



TRANSCRIPT OF PROCEEDINGS

Fair Work Act 2009

1052655

TRANSCRIPT IN CONFIDENCE

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

AM2014/305

s.156 - 4 yearly review of modern awards

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

Melbourne

9.36 AM, THURSDAY, 5 NOVEMBER 2015

PN21453

VICE PRESIDENT CATANZARITI: Thank you. Shall we deal with the housekeeping matters first, Mr Moore?

PN21454

MR MOORE: Yes, your Honour. I can mention two matters. Yesterday we provided to the AMOD web site - and it may have reached the members of the Bench - an affidavit by Mr Kevin Kershner, affirmed yesterday. I'm not sure - - -

PN21455

VICE PRESIDENT CATANZARITI: Yes, we've got that.

PN21456

MR MOORE: I have an original copy of that, if it assists, to hand that up to file, but we would seek leave to file that today. For the record, I should indicate two things: (1) with the filing of that affidavit, as the employer organisations have indicated that they don't require Mr Kershner for cross-examination.

PN21457

Secondly, I should indicate for the record that the employers are of the view - and we understand this to be so - that with the filing of this affidavit, it discharges their obligations in respect of Browne v Dunn in relation to the submissions referred to in the Kershner affidavit.

PN21458

VICE PRESIDENT CATANZARITI: There are no changes to the affidavit at all?

PN21459

MR MOORE: No, it's just the original.

PN21460

VICE PRESIDENT CATANZARITI: That would be SDA32.

EXHIBIT #SDA32 AFFIDAVIT OF MR KERSHNER

PN21461

MR MOORE: The second housekeeping matter is Ms Yu. There was some discussion yesterday as to whether a further report by her was intended to be filed. I confirm that is the intention, and that will occur today. As soon as we're able and the report is finalised it will be filed and provided to the employer parties.

PN21462

VICE PRESIDENT CATANZARITI: Where does that put us in terms of tomorrow?

PN21463

MR MOORE: Well, I think tomorrow the - my notes indicate that there are Dr Watson, Mr Armstrong and Ms Yu. And I think that the President yesterday indicated - - -

PN21464

VICE PRESIDENT CATANZARITI: We're starting at 9 o'clock tomorrow for Dr Watson.

PN21465

MR MOORE: 9 o'clock. Yes, that's right. In that order, as I understand it.

PN21466

VICE PRESIDENT CATANZARITI: Yes. We're trying to see whether we can do them all before lunchtime.

PN21467

MR MOORE: Well, yes.

PN21468

VICE PRESIDENT CATANZARITI: Have you thought about how long Mr Armstrong is going to be?

PN21469

MR MOORE: Yes. There was a further affidavit by Mr Armstrong provided to my solicitors about 10 o'clock last night which I haven't had the pleasure of reading as yet.

PN21470

VICE PRESIDENT CATANZARITI: Neither have we.

PN21471

MR MOORE: With that caveat, as things presently stand, putting that to one side, my estimate with Mr Armstrong would be 45 minutes.

PN21472

VICE PRESIDENT CATANZARITI: The way they go on is they will just follow each other. There will be no break.

PN21473

MR MOORE: If the Commission pleases, yes. That's all from my side of the bar table.

PN21474

VICE PRESIDENT CATANZARITI: Anything from your side, Mr Dixon?

PN21475

MR DIXON: May it please the Commission. May we call our next witness, Dr Andrew Pratley. And the Commission will see that there is an updated affidavit for him which replaces his affidavit of 4 September, but I will deal with that with him in a minute, and I have copies for the Bench.

PN21476

THE ASSOCIATE: Please state your full name and address.

PN21477

DR PRATLEY: Dr Andrew James Pratley, (address supplied).

<ANDREW JAMES PRATLEY, AFFIRMED

[9.40 AM]

EXAMINATION-IN-CHIEF BY MR DIXON

[9.40 AM]

PN21478

MR DIXON: Are your full names Andrew James Pratley?---Yes.

PN21479

Dr Pratley, is your address (address supplied)?---Yes.

PN21480

And are you a statistical consultant?---Yes.

PN21481

And you are a director of your own consultancy company, Dr Andrew Pratley Pty Ltd?---Yes.

PN21482

And in that capacity - or in those capacities - you have been asked to prepare reports for the purposes of these proceedings?---That's correct.

PN21483

And you have prepared an affidavit, which was affirmed on 3 November 2015, which now contains an updated copy of your earlier report, and a further report responding to a report from Dr Pratley - responding to Bartley - I beg your pardon?---Yes, I responded to the report from Ms Bartley.

PN21484

Can I show you this. Do you have a folder with you, Dr Pratley, that has a copy of your affidavit with you?---I do.

PN21485

Is that behind tab 1?---I have that in front of me.

PN21486

Does your affidavit consist of some 35 paragraphs with attachments going up to page 60?---That is correct.

PN21487

I understand, Dr Pratley, that there are a couple of changes that you wish to make. The first is in relation to your affidavit of 3 November, on page 6 in paragraph 33, subparagraph (a), the second sentence, which starts with the words, "Sampling bias occurs", after the word "occurs" you wish to insert "when"?---Correct.

PN21488

And then in relation to your report, AP5, which is described as your second report in paragraph 6 of the affidavit; in paragraph 64 of that report, which appears on page 47 of 60; in paragraph 64 of that report, in the second sentence, it presently reads, "In section 5". You wish to correct that so that it reads, "In section 4.11"?---That's correct.

PN21489

At page 40 of 60, in paragraph number 5 of your report of 3 November 2015, in the sentence in paragraph 5 there is a reference to, "The combined employee survey sample." You wish to delete the word "survey"?---That's correct.

PN21490

And then in relation to figure 1, which you set out at page 51 of 60 of your report of 3 November, in paragraph 113 there are two small corrections you wish to make. As I understand it the first one is in relation to the blue dot point at the bottom of that scale which presently reads, "Less than 14 years old." You wish to correct that to read, "14 or less"?---That's correct.

PN21491

And in the description, after the words "figure of 1", where the words presently read, "Cumulative percentage by of sample", et cetera, you wish to delete the first word "by" after the word "percentage"?---That's correct. The third word of that sentence.

PN21492

And in respect of the content of table 1, which appears on page 57 of 60 of your report of 3 November, you have instructed us that that information was provided to you on a commercially confidential basis and not for public disclosure, and you seek to protect the confidentiality?---That's correct.

PN21493

And with those corrections, Dr Pratley, do you say that the opinions and views that you've expressed in your reports are within your expertise, training and experience, and you adopt them?---I do.

PN21494

VICE PRESIDENT CATANZARITI: That will be AiG17.

EXHIBIT #Ai GROUP 17 UPDATED AFFIDAVIT OF ANDREW PRATLEY DATED 03/11/2015 AS AMENDED

PN21495

VICE PRESIDENT CATANZARITI: Mr Dixon, I'm just concerned about the confidentiality page. These things sometimes get caught up in the website. I'm just wondering whether a better process, given is the one page, is we have two versions of the document subsequently, so that - - -

PN21496

MR DIXON: If your Honour pleases. We will, perhaps - - -

PN21497

VICE PRESIDENT CATANZARITI: To avoid any potential problem.

PN21498

MR DIXON: And the - - -

PN21499

VICE PRESIDENT CATANZARITI: It's already blanked out on the one that's filed, the one we've got.

PN21500

MR DIXON: It has been blanked out. Thank you. I was not aware of that.

PN21501

VICE PRESIDENT CATANZARITI: Neither was I.

PN21502

MR DIXON: I appreciate your Honour's observations. That is the evidence-in-chief, if the Commission pleases.

CROSS-EXAMINATION BY MR MOORE

[9.47 AM]

PN21503

MR MOORE: Good morning, Dr Pratley. I just want to ask you some questions about your affidavit and the reports annexed thereto. I think you say in your affidavit that you're a member of the Statistical Society of Australia. Is that correct?---That's correct.

PN21504

But your - and you understand that they - that society maintains a list of accredited statisticians?---I'm aware of that.

PN21505

You're not one of those?---That is correct.

PN21506

You address in paragraph 8 of your affidavit the fact that you're aware of the Australian Market and Social Research Society. You're not a member of that society, as you go on to say?---That is correct.

PN21507

So it follows, then, that you are not a qualified practising market and social researcher?---That is correct.

PN21508

Now, you set out in your affidavit various matters including the studies you undertook to obtain your PhD, and in short compass without going in any great detail to it, you undertook statistical analysis and design to survey to obtain as part of your PhD?---That is correct.

PN21509

You do not hold though, do you, any formal qualifications in statistics?---Could you clarify the question?

*** ANDREW JAMES PRATLEY

XXN MR MOORE

PN21510

Do you hold a degree in statistics?---I do not hold a degree with the title of statistics in the title.

PN21511

You don't hold a degree in survey methods or design?---That is correct. I do not hold that degree.

PN21512

You don't hold a degree in research methods?---Not a degree by title, no.

PN21513

Thank you. I'm going to ask you some questions about your second report, which is AP5, in which you respond to a report by Ms Bartley. In your first report you concluded that the survey was representative of fast food industry employees, and I'll just read what you concluded in paragraph 169 of your first report. Just bear with me. You concluded that;

PN21514

The employees surveyed, McDonald's and Hungry Jacks, is representative of the fast food industry employees, except in the circumstances where questions specifically relate to hours outside that of standard trade within the fast food industry

PN21515

?---That's correct.

PN21516

In your second report you have modified that conclusion, have you not?---That is correct.

PN21517

If I could ask you to go to the second - I'm sorry, looking at paragraph 13 of your second report of 3 November, which is on page 41 at the bottom of the page. Do you see that?---I have it in front of me.

PN21518

Thank you. In short compass, you have now modified your opinion as expressed in the first report to conclude that the surveys are only representative of McDonald's and Hungry Jacks' employees and of major chains that operate 24/7?---That's partially correct.

PN21519

Is your statement that my - your evidence that my proposition to you is partially correct, could you explain what you mean by that?---In paragraph 15, I extend my opinion to major chains that do not operate stores 24/7, except where circumstances specifically relate to questions regarding - regarding questions about trade of 24/7.

*** ANDREW JAMES PRATLEY

XXN MR MOORE

PN21520

Thank you. I understand that. You do not claim that the survey results, the Hungry Jacks and McDonald's survey results are representative of the views, opinions of employees employed by what you refer to in your report as minor fast food outlets?---My wording is that I believe there is limited representativeness.

PN21521

I think your words are that there's very limited representativeness in respect of the independence?---That is my opinion, yes.

PN21522

So to put that another way, you don't tell the Commission that the survey results are representative of those two parts of the fast food industry?---Is the question to say they're not representative or they're limited in their - - -

PN21523

I just want to clarify, you're not giving evidence to the Commission saying - attesting to the fact that the survey results are representative of those two parts of the fast food industry?---As per my opinion, I believe there is some representativeness of them, by nature of the fact they're in the industry and there are questions around that. But I do not say that there is no representativeness.

PN21524

It's limited or very limited?---That is correct.

PN21525

I understand. You accept that a targetted sample of employees of two organisations, namely Hungry Jacks and McDonald's, who represent as I think you say about 50 per cent of the workforce in the fast food industry, does not capture the potential variability in the views and composition of the fast food industry generally?---It is my opinion that sampling those two organisations would not capture all of the variability within the population.

PN21526

Thank you. If I could ask you to turn to page 47 of your second report and look at paragraph 73, where you say that you;

PN21527

Conclude that the survey undertaken was a non-probability census of McDonald's and Hungry Jacks.

PN21528

This is what occurred, Dr Pratley. Can I ask you if you agree with this. The first stage of sampling involved the selection of McDonald's and Hungry Jacks employees?---To the best of my knowledge.

PN21529

That was an instance of convenience sampling?---I disagree with that and I would see that as speculation for me to answer the question.

*** ANDREW JAMES PRATLEY

XXN MR MOORE

PN21530

The second stage involved - well, I'll withdraw that. The second stage was intended or designed to be a census of the workforce of McDonald's and Hungry Jacks?---I agree.

PN21531

A census was not achieved?---I disagree.

PN21532

Well, a census - you do agree, do you not, that 20 per cent of - only 20 per cent of McDonald's employees responded to the survey?---I disagree with the basis of how you draw the conclusion that a census wasn't achieved.

PN21533

I'm just asking you to direct yourself to the question I just asked?---Yes.

PN21534

Do you agree that 20 per cent of McDonald's employees responded to the survey?---I agree with that, yes.

PN21535

Depending upon how one measures it, somewhere between 6 and 7 per cent of Hungry Jacks' employees responded to the survey?---That's correct.

PN21536

So I'd suggest to you it follows that a census was not achieved of the workforce of those two employers?---I disagree with that.

PN21537

A census is where the views or - I'll withdraw that. A census is where the responses are obtained from all of the persons sampled?---I disagree with that as well.

PN21538

Now there's some debate between you and Ms Bartley in relation to response rates, agree with that?---(No audible reply)

PN21539

There's a disagreement between you and Ms Bartley about the importance of response rates in surveys?---That yes, I agree with.

PN21540

Do you agree with this proposition, that response bias occurs in a survey where the responses to a survey have - the respondents to a survey have different opinions or characteristics to those who do not respond?---Can you please repeat that?

*** ANDREW JAMES PRATLEY

XXN MR MOORE

PN21541

Certainly. Response bias occurs or is present in a survey where the respondents to a survey have different opinions or characteristics to those who do

respond?---There is a difference between those that do and those that don't respond.

PN21542

Yes, that's right. Perhaps I may have inadvertently expressed - not expressed the proper comparison in my reformulation of the question, so I'll put it to you again, Dr Pratley. I apologise for the confusion. Response bias occurs where the respondents to a survey have different opinions and characteristics to those who do not respond?---That sounds correct.

PN21543

It's good practice in surveys for a response rate - the response rate of a survey to be reported?---Is that a question?

PN21544

Yes?---I don't have an opinion on that.

PN21545

Don't you?---No.

PN21546

I'd suggest to you that it's good professional practice in producing a report in relation to the conduct of a survey, to set out clearly what the achieved response rate was?---I agree it can be reported but it's one of many, many factors that could be reported in descriptive statistics.

PN21547

What the response was in a survey is an important factor in appraising or understanding the reliability of the survey conclusions?---I would conclude it's one of but I would not agree with the word "important".

PN21548

I see. Can I suggest to you that the attaining of a high response rate in a survey is a very important outcome because it diminishes the scope for response bias or non-response bias?---That is sometimes true.

PN21549

Can I suggest to you that a very low response rate in relation to a survey is itself evidence of inadequacy in the survey, no matter what other features the survey may have?---I disagree with that.

PN21550

There is no precise definition that you're aware of, of what a very low response rate is. Do you agree with that?---None was provided to me, no.

*** ANDREW JAMES PRATLEY

XXN MR MOORE

PN21551

Well, I assume as a person who believes themselves able to express opinions in relation to these matters that you would have knowledge as to whether or not there was an understood meaning of a low or a very low response rate?---To the best of

my knowledge I have not seen a table published that described the breakdown in response rates to low and very low.

PN21552

It's not a black and white thing. There's not a number which says at 15 per cent that's very low, 20 per cent that's low?---Having not seen a table, I would agree with that sentiment.

PN21553

Would you accept though that a rate of - a response rate of 6 to 7 per cent is properly regarded as a very low response rate in a survey?---I can't agree with that given that I expressed previously I haven't seen a table where very low is defined to be a range of numbers of a single number.

PN21554

Having regard to your experience in the area of surveys and statistics and accepting, as you say, that you've not seen a table which sets out what is precisely a low or very low rate - response rate, do you accept that a response rate of 6 to 7 per cent is a very low response rate in a survey?---Response rates are relative and I can't give an opinion as to what is low or very low without reviewing all of the possible literature on response rates first.

PN21555

So you've not done that? You've not reviewed the literature on response rates?---Not all of the literature on response rates.

PN21556

Can I suggest to you further that a response rate of 20 per cent in a survey is indeed properly regarded as a low response rate so as to render the results of a survey unreliable or potentially unreliable?---I can only answer that as per previous questions where you've asked specifically about percentages and response rates. That is, I cannot draw that conclusion.

PN21557

Do I take it from that that you accept that it may be, that is a 20 per cent response rate, a low response rate so as to render the results of a survey as unreliable to potentially unreliable?---I would accept that anything is possible and that someone somewhere may have defined that particular response rate to be low.

PN21558

Can I ask you to turn to paragraph 97 of your second report. In paragraph 96 you state, which appears to be consistent with your evidence that you gave a moment ago in answer to a question I asked you, that non-response bias assumes that there is a difference in one or more characteristics between those that choose to respond and those that do not in terms of representativeness. You go onto say in paragraph 97;

PN21559

Non-response bias does not necessarily introduce bias.

PN21560

Isn't this the correct situation, Dr Pratley, that without knowledge of the views or the responses of non-respondents to a survey and how they differ or are the same to those who do respond to a survey, one does not know and cannot know if the results of the survey are unbiased?---That is correct.

PN21561

In paragraph 99 you say;

PN21562

Non-response bias assumes that those that didn't participate would have significantly altered the results.

PN21563

Do you accept that that proposition is more accurately expressed in the way - in this way, that without knowledge of the answers that non-respondents would give and how they might differ from those given by respondents, one cannot be sure if the results of a survey are unbiased?---I would say they're different points of view about the same topic.

PN21564

In paragraph 108, you say that;

PN21565

Recent research has called into question the assumed correlation between non-response rate and non-response bias and you cite a number of papers.

PN21566

That literature though, would you accept, has not debunked the principle that a low response rate in a survey may affect the reliability of the survey results?---Can you rephrase that question?

PN21567

The literature and papers to which you refer has not debunked or - has not debunked the understanding that a low response rate may affect the reliability of survey results?---Could you define debunked for me?

PN21568

Certainly. That research or those papers do not contest an underlying proposition that a low response rate in a survey may affect the survey reliability?---That's correct, I don't disagree that it may.

PN21569

That literature accepts or proceeds on the basis that non-response bias is a potentially significant issue in surveys?---That is correct.

*** ANDREW JAMES PRATLEY

XXN MR MOORE

PN21570

Can I ask you to turn to page 51 of your report, your second report, and there's a heading: "4.5.3 Assessing Bias in the Sample", and on that page and over the page down to paragraph 121 you set out an analysis, if I can call it that, that you've

undertaken, and what you've done in brief is you've identified a correlation between the age of the survey respondents in the McDonald's and Hungry Jacks surveys and the age of the respondents according to the payroll data of those employers?---That's correct.

PN21571

You say, well, there's a correlation, there's a consistency, if you like, between – or correlation between the age of the survey respondents and the age of the employees according to the payroll data, and you therefore conclude that this indicates the absence of bias in the survey results, is that a fair summary?---There is also the analysis of demographic breakdown as well.

PN21572

In addition to age, yes. What are you referring to there, the demographic breakdown? Do you mean the location of the employers?---That's correct, yes.

PN21573

On those two criteria?---That's correct, yes.

PN21574

You understand though that the survey that was conducted was not one which was limited to ascertaining demographic information about McDonald's and Hungry Jacks employees?---I understand that, yes.

PN21575

And you understand that the survey sought the expressions of view and preferences and opinion by the survey respondents?---That's correct.

PN21576

Beyond identifying the correlation between the age and the location of employees, did you do any other checks to ascertain whether there existed bias or otherwise in the survey results, or was that the extent of the checks you undertook?---With the data available there was no other information that could be linked between those that responded in the sample and the population data.

PN21577

In concluding, on the basis of this analysis, that there was no bias in the survey results, you've assumed, haven't you, that the correlation that you identified in relation to the location of employees and the age of employees that the same correlation would occur in relation to the expression of preferences and opinions by employees?---The conclusion I've drawn is that, based on there being no evidence of difference in either age or location, that I could see no evidence of bias in the way people responded – those that chose to respond.

PN21578

Yes. What I'm suggesting to you is that that analysis around age and location of the employee, it can't be assumed that any such correlation that you identified would also be replicated in relation to the opinions or preferences of employees?---That is true.

ANDREW JAMES PRATLEY

XXN MR MOORE

PN21579

Can I suggest to you then that the conclusion you reach - and it's set out in paragraph 122 - that "based on the data in figure 1 and no specific evidence of bias within the sample I conclude that the sample is representative of the population – McDonald's and Hungry Jacks", can I suggest to you that that conclusion must be erroneous in respect of the survey questions which sought to elicit the preferences and opinions of employers?---I disagree with that.

PN21580

At paragraph 145 that appears on page 54 of your second report under the heading: Weighting the Data, in the same paragraph 145:

PN21581

When conducting a census there is no logical reason to weight the data. If everyone was to respond, weighting the data would bias the results.

PN21582

But not everyone responded, did they?---Is your question that my sentence is correct or that the outcome was different to the sentence stated?

PN21583

I'll be clearer. What I'm suggesting is that the proposition you're advancing in paragraph 145 assumes that everyone responded to the survey. Is that so?---It's my belief that one would not conduct a census unless they wish to obtain the responses of everyone.

PN21584

This was not a census. You, at best, got a response rate of nearly 20 per cent. Do you accept that?---I think we disagree on whether a census is the application or the outcome.

PN21585

What I'm suggesting to you, and do you accept this is right, that you were striving for a census but you didn't achieve a census?---I believe a census is the process that one undertakes.

PN21586

Can I suggest to you that because you didn't obtain anything close to a 100 per cent response that it necessarily followed that it wasn't a census and as such it was appropriate to weight the data as between the Hungry Jacks and McDonald's results?---I disagree with both of those statements.

PN21587

All right.

*** ANDREW JAMES PRATLEY

XXN MR MOORE

PN21588

COMMISSIONER HAMPTON: If I could just be clear, Dr Pratley, when you talk about a census do you mean in effect everyone in the population, say if it was given an opportunity to express a view?---That's correct, and further to that it's the idea that you wished to have the views of everyone represented if they wished to

participate. So, for me, the definition of a census is not whether or not anyone chose to respond, it was the process set out so that everyone could respond.

PN21589

Is that generally how the term is used?---To the best of my knowledge it's used as a process to capture all possible information about a population, and it's distinctly different to a sample where a sample specifically looks to exclude some members of the population.

PN21590

MR MOORE: At section 4.11 appearing on page 56 you set out some data about the population, and if I can just go through that generally? You state:

PN21591

There are approximately 214,265 people employed in fast food establishments.

PN21592

That's at paragraph 155, and you go on to say in paragraph 156 that:

PN21593

114,765 of those employees are employed by McDonald's and Hungry Jacks.

PN21594

?---That's correct.

PN21595

And in paragraph 159 you've categorised the stores between major chains that operate 24/7 - some stores, major chains that do not operate any stores 24/7, minor chains and independents. Is that a taxonomy or a method of categorisation that you devised?---No, as per paragraph 157 I base that on the Food Industry Foresight breakdown.

PN21596

I see, thank you. Yes, and you go on to say in paragraph 161 that table 1 is an extract showing the breakdown, I follow. If I could ask you to move to paragraph 171, you say that based on the data collected the nine companies have approximately 184,315 employees representing 86 per cent of all employees in the fast food industry, and the nine companies to which you there refer are the nine companies listed in table 2 in respect of which a number appears in the right-hand column, is that right?---That's correct.

PN21597

I see. Beyond the information that you obtained from the Food Industry Foresight Fast Food in Australia 2013 which is set out in your report, you haven't had regard to any other information in identifying the nature or composition of other operators in the fast food industry?---I'm not sure exactly what that question is asking.

*** ANDREW JAMES PRATLEY

XXN MR MOORE

PN21598

I'll rephrase it. Your statement in paragraph 172, the opinion you there express, is based upon two things; one is your view that there was no evidence of bias, that's right?---That's correct.

PN21599

And secondly, it's based upon what you've set out above about the numbers of employees?---In 172, the second part is reference to the fact that the stores in the sampling frame operate some of their stores 24/7.

PN21600

I see?---Not with regards to the other major chains.

PN21601

In preparing your report you did not have any other information at hand or instructions provided to you beyond what you refer to in this report in relation to the make up, composition or operations of other major chains in the food industry?---That is correct.

PN21602

Thank you. You've assumed – would this be correct, you've assumed that the other major chains have the same operations, workforce composition as McDonald's and Hungry Jacks?---I would use the word similar.

PN21603

And you, can I suggest to you, have no basis to assume that there is any such similarity between any of these other chains and McDonald's and Hungry Jacks? Do you accept that?---No, I would disagree.

PN21604

When you say in paragraph 175 that the survey only has limited representativeness to the minor chains, is that because the only thing that is in common between the minor chains and McDonald's and Hungry Jacks is because they are in the food industry?---There's more that draws them together than simply the nature they both sell food.

PN21605

When you say there's more that draws them together than simply the fact that they sell food, to what are you referring?---Limited menu options.

PN21606

Were you provided with information about limited menu options?---I believe in the Environmental Fast Food Scan 2014 it referred to the nature of what fast food industry is defined as.

PN21607

I see, so really what you're saying is that they have in common the fact that they are providers of fast food?---Yes, and that fast food has a definitional aspect around it, as opposed to any food.

*** ANDREW JAMES PRATLEY

XXN MR MOORE

PN21608

So because the minor chains, and McDonald's and Hungry Jacks, both satisfy the definitional requirements related to being in the fast food industry, that's the extent to which you're able to say the survey results are representative of the minor chains, in a very limited way?---In a very limited way that is why I draw that conclusion, correct.

PN21609

If you could turn to page 60 of your report, at paragraph 184, and you repeat what you say earlier; you state your conclusion that the survey only has limited representativeness to the minor chains, and in the next paragraph you conclude that it has very little representativeness of the independents. Then in paragraph 186 you say that based on these conclusions you disagree with the statement by Ms Bartley that it's not possible to draw any reliable conclusions about the population of all fast food employees. Dr Pratley, I don't follow that reasoning, and can I suggest to you that if in light of your conclusions that the survey results are only of limited or very limited representativeness in respect of minor and independents, one can't draw reliable conclusions about the population of all fast food employees, do you accept that?---I accept from my statements in those paragraphs that once we consider all employees, the strongest conclusions that can be drawn will be very limited, but I wouldn't say that nothing can be concluded.

PN21610

I see. They wouldn't be reliable conclusions that one could draw?---It would depend on the definition of reliable.

PN21611

Nothing further.

PN21612

VICE PRESIDENT CATANZARITI: Any further cross-examination?

PN21613

MR MOORE: No, your Honour.

PN21614

VICE PRESIDENT CATANZARITI: Any re-examination?

PN21615

MR DIXON: Yes, your Honour.

RE-EXAMINATION BY MR DIXON

[10.26 AM]

PN21616

MR DIXON: Dr Pratley, at the commencement of cross-examination by Mr Moore you were asked about whether you held certain degrees of statistics and other degrees, and in response to the questions you said "not in title"?---That is correct.

*** ANDREW JAMES PRATLEY

RXN MR DIXON

PN21617

What did you mean by that qualification?---I mean a number of things. Firstly, a degree by its name often has little representativeness as to what subjects are covered. They are course codes. They are not defining characteristics of the course and the material that people do, and having taught at a university for a number of years I can conclude that what one's degree is often has very little to do with their skill and knowledge they may be able to practise or ascertain in that time. Further to that, in the degrees I've undertaken I've always taken the statistics specialisations within those degrees, and my research was effectively a PhD in Applied Statistics. It is by mere good fortune that I did not happen to be in the mathematics programme, a statistics major, when I completed that, because if I had then I wouldn't have had the opportunities to go and work with companies, because they were looking for someone that had a degree of a different title.

PN21618

You were next asked questions in relation to the fact that there was a targeted sample of two organisations, and it was suggested to you that it does not capture all variability?---That's correct.

PN21619

Can you explain further how that relates to the different categories of enterprises that you broke down into the full categories in later aspects of your report?---Yes, so that's correct; the question you're asking is, given those two companies that were selected, how were they similar and how were they different to the other companies that are included in the fast food industry?

PN21620

Yes?---Yes, okay. It's my opinion from the research I've done that those two companies represent broadly all the characteristics of the fast food industry. So for example, where one might draw limitations in sampling or in data that is served is if it doesn't cover specific regions. If it doesn't specific ages of employees, if it doesn't cover specific ways of serving. Three examples of those would be; in the minor chains they don't cover all geographic regions of Australia, in the minor chains they don't have a drive through option, in the minor chains they might not employ across all age groups. It's my opinion that the two companies selected covering 50 per cent of the population of fast food employees, provide very adequate coverage across all areas. Where they are different is in the nature that they are highly organised companies. One cannot run an organisation with 10,000 or 100,000 people unless the systems and structures are very clearly organised and in place. Where I would see a difference in the nature of how fast food organisations are run is that minor chains would have less effective and less efficient systems, and independents may not even have formal systems at all in terms of training, management, line operation duties.

ANDREW JAMES PRATLEY

RXN MR DIXON

PN21621

It was then suggested to you that in respect of your phrase that you used or the terminology a census was conducted of McDonald's and Hungry Jacks, and it was suggested to you that a 20 per cent response rate in respect of McDonald's and a response rate of between 6 and 7 per cent in response from the Hungry Jacks survey, did not mean - meant that you did not achieve a consensus. You said you

disagree that the consensus was not achieved - that the census was not achieved. Can you just tell us why you disagree with that proposition?---Yes. Going back to the conversation that we had earlier, it's my opinion that when you set out to do work you define the characteristics of the process and you don't retrospectively look at the outcome and then change the definition by what you did. In the case of a census the goal is to capture the opinions of everyone. In every piece of - in every census ever conducted there are some people that don't respond. So if the definition is because a certain percentage, be that 0.1, 0.0001 or be it because just one person didn't respond or 80 per cent of people didn't respond, you didn't achieve a census, then we've never achieved a census in this country, and no one worldwide has ever achieved a census. To the best of my knowledge that is not the benchmark that people use. It's the process they go about to undertake the work. Now in the case of the Australian census an enormous amount of time and effort and money is put into that operation. I believe it's the largest peace time operation we conduct and yet still we cannot get everyone to respond. We cannot find everyone. It is simply impossible to achieve. But I would not by that measure tell the Australian census that they have failed to achieve a census because they didn't get everyone to respond.

PN21622

You recall, do you, that you were then asked some questions about response bias and it was - the proposition was put to you that it occurs where respondents have different opinions or characters to those who do not respond?---Yes.

PN21623

Now by reference to the sample frame that was adopted for the survey, and by that I mean McDonald's and Hungry Jacks, can you say whether that principle, if it is a principle, applies and if so how it applies in respect of those two surveys?---Yes. The problem with bias is it's a theoretical concept that's applied when things don't seem to be as they would be desirably the case. So bias can always be applied. The theory of bias can be applied to any research that's ever conducted unless every single person responds perfectly and accurately. So theoretically, it's entirely possible that there is some form of response bias but I saw no evidence within the data that I analysed or within the question set that I looked at that would indicate there would be a form of response bias. But I can't rule out that theoretically it might be possible under some circumstances that it could have occurred.

PN21624

Did the fact that there was a 20 per cent response in respect of McDonald's and a 6 to 7 per cent response in relation to Hungry Jacks, indicate to you that there was response bias?---I don't see a direct relationship between the percentage of respondents and response or non-response bias.

ANDREW JAMES PRATLEY

RXN MR DIXON

PN21625

Can you explain that a bit further?---Both response bias and non-response bias are prefaced around the idea that there is something happening that is either causing people to choose to response to choose not to respond. Now one could not consider a response or a non-response bias in a survey where 100 per cent of

people responded. That would be an impossible outcome to achieve, because if everyone responds we can't say there's either a response or a non-response bias. As I mentioned earlier, I have never seen a survey of a population where everyone has ever responded and so therefore the question of a response or a non-response bias can always be raised, but what it needs to achieve to meet the definition is to show that there was something that either caused people to respond to something that caused people not to respond. I found no evidence in my reviewing of the information and the affidavits of either of those things to be the case, but I also note in my first report that it's theoretically possible that that could be the case.

PN21626

The proposition was put to you that a very low response rate affects the voracity of the survey, and you said you disagreed?---I do.

PN21627

Why?---A response rate is a reflection of the interest of the participants. Where a response rate affects the voracity is where there is an external factor of bias. Now if a factor of bias can be linked to the response rate, then it's a reasonable conclusion to draw that there is a problem of voracity. But simply mentioning it because some people didn't participate by default the conclusion is that the results are biased, wrong or unrepresentative would call into question all research that's ever been conducted in this country.

PN21628

The question was then put to you that a 6 to 7 per cent response in relation to Hungry Jacks' survey was low and you did not disagree with that. What do you say about the fact that there was a 6 to 7 per cent response in relation to Hungry Jacks in respect of response bias?---Again, with respect to response bias, the fact that 6 to 7 per cent responded doesn't draw me to conclude there is response bias. It simply draws me to conclude that the people at Hungry Jacks are less responsive to online questionnaires than the people at McDonald's.

PN21629

As for reliability of the survey?---Again, from the analysis I was able to conduct in that analysis was comparing characteristics in the known true population with the sample, I couldn't find any evidence of that. But I don't rule out that if additional information was provided that I may not overturn that opinion.

PN21630

In respect of the 20 per cent McDonald's survey, what do you say about reliability by reason of that response rate?

PN21631

MR MOORE: Well, I object to the question. My friend needs to confine himself to re-examining, not simply asking the witness to have a second go at different topics. My friend should with respect take the witness to the evidence the witness gave and ask an appropriate question, rather than open up a topic and invite the witness to give fresh evidence on the topic.

ANDREW JAMES PRATLEY

RXN MR DIXON

PN21632

VICE PRESIDENT CATANZARITI: Perhaps you want to rephrase the question, Mr Dixon.

PN21633

MR DIXON: Does the response rate of 20 per cent, approximately 20 per cent in relation to the McDonald's survey cause you any concern in respect of response bias?

PN21634

MR MOORE: I object to the question.

PN21635

MR DIXON: I'll rephrase it because my learned friend asked questions in relation to the relative response rate and challenged the reliability of the survey and what I'm asking this witness, if the Commission pleases, is to give the Commission his opinion as to whether that response rate in any way impacts in his opinion on the reliability of the survey. It arises directly out of cross-examination.

PN21636

VICE PRESIDENT CATANZARITI: Yes, proceed Mr Dixon.

PN21637

MR DIXON: Thank you?---On the basis of that question I have seen no question to conclude that the 20 per cent response rate leads to any problems withdrawing conclusions from the sample to the sampling frame.

PN21638

Dr Pratley, can I then ask you to go to your report, which is attached to your affidavit and go to page 49, and in particular to paragraph 97. You were asked some questions about paragraphs 96, 97 and following, and in relation to 97 you were asked questions about whether you had - whether the knowledge of the views of those who did not respond was relevant, or questions to that effect?---Yes.

PN21639

Now is there anything here in the McDonald's survey or the Hungry Jacks' survey that the absence of knowledge affects your views about the reliability of the surveys?---If the question is asking do I have any evidence that the people that didn't respond would have changed the tenure of the results, my answer is no but I preface that as was noted that one cannot know what those that didn't respond actually think.

PN21640

In relation to paragraph 99, you were asked about non-response bias assuming that those who didn't participate would have significantly altered the results, and you said in answer to a question, "different points of view on the same topic". Do you recall saying that? Paragraph 99?---I don't recall saying "different points of view on the same topic", no.

ANDREW JAMES PRATLEY

RXN MR DIXON

PN21641

In relation to the assumption in paragraph 99 that those who didn't participate would have significantly altered - sorry, that non-response bias assumes that those who didn't participate would have significantly altered the results, what do you say about the legitimacy of that assumption?

PN21642

MR MOORE: Well, I object to that question. It's not a matter arising. The witness has given his evidence in-chief. It's in his report. My friend has an opportunity to deal with matters arising. The question as put is directing the witness to elaborate upon a word or some words in a paragraph of his report.

PN21643

MR DIXON: I withdraw the question.

PN21644

MR MOORE: Thank you.

PN21645

MR DIXON: You were then asked some questions, Dr Pratley, in relation to page 51 and in particular paragraph 109 and following, in respect of the correlation that you identified between age and pay roll data for the purposes of carrying out that analysis. You were asked questions that beyond that correlation there was no other data which could be linked, and it was suggested to you that you assumed that there would be a correlation beyond that that you had identified?---Could you clarify by "assumed correlation"?

PN21646

As I understood your answer, you assumed the correlation of age and location to be the same correlation as to opinions and preferences?---The conclusions I drew in my report are that given the position put by Ms Bartley that there is some form of bias, without being specified what that bias is or what it would cause to happen, I undertook an analysis to assess, based on the information we have, is there any evidence of bias. I ruled out in my professional opinion an evidence of bias. As a result I drew the conclusion that the sample is representative. What I can't conclude is on any given question if the sample was re-sampled, if the sample was larger or if different people had responded or not responded, what exactly would have happened. What I can say is there will always be a correlation between the answers because there is always a correlation in the data.

PN21647

In respect of the question of preferences, to what population did your answers go, the wider population, the total population or the sample population?

PN21648

MR MOORE: I object to the question. I'd like my friend to be more specific in the question. It's not clear to me what evidence. My friend refers to preferences, it's not clear - - -

*** ANDREW JAMES PRATLEY

RXN MR DIXON

PN21649

VICE PRESIDENT CATANZARITI: Mr Dixon, I think the question can't be asked in the way you framed it.

PN21650

MR DIXON: Yes, I appreciate that. As I understood your evidence, Dr Pratley, and correct me if I'm wrong, the questions followed this line. You assumed the correlation in respect of age and the pay roll data to draw certain conclusions?---Yes.

PN21651

You were then asked questions about whether you saw any correlation vis a vis preferences of employees in categories of employment?---And I don't have that information on categories of employment.

PN21652

By reference to preferences of employees, which population group were you referring to?---Right. So my initial analysis in section 4.53 draws the conclusion on the sampling frame and that is the total employees of McDonald's and Hungry Jacks.

PN21653

Do you draw any conclusions in respect of preferences of employees within that sample frame?---It is the logical undertaking that if you cannot see bias within the sample, that the survey results therefore would not be biased and that therefore there would be a correlation, a very strong correlation between the preferences and views of those that responded and the preferences and views of those in the population. Unfortunately, I'm not able to test any of that directly.

PN21654

Can I then draw your attention to paragraph 122 of your report on page 52, where it was suggested to you in relation to that paragraph that you could not draw the conclusion that you there drew, and you said you disagreed?---That's correct.

PN21655

Why?---For the reasons I outlined in my previous answer. Simply that the position was put to me in a report that there was a strong probability of bias. I looked at the evidence available that could be linked, that is publically - well, it is available for all experts to review. I could not find the evidence of bias and so therefore I concluded that the sample data in and of itself is unbiased and so therefore once that conclusion is drawn the logical extension is simply to say that the results are therefore representative to that group, the sampling frame.

PN21656

Dr Pratley, turning then to the question of weighting, you disagreed with the proposition that because not everyone responded to the surveys it necessarily followed that you had to weight the results?---That's correct.

*** ANDREW JAMES PRATLEY

RXN MR DIXON

PN21657

Why did you say you disagreed?---I disagreed because as I outlined in my report in section 4.8 - in paragraph 148 I state "If weighting were to be required this would have been determined at the design stage".

PN21658

Did you see any need for weighting?---Not when the plan was to conduct a census, no.

PN21659

Then in respect of paragraph 172 of your report, where you were asked about organisations of the representative nature of the survey in the major chains that operate some stores 24:7 and you said that you disagreed that there was no basis for the assumption that underpinned that opinion?---Sorry, could you please clarify that?

PN21660

I understood your evidence, it was put to you that you assumed that the other majors had the same operations, or similar operations to those conducted by McDonald's and Hungry Jacks and that assumption was challenged and I understood your evidence to be that you disagree that there was no basis for your assumption underpinning your conclusion?---Yes.

PN21661

Why did you disagree?---I disagreed primarily based on a number of factors. The first is that one of the leading companies in the space of collecting data logically groups these companies together. So it's not an opinion I hold that the major chains are similar, it's an opinion held by food industry foresight that they're similar and that they report data together in that group as per Table 1. So that's the first part of that. The second part of that is that with regards to when I look at how those stores operate when I look at their geographic dispersion, when I look at the nature of their operations, they strike me as very similar in their nature. I could go down to a level of a statistical analysis and prove, based on something as obscure as response time from order to delivery that in fact they are very similar, but that was not something required of me to do that.

PN21662

If the Commission please, that's the re-examination.

PN21663

VICE PRESIDENT CATANZARITI: Dr Pratley, you're excused?---Thank you.

<THE WITNESS WITHDREW

[10.51 AM]

PN21664

VICE PRESIDENT CATANZARITI: Before we take the next witness, I understand that Mr Seck is running late. Have the employers had a discussion about to cross-examine the next witness?

*** ANDREW JAMES PRATLEY

RXN MR DIXON

PN21665

MR DIXON: I'm sorry, your Honour, I couldn't hear.

PN21666

VICE PRESIDENT CATANZARITI: Mr Seck has indicated that he's running late. Have the employers had a discussion about how they're going to cross-examine the next witness?

PN21667

MR DIXON: They're different interests because the first of the reports from the next witness - is your Honour referring to Bartley?

PN21668

VICE PRESIDENT CATANZARITI: Yes, Ms Bartley.

PN21669

MR DIXON: Ms Bartley's response, they're different interests because - - -

PN21670

VICE PRESIDENT CATANZARITI: I understand that, but for my part, I'm not inclined to adjourn. Others can start the cross-examination, but I'll take a short adjournment to discuss with the others, but really counsel running late is not ordinarily a basis - or counsel having a flight delayed - the case was scheduled to start at 9 o'clock this morning. Everybody knew that and we're also intended that we would bat on. Mr Moore?

PN21671

MR MOORE: Your Honour, Just in relation to that, if it assists, I'd seek leave to ask Ms Bartley some additional questions as has occurred a number of times with other witnesses, responding to the reply of the report filed by Ms Pezzullo and also the affidavit that Mr Pratley sought affirmed to complete the circle, as it were, in relation to those bits of evidence.

PN21672

VICE PRESIDENT CATANZARITI: We will take a short adjournment.

SHORT ADJOURNMENT

[10.53 AM]

RESUMED

[11.23 AM]

PN21673

VICE PRESIDENT CATANZARITI: Thank you. Mr Moore proceed. Mr Seck has indicated we should commence.

PN21674

MR MOORE: Thank you, your Honour. Can I just indicate to the Bench that the reply report, if I can call it that by Ms Yu is being filed as we speak and served on the employer parties as I understand it.

PN21675

VICE PRESIDENT CATANZARITI: Thank you, Mr Moore.

PN21676

MR MOORE: I call our next witness Ms Helen Bartley.

PN21677

THE ASSOCIATE: Can you please state your full name and work address for the Commission.

PN21678

MS BARTLEY: Helen Anne Bartley, [REDACTED].

<HELEN ANNE BARTLEY, AFFIRMED [11.24 AM]

EXAMINATION-IN-CHIEF BY MR MOORE [11.24 AM]

PN21679

MR MOORE: Good morning, Ms Bartley?---Good morning.

PN21680

Could you please restate for the transcript your full name and work address?---Helen Anne Bartley, [REDACTED].

PN21681

What is your occupation, Ms Bartley?---Research consultant and statistician.

PN21682

You have a red folder in front of you. I want to ask you, you'll see on the first page there's a table of contents and I should note this folder's been provided to members of the Bench and to the parties at the Bar table. Before I go there, Ms Bartley, have you prepared two reports for use in this proceeding?---Yes.

PN21683

You'll see in this folder there's a table of contents numbered 1 through to 8 and on the right-hand side of the folder you should hopefully see those numbered tabs?---Yes.

PN21684

If you could please turn to tab 1?---Yes.

PN21685

Do you see there a document entitled;

PN21686

Four Yearly Review of Modern Awards Penalty Rates AM2014/305 2015, Expert Opinion Report to Fair Work Commission by Helen Bartley, Bartley Consulting Pty Ltd, 28 August 2015.

PN21687

?---Yes.

PN21688

If you'd just take a moment to look through that report. Can I ask you, is that a copy of the report prepared by you dated 28 August 2015 for use in this proceeding?---Yes, it is.

*** HELEN ANNE BARTLEY

XN MR MOORE

PN21689

Thank you, Ms Bartley. If the Commission pleases, the document that is contained in the folder behind tab 1, which the witness has just identified, contains within it various red strikethroughs.

PN21690

VICE PRESIDENT CATANZARITI: Yes, I've noticed that.

PN21691

MR MOORE: They are the parts of the report by Ms Bartley which we do not propose to read. Now Ms Bartley, the report in front of you, can you confirm is comprised of 26 pages plus six pages of annexures?---The copy of the report in front of me 26 pages.

PN21692

Does it contain the annexures, that is after page 26 does it contain a letter on A J Macken & Co letterhead?---No.

PN21693

It doesn't, I see. Does it contain your curriculum vitae?---No.

PN21694

It just contains the - if I might hand these up to you, there's just been an omission with the folder. If I just hand you - if you just take a moment to look at those, you should have a letter from A J Macken & Co addressed to you of 17 August 2015?---Yes.

PN21695

And your curriculum vitae of two pages?---Yes.

PN21696

Are they the annexures referred to in your report of 28 August?---Yes.

PN21697

Thank you. Ms Bartley, have you read this report recently?---Yes.

PN21698

Can I ask you this question, does the report accurately set out the opinions formed by you on the basis of your specialised knowledge?---Yes.

PN21699

I tender - - -

PN21700

VICE PRESIDENT CATANZARITI: SDA33.

PN21701

MR MOORE: I'm sorry was that SDA?

*** HELEN ANNE BARTLEY

XN MR MOORE

PN21702

VICE PRESIDENT CATANZARITI: 33 or 32 - 33.

PN21703

MR MOORE: 33, thank you.

**EXHIBIT #SDA33 REPORT OF HELEN BARTLEY DATED
28/08/2015 TOGETHER WITH CURRICULUM VITAE**

PN21704

Ms Bartley, if you could turn to page - behind tab 2, you should see there a document entitled

PN21705

*Four Yearly Review of Modern Awards Penalty Rates AM2014/305 2015,
Expert Opinion Report to Fair Work Commission by Helen Bartley, Bartley
Consulting Pty Ltd, dated 26 October 2015.*

PN21706

?---Yes.

PN21707

If you turn to the - confirm for the Commission that it is comprised of 11 pages?---Yes.

PN21708

Twenty-six paragraphs?---Yes.

PN21709

Can I inquire whether the folder has within it any annexures behind following that - - -?---Yes, both annexures.

PN21710

The first annexure being a letter of A J Macken & Co to you of 21 October 2015?---Yes.

PN21711

The second annexure being your curriculum vitae?---Yes.

PN21712

Thank you. Again, Commissioner - yes, I understand. Thanks I haven't forgotten, thank you. Again, the report Ms Bartley of 26 October 2015 contains within it redactions marked in red strikethrough, they are not read. Can I also in addition to those redactions draw the Commission's attention to paragraph 25, which is not struck through, we do not read that paragraph. Now Ms Bartley, I think there's a correction that you may want to make to this report. Could I ask you to go to page 8, paragraph 19?---Yes.

PN21713

Which commences "In paragraphs"?---Yes.

PN21714

Should that sentence commence in paragraphs 128, 129 and 131, "Dr Pratley appears"?---Yes.

PN21715

Thank you. With that correction, Ms Bartley - just excuse me a moment. With that correction, does that report accurately set out the opinions formed by you on the basis of your specialised knowledge?---Yes.

PN21716

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

PN21717

VICE PRESIDENT CATANZARITI: SDA34.

**EXHIBIT #SDA34 REPORT OF HELEN BARTLEY DATED
26/10/2015**

PN21718

MR MOORE: Thank you. As foreshadowed before the adjournment, I seek leave to ask the witness some further questions dealing with Ms Pezzullo's reply report, and also Dr Pratley's affidavit.

PN21719

VICE PRESIDENT CATANZARITI: Yes, Mr Moore.

PN21720

MR MOORE: Thank you. Now if you could turn to tab 4 please, Ms Bartley. Do you have there a report on Deloitte Access Economics letterhead entitled;

PN21721

Reply evidence to union opinions for use by Fair Work Commission for Four Yearly Review of Modern Awards Penalty Rates AM2014/305, Meridian Lawyers, September 2015.

PN21722

?---Yes.

PN21723

Have you read that document before?---Yes.

PN21724

Thank you. You will have noted in reading this document that ---?---Correction, I've read the sections of the document that pertain to my report.

PN21725

Thank you. If I could ask you to turn to that section, if you could go to page 16 of that report, the numbers are in the bottom right, do you see there shortly below the top of the page "3.2 Helen Bartley, re weekend report", that heading?---Yes.

PN21726

Is the section of the report that you have read section 3.2 and section 3.3, which is over the page?---Yes.

PN21727

I want to ask you some questions about the contents of that part of the report. Looking at page 16, under the heading "3.2.1 Survey approach", there's some words in italics, and then in the first dot point Ms Pezzullo states on the second line;

PN21728

The response rate was 29 per cent and as argued in sections 2.1.2 and 3.1.1 above, this is considered a good response rate that would not suffer from significant non-response bias.

PN21729

Just pausing there, could I invite you to please respond to that statement by Ms Pezzullo?---Well, a 29 per cent response rate suggests to me that there's 71 per cent of people who were invited to participate in the survey who did not respond, and I would be concerned that the implications of that non-response that that in fact could create significant non-response bias.

PN21730

The sentence goes on after the word "bias", Ms Pezzullo states;

PN21731

nor would the online approach jeopardise the robustness of findings.

PN21732

Could you please respond to that statement by Ms Pezzullo?---An online panel survey, in my understanding of the approach used in this survey, is the - it in itself a subset of a population. So from that point of view and particularly given the high non-response rate, it might - let me think about my words. I would be concerned about the reliability of the findings using that approach and given the non-response.

PN21733

In the following paragraph Ms Pezzullo states;

PN21734

Respondents are not so available that they all drop everything and participate, yet the internet is optimal for enabling people to respond and hence is valuable in ensuring higher participation, which is what is desirable.

PN21735

Can you respond to that statement?---Yes. I would agree that it is a way to reach people but as evidenced with this survey, the response rate was not high as a result of using an online survey methodology.

*** HELEN ANNE BARTLEY

XN MR MOORE

PN21736

Ms Pezzullo goes onto state in the next sentence;

PN21737

There is no issue with convenience in survey. It is an asset and survey typically don't aim to be inconvenient in their approaches.

PN21738

Could you please response to that statement by Ms Pezzullo?---A convenience - the idea of convenience sample is that we sample people because they're convenient or easy to reach in that sense, and yes it may be cost effective but it doesn't necessarily mean it's the most rigorous or representative way of reaching conclusions about a population from a sample. In fact, there are dangers as the Bureau of Statistics and the National Statistical Survey Service note in in fact drawing conclusions from convenience samples.

PN21739

In the following paragraph Ms Pezzullo states;

PN21740

Overall, the survey approach was an effective cost effective approach with a representative sample, with a balanced participation rate.

PN21741

Could you please respond to her statement there that the survey had a representative sample with a balanced participation rate?---Number one, I'm not sure how we can be confident that the sample's representative if we've only had a response rate of 29 per cent and we don't know about the remaining 71 per cent who didn't respond to the survey. Second, the term "a balanced participation rate" in statistics is not a term that I have come across before.

PN21742

In the next section there's section (b) in italics, and if you take a moment to read the part in italics in the first dot point, if you just read that to yourself please, Ms Bartley? You've read that?---Yes.

PN21743

Thank you. You'll see under the first dot point there's an indented dot point in which Ms Pezzullo states:

PN21744

If these respondents do not answer open-ended questions legitimately the rest of their answers are less likely to be reliable.

*** HELEN ANNE BARTLEY

XN MR MOORE

PN21745

How do you respond to that statement?---I disagree with it, and in fact in my extensive experience, which includes running a number of online surveys of which I have a number happening with myself at the moment, commonly people don't respond to open-ended questions in online surveys because they require more work, they're more burdensome to answer and they can't be answered quickly, but I don't believe that it invalidates the remaining data in any survey.

PN21746

In the next dot point Ms Pezzullo states:

PN21747

There was a surfeit of completed surveys. 975 responses were randomly discarded to provide the desired 2100 completed surveys, so it makes sense to remove the lower quality ones first and then randomly discard.

PN21748

Could you please tell the Commission how you respond to that statement?---To be honest I'm startled by that statement because I'm not sure, if you were trying to demonstrate that the results of a survey were reliable, and you wanted to report them with a degree of statistical accuracy and confidence, why you would actually remove 975 responses and reduce your effective sample size, thus increasing the margin of error of your results, assuming the sample was representative.

PN21749

Thank you. In paragraph 23 of your report of the 28th of August you say this - I'll read it to you - it's at page 10 of your first report behind tab 1, and you're here addressing the Pezzullo report, and you say that:

PN21750

Due to a number of limitations with the research I cannot be confident that reliable conclusions can be drawn from the surveys described in chapter 4 of the Pezzullo report about the composition working hours attitudes and experiences of weekend and non-weekend workers listed above as items (a) to (d).

PN21751

Is your opinion in that regard altered having read the contents of section 3.2 of the Pezzullo reply report?---No.

PN21752

If you turn to page 17?---At my report?

PN21753

I'm sorry, behind tab 4 of the Pezzullo reply, on page 17 there's a heading: Helen Bartley re PIA Report. Under the heading in italics, which reads:

PN21754

(b) Bartley says the 5.6 per cent survey response rate is low, which could introduce bias into the findings of confidence intervals.

PN21755

Ms Pezzullo then states as set out in the first dot point. Could you please read that to yourself? Have you read that?---Yes.

HELEN ANNE BARTLEY

XN MR MOORE

PN21756

Can you please tell the Commission how you respond to that dot point?---Again, that concerns me, and I think it's well-documented in the literature, my training

and I concede to the Australian Bureau of Statistics and other reputable organisations, and actually what we should be focussing on in designing research is achieving a representative sample using rigorous sampling methods rather than focussing on getting as many as we can, if I can use that term.

PN21757

Thank you. If you could turn back to tab 1, which is your report of the 28th of August, and go to page 12. At paragraph 30 on page 12, and in this section you're here addressing the Pharmacy report, and you state:

PN21758

I cannot be confident that reliable conclusions can be drawn from the survey described in chapter 3 of the Pharmacy report about the characteristics of Australian pharmacies, their business operations, the views of Australian pharmacy proprietors about the impact of the PIA - Pharmacy Industry Award, and the preferences of Australian pharmacy proprietors.

PN21759

Having read section 3.3 of the Pezzullo reply report, which is behind tab 4, is your conclusion as previously stated on the 28th of August altered in any way?---No, it hasn't been altered.

PN21760

Thank you. I might ask you some questions now about – return to tab 5 – you should have in front of you there an affidavit of Dr Andrew Pratley dated the 3rd of November 2015?---Yes.

PN21761

I want to ask you some questions about that, but, firstly, have you read that affidavit?---I have.

PN21762

If you could please go to – and I'll use the page numbering down the bottom of the page in the middle – and if you go to page 47?---So for example where it says page 47 of 60, that's their numbering?

PN21763

Correct. This is exhibit AP5 to Dr Pratley's affidavit, and this is a report prepared by Dr Pratley in which he responds to your report of the 28th of October. You've read this report?---Yes.

PN21764

Now if you go to page 47?---Yes.

PN21765

At paragraph 73 Dr Pratley states:

PN21766

I conclude that the survey undertaken was a non-probability census of McDonald's and Hungry Jacks.

PN21767

Do you see that?---Yes.

PN21768

Could you please tell the Commission how you respond to that?---Several aspects with that statement. First, I would agree with Dr Pratley that it's non-probability, that in other words the organisations were not selected by chance and that nor were the employees. The intent may have been to achieve a census, that is, a survey of every member of the two target populations, being McDonald's and Hungry Jacks employees, but a census was not in fact achieved, as previously talked about, because there is non-response to both of those surveys, so I disagree that it was a non-probability census, when you put those two words together.

PN21769

Thank you, Ms Bartley. If you could please turn over to page 48, at paragraph 77 Dr Pratley states:

PN21770

Ms Bartley does not supply a reference for the definition of low and very low response rates.

PN21771

On what basis, Ms Bartley, did you describe the response rates as low and very low?---Based on my experience, both collecting data myself and reviewing other research projects, and I've worked for myself since 2003, and since 2004 I've actually documented all the projects I've worked on in an inventory, which averages about 25 survey research projects a year, and throughout those projects I would have in various surveys achieved response rates around, say, 10 per cent, which has been very disappointing to me, and close to 90, and in a couple of cases I can think of where I was surveying local councils achieved up to 100 per cent – well, 99 point something, so in the scale from which I've collected data and reviewed survey work that I've been involved in, these would definitely be at the low or very low end of the scale, the response rates achieved for these surveys.

PN21772

Where you've received a high response rate how large was the population?---There's a couple of examples that come to my mind. One is a population of local councils and trying to reach particular people within the local councils, so population was less than 100, and the other surveys where probably we're looking at 70, 80, 90 member organisations with incentives and with appropriate follow up, and use of appropriate data collection methods to reach the people in the first instance.

HELEN ANNE BARTLEY

XN MR MOORE

PN21773

So where you said the organisations you gave them incentives to participate in the survey?---It might be, for example – and I don't tend to work in a zone that provides cash or card incentives, but it would be more, in a corporate environment, reports or feedback on the results of the surveys, and I guess more important than the incentives is really using the method of data collection to reach

people, and being prepared to follow up and to gather that data, so calling people – if it's a telephone interview survey, for example, calling people different times of the day, different days of the week, to reach them and converse essentially a non-response into a survey response.

PN21774

DEPUTY PRESIDENT ASBURY: Ms Bartley, when you just said before that you didn't think a census had been achieved because of the non-response, did you mean the level of the non-response or the fact there was - - -?---The fact that there was non-response.

PN21775

How many surveys would there be a 100 per cent response?---In fact there's very few, including our annual census of population and housing, even that has non-response, when people are compelled to fill it in, so the term 'census' is in a sense I guess a theoretical term that is used to describe a situation in which everyone does complete the tool, but in fact the reality is most of the data that we would collect in the social sciences, and market and social research sciences, is in fact survey data with non-response. So the intent, as with the census of population and housing, is to achieve 100 per cent coverage, but the fact that we don't means that there is the potential to – we don't know about that non-response.

PN21776

VICE PRESIDENT CATANZARITI: Yes.

PN21777

MR MOORE: If you could please turn to page 49, Ms Bartley, and there's a section headed 4.5.2 Non-Response Bias, and at paragraph 96 and following, Dr Pratley states as follows:

PN21778

Non-response bias assumes that there is a difference in one or more characteristics between those that choose to respond and those that do not in terms of representativeness. Non-response does not necessarily introduce bias. The bias in non-response bias is not due to the fact that there is a level of non-response, or even the level itself. It is the underlying reason there is non-response.

PN21779

Then over the page at paragraph 99, he states:

PN21780

Non-response bias assumes that those that didn't participate would have significantly altered the results.

*** HELEN ANNE BARTLEY

XN MR MOORE

PN21781

Could you please respond to those paragraphs for the Commission?---Sure. I'd take them one at a time. The first one in paragraph 96 where Dr Pratley says non-response bias assumes that there is a difference in one or more characteristics between those that choose to respond and those that do not, I think that needs

qualification; where it assumes that there is a difference in one or more characteristics, and those characteristics are the questions that were asked in the survey, so the difference is with respect to what the research is about. So that's how I would answer that one. I agree that non-response does not necessarily introduce bias. The point is we don't know, so we can't be confident that it hasn't, so that's how I answer paragraph 97. I'm a little bit confused by his statement in paragraph 98, but I again refer – if we have non-response to a survey, the bottom line with respect to the questions that were asked or intended to be asked of those who didn't respond is that we can't be confident of what their answers are, or were, because they haven't responded. And the last paragraph, 99, assumes that those didn't participate – it assumes non-response bias – that could be correct, so we can assume that if they didn't participate they may have altered the results, but we don't know, because again we don't have the answers to the questions that were intended to be asked of those people.

PN21782

Thank you, Ms Bartley. Can you please go to page 51? At the top of that page there's a heading 4.5.3 Assessing Bias in the Sample, and there's then five paragraphs that appear below that heading and figure 1?---Yes.

PN21783

And then over the page, Dr Pratley continues from paragraphs 114 through to 121. He then states by way of conclusion at 4.5.4, he states:

PN21784

Based on the data in figure 1 and no specific evidence of bias within the sample, I conclude that the sample is representative of the population McDonald's and Hungry Jacks.

PN21785

Could you please tell the Commission your response to that statement in conclusion?---The statement is reasonable with respect to the variable age because that's what he made the comparison between, the sample and – or in his analysis that's presented in paragraphs 109 to 121, but we don't know with respect to the questions that were asked what the answers would have been of the non-response, so we don't know whether the achieved sample is representative of the overall population because we don't know what the answers would have been to those who didn't respond. So in a sense I'm saying that age perhaps, or any other variable that we may know – gender or location, we can make all those comparisons, but ultimately it's the answers that those people would have given if they had've responded, in a theoretical sense, that make the difference.

PN21786

DEPUTY PRESIDENT ASBURY: But Ms Bartley, if we know from the range of information about the McDonald's survey and the Hungry Jacks survey, leaving aside it's only McDonald's and Hungry Jacks and it may not pertain to other entities in the fast food industry, but, correct me if I'm wrong, in the data about that survey we know how many employees in total were surveyed?---Yes.

HELEN ANNE BARTLEY

XN MR MOORE

PN21787

We know from the company zone data how many in each classification that they employ in total?---Yes.

PN21788

And we know it went to all those employees?---Yes.

PN21789

The ones that responded, we know their gender, we know their age, we know where they live, we know are they students, are they full-time or part-time students, are they not students at all?---Yes.

PN21790

We do know a range of things?---Correct.

PN21791

And from my untrained eye I can see a spread, the majority are casuals, the biggest lot of answers are from casuals, you can see. How would you say that the fact we don't know what people who didn't respond would've said should outweigh what we do know, because theoretically how could we ever know what people who don't respond to a survey would've said if they did respond?---You're absolutely right. The key things are - the attributes that you've talked about that we know about, and even we know about from the non-respondents, presumably from payroll or employment records such as gender, age, the address, they're actually traits of an individual, demographic characteristics or whatever you like to call them.

PN21792

The survey was about people's attitudes and perceptions and so on. We don't know – and there may well be differences between the people who choose to participate and provide opinions on all of this sort of stuff than those who didn't. We're talking about the opinions, and that's what really matters if we're trying to make an assessment of the representativeness of the sample.

PN21793

It's with respect to the variables that we are undertaking the research on, so we can know everything we want to demographically; we can make all these comparisons and parallels between the respondents and non-respondents, but ultimately – and particularly when we're talking about issues that may or may not be controversial, and I'm not making a statement about the issue that we're here to discuss today, but in a general sense there can be notable differences between people who respond and who don't respond, and in fact in a number of studies often follow up is done to attempt to try and understand why people don't respond to surveys, which sometimes can relate to the issue at stake.

PN21794

DEPUTY PRESIDENT ASBURY: Thank you.

*** HELEN ANNE BARTLEY

XN MR MOORE

PN21795

MR MOORE: Ms Bartley, could you please turn to page 54 of Dr Pratley's affidavit and at paragraph 145, at the bottom of the page, he states;

PN21796

PN21797

When conducting a census there is no logical reason to weight the data. If everyone was to respond, weighing the data would bias the results. This survey was conducted as a census with the opportunity for all employees to respond.

PN21798

Could you please respond to that statement by Dr Pratley?---Sure. Yes, the aim was to achieve 100 per cent coverage and no, that was not achieved. In fact the response rates were different between the two groups and if - I haven't got a calculator or the figures exactly in front of me but as I recall the McDonald's employee population probably represented about 90 per cent or 80 per cent, I can't remember the exact figures, of the population and the Hungry Jacks were the remainder, if we call the population the employees of Hungry Jacks and McDonald's. So we know that McDonald's were say about 90 and Hungry Jacks was 10, for argument's sake if I can use those figures. In the survey we got - I can't remember the exact response rate for the McDonald's survey, but I do note that it was higher than the response rate for - than the McDonald's survey. So what that means is we're actually over-representing in that sample the McDonald's employees. Now if there was a difference between the results obtained from McDonald's employees and Hungry Jacks' employees the feedback from McDonald's employees was going to outweigh in a biased way the feedback from the Hungry Jacks' employees. So really what should happen is if the population percentages were 90/10, McDonald's/Hungry Jacks, in the sample you would post weight the data so that the sample was 90/10 as well. So that's my point around that issue.

PN21799

Thank you, Ms Bartley. One last question, if you could please turn the page to page 55 and under the heading "4.10 Conclusion of representativeness of the sample to sampling frame", Dr Pratley states;

PN21800

Having reviewed the data a second time under the revised assumptions, I conclude there is no evidence of bias in the sample.

PN21801

He then states in paragraph 152 the bases of his conclusion, which I invite you to read to yourself, Ms Bartley?---Yes.

PN21802

Then over the page at paragraph 153 to conclude that section, Dr Pratley states;

*** HELEN ANNE BARTLEY

XN MR MOORE

PN21803

As a result of concluding there is no evidence of bias in the sample, it is my opinion that the sample is representative of the sampling frame with regard to reasonableness.

PN21804

Ms Bartley, would you care to respond to those paragraphs of Dr Pratley's affidavit?---Overall and to answer question - respond to paragraph 153 first, my general conclusion is that I cannot be confident there's no bias. I'm not saying there is and I'm not saying there isn't. I'm saying I cannot be confident. Now reflecting back on items 1 to 4 in 152;

PN21805

Non-response does not necessarily introduce bias,

PN21806

That's reasonable.

PN21807

I could find no underlying reasons for bias as outlined in the Bartley report.

PN21808

Well, equally, we don't - the point is we don't know and that's how I respond to the point 2.

PN21809

Recent research is called in to question the assume correlation between non-response rate and non-response bias.

PN21810

There is probably a far more significant body, in my experience, in reading that suggests in fact the fundamental thing that we should be concerned about as social researchers is maximising our response rates to surveys to minimise the effect of non-response and avoid the danger of drawing conclusions based on surveys with low response rates. So I accept that he might have found some evidence to the contrary but standard best practice in our industry and if you look at the Australian Bureau of Statistics and other reputable organisations, I think they support a different viewpoint.

PN21811

When I reviewed the data of the sample age group compared to the population by age group.

PN21812

Well, I've mentioned yes, I accept that he's found that but that doesn't necessarily mean that with respect to what the surveys were about, that there were or were not differences between the respondents and the non-respondents.

PN21813

Thank you, Ms Bartley. If you just wait there please.

HELEN ANNE BARTLEY

XN MR MOORE

PN21814

VICE PRESIDENT CATANZARITI: Mr Seck.

CROSS-EXAMINATION BY MR SECK

[12.03 PM]

PN21815

MR SECK: I apologise to the Commission for my delay. I am grateful for the indulgence of the Commission. Ms Bartley, my name's Michael Seck, I'm the counsel for the Pharmacy Guild of Australia. I'm going to ask you some questions in relation to your report, specifically on the two reports which have been produced by Ms Pezzullo of Deloitte. Now in your report, Ms Bartley, I'm talking about the one which is dated 28 August 2015, in answer to question 2, you make some references or criticisms of the survey which was conducted through Deloitte in relation to the attitudes and experiences of Australian workers in relation to weekend work. Can I ask you to go to paragraph 24 on page 10 of your report. There you deal with the use of the internet as a method for undertaking the survey. One of your criticisms is that the internet may not necessarily be open to be used by the entirety of the target population. Am I right in my understanding?---Yes.

PN21816

Are you aware of the use of internet in Australia?---Yes.

PN21817

You've read Ms Pezzullo's reply to your report, that's right?---Yes.

PN21818

Have you also read her reply to other reports as well or only just to your report?---Can you draw me to the right sections?

PN21819

Sure?---I would have read, if she'd cross-referenced within my reply the relevant paragraphs back - I think that was the one in which - - -

PN21820

Could I take you to page 12 of Ms Pezzullo's response?---Sorry, I'm just - - -

PN21821

Tab 4?---Tab 4, thank you.

PN21822

If you go to the section which is 3.1.1?---Yes.

PN21823

You'll see that there's a large bullet point on the left and then two sub bullet points. Do you see that?---Yes, yes.

*** HELEN ANNE BARTLEY

XXN MR SECK

PN21824

Ms Pezzullo, in her response says that she cites her report from the Australian Communications and Media Authority that 92 per cent of Australians use the internet?---Yes.

PN21825

Are you aware of that study?---In a broad sense, yes, and those statistics are consistent with other statistics I'm aware of.

PN21826

You accept those statistics, that's right?---In a broad sense, yes.

PN21827

That 81 per cent of homes have an internet connection, that's right?---I won't challenge those.

PN21828

You would acknowledge that that demonstrates that the internet is internet use in Australia for a significant majority of Australians is a common thing?---Yes, internet access.

PN21829

Even if - you would also from your experience acknowledge that people can access internet - the internet outside of home, for example at the library, yes?---Yes.

PN21830

They could access it using their mobile devices as well?---Yes.

PN21831

So the 81 per cent figure quoted there, that 81 per cent of homes have an internet connection doesn't necessarily capture, in your understanding, all the potential ways that individuals may access the internet?---It may, it may not. We don't know and I have to look at the data to find out if people are the same people who are using the library and mobile device, yes.

PN21832

But certainly the figure 81 per cent of homes having an internet connection doesn't necessarily capture the entire universe of access to the internet in Australia, because there are multiple ways of accessing the internet that through a home connection. You acknowledge that?---I acknowledge there's multiple ways, yes.

PN21833

If you go back to your report, you say that the internet survey method may not necessarily capture all the members of the target population?---Yes.

*** HELEN ANNE BARTLEY

XXN MR SECK

PN21834

Now in your understanding what was the target population that Ms Pezzullo was seeking to capture in conducting the survey?---She - now I'll have to refresh my memory. Sorry, I'm just trying to find my sections in my report to refresh my

memory. It was retail shop employees and I would have to read the detail of her report again for the specifics.

PN21835

I want to put to you what was sought to be captured was the attitudes of the general working population above the age of 18?---Okay.

PN21836

Do you accept that?---I need to review - I would like to review her report further to check my understanding of her - - -

PN21837

If you go to Ms Pezzullo's report - - -

PN21838

MR MOORE: Can I just - sorry to interrupt my friend. As there's two Pezzullo reports it might be useful to avoid any misunderstanding if my friend just clarifies which report.

PN21839

MR SECK: I will and I'm grateful to my learned friend for raising that issue. Can I take you to - I'm going to describe the two reports that Ms Pezzullo has - the first one is the weekend work report?---Yes.

PN21840

The second one as the Pharmacy Award report. Do you understand that distinction, Ms Bartley?---Yes, yes, absolutely. It's just locating - I'm just getting my head around the tabs, sorry.

PN21841

If you go to the weekend work report of Ms Pezzullo?---Yes, sorry, I've got that now.

PN21842

Tab 3?---Yes.

PN21843

I'm using the page numbers, the big page numbers in the bottom right-hand corner, Ms Bartley?---Sure, yes.

PN21844

Go to page 41?---Yes.

PN21845

You'll see that Ms Pezzullo there sets out the introduction to the survey results of analysis?---Yes, weekend work.

PN21846

You do recall reading that part of the weekend work report?---I do, yes.

PN21847

You'll see in that part of the report it identifies the population sample and talks about weekend workers and non-weekend workers?---Yes, I've got it, thank you.

PN21848

If you go down to the questions, it says;

PN21849

The questions in the survey deal with the time use patterns for weekend workers, their frequency and duration of weekend work and their attitudes to weekend work. Both weekend and non-weekend workers were asked questions about their time use patterns and use of businesses staff by relevant award workers.

PN21850

?---Yes.

PN21851

That's your understanding of the target population?---Yes.

PN21852

You say that the use of the internet as a survey as a survey tool could lead to bias results?---Yes.

PN21853

My understanding of your response is that it's because it's not everyone necessarily has access to the internet. Is that correct?---Several factors. That's one of the factors but not necessarily the main factor.

PN21854

Let's deal with the fact that you don't have - people don't have access to the internet. You would acknowledge that 91 per cent of people saying that they have - they use the internet is reasonably high for the purposes of conducting a survey?---Yes.

PN21855

Other methods of not necessarily going to have a similar level of usage. You would agree with that?---What do you define as other methods?

PN21856

Let's talk about the other methods which are identified. Paper methods, that assumes that people will receive something in the mail at home?---I wouldn't say that's lower than an internet survey.

PN21857

In terms of paper? When you say that's lower than the internet - - -?---No, I would say it's not.

*** HELEN ANNE BARTLEY

XXN MR SECK

PN21858

Pardon me. Doesn't it assume, Ms Bartley, and I'll come back to this, that people will have a post box to where the survey can be sent?---Yes, or they - either at their address or at a post office for example.

PN21859

That's not necessarily going to cover everyone because not everyone has a post office box or a home to which the survey can be sent. Do you acknowledge that?---No, I don't actually. I would say the coverage would be greater.

PN21860

In relation to telephones, you would acknowledge not everyone has a telephone?---That's true but more people are likely - the statistics are still, as I recall, higher for access to a telephone and I include mobile devices as well as landlines, better than they are for internet.

PN21861

In your experience, not everyone has a home telephone, that's right?---That's correct.

PN21862

Not everyone has a mobile telephone, that's right?---That's right.

PN21863

There might be some people who don't have a telephone at all, that's right?---There may be.

PN21864

In your experience, when telephone surveys are conducted, are they generally calls to the home phone number?---Not necessarily, no.

PN21865

When it's a call to a mobile, in your experience, is it the case that people do not answer the phone because they might be busy doing some other activities, because they're outside of home?---Not at all, no. In fact quite the opposite, in my experience.

PN21866

Would you agree that 90 per cent of people using - 92 per cent of people using the internet give sufficient confidence that it's going to cover the target population?---I'm just trying to think how to best answer that because the internet is step one in a number of steps to actually reach that target population. So as far as step one goes, yes, I've got the internet but there's a few things that have to happen before we can actually reach the target population.

PN21867

They have to have access to the internet, right?---And they have to use the internet.

PN21868

They have to use the internet, that's correct?---Yes.

PN21869

If 92 per cent of Australians are saying that they use the internet, that kind of gets you past step one and step two, doesn't it?---And they have to access online survey panels.

PN21870

Now when you say they have to access online survey panels, you understood that the survey firm which was engaged by Deloitte to conduct the survey had a large survey sample of 282 persons, that's right?---Yes.

PN21871

You understood that they were paid, that's right?---Yes.

PN21872

When one chooses from a number of 282,000 persons, you would agree that's a large sample size?---Yes, but I want to qualify that.

PN21873

Please qualify if?---And that is large doesn't necessarily mean representative.

PN21874

That's the second part, so you need to ascertain when you say representative you're seeking to ascertain whether or not the demographic attributes are suited for the purpose of the survey which is being conducted. Is that right?---That sample represents the target population of interest.

PN21875

But just looking in terms of the use of the internet, you agree that 282,000 persons is a large sample size, that's right? Putting aside the question of representativeness?---Yes, okay.

PN21876

Now you compare it to other methods in terms of paper methods and telephone, I've already gone through a few of the issues there. If you go to page 12 of Ms Pezzullo's reply?---Just remind me of the tab. Tab 4, thank you.

PN21877

Do you have that?---Yes.

PN21878

If you go back to those bullet points I took you to beforehand, Ms Bartley, and go to the second indented bullet point which starts, "Paper based"?---Yes.

PN21879

You'll see that says;

PN21880

Paper based self-completed or telephone surveys could have a larger bias, for example, in that they may be biased towards people who are at home more often, or people who are unemployed.

PN21881

Do you accept that?---Possibly, I mean it could possibly be the situation.

PN21882

This is telephone surveys are more likely to be introduce interviewer bias. Do you accept that proposition?---Well, of course, because you've got an interviewer collecting the data but it doesn't mean that the data will biased. If the interviewer is well trained, but that's - - -

PN21883

And that's something you don't necessarily know, do you when you are actually analysing survey results?---Whether the interviewer's - - -

PN21884

Whether or not there is interviewer bias?---Well, the data that I would collect and then I commission field work, is the term we use, I would only commission that field work from quality accredited and professionally trained and experienced ISO standards interviewers. So, but I would have a lot more faith in that data, knowing that the interviewer has actually reached the person who I want to be interviewed.

PN21885

But you're not necessarily going to know whether or not the interviewer has asked questions in a way which might introduce bias, will you?---Only by listening in on - which I can do, and do.

PN21886

But you can only do that if you're conducting the survey yourself, is that right?---Yes.

PN21887

If you're not conducting the survey, it's hard to say that as an outsider. That's correct, isn't it?---Yes, of course, but your trust has to be there and in the same way if I can add, when it's a self-completion questionnaire, I want to be sure that the person who has responded to it is the person who I desire to respond to it.

PN21888

One of the other problems with using the telephone is that someone may not necessarily pick up the phone or that person may say I'm busy and that person needs to be rung back at a later time, that's right?---Yes.

PN21889

One of the advantages of the internet is that persons who complete the survey can complete that at a time that suits them. Do you agree with that?---I agree that in practice and based on my experience, if they look at it once and don't want to proceed with it, they'll abandon it and the chance of coming back are negligible.

*** HELEN ANNE BARTLEY

XXN MR SECK

PN21890

That may be the case with people who decide not to participate after receiving a telephone call. That's right, isn't it?---Yes, but you're more likely to convert a non-response to a response via a telephone interview method, for example.

PN21891

When you say you're more likely to convert a response?---A non-response.

PN21892

A non-response. It may be the case that what - do you have any evidence to demonstrate that the conversion rate is particularly high?---My evidence would be based on, for example, in the telephone interview survey that I would conduct, and I've got one in field at the moment, where we allow multiple calls to reach members of the target - so this is a customer survey if you like - and we've selected a sample, we will make multiple attempts to reach the person. So the first attempt might be no answer. We ring back and go we need to speak to Mr Smith. Mr Smith's not there. Can we make a time to reach Mr Smith. Yes, Mr Smith will be there at 6pm. Okay, we'll interview Mr Smith then. So we've put that effort in to convert that non-response to a response.

PN21893

You could do similar things with an internet survey by sending various emails. Would you agree with that?---Yes, but with less effect, in my experience.

PN21894

Is there any issue associated with making a payment to participants in a survey?---Yes, there can be. In our industry, in fact it's just come up recently, in our professional standards, one is that incentives should never in any way be related to the subject of research. That's European and Australian and pretty much industry standard because of the impact that could have on swaying people to say one thing rather than another. That would be one issue.

PN21895

Just pausing there Ms Bartley, I thought I'd interrupt you. When you say it may sway them to give a particular answer, that's assuming that the payment is to induce them to give a particular answer, is that right?---No, no, not at all. An example, I'm just going to pull something random out of the hat. Say we're doing a survey for Tattslotto or a lottery company and the lottery company says I'll give you 500 lottery tickets so you can say thank you to the people who participated. The survey could be about anything, it might not even be about the lottery, but the client is the lottery company and the lottery company has provided the lottery tickets as the incentive. That is not permitted in our industry. So that's an example, so it may not have anything to do with the subject of research. It may not have anything to do with the fact that we're surveying about lottery tickets or not. There shouldn't be a link between the organisation and its incentives.

HELEN ANNE BARTLEY

XXN MR SECK

PN21896

I understand that?---So that's where I'm coming from. The second side of it in regard to cash incentives, is - and I'm just thinking back to when I was at our industry conference in September and one of the presentations had an online

panel. Members of an online panel came along and were asked questions and in fact they were asked about what encourages them to participate in research and some had very good motives, or motives with a lot of integrity. But there were certainly people that actually said, well, the money is always handy and that was the reason why they were participating in surveys.

PN21897

That doesn't necessarily lead to any distortion in their completion of the survey, does it Ms Bartley?---Well, they also commented that they're selective about which ones they do complete, for example, if they know there's a big incentive over here, but there's a little one here and I've only got a fixed amount of time in the day. Well, I'll go the \$50 than the \$10 lottery ticket.

PN21898

But that doesn't necessarily change the accuracy of the answers that they're giving. That's correct, isn't it?---It could do. (a) Because they're really completing it just for the sake of getting the money rather than actually thinking about the nature of the questions. But we don't know.

PN21899

You don't know, you're just speculating, that's right, isn't it?---I'm more than speculating. I'd say that I'm based on what we know from what goes on in our industry.

PN21900

Wouldn't it also be the case that people who are paid are more likely to participate in the survey because there's a financial incentive?---Yes, absolutely.

PN21901

So that's going to improve the response rate? That's right, isn't it?---Among certain people that are motivated to complete surveys because they're being paid to do so.

PN21902

You say in your report that one of the difficulties in the data collection methods is to maximise a response rate. You do say that in your report, that's right?---Yes.

PN21903

One of the ways of maximising the response rate is to provide a financial incentive for individuals to complete the survey, that's right?---Yes.

PN21904

So long as the financial incentive doesn't necessarily link itself to the organisation- -?---Or the nature of the research.

PN21905

Or the nature of the research, you would agree that it's a valid way of incentivising individuals to respond?---Yes, but I'd also agree that it has its limitations that need to be acknowledged.

PN21906

And you've identified those particular limitations. You'd agree those limitations didn't apply to the survey conducted on behalf of Deloitte?---Not necessarily, I don't know.

PN21907

There's nothing to suggest that the survey was conducted in a way which was connected with a benefit being provided by Deloitte?---I want to go back a step in answering that question or commenting because people who are on those online panels and they get paid even before the Deloitte survey takes place. So, it's a step before that, it's the people who haven't even made the link or got to the stage of actually being on the panel.

PN21908

You might have to explain that further Ms Bartley. When you say they get paid, are you suggesting that the payments are made for participating or being on the panel in the first place, rather than participating in a specific survey. Is that what you're saying?---No, no, not at all. What I'm saying is people that join an online panel, with the anticipation that they will be paid to complete surveys, for example.

PN21909

That doesn't necessarily introduce any vice, does it?---But the people who - there's a whole population, a whole other side of people who choose not to join panels, who may not even know of the existence of a panel in the first instance, so it's the fact that it's not openly accessible to everybody.

PN21910

The way that one addresses that is through looking at the size of the population and ensuring that the population is representative in nature?---The size of the population - the sample size itself that's achieved - it's not necessarily how big the population is, it's actually the sample itself that matters itself in terms of how representative it is.

PN21911

It's both, isn't it? Because if you're going to have a small sample size, that's going to be less reliable than a larger sample size, so it's both elements ?---No, not necessarily, I would dispute that.

PN21912

You say, can I take you to your report. You actually say in part 43.5 on page 17 of your report, see 43.5.3, and?---Sorry, I'm still getting to it.

PN21913

That's alright. I'll take you back to page 16 at the bottom. It's sample 43.5. "The sample design and selection processes need to be unbiased, maximise the survey response and allow inferences to be made from the survey that can lead to reliable conclusions about the population." You see it?---Yes.

*** HELEN ANNE BARTLEY

XXN MR SECK

PN21914

Then you identify the particular attributes required to achieve that outcome?---Yes.

PN21915

I won't read it all out to you but you do acknowledge that one of the attributes that you've identified in 43.5.3 is that the sample needs to be sufficiently large?---Yes.

PN21916

It's wrong to say that the size of the sample does not matter?---I agree with you the sample size does not matter, but relative to - what it is, is a combination of sample size and it needs to be representative.

PN21917

Of course, and I'm not suggesting otherwise Ms Bartley?---So I wasn't saying that in isolation.

PN21918

Can I talk about - you refer to convenience sampling in your reply and you make a criticism that the Deloitte's survey uses a convenience sample. That's right?---Yes. Can you refer me to my paragraph so that I can be along with you?

PN21919

Sure. If you go to - just lost my page - if you go to paragraph 25, this is in tab 1 of your August report?---Tab 1, paragraph 25?

PN21920

Paragraph 25 in page 11?---Yes.

PN21921

You say there that - about half way down. "Importantly the sample for this survey is what's commonly termed a convenient sample. This means that the sample is made up of people who are readily available to participate in the survey"?---Yes.

PN21922

Now would you agree that if a survey is more convenient for people to participate in, it's likely to get a better response rate?---Yes, but I don't want to confuse that notion with the notion of what a convenient sample is and the impacts of that on the ability to draw conclusions from a sample about a population, in a statistical sense.

PN21923

So I understand what you're getting at Ms Bartley, you're saying that a particular part of the population may be excluded who do not wish to participate in a survey unless it's readily available?---Or do not even know it exists.

*** HELEN ANNE BARTLEY

XXN MR SECK

PN21924

That's always going to be the case in any survey, isn't it? There's going to be a number of people who do not know that the survey exists, because they're not invited to participate in the survey?---Statistically, we're talking about here, a non-probability method of sampling. What you say is correct, there are people who

know that surveys don't exist. If we use a method of chance to select a sample, then based on statistical theory, and we achieve that sample, we can draw conclusions about that sample to the population with a margin of error and no level of confidence, so that's the basics of statistics. A convenient sample is not the same. There's not the element of chance that allows us to make those inferences and draw those same conclusions.

PN21925

When you say there's not the element of chance, if the sample is representative and sufficiently large, the convenience issue really disappears, doesn't it?---Chance is defined as having a known probability of selection. We don't know what the probability of those people doing that is.

PN21926

That issue actually applies to all surveys, doesn't it?---Which issue?

PN21927

The issue that things are not necessarily going to be left to chance because there will necessarily be some people who don't know that the survey exists?---Right, that's really my point that if we were to undertake the probability - if we have a list, and I'll just take a simple example. Say we have a population of 1000 widgets and we want to conduct a survey to find out if those widgets are any good or not, we can simply get a hat and take out names, taking out ID numbers, which is a sort of fairly rudimentary way or use other methods of randomly selecting a certain sample size 200 or 300 or whatever we decide, surveying those widgets, finding out about those widgets and then drawing conclusions about the 1000 widgets based on that sample that we've achieved, those 300 widgets using a random method that has not got any biases associated with an individual saying, I like the idea of being part of that, I'm going to opt into that. So I'm trying to differentiate between using chance and probability and removal of selection of individuals into a sample based on any personal traits, either by the researchers or the individuals themselves, to letting chance and some independent phenomenon make the selection as to who and what is going to participate in that survey.

PN21928

Now you've referred to one of the key issues being the representativeness of the sample. I want to put to you a proposition. Let's say we were seeking to sample the attitudes of workers in relation to weekend work, and the survey was conducted on the weekend. Do you think that would create any difficulties of bias in the conduct of the survey?---Depends on how the survey is conducted.

PN21929

Let's assume it was by telephone?---If I were commissioned to undertake that kind of research and we wanted to survey weekend workers, I would want to consider - well, I would need to look at whether I'm - if I were to draw a probability sample, and we wanted to look at that issue, then I would want to allow for multiple contacts to reach those people that may include weekends but it would be highly variable, so we maximise the reach and minimise the non-response.

HELEN ANNE BARTLEY

XXN MR SECK

PN21930

But if it's only limited to weekends, you'd agree that there would be a bias there?---There could be a bias there, yes. I'm not saying there would be, there may be.

PN21931

And the biases could be because weekend workers are unavailable to answer the phone because they happen to be working?---Yes.

PN21932

It could be that workers who are in fact working and receiving phone calls could be slightly more stressed when they receive it because they're all at work?---And all sorts of other factors.

PN21933

All sorts of other factors. So what you would be seeking to do would be to conduct that survey on all days of the week so you actually capture workers who work on different days. That's right, isn't it?---Yes.

PN21934

If you start excluding certain categories of the population. For example if you're conducting a survey of this nature, unemployed people or self-employed people, that would also introduce biases into the, potentially, you would agree?---Depends how you define the population in the first instance. That raises I guess, the difference between the definition of a target population who's your desired and theoretical group that you want to reach, and acknowledging the limitations of your research so that you end up with what we might call a survey population. So, one of the limitations might be that we cannot reach unemployed people, so that's the extent to which we can make generalisations. It doesn't include that group.

PN21935

I want to talk about response rates, Ms Bartley. You deal with that in relation to Ms Pezzullo's weekend report in paragraph 26 on page 11?---Yes.

PN21936

Now you've read Ms Pezzullo's response where she says I think it was a 29 percent response rate in relation to the survey?---Yes.

PN21937

Would you agree that's a good response rate for the size of the population?---29 percent? The size of the population is irrelevant to the response rate. 29 percent whether it's a small or a large population in my opinion and based on my experience, is a pretty meagre response rate.

*** HELEN ANNE BARTLEY

XXN MR SECK

PN21938

In terms of whether or not the response rate will affect the reliability of the conclusions one can draw from the survey, again so long as the survey satisfies the criteria set out in 43.5 starting at page 16 of your report, you would agree that reliable conclusions could be drawn?---Not in isolation.

PN21939

But cumulatively, each of those characteristics you set out in 43.5?---To draw a reliable conclusion and even broader than that, it's a whole lot of factors. Reliable conclusions for many survey are going to be related to the design of the research and actually the ultimate outcomes. Look, a simple analogy that I can think about is baking a cake. You can have the best recipe and the methodology could be perfect but a cake doesn't always end up the way it should. I can't - and it's the same with the survey, that we can design it properly but factors can let us down along the way and what we set out to achieve - so if you go to that point, yes, this is looking good, you know, if this all happens yes, that can lead to reliable conclusions. But if falls down along the way, for example, the response rate is really low then we have to question it.

PN21940

Well, you've sought to identify in your report, Ms Bartley, what you say are the pre-requisites for establishing and conducting a survey from which reliable conclusions can be drawn. That's set out in paragraph 43. That's correct, isn't it?---Mm-hm.

PN21941

You've said you've set out what you expect in terms of survey planning and in 43.5 you set out the characteristics in relation to survey design and selection processes. That's correct?---Yes.

PN21942

In paragraph 44 you merely refer to considerations that should be taken into account in data collection methods. Do you see that?---Yes.

PN21943

In 44.2 you don't identify a particular level of response rate which is good or bad or the particular quality, you merely say that it should consider the expected response rate and how to maximise the response rate. That's because you acknowledge that no survey's ever going to achieve a 100 per cent response rate, that's correct?---That's correct.

PN21944

What's going to be much more critical is the characteristics that you've set out in 43.5 of your report, that's right isn't it?---No, I think it's a package. In other words I wouldn't want to look at any factor in isolation to decide if a survey can make reliable conclusions and when it comes to making those conclusions, it's how much I am - and it's the extent to which I am prepared to accept the researcher's limitations that allows me to draw conclusions. Also, how we wish to use that data at the end of the day.

PN21945

Let me just deal with each of them. When you said how much you're prepared to accept the limitations - - -?---Yes.

*** HELEN ANNE BARTLEY

XXN MR SECK

PN21946

- - - necessarily any limitations is going to introduce difficulties in drawing reliable conclusions, that's right?---Yes.

PN21947

So when you say when you're prepared to accept those limitations, are you simply accepting that inevitably in any survey that one conducts there are limitations involved, that's right?---Yes.

PN21948

And the way one deals with those limitations is by having regard to the qualities which you've set out in paragraph 43.5 of your report, that's right isn't it?---Yes, among other things, yes.

PN21949

Now can I deal with the question of the cleaning of data. You address that issue in paragraph 27 of your August report, starting at page 11. You acknowledge it's good practice to remove speeders and flatliners, do you accept that?---I actually see it in my report;

PN21950

Regardless of the number of individuals removed from the sample I suggest that the removal of these individuals from the sample is subjective and their exclusion may bias the results.

PN21951

So I actually questioned.

PN21952

So in your view, if you were conducting a survey you wouldn't be removing speeders, flatliners or bad verbatims, is that what you're saying?---I'd be considering them and I would be looking at other evidence to - I would be documenting who I - if I were in that situation I would be documenting and providing the report to my client. I would probably include those, even if it was in a spreadsheet as examples so that the client could see and make a decision for themselves should they be removed.

PN21953

But in terms of seeking to draw reliable conclusions - - -?---But not - - -

PN21954

Pardon me, go on Ms Bartley?---No, no, that's okay.

PN21955

In seeking to draw reliable conclusions from a survey report, one obviously has to make decisions as to which individuals should be excluded from the survey results, because they may give rise - they may demonstrate unreliable or inaccurate responses. You agree?---Yes.

*** HELEN ANNE BARTLEY

XXN MR SECK

PN21956

It is completely reasonable to remove speeders who identify - and you understand what I mean by speeder, do you?---I think she provides an example of speeders where - - -

PN21957

Yes, so if you go to paragraph - sorry, page 41 of the weekend work report of Ms Pezzullo?---Yes, she defines them, yes.

PN21958

Where she defines them. You've seen those definitions obviously beforehand?---Yes, yes.

PN21959

You agree that it was - if one wanted to draw reliable conclusions from the survey results, it is completely reasonable to remove those classes of individuals from the survey?---No, not necessarily. It's subjective. Ultimately it's subject whether someone is a speeder - a speedster or speeder, whatever you want to call it or straight lined in answering the questions, and I would want to understand the nature of the questions that were - I would want to look at the patterns of - I would want to look at is it consistent throughout their survey, is it blocks of questions and I would want to understand maybe it's legitimate that everyone - you know, that someone agrees on a scale - on a five point scale to every item that's presented. So I'm not saying that it's incorrect, I'm saying I'm just questioning ultimately it is a subject decision.

PN21960

Every decision to remove those who's seen to give unreliable and inaccurate answers is going to involve a degree of subjectivity?---I think the other point is too when we remove any cases that you would want to not just be the one individual removing cases from a data file. You would want to have someone valid that too and document it ultimately. If I could see that data then I might change my opinion but at the moment, as the information has been provided I just question the removal of those.

PN21961

Well, do you accept that if you don't remove those individuals that also may result in equally difficult situations?---Yes, that's right.

PN21962

That's right, isn't it?---Yes.

PN21963

You'll see the particular definitions which have been used by Ms Pezzullo on page 41 to describe speeders, flatliners and bad verbatims?---Yes.

*** HELEN ANNE BARTLEY

XXN MR SECK

PN21964

Based on what you know there, you'd agree that it's entirely reasonable to remove them from the survey sample in order to improve the prospect of obtaining reliable survey results?---No, not necessarily but that's - I haven't seen the specific - I've seen her definitions. I haven't seen her examples and particularly with bad

verbatims, the number of surveys that I've been involved in where open enders, which is where a verbatim come from, an open ended question, a why did you say that type question, where it's left blank or you just get gobbledegook in there, is quite common but then the patterns of responses on every other question don't fit any of the other categories. Now I wouldn't be deleting all of that data, just because someone has failed to provide a response to an open ended question when they should have, or they've provided a response to an open ended question which may even be just full of spelling and grammatical errors, and look so bad that it becomes a bad verbatim. I mean that's very common in online surveys, but I'd question whether that really means that you should be removing all of that data from all of those - from those cases.

PN21965

Do you recall looking at which particular questions were open ended in the survey conducted by - on behalf of Deloitte?---Off the top of my head, no.

PN21966

If I can take you - - -?---But as a general statement.

PN21967

That's all right. Can I take you to appendix A to the weekend work report of Ms Pezzullo which sets out the online survey?---Yes.

PN21968

So the open ended questions I think start at question 13 on page 70. You'll see at question 13?---What page are you on, sorry?

PN21969

Page 70 of - - -?---Page 70, yes.

PN21970

Question 13, do you see that?---Yes.

PN21971

When you talk about open ended responses, they can be an open ended response which requires an explanation or they could be an open ended response where someone has to simply insert a number?---Yes, put a numeric in, yes.

PN21972

Numerical one. You'll see that this is - question 13 is a numerical one?---Yes.

PN21973

If someone put as an average hours work on a Saturday, 50 hours. That clearly would be illegitimate and a bad verbatim wouldn't it?---Well, I would suggest if the survey was well designed you'd actually prevent an answer like that from being included in the first instance.

PN21974

Well, I'm suggesting to you that - - -?---I'm not sure, yes.

PN21975

If someone put in 50 hours, for example - - -?---I wouldn't necessarily remove the whole record, I would probably code that as missing data.

PN21976

But it may be indicative that other parts of the survey haven't been completed properly isn't it?---And it could be a typographic error, it could mean maybe meant to be 5 or 8.

PN21977

But that's an example of a clear bad verbatim when the answer's completely illegitimate, isn't it, where it makes no sense, if it exceeds 24 hours per day?---Yes, yes. But I don't necessarily agree that it means we should delete the whole record.

PN21978

Wouldn't you agree that if you didn't delete - that is indicative that the person hasn't necessarily paid the necessary attention in completing the survey?---Well, for example, they might say 58 hours for the Saturday, the could have seven hours for the Sunday, five hours for an average weekday. They probably look fairly reasonable and that suggests to me that perhaps 58 might be an error. Rather than insufficient - if you're not experienced in - I mean someone completing an online survey I expect will go bang, bang, bang, bang, bang, they won't go bang, bang, bang, oh I put - some people might go back and think oh, I put 58 there by mistake. You don't tend to go back. It's not like an exam where you'll go back and check your work.

PN21979

But you would accept, Ms Bartley, that inevitably there's going to be a degree of subjectivity in assessing whether or not someone is a bad verbatim or not and whether or not they should be removed or not?---Yes. Yes.

PN21980

It doesn't necessarily mean that they survey - the conclusions drawn from the survey results or the survey results themselves are unreliable. That's right, isn't it?---In isolation, it could contribute. It's just - - -

PN21981

Now I want to take you to your report about responses which are marked N/A or not applicable. If you go back to your report, paragraph 28, you say about six lines down;

PN21982

I'm also unsure why the N/A responses are listed as I interpret N/A to be invalid.

PN21983

Now if you go the - back to the survey attached to Ms Pezzullo's weekend report, can you go to page 71, question 14?---Yes.

PN21984

Now you see there there's an explanation in the survey as to what N/A is?---Yes.

PN21985

So do you accept when you say in your report that you interpret it to be invalid, do you now understand having looked at that question it's really N/A because it's in response to a specific question in the survey?---I accept that but I also note that you could also - it would be perfectly reasonable to analyse the results for question 15, for example, just using the first five categories including the don't know responses. Because not applicable suggests that they're actually out of that group, if you like. If they're not weekend workers in the first instance.

PN21986

Well, it doesn't necessarily mean that. It says;

PN21987

Or put N/A if this question doesn't make sense in relation to your employer.

PN21988

So it's slightly broader than that. Do you agree?---That's - - -

PN21989

It's obvious there what's intended, isn't it, that if employees don't work on Saturdays, Sundays and average weekday that they move to the hidden question below and then they complete what applied. That's abundantly clear, isn't it?---Sorry, I'm just moved off the page. Can you repeat your question, sorry, I moved off the page then.

PN21990

That's okay. If you go back to page 71, Ms Bartley?---Yes.

PN21991

Question 14, you'll seen in parentheses in the question it says;

PN21992

Or put N/A if this question doesn't make sense in relation to your employer.

PN21993

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

PN21994

The words in parentheses make it abundantly clear when - - -?---Okay, you're at the top of the page, sorry, I've got you now, okay.

PN21995

Do you see that?---Yes, sorry, yes.

PN21996

That makes it abundantly clear to a person completely a survey when the response N/A was to be used. Do you agree with that?---Yes.

HELEN ANNE BARTLEY

XXN MR SECK

PN21997

So your criticism made in paragraph 28 of your response is in fact inaccurate, isn't it?---No, no, I disagree.

PN21998

Well, you said you interpret it to be invalid. It's not invalid, is it?---Well, if you don't want someone - if the question doesn't make sense to that person, I would analyse that data, that's not relevant to that group of people. I would analyse that data excluding the not applicables.

PN21999

But doesn't having a sub-question below it saying a hidden N/A and asking them to say what applies allow you to analyse that in more detail?---Yes, but I would still not include a not applicable. It's a filtering mechanism the not applicable. Not a filtering mechanism, it's - the valid responses are a subset of the total sample, if you like, so what would be more usual that one would see in the report both - and the way I would approach that analysis and the way I have seen others approach that analysis would be to exclude not applicables.

PN22000

But that doesn't necessarily invalidate the survey does it?---No, I'm not suggesting it invalidates the survey. I've just made a comment that the N/As, I interpret the N/As to be invalid. I haven't suggested the whole survey is invalidated.

PN22001

But the N/As aren't invalid there because it allows them to nominate particular days where it doesn't make sense for their particular situation, doesn't it? It says N/A Saturday, Sunday or an average weekday?---I think - I think what I'm kind of - I think we're looking at the questionnaire and the way the programming's worked compared to - yes, I'm sort of seeing a gap - I feel like there's a gap between my comment and what your commenting on, and I'm talking about what - how we report the results compared to how the filter and branches - filters and branches go within the questionnaire itself.

PN22002

But how you report the results is quite easy, isn't it? You just simply identify those people as N/A and then you can - - -?---And what I'm suggesting is that it would not be normal practice to do that, it would be normal practice to filter and have a sample base that excluded those people.

PN22003

But it doesn't necessarily make the conclusions one can draw from that any less reliable?---You just need to be careful how we conclude - make those conclusions.

PN22004

Now I'm going to deal now with - - -

PN22005

VICE PRESIDENT CATANZARITI: Mr Seck, is that a convenient time?

PN22006

MR SECK: It is, your Honour.

PN22007

VICE PRESIDENT CATANZARITI: How long do you think you'll be, Mr Seck?

PN22008

MR SECK: I'll probably be another 10 minutes, your Honour.

PN22009

VICE PRESIDENT CATANZARITI: Do you want to go on or do you want to - well, your 10 minutes is usually longer than 10 minutes. I think we'll adjourn until 2 o'clock.

<THE WITNESS WITHDREW [12.56 PM]

LUNCHEON ADJOURNMENT [12.56 PM]

RESUMED [2.01 PM]

PN22010

VICE PRESIDENT CATANZARITI: Yes, Mr Seck.

PN22011

MR SECK: Thank you, your Honour.

<HELEN ANNE BARTLEY, RECALLED ON FORMER AFFIRMATION [2.01 PM]

CROSS-EXAMINATION BY MR SECK, CONTINUING [2.01 PM]

PN22012

Ms Bartley, before lunch I think we got to the part where you deal with the Pharmacy Industry Award report of Ms Pezzullo. You deal with that in your report in question 3, at 3(a), which starts at page 12. One of the criticisms you identify in your report is set out in paragraph 32 about the survey response rate. You will recall I asked you some questions about survey response rates in relation to the first Pezzullo weekend work report before lunch.

PN22013

I want to take you back to the criteria you set out for the conduct of surveys in order to draw reliable conclusions. If you can go back to page 17 of 26 of your August report. 43.6, you acknowledge there that there's always going to be a likelihood of survey non-response and the way of dealing with it is by planned oversampling to ensure the required sample size is achieved. Do you see that?---Yes.

*** HELEN ANNE BARTLEY XXN MR SECK

PN22014

When you were asked questions by counsel for the SDA, a letter from Mr Moore, you said that no survey was going to have a 100 percent response rate and it's a

matter of trying to minimise the issues arising out of the level of non-response in order to draw reliable conclusions?---Yes.

PN22015

What you identify in paragraph 43.6 of page 17, is that one can account for the likelihood of a survey non-response by planned oversampling and I assume from that is that you actually sample more than you need to sample for the purposes of the sample size. That's correct?---Yes, and I would probably qualify that statement that would really relate to probability sampling too.

PN22016

When you say - you might explain to the Commission what you mean by probability sampling?---Probability sampling is using a chance to select your members of your sample from your population and if you expected a 50 percent response rate then you would randomly oversample to still achieve the sample size that you desired to make up that 50 percent response or non-response rate. The point is that you are randomly sampling across the board, rather than deliberately starting off with people who are going to be conveniently available to complete a survey.

PN22017

When you say randomly sample, you mean making sure that there is no bias in the selection of the persons who participate?---Using chance, even more than making sure there's no bias, using chance to select those members of the sample.

PN22018

When you say chance, you mean that there is no human intervention in making the selection?---No direct human intervention. Of course you've got to use a random number generator or some system like that to create that randomness.

PN22019

That goes to the points that you raise in 43.5.1 of your report right, at the top, so members of the sample need to be randomly selected?---Yes.

PN22020

Just go to 43.5.2?---Sorry, 43.5?

PN22021

43.5.2, the next paragraph. It says "Ideally members of the sample will be selected from a complete accurate and current sampling frame?---Yes.

PN22022

When you use the words sampling frame, what do you mean by that?---Sampling frame is a list of the members in the target population from whom you select your sample. So it could be a list of members and contact details to enable you to complete that survey with those people.

*** HELEN ANNE BARTLEY

XXN MR SECK

PN22023

Do you also mean by that, that the sampling frame reflects the particular attributes or demographic data?---No, sampling frame is a list of members of the population, of the target population.

PN22024

Okay, I understand what you mean by that. So you just have to make sure that their names and contact details are accurate?---Yes.

PN22025

Now, what I gather from 43.6 of your report is that what is ultimately desired is to get a large enough sample which has been randomly selected. That's the key, isn't it?---Not a large enough sample, what is ultimately desired is we wanted to survey a sample of 300 and we expected some non-response from whoever it is that we're surveying, we need to say that we want 300, we're expecting a 10 percent response rate, so we need to select up front, before we do anything else, 330 people.

PN22026

Understand. So in effect, what you're trying to do is get to a particular number ultimately which is going to give you the required level of confidence?---That's right. But if you end up getting 70 percent, you don't then go and look for other people who are easy to get to make that up.

PN22027

I want to take you to your criticisms of the Pharmacy Industry Award report. If you go to paragraph 32 on page 13, you say a 5.6 percent response rate is extremely low?---Yes.

PN22028

And that it doesn't necessarily mean that you can be confident that reliable conclusions could be made from the survey results, do you see that?---Yes.

PN22029

Isn't the case that it's not whether or not the response rate is low, which is a concern, it's whether or not you've achieved the required sample size and ensure that it's randomly selected?---No, the response rate is part of that process.

PN22030

But in 43.6 you acknowledge that there's always going to be a likelihood of non-response and so long as the required sample size is achieved, then - - -?---Using random methods of selection to achieve that sample size.

PN22031

And that's the proposition I'm putting to you. That's right, isn't it? So it's not the response rate which is the key issue here, it's to ensure that the likelihood of non-response is taken into account so that the required sample size is ultimately achieved?---Having said that we still need to take into account that non-response and why that non-response occurred and the fact that that non-response has the potential to affect the conclusions that we can draw.

HELEN ANNE BARTLEY

XXN MR SECK

PN22032

But that's going to be the case with every survey where there's a non-response, isn't it?---Yes.

PN22033

I want to put to you that the sample size number of 302 used for the Pharmacy Industry Award report of Ms Pezzullo is a large enough sample size to draw reliable conclusions from. Do you accept that?---No. It may be, I can't be confident because it's not just about the sample size.

PN22034

Well, I'm just talking about sample - I understand you say it's a multifactorial issue, Ms Bartley, but you can't say in isolation whether or not 302 is or isn't sufficiently large, that's right?---That's right I can't say that. I can't say in isolation.

PN22035

You accept that there are some reports where 20 might be a sufficiently large sample size to ensure sufficient confidence in the analysis, that's right?---I think that's a different matter. My reference - I think I've referred to 20 is if you've got a sample and you want to then produce some statistical model or do some - a rule of thumb and it's not a black and white thing, and it becomes an art rather than a science. If you've got sufficient data, you can still undertake that analysis but the extent to which you are prepared to conclusions based on those small samples, that's where you're going to have less confidence in the results.

PN22036

When you say it's an art and not a science, it's because there are so many variables in play that one has to kind of adjust for each of that?---It's a rule of thumb so if you're measuring an attribute that is highly variable, you're going to need a larger sample than if you're measuring an attribute that is fairly homogenous. If I take a flippant example, in this room, if I wanted to measure the proportion of people who were wearing black, I think all of us have got black on. I don't need as big a sample as if I were to ask a more complicated question about the proportion of people who had vegemite on their toast this morning or something. What I'm saying is you need to take into account the variability of that data in terms of how many or how few your sample size might be.

PN22037

Can I then take you to the regression analysis that's undertaken in the Pharmacy Industry Award report and you refer to it on page 14, in paragraphs 35 to 38?---Yes.

PN22038

You were asked some questions by my learned friend Mr Moore, counsel for the SDA earlier on, where you were asked to respond to parts of Ms Pezzullo's reply. Do you recall that?---I do.

*** HELEN ANNE BARTLEY

XXN MR SECK

PN22039

The questions you were asked, they were designed to respond to parts of Ms Pezzullo's reply to which you disagreed, or had comment. That's right?---

PN22040

MR MOORE: Well, I object to the question. I think the way my friend's asked it, he's asking the witness to comment upon the design of the questions that the witness was asked in examination-in-chief, which is obviously not a matter which the witness can comment about.

PN22041

MR SECK: I'll ask it a different way. When you were asked questions earlier on by Mr Moore, in responding to matters contained in Ms Pezzullo's reply?---Yes.

PN22042

Did you say everything you wanted to say in response to the matters contained in Ms Pezzullo's report?---I'm not sure what you're getting at, I'm sorry.

PN22043

Where you disagreed with Ms Pezzullo in her reply?---Yes.

PN22044

Did you have the opportunity to provide the basis for your disagreement in the questions that were asked by Mr Moore?---Yes.

PN22045

You didn't make any comments about the regression analysis conducted - sorry, your response on the regression analysis. Do you agree with that?---That's correct.

PN22046

That's because you did not disagree with the comments made by Ms Pezzullo in her reply about the regression analysis. That's right?---That's right.

PN22047

When you actually prepared your report Ms Bartley, you looked at the surveys conducted in both the weekend work report and Pharmacy Industry Award report and measured those surveys against the criteria which you set out in answer to question 4 of your report. Is that right?---Yes.

PN22048

To the extent that you considered that the survey did not meet that criteria, you explicitly identified that in your report. That is so?---Yes.

PN22049

You use the words in your report that you cannot - and I want to take you to an example in paragraph 41 on page 15 of your report, in the second sentence "The consequence of this is that I cannot be confident that the statistical analysis and methods and the results of the statistical analysis represented in the report are consistently reliable and valid." Do you see that?---I do.

PN22050

You've used the words that you weren't confident about the reliability in various parts of the report, where you've made criticisms about it. Do you agree with that?---Yes.

PN22051

You use the word *confident* there and you also define the words *confidence level* and *confidence interval* on page 21 of your report?---Yes.

PN22052

When you use the word *confident* in the content of your report where you say that you can't be confident about the statistical analysis and methods, you were using that in the lay sense, as opposed to the statistical sense. That's right, isn't it?---Yes.

PN22053

When you say you can't be confident, were you saying that you couldn't be 100 percent confident, is that the benchmark you were using?---Yes. Well, confident or not. I'm either confident, or not. I don't consider something on a scale.

PN22054

Well, confident, there's a question of degree in confidence, don't you agree?---In the statistical sense, there is.

PN22055

In a layman's sense you could be reasonably confident, or you could be absolutely confident?---I'm using it, I'm not prepared to put my hand on my heart and say to those that I can trust those results.

PN22056

Right, and you're holding up to the benchmark as to whether or not you can be 100 percent confident that those results can be used to draw reliable conclusions, that's right, isn't it?---You can't be 100 percent reliable.

PN22057

That's the way you're using it in the report?---Not specifically. I would have stated 100 percent if that's what I was using it in the broad sense.

PN22058

I'm putting to you what you say- - -?---I cannot be 100 percent positive.

PN22059

That's how you used it in the report? That's right, isn't it? Where you've used the word *confident*, you mean 100 percent confident?---I mean that I cannot be confident. I hadn't considered a specific number.

PN22060

Well, I'm putting to you that's what you meant? That's right, isn't it? Yes or no?---I can't be confident they're 100 percent.

PN22061

The fact is, you can never 100 percent confident in any survey, can you Ms Bartley?---No, that's correct.

PN22062

What you're really doing is holding these surveys up to an idealised standard which no survey can ever meet. That's right, isn't it?---But there are elements of this that I would even be less confident in without putting a number to those elements.

PN22063

What you've sought to do is you could not be confident 100 percent. That's what you've said in your report, isn't it?---There are aspects which my confidence is even less.

PN22064

But you haven't actually assigned a number to any of that in your report, right?---No.

PN22065

And it's not apparent from reading your report whether or not you mean 100 per cent confident, 50 per cent confident or 10 per cent confident, would you agree?---That's right.

PN22066

And so it's difficult for anyone to ascertain what you mean in the report when you use the word 'confident', that's right?---I use 'confident' in the sense that I would not want to be held to account based on the information that I've reviewed and my understanding of these surveys that the conclusions are reliable.

PN22067

The fact is you could never be held to account about the reliability conclusions one can draw from any survey because every survey has its limitations, that's so, isn't it?---Yes, but I would qualify that by saying that one could be more confident in the results of a survey if factors such as the way the survey was conducted, the response rate and so on, the nature of the questionnaire, et cetera, if they followed the principles that I've outlined in my report of the 28th of August.

PN22068

I put to you that the criticisms that you've raised in relation to both Pezzullo reports are trivial, because you're holding it up to a 100 per cent confidence level, and reliable conclusions can still be drawn from both of those surveys. That's correct, isn't it?---No, it's not, I totally disagree with that.

PN22069

And the conclusions which were drawn from the survey by Ms Pezzullo were reliable, that's so, isn't it?---I disagree, I totally disagree, and that's what's detailed in my report, along with the reasons why.

*** HELEN ANNE BARTLEY

XXN MR SECK

PN22070

No further questions.

PN22071

VICE PRESIDENT CATANZARITI: Well, it was only 20 minutes, Mr Seck.

PN22072

MR SECK: Usually you can double it, your Honour.

CROSS-EXAMINATION BY MR DIXON

[2.20 PM]

PN22073

MR DIXON: We're not prepared to take the odds on it. Ms Bartley, my colleague and I represent the fast food group in these proceedings, and we just have a few questions for you. The first is in relation to convenience sampling. You agree, do you not, that the key feature of convenience sampling is that no attempt is made to capture the entire sampling frame?---Is that in reference to something I've written?

PN22074

No, I'm just asking you about the proposition. You agree that the key feature of convenience sampling is that no attempt is made to capture the entire sampling frame?---No, I don't necessarily agree with that, and you in fact might be attempting to capture the entire sampling frame. The fact is if we are convenience sampling it may be because we don't actually have a sampling frame.

PN22075

So perhaps I can clarify. In respect of a defined sampling frame, if one is aiming to survey everyone in that sampling frame, that is not convenience sampling, you accept that?---That would be aiming to take a census, so you wouldn't need to sample, so yes.

PN22076

Yes, and that is not convenience sampling, as you understand?---No.

PN22077

You also accept, do you not, that a well and properly constructed or defined survey which produces a low response rate may still be representative of the total population?---It may be.

PN22078

You were asked questions this morning in respect of what you understood might be a low or very low response rate?---Yes.

PN22079

And you gave some examples?---Yes.

PN22080

One example you gave was in relation to about a 90 per cent, or it may be 95 per cent response?---Thereabouts.

PN22081

Out of a total population of how many?---Well, that was just one example that came to the top of my – that was a sample – a population of less than 100, but I have had other surveys with populations of thousands where we've obtained 60 to 70 per cent response rates.

PN22082

But the rate that you arrive at is derived from the responses you get by reference to the known total population?---The response rate – no, it's not to do with the population; it's that you – well, yes, it has got to do with population – response rate would be the number of people you approached to participate in a survey who did participate versus the – if you plan to survey – how can I give you – how many contacts did you have to make, who were eligible, to reach your required sample size.

PN22083

Perhaps just go back to your example. Out of the 90-odd that you got a 90 per cent response rate, that means you tested the rate by reference to the total number?---In that particular example - with hindsight I probably could have provided you with a better example – but that particular example, we have – don't quote me on the numbers - but 100 was the population, and in that particular example we were aiming to achieve 100 and we achieved 90.

PN22084

You gave another example from some of your projects where you achieved a 10 per cent response?---Yes.

PN22085

What was the total number of responses, in other words, the number of responses in that survey that you gave the example?---That was a broad example. I've conducted more than 250 surveys at least over the last 10 years. That was just a generic example, not a particular example, so I can't give you specific numbers, but it would be the case probably in the earlier days of online surveys for example, maybe an employee survey of employees in a very large organisation.

PN22086

So the total number of people who have responded was low?---Correct.

PN22087

Not in the 10s or 20,000s?---In the thousands.

PN22088

Not in the 10,000s or the 20,000s?---No.

PN22089

In respect of weighting, you gave some evidence this morning and you expressed some concern that the size of one group of responses from the McDonald's survey may bias results overall, is that - - -?---That's correct.

*** HELEN ANNE BARTLEY

XXN MR DIXON

PN22090

That would be so, would it not, if there were differences in the make-up of the two groups?---That's right, and I acknowledged that at the time.

PN22091

Yes, and you do not identify whether there are any differences in the two group. Are you not able to do so?---I haven't been provided with that information.

PN22092

I beg your pardon?---No, I wasn't able to establish that.

PN22093

In respect of the representative nature of responses in the sampling frame, did you express the view that you had concerns about responses which involved opinions from respondents as a part of the representative nature of the data acquired?---I'm sorry, I'm not following your question.

PN22094

I'll rephrase the question. As I understood your evidence this morning, you had some concerns that in extrapolating or using data as a representative of the total population, for example within the sample frame, you had concern about the nature of some of the questions, for example, matters of opinion?---Not specifically to the survey. My point – correct me if I'm wrong – but my point was in relation to – if we want to draw reliable conclusions from the achieved sample about the population and we have a low non-response rate, we need to be confident that the respondents are representative of the population and that in terms of representative what I'm talking about is that the non-respondents would be likely to have given the same answers, or the same pattern of answers, as the respondents.

PN22095

And in that answer you were referring to the population at large, not simply the sample frame, is that correct?---The sample frame should be a list of members of the population, of the target population.

PN22096

Yes, but the level of responses within the sample frame can be used to be representative of the total number within the sample frame, you accept that?---I'm not sure I'm following you, but the sample frame is a list of members of the population from whom we are going to select the sample.

PN22097

And in this case that you've commented on, it was a McDonald's survey for total employees - - -?---Employees and Hungry Jacks.

PN22098

- - - and the Hungry Jacks total employees?---Yes.

*** HELEN ANNE BARTLEY

XXN MR DIXON

PN22099

The answers that employees within those two categories gave, there would be a distinction in the answers they gave as to matters of opinion as opposed to matters of demographics, for example?---There may be.

PN22100

The questions may be directed at different issues? Some of the questions might have been opinion-based, some of the questions - - -?---Within those surveys?

PN22101

Yes?---Yes.

PN22102

And to the extent that you had a concern about using the data about reference to those who did not respond, your concern related to the questions of opinion, not to questions such as - - -?---To any questions.

PN22103

To the questions of the representative – the demographics, there would be a distinction, would there not?---I made the comment that if we knew - we might know the demographics of the non-respondents from employee records, but ultimately if we want to be confident about the results of the survey, the questions – what really matters is the questions that were asked of individuals in that survey, regardless of whether they were demographics or anything else.

PN22104

No further questions.

PN22105

VICE PRESIDENT CATANZARITI: Mr Stanton, did you want to ask any questions of this witness?

PN22106

MR STANTON: No, your Honour.

PN22107

VICE PRESIDENT CATANZARITI: Any re-examination?

PN22108

MR MOORE: Just a few things left, your Honour.

RE-EXAMINATION BY MR MOORE

[2.29 PM]

PN22109

MR MOORE: You were asked some questions early in your evidence, Ms Bartley, about online surveys and access to the internet?---Yes.

PN22110

Your evidence was that there were several factors as to why the conduct of a survey through the internet may lead to biased results?---Yes.

PN22111

One of those that you were asked about and you gave evidence about was the extent of access to the internet?---Yes.

PN22112

What are the other factors to which you alluded?---An online survey requires obviously internet access, it requires people to log on, and if the online survey is conducted by way of an email invitation whereby a link to the survey is embedded within an email it relies that not to go to junk mail, it relies someone to check and click on that email and proceed with the survey, so there's a whole lot of steps at that level. The other angle, of course, when we're dealing with online panels is how people are either recruited or invited to or become members of that panel in the first instance. Is that by word of mouth, is that by random selection, so we've randomly dialled from the general – phoned them or, you know, done some random process to actually get them onto that panel in the first instance. So there's a whole lot of levels at which that can occur, and then, of course, are they eligible and then providing accurate information.

PN22113

What is the significance of how persons may have joined an online panel?---If they're via social networks or contacts, that could bias the results because they're not randomly selected, they're not selected by chance; it's a convenience method; it's not got the statistical principles sitting behind how they ended up being on a panel.

PN22114

Thank you for that, Ms Bartley. You were asked some questions about the importance or otherwise of the sample size, and you said in answer to a question from my learned friend large doesn't necessarily mean it's representative, that is, in relation to a sample?---Yes.

PN22115

Could you explain what you meant by that?---Okay. Maybe I'll just take a simple scenario. Let's say we've surveyed 10,000 people from the general population and we wanted to – I'll go back to Vegemite, who had Vegemite for breakfast might be a really innocuous question. If we only surveyed women in that sample and got a result, that may not be representative; we've missed out on males, and yet they're part of our population of interest. In contrast, if I randomly sampled, say, 500 people using unbiased methods, and I might even stratify it if I could, which means I can be sure to get males and females by using statistical principles, and then came up with the result, I could have quite a different result, and I've only surveyed 500, but I would be more comfortable with that result knowing that that sample is representative – or having more confidence it's representative.

PN22116

Thank you. You were asked some questions this afternoon after lunch about the regression analysis in the Pezzullo report dealing with a pharmacy and your comments about that, how would you describe your skills or expertise in relation to regression analysis?

HELEN ANNE BARTLEY

RXN MR MOORE

PN22117

SPEAKER: Objection. I don't know how that arises.

PN22118

VICE PRESIDENT CATANZARITI: Yes, I can't see that arising, Mr Moore.

PN22119

MR MOORE: Well, the witness was asked some questions and - - -

PN22120

VICE PRESIDENT CATANZARITI: That's not the line of question that was asked. I reject that question.

PN22121

MR MOORE: All right, if the Commission please. Nothing further.

PN22122

VICE PRESIDENT CATANZARITI: Thank you, you're excused.

<THE WITNESS WITHDREW

[2.34 PM]

PN22123

VICE PRESIDENT CATANZARITI: Any more housekeeping matters? The Commission is adjourned until 9 o'clock tomorrow.

ADJOURNED UNTIL FRIDAY, 06 NOVEMBER 2015

[2.34 PM]

HELEN ANNE BARTLEY

RXN MR MOORE

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