



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009
TRANSCRIPT IN CONFIDENCE

1052573

**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

9.04 AM, MONDAY, 19 OCTOBER 2015

Continued from 15/10/2015

PN15958

JUSTICE ROSS: Thank you, I'll have the first witness, Mr Barron.

PN15959

MR WHEELAHAN: Yes, I call Mr Barron.

PN15960

JUSTICE ROSS: Have you agreed to the objections?

PN15961

MR WHEELAHAN: There are no current objections to the revised statement.

PN15962

JUSTICE ROSS: Excellent.

PN15963

MR WHEELAHAN: Your Honour, there were new clean copy statements filed with amended statements marked up and I'll be just going off obviously the clean one. There's only one sentence in that statement that Mr Moore has asked me to ask the witness the basis upon which he makes the statement.

PN15964

JUSTICE ROSS: Thank you.

PN15965

THE ASSOCIATE: Please state your full name and address for the Commissioner?

PN15966

MR BARRON: Barry Gerald Barron, (address supplied).

<BARRY GERALD BARRON, AFFIRMED [9.05 AM]

EXAMINATION-IN-CHIEF BY MR WHEELAHAN [9.06 AM]

PN15967

MR WHEELAHAN: Your name is Barry Gerald Barron?---Correct.

PN15968

Your work address is [REDACTED]
[REDACTED] ---Correct.

PN15969

You're the group chief operating officer of the Sussan Group?---Correct.

PN15970

You've made a statement in this proceeding of 30 paragraphs with two attachments?---Correct.

*** BARRY GERALD BARRON

XN MR WHEELAHAN

PN15971

Are there any changes to that statement?---No.

PN15972

Is it true and correct in every particular?---It is.

PN15973

I tender that statement, your Honour.

PN15974

JUSTICE ROSS: Retail 3.

EXHIBIT #R3 WITNESS STATEMENT OF BARRY BARRON

PN15975

MR WHEELAHAN: Mr Barron, could you turn to paragraph 29 of that statement, please. You see in the second sentence there you state:

PN15976

Students in particular are eager for additional hours outside their study schedule which mainly takes place on Wednesdays.

PN15977

This is in the context of your evidence about employees working on Sunday. What's the basis upon which you make that statement?---The basis upon which I make that statement is that we received written requests and we've received 37 written requests from employees in the past 12 months to increase their hours on Sundays and to work on Sundays, and many of those are students and I've personally read each one of those 37 requests before I've put it in the statement.

PN15978

Thank you. I just wonder, your Honour, if that's going to disrupt Mr Moore's cross-examination for the next hour or so.

PN15979

JUSTICE ROSS: Yes, there's nobody in those rooms at the moment. We can have them disconnected.

PN15980

MR WHEELAHAN: There's no-one there.

PN15981

JUSTICE ROSS: We're muting them at least.

PN15982

MR WHEELAHAN: Mr Moore will ask you some questions.

PN15983

JUSTICE ROSS: Thank you, Mr Moore.

CROSS-EXAMINATION BY MR MOORE

[9.08 AM]

PN15984

MR MOORE: Good morning, Mr Barron?---Good morning.

PN15985

I want to ask you some questions about your statement. In paragraph 5 you refer to the fact that the Sussan Group has 493 stores spread across the three brands and you identify the number of store referable to each brand. In the following paragraph you identify that across all brands there's 4399 retail staff. Is it reasonable to assume that the spread of those retail employees is in the same proportions as the spread of stores across the brands?---Not really, no.

PN15986

No?---No, because the various brands have achieved different levels of sales.

PN15987

Can you tell the Commission then approximately or whether you know exactly what the number of retail positions in each of the brands are?---I wouldn't be able to tell exactly but in terms of - in terms of sales, the average sales in a Sportsgirl store is higher than Sussan which is in turn far higher than Suzanne Grae, because Suzanne Grae a more discount chain with a lower cost structure in much smaller stores.

PN15988

So there's 119 Sportsgirl stores out of 493 stores, which is whatever proportion that is but the number of staff at Sportsgirl would be higher than that proportion of stores?---Proportionately higher than Sussan and Suzanne Grae.

PN15989

I see. In paragraph 11, you say that store managers are required to operate within the labour budget, being a percentage of sales in each store. I take it then that it's the responsibility of the store managers, having regard to that labour budget to allocate their labour hours across the days?---Well, they're accountable but in turn they - - -

PN15990

I'm sorry, I missed that?---Yes, they are accountable but in turn they also report to area managers who are responsible for a group of stores and really it's monitored all the way through the business. But the store managers are - one of their key criteria upon which their performance is judged, besides being judged on sales, they're judged on their wage percentage to sales, in terms of whether they get incentives or bonuses and that sort of thing.

PN15991

So subject to the internal, if I can call it a review process that might exist by further managers up the chain, the first port of call with allocating labour hours across different days is with the store manager. Is that a fair statement?---Yes, within the parameter partly fair because within the parameters they are given their wage, dollar wage budget at the beginning of the season based on their sales for the season.

PN15992

Yes?---That dollar wage budget is converted to a percentage and the reason we give a percentage - if I may explain, the reason we give a percentage and they don't have to stick to a dollar wage budget is because our business trading fluctuates from day to day, from week to week, from store to store. So managing the flexibility to staff up when we're exceeding sales budget and thereby give better customer service and similar if the store is underperforming, where possible we flex down. So by giving her a wage percentage budget she has the ability to staff up knowing that she's still going to get her incentives.

PN15993

So within the parameters that are set, the store manager allocates?---Correct.

PN15994

I think you've in part said this, there's no doubt some variability in how store managers do actually allocate the hours across the different days, depending upon the circumstances of each store?---It depends on the circumstances of each store.

PN15995

You don't have any direct knowledge of the extent of any changes in the allocations of budgeted labour hours on Sundays across stores?---Could you explain that further?

PN15996

Because it is the store managers who allocate labour across days within the parameters that the company sets, you personally don't have any direct knowledge of the extent of any changes in the allocations of budgeted labour hours on Sundays at different particular stores?---I would have from being fed back high level analyses.

PN15997

I see. I want to ask you about an exhibit that is attached to your statement, BB1, which is referred to in paragraph 13 of your statement, and I want to go through this document and better understand it. Now if I can just ask you to look at the document which is behind BB1, the first appearing which is under the Sportsgirl heading. Do you have that?---Sorry, this one?

PN15998

Well, I assume it's just the first appearing behind exhibit - forming part of BB1?---Sportsgirl?

PN15999

Yes?---Yes, the Sportsgirl page, yes.

PN16000

My printout is rather small font so I'll do my best to read it. The first table at the top or first part of the table has a heading "Hourly wage calculations". Do you have that?---Correct, yes.

PN16001

The first line underneath that is;

PN16002

Key holder (first seven hours based on 10 am to 5 pm trade GRIA level 3).

PN16003

We're looking at the same document?---Correct.

PN16004

Thank you. If I could ask you to look at the bottom of the page where you've got three notes. This note tells us that out of the 119 Sportsgirl stores, there are only five that do not trade on Sundays, correct?---Not necessarily correct. I think we've said 95 per cent of the Sportsgirl stores don't trade on Sundays. This list is not comprehensive, it isn't all five, it's a sample of stores.

PN16005

The note says that;

PN16006

The above represents all Sportsgirls stores that do not currently trade on Sundays.

PN16007

?---Well then it is - then it is, five per cent of 119 is near enough I guess, yes.

PN16008

There are five that don't trade on Sundays?---Five that don't trade on Sundays.

PN16009

Thank you?---Correct.

PN16010

Of those five that don't trade on Sundays, three of them - I'll withdraw that. Four of them are in regional or country locations, that is all of the ones referred to in this document other than the store at Subiaco?---Greenwood Plaza isn't a country location.

PN16011

It's not, I see. Where's Greenwood Plaza?---It's in Melbourne.

PN16012

But Shepparton, Lismore and Mildura obviously are country locations?---Correct.

PN16013

Now the first grid under the heading "hourly wage calculations", sets out in the columns that then appear the hourly - an hourly base rate, then a Sunday loading referable to well a Sunday loading. Then a total costs exclusive of oncosts. That's total wages exclusive of oncosts. That's right so far?---Correct, yes.

*** BARRY GERALD BARRON

XXN MR MOORE

PN16014

Then there's oncosts are calculated in the second last column at 25.5 per cent?---Correct.

PN16015

Then we have a total including oncosts. So the total labour cost inclusive of oncosts that you've set out here for the key holder based on level 3 is - can you read the - - -?---\$49.55.

PN16016

Thank you. That's for a permanent employee?---Correct.

PN16017

The key holder, am I right in thinking, that's the person who opens the shop with the key?---Correct.

PN16018

Then you've got the same information on the next row down for additional staff, which are put at a lower classification level, level 1?---Correct.

PN16019

And the same data referable to level 1?---Correct.

PN16020

Which gives a total labour cost per hour, including oncosts of \$47.66. Have I read that right?---Correct.

PN16021

If you go to the next section of the table:

PN16022

Sportsgirl stores closed on Sundays.

PN16023

There's a heading "Salaried hours", and just to take leave to explore these, salaried hours at the Greenwich Plaza store are total of 17.5. Is that what the - - -

PN16024

JUSTICE ROSS: Just for the record it's actually Greenwood Plaza, so that the record reads it correctly.

PN16025

MR MOORE: I'm sorry, was I saying something else?

PN16026

JUSTICE ROSS: You were saying Greenwich.

PN16027

MR MOORE: Greenwich, I apologise. Greenwood Plaza. Greenwood Plaza, the total number of hours identified for Greenwood Plaza is 17.5. Is that right?---17.6.

PN16028

17.6, thank you. Now you get to 17.6 at Greenwood Plaza by adding together 15.4, which is salaried hours based on seven hours per day at 15.4 with the 2.2 hours above that. I just don't understand and could you just assist the Commission by explaining what the average FTE, full time equivalent presumably, coverage per base rosters and the salaried hours based on seven hours per day, what they mean and how you got to the numbers 2.2 and 15.4?---Can you just give me a moment?

PN16029

Certainly?---Okay. It is really merely a split of the 17.6, the salaried hours based on seven hours per day would be normally 15.4 hours to open the doors of that store, and the 2.2 hours is really over and above base rosters. That's my understanding of it.

PN16030

Do you mean by that that at Greenwood Plaza for a Sunday, if it was open on a Sunday?---Yes.

PN16031

There would need to be - - -?---A minimum of 15.4 hours to open the doors.

PN16032

I see. Where is that, because I see that the numbers identified for all of the stores on that line are different. So it's not some standard number that applies - - - ?---No, it wouldn't be some standard number. It would be based on the sales of the store and the amount of staff you need there to open the doors, to have the lunch coverage, that sort of thing.

PN16033

Did you prepare this document?---I didn't prepare it, I've reviewed the document.

PN16034

You don't know where the data in it's come from?---Yes, the data would have come from our wage records, our company wage records, correct.

PN16035

You're saying that 15.4 hours are the minimum hours one would need to open the doors at Greenwood plaza for seven hours on a Sunday?---Correct.

PN16036

Then there's added to that another 2.2 hours?---Yes.

PN16037

What's that for?---That's to give better - little bit of customer service.

PN16038

So the 2.2 is over - - -?---Yes.

PN16039

Then going down to the next section immediately under that, what you then do is with that total of 17.6 hours split those hours between the key holder, the more senior member of staff, and the additional staff?---Correct.

PN16040

You said before that the key holder in this analysis is a permanent employee, and the additional staff I take it is also a permanent employee?---Could be - it could be a permanent, could be a permanent part-timer. In this particular example it would be a permanent or a permanent part-timer.

PN16041

When I say permanent I mean either a full-timer or a part-timer?---Yes, yes, it would be a permanent employee. For the purposes of this example it's a full-time or part-timer. On occasions of course we do employ casual staff on Sundays quite extensively.

PN16042

Quite extensively?---Yes.

PN16043

Do you also employ junior staff on Sundays?---Yes, we would.

PN16044

Quite extensively?---No more extensively than on other days of the week but more than we'd like to because our coverage on a Sunday isn't what we'd like it to be, in terms of giving customer service.

PN16045

I'm just asking you whether you do or don't?---Yes, we do.

PN16046

So we're at the split that I've asked you about. Under the next section under the heading "Wages" identifies the wages for the - the wages which are set out in the first part of the table which I asked you about before, by reference to the split of hours which I've just asked you about and then quantifies the wages which would be paid to the key holder and the additional staff member for the 17.5 hours on a Sunday?---Correct.

PN16047

That generates an amount of 800- - -?---52 and eight cents.

PN16048

Inclusive of oncosts?---Correct.

PN16049

Then in the next section you split that in half to derive what's described as a base wage, and the Sunday loading component?---Correct.

*** BARRY GERALD BARRON

XXN MR MOORE

PN16050

Then you identify some variable costs and for the Greenwood Plaza, rental is identified as I read it as \$658.61?---\$668.61.

PN16051

\$658.61?---It's \$668.

PN16052

Sorry, thank you. That's not the daily rate, I take it?---That's the rental applicable to that day. That's the pro rata rent for that day.

PN16053

So the weekly rent at Greenwood Plaza, are you telling the Commission, is in excess of \$4200?---That is correct.

PN16054

I see. You identify two lines under rental, the total variable costs of \$1625.69?---Correct.

PN16055

That is a sum, is it not, of the rent plus other variable costs which you've identified and quantified at \$105, plus the total wages of \$852.08?---That is correct.

PN16056

Now if you go to the - I'll come back to the heading, "Variable costs with 50 per cent Sunday loading" in a moment. The next part of the table looks at the analysis based on current rates, 100 per cent Sunday loading, and what you there identify is in the first part of the table thereunder sales required to break even at 63 per cent gross margin. What you're saying then is that at the Greenwood Plaza store, in order for that store on a Sunday to break even obtaining a 63 per cent gross margin, the total sales required inclusive of GST is \$2838.51. Have I got that right?---That is correct. Could I point something out though?

PN16057

Yes?---That is just to cover the direct variable costs of that store. It's without covering the indirect costs, the head office costs, without making a profit.

PN16058

Yes, this is a break even number?---This is a break even number of just operating that store.

PN16059

I understand, I understand. So another way of looking at those numbers is that 63 per cent of \$2580.46 which is the sales exclusive of GST, gives you the total variable costs of \$1625.69?---Correct.

PN16060

Can you tell the Commission what the 63 per cent gross margin is, what that represents?---That's basically the difference between the selling price of the goods and what we paid for them. It's basically you're trading profit before expenses on merchandise.

*** BARRY GERALD BARRON

XXN MR MOORE

PN16061

Thank you. Is that - the 63 per cent margin, is that a company benchmark as it were?---It's the benchmark we use for opening and closing stores over a period of time. It tends to be an average, of course it varies from year to year dependent on how heavily you have to discount.

PN16062

Thank you. Now I want to turn to the analysis based on 50 per cent time and a half for Sundays. Now going back into the table where just before the variable costs, which I was asking you about before, there's a number "Variable costs with 50 per cent Sunday loading", that's \$1412.67?---Yes.

PN16063

So what you've done there to derive that number is add together the rent, the other variable costs, the base wages and half the Sunday loading?---Correct.

PN16064

Back down to the section analysis based on 50 per cent Sunday trading, again the section "the sales required to break even", which is essentially the second last bottom part of the table. To break even at a - and to obtain at a 63 per cent gross margin, the table shows that you need total GST exclusive sales of \$2242.33?---Correct.

PN16065

In other words, 63 per cent of that number gives you the total variable cost with 50 per cent Sunday loading of \$1412.67?---Correct.

PN16066

Thank you. So the GST inclusive sales volume to break even at time and a half at 60 per cent margin is \$2466.57?---Correct.

PN16067

For that store. Now in the second bottom part of the table, this is still looking at the break even part, you've got an entry the fourth row down in there which says:

PN16068

Additional Sunday sales required at current rates.

PN16069

So what you're there identifying is that in order to achieve a break even situation at 63 per cent margin, the shop would need additional Sunday sales beyond the current rate of \$371.94?---Yes, what I'm saying there is I'm comparing a 100 per cent Sunday loading with a 50 per cent Sunday loading. I'm saying in order to achieve the same break even outcome under a 100 per cent loading, the store has to do 15 per cent more sales.

PN16070

Yes?---And similarly with the other four stores; 22 per cent, 23 per cent, 21 per cent and 23 per cent.

*** BARRY GERALD BARRON

XXN MR MOORE

PN16071

To break even at time and a half?---Yes, to break even at time and a half.

PN16072

That's right, thank you?---Well yes, in other words to break even at 100 per cent at double time, you have to do the 15 per cent more sales than to break even at time and a half. I'm comparing the two.

PN16073

Well as I understand it, the number gross sales - where you say;

PN16074

Additional Sunday sales required at current rates -

PN16075

and there's a number \$371.94, you're saying - - -?---Which is simply the difference between the 2838 and the 2466.

PN16076

Where's the 28- - I see. But what you're modelling there, if I can use that word, are the increased sales required to achieve break even on a lower costs scenario at time and a half, that's right?---Yes, but those two lines says on double time how much more sales I have to do, compared with the time and a half. Those two - the \$371 says that on double time I have to do \$371 more sales than on time and a half to break even.

PN16077

I see?---That represents a 15 per cent sales increase.

PN16078

That 15 per cent sales increase is of necessity a notional number though is it not, because of course the store's not open on a Sunday?---No, it's not a notional number. It's partly correct because it refers to what would actually happen if the store were open. It's the way we'd staff the store, it's what the expense structure of the store would be, so it's an actual number.

PN16079

Well it's what would happen but it's what would happen by reference to a scenario that doesn't actually exist at the moment, because you're not paying time and a half in those stores, because they're not open and the award provides double time. That's right?---That is partly correct because if the 50 per cent were to apply we might well open that store.

PN16080

I just want to - I understand you say that. When you say if the 15 per cent to - if the 50 per cent were to apply, is another way of looking at this to say that your analysis is indicating that if the minimum was time and a time instead of double time you could break even with 15 per cent less sales than what is required at double time?---Correct.

*** BARRY GERALD BARRON

XXN MR MOORE

PN16081

I see. You say well we might open in that scenario?---Correct.

PN16082

I suggest to you that that is entirely speculative because you don't open these store at the moment. That's right?---No, because some of these stores did trade and they've been closed because it was a tipping point. It was - - -

PN16083

Do you know if any of these five stores previously opened and then closed?---I couldn't say for certain, no.

PN16084

The Greenwood Plaza store can never on a Sunday can it?---Yes, it can.

PN16085

Well, the plaza is shut on a Sunday, isn't it? Do you know that?---I don't know that.

PN16086

I'll show you this document. There's four for the Bench, one for the witness, thank you. The document that I've just handed to you, Mr Barron, is a printout from the Greenwood Plaza website, which sets out the trading hours of that plaza. You'll see it records as being closed on a Sunday?---Could I ask a question? Why does it say IGA trading hours, does it not refer to food?

PN16087

Well the issue with this, Mr Barron, is that I ask the questions and you've got counsel here who can ask you questions if he sees fit?---Sure.

PN16088

Do you accept that this indicates that Greenwood Plaza is shut on a Sunday?---I'm not sure, I'm unsure.

PN16089

I tender the document.

PN16090

MR WHEELAHAN: I object. What is it first? What's the basis of the document? It's got some internet thing at the top.

PN16091

MR MOORE: Do you want me to prove it, do you?

PN16092

MR WHEELAHAN: Well what's it being tendered for?

*** BARRY GERALD BARRON

XXN MR MOORE

PN16093

MR MOORE: If my friend is requiring me to put on an affidavit from a solicitor saying that he or she went onto a computer and went to - and Googled Greenwood

Plaza and found this web page, we can do that if it assists my friend, but it seems to be a little bit unnecessary.

PN16094

MR WHEELAHAN: I asked for the basis and that's precisely the type of thing I was looking to hear before he proposed to tender the document. What I propose, I'll just have my instructor go to the same website rather than put him to the trouble of an affidavit and mark it for identification presently, and then we'll just confirm it ourselves.

PN16095

JUSTICE ROSS: MFI1 for the moment.

PN16096

MR WHEELAHAN: Yes.

**MFI #1 SCREENSHOT OF WEBPAGE SHOWING GREENWOOD
PLAZA OPENING HOURS**

PN16097

MR MOORE: Thank you. Do you understand that the Sportsgirl stores at Shepparton, Lismore and Mildura, do you know anything about those stores?---I wouldn't have a - I wouldn't know about the detail of those stores, no.

PN16098

Do you understand that those stores are located in regional cities?---Correct, I do.

PN16099

Would it surprise you if those stores are located in regional cities in which the shops in the main street of those cities are generally closed after 2 pm on Saturday, and generally closed across the board on a Sunday? Would that surprise you?---It may surprise me, yes. Could I explain my answer a bit further?

PN16100

No, I'll ask you questions?---Okay.

PN16101

I take it that it's retailing basics that the key determinant of whether a - a key determinant of whether a store opens on any particular day is an estimation of whether or not the volumes of sales are sufficient to warrant the opening on that day?---The volume of sales when related to the overhead.

PN16102

Yes?---Yes. Not sales alone, it's sales related.

PN16103

No, the sales relative to how much it's going to cost you to open?---Yes, correct.

*** BARRY GERALD BARRON

XXN MR MOORE

PN16104

In preparing your statement, have you made any inquiries to identify the volume of sales that any of these five Sportsgirl stores or any of the five Sussan stores that you identify would be anticipated to achieve if they opened on a Sunday?---I would have a fair idea from 30 years of retail experience, from having examined reports and see what similar stores do, from feedback from the businesses, from business managers over the years.

PN16105

Well my question was more specific. In preparing your statement have you undertaken any analysis to identify what you anticipate to be the likely sales volume, which would be achieved by each of the stores to which you refer to in BB1 if they were open on a Sunday?---No.

PN16106

Thank you. Do you accept also that an important factor on whether or not a shop which is currently not open on a Sunday, whether it would be commercially sensible to open on a Sunday is whether or not the sales that might be achieved on that Sunday might be at the expense of sales achieved on other days of the week?---Generally, no. Because a Sunday should be a looked at in isolation. Does it - we would really discount that because if everybody else is trading on the Sunday and you're not trading, generally we discount it. Certainly when Sunday trading was first introduced many years ago, it did affect other days of the week but generally our principal calculations would be saying now can we run the store profitably on a Sunday.

PN16107

A key factor in that I think you've just mentioned is whether or not the other stores in the relevant area are also trading on Sundays?---One of the elements, it's not necessarily the key element but one of the elements.

PN16108

Now the analysis in BB1 I think you've confirmed before - I'll withdraw that. You understand, would you agree with me that the analysis that you've set out in BB1 which identifies amongst other things the variable costs associated with opening the identified stores on a Sunday?---Yes.

PN16109

Those variable costs would be reduced insofar as any of the staff employed on a Sunday were juniors?---Correct.

PN16110

Would you also accept that - I think you said earlier in your evidence that the company makes quite extensive use of casuals in its workforce. Would you also accept that the variable costs would be less insofar as casuals were employed to work these hours on the Sunday in these stores?---Not sure, because casuals already get a 25 per cent loading in their base pay. They get 75 per cent loading on a Sunday so it still amounts to 100 per cent loading.

*** BARRY GERALD BARRON

XXN MR MOORE

PN16111

Where it feeds in is on reduced oncosts?---Reduced annual leave.

PN16112

Yes?---That's one part of it.

PN16113

So annual leave, I think you attribute seven of the 25 per cent points?---Correct, yes.

PN16114

So that would go with casuals?---Correct.

PN16115

There may not be the same superannuation obligations in respect of casuals, depending upon the number of hours they work and how much they earn?---Normally you would expect there would be though.

PN16116

With the Sussan table, I now propose to take you through - well I'll ask you this general question. I take it that the Sussan analysis follows the same methodology that you've explained to the Commission in answer to my questions this morning?---Exactly the same.

PN16117

Note 3 at the bottom of the page of Sussan says:

PN16118

The above is a sample of five of a total of 33 Sussan stores currently closed on Sundays.

PN16119

?---Correct.

PN16120

Do you see that?---Correct.

PN16121

I think you say in your statement that there are - - -?---81 per cent or something.

PN16122

I think you say that there are 180 Sussan stores?---Yes.

PN16123

Are you able to tell the Commission, do you know on what basis these five stores were selected?---Merely a sample. Merely a sample of stores.

PN16124

But do you know or - - -?---No, I do know that it's just merely a sample - - -

*** BARRY GERALD BARRON

XXN MR MOORE

PN16125

What sort of sample?---Random sample.

PN16126

I see?---Random sample.

PN16127

I asked you some questions before about some of the determinants of whether it is commercially rational if you like to open a store on a particular day, and you've identified obviously the volume of sales and then the operating costs associated with opening on a particular day. One of those operating - a significant operating cost relevant to whether it's sensible, commercially sensible to open on a particular day is the level of rent incurred by the store?---Correct.

PN16128

Obviously the rent associated with a particular store and the sales volume of a particular store will vary from store to store?---Correct.

PN16129

There are 194 Suzanne Grae stores you mention in your statement?---Correct.

PN16130

Do you know how many of those are closed on Sundays?---I don't know that.

PN16131

Do you have any idea or it's just not something you know at all?---I'd imagine the number to be higher than Sussan.

PN16132

But you don't know?---I could say with a 90 degree certainty.

PN16133

I see, so your best guess is that there would be a greater proportion of Suzanne Grae stores closed on a Sunday than Sussan stores?---Yes, that's merely because their average turnover per store across a whole week, their average turnover per store across the whole year is much, much lower and they trade on a much, much lower level. They also trade a lot more in country areas.

PN16134

So the greater proportion of Suzanne Grae store that are closed on a Sunday relative to say Sussan stores is a product of various factors, including that typically their volume of sales don't justify it? That's right?---Correct, correct.

PN16135

They're in country locations where - - -?---Correct.

PN16136

- - - there's a less common spread of Sunday trading?---More in country locations and generally country locations do lower sales.

*** BARRY GERALD BARRON

XXN MR MOORE

PN16137

I see. You've identified - we know that there are five Sportsgirl stores shut on a Sunday, 33 Sussan stores shut on a Sunday and probably it's likely to be something in excessive of 33 Suzanne Grae stores shut on a Sunday?---Correct.

PN16138

Putting aside the Suzanne Grae stores for a moment, just focusing on the 38 Sportsgirl and Sussan stores. In preparing your evidence, did you do any analysis to identify why any of those 38 do not open on a Sunday, or is that a matter of impression?---No, it's a matter of analysis being done - - -

PN16139

Well what analysis did you do?---My staff do analysis - - -

PN16140

Well where is the analysis of those 38 stores?---I don't have it with me.

PN16141

Was it done?---Of course it would have been done. Of course it would have been done. We want to trade whenever we can.

PN16142

So just to be clear, you're saying that in preparing your statement there was an analysis undertaken as to the reasons for why the 38 Sportsgirl/Sussan stores do not open on a Sunday?---No, the analysis would have been done not in preparing the statement, the analysis would be done as part of a business review on perhaps a six monthly basis, where we look at every single store and say is it justified to open this store on a Sunday.

PN16143

But it's not a piece of work that you've undertaken for this case?---Not particularly for this case, no.

PN16144

Do you accept that in many cases the primary reason for a store not opening may be the inadequacy of sales volume and/or level of rent for why they don't open on a Sunday?---Partly correct, because it's relative to the - it's not the primary reason at all. The primary reason is the loading on the Sunday.

PN16145

Well you haven't done that analysis in relation to the evidence in this case, have you?---(No audible reply)

PN16146

You don't know. You're just guessing as to why these 38 stores don't open on a Sunday?---No, I'm not. No, I'm not because we've done the analysis over a period - we do it as part of our regular business discipline every six months.

*** BARRY GERALD BARRON

XXN MR MOORE

PN16147

I'm sorry, please finish your evidence?---We know, for example, that in Echuca Sportsgirl open on a Sunday and Sussan doesn't open on a Sunday and it's purely the interplay between sales and wages. The rents are similar, you know, so - - -

PN16148

So that was Echuca was it?---Yes.

PN16149

In Echuca did you say - sorry, I missed your evidence there?---I said Sportsgirl opens and Sussan's closed on a Sunday.

PN16150

Sportsgirl open, Sussan's closed. So they have in common the same award minimum?---They have in common the same award minimum.

PN16151

So what's different and explains that differential outcome is the different volume in sales, that's so?---The percentage sale, the percentages wages to sales. Could I explain further? Normally, across our business wages as a percentage of sales across the whole year would be somewhere around 80, 90 per cent. Wages as an expense is stores wages to sales excluding non-store wages. So when we talk, looking at Sunday at double the rates, you could say 36 per cent, our profits are - and any profit analysis is very, very sensitive to our major variable expense in the business being double the normal rate. So I would say that the wages are the thing that tips it over and they're the reason why we close a number of stores.

PN16152

The wages don't lead you to close Echuca Sportsgirl, that's right?---They don't - in Sussan.

PN16153

Sorry, I've got them round the wrong way?---Yes.

PN16154

So the wages at Sussan don't lead you to close Sussan in Echuca?---They do, the interplay between wages and - - -

PN16155

Could we just be clear?---Yes, yes, they do. Yes, they do because if Sussan Echuca was paying a 50 per cent loading they might well open.

PN16156

At the moment your Sussan and Sportsgirl employees get double time whether they work at whichever brand in Echuca?---Correct.

PN16157

That's right, for Sunday work?---Correct.

PN16158

One store's closed, one's open, that's so?---Yes, correct.

*** BARRY GERALD BARRON

XXN MR MOORE

PN16159

The reason for that differential outcome as a matter of commercial reality as we sit here today, is because the sales justify opening the store in one case and not the other store, that's right?---The sales together with the costs.

PN16160

Now in your statement you refer to engaging employees to work beyond purely selling activities if the penalty rates were lower on a Sunday?---Correct.

PN16161

You refer to restocking and administration tasks?---Correct.

PN16162

As one example?---Yes.

PN16163

These are all tasks that need to be undertaken each week, in each store?---Correct.

PN16164

It's just a question of when that work is done?---It's a question of when it's done but it's also a question of wanting to do the tasks as quickly as possible, to give better customer service. So for example to restock a store the store looks better, you're less likely to have customers walking out of the store without even asking for their size if they've found that particular size of a fashion garment has sold out. So in terms of more about customer service and in terms of giving better customer service we'd like to restock the stores as much as we can.

PN16165

Yes, I understand what you say there. All I'm putting to you is that there's a certain number of hours of work that necessarily need to be done in the nature of restocking and administration around a store. If that work's not done on a Sunday that needs to be done on another day of the week, that's so?---Correct.

PN16166

I assume that even if penalty rates were time and a half on a Sunday, that would be unlikely to lead to any shift in non-income earning activities to other days, so far as is practicable? That is you'd still be minded to put the restocking and administrative tasks on other days, would you not?---No. Because on a Saturday where the loadings are 50 per cent, we do some of those tasks.

PN16167

The loading is 50 per cent?---The loading on - there is a loading on a Saturday.

PN16168

The loading on a Saturday is 25 per cent?---Sorry, is 25 per cent, sorry. We do do some of those tasks on a Saturday.

*** BARRY GERALD BARRON

XXN MR MOORE

PN16169

I'm suggesting to you that at a loading of time and a half isn't going to induce you to reallocate those non selling activities to a Sunday?---It certainly would in the

case of restocking and refilling, and replenishing, because we are about customer service and we are about having the stock there for the customer to sell, we're a fashion business.

PN16170

In paragraph 17 of your statement you refer to Sunday penalty rates prior to 2010?---Paragraph - sorry?

PN16171

Paragraph 17?---Yes.

PN16172

And you say that you are aware that before the General Retail Industry Award commenced the Sunday penalty rate in New South Wales and the ACT was time and a half, and you say it was 60 per cent in South Australia. I take it you're also aware that in South Australia at that time the 60 per cent was calculated by reference to a higher base rate or ordinary rate of pay than in other states?---Correct, yes.

PN16173

I take it you are also aware that before the General Retail Industry Award commenced it was double time in Victoria for your shops?---Correct.

PN16174

And it was double time for your shops in Queensland?---Correct.

PN16175

And it was double time in the Northern Territory?---Correct.

PN16176

Double time in Tasmania for Sundays?---Correct. If I recall correctly correct, yes.

PN16177

In overtime it was double time but paid as overtime?---Correct. I don't recall.

PN16178

So when you say that the costs to the business for labour on Sundays has significantly increased since 2010 in a phased way you're referring principally to the stores in New South Wales and ACT under the Sportsgirl and Sussan brands?---No. The costs have increased, but the interplay between costs and sales haven't, because in our business trading has become more difficult generally over the last five years.

PN16179

You say that the costs to the business for labour on Sundays has significantly increased since 2010. In light of your answer to the questions I've just given - - - ?---Yes, correct.

*** BARRY GERALD BARRON

XXN MR MOORE

PN16180

Let me finish the question so we're clear. I take it that what you're referring principally to is the costs to the business for Sunday labour in Sportsgirl and Sussan in New South Wales and ACT?---Correct.

PN16181

Do you know what proportion of Sussan and Sportsgirl employees are casual?---I couldn't answer that off the top of my head, no.

PN16182

You don't know?---No, I wouldn't know.

PN16183

But there is some proportion who are?---Certainly, yes.

PN16184

In saying that the business costs for Sunday labour has significantly increased since 2010 in New South Wales and ACT you have assumed, have you, that casuals went from time and a half to double times in those states and that territory?---I couldn't answer that question.

PN16185

Were you aware in making your statement that the increase for casuals for Sundays in New South Wales was not from time and a half to double time, because they previously got the time and a half on their rate inclusive of a casual loading of 15 per cent; are you aware of that?---I was aware of that, yes.

PN16186

And the effect of that was that in effect a casual worker in New South Wales for Sunday work got 174 per cent of the ordinary rate. Are you generally aware of that?---Yes.

PN16187

Were you also aware that similar arrangements applied in the ACT; are you aware of that?---I wouldn't have known the details on it.

PN16188

Did you take that into account in saying that the change to the GRIA has significantly increased your labour costs?---Yes.

PN16189

Were you aware that in moving to the GRIA there were some offsetting benefits that your company would have enjoyed in New South Wales and ACT compared to the pre-existing arrangements?---Yes.

PN16190

What were they?---I wouldn't know, but I - but I know that there's always an equalisation when - when there's an adjustment to one way there's an equalisation somewhere else.

*** BARRY GERALD BARRON

XXN MR MOORE

PN16191

So there's an equalisation in another way as you say. Did you take those into account in asserting that the costs, there's been a significant increase in labour costs associated with Sundays in New South Wales and ACT?---I was particularly looking at Sundays and how it's affected a Sunday, I'm not looking at equalisations that affect all seven days of the week.

PN16192

But those equalisations are very important, are they not, in terms of your bottom line and labour costs on a weekly basis?---They are important, but they - our calculations are based on what the actual numbers are today.

PN16193

But you just focused on Sundays?---Yes, what the actual costs are on Sundays today, the cost of - - -

PN16194

So you've ignored, haven't you, the offsetting benefits that your businesses enjoyed in moving to the GRIA in New South Wales and ACT; that's right?---Insofar as they're not incorporated into the Sunday rates I think they would - - -

PN16195

Yes. So for example one of the offsetting benefits was late nights, late night trades?---Yes.

PN16196

Work between 6 and 9 pm, which went to time and a quarter under the GRIA which was previously paid at overtime rates. You understand that, on certain days?---I understand that, yes.

PN16197

So to be clear you haven't determined the net effect of the transition to the GRIA for your Sportsgirl and Sussan stores, having regard to both the increase in Sunday costs and other offsetting benefits?---No, because I've particularly focused on Sundays and what is a pure cost of a Sunday.

PN16198

All right. Excuse me a moment. Paragraph 18, you say:

PN16199

With the increase in labour costs on Sundays the business has needed to respond in order to maintain labour costs at the required percentage of turnover. This has meant that a number of stores have reduced the hours they trade.

PN16200

You see that?---That's correct.

*** BARRY GERALD BARRON

XXN MR MOORE

PN16201

Which stores?---I couldn't specify the stores, but I do - but the total of the stores if you refer to schedule - - -

PN16202

No, which stores, do you know?---I couldn't tell you off hand which stores.

PN16203

So you don't know?---Don't know.

PN16204

How did you determine that these stores reduced the hours they trade on a Sunday because of labour costs and not for some other reason?---(No audible reply)

PN16205

You don't know, do you?---Because exercises were done by the people in the business on each of these stores, and they review the stores labour costs relative to the sales of the store on a regular basis, and then they take a decision, interplay between sales and labour whether it pays you to reduce hours or increase hours.

PN16206

In preparing your statement did you actually have in front of you the stores that reduced the hours that they trade on a Sunday because of Sunday penalty rates?---No. I had in front of me a statement summarising the number of stores that reduced on a Sunday because of penalty rates, reduced the hours on a Sunday because of penalty rates has increased.

PN16207

And that was prepared by someone else within your business?---Correct.

PN16208

You don't have any direct knowledge of that analysis?---I don't have direct knowledge of that analysis, no.

PN16209

Just a conclusion that was put in front of you that you adopted?---It was a conclusion which I adopted, but it would be based on fact, the totals are fact.

PN16210

Was a piece of paper put in front of you which showed that, was it?---Yes.

PN16211

What was the piece of paper?---A piece of paper as is shown - - -

PN16212

What was the piece of paper called?---The piece of paper is this piece of paper, attachment 2, BB2.

*** BARRY GERALD BARRON

XXN MR MOORE

PN16213

I see. So you're saying that BB2 is the piece of paper from which you made the claim that a number of stores have reduced the hours they trade on a

Sunday?---Yes, that and together with discussions with the operating people in the business.

PN16214

BB2 doesn't identify any stores?---It doesn't identify specific stores, but it does show that in New South Wales we had 56 stores on average open on a Sunday and 50 - in 2010 and '11 and now they're 50.

PN16215

You're looking at the Sussan numbers?---The Sussan one. It does show that in all five states the number of average hours per store have in total decreased. So if I refer you to the final column over there.

PN16216

I see. If I could ask you to look at BB2 and I will ask you some questions by reference to the Sportsgirl page. The last table on the left shows the average Sunday hours worked per store by state between 2010 and 2015. Is that right?---Correct.

PN16217

It shows, just to - - -?---No, no, the one on the right shows financial '14/15.

PN16218

No, I mean the one on the left?---The one on the left, yes.

PN16219

The one on the left shows the average Sunday hours worked per store by state?---Correct.

PN16220

To illustrate how one reads this what it's showing is in New South Wales for the financial year 2014 to 2015 there are 37 - the average number of stores open on a Sunday has increased from 34 to 37; that's right so far?---Correct. Correct.

PN16221

And the average hours per store have reduced from 822 to 726?---Correct.

PN16222

And the percentage of 11.7 per cent shows the reduction in the average hours per store in New South Wales between 2010, '11 and 2014/15?---Correct.

PN16223

Thank you. So looking at Sportsgirl it shows, on that table on the left there, it shows a reduction in average Sunday hours worked per store across all states between 2010, '11 and 2014 and 2015?---Correct.

PN16224

As you note underneath the table there were unique circumstances in Western Australia to do with the liberalisation of trading hours?---Correct.

*** BARRY GERALD BARRON

XXN MR MOORE

PN16225

It's correct, isn't it, that for Sportsgirl the percentage change in average Sunday hours between 2010 and '11 and 2014/15 was significantly greater in Victoria than in New South Wales and other states?---Correct.

PN16226

Pardon?---Correct.

PN16227

And that is so also in relation to the Sussan brand?---Correct.

PN16228

You accept that because over this time New South Wales saw an increase in the Sunday penalty rate while the Victorian Sunday penalty rate remained unchanged, this suggests that the change in Sunday employment hours was not in fact caused by the change in the price of labour for Sundays, but by other factors?---Incorrect.

PN16229

You say that the reduction in average Sunday hours in Victoria has significantly outpaced the weekly average, you say that in your statement. You accept though I take it that that can have nothing to do with any change in penalty rates because they haven't changed since 2010; do you accept that's so?---In comparison to 2010, yes, I accept that.

PN16230

You say in effect that as the cost of labour on Sunday increases that fact of itself operates to reduce your demand for labour; that's right?---Sorry, as the costs of labour - sorry, as the costs of labour - - -

PN16231

As I understand the import of your evidence is to say that as the cost of Sunday labour increases that fact of itself operates to reduce your demand for labour?---By demand for labour what do you mean?

PN16232

How much you want to employ people?---As the cost of labour decreases - did you say increases or decreases?

PN16233

As I understand it that what you're saying - the import of your evidence as I understand it, and if I'm wrong you can tell me, is that as the cost of labour on Sundays increases that fact operates to reduce or diminish your demand for labour on Sundays?---Yes, reduce our willingness to employ people on a Sunday. Yes, correct.

*** BARRY GERALD BARRON

XXN MR MOORE

PN16234

Can I suggest to you though that your experience in New South Wales contradicts or is inconsistent with your evidence in that regard because Sunday penalty rates have increased there, but the reduction in Sunday hours is vastly less than has

occurred in Victoria when penalty rates remained unchanged. Do you accept that?---No.

PN16235

In paragraph 24 - it's actually 23, I apologise - you say:

PN16236

Although Sunday trading hours generate much higher returns to other days average store hours on Sunday is significantly lower because of the Sunday penalty rate, which means you can only afford to open the stores in peak trading hours.

PN16237

You are not saying though that there's any generalised principle here that says for example that stores outside of the hours of 10 am and 3 pm on a Sunday are unprofitable?---I'm saying each store is treated on its own merits.

PN16238

Yes, it depends on the store?---It depends on the store, and it's - - -

PN16239

And what business does through the store managers principally is to set trading hours at a store to optimise your profitability?---To optimise profitability, but also at the same time to minimise a lessening of customer service.

PN16240

Profitability is generated from a whole lot of different experiences, including the customer experience, I understand that?---But the customer experience and the customer service is the prime thing which drives our business, and if we feel we can't give customer service because we can't afford to open say between 5 o'clock and 6 o'clock on a Sunday we'd rather close the store and present our brand as not - as not giving customer service.

PN16241

Just to focus on that particular consideration of how you present your brands, giving customer service to customers or prospective customers your business plan or business approach is not just to open on certain days merely to send the signal to prospective customers that we're a brand that services your needs, ultimately it needs to be a profitable undertaking?---It has to be a profitable - - -

PN16242

Yes?---Yes.

PN16243

And so it's not the same thing as saying that all hours outside of your trading hours are unprofitable, they just may be less profitable than what you want them to be?---They'd be unprofitable. They'd be unprofitable. In the way we define profitability they'd be unprofitable.

*** BARRY GERALD BARRON

XXN MR MOORE

PN16244

And the way you define profitability is what, as a benchmark of profitability?---If the store is going to make a positive contribution in that hour, our first preference would be to keep the store open for that hour. But if perhaps it can only make a profit by having one staff member, you'd say, "Well, we're not giving customers service there. We might close it."

PN16245

You identify in paragraph 20A some changes you say you would implement if there was a reduction in penalty rates. In general terms, you agree that the changes that you outline there would only transpire if you were satisfied in relation to each particular store that in the face of reduced Sunday penalty rates the income made it profitable to trade on a Sunday or to extend your trading hours on that day?---Correct. We'd do that exercise per the samples in BB1 where you'd only have to do 20 - 15 per cent, 20, 24 per cent less turnover to break even.

PN16246

All right. Can I just show you this document? So the document you've got in front of you is headed "Daily sales percentages". This is a document provided to my solicitors in answer to a requirement on you to produce certain documents. This document was produced by you, or by the Sussan Group, do you understand that?---Correct, yes.

PN16247

Daily sales percentages, this document simply tells us the proportion of sales - weekly sales, sorry, the proportion of weekly sales derived from each particular day?---Correct.

PN16248

What it tells us in relation to the Sussan brand is that the proportion of your weekly sales that Sussan across the board achieves from Sundays is the lowest of the seven days, is that right?---Correct.

PN16249

It tells us that Sundays Sportsgirl is in the middle. It's the fourth-most - the fourth highest percentage of sales?---Correct. Could I qualify it because it could be misinterpreted, this statement?

PN16250

Yes?---We trade a lot shorter hours on a Sunday.

PN16251

I understand?---And some stores are closed.

PN16252

You accept that at least in the case of Sussan - I withdraw that. Sundays is a quiet day for Sussan generally across the board?---No, definitely not.

*** BARRY GERALD BARRON

XXN MR MOORE

PN16253

It's your lowest earning day of the seven?---No, but it's one of our highest earning days on an hour by hour takings basis in individual stores. I absolutely reject that. It's a very busy day.

PN16254

Can I suggest to you that in the face of earning the lowest daily sales for Sundays for Sussan, in the face of a reduction of Sunday penalty rates to time and a half, do you accept that that of itself may not lead to any increase in opening hours or openings at all in Sussan businesses - brands?---I do not accept that.

PN16255

I tender that document, Commissioner, please.

PN16256

JUSTICE ROSS: Any objection?

PN16257

MR WHEELAHAN: No. Whilst I'm on my feet, MFI can also - I withdraw the objection to that document.

PN16258

MR MOORE: I thank my learned friend.

PN16259

JUSTICE ROSS: MFI1 will become SDA12.

**EXHIBIT #SDA12 (MFI1) SCREENSHOT OF WEBPAGE
SHOWING GREENWOOD PLAZA OPENING HOURS.**

EXHIBIT #SDA13 DAILY SALES PERCENTAGE DOCUMENTS

PN16260

MR MOORE: Thank you, Your Honour. (To witness) In paragraph 10 of your statement, if I could ask you to go back to that - I'm sorry, paragraph 9, you say that the majority of Sussan and Sportsgirl retail employees are covered by the award. Do you see that?---Correct, yes.

PN16261

What are the remaining retail employees employed by Sussan and Sportsgirl covered by?---Contracts of employment. Just contracts of employment. It might be a store manager being paid on quite a high salary, a store manager of a premium store.

PN16262

I see. So overall, award type provisions?---Yes, yes. Considerably over award.

PN16263

So Suzanne Grae is your largest brand in terms of store numbers?---Yes.

*** BARRY GERALD BARRON

XXN MR MOORE

PN16264

I can't quite recall your evidence from before. Is that likewise in terms of the number of retail employees across the brands?---No. Sussan would have more.

PN16265

Sussan would have more?---Sussan would have more because Sussan's sales per store is much higher.

PN16266

JUSTICE ROSS: We might have to take you for a view, Mr Moore. They are very different brands.

PN16267

MR MOORE: They are. I am not immediately familiar with them.

PN16268

JUSTICE ROSS: Unfortunately, I have been in all three.

PN16269

DEPUTY PRESIDENT ASBURY: Me too.

PN16270

JUSTICE ROSS: Not to shop but as an accompanying person?---They have much smaller stores, that's why they have a lower stock.

PN16271

MR MOORE: They have smaller stores?---Yes.

PN16272

I think your evidence before was that a greater proportion of Suzanne Grae stores are closed on a Sunday compared to the Sussan stores?---Correct.

PN16273

The minimum terms and conditions of employees who work in the Suzanne Grae stores are not covered by the General Retail Industry Award, are they?---No, they're not. They have their own enterprise agreement.

PN16274

Yes. They are covered by the Suzanne Grae Agreement 2012, an agreement made by Fair Work Australia?---Correct.

PN16275

That agreement in general terms, do you accept this, provides for a reduction in some penalty rates in return for an increase in the ordinary rate of pay above that prescribed by the General Retail Industry Award?---Correct.

PN16276

For example, it does not contain a penalty rate for Saturdays, do you understand that?---I wouldn't even know.

*** BARRY GERALD BARRON

XXN MR MOORE

PN16277

You don't know?---No.

PN16278

All right. Perhaps for the benefit of the Commission, I don't think - unless the Commission would like me to tender it, it's a document of the Commission, it might be completely unnecessary, if I just inform for the benefit of the transcript the reference to the agreement. The decision approving it is dated 8 October 2012, it is 2012FWAA8612. (To witness) So you are unaware of the fact that it doesn't provide a Saturday penalty rate?---I'm unaware of that. I just know there were a number of set-offs in return for the changes in the loadings.

PN16279

Do you also understand that it provides for a Sunday penalty rate of time and a half?---I am aware of that.

PN16280

Are you generally aware that the current weekly rate of pay for the base classification is \$789 a week compared to the award rate of \$721 a week? Are you generally aware of that?---Not of the specific amount but generally I know it's above the award rate.

PN16281

Similar agreements providing for a trade-off between increases in ordinary time rates of pay and reductions in penalty rates have been made between the Suzanne Grae business and the SDA since about 2001, are you aware of that?---Yes.

PN16282

Are you aware that Sundays under those agreements have been paid at time and a half since 2001?---Yes.

PN16283

I take it that the 2012 agreement, the current agreement, and its predecessors were entered into because the company saw it as providing - those agreements as providing for a set of conditions more suitable to its business operations than those provided for by the award?---Correct.

PN16284

So in the Suzanne Grae setting, even with the benefit of a lower Sunday penalty rate of time and a half, I take it that the level of business in those stores doesn't generally justify them opening?---Correct.

PN16285

Can I suggest to you that the same outcome would likely occur with the Sussan stores if penalty rates were reduced since Sunday is, relatively speaking, the quietest day?---Incorrect.

PN16286

Nothing further, if the Commission pleases.

*** BARRY GERALD BARRON

XXN MR MOORE

PN16287

DEPUTY PRESIDENT ASBURY: Mr Barron, can I just ask you, you mentioned earlier, and I think the cross-examination just dealt with this point as well most recently but, for example, Echuca, the Sussan isn't open on a Sunday while the Sportsgirl is and Suzanne Grae, I think you mentioned that there's less of those stores that open on Sunday. Is it because of the demographic of the customer? Does that have anything to do with it?---In the case of Suzanne Grae, yes. In the case of Sportsgirl, Sportsgirl is the most popular of our brands really, so their general level of trading per store is higher than Sussan. And in Sussan, basically the Sunday penalty rates are the tipping point that prevent them from opening. Sussan is much closer to Sportsgirl in terms of turnover per store.

PN16288

Thanks.

PN16289

JUSTICE ROSS: Re-examination?

RE-EXAMINATION BY MR WHEELAHAN

[10.32 AM]

PN16290

Mr Barron, if you go to the second attachment, BB2. Mr Moore put to you that the rate in Victoria had not changed for penalty rates on a Sunday from 2010 to 15 and then directed you to the New South Wales drop in hours and the fact that the Victorian one was more substantial. Can you explain why that is?---Well, each store is evaluated by the businesses on a regular basis and in New South Wales, a number of things happen because of general trading. We closed two of our major stores in Pitt Street, Sydney, and in Miranda, and those stores might well have changed these figures. Also in our reviews, because we have in our business, found trading difficult over the last five years, so the interplay between the store wage bill and the sales has become more marginal. It has become more difficult to trade. And in Victoria, because we have more country stores, as a business Victoria was our home base, we had more country stores. We weren't forced to open by landlords on a Sunday, so we could close some more of those country stores or reduce the hours. That's really one of the reasons that Victoria is - but really it comes from actual numbers that we do on each store.

PN16291

Also you were asked about your regional stores and in particular Subiaco and you said, "Can I explain?" Do you recall being taken to the first annexure, with the stores Greenwood, Shepparton and the last one being Subiaco? Do you see that for Sportsgirl? Do you see the fifth column? It says Subiaco?---I see Subiaco, yes.

PN16292

MR MOORE: Your Honour, I'm sorry. Sorry to interrupt my friend but I didn't ask the witness any questions about Subiaco.

*** BARRY GERALD BARRON

RXN MR WHEELAHAN

PN16293

JUSTICE ROSS: Yes. I must say I have no recollection of any questions on Subiaco.

PN16294

MR WHEELAHAN: No. I just want to ask him that.

PN16295

MR MOORE: Well, I object to it. I didn't ask the witness any questions about Subiaco.

PN16296

JUSTICE ROSS: Are you seeking leave?

PN16297

MR WHEELAHAN: He took him to the table.

PN16298

JUSTICE ROSS: He took him to the table.

PN16299

MR WHEELAHAN: I am entitled to re-examine so that the Full Bench is not misled as to anything and part of the theme of the cross-examination was that these are regional stores and in light of Your Honour's comment about you're not sure about Subiaco, I was just going to ask this witness whether he knew whether it was considered by his business to be a regional store or not.

PN16300

JUSTICE ROSS: I will allow the question.

PN16301

WITNESS: It's a city store.

PN16302

MR WHEELAHAN: Thank you. I have no further questions.

PN16303

JUSTICE ROSS: Thank you. You're excused?---Thank you.

<THE WITNESS WITHDREW

[10.37 AM]

PN16304

JUSTICE ROSS: The Commission will adjourn until 11 o'clock, when we'll deal with the next witness by video.

SHORT ADJOURNMENT

[10.37 AM]

RESUMED

[11.18 AM]

PN16305

MR WHEELAHAN: I call Mr Goddard.

*** BARRY GERALD BARRON

RXN MR WHEELAHAN

PN16306

THE ASSOCIATE: Mr Goddard, could you please stand and state your full name and - actually, I think it's better if you stay seated, as we can't see you. Sorry. Could you please state your full name and address.

PN16307

MR GODDARD: Owen Heath Goddard, (address supplied).

<OWEN HEATH GODDARD, SWORN [11.19 AM]

EXAMINATION-IN-CHIEF BY MR WHEELAHAN [11.20 AM]

PN16308

MR WHEELAHAN: Mr Goddard, Patrick Wheelahan, counsel. Can you please state your full name?---Owen Heath Goddard.

PN16309

And your work address?---Work address is 1 Northolt Street, Darra, Brisbane.

PN16310

You are the managing director of Pillow Talk Pty Ltd?---Correct.

PN16311

And you have prepared a statement for these proceedings?---I have.

PN16312

And that is 32 paragraphs with two attachments?---Correct.

PN16313

Is that statement true and correct in every particular?---Yes.

PN16314

I tender that statement, if the Commission pleases.

PN16315

JUSTICE ROSS: Thank you. That will be Retail 4.

EXHIBIT #R4 STATEMENT OF HEATH GODDARD

CROSS-EXAMINATION BY MR MOORE [11.20 AM]

PN16316

MR MOORE: Mr Goddard, can you hear me?---I can.

PN16317

Can you see me?---I don't know who you are. Where are you? If you wave your hand or something, I might. There are four gentlemen.

*** OWEN HEATH GODDARD

XN MR WHEELAHAN

*** OWEN HEATH GODDARD

XXN MR MOORE

PN16318

Can you see me? I'm waving my hand now?---I'm not doing very - - -

PN16319

JUSTICE ROSS: No, I think the camera's probably focused this way.

PN16320

THE WITNESS: I'm sorry but you're not there.

PN16321

MR MOORE: Right?---Are you in the front or - no?

PN16322

Is it normal for the witness - - -

PN16323

JUSTICE ROSS: We're trying to change the camera.

PN16324

MR MOORE: Just bear with us, Mr Goddard?---You're right.

PN16325

While we're attending to - - -?---Do I need to see you?

PN16326

JUSTICE ROSS: Not necessarily.

PN16327

MR MOORE: Not necessarily. I just wanted to make sure we had a line of communication. My name is Moore and I'm counsel for the Shop Distributive and Allied Employees Association?---Right.

PN16328

You can hear me okay, can you?---I can hear you very well.

PN16329

I'm just going to ask you some questions about your statement to this Commission?---Mm-hm.

PN16330

You say in paragraph 6 that;

PN16331

Despite Pillow Talk enjoying relative business success and continuing to grow, that this has been achieved against a difficult trading environment which has impacted on your success.

PN16332

I just want to understand the nature of this impact on your success, as you put it. I have had brought to my attention an article in The Australian dated 30 December 2011?---Right.

*** OWEN HEATH GODDARD

XXN MR MOORE

PN16333

Under the headline;

PN16334

Twice the pain for some industrial power users.

PN16335

Have you seen that article?---Yes. Not at the moment. I'm aware of it, that was some time ago.

PN16336

Yes, and in that article in which you were quoted in relation to the carbon tax, it also quotes you as saying that you had 32 stores?---Yes.

PN16337

This is back on 30 December 2011. Is that correct, that you had 32 stores in - - - ?---Yes.

PN16338

Yes?---Yes.

PN16339

So in less than four years you've been able to grow your business from 32 store to 56, that's - - -?---Correct.

PN16340

As I understand your evidence, all of those stores except one trade on Sundays?---They do.

PN16341

This growth has occurred in a period that you've had to pay your employees double time for work on Sundays, that's so?---That'd be correct.

PN16342

You say that there has been - your evidence before this Commission in paragraph 26 of this statement is that in that - between 2009 and 2015 there hasn't been a reduction in total Sunday hours, that's so?---There has been?

PN16343

No, there has not been?---Yes, right.

PN16344

In fact looking at the annexures to your statement, the proportion of the hours worked on Sundays has actually increased from eight per cent to 10 per cent in that time, that's so?---Yes.

*** OWEN HEATH GODDARD

XXN MR MOORE

PN16345

I had another newspaper article brought to my attention. The Bundaberg News Mail in fact, of 7 July this year. It quotes you as saying that your chain of stores was going from strength to strength and that it is all positive. Do you recall being

quoted saying that?---Yes, I do recall talking to a journalist. What she wrote versus what I was talking about was somewhat different but that's what was written.

PN16346

It was also written - - -?---Do you want me to expand on that or not?

PN16347

I'll ask you a question about it in a moment?---Thank you.

PN16348

It also quoted you as saying;

PN16349

We're not doing doom and gloom, we're doing excitement.

PN16350

You're aware of that quote?---It would have been one I might have made during the course of the conversation, yes.

PN16351

Do you accept that those remarks made by you in July - I'll withdraw that. Do you accept that in July 2015 you made remarks to the effect;

PN16352

It's all positive, we're not doing doom and gloom, we're doing excitement -

PN16353

in relation to your business?---Yes, we are trying to do that but it's doesn't necessarily correspond with how the facts are behind the results that we're trying to achieve.

PN16354

Mr Goddard, you just need to direct yourself to the question. The question, I'll repeat it for you if it assists, is - - -?---No, I heard it, yes, I would have probably said something to that effect.

PN16355

Thank you. Should this Commission take it that your remarks to the effect that - in relation to your business that;

PN16356

It's all positive, we're not doing doom and gloom, we're doing excitement -

PN16357

that that - should the Commission take it that that accurately recorded your attitude towards the future, as at July 2015?---Well it would be - answering the question simply, if I've said that, fine, but the inferences behind what I am doing is to try to make sure that the business is sound so that we can continue to employ the people we currently have.

*** OWEN HEATH GODDARD

XXN MR MOORE

PN16358

Do you want me to repeat the question?

PN16359

MR WHEELAHAN: He was answering.

PN16360

MR MOORE: The question is - - -?---No.

PN16361

JUSTICE ROSS: He's answered the question on this occasion, Mr Moore.

PN16362

MR MOORE: Well with respect, your Honour, he didn't answer the question.

PN16363

JUSTICE ROSS: Well I think he's acknowledged that he said what was in the press. It's a matter for re-examination why he wants to say it. What's in the press is in the press.

PN16364

MR MOORE: The question that I asked the witness was whether or not those statements accurately recorded his attitude towards the future and I didn't understand that he - - -

PN16365

JUSTICE ROSS: I don't think you put it that way, Mr Moore, but if you put it that way, which is quite correct. Put it that way.

PN16366

MR MOORE: Thank you, your Honour. Mr Goddard?---Yes.

PN16367

Should this Commission accept that when you were reported as saying in July 2015 that;

PN16368

It's all positive, we're not doing doom and gloom, we're doing excitement -

PN16369

that that accurately recorded your attitude towards the future for your business in July 2015?---It was reflecting on what we were hoping to do in the store in Bundaberg, where we haven't been before.

PN16370

I see. Thank you. Am I correct in understanding that when you refer to the impact of difficult trading conditions on your success, what you're in substance saying is that the growth that you could have enjoyed would in fact have - could have been greater than what it actually has been. Is that in substance what you're saying?---No, it's not what I'm saying. What I'm - - -

*** OWEN HEATH GODDARD

XXN MR MOORE

PN16371

Now - sorry, go on? Please finish your answer?---The nature of our - sorry?

PN16372

I'm sorry, please finish your answer?---No, no. What we have done in the last three years is to expand to make sure that we are a viable company to maintain the employment of the people. It's a much more complex thing than a yes or no answer.

PN16373

Thank you. You've been able to maintain the employment of your employees and provide new employment and additional hours of work to employees. That's so?---We have done that, yes.

PN16374

I take it that your principal complaint to this Commission in relation to the Sunday penalty rates, is that if they were reduced you could provide additional hours of work on a Sunday to your employees?---We believe so.

PN16375

Could you just - in paragraph 12, if you just read that to yourself please?---Yes.

PN16376

The key proposition I take it that you're advancing there is that based on historical data and marketing initiatives, what your business does is estimate the likely sales across the week and then work out the labour budget for that week. Is that a fair statement?---Yes, that's about what we do.

PN16377

Thank you. Obviously, your anticipated level of sales is the key driver in that calculation?---In a reasonable situation, yes.

PN16378

Could you please look at paragraph 16. You say there that;

PN16379

For the purposes of this statement a detailed analysis has been undertaken of 21 stores, which currently trade on Sundays and which were also in operation and trading in 2009.

PN16380

You refer to this data as the sample data set, and in the following paragraph you define the sample period. My question for you is this; on what basis did you select these 21 stores? I understand that they were stores that were in operation in 2009 and are still in operation. Is this all of the stores that fall into that class or if not, on what basis were these stores selected?---Well I think it's a spread of stores. There was no particular, you know, choosing one above another, that they were trading then and they're trading today.

*** OWEN HEATH GODDARD

XXN MR MOORE

PN16381

So there was - I'm sorry?---It's a comparative of what we did back then for the benefit of the Commission and what we're doing today.

PN16382

Can you shed any light on the basis upon which those 21 stores were selected for the purposes of sample data set?---No, it was just a random selection of stores.

PN16383

Thank you. Just bear with a moment. In the first annexure to your statement - - - ?---HG1?

PN16384

HG1, that's so, thank you?---Good.

PN16385

You've attached the daily sales of stores, of 21 stores. That's the sample set?---Correct, yes.

PN16386

You haven't produced - - -?---By day.

PN16387

I'm sorry?---I said it's a collection of the gross sales of those stores by day, for that particular period, one 28th of - - -

PN16388

Yes, thank you?---Right.

PN16389

You haven't provided the same information for those 21 stores as at 2009. Is that right?---No, I haven't.

PN16390

Do you have that information? Is it recorded in a document?---I don't have it with me, no.

PN16391

No, I'm sorry, you may not have it with you now as you sit in the witness box, but I take it that your company or you have such a document?---I could certainly - I could get it for you.

PN16392

I call for the - - -?---Not right now.

PN16393

MR WHEELAHAN: Can I just clarify that. The witness I suggest might believe that he needs to create a document, so the question could be precise - because this has been created as a sample of 21 stores from other data. If my friend's calling for a document - - -

*** OWEN HEATH GODDARD

XXN MR MOORE

PN16394

JUSTICE ROSS: That is the same as, what, it's actual creation. You want the raw material?

PN16395

MR MOORE: I'll need to ask another question I think. I take it, Mr Goddard, that you created a document which is HG1 for the purpose of this proceeding?---Yes.

PN16396

Did you create the same document for the same stores, but in respect of the 2009 period?---No, we did not.

PN16397

In paragraph 23, I'll withdraw that. In paragraph 21, you set out the average sales per hour?---Yes.

PN16398

For the period 1 June to 28 June 2015?---Correct.

PN16399

Where did you derive that information from?---That's a collation of the gross number of hours worked by day, eight and a half hours I think it is on a Monday, and the sales per hour would be a reflection of eight and a half times 21,000.

PN16400

Did you - - -?---It does - it uses the - sorry, it does use the word "average".

PN16401

Yes, it does?---It's a different word to what actually happens by hour.

PN16402

Yes, I understand that, thank you?---Thank you, excellent.

PN16403

You haven't provided that data in respect of the June 2009 period?---No, we have not.

PN16404

Have you produced a table in the same or similar form to what's there in paragraph 21 for the June 2009 period?---No, no, we have not.

PN16405

Is there a reason why you have not?---No, I suppose in this instance it was more showing how the performance of sales is weighted more towards the back half of the week, and that's what we're experiencing now, so that's what we're dealing with.

*** OWEN HEATH GODDARD

XXN MR MOORE

PN16406

Paragraph 23, you say that from the information you've set out about average sales per hour, it would be assumed that the business would engage a greater number of

employees to work on a Sunday but that as a direct result of the high wage costs on Sunday, the business has taken active steps and measures to minimise the total volume of work performed on a Sunday. Can I ask you a couple of questions about that. You accept though that the volume of work performed on a Sunday across your businesses has in fact increased between 2009 and 2015?---Yes, it has gone up slightly, yes. If I did have the 2009 figures it would probably show that Sunday hasn't grown in importance in the last six years.

PN16407

It's also true that as your business has grown over the last six years, you have allocated proportionally greater hours to Sundays over Saturdays?---I don't know that's - - -

PN16408

If I can - - -?---Is that reflected in my numbers there? I don't know that that's quite - there's more hours worked on a Saturday.

PN16409

If I can direct you to HG2 and at the end of the third page in of the tables there, which deals with the - - -?---Sunday hours.

PN16410

Well it deals with 2009. Do you see there's a table headed - last table "Aggregate total"?---Yes.

PN16411

You see for Sundays it's eight per cent?---2015, yes, and it's 10 per cent now.

PN16412

Yes, and if you look to the left, Saturdays 14 per cent. This is back in 2009?---And per cent in 2015.

PN16413

Yes. So the status quo has remained unchanged in relation to the proportion of your hours on Saturday but you've re-allocated greater hours towards Sunday?---Yes, and we would like to probably put a few more into it if we could but we're very mindful of the cost per hour.

PN16414

Thank you. Looking at paragraph 28 of your statement, if you just read that to yourself to refresh your memory, Mr Goddard?---Correct, yes. I've read it.

PN16415

You say that the Sunday wage rates are resulting in significantly lower levels of employment on that day because of - you point to this comparison with Saturday having 14 per cent of all hours, but \$41,058 of average sales per hour, compared to Sunday with 10 per cent of all hours, but slightly more, \$41,610 average sales per hour. That's what you point to?---Yes.

*** OWEN HEATH GODDARD

XXN MR MOORE

PN16416

Yes?---Yes.

PN16417

And your point as I understand it is that because the average sales per hour are greater on Sunday one would expect to see a greater proportion of total hours on Sunday than Saturday?---Well, we - we would probably like to give more staff a job on the Sunday, but we're not about to do it at the current restrictive rates of pay.

PN16418

I am just trying to understand your evidence. Have I got that right, that you're saying, well the comparison in the average sales per hour they're pretty similar, but there's 4 per cent more hours on Saturday as against Sunday, and you say - - - ?---That's right.

PN16419

- - - therefore one would expect to see a greater - with those sales, that sales comparison one would expect to see a greater proportion of total sales on Sunday rather than Saturday?---What are you saying, that there'd be a greater percentage of sales on a Sunday? That's not right. Saturday is a busier day than the Sunday. It comes back to the hours we work.

PN16420

But you're saying that the average sales per hour on a Saturday are less - - -?---Are slightly less than on a Sunday, because it's compressed, because it's six hours versus eight and a half hours.

PN16421

I understand that, and I am just trying to understand what you're saying in this paragraph, and as I understand it what you're saying is that because the average sales per hour on Sunday are slightly more than Saturday one would expect to see at least the same or slightly more proportion of hours on the Sunday than a Saturday, but in fact one sees the opposite. Is that what you're saying?---Well not - no, no, sorry, if we had the same amount of hours our cost would go up by quite some - so we do our best to balance it and do what we do, but we're now getting a compressed turnover figure because of the way that the sales fall on the Sunday versus mid-week or Saturday.

PN16422

I follow - - -?---So I don't see where you're coming from, I'm sorry.

PN16423

All right. If there was a reduction in penalties to time and a half on Sundays you would intend or expect to reallocate some of the Saturday hours to Sundays, is that so?---Well there would be a commensurate savings and we would probably put a little into Saturday and more into the Sunday, because both days are more compressed in turnover as retailing changes. So both days we'd probably get a little bit more staffing put into it.

*** OWEN HEATH GODDARD

XXN MR MOORE

PN16424

All right. In paragraph 30 you say that if the costs of your business continue to increase, including wage costs, you will need to make difficult decisions concerning the viability of trading on particular days of the week which would result in a reduction in hours and/or a direct loss of employment. You see that?---Correct, yes.

PN16425

The situation is that Pillow Talk is actually hiring now, is that so?---Well we're opening new stores, we have to hire.

PN16426

So is the answer to my question "Yes"?---Yes.

PN16427

Are you aware that your website currently states that "We are furthering our growth in these areas", and you refer to Queensland, New South Wales, ACT and Victoria?---Correct.

PN16428

We're furthering our growth in these areas over the next 12 months and will continue to seek staff for a variety of roles, including management, sales assistants and merchandisers.

PN16429

You're aware of that?---Yes, it's probably coming to a bit of an end at the moment. We've been on that crusade, we've opened eight stores in the last year. We have two to go, one in November of this year and one in February. At that point we have no other stores on the drawing board.

PN16430

Do you accept that what I've read out to you is on your website at the moment?---Yes, I accept that.

PN16431

Can I suggest to you that in light of your professed optimism about the future and the fact that you have substantially expanded your business over the last four years and the fact that the proportion of hours worked on Sundays has increased your reference to having to make difficult decisions about the viability of trading on particular days is just scare mongering for the purposes of this proceeding?---I reject that, sir.

PN16432

Paragraph 31, you say there:

PN16433

In the 21 stores who were part of the sample data set alone 2,072 hours were worked on Sundays.

*** OWEN HEATH GODDARD

XXN MR MOORE

PN16434

And you say that for those stores a reduction to a 50 per cent penalty would mean that 936.25 ordinary hours of work could be put into those stores - - -?---Yes.

PN16435

- - - without any impact on labour cost percentages. Can you just tell the Commission how you got to 936.25?---That would have been using the rates of pay applicable for the hours that would be worked. That's what would be saved and therefore that's the hours that we could therefore look to increase extra people on Saturday and Sunday, which would - - -

PN16436

I am sorry?---Sorry, I was just going to say which - which is our preference to do, but - you know, it's a much broader discussion than what I'm allowed to offer you at the moment.

PN16437

Whether those additional hours were in fact put back into the business would depend principally on your anticipated level of sales in particular stores; that's correct?---Yes, it would do.

PN16438

Yes, all right. Thank you, nothing further.

PN16439

JUSTICE ROSS: Any re-examination?

RE-EXAMINATION BY MR WHEELAHAN

[11.48 AM]

PN16440

MR WHEELAHAN: Mr Goddard, you were asked a question in relation to paragraph 6. It was put to you about the growth in the number of stores was essentially inconsistent with what you're putting?---Yes.

PN16441

In answer you said, well what we've done in the last three years - but you didn't go on and say what you have done in the last three years. Can you finish that answer, please?---Am I allowed to do this?

*** OWEN HEATH GODDARD

RXN MR WHEELAHAN

PN16442

Yes, you can?---Right-o. That - that - what we've done in the last three years is - it will be a fairly long winded discussion I'm sorry to tell you - is to expand the company, because most of what we do is sourced offshore, it's textiles, we don't have any industry here. What we do is deal with large offshore textile mills. They have large volumes required. We need to have more dissipation points to accommodate the volumes that we're obliged to deal with these companies with. When we went on this expansion program it was done on the basis that we were in a sound financial position, we're very, very conservative in what we do, and it was thought that if we went ahead and expanded the business it would give us the strength to make sure that those who work with us would be able to continue to be employed, as all the head winds that I've seen coming would be sort of visited

upon us, and that's what we were doing back then and we are continuing to do it, although we have put a bit of a halt on it just at the moment so we can catch our breath, but it's been done from past capital that we owned and had and now we have to take a stop and make what we've got work for everyone. But the actual - the trading conditions if I may say, the profitability of the business in '13/14 and '14/15 was a loss in '13/14 and '14/15 a very slight profit, well down on where it was seven and eight years ago.

PN16443

If I could take you to paragraph 30?---Yes.

PN16444

It was put to you there that this was nothing but scare mongering and you said that you rejected that. Can you say why you reject that as being scare mongering?---We've already had to put into place some degree of labour restriction into the Mondays, Tuesdays, Wednesdays and Thursdays to allow us to continue to keep as much as we can on Thursday, Friday, Saturday. Now, we've had to do that, it's been very - well, difficult for us to do so because we've been a business that's always tried to give as much as we can to the people who work with us, but everyone is understanding now where we're going, why we're going, we're quite open with our staff as to what we're doing, what we're trying to do. It's not going to change, but you have to be rational about costs. You alluded on the 2011 Australian article, our electricity costs are way up, we are doing our level damned best to get them down. So everything we're about that - there's only so many areas that you can actually keep chipping away at, there's not much left. So at some point in time you have to change.

PN16445

Thank you, I have no further questions.

PN16446

JUSTICE ROSS: Thank you, Mr Goddard, you're excused.

<THE WITNESS WITHDREW

[11.52 AM]

PN16447

JUSTICE ROSS: The Commission will take a short adjournment so we can get ready with the next VC.

SHORT ADJOURNMENT

[11.52 AM]

RESUMED

[12.15 PM]

PN16448

JUSTICE ROSS: We have Ms Twomey present and we have - - -

PN16449

MR SECK: We do, your Honour. We do, your Honour.

*** OWEN HEATH GODDARD

RXN MR WHEELAHAN

PN16450

JUSTICE ROSS: Yes, Mr Seck. Go ahead.

PN16451

MR SECK: Thank you, your Honour. I call Georgina Twomey

PN16452

THE ASSOCIATE: Ms Twomey, could you please stand and state your full name and address.

PN16453

MS TWOMEY: Georgina Clare Twomey, (address supplied).

<GEORGINA CLARE TWOMEY, AFFIRMED [12.16 PM]

EXAMINATION-IN-CHIEF BY MR SECK [12.16 PM]

PN16454

MR SECK: Ms Twomey, my name is Michael Seck. I'm the counsel for the Pharmacy Guild. Can you hear me?---Yes.

PN16455

I'm going to ask you a few questions. Ms Twomey, you're a pharmacist by occupation. That's correct?---Yes.

PN16456

And you are the proprietor of Good Price Pharmacy Warehouse, Innisfail?---Yes.

PN16457

You have prepared an affidavit in these proceedings which is dated 10 August 2015. It's on the last page?---Yes.

PN16458

Do you have that affidavit with you in the witness box?---Yes.

PN16459

Have you read that affidavit recently?---Yes.

PN16460

Do you wish to make any changes to your affidavit?---No.

PN16461

Are the contents of your affidavit true and correct to the best of your knowledge and belief?---Yes.

PN16462

I read the affidavit of Ms Georgina Twomey.

PN16463

JUSTICE ROSS: PG24.

*** GEORGINA CLARE TWOMEY

XN MR SECK

**EXHIBIT #PG24 AFFIDAVIT OF GEORGINA TWOMEY DATED
10/08/2015**

CROSS-EXAMINATION BY MS FORSYTH

[12.17 PM]

PN16464

MS FORSYTH: Ms Twomey, My name is Anna Forsyth. I'm counsel for the SDA, and I'm going to ask you a few questions. Can you see me?---I'm not sure.

PN16465

You can hear me?---Yes.

PN16466

I think that's the main thing. Ms Twomey, when did Good Price Pharmacy Warehouse in Innisfail open?---2011.

PN16467

And have you been a proprietor of that pharmacy since 2011?---Yes.

PN16468

Are you a proprietor of any other pharmacies?---Yes.

PN16469

What pharmacies are those?---Terry White Chemist, The Willows.

PN16470

Terry White Chemist, The Willows is the one pharmacy, is it, or is that - - - ?---Yes. So there's one pharmacy.

PN16471

That's one pharmacy. I see. And is that also in Innisfail, or is it in The Willows?---It's in The Willows shopping centre in Townsville.

PN16472

I see. How long have you been a proprietor of that pharmacy?---Since 2012.

PN16473

Does it have similar staff numbers to the pharmacy that you have in Innisfail, namely eight?---No.

PN16474

How many staff do you have at The Willows?---Four full-time, two part-time.

PN16475

And what about the opening hours, are they the same as your pharmacy in Innisfail?---No.

*** GEORGINA CLARE TWOMEY

XXN MS FORSYTH

PN16476

What hours you open at The Willows?---8.30 till 6.00 Monday to Wednesday; 8.30 till 9.00 Thursday; 8.30 till 6.00 Friday - it could even be 8.00, I'm not even -

I'm not cross those details; 8.00 or 8.30 till 5.00 on the Saturday; and 9.00 till 4.00, I believe, on a Sunday. As I said, I'm not across all those details.

PN16477

That's your best estimate. Is that right, those hours?---Yes. Yes.

PN16478

And I take it that both pharmacies are profitable going concerns?---Excuse me?

PN16479

I take it that both pharmacies are profitable?---Yes.

PN16480

You give the breakdown in paragraph 7 of your statement, Ms Twomey, as to the status, classification and number of employees that you have at Innisfail. I take it that that mix of staff has remained constant since 2011?---Can you just clarify that question?

PN16481

Certainly. I take it that the number and type of employees that you specify at paragraph 7 in your witness statement has remained constant since you opened the pharmacy in 2011?---No.

PN16482

How has that changed?---This number has been constant for probably the last six months. The number of staff changed depending on the - depending on who and what are available when other staff members have come and go.

PN16483

I see. But the number of eight, has it roughly been the same since 2011? You've had eight employees across that time?---I can't say for sure in 2011 exactly how many staff members we hired when we opened a greenfield site, and I can't comment on the specifics of when or - other staff members may have been employed or when other staff members may have resigned. I don't have those specifics on me.

PN16484

Certainly. The numbers have grown with the growth of the pharmacy, no doubt?---Possibly not, no.

PN16485

But you're not sure?---No.

PN16486

And in terms of the hours that you keep, you've identified these at paragraph 5 of your witness statement. Have they been the hours that have been kept by the Innisfail pharmacy since 2011?---I believe when it was opened it was 8.00 till 8.00 seven days a week, but we dropped back to 8.00 till 6.00 on Saturdays and Sundays, partly due to the penalty rates and partly due to the profitability on those days.

*** GEORGINA CLARE TWOMEY

XXN MS FORSYTH

PN16487

They were slower trading days for you, the Saturday and Sunday?---Correct.

PN16488

And didn't justify the extended hours?---Correct.

PN16489

You say at paragraph 12 of your statement, Ms Twomey, that:

PN16490

It is not profitable to open extended hours as the amount we make from sales does not compensate for the amount we pay as a result of penalty rates.

PN16491

Do you see that?---Yes.

PN16492

What extended hours are you referring to there?---8.00 till 6.00 on Saturday and Sunday, and I would consider 6.00 till 8.00 Monday to Friday to be in extended hours as well. So anything on the Saturday after about 2 pm, I would consider as extended hours; on Sunday anything before 10 and anything after 4 pm, I consider as an extended hour.

PN16493

I see. But you're aware, are you not, that - sorry, I withdraw that. Have you done the analysis that shows that operating these extended hours are not, as you say, profitable?---Have I done specific analysis to assess whether those extended hours are profitable, did you say?

PN16494

Yes?---Yes, I have done extended analysis on that particular pharmacy.

PN16495

And I take it that that analysis has still allowed you to justify opening at the current time, those extended hours; namely after 4 pm on weekends?---As I said in my affidavit in clause 10, that the community did not have enough grass pharmacy, so a decision was made to open extended hours as a point of difference. That's why we've continued to do it. Does that answer your question?

*** GEORGINA CLARE TWOMEY

XXN MS FORSYTH

PN16496

Well, not quite. My specific question is this, and that is that the analysis that you say you've done to establish the proposition at paragraph 12 of your witness statement, that it is not profitable to open extended hours; what I'm saying to you is that the analysis that you've done there clearly hasn't prevented you from continuing to open those extended hours, namely up until 8 pm Monday through to Friday, and I think your evidence was sort of any time after 4 pm on the weekends. That's correct, isn't it? You're still operating those extended hours?---We are. But as I said to you, we were open till 8 pm on a Saturday and Sunday, so certainly when looking at the lack of profitability on those days, we made a decision to cull back the hours to 6 pm.

PN16497

Yes, and you note that. And look - - -

PN16498

You note that?---And looking into the future, we would continue to analyse and look at the bigger picture in terms of staying open these extended hours.

PN16499

But presently those extended hours are justified commercially?---With PBS disclosure and increases in rent on this particular pharmacy, we would keep the opening hours under constant review.

PN16500

But presently the hours that you operate are commercially viable, that's why you open those extended hours at present?---This week, they're viable; but we constantly look at this and would keep it under a constant review.

PN16501

I see. You referred to the Pharmaceutical Benefits Scheme, and I see that you refer to that also at paragraph 14 of your witness statement. You say there that:

PN16502

The costs of wages combined with reduced profitability associated with the Pharmaceutical Benefits Scheme price disclosure scheme is having a negative effect on our bottom line.

PN16503

Are you aware of the Sixth Community Pharmacy Agreement, Ms Twomey?---Yes.

PN16504

Are you aware that under that agreement there is what is described as - try to bear with me - the administration, handling and infrastructure fee?---I'm not aware of the full details of the Sixth Community Pharmacy Agreement. I know that it had been signed in around June and I know that there are a lot of details still to come on this agreement, so I know that there is an administration handling fee. I don't know what it is exactly, and I don't know that the business rules have been written and how it's going to affect pharmacy in the future.

PN16505

Would you accept that there has been a significant immediate increase in dispensing remuneration from 1 July with the introduction of this fee at a minimum of \$3.49 per script?---I haven't seen those results of an increase come through on my bottom line, no.

*** GEORGINA CLARE TWOMEY

XXN MS FORSYTH

PN16506

Well, that's not quite what I asked you but perhaps I'll ask you to refer to, and perhaps you will need to turn around for this purpose, a document that I understand has been placed behind you, Ms Twomey. I'm just showing the

witness, Your Honour, the exhibit which has been marked SDA9. (To witness)
Have you got that in front of you?---Yes.

PN16507

This is a bundle of fact sheets that have been provided from the Pharmacy Guild of Australia that are available on its website. Are you a member of the Guild, Ms Twomey?---Yes.

PN16508

Have you seen these fact sheets before?---No.

PN16509

You're aware that the Pharmacy Guild has these fact sheets on its website?---Well, I - yeah, that's - - -

PN16510

MR SECK: Objection. Objection.

PN16511

JUSTICE ROSS: She just said she wasn't aware.

PN16512

MR SECK: She said she hadn't seen the - - -

PN16513

JUSTICE ROSS: Yes, that's all right, Mr Seck. The question is not pressed.

PN16514

MR SECK: All right. May it please.

PN16515

MS FORSYTH: Thank you, Your Honour. (To witness) You will see that, Ms Twomey, if you turn to the final page of the bundle that I have given you, you will see that there is a fact sheet entitled "Benefits of the six community pharmacy agreement." Do you see that?---Yes.

PN16516

You will see that at point 4 it says that, "There will be a significant immediate increase in dispensing remuneration from 1 July with the introduction of the AHI at a minimum of 3.49 per script." Do you see that?---Yes.

PN16517

At point 5, that "The AHI means that for the first time pharmacies' official dispensing remuneration will be virtually immune from the impact of price disclosure. The AHI puts a permanent floor on dispensing remuneration." Do you accept that?

PN16518

JUSTICE ROSS: What do you mean by that? She accepts what's in the document?---I'm unsure.

*** GEORGINA CLARE TWOMEY

XXN MS FORSYTH

PN16519

The question is a bit misleading, I think. It's not a fair question.

PN16520

MS FORSYTH: Yes, I appreciate that, Your Honour. (To witness) Do you - - -
?---Am I supposed to answer?

PN16521

Yes.

PN16522

JUSTICE ROSS: No, Ms Forsyth is going to rephrase the question.

PN16523

MS FORSYTH: I will. (To witness) Do you accept that this is what the Pharmacy Guild of Australia has espoused as the benefits arising to community pharmacies like your own under the 6CPA?---I accept that it may be the Pharmacy Guild's opinion on how the AHI might affect it but also I don't understand what their definition of dispensing remuneration is.

PN16524

I see. But you would accept, would you not, that there have been changes to address what you would have described as the strain placed on community pharmacies by the PBS under the Sixth Community Pharmacy Agreement? You would be aware of that, no doubt?---I'm - like I said before, I'm aware of the AHI but I'm not clear on the business rules of how the 6CPA is being fully implemented in pharmacies.

PN16525

If I can take you then to paragraph 19 where you further refer to the Sixth Community Pharmacy Agreement, specifically the Community Pharmacy programs that have been given emphasis under the new agreement. Do you see where you refer to that at paragraph 19?---Yes.

PN16526

Again, if I can ask you to turn to the document that I have provided you with and again the final page, so this is actually - what I'm going to direct you to is point 12 on the Benefits of the Sixth Community Pharmacy Agreement fact sheet. Do you see that, point 12?---Yes.

PN16527

It says that there will be up to \$6m in funding for new and expanded Community Pharmacy programs providing the opportunity for pharmacies to transform and significantly broaden their role in pharmacy. Do you accept that?---I'm sorry, I must be in a different spot to you. Did you say point 12 on the Benefits of the Sixth Community Pharmacy Agreement? Where are you?

PN16528

Yes, I did. It's the last page on the document that you have in front of you.

*** GEORGINA CLARE TWOMEY

XXN MS FORSYTH

PN16529

MR SECK: Can I say paragraph 12 on the last page is different for me as well. Paragraph 12 reads out - - -?

PN16530

WITNESS: Thank God.

PN16531

MS FORSYTH: Sorry, paragraph 17, that is my error, 17?---Okay.

PN16532

There it refers to \$6m in funding being - - -

PN16533

JUSTICE ROSS: Six hundred million.

PN16534

MS FORSYTH: Six hundred million, you can see maths wasn't my strong point, Your Honour. Six hundred million dollars in funding for new and expanded Community Pharmacy programs under the new agreement. Do you see that?---Yes.

PN16535

You accept that that is a benefit that would be provided to your pharmacy among others, or your pharmacies among others under this new agreement?---I think it would be a wonderful benefit but whether we actually see a dollar of it, I don't - I'm yet to see how that will eventuate.

PN16536

In respect of the services you say your pharmacy provides, you have articulated these at paragraph 21 of your statement. There are a number. You refer to Webster-Paks, methadone dosing, and then a number of other services that are identified as sub-paragraph (a) through to (d) in paragraph 21. Do you see that, Ms Twomey?---Yeah, (a) through to (e).

PN16537

Can you tell the Commission whether you receive funding for Webster-Paks?---When?

PN16538

Whether you receive funding, government funding, Federal or State funding, for the provision of Webster-Paks to your customers?---Yes. I'm not across the details but I believe we would receive funding for CTG patients for Webster-Paking.

PN16539

What are CTG customers?---Closing the Gap. Closing the Gap, Aboriginal and Torres Strait Islander customers that qualify for the Closing the Gap program.

*** GEORGINA CLARE TWOMEY

XXN MS FORSYTH

PN16540

Thank you. The methadone dosing program, do you receive any government funding for that?---Well, I'm not across the details, sorry.

PN16541

You don't know whether you receive any funding for that?---No, I'm not sure.

PN16542

Do you charge a fee for service for either the Webster-Pak provision or the methadone dosing program?---I'm not sure for the methadone dosing program but for the Webster patients that have - Closing the Gap patients, they would not be charged a fee, no.

PN16543

For any other patients that receive Webster-Paks, would you charge a fee for them?---Yes, they would be charged a fee, I'd imagine, yeah. I'm not sure of the specifics of the fee.

PN16544

In terms of the healthcare aids and advice that you give to patients and identify sub-paragraphs (a) to (3) in your witness statement, which of those do you receive funding for?---None.

PN16545

Do you charge a fee for service for any of those services identified there?---People are charged a fee for hiring equipment but not for the advice that they're given. Like, there's no specific fee for advising how to use a breast pump but there is a charge for hiring a breast pump, if that makes sense.

PN16546

Understood. Finally, Ms Twomey, you say at paragraph 27 of your statement that, "If the Guild's proposal is accepted, we would consider trading from 8 am to 8 pm seven days a week and have staff meetings and training sessions on Sundays during the week from 7 am." Have you undertaken an analysis to determine whether or not it would in fact be viable to open from 6 pm to 8 pm through the weekdays where you currently - sorry, from 6 pm to 8 pm on the weekends when you only currently open until 6 pm? Have you looked at that as something that is viable for your pharmacy or is it just something - - -?---Well, we did previously open at those house, as I mentioned. We took an analysis. We drew them back to 6 pm on the weekends due to the lack of profitability. No, I haven't taken an analysis based on what the Guild's proposal is for penalty rates but I would be - I think it's more of a willingness to re-look at it and extend hours again in the future, depending on how things eventuate.

PN16547

That would in part depend, would it not, on understanding what the demand for your service is or what the custom or trade is on those particular days at those particular times?---That would be one of the aspects that we would look at, yes.

*** GEORGINA CLARE TWOMEY

XXN MS FORSYTH

PN16548

No further questions, thanks, Ms Twomey.

PN16549

JUSTICE ROSS: Any re-examination, Mr Seck?

RE-EXAMINATION BY MR SECK

[12.44 PM]

PN16550

MR SECK: One question, Your Honour. Ms Twomey, in answer to the last question that was asked by Ms Forsyth for the SDA, you said you were willing to look at a number of things and Ms Forsyth said to you would look a trade and you said that would be one aspect you would look at. What other aspects would you look at in terms of determining whether or not you would open from six to eight if the Guild's proposal was accepted by the Commission?---I'd look at the community need. I'd look at the safety of the area and my staff during those hours. I'd look at the - I think mainly it would be the community need. So if Innisfail required added health care during those hours, I would - and people were driving, you know, an hour and a half to two hours to find a pharmacy, I would like to be able to be open for them to help them out.

PN16551

How would you determine that community need, Ms Twomey?---Well, I already know there are no other pharmacies open in the area and in a radius of an hour in some directions from Innisfail, so I know myself from working there, up to 6 pm on a Saturday or a public holiday I quite often get people from hospitals, emergency departments, come in for medication and driving for an hour, you know, with a paralysis tick bite, just to get the medicine they need because they're so desperate.

PN16552

Thank you, Ms Twomey?---Does that - - -

PN16553

No further questions. It does answer my question, thank you, Ms Twomey?---Okay.

PN16554

JUSTICE ROSS: Ms Twomey, you are excused, thank you.

<THE WITNESS WITHDREW

[12.46 PM]

PN16555

JUSTICE ROSS: Before we adjourn, there are a couple of matters I wish to raise. The first matter is that on 14 October I issued an order to produce to Ms Carleen Weiner. An examination of the files at the moment indicates that the order has not been complied with and she is on to give evidence tomorrow, Mr Moore.

PN16556

MR MOORE: Might I take that on notice over the luncheon break, Your Honour?

GEORGINA CLARE TWOMEY

RXN MR SECK

PN16557

JUSTICE ROSS: Thank you.

PN16558

MR MOORE: Could I just clarify the name of the witness?

PN16559

JUSTICE ROSS: Carleen Weiner.

PN16560

MR MOORE: Yes, I'll take some instructions about that.

PN16561

JUSTICE ROSS: Thank you very much.

PN16562

MR SECK: Can I just indicate, Your Honour? We had discussions, if it helps, with Mr Macken on this issue. He told us this morning that there are documents which have been put into a drop box. We haven't had the opportunity to check that yet but that is our understanding of the situation.

PN16563

JUSTICE ROSS: Well, at the moment, according to our AMOD people, they have not arrived, so it is important that they make the Commission by tomorrow.

PN16564

MR SECK: Indeed, Your Honour.

PN16565

JUSTICE ROSS: Thank you. The second matter I wanted to raise, Mr Wheelahan, is that for this afternoon's witnesses it is possible that we won't need the time currently allocated, that is 40 minutes for the first witness. Could you make sure that the three witnesses are available slightly earlier if possible?

PN16566

MR WHEELAHAN: Yes, I will.

PN16567

JUSTICE ROSS: And thirdly, although all the parties are not here, and I will send some separate correspondence about this, I understand at the moment that the expert witnesses to be called in November, the objections to those witnesses have still not been resolved. I received correspondence from AIG last week saying that there was a document to come about what those objections were but they're still outstanding. Given that this matter is to be debated next Thursday the 29th, I propose to conduct a conference in the slot that is vacant on Tuesday afternoon at about 1.30 to see whether we can resolve those objections similarly in the fashion that we resolved previous objections. The Commission is adjourned until 2 o'clock.

*** GEORGINA CLARE TWOMEY

RXN MR SECK

PN16568

MR MOORE: Your Honour, I'm sorry to interrupt. There were two other scheduling matters I was going to raise if that is convenient.

PN16569

HIS HONOUR: Yes, go ahead.

PN16570

MR MOORE: Tomorrow, Mr Topp is schedule at 11.30. Mr Diorelli is at 9.30. Mr Diorelli's statement, there is an amended statement being filed and it is substantially less than it was. There's two hours put aside there. I am not going to need two hours of Mr Diorelli. I would have thought half an hour would be more in the range. I am not sure if Mr Seck is still hearing me but I am not sure what arrangements, if any, might be able to be altered but the Guild witness Mr Topp is currently scheduled for 11.30. Subject to the Commission's convenience, it might be desirable for that to be brought forward earlier.

PN16571

JUSTICE ROSS: Well, that may be more difficult. I'm thinking perhaps we might have a later start. It might be the easiest way.

PN16572

MR MOORE: That could be another way of dealing with it, Your Honour. Can I deal with the other - flag the other matter because it might affect your deliberations.

PN16573

JUSTICE ROSS: Yes.

PN16574

MR MOORE: There is a witness called by the SDA [REDACTED], who is listed to give evidence at 2.30 on Tuesday. I am instructed that there are difficulties around her being released to give evidence on Tuesday. Rather than dealing with that in a formal way, a pragmatic approach, if it is convenient to the Commission, would be to re-schedule her for Wednesday at which time I'm told the difficulties around her being released are not present.

PN16575

JUSTICE ROSS: Well, she could move to after 10.30 on Wednesday.

PN16576

MR MOORE: That is right.

PN16577

JUSTICE ROSS: I think that we'll do that.

PN16578

MR MOORE: All right.

PN16579

JUSTICE ROSS: I think that makes it easier. I'll say 10.50 just for the record.

PN16580

MR MOORE: Yes, thank you for that, Your Honour.

PN16581

JUSTICE ROSS: All the witnesses on Tuesday afternoon are by VC. The question is whether we can shift them up, start a bit earlier. Can you make some enquiries perhaps, Mr Moore, over the luncheon break?

PN16582

MR MOORE: About whether the witnesses on Tuesday afternoon could be brought forward earlier in the - - -

PN16583

JUSTICE ROSS: Or even if the last witness, for example, moved to 2.30 or something, whatever juggling you like.

PN16584

MR MOORE: To bring them forward earlier into the afternoon.

PN16585

JUSTICE ROSS: So we don't finish at 3.50.

PN16586

MR MOORE: As late. Yes, I see.

PN16587

JUSTICE ROSS: And in relation to the start tomorrow morning - just pardon me a moment. Mr Moore, how long do you think you would be with Mr Diorelli?

PN16588

MR MOORE: Half an hour we would be done.

PN16589

JUSTICE ROSS: All right. I think we'll start at 11 o'clock tomorrow, give the parties more time perhaps so they can have some discussion about objections as well even if by telephone.

PN16590

MR MOORE: There is plenty to do, your Honour.

PN16591

JUSTICE ROSS: Yes, all right. The Commission is adjourned until 2 pm.

LUNCHEON ADJOURNMENT [12.52 PM]

RESUMED [2.13 PM]

PN16592

JUSTICE ROSS: Thank you. Mr Gough.

PN16593

MR WHEELAHAN: If the Commission pleases, I call Mr Gough.

PN16594

THE ASSOCIATE: Mr Gough, could you please state your full name and address.

PN16595

MR GOUGH: My name is Graeme James Gough, and I live in (address supplied).

<GRAEME JAMES GOUGH, AFFIRMED [2.14 PM]

EXAMINATION-IN-CHIEF BY MR WHEELAHAN [2.14 PM]

PN16596

MR WHEELAHAN: Mr Gough, your name is Graeme Gough and you are a director and part owner of Key Market Pty Ltd, which runs Spar Ballina. Correct?---Ballina, yes, that's correct.

PN16597

And you've prepared a statement for these proceedings which has 22 paragraphs and one attachment. Do you have a copy of that in front of you?---I do, yes.

PN16598

If you could please turn to paragraph 22?---Yes.

PN16599

My learned friend has objected to the second and third sentence, and that objection has been conceded. So if you could mark out the second sentence commencing, "I have been advised by one of my employees"?---Yes.

PN16600

That sentence and the following sentence, that should be struck out?---Okay.

PN16601

And with those changes is the statement otherwise true and correct in every particular?---Yes, it is.

PN16602

I tender that statement and the attachments.

PN16603

JUSTICE ROSS: With that objection noted, Retail 5.

EXHIBIT #R5 STATEMENT OF GRAEME GOUGH AS AMENDED PLUS ATTACHMENT

CROSS-EXAMINATION BY MR MOORE [2.15 PM]

*** GRAEME JAMES GOUGH

XN MR WHEELAHAN

*** GRAEME JAMES GOUGH

XXN MR MOORE

PN16604

MR MOORE: Mr Gough, can you hear me?---I can, yes.

PN16605

Mr Gough, my name is Moore and I'm counsel for the Shop Distributive and Allied Employees Association. I just want to ask you some questions about your statement to the Commission?---Sure.

PN16606

By way of background, before you opened Spar Ballina, as I understand it, that business was operated as what's called a Farmer Charles supermarket. Is that right?---Yes, Farmer Charlie's, yes. It was a fruit barn, yes.

PN16607

Yes. And the Farmer Charles business went into administration, as I understand?---That's correct.

PN16608

And I take it that without digging into the legalities of it, in effect you and your partners acquired that business and relaunched it as Spar Ballina. Is that right?---That's correct. We did a major refurbishment and a re-launch.

PN16609

Thank you. You've got to partners or co-owners in the business?---There are two companies that own it. So the other partners are directors of the other company that owns the business.

PN16610

Yes. And one of those persons is a Mr Trim. Is that right?---That's correct, yes.

PN16611

And he has got a corporate background with Caltex?---Yes, he has, yes.

PN16612

Is the other person and Mr Morris?---That's correct.

PN16613

And he's a chartered accountant?---That's correct.

PN16614

And I take it that before you bought and relaunched the supermarket into Spar Ballina, you and your partners did something in the nature of a due diligence in respect of the prospect of the business being successful into the future?---We certainly did. We did that in conjunction with Spar as well.

PN16615

I see. And you would have, as part of that process, appraised the competitive environment?---We did the competitive environment of the day; yes, we did.

PN16616

And you would have also considered and assessed what your labour costs obligations would be in terms of the applicable award minima?---Of the day, yes, we did.

*** GRAEME JAMES GOUGH

XXN MR MOORE

PN16617

And this is back in 2011?---Yes, that's correct.

PN16618

And you say in paragraph 9 of your statement that Spar Ballina is not profitable, and you say that on average you make \$72,000 in sales - I'm sorry. On average you're making \$70,000, but you need 72,000 on average per week to break even?---Yes, that's correct.

PN16619

So I would - on my simple arithmetic that would suggest to me that you're running at a loss of about \$100,000 per annum. Is that about right?---That is about right. It has varied a bit over time, but that is about the mean.

PN16620

All right. And I assume that the supermarket hasn't been profitable for any of the financial years you've operated it since 2011?---That is also correct.

PN16621

Thank you. And are you able to tell the Commission what your losses were in the previous financial years between 2011 and the present time, approximately?---We've got - it is in the order of \$400,000 in - in direct losses.

PN16622

Over that period?---Yes.

PN16623

I see. Thank you. And you say in paragraph 11 that you structure the use of labour on the basis that in order for the business to achieve your required level of profitability, direct labour costs are required to be limited to 10 per cent of retail sales, and in the past 12 months you've been running at 13.6. Would I be right in thinking that for all of the most of the period since you've commenced operating business in 2011, that it has operated over 10 per cent?---Yes, that would be a fair assumption, yes.

PN16624

Okay. Thank you. Are you able to tell the Commission what - when you refer in that paragraph to what you refer to as achieving your required level of profitability, do you know - what level of profitability are you striving for?---Well, as of right now we're striving to achieve any level of profitability; certainly to stop the bleed.

PN16625

And I assume, Mr Gough, that it's because you have been able to achieve to break even over the four years or so that you've operated a business, and over which time you've accrued losses in the vicinity of \$400,000, that you've had to consider ways of reducing the costs of the business, such as reducing rostered hours of work between Monday and Saturday?---Yes, that's correct.

*** GRAEME JAMES GOUGH

XXN MR MOORE

PN16626

Thank you. Now, Mr Gough, hopefully you have near you where you are sitting some documents that have been placed there by the Commission staff?---Yes, I do.

PN16627

Could you turn those over, please. I just want to - you should hopefully have three stapled bundles of documents. Is that right?---No, I've got one bundle of documents that's not stapled, and they're duplicates, so there's really no top or bottom.

PN16628

[REDACTED]

PN16629

[REDACTED]

PN16630

[REDACTED]

PN16631

[REDACTED]

PN16632

[REDACTED]

PN16633

[REDACTED]

PN16634

[REDACTED]

PN16635

[REDACTED]

PN16636

[REDACTED]

*** GRAEME JAMES GOUGH

XXN MR MOORE

PN16637

[REDACTED]

PN16638

[REDACTED]

PN16639

[REDACTED]

PN16640

[REDACTED]

PN16641

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PN16642

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*** GRAEME JAMES GOUGH

XXN MR MOORE

PN16649

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PN16650

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PN16651

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PN16652

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PN16657

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PN16658

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PN16659

[REDACTED]

*** GRAEME JAMES GOUGH

XXN MR MOORE

PN16660

[REDACTED]

PN16661

[REDACTED]

PN16662

PN16663

I was going to take you through the remaining documents and perhaps I might in a moment but I might avoid that if I just ask you a general question. You accept that Sunday trade is typically either your lowest or second lowest trading day at Spar Ballina, in terms of volume of sales?---Difficult to generalise without actually looking at a broader spread of trade conditions. This was certainly the case through the winter months. The summery months our trade does change and is generally different, because of the tourist trade. I wouldn't - without further examination I wouldn't like to accept that as a generalisation.

PN16664

[REDACTED]

PN16665

Thank you. Can I - - -

PN16666

JUSTICE ROSS: Are you tendering that, Mr Moore?

PN16667

MR MOORE: Thank you, your Honour. I do tender those two bundles.

PN16668

JUSTICE ROSS: Just the two or all three?

PN16669

MR MOORE: I don't think it necessary to tender the third.

PN16670

JUSTICE ROSS: As one bundle or as two bundles?

PN16671

MR MOORE: I'm in your Honour's hands.

*** GRAEME JAMES GOUGH

XXN MR MOORE

PN16672

JUSTICE ROSS: We might just do them as one, I think, because the witness has got them altogether, so I'll make that SDA14.

EXHIBIT #SDA14 BUNDLE OF DOCUMENTS

PN16673

MR MOORE: Thank you. If you can go to paragraph 15 of your statement?---Yes.

PN16674

You refer to the GRIA, meaning that employees working on Sundays are paid at a rate of double time the ordinary hourly rate of pay, and you say this rate was phased in from the time you commenced operating the business, which meant that the costs to the business for labour on Sundays has significantly increased since 2011. Do you accept that when you commenced operating Spar Ballina in 2011, the Sunday rates were 170 per cent, that is a 70 per cent loading on the ordinary rate?---I would have to take your word for that. I have - I don't have the exact numbers to hand but I recall that there was a loading on the Sunday rates of pay, yes.

PN16675

What I'm suggesting to you is that the rates have indeed increased over the period that you've operated the business but they've gone from a loading of 70 per cent to a loading of 100 per cent, not from 50 per cent to 100 per cent. You don't dispute that?---No, I don't dispute that.

PN16676

Thank you. You say in paragraph 17 that you've always run a skeleton staff on Sunday and I take it that that's because principally - because it's one of your quietest days and you want to keep the costs down on that day?---Well it's certainly because of cost.

PN16677

What I'm suggesting to you is that you run - you run a skeleton crew on that day because labour costs more and it's one of your quieter days?---We run the skeleton crew because of costs. You know, if we had the opportunity we would do more on a Sunday but because of cost we do less in the store.

PN16678

Can I ask you about paragraph 19(b), where you refer to Sunday being effectively a service only day and you don't do any stock replenishment, cleaning or administrative tasks. There's always in the sort of business you run those tasks need to be done. There's hours of work that are necessarily associated with doing those tasks, that's so?---Yes.

*** GRAEME JAMES GOUGH

XXN MR MOORE

PN16679

What you do I take it is you allocate those hours of work to days other than Sunday?---Yes, to an extent. We don't do, as I've said in the statement, the paragraph there, we don't - we wouldn't do a major stock replenishment or we

wouldn't undertake, you know, a clean of the deli area for example or a stripping out stock to clean in the chilling units. So we do - we keep it to a minimum sort of day for that activity.

PN16680

Yes, and those duties and work just get done when you can on other days, other than Sunday?---Well they're also rostered on other days as well. We have days for doing different tasks and those tasks don't happen to fall on Sundays.

PN16681

If you could look at paragraph 20, you say that if the Sunday penalty rate was decreased from 100 per cent to 50 per cent, you would roster more staff over both Saturday and Sunday. I'm sorry, I haven't read that accurately. Roster more senior staff over both Saturday and Sunday. So just pausing there. In that eventuality, there would to some extent be the replacing of more junior staff with senior staff on Saturday and Sunday, that's right?---That's correct, yes.

PN16682

Thank you. You go onto say in paragraph 21, you're not certain that you would reinvest all of the labour cost savings brought about by a reduction of the Sunday penalty back into additional hours of work, because you first need to address the profitability question. So at least initially, Mr Gough, given that you're labouring under accrued losses in the vicinity of \$400,000, if penalty rates were reduced to 50 per cent, at least initially, that wouldn't translate into any increase in rostered hours I take it?---Well like anything else in the business, we look at what benefit we would derive from that and we think that there is a fair benefit there. But having said that, you know, we're - if the business was profitable at the moment and we weren't struggling financially and cash flow was up to speed well, yes, we would immediately do it. Look, possibly we would anyway because - but I couldn't sit here and say to everyone that yes, we would definitely do that first up but we might. The situation hasn't occurred.

PN16683

Mr Gough, really given that the business is struggling and it's losing \$100,000 a year and has significant accrued losses, the import of your evidence is to say well, first you've got to - before you translated any penalty cut into additional staffing you would want to claw back some of those losses and put the business on a secure footing. That's so?---If the change in penalty rates would allow us to do that yes, we probably would in the first instance.

PN16684

You probably would what in the first instance?---Well we'd probably try and address our cash flow issues.

PN16685

Yes. So before you got around to doing any of the things you say in (a), (b) and (c), you've got a lot of losses - - -

*** GRAEME JAMES GOUGH

XXN MR MOORE

PN16686

MR WHEELAHAN: (a), (b) and (c) of what?

PN16687

MR MOORE: (a), (b) and (c) of paragraph 20, there's a lot of losses to recoup, that's so?---It is but it's a chicken and egg thing really, because for us to - if we just relied on the recouping of the penalty rate we'd be a long time before we actually made good those losses, I can tell you. So if we could determine that it is a better reinvestment of that saving into productivity issues, then we could accelerate the return of profitability. So I think that'd be more along the lines that we would follow.

PN16688

This business has never been profitable, that's right?---That is correct, except for the last two months. We've just got some numbers out now where we've broken even for the first time.

PN16689

Congratulations. The reality, Mr Gough, is that the matters - the possible things that you set out in paragraph 20 (a) through to (c) may well never happen given the struggles that your business has had in making a profit, even if penalty rates were reduced?---Well that is our reality, so that is what we have to deal with and we are faced with - we are faced with having to do something. So we've still got 20 staff, 20-odd staff that we feel some responsibility for, that we pay each week. We have a substantial financial commitment to the business and we are working very hard to continually improve our lot and as I say we have made some progress but we've got a long way to go.

PN16690

I take it you actually haven't sat down and calculated the impact of the proposed reductions in penalty rates on how that would improve your profitability?---Well anecdotally we've looked at what would happen if we operated our bakery, for example, and you know you've got to understand we're just a small business really. We don't have a lot of resources to forecast and to put all of these things together. We don't have a lot of time to do it, but when - we've done quite well in our bakery business and we think that it would do quite well on Sundays and Saturdays. So they're the sorts of discussions and thoughts that we've had.

PN16691

In terms of the things you refer to in paragraph 20 of rostering more staff, operating the bakery and you and the store manager working less unpaid hours, do you accept that it's fair for the Commission to read your evidence there as those things as being really aspirational as to what you would like to do if you can?---Well it's certainly something we would aspire to is to actually improve our business.

*** GRAEME JAMES GOUGH

XXN MR MOORE

PN16692

But they are a long way off from being able to be pursued even if penalty rates were reduced, do you accept that?---Well we're undertaking a range of measures to improve the business and I think we provided some rostering information as

part of the submission which showed we'd dramatically cut overall hours to try and improve the business. We've invested in capital equipment to try and improve a lot of the business. So these aren't just thoughts, these are things that you know ongoing we've been doing. We've just changed a whole lot of marketing within the business to try and improve the fortunes of the business. It's not as if we're just simply sitting back, waiting for something else to happen, you know, to improve it. We've actively pursued other things to improve the business as well.

PN16693

Thank you, Mr Gough. No further questions. Just wait there, Mr Gough.

PN16694

JUSTICE ROSS: Any re-examination?

PN16695

MR WHEELAHAN: No.

PN16696

JUSTICE ROSS: Mr Gough, you're excused?---Thank you.

<THE WITNESS WITHDREW [2.47 PM]

PN16697

We'll take a short adjournment as we organise the next VC.

SHORT ADJOURNMENT [2.47 PM]

RESUMED [2.55 PM]

PN16698

JUSTICE ROSS: Thank you, Mr Wheelahan.

PN16699

MR WHEELAHAN: Your Honour, I call Mr Antonieff.

PN16700

THE ASSOCIATE: Mr Antonieff, could you please state your full name and address.

PN16701

MR ANTONIEFF: My full name is Peter Christian Antonieff. My address is (address supplied).

<PETER CHRISTIAN ANTONIEFF, SWORN [2.55 PM]

EXAMINATION-IN-CHIEF BY MR WHEELAHAN [2.56 PM]

PN16702

MR WHEELAHAN: For the transcript, can you please state your full name again?---My full name is Peter Christian Antonieff.

*** PETER CHRISTIAN ANTONIEFF

XN MR WHEELAHAN

PN16703

And, Mr Antonieff, you're also known commonly as Chris for your first name?---That is correct, yes. At work.

PN16704

Yes. And that's - hence the statement that you have made for these proceedings says "The statement of Chris Antonieff". Correct?---That is correct.

PN16705

And do you have a copy of that statement in front of you?---Yes, I do.

PN16706

Are there any changes that you want to make to that statement?---No, there is not.

PN16707

And is the statement true and correct in every particular?---Yes, it is.

PN16708

And you are - if I just go back - you are the director of Prapulla Pty Ltd, which trades - - - ?---Prapla Pty Ltd.

PN16709

- - - trading as Foodworks Oxley?---Correct.

PN16710

I tender the statement, your Honour.

PN16711

JUSTICE ROSS: Retail 6.

EXHIBIT #R6 STATEMENT OF CHRIS ANTONIEFF

CROSS-EXAMINATION BY MR MOORE

[2.57 PM]

PN16712

MR MOORE: Mr Antonieff, can you hear me?---Yes, I can.

PN16713

My name is Moore and I'm counsel for the Shop Distributive and Allied Employees Association. Am I pronouncing your name correctly as in Antonieff?---Antonieff, yes. You're doing a great job.

PN16714

Thank you for that encouragement. Now, can I just ask you some questions about your statement. In paragraph 11 you say that:

PN16715

Sunday trading accounts for about 15.7 per cent of Foodworks Oxley's weekly trading.

*** PETER CHRISTIAN ANTONIEFF

XXN MR MOORE

PN16716

And:

PN16717

On a sales by hour basis Sunday is our second-best trading day behind only Saturday, with Sunday sales averaging \$588 per hour.

PN16718

You go on to say that you've produced to the representatives of the SDA a copy of the data supporting your statement?---That is correct.

PN16719

Now, do you have with you in the witness box some documents that hopefully a member of the Commission staff may have left for you?---I've actually printed my own out.

PN16720

Have you got a document that hopefully has been provided by the Commission to you which is headed, "Oxley Foodworks, 113 Oxley Station Road, Oxley, Queensland, 4075, consolidated hourly productivity report for the week ending 31 May 2015"?---Correct. Yes, I do.

PN16721

Good. And I might just provide to the Bench, for the purposes of identification, a copy of this document.

PN16722

Now, the first page of the document is for the week ending 31 May 2015. That's right?---That is correct, yes.

PN16723

And the second - - -?---Monday to Sunday.

PN16724

Yes. And the next pages for the week ending 24 May?---Correct.

PN16725

And then the next page, 17 May, then 10 May?---Yes.

PN16726

There may be duplicates thereafter, I think?---No, they're not duplicates. They're actually break-ups for the actual Sunday day. So the first four documents that you've just presented are actually for the whole entire weeks.

PN16727

Yes?---And then to back up the claim in relation to percentage of sales for overall the whole week, I've provided the Sundays for those weeks.

PN16728

I see, so the Sundays. I follow. 10 May, 17 May, 24 May and 31 May?---Correct.

*** PETER CHRISTIAN ANTONIEFF

XXN MR MOORE

PN16729

I follow. You produced those documents to the Commission in response to a request to do so or a direction to do so?---Yes.

PN16730

What I don't understand is how the documents that I've just taken you to explain what you've set out in paragraph 11; that is that Sunday trading accounts for approximately 15.7 per cent of weekly trade, with Sunday sales averaging \$588. Do these documents demonstrate that?---As far as averages go, yes.

PN16731

Well, you will need to explain to the Commission how the documents I've just been asking you about establish firstly the proposition that Sunday trading accounts for approximately 15.7 per cent of weekly trade. Can you assist the Commission in that regard, please?---Yes. Well, if you have a look at the first weekly report dated the week ending 31 May.

PN16732

Yes?---And then have a look at the sales for the Sunday, 10 May, that is actually representative of 17.8 per cent of weekly sales.

PN16733

So just pausing there, Mr Antonieff. So what's the calculation one needs to do to get that result?---Well, if you're trying to work out a percentage basis of an overall sales, you grab the figure that you're trying to find as a percentage and divide that by the total number.

PN16734

Can you tell me and the Commission what numbers - - -?---Yes.

PN16735

You direct us to the specific numbers that allow that calculation?---Okay. Yes. Okay. So if you've got your calculator ready, you can go [REDACTED] - - -

PN16736

Which page are you looking at?---That is actually the fifth page, so the Sunday, 10 May.

PN16737

Yes. Just hang on one second. Yes, I have that. Where's the number? What was the number, sorry?---At the top you've got some columns there, you've got Hours, Customers, Items Sold, and then Sales Dollars.

PN16738

Yes?---Which is the fourth column of information across.

PN16739

Yes?---Okay. And down the bottom you've got [REDACTED].

*** PETER CHRISTIAN ANTONIEFF

XXN MR MOORE

PN16740

I see. Yes?---Okay. So you divide that by [REDACTED], which is our weekly sales for week ending 31 May.

PN16741

Yes.

PN16742

JUSTICE ROSS: Mr Antonieff, I think we made this clarification. It seems to me that you're looking at two different dates; one is 10 May, and is not be week ending 10 May the one - - - ?---Okay. All right. Yes. Okay. I'm looking - because I didn't put this together. Okay. So 10 May. All right. Let me recalculate that, guys. So that's 17.3 per cent. Okay. So you need to go to sheet number 4, which is - - -

PN16743

MR MOORE: Yes. Is that for the week ending 10 May?---Week ending 10 May, yes.

PN16744

Yes?---My apologies for that. I collated mine in date order, so.

PN16745

And so do you take - - - ?---And that's - - -

PN16746

- - - [REDACTED] and divide it by the total weekly sales for that week of [REDACTED]. Is that right?---That is correct.

PN16747

Just bear with me. Which gives you 17 per cent. I see?---17.31 per cent, yes.

PN16748

I follow. Thank you, Mr Antonieff. The witness has requested confidentiality in relation - I don't think it's necessary to tender the documents. I wasn't quite sure; I needed to understand the documents, but I understand them now?---Okay.

PN16749

JUSTICE ROSS: Yes.

PN16750

MR MOORE: I don't seek to tender them.

PN16751

All right. Thank you for that clarification, Mr Antonieff. Now, coming back to your statement, as I read your statement, there really are two key dates in your evidence?---Yes.

*** PETER CHRISTIAN ANTONIEFF

XXN MR MOORE

PN16752

The first is 1 January 2010, from which time you say the then applicable penalty rate for Sundays was increased from 50 per cent to double time at 100 per cent. That's the first important date in your evidence?---Right. Yes.

PN16753

And you understand that that increase in penalties was phased in over four years?---Yes. Actually - well, phase in transitional rates, yes.

PN16754

Yes. So that's the first important date in your evidence. And the second important date, as I read it, is July 2013, when a Woolworths opened next door to your business. That's right?---Correct.

PN16755

And your evidence is, paragraph 16, as I understand what you're saying is that the reduction in Sunday hours - I withdraw that. You're saying that there was a reduction in Sunday hours and total hours worked between 2008 and 2013, and that was primarily due to the increase in the cost of labour on Sundays. That's what you say? Am I understanding that correctly?---I'm saying the hours decreased in 2013, as opposed to 2008, and in particular they decreased over the transitional phase of the General Retail Industry Award. Because if you refer back to 15.

PN16756

Yes?---You can see there, back in 2008, of the hours that we had rostered on Sunday was 51.25.

PN16757

Yes?---Right. And then July - now, keeping in mind that our competitor did not open until the 27th, you already see there from 2008 to 2013 that there was already over a 20 per cent reduction in the number of hours rostered on a Sunday to manage our labour costs.

PN16758

Yes. And so looking at the table in paragraph 15, that's a useful way to do this?---Yes.

PN16759

Amongst other things, you're saying - let me start again. What one sees there in the table is back in the period of February to March 2008 there were 371.25 total hours rostered, including 51.25 on a Sunday?---Yes.

PN16760

If one goes to the period ending 21 July 2013, just before the Woolworths opened up?---Yes.

PN16761

Those numbers have fallen to 321 and 37 respectively. Right?---Correct. Yes.

*** PETER CHRISTIAN ANTONIEFF

XXN MR MOORE

PN16762

And what I'm just confirming is that you say that those reductions in total hours and Sunday hours were caused by the increase in Sunday penalties?---Definitely. That would be a contributing factor, for sure.

PN16763

And then to just complete the narrative, looking at the table?---Yes.

PN16764

Continuing to look at the table, when one sees at the week ending 21 July 2013 where there are 321 total hours and 37 Sundays, if one jumps forward to 31 May 2015, you will see 193.75 hours and 26.5 hours?---Yes.

PN16765

So a further reduction in that period?---Yes.

PN16766

And what you're saying is that that further reduction is principally attributable to the Woolworths opening up next door?---Absolutely. In the process of managing labour costs, yes.

PN16767

Yes. All right. Thank you?---I guess the other thing, to - - -

PN16768

I'm sorry, Mr Antonieff, you just need to answer the questions which I will ask you?---Okay.

PN16769

I just want to deal with this period from 2013; the Woolworths competition period, if I can call it that, from July 2013 to May 2015?---Yes.

PN16770

You say:

PN16771

There has been a significant decline in sales.

PN16772

That's in paragraph 7 of your statement, in that period. Correct?---Yes.

PN16773

What has the percentage reduction in your sales been in that time?---Percentage of dollar sales, initially in that period it was around the 34 per cent.

PN16774

What, for the first financial year?---32 to 34 per cent.

PN16775

In the first - would that be, for example, for the financial year ending June 2014?---Yes.

*** PETER CHRISTIAN ANTONIEFF

XXN MR MOORE

PN16776

I see. And then for the year ending June 2015?---In June 2015, probably around the 28, 27 per cent, based on 2013.

PN16777

I see?---So 13, 14, 32 per cent; 14,15, probably about 28, 27 per cent.

PN16778

And when you say 28, 27 - 28, 29 per cent for that second year - - - ?---Reduction.

PN16779

- - - is that a further reduction from 2014, or - - - ?---No. No, not at all.

PN16780

I see. That's a reduction by reference to the 2013 high. Is that right?---That is correct, yes.

PN16781

I see. Thank you. And I take it you have annual accounts prepared?---Yes.

PN16782

And do those annual accounts record your annual sales?---Absolutely.

PN16783

All right. You have annual accounts for the financial year ending June 2012 and for the financial year ending June 2013?---Yes.

PN16784

For the financial year ending June 2014?---Correct.

PN16785

And for the year ending June 2015?---I do.

PN16786

I call for the production of those accounts.

PN16787

VICE PRESIDENT CATANZARITI: Please make available, through your representative, the material that has been requested?---I can, but - - -

PN16788

You don't have to do it right now, but subsequently. Thank you.

PN16789

MR WHEELAHAN: Can I - sorry to interrupt, your Honour. For the witness's benefit, production doesn't mean tendering to make the documents public, so that -
- -

*** PETER CHRISTIAN ANTONIEFF

XXN MR MOORE

PN16790

VICE PRESIDENT CATANZARITI: No, it's only to provide them so Mr Moore can have a look at them.

PN16791

MR WHEELAHAN: They're not being tendered into evidence at this stage.

PN16792

MR MOORE: Mr Antonieff, is it your evidence that the principal cause of the reduction in sales from July 2013 to July 2015 has been the reduction in sales - sorry - has been the Woolworths competition?---Absolutely.

PN16793

Thank you. Now, I want to go back in time to the period from 2008 to 2013, which I asked you about before?---Yes.

PN16794

Did you undertake any analysis or calculation to conclude that the reduction in total hours rostered and Sunday hours rostered between 20/8/2008 and 2013 was primarily due to the increase in cost of labour on Sundays?---The increase to cost of labour. I mean, look, as a small business you have to manage your costs on a day-to-day basis, on a weekly basis, on a monthly basis, based on turnover; and, of course, what the known costs are. Labour is one of those costs that you can sit down three weeks in advance and work out that: hey look, if my sales are going to be 65, \$70,000 a week, my budget of labour is going to be six and a half thousand dollars, and this is the number of hours that I've got available to me over the roster.

PN16795

My question was simply this - - -?---Obvious - - -

PN16796

Sorry, did you finish your answer?---I was just going to say that's obviously based on the cost of your workforce.

PN16797

What you say in your statement - thank you very much. What you say in your statement is that the reduction in Sunday hours and total hours between 2008 and 2013 was - you attribute that - the blame for that, if you like - principally to the increasing cost of labour on Sundays. And my question is simply this: is that your impression, or did you undertake some calculation or analysis that gave you that result?---Every day of the week you do a calculation in small business to make things balance.

PN16798

So it's a matter of impression, I take it?---It's a matter of what, sorry?

*** PETER CHRISTIAN ANTONIEFF

XXN MR MOORE

PN16799

Impression?---You've got to be able to control costs in some shape or form, and, you know, one of the costs that we have control over is the number of hours that go on a roster.

PN16800

All right. Now, I want to look at - the table that's in paragraph 15 is drawn from -
- - ?---Yes.

PN16801

- - - the attachments to your witness statement?---Yes.

PN16802

And I want to ask you about those attachments?---Sure.

PN16803

If you could look at CA1?---Yes.

PN16804

This is what you refer to as an hour's worked summary for the period 25 February
08 to 9 March 2008. Is that right?---Over those two pages, yes - or four pages,
yes. That's our actual rostered hours.

PN16805

Just one moment, Mr Antonieff. This covers a one-week period of 25 February to
2 March. Yes?---Correct, yes.

PN16806

The first document that appears behind exhibit CA1?---Yes.

PN16807

Is that a document generated off an electronic or digital record database that you
have?---No.

PN16808

Right. So what is the source of that document?---This is a Microsoft Excel
Workbook that we have set up with all our employees. And obviously there are
other work sheets behind it that give us the information for hourly costs for each
different staff member and that. And then we also have a summary page at the
end that will give us our weekly budget and our actual weekly spend.

PN16809

I see. So this - what we're looking at here is a printout from an Excel
Workbook?---Yes.

PN16810

I see. So you maintain you have kept your Excel Workbook records back until 25
February 2008?---For that period, yes.

PN16811

What do you mean, for that period? For the period 25 February to 2
March?---Absolutely, yes.

PN16812

I see. All right. And looking at the first page?---Yes.

*** PETER CHRISTIAN ANTONIEFF

XXN MR MOORE

PN16813

I can see that on the top left, the first row, as it were, is meant to include the names of employees. That's right?---That is correct, yes.

PN16814

And they've been blanked out here, I take it?---That is correct, yes.

PN16815

And then you go to the next row, which has Monday, 25 February, and it has the start and finish time and the break time for an employee if they worked on that day?---Correct.

PN16816

All right. And so if you go down that first column, Monday, 25 February?---Yes.

PN16817

You get down to the bottom of that document and there is a line, "Total" - appears to be "daily hours"?---Yes.

PN16818

And there's a number, 46.5, in red?---Correct.

PN16819

Is that recording the hours that were rostered on for employees on 25 February was 46.5?---For that sheet, yes.

PN16820

All right. And because then you have - - - ?---If you - - -

PN16821

I'm sorry. I think what then occurs, at the very bottom of the page one ends up with a total of 54.75 by adding to 46.5 8.25 hours. Is that right?---That is correct.

PN16822

And you get that 8.25 hours from the third page. Is that right?---That is correct, yes.

PN16823

And the third page - so is the first page your permanent employees? Is that right?---No. No. First page is - all my staff are casual.

PN16824

I'm sorry? All your staff are casual?---First - yes, except me and my wife.

PN16825

Yes. So what's the first page?---Okay. The first page is basically our shop staff; so registers, floor - being on the floor at any one stage during the day. Our third page - or what I refer to as our second page - is actually our supervisors - shift supervisors.

*** PETER CHRISTIAN ANTONIEFF

XXN MR MOORE

PN16826

I follow. And the third page is really the bottom of the second page, I take it?---That's correct.

PN16827

I see. So if you want to know what the total work hours were for Monday, 25 February, you've got to add up the shop's employee hours of 46.5, with your supervisor hours of 8.25, which gives you 54.75?---Correct.

PN16828

I see. Thank you. And so - - -

PN16829

VICE PRESIDENT CATANZARITI: Mr Moore, can I just stop you for a moment?

PN16830

MR MOORE: Yes.

PN16831

VICE PRESIDENT CATANZARITI: I've just been advised that the next witness - there are some problems with how long we're going to need the remote facilities in that court. How long do you think you would be with this witness? Otherwise I may need to interpose Ms Daggart, because we won't have the court facilities at the other end.

PN16832

MR MOORE: I see. I may be 15 minutes more.

PN16833

VICE PRESIDENT CATANZARITI: How long do you think you would be with Ms Daggart?

PN16834

MR MOORE: Half an hour, 20 minutes, my friend says.

PN16835

VICE PRESIDENT CATANZARITI: Bat on. See how we go for a while.

PN16836

MR MOORE: So going back to the first page of exhibit CA1, when you printed out this page from Excel Workbook did it print out those total numbers at the bottom of the first page which I took you to before? That is 46.5 and 8.25 and 54.75; or have they been hand added together?---Absolutely not.

PN16837

So they - - - ?---It's all part of the calculation within the Workbook.

*** PETER CHRISTIAN ANTONIEFF

XXN MR MOORE

PN16838

Yes, I see. So if you direct the computer in the right way to print certain pages, you will get the page that is exhibit CA1?---If you direct the computer? No. If you print that page out, you will get that total, because it's made up of a whole heap of data across that Workbook.

PN16839

All right. Thank you. So you have these Excel Workbook records that you've just taken the Commission through for all of your staff back to February 2008?---I have them available, yes.

PN16840

All right. Is there a reason why you haven't produced an hours worked summary for 2009 or 2010?---No.

PN16841

Is there a reason why you haven't produced them for June 2014; that is, immediately before the Woolworths opened?---No.

PN16842

When I look at the periods produced in CA1, and you can see this in the table?---Yes.

PN16843

It's easier seen in the table in paragraph 15?---Yes.

PN16844

You will see that the time period selected for the first period is late February into early March - I'm sorry, I withdraw that. For the first two rows you've produced two weeks commencing 25 February and ending 9 March. Do you see that?---Yes.

PN16845

And then you've produced the records for July 2013?---Yes.

PN16846

And then records for March '14?---Yes.

PN16847

And then records for May '15. Was there any reason why you haven't produced them for consistent month periods?---By that question are you meaning July 2008, July 2013, July 2014 and July 2015?

PN16848

Yes, that might be an - that's an illustration of what I mean, yes?---Okay. All right. Look, it was probably more just to give the Commission an overall, you know, not specific for any sort of trading time of the year or anything like that.

*** PETER CHRISTIAN ANTONIEFF

XXN MR MOORE

PN16849

I see?---So there was no particular reason why we didn't produce them. I mean, look, it was a case of I can get my hands on these, can print them out quite easily. It demonstrates what my statement says, so.

PN16850

Yes. I call for the production of the hours worked summary for any two-week periods in March 2009, March 2010, March 2011, and March 2012, with such hours worked summaries, as I understand them, would be those generated from Mr Antonieff's Excel Workbook in the same form as exhibit CA1.

PN16851

VICE PRESIDENT CATANZARITI: Anything to say about that, Mr Wheelahan?

PN16852

MR WHEELAHAN: No. Just my learned friend didn't - why he has chosen March might be a matter for him, but - - -

PN16853

MR MOORE: I've chosen March rather randomly, but only on the basis that it's a period that Mr Antonieff referred to for a number of the periods.

PN16854

MR WHEELAHAN: You just didn't have for 15. You didn't ask for 2015 March.

PN16855

MR MOORE: Well, I can ask for March 2015. No problems.

PN16856

MR WHEELAHAN: If you want to be consistent.

PN16857

MR MOORE: Okay. Fine.

PN16858

JUSTICE ROSS: Any two weeks in March. That's what I heard.

PN16859

VICE PRESIDENT CATANZARITI: The periods of March referred to, of course, are different periods. They won't line up. If you want a comparison, you will need to get the same two weeks presumably?---That's not completely true when you're starting to talk about the first half of the year because we have - - -

PN16860

Mr Antonieff, we don't want you at this stage to give an explanation?---Okay.

PN16861

We're just dealing with what is the request being sought of you at this stage. Mr Wheelahan will have an opportunity to ask you further questions in a moment?---Okay.

*** PETER CHRISTIAN ANTONIEFF

XXN MR MOORE

PN16862

MR MOORE: Perhaps a more convenient approach, one that's more able to be clearly identified, would be the two weeks - the last two weeks in June in each of the years. Is there any problem with that?

PN16863

MR WHEELAHAN: Your Honour, what I gather from the witness' evidence, this is all electronic and he's saying he's just printing off from it. Perhaps if I am able to make enquiries at some stage about what is the easiest way to produce documents. It might just be in an electronic file that can be used by my learned friend.

PN16864

VICE PRESIDENT CATANZARITI: In the end, one is not sure what the forensic value is of all this.

PN16865

MR WHEELAHAN: Yes. Well, what he said is he's just take a sample to prove his point in the table.

PN16866

MR MOORE: Your Honour, the question of forensic value is a matter I am happy to address in the absence of the witness. I am not asking it idly.

PN16867

VICE PRESIDENT CATANZARITI: What I propose to do, I think, is we'll hear you in the absence of the witness and we will interpose Ms Daggart because otherwise we're going to have a problem with Ms Daggart and the VC will disappear.

PN16868

MR MOORE: Yes.

PN16869

VICE PRESIDENT CATANZARITI: So we will mute Mr Gough.

<THE WITNESS WITHDREW

[3.29 PM]

PN16870

VICE PRESIDENT CATANZARITI: Yes, Mr Moore?

PN16871

MR MOORE: Mr Gough, can you hear me? On the forensic value point, the witness has selected dates which do not include 2009, 2010. The award came in with effect on 1 July 2010. So the Commission does not have any evidence of what the Sunday hours rostered or the total rostered hours were shortly before the award commenced. It might be - it might be - that this decline that the witness has attributed to the award was actually a decline evident before the award came in. That's the potential forensic value. I don't know if ultimately there's anything - - -

*** PETER CHRISTIAN ANTONIEFF

XXN MR MOORE

PN16872

VICE PRESIDENT CATANZARITI: So you're hoping there will be a decline in 2009 and - well, 2009 really.

PN16873

MR MOORE: That's what I'm hoping for.

PN16874

VICE PRESIDENT CATANZARITI: That's what you're hoping to find?

PN16875

MR MOORE: Yes.

PN16876

VICE PRESIDENT CATANZARITI: All right.

PN16877

MR MOORE: I will let my learned friend select whatever months, in March or - -
-

PN16878

VICE PRESIDENT CATANZARITI: What we'll do is we'll ask you to articulate that in front of Mr Gough, the precise period you want.

PN16879

MR MOORE: Yes. It might be, before Mr Gough is returned - - -

PN16880

VICE PRESIDENT CATANZARITI: Mr Antonieff rather.

PN16881

MR MOORE: Mr Antonieff, when he returns. It might be - I will raise this now in case my friend has an objection, so it can be resolved. But it seems to me, my suggestion of March was really quite a random one and only informed by the fact that the witness himself had referred to March. But if it's to be clear and definitive, the most appropriate course might be to take the two last weeks of June in each year. Then one has, I would have thought, an apples with apples type comparison.

PN16882

VICE PRESIDENT CATANZARITI: Look, there might be factors that none of us know about.

PN16883

MR MOORE: Well, there might be.

PN16884

VICE PRESIDENT CATANZARITI: Speaking for myself, I think it would be appropriate to find out from the witness, at least what variation there is and what are the factors leading to the variation, otherwise whatever is produced may not mean anything in any event.

PN16885

MR MOORE: If there is variation, do you mean, Commission, variation through the year?

PN16886

VICE PRESIDENT CATANZARITI: Precisely.

PN16887

MR MOORE: But if there is such variation and one has before one documents, the records, for each of the years in March or June or whatever it might be, those seasonal variations should not really be - - -

PN16888

VICE PRESIDENT CATANZARITI: Presumably, but there's a few assumptions in that.

PN16889

MR MOORE: There are.

PN16890

VICE PRESIDENT CATANZARITI: Ultimately, it is up to you.

PN16891

MR MOORE: Yes.

PN16892

VICE PRESIDENT CATANZARITI: But I am also mindful of the fact that we can avoid having a witness recalled to fill in the gaps that might emerge.

PN16893

MR MOORE: I think I might return to my original request, slightly adjusted, and call for the production of the documents, the hours worked summaries for the period 15 March to 30 March or 31 March in each of the years.

PN16894

COMMISSIONER LEE: You might have some Easter periods falling into those which will create distortions.

PN16895

MR MOORE: All right. That is so. It might be better then, thank you, Commissioner, a more reliable month might be 15 May until 31 May. I don't think there's any external disturbances of a general type that - at the end of the day, it is about exploring - the witness has put forward a comparison over seven years. I want to be able to test that comparison and there is always going to be imperfections and limitations around any such exploration. In any event, that is what I'll call for.

PN16896

MR WHEELAHAN: I make an objection to that. The witness is being tested about how he can make these statements and what he says, as a small business owner, he looks at this data daily and weekly and the only true answer for my

friend is, "I should have really all the data for the seven years for every single week," because - - -

PN16897

VICE PRESIDENT CATANZARITI: On one view, that is right, Mr Wheelahan. It seems to me that that is what he should be looking at because it is when he made the decision to reduce the Sunday rosters which becomes the relevant decision and he may have done it - he might have waited for the first year of the award coming in and done nothing. So I don't know whether - you can get your two weeks but I'm not sure it is going to answer the question, Mr Moore.

PN16898

MR MOORE: Well, there is no force in my friend's objection, with respect. I am not sure if you require me to be heard on that but the witness has deposed to what is deposed in paragraph 15 - - -

PN16899

VICE PRESIDENT CATANZARITI: These documents are all electronic. One way around this, of course, is that you have a view of the electronic records of the whole lot. On one view, Mr Wheelahan.

PN16900

MR WHEELAHAN: If that is able to be done and the witness can tell us - I think that is the only reasonable way.

PN16901

VICE PRESIDENT CATANZARITI: That is the fairest way of dealing with this, just have a look at the whole lot if they're electronic.

PN16902

MR MOORE: I have no difficulty with that course, if my friend doesn't.

PN16903

VICE PRESIDENT CATANZARITI: Not for my part - just pardon me. Yes, I think that is the fairest course, Mr Moore, you get access to the lot, if it can be done. It seems it can be done. Why don't you just ask the witness that question?

PN16904

MR MOORE: I will ask that witness. If it can be done, I'd then seek to call for the production of the electronic records of the hours worked summary for the period from 25 February 2008 until - - -

PN16905

VICE PRESIDENT CATANZARITI: 31 May 2015.

PN16906

MR MOORE: Yes.

PN16907

VICE PRESIDENT CATANZARITI: Yes.

PN16908

MR MOORE: If my friend has no objection to that, I can see that being an attractive way through it.

PN16909

VICE PRESIDENT CATANZARITI: Yes. We'll have Mr Antonieff back.

<PETER CHRISTIAN ANTONIEFF, RECALLED ON FORMER OATH [3.36 PM]

CROSS-EXAMINATION BY MR MOORE, CONTINUING [3.36 PM]

PN16910

Mr Antonieff, can you hear me?---Yes, I can.

PN16911

Thank you. You said before that you - I just want to clarify this. The documents which are exhibited as CA1 and which are then exhibited CA2, CA3, CA4, are the hours worked summaries for certain periods and you have told the Commission that they come from - they're printouts of your Excel workbook, that's right? Am I right in understanding that?---Correct, yes.

PN16912

You have that information, that is the hours worked summaries, for the period 25 February 2008 until 31 May 2015?---I have - I have an array of worksheets available to me, yes.

PN16913

I am not asking about other worksheets but do you have the hours worked summaries. Do you have the hours worked summaries of the type that you have exhibited as CA1 through to CA4, are you able to generate that from your Excel database for the period from 25 February 2008 to 31 May 2015?---For a particular period?

PN16914

Yes, for any period - - -?---As long as - as long as they're available and still in an electronic form, yes.

PN16915

Am I right in thinking that the data is available in electronic form in the Excel program?---Without going through four or five years' worth of spreadsheets, you could make that assumption, yes.

PN16916

MR WHEELAHAN: If I could ask the witness. It appears apparent it is not in one Excel spreadsheet and we're talking about many - - -?---No, it's not.

*** PETER CHRISTIAN ANTONIEFF

XXN MR MOORE

PN16917

Mr Antonieff, can you explain how long it would take you to get all the data for those years from 08 February to May 2015 and if it can be done?---I think it can be done. It just depends on whether or not those electronic weeks that we are

talking about for work summaries haven't been utilised or over-written to generate another form. I mean, we're talking, what, 240, 250 files, different workbooks.

PN16918

How long would it take - - -?---Once the workbook is used, obviously then they have the ability to get over-written and utilised for other weeks. If you understand what I mean.

PN16919

How many days would it take you to get those electronic files, realistically?---Realistically, you're probably looking at a week, week and a half. I mean, you know, over five different years, I've probably had, you know, three hard drive changes, you know, software crashes, and all those sorts of things. It's just whether or not that data in those spreadsheets are available for those particular weeks that the Commission is asking for.

PN16920

They're asking for the entire period, every week, from 25 May 2008 to 31 May 2015. So you are not sure whether you have the data still for every week?---That is correct.

PN16921

MR MOORE: If the Commission pleases, in light of what the witness has said in terms of the time involved and having to provide it for the whole of the period, I am not going to press that request but I will need to advance a more specific request of the type I initially advanced.

PN16922

VICE PRESIDENT CATANZARITI: Just one second. Mr Antonieff, you have got the records for February 2008. I just want to understand. You said things get over-written?---Yes.

PN16923

How can we have a situation where 2008 exists and periods beyond it don't exist? I'm just a bit - for my part, I'm a bit troubled by the way you answer that question?---Look, it really just depends on what sort of back-ups or archives that I've pulled files over. You know, the technology in 2008 was vastly different to what it is now. You know, now, I have a machine that's got, like, a terabyte hard drive of space available to it. In 2008, it might have been a 456.

PN16924

But you have the 2008 material, according to your - well, I'll come at it another way?---Yes.

PN16925

You have referred to two time periods, and you have annexed those periods?---Yes.

*** PETER CHRISTIAN ANTONIEFF

XXN MR MOORE

PN16926

So you have the 2008 material?---Yes.

PN16927

The question really is what flows - where is the material between March 2008 and the rest, and you say it would take a week and a half for you to determine whether that material exists?---Well, respectively, the Commission is asking for a whole 12 month period, over a whole five year period.

PN16928

All right, Mr Moore. Do you want to - where do you want to take this in terms of what your request is?

PN16929

MR MOORE: I think - - -

PN16930

WITNESS: I'm happy - sorry, guys.

PN16931

MR MOORE: I think the appropriate course in the circumstances is to call for the production of the hours worked summary for the period 15 May to 31 May in 2009, 2010, 2011, 2012, 2013, 2014.

PN16932

VICE PRESIDENT CATANZARITI: All right, Mr Antonieff, through your representative you will be asked to produce that material?---That's fine.

PN16933

You can indicate to your representative if there is any difficulty in relation to the material?---I will do my best to get it, yes, absolutely.

PN16934

MR MOORE: I don't have many more questions, Your Honour.

PN16935

VICE PRESIDENT CATANZARITI: If you're going to be less than five or 10 minutes, we'll bat on.

PN16936

MR MOORE: I'll be five minutes.

PN16937

VICE PRESIDENT CATANZARITI: Then go on, Mr Moore.

PN16938

MR MOORE: Paragraph 17, Mr Antonieff, you have set out hours that you and your wife have worked?---Yeah.

PN16939

Where are those hours recorded?---Where are they recorded? On those weekly work assessments that you've just been referring to.

*** PETER CHRISTIAN ANTONIEFF

XXN MR MOORE

PN16940

MR MOORE: I see. So if we look at - the exhibits CA1 through to CA4, do any of them include any record of hours worked by you and/or your wife?---Yes, they do.

PN16941

Could you direct the Commission to where we would see that?---Yes.

PN16942

In which one? Exhibit CA1?---CA1, no. CA2, no - hang on. CA2, sorry. CA2, sheet number 2.

PN16943

Yes?---The third and fourth lot of data.

PN16944

So which date?---Sunday 14 July.

PN16945

Yes?---That's me and my wife there. On - how can I explain it? The third and - -
-

PN16946

Just before you explain it, Mr Antonieff, just to make sure we're looking at the same thing?---Yes.

PN16947

Is it the entries for Saturday 13 July, 1300 hours?---Yes.

PN16948

And then the line below that is 1945 hours?---Correct.

PN16949

And a 30 minute break and six hours 15?---In total.

PN16950

Yes?---Yeah.

PN16951

So are you saying that that entry plus the entry below it on the same date, as well as the two equivalent entries for 14 July, that they record hours worked by you or your wife?---Yes. On a roster that would normally be for staff, other than myself or my wife.

PN16952

How does a reader of this document, by looking at the document, know that those hours were worked by you or your wife?---Well, if a reader of this document had names there, then they would know.

*** PETER CHRISTIAN ANTONIEFF

XXN MR MOORE

PN16953

So how do you know? This is a - - -?---Because I've been - I've been dealing with this format for over five years, so I know work patterns and everything like that.

PN16954

So for the uninitiated reader though - - -?---Yes.

PN16955

- - - one would only know it by seeing yours or your wife's name?---Correct.

PN16956

Thank you. What is your wife's name?---I guess for - - -

PN16957

What was your wife's name?---Rebecca.

PN16958

She has the same surname?---Yes, she does.

PN16959

I take it that you and your wife did work in the business before 2014?---Absolutely, yeah.

PN16960

And you worked in the business before 2010 as well?---Worked on the business, yes.

PN16961

On the business, is that different from working in the business?---Absolutely.

PN16962

In what way do you - what do you mean?---Well, when you're working on the business, you're looking at an overall running, management and things like that and the hours available inside the roster, which is your hired workforce, is covered by staff members other than the business owners.

PN16963

So when you see "worked on the business", you mean in dealing with management activities and strategic planning for the business?---Correct.

PN16964

And when you say worked in the business you mean being behind a register for example or performing some duty which employed staff would otherwise perform?---Yes, absolutely.

PN16965

All right. So throughout the time you have owned this business you've obviously worked on the business throughout; that's right?---Correct.

*** PETER CHRISTIAN ANTONIEFF

XXN MR MOORE

PN16966

And throughout the time you've owned the business you have also worked in the business in the way in which you describe?---Correct.

PN16967

All right, thank you. Paragraph 18A - - -?---Yes.

PN16968

Just bear with me. What you're there referring to is mainly about stocking shelves; that's right?---Correct.

PN16969

What you're saying there is that you allocate those hours that's involved in stocking shelves Monday to Friday principally?---Principally, yes.

PN16970

Likewise in paragraph C where you refer to deliveries?---Yes.

PN16971

The work involved in unloading deliveries which is obviously unavoidable and necessary to a supermarket, you allocate those hours to week days?---Correct.

PN16972

Likewise in paragraph D in relation to stock replenishment, cleaning and administrative tasks which are all tasks necessarily bound up in operating a supermarket so far as you can you allocate those tasks to week days; that's right?---Correct.

PN16973

Thank you. In paragraph 19 you say that if penalties were reduced for Sundays you and your wife would work less hours. You mean in particular you would work less hours on a Sunday, is that right?---Correct. May I - may I talk?

PN16974

Yes, go on, complete your answer?---I - I have a young family, I have three kids. You know, our work commitments which is what we signed up for, I don't have a problem with that, but I'm sure that the Commission would appreciate the fact that it would be better for a wage earner to earn the wage on a Sunday, so I give those hours back, and in return I also get a quality of life back and spend time with my kids as well.

PN16975

So what do you want to spend your time with on Sundays instead of working Sundays?---With my family.

PN16976

When you say you would work less Sunday hours I take it that if that happened that time that you currently spend working on Sundays you would then work all or most of that time during weekdays in the business. Would that be likely to be so?---On the business.

*** PETER CHRISTIAN ANTONIEFF

XXN MR MOORE

PN16977

On the business?---On the business.

PN16978

Would I be right in thinking then that that would involve some curtailment of the hours of other employees during the weekdays?---No, because on the business and in the business are two different things.

PN16979

All right, thank you. Thank you, Mr Antonieff, I have nothing further.

PN16980

VICE PRESIDENT CATANZARITI: Anything arising, Mr Wheelahan?

PN16981

MR WHEELAHAN: No, your Honour.

PN16982

VICE PRESIDENT CATANZARITI: Thank you, Mr Antonieff, you're excused?---Thank you.

<THE WITNESS WITHDREW [3.52 PM]

PN16983

We will take a short adjournment to get the VC organised.

SHORT ADJOURNMENT [3.52 PM]

RESUMED [3.57 PM]

PN16984

MR WHEELAHAN: I call Ms Daggart.

<BELINDA KATE DAGGART, SWORN [3.57 PM]

EXAMINATION-IN-CHIEF BY MR WHEELAHAN [3.57 PM]

PN16985

Ms Daggart, can you state your full name again, please?---Belinda Kate Daggart.

PN16986

Can you give your work address, please?---Shop 85, 351 Griffith Road, Lavington, New South Wales.

PN16987

You're a director of Bindoor Pty Ltd trading as Bakers Delight Lavington, correct?---I am.

BELINDA KATE DAGGART

XN MR WHEELAHAN

PN16988

And you have prepared a statement in these proceedings dated 15 October 2015?---I have.

PN16989

Do you have a copy of that with you?---I do.

PN16990

Paragraph 24 is to be struck out?---Yes.

PN16991

And with that amendment to the statement it is otherwise true and correct in every particular?---Yes.

PN16992

I tender the statement, your Honour.

EXHIBIT #R7 STATEMENT OF B K DAGGART DATED 15/10/15

PN16993

VICE PRESIDENT CATANZARITI: Thank you, Ms Forsyth.

PN16994

MS FORSYTH: Thank you, your Honour.

CROSS-EXAMINATION BY MS FORSYTH

[3.59 PM]

PN16995

Ms Daggart, I don't know whether you can see me, my name is Anna Forsyth, I'm appearing as counsel for the Shop, Distributive and Allied Employees Association. I am going to ask you some questions about your statement. Can you hear me?---Yes.

PN16996

Excellent. Ms Daggart, you have owned the bakery I understand it in Lavington for around 13 years, is that correct?---Yes, that's correct.

PN16997

I think you mentioned July 2012 specifically.

PN16998

VICE PRESIDENT CATANZARITI: July 2002.

PN16999

MS FORSYTH: In 2002?---We took over in 2002.

PN17000

Thank you. I take it that you work not only as the director but also as a baker in the bakery, is that right?---Yes, and also in sales.

PN17001

And I take it that over the 13 or so odd years that you've had the bakery you've got fairly used to giving your time after hours and on Sundays as something that you regularly do in the business, is that right?---Yes.

*** BELINDA KATE DAGGART

XXN MS FORSYTH

PN17002

It's a company owned bakery as I understand it, is that right?---Yes, that's correct.

PN17003

Is your company called Bindoor Pty Ltd, is that the - - -?---Yes, that's correct.

PN17004

And I understand that you and your father are directors of that company, is that right?---Yes, that's correct.

PN17005

What's your annual revenue for the company?---Approximately 1.2 million.

PN17006

Do you have any other financial interests in any other bakeries in the Bakers Delight franchise, Ms Daggart?---No, I don't.

PN17007

Or in any other bakeries?---No, I don't.

PN17008

So I take it that the Lavington bakery is your only business interest at present?---Yes.

PN17009

You say in your statement that when it commenced operating under previous owners, and I'm reading from paragraph 5 of your statement, Ms Daggart, that the bakery operated out of the Lavington Square Shopping Centre, is that right?---Yes, that's correct.

PN17010

And I take it that it still operates out of that shopping centre, is that right?---Yes.

PN17011

But in around 2005 I understand the shopping centre was expanded significantly with a newly renovated food court and some addition of major retail outlets, is that right?---Yes, and we had to relocate in that - as part of that movement.

PN17012

Where did you relocate from and to?---We relocated from in front of Big W down to be in front or beside Woolworths in their new fresh food precinct.

PN17013

And that no doubt has seen some advantages for the custom that you've received with that relocation?---Yes.

PN17014

As I understand your evidence you trade beyond the shopping centre's minimum hours, is that right?---Yes, that's correct.

*** BELINDA KATE DAGGART

XXN MS FORSYTH

PN17015

If I have it right that would mean that you would trade for an extra four hours on a Saturday, is that right?---Well, we open at 7 and we're not meant to open until 9, and we shut at 6 and we're not meant to be open after 4, so, yes, that's quite correct.

PN17016

Again on Sunday you trade for an extra five hours as I understand it from 7 am and then again until 6 pm in the evening, is that right?---Yes, that's correct.

PN17017

You say at paragraphs 6 and 7 that you have currently got in your employ 18 employees?---Yes.

PN17018

You say that most of them are covered by the GRIA?---Yes.

PN17019

What is the instrument that governs your other employees?---Well at the moment they're all covered by the GRIA, I just put that in - was told to put that in there as just in case in the past I'd had others that weren't part of that. So for instance my husband - my husband isn't part of that, he just gets a salary.

PN17020

Do you get a salary?---Yes.

PN17021

Have you ever operated solely under an enterprise agreement?---No.

PN17022

Other than you and your husband, both of whom receive salary positions or are on salaries, is there anyone else that you employ that is above the GRIA minima?---My dad, he's another one that gets a salary, but his is minimal.

PN17023

Is that it?---My qualified baker I pay above award wages, but I base it on the retail award, but then I just pay him an extra - like a few dollars an hour.

PN17024

I see. Other than the qualified baker, your husband and you and your father who's also your co-director, are all other employees paid in accordance with the GRIA?---Yes.

PN17025

You say at paragraph 8 of your statement that prior to the commencement of the GRIA on 1 January 2010 the business employed the substantial majority of its retail store employees under the Shop Employees State Award New South Wales and that under this award the penalty rates for work performed on Sundays was payment of an additional 50 per cent of the ordinary rate of pay. Do you see that?---Yes.

PN17026

Did you ever have your employees covered under an alternative state award known as the Bread Industry State Award? Did that ever apply to your employees prior to the commencement of the GRIA in 2010?---I'm not sure, I think it may have, because I've always followed the Baking Industry Association's advice.

PN17027

Do you recall that at any point you paid instead of 50 per cent of the ordinary rate of pay on Sunday 70 per cent of the ordinary rate of pay on Sundays?---I can't remember to be honest. I'd have to go back and look at my records.

PN17028

Do you ever recall paying 30 per cent of the ordinary hourly rate on a Saturday instead of 25 per cent?---I can't recall, I'd have to look at my records.

PN17029

You said that prior to the GRIA commencing on 1 January the substantial majority of your retail store employees were engaged or they had the minimum set by the Shop Employees State Award New South Wales. What employees didn't have their - well I might ask that question differently. What other instruments governed employment of your employees prior to the GRIA?---I'm not sure to be honest.

PN17030

Were there salaried positions as you've referred to earlier?---Yes, there would have been myself and my dad and perhaps my brother.

PN17031

Your brother also works in the business?---He did back then.

PN17032

At paragraph 9 you talk about the fact that you in order to - the level of profitability you require, direct labour costs are required to be limited to a maximum of 35 per cent retail sales. Do you see that?---Yes.

PN17033

Is that percentage based on an estimate of the likely sales across a week and used to work out therefore what the labour budget for that week might be? Is that how you come to the 35 per cent?---That gets helped with Bakers Delight and what their recommendations are, and we like to run ours around 35 per cent to keep the level of profitability. But at the moment since this has been done it's been getting nearer to 40 per cent, which is making it harder to make profits in the store.

PN17034

When you say "since this has been done", do you mean your statement?---Yes, so over the last few weeks it's starting to get higher with people on holidays and stuff like that, so that 35 per cent you have full staffing levels and nobody's away on holidays.

*** BELINDA KATE DAGGART

XXN MS FORSYTH

PN17035

You've said that Sundays have become busier for you?---Yes.

PN17036

I think you've produced some profit and loss statements in relation to paragraph 13 of your statement that record that Sunday trade currently constitutes about 12 per cent of your weekly trading. Is that right?---Yes.

PN17037

That's not an insignificant contribution to the bakery's weekly trade is it?---No.

PN17038

I assume that in light of your business's profitability and the extended hours that you already trade, that your principal complaint is that if Sunday penalties were reduced there could be more hours for you to roster on a Sunday. Is that correct?---Yes, there could be more hours and there could be more hours for older people on the weekends as well. So making the level of customer service a lot better than what it is at the moment with junior sales members and things like that.

PN17039

I take it that the additional hours that might be offered would be to employees already employed within the business. That's right isn't it?---Not necessarily. We'd need more people, yes.

PN17040

Well I might just - - -?---And I've got senior staff wanting to work Saturdays and Sundays so that they can be home with their children during the week, instead of paying for childcare but I just can't offer them the Sunday work because it's too expensive to put them on.

PN17041

Well - - -?---So they can't get more than their 20 hours a week because they can't be rostered on on a Sunday.

PN17042

Well perhaps if I can ask you then just to explain a little further about to whom these additional hours might go. If I can refer you to paragraph 22 of your statement. You say that, paragraph 2;

PN17043

Given we roster about 207 and a half hours per month on Sundays, if the Sunday penalty rate was reduced we would effectively have an additional 103 and a quarter hours at ordinary rates.

PN17044

Do you see that?---Yes.

PN17045

Continuing -

*** BELINDA KATE DAGGART

XXN MS FORSYTH

PN17046

That we could roster -

PN17047

So you'd have those additional hours that you could roster in the business without having any negative impact on labour cost percentages. I take it that that would only be possible if you employed those already in your business, because your - the percentages or the labour cost doesn't take into account the costs that would come with employing new staff, for example, additional superannuation or payroll tax or WorkCover premiums that might come with employing new staff?---So what's your question?

PN17048

My question is that what you say at paragraph 2 in that you'd have an additional 103 odd hours to put back into the business, those hours would have to go to existing staff because those hours are based on a labour cost that just deals with direct labour cost. You haven't taken into account costs that might be associated with employing new employees into the business?---I'm not really understanding the question because with any new employee there's going to be an additional cost, no matter whether it's being on a normal rate or being on a penalty rate.

PN17049

And you haven't done any analysis to see - - -?---No, no.

PN17050

So - - -?---So instead of putting that 103 hours back into the business straight away you probably wouldn't put 103 hours straight back into the business, you'd have to work it out over a month because it takes about a month to get somebody trained up to be competent on their own.

PN17051

Yes, so the 103 really only refers to the amount of hours that might be available to existing staff. It's not referable to the costs associated with employing new staff?---No, but you would still need extra staff because you can't expect staff that already doing X amount of hours to take on another 100 hours.

PN17052

But you haven't done the analysis to work out whether or not it would - I withdraw that. You say that if you put all of these hours back into the business, what do you mean by that? Do you mean you'd put all of those hours back into existing employees or what?---Well I'd top up the hours with people that wanted more hours, so more of the - because a lot of my girls are casuals so they would get their hours topped up to maybe 30 hours a week instead of 20 hours. Then the additional hours would have to be put onto an extra employee.

*** BELINDA KATE DAGGART

XXN MS FORSYTH

PN17053

You say that you believe that putting these hours back into the business would drive stronger sales, have you done the analysis to suggest that that's in fact the case, that that in fact would be the case? More rostered hours would drive stronger sales?---Well at the moment I'm currently trialling with having three staff

members on a closing shift in the afternoons and our sales are growing a little bit each week at the moment. So we're getting an extra few customers per shift a week, so that'll just be a thing that you have to sort of play with and see whether it's going to work or not. But I know that having had more senior staff on at different times of the day has helped grow our business because from this time last year, we're up 150 customers approximately a week and we've got more senior staff in the business now than what we had 18 months ago.

PN17054

In paragraph 16 and 17 you refer to or you make a comparison and you attach exhibits to your statement, Ms Daggett, and they're exhibits BD1 and BD2. Do you have those attached to your statement?---Yes.

PN17055

I take it that the summary of hours worked on Sundays and overall contained in both of these exhibits is a valid comparison between those worked in June 2009 and those worked in June 2015. Is that right?---Yes, that's correct.

PN17056

If I understand it, that's because the trading hours on a Sunday in June 2009 and in June 2015 were the same. Is that right?---Yes, they were - yes.

PN17057

In June 2009 and in June 2015, I understand that the trading hours were 7 am till 6 pm on Sundays. Is that right?---Yes.

PN17058

At paragraph 19 you mention - I'm just moving on from the comparison between June 2009 and June 2015 to look at paragraph 19, where you talk about the business engaging other methods to reduce the cost of trading on Sundays. Do you see that?---Yes.

PN17059

Have they been things that you've been conscientiously doing since around 2009?---We've worked on it over them years to try and get it as efficient as we can.

PN17060

So that's been something that you've had to do over the last 10 years or so?---Yes.

PN17061

Turning to paragraph 21 of your statement, Ms Daggett, you say that;

PN17062

If the Sunday penalty rate was reduced from 100 to 50 per cent, my preferred operating structure would include the following -

*** BELINDA KATE DAGGART

XXN MS FORSYTH

PN17063

One of those things understandably is that you say that you would not work on the weekends which would mean that you'd roster another employee to work. I

presume that's just to regain some of your work/life balance, is it?--- Yes, because I have young children.

PN17064

Would I be right in assuming that you'd be wanting to spend time with your children on a Sunday instead of work?---Yes, because they go to school during the week, so I don't see them during the week.

PN17065

No further questions, Ms Daggett.

PN17066

VICE PRESIDENT CATANZARITI: Mr Wheelahan, any re-examination?

PN17067

MR WHEELAHAN: No, your Honour.

PN17068

VICE PRESIDENT CATANZARITI: Thank you, Ms Daggett for your time this afternoon. You're excused?---Thank you.

<THE WITNESS WITHDREW

[4.21 PM]

PN17069

Yes.

PN17070

MR MOORE: I think there were some housekeeping matters from lunch, your Honour, that I could update you about if the Commission pleases. In relation to the orders to produce to Carlene Wyman I understand - I'm instructed that they were provided via Dropbox to the Commission on Friday, so they may not have just reached where they need to reach but they hopefully have by this time. They may have been provided - I think Carlene Wyman is a pharmacist, I'm not sure if that may be why there's some difficulty with whether or not it's come to the Bench's attention.

PN17071

I understand that the question of the rescheduling of witnesses has been dealt with between Ms Burnley and the Commission's Associate to re-gig things a bit tomorrow, and also moving that witness from tomorrow to the following day. With the experts and the hearing of objections, did I understand the Bench had in mind that that would be at least dealt with in part in the conference at 1.30 pm tomorrow?

PN17072

VICE PRESIDENT CATANZARITI: Tuesday of next week.

PN17073

MR MOORE: Tuesday of next week.

*** BELINDA KATE DAGGART

XXN MS FORSYTH

PN17074

VICE PRESIDENT CATANZARITI: Requires everyone to be present, otherwise we can do it tomorrow.

PN17075

MR MOORE: Yes. There are - I won't trouble the Commission now with an update about the status of the objections but they are - the objections and the resolution of them is progressing as I understand it.

PN17076

VICE PRESIDENT CATANZARITI: Yes. We've received some correspondence that says they're still ongoing and we're trying to get them down to zero if possible.

PN17077

MR MOORE: Yes, I think that from our perspective, SDA's perspective there still are objections to the tender of documents but that doesn't relate to witnesses. That can be - - -

PN17078

VICE PRESIDENT CATANZARITI: Don't worry about the tender of the Productivity Commission Report and things like that. I'm more concerned with the actual witnesses.

PN17079

MR MOORE: Yes, and so in relation to the witnesses I'm instructed that the objections raised by the AiG to SDA experts or United Voice experts have been resolved, as I understand it. The outstanding controversy - - -

PN17080

VICE PRESIDENT CATANZARITI: That's not the correspondence the Commission's received from AiG.

PN17081

MR MOORE: That's not - - -

PN17082

VICE PRESIDENT CATANZARITI: The correspondence said that the employers still were coming on Friday.

PN17083

MR MOORE: Right.

PN17084

VICE PRESIDENT CATANZARITI: But I'll get my Associate to make some more inquiries of AiG.

PN17085

MR MOORE: I see. My junior suggests there may be controversies remaining between United Voice and AiG, but I understand that's not the case with my client. Then in relation to Meridian Lawyers who represents the Guild and AHA and others, I understand that - well from where we sit, we're waiting to hear from

Meridian as to whether or not certain objections are to be withdrawn or not pressed. That's where things stand in broad - - -

PN17086

VICE PRESIDENT CATANZARITI: For the moment the conference will stay in place at 1.30 next Tuesday week. Obviously if all objections are resolved we won't proceed with that conference.

PN17087

MR MOORE: Yes, thank you.

PN17088

VICE PRESIDENT CATANZARITI: The Commission will adjourn until 11 o'clock tomorrow.

ADJOURNED UNTIL TUESDAY, 20 OCTOBER 2015

[4.25 PM]

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