



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009
TRANSCRIPT IN CONFIDENCE

1052577

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

AM2014/305

s.156 - 4 yearly review of modern awards

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

Sydney

10.35 AM, MONDAY, 26 OCTOBER 2015

Continued from 21/10/2015

PN18372

JUSTICE ROSS: Good morning, any preliminary matters?

PN18373

MR MOORE: There's a change of appearance this morning. Mr BORGES is appearing with me this week.

PN18374

JUSTICE ROSS: Thank you.

PN18375

MR MOORE: There is a preliminary matter I do wish to raise. I'm not sure if it's reached the Bench's chambers but at about 6.30 on Friday a letter was sent to my instructing solicitors from Amy Hill, senior legal counsel for Deloitte. A copy of the letter was sent to my instructors and it was addressed to the registrar of the Commission. Can I inquire if that's - - -

PN18376

JUSTICE ROSS: I don't. Vice President Catanzariti's got it.

PN18377

MR MOORE: I'm sorry, your Honour?

PN18378

JUSTICE ROSS: Vice President Catanzariti's has it but I haven't - - -

PN18379

MR MOORE: I see. It's a piece of correspondence of some moment. I don't have copies of it at hand, I'd assumed it might have reached the Bench.

PN18380

JUSTICE ROSS: What's the issue that they raise? Are they represented here?

PN18381

MR MOORE: I understand not.

PN18382

JUSTICE ROSS: Right.

PN18383

MR MOORE: What they say, I hope this is a fair summary, just a summary of what they say is that they say that certain documents were mistakenly provided to the parties in answer to orders for production, and they want to put the genie back in the bottle - that's my words. This is in relation to Ms Pezzullo of course, her evidence, and they say in the fourth last paragraph;

PN18384

In light of the above, we respectfully request that the Commission make orders directing that the parties who have been given access to the documents listed above, destroy the documents and be prohibited from relying on those document in this review or otherwise.

PN18385

JUSTICE ROSS: But they're not here to prosecute any of that.

PN18386

MR MOORE: No.

PN18387

JUSTICE ROSS: Just for the sequencing, there was a dispute around the claimed legal privilege in relation to the notices to produce in respect to Ms Pezzullo, as I understand it.

PN18388

MR MOORE: That's so.

PN18389

JUSTICE ROSS: That was referred to Johns C?

PN18390

MR MOORE: Yes.

PN18391

JUSTICE ROSS: He's heard and determined that matter and made orders. Is that the case?

PN18392

MR MOORE: What we understand is that orders for production were made on 31 August. There was a hearing on 9 September at which I appeared as I recall before Johns C, in which argument was heard around Deloittes' objections to the production. In the letter, Deloittes say that orders were made on that day, on 9 September, in effect altering the scope of the previous orders made on 31 August. I've asked my instructor to provide me with those orders. We don't have any. To the best of our understanding no orders were made, we may be mistaken, they're not on the website, I don't have any at hand. We sent a letter to Deloittes yesterday afternoon saying can we please have a copy of the order. But I can confirm that there was argument and some modification of confinement of the - some modification or confinement of the orders for production first made on 31 August, but I can't - I'm not in a position to recall the specificity of the confinement.

PN18393

JUSTICE ROSS: No, no, that's fine, Mr Moore. I think what we might do is just stand down for five minutes. My Associate will endeavour to get the correspondence that you refer to so all parties are informed. I don't want to prevail upon - well, I'm about to Mr Dixon, but looking for someone that can contact perhaps through your instructors Deloittes or the Pharmacy Guild, someone that has an interest in this and I want them here now. I want to hear from them about what this is all about as soon as they can organise representation. So if you could through your instructors seek to convey a message to them, we'll check the correspondence and also contact the person who wrote it, and then see what they wish to say. Then we'll work out a way of dealing with their application.

PN18394

MR MOORE: We have some observations to make about that but perhaps it might be best if the Bench considers the correspondence first.

PN18395

JUSTICE ROSS: I think any observation should be made when their represented in here.

PN18396

MR MOORE: Indeed, that's fine.

PN18397

JUSTICE ROSS: But as I say, it's the first I've been aware of it and I've not been involved in the notice to produce series.

PN18398

MR MOORE: No.

PN18399

JUSTICE ROSS: Let's do that and see if we can enable the contact to be made. In the meantime we'll organise for copies of the correspondence so those who have an interest, everybody knows what is being discussed, and then we'll see where or when Deloittes can get here. We won't hold up the witnesses for too long, Mr Dixon, it'll only be five minutes or so.

SHORT ADJOURNMENT

[10.42 AM]

RESUMED

[10.51 AM]

PN18400

JUSTICE ROSS: Mr Dixon, I'm told that through your efforts there's apparently a solicitor from Deloittes that might be somewhere in the building that may be able to attend.

PN18401

MR DIXON: From the solicitors' office there is someone appearing before Hamberger SDP at the moment, your Honour, and an effort will be made, I understand, for either that person or the Deloittes representative to make an appearance as soon as possible.

PN18402

JUSTICE ROSS: My Associate contacted Deloittes and their response was they'd see if they could find someone that was available at some point. We'll await them. Has everyone now got a copy of the correspondence?

PN18403

MR DIXON: We don't. I don't think it affects us and that may be - thank you very much.

PN18404

JUSTICE ROSS: No, no. On the face of it, it seems like there was a gap of some weeks before they've discovered that they've handed over material which they didn't intend.

PN18405

MR MOORE: Yes, as I understand it was provided - the material was provided between 10 and 21 September in tranches and this was first raised at 6.30 on Friday.

PN18406

JUSTICE ROSS: Yes. Anyway, we'll see how it develops. Let's deal with the first witness.

PN18407

MR MOORE: Your Honour, there was one other preliminary matter.

PN18408

JUSTICE ROSS: Yes.

PN18409

MR MOORE: Happily, a simple matter. We had foreshadowed last week and objection to Dr Pratley's affidavit and some directions have been, as I understand it, around the determination of that objection. We withdraw that objection to the admissibility of his affidavit and I've told my learned friends that this morning.

PN18410

JUSTICE ROSS: Can I just check, is there any other challenge outstanding, any other evidentiary challenge outstanding? There was - I seem to have a recollection of an SDA challenge to a lay witness dealing with some evidence about survey material, but look this thing's been a moving issue and has that - and I think Mr Gotting dealt with one of the matters on the last, and that resolved that issue. So are we now in the position - we had tentatively said that there'd be hearing on Wednesday morning but it doesn't seem like there's going to be anything dealt with at that.

PN18411

MR MOORE: That's right, your Honour. As I understand it that had been tentatively penned in as a hearing of the Pratley objections. That won't be necessary.

PN18412

JUSTICE ROSS: Can I just - I might ask you just during the course of the day to reflect on whether there's anything left by way of objection, other than the usual minor sort of running point, as you were, but I'm looking here at substantive objections to expert evidence. I think it is the case that all of those have now been resolved. If that's not the case, if you could let me know by the end of the day.

PN18413

MR MOORE: I think the one to which your Honour alludes involved a witness to be called by my learned friends Deezy.

PN18414

JUSTICE ROSS: Deezy, yes.

PN18415

MR MOORE: Related to the survey and I can tell the Commission that that controversy has been resolved.

PN18416

JUSTICE ROSS: Excellent, thank you. I regret to do this but we just need to adjourn for a couple of minutes, thanks.

SHORT ADJOURNMENT

[10.55 AM]

RESUMED

[11.01 AM]

PN18417

JUSTICE ROSS: The Deloittes correspondence and application will be dealt with by Johns C at 4.15 today. We'll advise Deloittes accordingly. My Associate will also contact Ms Wellard from the Pharmacy Guild because it seems it's their privilege that is being asserted not Deloittes' but in any event - and a listing notice will go out in due course.

PN18418

The difficulty and the reason for that course is that we've been at pains not to see any of the material that's the subject of the privilege claims. That's why we've set up a separate process and that's why Johns C has managed it. It seems to us that this correspondence would invite us to review the material, form a view about whether it was privileged, form a view about whether it was within the scope of any orders issued and form a view about whether or not privilege was waived, and we don't intend to do any of that. So Johns C will deal with it and if there's anything arising from that, we'll hear about it in due course.

PN18419

MR MOORE: Will we have the facility to video link, your Honour?

PN18420

JUSTICE ROSS: Yes, where to?

PN18421

MR MOORE: While we're here and I assume Johns C is in Melbourne.

PN18422

JUSTICE ROSS: No, he's here.

PN18423

MR MOORE: I see, I'm sorry.

PN18424

JUSTICE ROSS: No, no, he's here. I've just spoken to him.

PN18425

MR MOORE: I see, thank you. Thank you, your Honour. Your Honour queried about the status of outstanding objections and so forth in relation to experts. To complete the update, the Commission might recall the week before last the hearing was here in Sydney in relation to Pharmacy, and there were objections taken to Mr Armstrong's affidavit and a process had begun between myself and Mr Seck around the resolution of that. We had understood that further documents were to be provided by the Guild in relation to Mr Armstrong's statement and the objections thereto, and that those documents were to have been provided Friday week ago or last Monday. We hadn't received them and we wrote to the Meridian Lawyers last week, last Friday, and we were told in response that they had received some additional and final documents from the Guild, which will be provided as part of our roadmap document. That they anticipate providing those documents and supporting information Monday or Tuesday next week, that is this week. So that process is still unfolding and hasn't unfolded as quickly as we'd anticipated.

PN18426

JUSTICE ROSS: How would that involve us?

PN18427

MR MOORE: Hopefully it won't trouble the Bench at all.

PN18428

JUSTICE ROSS: That's the best part of the submissions I've heard this morning, Mr Moore.

PN18429

MR MOORE: The way Mr Armstrong I think has been listed for hearing, his evidence if necessary in the early November dates.

PN18430

JUSTICE ROSS: Yes.

PN18431

MR MOORE: So hopefully these objections can be resolved between counsel before then and a final decision can be made as to whether he's required to give evidence then and if necessary be cross-examined.

PN18432

JUSTICE ROSS: Look there is a couple of other witnesses who are to provide material and if anything arises from then we'll also endeavour to squeeze them in during the early November sittings, if possible. Depending on when you get the material of course.

PN18433

MR MOORE: We have chased - we haven't been given anything yet as I understand it so - - -

PN18434

JUSTICE ROSS: Well at some point or another whether it's then or in December, if the witnesses are required they can be dealt with then.

PN18435

MR MOORE: Thank you, your Honour.

PN18436

JUSTICE ROSS: Right. At last, Mr Dixon, your first witness.

PN18437

MR DIXON: May it please the Full Bench, may we call our first witness Mr Marcus Dunn and if the Commission pleases, Mr Dunn had provided an affidavit which was dated originally 10 August 2015. It has been updated with an amended affidavit which was affirmed on 23 October 2015 and it has more legible exhibits and attachments. May we hand that to the Full Bench if the Commission pleases, thank you. A copy of that amended affidavit has been provided to the SDA. On the front page it has a date 23 August, it should read 23 October and it was affirmed on 23 October.

PN18438

JUSTICE ROSS: Do you wish us to make that correction?

PN18439

MR DIXON: If the Commission pleases.

PN18440

JUSTICE ROSS: Does the 23 October affidavit that you've just - amended affidavit you've just handed up, does that comprehend the earlier one and the second affidavit?

PN18441

MR DIXON: It replaces the first one in August entirely.

PN18442

JUSTICE ROSS: Yes.

PN18443

MR DIXON: But the second affidavit stands separate. The second affidavit, as your Honour will see refers to paragraph 70 of the first affidavit being the amended affidavit.

PN18444

JUSTICE ROSS: Yes, I see. Thank you.

PN18445

MR DIXON: The amended affidavit consists of 71 paragraphs and annexures and exhibits 1 to 7. The confidential exhibits, if the Commission pleases, are identified as MDX1, MDX2, MDX3 and MDX5.

PN18446

JUSTICE ROSS: I wonder if you might settle between you an order as to the confidentiality of those documents, because in the normal course they would go on the part of the website that the parties can access and would be loaded up onto that. That would be my intention but there'd be an order attached to them detailing which exhibits are the subject of the order and I think we'd need to take

steps also to make sure that the transcript and probably out of an abundance of caution, initially all of it involving Mr Dunn be marked in-confidence and be the subject of an order. In due course you might identify which parts of the transcript. I think it's better rather than have us say we're treating them as confidential, that there be a formal order to that effect.

PN18447

MR DIXON: If your Honour pleases, we'll attend to that, thank you.

PN18448

THE ASSOCIATE: Could you please state your full name and address?

PN18449

MR DUNN: Marcus Alexander Alan Dunn, (address supplied).

<MARCUS ALEXANDER ALAN DUNN, AFFIRMED [11.09 AM]

EXAMINATION-IN-CHIEF BY MR DIXON [11.09 AM]

PN18450

MR DIXON: Mr Dunn, your full name is Marcus Alan Dunn?---Marcus Alexander Alan - - -

PN18451

Alexander Dunn. You are a director of a company Jamadu QLD Pty Ltd?---That's correct.

PN18452

You're a franchisee in the McDonald's franchise group?---Yes.

PN18453

You have affirmed two affidavits for the purpose of the proceedings. May I draw your attention to the first one headed "Amended affidavit" of some 71 paragraphs. Do you have that with you?---I do.

PN18454

That was affirmed on 23 October 2015?---Correct.

PN18455

Do you have a document headed "Second affidavit" which was affirmed by you on 20 October 2015?---I do. I'm taking a moment to find it. Sorry, yes, I do, yes.

PN18456

Just to make sure, the second one is a two page affidavit and you have the amended affidavit with you?---Correct, yes.

PN18457

If the Commission pleases, that's the evidence in-chief.

*** MARCUS ALEXANDER ALAN DUNN

XN MR DIXON

PN18458

JUSTICE ROSS: I think this is the first exhibit from the Ai Group, so we'll mark the amended affidavit as exhibit AIG1. The second affidavit exhibit AIG2.

EXHIBIT #AIG1 AMENDED AFFIDAVIT OF MARCUS DUNN

EXHIBIT #AIG2 SECOND AFFIDAVIT OF MARCUS DUNN

PN18459

Mr Moore.

CROSS-EXAMINATION BY MR MOORE

[11.11 AM]

PN18460

MR MOORE: Thank you, your Honour. Good morning, Mr Dunn. Now there's some evidence to be given to this Commission by a Ms Limbrey who is the human resources business partner for New South Wales and ACT for McDonald's. She will give evidence including that across a sample of different types of McDonald's store, the amount of average gross sales between Friday and Sunday as a percentage of gross weekly sales is [REDACTED]. Is that consistent with the experience of your stores?---Some of my stores would fall into that category. Other stores would not.

PN18461

You've got how many stores?---Five.

PN18462

So how many would be in that category?---Close to [REDACTED]?

PN18463

Yes?---Three of them.

PN18464

Three out of five, about half the gross weekly sales are between Fridays and Sundays?---Most of those sales are between Friday and Saturday. Sunday is much less.

PN18465

Of the other two stores, where do they sit in terms of the Friday to Sunday proportion?---10 per cent less, I would suggest.

PN18466

Is it fair to say that collectively from Friday night through to the end of Sundays that that's collectively the busiest time for your restaurants in the week?---No.

PN18467

It's not accurate?---That's not accurate.

PN18468

So what are the busiest times?---The busiest time is as per the affidavit which I put on there are from Thursday through to Saturday. Sunday is less sales.

*** MARCUS ALEXANDER ALAN DUNN

XXN MR MOORE

PN18469

I'm sorry?---Sunday is generally less sales, so if you were looking for the busiest portion of the week, it would be from Thursday, mostly Thursday evening because of late night shopping.

PN18470

In paragraph 10 of your affidavit you refer to your company's use of a software program known as MeTime and the use of that program for the purpose, amongst other things, of hiring staff. So in simple terms, I take it, a person who wants to get a job at one of your stores is interviewed by one of your managers?---That's correct.

PN18471

One piece of information that the manager ascertains from an applicant are the days and times that the applicant is available to work, in the interview?---The manager would have that information but the crew person themselves would enter that into the system.

PN18472

So the applicant would have already, before the interview, entered in their availabilities in the online application system?---That's correct.

PN18473

I assume that that availability is then confirmed in the interview, is it?---Yes.

PN18474

I gather that in the interview applicants are generally made aware that Saturdays and Sundays are some of your busiest times?---I don't think they would necessarily discuss that with the applicant.

PN18475

Well it's important - a relevant factor, a significant factor as to whether a person gets a job with one of your restaurants, in one of your restaurants, is whether they're available to work when you need staff the most. Is that right?---That would be correct.

PN18476

So I would have assumed that in the interview the relevant manager would have sought to confirm from the applicant that they were going to be available in the busy times?---The most difficult time to start in my restaurant is Monday to Friday. It is absolutely by far and away more difficult because other people have other things on during those times, like university or school and that is the most time. I would suggest with other store as well, but most people already have Saturdays and Sundays in their availability because that's when it suits them.

*** MARCUS ALEXANDER ALAN DUNN

XXN MR MOORE

PN18477

Another licensee is going to give evidence to the Commission, a Mr Dando, a director of Jayzee Pty Ltd, and in his affidavit to the Commission he states that he is aware that McDonald's provides training to the managers who conduct job interviews, in which managers are taught that prospective employees are required

to be told at the time of interviewing that there is an expectation that they will be available to work during peak periods of the business. That's his evidence - the evidence he proposes to give to this Commission, and I just wanted to ascertain whether that reflects what happens in your business, that prospective employees are told by managers that it's expected they will be available during the peak periods of the business?---I may not be like every licensee.

PN18478

No, that's not - I'm sorry, go on?---So I roster people when they want to work. If I try to coerce somebody to work when they do not want to work, it just won't work out and we have a system whereby if they are hired, if they don't want to work they just put in that they don't want to work on that day. So that's what will end up happening and through experience I have learnt that.

PN18479

So your experience doesn't accord with what I've read to you, Mr Dando's proposed evidence to this Commission?---My experience is that people want to work on Saturdays and Sundays and Fridays and Thursdays, and we hire them accordingly.

PN18480

No, I just - Mr Dando's evidence - - -

PN18481

MR DIXON: That's a matter for submission.

PN18482

MR MOORE: Mr Dando's - just let me repeat the question. The question for you is your restaurants do adopt the same practice to which Mr Dando says he's aware that prospective employees are told at the time of interview, that they're expected to be available during peak times of the business?---(No audible reply)

PN18483

Are you saying that's not your business or - - -?---That's not my practice at all.

PN18484

Thank you?---Can I qualify that answer. Are we talking about crew people, level 2? Because level 4 employees are absolutely expected to be available 24/7.

PN18485

You said your peak times, I think, were Friday and Saturday. That's what your evidence was?---I would - - -

PN18486

I think you said from Thursday night, I'm sorry, to Saturday night?---If you were to be categorising it from a week and look at where all the sales are.

PN18487

Yes, that's right?---Yes.

*** MARCUS ALEXANDER ALAN DUNN

XXN MR MOORE

PN18488

So am I right in thinking that although of course you employ employees who are not available on weekends, you're more likely to get a job in one of your restaurants if you're available - if a person's available to work between Thursday night and Saturday night?---Not purely because of availabilities but when shifts are available to be worked. But if you - and I believe you're questioning Queensland and Western Australian licensees who are subject to the child labour laws, and quite a lot of the people who do apply, apply for their first job with McDonald's. Those particular people are generally more available at those times and only available towards the latter half of the week and the weekend. So yes, they'd be more likely in that instance to get a job.

PN18489

Thank you. In paragraph 36 of your affidavit, you say that you -

PN18490

have more employees indicating they're available to work on a Saturday and Sunday than what I was able to roster on a Saturday and Sunday.

PN18491

You say that;

PN18492

In order to allow for holidays, sickness and turnover, I require considerably more people to be available than I actually roster on. That is the same for all five restaurants. On Fridays, Saturdays and Sundays, more people call in sick or have other commitments that affect their temporary availability. So Jamadu maintains many extra crew who are available on Saturday but are not actually rostered.

PN18493

What you're saying there, amongst other things, is that you have greater difficulties - you encounter greater difficulties relatively speaking with rostering on Fridays, Saturdays and Sundays and that you manage that by having more staff who are available on those days?---I don't have more - sorry, I don't have more - any problem rostering it. I have problems with some of the younger people who don't consider this their career and who prioritise perhaps going out with somebody or the weather's great and they go to the beach and they call in sick. That is a factor and why I have more people and why I roster smaller shifts on a Saturday and Sunday because it's easier then to replace.

PN18494

So in a way you have backup staff to deal with those anticipated contingencies of people calling in saying they're sick or not being able to work?---Absolutely.

PN18495

In paragraph 39 in the first sentence, where you say;

*** MARCUS ALEXANDER ALAN DUNN

XXN MR MOORE

PN18496

The company has no problem at all staffing its restaurants on a Saturday and Sunday. They are the easiest times to staff.

PN18497

That's because of the, I suppose, staffing practices and recruitment practices you adopt of looking to employ people who are available at busy times, and ensuring that there's a pooling reserve, if you like, of staff to fill in if people become unavailable at those busy times. Do you agree with that?---No.

PN18498

You say in paragraph 40;

PN18499

I do also have employees in my restaurants who do not make themselves available to work on weekends.

PN18500

Do you see that?---(No audible reply)

PN18501

What proportion of your employees across your restaurants would fall into that category; namely those who are not available at all to work on weekends?---You probably know my statement better than me but the section where I refer to the type of employees that I have in my business, whereby there are young people who go to school and people who are students, and then there are people who I would consider day crew. Those day crew let's say it's 20 per cent, I don't want them available on weekends. I want them to be available Monday to Friday, so they're the type of people I'm referring to in that instance. There are other people who I love working for my business who typically put schooling and sporting first and they don't have availability on a - particularly on a Saturday, and they need one day off a week, and I don't encourage them to work, I encourage them to work when they want to work, as per all of my staff.

PN18502

The first group that you referred to there were the - what do you call them, the weekday crew?---The day crew.

PN18503

The day crew, sorry?---I refer to them.

PN18504

Are you saying that about 20 per cent of the weekday crew - - -?---Sorry, 20 per cent of the staff that are weekday, they may have 24 availability in our system still but I would never roster them on a weekend, because I need them Monday to Friday.

*** MARCUS ALEXANDER ALAN DUNN

XXN MR MOORE

PN18505

Yes, so 20 per cent you think of the weekday crew would not be available to work on the weekend, is that your best estimate?---When I say 20 per cent, I'm referring to all of those weekday crew. They would just not be rostered on a weekend.

What their availabilities say regardless, a lot of those people have 24/7 availabilities and, you know, that's handy to have because there are particular days where something is on, on a weekend, there is an event which might impact our ability to staff on a weekend and then we utilise those people. But I would prefer to have them rostered Monday to Friday because that's when it's quite difficult for me to fill those shifts. So as to there a particularly percentage of them who really are not available on a weekend, they just wouldn't be rostered.

PN18506

Can I take you back to paragraph 36 again, where you say that across your five restaurants Fridays, Saturdays and Sundays, more people call in sick or have other commitments that affect their temporary availability. Am I right - would you agree that that experience of people calling in sick or having other commitments that affect their temporary availability is highest amongst those three days on Sundays?---I believe it's highest on a Friday. If you go back to the other evidence that was provided, actually I don't have that in here but it was provided, the NA Book that we have. It looks to me from looking at that, while I haven't statistically analysed it, it looks Fridays are quite prominent. Saturdays are more so. Sundays are no problem, so I don't count the number of people who would - I don't rely on the number who aren't available.

PN18507

You're not closely across that question of the number of people who are unavailable - - -?---I don't need to be closely across that because there are plenty more people who want to work on that time or those days than we require.

PN18508

The NA Book, in paragraph 61, you say on the third line;

PN18509

If employees are unavailable on a day or time they would usually be available, they can write it into a book and the roster manager enters that into the myRestaurant system.

PN18510

The book to which you refer there is the NA Book, is that right?---Yes. So they don't actually enter into the myRestaurant system because they would do that - that's to hold their availabilities when they're hired as such, but they would enter into their rostering system. So then if they were rostered for a particular shift they then wouldn't come up as being allocatable as such.

PN18511

So in general terms what happens is that when a person applies for a job, they enter their days and times of availability and that goes into the myRestaurant system as you understand it. Am I right so far?---Yes.

*** MARCUS ALEXANDER ALAN DUNN

XXN MR MOORE

PN18512

Then there are certain processes in place if the person then commences employment by which that availability can be changed on either a permanent or a temporary basis, yes?---Correct.

PN18513

A permanent change in availability requires an employee in very general terms to notify or make application to the relevant manager and if the change is acceptable it's then - the record in the myRestaurant system is altered accordingly as to their new availability times?---Their availabilities would be then entered into our rostering system as their permanent availabilities.

PN18514

Yes?---But it would probably then push back to myRestaurant, like technically speaking, but yes.

PN18515

In terms of temporary unavailability, that's dealt with more in a sort of old fashioned way in the sense that there's a hard copy book that's in the restaurant that a member of staff - let's say they're unavailable because of a social commitment this coming Sunday - they can write their name on the date in that diary in the book?---Yes.

PN18516

And so the book is a day at a page diary. Is that right?---Some of them are slightly different, but yes.

PN18517

I see. Yes. And the system is that employees are able to write their name on an upcoming date in that book to record their unavailability for whatever reason?---As long as there's no lines through it, which means that the roster has already been completed.

PN18518

Yes. I see. Now, you've produced to the Commission some copies of the NA books. That's right?---That's right.

PN18519

I will just have a look at those. Thank you. The NA books that you - you produced extracts, copies of pages of the NA book for each of your five restaurants for period from [REDACTED] to [REDACTED] - [REDACTED], sorry?---I think it was [REDACTED], yes.

PN18520

Yes. So we've had a look at those - and if necessary, I can show them to you - and we - just excuse me a moment. So we added up the number of names recorded on each day in each restaurant to see where the spread of days were where people were recording their names for the purposes of temporary unavailability. You follow me?---I follow.

*** MARCUS ALEXANDER ALAN DUNN

XXN MR MOORE

PN18521

Yes. And we've produced a graph, which I will hand to you. So just to explain this to you, Mr Dunn. Looking at the [REDACTED] of the NA books produced, we, in a spreadsheet, added up the number of names that were recorded on each day in each store, and then sought to ascertain an average of the number of names appearing in the NA book on each day over that three-month period. You follow me?---I follow you.

PN18522

And the numbers we got to are in the column there. So on [REDACTED], on average over that [REDACTED] period there are [REDACTED] names appear, on our calculation; and on [REDACTED], [REDACTED] names; and so on and so forth down to [REDACTED] at [REDACTED] names. Do you see that?---(No audible reply)

PN18523

And so we've sought to represent those numbers graphically in the graph next to it, and you will see that on our calculations the largest - the day which has associated with it the largest number of names, on average, the NA book across your restaurants is [REDACTED], followed by [REDACTED], and then [REDACTED]. Does that accord with your general understanding?---As I stated before, I would have thought [REDACTED] was a lot higher than that. And I think if you were to go back and look at those names, quite often somebody who only gets rostered Monday to Friday - our day crew - if they're away, they will write their name on every day; and they write their name on weekends when they wouldn't have otherwise been rostered on a weekend. But if you tell me that that's the numbers, I'm happy to suggest that that is the numbers, but [REDACTED] is actually quite difficult to sometimes produce a roster for.

PN18524

All right?---More than difficult than [REDACTED] names would suggest to me. But - - -

PN18525

You're content to accept this as an accurate representation?---In the particular time that we've got on there, and there are school holidays in the middle of that.

PN18526

MR DIXON: I object. It's an unfair question to ask a witness without the ability to analyse any of the material and simply accept all the assumptions that my learned friend has given him.

PN18527

MR MOORE: Well, there's another way through it, and I will just deal with it in that direct way. Thank you. Can I just hand to the witness this folder. Now, because of the volume of these documents I don't have copies of them all. Can I just show them to my learned friend first, if I may. If that could be provided to the witness. I've got one copy for the bench, just to identify.

PN18528

JUSTICE ROSS: Thank you.

*** MARCUS ALEXANDER ALAN DUNN

XXN MR MOORE

PN18529

MR MOORE: Now, if you just open that folder, Mr Dunn. Contained in that folder are the NA books produced by you or your company in relation to your five restaurants for the period from [REDACTED] until [REDACTED]. Could you just have a look through that, just to ascertain what I've said is correct?---Yes. Correct.

PN18530

Do you agree with that, that's so?---Yes, that looks like my NA books, the ones that I - - -

PN18531

Thank you. I tender that bundle, if the Commission pleases.

PN18532

JUSTICE ROSS: Mark that exhibit SDA23.

EXHIBIT #SDA23 BUNDLE OF NA BOOKS

PN18533

JUSTICE ROSS: Is this the whole folder?

PN18534

MR MOORE: Yes.

PN18535

JUSTICE ROSS: All right.

PN18536

MR MOORE: Thank you, your Honour. Can the document which I showed the witness before the folder, which was the graph and the numbers on it, Monday to Sunday; can I ask that that be - well, I'm not able to tender that document, but if it be marked for identification.

PN18537

JUSTICE ROSS: Exhibit MFI 1

MFI #1 GRAPH DEPICTING NA NUMBERS MONDAY TO SUNDAY

PN18538

MR MOORE: Thank you. No further questions, your Honour.

PN18539

JUSTICE ROSS: Mr Dunn, can I just ask you a question about the table at paragraph 37 of your first affidavit. Can I take you to that?---Yes.

PN18540

I just want to test my understanding of what's produced there. And there's a later one for the Sunday. But that's based on the calculations made in Annexure MDX4, I think. Is that right?---(No audible reply)

*** MARCUS ALEXANDER ALAN DUNN

XXN MR MOORE

PN18541

And am I right in thinking that what you've done is where you've got the column, "Percentage of employees available to work on Saturday", in your affidavit and you list those percentages for each of the stores, that's a percentage of the employees - the denominator, if you like, is the employees who work at that store; and the numerator is the number of employees who express an interest in working on the Saturday. So is it right to say that, say at Burnley Stockland, 82 per cent of the employees of that store have expressed their availability to work on a Saturday. Is that how I read that?---The whole store, correct.

PN18542

Yes. And then you - you only require so many employees to actually be rostered on the Saturday, so in fact the percentage of employees actually rostered to work on the Saturday is 43 per cent. Is that 43 per cent of all the employees at Burleigh Stockland rostered on the Saturday? Is that how I read that?---That's right, yes.

PN18543

Okay. The reason I'm asking the question is I just wasn't sure whether it was 43 per cent of the people who had expressed an interest in working on - - - ?---Sorry, yes.

PN18544

- - - or whether it was 43 per cent of all the employees. But as I understand your answer, in each case it's a percentage of all the employees who work at that store. Is that right?---That's right.

PN18545

And it's the same with your later table that deals with the Sunday. I think you do the same methodology and you explain it in the same way. I think that's at 54 or 55 of the earlier one. All right. Thank you, Mr Dunn. Any re-examination?

PN18546

MR DIXON: If the Commission pleases.

PN18547

JUSTICE ROSS: I'm sorry. Anything arising?

PN18548

MR MOORE: No, not at all.

RE-EXAMINATION BY MR DIXON

[11.40 AM]

PN18549

MR DIXON: Mr Dunn, you mentioned in one of the answers you gave that the legislation - the labour laws, you call them - in Queensland dealing with juveniles, as I understood it, had an impact on the way in which you roster people?---It does.

*** MARCUS ALEXANDER ALAN DUNN

RXN MR DIXON

PN18550

Would you just explain to the Commission what the restriction is and how it impacts on the way in which you roster in Queensland?---Yes. They can't work

before 6 am or after 10 pm, but - there are quite heavy penalties, so we make sure that they don't work after 9.30. And I think that's quite responsible. But the question relates to how we then roster. We can only roster those people four hours during a normal school week, and the remainder of their hours, which can be a total of 12 for the week, need to be on a weekend; which would also therefore account for why they have more staff on a Saturday and Sunday, because those people can't work long hours.

PN18551

So you would, therefore, have to roster more people on to cover the same period?---Yes.

PN18552

In looking at the graph which has been marked MFI 1; do you have a copy of that document available? What day of the week has the greatest number of employees rostered?---Saturday.

PN18553

Saturday. And do the number of staff rostered vary per other days of the week?---Yes.

PN18554

And so can you just amplify that as to how the numbers may change; starting, perhaps, with a Monday?---Sure. I would basically say per - I have a general - I try to have, based on sales, one person rostered per \$100 of sales. That's kind of a target that I put on there. So according to our sales, how they fluctuate, with Friday being quite high, Saturday being quite high in sales, they would have more people rostered, more hours rostered. But lots more people, because I roster smaller shifts on a weekend.

PN18555

And do they vary, then - the number of people rostered vary per day of the week?---Yes.

PN18556

You have, I think, at your left hand, a folder of the NA book extracts that you provided. Do you have one available for [REDACTED] starting with [REDACTED]?---That's in front of me.

PN18557

Could you look at the Burleigh Waters store?---Okay. Yes.

*** MARCUS ALEXANDER ALAN DUNN

RXN MR DIXON

PN18558

You gave evidence about the fact that there were times - the same name appearing repeatedly, I think you said. Is that reflected in the Burleigh Waters store in a book that I've just handed you - sorry - that you've been handed?---I would have to spend some time looking for those names in there, but - [REDACTED], [REDACTED], [REDACTED], [REDACTED] - but, for example, [REDACTED], he there appears on [REDACTED]. Perhaps the family is away for a week, that type of thing, so therefore he would be away on the duration.

PN18559

And I think if you look at the same page, 5 May, for example, there's someone called [REDACTED]?---Yes.

PN18560

And then there's a number next to [REDACTED], [REDACTED]. What does that depict?---So what we try to do in terms of our rostering system, the rostering manager says,

[REDACTED]
[REDACTED] It's not foolproof, but that's part of the training that we provide, is they need to take responsibility for the shifts they say they're available for.

PN18561

So if you come back to [REDACTED], under [REDACTED] there's [REDACTED]. That name appears on - for [REDACTED] and then [REDACTED] and [REDACTED] [REDACTED], but on each - so what does that tell you?---It would suggest to me that that person is away and doesn't want to be rostered on those days.

PN18562

Thank you. If the Commission would just bear with me for one moment. That is the evidence in re-examination, if the Commission pleases.

PN18563

JUSTICE ROSS: Nothing further for the witness?

PN18564

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

<THE WITNESS WITHDREW

[11.46 AM]

PN18565

JUSTICE ROSS: Can I ask the for amended affidavit to be provided electronically in due course.

PN18566

MR DIXON: We will attend to that. Thank you, your Honour.

PN18567

JUSTICE ROSS: Next witness.

PN18568

MR DIXON: The next witness is Krista Limbrey. Whilst the witness is on her way, could I inquire of the Commission whether the confidential exhibits which she makes reference to in her affidavit of 10 August, KTL1, KTL2, KTL3 and KTL9, have made their way through to the Commission?

PN18569

JUSTICE ROSS: Not to me. The first one I have is KTL4, I think.

*** MARCUS ALEXANDER ALAN DUNN

RXN MR DIXON

PN18570

MR DIXON: Yes. So may I hand up a copy and undertake to remedy the position, ensure that - so the Commission will see that Ms Limbrey has two affidavits: one is 10 August 2015 consisting of 194 paragraphs with 11 annexures and exhibits; and then there's a second affidavit of 20 October, which consists of some 14 paragraphs.

PN18571

MR MOORE: Your Honour, if I might have a moment just to read that affidavit. I haven't seen that - the second affidavit. Thank you.

PN18572

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

PN18573

MS LIMBREY: Krista Therese Limbrey, (address supplied).

<KRISTA THERESE LIMBREY, AFFIRMED [11.50 AM]

EXAMINATION-IN-CHIEF BY MR DIXON [11.51 AM]

PN18574

MR MOORE: Ms Limbrey, your full name is Krista Theresa Limbrey?---Yes.

PN18575

And your address is (address supplied)?---Yes.

PN18576

And you are employed by McDonald's Australia Limited in the role of HR business partner New South Wales ACT?---Yes.

PN18577

And you have affirmed two affidavits for the purposes of these proceedings?---Yes.

PN18578

The first of your affidavits was the one of 10 August 2015, consisting of 194 paragraphs with annexures and exhibits. Do you have that handy?---Yes, I do.

PN18579

I understand that you wanted to make a comment in relation to paragraph 165 subparagraph (n) and (o)?---Yes.

PN18580

Which appears on page 42?---Yes.

PN18581

And I think you wanted to put a qualification in your evidence in respect of a reference to employees aged 14 in each of subparagraph (n) and (o) on page 42?---That's correct.

*** KRISTA THERESE LIMBREY

XN MR DIXON

PN18582

And what is the qualification?---I would like to remove the 14 year old age group from (n) and (o).

PN18583

And the reason for that is?---Because the sample size for - with the data that's there, that is incorrect for that age group.

PN18584

And then in relation to paragraph 165(dd), which appears on page 43, you wanted to add a qualification so that it reads:

PN18585

On weekends after 8 pm in most age groups the difference is inavailability -

PN18586

et cetera?---That's correct.

PN18587

And the second affidavit that you have affirmed on 20 October consists of some 14 paragraphs. Is that correct?---That's correct.

PN18588

And you have a copy of that document with you as well?---I do.

PN18589

Thanks. If it please the Commissioner, that is the evidence-in-chief.

PN18590

JUSTICE ROSS: We will mark the affidavit exhibit Ai Group 3 and the second affidavit exhibit Ai Group 4.

**EXHIBIT #AIG3 AFFIDAVIT OF KRISTA LIMBREY DATED
10/08/2015**

**EXHIBIT #AIG4 AFFIDAVIT OF KRISTA LIMBREY DATED
20/10/2015**

PN18591

JUSTICE ROSS: Mr Moore.

PN18592

MR DIXON: And the confidential exhibits in relation to the first affidavit, being KTL1, KTL2, KTL3 and KTL9.

PN18593

JUSTICE ROSS: Yes. Well, they're really part of Ai Group 3 and - I will make the same observation about an order in due course.

*** KRISTA THERESE LIMBREY

XN MR DIXON

PN18594

MR DIXON: If your Honour pleases.

CROSS-EXAMINATION BY MR MOORE

[11.54 AM]

PN18595

MR MOORE: Hello, Ms Limbrey. A large part of your affidavit from paragraph 73 onwards until about paragraph 164 you deal with, under headings, to what you refer to as the work preferences of employees of different years of age between 14 and 21?---Yes.

PN18596

Yes. And all of that information comes from what you define in paragraph 68 as the Preferences Report. That's right?---That's correct.

PN18597

And that's a report generated by interrogating the data in the myRestaurant system?---That's correct.

PN18598

Yes. And the data in that system, in turn, is dealing - is derived from information entered into the system as part of the application for employment process, as updated subsequent to the commencement of any employment by an employee?---That's one way it can be updated.

PN18599

Yes?---It can also be updated after an employee starts, on a regular basis.

PN18600

Sorry. I think my question was perhaps a bit convoluted. So the information in myRestaurant system comes from the information about an employee's availability that an employee puts forward in their application for a job. That's right so far?---That's correct.

PN18601

And if the employee gets a job and there's a change - a permanent change in their availability, processes can be put in place for that change to be recorded in the system?---Yes.

PN18602

At exhibit KTL7 you've set out the current standard questions asked of McDonald's - I withdraw that. What you set out at KTL7 is a printout of the standard questions currently asked by McDonald's of online job applicants. That's right?---I'm just going to it now. Hang one.

PN18603

I'm sorry. Please take your time?---That's correct.

*** KRISTA THERESE LIMBREY

XXN MR MOORE

PN18604

Yes. So what you've printed out there, or what appears in those two pages is what an applicant would see on the screen when they were considering or filling in the application?---Yes.

PN18605

So it's headed "Availability Schedule" and the second sentence reads:

PN18606

Please indicate all the days and times that it's possible for you to work.

PN18607

And that makes clear what it is that they're supposed to do in filling out this form?---Yes.

PN18608

And in the fourth paragraph there's guidance about adding a second availability time, and then in the last paragraph there's guidance about how to correct a mistake in entering availability times. That's right?---Yes.

PN18609

And over the page on page 2 - before we go to that. If an applicant was available to work, having regard to the instructions on the top of the page, if they were available to work on a Monday, they would click "Monday" "Add"?---Correct.

PN18610

And then over the page there are some questions. The first three questions are about the maximum number of shifts or hours. Yes?---Yes.

PN18611

That a person would like to work. And then there are questions about whether the person is available to work at certain times, such as public holidays and work weekends?---Yes.

PN18612

"Yes" or "no", the person has to tick. So through this process of applying for a job, and then if they get a job and there's any later desire to permanently change their availability, applicants are able to identify all the days and times when it's possible for them to work?---Yes.

PN18613

And it's in this way that it records their availability?---Yes.

PN18614

So when a person applies for a job and answers the questions in KTL7 that I've just asked you about, they're not asked to identify their preferred day and times to work within those times that they identify that it's possible for them to work?---Can you ask that again, sorry.

*** KRISTA THERESE LIMBREY

XXN MR MOORE

PN18615

Certainly. So when an applicant applies for a job they're not asked to identify, within the range of their available days, their preferred times?---No, they're not.

PN18616

So in that sense, then, what you refer in your affidavit as the preferences report is more accurately described as an availability report?---They're still giving a preference of the time that they would like to work, so it could be either of those.

PN18617

You mean they're still giving a preference in the sense of identifying when they're available?---Yes.

PN18618

In paragraph 51 of your affidavit you say that:

PN18619

The myRestaurant system allows employees to record their hours of availability and preference to work.

PN18620

And you go on to say that:

PN18621

They may indicate their hours of availability in two ways.

PN18622

There is no separate information beyond what you've just given an answer about this morning in asking the questions I've asked you. There's no separate information beyond what you've identified as to employees' preferences. Do you agree with that?---Agree, yes.

PN18623

Thank you. And the information about availability that's in the myRestaurant system is, in practical terms, would you agree, a limiter, if you like, on the hours that an employee might be rostered; that is, the particular days or the particular times upon which that might be rostered?---Can you ask that again, sorry.

PN18624

Well, if an employee records that they're available only on, let's say, a Monday and Tuesday - let's say that's the only days that they've said that they're available to work - the way McDonald's approaches it is that they might then be allocated shifts only on Monday or Tuesday?---Yes.

PN18625

Now, at a number of points throughout your statement you often referred in the same paragraph - use the word "availability" and "preference". So, for example, if you look at paragraph 51, which I took you to before, you're referring to the system and you say:

*** KRISTA THERESE LIMBREY

XXN MR MOORE

PN18626

It allows employees to record their hours of availability and preference work.

PN18627

In paragraph 56 you will see in that paragraph you refer to the online process that I've asked you about and an applicant entering their hours of availability, and you go on to say:

PN18628

And their preferred hours of work.

PN18629

You see that?---Yes.

PN18630

And paragraph 60 you say:

PN18631

For applicants to become full-time or part-time employees, the hours of availability and preference remain as contained in the answers to the standard questions.

PN18632

And so forth. Do you see that?---Yes.

PN18633

And in paragraph 62 you refer to your experience of:

PN18634

Managers of stores rostering full-time and part-time employees to work in accordance with hours of availability and preference.

PN18635

As I understand it, given the information that's entered into the myRestaurant system, you're using the words "availability" and "preference" in your affidavit interchangeably?---What I would say the difference between availability and preference is availability is the top part where they're saying when they're available and what days and times they're available to work; whereas preferences, if you went back to the questions that it had, talking about the maximum number of shifts they would like to work would probably be more of a preference than an availability.

PN18636

I see?---So for example, if they answered that they would like to work a particular number - that maximum number of shifts they would like to work for Monday to Friday, that would be a preference, not necessarily an availability.

PN18637

I see. So you've used that terminology of availability and preference, you use the word "availability" to capture the information on the first page of KTL7 - have you got that in front of you?---Yes.

*** KRISTA THERESE LIMBREY

XXN MR MOORE

PN18638

And to capture information in the last four questions?---On the second page, are you talking about?

PN18639

Yes?---Yes.

PN18640

But with the first three questions, it's because of the inclusion of those questions that you use the word "preference"?---Yes.

PN18641

And beyond those three questions there's no other identification of an employee's preference in the recruitment process and the rostering process?---Not other than what they've put down as their availabilities, no.

PN18642

Yes. All right. Nothing further, if the Commission please.

PN18643

JUSTICE ROSS: Any re-examination?

PN18644

MR DIXON: No re-examination, if the Commission please.

PN18645

JUSTICE ROSS: Thank you, Ms Limbrey, for your evidence. You're excused.

<THE WITNESS WITHDREW

[12.05 PM]

PN18646

JUSTICE ROSS: Next witness? Do you want a moment?

PN18647

MR DIXON: Could we call Mr Haydar next, if the Commission pleases.

PN18648

THE ASSOCIATE: Please state your full name and address.

PN18649

MR HAYDAR: Ayman Haydar of (address supplied).

<AYMAN HAYDAR, AFFIRMED

[12.06 PM]

EXAMINATION-IN-CHIEF BY MR DIXON

[12.06 PM]

PN18650

MR DIXON: If the Commission pleases. Mr Haydar had asked for some amendments on numbers, and so we have an amended affidavit. I don't know if the Commission has that. If I may hand that up. It was affirmed on 25 October.

*** AYMAN HAYDAR

XN MR DIXON

PN18651

JUSTICE ROSS: You've got that, Mr Moore?

PN18652

MR MOORE: Yes, your Honour. Thank you.

PN18653

MR DIXON: If the Commission pleases, there are two confidential exhibits which we will deal with in the same way, if the Commission pleases.

PN18654

JUSTICE ROSS: Yes.

PN18655

MR DIXON: Mr Haydar, you are a director and company secretary of Haydar Pty Ltd?---I am.

PN18656

And you reside in (address supplied)?---I do.

PN18657

And in your - your company is a franchisee under the McDonald's franchise system?---Correct.

PN18658

Operated by McDonald's Australia Ltd?---Correct.

PN18659

And you have, for the purposes of these proceedings, affirmed on 25 October, an amended affidavit?--- I did, yes.

PN18660

Do you have a copy of that available?---I do, yes.

PN18661

Thank you. And that is an affidavit, if you go to the last paragraph, which consists of some 48 paragraphs?---Sorry, what page am I on?

PN18662

You're on page 12?---Yes.

PN18663

That's the evidence-in-chief.

PN18664

JUSTICE ROSS: Mark the amended affidavit as exhibit Ai Group 5.

**EXHIBIT #AIG5 AMENDED AFFIDAVIT OF AYMAN HAYDAR
DATED 25/10/2015**

*** AYMAN HAYDAR

XN MR DIXON

PN18665

MR MOORE: Good afternoon, Mr Haydar?---Good afternoon.

PN18666

You say in paragraph 39(a), I think it's still 39(a) in your amended affidavit. Yes, it is. You say in about the middle of that paragraph that a candidate's - that a job applicant or a candidate's availability to work is a significant determining factor as to whether he or she will be recruited. That's your evidence. Another McDonald's licensee, Mr Dando, has sworn an affidavit and is giving evidence to this Commission to the terms that managers as he understands it are trained when conducting job interviews to tell applicants that they're expected to be available to work during peak times. Does that practice occur with job interviews at your restaurants?---Sometimes they do, yes.

PN18667

Your busiest times as I read your affidavit are Friday through to Sunday?---Correct.

PN18668

It's not uncommon for, as you understand it for applicants for jobs in your restaurants to be told that they're expected to be available in that window Friday to Sunday?---It is common, yes. We tell them.

PN18669

I take it that if an employee - prospective employee is not available in that time, they're less likely to get a job?---No, not true because we have employees that work on days that are not busy.

PN18670

Speaking generally, a person who wants a job makes the application on line including identifying their availabilities. That's right?---Correct.

PN18671

If they get the job those availabilities are entered onto the system?---Correct.

PN18672

There are then processes within the company for any permanent changes in availability to occur?---Correct.

PN18673

An employee will be rostered within the range of their availabilities that are on the system?---Correct.

PN18674

Within the times and days that an employee is identified as being available to work on the system, there's no process in place for the employee to identify their preferred times of work?---Well there is. It's through MeTime, so they - - -

*** AYMAN HAYDAR

XXN MR MOORE

PN18675

I'm sorry, go on?---They will note into the system when they can work and can't work.

PN18676

What enter in through MeTime is when they're available to work?---And if they are not available then there is a system at work where they will go to their rostering manager and we have an NA Book, not availability book, where they will note in that book when they can't work.

PN18677

I understand that. So putting to one side at the moment the capacity, as you quite correctly identified, for an employee to identify a temporary unavailability through the NA Book?---Yes.

PN18678

Put that to one side. Beyond that, what you have is a computer record of the range of times of which an employee is available to work?---Yes, and they can alter that. They can make the change themselves.

PN18679

That's right, and my question to you is that beyond that record of availability, there's no other processes in place which allow employees to identify their preferred times within that availability?---I'm sure there is. I don't understand. Sorry, I don't understand your question.

PN18680

Do you understand the difference, by availability a person identifies when they are available to work?---Absolutely, yes.

PN18681

You understand that if a person is available to work that's not necessarily the same time as - same thing as saying that they prefer to work then. Do you accept that logical distinction?---Yes, I do, yes.

PN18682

Accepting that logical difference, I'm just clarifying with you that the system records employees' availability and they are then rostered within the framework of that availability, yes?---Yes.

PN18683

But there are no processes in place beyond the NA Book which allow employees to express their preferred hours within their available hours. Do you accept that's accurate?---Well they can through MeTime, they can make a change. They can actually make a note on their system to make a change of their availabilities.

PN18684

I see, so they could permanently change their availabilities?---Correct, and they could print a copy of that.

*** AYMAN HAYDAR

XXN MR MOORE

PN18685

Beyond that there's no - I'm sorry, go on?---They could tell their - I beg your pardon. They could tell their rostering manager or store manager what they intend to do.

PN18686

Yes, so if there's a change in an employee's circumstance they can approach their manager and say I need to change my availability and that can occur through the MeTime system?---Correct, and they can also enter that into the My Roster system at the store where it will be noted before the roster is generated there's a change.

PN18687

Those systems that you've just described, those adjustments in those systems that you've just described allow an employee to adjust their availability, that's right?---Correct.

PN18688

Beyond those systems and beyond the NA Book, there's no other capacity for an employee to communicate their preferred times to work within their available hours. Do you accept that?---Other than speaking to their rostering manager.

PN18689

Yes, do you accept that?---Yes.

PN18690

In paragraph 39, if you can go back to that, that I asked you about before. You say at the commencement of that paragraph;

PN18691

The company uses a number of systems for employees to express their preferred working hours as set out below.

PN18692

You set out in paragraph (a) the MeTime and the permanent availabilities that an applicant enters when they're applying for a job. Then there's the temporary change and availability through the NA Book which you refer to in (b), yes?---Correct.

PN18693

Then there's what you refer to as the change of availability form for a permanent change in availability in (c)?---Correct.

PN18694

When you say at the start of that paragraph there are a number of systems for employees to express their preferred working hours, what you mean is that there are a number of systems in place which allow employees to express and identify their available working hours?---Correct.

*** AYMAN HAYDAR

XXN MR MOORE

PN18695

Thank you. Another licensee Mr Dunn has given evidence to this Commission that on Fridays, Saturdays and Sundays more people call in sick or have other commitments that affect their temporary availability. That's his evidence to this Commission. Is that consistent with the experience in your restaurants?---Yes, sometimes it is, yes.

PN18696

Would you also agree that of those three days the greatest preponderance of when people call in sick or have other commitments such that they become temporarily available, is on Sundays?---Temporarily unavailable?

PN18697

Yes?---Yes.

PN18698

Thank you. Nothing further.

PN18699

VICE PRESIDENT CATANZARITI: Can I just ask you one question?---Yes, certainly.

PN18700

I understand that there is a formal system but each system would an informal system in that they're working on a particular shift, the manager would be talking to the staff and say well, even though they haven't put that they're available there's nothing stopping an employee saying, when the manager requests, are you available tomorrow even though you haven't put in your availability?---Correct.

PN18701

That would happen from time to time?---It does, yes.

PN18702

MR MOORE: Nothing arising, your Honour.

PN18703

JUSTICE ROSS: Any re-examination?

RE-EXAMINATION BY MR DIXON

[12.18 PM]

PN18704

MR DIXON: Just one question. Mr Haydar, you were asked some questions in relation to the employees being temporarily unavailable because of Friday - of some calling in sick. At your stores, do you roster the same number of people every day or do they change?---No, they change.

PN18705

Which is the day when you roster most employees?---It would be Friday, Saturday or Sunday. It depends if we have a promotion or an activity on one of those days, but generally the weekend.

*** AYMAN HAYDAR

RXN MR DIXON

PN18706

The number of employees that you roster during the week, are they equal every day or do they change?---No, they vary again.

PN18707

Is there a pattern to that variation?---It's all reliant on sales.

PN18708

So are there some days where you roster significantly fewer or some fewer number?---Generally a few number but generally they're the same.

PN18709

Thank you, if the Commission please.

PN18710

JUSTICE ROSS: Anything further? Thank you very much for your evidence, Mr Haydar. You're excused?---Thank you.

<THE WITNESS WITHDREW

[12.19 PM]

PN18711

MR MOORE: Could we just have five minutes. We're just having difficulty with some copying and I was just hoping to attend to that without delaying.

PN18712

JUSTICE ROSS: That's right, all right. If you need any assistance, just let my Associate know.

PN18713

MR MOORE: Thank you. The registry is assisting.

PN18714

JUSTICE ROSS: We'll stand down for five minutes.

SHORT ADJOURNMENT

[12.19 PM]

RESUMED

[12.29 PM]

PN18715

JUSTICE ROSS: All good?

PN18716

MR GOTTING: Thank you for the adjournment.

PN18717

JUSTICE ROSS: No, not at all.

*** AYMAN HAYDAR

RXN MR DIXON

PN18718

MR DIXON: If the Commission pleases, may we call our next witness, Mr Adam Dando. And if the Commission pleases, there's an amended affidavit, which was

the cause of the hold up, but corrected some of the figures that he previously gives.

PN18719

THE ASSOCIATE: Please state your full name and address.

PN18720

MR DANDO: Adam Dando, (address supplied).

<ADAM MARK DANDO, AFFIRMED [12.30 PM]

EXAMINATION-IN-CHIEF BY MR DIXON [12.30 AM]

PN18721

MR DIXON: Could you state your full names, Mr Dando?---Adam Mark Dando.

PN18722

And you are a director of Jasie, J-A-S-I-E, Pty Ltd, a franchisee for the McDonald's Restaurant chains in Queensland?---Yes.

PN18723

And for the purposes of these proceedings you have affirmed an amended affidavit on today's date, 26 October 2015?---Yes.

PN18724

I'm not sure whether the copy that the tribunal has has Mr Dando's signature at the end. If not, I will ask him to affirm it separately.

PN18725

JUSTICE ROSS: Yes, it does.

PN18726

MR DIXON: It has.

PN18727

And do you have a copy of that amended affidavit of some 43 paragraphs in front of you, Mr Dando?---Yes.

PN18728

If the Commission pleases, that's the evidence-in-chief.

PN18729

JUSTICE ROSS: I will mark the amended affidavit of Mr Dando as exhibit Ai Group 6.

*** ADAM MARK DANDO

XN MR DIXON

*** ADAM MARK DANDO

XXN MR MOORE

**EXHIBIT #AIG6 AMENDED AFFIDAVIT OF ADAM DANDO
DATED 26/10/2015**

CROSS-EXAMINATION BY MR MOORE [12.32 PM]

PN18730

MR MOORE: Hello, Mr Dando. Now, I just want to ask you some questions about your affidavit. Just excuse me a moment, I've got the wrong document in front of me. At the end of your affidavit, if you look at the last paragraph of your affidavit?---Number 43?

PN18731

Yes, number 43. You say that although you don't conduct job interviews for prospective employees, you're aware that McDonald's provides training to the managers who do conduct the job interviews, in which managers are taught that prospective employees are required to be told at the time of interviewing that there is an expectation that they will be available to work during peak periods of the business, which in your restaurants - your freestanding restaurants, I'm sorry - is Friday to Sunday. Your managers undergo that training. Is that right?---Yes.

PN18732

Do your managers undergo that training?---They go to a McDonald's training course, yes.

PN18733

Yes. And is it your understanding that your managers do tell prospective employees that there's an expectation that they will be available to work during peak periods of business?---I believe so.

PN18734

Yes. And your peak periods of business are Friday to Sunday?---Across most stores.

PN18735

Yes?---I do have one that's not the case.

PN18736

I see. But speaking generally across the stores?---Generally, yes.

PN18737

And so if a prospective employee was not available to work across Friday to Sunday, their prospects of getting a job would be much diminished?---I imagine. Having - not doing the interviews specifically, that that would depend on other days of availability.

PN18738

Yes. They're going to have less prospects if they're not available at the busy times?---It would depend on what the need was at the store at the time of the interview.

PN18739

There might be another gap to fill?---Correct.

PN18740

Yes. But there are fewer gaps than in the busy times?---No, not necessarily. No.

*** ADAM MARK DANDO

XXN MR MOORE

PN18741

All right. Now, in paragraph 39 you refer to a system for employees - you say in the first paragraph:

PN18742

There's a system for employees to write down their general availability for work.

PN18743

Do you see that?---Yes.

PN18744

And you go on to refer how there can be - the system also accommodates any later changes in their general availability?---Yes.

PN18745

And there's also, separate to that, the NA book system as well for temporary unavailability?---I think they're effectively the same.

PN18746

I see?---Maybe I need to hear the second part again.

PN18747

Certainly. I see. So in your business, the way it works in your restaurants is that the availability of employees are what appears in the electronic system, which is entered into when an employee applies for a job?---Correct.

PN18748

And that remains unchanged, does it?---Until notified by the employee.

PN18749

I see. An employee might request to change their - - - ?---To change it, yes.

PN18750

A permanent change in their availability, if you like?---Correct.

PN18751

And then separate to that there's also one-off unavailability that can be communicated through the NA book?---Correct.

PN18752

Thank you. And I take it that across your restaurants rosters of staff are then determined for particular staff members within the parameters or within the limits of their stated availability?---Correct.

*** ADAM MARK DANDO

XXN MR MOORE

PN18753

So it's not a system for employees to identify their preferred hours of work - when they want to work - just when they're available to work?---Maybe not a system as such. And I only say what I'm about to say based on experience; staff would say,

you know, "I'm available for this length, these many days, but my preferred days are - my preferred availability is - - - "

PN18754

But there's no scope to - - - ?---" - - - x, y, z."

PN18755

I'm sorry, did you finish your answer?---Yes.

PN18756

Sorry to interrupt you. There's no scope to record the last part of what you identified; that is, an employee saying, "I'm available across these days, but my preferred days are x." There's no scope in the McDonald's system or the systems which operate at your restaurants to record that last part as to their preferred days?---They more than likely would use the NA book or talk to the scheduling manager.

PN18757

I see. So it's an ad hoc or an informal basis, they could express their preference?---I believe so, yes.

PN18758

All right. Now, another witness, a Mr Dunn, has given evidence to this Commission - he's a licensee. You may or may not know Mr Dunn - that across his five restaurants he says that on Fridays, Saturdays and Sundays more people call in sick or have other commitments that affect their temporary availability. Does that reflect the experience in your restaurants?---I couldn't tell you, to be honest. In my time, people ring up sick when they're sick.

PN18759

So you don't know?---No.

PN18760

I see. Okay. Are you able to say - all right. So you don't know, within your own knowledge, as you sit here now?---I've never recorded it or checked that stat or had any sort of tracking to establish that.

PN18761

Okay. Now, in this proceeding you were asked to produce to the Commission some copies of your NA book?---Yes.

PN18762

And you did that?---Yes.

PN18763

And they were for the period of [REDACTED] ?---I believe so.

PN18764

Yes. I just hand the witness - sorry, I've only got two of these, but it is these documents, as with the other one. It's the same.

*** ADAM MARK DANDO

XXN MR MOORE

PN18765

I've just had handed to you a copy of the documents that you produced, being the NA books for the period I identified across your restaurants. Can you identify that that is a copy of the NA books for your restaurants, the identity of which are set out in the contents in the first page of that folder for the period [REDACTED] [REDACTED]?---They look familiar, but - - -

PN18766

Just take a moment to - - -?---I saw a name that's familiar, yes.

PN18767

Just take a moment to look through it if you need to confirm it in your mind?---Yes, they look correct, yes.

PN18768

You're able to identify them as the NA books - - - ?---Yes. I see names in them, yes.

PN18769

- - - for your eight restaurants for the period [REDACTED] [REDACTED]?---I didn't check the dates. [REDACTED] - they look like what I've seen. [REDACTED], did you say?

PN18770

I think it's [REDACTED]?---Yes.

PN18771

Thank you. I tender those, if the Commission pleases.

PN18772

JUSTICE ROSS: Mark that exhibit SDA24.

EXHIBIT #SDA24 NA BOOKS [REDACTED] TO [REDACTED]

PN18773

MR MOORE: I just want to ask you a few questions about the way the system works. There's a book, which is really a page at a daily diary, in each of the stores. That's right?---Yes.

PN18774

And so if an employee wants to make themselves temporarily unavailable for an upcoming day when they're generally available for that day because that is recorded in the system, they need to go and put their name in the book on that day?---Correct.

PN18775

That's right?---That's right, yes.

PN18776

And some days have more or less names?---Yes, that's right.

*** ADAM MARK DANDO

XXN MR MOORE

PN18777

So can I hand you this document?---Thank you.

PN18778

Let me explain the document that has just been handed to you, Mr Dando. So what we've done is we looked at the documents in the NA books, in the folder of documents in front of you?---Yes.

PN18779

And we've added up all the names that appear on each date across all the stores and calculated an average of the number of names that appear on each date, and that average is set out in the column - - - ?---Yes.

PN18780

- - - under your name, Dando. Do you see that there?---Yes.

PN18781

And we've represent those averages in the graph which is to the right?---Okay.

PN18782

See that?---Yes.

PN18783

So you will see that according to the calculations we've undertaken, the day which has the largest number of names associated with it in the week, on average, is [REDACTED]?---Yes.

PN18784

Followed by [REDACTED], and then [REDACTED]. Do you see that in the graph?---Yes.

PN18785

Do you accept that that's an accurate picture?

PN18786

MR DIXON: I object. The witness cannot be asked as whether that analysis is an accurate reflection of - - -

PN18787

JUSTICE ROSS: You can frame it differently; perhaps whether it accords with his experience.

PN18788

MR DIXON: Yes.

PN18789

MR MOORE: Does that - what I've just outlined to you about [REDACTED] being the day with the greatest number of names in the book identifying temporary absence, followed by [REDACTED], and then followed by [REDACTED] - does that accord with your experience in managing the businesses?---Yes.

*** ADAM MARK DANDO

XXN MR MOORE

PN18790

I tender the document.

PN18791

MR DIXON: I object on the basis that it's not - it can't be the evidence of the analysis that's carried out, it can only be an aide-memoir.

PN18792

JUSTICE ROSS: No, it's not. It's evidence in his experience, because he has answered the question whether the chart accords with his experience.

PN18793

MR DIXON: But, your Honour, that, in my respectful submission, is a different issue than the accuracy of the analysis that's carried out in the document.

PN18794

JUSTICE ROSS: Well, it's not being tendered for the purpose of the accuracy of the analysis, because as - - -

PN18795

MR DIXON: I accept that, your Honour.

PN18796

JUSTICE ROSS: It's really to reflect the witness's answer, I think.

PN18797

MR DIXON: If your Honour pleases.

PN18798

JUSTICE ROSS: You would need to do more. You can go through the document. I'm not sure what forensic purpose would be achieved, because the witness has indicated that that's broadly the pattern that accords with his experience.

PN18799

MR DIXON: Yes.

PN18800

JUSTICE ROSS: And that would seem to be the - - -

PN18801

MR DIXON: Yes.

PN18802

JUSTICE ROSS: We will mark that as exhibit SDA25.

EXHIBIT #SDA25 GRAPH DEPICTING NA NUMBERS

*** ADAM MARK DANDO

XXN MR MOORE

PN18803

MR MOORE: Thank you, your Honour. Nothing further, if the Commission pleases.

RE-EXAMINATION BY MR DIXON

[12.47 PM]

PN18804

MR DIXON: Mr Dando, do you have handy the DA (sic) book for Albany Creek store?---I'm sorry, the NA book?

PN18805

Yes. You know, the volume of material that you've given us?---Yes.

PN18806

Now, within that volume there should be - - - ?---Albany Creek, yes.

PN18807

- - - the DA book for Albany Creek?---Yes.

PN18808

Can you - and I think that the first page that we have for Albany Creek starts in [REDACTED]. Does that confirm yours? No, there's another one. In Albany Creek, could you just go to [REDACTED], for example?---Yes.

PN18809

Have you got that?---Yes.

PN18810

Now, [REDACTED], which is a [REDACTED], there are a couple of entries starting at the bottom of that page?---Yes.

PN18811

Do you see those?---Yes.

PN18812

I don't think all the members of the tribunal have it. Can you just broadly indicate what those two entries refer to?---Are you referring to the [REDACTED] availability?---Yes.

PN18813

And the other one would be the - looks like [REDACTED] new availability. It's where, as I said before, some crew have indicated to the scheduling manager their new availability moving forward.

PN18814

Right. And if you go to [REDACTED]?---Yes.

PN18815

There's an entry under - - - ?---[REDACTED].

*** ADAM MARK DANDO

RXN MR DIXON

PN18816

- - - a name, [REDACTED], new availabilities, and then set out availabilities?---Correct.

PN18817

And there are a number of such entries in this NA book. Can you tell me, in your experience, what the process is if an employee has entered new availabilities in the NA book in that fashion?---My understanding is the rostering manager would take that availability, when do the rosters, and re-enter that availability into the scheduling system to draw a roster - to do a roster.

PN18818

And in your experience is that preference given effect to?---I'm sorry?

PN18819

Does the rostering manager, through the rostering, give effect - implement the availability nominated by the employee?---Yes.

PN18820

And in respect of rostering and your stores, which is the day that the greatest number of employees being rostered?---It will be Friday or Saturday, depending on which store.

PN18821

Yes?---It's predominantly Saturday. I was thinking Kenmore then, which would probably be Friday, but Newmarket and Albany Creek would be Saturday.

PN18822

And - - -?---And The Gap will be Saturday.

PN18823

And other days of the week the same number, or more or fewer?---You mean like a Monday? A Monday, Tuesday, Wednesday would be considerably less.

PN18824

Right. Thank you. If the Commission pleases, that's the examination.

PN18825

JUSTICE ROSS: Nothing further? Thank you for your evidence. You're excused?---Your welcome.

<THE WITNESS WITHDREW

[12.50 PM]

PN18826

MR GOTTING: That's the witnesses that we have to day. I understand that RCI is going to interpose to of its witnesses, but the next Ai Group witness is scheduled tomorrow morning.

PN18827

JUSTICE ROSS: So we have Mr Lonregan and Mr [REDACTED], I think, for RCI this afternoon at 2.00 - commencing at 2.00.

*** ADAM MARK DANDO

RXN MR DIXON

PN18828

MR GOTTING: I'm not sure of the names, but they're RCI witnesses and I do not have any direct involvement in that matter.

PN18829

JUSTICE ROSS: No, that's fine, Mr Gotting.

PN18830

MR PARKES: Your Honour, Mr [REDACTED] from Adelaide would like to bring his evidence forward. He has a funeral to attend this afternoon and we would appreciate - - -

PN18831

JUSTICE ROSS: Dos he want to do it now?

PN18832

MR PARKES: Yes. He's a few minutes away from the tribunal, so if could have an adjournment for five minutes. And I've spoken to counsel. They seem to be happy with that as well.

PN18833

JUSTICE ROSS: Yes. No, we're happy to accommodate him. We will stand down for five minutes.

PN18834

MR PARKES: May I be excused this afternoon? Mr Gotting will be here. Thank you.

SHORT ADJOURNMENT

[12.51 PM]

RESUMED

[1.01 PM]

PN18835

JUSTICE ROSS: Yes.

PN18836

MR PARKES: Thank you, your Honour. I call Mr [REDACTED]

PN18837

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

PN18838

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

< [REDACTED], AFFIRMED

[1.02 PM]

EXAMINATION-IN-CHIEF BY MR PARKES

[1.02 PM]

XN MR PARKES

PN18839

MR PARKES: Mr [REDACTED], it's Greg Parkes from the Restaurant and Catering Association. Can you hear me okay?---I can, yes. This is fine.

PN18840

Thank you. Can you please state your name for the transcription record?---[REDACTED].

PN18841

Thank you. And you are the co-owner of [REDACTED] in Adelaide. Is that correct?---That's true, yes.

PN18842

And did you prepare a statement for this case?---I did, yes.

PN18843

And do you have a copy of that statement with you?---I do. I have it in front of me.

PN18844

Is that a statement of 11 paragraphs dated 10 August 2015?---Yes.

PN18845

Thank you. Your Honour, I would just like to point out, in relation to some objections that the SDA made in relation to this statement, we have reached agreement, and that's on the basis that the word "excessively" in paragraph 10 be retracted; and we no longer read paragraph 11.

PN18846

JUSTICE ROSS: Thank you, Mr Parkes.

PN18847

MR PARKES: On that basis, I seek to tender that statement, your Honour.

PN18848

JUSTICE ROSS: With those redactions we will mark the statement RCI20.

**EXHIBIT #RCI20 STATEMENT OF [REDACTED] AS
AMENDED DATED 10/08/2015**

CROSS-EXAMINATION BY MR MOORE

[1.04 PM]

PN18849

MR MOORE: Mr [REDACTED], can you hear me okay?---Yes.

PN18850

Mr [REDACTED], my name is Stephen Moore, and I'm barrister for the SDA. I'm just going to ask you some questions about your statement?---Yes.

XXN MR MOORE

PN18851

You say in paragraph 2 that you've commenced operations in August 2010, so I gather that from August 2010 to the present time you've grown from one to three outlets. Is that right?---Yes, that's right.

PN18852

Any more in the tube?---I would like to say yes, but - - -

PN18853

Any more planned, I'm sorry?---Not currently.

PN18854

All right. When was the most recent one opened?---[REDACTED] was opened October 2013.

PN18855

All right. Thank you. Now, I had a look at your web site. And if you could be shown a document which a staff member of the Commission should have available now. If the witness could please be shown that?---Yes.

PN18856

So you've got a web site?---Yes.

PN18857

And there's a tab on the web site, I think it's called "Careers"?---Yes, I think "Work With Us", is what it's called.

PN18858

Yes. Okay. And there's a facility, then, on the web site, to make online application to get a job?---Yes.

PN18859

And to do that one is then shown on the web site the document that's in front of you now. Is that correct?---Yes.

PN18860

All right. So that's the document headed "Pre-Employment Questions Team Member". If you go over to page 2 of that document there's a heading "Availability". Do you see that?---Yes.

PN18861

And it reads:

PN18862

[REDACTED]'s - [REDACTED] - operate over seven days and most public holidays. We operate 8.30 am to 10 pm at most locations.

PN18863

See that?---Yes.

XXN MR MOORE

PN18864

So that accurately records your operational hours?---Operational; trading hours, no.

PN18865

So trading hours, that is by which you mean when your doors are open to the public?---Correct.

PN18866

I see. So these are your operational hours in the sense that that's when people are working in your premises?---Yes.

PN18867

I see. And the trading hours would be something less than that, perhaps?---Yes.

PN18868

I see?---Yes. The trading hours, we operate 11 am till 9 pm every day, where only our city store we operate and extent till 11 pm on the Friday and Saturdays.

PN18869

All right. And that's what you refer to in paragraph 6. So in the language that I've just used in asking you some questions, they are your trading times that you set out in paragraph 6?---Yes.

PN18870

I see?---Yes.

PN18871

But your operational hours are actually greater than that?---Yes. We operate very high quality food, and with that comes prep time; and at the end of the day comes a close-down time as well.

PN18872

Yes. I think you won best burger in Australia. Is that right?---We did. There are many surveys, but yes, we will definitely take that one.

PN18873

Thank you. Now, if you look at paragraph 8 - before I go on, I tender that document, your Honour.

PN18874

JUSTICE ROSS: Mark that exhibit SDA26.

EXHIBIT #SDA26 PRINTOUT FROM [REDACTED] WEB SITE

PN18875

MR MOORE: If you look at paragraph 8 of your affidavit, you say that:

[REDACTED]

XXN MR MOORE

PN18876

A reduction to the Sunday penalty rate would benefit the company and would boost casual employment by three new staff.

PN18877

I just want to focus on those words "would benefit the company". By that I take it you're just simply saying that it would reduce your labour costs?---It would allow us to provide a better service to our customers, where currently we have to shorten our head count on those days just to provide a profitable day to continue the business operations that we currently have and our trading hours. Yes, it's costly to open on a Sunday, but we acknowledge that we need to be able to service our customers which demand our service on those days, and so we just - we work a little bit harder on those days; whereas if it was a little bit more reduced we could have that extra staff member on for the service and create a better environment for our customers.

PN18878

All right. I just wanted to clarify. When you refer to "would benefit the company", it's really the point you go on to make, which is you say it would permit you to employ three new staff, which would, you say, improve the service that you can offer?---Absolutely, yes.

PN18879

I follow. Thank you. So how did you determine that a reduction in the Sunday penalty rate would boost casual employment by three new staff?---It would become - there would be an opportunity to have an extra staff member on in those key times; the 12 till 3.00 of lunchtime, which can be quite busy on a Sunday; and then Sunday night, the end of the weekend, tends to be a busy session also. Currently we run with a lean amount of staff to be able to get through that shift, but we would put on that extra staff member just to make the wait times reduce and also, yes, help out the rest of the team.

PN18880

I see. And on Sundays now, what are your casual staff paid - in terms of the penalty rate, I'm sorry - in terms of the penalty rate?---In terms of the penalty rate, we have a variance of ages from 15 right through to 30-year-old staff members, full-time and casual; casuals at the moment are getting paid - it really just depends on the age, but to my understanding they're paid at 25 per cent loading, and then also an extra 150 per cent on top of that.

PN18881

I see, so the casuals are getting whatever the applicable ordinary rate is for their age plus the 175 per cent inclusive of the casual loading?---Yes.

PN18882

Are you saying that an abolition in the - that is the removal entirely of the Sunday penalty rate would allow you to employ three new staff?---A reduction in its entirety is not what I'm claiming. I'm claiming just a reduction back to what the Saturday rate is of 150 per cent, that would reduce obviously the added cost for the day. Yes, so just making it a weekend rate than a loaded Sunday rate.

XXN MR MOORE

PN18883

So what you're saying is - I understand what you're saying, your evidence that casual employment, you would boost casual employment by three new staff is on the basis that the Sunday rate was reduced to the Saturday rate?---Yes.

PN18884

Now in the next paragraph you talk about late nights?---Yes.

PN18885

You say that staff staying back until 10 pm to complete the necessary closure of operations at each site on weekdays, and you say that this equates to a total of \$4391 across all three sites per annum. Are you saying that that is the total - your company's total labour cost for the period from 9 to 10 pm across all three sites, or just the 10 per cent loading?---Just the 10 per cent loading.

PN18886

You're saying that the 10 per cent loading that you pay your workers from 9 to 10 pm - I'll withdraw that. Now it's a very specific number you've come up with there, 4391. How did you calculate that number?---I went through the previous 12 months prior to this statement of every staff members, every shift between 9 and midnight - 9 pm and midnight, across the three sites and I worked out the loading within that because our software allowed us to be able to track data, and it came to - just that loading in itself came to - added up amongst the three stores came to \$4391. Within that our Adelaide store operates until 11 pm on these Fridays and Saturdays so that store generated obviously a little bit more than the other two sites, but we see it necessary to be able to stay open till 11 pm when we are a city location, just to be able to create that vibrancy on the Friday and Saturday night that the public comes to expect from our food outlet.

PN18887

I understand?---So that is still our core business trading hours and with that 10 per cent it is - it does disadvantage us slightly when it is still core business hours.

PN18888

You're not in a position to say that if that 10 per cent was removed between 9 and 10 pm that that would in all likelihood lead you to change your staffing arrangements or your hours of trade?---No, it would stay the same trading hours.

PN18889

Can I ask you about paragraph 10. As you say in your website, you do actually trade most public holidays. That's so, isn't it?---I would like to correct that. We trade - after this employment pack was created prior to our sort of test run that we did on that public holidays through Easter last year, so it does need to be updated. We trade only one public holiday per store for the year.

PN18890

Are you saying that the document from your website, exhibit SDA26, was created after your trial in 2014 over Easter?---Before.



XXN MR MOORE

PN18891

Before, I see?---Sorry, we didn't update it and thank you for bringing it to my attention.

PN18892

I'm glad I could assist. Now you say that with the trial in 2014 at Easter, the business ran at a loss. Do you mean all stores ran at a loss or just some?---All stores.

PN18893

How did you determine this, that is in relation to the trial in 2014 over Easter?---We have our spreadsheets that we use on a daily basis to calculate expenses, labour cost, sales and just give us that - basically like a profit and loss statement for each day. On all those occasions across that Easter weekend, even with charging at 12.5 per cent surcharge onto the customer's bill with the new menu and listing and everything, we still were not able to generate a figure in the black. That was the last of our public holiday trials. Previous to this, we had tried opening just in the profitable part of the day, so 5 pm till 9 pm where we would be at our most busiest to shorten the amount of labour hours in the day, and even then we were still unable to generate a profit from the business. So we deemed after doing that and then opening all day with no surcharge, that didn't work. Opening all day with a surcharge, the customers weren't responsive to paying extra on these days and we actually got some negative feedback about that. So with that all in mind and just not being able to generate the profit out of it, we ended up just saying everyone gets that day off and customers cannot access our business.

PN18894

Have you, since May 2014 - sorry Easter 2014, have you had any other trials of opening on public holidays?---We trade- for our [REDACTED] store, we trade on New Year's Day because in previous years we have an expectation of the sales that we are going to make, and we are able to generate enough sales through the door that day to stay open. However, the profit line on that is considerably reduced and at best we - yes, we don't generate the amount of income that we need to for that day, but we acknowledge that we have a lot of people in the local area that do know that we're open on that day. So that's the one day of the year we stay open.

PN18895

That's part of the challenge for having a successful trading day on a public holiday is ensuring that customers know you're open. Is that an important ingredient to commercial success on any particular day, including a public holiday?---Yes, absolutely.

XXN MR MOORE

PN18896

Was that part of the problem with the Easter 2014 trial, that your business at those outlets hadn't previously traded on public holidays?---No, we had been open the previous Easter also. The only thing with the Easter, it is quite a long break so a lot of the locals do end up going on holiday and getting out of the city. So we

knew that sales were not going to be there and that assisted us in our decision to close the business.

PN18897

So the [REDACTED] store is open on New Year's Day. Is the [REDACTED] store open on any other public holidays?---No, we also close on Christmas Eve and New Year's Eve.

PN18898

What about the two other stores, are they open on any public holidays?---The city store closes on New Year's Day but it is open on Boxing Day, which is traditionally very - it is a shopping day, the day after Christmas, so we do know that there are enough - there is enough foot traffic in the area to generate enough business to stay open.

PN18899

Any other public holidays that the city store's open?---No.

PN18900

What about the [REDACTED] store?---That's also a suburb location so that trades on New Year's Day, however it's not as successful as the [REDACTED] store, but we still remain open to keep it consistent.

PN18901

Thank you, Mr [REDACTED], nothing further?---Thank you.

PN18902

JUSTICE ROSS: Any re-examination?

RE-EXAMINATION BY MR PARKES

[1.22 PM]

PN18903

MR PARKES: Mr [REDACTED], if I can take you back to paragraph 10 of your statement.

PN18904

MR MOORE: It's not in - - -

PN18905

MR PARKES: I'm sorry, I withdraw that, sorry. I take it that when you trialled working or opening your stores on public holidays that the predominant amount of staff were casual staff. Is that correct?

PN18906

MR MOORE: I object to the question.

PN18907

JUSTICE ROSS: Yes, don't lead. That's at least one basis for the objection.

RXN MR PARKES

PN18908

MR MOORE: Yes, it was the basis for the objection.

PN18909

MR PARKES: Mr [REDACTED], I am just referring to the trial that you had in 2014. Could you please explain the staff that you employed during the trial?---During that time we had our full-time team members, of which there were only two in the business working, and so we gave them extra time off later in the week. We also had myself in management in the business working. Assisting us with that we had per shift there would have been three casuals on, and that - so it would have been in the morning and lunch and then in the afternoon we would have had four casuals on per day. So overall there would have been several casual employees that would have been working throughout the day, two full-timers and myself.

PN18910

Thank you, Mr [REDACTED]. No further questions.

PN18911

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

<THE WITNESS WITHDREW

[1.24 PM]

PN18912

So we have Mr [REDACTED] at 2.30, is that right?

PN18913

MR MOORE: Your Honour, yes.

PN18914

JUSTICE ROSS: We'll adjourn until 2.30.

LUNCHEON ADJOURNMENT

[1.24 PM]

OFF THE RECORD

[1.24 PM]

[REDACTED]

RXN MR PARKES

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