



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

1052408

**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

9.32 AM, WEDNESDAY, 16 SEPTEMBER 2015

Continued from 15/09/2015

PN5938

JUSTICE ROSS: Can I have the appearances in Melbourne, please?

PN5939

MS FORSYTH: Yes, Your Honour, Forsyth, initial A, for the SDA.

PN5940

JUSTICE ROSS: Thank you, Ms Forsyth. In Sydney any changes to the appearances? Mr Izzo, you're in?

PN5941

MR IZZO: Yes, Your Honour, appearing on behalf of the New South Wales Business Chambers and ABI.

PN5942

JUSTICE ROSS: Can I raise one thing at the outset, and this is by way of an apology to you, Mr Dowling. You've been trying to get me to focus on the order of the expert witnesses in the next tranche for some time and I have been sort of lightly pushing that off. It's only when I started to revisit the dates that are available that it's occurred to me that that's coming up quite quickly.

PN5943

MR DOWLING: Yes.

PN5944

JUSTICE ROSS: So I don't think I can leave that discussion until next Friday as we had originally planned. I think certainly the scheduling of the witnesses on 30 September through to 2 October, that period, I think we should have a discussion about that. Perhaps this Friday after the debate concludes at 11.30 on the other issues I will come back in and we'll mention that matter then.

PN5945

I know, Mr Izzo, you're still sorting out your crew, but I think we will need to focus on which experts are going to be in that block. If we leave it to the following Friday it doesn't give much time to sort that out. We will still keep the Friday of next week's mention in the calendar because that will allow us to consider the subsequent days, but I think we will need to focus a little bit earlier on what happens in that first tranche. I would encourage you to have discussions about that as well.

PN5946

MR DOWLING: Yes, Your Honour. Can I just clarify? As I understand it, the result of that is on 18 September we will discuss timetabling for 30 September and 1 and 2 October?

PN5947

JUSTICE ROSS: That's right.

PN5948

MR DOWLING: But then on 25 September we will discuss timetablings for the remaining November days; the 4, 5 and 6.

PN5949

JUSTICE ROSS: Yes, that's right.

PN5950

MR DOWLING: Thank you.

PN5951

JUSTICE ROSS: We will also be in a better position to know where we are up to with all of it by then as well. It may mean it's a short mention and I would encourage the parties to have discussions about what takes place on the 30th and 1st and 2nd.

PN5952

MR DOWLING: Yes, thank you.

PN5953

JUSTICE ROSS: I'm sorry about that (indistinct). If I had listened to you more closely earlier I would have realised that time is moving a bit more quickly than I had anticipated.

PN5954

The first thing this morning is to deal with the application by ABI in correspondence of 15 September which is seeking an extension in relation to the filing of reply evidence by Professor Lewis from 4.00 pm today to 12 noon this Friday. We have received correspondence from United Voice and from the SDA which speaks for itself. Mr Izzo, what do you want to say in response to that correspondence?

PN5955

MR IZZO: Your Honour, we don't have a specific objection to Professor Lewis' evidence being heard on 1 or 2 October. Our desire is to ensure, as I think the Bench's desire is, is to see that the proceedings are run as efficiently as possible. We know that there is a date that's available next Thursday, so we're - our preference is to have Professor Lewis heard on Thursday because he is available that day, we have made arrangements for him to be able to attend on that day, et cetera. I'm not saying those arrangements can't be changed. I'm just saying that I think in the interests of efficiency that's our preference. We are not necessarily convinced that there is substantial prejudice caused by the delay in the filing of the evidence given that there are ongoing hearings scheduled for today, tomorrow and Friday. We are not necessarily convinced there would be substantial preparation time dedicated to the evidence of Professor Lewis over those days, but
- - -

PN5956

JUSTICE ROSS: Bearing in mind the SDA is not involved in the hearings over the next few days.

PN5957

MR IZZO: Yes, Your Honour, that is true. So all we can say in that regard is the delay is not a substantial one. For that reason, our preference is for the matter still to be heard on Thursday, but if there is a significant prejudice caused to United

Voice and that is the case, then we wouldn't stand in the way of having Professor Lewis heard on 1 or 2 October. My understanding is he is not available on 30 September, but 1 or 2 October he is available.

PN5958

JUSTICE ROSS: So can I put it in this way, that in order of preference, you want to be granted the extension so he's got sufficient time to - that's your primary position.

PN5959

MR IZZO: Yes, Your Honour.

PN5960

JUSTICE ROSS: Sufficient time to put the reply in. If we are of the view that that would cause prejudice to the other parties, if we are persuaded by that argument, whilst you prefer because of his availability to run next Thursday, he is also available on the following set of sittings on the days you have indicated.

PN5961

MR IZZO: Yes, Your Honour. And I apologise, I should say in respect of the extension we acknowledge that we were aware of the tight timeframes in place for the filing of reply, but we did have some difficulties in obtaining final approval to have Professor Lewis' final research funded which meant that he wasn't allowed to start the day we got the evidence. That's not something that's his fault. It just happens to be one of the practicalities associated with obtaining evidence in reply and the way that the matter is being funded, so unfortunately, that circumstance arose. There was little we could do about it even though we knew that we were always facing a tight timeframe. So we extend our apologies, but that's the best that we can do in the circumstances.

PN5962

JUSTICE ROSS: The other sort of practical issue that arises is the one that is raised in the correspondence, when would we deal with objections to the reply evidence that he files because, of course, we are dealing with the objections to the other evidentiary material in the morning on the Friday. The unions would need to look at the reply evidence. We would need to have some process for dealing with objections. I am just concerned about how that fits in, given if his evidence is on the Thursday, how is all that going to work?

PN5963

MR IZZO: Your Honour, I'm not sure that would be a substantial concern because having viewed the objections that have come forward to date in respect of Professor Lewis' evidence, the predominant objection relates to just one discrete part of his evidence going to social mores on weekends. The evidence that he is replying to, predominantly the expert reports of Professors Borland and Quiggin don't actually go to those issues.

PN5964

JUSTICE ROSS: No, I'm not suggesting that there would necessarily be any but they have still got to be given an opportunity to look at it and assess whether they

want to make an objection. We then would need to deal with the objection at some point, that's all.

PN5965

MR IZZO: Your Honour, I suppose the reason I raise that as a contextual matter is because if there were objections, I would have thought that they are matters that could have been dealt with relatively efficiently either on the morning of the Thursday or potentially on the Wednesday afternoon because Ms Pazuelo has been moved, I understand, from the Wednesday afternoon. But the reason I raise the context is because any objections will probably be dealt with relatively briefly.

PN5966

JUSTICE ROSS: All right. Thank you. Mr Dowling, we have read what you have put. There was one matter I wanted to ask you about. If we were to grant the extension but not hear Professor Lewis next Thursday but hear him in the schedule sittings that follow, how are you prejudiced by that?

PN5967

MR DOWLING: No, no, we would be content for him to be heard. I think we proposed that he instead be heard on the first or 2 October.

PN5968

JUSTICE ROSS: That would also allow, picking up the point you made the other day, for concurrent evidence as an option with the three witnesses that are dealing with that material on the same day.

PN5969

MR DOWLING: On those two days, if they could all three of them be heard in those two days, we thought that would be something that would be advantageous to the Commission and certainly overcome the problem that has now been created.

PN5970

JUSTICE ROSS: It may avoid recalling a witness to deal with evidence that another witness has given on the run.

PN5971

MR DOWLING: Yes. I think particularly with respect to the three economists, that's what we were - clearly their evidence is crucial, all three of them.

PN5972

JUSTICE ROSS: I imagine you'd both say that but on the basis that we accept the evidence of your witnesses but yes.

PN5973

MR DOWLING: Yes, yes.

PN5974

JUSTICE ROSS: Clearly there is a joining of the evidence around those issues and those three witnesses are the ones that deal with that discrete aspect of the case.

PN5975

MR DOWLING: Yes.

PN5976

JUSTICE ROSS: Yes.

PN5977

MR DOWLING: Can I identify just a couple of very brief matters? It seems to be said, I think it seemed to be said by Mr Izzo, that we might not be missing very much because we're missing one to two days and we're in court anyway. Of course that neglects that the material provided by Mr Lewis would have to go to both of those experts that it responds to. They are going to miss the two days also. We don't yet know when their evidence is, so that shouldn't be forgotten.

PN5978

It is said that there was some potential delay in respect of Professor Lewis replying. Well, we certainly weren't put on notice of that and could have been.

PN5979

It is also said that they accept that there was a tight timeframe. The Full Bench should be aware that when these - they accepted a timetable that had an eight day gap for reply material. As a result of being late, there was a new timetable provided that gave them 12 days. So in fact they got a much longer period than they had originally agreed to and yet we are still in this problem.

PN5980

JUSTICE ROSS: I must admit I am less concerned for myself with a non-compliance issue. These things happen in cases.

PN5981

MR DOWLING: Yes.

PN5982

JUSTICE ROSS: It really becomes a question of prejudice and fairness between the parties.

PN5983

MR DOWLING: That is the issue for us, too, of course.

PN5984

JUSTICE ROSS: I would not want to hold any party to a deadline and exclude evidence that they want to bring.

PN5985

MR DOWLING: Yes, provided there is no prejudice.

PN5986

JUSTICE ROSS: That's right. Provided you can accommodate and make sure that the other parties have an opportunity. You may find yourself in the same position at some point.

PN5987

MR DOWLING: On that, Your Honour, as I have said, for our part, we think the first and second, the putting of those three economists on the first and 2 October could accommodate that problem.

PN5988

JUSTICE ROSS: Right.

PN5989

MR DOWLING: Thank you, Your Honour.

PN5990

JUSTICE ROSS: Thank you. Ms Forsyth, anything you want to add?

PN5991

MS FORSYTH: The SDA is at one with the submission as put by United Voice, Your Honour, with respect to the application sought for the reply evidence of Professor Lewis. Our primary position is that the extension should be refused but if it is granted, then hearing Professor Lewis on the first or 2 October obviously avoids the prejudice that would otherwise attach to the application.

PN5992

JUSTICE ROSS: Right. Anything finally on this? No? We might adjourn for a couple of minutes and let you know.

SHORT ADJOURNMENT

[9.45 AM]

RESUMED

[9.51 AM]

PN5993

JUSTICE ROSS: Mr Izzo, we propose to grant the extension sought but we will move Professor Phillips' evidence - sorry, Professor Lewis' evidence to the dates that have been indicated in the next schedule. We will leave the dates for discussion between the parties and we would also encourage the parties to have discussion about the concurrent evidence idea and how that might work. It would certainly be desirable for the three economists to be heard on the same day or days. All right.

PN5994

MR IZZO: Thank you, Your Honour.

PN5995

JUSTICE ROSS: Nothing further in relation to that matter?

PN5996

MS FORSYTH: Your Honour?

PN5997

JUSTICE ROSS: Yes?

PN5998

MS FORSYTH: If I might just say on the former issue that you raised with respect to the discussions on Friday with the remaining timetabling of tranche B if

you like for the expert evidence. It would be of great assistance to the SDA, and to be placed in the best position to assist the Bench in that regard for the employer organisations to respond to my instructor's request that estimates of their cross-examination time be provided prior to Friday.

PN5999

JUSTICE ROSS: Really, we just have to know which witnesses are going to be dealt with on those three days. So it's probably more focused - it doesn't need to be about all 16 or 14 of the union experts. If we have got Pazuelo and the three economists, that is probably going to take up the three days, or close to it.

PN6000

MS FORSYTH: Yes, that may well be the case, Your Honour. Thank you for that.

PN6001

JUSTICE ROSS: We may not get to balance of the - so really you would need to know the extent of cross-examination in relation to - is it Quiggin and Borland? - yes, those two, and you know that Lewis is going to be, I think, about a day was my recollection from the union side. Is that right or - - -

PN6002

MR DOWLING: Do you mean Pazuelo or do you mean - - -?

PN6003

JUSTICE ROSS: No. Pazuelo, I thought, was a day and a half.

PN6004

MR DOWLING: Yes.

PN6005

MS FORSYTH: Yes, I understood that I think the estimate that has been provided, Your Honour, is half a day for Professor Lewis.

PN6006

JUSTICE ROSS: Well, that's two days down out of three and you've got a day for the two union experts, Quiggin and Borland. That's probably going to be it for those three days. Unless the parties think an additional - that would complete the employer experts and it would complete two of the union experts. Perhaps the unions could give some thought to which expert they would want to call if there was, say, half a day or so available, which one would you call, and as soon as you have identified that, let Mr Izzo know and he can let you know how long cross-examination would be on that expert. I don't think we need necessarily - I think you should try and get the information that is requested to them next week sometime, before the Friday mention because that's dealing with the final tranche. But this Friday is really just focused on those next three days and they will largely be taken up with what we've been discussing. Pazuelo and the economists should take care of most of it. You know, obviously we've got to deal with the objections to the evidence and that may change what we've been discussing but on the current - absent any objections, that is what we were looking at. Okay?

PN6007

MS FORSYTH: Thank you, Your Honour.

PN6008

JUSTICE ROSS: Anything further on that? No. All right. Let's go back to the evidence. Mr Ovenden. Can I just raise with you, in the afternoon I think we have three witnesses. Are they all in the one location?

PN6009

MR IZZO: Yes, Your Honour, I'm instructed they are all in Brisbane.

PN6010

JUSTICE ROSS: Perhaps if we can arrange to get them - well, pretty much 1.45 to 2.15, then that would be good.

PN6011

MR IZZO: Yes, Your Honour.

PN6012

JUSTICE ROSS: I know it's more difficult in the morning because we're all over the place. All right.

PN6013

MR IZZO: Your Honour, at this point, if I may be excused?

PN6014

JUSTICE ROSS: Certainly. Thanks very much.

PN6015

MR IZZO: Ms Baxter will be staying for the duration of proceedings though.

PN6016

JUSTICE ROSS: Thanks very much. I should indicate we will issue a short statement confirming what we have decided this morning and granting the variation to the directions, et cetera.

PN6017

MR DOWLING: Thank you, Your Honour. Can I just mention one brief timetabling matter? On 23 September at 11.20 am there is a spot for Akira Boardman, a United Voice witness. She will not be called and her evidence not relied upon as a result of matters outside of our control.

PN6018

JUSTICE ROSS: Okay. Does that mean we could move Ms Kindness to 11.20?

PN6019

MR DOWLING: I think so, Your Honour, but we'll confirm it. We'll make some enquiries.

PN6020

JUSTICE ROSS: If you wouldn't mind. Thank you.

PN6021

MR DOWLING: Sorry, Your Honour. I'm told that is a yes, we can.

PN6022

JUSTICE ROSS: Thanks very much.

PN6023

MR DOWLING: Your Honour, call David Ovensden, who will take oath.

<DAVID OVENDEN, SWORN [9.57 AM]

EXAMINATION-IN-CHIEF BY MR STANTON [9.57 AM]

PN6024

Sir, you are the group operations manager of The Glen Hotel?---That is correct, yes.

PN6025

That hotel is located in Eight Mile Plains in Queensland?---Yes.

PN6026

How long have you held that position?---I've held the group operations position for about eight or ten years and I've been working with the hotel for just over 20.

PN6027

Sir, for the purposes of these proceedings you have done two statements; one statement, three pages of 26 June; and one statement, of one page, of 25 August of this year. Do you have those statements with you this morning?---Yes, I do.

PN6028

Sir, do you say that the content of those statements is true and correct to the best of your knowledge and belief?---That is correct, yes, I do.

PN6029

Your Honour, matters of objection to the statement of 26 June, again my friend will say something, that this has been, as I understand it, resolved. I hand up five copies, if it assists. Paragraph 14 shows some redaction and unless there are any objections, I would seek that that statement and the statement of the 21st - I beg your pardon, the 25th be received as the witness' evidence-in-chief in the proceedings.

PN6030

MR DOWLING: No, objection, Your Honour.

PN6031

JUSTICE ROSS: I'll mark the longest statement - I think we're at AHA47, is that right?

*** DAVID OVENDEN

XN MR STANTON

PN6032

MR STANTON: Yes, Your Honour, 47.

**EXHIBIT #AHA47 STATEMENT OF DAVID OVENDEN DATED
29/06/2015**

**EXHIBIT #AHA48 SUPPLEMENTARY STATEMENT OF DAVID
OVENDEN DATED 25/08/2015**

CROSS-EXAMINATION BY MR DOWLING

[10.00 AM]

PN6033

Mr Ovenden, can you see and hear me clearly?---Yes, I can.

PN6034

Your evidence is you are the Group Operations Manager of the Glen Hotel?---That's correct.

PN6035

You have given some evidence about the staff employed by the hotel. Is it still correct that at the moment there are 120 staff?---Yes, there is currently 120 approximate staff there to 125.

PN6036

Sorry, 122 or 125 did you say?---Currently last week there were 125.

PN6037

So since the statement of 30 June you have engaged five new employees?---That's correct.

PN6038

Are those five new employees casuals or full-timers or part-timers?---I don't have that information with me.

PN6039

We know though, do we, that you have at least 75 casuals employed at the hotel?---As of the 30th of June that was correct.

PN6040

That number has not got smaller, it may have got larger. Is that right?---That could be correct, yes.

PN6041

The trading hours - it has some accommodation. Putting the accommodation to one side for the moment, the trading hours hotel are 10.00 am until 3.30 am?---Yes, that's correct.

PN6042

Your liquor licence runs until 3.30 am?---Yes, that's correct.

PN6043

Did that change in 2014?---Yes, from the best of my knowledge, that's when it changed from 2.30 to 3.30.

*** DAVID OVENDEN

XXN MR DOWLING

PN6044

I think you - is it right that in - so early in the middle of 2014 your liquor licence ran until 2.30 am. Is that right?---Yes, that's correct.

PN6045

I think at that time in about August/September of 2014 the then Newman government lifted the moratorium on making applications to extend liquor licences. Is that right?---That is correct.

PN6046

You made an application, what, late 2014 to extend your liquor licence from 2.30 am to 3.30 am?---Yes, that's correct. We actually applied for it earlier and it got held over in the moratorium and eventually got processed in 2014.

PN6047

Are you able to say when you applied for it? When you say you applied for it earlier, do you know when that was?---Just prior to the moratorium. I don't know exactly the date.

PN6048

Come 2014 when the moratoriums lifted the penalty rates under the current award are in place but it's still your desire to extend from 2.30 am to 3.30 am. Is that right?---Yes, that was correct.

PN6049

You give some evidence about using salaried staff on public holidays. Should we understand from that that they are the staff that you identify in your second statement as the 41 employees on an annualised salary?---Yes, that's majoritarily(sic) correct. Yeah, there's three full-timers as well, but the majority of those are from the annualised salary.

PN6050

Do you know, are they managers or not? I assume that not all 41 of those are managers. Some of them are not. Is that right?---Only a couple aren't. The majority of those are managers. Probably up to about 80, 90 per cent.

PN6051

Do you use the non-managerial salaried staff on the public holidays also?---Sometimes there would be, but I couldn't answer that 100 per cent. Some may have it off.

PN6052

You understand that when you engage salary employees - when you annualise a salary that the Award requires that the annual salary under such an arrangement over the course of a year cannot be less than what the employee would have been entitled to had they received all of the penalties and overtime rates that they were due?---Yes, I am aware of that.

*** DAVID OVENDEN

XXN MR DOWLING

PN6053

And you are required to keep records of the start and finish time of all of those annual salary people who are not managers?---Yes, that correct. Yes.

PN6054

And you do that?---Yes, we do.

PN6055

They sign that on a weekly basis?---They submit a timesheet at the end of the week and they get submitted to the payroll department on a weekly basis.

PN6056

One of the purposes of that is so you can do a reconciliation to ensure that those relevant people we are talking about were, in fact, paid at least what they would have been entitled to in respect of the penalties and overtime. Do you understand that?---Yes.

PN6057

So I am suggesting to you that with respect to those people it would not be cheaper to work them on a public holiday at all?---Possibly, if you look at it from that point. We look at it that we currently give them an extra day off and we look at it then on a daily basis rate because we pay them higher on a normal daily rate. So if I'm looking at a full time employee or a salaried manager or employee, they're on a higher rate and we give them a day in lieu for that. So I imagine there that they would be as equal to a casual, I would say.

PN6058

When you give them a day off you've got to have someone else work in their place, I assume?---That's correct.

PN6059

If we take a simplistic example - if we've got a Sunday and you require someone for - sorry, I withdraw that. If we take a public holiday and you require someone for 10 hours, your choice is between the salaried person that must be paid the penalty rates or above and as against that you've got a casual who has got to be paid the penalty rates. I am suggesting to you you're not going to save any money by employing the casual employee because they've got to be paid at least the penalty rate. So in terms of that - - -?---I look at it - we build that into the total salary, so they're averaged over the whole week. So when I'm looking at a salary wage, they're built in higher on a Monday to Friday rate. So when I'm looking at the actual day of a public holiday, they're only costing me the average of their week whereas a full time or a casual person we'll be paying double time and three quarters. So the actual dollar cost on that day is higher.

*** DAVID OVENDEN

XXN MR DOWLING

PN6060

But you can't calculate these costs over a week. You've got to do properly over a year. If you calculate the salaried person over a year that person can't receive less than the penalty rate and overtime that they would have received. So over the course of a year that person is not going to be any cheaper?---If you look at that example, it could also be that they had worked less hours on a Saturday or Sunday

and the average will be - as long as it's paid 20 per cent above the Award for managerial.

PN6061

You have identified some concerns about penalty rates on Sundays and public holidays in paragraph 14 to 17 of your longer statement. You understand, of course, that it is not part of this application that penalty rates will be removed. Do you understand that?---Yes, I do.

PN6062

What is being sought is that they would be reduced?---That's correct.

PN6063

Have you calculated for any day, any particular Sunday, for example, the difference between what you pay in penalty rates under existing penalty rates provided for by the Award and what you would pay in penalty rates under the penalty rates proposed by the AHA?---Yes. I got our payroll to look at this morning for last Sunday and we had 257.5 hours - - -

PN6064

Can I just stop you there for the moment?---Sure.

PN6065

Why did you ring the payroll this morning? Did someone ask you to do that?---No, I did that just out of my own thoughts of what the saving would be to get a reference to the dollar amount, yeah. Shall I continue?

PN6066

And the dollar amount we're talking about is the difference between - - -?---The difference between time and three quarters and time and a half which, as an average of F&B, grade 2 is about \$4.61 and so just on an average saving if we take the average of F&B grade 2 - and there's some F&B grade 3 in there - the saving would be an approximate of \$1200 on last week's payroll on casual.

PN6067

Can you tell us exactly how many staff you identified to do that calculation?---I haven't got that in front of me. We just pulled a total figure of hours off the payroll system that was casual hours that were worked on last Sunday at the hotel.

PN6068

Are you not able to tell the Commission how many casual employees you're talking about?---No, I can't tell you.

PN6069

Are you able to tell them with any precision what level those employees that worked on that day were classified at?---No, I can't.

*** DAVID OVENDEN

XXN MR DOWLING

PN6070

You have done that example today, is that an exercise you did before today?---I had done that example when I was writing the statement as well, so I just wanted to get an up to date figure to see where we were heading as of last Sunday.

PN6071

Why didn't you include any of that in your statement?---At that stage I didn't feel it was relevant.

PN6072

You didn't think it was relevant?---No, I wasn't looking at putting - I didn't think it was relevant to put in the dollar term, I actually stated there that we could utilise where we could actually get more employment out of using these funds in my eyes.

PN6073

Isn't that the most relevant question, what it is you're going to save between the two proposals? You have to know that to form an assessment of what you're going to do differently, don't you?---Yes, and that's why I've relevantly said that we have some savings when we do these penalty rates that we can extend our trading hours or open up restaurants, et cetera.

PN6074

But it's the level of those savings that is the most important thing, isn't it; not just that you have a saving, it's the level of them that is the most important, isn't it?---Yes, it is.

PN6075

But you haven't included that in your statement?---No, I didn't.

PN6076

Nothing further.

PN6077

JUSTICE ROSS: Mr Ovenden, can I just ask you a couple of questions about the longer statement. Can I take you to paragraph 15?---Yes.

PN6078

You say there that the restaurant is closed on a number of public holidays?---Yes.

PN6079

So how many public holidays are we talking about there?---Okay. We only open on one public holiday and that's Christmas Day for a Christmas Day function. All other public holidays we close the restaurant.

PN6080

In paragraph 17 in the second sentence you say:

PN6081

No casual or non-salaried staff are rostered.

*** DAVID OVENDEN

XXN MR DOWLING

PN6082

Are you referring there to work in the bottle shop, does that relate to the first sentence or does it mean something else?---No, that's correct, it generally only relates to the bottle shops.

PN6083

How do you operate on a Sunday, what parts of the business are open and how do you staff that?---Okay. So currently we operate all areas of our business on Sunday. We just limit some trading times on Sunday to be shorter, so a couple of our bottle shops will close at 7 am versus 10 o'clock or 8 o'clock, and also our deck bar will close earlier on a Sunday because there's no entertainment or any offering on there at that night. We still operate our restaurant as normal, but we just limit our - there's no entertainment on a Sunday night.

PN6084

What about the types of employees that you roster to work on a Sunday?---It's a mix, so a mix of salary and also casual staff.

PN6085

What would change - I see what you say about what would change on public holidays in your statement, but if the AHA amendment were granted for the Sunday penalty rate what would you do differently?---For a start we actually - Sundays don't operate with a receptionist, so it's the only day of the week we have no one on the phones because of the costs associated with that, so I feel that would be an advantage to have a receptionist on there. I feel I could offer some entertainment on a Sunday night with the savings that could potentially increase patronage and longer term of trading, and we could also look at the ability to spend some more on family fun days that we do once every month or three months, we could do that more regularly to try and increase patronage, more hours.

PN6086

You indicated in response to some questions put to you earlier that you had done the calculation for last Saturday as to what - - -?---Last Sunday sorry, your Honour.

PN6087

Sorry, last Sunday, as to what would be the savings had you been operating on the lower rate, is that right?---That's correct.

PN6088

I would be interested in seeing those calculations - - -?---Sure.

PN6089

- - - and probably the easiest way would be for you to talk to the Association and put a supplementary statement in attaching those. That may mean that you are recalled, we will wait and see when it comes in. It may mean that you're recalled and asked some further questions about that, but let's see how that works. All right?---No problem. Thank you.

*** DAVID OVENDEN

XXN MR DOWLING

PN6090

Anything arising?

PN6091

MR DOWLING: I was just going to formally reserve my rights in respect of any further cross-examination that might be required.

PN6092

JUSTICE ROSS: And let's see - it may speak for itself, it may not - let's see how it goes.

RE-EXAMINATION BY MR STANTON

[10.16 AM]

PN6093

MR STANTON: Mr Ovenden, you were asked questions by his Honour regarding the amendment to the Sunday rate and you mentioned putting on a receptionist. Do you recall that?---Yes. Yes, I did.

PN6094

Do you have any idea at this point how many hours might be available?---Currently they work seven and a half to eight hour days, so probably seven to eight hours.

PN6095

Earlier you were asked questions by my friend, Mr Dowling, regarding the salaried arrangements for some managerial employees. Just to confirm these employees are employed on a permanent basis?---That's correct.

PN6096

MR DOWLING: I wonder if my friend might choose to ask his questions in a non-leading way.

PN6097

JUSTICE ROSS: Yes, I agree. If you persist in asking leading questions it may reduce the probative value of the answer that's given.

PN6098

MR STANTON: Yes, of course.

PN6099

JUSTICE ROSS: All right. Anything further from this witness?

PN6100

MR STANTON: Nothing further.

PN6101

JUSTICE ROSS: Thank you for your evidence and your time, you're excused.

<THE WITNESS WITHDREW

[10.17 AM]

*** DAVID OVENDEN

RXN MR STANTON

PN6102

JUSTICE ROSS: If there is to be a supplementary statement if you can endeavour to get that done as quickly as possible and make sure that United Voice get it as quickly as possible as well.

PN6103

MR STANTON: Yes, Ms Wellard will liaise with the AHA.

PN6104

JUSTICE ROSS: Thank you. Ms Tait?

PN6105

MR STANTON: Yes, your Honour. I call Mel Tait.

<MELINDA JANE TAIT, SWORN

[10.18 AM]

EXAMINATION-IN-CHIEF BY MR STANTON

[10.18 AM]

PN6106

MR STANTON: Ms Tait, you are the general manager for the Murrumba Downs Tavern located in Murrumba Downs, Queensland, is that the case?---Yes. Yes, that is correct.

PN6107

And how long have you held that position?---At the Murrumba Downs Tavern I've been there for six years, since we built.

PN6108

Thank you. For the purposes of these proceedings you have done two statements, one a statement of 26 June and a further supplementary statement of 28 August this year?---Yes.

PN6109

Do you have both of those statements with you this morning?---Yes, I do.

PN6110

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

PN6111

Your Honour, if I could hand up five copies of the more substantive statement. We have resolved the objections. If it assists paragraphs 13 and 15 are the relevant paragraphs in relation to those.

PN6112

JUSTICE ROSS: No objection?

PN6113

MS BURKE: No, none. Thank you.

*** MELINDA JANE TAIT

XN MR STANTON

PN6114

JUSTICE ROSS: I will mark the longer statement as exhibit AHA49 and the supplementary as exhibit AHA50.

**EXHIBIT #AHA49 WITNESS STATEMENT OF MEL TAIT DATED
29/06/2015**

**EXHIBIT #AHA50 SUPPLEMENTARY STATEMENT OF MEL
TAIT DATED 25/08/2015**

CROSS-EXAMINATION BY MS BURKE

[10.20 AM]

PN6115

MS BURKE: Ms Tait, can you see and hear me all right?---Yes.

PN6116

Can I just start by clarifying a few matters. You've said in your second statement you've got 32 staff: 20 of those care casuals and the remaining 12 are full-time; and seven of those full-timers are on an annualised salary. Are those employees on an annualised salary, are they managerial staff or non-managerial?---A combination.

PN6117

What's the breakdown there?---4:3; four managerial, three non.

PN6118

Thank you. Are they paid salaries under the award?---Three are, and the four aren't, they're above award.

PN6119

They're above award. Okay. So where are - - -?---In non-award positions.

PN6120

Sorry, I cut you off?---Non-award positions.

PN6121

Okay. So where you say in paragraph 12 of your first statement that your management staff - that the award doesn't apply to them, what you mean is they are paid above the award and therefore you don't have to pay them any of the other award entitlements or provisions. Is that right?---I'm sorry, can you just clarify that. I'm not sure what you're actually asking in relation to. Are you speaking in relation to the salary contracts, or are you speaking in relation to my award managers?

PN6122

I understood you've got four managers?---Yes, we do.

PN6123

They're not paid under the - - -?---Four contract managers.

*** MELINDA JANE TAIT

XXN MS BURKE

PN6124

Contract, okay. Does that mean they're not employees?---No, they're employees, but they're on contract. They're salaried employees. We also have managers that are on award.

PN6125

Are you referring there just to the amount that they're paid? So there's - go ahead?---To both. Yes. No, you go. To both.

PN6126

Sorry, I'm afraid I'm not quite following. You've got 12 full-timers. Five of them are not managers. Am I right?---We have a combination of staff. So we have staff that are managers that are on - salaried managers - so they're on contract with some of the award conditions, such as the clause - what is it? The overtime. Those ones - but we also have supervisors which are managers that are on award, as in they're paid a level 4 and above. Is that clear, or am I missing something.

PN6127

Sorry, Ms Tait, did you just ask somebody - is there someone in the courtroom with you there?---No. I'm talking to myself about clause 27.1.

PN6128

Okay. All right?---Sorry.

PN6129

It's just I can see someone's legs just sitting behind you, and I just wondered if you leaned over and spoke to someone?---No, I'm not speaking to them. No, I'm not speaking to the.

PN6130

Or to anyone?---No. To myself.

PN6131

That's fine. Ms Tait, I understand you've got a copy of the award there in the courtroom with you?---Yes.

PN6132

Terrific. Were you asked to bring that with you today by anyone?---No, I brought that with me.

PN6133

Can you have a look at clause 27 of the award, please?---Yes.

PN6134

I'm afraid I've only got my own copy, and I assume the full bench have got copies.

PN6135

JUSTICE ROSS: Yes.

*** MELINDA JANE TAIT

XXN MS BURKE

PN6136

MS BURKE: Can you see there clause 27.1, it's headed Salary Arrangements?---Yes.

PN6137

And that applies to employees who are not managerial staff at hotels?---Yes.

PN6138

Do you have any of those?---Yes. The four that we were just discussing.

PN6139

Four, okay. If you turn the page, clause 27.2, this applies to - - -?---Yes, the other three.

PN6140

Okay. And then you've got another five full-timers who aren't on salaries at all?---No.

PN6141

Do you mean yes?---Sorry, I mean yes. Sorry.

PN6142

No, that's absolutely fine. So those three managerial staff - this is the 27.2 staff?---Yes.

PN6143

They must be earning more than \$54,000 a year. That's right, isn't it?---Yes, they are.

PN6144

Thank you. Ms Tait, you've said that one of the reasons that you prefer to have management staff working on a public holiday is because they're more efficient workers?---Yes.

PN6145

Can you explain what you mean by that; more efficient than who?---In my experience I find that salaried employees are those that are the highest skilled sets with the better qualifications, and necessary attributes to deal with a higher range of situations. As a result, that's why they are given the full-time positions; versus a casual who may not have the same level of experience. So when in a situation where I'm looking at wages and costs and things, I will naturally roster my stronger staff - I'm meaning stronger and more skilled staff - than my lesser unskilled, to get the most value for my dollar.

PN6146

So on a cost benefit analysis, you might have to pay a salary to an employee like this and you've got to pay them annual leave and all those things, but you get the benefit of that because they are a more efficient worker?---They're also more skilled. They have skills in our industry that are required, such as relevant licences and specific training to deal with specific things that occur.

*** MELINDA JANE TAIT

XXN MS BURKE

PN6147

You also give some evidence of what you might do if penalty rates are reduced. One of the things that you say you will do is give longer shifts to your permanent employees. Do you mean your full-time - you mean your full-timers there?---Yes.

PN6148

Your existing - - -?---My full-time hourly ones.

PN6149

I see. The five?---Yes, the full-time hourly award employees that I have.

PN6150

So you would give them longer shifts each week?---There is definitely a possibility that that could occur.

PN6151

And you would only do that if it was affordable, wouldn't you?---Yes.

PN6152

And so does that mean that you have calculated what that would cost you in additional wages?---Quarterly we analyse our salaries to see what the best benefit we can do. So we're constantly looking at costs and things like that in relation to the business. So yes.

PN6153

So when you say "we are looking", do you mean you, or is it someone else who does this exercise?---I do the exercise on behalf of the company.

PN6154

So can I take it that means you know how much you might save if penalty rates are reduced in the way proposed by the AHA?---Honestly, I haven't done a full calculation but I've done a mid-calculation and I am aware that there will be some significant savings.

PN6155

Perhaps there's just one more question you can answer for me which is just to clear something up?---Yes.

PN6156

One of the things you say might do is - with the money you save from cuts in penalty rates if they were made, is provide some activities to your customers including an Easter egg hunt? Is that a particularly expensive Easter egg hunt?---So if I may indulge a little bit. On a public holiday when you're staffing, it's your staff and all your on costs that are involved. So you need security, you need additional staffing and it's not necessarily the cost of the Easter egg hunt, it's the cost of the event as such. The Easter egg hunt is a part of the event. It's an example.

*** MELINDA JANE TAIT

XXN MS BURKE

PN6157

You need security for an Easter egg hunt?---Under legislation we are required to have security at venues under licensing. It depends on the venue, it depends on the requirement. So we have other restrictions that are applicable to us as well.

PN6158

It depends entirely on the event, doesn't it?---No, no, under licensing there may be a condition on your commercial hotel licence that requires you to have security at particular trade times. So it's not relevant to an Easter egg hunt, it's relevant to a venue, as well as to events.

PN6159

What are those trade times, I'm sorry?---It depends on each license, so each license is individual. Yes, after 1 am you must have additional security but each individual hotelier's license may have a different condition in relation to holding security on it.

PN6160

I think I'll leave that, thank you very much. No more questions?---Thank you.

PN6161

JUSTICE ROSS: Ms Tait, can I just ask you a question about paragraph 16 of your longer statement. Do you have that?---Yes.

PN6162

You say there that if the penalty rates that were being sought by the AHA were granted then you would have longer shifts et cetera. When would those shifts be on?---So we would trade through till the end of the day versus making a decision about - it's relative to the start and the close of the hotel venue. So we might make a decision that we will trade right through till midnight or 1 am versus pulling - - -

PN6163

On what days - I'm sorry - on what days would you do that?---Yes, so it could be any day but mainly we'd be looking at your Saturdays, your Sundays and your public holidays.

PN6164

So is the essence of your evidence that the savings you would make if the claims were granted would allow you to operate longer shifts on a range of days; Saturdays, Sundays, public holidays?---Yes.

PN6165

COMMISSIONER HAMPTON: Ms Tait, do I take it under that scenario, does that mean that the permanent employees would work less hours at other times?---If there were a different structure, it's my belief that we would be able to balance the hours across. There wouldn't be such a definition of how we roster. I'm sorry if it's not coming out the right way, but what I'm suggesting is that rather than - we would be able to train other staff so that we could them over those hours so they'd have specialised skills and be able to work those hours, rather than not making a choice of having them because of the cost.

*** MELINDA JANE TAIT

XXN MS BURKE

PN6166

These permanent employees, some of them at least I take it are full-time?---Well some of them wouldn't automatically be in line for that shift. They could actually have hours at other times, rather than - what I'm trying to say is there's a - you get to an expensive day of trade or expensive days and you pick your staff. Presented with a different cost amount, we can look at a different range of staff to cover those shifts, those days.

PN6167

I'm just trying to explore whether or not you're talking about additional hours here or just changing the mix of staff?---Well it's a combination of the two. I believe there is additional hours and a mix of the staff which I find to be beneficial for the business as a whole.

PN6168

But if you're providing additional hours to full-time employees unless they are working less hours at other times won't you just push them into overtime?---Well what's the benefit of pushing your full-timer to a situation where they've worked in excess when you can utilise other staff at a more beneficial cost? There is a work/life balance involved as well.

PN6169

I agree, I'm just trying to understand what it is you're proposing by way of the additional hours for permanent employees?---I'm suggesting we will be able to trade for longer at the front end of the day and the back end of the day on certain days, and instead of utilising the existing staff in the current format that we do, we would be able to consider using our casuals in a more likely way. So they would also receive the benefit of it. Does that makes sense?

PN6170

Well it does but there's some difference between that and the earlier evidence about the additional hours for the permanent part-time employees, but I understand what you've just said, thank you.

PN6171

DEPUTY PRESIDENT ASBURY: Ms Tait, I was just wondering, as I understood your evidence you said that you hadn't done detailed calculations about savings but that you'd done some what you described as mid-level calculations. You believe that there would be significant savings if the AHA application was granted. I just wondered if you could give us some indication of what your assessment is for Sundays and also for public holidays?---I can't at the moment because I don't have anything with me but - - -

PN6172

Thank you?---I could if you wanted something, I could get something for you.

*** MELINDA JANE TAIT

XXN MS BURKE

PN6173

MS BURKE: One more question. Ms Tait, what time does your liquor license run until?---We have three venues. At the Murrumba Downs Tavern it runs through till - - -

PN6174

Just the Murrumba Downs?---Yes, okay cool. Till 12.30 on Saturdays, 1 pm I think it is on Sundays, I can't remember which one it is, 12.30 on Saturday night and then midnight the rest of the time.

PN6175

So when you - I think you say you trade till 1 am on Fridays and Saturdays but does that mean you stop serving alcohol at 12.30 and it's just half an hour to pack everyone up and get them out?---Yes.

PN6176

Thank you.

PN6177

MR STANTON: Nothing arising.

PN6178

JUSTICE ROSS: Nothing further for the witness? Thank you for your evidence and your time, Ms Tait, you're excused?---Thank you.

<THE WITNESS WITHDREW

[10.37 AM]

PN6179

JUSTICE ROSS: I think our next witness is at a remote location at 11, is that right?

PN6180

MR STANTON: Yes, your Honour, yes.

PN6181

JUSTICE ROSS: We have two witnesses at that location so we'll see if we can deal with the second one earlier. Then following that we have four witnesses at the same location commencing at 1.45. Is that right?

PN6182

MR STANTON: Three in the afternoon.

PN6183

JUSTICE ROSS: Three?

PN6184

MR STANTON: It will be four according to the schedule your Honour refers to but Mr Clarkson is not required. I beg your pardon, we're not relying on Mr Clarkson.

*** MELINDA JANE TAIT

XXN MS BURKE

PN6185

JUSTICE ROSS: You'll endeavour to have the other two available at the earlier time.

PN6186

MR STANTON: Yes.

PN6187

JUSTICE ROSS: We'll stand down until 11 and we'll hear from that witness, thank you.

SHORT ADJOURNMENT

[10.38 AM]

RESUMED

[11.06 AM]

PN6188

JUSTICE ROSS: We have put out a statement which captures what we decided this morning and the other day. Is there any questions in relation to any of the scheduling issues?

PN6189

MR DOWLING: Not from us, your Honour.

PN6190

JUSTICE ROSS: Thanks, Mr Dowling.

PN6191

MR STANTON: I'm informed that the order of Hotel Association witnesses on Tuesday the 22nd, as it appears, may not necessarily represent the order in which they will be available.

PN6192

JUSTICE ROSS: Look, the main thing from our perspective is if the order is shifting on that day then let United Voice know as soon as you can. They know they'll be on that day but it doesn't - it's sort of not critical for us, but if you're cross-examining.

PN6193

MR STANTON: Yes.

PN6194

JUSTICE ROSS: It's not as if they are changing, they'll be on a different day. It might just be they'll be on a different time. Just keep us informed if there are any shifts in that and let United Voice know as soon as you know.

PN6195

MR STANTON: Yes, of course. Your Honour, I call Sue Mitchell.

<SUE MARIE MITCHELL, SWORN

[11.08 AM]

EXAMINATION-IN-CHIEF BY MR STANTON

[11.08 AM]

SUE MARIE MITCHELL

XN MR STANTON

PN6196

MR STANTON: Ms Mitchell, you are the owner of the Victoria Tavern located at 1 Musgrave Street, Rockhampton in Queensland?---Yes.

PN6197

For the purposes of these proceedings you have done two statements, is that the case, one a three page statement and one a single page statement?---Yes.

PN6198

Do you have both of those statements with you this morning?---Yes, I do.

PN6199

Your Honour, if I could hand up five copies of the - I will call it the more substantial statement, that is the three page statement. There were objections, the objections have been, as I understand it, resolved. If it assists, paragraphs 11, 14, 15 and 18 were affected and, subject to anything further, I'd ask that they be received into the evidence as the - into the proceedings as the witness's evidence-in-chief.

PN6200

JUSTICE ROSS: No objection?

PN6201

MR DOWLING: No, your Honour.

PN6202

JUSTICE ROSS: I'll mark the longer statement as Exhibit AHA51 and the supplementary statement as Exhibit AHA52.

EXHIBIT #AHA51 THREE PAGE STATEMENT OF SUE MARIE MITCHELL

EXHIBIT #AHA52 SUPPLEMENTARY STATEMENT OF SUE MARIE MITCHELL

PN6203

Cross-examination?

PN6204

MR DOWLING: Thank you, your Honour.

CROSS-EXAMINATION BY MR DOWLING

[11.10 AM]

PN6205

Ms Mitchell, can you see and hear me clearly?---Yes.

PN6206

Your evidence is you're the owner of the Victoria Tavern?---Yes, that's right.

*** SUE MARIE MITCHELL

XXN MR DOWLING

PN6207

Your second statement sets out the employees of the tavern. You said, at least as at 30 June there were 18 staff. Is that still the case?---This week there's 19, but, yes, we vary from around that mark.

PN6208

Have you hired an additional staff member since 30 June 2015?---Yes.

PN6209

Is that additional staff member a casual or a full-timer?---Just a casual.

PN6210

So you now have 17 casuals and two full-timers?---Yes, that's correct.

PN6211

The two full-timers are on annualised salaries?---Yes, that's correct.

PN6212

So they're employees covered by the award but you have elected to pay them an annual salary, yes?---Yes, that's correct.

PN6213

You've given some evidence in your statement, in your longer statement, between paragraphs 12 and 19, as to what you say are some of the effects of penalty rates on weekends and public holidays. You understand that this application doesn't remove penalty rates; do you understand that?---Yes.

PN6214

It seeks to vary them?---Yes.

PN6215

Do you know how it seeks to vary them?---Yes, it seeks to vary them with regard to Sunday more so, by reducing the Sunday trading rate, and also reducing the public holiday rate of pays.

PN6216

Are you looking at your statement at paragraph 20?---At my statement at paragraph 20?

PN6217

Yes, or are you looking at another document? You're looking at a document, I just wondered what it was Ms Mitchell?---The draft.

PN6218

The draft what?---The draft determination, what the QHA has put forward to you.

PN6219

How is it that you have the draft determination?---I was given it.

PN6220

By who?---Sorry, I don't know your name - Cameron.

*** SUE MARIE MITCHELL

XXN MR DOWLING

PN6221

Do you know who Cameron is?---He's a lawyer for the QHA.

PN6222

When did he give it to you?---Just now.

PN6223

Did you have a discussion about it?---No.

PN6224

What did he say when he gave it to you?---"This was the proposal that we were putting forward."

PN6225

Thank you. So you understand from that document what the proposal is. Did you understand what the proposal was when you signed your statement, or is that the first you've seen of that document?---This is the first I've seen of this document today.

PN6226

JUSTICE ROSS: Two questions in that in the one.

PN6227

MR DOWLING: Yes, you're right, your Honour. Did you understand what the variation proposal was when you signed your statement?---No, I understood that we were looking to address the wages, but I didn't understand what they were - what they were proposing at all.

PN6228

Should we understand from that then that you did not, or you were unable, to calculate the difference in penalty rates that you might pay under the current award and what you might be required to pay, for example, on a Sunday under the proposal as put by the AHA, or QHA? I'm sorry, that was a long question, feel free to - if you didn't follow it feel free to - - -?---Could you just say it again.

PN6229

I think your evidence is when you signed your statement you didn't understand what the variation proposal was. What I'm asking you is should we assume from that then that you haven't done this exercise; you haven't looked at a day, for example a Sunday, and worked out what the difference between the penalty you might pay on that Sunday under the current award and what you might pay on that Sunday under the AHA proposal. Have you done that exercise?---Yes.

PN6230

How did you do that exercise if you didn't know what the variation proposal was?---Under the current award we couldn't afford to operate on a Sunday, so with an amendment under the - - -

*** SUE MARIE MITCHELL

XXN MR DOWLING

PN6231

That's not my question, Ms Mitchell. My question is how did you manage to do that exercise if you didn't know what the variation proposal was; how could you compare the penalty rates under the two proposals if you didn't know what the variation proposal was?---I obviously can't. But I can now, I have it in front of me.

PN6232

So when you provided your statement, and one of the things you said was, you'd like to invest in a playground area. You really were not able to say what your savings might be and, therefore, to inform that decision about what investment you might make, you simply weren't able to say. That's correct isn't it?---I was saying under the current wage structure that it's not viable to do that, because it's - half the time we operate is on a Sunday rate or a Saturday rate which would be the main - the main rates, it's not viable to do that, and I'd done the exercise based on our current rates.

PN6233

You were saying it was not viable to operate under the current rates, but what I'm suggesting to you is before you make a decision to invest in something, some capital works, you have to work out what you've got to spend and how much it's going to cost. Is that fair?---Yes.

PN6234

One of the things you say is, well, if we save some money in penalty rates I might - I might have a - invest in a children's playground. But what I'm suggesting to you is you had no idea how much you're going to - how much your wage bill might be changed to enable you to make that decision as to whether you could or couldn't invest in a children's playground. That's correct isn't it?---Well, that is correct but how would I know the outcome of what you are doing before - whereas we're actually sitting here, so I can't make that decision without knowing what your outcome is.

PN6235

You don't know what the outcome is but you know what the proposal - you should have known, I'm putting to you, what the proposal was. But you didn't, is that right?---No, I didn't, no.

PN6236

Thank you, nothing further.

PN6237

JUSTICE ROSS: Any re-examination?

PN6238

MR STANTON: Nothing, your Honours.

PN6239

JUSTICE ROSS: No other questions for the witness? Thanks for your evidence, Ms Mitchell, you're excused.

*** SUE MARIE MITCHELL

XXN MR DOWLING

<THE WITNESS WITHDREW

[11.18 AM]

PN6240

MR STANTON: Your Honour, I call Will Cordwell.

<WILLIAM ALEC CORDWELL, SWORN

[11.19 AM]

EXAMINATION-IN-CHIEF BY MR STANTON

[11.19 AM]

PN6241

MR STANTON: Sir, you are the owner of Cordwell Investment Pty Ltd, which trades as the Ascot Hotel at 177 Musgrave Street, North Rockhampton?---Yes. That is correct.

PN6242

Sir, for the purposes of these proceedings is it the case that you have done two statements?---I've done one - I've got a statement here, yes, sir.

PN6243

All right. Now - - -?---I've got one statement here.

PN6244

You've got one statement before you. Can you just describe what you've got before you?---Pardon?

PN6245

Can you just describe what it is that you have in front of you, please?---It's a penalty rates for the Fair Work Commission, yes, I do.

PN6246

Perhaps it easier, how many pages?--- - - - I do have here, sir - - -

PN6247

Sir - - -?--- - - - a matter number AM2014/305 over penalty rates was number 1; and the next one was a matter number - - -

PN6248

Mr Cordwell - - -?--- - - - AM2014/272. Yes, sir. Sorry.

PN6249

Sir, how many pages do you have before you?---One in one statement and three in the other, sir.

PN6250

All right. Can you confirm that is all you have in front of you?---Yes, sir.

PN6251

Those statements, do you say that they are true and correct to the best of your knowledge and belief?---Yes, sir.

*** WILLIAM ALEC CORDWELL

XN MR STANTON

PN6252

I would seek that the statements be entered into the proceedings at the witness's evidence in chief. The objections - again, my friend will tell me if it's not the case - have been resolved. And I hand up - in relation to the more substantive statement I hand up five copies for the bench.

PN6253

MR DOWLING: No objection.

PN6254

MS BURKE: No objection, thank you, your Honour.

PN6255

JUSTICE ROSS: I will mark the longer statement as exhibit AHA53, that's the three-page statement; the supplementary one-page statement is exhibit AHA54.

**EXHIBIT #AHA53 WITNESS STATEMENT OF WILLIAM
CORDWELL OF THREE PAGES**

**EXHIBIT #AHA54 SUPPLEMENTARY STATEMENT OF WILLIAM
CORDWELL OF ONE PAGE**

CROSS-EXAMINATION BY MS BURKE

[11.23 AM]

PN6256

MS BURKE: Mr Cordwell, can you see and hear me all right?---Can I give you my what?

PN6257

That answers that. I was asking if he could see and hear me all right?---Yes. I will concentrate little bit more to make sure I do.

PN6258

Just let me know if you need me to speak up. All right?---Thank you.

PN6259

Mr Cordwell, you've given some evidence about working in your pub on Sundays and public holidays. Is it you alone who works there on those days?---I work on myself on those days, yes. I work alone.

PN6260

Is it fair to say that it's pretty quiet around that part of North Rockhampton on Sundays?---Yes.

PN6261

Is it the same on public holidays?---Some public holidays the demand is different, but normally it's a quiet part of town, I suppose, with being - there's lots of competition with bigger hotel operators that I cannot compete with, so it is a lot quieter, and clubs are much more competitive these days.

*** WILLIAM ALEC CORDWELL

XXN MS BURKE

PN6262

And so does that mean because you're the only one who works on - we will just take Sundays as an example. Because you're the only one who works on Sundays, you don't pay anyone any - you don't have any wage bill on Sundays aside from yourself, of course?---That is correct.

PN6263

So if penalty rates were to be reduced on a Sunday, as the AHA are proposing, you wouldn't actually save any money at this stage, would you, because you're not paying any money on Sunday?---No, I certainly am not paying money at this stage. If things were changed we would most likely look at it more closer with the Tourist Information Centre to get them to send more people, especially for our dining concept.

PN6264

When you say dining concept, does that mean that that's not something that you've got in place now, or are you talking about the stone grill dining on the other days?---The stone grill dining, I do on Sunday on my own.

PN6265

And so it's your evidence that if penalty rates were reduced in the way that the AHA are proposing, it might be affordable for you to have people working on a Sunday. Is that right?---Most certainly.

PN6266

And that would be your existing casual staff?---I think - no, I would most likely have to employ another - someone else, or give - especially one of my staff - some extra hours, and I would most likely look at employing someone else for those days to try and improve our business profits.

PN6267

You must, then, have a sense about how much it would cost you to employ someone on a Sunday at the moment?---Yes. If I want to employ someone on a Sunday at the moment I would most likely only work them three or four hours, because it's the cost. Once you start getting into meals in a bigger way, of course you need a lot more staff, so - - -

PN6268

Okay. Let's just take a step back. My question was just you know how much you would have to pay someone to work on a Sunday, say this Sunday, don't you?---With the penalty rates, yes.

PN6269

I think you said that your casuals are mostly - are all level 2 and level 3. That's right, isn't it?---Yes, correct.

*** WILLIAM ALEC CORDWELL

XXN MS BURKE

PN6270

And so it must be right, then, mustn't it, that you would have a sense of how much it would cost on the Sunday per hour to employ someone if the Australian Hotels Association proposal is adopted by the Fair Work Commission?---It wouldn't take

long to work that out, but I have a rough idea of it. I couldn't say exactly what it is, but I would be able to work it out very easily.

PN6271

And you hadn't worked it out when you make your statement. Is that what you mean?---No. Correct.

PN6272

Thank you very much, Mr Cordwell.

PN6273

COMMISSIONER HAMPTON: Mr Cordwell, I'm just trying to get a sense of it for the practical realities of conducting your hotel on a Sunday, for instance. I mean, on an average Sunday how many meals would you serve?---Some Sundays, zero; other days, six, eight meals. It is very limited, yes.

PN6274

And the same on a public holiday?---On a public holiday it could be the same, yes.

PN6275

Thank you.

PN6276

DEPUTY PRESIDENT ASBURY: Mr Cordwell, can you tell me, with your meals on a Saturday or with your hotel on a Saturday, how do you staff it?---I staff it with one person and myself; and at night-time, depending on bookings, as to whether someone else comes in to assist there or I give someone extra hours.

PN6277

So if the AHA penalty rates proposal was implemented, would you staff the hotel on a Sunday the same as you do on a Saturday, or would be different?---No, it would be practically the same as a Saturday; pending, of course, bookings. If you have more bookings you would have to look at the staffing that you would put together.

PN6278

JUSTICE ROSS: Thank you for your evidence, Mr Cordwell, you're excused?---Thank you very much.

<THE WITNESS WITHDREW [11.30 AM]

SHORT ADJOURNMENT [11.30 AM]

RESUMED [11.30 AM]

<COLIN CLIVE JOHNSON, SWORN [1.51 PM]

EXAMINATION-IN-CHIEF BY MR STANTON [1.52 PM]

*** COLIN CLIVE JOHNSON

XN MR STANTON

PN6279

Sir, you are the owner of Pencray Pty Ltd which trades as the Prince Alfred Hotel located at 170 Brisbane Road, Booval, Queensland?---That's correct, yes.

PN6280

Sir, for the purposes of these proceedings, I understand you have done two statements?---Yes, we have. Yes.

PN6281

Do you have the statements before you this afternoon?---Yes, I do.

PN6282

One of those statements is a statement of 24 June 2015. A three page statement?---The 29th of June, yes.

PN6283

I beg your pardon, 29 June, yes. Can I just take you to the numbered paragraph 4 of that statement?---Yes.

PN6284

If you could just read through that paragraph for me just to yourself?---"The Prince Alfred Hotel is open from 10.00 am to 1.00 pm Monday and Saturday and from 10.00 am to 12.00 am on Sunday."

PN6285

Where it says "1.00 pm" should that read "1.00 am"?---Yes, it should.

PN6286

We take that as corrected?---Yes.

PN6287

Sir, where it says "Monday and Saturday" should that read "Monday to Saturday"?---Yes, it should.

PN6288

So we'll take that as corrected. With those corrections to that statement, do you say that in relation to both statements they are true and correct to the best of your knowledge and belief?---Yes, they are.

PN6289

Your Honour, I seek that that the statements be entered as the witness' evidence-in-chief. I can hand up five copies of the substantive statement. That is the statement which I now know to be 29 June and it's accommodated some objections which are shown at paragraphs 10, 13 and 18. The redacted aspects are shown at those paragraphs. I have not marked on the copies that are to be handed up to the Bench the corrections to that paragraph.

PN6290

JUSTICE ROSS: That's all right. We'll make the corrections, yes.

*** COLIN CLIVE JOHNSON

XN MR STANTON

PN6291

MR STANTON: It's paragraph 4.

PN6292

JUSTICE ROSS: Any objection?

PN6293

MS BURKE: No, Your Honour.

**EXHIBIT #AHA55 STATEMENT OF COLIN JOHNSON DATED
29/06/2015**

**EXHIBIT #AHA56 SUPPLEMENTARY STATEMENT OF COLIN
JOHNSON**

PN6294

JUSTICE ROSS: I note that paragraph 4 of AHA55 is corrected so that it reads:

PN6295

*The Prince Alfred Hotel is open from 10.00am to 1.00am Monday to Saturday
and from 10.00 am to 12.am on Sunday."*

PN6296

MR STANTON: May it please.

CROSS-EXAMINATION BY MS BURKE

[1.56 PM]

PN6297

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

PN6298

I wanted to ask you some questions about your casual workforce. I understand you've got 50 casuals. That's right, isn't it?---That's correct, yes.

PN6299

Are some of those juniors?---Some of them juniors?

PN6300

Yes?---I'm sorry, I have industrial deafness so I'm trying a little hard to hear.

PN6301

I'm sorry?---You said are those - - -

PN6302

Are any of your casual employees juniors?---Juniors being what age?

PN6303

Under 21?---Yes, we would have under 21s.

*** COLIN CLIVE JOHNSON

XXN MS BURKE

PN6304

Can you say roughly how many or what sort of proportion out of the 50?---I would have to be guessing, but there's probably only three or four and mostly in the kitchen.

PN6305

And you've got 17 full-timers and 16 of those - - -?---Yeah.

PN6306

Sixteen of those are on a salary. That's right, isn't it?---Yes, that's correct.

PN6307

Of those staff who are on salary, are any of those managerial staff under the award?---We do have managerial staff, yes.

PN6308

Can you say how many out of the 16 are managerial?---Probably four.

PN6309

Those four would be paid at least \$54,000 under the Award. That's right, isn't it?---Yes, it is.

PN6310

Is it your Prince Alfred Hotel that's expanded a bit over the last few years?---It has expanded, yes.

PN6311

I think you opened a restaurant two years ago?---We did, yes.

PN6312

And a cocktail bar last year?---Yes, we did.

PN6313

And a craft beer bar just a month or so ago?---That's true, yes. It opened last Friday.

PN6314

Right, okay. Very recently. So you've obviously got a bit of demand around in order to meet opening all these new venues?---Well, it was a case of we had to change our operation because there was a - Woolworths opened up the Liquor Barn down the road from us, so they made it very difficult for us to survive with retail. So we had to change the operation to survive, to be honest.

PN6315

So that Woolworths is a bottle shop?---Yes, it was the biggest in the Southern Hemisphere at the time they build it and we had a big Liquor Barn for several years until they opened up and it made life incredibly difficult for us to the point where we had to change our whole operation.

*** COLIN CLIVE JOHNSON

XXN MS BURKE

PN6316

So in response to that you have now got the restaurant, the cocktail bar and the beer bar?---Yes.

PN6317

I think you said you've got a gaming facility as well?---We do have a gaming facility, yes.

PN6318

About what proportion of the income of the Prince Alfred Hotel is from gaming?---About a fifth.

PN6319

Mr Johnson, you have given some evidence about how you roster your staff on Sundays and public holidays. Taking Sundays as an example, you roster salaried staff on a Sunday, that's right?---As much as we can, yes, we do.

PN6320

Those staff that work on a Sunday, are they the managerial staff or the non-managerial staff?---Both.

PN6321

There's four managerial staff, so would it be more non-managerial?---There's quite a lot of casuals. We have to do that.

PN6322

Yes, yes, I understand that but putting the casuals to one side, I'm just asking about how many of your full-time salaried employees you roster on a Sunday?---Without looking at the rosters, I can't tell you to be honest.

PN6323

Do you do the rosters, Mr Johnson?---I don't do the rosters, no, I don't.

PN6324

But there would be a few?---Yeah.

PN6325

You understand, don't you, that under the award, salaried employees are to be paid 25 per cent above what they would otherwise get and that that salary has to incorporate what they would receive in terms of penalty rates and overtime?---Yeah. We do that, yes.

PN6326

Given that you have to pay them at least what they would have earned in penalty rates, it's not necessarily cheaper to have those salaried employees working on a Sunday, is it?---How do you mean?

*** COLIN CLIVE JOHNSON

XXN MS BURKE

PN6327

An employee on a salary, you just acknowledged, has to be paid - their salary has to incorporate the penalty rates that they would have been paid if they weren't on a salary. So if they're working on a Sunday, doesn't that mean that their salary

would include the penalty rate they would get on a Sunday?---Yes, that - but we also have to have a lot of casuals working on a Sunday as well.

PN6328

Right. But if you've got a casual and a full-timer on a Sunday, the penalty rate for both of those workers is the same, isn't it?---If we have them working on a Sunday, yes, so the penalty rates - we are paying them 25 per cent above, which - and on a Sunday, I know with the - with our wage costs, they're around about 53 per cent on a Sunday for - - -

PN6329

Fifty three per cent of what?---Of wage costs. That's the wage cost compared to turnover is 53 per cent.

PN6330

On that day?---On the Sunday, yes.

PN6331

When you're assessing the cost of your business overall, you don't look at it on a day to day basis, do you? You will look at it quarterly or annually, when you're doing your taxes for example?---Well, for instance, we - in our bottle shops - - -

PN6332

I'll just ask if you could - I can repeat the question if you need but my question was when you're looking at the financial viability of your business, you look at it across a period, not just day to day?---We look at - say our bottle shops, we close our bottle shops on every public holiday, so we look at it daily as well, and our wage cost - if we run our bottle shops on a Sunday and a public holiday, we lose about \$100 a day, so we close them. If we were running on a normal week, we make about \$160 on a normal day.

PN6333

But you don't do your tax on a daily basis, do you? You don't file a tax return every day?---No, but you have to run your business on a daily basis.

PN6334

You have to look at your business on a daily basis, I accept that, Mr Johnson, but what I'm asking you is when you're looking at it from an accounting point of view, overall, you need to look at it on a quarterly or yearly basis, don't you, otherwise you won't get an accurate figure of the business?---Well, what we - what we find as a business is we have to run it as much as we possibly can by the hour in hospitality. That turns into a day and a day into a week. But we've got to look at it very carefully by every hour that people are working otherwise our wages run away from us. So it's - yes, the - we pay the tax on a year but we have to run it on a very careful basis of hour to hour.

*** COLIN CLIVE JOHNSON

XXN MS BURKE

PN6335

Does that mean that on a day like a Friday or a Saturday when you do really well that you would then consider paying your staff more on those days because you're doing so well?---Well, when we come to Sundays, we would probably lose - we

would be losing money. So somewhere we have to make a profit and if we don't make a profit, we owe money. If we don't make a profit, then the bank is going to foreclose on us. It's the bottom line. We have to make a profit somewhere.

PN6336

I think in a way we're saying the same thing, that you need to look at it - I'll just withdraw that. Losing money on a Sunday might be balanced out by making money on a Friday or Saturday for example?---Could you repeat that?

PN6337

You say you're not making very much money on a Sunday. That might be offset by making a considerable amount of money on Friday, for example?---I wish there was a considerable amount of money on any day. It's just a very slow process early in the week, turnover is very slow in every hospitality business and it - Friday and Saturday are our big days. However, like you said, we've got to spread that over a full week but over the full week it's still very hard to make money out of - out of hospitality. On the food side, it's very difficult. Our food cost is 37 per cent. On a Sunday our wages are 53 per cent. That gives you 90 per cent costs, without any electricity or anything else.

PN6338

And of course, on those days, you have to pay for things like electricity and rent and so on, don't you?---Our electricity is \$360,000 a year. Our rates are about \$300,000 a year. And our land tax is about a hundred. You've got those whether you open your doors or whether you don't.

PN6339

Those are very big costs?---They are.

PN6340

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

PN6341

JUSTICE ROSS: Any re-examination?

PN6342

MR STANTON: Nothing arises.

PN6343

JUSTICE ROSS: Thank you very much for your evidence, Mr Johnson. You are excused.

<THE WITNESS WITHDREW [2.07 PM]

<PETER EDWARD JOHNSTON, SWORN [2.00 PM]

EXAMINATION-IN-CHIEF BY MR STANTON [2.08 PM]

*** PETER EDWARD JOHNSTON

XN MR STANTON

PN6344

MR STANTON: Sir, you are the owner of Ulster Pty Ltd located at 13 Warwick Road, Ipswich in Queensland?---Yes, technically, yes.

PN6345

That entity owns the Ulster Hotel?---Correct.

PN6346

Just clarify, the hotel is located at that address, is that the case?---No, the hotel is located at 25 Brisbane Street, Ipswich. The 13 Warwick Road address is an office.

PN6347

Thank you. How long have you been the owner of the hotel?---We've run the business since 2012.

PN6348

Sir, for the purposes of these proceedings you have made two statements, is that the case?---Yes, it is.

PN6349

One of those statements is a statement of some three pages, and the second statement - - -?---Correct.

PN6350

- - - the second statement of 25 August 2015, a statement of - a single page statement?---Correct.

PN6351

Sir, do you have those statements with you this afternoon?---I do.

PN6352

That's the material, is it, on the - just in front of you?---Yes, it is.

PN6353

You've got nothing else there, just the statements?---No.

PN6354

Is that the case?---Yes, that's correct.

PN6355

Sir, in relation to both those statements do you say that the content is true and correct to the best of your knowledge and belief?---Yes, I do.

PN6356

Your Honour, just in relation to the first of those statements, the substantive statement, I believe we resolved the objections. I hand up to the Bench five copies of Mr Johnston's statement and, to assist, paragraphs 9 and 10 are affected by redactions. Of course it asks - assuming no objections, that the statements be entered as the witness's evidence-in-chief in the proceeding.

*** PETER EDWARD JOHNSTON

XN MR STANTON

PN6357

JUSTICE ROSS: I will mark the longer statement as Exhibit AHA57 and the supplementary as Exhibit AHA58.

EXHIBIT #AHA57 THREE PAGE STATEMENT OF PETER EDWARD JOHNSTON

EXHIBIT #AHA58 SINGLE PAGE SUPPLEMENTARY STATEMENT OF PETER EDWARD JOHNSTON

PN6358

JUSTICE ROSS: Cross-examination?

CROSS-EXAMINATION BY MR DOWLING

[2.12 PM]

PN6359

MR DOWLING: Mr Johnston, can you see and hear me clearly?---Yes, I can.

PN6360

Your evidence is you are the owner of the Ulster Hotel, correct?---We are the owner of the business, the Ulster, and my family - the family owns the real estate. There's been a change of ownership with the real estate with the death of a family member earlier this year.

PN6361

The family still owns the real estate but not the same family member?---So one - sorry, the family - three members of the family - the three families own the real estate and one family, as in mine, owns the business and all its contents.

PN6362

I see. I take it, though, you're not at the business on a daily basis?---I'm at the business every day, yes.

PN6363

But your evidence is that you have another full-time job. Is that right?---That's correct. I'm a self-employed architect but I would spend about - I would spend every afternoon and every evening in the hotel, and pretty well all day Saturdays in the hotel.

PN6364

Otherwise your business is a full-time business, though, your architectural business?---Yes, it is.

PN6365

The staff of the hotel - your evidence is that as at 30 June it was 10 staff members. Is that still the case?---It may be 11 now. It does vary a little bit depending on seasonal influences, but it's about that.

*** PETER EDWARD JOHNSTON

XXN MR DOWLING

PN6366

Do you think it might have gone up by one since 30 June 2015?---It would have, yes.

PN6367

So one additional person has been hired since 30 June?---One casual employee, yes.

PN6368

So from your second statement we should understand that there are now nine casuals and two full-timers on an annualised salary. Is that right?---Correct.

PN6369

What hours does your liquor license run till?---Midnight.

PN6370

That's Tuesday through to Saturday it's midnight on all of those nights?---Yes, it is.

PN6371

You've given some evidence about the impact of penalty rates on your business. You understand, of course, that this proceeding is not going to remove penalty rates. You understand that?---I understand that, yes.

PN6372

It's going to make a reduction?---Yes.

PN6373

It's seeking to make a reduction in the penalty rates?---Yes, I understand that.

PN6374

In understanding that have you calculated the difference between what you presently pay on a Sunday or a public holiday and what you will pay in penalty rates under the variation as sought by the AHA?---I have done some draft figures, yes.

PN6375

You haven't included any of those draft figures in your statement. Is there a reason for that?---When the lawyer asked me for the statement these are the questions that we went through at the time.

PN6376

So you weren't asked to do that as part of your statement?---No.

PN6377

So you didn't do it at the time you did your statement?---I didn't do it at the time, no.

*** PETER EDWARD JOHNSTON

XXN MR DOWLING

PN6378

One of the things you say in your statement is that one of the things you might do is renovate the kitchen. At the time you did your statement of course you didn't

know what the difference is, in terms of the current rate and the proposed rate, so you wouldn't have been able to say with any certainty whether you might or might not do that. Is that correct?---No, it's not correct, in that if there was any - our figures were marginal. So basically when we're opening on Sundays we were just barely covering cost. So any saving would have an effect on the bottom line.

PN6379

But you don't know the extent of the saving, is that fair?---I don't know the extent of the saving, yes, because I don't know how many customers we'll have from day to day.

PN6380

But you don't know the extent of the savings because you hadn't performed the calculation?---I've performed the calculation by having been open.

PN6381

Thank you, Mr Johnston, nothing further.

PN6382

JUSTICE ROSS: Any re-examination?

PN6383

MR STANTON: Nothing arising, your Honour.

PN6384

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

<THE WITNESS WITHDREW [2.17 PM]

PN6385

MR STANTON: Your Honour, I call Mr Peter Sullivan who will make oath.

PN6386

UNIDENTIFIED SPEAKER: If the Commission pleases, I'm not appearing in this matter, but Peter Sullivan is not here at present, we're just trying to find where he is. My apologies, if the Commission pleases.

PN6387

JUSTICE ROSS: That's all right, thanks. We might - we'll stand down for a few minutes while we try and locate him.

SHORT ADJOURNMENT [2.19 PM]

RESUMED [2.23 PM]

PN6388

MR STANTON: Your Honour, I call Peter Sullivan.

*** PETER EDWARD JOHNSTON

XXN MR DOWLING

PN6389

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

PN6390

MR SULLIVAN: Peter Thomas Sullivan, of [REDACTED]
[REDACTED].

<PETER THOMAS SULLIVAN, SWORN [2.24 PM]

EXAMINATION-IN-CHIEF BY MR STANTON [2.24 PM]

PN6391

MR STANTON: Mr Sullivan, you are the owner of Grog Baron Pty Ltd, which trades as the Queensland Hotel Goondiwindi?---That's right.

PN6392

At 34 Marshall Street, Goondiwindi, in Queensland?---That's right. I am the lessee of the hotel.

PN6393

And, sir, for the purposes of these proceedings you've made two statements. Is that correct?---That's right. That's correct.

PN6394

One of 29 June, which is a three-page statement, and a second statement of 31 August, which is a one-page statement?---That is correct.

PN6395

And, sir, do you have those statements before you this afternoon at the commission?---I do.

PN6396

You don't have anything else with you in front of you, do you? You've just got the statements?---That's all. That's fine. Yes.

PN6397

Just with respect to the first of those statements, that is the statement of 29 June, if you have that in front of you?---Yes.

PN6398

Can I just take you to paragraph 7 of that statement?---Yes.

PN6399

Sir, do you see in the second line the word "variable" appears?---Yes.

PN6400

Should that read "viable"?---Exactly.

PN6401

So we will correct that?---Yes, please.

*** PETER THOMAS SULLIVAN

XN MR STANTON

PN6402

And, sir, can I take you to paragraph 13 of that same statement?---Yes.

PN6403

Do you see it reads:

PN6404

My casual staff ask to be rostered.

PN6405

Are we to understand that the words "ask to be" shall be replaced with the words "are available"?---Yes.

PN6406

We will make that correction?---Thank you.

PN6407

With those corrections to that statement, do you say that those statements are true and correct to the best of your knowledge and belief?---I do.

PN6408

Your Honour, I would seek that the statements be entered as the evidence of the witness in the proceedings. I can hand up five copies of the substantive statement. The witness has just corrected two paragraphs, being paragraphs 7 and 13. Those corrections aren't shown on what I will hand up to the commission.

PN6409

JUSTICE ROSS: That's all right. I will go to them once I get the document. Any objection?

PN6410

MR DOWLING: No, your Honour.

PN6411

JUSTICE ROSS: I will mark the three-page statement as exhibit AHA59 and the one-page document as exhibit AHA60.

**EXHIBIT #AHA59 WITNESS STATEMENT OF PETER SULLIVAN
AS AMENDED DATED 29/06/2015**

**EXHIBIT #AHA60 SUPPLEMENTARY STATEMENT OF PETER
SULLIVAN DATED 31/08/2015**

PN6412

JUSTICE ROSS: In relation to exhibit AHA59 in paragraph 7 the word "variable" in the second line is to be deleted and the word "viable" inserted in lieu. In paragraph 13 of the statement the fourth word "ask" is to be deleted and the words "are available" are to be inserted.

CROSS-EXAMINATION BY MR DOWLING

[2.28 PM]

*** PETER THOMAS SULLIVAN

XXN MR DOWLING

PN6413

MR DOWLING: Mr Sullivan, can you see and hear me clearly?---I can.

PN6414

You were asked a moment ago whether you had any other documents with you, and I think you put a document to one side. Can you tell me what that document was?---It was in my folder that I brought down today. It's just a draft determination. That's got written on it - - -

PN6415

A draft what, sorry?---Determination.

PN6416

Where does that document come from?---It was in my briefcase.

PN6417

Do you know where you obtained it or how you obtained it?---Well, my wife must have put it in there this morning.

PN6418

Do you know where she might have got it from?---I have no idea.

PN6419

Your evidence is that you're the owner of Grog Baron, and it trades as the Queensland Hotel in Goondiwindi. Yes?---Yes.

PN6420

And your workforce as at 30 June was 24 employees. Is that still the case?---That is correct.

PN6421

Of those 24 employees, 22 of them are casual?---That is right, yes.

PN6422

You've given some evidence in your statement about what you say are some of the effects on the Queensland Hotel as the result of penalty rates. You understand, of course, that this proceeding is not going to remove those penalty rates?---I understand that, yes.

PN6423

It seeks a variation in the penalty rates?---Yes.

PN6424

Have you been told what that variation is?---I have had a look at it, yes.

*** PETER THOMAS SULLIVAN

XXN MR DOWLING

PN6425

As part of looking at it have you calculated on any of your Sundays or public holidays what the difference you pay in penalty rates under the current award and what you would pay under the proposed variation?---I haven't done any calculations at all. The main reason being because most of those hours on those

days, my wife and I work those hours. We do most of the hours, and then the staff come in after that.

PN6426

All right. But your evidence is - take, for example, on Sunday night a few weeks ago you had three staff working. Do you recall giving that evidence at paragraph 11 of your statement?---Yes, I understand. I understand that, yes.

PN6427

And you have to pay penalty rates to those three staff members?---Yes, we do, because at our hotel where I work as - - -

PN6428

Hang on a sec, Mr Sullivan. The only question is whether you paid penalty rates to those employees on the Sunday?---Yes, I do.

PN6429

And what I'm asking you is have you done a calculation, for example, in respect of the same Sunday, as to what you would pay those three staff members under the variation as proposed by the AHA proposal?---No, I have not.

PN6430

Have you done that in the same way in respect of any public holiday?---No, I haven't.

PN6431

Nothing further, your Honour.

PN6432

MR STANTON: Nothing arises.

PN6433

JUSTICE ROSS: Any further questions for the witness?

PN6434

Thank you for your evidence, Mr Sullivan. You're excused?---Thank you.

<THE WITNESS WITHDREW

[2.33 PM]

PN6435

MR STANTON: That's the last of today's witnesses, your Honour.

PN6436

JUSTICE ROSS: 9.30 tomorrow?

PN6437

MR STANTON: Yes. Mr Hackford from Brisbane, I think, is the first of the witnesses tomorrow.

*** PETER THOMAS SULLIVAN

XXN MR DOWLING

PN6438

JUSTICE ROSS: We will adjourn till 9.30.

ADJOURNED UNTIL THURSDAY, 17 SEPTEMBER 2015

[2.33 PM]

LIST OF WITNESSES, EXHIBITS AND MFIs

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