



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009
TRANSCRIPT IN CONFIDENCE

1052409

**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

9.37 AM, TUESDAY, 15 SEPTEMBER 2015

Continued from 14/09/2015

PN5139

JUSTICE ROSS: Any changes in the appearances in Sydney?

PN5140

MR STANTON: Your Honour, I, just for the purposes of the mention, also appear for the Pharmacy Guild.

PN5141

MR IZZO: Your Honour (indistinct) Ms Baxter is only appearing on behalf of the New South Wales Business Chambers (indistinct) Ms Baxter. I will be leaving shortly but Ms Baxter will be here for the remainder (indistinct).

PN5142

JUSTICE ROSS: I think we have Ms Cruden on the phone.

PN5143

MS L CRUDEN: Yes, Your Honour. Ms Cruden, initial L, appearing on behalf of the Australian Industry Group.

PN5144

JUSTICE ROSS: And in Melbourne?

PN5145

MS A FORSYTH: Yes, Your Honours, if the Commission pleases, I seek permission to appear on behalf of the Shop Distributive and Allied Employees Association. Forsyth, initial A.

PN5146

JUSTICE ROSS: Thank you, Ms Forsyth. I think we have dealt with the issues of permission and permission has been granted. Mr Tindley is there with you?

PN5147

MR TINDLEY: Yes, Your Honour, Tindley, initial N, appearing on behalf of the NRA, ARA and MGA.

PN5148

JUSTICE ROSS: Can I deal with what I think are the simple things first? We have noted that United Voice's witnesses - I'm not sure if I'm pronouncing this correctly, but Sirek and Petrov are not required for cross-examination. Sirek was proposed to be called at 2.45 on Tuesday the 22nd and Petrov at 12 noon on Wednesday the 23rd. What I want to explore is - well, those slots will come out. Can one of the United Voice's witnesses on the 23rd, preferably Sanders because Sanders is currently listed at 11.40, be moved to the afternoon of the 22nd? If that can be done, what I have in mind is moving Ms Kindness' evidence up so we would deal with her at 11.40 and then at 12 noon we would deal with the objections to the notices to produce the retail lay evidence.

PN5149

Now, if some reason Mr Sanders can't be moved, then I am assuming at least one of the others could be. What do you think, Mr Dowling?

PN5150

MR DOWLING: Sorry, Your Honour, we're just making some inquiries. I wonder if other matters could be dealt with and we'll respond to you during the course of the - - -

PN5151

JUSTICE ROSS: Certainly. We would then move - we will return to Ms Pazuelo in a moment, but in order to provide sufficient time for the objections to the notices to be heard, Pazuelo would probably start at 2.30. We will confirm all that later. Brown, who is currently listed at 3.30 on Tuesday the 22nd, it's proposed by the AHA and I think agree by the other interested parties that he would give his evidence at 9.00 am on the Tuesday because that's a time that suits him. Is that right?

PN5152

MR STANTON: That's correct, Your Honour.

PN5153

JUSTICE ROSS: Yes. So all of those matters subject to United Voice checking availability - the SDA has written saying the time allocated for Professor Rose on Friday is not sufficient. We don't propose to change the time on which Dr Sands will be available. We want to avoid any gap in the evidence. It doesn't mean that Professor Rose's cross-examination must finish at 11.45. It just means that we want Doctor Sands available from that time. So he won't be required before 11.45 and then we will slot him in as we see how we go. The reason for that is that it may not be necessary to take the adjournment on the Friday. The SDA is indicating depending on how the cross-examination of Professor Rose goes, they may not require as much time as Dr Sands. So the whole thing might be over by lunch time and we don't want to preclude that possibility. So that deals with that.

PN5154

Is there anything else - there are two other matters. Is there anything about any of that that anyone wants to say anything about subject to you sorting out availability?

PN5155

MR DOWLING: Yes, we're doing the best we can, Your Honour. Can I mention that we undertook with respect to - in communications with the RCA that we would endeavour to have all of those witnesses that they wanted to cross-examine on one day. That day was allocated as the 23rd and we understand that they want to cross-examine all of Mr Sanders, Ms Portman - - -

PN5156

JUSTICE ROSS: Mr Sanders works in a hotel though.

PN5157

MR DOWLING: Yes.

PN5158

JUSTICE ROSS: Well, that will be their choice, but I'll have to do it on the day before.

PN5159

MR DOWLING: That's the only reason and that's the only thing that causes some complication, what we've said to them about that, but (indistinct).

PN5160

JUSTICE ROSS: That may mean that we try and have Sanders at the end of the day on the Tuesday, so the last witness. So probably at 3.15. So the AHA - Restaurant and Catering, if they wish to cross-examine, they can - they will know the time and it can be done then.

PN5161

MR DOWLING: Does that mean Mr Bourke would move to 2.45 and Mr Brown is already moved to 9.00 am and - - -

PN5162

JUSTICE ROSS: Yes, that should be fine. I don't think there will any problem - -
-

PN5163

MR DOWLING: Thank you.

PN5164

JUSTICE ROSS: - - - moving Mr Bourke half an hour forward. No other issues about that. Then there are two other matters. One is the notices to produce in respect of the retail lay evidence. What we have in mind is this, that union parties are to file their notices to produce in respect of the retail lay evidence by 4.00 pm tomorrow. I understand they have already filed draft notices to produce on the employers. Any objections to the notices to produce would be filed by 4.00 pm this Friday. Objections should be in the form of full written submissions. Any replies to an objection are to be filed by 4.00 pm next Tuesday and then we will have that short oral hearing I mentioned would take place at 12 noon on Wednesday the 23rd. Any comments on any of that? Okay.

PN5165

The remaining issue then, I think, is the application by the Pharmacy Guild and others to seek a variation to the directions in respect of the filing of reply evidence by Ms (indistinct). The directions presently require that that reply evidence be filed by 4.00 pm this Wednesday. Is someone near a microphone in the interstate? And Meridian, on behalf of the Pharmacy Guild, are seeking an extension until - it's the Monday, isn't it?

PN5166

MR STANTON: Yes, Your Honour, Monday the 21st.

PN5167

JUSTICE ROSS: At 4.00 pm, yes. In your correspondence in the third paragraph you acknowledge that the - so it's not an issue about the union expert evidence being filed out of time. It was filed in time. Is that right?---

PN5168

MR STANTON: Yes. It's just the extent of the material, Your Honour. There are seven reports.

PN5169

JUSTICE ROSS: Yes, but it's got received by you on the 7th. Why is that?

PN5170

MR STANTON: I'm instructed that's just when the material was received by my instructing solicitors.

PN5171

JUSTICE ROSS: It was loaded onto the website presumably on the day it came in. In any event, your complaint isn't about any late filing, it's simply about volume and some personal issues to Ms Pazuelo that you identify in your correspondence. Can somebody just (indistinct) keeps crashing into the microphone - can everyone get away from the microphones for the moment? Thanks.

PN5172

MR STANTON: Yes, your Honour, that's the case.

PN5173

JUSTICE ROSS: And you say what you say about that?

PN5174

MR STANTON: Yes.

PN5175

JUSTICE ROSS: I had my associate contact Mr Izzo this morning to see if there may be an alternate solution to this issue. In the earlier documentation that went out around experts to be called in this period, it was originally proposed that Professor Lewis would be called on the Thursday, and then it became apparent that Ms Pazuelo was going to take at least a day-and-a-half in cross-examination and she would take up all of that time, and Professor Lewis was not available on the Friday from memory. I'm not sure what time my associate contacted you but it was late – shortly before the proceedings commenced. Are you able to give an indication about Professor Lewis's availability, so that the idea would be he would replace Ms Pazuelo and then we'd deal with your application for an extension?

PN5176

MR IZZO: All I can say, your Honour, at this stage is that Professor Lewis had previously indicated he was available on the 24th of September. That's the last I'd heard of him before we then agreed that he wouldn't be heard next week. I've tried to contact him by phone and email but haven't heard from him yet, so it's possible he still is available on the 24th but I'm not sure if he's made alternate plans in the interim.

PN5177

JUSTICE ROSS: Okay, well I think we'll proceed this way. Let's just step through it. If you can continue to make enquiries and let us know, hopefully today - - -

PN5178

MR IZZO: I imagine I'll be able to get him today.

PN5179

JUSTICE ROSS: Okay. What does anyone want to say about that proposal? That would mean that we wouldn't start on the Wednesday afternoon as currently scheduled; that would be clear. We would commence at 9.30 or 10 am on Thursday the 24th with Professor Lewis, and Ms Pazuelo's evidence would be heard in the next tranche or at a later convenient time.

PN5180

MR DOWLING: Just a couple of matters from the perspective of United Voice. It causes us some difficulty, of course, because we are in the hearing, save the Monday, every day up until the 23rd, and we'd then need to cross-examine Professor Lewis on the 24th, without having seen his reply report yet, of course.

PN5181

JUSTICE ROSS: You're in the same position – you haven't seen the reply report from Rose or Sanders either.

PN5182

MR DOWLING: Yes, Lewis more directly affects us and more directly affects the two experts that we have a particular interest in – Professor Ballen and Professor Quiggan.

PN5183

JUSTICE ROSS: Sure, but we still have freed up the Monday the 21st.

PN5184

MR DOWLING: Yes.

PN5185

JUSTICE ROSS: And the afternoon of the 23rd.

PN5186

MR DOWLING: Yes.

PN5187

JUSTICE ROSS: Yes, all right.

PN5188

MR DOWLING: Can we seek some confirmation, given what's said about Ms Pazuelo, that Professor Lewis's reply material will be filed on time? That will impact - - -

PN5189

JUSTICE ROSS: It will all be filed on time, and if it's not they'll be in breach and we'll deal with that when we deal with it, but there's no application to extend the time.

PN5190

MR DOWLING: Can I just raise one last matter then? Professor Ballen presently is only available on the 2nd of October. For our part, your Honour might recall there was some discussion about the concurrency of evidence - -

PN5191

JUSTICE ROSS: Yes, given the limited availability of some of the witnesses I think that's going to be challenging. Professor Lewis was only available I think for the first part of that tranche. In any event my recollection – was it the 30th and the 1st?

PN5192

MR DOWLING: The 1st and the 2nd - - -

PN5193

MR IZZO: I believe it was 30th, 1st and 2nd, your Honour.

PN5194

JUSTICE ROSS: Okay.

PN5195

MR DOWLING: We thought that those three were the three that were most apt for concurrent evidence.

PN5196

JUSTICE ROSS: That might be right but then that just means we – you know, we're not going to have concurrent evidence.

PN5197

MR DOWLING: Yes.

PN5198

JUSTICE ROSS: It's something that was foreshadowed.

PN5199

MR DOWLING: Yes, I appreciate that, your Honour.

PN5200

JUSTICE ROSS: Yes, so, it may be that it's still useful to have Ballen and Quiggan give concurrent evidence.

PN5201

MR DOWLING: Yes.

PN5202

JUSTICE ROSS: Given there's a degree of overlap between my understanding of what they're going to be covering.

PN5203

MR DOWLING: Yes, well we anticipate, given Professor Ballen's availability on the 2nd, that Professor Quiggan can work around the dates on that day or immediately beside it, so that can be accommodated.

PN5204

JUSTICE ROSS: Yes, okay.

PN5205

MR DOWLING: Thank you, your Honour.

PN5206

JUSTICE ROSS: Anything else about this issue?

PN5207

MS FORSYTH: Yes, your Honour, for the SDA's part we are content with your proposal to schedule Professor Lewis in the place of Ms Pazuelo. That deals with any issues of concern that we had regarding the prejudice that might otherwise have attached to the extension sought by Meridian.

PN5208

JUSTICE ROSS: Okay. Well let's just look at the alternative in the event that Professor Lewis isn't available and let's now turn to Pazuelo, and I think given the nature of this we'll just need to reserve on this issue until we hear from Mr Izzo about Professor Lewis's availability, and we'll consider what United Voice has put about Professor Lewis, but if he's not available then we have to address the Pazuelo issue. Can I indicate an extension to 4 pm on Monday, speaking for myself seems that there is some force in the proposition that that would prejudice the union parties, particularly those involved in the proceedings on the 22nd and 23rd, and what would you say to the proposition that the extension be limited to 12 noon this Friday? It may be that if that's not sufficient time then the alternative might be that Ms Pazuelo has to be re-scheduled at another time.

PN5209

MS FORSYTH: Your Honour, the SDA - - -

PN5210

JUSTICE ROSS: Just a moment, I'll just hear from the Pharmacy Guild first and then I'll come to you.

PN5211

MR STANTON: The extension and that time period has been indicated by Ms Pazuelo, my instructing solicitor, so we have to go on what Ms Pazuelo considers that she could accommodate in the circumstances.

PN5212

JUSTICE ROSS: Okay, so that wouldn't be sufficient for your purpose, is that what you're saying?

PN5213

MR STANTON: I think the answer would be no – or the answer is no. I do have dates of - - -

PN5214

JUSTICE ROSS: All right, so we're sort of stuck with Ms Pazuelo saying look she requires until 4 pm Monday and that's what she requires, yes.

PN5215

MR STANTON: If it assists, Ms Pazuelo has given her availability in October and November. It may be premature to get to that yet.

PN5216

JUSTICE ROSS: It is premature. Look, everyone keeps raising it and I understand why but we will get to it, but that's not the purpose of today.

PN5217

MR STANTON: May I please?

PN5218

JUSTICE ROSS: Yes.

PN5219

MS FORSYTH: Your Honour, the SDA - - -

PN5220

JUSTICE ROSS: No, we don't need to hear from you for the moment, just wait. We think an extension to 4 pm on Monday the 21st and then having the witness commence her evidence on the afternoon of the 23rd would unfairly prejudice the union parties, so we don't propose to adopt that course. That means that we would not be dealing with Ms Pazuelo's evidence now on the Wednesday/Thursday. We'll come back in a moment to the extension application, but that means really it'll be Professor Lewis or nothing on the Thursday, okay? Does everyone understand that?

PN5221

MR TINDLEY: Your Honour?

PN5222

JUSTICE ROSS: Yes?

PN5223

MR TINDLEY: Tindley for the NRA and ARA and MGA.

PN5224

JUSTICE ROSS: Yes.

PN5225

MR TINDLEY: There is some prospect that we could – I know initially we'd instructed that Dr Sands was unavailable on the Thursday the 24th but we can undertake to have some discussions with Dr Sands about moving – I understand his availability has freed up somewhat.

PN5226

JUSTICE ROSS: No, let's just leave him where he is. Let's keep the Thursday clear and then have the Friday, okay? What would be gained, particular as the unions indicated that cross-examining Professor Rose may shorten the cross-examination of Dr Sands? So the sequencing works and it may mean he's detained for longer. I think there's a risk of repetition if you put him on the Thursday, okay?

PN5227

MR TINDLEY: Understood, your Honour.

PN5228

JUSTICE ROSS: So nothing else in relation to that. So we'll wait to hear from you, Mr Izzo. The other issue that arises is we still have before us the application for the extension. Why shouldn't that be granted? United Voice or SDA?

PN5229

MS FORSYTH: Commissioner, in light of the potential for Ms Pazuelo to be heard in the second tranche of the proceedings, the prejudice which might otherwise have attached to the granting of the extension in light of Ms Pazuelo's attendance originally on 23 September falls away. That being said, the employer parties have been on notice since 15 June of the outlines of employer evidence - of the outlines of the union expert evidence I should say, and the timetable was subsequently amended on 7 August to allow the employer parties an additional week in reply evidence. So our position remains that we resist and would oppose the extension, noting obviously that our argument with respect to prejudice is somewhat lessened in light of your Honour's most recent comments.

PN5230

JUSTICE ROSS: Okay.

PN5231

Mr Dowling?

PN5232

MR DOWLING: We agree with that submission, your Honour. The significant part of the prejudice has reduced. There's one alternative that might be of interest to the Commission and that is we understand that there are a number of reply reports to be provided by Ms Pazuelo from the correspondence as we understand it. We wonder whether there couldn't be a staging of some of that reply material so as to give the parties more time with those reports rather than - - -

PN5233

JUSTICE ROSS: Well, you're going to have more time anyway. You're going to have more time than you would have had before.

PN5234

MR DOWLING: Yes.

PN5235

JUSTICE ROSS: Because on the current directions it would have been filed this Wednesday, Ms Pazuelo's evidence would have been next Thursday afternoon. You're going to get much longer than that.

PN5236

MR DOWLING: Yes.

PN5237

JUSTICE ROSS: If it's done on the Monday.

PN5238

MR DOWLING: Yes, we accept that.

PN5239

JUSTICE ROSS: So in fact your position is enhanced, so I don't see there's any value in staging and I'm struggling to see the prejudice.

PN5240

MR DOWLING: Yes we accept that, your Honour.

PN5241

JUSTICE ROSS: We'll grant the extension.

PN5242

MR STANTON: May it please.

PN5243

JUSTICE ROSS: All right. Can I encourage the parties to have some discussions amongst themselves? One of the reasons why I'm not anxious to get into the scheduling of employer experts is I'm anxious for you to talk about that amongst yourselves and to reach some agreement about how long it's going to take. Now can you just refresh my memory, the union expert is due when?

PN5244

MR DOWLING: It was filed on 4 September, your Honour.

PN5245

JUSTICE ROSS: And I think is there any - no, there are no further steps in relation to the expert evidence.

PN5246

Mr Izzo, I think the last time you were before us we asked you - and I think at that stage it might not have been filed, that is the union expert evidence, but when will you be in a position to estimate how long cross-examination is likely to be?

PN5247

MR IZZO: Your Honour, we commenced the process of having discussions yesterday about cross-examination, because I think there are two issues that we need to address. One is how long the parties think they'll cross-examine and the second is which employer parties might wish to take the lead in cross-examining certain experts to minimise duplication. We have commenced that dialogue. Unfortunately it is still the case that many of the employer parties aren't yet across all the materials that have been filed. Without committing any of the employer parties I think at some time during the course of next week hopefully we'll be in a position to have an idea of who's going to be cross-examining and how long it might take.

PN5248

JUSTICE ROSS: It's likely that I'll list the - well, I can give the indication now that at the conclusion of the expert evidence next Friday the Bench will adjourn, I'll come back and deal with the mention of the scheduling of the expert evidence,

okay? Now it would assist if the union parties and the employers parties to exchange information about the availability of their respective experts and have a discussion, and now that - or you may have some time on the Thursday depending on Professor - you'll certainly have the Wednesday afternoon, and I'd encourage you to have some discussions amongst yourselves.

PN5249

By that stage I'm assuming the employer parties will know which of the union experts they wish to cross-examine and how long that might take. And I certainly encourage the idea that one organisation take the lead in respect of each witness rather than have three or four of you having a go, okay?

PN5250

MR STANTON: Your Honour, just to confirm that's the conclusion of the proceedings on the 25th?

PN5251

JUSTICE ROSS: That's right.

PN5252

MR STANTON: May it please.

PN5253

MR IZZO: Your Honour, you asked whether there was any further steps outstanding. It's probably appropriate just to notify the Bench that there's been correspondence sent to the union parties last week in relation to producing documents regarding the expert evidence that has been filed. That correspondence hasn't yet been responded to, and so it's envisaged that one of the employer parties will be filing orders for the production of documents with the Commission on behalf of all the employer parties with respect to those experts. We anticipate those orders being filed in the next day or so.

PN5254

JUSTICE ROSS: We can deal with the scheduling of all of that at the mention on the 25th as well. Okay?

PN5255

MS FORSYTH: Yes. Thank you, your Honour. For the SDA's part my instructor does advise me that she has engaged in some correspondence with the employer parties with respect to the estimate for cross-examination of the employer experts and it is of some assistance - sorry, the union experts, and it is of some assistance that you have articulated next Friday as the deadline for finalising that timetable.

PN5256

JUSTICE ROSS: Look, can I also encourage counsel involved and perhaps one representative from the employer side to just have a telephone conference, because that's going to be a lot quicker than burying each other in correspondence, and you might be able to sort through some of these issues that way. Okay?

PN5257

MS FORSYTH: Thank you, your Honour.

PN5258

JUSTICE ROSS: We'll issue the directions in relation to the notices to produce on the retail lay evidence later on this afternoon and post that on the website, but it will be along the lines that I identified. Is there anything further that we need to deal with now before we turn to the witness evidence? Any party? No? All right, thanks very much. Let's move to is it Mr Bullock first?

PN5259

MR STANTON: Mr Bullock, your Honour.

PN5260

JUSTICE ROSS: And he's in South Australia?

PN5261

MR STANTON: Yes.

PN5262

JUSTICE ROSS: We'll stand down for a couple of minutes to let everyone reshuffle and to get the link up.

SHORT ADJOURNMENT

[10.05 AM]

RESUMED

[10.10 AM]

PN5263

JUSTICE ROSS: Yes, Mr Stanton.

PN5264

MR STANTON: I call Andrew Bullock, who will take the affirmation.

PN5265

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

PN5266

MR BULLOCK: Yes. It's Andrew David Bullock, (address supplied).

<ANDREW DAVID BULLOCK, AFFIRMED

[10.10 AM]

EXAMINATION-IN-CHIEF BY MR STANTON

[10.11 AM]

PN5267

MR STANTON: Sir, you are the chief executive officer of 1834 Hotels?---Yes, that's correct.

PN5268

For the purpose of these proceedings you have done two statements. Is that the case?---Yes, that's correct.

*** ANDREW DAVID BULLOCK

XN MR STANTON

PN5269

One statement is made 26 June 2015?---Correct.

PN5270

And a further statement made 26 August 2015?---Also correct.

PN5271

You have those statements with you this morning?---Yes, I do.

PN5272

They're before you there in the witness box?---That's correct, yes.

PN5273

Your Honour, I would seek that both those statements be received into the evidence as Mr Bullock's evidence-in-chief. I should indicate that I believe we've resolved certain objections to that statement. If I might hand up five copies that are marked Statement. My friend will confirm the position - that is to the statement of 26 June, I should say.

PN5274

JUSTICE ROSS: That resolves the objections? So no objection to the tender? We will mark the first statement with the redactions, that's the statement of 26 June, as exhibit AHA30.

EXHIBIT #AHA30 WITNESS STATEMENT OF ANDREW BULLOCK DATED 26/06/2015

PN5275

JUSTICE ROSS: And the further statement of 26 August, exhibit AHA31.

EXHIBIT #AHA31 FURTHER WITNESS STATEMENT OF ANDREW BULLOCK DATED 26/08/2015

PN5276

MR STANTON: There's just one further matter. It was remiss of me.

PN5277

Sir, do you say - Mr Bullock, do you say that in relation to both statements, they are true and correct to the best of your knowledge and belief?---Yes, I do.

CROSS-EXAMINATION BY MS BURKE

[10.13 AM]

PN5278

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

ANDREW DAVID BULLOCK

XXN MS BURKE

PN5279

Can I just confirm what 1834 Hotels does. You manage a number of hotels. That's right?---Yes, that's correct. we have a management company that, on behalf of owners - well, we enter into management agreements of differing terms, between three and 10 years for the majority of our management agreements,

whereby we undertake the day to day operations of management on behalf of the owners of the various hospitality and hotel establishments, and report to them on a monthly or bi-monthly basis.

PN5280

Okay. So you don't actually own the hotels, but you sort of provide management services to them?---Yes, that's correct. I personally have some ownership into a variety of the hotels as well, but the 1834 Hotels or 1834 Hospitality is a management company.

PN5281

As part of your role doing the management, you're responsible for human resources matters?---Yes, that's correct.

PN5282

That includes - how far does that extend? That includes hiring and firing?---Yes, it does, with the exception of the general manager of each hotel, where we have recommendations to the various owners. We still make the appointment, but it's in conjunction consultation with the owners. All other staff are at the discretion of 1834 Hospitality.

PN5283

Are the general managers - just so I'm clear, are they your employees, or are they the employees of the individual hotels?---No, they're employed by the individual hotels.

PN5284

And are you also responsible for things like rostering?---We're involved in rostering within our group, and normally in conjunction with the general managers at each hotel.

PN5285

And matters like opening and closing hours and when or what services to offer?---Yes, we're very involved in that.

PN5286

As at 30 June I think your evidence is that 1834 Hotels have a - sorry, can I just confirm whether - because I can't see into the courtroom, can I just confirm whether anyone else is in the courtroom there? There are a number of witnesses to go after this witness from South Australia. That's question for you, Mr Bullock. Sorry. Is there anyone else in there with you?---Sorry. There's Trevor Evans from the AHA and Owen Webb, also from the AHA.

PN5287

And that's it?---Yes. Nobody else, except for - sorry, what was - - -

PN5288

Can I ask that - - -?---Except for the court - - -

*** ANDREW DAVID BULLOCK

XXN MS BURKE

PN5289

Yes, certainly. Can I ask that I - if you just slightly put on another hat during the course of your evidence and if anyone else comes into the courtroom, just sing out?---I can be a very good adjudicator on that for you.

PN5290

Thank you. Sorry, before I was asking you just to confirm that as at 30 June 1834 Hotels had about 500 staff, that's right, isn't it?---Yes, correct.

PN5291

None of those employees are covered by an enterprise agreement?---No, they're not.

PN5292

You understand, don't you, that under the Fair Work Act you can negotiate an enterprise agreement with your employees?---Yes, absolutely.

PN5293

That process enables you to tailor the terms and conditions to suit your business needs, doesn't it?---Depending on the agreement, indeed.

PN5294

Right. It could also - that tailoring could extend to giving your flexibility, in terms of how you pay your employees?---Yes.

PN5295

That's a process you've chosen not to engage in?---Yes.

PN5296

Of your 500 or so employees, as at 30 June, I think your evidence is that 363 of those are casuals paid on the award?---Correct.

PN5297

That's a bit over 70 per cent of your workforce there that are casuals?---Yes, that would be right.

PN5298

And you've got 103 full timers on a salary?---Yes, correct.

PN5299

Are they managerial or non-managerial staff?---It's a mixture.

PN5300

Can you say about what the proportions of the mix are?---I couldn't tell you categorically, without getting the - the raw data on that, to be fair, but I would suggest that probably of the 103 35 per cent of those are probably managerial employees.

PN5301

Thanks. So has the proportion of casuals to permanent workers, so about 70 per cent, has that remained pretty constant over the last year or so?---Yes. Yes.

*** ANDREW DAVID BULLOCK

XXN MS BURKE

PN5302

Your casuals work Monday to Friday?---The casuals work over a seven day roster.

PN5303

Right, so they work Monday to Friday and they work on the weekend as well?---Correct.

PN5304

Is it fair to say that the total number of hours worked by your casuals on Monday to Friday would be higher than the total number of hours that the casuals work Saturday and Sunday?---Depending on the venue, that would be case specific but, yes, in general terms we would suggest that five days of trade is going to have more hours than two days of trade.

PN5305

Yes, I appreciate that it would depend on the venue, but across - across the group there would be more casual hours worked Monday to Friday than there would be Saturday to Sunday?---To categorically answer that I'd have to get the raw data, but I would suggest, on the basis of five days having more trade than two days, yes, that would be the case.

PN5306

You've given some evidence that you use salaried staff members instead of casuals on Sundays and public holidays, in an effort to save costs. Can I just confirm whether those salaried staff members that you use on those days, are they the managerial or the non-managerial staff?---In - it'd be a mixture, but in the main the managerial staff that would absorb additional shifts on those days that may not have been previously.

PN5307

You understand, don't you, that managerial staff paid a salary under the award can't - have to be paid at least, in the last financial year anyway, a salary of about \$53,000 a year?---Correct.

PN5308

You're aware also that for the non-managerial staff under the award any annual salary that they are paid can't be less than what that employee would have earned if they'd been entitled to all of their penalty rates under the award?---Yes, I understand that.

*** ANDREW DAVID BULLOCK

XXN MS BURKE

PN5309

So given that's the case, certainly in respect of the non-managerial staff, you're not actually saving money by rostering those people to work on weekends instead of casuals, are you?---Well, that's not entirely true. If those people that are applied at a 25 per cent above the current award rate are currently working Monday to Friday, they would still be comfortably above the award and so if we change their roster around to include perhaps a Saturday or a Sunday shift they'd still be

comfortably inside the award rate, as a total picture, however they would still be - we would be reducing our overall wage cost.

PN5310

The 1834 Group has acquired a number of venues under management recently, that's right, isn't it?---Yes, it's been quite a rapid growth curve over the last few months.

PN5311

I think in your statement, which was dated just before the end of the last financial year, you say that you're going to have an additional seven venues post 1 July, under management, is that right?---Yes, and part of those actually ended up coming on between the 26th of the 6th and the 30th of the 6th, as you'll see in the two statements.

PN5312

Yes. When you take on a new hotel to manage, do you make an assessment about whether it's going to be financially profitable for the group?---Sorry, how do you mean financially profitable for the group? By way of the management agreement are you referring?

PN5313

When you're considering whether to add a hotel to your portfolio to manage, you consider - before you actually do it, when you're in the process of thinking about whether or not to do it, you make an assessment of whether or not you're going to make any money out of it, don't you?---Well, that's certainly a factor in any consideration of growth.

PN5314

When you are making that assessment you look at the cost involved in providing your services and you assess for likely return, that's right, isn't it?---Yes.

PN5315

You do that by reference to the best data you've got available at that time?---Yes, that's right.

PN5316

Have you done a similar sort of exercise like that when assessing what savings you might get if penalty rates are reduced, as proposed by the AHA?---No. To be fair, I've not actually analysed the difference from a management company perspective. We certainly have looked at that from a property specific perspective, but never at a management company level.

PN5317

By management company level you're referring to the wages cost, or does that - - -?---Sorry, 1834 Hospitality, as the management company, obviously has a variety of different ways in which we draw a fee from each of our hotels. I've never looked at what the return would be or the changes would be, based on the proposed changes by the AHA for that management company, per se.

*** ANDREW DAVID BULLOCK

XXN MS BURKE

PN5318

Mr Bullock, do you - are the employees wages actually paid by your company?---No, they're paid - well, some of those are, and you'll see in the second statement, the nine employees, as at 30 June, for 1834 Hotels are paid by our company. The balance of those companies are paid by the individual companies, but managed by us.

PN5319

So you don't actually - it's not a matter for your group to assess the viability of wage costs and pay that, that's a matter for the individual hotels?---It's a matter for our group because we manage that process for those individual hotels.

PN5320

Okay. You know that, don't you, that there's been a rate - a change in the hourly wage paid to casuals in South Australia, from 1 January 2015?---Yes, I am aware.

PN5321

So before 1 January casuals were paid a loading of 50 per cent every day of the week, that's right, isn't it?---That's correct, seven days a week.

PN5322

And for public holidays it was also 150 per cent?---Yes, that's correct.

PN5323

The effect of that change for public holidays, in fact you're now obliged to pay casuals 275 per cent?---Correct.

PN5324

On those 13 public holidays a year?---Correct.

PN5325

On Sundays you now pay them an additional 25 per cent. So you've gone from 150 to 175, in terms of your hourly wage bill there?---That's correct.

PN5326

On Saturdays there's no change between this year and last year, it's 150?---Correct.

PN5327

But on Mondays to Fridays you used to pay your casuals 150 and now you pay them 125, that's right, isn't it?---Plus penalties for before and after 7.

PN5328

Right. Those penalties are based on the minimum wage, not their inclusive of casual loading wage?---Sorry, say that again? Those penalties for before and after 7 are based on - it's a dollar - it's an actual dollar figure, not a percentage figure so, yes, I assume that's how that works.

*** ANDREW DAVID BULLOCK

XXN MS BURKE

PN5329

So isn't it the case that your wages bill for weekly casual hours is less this year than it was last year?---Well, the year's not over yet.

PN5330

No, but to date?---To date our figures are that - and whilst it's very difficult to determine the total figure, we would - we would anticipate that the total wage bill will reduce, on the basis of the changed scheme of awards.

PN5331

Thank you, Mr Bullock. No more questions?---Thanks.

PN5332

JUSTICE ROSS: Mr Bullock, at paragraph 19 of your statement - this is your first statement?---Yes.

PN5333

That last sentence, "This would create more work and income opportunities for staff." Are you able to quantify what that might look like?---I guess that's difficult to quantify because obviously that would be based on consumer demand at the time, but what we know is if there was more flexibility in our base costings we would have more flexibility with the offerings that we could produce for market and anecdotally I would suggest that if that was the case, we would see more trade and in turn, staffing.

PN5334

Is that the same in relation to the observation at paragraph 20 where you say, "We would also be able to offer casual staff more shifts." That's also predicated on the additional business offerings. Is that right?---Yes, that's - that's right, yes.

PN5335

Any re-examination or anything arising?

PN5336

MR STANTON: Nothing further.

PN5337

COMMISSIONER HAMPTON: Mr Bullock, the company provides a management service to a range of venues including a couple of what look like licensed clubs?---Yes, that's correct. Can I understand whether you apply the Hospitality Industry (General) Award or the Clubs Award to those clubs?---The Hospitality Industry (General) Award for those facilities.

PN5338

On the basis that you're the employer and you're in the hotel and related industries?---Yes, and the employees when - well, in particular, one of those was an asset that was bought by a club that was previously a hotel and the employees continued on the HIGA at that time.

*** ANDREW DAVID BULLOCK

XXN MS BURKE

PN5339

I was going to ask you about the comparison between the two awards but I won't do that now. The only other question I have got is you have indicated that you have not pursued an enterprise agreement in relation to any of the venues?---Yes, that's correct.

PN5340

Can you explain why?---We've never - we've never considered that the specific benefits would outweigh the other costs associated with the enterprise bargaining agreement. Obviously there are some benefits to that for business flexibility but, for us, we didn't perceive it as having sufficient basis for the change.

PN5341

Thank you.

RE-EXAMINATION BY MR STANTON

[10.29 AM]

PN5342

Sir, have you been asked by any party to make an enterprise agreement? I should say has the group been asked?---Any party as in?

PN5343

Any employee?---No, we've never been requested by an employee or otherwise, if that's what you mean.

PN5344

Thank you.

PN5345

JUSTICE ROSS: Nothing further for the witness. Thank you very much for your evidence and your time this morning. You are excused?---Thank you.

<THE WITNESS WITHDREW

[10.30 AM]

PN5346

JUSTICE ROSS: Is Mr McCallum the next witness?

PN5347

MR STANTON: Yes, Your Honour, who I also understand is attending Adelaide this morning.

<KEITH ROBERT MCCALLUM, SWORN

[10.31 AM]

EXAMINATION-IN-CHIEF BY MR STANTON

[10.31 AM]

PN5348

Sir, you are the owner and manager of the Lonsdale Hotel at Sherriffs Road in Lonsdale. Is that the case?---That's right.

*** ANDREW DAVID BULLOCK

RXN MR STANTON

*** KEITH ROBERT MCCALLUM

XN MR STANTON

PN5349

As I understand it, you have had that position for over 28 years?---Yes. Yes, I have. I have - for the last six years I have - my wife and I have owned the property - owned the business, but prior to that we have been in partnerships for - up until that period for 28 years, yes.

PN5350

Thank you. For the purposes of these proceedings you have done a statement, have you not, of 28 June and a further statement of 25 August of this year?---Yes.

PN5351

Do you have copies of those statements with you this morning at the Commission?---Yes, I do.

PN5352

Just to confirm, sir, there is no one else in the room with you at the moment other than I think Mr Evans from the AHA?---Yes, Mr Evans and I think there's another gentleman from the AHA, Owen Webb.

PN5353

If that position changes, would you indicate if anyone else comes into the room during the course of your evidence this morning?---Yes, sure.

PN5354

In relation to each of those statements, do you say that they are both true and correct to the best of your knowledge and belief?---Looking at the number of staff last night, it's changed by one full time employee who has resigned, so other than that the - everything is correct.

PN5355

I see. So in relation to the statement of 25 August I think you had indicate there seven full time employees?---Yes, I - with the - this is the amendment, yes. That's seven employees, so now it's changed to six.

PN5356

And that's as a result, did you say - - -?---But still - - -

PN5357

- - - of a resignation last night?---Not last night actually. Earlier in - last week it was. It was late last week. Last week.

PN5358

I would seek that both statements be entered into the proceedings as Mr McCallum's evidence-in-chief. There were objections raised in relation to the first of those statements, Your Honour. That is the statement of 28 June, but I can hand up - if I could hand up five copies of the marked statement. If it assists, paragraph 6 is the relevant paragraph.

PN5359

JUSTICE ROSS: That, I think, deals with the only objection that was taken. Is that right?

*** KEITH ROBERT MCCALLUM

XN MR STANTON

PN5360

MR DOWLING: Yes, Your Honour.

**EXHIBIT #AHA32 REDACTED STATEMENT OF KEITH
McCALLUM DATED 28/06/2015**

**EXHIBIT #AHA33 SUPPLEMENTARY STATEMENT OF KEITH
McCALLUM DATED 26/08/2015**

PN5361

MR STANTON: May it please.

PN5362

JUSTICE ROSS: We have noted what the witness has said about the reduction in the number of full time employees, but there is no need to amend the statement AHA33 because I think he is just there setting out the position as at 30 June and what he has given evidence about this morning as the more recent developments.

PN5363

MR STANTON: Yes, Your Honour. May it please.

PN5364

JUSTICE ROSS: Mr Dowling?

CROSS-EXAMINATION BY MR DOWLING

[10.36 AM]

PN5365

Mr McCallum, can you see and hear me clearly?---I can - yes, I can see you. I'm not sure about clearly, but I can see you, yes.

PN5366

Can you hear me clearly?---I certainly can, yes.

PN5367

Thank you. Now, you own and manage the Lonsdale Hotel. That's correct?---Yes.

PN5368

Can I just clarify in respect of your employees. I think your evidence is as at today there are, subtracting the full-timer, there are 41 employees?---I think that would be - - -

PN5369

I think to assist, if you look - - -?---That would be correct, yes.

PN5370

If you look at the second statement - - -?---Yes, yes, that's right.

PN5371

Thirty-two plus six plus three?---Yes, correct.

*** KEITH ROBERT MCCALLUM

XXN MR DOWLING

PN5372

And the - - -?---So 41. That's right, yes.

PN5373

The 32 you have identified are casuals. That's correct?---Yes.

PN5374

So is it - the 32 of the 41, just over 75 per cent - 76 per cent, in fact, that's the proportion of your casuals at the moment?---Yes.

PN5375

All right. Is that - has that proportion of 75 per cent casuals or thereabouts, has that proportion been relatively constant over the last few years?---Reasonably so, yes.

PN5376

All right?---Yes.

PN5377

Okay. Now, those casuals, they work over a seven day roster, is that right?---Yes.

PN5378

So of course that means they work Monday to Friday, they work on the weekend as well, yes?---Yes.

PN5379

All right. Now, what days are you open?---Every day and varying hours. One area opens at 9 o'clock in the morning and another area closes at 5 o'clock in the morning, so we - we trade for long periods of time.

PN5380

Now, just returning to those casuals for a moment, is it - is it a fair thing to say that those casuals - in terms of the total number of hours those casuals work, that they would work - there would be more casual hours over Monday to Friday than there would be casual hours Saturday Sunday?---Yes.

PN5381

Okay. Now, I think one of the things you say is that there's not as many casual hours around at the moment. Are you presently advertising for a casual position?---Yes.

PN5382

That's a gaming, bottle shop and bistro attendant?---Yes.

PN5383

That person, when they're taken on, will be a casual employee?---Yes.

PN5384

They'll work across the seven days?---Subject to their availability, yes.

*** KEITH ROBERT MCCALLUM

XXN MR DOWLING

PN5385

All right. Now, no doubt you're familiar that there was a change in rates payable to casuals, effective of 1 January of this year?---Yes.

PN5386

All right. Before 1 January of this year you paid your casuals a loading of 50 per cent for all of the seven days of the week, is that correct?---Correct.

PN5387

That was the same for public holidays, you also paid them the 50 per cent loading, so 150 per cent on public holidays, that's correct?---Yes.

PN5388

The changes, in respect of those casuals, mean that dealing with public holidays first you now pay those casuals 275 per cent, as opposed to the 150 per cent?---Yes, correct.

PN5389

All right. In terms of Sundays you now pay them 175 instead of 150?---Yes.

PN5390

Saturdays is the same, you paid them 150 before 1 January and you still pay them 150?---Yes.

PN5391

All right. In terms of Monday to Friday, casual hours, you used to pay them 150 and you now pay them 125?---Correct.

PN5392

All right?---As per the award, yes.

PN5393

So is it also fair to say that if those casuals are working more hours Monday to Friday than they are on Saturday to Sunday that your wage bill, in fact, will be lower under this new arrangement, as of 1 January of 2015?---It would be, however there are - casuals are working less, particularly on a Sunday, because of the increase in the wage, in the rate.

PN5394

You say you might change some movement amongst them, but you accept, at least in terms of - if you work them the same number of casual hours past 1 January, across your entire business, that you worked them prior to 1 January 2015, your wages bill will be lower?---Yes.

PN5395

All right. Now, I think you also say that your wife and son and daughter work on public holidays?---We do.

PN5396

All right. You also?---Yes.

*** KEITH ROBERT MCCALLUM

XXN MR DOWLING

PN5397

I take it from that that it's your preference that they not work on those days?---No. I think the point that was being made was that as a family business we have to reduce our costs wherever we can and - and - and my wife and I work on the public holidays and we work predominantly in the office and setting up areas of the hotel prior to staff coming on duty. But the point is, is that we are being forced to do that because we - we can't afford to pay people \$60 an hour to work on a public holiday so we chose to do that. We're a family business so, you know, anybody who's worked in a family business knows, you know, that the family work and that - that's what we do. But there are times when, yes, we - it would be nice to have a public holiday off. It's just - you know, the wages, particularly on a public holiday are onerous.

PN5398

Well, you said \$60. I'm suggesting to you that no one, under the new system, in your establishment, will be paid \$60 an hour, is that - is that an overstatement, on a public holiday?---I - I - I think it is actually \$60, but I'd have to check that, but I'm pretty sure it's very, very close to \$60 and some would be - some would be, depending on the level, would - certainly in - in administration, would be that figure, but I'd have to double check that with the award figures, I don't have those in front of me.

PN5399

Well, I'm suggesting to you that in terms of your casual employees, the 32 casual employees, none of them would be earning \$60?---Well, I'd suggest that two of my employees who work in the office would - would be. Certainly one of them, in particular, that I know of, that - that would be, because they - they're on - I suppose 2.75 times just over \$21, so what's that, it's - it's close to \$60, isn't it? It's not quite \$60.

PN5400

So they're on \$21 an hour, is that right?---I - I think one of our people, who's been with us for a long time, is - is on that figure, yes.

PN5401

All right. So in terms of the people that you think get \$60 an hour it's one person who's on \$21 an hour, is that right?---Well, it - it - it varies. I mean the base rate will go from \$18 up to - up to \$20, depending on the level. So if you have a level 2, it's around \$18 is the base rate and then, you know, it just goes up accordingly as to what level they're on - they are. If they're level 3 or if they're level 4 or 5 or 6, and we have chefs who are not - they're full timers but - but the - but we do have people who are, you know, on - on those higher levels. You know, casuals - casuals who are paid at level 5.

PN5402

Well, perhaps you can break it down for me a little bit then. You've got 32 casuals?---Yes.

*** KEITH ROBERT MCCALLUM

XXN MR DOWLING

PN5403

Can you tell me how many are on the introductory level?---There has been nobody on the introductory level.

PN5404

Okay, level 1?---Nobody.

PN5405

Sorry, nobody did you say?---No.

PN5406

You don't employ anyone on level 1?---No.

PN5407

Level 2?---A lot.

PN5408

What do you mean by "a lot"? Do you mean the majority of them?---Quite a few. The - most of the - the casual employees that would work predominantly in the bistro and in the bottle shop would be at level 2. People who would work in the front bar for instance operating a TAB would be level 3 and - - -

PN5409

Let's just deal with one at a time. Hang on. Hang on a minute please, Mr McCallum?---Sorry.

PN5410

Let's deal with it one at a time?---Sorry.

PN5411

I think you said "A lot" in respect of level 2. Is it fair to say the majority?---Probably, yes.

PN5412

All right?---It's difficult for me to - without having a look at the list. But yes, I mean we're - there's a - there are a number of employees that would be on - quite a few that would be on level 2. So, yes, I'd be okay with that.

PN5413

All right, and then if we combine level 2 and level 3, have we got nearly everybody apart from what might be just one or two left over?---No, there are people who are level 4, gaming managers, and there are people, also casuals, who are level 5 who are responsible persons. So that - with those there would be - we have at present in casuals we would have three that would be RPs - four actually, that would be RPs. The rest of them would be - there are some - a number of gaming managers who - that are casual as well. So it's across the board, but yes you're right, the majority would be level 2 and 3.

*** KEITH ROBERT MCCALLUM

XXN MR DOWLING

PN5414

And of course you accept no one at level 2 or level 2 is going to be getting \$60 an hour. Not even close I suggest to you?---Well it's 18, the base rate is \$18 an hour

and it's 2.75 times that so, you know, you're climbing up there. It's \$50-odd isn't it?

PN5415

Just to clarify in terms of the public holidays I think your evidence is that at times - tell me if I misunderstood you but at times it would be good if your wife and son and daughter weren't working on those public holidays, and I take it you mean that's because it would give them time to rest, spend time with friends, time with family? That's the sort of thing you'd like them to do on those days?---Well, you know, it would only be if people have plans. I mean public holidays these days are part and parcel of the - of everyday life. I mean we're - everything's changed from what it used to be. I mean, Saturdays and Sundays are now part of the working week and, you know, public holidays, we would like to employ more of our casuals on public holidays because that's when they're available. That's when they want to work and because it's - - -

PN5416

Let's just deal with one thing at a time, please, and listen carefully to my question?---Yes.

PN5417

In terms of any additional hours that might arise on a public holiday is it your evidence that they would go to your existing casual workforce?---The - could you repeat that once more please?

PN5418

If you were to provide any additional hours over and above what you do now on a public holiday you'd give those to your existing casual workforce?---No, on a public holiday, on public holidays, we would employ the vast majority of our full-time staff. If - but if there were any gaps in relation to the hours that needed to be worked, then they would be - then that would be filled by casuals. Yes.

PN5419

And just so you're clear, I'm talking also if there were to be any change consistent with what the AHA is proposing and you might make some change in respect of how you work on a public holiday, the people you're giving any changed hours to on that public holiday are your existing casual workforce?---Correct.

PN5420

All right. Did you ask any of your staff whether they wanted to give evidence in this proceeding?---No.

PN5421

Thank you. Nothing further, your Honour.

PN5422

JUSTICE ROSS: Any re-examination?

RE-EXAMINATION BY MR STANTON

[10.51 AM]

*** KEITH ROBERT MCCALLUM

RXN MR STANTON

PN5423

MR STANTON: Yes, your Honour.

PN5424

Sir, you were asked by my friend a series of questions about the hourly rates and you will recall your evidence was that at least one rate came close to \$60 an hour?---Yes.

PN5425

What items do you have in mind when you speak of an hourly rate? What are the considerations you have in mind when you make the assessment of an hourly rate?---Well, how much the hourly rate is. So I base it upon the award. So that the base rate of pay and then it's whatever the award is - how it's applied.

PN5426

Yes?---Is that what you mean? Yes.

PN5427

Well - - -

PN5428

JUSTICE ROSS: No, but just answer the question.

PN5429

MR STANTON: All right.

PN5430

THE WITNESS: Yes, okay.

PN5431

MR STANTON: All right, nothing further.

PN5432

JUSTICE ROSS: Nothing further for this witness?

PN5433

Thank you very much for your time and for your evidence this morning. You're excused?---Okay, thank you. Thank you.

<THE WITNESS WITHDREW

[10.52 AM]

PN5434

JUSTICE ROSS: The next witness?

PN5435

MR STANTON: Yes, your Honour.

PN5436

JUSTICE ROSS: We'll just check if he's there, I suppose.

*** KEITH ROBERT MCCALLUM

RXN MR STANTON

PN5437

MR STANTON: Yes, I call Samuel McInnes. I think he's also a - is he in South Australia?

PN5438

MS WELLARD: Yes.

PN5439

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

PN5440

MR McINNES: Samuel Charles McInnes (address supplied).

<SAMUEL CHARLES MCINNES, AFFIRMED [10.53 AM]

EXAMINATION-IN-CHIEF BY MR STANTON [10.53 AM]

PN5441

MR STANTON: Now sir, you are the general manager of the Hurley Group, is that the case?---The Hurley Hotel Group, that's correct.

PN5442

I beg your pardon, the Hurley Hotel Group, yes, and you've held that position since 2006?---That's correct.

PN5443

Yes, and for how long have you been in the hospitality industry?---I did a accountancy degree at university and worked in hospitality accounting for about five years and started in - physically working in the hotel industry in 1995, so 20 years.

PN5444

And for the purposes of these proceedings you have done two statements, one of which is a statement of 25 June 2015 and another a statement of 25 August 2015. Is that the case?---That's correct.

PN5445

Do you have copies with you today of both of those statements?---I do.

PN5446

Yes, and do you say that in relation to both they are true and correct to the best of your knowledge and belief?---They are true and correct.

PN5447

Yes, I'd seek that the statements be entered into the proceedings as the evidence. The matter of the objections it will be confirmed has been resolved. I hand up five copies of the substantive statement, that is the first statement. If it assists, the statement of 27 is marked.

*** SAMUEL CHARLES MCINNES

XN MR STANTON

PN5448

JUSTICE ROSS: So we have this statement and the two supplementary statements, is that right?

PN5449

MR STANTON: Was there two supplementary?

PN5450

JUSTICE ROSS: Yes. One was in relation - I thought there was.

PN5451

SPEAKER: Yes, there are.

PN5452

JUSTICE ROSS: One was to the Hackney Hotel and the other was to the Pretoria Hotel.

PN5453

MR STANTON: Yes.

PN5454

JUSTICE ROSS: We'll put those - - -

PN5455

MR STANTON: I beg your pardon, your Honour, that was remiss of me. If I could have a moment?

PN5456

JUSTICE ROSS: Sure.

PN5457

MR STANTON: If I could just - sir, there was a further statement, I understand, in relation to the Hackney Hotel, made 25 August 2015?---There was the original affidavit, which covered both hotels, and then there were two separate supplementaries on the same day of reach hotel, the Hackney and the Pretoria.

PN5458

Yes. And that statement in relation to - the additional statement in relation to the Hackney Hotel is also dated 25 August. Is that the case?---Correct.

PN5459

And similarly, do you say that that statement is also true and correct to the best of your knowledge and belief?---I do.

PN5460

Sorry, your Honour, there are two supplementary statements of the witness.

PN5461

JUSTICE ROSS: We will mark the first statement of 25 June as exhibit AHA34.

*** SAMUEL CHARLES MCINNES

XN MR STANTON

**EXHIBIT #AHA34 WITNESS STATEMENT OF SAMUEL
MCINNES DATED 25/06/15**

PN5462

JUSTICE ROSS: The supplementary statement of 25 August in respect of the Hackney Hotel is exhibit AHA35.

**EXHIBIT #AHA35 SUPPLEMENTARY STATEMENT OF SAMUEL
MCINNES IN RESPECT OF HACKNEY HOTEL DATED 25/08/2015**

PN5463

JUSTICE ROSS: And the supplementary statement of 25 August in respect of the Pretoria Hotel is exhibit AHA36.

**EXHIBIT #AHA36 SUPPLEMENTARY STATEMENT OF SAMUEL
MCINNES IN RESPECT OF PRETORIA HOTEL DATED 25/08/2015**

CROSS-EXAMINATION BY MS BURKE

[10.58 AM]

PN5464

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

PN5465

Is that a bit better?---That's good.

PN5466

Thank you. Mr McInnes, can I just start by asking you, you're a member of the Australian Hotels Association, South Australia's IR committee. Does IR stand for industrial relations?---That's correct.

PN5467

What does that role involve?---Essentially it's a monthly meeting of people involved in IR within the AHA membership.

PN5468

Would you describe that role as being about policy, or do you deal with issues that come up with particular employees, or what's the scope of that role?---I would say largely it's an information exercise; like, handing over of or discussing information in relation to changes in IR.

PN5469

More generally?---Yes.

PN5470

Yes, okay. And the Hurley Hotel Group manages 10 hotels?---Yes.

PN5471

I think you say each hotel employs its own staff. Does that mean that - - - ?---That's right.

*** SAMUEL CHARLES MCINNES

XXN MS BURKE

PN5472

- - - that each hotel is legally the employer of the staff, but your role - - -?---Each -
- -

PN5473

Hurley Hotel's role, I should say, manages those employees?---Yes. We have 10 hotels. Each hotel has their own ABN as their own legal entity. There are different ownership structures for each hotel. Essentially we run a central management company which has about 15 employees and assists each hotel with on and off-premise management, gaming management, industrial relations issues, marketing.

PN5474

In terms of the industrial relation issues, what's the scope of that? Is it you who determines, or is it your group who determines who's going to be hired and who might be let go?--- Depends on the level of the employee. At senior level, so hotel managers, head chefs, senior kitchen staff, duty managers, there would certainly be involvement with myself and other senior members of the central Hurley Hotel Group management, who would participate in that process in conjunction with the hotel manager or senior manager at the hotel.

PN5475

Are any of the 15 employees of the Hurley Hotel Group or any of those people based at any of the hotels that you manage?---No. Sorry, I should correct that. Our head office is the Arkaba Hotel, where most of our senior staff are domiciled. The office we occupy is separate to the hotel itself, but it's one building, and to an outsider there wouldn't be much difference between the hotel and Hurley Hotel Group.

PN5476

I see. And as part of your management role does the Hurley Hotel Group look after payroll?---Each hotel - we're a firm believer in decentralisation, so each hotel has its own stock system, own payroll system. We bank more centrally, so a wage file is sent each Monday afternoon to head office, if you like, by email, and the parties are processed through our banking system at head office. For the purpose of end of month reconciliations some of our hotels, because of the nature of the ownerships, are grouped for payroll tax purposes, and that means there has to be some sort of consolidation of payroll at the end of each month.

PN5477

Do you do the accounting for the hotels? Do you do their quarterly BAS and so forth?---Yes, we do. We lodge our own BAS statements, yes.

PN5478

I mean do you lodge them on behalf of the hotels you manage?---Yes.

*** SAMUEL CHARLES MCINNES

XXN MS BURKE

PN5479

Is it your firm that deals with things like rostering?---Each hotel - we run the same payroll system in each hotel. Each payroll system has a rostering system attached

to it, so it's a generic version of the rosters are prepared in each hotel, but the manager of each hotel ultimately is responsible for the preparation, posting and distribution of those rosters.

PN5480

So it's not something your group has any involvement in?---We certainly review them from time to time.

PN5481

Across the Hurley Hotel Group, you've got, I think you said, over 550 employees - these are employees of the individual hotels?---Yes, that's right.

PN5482

And none of those are covered by an enterprise agreement?---Yes.

PN5483

None of those employees?---Yes. We have 10 hotels. Two hotels are under the HIGA general provisions and eight hotels are under a collective agreement which commenced in 2007 in conjunction with United Voice.

PN5484

And that collective agreement is still on foot?---That's right.

PN5485

What's the name of it?---I think the generic name is Top Shelf, but each hotel has its own individual collective agreement that's lodged with the Fair Work Commission.

PN5486

Are the two hotels that aren't covered by the collective agreement, are they the Pretoria Hotel and the Hackney Hotel?---That's right.

PN5487

That's why you've picked those two to give evidence about in your statement?---That's correct.

PN5488

Does that mean, then, that of the 550 employees across the Hurley Hotel Group, most of those covered by a collective agreement?---Yes, the majority would be. Some of the employees in the collective hotels, for want of a name, are covered by HIGA managerial provisions.

PN5489

Right. But leaving the managerial employees to one side, the only employees that are covered by the hospitality award are the 26 at the Pretoria Hotel?---Yes.

PN5490

And the 46 at the Hackney Hotel?---Correct.

*** SAMUEL CHARLES MCINNES

XXN MS BURKE

PN5491

Can you just excuse me for a minute. In your statement you give some evidence about the make-up of the workforce at those two hotels, the Pretoria and the Hackney?---Yes.

PN5492

I think you say you've got 21 out of 26 at the Pretoria a casual employees?---Mm'hm.

PN5493

And that's about 80 per cent of that workforce?---Correct.

PN5494

And at the Hackney you've got 32 out of 46 are casual. That's about 70 per cent of that workforce?---Yes.

PN5495

Have those proportions been pretty consistent over the years?---Both of those hotels, we have only owned for - the Pretoria, we've had for two years, and the Hackney, we've had for three years, but those - - -

PN5496

Okay. So taking the - I will just break it down a bit. Taking the Pretoria first?---Yes.

PN5497

That 80 per cent casual workforce is - to the best of your knowledge, that has been about the same for the two years that you've been managing that hotel?---Around the mark.

PN5498

And what about the Hackney? Seventy per cent there and you've been managing that one for three years?---Yes. It would be about the same, yes. It wouldn't have changed much.

PN5499

Those casuals at both hotels, and please let me know if there's a significant difference between them, those casuals work Monday to Friday in the hotels?---Both hotels are quite different. The Pretoria Hotel is on the Murray River about one hour from Adelaide very much driven by tourists in summer season. Very quiet winter there. A small population in the town. The Hackney Hotel is a - we market it as the Hackney Hotel & Function Centre. Predominantly driven by functions and food, pretty limited base trade in terms of traditional bar trade.

PN5500

The Hackney Hotel, is that the one that won burger of the year this year?---That's right, yes. Not this year but won it two years running.

*** SAMUEL CHARLES MCINNES

XXN MS BURKE

PN5501

So limited but obviously very successful bar trade?---Successful food trade, limited bar trade.

PN5502

I won't go into what I'm thinking about burgers and bars. Nevertheless - I accept that they're quite different hotels, but in terms of when your employees work there - - -?---Yes.

PN5503

- - - is it fair to say that, you know, you've got casuals working Monday to Friday at both hotels?---They do, but certainly, if we just isolate each pub, the Pretoria is a tourist driven, summer driven hotel. The majority of hours are between Friday and Sunday. So the casuals - the majority of casual hours would be between Friday and Sunday. We have limited trade during the day except for school holiday time and so it's base roster during the week.

PN5504

So I think that - is that why you say in your statement that you need to have a lot of employees on short notice with the Pretoria because it's very, very seasonal?---Yes, very seasonal. We need to be - we need to have a flexible workforce. We can go - on a Sunday in winter we can do 30 or 40 meals for lunch. On a busy day in Summer we can do five or 600 meals for the day. So the extremes are quite large. The difference is - - -

PN5505

Is it pretty - sorry, I didn't mean to cut you off?---Go on. No, you're right.

PN5506

Is it pretty common then that at the Pretoria, on weekends in particular, you might roster a number of casuals on but then you've got to pick up the phone and get a whole lot more people in?---That's - that's pretty difficult to do in the modern age, to be honest. Like the - we really have to set a roster and abide by the minimum requirements. Minimum hours requirements.

PN5507

So when you say at paragraph 14 of your statement that

PN5508

It's necessary to have well-trained and resilient staff who are available at short notice.

PN5509

you mean a little bit longer short notice then on the day but it might be a day or so in advance?---That's right, yes.

*** SAMUEL CHARLES MCINNES

XXN MS BURKE

PN5510

Is the reverse true that on a Sunday you might roster a number of people on, but then it's very quiet and so as soon as you've met your award obligations, of course, in terms of minimum hours, you might say to some people, "Okay, well, you can go home"?---That's true.

PN5511

And that's just a feature of working at that hotel as a casual?---Yes, I'd say that's pretty common across all of our businesses.

PN5512

So that deals with the Pretoria?---Yes.

PN5513

What about at the Hackney Hotel?---Yes.

PN5514

Are the majority of your - sorry, I'll start again. Monday to Friday - do casuals work Monday to Friday?---At the Hackney?

PN5515

Yes?---They do, but again the business varies quite a bit depending on the number of functions. So we have several function rooms there which are - we've won best function hotel in South Australia a couple of times. Very much driven at night time celebrations, 40ths, 21sts, 50ths. So our busy times in terms of food and beverage will be traditionally Friday, Saturday nights. We do do a lot of corporate functions which tend to be lunch or breakfast meetings. There's certainly a requirement for staffing at that time, casual staffing, but obviously not a great demand for beverage service during those times. So the majority - you know, the peak times are certainly night times, weekends.

PN5516

Not a lot of demand for beverage service during corporate events?---No. Daytime corporate events. So breakfast and lunch, you know, limited demand.

PN5517

But nevertheless 70 per cent of your workforce at the Hackney and 80 per cent at the Pretoria are casual staff. So while casual staff - while overall there is less demand on Monday to Friday as compared to the weekend, the people filling that demand are mostly casuals, aren't they?---Most of our workforce are casuals, yes.

PN5518

Are you able to give me some indication of what the proportions are over the course of a week? Would you have more casual hours worked on weekdays as opposed to weekends?---No, more on the weekends. More on - Friday night is the start of the weekend, so Friday, Saturday - - -

PN5519

Can you just - - -?---Friday and - - -

PN5520

Sorry, I'll let you finish?---Friday and Saturday and Sunday are the majority of our business. Like more than half of our trade occurs on those times. Father's Day at the Pretoria half of our food sales for the week occurred on the Sunday. So there's - in both hotels there's a skewing towards the weekend for trade and casual hours.

*** SAMUEL CHARLES MCINNES

XXN MS BURKE

PN5521

Is that the same if the weekend starts on Saturday rather than Friday? I accept that socially it starts on a Friday night, but - - -?---Friday night, yes.

PN5522

- - - for the purposes of how much you pay your employees, it starts on Saturday?---It does.

PN5523

So what would you say the proportion is Monday to - - -?---Well, it starts - it starts Friday at midnight.

PN5524

Well, Friday at midnight is Saturday morning?---Correct.

PN5525

So what would you say the proportion is in terms of casual hours worked Monday to Friday to midnight compared to Saturday Sunday? Is it 50 per cent, is it some other proportion?---It's less than 50 per cent. I couldn't give you an answer honestly.

PN5526

Mr McInnes, you know, don't you, that the rate of pay for casuals changed from 1 January this year?---Meaning that the schedule B ended in South Australia and those hotels that didn't have a collective went to the HIGA general provisions?

PN5527

Yes, that's exactly what I mean?---Yes.

PN5528

So you know then that before 1 January you paid your casuals - or your casuals were paid 150 per cent and now it's a sliding scale of 275 on public holidays, 175 on Sundays, 150 on Saturdays and then 125 Mondays to Fridays?---I understand that.

PN5529

So on Monday - at least in terms of your casual wages Monday to Friday, that wages bill is less this year than it was last year. That's right, isn't it?---Correct unless there's a public holiday in the week. In the Monday to Friday.

PN5530

Putting aside the 13 public holidays a year, in an ordinary week that wages bill is less?---Correct.

PN5531

Mr McInnes, you give some evidence about what you would do or what would you like to do if penalty rates were reduced and I think that you mention renovations to the Hackney Hotel?---M'mm.

*** SAMUEL CHARLES MCINNES

XXN MS BURKE

PN5532

So you're talking there about capital works?---Correct.

PN5533

Have you got an estimate for what those capital works might cost?---There's probably some different ideas and concepts that we have talked about for the Hackney.

PN5534

Is it just at the ideas stage at the moment?---No. No, we've actually - we received a - we lodged and received approval for - a development approval through Norwood Council six months ago which was sort of combining what was traditionally the sports bar and the restaurant into a larger space. My estimate on the cost of that renovation would be one and a half to \$2 million. In my experience renovating hotels it doesn't take much to get above \$1M.

PN5535

I think that's probably the case with all renovations, certainly – anyway – and Mr McInnes, are you really suggesting that a cut in penalty rates on Sundays and public holidays for your under 100 casual employees will fund a \$1.5-2 million renovation?---Well, we have a restrictive penalty arrangement, which - - -

PN5536

It's a pretty straightforward question?---At the moment the Hackney Hotel is losing money. If we can save money it helps us assist with the servicing of the debt that we invest in.

PN5537

How much money do you think you would save if penalty rates were reduced? Have you worked that out?---Reduced to what?

PN5538

Reduced as proposed by the Australian Hotels Association?---I think it's difficult to put an exact number on that, because each hotel is different, each hotel has different trading patterns, each hotel has different staffing.

PN5539

Thank you, no further questions.

PN5540

JUSTICE ROSS: Mr McInnes, can I ask you a question about paragraph 29 of your main statement? Can I take you to that?---Mm-hm.

*** SAMUEL CHARLES MCINNES

XXN MS BURKE

PN5541

You say there, if the penalty rates were those proposed by the AHA you could provide more certainty of hours for staff, especially casual staff. You then talk about your present practice of closing early on public holidays. Can you just expand on what it is you would do differently if the AHA's proposal were accepted?---I guess in South Australia where we've been through a different experience we've become from a flat rate experience and now moving to a staggered penalty rate, so it's a new concept for us; we probably look at it with

fresh eyes, and there's sort of two issues. One is when you're trading on the eve of a public holiday, and Easter Saturday was a good example of that where traditionally we would trade till 1-2 in the morning, as long as there was enough sales being made to pay for the additional wages then it was worthwhile for us to trade. We quite often put live entertainment on, particular at the Pretoria; that generally goes past midnight, so with the change to the penalty arrangements we made the decision to close before midnight, or we really wanted to be finished up prior to midnight. We changed the cleaners' rosters so that they weren't working on the public holiday because the costs were prohibitive, so those things have changed. We've also become very concentrated on the hours worked, particularly on the public holidays, so being very conscious of cutting back staff when they're not required, so those things have definitely contributed to lower hours being available for casual staff.

PN5542

And if the penalty rates were reduced in line with the AHA'S proposal, what changes would you make do you say, or do you think it's too difficult to tell?---Well it's – our focus and our business is revenue per hour. Wages form 50 per cent of our gross profit, so it's our number one expense, it's our number one controllable expense, so when we're not taking enough money per hour to pay the wage bill then we either close or cut the wages.

PN5543

Any re-examination, anything arising?

RE-EXAMINATION BY MR STANTON

[11.21 AM]

PN5544

MR STANTON: Sir, just in answer to his Honour's question regarding paragraph 29, you've indicated that you'd made changes to the cleaners' roster?---Yes.

PN5545

Sorry, what were the nature of those changes?---The cleaners at the Pretoria Hotel are employed by the hotel. They work generally later in the night into the early hours of the morning. Generally we're busier on the eves of public holidays in our business and so the hours – we try to have the hours of the cleaning done outside of the public holiday times, so either before or we reduce the cleaning that we're doing on that night - we might defer it until a day when the rates are lower.

PN5546

Thank you.

PN5547

JUSTICE ROSS: Nothing further for the witness? Thank you for your evidence, Mr McInnes. You're excused.---Thank you.

<THE WITNESS WITHDREW

[11.22 AM]

*** SAMUEL CHARLES MCINNES

RXN MR STANTON

PN5548

JUSTICE ROSS: Is the next witness available?

PN5549

MR STANTON: If I could have a moment to - - -

PN5550

JUSTICE ROSS: Perhaps we'll step down for a couple of minutes. Might see if we can bring forward the one that's scheduled at 12.30 and I'd encourage you to try and squeeze up the ones in the afternoon as well.

PN5551

MR STANTON: On the current pattern they're not going to be required for the time that they're scheduled, that's all.

PN5552

JUSTICE ROSS: Yes, of course. I think there is a matter that Ms Baxter may wish to deal with. Yes, Ms Baxter?

PN5553

MS BAXTER: Thank you, your Honour. We just have an update on Professor Lewis.

PN5554

JUSTICE ROSS: Good, thank you.

PN5555

MS BAXTER: He is available to give his evidence next Thursday on the 24th. We'd request that that doesn't occur until after 11.30 however. Professor Lewis does have to travel from Canberra to Melbourne, so our request would be that it commences at 11.30. Additionally, we understand that the - - -

PN5556

JUSTICE ROSS: I'm assuming he can't travel on the Wednesday night, is that right?

PN5557

MS BAXTER: He's stuck in Canberra late on Wednesday night. I'm not sure what the latest flight is that he's able to get.

PN5558

JUSTICE ROSS: Okay.

PN5559

MS BAXTER: Additionally, we understand that the expert evidence in reply is due to be filed by 4 pm tomorrow.

PN5560

JUSTICE ROSS: That's right.

PN5561

MS BAXTER: Unfortunately it's unlikely that Professor Lewis will be able to provide his report until 5 pm on Friday. I do apologise for the lateness in notifying the Commission but we would respectfully request an extension until 5 pm on Friday.

PN5562

JUSTICE ROSS: If you file an application to vary the directions in respect to the filing of Professor Lewis's material in reply, if you can do that by 4 o'clock today, and we'll hear that issue at 9.30 tomorrow. If United Voice can advise the SDA of that as well as to when it will be heard, but, well, given the late notice that may mean we don't to Professor Lewis next week.

PN5563

MS BAXTER: Thank you, your Honour.

PN5564

JUSTICE ROSS: All right, thanks. Are there any other proposals to file late the expert material in reply?

PN5565

We'll stand down for five minutes.

SHORT ADJOURNMENT

[11.25 AM]

RESUMED

[11.33 AM]

PN5566

JUSTICE ROSS: Just before you do. Ms Baxter, in relation to the request to extend - and this is just to avoid - or so you can get instructions for tomorrow - is Prof Lewis in the same position as Ms Pazuelo: that is, it has got to be until the date that he has requested, or he can't - he can't comply with any earlier date; or could he accommodate 12 noon on the Friday? So perhaps if you can put that to him, we will see.

PN5567

MR BAXTER: Okay. I can get those instructions. Thank you, your Honour.

PN5568

JUSTICE ROSS: Next witness?

PN5569

MR STANTON: Your Honour, I call Mr Graham Annovazzi.

PN5570

THE ASSOCIATE: State your full name and address for the record, please.

PN5571

MR ANNOVAZZI: Graham James Annovazzi, (address supplied).

<GRAHAM JAMES ANNOVAZZI, AFFIRMED

[11.35 AM]

EXAMINATION-IN-CHIEF BY MR STANTON

[11.35 AM]

*** GRAHAM JAMES ANNOVAZZI

XN MR STANTON

PN5572

MR STANTON: Sir, you're the hotel owner of the Capertee Royal Hotel at 76 Castlereagh Highway, Capertee, New South Wales?---Co-owner with my partner, yes.

PN5573

You've owned and managed that hotel since 2010?---1 April.

PN5574

Yes. Thank you. How long have you worked in the hospitality industry?---This is my first go at it.

PN5575

For the purposes of these proceedings you've done two statements; one a statement dated - well, you've done two statements. There's a three-page statement. Do you have a copy of a statement with you - all right. The statement you have before you, which is of three pages, that is your statement, is it?---It is.

PN5576

Do you recall the date on which you made the statement?---To be honest, no.

PN5577

And a second statement of one page?---Again, no, unless it has got a date on it.

PN5578

But you have both in front of you. Is that the case?---I do.

PN5579

Do you say in relation to each statement that they are true and correct to the best of your knowledge and belief?---They are.

PN5580

Your Honour, I would seek that the statements be entered into the proceedings as Mr Annovazzi's evidence-in-chief. The first of those statements was the subject of some objections, which I understand are resolved. I hand up now five copies of a marked statement. If it assists, paragraphs 14 and 17 are affected by those objections.

PN5581

JUSTICE ROSS: No objection.

PN5582

MR DOWLING: No, Your Honour.

EXHIBIT #AHA37 STATEMENT OF GRAHAM ANNOVAZZI

EXHIBIT #AHA38 SUPPLEMENTARY STATEMENT OF GRAHAM ANNOVAZZI

PN5583

MR STANTON: May it please.

*** GRAHAM JAMES ANNOVAZZI

XN MR STANTON

PN5584

JUSTICE ROSS: Cross-examination?

PN5585

MR DOWLING: Yes, Your Honour.

PN5586

MR STANTON: Best if I show the witness the copy of AHA37 suitably redacted. I've just shown you a copy of a statement. You will see that it has marks on it, the matters that have been dealt with and my friend will ask you some questions in relation to it.

CROSS-EXAMINATION BY MR DOWLING

[11.38 AM]

PN5587

Mr Annovazzi, I'll just ask you a couple of questions about your workforce. In the first of your statements, the longer statement, I think your evidence was you employ up to 10 members at a time, but as at 30 June at least there is six. Yes?---That's correct.

PN5588

They are all casual employees?---Yes.

PN5589

When you have employed more, when the numbers got up to 10, for example, should we understand that they were also all casuals?---Yes.

PN5590

I think it's your evidence that all of those employees are employed under the award?---To the best of our abilities, yes.

PN5591

And you've not negotiated an enterprise agreement or anything of that sort?---Wouldn't even know how to go about it.

PN5592

Are you aware that the award has a provision that entitles the employer and an individual employee to agree to vary the terms of the award to suit the genuine individual needs of the employer and the individual employee? Are you aware that there's a - - -?---No, we just generally discuss everything with our staff accordingly but I don't change whatever the Award is. That's the Award.

PN5593

Perhaps if I can show you a document. The witness is being shown clause 7 of the Award. Do you see in clause 7 there - - -?---Yes.

PN5594

- - - in front of you that entitles you to vary the terms and conditions of employment including penalty rates to suit the needs of the employer and the employee. Is that a clause you have seen before?---No.

*** GRAHAM JAMES ANNOVAZZI

XXN MR DOWLING

PN5595

So I assume we should take it from that answer that you have never tried to vary the terms of penalty rates for your employees under that clause?---Never.

PN5596

Can you hand that back please? You're a member of the Australian Hotels Association?---We are.

PN5597

Have they given you any information about that clause at any stage that you're aware of?---No.

PN5598

You give some evidence towards the end of your first statement about what might or might not happen if there were the variations - you understand the AHA is seeking some variations to the penalty rates?---I do.

PN5599

You give some evidence about what you might or might not do if there was a variation?---That's correct.

PN5600

Should we understand from that that you have made an assessment - let's pick a Sunday as an example. You've made an assessment of what you currently pay in penalty rates on a Sunday. A calculation of what you currently pay in penalty rates on a Sunday?---Yes.

PN5601

You have also made a calculation of what you would pay in penalty rates under the AHA proposal?---No, I haven't.

PN5602

All right. Can I ask you also then that if there were to be any additional hours arising from any variation, would any of those additional hours go to your existing casual workforce?---I'd rather give my existing workforce the work before giving it to anyone else because they're trusted and they're good employees.

PN5603

Thank you. Nothing further, Your Honour.

PN5604

COMMISSIONER HAMPTON: Mr Annovazzi, you are located in what you describe as a village. Just for a person that doesn't live in New South Wales, how many - what's the population?---I'd guess at around 70.

PN5605

That's a genuine village. Do I understand that it's seasonal?---Yes, it is.

*** GRAHAM JAMES ANNOVAZZI

XXN MR DOWLING

PN5606

So in the summer period?---Yes. Last Sunday or last weekend is the best weekend we've had in three months.

PN5607

Paragraph - this is of your main statement. The longer statement. I'm not sure I understand what paragraph 5, or at least the second part of paragraph 5 means. I wonder if you might explain that a little further for me?---Of the 10 hotels that surround us in other towns or villages, seven out of the 10 have gone broke. A number of them two or three times in the five years that we've been in the hotel. A prime example would be the hotel in - one of the two hotels in Portland has just gone broke again. It's a tough way to make a dollar especially when you've got two and a half thousand people in the local area out of work.

PN5608

So someone else buys them and opens them up?---They buy them. I'm not exactly sure of the individual arrangements, but most of them are owned by the operators. A couple are owned by managers. It doesn't seem to matter, unless you're very particular in how you manage your business and very careful on your costs you're out of business shortly.

PN5609

I take it yours is the only hotel your village?---That's correct.

PN5610

Thank you.

PN5611

JUSTICE ROSS: Anything further for the witness?

RE-EXAMINATION BY MR STANTON

[11.44 AM]

PN5612

Sir, my friend asked you some questions about clause 7 of the Award and you were shown a document. Has anyone asked you to enter into a flexibility agreement?---No.

PN5613

Thank you.

PN5614

JUSTICE ROSS: Anything further?

PN5615

MR STANTON: Nothing further.

PN5616

JUSTICE ROSS: Thank you for your time and for your evidence this morning. You're excused?---Thank you.

<THE WITNESS WITHDREW

[11.44 AM]

*** GRAHAM JAMES ANNOVAZZI

RXN MR STANTON

PN5617

MR STANTON: I call Mr Ian Green.

PN5618

JUSTICE ROSS: Just while we're waiting for Mr Green, Mr Dowling, have you had any luck with that witness yet and the availability issue?

PN5619

MR DOWLING: I'm sorry, we haven't been able to check personally, but the problem we identified in terms of the RCA, that's been dealt with by what Your Honour said. We will check personally with that witness that's been moved and we will - - -

PN5620

JUSTICE ROSS: Well, perhaps once you know, if you could just let my Associate know so that we can put out a revised schedule as soon as we can?

PN5621

MR DOWLING: Most certainly. Thank you, Your Honour.

<IAN WAYNE GREEN, AFFIRMED [11.45 AM]

EXAMINATION-IN-CHIEF BY MR STANTON [11.46 AM]

PN5622

Sir, you are the owner of the Court House Hotel in Mudgee?---Part owner, yes. There's two of us involved.

PN5623

That other person, is that your wife?---Just business partners.

PN5624

I beg your pardon. That hotel is located at 111 Market Street, Mudgee?---That's correct, yes.

PN5625

How long have you been part owner of that establishment?---Four and a half years.

PN5626

Do you have previous experience in the hospitality industry?---Twenty-five years prior to that, yes.

PN5627

Sir, for the purposes of these proceedings have you done a statement of 29 June 2015 and a supplementary statement of 25 August 2015?---Yes, I have.

PN5628

Have you brought those statements with you here this - - -?---Yes, I have, yes.

*** IAN WAYNE GREEN

XN MR STANTON

PN5629

All right. Do you say in relation to each of those statements that they are true and correct to the best of your knowledge and belief?---Yes, I do.

PN5630

Yes. Your Honour, the statement was subject to some objections which are resolved. If I hand up five copies of the statement with the redactions - if it assists, paragraphs 6, 10 and 14 are affected.

PN5631

JUSTICE ROSS: I'll mark the first statement as exhibit AHA39.

**EXHIBIT #AHA39 WITNESS STATEMENT OF IAN GREEN
DATED 29/06/2015**

PN5632

JUSTICE ROSS: The supplementary statement is exhibit AHA40.

**EXHIBIT #AHA40 SUPPLEMENTARY WITNESS STATEMENT OF
IAN GREEN DATED 25/08/2015**

PN5633

JUSTICE ROSS: Cross-examination?

PN5634

MR STANTON: If we could just show the witness the redacted version?

PN5635

JUSTICE ROSS: Showing the witness AHA39?

PN5636

MR STANTON: AHA39, yes.

PN5637

JUSTICE ROSS: Yes.

PN5638

MR STANTON: Sir, I've just handed you a document or it's been handed to you. If you could refer to that if my friend has some questions for you.

CROSS-EXAMINATION BY MS BURKE

[11.49 AM]

PN5639

MS BURKE: Mr Green, you give some evidence about what you might do if penalty rates are reduced and you say one of the things that you and your business partner Amanda would do is work less hours on public holidays?---That's correct.

PN5640

If that happened, it would be your existing employees who would be offered more hours to fill the time that you currently work?---Yes, that's correct, yes.

*** IAN WAYNE GREEN

XXN MS BURKE

PN5641

That would mean that you could have a day off on a public holiday?---If we needed to, yes.

PN5642

Well, I think you say you work 80 hours a week so you'd probably need to?---Roughly, yes.

PN5643

What sort of things would you do on that day off? Would you see friends?---Maybe just stay at home and sleep.

PN5644

Yes. What about catching up with family?---Neither of our families live in Mudgee, so unlikely. On a public holiday we would still work but we would have more staff in for the busier periods to provide a better service but at this stage we can't provide that better service because of the exorbitant rates.

PN5645

Then if you weren't working you would be able to have a rest after having worked how every many days in a row?---Correct.

PN5646

I think your entire workforce is casual, isn't it?---Yes, it is.

PN5647

I don't have any more questions, thank you.

PN5648

JUSTICE ROSS: Mr Green, when you said you would be able to bring more casuals in on a public holiday, have you got any idea as to what that might look like, how many extra casuals on how many public holidays or have you not thought that through at the moment?---It would be a matter of bringing the casuals in during the busier periods, which are lunch and dinner, obviously.

PN5649

Yes?---Yes, I think on a public holiday we don't provide the service we provide on other days, purely because of the costs involved. Our staff would be happy to work it but it's just excessive costs and they're fully aware of that.

PN5650

How many casuals would we be talking about on those - to be rostered on those busier periods?---Probably two during lunch and two during dinner.

PN5651

Right. Do you think you would be doing it on most public holidays?---Depending on which one it is - Easter, probably; the June long weekend maybe not, because it's a quieter time, not as many people. It depends on what's on in the town and - yes.

*** IAN WAYNE GREEN

XXN MS BURKE

PN5652

Yes. All right, any other questions? Re-examination?

PN5653

MR STANTON: Nothing further.

PN5654

JUSTICE ROSS: All right, thanks very much for your evidence and your time today. You're excused.

<THE WITNESS WITHDREW

[11.51 AM]

PN5655

MR STANTON: Your Honour, the next witness, Mr Kearney I think is the pronunciation, is coming from Newcastle. I understand he's not here. If he was we could deal with him and I do understand we may be able to have both the witnesses after lunch, possibly dealt with before 2.45. I understand - and we'll do our best to confirm this - that perhaps Mr Gallagher may not be able to attend earlier but we'll do what we can.

PN5656

JUSTICE ROSS: Yes, that's fine. You can work on the assumption that he's probably only going to be required for about 15 minutes, so - - -

PN5657

MR STANTON: Yes.

PN5658

JUSTICE ROSS: All right?

PN5659

MR STANTON: May it please.

PN5660

JUSTICE ROSS: So 2.15 and that's when Mr Kearney will be available, is that right?

PN5661

MR STANTON: We're working on that at the moment, yes, your Honour.

PN5662

JUSTICE ROSS: Okay. All right, so we'll adjourn till 2.15.

PN5663

MR STANTON: If it please.

PN5664

JUSTICE ROSS: Thank you.

LUNCHEON ADJOURNMENT

[11.53 AM]

*** IAN WAYNE GREEN

XXN MS BURKE

RESUMED

[2.18 PM]

PN5665

MR STANTON: Ms Baxter has a matter to report.

PN5666

MS BAXTER: Thank you, Your Honour. Just on Professor Lewis' evidence in reply, we anticipate that that should be able to be provided to the Commission by 12.00 pm on Friday.

PN5667

JUSTICE ROSS: Thank you. I think you're going to file something and we'll deal with it at 9.30 tomorrow morning.

PN5668

MS BAXTER: Thank you, Commissioner.

PN5669

JUSTICE ROSS: All right.

PN5670

MR STANTON: May it please.

<MICHAEL MARK KEARNEY, SWORN

[2.19 PM]

EXAMINATION-IN-CHIEF BY MR STANTON

[2.19 PM]

PN5671

Sir, you are the owner of Small Bar Pty Ltd trading as Bar Petite located at 5 King Street, Newcastle in New South Wales?---Yes, that's right.

PN5672

How long have you been in that position?---Roughly four years.

PN5673

For the purposes of these proceedings, you have made statements?---Yes.

PN5674

You don't have - you haven't brought them with you?---I've brought those.

PN5675

You have, thank you. Is one a statement of 1 July 2015?---Yes.

PN5676

And a supplementary statement of 1 September 2015?---Yes.

PN5677

I'll show you these documents. Three stapled pages have been handed to you. Does that represent your statement made on 1 July 2015?---Yes.

*** MICHAEL MARK KEARNEY

XN MR STANTON

PN5678

Your Honour, I would seek that the statement be entered into proceedings as Mr Kearney's evidence-in-chief. There were some objections which have been - and I'll be correct if it's not the case - resolved. So I hand up five copies of the statement. That's Mr Kearney's first statement. Can I just deal with one matter, sir? Is your - is the spelling of your surname K-e-a- - - -?---Yes.

PN5679

- - - r-n-e-y?---That's right, yes.

PN5680

Should we then correct that on the - I notice the statements in both cases - - -

PN5681

JUSTICE ROSS: It is corrected on the supplementary statement.

PN5682

MR STANTON: May it please. Yes, sorry, I hand those up.

PN5683

JUSTICE ROSS: No objection.

**EXHIBIT #AHA41 STATEMENT OF MICHAEL KEARNEY DATED
01/07/2015**

**EXHIBIT #AHA42 SUPPLEMENTARY STATEMENT OF
MICHAEL KEARNEY DATED 01/09/2015**

PN5684

MR STANTON: May it please.

CROSS-EXAMINATION BY MS BURKE

[2.22 PM]

PN5685

MS BURKE: Mr Kearney, you've got seven casual workers?---Yes.

PN5686

And that's your whole workforce?---Yes. Yes. It fluctuates a little bit, but that's it, yes.

PN5687

How many people do you have working on a Sunday?---Usually one through the day and two of an afternoon. Of a night.

PN5688

So what's the - - -?---Depending.

PN5689

What's the total number of casual hours you have on a Sunday?---From 12.00 till, say, 10 o'clock is the total hours.

*** MICHAEL MARK KEARNEY

XXN MS BURKE

PN5690

I see. So that's when you're - -?---We split the shift, yes.

PN5691

That's when you're open?---Yes.

PN5692

What about the number of hours worked in total?---For each person?

PN5693

Sure, we'll do it that way?---Yes, okay. So one person will start at 12.00 and they'll finish at 5.00 and the other two come on at 5.00 and finish at 10.00. So it's five hours each - each person.

PN5694

So 15 hours?---Yes. Fifteen hours all up, yes.

PN5695

What are the classifications of those workers under the award?---They're casual.

PN5696

Do you know what level they are? Level 1, level 2?---Level 2.

PN5697

All three?---Yes. They all they do the - - -

PN5698

And the rest - - -?---They all do the same job.

PN5699

So are all seven casuals level 2?---I've got two chefs and the rest of the workers out in the front of the bar are all casual and they do, you know, service of food and service of alcohol.

PN5700

You have given some evidence about how a cut in penalty rates - this is the cut that the AHA have proposed - on a Sunday might affect your staffing levels on that day. Can I take it that means that you've calculated what your savings would be if the rates are cut in the way that the AHA has proposed?---Well, I would probably have an extra person through the day for lunchtime. It depends on how many bookings you have. Every day is - every weekend is different, so you can't sort of just say, you know, it's the same every week, but yes, I definitely want someone else on a lunchtime service period because it's hard for one person if he's pouring drinks and he's got to serve too, so - - -

*** MICHAEL MARK KEARNEY

XXN MS BURKE

PN5701

That wasn't quite my question, though. My question was whether you had actually calculated what the wage savings would be if the penalty rates are cut in the way proposed by the AHA? How much money would you save on a Sunday?

Had you worked that out?---On that - on that, what you're saying now, from 12.00 till 5.00 - - -

PN5702

On a - my - - -?---Is the - is what I would save with an extra person.

PN5703

When you made this statement, the one that's dated 1 July, had you actually worked out what the dollar amount was?---Well, I can roughly work it out now. It would be - - -

PN5704

Had you worked - - -?---Yes.

PN5705

My question is whether you've worked it out?---I haven't written it down, no. I haven't written it down, but in my head I just worked out five hours times, say, roughly \$30.

PN5706

You did that just now?---No, I just did that when I was asked. So that's my saving.

PN5707

When were you asked?---When we went through all this before with the AHA and I was asked to come here.

PN5708

This was in June or July?---Mm'm.

PN5709

So you've worked it out in your head in a pretty rough sort of way?---Mm'm.

PN5710

But you don't really know what the actual dollar amount would be in terms of savings. Not precisely?---Well, I probably don't precisely, but I mean it wouldn't be hard to work out.

PN5711

If you don't know precisely, it's pretty hard to say exactly what you would be able to do with the money, isn't it?---Well, no really. I would probably want extra service on. I mean, you know, we're a small bar. You know, we serve a lot of food. So if people want service - - -

*** MICHAEL MARK KEARNEY

XXN MS BURKE

PN5712

But at the - looking at your - your evidence is in this statement and looking at that document, there's nothing in there that can tell me, for example, how much money you would save if penalty rates are cut in the way that the AHA is seeking and whether that would be enough for you to do what you say you want to do. Put on more service. That's the case, isn't it?---Possibly, but it depends on how many

bookings you get on a day though. So every weekend is different. Every day is different, so - - -

PN5713

So it's hard to predict?---It's very hard to predict.

PN5714

Would you be offering more shifts to your existing casuals?---I would probably give them more shifts, but I still would need - I would still need some extra staff. At least one other staff member. At least for me.

PN5715

But at this stage - - -?---And that would be - that would be weekend work because that's where most of our business comes from.

PN5716

So ideally, you would have one or two of your existing staff members doing a few more hours and then a whole other person?---I would definitely need another person. They can only do - I usually only put my staff on for five or six hours at a time. So if I'm short, they will do extra and it also depends on what they've got on on the weekends. So, you know, they don't actually just, you know, turn up when you need them.

PN5717

They don't just appear like magic when you need them?---No. It doesn't work that way, no.

PN5718

It's about when they're available?---It's a bit of - it's a juggling act, so - - -

PN5719

Mr Kearney, if I tell you that if you want to employ someone - a whole new person - for another five hours?---Mm'hm.

PN5720

Do you know how much that would cost you under the new rate, if that new rate happens?---The new rate now? I haven't worked that out, no.

PN5721

JUSTICE ROSS: Do you mean on a Sunday?

PN5722

MS BURKE: I do mean on a Sunday. Thank you, your Honour.

PN5723

Do you know roughly - can you work it out now, how much that might be?---No. I haven't even looked at it to be honest, so. I only looked at what it would roughly save me on the old rate, which is what we spoke about before.

*** MICHAEL MARK KEARNEY

XXN MS BURKE

PN5724

Can I suggest to you that a level 2 casual - this is on the rate if the AHA's proposal is successful - would be paid on a Sunday - sorry, I thought I might have heard an objection, but I think it was a cough - it would be \$27.71 an hour?---Mm'hm.

PN5725

And so over five hours the cost of that person would be \$138.55. I appreciate you don't have a calculator in front of you, but do those numbers sound about right?---Yes, they sound about right, yes.

PN5726

And if penalty rates were cut in the way that is proposed by the AHA, then your 15 casual hours on a Sunday will save you \$69. Does that sound about right as well?---Mm'hm.

PN5727

So the hourly rate would go from 32.32 to 27.71?---Mm'hm.

PN5728

So that \$69 saving is not enough to employ another person for five hours, is it?---No, but I could probably give them two hours of the lunch period for better service.

PN5729

But you've just said that you would want to give your existing casuals some more hours and employ a whole new person?---Mm'hm.

PN5730

But when you do the sums, you can't really do that, can you?---It depends on what happens on that weekend. I mean, if we've got bookings, I would love to give someone an extra two hours from 12 to 2.00 to get better service in my bar.

PN5731

All right. Thank you, Mr Kearney?---Thank you.

PN5732

JUSTICE ROSS: Re-examination?

PN5733

MR STANTON: Nothing arises.

PN5734

JUSTICE ROSS: Thank you for your evidence, Mr Kearney. You're excused.

<THE WITNESS WITHDREW

[2.20 PM]

PN5735

MR STANTON: I call Darren Gunn.

PN5736

THE ASSOCIATE: Please state your full name and address for the record.

*** MICHAEL MARK KEARNEY

XXN MS BURKE

PN5737

MR GUNN: Darren Peter Gunn, (address supplied).

<DARREN PETER GUNN, SWORN [2.31 PM]

EXAMINATION-IN-CHIEF BY MR STANTON [2.31 PM]

PN5738

MR STANTON: I see you are Darren Gunn, director of Crescent Head Tavern Pty Ltd, trading as Crescent Head Tavern, located at 2 Main Street, Crescent Head, New South Wales?---That's correct.

PN5739

How long have you occupied that role?---Since 22 September 2010.

PN5740

How long have you been in the hospitality industry?---35 years.

PN5741

Sir, for the purposes of these proceedings you've made a statement. Do you recall making a statement in these proceedings? Do you recall that date?---It was around August, I think it was.

PN5742

And a supplementary statement of 26 August?---That's correct.

PN5743

There were two statements that you've made?---Yes.

PN5744

Were they both August?

PN5745

JUSTICE ROSS: Does it matter?

PN5746

MR STANTON: Just - probably not, your Honour, no. I just thought I would distinguish.

PN5747

JUSTICE ROSS: One's a supplementary statement and the other is the main statement?---It would have been about a fortnight - - -

PN5748

MR STANTON: It just didn't appear that mine was dated, your Honour.

PN5749

JUSTICE ROSS: I know. It doesn't really matter. As long as he's swearing up to it here?---Yes.

*** DARREN PETER GUNN

XN MR STANTON

PN5750

And there's no disadvantage to anyone else because they've seen it.

PN5751

MR STANTON: In relation to that earlier statement - that first statement, your Honour - there were some objections which - if I can hand up five copies of the statement. And if it assists, paragraph 19 is the paragraph affected by redaction.

PN5752

JUSTICE ROSS: Those redactions, is there any objection?

PN5753

MR DOWLING: No, your Honour.

PN5754

JUSTICE ROSS: I mark the main statement exhibit AHA43 and the supplementary statement as exhibit AHA44.

EXHIBIT #AHA43 WITNESS STATEMENT OF DARREN GUNN

**EXHIBIT #AHA44 SUPPLEMENTARY WITNESS STATEMENT OF
DARREN GUNN DATED 26/08/2015**

PN5755

MR STANTON: Just one further matter, your Honour.

PN5756

Sir, do you say in relation to both statements they are true and correct to the best of your knowledge and belief?---Yes, they are.

PN5757

I might show the witness AHA43. My friend has some questions.

CROSS-EXAMINATION BY MR DOWLING

[2.34 PM]

PN5758

MR DOWLING: Mr Gunn, just a couple of questions firstly about your workforce. You have a workforce at the moment of 10. Is that right?---As of 30 June that was correct.

PN5759

Has that changed since 30 June?---Yes, it has.

PN5760

Can you explain what the change is?---I've had some staff leave and currently got some staff coming ready for the school holidays, particularly some kids that are doing uni at the moment. They're finishing uni for the school holidays and they will come and work for me during that period.

*** DARREN PETER GUNN

XXN MR DOWLING

PN5761

How many casuals do you have at the moment?---At the moment I've got 12 casuals.

PN5762

12 casuals. All right. And I think you identified in your supplementary statement that you had one full-timer. Is that number still the same?---That is still the same.

PN5763

All right. So 12 casuals and one full-timer. Are some of those casuals juniors, or are they all?---Some of them are juniors.

PN5764

How many of the 12 are juniors?---That would be five.

PN5765

Five of the 12. Okay. Thank you. You've given evidence about trading over a Christmas period in your statement. Do you recall giving that evidence?---Yes, I do.

PN5766

Is it right that that period was the 2010-2011 Christmas period?---That's correct.

PN5767

I think your evidence was about the wages; I think your evidence was that it was \$21,000 in wages?---That's correct.

PN5768

Is it correct that that's the total wage bill for the period?---For that one-week period, yes.

PN5769

All right. That's not - you're not suggesting, of course, that that's the penalty rate component of the \$21,000, that's the total wage bill for the period?---That included the penalty rates for the public holidays during that period.

PN5770

Did you extract from that period the component that is just attributable to the penalty rates for that period?---That was just the total wage bill, which didn't include the super on top of that.

PN5771

My question is whether you - for the same period, whether you extracted from the 21,000 that component that just represented the penalty rates?---No, I did not.

PN5772

Did you calculate for the same period what the penalty rates would have been under the AHA proposal?---No, I did not.

*** DARREN PETER GUNN

XXN MR DOWLING

PN5773

You give some evidence also in relation to the bottle shop and it being staffed in winter. Is it fair to say that the bottle shop - there's lower demand for the bottle shop during the winter period?---There is and there isn't sometimes.

PN5774

JUSTICE ROSS: Is it the bottle shop or the tavern?---It's all in the one building, your Honour.

PN5775

I'm just wondering about - - -?---Yes.

PN5776

MR DOWLING: The question was a reference to paragraph 17, Your Honour.

PN5777

JUSTICE ROSS: I see. All right. I was looking at paragraph 13.

PN5778

MR DOWLING: So just in relation to the bottle shop, you're saying the demand in the bottle shop fluctuates?---The whole Tavern fluctuates in winter. We're a summer town, relying on summer dollars, so in winter time the whole trade does stop, yes.

PN5779

So whilst it's a little bit up and down in winter, generally a as a rule it is significantly lower than it is in summer?---The whole town is, yes.

PN5780

Including the bottle shop?---Yes.

PN5781

Thank you very much. Now, one of the things you describe that you had thought about investing in was a child-friendly area. Did you mean by that that you were going to do some actual capital works on the hotel?---Renovations, yes, yes, yes.

PN5782

The renovations to establish a child-friendly area, is that what you were getting at?---Yes, that's correct.

PN5783

Have you got quote on what it is that those renovations will cost, or has it not got to that point?---It hasn't gone to that point.

PN5784

Lastly, can I just ask you if there were to be any additional hours as the result of any change in penalty rates, would they be allocated to the 12 casuals that you currently have, or whatever the casual workforce might be at that time?---For some of them, yes. Some of them are restricted because of what they do. Some of them are doing uni, some just work nights. Yes, I'd like to increase my workforce to take the pressure off my family life.

PN5785

What I'm suggesting to you, not all of the casuals can do all of the same things, is that the actual - - -?---That's right. That's right. Yes.

PN5786

But in terms of, let's say, in theory there's a couple of additional hours that appear on a Sunday, what you will do first is allocate that to your existing casual workforce that are qualified and able to do that work, is that right?---Yes, if they're qualified in positions they need to cover, yes.

PN5787

JUSTICE ROSS: Can I ask you two questions, Mr Gunn? Can I take you to paragraph 20 of your first statement, the longer statement?---Yes, Your Honour.

PN5788

Can you see the second sentence there, "My plan is to invest in a child-friendly area." It is the next passage. You have been asked questions about the investment and the child-friendly area. You go on to say, "But given the current penalty rates, such facilities would further increase wage costs." How would a child-friendly area increase wage costs?---Your Honour, most of the - most of my takings, I try and invest a lot on Sunday afternoons in my Tavern. I currently try and do live music Sunday afternoons in my Tavern. I have a son and a lot of families and that - we're just trying to get more families into the Tavern. The club across the road from us, Your Honour, has that facility and I think to compete against the opposition that I need to put that facility in.

PN5789

I follow that?---The Sunday rates, and particularly when I do the live music, but unfortunately I have to put on extra staff to cover the - maybe the increase in trade that - - -

PN5790

I see. So is the logic that putting in a family-friendly area would increase trade and require more staff?---Yes. Like I said, I've got, you know, opportunity to grow my business, particularly Sundays. I do live music on Sundays. I don't do it every Sunday. I sort of pick the Sundays that I think that I can get some benefit out of it and then I sort of allocate to how many staff I think extra I need for that Sunday.

PN5791

Then in paragraph 22 of your statement, the last sentence there, this is if the AHA's proposal was accepted, that is for reduction of penalty rates on public holidays, you say that you would endeavour to open all areas of the Tavern on public holidays. Now, the Tavern consists of a public bar, the bistro, and the bottle shop/takeaway pizza?---That's correct, Your Honour.

PN5792

Which areas do you not open currently on public holidays?---The bottle shop/pizza.

*** DARREN PETER GUNN

XXN MR DOWLING

PN5793

So you're saying there that if the penalty rates were reduced on public holidays, you'd endeavour to open that bottle shop/pizza area?---Yes, Your Honour.

PN5794

Would that be every public holiday or - - -?---Yes. I would love to open that and do every public holiday.

PN5795

What sort of hours and staffing would you have in that area?---Normally, it would be probably about eight hours for the day I could probably trade for on that public holiday.

PN5796

For how many staff?---One to two, depending on what time of the year it is, Your Honour. It could be three.

PN5797

So if it's in winter, less, but in summer, more?---Yes. Yes. In summer time, I can have up to four staff in that shop.

PN5798

All right. Thank you. Anything arising? Any re-examination?

PN5799

MR STANTON: Nothing, Your Honour.

PN5800

JUSTICE ROSS: Mr Dowling, did you want to ask something?

PN5801

MR DOWLING: Yes, Your Honour.

PN5802

The casuals that you just describe that might get some additional hours in response to the President's question, what levels are they at?---That'd be level 3.

PN5803

Can I go back one step? You were asked some questions about the child-friendly area increasing the wage costs. Do I understand it that what you are hoping, if that were to happen, is that it would increase the number of customers and therefore also increase your revenue. There might be an increase in wage costs but it would hopefully be commensurate with the increase in revenue?---Yes, to offset - yes.

PN5804

Just in terms of any additional hours that you might be able to work people in terms of the pizza and the bottle shop - excuse me one moment. I'll withdraw that last question.

*** DARREN PETER GUNN

XXN MR DOWLING

PN5805

JUSTICE ROSS: Any re-examination?

PN5806

MR STANTON: Nothing. Nothing, Your Honour.

PN5807

JUSTICE ROSS: Any further questions? No. Thank you for your evidence, Mr Gunn. You are excused?---Thank you.

<THE WITNESS WITHDREW

[2.45 PM]

PN5808

JUSTICE ROSS: Next witness?

PN5809

MR STANTON: Mr Gallagher is the next witness. He is currently scheduled for 3.15. I hope that I had indicated earlier that he may not be able to be brought forward but -is that still the case? - I am instructed he may get here in advance. Now, I'm instructed he is actually here.

PN5810

JUSTICE ROSS: Soon he will have already given his evidence. All right. Let's bring him on now. Do you want a moment with him?

PN5811

MR STANTON: Could we just have a short - - -

PN5812

JUSTICE ROSS: Yes. We'll take a couple of minutes.

PN5813

MR STANTON: May it please.

SHORT ADJOURNMENT

[2.45 PM]

RESUMED

[2.50 PM]

<PATRICK JOHN GALLAGHER, SWORN

[2.51 PM]

EXAMINATION-IN-CHIEF BY MR STANTON

[2.51 PM]

PN5814

Sir, you are the owner of the Gallagher group of hotels?---Yes.

PN5815

For the purposes of these proceedings you have made a statement of 29 June 2015 and a supplementary statement of 25 August 2015?---Sure.

*** PATRICK JOHN GALLAGHER

XN MR STANTON

PN5816

I will just show you - - -?---Yes.

PN5817

You have before you a three page stapled document. Is that a copy of your statement of 29 June?---Yes.

PN5818

And a single page document. That is the copy of your supplementary statement?---Yes.

PN5819

Do you say that the statements are true and correct to the best of your knowledge and belief?---Yes.

PN5820

Your Honour, I would seek that they be entered into the proceedings as the witness' evidence-in-chief. I can hand up five copies of the statement with redactions at paragraph 13 if it assists. I understand that resolves - I'm sorry, 13 and 17.

PN5821

THE WITNESS: Do you want this back?

PN5822

MR STANTON: You can refer to that.

**EXHIBIT #AHA45 STATEMENT OF PATRICK GALLAGHER
DATED 29/06/2015**

**EXHIBIT #AHA46 SUPPLEMENTARY STATEMENT OF PATRICK
GALLAGHER DATED 25/08/2015**

PN5823

May it please.

CROSS-EXAMINATION BY MR DOWLING

[2.53 PM]

PN5824

Mr Gallagher, can I just clarify your workforce numbers firstly? In your first statement, the longer statement of 29 June, you identify at paragraph 4 that the Gallagher Group employs 350 people. Do you see that?---Yes. Well, I don't, but I'm sure it's here somewhere, yes. What page?

PN5825

First page?---First page.

PN5826

The paragraph numbered 4?---Yes.

*** PATRICK JOHN GALLAGHER

XXN MR DOWLING

PN5827

In the second statement you identify that the Gallagher Group employs 182?---Yes. Well, I've just made a mistake, I think. We may have - did we sell a hotel - - -

PN5828

In the first or the second?---The - I'd say the first one. The second one, I would have got that from the accountants.

PN5829

Okay. So - - -?---There was a little bit of confusion over whether or not these two were added together or separate.

PN5830

So the first one should read 182 or - well - - -?---Yes.

PN5831

Or thereabouts. The numbers might have been slightly different?---They're approximate, but yes.

PN5832

Just in respect of the second also, you will see there you have 152 casuals?---Yes.

PN5833

And you have 30 employees on an annualised salary?---Yes.

PN5834

Then you have - they're fulltime employees on an annualised salary and then 15 - - -?---Fifteen of the 30 annualised.

PN5835

Right, okay. I just wanted to clarify?---Yes.

PN5836

So they don't duplicate and that's what gets us to 182?---Yes.

PN5837

Fifteen of that 30 are annualised, but - - -?---But over the Award.

PN5838

Over the Award?---M'mm.

PN5839

Just secondly in relation to - can I just clarify your hotels? You've got a list of hotels in the first document at paragraph 3 in the middle of the first page?---M'mm.

PN5840

I think you list 12 hotels there. Do you see those? Do you see that list?---That's this list?

*** PATRICK JOHN GALLAGHER

XXN MR DOWLING

PN5841

That's right, paragraph 3A, B, C, D, E, F, G. Do you see that list there?---Yes.

PN5842

So there's 12 hotels listed there?---Yes. They're all part of the group.

PN5843

They're all part of the group. Can I just ask you a couple of questions about some other hotels? Did the group purchase the Oriental Hotel in the Blue Mountains in 2013?---No.

PN5844

It didn't?---No, we were managing it. It was part of the group.

PN5845

So that's a hotel you managed. Still manage?---Yes, for a new owner.

PN5846

But it's not a hotel you own?---No. But it's mentioned here. It's Springwood.

PN5847

Sorry?---It's the one in Springwood.

PN5848

That's the P.J. Gallagher's in Springwood?---We trade under that sort of name, yes.

PN5849

Did the group purchase the Royal Hotel in Ryde?---Yes.

PN5850

Is that one listed here?---No, it's not. That's a mistake.

PN5851

When was that purchased? Sort of late 2014?---It was about August last year, yes.

PN5852

So that one should be - - -?---And look, there's another mistake there too. The Liverpool Hotel is actually two hotels. One is called the Liverpool and one's called the Corner and they're right next to each other, but we trade them - we call them one pub.

PN5853

So if we add the Corner we get 13 hotels and then if we add the Royal Hotel in Ryde we get 14 hotels?---Yes.

PN5854

Was the purchase price for the Royal about \$18M or thereabouts? Is that about right?---Yes.

*** PATRICK JOHN GALLAGHER

XXN MR DOWLING

PN5855

You've got Le Pub on King Street listed there?---Mm'hm.

PN5856

You did have another Le Pub Balmain. Is that right?---Yes.

PN5857

But you sold that one earlier this year?---I can't recall the date, but it was - it's been sold, yes.

PN5858

It was this year?---I think so, but I can't recall.

PN5859

What was the sale price on that one?---Somewhere around \$5M.

PN5860

That, I think, also went by the name Monkey Bar, is that right?---Originally, yes.

PN5861

Are you able to say what the approximate value of the total assets of the group are?---I've already made a few mistakes. I don't want to make any more. Let me take a stab.

PN5862

So I think we have 14 in our list now?---Look, I - to be honest, I can't add it up here in my head.

PN5863

Give us a rough estimate. Are we talking - - -?---It's over 80 million, I suppose.

PN5864

Somewhere in that range?---Mm'm.

PN5865

Are you able to say what the approximate revenue of the group is on an annual basis?---Not off the top of my head.

PN5866

Well, again, just roughly?---So by revenue, you mean sales?

PN5867

Yes, total revenue from all of the managing, running - - -?---I'm really just guessing, but I'll just say eight to 10 million. No, actually, that can't be right. No, that's more the profit. It would be closer to - closer to 40 or 50 million.

*** PATRICK JOHN GALLAGHER

XXN MR DOWLING

PN5868

In terms of the staff numbers, I think we're at 182, is it your evidence that all of those are covered by the Award?---No, the - there's a couple of Awards, I think,

isn't there? There's the Award for the bar staff and then there's the manager's Award. Are they the same Award or not?

PN5869

The award that we're concerned with in this proceeding is the Hospitality Industry Award, and there's some provision in it for manager classifications. So certainly the managers, depending on what they do and how they're paid, can be covered by that award?---So isn't - the award that you're talking about - the 152?

PN5870

I'm asking you. Is it right that all of those casuals are covered by the award?---Yes.

PN5871

All right. And to the best of your knowledge the 30 full-timers, they're covered by the award as well, or you're not sure?---They're covered by that other award, the manager's award or - I'm not quite sure what the technical name of it is.

PN5872

You describe those 30 as being on an annualised salary?---Yes.

PN5873

There's a provision in the Hospitality Industry Award that you can provide them with an annualised salary; managers or others as well, but managers in particular. Is it possible that those 30 are also covered by the hospitality award but are managers within it?---Yes, that what I mean. I thought - sorry, I just assumed. I thought they were a different award.

PN5874

Given you've got such a large number of employees, have you - you're aware that you can negotiate with your employees an enterprise agreement?---Yes.

PN5875

That enterprise agreement can tailor the particular terms and conditions of those employees to suit your business. You understand that?---Mm'hm.

PN5876

You've chosen not to do that?---We tried to do it years ago.

PN5877

How many years ago?---When the previous Liberal government was in.

PN5878

Which previous Liberal government, Mr Gallagher?---The previous, previous Liberal government.

PN5879

Are we talking 10 years ago?---Yes, something like 10 years ago. And we just couldn't - we didn't get it across the line.

*** PATRICK JOHN GALLAGHER

XXN MR DOWLING

PN5880

You didn't get it across the line. And is there a reason - - - ?---Staff - - -

PN5881

Is there a reason you haven't done it since?---It was just all a bit hard. And plus, I think it has changed quite significantly since then.

PN5882

What has?---The - I don't understand all the technicalities of it, but the things that were on offer then are different to what were on offer now, and it's not quite as easy to get it across the line, so we just haven't worried about it. We just focussed on running our businesses.

PN5883

Have you sought some advice about it from the AHA or anyone else?---Not recently.

PN5884

Are you aware that within the award there's a provision that allows you, by agreement between your employees, to vary penalty rates to suit the individual needs of the employer - of you, the employer, and the individual employees? There's a clause that allows you to do that?---I don't know what you mean.

PN5885

Okay. That's not a clause you're familiar with?---Vary it in which way? Do you mean - - -

PN5886

Come to an agreement between you and the employees as to - - - ?---And increase the - - -

PN5887

It might be an increase, it might be some other change?---I've never heard of it decreasing, no.

PN5888

Okay. You've never heard of a clause that allows you to come to an agreement about the penalty rates?---Only if it means increasing them.

PN5889

All right. Is that something you've ever got any advice about from the AHA about a particular variation pursuant to the award to penalty rates?---I may have received it, but I don't recall.

PN5890

Are you aware that in respect of public holidays, that you may, in respect of certain employees, ask them, by agreement, to perform work at their normal hourly rate plus 50 per cent, rather than the public holiday penalty rate, provided that you give them a day in lieu?---Yes, I did know that.

*** PATRICK JOHN GALLAGHER

XXN MR DOWLING

PN5891

Is that a clause that you've sought advice about or sought to use?---I know that's there, but I don't use it.

PN5892

I think your evidence is that one of the big issues for you in terms of your Sydney pubs is the lockout laws. Can you say how it is that they are affecting your business?---That had a negative impact on trade.

PN5893

How was that?---Mainly because there are less people in Sydney now at night.

PN5894

In the CBD?---Yes.

PN5895

Why is that?---I guess it is a function of the lockout laws.

PN5896

Okay. They go elsewhere?---Yes.

PN5897

That's your theory, because of the lockout - sorry, I don't mean to - - -?---No, that's all right, but it's pretty obvious if you walk around the streets after midnight, there's hardly anyone there, whereas a couple of years ago the streets were pretty busy.

PN5898

And that has had an effect on the way you operate in the CBD hotels?---Yes.

PN5899

You give some evidence about the things that you might consider doing in terms of if there was any variation to the penalty rates. Should we understand that within the - that you have assessed within the Gallagher group on any given day where penalty rates are paid, say a Sunday, you've worked out just exactly how much you pay in penalty rates for that particular Sunday for the group?---Not for the group; on an individual basis.

PN5900

All right?---Each business has different trading patterns.

PN5901

I see. So does that mean for each business you've worked out - you've picked a Sunday and you've said: this is how much I would pay on penalty rates under the current regime in that business in that business. Is that something was done?---Probably don't quantify it in that way. What we will do is we would look at the roster and we would make - - -

*** PATRICK JOHN GALLAGHER

XXN MR DOWLING

PN5902

Sorry, I should have made my question clearer. I'm not asking what you would do or what you might do - I started that way. But I want to know whether before you did this statement and you were making an assessment of the consequences of all of this, whether you worked out: what do I pay in penalty rates under the current award on any Sunday in any business? Did you work that out?---You mean multiply out how many - well, work it out in the sense of when you do the wages you know how much you're paying out on a Sunday at penalty rates.

PN5903

If you were the wage clerk you might know as you write it down?---I pay them, so I do know, but - - -

PN5904

But do you know - are you able to say to this commission what you pay in penalty rates on a Sunday under the current award?---I could probably work that out in a few minutes and get it as rough as I got with those questions you ask me before about sales, but no. Not at the top of my head, no.

PN5905

I'm asking - but did you do it? Not could you do it now; did you do it before you put this statement in?---Add up how many hours we spend on Sundays, is that what you're saying, specifically?

PN5906

No. No?---Add up how many dollars we spend on Sunday?

PN5907

No. Did you work out - - -?---I don't understand your question, sorry.

PN5908

Did you work out "How much I pay in penalty rates -" not in my total wage bill, "How much do I pay in penalty rates on any Sunday?" Did you work that out?---Specifically for this?

PN5909

Yes?---No.

PN5910

All right. I take it then, it probably follows but I take it then you didn't work out, "Okay. After this variation, how much will I pay in penalty rates on any given Sunday"?---No.

PN5911

Right?---I just know it would be less.

PN5912

But you don't know how much?---No.

*** PATRICK JOHN GALLAGHER

XXN MR DOWLING

PN5913

All right. I think one of the things you say is that you might have longer hours, you might open for longer hours, should we understand that if you open for longer hours what you would do or what you would try to do is give those extra hours to that existing casual workforce at 150 odd?---Well, that would depend on the make-up of the individual workforce that you're talking about. Some of them may not be available.

PN5914

Yes?---So it might mean engaging new employees.

PN5915

Let me put it a different way. The first thing you would do would be to offer it to your existing casual workforce and see if they are able to do it, is that right?---No, I don't think it's as black and white as that. Probably, but - or possibly but not definitely.

PN5916

Thank you. Nothing further.

PN5917

JUSTICE ROSS: Mr Gallagher, can I take you to paragraph 16 of your first statement, the longer one?---Yes.

PN5918

There you say that if the penalty rates that are being sought by the AHA were implemented, you say, "We would open for longer hours and employ more staff on public holidays and Sundays"?---Yes.

PN5919

Have you given thought to what that might mean about how many more casual shifts, for example, casual shifts across your businesses, you would be offering on a Sunday, or how many more casual hours?---It'd be - it'd be a minimum of one per shift per pub per day. So there's three shifts in a day, there'd be three shifts extra at least. The way we do our rostering is we work out, on these days where you've got the penalties, we make all the full-time ones and all the managers do less managing and become bartenders and so they would be able to work like you would on a normal trading day and do their proper supervision and make sure the service was adequate and then we'd be able to take - we'd be able to employ more people, and presumably provide better service.

PN5920

Right. Thank you. Anything arising?

PN5921

MR DOWLING: Yes, Your Honour.

PN5922

JUSTICE ROSS: Mr Dowling first.

*** PATRICK JOHN GALLAGHER

XXN MR DOWLING

PN5923

MR DOWLING: Your evidence has been, Mr Gallagher, that you haven't worked out what the difference you are paying in penalty rates between the current award rate and what it is that's proposed by the AHA. You don't know how much less it's going to be. I think you think, "Well, it's going to be less. I just don't know how much," is that right?---Well, not in dollar terms. We don't want to put it as a proportion, and I know roughly what it means in dollar terms but you wanted me to give you a precise figure. You said you - had I sat down - - -

PN5924

What's the Sunday penalty rate changing from in this proceeding? From what to what?---Well, there's a suggestion that it goes down to that - - -

PN5925

Can you say without looking at your statement?---No. And this is all pie in the sky, as far as I'm concerned, isn't it?

PN5926

Okay. Thank you

PN5927

JUSTICE ROSS: Re-examination?

PN5928

MR STANTON: Yes.

RE-EXAMINATION BY MR STANTON

[3.11 PM]

PN5929

In answer to a question earlier from my friend, he was asking about if there were extra hours as a result of this variation, whether those hours would go to new or existing employees. Your answer was something to the effect that you weren't sure, it was not black and white. What would you need to know in order to - - - ?---Well, some - some employees can work Saturdays and Sundays and some can't and some hotels would have a greater demand on their workforce on the Saturday and Sunday, and some have less. So it would just depend on the make-up of the hotel and the make-up of the workforce. I mean, there's a lot of young people who are at uni and stuff like that who are quite happy to work Saturday and Sunday.

PN5930

Yes. Nothing further.

PN5931

JUSTICE ROSS: Thanks for your evidence, Mr Gallagher. You are excused?---Okay. Thanks. Sorry about all the mistakes.

<THE WITNESS WITHDREW

[3.11 PM]

PN5932

MR STANTON: Mr Gallagher is our final witness for the day, Your Honour.

PATRICK JOHN GALLAGHER

RXN MR STANTON

PN5933

JUSTICE ROSS: All right.

PN5934

MR STANTON: Unless I'm mistaken. There's no one else that could give evidence? No. It would be rather early if it - - -

PN5935

JUSTICE ROSS: Yes. We'll have a look at the timings for tomorrow and see if we can compress them a bit. We'll see how we go. I think at 9.30 we will deal with the material to be filed by ABI in relation to Professor Lewis. Right. Nothing further?

PN5936

MR STANTON: Nothing further.

PN5937

JUSTICE ROSS: We will adjourn until 9.30.

ADJOURNED UNTIL WEDNESDAY, 16 SEPTEMBER 2015 [3.12 PM]

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