



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009
TRANSCRIPT IN CONFIDENCE

1052407

**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

9.40 AM, THURSDAY, 17 SEPTEMBER 2015

Continued from 16/09/2015

PN6439

MR STANTON: Your Honour, I call Albert Hakfoort.

PN6440

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

PN6441

MR HAKFOORT: Albert Craig John Hakfoort, (address supplied).

<ALBERT CRAIG JOHN HAKFOORT, AFFIRMED [9.41 AM]

EXAMINATION-IN-CHIEF BY MR STANTON [9.41 AM]

PN6442

MR STANTON: Mr Hakfoort, you are the chief executive officer of the Hakfoort group. Is that the case?---Yes.

PN6443

How long have you held that position?---Approximately five years.

PN6444

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

PN6445

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

PN6446

They're on the table in front of you. Is that the case?---Yes.

PN6447

You haven't got anything else there with you?---No.

PN6448

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

PN6449

Your Honour, I ask that the statements be entered to the proceedings as the witness's evidence-in-chief. I can hand up to the bench - as there were some objections, they've been - and I will be corrected if it's not the case - but they've been resolved. If it assists, paragraphs 5 and 15 of the three-page statement are affected by the redactions.

PN6450

JUSTICE ROSS: Any objections?

PN6451

MR DOWLING: No, your Honour.

*** ALBERT CRAIG JOHN HAKFOORT

XN MR STANTON

PN6452

JUSTICE ROSS: I will mark the three-page statement as exhibit AHA61 and the one-page supplementary statement as exhibit AHA62.

**EXHIBIT #AHA61 WITNESS STATEMENT OF ALBERT
HAKFOORT OF THREE PAGES**

**EXHIBIT #AHA62 SUPPLEMENTARY STATEMENT OF ALBERT
HAKFOORT OF ONE PAGE**

CROSS-EXAMINATION BY MR DOWLING

[9.43 AM]

PN6453

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

PN6454

Can I ask you firstly to look at the longer statement, the one of four pages. You list there the eight hotels within what you describe as, "The network of hotels in the Hakfoort group." Do you see that at the first numbered paragraph under the heading Background?---Yes.

PN6455

You say there that they are the hotels within - the hotels within the group include those ones you list. Can I just confirm that there aren't any others?---At the time of the statement there wasn't, but as at this point in time there are more.

PN6456

Can you explain to the commission the additional hotels?---Yes. There was an acquisition in Bowen called the Denison Hotel on 17 August, and a - - -

PN6457

Sorry, just let me catch up with you. In Bowen, and it's called the what, sorry?---It's called the Denison Hotel.

PN6458

When was that purchased?---17 August, was settlement date.

PN6459

What was the purchase price?---3.75 million.

PN6460

There's another one?---There's a settlement of another hotel on Monday the 21st of this month.

PN6461

Yes?---And settlement will be on that day.

PN6462

Where's that last hotel?---It's the Tingalpa Hotel in Brisbane.

*** ALBERT CRAIG JOHN HAKFOORT

XXN MR DOWLING

PN6463

What was the purchase price of that hotel?---8.5 million.

PN6464

MR STANTON: Your Honour, I'm just wondering if this might be - - -

PN6465

JUSTICE ROSS: Sorry? What's the objection?

PN6466

MR STANTON: It may be commercially sensitive, but I appreciate the transcript is limited.

PN6467

MR DOWLING: I've dealt with it now, your Honour.

PN6468

JUSTICE ROSS: Yes.

PN6469

MR DOWLING: I think you said that that one is settling on 21 September, the Tingalpa?---Correct.

PN6470

That will make a total of 10 hotels within the Hakfoort group. Is that right?---Correct.

PN6471

Can you tell me in respect of the hotels that you have listed - we will leave the Bowen and the Tingalpa aside for the moment - of the hotels you have there, can you tell me their opening hours, the Burke and Wills?---The Burke and Wills has two parts to its opening. It has a combination sector to it, and we run a 24-hour reception, so it doesn't actually have a closing time; but the licensed area is governed by the liquor licence, which is 10 am to 12 am Monday to Thursday. And if you will excuse me, I actually don't have a copy of that liquor licence in front of me.

PN6472

That's okay. And the Gowrie - perhaps I can ask the question a different way. The remaining seven hotels you have there, are their opening hours governed by a liquor licence and their opening hours - sorry, I will ask you one question at a time. Their opening hours are governed by a liquor licence - the licensed areas, at least?---The opening hours are, but trading hours that we actually trade them are not to the full extent of those.

PN6473

All right. Can you tell me, in respect of Mount Isa, what the trading hours are?---There are two venues in Mount Isa. Specifically Red Earth or The Isa?

*** ALBERT CRAIG JOHN HAKFOORT

XXN MR DOWLING

PN6474

The Isa?---The Isa. The Isa trades in accordance with its liquor licence in one area to the full extent of its opening ability, but other areas close down well before their licensed trading hours.

PN6475

Which bit is which? Can you tell us which area trades to the full extent of its liquor licence?---I can. We trade our gaming room to the full extent of our liquor licence and gaming licence, and we close our bistro down and our retail liquor down earlier.

PN6476

Can you tell me what that is? The gaming room runs from when till when?---The gaming room opens at 10 am and closes at 3 am Monday to Sunday.

PN6477

There's a Liquor Barn in Mount Isa as well, isn't there?---Correct.

PN6478

What hours does that trade?---Monday to Saturday we trade it from 10 am till midnight; on Sunday would close it at 10 pm.

PN6479

Is it correct to say that the liquor licence for the Liquor Barn runs from 10 am till 12 am?---Correct.

PN6480

So Monday to Saturday it trades to the full extent of its licence?---Correct.

PN6481

And the Sunday it trades two hours short of its liquor licence, does it?---Yes.

PN6482

All right. And I think in your statement you refer to bottle shops. Do you include the Liquor Barn under that description?---Can you tell me what point I reference that?

PN6483

Paragraph 13, see there in the first line it says, "Drive-through bottle shops"?---Yes. No, that Liquor Barn is not included in that statement.

PN6484

Okay. Well, you see there - - -?---With regards to the trading hours.

PN6485

You see there, if you go down four lines in the same paragraph it says:

PN6486

And The Isa Hotel in Mount Isa has a large outdoor detached bottle shop.

*** ALBERT CRAIG JOHN HAKFOORT

XXN MR DOWLING

PN6487

?---Correct.

PN6488

Is that the Liquor Barn you're referring to there?---It is. But the first three lines of that paragraph are specifically to the drive-thru and detached bottle shops off the other venues.

PN6489

Okay, should we understand from your evidence that you're not saying you would extend the hours of the large – of the Liquor Barn at Mt Isa?---I potentially would, yes.

PN6490

And the most you could extend it, you accept, is two hours?---Correct.

PN6491

All right. Can you tell the Commission please, the total value of the assets of the Hakfoort Group?---I'd rather not, if that's all right.

PN6492

Well, I'd like you to answer my question, please?---I understand. The total group value, off the top of my head- - -

PN6493

JUSTICE ROSS: Just a moment. Why is it relevant?

PN6494

MR DOWLING: Well, I wonder if we could mute the witness?

PN6495

JUSTICE ROSS: Sure. Just bear with us for a moment, we just want to deal with this issue.

PN6496

MR DOWLING: Your Honour, this witness gives evidence about the changing to his service offerings at his establishment because of the return on investment.

PN6497

JUSTICE ROSS: But they're entitled to pick whatever return on investment they like and whatever level of profitability they like. He's not running an incapacity to pay case.

PN6498

MR DOWLING: Well, it seems to be the suggestion, from what's put in respect of the penalty rates, that it's affecting their bottom line.

PN6499

JUSTICE ROSS: It would be.

*** ALBERT CRAIG JOHN HAKFOORT

XXN MR DOWLING

PN6500

MR DOWLING: Yes. Well, how are we to explore that and how are we to establish the extent- - -

PN6501

JUSTICE ROSS: Well, the assets won't tell you that.

PN6502

MR DOWLING: Well, if we know what his total asset is, his total revenue is, his total profit is, if we know what his profit margin is and he's going to give evidence to the Commission that it's affecting his bottom line in terms of profit, and let's say it's a very large profit, in our submission, that is relevant.

PN6503

JUSTICE ROSS: Why? Businesses are entitled to make as much profit as they want.

PN6504

MR DOWLING: They are, but – and we don't cavil with that. But in terms of how much it is that penalty rates can affect that bottom line, if a business is making 200,000 a year and they're going to say that penalty rates make up a 100,000 of that, we accept they're going to say penalty rates have a significant impact on their profit. If they're making 10 million a year and penalty rates are making up 50,000 to 100,000 of that, it's having a very marginal, if any, impact on the profit.

PN6505

COMMISSIONER LEE: Because you can explore that without exploring what the capital value of his organisation is.

PN6506

JUSTICE ROSS: In fact, the capital value and liabilities isn't directly relevant. You're talking about profitability.

PN6507

MR DOWLING: We are.

PN6508

JUSTICE ROSS: Yes.

PN6509

MR DOWLING: I'm happy to restrict my questions to revenue and profit.

PN6510

JUSTICE ROSS: All right. Can we get the witness back on? Mr Hakfoort, we've sought to restrict counsel's questions to questions of profitability rather than overall assets. If there is some commercial sensitivity in relation to any of this material, you should let us know so that we can mark the transcript as being restricted for that purpose. Okay?---Thank you.

*** ALBERT CRAIG JOHN HAKFOORT

XXN MR DOWLING

PN6511

And your counsel should make an objection on your behalf in any event, that if you're concerned about any of those matters, if you can let us know. Do you have any questions about that?---No. Thank you.

PN6512

Okay.

PN6513

MR DOWLING: Mr Hakfoort, I asked you a question about total assets. I don't require you, or you're not required to answer that question. But I want to ask you about your revenue. Can you tell the Commission, please, what your total revenue from the 10 hotels – sorry, perhaps you can't say in respect to Bowen and Tingalpa isn't yours yet - so let's keep it to the eight. Can you say what the total revenue from the eight hotels is?---Is that an EBIT revenue that you're requesting?

PN6514

Yes?---Or after tax? Yes?

PN6515

Before tax?---I actually don't have an accurate figure off the top of my head, however if you would like an approximation at this point in time?

PN6516

Yes please?---Last financial year – last financial year was probably in the vicinity of five.

PN6517

I assume you mean 5 million?---Correct, sorry.

PN6518

Is that your revenue or is that your profit you're talking about? I might have confused you?---That's EBIT revenue, earnings before interest and tax.

PN6519

Okay. And are you able to say what the profit figure is?---After tax and interest?

PN6520

Yes?---Not accurately, no.

PN6521

Approximately, in the say way you approximated the EBIT revenue?---If this is going on the record, it'd be difficult for me to actually give you that figure. I wasn't briefed on the relevance of that, so I just don't have those figures, I'm sorry.

PN6522

Do you mean by that, that you don't have the figures and you're unable to give an approximation?---Not accurately. I could give you an approximation, but if it's to go on the record, then it would probably be misleading or potentially misleading.

*** ALBERT CRAIG JOHN HAKFOORT

XXN MR DOWLING

PN6523

Well, can you do your best and give us an approximation, please, Mr Hakfoort?---Okay, a net revenue, after tax and interest- - -

PN6524

MR STANTON: Your Honour, I think that the answer would need to be- - -

PN6525

JUSTICE ROSS: Just a moment. Yes?

PN6526

MR STANTON: - - -commercially sensitive.

PN6527

JUSTICE ROSS: Well, he hasn't raised that issue, he's raised his – that he's not sure it would be accurate. He's not raised an issue of commercial sensitivity around it.

PN6528

MR STANTON: May it please.

PN6529

JUSTICE ROSS: Yes. Sorry, Mr Hakfoort.

PN6530

MR DOWLING: You were about to answer, Mr Hakfoort?---The net profit after interest and tax would be between one and two million.

PN6531

And just one last question in relation to the EBIT revenue, are you able to say, approximately, the percentage that comes from gaming?---Again, not accurately, no.

PN6532

Approximately, in terms of a percentage?---I'm really struggling to actually put a figure on that, because there's many aspects of our business once it comes down to the bottom line, that to actually accurately disseminate that for you. No, I couldn't actually answer that.

PN6533

Well, I'm not asking you to accurately disseminate it, I'm asking you to give an approximation. You've been the CEO for five years?---As a percentage?

PN6534

Yes?---Probably in the vicinity of 20 to 30 per cent.

PN6535

Thank you. Now, your evidence is that you have – as at 30 June you had 231 staff members?---Yes.

*** ALBERT CRAIG JOHN HAKFOORT

XXN MR DOWLING

PN6536

Is that still the number today?---Approximately an increase of around 20 to 25 on that number. That's due to the acquisition of the Denison in Bowen.

PN6537

I see. So 231 plus 20 to 25?---Correct.

PN6538

And they are employees of the Denison?---Correct.

PN6539

And I take it that number will go up again when the Tingalpa settles, is that right?---Correct.

PN6540

And how many employees are there at the Tingalpa?---Approximately 40.

PN6541

Okay, so by the middle of next week, you might have 290-odd?---Correct.

PN6542

All right, and in respect of the 231 that you've identified, 116 of them are casuals. Is that still accurate?---I doubt it is actually still accurate to the exact number, but as an approximate, yes it would be very close.

PN6543

All right. Okay, something around half or just over half of your employees are casuals?---Correct.

PN6544

And will that be the same after the purchase of the Bowen and the Tingalpa? Are their workforce the same percentage of casuals or more or less?---It will be very similar. The Denison is actually almost identical to the current percentage breakup.

PN6545

Okay. Are you aware of the process for negotiating an enterprise agreement?---I am aware. I haven't engaged in one though.

PN6546

Okay. And when you say you're aware, you're aware that it gives you the ability to tailor terms and conditions to suit your business?---Correct.

PN6547

And that's something you have never done?---No, I haven't. I've had the opportunity presented to me, but I haven't taken that opportunity.

*** ALBERT CRAIG JOHN HAKFOORT

XXN MR DOWLING

PN6548

Why is that?---A lot of our sites are in regional areas and in some - some of those areas we compete against clubs that have a significant tax advantage over us, and as a result they are able to offer superior hourly rates to our staff and poach our

staff on a frequent basis. So reducing the rate even further through an EBA just didn't make sense, it would hinder our business.

PN6549

You don't have to reduce the rate through an EBA though, do you, you could increase it?---As I understand, yes.

PN6550

So why can't you do that?---I'm sorry?

PN6551

So why can't you do that?---I guess I could, but the way that the EBA was presented to me was that it would actually purport to be a reduction in wages and - and the company that was offering it didn't offer it as an opportunity to increase wages.

PN6552

But you don't have to wait for an EBA to be offered to you, you can craft one yourself, can't you?---I could.

PN6553

But you have chosen not to?---Correct.

PN6554

You have said that if you negotiate an agreement and it reduces the rates one of the things you're worried about is other hotels poaching your staff, because - do I understand correctly - they offer better rates than you at the moment?---To clarify it was clubs and we're talking regionally specifically at Mount Isa. It's a fairly unique environment with two large clubs dominating that area. Toowoomba would be a different scenario to that.

PN6555

In respect of those clubs aren't you concerned that that problem will be heightened if you reduce penalty rates, won't that increase the likelihood that those same employees will be poached to the clubs?---Potentially, but we quite often offer salary positions to full-time staff to compensate for that. So rather than the casuals being dropped away there will always be a certain percentage of our staff that will be casual and will need extra work. So the casual staff that do consistently increased hours we usually transition them to full-time or salary employment.

PN6556

But the casual staff that might potentially be getting any extra hours will be working less, so they will have to work their extra hours just to get back where they were, won't they?---Sure, sure, and in Mount Isa we've been battling an environment where we're not only up against other clubs or other hospitality industry members, but the mines, so we're quite frequently over and above already for our staff, but that has waned recently.

*** ALBERT CRAIG JOHN HAKFOORT

XXN MR DOWLING

PN6557

But it's amongst the concerns you have that if there's a reduction in penalty rates it has the potential to have an adverse effect because you will lose some more staff, do you accept that?---I do accept that.

PN6558

Are you aware that the award provides a process where you can vary penalty rates to suit the genuine individual needs of the employer and the individual employee; are you aware of that provision in the award?---No, I was not.

PN6559

You never received any advice about that clause?---Potentially, but, no, it's not something that's at the forefront of my mind.

PN6560

It is not something that you have sought to exercise, or to utilise, sorry?---Over and above the award? No.

PN6561

Or to vary the penalties in any way?---No. The only way that we do vary remuneration is when we put people on annualised salary that has a built-in allowance in it.

PN6562

And those people you put on annualised salary do they include managers and non managers?---Correct.

PN6563

And you agree with respect to the non managers that in respect of those people on annualised salary you cannot pay them less over a year than they would have earned had they received all of their penalty rates and overtime hours?---Yes.

PN6564

And you keep records of the hours they work to ensure that that's so?---Absolutely.

PN6565

All right. You have given some evidence about laundry services at your hotels, before we get to any detail some of your establishments have accommodation such as the Burke & Wills, yes?---Correct.

PN6566

It has, what, about 90 rooms or thereabouts?---Correct.

PN6567

All right. Do you offer laundry services at all or just a limited laundry service presently?---We have - we have a third party that does laundry service for us.

PN6568

You don't personally do it at any time of the week?---Correct.

*** ALBERT CRAIG JOHN HAKFOORT

XXN MR DOWLING

PN6569

So when you say that that might change in respect of penalty rates for those days where you don't pay penalty rates you have still made a decision that you don't have anyone employed by you do laundry services, is that correct?---At the moment, correct.

PN6570

You have given some evidence also about change in trading hours on public holidays, is it correct that under your liquor licence there are four public holidays that are not covered by your liquor licence, being Anzac Day, Christmas Day, Good Friday and New Year's Eve that have prescribed hours under the Liquor Act, is that right?---Yes.

PN6571

The terms of your liquor licence doesn't apply on those days, is that right?---Sorry, the terms of my liquor licence don't apply on those - - -

PN6572

Sorry, let me ask the question more clearly. The hours that you are entitled to trade under your liquor licence are different for the four public holidays that I have just mentioned?---Correct.

PN6573

And the Liquor Act, the Queensland Liquor Act, it prescribes you can only trade on those four days on particular hours, is that correct?---Correct.

PN6574

To take Christmas Day and Good Friday as an example that's 10 am until 12 am on those days regardless if your licence runs to 2 am or 3 am or any other time, correct?---Yes.

PN6575

Can I ask you just a couple more questions about your evidence; you have given some other evidence about how it is you say penalty rates affects you. Have you compared in terms of the payments made by the Hakfoort Group what it pays in penalty rates under the present award and what it would pay in penalty rates under the AHA proposal? Is that a sum - - -?---No, I haven't.

PN6576

Sorry?---No, I have not done that comparison.

PN6577

Thank you. Nothing further, your Honour.

PN6578

COMMISSIONER HAMPTON: Mr Hakfoort, you have just given evidence about you've got a number of employees in the group that are on salaries, you have got both managerial and non managerial?---Yes.

*** ALBERT CRAIG JOHN HAKFOORT

XXN MR DOWLING

PN6579

Can I ask you first about the non managerial employees that are on salary. Can you tell me what factors you take into account when you establish a salary for a non managerial employee in one of the hotels?---Yes. Predominantly we require a core group of staff to staff all the various areas of the hotels and we try to keep those casual hours within around the 20 hour mark, so if a person is continually doing over and above 20 hours in one of our areas of our hotel we look to move that person onto a salary arrangement so that we've got security over that position and that role.

PN6580

What are the other factors you take into account in determining the actual salary?---There is also a reduction in wages over paying those casual hours.

PN6581

What factors do you take into account when you set an actual salary?---Primarily -
- -

PN6582

That is, the salary figure itself?---I'm sorry, can you repeat that question.

PN6583

Yes. I'm interested in the factors you take into account when you establish the actual salary figure itself?---Primarily it's to secure the actual staffing for that area. That is the main factor.

PN6584

What you're telling me, I understand, is the factors you take into account when you decide to make it a salaried position. I understand that. But I'm asking you about the factors you take into account when you try and establish the actual salary?---Do you mean the dollar value?

PN6585

I mean the dollar value?---The dollar value - we budget our wages per turnover for every venue of every day of every shift. So when we factor in the wages per shift we know that the casuals will cost more for that area of the hotel than what a salaried person will be, particularly when we're talking about public holidays and weekend work. So there's a set budget for every area of our hotels, and we need to keep the wages as a percentage of that turnover in check. Sometimes that's not possible, but overall the salaried positions, which we work predominantly on the weekends, public holidays, give us some flexibility for that.

*** ALBERT CRAIG JOHN HAKFOORT

XXN MR DOWLING

PN6586

Again, that seems to be an answer as to why you - in your mind, at least, you might use a salaried person other than someone else. I'm just trying to explore what are the factors you take into account when you offer a particular salary? I presume you have regard to the rate of wage in the award, but what are the other circumstances you have regard to?---Security over that role. So if we know we have a salaried person, we know we can get 40 hours a week out of them or 38

hours a week, roughly; beyond that, it's really operational to keep numbers on the floor.

PN6587

All right. Thank you?---I'm not sure that I'm able to answer your question exactly as you may desire.

PN6588

JUSTICE ROSS: Any re-examination?

PN6589

DEPUTY PRESIDENT ASBURY: Mr Hakfoort, I was just wondering if you could tell me, in paragraph 5 you talk about the Burke and Wills Hotel, and then further on in your statement you say what you would like to do on Sundays and public holidays if you had - presumably if the application that has been made by the AHA was granted. I was wondering if you could just give us an idea of what the staffing looks like in areas like your restaurants and your bottle shops on Saturdays compared to what it looks like on Sundays, and what change you might implement if the AHA application was granted?---Sure. The retail outlets would have a different approach to the restaurants internally because our retail outlets, we would extend the later trading hours. We know from trading history that there's a certain amount of money that we will make in an hourly period in our retail outlets, and if the wages as a percentage weren't as high, we would extend those trading hours for convenience, which in our retail outlets is quite critical to instil in people's minds that convenience factor. As for the on-premise side of things, we would extend our food service periods. Most of our venues have gaming that are attached to them, and sometimes we run those later, but certainly our trading hours are restricted on Sundays because it is quite costly to run those areas on those days or that day.

PN6590

What additional staff might you engage, or how would you staff those increased operating hours?---Specifically for the restaurants, you would keep your kitchen staff on for at least another hour, which could include a dish hand as well; bistro attendants would presumably stay open with them as well; and hopefully the activity that that brings in would bring more to our beverage trade and our gaming.

PN6591

JUSTICE ROSS: Anything arising?

PN6592

MR DOWLING: Two issues, Mr Hakfoort. Your evidence is you haven't worked out the difference between the AHA proposal and the current rates. How is it that you can say with any accuracy what it is you might do when you don't even know what the difference in your wages bill will be? How can you say that with any reliability?---That's a good question, but I would say this, that - - -

*** ALBERT CRAIG JOHN HAKFOORT

XXN MR DOWLING

PN6593

Do you have a good answer?---I'm sorry?

PN6594

Do you have an answer?---I do have an answer. I currently know what our existing wages are and the penalty rates that they currently are, and I have seen what they are proposed, and it is obvious that there is a reduction there on those casual rates proposed.

PN6595

But you don't know what that translates to, do you? You don't know what the difference in your penalty rate payment will be in dollar terms?---No, I haven't done the exact calculation, but if I can give you an analogy, a reference - - -

PN6596

No, I don't need an analogy. I want you to tell me: if you don't know what difference will be, how can you accurately say what you will do in the circumstances of a change? Aren't you just speculating?---To a degree, I guess that would be correct, but there is a reduction proposed there for casual rates, and I do restrict my business and opening hours based on my wage cost for those areas.

PN6597

Nothing further, your Honour.

PN6598

JUSTICE ROSS: Re-examination?

PN6599

MR STANTON: Nothing arises, your Honour.

PN6600

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

<THE WITNESS WITHDREW

[10.17 AM]

PN6601

JUSTICE ROSS: Next witness?

PN6602

MR STANTON: Your Honour, I call David Gibson.

PN6603

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

PN6604

MR GIBSON: David John Gibson, [REDACTED].

<DAVID JOHN GIBSON, SWORN

[10.18 AM]

*** ALBERT CRAIG JOHN HAKFOORT

XXN MR DOWLING

PN6605

MR STANTON: Sir, you are the owner of the Westcourt Tavern at 200 Aumuller Street, Westcourt in Queensland?---Aumuller Street in Cairns, Queensland. Yes, that's correct.

PN6606

How long have you been the owner of the tavern?---We've owned the business there for about five years.

PN6607

Sir, for the purposes of these proceedings you have made two statements, one of 29 June 2015 and another of 26 August 2015. Is that the case?---I think that would be right.

PN6608

Do you have those statements before you this morning?---I do.

PN6609

Is that what is in front of you on the table?---That's correct.

PN6610

There's nothing else in front of you on the table, is there?---Draft determination.

PN6611

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

PN6612

If you just might move that draft determination away. Your Honour, I seek that the statements be entered as the evidence-in-chief of the witness. There were objections to the main statement. They have been resolved and I hand up to the Bench five copies of the statement showing redactions at 11, 12, 13 and 14. That is paragraphs 11, 12, 13 and 14.

PN6613

JUSTICE ROSS: No objection?

PN6614

MS BURKE: No objection, Your Honour.

**EXHIBIT #AHA63 STATEMENT OF DAVID GIBSON DATED
29/06/2015.**

**EXHIBIT #AHA64 SUPPLEMENTARY STATEMENT OF DAVID
GIBSON DATED 26/08/2015**

PN6615

MR STANTON: May it please.

*** DAVID JOHN GIBSON

XN MR STANTON

PN6616

Mr Gibson, can you see and hear me all right?---Yes.

PN6617

Can I start by asking you some questions about your full time staff?---M'mm.

PN6618

I think you say you have six full time staff. Is that still accurate?---I believe so.

PN6619

Four of those full-timers are on annualised salaries?---Yes, I think so. I think that's right.

PN6620

Are those four staff members who are on annualised salaries - does that include you and your wife?---I think so, yes.

PN6621

Are those four managers or are they not managers?---Well, myself and my wife, I suppose you would class as manager, and one of the others, yes.

PN6622

Just to be clear, when I'm asking you about managers and non-managers I'm asking you about the managerial provisions under the Award. There are slightly different provisions in terms of how you pay salaries to somebody who is classified as a manager and somebody who is not classified as a manager. Does that change your answer in any way?---Possibly. Myself and my wife, I would class as managers myself, but we're probably not paid under the Award or anything to do with the Award.

PN6623

You also say you've got another employee who is paid above award rates. Is that right?---We do, yes.

PN6624

Why have you done that?---Because she's worth it.

PN6625

At the Westcourt Tavern you've got a bottle shop, a gaming room, a bar and a kitchen, is that - have I got that breakdown right?---Two bars.

PN6626

Two bars?---Two bars and also a detached bottle shop as well.

*** DAVID JOHN GIBSON

XXN MS BURKE

PN6627

Yes. Are you able to say roughly which of those - let's just take the two bars together as one for my question, if that's all right. Are you able to say which one

of the bottle shop, the gaming room, the bars and the kitchen the most money?---As in profit or the turnover?

PN6628

Turnover?---Well, the turnover - the biggest dollar turnover would be through the bottle shops.

PN6629

What sort of percentage is that overall for the tavern? Is that 10, 20, 30, 40 per cent?---It would be - look, I would only be guessing here. Just - it would have to be probably 60 per cent or more. It all depends on what you class as turnover too. If you look at the poker machines, there's a big turnover there, but I don't - I don't class that as turnover the same as our bars, kitchen and bottle shop, but the biggest - yeah.

PN6630

Why is that?---It's a completely different business compared to the rest of the hotel, the gaming room, as in the turnover there is - I think you would be better off looking at revenue there instead of turnover.

PN6631

Perhaps I will go back a step. What do you mean when you say turnover?---Well, turnover is just a sale. A gross sale and you really can't look at gaming in that light in my opinion.

PN6632

And revenue is different from sale how?---Well, revenue is - it's tied in with your profit basically. That's the way I look at it.

PN6633

In what way is it - isn't profit something quite different?---Well, it all depends on who you're talking to. Some people class it as revenue, some class it as profit, net profit, gross profit.

Let's say - - -?---There's so many different ones.

PN6634

I'm talking to you, Mr Gibson, and I'm not trying to trap you. I'm just trying to understand what you mean so that I can understand it when you talk about revenue, turnover and profit?---Okay. Well, revenue, I would class as gross profit.

PN6635

So that's the amount of money you make before you deduct all the expenses. Is that what you mean?---That's the way I would look at it, yes.

PN6636

And profit is?---(No audible reply)

PN6637

Sorry, that was a question?---Net profit is basically what you keep at the end.

*** DAVID JOHN GIBSON

XXN MS BURKE

PN6638

And turnover is just the amount of cash that's going through the business that day?---Yeah, going backwards and forwards, that's right.

PN6639

So going back to my earlier question - and let's just look at revenue - is the bottle shop still 60 per cent of the - does the bottle shop still generate 60 per cent of the revenue of your pub?---No.

PN6640

Can you say about what it does?---Look, that would - I would just - on that I would be having a real guess. It would be probably around 20 per cent.

PN6641

What about the gaming room?---The gaming room is our largest revenue maker.

PN6642

Are you able to give a sort of rough estimation of how much - well, not how much revenue, but what percentage of your revenue overall comes from gaming?---Probably 60 percent maybe.

PN6643

So does that mean that the bar and the kitchen between them generate about 20 per cent of revenue overall?---Yeah, that would be about right.

PN6644

Now, just going back to your salaried employees, you understand, don't you, that you are required to pay salaried employees at least 25 per cent above the minimum wages in the Award?---I do.

PN6645

And that that salary over a year has to be enough to cover what that employee would have been entitled to including penalty rates and overtime and there's a few other matters, but obviously I'm particularly interested in penalty rates?---Yeah, well, it's supposed to be 25 per cent above what they would normally get under the Award. So that's the way I read it. That's the way we try and work it out.

PN6646

What about the requirement that the annualised salary also - sorry, that the employee is also paid a salary that covers what they would be paid or what they would be entitled to be paid in penalty rates and overtime?

PN6647

MR STANTON: Objection. This witness didn't clarify the type of managerial employee - I beg your pardon, the type of salaried employee the question is directed at because there are the two.

PN6648

JUSTICE ROSS: Which clause it's under?

*** DAVID JOHN GIBSON

XXN MS BURKE

PN6649

MR STANTON: Yes.

PN6650

MS BURKE: Certainly. Mr Gibson, just to be clear, I am talking about - there's two kinds of employees who can be paid a salary under the award. That's how the award classifies it. There is managerial staff and there's non-managerial staff and my questions to you just now are about the non-managerial staff. So you can set aside the managers. Does that clear it up a bit?---Well, possibly you're talking about maybe one person. You know, how I would classify him as a manager or not, you know, he does perform managerial duties and we believe we pay him the correct wage, correct salary.

PN6651

What do you classify him as? As a manager or as not a manager?---Well, at certain times he is in charge of the hotel, so he's a manager, I would assume. You would classify him as that.

PN6652

When you were putting together his employment contract, for example, what is his job?---That's a hard one because basically he does anything around the hotel and if we're not there, he's in charge.

PN6653

How much does - - -?---He had - we have four people on salary; myself, my wife, and my son, and then this other person that's been with us a long time and he - as I say, he's in charge when we're not there. When we are there, he's got many different duties.

PN6654

He wears a lot of hats?---Yes.

PN6655

Is he paid over \$54,000 a year?---Over what, sorry?

PN6656

Over 54,000?---I think his salary, from memory, is 52,000 gross per year. Maybe even a fraction more. Look, I just - I'm not sure on that to tell you the truth. One thing we do do, when he - if he works on a public holiday, he then gets another day off in lieu for that.

PN6657

For this person, who sounds like a very valuable person to your family, you understand that in addition to the extra 25 per cent, he is required - his salary should cover what he would get in penalty rates under the award. Do you understand that?---Well, that's - that's why we give him the day off in lieu. If he works on a public holiday he gets an extra day off during the week.

*** DAVID JOHN GIBSON

XXN MS BURKE

PN6658

An extra day off, not just his standard two days off?---No. He gets his two days off plus another day of his choosing.

PN6659

Mr Gibson, you have given some evidence about the cost of employing people to work in the kitchen on Sundays?---That's correct.

PN6660

Do you have the same sort of burden, I think as you describe it, on Saturdays?---There are penalty rates on Saturdays but they're not as dear as Sundays.

PN6661

You understand there is no amendment sought to the Saturday penalty rates by the Australian Hotels Association?---That's correct, yes.

PN6662

You also say that the Sunday rates that you pay, and correct me if I've got this wrong, but I think your evidence is that the penalty rates you pay on Sunday are made worse because you have to pay an extra 10 per cent between 7.00 pm and midnight?---That's - that would be right, yes.

PN6663

You know that that allowance of the extra 10 per cent between 7.00 pm and midnight is not paid on a Sunday?---I couldn't be sure about that, whether it is or isn't.

PN6664

Can I suggest to you that it isn't paid on a Sunday? Does that sound right?---Well, that - well, that could be right. I suppose a penalty on top of a penalty is not real fair, is it?

PN6665

Sorry, I missed that?---I say a penalty on top of a penalty isn't real fair, so that would be right, I suppose.

PN6666

Then does that change your evidence where you say that the Sunday penalty rate for you is made harder by, or made more of a burden by having to pay the additional 10 per cent now that you know that you don't have to pay the additional 10 per cent? Does that change your evidence about the impact of the Sunday penalty rate?---Well, Sunday penalty rates are dearer than Saturday penalty rates.

PN6667

Yes, but what I'm asking - - -?---So therefore it's a heavier burden.

*** DAVID JOHN GIBSON

XXN MS BURKE

PN6668

It's a heavier burden than Saturday but what I'm asking you is whether your evidence that having to pay the Sunday penalty rate plus the 10 per cent, which you describe as causing you financial stress, whether that financial stress you

describe is as bad now that you know you don't have to pay that extra 10 per cent?---Well, I don't think I mentioned I had to pay that 10 per cent on Sunday anyway.

PN6669

That's why I asked you if I had that part of your evidence right?---I thought you were asking me if it was correct that we had to pay an extra 10 per cent on Sunday.

PN6670

Perhaps to be fair, I'll just ask you to look at paragraph 17 of your statement?---Okay. I did say that, yeah. Fair enough.

PN6671

I don't have any further questions. Thank you.

PN6672

JUSTICE ROSS: Anything further for the witness? Any re-examination.

PN6673

MR STANTON: Nothing further.

PN6674

JUSTICE ROSS: Thank you for your evidence and your time this morning. You are excused.

<THE WITNESS WITHDREW

[10.38 AM]

PN6675

JUSTICE ROSS: I think the next link is in Tasmania, I think is it?

PN6676

MR STANTON: I think the next witness, Your Honour, is in Tasmania.

PN6677

JUSTICE ROSS: All right. We'll just stand down. Do you know if the witness is available?

PN6678

MR STANTON: I don't. I am hoping.

PN6679

JUSTICE ROSS: Okay. We'll just stand down while we do the connection.

PN6680

MR STANTON: We are pretty confident. May it please.

SHORT ADJOURNMENT

[10.38 AM]

RESUMED

[10.44 AM]

*** DAVID JOHN GIBSON

XXN MS BURKE

PN6681

MR STANTON: Your Honour, I call John Dabner.

<JOHN RAYMOND DABNER, SWORN

[10.44 AM]

EXAMINATION-IN-CHIEF BY MR STANTON

[10.44 AM]

PN6682

Now, Mr Dabner, you are the director and manager of Tall Timbers Tasmania, located in Smithton, Tasmania, is that the case?---Yes, Commissioner, that's the case.

PN6683

Sir, how long have you held that position?---I've been general manager of that property for 25 years and a director for the last six months.

PN6684

For the purposes of these proceedings, is it the case you have done two statements; one of 29 June 2015 and the other 25 August 2015?---Yes, that's exactly right.

PN6685

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

PN6686

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.

PN6687

Your Honour, there were no other matters that needed to be resolved, so if I can ask that the statements be received into the evidence.

EXHIBIT #AHA65 LONGER STATEMENT OF MR JOHN RAYMOND DABNER.

EXHIBIT #AHA66 SUPPLEMENTARY STATEMENT OF MR JOHN RAYMOND DABNER.

PN6688

MR STANTON: If Your Honour pleases.

PN6689

JUSTICE ROSS: Cross-examination?

CROSS-EXAMINATION BY MS BURKE

[10.46 AM]

PN6690

Mr Dabner, can you see and hear me all right?---Yes, I can.

*** JOHN RAYMOND DABNER

XN MR STANTON

*** JOHN RAYMOND DABNER

XXN MS BURKE

PN6691

Thank you. You have given some evidence in your statement about rostering on a public holiday and I just want to ask you about that. You say that your salaried staff are rostered on to reduce wage costs. That's right, isn't it?---Yes, that's correct, yes.

PN6692

Of those salaried staff, am I right in saying you still have seven of those?---Yes, that's exactly right.

PN6693

Are any of those managers?---Yes, they are.

PN6694

Just to be clear, by managers I mean managers under the award?---Yes. Duty managers. Housemaid managers. Reception managers. Operations managers. Head chef.

PN6695

How many - sorry, I didn't mean to cut you off?---And head chef and sous chef. All are part of the management team.

PN6696

How many of the seven full-timers you have on salaries are managers?---The entire lot.

PN6697

So they are paid over about \$54,000 a year, that's right?---Yes, they all would be. Yes, that's correct.

PN6698

When you're talking about wages costs on a public holiday, there you are talking - I'll rephrase that. You're talking there about the wage costs for those single days, aren't you?---Could you just explain that a little bit more for me?

PN6699

Yes?---What you mean by that?

PN6700

You say that you roster salaried staff to work on public holidays in an attempt to reduce wage costs?---Yes, that's correct.

PN6701

That is because your wage costs are higher on those days, aren't they?---Exactly right, yes.

PN6702

There are other days where wage costs are lower, aren't there?---Yes, that's correct.

*** JOHN RAYMOND DABNER

XXN MS BURKE

PN6703

When I say lower, I'm not just talking about lower in terms of the absolute dollar figure but they are lower than revenue?---Yes, that's correct.

PN6704

So it is fair to say you would have good and bad days in business?---Definitely, I agree with you there.

PN6705

For that reason, to get a realistic picture of any business you need to look at it across several months or a year, don't you?---Yes, across a whole period, not on a specific day.

PN6706

Mr Dabner, you have given some evidence about the Easter trading period which I assume was the Easter trading period this year. Have I got that right?---Yes, for April the 3rd through to Monday, April the 6th.

PN6707

I think you attribute an overall loss over that period to penalty rates?---Or if you actually look at the individual figures that were submitted, yes, the wage component was very high.

PN6708

I will come to that. Are you talking there about a document you produced in response to an order by the Commission?---I'm not sure if it was an order by the Commission or a request from the AHA.

PN6709

In fairness I think it was probably both of those things occurred, but just to be clear I am talking about a document that you have produced that's titled "Tall Timbers Hotel Easter trading analysis 3-6 April 2015"?---That's correct, yes.

PN6710

Have you got that document there with you?---Yes, I have it in front of me.

PN6711

Do members of the Full Bench have that document?

PN6712

JUSTICE ROSS: We do.

PN6713

MS BURKE: Thank you. I just want to ask you some questions about this document. Starting at the top, and I am just looking here at the total figures at the right-hand side - before I get into that can I just ask you, did you draw up this document?---Yes, with assistance from the company accountant.

PN6714

When did you do that?---I'm unsure of the date that I actually completed this.

*** JOHN RAYMOND DABNER

XXN MS BURKE

PN6715

Are you able to say roughly was it in the last month or so or was it much earlier?---I would say it would be around the same time as the other evidence that was given.

PN6716

There are two statements I think, is that what you are referring to when you say the other evidence?---Yes, that's correct.

PN6717

And they're quite different dates, so which time period are you talking about there?---I would say in between those two.

PN6718

So after you swore your first statement?---Yes, that's right. That is correct.

PN6719

All right. The total figures starting at the top you're looking there at bistro food revenue and bistro beverage revenue. That includes the surcharge?---Yes.

PN6720

Then the next bracket of items refers to food and beverage COGS. Does that mean cost of goods and - - -?---Cost of - yes, cost of goods for those two areas, for the food costs and for the beverage costs.

PN6721

And you average that figure out over the year, is that right?---Yes, that's on the average of the previous 12 months.

PN6722

So if you just do this simple calculation you deduct cost of goods from total revenue you get to about \$36,000, does that sound about right?---I'm unsure where you're getting the \$36,000 from.

PN6723

I am doing \$51,215.45 minus \$14,854.17?---I'm just unsure where you're getting those figures from, from the figures I'm looking at.

PN6724

If you have a look at the column right at the end on the right-hand side?---Yes.

PN6725

It's headed "Total"?---The figures - I've just been handed some figures here and - -
-

PN6726

Just hold on a minute there, Mr Dabner, who have you been handed the figures by?---Sasha from registry, and the figures I have here to the figures I submitted are entirely different.

*** JOHN RAYMOND DABNER

XXN MS BURKE

PN6727

That's interesting. What figures do you have?---The figures I submitted for total revenue for the period 3 to 6 April is totalling \$16,430.41 and the total cost of goods for that period was \$5,164.48. So I'm - - -

PN6728

Just hold on a second there, Mr Dabner, I just need a moment. We are just going to adjourn for five minutes. Thank you.

<THE WITNESS WITHDREW [10.54 AM]

SHORT ADJOURNMENT [10.54 AM]

RESUMED [11.14 AM]

<JOHN RAYMOND DABNER, RECALLED ON FORMER OATH[11.14 AM]

CROSS-EXAMINATION BY MS BURKE [11.14 AM]

PN6729

JUSTICE ROSS: Any insight into the mystery?

PN6730

MR STANTON: Your Honour, to the extent that level is required to withdraw the statement, I seek that leave. We no longer rely on the statement. I note that they've been marked as an exhibit, so I just raise that.

PN6731

JUSTICE ROSS: All right. So you're withdrawing Mr Dabner's two statements?

PN6732

MR STANTON: Two statements, yes.

PN6733

JUSTICE ROSS: And don't seek to rely on them.

PN6734

MR STANTON: Yes, not the material on – answers to questions.

PN6735

JUSTICE ROSS: Or the material in relation to the transcript. Yes.

PN6736

MS BURKE: No objection.

PN6737

JUSTICE ROSS: Okay. Well, we'll adopt that course. I don't need to do anything else.

*** JOHN RAYMOND DABNER

XXN MS BURKE

PN6738

MR STANTON: If Mr Dabner could be excused?

PN6739

JUSTICE ROSS: Yes. Thank you for your evidence, Mr Dabner, and you're excused.

<THE WITNESS WITHDREW

[11.14 AM]

PN6740

MR STANTON: May it please.

PN6741

JUSTICE ROSS: We've got Ms (inaudible)? Yes, I note she wasn't due until 11.45 but is she here?

PN6742

MR DOWLING: Her evidence is not being relied upon. I'm sorry, your Honour, we did send a communication to his Honour's chambers.

PN6743

JUSTICE ROSS: No, no, that's fine.

PN6744

MR DOWLING: I'm sorry we couldn't do it sooner.

PN6745

JUSTICE ROSS: No, not at all. No, that's all right. So that's the evidence for today?

PN6746

MR DOWLING: Yes, your Honour.

PN6747

JUSTICE ROSS: Can I raise one thing about tomorrow and we'll put out a short statement this afternoon, and check the statement, because what I'm about to say might not be completely accurate.

PN6748

It occurs to us that when you look at the volume of objections that have come in relatively late, that there's not going to be sufficient time to deal with all of it tomorrow. And we're also mindful of, well what do we need to deal with as soon as possible, given the likely scheduling of witnesses coming up?

PN6749

Having regard to that, the focus of tomorrow's proceedings - and this will be in the statement for those who are not here, but I thought if I told you, you could disseminate it to the others and put them on notice anyway - would be the objections taken by United Voice and the SDA to the evidence of Lewis and Sands and Pazuelo. I don't think there's any objection taken to Rose, it's those three.

PN6750

MR DOWLING: No, your Honour.

PN6751

JUSTICE ROSS: And also the objections taken, I think by the SDA, to Baxter and Pritchard, those two affidavits, because those objections, in part, seem to be about prejudice due to late filing and we thought we could deal with those as well.

PN6752

MR DOWLING: Yes.

PN6753

JUSTICE ROSS: The balance of the objections would be the subject of a conference before Catanzariti VP on Thursday of next week at a time we'll advise, in Melbourne, to see if there's some – with some facilitation, whether there's any prospect of resolving some of those and we'd certainly encourage the parties to talk about them.

PN6754

What occurs to me, on reading the objections, is that in some cases it might be a case of be careful what you wish for, because if material that a party is objecting to is knocked out on a particular basis, well it follows a counter-objection would mean some of your material is going to go too.

PN6755

MR DOWLING: Yes.

PN6756

JUSTICE ROSS: So, I think having a look at it globally might result in a more sensible outcome. Okay? Rather than have us sort of launch into those issues.

PN6757

MR DOWLING: Yes.

PN6758

JUSTICE ROSS: And look, I might mention, in relation to the Pazuelo material, that the objection is substantially on the basis of not qualified as an expert to provide the opinions put. One way of potentially dealing with that, Ms Pazuelo is to file evidence in reply on Monday and it may be that that can also have her address the question of expertise in relation to the other issues.

PN6759

MR DOWLING: Yes.

PN6760

JUSTICE ROSS: So that might mean that Pazuelo's dealt with in finality in one other hearing, but that might be a way of dealing with that evidence as well. Okay?

PN6761

MR DOWLING: Can I raise one – sorry, your Honour.

PN6762

JUSTICE ROSS: No, that's all right. And look, in the statement, depending on - I want to try and get it out early this afternoon - it may have some questions to the

parties as well in an effort to focus the proceedings. For example, I think it's unlikely that the employers would take issue with the legal summary in relation to the relevant authorities that's provided in United Voice's submission. I say that because AI Group is relying on the same case for the same proposition in reverse. That might avoid, and we can have some common ground about those issues and then it's the application question, all right?

PN6763

MR DOWLING: Yes.

PN6764

JUSTICE ROSS: Okay? So we'll get that to you later on. And I think 9 o'clock before me, for mention for Retail.

PN6765

MR DOWLING: Yes.

PN6766

JUSTICE ROSS: 9.15, is it - whatever the listing notice says. And I think it's 9.30 then for the expert evidence issues.

PN6767

MR DOWLING: Can I mention one other matter, your Honour?

PN6768

JUSTICE ROSS: Certainly, yes.

PN6769

MR DOWLING: In terms of priorities, in terms of things that have to be dealt with, your Honour might recall that Keith Harvey is one still to be dealt with.

PN6770

JUSTICE ROSS: Yes.

PN6771

MR DOWLING: Now, there's been some communications exchanged. AHA are the only party objecting to Mr Harvey and there's been some communication and we'll have some discussion immediately after court adjourns. So it may be able to be resolved, but in the event that it isn't, his evidence is to be given next Wednesday. So that might be one that has some more urgency than others.

PN6772

JUSTICE ROSS: See how you go. It may be that – look and you recall our previous exchange about this, I thought, and I haven't revisited his evidence, I thought there was a conclusion at the end that - - -

PN6773

MR DOWLING: Yes.

PN6774

JUSTICE ROSS: That might properly, you know, raise some concern. But - - -

PN6775

MR DOWLING: I think the issues are very close to a resolution and I will – intended to inform my friends before midday - - -

PN6776

JUSTICE ROSS: Okay, that's fine.

PN6777

MR DOWLING: - - - and then send a message, if that assists.

PN6778

JUSTICE ROSS: All right, well let's see how we go, but in any event, we'll leave it in the program at the moment.

PN6779

MR DOWLING: Yes.

PN6780

JUSTICE ROSS: If we have to deal with it tomorrow, we will, but if not tomorrow, then Tuesday.

PN6781

MR DOWLING: The Productivity Commission's is the only other thing, your Honour. Now, I'm not sure that the same urgency attaches to it.

PN6782

JUSTICE ROSS: I don't know. Look, there's a range of common material that each of you want to put in that everyone else is objecting to on various grounds, and that's why we thought that might be usefully dealt with at a conference.

PN6783

MR DOWLING: Yes.

PN6784

JUSTICE ROSS: Because it may be that materials – I'm not making a comment here about any particular item, but it may be the material can be put in without objection but with the party reserving their position as to the weight we should attach to it or putting a proposition that it's only – it's of limited relevance or something like that.

PN6785

MR DOWLING: Yes.

PN6786

JUSTICE ROSS: Just foreshadowing those issues but I think each side's in a similar position with some of that material.

PN6787

MR DOWLING: Thank you, your Honour.

PN6788

JUSTICE ROSS: Okay? Nothing further?

PN6789

MR DOWLING: Nothing further.

ADJOURNED UNTIL FRIDAY, 18 SEPTEMBER 2015

[11.21 AM]

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