



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009
TRANSCRIPT IN CONFIDENCE

1052410

**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

9.31 AM, MONDAY, 14 SEPTEMBER 2015

Continued from 11/09/2015

PN3875

JUSTICE ROSS: Any preliminary matters, Mr Clarke?

PN3876

MR CLARKE: No, your Honour.

PN3877

JUSTICE ROSS: The first witness is Mr [REDACTED], is that right?

PN3878

MR CLARKE: That's correct, your Honour.

PN3879

JUSTICE ROSS: And he's in Melbourne?

PN3880

MR CLARKE: He is, your Honour.

< [REDACTED], SWORN

[9.32 AM]

EXAMINATION-IN-CHIEF BY MR CLARKE

[9.33 AM]

PN3881

MR CLARKE: Mr [REDACTED], it's Ross Clarke representing the Restaurant Association. You can hear me clearly?---Very clearly, thank you.

PN3882

Do you have two statements in front of you?---Yes, I have.

PN3883

Is one of those a sworn statement of 12 paragraphs signed by you on the 29th of June 2015?---Yes, that's right.

PN3884

Yes. I'd seek to tender that. Is that statement still to the best of your knowledge a true account?---That particular statement, yes.

PN3885

It is, yes? I seek to tender these separately, I think, your Honour, because there's two separate - - -

PN3886

JUSTICE ROSS: Yes, has he signed up to the second statement? We'll do both.

PN3887

MR CLARKE: No, and Mr [REDACTED], have you got a second supplementary statement, or a supplementary statement of [REDACTED] dated 26 August 2015, that being of six paragraphs?---I have.

XN MR CLARKE

PN3888

Yes. I'm not sure, your Honour, if you want me to tender them separately or have them marked - - -

PN3889

JUSTICE ROSS: Just ask him if it's true and correct.

PN3890

MR CLARKE: Yes. Is the second statement true and correct, Mr [REDACTED]?---It is an up-to-date, true and correct statement.

PN3891

Yes, your Honour. RCI8, I believe we're up to - - -

PN3892

JUSTICE ROSS: The first longer statement will be RCI8. Any objections?

PN3893

MR CLARKE: No, your Honour.

PN3894

JUSTICE ROSS: And the supplementary statement, exhibit RCI9.

**EXHIBIT #RCI8 STATEMENT OF [REDACTED] OF 12
PARAGRAPHS DATED 29/06/2015**

**EXHIBIT #RCI9 SUPPLEMENTARY STATEMENT OF [REDACTED]
[REDACTED] OF 6 PARAGRAPHS DATED 26/08/2015**

PN3895

JUSTICE ROSS: Cross-examination?

PN3896

MR DOWLING: Yes, your Honour.

CROSS-EXAMINATION BY MR DOWLING

[9.35 AM]

PN3897

MR DOWLING: Mr [REDACTED], can you see and hear me clearly?---Yes.

PN3898

Thank you, if I can just ask you a couple of questions about your workforce personally, please? I think in your most recent statement, the one of the 26th of August, you describe 19 employees, and five of those are full-time, is that correct?---We had five full-time and fourteen casuals.

PN3899

Do you have it there in front of you?---Yes, here.

PN3900

So the balance of them – the 14 of them I think you just said - - -?---Nineteen, yes.

XXN MR DOWLING

PN3901

So the balance of the 19, the 14 are casuals, is that right?---That's right.

PN3902

Okay, and I'll just concentrate for a moment on those casuals firstly. Is it fair to say that of those 14 casuals some are more junior than others?---Yes – no, they're all about the same status.

PN3903

Are you able to say are they a level 1 casual or a level 2 casual?---Dear oh dear, I think it's level 1, isn't it? What's the lowest one?

PN3904

The lowest one is introductory and then it goes to level 1 and then level 2.---Yes, a level 1.

PN3905

So should we assume if they're all about the same level they are all level 1?---About the same, yes.

PN3906

And level 1?---Yes.

PN3907

All right, thanks very much. Just to get a picture in terms of calendar years, if we look at the 2014 calendar year, did the number of casuals stay relatively constant over that 2014 calendar year?---Basically, yes, because business is normally fairly constant, so, you know, basically I can't tell you this for sure, but yes - - -

PN3908

But to the best of your recollection and it basically constant over that calendar year?---It is basically constant, yes.

PN3909

Can I ask you also just a couple of questions about your trading hours? I think you open at 11 am, is that right?---That's right.

PN3910

And I think you describe yourself as staying open late, is that right?---Until 11 o'clock, yes. That's what the licence tells me.

PN3911

So does your liquor licence run till 11 pm?---It does.

PN3912

JUSTICE ROSS: You might take the witness to paragraph 7 of his first statement?

PN3913

MR DOWLING: Yes, your Honour, I'm coming there.

XXN MR DOWLING

PN3914

JUSTICE ROSS: Yes.

PN3915

MR DOWLING: Can I firstly show you a document though – there's someone in the room is going to hand you a document of three pages.---Thanks. Yes?

PN3916

Do you see that document? There are three pages, and the first one, it says [REDACTED] at the top in the middle, do you see that?---Yes.

PN3917

If you look in the very bottom left-hand corner it says: [REDACTED] Do you see that?---Hang on a minute.

PN3918

Yes, it's quite small writing I'm sorry but can you see that?---That's all right. Page 1 of 1.

PN3919

Page 1 of 1.---Which is page 2 of this lot.

PN3920

No, the very first page you have - - -?---It's page 1 of 1, page 1 of - - -

PN3921

Ignore the page numbers, Mr [REDACTED], because unfortunately they're all marked 1 of 1, so the first one has [REDACTED] in the top middle and then some other headings which you can ignore for the moment, and then says [REDACTED] [REDACTED]?---That's right.

PN3922

And says, "[REDACTED] is nestled between the rear of [REDACTED]," et cetera, et cetera. Do you see that?---Yes.

PN3923

Is that the one you've got?---Hey, what's this? Yes.

PN3924

Okay, and you'll see there, under opening hours it says Monday to Saturday 11am till late. Do you see that?---Yes, that comes under what I just said, late being 11 o'clock.

PN3925

But it doesn't say 11 o'clock, does it, it says till late?---Yes, I'm afraid it does, and that's probably a thing that I shall fix as soon as I get back.

PN3926

All right, and if you turn the page - - -?---I was unaware of it, quite unaware of it.

XXN MR DOWLING

PN3927

If you turn the page, you'll see there within – perhaps, sorry, to be fair, before you turn the page, you'll see across the top it says, under the heading [REDACTED] on the first page it says [REDACTED], then it says [REDACTED], then it says [REDACTED], then it says [REDACTED]. Do you see those headings across the top of the page?—
--Yes.

PN3928

Can I just clarify for the Commission, there's the restaurant and wine bar where people will eat and drink, yes?---Yes, that's at the front.

PN3929

Yes, and then there's the Courtyard out the back, you can have a meal and you can drink out there also?---You can.

PN3930

All right. And then there's what's called the [REDACTED] [REDACTED] which is a first level up and there's a bar and- -?---No. [REDACTED] is just a courtyard on the top of the roof and [REDACTED] is a little snug downstairs and off the courtyard.

PN3931

Okay so there's the rooftop bar?---No, there's no bar up there.

PN3932

Sorry, can you describe again the rooftop, what's on the rooftop?---The rooftop is just a sitting area where you can take a pizza up with you and have it and take a glass up with you. [REDACTED] is a little snug at the bottom, off the courtyard, before you walk upstairs.

PN3933

I see. Okay. I see, and then the third option or the next description is the [REDACTED] [REDACTED]?---That's right.

PN3934

And where's that?---This really is all out of kilter, because this must have been done many years ago. I've had people that started all this- - -

PN3935

Well, hang on, Mr [REDACTED]. If we're just clear on the various locations first?---All right, okay. Righto.

PN3936

And you can explain in response to some questions what's where?---Okay.

PN3937

But if you just answer firstly what the [REDACTED] [REDACTED] is?---Well, it isn't a [REDACTED] [REDACTED] now. It is – it was to be a cocktail area.

XXN MR DOWLING

PN3938

Right?---But – and that's what I'm saying, this is all out of kilter. It – I didn't like it in the first place. You have to go upstairs, it is now just a part of the restaurant where you can hire and have a party.

PN3939

All right?---It's not an open bar.

PN3940

Okay. So if you then go to the next page which deals with the [REDACTED], the [REDACTED]?---Yes.

PN3941

You'll see that describes itself on a Sunday, if you look towards the bottom of the page, in the middle, on a Sunday as being open from 1 pm till late?---Yes.

PN3942

Is that accurate?---No.

PN3943

So it's just 11 pm?---Till 11, but basically, it isn't used quite as much as that.

PN3944

Is it fair to say that sometimes people stay a little bit past 11?---No, they've all gone home by then. It's not that sort of a [REDACTED]. It's a [REDACTED]. It's basically lunch and - or after dinner. They've finished by about 11.

PN3945

About 11, sometimes it goes past 11, I'm suggesting to you, Mr [REDACTED]. Is that correct?---No, no, no. I like to get them out at about 10, 10.30.

PN3946

I know you might like to do that, Mr [REDACTED] but I'm suggesting to you that sometimes – you're under Oath Mr [REDACTED] – sometimes- -?---Yes.

PN3947

- - -people are staying there and drinking past 11 pm?---No, they don't.

PN3948

All right. Now, you say that because of your evidence a moment ago that your liquor licence goes to 11 pm?---Yes.

PN3949

Okay. If you have a look at the first of your statements which was marked RC18, which is the longer one, the one of – well, the one that goes to two pages at least?---Mm-hm.

PN3950

You'll see there, at paragraph 7, you say the liquor licence is between 7 and midnight. Should that, in fact, read 7 and 11 pm?---It should, I'm afraid so, yes.

XXN MR DOWLING

PN3951

Okay?---And that must have been a clerical error which I didn't pick up.

PN3952

All right. Now, just in respect of the documents that I showed you, if I tell you that they are presently on your website as it appears today, are you unable to explain why or how it says "late"?---Yes. As I was saying before, the people that set this up was – my son had two friends that thought they knew how to run the business. I, being [REDACTED] odd years' old, had decided to leave my son run the business but he couldn't and these people had all these ideas. At this moment, and on oath, I have not accessed to this website. They've got it themselves and they're not there with me anymore.

PN3953

Did they have some discussion with you before they set it up?---No. They had a discussion with my son.

PN3954

And none with you?---No.

PN3955

Okay?---In fact I didn't like – as I said before, I didn't like the [REDACTED].

PN3956

Yes, well I'm not asking you about the [REDACTED]. I want to know whether they had discussions with you about opening hours before they went and put it up on the net. You're the owner?---Yes, I'm the owner but I'm – unfortunately gave it to my son to run.

PN3957

All right. Okay, now one of the things you say in the first of the statements is that you make some reference to what you might do if late night penalties were reduced?---Yes.

PN3958

Now, you say one of the things you describe as a possibility, is extending trading hours. I take it that- -?---No, I didn't want to extend trading hours, I just wanted to have more people to give better service.

PN3959

Okay, so the paragraph 11 in your statement, we should remove, should we?---Yes. Yes, I'm quite happy with that.

PN3960

All right. We'll remove paragraph 11. And are you – when you had given this statement about penalty rates, should we understand that you made a calculation, firstly about what proportion of your Sunday wage is paid in penalty rates?---Oh dear. At the moment we only open the - part of the business on a Sunday.

XXN MR DOWLING

PN3961

Hang on one moment, Mr [REDACTED], I'm not asking you to do a calculation. I'm asking you whether, before preparing the statement, you did a calculation and ascertained what proportion of your Sunday wages is penalty rates. Did you do that calculation before your statement?---I didn't basically do it, it was word of, you know – just- - -

PN3962

You didn't do it?---No, I didn't do it, but I could see the potential of if the penalty rates were reduced, I could extend the facilities to the public.

PN3963

All right. Can I ask you another question? Did you, when you did this statement, do a calculation of what penalties you would pay under the proposal to vary the award made by Restaurant and Catering Australia? Did you do that sum?---No.

PN3964

All right?---I was just – it was just a blanket, as far as I'm concerned and I don't get into this very much. I just felt that if I could do it more economically, I would like to open the business a little – extend the business.

PN3965

All right. Now, I think it's your evidence that you're employees are covered by the Restaurant Industry Award, so that covers all those 19 employees that we've talked about?---Yes. I think Fair Work have been in and had a look at our books just about a month ago.

PN3966

Okay. Why is that?---I don't know, it's obviously a routine thing.

PN3967

Did someone make a complaint?---I don't think so.

PN3968

Okay, but you don't know why- -?---If they did, I haven't been told anything about it.

PN3969

But Fair Work have been in looking at your books?

PN3970

JUSTICE ROSS: The Ombudsman.

PN3971

WITNESS: No, they just came to check.

PN3972

MR DOWLING: All right. You might not have heard- -?---And they were very satisfied.

XXN MR DOWLING

PN3973

You might not have heard the President ask, was it the Fair Work Ombudsman? Do you know?---I beg your pardon?

PN3974

The President asked you whether it was the – or asked whether it was the Fair Work Ombudsman. Are you able to say whether that's right or wrong?---No, I don't think so. Somebody just turned up and wanted to have a look at the wages etc, and the staff hours and that was it.

PN3975

Okay Now, sorry, before you raised that, I was asking you about the Restaurant Industry Award?---Mm-hm.

PN3976

That covers your 19 employees?---Mm-hm.

PN3977

And all of your casuals? Those 14 casuals that are on level 1, yes?---Yes.

PN3978

Are you aware that the penalty rates in that award were varied for casuals at the introductory level, level 1 and level 2, as of 1 July of 2014?---Yes.

PN3979

That went from 175 down to 150, is that right?---I don't know what it is, I have a bookkeeper, but we were informed that the rates went up and that was - I left it to her.

PN3980

The rates went down, Mr [REDACTED]?---They went down, did they? I just left it to her. To tell you the truth, I don't even touch the wages.

PN3981

So it's really difficult for you to make an assessment of the impact of penalty rates in that case?---Of course, up to a point. If there's penalty rates and you're struggling in the first place and it's going to go up, or if it can come down you have a sort of a rule of thumb that you say, right, if it comes down, I can do something else. If it goes up, you just don't do it.

PN3982

But I think your evidence is that that number of level 1 casuals stayed relatively - basically, I think you said - basically constant over 2014. That was despite the reduction from 175 to 150, is that right?---Hang on. What was - 175 to what?

PN3983

The casual loading went from - in respect of a Sunday - - -?---Sorry. Don't - don't draw me into - into costs, I'm sorry. I'm a rule of thumb person. I leave it to staff to do the other.

XXN MR DOWLING

PN3984

All right. Let's deal with it at sort of a broad brush level then?---Yeah.

PN3985

At a broad brush level, there is a change in the penalty rate but the level of casuals is constant over the calendar year of 2015. That is a fair assessment?---I think that was right.

PN3986

JUSTICE ROSS: I think you should explain the change in the penalty rate.

PN3987

THE WITNESS: Mind you, the casuals change. You don't have the same casuals all the time.

PN3988

MR DOWLING: Yes. To be fair to you, I just want to make it clear what I am talking about in respect of the change is that as of 1 July 2015 and as the result of the two-year review of the Restaurant Industry Award, casual loading for casuals at introductory level, level 1 and level 2, inclusive of their casual loading, on a Sunday, went from 175 to 150. Are you aware of that?---No.

PN3989

All right. But you are aware that your casual numbers, putting aside different people, your casual numbers stayed constant during that time?---I would assume that.

PN3990

Thank you. Nothing further.

PN3991

JUSTICE ROSS: Re-examination?

PN3992

MR CLARKE: No, Your Honour.

PN3993

JUSTICE ROSS: Thank you for your evidence and your time today, Mr [REDACTED]
You are excused?---Thank you.

<THE WITNESS WITHDREW

[9.55 AM]

PN3994

MR CLARKE: Your Honour, the next witness is in from video conference from Brisbane, Ms [REDACTED], due at 10 but I understand that Ms [REDACTED] is in the Commission already in Brisbane.

PN3995

JUSTICE ROSS: All right. We might stand down for a couple of minutes while we get the link up.

XXN MR DOWLING

SHORT ADJOURNMENT

[9.55 AM]

RESUMED

[9.57 AM]

< [REDACTED], SWORN

[9.58 AM]

EXAMINATION-IN-CHIEF BY MR CLARKE

[9.58 AM]

PN3996

Ms [REDACTED], it is Mr Clarke, representing the Restaurant Association. Can you hear me clearly?---Yes, I can.

PN3997

Have you got two statements in front of you there today?---I do.

PN3998

Is one of them titled a supplementary statement signed by you on 25 August 2015 containing seven paragraphs?---Correct.

PN3999

Does that remain a true and accurate record?---Yes, it does.

PN4000

Is the second statement an eight paragraph statement dated 9 September 2015?---That is correct.

PN4001

Does that remain a true and accurate record?---It does.

PN4002

Thank you, Ms [REDACTED].

PN4003

UNIDENTIFIED SPEAKER: Your Honour should have an excised version that replicates the objections as agreed.

PN4004

JUSTICE ROSS: Well, don't work on that assumption. Tender the excised statement and let me have a look at it.

PN4005

MR CLARKE: Sorry, Your Honour. You've got a copy of - - -

PN4006

JUSTICE ROSS: No, don't assume I've got a copy of anything. I've got a copy of the document filed on 3 June and I've got a copy of a document filed on 25 August. When did you file the redacted copy?

PN4007

MR CLARKE: Sorry, Your Honour. Late on Friday.

XN MR CLARKE

PN4008

JUSTICE ROSS: Well, it's Monday now.

PN4009

MR CLARKE: Yes, I accept that, Your Honour. The next couple of witnesses have statements filed on Friday that met, if you like, the objections and the agreement with regard to objections, so I can get - - -

PN4010

JUSTICE ROSS: No. We'll stand down for 5 minutes, we'll get copies of the statements. In future, if you are going to refer to it, let my associate know so we can print them off. Don't assume something you file on Friday night is magically going to appear before all of us on Monday morning.

PN4011

MR CLARKE: I completely accept that, Your Honour.

PN4012

JUSTICE ROSS: All right.

<THE WITNESS WITHDREW [10.01 AM]

SHORT ADJOURNMENT [10.01 AM]

RESUMED [10.15 AM]

PN4013

JUSTICE ROSS: So we have a document that replaces the supplementary statement. Is that right?

PN4014

MR CLARKE: Sorry, Your Honour, no. The supplementary statement was an additional statement that came out of the notices to produce and it stands. The additional statement replaces Ms [REDACTED] earlier statement of probably the 29th - dated - - -

PN4015

JUSTICE ROSS: So is it two paragraphs shorter than the one originally filed? It's eight paragraphs rather than 10. Is that the idea?

PN4016

MR CLARKE: That's correct. It's eight paragraphs dated 9 September 2015.

PN4017

JUSTICE ROSS: All right.

PN4018

MR CLARKE: Apologies, Your Honour. So Ms [REDACTED] has recognised both of those documents.

XN MR CLARKE

PN4019

JUSTICE ROSS: So she has sworn up to the documents and you want to tender them?

PN4020

MR CLARKE: Yes, I seek to tender the supplementary statement of Ms [REDACTED] dated 25 August 2015 and the statement of Ms [REDACTED] dated 9 September 2015.

PN4021

JUSTICE ROSS: Mr Dowling, do you have any objection?

PN4022

MR DOWLING: No.

**EXHIBIT #RCI10 SUPPLEMENTARY STATEMENT OF [REDACTED]
[REDACTED] DATED 25/09/2015**

**EXHIBIT #RCI11 STATEMENT OF [REDACTED] DATED
09/09/2015**

PN4023

MR DOWLING: Can I just clarify for Your Honour that the statement of 9 September replaces the statement sworn on 3 June does not just remove paragraphs 9 and 10. It does also remove - - -

PN4024

JUSTICE ROSS: That's fine. I don't need to know what else it does.

PN4025

MR DOWLING: Thank you, Your Honour.

PN4026

JUSTICE ROSS: Cross-examination?

< [REDACTED], RECALLED ON FORMER OATH [10.18 AM]

CROSS-EXAMINATION BY MR DOWLING [10.18 AM]

PN4027

Ms [REDACTED], can you see and hear me clearly?---I can.

PN4028

Can I just firstly ask you a couple of questions about your workforce? In your supplementary statement you tell the Commission that you have 16 casual employees. Is that right?---Correct.

PN4029

And they are your entire workforce. There's no part-timers and no full-timers and no annualised salary people?---That's correct.

XXN MR DOWLING

PN4030

Are those 16 casuals of varying levels or are they all about the same level, do you know?---Varying levels.

PN4031

Are some at the introductory level?---No, not at the moment.

PN4032

Are some of the at level 1?---Yes.

PN4033

Can you say how many of the 16 are at level 1?---There would be probably, just without being totally accurate, about 40 per cent of them.

PN4034

Then level 2, is that the balance or - - -?---Level 2 is the balance with the exception of two who are chefs and they are at the professional level for the trade.

PN4035

So as a broad brush of the 16 casuals, 14 of them are level 1 or level 2?---Yes, correct.

PN4036

If I understood correctly?---Yes, correct.

PN4037

Just in terms of the sort of general numbers you have of casuals, and if we, just for the moment, look at the financial year - sorry, the calendar year 2014?---Yes.

PN4038

For that calendar year, was the entire workforce casual for that year as well?---Yes.

PN4039

Were the casual numbers relatively constant for that calendar year 2014?---Our business is fairly consistent and our staff levels stay approximately the level that I have stated.

PN4040

You have given some evidence about a lease that you recently entered into or that you entered into some time ago. Do you recall giving that evidence?---Yes, I do.

PN4041

You were asked to provide a copy of that lease. Is that right?---Correct.

PN4042

A copy has been given to me this morning with some things redacted from it, but the copy that I have says that it was executed by - it appears to be executed by you on 4 December 2012. Is that right?---Yes, that would be right.

XXN MR DOWLING

PN4043

One of the things you say is that because of your lease you have got some concerns about penalty rates, but you also say that the lease was negotiated prior to the penalty rates being applied under the Restaurant Industry Award. Do you see that at paragraph 6 of your statement?---Yes, I do.

PN4044

You know the Restaurant Industry Award took effect on 1 January 2010?---Yes, I am aware of that, however this lease was brought about at the request of the management of the centre and the lease that - I was not out of lease. The new lease was to reflect exactly the requirements and conditions of the old lease which was - I've had the business for 20 years and the lease was to reflect exactly the clauses in the original lease.

PN4045

But you were asked to sign this lease in or about December of 2012, is that right?---Yes.

PN4046

Did you get some advice about the lease in December of 2012?---I did.

PN4047

You went to see a lawyer about it?---I did.

PN4048

Did the lawyer make some suggestions about what you should change?---At the time the lease was basically a total reflection of the one that I had and his - - -

PN4049

That's not what I asked, Ms [REDACTED]. Could you - - -?---Right.

PN4050

- - - listen carefully to my question?---Yes, yes.

PN4051

Did you get some advice about what parts you might change?---Yes, I did.

PN4052

But ultimately you agreed to sign the form of the lease that you signed on 4 December 2012. Is that right?---Obviously, yes.

PN4053

When you signed it on 4 December 2012 you knew very well what the penalty rate regime was under the restaurant industry award, didn't you?---Yes, I did.

XXN MR DOWLING

PN4054

Can I ask you some questions about some calculations you might have performed for the purposes of this proceeding? Do you understand that you're giving evidence on behalf of Restaurant & Catering Australia? You understand

that?---Yes, I am a member of restaurant and caterers and I understand that as that, I am appearing here today.

PN4055

They're seeking to vary the Restaurant Industry Award. You understand that?---I do.

PN4056

Do you know the variations they are seeking?---Yes, I am.

PN4057

All right?---I am partially familiar with them, yes.

PN4058

Have you made a calculation about what penalty rates you currently pay as a proportion of you Sunday, for example, and what penalty rates you will pay as part of the Restaurant & Catering Association's variation?---No, I have not done that calculation.

PN4059

Just some last questions in relation to those casual employees. If you just concentrate on the 14 of them that are level 1 and level 2, did their penalty rate for a Sunday change on 1 July of last year, 2014?---Yes, it did.

PN4060

Is it your understanding that casual employees at level 1 and level 2 inclusive of their casual loading, their penalty rate on Sunday went from 175 to 150?---Yes, I am.

PN4061

But I think your evidence is despite that, your workforce was consistent over - the total numbers of casuals were broadly consistent for the calendar year of 2014. Is that right?---Yes, correct.

PN4062

Nothing further, Your Honour.

PN4063

JUSTICE ROSS: Ms [REDACTED], can I just ask you a follow-on question from that last one?---Yes.

PN4064

Do you employ the same number of casuals in 2015 on a Sunday that you employed in 2014 broadly?---Similar. Very similar.

PN4065

MR CLARKE: No re-examination, Your Honour.

XXN MR DOWLING

PN4066

JUSTICE ROSS: Thank you for your evidence and your time this morning, Ms [REDACTED]. You are excused?---Thank you very much.

<THE WITNESS WITHDREW

[10.27 AM]

PN4067

JUSTICE ROSS: Next witness?

PN4068

MR CLARKE: The next witness is by video.

PN4069

MS [REDACTED]: There is no one else here.

PN4070

MR CLARKE: Sorry, that's Ms [REDACTED]. I think she's - - -

PN4071

MS [REDACTED]: Leaving. I'm leaving.

PN4072

MR CLARKE: Thank you, [REDACTED].

PN4073

MS [REDACTED]: Thank you very much.

PN4074

MR CLARKE: The next witness is Mr [REDACTED] who is meant to be online from - coming in from Canberra.

PN4075

THE ASSOCIATE: Mr [REDACTED]?

PN4076

MS [REDACTED]: Yes, it is.

PN4077

THE ASSOCIATE: Could I please just ask you to sit at the Bar table as we can't actually see the witness box, if that's okay.

PN4078

MS [REDACTED]: Just here?

PN4079

THE ASSOCIATE: Yes, that's fine. Can I please just ask who is sitting in the background? The gentleman in the back seat.

PN4080

UNIDENTIFIED SPEAKER: Yes?

XXN MR DOWLING

PN4081

THE ASSOCIATE: Can I just ask where you are from?

PN4082

UNIDENTIFIED SPEAKER: From Restaurant & Catering Association.

PN4083

THE ASSOCIATE: Thank you.

< [REDACTED], SWORN [10.30 AM]

EXAMINATION-IN-CHIEF BY MR CLARKE [10.30 AM]

PN4084

Mr [REDACTED], it's Ross Clarke representing the Restaurant & Catering Association. Can you hear me clearly?---Yes, I can.

PN4085

Do you have two statements in front of you?---Yes.

PN4086

Is one of those statements headed "Supplementary Statement" with four paragraphs and dated 27 August 2015?---Yes, that's correct.

PN4087

Does that statement remain true and accurate?---Yes, it does.

PN4088

Do you have a second statement in front of you headed Statement of 12 paragraphs signed by you on 9 September 2015?---Yes, that's correct.

PN4089

And does that statement remain true and accurate?---Yes, it does.

PN4090

Thank you, your Honour.

PN4091

JUSTICE ROSS: Any objection?

PN4092

MS BURKE: No, your Honour.

PN4093

JUSTICE ROSS: We'll mark the supplementary statement of the 27th of August is exhibit RCI12, and the statement of the 9th of September 2015 as exhibit RCI13.

**EXHIBIT #RCI12 SUPPLEMENTARY STATEMENT OF MR
[REDACTED] DATED 27/08/2015**

XN MR CLARKE

**EXHIBIT #RCI13 STATEMENT OF MR [REDACTED]
DATED 09/09/2015**

PN4094

MR CLARKE: Thank you, your Honour.

PN4095

JUSTICE ROSS: Cross-examination?

CROSS-EXAMINATION BY MS BURKE

[10.31 AM]

PN4096

MS BURKE: Thank you. Mr [REDACTED], can you see and hear me alright?---Yes, I can. It is a little bit low for volume.

PN4097

Is that better?---I can hear you, yes, that's fine; it just sounds a little bit distant but it's totally okay, I can hear you clearly.

PN4098

I'll shout, thank you.---Thank you.

PN4099

Mr [REDACTED], you employ nine casuals, I think you say, that's right?---That's correct.

PN4100

Have you had those same nine casuals over the last year or so?---No. No, it's quite a moving piece, so probably the majority of that – in fact probably the last couple of months I've had probably the most movement, roughly the same amount of staff leaving are come in, so just the nature of the younger workforce, either completing university or gaining full-time employment, so new staff have come in.

PN4101

But have you consistently had nine positions and it's just the case that there are different people filling those roles over the last year or so?---Yes, precisely, so - - -

PN4102

Got it.- - - in five year in business, probably between eight and ten has stayed fairly steady within that range.

PN4103

Of those positions, are they a range of levels and jobs?---Yes, and I guess probably the interesting note is, you know, in my statement I say none are under annualised salary arrangements. Probably in the next week or so that will change, so it was just a reflection of that moment in time to make the statement obviously accurate and true, but yes - - -

PN4104

In the last year or so then, have you had any casuals at the introductory level under the award?---Yes.

XXN MS BURKE

PN4105

How many about?---Well most of the casual staff that have started in the new year started at introductory level – level 1 – and then I tend to have – I've had a couple of staff members that, having been with me longer, are older age, more availability, they're sort of higher in level.

PN4106

So is it the case that at any given time with your nine casuals there are some at introductory level and some at level 1 and some above that?---Sorry, if you can clarify the definition of introductory? For me it would be at level 1. That's generally how they start.

PN4107

I'm referring to the classifications in the Restaurant Industry Award.---Okay, yes, well I start them at level 1, so yes, to accurately answer your question, no introductory staff; level 1's.

PN4108

Right now, how many of your casuals are at level 1?---The majority except two.

PN4109

Was that the case in 2014?---It's, yes, been fairly consistent at that level, because as an owner I still work and operate the business day-to-day; I don't leave it - I don't have managers or supervisors as such there operating the business.

PN4110

Okay, and the two that aren't level 1, what level are they?---Two.

PN4111

You've had those two level 2 positions for the last year or so?---No, it became two very recently; the other one has been longer term, probably yes at least a good couple of years.

PN4112

How many of your workers do you have rostered on an average school night, so Monday, Tuesday, Wednesday, Thursday?---So for our lunch service – we have a lunch and dinner service - - -

PN4113

Sorry, just in the evening?---Sorry, the evenings, it's between one and two.

PN4114

What about on a Friday night?---Anywhere between two to four.

PN4115

And Saturday lunch?---I don't trade.

XXN MS BURKE

PN4116

Okay, so in your statement at paragraph 5, you say the operating times for trade for lunch are 12 to 2 pm, and above that that the company trades Tuesday to

Saturday each week. Does that mean this statement needs to be corrected?---Yes, you are right actually. So it's just the Saturday I don't trade lunch. We just trade dinner on that day. So yes, you're right, it does need a small correction there.

PN4117

Okay. Then just going back to the question I was asking you, which is roughly how many people do you have working on Saturday night?---So Saturday nights, again, between two and four. If I can just add, the reason for the fairly big range is I have family members, being my wife and stepsons, who often work and participate in the family business.

PN4118

Thank you. And so you have more workers working on Friday and Saturday nights because there's not too much demand in Canberra after 10 o'clock on a school night, is that right?---Yes, I guess that's part - - -

PN4119

Sorry, on a week night?---Week night? Yes, part of your statement is correct, yes, so the demand element - absolutely, 10 pm - yes, even less so.

PN4120

Okay, so there's less demand after 10 o'clock - - -?---Absolutely.

PN4121

- - - on Monday, Tuesday, Wednesday and Thursday?--- Correct.

PN4122

And you know, don't you, Mr [REDACTED], what the penalty rates are on Sundays under the Restaurants Award?---Yes.

PN4123

And you know that for level 1 and level 2 casuals they're actually the same as they are on Saturday, that's right, isn't it?---Yes, I believe that is correct.

PN4124

So where you say at paragraph 12 of your statement that you don't currently trade on Sundays but if the current penalty rate was reduced to Saturday rate for all staff you'd consider opening on Sundays, you could do that right now, couldn't you?---I guess the sense of - to answer that question and the reason for my appearance is that the fact that - well actually let me backtrack - the rate for Sunday for level 1's and 2 you're saying is the same as Saturday?

PN4125

That's right.---Because I don't believe that's correct.

PN4126

I asked you just a minute ago if you knew what the rates for Sundays were for casuals - - -?---Yes, that's where I'd like to go back. I'd like to go back to that question. So I do believe that Saturday and Sunday rates differ during the day.

XXN MS BURKE

PN4127

If you're wrong about that, does that mean that you would withdraw paragraph 12 of your statement?---Yes, that would be withdrawn, or more accurately it would be re-phrased more accurately.

PN4128

I think there's a limit on re-phrasing, but I'll let others deal with that.---Yes, well let's leave it at – yes, if the Sunday rates are different to Saturday day rates then – which I wasn't aware of, that paragraph 12 would be withdrawn.

PN4129

Mr [REDACTED], you know, don't you, that in the last year your wages bill has actually fallen for all your casuals at level 1 and 2, that's right, isn't it? Let me just be clear about that, their hourly rate has fallen?---No, they haven't.

PN4130

JUSTICE ROSS: Are you sure about that, Ms Burke?

PN4131

MS BURKE: No, I'm not. I withdraw that question.

PN4132

JUSTICE ROSS: You might just be focusing on one aspect. There'd be the annual wage review as well.

PN4133

MS BURKE: I'm focusing on a particular day that isn't relevant to this witness.

PN4134

JUSTICE ROSS: Okay.

PN4135

MS BURKE: So I withdraw the question and erase the note. Thank you, I don't have any more questions, thank you?---Thank you.

PN4136

JUSTICE ROSS: Mr [REDACTED], can I ask you a question about paragraph 12? You remember you were asked some questions about that?---Yes.

PN4137

Specifically it was put to you that the penalty rate for level 1 and 2 casuals is the same on Saturday and Sunday and if that was the case, I'm asking you to accept for the moment that that's the case, what changes would you make to paragraph 12? You said that you would rephrase it, in what way?---Well, if the rate is the same, it would be part of the - it would make a bit part of the consideration on opening on a Sunday. Yes, it would make it a lot easier I suppose. But, yes, part of why - - -

PN4138

But what's been put - - -?---Yes, go on.

XXN MS BURKE

PN4139

Just to be clear, what's being put to you is that the rate is the same and it's been the same for more than 12 months?---Yes, I wasn't aware of that at all.

PN4140

Anything arising?

PN4141

MR [REDACTED]: I'm actually absolutely intrigued by that, if that's the case. Yes, it's something that I'll definitely go and sort of re-evaluate, I suppose.

PN4142

JUSTICE ROSS: Anything further for this witness?

PN4143

MS BURKE: No, thank you, your Honour.

PN4144

MR [REDACTED]: What is that rate, if that statement is true?

PN4145

JUSTICE ROSS: Look, you've got someone from restaurant and catering there, they'll be able to assist you once we collect your evidence. Anything further?

PN4146

MR CLARKE: No, your Honour.

PN4147

JUSTICE ROSS: All right. Well, you can do that now, Mr [REDACTED]. Thanks for your time, you're excused?---Thank you.

<THE WITNESS WITHDREW

[10.44 AM]

PN4148

JUSTICE ROSS: Did Restaurant and Catering advise its employees of the change?

PN4149

MR CLARKE: Yes.

PN4150

JUSTICE ROSS: Sorry, not it's employees, I'm sorry, it's members.

PN4151

MR CLARKE: Yes, I would have expected you would have, but yes.

PN4152

JUSTICE ROSS: Okay. Next witness.

[REDACTED]

XXN MS BURKE

PN4153

MR CLARKE: Sorry, your Honour, Brian Leyden has withdrawn his evidence. So the next witness is Ms [REDACTED], and she is here.

PN4154

JUSTICE ROSS: Are there any amendments to her statement?

PN4155

MR CLARKE: There are amendments to her statement and there are amendments to the [REDACTED] statement as - - -

PN4156

JUSTICE ROSS: All right, we might just stand down for five minutes while we get copies of those. No, we've got them.

PN4157

MR CLARKE: Your Honour, can I just make a couple of comments about the [REDACTED] statement, just by - - -

PN4158

JUSTICE ROSS: The [REDACTED] statement, yes.

PN4159

MR CLARKE: It's just that Mr [REDACTED] doesn't have access to facilities. So the second page of his statement, if you turn it over, it might even be the first page, is quite dark, the second page - yes. In discussion with United Voice, over the weekend, most of the second page is withdrawn, except for the first two words. So we've been trying to get a clearer copy this morning.

PN4160

JUSTICE ROSS: Okay. Well we'll adjourn between the two and we'll see how we go.

PN4161

MR CLARKE: Okay, your Honour, thank you.

PN4162

JUSTICE ROSS: Just bear with me for a moment? What we might do is my associate will just - if you can indicate which bits are withdrawn, we'll get it retyped now and get it put to the witness, it'll just save some time.

PN4163

MR CLARKE: Your Honour, just in discussions with my friend, it might be - the alternative is to go through Mr [REDACTED] original statement and strike out.

PN4164

JUSTICE ROSS: Do whichever you like, but just take my associate now through what the strike outs and we'll get it retyped.

PN4165

MR CLARKE: I call Ms [REDACTED].

PN4166

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

PN4167

MS [REDACTED]: [REDACTED] (address supplied).

< [REDACTED], SWORN

[10.48 AM]

EXAMINATION-IN-CHIEF BY MR CLARKE

[10.48 AM]

PN4168

MR CLARKE: Your Honour, I've got two statements I'd like to hand to Ms [REDACTED]. Ms [REDACTED], you've been handed two statements?---Yes.

PN4169

I'll just take you to the statement dated 25 August 2015. It's headed, at the top, Supplementary Statement, and it's six paragraphs long, do you see that statement?---Yes.

PN4170

Is that your statement?---Yes, it is.

PN4171

That statement remains a true and accurate record?---Yes, it does.

PN4172

The second statement is just headed Statement, it is seven paragraphs, ordered 1 to 7, signed by you on 9 September 2015, is that statement yours?---That is, yes.

PN4173

That statement remains a true and accurate statement?---Yes, it does.

PN4174

Thank you. Your Honour, I'd seek to tender a supplementary statement and the statement of - dated 25 August, and the statement of Ms [REDACTED], dated 9 September 2015.

PN4175

JUSTICE ROSS: Any objection?

PN4176

MS BURKE: No.

PN4177

JUSTICE ROSS: I'll mark the supplementary statement exhibit RCI14 and the statement of 9 September RCI15.

**EXHIBIT #RCI14 SUPPLEMENTARY STATEMENT OF [REDACTED]
[REDACTED] DATED 25/08/2015**

XN MR CLARKE

**EXHIBIT #RCI15 STATEMENT OF [REDACTED] DATED
09/09/2015**

PN4178

JUSTICE ROSS: Cross-examination?

CROSS-EXAMINATION BY MS BURKE

[10.50 AM]

PN4179

MR CLARKE: Thank you. Ms [REDACTED], can I just start by clarifying a couple of matters about your employees? You say you've got six full timers and five of those are on salaries, are the five on salaries the full timers?---Yes.

PN4180

Then there's one full timer who's not on a salary?---No, casual.

PN4181

The six full timers are four in the kitchen and two front of house?---That's correct, yes.

PN4182

They work every day that you're open, that's right, isn't it?---That's correct.

PN4183

So that's Wednesday to Sunday?---That's correct.

PN4184

You've also got eight casuals?---That's right.

PN4185

Do they have different levels and different roles?---Yes, they do actually.

PN4186

Can you tell the Commission what their roles are?---They are front of house staff, so wait staff, and two would be kitchen staff that are kitchen hands.

PN4187

What are their levels under the award, do you know?---Level - for the front of house they're at level 2.

PN4188

How many of those are there?---There are six of those.

PN4189

Yes?---It fluctuates. We've had a couple leave and a couple come on. And the kitchen hands are level 1.

PN4190

There's two of those?---Yes.

XXN MS BURKE

PN4191

Have those staffing numbers been pretty consistent I the last 18 months?---Yes.

PN4192

Weekends are your busiest times, aren't they?---That's correct.

PN4193

Is it fair to say that the majority of your casuals work on weekends?---Yes.

PN4194

Do you have all eight working on Saturday - or all eight casuals working on Saturday?---All age, is that what you're saying?

PN4195

Sorry, eight, the number 8?---Eight, sorry. Yes, they - it depends on the weekend, how busy it is but normally, yes.

PN4196

Is it the same for Sunday?---Yes.

PN4197

Has that sort of rostering system been pretty consistent for the last 18 months or so?---It has been consistent. It is a little bit difficult because if people can't get their hours, they won't stay on. They will obviously look for other jobs.

PN4198

So the people who do the work might change but the positions available have remained the same?---Yes.

PN4199

You have given some evidence to the Commission about what you would do if penalty rates were significantly reduced. What does significantly reduced mean to you?---Affordable for us as a business to be viable. Currently, we can't afford to open on a public holiday, for instance, because penalty rates are exorbitant.

PN4200

Do you have a number in mind?---Of reducing the penalty rates? If we had a flat rate across the board it would make it much more - as a small business, we'd be able to probably make money.

PN4201

You say that you would be able to employ more casual staff on weekends if penalty rates were significantly reduced, just looking at weekends - - -?---Mm-hm.

PN4202

What is the significant reduction that would enable you to do that?---Of the penalty rates?

[REDACTED]

XXN MS BURKE

PN4203

On weekends?---On weekends. We're looking at - because currently they're sitting at 1.75 per cent - - -

PN4204

On Sunday?---One seventy five, yeah.

PN4205

And 1.5 on - - -?---One point five on Saturday, yeah.

PN4206

On Sunday, do you know what the rates are on Sunday?---One seventy five.

PN4207

For all of them?---Yes. It depends on - we have some of our chefs - we have an apprentice chef whose rates go up over a certain amount of hours that she does.

PN4208

But your casuals?---The casuals?

PN4209

Yes?---Yes. They're sitting on level 2, so their rates stay the same. We try not to have any of our casuals working past 10 o'clock at night or starting before seven in the morning.

PN4210

So my question was then what is the significant reduction to the penalty rates on weekends that would enable you to make the changes that you say you want to make?---Ideally? Ideally, no penalty rates would be great.

PN4211

You know what amendments the Restaurant & Catering Association are seeking?---They're seeking for a reduction. I think it's to have it the same as Saturday rates.

PN4212

You have given some evidence about how a reduction in weekend penalty rates would affect your levels of casual employment. Can I take it that means that you have calculated how much it would cost you to employ more casuals?---We look at - at the moment we look at staffing our business according to the time of year, not necessary Saturday or Sunday because we could have - this week just gone by, the weekend was very quiet. So we had to - we still have to staff based on historical figures, which aren't always correct.

PN4213

What do you mean by historical figures?---Well, this time a year ago.

PN4214

I see?---So - which is what we did. It was still very quiet. We had - we try to keep our restaurant at a service level so that our customers are happy.

XXN MS BURKE

PN4215

But I'll just see if I can ask my question in a way that is more clear. When you made your statement, the first one, which was you originally I think swore on 5 June and there's been some amendments to it but the same in substance as the one on 9 September, when you made that statement, had you calculated how much it would cost you to employ more casuals if penalty rates were reduced in the way that the Restaurant & Catering Association are looking?---We did a brief calculation. I did it with my bookkeeper.

PN4216

What was the cost there that you calculated?---We don't - I was looking more at whether we could - we didn't look at a cost per se. Because the industry and because our business fluctuates quite a bit, we look at the percentage of the labour cost to what we are currently earning. So an actual dollar figure, we - I wouldn't be able to tell you, no.

PN4217

Where you say that you would - sorry. Where you refer to more casual work if penalty rates were reduced, that would include offering more work to your existing casual staff, wouldn't it?---That would mean more people on the floor because we do get quite busy and at the moment we limit our staff because we can't afford to put more staff on so - - -

PN4218

You limit the number of staff or the hours that they work?---Both.

PN4219

So does it follow then that if penalty rates were reduced, your existing staff would have more hours?---Yes.

PN4220

Those would be your casual staff because of course the full-timers are full-time?---Mm-hm.

PN4221

Ms [REDACTED], your wage bill for some of your casuals, or actually all of your casuals, has fallen since 1 July last year, hasn't it, on a per hour basis?---Yes.

PN4222

On a Sunday?---On a Sunday, yes. Yeah.

PN4223

That's because level 1 and level 2 casuals are now paid 150 whereas before 1 July they were paid 125 - sorry, 175?---Yeah.

XXN MS BURKE

PN4224

On a Sunday. But you haven't employed any more casuals since that change over a year ago?---The number of casuals we have employed have stayed the same. We have put on - it's not necessarily the same people, as I said, we have a lot of transient staff. We were wanting to employ permanent staff in the kitchen, which

was difficult because of their level. It made it - we had to balance the cost of a senior kitchen staff member as opposed to putting on more casuals, or having a casual member in the kitchen.

PN4225

You haven't put on any more casuals since then?---Not any more extra, physical casuals, no.

PN4226

Thank you. I don't have any more questions for Ms [REDACTED].

RE-EXAMINATION BY MR CLARKE

[10.58 AM]

PN4227

Ms [REDACTED], you say you have kept the number of casuals the same since the change in the middle of last year. Have the hours of those casuals remained the same?---Some of them have. As I said, it is difficult to give an actual - to be able to say across the board that their hours have gone up or down. If a casual - or if a member of staff leaves, we actually have to replace that member that leaves and sometimes an existing casual member, their hours will go up to compensate for that.

PN4228

You mentioned the percentage. You sort of configure your workforce based on the wages to sales ratio?---Yes, yes.

PN4229

How does that impact your thinking with regards to the workforce?---Currently our wage costs, our labour costs, is quite high. We're looking at - it's sitting on about 49 per cent. The costs of goods has also risen. So it's quite difficult at the moment to be able to keep everything - just to keep it viable. It is quite a constant battle every - every week to be able to keep those labour costs down and also to have the cost of goods at a reasonable level as well.

PN4230

What impact does that have on your labour - on the people you employ and their hours?---We need to cut hours basically. We need to look at the casual that we have rostered on and need to just make sure that they are working minimum hours if our actual revenue is looking like it will be down for the week.

PN4231

No further questions, Your Honour.

PN4232

JUSTICE ROSS: Ms [REDACTED], can I just ask you a question about the casual hours?---Yes.

RXN MR CLARKE

PN4233

In response to a question that was just put to you, you said that sometimes the hours go up to compensate if one of the casuals leaves and before you can recruit

another one, then you'll increase the hours of some of your remaining casuals. Have the overall number of hours you employ your casuals on a Sunday as a block, as a group, have they changed much in the last 12 months or so or have they been fairly constant?---They have been fairly constant. It's a time of year where it fluctuates, but overall, if you're looking at 12 month period, it has stayed fairly constant, yes.

PN4234

I'm just trying to understand your response to a question that was put to you in cross-examination where you indicated that it was expensive to employ an additional kitchen - a chef, I am assuming. Have you changed the employment levels in the kitchen? Have you employed an extra chef in the last 12 months or so?---We have gone through probably six chefs in the last 12 months.

PN4235

No, I meant the overall - - -?---An extra chef?

PN4236

Like most places, they seem to rotate pretty quickly?---Yes. At the moment we look at - the way our business employs staff at the moment, we have normally three chefs in the kitchen.

PN4237

And that's been pretty much the same?---Yes.

PN4238

Different chefs, but the same number?---Coming into summer we need to employ another one.

PN4239

Is that usually your pattern each year?---Yes.

PN4240

Anything arising?

PN4241

MR CLARKE: No, Your Honour.

PN4242

JUSTICE ROSS: Any other questions? Thank you very much - - -?---Thank you.

PN4243

- - - for your evidence and your time this afternoon. This morning, rather. You're excused.

<THE WITNESS WITHDREW

[11.02 AM]

PN4244

JUSTICE ROSS: We will just stand down for five minutes while we sort out this statement issue. Is Mr [REDACTED] available or - - -

RXN MR CLARKE

PN4245

MR CLARKE: Mr [REDACTED] - can I just make one comment, Your Honour, before you do, and I am already noting your comments earlier so you can take them they have been received, but the statement I have here for Mr [REDACTED] which we will be relying on this morning has got a clean copy of page 1 and then it's got, if you like, a shaded copy of page 2. I suppose my comment earlier was that in discussions with United Voice over the weekend most of page 2 disappears this morning apart from the first two words, so we could - - -

PN4246

JUSTICE ROSS: All that we have done is retyped the statement so it all appears on one page.

PN4247

MR CLARKE: Okay.

PN4248

JUSTICE ROSS: I just want you to check it and then it can be put to the witness in the box and we can mark it that way. It doesn't really matter whether it was previously five. No issue is taken about any of that. Is the witness around though?

PN4249

MR CLARKE: Yes, the witness is - I probably should add that the witness is from New South Wales and it's been - he has done his best in the circumstances.

PN4250

JUSTICE ROSS: I'm not troubled by it. No, no, I'm not worried about it.

PN4251

MR CLARKE: Yes. That's all right, Your Honour.

PN4252

JUSTICE ROSS: No, that's - - -

PN4253

MR CLARKE: We don't like to have it this way.

PN4254

JUSTICE ROSS: No, no, that's fine. I just wanted to find the quickest way home, that's all.

PN4255

MR CLARKE: That's fine.

PN4256

JUSTICE ROSS: We will just adjourn for five minutes. Make sure we've got a copy so the witness can be shown it before he is sworn up.

PN4257

MR CLARKE: Thank you, Your Honour.

PN4258

JUSTICE ROSS: Thank you.

SHORT ADJOURNMENT

[11.04 AM]

RESUMED

[11.26 AM]

PN4259

JUSTICE ROSS: Sorry to keep you, Mr [REDACTED]. Thank you.

< [REDACTED], **AFFIRMED**

[11.27 AM]

EXAMINATION-IN-CHIEF BY MR CLARKE

[11.27 AM]

PN4260

MR CLARKE: Mr [REDACTED], do you have two statements in front of you there now?---Yes, I do.

PN4261

If I could turn to the one firstly titled "Supplementary Statement of [REDACTED] [REDACTED]" it's got nine paragraphs and it's dated 25 August 2015. Can you identify that?---Yes, I can.

PN4262

Does that statement remain a true and accurate record?---It remains - it does remain true and accurate, yes.

PN4263

I have got a second unsigned statement dated 14 September 2015 with "Statement of [REDACTED]" written at the top?---Yes.

PN4264

That attaches to it three pages of profit and loss statements - two pages of profit and loss statements and an employee shift schedule?---Correct.

PN4265

Is that statement a true and accurate record?---Yes, it is.

PN4266

I would seek to tender those, Your Honour.

**EXHIBIT #RCI16 SUPPLEMENTARY STATEMENT OF [REDACTED]
[REDACTED] DATED 25/08/2015**

**EXHIBIT #RCI17 UNSIGNED STATEMENT OF [REDACTED]
[REDACTED] DATED 14/09/2015**

PN4267

MR CLARKE: Thank you, Your Honour.

[REDACTED]

XN MR CLARKE

CROSS-EXAMINATION BY MS BURKE

[11.28 AM]

PN4268

Thank you, Mr [REDACTED]. You are the owner of [REDACTED]?---Yes, I am.

PN4269

Are you the sole owner?---Yes, I am.

PN4270

And you're a director of that company?---Yes, I am.

PN4271

That company operates two businesses. That's right, doesn't it?---Correct.

PN4272

There is [REDACTED]. Let me know if I've got this right. That business imports coffee beans and roasts the beans and then sells it?---No, it doesn't import coffee.

PN4273

I'm sorry. It grows coffee?---No, it buys coffee locally from traders.

PN4274

And then the beans are roasted at a premises and then sold?---No.

PN4275

There's a cafe attached to that called [REDACTED]?---It's the same business.

PN4276

Well, the cafe is at the same location. That's [REDACTED]?---It is, but the distinction between the businesses isn't what you're raising. There is another business operated by [REDACTED]. [REDACTED] is the cafe. The trading name [REDACTED] is its public persona but [REDACTED] is the entity that trades.

PN4277

I see. So you've just got a sign outside the cafe, part of [REDACTED], and it's called [REDACTED]?---Yeah.

PN4278

And you've got separate social media sites for it?---Yeah.

PN4279

But it is, in effect, one business?---Correct.

PN4280

The business employs 14 staff. That's your evidence?---My evidence on this day was that it employed 14 staff, yes.

PN4281

[REDACTED]

XN MR CLARKE

[REDACTED]

XXN MS BURKE

Your evidence - - -?---I can't tell you how many it employs today. I haven't brought that information.

PN4282

Do all of those staff work in both parts of the business or do some work exclusively in roasting and some work exclusively in the cafe?---There are really no two parts of the business. It's one business.

PN4283

Well, in terms of their role?---Well, there are different roles within the business. Not all staff do everything, no.

PN4284

And you've got - well, at the time you made this statement you have five full-timers?---Yes.

PN4285

One part time?---Yes.

PN4286

And eight casuals?---Correct.

PN4287

You've got a wages clerk as well?---We have a contract wages clerk.

PN4288

Is that person part of those numbers I just went through or is that a separate person?---No, they're not employed by the company. It's an outsourced process. So we pay an invoice for their services.

PN4289

So that's not part of your wages bill?---No.

PN4290

Are the full-timers, are any of them on a salary?---At that - at that time, no.

PN4291

They are now?---We have some staff now who are paid salaries, correct.

PN4292

How many are paid salaries?---Two.

PN4293

What are their roles?---One is the front of house supervisor and the other is the head chef.

PN4294

The head chef, is that [REDACTED]?---No. Our head chef is a [REDACTED].

XXN MS BURKE

PN4295

Front of house person?---Is [REDACTED].

PN4296

They're both on salaries?---They are. They are now, they weren't at this time.

PN4297

When did they go on salaries?---I can't answer that question, I - I - I - I would have to refer to the records, I don't have them here.

PN4298

Some time obviously in the last couple of months?---In - in between then and now, yes.

PN4299

Okay. Your part-time person, is that person paid per hour, or on a salary?---They're paid per hour.

PN4300

What's that person's role?---That person is a barista. She also performs wait duties and occasionally does some kitchenhand work.

PN4301

Then you've got eight casuals, or you had - - -?---Yes, at that time.

PN4302

- - - at this time. Am I right in suggesting that you've got a range of casuals, in terms of their levels and their experience?---Yes.

PN4303

You've got some juniors and some who are more senior?---I believe all of our casuals currently - I'm just trying to go through them to make sure this statement's true. I believe all of our casuals are junior staff.

PN4304

When you say "junior" are you referring to their age or to - - -?---I'm referring to the provision in the award for junior staff.

PN4305

So does that mean they would be - they're classified as - - -?---They're less than 21 years old.

PN4306

Yes. Just a moment, please? Is the number of staff - not necessarily the people fulfilling the roles, but the number of roles, has that been pretty consistent over the last 12 months?---It varies between around 11 staff and the maximum we've had is 14 staff. Mostly due to the transience of the workforce.

XXN MS BURKE

PN4307

So where it varies it's the casual workers that vary, not the full timers?---No, it - it varies because we struggle to maintain full staffing. We struggle to engage - we - we have vacant positions now and we seem always to have vacant positions.

PN4308

Are the positions that are vacant now and that are always vacant, is that the same kind of role or does that - does that vary as well? So it might be a chef one month, it might be - -?---It depends on who's vacated the position, yes.

PN4309

There's no pattern?---I can't point at a pattern, no. Chefs - chefs - skilled - skilled roles are harder to fill in regional centres, so chefs, in particular, followed by baristas are the more difficult skillsets to acquire.

PN4310

Your role in the business, are you responsible for hiring staff?---I play the role of supporting - I play a support role, so my role is to try to find staff. They're then interviewed by the person to whom they'd report to.

PN4311

Is that the general manager?---The general manager and their front of house supervisor or the head chef who would recommend someone and ultimately I would fill the role of - the human resource role, if you like, of acquiring a person.

PN4312

You put the ads in and then you enable their employment, in terms of the paperwork and so forth?---That's correct.

PN4313

Okay. Are you responsible then for payroll?---No. The payroll clerk reports to me.

PN4314

Of course. Rostering, that's something that's - - -?---I do the rostering.

PN4315

You do the rostering?---I do the rostering, yes.

PN4316

The business, as I understand it, was founded by [REDACTED], is he related to you?---He's my son.

PN4317

Is he the chief roaster?---Yes.

PN4318

He's the general manager - - -?---Yes.

PN4319

- - - of the cafe as well?---Yes.

XXN MS BURKE

PN4320

So as general manager of the cafe is it his job to do - you know, determine the employee roles?---Yes. I'd describe - perhaps a better description for his role is the operations manager. He's responsible for the day-to-day activities of the business.

PN4321

Does he determine the opening hours of the cafe?---No.

PN4322

That's determined by you?---That's determined by the management team.

PN4323

Who's on the management team?---The head chef, the general manager, the front of house supervisor and myself.

PN4324

Is it the same management team then that determines employees - what sort of employees you need, whether you need a barista and so forth, or a chef?---Those - those considerations - there doesn't need - there doesn't seem to be much dialogue about that. It's pretty clear what roles are necessary to staff - to staff the - the shop.

PN4325

Is there any one person who's got a deciding vote on those matters?---Not really. It depends on who is responsible for that area of work.

PN4326

So those matters are - you're involved in them but they're not completely your responsibility?---Well, I own - look, ultimately I can override anything if I choose to, but we don't operate an autocracy.

PN4327

No, but you're solely responsible for the rostering and then things like hiring and opening hours are a consultation, depending on need and so forth?---So is rostering. Rostering is consultative as well, but in practice I'm the one who does that work.

PN4328

Okay. Then if you - if you did a roster and the head chef or - or the general manager came to you and said, "Well this doesn't work because of X, Y, Z" you would change it?---Yes.

[REDACTED]

XXN MS BURKE

PN4329

You wouldn't say, "Well, I've done it so that's it"?---Of course, we'd change it. It tends - it tends to be fluid anyway. We have a process where we send - the roster's completed then it's sent by email to all the staff and they have an opportunity to reject their rosters. If they reject their roster and changes are made then everyone gets a new roster. So there's, in a sense, consultation with every employee, it creates flexibility for all our staff.

PN4330

Right. You provided a roster with your statement, that's right, isn't it?---I did.

PN4331

Can I just confirm that members of the Full Bench have a copy of the roster.

PN4332

JUSTICE ROSS: Mm hm.

PN4333

MS BURKE: Thank you. Is this - is this a typical weeks' roster?---I'm not sure I can say that there is a typical weeks' roster. Some of our employees - if - if they're an employee who works 38 hours a week, typically they would get 38 hours in a week.

PN4334

But perhaps I'll clarify the question, and I'm just looking at your statement, where you've described it as an indicative weekly roster?---Yes. Well, it's an actual - it's an actual roster for that week.

PN4335

Yes, but in terms of when you have people working on certain days, those are pretty much the shifts that are filled or that need to be filled on an average week?---In terms of the staff it's a rolling roster. No staff are expected to work - -
-

PN4336

In terms of the roles?--- - - - fixed days. There are fixed roles on each shift that vary according to the workload on the shift. For example, a Monday is a much smaller - there's much less demand on Monday than there is, for example, on a Sunday.

PN4337

Yes. So I can see there and I don't need to take you through the sums, unless I'm asked to, but I can see that you've got 35 and a quarter hours on a Monday and a much higher number of hours on Wednesday, Saturday, Sunday, in this roster?---That's correct. There's perhaps a relevant point to this though. Because of the functioning of our rostering system, we don't deduct breaks from the numbers that you see here. So - so these numbers, the total - it's the start time and the finish time of the employee, breaks are taken from those hours.

PN4338

So you wouldn't just press a button from this and be able to generate payroll, you'd need to factor in breaks?---We don't use this for payroll at all.

PN4339

Okay. Does that mean that some of the shifts are also split shifts?---There are no split shifts on this occasion, I don't believe. No. They occasionally happen, quite rarely though.

[REDACTED]

XXN MS BURKE

PN4340

Can we just go through the roster, starting at the top, which is - mine's a bit of a fuzzy copy, so forgive me
---?---[REDACTED]?

PN4341

-- if I get the names wrong. Yes. She's the apprentice chef, is that right?---She's - she's a school-based trainee. So she's a - she's a school girl engaged in a traineeship.

PN4342

Then you've got [REDACTED] ---?---[REDACTED].

PN4343

[REDACTED]?---Yes.

PN4344

Is she a full time or casual?---She's a - she is a casual employee.

PN4345

Is she - they're all juniors, so I don't need to ask about that?---She's an 18-year-old young lady who's doing a gap year.

PN4346

Excuse me a moment. Sorry about that interruption. The next one is [REDACTED]
[REDACTED]?---Yes.

PN4347

Is that person full-time or casual?---She's a full-time employee.

PN4348

Then you've got [REDACTED], who is front of - [REDACTED]?---[REDACTED], yes.

PN4349

Front of house?---He's our front of house supervisor, correct. He's a permanent - he's a permanent - now he's salary but at this point he wasn't, yes.

PN4350

Now salary. Okay. But at the time of this roster, he wasn't?---Correct.

PN4351

Then you've got [REDACTED]?---Correct.

PN4352

Casual?---She's casual, yes.

PN4353

[REDACTED]?---[REDACTED] is a casual.

[REDACTED]

XXN MS BURKE

PN4354

[REDACTED] ?---Was a permanent full-time employee.

PN4355

Was because?---He's no longer employed by us.

PN4356

But at the time, was she head chef?---It's a he.

PN4357

I beg your pardon?---And he was at that time, head chef, yes.

PN4358

[REDACTED] ?---[REDACTED] actually.

PN4359

[REDACTED] ?---[REDACTED] was a casual employee.

PN4360

Right. [REDACTED] is the general manager?---Correct.

PN4361

[REDACTED] ?---[REDACTED] was a casual. She is no longer with us.

PN4362

[REDACTED], who is now the head chef?---Yes.

PN4363

And on a salary?---At that point - at that point he was a permanent employee.

PN4364

[REDACTED] ?---Is a permanent part time employee.

PN4365

And [REDACTED] ?---He's a casual employee.

PN4366

Thank you for that. Of your casuals, you have said they are all juniors but what levels are they at under the award, do you know?---Well, they will potentially all be at different levels. If they have worked for us for less than three months they may well be on the introductory level. Beyond that, they would be on a level commensurate with their duties. So if they are handling cash, they would be - is it level 2 or level 3? There is a provision in the award where cash handling triggers - effectively that's the - that's, for us, the work that would trigger them to be at a higher level.

XXN MS BURKE

PN4367

Are you able to say, looking at this roster, what levels your casuals were on, even if it's just a sort of breakdown of proportions?---I can only really - look, I don't have that information in front of me, so I'm not sure that I can be, yeah, absolutely clear about it. I can say for example that [REDACTED] isn't trained as a cashier

and he's been with us a relatively short time, or certainly at that point he had been. He may have been introductory at that point. [REDACTED] was a waitress. She didn't have cash handling duties, so I suspect she may have been level 2. I expect she should have been level 2 under the award.

PN4368

Maybe I'll ask the question a slightly different way. Do you know what the highest level of casual employee you have?---Level 3.

PN4369

Level 3. Do you know roughly if there are many casuals occupying that level?---It may vary from shift to shift according to their duties.

PN4370

I'm just speaking now of your overall workforce?---Yes, but my point is that if, for example, there's a permanent employee expected to work a shift, who would be the level 3 employee, in other words having supervisory duties, if that person was sick - - -

PN4371

Right. My question is just about casuals?---Well, I'm trying - I'm trying to answer your question. It's more fluid than that because it may be that someone calls in sick and then it's necessary for a casual employee to fill a role. They may normally be a level 2 employee. If they were asked to undertake supervisory duties though for that sort of reason, then they would be paid at level 3 for that shift.

PN4372

Okay. But not looking at it on a day to day basis, but your overall workforce at any given time, you say the highest level that any casual would be on the books is a level 3. Do you roughly know how many of those casuals would be at level 3, not on any particular day but just as a - - -?---Well, I'm just going to run - if you'll give me a moment, I'll run my eye down this list and see from this list who I think might be level 3.

PN4373

Just before you do that, Mr [REDACTED], it might help if I tell you that level 2 employees includes receiving money?---Yes, correct. Level 3 - level 3 - for us, the primary trigger to move to level 3 is supervisory responsibilities. To move from level 1 to level 2, the primary trigger for us is cash handling. They are the differences.

PN4374

All right. Well, I'll let you do that exercise?---So I don't believe of any of those casuals there is anyone who would normally be paid at level 3.

PN4375

Now? You can't say?---I don't have a roster in front of me, no, but I - - -

XXN MS BURKE

PN4376

When did you last do the roster?---When we roster, whilst I do the roster, I don't process the wages, so I'm not as conversant with those provisions as our pay clerk. That is their responsibility, not mine.

PN4377

I understand that from a pay perspective - - -?---Yeah.

PN4378

- - - but you're talking here about duties. So when you do the roster, don't you have regard to what their duties might be and what sort of person you need on a particular day?---I do but I don't think about what the consequence of their income will be. That's dealt with subsequently. They'll be paid fairly according to the duties they are undertaking.

PN4379

So your answer is that you don't know how many of your casuals, your current workforce, are at level 3 but is it fair to - sorry. Is that right?---I think it's unlikely that we'd have any at level 3 at this time.

PN4380

Just a couple of this matters on this roster that perhaps you can explain to me. At the time [REDACTED] was the head chef - - -?---Yes. Yes.

PN4381

[REDACTED] was - - -?---[REDACTED].

PN4382

[REDACTED]. I'll just correct that. Was a chef?---No.

PN4383

No?---No. [REDACTED] works front of house.

PN4384

Right. [REDACTED]?---[REDACTED] was a casual chef. She was front - she was for a period permanent part-time.

PN4385

My question was just then that looking at this roster, you don't have either Mr [REDACTED] or Ms [REDACTED] working on Mondays or Tuesdays or Fridays. That's right, isn't it, in this week?---Well, in that case you need to drop the S off because it's Monday, Tuesday or Friday.

PN4386

And Friday?---I believe that there were leave requests by [REDACTED] in that week.

PN4387

That's okay. I'm just asking you to tell me if I've got that right, that on this roster there is no chef working on Monday, Tuesday or Friday of this week?---No, that's not correct. [REDACTED] is the chef on those shifts.

XXN MS BURKE

PN4388

But [REDACTED] was not the chef then but did cooking roles?---No. [REDACTED] is a chef - he wasn't the head chef. He was a chef. He is a qualified chef. The only change in that regard is he is now a head chef.

PN4389

Perhaps I'll just explain where that confusion arose, which was - and I can hand you a copy of this, it's two pages. I'm sorry it looks so amateurish. If I can just hand up a couple of copies to the Full Bench because it's a bit of a mess. This is just a printout from the Facebook page for [REDACTED]?---I know what it is, yeah. This is one of my - - -

PN4390

I'm just mentioning - explaining it?---This is another one of my responsibilities. I do look after this.

PN4391

You do look after this?---Mm-hm.

PN4392

I was just explaining what it is for the members of the Full Bench?---Thank you.

PN4393

It says "Culinary team, [REDACTED], [REDACTED], [REDACTED] and [REDACTED]?---Yes.

PN4394

Not [REDACTED]?---Look, this is a Facebook page. It's not in any way an attempt to be absolute in terms of our staffing.

PN4395

So it's not completely accurate?---No. It's a promotional product.

PN4396

Thank you. You can put that to one side now. My copy of this roster is a little bit hard to read, so perhaps you can help me with some of the matters. Down at the bottom there's a heading that says "Time worked key". Can you see that down the bottom left?---Yes, I can.

PN4397

Then it looks like there's something underlined and it says "Overtime". Is that right?---It looks to me like it may be but this software is an American software. It's sold widely in Australia but it's actually owned - the owners of this software are Hungry Jacks in America, and their systems are designed around an American business model. We don't use most of the features. The only feature we use here is the start and finish time, that's the only feature we use. It's not relevant in terms of our payroll at all.

XXN MS BURKE

PN4398

Okay, so the next one where it says double – I just want to make sure I got the words right – it says 'double time' and then 'something clocked out.' Do you know what that is?---I don't because I'm not familiar with it. You're drawing my attention to features that we simply don't use.

PN4399

So where there are shifts underlined, and you can see that on Saturday and Sunday - - -?---Yes.

PN4400

- - - they don't represent overtime or double time?---No, they don't.

PN4401

For your purposes that's just a glitch in the software?---That's an algorithm embedded in the software that's irrelevant for our purposes.

PN4402

But it is the case, isn't it, that at least on this roster you've got one, two, three, four of your employees working over 38 hours a week?---No, that's not the case. That's not the case at all, because - - -

PN4403

Well I'll just finish.---Yes.

PN4404

If you look at [REDACTED] ?---Yes?

PN4405

Forty-two hours?---Yes.

PN4406

And [REDACTED] - - -?---[REDACTED] ?

PN4407

[REDACTED], 44-and-a-half?---Correct.

PN4408

Then down the page a bit, [REDACTED], 43 hours?---Yes.

PN4409

And [REDACTED], 43 hours?---Yes. What this is - - -

PN4410

So aren't those numbers over 38?---No, what this is recording is their start time and their finish time. It doesn't deduct breaks.

XXN MS BURKE

PN4411

How long are their breaks?---It depends on the length of their shift, so a 5-hour shift doesn't attract a break; between 5 and 7 hours, they have a 45-minute break; above 7 hours, they have a 1-hour break. So it may be that some employees are

working more than 38 hours but it wouldn't be much more than 38 hours. The award allows us to average hours over a 30-day period and so if an employee worked in excess of 38 hours in one given week, within that 30-day period there would be an adjustment of their hours or they would be paid overtime.

PN4412

I see. You've said, haven't you, that weekends are your busiest time?---Yes.

PN4413

And you've got a lot of people working on weekends?---We usually roster nine staff on a Sunday and eight on a Saturday, if we have them to roster.

PN4414

You've got both junior and senior staff working on the weekends?---Correct.

PN4415

So where you say in your statement that you have to use juniors on the weekend, that's not completely right, is it; you use juniors and seniors?---No, but the statement doesn't say we use juniors absolutely. It doesn't – that's not the point. The point is that the financial impost of employing 100 per cent adults would cause a rise in operating costs well beyond the 43.66 per cent – our average.

PN4416

It doesn't quite say that though, does it, Mr [REDACTED]? It says that if you employ adult employees then your weekend - - -?---Could you just refer me please to - - -

PN4417

Yes, certainly – paragraph 10 of your statement.---This is not the supplementary statement, this is the statement?

PN4418

That's right, the statement:

PN4419

Weekend penalty rates increase the ratio of wages to sales et cetera if we employ adult employees, making it necessary to staff weekends with junior staff.

PN4420

---Correct.

PN4421

JUSTICE ROSS: Read the lot.

PN4422

MS BURKE: I see. I'm looking at a different – an earlier version of your statement where those high proportion words were not there.---I see, thank you.

XXN MS BURKE

PN4423

And then in your supplementary statement at paragraph 8 you say you've calculated the increase in the ratio of rates to sales. Do you mean wages to sales or weekend penalty rates to sales?---Just let me read, please? My intention is to communicate that the overall cost of wages on those occasions – I took two examples, because of course this is a very notional thing, that the ratio on any shift – if we take a shift as a means of calculating it – will of course vary subject to what you actually sell and how many staff are actually engaged on that shift. I took two, I believe, Sunday periods and calculated our actual cost of wages, and I substituted the full cost of adult wages for that period and found that wages form 60 per cent of sales on a Sunday if everyone was an adult.

PN4424

But you've never had all adult employees, have you?---I simulated it.

PN4425

But for the purposes of reality, you've never had any adult employees, have you?---We always have adult employees. We've never had 100 per cent adult employees on a shift though.

PN4426

I think you said all of your casuals are under 21?---They are.

PN4427

And there's eight casuals?---There are eight casuals.

PN4428

And five full-timers?---Correct.

PN4429

So the majority are juniors under 21?---The majority of your staff are juniors under 21, correct.

PN4430

And of course - - -?---Which is why our average wage to sales ratio is 43.66 per cent.

PN4431

I'll come to that. Of course you have many more people, or many more hours worked on the weekend, don't you?---In total, yes. The majority of our hours are worked on the weekend, yes.

PN4432

Yes, and whenever you have more people working the more hours then of course wage costs go up? It's simple - - -?---Yes, but they go up exponentially if you don't have the benefit of the 40 per cent discount or depending on what age the person is.

[REDACTED]

XXN MS BURKE

PN4433

The 40 per cent discount – can you just explain what you mean by that?---Well a junior is paid at various rates under the award but a junior is paid at a lesser rate

than an adult, and, if my memory serves me, a 17 year old is paid at 60 per cent of the award.

PN4434

I see. Can I just ask you a little about this 43.66 per cent that you've calculated?---Sure.

PN4435

Because I couldn't quite follow it. Did you calculate that based on the profit and loss statement that you've attached?---Yes, I did.

PN4436

And so did you take – looking at the second page of it – did you take the wages and salaries expenses – that's about early on there, that's the figure \$209,001.97?---Yes. Look, I don't remember now exactly what I did. That's what I expect I would have done.

PN4437

Okay, and you worked out what percentage that was of - turning back to the first page - income or total income?---Total income.

PN4438

And you say that was 43.33 - - -?---Yes, there's a figure here of 534,151 in sales and my son was to measure total payroll expenses as a percentage of that figure.

PN4439

Bear with me for a minute, Mr [REDACTED]. Well, when I looked at that wages – working out what percentage that wages was of the 534 figures, which is just the restaurant income?---No, it's the entire income for [REDACTED].

PN4440

The 534, it says [REDACTED] restaurant income.---It might say that. That's what our bookkeeper has called that line item but in practice it is the entire income for the venture [REDACTED].

PN4441

So where there's [REDACTED] coffee sales, that's not counted as part of the income? That's \$40,000?---Well it is counted there.

PN4442

Perhaps I'm - - -?---No, sorry – I'm sorry, I made a mistake there – 583,713 is perhaps the figure I may have used.

PN4443

Well when I calculate what percentage \$209,001.97 is of 582,713.27, I've got about 35 per cent?---May I just have a look at this? Am I able to pull out my calculator and just see how I got to that number?

PN4444

I've just been noted - to be fair, it's 35.87 per cent. Could be closer to 36.

XXN MS BURKE

PN4445

COMMISSIONER LEE: But that's based on just using the wages and salaries figure and not the other costs of payroll.

PN4446

MS BURKE: That's right. I'm just trying to understand.

PN4447

COMMISSIONER LEE: I'm just not sure the witness is clear about that, because he spoke of the total payroll expenses in his evidence earlier?---I'm trying to recreate how I came to that figure. It looks as if it's a combination of some of the numbers in the sales. It looks as if there may have been some exclusion. Would you like me to continue working out how I've calculated that precisely? It's obviously some of the numbers in the income, it has discounted some. For example, I expect I've deducted the \$6000 in training incentives, which of course aren't sales revenues. If you would like me to recreate it, I will work it through.

PN4448

MS BURKE: I'm in a slight bind, because I'm happy to leave it as it is, but there might be others in the courtroom who would like you to calculate it. So perhaps for my purposes, I will just leave it there?---For my purposes, I'm very confident that I can in fact determine - - -

PN4449

There are people here who are looking after your purposes, and they will take care of that if they think that's necessary?---Okay.

PN4450

I think you said earlier, Mr [REDACTED], that the number of positions for casuals anyway has remained pretty constant over the last year or so?---No. In fact, I said we've employed between 11 and 14 people.

PN4451

Of course you did. I'm sorry. And the changes in the number of people you employ relates to if somebody just leaves, or if - do you have busy seasons and quiet seasons?---There are variations during the year; yes, there are; but our employment numbers don't relate to that at all, they relate to our ability to access competent staff.

PN4452

Is that the sole driver, really?---Yes.

PN4453

Your hourly wage costs for Sundays, anyway, for your casuals, will have reduced from 1 July last year, won't it?---That's correct.

PN4454

That has reduced from 175 to 150?---Per cent, yes.

XXN MS BURKE

PN4455

Percentage?---Correct.

PN4456

On the basis of that you haven't employed any more people. If your answer before is correct, you've employed more people based on whether you can find skilled workers?---We tried to fill 14 positions. It is our intention to have 14 staff on a roster. I can't tell you how many we have today, but we are advertising, as we always seem to be.

PN4457

And you're advertising to pay them at the current rates?---We pay people award.

PN4458

Of course. Thank you.

RE-EXAMINATION BY MR CLARKE

[12.05 PM]

PN4459

MR CLARKE: Mr [REDACTED], you indicated you had a payroll clerk. Is there a reason you have a payroll clerk?---We have a payroll clerk - - -

PN4460

MR CLARKE: I object to that. I think that's leading and it doesn't necessarily advise out of cross examination.

PN4461

JUSTICE ROSS: It does arise, because he did give evidence he does have a payroll clerk.

PN4462

MS BURKE: He said that he had somebody who invoices.

PN4463

JUSTICE ROSS: Ask the question, but don't lead.

PN4464

MR CLARKE: You mentioned a payroll clerk?---Yes, we do. We have a contract payroll clerk.

PN4465

Just running through the roster that we're looking at, and I note there are some changes, I was just unclear. We discussed the casuals. I would just like clarification who on that roster is a permanent employee?---The permanent employees on this roster are [REDACTED], [REDACTED] - - -

PN4466

Sorry, can we just go - - - ?---Sorry.

PN4467

Yes, sorry?---[REDACTED].

[REDACTED]

RXN MR CLARKE

PN4468

Yes?--- [REDACTED], or [REDACTED] - yes, [REDACTED]. I believe at that point [REDACTED] - she's no longer with us, but I believe she was permanent part-time. [REDACTED] was a permanent employee. [REDACTED] is a permanent employee but was on annual leave at that time. [REDACTED] is a permanent employee. And [REDACTED] is a permanent part-time employee.

PN4469

Mr [REDACTED], I just want to come back to this question of wage costs and your calculations. And I'm just - Your Honour, I'm just - it is - I'm just trying to work out the best way for Mr [REDACTED] to give an explanation of - - -

PN4470

JUSTICE ROSS: Just ask him how he calculated - - -

PN4471

MR CLARKE: Yes, could you - - -

PN4472

JUSTICE ROSS: How did he arrive at the figure of 43.6 - - -

PN4473

MR CLARKE: Yes.

PN4474

How did you arrive at the figure of 43.68?---Are you prepared to bear with me for a moment just while I try and recreate that sum? Is that okay?

PN4475

Your Honour, is it appropriate - I'm just wondering whether we should sort of adjourn for a couple of minutes for - - -

PN4476

JUSTICE ROSS: No, I don't think so.

PN4477

MR CLARKE: No. That's fine?---It won't be too hard. It's likely I've dropped something off?---I've calculated it twice, your Honour, and I haven't got quite the same number twice. I'm getting something very similar. Perhaps - my proposition is that the \$6000 trainee incentive should be deducted from sales. It's not. It's not a relevant revenue. And that the resulting number for revenue - - -

PN4478

JUSTICE ROSS: Does that give you 576,713.27?---I'm sorry?

PN4479

Does that give you 576,713.27?---It does. It does. And if we multiply that by - divided by 100, multiplied by 43.66 gives me a figure of \$251,743. I'm having trouble getting that number and I don't know why. Perhaps we may - if you would like me to be absolute, perhaps we need to - - -

RXN MR CLARKE

PN4480

I think just do the best you can there?---Well, if I take the 40 off as well - I wonder if I've done that. Yes, that's what I've done. So I'm still not getting exactly the same number, but I'm getting within \$1000 or so of it. So I have deducted the \$40,313.18 being coffee sales and I have deducted \$6000 of trainee apprentice incentive and I can't tell you what that number is but I will get it for you now. That, according to my calculator, is \$536,400.09 in revenue. I have used that figure to calculate the relationship - the percentage relationship between payroll expenses and sales and I get a number very like 43.66.

PN4481

What number do you use for payroll expenses?---I'm using - well, the total of payroll expenses, so - - -

PN4482

\$236,320.71?---Yeah, 236,320.71. I don't - I'm not getting exactly the same percentage now, but it's very close.

PN4483

Why do you say the trainee apprenticeship incentives are irrelevant? Don't they reduce your costs of employing trainees and apprentices?---They do on that occasion. They're not irrelevant, but they're not consistent. So they're not always there. I mean it may not be a fair thing to do, but it just seemed to me it wasn't the revenue - it wasn't the sales revenue.

PN4484

Any further questions?

PN4485

MR CLARKE: No further questions, Your Honour.

FURTHER CROSS-EXAMINATION BY MS BURKE

[12.14 PM]

PN4486

MS BURKE: Just one in relation to removing the \$40,313?---Yeah.

PN4487

Your evidence earlier was that it's all the same business, isn't it?---It is the same business.

PN4488

So why would you deduct that?---Within that figure there are coffee sales that happen within the shop which would be relevant. In other words, coffee sold over the counter in the shop but we also sell wholesale coffee to cafes. That doesn't have - those sales don't pick up any of the cafe's direct costs.

PN4489

This is the - it's on the basis of this profit and lost that you do tax returns every year?---Yes.

FXXN MS BURKE

PN4490

So it's income - - -?---But - - -

PN4491

- - - for the purposes of that exercise but not for the purpose of your evidence here today?---But the - I'm doing my very best to be forensic about this and provide accurate information. The coffee that's roasted within the shop and sold to other cafes is not in any way processed by paid labour. It's processed by my son who is our coffee roaster who doesn't charge for his labour when he's doing that work.

PN4492

How do you know what proportion that is?---I don't.

PN4493

Looking at this document?---I don't. It's possible to calculate it, but it's not - it wasn't intended to be captured in this information.

PN4494

Thank you, Mr [REDACTED]

PN4495

JUSTICE ROSS: Anything further?

PN4496

MR CLARKE: No.

PN4497

JUSTICE ROSS: Thank you for your evidence and your time, Mr [REDACTED]?---Thank you very much.

PN4498

You are excused?---Thank you.

<THE WITNESS WITHDREW

[12.15 PM]

PN4499

JUSTICE ROSS: I think the next witness is Mr Parker at 1.30. Is that right?

PN4500

MR CLARKE: It is, Your Honour.

PN4501

JUSTICE ROSS: Ms Warren will be available a bit earlier than 3.00 if we - - -

PN4502

MR CLARKE: Ms Warren is here already so yes, Your Honour, but I think due to the timings - - -

PN4503

JUSTICE ROSS: All right. We will adjourn until 1.30.

FXXN MS BURKE

LUNCHEON ADJOURNMENT [12.16 PM]

RESUMED [1.31 PM]

PN4504

MR CLARKE: Thank you, your Honour, I call James Parker to the stand.

<JAMES DAVID PARKER, AFFIRMED [1.32 PM]

EXAMINATION-IN-CHIEF BY MR CLARKE [1.32 PM]

PN4505

MR CLARKE: Thank you. Can I just hand some statements? Sorry. Mr Parker, could I just confirm that you prepared a statement that attached a report for this matter?---That's correct.

PN4506

And you've got a copy of a statement in front of you, I understand?---Yes, that's correct.

PN4507

And is that of 15 paragraphs and dated 15 June 2015?---Yes, it is.

PN4508

And is that statement true and accurate?---Yes, it is.

PN4509

I'd seek to tender that statement, your Honour.

PN4510

JUSTICE ROSS: Yes. Exhibit RCI18.

**EXHIBIT #RCI18 STATEMENT OF JAMES DAVID PARKER
DATED 15 JUNE 2015**

PN4511

MR CLARKE: Thank you, your Honour.

PN4512

JUSTICE ROSS: Cross-examination?

PN4513

MR DOWLING: Thank you, your Honour.

CROSS-EXAMINATION BY MR DOWLING [1.34 PM]

PN4514

*** JAMES DAVID PARKER

XN MR CLARKE

*** JAMES DAVID PARKER

XXN MR DOWLING

MR DOWLING: Mr Parker, you are the Managing Director of Jetty Research?---Correct.

PN4515

And in that capacity, you were commissioned by the Restaurant and Catering Industry Association to conduct a telephone survey, is that right?---That's right.

PN4516

And just in terms of your background, I think your company's website describes you as formerly a business commentator with Australian Business Magazine and Radio Station 2UE, is that's right?---That's right, yes.

PN4517

And that since 1992, you've held a succession of media management roles, including the Launch Publisher of Men's Health, is that's right?---Yes.

PN4518

And that's a magazine?---Yes.

PN4519

And the Managing Director if TNT Magazine Australia and New Zealand. Is that correct?---Correct.

PN4520

All right, and is it fair to describe that as a free magazine that deals with travel and jobs and accommodation and things of that sort?---For independent travellers, yes.

PN4521

All right, and that you were also the General Manager of the Coffs Coast Advocate, is that's right?---Yes.

PN4522

And that's the local Coffs Harbour newspaper, is that's right?---Yes.

PN4523

Okay, thank you. Now, the report you produced also identifies that you are a member of the Australian Market and Social Research Society, is that's right?---Yes, it is.

PN4524

Now, that society has a scheme which enables qualification, as what they describe, as a qualified practising market researcher. Are you aware of that scheme?---Yes, I am.

PN4525

And are you qualified as a qualified practising market researcher under their scheme?---Not yet. I've done part of the qualification, but not the final bit.

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4526

Okay. And are you aware that there's another member of that society who's filed a statement in this proceeding, Ms Helen Bartley?---No, I wasn't.

PN4527

All right, you've not been provided with Ms Bartley's statement?--- No, I haven't.

PN4528

Okay. Are you a member of the Statistical Society of Australia?---No, I'm not. I'm not a statistician.

PN4529

All right. Now, can I just ask you some questions about the process in respect of the telephone survey that your company conducted? You say in your statement that your company has what you describe as a 12 seat CATI research facility, CATI, C-A-T-I being an acronym. Is that's right?---Correct, Computer Assisted Telephone Interviewing.

PN4530

Yes, okay. And should we understand by that process, the Computer Assisted Telephone Interviewing process, that there is a – there's a person sitting in front of a computer and there is a computer generated questionnaire, so that would be on the screen in front of them and those in front of the screen will be prompted by the screen as to the questions to ask? Is that correct?---Yes, yes.

PN4531

They'll then be given an answer and when they're given the answer on the telephone, they will enter it into the computer as they go along?---Yes.

PN4532

All right. And in some cases, that CATI process generates the phone number as well?---Yes. Sorry, not in this case.

PN4533

Not in this case?---No.

PN4534

Okay, all right. Now, I think you described the people that are doing the telephone interviewing as researchers. Are they required to have any formal qualification for that role?---No, they're not.

PN4535

Okay. Now, I think you've provided, as part of the report – I won't take you to it immediately – but the questionnaire and it has those conducting it saying that the survey will take less than 2 minutes. So should we understand then that it was designed to be done in that time, in under 2 minutes?---We thought it would take about three, but we were keen to get people to do the survey. Obviously we wanted them to do the survey, so we implied that it would not take a long time, yes.

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4536

Well, I think you did more than imply. I think you – if you look at question 1, the survey starts at page 20, the questionnaire starts at page 20 in the document and this is the script for the person. Is that what we should understand, "Hi, my name is (name)"?---Yes.

PN4537

"I'm calling from Jedi Research", etc, etc. You'll see the third sentence, "The survey takes less than 2 minutes and all responses are confidential"?---Yes.

PN4538

That's what the person said?---Correct.

PN4539

All right, and are you saying that when you wrote that script, you knew in fact, it was going to take more than that, but you just said 2 minutes so you hoped you'd get a few more people to answer?---You don't actually know when you start how long the survey's going to take, but yes, we figured it would probably take 2 to 3 minutes. It nearly took 3.6.

PN4540

In the end, I think it turned out the average was about three and a half minutes, is that accord with your recollection?---Yes. Yes.

PN4541

All right. Should I understand that the 10 people that you've described as doing this report, you weren't included amongst them?---No, I wasn't.

PN4542

You didn't do any of this process yourself?---No.

PN4543

All right. Now, whilst you've got the questionnaire in front of you, if you have still, can I just ask you a couple more questions about the process? Perhaps, if you can look at page 20, you'll see there question 5 says:

PN4544

To kick things off do you currently open on any of the following days?

PN4545

And then there's a box that says "prompted". So should we understand, where there's a box that says "prompted" that the person on the telephone then prompts the answer, "Saturday, Sunday, Public Holidays"?---So the researcher prompts:

PN4546

Do you open on Saturdays? Do you open on Sundays? Do you open on Public Holidays?

PN4547

Yes. So where there's a box "prompted" as in question 5 - - -?---Yes.

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4548

They would have prompted one of the three answers that thereafter are set out, Saturdays, Sundays, public holidays. Is that - - ?---No, in that case they prompted all three options.

PN4549

Yes. All right. I understand. Perhaps, just so we're clear on this point, if you jump ahead to question 15 on page 23, you will see there's a reference to question, "If labour costs continue to rise, what changes will you make to your business?" and it says, unprompted, "Tick any that apply or write in as 'other'", so does that mean it's an open question and the person on the other end of the phone, the recipient of the questionnaire, gives an answer and this person, if it is one of the one to seven that are listed there - or one to eight if you include "unsure", they will just put a tick beside it, and if it is a different answer, they'll put it in the "other" box?---Correct.

PN4550

But they are not reading through each of those eight options?---No, they're not.

PN4551

Not when it says "unprompted" but they are when it says "prompted"?---That's right.

PN4552

I understand. Just a couple of last matters in terms of process. You say you are commissioned to write the report by the Restaurant Catering & Industry Association. Did you receive from them a written request asking for - setting out the details of what it is they wanted?---I don't recall. I don't recall.

PN4553

You don't recall whether you got anything in writing asking you to do the survey?---Sorry. We got - you need to remember this is back in April, early April, but I believe I would have received an email from John Hart, who we had done a survey for some years ago, asking me if we'd be interested in doing a survey on his behalf and I said, obviously, yes.

PN4554

Did he tell you that it was going to be used for the purposes of this case, or the case dealing with penalty rates?---No. I suppose I made that assumption - I'm sorry. We'll go back a step. I didn't know anything about a case at that stage but -
- -

PN4555

Did he tell you about it?---Not to my memory at that stage.

PN4556

You found out about it at some point thereafter, did you?---Yes. Yes.

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4557

It became clear to you, did it, thereafter that the document you were being asked to prepare was going to be used for the purposes of this case, did it?---Let me make it clear, I haven't written - I haven't appeared before something like this before and I haven't written a report designed for that before. However, my assumption was that it would be used by some external body, that the Restaurant & Catering Industry Association was not just commissioning it for their own use.

PN4558

All right. Would you be able to put your hands on the email from Mr Hart to you setting out the request?---I should be able to, yes.

PN4559

Your Honour, I wonder if Mr Parker might be directed to provide a copy of that email request? Or I formally request he be asked to do so, Your Honour.

PN4560

MR CLARKE: Your Honour, we object on the basis that this is - the question that is now being put has been put previously by the notices to produce.

PN4561

JUSTICE ROSS: Yes, but why shouldn't the material be provided, if he says he's got it and he can put his hands on it? Do you say it is not relevant and, if so, on what basis?

PN4562

MR CLARKE: Look, we would only say it is not relevant on the basis that Mr Parker has been asked to provide a report and he has indicated he has done that and it doesn't, on our submission, go to how the report was prepared.

PN4563

JUSTICE ROSS: Anything in reply, Mr Dowling?

PN4564

MR DOWLING: Yes, Your Honour.

PN4565

JUSTICE ROSS: Do you want the witness outside while you discuss the relevance?

PN4566

MR DOWLING: It might be appropriate, Your Honour.

PN4567

JUSTICE ROSS: Would you mind waiting outside. We won't be long.

PN4568

MR DOWLING: May I take my jacket off?

PN4569

JUSTICE ROSS: Of course you can. I wish I could do the same but, you know.

*** JAMES DAVID PARKER

XXN MR DOWLING

<THE WITNESS WITHDREW

[1.45 PM]

PN4570

MR DOWLING: Ms Bardley has given some evidence, Your Honour, and she describes herself, and appropriately we say - - -

PN4571

JUSTICE ROSS: Is someone's phone going off? Yes.

PN4572

MR DOWLING: She describes herself as an expert in the design of these surveys of this type. She also gives some evidence about the importance of the task that was requested of the person conducting the survey and the purpose for which - whether they were told the purpose for which the survey would be used, and how that might affect the reliability of the survey.

PN4573

JUSTICE ROSS: Well, the framing of the questions or something like that.

PN4574

MR DOWLING: Yes.

PN4575

JUSTICE ROSS: All right. Just give us a minute. All right. You can bring the witness back in.

**<JAMES DAVID PARKER, RECALLED ON FORMER
AFFIRMATION**

[1.47 PM]

CROSS-EXAMINATION BY MR DOWLING

[1.47 PM]

PN4576

JUSTICE ROSS: We will direct the witness to provide the email. I suppose the question becomes what happens then?

PN4577

MR DOWLING: Yes, Your Honour. Well, we will have to reserve the right to recall Mr Parker if it becomes necessary. We will do our best to ensure that does not happen given the tight timetable everybody is working to.

PN4578

JUSTICE ROSS: Perhaps you can also ask him what his recollection of the email was, without being unfair to him, that might give you an opportunity to explore whatever you want to explore.

PN4579

MR DOWLING: Yes.

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4580

MR CLARKE: Your Honour, just on this point. I haven't seen the email per se but it seemed to be - my friend seems to be asking for something for a specific purpose which these emails might go beyond that purpose as well.

PN4581

JUSTICE ROSS: You don't know what's in them.

PN4582

MR CLARKE: Sorry, Your Honour?

PN4583

JUSTICE ROSS: But you don't know that. Look, the witness can provide the email to you. If you want to claim a privilege, but you will be stretching it because it's not illegal.

PN4584

MR CLARKE: I understand that, Your Honour.

PN4585

JUSTICE ROSS: Yes. We can sort it out from there. But if it deals in any way with the survey and its conduct, then it should be produced.

PN4586

MR CLARKE: Yes. I suppose I'm moving towards a position of potentially providing that to the Bench to have a look at, potentially in order that - - -

PN4587

JUSTICE ROSS: No, I don't want to have a look at it. What I want is for the witness to provide it to you and if you want to agitate an argument that parts of it are not relevant in that they don't deal with the survey or anything of that nature, then you can do that and we'll list it for hearing. We will hear it at some point during the case.

PN4588

MR CLARKE: Yes, Your Honour.

PN4589

JUSTICE ROSS: Mr Parker, if you provide a copy of the email that was put to you, that is the email from Mr Hart, or any emails from Mr Hart which relate to the survey, instructions to you about the survey and the like, can you provide them to Mr Clarke and he will take the next steps?---Yes, I will.

PN4590

Thanks.

PN4591

MR DOWLING: Thank you, Your Honour.

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4592

Are you able to, whilst you are here today, recall the contents of the emails or email?---No, I can't.

PN4593

But you will find them for us?---Well, sorry, let me finish. I can say with certainty that he never asked me to come up with any outcome, if that's where you're going to. He was very matter of fact about the process, so that's why I feel comfortable supplying those because there was never any indication that he wanted me to produce anything other than an objective result based on a set of questions.

PN4594

All right. Now, I think we are still dealing with process, so just in terms of are you aware of Australian and international standards that apply in respect of data collection?---I am. Well, sorry, whether I know them back to front, I won't say I do but I am aware of them, yes.

PN4595

To be fair to you, does ASISO20252, the Australian standard for market, social, and opinion research, is that a standard that you are familiar with?---No, I'm not. I would also point out we are not ISO accredited but then I would argue - sorry. Yeah, we're not - - -

PN4596

So you would not have applied that standard in the data collection process of this survey?---I can't tell you that without knowing what the standard is.

PN4597

All right, but it's not something that you turned your mind to as part of this process?---No.

PN4598

And lastly in terms of the questionnaire that we looked at, I think it is your evidence that it was written in collaboration with the RCIA, is that right?---Correct.

PN4599

Now if I can just ask you a couple of questions about the sample that you used. You describe your sampling frame as comprising a list of 18,268 restaurants and cafes around Australia. Do you recall that description?---Yes.

PN4600

All right, and I think you also say in your evidence that that list was a list that was supplied to you by the RCIA?---Correct.

PN4601

Right, and it's your evidence that you presumed, using your word, that the list included RCIA members, is that right?---I would be - I would assume so, yes.

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4602

But you were not told which in that list were RCIA members?---No, I was not.

PN4603

And you weren't told how many of the list were RCIA members?---I think it's in the report that I found out as I was writing the report that there were - what is it, two and a half or three thousand RCIA members. Two thousand - which we believed to number approximately 2300 nationally. But that - - -

PN4604

Are you looking at - well, perhaps I'll go back and be clearer on my question. Were you told by Mr Hart or anyone when you were supplied with the list of 18,268 exactly how many of those were members of the RCIA?---No.

PN4605

All right, and the footnote, you're referring to page 6 of your report where you footnote, "We believe the number to be approximately 2300 nationally"?---That's right.

PN4606

That wasn't in your instructions?---No.

PN4607

Now you also say in your evidence that there are as at 30 June of 2014 33,065 restaurants and cafes in Australia. Do you recall saying that?---Yes, as per table 1.

PN4608

Yes, have you seen Ms Warren, Carlita Warren's report that she has provided?---No, I haven't.

PN4609

All right. She comes up with a different number based on what appears to be the same ABS documents and she comes up with 35,457. Are you able to explain how you've got 33 and she has got 35?---I took mine off the ABS website so I'd be reasonably comfortable they were correct.

PN4610

You think she might be wrong?---I'm not saying that. I'm just saying I took my figures off the ABS website.

PN4611

Now you say that in respect of that 33,000 there were 6000 non-employing businesses so that left you with 26,728 on your calculations?---Yes.

PN4612

But of course you didn't work off a list of 26,728 did you?---No.

PN4613

You worked off a list of 18,000?---That's correct.

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4614

All right, and were you told by the RCIA when they gave you that list why it was that their list was 18,000 and the ABS identified that there were in fact 26,000 cafes and restaurants?---No, I didn't know the 26,000 until after we'd finished the survey.

PN4615

So after having finished the survey and seeing that there is in fact a sample of 26,700 and you got 18,000, did you think it was appropriate to go back to the RCIA and say, "What happened to the missing eight and a half thousand-odd?"?---No. For the purposes of this survey I felt a sampling frame of 18,000 was more than enough to provide a representedly - sorry, a representative sample of the restaurants and cafes.

PN4616

You describe in paragraph 13 the random sampling error for a randomly selected sample of 1000 restaurants within a population of 26,728. Do you see that?---Yes.

PN4617

You weren't working with a random sample of 1000 within 26,728 were you?---No, the 26,728 was the sample population.

PN4618

Yes?---Yes.

PN4619

But your thousand wasn't chosen out of that 26,700 was it?---No, but that's - - -

PN4620

It was chosen out of 18,000?---That's correct. Can I just clarify that to an extent?

PN4621

JUSTICE ROSS: Sure?---This is - that's perfectly usual practice when we do random - when we do home phone surveys. We always talk about the sample population but that doesn't exclude - that doesn't include the population that don't have fixed line phones. So it's quite normal to talk about the sample population. The target population is 26,000 but for the sample population I'm very comfortable with that figure.

PN4622

MR DOWLING: All right, because you don't say in the first sentence of paragraph 13 that you selected a thousand out of a target population of 26,000. You say you randomly selected a thousand within a population of 26,728?---Correct.

PN4623

You chose your thousand out of the 18,000 didn't you?

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4624

JUSTICE ROSS: Yes, it doesn't say he chose a thousand. He's describing what the random sampling error is.

PN4625

MR DOWLING: Yes.

PN4626

JUSTICE ROSS: If the sample of a thousand was chosen out of a population of 26,000. He doesn't say that's what he did.

PN4627

MR DOWLING: No, well that's just the point I'm making, your Honour. I just want to be clear.

PN4628

JUSTICE ROSS: No, but then you'll need to reframe your question.

PN4629

MR DOWLING: All right.

PN4630

JUSTICE ROSS: Because you've said, "You said this and that" but he didn't.

PN4631

MR DOWLING: You were describing a random sampling error for a randomly selected sample of a thousand within a population of 26,728?---Right.

PN4632

But that is not the process that you undertook, is it?---We undertook I think - we undertook a survey of a thousand restaurants within a sampling frame of 18,000.

PN4633

Yes?---The sample population is 26,728.

PN4634

Right?---A sample of 1000 restaurants within a sample population of twenty six thousand whatever will provide a random sampling error of plus or minus 3 per cent over the 95 per cent confidence level.

PN4635

That's my question I want to be clear about. If you had randomly selected a thousand people out of 26,728 you would have got the random sampling error that you describe at paragraph 13. That's correct?---The random sampling error would not have been any different. Once a sample population is above 20,000 it is almost impossible to change the random sampling error.

PN4636

I'm putting to you that that's simply not correct because I'm obliged to. Are you going to stick with your answer?---I'm say - what I'm saying is that - - -

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4637

JUSTICE ROSS: What are you saying is not correct?

PN4638

MR DOWLING: I'm saying that that is not the correct sampling error for the process you undertook.

PN4639

JUSTICE ROSS: For the process he undertook or for the numbers that appear in paragraph 13?

PN4640

MR DOWLING: For the process that he undertook.

PN4641

THE WITNESS: I'm not quite sure how to answer that question. What's the - what?

PN4642

MR DOWLING: I'm asking you, the random sampling error would be different if you described a thousand people being selected from a sample of 18,000. Do you agree or disagree?---It would be marginally different, yes, but - - -

PN4643

You agree it would be different but your evidence is marginally different?---Marginally different, yes.

PN4644

All right.

PN4645

JUSTICE ROSS: How is this going to help us, because if you're taking a sample of seven and a half thousand out of 18,268 you'd expect to have a higher confidence level than taking a thousand out of 26,728? So the process he actually adopted would give you a higher confidence level than the one he describes at 13.

PN4646

MR DOWLING: There are other considerations though, your Honour, because we don't know how it is the 8000 was excluded. So you're assuming, your Honour - - -

PN4647

JUSTICE ROSS: What 8000?

PN4648

MR DOWLING: The difference between 26,000 and 18,000.

PN4649

JUSTICE ROSS: I appreciate that, yes. But that's not - but none of that is assisted by your questions on 13.

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4650

MR DOWLING: Well, perhaps we just follow this process. So you've got the RCIA's list of 18,000, however it was they chose the 18,000 and then you selected seven and a half thousand from that list and they were loaded onto the CATI system?---Correct.

PN4651

And then a number are called from that 7000?---500, yes.

PN4652

500?---7500.

PN4653

Now what you say is that the ultimate sample is a thousand, is that right?---Yes.

PN4654

And I think it's your evidence that in respect of the 1000 - sorry, in respect of the people that called, 67 per cent said they were willing to participate in the survey. Is that right?---Seventy per cent of people who were eligible to participate said they happy to do so.

PN4655

So just to be clear in terms of the maths, should we understand that you don't call 7500. In fact, you call something close to 1500 and you lose 30 odd per cent of them and you're left with the sample of 1000. Is that right?---It's not that simple. We have disconnected, wrong numbers, fax lines, answering machines. We have all sorts of numbers that can't be reached for whatever reason. We tried answering machines or engaged or no answer multiple times obviously, but yes, we make more than 1500 calls, if that's what you're getting at.

PN4656

If you got through to 1500 people and 33 per cent of them said no, you would be left 1000?---Correct.

PN4657

But in fact, you say you might have to call 1600 because there's numbers disconnected or whatever other problems you have, so you might lose 100 there and you've still got to - then you've still got to call the 1500 to get your 1000. Yes?---That's right.

PN4658

In respect of the target being 1000, who was it that decided that the target number for the sample would be 1000?---The Restaurant & Catering Industry Association requested that sample size.

PN4659

Is there a difference in cost? I assume there is. If you want a 5000 person sample it's going to cost you a lot more than 1000?---Yes.

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4660

Did you quote on different sample sizes?---No.

PN4661

You were just asked to do 1000?---Correct.

PN4662

Was there a discussion about 1000 being an appropriate number of you were just told, "We would like 1000"?---We were told, "We would like 1000."

PN4663

Can I take you back to the script that you will recall starts from page 20 in the report? I think it's your evidence that - so the first thing the person says is the script that is set out next to question 1, "Hi, my name is," and, "I'm calling from," et cetera, et cetera?---Yes.

PN4664

And I think it's your evidence that you deliberately decided that they wouldn't identify that the issue was penalty rates because you might get a sample bias of some sort, but you decided, did you, that it was still appropriate for them to say, "I'm calling from Jetty Research on behalf of the Restaurant & Catering Industry Association. The Association is conducting a national survey regarding an important issue to all operators." Did you think it was appropriate to say that in writing the script or was that something the RCIA wanted?---I can't recall, but putting together an introductory script is an issue of trying to maximise response, so we typically work with a client to create a script that will maximise response without creating response bias.

PN4665

Do you accept that identifying - the caller identifying themselves as calling on behalf of the Restaurant & Catering Industry Association to discuss an issue of importance to all of their operators has the potential to create sample bias?---It has the potential to, I suppose. We were keen to avoid that, but - - -

PN4666

Well, if you were careful to avoid it, you would not have made any reference to the Restaurant & Catering Industry Association, would you?---It's good practice, where possible, to name the survey sponsor upfront. It helps to maximise response and we felt that there was no particular reason in this case not to.

PN4667

It also has the potential to introduce bias, doesn't it?---Lots of things have the potential to introduce bias.

PN4668

Well, this is one I am asking you about, Mr Parker. This one has the potential to introduce bias, doesn't it?---I certainly did not think that at the time.

PN4669

Do you think it now?---I'm not sure.

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4670

Now, if we deal with some of the questions. I think we looked a moment ago at question 5 where the person says, to kick things off, "Do you currently open on any of the following days," and they then prompt, "Are you open on a Saturday? Do you open on a Sunday and do you open on a public holiday?" Can I ask you then to have a look at question 6? It says there, "Why do you chose to trade on Sundays and/or public holidays," and the person gives an answer. Is there any way of distinguishing in the answer which day they're talking about?---Well, yes. We have the data on whether they open on Sundays or public holidays or both.

PN4671

I'm talking about in answer to this question. Let's say they say, "Keep our customers happy," as is identified as the third choice and you tick next to "Keep our customers happy," and you're looking at that question. Are you able to say whether they were talking about keeping their customers happy on the Sunday or the public holiday or both?---We would obviously be able to tell if they only opened on Sundays or public holidays, but we wouldn't be able to tell if they opened on both.

PN4672

Isn't that a problem?---I don't see a problem.

PN4673

In response to question 7 the same issue arises. "Do you believe that opening on Sundays and/or public holidays makes your business more or less profitable?" Now, someone might say more profitable and in the absence of answers in respect of other questions that you have identified, you won't be able to say whether they're talking about more profitable on a Sunday or more profitable on a public holiday, will you?---No, unless they - unless they only opened on one or the other.

PN4674

If they opened on both, you won't be able to tell?---No.

PN4675

Now, if we go to question 8, "If weekend penalty rates were to reduce, which of the following changes would you make to your business?" Just dealing firstly with the issue we have just described, you're asking them about weekend penalty rates, so there you are deliberately not distinguishing between Saturday and Sunday. Is that right?---No.

PN4676

And the answer will not tell you anything as between Saturday and Sunday, will it?---No.

PN4677

It asks whether if penalty rates were to reduce, but of course it doesn't say how much they're to reduce by, does it?---No.

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4678

So how is the person to know whether the question is talking about a reduction of 40 per cent or a reduction of 80 per cent? Will they have any idea?---At the time the intention was to - - -

PN4679

I'm not asking about the intention. I'm asking you about - - -?---Well, no - - -

PN4680

What the recipient - - -?---Excuse me - - -

PN4681

How is the - - -?---Just let me - - -

PN4682

No, no, can you just listen carefully to my question and answer my question?

PN4683

JUSTICE ROSS: If you just answer his question, counsel for Restaurant & Catering can re-examine at the end?---Okay.

PN4684

And clean anything up?---Sorry, go on.

PN4685

MR CLARKE: So I'm suggesting to you that the recipient to this question will not understand what level of reduction is being described by the question, will they?---No.

PN4686

And they won't know whether it might be 40 per cent or 80 per cent or 95 per cent. They won't know anywhere within that range, will they?---No.

PN4687

The other thing - this is one of those questions that's a prompted question. Is that right?---Correct.

PN4688

It says, "Please answer yes or no." So I take it that what that means is that the interviewer says, "Would you put on additional staff, yes or no? Would you open for longer hours, yes or no? Would you use the savings to improve your business, yes or no?" Is that right?---They may not have said yes or no, but yes. Effectively yes.

PN4689

So when they say "use the savings" is that telling the recipient that, "There is going to be some, it's just a question of what you do with them," is it?---Yes.

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4690

Is that a bias question, do you think? "If weekend penalty rates were to reduce, put aside we don't know by how much, would you use the savings to improve

your business"?---I would have thought it was a reasonable assumption that if you were to reduce penalty rates, there would be savings.

PN4691

So you're happy to build in the assumption that there is going to be some and ask how they're going to be used. Do you think that's a proper method?---I don't think it's improper.

PN4692

You then ask them at question 9 to do what you call 'give a rough estimate'. What are they meant to understand by 'rough estimate' or 'roughly estimate'?---The question, I think, is fairly self-explanatory: Are you able to roughly estimate how many additional staff you might recruit on a typical Sunday or public holiday.

PN4693

But what does 'roughly' mean?---I think when you're speaking to someone over the phone and they're in the middle of a shift, you're trying to give them a bit of latitude not to have to think too - you know - - -

PN4694

You've only got 3 minutes?---That's right.

PN4695

So you don't suggest then that the answer to this question is going to be a considered and accurate response; it's going to be a rough estimate, at best, that they've been able to give in the 2 to 3 minutes that you've been talking to them, is that right?---Correct.

PN4696

I take it that the same would apply for question 10?---Yes.

PN4697

Again, we've got 3/ 3-and-a-half minutes, I don't want you to give a considered answer here, just give us your best shot at it, is that right?---Correct.

PN4698

Can I just ask you something else about question 10? If you turn back to page 17 you'll see there at the top there's graph 3.4 which, as I understand it, that's intended to depict the outcome of the question we were just looking at, is that right?---Correct.

PN4699

On the right-hand side of the graph, it describes the mean and the standard deviation and it has an N number, and it says $N = 396$?---Correct.

PN4700

So is that the sample size that answered that question?---Yes.

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4701

So of the 1000, only 39.6 per cent of them answered that question?---Well the instruction says only answer if attribute put on additional staff from question 8 is yes, or answer if attribute open for longer hours from question 8 is yes.

PN4702

I see.---So unless they said yes to that question they were not asked the follow up question because the issue of dancing was zero.

PN4703

All right, I understand. So you end up with 396 people who are able to answer that question?---Correct.

PN4704

Just while we're dealing with sample size, if you go to question 11 and then you turn to page 12 you'll see down the bottom graph 2.2b – why do you choose not to open on Sundays and/or public holidays, unprompted, and there's again a bar chart, and the sample size is identified there, as well, as 104, is that right?---That's correct.

PN4705

So there's only 104 that answered question 11?---Correct.

PN4706

Now this is an unprompted, so someone might have an answer and then the person taking the survey will slot them into one of those five categories or put them in another, is that right?---Yes.

PN4707

And so if I say, in answer to that question, I can't make a profit, then I'll go into the first of those alternatives, will I?---Yes.

PN4708

Are we able to say of the 70 per cent that gave that answer out of 104, you're not able to say which one said 'penalty rates', which one said 'too expensive' and which one said 'can't make a profit'?---Not unless they specified whether they only opened on a Sunday or only opened on a public holiday.

PN4709

Yes, okay, so if you go to page 13 of your report, and it says there at the very top of the – sorry, page 14 of your report, my apologies – sorry, my apologies, 13 is what I intended – you'll see at the very top of page 13 it says 'Seven in ten of these' – sorry, if you go back to page 12, which is where I've taken you before to graph 2.2b, and so that's what that graph is what you're referring to when you're at the top of page 13, and you say 'Seven in ten of these claimed that penalty rates made it impractical or unprofitable to open on Sundays or public holidays' - do you see that?---Yes.

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4710

I'm suggesting to you that in fact that's not what an answer to that question necessarily establishes, is it, because someone may well have said 'I can't make a

profit', and if they said that they haven't said 'I can't make a profit because of penalty rates', they've simply said 'I can't make a profit' and they will be in that box, won't they?---I feel you're splitting hairs. I think if they answered the box 'Are penalty rates too expensive – can't make a profit' then I feel that that statement at the top of page 13 is reasonable.

PN4711

The first option in question 11 is not a sentence; it's not 'penalty rates are too expensive, I can't make a profit', is it? It's three alternatives: penalty rates/ too expensive/ can't make a profit.---Right.

PN4712

And I suggested to you that a person might answer, in response to that question, unprompted, 'I can't make a profit.' Do you agree with that?---Potentially, yes.

PN4713

And that person will go into having answered option 1, won't they?---Yes.

PN4714

And that person will appear in your bar chart in the 70 per cent?---Correct.

PN4715

What I'm suggesting to you is that that person - it is clearly open on this process – that person might not have made mention of penalty rates at all; they might have simply said 'I can't make a profit.' Do you agree with that?---Yes.

PN4716

And if all of that is right, then what you say at the top of page 13 is simply not right, is it?---In hindsight it could've been better worded.

PN4717

When you say it could've been better worded, it is simply not accurate, is it? You cannot comfortably say it is accurate based on the question and the potential answers to the question?---I'll say it could have been better worded.

PN4718

All right. If you have a look at question 12 and at the same time – if you can do both at the same time – if you go to page 13 again – sorry, I've got your page numbers wrong again, I meant 14, my apologies – well perhaps I'll put the question a slightly different way. In relation to question 12, are you able to identify for the Commission the sample size of the people that answered that question?---I'm sorry, are you talking about the questionnaire or the - - -?

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4719

Question 12 - are you able to say the number that answered question 12?---I'm not – I just need to get my head around this. Okay, so question 12 removes people who – sorry, only includes those who said "Penalty rates too expensive", or, "Have never opened in history" or, "Competitors don't open". So I can't tell you the exact sample size for that question, but I'm guessing it would have been somewhere between 70 and 100.

PN4720

All right.

PN4721

JUSTICE ROSS: Doesn't that appear on page 15, "N = 104"?---That's the total number of people who did not open on a Sunday or a public holiday.

PN4722

MR DOWLING: That's the graph I was missing, your Honour. I understood that that "N = 104" on page 15 to be the sample size for the people who answered that question.

PN4723

If penalty rates were reduced, would you be more likely to open on Sundays and/or public holidays? (N = 104)

PN4724

?---I can't – sorry, are you asking me a question?

PN4725

Yes. Is that the sample size for the answers to question 12?---I'm assuming it is. Question 11 was a multiple response question, so they could have ticked more than one box.

PN4726

Yes?---That's – alternatively, the "N = 104", may be incorrect in which case the correct answer would be somewhere between 80 and 104. But I don't – I can't tell you off the top of my head which of those it is.

PN4727

So in respect of question 12, it might be 80 to 104 or it might be 104?---Correct.

PN4728

All right. Now, again of course, in asking this question, it doesn't tell the listener, the recipient, just how much it is that penalty rates are going to reduce by, does it?---No, it doesn't.

PN4729

So again, they had no idea whether the questioner is asking them 80 per cent, 50 per cent, 20 per cent, would they?---It's conceptual.

PN4730

All right. And if it is in answer to that question – you're only to answer yes to that question if you are more likely to open on both of the days, or if for example, you think you're more likely to open on the Sunday but you're not sure about public holidays and you say "Yes", would that be indicated as a yes?---No, we didn't distinguish. It was whether you would be more likely to open on Saturday and/or a public holiday – sorry, Sunday – Sunday - - -

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4731

Sunday?---And/or a public holiday.

PN4732

You said, "and/or" then. Did you mean and/or or did you mean and?---The question was asked as:

PN4733

Would you be more likely to open on Sudnays and public holidays?

PN4734

Yes, so do you accept that someone might have – again, the recipient might have thought, "Well, I'm more likely to open on a Sunday, but I'm not more likely to open on a public holiday, so I'll say yes"?---Perhaps.

PN4735

And that would create a misleading answer also, wouldn't it? Yes?---I'm thinking. I suppose it may.

PN4736

Now, you agree, I take it, that the most fundamental problem with question 12 is that the recipient to the question has no idea of the level of the reduction and therefore are really not in a position to accurately, or in a reliable way, give an answer to the question?---No, I don't accept that. It's a – I take it as a fairly simple question.

PN4737

If penalty rates were reduced, would you be more likely to open on Sundays and public holidays?

PN4738

So you think someone might give the same answer if the level of reduction was identified at 2 per cent to the person – and in the same circumstances, give the same answer if the level of reduction was 98 per cent? Is that seriously your evidence?---That's why we didn't include it.

PN4739

What, because you didn't want people saying no, if it was 2 per cent?---No, we didn't want to confuse, by some saying – some giving an answer to one percentage and some giving an answer to another percentage.

PN4740

But don't you end up with an absolutely meaningless result because we've got no idea what the person is thinking, what level of reduction they're thinking about when they say whether they will or won't open?---As I said earlier, the question was conceptual. Asked of the restaurant owner as to whether that, and I think on that basis, the question was reasonable.

PN4741

That was, of course, as with all of the other questions, written in consultation, in your words, with the Restaurant Catering Industry Association, was it?---Yes.

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4742

Now, questions 13 and 14, we're back in the rough estimate territory. And again, you're not intending the answers to any of these questions to be, 13 or 14 to be a properly considered assessment of how many staff might be recruited, are you?---I think we've been up front in asking the question, and we said "roughly". And within the confines of a 3 minute survey during a busy restaurant serving period, I think that was a reasonable way to approach this exercise.

PN4743

Is that an answer yes, to my question?---Sorry, what was the question?

PN4744

You're not expecting that the answer to this question should be a considered and reliable articulation of how many staff that the recipient might actually recruit?---I'm not expecting it to be a precise answer, but I think, if we're interviewing a manager or an owner, I think there's a reason to say it should be say it should be considered or reasonable.

PN4745

But you do't ask for a considered answer, you ask for a rough estimate in the 3 minutes of giving them, to carry out all of these questions. You're not even asking for a considered answer, you're asking for a rough estimate. That's all – you can't expect anything more than what you asked for, can you, in this case?---I'm a small business owner. If you asked me that question, I'd be able to answer it. And I think other small business owners running restaurants would be able to answer it as well.

PN4746

All right, so are you giving evidence now as a small business owner or are you giving evidence as the person who conducted the research?---I'm giving evidence as the person who conducted the research.

PN4747

All right. And you don't know, and you didn't speak to any of the recipients, about how it was they viewed that question, did you?---No.

PN4748

And the same applies for question 14, correct?---Yes.

PN4749

All right. Now, in respect of question 15, I think you say:

PN4750

If labour costs continue to rise, what changes will you make to your business?

PN4751

So the recipient to this question should understand that labour costs are already rising, should they?---Yes.

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4752

And they should understand the possibility that they will continue to rise, should they?---Yes.

PN4753

And they should understand also that they're going to make some changes to their business, they just need to say which one. Is that right?---In hindsight, we should have said "What changes would you make to your business?"

PN4754

All right, in hindsight, you'd do that question differently, would you?---I'd change that word, yes.

PN4755

And again, of course, the recipient has no idea, in answering this question, the extent to which these labour costs are going to rise, do they?---No.

PN4756

And again, I suggest to you that that really makes the answer meaningless. You agree?---No, I don't.

PN4757

All right. No further question, your Honour.

PN4758

JUSTICE ROSS: Can I just ask you some questions about the sample and how you got there?---Yes.

PN4759

Can I put to you my understanding of it first, and you can correct me as we go along? You were given a list of 18,268 restaurant and cafes from around Australia by the Association. You then conduct a sample or obtain a sample of seven and a half thousand from that and how you get from that seven and a half thousand down to the 1,000?---So the 18,000 randomised within an Excel spreadsheet, that is – then we take the 7,000, we randomise it again and we start ringing those businesses. Each business is run – I can't remember whether it's three or five times until – and we keep working that list until we reach a sample of a thousand.

PN4760

I see, so you keep working your seven and a half thousand till you get your 1,000 sample that you are required to get?---Correct (indistinct) sorry.

PN4761

No, that's all right. And if I look at paragraph 11, it sets out, using the ABS data, which I'll come back to, "Restaurant and Cafes, by Size, by State and territory"?---Right.

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4762

Was the thousand that you ended up with that provided a response and agreed to participate and you got the results for, are they – do you say they're representative of restaurants and cafes across Australia, based on the ABS data? You say

something in your report about, it doesn't entirely match it for - - -?---No, it was -
- -

PN4763

State territory distribution?---It was never intended to be. It was a – it was designed as a purely random sample and we were not asked to distinguish between size or state.

PN4764

So it's not a stratified random sample, but I – sorry, I do – yes, so I have got under Footnote 9 in the report, "The survey sample slightly under represented business in New South Wales and Victoria, and slightly over represented businesses in South Australia, NT and Tasmania." I didn't do the same analysis for restaurant size because they didn't quite match up.

PN4765

Okay, but in any event, given the differences that you've seen, you are not saying that the sample that you've ended up with is representative of the cafes and restaurants across Australia?---Sorry, it – the sample is not – I feel it is representative.

PN4766

You think it is representative?---Yes.

PN4767

And – well, what do you say about size?---Sorry, are you talking about the size of the sampling frame or the size of the restaurant?

PN4768

No, the size of the restaurants. Are you saying it's representative of the size of cafes and restaurants across Australia?---Sorry, no. No, I'm not saying that.

PN4769

Okay?---I'm saying – so, I'm not – I'm not - - -

PN4770

You're saying it's close on state territory distribution but under reports some and over reports others, but you're not saying it's representative by size?---No, but from memory, it was pretty close. It was not a long way out. The – as I say, I couldn't do it, specifically, because the categories were slightly different but it was not far out.

PN4771

Okay, so you are saying that the samples are representative of the population?---I believe so.

PN4772

All right?---To within the sampling error.

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4773

Thank you. You remember you were asked about the number you got, which is 30 – this is in paragraph 12 of your statement, 33,065 restaurants and cafes?---Yes.

PN4774

And you get that from the ABS, 8165.0. Can I just show you a copy of that and can you tell me where you've got that from, because as has been pointed out, the next witness seems to give a different number and I'm just curious as to where you get yours from. Well, firstly, I suppose is that the document you're referring to? I think you - - -?---I was referring to a website, Your Honour, but it looks like the same document. Sorry, do you want me to find the relevant number in the - - -

PN4775

Mm-hm. Like most ABS statistics, most of it's appendix, so - - -?---Yes.

PN4776

But the meaty bit will be at the front?---Sorry, Your Honour, I'm not finding a directly comparable table.

PN4777

No. No, neither can I?---Mm-hm.

PN4778

Because the category is, "Accommodation and Food Services", I think. I couldn't find any – so it may be there's more information on the website by subsector, or something like that?---That's possible.

PN4779

Yes. And do you have - - -

PN4780

MR DOWLING: Your Honour, might I be of some assistance?

PN4781

JUSTICE ROSS: Sure. You know, we'll find out.

PN4782

MR DOWLING: If you're on the website of 8165.0, you'll see data cubes within that website, and one of those data cubes is 81650, without the decimal point.

PN4783

JUSTICE ROSS: I see. That's helpful, isn't it?

PN4784

MR DOWLING: And we've managed to find some additional figures.

PN4785

JUSTICE ROSS: By ABS on that, yes.

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4786

MR DOWLING: Yes.

PN4787

JUSTICE ROSS: Okay. But are you going to be able to get to the bottom of how we've got the different numbers?

PN4788

MR DOWLING: I don't know that I can get to the bottom of how this Ms Warren comes to a different number.

PN4789

JUSTICE ROSS: Okay, but for the purpose of this witness, he's come to the right number.

PN4790

MR DOWLING: We think so.

PN4791

JUSTICE ROSS: Yes, okay. The information that you've got on the respondent's size, is that set out at page 9 of your report - - -

PN4792

MR DOWLING: Yes.

PN4793

JUSTICE ROSS: And 1.2?---Sorry, Your Honour, what are you referring to?

PN4794

Just the size of the respondents to the CATI survey, is that the material set out at 1.2?---Graph 1.2? Yes.

PN4795

Yes, and so you can't compare that with the ABS data because you've got different spreads, is that the idea?---That's right.

PN4796

They look at 1 to 19, et cetera?---That's right, and without – thank you for my – we – I was not aware of the ABS data - - -

PN4797

Yes?---At the time we commenced the survey.

PN4798

I suppose you'd get close if you added up 1.5, 6 to 10, and 11 to 20? You'd get pretty close to 1 to 19?---Yes.

PN4799

And – yes. Okay. Yes. Thanks, very much. Any re-examination, or anything arising, Mr Dowling?

*** JAMES DAVID PARKER

XXN MR DOWLING

PN4800

MR DOWLING: No, Your Honour.

RE-EXAMINATION BY MR CLARKE

[2.38 PM]

PN4801

MR CLARKE: Sorry, Your Honour, just one or two things. Mr Parker, you – I think, from memory, you were starting to answer, "We had more to say with regards to Question 8 of the survey – if weekend penalty rates were to reduce, which of the following changes would you make to your business"?---Right.

PN4802

Is there anything else you wanted to add?---I should make the point that when the survey was being constructed, back in early April, I was certainly unaware of the work that was going on in this area, and it was only, probably three to four weeks after the survey was finished that the discussion – I saw a discussion in the media which I think had come out of the Productivity Commission, about this idea of moving Sunday back to Saturday. That certainly was not – was not under discussion when this survey was being constructed and in the absence of any of that, you know, we decided not to go with a specific number because we felt it may – it may mislead some people and – because it might confuse or mislead, or cause some people to – so we decided just to go with a conceptual framework of what happens if penalty rates go down. So I just wanted to provide some background as to why that decision was made, and yes, that's – thank you, that's all I want – that's the only point I wanted to make.

PN4803

Thanks.

PN4804

JUSTICE ROSS: Nothing else for the witness?

PN4805

MR CLARKE: Sorry, Your Honour, I'm just checking one thing. No, Your Honour.

PN4806

JUSTICE ROSS: Okay. Thanks for your evidence, Mr Parker, and your time this afternoon, you're excused?---Thank you.

<THE WITNESS WITHDREW

[2.40 PM]

PN4807

JUSTICE ROSS: I might just get back my ABS – Ms Warren?

PN4808

MR CLARKE: Yes, Your Honour, the next witness is Ms Warren. I'm sorry, Your Honour, I'm just wondering if we could have a five minute adjournment. I just would – just regarding the email chain with Mr Parker, while - - -

JAMES DAVID PARKER

RXN MR CLARKE

PN4809

JUSTICE ROSS: Sure.

PN4810

MR CLARKE: While he's here, because he is about to get a flight and I'm aware the flight is not till 8 pm - - -

PN4811

JUSTICE ROSS: No, that's fine.

PN4812

MR CLARKE: So if I could resolve it, I would, but I'm not sure I can.

PN4813

JUSTICE ROSS: Sure.

PN4814

MR CLARKE: Thank you, Your Honour.

SHORT ADJOURNMENT

[2.41 PM]

RESUMED

[2.49 PM]

PN4815

THE ASSOCIATE: Can I please ask you to state your full name and address for the record please?

PN4816

MS WARREN: Yes, it's Carlita Dearne Warren of (address supplied).

<CARLITA DEARNE WARREN, SWORN

[2.50 PM]

EXAMINATION-IN-CHIEF BY MR CLARKE

[2.50 AM]

PN4817

MR CLARKE: I just might hand a couple of documents - sorry. Ms Warren did you provide a statement on this matter?---Yes, I did.

PN4818

And do you have a copy of the statement in front of you?---Yes I do.

PN4819

And that's an 18 paragraph statement? The last paragraph is numbered number 18?---Yes it is.

PN4820

Thank you, and that attaches the 2014 industry benchmarking report?---That's correct.

*** CARLITA DEARNE WARREN

XN MR CLARKE

PN4821

And take your time if you want to have a look, but is that statement still a true and accurate record?---Yes it is.

PN4822

Thank you.

PN4823

I'd seek to tender that statement of Ms Warren.

PN4824

JUSTICE ROSS: No objection?

PN4825

MR DOWLING: No, your Honour.

PN4826

JUSTICE ROSS: Exhibit RCI19.

**EXHIBIT #RCI19 WITNESS STATEMENT OF CARLITA WARREN
WITH ATTACHMENT**

PN4827

MR CLARKE: Thank you, your Honour.

CROSS-EXAMINATION BY MR DOWLING

[2.52 PM]

PN4828

MR DOWLING: Ms Warren, you are the policy and public affairs director for the Restaurant and Catering Industrial Association?---Yes, that's correct.

PN4829

And how long have you held that position?---Approximately two years.

PN4830

And I think your evidence is your role includes conducting research in support of the RCA's policies, is that right?---That's correct.

PN4831

So one of the purposes of that research that you do is to advance and support the policy of the RCA?---Mm-hm.

PN4832

Do you have any market research qualifications?---No, I don't.

PN4833

Are you a member of the Australian Market and Social Research Society?---No I am not.

PN4834

Do you have any qualifications in statistics?---No.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN4835

And I take it from that you're not a member of the Statistical Society of Australia?---No I'm not.

PN4836

Now can I ask you firstly about paragraph 4 of your statement?---Yes.

PN4837

You set out there the number of cafes and restaurants operating at the end of financial year of June 2104?---Mm-hm.

PN4838

And you say there are 35,457 cafes and restaurants?---Mm-hm.

PN4839

Are you aware Mr James Parker has given some evidence in this proceeding?---Yes, I know that he was appearing.

PN4840

Have you read Mr Parker's statement?---No, I haven't.

PN4841

Because Mr Parker also has a number for the number of cafes and restaurants operating as at June of 2014 and his number is 33,065?---So "Operating at the end of June" two thousand and - - -

PN4842

In his words "As at June of 2014"?---Okay.

PN4843

And I think you say "As of June 2014". I don't think there's any difference between those two expressions, do you?---Just in terms of when you actually look at the file that comes through. So it says "Operating at the beginning of the financial year" and "Operating at the end of financial year". So I have taken it from operating at the end of financial year, so that may potentially be why there's - - -

PN4844

So you've taken it as operating at June of 2014?---Yes.

PN4845

And Mr Parker he uses the expression "As at June 2014", so I understood from that he was talking about the same month and the same part of the year, yes?---Okay.

PN4846

But you're not able to explain the difference between his figure and your figure?---No. Well, all that I know is that from my best recollection the 35,457 was operating at the end of the financial year.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN4847

All right, did you look at the ABS statistics? Did you look at the document you refer to, ABS 8165.0?---Yes.

PN4848

Council of Australian Businesses?---Yes.

PN4849

Did you look at it electronically or in hard copy?---Electronically.

PN4850

And did you look at any data - you see you get that report and then there's some data sets within that report?---Yes.

PN4851

Did you look at any data sets within the report or did you just look at 8165.0?---I looked at a specific data set within that statistical category.

PN4852

And are you able to say which one?---I think to the best of my knowledge it was - it's a sub-category looking specifically at industry subsets.

PN4853

Rather unhelpfully there's a subset called 81650, so the same set of numbers without a decimal point?---Okay.

PN4854

Does that ring any bells to you?---No, unfortunately it doesn't.

PN4855

No? All right, so you're not able to at the moment at least shed any light on how it is that you and Mr Parker have different figures?---No.

PN4856

Thank you. But of course your sample wasn't selected from the 35,457 randomly was it?---Are you talking about our industry survey?

PN4857

Yes, the benchmarking survey?---I wouldn't be able to tell you whether or not the businesses that we surveyed are also calculated in the ABS. I would assume so though.

PN4858

I'm sorry, I should be clearer. I'm not asking you that. I'm asking you, you didn't just randomly choose several thousand cafes and restaurants out of the 35,000?---No.

PN4859

You had a particular list?---That's correct.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN4860

And that list was a list of 2760, what you describe as members and non-members of the Restaurant and Catering Association?---Yes, that's correct.

PN4861

And just so we're clear, of that 2760 are you able to say how many were members and how many were non-members?---No, not with certainty.

PN4862

All right, but in respect of all of them they were a recipient list generated from the RCA's database that had previously received communications from the RCA, yes?---Yes, that's correct.

PN4863

So firstly they had previously received it and secondly they had also indicated or not unsubscribed or not in some other way indicated that they did not want to receive information from the RCA?---That's correct.

PN4864

They had to have at least those two qualifications?---Yes.

PN4865

But otherwise you're unable to say of the 2760 how many were members and how many were non-members?---That's correct.

PN4866

Thank you. Now I take it that the recipients that were asked or invited to complete the questions were sent the information electronically, yes?---They were sent a link to a survey, yes.

PN4867

And they were sent the link via email?---That's correct.

PN4868

And the link is a SurveyMonkey link, yes?---That's correct, yes.

PN4869

So obviously for practical purposes we can rule out those people that don't have internet access? They certainly would not have received anything because the only method by which it was sent was by email, is that right?---That's correct, yes.

PN4870

All right, and the process after you are one of the 2760-odd that got it then you made a decision, you being the recipient, you made a decision as to whether you wanted to participate, whether you wanted to opt in effectively, yes?---That's correct.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN4871

And should we understand from your evidence that of the 2760, 340 people chose to opt in or to carry out at least some part of the survey, is that right?---That's correct, yes.

PN4872

And it's also your evidence as I understand it that of that 340 and in fact of the 2760 only 121 completed the entire survey?---That's correct, yes.

PN4873

Through SurveyMonkey do they get incentives for completing it?---Not through SurveyMonkey but we incentivise the survey, yes.

PN4874

Okay, how did you do that?---In the email that was sent out with the instructions it was basically indicated if you completed the full survey they went into a draw to receive or win an iPad.

PN4875

How many winners are there?---There was only one.

PN4876

So despite that incentive there's only 340 out of 276(sic) that complete some part of it. Now on my calculations - and I'm happy to give you time but on my calculations that's about 12 per cent?---The 121 over?

PN4877

The 340 out of 2760?---Yes, 12 per cent.

PN4878

So 12 per cent say yes to some part. 88 per cent say no. Yes? I'm just putting the inverse proposition, for what it was worth?

PN4879

JUSTICE ROSS: They don't say no. They just don't complete the survey.

PN4880

THE WITNESS: Yes.

PN4881

MR DOWLING: Thank you.

PN4882

Thank you, 88 per cent choose not to complete the survey?---That's correct.

PN4883

All right, and in respect of the 121 who completed the entire survey that, you say, is a figure of about 4 per cent. That's the 121 out of the 2760?---Yes.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN4884

Now as part of this proceeding the association was asked to provide the full set of questions and the sample size and the response rate, and they sent some communication to the Commission?---Mm-hm.

PN4885

Did you participate in providing that information to the Commission in response to those orders?---No, I did not.

PN4886

Because Mr Parkes, on behalf of the Association, in respect of the RCA benchmarking survey, advised the Commission on 9 September 2015, that the response rate was 8.1 per cent. Perhaps to be fair, can I show you the copy of that letter?---Thanks.

PN4887

You'll see part-way down the first page, about 60 per cent of the way down there's a heading, it says, "The Benchmarking Survey"?---Yes.

PN4888

And it has the sample size of 2,760 and it also has the response rate and it says 8.1 per cent?---Yes.

PN4889

Do you see that?---Yes.

PN4890

Are you able to say how it was that Mr Parkes calculated the response rate of 8.1 per cent?---No.

PN4891

Now, can I just ask you the, just going back to the process itself, the recipients, I think you said, they get sent a link to Survey Monkey?---Mm-hm.

PN4892

And that's a hypertext link, so if they click on that, that'll take them directly through to the survey. Is that's right?---Yes, that's correct.

PN4893

And again, assuming they have internet access and all of those sorts of things, of course?---Yes.

PN4894

And is it accurate to say that this process, the same process that we've described so far at this point, has been carried out before by the RCA?---It – I think it has been, but I haven't been the one whose conducted the survey.

PN4895

Okay, but there's previous benchmarking surveys, aren't there?---Yes, there are.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN4896

Of a similar nature?---Yes, that's correct.

PN4897

All right. Is it done annually or something close to annually?---It's done roughly around the same time of year each year, but sometimes that – that differs, depending on sort of what's going on during that – during the year.

PN4898

All right. Could you please turn to page 4 of the benchmarking survey, which is annexed to your statement?---So the Executive Summary?

PN4899

Yes, please?---Yes.

PN4900

And you'll see in the very first paragraph it says it was distributed to 2,760 restaurant, cafes and catering businesses in late November 2013?---Yes.

PN4901

Marking the fifth edition of the industry survey?---Mm-hm.

PN4902

So should we understand, when you said it's roughly the same time, it's about November of each year that you're talking about?---Yes, I believe the year before it was actually circulated a lot earlier than that, but I'd only just recently joined the Association, so the date was pushed back a bit for the 2013/14 survey.

PN4903

I see, so it's normally a little bit earlier than that, is it?---Yes.

PN4904

Okay. So should we understand then that there was also the distribution again, in late 2014?---The survey, yes.

PN4905

Yes?---Yes.

PN4906

And so the distribution in late 2014 would have resulted in, or should have resulted in the 2015 industry benchmarking report, yes?---Yes, that's correct.

PN4907

Okay. Is there a reason you haven't supplied the 2015 benchmarking survey?---Yes, I recently took on more of an expanded role, like Restaurant and Catering Australia, which meant that obviously my responsibilities were expanded. So in terms of the delivery of the final report, that was pushed back a bit, so we still haven't finally – or finalised the final report.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN4908

Okay. Now, just so I can be clear, you're aware that the Association participates in the annual wage review that's conducted by the Fair Work Commission?---Yes.

PN4909

And I think, as part of that process, they rely on their benchmarking survey, don't they?---Mm-hm.

PN4910

And there was a decision from June of this year, the Annual Wage Review 2014/2015. Are you aware of that decision?---Is this with the reduction in the penalty rate for casuals on the weekend? Is that what you're talking – referring to?

PN4911

Yes. No, no, no?---Okay, then no, I don't know what you're talking about.

PN4912

Well perhaps I can identify it for you. That decision that was handed down, 2 June 2015, the Annual Wage Review of 2014/2015, it refers to – and to be fair to you, I'll read, at paragraph 272:

PN4913

RCA relied on its 2015 Industry Benchmarking survey, submitting that- - -

PN4914

The next part's not relevant.

PN4915

This information is broadly comparable to responses to a 2 per cent increase asked by the RCA in the 2013/2014 Review.

PN4916

Now, it appears - and correct me if I'm wrong – it appears that as part of the wage review process, the RCA relied on its 2015 Industry Benchmarking Survey?---Mm-hm.

PN4917

Does that sound correct to you?---They could be referring to the preliminary data which was collected, but I hadn't analysed it at that point.

PN4918

I see?---Into the final report.

PN4919

So they may have put forward in the wage review, not the finalised report, in the form that it's attached to your statement here?---That's all I can assume, to be honest.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN4920

All right. So does that mean that there is, in fact, the data for the 2015 Industry Benchmarking Survey is all collected?---Yes.

PN4921

And did you not, despite what happened in the annual wage review, did you not look at that data here and decide whether we put the 2015 in?---It wasn't my decision to put things forward or not forward.

PN4922

Whose decision was it?---Well, that's our Workplace Relations team and the CEO.

PN4923

So who makes the ultimate decision, Mr Hart, is it?---Yes. I would assume so.

PN4924

So you don't know why it was that in the Minimum Wage Review, some 2015 data was relied upon, but in this proceeding the 2014 data is being relied upon?---No.

PN4925

That's not a decision that you were involved in?---No, not at all.

PN4926

All right. Now, you refer to a decision that made a reduction for casuals, and I hope I didn't confuse you, but there was – you're aware that this award, the Restaurant Industry Award undergoes or underwent a review after the first two year period?---Yes.

PN4927

And we're now undergoing the review for the four year period. And you're aware there's a decision of the Full Bench of this Commission dealing with the 2 Year Review, yes?---No, I wasn't aware of that.

PN4928

You weren't aware of that? Are you aware that, as part of that review process, the 2 Year Review, the benchmarking survey was relied upon by the RCA?---Not too sure, to be honest.

PN4929

I'm not sure what that means. Is that a yes or a no?---I don't remember providing evidence for the 2 Year Review.

PN4930

And are you aware whether – not whether you attended, but whether the RCA relied upon its benchmarking survey as part of that 2 Year Review? Is that something you're aware of?---No.

PN4931

All right. And have you seen that part of the decision that discusses the benchmarking survey?---No.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN4932

Okay. And to be fair and to make sure we are on the same page, at paragraph 113 of the Full Bench's decision in respect of the mid-year review, the three members of the Full Bench, Hatcher VP, Boulton J, McKenna C, say this:

PN4933

For example, the RCA conducted a survey of its members in 2011 concerning a large range of issues of relevance to the industry. One question in the survey was, 'What has been the impact on weekend penalty rates being enforced through the restaurant industry?'

PN4934

Now, just to stop there for a moment, that's a question that appears in your benchmarking survey, isn't it?---Mm-hm - a similar question, yes.

PN4935

Yes. So can we safely assume that what was being discussed here was a predecessor of the 2014 Benchmarking Survey?---Yes, that's correct.

PN4936

Okay. They then go on to say:

PN4937

That question is curiously phrased, in particular the import of 'enforced' is not entirely clear. The intermingling of weekend penalty rates and public holiday rates in the question also reduces the value of the survey response for our purposes.

PN4938

Is that something that has been drawn to your attention or you've seen before?---No.

PN4939

All right. Was there any discussion, when you were participating in the preparation of the 2014 Benchmarking Survey, about how it is we might be able to improve it or deal with any criticisms that have been made of it?---I think that there was a broad discussion in terms of how can we make the survey as simple as possible for our members to understand. We sometimes find that members find it a little bit difficult to understand some of the questions that we're asking them. And there was also a discussion with regards to further questions we could ask them.

PN4940

But my question to you is a little bit different. Was there any discussion about how the survey could be improved?---No.

PN4941

So should we understand largely that the survey questions from 2011, 12, and 13, up to yours, November 2013, are pretty much the same?---Yes, quite similar.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN4942

I will come to the questions but from your recollection if you can say so, the question that receives some I think criticism is not overstating it, it just ends up in the same form as the question that was being discussed in this decision?---Say again, sorry?

PN4943

Is that fair? The question that I read to you - - -?---Yes.

PN4944

- - - it just ends up in the same form, despite what is said here, it just ends up in the same form in the 2014 Benchmarking Survey?---I don't know what sort of responses or response options were as part of that question but I would assume that they would be similar, yes.

PN4945

As part of the process in this proceeding, you were asked to provide the full set of questions. Did you participate in responding to that request?---In providing the questions that - - -

PN4946

The full set of questions for the Benchmarking Survey?---Yes. Yes.

PN4947

Can I hand you a document, please? Do you have a document in front of you - sorry, I'll just ask you to wait for a moment until everybody has a copy. Do you have a document in front of you that says "Restaurant Catering Australia Industry Benchmarking Survey".

PN4948

MR PARKES: Objection, Your Honour. We haven't got a copy of that.

PN4949

MR DOWLING: Sorry. That was my fault. Do you have a copy of a document in front of us, "Restaurant Catering Australia Industry Benchmarking Survey" and underneath that it says, "Understanding your business"?---Yes.

PN4950

The first question is, "How many restaurants/businesses do you operate within your company"?---Yes.

PN4951

Take a moment to look through it, if you like, but is it accurate to say that this set of questions, from one through to 45, represents the SurveyMonkey questions that these people were asked as part of the Benchmarking Survey?---Yes, that's correct.

PN4952

There's different headings at the top of each page?---Yeah.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN4953

The first two pages deal with understanding your business, then we get to operating your business and by the time you get to the very last page, you are prompted at the top that for completing the survey you can win an iPad, you can go into the draw to win an iPad, which is what we were discussing earlier, yes?---Mm-hm.

PN4954

All right. Now, if I can ask you to go ahead to question 16. Now this question says, "If you are not open on Sundays/public holidays, what is the main reason you are not open on these days"?---Mm-hm.

PN4955

Should we understand that the participant carrying out the survey will then see below that question, the dot points that we see, "No market demand on Sundays/public holidays; the cost of penalty rates; cannot find staff; work/life balance," those options will then appear below the question?---Yeah, that's correct.

PN4956

So they are, I think it's fair to say, prompted with these answers. It's not a blank space?---No.

PN4957

They're prompted to choose one of these options?---That's correct.

PN4958

They are answering the question in respect of Sundays/public holidays?---Mm-hm.

PN4959

Is it fair to say that the answers - let's say someone picks work/life balance, the fourth dot point, that will not enable us in looking at the answers to determine whether they were referring to a Sunday or a public holiday?---No, that's correct.

PN4960

Or both?---Correct.

PN4961

We simply don't know?---(No audible reply)

PN4962

Sorry, you'll have to say yes?---Sorry, yes, that's correct.

PN4963

Thank you.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN4964

JUSTICE ROSS: Can I just ask, can they answer more than one? Can they give more than one answer to that question?---No. In setting up the survey you can

basically tick whether or not you want one response or you can have multiple responses but for that question we would have just indicated that they have to click one.

PN4965

MR DOWLING: So that if someone had a different - just following on from the President's question, if someone had a different reason for Sundays and public holidays, such as for example, "cannot find staff" might have been their response in respect of the Sunday but work/life balance might have been their response in respect of a public holiday, they would not have been able to advance both. They would have just had to choose one of those options?---Well, if they thought those - I guess those responses above were inappropriate, there was the "Other" box where they could write and inform us what they thought was the reason for their closing.

PN4966

But what I'm suggesting to you is in fact work/life balance was a reason but it was a reason for Sunday - - -?---And not the public holiday.

PN4967

- - - and not the public holiday, they were most likely to tick work/life balance in that situation, I suppose?---Yeah. I understand your point. I guess coming back, most of the operators are small operators so we tried to keep it as simple as possible.

PN4968

Yes, and there is a balance in that exercise, of course, in making it useful and reliable, isn't there?---Of course.

PN4969

As part of your annexures, you have included the document that is headed "Employment related survey questions"?---Yes.

PN4970

If you go to - - -?---Sorry, I don't have it in front of me.

PN4971

My apologies. I thought that was part of your evidence. Sorry, Your Honour, I had understood this was part of the statement. It might change things slightly if it is not part of the statement, or not relied upon. I am not sure what the position is. It is annexed to my copy?---I do have it, I just don't have it in front of me. So I do have it - - -

PN4972

Yes. I'll just get it.

PN4973

MR CLARKE: Sorry, Your Honour. I hand up the 2014 Industry Benchmarking Survey. It should have formed part of the statement.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN4974

JUSTICE ROSS: What do you want us to do with that? Is that annexed to the witness' statement? Or do you want to tender it?

PN4975

MR CLARKE: That should properly have been provided earlier and it does form part of RCI19.

PN4976

JUSTICE ROSS: So the two attachments form part of the statement, is that right?

PN4977

MR CLARKE: Yes, and they were both filed on 29 June.

PN4978

JUSTICE ROSS: Mr Dowling, have you got those or not?

PN4979

MR DOWLING: I do, Your Honour, yes.

PN4980

JUSTICE ROSS: Okay.

PN4981

MR DOWLING: Now if you have a look at the first - that deals with question 15 first. Does it start at question 15 because you have extracted parts of it, or did you not deal with questions 1 to 14 in this document, or you don't know?---I was just asked to provide a summary of the questions 15 and all the employment-related questions for this purpose.

PN4982

I see, so this document's generated by you and someone has asked you to pick just some of the questions to generate the document, is that right?---Yes.

PN4983

Did they explain to you a basis upon which they ruled out some of the other questions?---No.

PN4984

The first one is question 15: Are you open on Sundays / Public Holidays?---Mm-hm.

PN4985

And then it has yes, yes, or then it gives the percentages, and then it says "Other" and then there's a table that follows?---Yes.

PN4986

Should we understand that the twelve responses in the table are the other responses?---Yes, that's correct.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN4987

Or are they just indicative examples of various responses?---No, those are the responses that people who are completing the survey gave us to that 'other'.

PN4988

To the 'other' box?---Yes.

PN4989

All right, thank you. If I can ask you to turn back to the survey - and we're at question 16 - could I ask you to go ahead to question 19, and you'll see there a question that will look familiar to you given our previous discussion: What has been the impact on weekend public holiday penalty rates being enforced through the Restaurant Industry Award?---Mm-hm.

PN4990

I take it, given the comments that have been made about the 2011 version, that this is not a question that you wrote?---No.

PN4991

Should I also take it that you didn't write any of the questions?---Some of the questions, when I had a look at the old benchmarking survey, were amended a little bit in terms of how they're worded, but the majority of the questions were kept the same as the 213 survey for consistency sake.

PN4992

And those that you amended, are you able to give any evidence about how you amended them?---No, it just would've been small wording things as opposed to large re-writes. For example, question 4 didn't appear in the 2013 survey but made it a little bit easier for us to identify the size of businesses. An additional question was asked in terms of, I guess, what changes would make their business run more effectively. Those types of questions were added to the survey, but apart from that the rest of the content remained the same.

PN4993

All right, and this is one that, from what we've discussed already, remained the same, yes?---Yes.

PN4994

Do you know what it means – rates being enforced through the Restaurant Industry Award?---I would assume it means that the business owner follows or correctly pays their staff based on the Restaurant Industry Award.

PN4995

Do you correct pay the penalty rates?---Yes.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN4996

Again, can you tell the Commission whether you can do one or more of the options that follow the question?---Yes, so this one, as you can see under question 19, it says you may select more than one response, so again there's an option in

the back of House of Survey Monkey which allows the recipient to select more than one option.

PN4997

When it doesn't limit more than one response, does that mean if you were minded to you could tick every box?---If you wanted to, yes.

PN4998

Now, this question is asked in relation to the impact of weekend/public holiday penalty rates, so if, for example, we were ticking the fourth box down: reduced staff working hours, there would be no way to work out whether the person was talking about on the weekend or on a public holiday, would there?---No.

PN4999

And when it says 'the impact', is it fair to say that there's no – well there's no definition of what impact means obviously - the question just is what it is – and there's no explanation here, or is it correct to say anywhere else as to what time period it's talking about, the impact over a particular period of time?---No, that's correct, although we did ask the respondents to base it on their 2012/13 financial turn, so if you were going to indicate a period I would assume that it would be based on that.

PN5000

But the impact is not necessarily limited in any way to that period, is it?---No.

PN5001

Does it assume there has been an impact?---To be honest I don't know what has been the impact. If they wanted to say there has been no impact they could easily click 'other' and say no impact.

PN5002

Right.

PN5003

JUSTICE ROSS: Well they can answer the first question. They could tick the first question – no impact?---Yes.

PN5004

The first answer, rather?---Yes, so the third tick box down.

PN5005

MR DOWLING: Sorry, did your Honour say third? I thought your Honour said first and I'm now concerned that we're looking at different documents.

PN5006

JUSTICE ROSS: No, I'm looking at the answers. The question's structured differently.

PN5007

MR DOWLING: Yes, sorry.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN5008

JUSTICE ROSS: Yes, it's a difference in order, that's all.

PN5009

MR DOWLING: Yes.

PN5010

JUSTICE ROSS: It's number 3 on the question.

PN5011

MR DOWLING: Yes, thank you, your Honour. Now, can I ask you to turn to the next question?---Question 20?

PN5012

Yes. If the Restaurant Industry Award was to change, which of the following would be the most beneficial to your business?---Mm-hm.

PN5013

And, again, you are able to select more than one so, again, I take it that you are able to select all of them if you so choose?---Yes, that's correct.

PN5014

And if you're not minded to include anything in the other box, you're restricted at least to the prompts in relation to the first six of the options?---Yes, that's correct.

PN5015

The question itself assumes, does it, that each of these are beneficial and it's just asking you which is the most beneficial, is that right?---Yes, so one's I guess if they ticked all the boxes, if they so wish; it comes down to, I guess, once we've collected all the data which one was the most popular answer.

PN5016

But my question's a little bit different, sorry, I should have been clearer. Answers 1 to 6 assume that they're all beneficial and it's just asking you for the most beneficial, is that right?---Yes.

PN5017

Is that an appropriate question in your view, to assume that these are all beneficial but just tell us which is the most beneficial?---Well I think it comes down to the feedback that we've got from members, which indicates that, I guess, some sort of change is needed and which one of these would be most beneficial to them.

PN5018

Okay, so if we deal with some sort of change being needed, and perhaps we look at the first question – or the first answer, which is reduction in classification levels?---Mm-hm.

PN5019

Does it describe anywhere in this question or elsewhere just exactly what reduction is being talked about?---No.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN5020

All right. When it talks about, in the third option, no weekend penalties for any additional hours worked by casuals, does it describe anywhere in this question or elsewhere what it means when it says additional hours?---No.

PN5021

And when it says in the sixth answer a reduction in public holiday rates, does it describe anywhere in this question or elsewhere just exactly what that reduction is?---No.

PN5022

So a person's going to answer, I think a reduction in public holidays would be beneficial to my business - or most beneficial to my business, but you've got no way of knowing what reduction they were talking about when they ticked the box?---No, that's correct.

PN5023

Now if you go to the next question, 21:

PN5024

If any of the above changes were implemented, how many additional hours do you believe you would be willing to employ staff during the break?

PN5025

?---"During the peak period"?

PN5026

JUSTICE ROSS: "During the peak period".

PN5027

MR DOWLING: I'm sorry. That's a bit Freudian I think. "During the peak period". Now this question of course is referring to "the above changes" identified in question 20. Should we understand that it's not dependent upon question 20 in the sense that you don't have to have ticked just one box in question 20 such as "Reduction in classification levels" and then be talking about the effect of that in 21?---Mm-hm.

PN5028

You may have answered something under "Other" that's not set out in answers 1 through to six, but when you're answering question 21 you are considering any of those changes in one through to six including what it is you might have put under "Other". Is that correct?---Yes.

PN5029

All right, and if for example someone writes "10 hours" next to - within the box provided for under 21 - sorry, just to clarify, there's just an empty box in 21 so they're just meant to write in a number are they?---Or they could provide a comment.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN5030

Yes?---Yes.

PN5031

But there's no prompt here. There's no series of boxes to tick?---No.

PN5032

They're being asked about additional hours so they might write for example 10?---Yes, it's a qualitative question. Yes.

PN5033

It's, sorry?---A qualitative question.

PN5034

Thank you. So if someone was to write for example 10 in the box there's no way to assess whether that 10 was referable to box number 1 in question 20, "A reduction in classification levels", or whether in fact they were talking about option number 6, "A reduction in public holiday rates"?---But it says, "How many additional hours?" so the 10 wouldn't apply to how many additional hours they would employ staff. But are you saying that you don't know whether or not those 10 additional hours are attributed to a reduction in classification levels in question 20?

PN5035

Yes?---Okay.

PN5036

What I'm suggesting to you if they put 10 in box 21?---Yes.

PN5037

That's all it tells us, it says 10?---Yes.

PN5038

Now when we're looking at that, I'm suggesting to you we can't tell to which of the answers in question 20 they were referring to when they gave the answer 10?---That's correct.

PN5039

And we can't tell whether they were talking about a reduction in classification levels or whether in fact they were talking about a reduction in public holiday rates. We just don't know?---That's correct.

PN5040

All right, and if they were talking about a reduction in classification levels, as you've said before we don't know what sort of level of reduction they were talking about?---No.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN5041

Well, I suggest to you that the answers to that questions would be completely meaningless. Do you agree?---Well, for your purposes it may be, but for our purpose is to give our members an indication of what was going on and what their

peers are saying in the industry. So again the survey is to give our members an indication of how the sector is faring. That's the main purpose of the survey. Whether or not it's been used in other forums such as this, it may not suit this purpose.

PN5042

That's what I'm suggesting to you really, to be fair. I'm suggesting to you that it's really of no use in this forum. Do you agree with that?--No.

PN5043

Right?---There was still - there was - - -

PN5044

Can I ask you to go to the second of the documents annexed and if you turn to page 13 of that document and you'll see there question 21 and it sets out the responses. Now firstly, you'll see in response to question 21 that the table that's set out below it has 114 answers in it?--Yes.

PN5045

So should we understand from that that only 114 people answered this survey - sorry, this question?--This question, yes.

PN5046

I thought from your evidence earlier that of the total number that responded to the survey - - -?---Was 121?

PN5047

There were 340 that responded and 121 that completed it?---Mm-hm.

PN5048

There might be some questions where there in fact wasn't 121 answers, is that right?---So with the question that is 21 the person who completed the survey had the option to skip that question. So they may have skipped that question and then moved on to the next one.

PN5049

So your evidence that 121 people completed the surveys is correct, but what it doesn't say is that that doesn't mean that 121 people completed every question?--Yes, that's correct.

PN5050

And in respect of this question we know only 114 completed the question?--Yes.

PN5051

All right. Now just to get a sense, we know that answer number 28, they put zero so we should understand that that person is saying they won't offer any additional hours?---From what I understand, yes.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN5052

And 39, that person is saying, "Nothing will change. Employ max amount of staff anyway. I will just finally make some money". So that's to be regarded as a no additional hours as well?---Yes.

PN5053

All right, and answer 60, that person appears to say, "41,769 additional hours"?---That's correct.

PN5054

But of course as we have said before we don't know what they were talking about in terms of which of the answers in question 20 they were referring to that might lead to the 41,769 hours, do we?---That's correct. They could be talking per year, per week. We don't know.

PN5055

Well, it's not just we don't know whether it's per week or per year, we don't know what it's attributable to. We don't know whether that's attributable to the reduction in classification levels or something else. Is that correct?---No, all we know is it's attributed to some change in the Restaurant Industry Award.

PN5056

Yes, we don't know what. Now answer number 66:

PN5057

I use around three and a half hours on a weekend as it is. If penalty rates are rescinded I'd add about 10 per cent more hours, around 350.

PN5058

Now of course rescinding the penalty rates is not something that is in option 1 through to 6 but is it possible - is what you're suggesting - sorry, I'll withdraw that. That person seems to have answered the question with a view to changes not described by question 20. Is that fair?---Well, I would assume that he was answering with regards to response option number 4, "No weekend penalty rates for casuals".

PN5059

But he doesn't say anything about casuals. He said he or she is rescinding penalty rates completely, it seems. Why would you assume that he or she is referring to casuals?---Because we've asked them question 21 based on question 20.

PN5060

Right, so from that you're going to assume that what 66 is talking about is no weekend penalty rates for casuals, is that right?---Yes.

PN5061

And you think that's reliable information that that person really means, "No weekend penalty rates for casuals means about 350 hours"?---I think it gives you an indication of what change they'd like to see.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN5062

And when they say "Nearly 10 full-timers" clearly they're not talking about casuals there with their full-timers?---That they're equating with 350 hours to full-timers.

PN5063

Okay. I'm suggesting to you, you can't reliably suggest – you can't suggest that that figure is in any way reliably referable to an abolition of weekend penalty rates for casuals. You just cannot say from that answer?---I think it gives you an indication of what he was thinking at the time. I can't say the full effect.

PN5064

So the best we should take from the answer is an indication of what the person might have been thinking. Can I ask you to turn over the page to question 25?---Of the survey or the- - -

PN5065

Sorry, I'm now asking you to look at the questions, the series of questions in the document that I handed to you?---Yes.

PN5066

Before I forget, if you just wait there one moment. Can I tender that document, please your Honour?

PN5067

JUSTICE ROSS: That will be Exhibit UV8. Any objection?

PN5068

MR CLARKE: No, your Honour.

EXHIBIT #UV8 SERIES OF QUESTIONS

PN5069

MR DOWLING: So do you have the page that has questions 23 through to 26 on it? 22 through to 26?---Yes.

PN5070

All right. We see there a question:

PN5071

"Do you believe the Restaurant Industry Award reduces your productivity in terms of employment in the workplace?"

PN5072

?---Mm-hm.

PN5073

Is there anywhere else in the survey, or elsewhere accompanying the survey, to explain what's meant by the expression, "Reduces your productivity in terms of employment"?---No.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN5074

All right. Can I ask you to go ahead to question 39? And you'll see there it says:

PN5075

Which of the following would make the biggest difference to running your business successfully?

PN5076

?---Mm-hm.

PN5077

And this is a question to which you are intended to identify each of the answers – sorry, let me start again. You're prompted with a series of answers, down on the left-hand column, under the question?---Mm-hm.

PN5078

And you're meant to deal with each one of those possibilities and you're meant to rank each one of those possibilities, is that's right?---Yes, that's correct, yes.

PN5079

Okay, now the one second from the bottom is, "Reduced Penalty Rates on the Weekends", do you see that?---Yes.

PN5080

I take it that nowhere in this question, or anywhere else in the survey, does it explain by how much these penalty rates are to be reduced on the weekend?---No, it wasn't quantified.

PN5081

All right, and the person that's answering that question, we don't know whether they are, themselves, contemplating a reduction of 5 per cent or 50 per cent, do we?---No.

PN5082

All right. And again, when you're looking at the answers to that question as to how useful the answers might be, I'm suggesting to you that they would be, in the first column, "Not very useful". Is that a fair assessment?---I think again, it provides you some indication that they think there should be change.

PN5083

But it doesn't tell you what's changed, does it?---Well, it's saying from that option, "Reduced Penalty Rates on Weekends", so to some effect.

PN5084

Well, they might be talking about a 1 per cent reduction, mightn't they?---But it's still a reduction.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN5085

Okay. But that's not what your Association is seeking, is it? It's not seeking a 1 per cent reduction, is it?---I haven't been involved in what our organisation is seeking, so- - -

PN5086

Do you know what it is the Association is seeking?---I haven't been involved in – in putting together the case on – well, apart from the survey materials that we've put through.

PN5087

So when you were preparing the survey- - -

PN5088

MR CLARKE: Your Honour, sorry, I think the evidence is the survey.

PN5089

MR DOWLING: Is this an objection?

PN5090

MR CLARKE: Objection, your Honour, yes. This survey pre-dates this review, in our submission. So the witness is entitled to not understand the questions that are being put to her.

PN5091

JUSTICE ROSS: Well, how is that an objection to the question? The survey doesn't – this survey doesn't pre-date the review.

PN5092

MR CLARKE: It does, in that it was from the – it does in that it was from the 2014- - -

PN5093

JUSTICE ROSS: The review started at the beginning of 2014.

PN5094

MR CLARKE: Yes, your Honour.

PN5095

JUSTICE ROSS: And it was also known that you were going to pursue this issue from the transitional review.

PN5096

MR CLARKE: I accept that, your Honour. Yes.

PN5097

JUSTICE ROSS: Yes.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN5098

MR DOWLING: So when you put this survey together, you knew there was an application being made by the Association in respect of the reduction in penalty

rates?---Yes, but to what amounts and for which grades and all those sorts of things, I don't know.

PN5099

Well, did you endeavour to find out?---No.

PN5100

Well, I'm suggesting to you, that would have been a useful exercise because then you would have known what reduction you were seeking and then you might have been able to put the reduction you were seeking in a question. Is that something you thought about?---No.

PN5101

Nothing further.

PN5102

JUSTICE ROSS: Any re-examination?

PN5103

MR CLARKE: No, your Honour.

PN5104

JUSTICE ROSS: Thank you for your evidence and your time. You're excused.

<THE WITNESS WITHDREW

[3.46 PM]

PN5105

JUSTICE ROSS: That completes the witness evidence for this afternoon?

PN5106

MR DOWLING: It does, your Honour, yes.

PN5107

JUSTICE ROSS: I think we'll adjourn till tomorrow at 9.30, at which time I think there will be a short discussion about the revisions to the timetable and the statement issued on Friday and then we'll proceed with our first AHA witness.

PN5108

Nothing further today?

PN5109

MR CLARKE: No, your Honour. It is our intention to withdraw until next week, but I think it will be worth us being here at 9.30 to discuss that schedule, because we've got – we've got no further witnesses or no further evidence, I think, till well into next week in Melbourne.

PN5110

JUSTICE ROSS: Yes. Well, you might check the website. I think comments were due in at 4 pm today.

*** CARLITA DEARNE WARREN

XXN MR DOWLING

PN5111

MR CLARKE: Yes.

PN5112

JUSTICE ROSS: And it may be that no one has any comments, in which case it will stay as appears annexed to the statement. But I'll leave that to you.

PN5113

MR CLARKE: Yes. I might indicate to chambers whether we do have any comments.

PN5114

JUSTICE ROSS: Sure, no problems.

PN5115

MR CLARKE: Thank you.

PN5116

JUSTICE ROSS: Nothing further? We'll adjourn till 9.30.

PN5117

MR DOWLING: Sorry, your Honour. My apologies, your Honour, very quickly.

PN5118

JUSTICE ROSS: Yes, Mr Dowling.

PN5119

MR DOWLING: I'm sorry, I will be very quick.

PN5120

JUSTICE ROSS: That's all right.

PN5121

MR DOWLING: We don't intend to put in any comments, but I should make clear, that's because we don't seek any changes to the provisional timetable that's proposed.

PN5122

JUSTICE ROSS: Yes, and I think that's likely to be the position with the AHA because they didn't raise anything on Friday.

PN5123

MR DOWLING: I think, your Honour, if you will recall- - -

PN5124

JUSTICE ROSS: Yes, they've got some minor changes - - -

PN5125

MR DOWLING: Yes.

PN5126

JUSTICE ROSS: But nothing of great moment.

PN5127

MR DOWLING: They were to check availability, I think, in relation to whether the witnesses could be squashed.

PN5128

JUSTICE ROSS: Yes, that's exactly right, yes. Okay.

PN5129

MR CLARKE: Sorry, your Honour. Sorry.

PN5130

JUSTICE ROSS: That's all right, it's the only exercise I'm getting these days.

PN5131

MR CLARKE: I'm most concerned with Mr Parker is still here and I need to have a look at those emails and I wasn't sure – there was a suggestion – I'm just trying to work through some timings in my own mind about when – how we might proceed with that matter.

PN5132

JUSTICE ROSS: Well, are you going to be here on Friday?

PN5133

MR CLARKE: It's not my intention to be here on Friday.

PN5134

JUSTICE ROSS: Have a look at them and then forward them. Unless you want to take an objection, then just forward them to my chambers and they'll be uploaded and they will be provided to the union.

PN5135

MR CLARKE: Okay.

PN5136

JUSTICE ROSS: It's only if you want to take an objection you have to write and identify what it is and we'll list it for hearing later this week.

PN5137

MR CLARKE: Yes, your Honour.

PN5138

JUSTICE ROSS: Okay?

ADJOURNED INDEFINITELY

[3.49 PM]

LIST OF WITNESSES, EXHIBITS AND MFIs

[REDACTED] SWORN PN3880

EXAMINATION-IN-CHIEF BY MR CLARKE..... PN3880

**EXHIBIT #RCI8 STATEMENT OF [REDACTED] OF 12
PARAGRAPHS DATED 29/06/2015 PN3894**

**EXHIBIT #RCI9 SUPPLEMENTARY STATEMENT OF [REDACTED]
[REDACTED] OF 6 PARAGRAPHS DATED 26/08/2015 PN3894**

CROSS-EXAMINATION BY MR DOWLING..... PN3896

THE WITNESS WITHDREW PN3993

[REDACTED], SWORN PN3995

EXAMINATION-IN-CHIEF BY MR CLARKE..... PN3995

THE WITNESS WITHDREW PN4012

**EXHIBIT #RCI10 SUPPLEMENTARY STATEMENT OF [REDACTED]
[REDACTED] DATED 25/09/2015..... PN4022**

**EXHIBIT #RCI11 STATEMENT OF [REDACTED] DATED
09/09/2015 PN4022**

[REDACTED], RECALLED ON FORMER OATH..... PN4026

CROSS-EXAMINATION BY MR DOWLING..... PN4026

THE WITNESS WITHDREW PN4066

[REDACTED], SWORN..... PN4083

EXAMINATION-IN-CHIEF BY MR CLARKE..... PN4083

**EXHIBIT #RCI12 SUPPLEMENTARY STATEMENT OF MR [REDACTED]
[REDACTED] DATED 27/08/2015 PN4093**

**EXHIBIT #RCI13 STATEMENT OF MR [REDACTED] DATED
09/09/2015 PN4093**

CROSS-EXAMINATION BY MS BURKE PN4095

THE WITNESS WITHDREW PN4147

[REDACTED], SWORN PN4167

EXAMINATION-IN-CHIEF BY MR CLARKE.....	PN4167
EXHIBIT #RCI14 SUPPLEMENTARY STATEMENT OF [REDACTED] DATED 25/08/2015	PN4177
EXHIBIT #RCI15 STATEMENT OF [REDACTED] DATED 09/09/2015	PN4177
CROSS-EXAMINATION BY MS BURKE	PN4178
RE-EXAMINATION BY MR CLARKE	PN4226
THE WITNESS WITHDREW	PN4243
[REDACTED], AFFIRMED	PN4259
EXAMINATION-IN-CHIEF BY MR CLARKE.....	PN4259
EXHIBIT #RCI16 SUPPLEMENTARY STATEMENT OF [REDACTED] [REDACTED] DATED 25/08/2015	PN4266
EXHIBIT #RCI17 UNSIGNED STATEMENT OF [REDACTED] DATED 14/09/2015	PN4266
CROSS-EXAMINATION BY MS BURKE	PN4267
RE-EXAMINATION BY MR CLARKE	PN4458
FURTHER CROSS-EXAMINATION BY MS BURKE.....	PN4485
THE WITNESS WITHDREW	PN4498
JAMES DAVID PARKER, AFFIRMED	PN4504
EXAMINATION-IN-CHIEF BY MR CLARKE.....	PN4504
EXHIBIT #RCI18 STATEMENT OF JAMES DAVID PARKER DATED 15 JUNE 2015	PN4510
CROSS-EXAMINATION BY MR DOWLING.....	PN4513
THE WITNESS WITHDREW	PN4569
JAMES DAVID PARKER, RECALLED ON FORMER AFFIRMATION..	PN4575
CROSS-EXAMINATION BY MR DOWLING.....	PN4575
RE-EXAMINATION BY MR CLARKE	PN4800
THE WITNESS WITHDREW	PN4806
CARLITA DEARNE WARREN, SWORN.....	PN4816
EXAMINATION-IN-CHIEF BY MR CLARKE.....	PN4816

EXHIBIT #RC119 WITNESS STATEMENT OF CARLITA WARREN WITH ATTACHMENT	PN4826
CROSS-EXAMINATION BY MR DOWLING.....	PN4827
EXHIBIT #UV8 SERIES OF QUESTIONS	PN5068
THE WITNESS WITHDREW	PN5104