



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009
TRANSCRIPT IN CONFIDENCE

1052575

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

AM2014/305

s.156 - 4 yearly review of modern awards

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

Sydney

9.30 AM, WEDNESDAY, 28 OCTOBER 2015

Continued from 27/10/2015

PN19860

JUSTICE ROSS: Can I raise a preliminary matter. I'm not suggesting this is a matter of great moment, but I wanted to bring it to your attention. It had escaped my attention that - or I had simply forgotten about it - that I think in - 12 or so years ago - I was the co-editor of a book, Works Councils in Australia - no doubt you've heard of it, I think it rocketed up the charts - with Paul Gollan and Ray Markey, and I've had little contact with each of them.

PN19861

I think I spoke at a Macquarie University management conference a couple of years ago. I plainly haven't spoken to them about this matter or their evidence, but I thought on the off chance you might see a copy of this book, probably on the remainder table at a book shop, and you might wonder about the connection, that's the extent of it.

PN19862

I was pleased that there is a positive review on the web site from someone who must have read the book, but it's simply a completion of views. I note my now colleague, Jonathan Hamberger, was a contributor as well. But I just bring it to your attention for - if at least you see it later or one of your clients does, and one wonders about - - -

PN19863

MR DIXON: We have no difficulty. Thank you, your Honour.

PN19864

JUSTICE ROSS: And, Mr Markey, who's - - -

PN19865

MR SECK: Can I just raise one preliminary issue, your Honour?

PN19866

JUSTICE ROSS: Yes, certainly.

PN19867

MR SECK: Your Honour asked me yesterday to ascertain Ms Pezzullo's availability for 16 December.

PN19868

JUSTICE ROSS: Yes.

PN19869

MR SECK: We've spoken to Ms Pezzullo. She has indicated that she can make herself available on 16 December. She does have a board meeting of Deloitte, and she had expressed a preference for either the 14th or 15th if that was possible, but if 16th is the only date, then she will make herself available.

PN19870

JUSTICE ROSS: Look, we will have a look at it. I think the difficulty is the 15th we've got the three witnesses already scheduled. I'm content for you to discuss

that with the parties calling them, and if the two dates can change, then that's fine. I'm not sure what the availability of those three witnesses is. That's - - -

PN19871

MR SECK: I understand, your Honour.

PN19872

JUSTICE ROSS: So I will leave that with the parties to have a discussion about. From the Bench's perspective, the difficulties we run into are then - well, I know for myself I think I've got a group 3 and 4 modern award callover on the Monday, and moving those is challenging because there are 60 or so awards and a number of parties.

PN19873

MR SECK: May it please your Honour.

PN19874

JUSTICE ROSS: Okay.

PN19875

MR IZZO: Your Honour, could I raise one further preliminary matter? Just in relation to the notices to produce that were issued in relation to Prof Markey, there is a small outstanding issue before Johns C regarding a privilege claim over some documents. All we would seek to do is reserve our position, should a document arise, if the need to recall the professor arises. I doubt that that would be required, we just wish to reserve our position.

PN19876

JUSTICE ROSS: Yes. Thanks, Mr Izzo. Mr Gotting raised a similar point. And yes, there will be leave, as there was in in relation to - I can't recall whether it was Prof Quiggan or one of the others, but a similar issue arose. Mr Dixon, I was advised that there was a - did you want to tender some material or foreshadow the tendering of some witness statements? Did you want to do that now, or once Mr Markey's evidence - - -

PN19877

MR DIXON: No, your Honour. We thought at another convenient time.

PN19878

JUSTICE ROSS: All right. Well, we might deal with Prof Markey first.

PN19879

MR DIXON: We wanted to just make it easier, and we would, through your associate, give advance notice these are the ones that we wish to tender. They're quite voluminous. I didn't know whether the Bench would want them all on the Bench, or whatever it is, but we will work it out with your associate, if we may, at a convenient time.

PN19880

JUSTICE ROSS: No, that's fine. Thank you. Yes.

PN19881

MR DIXON: Thank you, your Honour.

PN19882

JUSTICE ROSS: And these are witnesses that weren't required for cross-examination on the materials.

PN19883

MR DIXON: That is right, if your Honour pleases.

PN19884

JUSTICE ROSS: There's an issue with the recording. We will just stand down for five minutes while we get on top of that.

SHORT ADJOURNMENT [9.35 AM]

RESUMED [9.39 AM]

PN19885

JUSTICE ROSS: I'm advised that the system was recording but the clock was broken. So, small comfort. Yes.

PN19886

MS STARR: Thank you, your Honour. Just one final piece of housekeeping before we call Prof Markey. The Australian Industry Group had raised a number of objections to Prof Markey's report, and those objections have all been resolved. And I seek to tender a document which sets out the agreed understanding of the parties. Some of those objections, your Honour, were not pressed, and others, it has been agreed, based on the conditional nature of the propositions in the expert report, that they will be dealt with as such.

PN19887

JUSTICE ROSS: Do you want me to mark this?

PN19888

MS STARR: Sorry?

PN19889

JUSTICE ROSS: Will I mark - are you tendering?

PN19890

MS STARR: Yes, if that's - - -

PN19891

JUSTICE ROSS: ACTU1.

**EXHIBIT #ACTU1 AGREED UNDERSTANDING OF THE PARTIES
REGARDING STATEMENT OF PROFESSOR MARKEY**

PN19892

JUSTICE ROSS: Did you want to say anything about it, Mr Dixon.

PN19893

MR DIXON: No. We agree with that. Thank you.

PN19894

JUSTICE ROSS: Just bear with me for a moment, if you wouldn't mind. Thank you.

PN19895

MS STARR: The ACTU would call Prof Markey. Thank you.

PN19896

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

PN19897

PROF MARKEY: Raymond Arthur Markey, (address supplied)

<RAYMOND ARTHUR MARKEY, SWORN [9.41 AM]

EXAMINATION-IN-CHIEF BY MS STARR [9.41 AM]

PN19898

MS STARR: Can you repeat for us your name - - -

PN19899

MR WHEELAHAN: Excuse me. Sorry to interrupt. Melbourne here. Is it possible that the camera in Sydney can be panned to the right so that we can see the witness?

PN19900

JUSTICE ROSS: Yes, we will do that now, Mr Wheelahan. Just bear with us for a moment. Let us know when he comes into view.

PN19901

MR WHEELAHAN: Thank you.

PN19902

MS STARR: Can you repeat for us your name, please?---Raymond Arthur Markey.

PN19903

And your address?---(Address supplied)

PN19904

And your occupation?---Professor of employment relationship at Macquarie University and director of the Centre for Workforce Futures.

PN19905

And is it correct that you've prepared a report in these proceedings?---Yes.

*** RAYMOND ARTHUR MARKEY

XN MS STARR

PN19906

If I can, I will provide a - Prof Markey, in that folder of documents you will see that there are three documents. Can you confirm that under the first tab is the report which was prepared by you and is dated 2 September?---Yes.

PN19907

And your curriculum vitae is set out at Appendix A of that report?---Yes.

PN19908

And does that report accurately set out the opinions formed by you based on your expertise?---Yes.

PN19909

I seek to tender that report, your Honour.

PN19910

JUSTICE ROSS: I will mark Prof Markey's report as ACTU2.

**EXHIBIT #ACTU2 REPORT OF PROFESSOR MARKEY DATED
02/09/2015**

PN19911

MS STARR: There are two other documents in there, Prof Markey, you will see behind the second tab. Is it correct that your report that you prepared was in reply to a report of Deloitte Access Economics?---Yes.

PN19912

And is that the report which is behind tab 2 in the folder?---Yes.

PN19913

And lastly, are you aware that Deloitte's Access Economics have prepared a reply response to your report?---Yes.

PN19914

And is that the report which is contained behind tab 3?---Yes.

PN19915

JUSTICE ROSS: Cross-examination?

PN19916

MR DIXON: May I lead off very briefly, if I may?

CROSS-EXAMINATION BY MR DIXON

[9.45 AM]

PN19917

MR DIXON: Prof Markey, for the purposes of preparing your report you were retained by the ACTU. Is that correct?---Yes.

*** RAYMOND ARTHUR MARKEY

XXN MR DIXON

PN19918

And the purpose for which you were engaged was made clear to you by the ACTU, as you've recorded in your letter of 2 September 2015 addressed to Ms Starr, which is behind - which is in your report I take it?---Yes.

PN19919

In preparing this report, you were assisted by Dr McIvor?---That's right.

PN19920

You and Dr McIvor were in agreement as to the approach you would adopt in preparing your report?---Yes.

PN19921

You and Dr McIvor collaborated in preparing your report?---Yes.

PN19922

You collaborated by email as well in preparing your report?---Yes, email and face to face meetings.

PN19923

As at October 2015, you were still in the process of preparing your report for the ACTU?---Not - no, this - - -

PN19924

I'm sorry. As at August 2015, I beg your pardon?---Yes, yes.

PN19925

You were still in the process of preparing your report, my apologies?---Yes.

PN19926

Can I show you an email, if I may. Is it correct that, leaving aside the heading which may have confused me, the email of 11 August 2015 is an email from Dr Joseph McIvor to you in respect of the ongoing preparation of your report. Is that correct?---Yes.

PN19927

Leaving aside - you've read the email now?---Yes.

PN19928

You'll see in the third sentence it says;

PN19929

Much of the report, especially the early parts, is descriptive and doesn't make much of an argument, at least not one we need to refute. For example, the industries in question are important, so I haven't addressed things where I don't feel an actual argument has been made.

PN19930

Do you see that passage?---Yes.

*** RAYMOND ARTHUR MARKEY

XXN MR DIXON

PN19931

Leaving aside the descriptive parts of Ms Pezzullo's report, it's correct is it that you and Dr McIvor approached your task as having to refute what Ms Pezzullo set out in her report?---Yes, that was our direction at that stage.

PN19932

If you go - and that direction did not change?---It did over time. Initially, when we were engaged we just prepared a literature review overall and then we were instructed to focus on the Pezzullo submission, hence this conversation. So it was an iterative process.

PN19933

It changed so that you then focused on refuting Ms Pezzullo's report?---Well reviewing that evidence, yes.

PN19934

More than reviewing, you saw your task as having to refute what Ms Pezzullo had said in her report. Is that not correct?---No, reviewing the evidence.

PN19935

Well this email I suggest to you suggests much more than that?---Does it?

PN19936

Yes, at least;

PN19937

it doesn't make much of an argument, at least not one we need to refute.

PN19938

I suggest to you, Professor Markey, that you and Dr McIvor saw your task as having to refute what Ms Pezzullo had set out in her report. That is correct, is it not?---No, just to review the evidence, which ended up being a refutation.

PN19939

In the heading of your letter of 2 September, do you have that handy? Do you have your letter of 2 September behind your report?---Yes.

PN19940

You signed that letter?---Yes.

PN19941

The heading, "The continuing importance of penalty rates for weekend work", that is simply a manifestation, that comment is it not, about your approach to refuting anything that Ms Pezzullo had said in her report?---That's an indication of what the review of the evidence indicated.

PN19942

In the context where you had set out to refute anything that was contrary to - that you could identify in Ms Pezzullo's report, for the purpose of refuting it?---No, as the letter says it was to review, evaluate and assess the report.

*** RAYMOND ARTHUR MARKEY

XXN MR DIXON

PN19943

Can I then ask you to turn to the body of your report, firstly the executive summary, which there's a paragraph numbered - it starts on page (v). Have you got that?---Mm-hm.

PN19944

Second paragraph, you refer in the second sentence to the Australian Work and Life Index survey?---Yes.

PN19945

It's correct, is it not, that that is a survey and the percentage that you there quote relates to a percentage of workers across all industries?---Yes.

PN19946

In paragraph 3, where you make a reference to a percentage of workers, again that is across all industries?---Yes.

PN19947

Then may I ask you to turn to the body of your report, which starts on page numbered 1. It starts Introduction on 1. Have you got that?---Yes.

PN19948

Turn to page 2, if you would. In paragraph 5, halfway down that paragraph again you make reference to the same Australian Work and Life Index that you referred to in the executive summary, and the evidence - the analysis there again relates across all industries and is not industry specific?---Well as you can see, some of it is industry specific.

PN19949

Apart from - some of it is but according to AWALI, surveyed 37.8 per cent of workers, that is across all industries?---Yes.

PN19950

The next sentence or part, 48.8 per cent of those who work both evenings across all industries?---Yes.

PN19951

52.2 per cent across all industries?---Yes.

PN19952

When you turn to paragraph 6, take your time but it seems that that analysis also there is across all industries?---Yes.

PN19953

Would you then please turn to page 7. Paragraph 17, and halfway down paragraph 17 you refer to an analysis from the Australian Bureau of Statistics 2015?---Yes.

PN19954

You there refer to average employer hours in food retailing?---Yes.

*** RAYMOND ARTHUR MARKEY

XXN MR DIXON

PN19955

For the purposes of that analysis, did you use the ANZAC code of classifications?---Yes, but we used a data cube EO5, I think it was.

PN19956

Which is data cube in division G?---Yes.

PN19957

That's correct, is it not?---Yes.

PN19958

Do you hesitate or are you clear about that?---Well, I mean it's an online process that, so I haven't got a written record of it but - - -

PN19959

Your best recollection, it's division G?---Yes, I think so, yes.

PN19960

Then would you please turn to page 17, at paragraph 37. In the last sentence you make reference to two articles, one from Bittman and the other one Craig and Brown - well there may be three articles, two from Craig and Brown and one from Bittman. It's correct, is it not, that those articles deal with leisure time across all industries and are not industry specific?---Yes.

PN19961

Thank you, professor.

PN19962

JUSTICE ROSS: Mr Seck.

CROSS-EXAMINATION BY MR SECK

[9.55 AM]

PN19963

MR SECK: Thank you, your Honour.

PN19964

JUSTICE ROSS: I'm sorry, Mr Dixon, did you want to tender the - - -

PN19965

MR DIXON: Thank you, your Honour. I do, I apologise.

PN19966

JUSTICE ROSS: No, no, not at all. Mark that Ai Group 12.

EXHIBIT #Ai GROUP 12 EMAIL FROM DR MCIVOR TO PROFESSOR MARKEY DATED 11/08/2015

PN19967

Mr Seck.

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN19968

MR SECK: Professor Markey, my name's Michael Seck and I'm the counsel for the Pharmacy Guild of Australia. I'm going to ask you some questions about your report. Before I do so, I just want to understand your qualifications and areas of study. You've attached to your report your extensive curriculum vitae. Can I take you to page 27 of your CV?---Yes.

PN19969

Just looking at your academic qualifications, Professor Markey, I understand your Bachelor of Arts Honours Degree was in History, that's right?---That's right.

PN19970

Your PhD was in Labour History, that's so?---Labour Economic History, yes.

PN19971

You've never done a formal study in economics, is that correct?---No.

PN19972

Just looking at your academic research and papers, it'd be correct to say that your expertise is primarily focused as a social scientist in the area of industrial relations and labour history?---Yes.

PN19973

You don't claim to have any expertise in behaviour economics?---No.

PN19974

You don't have any expertise in econometrics?---No.

PN19975

You've certainly no academic studies in those areas, that's correct isn't it?---Except in partnership with others with those skills.

PN19976

With those skills. In the area of employee preferences in terms of work/life interference, you haven't undertaken any studies in that area for the purposes of academic research?---Yes, I have.

PN19977

Have you published in that area?---Yes.

PN19978

Have you done anything in relation to weekend work?---Yes.

PN19979

You've set out in your CV, I assume, quite comprehensively the academic research you've undertaken?---Yes.

PN19980

That would be exhaustive?---Yes.

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN19981

Now you've referred to articles in your report which support your refutation of particular parts of Ms Pezzullo's report. That's correct?---Could you say that again?

PN19982

You've identified in your report specific academic articles or studies which report to refute parts of Ms Pezzullo's report, that's so?---Well I've reviewed those articles, yes.

PN19983

You would agree that you've not cited any of the articles that you may have prepared in relation to time use on weekends and work/life interference? Not cited any studies you've done, that's correct?---No, there are some studies where I've done that but I thought that might complicate issues if I referred to my own work.

PN19984

When you say they might complicate issues, why do you say that?---Well there may be an issue of bias on my part if I'm referring to my own work. I thought it was better not to.

PN19985

Just go to your major consultancies listed on page 34?---Yes.

PN19986

You've identified at the top that you have a consultancy with the ACTU, that's right?---(No audible reply)

PN19987

You see that at the top, page 34?---Just a moment. Yes.

PN19988

Are you engaged on a retainer with the ACTU?---If you mean the works being paid for, yes.

PN19989

Is it an ongoing retainer?---It's specific to this task.

PN19990

When you said you prepared technical reports for penalty rates and casual employment, which - and it was for submissions to the Modern Award Review of the Fair Work Commission, are you referring to anything other than this particular report?---Yes, I did one - I've done one recently for the casual employment claim at the ACTU.

PN19991

I understand, but it has nothing to do specifically with the question of penalty rates?---Not that one, no.

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN19992

Is it the case that the only report that you prepared for the ACTU2 pursuant to your consultancy on penalty rates, is this report that we have in front of - that you have in front of you at the moment?---Yes.

PN19993

You haven't produced any other reports?---No. I did respond to - I did produce a report responding to Pezzullo's response to my response.

PN19994

That hasn't been produced to the Commission, has it?---No, as far as I'm aware.

PN19995

You prepared that response and provided it to the ACTU, that's right?---Yes, and it was as much briefing notes for me.

PN19996

I want to go to the preparation of your report. You say on the page after the cover page that you were assisted by Dr Joseph McIvor, in answer to a question asked by my learned friend Mr Dixon, and you said yes. That's right?---Yes.

PN19997

He's a teacher and a research assistant at the Department of Marketing and Management at Macquarie University. That's right?---Yes. His principal job is in my centre as a research fellow.

PN19998

Would it be the case that Dr McIvor did most of the drafting of the report?---It was a collaborative venture. The way we work and we've worked on a number of projects together, we scope the project together. I give him directions about material to look for, I look at - we discuss on a regular basis what he's doing. I talk about what I see as appropriate, what not, we discuss interpretation of data. I identify anything extra that I think needs to be considered or suggest that material is less relevant, and so on. So it's an iterative process, so I don't think that is accurate, no. It's a collaborative venture.

PN19999

Would it be correct to say that Dr McIvor produced the first draft of the report?---Yes.

PN20000

Much of the first draft still remains within the final report?---Much of it does, yes.

PN20001

What you did was review it and then inserted your own amendments to the report?---Yes, but also prior to that we workshopped it through so that the draft report was also a result of my work.

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN20002

As I understand the preparation of the report it originally commenced as a literature review, that's so?---Yes.

PN20003

It was focused upon the question of work/life interference and the impact of penalty rates on individuals and the economy generally, that's so?---Yes.

PN20004

That was prior to you having read the Pezzullo report. That's so, isn't it?---Yes.

PN20005

That's so?---Yes.

PN20006

You were engaged by the ACTU to commence undertaking this task in January this year, would that be correct?---January or February, thereabouts.

PN20007

Now can I ask you, are you aware whether or not Dr McIvor has any economic qualifications?---His PhD is in Political Economy.

PN20008

But not behavioural economics?---No.

PN20009

Not in econometrics?---No.

PN20010

You would agree that a significant part of your report deals with employee behaviour and the wage elasticity of labour demand?---Yes.

PN20011

That's really just a literature survey, that's correct, isn't it?---Yes.

PN20012

You don't try to - you don't purport to have expertise in that area other than in compiling the relevant material on the issue, that's so?---That's right and assessing the evidence that's presenting which I can do as a social scientist.

PN20013

But you can't do as someone having no specialised knowledge as an economist. That's right?---It's not needed for this particular task.

PN20014

You do make some assessment as to the nature of the economic evidence, don't you, in your report?---Yes.

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN20015

So let me just take you to where you start doing that, Prof Markey. So firstly, if you go to - I want to firstly take you to 3.2 of your report, which deals with the

wage elasticity of labour demands, starting at page 7. You say in the first paragraph:

PN20016

In general there is a lack of published academic research that evaluates the link between penalty rates and employment.

PN20017

?---Yes.

PN20018

Do you see that? As far as you're aware there has never been a study on that particular issue. That's right?---No, that's not what that says.

PN20019

Sorry, when I - an academic study which has been published on this issue, I should say?---There have been studies, some of which are referred to in Pezzullo. But the main thrust of what I'm saying is that there's a lack of empirical data associated with - - -

PN20020

Okay. Now, you refer to a report which has been prepared by Prof Lewis in paragraph 19 of your report?---Yes.

PN20021

And you say it hasn't been validated empirically. Do you see that?---Yes.

PN20022

And then you say in paragraph 20:

PN20023

Minimum wages have been most widely researched statutory minimum in relation to wages, and there is little evidence of negative net employment impact.

PN20024

Do you see that?---That's right.

PN20025

Have you looked at - did you undertake, yourself, a detailed literature survey of the published academic articles in this area?---Yes.

PN20026

Are you aware of the contents of the latest Productivity Commission report on this issue?---Yes. I have looked at that.

PN20027

And are you aware that appendix C to that report sets out a literature survey as to empirical studies of wage employment effects?---Yes.

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN20028

It's not true to say that there is little evidence of negative net employment impact, is it, Prof Markey, because there are numerous studies on this issue which demonstrate that there is an employment impact which is negative in nature?---Overall I think it's true to say that there isn't a negative impact demonstrated in the literature, merely a substitution effect.

PN20029

Now, the Productivity Commission report appendix C says that:

PN20030

There have been eight Australian empirical studies since 1999 dealing with the effective changes in minimum wages on total employment and employment in a firm or industry.

PN20031

Are you aware of that?---Yes.

PN20032

And there is reference to five studies which demonstrate that employment is negatively related to changes in the minimum wage. Are you aware of those studies?---I'm aware of some which indicate that impact for youth workers, but not aggregate employment.

PN20033

The studies you're aware of - are you aware of the studies by Mangan and Johnson?---Yes, but I haven't referred to that.

PN20034

Are you aware of the studies of Junankar, spelt J-U-N-A-N-K-A-R, Waite and Bellchamber?---No.

PN20035

Are you aware of the econometric study of Leigh, L-E-I-G-H?---L-E-I-G-H?

PN20036

Yes?---No.

PN20037

Harding?---No.

PN20038

Lewis, you're aware of?---Yes. Yes.

PN20039

So when you say that there is little evidence of a negative net employment impact, it would be safe to say that you hadn't actually undertaken a detailed search of the literature of this issue. That's correct, isn't it, Prof Markey?---No. Lewis actually refers to that literature.

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN20040

And that literature indicates there is evidence of a negative net employment impact. That's so, isn't it?---As far as I'm aware, it doesn't do that empirically.

PN20041

Well - - - ?---Except with youth employees, and even that's contested by other studies.

PN20042

When you say "empirically", what do you mean?---I mean actual empirical data, rather than economic theory.

PN20043

So you're referring to econometric techniques being used in the study. That's right?---Not per se. I mean, econometrics is useful if you've got empirical data to feed into it; but if it's based on assumptions, which Lewis and many of the others who claim there is a negative impact on employment do - that's assumptions based on economic theory only - the technique doesn't matter, it's the assumptions that you start with.

PN20044

You're not in a position to comment about the techniques used in each of these reports, are you?---And I'm not trying to, because I'm talking about the evidence. Economic theory by itself is hypothesis.

PN20045

I'm not saying anything about economic theory, Prof Markey. I want to put to you that Mangan and Johnson was an econometric analysis. Do you accept that, or not?---Yes. I know John.

PN20046

Junankar, Waite and Bellchamber, that was an econometric analysis. Are you aware of that?---No, not particularly.

PN20047

Leigh, L-E-I-G-H, was also econometric analysis. You're not aware of that, are you?---No.

PN20048

Lewis was a statistical analysis. You're aware of that?---Well, I thought it was econometric as well.

PN20049

Okay. So they're much more than economic theory. That's the case, isn't it, Prof Markey? That's actually statistical or economic analysis demonstrating that there is a negative net employment impact associated with statutory minimum wages. But so, isn't it?---No.

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN20050

You don't accept that?---No, I don't. Because if you take the Lewis case there is no empirical data that is used for the economic analysis. And all of the sources he relies on, which include some of those you mentioned, are the same.

PN20051

Well, putting aside Lewis, in the case of the other ones, you're not in a position to comment, are you?---Okay. No.

PN20052

And your statement in paragraph 20 that:

PN20053

There is little evidence of negative net employment impact.

PN20054

You would concede, therefore, is done in the absence of fully appreciating all the studies on this particular issue in recent times. That's right, isn't it?---Given what you've just said, yes.

PN20055

Are you aware of the decision of the Full Bench of this Commission in 2012 on penalty rates?---Yes.

PN20056

Where you say in paragraph - sorry, let me go back a step. Have you read that decision, Prof Markey?---I did at an early stage, in January or February.

PN20057

Are you aware of what's said in that decision about wage elasticities?---My greatest recollection of that decision is that it was highly sceptical of the evidence for employment impacts on penalty rates - - -

PN20058

I'm asking you what - - -?--- - - - and of the type of data that was presented regarding that.

PN20059

I'm asking you something more specific, Prof Markey. Are you aware of what the Full Bench said about wage elasticities?---I can't quote that offhand, no.

PN20060

The Full Bench is critical about specific wage elasticities. Are you aware of that? Trying to find out a specific wage elasticity?---Yes.

PN20061

Do you recall that?---Yes. I think that's what I was referring to.

PN20062

But you also accept that at paragraph 120 - - -

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN20063

JUSTICE ROSS: Well, do you want to show him the paragraph, rather than a memory test?

PN20064

MR SECK: I'm going to read out to him, your Honour.

PN20065

Do you also recall this in paragraph 122 of the decision - I'm going to read it out to you:

PN20066

Although we accept that the Sunday penalty rate in the Restaurant Award, as compared to a hypothetical lower penalty rate of 25 per cent, would have some effect on employment (particularly in relation to some owner-operators working on Sundays in preference to working staff for additional hours), we do not think that those effects are nearly as significant as contended for by the RCAV.

PN20067

Do you recall that?---Yes.

PN20068

So you acknowledge there that the Full Bench said that can be some employment effects associated with a reduction in penalty rates?---Yes.

PN20069

Okay. Now, you also refer to, in your report, Prof Markey, a report of the McKell Institute, in paragraph 8?---Yes.

PN20070

You're a researcher at the McKell Institute. That's right?---No.

PN20071

It identifies you on the web site as a researcher. Is that incorrect?---They've engaged me for particular projects.

PN20072

So you have conducted research for the McKell Institute?---Yes.

PN20073

Have you - you've obviously read the report which is referred to in paragraph 8?---Yes.

PN20074

You've acknowledged that it was peer reviewed?---No, I haven't.

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN20075

All right. Can I show you a copy of the report. You've obviously read that report beforehand, Professor - sorry, Prof Markey. Just tell me, do you recognise that report?---Yes.

PN20076

That's the report to which you make reference in paragraph 8?---Yes.

PN20077

You've read the report, beforehand, Prof Markey?---Yes. I've already said that.

PN20078

Sorry, I didn't hear you. Now, can you go to page 10. You've seen the data sources, methodology and assumptions, for the economic modelling?---Yes.

PN20079

You would agree that the - having read that, it doesn't necessarily meet academic standards?---I'm not sure what you mean.

PN20080

Okay. Let's go something more specific. You've read Ms Pezzullo's criticism of the McKell Institute report?---Yes.

PN20081

You would acknowledge that there is no reference to wage elasticities and the employment impacts - - - ?---Yes.

PN20082

- - - associated with penalty rates? So the report which attempts to model the impact of penalty rates is highly flawed, isn't it, if it doesn't take into account any employment impacts associated with a reduction in penalty rates. You would agree?---Yes, I think that is a weakness.

PN20083

In referring to the McKell Institute report in paragraph 8 of your report, given that you acknowledge those weaknesses, wouldn't it have been appropriate to refer to those weaknesses in paragraph 8?---Well, it's fairly cautious language there. I mean, I refer to "some attempts" and "they've attempted to model", "they estimate". I don't make much of it.

PN20084

Well, if you're referring to it and you don't try to make much of it, what's the point in having a reference to it in the first place, Prof Markey, if it's of no substance?---I was just attempting to review the available data. I don't think it's particular critical.

PN20085

It would be appropriate in those circumstances if you were presenting an objective report to identify the deficiencies in the McKell Institute report. That's correct, isn't it?---If you say so.

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN20086

I'm not saying so, I'm asking you to accept it. Do you agree?---With hindsight, yes.

PN20087

It's just not credible or serious economic study, is it, Prof Markey?---It could be better.

PN20088

And you were seeking just to refer to it in an attempt to construct a case which supported your refutation of Ms Pezzullo's report. That's right, isn't it?---I don't think it's critical.

PN20089

Can I then take you to your analysis of the role of weekend work. Can you - in fact, before I do that, I want to take you to paragraph 6 of your report, Prof Markey. You refer in there to a report of Daly, D-A-L-Y. Do you see that?---Yes.

PN20090

Now, the - just bear with me whilst I uncover it. You've read the Daly report, obviously?---Yes.

PN20091

It's the one entitled "Evening, Nights and Weekends, Working Unsocial Hours, and Penalty Rates." Yes?---Yes. I think that title. I've read Daly.

PN20092

Let me give you a copy of the Daly report. I want to ask you some questions about it. In paragraph 6 on page 2 of your report, Prof Markey, you've set out a summary of what you consider the key conclusions out of the Daly study?---Yes.

PN20093

And the Daly study did actually break down, didn't it, the particular classes of employees and the impact upon them by reference to occupation and type of employment. Do you recall that? Yes?---I'm just refreshing my memory, looking at the tables.

PN20094

That's all right. Well, let me take you to a specific table. If you go to page 10 and 11?---Of Daly?

PN20095

Yes. You will see it breaks it down by household income and geographic location. Do you see that?---Yes.

PN20096

And then if you go to the bottom it breaks it down by occupation and type of employment. Yes?---Yes.

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN20097

And if you go to table 7, over the page, you will see it breaks it down by - there's the percentage there. Do you see that?---Yes.

PN20098

It says - if you go down to the bottom of page 10 there's a summary of the classes of employees who worked unsocial hours. Do you see that?---Yes.

PN20099

You would agree that, relevantly, table 7 identifies:

PN20100

Employees with casual contracts were more likely to work any type of unsocial hours and to work on weekends.

PN20101

JUSTICE ROSS: You might want to rephrase the proposition.

PN20102

MR SECK: Would you agree that table, it says there:

PN20103

Table 7 also shows that employees with casual contracts were more likely to work any type of unsocial hours, and more likely to work on weekends only.

PN20104

?---Yes.

PN20105

Yes. And if you go over to the table on page 11, you see it identifies casuals?---Under "Unsocial Work Hours" heading, you mean, or do you mean in the table?

PN20106

Are you looking at table 7 on page 11?---Okay. I thought we've already moved to that.

PN20107

Sorry. That's my fault. You see table 7 on page 11?---Yes.

PN20108

And it identifies casuals in the last line there?---Yes.

PN20109

Yes?---Yes.

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN20110

You would also agree that the report found men and younger workers between the age of 18 to 24 predominantly worked a combination of evenings and weekends.

Let me take you specifically to the finding made, page 17 of the report?---My report or - - -

PN20111

No, sorry, pardon me, the Daly report. Go to the bottom?---Right.

PN20112

It says;

PN20113

Employee groups whose mix of unsocial hours was a combination of evenings and weekends were predominantly men, younger workers aged 18 to 24 -

PN20114

PN20115

You see that?---Yes.

PN20116

You knew that part of the report as well, that's right, and you accept it?---Could you repeat that?

PN20117

You recognise that part of the report and do you accept it?---Yes.

PN20118

If you go to page 18, Professor Markey, just go down below the heading, "Who received penalty rates", third line down;

PN20119

There was no differences between men and women in the receipt of penalty rates but younger workers aged between age 18 to 24 years and single employees without children were generally more likely to receive penalty rates for working unsocial hours.

PN20120

Do you see that?---Yes.

PN20121

You accept that proposition?---Yes, yes, and I think I've repeated that in my report.

PN20122

Then it goes onto say;

PN20123

Those receiving penalty rates will more likely be on casual contracts -

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN20124

et cetera. Do you see that?---Yes.

PN20125

You accept that?---Yes.

PN20126

If you go down to the bottom of page 18. Sorry, let me just take you to the middle part, which says;

PN20127

who rely financially on penalty rates to meet their household expenses.

PN20128

Do you see that?---Yes.

PN20129

If you go to the second paragraph it says;

PN20130

Those who are least likely to report financially relying on penalty rates included employees aged 18 to 24 years.

PN20131

?---Yes.

PN20132

Those were the combined household incomes of \$90,000 or more or single employees with no children. Do you accept that?---Yes.

PN20133

Now if you go to the heading;

PN20134

Anticipated labour supply consequences of removing penalty rates

PN20135

?---Yes.

PN20136

Go down to the last sentence on page 18?---Yes.

PN20137

It says;

PN20138

Sale workers, managers and professionals were more likely to continue working their unsocial hours if penalty rates were not available.

PN20139

Do you see that?---Yes.

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN20140

Do you agree with that?---Yes.

PN20141

Continuing;

PN20142

and casual workers were more likely than those on permanent, ongoing or fixed-term contracts to continue working social hours.

PN20143

Do you accept that?---Yes.

PN20144

Now if you go to - do you have Ms Pezzullo's primary report?---Yes.

PN20145

Can you go there. I'm using the small - do you have page numbers in the bottom right-hand corner of the report?---The large numbers or - - -

PN20146

You've got large numbers and small numbers?---The roman numerals, the small ones?

PN20147

Yes, they start off as roman numerals and then I think they move onto regular numbers?---Okay, yes.

PN20148

If you can go to page 29 in the small numbers which I think is page 48 in the big numbers?---Yes.

PN20149

Ms Pezzullo there sets out analysis of the survey results and seeks to draw conclusions from it on that page?---Yes.

PN20150

You've obviously read this part of it. If you go down to the fourth paragraph, Professor Markey, it says - just read that to yourself?---Beginning 43 per cent?

PN20151

That's correct?---Yes.

PN20152

Do you accept the correctness of the proposition in the second sentence?---Yes, I accept the proposition of the whole paragraph except that the same figures could be presented in the opposite way. Let me suggest how, they could - - -

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN20153

Please tell me?---They would be a majority who have substantial or a little problem with working weekends, but that's what that also says.

PN20154

Can you say that again, a substantial majority would have little or no problem?---Would have little or substantial problem.

PN20155

Explain how you say that?---Well there's 42 per cent with no problems with Sunday work, that's not a majority. That leaves, if you add - if you take that from 100, that's 48 - 58 who have some problem or a lot of problem. That's what I say in my report.

PN20156

I'm not sure how that maths works, Professor Markey. You will see that Ms Pezzullo says in the last sentence;

PN20157

The majority of these employees have no or minor concerns about it.

PN20158

?---I would say that the majority have substantial or some, i.e. minor concerns.

PN20159

So when you say some, you mean minor concerns?---Yes.

PN20160

You would agree that it's more appropriate to group no or minor concerns together as opposed to some, because some is a question of - when you use the word some, that infers that it's somewhere between minor to major, when it's more accurate to isolate minor as opposed to describe it as some. That's right, isn't it?---No, I don't agree with that at all. I agree with the way I've put the data.

PN20161

You're making an evaluative judgment that minor means something more than minor, aren't you by characterising as some?---No, minor means some. It's an acknowledgment that there is some problem.

PN20162

Ms Pezzullo's analysis is actually more accurate because it seeks to distinguish between minor and major, doesn't it?---No, she collapses minor with no problem to get a majority.

PN20163

No, she doesn't collapse it, she says no or minor concerns. That's right, isn't it?---Yes, in my report I say major or minor concerns is the majority.

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN20164

Now let me put to you that what - the next paragraph in Ms Pezzullo's report is also accurate. I want you to read that and tell me if you agree?---"Note that these results"?

PN20165

Yes, and then in particular the next sentence?---Yes, I've re-familiarised myself with it.

PN20166

Do you accept that's accurate?---No, there's assumption there because she didn't directly ask the question of those workers about penalty rates, because she said that it would introduce a bias.

PN20167

Well I'm not asking you whether or not she asked questions about penalty rates, I'm asking you to accept the proposition?---No.

PN20168

You don't accept that?---Not necessarily.

PN20169

Now you've relied in your report, Professor Markey, on two reports of Craig and Brown. That's right?---Yes.

PN20170

One in 2014 and one in 2015, that's so?---Yes.

PN20171

You've obviously read those articles in detail?---Yes.

PN20172

You've sought to summarise accurately the results of those reports in or those articles in paragraph - sorry, I've just lost my notes - 28. Sorry 29, of your report, that's right?---Yes.

PN20173

I want to put it to you, Professor Markey, that the findings made by Craig and Brown, a slightly more nuanced than what you've summarised in paragraph 29 and what you've sought to do is to put at its highest the findings when they were qualified in the article. Would you agree with that?---You'll have to explain what you mean by the more nuanced argument.

PN20174

Well let me take you to the article, can I show it to you. Professor Markey, I've given you what is identified in your report as the Craig and Brown 2014 report. If you go to the bottom it's got the citation, the reference?---Yes.

PN20175

Do you see that?---Yes.

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN20176

Do you agree that's the 2014 report to which you make reference in your report?---Yes.

PN20177

You'll see - I won't invite you to read it now but there's a summary at the front of the - or abstract at the front of the article. Do you see that?---Mm-hm.

PN20178

If you go to page 722, Professor Markey, this section here deals - it's a discussion about whether or not working nonstandard hours of work disrupts non-work activities, and is detrimental to the wellbeing of employees and their families. If you go to the second column, in the last paragraph, I want you to read that and tell me when you've done that?---Yes.

PN20179

Do you agree that that's a qualification which is not contained in your summary of the Craig and Brown report in paragraph 29?---Yes.

PN20180

So there are some classes of employees, in this case parents, where there is a positive association between Sunday work and the leisure time those employees spend with friends during weekdays. That's right?---Pezzullo's own evidence contradicts that.

PN20181

Hold on, I'm asking you that. Do you accept that's what it says there?---That's what that says, yes.

PN20182

If it contradicted it, it would have been fair for you to actually set that out in paragraph 29, that's right?---I stand by that as an overall summary of the findings. And the abstract confirms that and the conclusions.

PN20183

Now it's also the case that there's a further qualification contained in the next paragraph on page 723, Professor Markey. It states that there's - just have a read of that and I want to ask you some questions?---Yes.

PN20184

Do you accept the proposition that arising out of the study conducted by Craig and Brown, that weekend work which is comprising shorter hours is actually associated with more weekday shared leisure. You would agree with that?---Yes.

PN20185

Do you also accept the proposition that part-time work offers more flexibility for employees to reschedule than full-time employees, and to coordinate their schedules with others?---Sometimes.

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN20186

Do you also accept then that the situation is slightly more nuance and the length of the work week and the timing of the work are relevant considerations, in determining whether or not shared leisure time can be recouped by weekend workers?---Yes, I specifically addressed that in my report, and I said that the dysfunctional aspect of weekend workers working unsocial hours is compounded if they're working in the evenings as well during the week, and a high proportion of them are.

PN20187

I'm not asking you to talk about that, I'm asking you to accept this proposition here and you accept it, don't you?---Yes, it's perfectly consistent with what I've said.

PN20188

When Ms Pezzullo says in paragraph 31 - sorry, can I just take you back to your report, Professor Markey. Paragraph 31 on page 14?---Yes.

PN20189

Where Ms Pezzullo makes the observation that;

PN20190

Patterns of time used are complicated, personal and varies much with unmeasured systematic differences between the two populations; weekend workers and non-weekend workers, as they do on work obligations.

PN20191

You accept that as correct, isn't it? As you do on the next page?---Well it has an element of truth.

PN20192

It depends on, you would agree, whether or not the employee is full-time, part-time or casual?---Amongst other things.

PN20193

The length of time they work on weekends. That's right, isn't it?---Amongst other things.

PN20194

Now Ms Pezzullo as well, and you refer to this in your report - sorry, let me go back. Go back to the Pezzullo report, Professor Markey. Page 48, using the big numbers. Where it says under Reduced Penalty Rates;

PN20195

We would expect the self-selection of weekend work by those for whom it is most convenient to increase, and reduced participation by weekend employees who would have worked weekends largely or solely on the basis of penalty rates -

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XXN MR SECK

PN20196

I think you said you accepted that proposition?---I cannot find that on the page - -
-

PN20197

Sorry, the bottom of page - using the big numbers, in the last sentence?---Okay.

PN20198

Under "reduced penalty rates". So it starts, "Note that these results", and then you should go to the last sentence?---No, I don't fully accept that, and I've got reasons for that.

PN20199

Well, let take you to Craig and Brown. Can you go back to that article on page 724. If you go to the second paragraph or third paragraph, which starts, "This study", and it's noted there by the authors that there are limitations on the study. I want you to go to the third sentence, which starts on the fourth line:

PN20200

We noted above that selection effects may be at play such that some workers choose weekend shifts to give themselves more options about how to spend their time.

PN20201

?---Yes.

PN20202

Do you accept that's a qualification made in Craig and Brown?---Yes.

PN20203

And do you accept that's consistent with that Ms Pezzullo says there on page 48, that there might be some selection effects in play?---It's consistent with, but she does more with it.

PN20204

When you - - - ?---Her own evidence shows that the main reason that people work weekends is because employers direct them to.

PN20205

Well, that's not necessarily the case for all employees. That's the case, isn't it, Prof Markey?---Her - if you give me a moment, I will get you the table. Chart 411 on page 60 - large numbers - of her report shows that way ahead of any other reason, it's there's an expectation of the employer.

PN20206

I want to put to you, Prof Markey, that differs depending on the class of employee. Do you accept that?---Probably. And she doesn't break that down, though.

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN20207

Well, there is a breakdown in the Daly report. I want to take you back to the Daly report?---Okay.

PN20208

If you go to page 18 - and I've taken you to this beforehand - "Anticipated labour supply consequences of removing penalty rates"?---Yes.

PN20209

You agreed with me beforehand that it depended upon the class of workers or the type of employment. And that's set out in that paragraph, isn't it?---Yes.

PN20210

And so it's a slightly more sophisticated proposition, isn't it, as to whether or not employees work because they're directed to, isn't it?---Is that addressed in that paragraph?

PN20211

Well, let me put it to you: casual employee more likely than those on permanent, ongoing or fixed-term contracts would continue working unsocial hours even if penalty rates were removed?---Which sentence is that?

PN20212

Bottom of page 18?---So the last one and a half lines?

PN20213

Yes. Do you accept that casual employees would continue to work. That's right?---That's perfectly consistent with what I said; and that's because they're likely to be directed to.

PN20214

Casual employees have the choice as to whether or not they want to work on a particular day or not. That's right, isn't it?---Not always.

PN20215

You would agree that the nature of a casual engagement is that its engagement is discrete for each time they work?---Yes.

PN20216

And it would be open to a worker to decline a specific casual engagement. That's so, isn't it?---Technically.

PN20217

And if they didn't want to work it, they wouldn't be forced to work it, would they?---They may feel that there would be other people chosen for future work in the future.

PN20218

You're speculating. You're just speculating now?---No, I've done a lot of research on that at a workplace level.

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN20219

They're not being forced in that circumstances, are they?---I can't demonstrate that, no. I mean, they would feel that they had little choice, often, though.

PN20220

But they're not being forced, are they?---They would feel an obligation, is as strong as I put it.

PN20221

Let me just take you back, Prof Markey, to paragraph 35 of your report?---Yes.

PN20222

You there address the fact that Ms Pezzullo says that employees work less, or the average shift length for weekends is less on weekends for weekend workers relative to weekdays. Do you see that?---Yes.

PN20223

Now, isn't it the case that what Craig and Brown say is that if employees - the less that employees work on weekends, the more likely they're going to recoup that leisure time on weekdays. That's right? I took you to that part of the study beforehand?---Yes.

PN20224

And based on the Craig and Brown report it would be the case that given the shorter shift lengths for employees working on weekends relative to weekdays, it is likely that they would be recouping their leisure time on weekdays relative to other employees. That's so, isn't it?---Well, Craig and Brown shows that often they don't; in the major proportion, they don't. That's the major conclusion.

PN20225

But the shorter the shift length, the more likely they will be recouping. That's so, isn't it?---Perhaps, yes.

PN20226

And when you say in paragraph 35 that:

PN20227

Particularly if shifts occur at crucial times for, for instance - - -

PN20228

?---Whereabouts is this?

PN20229

Sorry. Pardon me. It's the fifth line down on paragraph 35, Prof Markey. It says:

PN20230

Particularly if shifts occur at crucial times for, for instance, social activities, and given the burden of preparation, travel time and fatigue, it seems unlikely that moderately shorter average shift lengths should significantly mitigate work life effects.

PN20231

Do you see that??---Mm-hm.

PN20232

Now, you would accept that the burden of preparation, travel, time and fatigue applies equally to both weekday and weekend work. That's so, isn't it?---Regardless of length of shift?

PN20233

Yes?---Yes.

PN20234

And so your proposition there, it really doesn't apply just particularly to weekend work at all, does it?---No. You've confused two different things there. You've confused the report - the material in Craig and Brown with what Pezzullo is saying, and which I address here.

PN20235

I'm not saying that they're related propositions. I'm putting to you a different proposition now?---So what's your proposition?

PN20236

My proposition is simply that what you say there in paragraph 35 applies equally to weekdays as well?---In relation to the previous sentence. And Pezzullo's evidence that there are shorter shifts on Saturdays and Sundays; but the degree to which they're shorter is so marginal, on average, I'm arguing that on average you couldn't expect much difference in the dysfunctional nature of that.

PN20237

The question of the burden of preparation, travel time and fatigue is irrelevant to that, isn't it?---Yes. That would be my point, that even though you can demonstrate a 15 or 20 minute average shorter shift time at the weekend, the burden of travel time, fatigue, et cetera, would be much the same.

PN20238

Would it actually be - - -?---Much of that would be a fixed cost.

PN20239

When you say "much of that would be a fixed cost", that's relevant to the question of time, isn't it?---If you're looking at cost purely as financial, yes, but I'm thinking of opportunity cost, time - - -

PN20240

I understand what you're saying. Now, I want to take you to the importance of Sundays, Prof Markey. You make a reference there at paragraph 36 to the report of Prof Rose. Do you see that?---Yes.

PN20241

You've read the report of Prof Rose?---Yes.

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN20242

You're obviously seeking to rely on Prof Rose's study in support of your position there?---Yes.

PN20243

And so you must accept the accuracy of what Prof Rose says. That's right?---Yes.

PN20244

And you accept the methodology that Prof Rose has used?---Yes.

PN20245

Now, you understand that Ms Pezzullo never - in her report never advocated that Sunday was less important than Saturday?---Yes.

PN20246

So the real question is not whether or not there's a difference - relative difference between - sorry, this difference between Saturdays and Sundays, but it's the degree of the importance assigned to Sunday relative to Saturday which is important. That's right?---Could you just say that again.

PN20247

It's not whether or not Saturdays and Sundays are the same which is the relevant question, but the relative importance of Sunday to Saturday which is the key question?---Yes.

PN20248

So the proposition that you're dealing with there in paragraph 36 is really a straw proposition, isn't it?---I don't follow you.

PN20249

Well, you're saying:

PN20250

Further claims are being made by critics regarding the ongoing need to differentiate Sunday from Sunday work.

PN20251

Do you see that?---Yes.

PN20252

That's not something which Pezzullo is advocating?---No. But that doesn't make it a straw man. I mean, that has been a consistent claim.

PN20253

But the real question is how does one assess the value of Sunday were relative Sunday work. That's the issue, isn't it?---Yes.

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN20254

That you understand. And that means coming up with meaningful values as to how particular employees value Sundays relative to Saturdays. That's correct, isn't it?---Yes.

PN20255

So it's not a matter of just demonstrating to say that there is some work-life interference on Sundays relative to other days of the week; it's trying to ascertain what that value is, you would agree?---Yes.

PN20256

And in working out that particular value, you obviously need to look at how it affects particular classes of employees. You would agree?---Yes.

PN20257

And we've demonstrated by reference to Daly previously that there are certain classes of employees who are prepared to work weekends more so than other employees. That's right?---Yes.

PN20258

You agree that that included younger employees?---Yes.

PN20259

Casual employees?---Yes.

PN20260

Men - - -?---18 to 24.

PN20261

18 to 24, that's right?---Yes.

PN20262

And that's consistent with the Pezzullo report, isn't it?---Yes.

PN20263

That younger employees are much more prepared to work on Sundays, relative to older employees. That's so?---Yes. But a majority aren't.

PN20264

Well, when you say "the majority", you mean the majority of younger employees, or - - - ?---Yes.

PN20265

Well, it says 69 per cent of employees view Sunday and Saturday as equally important. You would agree with that? For younger employees, less than - - - ?---Where's this from?

PN20266

Let me take you to the specific findings.

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN20267

MR DIXON: Just identify you're referring to Pezzullo.

PN20268

MR SECK: Pezzullo's report.

PN20269

If you go to page 49, second paragraph. Do you see that says:

PN20270

Of those under 35 years old we found that 69 per cent viewed both days as equally important.

PN20271

?---Yes.

PN20272

12 per cent chose Saturday, 19 per cent chose Sunday; a significantly lower rate than the whole.

PN20273

Do you see that?---Yes.

PN20274

And do you accept the next proposition:

PN20275

This suggests that any special important associated with Sunday is currently associated primarily with older generations, and hence may decline with time.

PN20276

?---I'm just trying to refresh my memory. I think I addressed that in my report.

PN20277

You addressed the importance of Sundays in 4.2 of your report on page 17 of your report, Prof Markey. I don't see anywhere where you deal with younger workers?---No, not there. Yes, I accept that with a caveat that - well, that's about equal. Okay. Yes, I accept that.

PN20278

Okay. I just want to deal with the question of employee preferences now - - -
?---Yes, that's what I was going to come to.

PN20279

- - - Prof Markey. If you go to your report, I think you say somewhere - and I'm just trying to find it, Prof Markey - that 39.7 per cent of all weekend workers would work if - sorry, let me go back a step. You've obviously read the AWALI survey, Prof Markey. That's right?---Yes.

PN20280

You've read in the AWALI survey that it says:

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PN20281

39.7 per cent of all workers would continue to work if penalty rates weren't offered.

PN20282

That's right?---Yes.

PN20283

And that proposition relies upon the complete removal of penalty rates?---Yes.

PN20284

You accept that the employer groups in this case are not seeking the complete removal of penalty rates, they're seeking simply the reduction of penalty rates?---Yes.

PN20285

And you've also read Daly's report where he also refers to the fact that a significant class of employees would be prepared to continue working if penalty rates were removed. That's right?---A significant minority.

PN20286

Well, a significant - okay. We will talk - but a significant number of particular classes would be prepared to continue working. That's so, isn't it?---Yes. But the vast majority would not.

PN20287

Now, you understand that one of the classes which indicated that they would be prepared to work on weekends without penalty rates - one of the significant classes is casual employees?---Yes.

PN20288

And that in Ms Pezzullo's report when she analysed the willingness of casuals to work - or the motivations of casuals to work on weekends, only a quarter of them identified wage rates as the major reason.

PN20289

Yes. In your analysis you recognised this as a problem, didn't you, that the evidence did demonstrate that casual employees weren't primarily motivated by wages in working on weekends?---No.

PN20290

Can I show you some emails. Can you go to about five pages in, Professor Markey, to an email from yourself to Dr McIvor on 7 August 2015, at 9.48 am?---Yes.

PN20291

You'll see that there's an email from Dr McIvor to you at 9.39 am. You see that?---Yes.

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PN20292

So this is an email that Dr McIvor drafted to you about his review of the Pezzullo report amongst other things. Do you see that?---Yes.

PN20293

I won't ask you to read it all but he sets out in summary his review of the Pezzullo report. If you go down to the fifth bullet point which starts;

PN20294

They do have their own survey data.

PN20295

Do you see that?---Yes.

PN20296

You said it was said to you by Dr McIvor;

PN20297

The most problematic aspects here are that only about a quarter of casuals identified higher hourly rate as a main motivator for weekends.

PN20298

?---Yes.

PN20299

Sundays identified as being hugely more important than Saturdays.

PN20300

Do you see that?---Yes.

PN20301

You identify that as part of the report that needed to be addressed, right?---Yes.

PN20302

You don't really address casuals at all in your report, that's right?---No.

PN20303

If you go over the - just so I can clarify that, Professor Markey, you agree with me it's an issue that you did not refer to your report, deal with in your report?

PN20304

JUSTICE ROSS: Which issue?

PN20305

MR SECK: The question of casuals identifying a highly hourly rate as a main motivator for working weekends?---No, and nor did Pezzullo in relation to penalty rates.

PN20306

In fact what's being set out there by Dr McIvor is the conclusions from the survey data. Do you see that?---Yes.

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XXN MR SECK

PN20307

What the survey data demonstrated was that only a quarter of casuals identified a higher hourly rate as a main motivator for working weekends and you accept - - - ?---They weren't specifically asked about penalty rates.

PN20308

Identified a higher hourly rate. I'm not talking about penalty rates. You agree with that?---Yes.

PN20309

That wasn't addressed in your report, was it?---No.

PN20310

Now if you go to the first page, Professor Markey?---Of the emails?

PN20311

The emails, yes. You'll see there's an email from you to Martin O'Brien?---Yes.

PN20312

Just so I understand this, that's Professor O'Brien at the University of Wollongong, that's right?---Yes.

PN20313

You understand that Professor O'Brien has given evidence - has prepared two reports in these proceedings, that's right?---Yes.

PN20314

You were coordinating with him in or about January this year as to your attack on the employers' penalty rates case, that's right?---Say that again?

PN20315

You were coordinating with him in January 2015 about a response for the employees' application to vary penalty rates, that's right?---Well at that stage he was going to work with us on what we were doing, but that didn't turn out to be the case.

PN20316

Now if you go down that email, Professor Markey, you say;

PN20317

The gold standard would be if we can get data to estimate elasticity.

PN20318

Do you see that?---Yes.

PN20319

That's to model the elasticity of an impact of penalty rates?---Yes.

PN20320

On the economy, that's right?---Yes.

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PN20321

JUSTICE ROSS: Where are you?

PN20322

MR SECK: Sorry, your Honour. It's at the second paragraph in the email, the gold standard.

PN20323

JUSTICE ROSS: Front page?

PN20324

MR SECK: Front page, 30 January.

PN20325

JUSTICE ROSS: Yes.

PN20326

MR SECK: Do you see - - -?---Yes.

PN20327

You didn't get a study done, did you, on that issue?---No, that was my preferred option but that didn't happen.

PN20328

If you go down that email, you said;

PN20329

I've asked SSI -

PN20330

Just pausing there, who's SSI?---They're a panel survey provider.

PN20331

Right;

PN20332

- for a quote for a panel of 3000 workers to survey regarding penalty rates and casual employment, though we may only need to do the former.

PN20333

You were concerned there, weren't you, to demonstrate whether or not there was a wage elasticity in dealing with casual employees and the issue of penalty rates?---No, the reason that's there is because, as I've mentioned, I am also - I've also done a submission for the ACTU on casual employment, and I was trying to think of ways of combining the survey into one to be cost effective.

PN20334

I see. Now can I ask you when you were actually - can I tender that email chain?

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PN20335

JUSTICE ROSS: Mark that PG27.

PN20336

MR SECK: May it please.

**EXHIBIT #PG27 EMAIL CHAIN BETWEEN PROFESSOR
MARKEY AND PROFESSOR O'BRIEN**

PN20337

JUSTICE ROSS: What do you want to do with the range of other material you've put to the witness?

PN20338

MR SECK: It might be appropriate that it's marked for identification, your Honour, rather than tendered, given they're academic articles but I'm in your Honour's hands on the issue.

PN20339

JUSTICE ROSS: It's a really matter for you.

PN20340

MR SECK: Your Honour, I don't think it's necessary. I think we can adequately identify them in submissions if it's necessary. If it please.

PN20341

JUSTICE ROSS: Right.

PN20342

MR SECK: Professor Markey, when you prepared this particular report, were you made aware of any code of conduct which applied to expert witnesses in other courts?---Yes.

PN20343

You were given a copy of the code of conduct?---Yes.

PN20344

Was that the Federal Court code of conduct for expert witnesses?---Yes.

PN20345

You understood your role to be an independent one and not to advocate a particular position on behalf of the ACTU?---Yes.

PN20346

That was in the forefront of your mind in preparing this particular report, that's right?---Yes.

PN20347

That involved ensuring that you set out objectively your expert views, regardless of whether or not that assisted the ACTU or not. Would you agree with that?---Yes.

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

PN20348

I'm going to just read out one paragraph in the code of conduct and tell me if you recall this. It says;

PN20349

If an expert's opinion is not fully researched because the expert considers that insufficient data are available or for any other reason, this must be stated with an indication that the opinion is of no more than a provisional one.

PN20350

Do you recall that?---Yes.

PN20351

It says;

PN20352

Where an expert witness who has prepared a report believes that it may be incomplete or inaccurate without some qualification, that qualification must be stated in the report.

PN20353

?---Yes.

PN20354

You agree that you haven't - what you've really done here is probably undertaken a literature survey and tried to summarise some of the key findings made in the literature. That's correct?---And with specific reference to the Pezzullo report.

PN20355

Yes?---And looking at her data.

PN20356

That's been the primary function of your report, that's right?---Yes.

PN20357

In setting out the literature review you agree that it's important to accurately set out the findings and the qualifications contained in the report?---Yes.

PN20358

You would agree that you haven't necessarily accurately set out all the findings and all the qualifications contained in each of those studies, when you've referenced them?---I didn't dig down to detail in all cases.

PN20359

What you were really doing, I want to put to you Professor Markey, was advocating a case on behalf of the ACTU and not presenting an objective report based on your expertise. That's so, isn't it?---No.

PN20360

Can I take you to exhibit PG27. Can you go to the email on page 4?

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PN20361

MR DIXON: What page again?

PN20362

MR SECK: Yes, I think it's on page 4, 5 August 2015 at 2.56 pm. Do you have that?---Say that again?

PN20363

It's the email - you have to probably go down but it's an email dated 5 August 2015 at 2.56 pm?---Yes.

PN20364

It's from you to Dr McIvor, that's right?---Yes.

PN20365

Now you say in the content of your email in the second sentence;

PN20366

I think it's mainly refocusing based on the -

PN20367

And there's a - I can't read that word there, that's -

PN20368

list review but including where appropriate, response through their use of HILDA to really looking for a subjectivity interpretation, selectivity in evidence used, accuracy of their interpretation and summary, and their depiction of the literature.

PN20369

What you're really doing there, Professor Markey, was trying to marshal all the evidence you could find to refute or attack Ms Pezzullo's report, rather than objectively set out your opinion on the issues. That's so, isn't it?---No.

PN20370

That email sets out quite plainly that was your intent in preparing a report doesn't it?---I don't agree.

PN20371

If you were - - -?---And I can explain why.

PN20372

If you were truly setting out an objective position, what you wouldn't be doing is trying to select out parts of the Pezzullo report to attack but to simply present objectively your opinion on the particular issues on which you were asked?---That's not what that email indicates at all. Those instructions are what I would give a student. If I asked them to review an article, I'd ask them to critically review it and by that I would say that they're looking for subjectivity of interpretation, whether all of the evidence has been used or whether it's been selectively taken and whether the interpretation is appropriate.

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PN20373

You didn't do that in relation to a number of the reports to which you referred to in your report. That's right, isn't it?---No.

PN20374

You didn't do that in relation to the McKell report, did you?---I referred to the McKell report.

PN20375

You didn't analyse it for subjectivity?---I didn't analyse it in terms of its methodology.

PN20376

You didn't analyse in terms of its accuracy?---I think what I've agreed I didn't analyse it for was its methodology and how good that was.

PN20377

What I want to put to you is that what you sought to do, Professor Markey, was to refute aspects of the Pezzullo report to advocate the ACTU's case, and you didn't apply the same standard to the material that you relied upon in your report. That's so, isn't it?---No, I mean the McKell report was a very minor passing reference. The argument didn't stand on that at all.

PN20378

No further questions.

PN20379

JUSTICE ROSS: Any other cross-examination, Mr Izzo? Can you give us an indication of how long you're likely to be, Mr Izzo?

PN20380

MR IZZO: Fifteen to 20 minutes, your Honour.

PN20381

JUSTICE ROSS: Is there any further cross-examination after Mr Izzo?

PN20382

SPEAKER: No, your Honour.

PN20383

JUSTICE ROSS: We might take a five minute break now, Mr Izzo, if that's convenient.

<THE WITNESS WITHDREW

[11.18 AM]

SHORT ADJOURNMENT

[11.18 AM]

RESUMED

[11.26 AM]

*** RAYMOND ARTHUR MARKEY

XXN MR SECK

<RAYMOND ARTHUR MARKEY, RECALLED ON FORMER OATH [11.26 AM]

CROSS-EXAMINATION BY MR IZZO [11.26 AM]

PN20384

MR IZZO: Professor, I would like to ask you a couple of questions in relation to some of the articles to which you've referred. And what I would like to do is hand you a copy of a couple of extracts from the Bittman report. What I will do is - I've got copies for everybody. Now, what I also have, in case you wish to satisfy yourself that it is from the Bittman report, is I have a whole copy of the document here. So I might just firstly ask you, do you recognise that as two excerpts from the Bittman report? Otherwise I'm more than happy to hand you the full document?---No, that's fine.

PN20385

Okay. Thanks. So, sorry, can I just - so you do agree that - - - ?---Yes.

PN20386

And so when I say the Bittman report, I should clarify what I'm referring to, and I will take you to your report at paragraph 28 of your report?---Yes.

PN20387

You refer to analysis by Bittman in that paragraph?---Yes.

PN20388

The analysis you're referring to is the article of which these pages have been extracted?---Yes.

PN20389

Okay. Thank you. Now, professor, if I could take you to the second page of the document I've handed you. You will see there's a figure extracted, and that figure is figure 9, and it identifies the findings of Bittman regarding the average minutes per day of social contact with family, friends, colleagues and neighbours by day of the week or persons. Do you agree that that's what the table identifies?---Yes.

PN20390

And you will see there that what Bittman has done, do you agree, is analysed different types of leisure activity in the table, and they've been broken up into separate line graphs if you like. Yes?---(No audible reply)

PN20391

I would just like to get your view on some of these matters. If I can start with the bottom line in the graph, that line correlates to eating with family. Do you agree with that?---Yes.

PN20392

Do you agree that in relation to time spent eating with family, that's the time spent eating with family on a Sunday is broadly equivalent to the time spent eating with family on a Saturday?---It's a little more.

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PN20393

So Sunday is slightly higher than Saturday?---Yes.

PN20394

In relation to the next line up, leisure with friends - sorry. The next line up, you agree, relates to "Leisure with Friends, Colleagues and Neighbours"?---Yes.

PN20395

And you agree that in relation to that activity, Saturday is ever so slightly higher than Sunday?---Yes.

PN20396

In relation to the next line up, do you agree that relates to leisure with kids?---Yes.

PN20397

Now, do you agree that in relation to that one, Sunday is slightly higher than Saturday?---Yes.

PN20398

I will move to the next one. Sorry. In relation to the next one, that's family leisure time. Yes?---Yes.

PN20399

And in relation to that one, Sunday is slightly higher than Saturday?---Yes.

PN20400

If I can then take you to figure 6, which should be the first page you have. Do you agree that this identifies the finding of Bittman - or the findings of Bittman - regarding time allocated to various activities by day of the week for all persons?---Yes.

PN20401

If we go from the bottom again, do you agree that the bottom line represents time spent on education?---Yes.

PN20402

I'm referring to the circles there, if you see that?---Yes.

PN20403

And do you agree that there is negligible difference between Saturday and Sunday in relation to education?---Yes.

PN20404

The next one up is "Social and Community Interaction". Do you agree with that? That's the cross with the dotted lines?---Yes.

PN20405

Do you agree that Saturday is slightly higher there than Sunday, or that they are otherwise - or perhaps if not, that they're equivalent?---"Social and Community Interaction"?

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XXN MR IZZO

PN20406

Yes?---I would have said broadly equivalent.

PN20407

Okay. Sure. The next one, "Voluntary Activities and Care Activities", that's the faint line with the asterisk?---Yes.

PN20408

Do you agree that time spent on Saturdays and Sundays are broadly equivalent?---Yes.

PN20409

The next one is "Recreation and Leisure". Do you agree that the time spent is broadly equivalent between Saturday and Sunday?---Yes.

PN20410

I will skip the next one because that relates to employment. And the last one, "Personal Care Activities", do you agree that Sunday is slightly higher than Saturday?---Yes.

PN20411

Do you agree in relation to both figures, that where there is a difference between Sunday and Saturday, that difference is slight and is markedly different to the difference between the time spent on the weekends as compared to the weekday?---Yes.

PN20412

At paragraph 28 of your report you say that - and I will just take you - it's almost the second-last sentence, I believe it is - you say that:

PN20413

Bittman found that Sunday was the most -

PN20414

sorry, I will take it up a little bit further, actually. You say:

PN20415

Unsurprisingly, Bittman found that working on Sundays resulted in substantially less time spent on a range of other activities on that day, including, amongst other things, substantial drops in time spent on social and community interaction, recreation, leisure activities and domestic activities.

PN20416

Do you see that?---Yes.

PN20417

And then you go on to say - if I skip the next sentence, the sentence after that, you go on to say:

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PN20418

He found that Sunday was the most important day of the week for family spending time together.

PN20419

?---Yes.

PN20420

Do you agree that what one could add to those comments is that in relation to all of these activities, an equivalent amount of leisure time was associated with Saturdays; or if not an equivalent amount, then slightly lesser amount?---I would agree that a slightly lesser amount, yes.

PN20421

But not necessarily for all activities; for some, you would agree it's equivalent?---Yes.

PN20422

If I could now hand you a second document. It's an article entitled "Weekend Work and Leisure Time with Family and Friends, Who Misses out", by Craig and Brown. Does the Bench already have a copy of that? I've got copies here if need be?---Which one is it, the 2014 or the 2015?

PN20423

It's August 2014?---Okay.

PN20424

JUSTICE ROSS: Is this the article referred to at 29 of the report?---Yes, that's the one we've got.

PN20425

MR IZZO: It is. I do have copies. I'm happy to hand up additional copies.

PN20426

JUSTICE ROSS: No, Mr Seck has already provided it. It's just the - this has a snazzier cover, that's all.

PN20427

MR IZZO: Your Honour, before I do that, I would seek to tender the two-page document that I handed to the witness.

PN20428

JUSTICE ROSS: Mark that exhibit ABI11.

EXHIBIT #ABI11 TWO PAGE DOCUMENT EXTRACT FROM BITTMAN REPORT

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XXN MR IZZO

PN20429

MR IZZO: Professor, could I please take you to page 717 of that document. Do you see in the second column there's a heading which says "What is the

Relationship Between Weekend Work and Weekend Time and Shared Leisure Activities"?---Yes.

PN20430

I would like to just take you to some sentences in this section, and then I will ask you some questions. Can I first just ask you to read the first sentence, which - sorry, I withdraw that. I will just ask if you agree with various propositions, and then ask some further questions. Do you agree that in the first sentence what the authors identify is that across three different household types shared leisure - sorry, I will withdraw the question. I apologise for that. Can I ask you to read the first question - the first sentence. And then can I ask you to read the third sentence starting from:

PN20431

For respondents in couples without children every hour of work on a weekend day.

PN20432

Can I ask you to read that sentence as well?---Okay. The first sentence is:

PN20433

Multi-variate analyses confirm that across all three household types weekend work was negatively associated with shared leisure activities on weekend days.

PN20434

Yes. So in relation to that do you agree that what the authors are looking at is three different categories of households?---Yes.

PN20435

Now, if - and you can read aloud or to yourself - if I can ask you to read the third sentence of the paragraph?---For respondents in couples?

PN20436

The one commencing there, yes?---Yes.

PN20437

Now, do you agree that what the authors are talking about here is one type of household - one category - which is respondents in couples without children?---Yes.

PN20438

And in respect of that, they identify that working on a weekend day meant that they spent less time doing certain leisure activities. Yes?---Yes.

PN20439

Now, if you go on, you will see that the authors then talk about spending less leisure activities with family and friends in the next sentence, and then they say:

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XXN MR IZZO

PN20440

There were no significant interactions between paid work on Sunday for any form of shared leisure time for this group.

PN20441

Suggesting that both weekend days displaced their shared leisure time to a similar extent. Do you accept, then, that in relation to this subgroup, the authors have found that in terms of leisure activities being displaced, there was no difference between a Saturday and Sunday?---Yes.

PN20442

They then go on in the next sentence to state:

PN20443

For respondents in a couple with children, each hour of weekend work predicted less leisure time with one's spouse, 14 minutes per day; children, 15 minutes per day; and friends, six minutes per day.

PN20444

Do you see that?---Yes.

PN20445

For the average six hours a day worked, this amounts to 1.4, 1.5 and 0.6 hours per day.

PN20446

See that?---Yes.

PN20447

Now, can I ask you to assume that adding all of those times up, you end up with a total of 3.5 total hours being displaced per day in relation to this subgroup?---On average.

PN20448

Yes, on average. Do you agree with that?---Yes.

PN20449

They go on to say:

PN20450

For this group interaction terms were significant, such that for them, Sunday work was associated with more displaced leisure time with spouse and children; a further five minutes per day per hour worked less than Saturday work.

PN20451

Do you see that?---Yes.

PN20452

So in relation to this second subgroup, you accept that Sunday did result in some greater displacement of leisure time. Yes?---Yes.

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XXN MR IZZO

PN20453

And on average, if we take the same measure of a six-hour day, that's about 30 minutes. Yes?---Is that what it says?

PN20454

So if I take you to the example given earlier, you will see that the authors take an average six hours a day worked and multiply the minutes per day lost for each activity by six hours to arrive at their 3.5. Do you accept that adopting a similar process, if one multiplies the five minutes per day per hour worked loss by an average of six hours, you arrive at 30 minutes?---So you don't multiply 1.4 by six?

PN20455

Well, what I'm asking you is if you look at five minutes per day per hour worked - -?---Where does it say that?

PN20456

So if you look at the sentence:

PN20457

For this group interaction terms were significant, such that for them, Sunday work was associated with more displaced leisure time with spouse and children; a further five minutes per day per hour worked.

PN20458

?---Yes.

PN20459

So if we were to take the measure of six hours which was taken above, would we not need multiply the five minutes by six?---Yes.

PN20460

And so we arrive at a figure for the average six hours worked - sorry. If there's a notional six-hour day work, we arrive at a figure of an average of 30 minutes of leisure time displaced?---The difference between Sunday and Saturday.

PN20461

Yes?---Is what you're talking about. That's what confused me.

PN20462

I apologise. Do you agree with that?---Yes.

PN20463

So then we move to the next sentence:

PN20464

For singles without children, weekend work, irrespective of the day, was associated with less leisure time shared with family, seven minutes per day per hour worked; and friends, 17 minutes per day per hour worked.

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XXN MR IZZO

PN20465

Do you accept that in relation to this subcategory, again, the displacement of leisure time was the same as between Saturday and Sunday?---Yes.

PN20466

So if I could take you to your report at paragraph - page 17 and paragraph 37, you say in the last sentence, when referring to the Skinner and Pocock research, you say:

PN20467

This is consistent with the findings of Bittman and Craig and Brown, which demonstrate that loss of shared leisure time, particularly family, is particularly acute for Sundays compared to Saturdays.

PN20468

Do you see that?---Yes.

PN20469

Would it not be more accurate to say that Craig and Brown demonstrate - sorry, apologise. I withdraw that question. I have one further thing that I wanted to draw to your attention before asking the question. Can I take you back to the report of Craig and Brown, the first line and the second line of the last paragraph:

PN20470

As a main effect, Sunday was associated with less leisure time with friends across all three household types.

PN20471

You see that?---Yes.

PN20472

Do you agree that that identifies that the authors found that leisure time with friends was more likely to - was of an increased prevalence on Saturday than on Sunday?---I don't - I'm not sure about that. I read this to mean that Sunday - working Sunday was associated with less leisure time with friends, et cetera.

PN20473

It doesn't say working Sunday though, does it?---No, I mean I haven't had time to explore that and read the rest.

PN20474

What was that sorry?---I just haven't had time to re-read this.

PN20475

It goes onto say that Sunday is allocated more for family and Saturday more for friends. So do you agree that Sunday is less associated with friends than Saturday?---Yes, with friends but more with family.

PN20476

Now if I can take you back to paragraph 17 of your - sorry, page 17 of your report, paragraph 37. You say;

*** RAYMOND ARTHUR MARKEY

XXN MR IZZO

PN20477

The findings of Skinner and Pocock are consistent with the findings of Bittman and Craig and Brown -

PN20478

And I've read that sentence to you there, the last sentence, yes?---Mm-hm.

PN20479

Would it not be more accurate to say instead of what you've said there in the last sentence, that Craig and Brown demonstrate that the loss of leisure time with friends is more acute on Saturdays, and that the loss of leisure time with family is more acute on Sundays for one subgroup of the three subgroups that were the subject of the Craig and Brown study?---I have qualified it and said particularly with family.

PN20480

Do you agree that the proposition I put to you is a more accurate reflection of the Craig and Brown study than what you have included in that last sentence there?---It goes into more detail.

PN20481

You agree that the proposition I put to you is an accurate description of the Craig and Brown findings?---Yes.

PN20482

Mr Seck asked you some questions about the relationship between the minimum wage and employment, and I can assure you I won't be covering the same ground. But I do have one or two additional questions that I did want to ask you on that topic and to do so, I'd like to hand you a copy of the OECD Employment Outlook?---Yes.

PN20483

If you'd just bear with me one moment, I'm just trying to arrange a copy of the document for the ACTU as well. If I could just ask you, professor, to turn to page 13 of that document. Sorry, before I do that, can I ask you do you recognise - have you seen this document before?---Yes, but it's not one of the ones that I've referred to.

PN20484

I appreciate that but have you read it before?---I think so, yes.

PN20485

You're aware of what it is?---Yes.

PN20486

If I can take you to page 13 and if I can take you to the bottom section of that page?---Yes.

PN20487

It says;

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XXN MR IZZO

PN20488

Evidence suggests that when set at an appropriate level, minimum wages tend to have only a small adverse effect on employment.

PN20489

Do you see that?---Yes.

PN20490

If I can then take you to page 17?---In - - -

PN20491

Of the OECD document. In the second section there is - in the second sentence it says - I'm sorry, third sentence it says;

PN20492

Minimum wages can help underpin the income of low paid workers but this is conditional on two important factors. First, they should not be set too high otherwise they can lead to job losses and a loss of income for low paid workers.

PN20493

Do you see that?---Yes.

PN20494

Then if I can take you to page 21 of the OECD document and the last bullet point, and it says;

PN20495

At reasonable levels increases in the minimum wage are unlikely to cause substantial job loss.

PN20496

Do you see that?---Yes.

PN20497

Do you accept that the OECD view is that increases in the minimum wage that are not moderate or are not reasonable might have a disemployment effect?---They refer to it possibly have an impact on youth unemployment.

PN20498

More generally though, a disemployment effect generally?---I'm not - it's not the same as the reports I referred to. Reasonable level, yes, I mean I guess there has to be a level at which it has an impact.

PN20499

So you accept that if it goes beyond a reasonable level it may then have an impact on employment?---It's speculation but that seems likely.

*** RAYMOND ARTHUR MARKEY

XXN MR IZZO

PN20500

Can I just pose a series of questions to you. The present - in fact before I do that, your Honour we haven't previously tendered the OECD Employment Outlook document. We might tender it at this point.

PN20501

JUSTICE ROSS: Mark that exhibit ABI12.

EXHIBIT #ABI12 OECD EMPLOYMENT OUTLOOK DOCUMENT

PN20502

MR IZZO: Professor, if I can now ask you a series of questions. In the General Retail Industry Award, are you aware that the Saturday rate or the Saturday penalty is 125 per cent? Sorry, I'll withdraw that and I'll rephrase the question. The Saturday penalty is 25 per cent, that is there's a 25 per cent loading on top. Are you aware of that, in the retail industry?---For?

PN20503

For employees covered by - full-time, part-time employees covered by the retail award?---Yes.

PN20504

Are you aware that on Sunday that rises to 200 per cent?---Yes.

PN20505

Do you consider that the increase from 25 per cent and sorry I have to apologise, I've changed terminology. On Sunday it increases to 100 per cent, do you agree with that? I believe I said 200 per cent before?---Yes.

PN20506

So I put it to you that the Saturday penalty is 25 per cent and the Sunday penalty is 100 per cent. Do you accept that?---Yes.

PN20507

Do you accept that the increase from 25 per cent to 100 per cent is a substantial one?---Yes.

PN20508

That it is of such a magnitude that it may have the type of disemployment effect contemplated by the OECD?---Not necessarily. I think that's a step too far.

PN20509

In relation to the Hair and Beauty Award, are you aware that the Saturday penalty for full-time and part-time workers is 33 per cent?---No.

PN20510

Can I ask you to assume that then?---Okay.

PN20511

Can I also ask you to assume that the Sunday penalty is 200 per cent - sorry, 100 per cent, apologies?---Yes.

*** RAYMOND ARTHUR MARKEY

XXN MR IZZO

PN20512

You agree that the difference between the 33 per cent and 100 per cent is a substantial one?---Yes.

PN20513

Do you agree that it is of such a size that it may have a disemployment effect?---No.

PN20514

In relation to the Restaurant Industry Award, are you aware that the Saturday penalty rate for full-time and part-time workers is 25 per cent?---Yes.

PN20515

Are you aware that the Sunday penalty for full-time and part-time workers is 75 per cent?---Yes.

PN20516

Do you consider the difference between the two to be substantial?---Yes.

PN20517

Do you consider that that difference is of such a magnitude as to have a disemployment effect?---No.

PN20518

In relation to all of the Saturday penalties that I referred, they were all at 25 per cent. Can I ask you to assume that the public holiday penalty rates are all 150 per cent, for all of those industries?---Yes, I'm in your hands with that.

PN20519

Having assumed that, can I ask you do you agree that the difference between those penalties is substantial?---Yes.

PN20520

So substantial is the magnitude of the difference it might have a disemployment effect?---No, not unless - not without evidence.

PN20521

Can I show you two more documents, professor. These documents are ABI7 and ABI8. The first document I'll give you is ABI8. Now this is an excerpt from the Draft Productivity Commission Report in relation to the federal workplace relations framework. Have you read the Draft Productivity Commission Report?---Yes, yes.

PN20522

This document outlines the Productivity Commission's overall view you'll see in the second paragraph, in relation to penalty rates and the Commission says;

*** RAYMOND ARTHUR MARKEY

XXN MR IZZO

PN20523

The Productivity Commission's overall view and formed largely by the reality that labour demand response to wage rates is that as there is a significant

differential between Saturday and Sunday penalty rates, their greater alignment highly likely to have sizeable employment effects. This conclusion is not underpinned by the simple adoption of any assumption that employment is highly responsive to wage rates, as in Lewis, nor by uncritical acceptance of anecdote or surveys of businesses, though the latter has some value because businesses are the parties that make decisions about whether to open or employ people. It rests primarily on the significant size of the wage differential between Saturday and Sunday.

PN20524

Do you agree with the statements made there by the Productivity Commission Report?---No, I don't agree with the conclusion they come to there because I don't think it's based on much in the way of new evidence.

PN20525

I'm going to hand you one - - -?---Anything actually.

PN20526

I'm going to hand you one further document. I apologise, there's some highlighting on it, thank you. Can I ask you to read the third last bullet point of this document?

PN20527

MR DIXON: What is it?

PN20528

MR IZZO: This document is another excerpt from the Productivity Commission Report. It is the beginning of chapter 14 which deals with penalty rates.

PN20529

MR DIXON: Is that ABI7?

PN20530

MR IZZO: Which is ABI7. Can I ask you to read the third last bullet point of this document?---Yes.

PN20531

Also the fifth last bullet point.

PN20532

JUSTICE ROSS: You might just read the introductory words of each, just so he's reading the right ones.

PN20533

MR IZZO: Certainly, your Honour. The introduction to the third last bullet point reads;

PN20534

Lower rates would affect the incomes of employees currently working on Sundays.

*** RAYMOND ARTHUR MARKEY

XXN MR IZZO

PN20535

Do you see that paragraph?---Yes.

PN20536

Can I ask you, have you read that paragraph?---Yes.

PN20537

The fifth last bullet point starts;

PN20538

Excessive penalty rates for Sundays reduce hours worked.

PN20539

Do you see that paragraph?---Yes.

PN20540

Have you read that paragraph?---Yes.

PN20541

Do you agree with the sentiments expressed in those two bullets points?---No.

PN20542

I thought I'd mentioned it's ABI7 but if I haven't then for the record - - -

PN20543

JUSTICE ROSS: It's marked on the document.

PN20544

MR IZZO: Professor, at paragraph 17 of your report, you talk about the - at the beginning of that paragraph the notion that or you discuss whether owner manager employers will increase hours of work to avoid paying penalty rates. Do you see that?---Yes.

PN20545

You then go on in the middle section of the paragraph to say;

PN20546

Analysis of average employer hours from the Australia Bureau of Statistics, ABS2015, suggests that average employer hours in food retailing have fallen by around 10 per weeks since the mid-1990s, and have been stable to approximately 50 hours per week for the last five years.

PN20547

Do you see that?---Yes.

PN20548

Do I take it then that in the mid-1990s the average employer hours worked were approximately 60 hours per week. Is that the case?---Yes.

*** RAYMOND ARTHUR MARKEY

XXN MR IZZO

PN20549

Now the reduction you cite from 60 to 50 hours is likely to be attributable to a number of factors, isn't it?---Yes.

PN20550

For instance, computer proficiency in the mid-1990s would be markedly different to computer proficiency today?---Yes.

PN20551

Now what I'd like to do is just briefly hand you a copy of the documents. Sorry, before doing that I might instead ask you another question. You agree as well that together with the increase in computer literacy has come computer software that assists employers in running their businesses, yes?---Yes.

PN20552

Software such as MYOB, Mind Your Own Business?---Yes.

PN20553

Are you aware that over a million businesses now use MYOB software?---I didn't know the numbers.

PN20554

Would you agree that software systems such as MYOB have made business operations, payroll accounting simpler and less time consuming?---Yes.

PN20555

So when you talk about average employer hours falling 10 hours per week, you accept that the hours aren't necessarily going to employees. This work might have been subsumed by computer or technological advances?---I was simply addressing the question that owner manager employers had increased their own hours.

PN20556

In your report, in paragraph 17, you state - sorry, just bear with me one moment. You state in the last sentence;

PN20557

In comparison to average hours for employees have increased by approximately two hours since the 1990s and have remained stable.

PN20558

Are you not asserting that employers hours have decreased and then some of hours had gone to employees?---I'm not making a strong point about that, I'm just saying that there's no evidence that employee hours, given that, being taken up by employers working themselves.

PN20559

But you're not stating that employer hours are now being taken up by employees?---They've been stable for the last five years.

*** RAYMOND ARTHUR MARKEY

XXN MR IZZO

PN20560

So I take it that's a no?---Yes.

PN20561

I have no further questions.

PN20562

JUSTICE ROSS: Any further cross-examination?

PN20563

Prof Markey, can I just take you to a matter that Mr Izzo has just been asking you about, paragraph 17. There you're dealing with Prof Lewis's proposition that owner manager employers increase their own hours of work to avoid paying penalty rates. You suggested if that were the case, then you would expect to see an increase in average employer hours in response. That might be one increase but - or one thing that one might expect, but does that really tell us anything about the pattern of employer hours? Even if there had been a decrease in the number of employer hours, as the data suggests, over the entire week, does that ABS data tell us anything about when those hours are worked?---No, that data set doesn't.

PN20564

So it's conceivable there could be a reduction in the number of hours worked by owner manager employers overall, but they may choose to distribute the hours they work by working hours when penalty rates apply rather than when they don't?---That's possible.

PN20565

Okay. The other matter I wanted to - can I take you to paragraph 13 of your report, and about two-thirds of the way down. You talk about the results of the second question as if they more accurately reflect their realised preferences, and then you go to the differing form of the second question. Can I ask you to just explain that proposition in a bit more detail?---The question about preference actually gave an option for every day of the week as a response, whereas the question about when they did use services referred to the average weekday instead of each specific weekday. I had a couple of problems with that: one is I think there could be an issue with confusion for respondents between saying what they preferred and what they do, because sometimes if I've answered surveys my preferred time is the time I do do things; the other issue was that there may - an average weekday is a less precise concept than particular weekdays, and it just gives a clearer idea of preferences, to specify each day. I'm not sure which of the days is average, necessarily, and whether the respondents would.

PN20566

Yes. I see. This is what can only be regarded as a very small point. Can I take you to paragraph 27. If you go down - it's the seventh line - the line that starts:

PN20567

3.3 times as much time socialising; and females, 2.7 times on weekends versus weekdays.

*** RAYMOND ARTHUR MARKEY

XXN MR IZZO

PN20568

What does the next bit say? And in - - -

PN20569

?---*And in spite of weekends is four times that spent on weekdays in males and 2.5 times - - -*

PN20570

"And in spite of weekends is" - I'm just having trouble following the - - -?---Yes.

PN20571

I'm just not sure what it's saying?---Actually, I'm slightly confused myself, I must admit. There is a typo there, and I can only apologise for that.

PN20572

No, I wasn't raising it to be critical, I'm just trying to understand what the proposition is, that's all?---Yes.

PN20573

I'm not sure much turns on it, and - - -?---No. I can't offer much more explanation.

PN20574

You refer to at paragraph 29 to the Craig and Brown studies analysing the 2006 ABS time use survey. Is there a more recent ABS Time Use survey?---No.

PN20575

This is one of the many that they've dropped off over the period of time?---Yes.

PN20576

Okay?---And it's one of the problems with all of this.

PN20577

Is there any - if you were to compare the Bittman analysis, which I think is of the earlier '97 time use survey, with the Craig and Brown of the 2006, is there any problem with comparing the two data sources? Have they been consistent, or have they - - -?---Well, they - - -

PN20578

- - - as some of them have changed over time?---Yes. The Bittman one is based on an earlier survey.

PN20579

Yes?---And the Craig and Brown conclusions are stronger than Bittman.

PN20580

But is the actual ABS time use - is the data they're referring to - is the survey asking the same questions?---Yes. Yes.

PN20581

Okay. All right. Anything else?

*** RAYMOND ARTHUR MARKEY

XXN MR IZZO

PN20582

COMMISSIONER LEE: Professor, can I just take you to page 19 of your report, paragraph 41. In that paragraph you start off - - -?---That starts on page 18?

PN20583

Sorry, yes. Starts on page 18. And you start off talking about the exchange between Wooderman and Deary and Mahoney. And then you go on to say on page 19, about three lines down:

PN20584

Ensuring labour supply has never been a primary justification for penalty rates.

PN20585

You don't make any reference to the literature in making that statement. I just wondered if you could explain some more to me about the basis upon which you make that statement?---My understanding of penalty rates is that it's because it recompenses - they recompense workers for working unsocial hours in terms of what has been the standard working week, and that that was the primary motivation for why they came into being in the first place. And I think there's a bit of - some of the literature which I don't cite here refers to that historically as the main motivation and justification.

PN20586

Okay. What literature would that be?---What's his name? The guy - just bear with me. It's one of the key pieces is something that is Zullo refers to. And just bear with me to - because I've got a brain fade about the guy's name, and I should know it very well. Campbell. Campbell and Matthews. And he has done a lot of other articles as well, going - - -

PN20587

That's Ian Campbell?---Yes - going back 20 or 30 years on this.

PN20588

Yes.

PN20589

JUSTICE ROSS: Anything arising?

PN20590

MR IZZO: Your Honour, I just failed to tender one document, I believe.

PN20591

JUSTICE ROSS: Yes.

PN20592

MR IZZO: The Craig and Brown document has not been tendered.

*** RAYMOND ARTHUR MARKEY

XXN MR IZZO

PN20593

JUSTICE ROSS: So we will mark that ABI13.

**EXHIBIT #ABI13 CRAIG AND BROWN ARTICLE "WEEKEND
WORK AND LEISURE TIME WITH FAMILY AND FRIENDS,
WHO MISSES OUT"**

RE-EXAMINATION BY MS STARR

[12.15 PM]

PN20594

MS STARR: I might say I'm going to jump around a little bit, but I just have a few more questions. But I might try and start where we left off. In the comment that you just made earlier in response to his Honour's question about the Craig and Brown and Bittman reports was that you consider the Craig and Brown to be stronger than - I think was the word that you used - than the Bittman. Can you explain what you meant by that?---Their conclusions were less qualified than Bittman in the ways that have been addressed. And that's particularly in the most recent 2015 article.

PN20595

Conclusions in relation to what?---For virtually all classes of workers, the impact on their time spent with family and friends during the rest of the week, not having the ability to make up for that lost time.

PN20596

Thank you. And on that, can I take you back to the Craig and Brown report which you have a copy of?---the 2014 one?

PN20597

This is the 2014?---Yes.

PN20598

And at page 722. And I'm looking at the paragraph which is about halfway down in the first column, and it starts:

PN20599

In all three household types on weekend days paid work displaced all categories of shared leisure time when considered.

PN20600

Can I ask you to read the remaining paragraph on that column.

PN20601

MR SECK: Objection. This doesn't arise from the cross-examination. I think none of these things were put to the professor in cross.

PN20602

MS STARR: I think that it does. There were various passages which were taken to on page 722, and this is - - -

PN20603

JUSTICE ROSS: Look, he was taken to parts of the article. Entitled to take him to other parts that might make a different point.

*** RAYMOND ARTHUR MARKEY

RXN MS STARR

PN20604

MR SECK: I understand, your Honour.

PN20605

JUSTICE ROSS: If anything arises or you want to seek leave to further cross, you can do that.

PN20606

MS STARR: Thank you, your Honour.

PN20607

Can I ask you to read that, professor?---Okay. Yes.

PN20608

And does that passage accord with the findings of your report?---Yes.

PN20609

And I think in - and not in reference to that particular passage on 722, but you were asked some other questions in relation to this article, and you made the comment that it contradicts Pezzullo's findings. Can you explain what you meant by the way in which it contradicts Pezzullo's findings?---Pezzullo attempts to characterise the demographics of workers who get penalty rates as an explanation for whether they're affected with time use negatively. And I talk about that in my report. If you give me a moment I will find where I talk about that. And I talk about the demographics. Okay. I refer you to paragraphs 32 and 34 of my report. And Pezzullo has argued that the findings about work-life balance for weekend workers are more attributable to the kind of worker who works on weekends, and that some of that is to do with low wages and people on low wages are more likely to have work-life interference; but in fact the AWALI survey shows the opposite, that high income workers are more likely to have work-life interference in their jobs across the board, whether they're week or weekend workers. But notwithstanding that, for low income workers working weekends, they're more likely than higher income workers to experience work-life interference. So there's a significant difference at the weekend for those people. Also Pezzullo refers to risk factors associated with having young or many children, and that people with young or many children are thus likely to have both more stress, and are more likely to work atypical hours. But the AWALI survey doesn't confirm that at all.

PN20610

Thank you, professor. Can I now take you to Pezzullo's report and page - so small number page 29, or page 48 with the big numbers?---Yes.

PN20611

And specifically you were taken to, I think, the final sentence, that starts:

*** RAYMOND ARTHUR MARKEY

RXN MS STARR

PN20612

Under reduced weekend penalty rates we would expect the self-selection of weekend work by those for whom it is most convenient to increase; and reduced participation by weekend employees who work weekends largely or solely on the basis of penalty rates.

PN20613

You said that you did not accept that proposition. Can you explain why?---Can you just give me a moment to refer to 4.9?

PN20614

Twenty - so small number 29. I'm looking for chart 4.9, because that's what it refers to.

PN20615

Page small number 38?---Well, I just don't see how, necessarily, you can draw that conclusion from that table.

PN20616

And can you explain why not?---Well, the table refers to when they prefer to use services, but I'm just wondering if it is that table that we need to refer to, or if it's the chart on small page 32, based on differences in social activities. I think it might refer to the chart rather than the table; the type of activities. And no, that refers to the time use survey, so it does refer to the table. Well, I don't know - I just don't know how you can draw that conclusion from when people prefer to use services, as indicated in the table.

PN20617

On a different topic, there were some questions to you about casual workers and suggested that they might - there was some discussion about whether or not they would feel forced to work on a weekend as opposed to another class of workers. I think your words were that you feel that they would have little choice or that they would feel obligated. Can you firstly explain to us some of the work that you have done in relation to casual workers?---I've done work on hotels in Australia and New Zealand and Denmark, in the meat industry and with teachers, strangely enough. That doesn't apply so much with teachers but with hotel workers and workers in meat and manufacturing, there's - I mean that was based on a number of case studies of organisations and it was based on interviews with a very small sample and also a survey of a larger sample in those workplaces of employees. But also interviews with managers. In many cases workers in those sectors felt that they would be at a disadvantage if they didn't take work when it's offered, that they may not get as many shifts in the future because they wouldn't be considered as reliable by the employer, or - well principally that, that they would be disadvantaged in that way and therefore in order to keep a continuous casual employment, they needed to show their willingness to be available at hours which are often considered unsociable at the weekend. That's confirmed by Pezzullo's survey which shows the main reason that people take that work is because of employer requests. Also, I can add there, there is a little bit of evidence from the WorkCover era regarding AWA in that regard to - - -

PN20618

I'm sorry?---There's a bit of evidence from AWA, some of which required workers to be available at times suitable for the employer.

*** RAYMOND ARTHUR MARKEY

RXN MS STARR

PN20619

Yes, thank you. I think finally, can I take you to - I think tab 2 of your folder is - no, it's - sorry, no it should be tab 3 which is the reply response from Deloitte in relation to your report?---Yes.

PN20620

On page 4, at the very top, Deloitte say that;

PN20621

Markey argues that there is no evidence that owner manager employers increase their own hours of work and reduce those of employees to avoid penalty rates.

PN20622

She says;

PN20623

Our report does not claim this, so we are agreed.

PN20624

Does that first proposition accord with your view and your argument in your report?---Yes, and we discussed that. The President asked me a question about that, I forget the paragraph number but yes.

PN20625

So you would agree that there is some agreement between yourself and the Deloitte report in that regard?---Yes.

PN20626

Lastly, if I can take you down to the third dot point and it says;

PN20627

Markey argues there is limited evidence that minimum wages have a negative net employment impact.

PN20628

And the response is;

PN20629

Our report acknowledges the ambiguous overall effect of a minimum wage on employment, particularly with regards to different industries and makes no definitive claim on the relationship between the two variables. However, it does note studies that find the relationship and those that do not, acknowledging either could be the case.

PN20630

Does that accord with your argument in your report?---Yes, I'd say it's less than an ambiguous overall even though.

PN20631

Thank you.

*** RAYMOND ARTHUR MARKEY

RXN MS STARR

PN20632

JUSTICE ROSS: Nothing further for the witness? Thank you, Professor Markey, you're excused.

<THE WITNESS WITHDREW

[12.30 PM]

PN20633

Can I just raise some matters about - I think that concludes the schedule for today. In relation to the proposition that the witnesses on 15 December and there are - I'll just let you know who they are Mr Seck; Dr O'Brien, Professor Charlesworth and Professor McDonald, the proposition if you can have a discussion with I think it was Mr Moore's instructors. Are they the SDA witnesses or are they United Voice?

PN20634

MR SECK: I think they are, yes.

PN20635

MS STARR: O'Brien has two, he has two reports. One of them is the ACTU's report and there's a second SDA report. I think we're dealing with both.

PN20636

JUSTICE ROSS: Yes. In any event, given it's some time off, if the legal representatives can have a discussion about seeing if those witnesses are able to move to the 16th to accommodation Ms Pezzullo on the 15th. We'll reserve the 15th and the 16th. If you can let us know during the course of the proceedings next week on the 4, 5 and 6 November where you've got to with that.

PN20637

The other matter I want to raise is - this will be directly at you Mr Izzo, only because you've stuck your hand up to try and coordinate the cross-examining timings. My apprehension is increasing a bit because the estimate was 45 minutes and we've gone three times that long and we've crafted the schedule for next week based on the estimates. I just ask you to reconfirm with your colleagues the timings because what I want to avoid is having witnesses held over for more than one day, and then we run into availability problems and it's going to then create problems - a ripple effect later down the pipeline.

PN20638

In terms of the commencement, can I indicate that Dr Muurlink will commence at 9.45 not 9.30. There's a welcome ceremony for a new member at 9 am on that day. Can I also indicate within the bounds of reason, we'll sit late to endeavour to accommodate witnesses and try and conclude their evidence on the scheduled program. I would encourage those cross-examining to perhaps more closely coordinate their efforts and try and come within the estimate. If there is to be a - if it's anticipated there's going to be a wide variant, the sooner we know, the better. I don't want to constrain cross-examination, I'm just trying to manage the witness availability issues, that's all.

PN20639

MR IZZO: Your Honour, I can note we're in the process of trying to ensure that the estimates are as accurate as possible.

PN20640

JUSTICE ROSS: I think there's scope for an academic study on estimates and certainly if my experience is anything to go by, there's not a lot of correlation but I appreciate the efforts and I know it's difficult where you have more than one cross-examiner. We'll adjourn until 9.45 on Wednesday 4 November in Melbourne.

ADJOURNED UNTIL WEDNESDAY, 04 NOVEMBER 2015 [12.34 PM]

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