



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009
TRANSCRIPT IN CONFIDENCE

1052656

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

AM2014/305

s.156 - 4 yearly review of modern awards

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

Melbourne

10.06 AM, WEDNESDAY, 4 NOVEMBER 2015

Continued from 28/10/2015

PN20641

JUSTICE ROSS: There are a number of preliminary matters. Can I deal first with the correspondence from Ms Cruden about the proposed timetabling of the matter. We provide two possible sets of dates. I'm told that not all of the employer party representatives on the April dates. Who is not available?

PN20642

MR GOTTING: I'm not available.

PN20643

JUSTICE ROSS: And why is that?

PN20644

MR GOTTING: I'm overseas.

PN20645

JUSTICE ROSS: Okay. Anybody else? So you're available?

PN20646

MR DIXON: I am.

PN20647

JUSTICE ROSS: All right. We will confirm the April dates. The parties can file the consent directions that relate to those. Ai Group has filed amended affidavits: Kopias, Deasy, Dando, Dunn and Haydar, and a third - and that has been copied to the other parties. Any issues about any of those? No? All right. And Professor Peetz is no longer required for cross-examination on Friday. Is that correct? Yes?

PN20648

MR DOWLING: That's my understanding, your Honour.

PN20649

JUSTICE ROSS: All right. So that leaves Ms Yu and Dr Watson. I think it was proposed that Dr Watson would go first on that day, and he's required for about 30 to 45 minutes, I think. And there was another witness who was to be called on that day, Armstrong. Is that correct?

PN20650

MR MOORE: In the afternoon, I think, had been - - -

PN20651

JUSTICE ROSS: Is there any reason why he can't be in the morning?

PN20652

MR MOORE: Not from my perspective.

PN20653

JUSTICE ROSS: All right. Is there any reason we can't start at 9.00 on Friday with Dr Watson and then with Mr Armstrong being available at 9.45, and then go to Ms Yu? No? All right. With Ms Yu there was an issue around the Pezzullo

report. Can I indicate that we're not attracted to the idea of putting Ms Yu off to December in totality.

PN20654

We've read the Pezzullo report. And while it covers nearly 30 pages, there are only really 10 that are relevant to - go to the core of the matter, and they identify four or five what are said to be methodological problems with Ms Yu's evidence. Now, if, having had the time between now and Friday, we can also adjourn Ms Yu to the afternoon and deal with her, it would see it would give you further time in the morning. But at the very least we would propose to deal with all of her evidence but the reply to the Pezzullo report if necessary.

PN20655

We would prefer to deal with all of it and not call her back, but that really depends on - and given the intervention of the public holiday and the late filing of the Pezzullo report, you may not have had the opportunity to contact Ms Yu about it or seek any instructions in relation to it, so that's probably where it rests, I think, Mr Moore.

PN20656

MR MOORE: Thank you, your Honour. I haven't been in contact with Ms Yu, but I have got some general instructions. She's considering Ms Pezzullo's further report. It's proposed for Ms Yu to file a reply report by the end of tomorrow.

PN20657

JUSTICE ROSS: Okay.

PN20658

MR MOORE: That's what we're striving to do. It's still a matter of ambition, but one that there's a level of quiet confidence towards. But I reserve - - -

PN20659

JUSTICE ROSS: I'm all for quiet confidence, Mr Moore.

PN20660

MR MOORE: I reserve our position to, if need be - and I understand the Bench's view about this, to - if it can't be done, we would, on Friday, apply if necessary for Ms Yu's evidence in relation to that matter to go off to another time.

PN20661

JUSTICE ROSS: Yes.

PN20662

MR MOORE: But we understand that's inconvenient to - - -

PN20663

JUSTICE ROSS: No. No, look, it's trying to balance - well, in part, Ms Yu's convenience.

PN20664

MR MOORE: Well, indeed, yes.

PN20665

JUSTICE ROSS: And also the other parties, in expedition with the fact that the material did come in late and you need an opportunity to consider it. So we will work out way through that. I'm indebted to your indication, and hopefully the reply report can go in, and that will deal with the issue, and it will proceed on the Friday. Are there any other preliminary matters? Mr Izzo.

PN20666

MR IZZO: Your Honour, on Thursday or Friday our office filed a statement of Ms Emily Baxter. In fact, I apologise, I think it was Monday afternoon, we filed it. That supplementary statement seeks to correct some responses Ms Baxter gave under cross-examination. It also foreshadows the filing of some additional material in relation to the survey that was conducted.

PN20667

My understanding from Mr Moore - he can correct the record if need be - my understanding is that he presently doesn't propose to cross-examine Ms Baxter in relation to the further supplementary statement, but he reserves his position in relation to whatever is filed by our office in the coming days. I can indicate that we do hope to be in a position to file a further document this week and seek leave for that to be admitted into evidence. We're hopeful that Ms Baxter won't need to be recalled, but it's a possibility, and that's where things stand.

PN20668

JUSTICE ROSS: All right. Well, you will discuss the matter with Mr Moore and let us know whether Ms Baxter is required for further cross-examination. And there's a list of witnesses that were not required for cross examination that Ai Group seeks to tender their statements, and we will attend to that, Mr Dixon, and take care of that in due course.

PN20669

MR DIXON: If your Honour pleases.

PN20670

JUSTICE ROSS: Is there anything further by way of preliminary matters before we turn to Dr Muurlink? No? All right.

PN20671

MR DOWLING: Thank you, your Honour. I call Dr Olav Muurlink.

PN20672

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

PN20673

DR MUURLINK: Olav Titus Muurlink, work address, was it?

PN20674

THE ASSOCIATE: Yes.

PN20675

MR MUURLINK: I just had to remember it. 160 Ann Street, Brisbane.

<OLAV TITUS MUURLINK, AFFIRMED [10.14 AM]

EXAMINATION-IN-CHIEF BY MR DOWLING [10.15 AM]

PN20676

MR DOWLING: Dr Muurlink, could you please restate your full name?---Olav Titus Muurlink.

PN20677

Your address?---160 Ann Street, Brisbane.

PN20678

Your occupation?---I'm a senior research fellow at Griffith University and a senior lecturer at Central Queensland University.

PN20679

You have prepared two reports for the purposes of this proceeding?---Yes.

PN20680

Can I hand you a folder, please. You have a folder there with five tabs, only four of which are relevant to you. Can I ask you to look behind the first tab, please. Do you see there a document headed "Report to Fair Work Commission", the title being "The Impact of Weekend Work: Consecutivity, Overload, Uncontrollability, Unpredictability, Asynchronicity and Arrhythmia"?---Yes, I do.

PN20681

Is that a report prepared by you?---Yes, it is.

PN20682

And do you have there - is the report you have there 123 pages long?---It's a little hard to tell, actually. I may be looking at the wrong - yes, it is.

PN20683

If I ask you to turn to page 99 of those 123 pages. Is that a declaration, and your signature that follows it is a declaration made by your in respect of the report?---That's right, yes.

PN20684

Thank you. And immediately following the report, with a blue tab, you should see a curriculum vitae. Is that right?---Yes.

PN20685

That's your curriculum vitae?---It is, at the time in which I prepared the report.

*** OLAV TITUS MUURLINK

XN MR DOWLING

PN20686

Can I ask you to turn back to the report, please, and turn firstly - I understand you wish to make some corrections to that report. Is that correct?---Yes. Since I

submitted it I've picked up three errors which do have some material impact. They weren't picked up in my various proofreadings. I do apologise for that.

PN20687

Can I ask you firstly, then, to turn to page 15?---Yes.

PN20688

And the sentence that starts at the bottom of page 14 with the words, "The relationship." Do you wish to correct that sentence so that it reads:

PN20689

The relationship between weekend work and psychological maladjustment is likely to be largely explained by social network strength, fatigue, uncertainty, lack of control over work hours, and being on call, all of which are associated with lower psychological health.

PN20690

?---Yes, that's right. The sentence, as it implies the opposite meaning.

PN20691

Thank you. So the word "lower" is inserted after - - - ?---That's correct, yes.

PN20692

- - - "with" in the second line on page 15?---Yes.

PN20693

Thank you. Can I ask you to turn next to page 84, please?---Yes.

PN20694

And the first paragraph that appears on page 84 is paragraph numbered 163. Do you see that?---Yes.

PN20695

Can I take you to the last sentence of that paragraph?---Yes.

PN20696

The sentence beginning, "One study." Do you have that?---Yes, no problem.

PN20697

Should that sentence read:

PN20698

One study found, for example, that when women worked on the weekend, there was a significant negative impact on their relationship satisfaction, but no such connection emerged for men.

*** OLAV TITUS MUURLINK

XN MR DOWLING

PN20699

?---Yes. So I used the word "men" twice, but the initial use of "men" should have read "women".

PN20700

Yes. And I think the word "found" appears twice on the third-last line?---Well, of those trivial errors, there are a few more, I'm afraid, but not confusing, I don't think.

PN20701

Thank you. Can I ask you lastly to turn to page 92, please, and to the paragraph numbered 186?---Okay.

PN20702

Do you have that paragraph?---Yes.

PN20703

Should the first sentence - or the first part of the first sentence - read:

PN20704

In another European study based on 23,934 EU workers, Wurts et al -

PN20705

And then the balance of the sentence. So the figure in that first line should be 23,934?---Yes, that's right. Just an additional "3" there.

PN20706

Can you tell the Commission, please, that with those corrections, does the report accurately set out the opinions formed by you based on your expertise?---Yes, it does.

PN20707

I tender that report together with the curriculum vitae, your Honour.

PN20708

JUSTICE ROSS: Mark that exhibit United Voice 26.

PN20709

MR DOWLING: Thank you, your Honour.

**EXHIBIT #UNITED VOICE 26 REPORT AND CURRICULUM
VITAE OF DR MUURLINK**

PN20710

Can I ask you, Dr Muurlink, next to turn to the document behind tab 2?---Yes.

PN20711

Do you have there a document headed "Report to Fair Work Commission", author Dr Olav Muurlink?---Yes, I do.

*** OLAV TITUS MUURLINK

XN MR DOWLING

PN20712

Is that report a report of eight pages?---Yes.

PN20713

If you can turn to the seventh page, is that a declaration made and signed by you?---Yes, it is.

PN20714

Does that report actively set out the opinions formed by you based on your expertise?---Yes, it does.

PN20715

I tender that also, your Honour.

PN20716

JUSTICE ROSS: Can I just check what looks like a typographical error on page 5. In that first paragraph there's a sentence beginning about halfway through, "Considering the topic"?---Is this the second report, your Honour?

PN20717

Page 5 of the second report?---Yes.

PN20718

Do you have that, about halfway through the first para?---Yes.

PN20719

"Considering the topic", do you see that one?---Yes, I do.

PN20720

Then the next sentence, "71 per cent of the live tribe"?---"Sample", yes.

PN20721

It goes on, the next line, "age of 35 while the mean age of weekend workers in Australia"?---30.8 per cent, yes, yes, 30.8.

PN20722

Yes. So it's just 30.8 years. Is that right?---Yes, that's correct. Sorry, apologise.

PN20723

Sorry, Mr Dowling.

PN20724

MR DOWLING: Thank you, your Honour.

PN20725

JUSTICE ROSS: You wanted to tender that?

PN20726

MR DOWLING: Yes, your Honour.

*** OLAV TITUS MUURLINK

XN MR DOWLING

PN20727

JUSTICE ROSS: Mark that exhibit United Voice 27.

EXHIBIT #UNITED VOICE 27 DOCUMENT HEADED "REPORT TO FAIR WORK COMMISSION", AUTHOR DR OLAV MUURLINK

PN20728

MR DOWLING: Your Honour, with leave I would like to ask Dr Muurlink five questions dealing with Ms Pezzullo's reply to Dr Muurlink's report.

PN20729

JUSTICE ROSS: Any objections? No?

PN20730

MR DOWLING: Thank you, your Honour. Dr Muurlink, if you turn to the document behind tab 4 in your folder, you should have there a document headed;

PN20731

Reply evidence to union opinions for use by Fair Work Commission Four Yearly Reviews of Modern Awards Penalty Rates AM2014/305.

PN20732

?---Yes.

PN20733

Is that the document you have?---Yes.

PN20734

Now can you please turn to page 7 of that report?---Yes.

PN20735

You'll see there chapter number 2 headed "United Voice" and beneath that it says, "2.1 Olav Muurlink, re weekend report". Do you see that?---Yes, I do.

PN20736

Can I ask you please firstly, under the heading 2.1.1, towards the bottom of page 7, you'll see beside the letter (a) Ms Pezzullo extracts part of your finding from your report, the second of the first I have taken you to. Then in the dot points that follow she sets out her response. Can I ask you firstly please to look at the first dot point commencing;

PN20737

The engagement letter, page 4, specified that we would undertake.

PN20738

Do you have that dot point?---Yes, I do.

PN20739

Can you read that dot point, please?---

*** OLAV TITUS MUURLINK

XN MR DOWLING

PN20740

The engagement letter, page 4, specified that we would undertake a targeted search. The search was not intended to be systematic. Page 12 of the report states that the targeted search was undertaken.

PN20741

What do you say in response to that?---Look, I'm a little bit unfamiliar with the term targeted search. If you use - if you do a literature review in the formal sense you need to specify the limits of that review and the report does indeed do so. I think the table in which the search terms used to create the literature review is listed. When I look at that list of search terms it gives the impression to someone like myself, perhaps not to a lay person but it gives the impression that a literature review covering that field comprehensively was conducted. It appears though from the results of that search that a very limited literature review was conducted. Now the author of the report argues that this represents a targeted or a focused approach to that literature review but I do not understand how that could be done in the manner that they have claimed to have done it. So yes, it's true that whenever you conduct a literature review you do need to - you know, the mass of literature out there is the years advance and the number of journals advance is just enormous and you simply cannot digest it all. But the scale of the literature that is relevant to this case, as indeed I found, is enormous and it presents in itself a real challenge. You know, in a lay sense what I feel has happened here is that, you know, there has been some kind of like cherry picking almost, you know. I'm not saying that in a negative sense but like, you know, picking of a number of items that appear to be relevant have been taken. But even the most superficial analysis of the literature from my perspective shows that a huge quantity of highly relevant literature is missing.

PN20742

Thank you. Can I ask you to read to yourself the third dot point that appears on page 7, the same part of Ms Pezzullo's response?---"Google Scholar limits" - - -

PN20743

Just to yourself?---Okay.

PN20744

Just to assure the Commission that you have read it?---Yes.

*** OLAV TITUS MUURLINK

XN MR DOWLING

PN20745

What do you say in response to that?---What the - the quote there from the author of the report is accurate and it is true that Google Scholar does limit results to a 1000. I mean it shows higher figures but you can't actually get to them, not in a single search. You have to do multiple searches in order to get beyond that 1000 mark. I will say, however, that Google Scholar is a robot, it's not a - it's not an intelligent tool. There's not a little man sitting behind Google making sure that everything of every search that's conducted is correct. So Google Scholar does make errors and through use and heavy use of Google Scholar myself over many years, I have uncovered some of the systematic errors that do exist. Those errors include the fact that, for example, government reports or insurance agency reports or perhaps most importantly military reports are not highly prioritised in the

search results. These are some of the best quality and most objective results that you can find. If, for example, foreign language reports or they'd have majority foreign language but might have an English abstract, will not get highly listed in that 1000 result because they're not heavily cited by western authors or English speaking authors. So the systematic errors means that you do have to dig beyond the first few pages, otherwise you will miss, you know, gold nuggets basically.

PN20746

Thank you. Can I ask you to turn the page please of Ms Pezzullo's reply report to page number 8?---Okay.

PN20747

We're still under the heading 2.1.1 but at the top of the page, next to the letter (b) Ms Pezzullo again extracts part of your findings or your conclusions from your report. Can I ask you to read to yourself the first and second dot points that appear beneath the letter (b)?---Yes.

PN20748

Tell the Commission what you say in response to those replies?---I'll try not to repeat myself but the key point here is that Google is not clever and Google is a robot. So you know unless you ask Google the right question, you will not get the right answer or you will not get a comprehensive answer. It's clear that the report author was asked in the terms of engagement to look into consumer activity but I think that the author would have been better advised to think of synonyms that are beyond the lay terms, in order to get a more comprehensive reach of the literature. So consumer activity's not a term that I'm familiar with and if you do look at the term "consumer activity" in ordinary Google, for example, you find that it is not a common term that's used in either the lay or the professional literature. It's a term that the client I assume used in the terms of engagement but it's not a professional term. The best or one of the better synonyms if you like is consumer behaviour. I've just picked one, it's not the only one you could use to get at the kind of target literature you want to get at, but it is the clearest and most obvious flaw in that particular search.

*** OLAV TITUS MUURLINK

XN MR DOWLING

PN20749

Thank you. Fourthly, can you please immediately following those two dot points that you've looked at is the paragraph next to the letter (c) where part of your report is again extracted and then there is a reply with a dot point beginning, "Muurlink has not provided any evidence". Can you read to yourself that dot point and the sub dot point that follows it, and tell us what you say in response?---Yes, in this case simply using the word "premia" of course is going to lead to a ridiculously large amount because premia is plural for premium. It's going to produce rubbish really and certainly if I was conducting such a search I would not use the word premia on its own like that. I just did overnight a quick Google Scholar test and I put in a few words. For example, if you write overtime premia or premia for overtime you get hundreds and hundreds of results that are much more focused on what you're looking for. Or if you put in a slightly more sophisticated search but one that hones in even better, if you put in quote marks "premia" for asterix work, which is kind of like a wild card, you'll get I think 76 -

don't quote me but 76 quite focused results of the sort that I would have thought would have been useful. They are European so they're not - penalty rates is an Australian or largely Australian term but in Europe there a whole good quality literature there available and they tend to prefer words like premia. So again it's about putting the right question to Google Scholar in order to get the right answer.

PN20750

Thank you. Lastly, could I ask you to turn to the following page, which is page 9 and you'll see there towards the top of the page, next to the letter (b) again extracted as part of your findings, including the dot points that follow, beneath that is the heading "Reply". Do you see that?---Yes.

PN20751

Have you read the three dot points that appear beneath the word "Reply"?---I have.

PN20752

Can you tell the Commission what you say in response to that reply?---Look, my main concern in relation to the element of this report, the literature review for example that I just spoke of earlier, you could do a bad job of it but accidentally, by accident come upon the targetted literature you wanted. I'm not saying it's likely but it's possible to do so. Look, when you're building a study of this sort and you want to have the study have some meaning, as a researcher I would argue that the core principle of a good study is good sampling. So you must - let's say you have a population - let's say your population is an exhaustive one, like the Australian population of infants and adults et cetera, et cetera. You'd need to build a study whereby every person in that population has an equal chance of being picked for your study random sampling. So if you get your sampling wrong, then the foundation on which you build the study is wrong. It's simple the house will not stand on such a poor foundation. Now I was surprised in relation to this that the population that we're talking about is the population of people who work on weekends or might work on weekends let's say. They chose a commercial database and I am not sure how great that database is but I don't have to know how good that database is, because in the report themselves they proved to me as a statistician - if I can use that term as a psychologist who's experienced with statistics - they proved to me that the sample was wrong. They state themselves that the target population should have X, Y and Z per cent of a particular group in it, and it has less than one per cent. I can tell you without having to conduct any analysis that I would stake my life on it that this sample is grossly misrepresentative of the target population, and subsequently any conclusions drawn from that sample are flawed. So I am just surprised that it would have been possible to do excellent study with slightly better sampling method, and I'm surprised they did this.

PN20753

Thank you. No further questions. If you'd just wait there, Dr Muurlink.

*** OLAV TITUS MUURLINK

XN MR DOWLING

PN20754

JUSTICE ROSS: Cross examination. Mr Dixon.

PN20755

MR DIXON: May it please the Full Bench. Dr Muurlink, we act for the Ai Group in respect of the fast food industry and the Fast Food Industry Award. Can I start by just asking you about the request for you to prepare your report. It's correct, is it not, that the report was requested of you by the solicitors on behalf of United Voice?---The initial request came from the union itself, United Voice, and then solicitors, yes.

PN20756

The request was in writing from the union?---Yes, it was. I believe the initial request was a phone call and beyond that it turned into writing.

PN20757

It was followed up in writing?---Yes.

PN20758

If you have a look at this document please, which appears to be a letter dated 28 May 2015, from United Voice to you. I understand from Mr Dowling that you have this letter in your folder as well. So the request of you in writing was made on 28 May 2015 as set out in that letter which I've just handed you. Is that correct?---Yes, that looks familiar.

PN20759

The request shows that you were requested to prepare a report in respect of the awards that are set out at the bottom of page 1 and through to the top of page 2 of that letter. Is that correct?---That's right.

PN20760

Those four awards operated in, as you understood it, four separate industries?---Yes.

PN20761

The relevant awards and the terms, the summary of the proposed variations that were being sought in respect of those awards were set out in annexure A, which are attached to that letter?---Yes.

PN20762

I tender - only if it's necessary. I hadn't seen the folder but other I would tender the letter, if the Commission pleases.

PN20763

JUSTICE ROSS: We'll mark the letter Ai Group 13.

PN20764

MR DIXON: Thank you.

*** OLAV TITUS MUURLINK

XXN MR DIXON

EXHIBIT #Ai GROUP 13 LETTER FROM UNITED VOICE TO DR MUURLINK DATED 28/05/2015

PN20765

JUSTICE ROSS: Yes, the folder wasn't tendered, only the two reports.

PN20766

MR DIXON: If your Honour pleases, thank you. Dr Muurlink, your instructions from United Voice or subsequently any instructions you received from the solicitors acting on United Voice did not include any data or statistical analysis of a range of matters that concerned the groups of employees covered by those awards?---Sorry, can you repeat the - - -

PN20767

I'll repeat - I'm going to put to you a range of matters and ask you to confirm that these were not matters upon which you received instructions?---Okay.

PN20768

You did not receive instructions of any of the following. Firstly, the age of the workers in each industry?---I think we looked - I'm not sure about the written instructions but certainly I believe gender was mentioned. I thought age would have been. I certainly would have - - -

PN20769

You make no reference to that in your report?---I do make a reference to it in my report.

PN20770

MR DIXON: I'm sorry: you make no reference to the fact that you received any data in respect of the age of workers in each industry?---I have to say I can't recall.

PN20771

You did not receive any data in respect of workers in each industry?---Data from whom?

PN20772

Data from those instructing you?---No, I don't think I did.

PN20773

Did you receive any data from those instructing you in respect of the gender of workers in each of those four industries?---Certainly I didn't receive any data.

PN20774

At all?---At all - not that I'm aware of, no.

PN20775

Right. So I'm going to follow this up with what you may have done later but I just wanted to make clear that - - -?---Yes, sure.

*** OLAV TITUS MUURLINK

XXN MR DIXON

PN20776

- - as a result those instructing you did not give you any data or statistical analysis of the age of the workers in each industry?---Not that I'm aware of and certainly if

it did it would have come in some form of appendix or something that I regarded just on the superficial look as not being relevant. But I would say I haven't, yes; I have not.

PN20777

I just want to cover a range of data?---No problem, yes.

PN20778

I'll follow up with a later question?---No problem.

PN20779

No data was given to you in respect of the gender of the workforce in each industry?---No.

PN20780

In respect of the marital or partner status of the employees in each industry?---No.

PN20781

Of the caring responsibilities of employees in each of those industries?---No, but again, I would just qualify by saying if you're talking about data, no.

PN20782

All statistical analysis in respect of any of those items?---No.

PN20783

So when I refer - the following questions will include both those data or statistical analysis?---Okay, I understand, yes.

PN20784

You received no data or statistical analysis from those instructing you about whether employees in each of those industries were engaged in shift work?---No, certainly no data.

PN20785

No data or statistical analysis of the type of shift or shifts worked by employees in each of those industries?---Correct, no, I did not receive - - -

PN20786

No data or statistical analysis in respect of the length of shifts?---No, I did not.

PN20787

Whether employees worked rotating shifts?---No.

PN20788

Or the number of consecutive shifts worked?---No.

*** OLAV TITUS MUURLINK

XXN MR DIXON

PN20789

Or the number of consecutive shifts worked with no rest day in-between?---No, I did not.

PN20790

Or the number of rest days in-between?---No.

PN20791

Whether employees in each of those industries worked abnormal hours?---No, I did not.

PN20792

You received no instructions about the level and duration of intra-work breaks of employees in each of the industries?---No, I did not.

PN20793

No data or statistical information about the frequency of such breaks?---No, I did not.

PN20794

No data or statistical analysis of the total hours worked per work cycle - - -?---No.

PN20795

- - in each of the industries or whether there was any overload in hours worked?---No, I did not.

PN20796

Whether employees worked - typically - night work?---No, I did not.

PN20797

The days of the week which employees typically worked in each of those industries?---No.

PN20798

The days of the week when they did not work?---No.

PN20799

The level of staff turnover?---No.

PN20800

You did not receive any data or statistical analysis of what employees in those industries do with their leisure time?---No.

PN20801

Now, apart from data you received no other information in your instructions about any of the topics that I have just identified?---No, I would qualify that by saying I only discovered very recently that there was an appendix to one of the emails. I still don't know what it contains but I didn't read it. But I just have to state that so that I'm not sure what it contains but it was provided to me by the union and it was in a very early communication. That's - - -

*** OLAV TITUS MUURLINK

XXN MR DIXON

PN20802

But you had no regard for any other information provided to you about any of the topics I've just - - -?---No, that's correct, yes.

PN20803

Apart from instructions that you may or may not have received neither you nor those working with you on your report independently obtained data or undertook any statistical analysis about the matters that I've just identified in respect of the four industries, the subject of the request to you by United Voice?---That would be harder for me to give an emphatic answer to. So I - if you mean conduct primary research, definitely not. So that is primary research is going out into the field and actually doing research. I did not do that, no.

PN20804

You also did not find any data or information yourself or those assisting you specific to the four industries that you were requested to provide your report on?---No, I would challenge that. The report makes a number of references to either Australian or overseas workers in a variety of categories that certainly overlap with those industries that the instructions were received on.

PN20805

I'm sorry, I didn't mean to interrupt you. Your voice tailed off?---Sorry.

PN20806

In respect of the four industries that we've just - that you were requested to provide your report on, you did not obtain any data or any statistical analysis yourself in respect of the matters that I've just identified in a range of questions specific to the four industries that you were asked to provide your report on?---Okay, once again, if you're asking about primary research, indeed no. I can say that emphatically.

PN20807

Any secondary research, if that's the appropriate term - - -?---Yes.

PN20808

- - none of it was specific to any one of the four industries that you identify in your report?---Again, I would have to repeat that I would challenge that. I do believe that the data and the studies that I - the data and the studies that I relied on included the examination of a number of industries that were relevant or overlapped heavily with the four industries that you refer to.

*** OLAV TITUS MUURLINK

XXN MR DIXON

PN20809

Not one of the studies that you - well, perhaps I could ask the question differently. None of the studies you just referred to separate out or identify separately in respect of the four industries data which would answer the questions in relation to age, gender, marital status, shift work, et cetera, et cetera; you agree with that?---I would hesitate to agree with that. You refer to, you know, the four industries include the hospitality industry - well, there are studies in there that relate specifically to the hospitality industry. For example - I'm just taking an example - but look, perhaps, yes - - -

PN20810

The position is different, isn't it, Dr Muurlink? The position was this: you recognised that there was no specific data available to any one of those industries or to any other specific industry in Australia and what you then did was to carry out a literature research of whatever literature you could obtain whether in Australia and elsewhere to see what conclusions you could draw from it? That is the basis upon which you pursued the making of your report and how you made your report, is that not correct?---Where possible I used data in relation to the target industries but I absolutely concede that in these industries which relate to relatively poorer-paid workers the literature is lacking and that's due to the fact that a lot of research is funded by money and money tends to go towards the higher-value industries, which is, for example, nursing. I do refer to it repeatedly. You know, there's also a lot of studies that relate to doctors and police and things like that, where funding money comes to. So naturally there's a focus of the research in those areas. Where possible I did include research that related to industries that heavily overlap with the four categories. That's my view, anyway.

PN20811

But I think we can take it that you agree that you did not have available to you data or any statistical analysis or articles that were specific to the four industries which you were asked to provide your opinion on?---No, I do not concede that.

PN20812

Are you able to point to the data or statistical analysis or particular article that dealt specifically with the four industries on which you were asked to provide your opinion?

PN20813

MR DOWLING: Your Honour, I'm very concerned about the matter that is perhaps most appropriately raised in the absence of the witness.

PN20814

JUSTICE ROSS: All right - can you just wait outside for a moment?---Sure.

<THE WITNESS WITHDREW

[10.50 AM]

PN20815

MR DOWLING: Just the letter of 28 May of 2015 that is being referred to by my learned friend, the questions that are being posed to Dr Muurlink are premised on the basis that he was asked for his opinion in respect of particular industries.

PN20816

JUSTICE ROSS: Yes. Well, he was asked that question and he said yes, that was his understanding.

*** OLAV TITUS MUURLINK

XXN MR DIXON

PN20817

MR DOWLING: Well, what I'm concerned about is that he may be being misled in that regard because if the bench looks at the questions that are asked and that it commence - - -

PN20818

JUSTICE ROSS: I appreciate the difficulty but he was asked the question and he answered it. I'm not sure what you - how do you want us to deal with it now?

PN20819

MR DOWLING: Well - - -

PN20820

JUSTICE ROSS: He was asked whether - he was asked - the report was directed at those four particular industries. I understand the point you're raising because that's really in the background section of it but he answered the question; that was his understanding.

PN20821

MR DOWLING: Well, that's where I'm concerned that he was misled and might be continuing to be misled because he was - what was identified to him - - -

PN20822

JUSTICE ROSS: I'm not sure he was misled. He was asked a question and he answered it. Look, I understand the difficulty but I don't think the characterisation is fair. I don't think Mr Dixon misled him. Mr Dixon asked him a question and he answered the question.

PN20823

MR DOWLING: Yes.

PN20824

JUSTICE ROSS: I take the point that there are other ways of construing the instruction.

PN20825

MR DOWLING: Yes.

PN20826

JUSTICE ROSS: But look, I'm assuming the purpose here is to identify the relevance of the report to the specific circumstances of this case and that seems to be more what's being explored.

PN20827

MR DOWLING: Yes.

PN20828

JUSTICE ROSS: Yes - - -

PN20829

MR DOWLING: That's a matter I can re-examine on.

PN20830

JUSTICE ROSS: Yes, I'm just not sure what else to do with it, Mr Dowling. I understand your concern.

PN20831

MR DOWLING: I appreciate that.

PN20832

JUSTICE ROSS: But he was asked a question. He had the letter and he's answered it.

PN20833

MR DOWLING: Thank you, your Honour. I understand.

PN20834

JUSTICE ROSS: All right. Was there anything you wanted to - sure. Could you just wait a moment?

<OLAV TITUS MUURLINK, RECALLED ON FORMER AFFIRMATION [10.53 AM]

CROSS-EXAMINATION BY MR DIXON, CONTINUING [10.53 AM]

PN20835

MR DIXON: Dr Muurlink, perhaps I should just go back to what I recall asking you and that is are you able to identify any specific data or any specific material that deals with the type of question I asked you in respect of the four industries which you identify - which are identified in the instructions given to you in the letter of 28 May?---I would be able to. It's a fairly long report, for which I do apologise. But - - -

PN20836

I'm inviting you to do that?---Okay, if you wish me to do that. From recollection the majority of mentions - I certainly don't remember any literature in relation to the laundry industry because it's a fairly obscure industry but I do remember more generally to hospitality quite a number of cases but it may take me a while to find - okay. I'm not trying to read the whole report but I'm just a little nervous - trying to remember where it was is a little bit difficult. If I had a control F on my computer I would know where to look but I apologise.

PN20837

JUSTICE ROSS: That's all right. Take your time.

PN20838

MR DIXON: Okay, I have found one example. It's a little bit loose, but it will do just to illustrate the point.

*** OLAV TITUS MUURLINK

XXN MR DIXON

PN20839

I'm sorry, Dr Muurlink, would you speak up? I couldn't hear you?---Sorry. I have found one example. It's on page 45, paragraph 80, "Hotel, arts and entertainment industry, both in the US and Australia", talking about those who work in the arts and recreation industry work - large proportion work weekends only. So that particular paragraph is one example. There are others, but I'm afraid that it would take me a little while to find them.

PN20840

I don't want to curtail your opportunity of answering a question, but it's fair to say, is it not, Dr Muurlink, that you did not have available to you in any form data, articles or statistical analyses in respect of these four industries that were identified in the letter of instruction to you of 28 May?---Very limited, yes.

PN20841

And you also had no information of the kind I've just described available to you specific to any other industry, did you?---Yes. Virtually all the data is specific to a particular industry.

PN20842

Right. And none of it covers the fast food industry? Or is there anything that covers the - - - ?---I don't recollect the fast food industry specifically, no. It's rarely separated out, for example, in ABS data.

PN20843

And you relied on articles concerning the health effects and issues in a range of overseas countries. That's correct, is it not?---That's correct, yes.

PN20844

And do you accept that, for example, the labour laws or employment conditions in those countries may be different to those applicable to any industry that applies in Australia?---Definitely.

PN20845

And you also accept that you carried out no analysis in respect of any cultural or societal values to work in respect of the other countries that are referred to in some of the reports that you cite?---I made very sparing references to it, but I would concede your point, that that was certainly not a central focus of my - - -

PN20846

And you make no analysis or had no information available to you about the regulation of standard hours applicable in other countries - ordinary hours as opposed to overtime hours?---Yes, I did do that. I don't know whether I had included it in the report, so it may not - from memory, I don't think it is in the report, no.

PN20847

You accept that the standard hours may be significantly different in other countries, as opposed to regulated standard ordinary hours in Australia?---The majority of research that I've relied on is US, British and Scandinavian research, where the standard hours are quite similar to ours. But you're quite right, the employment laws there are quite different.

*** OLAV TITUS MUURLINK

XXN MR DIXON

PN20848

Similar hours being what?---As in somewhere between the 38 and 40, or 35 and 40.

PN20849

Wage rates may be very different in those countries, as opposed to Australia?---Yes. It's not a field on familiar with, but I would imagine so.

PN20850

The economic circumstances of those countries in respect of which the reports are prepared may be significantly different from those in Australia?---I wouldn't be prepared to comment on that. I assume so. I assume so.

PN20851

In other words, you would accept the proposition that their unemployment levels might be different?---Yes, of course.

PN20852

Underemployment may be different?---I'm not an expert in this field, so I - but it just is a general knowledge I assume.

PN20853

And youth unemployment may be different?---Absolutely.

PN20854

And the social welfare systems that apply may be different?---Indeed.

PN20855

Do you accept that the occupational health and safety laws may be different?---Yes. I'm not familiar with it, but I would accept.

PN20856

And the obligations owed to employees by employers may be different?---Again, same. I'm not familiar, but I would imagine so.

PN20857

Are you familiar - do you have knowledge of what the obligations are under the various occupational health and safety laws applying in Australia - - - ?---I'm familiar with - - -

PN20858

- - - in respect of duties owed to employees?---Yes, I am familiar with it.

PN20859

What are those duties?---They're significantly more stringent than in most other countries. So, you know, everything from the provision of holidays and sick leave and regulation of overtime, and also the insurance cover in relation to workers. I am somewhat familiar. I'm certainly not an expert. It is different and more stringent in Australia.

*** OLAV TITUS MUURLINK

XXN MR DIXON

PN20860

And you would accept, would you not, Dr Muurlink, that each of the matters that I've so far asked you about would be relevant in determining what the impact of working is on the welfare or health of employees in those industries?---Certainly of relevance, yes.

PN20861

And are you aware of what typically is found in respect of restrictions, in the Australian context, of employees working overtime?---Interesting, I am aware. And interestingly enough, that is something that arguably Australia is more loose on, and that is in most countries there are very strict rules that I'm aware of in relation to maximum hours per week and also consecutive days worked per week which are not in place, as far as I'm aware, in Australia.

PN20862

What is your understanding of the restrictions in awards of this Commission, for example, in respect of employees working overtime?---I have to say I'm not at all an industrial relations expert.

PN20863

And you did not take into account, in preparing your report, any of the restrictions that might apply in respect of employees working additional hours by way of overtime?---Except in so far as looking at the issue of maximum hours, which is something I am familiar with; as in the lack of regulation maximum hours.

PN20864

In the what regulation?---The lack of regulation of maximum consecutive hours worked and consecutive days worked. There appears to be a lack of regulation of this.

PN20865

But you could not carry out that analysis in respect of award employees without knowing what the restrictions are in the award?---It's highly variant. It's variant.

PN20866

And you don't know what the restrictions are in the awards that you were concerned with in preparing the report?---No, I do not.

PN20867

Now, can I then ask you to turn to paragraph 55 of your report, which is the major report?---Yes.

PN20868

You will see that's on page 35?---Yes.

*** OLAV TITUS MUURLINK

XXN MR DIXON

PN20869

You make reference there to the mining industry in the Australian context, and you appear - correct me if I'm wrong, Dr Muurlink - to recognise that even if you have specific industry information, you may still be - and I'm using your words - underpowered in reliance on that material due to matters such as small cell size?---Yes.

PN20870

That is a comment that you would apply more generally to any analysis in any industry, would you not?---Yes. It's a purely statistical point relating to sample size, sampling, and the structure of the sample.

PN20871

Yes. Can I then ask you to look at paragraph 59, which starts at page 36 and goes across to the top of page 37?---Did you say - - -

PN20872

Paragraph 59?---59, sorry. Yes.

PN20873

I just want you to just refresh your memory about what's at the bottom of page 36, and then into the first quarter of the top of page 37?---Yes.

PN20874

You make the point, which appears when one reads your report as a whole, that individual preference would have a significant positive influence on whether people are emotionally - whether it's emotionally negative for them working on the weekend, for example?---It is certainly a relevant point in relation to mitigating the potential negative impacts of weekend work. But can I say that human preference is a bit of a fickle thing. It goes into a field that we refer to as meta-knowledge - people's knowledge of themselves - which is remarkably, well, unsure. So, for example, everybody thinks that they're a better driver than statistical average, you know, so, you know, people's knowledge of even relatively objective things is quite limited. And even in relation to preference there is a degree of self-deception going on. So, you know, just to give you an example, I make the point in relation to preference that another alternate way of looking at preference is looking at people's willingness to endure a particular condition even if they like it that much. And I refer in particular to a US study which is in the retail industry which shows that retail workers who have had worked in standard working week survive at the job 60 months longer than those who work in schedules that include a weekend. Now, that's not a particularly arduous job, the retail industry, but nevertheless it affects - even within that field there is a people voting with their feet effect, if you like. But yes, preference is, without a doubt - I make the point several times, in relation to your question, that preference has an impact upon people's sense to which they are in charge of the destiny, and that is really quite an important moderator of some of these negative effects. I completely concede that.

PN20875

And I think you make that point very specifically at paragraph 88?---Yes.

*** OLAV TITUS MUURLINK

XXN MR DIXON

PN20876

If you - on page 48. And you refer there to the degree that an employee has discretion over the distribution of their working time?---Yes.

PN20877

Now, I suggest to you that what you are trying to say there is that an individual's choice as to when that employee is available to work is recognised by you as an important factor?---It's part of - it's indeed part of it, but more generally it's about the sense of sovereignty or control; free will, if you like - a sense of free will

about the process. So the employee versus employer desires are sort of balanced out on this point.

PN20878

And so, for example, if an employee working over a weekend day has the ability to opt out of working on a particular day without any adverse consequences, that would be an example of control that you refer to?---Yes, indeed.

PN20879

And I think you follow up on what you've said earlier by what you effectively conclude in paragraph 94, Dr Muurlink, is it not the case - bottom of page 15, then the top of page 51?---Yes.

PN20880

The example I gave you about the employee having the choice to opt out of working over the weekend would squarely fit within what you've said in that paragraph, would it not?---Yes.

PN20881

Can I then ask you to turn back a bit to page 40, to paragraph 65?---Yes.

PN20882

And in this example you are looking at the character of the working week, and you are referring in the last part of paragraph 65, where you deal with the changing working week, to a study by an author Zuzanek?---Yes, that's right.

PN20883

Z-U-Z-A-N-E-K?---Yes.

PN20884

And what you are doing in that paragraph and by reference to that article, is it not, that is to try and illustrate that despite the fact that the nature of the working week has changed and the activities that members of a community typically did or now do on a Saturday or Sunday have merged?---Yes. There is a trend towards change, which - you know, the empirical evidence illustrates; whether it's Australian or Canadian, there's definitely a trend towards a change in patterns of work.

PN20885

And when you say a change-, and in the last part of paragraph 65 you make reference to a Canadian study which I've identified - - -?---Yes.

*** OLAV TITUS MUURLINK

XXN MR DIXON

PN20886

- - - in relation to Saturdays and Sundays, you say they merge in terms of the degree to which they are emotionally attractive?---Merging in the sense of traffic merging, so there is a degree of merging going on, but still a degree of separation. But even in the Canadian data, from recollection, there is a separation, but it's a coming together.

PN20887

And when you say "emotionally attractive", it means that the workers the subject of that analysis did not find, emotionally, any more negative aspect working a Saturday as opposed to a Sunday?---Again, I just refer to the one proviso, being the merging aspect. The used to be a very great distinction because the Saturday has - you know, if you go back as little as 50 years - has had a fair bit of work on it, and Sunday has always been somewhat sacred, but that line is being erased. So perhaps I - perhaps the word "merging" is not quite an ideal term to use in that particular sense.

PN20888

I suggest to you it might be stronger, if you look at the Canadian article that you refer to, Dr Muurlink, and I will take you to it?---Okay. Thank you.

PN20889

Could I hand up a copy, thanks?---Thank you very much. Okay.

PN20890

Dr Muurlink, before you look at it, can I just ask you to identify that the report that you refer to and cite at the end of paragraph 65 of your report is the one that I've handed to you now, from Time and Society 2014 volume 23, pages 6 to 27?---That's right, yes.

PN20891

Do you need to refresh your memory, or can I take you through it? Which would you prefer?---Take me through it. I'm a fairly quick reader.

PN20892

Right. Okay. You will see in the introduction, the author from the University of Waterloo in Canada, at the bottom of the first page, talks about:

PN20893

The flexibilisation of working schedules, deregulation of the operating hours in the service sector, Sunday shopping, and conflicting work schedules of spouses that have intensified during the past two decades and contributed to what is described as the desynchronisation of daily lives in modern society.

*** OLAV TITUS MUURLINK

XXN MR DIXON

PN20894

And then the author, at page 8, makes reference to some observations in articles about Saturdays and Sundays and at the bottom of page 12, there is a reference to table 1, and it says that it shows that in 2005 adult Canadians spent 67 per cent more time on Sundays working for pay than they did in 1981. That is part of, what, the trend that you describe?---Yes.

PN20895

You accept, do you not, Dr Muurlink, that the trend is the same in Australian context?---The actual figure increase is probably not that analogist but look, I wouldn't be able to state that. My memory is not that good I'm afraid. But yes, there is a trend in that direction in Australia as well.

PN20896

When you answered my questions earlier about the merging, you were referring there to society including the Australian context?---There is definitely a trend towards a blurring of lines. I am somewhat - I'm much more familiar with the Australian data by the way so I can probably specifically answer. With the Canadian data, I'll just make a quick comment, is that if you look through the whole report which there are a number of times where I present evidence that's contrary to the gist of my report, and more often than not those studies are Canadian studies. Now I didn't go into depth into looking at the Canadian situation but it is curious. I can't question the quality of the sample, the Canadian sample is big, it's representative. But I do question, going back to your question earlier in relation to cultural differences, there appears to be something discrepant about the Canadian situation, but you know I'm happy to concede that you know these trends towards merging are happening here in Australian as well.

PN20897

If you go to page 23, the last paragraph by the author, where you'll see the first half of that paragraph and then in the third sentence;

PN20898

Behaviourally, Sundays are today more constrained and more like the rest of the week but we do not seem to mind.

PN20899

?---Sorry, with - - -

PN20900

I'm on page 23?---Twenty-three, thank you.

PN20901

The last paragraph?---Yes.

PN20902

The first three sentences leading to the conclusion in sentence three?---Yes.

PN20903

Continuing:

PN20904

More like the rest of the week, but we not seem to mind.

PN20905

?---Yes.

*** OLAV TITUS MUURLINK

XXN MR DIXON

PN20906

That is what you describe as an emotionally attractive phrase?---Yes, yes, that's right.

PN20907

In other words that the emotional impact is greatly - sorry, that there is no material difference between the emotion impact working on a Saturday or a Sunday?---I

have to also point you though towards the same paragraph near the end there, it does refer to;

PN20908

In this way this serves as a self-defence mechanism. Life becomes miserable when we continuously dislike what we are doing.

PN20909

Which I am referring back to my comment earlier in relation to the fact that people reconcile themselves with something that they have to do that's a phenomenon called cognitive dissonance. We tend to become more satisfied with decisions that we have made post decisional dissonance. So it's not surprising that workers who are being encouraged to work on different days of the week will eventually become satisfied with that process. But that does not take away from the objective problems that occur and can be measured epidemiologically with that process of working on Saturdays and Sundays. But absolutely, in terms of preference there is a shift without a doubt.

PN20910

Are you familiar with environmental scans that are produced by the Retail and Personal Services Training Council?---No, I'm afraid not.

PN20911

You're not familiar with that organisation?---No. No.

PN20912

JUSTICE ROSS: Do you want to tender that article?

PN20913

MR DIXON: If the Commission pleases.

PN20914

JUSTICE ROSS: I'll mark that exhibit Ai Group 14.

EXHIBIT #Ai GROUP 14 ARTICLE

PN20915

MR DIXON: Dr Muurlink, you refer in a number of other parts of you - sorry, I withdraw that. Can I ask you to turn to page 44 of your report, paragraph 76?---That was paragraph 76?

PN20916

Paragraph 76?---Yes, thank you.

*** OLAV TITUS MUURLINK

XXN MR DIXON

PN20917

In that paragraph you make reference to a paper by Bittman & Ors?---Yes.

PN20918

The data that's relied upon on Bittman, the position was as you understand it and correct me if it's not the case, that the Bittman authors were relying on ABS data

time use survey in 1997?---Actually my memory serves me a little bit differently but it was - I remember thinking old data. I actually thought it was 2006 but certainly one of the Bittman later studies is 2006 but this one may well be 1997. Happy to - - -

PN20919

The Bittman article is 2006?---Okay, so it can't be 2006. So this would be 1997.

PN20920

At 2005 that other data was not available?---No, right. So it would be 1997 data.

PN20921

The compared to data that is most recently available, the figures you quote are now almost certainly to be higher than that that they were in respect of the analysis carried out by Bittman?---I would certainly say so.

PN20922

I think you said you would certainly say so?---I would certainly say so for sure.

PN20923

In page 50 at paragraph 93, you make reference to a Costa & Ors 2006 survey?---Yes.

PN20924

That was a survey carried out where?---In Europe. I believe it was a general European survey so OECD countries.

PN20925

So it covered all OECD countries?---Yes, from memory, yes.

PN20926

You mentioned in paragraph 93, at about a third of the way down that there was a massive number of participants, that's 21,505?---Yes.

PN20927

Could you just explain your reasoning in saying why you concluded it was a massive number of participants?---You know, I believe this is the second largest study of its kind. There is one larger one from memory using Hungarian data set that's something like 40,000. That's the only larger one I saw.

PN20928

A response of 21,505 in respect of all those countries, you would regard as a massive number of participants?---It's a very substantial number. I'd love to have such a data set myself.

*** OLAV TITUS MUURLINK

XXN MR DIXON

PN20929

The conclusion you would draw from that, Mr Muurlink, is that as the sample participants' responses increases the confidence in the data increases?---No, no, that's not the case. You know, a classic illustration I give my students of massive but dreadful data sets is Readers Digest 1932 presidential election, 21 million

people responded to a - you know, who are you going to vote for thing, and they got it wrong. It was well over half of the US voting population and it was wrong. So if you sample incorrectly you, as I said before in relation to the Deloitte's report, if you sample incorrectly the study is flawed.

PN20930

But here you are confident - - -?---This is a good study, this is a well conducted study.

PN20931

I mean compared to the total population of the countries - - -?---It's very small, yes.

PN20932

- - - this is a very small percentage?---You know, you can conduct national opinion polls that come within a few percent of the final result in Australia with 1500 - a sample of 1500. If you sample correctly, small samples are quite good. The good thing about a large sample in this case is because of that issue you referred to earlier in relation to cell size, that some of the more obscure kinds of work practices still will produce a sufficient number to do good statistical analysis on.

PN20933

But if it's a properly conducted survey and you get a large number which impress you, as this one did, over 20,000?---Yes, definitely. Definitely, yes.

PN20934

The conclusion you draw from that is that the sample - the sample size gives you confidence in the data?---As I said, sample size on its own - a sample of, you know, 3, 4, 500 is more than adequate under certain circumstances but yes, if all other variables are - then of course, the larger the sample, the better. You start to go down to a confidence interval of, you know, half a per cent, quarter per cent. You're virtually reflecting the population exactly, the bigger the sample you use.

PN20935

I'm sorry?---That's all right.

PN20936

I apologise, I didn't mean to cut you - had you finished the answer?---Yes, yes.

PN20937

In your statistical analysis terms, what you're saying is that the confidence interval is quite narrow when computed from a large sample of a survey properly conducted?---Yes.

*** OLAV TITUS MUURLINK

XXN MR DIXON

PN20938

Now you make reference in a couple of places in your report to ABA survey and I'll give you an example. At page 80 you make reference at paragraph 155 to - sorry, not ABA, ABS data, about on-call and standby and you refer to ABS 2009A, you see that?---Yes.

PN20939

I think if one goes to 104 of your - page 104 of your report by way of references, am I correct that that's the fourth reference from the top?---Yes, I believe so.

PN20940

Can I just show you a document please, Dr Muurlink. Perhaps I can just help you refresh your memory. If you go back to paragraph 155, on page 80?---Yes.

PN20941

There you refer to on-call, and you refer to a figure 31.2 per cent of workers are usually required to be on standby?---Yes.

PN20942

Can I ask you to turn to page 25 of the document I just handed you, and I think in the bottom right-hand corner there's a 363?---Yes.

PN20943

The figure about halfway - under halfway down that table in the line "accommodation and food services", the third column from the right on standby there's a figure of 31.2 per cent?---Yes.

PN20944

That's the figure you were quoting?---Yes, it is. I believe so. I have to admit I didn't bring my glasses but I can see it, yes.

PN20945

Do you need - can I do anything to assist you in answering that?---No, it's good. No, no, I can see it if I hold it back far enough, thank you.

PN20946

So you confirm that?---That's - - -

PN20947

This is the document from which you drew that figure?---Yes, yes.

PN20948

I tender the document, if the Commission pleases.

PN20949

JUSTICE ROSS: I'll mark that exhibit Ai Group 15

**EXHIBIT #Ai GROUP 15 DOCUMENT WITH TABLE HEADED
"ACCOMMODATION AND FOOD SERVICES"**

*** OLAV TITUS MUURLINK

XXN MR DIXON

PN20950

MR DIXON: Dr Muurlink, would you please turn to page 123 of your report?---That's the final page?

PN20951

Yes?---Yes.

PN20952

Can you just give us the name of that article please?---Bobco - yes, Natalie Bobco, she's from the Ukraine. You may note that I had to get this article translated. It's an example of the difficulty one can have in accessing certain types of data. It turned out to be not particularly relevant but it appeared on the basis of the English language abstract to be relevant, so yes, I apologise for the Cyrillic.

PN20953

Thank you, Mr Muurlink, no further questions, Commissioner.

PN20954

JUSTICE ROSS: Thank you, Mr Dixon. Mr Izzo.

CROSS-EXAMINATION BY MR IZZO

[11.36 AM]

PN20955

MR IZZO: Thank you. Dr Muurlink, I'd just like to ask you if I could to turn to page 11 of your report. You set out your summary of response to question 4 there, and you'll see in the third paragraph under question 4, in the second sentence you start to talk about - well, sorry, in the first sentence you talk about physical, social and psychological wellbeing. You go onto then say in the second sentence that physical health impacts, the degree to which one can access social support and that social support is very close to positive psychological health. Then you go onto say the six issues I have identified that relate to weekend work consecutivity, overload, uncontrollability, unpredictability, synchronicity and arrhythmia also interrelate. Those six issues that you've identified, do I take it that your view is that those six issues contribute to adverse health consequences, in relation to weekend work. Is that right?---Yes.

PN20956

If I can take you over the page to page 13, you have a graph set out, a diagram, and do I take it that your view furthermore is that consecutivity and overload particularly contribute to fatigue, which goes onto create physical health impacts. Is that right?---Yes, I mean this is a conceptual model. It's my model and it is not a fully tested model but elements of it have been tested. I have assembled it in this way. These do not represent an exhaustive list of relationships but yes, I believe that this model is representative of the dominant relationships.

*** OLAV TITUS MUURLINK

XXN MR IZZO

PN20957

So do I take it by your response then that it's possible that consecutivity and overload might also create some social impacts or psychological health impacts but that generally speaking you're pushing them towards fatigue?---Yes, that's my - that would be a good summary.

PN20958

Equally uncontrollability and unpredictability you say tend to give rise to issues about sense of control and psychological health impacts?---Yes, but for example that's a good example of where social impacts, unpredictability and

uncontrollability I believe when it certainly comes to health impacts that they probably will filter through the sense of control. That's how - that would be the mechanism that I would image it impacts, but it also would for example through unpredictability and uncontrollability also filter through circadian mechanisms which are much less well understood. But sense of control I believe on the basis of what I know would be where it would flow through. Similarly I just quickly would add that those two variables also would significantly and probably directly impact on social elements - - -

PN20959

Sure?---Because if you can't predict when you're going to be working or not working it's very difficult to schedule leisure, for example.

PN20960

Sure. So again finally, synchronicity and arrhythmia, they may tend to generally create work/life imbalance?---Yes, that one I'd be the most comfortable in standing by and saying without too much - yes.

PN20961

It's these factors that drive negative health consequences for those people who are working weekends, yes?---Sorry, did you say these factors that are - - -

PN20962

That drive negative health - sorry, let me rephrase the question: it's these factors that substantially give rise to negative health consequences for people working weekends?---I think collectively, yes.

PN20963

Sure. Now, at page 14 you talk about - at the very top of the page you start to talk about circadian rhythms. You say it reduces the - sorry, I'll just go back. If you go to the earlier page, 13, you say: "The evidence suggests that the physical health of workers who work on weekends is negatively impacted in a number of ways." If we then turn over to page 14, you say in the second sentence at the top of the page: "It reduces the opportunity for restorative rest and insofar as weekend work is associated with unusually long hours of work. It disrupts Circadian rhythms." Do you see that?---Yes.

*** OLAV TITUS MUURLINK

XXN MR IZZO

PN20964

So I take it that if weekend work is not part of long hours or unusual hours, for an employee, then it would not have that disruptive effect to circadian rhythms, is that right?---If you were to separate it out it would dramatically reduce its effect. I mean, I just slightly qualify that by saying that there is one, single study which I referred in there which is a study of nurses - unfortunately not the industry we're talking about - and it is the only study that I've been able to find that looks at the issue of taking a rest on the weekend as opposed to taking a rest equivalent, like a weekend during the week. That is actually - if you look closely at that it's actually quite a good quality study with a couple of small flaws. But it found a significant difference in fatigue, even for people who had a weekend just transposed into the middle of the week. I can only assume - as the authors, I think, speculate - that

that's because if you're attempting to sleep when the rest of the world is buzzing your ability to rest and sleep is interrupted. So that would be the only proviso to the previous answer I gave.

PN20965

Now, in relation to that study, if I take you to page 17 of your report and paragraph 12, you say in the middle of the paragraph: "The degree to which these two days have to be" - that's two days of rest you're referring to - "calendar Saturdays and Sundays is difficult to determine because the working week is lodged in cultural and normative behaviour"?---Yes.

PN20966

You go on to cite a study by Drak Zavy?---Yes, that was the study I was just referring to, yes, yes.

PN20967

That's the study you're referring to?---Yes.

PN20968

Now, that's the study that looked, as you say, at nurses in Israel, is that right?---Yes, it was an Israeli study, yes.

PN20969

They were derived from only two hospitals?---Two hospitals, yes - they did quite a good job of the sampling process.

PN20970

Am I correct in understanding that that is the only study that you've identified that reports - - -?---Certainly the only study I was able to find and they - you know, that's a 2013 study. I assume they did an even more exhaustive literature search on this point and were able to state and get through the peer review process stating this is the only study. So I assume that it must be a very rare study.

PN20971

Now, if I can take you back to what we were talking about on page 14, we were talking about circadian rhythms. Do I take it then that if a person is working Monday to Friday, 9 to 5 - the standard, if you like, normal working week for some - you say there would be - there is not likely to be that level of disruption to circadian rhythms with those types of working hours. Is that right?---Yes, particularly 9 to 5.

*** OLAV TITUS MUURLINK

XXN MR IZZO

PN20972

Now, if you have an employee working Sunday through to Thursday 9 am to 5 pm, I take it in those circumstances again, there is going to be less disruption to circadian rhythms because again, the hours are quite normal, as you say?---Yes.

PN20973

It's only once we start to play with the hours and put them at night or have unusually long hours that we start to see adverse impacts in terms of circadian rhythms?---With a variety of provisos that I refer to repeatedly, relating to the

synchronicity with the rest of the community, the predictability of such schedules, et cetera, et cetera. But let's say that they have every week, Tuesday to Sunday or whatever it was, then the impacts generally will certainly be reduced.

PN20974

Now, at page 15 at the top you start to talk about - sorry, again, I apologise - start at the bottom of page 14. You say the relationship between weekend work and psychological maladjustment is likely to largely be explained by - and you go on to talk about a number of factors: social network strength, fatigue, uncertainty, lack of control over work hours. You say they contribute to lower psychological health. The question I'd like to ask you about that is if a person working weekends was to have some of those factors taken away, such as the person not on call, the person does have certainty about their working arrangements, the person isn't working overload or significant work hours; do you accept then the negative psychological impacts you're talking about are lowered? Is that right?---Without a doubt, otherwise - I mean, that's the whole basis of my argument, yes.

PN20975

Now, you also say at page 52 - sorry, page 52, paragraph 98, you talk about shift work and you summarise your view - I think that you expressed earlier, actually - that shift work itself is likely to lead to negative health impacts for employees. That's correct, isn't it?---It's very well established and this is why I said a little bit earlier that 9-to-5 aspect of it. At the moment it's - I assume 11 o'clock or something like that and there's light shining in, natural light shining in through the windows. If you shift that day - that shift into hours when artificial light comes into play, and we do have some in this room, for example, then suddenly the implications for circadian rhythm kick in. You know, it's not very well known, for example, that breast cancer is one of the diseases that we're really struggling to work out what's causing it but there is very new evidence now emerging that breast cancer is - one of its key causes is artificial light and circadian rhythms have a very important role in that. Now, just very, very quickly, to illustrate how important that is, the light - and by the way, fire light and candlelight are acceptable but artificial light seems to be solely the cause - but blind women do not get breast cancer nearly as much as sighted women because they are prevented from getting the artificial light through their eyes. So that's kind of like - we need to be very clear what it means by, "normal", hours.

PN20976

So if we - so again, if were to have an employee working a weekend that's not part of shift work, those adverse consequences you talk about fall away?---Yes.

*** OLAV TITUS MUURLINK

XXN MR IZZO

PN20977

So can I ask this: if we were to have employees - and the question is a little long so if you have difficulty understanding it let me know and I'll rephrase it - but if you have employees who work but don't have irregularity of rostering, they're not working weekends after five consecutive shifts, they aren't on call, they aren't working shift work, then all of the health consequences that you talk about and these negative impacts, they're dramatically reduced, aren't they?---Yes, they are.

PN20978

Now, if I can take you, Dr Muurlink, to paragraph 61, which appears on page 38?---Yes.

PN20979

You talk about public holidays. You say the report does not directly address the issue of public holidays but you go on to say that the analysis in your report is analogous, if you like - sorry, I'll rephrase that: the analysis in your report regarding weekends is analogous to public holidays. Do I take it that that is the case because you're of the view that employees working on public holidays are more likely to suffer from things like overload, consecutivity, the types of synchronicity issues, arrhythmia, et cetera, that you cite in this report and that is why you're saying that the findings in this report are analogous with work on public holidays?---Yes, to be quite clear weekends and public holidays do not magically cause negative effects. The body does not somehow sniff that it's Saturday. These things are empirically associated with but not - Saturday doesn't have to be associated with anything; it just is associated with these things. Public holidays tend to be staffed by people who have unpredictable schedules, et cetera, et cetera. So it's a correlation, not a causation; not a necessary causation.

PN20980

Now, if I can take you to paragraph 137, and that appears on page 73 - - - ?---Paragraph 137?

PN20981

Yes, it actually - yes, it appears on page 73?---Okay.

PN20982

You talk about the increased - sorry, I'll let you get to the page?---I've got it.

PN20983

You talk about the increased risk of cardiovascular disease in employees in this paragraph and at the end of that paragraph you'll see there's a study by - I take it it's Kidimarkis, the pronunciation?---Yes.

PN20984

It says that they found - and I'm reading after the last hyphen in the fourth-last line - they found that employees who rarely recovered from work during free weekends have an elevated risk of death from cardiovascular disease that remained highly statistically significant after adjusting for demographics and 16 conventional risk factors. Do you see that?---Yes.

*** OLAV TITUS MUURLINK

XXN MR IZZO

PN20985

Do I take it that these people who were studied were people who had worked during the week and then worked on the weekend such that they were not able to recover? Is that right?---Yes, their schedules included the weekend but were not exclusively weekend.

PN20986

That's the same study - just for the sake of completeness - that you cite at page 24 and paragraph 32, where you summarise your findings?---Yes, I would imagine so.

PN20987

Just page 24, paragraph 32?---Yes, same study.

PN20988

So it's likely, with these survey participants that issues of consecutivity and overload may have contributed to the higher injury rate we're talking about, yes?---Yes, they may. There were other similar studies, however, which actually controlled for the overload. This study, from recollection, didn't control for the overload factor but the Hungarian study I referred to, which was the truly enormous, 44,000 or something, did control for the number of hours so the overload factor was controlled for in that study.

PN20989

Now, if I can take you to page 176 - - ?---176?

PN20990

Sorry, I withdraw that; apologies. If I can take you to page 88, which is paragraph 174?---Yes.

PN20991

You cite a study by Craig and Brown at paragraph 174 and at the bottom of the page you say: "Their study is less focused on Sunday work. However, they note that Australians tend to spend Saturday and Sunday hours differently." Over the page on page 88 you say: "A higher proportion of Sunday time and budget is spend on family, while Saturday seems to be more allocated to friends." Do you see that?---Yes.

PN20992

I'd just like to ask you some questions about that report so I'll hand a copy to you. I'm handing the witness a copy of ABI12. I've got copies for the bench in any event. Can I ask you, is that the study you're referring to in page 88 of your report - "Weekend work and leisure time with family and friends: who misses out"?---Yes.

*** OLAV TITUS MUURLINK

XXN MR IZZO

PN20993

Can I just show you at the front page there's an abstract, if you like, in italics. Halfway through that abstract it says: "Analyses were stratified by three family types: couples without children, couples with children and singles without children." Do you see that?---Yes.

PN20994

Now, what I'd like to put to you is that they were the three types of categories of people that were surveyed. Do you accept that?---Yes. This was a focus on family issues.

PN20995

Now, if I can you to page 717 of that report, there is two columns and you'll see on the right there's a heading, "What is the relationship between weekend work and weekend time and shared leisure activities"?---Yes.

PN20996

It says: "Multi-varied analyses confirmed that across all three household types weekend work was negatively associated with shared leisure activities on weekend days." They go on to say - jumping a sentence down - "For respondents in couples without children every hour of work on a weekend day was associated with 18 fewer minutes per day" - that's MPD - "while doing leisure activities." They then go on to say: "There were no significant interactions" - this is a couple of sentences down - "between paid work and Sunday for any form of shared leisure time for this group, suggesting that both weekend days displaced their shared leisure time to a similar extent." Do you accept that for this subgroup that they're talking about - which is couples without children - the difference between Saturday and Sunday with respect to their leisure time was the same or the time spent on leisure activities, whether it be with family or friends - was broadly the same for that subgroup?---The short answer is yes, but just slightly to expand on it interactions and statistical analysis are something we always look for because it makes a particularly nice publication. It's basically - it's this but that. What happens is you very rarely find interactions because the number of variables you stack into such an analysis - a multi-varied analysis - sort of waters down the power so much that it's rarely statistically significant. But absolutely, the authors are within their rights to say that statistically there was no difference between Saturday and Sunday, yes.

*** OLAV TITUS MUURLINK

XXN MR IZZO

PN20997

Sure. Then the next group they talk about: "For respondents in a couple with children, each hour of weekend work predicted less leisure time with one's spouse - 40 minutes per day, children, 15 minutes per day and friends, 6 minutes per day. For the average six hours a day worked this amounts to 1.4, 1.5 and 0.6 hours per day." If we skip down they then say: "For them Sunday work was associated with more displaced leisure time with spouse and children; a further five minutes per day per hour worked." So then they stop there. So for this subgroup - that is, respondents in a couple with children - do you agree that there was a difference between Saturday and Sunday and that difference that was found was five minutes per day, per hour worked was spent with - sorry, I'll rephrase the question. For this group there was a difference between Saturday and Sunday and that was that they spent a further five minutes per day, per hour worked on family leisure and that time was displaced when they worked on Sundays?---Yes, that's right, and as the report points out several times this issue of spent time - time spent with children is one of the really peculiar aspects of a lot of the research and it appears to be because parents and particularly mothers do their darndest do try to insure that it doesn't impact on children. So there are quite small impacts because they sacrifice other categories of time for the children.

PN20998

Then there is a third subgroup for singles without children. Weekend work, irrespective of the day, was associated with less leisure time shared with family and friends, and they quote the numbers. Do you see that?---Yes.

PN20999

So you accept for this third subgroup surveyed that there was no difference found between Saturday and Sunday in terms of leisure time, subject perhaps to the caveats you made earlier in respect to the first group?---Yes. That's what this study found, yes.

PN21000

So if we go back to your statement in the report at paragraph 174, do you accept that perhaps a more accurate description of the outcome of the Craig and Brown survey was that for one subgroup of the three subgroups that were surveyed, a higher proportion of Sunday's time and budget is spent on family, whereas there was no difference for the other two subgroups surveyed. Do you accept that more accurate?---Yes. Just quickly, yes, I believe so. Yes.

PN21001

Now, if I could take you to page 92 of your report and paragraph 186?---Yes.

PN21002

Sorry, bear with me. I may have the wrong page. Sorry, can I take you to paragraph 188. My apologies?---Yes.

PN21003

You refer to a report from a large dataset in the US by Brognus, do you see that?---Yes.

PN21004

And you talk about a high injury rate on Sundays that was found in that report. Do you see that?---Yes.

PN21005

I will hand you a copy of the Brognus survey. Firstly can I take you to page 455 of that document. Sorry, before I do that, do you accept or do you agree that this document is the report that you are referring to at paragraph 188 of your report?---Yes.

PN21006

If I could take you to page 455 of this document. You will see the lost time injury rates reported, and as you point out, Sunday is the highest column there. Do you see that?---Yes.

PN21007

Do you accept that the next highest day is Monday?---Yes.

*** OLAV TITUS MUURLINK

XXN MR IZZO

PN21008

And that Monday had a higher injury rate than Tuesday through to Saturday?---Yes.

PN21009

Now, do you accept that study didn't distinguish between those people who worked on Sundays in addition to their normal weekday hours, as opposed to those people who only worked on weekends?---Yes, that would - I don't believe the dataset was able to distinguish.

PN21010

And if I can take you to page 462, there's a column headed "Overtime"?---Yes.

PN21011

And it says:

PN21012

Figure 8 shows the percentage of hours worked within each day attributed to overtime workers by day of the week. Overtime workers were defined as those ATUS respondents reported working a total of over 40 hours per week.

PN21013

?---Yes.

PN21014

Although Sunday shows a higher percentage of work hours, the differences were compelling.

PN21015

And then if you go over the page you will see figure 8. Do you accept that what this shows is that approximately 45 per cent of the workers who were surveyed worked overtime hours on Sundays?---Yes, I believe so. Yes.

PN21016

And when we say overtime hours, that's worked more than 40 hours per week?---Yes. Okay.

PN21017

And can I take you to page 463, which I believe we're on?---Yes.

PN21018

At the very bottom it says:

PN21019

Weekend work represents a second job. Figure 11 shows the distribution of other jobs work hours by day of the week. Sunday other jobs work hours are about four times the weekday hours.

*** OLAV TITUS MUURLINK

XXN MR IZZO

PN21020

And Saturday other jobs work hours - turning over the page - are about three times the weekday hours. Do you see that?---Yes.

PN21021

And if we go over the page to 465 you will see a figure, figure 11. And do you agree that that shows that on Sunday there's a dramatically higher proportion of people who are working Sundays a second job, compared to the Monday to Friday?---Yes.

PN21022

And the same applies for Saturday?---That's right.

PN21023

Sorry, what was that?---?---That's correct, yes. These are US figures, of course, yes.

PN21024

And these types of issues - the prevalence of overtime work on the Sunday and the working on the second job - are likely to give rise to the consecutivity and overload problems you talk about in your report, and thereby contribute to adverse health consequences. Is that right?---It would, without a doubt, be a contributing factor, from the look of these figures, sure.

PN21025

You can put that document to one side.

PN21026

JUSTICE ROSS: Did you want to tender that, Mr Izzo?

PN21027

MR IZZO: No, I don't think there's a need, your Honour.

PN21028

Now, at paragraph 189, the next paragraph down, you talk about a study by Kopp, and that talks about the Hungarian data set you've talked about earlier. And you talk about:

PN21029

The high weekend workload was the best working time predictor of premature cardiovascular disease.

PN21030

This study didn't distinguish, did it, between employees who work weekends in addition to their ordinary working week, and those who just work weekends in addition to their ordinary working week - - - ?---No.

PN21031

- - - and those who just work weekends?---But this study did control for the issue of overload. So that's why this particular study is particularly - you know, gives particular insight into this issue, because it did separate that issue of overload out.

*** OLAV TITUS MUURLINK

XXN MR IZZO

PN21032

But it did not analyse which proportion of the employees were working weekends as second jobs?---No, it did not.

PN21033

And the respondents were not separated between employees who work weekends in addition to weekdays and employees who just work weekends?---It wasn't the kind of variable that they looked at.

PN21034

Sure. If I can next take you to paragraph - sorry, the bottom of paragraph 189. You refer to a Finnish study?---Mm-hm.

PN21035

Of the progression of - - - ?---Atherosclerosis.

PN21036

Atherosclerosis. Thank you. Now, I will hand you a copy of that?---Thank you.

PN21037

Can I take you to - sorry. Firstly, is this the study you refer to at the bottom of paragraph 189?---It is.

PN21038

Can I take you to page 2 of the study. There are two columns. You will see towards the bottom of the second column it says "Exposure Assessment Work Schedules"?---Yes.

PN21039

Then halfway down it says:

PN21040

We further characterised work schedules into the following categories: (i) standard daytime work, people who reported working during daytime and working less or equal to five days per week; (ii) weekend shifts, people who work during daytime and more than five days per week; (iii) evening/night/rotating shifts, including work schedules B, C and E above, regardless of the number of days worked per week; (iv) other shift work, including work schedules D and G above, regardless of the number of days worked per week.

PN21041

Now, if I can next just take you to the table on page 7. You will see in the second - it's table 4?---Mm-hm.

PN21042

There are a series of results by work schedule: standard, weekend shifts, evening/night/rotating shifts, and other shifts. Do you see that?---Yes.

*** OLAV TITUS MUURLINK

XXN MR IZZO

PN21043

Do you agree that when they refer to weekend shifts in this table they are referring to people who work weekends in addition to working five days per week?---With the proviso that this study also controlled for work hours, so, you know, they did

control for the overload factor, but they didn't control for the - if you like, control for the consecutivity factor.

PN21044

Just bear with me. When you say they control for overload, do I take it you're referring to the bottom of page 7 where they say - sorry, I withdraw that. I will ask you a different matter first. Do you see under the heading "Discussion", they say:

PN21045

First we observed faster progression of carotid atherosclerosis when comparing weekend shifts to standard daytime work.

PN21046

Do you see that?---Yes.

PN21047

So that comparison, again, is that when people working weekends in addition to Monday and Friday, as opposed to people doing standard daytime work. Yes?---(No audible reply)

PN21048

And then if you go on and you see at the bottom - or halfway through the next paragraph they say:

PN21049

Our definition of weekend shifts is also an indicator of overtime work or extended work hours during weekends. In this case our finding of that weekend shifts is in line with the previous study done in the cohort where worktime measured by days worked per week was predictive of progression of carotid atherosclerosis.

PN21050

Do I understand there the point is that they're saying that the more one works, the higher it is likely that there's going to be this negative health consequences?---I mean, I don't want to argue with the authors of a published report, but I would argue that that's slightly wrong, what they said there, because it doesn't take account for the fact that they did take account of overwork in this study. But it does - you know, as I've said before, weekend work does correlate with overwork often.

PN21051

Thank you. Then if we go to page 9, in the second column above "Acknowledgements", just before the last paragraph, they say:

*** OLAV TITUS MUURLINK

XXN MR IZZO

PN21052

We were not able to identify workers who worked during weekends, but no more than five days per week, and therefore cannot make inferences about all weekend work per se.

PN21053

Do you see that?---Yes.

PN21054

Do you accept that proposition?---That's correct.

PN21055

Now, if I can take you back to page 7, the bottom of page 7. You talk about the fact that they control for overload. Do I take it that is from this section here where they say towards the bottom:

PN21056

However, in this study of work schedules this positive association between weekend shifts and progression of atherosclerosis persisted even when we additionally adjusted for other work schedules and the total time at work during follow-up; our most comprehensive cumulative measure of worktime combining hours worked per day, days worked per week, weeks per year, and years during an 11-year follow-up that predicted progression.

PN21057

Am I correct in understanding that the way they control for overload was to look at what happened in the 11 years following the conduct of the survey, to then arrive at a conclusion about the impact of overload?---No. No, they controlled for overload statistically right from the beginning by measuring the amount of work hours. So what has probably happened here in these cases, they're working for six days a week, but they're working a smaller number of hours, so that controlled - they haven't controlled for consecutive or number of days per week, but they have control to the total hours, which is - I know from my own personal experience, trying to control for consecutive days is extraordinarily difficult, and generally in these datasets it's just impossible. Total hours is much easier to control for, and they've done so.

PN21058

So you accept they haven't controlled for consecutivity. They also haven't controlled for employees working weekends as second jobs?---They have not.

PN21059

And they haven't controlled for - no, I apologise. I withdraw that. At paragraph 192 on page 94 you talk about a study of almost 30,000 Korean workers?---Yes.

PN21060

And you say that after they controlled for confounding effects, including hours worked, the finding held firm?---Yes.

*** OLAV TITUS MUURLINK

XXN MR IZZO

PN21061

You accept, though, don't you, that when the study did control for hours of work, and that took that into account, the number of employees with depressive symptoms on Sundays did drop?---Yes, which would produce a problem with statistical power.

PN21062

Now, if I can take you to page 92 of your report?---Yes.

PN21063

The study from Wurt, that did not control for whether employees worked on a Sunday or Saturday as part of a second job or not?---No, I don't believe so. I'm afraid that detail - but I don't believe so.

PN21064

And that also when it looked at people working on a more Sundays a month, it did not distinguish between people who worked weekends in addition to their ordinary hours, as opposed to those who work predominantly weekend shifts or Thursday through Sunday, or something like that?---No, it didn't, as far as I recall.

PN21065

Just bear with me one moment. I just have a question. At page 30 on paragraph 45 - sorry, paragraph 45 on page 30 - you talk about the Craig and Powell findings?---Yes.

PN21066

You say:

PN21067

Parents who work non-standard work hours work significantly longer hours than those who work standard work hours.

PN21068

I was just wondering, what do you mean by non-standard work hours there?---I define standard in the earlier section. But standard, basically, in this case, from the Craig and Powell study, I believe refers to Monday to Friday.

PN21069

So not the times at which someone works, 9.00 to 5.00 versus - - - ?---I'm sure Craig and Powell would have controlled for what we call shift work, as in what we think is shift work - night work.

PN21070

I have no further questions. Thank you.

PN21071

JUSTICE ROSS: Shall we mark the Wang article?

PN21072

MR IZZO: I'm happy not to tender the article, your Honour.

*** OLAV TITUS MUURLINK

XXN MR IZZO

PN21073

JUSTICE ROSS: Any further cross-examination?

PN21074

MR SECK: I have some cross-examination, your Honour, in Sydney if no one else has anything in Melbourne.

CROSS-EXAMINATION BY MR SECK

[12.20 PM]

PN21075

Dr Muurlink, my name is Michael Seck, I am the counsel for the Pharmacy Guild of Australia. Can you see me?---Yes.

PN21076

Dr Muurlink, I want to ask you some questions about both of your reports. I want to address firstly your report which is exhibit UV 26 on the impact of weekend work. You've been asked a number of questions about the matters that you deal with in paragraph 88 on page 48 of your report. Can I take you to that part of your report. This is the part of your report where you deal with the degree which workers have control over their working schedule and their work/life balance. Do you see that?---Yes, yes.

PN21077

From what I understand reading those paragraphs under the heading "Control and Choice", Dr Muurlink, is that if workers have control over whether or not they work on weekends, that may impact upon their psychological wellbeing. That's so, isn't it?---Yes.

PN21078

To the best of your knowledge you understand that there might be a number of employees who choose to work on weekends to suit their personal circumstances?---Yes, and further I would concede that some of them would genuinely choose as opposed to kidding themselves - I'm sure there's some people who genuinely like working weekends. I know that there's certainly people who love working shift work.

PN21079

Those classes of employees could include students who work - sorry, students who are studying full-time or part-time on weekdays. You would agree with that?---True but their preference may be related to factors other than choice. Their factors may be related to necessity or the fact that they are desperate for work and they can't work during the week. I mean these factors would reduce the degree to which the control is genuine, but yes.

PN21080

If the students are not available to work on a weekday because they're attending school or university, obviously their choice would only be to work on weekends. That's correct?---Yes.

*** OLAV TITUS MUURLINK

XXN MR SECK

PN21081

It may also suit parents who have carers responsibilities and where mothers and fathers wish to coordinate their schedules, so there's at least one of them looking after their children at all times?---Yes.

PN21082

It may also apply to employees who are semi-retired and may wish to spend time with friends during weekdays?---Yes.

PN21083

That would also apply wouldn't it?---Certainly.

PN21084

You refer to the report, the Costa report or the Costa study in paragraph 93 of your report and you make a distinction between variability and flexibility, that's correct?---Costa makes that distinction, yes.

PN21085

Do you accept that distinction?---Yes, I think it's a - I think it's quite a clever distinction. I accept his argument, it seems logical.

PN21086

So there will also be a class of employees where individual workers wish to exercise discretion and autonomy to adjust their working hours so as to reduce work/life conflict and better accommodate other activities, needs and responsibilities. That would be correct, isn't it?---Yes.

PN21087

I want to ask you some questions its applicability to Australian circumstances. You were asked by Mr Dixon previously about whether or not there were any studies which were applicable to those four industries identified in the letter of engagement. Do you recall those questions Dr Muurlink?---Yes, yes.

PN21088

To the best of your knowledge and understanding did any of the reports to which you refer in your weekend work report deal with Community Pharmacy Industry?---No, they did not.

PN21089

In paragraph 72 of your report, Dr Muurlink, if I can take you there?---Yes.

PN21090

You refer to an analysis by Daly 2014, do you see that?---Yes, I do.

PN21091

That is a study which is undertaken based on the most recent AWALI survey, that's correct?---Yes.

PN21092

You've read that report recently?---The AWALI report itself, do you mean or do you mean the Daly report, the Daly study?

*** OLAV TITUS MUURLINK

XXN MR SECK

PN21093

Daly report?---The Daly study.

PN21094

Daly study?---Yes, I've read that.

PN21095

You've seen in the Daly study, Dr Muurlink, that there are certain classes of employees who work weekends relative to other classes of employees. Do you recall that?---Yes.

PN21096

I want to put to you some propositions arising out the Daly report. Unfortunately I'm in Sydney but I'm going to take you to the specific findings and ask you if you accept them. In the Daly report using the AWALI survey findings, he says that there were - it was more likely that casual and younger workers would work weekends compared to other parts of the workforce. Do you recall those findings being made?---Yes, I do and they're confirmed by other studies as well, so it's a fairly solid finding.

PN21097

That sales workers and professionals would be more likely to continue working non-standard hours, even if penalty rates were not available. Do you recall that?---Yes.

PN21098

Do you also concede that - sorry, let me just take you to another study. You've been taken, Dr Muurlink, to a number of Australian studies. I want to first take you to the study of Craig and Brown and I understand you have a copy of that article in front of you at the moment. The 2014 study?---Yes, I've got it.

PN21099

You refer to the 2014 Craig and Brown study in paragraph 175 of your report. Can I take you there?---Yes, thank you, I've got that paragraph.

PN21100

Dr Muurlink, you set out there the conclusions of the Craig and Brown 2014 study and the exceptions - and you identify one exception found in the Craig and Brown study at the bottom there. Do you see that?---(No audible reply)

PN21101

You say that they found that;

PN21102

The Sunday workers in a relationship either with or without children spent around half an hour a day more leisure time with friends on weekdays.

PN21103

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

*** OLAV TITUS MUURLINK

XXN MR SECK

PN21104

Can you go to the Craig and Brown 2014 article, to pages 722 and 723?---Yes.

PN21105

Just bear with me whilst I find my part in the report. If you go to the second column at the bottom, Dr Muurlink, you'll see that the exception that you identify in the report is set out in the last paragraph on 722 and the over the page on 723. Starting the second sentence;

PN21106

For these diarists Sunday work was associated with about half an hour a day more leisure with friends on weekdays. Higher weekday leisure time with friends may be possible because friendship groups are larger than nuclear families and offer more opportunity to reschedule.

PN21107

Do you see that?---Yes.

PN21108

If you turn over the page, Dr Muurlink, to the first column on page 723, you'll see that it says;

PN21109

The positive association between Sunday work and parents weekday leisure time with friends was however negated for individuals who work long hours.

PN21110

?---Yes.

PN21111

If you look at the bottom of that paragraph it says;

PN21112

Both length of work and timing of the work are implicated in whether shared leisure time can be recouped.

PN21113

?---Yes.

PN21114

Do you accept that proposition that can be drawn from the Craig and Brown article is that employees who work less on Sundays are likely to have a greater - recoup more of their time on weekdays with their friends. That's correct?---Yes, I mean that's the evidence that they show. They recoup that time or even more than recoup at times during the working week.

PN21115

If you go back to that paragraph, Dr Muurlink, you'll see in the previous sentence starting about halfway down the page it says;

*** OLAV TITUS MUURLINK

XXN MR SECK

PN21116

Logically, part-time work offers more flexibility to reschedule than full-time does, and persons who work long hours would have the least opportunity to coordinate their leisure time with others.

PN21117

Do you see that?---Yes.

PN21118

Would you agree that's an example of part of the workforce being able to exercise control and choice over their work/life balance and there would be some circumstances such as this one, where there is in fact a positive association with working on weekends, and the ability to recoup leisure time on weekdays because of the ability and flexibility to reschedule activities?---Without a doubt. There's always variability in any data set and there's always individuals that may not follow the norm but they surely exist and you know Craig and Brown were able to identify some of these individuals.

PN21119

For a number of those individuals, working on weekends would involve a degree of self-selection. Do you accept that?---That's a significant issue. I accept that.

PN21120

Indeed I think the - if you go to page 724, in the last paragraph, do you accept the proposition stated there by Craig and Brown that you noted above that selection effects may be at play, such that some workers choose weekend shifts to give themselves more options about how they spend their time?---Yes, that's what it states there. It's not quite how I think of the selection effects but I understand what they're saying.

PN21121

Can I then ask you about the Craig and Powell report to which you refer in paragraph 176 of your weekend work report?---Yes.

PN21122

Can you just bear with me, Dr Muurlink. Now the conclusion of the Craig and Powell report is that if one parent works non-standard hours, that results in no net reduction in time spent by parents with children. Do you accept that?---Yes, due to the inelasticity of time that parents want to devote to children. So there's a compensating effect appearing that they're referring to.

PN21123

You don't have the report in front of you but I want to read you the conclusion of one of the conclusions reached by Craig and Powell. They find that;

PN21124

Non-standard hours may give mothers the opportunity to work their hours around their partners and children's timetables and thus maximise their paid work time.

*** OLAV TITUS MUURLINK

XXN MR SECK

PN21125

Do you accept that proposition as well?---It would be particularly true where the time - there are a number of studies looking at where the overlap time between the partners is different. So the working time that the mother works is, for example, weekend and the husband works is weeks. So the degree to which they're able to select the hours they work enables couples to compensate for some of these issues.

PN21126

That's again another example of the ability of workers to control their hours by working weekends and therefore minimise any adverse psychological effects associated with working those days. That's right?---That's right.

PN21127

You make also a reference in paragraph 178, Dr Muurlink, to a report by Baxter in the second sentence. Do you see that?---Yes.

PN21128

Now looking at your bibliography I couldn't find a reference to the 2011 Baxter report - -?---I do apologise, it's quite a readily available one and quite a famous study so, yes, I apologise for that.

PN21129

Can I put to you that the article that you were referring to there, Dr Muurlink, was an article entitled "Flexible work hours and other job factors in parental time and children". That's right?---That sounds right.

PN21130

Contained in the social indicator research 2011 at page 101. Does that ring a bell?---The journal does, the page doesn't I have to confess.

PN21131

Can you assume that that's the only report I could find by Baxter in 2011 which has potentially any relevance?---Yes. No, I believe that you've identified the correct document.

PN21132

In this case, sorry, in this article, Dr Baxter examines whether or not flexible work hours, in particular flexible work hours on weekends had any negative spill over for parental time with children. Do you recall that?---Yes.

PN21133

I want to read out some of the conclusions of that report and tell me if you accept it. It's at page - the results are set out at page 241 and 242. It finds that;

*** OLAV TITUS MUURLINK

XXN MR SECK

PN21134

As flexible work hours reduce negative spill over from work to family, it seems that flexible work hours more easily enable parents to fit the desired or required amount of time for children around work commitments, while not necessarily giving them more time with children.

PN21135

Do you accept that proposition?---Yes, I mean you referred earlier to the Costa report and probably the kind of flexibility you're talking about is what Costa calls flexibility, as opposed to what Costa calls variability.

PN21136

Flexible working hours in those circumstances may include the ability for mothers or fathers to work on weekends so that their partners can look after their children, whilst they're at work. That's right?---That's right.

PN21137

Now you also refer to at various parts of your report including at paragraph 38 and 192 to an article by - I'm going to mispronounce her name but it's Strasdine's. It's a 2006 report entitled "Unsociable work, non-standard work schedules, family relationships and children's wellbeing"?---Yes, that's a Canadian study, yes.

PN21138

I want to take you to some of the conclusions set out in the report and tell me if you agree with it. At page 406 the authors say;

PN21139

Mothers who work evenings, nights and weekends may increase fathers involved with children, mothers can feel that they share the responsibility for their children's care so feel less guilty about earning an income or pursuing careers.

PN21140

Do you accept that was one of the findings made in the article?---Yes.

PN21141

Do you also accept that another finding made was that non-standard schedules could help if they enabled fathers to share childcare? You also accept that?---Yes, which I referred to before. If the schedules are conducive to that that's what does happen.

PN21142

There's also a reference in that article to - there's an article by Fenwick and Zhang. Are you aware of that article?---Specifically, no, but - no.

PN21143

The authors refer to it by saying, "Increase in choice and control about when parents start and stop work will help them fit their schedules around family events and routine"?---Sounds - I would accept that, yes.

PN21144

Each of the propositions that I've just advanced in relation to - arising out of those articles are examples of workers being able to exercise flexibility using the term, "coster users." That's correct?---Yes.

*** OLAV TITUS MUURLINK

XXN MR SECK

PN21145

You also refer to in your report, Dr Muurlink, to Skinner and Pocock's study in paragraph 179?---Yes.

PN21146

That's a study based on the Wharley report, that's correct?---Yes.

PN21147

I want to take you to some of the propositions that are set out in that report. Do you accept that - this is at page 35 of the report - that casuals have the lowest level of work/life interference?---That was paragraph - - -

PN21148

Sorry, that's my fault. I should read out the whole sentence to you?---Are you referring - sorry to interrupt - are you referring to paragraph 35 on page 25 of my report or are you referring to a paragraph in the Skinner and Pocock report?

PN21149

It's the latter, Dr Muurlink, so I apologise for any confusion. I'm referring to page 35 of the Skinner and Pocock report. So you don't have the article in front of you, I appreciate that?---That's okay.

PN21150

I'm just going to read out a number of propositions from the report and ask you if you accept them. It says: "Given that there is a strong association between longer work hours and work/life interference it is not surprising that casual employees have the lowest work/life interference adjusted for work hours. This is the case for men, women and all employees." Do you accept that?---Could you read that again?

PN21151

"Given that there is a strong association between longer hours and work/life interference it is not surprising that casual employees have the lowest level of interference unadjusted for work hours and this is the case for men, women and all employees"?---I believe there is a phrase in there that says adjusted for work hours? Sorry, I didn't - I apologise. Does it say, "adjusted for work hours?"

PN21152

It does say adjusted for work hours, Dr Muurlink?---I am inclined not to personally agree with that statement, no, on the basis of - - -

PN21153

If casual - sorry, go on?---Yes, you know, it's - perhaps I don't know the context in which that's said but that sentence on its own does cause me some disquiet.

*** OLAV TITUS MUURLINK

XXN MR SECK

PN21154

It is because you say once you adjust for work hours, the level of work/life interference for casual employees is no different to full-time or fixed-term employees?---Yes, that's probably my concern about that. It certainly doesn't add up with other reports I've seen. I mean, I certainly have great respect for Skinner and Pocock but my view would not be - I wouldn't write such a sentence. But

then again if the evidence - you know, if I ran a study and that's what it said then that's what I would do. But I believe casual workers - I believe the reason that they would have found that is that casual workers tend to have lower hours than non-casual workers.

PN21155

To be fair to you, Dr Muurlink, I think that's what is pointed out by Skinner and Pocock in a subsequent paragraph?---Okay.

PN21156

So you accept, however, that if casuals work lower hours generally that their level of work/life interference is going to be less than - - -?---Then I would agree with it, yes. Sorry to be pedantic.

PN21157

JUSTICE ROSS: Mr Seck, can I suggest if you want to take the witness to an article then you provide it to the witness and if you can scan the article and send it to my associate we can do it that way?

PN21158

MR SECK: Yes, yes, your Honour. Now, arising out of all of that, Dr Muurlink, would you agree that whether or not weekend work causes psychological damage is going to be dependent highly on the personal circumstances of each worker?---Absolutely, but the studies that I rely on in coming to my conclusions are based on very large aggregate studies where all these variables are mixed together and then statistically separated out and those studies allow us to say with a high degree of confidence that weekend work per se has some very significant psychological and physical impacts. To be honest, that was the bottom-line finding of my report, that to some degree surprised even me. I certainly didn't go into it expecting to find that weekend work per se, separated from these other effects, had such highly significant impacts. But there is always natural variability. There will be plenty of people - thousands of them - who benefit enormously from working on weekends and have no negative impacts. It's just in aggregate that these impacts come through.

PN21159

When you talk about, "in aggregate", they obviously apply to a variety of industries which are not necessarily applicable to the industries in Australia; you would agree with that?---Absolutely.

*** OLAV TITUS MUURLINK

XXN MR SECK

PN21160

Now, as a psychologist, Dr Muurlink, are you also aware of the psychological consequences or impacts of unemployment or under-employment?---Yes, indeed, and I do refer briefly to that in the report. So for example, hours worked during the week positively correlated with all sorts of positive impacts, like physical health and psychological health in particular. So the fewer hours you work during the working week, the better - the worse it is for you. Once you come to the weekend, that relationship flips over. So the more hours you work, the more

negative impacts you experience on a weekend. So there is without a doubt - a quantum of work is very, very good for us.

PN21161

When that quantum of work is undertaken is not going to - it's going to depend on the individual circumstances of the employee. That's correct, isn't it?---That's correct, yes.

PN21162

If the employees do not work on weekdays and elect to work on weekends, one is not going to have many of the physical and psychological consequences that you identify in your report. That's so, isn't it?---That's right, and again, you know we're talking about this variability. There will be variability in any answer I give which is why we rely on statistics.

PN21163

Indeed, if employees were seeking to work on weekends and couldn't otherwise find work and there would be negative physical and psychological consequences associated with not working. That's correct, isn't it?---That's correct.

PN21164

If workers needed to work on weekends or needed to find jobs and those jobs were available on weekends - sorry, let me reverse the proposition. Let me put it another way: if there are employees who are willing to work on weekends but there are not jobs available on weekends and that impacts on their financial situation, that could also have negative physical and psychological consequences. That's correct, isn't it?---In that particular circumstance, yes.

PN21165

Can I then take you to your second report, Dr Muurlink, which responds to the report of Ms Pezzullo on behalf of Deloitte. You have that in front of you?---My response or the original report?

PN21166

Your response?---Okay. Yes, I'm fine.

PN21167

Okay. Firstly I want to deal with the question of the scope of the literature search. It starts at page 2 of your report. Can I understand - have you ever undertaken any academic study or research into the methodology for undertaking literature searches on Google Scholar?---Have I ever undertaken any research that I've published? Is that the question?

PN21168

No?---Sorry, go ahead.

PN21169

JUSTICE ROSS: Just repeat the question.

*** OLAV TITUS MUURLINK

XXN MR SECK

PN21170

MR SECK: Have you ever undertaken an academic study or research into the methodology of using Google Scholar for literature searches?---Yes, I have. I've done - it's not published in peer-reviewed journals but I've made multiple presentations at multiple universities based on my own research of Google Scholar and presented findings of that research.

PN21171

Right. The use of Google Scholar is going to depend, as you say, on the particular search expressions which are entered into the database, that's right?---Wholly dependent.

PN21172

Whether or not you use the appropriate search expressions is going to depend on whether or not you have expertise in that particular subject matter and understanding whether or not those terms are likely to produce certain results. That's right?---That's one of the factors. I think the other factor that a lot of people do not realise with Google Scholar is that you can get very good results by second-guessing the exact expression that the scholar will use. This helps Google work generally. You need to second-guess, get into the mind of the person writing on the subject and then use quote marks very selectively and then you can really get to what you want.

PN21173

In seeking to second-guess you're going to have to have knowledge about the area in the first place?---It certainly helps. It does help.

PN21174

What is your knowledge and what studies have you undertaken about penalty rates?---The - in relation to the whole industrial literature on penalty rates, incredibly little; very, very little.

PN21175

How about consumer activity?---Consumer activity, a much more comfortable area for me because my original - my PHD was in the broad area of social psychology, which is attitude and behaviour, including to a degree consumer or lay behaviour.

PN21176

Do you accept that consumer activity is a different concept to consumer behaviour, Dr Muurlink?---No, I don't, really. I think that you'll find - I did a bit of research on this as well just to check that I wasn't kidding myself but a lot of the same constructs are coming up when you look at activity and behaviour. But there is a distinction, as I said earlier, consumer activity as a search term is not focused or targeted on what the study was supposed to be about, I think.

*** OLAV TITUS MUURLINK

XXN MR SECK

PN21177

You understood that when you read the report on Ms Pezzullo when the expression, "consumer activity", was entered it was to ascertain whether or not

there would be consumer activity on weekends as opposed to weekdays?---So for example, shopping behaviour - that's what you're talking about, for example?

PN21178

Not shopping behaviour but actual consumer activity on weekends?---Can you give me an example of - - -

PN21179

That was one of the points in your report?---Sorry, I didn't quite catch that. Can you give me an example of what you mean by, "consumer activity?"

PN21180

Well, I'm going to use the expression - firstly, I ask the questions but let me clarify the point for you?---Sorry, yes. I apologise.

PN21181

That's all right. Have you looked at - have you read the report, the Pezzullo report, in relation to weekend use of services? This is in front of you?---Yes, that's the original report. Is that the original report or her response report?

PN21182

The original report?---Original report, yes, I have read that.

PN21183

You understood that the principle purpose of looking at the question of consumer activity was to ascertain whether or not there was weekend use of services?---Okay, yes.

PN21184

MR DOWLING: I'm not sure, your Honour, whether Mr Seck is asking the witness about a particular part of the original report or about it more generally. It's certainly not clear to me and perhaps might not be clear to the witness. If he does have it it's behind tab 3 in the folder.

PN21185

JUSTICE ROSS: Do you want to take the witness to the report you're referring to?

PN21186

MR SECK: Yes, section 4.8 - have you got page numbers in the bottom right-hand corner?---Yes, I do.

PN21187

So use the big numbers, it's page 57, and you should go to section 4.8?---Yes, the printer has truncated the numbers but I think - 57, I should be able to find that. Yes, 57, I've got it.

PN21188

You understood that one of the purposes of using the expression, "consumer activity", was to ascertain weekend use of services. That's correct?---Yes.

*** OLAV TITUS MUURLINK

XXN MR SECK

PN21189

If you go to page 37 - - -?---Yes.

PN21190

- - at 3.2.5 you'll see that the focus was - there's a heading there, "Consumer Activity on Weekends"?---Yes.

PN21191

When you read those sections you understood that the purpose of using the expression, "consumer activity", was to ascertain whether or not there was consumer activity on weekends." That's correct, isn't it?---Well, that particular section, the heading is, "Consumer Activity on Weekends." That's the one you're referring to?

PN21192

Yes?---But that particular section purely refers to Craig and Brown. I understand what you're saying but that particular section doesn't really clarify it, just the heading does.

PN21193

However, it was apparent to you when you read the Pezzullo report that the intention of using the search expression, "consumer activity", was designed not to look at the behaviour of consumers but to look at the level of activity on weekends. That's correct, isn't it?---Yes, but I find it hard to understand how a consumer can behave without engaging in an activity.

PN21194

Whether or not consumers behave in a particular way is not relevant for our particular purposes. It's whether or not there's in fact activity on weekends and you understood that was the key reason why that expression was used in the Pezzullo report. That's correct, isn't it?---Okay, yes.

PN21195

Now, when you say you've undertaken your own searches, Dr Muurlink, on Google Scholar, you haven't listed any articles which were missed out and not set out in the Pezzullo report which were of any material nature. Do you accept that?---I didn't go to that extent. I wasn't asked to. I was asked to comment on the methodology.

PN21196

What you can't say is whether nor not the articles referred to in the Pezzullo report reflect a genuine representative sample of the literature in the area, can you?---I can only say that it would be extraordinarily coincidental if they did.

PN21197

Have you seen the literature reviews undertaken by any other academic or any other expert who's filed a report in these proceedings?---No, I haven't.

*** OLAV TITUS MUURLINK

XXN MR SECK

PN21198

Okay. I want to now take you to the study methodology - - -

PN21199

JUSTICE ROSS: That might be a convenient time, Mr Seck. Can I just ask before we go, in the earlier estimates there were discussions - there was a note saying that there were discussions being held between the SDA and the ARA/NRA, which may result in Mr Kershner not being required for cross-examination. Are they - - -

PN21200

MR WHEELAHAN: They're ongoing this afternoon after lunch.

PN21201

JUSTICE ROSS: Okay.

PN21202

MR WHEELAHAN: The discussions. That might be the case.

PN21203

JUSTICE ROSS: I think Mr Kershner was going to be for an hour in any event

PN21204

MR WHEELAHAN: Yes. He might - - -

PN21205

JUSTICE ROSS: Do you know if Mr Armstrong is available tomorrow afternoon? Perhaps that's something that can be looked at.

PN21206

MR SECK: Your Honour, I'm not sure whether or not Mr Armstrong is available this afternoon. We had scheduled him for the possibility he may be called earlier on Friday morning.

PN21207

JUSTICE ROSS: Yes, I know. I'm just asking whether he would be available tomorrow afternoon.

PN21208

MR SECK: I haven't made those inquiries. We can check.

PN21209

JUSTICE ROSS: I imagine that's right, because I've just asked. If you could make those inquiries, and we can see where we go, depending on where the discussions go between the retailers and the SDA as well.

PN21210

MR SECK: May it please.

PN21211

JUSTICE ROSS: 2.15.

<THE WITNESS WITHDREW

[1.00 PM]

*** OLAV TITUS MUURLINK

XXN MR SECK

LUNCHEON ADJOURNMENT [1.00 PM]

RESUMED [2.15 PM]

<OLAV TITUS MUURLINK, RECALLED ON FORMER AFFIRMATION [2.15 PM]

CROSS-EXAMINATION BY MR SECK, CONTINUING [2.15 PM]

PN21212

JUSTICE ROSS: Any update on Mr Gotting?

PN21213

MR MOORE: He's still chatting.

PN21214

JUSTICE ROSS: Still chatting. Mr Seck.

PN21215

MR SECK: Your Honour, just one housekeeping issue. Unfortunately, Mr Armstrong is not available tomorrow afternoon.

PN21216

JUSTICE ROSS: Did you have any more questions for the witness?

PN21217

MR SECK: I do, your Honour. Dr Muurlink, I want to take you to your report in response to Ms Pezzullo's report, in particular section 2 on study methodology?---Okay.

PN21218

In the second paragraph on page 4, you say that Ms Pezzullo's report is worryingly absent on detail required to assess the representativeness of the sample. Do you see that?---Yes.

PN21219

Now you've raised a few issues there about whether or not participants were Australia?---Yes.

PN21220

You understand in the reply report of Ms Pezzullo she's addressed that question?---Yes, she's addressed all my questions.

PN21221

Now you've then raised questions about issues about the exclusion of 16 to 17 year old. Well not the exclusion but the limited sample of 16 to 17 year olds on page 4 and page 5 of your report?---Yes.

PN21222

That's right?---Yes.

*** OLAV TITUS MUURLINK

XXN MR SECK

PN21223

Do you accept whether or not a particular sample of a - sorry, whether or not a survey population is representative will be determined in part by the purpose of the survey?---Entirely. I accept entirely.

PN21224

Whether or not there are demographic differences between the survey population and the general population as a whole, may or may not have an impact on the conclusions one can draw from those differences. That's right?---May or may not, yes.

PN21225

It'll really depend on what questions or what conclusions are sought to be drawn from that information. That's correct, isn't it?---Yes, that and also just - I mean there's always a probability and however small that probability that a sample badly drawn can accurately represent a sample well drawn. It's just improbable but it's possible.

PN21226

When you say it's improbably, it really depends on what particular attributes are being examined. That's right, isn't it?---It's impossible to say because, you know, as a researcher you should go in with a relatively open mind so how do you know what aspects of the population are critical to answering your questions. So within a limited possibility, yes, but generally no.

PN21227

Every survey's not going to be able to capture every relevant piece of data regarding the attributes of their participants. You would agree with that?---If you have a population defined and then you randomly sample from that population, as long as your N or number is sufficiently large and you can calculate that statistically then yes, it will represent the population very well in every aspect.

PN21228

So I gather from that answer, Dr Muurlink, you say the larger the survey sample - the size of the population in the survey, the less likely there will be difficulties in drawing conclusions from that survey sample. Is that right?---No, no, that's not correct. You can draw ever so large sample and if it's badly scoped then it doesn't matter how large it is, it will still be flawed, and it will still produce flawed conclusions. I gave the Readers Digest example before. Readers Digest readers did not represent the voting public and subsequently you could have drawn all of them and it would have still been a massive study, huge numbers but it would still have been wrong. It was proved to be wrong.

PN21229

I understand. Dr Muurlink, can you go to paragraph 73 of your principal report, relating to weekend work. It's on page 42?---Yes. Sorry, paragraph 73, sorry. I sometimes get confused.

*** OLAV TITUS MUURLINK

XXN MR SECK

PN21230

Seventy-three, yes?---Yes.

PN21231

You will see there you make a reference to the study undertaken by Skinner & Pocock?---Mm-hm.

PN21232

You understand that Skinner & Pocock study was based on data - survey data obtained through the AWALI survey?---Yes.

PN21233

You say there that AWALI has used an arguably less good quality data set based on a telephone survey conducted by Newspoll. When you say it was an arguably less good quality good data set, what did you mean by that?---Newspoll, like most commercial polling organisations don't have the power that the ABS has, so they're limited in their sampling method to people who have got telephones. They also don't have the credibility when they ring up so, you know, whether it's AWALI or HILDA, they don't have the same credibility that ABS and the same legal status as the ABS. So I'm merely making a qualitative difference, it's not as good as ABS data.

PN21234

What are the difficulties in your experience with telephone surveys?---Well, first of all certain parts of the - it's becoming less so but certain parts of the population are less likely to have - systematically less likely to have telephones than other parts of the population. It's a decreasing problem but it used to be a very major problem. Secondly, it's to do with different kinds of workers have the liberty to answer a phone at different times of the day. Again, this can have systematic differences so if you're a self-employed person or a stay at home mum you could probably answer your mobile phone at any time. But if you're in a particular class of profession, you don't have that ability, so there can be distortions as a result. I'm not particularly casting aspersions on HILDA and AWALI but they do have these systematic problems.

PN21235

Are you aware that the AWALI survey did not sample workers under the age of 18?---No, I wasn't aware of that. I've had no personal experience with the AWALI survey.

PN21236

You've obviously read the reports based on the AWALI survey and what they say about the representativeness of the sample, that's correct?---Yes, I must have overlooked the business to do with the under 18s but, yes, I take your word for it.

*** OLAV TITUS MUURLINK

XXN MR SECK

PN21237

I take it you're not aware of any of the issues about the representativeness of the AWALI sample at all, is that right?---Other than a general comment in relation to what I've just said and also perhaps a general comment in relation to reputation,

which is a much more general thing and I wouldn't want to stake anything on that, but reputation within academic circles. It's a good survey.

PN21238

Why do you say it's a good survey?---It has a good reputation and it's undertaken by organisations that do not have a particular research agenda, which is something I always worry about. Either when I'm doing research or when other people are doing research, there's no - there's an academic agenda here which is supposedly aimed to get the truth. As opposed to with a particular hypothesis in mind and a particular direction.

PN21239

I'm just going to read out the paragraph in the report of Daly 2014 which I took you to beforehand about the AWALI sample and I'm going to ask you some questions on it. It says this;

PN21240

The AWALI 2014 sample provides a fair representation of employed Australians by gender, state and work hours.

PN21241

JUSTICE ROSS: Mr Seck.

PN21242

MR SECK: Yes.

PN21243

JUSTICE ROSS: Do you remember our discussion before lunch, that if you were going to take the witness to an article, I asked you to forward it to my Associate so the witness could be shown it?

PN21244

MR SECK: I apologise, your Honour. I didn't have the opportunity at lunch time because I'm away from chambers. I'm hoping that any disadvantage that Dr Muurlink may have is overcome by me reading out the relevant paragraph to him.

PN21245

JUSTICE ROSS: The problem is you're reading it out, out of context. He doesn't have the opportunity to look at the article as a whole.

PN21246

MR SECK: I accept, your Honour, that he won't be reading the article as a whole but I supposed submissions can be made on that and I will - I'm endeavouring to ensure - - -

PN21247

JUSTICE ROSS: Well it will be a bit late then because he would have given his evidence.

*** OLAV TITUS MUURLINK

XXN MR SECK

PN21248

MR SECK: Your Honour, I'm taking him to a particular paragraph. In my view, it's not out of context because it's simple one paragraph.

PN21249

JUSTICE ROSS: Sure.

PN21250

MR SECK: Dealing with a very specific issue.

PN21251

JUSTICE ROSS: Yes.

PN21252

MR SECK: I do apologise for not having a copy of the report.

PN21253

JUSTICE ROSS: All right.

PN21254

MR SECK: Dr Muurlink, I'm just going to read this paragraph out to you. It says;

PN21255

The AWALI 2014 sample provides a fair representation of employed Australians by gender, state and work hours. The sample is also reasonably representative by education and occupation, although there is an over-representation of those with higher qualifications, older workers and those in professional occupations. The AWALI 2014 sample slightly under-represents casual and self-employed workers. In the sample, 16.7 per cent of the employees are employed casually compared to ABS estimates of 19.4 per cent. This properly reflects the inclusion of workers aged 15 to 17 years in ABS surveys whereas AWALI respondents were aged 18 or older.

*** OLAV TITUS MUURLINK

XXN MR SECK

PN21256

Now Dr Muurlink, you make a criticism of the survey - the representativeness of the survey conducted by Ms Pezzullo because that survey did not include 15 to 18 year olds. I've just read out a paragraph to you in the AWALI survey which says that they didn't include 15 to 17 year olds. Do you accept that your criticism of Ms Pezzullo would equally apply to the AWALI sample?---If you mean by equally, exactly the same, no. I suppose there's two points I would want to make here. Every single year that you progress, like from 15, 16, 17, 18, 19 year olds, the proportion or the number of workers involved is much larger. So the AWALI survey may only have one additional year involved but that actually represents a much larger quantum of respondents than 17, 16, 15 year olds. The second point that I would make is a little bit more general and I did refer to this earlier, so I'll just in brief. When I saw that flaw - when I saw those figures in there, it made me question more broadly the representativeness of this sample. So if the sample is so non-representative in relation to these younger workers, what is it in relation to other aspects, other characteristics of workers more generally. It makes me question the quality of sample in general.

PN21257

You saw - if you go to Ms Pezzullo's report, Dr Muurlink, at 4.1. I don't know if - can you go to that report which is at page 42?---Forty-two of her report?

PN21258

Of her report, the principal report?---Yes.

PN21259

You'll see that there is a demographic breakdown of the particular respondents?---Yes.

PN21260

By gender, age, living situation and employment status. You see that?---Yes.

PN21261

Would you agree those are the key characteristics that one would look at in this type of survey to ascertain the representativeness of the survey?---I'm not prescient. As in, you know, no one knows what characteristics are critical. A priori you can say, "Yes, these are the characteristics that are critical." And, you know, I would be - like, living alone, I'm not particularly sure that one is relevant or helpful, but, you know, the living conditions generally may be not helpful, except with children or not children. So yes, look, it's one that seem a priori, but this is the problem with flawed sampling. I can't answer that question, really.

PN21262

Your criticism in relation to the sampling could equally apply to the AWALI sampling, so you could never know whether or not it's truly representative unless you looked at a whole range of characteristics which aren't necessarily identified in the survey. That's right, isn't it?---The AWALI sample - and I am not thoroughly familiar with it, but I'm familiar with the researchers and the institute that runs it in South Australia. They invest a lot of money into this survey in order to answer research questions. They would be the same as me in understanding the importance of the representativeness of that sample, so I would say that they would have put a lot of effort to ensure that it was representative.

PN21263

And you don't know whether or not Deloitte has not made the same effort in ensuring it's representative, do you?---As far as I'm aware - and I'm not sure if this is true - but Deloitte went to a commercial organisation that samples people for consumer decisions and a variety of opinion surveys, et cetera. It's not what we would call a sample constituted in a systematic way to be representative in the first place - in the first place.

PN21264

How can you assert that, Dr Muurlink? You've got no evidence for that, do you?---No, I don't, but that's - I did actually look into LiveTribe. I actually googled it, and it didn't reassure me.

*** OLAV TITUS MUURLINK

XXN MR SECK

PN21265

Whilst it didn't reassure you, you only googled it, you haven't actually sought information from LiveTribe to ascertain their - - -?---No, I didn't do that.

PN21266

- - - expertise in conducting surveys, did you?---No, I did not.

PN21267

And you certainly don't know whether or not they had made efforts to ensure that the population is representative in a way which is dissimilar or similar to the academics at the University of South Australia conducted the AWALI survey. That's so, isn't it?---That's right.

PN21268

Now, you say - wouldn't it also be correct, Dr Muurlink, that any issues associated with particular subgroups, such as 16 to 17-year-olds or younger workers, could be addressed by analysing those particular subgroups specifically?---Yes, they could, if they were present.

PN21269

When you say if they were present, what do you mean by that?---Well, they're not present. 16 to 17-year-olds are not present in the survey, and I suspect from the trend in the numbers, 18-year-olds are almost not present either.

PN21270

If one is analysing preferences to work on weekends or to engage in weekend activities, do you accept that the exclusion of 16 to 17-year-olds doesn't necessarily invalidate the results in relation to the rest of the population?---Absolutely. It doesn't necessarily invalidate, but the emphasis would be on "necessarily". I don't know. It doesn't rule out the possibility that it could be valid, but it doesn't allow one to say that they are valid.

PN21271

And that's equally the case in relation to the AWALI survey in excluding 15 to 17-year-olds. That's correct, isn't it?---To the degree that they have eliminated 16 and 17-year-olds, yes.

PN21272

I have no further questions for Dr Muurlink.

PN21273

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

PN21274

MR DOWLING: Thank you, your Honour. Just four matters.

RE-EXAMINATION BY MR DOWLING

[2.34 PM]

*** OLAV TITUS MUURLINK

RXN MR DOWLING

PN21275

MR DOWLING: Dr Muurlink, you were taken to the letter of engagement of 28 May, which I think you have before you, and your attention was directed to the

four awards and for industries set out in part A of that letter. Do you recall those questions?---Yes.

PN21276

Can you tell the Commission, please, to what extent your opinions were intended to be referrable to particular industries?

PN21277

MR DIXON: I object. I'm happy for Dr Muurlink to step out for a moment or two.

<THE WITNESS WITHDREW

[2.34 PM]

PN21278

MR DIXON: Your Honour, if the Commission pleases, the witness answered the question, but his report was confined - was prepared in respect of the four industries. He went on to say that he did not address the fast food industry. He went on to suggest - to say that he did not address the pharmaceutical industry, and he did not say that addressed any other industry. And in my respectful submission my learned friend cannot now seek to counter that evidence that has been given by inviting the witness to qualify.

PN21279

JUSTICE ROSS: Well, why can't he do that? It arose in cross-examination. Are you saying he can't seek to have the witness clarify his position in re-examination?

PN21280

MR DIXON: No, your Honour. You can't, with respect, ask a witness questions which permit him to contradict the evidence that he has given already.

PN21281

MR DOWLING: I'm not sure about that principle of re-examination, your Honour, but - - -

PN21282

JUSTICE ROSS: Neither am I, but - - -

PN21283

MR DOWLING: Clearly on the face of the letter of instruction there is some dispute about the questions he was asked and whether they are referrable to the industry, and in our submission the questions are not directed at the industry. He did give some answers, and in my submission I'm entitled to clarify that dispute between the questions themselves and the answer that was given.

PN21284

JUSTICE ROSS: Bring the witness back in. You can put the question.

**<OLAV TITUS MUURLINK, RECALLED ON FORMER
AFFIRMATION**

[2.36 PM]

*** OLAV TITUS MUURLINK

RXN MR DOWLING

PN21285

MR DOWLING: Thank you, Dr Muurlink. I will repeat the question for you. Perhaps to give you the background to the question I asked, I'm reminded you that you were taken to some questions about the industries referred to in part A of your letter of engagement of 28 May. I then asked you to tell the Commission to what extent are your opinions intended to be referable to particular industries?--I'm afraid I have to give a relatively long answer. The absence of evidence industry-specific to the Australian situation did lead me to broaden the search that I did, and as a result of that broadening I was able to gather evidence that I believe does pertain to the particular industries in the engagement letter. The reason for me saying so is that I think that the knowledge that I have of health psychology in particular, and epidemiology more generally, is that some of the key characteristics are common to humans, as opposed to common to industries. We're talking about human characteristics, and I particularly rely in these multi-industry aw general population studies - some from Australia, but mainly the European studies, and particularly the Scandinavian studies. And just very briefly I'll say that the Scandinavian - the reason there are so many Finnish and Swedish names in this report is because the Scandinavians are particularly good at forcing their populations in general to answer surveys and submit to the government's need for data. So the Scandinavians are the world's richest source of general population information - multi-industry population. I have made, in the report, additionally, some distinguishing points between blue-collar work in general and white-collar work, because that is a very important general distinction. Blue-collar work is characterised by aspects that relate to lower job meaning, as in people don't feel quite as thrilled to say that they're a cleaner as they do to say they're a surgeon. And lower control over work hours. Of course, lower wages as well, but also lower education, lower general socio-economic status, slightly larger families; a whole lot of general trends. It's only a crude way of clustering it, and I would be the first to admit we need to do a lot more research into this in order to be able to answer some of these questions with absolute faith. But the bottom line conclusion that I make, I feel very confident that it is representative of the target populations and their particular industry groupings.

PN21286

Forgive me if the answer to this question is included in that answer, but those industries that I understand you to be referring to are the four referred to in the 28 May 2015 letter. Can you also tell the Commission the application of your opinions in respect of industries outside of those four that are identified in that letter of 28 May.

PN21287

MR DIXON: I object. The witness answered the question, that he directed his report to the four industries.

PN21288

MR DOWLING: This is clarifying that very answer, your Honour. I don't see any problem with it.

*** OLAV TITUS MUURLINK

RXN MR DOWLING

PN21289

JUSTICE ROSS: Just give us a moment.

PN21290

MR DIXON: Thank you, your Honour.

PN21291

JUSTICE ROSS: I'm assuming this will be your last question on this topic, though.

PN21292

MR DOWLING: Yes, your Honour.

PN21293

Dr Muurlink, would you like me to repeat the question? I think the preface to my question was that in your answer you identified your confidence that it addresses the four industries referred to in the letter of 28 May, and I asked you whether - what can you say about whether your opinions apply outside and additional to those industries?---Yes, they do.

PN21294

Thank you. You were asked some questions about a series - you were taken through a series of questions about data, and it was put to you that you did not receive the data. Do you remember?---Yes.

PN21295

Perhaps I can give you an example. It was said you did not receive data in respect of age in each industry, workers in each industry, gender in each industry. Do you remember those questions?---Yes, I do.

PN21296

Are you able to tell the Commission - I think you were also asked whether that data was relevant, and you said it was relevant. Do you recall that answer?---Yes.

PN21297

Are you able to tell the Commission what you say about the validity of your findings without the provision of that data?---I think to a large degree I've answered that question, as in the data that I have relied on most is very high quality epidemiological data from organisations that are - for example, insurance organisations. It's another area that I particularly put - in my own mind put a high weight on because insurers' lives - their financial lives depend upon getting risk right, and so the two, Lombardi and Brognus are both funded by Liberty Mutual, one of the largest - second-largest insurer of workers in the world, and they are absolutely charged by their funding bodies to come up with the truth in relation to risk. And, you know, they couch their responses in cautious terms, as insurers do, but the evidence that they present is quite compelling. Yes.

*** OLAV TITUS MUURLINK

RXN MR DOWLING

PN21298

Thank you. Thirdly, can I take you to your first report, which you will remember is behind tab 1, and particularly to paragraph 65 of that report at page 40?---Yes.

PN21299

You were asked some questions about the trend or the merging in respect of Saturdays and Sundays. Do you see that at paragraph 65?---Yes.

PN21300

Do you recall those questions? Can I ask you to turn back in your report. I wanted to explain to the Commission - you've also given some evidence about those days elsewhere, and you will see that at paragraphs 27 and 28 on page 22?---Yes.

PN21301

Do you see that?---Yes.

PN21302

Can you explain to the Commission what you say about the trend but you identify - the relationship between the trend you identify at 65 and the conclusions you reach that paragraphs 27 and 28?---Yes. Just to clarify, that trend that was identified was in relation to a Canadian study, and I've already said that I have a little bit of a question mark in my mind about the Canadian studies because there seems to be something peculiar to Canada. I haven't really got to the bottom of that yet, but there seems to be something discrepant that Canadian data. But I will say more generally that in the Australian data there still is a significant differentiation between Sunday and Saturday, which I talk about this particular section.

PN21303

And one last matter. Your Honour, if the witness could be shown exhibit AiG15. I'm not sure - you have still there, Dr Muurlink, the document titled "Australian Social Trends", the ABS document from December of 2009?---Yes I do, yes.

PN21304

You were taken to the table that appears on page 25, it's the page that is marked 363 in the bottom right hand corner?---Yes.

PN21305

And I think you were taken to that part of the table that deals with accommodation and food services?---Mm-hm.

PN21306

And the column three from the right-hand and the figure 31.2?---Yes.

PN21307

Do you recall being taken to that figure?---(No audible reply)

*** OLAV TITUS MUURLINK

RXN MR DOWLING

PN21308

Are you able to say - or what do you know, if anything, about whether that industry description, accommodation and food services, includes fast food?---It's the general category that's used in Australian data, and I do not believe that there is any other category that could plausibly include fast food than that category, so it's kind of logic that it must be lodged within that category. That's all I know.

PN21309

There are no further questions, your Honour. And if Dr Muurlink may be excused.

PN21310

JUSTICE ROSS: Nothing further for the witness?

PN21311

Thank you, Dr Muurlink. You're excused.

<THE WITNESS WITHDREW

[2.47 PM]

PN21312

MR MOORE: Your Honour, before the next witness is called, I seek leave to be excused for the rest of the day.

PN21313

JUSTICE ROSS: Certainly, Mr Moore.

PN21314

MR SECK: Your Honour, I seek that same leave in Sydney.

PN21315

JUSTICE ROSS: Certainly.

PN21316

MR DOWLING: I call Dr Damian Oliver, your Honour. He was outside only moments ago, your Honour. He can't have gone too far.

PN21317

THE ASSOCIATE: Please state your full name and address.

PN21318

DR OLIVER: Damian Oliver, (address supplied).

<DAMIAN JOHN WILLIAM OLIVER, SWORN

[2.49 PM]

EXAMINATION-IN-CHIEF BY MR DOWLING

[2.49 PM]

PN21319

MR DOWLING: Dr Oliver, could you please repeat your full name?---Yes, Damian John William Oliver.

PN21320

Your occupation?---I am a senior lecturer at the UTS Business School, and I am deputy director of the Centre for Management and Organisation Studies.

PN21321

And your address?---(Address supplied).

*** DAMIAN JOHN WILLIAM OLIVER

XN MR DOWLING

PN21322

Thank you. You have prepared for the purposes of this proceeding a report?---Yes, I have.

PN21323

The folder is about to be handed to you. Could you please turn to the fifth tab in that folder, the very last tab? Do you have there a document headed "Impact of Penalty Rates on Wages of Hospitality Workers", dated the 4th of September of 2015?---Yes, I do.

PN21324

Is that the report prepared by you?---Yes, it is.

PN21325

Is that a report that is 56 pages in length?---Yes, it is.

PN21326

If you turn to page 2 there is a declaration and a signature. That is a declaration and signature made by you?---Yes.

PN21327

Thank you, and immediately behind that report, marked with a yellow tab, is your curriculum vitae, is that correct?---Yes.

PN21328

Thank you. Can I ask you to turn back to the report, please? I understand you have some corrections to make to the report?---Yes, I do.

PN21329

Can you turn firstly to page 17? You'll see there at the top of page 17 is the continuation of paragraph 64, and is it correct that subparagraph (b) of paragraph 64 should read:

PN21330

The business or organisation operates outside regular business hours at a time when the industrial instrument provides for the payment of penalty rates.

PN21331

?---Yes, that's correct.

PN21332

So there needs to be the addition of the words after instrument: "provides for the payment of penalty rates"?---Yes.

PN21333

Thank you. Can you next turn to page 26, please, and to the paragraph numbered 90, under the heading Multiple Job Holders, do you have that?---Yes.

PN21334

Should the percentage appearing in brackets on the first line be amended from 20.8 to 21.3?---Yes.

*** DAMIAN JOHN WILLIAM OLIVER

XN MR DOWLING

PN21335

And the percentage in brackets on the third line be amended from 12.3 per cent to 12.4 per cent?---Yes.

PN21336

Can you turn to the next page, page 27, and paragraph 91. Do you have that paragraph?---Yes.

PN21337

Should the percentage appearing on the second line, 22 per cent, be replaced with 22.5 per cent?---Yes.

PN21338

Can you then turn to page 34? You will see at the top of page 34 the continuation of paragraph 110 with four dot points, do you see that?---Yes.

PN21339

Can you go to the second dot point, please, and there is a percentage in the second line, 47 per cent. Should that read 45 per cent?---Yes.

PN21340

Can you then turn to paragraph 124, please, on page 39? Do you have that paragraph?---Yes.

PN21341

In the second line of that paragraph, the percentage 25.5 per cent appears. Should that read 25.6?---Yes.

PN21342

And lastly, if you turn over the page to paragraph 126, you will see in the second line the percentage 42.6 appears. Should that read 31.5?---Yes.

PN21343

And in the next line in brackets you see the percentage 18 per cent. Should that read 24.2?---Yes.

PN21344

Thank you. With those corrections, does the report accurately set out the opinions formed by you based on your expertise?---Yes, it does.

PN21345

I tender that, your Honour.

PN21346

JUSTICE ROSS: I'll mark that exhibit United Voice 28.

EXHIBIT #UNITED VOICE 28 DOCUMENT HEADED "IMPACT OF PENALTY RATES ON WAGES OF HOSPITALITY WORKERS", PREPARED BY DR DAMIAN OLIVER, DATED 04/09/2015

*** DAMIAN JOHN WILLIAM OLIVER

XN MR DOWLING

PN21347

MR DOWLING: Your Honour, with leave, I would like to ask Dr Oliver one question arising from Ms Pezzullo's report in response to Dr Oliver.

PN21348

JUSTICE ROSS: Mm-hm.

PN21349

MR DOWLING: Dr Oliver, if you turn to the fourth tab in the folder in front of you, you should have a document there headed: Reply Evidence to Union Opinions for use by Fair Work Commission, do you see that?---Yes.

PN21350

Can you please turn to page 11 in that document? Have you read before Ms Pezzullo's response to you, appearing at page 11?---Yes, I have.

PN21351

Can you tell the Commission what you say in response to – particularly can I direct your attention to the third dot point on that page, what you say in response?---Yes, so in relation to the first sentence of the third dot point I simply say that my analysis was indeed taken at a point in time. My research question was to investigate the impact of penalty rate payments on existing hospitality workers, and so by definition it is a static analysis rather than a dynamic one. In relation to the final sentence of that paragraph:

PN21352

Moreover, comparison of a population which is more likely to be casual part-time, young and without dependants, relative to benchmarks that are for full-time workers who are older and with more dependants on average, makes any findings difficult to interpret.

PN21353

The findings of my report indicate that particularly part-time and casual workers, as well as award-reliant workers, receive a higher proportion of penalty rate payments in terms of their overall pay, and in terms of the survey results that would mean, because of the biases that were present in the survey – in the survey data, that it is possible then to at least interpret that the overall level of penalty rate reliance would therefore be higher than the average of the survey results would indicate.

PN21354

Thank you. No further questions. If you wait there, Dr Oliver.

PN21355

JUSTICE ROSS: Yes, Mr Gotting.

CROSS-EXAMINATION BY MR GOTTING

[2.57 PM]

*** DAMIAN JOHN WILLIAM OLIVER

XXN MR GOTTING

PN21356

MR GOTTING: Dr Oliver, my name is Gotting and I appear for the Australian Industry Group, which in turn is acting for some of the employer parties. Dr Oliver, can I ask you to go to page 6 of your report, please? Do you have that page?---Yes, I do, yes.

PN21357

Could I ask you to go to paragraph 16 on page 6?---Mm-hm.

PN21358

In paragraph 16 you deal with average total earnings, correct?---Yes.

PN21359

And you do deal with average total earnings for accommodation and food services employees, correct?---Correct.

PN21360

And the average total earnings which you specify in that paragraph includes employees that work in accommodation and food services on a full-time basis?---Yes, it does include them, yes.

PN21361

The average total earnings which you reference in paragraph 16 also includes employees in accommodation and food services which work on a part-time basis?---Yes, it does.

PN21362

And thirdly, the average total earnings which are set out in paragraph 16 includes employees in accommodation and food services that work on a casual basis?---Yes.

PN21363

Dr Oliver, could I then ask you to go to page 15 of your report? In paragraph 56 you refer to a limited sample, correct?---Yes, that is correct.

PN21364

The limited sample is the 500 employee responses, is that correct?---Yes, and in particular the more detailed examination of employees who report a penalty rate payment.

PN21365

Is that the 500 employees' responses which is mentioned in paragraph 52 of your report?---Yes.

PN21366

You've described it as a limited sample. Should the significance of the phrase 'limited sample' be understood to mean that there should be some caution in extrapolating the results of the sample to the broader population?---Yes, it does, particularly with regard to the fact that the results reported here are not specifically relating to the population of award-reliant hospitality workers - or accommodation and food services workers.

*** DAMIAN JOHN WILLIAM OLIVER

XXN MR GOTTING

PN21367

If I could trouble you to turn to page 16 of your report, and in particular the paragraph 61, do you have that?---Yes.

PN21368

There's a reference in paragraph 61 to 515 respondents. Should the 515 respondents also be viewed as a limited sample?---The total 515 respondents is, just as the 500, a small sample. In relation to – sorry, I should clarify that - in relation to the limited sample – the use of the word 'limited sample' on paragraph 56 on page 15, I made that comment with specific reference to subpopulations of the 500 employees, and particularly with regard to the matter under consideration here, the population – or the sample of award-reliant hospitality workers.

PN21369

Does the observation about the limited sample that relates to the subpopulation also apply to the 515 respondents at paragraph 61 of your report?---No, it doesn't, because – well, not with specific regard to award-reliant employees, because that is not a subpopulation that can be examined in the HILDA sample because it's not a variable. At a more general level, in terms of if you were to take an analogous group, for example, of permanent workers or casual workers, some further breakdown, then depending on the numbers in that group it could be that that would begin to be a sample size that is more limited.

PN21370

Dr Oliver, can I then ask you to turn to page 36 of your report? In paragraph 114 you refer to the 4-digit class level codes by ANZIT?---Yes.

PN21371

I take it that in the data that appears from page 36 onwards, it's based on the 4-digit codes?---It's based on a combination of 4-digit codes described earlier in the report, yes.

PN21372

And in particular, the analysis based on the 4-digit codes excludes the fast food industry?---Yes, it does, that was the principal objective of that analysis.

PN21373

I take it that the data in table 17 that appears on page 36 does not include any data relating to the fast food industry?---No, it does not.

PN21374

And, equally, the data in tables 18 to 26 in your report do also not include the fast food industry?---That's correct.

PN21375

The data in table 27 appearing on pages 43 and 44 do not include the fast food industry?---Yes, that's correct.

*** DAMIAN JOHN WILLIAM OLIVER

XXN MR GOTTING

PN21376

Dr Oliver, you were asked to produce certain documents to the Commission for the purposes of these proceedings?---Yes, I was.

PN21377

One of the documents that you produced was a proposal that had been prepared to United Voice for the preparation of a report by you?---Yes.

PN21378

And part of the documents that were included within the proposal was a copy of your curriculum vitae?---Yes.

PN21379

And one aspect of your curriculum vitae is a section that deals with grants that you have received over the years?---Yes.

PN21380

In particular, some of the grants that you have listed refer to an environmental scan, correct?---Yes.

PN21381

Am I right in understanding that you have received grants to prepare environmental scans for various training councils?---No, one training council in particular, the Community Services and Health Industry Skills Council.

PN21382

Am I right in understanding that an environmental scan is a snapshot of an industry?---It has a specific meaning. The Department of Industry, and its previous guises, requires industry skills councils to produce an environmental scan. That's the name of the document. There are certain fixed sections. It requires them to look at, in particular, the use of training packages, enrolment figures, projected future demand for occupations that relate to the training package qualifications under the remit of that particular industry skills council.

PN21383

Do I take it that you were involved in preparing the environmental scan for the relevant training council that you previously identified?---Yes, so the Community Services and Health Industry Skills Council commissioned the University of Sydney to provide research assistance in the production of its annual environmental scan for a number of years. I think I was involved with three.

PN21384

Are you aware of the Retail and Personal Services Training Council?---I don't think that there is – I'm not aware that there is an industry skills council in terms of a Federal industry skills council by that name. I'm familiar with Service Skills Australia, which is the national industry skills council with responsibility for retail training packages.

*** DAMIAN JOHN WILLIAM OLIVER

XXN MR GOTTING

PN21385

Are you aware that in Western Australia there is a body known as the Retail and Personal Services Training Council?---I wasn't aware of the specific name of that

specific industry training body; I was aware as a result of various projects that I've been involved with over the years that some States have continued to maintain separate industry training advisory boards, ITABs as they were commonly known, and, yes, it doesn't surprise that there's a particular one for the retail industry in Western Australia.

PN21386

Can I ask that the witness be shown a document, please? Thank you.

PN21387

Dr Oliver, can I ask you to go through the document which has been handed to you. Have you had an opportunity to go through that document, Dr Oliver?---No, I haven't read it in detail but I've worked through the sections, yes.

PN21388

Do you agree that the document in front of you is described as the Fast Food Environmental Scan 2014, on its first page?---Yes.

PN21389

Do you see that it has the symbol of the Retail and Personal Services Training Council on the first page?---Yes.

PN21390

In light of your briefly looking at the document, are you able to say whether the format of the document is similar to the environmental scans in which you were involved for the Community Services Skills Council in 2013, through 2015?---Broadly, the purpose of the document is the same but as I said before the environment scans produced by industry skills councils at the national level have very specific categories, that must address very specific criteria in terms of reporting on the use of training package data, in terms of enrolments. They also need to report on various changes to the training packages that have been made in the previous 12 months, and then they also contain sections that look at the relevant labour force requirements, a sort of industry scan. So broadly, the purpose of the document would be the same but I would say that this environmental scan has been prepared to a much less rigorous set of criteria.

PN21391

Thank you. Your Honour, I tender the document.

PN21392

MR DOWLING: I'm really not sure how it will assist in terms of relevance. It's had a very broad proposition put, a broad answer given with a serious caveat.

PN21393

MR GOTTING: It'll be dealt with in submissions in due course but there are certain aspects that we will seek to emphasise in due course, your Honour.

*** DAMIAN JOHN WILLIAM OLIVER

XXN MR GOTTING

PN21394

JUSTICE ROSS: Yes. I follow that but why is it being put through this witness? This witness doesn't know anything about it. He hasn't produced it. You've put it to him and asked him but - - -

PN21395

MR GOTTING: Well I could simply just tender the document independent of the witness and in that sense I'm not seeking to do it as a result of - - -

PN21396

JUSTICE ROSS: As part of his evidence.

PN21397

MR GOTTING: No.

PN21398

JUSTICE ROSS: It's really - it's just a convenient point.

PN21399

MR GOTTING: Yes. It is and - - -

PN21400

JUSTICE ROSS: No, that's fine.

PN21401

MR GOTTING: - - - the Commission may have been assisted by the background information that flowed from the evidence of Dr Oliver.

PN21402

JUSTICE ROSS: We'll mark that exhibit Ai Group 16.

EXHIBIT #Ai GROUP 16 DOCUMENT HEADED "FAST FOOD ENVIRONMENTAL SCAN 2014"

PN21403

MR GOTTING: Thank you, Dr Oliver.

PN21404

JUSTICE ROSS: Mr Izzo?

PN21405

MR IZZO: No questions, your Honour.

PN21406

JUSTICE ROSS: Any further questions? Any further cross-examination of the witness?

CROSS-EXAMINATION BY MR STANTON

[3.15 PM]

*** DAMIAN JOHN WILLIAM OLIVER

XXN MR STANTON

PN21407

MR STANTON: Yes, your Honour, in Sydney we have some questions. I'm sorry, I can't see if anyone else in Melbourne had questions. I hope I haven't - - -

PN21408

JUSTICE ROSS: No, nobody does.

PN21409

MR STANTON: Dr Oliver, I'm John Stanton, I represent counsel representing the Australian Hotels Association and the Accommodation Association of Australia. I just have some questions regarding the Australian Workplace Relations Study that you've relied on for the purpose of your report. It might assist if you have your report before you, if you could go to page 20. As I understand it the study - the information gathering process for that study relied on six questionnaires. Is that your understanding?---Yes, in total although I don't make reference to all six in this report.

PN21410

There was only one questionnaire which was directed to employees. Is that correct?---That is correct.

PN21411

That was usefully name The Employee Questionnaire?---Yes.

PN21412

At part C of that questionnaire, part of which you have reproduced in your report, part C seeks responses in relation to wages and income?---Yes.

PN21413

Is that correct? Is it correct - is that the only part of that report that sought that type of information?---Sorry, could I just check that by report you mean the survey - the study overall?

PN21414

I'm sorry, I should qualify that. Is that the only part of the questionnaire, the employee questionnaire that sought the information on wages and income?---And sorry just to check again, you're referring to section C overall. I don't have the questionnaire in front of me so I just want to check that I'm understanding how much - the scope of what you're referring to.

PN21415

You've reproduced - sorry. You're reproduced in the report at page 20 a screen capture of the penalty rate payment questions?---Yes, that's right.

*** DAMIAN JOHN WILLIAM OLIVER

XXN MR STANTON

PN21416

Just to clarify, are they only questions in that questionnaire that sought information regarding income and wages?---I recall and I think - I think I make a reference to this somewhere, that there were two items that dealt with total remuneration. One involved a summation of the data provided in C7 and then at another point within section C my recollection is that there was a question that

asked employees to give their regular income or salary, according to the frequency with which it was paid.

PN21417

Is this correct that what you have reproduced in the report represents, if you like, the questions regarding specific components of the makeup of remuneration?---Yes, so C7 was the only question or block of questions that relate to the composition of an employee's remuneration.

PN21418

Those responses drew on information from the most recent pay or pay period, is that correct?---Yes, that was the instruction which was provided in the questionnaire to the employees completing the questionnaire.

PN21419

That pay period could have been, for example, one week or it could have been two weeks. Is that your understanding?---Yes, my understanding is that there is an item near C7 that asked employees to nominate what their pay period was, so whether they were paid daily, weekly, fortnightly, monthly, quarterly or annually, and so the combination of information from the pay period - so the length of the pay period and the total pay received in that pay period was able to produce a standard figure.

PN21420

The responses were confined to that period though?---That is what the questionnaire instructed or directed the employees to provide, yes.

PN21421

The survey does not seek here responses in relation to the actual days worked by the employee during that particular period?---No, it does not.

PN21422

It doesn't seek responses in relation to the actual time that the person worked during that pay period?---In terms of number of hours?

PN21423

Yes. Well the times they - - -?---No, in terms of - for example, the particular shifts. So what days were worked and then what time of day was worked no, it does not.

PN21424

So in other words, the specific details of the roster, for example, were not called for and are not reflected in the data. Is that correct?---That is correct.

PN21425

For example, if the extent to which a person worked, for example, a Sunday wouldn't be shown in any of this data?---That's correct.

*** DAMIAN JOHN WILLIAM OLIVER

XXN MR STANTON

PN21426

If the person had worked, for example, a Sunday and had received a penalty rate, it's not possible to know from this information that was gathered from the questionnaire, it's not possible to know from that information what contribution the Sunday penalty rate made to the overall remuneration makeup?---That's true. So it's not possible from the overall - from the information provided in the questionnaire to determine or separate out if the penalty rate payment reported by an employee relates to a penalty paid in relation to working on a Sunday or on a Saturday or an evening penalty.

PN21427

Doctor, where the respondent replies to the - I'll call it a question entitled penalty rates for work performed outside standard hours, where the respondent has included an amount in the corresponding square, it'd be correct to say that that amount could represent either the value of a single penalty rate or the combined value of more than one penalty rate?---When you say a - when you refer to a particular penalty rate, do you mean the penalty rate payable for a particular day or a particular time of day?

PN21428

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

PN21429

So from these surveys, it's not possible to know the impact of a particular penalty rate upon the overall remuneration makeup?---No, it is not.

PN21430

Thank you. That is all I had for Dr Oliver, your Honour.

PN21431

JUSTICE ROSS: Any further cross-examination? No? Any re-examination?

PN21432

MR DOWLING: No re-examination, your Honour.

PN21433

JUSTICE ROSS: Thank you for your evidence, Dr Oliver. You're excused.

<THE WITNESS WITHDREW

[3.24 PM]

PN21434

Is there anything further?

PN21435

MR DOWLING: Your Honour, can I raise, unrelated to the evidence today, two matters. You might recall some time ago now Mr Hart - sorry, Mr Parker.

PN21436

JUSTICE ROSS: Yes.

*** DAMIAN JOHN WILLIAM OLIVER

XXN MR STANTON

PN21437

MR DOWLING: My apologies, Mr Parker was recalled and cross-examined about a number of emails that he'd produced in-between his first lot of evidence and his second.

PN21438

JUSTICE ROSS: That was the gentleman from Coffs Harbour or - - -

PN21439

MR DOWLING: That's correct.

PN21440

JUSTICE ROSS: Yes.

PN21441

MR DOWLING: Now as part of that process I neglected to tender copies of those emails that were provided in-between the first evidence and the second evidence. I'm not sure whether the - there's a number of ways we can provide them. I have a copy today but I don't have five copies. It may be that the Full Bench still has the copies that were provided, I'm not certain, but - I'll take it from that that the answer is no. But perhaps I can just put this issue on the table and we will produce five copies tomorrow morning and formally tender it then.

PN21442

JUSTICE ROSS: Right.

PN21443

MR DOWLING: The second issue that falls into that same category is my client's United Voice schedule of common material. That's yet to be tendered, again I have one copy of that and we might produce five and tender that tomorrow morning.

PN21444

JUSTICE ROSS: We still haven't had the debate about the Productivity Commission Report. Is there any other general material that's going to be sought to be tendered? Mr Gotting?

PN21445

MR GOTTING: There is some common evidence from the Australia Industry Group as well, in addition to the documents that were recorded in the tender list that was provided to your Honour's Associate.

PN21446

JUSTICE ROSS: Yes.

PN21447

MR IZZO: Your Honour, there is a document and I don't have it with me today but there was a document that was filed by Australian Business Industrial of New South Wales Business Chamber detailing the history of public holiday penalty rates and the history of legislative treatment of public holidays. That was filed together with our evidence and submissions. It is broadly speaking something that could be characterised as a submission in large part. I was going to at some

point this week either seek to have it tendered formally or to confirm that it can simply be admitted as part of the submissions in due course. So that's another outstanding matter.

PN21448

JUSTICE ROSS: Perhaps if counsel can confer about how we deal with the outstanding matters and what's going to be contested and how you propose we deal with any contest about any of the material.

PN21449

MR DOWLING: Yes, your Honour.

PN21450

JUSTICE ROSS: Can you let Restaurant and Catering Industrial know of your intention to tender that material because I don't know that they're here and if they've got any objection then we could hear from them.

PN21451

MR IZZO: Of course, yes, your Honour.

PN21452

JUSTICE ROSS: Nothing further? So 9.30 tomorrow morning.

ADJOURNED UNTIL THURSDAY, 05 NOVEMBER 2015

[3.27 PM]

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