday you've got \$70,000?---Yes.

PN3023

Does that mean your revenue is \$70,000 per day on Monday to Wednesday or that that's the total from Monday to Wednesday?---That's per day, average per day.

PN3024

I see. So there's still really only \$10,000 or \$5000 less than Monday to Wednesday?---Yes.

PN3025

But you have far fewer employees working on those days, looking at paragraph 8?---Monday to Friday includes administration staff, so there's more staff that work on those days.

PN3026

Yes, still employees though?---Yes.

PN3027

I don't have any more questions for this witness. Thank you.

PN3028

MR WARREN: Nothing arising, your Honour.

PN3029

JUSTICE ROSS: Thank you for your evidence and for your time.

<THE WITNESS WITHDREW

[12.45 PM]

PN3030

JUSTICE ROSS: I think the next witness is Mr Casu at 3 pm.

*** GEOFFREY WAYNE COX

XXN MS BURKE

PN3031

MR WARREN: Yes, your Honour.

PN3032

JUSTICE ROSS: And then we've got Mr Doud at 3.45, is that right?

PN3033

MR WARREN: Yes, your Honour.

PN3034

MS BURKE: Yes, and I understand he is giving evidence from video link as well.

PN3035

JUSTICE ROSS: That's right.

PN3036

MS BURKE: He is not my witness, of course. We will use the time productively.

PN3037

JUSTICE ROSS: Good. We will adjourn until 3 pm.

LUNCHEON ADJOURNMENT

[12.45 PM]

RESUMED

[3.01 PM]

PN3038

JUSTICE ROSS: Yes, Mr Warren.

PN3039

MR WARREN: Thank you, your Honour. Mr Casu that's spelt C-a-s-u and pronounced Casu and is in the Commission's premises in Canberra at the moment, and he's at the Bar table there.

PN3040

JUSTICE ROSS: Okay.

PN3041

MR WARREN: Your Honour, maybe he could be sworn or affirmed.

PN3042

THE ASSOCIATE: Mr Casu, can you please state your full name and address for the record please?

PN3043

MR CASU: Anthony Mark Casu, (address supplied).

<ANTHONY MARK CASU, AFFIRMED

[3.02 PM]

EXAMINATION-IN-CHIEF BY MR WARREN

[3.02 PM]

*** ANTHONY MARK CASU

XN MR WARREN

PN3044

MR WARREN: Your Honour, on 31 August those instructing me sent a letter to the Fair Work Commission with a replacement affidavit of Mr Casu and the replacement revolves around paragraph 7, being a different paragraph 7 to the previous paragraph 7 that the Commission would have been - would have received. Does the Commission have that?

PN3045

JUSTICE ROSS: I don't know but it doesn't really matter as long as we've got what you want the witness to swear up to.

PN3046

MR WARREN: I suppose in theory I seek leave to rely upon that affidavit as opposed to the first affidavit served.

PN3047

JUSTICE ROSS: You've discussed all that with Mr Dowling?

PN3048

MR WARREN: Yes, he's aware I'm seeking leave.

PN3049

JUSTICE ROSS: Yes.

PN3050

MR WARREN: Mr Casu, you have with you, do you, an affidavit and a document entitled "Statement of Anthony Mark Casu"?---Yes, I do.

PN3051

The affidavit is of some 15 paragraphs and four pages in length?---Yes.

PN3052

The one we are relying upon was sworn by you or affirmed by you on 14 August 2015. Do you have that?---Yes, I do.

PN3053

There is a further statement of yours of some four paragraphs that was signed by you on 31 August 2015?---Yes, that is correct.

PN3054

Thank you. Is it your evidence that the affidavit I have referred to and the statement are true and correct to the best of your knowledge and belief?---Yes, that's correct.

PN3055

I tender those two documents, your Honour. Can I hand up please - - -

PN3056

JUSTICE ROSS: No objections?

*** ANTHONY MARK CASU

XN MR WARREN

PN3057

MR DOWLING: No, your Honour.

PN3058

JUSTICE ROSS: I'll mark the four page affidavit as - I think we're up to CAI7, is that right?

PN3059

MR WARREN: I think that's right.

PN3060

JUSTICE ROSS: The one page statement exhibit CAI8.

**EXHIBIT #CAI7 FOUR PAGE AFFIDAVIT OF ANTHONY CASU
DATED 14/08/15**

**EXHIBIT #CAI8 FURTHER ONE PAGE STATEMENT OF
ANTHONY CASU DATED 31/08/15**

PN3061

MR WARREN: That's the evidence of Mr Casu.

PN3062

JUSTICE ROSS: Thank you.

CROSS-EXAMINATION BY MR DOWLING

[3.05 PM]

PN3063

MR DOWLING: Thank you, your Honour. Mr Casu, you've made some amendments to paragraph 7 on the earlier version of the statement that was filed and you were asked to produce financial information that surrounds the statement you make at paragraph 7. Do you understand that?---Yes.

PN3064

You produced amongst other things a table headed, "Narooma Sporting and Services Club Ltd, average total club revenue"?---Yes.

PN3065

Do you have that table with you?---Yes.

PN3066

Your Honour, I made inquiries to ensure that every member of the Full Bench had it and could I just ask you some questions about that table, Mr Casu. You'll see in terms of - dealing with the columns firstly, the column of the left, the calculation period identifies the days, Monday to Thursday, Friday, Saturday and Sunday. Then there is a column dealing with the gaming average. Should we understand that's the gaming average across the two clubs; Dalmeny and Narooma?---No, that gaming is club Narooma only.

*** ANTHONY MARK CASU

XXN MR DOWLING

PN3067

Then the next column is food average, is that - - -?---Yes.

PN3068

Is that Narooma only also?---That is correct because yes, yes, the Dalmeny club doesn't open on a Sunday. It's only open four days a week for food.

PN3069

But as I understand the column it displays the averages for Monday to Thursday, Friday, Saturday and Sunday in respect of the revenue food average. Is that right?---That is correct, yes.

PN3070

Across all of those days but only at Narooma. Is that what you're saying?---For the gaming and the food that is correct, yes.

PN3071

Then the next column deals with the Dalmeny bar?---Yes.

PN3072

The next column the Narooma bar?---That is correct, yes.

PN3073

Should I understand then that in terms of the total revenue there would additionally be gaming revenue from the Dalmeny club. Is that right?---There would be a slight increase, yes.

PN3074

Sorry, just so that we understand. There would be gaming revenue from the Dalmeny club that is not represented in this table?---That is correct, yes.

PN3075

There would be food revenue from the Dalmeny club excluding the bar that is also not represented in this table. Is that right?---On some of the days of the week, yes.

PN3076

Now if I can just make clear - ensure that I understand the table, across the Monday to Thursday the gaming average at Narooma only is \$7000?---7295, yes, that's correct.

PN3077

That's per day?---That is correct, yes.

PN3078

So in fact for the four days it's going to be something closer to 29,000, or thereabouts?---Yes.

PN3079

The same goes for the food average, that's the per day rate not the rate for the four days?---No, the actual - the food average is the rate for the four days, so is the bar.

*** ANTHONY MARK CASU

XXN MR DOWLING

PN3080

Well I'm not sure that's right, Mr Casu, because if you look at your figure in the right-hand column it says \$52,000 there, \$52,407. Do you see that?---The weekly average, yes. Sorry, yes. Yes, the average of that, yes.

PN3081

Should we understand that that column of 52,000 is the total across those four columns for Monday through the Thursday?---Monday through to Thursday, yes. Nar bar, Dal bar, food, yes.

PN3082

So that would mean that the columns that deal with the food and the Dal bar and the Narooma bar is just a daily average and they should be multiplied by four to work out the average across the four days?---And I think you'll find that that is actually what it is. That 52 is times four.

PN3083

That's right, so four times seven is about 29,000. Four times the 2-3, just over 9000. 4000 for the next, 1112, and about 9500 for four times the 2-4-6. You add all of that together you'll get 52?---Yes. Yes.

PN3084

Those figures represent the daily figures, not the four day figure?---Yes, and the total is the weekly figure, yes.

PN3085

If you divided the weekly figure by four you'd end up with a daily average in terms of Monday through to Thursday of approximately 13,000?---Yes, yes, that's correct, yes.

PN3086

Now in terms of the revenue across days then. Monday through to Thursday the daily would be about 13,000?---Yes.

PN3087

Friday, your daily average is 26,000?---Yes.

PN3088

Saturday, your daily average is 25,400?---Yes.

PN3089

And Sunday the daily average is 20,700?---Yes.

PN3090

But we should understand that all of those figures would be higher if we're going across both of the clubs, because you have to add Dalmeny gaming and Dalmeny food, is that right?---Yes. Yes.

*** ANTHONY MARK CASU

XXN MR DOWLING

PN3091

All right and - - -?---The - to give you an - sorry, to give you an idea, the Dalmeny gaming was - for the year was about \$480,000 for the total of the club for the year.

PN3092

Okay, and I think your evidence is that the gaming revenue for the clubs combined is somewhere around 3.8 million, is that right?---That's correct, yes. Yes.

PN3093

So 3.8 million in gaming revenue. Is that from electronic gaming machines?---That's correct, yes.

PN3094

So 3.8 and about 3.4 million is attributable to Narooma and about 400,000 or half a million thereabouts to Dalmeny?---Yes, that's correct.

PN3095

All right. Is it fair to say that taking those averages across a year the annual revenue is somewhere around six and a half million?---Off the top of my head I'd - yes. Yes, without having the actual figures in front of me.

PN3096

Well, perhaps I can tell you on my calculations I have used those averages and multiplied them out by a year, and my total is 6.47 but that doesn't include those two amounts that you've described, Dalmeny gaming and Dalmeny food, and that comes out to about 6.47 million?---Yes.

PN3097

That roughly - - -?---Yes. Yes.

PN3098

- - - accords with the total revenue of the clubs or thereabouts?---Ball park'ish, yes.

PN3099

All right, and I think your evidence is also that the costs of running the sporting facilities are about 200,000?---Yes, that's correct.

PN3100

And the wages and superannuation bill are 2.47 million?---About that. Yes, that's correct.

PN3101

All right. Thank you

PN3102

I seek to tender that table, your Honour.

PN3103

MR WARREN: I've no objection.

*** ANTHONY MARK CASU

XXN MR DOWLING

PN3104

JUSTICE ROSS: United Voice 3.

PN3105

MR DOWLING: Thank you.

PN3106

JUSTICE ROSS: Or exhibit UV3.

EXHIBIT #UV3 TABLE HEADED "NAROOMA SPORTING AND SERVICES CLUB LTD"

PN3107

MR DOWLING: Thank you.

PN3108

Now you've given some evidence in your statement about changes that might be made if there were to be a change in the penalty rates?---Yes.

PN3109

But I think it's your evidence that certainly when it comes to rostering, that any operational changes of that kind would be subject to a cost benefit analysis. Is that correct?---That's correct, yes. Yes.

PN3110

All right, so before you were to make any decisions about what you might do as a result of any variation in the penalty rate you would do a full cost benefit analysis?---To the best of our ability, yes.

PN3111

All right, and that would involve working out as the result of your present rostering, for example, what it is you are paying in penalty rates under the variation proposed by Clubs Australia; does that make sense?---Yes, that's correct. Yes, that's correct. Yes.

PN3112

Have you worked out what you - if there was to be the variation sought by Clubs, what you are currently paying in penalty rates in accordance with that variation?---Yes. Yes, I have.

PN3113

So this is the variation that's set out at paragraph 13?---Yes, that's correct.

PN3114

So you've looked at your present rostering and said, "Okay, if we vary the penalty rates in that way, this is what we will now be paying in penalty rates under the Club's proposal"?---That's correct. I looked at for example Sunday the 14th of June, which is just a normal Sunday trade. Looked at what we paid on that day and looked at if we paid 20 - point two five points less, and the difference would be \$287.

PN3115

Across the entire day?---That's correct, yes.

PN3116

All right, and is there a document setting that out?---No, I looked at it before I came here.

PN3117

Sorry, did someone ask you to look at it before you came here or did you decide to do it yourself?---No, I just looked at it and seen what the difference would be.

PN3118

All right, and the calculation was \$287?---That's for the Sunday, yes. The Saturday was \$378.

PN3119

Now should we understand that one of the things that that might lead to - well, sorry, let me go back one step. I take it that the trading hours you operate under are not going to change as the result of any change in the penalty rates?---The trading hours we operate under pretty much - the club stays open until such time as the trade diminishes enough that it's not worth open - keeping the club open any more.

PN3120

But sorry, my question is that that's not going to alter whether there's a change in penalty rates or not? You're going to still operate with hours open in the same way?---Yes, that's correct.

PN3121

So then the question is what happens as the result of the \$228 on a Sunday, for example - - -?---Well, the first thing that comes mind, we - - -

PN3122

Hang on a moment. Hang on?---Sorry.

PN3123

Sorry, that wasn't a question. I was just getting to a question. I'm sorry?---Okay. Sorry.

PN3124

Now in terms of that money, is it your evidence that there's at least a possibility that there might be additional hours for staff?---Yes.

PN3125

And should we understand that any of those possible additional hours would be worked by your existing casual workforce?---Yes, that's correct.

PN3126

All right?---Yes, an example of that - - -

*** ANTHONY MARK CASU

XXN MR DOWLING

PN3127

Hang on a moment?---- - - we had our - - -

PN3128

Hang on. Hang on a moment, Mr Casu, sorry?---Sorry. No, that's okay.

PN3129

And are you able to or have you been able to make a cost benefit analysis of how many hours \$228 translates to?---Off the top of my head that would average out at about eight hours.

PN3130

And how do you work that out off the top of my head? What is the process you follow?---The process would be that casual - a casual wage is around about the \$19 mark. So if you - for example if it's on a Sunday you'd halve that again and that would bring it up to around about the \$28-odd mark. So it's going to be around about the eight to 10 hours, just off the top of my head looking at it.

PN3131

Just so we're clear, the difference we're talking about is the difference between the existing rate and the proposed rate?---That's correct. That would be the difference of time and three-quarter on a Sunday back to time and a half.

PN3132

All right, and on my calculations that will come out somewhere just above \$4 an hour. Is that what your calculations show?---I didn't do it that way so I couldn't tell you off the top of my head. I'd only be completely stabbing in the dark, sorry.

PN3133

So you didn't work out the hourly rate that you're currently paying and the hourly rate under the Clubs' proposal?---No, I did it a more simplistic way. I looked at our total wage for that day, which was 2012, and then divided it by seven and timed it by six.

PN3134

I see. Divided by seven to get - in terms of the hours?---Yes, divided by seven to get back to a point, because there's seven quarters in time and three quarter, and then times it by six to get back to time and a half.

PN3135

I see. So these are round figures I suppose?---287, yes.

PN3136

All right. Just so I can be clear in terms of your casual workforce I think your evidence in your second statement is that that existing workforce there's 19 of them, is that right?---That's correct, yes.

*** ANTHONY MARK CASU

XXN MR DOWLING

PN3137

One of the other things that you describe is the change in member services; is that something that would require the cost - I take it from paragraph 15 that that's

something that would require the cost benefit analysis also?---That's - that's correct. We wouldn't just do something for the sake of doing it without having an understanding of what it would actually cause and what it may or may not do to the club's profitability.

PN3138

Thank you. Just hang on one moment, please. There is nothing further, your Honour.

PN3139

JUSTICE ROSS: Re-examination?

PN3140

MR WARREN: Yes.

RE-EXAMINATION BY MR WARREN

[3.23 PM]

PN3141

Mr Casu, you gave evidence of using existing casuals to do the extra work on the Sunday, that you were contemplating - - -?---Yes. Yes. Yes, that's correct. Casuals or - - -

PN3142

Just wait for my question?---Sorry.

PN3143

That was dealing with the \$287 that your estimate was - when you say existing casuals did you mean - - -

PN3144

MR DOWLING: Don't lead.

PN3145

MR WARREN: What were the existing casuals?---The current people employed by the club.

PN3146

How many casuals would you have employed on a Sunday normally?---I'd only be guessing. Somewhere around about 10 to 12.

PN3147

Would there be more casuals - - -

PN3148

MR DOWLING: I object to that question.

PN3149

MR WARREN: When you say existing casuals what do you mean by an existing casual?

*** ANTHONY MARK CASU

RXN MR WARREN

PN3150

MR DOWLING: This question has been asked and answered twice now. My friend is just fishing for a better answer.

PN3151

MR WARREN: No, I am not fishing for a better answer, I am trying to work out where this person is talking about casuals - maybe we should turn off the microphone to there.

PN3152

JUSTICE ROSS: Just bear with us for a moment, Mr Casu?---Yes, okay.

PN3153

Can you hear me, Mr Casu? I am assuming the answer is that it's the casuals they currently employ they give them more hours on that day.

PN3154

MR WARREN: And the question is when he says "our existing casuals" - - -

PN3155

JUSTICE ROSS: What difference does it make whether it's ones that work on Sunday get more hours or casuals they employ on other days get more hours?

PN3156

MR WARREN: And that's what I was looking for.

PN3157

JUSTICE ROSS: But what difference does it make? The point is that the additional hours would be worked by the existing casual pool. Is there any - - -

PN3158

MR WARREN: If that's your Honour's understanding I have no further - - -

PN3159

MR DOWLING: That's where the evidence is I think, your Honour.

PN3160

MR WARREN: I have no further questions.

PN3161

JUSTICE ROSS: All right. Let's just restore the link to put Mr Casu's mind at rest.

PN3162

MR WARREN: I have no further questions.

PN3163

JUSTICE ROSS: Can you hear us now, Mr Casu?---Sorry? Yes, yes, I can. Yes, sorry.

*** ANTHONY MARK CASU

RXN MR WARREN

PN3164

Nothing further for Mr Casu?

PN3165

MR WARREN: No.

PN3166

JUSTICE ROSS: Thank you for your evidence and your time today, Mr Casu, you're excused?---Thank you.

<THE WITNESS WITHDREW

[3.26 PM]

PN3167

JUSTICE ROSS: I think the next witness is at 3.45 and that's the set link, is that right?

PN3168

MR WARREN: Yes, your Honour. I have one other matter to deal with if I could. You will recall this morning that Mr Tait's affidavit was redacted a number of ways. We have a clean copy of the version with all the redacted taken out.

PN3169

JUSTICE ROSS: You have seen that, Mr Dowling, and you are content with it?

PN3170

MR DOWLING: I was given it only moments before - - -

PN3171

JUSTICE ROSS: Why don't you have a look at it during the break before we come back. Is it 3.45 for the next witness?

PN3172

MR DOWLING: It is not mine though and I was going to try and escape, your Honour, that's all.

PN3173

MR WARREN: I think my friend said I can hand it up.

PN3174

JUSTICE ROSS: If you can send it to us electronically, because our plan would be that once we have got the various redacted versions right we will provide a list of exhibits with a link to the relevant witness statement on that site that we discussed before, and we will at some point, presumably after the close of the lay evidence, over the course of this two weeks or so, we would then load up the transcript. In the meantime it will go to each of the advocates to be treated confidentially and not provided to any witness of the proceedings.

PN3175

MR WARREN: Thank you, your Honour. If my friend gives the okay for this document we will send it through in soft copy.

*** ANTHONY MARK CASU

RXN MR WARREN

PN3176

JUSTICE ROSS: Thanks. So we will be back at 3.45. Thank you.

SHORT ADJOURNMENT

[3.27 PM]

RESUMED

[3.46 PM]

PN3177

MR STANTON: Your Honour, I call John Andrew Doud who I understand will take the oath.

PN3178

THE ASSOCIATE: Mr Doud, could I please ask you to state your full name and address for the record please.

PN3179

MR DOUD: John Andrew Doud, (address supplied).

<JOHN ANDREW DOUD, SWORN

[3.46 PM]

EXAMINATION-IN-CHIEF BY MR STANTON

[3.46 PM]

PN3180

MR STANTON: Mr Doud, can I just confirm that you are the owner of Croote Pty Ltd, which trades as Lightning Ridge Outback Resort and Caravan Park at 1 Onyx Street, Lightning Ridge?---Correct.

PN3181

Sir, how long have you held that position?---We've had that for the last seven years.

PN3182

Have you worked in the hospitality industry in the past?---Yes, last 15 years.

PN3183

Have you made statements in these proceedings, that is written statements in these proceedings?---Yes.

PN3184

Do you have copies of your written statements with you this afternoon in the court?---I've got the second one I sent. The other one is - I just couldn't lay my hands on it but I've got the second page.

PN3185

Just let me confirm, is that a page - is that dated 25 August 2015?---Yes, correct. That's the one, yes.

PN3186

So you don't have your statement, the three page statement with you?---No, it's at Lightning Ridge and I'm in Bathurst unfortunately.

*** JOHN ANDREW DOUD

XN MR STANTON

PN3187

JUSTICE ROSS: We can email it to him. In future get someone to talk to the witnesses, make sure they've got their statement, particularly the ones that are in remote locations because not all of these places - I'll put it this way, some of the locations in remote or regional court houses might not be as cooperative when we try and send something to them. What we'll endeavour to do, we'll stand the matter down, I'm going to get my Associate to send it by email to the Bathurst facility, get them to print it out and provide it. Are there any objections in the statement that we can deal with or - - -

PN3188

MS BURKE: No, there are none.

PN3189

JUSTICE ROSS: We'll sort it out this way and we'll come back

PN3190

MR STANTON: May it please.

<THE WITNESS WITHDREW [3.49 PM]

SHORT ADJOURNMENT [3.49 PM]

RESUMED [3.56 PM]

PN3191

MR STANTON: I regret any inconvenience associated with that.

PN3192

JUSTICE ROSS: That's all right.

<JOHN ANDREW DOUD, RECALLED [3.56 PM]

EXAMINATION-IN-CHIEF BY MR STANTON [3.56 PM]

PN3193

MR STANTON: Mr Doud, you now have your statements before you. In relation to each, do you say in relation to each that they are true and correct to the best of your knowledge and belief?---Yes, they are.

PN3194

In the absence of objections, might they be marked?

PN3195

JUSTICE ROSS: Yes. The three page statement will be marked exhibit AHA26.

EXHIBIT #AHA26 THREE PAGE STATEMENT OF MR JOHN ANDREW DOUD.

*** JOHN ANDREW DOUD

XN MR STANTON

PN3196

JUSTICE ROSS: The one page statement, exhibit AHA27

EXHIBIT #AHA27 ONE PAGE STATEMENT OF MR JOHN ANDREW DOUD.

PN3197

JUSTICE ROSS: Ms Burke?

CROSS-EXAMINATION BY MS BURKE

[3.57 PM]

PN3198

Thank you. Mr Doud, can you see and hear me all right?---Yes, I can.

PN3199

Thank you. Can I start, please, by asking you to look at paragraph 17 of your statement, the one that was just brought to you?---Yes.

PN3200

In that statement you say that because of penalty rates you are restricted from offering patrons a full service on public holidays. Those full services that you are talking about there, do they include live music?---Yes, that - yes. They can do, yes.

PN3201

I should just ask you to look also at paragraph 23. Do those services also include what you call there family style events?---Yes, that's correct.

PN3202

What sort of things do you mean by family style events?---I mean, it could be many different sorts of entertainment that families might come along to that would obviously cost us money to run and to staff as well, so things like DJs or bands or, you know, jumping castles, that sort of thing. Yes, so we don't run those because we'd need to have staff to facilitate that as well and it just doesn't cover the costs of running it by the time we staff them.

PN3203

Aside from music, entertainment, and that sort of thing, are there other things that fall into full services that you say you can't offer because of penalty rates or does that about cover it?---Yes, that about covers it but even, you know, staying open longer hours or - you know, like - and some days, Christmas Day and in the past some New Year's Day we just haven't opened because it just doesn't pay for us to do so. We can't recoup our wage costs.

PN3204

Can I take it from what you are saying there that you say that you are restricted from offering these services. So let's take live music as an example. Does that mean that you have assessed the demand for that sort of thing from your customers?---Yes, and from time to time I'll try it but, you know, with our - with our customer base, you know, it's a turnover game. You need enough turnover to pay for the extra cost of music and other entertainment.

*** JOHN ANDREW DOUD

XXN MS BURKE

PN3205

Can I just stop you there? You say you have tried that from time to time?---Yes.

PN3206

You don't have anything - unless I'm wrong, you don't have anything like that in your statement. You don't say you've tried live music before and you've had to stop?---I'm sorry, but we have done in the past. It doesn't say that there, but - - -

PN3207

That's fine, thank you. Can I also take it from your statement here that you have assessed what your staffing needs would be if you were going to offer these services?---Sorry, can you repeat the question? I couldn't hear the last bit.

PN3208

If you were going to offer these services that you say you can't offer, you would - I withdraw that. Can I take it that you have worked out how many staff you would need on those days?---Well, yes, or done a budget on what - what you think you need, yes.

PN3209

You've done a budget?---Yes.

PN3210

When did you do that budget?---I mean you do that budget every time you consider putting something on.

PN3211

So as a sort of general business practice, that's what you would do?---Yes.

PN3212

But you haven't done that specific exercise in relation to things you say in your statement you would do. I'm not sure if it says that there in the statement, but that's just general business practice. If you're going to consider running any entertainment or opening up on any particular day you have to staff it with a minimum amount of staff and you do a budget on that every day regardless of whether there's entertainment or no entertainment.

PN3213

But you didn't do that exercise when you were comparing this statement, did you? I understand that that's something that you might do as a general practice, but when you were preparing your statement you didn't do that specific exercise of cost assessment and so on?---Well, no, it's not in this particular statement, no.

PN3214

You also say that because of wage pressures and you are quoting here from paragraph 19 and those wage pressures are:

*** JOHN ANDREW DOUD

XXN MS BURKE

PN3215

The high cost of wages due to penalty rates mean that the community ultimately suffers the consequence of having fewer services available and a limited prospect of being employed by the hotel.

PN3216

It is difficult for you to find staff in the community, isn't it?---Yes, it is.

PN3217

In fact, you have to employ backpackers quite a lot of the time. That's right, isn't it?---Yes, in the busy time. It's seasonal, yes. In winter.

PN3218

So to the extent that there is - that you can't offer more jobs - that you say you can't offer more job because of penalty rates is not necessarily true that you've got people in the community there ready to take those jobs?---No, there's people on our books waiting for jobs. I mean we could employ more people.

PN3219

But it - - -?---You know, for instance, if I wasn't working there, there would be someone taking my time.

PN3220

That's one person and that person would need to be somebody probably managerial at least, wouldn't they, to do the work when you wouldn't be working?---I do a lot of bar shifts and other work that is not managerial. Driving buses and bar shifts.

PN3221

Am I right that's why you say one of the things that you would do if penalty rates were cut would be to employ a casual as courtesy bus driver?---Yes, that would be correct. Yes.

PN3222

Can I take it from that that you have costed how many hours you would need that casual to work?---Yes, we run the - that courtesy bus is set hours. It's from 3.00 until closing midweek and 12.00 until close weekends.

PN3223

Does that mean you have already - that bus already runs?---Yes, it does.

PN3224

The people who drive the bus are already your employees?---Yes. Including myself, yes.

PN3225

So if penalty rates are cut you're saying you would employ a new person to drive the bus?---Yes. They would be taking the shifts that I do that and I could be doing other managerial things. I work a lot of hours up there.

*** JOHN ANDREW DOUD

XXN MS BURKE

PN3226

What would you do - - -?---And particularly do public holidays and Saturdays and Sundays. I try and cover those days because they're higher rates.

PN3227

You would try and cover those days with a casual?---I cover as many of those days as I can at the moment. Saturdays, Sundays and public holidays myself. What I'm saying is if the rates - if casual rates were less, I would not necessarily have to do that and I could employ somebody else to do that and make the same amount of profit.

PN3228

What would you do if you weren't working on those days?---I would spend more time with my family.

PN3229

Thank you, I don't have any more questions?

RE-EXAMINATION BY MR STANTON

[4.07 PM]

PN3230

Mr Doud, when you did the statement - that is the three page statement - were you considering any particular family events? Were you planning any particular family events?

PN3231

MS BURKE: I object - - -

PN3232

MR STANTON: It arises out of the cross-examination.

PN3233

MS BURKE: But the witness has been asked and answered these questions.

PN3234

MR STANTON: The witness said that he does the budget each time he considers - well, I don't want to - it's a bit dangerous for me to be saying it in front of the witness. I don't want to be leading the witness in any way.

PN3235

JUSTICE ROSS: Wasn't the witness asked about what he meant by "family events" and he dealt with that?

PN3236

MR STANTON: He was actually asked about - my recollection is he was asked about - - -

PN3237

JUSTICE ROSS: I think it was offering family - - -

*** JOHN ANDREW DOUD

RXN MR STANTON

PN3238

MR STANTON: - - - why that material wasn't in the statement at the time.

PN3239

JUSTICE ROSS: I thought he was asked a question about paragraph 23, what did he mean by "family style events", and that was a follow on from a question about live music.

PN3240

MR STANTON: I think, to be fair to my friends, if I was to explain and defend why I needed to cross-examine - I beg your pardon, re-examine, I am probably going to give it away and I don't want that to be said. I won't press the question.

PN3241

JUSTICE ROSS: All right. That's a matter for you.

PN3242

MR STANTON: Yes, indeed. Sir, you were asked - in answer to a question my friend put you said - you gave an answer that you do a lot of bar work that is not managerial. Do you recall that?---Yes.

PN3243

Are you able to say how much? How many hours?---Sorry, are you asking me how many hours I do of bar work, is that the - - -

PN3244

Yes. The answer you gave to a question that my friend put to you was to the effect of - the answer, at least, as I have written it down was that you do a lot of work that is not managerial and I think you nominated bar work as being, if you like, representative of that non-managerial work. Are you able to say how much time, say, on a weekly basis you would be doing that time of non-managerial work?---It would be from - it would be 70 to 80 hours a week when - yes.

PN3245

Nothing further?---Just have to do the calculations, so it's from, you know, open at - preparing the bar at 9.30 until close which would normally till 10, yes.

PN3246

Thank you?---Seven days a week.

PN3247

JUSTICE ROSS: Anything further for the witness?

PN3248

MR STANTON: No.

PN3249

JUSTICE ROSS: Thank you for your evidence, Mr Doud, and for your time.

FURTHER CROSS-EXAMINATION BY MS BURKE

[4.10 PM]

*** JOHN ANDREW DOUD

FXXN MS BURKE

PN3250

MS BURKE: Can I just clarify something, Mr Doud? You said you work 70 to 80 hours a week just now?---Yes. When I'm at the business I'm not there 100 per cent of the time. I'm sort of week on, week off.

PN3251

And when you're doing those 70 to 80 hours, is that all bar work?---There's - no, there's other - a couple of hours, you know, most days where I would be doing managerial work. But I'm rostered to do bar work as well as drive the bus, which is part of the bar. It's a convenience bus that picks up people and drops them off to the hotel.

PN3252

And driving the bus is bar work as well?---Yes, it's a - bar staff does that as well.

PN3253

Thank you.

PN3254

MR STANTON: Just so that it's not left in an unsatisfactory state can I just get that re-examination clarified?

PN3255

JUSTICE ROSS: Sure, what do you want to ask?

PN3256

MR STANTON: Well, the witness gave an answer to my question in re-examination of 70 to 80 hours.

PN3257

JUSTICE ROSS: Yes.

PN3258

MR STANTON: And my friend - - -

PN3259

JUSTICE ROSS: But can I ask, Mr Doud, the 70 to 80 hours a week that you say you work one week and then you have one week off, is that your total hours in that week or is that the amount of hours in which you perform what you've described as bar work, which means being rostered on the bar or driving the courtesy bus?---It - yes, when I'm physically at the business, which I try to do roughly week on, week off, it might be two weeks on and two weeks off.

PN3260

Sure?---And I try to just put it over as many weekends and public holidays if they're there, but you've asked me for an example for a week. So it's - that's - in a week I'd, you know, roughly do 9.30 to 10 or it might be midnight on a Friday night, you know, in the bar and drive - and/or driving the bus.

*** JOHN ANDREW DOUD

FXXN MS BURKE

PN3261

So is it your evidence that when you're at the premises, 70 to 80 hours a week you would be doing bar work or driving the courtesy bus?---That's correct and I would be working - particularly working, you know, trying to work the weekends which are the higher rates.

PN3262

Yes?---And public holidays.

PN3263

No, I've got that point. I just want to focus on how many hours per week - - - ?---Sorry, that's - yes, that's - - -

PN3264

Okay?---That's correct.

PN3265

Anything arising from any of that?

PN3266

MR STANTON: Nothing. Nothing further.

PN3267

MS BURKE: No.

PN3268

JUSTICE ROSS: No? All right.

PN3269

Thanks for your evidence, Mr Doud, and for your time this afternoon. You're excused?---Okay, thanks.

<THE WITNESS WITHDREW

[4.13 PM]

PN3270

JUSTICE ROSS: I raised with you on the last occasion to see if we could - I think one suggestion was to move the AHA witnesses that are currently scheduled on Monday the 21st and try and put them in the week before. That would then leave the 21st free, which would allow some preparation time in relation to the expert witnesses that we spoke about on the last occasion, which would begin I think on the afternoon of the 23rd and may get to the 24th and 25th.

PN3271

So just to focus your attention on that I want you to think about putting forward - you've got six AHA witnesses on Monday the 21st. Have a look at whether you can put four of those on Thursday the 17th and you could put an additional one on Tuesday the 15th and one on the 16th. So bearing in mind that the cross-examinations is not taking as long as had been anticipated, so we should be able to squeeze up some of the times and that would - I think it's preferable to have a clear day rather than a couple of half days. So let's see if we can do that.

*** JOHN ANDREW DOUD

FXXN MS BURKE

PN3272

MR STANTON: Yes. Yes, indeed.

PN3273

JUSTICE ROSS: Okay, so can you have a go at that and see if you can give us an update at some stage tomorrow or I suppose at the latest on Monday, and see how we go?

PN3274

MR STANTON: Of course.

PN3275

JUSTICE ROSS: And can you talk to Mr Dowling or Ms Burke about it, just so they know when they're coming. I mean, they know who you're calling and their statements but just so they have an idea of the timing.

PN3276

MR STANTON: Yes, certainly.

PN3277

JUSTICE ROSS: And we'll organise video links to the extent that they're in Melbourne.

PN3278

MR STANTON: Yes.

PN3279

MR DOWLING: Your Honour, can I just factor into that equation the possibility of moving some of the United Voice witnesses on the 23rd?

PN3280

JUSTICE ROSS: Yes.

PN3281

MR DOWLING: It might be, depending on which of the days is easier to free up, that that's a possibility as well. We are able to move some of them.

PN3282

JUSTICE ROSS: Sure. Look, I've got an open mind about how it's done but in light of the conversation or the exchange we had the other day it would be desirable to free up a day in that week, and certainly to move Ms Kindness to the morning of the 23rd, and I frankly doubt that it's going to take half an hour to cross-examine the United Voice witnesses.

PN3283

MR DOWLING: Yes, I don't know. That's out of our hands, that one.

PN3284

JUSTICE ROSS: Yes, well I might be surprised but I doubt it, and it certainly hasn't taken you 45 minutes. On average it's closer to 18, so I think we can afford to squeeze the program a bit. But I'm content to leave it to the two of you to sort that out. If you could let us know how you go and we'll facilitate with video links

and the like. Yes, all right. So if you can give us an update probably towards the luncheon adjournment tomorrow just as to where you're thinking? Because we've got some of our witness material in Melbourne; we just have to move it around a bit, that's all.

PN3285

MR DOWLING: Yes, I understand. Of course, your Honour.

PN3286

MR STANTON: May it please.

PN3287

JUSTICE ROSS: Was it 9.30 tomorrow and then I think the idea was we were going to get a report-back from restaurant and catering about - - -

PN3288

MR DOWLING: In relation to Mr Hart.

PN3289

JUSTICE ROSS: Where Mr Hart is.

PN3290

MR DOWLING: Yes.

PN3291

JUSTICE ROSS: And they were going to have all their material to tender as common material then as well.

PN3292

MR DOWLING: Yes.

PN3293

JUSTICE ROSS: All right, we're adjourned till 9.30.

ADJOURNED UNTIL FRIDAY, 11 SEPTEMBER 2015

[4.17 PM]

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