



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*  
TRANSCRIPT IN CONFIDENCE

1052571

**JUSTICE ROSS, PRESIDENT  
VICE PRESIDENT CATANZARITI  
DEPUTY PRESIDENT ASBURY  
COMMISSIONER HAMPTON  
COMMISSIONER LEE**

**AM2014/305**

**s.156 - 4 yearly review of modern awards**

**Four yearly review of modern awards  
(AM2014/305)**

**Melbourne**

**10.02 AM, WEDNESDAY, 21 OCTOBER 2015**

**Continued from 20/10/2015**

PN18093

JUSTICE ROSS: Good morning. There are a couple of preliminary matters before we go to the first witness. Mr Gotting, I understand there's something you want to say in relation to Dr Muurlink and his evidence.

PN18094

MR GOTTING: I didn't want to detain the Commission any longer.

PN18095

JUSTICE ROSS: No, that's fine.

PN18096

MR GOTTING: I'm sorry this seems to be coming a bigger issue than what I had intended.

PN18097

JUSTICE ROSS: No, no, not at all.

PN18098

MR GOTTING: I merely wanted to ensure that the members of the Full Bench had a copy of the submission dated 16 October and to indicate that the Australian Industry Group is content for the Commission to make rulings in light of that submission. To our mind, the Commission could do so in chambers without the need for a hearing on Wednesday at 8.30 am. That was the only issue that I intended to raise this morning.

PN18099

JUSTICE ROSS: You're anticipating that we'll adopt the consistent course that we did in relation to the report of Professor Quiggin.

PN18100

MR GOTTING: I am.

PN18101

JUSTICE ROSS: Yes.

PN18102

MR GOTTING: I simply ask that the Commission note the objections that we've made. I'm not seeking to encourage the Commission to act inconsistently.

PN18103

JUSTICE ROSS: No, I understand that. We can deal with that - - -

PN18104

MR GOTTING: I am not aware of the precise way in which the Commission has dealt with the relevance objections previously and that's why it has not been the subject of an express statement in the submission. But obviously we intend the Commission to act consistently but we ask that the Commission note the relevance objection.

PN18105

JUSTICE ROSS: Yes. I think the issue is that the expert evidence is regarded as common cause and therefore it can be used by any party in any aspect of the proceedings. We've resisted the temptation to determine matters of fine judgment that this evidence isn't relevant to this particular claim because plainly it will be relied on by other parties in other claims.

PN18106

MR GOTTING: As your Honour will see from paragraph 3, we were not trying to preclude anyone else from relying on the material. We were only simply seeing to agitate the issue in terms of the Fast Food Award.

PN18107

JUSTICE ROSS: Yes.

PN18108

MR GOTTING: I hear what your Honour says. I don't want to detain the Commission any longer.

PN18109

JUSTICE ROSS: No, no, that's fine. Thank you, Mr Gotting. Just bear with us for a moment. Mr Gotting, we note the objection, we don't proceed to - we don't intend to uphold the objection on the basis of the approach we've taken previously. Submissions that you wish to make as to the relevance of this evidence or indeed any evidence in the proceedings to the particular circumstances of the Fast Food Award are a matter that you can address in your written submissions for conclusion of the case.

PN18110

MR GOTTING: As the Commission pleases.

PN18111

JUSTICE ROSS: Thank you for your assistance. Look, the other short matter - well it may not be short, it's just I've received a draft prepared by Ai Group. I think Mr Dixon undertook that task, with a revised schedule of final submissions, which has some comments from United Voice in the blue. What am I to do with this? Does anybody have a clue?

PN18112

MR GOTTING: For our part, it was not intended that the Commission receive the document at the moment. For our part the document was intended to be circulated amongst the union parties with a view to the parties presenting a joint position.

PN18113

JUSTICE ROSS: That's fine, Mr Gotting, we can leave it at - - -

PN18114

MR GOTTING: I'm sorry it's made its way - - -

PN18115

JUSTICE ROSS: No, no, not at all. That's fine, I appreciate the effort that's gone into the resolution of the issue and - - -

PN18116

MR GOTTING: Can I just indicate that we will continue to coordinate amongst all the parties to try and reach some agreement on a timetable for the filing of submissions, and the making of oral submissions.

PN18117

JUSTICE ROSS: Thank you very much. First witness?

PN18118

MS FORSYTH: Thank you, your Honour.

PN18119

JUSTICE ROSS: Sorry, is there anything else preliminary? No? Thank you. Yes, Ms Forsyth.

PN18120

MS FORSYTH: Your Honour, if I may call Ms [REDACTED].

PN18121

THE ASSOCIATE: Ms [REDACTED], could you please state your full name and address.

PN18122

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

< [REDACTED], AFFIRMED [10.07 AM]

**EXAMINATION-IN-CHIEF BY MS FORSYTH [10.07 AM]**

PN18123

MS FORSYTH: Ms [REDACTED], can you please for the benefit of the Commission state your full name?---Sorry, I didn't hear you.

PN18124

Can you hear me now?---Yes.

PN18125

Ms [REDACTED], can you state your full name for the Commission, please?---Yes,

[REDACTED].

PN18126

Your address?---(Address supplied)

PN18127

Your current occupation?---Supervisor on the checkouts at [REDACTED].

PN18128

Thank you, Ms [REDACTED]. Have you prepared a witness statement for the purposes of these proceedings?---Yes, I have.

\*\*\*

[REDACTED]

XN MS FORSYTH

PN18129

Is that witness statement 16 paragraphs long and dated 5 October 2015?---Yes, it is.

PN18130

You've got a copy of that, I take it, in front of you, Ms [REDACTED]?---Yes, I have.

PN18131

Have you had an opportunity to recently review that witness statement?---Yes.

PN18132

Are the contents of that witness statement true and correct?---Yes.

PN18133

Thank you, Ms [REDACTED]. Your Honour, I seek to tender the witness statement of [REDACTED].

PN18134

JUSTICE ROSS: Any objection?

PN18135

MR WHEELAHAN: No, your Honour.

PN18136

JUSTICE ROSS: I'll mark the witness statement of [REDACTED] as exhibit SDA19.

**EXHIBIT #SDA19 WITNESS STATEMENT OF [REDACTED]  
[REDACTED] DATED 05/10/2015**

PN18137

Mr Wheelahan.

**CROSS-EXAMINATION BY MR WHEELAHAN**

**[10.09 AM]**

PN18138

MR WHEELAHAN: Thank you. Ms [REDACTED], I just want to ask you some questions about your work history that you've set out at paragraphs 4 and 5 of your statement?---Yes.

PN18139

Out of school, when you were working a [REDACTED] as a domestic, did that work involve weekend work?---Yes, it was rostered including weekends as well, yes.

PN18140

Including Sunday?---Yes.

\*\*\*

XXN MR WHEELAHAN

PN18141

Then 1980 to 82 you operated a motel full-time, did that work involve Saturday and Sunday work?---Yes, it did, seven days a week.

PN18142

From 1982 for four years, you have said that you did office jobs full-time doing clerical work. Was that work Monday to Friday only or was that also weekend work?---No, just weekdays.

PN18143

From 1986 you worked in family run fruit shops for five years. Did that involve Saturday and Sunday work?---Yes, it did.

PN18144

2006, you re-entered the workforce and you've said that you did a number of jobs including clerical work at [REDACTED]. Did that work involve working on Saturday and/or Sunday?---No, that was weekdays.

PN18145

2007 to 2009, you were working part-time in a motel cleaning and administration work. Did that involve working on Saturdays and Sundays?---Yes, I worked Sundays and Mondays.

PN18146

In 2009, you commenced with your current employer [REDACTED]. When you accepted that job, were you aware that you would be required to work on weekends?---Yes.

PN18147

Did you consider choosing an alternate office job that didn't require working weekends?---I didn't see that I had a choice because it's limited employment in [REDACTED], like there are no other employers and I would have to travel to [REDACTED] or [REDACTED]. And another concern was my age and no recent experience.

PN18148

When you applied for the job, you were aware that the [REDACTED] traded on Saturday and Sunday?---Yes.

PN18149

You were aware and accepted that you would be working on the weekend?---Sorry, can you just repeat that?

PN18150

You knew and accepted by taking the job that you would be working on the weekend?---Yes, it was casual to begin with so I wasn't sure from week to week what the hours would be in the beginning.

PN18151

But you expected or I put to you that you knew that you would be working on the weekends?---Yes, I knew it was possible.

\*\*\*

XXN MR WHEELAHAN

PN18152

Well I suggest it was more than possible. You knew by the nature of the business that you would be working on the weekends?---Yes.

PN18153

Including Sunday?---Yes.

PN18154

In your statement you state that every bit you earn is needed to get you across the line?---That's right.

PN18155

So if some day if the penalty rate was reduced from 100 per cent to 50 per cent, you would still work that Sunday so that you obtain the benefit of at least the 50 per cent penalty. That's correct, isn't it?---I would have to do whatever the shift is because I need to have a job.

PN18156

So you would work the Sunday shift regardless of whether it had a penalty or not, because it's part of the job. Is that right?---Yes, because I need to work.

PN18157

Yes, I've no further questions, your Honour.

PN18158

JUSTICE ROSS: Mr Izzo.

**CROSS-EXAMINATION BY MR IZZO**

**[10.14 AM]**

PN18159

MR IZZO: Ms [REDACTED], it's Mr Izzo from Melbourne as well. I've also just got a few questions for you?---Okay,

PN18160

In your statement at the very beginning you talk about your three grandchildren. Can I just ask how old your grandchildren are?---Yes, they're seven and four and 18 months.

PN18161

Does that mean that the seven year old is at school now, is that right?---That's right, yes.

PN18162

What about the four year old, is the four year old at pre-school or still in day - or at home, what's the situation with the four year old during the week?---He does I think several days during the week, I'm not sure if it's two or three in like day care.

\*\*\*

XXN MR IZZO

PN18163

You talk about visits from your grandchildren. I take it that the times they usually visit are on the weekends?---That's right, yes.

PN18164

That's because they can't or they find it difficult - sorry, I'll withdraw that. That's because they're not really available during the week, is that right?---That's right. My son runs his own business and then with my oldest grandson having to attend school, then it's weekends that they will come.

PN18165

You talk about two sons - two adult sons that don't live with you. I take it they both work, is that right?---Yes, one lives with me and one lives in Orange. They're both working.

PN18166

Because I had assumed - do you have two or three sons in total?---I have three sons.

PN18167

So one lives with you, one lives in Orange and one lives in Sydney, is that right?---That's right, yes.

PN18168

The one that lives in Sydney, does he work Monday to Friday or does he work other types of hours, what are his hours?---Definitely Monday to Friday and some Saturdays.

PN18169

Now you talk about catching up with friends for lunch or dinner in your statement. Am I right in assuming that these catch ups usually occur on weekends as well?---Well, they don't happen because I work weekends and they work during the week, so it's just difficult to get together at any time.

PN18170

So they're free on Saturdays and Sundays are they?---Yes.

PN18171

But you're not because you're working on Saturday and Sunday?---Yes, that's right.

PN18172

What about dinners, if there's a dinner is that more likely to be something that's on a Friday or Saturday night?---Do you mean family get-togethers or with friends?

PN18173

In terms of - I apologise, that's my fault?---Sorry, I'm just not quite sure what you mean.

PN18174

Yes, I'll rephrase the question; I apologise?---Okay.

\*\*\*

XXN MR IZZO

PN18175

In terms of get-togethers with friends - you've said that you often miss out on weekends. If there's dinners with friends, are they likely to be on Friday or Saturday nights?---Well, it's more lunch with friends - - -

PN18176

Sure?---Because of the hours I work weekends.

PN18177

Now, you mentioned some agricultural events that you might miss out on, such as the [REDACTED]. Can I just confirm - my understanding is that the [REDACTED] is on a Saturday, is that right?---It is, yes.

PN18178

The local rugby events as well - when you talk about the local rugby events, is that a particular team that you go to watch?---Yes, it's the local - it's the rugby league and then there's the rugby union, [REDACTED].

PN18179

[REDACTED] play on Saturday afternoons, is that right?---Well, it can be a Saturday or a Sunday.

PN18180

Right?---As far as I'm aware it's either day.

PN18181

The League, is that a Saturday or a Sunday?---A Sunday.

PN18182

That would be in the afternoon, is that right?---Yes.

PN18183

Now, in terms of your working hours, you work till 12.45 on Sundays, is that right?---Yes.

PN18184

So in terms of the things you miss out on on Sundays, your concern is that you miss out on - sorry, I'll rephrase the question. So that means that when things are held on Sunday afternoons, you don't necessarily miss out on those things, is that right?---I think because I've worked the five hours on a Sunday morning, and so a lot of the time - - -

PN18185

JUSTICE ROSS: We might need to re-establish the link. We'll just stand down for five minutes while we take care of it.

<THE WITNESS WITHDREW

[10.21 AM]

SHORT ADJOURNMENT

[10.21 AM]

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XXN MR IZZO

**RESUMED**

[10.29 AM]

< [REDACTED], RECALLED ON FORMER  
AFFIRMATION

[10.30 AM]

**CROSS-EXAMINATION BY MR IZZO**

[10.30 AM]

PN18186

JUSTICE ROSS: Mr Izzo.

PN18187

MR IZZO: Thank you, the video link was cut but we're up again so I've just got a few more questions for you?---Okay.

PN18188

Now, I assume from the evidence you've given that there's leisure activities that you would engage in on a Saturday that you miss out on when you work on Saturdays, is that right?---Yes, Saturdays and Sundays, yes.

PN18189

Yes, so things like whether it be coffee or lunch; things like that?---Yes, or any family event - I have a large extended family so any twenty-firsts or any age event - I don't know what else I said here. Even christenings or - and it is like the any events - I come from a small town near [REDACTED] so anything that is on there at the weekends I would really like to go to to catch up with people that I've known all my life and you know I can't take work off because I need to work, you know, to make a liveable pay.

PN18190

So if we were talking about something like a christening or family event - say a christening - would that be in Sydney, if it's for your son in Sydney?---It has been or it could be just any of my cousins' kids or even friends but it certainly was the case with my grandchildren as well, that I had to take the weekend off for that.

PN18191

Sure. So can I assume then in an ideal world, if financial pressures weren't what they were, in an ideal world you wouldn't work either Saturday or Sunday, is that right? You would prefer to work during the week?---Well, yes, that's right. You know, if I could live on what I made during the week because I only work part-time, you know, I need the penalty rates to be able to make a decent pay. They won't give me any more hours than my part-time hours.

PN18192

Sure. In this ideal world, the reason that you wouldn't want to work on weekends is because both Saturday work and Sunday work intrude into your social life and your personal life; is that right?---Yes, it is.

\*\*\*

XXN MR IZZO

PN18193

That level of intrusion into your social and personal life, that's about the same between a Saturday and a Sunday?---Probably overall it is but if there's a family

event that goes all weekend. Even if there is something on a Saturday then the family gets together on a Sunday so it sort of carries over the whole weekend.

PN18194

Sure. I have no more questions.

PN18195

JUSTICE ROSS: Any other questions in cross-examination? Any re-examination?

PN18196

MS FORSYTH: No re-examination.

PN18197

JUSTICE ROSS: Thank you for your evidence, Ms [REDACTED], and for your time this morning. You are excused?---Okay, thank you.

<THE WITNESS WITHDREW

[10.34 AM]

PN18198

JUSTICE ROSS: [REDACTED]?

PN18199

MS FORSYTH: Yes, thank you, your Honour. I understand that she is being called via video conference from Sydney so if that is ready to go I can call Ms [REDACTED]. Ms [REDACTED], can you hear me? She's sprinting to the witness box.

PN18200

MS [REDACTED]: Yes, I can.

PN18201

MS FORSYTH: Thank you, Ms [REDACTED]. We've got several screens here. Ms [REDACTED] - - -

PN18202

JUSTICE ROSS: We need to swear the witness.

< [REDACTED], AFFIRMED

[10.35 AM]

EXAMINATION-IN-CHIEF BY MS FORSYTH

[10.35 AM]

PN18203

JUSTICE ROSS: Ms Forsyth.

PN18204

MS FORSYTH: Thank you, your Honour. Ms [REDACTED], if you could please state your full name for the benefit of the Commission, please?---It's [REDACTED].

PN18205

Your address is (address supplied), is that right?---Yes, it is.

\*\*\*

XN MS FORSYTH

PN18206

What is your current occupation?---I'm a sales assistant at [REDACTED].

PN18207

Thank you. Ms [REDACTED], did you prepare a witness statement for the purpose of these proceedings?---Yes, I did.

PN18208

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

PN18209

Is that witness statement dated 5 October 2015 and does it consist of 13 paragraphs?---Yes.

PN18210

Can I take you to paragraph 5 of that witness statement, please, Ms [REDACTED]?---Yes.

PN18211

You'll see that you set out there your roster. At the second dot point, "Week two," you say you work Wednesday and it's got 9.30 pm to 5.30 pm. Should that read 9.30 am to 5.30 pm?---Yes, it should.

PN18212

Other than that correction are the contents of your witness statement true and correct?---Yes.

PN18213

Thank you, Ms [REDACTED]. Your Honour, I seek to tender that witness statement.

PN18214

JUSTICE ROSS: I'll mark the statement exhibit SDA20.

**EXHIBIT #SDA20 WITNESS STATEMENT OF [REDACTED]**

PN18215

MS FORSYTH: Thank you, Ms [REDACTED].

**CROSS-EXAMINATION BY MR WHEELAHAN**

**[10.37 AM]**

PN18216

MR WHEELAHAN: Ms [REDACTED], I just want to ask you some questions about your work history at paragraphs 2 and 3. When you left school and did your apprenticeship in hairdressing, did you work weekends?---Only till Saturday.

PN18217

Only till Saturday. When you continued working, you state for another six years as a hairdresser, did you work only Saturdays then, or Saturdays and Sundays?---No, always Saturday.

\*\*\*

XXN MR WHEELAHAN

PN18218

And is that because the hairdressing business that you were working in only traded on Monday through to Saturday?---That's correct.

PN18219

In 1981 you opened your own hairdressing salon. Did you operate that salon seven days a week, or Monday through to Saturday?---Through to Saturday.

PN18220

And did you work on Saturday?---Yes.

PN18221

1986 to 1990 you stated that you did part-time work as a hairdresser. Again, the business that you were working in, was that open seven days a week, or Monday to Saturday?---Monday to Saturday.

PN18222

And did you work Saturday?---Yes.

PN18223

And from about 1990 you opened and presumably also worked in the photographic laboratory. Correct?---Yes.

PN18224

Was that business open seven days a week, or less?---Seven days a week.

PN18225

And did you work Saturday and Sunday?---I didn't work Sundays because my husband used to work; but if he couldn't work, then I would work it; or if we were really busy, I would work it as well.

PN18226

All right. After that business closed in 1997 you've said that you did some more part-time hairdressing work for about three years. The business that you did that work in - or businesses - did they trade seven days a week, or less?---Less.

PN18227

And was that Monday through to Saturday?---Yes.

PN18228

And did you work Saturdays?---Yes.

PN18229

In the year 2000 you commenced work at [REDACTED]. When you applied for that job were you aware that [REDACTED] was a retail business that operated seven days a week?---Yes.

PN18230

And were you also aware that by accepting the job, that you would be required to work Saturday and Sunday?---When I accepted the job I was only a casual, so I could choose to work Saturday or Sunday.

\*\*\*

XXN MR WHEELAHAN

PN18231

When you were a casual did you choose to work Saturdays or Sundays?---I did, because of the money.

PN18232

All right. And when you moved from casual to part-time did you accept that you were going to work Saturdays and Sundays?---Yes.

PN18233

Currently in your statement you've said that the income you earn barely meets the costs of living for you?---Mm-hm.

PN18234

Is that correct?---That's correct.

PN18235

So I suggest to you that working the Sunday shifts, even if the penalty was reduced from 100 per cent to 50 per cent, you would still work those Sunday shifts?---I would have to work because I have to make ends meet. So I have to work it.

PN18236

Yes. I've no further questions. Thank you.

**CROSS-EXAMINATION BY MR IZZO**

**[10.41 AM]**

PN18237

MR IZZO: Ms [REDACTED], I have just some questions for you as well. You refer in your statement to the fact that you have four children. Can I just ask a couple of questions. In respect of those children, can I assume that [REDACTED] works. Is that right?---He works and he's married.

PN18238

And when does he work? Is it Monday to Friday?---Yes. He works Monday to Friday and he has the weekend off.

PN18239

Right. And what about [REDACTED]?---[REDACTED], most weekends off. She's on a roster, once a month to work a weekend.

PN18240

And what about [REDACTED]?---She at the moment is on maternity leave.

PN18241

Okay. Prior to maternity leave do you know what her working arrangements were?---She works in the hospital, so she's a shift worker.

\*\*\*

XXN MR IZZO

PN18242

I see. Can I assume from what you've said then that for some of your children the case is that they are free on weekends when you are not. Is that right?---That's correct, yes. And my grandchildren - - -

PN18243

And that's - sorry, I didn't let you finish. Would you mind repeating the answer?---Well, my kids live in Sydney, and my grandchildren - the eldest one and that - so that's the time they come down to see me, is on a weekend. Sometimes I can't see them because I'm at work.

PN18244

Thank you?---So - and, yes.

PN18245

Do you catch up with friends at all socially?---Well, I really haven't got much time, and I have got a partner that lives two hours away from me, and I can only see him once a fortnight because of my roster, because I work the weekend every second weekend.

PN18246

So you see him every second week - you go and see him on a weekend. Is that right?---Every second weekend. We can't see each other every weekend.

PN18247

I apologise. Just one moment. So when you talk about missing out on things on the weekend, that's a problem - that doesn't happen every weekend; the problems that you're identifying happened to you every fortnight, not every week. Is that right?---Yes, every fortnight. Like, I miss out on Mother's Day usually because I'm at work; I miss out on Sunday, going to church; when my grandchildren come down, like last weekend, I couldn't see them. They were down Friday, Saturday, Sunday; I didn't get to see them because I was at work.

PN18248

Sure. So in an ideal world - - -?---So, yes.

PN18249

- - - if the financial pressures weren't what they are, I take it you would prefer not to work Saturday and Sunday. Is that right?---That's correct.

PN18250

And that's because working on both Saturday and Sunday interfere with your personal life?---Sorry, can you repeat that one - that question?

PN18251

And that's because working on both Saturday and Sunday interfere with your personal and social life?---Yes, it does. Yes.

\*\*\*

XXN MR IZZO

PN18252

And can I assume from what you've said that the level of intrusion into your social life is about the same between Saturday and Sunday?---Well, no, because Sunday

is more important. If my kids don't come down till Sunday night from Sydney, we usually try and get - like, you know, Sunday is quite important to me, so I really missed out on a lot. You can't compare Saturday to Sunday when, you know, my daughter might work Saturday, but she doesn't the Sunday, and my son might work Saturday and not the Sunday; so, you know, Sunday is more important than Saturday, of course.

PN18253

And the importance you associate, though, relates to spending time with family, such as your son, such as your daughter, such as your granddaughter; that's what you're saying is important. Yes?---Yes.

PN18254

So if you were able to spend time with them - so it's not that the quality of time differs, but you're saying - sorry, I withdraw that. I apologise. So if you see your grandchild for two hours on a Saturday, that's the same, isn't it, as if you see them on a Sunday for two hours; the important thing to you is seeing these people that are close to you?---Yes, that's the most important thing, is seeing them.

PN18255

I have no further questions.

PN18256

JUSTICE ROSS: Any other questions? Any re-examination?

PN18257

Thank you for your evidence, Ms [REDACTED]. You're excused?---Thank you.

<THE WITNESS WITHDREW

[10.47 PM]

PN18258

JUSTICE ROSS: Next witness.

PN18259

MS FORSYTH: Yes. I call Ms [REDACTED].

PN18260

THE ASSOCIATE: Please state your full name and address.

PN18261

MS [REDACTED]: [REDACTED], (address supplied)

<[REDACTED], SWORN

[10.48 AM]

EXAMINATION-IN-CHIEF BY MS FORSYTH

[10.49 AM]

PN18262

MS FORSYTH: Ms [REDACTED], if you can please state your full name for the Commission?---[REDACTED].

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XN MS FORSYTH

PN18263

And your address is (address supplied), is that right?---Yes.

PN18264

Can you please tell the Commission what your current occupation is?---Retail worker.

PN18265

And that's retail work at [REDACTED], is it?---Yes.

PN18266

And that's the [REDACTED] in [REDACTED]?---Yes.

PN18267

Have you prepared a witness statement for the purpose of this proceeding, Ms [REDACTED]?---I have.

PN18268

Have you got a copy of that witness statement in front of you?---Yes.

PN18269

Is that witness statement dated 5 October 2015?---Yes.

PN18270

And does it consist of 13 paragraphs?---Yes.

PN18271

Have you had an opportunity to recently review that witness statement, Ms [REDACTED]?---Yes.

PN18272

Are its contents are true and correct?---Yes.

PN18273

Thank you, Ms [REDACTED]. Your Honour, I seek to tender that witness statement.

PN18274

JUSTICE ROSS: I will mark the witness statement exhibit SDA21.

**EXHIBIT #SDA21 WITNESS STATEMENT OF [REDACTED]  
DATED 05/10/2015**

**CROSS-EXAMINATION BY MR WHEELAHAN**

**[10.50 AM]**

PN18275

MR WHEELAHAN: Ms [REDACTED], commenced employment with [REDACTED] in the year 2000?---Yes.

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XXN MR WHEELAHAN

PN18276

When you applied for that job were you aware that [REDACTED] was a retail business operating seven days a week?---Yes.

PN18277

And when you applied to that job were you aware that you were going to work on the weekends?---Yes.

PN18278

And you accepted that job, knowing that you would be working Saturday and Sundays?---Yes.

PN18279

You've said in your statement that you earn just enough money to get by, and that you rely on the penalty rates to support yourself. Correct?---Yes.

PN18280

Can I suggest to you that even if the Sunday penalty rate was reduced from 100 per cent loading to a 50 per cent loading, that you would still work on the Sundays in order to earn that 50 per cent loading. Correct?---Yes.

PN18281

You work every second weekend?---Yes.

PN18282

Is it correct that you plan your social activities and family interactions as best you can to occur on the weekend that you're not working?---Yes.

PN18283

I have no further questions.

PN18284

JUSTICE ROSS: Any further cross-examination?

PN18285

MR IZZO: No, your Honour.

PN18286

JUSTICE ROSS: Any re-examination?

PN18287

MS FORSYTH: No re-examination.

PN18288

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

<THE WITNESS WITHDREW

[10.52 PM]

PN18289

JUSTICE ROSS: Next witness.

\*\*\*

XXN MR WHEELAHAN

PN18290

MS FORSYTH: If I may call Ms [REDACTED].

PN18291

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

PN18292

MS [REDACTED]: [REDACTED], (address supplied).

< [REDACTED], SWORN

[10.53 AM]

**EXAMINATION-IN-CHIEF BY MS FORSYTH**

[10.53 AM]

PN18293

MS FORSYTH: Ms [REDACTED], if you can please state your full name for the Commission?---[REDACTED].

PN18294

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

PN18295

Do you have a copy - I beg your pardon. I should ask you to confirm your address. I understand that's (address supplied), is that correct?---It is, yes.

PN18296

And at the moment you are a retail service assistant at [REDACTED] in [REDACTED]. Is that right?---Yes, it is.

PN18297

And have you prepared a witness statement for the purposes of these proceedings?---I have.

PN18298

Do you have a copy of that witness statement with you?---Yes.

PN18299

Have you had an opportunity to review that witness statement, Ms [REDACTED]?---I have.

PN18300

Is that witness statement that you've reviewed and that is before you in the witness box, dated 5 October 2015?---It is, yes.

PN18301

And is it 12 paragraphs in length?---Yes, it is.

PN18302

If I can take you to paragraph 6, Ms [REDACTED]. You say in the last sentence of paragraph 6 that your weekly pay is currently \$578.15 after tax. Is it right that that should read \$588.15 after-tax?---Yes, that's correct.

\*\*\*

XN MS FORSYTH

PN18303

Then turning over the page to paragraph 9 of your witness statement, you say that in addition to your weekly wage - and you give the figure of 578.15 - again, should that read 588.15 instead?---Yes, it should.

PN18304

And the second paragraph of - sorry - the second sentence in paragraph 9 commencing, "I also receive a New Start allowance," should that sentence no longer be read?---That no longer exists now.

PN18305

And is that because you no longer receive the New Start allowance from the government?---That's correct.

PN18306

And the first dot point under paragraph 9 where you say:

PN18307

*A car finance loan which requires me to pay \$116.50.*

PN18308

Should that read \$133?---Yes.

PN18309

And the third dot point under paragraph 9, should that no longer be read?---That's correct. No longer read, yes.

PN18310

And that's because you no longer pay the car loan of \$96.25 per week for your daughter. Is that right?---That's correct.

PN18311

Other than those corrections, Ms [REDACTED], are the contents of your witness statement true and correct?---Yes.

PN18312

JUSTICE ROSS: With the sentence, "I have \$1097.14 from these combined sources," in paragraph 9, does that change as a result of the other changes you've made?

PN18313

MS FORSYTH: I imagine it does, your Honour. That's my oversight. Your Honour, if you might bear with me, just to recalculate what that - - -

PN18314

JUSTICE ROSS: Sure.

PN18315

MS FORSYTH: I think it's \$1030.14.

\*\*\*

XN MS FORSYTH

PN18316

JUSTICE ROSS: Isn't it just -it's an additional \$10 a week, and then you take of 37 per fortnight, which is what? 18.50. So it's minus \$8.50. Is that right?

PN18317

MS FORSYTH: My calculation is that it arrives that, your Honour, \$1070.14.

PN18318

JUSTICE ROSS: How do you get there?

PN18319

MS FORSYTH: I add an extra \$10 to the amount of \$1097.14 and then I subtract 37.

PN18320

JUSTICE ROSS: It's per fortnight though, so it's \$18.50, we're dealing with weeks.

PN18321

MS FORSYTH: I beg your pardon. Maths was never my strong point, your Honour.

PN18322

JUSTICE ROSS: That's all right. So it's minus \$8.50.

PN18323

MS FORSYTH: That's right.

PN18324

JUSTICE ROSS: So whatever \$8.50 is from \$1097.14.

PN18325

MS FORSYTH: Minus \$8.50 is \$1088.64.

PN18326

JUSTICE ROSS: Anything further?

PN18327

MS FORSYTH: Nothing further, your Honour.

PN18328

JUSTICE ROSS: I think you were going to put to the witness with those changes, is her statement true and correct.

PN18329

MS FORSYTH: Indeed. Ms [REDACTED], with those changes, are the contents of your witness statement true and correct?---Yes.

PN18330

Your Honour, I seek to tender that witness statement.

\*\*\*

[REDACTED]

XN MS FORSYTH

PN18331

JUSTICE ROSS: I'll mark that exhibit SDA22.

**EXHIBIT #SDA22 WITNESS STATEMENT OF [REDACTED]**

PN18332

MS FORSYTH: Thank you, your Honour.

PN18333

JUSTICE ROSS: Mr Wheelahan.

**CROSS-EXAMINATION BY MR WHEELAHAN**

**[10.59 AM]**

PN18334

MR WHEELAHAN: Thank you. Ms [REDACTED], prior to obtaining employment in 2007, you state that you worked for two years in [REDACTED]. Is that with one employer for that two year period?---Yes.

PN18335

Did that require you working on Saturdays and Sundays?---No.

PN18336

Was that a Monday to Friday job?---Yes, it was.

PN18337

When you applied for the job at [REDACTED], you were aware weren't you that they were a retail business that operated seven days a week?---Yes.

PN18338

You were also aware that you would be working on the weekends?---I was called in whenever because I was casual when I first started there.

PN18339

When you started as a casual though, you were aware and accepted work on Saturdays and Sundays?---If I was offered, yes.

PN18340

If you were offered it, yes. Eight months ago you stated that you've accepted a Sunday shift. Is that now a permanent Sunday shift for you?---It is, yes.

PN18341

You rely on those penalty rates?---I do.

PN18342

Can I suggest to you that given your financial circumstances, that even if the penalty rate was a 50 per cent loading instead of 100 per cent loading, you would still work that shift in order to earn that additional payment, correct?---Yes, I would.

\*\*\*

XXN MR WHEELAHAN

PN18343

I've no further questions.

PN18344

MR IZZO: No questions, your Honour.

PN18345

JUSTICE ROSS: Any re-examination?

PN18346

MS FORSYTH: No re-examination, your Honour.

PN18347

JUSTICE ROSS: Nothing further for the witness? Thank you for your evidence, Ms [REDACTED], you're excused?---Thank you.

<THE WITNESS WITHDREW

[11.01 AM]

PN18348

Is that our last witness?

PN18349

MS FORSYTH: It is, your Honour.

PN18350

JUSTICE ROSS: Well we'll now adjourn until 10.30 on Monday the 26th. In relation to the APESMA witness - - -

PN18351

MS FORSYTH: Yes, (name expunged).

PN18352

JUSTICE ROSS: It was proposed that that be at 1.30 on Tuesday the 27th.

PN18353

MS FORSYTH: Yes, that's our understanding, thank you, your Honour. I should  
- - -

PN18354

MR GOTTING: Your Honour, can I just indicate that the name of the witness was intended to be confidential and it may have just been recorded in transcript.

PN18355

JUSTICE ROSS: I just said the APESMA witness.

PN18356

MR GOTTING: Someone - I'm sorry - someone at the Bar table said the name - -  
-

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XXN MR WHEELAHAN

PN18357

JUSTICE ROSS: We'll make sure it doesn't appear in the - make the notation that the name should be expunged from the transcript. The notice to produce hearings will be dealt with after we deal with the APESMA witness.

PN18358

MR GOTTING: Of course, thank you, I understand.

PN18359

JUSTICE ROSS: Thank you.

PN18360

MS FORSYTH: Your Honour, I may also just bring the Bench's attention to one further thing that I've been instructed to moot, and that is with respect to Professor Markey who's currently listed, I understand, next Wednesday at 9.30 am.

PN18361

JUSTICE ROSS: That's right.

PN18362

MS FORSYTH: The ACTU maybe in a position, the Full Bench's availability pending of course, to seek that perhaps his evidence be brought forward to Tuesday afternoon.

PN18363

JUSTICE ROSS: No.

PN18364

MS FORSYTH: That's not possible?

PN18365

JUSTICE ROSS: No, it's not.

PN18366

MS FORSYTH: I will make sure that that is communicated. Thank you, your Honour.

PN18367

JUSTICE ROSS: Thank you.

PN18368

MR IZZO: May I just make a query of the Bench, your Honour. My understanding was Professor Altman is at 11 am on the 27th.

PN18369

JUSTICE ROSS: That's right, yes.

PN18370

MR IZZO: That's going to stay?

PN18371

JUSTICE ROSS: Yes, that's right. Nothing further? Thanks very much.

**ADJOURNED UNTIL MONDAY, 26 OCTOBER 2015**

**[11.03 AM]**

**LIST OF WITNESSES, EXHIBITS AND MFIs**

<b>[REDACTED], AFFIRMED .....</b>	<b>PN18122</b>
<b>EXAMINATION-IN-CHIEF BY MS FORSYTH.....</b>	<b>PN18122</b>
<b>EXHIBIT #SDA19 WITNESS STATEMENT OF [REDACTED] [REDACTED] DATED 05/10/2015 .....</b>	<b>PN18136</b>
<b>CROSS-EXAMINATION BY MR WHEELAHAN.....</b>	<b>PN18137</b>
<b>CROSS-EXAMINATION BY MR IZZO.....</b>	<b>PN18158</b>
<b>THE WITNESS WITHDREW .....</b>	<b>PN18185</b>
<b>[REDACTED], RECALLED ON FORMER AFFIRMATION.....</b>	<b>PN18185</b>
<b>CROSS-EXAMINATION BY MR IZZO.....</b>	<b>PN18185</b>
<b>THE WITNESS WITHDREW .....</b>	<b>PN18197</b>
<b>[REDACTED], AFFIRMED .....</b>	<b>PN18202</b>
<b>EXAMINATION-IN-CHIEF BY MS FORSYTH.....</b>	<b>PN18202</b>
<b>EXHIBIT #SDA20 WITNESS STATEMENT OF [REDACTED] .....</b>	<b>PN18214</b>
<b>CROSS-EXAMINATION BY MR WHEELAHAN.....</b>	<b>PN18215</b>
<b>CROSS-EXAMINATION BY MR IZZO.....</b>	<b>PN18236</b>
<b>THE WITNESS WITHDREW .....</b>	<b>PN18257</b>
<b>[REDACTED], SWORN .....</b>	<b>PN18261</b>
<b>EXAMINATION-IN-CHIEF BY MS FORSYTH.....</b>	<b>PN18261</b>
<b>EXHIBIT #SDA21 WITNESS STATEMENT OF [REDACTED] DATED 05/10/2015 .....</b>	<b>PN18274</b>
<b>CROSS-EXAMINATION BY MR WHEELAHAN.....</b>	<b>PN18274</b>
<b>THE WITNESS WITHDREW .....</b>	<b>PN18288</b>
<b>[REDACTED], SWORN.....</b>	<b>PN18292</b>
<b>EXAMINATION-IN-CHIEF BY MS FORSYTH.....</b>	<b>PN18292</b>
<b>EXHIBIT #SDA22 WITNESS STATEMENT OF [REDACTED] ....</b>	<b>PN18331</b>

**CROSS-EXAMINATION BY MR WHEELAHAN.....PN18333**

**THE WITNESS WITHDREW .....PN18347**