



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009
TRANSCRIPT IN CONFIDENCE

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**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)**

Melbourne

10.05 AM, WEDNESDAY, 23 SEPTEMBER 2015

Continued from 22/09/2015

PN8274

MR DOWLING: Good morning, members of the Full Bench. The first witness is Mr William King, who will be via video link from South Australia. Can I raise though two brief matters before Mr King gives his evidence? The first is the members of the Bench may have seen that, in response to the directions that Mr Parker provide further documents, further documents were produced yesterday. In response to those documents we have asked Mr Parker – or we have indicated to Mr Clarke from the RCA that we wish to recall Mr Parker. We understand the position of the RCA is they oppose that recalling, and I'll ask Mr Clarke to explain his position. That's the first of the issues.

PN8275

The second is during yesterday, orders for production were made by the Vice President directed at the experts being called by the union parties. We just request – unlike the orders that were made in respect of the employer experts, in that process there was a mechanism built in that if there was to be any objection to the production to some of the material those objections be filed by a certain time and then be dealt with shortly thereafter, and I indicate that there will be some objections to some of the material sought and we just seek a mechanism for dealing with those objections. For our part we had in mind that those objections would be filed by close of business on Friday, and could be dealt with as soon as possible and as convenient to the Full Bench thereafter.

PN8276

JUSTICE ROSS: Yes, I don't think they will be dealt with quickly.

PN8277

MR DOWLING: I understand.

PN8278

JUSTICE ROSS: But does anyone have any objection to the objections to the notice to produce being filed by Friday?

PN8279

MR IZZO: No, your Honour.

PN8280

JUSTICE ROSS: All right, well let's adopt that course and see how we go from there.

PN8281

MR DOWLING: Thank you, your Honour.

PN8282

JUSTICE ROSS: Do you want to deal with Mr Hart's matter?

PN8283

MR DOWLING: The Parker matter, your Honour.

PN8284

JUSTICE ROSS: Yes, well, the correspondence from Mr Hart, the emails and - -
-

PN8285

MR DOWLING: There's probably two other matters that I wouldn't mind mentioning this morning too is the Productivity Commission report, because I think it was going to be heard - I'm not sure if I'm correct in this – last Friday, but that's - - -

PN8286

JUSTICE ROSS: Yes – no, it wasn't.

PN8287

MR DOWLING: Yes, it wasn't, and I just - - -

PN8288

JUSTICE ROSS: No, it wasn't going to be heard last Friday. There was a statement issued making it clear that those matters will be the subject of a conference before Vice President Catanzariti tomorrow.

PN8289

MR DOWLING: Okay, so that fits in with that.

PN8290

JUSTICE ROSS: Yes.

PN8291

MR DOWLING: Just in relation to Parker, your Honour, I think, just to give a little bit of context, that United Voice on this matter - and I've raised this before - had their option for their notices to produce back in August, and they overlooked that.

PN8292

JUSTICE ROSS: I think both sides have been guilty of filing material late and including witness statements and the like.

PN8293

MR DOWLING: Your Honour, in fairness to the association I think the only time that's occurred with us has been the Productivity - - -

PN8294

JUSTICE ROSS: Yes, that's not true of the employer side though, generally.

PN8295

MR DOWLING: Yes, they then brought an application that was dismissed but then we had record on the transcript, and they had a third bite at the cherry, and to be fair to the association – and I say this - - -

PN8296

JUSTICE ROSS: But none of this is an objection. This is saying, well they've had all these goes. The question is, is it relevant what they want to cross-examine him about. Is it going to give evidence that's relevant to affect an issue? That's

the issue for us. Is his evidence going to assist us? And frankly, I'm not interested in the squabbling between the two of you, I'm interested in getting evidence that is going to be relevant to our task, so that should be the focus of your objection, not complaining about they should have done this or that, because it's a review, as you and others keep reminding us, so it's not an inter-party squabble; it's about us informing ourselves of these matters. Now the issue that is left unresolved from Mr Parker's evidence is the source of the population from which he extracted the sample. We don't know that. That's the 17-odd thousand. Now that's what we didn't know after his evidence, right?

PN8297

MR DOWLING: Yes, your Honour.

PN8298

JUSTICE ROSS: Because he said well he's not sure where that came from.

PN8299

MR DOWLING: Yes.

PN8300

JUSTICE ROSS: Well that's an issue of interest to us. Is there anything else?

PN8301

MR DOWLING: And that's been provided.

PN8302

JUSTICE ROSS: Yes, well, I'll get to Mr Dowling in a moment and find out, well, what does he want to cross-examine him in relation to. Your topic's not questions.

PN8303

MR DOWLING: Yes, your Honour, because that hasn't been explained to us.

PN8304

JUSTICE ROSS: Yes, well let's find that out and then we'll see whether you object to that. What's the purpose of recalling him?

PN8305

MR DOWLING: There's two broad topics, your Honour. The first is, you might recall there was a series of questions about whether Mr Parker knew the purpose for which his survey was being conducted?

PN8306

JUSTICE ROSS: Yes, and he wasn't aware at the time he did it but it became obvious to him later when he read some publicity about the case, I think, was the substance of his evidence, from memory.

PN8307

MR DOWLING: Yes, well, the email suggests something different, your Honour, and I think out of fairness I should put it to him.

PN8308

JUSTICE ROSS: Yes.

PN8309

MR DOWLING: And the second issue is the one, your Honour, I identified, and that is the source of the material. I think he said he didn't know. Again, the emails make clear that he was given some information about the source of the - - -

PN8310

JUSTICE ROSS: Which emails says that? Is that the email of the 16th of April?

PN8311

MR DOWLING: Yes, your Honour. I don't have it in front of me, I'm sorry, but I will pull it up. It's the email – it was originally redacted.

PN8312

JUSTICE ROSS: Yes, but comes from Dimmi.

PN8313

MR DOWLING: Yes.

PN8314

JUSTICE ROSS: What's Dimmi?

PN8315

MR DOWLING: Our research has revealed so far that it's a restaurant reservation site.

PN8316

JUSTICE ROSS: Okay, Mr Clarke? So the proposition is he's given evidence inconsistent with what's shown on this material and they want to put that to him. The alternative of course, you know - the problem for the union is they can't later challenge his evidence, on the basis of a credit finding without having put it to the witness.

PN8317

MR CLARKE: Yes, your Honour. We have questions over the source of the material. There was discussions about that in cross-examination.

PN8318

JUSTICE ROSS: Well yes but - - -

PN8319

MR CLARKE: That information has now been provided, and that's really come from Mr Hart anyway, not from - - -

PN8320

JUSTICE ROSS: No, I think you're missing the point. During cross-examination he indicated he didn't know the source of the material.

PN8321

MR CLARKE: Yes, your Honour.

PN8322

JUSTICE ROSS: What Mr Dowling is saying is when you look at the email of the 16th of April from Mr Hart to Mr Parker it explains the source of the material.

PN8323

MR CLARKE: I accept there's a bracket with the name Dimmi on that email.

PN8324

JUSTICE ROSS: Yes.

PN8325

MR CLARKE: Yes, your Honour, and I note even my friend has done some research to uncover that, so does that uncover a name? I'd say even on my friend's submissions it's - - -

PN8326

JUSTICE ROSS: No, I know but that's a submission your making.

PN8327

MR CLARKE: Yes.

PN8328

JUSTICE ROSS: But the problem will be that your witness's credit is going to be attacked in submissions on the basis he said one thing, it's turned out to be – so he's entitled to the opportunity of explaining, and the question will be put to him: well I take you to this email, it seems that you did know, what do you say about that. Now, you're trying to put his evidence, that is, you're trying to say well you couldn't tell anything from that email about the source; well, a question has to be asked of the witness to see what he says.

PN8329

MR CLARKE: No, sorry, your Honour, I just simply said my friend, from reading - - -

PN8330

JUSTICE ROSS: No, I know.

PN8331

MR CLARKE: - - - didn't understand the source.

PN8332

JUSTICE ROSS: Yes, but - - -

PN8333

MR CLARKE: So it's sort of, you know, that yes - - -

PN8334

JUSTICE ROSS: Yes, but you're asking us to infer that the witness didn't know the source either – well we don't know that until he's asked.

PN8335

MR CLARKE: Yes, your Honour, and also there's – I mean there is some practical issues to do with this that the witness is located in Coffs Harbour.

PN8336

JUSTICE ROSS: Why can't we just get him on a video link?

PN8337

MR CLARKE: Yes, I mean, that's something that hasn't been discussed.

PN8338

MR DOWLING: That's fine with us, your Honour.

PN8339

JUSTICE ROSS: I mean, I don't think he should be inconvenienced by being dragged down to Sydney or Melbourne to deal with what's likely to be a sequence of three or four questions or so, so let's find a convenient time to deal with his evidence and his availability. So is there anything else - if he's in Coffs Harbour I understand the inconvenience issue, but if a time can be arranged that's convenient to him to deal with these questions is there any other objection from the association?

PN8340

MR CLARKE: No, your Honour, our objections really went to process and plan.

PN8341

JUSTICE ROSS: Okay. Well, look, I'd encourage the parties to discuss what might be a convenient time, both convenient to the witness and each of you, but it can fit into the schedule at some point. I wouldn't put it on a day other than the schedule because we'll just run into problems with Bench members and the like, okay, so we'll leave that to yourself. Have you got a suggestion, Mr Dowling?

PN8342

MR DOWLING: Yes, I have, your Honour. We've made the suggestion to Mr Clarke, but subject of course to the Commission's convenience, was 2 pm on Friday, remembering that the witness evidence is to finish before lunchtime. There's been a mention of 1 pm for the scheduling of the expert evidence for the 4th, 5th and 6th of November.

PN8343

JUSTICE ROSS: And I think we're also bringing back the outstanding objections to the evidence, but that's probably likely to be more for mention than for substantive – it depends a bit on how matters go tomorrow really.

PN8344

MR DOWLING: Yes.

PN8345

JUSTICE ROSS: Mr Clarke, can you make an enquiry of the witness and see what his availability is? If you can talk to my associate we'll endeavour to organise a video link to Coffs Harbour as well.

PN8346

MR CLARKE: Yes, your Honour. I understand the witness can be available at 2 o'clock from Coffs Harbour on Friday, your Honour.

PN8347

JUSTICE ROSS: Okay, well we'll make enquiries about the video link. If not we'll get him on the phone, we'll do something.

PN8348

MR CLARKE: Sorry, I do need to confirm that. That's my understanding of this.

PN8349

JUSTICE ROSS: I'll talk to my colleagues when we have an adjournment during the evidence and confirm whether it's 2 pm or some other time, okay.

PN8350

MR DOWLING: Thank you, your Honour. I call Mr William King who I understand is in the court room in South Australia, which is the bottom left-hand corner of the video.

<WILLIAM GEORGE KING, SWORN [10.17 AM]

EXAMINATION-IN-CHIEF BY MR DOWLING [10.18 AM]

PN8351

MR DOWLING: Mr King, can you see and hear me clearly?---The volume's a little bit down but yes.

PN8352

Is that any better?---Yes, tip top.

PN8353

Thank you. Can you please repeat your full name?---William George King.

PN8354

Your address?---(Address supplied)

PN8355

And your occupation?---Food and beverage attendant.

PN8356

Thank you. Can you confirm for the Commission whether you have prepared a statement for the purposes of today's proceeding?---I have.

PN8357

Do you have that statement with you?---Yes, I do.

PN8358

Is that a statement of 5 pages and 27 numbered paragraphs?---Yes, it is.

*** WILLIAM GEORGE KING

XN MR DOWLING

PN8359

And it has a signature at the end of the fifth page, is that your signature?---Yes, it is.

PN8360

You should also have, together with the statement, one annexure marked annexure A, do you have that?---Annex A, yes.

PN8361

That is a series of pay slips. Do you have that?---Yes, six or so of them, yes.

PN8362

Thank you. Now, can I just take you firstly to paragraph 3 of your statement?---Yes.

PN8363

Do you wish to correct the second line so that it reads:

PN8364

Her name is Jamie and she is 16 years old. Jamie lives with us.

PN8365

?---Yes, she had a birthday last week.

PN8366

Thank you, and with that correction are the contents of your statement true and correct?---Yes, they are.

PN8367

Thank you. I tender that, your Honour.

PN8368

JUSTICE ROSS: No objections? I'll mark that United Voice 10.

EXHIBIT #UV10 WITNESS STATEMENT OF WILLIAM GEORGE KING

PN8369

MR DOWLING: If you just wait there, Mr King.

PN8370

JUSTICE ROSS: Cross-examination Mr Izzo?

CROSS-EXAMINATION BY MR IZZO

[10.20 AM]

PN8371

MR IZZO: Mr King, can you hear me okay?---Yes, I can.

PN8372

Thank you. Mr King, you say in your witness statement - and I take it you've got a copy of your statement there with you?---Yes I do.

*** WILLIAM GEORGE KING

XXN MR IZZO

PN8373

Great. You say in your statement at paragraph 6 that you've been in the hospitality industry for about 20 years and that you've mostly worked weekends and evenings and public holidays. Do you see that there at paragraph 6?---Yes.

PN8374

Can I ask you, Mr King, do you agree that these kind of working hours go hand in hand with the industry which you worked in?---Yes they do.

PN8375

And would you agree that in your experience businesses in the restaurant industry have their biggest trading period broadly between Thursdays and Sundays?---Yes.

PN8376

And would you agree that the reason that businesses in the restaurant industry open at this time is because that's when customers most want to come out and have their meals?---I couldn't answer for people but it does seem that way.

PN8377

MR DOWLING: I think Mr King has already anticipated my objection. I'm not sure Mr King can give evidence about why it is that people choose to eat at certain times.

PN8378

JUSTICE ROSS: Yes. Yes.

PN8379

MR IZZO: Can I ask this then, Mr King. Do you have a view as to why it is that most businesses generally have their predominant trading hours between Thursdays and Sundays?

PN8380

MR DOWLING: No, I don't think Mr King can give evidence about why businesses do certain things either.

PN8381

JUSTICE ROSS: He has run a business.

PN8382

MR IZZO: He has run a business and he's been in the industry for 20 years, your Honour.

PN8383

MR DOWLING: He can - perhaps you'll let me deal with the objection?

PN8384

MR IZZO: Sure.

*** WILLIAM GEORGE KING

XXN MR IZZO

PN8385

MR DOWLING: Perhaps he can give evidence about his own business but the witness(sic) seems to be asking a question based on why businesses generally conduct themselves in a certain way. He is unable to give that evidence.

PN8386

JUSTICE ROSS: You could ask about the volume of trade in his experience, the number of people, those sorts of issues.

PN8387

MR IZZO: Your Honour, my position in relation to that question was that he has been either an owner or an employee for 20 years and of - - -

PN8388

JUSTICE ROSS: And he has been an owner for six months of the 20 years, yes.

PN8389

MR IZZO: That's true, your Honour.

PN8390

JUSTICE ROSS: Yes.

PN8391

MR IZZO: But may well have an understanding of rostering, why it is that a company that he has worked in doesn't choose to open on a particular week day as opposed to a weekend. That could well be something that's within his knowledge because he may well have been told about it, seen it et cetera.

PN8392

JUSTICE ROSS: If he has been told about it it's hearsay and if he has seen it, I'm not sure how you'd see something like that.

PN8393

MR IZZO: I'll withdraw the question and I'll rephrase, your Honour.

PN8394

JUSTICE ROSS: Okay.

PN8395

MR IZZO: Mr King, can I ask you this. In the jobs that you've worked have you noticed whether there's more trade on - sorry, whether there are more customers attending on Thursdays, Fridays and Saturdays as opposed to during mid-week periods?---Yes, I would say that would be a fair assessment.

*** WILLIAM GEORGE KING

XXN MR IZZO

PN8396

Now Mr King, later on in your statement you talk about the fact that you've stopped working on Sundays at your current job. Can you explain or tell us when you stopped working on Sundays?---It started with my current job round about the middle of January I would say and that was a request of mine so I could actually spend time with my family. Having said that, I've just worked the last three

Sundays because one of the other people that I work with has been back in Portugal.

PN8397

So you were asked to cover for those last three Sundays, were you?---Yes I was.

PN8398

In the business you currently work are there less people rostered on a Sunday than, say, Saturday?---No, during the day it's exactly the same and of the evening it's one less person.

PN8399

And what about compared with the mid-week, are there less people on a Sunday than, say, during the mid-week?---No, exactly the same amount of people.

PN8400

JUSTICE ROSS: Can you specify do you mean a Wednesday, or?

PN8401

MR IZZO: Sorry, your Honour.

PN8402

Sorry, I apologise, Mr King, I'll rephrase that. The number of people rostered on a Sunday as compared to say a Tuesday, Wednesday or Thursday?

PN8403

JUSTICE ROSS: It's closed on Tuesday so it would probably be - I think it's closed Monday, Tuesday.

PN8404

MR IZZO: Wednesday or Thursday do the numbers differ?---Not at all. Exactly the same.

PN8405

Thank you. Mr King, you talk as well at about paragraph 15 of your statement about missing out on social events on weekends. Can I assume that these social events you're talking about might happen on a Saturday or a Sunday?---Friday night, Saturday, Saturday night, Sundays, you know, when people have social events. Yes.

PN8406

Sure, and one of the examples you talk about is your daughter's netball, which you talk about being on a Saturday morning, is that right?---Yes.

PN8407

And can I assume that most of her sporting commitments generally occur on a Saturday?---Well, they don't any more because she doesn't participate. But when she was participating, yes they were on Saturday mornings.

*** WILLIAM GEORGE KING

XXN MR IZZO

PN8408

And when you talked about - I think you talk about birthday celebrations in there, am I right in assuming that they might predominantly occur on Friday and Saturday nights, is that the case?---Yes.

PN8409

So can I ask you this. In your mind is there any difference between working on a Saturday and a Sunday when it comes to the level of intrusion into your social life?---As in do - does working on Saturday or Sunday night intrude on my social life?

PN8410

No, sorry, let - -?---Is that what you're asking?

PN8411

Let me rephrase that. Is there any difference for you in terms of the level of intrusion into your social life? So you've talked about some social events that you miss. Is that impact equal whether it's a Saturday or a Sunday?---Well, it depends when the social event is, surely?

PN8412

So you don't have a particular - - -?---If I've got friends that are having a nice casual barbecue and it happens to be on a Sunday afternoon then that's going to intrude on my social more than if it was a party on a Saturday night.

PN8413

So it depends when the event is?---Yes.

PN8414

But if we took something like spending time with your family, if you had a couple of hours to spend with your family, to you it's not different whether it's a couple of hours spent with them on a Saturday or a couple of hours spent with them on a Sunday?---No, I mean just spending time with family is spending time with family. At the moment I spend the majority of my time on - with them, now that I'm not working Sundays, on Sundays, Monday nights and Tuesday nights. That's the only time I see my family.

PN8415

Sure, and if I can ask you this. when it comes to night work, and I appreciate you don't presently work Sunday night but when it comes to night work would you see there as being a difference in the level of intrusion into your social life between working, say, Saturday night and working a Sunday night?---Well, again just missing out on family, yes I'd be - so, yes, there - not working either of them or working both of them, yes it's going to intrude on my social life and family time.

PN8416

But do you draw any distinction between the two?---Between Saturday and Sunday?

*** WILLIAM GEORGE KING

XXN MR IZZO

PN8417

Yes, Saturday and Sunday night?---No.

PN8418

Can I ask you then about public holidays, Mr King. At paragraph 14 you talked about the beauty of having Christmas day at home with your family. I think it's on the second page of your statement?---Yes.

PN8419

Now I take it Christmas Day is not the only public holiday you've had to work in the past, is that right?---That is correct.

PN8420

Is the reason you mention Christmas in particular because that day is of more importance to you than some of the other public holidays?---No, I mention that because it was the first Christmas Day I'd had off for quite some time. That was - I was quite excited about it.

PN8421

Certainly. But if I was to ask you about whether you were to have Christmas Day off as compared to say Labour Day, the Queen's Birthday or Proclamation Day, would your preference be to have Christmas Day off?---Not particularly. If I have to work Christmas Day, which I have done a lot over the 20-odd years, it's something that has to be done, as long as I get compensated for my time. It was nice. I did enjoy spending time with my family this Christmas, but it's one of these things that I'm used to not spending it with my family, so I guess I have a different opinion or point of view.

PN8422

Can I ask you now, at paragraph 7 of your statement, you talk about a restaurant that you owned, called Four Seasons, in about 2012?---Yes.

PN8423

Firstly, can I ask, you only owned it for six months; did it close down after that?---Yes. It was, what we call a very, very failed business.

PN8424

And so do I take it from your comments that it closed because it wasn't profitable. Is that right?---I wasn't getting enough people in through the door whatsoever, so yes, it wasn't profitable.

PN8425

Did you employ employees in running that business?---I did.

PN8426

Are you able to remember how many employees roughly you employed?---Three.

PN8427

You talk about the fact that during this period you worked on weekends and public holidays. Is there a reason why you worked on those days and didn't roster employees to work them?---I rostered employees to work them as well.

*** WILLIAM GEORGE KING

XXN MR IZZO

PN8428

So did you have your entire workforce working on weekends and public holidays, did you?---Yes.

PN8429

Mr King, can I ask you now about the end of your statement, in particular, paragraph 21? You talk about losses that you might suffer if penalty rates are cut. Do you see that at paragraph 21 onwards?---Yes.

PN8430

Can I assume that you've not factored into this calculation any additional hours that you might be granted if your employer increases rostering as a result of the cut to penalty rates? You haven't factored that type of thing into your calculations?---At my current business, as I said, Wednesday/Thursday we have two people on a day and two people on at night. Same with Sunday. There would be no change. There would be no more hours.

PN8431

So you've assumed that there will be no more hours allocated to - - -?---We're a restaurant that seats 45 people. Two people can handle 45 people. You're not going to get more than two people on.

PN8432

You currently only work about 30 hours a week. That means that, at the moment, as I understand it, you're not working Sunday, Tuesday or Wednesday ordinarily. Is that right?---Sunday, Monday or Tuesday.

PN8433

Sorry, Sunday, Monday or Tuesday. If this remained the case for the foreseeable future, that you weren't working Sunday, Monday or Tuesday, you could theoretically look for shifts at another business to increase your hours to more of a full-time load, couldn't you?---If I could find somewhere in hospitality that wanted you to work for them not including Friday, Saturday nights then, yes, I could. However, finding something like that, in my experience, is, I'm going to say, very little to none.

PN8434

Have you looked recently to see if you can obtain those types of shifts?---No, because I'm happy with what I've got at the moment.

PN8435

JUSTICE ROSS: Mr King, can I just take you to paragraph 27 of your statement? Do you have that?---Certainly.

PN8436

Do you see the last sentence there, when you say:

PN8437

The key nights for hospitality are Fridays, Saturdays and Sundays and there's a lot of competition for those shifts.

*** WILLIAM GEORGE KING

XXN MR IZZO

PN8438

Can you just expand on that? What do you mean by that?---The majority of hospitality venues and establishments have a lot of casual staff, and except for a few people that do stay on as professionals, it's very transient. So if you ask for a Friday or a Saturday night off for an event, say, the chances are the next week you may have lost your shift. Because you've asked for it off once, the good chance is that you will not have it again until someone else asks for it off. That can quite often be the case. So there's competition for the shifts and they are the most important ones.

PN8439

When you say "competition for the shifts" is that amongst the casual employees?---Yes.

CROSS-EXAMINATION BY MR CLARKE

[10.36 AM]

PN8440

MR CLARKE: Mr King, just if I take you to paragraph 19 of your statement, you say you earn about \$750 a week gross?---Yes, that's correct.

PN8441

How did you arrive at that figure?---Averaging out my pay slips.

PN8442

Do you? Are they the pay slips that are at the back of your statement?---Yes. Those and my yearly earnings, but yes, about that.

PN8443

So if I just take you to those pay slips for a moment, I'm looking at the pay slip 16 March to 22 March 2015. It's the first pay slip?---Yes. I've got one that's in March. Sorry, I do beg your pardon. The 16th, yes.

PN8444

That, am I correct in saying, has a gross pay of 747.87?---That's what it says there, yes.

PN8445

Then, if I take you to the next pay slip from 23 March to 29 March, that says 719.49?---Yes.

PN8446

I think in your statement you say that you've got pay slips from March through, but there seems to be a gap now from 29 March to 20 April. Is that on your statement as well? Are there no statements for the early - - -?---There is a gap, yes, you're correct.

PN8447

Can I just ask you quickly, on that gap, did you work over the Easter period?---Yes.

*** WILLIAM GEORGE KING

XXN MR CLARKE

PN8448

What days did you work over Easter?---It was just the Thursday and the Saturday.

PN8449

Not the Friday?---No. We were closed for the Friday.

PN8450

You were closed for the Friday?---Yes.

PN8451

So if I just keep working through these pay slips, we come back to 20 April to 26 April, \$927.07?---Yes.

PN8452

I won't take you through the rest. I'm just double checking that that is what helped inform you of your \$750 gross at paragraph 19?---Yes. That, as well as, like I said, my group certificate and averaging it out.

PN8453

I just want to be clear. Is that the total income you've earned during that period?---Of these pay slips?

PN8454

Not just of your payslips, did you receive any other income whatsoever during that period?---No.

PN8455

None?---Except for tips, yes. No.

PN8456

Sorry, except for tips. And when you make that comment, "except for tips", what do we take that to mean?---Well, I'm just saying, you're asking me what my income is, it's that, except for tips. That's my only other income.

PN8457

Okay. But that's not covered in your statement, the tips, is it?---No, because it's such a nominal amount.

PN8458

And when you say a "nominal amount" you don't think it would have informed us when you say my income varies that it would assist us with the \$750 gross?---Well, you can add \$5 a week to that then if you like.

PN8459

Okay. So just to be clear your evidence is that in a – it's a 45 seat restaurant?---That's right. Yes.

PN8460

It's busy Wednesday through to Sundays?---Yes, it is.

*** WILLIAM GEORGE KING

XXN MR CLARKE

PN8461

And you're working Wednesday, Thursday, Friday and Saturday?---That's correct.

PN8462

And just to be clear on how much you say the tips you receive on a weekly basis would be?---Yes. I mean, you get some weeks when it's more, some weeks when it's less, but, yes.

PN8463

And what would the more be?---I have had, not at this particular restaurant, but I have had at other establishments, a tip of \$75 from one table. But, I mean, that's a one-off.

PN8464

Yes?---Not exactly what you'd consider normal.

PN8465

No further questions, your Honour.

PN8466

JUSTICE ROSS: Any further cross-examination? Mr King, can I just ask you one question, on the payslips there's a reference to annual salary, which is consistent throughout. Are you on some sort of annual salary arrangement?---No, I'm not. I don't know what that is about. Whether it's just an average of – or what the expected annual salary is from the gross, but I'm afraid I don't know, sorry.

PN8467

Thank you. Re-examination?

RE-EXAMINATION BY MR DOWLING

[10.42 AM]

PN8468

MR DOWLING: Yes, your Honour. Mr King, you were asked about Saturday and Sundays. Can I firstly ask you, dealing with family events, putting social to one side, dealing with family events, what is your experience in terms of whether the family events they are more commonly on a Saturday or a Sunday?---Maybe 50-50 or more leaning towards the Saturday. It's hard to say. They're those things that just get left by the wayside so, you know, it's sort of in one ear out the other for me for a majority of them, because I know I can't – or generally can't make it to them.

PN8469

Sorry, I was just having a bit of trouble hearing you. When you say "left by the wayside", you mean, because you're not there?---Yes. So, you know, I don't exactly make an effort to remember when things, I can't go to, are.

*** WILLIAM GEORGE KING

RXN MR DOWLING

PN8470

I see. I see. You might have the same response then, but I wanted to deal separately with social. Again, are you unable to say because of the evidence you've just given, whether the social is more commonly on a Saturday or a

Sunday?---I'd say with socials it's more on the Saturday just because tend towards the Saturday night with a Sunday recovery if drinking is going to be involved, but again there have been that many that I have missed, I wouldn't be able to give you a set amount one way or the other.

PN8471

I understand. Thank you, Mr King. If the witness might be excused.

PN8472

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

<THE WITNESS WITHDREW

[10.44 AM]

PN8473

JUSTICE ROSS: Next witness?

PN8474

MS BURKE: Yes, your Honour, I call Mr Sean Davis.

PN8475

THE ASSOCIATE: Could you please state your full name and address for the Commission.

PN8476

MR DAVIS: Sean Miles Jorgen Davis.

PN8477

THE ASSOCIATE: And your address, please.

PN8478

MR DAVIS: (Address supplied)

<SEAN MILES JORGEN DAVIS, AFFIRMED

[10.45 AM]

EXAMINATION-IN-CHIEF BY MS BURKE

[10.46 AM]

PN8479

MS BURKE: Mr Davis, would you please just repeat your full name for the Commission?---Sean Miles Jorgen Davis.

PN8480

And your address?---(Address supplied)

PN8481

And your occupation?---I'm a duty manager at the Grange Hotel.

PN8482

Thank you. And have you prepared a statement in this proceedings?---I have.

*** SEAN MILES JORGEN DAVIS

XN MS BURKE

PN8483

And I'm just going to have a copy of that statement or what I'll ask you to confirm that statement handed to you?---Thank you.

PN8484

Is that the statement you prepared?---That is indeed.

PN8485

And are there some corrections that need to be made to that statement?---That is correct.

PN8486

At paragraph 2 is your birthday month November rather than October?---That's right.

PN8487

And at paragraph 3 is your eldest child, Matt, now 18?---Yes.

PN8488

And Chad is now 16?---Yes.

PN8489

And at paragraph 6 is it the case that you haven't had the car service for two years not three?---Unfortunately so. Yes.

PN8490

And at paragraph 10 - - -?---Yes, Ma'am.

PN8491

- - -the date is January to October 2015. Should that be 2014?---Yes, that is correct.

PN8492

And then at paragraph 35 - - -?---Mm-hm.

PN8493

- - -it reads:

PN8494

I currently have a personal loan of approximately \$4000 and a credit card which is maxed out at around \$3000.

PN8495

?---Yes.

PN8496

Should that now read:

PN8497

I currently have personal debts of about \$5000.

*** SEAN MILES JORGEN DAVIS

XN MS BURKE

PN8498

?---That is correct. Yes. It's about \$5000 now.

PN8499

And with those corrections are the contents of your statement true and correct?---As far as I'm able to see, yes.

PN8500

And attached to that statement, I should've asked you this before, there is a document headed Annexure A, and it's a copy of your payslips?---Yes, Ma'am.

PN8501

And with the annexure is your statement then true and correct?---Yes, Ma'am.

PN8502

I tender that statement.

PN8503

JUSTICE ROSS: Any objection?

PN8504

MR STANTON: No objections.

PN8505

JUSTICE ROSS: I make that exhibit United Voice 11.

**EXHIBIT #UV11 WITNESS STATEMENT OF SEAN MILES
JORGEN DAVIS**

PN8506

MS BURKE: Thank you, Mr Davis. Wait there, my friend will have some questions?---No worries.

CROSS-EXAMINATION BY MR STANTON

[10.48 AM]

PN8507

MR STANTON: Sir, prior to starting work at the Grange Hotel, which is your current employer - - -?---Yes.

PN8508

- - -I take it that you applied for work with the hotel?---I don't understand what - - -

PN8509

You applied for work at that hotel?---Yes. I – yes.

*** SEAN MILES JORGEN DAVIS

XXN MR STANTON

PN8510

And how did you make that application?---A little bit of a story. I went and saw a friend and she told me to – that there might be work at the Hyde Park. So I went to the Hyde Park, I spoke to Luke. Luke said, "Go see Tony at the Bath Hotel", so

I went up on that same day, went and saw Tony. I bumped into an old friend, who worked at – who was the manager there, and he got me an interview and two days later I turned up and had an interview with Tony, and he gave me the job on the spot.

PN8511

And who do we understand Tony to be? The manager of the Grange?---Tony Franzon is the owner of the hotels. The actual owner. Owner – Tony Franzon is the owner.

PN8512

Yes. And in the course of that interview I take it you were asked about your availability for work during the week?---Yes.

PN8513

And did you indicate you were available – were there any days that you were not available?---Tuesdays.

PN8514

That was the only day you were unavailable?---Yes.

PN8515

And you don't work Tuesdays do you?---Not so far, no.

PN8516

So you were available to work any day other than Tuesday, including the weekends?---If I want a job then, yes.

PN8517

Yes. And you've always worked the weekends according to your statement?---Generally, yes. Mostly, yes.

PN8518

Now, you've stated that you've been in the hospitality industry for 30 years?---I was 18. So 30, 31 years now.

PN8519

Yes. And it's always been the case that you have worked on weekends or public holidays?---No.

PN8520

And when wasn't it the case?---I was at the Britannia Hotel.

PN8521

Was that a recent one?---That was prior. It was from October to about April 2015. I left the Tapp Inn and I took up a position at the Britannia, specifically because the job was Monday to Friday. So I could have weekends off for a change, which was really nice.

*** SEAN MILES JORGEN DAVIS

XXN MR STANTON

PN8522

So you mean October 2014?---2014 to April, roughly - no, January 2015, sorry.
So -yes, I had to leave then when the award changed.

PN8523

And that period of employment is the only period that you recall where you weren't required or didn't work - - -?---Weekends, yes. Yes, I actually took a lower position because I really wanted to spend some time with the family.

PN8524

So other than that then it has been typically the case, hasn't it, that you've worked weekends. Unfortunately, yes.

PN8525

You've been available to work the weekends?---Well, you have to. You haven't got a choice.

PN8526

You've been available to work those weekends?---Well, yes, absolutely. Yes.

PN8527

So in your current position at the Grange, have there been occasions where you have declined to work, say, a Saturday?---No, absolutely not. It pays better.

PN8528

And have there been occasions where you have declined to work a Sunday?---No.

PN8529

In your statement, you have provided an average of the hours that you work a week?---At which establishment.

PN8530

Well, the statement that's in front of you?---Yes.

PN8531

When I say "statement", I'll be referring to the witness statement you've made, so that at least we're on the same page.

PN8532

In your statement you've made - it's in relation to your current role at the Grange?---Yes, thank you. Yes, that's what I was - - -

PN8533

That the average number of hours is 35?---Not any more. Not in the last month - it's changed.

PN8534

Well, if you just go to paragraph 20 of the statement - - -?---But it's - yes, it's 35?

*** SEAN MILES JORGEN DAVIS

XXN MR STANTON

PN8535

Yes?---Very good Yes, it was. It was 35 hours, but the statement was done - it's only in the last three weeks - - -

PN8536

When this statement was made?---That was correct, yes.

PN8537

It was 35 - - -?---35.

PN8538

According to your count?---35 or a little bit more or a little bit less.

PN8539

Well, it was 35 on the statement?---35, so yes.

PN8540

And do you understand that - is this correct - that calculation provides from this that you work Wednesday to Saturday, four days, from 5.00 till usually, what, 1.30 in the morning, the next morning?---About roughly, correct.

PN8541

So a shift could be between eight and a half hours?---Yes.

PN8542

It could be as long as nine?---Yes, and I could start earlier even, so yes.

PN8543

So you could be looking at anywhere between four days at, say, eight and half hours, giving you 34 hours in total or four days at nine hours, giving 36 hours in total?---Correct, yes.

PN8544

So 35 - - -?---It's all over the place, yes.

PN8545

It's all over the place?---Yes.

PN8546

It seems pretty constant though. It's either eight and a half or nine hours?---Yes. But then I'll work a Wednesday and I'll only work six and a half hours, because we close early at 12.30, because that's - I come in at 5.00 and I have a half hour break, so I get paid for six and a half hours.

PN8547

Well, when you made the statement, you made the calculation?---Yes, but - you're correct. You're correct, yes. I'm not trying to argue. Sorry, I apologise.

PN8548

The average - - -?---Is 35.

*** SEAN MILES JORGEN DAVIS

XXN MR STANTON

PN8549

The average that you've nominated there, is worked out according to the hours worked Wednesday to Saturday?---Correct.

PN8550

Not Sunday, just Wednesday to Saturday?---Correct.

PN8551

And Sunday isn't included in that average, because it varies?---Correct.

PN8552

And you have told us in the statement - - -?---Correct.

PN8553

- - - that you don't regularly work Sunday?---Correct.

PN8554

Yes. The pay advices that you have attached at annexure A show that you have worked on most of the Sundays in that period?---In that - yes, yes.

PN8555

But this would be correct. The hours vary, don't they? The Sunday hours?---Tremendously they vary, yes.

PN8556

Tremendously?---Yes, that - now, yes, especially in the last three weeks yes.

PN8557

If we can just focus on the period - - ?---That we've done.

PN8558

That we've done?---Yes.

PN8559

Because - - -?---I understand.

PN8560

Everyone has before them the statement that you've made?---Understood.

PN8561

Now, that variation, for example, in one of those weeks, 10 May, you are shown to have worked 11 and a quarter hours on the Sunday. I am just looking at the Sunday at the moment. That's the week ending - it's the pay week ending 10 May?---Mm.

PN8562

That appears to be the most hours that you've worked on a Sunday in that 18-week period. Would you agree with that?---That is correct.

*** SEAN MILES JORGEN DAVIS

XXN MR STANTON

PN8563

Yes. And the least, as I read it, is - well, there are two days where you are shown to have worked just over one hour - one and a quarter hours. They are the week ending on 7 June, whichever Sunday that was and the week ending 12 July?---Yes.

PN8564

Both cases, one and a quarter hours?---Mm.

PN8565

Do you recall why it was such a short experience on that day?---That's because you are working at 1 o'clock in the morning. You start Saturday and you go to 1 o'clock in the morning, so the pay rate changes on the Sunday. So you get an hour and 15 minutes of Sunday pay.

PN8566

So with the 10 May, which I used before, is that - do you recall when you would have started?---The 10th, well, that would have been a Saturday, so I would have done maybe two hours on Saturday that would have lead into Sunday morning and then I would have come back 10 hours later and done another shift, for Sunday.

PN8567

Yes, of 11 and a quarter hours?---Yes, so it would have added all up for the whole day. So if I finished at = worked Saturday and worked to Sunday morning at 2.30, and then came back at 4 and worked to midnight or 1 o'clock or whatever, Monday morning.

PN8568

Now, you've told us in your statement that the roster - you are not regularly rostered on a Sunday?---Correct.

PN8569

But you are called in when other staff are sick?---Correct, yes.

PN8570

SO that's the predominant reason why you are working on a Sunday?---That is correct, yes.

PN8571

Do we understand that where you are working hours such as 11 and a quarter or 10 and a quarter, which is the case on 24 May?---Correct, yes.

PN8572

These are rosters where you've been called in to cover for somebody?---I believe so, or I've been asked to do that, because someone wants the Sunday off, either Rob or Stacey the managers - the other managers wanted the day off and I may have been rostered on for that day to have done it - to do it for them, so they can have the day off.

*** SEAN MILES JORGEN DAVIS

XXN MR STANTON

PN8573

Yes?---My memory is not a hundred per cent on that particular - - -

PN8574

Now, earlier in a question that I asked you, you gave a response that the Sunday hours vary - I think your words were "tremendously" in relation to - - - What the - - -

PN8575

- - - your hours now?---The hours in the rosters tremendously do - yes. They're - yes. I've lost - the boss has hired a new person who is a mate of his, and three of us have lost hours - about 10 hours a week each to accommodate his employment.

PN8576

So let's be clear on this, you're rostered each week Wednesday to Saturday, so that much you know?---It's changed.

PN8577

What is it now?---I'm just getting - they've put me only Wednesday, Thursday and Sunday. I am now exploring the possibility of getting another job or working at one of the other establishments. That's the current situation right now, unfortunately. So - - -

PN8578

Yes. So you've given evidence at paragraph 21, you have indicated you have always worked weekends and public holidays, and you try to get paid on these days?---Yes.

PN8579

What is it that you specifically do to try to get those shifts?---Just making myself available. I just say - let them know, "If anyone needs me, give me a call," as I say to Stacey. You know, "If you need somebody, give me a bell."

PN8580

Who is Stacey?---Stacey's the manager of the Grange Hotel.

PN8581

And how frequently would you indicate to Stacey that she should give you a call?---Not that often. Once a month, maybe. I don't see her very often because she's gone by the time I get there to work. Half - most of the time I don't see her. Maybe once a week briefly.

PN8582

And is there anything else that you do to try to get those shifts?---No, not really. People know. If they ring around, if they - if there's a - Amy rang up two weeks, three weeks, four weeks ago to get a Monday off and I was very sick and I couldn't come in and do a Monday night shift for her.

PN8583

And so prior to working at the Grange Hotel?---Yes, sir.

*** SEAN MILES JORGEN DAVIS

XXN MR STANTON

PN8584

And we'll exclude the Britannia. You've already given some evidence about that. That was the period from January to October of last year - was that the Britannia?---Britannia was October to January this year.

PN8585

I beg your pardon. It's also the case you've tried to get those weekend shifts at other establishments in the past?---Well, it's not so much as trying to get the shifts. It's you make yourself available for them so that you get the job. Because they need people to work weekends because no one wants to work weekends or nights.

PN8586

So you tell the managers that you're available to work those times?---Well, if I want the job I have to. I have no choice.

PN8587

You tell the managers you're available?---Yes I do. Yes.

PN8588

And that has been the case through your career?---Well, not at the Britannia. I specifically went there for - and - yes, I've had to take crappy jobs or do crappy hours so I can assure that I get good pay. Yes.

PN8589

Now you've done some calculations?---Yes, sir.

PN8590

In relation to the - you understand the AHA proposal?---Yes, sir.

PN8591

This has been explained to you?---Yes.

PN8592

And you speak of this at paragraph 36 of your statement?---Yes, sir.

PN8593

Can I ask you this; is it your view that the AHA proposal - and I'm just referring here to the Sunday proposal - that that would lead to a reduction of 25 per cent?---The Sunday, if you were going to cut my - yes, it could lead to - let's see how it - let's have a think about it. I don't quite understand what you're getting at there. 25 per cent in my - reduced? Can you just clear that up for me, what you mean?

PN8594

Do you see there you say:

PN8595

I understand AHA is seeking to have penalty rates on Sundays reduced by 25 per cent for casual employees.

PN8596

?---Yes. Yes, I understand that. What - so that would be \$5 an hour that I would lose basically.

PN8597

And your hourly rate at the moment - - -?---Is - - -

PN8598

- - - for a Sunday is \$35.23?---\$35 an hour, so yes.

PN8599

Yes?---It would go back to the Saturday pay.

PN8600

And the calculation you've made at 37 is:

PN8601

I've calculated I would lose \$5.03 for each hour I work on Sunday.

PN8602

?---Yes.

PN8603

Yes, and that doesn't represent 25 per cent of the hourly rate on Sunday, does it?---It's a 25 per cent reduction. It's a - so what the - you're talking about is one 75. So it's 25 per cent off the base pay. So I - - -

PN8604

That doesn't represent a reduction of 25 per cent in the Sunday rate, does it?---Twenty five per cent, \$5 is - no.

PN8605

So if you divide \$5.03 over - - -?---Yes I see what - yes.

PN8606

- - - \$35.23. I know you haven't got a calculator there but would you accept that's one-seventh?---One-seventh? Yes, yes. No, I understand what you're getting at. That's one-seventh or one-sixth if you're taking it on - basing it on \$30.

PN8607

Sorry?---It's one-sixth if you're basing it on the \$30, 1.5, or it's - - -

PN8608

Well, I'm referring at this point to the hourly rate?---Yes. Yes.

PN8609

For Sundays?---Yes.

PN8610

It's not a quarter?---No, I don't think it was implied that it was a quarter.

*** SEAN MILES JORGEN DAVIS

XXN MR STANTON

PN8611

And have you done calculations - I retract that. So I understand that from your statement your wife is studying for a hospitality certificate?---Yes, at that stage. She's done the - she's completed that particular course now at this stage.

PN8612

She has completed it?---She's completed it, yes.

PN8613

Is she looking for work in the hospitality industry?---She is. She's doing another course. It's based more on cooking, yes.

PN8614

And you've encouraged her in that endeavour?---Yes. Well, she's - needs to - she wants to do something and she wants to get out of the house. Yes.

PN8615

Nothing further.

PN8616

JUSTICE ROSS: Any further cross-examination? Re-examination?

PN8617

MS BURKE: There's no re-examination. Can the witness be excused?

PN8618

JUSTICE ROSS: Anything further for the witness, no?

PN8619

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

<THE WITNESS WITHDREW

[11.06 AM]

PN8620

MR DOWLING: I call Mr [REDACTED], your Honour. Sorry, I was waiting for you. I'm sorry.

PN8621

JUSTICE ROSS: I'm glad one of us spoke. Otherwise we might have been here all day.

PN8622

THE ASSOCIATE: Thank you. Please state your full name and address for the Commission?

PN8623

MR [REDACTED]: Yes, [REDACTED] (address supplied).

< [REDACTED], AFFIRMED

[11.07 AM]

*** SEAN MILES JORGEN DAVIS

XXN MR STANTON

PN8624

MR DOWLING: Mr [REDACTED], could you please repeat your full name?---[REDACTED].

PN8625

And your address?---(Address supplied)

PN8626

Your occupation?---I am a floor staff and part-time barista.

PN8627

Can you confirm for the Commission please whether you've prepared a statement for the purposes of this proceeding?---I have, yes.

PN8628

I'll hand you a document?---Thank you.

PN8629

You have there a document headed "Statement of [REDACTED]"?---Yes.

PN8630

Is that a statement of 46 paragraphs?---Yes.

PN8631

And is that your signature that appears at the bottom of page 7 of that document?---Yes it is.

PN8632

Does it have with it an annexure marked annexure A?---Yes.

PN8633

That has three pay slips?---Yes.

PN8634

Now do you wish to make some corrections to that statement?---Yes.

PN8635

Can I take you firstly to paragraph 4? You'll see there in the second line it says, "A Bachelor of Internal Relations". I assume that's a Bachelor of International Relations"?---It is. That's just a spelling mistake.

PN8636

Can I take you next please to paragraph 12. Do you wish to correct the second line of paragraph 12 so that it reads in place of what is there, "I worked there for 18 months"?---I do, yes.

XN MR DOWLING

PN8637

Can you please go to paragraph 22? Do you wish to correct the second sentence of that paragraph so that it reads:

PN8638

I work from around 7.30 am until closing time in the late afternoon.

PN8639

?---Yes I do.

PN8640

Can I take you next please to paragraph 34. Do you wish to correct the first sentence of paragraph 34 so that it reads:

PN8641

The biggest thing that I lose from working the hours I work over weekends and public holidays is time with my partner

PN8642

?---Yes.

PN8643

I'll take you then to paragraph 45. Perhaps rather than a correction, you'll see there you say, in the third line:

PN8644

I've applied for 20 jobs since graduating.

PN8645

Has that position changed since 10 August 2015?---It has. I have applied for an additional 10 to 15 more jobs since then.

PN8646

One last correction. If I can take you back to paragraph 4, I'm sorry?

PN8647

COMMISSIONER LEE: Sorry, can I just clarify? Are we saying, "I've applied for 20 jobs" still, or are we adding the 15 or are we - - -

PN8648

JUSTICE ROSS: You're saying it's 30 to 35. We think that's the decision.

PN8649

MR DOWLING: I'll clarify, Commissioner, thank you. You heard the question. What should the total now be up to today?---Thirty to 35. I can't remember. I've applied for many, but more than what is there.

PN8650

One last correction. The first sentence of paragraph 4, it says there:

[REDACTED]

XN MR DOWLING

PN8651

I graduated with a master's degree in International Relations from Latrobe University.

PN8652

Should that be, "in June of 2015" rather than, "in March of 2015"?---Yes, it should.

PN8653

With those corrections and that clarification at paragraph 45, are the contents of your statement true and correct?---Yes.

EXHIBIT #UV12 STATEMENT OF [REDACTED]

CROSS-EXAMINATION BY MR IZZO

[11.12 AM]

PN8654

MR IZZO: Mr [REDACTED], you've got a copy of your statement there, don't you? Can I ask you please to just go to paragraph 27 of your statement, if you don't mind? I think it's on page 4?---Yes.

PN8655

At paragraph 27, you talk about needing to attend class four days a week. Can I take it that this reference to attending class as an undergraduate student, that's relating to four days during the weekdays, so that is, Monday, Tuesday, Wednesday, Thursday, Friday?---Yes.

PN8656

You talk about having to work around these hours, so do I understand correctly that that means you need to work on weekends and perhaps one other day a week because they were the main times you weren't required to attend university?---Yes.

PN8657

If I can actually just ask you to have a read through paragraphs 28 and 29, because I just want to ask you one or two or three questions about them. Just let me know once you've - - -?---I'm familiar with my statement.

PN8658

You talk there about the study load you had during your master's degree. Do I take it that the point you're making is that you had very little free time while you were performing your master's degree or studying for it?---Yes.

PN8659

Can I assume that the point you're making in these paragraphs is that, ideally, you would have liked more time off during this period of life to study and practice your language skills? Regardless of which day that might have been, what you were after was really more time off?---More study time.

XXN MR IZZO

PN8660

Yes, more time not spent working so you could spend it on your studies. That's really what the essence of those paragraphs is saying that you would have liked?---Yes.

PN8661

If I can then take you forward a page to paragraph 34, you start to talk about the impact of working weekends and public holidays on your social life. I understand that your partner has both Saturday and Sunday off. Is this correct?---That is correct.

PN8662

And you talk about missing social events like birthday parties. Can you tell us when these birthday parties are primary held?---Often Friday or Saturdays in the evenings.

PN8663

That was in the evenings as well, was it?---Yes.

PN8664

In light of that, can I ask you this: in your mind, is there any difference between working on a Saturday or a Sunday when it comes to the level of intrusion in your social life?---Yes, there is a higher level of intrusion if I work on those weekend days.

PN8665

Sorry, no, to differ between them. I understand that there's events you're missing out on by having to work Saturday and Sunday, but if you actually compare the two days, the level of intrusion into your social life, is there any difference between those two days?---Between Saturday and Sunday?

PN8666

Yes?---Not particularly, no.

PN8667

And the same in relation to night work. I can't recall; do you work Sunday nights?---I do not work nights.

PN8668

No, you don't. If you were to work Sunday night and you were comparing the difference between working Saturday and Sunday nights, would there be a difference in the level of intrusion into your social life, compared between the Saturday night and the Sunday night?---There would be, as there are more things often on a Saturday than, say, a Sunday. But I don't work evenings.

PN8669

No, I appreciate that. You're working about three shifts a week and that's also three days a week, from what I understand?---Correct.

XXN MR IZZO

PN8670

The remainder of the week, how is that you spend your time?---Mainly applying for full-time work.

PN8671

And you've told us that each job application takes about two hours to complete everything and put all the answers together and submit. Is that right?---Yes.

PN8672

And we've heard that you've got about 30 to 35 job applications now that you've put in?---Yes.

PN8673

So on average, we're talking about 60 hours total or perhaps even a little bit more, if we go 35. I'm just trying to do the maths. Sixty to 70 hours of time put together in putting together these job applications?---That would be fair, yes.

PN8674

And you've been putting in these job applications since March?---No, since June, when I finished, but I've been applying before then also.

PN8675

When you say you've been applying before then also, when did you start applying for these jobs?---Since during my master's degree, towards the end, when I knew when I was going to be finishing, so I had a job once I finished.

PN8676

So isn't that about March, when you finished?---No. We've made a correction where I finished the actual degree, I graduated in June.

PN8677

I should have been listening more attentively. I apologise. Other than that though, that's the main work-related thing you're doing, is applying for the jobs. There's no other working related things you're doing. You're not working another job, for instance?---Not to the one that is on here, no.

PN8678

I certainly hope this isn't the case, but if, in the long term, you were unsuccessful in obtaining a job in your chosen career that you're applying for at the moment, you could always look for a second job in this particular industry, couldn't you?---I could, yes.

PN8679

But you haven't done that to date?---I have not.

CROSS-EXAMINATION BY MR CLARKE

[11.19 AM]

PN8680

MR CLARKE: Just following on from my friend's questions to you, from your statement, you're working 20/25 hours a week?---Yes.

XXN MR CLARKE

PN8681

And you've completed, I think 30 to 35 applications, say, at two hours each?---Yes.

PN8682

So your total work engagement at the moment is about 30 hours a week. Would that be fair?---Thirty to 35 I would say.

PN8683

And how do you arrive at the 35?---It depends on how many jobs I've applied for that week. So some weeks there are more jobs available for me to apply for, so more time is spent doing that but - and often because my roster changes, some days - some weeks I may be called in to do a fourth shift or I may only have two shifts or it depends on the week. I don't have a set roster each week until that week.

PN8684

Would some extra work assist you in meeting your weekly expenses at this stage?---Extra work would, yes.

PN8685

At paragraph 40 of your statement?---Yes.

PN8686

Sorry, just take me through the Sunday work you've performed in the last four weeks?---In the last four weeks I've worked three Sundays.

PN8687

At paragraph 41 of your statement you say:

PN8688

My wages are not the only source of income in my household.

PN8689

Is that correct?---That is correct.

PN8690

The other source of income is your partner's income?---Yes.

PN8691

There's no other income you're generating other than your work and your partner's work?---No, we have a house mate but he lives obviously separately to us so it's not what I consider income.

PN8692

Do you receive any tips at all during the week at the place?---Not weekly, no. We pool our tips and share them once a month probably. But it's - last time when we split them I got \$20 for a month, so the expenses would be negligible to \$5 probably max per week.

XXN MR CLARKE

PN8693

Thank you. No further questions, your Honour.

PN8694

JUSTICE ROSS: Any other cross-examination? Re-examination?

PN8695

MR DOWLING: No re-examination, your Honour.

PN8696

JUSTICE ROSS: Thank you for your evidence, Mr [REDACTED]. You're excused.

<THE WITNESS WITHDREW

[11.22 AM]

PN8697

JUSTICE ROSS: Next witness.

PN8698

MS BURKE: Call Jennifer Miller.

PN8699

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

PN8700

MS MILLER: Jennifer Miller (address supplied).

<JENNIFER MILLER, AFFIRMED

[11.23 AM]

EXAMINATION-IN-CHIEF BY MS BURKE

[11.23 AM]

PN8701

MS BURKE: Ms Miller, can you please state your full name for the Commission?---Jennifer Miller.

PN8702

Your address?---(Address supplied)

PN8703

Your occupation, please?---I'm a chef.

PN8704

Ms Miller, you've prepared a statement in this proceedings?---Yes, I have.

PN8705

I'll just have a copy of that document handed up please. Is that document there headed "Statement of Jennifer Miller" the statement that you prepared?---Yes, it is.

PN8706

Are there some corrections that need to be made to that statement?---Yes.

*** JENNIFER MILLER

XN MS BURKE

PN8707

At paragraph 6 and 7, should the dates - the years in those paragraphs be moved back a year?---Yes.

PN8708

So 2010 should be 2009?---Yes.

PN8709

2011 should be 2010?---Yes.

PN8710

2012 should be 2011?---Yes.

PN8711

At paragraph 14 over the page, should the words:

PN8712

If I dispute the hours I wouldn't have a job -

PN8713

be removed?---Yes.

PN8714

At paragraph over the page, should the words:

PN8715

Irregular and anti-social hours -

PN8716

be deleted and replaced with the words:

PN8717

The hours that I worked

PN8718

?---Yes.

PN8719

A couple more pages over at paragraph 33, should the words:

PN8720

And assuming I'm correctly classified as a level 3 casual and therefore affected by the proposed cuts.

PN8721

Should those words be deleted?---Yes.

PN8722

Should the figure of "\$71" be replaced with "\$65"?---Yes.

*** JENNIFER MILLER

XN MS BURKE

PN8723

At paragraph 34, there's a reference in the second line to a "level 3 casual", should that be a "level 4"?---Yes, it should.

PN8724

That would mean that there are amendments to be made to all of the dollar figures there, which I'll just take you through and tell me if I'm correct. "\$47.75" should be "\$50.23"?---Yes.

PN8725

"\$28.65" should be "\$30.20"?---Yes.

PN8726

"\$23.88" should be "\$25.61"?---Yes.

PN8727

Then in the final sentence there "\$133.70" should be "\$140.25"?---Yes.

PN8728

"\$167.13" should be "\$175.47"?---Yes.

PN8729

Thank you. Finally, just over the page which is a bit of paragraph 35 that's hanging over there, that reference to "\$280", should that be "\$260"?---Yes.

PN8730

Your statement, does that have attached to it a bundle of rosters and pay slips?---Yes, it does.

PN8731

Is your statement together with those rosters and payslips true and correct?---To the best of my knowledge, yes.

PN8732

I tender that document.

PN8733

JUSTICE ROSS: Any objections?

PN8734

MR CLARKE: No, your Honour.

PN8735

JUSTICE ROSS: I'll mark that as exhibit UB13.

EXHIBIT #UV13 WITNESS STATEMENT OF JENNIFER MILLER

PN8736

MR CLARKE: Your Honour, the point I've raised with my friends overnight is that there's - if you look at the attachments to this statement, it's quite apparent that there's - - -

*** JENNIFER MILLER

XN MS BURKE

PN8737

JUSTICE ROSS: Well should the witness be here? Are you making an objection or - - -

PN8738

MR CLARKE: It's just really a matter of process as to who should be doing the cross-examining, your Honour, is really the point.

PN8739

JUSTICE ROSS: Have you had a discussion with United Voice about this or your colleagues, for that matter?

PN8740

MR CLARKE: I've alerted them to my concerns overnight, your Honour, yes.

PN8741

JUSTICE ROSS: What are your concerns?

PN8742

MR CLARKE: The witness works in a hotel, your Honour.

PN8743

JUSTICE ROSS: Yes.

PN8744

MR CLARKE: She's been called as a restaurant witness, your Honour.

PN8745

JUSTICE ROSS: So you're saying she's not covered by the restaurant award?

PN8746

MR CLARKE: That is a view we've quite clearly expressed to my friends overnight and yes, your Honour.

PN8747

JUSTICE ROSS: Can you cast any light on this, Ms Burke?

PN8748

MS BURKE: The witness is called as a witness. It's a matter for my friends who cross-examines her. I will note that at paragraph 9 she refers to being employed under the Restaurant Industry Award.

PN8749

JUSTICE ROSS: Yes. Well you can cross-examine her if you wish. It's a matter for you to sort out who wants to cross-examine her. She was called as a general witness, whether she's correctly classified under the restaurant award or paid - she's just explaining what she is paid under. It's a matter for you whether you want to cross-examine her. Her evidence will be relied on in all the matters that are before us, is what's being put to you by United Voice.

*** JENNIFER MILLER

XN MS BURKE

PN8750

MR CLARKE: Yes, no, I understand that, your Honour, but it's probably something the AHA is better to comment on than us because just the way the witness has been scheduled it would appear as a restaurant witness, and we've fairly raised the question mark over that, albeit late and so I mean we can continued with the cross-examination but it's not really our witness we'd say in the scheme of this.

PN8751

JUSTICE ROSS: But it's a matter for the employers to sort of - the witness has been scheduled, her statement has been in for a while. She's here to be cross-examined by whoever is here. So you can cross-examine or not, but it's a matter entirely for the employers' side.

PN8752

MR STANTON: Yes, your Honour.

PN8753

JUSTICE ROSS: Yes.

PN8754

MR IZZO: I'm not intending on cross-examining her, your Honour.

PN8755

JUSTICE ROSS: Do you want a five minute adjournment so you can sort it out amongst yourselves what you're doing? Is the AHA not here, is that the point?

PN8756

MR IZZO: They are, yes.

PN8757

UNIDENTIFIED SPEAKER: The AHA - yes.

PN8758

MR STANTON: I haven't got anything - why don't we take that adjournment that your Honour has invited us to take?

PN8759

JUSTICE ROSS: That would be a good idea I think. Yes, all right.

<THE WITNESS WITHDREW [11.30 AM]

SHORT ADJOURNMENT [11.30 AM]

RESUMED [11.39 AM]

<JENNIFER MILLER, RECALLED ON FORMER AFFIRMATION[11.39 AM]

CROSS-EXAMINATION BY MR IZZO [11.39 AM]

*** JENNIFER MILLER

XXN MR IZZO

PN8760

MR IZZO: Ms Miller, if I can just ask you a bit about your employer, Oscar's on the Yarra? Do they also operate a guest house service with accommodation facilities?---As far as I was told, the guest house and the restaurant were separate businesses.

PN8761

So is it your understanding that the company that employs to work in the restaurant is a different company to the company that operates the accommodation and guest house facilities, is it?---That's what I was under the impression of; Best Western is separate to the restaurant, Oscar's.

PN8762

If I could now just ask you a bit about your working hours? Your shifts are usually Thursday through to Sunday. Is that right?---Mostly.

PN8763

I had understood, and please correct me if I'm wrong, but is the restaurant shut on Tuesdays and Wednesdays?---Yes, they're our days off.

PN8764

They're the days the restaurant doesn't open?---The chef is off, yes.

PN8765

The chef is off?---Yes.

PN8766

So there's some partial catering facility, but it's not the full restaurant. Is that right?---Could you repeat that?

PN8767

So the chef is off on Tuesday/Wednesday. Does that mean that the restaurant is not open?---That's correct, unless there's a specific function that's been organised.

PN8768

You say in your statement that Thursdays to Sundays are the peak times for the restaurant. When you say that, do you mean that this is the time when most customers come to dine?---That's correct.

PN8769

Whilst working for Oscar's have you performed work for other companies on Tuesdays and Wednesdays?---No.

PN8770

You've mentioned in your statement that you've worked in the hospitality industry for 30 years, on and off?---Yes.

PN8771

Can I assume that throughout the duration of your time in the hospitality industry you've been required to work Saturdays and Sundays?---For some of the time, yes.

*** JENNIFER MILLER

XXN MR IZZO

PN8772

And when you talk about the hospitality industry, you're talking about working in restaurants as a chef or a cook, but does it also include perhaps sometimes working in hotels with catering services? What do you consider to be the hospitality industry that you've worked in?---Over the 30 years I have worked in - this has been internationally. I've worked overseas in hotels as front of house, chamber maid, that sort of thing, waitressing.

PN8773

So how much of that 30 years has been spent working in Australia?---Ten years roughly, on and off.

PN8774

And are they the most recent 10 years or have you recently come back from overseas? When would those 10 years have been worked?---Probably the early eighties. Then I had a large break, which I did something completely different, and then I came back to hospitality.

PN8775

And how long have you been in the industry most recently?---I started my chef's apprenticeship roughly 2009.

PN8776

So the last five or six years or so?---Yes.

PN8777

Since that time, the last five or six years, have you mainly been working Thursdays through to Sundays?---Mainly, yes.

PN8778

Is it something that you kind of accept goes with the industry?---Yes.

PN8779

If I can move forward to another part of your statement, which is approximately at paragraph 17, at around page 3? You talk about missing out on certain social events. What type of socialising are you referring to there, when you're talking about missing out on it? What kind of social stuff are we talking about?---Mainly family functions. I've missed on many weddings, a funeral, birthdays, Christmas, that sort of thing with my family.

PN8780

These might happen on a Saturday or a Sunday?---Quite often they do, yes.

PN8781

Maybe even a Friday night?---Occasionally.

*** JENNIFER MILLER

XXN MR IZZO

PN8782

I think you mentioned birthdays, weddings. Are they more nighttime things, Friday night, Saturday night? I asked a few things in a row there. Let me wind

that back. The weddings, I take it, are predominantly on Saturday?---No. I've had Sunday weddings.

PN8783

What about evening functions, birthdays, things like that? Are they usually Friday night/Saturday night?---No. With my family it's always a family event, which means weekends.

PN8784

So when you think about those things that you're missing out on, do I take it, obviously you're talking about work intruding on your social life to a certain extent, but is there a difference between the level of intrusion on a Saturday versus on a Sunday, or is it really the same level?---No. I feel Sunday is worse for me, because we have a lot of small children in our family and it's usually Sundays that they have parties and picnics and things like that. For example, we always get together on a Sunday after Christmas, the whole family, and have a big picnic in the park on a Sunday. I've missed out on that many times?---You've mentioned Christmas today, but you actually talk about it in your witness statement as well, at paragraph 21. You actually talk about sadness associated with working on Christmas Day, Christmas Eve and Boxing Day?---Yes.

PN8785

Is the reason you mention feeling particular sad on these days because they're of more importance to you than other public holidays?---Very much so, yes.

PN8786

So I take it you'd be less upset if you had to work Queen's Birthday, Grand Final Eve, Melbourne Cup or Easter Monday, as compared to having to work Christmas Day, Boxing Day?---It's a different kind of upset and sadness. It's still sadness because my family are there and having fun and I'm not, but Christmas, yes, is specifically significant, but so are all the get-togethers really.

PN8787

But would your family get together on every public holiday?---Not necessarily a public holiday, but that's when the family are all home and they're all doing things that families do.

PN8788

Is the likelihood of everyone having together that kind of big social event is more likely to occur on Christmas Day and Boxing Day than it is on, say, some of those other days I mentioned: Queen's Birthday, Grand Final Eve, Melbourne Cup Day, those type of days?---Christmas Day is a big extended family day, where I would get to say maybe relatives that I haven't seen for a very long time, but general Sundays are my immediate family get-together days. It's the Sunday as opposed to the Saturday that they all get together.

*** JENNIFER MILLER

XXN MR IZZO

PN8789

I'm just asking you to focus on public holidays, not Sunday versus Saturday?---Public holidays are the same thing. All my children that work are home on those days.

PN8790

You talk about losses that you might suffer if penalty rates are cut. That's towards the back end of your statement. Can I assume that when you've done these calculations, you've not factored in any additional hours that might be granted if your employer was to increase rostering as a result of the cut to penalty rates?---Do you mean that they would compensate me by giving me a weekday instead off - - -

PN8791

No, just that you haven't assumed or you haven't predicted that if penalty rates were cut, there might be more hours rostered to workers, such as yourself, that might see your total income increase potentially, if you were to be given more hours. You've simply looked at your existing hours and looked at the loss that might occur?---Possibly, but that would be hypothetical and I don't know if that would happen.

PN8792

I accept that's a hypothetical. I'm just confirming that hasn't been taken into account in the calculations you've put forward?---I guess so, yes.

PN8793

Sure. And just in relation to your existing hours at the moment, you've not sought to – am I correct in assuming your days off are not just Tuesday/Wednesdays but Mondays as well; is that right?---That's an open day that if something occurs they can call me.

PN8794

How often would you work the Monday?---Maybe once a month perhaps.

PN8795

Right. So there's a level of flexibility there. If you wanted to increase your working hours you could look elsewhere for more shifts? Whether it be on a Monday or a Tuesday or a Wednesday, there's some flexibility there in terms of seeking further shifts should you want them?---Within the job that I have at the moment, do you mean, or another job?

PN8796

Yes. Sorry, no, no, with a second job?---Another employer?

PN8797

Yes?---That is very possible, however they require you to be flexible and work most days. Be available seven days a week. And if I'm already working in a job that I have permanent hours on Friday, Saturday, Sunday, that's contradictory. I can't sort of say, "I can't work for you this day because I'm working for this other person." You have to be available all the time.

*** JENNIFER MILLER

XXN MR IZZO

PN8798

But we'd be talking about looking for a job not on Friday, Saturday, Sunday. I'm talking about those days you currently don't work?---Most restaurants don't need you to work on those weekdays. They want you at the weekend. I've found that out. I've personally asked.

PN8799

All right. Thank you. I've got no further questions.

PN8800

JUSTICE ROSS: Any further cross-examination?

CROSS-EXAMINATION BY MR CLARKE

[11.51 AM]

PN8801

MR CLARKE: Yes, your Honour. Thank you. Ms Miller, I just want to go to annexure A to your statement. Sorry, you've got your statement in front of you there?---Yes.

PN8802

Sorry, can you hear me all right?---Yes. Yes.

PN8803

Yes, sorry?---That's okay.

PN8804

I'm a little hidden down here. Just attachment A, I just wanted to – annexure A. I haven't got a colour copy of these, but there's titles like duty manager on the right-hand side, restaurant service, kitchen, front office, breakfast, housekeeping?---Yes.

PN8805

Is that right?---Yes.

PN8806

And what's a duty manager? What role does the duty manager perform?---That's debatable. He is supposed to perform overseeing the workings of the entire restaurant and accommodation.

PN8807

And accommodation?---Yes.

PN8808

Thank you. And you acknowledge that it says "front office" on there. I take it that's not a restaurant role?---It's both.

PN8809

It's both?---Yes.

*** JENNIFER MILLER

XXN MR CLARKE

PN8810

Work in the restaurant?---It's a - - -

PN8811

Sorry?---Yes, when you open the door – so, when you open the door to come to Oscars, there's one reception area and - - -

PN8812

Yes?--- - - -they can either take accommodation or they can say, "The restaurant is to the left, please go ahead." That's what they do.

PN8813

Yes. No further questions, your Honour.

PN8814

JUSTICE ROSS: Any further cross-examination? Any re-examination?

PN8815

MS BURKE: No, your Honour.

PN8816

JUSTICE ROSS: Anything further for the witness? No. Thank you. You're excused.

<THE WITNESS WITHDREW

[11.53 AM]

PN8817

MR DOWLING: Thank you, your Honour. The next witness is Alexandra Kindness. I call her.

PN8818

THE ASSOCIATE: Can you please state your full name and address for the Commission.

PN8819

MS KINDNESS: Alexandra Jade Kindness (address supplied).

<ALEXANDRA JADE KINDNESS, AFFIRMED

[11.54 AM]

EXAMINATION-IN-CHIEF BY MR DOWLING

[11.54 AM]

PN8820

MR DOWLING: Thank you, your Honour?---Thank you.

PN8821

Ms Kindness, could you please repeat your full name?---Alexandra Jade Kindness.

PN8822

Your address?---(Address supplied)

*** ALEXANDRA JADE KINDNESS

XN MR DOWLING

PN8823

And your occupation?---I'm a kitchen hand.

PN8824

And have you prepared a statement for the purposes of this proceeding?---I have.

PN8825

I'll just have a statement handed to you?---Thank you.

PN8826

The document you've been provided I hope is headed statement of Alexandra Kindness; is that right?---That's correct.

PN8827

And it's a statement of 27 paragraphs?---Yes.

PN8828

You'll see on the fifth page it has a signature and the date, 10 August 2015. Is that your signature?---That is my signature.

PN8829

It has together with it an annexure marked Annexure A which attaches five pay slips. Do you have that?---I do.

PN8830

My apologies, four pay slips?---Yes. Yes.

PN8831

All right. Now, do you wish to make some corrections and clarifications to that statement?---Paragraph 11 my hours have changed ever so slightly in the few weeks since I've put together this statement.

PN8832

Can you explain what those hours now are?---Tuesday I am now on-call rather than having set hours. And Thursday is no longer a rostered day off. I work, at the very least, a lunch shift to cover there.

PN8833

All right. And you described those as the hours you work. What can you say about whether they are the maximum or minimum hours?---These hours are the minimum of which I will work. Fridays and Saturdays are very flexible. You never know from week to week, day to day how busy we will be, so more often than not it will say 9.30 on the roster, I will stay until 10 if need be, 10.30 on occasions. Certain Sundays, Mother's Day and Father's Day, you can imagine are a lot busier, so I will start at 10 in the morning. I will stay until 4 in the afternoon. It is on a day-to-day basis.

PN8834

All right. Thank you. Can I ask you to turn to paragraph 21, please?---Yes.

*** ALEXANDRA JADE KINDNESS

XN MR DOWLING

PN8835

Should paragraph 21 read:

PN8836

approximately \$20 -

PN8837

in place of:

PN8838

50 to 70 per week - - -

PN8839

?---Yes, it should.

PN8840

- - -from my weekly take home pay.

PN8841

?---Yes, it should.

PN8842

And then can you please look at paragraph 25 on the same page?---Yes.

PN8843

Should the first sentence at paragraph 25 read:

PN8844

Since it is difficult to balance work and study while working the hours that I work, I would have to seriously consider –

PN8845

et cetera?---Yes, it should.

PN8846

Thank you. Now, in respect of the same paragraph, you'll see the last sentence reads:

PN8847

Discontinuing study would drastically limit my career prospects.

PN8848

Do you see that?---Yes, I do.

*** ALEXANDRA JADE KINDNESS

XN MR DOWLING

PN8849

Can you please explain what you mean by that?---Rockhampton is a town that is based – with an economy based on beef cattle and agriculture, and an economy that supports the mining sector out west. If you don't have a degree or qualification or a family member working in any of these industries then it is very difficult to find anything that pays reasonable amount of money, that is, that you can comfortably live off. Not having a degree and being able to move somewhere

where - be very difficult. I would be stuck in hospitality for the foreseeable future.

PN8850

Thank you. Can I lastly ask you to turn to paragraph 27. You say:

PN8851

I have considered whether I could change jobs if penalty rates were reduced and arrived at the conclusion that the limited jobs in my town and the barriers to entry into another industry without direct experience would prevent me from being able to do so.

PN8852

Again, can you explain what you mean by that, from your personal experience?---About 12 months ago or 18 months ago I started trying to look for another job outside of hospitality or at least outside of the restaurant I was working in, and I did this for 18 months, and it was exceptionally difficult to even get an interview. I have reception and hospitality experience as well as experience working through a bachelor's degree, however if you don't have a background in agriculture, mining or economics it is difficult to change the jobs, and even to move within hospitality a lot of employers look to employ younger people. They are cheaper, not necessarily more reliable but certainly cheaper, so I've been told. It's a very nepotistic town as well. You need to know somebody to get into the industry. For – and that applies again to agriculture and the mining sector as well.

PN8853

Thank you. Now, with those clarifications and those corrections, can you confirm for me, please whether the contents of your statement are true and correct?---They are.

PN8854

I tender that, your Honour.

PN8855

JUSTICE ROSS: Any objection? I'll mark the statement exhibit UV14.

EXHIBIT #UV14 WITNESS STATEMENT OF ALEXANDRA JADE KINDNESS COMPRISING 27 PARAGRAPHS AND DATED 10/08/2015 TOGETHER WITH ANNEXURE A ATTACHING FOUR PAY SLIPS

PN8856

JUSTICE ROSS: Cross-examination, Mr Izzo?

CROSS-EXAMINATION BY MR IZZO

[12.00 PM]

PN8857

MR IZZO: Ms Kindness, can I ask, the café you work at Demedios - - - ?---Demedios Café.

*** ALEXANDRA JADE KINDNESS

XXN MR IZZO

PN8858

Demedios, does that shut any day of the week?---Monday.

PN8859

Monday, and so I understand you correctly, you're no longer working on Tuesdays but you are on call?---Yes.

PN8860

You say in your statement that you consistently work Saturdays and Sundays. Can I ask is there more business for the café on Saturdays and Sundays than during the week?---Yes.

PN8861

If I can then take you to further down in your statement on the second page at paragraph 14, you start talking about the impact of working on the weekend on your life. You talk about missing out on a family outing to a classic car show at Emu Park?---Mm-hm.

PN8862

And that such an event might not be unusual missing out on this type of thing. Would this kind of thing happen on both Saturdays and Sundays?---Yes, it does.

PN8863

I take it there might be birthdays and dinners and events like that that might also occur on a Friday night or a Saturday or a Sunday that you feel you miss out on?---Yes.

PN8864

With the dinners, are they more likely to occur on a Friday night or a Saturday night as opposed to Sunday nights?---They can, yes.

PN8865

So can I ask you this, in your mind when you consider – obviously your position is that working on weekends intrudes into your social life to a certain extent – can I ask you to think about, in your mind, is the level of that social intrusion different between a Saturday or a Sunday, or you view it in the same way?---I have found that people who work 9 to 5 jobs, Monday to Friday, will tend to – they might organise a social thing for a Saturday evening, however if it's a Sunday thing it will be during the day, when I am working. It will not be an evening event because obviously they have to work the next day.

PN8866

Sure, and if it's a Saturday evening I take it you're usually working as well, is that right?---Every Saturday.

*** ALEXANDRA JADE KINDNESS

XXN MR IZZO

PN8867

So if I can just direct you back to my question, do you think that the level of intrusion in your social life is the same on Saturdays and Sundays? Do you think it's more or less on one of those particular days? I'm just asking to see if you draw

any comparison, or whether generally you view it as the same level of intrusion into your social life?---It's the same.

PN8868

When it comes to working at night – now I appreciate you don't work on Sunday night, but if I can just put this to you – if you were to work on a Saturday night and a Sunday night, would you consider that the level of intrusion into your social life would be the same or do you think it would be worse on one of those two nights?---Are you talking about in comparison to a Saturday to a Sunday?

PN8869

Yes, in comparison to each other, Saturday night versus Sunday night?---On a Saturday would be more inconvenient, I guess.

PN8870

Right. This may have changed. I was about to confirm that you only work about 30 hours a week. Based on your changes to your statement is that still the case?---Possibly a little less.

PN8871

Right, okay.---It just – it is a week-to-week basis.

PN8872

Certainly. You haven't looked for a second job to increase your hours? Sorry, I'll withdraw that; you actually told us that you had looked for a second job. Is your position that you haven't been able to find one?---I looked for a – not necessarily a second job, more of a replacement job rather than that. I don't have the time for a second job. I study full-time as well as work these hours.

PN8873

Yes, in relation to your study, you've got the full-time study commitment and you've indicated that you're keen to keep it full-time because of an allowance that you receive from the Department of Veterans Affairs, is that right?---That's correct.

PN8874

Can I just ask, in terms of the job searching that you said you'd done before, that was not to fill those hours that you're not currently working, it was a whole new job?---Yes.

PN8875

With more hours or you just wanted to see if there was something better than Demedios?---I did want to see if there was something better.

*** ALEXANDRA JADE KINDNESS

XXN MR IZZO

PN8876

You've talked about the loss that you might suffer if penalty rates were cut. Can I ask this? If as a result of the cut to penalty rates your employer was willing to offer you more hours of work, that is, those hours in addition to what you're doing, is it the case you wouldn't really want to accept them because you've got your study commitments that you keep you busy in the rest of the time?---No, not

at all. The problem is that there are no more hours. You can cut the penalty rates if you like, however that does not bring customers in the door and it does not generate more work for me.

PN8877

All right. I have no further questions, your Honour.

PN8878

JUSTICE ROSS: Anyone else? Any other cross-examination?

PN8879

MR CLARKE: Sorry, Ms Kindness, only one line of questioning in just regards to your weekly income. Are there tips collected at the café you work in?---There are, yes.

PN8880

How are they collected – on an individual basis or group basis?---No, collectively.

PN8881

Are they covered in your statement?---No. We don't see them.

PN8882

Sorry?---They are distributed at the end of the year. The bosses will put on a Christmas party and the tips will go towards that. We don't see any of that cash in hand at all.

PN8883

No further questions, your Honour.

PN8884

JUSTICE ROSS: Any re-examination?

PN8885

MR DOWLING: Yes, briefly, your Honour.

RE-EXAMINATION BY MR DOWLING

[12.07 PM]

PN8886

MR DOWLING: You were asked some questions about the inconvenience to you in terms of Saturday and Sunday and your family and social life. Can I just separate out some of those different propositions? In terms of family events, can you say what is more common in terms of the day of the week in terms of Saturday or Sunday?---Saturday.

PN8887

And in terms of social events, can you say whether Saturday or Sunday is more common?---Generally Saturday, but I have people around me who are aware that I work the weekend so they may cater to do things on Sunday, but it doesn't really matter though, it's still on a Sunday; it's still inconvenient.

*** ALEXANDRA JADE KINDNESS

RXN MR DOWLING

PN8888

Can you say what other activities you engage in on the weekend?---Besides work?

PN8889

Yes?---Does housework count?

PN8890

Yes.---That is all I get done.

PN8891

Thank you. Nothing further, your Honour.

PN8892

JUSTICE ROSS: Nothing further for the witness? No? All right. Thanks very much, you're excused now.---Thank you.

<THE WITNESS WITHDREW

[12.07 PM]

PN8893

JUSTICE ROSS: I gather the objections in relation to Mr Harvey's statements have been resolved, is that right?

PN8894

MR DOWLING: They have, your Honour, and there's been a redacted version filed.

PN8895

JUSTICE ROSS: Did you want to tender the redacted version?

PN8896

MR DOWLING: Yes, there's a number of other statements that I'll seek to tender as well.

PN8897

JUSTICE ROSS: All right.

PN8898

MR DOWLING: In terms of Mr Harvey, your Honour, paragraphs 8 and 32 are extracted and I hope the Commission by now has received that extracted version.

PN8899

JUSTICE ROSS: That's with the strikethroughs?

PN8900

MR DOWLING: Yes, thank you. There are five other witnesses that were not required for cross-examination. Sorry, before I move to them, should there be a number allocated to Mr Harvey?

*** ALEXANDRA JADE KINDNESS

RXN MR DOWLING

PN8901

JUSTICE ROSS: Yes, it would be – no objection to Mr Harvey's redacted statement?

PN8902

MR CLARKE: No, your Honour.

PN8903

MR IZZO: No objection.

PN8904

JUSTICE ROSS: That will be marked exhibit UV15.

EXHIBIT #UV15 REDACTED WITNESS STATEMENT OF MR HARVEY

PN8905

MR DOWLING: Thank you, your Honour. In terms of the five other witnesses who were not required for cross-examination, the first of those is Ms Carol Gordon.

PN8906

JUSTICE ROSS: Yes. Any objection to Ms Gordon's statement? No? That will be marked as exhibit UV16.

EXHIBIT #UV16 WITNESS STATEMENT OF CAROL GORDON

PN8907

MR DOWLING: Mr Amit Gounder is the next, your Honour.

PN8908

JUSTICE ROSS: Any objection to Mr Gounder's statement? No? It will be marked as exhibit UV17.

EXHIBIT #UV17 WITNESS STATEMENT OF AMIT GOUNDER

PN8909

MR DOWLING: Mr Steven Petrov is the next.

PN8910

JUSTICE ROSS: Any objection to Mr Petrov's statement.

PN8911

UNIDENTIFIED SPEAKER: No, objection.

PN8912

JUSTICE ROSS: Mark that exhibit UV18.

EXHIBIT #UV18 STATEMENT OF STEVEN PETROV

PN8913

MR DOWLING: Jan Syrek is the next.

PN8914

JUSTICE ROSS: And objection to that statement?

PN8915

UNIDENTIFIED SPEAKER: No objection.

PN8916

JUSTICE ROSS: That will be marked as exhibit UV19.

EXHIBIT #UV19 STATEMENT OF JAN SYREK

PN8917

MR DOWLING: And the last is Rachel-Lee Zwarts.

PN8918

JUSTICE ROSS: Any objection?

PN8919

UNIDENTIFIED SPEAKER: No objection.

PN8920

JUSTICE ROSS: Mark that as exhibit UV20.

EXHIBIT #UV20 STATEMENT OF RACHEL-LEE ZWARTS

PN8921

MR DOWLING: Can I just clarify, your Honour, given that we've got almost at least to the end of the lay evidence in respect of the hospitality evidence. Your Honour will recall that there are three witnesses - putting Mr Parker to side, there are three witnesses who were to produce further documents; two of them in response to your Honour's request and one of them in response to ours.

PN8922

JUSTICE ROSS: Yes.

PN8923

MR DOWLING: They are Mr Madden from yesterday. The other two are Mr Rick Lovell, who gave his evidence on 11 September and the last, Mr David Ovenden who gave his evidence on 16 September. We simply just note those for the record, that they are still to be finally dealt with. We have reserved our rights in respect of all three of them.

PN8924

JUSTICE ROSS: And in relation to Mr Parker, I can indicate that we will deal with his additional cross-examination at 2 pm on Friday. We are endeavouring to arrange a video link through the New South Wales court system. It's got a centralised booking system that's slightly more complicated than I envisaged though. As soon as that is confirmed, my associate will let the parties know.

PN8925

MR CLARKE: Your Honour, I can confirm that Mr Parker is available at 2 o'clock on Friday. I've still got to work out my schedule. There is a chance I will need to come in from Brisbane on Friday for that.

PN8926

JUSTICE ROSS: Through VC?

PN8927

MR CLARKE: Yes, if that's all right. I am just trying to work out arrangements on the run.

PN8928

JUSTICE ROSS: No, that's all right.

PN8929

MR CLARKE: Thank you, your Honour.

PN8930

JUSTICE ROSS: We will book our VC for that time on Friday in Brisbane.

PN8931

MR CLARKE: Thank you.

PN8932

JUSTICE ROSS: The other thing I should mention, but we will put a note on the web site as well is that the FDA is seeking to defer Ms Pezzullo's evidence from 30 September to another date, because of the reasons they set out in the correspondence of 23 September. Have you seen that Mr Izzo?

PN8933

MR IZZO: I am aware of that correspondence. That was provided to me this morning.

PN8934

JUSTICE ROSS: We will deal with that and we will put a note on the web site to this effect that we will deal with that at 1 pm on this Friday as well, as everyone will be around then.

PN8935

Is there an objection to it?

PN8936

MR IZZO: I think it's more a matter for the AHA, your Honour.

PN8937

JUSTICE ROSS: No. No, sure.

PN8938

MR STANTON: We've only just received that, your Honour.

PN8939

JUSTICE ROSS: I think you are all before Catanzariti VP at 2 o'clock tomorrow. Perhaps you can advise him, but if it's necessary, you obviously need to be heard about it, if you are objecting to it, so if it's necessary to have such a hearing, it will be at 1 o'clock on Friday.

PN8940

MR STANTON: Mr Lovell was mentioned a moment ago by my friend. I just indicate that Mr Lovell was provided an opportunity when he gave his evidence on 11 September to do some calculations in relation to public holidays and a comparison between the public holidays, your Honour might recall.

PN8941

JUSTICE ROSS: No, you are testing my memory, but okay. I'll take your word for it.

PN8942

MR STANTON: We have received those calculations and a copy has been passed on, but I won't press them today, as there is some detail and that will have to be absorbed, but hopefully we're in a position to satisfy that request.

PN8943

JUSTICE ROSS: Okay.

PN8944

MR DOWLING: Your Honour, I've just received those moments ago, so we will look at those immediately and make a determination as to whether we need to call Mr Lovell.

PN8945

JUSTICE ROSS: Okay. Well, as you go through the material, you can advise us as to whether or they're required, but can I encourage you to try and rather than recall the witnesses, try and work out any clarification issues with the relevant association.

PN8946

MR DOWLING: Yes.

PN8947

JUSTICE ROSS: Is there anything further?

PN8948

MR IZZO: Can I raise one matter, your Honour. I've just noted - sorry, I think the United Voice may have had one or two further, but I have just noted that a representative of the SDA has walked into the room and I haven't had a chance to confirm this, but I just wanted to make sure that no application is being made to have Prof Rose's evidence adjourned from this Friday, because we have made arrangements for Prof Rose to fly down tomorrow and if there is to be a change to that, it would be - - -

PN8949

JUSTICE ROSS: No, I haven't. I'm not aware of anything that's been filed. Perhaps you can have a discussion with the SDA, while we finish off with Mr Dowling.

PN8950

MR IZZO: Thank you, your Honour.

PN8951

JUSTICE ROSS: Mr Dowling.

PN8952

MR DOWLING: Mine was very brief, your Honour. Your Honour said a moment ago that the parties will be before Catanzariti VP at 2 pm tomorrow.

PN8953

JUSTICE ROSS: No, that's the Pezzullo issue is for report back at 2.00. I think the rest of you are at 10 o'clock.

PN8954

MR DOWLING: Thank you, your Honour. I just wanted to clarify that.

PN8955

JUSTICE ROSS: Yes. Do you want to have the discussion now?

PN8956

MR IZZO: The SDA are not presently in a position to confirm whether there's going to be an application made. They can confirm it this afternoon.

PN8957

JUSTICE ROSS: Well, when are we going to deal with it?

PN8958

MR IZZO: I'm not sure I can - well, I think that's a problem, your Honour.

PN8959

JUSTICE ROSS: Well, it's going to be a problem for the SDA if they haven't foreshadowed it and they're filing it late.

PN8960

MR IZZO: And we may well have an objection, your Honour.

PN8961

JUSTICE ROSS: Yes. Anyway, we will cross all roads and bridges when we come to them. If there's nothing further, we'll adjourn and then the Bench will reconfigure as previously indicated to the same three-person bench that dealt with the earlier objection in relation to the notices. Nothing further?

SHORT ADJOURNMENT

[12.17 PM]

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