



TRANSCRIPT OF PROCEEDINGS

*Fair Work Act 2009*

1052860

**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**

**9.02 AM, TUESDAY, 15 DECEMBER 2015**

**Continued from 07/12/2015**

PN23133

JUSTICE ROSS: Are there any changes in the appearances since the last occasion in either Melbourne or Sydney? Melbourne first.

PN23134

MR IZZO: Your Honour, just for Australia Business New South Wales Business Chamber, Mr Izzo instead of Mr Arndt.

PN23135

JUSTICE ROSS: In Sydney. Nobody else, right. There are a range of preliminary matters that we just need to deal with. Can I deal firstly - we'll come to the Pezzullo issue last. Can I deal with your correspondence, Mr Izzo, of yesterday. I think you were going to tender some material or something like that that was filed at 6.15 pm.

PN23136

MR IZZO: Yes, your Honour. Your Honour, we had filed earlier in the proceedings a number of statements for Ms Emily Baxter and then on 2 December, our office filed a consolidated statement of Ms Baxter to replace all previous statements that had been filed.

PN23137

JUSTICE ROSS: Yes.

PN23138

MR IZZO: There have then been some discussions between the SDA and our office in order to see whether Ms Baxter's evidence would be tendered without the need for cross-examination. Those discussions have been productive and the result of those discussions is that our office has prepared a further and final consolidated witness statement of Ms Emily Baxter, which is to replace everything else we previously filed in relation to Ms Baxter and provided that leave is granted for that statement to be tendered today, then the SDA will not be seeking to cross-examine and there is one small concession we have made in relation to the principles outlined in *Brown v Dunn*. That is, that we have accepted that we will not take any *Brown v Dunn* point against the SDA in relation to any submissions they might wish to make about two respondents to the survey who skipped the question about whether their enterprises were covered by enterprise agreements. So on that basis we are seeking to tender this further and final consolidated statement of Ms Baxter.

PN23139

There is one complicating matter and that is that Ms Baxter is presently still not in the country, she's on a cruise. We have been in contact with Ms Baxter. I am confident and comfortable that she would be comfortable with the statement and what I propose to do for the ease of efficiency in the proceedings, is if we can tender the unsigned statement and then what we might do is follow a two line affidavit in the coming weeks with Ms Baxter, just confirming that she's read it and it's true and correct to the best of her knowledge and belief.

PN23140

JUSTICE ROSS: In the one that was filed last night I didn't have any of the attachments. I see, so the previous exhibits EB1 and 2 are both referenced in this document and they should be attached to the further and final consolidated statement. Is that the idea?

PN23141

MR IZZO: Yes. So we didn't resend all those but I believe the Bench already has EB1 and 2. Would you like them handed up?

PN23142

JUSTICE ROSS: Yes, thanks. Mr Moore, are you content with all that?

PN23143

MR MOORE: Yes.

PN23144

JUSTICE ROSS: Thanks. Anyone else want to say anything about it? Look, we'll mark it and renumber the exhibits in due course and I should mention while we're dealing with that, that I expect when the witness evidence is concluded there'll be posted on the website a list of all of the witness statements with links to those statements, and links to the transcript where those witnesses are dealt with. That material will firstly be sent to the parties only, so that you can check if there are any confidentiality orders that apply to any of the material, or that the redactions have been done correctly in the various statements. We'll give you time to do that and then there'll be publically available.

PN23145

We'll set down a process, issue a short statement dealing with all of that in the next week or so. That's both for ease of the parties when you come to prepare your submissions but also for our own convenience. We were having it done anyway so we thought we may as well provide it to the parties and then make it publically available.

PN23146

I gather from that that Ms Baxter's not required for further cross-examination and I gather that Mr Ovenden and Mr Madden are no longer required for cross-examination. Is that right?

PN23147

MR DOWLING: That is right, your Honour. There's some particular terms that apply with respect to Mr Madden and that is, can I clarify for the record, that he will not be required on the basis that those paragraphs numbered 10 through to 28 of his first statement AHA69 will be withdrawn.

PN23148

JUSTICE ROSS: So that's AHA69.

PN23149

MR DOWLING: Yes, your Honour.

PN23150

JUSTICE ROSS: Paragraphs 10 to 28.

PN23151

MR DOWLING: Yes, your Honour.

PN23152

JUSTICE ROSS: Will be withdrawn. Yes.

PN23153

MR DOWLING: AHA70 remains in evidence, there are no amendments to it.

PN23154

JUSTICE ROSS: Yes.

PN23155

MR DOWLING: The further affidavit of Mr Madden dated 27 October 2015 will not be tendered and is not relied upon.

PN23156

JUSTICE ROSS: It hasn't been tendered yet, has it?

PN23157

MR DOWLING: No, it hasn't your Honour. There is only one other document that relates to Mr Madden that's relevant for this purpose, your Honour. Mr Madden produced a document headed Commercial Hotel, Queens Birthday Public Holiday Trading Analysis. That also has not yet been tendered. It's not to be tendered and will not be relied upon. Thank you, your Honour.

PN23158

JUSTICE ROSS: Anyone else wish to say anything about that?

PN23159

MR STANTON: I'll just confirm that is the position, your Honour.

PN23160

JUSTICE ROSS: Thank you. Can I also deal with United Voice's correspondence of 7 December from Ms Burke, seeking - identifying a schedule of common material to be filed. Can we deal with that now?

PN23161

MR DOWLING: Yes, your Honour.

PN23162

JUSTICE ROSS: I wasn't quite sure what was meant by the covering note about the cell range and - I understood there was the attachment which was straight forward enough but what's this material? That is the businesses and all that sort of - what's it relevant to?

PN23163

MR DOWLING: Sorry, I should go back one step. There are seven documents in United Voice's schedule of common material in the folder that will be provided. The covering note refers to the second of those documents which is an ABS

statistical table. There was a great deal of difficulty in printing that in a properly legible form for the Commission, and what's proposed is that that would be provided in electronic copy, the covering notes sought to assuage any concerns about how it might be referred to in submission and the idea was that we would pinpoint any particular reference to a cell, so as to enable the Commission to find the relevant parts in submission.

PN23164

JUSTICE ROSS: So the material being sought to be tendered is the Australian Jobs 2015 from the Commonwealth Department of Employment, the ABS Statistical Table Australian Industry 2013/14, a Fair Work Ombudsman Report of the National Hospitality Industry Campaign June 2015, Star City Enterprise Agreement, transcript of certification of that agreement, Stamford Plaza Agreement and Stamford Hotel and Resorts Enterprise Agreement.

PN23165

MR DOWLING: Yes, your Honour, that's the total of it.

PN23166

JUSTICE ROSS: Is there any objection to any of that material? We'll mark it with exhibits and it'll be on the consolidated document that goes out.

PN23167

MR DOWLING: Thank you, your Honour.

PN23168

JUSTICE ROSS: Ai Group similarly had some material - bear with me for a moment - that they wish to - these were witness statements that the witnesses weren't required for cross-examination and you wanted to make sure that they were given exhibit numbers.

PN23169

MR GOTTING: Yes, there was a document handed up I think on 28 October.

PN23170

JUSTICE ROSS: Yes. That will go in the consolidated material that will be provided to all the parties, Mr Gotting. If we've missed anything then you can bring it to our attention at that point. There is correspondence from FCB indicating that this is correspondence dated yesterday at 4.51 pm, that they no longer rely on three documents. The Productivity Commission Research Report, relative costs of doing business in Australia, Retail Trade. The ACRS reports, Sunday trading in Australia research report or the proposed findings in relation to Productivity Commission Inquiry Report, economic structure and performance of the Australian Retail Industry 2011. Has that material been tendered?

PN23171

MR WHEELAHAN: No, not to my knowledge.

PN23172

JUSTICE ROSS: What's the import of the letter?

PN23173

MR WHEELAHAN: There was just an issue of documents that my instructor was dealing with the SDA and it's one of those - - -

PN23174

JUSTICE ROSS: I see, this was part of the SDA objections?

PN23175

MR WHEELAHAN: Yes, it's a left over matter so it was just tidying that up.

PN23176

JUSTICE ROSS: Thank you. The SDA were to advise of the proposal to deal with the outstanding objections, I think by the end of last week. Where's that matter up to?

PN23177

MS FORSYTH: Your Honour, it's very close. There's one outstanding document that I'm in discussions with Mr Gotting about. It's an AIG tender document. Subject to that being resolved this evening, I intend to file a document that essentially summarises the position of all of the tender documents ARA and AIG and at this stage it looks as though there'll be no need for the Full Bench to make any determination with respect to those, they've been resolved.

PN23178

JUSTICE ROSS: Thank you. Can I draw your attention to two other matters. The Workplace and Economic Research section within the Commission has prepared three documents; an industry profile on retail trade, an industry profile on accommodation and food services and a document headed Changing Work Patterns. These documents have been prepared independently of the Bench and don't reflect the Bench's view but maybe relevant and of assistance in the review in relation to these matters. We propose to provide copies to you, we'll post them on the website. You'll be invited to make whatever submissions you wish to make about them.

PN23179

We will also post in probably next week a list of articles and other material that we will also propose to have regard to, and the parties can examine those. Most of this material is actually drawn from all of the evidence that's in the case. A number of parties have done literature reviews but we're just making it clear that we'll have a look at the full article that's reviewed, rather than simply relying on what a witness has said is in the article. There are some other ABS material that's relevant, bearing in mind this isn't an inter-parties proceeding, it's a review. So we're putting you on notice that that material is material we'll have a look at, so we want you to have a look at it as well and say whatever you wish to say about it when you come to deal with your submissions.

PN23180

Is there anything else before we turn to the Pezzullo objection?

PN23181

MR IZZO: Yes, your Honour. There's one other set of correspondence that we sent through about a week ago regarding some materials that ABI New South Wales Business Chamber wish to file.

PN23182

JUSTICE ROSS: Yes, this is arising from the new evidence and it's the material dealing with WorkCover and those sorts of things.

PN23183

MR IZZO: Workers Compensation premiums and payroll tax information.

PN23184

JUSTICE ROSS: Yes.

PN23185

MR IZZO: So Dr Yu was asked to make certain assumptions and she answered those questions based on those assumptions.

PN23186

JUSTICE ROSS: Yes.

PN23187

MR IZZO: This is the material to support the assumptions. My understanding and the SDA can correct me if I'm wrong is that the SDA neither consents nor objects to the tendering of the material. So I have the materials here to hand up.

PN23188

JUSTICE ROSS: If you can do that. It's all in the one exhibit, is that how we'll deal with it?

PN23189

MR IZZO: Your Honour, I've got copies of each document. There's actually a number of them to tender separately.

PN23190

JUSTICE ROSS: How many documents are there?

PN23191

MR IZZO: Your Honour, there should be a total of six documents.

PN23192

JUSTICE ROSS: Do you have a view about the order?

PN23193

MR IZZO: Yes, your Honour. Could we perhaps start with the documents headed Work Safety Industry Rates, Industry Claim Cost Rates, they're the ones with the orange headings. I'll just hand a copy to the SDA as well so they have them.

PN23194

JUSTICE ROSS: Yes, Work Safe Industry Rates and Industry Claim Costs 2013/14.

PN23195

MR IZZO: So there should be one which is headed 2012/2013 as well your Honour.

PN23196

JUSTICE ROSS: Yes, there is. Is that one document?

PN23197

MR IZZO: That's one document 2012/13, that is a summary from the WorkSafe Victoria website of Workers Compensation Industry Premium Rates.

PN23198

JUSTICE ROSS: I'll come to any objections in a moment but we'll mark that exhibit ABI15.

**EXHIBIT #ABI15 WORK SAFETY INDUSTRY RATES AND  
INDUSTRY CLAIM COSTS 2012/13**

PN23199

Then there's the 2013/14 WorkSafe Industry Rates and Industry Claim Costs.

PN23200

MR IZZO: Yes, your Honour.

PN23201

JUSTICE ROSS: We'll mark that exhibit ABI16.

**EXHIBIT #ABI16 WORK SAFETY INDUSTRY RATES AND  
INDUSTRY CLAIM COSTS 2013/14**

PN23202

Then what?

PN23203

MR IZZO: Then, your Honour, we should have some New South Wales WorkCover documents, some fact sheets.

PN23204

JUSTICE ROSS: Yes, there's - - -

PN23205

MR IZZO: They look similar but there's actually a slight difference.

PN23206

JUSTICE ROSS: Yes, 346 versus 376 industries.

PN23207

MR IZZO: That is correct. So your Honour the 346, your Honour, is the first document.

PN23208

JUSTICE ROSS: We'll mark that exhibit ABI17 and the other document, the 376 industries.

PN23209

MR IZZO: That was issued six months later and that's the next document we seek to tender.

PN23210

JUSTICE ROSS: ABI18.

**EXHIBIT #ABI17 NSW WORKCOVER FACT SHEETS, 346 INDUSTRIES**

**EXHIBIT #ABI18 NSW WORKCOVER FACT SHEETS, 376 INDUSTRIES**

PN23211

Then you've got two payroll tax documents.

PN23212

MR IZZO: Yes, your Honour. The first is actually just a printout of the payroll tax app and obviously it's not evidence to be tendered but we thought it might be helpful to give all the materials - - -

PN23213

JUSTICE ROSS: Yes, useful for cross-reference. We'll mark that exhibit ABI19.

**EXHIBIT #ABI19 PRINTOUT OF PAYROLL TAX APP**

PN23214

The last is the Historical Rates of Payroll Tax.

PN23215

MR IZZO: Yes, and that's come from the Office of State Revenue website in Victoria, your Honour.

PN23216

JUSTICE ROSS: ABI20. Thanks Mr Izzo.

**EXHIBIT #ABI20 HISTORIAL RATES OF PAYROLL TAX FROM THE OFFICE OF STATE REVENUE WEBSITE, VICTORIA**

PN23217

All right. Let's move to the report of Ms Pezzullo, the further report in response to the new response to the Pezzullo report. Mr Moore, we've read the written submission that you've filed in relation to it. Is it fair to characterise it this way: despite - there seems to be some earlier exchange where there were issues of relevance, but in substance your objection is that (1) it goes beyond the response from Ms Forsyth, it goes beyond the response to the new report, and you're really raising a procedural fairness issue rather than a relevance issue. Is that right?

PN23218

MS FORSYTH: That's right, your Honour.

PN23219

JUSTICE ROSS: And so then it becomes, well, how to deal with it in that context, given that if it's relevant, then prima facie it's admissible; it's just a question of how we accommodate the procedural fairness issue that arises. What we would be anxious to avoid - in fact, will avoid - is a further response from Dr Yu to Ms Pezzullo's and we will be here until Christmas next year.

PN23220

MS FORSYTH: Yes.

PN23221

JUSTICE ROSS: So on the last occasion of the mention I indicated that perhaps the most convenient course would be for both witnesses to come, and the Pezzullo report, if it - subject to what everyone says about it, but if that's admitted, then Dr Yu says what she wishes to say about that; Ms Pezzullo is there to say whatever she says; if Dr Yu wants to come back, Dr Yu can come back; they can do it all day, but that would be the end of it. Is that - subject to the timing issues, does that meet the procedural fairness concern?

PN23222

MS FORSYTH: I think it does, your Honour.

PN23223

JUSTICE ROSS: Yes. All right. You might just give us a moment, and we will adjourn for five minutes, come back, and let you know where we're going with this.

**SHORT ADJOURNMENT**

**[9.23 AM]**

**RESUMED**

**[9.29 AM]**

PN23224

MR DOWLING: Thank you, your Honour. The common evidence material that we spoke about a moment ago, we had the hard copy - five hard copies, save the second document that was referred to. I will hand those up to you now.

PN23225

JUSTICE ROSS: All right. Thank you.

PN23226

MR DOWLING: Thank you, your Honour.

PN23227

JUSTICE ROSS: And we will make sure they're marked in due course and they go on the exhibit list.

PN23228

MR DOWLING: Thank you, your Honour.

PN23229

JUSTICE ROSS: We propose to admit the Pezzullo report. What do any of the employer parties wish to say about the proposition that was outlined before: that is that Ms Pezzullo and Ms Yu be given an opportunity to - well, Ms Pezzullo will be cross-examined; Ms Yu will be given an opportunity to give further evidence in relation to the Pezzullo response report, and will be able to be cross-examined on that.

PN23230

MR WHEELAHAN: Your Honour, my submission is Yu should be restricted to dealing with the data analysis to support the contentions in Ms Pezzullo's report that are objected to - - -

PN23231

JUSTICE ROSS: Why?

PN23232

MR WHEELAHAN: - - - and not to revisit - not to revisit those matters she was cross-examined about and her earlier analysis.

PN23233

JUSTICE ROSS: Well, we can see how that goes, but the Pezzullo report goes beyond a reply, and that's what has led to this problem, so we will address that if and when it arises. We will see what the nature of her evidence is, and we will deal with that on an objection by objection basis, I think.

PN23234

MR WHEELAHAN: If your Honour pleases.

PN23235

JUSTICE ROSS: As for availability, in earlier correspondence from A.J. Macken. They indicated 21 December was a date that Ms Yu was available.

PN23236

MS FORSYTH: Yes, that remains the case, your Honour.

PN23237

JUSTICE ROSS: Yes. We've noticed that - there's correspondence from - I think, the retailers - indicating Ms Pezzullo's availability. Why is Ms Pezzullo not available on the 21st?

PN23238

MR WHEELAHAN: Of December or January?

PN23239

JUSTICE ROSS: Yes, December. We can ask her that under oath this afternoon, but do you have any information?

PN23240

MR WHEELAHAN: Your Honour, I had my instructor press her twice about her availability. I'm not sure, on my feet, why, but the answer came back twice, no.

PN23241

JUSTICE ROSS: Well, it will have to be a very good answer for her not to appear on the 21st.

PN23242

MR WHEELAHAN: Yes, your Honour.

PN23243

JUSTICE ROSS: So - and for that matter, on the weekend, if she's absent overseas on the 21st, because we want to conclude it before Christmas.

PN23244

MR WHEELAHAN: Yes.

PN23245

JUSTICE ROSS: So you might convey that to her, but - and we can seek to accommodate by video and the like, but it's going to have to be something more than inconvenience. All right.

PN23246

MR WHEELAHAN: Yes.

PN23247

JUSTICE ROSS: Is there anything else anyone else wishes to say about this matter? No? All right. Shall we proceed to the first witness. Mr Moore.

PN23248

MR MOORE: Thank you, your Honour. The first witness today is Dr O'Brien. Can I indicate to the bench that Dr O'Brien is called as a witness by the SDA, and he's also called as a witness by the ACTU, and he has produced three reports.

PN23249

In the circumstances where he's called by two parties, the course I would propose, subject to the convenience of the Commission and any concerns the employers might have, is to call Dr O'Brien, and I will then ask him in due course to adopt the reports that he provided upon engagement by the SDA; and then counsel for the ACTU would adopt the same course in relation to that report; and then he could be cross-examined by the employers in relation to both reports, if that's a convenient course.

PN23250

JUSTICE ROSS: Any objection to that course? All right.

PN23251

MR MOORE: I should indicate that United Voice also relies upon Dr O'Brien's report.

PN23252

JUSTICE ROSS: Do we have the issue about - is United Voice proposing to cross-examine?

PN23253

MR DOWLING: No, your Honour.

PN23254

JUSTICE ROSS: All right. Okay. Thanks.

PN23255

MR MOORE: I call Dr O'Brien.

PN23256

THE ASSOCIATE: Please state your full name and address.

PN23257

DR O'BRIEN: Martin John O'Brien, (address supplied).

**<MARTIN JOHN O'BRIEN, SWORN** [9.34 AM]

**EXAMINATION-IN-CHIEF BY MR MOORE** [9.34 AM]

PN23258

MR MOORE: Good morning, Dr O'Brien?---Good morning.

PN23259

Could you please re-state for the Commission your full name and address?---Martin John O'Brien, (address supplied).

PN23260

Thank you. And can you tell the Commission what your occupation is, Dr O'Brien?---I'm a senior lecturer in the School of Accounting, Economics and Finance at the University of Wollongong.

PN23261

Thank you. Now, in front of you in the witness box you've got a folder there. If you could open that, please. You will see on the first page that there's an index of materials. If you could turn behind the first tab, you should see there a document dated 3 September 2015 which is on the letterhead Faculty of Business University of Wollongong, and it's addressed to, "Dear Award Modernisation Team," and over the page it appears to bear your signature. Do you see that?---Yes.

PN23262

Is that a copy of a report that you prepared for this proceeding?---Yes, it is.

PN23263

All right. Have you read that recently?---Yes.

PN23264

Thank you. Are there any changes or corrections you wish to make to it?---No.

PN23265

And can I confirm that the report is comprised of seven pages and nine paragraphs, followed by a glossary, your curriculum vitae, and a document "Summary of Relevant Qualifications and Experiences"?---Yes.

\*\*\* MARTIN JOHN O'BRIEN

XN MR MOORE

PN23266

Yes. Thank you. Can I confirm that that report accurately sets out opinions formed by you on the basis of your expert opinion?---Yes.

PN23267

I tender that, if the Commission pleases.

PN23268

JUSTICE ROSS: So this is the report that is directed at section 3.2 of Ms Pezzullo's report entitled "The Effect of the Pharmacy Award 2010 on Community Pharmacy in Australia"?

PN23269

MR MOORE: That's so. That's so, your Honour.

PN23270

JUSTICE ROSS: Any objection? No. We mark that exhibit SDA 41.

**EXHIBIT #SDA 41 REPORT OF MARTIN O'BRIEN**

PN23271

MR MOORE: Now, Dr O'Brien, if you would go to tab 3 in the folder. Do you see there a document dated 19 November 2015 which proceeds over five pages?---Yes.

PN23272

It bears your signature?---Yes.

PN23273

Is that a copy of a report that you prepared for this proceeding?---Correct.

PN23274

Have you read that recently?---Yes.

PN23275

Are there any changes or corrections you wish to make to it?---No.

PN23276

And does it accurately set out the opinions formed by you on the basis of your expertise?---Yes, it does.

PN23277

I tender that, if the Commission pleases.

PN23278

JUSTICE ROSS: And this is a brief report commenting on section 3.4 of reply evidence to union opinions by Ms Pezzullo?

PN23279

MR MOORE: That's the one.

\*\*\* MARTIN JOHN O'BRIEN

XN MR MOORE

PN23280

JUSTICE ROSS: We mark that - no objection? Exhibit SDA 42.

**EXHIBIT #SDA 42 BRIEF REPORT COMMENTING ON SECTION  
3.4 OF REPLY EVIDENCE THE UNION OPINIONS BY MS  
PEZZULLO**

**CROSS-EXAMINATION BY MS STARR**

**[9.38 AM]**

PN23281

MS STARR: Dr O'Brien, can I take you to tab 2 in the folder. Is that a report which you've prepared for the ACTU in these proceedings?---Yes.

PN23282

And attached to that report is a copy of your curriculum vitae?---Yes.

PN23283

And that report is dated 4 September. Is that correct?---Correct.

PN23284

I understand that you have some corrections you wish to make to that report?---Yes, there were some minor corrections that I picked up when reading it again.

PN23285

I might step you through those?---Sure.

PN23286

The first of those is an executive summary on page 2. Can you identify the correction?---Yes. It's in the second paragraph, the second-last line, "It is shown that they are" - and it should be "a relatively low-paid group."

PN23287

Thank you. And the second correction at paragraph 8?---In paragraph 8, line 5, "Statistics indicate the actual pay level."

PN23288

Thank you. And the third correction at paragraph 11?---Paragraph 11, line 5, "Which comprised" - it should be - "and" rather than "and".

PN23289

Thank you. And the fourth correction at paragraph 32.

PN23290

JUSTICE ROSS: Is that 32?

PN23291

MS STARR: 32?---32, it's the first line, "reverting" should simply be "revert".

\*\*\* MARTIN JOHN O'BRIEN

XXN MS STARR

PN23292

Thank you. And the fifth and the final correction at paragraph 44?---Yes, this is the only one that has got a direction to the numbers. This is on line 6. The 47.6 should be 45.7. So instead of 47.6, 45.7.

PN23293

Thank you. And with those corrections, that report accurately sets out the opinions formed by you based on your expertise?---Yes, it does.

PN23294

Thank you. I tender the report with those corrections, your Honour.

PN23295

JUSTICE ROSS: Any objections? No. I will mark that exhibit ACTU3.

**EXHIBIT #ACTU3 REPORT PREPARED BY DR MARTIN O'BRIEN  
DATED 04/09/2015**

**CROSS-EXAMINATION BY MR DIXON**

**[9.41 AM]**

PN23296

MR DIXON: Dr O'Brien, my colleague and I represent the fast food industry in these proceedings and we want to ask you some questions just to clarify some aspects of your report of 4 September, which is behind tab 2 of your folder, as I understand it, which has now been marked ACTU3. Do you have that?---Yes.

PN23297

You indicate in this report on the covering page that you were responding to a request from the ACTU. This is the page that you signed. Do you have that?---Yes.

PN23298

You were asked to address a number of matters, including the first item, the earnings situation of the national fast food workforce. Do you see that?---Yes.

PN23299

The correspondence from the ACTU to you requesting you to prepare a report, do you have that available to you? Does that form part of your - the end of your report?---I'll have to check that.

PN23300

Please check and see if you have got it?---Yes, 19 August.

PN23301

That letter, yes?---Yes.

PN23302

That is the request you received from the ACTU?---Yes.

\*\*\* MARTIN JOHN O'BRIEN

XXN MR DIXON

PN23303

On the second page of that letter, you were given some information about the fast food industry as it is defined in the Fast Food Industry Award 2010. Do you see that?---Yes.

PN23304

You then see, in the request at the bottom of page 2, that you were asked to describe the earning situation - this is in item 1 - of the national fast food workforce. You see that?---Yes.

PN23305

When you prepared your report, did you draw a distinction between the fast food industry as defined in the Fast Food Industry Modern Award or were you concentrating on a different category of workforce; namely, the national fast food workforce?---Well, I don't know. That's a difficult question. What I concentrated on was the fast food workforce - I think it was - I'm just going back to the beginning of my report.

PN23306

Sure?---In paragraph 3 - - -

PN23307

This is on page 5 of the report?---That's correct, yes. That's an explanation of, I guess, the levels of the statistics as they relate to the categories that I was looking at. From what I could see, the Fast Food Award was relevant to the four-digit takeaway food services class which in turn is contained within the three-digit cafes, restaurants, takeaway food services group, the two-digit food and beverage service and the one-digit accommodation and food services division as defined by the ABS.

PN23308

We can take it from that, that as a result you did not examine the coverage of the Fast Food Industry Award and your report doesn't address employees covered by that award. They may be included, but your report focused on what you described as the national fast food workforce by reference to the data that you describe in paragraph 3 of your report on page 5?---As I said, it relates to the ABS definition of the four-digit takeaway food services, which in turn is specific to the Fast Food Award 2010 as referenced in the Fair Work Commission 2015 paper.

PN23309

I'm going to ask you some questions about that in a moment, but I think you accept that you concentrated on the data that was available - the data that you describe in paragraph 3 - for the purposes of your report. You did not independently assess what data was available strictly within the scope of the coverage of the Fast Food Award?---Well, no. I could only go off what was available from the ABS and other data sources, so it was those definitions that I was using for the analysis.

\*\*\* MARTIN JOHN O'BRIEN

XXN MR DIXON

PN23310

Yes, I understand that. As you refer to in paragraph 3 - you referred to the ABS data. You really had to go and look some subsets of the data in division H of the ANSIC division classification?---Correct.

PN23311

You have to work your way down until you get to - I think you described it as the four-digit takeaway food services class 4512?---Yes.

PN23312

It's correct, is it not, Dr O'Brien, that within that digit or class, takeaway food services, there are certain subcategories of employees who would be covered within that subclass?---Can you repeat that, please?

PN23313

Yes. Within takeaway food services class, there is a breakdown of the types of classifications covered by that subclass?---I still don't understand.

PN23314

All right. I'll ask you to look at a document, if you will. Dr O'Brien, this is the classification - I'm showing you a document from the Australian Bureau of Statistics, ABS category 1220?---Yes.

PN23315

Am I correct in understanding that this is the classification system you adopted or examined when you prepared your report?---No, it's not. This is relating to occupations, which is ANZSCO. The analysis I did was related to industry. Now, there are a couple of small sections where I do go into the ANZSCO, which is for occupation.

PN23316

Yes?---I mentioned that that is - it looks like it's in paragraph 4.

PN23317

That's correct?---That relates to ANZSCO.

PN23318

Yes?---But the majority of this would relate to ANZSIC which is relating to industry. So that's where we go from the accommodation and food services one-digit and drill down to the four-digit fast food services. No, this is relating to occupation.

PN23319

But when you come to the occupation, the four-digit classification is referred to - if you look at the document and you look at the classifications, in paragraph 3 you will see that you say in about the sixth line, "Then finally to four-digit takeaway food services class 4512"?---Yes.

PN23320

That's ABS data 2006. Then you move on and - - -?---Well, that's from the classification document 2006, yes.

\*\*\* MARTIN JOHN O'BRIEN

XXN MR DIXON

PN23321

Yes. Then when you come to paragraph 4, you refer to occupations. The document I've handed to you now deals with those occupations, does it not? If you look at page 3, you will see that there is the food preparation assistant, item number 851?---Yes.

PN23322

That is the food preparation assistant you refer to in paragraph 4?---Yes.

PN23323

The fast food cook is 8511. Now, if you go to page 3 of the document I've just handed you, you'll see that the fast food preparation assistants again is broken down into three subcategories?---yes.

PN23324

8511 is fast food cooks?---Yes.

PN23325

8512 is food trades assistants and 8513 is kitchenhands. Then on the next page, page 4, there is a further breakdown, is there not, of those subcategories?---Yes. I see that, yes.

PN23326

So that again referring to category 851, the subcategory 8512, the fast food trade assistants is broken down into pastrycook's assistant. You see that?---Yes.

PN23327

On page 4. That's item 851211, pastrycook's assistant. 851299 is fast food trades assistants. Do you see that?---Yes.

PN23328

It would be your understanding, would it not - and when you prepared your report - you appreciated that pastrycook's assistant is not confined to working in the fast food industry. They could be working in restaurants, cafeterias, et cetera?---Yes. I can see that, yes.

PN23329

Or even in retail. Certain retail outlets would have pastrycook's assistants. Do you accept that?---Yes.

PN23330

The same for the food trades assistants. They would not be confined to the fast food industry?---Correct.

PN23331

They would be included in other industries, such as restaurants and catering, accommodation and the like?---Yes.

\*\*\* MARTIN JOHN O'BRIEN

XXN MR DIXON

PN23332

You indicate in paragraph 3 that you were confronted with certain shortcomings in the data that was available to you. You recognise, as appears on the top of page 6, that with respect to what you described as fast food workers, there were 203,000 employed in takeaway food services, being 31.3 per cent of the AFS division; the AFS division being division 8 which you referred to in paragraph 3?---Yes.

PN23333

So of the 31.3 per cent, the takeaway food services, that would include the classifications that we have just been referring to, including food trades assistants, pastrycook's assistants and food trades assistants as defined on page 4 of the document I handed you earlier, item number 299?---No. Again, you're referring to the occupation data within that food preparation assistants, but what I'm discussing in paragraph 3 relates to the industry data.

PN23334

Right, but the industry data is based on those classifications - - -?---The industry and occupation are separate.

PN23335

Yes, but to the extent that you rely on the occupations of persons within the data that you examined, the only classifications that you examined are those referred to as item 851 on page 4 of the document I handed you?---The occupation is only analysed in a couple of tables. As I said, the majority of this is based upon the industry data, which is either the AFS division or the takeaway food services four-digit industry which comes from the census data. There is only - I don't know, I have to check that. I think there are only perhaps two tables that come from the occupation data that you're referring to with the food preparation assistants.

PN23336

When you analysed the food preparation assistant, you were analysing it on the broader term as it is in item 851. You didn't do any sub-analysis of the categories that fall under the food preparation assistants?---I'll just check that, if I may.

PN23337

I think table 1.7 on page 15 is one where you do an analysis of the total cash earnings of food preparation assistants as against all occupations. Is that what you're referring to?---Yes, there is food preparation assistants, which is the three-digit there in table 1.7. There it is. In paragraph 14, I do refer to the fast food cook. Sorry for taking that amount of time. I knew that there was the fast food cook in there somewhere, so paragraph 14 relates to that four-digit data specifically. The tables that I have later - so I think you correctly identified table 1.7. 1.7 is at the three-digit level. The small item that I referred to in paragraph 14 relates to that four-digit fast food cook only.

PN23338

If by reference to the document that I handed you a moment ago, by reference to paragraph 14 - - -?---Yes.

\*\*\* MARTIN JOHN O'BRIEN

XXN MR DIXON

PN23339

- - - you looked at the occupations of the four-digit level. You picked there the one occupation 8511. That is reflected on page 3 of the document I handed you as one of the 8513 digit classifications?---In paragraph 4?

PN23340

Sorry, page 3 of the document I handed you?---Yes, sorry. Yes, so paragraph 14 relates to the 8511 fast food cooks.

PN23341

Yes?---The table 1.7, which is referred to later in the report, refers to the three-digit good preparation assistants which does include the other categories apart from the fast food cooks.

PN23342

Which you see reflected on page 4 of the document I handed you including 8512111299?---Yes.

PN23343

I tender if I may the ABS documents, if the Commission pleases.

PN23344

JUSTICE ROSS: Objection? I'll mark that exhibit Ai Group 19.

#### **EXHIBIT #Ai GROUP 19 ABS DOCUMENTS**

PN23345

MR DIXON: Dr O'Brien, can I then ask you to return to page 6 of your report and in that paragraph - sorry, on that page, paragraph 6, you make reference to average weekly earnings of the various employees that were the subject of your data. What did you include when you did the comparisons within average weekly earnings?---What did I include with the comparison?

PN23346

What did you include when you made reference to average weekly earnings? What components of the person's remuneration did you take into account?---It was the - if you refer to the heading of Figure 1.1 it comes from the data published by the ABS for average weekly total earnings.

PN23347

What does that include?---It's ordinary earnings plus I believe overtime if that's applicable.

PN23348

What does it exclude?---I'm not aware of what it excludes.

PN23349

The average weekly earnings that you took into account would have been the total earnings of all the persons within the industries that you looked at, including all the occupations within those industries?---Yes.

\*\*\* MARTIN JOHN O'BRIEN

XXN MR DIXON

PN23350

That would have included people in finance and banking?---Are you talking the all industries comparison?

PN23351

Yes?---Yes.

PN23352

People working in the mining industry?---Yes.

PN23353

People working in mining and construction where they worked 60 hours a week two weeks in a row?---Yes.

PN23354

The ABS data seems to suggest and tell me if you had a different view when you prepared your report that you took into account total remunerations of persons except for bonuses. In other words, all regular payments that were made were included but discretionary payments like bonuses were excluded?---That sounds correct, yes.

PN23355

Your report is based on where you deal with the all industries with all categories of employment in all the industries you identify, including all hours worked and all such payments made for such hours worked, leaving aside bonuses?---Yes.

PN23356

Can I then just clarify one other thing. Where you have cited data relating to the average weekly earnings in your report, it's correct is it not that most of the data is based on a combination of full-time employees, part-time employees and casual employees?---Yes.

PN23357

Can I ask you then to turn to Table 1.1 of your report, it's not Figure 1.1 but table 1.1 which is on page 8?---Yes.

PN23358

That is a table which you sourced not from ABS data but from a - is that ABS data?---Yes.

PN23359

The total number of employees in the accommodation and food services category you list there as 739,700, correct?---Yes.

PN23360

If you then go to table 1.2 you analyse which of those employees who are non-managerial employees paid at the adult rate, full-time employees, amounted to 169,000 employees?---Yes.

\*\*\* MARTIN JOHN O'BRIEN

XXN MR DIXON

PN23361

You can deduce from that, can we not, that the number of part-time and casual employees in the category of accommodation and food services would be the difference between 739,700 on table 1.1 and the 169,000 on table 1.2?---Well there's no talk of casual here. This is only a distinction between all employees in table 1.1 versus those that full-time non-managerial paid at the adult rate. So the difference between the two of those would be - here's no talk of casual in there basically, we're talking about 739,700 minus 169 would relate to those that are not in the full-time non-managerial employees paid at the adult rate.

PN23362

I didn't follow you, Dr O'Brien, and it's my fault. In table 1.2 where you deal with full-time employees, those are 169,000 in the accommodation and food services category?---Mm-hm.

PN23363

In table 1.1 under the AFS column, you have a total number of employees in accommodation and food services of 739,700?---Yes.

PN23364

Now the total of 739,700 would include full-time, casual and part-time employees, one takes it?---Yes.

PN23365

So if you remove the full-time employees from table 1.2 from the number in table 1.1, 739,700, you get a figure of those employees who are not full-time and are therefore part-time and casual employees. You accept that?---Well what you're getting is those that are either part-time managerial and/or paid at the junior rates is the difference. Because we're looking specifically with table 1.2, full-time non-managerial and paid at the adult rate. So any of those things not being true is what we would get in the overall larger category of 739,700.

PN23366

JUSTICE ROSS: Can I just clarify that. Does that mean that the number of table 1.1 that would include managerial full-time employees?---Yes. So by being managerial they're automatically not included in table 1.2 and that particular category, full-time non-managerial employees paid at the adult rate, wasn't something that I just decided upon because it was a very complicated thing, and to try and prove a point. It's a standard definition used by the ABS in their published - in their published annual average weekly earnings publication. So it was a standard thing that was just a copy and paste rather than anything I had to do, any manipulation to get down to that specific category.

PN23367

MR DIXON: So if we go back to table 1.1 the figure of 739,700 would include casual employees who are non-managerial?---Well if they're full-time casual paid at the adult rate then they would be in table 1.2.

\*\*\* MARTIN JOHN O'BRIEN

XXN MR DIXON

PN23368

What is a full-time casual?---Well they would be not receiving any paid leave entitlements but they would be working over 35 hours per week.

PN23369

Have you included - have you made any distinction in your tables for full-time or part-time casuals on that definition?---I haven't - no, I haven't done the double disaggregation of looking at full-time, part-time and permanent casual in the same disaggregation. That just leads to a number of - a number of dimensions to the table where it gets quite complicated to report and interpret. So no, I have permanent versus casual. I have reference to full-time versus part-time in various aspects of the report but I haven't done the double disaggregation of looking at full-time, part-time and casual permanent together.

PN23370

Did you analyse the total working hours and therefore income of part-time and casual employees who are not full-time casuals or full-time part-time?---No, I haven't looked at casual and full-time part-time as a disaggregated group.

PN23371

You accept, do you not, that persons who are working a small number of hours, for example, four or five hours a week in all the casual - all the casuals working a reduced number of hours would impact on the overall comparison that you carried out between all industries and those in the accommodation and food section?---Can you repeat that, please?

PN23372

The lower total working hours of part-time and casual employees produce a lower average weekly earnings for them?---Well that would be true, yes, but you seem to be using part-time and casual in one statement where they're separate things that you're looking at. Part-time relates to hours specifically where casual relates to the receipt or otherwise of paid leave entitlements.

PN23373

So have you taken into account the fact that there may be casual employees who don't work 35 hours a week, who work say 10 hours a week on a regular basis?---Of course they would be in there.

PN23374

By definition they would be earning considerably less by reason of the hours that they work?---Correct.

PN23375

That would influence the comparison that you carry out, depending on how many people are working in that casual capacity that I've just described?

PN23376

JUSTICE ROSS: When you say the comparison, are you referring to figure 1.1?

\*\*\* MARTIN JOHN O'BRIEN

XXN MR DIXON

PN23377

MR DIXON: Generally, the comparison between all industries and employees in the accommodation and food services?---Of course those working fewer hours would be earning less but you'll see in other aspects of the report I've tried to take that into account by either looking at the hourly wage rates only or there's a decomposition that's presented in paragraphs 11, 12 and 13 where I'm trying to sort of decompose the difference in the weekly earnings into that which is attributable to average hours versus the average hourly rate. So of course those two factors would have an impact. The hourly wage rate itself as well as the number of hours worked.

PN23378

The fewer hours that are worked by the larger number of people who are casuals, the greater the difference would be between those in one category as opposed to the all industries category?---What do you mean by the larger number of casuals?

PN23379

Assume for a moment that there are a large number of employees in the accommodation and food services who are casuals, who work 10 hours a week. You would accept that when you do an analysis, if a large number of employees are casuals working a limited number of hours you're going to have a distorted comparison when you compare their salaries to those in the all industries category, covering all occupations, all hours and the like?---Well I think it's up to you what you think is distorted but it all relates to the number of hours rather than whether they're casual or not. So yes, if you do have a large proportion of workers working lower hours and in turn on lower hourly rates, of course that is going to lead to lower average weekly earnings.

PN23380

In relation to page 21 of your report, you indicate that 41 per cent of takeaway food services employees receive less than \$200 per week, and I take it that you would attribute that to the fact that they are working a - of the 41 per cent, they are working a limited number of hours per week?---Yes, well it's the combination of the number of hours as well as the hourly wage rate.

PN23381

The hourly wage rate being in the award, in order to arrive at \$200 a week, you would simply be - the real determinant there would be the number of hours that you work a week?---Yes.

PN23382

Dr O'Brien, to the extent that your report uses data specifically relating to the fast food industry, the Commission can accept that - is it correct that the data is limited as you say in paragraph 3 of your report on page 5, it is limited to 2011?---That is correct, that's the last census that was undertaken. That's the only available four digit data for the takeaway food services that I could find.

PN23383

Can I then ask you to turn to page 30?---13?

\*\*\* MARTIN JOHN O'BRIEN

XXN MR DIXON

PN23384

Page 3-0, table 3.3, where you're looking at household income and you are there comparing two different sets of data. In the all industries what have you included?---All industries is all industries.

PN23385

All occupations in those industries?---Of course yes. Again, we talk about industries, occupation is a separate disaggregation.

PN23386

Yes. Thank you, that's the cross-examination.

PN23387

JUSTICE ROSS: Further cross-examination?

PN23388

MR BREHAS: Your Honour, I'm not sure if I need leave to appear at the beginning of the proceedings but my name is BREHAS, initial C, for the National Retail Association and I just have some brief questions for Dr O'Brien.

**CROSS-EXAMINATION BY MR BREHAS**

**[10.19 AM]**

PN23389

MR BREHAS: Dr O'Brien, I just have some very short questions for you. Just in relation to that same report that my learned friend was referring to, I see that you received instructions to compile a report from the ACTU on 19 August 2015?---Yes.

PN23390

That your report was then prepared on 4 September 2015?---Yes.

PN23391

So that was a very quick turnaround, would you not agree with that?---I would certainly agree with that, yes.

PN23392

The three questions that you refer to in your report that the ACTU raised, they seem to me to be very broad and vague. Would you agree with that view?---I would agree with broad.

PN23393

So when we refer, for example, to the first question;

PN23394

*Describe the earning situation of the national fast food workforce.*

PN23395

Would you not consider the term "situation" to be very vague?---Not particularly.

\*\*\* MARTIN JOHN O'BRIEN

XXN MR BREHAS

PN23396

What is your understanding of the term "situation"?---Well, "situation", I'd be looking at statistics in the area of earnings for the fast food workers.

PN23397

But that's your interpretation of it?---Yes.

PN23398

Would you agree that other people could have a very different interpretation of earning situation?---Of course, perhaps they could have a different interpretation of that.

PN23399

In page 2 of your report under the Executive Summary heading, you state in the second paragraph that;

PN23400

*In order to address these questions, a comprehensive statistical analysis of the latest ABS and HILDA data is conducted.*

PN23401

Would you agree that that is not the only method of addressing the questions that have been put to you?---I guess the reason I was asked for my background was that I would be doing a statistical analysis on - I daresay other people could do more of a qualitative type of analysis, but my area is quantitative; econometrics, business statistics; that is naturally where I go.

PN23402

Sure, because that is based on your interpretation of what the questions actually meant and how you would go about approaching them?---Correct, and yes I would reiterate that my interpretation, from my background, would be to do a quantitative type of analysis, looking at statistics, yes.

PN23403

And that would have been the quickest method for you to prepare your report in the short period of time that you had?---I would have been struggling to do a comprehensive literature review in that amount of time, yes.

PN23404

But it would have been open to you to do so if he had been given sufficient time?

PN23405

MS STARR: I object to the specific line of questioning - - -

PN23406

JUSTICE ROSS: Where is all this taking us - - -

PN23407

MS STARR: It's clear what the questions are - - -

\*\*\* MARTIN JOHN O'BRIEN

XXN MR BREHAS

PN23408

JUSTICE ROSS: - - - he has produced his report. That's what he's here to be cross-examined about.

PN23409

MR BREHAS: I understand, your Honour.

PN23410

JUSTICE ROSS: Whether the report is the only way of doing it or it is - or the questions are vague, isn't it his report that's in evidence?

PN23411

MR BREHAS: I understand. The answers are relevant to the purposes of the submissions that we will be compiling at the end of the day, your Honour.

PN23412

JUSTICE ROSS: Whether they're relevant to what we have to decide is the question I'm raising with you.

PN23413

MR BREHAS: Okay.

PN23414

Dr O'Brien, would it be correct to say that the methodology that you've chosen to address these questions, based on your subjective interpretation as to what these questions mean, could effectively have been approached, as you said earlier, in a different manner?---I'm sure it could have been.

PN23415

Okay. And would you agree that the conclusions that you drew based on your interpretation - - -

PN23416

MS STARR: I object. I don't think they're in (indistinct) confusion - - -

PN23417

JUSTICE ROSS: He said "conclusion".

PN23418

MS STARR: Conclusion (indistinct).

PN23419

MR BREHAS: - - - based on your interpretation of the terms of reference, were, in fact, directly linked to your views as to how you should be approaching those questions?---Can you repeat that question, please.

PN23420

So would it be correct to say that the conclusions that you drew relating to the questions by the ACTU were based on your subjective views as to how you interpreted those questions?---Yes, I guess so.

\*\*\* MARTIN JOHN O'BRIEN

XXN MR BREHAS

PN23421

That's all. Thank you, your Honour.

PN23422

JUSTICE ROSS: Any further cross-examination?

**CROSS-EXAMINATION BY MR SECK**

**[10.24 AM]**

PN23423

MR SECK: Dr O'Brien, my name is Michael Seck. I appear for the Pharmacy Guild of Australia. Might I take you to your report which is dated 3 September 2015, which is in response to section 3.2 of what I will describe as Ms Pezzullo's report. It's under tab 1 of your bundle. You have that with you?---(No audible reply)

PN23424

Yes. You just have to speak, for the record. Can I please go to page 4 of the report, paragraph 1. Yes?---Yes.

PN23425

So what you're doing here, as I understand it, doctor - - -

PN23426

JUSTICE ROSS: What was the exhibit number of that?

PN23427

MR SECK: Pardon me. SDA 41.

PN23428

JUSTICE ROSS: 41. Thank you.

PN23429

MR SECK: Dr O'Brien, in paragraph 1 on page 4 of SDA 41 you're looking at the assertion which is made in the Pezzullo report regarding the Pharmacy Industry Award to ascertain whether or not the award - or the effect of the award impacted on a whole lot of variables. That's correct, isn't it?---Yes.

PN23430

And you're looking at the statistical analysis that has been undertaken in the Pezzullo report. That's correct?---Correct, the regression analysis.

PN23431

The regression analysis. Now, in paragraph 2 on page 4 you said you would expect that there was a vast array of factors that would have changed in the period 2009 to 2014 apart from the Pharmacy Industry Award?---Yes.

PN23432

Yes. And you identified one of them, which was the global financial crisis, in paragraph 2. That's right?---Yes.

\*\*\* MARTIN JOHN O'BRIEN

XXN MR SECK

PN23433

Of course, you don't say that you're an expert in the area - in the community pharmacy industry, do you, Dr O'Brien?---No.

PN23434

You've never done any research in that area?---No.

PN23435

You're not aware of the various economic factors which have impacted upon the community pharmacy industry between 2009 and 2014. That's correct?---Well, can you restate that question, please.

PN23436

You're not aware of any specific factors which may have impacted upon the community pharmacy industry between 2009 and 2014 which may have been influential in this analysis. That's correct?---Well, I haven't done research specifically in the pharmaceutical industry before, but my area of labour economics, and also macroeconomics, I think it would be fair to say that I have an understanding of the types of factors that could impact any particular industry, without specifically being the pharmaceutical industry. And I've made mention of a number of those factors in the second report to elaborate on that, apart from the financial crisis; which Ms Pezzullo seems to only take the financial crisis as one and only event that could impact the industry. I elaborated on that in the second report. Of course, there are a number of influences that can impact upon any specific industry in the economy apart from the global financial crisis.

PN23437

And the factors you've just identified, Dr O'Brien, you've listed in your second report dated 19 November 2015, which I understand is under tab 3 of the folder in front of you - - - ?---Yes, that's correct, that's - - -

PN23438

- - - and it's exhibit SDA 42?--- - - - what I was alluding to just then, yes.

PN23439

And if you go to page 2 of your report, about halfway down, starting with the words "for example", do you see that?---Yes.

PN23440

You identify those particular supply and demand conditions which may have changed between 2009 and 2015. That's right?---Correct.

PN23441

And you're not aware of any of those particular changes affecting the community pharmacy industry between that time, you're really just creating a catalogue of potential factors which may have changed. That's right?---Yes.

\*\*\* MARTIN JOHN O'BRIEN

XXN MR SECK

PN23442

Correct. Okay. Now, can I take it, Dr O'Brien, the second report that you produced on 19 November 2015 sets out all you wanted to say in response to Ms Pezzullo's reply, which was dated 21 September 2015. That's correct?---Yes.

PN23443

And to the extent that you haven't responded to matters which are contained in Ms Pezzullo's reply, that's because you didn't take issue with the points which were right. That's right?---Well, I used three points in SDA 42 which reflect the three points or issues that she raised in her reply to my initial critique, so I just kept to those three headings.

PN23444

So do I understand in a broad sense there are three topics which Ms Pezzullo addressed in her reply - - -?---Yes.

PN23445

- - - to your original report. You've dealt with them generally under those three headings?---I've kept the same three categories, yes, to - hopefully that keeps it easy for people to keep up with.

PN23446

And to the extent that you've dealt with those issues, you've said everything you wanted to say on the issue?---On those three particular issues - - -

PN23447

No further questions?--- - - - Yes.

PN23448

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

PN23449

MR MOORE: No, your Honour.

PN23450

JUSTICE ROSS: Dr O'Brien, can I just take you to paragraphs 45 and 46 of exhibit ACTU 43 - I'm sorry, 46 to 47?---Yes.

PN23451

I just had a little bit of trouble following the point you're making in these two paragraphs. Would you mind just explaining it to me?---Okay. I will just have a quick read, if that's okay, to reacquaint myself.

\*\*\* MARTIN JOHN O'BRIEN

XXN MR SECK

PN23452

Sure. Yes, that's fine?---The main point that I'm drawing attention to in paragraph 46 is there seems to be a bit of a disagreement between data coming from the census versus HILDA as to the proportion of dependent students, which I'm aware is being raised as an issue specific to this industry, the high proportion of dependent students, so HILDA seems to indicate that 37.4 per cent of the food and beverage services sector - so that was - the food and beverages service, if we go back to the original industry stuff that we were talking about at the beginning,

that's three digit, whereas what we're after is sort of like the four digit. Sorry, FBS, I think, is two digit. Let me just check that.

PN23453

And that's using the census, and it comes up with 21.5 per cent. Is that right?---Yes, that's right. So that's the thing. Yes, I'm just - yes, sorry, two digit is the food and beverages service, so we still have to go down another two levels before we get to the take-away food employees. But yes, that's right, the HILDA is saying that 37.4 per cent of food and beverage service employees are dependent students; whereas if we look at the census 2011, it indicates that that is only 21.5, and I'm just sort of drawing attention to the fact that the percentage or the proportion of dependent students is, I guess, a point of contention, the actual number there.

PN23454

And that's the point you make - - - ?---Yes, and there's no obvious - - -

PN23455

- - - at the beginning of paragraph 47?---There's no obvious reason for that. If we look at the definitions which I've provided, the HILDA definition in paragraph 45 and the census definition in paragraph 46, while the order of the wording of that definition appears to be quite similar, there's no obvious difference between the definition that should lead to - what are we talking about - about 16 or so per cent difference in the statistics. So I'm aware that HILDA is being used as the data source stating the percentage or the proportion of dependent students in other stuff, but looking at the census data, census is indicating it's only 21.5 per cent in the food and beverage services class which is used previously; and take-away food services, which we know that there's a much higher proportion of younger, and particularly teenage people within the take-away food services versus food and beverage services more generally. Census is only saying it's 35.8 per cent of take-away food services that are dependent students. Now, we would have expected - if we've got HILDA saying that 37 - sorry, use all these numbers. If we've got HILDA saying 37.4 per cent of food and beverage services employees are dependent students, we would expect a much higher percentage of those within the take-away food services being dependent students.

PN23456

Where was that - I see, the - - - ?---So in table 3.1 - - -

PN23457

So the census data - - - ?--- - - - has got the information coming out of HILDA, so that's saying 37.7 per cent of food and beverage services are dependent students. Now, the category that should be about the same is if we go to table 3.2 and again look down the FBS column, where we only have 21.5 per cent. Now, they are two different time periods, we're looking at 2013 in HILDA in table 3.1 versus 2011 as the time period in table 3.2 from the census, but at the bottom of paragraph 46 I've actually tried to sort of clean up that discrepancy in the time period by actually going to a different period of HILDA. And it just seems that there are different numbers coming out of HILDA.

\*\*\* MARTIN JOHN O'BRIEN

XXN MR SECK

PN23458

Yes. Does the - - - ?---So I guess that was the main thing from that. Yes, there are a higher proportion of dependent students within take-away food services and food and beverage services more generally, but there's actually a bit of a point of contention, exactly what that proportion is, depending upon whether we're looking at the census or HILDA data.

PN23459

And when you look at the census data of 21.5 per cent and the HILDA data at 37.4, in both of those you're looking at the same subdivision level?---Yes, correct; the food and beverage services, so the two digit level, yes.

PN23460

Okay?---And they're using the same industry classification. For all intents and purposes, the definition looks the same, so I'm just not quite sure why HILDA is actually producing what I would consider to be an over-estimate, because I would consider the census, being, you know, 23 million or something compared to 20-odd thousand sampled from HILDA, to be closer to the true number.

PN23461

Anything arising from any of that? No?---And the other thing in - I think you mentioned paragraph 47 as well.

PN23462

No, only because - it was really just the first - - -?---Just that first statement that the "high, but contestable" - - -

PN23463

Yes, when it talks about "high, but contestable", I just wanted to explore that?---Okay.

PN23464

Nothing further for Dr O'Brien?

PN23465

Thank you, you're excused?---You're welcome.

**<THE WITNESS WITHDREW**

**[10.37 AM]**

PN23466

JUSTICE ROSS: We might take a short five-minute break before we call the next witness.

**SHORT ADJOURNMENT**

**[10.37 PM]**

**RESUMED**

**[10.48 AM]**

PN23467

JUSTICE ROSS: Yes, Mr Moore.

\*\*\* MARTIN JOHN O'BRIEN

XXN MR SECK

PN23468

MR MOORE: Thank you, your Honour. The next witness who I called is Professor Sarah Charlesworth.

PN23469

THE ASSOCIATE: Please state your full name and address.

PN23470

PROFESSOR CHARLESWORTH: Sara Catherine Mary Charlesworth, (address supplied).

**<SARA CATHERINE MARY CHARLESWORTH, AFFIRMED [10.48 AM]**

**EXAMINATION-IN-CHIEF BY MR MOORE [10.49 AM]**

PN23471

MR MOORE: Professor Charlesworth, could you please repeat for the transcript your full name and work address?---And work address? Yes, Sara Catherine Mary Charlesworth. I am at RMIT University, 448 Swanston Street, Melbourne.

PN23472

Could you tell the Commission your occupation, Professor Charlesworth?---Yes, I'm a professor of management in the school of management in the college of business.

PN23473

Professor Charlesworth, I have put before you in the witness box a folder of some documents. If I could ask you to open those?---Yes.

PN23474

If you go to tab 1, what you should see there is a document which has as its heading "Expert Report from Professor Sara Charlesworth and Dr Fiona MacDonald to the Shop Distributive and Allied Employees Association for use in the four-yearly review of modern awards being conducted by Fair Work Australia". You see that?---Yes.

PN23475

Is that a copy of a report that you co-authored?---It is.

PN23476

That report, Professor Charlesworth, just to confirm for the record and for your observation is - if you go to page 12 - dated 26 August 2015 and signed by you?---Yes.

PN23477

And comprised of 42 paragraphs?---Yes.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XN MR MOORE

PN23478

Then following that, from the following page on page 13 through to page 24 - going to page 24 - it bears the signature of Dr Fiona MacDonald of 26 August. You see that?---Yes.

PN23479

There then follows from page 25 onwards through to - on page 25, a bibliography. You see that?---Yes.

PN23480

Then appendix 1 from page 26?---Yes.

PN23481

Which goes to page 41. Correct?---Yes, correct.

PN23482

Then appendix 2 entitled "Comparing AWALI scores for retail and non-retail workers controlling for hours" which goes through to page 45. That's correct?---Yes, that's correct.

PN23483

Then one finds appendix 3 at page 46, which goes to page 47?---Yes.

PN23484

Then appendix 4 on page 48 and appendix 5, which begins on page 49 and continues through to page 52. That's correct?---That's correct.

PN23485

There then follows your curriculum vitae and Dr MacDonald's curriculum vitae?---That's correct.

PN23486

Thank you. Can I just confirm that part A of the report which commences on page 5 and goes until page 12 - can I confirm whether you were the author of that part of the report?---I was the sole author.

PN23487

The sole author of that part of the report. In relation to the introduction on pages 3 and 4, can I confirm that you are the joint author of that part of the report with Dr MacDonald?---That's correct.

PN23488

Can you confirm whether the introduction and part A of the report accurately set out the opinions formed by you on the basis of your expertise?---They do.

PN23489

Before I tender that, your Honour, I just want to take the witness to one other matter.

PN23490

If you could turn to tab 2 of the folder, Professor Charlesworth?---Yes.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XN MR MOORE

PN23491

You should see there a two-page document, dated 31 August 2015?---Yes.

PN23492

Signed by you. Does that set out a correction that you wish to make to table 5 in appendix 1 of the report of 26 August 2015 and, in particular, that you would like to substitute table 5 for how it appears at the bottom of the letter of 31 August 2015 so that it reads as set out over the page from the top of that letter?---That's correct. That's what I wanted to do.

PN23493

Thank you. Now, beyond that change or correction, are there any other changes or corrections you wish to make to the report of 26 August?---Just one extremely minor one. In that letter of correction, I've got two "nots". The "not" after "not change" should be deleted. That's a typo.

PN23494

That is in the second paragraph of the first page after the - - -Yes, so it should read, "This error does not change the statistical significance," and I've popped in an additional "not".

PN23495

A correction in a correction. Thank you?---Yes.

PN23496

Are there any other changes or corrections you wish to make to your report of 26 August 2015?---No.

PN23497

I tender that, if the Commission pleases.

PN23498

JUSTICE ROSS: We'll mark the expert report as exhibit SDA43.

**EXHIBIT #SDA43 EXPORT REPORT OF PROFESSOR SARA CHARLESWORTH DATED 26/08/2015**

PN23499

JUSTICE ROSS: At some point, Mr Moore, if it can be just re-filed electronically, replacing table 5 with the corrected table.

PN23500

MR MOORE: We'll certainly attend to that, your Honour. With the leave of the Commission, I'd seek to ask the witness a few other questions dealing with the reply filed by Ms Pezzullo of September 2015 in which Ms Pezzullo addresses the report that I've just taken the witness to. That is a course that has been adopted, as the Commission would appreciate, in relation to a number of other witnesses and we would seek to adopt that course now.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XN MR MOORE

PN23501

JUSTICE ROSS: You raised with it - - -

PN23502

MR SECK: It hasn't been raised with me, your Honour. I'm content for it be done in the way it has been done for other experts, reserving my right to object to any questions of course.

PN23503

JUSTICE ROSS: Yes. Just see where the questions go and - - -

PN23504

MR SECK: May it please.

PN23505

JUSTICE ROSS: Thanks, Mr Seck.

PN23506

MR MOORE: Before I do that, there is actually a further report that I have not yet tendered, which I need to attend to, which is behind tab 3 of the folder.

PN23507

Professor Charlesworth, do you see there a document which commences with the heading "Expert opinion on questions and matters referred to in the Pezzullo report from Professor Sara Charlesworth to the SDA"?---Yes.

PN23508

You have that in front of you?---I do.

PN23509

That document, if you go to page 5, appears to bear your signature on 31 August 2015?---That's correct.

PN23510

It's then followed by a bibliography and appendices, and correspondence of 17 August 2015 from AJ Macken and Co, and a copy of your curriculum vitae?---Yes.

PN23511

Are there any changes or corrections you wish to make to that?---No.

PN23512

Does the contents of that document of 31 August 2015, set out opinions formed by you on the basis of your expertise?---It does.

PN23513

I tender that, if the Commission pleases.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XN MR MOORE

PN23514

JUSTICE ROSS: I'll mark that exhibit SDA44.

**EXHIBIT #SDA44 PROFESSOR CHARLESWORTH'S EXPERT  
OPINION ON QUESTIONS AND MATTERS REFERRED TO IN  
PEZZULLO REPORT DATED 31/08/2015**

PN23515

MR MOORE: If the witness could just be handed this document, please. I have copies for the bench and I've provided my learned friends with copies of this document.

PN23516

I have handed to you a document, Professor Charlesworth, called "Australian Work and Life Index 2014 - The Persistent Challenge: Living, Working and Caring in Australia in 2014" by Natalie Skinner and Barbara Pocock from the Centre for Work and Life at the University of South Australia. Just take a moment to look have a look at that, but could you please confirm for the Commission whether that is a copy of the document which is set out in the footnote - footnote number 5 and elsewhere - in your first report of 26 August?---Yes, it is.

PN23517

Is that a document to which you had regard when preparing your report?---Yes, it is.

PN23518

If the Commission pleases, we seek to tender this document just assist the Commission. I don't understand there to be any objections from counsel.

PN23519

JUSTICE ROSS: We'll mark that exhibit SDA45.

**EXHIBIT #SDA45 AUSTRALIAN WORK AND LIFE INDEX 2014 -  
THE PERSISTENT CHALLENGE: LIVING, WORKING AND  
CARING IN AUSTRALIA IN 2014**

PN23520

MR MOORE: I'm going back to the folder of documents, Professor Charlesworth. If you could turn to tab 4, you should see a document on the heading "Deloitte Access Economics", which is "Reply evidence to union opinions: for use by Fair Work Commission four-yearly review of modern awards penalty Rates", Meridian Lawyers, September 2015. Is that a document you've read before?---It is.

PN23521

I want to ask you some questions about parts of it. If you could go to page 12 of that document. See the heading there Shop Distributor and Allied Employees Association, and then 3.1 Sara Charlesworth and Fiona MacDonald re weekend report?---I do.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XN MR MOORE

PN23522

In this section of this report, Ms Pezzullo responds to and addresses statements made by you in your report of 26 August, is that so?---That's so.

PN23523

You've read this before?---I have.

PN23524

I just want to ask you a couple of questions about some parts of this part of the report. On page 12, towards the bottom of the page there's a heading in italics;

PN23525

*Charlesworth incorrectly speculated there may be a large non-response rate.*

PN23526

You see that?---Yes, I do.

PN23527

In the following paragraph, Ms Pezzullo refers to the survey - the obtaining of the survey sample. She goes on to state in the second sentence;

PN23528

*In drawing a total survey sample, i.e. those who were emailed the survey, i-link ensured that the sample was drawn to represent the Australian population in terms of gender, age and geography based on Australian Bureau of Statistics data.*

PN23529

You see that?---Yes, I do.

PN23530

Could you please provide your comment in respect of that sentence?---If I may it'll be a two part comment but taking - I have fundamental objections to a sample including people who aren't employed in comparing people who work weekends and people who don't work weekends. But putting that aside and taking first of all the i-link sample, if you in fact compare the i-link sample's age profile, it is significantly older than that provided by ABS population data. So it's about people over 50, there's almost two as many - well, double the proportion of people over 50 in the i-link survey. So it's not correct to say it represents the Australian population.

PN23531

JUSTICE ROSS: Was it over 40 or over 50?---Excuse me?

PN23532

Was it over 40 or over 50 that it was double?---I don't have the data in front of me but I did do a comparison when I was going through. I looked at the ABS population data for people aged 15 years and over and compared it with the categories with the i-link survey, that was - I downloaded from the internet and to which I referred to in my response to the Deloitte report.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XN MR MOORE

PN23533

Thank you.

PN23534

MR MOORE: If I could ask you to turn the page to page 13. There's a heading in italics:

PN23535

*D. Charlesworth complains that the survey aggregates a number of years into an age cohort, 22-35 years. This makes it difficult to evaluate findings about younger workers.*

PN23536

In the first dot point under that heading, Ms Pezzullo states, you can read the first sentence to yourself and she goes onto say in the second sentence;

PN23537

*There is nothing inappropriate about the age groups reported, broadly school age, university age, beyond university in the under 35 group.*

PN23538

Could you please respond and comment on that sentence?---Yes, in my opinion expressed on the original report, I queried why the more common use of ABS age cohort data which is to divide people into 15-19, 20-24 et cetera, wasn't used. The Deloitte report had - and I don't have it in front of me but the Deloitte report had two categories of young people, I think it was 15-19 and 20-22 or thereabouts. Then it had a huge category moving from 24 through to 35, which if one is talking about young workers is so large a category to be meaningless, and it also doesn't allow one to compare the representation in those categories with the ABS population estimates, although I would note that at least for the younger age group that only 4 per cent of the surveyed population to the survey that Deloitte ran, fell into that younger age group, which is way below population estimates.

PN23539

Thank you, Professor Charlesworth. If you could turn to page 14, there's a heading 3.1.2 AWALI Survey, Weekend Work and Work/life Interference, and there's a subheading in which Ms Pezzullo states at a);

PN23540

*Charlesworth notes that the weekend report states the correlation between work related stress and weekend work may be capturing the different characteristics of the weekend work population as indicated in the literature review. Not the effects of weekend work per se since, as this report shows, weekend workers act differently to non-weekend workers in ways that can't directly be explained by the fact that they work weekends.*

PN23541

She goes onto claim that;

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XN MR MOORE

PN23542

*We thus assume that only one particular type of person works on weekends.*

PN23543

In the dot point thereunder Ms Pezzullo responds by saying:

PN23544

*The report does not assume that only one type of person works on weekends. It is clear from the survey sample of weekend workers that there are a variety of employment and social demographic backgrounds. To clarify, there may be an underlying factor or personal characteristic which cannot be observed but may confound the measurement of the levels of the work/life interference. These factors are listed in section 1.2.3 above in our reply to the ACTU market response, para 1.2.3(c).*

PN23545

Could you please respond to Ms Pezzullo's statement in that second final sentence, that there may be an underlying factor or personal characteristic which cannot be observed but may confound the measurement of work/life interference?---What we were doing when we used the AWALI survey is to have - we compared groups of workers. So for example people who work weekends against those who don't. In both, the non-weekend worker and we used workers or in this case employees in quite a precise way, that's our target population if you like, that there are differences in both populations.

PN23546

So for example - and I don't have immediately the figures to hand but roughly the same or I think slightly fewer people who have got young children don't work weekends, Saturdays or Sundays, compared to those who do. I think the proportions are they're not statistically significant, something like 48 per cent do work weekends and 52 per cent don't.

PN23547

So the point I was making is that the different characteristics which the AWALI survey measures, so we've got a whole lot of characteristics from occupation, industry, employment status, whether or not they have - we've got age for example, and in age it is clear that the group - and AWALI only looks at people from 18 to 24, that's because of ethics protocols, which means we're not allowed to administer a survey to those under 18 without parental consent. But when we look at that group a higher proportion of them do work on weekends than not. But generally the two populations; weekend workers and non-weekend workers, are full of employees with quite diverse characteristics, and it was really in the original report that there seemed to be some suggestion that there was a type of person who was a weekend worker, and that was the point I was taking issue with.

PN23548

MR MOORE: Thank you. Paragraph (b), the heading in (b) following that dot point, Ms Pezzullo states;

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XN MR MOORE

PN23549

*Charlesworth accuses our analysis of having a non-representative survey methodology and inadequate sampling, particularly the non-weekend worker group, claiming that the AWALI survey instead is a large nationally representative survey of Australian workers.*

PN23550

She then sets out a number of dot points which I just want to take you through. Dealing with the first - the first dot point, Ms Pezzullo states that;

PN23551

*The AWALI sample comprises only Australian workers who answered a catty call on a weekend and then continued to participate in a telephone interview. We have noted the problems with this technique above.*

PN23552

Would you care to respond to that statement?---Yes, well in fact the catty - this particular 2014 AWALI survey was run over for weekends in Friday, Saturdays and Sundays in March 2014, so it included the Friday, Saturday and Sunday. Because there was concern that maybe Friday, Saturday and Sunday some people wouldn't be at home and calls are structured across the day and into the evening, a system of call backs was put in place. Basically, the AWALI survey is what you call probability sampling so it is looking at - and the larger AWALI survey surveys workers. So it's looking to interview workers, but it's a random selection. The only stratification that's put in place is statistical division to make sure that there's a fair representation across Australia and we can then talk meaningfully about a survey that's representative of the Australian worker population. So it's not as though there was simply one catty call on a weekend, so I would refute that.

PN23553

Thank you. In the next dot point Ms Pezzullo states;

PN23554

*The AWALI sample analysed by Charlesworth excludes the self-employed, which is not fit for purpose in our study.*

PN23555

Would you care to comment in relation to that statement?---Yes, it's noted in my original report, we specifically excluded the self-employed. We are comparing groups of workers in terms of the impact of work/life interference. That is the impact of work on their life outside of work. You know, whether or not it's connections with family or friends, the community et cetera, being rushed and pressed for time, they're the various constituent parts that go into the AWALI index. Now the self-employed generally have more control, I recognise lots of self-employed people feel that they don't have an enormous amount of control over their working hours, but they in fact do as an objective matter of fact have more control over the scheduling and the quantum of their working hours. So it was for that reason that we excluded them.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XN MR MOORE

PN23556

Thank you. In the next dot point Ms Pezzullo states;

PN23557

*The AWALI sample ignores others in the labour force, notably the unemployed.*

PN23558

She goes on - I don't ask you to deal with the remainder of her sentence but could you respond to that first statement in that sentence?---Well, I'm making an assumption here but that statement appears to relate to my criticism of the survey undertaken by Deloitte, which in their non-weekend worker sample, over 50 per cent of that sample were people not in the labour force or unemployed. I would certainly argue that that's not fit for purpose. Once again, we are comparing the impact of work on life, if you like. We're looking at the degree of interference. So in order to make that comparison you really have to compare workers, and in this case employees, so we're comparing employees who work on the weekends with employees who don't work on the weekends. Having a comparison which includes people who are not in the labour force or unemployed is not really measuring that effect. So that was the reason that we - I have to be honest, we didn't even imagine for a moment that we would exclude those not in the labour force or the unemployed but as I said that appears to be a follow up to the concern that I expressed in my report on the original Pezzullo report.

PN23559

Thank you. Over the page, Professor Charlesworth, the first dot point Ms Pezzullo states:

PN23560

*The AWALI sample would thus lead to bias results to the extent that those it excludes may value their weekend time and access the services and industries of interest differently from the average of the population.*

PN23561

Would you please respond to the statement that the AWALI sample would leave to bias results?---Well the AWALI sample wasn't measuring people's valuation of their weekend time, nor whether or not they were able to access surveys in the industry in question. What it was doing was having a look at people who were currently engaged in work, in this case the slightly smaller AWALI sample looking at employees, and they were simply asked a series of questions about, you know, their various characteristics. In terms of the actual AWALI measure made up of five different questions, they were then asked the extent to which they for example - well how frequently work interfered with their time with family and family relationships, for example. So I don't - I have to be honest, I don't actually understand the point of that question. That's a totally different exercise. I didn't - the AWALI can't speak to how people access the services in the industries of concern. That's not what it's about. It doesn't have any question that goes to that.

PN23562

Thank you. In the next dot point Ms Pezzullo states;

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XN MR MOORE

PN23563

*Moreover and importantly we note that the AWALI survey relied upon by Charlesworth is a telephone survey conducted only on weekends when potentially weekend workers would be working and hence more stressed than non-weekend workers who would be having days off. We consider this to be much more serious and identifiable introduced bias.*

PN23564

You've given some evidence before in relation to the manner in which the telephone surveys were conducted in March 2014. Could you please respond to the statement there that the way in which the survey was conducted was - would have the effect of introducing a serious and identifiable bias?---Well as I've already answered, it was conducted over those four weekends; Friday, Saturday, Sunday with a system of call back but inherent in that comment it seems to assume that people are either weekend workers or non-weekend workers, and in fact there's a fair degree of overlap.

PN23565

Thank you. Now the next heading which reads:

PN23566

*Charlesworth notes that for employees with young children working on weekends is associated with worse work/life interference than not working on weekends and the association is statistically significant.*

PN23567

In the second dot point underneath that heading Ms Pezzullo states that;

PN23568

*The regression analysis that you used throughout your response has serious flaws.*

PN23569

She states firstly; "She", that is you;

PN23570

*Include numbers of hours worked together with weekend work as independent variables but they are correlated. Weekend workers work fewer hours than non-weekend workers, potentially resulting in multi-collinearity.*

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XN MR MOORE

PN23571

Please respond to that statement?---What we did and indeed in the original AWALI report and it's been a practice in all of the AWALI reports being undertaken. Because we're measuring impact of work on life, if you include for example people who work three hours a week against people who work 60 hours a week, it wouldn't be surprising to assume that people who work 60 hours a week are going to be far more affected by work than those who work three hours a week. So what we do is - what's term control for hours, and rather than me going through it, if I could draw the Bench's attention to page 9 of the persistent challenge, where it sets it out very clearly in the second part of that.

PN23572

I'm sorry, Professor Charlesworth, you're referring to the - - -?---I'm referring to this report that was tendered.

PN23573

That I handed to you before?---Yes, and I'm referring to page 9. So - - -

PN23574

Thank you. Page 9?---Yes. This is - and I'm drawing your attention to the last full paragraph at the bottom of page 9, beginning "Work hours". What it's saying there much more elegantly than I am is that work hours have clear and consistent impact on work/life interferences. Hours increase, work/life interference also tends to increase, Therefore work hours are entered as a co-variant in some analyses in which means scores, and this is comparing the means scores on the AWALI index, are compared. So it means the effect of work hours is removed or controlled. So it's essentially asking the what if question. So for example, we know that women work fewer hours on average than men. So if we remove the impact of hours we can actually measure the impact of work on work/life interference. So that's that exercise and it's - I'd have to say and I haven't brought the list that this - the AWALI survey has been peer reviewed in Australian and international journals and this practice is regarded as, you know, extremely academically respectable.

PN23575

Thank you. Going back to page 15 of the Pezzullo reply document that I was asking you about, in the next dot point Ms Pezzullo states;

PN23576

*Second, the regressions relying on combining sometimes as well as often and almost always, relative to never combined with rarely. It is not clear why these groupings are adopted or why sometimes would not belong in the other group.*

PN23577

Can you please explain why those groupings were adopted?---Certainly. This is why I stepped out things very, very carefully in the appendices. If you turn to page 27 of the original report, the Charlesworth and MacDonald report.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XN MR MOORE

PN23578

Yes?---You'll see on page 27 the AWALI means, and they are grouped so we separate out sometimes from rarely and never, from often, almost always. When I ran these means what struck me was that workers who sometimes work on Saturdays or Sundays appeared to have similar levels of work/life interference, often lower, but often round about pretty much the same as people who worked often or most always. So it's simply in regression analyses you've got to have a binary, so you've either got to lump your sometimes with your never or rarely or with your often and almost always, but on the basis that people who sometimes work on Saturdays and Sundays have higher than average work/life interference scores. I then in the analysis - that was the rationale for doing them in two groups and you can see the two groups on page 28 - so I've run identical analyses, but

grouping our groups into never and rarely and then lumping the sometimes together with the often and almost always. So that was the rationale.

PN23579

Just finally, Professor Charlesworth, back to page 15 of the reply report by Ms Pezzullo the last dot point before the heading at 3.1.3 Ms Pezzullo states:

PN23580

*Finally and most importantly the explanatory power R-squared of all the regressions is very low suggesting just what we say in our report. There are a lot of confounding factors that are in fact driving work/life outcomes that are not just accounted for in AWALI.*

PN23581

Can you please respond to that statement?---Yes, I can. It might be easier if I draw the Bench's attention to page 42 of my original report which has one of these regressions there, and you can look at any of the tables, but table 1 for argument sake. The table that's there is the printout that you get when you run the linear regression on a software package called SPSS, and you can see at the bottom just under the table there's an R-squared, .114, and there's an adjusted R-squared, .113. The critique that the explanatory power of the R-squared is very low is misconceived.

PN23582

What we are doing is we're seeing the degree to which the variables, so the variables including the work/life index and working Saturdays for example, how - how they interact, whether or not the relationship between them is significant or not. We are not attempting to try and look at all the factors that would predict work/life interference, that's not what his exercise is about. It's actually asking whether working on Saturdays is - is statistically significantly associated with worse work/life interference.

PN23583

So the column that is of importance, so it's the fifth column across which has got FIG at the heading, and so for example if you look at the row with "Work Saturday" that tells us a .000, it tells us we can be 99 per cent sure that the strong relationship between working Saturdays and work/life interference is a strong one, and that is explained underneath. However what this regression also did was to ask are retail employees different from other employees.

PN23584

So that's why we've got this variable there called "Work Saturday and retail", and if you have a look to its significance it's not significant, it's got a P value of .435, which basically tells us that the influence of working Saturdays on average AWALI scores wasn't affected by whether or not employees were in the retail industry. That is that there was no statistical difference between employees in the retail industry and other employees in that respect, and I'm afraid that that's a rather long-winded explanation, but the comment about the R-squared is totally misconceived, that's not the point of this particular exercise.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XN MR MOORE

PN23585

MR MOORE: Thank you, Professor Charlesworth, if you just wait there, thank you.

PN23586

JUSTICE ROSS: Cross-examination?

**CROSS-EXAMINATION BY MR DIXON**

**[11.25 AM]**

PN23587

MR DIXON: Professor Charlesworth, my colleague and I represent the fast food industry and we want to ask you a range of questions for clarification purposes and explore some of the conclusions that you reached. Can I ask you to turn first to your first report which is behind tab 1 of your volume, and that's a report of 26 August 2015, and ask you to turn to page 5 which deals with an overview and an analysis of the 2014 AWALI survey. Is that correct?---Yes.

PN23588

You note as did the Skinner and Pocock paper that you have referred to that the five dimensions that AWALI seeks to measure include the five dot points that you have set out on page 5 under paragraph 2?---That's correct.

PN23589

And one of them is satisfaction with overall work/life balance?---That's correct.

PN23590

Can I then ask you to turn to paragraph 6 on page 6, which you seek to clarify numbers?---Yes.

PN23591

I am going to do this by reference to some of the tables as well because I want to be clear what figures you've used in the tables we have come to?---Sure. Yes.

PN23592

But you say in paragraph 6 that the 2014 AWALI survey surveyed 2,690 employees - - -?---Employed persons.

PN23593

Employed persons, of which 2,279 were employees and the 411 self-employed?---Yes.

PN23594

When one looks at the tables and your later calculations we end up at a figure of 2,316 which is - - -?---Yes.

PN23595

It's not always 2,316, it's 2,31 - close to 6 or 9 or whatever?---Yes.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR DIXON

PN23596

That came about as I understand your comments in paragraph 6 by reason of some weighting that was carried out?---That's correct.

PN23597

Can you explain to the Commission, firstly, we take it that whatever weighting was carried out was carried out by you?---No. Well, the weighting was actually carried out about by Roy Morgan Research. So that they - they give you - we have the dataset, the raw data, and we have a constructed variable that then applies these weights that weights our population by the relevant ABS data on age, highest level of schooling completed, sex and area, capital city and balance of state. So that when one runs the analysis you apply the weight to that analysis, and that produces those slightly higher figures.

PN23598

Where is that analysis in your report?---I'm sorry?

PN23599

Did you contain in your report anywhere the analysis that you have just referred to based on Roy Morgan and what the Roy Morgan formula was?---I can - I have the dataset so I can use it weighted or unweighted.

PN23600

I am asking you a separate question, please, Professor?---Yes. I'm sorry I'm trying to understand it.

PN23601

Where in your report do you carry out the analysis that you refer to in the last part of paragraph 6? You haven't documented it, have you?---No. I didn't - I didn't derive the variable that does the weighting, I simply when I run the SPSS analysis I weight the data. Yes.

PN23602

Tell us how did you weight the data on age?---The variable, the weight variable is a complex variable containing weights that cover those aspects in the bottom part of that paragraph 6.

PN23603

How did you weight for age?---The - can I - it might be helpful if I can just - can I just turn to this report where it's set out more clearly?

PN23604

You mean you're relying on the Skinner and Pocock report, or which report?---Yes, on the AWALI report.

PN23605

Please do?---Okay. If I take you to - - -

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR DIXON

PN23606

Is it page 9?---No, page 11, and that is providing the basic demographics of the AWALI sample, and as you can see, and this is the raw sample, so if you look at

age group for example you can see that the AWALI survey under-represents those aged between 18 and 24. I'm comparing 9.8 per cent for that age group against the ABS survey data, the relevant way before survey data of 18.3. Another example if you look down at height - sorry.

PN23607

Sorry, I didn't mean to interrupt you, can I just stick with that example. I understood you also to say that the AWALI survey did not seek to include or was precluded from including in the sample any employees in any of the industries that were younger than 18?---That's correct.

PN23608

And there is no weighting in these figures anywhere in the report to take account of the fact that there would be perhaps significant numbers of employees in certain industries who are younger than 18?---No, because we weren't - because the weighting doesn't go to that, the weighting is weighting the survey data. You don't apply a weight that has got nothing to do with your survey data.

PN23609

And therefore there was no weighting - I'm sorry I misunderstood that - can I seek to clarify that by taking you back to page 9 of the document you're referring to?---Yes.

PN23610

You see at the bottom of page 9 the very last paragraph, as I read it it seems to be that the ABS does the weighting?---No, the ABS doesn't do the weighting. We use the ABS population data to weight.

PN23611

I am sorry, just go back to the bottom of page 9?---Yes.

PN23612

I may be misunderstanding it, but am I misreading the second last sentence?---I - I think you might be, I think you're reading it as though that the ABS came in and did the weighting, and it might have - - -

PN23613

That's what the report says?---Well estimated reports have been weighted by ABS Bureau of Statistics data. I think you'll find this is a very typical sentence in lots of research reports.

PN23614

All right. I accept that. So if I come back to the earlier question there is no weighting through that method to take account of the fact that there are a significant number of employees in any one of these industries that came within the total AWALI sample were younger than 18 years?---Sorry - - -

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR DIXON

PN23615

JUSTICE ROSS: Mr Dixon, you might be at cross purposes. You can't weight something that's not in the sample. Weighting is intended to bring the sample to the population.

PN23616

MR DIXON: Up or down, your Honour?

PN23617

JUSTICE ROSS: Sorry?

PN23618

MR DIXON: Up or down?

PN23619

WITNESS: Both, it depends.

PN23620

JUSTICE ROSS: Yes, but if it's not in the sample you can't apply a weight to it. I mean you made the point that the AWALI survey doesn't include people under 18, but what would you apply a weight to it, there's no data in the AWALI sample for that?

PN23621

MR DIXON: That's one of the issues as I understand it, your Honour, because the weighting that has occurred - correct me if I am wrong on this, please, Professor - the weighting that has occurred has involved you taking a figure of 2,279 employees and weighting it up by reference to the categories that you've referred to, up or down I take it, to arrive at 2,312 or 16 figure that you used, correct?---The weighting - so various variables like age, like highest level of education, like sex, maybe weighted up or down depending on the actual population, but they then go into this composite variable which is this weight variable that takes those factors into account. So that if you looked at the raw number for example of professionals, because in the raw data professionals are over represented, that is a problem of CATI surveys everywhere, it's a problem with HILDA, for example HILDA uses weights as well. So that you apply the weight and so that some groups have been slightly shrunk in size if you like in importance and some have been slightly increased, but the weighting has to be done very carefully so that you are not - you're not - so in order to get exact representation for example of the number of young people between 18 and 24 you have to take into account the other variables. So it's a kind of good enough fit. It means that, yes, you can be reasonably confident that this survey, the survey respondents, represent the population. This is the strength of the AWALI survey, it's representative of the Australian population of employed persons.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR DIXON

PN23622

But if you pick up the point that his Honour the president made, if you want to weight by reference to the population as a whole, employees in the population as a whole who happen to work on a particular day or not, you would have to take into

account, would you not, that there would be in that population as a whole a significant number of employees who are younger than 18?

PN23623

JUSTICE ROSS: That wasn't the point I was making.

PN23624

MR DIXON: I'm sorry, I misunderstood your Honour.

PN23625

JUSTICE ROSS: No, my point was that the AWALI survey doesn't capture any data for those under 18 for the reasons given. For that reason there's no purpose in seeking to weight a number you don't have to be representative of the overall population. It's not put that the AWALI survey is representative of the overall population, it's put that it's representative of the population over 18. That's as I understand it?---That's correct.

PN23626

It doesn't say anything about the population under 18?---No.

PN23627

MR DIXON: Your Honour has clarified the matter for me. I appreciate that, thank you. (To witness) When you come then to your figure of 2,316 can I just clarify with you, please, Professor, by reference to your report of 31 August which is SDA44, and I'm going to ask you about some of the tables in that report. Table 1 on page 7 - - -?---I'm sorry, on page 7? I'm a little confused, I don't have a page 7, or are you referring to my - - -

PN23628

The 31 August?---The second, I apologise.

PN23629

Behind tab 3?---Behind tab 3. Sorry, I didn't - sorry, page?

PN23630

Page 7, Appendix 1?---Yes.

PN23631

There you have got weekend working and you've got a figure there of 2,300?---Yes.

PN23632

This goes by way of post school education?---Yes.

PN23633

So what you really are saying is the 2,300 is an all industries figure?--- Yes.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR DIXON

PN23634

So that this analysis effectively says if you take college diploma and university degrees 77 per cent of the all industries weighted figure have college diploma

certificate or university degree diploma?---Sorry, you're adding up quicker than I can do - you're looking at the total column?

PN23635

I am looking at the last column?---Yes.

PN23636

36.6 and 40.4, 77 per cent?---Yes.

PN23637

So what you're saying is that by a weighted process giving you a total number of 2,300 77 per cent of that number of the all industries group would have college diploma certificate or university degree diploma?---Yes.

PN23638

If one looks further at the tables, for example table 2 you've got the figure 2,317, table 3 2,315 - I don't want to waste time, but I think it's fair to say that close to the figure of 2,300 which is the weighted figure for all industries you've used that approach throughout these tables?---Yes, the weighted data has been used in both the original report and this report. May I just follow up with a little point of clarification?

PN23639

Sure?---The slight differences in the totals are due to sometimes people respond to from cross tabbing for example, highest level of post school education by working on weekends, some people may not have answered questions about their education, so that that's why - or say over the page care responsibilities for children - so that's why there is slight differences between the actual totals, but as you say they all sit round about the 2,300-odd mark, yes.

PN23640

They seem to get their age right, if you go to table 8 on page 11?---Yes.

PN23641

That table there's a figure of 2,316. That again is a weighted figure?---Yes.

PN23642

Can you just explain this, please, Professor. For the 18 to 24 years the total is 338 out of the 2316?---Yes.

PN23643

Now, that figure of 338 is a weighted figure for people within 18 to 24 years?---It is.

PN23644

But it excludes everyone below 18?---People below 18 were never surveyed.

PN23645

And therefore this table has nothing to say about them?---It has nothing to say about them.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR DIXON

PN23646

Now, can I then ask you, by reference to table 10?---Yes.

PN23647

Again, which is on page 12?---Yes.

PN23648

The total figure, this is for all industries?---Yes.

PN23649

Weekend work in selected industries, 2296. And as I understand it, by reference to your footnote paragraph - footnote 18, you've deducted a small cell of 20 from 2316 to give you 2296?---Yes.

PN23650

And one other clarification. If you look at mining, for example?---Yes.

PN23651

The 28 that sometimes, often, almost always work weekends?---Yes.

PN23652

I just want to understand this. Does that suggest - the figure of 28 suggest that there were actually fewer than 28 persons surveyed in the mining sector that often, almost always work weekends, and therefore the figure of 28 has been adjusted upwards to give you the change from the figure of 2279 to 2316?---I'm afraid I can't answer that without having run the unweighted data sitting beside it. Some will have been adjusted up, some down. The AWALI survey was not intended to be representative at the industry level, so that our weights didn't apply industry weights. However, the figures in the industry table would have been affected by the other weights that were weighting for sex, age, and I think - and, you know, capital city, rest of state, the other ones that were explained before. So all the data in these tables will have been affected to some degree or not. To the extent to which there were young people between 18 and 24 in the mining industry, then that would have - you would imagine that that figure would have gone up.

PN23653

So the 28 figure there, by way of example, doesn't necessarily tell us that there were only 28 employees in the mining industry caught by the AWALI sample?---No, it doesn't.

PN23654

Can I just ask you, then, how that works in relation to retail?---Yes.

PN23655

If you go to - and I'm sorry, I've got to ask you to go back to - I might be able to deal with it more quickly. In relation to the AWALI figures, you said in your earlier report there were a total of 223 retail industry employee respondents?---Mm-hm.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR DIXON

PN23656

Now, when you come - so 223 were the actual respondents - and I'm quoting from page 7, paragraph 12 of your first report?---If I can just find that. Page 12, sorry?

PN23657

Paragraph 12, the second dot point?---Yes. The sentence says:

PN23658

*In the analysis of the 2014 AWALI survey there were a total of 223 retail employer respondents.*

PN23659

That's a weighted data.

PN23660

Is that the weighted data?---Yes. It explained at the beginning that the analysis was based on weighted data, so then it follows that all the figures and the references to numbers refer to the weighted data.

PN23661

And sticking paragraph 12 of the moment, it's a small matter, but I just want to clarify. You see you say in paragraph 12, "Of these, 127 worked sometimes," et cetera. When one goes to table 15 on page 34, I think there's a figure of 136, and the figures - and that's for retail?---Yes.

PN23662

Is that simply a - is there an explanation for the difference between 136 and 127?

PN23663

JUSTICE ROSS: Which table was that, I'm sorry, Mr Dixon?

PN23664

MR DIXON: Sorry, it's table 15, dealing with Saturday work retail employees on page 34?---I'm sorry, are you referring to the first report now?

PN23665

It's of the first report?---Yes. And Saturdays. Well, I can explain the differences, because they're different questions. So on paragraph 12, page 7, second dot point, there were a total of 223 retail industry employers. Of these, 127 worked sometimes, often or almost always on Saturdays.

PN23666

I see?---The table you were taking me to, Weekend Working, refers to weekends. It's a different data.

PN23667

All right. Can I then ask you to just stay with table 13 for a moment, please, on page 33. So that table sought to look at the extent to which the employees surveyed were satisfied with work/life balance on Saturday work, and that's for all employees?---Yes.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR DIXON

PN23668

And then table 14 dealt with All Employees Worked on a Sunday?---Yes.

PN23669

And if I then take you back. And you later did the same - and I will come to it - in respect of retail?---Yes.

PN23670

So when you come to your report, Professor Charlesworth, on page 9, paragraph 25, the last dot point, you make reference to:

PN23671

*21 per cent said they were not very or not at all satisfied.*

PN23672

Do you see that?---Yes.

PN23673

That figure is the figure that one finds in table 13 under the Sometimes heading, 21.4 per cent for Saturdays. Am I right?---Yes. I'm sorry, I've just got to whip in between tables. So table 13, and it was - - -

PN23674

Paragraph twenty - - - ?---And it is the last bullet point under 25?

PN23675

Yes. You're looking at a comparison of 21.4 per cent and the 12.7 per cent; those figures, you are commenting on?---Yes.

PN23676

And the last dot point at paragraph 25?---Yes, that's correct.

PN23677

And in respect of table 14, the figure of 13.3 per cent under the Not Very Satisfied and the 23.7 per cent, that is a figure that you quote - or a comment you make at paragraph 27, last dot point on page 10 of your report?---Yes, that looks to be right.

PN23678

And there you're dealing with the level of satisfaction of employees by reference to their work/life balance on a Saturday or a Sunday in tables 13 and 14?---Yes. That's one of the five elements of the AWALI index, yes.

PN23679

Now, can I then take you back to table 13. And from table 13 it is apparent, is it not, that the employees who were satisfied about their work/life balance - very or somewhat satisfied - were 64 per cent?---You've - this is what's called a column distribution. So what you have to do, you don't read the row, you have to read down the column. So this tells us how people who sometimes, often, almost always work on Sundays, their kind of level of satisfaction, if you like.

PN23680

Yes?---And yes, the majority of them were very or somewhat satisfied.

PN23681

So 64.5 per cent were very or somewhat satisfied?---Yes.

PN23682

JUSTICE ROSS: That's of those who are working on Saturdays for that table, not Sundays?---Yes, the table refers to Saturday, yes.

PN23683

MR DIXON: And that is compared to 21.4 per cent who were not satisfied?---Yes.

PN23684

Why did you not put that in your report? It would be an important qualification, would it not, professor?---I produced a ream of tables so that my workings out, if you like, were entirely able to be followed. The AWALI index is an index, and it's made of five different questions, of which this is one. Now, job satisfaction data on its own is notoriously unreliable, because if you ask people whether or not they're satisfied, everything depends on context. For example, women, for whatever reason, are always more satisfied than men. So in terms of if you're just looking at satisfaction, you need to be doing longitudinal studies to see changes in satisfaction. That's when you can pick it up. But this is one question, it's set out there. They are the accurate findings and I stand by them, but they don't disqualify the AWALI index. What it would tell us, if people are generally satisfied, or a large proportion of people are very or somewhat satisfied with working on Saturdays and Sundays, it tells us that in measuring the AWALI index at the other factors - so the frequency of work interferes with responsibilities and activities outside of work, interferes with your ability to develop or maintain friendships, keeps you from spending the amount of time you want with friends, et cetera; they have, if you like, overwhelmed that more positive one, to produce an overall negative work/life balance outcome for those who work on Saturdays and Sundays.

PN23685

The fact of the matter is out of the AWALI survey the level of satisfaction for employees who sometimes, often and almost work on Saturdays, 64 per cent - almost two and a half times - said they were satisfied with work/life balance for Saturdays. And it's the same if you go to the Sunday one, 61 per cent?---Yes.

PN23686

And then I invite you to go to your table in relation to retail employees on table 23 and 24, page 38?---Page 38.

PN23687

Of those who sometimes, often, and almost always work on Saturdays - this is retail?---Mm-hm.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR DIXON

PN23688

And this is the weighted figure of 223?---Yes.

PN23689

69.9 per cent say that they were very or somewhat satisfied?---That's correct.

PN23690

And for the - and if you compare the 69.9 per cent, there were more employees in retail who were satisfied than those in all employees in all industries, being only 64.5 per cent. Do you accept that?---Yes, but you're comparing two different populations; the much smaller population of retail employees, with all employees.

PN23691

I see. So you can't - and in relation to table 24, the level of satisfaction of that group for working on Sundays was 67.6 per cent?---That's right.

PN23692

Now, you took the trouble in paragraph 25 and then 27 to refer to the dissatisfaction, but you - can we take it - deliberately omitted the level of satisfaction of these employees?---Well, I provided the tables. I was drawing conclusions. Work/life interference, if you like, is a negative concept. It's not work/life integration or work/life reconciliation, which are other ways of looking at it. So what I've been looking at is the measures as they contribute to work/life interference, so that - I mean, I've drawn conclusions, but I've provided all the raw data so that you can have a look at it.

PN23693

And I suppose - you said earlier that satisfaction was a subjective approach; and that would apply equally to those who said they were not satisfied?---Yes.

PN23694

Now, can I then just ask you to go back in your first report to table 5 on page 29?---I'm sorry, I didn't quite catch that.

PN23695

Sorry. Table 5, page 29?---Yes.

PN23696

JUSTICE ROSS: Is this exhibit SDA 43 or 44?

PN23697

MR DIXON: It's the first report, which is - it's the joint one, 43?---43.

PN23698

JUSTICE ROSS: Thank you. And what was the page number again?

PN23699

MR DIXON: It's table 5 on page 29, your Honour.

PN23700

Have you got that, professor?---I do, yes.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR DIXON

PN23701

Do you know - table 5 says, "Frequency work interferes with your responsibilities," et cetera. Do you know what the question is that the AWALI question has asked?---Yes:

PN23702

*How frequently does work interfere with your responsibilities and activities outside work?*

PN23703

You're aware of the concept of response bias, are you?---Yes, I am.

PN23704

What's your understanding of that?---A question is - it's a bit like a barrister asking a leading question. You actually get the response that you want.

PN23705

And so asking a question which invites a comment on the level of interference is exactly such a question, is it not?---About the level of interference. No. Well, people, as you've gone through, are perfectly able to say that it doesn't interfere or that it does. We ask a question, you know, also, "How often are you rushed and pressed for time?" And then we have that fifth question about work/life balance. I mean, it's a validated measure, so that - and because it's a validated measure, and I think that in this report it actually refers to the Cronbach's alpha, and the Cronbach's alpha - it has got a Cronbach, from memory, of 0.8-something - as long as your 0.8 to 0.9 is good, below 0.8 is considered adequate. So we've got a Cronbach's alpha that's quite respectable for the index.

PN23706

And does the question in any way give any objective basis of assessing what the level of interference is that flows from that leading question?---Well, people have a choice, and the choices are - so they're asked the question; the CATI interviewer asks them that question, and they're told before they're given the question that:

PN23707

*We're going to be asking you a series of questions about the frequency of things, and the responses are 'never', 'rarely', 'sometimes', 'often', 'almost always', or 'don't know' or 'non-response.'*

PN23708

So that's what people responded to.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR DIXON

PN23709

There is no analysis of the level of interference. It could rarely interfere or it could sometimes interfere in a most miniscule fashion?---Well, I think "never, really, sometimes, often, almost always" does give you a continuum of interference, and I do agree with you that "sometimes" might be imprecise, but it is a clear continuum that interviewees - the respondents are read that question so that it has got - it's a bit like a Likert scale, which typically has seven points; people are asked to rate their happiness, for example, between 1 and 7, and they

will pick 6; they could have picked 5 if they had been asked earlier that day. I mean, it's - I think it's as good as you get.

PN23710

What about activities? It doesn't define the activity at all. There's no basis of knowing what the activities that that are allegedly interfered with?---No, they weren't asked that question.

PN23711

And can I just clarify one other thing. In all of these questions where it says "sometimes, often, almost always work on Saturdays", is there any indication that the employees who answered that they sometimes, often or always work on Saturday, also worked on a Sunday or don't work on a Sunday and don't work during the week?---We have that data.

PN23712

Where is that reflected?---What I was asked to do by the SDA was to compare the work/life interference of Saturday and Sunday workers. I haven't included - so what's germane, really, is whether they work on Saturdays or Sundays, not whether they work on other days. We haven't - I could have, but we - no, actually, I couldn't have, because they're also asked the quantum of hours that they work, but I couldn't ascribe those to a particular day of the week.

PN23713

So when the question is "sometimes, often, almost work on Saturdays"[sic], it does not tell us that those employees may not have worked on the Monday - - - ?---No, it doesn't.

PN23714

- - - or may not have worked on the Friday?---No, it doesn't.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR DIXON

PN23715

And there's one other potential difficulty, is there not, with asking someone - if they work on a Saturday, is it suggested that the interference that you referred to earlier, is it interference simply by reason of the fact that they are at work on the Saturday, or is it - and that is as far as it goes, it doesn't suggest that they could make up the interference which happens on the Saturday or the Sunday on other days of the week. There's nothing to suggest that that is not available to these AWALI survey employees?---When they were surveyed, they weren't asked whether they worked on a Saturday and Sunday, and then to talk about the extent of work/life interference on those days. Quite separate questions. So that they're asked the hours that they work, they're asked the days that they work, so they're just asked literally, "What days do you work?" They're also asked if they work on evenings. Then what we can do is we have a look at those respondents who work on Saturday or Sunday and we have a look at their AWALI score. That's what we have done. We haven't put to them - they were never asked the question, "Does working on Sunday interfere with your capacity to connect with community?" for example. They're not asked that. So really what we're doing is we're comparing - and it's a decent sample, the AWALI survey of employees - two groups of

workers in each case for Saturday and Sunday. The Saturday, we're comparing workers who sometimes, often, almost always work on Saturdays compared with those who don't and likewise for Sundays.

PN23716

Can I then just ask you to go to page 30, table 7?---Excuse me, tab?

PN23717

Table 7 on page 30 of your first report?---Yes.

PN23718

This is a question about how much time they would like to spend with family or friends?---Yes.

PN23719

There is no objective material provided by any of the respondents, is there, about how much time in fact is spent with friends or family from which one can judge the level of impact?---No, the question - and the full question - is, "How often does work keep you from spending the amount of time you would like with family and friends?" So their response in terms of the never, rarely, sometimes, often, almost always, is a personal response and it's based on their estimation; but, no, they haven't answered in the AWALI survey a question that actually asks them to precisely indicate how many hours or minutes they spend with family or friends.

PN23720

"Already spend" and therefore you can't really make a judgment as to the level of impact?---But the question asks them, "How often does work keep you from spending the amount of time you would like" - so it's subjective. Some of us might like to spend less time with family and friends, some might like to spend more, but overall - and the AWALI mean is an average. Because it's a large survey, it's an average that carries some weight, and because the survey is also generally representative of a population of employees, we're able to generalise from this particular group of respondents to the broader population.

PN23721

One last question, please, Professor Charlesworth. When you refer to the retail industry and you take the 223 employees, do you know which classification by way of the Bureau of Statistics analysis that relates to?---Yes, it's the ABS ANZSIC classification.

PN23722

Digit one, is it?---Yes, it's a one-digit industry classification.

PN23723

No further questions. Thank you.

**CROSS-EXAMINATION BY MR SECK**

**[12.05 PM]**

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR SECK

PN23724

MR SECK: Professor Charlesworth, my name is Michael Seck. I am the counsel for the Pharmacy Guild of Australia?---Hello.

PN23725

Can I take you just to the AWALI measure. There is an explanation for it contained in your report, but I just want to get a bit of understanding as to what it measures and how it has been developed?---Yes.

PN23726

You set that out, I think, in paragraph 4 of your first report, SDA43?---I think paragraph 2 is what talks about the AWALI measure.

PN23727

Are you talking about paragraph 2 of part A of your report?---Yes.

PN23728

I understand. I was taking you to the introduction, but paragraph 2 does contain a bit more of a detailed explanation?---Yes.

PN23729

As I understand it, the AWALI measure was developed by three academics at the Centre for Work and Life at the University of South Australia in 2007. That's correct?---That's correct.

PN23730

You're an adjunct professor at that particular centre at the moment. That's correct?---I am.

PN23731

What AWALI measures are the five dimensions which are set out in paragraph 2 on page 5. That's so?---Yes, that's so.

PN23732

That's intended to measure the work/life interaction which has at least two aspects to it: the impact on the capacity to participate in activities and responsibilities in a non-work sphere. Secondly, the time available to spend on activities outside work. That would be a generally accurate assessment?---Yes, that's fair enough.

PN23733

That's right?---Yes.

PN23734

It's also true to say that work/life interactions can be both positive and negative. That is, bidirectional?---Absolutely.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR SECK

PN23735

AWALI is intended to measure, along those five dimensions, the negative spillover effects and not the positive spillover effects. That's correct?---Yes. This iteration of AWALI, when it was developed in 2007 - and I can't quite remember the - it did have another dimension that was seeking to measure also the spillover

from outside work to work, but there is little support in the academic literature for that and the actual AWALI index was stronger and more robust with these five factors. That is in fact - you would have to go back to the - and it's available online, but the 2008 AWALI survey talks about the slight differences and adjustments that were made between 2007 and 2008.

PN23736

I want to just take you to those?---Okay. I don't have copies, unfortunately.

PN23737

No, I will give you a copy, Professor Charlesworth?---Good.

PN23738

So if you could just bear with me. I want to take you initially to a document which is called the "Australian Work and Life Index: Concepts, Methodology and Rationale", May 2007. You're aware of that discussion paper?---It's a long time since I've read it, but I'm aware of it.

PN23739

I might give you a copy and provide a copy to the bench?---Thank you.

PN23740

Professor Charlesworth, you're aware of this document that I've just given you?---I am, but, as I said, it's quite a while since I've read it.

PN23741

You understand this is the bounding document, so to speak, which sets out the concepts, methodology and rationale at the genesis of the AWALI survey?---Yes.

PN23742

Ms Barbara Pocock, Philippa Williams and Natalie Skinner were the originators of the AWALI measure. That's correct?---Yes. Professor Pocock, yes.

PN23743

If I can take you to page 11 of the report, you'll see about a quarter down the page it says, "A bidirectional, positive and negative interaction"?---Yes.

PN23744

You're familiar with those particular concepts? That's right?---Yes.

PN23745

I won't take you through that. If you go over the page to page 13, the heading "Conceptualising AWALI"?---Yes.

PN23746

Go to the second paragraph. It says:

PN23747

*The AWALI is a bidirectional measure of work/life interaction that is focused on the negative spillover that flows between these two spheres.*

PN23748

Meaning work and life?---Mm-hm.

PN23749

That is your understanding? That's right?---Yes.

PN23750

It says:

PN23751

*While positive interactions are also likely, constraints on data collection mean that we focus on the issue with greatest policy interest.*

PN23752

That's so? That's correct? That reflects your understanding?---Well, I'm not an author, so I can't attest to - I'm slightly puzzled. You're reading this - - -

PN23753

I'm just asking does that reflect your understanding of the AWALI measure?---Of this document? Yes, it's written - - -

PN23754

Of the AWALI measure. Is that - - -

PN23755

JUSTICE ROSS: You mean the current measure or this document?

PN23756

MR SECK: Well, the - - -?---The measure was slightly adjusted, as I said, in 2008.

PN23757

I understand?---And without that document - - -

PN23758

I understand?---I don't have it in my head.

PN23759

Let me make it clearer: the AWALI measure as it stood at 2007?---Yes.

PN23760

So what you're looking at is, at least in the AWALI measure in 2007, only the negative interactions and not the positive interactions?---Well, except for the maintenance of that question about, you know, rating your work/life balance. That gives people an opportunity to express satisfaction - great satisfaction and great dissatisfaction.

PN23761

What it asks you to do is to answer whether or not there is any interference with your work/life balance. That's right?---Sorry, I don't understand the question.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR SECK

PN23762

The question that you just - you talked about satisfaction and I want to come back to that?---Yes.

PN23763

The question is framed in language which asks participants to express their view about the interference in their work/life balance. That's right?---No, it's how satisfied. The question is, "How satisfied are you with your work/life balance?"

PN23764

If you go down to the bottom of page 13 where it says, "Our reasoning is as follows," this is the reasoning for why they have adopted the AWALI measures?---Yes.

PN23765

It says:

PN23766

*On balance, it is more important to have an accurate measure of the degree of conflict or problems with work/life interaction, ie, negative spillover, rather than a measure of positive spillover between these two spheres.*

PN23767

That reflects your understanding of - - ?---Well, it's written there in front of me, yes.

PN23768

Okay?---Yes.

PN23769

You referred to the 2008 report. That's right?---Yes.

PN23770

Let me take you to the 2008 report. Professor Charlesworth, is this the report to which you referred earlier in your testimony?---Yes.

PN23771

You said that there was an adjustment to the AWALI measure made in 2008?---Yes. I'm just trying to - - -

PN23772

That's right?---Yes, that's what I said. I'm just trying now to find it.

PN23773

If it helps, the relevant part dealing with the AWALI measure, as I understand it, starts at page 14?---Yes. Thank you. Under "What AWALI measures", that's exactly my understanding and that's what I referred to in my original report.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR SECK

PN23774

If you go to the bottom of page 14, it sets out what AWALI measure as of the 2008 report?---Mm-hm.

PN23775

Do you agree that what is measured there - subject to the point you raised about satisfaction - still relates to the negative effects on work/life interaction?---Yes, generally, but people are able to give - they're able to say, you know, "Work doesn't interfere at all with my responsibilities or activities." I mean, they are actually given an option. It's not as though the question is a leading one couched, you know, how - you know, "Does your work," for example, "interfere negatively with your responsibilities or activities?" Some people might be relieved that their work does interfere with their responsibilities and activities.

PN23776

Do you accept that working doesn't necessarily always involve interference with life and that it does in some circumstances bring satisfaction, pleasure, et cetera?---Absolutely.

PN23777

That's not something which is measured in the AWALI index, is it?---No, the AWALI index is measuring work/life interference.

PN23778

It also doesn't measure the fact that there might be pleasure brought by doing the work and earning additional income associated with performing that work. That's right?---No, no questions are asked about satisfaction with income. In the 2014 study, there was a series of questions based on a positive psychology movement about flourishing and so there were questions asked about flourishing, but they're not part of my report.

PN23779

I want to come to the 2014 report?---Yes.

PN23780

But you acknowledge your report is focused on the negative aspects of interference to work/life balance and not any positive aspects which are - - - ?---No, it's focused on work/life interference and its degree.

PN23781

I want to just try and measure the level of the premium which should be assigned to penalty rates. It would be relevant, would you agree, to look at not only the negative aspects but also the positive aspects - - -

PN23782

MR MOORE: I object to the question. I think it's really a matter for the tribunal.

PN23783

JUSTICE ROSS: Yes, but that's not a basis for an objection from an expert. The ultimate issue rule is gone.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR SECK

PN23784

MR MOORE: I'll sit down.

PN23785

MR SECK: Do you want me to repeat the question, Professor Charlesworth?---Yes, could you.

PN23786

Would you agree that if one was trying to assess the level of the premium to be assigned for the penalty rates, it would be relevant to look at both the negative as well as the positive aspects associated with working unsocial hours?---I don't have the expertise to answer that question.

PN23787

But you clearly don't look at the question of a positive impact of working those particular hours - - -?---At the risk of repeating myself, I've been asked to look at work/life interference and the extent to which that differs for workers who work on Saturdays and Sundays, and then those work on Sundays compared to those who work on Saturdays. You're asking me a question that was outside my remit.

PN23788

There is also a specific section in the 2008 report, Professor Charlesworth, dealing with unsocial work hours and flexibility. Are you aware of that?---Yes, I am, because that was the subject of my evidence before the 2012 interim review of modern awards.

PN23789

Can I take you to that section. It's section 7 of the report?---Sorry, can you give me a page?

PN23790

It starts at page 48, professor?---Page 48.

PN23791

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

PN23792

In the 2008 AWALI survey, there were specific questions asked about the impact of an employee's capacity to exert some degree of control over their work scheduling. That's your understanding?---Yes, that's right.

PN23793

And whether or not the flexible work hours had a positive impact on their work/life interaction and mediated work/life pressures. There were questions asked of that nature, as well?---Yes.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR SECK

PN23794

So I understand it, to the best of your knowledge were there any questions asked on these particular topics in the 2014 AWALI survey?---I would have to go back to the questionnaire. This grouped weekends in a broad group. It doesn't

disaggregate Saturdays and Sundays. It did ask a series of questions which are typical kind of job quality questions about the degree of control people have over the quantum of their - from memory, quantum of their working hours, the scheduling of their working hours, but I haven't - I don't have the questionnaire in front of me.

PN23795

You're aware of some of the literature which says that if there is flexibility given to employees in their work scheduling, that can often be seen as a sense of empowerment for individuals?---Because flexibility means so many different things, I like to differentiate employee oriented flexibility and employer oriented flexibility, but in the job quality literature the concept that's used is control, job control, job autonomy, so, you know, questions will be asked, for example - and I've done it in a survey myself, you know, "Do you have control over the times you start and finish work? Do you have control over the patterns of your hours?" et cetera. There is a strong literature that would indicate that job control, particularly that kind of control, is really central to the whole job quality concept, if you like.

PN23796

If I can take you to page 50 of the 2008 report, Professor Charlesworth, and go down to the heading at the bottom, "Employee-Centred Flexibility", the expression "employee-centred flexibility", does that accord with the notion you've just described of job control?---It can be more than that. So sometimes - and for example, in the Longitudinal Study of Australian Children I worked with Lyndall Strazdins at the ANU and we derived a job quality index. And in a concept of flexibility we actually included practical access to various flexibilities, like being able to change your starting and finishing times. It can also include things like access to parental leave, carers leave, of course, which casual employees are excluded from, so that typically in job quality measures you then look at differences for casual and fixed-term and ongoing employees. But I can't say, because I'm not an author of this report, and I would suggest perhaps you get Professor Pocock here if you want to go through the detail of this report. But when I read this, it makes absolute sense to me, but it's not central to my report here before the Commission today, so I'm slightly puzzled.

PN23797

Well, I'm asking you this to just ascertain what the AWALI survey covers and doesn't cover. So you can - - - ?---The broader AWALI survey?

PN23798

The 2014 AWALI survey to which you make reference in your report?---Yes.

PN23799

If you go to page 51 of the 2008 report, you see in the first sentence there it sets out what is investigated in the 2008 report. To the best of your knowledge, was that assessed in the 2014 report?---I honestly couldn't - could I look at the report? But I can't tell you from memory.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR SECK

PN23800

You can look at it if you need to look at the report to - - - ?---I will just quickly look at the table of index.

PN23801

JUSTICE ROSS: Can't that be dealt with in submissions? you just compare the two documents and make the submission?

PN23802

MR SECK: I'm happy to do that?---Because the AWALI is such a big survey, necessarily in these reports on the surveys they're just - selected findings are focused on. So really, the concern in 2014 with flexibility was around the adequacy of the formal right to request, the National Employment Standards, so that's the focus in this written report. I haven't personally analysed the raw data in terms of flexibility.

PN23803

Have you been involved in the conducting of the subsequent AWALI surveys in 2008 onwards?---No. So I only went to the Centre for Work and Life at the beginning of 2011, and in the 2012 survey Natalie Skinner, who was then, in effect, taking charge of managing the relationship with Roy Morgan, gave Barbara Pocock and I copies of the questions and asked us if we thought, you know, that that was everything we wanted to cover; and likewise, then, for the 2014 one. So we worked in a very collegial environment and we had discussions, but really it was the named authors, Barbara and Natalie, who had ultimate say about what went into the survey, and we were juggling the very real expense of running a CATI survey and needing to keep it below 15 minutes, because otherwise people tend to get pretty tired if you've got them on the phone. So, you know, I've discussed the findings at various stages, but I haven't - I didn't have a hand in writing any of the reports. But, you know, as colleagues we used to talk about, you know, some of the interesting findings that were coming out.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR SECK

PN23804

Would you agree that in determining whether or not there is any work/life interference or positive spill-over effects, it would be relevant to ascertain whether or not employees have job control or flexibility over their particular hours, and that's not measured in the 2014 AWALI survey?---It's not written up. I can't absolutely say it wasn't measured. I did have some broad discussions, because I was in charge of a survey that I ran through an ARC linkage grant with the Victoria Government called the VicWell Survey, and we used the AWALI measure; and we concerned with job quality, so we did include all those questions, and I do remember then - that was back in 2009 - having some discussions with both Barbara and Natalie, saying, you know, "This is a good set of questions that the European Foundation for Living and Working Conditions uses. It allows us to compare our survey findings with the European findings, which are regarded as gold standard," but from memory, there's a constant juggle to keep down the items in any one survey. So Natalie was particularly wanting to get the flourishing questions into the 2014 survey, and I think in memory she

might have won out on that over some other questions that I personally might have liked to have seen.

PN23805

There were questions, however, asked over the right to request flexible work arrangements?---That's right, yes.

PN23806

You're aware of that research?---I am, indeed, aware of that research.

PN23807

And the right to request flexible work arrangements might be seen as a dimension of having some degree of job control or employee-centred flexibility. Do you agree with that?---Not necessarily. It's only a right to request, it's not a right to get.

PN23808

But it is - I'm not saying that it necessarily leads to flexible work arrangements but it is developing consideration in determining job control or employee-centred flexibility. Would you agree with that?---It's not typically used in any of the job control measures in the job quality literature; but in the European setting, because you have a right to request, but you also have a right to appeal the denial of that request, which we don't have in Australia, so - I mean, there are some interesting - I've just been reading some interesting articles that Barbara and Natalie have written out of that work about discontented non-requesters, so people who don't request and yet give other answers to questions which would show that they're under a lot of time strain, for example. And so that they've been trying to look at why it is that some people don't request. And there was a question on the 2014 AWALI survey which actually goes to that - I can't remember what page it is - but the reasons why people don't request, and quite often it's because their job is to be or they don't think that the supervisor would agree, et cetera. There's a huge literature around right to request.

PN23809

Are you familiar with the findings in relation to surveys on the topic of requesting flexible working arrangements in the 2014 report?---In this one?

PN23810

The 2014 one?---The AWALI one, or more generally?

PN23811

The report, which is exhibit SDA 45?---Yes. Yes, I am aware, but I didn't conducting an analysis.

PN23812

Would you agree that if what the 2014 AWALI report, SDA 45, does say is that if - that the majority of requests made in 2014 were granted; does that reflect with your - - -?---Yes, but can you just refer me to the page.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR SECK

PN23813

Yes, sure?---I feel happier when at the data in front of me.

PN23814

Page 45 - - -

PN23815

JUSTICE ROSS: I'm not sure where this is going. You're asking does she agree with it. It is what it says. She's not the author of the report. What do you mean by does she agree with that?

PN23816

MR SECK: Sorry. I thought I said, "Does it reflect your understanding," but I might clarify the question, your Honour.

PN23817

JUSTICE ROSS: But understanding of what?

PN23818

MR SECK: What the conclusions are.

PN23819

JUSTICE ROSS: Well, don't the conclusions speak for themselves?

PN23820

MR SECK: They do, your Honour, and I just wanted to ask questions based on those conclusions.

PN23821

JUSTICE ROSS: All right.

PN23822

MR SECK: I just want to take you to the conclusions firstly. So page 45 and 46. If you go to probably the summary, starting on page 45 and go over the page to 46. Okay?---Yes.

PN23823

You will see the second bullet point?---On page 46?

PN23824

Yes. That reflects your understanding. That's correct?---Yes, but you've got to be aware of what the percentages refer to. So if you go back to page 43, reasons for not making a request, the majority of the respondents, 79.9 per cent, didn't make a request, so that of those who did make a request, 64 per cent were granted.

PN23825

And if you go to the next bullet point at page 46?---Yes.

PN23826

It says:

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR SECK

PN23827

*The majority of those workers who had not made a request were content with their current work arrangements.*

PN23828

?---That's correct.

PN23829

Now, let's go to the methodology of the AWALI survey. My learned friend Mr Dixon for the AiG asked you some questions about CATI - the CATI methodology. As I understand it, the telephone calls are made on a random basis to households and not mobile phones. That's correct?---That is correct.

PN23830

Do you agree that results in a sample bias because it - - -?---It does, against young people.

PN23831

Because they don't own - - -?---Because they are unlikely to have landlines.

PN23832

And they're more likely to have mobile phones. That's right?---That is correct.

PN23833

Or they could be using Skype or other technologies for contacting people?---I think Skype is for older people.

PN23834

I might be old if that's the case?---Yes. No, that's what my children tell me, anyway.

PN23835

Now, the calls were made on a weekend and you said there was the facility - there were calls made - - -?---Can I clarify? Friday, Saturday and Sunday.

PN23836

Pardon me. Friday, Saturday and Sundays?---Yes.

PN23837

And the calls were spread out through the entirety of the day. I think that was your evidence. That's right?---As I understand it - and I understood that verbally when I received Ms Pezzullo's comment on my comments. I was in Adelaide and I spoke with Natalie Skinner, and she said - she confirmed that yes, the interviews took place on Friday, Saturday and Sunday, and that they were spread throughout the day, and they had a system of call-backs.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR SECK

PN23838

Do you accept that calling people on weekends, which are the days that they work - which they may work - may lead to potential bias because they may feel tired or stressed as a result of having worked that day?---Not a huge bias. You've got to

remember that this was a stratified probability sample, so households were called, if you like, till a quota in a statistical division was filled. And there's always a problem because we're not talking about the whole population of employees - Australian employees - didn't answer the survey, so there is always going to be some bias. But because we've got large numbers, and numbers like we've got, a good rule of thumb would suggest that may be that bias might be in the range of around about 2 per cent at maximum, you know, either way, up or down, but it's not huge. And certainly the statistical analyses we've carried out, you know, a perfectly fine and perfectly straightforward in terms of that. I mean, we're not pretending that it is a person in Australia who is employed over 18 was surveyed.

PN23839

But if one wants to conduct a survey about weekend work, wouldn't it make sense to conduct the survey over the course of the week and the weekend, as opposed to the weekend only? I'm sorry, I didn't mean to exclude Friday, so Friday, Saturday and Sunday. You would accept that?---The purpose of the AWALI survey was not to ask people only about Saturdays and Sundays.

PN23840

But if one wanted to draw reliable conclusions about the interference as a result of working on weekends, the better approach would be to interview them over the course of the week, including weekends. Do you agree with that, to avoid any bias?---Well, it depends, because there were four sets of Fridays, Saturdays and Sundays in question. And as I said, there was a system of call-backs.

PN23841

So I understand, call-backs on weekends or Fridays, that's right, not on other days of the week?---That's correct.

PN23842

Okay?---That's correct.

PN23843

You used the number 2 per cent beforehand - - -?---Well, it's a kind of a rough - the more you have in your sample. So say, for example, he just had a sample of 30 people, well, you've got a response bias that's, you know, stratospheric, you know, about 60, 70 per cent; but when you've got around about the high 2000, 3000, you're looking at a maximum of any bias, about - you know, maximum of 2 per cent, but that's the whole point of doing the comparisons and running the tests of significance, because they take into account the size of the population. And, you know, the data that has been used and the tests of significance, we can either be 95 per cent sure that these results - these findings didn't come about due to chance, or 99 per cent sure.

PN23844

If one wanted to determine the appropriate level of work/life interference for people who don't work on weekends but may wish to work on the weekend, the AWALI survey doesn't tell you anything about that, does it?

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR SECK

PN23845

MR MOORE: I just object to the question, the phrase by reference to "appropriate level of work/life - - - "

PN23846

JUSTICE ROSS: I'm just not sure I understand the question either, Mr Seck.

PN23847

MR SECK: Let me rephrase. And I probably said it in - - -

PN23848

JUSTICE ROSS: I think the short answer is no, it doesn't, but - - -

PN23849

MR SECK: I think that is probably the short answer.

PN23850

JUSTICE ROSS: But the AWALI survey says what it says. Unless - - -

PN23851

MR SECK: I just wanted to confirm it, your Honour.

PN23852

JUSTICE ROSS: All right.

PN23853

MR SECK: And, your Honour, if it says what it says, then I'm happy to move on?---I'm sorry, can you just ask me that question again.

PN23854

That's all right. I will move on to the next question, I think. Now, in your report, Dr Charlesworth, you do a comparison between retail industry workers and other employees. That's right?---In those regression analyses I referred to?

PN23855

Yes?---What it was doing is asking, in those regression analyses: are retail workers different from everyone else? So those regression analyses in appendix 2 from page 42 onwards, it's in tables 1 and table 2.

PN23856

And if you go to page 10 of your first report, SDA 43, you acknowledge in paragraph 31 that a reliable conclusion couldn't be drawn in relation to those employees in the retail industry because of the small cell sizes for the majority of those tables?---Yes.

PN23857

And that's why you looked at whether or not it might be comparable to employees working in other industries. That's right?---Yes.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR SECK

PN23858

So would you agree that in determining work/life balance interference, another way of looking at it would be to look at how employees, themselves, determine their willingness to work or supply their labour on a weekend, and the amount of money they would be prepared to accept to work on weekends? That would be another way of working out the level of interference in dollar terms?---No. I don't think that that would be at all very useful. The AWALI survey is asking people about their current jobs; that is, their real jobs and their real life; it's not asking hypotheticals. Asking preferences, where people express preferences, are notoriously unreliable, and I would refer you to an excellent article by Brigid van Wanrooy and Iain Campbell in Human Relations in 2014, I think, which actually goes to the unreliability of preference data, because it's so contextual.

PN23859

Rather than looking at preference data, why wouldn't you look at - sorry, let me go back a step. Would you agree with the proposition that what employees do in determining whether or not to work on weekends is to weigh up in their decision the nature of the job, wages, conditions, hours, career prospects, timing of when they're working, and measure that against the impact it has on their social lives? That's an assessment every employee does in determining whether or not to work on weekends?---Look, I can't possibly answer. I could tell you about my three children and their processes, but I don't think that that's in my capacity here as an expert witness.

PN23860

Are you aware - you're aware of the report by Tony Daly based on the AWALI data?---I am, yes.

PN23861

You've read that report previously?---I have.

PN23862

Can I show you a copy - - - ?---I don't have a copy, though.

PN23863

That's all right. I will show you a copy of the report. I think the Bench has had this on previous occasions, but I don't know if it has been tendered.

PN23864

I understand Mr Daly is a colleague of yours at the centre. That's right?---Tony probably started about two months before I left the Centre for Work and Life to return to RMIT. He no longer works there. He was working on a fixed-term contract to undertake part of the AWALI analysis.

PN23865

Okay. If you go to table 10 on page 1?---Sorry, on table 10.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR SECK

PN23866

So your understanding of what Mr Daly's done is to look at the AWALI data and apply it in relation to various issues concerning penalty rates. That's your understanding of his report, isn't it?---Yes, although my frank view is, he hasn't

expressed it as well as he could have in the tables. I remonstrated, when I saw this report, because for example, if I can take you to table 10, I think it's confusing for the lay reader and a lot - these reports are prepared for the lay reader. So we've got received pay 44 per cent for women. But what he doesn't have is the actual number that that represents. So you've got to go back and calculate out what 44 per cent is of the total 712 there. So I don't think it's as clear as it could be and when I saw it, I did ask Tony about it.

PN23867

But you're not criticising the accuracy of the table, are you?---No, no, I just think it's not - it's not clear, because I was trying to puzzle what on earth it meant until I realised that there was a missing column.

PN23868

Now, what AWALI shows is an average across a whole lot of different characteristics, that's right? And it can be broken down based on particular characteristics?---That's not quite right, there's the AWALI index, made up of those five factors we've been talking about and the AWALI survey, which asks the whole series of questions. And then you look at how certain characteristics are associated with work/life interference, a degree of better or worse work/life interference.

PN23869

Okay. And one of the characteristics you could look at would be age, which is set out in table 10 there?---Yes.

PN23870

And if you go to the 18 to 24 category?---Yes.

PN23871

It says "52.8 per cent would be willing to continue to work without penalty rates". You see that?---Yes, I do.

PN23872

Your understanding is that the employers are not seeking to abolish penalty rates but merely to seek a reduction of the penalty rates in these proceedings, that's correct?---That's my understanding.

PN23873

MR MOORE: I'm not sure where this - I don't know how this is a proper question for the witness.

PN23874

JUSTICE ROSS: No, neither do I. Taking the witness through a report that she's not prepared and reading out to her a question and putting it, "Is that what is says?" how does that assist us? These are issues about submissions.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR SECK

PN23875

MR SECK: I wanted to ask her to draw some conclusions from the particular point, your Honour. That's the purpose of the question, so I think as a matter of fairness- - -

PN23876

JUSTICE ROSS: What conclusion?

PN23877

MR SECK: - - -that I put the propositions to her.

PN23878

JUSTICE ROSS: What propositions?

PN23879

MR SECK: That the situation in relation to interpreting the AWALI data, in terms of work/life interference is slightly more nuance than looking at it across various characteristics. But if your Honour says I can make submissions- - -

PN23880

JUSTICE ROSS: Well look, move to that, but I don't see what the purpose of the question is about the claim or simply drawing the witness' attention to something and saying does she see that. Well, we all see that.

PN23881

MR SECK: I accept that, your Honour, I'll move on.

PN23882

Would you agree, Professor Charlesworth, that depending on characteristics such as age, job type, industry and occupation, the level of work/life interference is going to differ? That's right?---I think - well, if you're not controlling for hours, the level of work/life interference would differ, I suppose most markedly, according to the quantum of hours that you work. But yes, I think it's reasonable to assume that - and this goes to the questions you were asking about job control, that some jobs are more high pressure jobs and where people work very long hours. But also people who have, you know, certain characteristics, like a consistent finding of all the AWALI surveys is that women have worse work/life interference than men and that, in fact, in terms of that measure on always being rushed and pressed for time, that that is, in fact, growing for women, particularly those who work full-time. So you can pick up - you can pick up certain things. But I can't really speculate beyond that.

PN23883

And individual preference would vary and some classes of employees generally, but not always, will find weekend work more problematic than others?---Well, the only preference question, if you like, ever asked in AWALI survey was "Are you satisfied with the hours that you work? If not, would you like to work more hours or less hours?" And in a couple of the ones, have actually asked you to specify the total quantum of hours you would like to work. That's the only preference question and it's not a question I've used in my analysis.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR SECK

PN23884

In looking at, in actually analysing the data, you would agree that, as a general proposition, some employees may prefer to work on weekends rather than weekdays because of other responsibilities or activities they undertake on weekdays, such as students who attend school during weekdays?---Well, you know, there's a big debate in the academic literature around the notion of choice. And I think a lot of choices are constrained, a lot of choices are shaped by one's circumstances so that, for example, you know, the fact that people might continue if they weren't paid penalty rates, may be because they absolutely are going to have to - the need some income. We can't possibly deduce that from that, because they weren't asked a whole series of questions about their income, their individual circumstances, etc. So I'm not sure how I can assist. I mean, I think it's reasonable to assume that people differ. I would agree with that. But I don't think that there's such a thing as an unconstrained choice.

PN23885

And that level of choice is going to differ, depending on each person's circumstances, so the AWALI survey's not going to help us on that issue. That's right?---It doesn't address that issue.

PN23886

Now, looking at the characteristics of retail work as relative to workers in other industries, you've set that out in paragraph 28 of your report?---The original one?

PN23887

The original one?---Yes, paragraph 28. Yes.

PN23888

And just focussing on some of those particular characteristics, you would agree that retail industry employees do have particular characteristics which are significantly different to other industries, based on those bullet points?---Well, some are characteristics they have, like being female or younger. Some are characteristics their work has, like being casual or part-time. But yes, I mean, that's the whole point of the exercise was to set out the differences.

PN23889

Also there might be some underlying personal factors or characteristics which are not observed in the AWALI survey and may be confounding factors. Do you accept that?---Well, as a general point, but that's true of every single analysis. There are always going to be confounding factors, one can't account for everything. But I'm just worried that you might be missing the point of what the AWALI analysis is about. It's looking about the association in this case, between working Saturdays and Sundays and work/life interference. It's not attempting to say that working Sundays forms 25 per cent of the work/life interference. It's just saying that there is a strong, consistent, statistically significant association between working Saturdays and Sundays compared to those who don't, sometimes, almost always - I've forgotten, often, almost always work those days.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR SECK

PN23890

Those particular associations could reflect a whole lot of other different factors such as the financial circumstances of individuals, they're parental responsibilities their health problems. Those things are just not captured, are they?---Certainly, but by comparing two groups, those who work those times and those who don't, both groups are diverse. And one would imagine that those variety of characteristics are across the population, whether or not they work Saturdays or Sundays.

PN23891

There was also the ability for employees to engage in compensating strategies to deal with the impact of working on weekends. You would agree with that?---I don't understand the question, I'm sorry.

PN23892

Let me use an example. If an employee suffers from work/life interference from working on weekends, they could increase their social activity during weekdays. That could be something that could be done, that's right?---I think it depends on the person. I can't possibly answer that.

PN23893

Well, what I'm asking you is, that that's not necessarily revealed in the AWALI data, is it?---No, the AWALI didn't ask them that question.

PN23894

Because- - -

PN23895

JUSTICE ROSS: Is anyone suggesting that it did? No. The findings that are sought to be drawn from the evidence don't make any suggestion along those lines at all, do they?

PN23896

MR SECK: They don't.

PN23897

JUSTICE ROSS: No. Well, if no one's putting forward the contention, I'm just not sure why the question is relevant. Well, seeking to establish a negative, but no one's making the assertion.

PN23898

MR SECK: Well, I just wanted - your Honour, and I accept that. If that's the case, then I think I've finished.

PN23899

JUSTICE ROSS: Well, I think that is the case, Mr Moore. I don't recall any finding that your client's seeking to draw.

PN23900

MR MOORE: No, we're not putting that contention.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR SECK

PN23901

JUSTICE ROSS: No.

PN23902

MR SECK: Your Honour, I think that completed my questions.

PN23903

JUSTICE ROSS: All right. Mr Wheelahan?

PN23904

MR WHEELAHAN: Thank you.

**CROSS-EXAMINATION BY MR WHEELAHAN**

**[12.51 PM]**

PN23905

MR WHEELAHAN: Professor Charlesworth, in your first report, SDA42, if you turn to the introduction at page 4 at paragraph 9, do you have that in front of you?---I do, yes.

PN23906

Where you refer to being confident about the findings of the 2014 AWALI survey reflecting common patterns or experience for Australian employees. You accept, don't you, that it also reveals that a common pattern is that retail employees are very or somewhat satisfied with their work/life balance working Saturday and Sundays?---Yes, I do.

PN23907

Thank you.

PN23908

JUSTICE ROSS: Any further cross-examination?

**CROSS-EXAMINATION BY MR STANTON**

**[12.52 PM]**

PN23909

MR STANTON: Professor, my name is John Stanton, I represent the Hotels Association and the Accommodation Association. I just have a few questions of you in relation to the AWALI report, both the 2014 report and the 2008 report, which I understand both of which you'll have there before you?---Yes.

PN23910

In answer earlier to a question my learned friend, Mr Seck, asked, you'd answered to the effect that the purpose of the AWALI survey was not to focus just on Saturday and Sundays. That's the- -?---Yes.

PN23911

That's the case, isn't it? And indeed, the surveys include responses in relation to those people who work evenings and nights?---They do.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR WHEELAHAN

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR STANTON

PN23912

Yes. And can I take you to page 28 of the 2014 report? Do you see there figure 13 on that page?---Yes.

PN23913

There is a number of clusters of columns?---Yes.

PN23914

Now, the second from the left in that table refers to evenings and nights. Is it your understanding this represents the responses in relation to people who work after 9 pm Mondays - I beg your pardon - weekdays?---Yes, I just need to just double-check that it was- - -

PN23915

Sure?--- Is it after 9 pm - I just need to go back to the- - -

PN23916

If it assists, can I take you to page 27?---Yes. No, no, it's, in fact, it has on page 27, yes, before 9 pm. Yes, yes, then that would be right.

PN23917

In fact, it might be useful if I clarify that the standard hours, for the purpose of this survey, were weekdays before 9 pm. Is that your understanding?---Yes, I think that's correct.

PN23918

Yes, so it follows that in this case, what this records here on figure 13, that cluster of columns that I took you to, is the index in relation to those who work after 9 pm weekdays?---Yes, regularly. I think in this analysis, they've included - they haven't included the sometimes, they've just often and almost always are included here in this.

PN23919

Yes?---Yes.

PN23920

It's an important qualification, it's not just occasional, it is regular work?---It is regular, yes.

PN23921

Yes. Now, the results show, in the darker column for, I think it's men, and the medium column for women?---Yes.

PN23922

And the third column in that cluster, at 50.6, is the combined index?---That's correct.

PN23923

This appears greater than the index, the index for regular weekends?---Hm-mm.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR STANTON

PN23924

If we're comparing all with all?---Yes.

PN23925

And do you recall the National average for this survey?---I think that by and large, it sits aroundabout - they've been fairly consistent, the average AWALI mean, aroundabout 41, 42. So anything above that is worse than average and anything below that is better than average.

PN23926

So a score of 50.6 compared with an average of 41 or 42 - well, if I say it's 42, would you accept the average at 42?---Yes, yes.

PN23927

Yes. How would you describe that, substantially greater?---Well yes, I haven't run the KAI Squares to see, you know, what's statistical significance. But just looking at those numbers, I would agree with you.

PN23928

Yes?---Yes.

PN23929

And then we compare 43.2 with 42, not as great?---Sorry, I'm lost where the 43- -

PN23930

I beg your pardon?---43.2 on regular weekends?

PN23931

Yes?---Yes. And no regular evenings, nights - yes.

PN23932

Yes. So if that is compared, that result of 43.2, if that is compared with a National average of 42, what can you say about that, in terms of its significance?---Well I, in fact - I did, in fact, look at this and looked at just excluding the sometimes working, often and almost always for the 2012 interim Modern Award Review, and I would have to go back to the actual analysis, because if you have a look underneath it, it's got "Regular weekends, no regular evening or night". Now, when we work, because the 2008 survey only collected data about weekends. As I said, it didn't disaggregate Saturday and Sundays. So it's excluding people who also work in the evenings, which is not what the analysis that I did for the 2012 review. So but I'm just reading the data here, you know, and remembering that you're taking out a group of people who work regularly in the evenings and nights, then that, you know, if it's there, I've got every confidence that it's correct.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR STANTON

PN23933

Yes, and what can you say about how it compares with the average though? 43.2 compared with an average?---43.2, well I'd have to run, and it depends on the numbers that sit in each group because the statistical tests of significance are very sensitive to the size of the individual sample, so the larger numbers you have, you

tend to, where there is a relationship, you actually see that reflected in a P-value that tells you that it's statistically significant. So I don't have the numbers of participants or respondents in each of those columns, so the regular weekends, people who work regular weekends and do not work regular evenings and nights, on average, are only slightly above the AWALI average for all employees.

PN23934

Yes. Whereas those who work evenings and nights are more substantially above that average?---Those who work evenings and nights and not regularly Saturday and Sundays, yes, are large. Although if you then look at the first column, those who work regular evenings and nights and regular Saturday and Sundays, they are the - for all people, its highest of all. And that's actually consistent with the finding of the 2014 survey reflected in Tony Daly's report, that the worse thing, in terms of work/life interference you can be doing, is working Saturday and Sundays and in the evening.

PN23935

And you have the 2008 report before you?---Yes.

PN23936

Can I take you to page 49 of that report? The number is shown on that page in the top right-hand corner. It's a little bit difficult to see with- -?---Yes, gee. My glasses aren't goo.

PN23937

JUSTICE ROSS: Sorry, Mr Stanton, what was the number?

PN23938

MR STANTON: Page 49 of the 2008 AWALI report.

PN23939

Do you have that, Professor?---Yes, which figure on that page?

PN23940

Yes, it's figure 25, it's shown at the bottom?---Figure 25, right. Right.

PN23941

This, as I understand it, is a comparable table, if you like, or index - - -?---I don't know if it is because it doesn't tell me if those people working on - well, I'm assuming, although it's not as nicely explained as in the 2014 - it doesn't tell me though for sure whether people working weekends and evenings, nights - I have to assume, I suppose, that they are exclusive of each other, if you know what I mean, so the people working just for the weekends column are also not working evenings and nights because of that final column, but I'd be making a guess, so I'd be wanting to read the text more carefully.

PN23942

All right. The second column along from the left - - -?---Yes, "Weekends".

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR STANTON

PN23943

- - - would be "Weekends", and the third column on along from the left is "Evenings and nights"?---Yes.

PN23944

If we just compare those for a moment then. What is shown for evenings and nights the combined result, the all school if we could call it that, the unshaded column is 48.1?---Yes.

PN23945

And the result for weekends is 44.6?---But I don't know if that's statistically different. Once again I need to know the numbers inside and I would need to run a Chi-squared test to see if the difference - sometimes things visually look different, so that looks as if it's possibly, you know, 3.something, percentage point is different, but these are mean scores in these scores. The distribution of them they tend to be fairly - they tend to mainly hover around the midpoint, around the 42. It's not as though we have an even distribution of scores from zero through to 100. So I can't - I'm looking at those figures and I can agree it's 3.something per cent point large, I can't tell you if that's a statistically significant difference.

PN23946

In relation to both the 2014 survey and the 2008 survey both seem to suggest a greater level of interference if you like with working night than with working weekends?---Well particularly in the 2014 we've just looked at if you work weekends as well that's the - that's the double whammy, yes.

PN23947

Thank you, nothing further.

PN23948

JUSTICE ROSS: Mr Izzo.

**CROSS-EXAMINATION BY MR IZZO**

**[1.02 PM]**

PN23949

MR IZZO: Professor, I would just like to ask you a few brief questions about one paragraph of your report, and that is paragraph 30, so we're talking about SDA44, paragraph 30 on page 10?---Yes.

PN23950

It starts off:

PN23951

*Based on the AWALI index of work/life interference - - -*

PN23952

Do you see that?---Yes.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR IZZO

PN23953

From what I understand at that section of the report you analyse in the first bullet point the mean score for those first employees who almost always work Saturdays

and you have an average mean of 42.39, and then you have looked at the mean AWALI score for those persons who don't almost always work Saturdays and they have a mean score of 36.36, and you go on to conclude that this difference is not statistically significant. You then go on to look at Sundays and a similar approach is adopted where those who sometimes, often or almost work Sundays have a mean AWALI score of 45.3 compared to 34.4 for those who do not, and you found that the difference between those who often or almost work Sundays - sorry, who often or almost always work Sundays and those who do not is statistically significant. Now the first question I would like to ask is am I correct in assuming that you have not compared the mean score for those who sometimes, often or almost always work Saturdays with the mean score of those who sometimes, often or almost work Sundays to see if the difference between those two mean amounts or those two mean numbers is statistically significant or not?---Yes, you'd be correct, and I think it's probably explained. Because there are relatively few people in the retail industry in terms of numbers statistical significance or the capacity of a Chi-squared test to pick up statistical significance shrinks according to the size of the sample that you're looking at. So if we had a larger sample of retail employees we may have been able to do that, but that's the reason why in those regressions we've earlier discussed that we then compare. Another way of doing the same thing is to see if retail employees differ from all employees, and that's in fact picked up in those regressions on page 42 and 43, and I think I in fact actually - yes, well that was certainly the reason. I'm just trying to find - I'm fairly certain that I wrote this, I'm just trying to find where I wrote it. I can't find where I wrote it, but that as I explained before is the rationale for using the regression to actually have a look to see whether or not retail employees differed from the finding for all employees.

PN23954

So do I understand your answer to the question to be that you have not sought to determine whether the mean score of 42.39 for Saturdays is statistically significant from the mean score 45.3 for people - - -?---Yes, and I'm just looking - in fact I'm just remembering where I did - it was mainly because we had very - very small numbers, and in fact I can illustrate the small numbers by going back to one of the - - -

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR IZZO

PN23955

Professor, I think you're going to the reason why you may not have done it, but you're saying that you did not look at it, is that right?---Well I did - I did look at it and I'm trying to find where - where I wrote it because I've got a distinct memory of having - okay. No, that's in the - look I can't - I can't find it at the moment, but I'm just wondering - so for example if you look at table 20 on page 36, and this was - this is going to the difference of working between - on Saturdays and working on Sundays. Under the "Sometimes, often, almost always work on Sundays" we've only got 102 people in the retail sample that do that and we've got 136, and by the time you - by the time you do the analysis the numbers are too small to be meaningful. So we ended up with very small cells, because what we - what we did, and you can see that clearly in the post hoc tests on page 45 for all industries, to actually compare the impact of working Saturdays and Sundays you've got to do what are called pairwise comparisons, and as you can see even

without total sample - so we separate them out into Saturdays only versus Sundays only, so we're comparing people who work on Saturdays only, comparing to those who work on Sundays only, and we've got, you know, small-ish numbers there, but we were able - enough numbers to be able to run this particular ad hoc test using the Bonferroni Corrections and you can see that that shows us clearly that working on Saturday compared to Sunday that, yes, there is a significant difference and that Saturday only be - Sunday and Saturday, yes, there is, but there wasn't if you just compared the group of people who work Sunday only compared to Sunday and Saturday. So that there wasn't a significant difference, and that was the reason for our finding of working on Sundays alone or in combination with Saturdays was worse than working Saturdays alone if you were comparing those two groups, but - I feel sure if I go through this carefully enough - maybe I didn't - maybe I didn't step it out.

PN23956

So, Professor, am I correct in understanding that you didn't compare the mean AWALI score for working on Saturday versus the mean AWALI score for working on Sundays - sorry, I will withdraw that question, I better more precisely express it. Am I correct in assuming that you did not come to any conclusions about the statistical significance between the mean AWALI survey for people who sometimes, often or always work Saturdays versus the mean AWALI survey score for people who sometimes, often or always work on Sundays, because you're saying that the cell size or the sample size that you have is too small. Is that right?

PN23957

JUSTICE ROSS: Are you talking about the mean AWALI score or the retail?

PN23958

MR IZZO: In the retail industry.

PN23959

WITNESS: In the retail industry?

PN23960

MR IZZO: Yes?---Yes, and I'm saying that to do those comparisons you have to use the pairwise comparisons, and when you start breaking down as I've shown you for all employees you end up with very - - -

PN23961

JUSTICE ROSS: Professor, Mr Izzo just wants to know whether you did it or not?---No, I didn't do it.

PN23962

MR IZZO: Thank you.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR IZZO

PN23963

DEPUTY PRESIDENT ASBURY: Sorry to interrupt you, Mr Izzo; just while we're on that table 19 and table 20 that we just looked at is the heading in the middle column on table 19 should that be Saturdays on page 36?---On page 36. So table 19?

PN23964

Table 19, the heading on the middle column should that be Saturdays?---It should indeed.

PN23965

MR IZZO: Now, Professor, just looking at the mean scores themselves I see that - and I am referring here to the bullet points in paragraph 30 of your report - I see that the mean score for those who sometimes, often or almost work Saturdays in the retail industry they're at 42.39 appears to be quite close to the mean score that existed for Sunday being 45.3. Given the closeness of the two mean scores are you able to indicate - or can I say instead of that - do you agree that it is likely that the difference between the two mean scores are not statistically - the difference is not of a statistical significance, I apologise?---You can't - this is the difficulty in comparing for retail employees, exactly the difficulty I tried to allude to - so that I can't compare the score of 42.39 with a score of 45.30 and make a decision on those numbers whether or not it's statistically significant. I have to run this one way and over which allows me to compare means, and as I explained to be able to do that you've got to do these pairwise comparisons which means if you like salami slicing the retail data to such an extent that our cell sizes are too small to be meaningful.

PN23966

Thank you.

PN23967

JUSTICE ROSS: Any further cross-examination? Can I raise a related point, Professor, if I take you to paragraph 24 you will see in the two dot points there's the average AWALI score, this is for all employees, those working on a Saturday at 47.06 and in the next dot point for those working on a Sunday have an average score of 50.04. Now am I right in assuming that you could run a test for the statistical significance as between those two numbers because you're not restricted by cell size data?---Yes, and I think that that's exactly what I've done. Okay. So table 3 on page 44 - - -

PN23968

Yes?---So this answers your question. So this analysis here addresses the question of whether working on Sundays is associated with higher AWALI scores than working on Saturdays. So we select those who are sometimes - you know, often, almost always on those days and we compare then the Saturdays and Sundays and that showed that there was a statistical significance between working on Saturdays and Sundays, and you can then just look - - -

PN23969

Which of the items in the table tells us that?---Okay. So if you have a look down the first column "Source" and you have a look at a "Saturday Sunday regular" which is the name of the constructed variable, and you look across to "Significance" you see .000.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR IZZO

PN23970

So that tells us that the difference between the average AWALI scores on those who work sometimes, often or almost always on a Saturday versus those who do that on a Sunday is statistically significant?---Yes.

PN23971

And you draw from that that Sunday is when you control for hours provides a greater level of interference?---It does, but on page - table 4 over the page they're the post hoc tests we did.

PN23972

Yes?---So we wanted to then - because some people work Saturdays and Sundays. So this was done to then really compare the different groups. So we've got the first comparison is people who work Saturdays only and those who work Sundays only, and that is a significant difference, and if you read the means the first one is the mean 1, relates to Saturday only, and the mean 2 relates to Sunday only. So you can see in the size of those means which direction that interference is going. So Sunday only is statistically significant higher work/life interference than working Sunday only; likewise when you compare Saturday only versus Sunday and Saturday, but when you compare people who work Sunday only versus Sunday and Saturday there was no difference, and that's then the reason for our finding that working Sundays alone or in combination with Saturdays is associated with higher AWALI scores than sometimes, almost always, often working Saturdays and not Sundays.

PN23973

What if you worked both frequently?---Well if you worked both frequently you in the first - in the second row there, so we've got those who work Sunday and Saturday. Those pairwise comparisons each of our three combinations if you like are compared with each other. So in the second one there you're comparing Saturday only versus the people who work both days, and then the next one you're working Sunday only versus those who work Saturdays and Sundays.

PN23974

So there's a statistically significant difference. Do we have an order of magnitude?---Well, I suppose the order of magnitude is suggested by the actual means.

PN23975

I see. All right?---And it's really the difference between the means of those groups, but once again without running those post hoc tests you can't just eyeball the means and assume because there's four or five points difference that they are statistically significant.

PN23976

But you have run those tests here?---But we've run those, yes.

PN23977

Thank you. Anything arising? Any re-examination?

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR IZZO

PN23978

MR MOORE: Your Honour, the only issue is that my learned friend Mr Seck took the witness to a number of documents.

PN23979

JUSTICE ROSS: Are you going to tender those, Mr Seck?

PN23980

MR SECK: Yes, Your Honour. Might I tender - there are three documents. The first one is the 2007 report.

PN23981

JUSTICE ROSS: Is that the May 2007 AWALI Concepts, Methodology and Rationale?

PN23982

MR SECK: Yes, Your Honour.

**EXHIBIT #PG31 AWALI CONCEPTS, METHODOLOGY AND RATIONALE REPORT DATED MAY 2007**

PN23983

The next document is the 2008 report headed "Work life and workplace culture".

**EXHIBIT #PG32 REPORT HEADED WORK LIFE AND WORKPLACE CULTURE DATED 2008**

PN23984

JUSTICE ROSS: Then there's Mr Daly's report, is that right?

PN23985

MR SECK: Yes, Your Honour.

**EXHIBIT #PG33 REPORT OF T DALY**

PN23986

VICE PRESIDENT CATANZARITI: Can I just ask one question of clarification. The AMALI measure is about paid work?---Yes.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR IZZO

PN23987

But throughout the questioning the use of the word is "work", and if you look for example at table 10 it is possible that the person who receives the question when they say they're working on weekends is also doing unpaid work. How is it cooking it up in the mind of the recipient, because looking at the industries a lot of those industries would have - in the real world sense there wouldn't be that amount of paid work?---Yes, that's - that's a very good question and one thinks of academics who work on weekends and are not paid for it. So there were some questions and I can't recall if it's in this AWALI survey, we ask if people work overtime and then if they're paid for their overtime, but in terms of the questions in the AWALI what we've done when we've controlled for hours people have told us the total weekly hours that they work, and without checking to see if there was

a question in this particular AWALI, it's not always in the AWALI about being paid unpaid overtime, we can't really pick that up, so - and I think it's probably reflected as you see in Tony Daly's report, quite a few people who work on weekends are not receiving penalty rates. Now one could say that's because, you know, awards were being breached, but probably the reason is that there are people who work on weekends who are not paid to work on weekends. Because only employed persons are interviewed by AWALI the respondents are clear, they're asked if they're an employee or, you know, self-employed, they're clear that the questions are about I suppose work in the sense of paid or salaried or waged work.

PN23988

JUSTICE ROSS: Anything arising? Any re-examination?

PN23989

MR MOORE: No, Your Honour.

PN23990

JUSTICE ROSS: Thank you for your evidence, Professor, you're excused.

**<THE WITNESS WITHDREW**

**[1.22 PM]**

PN23991

Mr Wheelahan, when we return at 2.30 can you have made some enquiries of Ms Pezzullo and why it is she can't be here on Monday?

PN23992

MR WHEELAHAN: Yes. Should I ask about any - as I briefly understand she might be interstate and there's obviously the possibility for video links.

PN23993

JUSTICE ROSS: There is, yes.

PN23994

MR WHEELAHAN: It would assist if Mr Moore could give an estimate of his time.

PN23995

JUSTICE ROSS: You can talk to Mr Moore about that during the break. Other days that Dr Yu might be available in that week that might accommodate Ms Pezzullo, but let's see how we go. All right, we will adjourn until 2.30.

**LUNCHEON ADJOURNMENT**

**[1.23 PM]**

**RESUMED**

**[2.34 PM]**

PN23996

JUSTICE ROSS: Mr Wheelahan.

\*\*\* SARA CATHERINE MARY CHARLESWORTH

XXN MR IZZO

PN23997

MR WHEELAHAN: Thank you. Your Honour, I made inquiries with Ms Pezzullo. She has an aged care workshop that's booked from 9 am to 12.30 am in Adelaide which the people have pre-paid, but she advises she is able to board a plane at 1.35 to arrive at Tullamarine at 3.35 on the 21st.

PN23998

JUSTICE ROSS: She could just go to our premises in Adelaide and deal with it by video.

PN23999

MR WHEELAHAN: Yes, the only - she could, or Mr Moore advises me he only thinks he will be one hour with her, so I thought it might - but I'm in your Honour's hands.

PN24000

JUSTICE ROSS: If it's only one hour, why would we have her fly to Melbourne for that?

PN24001

MR WHEELAHAN: Just for ease of documents. Documents are going to be shown to the witness.

PN24002

JUSTICE ROSS: I see. Have you got - - -

PN24003

MR MOORE: Well, I don't know if there will be showing of documents, but that could be managed remotely, I would have thought. We've done that before in the running of the case.

PN24004

JUSTICE ROSS: Yes, and also - - -

PN24005

MR MOORE: I'm content for it by video.

PN24006

JUSTICE ROSS: And we can have a Commission staff member in Adelaide, and if you provide the documents on the Monday morning to my associate, we will make sure that that can be done. So either way.

PN24007

MR MOORE: Yes.

PN24008

JUSTICE ROSS: But if that's the scope of it, then - but bear in mind that Dr Yu may give evidence after, and the whole purpose of this is so that - yes, well, it might be better if she does come to Melbourne, because the purpose is that then she can say whatever she wants to say about that aspect of Dr Yu, so we don't end up with this endless backwards and forwards. Because what I don't want to happen is Ms Pezzullo gives her evidence, goes off; Dr Yu gives her evidence, and then you want to file another report. So we're not going to be doing that.

PN24009

MR WHEELAHAN: Your Honour, for my part, Ms Yu has - I put to her that there were structural breaks and that the trend was not the same. She doesn't accept that, so I've put it to her. I'm not interested, and I don't think I think I have to then put to her various analyses by data - - -

PN24010

JUSTICE ROSS: No, I'm not suggesting you do, I'm just - but if there's to be any further - well, Dr Yu is going to - current indications are - be called to comment on the Pezzullo comment on the Yu report.

PN24011

MR WHEELAHAN: Yes.

PN24012

JUSTICE ROSS: Now, you've highlighted that - the scope of that, and we will see how that plays out.

PN24013

MR WHEELAHAN: Yes.

PN24014

JUSTICE ROSS: But my point is that if anything emerges from that evidence, then Ms Pezzullo is going to be dealing with that on the day, because otherwise what's the point of it? We will get another report in January, and we will be back here and we will keep doing this.

PN24015

MR WHEELAHAN: That was my submission, your Honour, that really, it has been put to her what the contention is and what data underlies that. You don't have to keep going back and forth. They already disagree. They disagree, so - - -

PN24016

JUSTICE ROSS: Yes, but my point is that the Pezzullo reply on the argument goes beyond a response to Yu. It introduces additional material.

PN24017

MR WHEELAHAN: Yes.

PN24018

JUSTICE ROSS: Now, you want to rely on that, and the unions are entitled to cross-examine about that. Now, if something arises from that and Dr Yu comments on that as well, well, then, you may want Ms Pezzullo to come back on it. I'm just saying that would be done viva voce.

PN24019

MR WHEELAHAN: Yes.

PN24020

JUSTICE ROSS: Because otherwise it will be an endless process; doesn't seem to have an end in sight. I've lost track of the number of Pezzullo reports we've now got.

PN24021

MR WHEELAHAN: Yes - - -

PN24022

JUSTICE ROSS: So we just need to bring it to some sort of finality.

PN24023

MR WHEELAHAN: Well, your Honour, in terms of timing, it probably would be preferable to do it in Adelaide if the Bench is content for that to happen.

PN24024

JUSTICE ROSS: Well, but you may need to confer with your witness between - unless you want to ask questions you don't know the answers to.

PN24025

MR WHEELAHAN: I would just apply to have a short adjournment and make a telephone call.

PN24026

JUSTICE ROSS: That's fine. No, I'm just alerting you to how it might go, and I don't want you to be disadvantaged by her location in Adelaide. If you're content for her to remain in Adelaide, we will provide the facilities and the rest of it so that you can have those - - -

PN24027

MR WHEELAHAN: My preliminary position is that they disagree, and the fact that they will be giving different evidence, yes.

PN24028

JUSTICE ROSS: I know, Mr Wheelahan. I'm not - and look, my concern is I don't know where the evidence is going to go.

PN24029

MR WHEELAHAN: Yes. Yes, your Honour.

PN24030

JUSTICE ROSS: And not knowing that, I just want to avoid having this endless battle of the reports.

PN24031

MR WHEELAHAN: I appreciate that, your Honour. I think it would be better in Adelaide, because we don't want flights delayed and lose something. Anything could happen.

PN24032

JUSTICE ROSS: Yes, exactly right. The vagaries of the airlines, yes.

PN24033

MR WHEELAHAN: Correct.

PN24034

JUSTICE ROSS: All right.

PN24035

MR MOORE: Your Honour, the only other issue there - and I understand from the mention the other day that this arose and didn't find favour, but to deal with the potential issue that your Honour has raised, an option is for Ms Yu to file a short document - - -

PN24036

JUSTICE ROSS: Yes.

PN24037

MR MOORE: - - - which then - because as things stand at the moment, as I understand it from the mention the other day, that your Honour wasn't positively disposed towards receiving - - -

PN24038

JUSTICE ROSS: Only for this reason, Mr Moore, that I didn't see that as a solution to - - -

PN24039

MR MOORE: No, I understand that.

PN24040

JUSTICE ROSS: - - - then - well, the retailers, rightly enough, if anything is raised in that, wanting to come back at it. But it's not - I think it would be a useful option if it can be done by the end of the week.

PN24041

MR MOORE: Yes.

PN24042

JUSTICE ROSS: Then you will know what Ms Yu is going to say and what you can take exception to, and that can also allow a discussion between counsel before we actually get to the evidence. You might be able to resolve those issues.

PN24043

MR MOORE: Yes.

PN24044

JUSTICE ROSS: And that also may mean that you can give an indication that you don't require Ms Yu, or they can be some discussion about the scope of her evidence.

PN24045

MR WHEELAHAN: Yes. We did that, I think, for Dr Kirchner.

PN24046

JUSTICE ROSS: Yes.

PN24047

MR WHEELAHAN: So we might have the same approach between the SDA and the retailers.

PN24048

JUSTICE ROSS: Yes. I do think - I just - I thought it was being put, Mr Moore, on the basis that: oh well, Ms Yu an put in a reply; and then I thought: well, Ms Pezzullo will want a reply to the reply, and, you know, I just couldn't see any light at the end of the tunnel.

PN24049

MR MOORE: I think we've all got our eyes on that, your Honour. And the other attraction of that course is that it will shorten Ms Yu's evidence.

PN24050

JUSTICE ROSS: No, exactly right. And Ms Yu may not - depending on where you go with it, and you've heard what has been said about the issues that have already been ventilated - it may be that she's not required at all.

PN24051

MR MOORE: That's right. It may be able to be resolved on a different basis.

PN24052

JUSTICE ROSS: Yes.

PN24053

MR MOORE: So I don't see any difficulty to filing - I will call it a statement to avoid the word report - by the - - -

PN24054

JUSTICE ROSS: That makes me feel much better, Mr Moore.

PN24055

MR MOORE: - - - by the end of this week.

PN24056

JUSTICE ROSS: Okay.

PN24057

MR MOORE: We will do it as soon as you can.

PN24058

JUSTICE ROSS: Yes. I think as soon as you can enables the others to look at it, and it, I think, increases the prospect that you're able to resolve any issues, because if there's - it may be that some amendment means Ms Yu is not required and you're content to make it, well then, all of that can be done; but if it is given late, it makes it more difficult.

PN24059

MR WHEELAHAN: It's likely, your Honour, that I would like to just make a submission that I've complied with the rule in *Browne v Dunn* and we don't require her, as we did with Dr Kirchner, but that's not taken as acceptance of her position, obviously.

PN24060

JUSTICE ROSS: Yes. Well, I think you can have that discussion between you once you see the report; and really, it will be the scope point, I think.

PN24061

MR WHEELAHAN: I will have my instructor advise Ms Pezzullo not to book flights.

PN24062

JUSTICE ROSS: Yes. No, certainly.

PN24063

MR MOORE: Your Honour, the only other matter, while we're dealing with that issue concerning Ms Pezzullo's and Ms Yu's evidence next week; from my part it seemed logical that the whole topic of the debate, as it were, between Ms Yu and Ms Pezzullo around the natural experiment - the New South Wales natural experiment - but the totality of that cross-examination of Ms Pezzullo occur next week.

PN24064

JUSTICE ROSS: And is that within the confines of about the hour that you've estimated?

PN24065

MR MOORE: Yes.

PN24066

MR WHEELAHAN: Yes, I can take no issue with that.

PN24067

MR MOORE: I just wanted to raise that now.

PN24068

JUSTICE ROSS: No, that makes sense. Yes.

PN24069

MR DIXON: Your Honour, may I just indicate that Mr Gotting and I may not be able to attend, and if we are unable to do so it will be, of course, without any disrespect to the Commission - - -

PN24070

JUSTICE ROSS: No. No, I appreciate that.

PN24071

MR DIXON: - - - and we shall assess what we can do in that regard.

PN24072

JUSTICE ROSS: And look, I appreciate that it's that time of year and there are other things on and it has come at the last minute, but it would either be then, or it would be some time in January, which in my experience is even less popular with the bar, so I understand. That's the indication, Mr Dixon. All right. Next witness.

PN24073

MS FORSYTH: Thank you, your Honour. If I may call Dr MacDonald.

PN24074

THE ASSOCIATE: Please state your full name and address.

PN24075

DR MACDONALD: Fiona MacDonald, (address supplied).

**<FIONA MACDONALD, AFFIRMED** [2.44 PM]

**EXAMINATION-IN-CHIEF BY MS FORSYTH** [2.44 PM]

PN24076

MS FORSYTH: Dr MacDonald, if you could please state your full name for the Commission?---Fiona MacDonald.

PN24077

And your current occupation?---Vice Chancellor, senior research fellow.

PN24078

And where is that based? What address is - - - ?---That's at RMIT University, Swanson Street, Melbourne.

PN24079

Thank you. And you will have a folder in front of you, Dr MacDonald. I'm going to ask you to turn to the first tab, and the document behind that tab. That has been marked as an exhibit, it's exhibit SDA 43. Dr MacDonald, if I can ask you to turn to part B of that report, that starts at page 13 of the document in front of you?---Mm-hm.

PN24080

Were you the sole author of part B of the document in front of you?---Yes, I was.

PN24081

And is that inclusive of pages 13 through to 24?---25 - 13 through to 25.

PN24082

I beg your pardon?---It's a bibliography, yes.

PN24083

The bibliography at 25. And do appendix 4 and appendix 5 of that document relate to part B of the report?---Yes, they do.

PN24084

And you're the sole author of those two - - - ?---I am, yes.

PN24085

- - - appendices?---Yes.

\*\*\* FIONA MACDONALD

XN MS FORSYTH

PN24086

And have you had an opportunity to review part B recently?---Yes, I have.

PN24087

And are there any amendments that you wish to make to that?---There are two amendments.

PN24088

Perhaps if I can take you, then, to the first, which I understand is at paragraph 48. Is that right?---Mm-hm.

PN24089

On page 22, I understand that where you have, "In another example, a woman explains," "woman" should read "man". Is that right?---That's correct.

PN24090

And then the second and final correction, found at page 24 of the document, being the extension of paragraph 52 over the page, you have in brackets "IVI", I think it was?---IV 12?

PN24091

That's right, and that should read IV 13. Is that right?---That's correct, yes.

PN24092

Other than those two amendments, Dr MacDonald, does part B accurately set out opinions formed by you on the basis of your expertise?---Yes, it does.

PN24093

Your Honour, that is obviously tendered, but that should prove part B of SDA 43. Perhaps for the sake of clarify, your Honour, I will just ask Dr MacDonald whether she's the joint author of the introduction found at pages 3 through to 4 of the report.

PN24094

Dr MacDonald, are you a co-author of that part of the report?---I am, yes.

PN24095

Thank you, Dr MacDonald.

PN24096

JUSTICE ROSS: Cross-examination?

PN24097

MS FORSYTH: Sorry, your Honour, I was just going to seek leave to ask two very brief questions arising from Ms Pezzullo's reply report to the union opinions.

PN24098

JUSTICE ROSS: All right.

\*\*\* FIONA MACDONALD

XN MS FORSYTH

PN24099

MS FORSYTH: Dr MacDonald, behind tab 2 of the folder in front of you you should have a document entitled "Reply Evidence to Union Opinions". Do you have that in front of you?---Yes.

PN24100

If I can ask you to turn to page 15 of that document. You will see there that Ms Pezzullo has provided some commentary under paragraph 3.1.3. Do you see that?---Yes.

PN24101

I'm just going to take you to what is under dot point 2 of that paragraph. Over the page at page 16 Ms Pezzullo is referring to the sample of 25 respondents that were interviewed for the qualitative analysis, and she says:

PN24102

*It appears that the sample was neither random nor representative.*

PN24103

What you say to that?---The sample was not random. The sample of 25 people who participated in the interviews was not a random sample, it was developed on the basis of a theoretical sampling framework. So the 25 people were 25 of the 81 people who responded to the AWALI survey and indicated that they were retail employees and sometimes, often or always worked on weekends. There were 81 people in that survey who were in that category and who agreed to give a contact number and agreed to be contacted again for a follow-up interview. So the 25 were selected specifically because the research questions were going - the research was investigating the nature of any work/life interference experienced by retail employees working on weekends, so the sample was selected as a sample of respondents who could inform that question; so there was no point in selecting a sample of people who were not retail employees or didn't necessarily work regularly on weekends. So in that sense it wasn't a random sample, it was a theoretically selected sample. However, it is representative of the sample in the AWALI survey who were retail employees who said they worked sometimes often or always on weekends. The 25 were not selected in any way that would create a systemic bias to make them indifferent from the 81. They were in fact representative of the 81. They are representative as a group in terms of age and sex, and whether they were casual or ongoing status in their jobs. The method of selecting them was actually a colleague and I started with the 81 and were telephoning them during the day and in the evenings. By the time we had actually managed to contact 25 and interview them, we had gone through the list of 81 at least once, so there was particular - nobody was excluded from the sample that we interviewed. They were all possible inclusions. There were five people who declined to be interviewed and they were excluded, so the sample is representative of the 81.

\*\*\* FIONA MACDONALD

XN MS FORSYTH

PN24104

Thank you, Dr MacDonald. Finally, Ms Pezzullo says there following on in the same sentence that "the quotations provided" by you "are also highly selective, chosen by" you "without explanation." Can you respond to that, please?---Okay.

The analysis of qualitative research such as this involves reading and re-reading the interview transcripts in relation to the specific questions that the research is asking and identifying the range of different responses, and over time and reading and re-reading 25 transcripts identifying common themes that emerge. The quotes were selected by me on the basis that they were typical or shed light or illustrated aspects of those themes that emerged across the whole group or in some other circumstances they illustrated, for example, two people from very different life circumstances might have talked about missing out on family and friends when they were working on Sundays, but they had very different types of examples due to their different life circumstances. So the quotes in that instance were reflected to illustrate the diversity, but within a common theme; so they weren't randomly selected. They were selected to be representative of the themes.

PN24105

Thank you, Dr MacDonald. No further questions.

**CROSS-EXAMINATION BY MR WHEELAHAN**

**[2.54 PM]**

PN24106

MR WHEELAHAN: Dr MacDonald, can you open to page 3 of the introduction of SDA43. You have said that you co-authored that introduction. In the evidence you just gave, you said that the sample was selected on the basis of people who worked weekends. Do you see that at the last sentence of paragraph 4 it only refers to persons "who had indicated they sometimes, often or always worked on Sundays." Is the report in error or is your evidence in error?---No, I'm sorry, I was probably misleading. The sample was selected on the basis that they worked on Sundays in the knowledge that - having looked at that sample, in the knowledge that most of those people also worked on Saturdays.

PN24107

Is it your evidence that in selecting the sample, you telephoned all 81 people with a colleague of yours?---Yes. I did the vast majority. A colleague probably telephoned 10 and I telephoned the other 71.

PN24108

Was that Dr Richard Phillips?---Yes.

PN24109

What did you ask the people that you telephoned to screen them?---Can I refer you to the interview guide. Is that allowable?

PN24110

I'll ask the question again, because I think I've confused you. In order to select them for the 25 - - -?---Okay.

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24111

- - - what did you say to these people? What did you ask them?---We asked these people if - we said to these people that we were ringing them because they had participated in a survey in the previous year and at that time we understood they had indicated they were retail employees who worked on weekends and on

Sundays in particular, and had indicated that they would be prepared to participate in a follow-up interview.

PN24112

So you asked them whether they worked weekends and Sunday or is it, as per your report, that you contacted people on the basis that they worked Sundays?---The people were identified - the people were in the sample of 81 because their weekend work included Sunday work.

PN24113

Yes. Was there a transcript used by yourself and Dr Richard Phillips for this telephone call?---Yes.

PN24114

Was that produced?---The introduction was not written. That part that I just relayed was not written.

PN24115

All right. Was there a transcript used between yourself and Dr Phillips in order to select who would form part of the 25?---Yes.

PN24116

Is that in writing?---Part of that was in writing.

PN24117

Was it produced to this - - -?---Yes, it was produced.

PN24118

Can you turn to page 13 of your report, part B. I'll direct you to paragraph 2 and I'll put some propositions to you. The purpose of the interview of the 25, it was never to find out if a work/life interference existed. It was always assumed that work/life interference existed no matter what when a person worked on the weekend. That's right, isn't it?---No, that's not right. The research was undertaken on the basis that the AWALI survey findings had identified work/life interference as more significant - the association of work/life interference with working on Sundays to be present and more significant than the association of work/life interference with Saturdays.

PN24119

Yes?---So it was understood that as a group, workers - work/life interference was associated with Sundays. There were no assumptions made that any individual we interviewed had experienced work/life interference.

PN24120

Well, Dr MacDonald, if you read paragraph 2, the third sentence which you authored, it says:

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24121

*The purpose of the interviews was not to find out if work/life interference exists, but to generate knowledge about the nature of any work/life interference experienced by retail workers.*

PN24122

I suggest to you that you started with the premise that there was work/life interference. Are you saying that that's wrong?---No - yes. I started with the premise that, as a group, retail employees experience work/life interference associated with working on Sunday, but not that any single individual would experience that work/life interference.

PN24123

Did you also assume that working Sundays in particular, as a matter of fact, with people who worked and their work/life experience?---I started with the knowledge that the survey responses indicated that, as a group, work/life interference was more likely to be associated with Sunday work.

PN24124

If I can just take you back to the introduction at page 4 and draw your attention to paragraph 9. Can I ask you this: although you have given evidence that you co-authored the introduction, can I take it by the fact that paragraphs 9 and 10 deal with your part of the qualitative study, that you were the author of those paragraphs?---I was author of paragraph 10.

PN24125

Were you the author of paragraph 9?---No.

PN24126

No? All right. You'll see the last sentence in paragraph 9:

PN24127

*The qualitative study was designed to investigate the nature of work/life interference for retail employees working on weekends and on Sundays in particular.*

PN24128

I suggest to you again that the report was designed to extrapolate and investigate the assumption that there was work/life interference existing for employees who worked on the weekends?---No. The report was designed to investigate the nature of any work/life interference that existed.

PN24129

All right. It doesn't say that though in the introduction, does it, for the reader?---Well, it is - it doesn't say that exactly, but that's the intention. The intention was, in the knowledge that work/life interference is associated with Sundays for workers as a group, to understand the nature of that work/life interference through talking to individuals, some of whom may experience work/life interference and others who may not.

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24130

The sample size of 25 - if you can turn to page 13 of part B of the report. Sorry, 25 of the sample size. You have said that there were in-depth telephone interviews with 25 persons. Did you conduct those interviews?---I conducted 21 of those interviews.

PN24131

Who conducted the other four?---Richard Phillips.

PN24132

You have referred here that 25 was a sufficient number to reach a saturation level, at paragraph 3:

PN24133

*The sample size of 25 was considered to be large enough to reach saturation.*

PN24134

You understand that saturation is the point in data collection when no new or relevant information emerges with respect to the newly constructed theory. That's what that means. Correct?---Or the particular theme under exploration - - -

PN24135

Under investigation?---Under investigation, yes.

PN24136

So do I take it that less than 25, you did not reach the saturation point?---No. In this instance, I had determined that 25 would be sufficient. That was prior to the interviews. The sample size was determined at the outset of the study - - -

PN24137

Yes?--- - - - based on my experience as a qualitative researcher and knowledge of research experts' advice on researching a fairly specific or narrow - it's a phenomenological study. It's investigating - or it's focusing individuals' experiences and understandings of a particular phenomenon. In this case - - -

PN24138

Again I ask you the question: so less than 25 was not considered by you to be large enough of a sample group to reach saturation?---Not necessarily. 20 may have reached saturation point. I determined prior to that, that 25 - prior to commencing the interviews, that 25 should be adequate. It may have been the case that we reached saturation at 17 or 18 or 19. With a research focus that is as narrow and specific as this one, some research experts might propose a sample size of 15 would be adequate.

PN24139

My question again to you is you determined that 25 was the saturation point and anything less than that was not a sufficient number to reach saturation?---I estimated that prior to commencing the interviews. There's no way of actually knowing that prior to commencing the study.

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24140

Well, after the interviews, do you want to change what the number that was needed - the sample size large enough to reach saturation, and amend the report?---No. I would have to go back and read all the interviews, and that statement is saying what I estimated prior to conducting the interviews.

PN24141

Yes. My question is after conducting the interviews, which you said you did, and secondly that you've read the transcript many times of interviews to formulate your report, do you want to change your opinion of what the appropriate sample size was to reach saturation?---Not in this particular instance, no.

PN24142

If you turn to appendix 4 relevant to your report, at page 48 - this is the document that you said you authored which sets out the demographic and employment details for these 25 persons - you'll see starting with the age group of 18 to 24, you've got a number of 15 persons. I take it that that is what the "N" means?---Yes.

PN24143

How many of those persons were students?---I don't recall exactly.

PN24144

You don't know?---I could take a guess. About half.

PN24145

Was it something that was recorded or not?---It may have been recorded on a document that was produced.

PN24146

It's not part of your analysis though?---No.

PN24147

I suggest you don't know how many of those people were full-time, casuals or part-time. Correct?---It was recorded on a document that was produced. I don't know off the top of my head how many of those people were full-time, part-time or casual. For each person interviewed, it was recorded whether they were a full-time or part-time employee, whether they were combining their employment with study and whether they were combining it with caring responsibilities and their household status.

PN24148

Dr MacDonald, with respect to data saturation, if a researcher doesn't attain the data saturation - in your case, you say it's 25 - any resulting theory can be unbalanced, it can be incomplete and not be trusted. That's the correct principle, isn't it?---Yes.

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24149

Insofar as you interviewed the 25, it's a reasonable conclusion to say that insofar as there are any people over the age of 24 - that is, there were only 10 people -

that that's not a large enough group to draw any trustworthy conclusions for that group?---I'm sorry, can you ask that question again.

PN24150

In your sample group, taking out the group of 18 to 24, you only have 10 people. I'm suggesting to you that your report, it would be untrustworthy insofar as one is to draw any conclusions relating to your themes or theories for persons over the age of 24?---No, I don't agree with that. I mean, the selection of 25 as the saturation - as adequate to reach saturation, was an estimate that I made prior to the study. Post conducting the study, I'm confident that the sample size was large enough to make the findings valid and reliable.

PN24151

All right. Well, to put it another way, if I break it up, the persons aged over 55, there were two people. Now, one can't be confident of any conclusions or theories or themes that you put relating generally to people over the age of 55, can they?---I didn't put any particular themes or generalisations relating to people over 55. The themes that emerged from the research around how people viewed Sundays and what they - well, around the Sunday question, were common across the age groups in the general broad themes that I identified, so that's not to say that those themes - there might be additional themes present - it was a large sample of over 55s, but I would have confidence that the themes that emerged in the interviews are themes that would be found more generally in the population of retail employees who work on weekends. I didn't make specific - draw conclusions about any particular age group.

PN24152

Yes, well, Dr MacDonald, I'm just going to this because you've broken it up into age groups. It's not a criticism of you. I'm just putting to you a proposition that given what you've said, after the age of 24 those themes that you talked about, one cannot make any trustworthy conclusions that they apply to the persons aged over 24 because you only have 10 people. That's correct, isn't it?---No, that's not correct. My experience of conducting and analysing those interviews indicates to me that the conclusions are - if I had just interviewed 10 people over the age of 24, the same themes would have emerged in that data. They wouldn't have been - the themes of friends and family would have expressed themselves, there would have been the absence of the expression of some of the things that young people talked about, but the themes would still have been there. Or would still be there. Are there for that group.

PN24153

I'll move on. Can you please turn to page 13 of Part B of the report and direct your attention to paragraph 4. Do you have that document?---Yes.

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24154

So in the first line you refer to circumstances that Sunday is different and not a regular work day. You don't make any mention of Sunday. Did you also find that that equally applied to Saturday? That that was not a regular work day?---That

statement refers to what people thought about Sunday. It doesn't refer to what they thought about Saturday.

PN24155

Yes, I understand it's a statement - you might not have extracted it, but having made the calls and read the transcript many times, I'm asking you, in your expert capacity, are you able to say, although not in this report, that the persons' views were that Saturday was also different and not a regular work day?---I don't know that I could say that because what people talked about in talking about Sunday being different from other days and not a regular work day, they included reference to Sunday being different from Saturday. Saturday being - they made reference. People said things like, "Saturday's a day where people are doing jobs. Saturday is a day" - the nature of the difference of Sunday was such that people referred to Sunday being a day when you didn't work, as other days were days where you did work. So people could have - some people - some people talked about not liking working on Saturdays and not liking working on weekends generally, but when people talked about Sunday being different, as in this particular finding, they made reference to its difference from Saturday as well from Monday to Friday.

PN24156

So it's your evidence that there was a comparator of Sunday against Sunday in terms of determining whether it was a regular work day?---In part, yes.

PN24157

The next sentence you've stated that "Sunday was viewed as different from Saturday." Can I just stop there. How was it different?---People saw Sunday - people talked about Sunday being a day where you could relax being different because - there were two main themes that came through in many of the interviews; it being a day for relaxing and doing nothing and having a life and a day for catching up with people which was very much about something that you could do on that day that you couldn't do on other days because it was a shared day. And in that sense people saw it as quite different from Saturday.

PN24158

When you say "talked about it", it's more correct to say, isn't it, that you put it to them in a leading question that that's what Sunday involved?---I did never put that to anybody as a leading question.

PN24159

Appendix 5, that's not an error, is it, the questions that you asked 21 persons you interviewed?---Could you tell me what page that's on?

PN24160

Page 50?---Which - - -

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24161

Well if you look at page 51, the question, "Does - did working on Sundays affect your involvement in", and it has a number of things including "relaxing, time for

yourself, sporting activities, household and family responsibilities." I'm suggesting to you that that's a leading question and that you did put these matters to the people you interviewed?---These were put as prompts.

PN24162

Prompts?---I wasn't suggesting to people that they found these - that they would experience these things, I was asking them if they did. These prompts were drawn from the work/life - the AWALI index.

PN24163

Yes. But my question is, initially you said you did no such thing. I just want to make sure that that appendix does contain the prompts or questions that you put to the 21 people that you interviewed?---Yes. Yes.

PN24164

If you can return to paragraph 4 of page 13, Part B. You've then drawn the conclusion, I'm continuing to read the sentence, "In general employees regarded working on Sundays as more negative in its effect on work/life." Now, do you mean more negative than six other days or more negative than Saturday or more negative than Monday to Friday?---More negative than Saturday.

PN24165

Your next paragraph commences: "Underlying the idea that Sunday is different from Saturday in negative effect on work/life interaction", can I just stop there. Instead of the word "idea", what you're really doing is making an assumption following from paragraph 4, that Sunday was different from Saturday in its negative effect on the work/life interaction. That's correct, isn't it?---No, the interviews commenced with, "Is -", is asked people whether Sunday was any different from Saturday. If they - if people responded that Sunday was different from Saturday - - -

PN24166

No, I'm just reading what you've written in paragraph 5. So this is your statement. "Underlying the idea that Sunday's different from Saturday in negative effect on work/life interaction." So you're picking up your finding, if you like, finding or assumption, your finding that you have in paragraph 4. That's correct? It's not an idea?---Well "idea" as in belief. Or as in expressed attitude.

PN24167

Expressed attitude. All right. And, "The nature of work/life interference experienced by employees reflects this view. Sundays perceived to interfere with relaxation, working on Sundays described as isolating or excluding people from life and ripple effects." Again, that flows from responses to your questions directing peoples' attention to relaxation, isolation and so forth?---Yes.

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24168

In terms of ripple effects, that's something - that's your own interpretation of various answers from the survey respondents, is that right?---Sorry, can I just clarify? I didn't suggest to people that they were isolated. I didn't ask people if

they were isolated. I asked people if it - Sunday impacted on their relaxation time. Or - and I asked if it impacted on their socializing. I didn't ask if people - -

PN24169

At paragraph 6 - - -?---Felt isolated.

PN24170

- - - you've referred to the higher hourly pay received on Sundays. It wasn't part of your analysis to consider the higher rate of pay received on Saturdays, was it?---Many of the interviewees didn't talk about the higher rates of hourly pay on Saturdays.

PN24171

It wasn't part of your analysis, nor did you set out to investigate the issue of the higher pay on Saturday?---We did - - -

PN24172

In the same way that you did for Sunday?---No. We did ask if people received higher pay on weekends. Many of the interviewees received higher pay on Sunday but not on Saturday.

PN24173

All right. My question, though, at paragraph 6 you haven't made reference to the higher pay on Saturday, you've chosen only to talk about the higher pay on Sunday?---The interview respondents talked about the higher pay on Sundays.

PN24174

But you didn't set out to investigate higher pay on Saturday?---We did ask about higher pay on Saturday. If the - the document that was produced that gave all that other detail, if you look at that it actually shows that we asked everybody whether they received penalties on Saturdays and on Sundays. People talked about penalties on Sundays, possibly because many of them had Enterprise Agreements where the penalty was received on Sunday but not on Saturday.

PN24175

I put to you this. Only six of those interviewed declared receiving a 100 per cent loading for Sunday work. Does that recollect with your memory of the people you interviewed?---Yes.

PN24176

And 12 persons of the 25 declared receiving a 50 per cent loading - - -?---Yes.

PN24177

- - - for Sunday. Five persons declared receiving a nil loading - - -?---Yes.

PN24178

- - - for their Sunday work?---Yes.

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24179

And two persons made no specific statement at all as to their loading?---Yes.

PN24180

So at paragraph 6 where you refer to the higher hourly pay received, presumably you're only referring to the 12 that had a 50 per cent loading and the six that had a hundred per cent loading?---The 18, yes. Sorry, that's not - the people who didn't - a couple of people who didn't receive a loading talked about their annoyance with not receiving a loading.

PN24181

At paragraph 7 you set out how the qualitative data's captured the main themes and you then say this: "The interview data provides insight into the range and nuance of individual circumstances that can contribute to this common experience that from a work/life balance perspective working Sundays is qualitatively different and significantly more difficult than working on a Saturday." Do you see that?---Yes.

PN24182

I suggest to you that on a balanced reading of the interview, that that's just not so?---Which aspect of that?

PN24183

That the Sunday, "working Sunday, is qualitatively different and significantly more difficult. That part. "Significantly more difficult than working on a Saturday"?---I considered that to be true based on the - my analysis of the interviews.

PN24184

Your analysis of the interviews?---M'mm.

PN24185

All right. Can I suggest to you some other common themes that you - on a fair reading of the interviews, exist. "1. For many it was their choice to work Sunday, either by (a) accepting a job that required weekend work", do you accept that was a common theme?---I don't accept that by - that it was their choice in the sense - sorry, can you repeat that statement?

PN24186

I'll do it a bit slower. It was their choice to work on Sunday by virtue of accepting a job that they knew required them to work on the weekend? I'll give you an example. A bartender takes a job on a weekend at a pub on Friday night/Saturday, he can probably expect, or she, to work the weekends rather than Monday or Tuesday?---I'm not sure that you would say that was true in that if you were asked - if you were dealing with quantitative data and you had a question, "Was it your choice or not, yes or no?" you - - -

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24187

Well my question is - sorry?---What this data uncovered was that people make - the understanding in this, from my reading of what people told me, people make choices around a whole range of things. So, "It was my choice." "I really didn't

have a choice to work on Sunday because that's on the roster." It's, "I don't mind working Sundays because I get paid more but I don't actually know if I could stop working Sundays anyway because they want everyone to work on Sundays." So I don't - I'm giving you those examples because I'm not sure that it's that straight-forward to say - - -

PN24188

I'll ask you, and you can either accept or reject. I'm actually suggesting to you that on a fair reading of all the interview material it was in fact a common theme that for many it was their choice to work Sundays by virtue of accepting a job that they knew required weekend work. Do you accept that or not?---I would say no, that was not a common theme. The common theme was they accepted working on Sundays because they were paid more or because they were required to.

PN24189

Secondly, I put to you it was their choice to work Sunday by virtue of accepting shifts within an existing job, voluntarily, to work on the weekends. That was a common theme?---No, that was definitely not a common theme.

PN24190

All right?---People who were full time or who had part time shifts of, you know, quite a significant number of hours were the - were the people who talked about being rostered for Sundays.

PN24191

The next common theme I want to suggest to you was that people chose to work the weekend because in fact that suited their work/life balance. For example, the many university students that went to university Monday to Friday, that was a common theme, wasn't it?---It was a common theme but it's a very partial view of their decision-making and their preference.

PN24192

Can I suggest to you that you wrote your report and extracted quotes to suit your paradigm of significantly more difficult work/life balance for Sundays?---I'm not sure what you mean by paradigm, but that was a theme that emerged from my analysis of the interviews and I did select the quotes to illustrate those points.

PN24193

Yes?---But it was not a paradigm that I constructed.

PN24194

My third common theme, or fourth, I'll put to you is that it's a common theme that there was no significant difference or greater difficulty for persons working weekends, whether it was a Saturday or a Sunday?---You're suggesting - - -

PN24195

Do you understand that?---You're suggesting a common theme was that there was no difference in the difficulty of working - - -

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24196

You've asserted that it was significantly more difficult, and what I'm suggesting to you, that it's actually a common theme that there was no significant difference or greater difficulty for persons working weekends, whether it was a Saturday or Sunday, so putting Saturday or Sunday, they weren't fussed or phased with one of the interviewees described it. Were they? Sorry. That was a common theme, correct?---No, I don't - no, I would not agree that that was a common theme. A common theme was that Sunday was quite different from Saturday and more difficult because it interfered with aspects of work/life that people did not find Saturday work to interfere with.

PN24197

Dr MacDonald, I'll have handed to you so you can firstly identify them, these are the transcripts that were produced of the interviews with the 25 members of the sample group. I just hand that up. Now, Your Honour, my learned friend has just said that there might be subject to a confidentiality order on those. Is that right? I think the names are redacted?---Yes.

PN24198

I think that was taken care of before the production. I shouldn't listen to my - - -

PN24199

MS FORSYTH: Certainly on the copy that I have, Your Honour, the identifying details have been redacted.

PN24200

JUSTICE ROSS: Yes. Same with us.

PN24201

MR WHEELAHAN: Now, Dr MacDonald, firstly, you can identify these are the transcripts of the interviews with the 25 members of the sample group that you referred to reading numerous times in order to formulate your report. That's correct, isn't it?---Yes. Yes, sorry.

PN24202

Your Honour, I propose to tender it as a bundle and I'll add that the hand notation at the bottom right of each page, there's a number, just for ease of - - -

PN24203

JUSTICE ROSS: Yes.

PN24204

MR WHEELAHAN: I won't be taking her through the hundred pages, and also the IV number at the top is also a number that was put there by my instructor, having regard to the contents of the report. No, sorry, the IV is not there on the copy that's been handed up.

**EXHIBIT #RETAIL 11 TRANSCRIPTS OF INTERVIEWS WITH  
THE 25 MEMBERS OF THE SAMPLE GROUP.**

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24205

MR WHEELAHAN: Dr MacDonald, can you turn to page 8. Sorry, page 7.  
Page 7 and about midway down the page, you'll see that this person was asked:

PN24206

[REDACTED]

PN24207

Now, that's a statement consistent with the themes that I've put to you,  
correct?---Yes.

PN24208

On page 8, the next page asked:

PN24209

[REDACTED]

PN24210

Again that's a statement consistent with the themes that I've put to you,  
correct?---Yes.

PN24211

On page 9, midway down the page, this is referring to [REDACTED]:

PN24212

[REDACTED]

PN24213

That's consistent with the themes I've put to you, correct?---Yes.

PN24214

Page 11, midway down the page again, same person, [REDACTED]  
[REDACTED] If I'm going too fast, your Honour.

PN24215

JUSTICE ROSS: No, it's all right.

PN24216

MR WHEELAHAN: No?

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24217

[REDACTED]

PN24218

[REDACTED]

PN24219

[REDACTED]

PN24220

And then going on:

PN24221

[REDACTED]

PN24222

That's consistent with the common themes I've put to you, correct?---Yes.

PN24223

Page 15, the third interviewee, at the bottom of page 15. Question:

PN24224

[REDACTED]

PN24225

That's consistent with the themes that I've put to you, isn't it?---It is consistent, if read in isolation from the rest of the interview.

PN24226

It is consistent if read in isolation. Well, I suggest to you - - -?---If it's consistent with the theme - - -

PN24227

- - - Dr MacDonald, that you, in your report, under the heading "Research Findings" - I'll just get the page - all you've simply done is selectively extracted, in isolation, as many comments as possible to support your position in paragraph 7, that Sunday is qualitatively different and significantly more difficult than working on Saturday, when on a fair reading, that is just not so?---No, I don't agree that that is true on a fair reading of the content of all the interviews combined.

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24228

All right, if we can turn to page 21. [REDACTED]

PN24229

[REDACTED]

PN24230

Can I just ask, did you conduct this interview? Do you remember this particular discussion with this person by the manner of the questions, sorry, not the manner. What the questions were?---I'll have to just read it to remember.

PN24231

Well, I'll read it out loud, the answer:

PN24232

[REDACTED]

PN24233

?---Yes, I did conduct this interview.

PN24234

Yes. So again, the willingness here and the choice that it suits this person to work on the weekends, that's consistent with the common themes I've put to you, correct?---It's consistent with your assertion that's a common theme. However, it's not a common theme, if the interviews are read in their entirety.

PN24235

Yes?---There are examples throughout many of these interviews of statements, individual statements.

PN24236

Yes?---But if all the interviews are read together and if each interview is read in its entirety, those things that you're putting to me as common themes are not common themes.

PN24237

Yes, all right, well I'll have to inflict the Bench with some more pain and keep going. Page 23, at the bottom.

PN24238

[REDACTED]

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24239

That's not consistent with your common theme of Sunday being worse, is it?---Can I illustrate my problem with your assertion by way of example? If you go back to the page 15 you pointed out.

PN24240

Well, I'll just keep asking. Your counsel re-examined you. In your report, you've chosen to cherry pick quotes to support your common themes, correct?---No, and the reason I wanted to draw your attention to it - - -

PN24241

JUSTICE ROSS: Yes, just a moment.

PN24242

MS FORSYTH: I think, in fairness, your Honour, the witness is entitled to answer the question, and I'd ask that she be given the opportunity to put the example.

PN24243

JUSTICE ROSS: Well yes, the witness did answer the question. The witness then wanted to expand on part of her answer. The question was is that consistent with the theme that counsel had put to her and the answer to that would have been yes or no and then she sought to elaborate. But you can deal with it in re-examination.

PN24244

MS FORSYTH: As your Honour wishes.

PN24245

MR WHEELAHAN: Yes, page 24, Dr MacDonald, first paragraph, second line.

PN24246

[REDACTED]

PN24247

Again, that's consistent with the theme that I've put to you of the uni student who chooses to work on the weekend to fit in with their lifestyle, correct?---That statement is, yes.

PN24248

Yes. Page 27, next respondent, the fifth respondent. Sorry, the fifth interviewee, down the bottom of the page. Again, the interviewer:

PN24249

[REDACTED]

PN24250

I suppose, Dr MacDonald, is it your position that in an ideal world, nobody works on the weekends? Dr MacDonald?---No.

PN24251

No.

PN24252

[REDACTED]

PN24253

Then again goes on, well, it's followed up with the question:

PN24254

[REDACTED]

PN24255

Again, that's consistent with the common themes I've put to you. Correct?---That statement is, yes.

PN24256

Yes, at page 28, the last two lines, again:

PN24257

[REDACTED]

PN24258

?---Yes.

PN24259

That's consistent with the common themes I've put to you?---This - and this person's responses were reported in my report.

PN24260

Yes, we'll get to that. Page 33, the sixth person's interview, middle of the page:

PN24261

[REDACTED]

PN24262

[REDACTED]

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24263

[REDACTED]

PN24264

That's again consistent with the common themes I've put to you, isn't it?---I'm not sure that is. The person said they wouldn't have chosen the roster.

PN24265

All right, so you disagree that what I've read to you is consistent with the common themes that I've put to you?---Mm.

PN24266

Page 34, in the middle:

PN24267

[REDACTED]

PN24268

Again, that's consistent with the common theme that I've put to you, correct?---Mm-hm.

PN24269

And these are common themes that you chose not to include in your report, correct?---I'm suggesting that they're not common themes if you read all the interviews in their entirety.

PN24270

Yes. Do you accept that the majority of retail workers who work on weekends are satisfied with so doing?

PN24271

JUSTICE ROSS: Are you talking about as a general population - - -

PN24272

MR WHEELAHAN: Yes.

PN24273

JUSTICE ROSS: Or are you talking about - - -

PN24274

MR WHEELAHAN: Retail employees. Do you accept that?---Based on these interviews, I would accept that pay was very important for many of the workers who work on weekends and I would accept that - I wouldn't accept that general proposition.

PN24275

All right, can you please turn to - - -?---Without - without explanation.

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24276

Can you turn to page 38 of your report? This table was put together by Dr Charlesworth?---Mm.

PN24277

I take it that you've read the whole report and not just your part, being the introduction. Is that right?---Sorry, that I have read the report?

PN24278

Yes, the whole report, is that right?---Yes.

PN24279

Yes?---That I have read the report?

PN24280

Yes?---Yes.

PN24281

And do you recall seeing table 23 and 24 which records both, with respect to Saturday and Sunday, you'll see the percentages and take some time if you need it:

PN24282

*The extent to which you are satisfied with your work-life balance and Saturday work retail employees vary somewhat satisfied.*

PN24283

And you'll see the percentages there from 72.4 under those that never, rarely, etc?---Mm-hm.

PN24284

And below the table dealing with Sunday work, again very, somewhat satisfied and the percentages there?---Mm.

PN24285

So I put it to you again, as a specific proposition, do you accept that the vast majority of employees who work on the weekend are satisfied with their work-life balance?---Based on these findings, yes.

PN24286

Yes. But on your personal view, you don't accept it. Is that your view?---No. My analysis of the interviews was investigating what it was, if work-life interference is present, what it was, what was the nature of that and why it appeared to be different for Sundays.

PN24287

Do you - sorry?---I can't make generalisations about how satisfied the majority of retail employees are on the basis of my qualitative analysis.

PN24288

You can't? All right. Well, you can't make - - -?---I can make - - -

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24289

- - - an observation about how satisfied employees are, you still maintain that you're able to make observations that it is significantly more difficult to work on a Sunday than a Saturday, from a work-life balance perspective?---Yes.

PN24290

Yes?---The nature of the work-life interference is significantly different and the types of difficulties people encounter when they do have work-life interference, are more difficult.

PN24291

Yes, and in your questioning of people, you put all your various prompts, put to them all these difficulties. So after a number of employees said, "No, I've got no problem, it's more or less the same", as you said, in context, it's only after you start prompting them and leading the, I suggest, that you might get a bit of a slide in their answer. Is that a fair summary?---I don't lead people. Prompting them is not leading them.

PN24292

Page 27?---Of?

PN24293

The transcript, which is Exhibit Retail 11. So page 27. Sorry, I've taken you to that one. Yes, 34 I was up to. Next page is 36, three-quarters of the page down, question:

PN24294

[REDACTED]

PN24295

Response:

PN24296

[REDACTED]

PN24297

Answer:

PN24298

[REDACTED].

PN24299

Do you accept that that's consistent with the common themes I've put to you?---Yes, and that's again, the same interviewee whose experiences I did discuss in the report as one of the small number of people who said there was no difference.

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24300

I'm sorry, did you say a small number of people that said that there was no difference?---Who overall said there was no difference, yes.

PN24301

Yes. Do you accept that I think I've taken you to more than a small number of people that hold that view?---No, I think you've taken me to five people and I think that in at least two or three of those, you've been quite selective about the - -

-

PN24302

Yes, but you only had - - -?--- About the sections that you've pulled out rather than show the entirety of the person's responses.

PN24303

You only have two people over 60, correct?---Over?

PN24304

I've taken you to five people which deals with the saturation point of the data. I've taken you to five people?---And I'm suggesting that in two or three of those cases, you've been selective in the aspects of the interview that you've chosen.

PN24305

Yes?---In the other cases, those people's experiences and views that Saturday was no different from Sunday, were reported in the report.

PN24306

All right, we'll keep going and I'll be quick and just ask you the questions simply. So page 41, in the middle:

PN24307

[REDACTED]

PN24308

[REDACTED]

PN24309

Four lines, five lines down:

PN24310

[REDACTED]

PN24311

What I've read to you is consistent with the common themes I've put to you, correct?---Yes.

PN24312

Over the page, page 42, three-quarters of the way down:

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24313

[REDACTED]

PN24314

Answer, [REDACTED]. That's consistent with the common themes I've put to you, correct?---Yes. However - - -

PN24315

Page - - -?---The next line after your first quote, if you read that, it is not consistent with the common theme.

PN24316

Sorry, which page are you referring to?---The first quote from that interview, on page 41.

PN24317

That I read, [REDACTED]"?---And if you keep reading down the rest of that page, the quote is in a broader context that makes it inconsistent with the theme you put to me.

PN24318

Well, that's an argumentative position you've put to me, so are you now - you don't accept that what I've read to you is consistent with the common themes I put to you?---I accept that - I accept what you read to me, but I don't accept that it is a common theme across the interviews because it's been quite selective within a single interview.

PN24319

Yes. Well, Dr MacDonald, to be fair to you, that's why I'm going to - - -?---Read them all.

PN24320

The majority of them?---Okay.

PN24321

And you'll find that this common theme, at least I hope you will find, that it does appear. Page 42, I read to you. Page 44 at the top:

PN24322

[REDACTED]

PN24323

Again, consistent with the common themes I've put to you, correct?---Yes.

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24324

Page 57, at the bottom of the page:

PN24325

[REDACTED]

PN24326

[REDACTED]

PN24327

Again, a fair reading here is Sunday is not significantly or more negative than Saturday, based on what this person has said, is it?---Based on what this person has said in the entirety, if I could stop - had the time to read it, I might not agree with you that that is the case.

PN24328

No, but based on what I have read to you, you agree - - -?---Based on one sentence, yes.

PN24329

Two sentences?---Two sentences.

PN24330

Three actually. Page 62, towards the bottom of the page:

PN24331

[REDACTED]

PN24332

[REDACTED]

PN24333

[REDACTED]

PN24334

Again consistent. Early part of the interview consistent with the common themes I have put to you, correct?---Correct, in isolation.

PN24335

Over the page at 63, and again in the middle the issue:

PN24336

[REDACTED]

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

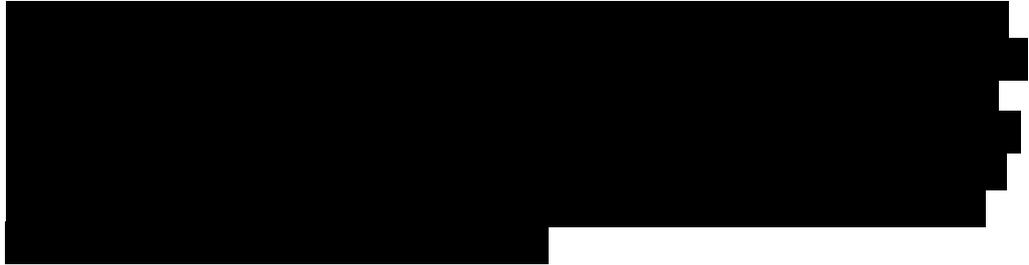
PN24337

Again that's consistent with the common themes I have put to you?---Yes.

PN24338

Page 69 in the middle of the page:

PN24339

A large rectangular area of text is completely redacted with black ink.

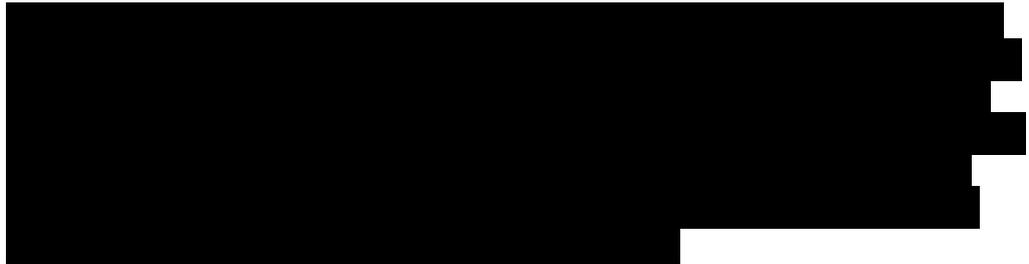
PN24340

Again that's consistent with the common themes I have put to you, correct?---Could you just restate the common theme?

PN24341

Do you want me to go back to each common theme. All right.

PN24342

A large rectangular area of text is completely redacted with black ink.

PN24343

So that's the comparator between Saturday and Sunday?---Okay.

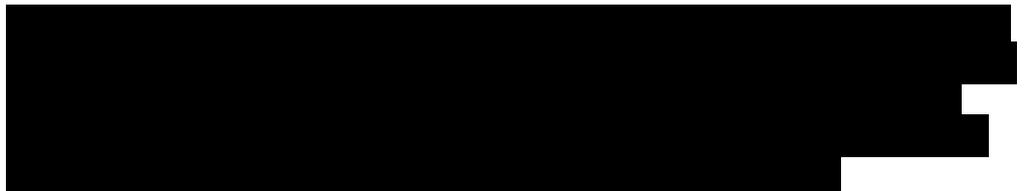
PN24344

Now, do you want me to re-ask you what I read to you at page 69, that's consistent with the common themes that I put to you, correct?---Yes.

PN24345

On page 73 in the middle:

PN24346

A large rectangular area of text is completely redacted with black ink.

PN24347

That's consistent with the common themes I have put to you, correct?---Yes.  
Sorry.

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24348

Page 80, the second half of the first page.

PN24349

[REDACTED]

PN24350

So again that's consistent with the common themes I've put to you, correct?---Yes.

PN24351

And going on:

PN24352

[REDACTED]

PN24353

Again that's indicative of flexibility, do you accept that?---What was the flexibility?

PN24354

What I have read to you is indicative of flexibility for that person in their employment?---Yes.

PN24355

Nothing from this transcript was quoted in your report, was it?---I can't say that without reading my report.

PN24356

Would it be fair to say that there is four or five transcripts that you have not quoted from in your report?---I think that there would be at least four or five transcripts which I haven't quoted from because the quotes are representative of the themes that were common across the interviews.

PN24357

Yes?---They're not representative of any individual.

PN24358

Can I suggest to you that the four or five that you didn't quote from in your report is because the themes in those were not consistent with what you were trying to argue in your report at paragraph 7?---I didn't - I didn't exclude quotes from any particular interview because it didn't fit with my themes, I chose the quotes having identified the themes.

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24359

I suggest to you that that's what you did do, you selectively chose quotes that supported your argument and left out those such as the many that I've read to you

because they didn't support the propositions that you had set out?---No, well I don't agree with that.

PN24360

All right. Turn the page to 81, again:

PN24361

[REDACTED]

PN24362

Over to page 82:

PN24363

[REDACTED]

PN24364

There's probably many people in the room might agree with that.

PN24365

[REDACTED]

PN24366

Again that's a statement consistent with the common themes I have put to you?---Well the rest of that sentence explains it's about the better pay.

PN24367

[REDACTED]

PN24368

Even with better pay that's consistent with the themes I put to you?---Yes.

PN24369

And only six of the interviewees had a declared pay on Sunday of 200 per cent, correct?---Yes.

PN24370

Going down further:

PN24371

[REDACTED]

PN24372

Consistent with the common themes I have put to you?---Taken in isolation from the next sentence, yes.

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24373

[REDACTED]

PN24374

That would be the case no matter what day or time or evening, is that right?---No, a lot of interviewees did talk about missing out because of Saturday - because functions were held on Saturday nights.

PN24375

Saturday nights?---And they didn't go because they had to be at work on Sunday mornings.

PN24376

Page 87, three-quarters of the way down, again asked:

PN24377

[REDACTED]

PN24378

So again an expression of happiness to work on the weekend. Do you construe it that way or do you construe it in a negative way of not being a choice?---What's the question?

PN24379

When I read that to you that your subject here when asked [REDACTED]  
[REDACTED]:

PN24380

[REDACTED].

PN24381

Do you construe that response as a negative, [REDACTED] - - -?---No.

PN24382

- - - or do you construe it in a positive way that they were happy to do it?---I don't - I don't - taken in isolation the person's not expressing unhappiness with working Sundays, no.

PN24383

Page 90, the third interview question down:

PN24384

[REDACTED]

PN24385

And it goes on. I will take you to the answer:

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24386

[REDACTED]

PN24387

So they're pretty much the same. That's consistent with the common themes I put to you, correct?---Yes.

PN24388

Page 93 - this is again from a report that I suggest to you nothing is quoted from in the body of your report as I understand it. Do you have any knowledge of that?---I don't know, I'd have to read my report.

PN24389

Page 93 at the bottom, four lines up:

PN24390

[REDACTED]

PN24391

Consistent with the common themes I have put to you?---Yes.

PN24392

Page 96, middle of the page:

PN24393

[REDACTED]

PN24394

Again that's consistent with the - - -?---Yes.

PN24395

- - - the third common theme that I have put to you. Page 105 in the middle, again asks:

PN24396

[REDACTED]

PN24397

Then further down:

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24398

[REDACTED] work - it's pretty

PN24399

Et cetera, et cetera, et cetera. Again consistent with the common themes I've put to you?---Yes.

PN24400

Page 107 in the middle:

PN24401

PN24402

Was it a common theme that Sunday was a relaxed day at work?---No, it was different for different people. Some people found it busier, some people found it more relaxed.

PN24403

Page 133 near the top. Question:

PN24404

PN24405

So again that's consistent with my common theme that those already within a job choose to work shifts on a weekend?---Sorry, could you repeat that?

PN24406

What I have read to you is consistent with the common them that I put to you that people already within a job choose shifts that occur on the weekend. You accept that?---That person did.

PN24407

Yes, that person. All right, we will go to another person. So at page 138, three-quarters near the bottom.

PN24408

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24409

Again that's consistent with the common themes that I put to you. Yes?---Yes.

PN24410

At page 143 about eight lines down:

PN24411

[REDACTED]

PN24412

A statement consistent with the common themes that I have put to you?---Yes.

PN24413

Page 144, four or five lines down:

PN24414

[REDACTED]

PN24415

Again squarely consistent with the common themes I have put to you, correct?---Yes.

PN24416

Page 147 through to 148. At the bottom of 147 it said:

PN24417

[REDACTED]

PN24418

Again consistent with the common themes that I have put to you, correct?---Yes.

PN24419

And page 150, at the top:

PN24420

[REDACTED]

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24421

Again that's a statement consistent with the common themes I have put to you, correct?---That people choose?

PN24422

It's not overly important?---Okay. Yes.

PN24423

And expressly in isolation at least it contradicts your argument or your findings at paragraph 7 page 14 part B of your report that Sundays -

PN24424

*From a work life balance perspective working Sundays is qualitatively different and significantly more difficult than working on a Saturday.*

PN24425

That's correct, isn't it? In isolation that's inconsistent with that?---Sorry, I've lost your paragraph again.

PN24426

So page 14 of part B, paragraph 7?---In isolation some of your - some of your comments do contradict that statement, but I would stand by that statement.

PN24427

Yes. You will stand by that?---M'mm.

PN24428

Secondly then I suggest to you that on a fair reading of the actual transcripts and having regard to your prompt questions that paragraph 4 is also unsustainable:

PN24429

*That in general employees regarded working on Sundays is more negative in its effect on work life and that that was the case for employees across age groups, including young people who were continuing studying in part-time retail employment.*

PN24430

?---No, taking that as more negative than Saturdays.

PN24431

All right. So you don't accept - - -?---I don't accept that that's not correct.

PN24432

If the Commission pleases.

PN24433

JUSTICE ROSS: Any further cross-examination?

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24434

VICE PRESIDENT CATANZARITI: Can I ask you about the interview schedule. Would you agree that the questions are loaded by starting with Sunday

and you don't get to Saturday in the sequence? You do not put the specific breakdown points on Sundays when you deal with Saturdays?---The breakdown points?

PN24435

In other words when you commenced the interview you didn't say, you didn't ask about Saturdays first, you asked them about Sundays first?---Yes.

PN24436

And then you broke down the Sundays with the matters 1 to 5 on page 51?---Okay, yes. On the top of page 52 - - -

PN24437

Listen to my question, please?---Sorry.

PN24438

I am asking about the sequence of the interviews. I read the interviews. So can you confirm that the sequence of the interviews is you asked about Sundays?---Yes.

PN24439

You didn't go to Saturdays until you asked about Sundays and asked them about the five points. So do you accept that as a consequence of the way you've asked the question that there is a bias?---To Sundays? Is that the question?

PN24440

You led the interviewee to a biased conclusion?---In relation to Sundays and Saturdays?

PN24441

No. The sequencing by going to Sundays first and then with the prompts you have put in the recipient's mind that there is a difference to Sundays because you haven't asked about Saturdays, nor have you put the prompts about Saturdays?---Your Honour, I did put the prompts about Saturdays. If you look at the top of page 52 - - -

PN24442

I don't want to be difficult and cute about this, but the point I'm asking is the sequencing. You did not ask about Saturdays until you had exhausted the Sunday questions?---No, I didn't and I don't think I put a bias in people's minds, I was primarily - - -

PN24443

My question is, is it a consequence, do you accept there is a bias - - -?---No, I don't.

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24444

- - - by the prompts leading Sunday first. Instead you could have proceeded with the interview by saying, dealing with weekends first as a general topic, going to Saturdays, putting the prompts, then going to Sundays and seeing then if there

was a difference?---No, I don't believe I did, there was a bias, because the AWALI survey findings found that work life interference was created for Sundays, and I wanted to know the nature of that work life interference. So the main purpose of the interviews was to understand how work life interference affected people, what - what it was about and why the larger population survey found a difference for Sunday, found greater work life interference on Sundays than Saturdays. So I was primarily interested in firstly finding out what was the nature of work life interference on Sundays, and then did that differ from Saturdays. So it was - the logical sequence for me was ask about Sundays and then ask about Saturdays and see if it was the same, and in some ways I think it would work the opposite to that bias, because having opened up all the possibilities that people could - that I was prompting on, people have those there as possibilities to talk about in relation to Saturday as well. And I did actually ask in the interviews about all those five things. If you will see at the top of page 52 I said:

PN24445

*I need to draw here on what was said about Sundays, drawing on the specific activities, impacts, one by one.*

PN24446

So if somebody had said that a particular - mentioned a particular aspect of work-life interference around family and friends on Sundays, then that was to be followed up in relation to Saturdays as well.

PN24447

Yes, just three questions, your Honour. Dr MacDonald, you were taken to a number of common themes my friend suggested were apparent by virtue of taking you to the transcripts of the interviews. And you will recall that one of them was about university students. Do you remember that?---Several of them, I think, yes.

PN24448

But one of the common themes that my learned friend identified was that university students choose to work on Sundays because it fits in with their timetable, if you like, their particular work-life balance, juggling of study, et cetera. And I think your answer was that you said that that was a partial view of the decision-making process that a university student might undergo?---Mm-hm.

PN24449

What did you mean by "partial"?---Some people chose to work on Sundays rather than Saturdays or rather than during the week because it was extra pay. So some - so the choices around Sunday were not entirely around fitting in, they were around effort for reward, and many of the students did mention that. The other - it was a partial view in that it doesn't take account of the constraints which people talked about - several people talked about at length - so:

PN24450

[REDACTED]

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24451

And while people said it fitted and it was a choice, that doesn't negate the fact that they did experience work-life interference if asked about it, and that it was an issue for them - for different people in some ways; for some people it wasn't an issue.

PN24452

Dr MacDonald, when you were asked about the common themes identified by my learned friend, you started to provide an example of why it was that you said they weren't common themes and why you didn't identify them as common themes in your report. What was the example that you were going to give, do you recall?---Yes. The example was on - I don't remember which part of this interview the gentleman read out, but he read some aspect, I think, of it on page 57, whereas on page 58 the person who - - -

PN24453

JUSTICE ROSS: If it assists, I had a note that it was a bit at the bottom of 57?---Okay. Thank you. Yes. He read out:

PN24454

[REDACTED]

PN24455

The interview continues with, [REDACTED] And the respondent says:

PN24456

[REDACTED]

PN24457

So to me, that is a relevant example, because if you take particular quotes where people say, "Well, it doesn't matter much," but then they go on to speak, and the woman actually says she gets upset. She finds working on - and she was quite upset on the telephone - she finds working on Sundays difficult because she sees other people having family time. And that's just one example. And I'm not saying that every quote - for every quote that the gentleman read out, that there are other examples in the same interview, but there are many other examples if the interviews are read in their totality.

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24458

MS FORSYTH: And just with respect to the quotations that you chose to put in your report, Dr MacDonald, it was put to you that you had been selective in that process, and I think your evidence was that you chose the quotations once you had identified the themes that had come through the qualitative interviews?---Mm-hm.

PN24459

Are you able to please tell the Commission what the technical process was involved in you identifying the themes that you did identify in your report?---Okay. The process is one of going through, reading and rereading and rereading, and in this case because there was only this much material, I didn't do it through a computer program, which would normally be the case with a larger number of interviews, I did it with highlighter pens, and I went through and noted themes and themes and themes, and then went back again and picked up the same themes. The fact that there were many - particularly younger and students who said they liked lots of - they didn't mind working on Sundays is reported in the report. The themes that I've - that's not picked up as a - well, it is picked up as a theme in that it is in the report. There's no need to quote that in the report; the quotes are around the nature of work-life interference and the significance of work-life interference, but the - I'm not - so - sorry, I'm going off the track now.

PN24460

I think you've answered the question. Thank you, Dr MacDonald.

PN24461

JUSTICE ROSS: Nothing further for Dr MacDonald? No?

PN24462

Thank you for your evidence, Dr MacDonald. You're excused?---Thank you.

<THE WITNESS WITHDREW

[4.17 PM]

PN24463

JUSTICE ROSS: Can I raise an issue of scheduling with the parties. Bearing in mind that we originally thought Ms Pezzullo would be starting her evidence at 3.00, and we now have the Monday afternoon, it's really whether the parties think that something productive can be - whether it's necessary to commence her evidence now; whether you think you will complete all but the Ms Yu/Ms Pezzullo controversy tomorrow within a reasonable time frame.

PN24464

Because you will recall we originally looked at splitting mainly because at that point we thought it would be a very long day for Ms Pezzullo. She was starting at 9.00, it was going after standard hours. Do you have any idea, or perhaps an estimate tomorrow, but also if you have a view about commencing her evidence now.

\*\*\* FIONA MACDONALD

XXN MR WHEELAHAN

PN24465

MR MOORE: Thank you, your Honour. I have a confidence that - complete her evidence tomorrow, but I'm not sure. I couldn't, perhaps, suggest that it wouldn't necessitate a longish day. It might necessitate a longish day, depends - - -

PN24466

JUSTICE ROSS: Well, we're starting at 9.00 anyway, so it's going to be a - yes.

PN24467

MR MOORE: Well, I feel - if we have a 9 am commencement, if that remains the intention, I would be quite confident we will complete tomorrow.

PN24468

JUSTICE ROSS: All right. Is there any examination-in-chief that's to be dealt with, or is it simply putting the reports and having them - - -

PN24469

MR WHEELAHAN: Just putting the reports on my behalf.

PN24470

MR GOTTING: I think there's on correction to be made to the report, but I won't take long.

PN24471

JUSTICE ROSS: Do you want to deal with that now and then commence - - -

PN24472

MR GOTTING: Can we deal with that now, just - - -

PN24473

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

PN24474

MR GOTTING: - - - because it might be an efficient use of the time. I'm conscious of the time.

PN24475

JUSTICE ROSS: Yes. No, I agree. No, I agree, Mr Gotting, that makes sense. Well, let's deal with that, and then - but not commence for cross-examination until tomorrow morning. Is everyone content with that, or not? All right. Let's do that.

PN24476

MR SECK: I call Ms Pezzullo.

PN24477

THE ASSOCIATE: Please state your full name and address.

PN24478

MS PEZZULLO: My name is Margaret Lynne Pezzullo, my address is (address supplied).

**<MARGARET LYNNE PEZZULLO, AFFIRMED**

**[4.21 PM]**

PN24479

MR SECK: Your Honour, similar to Dr O'Brien this morning, Ms Pezzullo has got a number of discrete reports dealing with different issues. The Pharmacy Guild is taking responsibility for two of the reports and the reply; that is the one related to weekend work and the one relating to the impacts of the Pharmacy Industry Award. Mr Wheelahan will take responsibility for leading Ms Pezzullo through the reports concerning Ms Yu's report.

PN24480

For the record, Ms Pezzullo, can you state your full name?---It's Margaret Lynne Pezzullo.

PN24481

You just speak up for that?---It's Margaret Lynne Pezzullo.

PN24482

And what is your current work address, Ms Pezzullo?---My current working address - - -

PN24483

Your work address, yes - - - ?--- - - - is at 1 of 9 Sydney Avenue in Barton.

PN24484

What is your current occupation?---Current occupation is an economist, but I have three roles in my current work with Deloitte. The first is as the lead partner of the health economics and social policy practise; the second role is as the managing partner of the Deloitte Touche Tohmatsu Canberra practice; and the third role is as an adviser to the CEO of Deloitte on responsible business.

PN24485

Ms Pezzullo, you've prepared a number of reports in this matter. I want to take you to three of those reports initially. Do you have before you a report which is entitled "The Modern Face of Weekend Work, Survey Results and Analysis" dated 25 June 2015?---I do.

PN24486

Yes? It should be behind an affidavit which you affirmed on 26 June 2015. That's right?---Yes.

PN24487

And annexure A to that affidavit is your curriculum vitae, and annexure B is a copy of the report. Is that so?---Yes.

PN24488

And looking at the number of pages and the page numbers at the bottom, it comprises 76 pages. Yes?---Sorry, I couldn't hear the question.

\*\*\* MARGARET LYNNE PEZZULLO

XN MR SECK

PN24489

Looking at the page numbers in the bottom right hand corner?---Yes.

PN24490

It comprises 76 pages. Is that correct?---Yes.

PN24491

Do you also have a copy with you in the witness box of the report entitled "The Effect of the Pharmacy Industry Award 2010 on Community Pharmacy in Australia" dated 25 June 2015?---Yes.

PN24492

Is that behind an affidavit which you affirmed on 26 June 2015?---I have the report as the report by itself, without the cover.

PN24493

Do you also have a document - sorry, I should ask you, Ms Pezzullo, is that report comprising - just looking at pages at the bottom - 59 pages?---Yes.

PN24494

Can I take you to a document which is entitled "Reply Evidence to Unions' Opinions for Use by Fair Work Commission Four-Yearly Review of Modern Awards Penalty Rates AM2014/305" September 2015? Do you have that?---Yes.

PN24495

Have you read those documents recently, Ms Pezzullo?---Yes.

PN24496

Do you wish to make any changes to any of the documents?---Yes. I noticed there was a typographical error in the report entitled - well, I refer to it as the weekend report - it is the one that is entitled "The Modern Face of Weekend Work, Survey Results and Analysis". The correction is to page 30 as numbered in the report itself, and it's to the paragraph that starts, "Subgroup analysis of part-time and casual workers deal with a similar pattern." There are two numbers in that paragraph, 31 per cent and 32 per cent; that actually should be 21 per cent and 22 per cent.

PN24497

JUSTICE ROSS: Sorry, can you just - so we're on page 30 of your report, which is 49 - - - ?---49, yes.

PN24498

And is it the second paragraph?---It's, in fact, the third paragraph.

PN24499

Third paragraph?---It starts, "Subgroup analysis." The two numbers at the end, 31 and 32, contain typographical errors, and it should be 21 and 22. My apologies.

PN24500

MR SECK: Do you wish to make any other changes or corrections, Ms Pezzullo?---No.

\*\*\* MARGARET LYNNE PEZZULLO

XN MR SECK

PN24501

Do each of these reports contain your opinions, which are accurate and are based on your specialised knowledge?---Yes.

PN24502

I tender each of those reports.

PN24503

MR MOORE: Your Honour, just for the record, I understand that - I assume what my friend is formally tendering is the version in relation to the weekend report which has various annotations on it dealing with those parts which are to be read as submissions, et cetera.

PN24504

MR SECK: That is so, your Honour.

PN24505

JUSTICE ROSS: Yes. I will mark the Modern Face of Weekend Work report as exhibit PG 34.

**EXHIBIT #PG 34 PEZZULLO REPORT TITLED MODERN FACE OF WEEKEND WORK DATED 25/06/2015**

PN24506

JUSTICE ROSS: The report entitled The Effect of Pharmacy Industry Award 2010 on Community Pharmacy in Australia is exhibit PG 35.

**EXHIBIT #PG 35 PEZZULLO REPORT TITLED THE EFFECT OF PHARMACY INDUSTRY AWARD 2010 ON COMMUNITY PHARMACY IN AUSTRALIA DATED 25/06/2015**

PN24507

JUSTICE ROSS: And the report headed Reply Evidence to Union Opinions dated September 2015 will be exhibit PG 36.

**EXHIBIT #PG 36 PEZZULLO REPORT TITLED REPLY EVIDENCE TO UNION OPINIONS DATED /09/2015**

**CROSS-EXAMINATION BY MR WHEELAHAN**

**[4.28 PM]**

PN24508

MR WHEELAHAN: Ms Pezzullo, for these proceedings, you also prepared a report titled "Four-Yearly Review of Modern Awards Penalty Rates Review" dated 2 November 2015. Correct?---Yes.

PN24509

Do you have a copy of that with you?---I believe I do. Yes.

PN24510

Are there any changes that you want to make to that report?---No.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR WHEELAHAN

PN24511

Is it accurate and does it set out your opinions based upon your expertise?---Yes.

PN24512

I tender that report, if the Commission pleases.

PN24513

JUSTICE ROSS: We will mark that report exhibit Retail 12.

**EXHIBIT #RETAIL 12 PEZZULLO REPORT TITLED FOUR-YEARLY REVIEW OF MODERN AWARDS PENALTY RATES REVIEW DATED 02/11/2015**

PN24514

MR WHEELAHAN: Ms Pezzullo, you've also prepared for these proceedings a report titled "Four-Yearly Review of Modern Award Penalty Rates Review" dated 2 December 2015. Correct?---Yes.

PN24515

Do you have a copy of that report?---Yes.

PN24516

And you've read it recently?---Yes.

PN24517

Are there any changes that you want to make to that report?---No.

PN24518

And does it set out accurately your opinions based upon your expertise?---Yes.

PN24519

I tender that report, your Honour.

PN24520

JUSTICE ROSS: Mark that exhibit Retail 13.

**EXHIBIT #RETAIL 13 PEZZULLO REPORT TITLED FOUR-YEARLY REVIEW OF MODERN AWARD PENALTY RATES REVIEW DATED 02/12/2015**

PN24521

MR WHEELAHAN: If the Commission pleases.

PN24522

JUSTICE ROSS: Anything further? No. We will adjourn until 9 am tomorrow morning.

<THE WITNESS WITHDREW [4.29 PM]

ADJOURNED UNTIL WEDNESDAY, 16 DECEMBER 2015 [4.29 PM]

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR WHEELAHAN

**LIST OF WITNESSES, EXHIBITS AND MFIs**

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<b>EXHIBIT #ABI16 WORK SAFETY INDUSTRY RATES AND INDUSTRY CLAIM COSTS 2013/14 .....</b>	<b>PN23201</b>
<b>EXHIBIT #ABI17 NSW WORKCOVER FACT SHEETS, 346 INDUSTRIES</b>	<b>PN23210</b>
<b>EXHIBIT #ABI18 NSW WORKCOVER FACT SHEETS, 376 INDUSTRIES</b>	<b>PN23210</b>
<b>EXHIBIT #ABI19 PRINTOUT OF PAYROLL TAX APP.....</b>	<b>PN23213</b>
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<b>MARTIN JOHN O'BRIEN, SWORN.....</b>	<b>PN23257</b>
<b>EXAMINATION-IN-CHIEF BY MR MOORE .....</b>	<b>PN23257</b>
<b>EXHIBIT #SDA 41 REPORT OF MARTIN O'BRIEN.....</b>	<b>PN23270</b>
<b>EXHIBIT #SDA 42 BRIEF REPORT COMMENTING ON SECTION 3.4 OF REPLY EVIDENCE THE UNION OPINIONS BY MS PEZZULLO ..</b>	<b>PN23280</b>
<b>CROSS-EXAMINATION BY MS STARR.....</b>	<b>PN23280</b>
<b>EXHIBIT #ACTU3 REPORT PREPARED BY DR MARTIN O'BRIEN DATED 04/09/2015 .....</b>	<b>PN23295</b>
<b>CROSS-EXAMINATION BY MR DIXON .....</b>	<b>PN23295</b>
<b>EXHIBIT #AI GROUP 19 ABS DOCUMENTS.....</b>	<b>PN23344</b>
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<b>CROSS-EXAMINATION BY MR SECK.....</b>	<b>PN23422</b>
<b>THE WITNESS WITHDREW .....</b>	<b>PN23465</b>
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<b>EXHIBIT #SDA43 EXPORT REPORT OF PROFESSOR SARA CHARLESWORTH DATED 26/08/2015 .....</b>	<b>PN23498</b>
<b>EXHIBIT #SDA44 PROFESSOR CHARLESWORTH'S EXPERT OPINION ON QUESTIONS AND MATTERS REFERRED TO IN PEZZULLO REPORT DATED 31/08/2015.....</b>	<b>PN23514</b>

<b>EXHIBIT #SDA45 AUSTRALIAN WORK AND LIFE INDEX 2014 - THE PERSISTENT CHALLENGE: LIVING, WORKING AND CARING IN AUSTRALIA IN 2014 .....</b>	<b>PN23519</b>
<b>CROSS-EXAMINATION BY MR DIXON .....</b>	<b>PN23586</b>
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<b>CROSS-EXAMINATION BY MR WHEELAHAN.....</b>	<b>PN23904</b>
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<b>EXHIBIT #PG31 AWALI CONCEPTS, METHODOLOGY AND RATIONALE REPORT DATED MAY 2007 .....</b>	<b>PN23982</b>
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<b>EXHIBIT #RETAIL 11 TRANSCRIPTS OF INTERVIEWS WITH THE 25 MEMBERS OF THE SAMPLE GROUP.....</b>	<b>PN24204</b>
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<b>MARGARET LYNNE PEZZULLO, AFFIRMED .....</b>	<b>PN24478</b>
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<b>EXHIBIT #PG 34 PEZZULLO REPORT TITLED MODERN FACE OF WEEKEND WORK DATED 25/06/2015 .....</b>	<b>PN24505</b>
<b>EXHIBIT #PG 35 PEZZULLO REPORT TITLED THE EFFECT OF PHARMACY INDUSTRY AWARD 2010 ON COMMUNITY PHARMACY IN AUSTRALIA DATED 25/06/2015 .....</b>	<b>PN24506</b>
<b>EXHIBIT #PG 36 PEZZULLO REPORT TITLED REPLY EVIDENCE TO UNION OPINIONS DATED /09/2015 .....</b>	<b>PN24507</b>
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**EXHIBIT #RETAIL 12 PEZZULLO REPORT TITLED FOUR-YEARLY  
REVIEW OF MODERN AWARDS PENALTY RATES REVIEW DATED  
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**EXHIBIT #RETAIL 13 PEZZULLO REPORT TITLED FOUR-YEARLY  
REVIEW OF MODERN AWARD PENALTY RATES REVIEW DATED  
02/12/2015 ..... PN24520**

**THE WITNESS WITHDREW ..... PN24522**