



TRANSCRIPT OF PROCEEDINGS

*Fair Work Act 2009*

1052861

**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**

**9.03 AM, WEDNESDAY, 16 DECEMBER 2015**

**Continued from 15/12/2015**

PN24523

JUSTICE ROSS: Mr Moore.

PN24524

MR MOORE: Your Honour, before we commence with Ms Pezzullo there's a housekeeping matter from yesterday. I think Ms Forsyth will deal with it.

PN24525

MS FORSYTH: Your Honour, if I can just hand up to you the aide memoire that was spoken of yesterday, which basically summarises the position as reached between the SDA, the ARA and the AIG, and that concerns the outstanding documents that were originally subject to objection. You will note that there is one outstanding objection that needs to be resolved as between the SDA and the AIG, and we hope to be in a position to update the aide memoire by the end of this week.

PN24526

JUSTICE ROSS: So there are further discussions around that issue, Mr Gotting, is that - - -

PN24527

MR GOTTING: Yes, that's fine.

PN24528

MS FORSYTH: Thank you, your Honour.

PN24529

JUSTICE ROSS: Thank you. Does anyone else wish to say anything about that? No. Would you be able to provide an electronic copy in due course and we'll just make sure it goes in with the material.

PN24530

MS FORSYTH: Certainly, your Honour.

PN24531

JUSTICE ROSS: Did you want us to mark it in any way or is it sufficient just to load it onto the website?

PN24532

MS FORSYTH: Perhaps if it's marked for identification, your Honour, that might be of assistance.

PN24533

JUSTICE ROSS: I'm not sure which MFI one we're up to but we'll call it exhibit MF11 and if we need to change that numbering we'll do that.

PN24534

MS FORSYTH: Thank you, your Honour.

**EXHIBIT #MF11 AIDE MEMOIRE**

PN24535

JUSTICE ROSS: Can I indicate that we intend to take a short break at around 10.45 if that assists in the timing.

PN24536

MR MOORE: Thank you, your Honour.

PN24537

JUSTICE ROSS: We don't want to do it at a point that interrupts, so if you could just bear in mind somewhere around then that might be convenient to you. In relation to Monday, can I ask counsel to have a discussion about - I wasn't sure where we ended up with about flights and all that sort of thing or whether it's going to be done in Adelaide, but just about what would be the convenient start time as between the two of you. If it is Adelaide then if there's any documents to be shown to the witness, if they can be forwarded to my Associate by 10 o'clock and we'll make sure the necessary arrangements - - -

PN24538

MR MOORE: Yes, your Honour.

PN24539

JUSTICE ROSS: 10 o'clock on Monday, we'll make sure the necessary arrangements are made in Adelaide. But if you can give us an indication we'll just book the video links and do all that sort of stuff. Is there anything else?

PN24540

MR MOORE: Your Honour, I think Mr Seck wants to deal with a matter.

PN24541

JUSTICE ROSS: Yes.

PN24542

MR SECK: Your Honour, with leave of the Commission I wish to ask Ms Pezzullo some questions in relation to the reply of Dr O'Brien dated 19 November 2015. Regrettably, I don't have the exhibit number here. I just wish to ask Ms Pezzullo to respond to one or two matters which are raised in that report. I've spoken to Mr Moore about that and he - - -

PN24543

JUSTICE ROSS: Without objection?

PN24544

MR MOORE: No objection.

PN24545

JUSTICE ROSS: Can I raise one other thing. At the risk of telling you how to go about this, Mr Moore. If you - because of the material involved in - that Ms Pezzullo's responded to and the range of reports that have been directed at her, can you - if you're asking a question about one can you identify it by the exhibit number?

PN24546

MR MOORE: Yes.

PN24547

JUSTICE ROSS: Because going through the past transcript it's not always an easy exercise to identify which particular document a cross-examiner's referring to.

PN24548

MR MOORE: I'll do that.

PN24549

JUSTICE ROSS: Given the range of material here it would certainly assist us when we go through it later.

PN24550

MR MOORE: I'll do that, your Honour.

PN24551

JUSTICE ROSS: Thank you. We'll bring Ms Pezzullo forward. Ms Pezzullo, can you take a - - -

**<MARGARET LYNNE PEZZULLO, RECALLED ON FORMER OATH** [9.07 AM]

**CROSS-EXAMINATION BY MR SECK** [9.07 AM]

PN24552

You don't need to re-swear the witness, that's fine. You understand you're under your former oath?---I do.

PN24553

Yes, thank you. Mr Seck.

PN24554

MR SECK: Thank you, your Honour. Ms Pezzullo, you've read the report of Dr Martin O'Brien dated 19 November 2015 which responds to your reply to his report, yes?---Yes.

PN24555

For the record that is exhibit SDA42, yes. Now can I ask you, having read the report, do you wish to say anything about the contents of Dr O'Brien's report?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR SECK

PN24556

Please let the Commission know what you wish to say?---I have noted that in section B of Mr O'Brien's report that there is reference in the third paragraph of section B to negative and positive correlations which are attributed to table 34 of my original report. Which is in fact the report which is the effect of the Pharmacy Industry Award on community pharmacy, not the Weekend Report. And that the references are incorrect in the O'Brien reply. So that for example he notes table

34 a negative correlation or a negative relationship between sales and weekly trading hours. In fact it's positive, he notes in table 35 the negative relationship between sales and trading hours and in table 35 a negative relationship between prior to hours and weekly trading hours. Those are also both positive relationships. He also cites a negative relationship between sales and casual employment in table 36, which is also not negative but positive. A negative relationship between sales and permanent employment in table 37, which again is not negative but positive. He does correctly cite the final relationship as negative in table 37, between wage costs and permanent employment. That is in fact a negative relationship.

PN24557

Thank you, Ms Pezzullo. No further questions.

PN24558

JUSTICE ROSS: Mr Moore.

**CROSS-EXAMINATION BY MR MOORE**

**[9.10 AM]**

PN24559

MR MOORE: Good morning, Ms Pezzullo, my name is Steven Moore, I'm counsel for the Shop Distributive and Allied Employees Association. I want to ask you some questions about the reports you filed in this proceeding. To begin with I want to ask you about your report entitled The Effect of Pharmacy Industry Award 2010 on Community Pharmacy in Australia, which is exhibit PG35 for the record. I'll refer to that as the Pharmacy Report if I may, and my questioning will focus on that report to commence with. Can I show you a document which pertains to that and in fact your other report. The document I'm to show the witness is the statement, I think it's an affidavit actually by Ms Wellard. If the Commission pleases, I'm not sure if this has actually been tendered and I don't propose to tender the affidavit in its totality but I want to tender and take the witness to a particular document in it. Now Ms Pezzullo, this is an affidavit sworn by Ms Wellard, the principal at Meridian Lawyers who are the lawyers for the Guild and if you look at paragraph 5 Ms Wellard states:

PN24560

*As identified in the respective engagement letters -*

PN24561

And they're dealt with in the preceding paragraphs -

PN24562

*Work on each report was carried out by a team of Deloitte Access Economics staff.*

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24563

In the preceding paragraphs she refers to the Pharmacy Report in paragraph 4 and the Modern Face of Weekend Work in paragraph 3. She goes onto say that the team members working on the Weekend Work Report identified in the

engagement letter were you, David Rumens. Now could you assist me with the pronunciation of the third name?---Kiu Tay-Teo.

PN24564

Sorry?---Kiu Tay-Teo.

PN24565

Kiu Tay-Teo, thank you. Dr Kiu Tay-Teo, Dr Paul Barnsley, Bryce Stevens and Adam Elderfield. Is that correct, Ms Pezzullo?---The people working on that report were originally the team intended. Sometimes what happens in our environment is if timelines change or the work becomes - you know, there are capacity issues we can substitute people in teams.

PN24566

So the six people or the five people in addition to yourself referred to in paragraph 6 were the persons who worked on the Weekend Report, is that right?---No, there were additional people. So Sveta Siljanovska for example also worked on that report.

PN24567

Could you pronounce that name again?---Sveta - S-v-e-t-a - - -

PN24568

Yes?---Siljanovska is her surname.

PN24569

Thank you. And - - -?---And there are sometimes other substitutions.

PN24570

So the team - - -?---The main authors though are fairly consistent in the report, so in that particular report on weekend work the main author was Dr Paul Barnsley, Sveta Siljanovska and myself, as well as our QA partner, wish advice from our pharmacist Dr Kiu Tay-Teo and additional inputs from other staff as needed.

PN24571

So the main author was Dr Paul Barnsley, is that what you say?---Yes. Yes.

PN24572

David Rumbens, was he - did he have significant involvement in the preparation of the Weekend Report?---I believe he did. We have a QA partner, so the quality assurance partner provides the end stage review, provides advice on the methodology through the report to the team and provides an independent peer review role, so that there are two opinions as well the opinion of the engagement partner on the overall findings.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24573

So David Rumbens was the quality assurance partner on the Weekend Report project?---Sometimes the quality assurance partner is substituted if, for example, they are on leave when a particular review is being done. In that case someone

like Mike Kissane, who is the CEO of Deloitte Access Economics might be involved in providing the relevant quality assurance.

PN24574

So from time to time the members, the six names that are identified there were substituted with other Deloitte's staff?---That's correct, we have a large team.

PN24575

Are you able to identify the total number of staff who had input into the writing of the Weekend Report?---We tend to keep track of the people who provide the major inputs. If for example someone is asked to provide two hours of input to check a literature reference to do something like that they may coat time to the engagement to provide a menial or minor task, but they would not be considered to be prime authors.

PN24576

So who were the persons who had the major input in your assessment into the writing of the Weekend Report?---Absolutely it was Sveta Siljanovksa and Paul Barnsley, and myself of course.

PN24577

Looking at paragraph 7, Ms Wellard states the team members working on the Pharmacy Report identified in the engagement letter were in addition to yourself, Mike Kissane, Dr Kui Tay-Teo, Barbara Dixon, Katie Cooper, Bryce Stevens. Is that correct what she states there?---That's correct in terms of again the original specification of who we envisaged at the time of the engagement letter, the team would likely comprise.

PN24578

Putting aside for one moment what was envisaged in terms of who actually was involved in the preparation of that report, was it those six persons or were there others?---The main authors in that case were Bryce Stevens and Barbara Dixon and Katie Cooper provided a, not insubstantial role in assisting with literature and other support tasks.

PN24579

Coming back to my question, were there others from Deloitte involved in the authorship of the Pharmacy Report beyond those six persons?---I think there was also a contribution from Alan Reece who is an econometrician at one point and that is my recollection.

PN24580

Thank you. As you state in - I'm now directing my question to the Pharmacy Report which is PG35, what you did in relation to the preparation of that report was your role was to supervise the research project and finalise the report. That's so?---Yes, I provided methodological direction through the reports, provide high level liaison and provide oversights and review of all of the deliverables as an engagement partner.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24581

But you're not actually undertaking the writing of the report?---I do edit quite heavily usually.

PN24582

So you do some edits on the report but you don't actually draft the report?---The first draft material is provided by staff under again my supervision and direction. We have team meetings to discuss various findings. We talk to each other on the phone, email each other and discuss.

PN24583

Was the nature of your involvement the same in relation to the weekend report, that is in the nature of supervising and finalising the report?---Well it's providing the methodological direction. It is overseeing the delivery of the methodology, providing supervision of the team, liaison with the clients and overall oversight of the deliverables to my satisfaction.

PN24584

If I could ask you to look at the Pharmacy Report PG35, page 19. If you go to page 19 and when I refer to page numbers, if I may Ms Pezzullo, I'm referring to the large pagination in the bottom right?---I don't have a copy of that I'm afraid.

PN24585

I see, you just have the paginations in - - -?---Yes, the original report.

PN24586

Well I happily have both paginations. Page 8?---Thank you.

PN24587

Now on page 8, just to make sure we're on the same page literally, does that page have a heading about halfway down, 1.4 Report Structure?---Yes.

PN24588

So this section conveniently outlines the structure of the report. Now looking at the top of the page, there's a reference to stage one, and what's - if you read that to yourself and you'll see that it refers to the review of publication surveys and statistical information et cetera. In short, in summary terms that work was contained in section 2 of the report, or reflected in section 2 of the report. That's right?---Yes.

PN24589

That work which in summary terms involved the review of publications, past surveys and statistical information about the community pharmacy sector, you did not personally undertake any of that work did you?---I directed that work rather than actually going onto the internet and doing a Google search but I would say to staff member this is how we would conduct this particular element, please do this task.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24590

You didn't read any of the articles, for example?---I do read some if there are pertinent information or if particularly we - it depends on the tier of evidence

typically, so for example a large meta-analysis that contained parameters in some work that we were doing, I would read the literature behind it.

PN24591

So there might have been - I think did you refer to a large meta-analysis, is that what you just referred to a few moments ago?---If there were such a thing, yes.

PN24592

If there were, but in relation to stage one which is reflected in section 2, which is a review of publications, surveys and statistical information, that was work undertaken by others, not you?---That's correct. The reality is I already have a very strong understanding of community pharmacy having just completed a previous report on the state of community pharmacy. So it wasn't really necessary for me to look at material that I had previously, you know, been quite familiar with in a previous piece of work.

PN24593

Because you didn't personally review any of these publications, past surveys or statistical information, you're not in a position to confirm the accuracy of the summary provided of that information in this report. Do you accept that?---No. As in, I don't accept it.

PN24594

Yes, I understand?---Yes.

PN24595

Now, looking at page 8 again of the pharmacy report, section 3, the substance of what is there set out is a report on the results from the survey as well as a regression analysis that was undertaken. That's right?---Yes.

PN24596

That part of the work is set out at the top of the page in stages 2 and 3. That's correct?---Could you repeat the question.

PN24597

Certainly. What is contained in section 3 of the report, the content of that work is comprised of what is in stage 2 and stage 3 at the top of the page?---Stage 2 and stage 3. That's correct, yes.

PN24598

That work involving the preparation of an analysis of the survey results, you didn't undertake that?---I certainly reviewed and did quantitative checks of the data, yes.

PN24599

You didn't undertake the regression analysis that was undertaken?---I did not perform the tests using EViews, but I reviewed all the results and, where there were queries, I asked for re-specification and then reviewed additional results; so certainly had strong involvements in both the regression analysis and the statistical analysis.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24600

But insofar as that statistical analysis and regression analysis and survey reporting is accurate, you're assuming and relying on the quality of the work done by others. Is that a fair comment?---No, not at all.

PN24601

Section 4 on page 8 refers to a discussion about -

PN24602

*the effectiveness and applicability of the PIA -*

PN24603

the Pharmacy Industry Award -

PN24604

*in relation to the aims of the modern awards as outlined in section 1.1.*

PN24605

Again, can I suggest to you that analysis in consideration wasn't undertaken personally by you?---No, that's not correct either.

PN24606

Can I suggest to you that that part of the report was authored and that work was undertaken by others, not you?---No, that's not correct. The first drafts are provided to me for my quality assurance and review. I edit them and when I am satisfactorily happy that they are accurate and robust, I will sign them off from a quality assurance perspective.

PN24607

As I understand it from Ms Wellard's affidavit, Deloitte's was engaged to conduct the research and prepare the report which crystallised in the form of the Pharmacy report pursuant to an engagement letter, which is exhibit SW2 to that affidavit. If you could look at that affidavit, you'll see - the pages aren't numbered, but you should be able to find a large cover page, SW2. Do you see that? It's the second of two attachments.

PN24608

JUSTICE ROSS: I believe it has been tendered and marked, I think, as PG1.

PN24609

MR MOORE: Thank you, your Honour. Is that the letter or the affidavit?

PN24610

JUSTICE ROSS: I think the letter with the attachments. I'm sorry, I mean the affidavit, the document that you're taking the witness to.

PN24611

MR MOORE: Thank you. PG1?---I'm sorry, I can't determine what you're referring to.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24612

I see. Do you have in front of you the affidavit of Sharlene Wellard?---As you have provided me, it has one attachment which is marked SW1.

PN24613

We'll just hand you a fresh copy, in case there is any incorrectly copied - - - ?---My apologies. There is - - -

PN24614

Have you found that?---I thought you were referring to something else.

PN24615

That's all right. SW2, you've got that there?---I've got that now.

PN24616

So SW2, you'll see, is a letter dated 15 May 2014 to Marion Whalan, the workplace relations manager of the Pharmacy Guild of Australia. You'll see if you go - the page numbers are at the top right-hand side - to the last page, which is page 9, it bears your signature and is signed by Ms Whalan. You see that?---Yes.

PN24617

It's correct that the engagement of Deloitte's which resulted ultimately in the preparation of the Pharmacy report was recorded in that letter?---Yes.

PN24618

The letter of engagement, SW2 to PG1, records the terms of what was agreed between Deloitte's and the guild about the services Deloitte's was to provide?---Yes. With our standard terms and conditions, yes.

PN24619

When you say it was your standard terms and conditions, it was a letter of engagement which though customised those standards terms and conditions to the research project at hand?---That's correct. So the terms are referred to in the first paragraph of the letter.

PN24620

I see. Are you saying that the letter of 15 May 2014 was provided with an attachment, being the standard terms and conditions?---Yes.

PN24621

Thank you. I assume that in other engagements beyond this one, particularly with the guild, it's normal practice for Deloitte's to confirm the nature and terms of the engagement in a letter of this type with the client?---Yes, or in a contract if it's a government - - -

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24622

Yes, I see. I take it that the confirmation and recording of an engagement is an important step so that both parties are clear about what is being done?---It's an important step, yes. The next step, the project inception meeting, there can be

changes to timelines, slight changes to scope, variations in team which can also occur, but it - - -

PN24623

Things can change?---It's a cover letter which describes what the intention of the scope of work is and a broad overview of how it would be carried out and by whom, all of which can change during the course of an engagement by mutual agreement.

PN24624

But the letter - an engagement letter - at least serves this purpose of crystallising and stating in clear terms what the intention of the scope of the engagement was?---Yes.

PN24625

It identifies what both parties' responsibilities are in undertaking that task?---As they are intended at the time, yes.

PN24626

Yes. Engagement letters of this type don't just emerge out of thin air. They're preceded of course by discussions and meetings, and proposals. That's right?---Often, yes.

PN24627

Often. Those discussions, meetings, proposals, typically inform the terms of the engagement as set out in the engagement - as recorded in the engagement letter?---Typically, yes.

PN24628

That was the case here in relation to the Pharmacy report?---There had been some prior discussion, yes.

PN24629

Those prior discussions informed the terms of the engagement as recorded in the engagement letter?---Yes.

PN24630

In fact Deloitte's had provided a proposal - in fact a number of proposals - to the guild about this research. That's right?---I don't recall how many proposals or the extent of the discussion prior.

PN24631

I'll just hand you a document?---Thank you.

PN24632

What I've handed to you is a document entitled "Proposal to assess the effect of Pharmacy Industry Award 2010 on community pharmacy in Australia. Pharmacy Guild of Australia, 22 April 2014" on Deloitte's heading. You'll see it is a letter addressed to Marion Warren of the guild which goes to - on page 11, is signed by you, then there is an attachment to it?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24633

Is that a copy of a proposal that you provided to the guild in relation to work directed at assessing the Pharmacy Industry Award on the community pharmacy industry?---It appears to be. I haven't read every word of it.

PN24634

Thank you. That goes prompt your memory that at least a proposal - - -?---It's usual that we have one proposal.

PN24635

- - - namely, this proposal, was provided?---Yes.

PN24636

Can you just take a moment to look through it. I'll ask you this question before you look at it: what I'd like to suggest to you is that the proposal that's here outlined in this document was in substance reflected in the engagement which was confirmed in the engagement letter of 15 May 2014. Could you perhaps look through the proposal to confirm whether or not what I've said to you is correct?---Yes.

PN24637

Do you agree that that's so, is it?---Yes.

PN24638

I tender that document, if the Commission pleases.

PN24639

JUSTICE ROSS: Exhibit SDA46. That's the proposal dated 22 April 2014.

**EXHIBIT #SDA46 PROPOSAL TO ASSESS EFFECT OF  
PHARMACY INDUSTRY AWARD 2010 ON COMMUNITY  
PHARMACY IN AUSTRALIA DATED 24/04/2014**

PN24640

MR MOORE: Now, I just want to go back to the Pharmacy Report. Do you have appendix A to the report, which is the PIA survey?---I actually have it as an appendix to my reply.

PN24641

I see. If one looks through the survey, it was divided into a number of parts. Do you have page numbering on the document in front of you, Ms Pezzullo?---I do, but it's probably not the same as yours.

PN24642

PG36 is the relevant exhibit, my learned junior tells me. I'm sorry, Ms Pezzullo, do you have page numbering?---I do have page numbering. It may not be the same as yours, because it's a different document that I'm referring to.

PN24643

Is the page numbering - the first page, page 25?---It is.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24644

That's lucky. Can I suggest to you that this survey had a number of sections within it. The first section is page 27, "About this pharmacy", just under the first heading at the top. Then if one goes on to page 29, there is a section, "About the operation of this business." A few pages on, one gets to - on page 35 - "About your view on the impact and the components of" dot dot dot. Then there is a final section which is on page 41, "The impact of PIA on your future business decisions." You see that?---Yes.

PN24645

If you look at the section on page 35, "About your view on the impact and components of", you'll see that that section commenced with a question asking respondents to rate the overall assessment of the impact of the Pharmacy Industry Award on their business and then seeking a response about the level of concern for the impact on the business of different provisions. That's right?---Mm-hm.

PN24646

So questions 22 to 25, which you'll see over the following pages, 36 through to 38, were questions which were explicitly directed to the penalty rates provisions of the Pharmacy Industry Award. That's right?---Yes.

PN24647

Questions 26 and 27 also made reference to penalty rates?---Yes.

PN24648

It would be fair to say, you would agree, that the survey was designed to elicit the views of pharmacy proprietors in relation to both the overall impact of the Pharmacy Industry Award and also in particular the effect of penalty rates. Is that a fair statement?---Yes, as part of the award.

PN24649

Yes. You understood that the eliciting of the views of proprietors in relation to the penalty rate provisions of the award was an important focal point of the survey?---Yes. Wage price is important in the areas we were investigating.

PN24650

If I could ask you to look at Ms Wellard's affidavit, which is PG1, and the letter of engagement. Sorry to move you through the different documents, Ms Pezzullo. Do you have that in front of you?---I do. Thank you.

PN24651

If you look at page 2 of that letter, there is a heading "Our understanding of the task" and you will see that in the paragraphs thereunder - and I'm here summarising - there is a reference to the Fair Work system, the Pharmacy Industry Award and the NES. That's right?---Yes.

PN24652

Over the page, there is a reference to the possibility of making enterprise agreements?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24653

If you look on page 3, the middle of the page, there is a paragraph which starts with the word "Similar" and on the third line down there is a sentence which reads:

PN24654

*The requirements for wage and workplace flexibility under the modern award have raised concerns among pharmacy proprietors on the future viability of the pharmacy industry.*

PN24655

You see that?---Yes.

PN24656

I take it that a specific issue of concern that was drawn to your attention in the discussions leading to the engagement letter being provided, was the operation and applicability of the Pharmacy Industry Award provisions in relation to penalty rates?---That had come up in the course of the previous work we had done, yes.

PN24657

Further down on that page, page 3, after the paragraph I was directing you to, after the three dot points, at the end of the first line there is a sentence that reads as follows:

PN24658

*We understand that the PGA will make a proposal to the FWC as part of its 2014 review of all modern awards.*

PN24659

The paragraph continues:

PN24660

*To inform this proposal, PGA is seeking to undertake a research project with the following aims.*

PN24661

There are then certain aims set out. You understood, I take it, that the foreshadowed proposal indicated by the guild in that letter was a proposal to reduce penalty rates?---No, to explore them.

PN24662

To explore them?---Yes. To see what their effects might be.

PN24663

No, perhaps we're at cross-purposes. The engagement letter indicates that you understood the guild would be making a proposal to the Fair Work Commission as part of the review in relation to the award. That's right?---That's the guild's position, yes, not mine.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24664

No, I'm not asking about your position?---Yes.

PN24665

I'm asking about your understanding?---Very good.

PN24666

It's correct, isn't it, that you understood that the foreshadowed proposal indicated by the guild was a proposal to reduce penalty rates? That's what it wanted to do. You understood that?---We understood their motivation, yes.

PN24667

You understood that that's what they proposed to do?---We understood that was their motivation, yes.

PN24668

When you say you understood that was their motivation, you're saying you understood that was their motivation in engaging Deloittes to do some work?---Yes.

PN24669

All right, thank you. Now, if you go back to page 1 of the letter of engagement, PG1, and there is a heading, "Our Engagement", and there is a reference in the first paragraph about discussions about the provision of a report that outlines the current state of community pharmacies and the effect of the award and in the second paragraph it states:

PN24670

*We understand that the intention of the services (defined in the paragraph) is to inform the PGA with evidence in support of its proposed changes to the Fair Work Commission as part of FWC's 2014 review of all modern awards.*

PN24671

"The purpose" - you see that sentence?---Yes.

PN24672

Yes. So you understood, I take it, Ms Pezzullo, from that sentence and in light of your evidence you've just given earlier about your understanding of the guild's motivation in seeking the report that the intention behind the provision of the report was to inform the guild with evidence in support of its proposed or foreshadowed application to seek changes to the pharmacy award, including reductions in penalty rates?---Yes.

PN24673

All right, thank you. In short, you understood that your task, Deloitte's task, your team's task, was to produce a report which provided a reason justificational basis for proposed reductions in penalty rates. Is that a fair statement?---No.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24674

Your task in a nutshell - and I'm talking about you in particular, Ms Pezzullo - as the engagement partner on this project was to harness and guide your team's

expertise to build an evidentiary foundation for the case that the guild sought to prosecute in this place for reductions in penalty rates?---No.

PN24675

No?---The statement says, "to inform with evidence." That could mean either - whatever the evidence says. Indeed, our work at Deloitte Access Economics is to provide reality which helps people in the decision-making, whether that reality is along the lines that they seek to act on, or in fact sometimes it's a reality check about what the evidence actually shows.

PN24676

Indeed, the intention - your understanding of the intention was to inform your client; that's' so?---That's right.

PN24677

It was to inform your client in support of an outcome - that's the case, isn't it? Namely, reductions in penalty rates?---No. We provide evidence which may inform how they approach their case. So, for example - - -

PN24678

I'm sorry to interrupt you - please complete your answer?--- - - we often provide advice which is what Deloitte Access Economics is known for: its integrity of the advice, that we say two plus two equals four, no matter who we're talking to. People seek us out and seek our services out in order to really understand what the evidence and the data say; not necessarily to spin a story.

PN24679

I can understand how I'm sure Deloitte might well undertake work of the type you've just referred but this was different because here, can I direct your attention to the words in the second paragraph on page - the first page of the engagement letter:

PN24680

*The intention of the services was to inform the PGA with evidence in support of its proposed changes.*

PN24681

It was crystal clear, wasn't it, Ms Pezzullo, that what your task was was to assemble an evidentiary case which supported the guild's proposed changes; namely, reductions in penalty rates. You accept that?---No.

PN24682

All right?---With respect, Mr Moore, I think you're reading too much into the word, "support." Evidence can support a proposal by providing arguments that inform but aren't parallel with a particular view. We do that quite typically in our advice, in our economic advice to governments, peak bodies, unions.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24683

All right. Now, on page 62 of the report - that is the community pharmacy report, which is PG35 - if you can look at that; page 51, in fact, I think, in the smaller

paginations that you have, Ms Pezzullo. Is that section 4, "Applicability of an effectiveness of the pharmacy industry award"?---Yes.

PN24684

Yes, and in this section, 4.1, which appears below - "Applicability of the PIA" - there are then some subheadings and the first is 4.1.1 and over the page one sees some other headings. At 4.1.1 the heading is, "The PIA penalty and standard hourly wage rates are not applicable to the modern pharmacy industry." That was one of the conclusions you reached?---Yes.

PN24685

Yes. Do you accept that if you had in fact concluded that the PIA penalty wages rates were in fact applicable to the modern pharmacy industry that the report would not have been a report consistent with the purpose for which you were engaged to provide?---No, I don't accept that.

PN24686

Can I suggest to you, to be abundantly clear, the submission which will be put in due course about this report is that in supervising this research and finalising the report - the community pharmacy report - you did not, Ms Pezzullo, bring an independent perspective to the question of the effect and operation of the pharmacy industry award?---No, I reject that. We always bring an independent perspective and often we don't find evidence and we have to inform our clients that there is no evidence that supports their case.

PN24687

Can I - the submission will be put in due course that the nature and circumstances of production of the community pharmacy report are such that the evidence you've just given was not the case and in this particular instance at least you understood your task as being to provide an expert opinion to provide a reasoned justification for the foreshadowed application by the guild to reduce penalty rates and other award conditions?---No, we didn't want to provide a justification. We wanted to provide evidence - - -

PN24688

All right?--- - - that would inform the case.

PN24689

Now, I want to ask you about dates. As I understand it, the work which led to the production of the community pharmacy report was - PG35 - was undertaken between 15 May 2014 and about early September 2014. Do you agree with that?---That sounds about right. I don't remember the precise dates.

PN24690

Thank you. Can I show you a document - thank you. I've just had handed to you an email, Ms Pezzullo, from Bryce Stephens to Marion Whalan, 5 September at 4 pm, CCd to you and to Barbara Dickson and Kiu Tay-Teo, subject, "Deloitte Access Economics final PIA impact report." The email had two attachments which have also been provided to you?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24691

One is, "The effect of Pharmacy Industry Award 2010 on community pharmacy in Australia; final report, Pharmacy Guild of Australia, 5 September 2014." You see that?---Yes.

PN24692

The other is a document headed, "Responses to comments on Deloitte draft report." You see that?---Yes.

PN24693

Right. The report, which is in fact PG35, about which you're giving evidence today, was in fact finalised and provided to the guild, your client, on 5 September via this email; that's correct?---Yes.

PN24694

I tender that email and attachments, if the Commission pleases.

PN24695

JUSTICE ROSS: I'll mark that exhibit SDA47.

**EXHIBIT #SDA47 DELOITTE ACCESS ECONOMICS REPORT  
AND RESPONSES TO REPORT DATED 05/09/2014**

PN24696

MR MOORE: If you need to please take the time that's necessary but on our review of the first attachment to this email, being the - what's called the final report of 5 September 2014 and comparing that to the report which is PG35, there are no changes between the two documents, save for the date of - - -?---I would have to read both documents in their entirety to compare changes to track that. Every now and then there are typos or things that might be corrected prior to submission of a final report.

PN24697

All right, well, the documents will be before the Commission. Perhaps that can be dealt with in that way. But would you accept that as you generally - putting aside matters of typos and such things - that you accept in general that there were no changes of any substance made between 5 September 2014 and the final report, which has been tendered in this proceeding of 25 June 2015?---That would be my understanding.

PN24698

Yes, all right. Now, can I ask you to go back to the report, which is PG35, as filed in - as tendered in the Commission? Chapter 2 of that report, which starts at page 9, smaller numbers, is called, "The current state of community pharmacy in Australia." Do you see that? Have you got that in front of you?---I don't, I'm afraid. I've lost track of what you're referring to.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24699

Certainly - page 9 of your report, not the document which is an attachment to SDA47 but your report that you adopted in the witness box - - -?---Right, yes.

PN24700

- - yesterday?---Yes.

PN24701

It's page 9?---Yes.

PN24702

Chapter 2 of your community pharmacy report?---Yes.

PN24703

You've got that in front of you?---Yes.

PN24704

"The current state of community pharmacy in Australia" - Given when the work on the report was undertaken - which you agreed was between 15 May and early September - and when the final report was provided to your client on 5 September, do you accept that what you refer to on page 9 of the report, PG35, as the current state of community pharmacy is a description of the community pharmacy industry at a time no later than 5 September 2014?---That would be correct. We wouldn't have had information from the future.

PN24705

Thank you. If you could go - still with PG35, and turn to small numbers page 14, and this is still within chapter 2 of the pharmacy report?---Yes.

PN24706

You see a heading, "Commercial position"?---Yes.

PN24707

That section goes on for an additional one, two - I'll withdraw that. I'll come at it a different way. You'll see that the section commences with a reference to the period 2011, 2012, and there is some information provided about that. Over the page on page 15 there is a reference to the guild - after the first two dot points there is a reference to the guild digest survey 2012 and the period 2011 to 2012 and certain information is then set out in five dot points and then in the following paragraph there is a reference to the performance of pharmacies and on the second line a reference to the guild digest survey across two years, 2010/11 and 2011/12. Over the page there is a heading, "Sales", and then a chart, 2.2, which has average sales revenue inflated to 2014 dollars between 2002 and 2012. Now, what I - and you can see that over the following page there is two other charts: 2.3 and 2.4, dealing with salaries and wages as a percentage of total sales and rent as a percentage of sales for years up to 2011 and 2012. Do you accept - as I read this section of the report, the commercial position of the sector which you outline in this section, is the position of the pharmacy industry prior to 2012. Is that a fair statement?---Yes.

PN24708

Thank you?---Prior to 2011/2012.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24709

Yes. In the report, which is PG35, as tendered in this Commission, you don't identify anywhere, do you, the fact that the commercial position of the community pharmacy sector that you outline was in fact three years out of date?---The 11/12 year ends in June 2012.

PN24710

Yes?---Often it takes a year, 18 months, sometimes two years to obtain data and to have it in a domain.

PN24711

I understand that, Ms Pezzullo. It's just that your report in this chapter is entitled, "The current state of community pharmacy in Australia." It is simply not that, at least in relation to the commercial position of community pharmacy sectors, because the position there portrayed is the position no later than 2012, is that so?---At the beginning of the period, which was May 2014, the most recent financial year would have been 12/13. If there hadn't been data available for that most recent financial year then the most recent current information would have been the year 11/12.

PN24712

Yes. The question I put to you a couple of questions ago was just to ask you to accept that you have not identified in your report that the commercial position of the sector that you outlined is in fact not the current condition but in fact a condition of some three years out of date?---The analysis goes back to 2002, so it depends on what one's definition of, "current", is. In health sector data, data which is two years old is frequently very good quality data. If you look at the Australian Institute of Health and Welfare and their data or the ABS Australian Health Surveys, those data sources only come out every three to five years. So you need to use the data which is the most recent or current data.

PN24713

Right. If you can go to page 18 of PG35, and do you see a heading there, about halfway down, "2.6 regulatory impacts on community pharmacy"?---Yes.

PN24714

There's a sub-heading, "2.6.1 Pharmaceutical Benefits Scheme Reform"?---Yes.

PN24715

Then over the page there's a heading at 2.6.2, "Competition." Under that heading, on the fourth line, you state, from the end of the fourth line, "The vigorous competition between pharmacies has resulted in a dynamic involving industry that is innovating to remain competitive." See that?---Yes.

PN24716

So far as I read from your report, you didn't undertake any analysis of the market structure of the community pharmacy sector to support that claim, do you agree with that?---We had previously conducted a different analysis for the Guild, as I mentioned earlier.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24717

So that was something - a view you had based upon some pre-existing knowledge?---Some other evidence, yes. Yes.

PN24718

I see. You understand, as a person who's got some expertise in the field of community pharmacy that one view expressed in relation to the sector is that the confinement or limitations on pharmacy ownership to registered pharmacists artificially protects proprietors from more efficient competition? You understand - I'm not saying that that's your view, I don't know if that's your view or not, but you're aware that that's a view that's expressed by some commentators about the community pharmacy sector?---Yes.

PN24719

Are you aware that some critics of the community pharmacy sector industry express the view or contend that these claimed limitations on competition provide artificial support to the sustainability and profitability of pharmacy businesses?---Yes.

PN24720

You haven't attempted, in this report, to analyse and consider any of those claims, have you?---I think the - the summary is an accurate summary and it wasn't the prime focus, I suppose, to look at additional information in relation to vexed issues, I guess. So we looked at - we provided a summary which I think is fit for purpose.

PN24721

They're vexed issues because they're matters of some controversy in the sector?---Yes.

PN24722

And it was a matter that was put to one side? Not looked at in your report?---I think it's alluded to and not discussed in great detail.

PN24723

At 2.6.3 in your report, at page 20 of PG35 you deal with changes in pharmacy location rules which occurred in 2011. You see that?---Yes.

PN24724

Without getting too much detail about these matters, location rules mean in substance that the minister, the relevant minister, needs to provide his or her approval to dispense - for a pharmacist or pharmacy to dispense PDS subsidised medicines, colloquially known as a licence?---Yes.

PN24725

It remains the case that notwithstanding changes in pharmacy location rules in 2011, that there continued to exist location rules for PBS dispensing, that's right?---I understand so.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24726

Are you aware that a view which is expressed by some critics is that these location rules make it difficult for competitors to move into a catchment area of an established pharmacy?---I understand that's the view of some, yes.

PN24727

Are you aware that it's the view of some commentators that those location rules thereby have the effect of helping inefficient pharmacies stave off competition and to place a scarcity value on pharmacies?---That is their view.

PN24728

Yes?---It's not my view.

PN24729

You haven't attempted in your report, PG35, to analyse or assess the effect of location rules on the sustainability and profitability of pharmacy businesses, have you?---We have put a substantial section, 363, about the changes in pharmacy location rules as part of the description in the report. Which is - meets the scope and purpose of the report.

PN24730

But - - -?---But it wasn't its main purpose.

PN24731

Sorry. 2.6.3 does not, though, in any way engage with the proposition that location rules artificially protect or inflate or affect the sustainability and profitability of pharmacies?---We would have had to investigate whether or not that was the case. Which was beyond the scope of the brief.

PN24732

Now 2.6.4 refers to the Fifth Community Pharmacy Agreement, and you agree, I take it, that the Community Pharmacy Agreements are a key aspect of the regulatory framework in which the sector operates?---(No audible reply)

PN24733

You just need to speak your answer?---Yes.

PN24734

Thank you. And I take it that you're well aware that the Fifth Community Pharmacy Agreement has been replaced by a sixth?---Yes.

PN24735

You would understand that that sixth agreement commenced operation on 1 July this year?---Yes.

PN24736

And operates until 30 June 2020?---Yes.

PN24737

You understand in general terms that it contains various significant changes to the arrangements which had subsisted and applied under 5CPA?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24738

Without getting into the detail of those changes, those changes include increases in remuneration of funding to the community pharmacy sector, which the Commonwealth estimates to be 3.2 billion over and above 5CPA levels?---I haven't read the Sixth Community Pharmacy Agreement.

PN24739

But you're generally aware that one of the changes it brings about is a significant increase in funding for the sector?---Yes.

PN24740

You're also aware, in general terms, that one of the changes it includes is the introduction of an administration handling and infrastructure fee to replace the former pharmacy mark-up?---Yes.

PN24741

That, you would agree, is a significant change in the way in which pharmacies are remunerated?---I can't comment. I'm not familiar enough with the 6CPA.

PN24742

You don't make any reference to the 6CPA in your report, do you?---No, it was from 2014.

PN24743

Yes. That's because your report, PGA35, was written some six months before 6CPA commenced, I take it?---Yes.

PN24744

Is that right?---Yes.

PN24745

Do you accept that given the commencement of 6CPA and the various significant changes introduced by it, and the fact that it's not referred to in your report, you would accept that the Commission should not treat your report as addressing the current or prospective regulatory framework of the community pharmacy sector and how that may affect the commercial position of pharmacies?---The report is an accurate reflection of its time and its date.

PN24746

It's a historical document, isn't it?---It is now.

PN24747

It was when it was written?---Well one can only write history unless one is doing for forecasting.

PN24748

6CPA is the foundation stone in which the sector operates, that's right?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24749

Your report - 6CPA brings about substantial changes across the sector, yes?---It does, but those changes have not been analysed and this report provides analysis up until 2014, which is accurate.

PN24750

To have an accurate understanding of the current and likely state of the sector, one would need to do that analysis of the 6CPA?---It would be important to consider developments since the finalisation of this report as well as the content of this report.

PN24751

So it would follow from that, I'd suggest, that you would accept that this Commission should not treat your report as providing an accurate assessment or portrayal of the current state of the community pharmacy industry?---I disagree because it was a reflection of a situation which has been emerging since 2002 which has had many influences. I think it's very important to consider history and context which are relevant for businesses. Having been a business owner myself, you know, it's very relevant what has gone on in the past to the - and how that has transformed business operations. Things don't just - because there is a new agreement, things don't change overnight for businesses.

PN24752

I'm not suggesting to you that history's irrelevant?---M'mm.

PN24753

History is - I accept that history is important. But this is purely historical, your assessment and portrayal of regulatory framework of community pharmacy industry, do you accept that's so?---Yes.

PN24754

All right, thank you. Now, as someone who is an expert in the area of community pharmacy, you were generally aware, I take it, that 6CPA was being negotiated in the first half

PN24755

of this year?---Yes.

PN24756

You would have been aware that it was signed or it was - I withdraw that. You're aware that it was signed and announced, that is the making of the agreement, in May this year?---Yes.

PN24757

Your PG35 is dated 25 June. The final report provided to the Guild is 5 September 2014. Did you give approval to your client to simply change the date on the front page of your report?---I don't recall. It often updates automatically.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24758

You or your office was no doubt contacted to provide the report for filing in this Commission some time prior to 25 June this year?---Yes.

PN24759

That's right?---Yes.

PN24760

As at that date or before that date, you were well aware that 5CPA was about to finish and 6CPA was about to start? That's right?---Yes.

PN24761

You make no reference to that significant change in your report, do you?---It wasn't part of the scope of our report, no.

PN24762

Do you accept that insofar as your report provides or purports to provide an overview of the current state of the community pharmacy industry, it's misleading because it doesn't address 6CPA and because it doesn't alert the reader to the fact that 5CPA, which you refer to in it, was shortly to cease?---No, I disagree with that because we were not - if we wanted to or are commissioned to do additional work on the impacts of the 6CPA, that would be - that would constitute additional work and we could undertake that analysis but it was not part of the initial scope of work.

PN24763

You accept though it's an important limitation of your report?---No. It's just additional information.

PN24764

Was it a deliberate choice not to refer to the Sixth Community - - -?---No.

PN24765

- - - Pharmacy Agreement?---No.

PN24766

Well you've put your name to a very substantial report for which the Guild paid over \$100,000 and you have not even told this tribunal, "Well hang on a second, that bit of the regulatory framework is out of date." Did that not arise?---No, it didn't arise.

PN24767

All right. Can I ask you about the survey in Chapter 3 - which you deal with in Chapter 3 of your report. Just to deal with some preliminary matters. Your qualifications, you've got - in terms of your academic qualifications you have a Bachelor of Economics Degree, I think with Honours?---That's correct, yes.

PN24768

You don't have any other academic qualifications?---I'm halfway through a PhD.

PN24769

You're not a member of the Statistical Society of Australia, I take it?---No.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24770

So you're not an accredited statistician?---No, I just have 25 years of statistical experience.

PN24771

You're not a member of the Australian Market and Social Research Society?---No.

PN24772

So therefore you're not a qualified practising market and social researcher?---I disagree with that statement.

PN24773

Well to be a qualified practicing market and social researcher one has to be a member of the Australian Market and Social Research Society, that is so?---I don't know. It's never come up in the course of my work and most of the partners at Deloitte Access Economics do not hold such a qualification, yet continue to conduct high quality market research. And if we applied for that qualification I'm sure - or that membership, I'm sure we'd receive it.

PN24774

You don't hold any formal academic qualifications in survey methods or survey design?---I used survey methods and survey designs in the course of my undergraduate and post-graduate work and I have 25 years of experience in that area.

PN24775

If you just direct yourself to my question it will be easier. Do you have any formal academic qualifications in the fields of survey methods or survey design?---Formal qualifications, no.

PN24776

You don't have any formal academic qualifications in the area of research methods, that's correct?---Actually, no, I'm going to disagree and change my answer to the last question because a Bachelor of Economics contains statistical units, statistics to - you know, second year statistics analysis, third year econometrics, second year econometrics, first year econometrics, all of those subjects are formal qualifications in statistics, progression analysis and survey technique.

PN24777

When did you complete your Bachelor of Economics?---In 1986.

PN24778

On page 22 of PG35 you provide an overview at 3.1 of the survey that was conducted. Can I ask you this general question, Ms Pezzullo. I take it you accept that in relation to surveys generally, in order to ensure their reliability and their representativeness of a survey of a population being surveyed, it's important to minimize the potential for biases in the conduct of surveys?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24779

Do you accept also, in general terms, that one potential source of bias in a survey may be the terms upon which potential survey respondents are invited to participate in a survey?---It's one of many potential sources, yes.

PN24780

So for example, a survey designed to obtain the political views of a sample of the voting population would likely be affected by bias if potential survey respondents were told that participation in the survey would support a campaign for the election of one particular group? Do you agree with that, by way of illustration?---Could you repeat the question?

PN24781

Well if we have a survey of - designed to obtain the political views of a sample of the voting population, that survey would likely be affected by bias if potential respondents to the survey were told - encouraged to participate because their participation would support the campaign or re-election of one of the candidates referred to in the survey?---Again, I'm not really sure I understand your question. The - - -

PN24782

All right. I'll come at it, perhaps, in a different way. If one - by way of illustration of the source of potential biases, if one is conducting a survey designed to elicit the political views of the voting population and then in attempting to elicit survey respondents, survey respondents are told - encouraged to participate because their participation will support the re-election campaign of candidate X, that communication is a communication which is likely to introduce a bias into the survey?---That couldn't work. Because the voters - everyone just gets one vote so how could their participation encourage re-election of a candidate?

PN24783

In 3.1.1 of your report you say in the first sentence that it's impossible - this is page 22 of PG35, that it's impossible to accurately estimate the response rate of the survey that you undertook as part of this work. You say "It's impossible to accurately estimate the response rate given that the distribution was via numerous channels and the actual number of pharmacy proprietors it reached is unclear."

PN24784

So firstly, it's clear from that that Deloitte itself did not implement and conduct the survey, that's so?---That's correct, yes.

PN24785

The Guild that your client distributed the survey to its members?---Distribution only. But we designed the survey, analysed the results. It's frequently used as a surveying technique to use a peak body, for example if you wanted to survey GPs or medical doctors you would typically use the AMA to distribute surveys, because you're likely to get a higher participation rate.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24786

What were the numerous channels by which the Guild distributed the survey?---It has many approaches and communications with its membership and it was the ability for the Guild to distribute it and to get a high participation rate which was the important factor.

PN24787

I take it from what you're saying there that you don't know what the specific means of communication were that the Guild had with its members about the distribution of the survey?---So email and web links are very common forms.

PN24788

You don't know precisely what they were?---I understand email and web link were the primary forms.

PN24789

That was left for them to distribute to - - -?---That's very typical, yes.

PN24790

I take it Deloitte didn't supervise or review or check the content of any communications by the Guild with its members, in relation to the distribution of the survey?---Some of my junior staff may have had liaison about that. I did not oversee that minor detail.

PN24791

When you say some of your junior staff might have overseen that, can I just be clear. Do you know whether or not there was any reviewing or checking of these communications, or you don't know?---I am not aware, no.

PN24792

Because you were not aware of whether or not the communications by the Guild with its members were reviewed or supervised by your staff, you can't say with any confidence can you that the Guild's communications with its members about their participation in the survey was free of any bias. Do you accept that?---That's correct. But the bias would be minor because the survey has its own preamble and stands on its own merits.

PN24793

When you say the bias would be minor, it depends what the nature of the bias communication was, I assume?---Well you're speculating that such bias may have existed.

PN24794

I am, but you can't speculate that the bias would be minor unless you know what the communications were. Do you accept that?---We trust our clients in these situations and would have no reason to believe in the hundreds of such surveys that have been distributed via peak bodies that there would be an attempt to spuriously alter results.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24795

So in endorsing as it were the survey that was conducted here as being a reliable and representative survey, you have assumed that there were no bias communications by the Guild with its members, which might introduce any significant bias in the results?---That's right. A very low risk assumption.

PN24796

Now going back to page 22 of the PG35 - excuse me a moment. Yes, at about midway through 3.1.1, you say:

PN24797

*Although a total of 302 responses were received -*

PN24798

I'm sorry, I'll wait for you to turn that up, Ms Pezzullo. It's page 22?---Yes.

PN24799

At page 22, under 3.1.1, about midway through that paragraph you say;

PN24800

*Although a total of 302 responses were received, the number of respondents and the number of valid responses to each question varied.*

PN24801

You see that?---Yes.

PN24802

I just want to ask you some questions about that. It's correct that in the design and planning of the survey, you regarded it as important to obtain an adequate sample size?---That's correct, yes.

PN24803

This was because you wanted to ensure that the sample size was sufficient to provide statistical confidence?---Correct.

PN24804

Having regard to the size of the population you were sampling, you were of the view that the survey would require a minimum of 400 respondents to provide an estimate at a 95 per cent level of confidence. That's correct?---With a five per cent margin of error, correct, yes.

PN24805

It's correct that there were real difficulties encountered in obtaining an adequate number of responses to the survey?---That's correct.

PN24806

It is also correct that the number of responses obtained to the survey never met your minimum sample size required for a 95 per cent level of confidence of 400?---No, we got to 302 responses which gave us 5.6 per cent margin of error rather than 5.0 per cent margin of error, which we decided was acceptable under the circumstances.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24807

Well that's all you had, wasn't it?---We could have kept sampling.

PN24808

Well you in fact extended the sampling to try and drum up some more responses?---We circulated Excel versions.

PN24809

I'll ask you about that in a moment. Your view was that you needed to have 400 responses to secure the requisite level of confidence of 95 per cent and you did not meet that. That's correct?---We set ourselves a goal of 95 per cent in the event we got 94.4 per cent.

PN24810

Could the witness please be shown this document which is an email of 17 July 2014. Ms Pezzullo, just to orientate you through this, the bottom email is an email from Ms Dixon a member of your team to you, cc to various persons of 17 July 2014. Then at the top there's an email from you back to Ms Dixon of the same date at 6.02 pm. That's an email - they are emails that you sent and received?---I'm not sure they're allowable evidence. They are internal documents.

PN24811

Ms Pezzullo, you're represented by counsel. The matters around documents - I withdraw that. If there are issues around whether I can ask you these questions I'm sure Mr Seck will be on his feet?---Very good.

PN24812

Now it's correct that these were - can you identify and confirm that this is an email exchange between you and Ms Dixon?---Yes.

PN24813

I'll tender that email.

PN24814

JUSTICE ROSS: Mark that exhibit SDA48.

**EXHIBIT #SDA48 EMAIL EXCHANGE BETWEEN MS PEZZULLO  
AND MS DIXON DATED 17 JULY 2014**

PN24815

MR MOORE: I just want to ask you some questions about the emails. These emails were sent about midway through the period in which the survey was open, that's correct?---Yes.

PN24816

Your response you'll see that what Ms Dixon said to you in her email is that;

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24817

*The Guild have requested that we create an alternative data entry format rather than for the banner groups to enable data from multiple Survey Monkey*

*pharmacies to be entered simultaneously under each survey question by a member of each of their respective head offices.*

PN24818

In the next paragraph she states;

PN24819

*So far the response rate has been low relative to their original expectations. We have received 179 responses out of the required sample of 400 for statistical significance and originally the Guild wanted a census of around 4000 responses.*

PN24820

Looking at your response to her, the effect of your response - by your response you indicated that you were agreeable to the proposed creation of an alternative data entry format?---Yes.

PN24821

What you approved was an alternative method for banner group pharmacies to respond to the survey?---Yes.

PN24822

That alternative method was to allow a head office person from each banner group to respond to the survey questions by entering data in respect of all of the pharmacies under the banner?---Yes. Again, a common typical approach.

PN24823

Banner group pharmacies or franchises are the most common type of business model accounting for about one third of the market share in 2014?---I understand so.

PN24824

Well that's what you say in your report, that's right?---Mm-hm.

PN24825

I think you say in table 3.3, this is at page 23 of your report, PG35. Have you got that in front of you?---28?

PN24826

It's page 23?---23.

PN24827

Table 3.3?---Yes.

PN24828

There are just without going through all the numbers in this table, there are large banner groups with 50 or more pharmacies, that's right?---Yes, yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24829

There are small banner groups, 15-49 pharmacies and micro banner groups with less than 14?---Yes.

PN24830

So a large banner group could have 50 or more pharmacies in the one group?---Yes.

PN24831

This table shows as I calculate it, looking at the first three rows, I'm sure your arithmetic is better than mine, but as I calculate it that's 65 per cent of responses to the survey were from banner groups, or were in relation to banner groups. Is that correct?---It's certainly 104 plus 88, which is 192 of 297, so that sounds about right.

PN24832

So in the event that - I'll withdraw that. It's possible that all of those responses were entered in relation to a particular banner group by a single person from head office of the banner group?---No, it's only the 79 that are additional.

PN24833

I'm sorry?---The 79 that are additional. So they'd already received 179 responses.

PN24834

I see?---And then - - -

PN24835

Well with the 170, you're looking at the email SDA48, the 179 responses?---Yes, so we ended up with 302 then the following or the remainder of 123 would have been additional banner group responses, using the Excel tool as well as continuing to have responses using the survey monkey web link.

PN24836

So that additional 120-odd responses - - -?---Was a combination of both.

PN24837

Well we don't know what they were?---We can go back and check but I don't have that information to hand.

PN24838

It is possible that those additional 120 responses were all responses provided by banner groups, entered by head office representatives of the banner group?---It's extremely unlikely but it's possible.

PN24839

Well you don't know, do you?---It's extremely unlikely.

PN24840

If you just answer the question, do you know or not?---I don't know but you make judgment calls in these situations and I would rule out the possibility that the remaining responses were all from one source.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24841

In the face of what appears to be a level of desperation - I'll withdraw that. In the face of what appears to be a keenness to increase the responses, you're midway through the survey and you've only got 179 responses and a new data format is set up to enable banner groups to respond, I'd suggest to you that it's entirely plausible that all of the additional responses were in fact from banner group head offices. Accept that's right?---No.

PN24842

Now it's correct that - you agree that some of the survey questions obviously sought respondents to indicate their preferences and opinions about beyond factual matters?---Yes.

PN24843

I'm sorry, just speak your answer?---Yes.

PN24844

Can you identify any procedures that were put in place for how head office banner representatives - how representatives from head offices of banner groups were to complete the survey responses of that type, eliciting preferences and opinions?---I'm not aware of particular mechanisms that were put in place.

PN24845

None were put in place were they?---I'm not aware of any.

PN24846

Do you know if the head office representatives interviewed or otherwise sought to obtain the views on those questions about preferences and opinion about - to obtain the views of affiliated proprietors?---They're often quite familiar with their proprietors views, given that they represent them.

PN24847

I'm just asking whether you know or not. Do you know whether that happened as a matter of fact?---I know the sector and I imagine that they would be reflecting the views of their members, yes.

PN24848

No, I'm not asking you to speculate about things, Ms Pezzullo. Do you know whether or not in the conduct of this survey the representatives of head office banner groups went and elicited the views and expressions of opinion of the pharmacy proprietors. Do you know or not?---I'm confident they represented the views of their members, yes.

PN24849

I'm sorry?---I'm confident they represented the views of their members.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24850

I'll put the question to you a third time. Do you know whether or not the head office representatives took steps to elicit the views of affiliated pharmacy proprietors about questions seeking opinions and preferences in the survey. Yes

or no?---I'm going to say no with a caveated of response. No, I don't know that they did but I know the sector and I know that they would represent the views of their members.

PN24851

I suggest to you that in circumstances where an Excel set up is provided to head office proprietors there's every likelihood that those head office proprietors simply inserted their own estimations of the opinions and preferences of affiliated pharmacy proprietors. Do you accept that's so?---Is that a question? No, I go back to my previous response which is that they would have no motivation whatsoever to misrepresent the views of their members.

PN24852

Did Deloitte collect any information that would have enabled it to evaluate how head office representatives answered these questions?---We could go back and explore that information should it be relevant to the Commission.

PN24853

I'm asking you did Deloitte collect any information that would have permitted that to occur, yes or no?---Yes, we do.

PN24854

Was is that information?---I would have to go back and check the data basis.

PN24855

You don't know - well what is the information that you say was collected which would have enabled the information provided by head office representatives to be checked or evaluated?---Well in Survey Monkey and Excel responses you can identify where responses have come from. So you can go back and check the various responses and where they all came from.

PN24856

But we're here talking about Excel not Survey Monkey for the banner group head offices aren't we?---Yes, but they are sent back in the form of an emailed response, so we know where they came from.

PN24857

You didn't disclose in your report that the survey results included results entered by head office representatives of banner groups in relation to multiple pharmacies. That's so?---I think we have summarised that in table 33.

PN24858

Well what you said if you go to - excuse me a moment - page 8 of PG35. You got page 8 there, Ms Pezzullo?---Yes.

PN24859

The second dot point which is headed stage 2, at about midway through it reads:

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24860

*A link to the online survey was emailed to all the state branches of the PGA who then emailed it to pharmacies within their jurisdiction. At the request of proprietors of multiple pharmacies an Excel response form was created and emailed to all requesting proprietors on 18 July 2014.*

PN24861

That's actually not correct, that last sentence, is it?---"At the request of proprietors of multiple pharmacies an Excel response form was created and emailed to all requesting proprietors" - it does seem to be correct.

PN24862

Well, it doesn't say anything about the response being emailed to head offices. It says it was emailed to all requesting proprietors?---I understand both was the case. But to be honest, it's not really relevant to the bias or lack of bias in any survey form. It's not substantial at all. You would have no expert advice as a result of that process.

PN24863

Well, can I suggest to you that in the face of 120 or thereabouts responses out of a survey of 302, which have come from head offices, potentially, that in circumstances where you don't know how those head offices completed the survey, that there is every chance, every prospect, for a meaningful bias to have infected this survey?---Why would there be bias as a result of head offices completing the survey? There is no pre-existing theory which you would expect there to be bias introduced as a result of that process, unlike, for example, in the AWALI survey when you send a survey to people on weekends only and then ask them about their work preference. That is definitely introduced bias because of the technique that is used and you can see it as you specify the research question.

PN24864

I didn't ask you anything about the AWALI survey?---I was just contrasting how one identifies whether there is a case for bias.

PN24865

The - you could only exclude the possibility of bias if you were satisfied that the completion of surveys by head office representatives, in doing that that they faithfully and accurately recorded the expressions of opinion by the affiliated proprietors. You accept that?---If there was a reason to expect that they would answer the survey differently in any question as a reason of a systematic bias you could not use that format. But there is no reason a priori to expect that. So there is no systematic bias in that approach. However, your Honour, if you wish I can go back to the original documents and provide the exact breakdown of the responses from head offices, if you prefer.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24866

I note the time, your Honour. I have just got one other question on this, I think. In the executive summary, you describe your report as being a - you may use this language at a number of occasions; I'm looking at, for example, page (i) under the

heading, "Methodology", second dot point: "An online survey of pharmacy proprietors." You see that?---Yes.

PN24867

That is inaccurate. This was not a survey wholly of pharmacy proprietors. This was a survey of some proprietors and a survey of head office of banner groups?---That is covered in the next sentence: "The survey was distributed by the PGA in its state branches", and then it covers the numbers of surveys and the detail is outside of the executive summary and reported in the rest of the documents.

PN24868

But there is no reference to the head office?---No, the executive summary is an executive summary. It doesn't provide every detail of every aspect of the methods.

PN24869

Certainly - can I suggest to you there is no reference in your report - - -?---It's irrelevant, because - - -

PN24870

Can I just finish the question, please? If you just listen to the question: there is no reference in your report to the survey being distributed to head office representative of banner groups in relation to multiple pharmacies?---It's possible it never went to any. Again, I would have to go back and check the records.

PN24871

You authorised it being distributed?---I did say it was a reasonable approach - - -

PN24872

Ms Pezzullo, if you would just let me finish the question: you authorised its approval via Excel to banner group head offices. You would expect that that happened. Are you saying it didn't happen?---Well, I said that it sounded fine from my perspective in the correspondence. That correspondence is a summary of the - of that particular moment in time and after that we often may not require particular aspects so I would have to go back and check the records to see exactly, if this is an issue for you, whether a head office responded at all.

PN24873

I see the time, your Honour.

PN24874

JUSTICE ROSS: Ms Pezzullo, you indicated that you could get that information and that would be of assistance?---Thank you, I will be happy to do that.

PN24875

To avoid the prolonging of the proceedings it would be helpful if it could be done prior to your evidence on Monday?---Very good, sir.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24876

Right, we'll adjourn for 15 minutes.

<THE WITNESS WITHDREW [10.48 AM]

SHORT ADJOURNMENT [10.48 AM]

RESUMED [11.06 AM]

<MARGARET LYNNE PEZZULLO, RECALLED ON FORMER OATH [11.06 AM]

CROSS-EXAMINATION BY MR MOORE [11.06 AM]

PN24877

JUSTICE ROSS: Yes?

PN24878

MR WHEELAHAN: Your Honour, could I just mention the matter with respect to Ms Pezzullo. I've spoken to Mr Moore and Ms Pezzullo. 2 pm Adelaide time and 2.30 Melbourne time would be convenient.

PN24879

MR MOORE: Ms Pezzullo, you've given evidence this morning that in the design and conduct of the survey, you understood that in order for it to have statistical significance, a minimum sample of 400 was required. You don't make mention in your report anywhere of the objective of the sample of 400 for statistical significance, do you?---Statistical significance depends on the margin of error and you have confidence at different levels. We had aimed for 95 per cent significance, we achieved 94.4 per cent. I'm not sure if we mention that in the report or not, I'd have to go back and have a look.

PN24880

Well, I'd suggest to you, you're welcome to review the report, but you don't make any mention of either the objective of achieving a minimum sample of 400, or you don't make mention of that fact, that goal in your report?---No.

PN24881

No. And you didn't make any reference to that because you failed, on your own measure, of achieving minimum significance, minimum statistical significance. That's so?---For 95 per cent, but we reported the sample size of 302, which is I accordance with best practice and we reported the estimated numbers of pharmacies and the participation rate, which was 5.6 per cent. So there is certainly adequate information for anyone interested in the statistical side to have confidence in the results.

PN24882

Can I suggest to you that the reason you didn't disclose the non-attainment of the minimum sample size of 400 was because then you would not be delivering a report consistent with the purpose for which it had been engaged by the Guild?---No, that's not correct at all.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24883

All right. You say in your reply report, September 2015, which is PG36 - have you got that there?---Yes, I do.

PN24884

At page 17, there's a heading "3.3 Helen Bartley re PIA Report". And under 3.3.1, the third dot point where you say:

PN24885

*N equals 302 responses is more than adequate in providing confidence.*

PN24886

Can I suggest to you that that view that you there express, is directly contrary to the basis upon which you knew the survey to be designed?---No, I reject that, for the reasons I've already stated, but I can state them again if you like.

PN24887

Now, I'm going to show you another document. Now, what I've had shown to you is a three-page email chain and to identify it, the top of the chain is an email from Barbara Dixon to Bryce Stephens at 1.17 pm on 8 August. Now, I want to ask you some questions about this email chain. If we could start at the bottom, please, on the third page, you'll see - it's actually on the second page it commences, there's an email from Marion Whalan to National Council and Branch Directors, cc'd to various persons, subject "PIA Impact Survey only 50 per cent of target achieved". And this is an email sent on 24 July 2014. Now, Ms Whalan was the principle contact at the Guild?---Yes.

PN24888

This email was sent a week after your exchange of emails with Mr Dixon - Ms Dixon, I'm sorry, which is Exhibit SDA48, in which you approved the creation of an alternative date entry format for Banna groups. You follow?---Yes.

PN24889

And you can see that by this time, as the email commenced - from Ms Whalan commences, it would seem that responses have gone up over that week from 179 to 255?---Yes.

PN24890

That's right? And---?---Thereby eliminating the possibility that all 120 additional ones were from one source.

PN24891

And the deadline for the survey was extended, that's right?---Yes. Again, quite typical in cases of low participation rate.

PN24892

Right, and you will see that Ms Whalan states, at the top of the third page of the chain:

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24893

*Please encourage members one last time to complete the survey. Without our target of 400 responses, the validity of our evidence, and therefore our arguments, for changes to the PIA are significantly weakened.*

PN24894

You see that?---Yes.

PN24895

Now, she goes on to say in the next paragraph:

PN24896

*Branches with low or no responses, can you please endeavour to at least find a few members to complete the survey?*

PN24897

And then in the next paragraph, she states:

PN24898

*I know some of you have commented on the onerous nature of the survey. Please remember that we are attempting to show a detrimental impact on the industry of the award since its introduction in 2010. In terms of the evidence standard, we need to show what has been the negative impacts over the 4 year period.*

PN24899

Now, in relation to that sentence, or those two sentences in the second-last paragraph, that was consistent with your understanding of what was being sought to be achieved through this survey, that's correct?---By the Guild.

PN24900

And you understood that your task was to manage a team to deliver up evidence which achieved that end, through this survey?---Which provided---

PN24901

I'm sorry?---I've essentially answered this earlier, when I said that our job is to provide evidence that informs the debate about the issue.

PN24902

Do you accept that if a statement to the effect in the second-last paragraph of this email was actually made to potential survey respondents when they were being encouraged to participate in the survey, that that would likely introduce bias into the survey results?---It's not clear that that was provided to people responding to the survey. It was provided to National Council and Branch Directors.

PN24903

That wasn't my question, Ms Pezzullo. Would you like to repeat it?---Certainly.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24904

Do you accept that if a statement to the effect of the second-last paragraph of this email chain was, in fact, made to potential survey respondents when they were

being encouraged or told about the survey, that that would likely introduce bias into the survey results?---It may or it may not.

PN24905

You're untroubled by the possibility - I withdraw that. Are you saying that it wouldn't concern you, that if a statement to that effect was made to potential survey respondents?---In my experience of people responding to surveys, they're likely to express their own opinions in surveys.

PN24906

So you're not troubled if a statement to that effect was made? That's not a matter of concern to you, in terms of bias, in a survey?---My understanding would be that people responding to the survey would express their own views in relation to the survey.

PN24907

Well, I'll ask the question again. You wouldn't be troubled - is your evidence to this Commission, that you're not troubled - you would not be troubled if a statement to the effect in the second-last paragraph of this email, was made to potential survey respondents in terms of that introducing potential biases into the survey?---I wouldn't be overly troubled, no.

PN24908

If you could look at your PG34, the weekend report, and go to small number 22. Do you have a copy of that there, Ms Pezzullo?---I'm just checking.

PN24909

Take your time?---Yes.

PN24910

Do you have that there?---Yes.

PN24911

Okay, page 22, small numbers. You'll see that this is chapter 4, "Survey Results and Analysis". And in the, towards the bottom of the page, there's a heading "Mitigating Potential for Bias". Do you see that?---Yes.

PN24912

And you there state:

PN24913

*It is possible that the responses obtained may have been biased if respondents were aware that the survey was intended to support a discussion on lowering penalty rates.*

PN24914

So does that remain your evidence, in that sense?---In relation to workers, yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24915

Well, you're saying that there's a different analysis applies in relation to the potential for bias as between the subject matters of a survey, the persons participating in a survey?---Yes.

PN24916

Right, so is your evidence to the Commission that, if you survey workers and alert them to the fact that the survey was intended to support a discussion on lowering penalty rates, that that may introduce bias. But if you surveyed pharmacy proprietors and alert them to the fact that you're attempting to show a detrimental impact on the industry of the award, that that wouldn't introduce bias. Is that your evidence to this Commission?---The proprietors are already aware of the existence of penalty rates and have raised it as a concern, so telling them that it's a concern again is not going to change the way that they respond to a survey. In the case of random sampling of people working weekends, to raise the issue of penalty rates, may produce bias.

PN24917

If potential for - pharmacy proprietors were told that they were encouraged to participate in a survey, in order to show the detrimental impact on the industry of the award, you must accept, don't you, that that is essentially loading the dice by encouraging people who have strong views to that effect, to participate in the survey?---If that were the case, then I would have expected there to be an inundation of responses, but there were not, so.

PN24918

Well, the fact that there was not an inundation of responses, might that not simply be consistent with the fact that those who did participate, were the true believers in the cause for reducing award conditions, which is what Ms Whalan was expressing in this email?---There was no evidence to that from the free field commentary or the other responses to the survey.

PN24919

All right.

PN24920

JUSTICE ROSS: Did you intend to tender that email?

PN24921

MR MOORE: I'm still asking questions about it, but I'll tender it at this point, your Honour, if that's convenient, so I don't forget.

PN24922

JUSTICE ROSS: Exhibit SDA49.

**EXHIBIT #SDA49 EMAIL CHAIN DATED 8 AUGUST**

PN24923

MR MOORE: Thank you.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24924

Now going back to exhibit SDA49, the email that I have just been asking you about, Ms Pezzullo, on the second page, so the second page at the top of the page you will see that Ms Whalan sent an email to Ms Dixon in relation to the survey and the fact that 50 per cent of target had been achieved, and on 8 August on the first page Ms Dixon followed up with Ms Whalan in relation to the spreadsheets. Do you see that?---Yes.

PN24925

Ms Dixon and Mr Stephens, I think your evidence is, were essentially involved in the authorship of this report, PGA35?---That's correct, yes.

PN24926

The next email on 9 August - I'm sorry 8 August at 9.19 am Ms Whalan refers to there being a lunchtime meeting to follow up on this and enquiring whether they were still short of our target of 400. Do you know anything about that meeting or what it was for?---No, I don't, sorry.

PN24927

There is then an email from Mr Stephens to Ms Dixon which states:

PN24928

*Hi Barb, from the look of things while we got 301 responses 299 really have answers to any of the questions, and if you check the grey writing above the questions most have much less than that. In short we are not that representative. We may be relying on 100 to 200 responses for some of the answers.*

PN24929

That's in an email of 8 August at 1.07 pm. Is your understanding that what Mr Stephens was saying in this email is that there were 301 responses, but that not all of those responses answered all of the questions. Is that how you understand it?---That's correct. Sometimes there are questions which aren't answered.

PN24930

Yes. So your understanding is that he was saying that although there were 301 responses 299 contained an answer to any question in the survey, but for some questions there were only between 100 and 200 responses?---So for some of the responses we may be relying on 100 to 200 responses.

PN24931

If we just go to the report - excuse me a moment - just to go to page 22 of PGA35, just to look quickly at tables 3.1 and then 3.2 and 3.3, what those tables show is that in relation to each of them respectively 300, then 282 and then 297 persons responded to those questions?---I don't have the document in front of me, I'm sorry, I've lost where you're - which one you're referring to.

PN24932

I am sorry. It's page 22 of the pharmacy report, PGA35. Have you got that there?---I do now, thank you.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24933

So tables 3.1 and then over the page down through 3.2 and 3.3 the letter "N" in the heading of each of those tables indicates the number - - -?---Sample size.

PN24934

- - - of respondents who answered those questions?---Exactly. Yes.

PN24935

Then if you go to illustrate the point page 33. Have you got page 33 there?---Yes.

PN24936

And page 33 - have you got that there?---Yes.

PN24937

Page 33 has table 3.10, which is about the impact of the PIA on the business?---Yes.

PN24938

In that case 216 people answered that question?---That's correct. The margin of error is also reported at 6.5 per cent, which means that you can have 93.5 per cent confidence in the findings.

PN24939

Just while we are on this table I don't understand the calculations as to the percentages in this table. Are the percentages - so taking the first row, that is no impact, where 16 people said no impact - that is not the equation 16 divided by 216 to generate the percentage?---There is an asterisk at the bottom saying that numbers may not sum to 100 per cent due to rounding. Is that what you're referring to?

PN24940

No, I do see that. My confusion is just about the calculation of the percentage. As I understand it to calculate the percentage in this table what one does is divide the number in the middle column by 216, is that right, to get the percentage in the third column?---It's by the sum of number of responses. So 16 divided by the sum of 16 plus 7 plus 140 plus 21. So you can see that 9 plus 4 plus 76 plus 11 equals 100 per cent.

PN24941

If one wants to know the percentage of respondents who said that the PIA had no impact on their business what you do is divide 16 by 216, is that right?---There may have been responses that were outside of that. So for example if you have 140 plus 21 that's 161, plus 7 is 168, plus 16 is 184. So that would suggest that there was another group of 216 minus 184 that may have had - - -

PN24942

Thank you. I understand, thank you.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24943

JUSTICE ROSS: I am not sure I follow. If there were 184 that reported in the table and yet the number is 216 that answered the question what did the others do?---I'd have to go back and check that. Sometimes they have an invalid response, for example there may be a response that has been cleaned out as a result of the cleaning processes. That can certainly again provide further information if we check our records on that one.

PN24944

If you got 184 responses that contained a valid response would that affect the margin of error number?---It would fall a little, probably to between 6 and 6.5 per cent. Again these margins of error are all providing responses well in excess of 90 per cent confidence.

PN24945

MR MOORE: To make a claim, just looking at table 3.10, to make a claim that a certain percentage of pharmacy proprietors believe that the PIA has a negative impact on their business for example to make such a claim, and 140 people on this table indicated that view, isn't the relevant calculation 140 divided by the total number of responses to the survey, that is 302?---It'd be the total number of valid responses to that question.

PN24946

But there were 90-odd people who chose not to answer that question, so one just disregards that cohort in estimating the proportion of respondents who believe the award had a negative impact. Is that - - -?---That's correct. You would typically - you can't make any speculation about why people skip questions.

PN24947

If you could just go on to page 40 and table 3.16 - have you got table 3.16 there, page 40?---I do now, yes.

PN24948

This is an example where in relation to information about employee average hours standard rates in 2009 and 2014 there was only 123 people who answered that question?---That's correct.

PN24949

Over the page - - -?---So there's a 91.3 per cent confidence in the finding.

PN24950

And at page 42, table 3.18, there are 157 persons who answered the question about reasons for changing the number or composition of staff since 1 January 2010; that's right?---That's correct, with a confidence of 92.3 per cent. Again not the 95 per cent you'd ideally like, but quite respectable.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24951

So is the situation this; the survey overall fell well short of what you determined as the minimum sample size to provide an estimate of the required level of confidence, and in fact in relation to many questions only between 100 and 200

responses were actually provided?---Best practice we would like to achieve 95 per cent.

PN24952

JUSTICE ROSS: Just a moment. Just split the question in two.

PN24953

MR MOORE: The situation is this, Ms Pezzullo, the first proposition is that the survey overall fell well short of what you determined as the minimum sample size to provide an estimate of the required level of confidence?---At 95 per cent, that's correct.

PN24954

That was the level of confidence that you felt was required in relation to this survey when you were designing it?---It's best practice, but 90 per cent is nonetheless acceptable.

PN24955

The second proposition is that in fact in relation to a good number of questions in the survey only between 100 and 200 responses were provided which was far less than the minimum sample size you had preordained in designing the survey?---All were above 90 per cent, however again all acceptable in terms of significance that a 10 per cent confidence interval.

PN24956

Would you not accept that in those instances at least where between 100 and 200 responses were provided the minimum requirement for statistical confidence was clearly not met?---No, I don't think you understand statistical confidence. It's relative - - -

PN24957

I am sorry?---So if you want to have 90 per cent confidence this is an adequate sample size. There are other examples for example in HILDA where a cell size of 20 is considered adequate, and that would take - you know, for those questions would take people to that 90 per cent level.

PN24958

Excuse me a moment. Going back to exhibit SDA49 which is the email chain that I was asking you about a few minutes ago ending at 8 August 2014 at 1.17 pm. Have you got that there?---Yes.

PN24959

Do you agree with Mr Stephens' observation in his email of 8 August 2014 at 1.07 pm that in relation to those responses where 100 to 200 answers were provided that the survey was not that representative?---No, I would disagree. He's a senior analyst and that's why you have a quality assurance partner overseeing the results.

PN24960

\*\*\*

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24961

You dealt with the question of the representativeness of the survey in section 3.1.3 of the report, which I will direct you to the page number, is page 23. Do you see that?---Yes.

PN24962

There is a heading, 3.1.3, "Representativeness of survey." Now, if you need to please read through those paragraphs but in substance as I understand what you're saying is that in your opinion the survey was representative in the sense that the findings were generally similar to and in accordance with the survey findings in the guild digest?---That's correct, yes.

PN24963

You are not saying in this section of the report or elsewhere in the report that the survey results were statistically representative of the population of community pharmacy proprietors as a whole? You're not saying that, are you?---No. It's considered comparable.

PN24964

It's considered comparable because the results are in accordance with the guild results?---Yes, correct.

PN24965

But your comparison between your survey results and the guild digest results are comparing your survey results of 2014 with the latest guild digest, which was for the year 2011/2012. That's right?---I think so, yes.

PN24966

So there is a two-year gap and I would suggest that in light of that gap there is not even a basis for you to assert that the survey is representative even of guild members?---The membership distribution would not have changed enormously in that time and again, you're looking at comparability as a whole.

PN24967

Is it your understanding that all pharmacy proprietors are members of the guild?---No.

PN24968

Mr Armstrong, a former employee of the guild, has given evidence that the membership of the guild was 4,238 in 2012, 4,116 in 2013 and 3,933 in 2014. On my calculations - which I ask you to assume for the moment - this indicates that in 2014 73 per cent of pharmacy proprietors were members of the guild. You broadly accept that? Sounds about right?---Sounds roughly correct.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24969

Do you accept that in circumstances where more than a quarter of pharmacy proprietors are not members of the guild in the year in which the survey was conducted there is no basis for you to assert that the survey was comparable to community pharmacy as a whole?---73 per cent is a good-sized base. So again, I

would support the conclusions that we would not expect there to be systematic bias in the survey. We couldn't - I'll leave it there.

PN24970

Can I ask you some questions about response rate? The survey was not a random sample of the population of community pharmacists. You agree with that?---It was sent out to members of the guild and was circulated by those various means that we've discussed.

PN24971

Well, it was a self-selecting sample. You'd agree with that description?---All samples are people who respond as self-selecting to the extent that they choose to respond.

PN24972

I see. I see. The survey respondents were not selected randomly. Those who chose to participate were those who so decided, having received a communication from the guild. You agree with that?---Yes. It was circulated very broadly so you would expect it to have reached thousands of potential respondents.

PN24973

Do you accept that because it had that character, the results of the survey are inherently more likely to be skewed towards those pharmacy operators who had concerns about the impact of the award on their business, compared to, say, a random sample?---No, I don't accept that. We got no evidence in any of the responses like I mentioned - there was any systematic bias.

PN24974

Well, you didn't - you weren't able to test - or what tests if any did you undertake to ascertain if there was any systematic bias of the type that I've just referred to?---If we'd had people responding with, you know, heated views expressed or strong opinions or serial repeats then we would have had concerns but we didn't experience any of those issues in the responses.

PN24975

You are familiar with the concept of non-response bias?---Yes.

PN24976

What do you understand that to mean?---When you don't know about the group of people who have not responded and you have a reason to expect that they might respond differently from the ones who have responded.

PN24977

The non-response bias is a concept which isn't contingent upon one character of your statement to the last question, which is it's not contingent upon where the person conducting a survey has any expectation that the response of the non-respondents would be different. It is always a bias of which a person conducting a survey must be aware?---That's right.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24978

Yes. In overseeing this research project you understood that to minimise non-response bias it was important to achieve as high a response rate as possible?---That's correct, yes.

PN24979

But the attainment of a high response rate didn't loom large as an issue of concern in the actual conduct of the survey or at least prior to the survey being distributed because you were led by the guild to believe that you would achieve something close to a census?---No, we didn't expect that we would achieve a census.

PN24980

But there was a lot of confidence that you were going to get a high response rate?---We're quite happy with the 5.6 per cent response rate. When you're doing health surveys, health/economic surveys, that's the very typical response rate. There is a lot of literature on what is an adequate response rate. As the respondent in my reply evidence, above 5 per cent is a good response rate.

PN24981

I wasn't asking you that question but can I approach it this way: in the discussions leading up to the commissioning of the report and then following the commissioning of the work prior to the survey being conducted you were led to believe that you would get close to a census?---No, we didn't expect that.

PN24982

You didn't think there was going to be a problem with the response rate, did you?---We always allow for the problem that you don't get the desired numbers in a survey. We're always conscious of it. We tend to put it in our risk mitigation strategies: potential ways of managing that risk are to extend the period for surveying, to change the survey vehicle to a different format or distribution mechanism and we always would expect in reporting information to have something which was above the 90 per cent threshold, which we've achieved in this case.

PN24983

Well, the response rate you achieved was 5.6 per cent?---Yes.

PN24984

That was in fact a very low response rate, do you accept?---No.

PN24985

What that response rate means - do you accept this - that 94.4 per cent of individuals invited to participate in the survey did not respond? Have I got that right?---Yes.

PN24986

You just need to speak up?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24987

You can have no confidence that if those 94.4 per cent of the population had responded that their results would be the same as those who did

respond?---Incorrect - we have a lot of evidence that there has not been any systematic bias in the reporting of the results and there's evidence through the responses that have been received in their free-fill text entry. The overall findings say we have got 90 per cent confidence as a result of statistical confidence intervals or more in relation to every question.

PN24988

Can I suggest to you that putting aside other features of this survey, the response rate achieved alone of 5.6 per cent necessarily means that one can't have any confidence that reliable conclusions can be drawn from the survey results?---No, that is completely incorrect.

PN24989

Do you accept that that factor - that is, the response rate - in conjunction with the fact that you did not achieve the 400 minimum sample size collectively has the consequence that reliable conclusions can't be drawn from the survey results?---No, I reject that. It's reliable at the 90 per cent confidence interval.

PN24990

All right. Now, I just want to ask you some questions about - if you could please turn to page 36 of the pharmacy report, PG35? Have you got that there?---Yes.

PN24991

Under that - under the heading, "3.3.5, Unprofitable trading hours", you set out that the survey asked the proprietors whether their pharmacy lease or other stipulations required them to open during specified hours. You see that?---Yes.

PN24992

You say in this paragraph that of the respondents 30 per cent, N211, stated that they were forced to open during specified hours and of these respondents three quarters said that the award made opening during time subject to penalty rates unprofitable. So are you saying that 30 per cent of 211 proprietors said that they were forced to open and of those 74 per cent said the award made opening time during penalty rates unprofitable?---Yes.

PN24993

All right, thank you. So on my calculation that equates to - I withdraw that. In table 3.13, where I'm confused is the reference in the heading of the table to N54. So there is 54 persons said to have answered this question but as I understand it 30 per cent of 211 respondents - which is 63.3 - said that they were forced to open of whom 74 per cent, or 46 people, said that the award made opening during that time unprofitable. Can you - am I misunderstanding some aspect of the table, for why you then have N equals 54?---Again, there can be cleaning or other minute adjustments to information as reported in the tables and I can again check that, your Honour, if there is relevance to the differential between 54 and another number.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN24994

If you could go to page 41 of your report, the pharmacy report at PG35; have you got that there?---Yes.

PN24995

At the bottom of the page you say: "Pharmacy businesses are under increasing pressure to provide extended trading during times in which penalty rates apply to standard staff rates. It is possible that the downward pressure in real terms in base hourly rates for most pharmacy staff has been driven by high wage expenses during extended trading hours." Now, in relation to the first sentence there where you refer to the increase in pressure, I take it you're referring to a comparison between 2009 and 2014?---Not specifically those dates; it's a general trend, yes.

PN24996

Can you direct the Commission to any material in your report which shows that in the period prior to 2014 - say since the period of 2009 or 2010 - the pressure on pharmacy businesses to provide extended trading hours has increased?---I would have to review the document and take some time to respond but we've certainly done previous work on that in relation to the work that I have referred to that is not part of the evidence for this Commission.

PN24997

Well, I want to suggest to you that your claim that there is some increase in pressure to provide extended trading during times when penalty rates apply is just speculation. There is no basis for that referred to in your report?---I'm not sure. I would have to reread it.

PN24998

Now, you say in the second sentence in that paragraph: "Though it's possible that the downwards pressure in real terms in base hourly rates for most pharmacy staff has been driven by high wages expenses during extended trading hours" - now, what you're there referring to is as I understand it what you refer to at the bottom of the previous page in table 3.17, where you identify that the period from 2009 to 2014, other than for junior employees and pharmacy staff, all other staff have suffered a real reduction in their hourly base rates of pay. Am I correct?---That's correct, yes.

PN24999

It is correct, though, that the proportion of total sales referable to salaries and wages remained unchanged between 2009 and 2012? That's what you refer to in table 2.3, earlier in your report, if I can take you to on page 17?---Are you referring to chart 2.3?

PN25000

Sorry, I am referring to chart 2.3?---Yes.

PN25001

You accept that that shows that the proportion of salaries and wages as a percentage of total sales between 2009 and 2012 has remained effectively unchanged?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25002

As you identify in the following chart on page 17 there, what has changed in that time is rent as a percentage of sales. You agree with that?---Yes, it's gone from 3 in 2001/2 to about 4.6, 4.7 per cent in 2011/12.

PN25003

So do you accept that a more likely explanation for what you identify as the downward pressure in real terms on base hourly rates of pay for most pharmacy staff has in fact or more likely been explicable by reference to increases in rents?---It may be another factor but the fact that the real - the chart that you refer to at the top of the page shows no change is a product of the environment of the pharmacy sector. So the reduction - if there was downward pressure it would be reflected in keeping that constant, wouldn't it?

PN25004

In your report you didn't seek to examine in particular the impact of increasing rents as a percentage of sales as a discrete item and the impact that had on pharmacy proprietors?---No, it wasn't part of our brief but we have reported it as part of the context.

PN25005

All right. Now, can I ask you to go to page 45 of your report where there is a section 3.4 pharmacy proprietors' preferences? Have you got that there?---Yes.

PN25006

Over the page, at page 46 at table 3.23, that appears under the heading, "Proprietor preferred penalty rates." I just want to see if I'm understanding this table correctly and just to use by way of illustration the period for Sundays, which is the second-last row - I take it that what this table shows is that using Sundays as an example is that it records that as compared to the current penalty rate of 100 per cent the average additional loading proprietors would prefer to pay for Sundays would be 42 per cent and the median is 50 per cent. Is that right?---Yes.

PN25007

So the preference proprietors have at times surprisingly is to pay substantially less penalty rates?---Yes, there's a chart that reflects that which is easier to read.

PN25008

Over the following page?---Yes.

PN25009

Yes, page 47, thank you. Proprietors were also asked in your survey what standard hourly rates they would be willing to pay employees based on their preferred penalty rates. That's right?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25010

You deal with that at page 48 and you say in that paragraph that the averages of the preferred standard hourly wage rates the proprietors would prefer to pay based on their preferred penalty rates were only slightly lower, right?---That's correct. Again the illustration in chart 34 shows it graphically.

PN25011

You conclude that in terms of wage rates proprietors are unlikely to object to maintaining rates they are currently paying but would like to see a decrease in the associated penalty rates. That's your conclusion?---Yes.

PN25012

But that is not correct, is it, because other than in the case of a pharmacist manager, as table 3.24 shows on page 49, the results of the survey show that for all other occupations other than pharmacist managers, proprietors want cuts in both standard hourly wage rates and also penalty rates?---They're quite small relative to the differences in the penalty rates, those differences.

PN25013

You mean the percentage reductions are less?---Yes. There may not be a significant difference although I have not tested that.

PN25014

Excuse me a moment. If you could go to - back earlier in your report to page 32 and table 3.9, this appears - have you got that there?---I do, thank you.

PN25015

This is reporting on that part of the survey which sought to identify a ranking if you like as to what proprietors perceived as being those matters which had the greatest impact on their business decisions. That's right?---Correct.

PN25016

The greatest impact identified as table 3.9 shows was PBS price disclosure?---Yes.

PN25017

Followed by competition from other pharmacies or other retailers?---Yes.

PN25018

Then implementation of the award?---Yes.

PN25019

Negative impacts were then also identified by proprietors at a lower level, lower ranking, in relation to pharmacy location rules, availability of staff, availability of pharmacists and implementation of 5CPA?---Yes.

PN25020

Now I want to ask you some questions about the regression analysis and that regression analysis was conducted on the basis of the survey data?---That's correct, yes.

PN25021

If I could ask you to go to page 24 of the report, PG35, and - I'm sorry I'll wait. In section 3.2 what you're trying to do is to examine the impact of the award alone. That's right?---That's correct, yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25022

As distinct from other factors?---Yes.

PN25023

Of the type referred to in the table that I referred to before?---Yes.

PN25024

Is that right?---Yes.

PN25025

But this section of the regression - I withdraw that. The regression analysis that you deal with in section 3.2 doesn't in truth just capture the effect of the award alone, do you accept that?---That's correct.

PN25026

Contrary to the title that you give the variable as the PIA dummy variable, what it captures is the effect of all variables that change between 2009 and 2014, other than those listed on page 25 of your report? Agree with that?---They would have had to have started in the exact year 2009 and completed in the exact year 2014.

PN25027

Yes, subject to that you agree with the proposition I put to you?---Yes.

PN25028

So in other words, all of the regression analysis in 3.2 is showing is that on the basis of the survey data between 2009 and 2014, there were identified changes to the annual wage cost of pharmacy employees to weekly trading hours, the number of casual and permanent full-time equivalents and the number of proprietor hours, and that neither the PBS - I'm sorry, price disclosure or competition significantly accounted for those changes?---Well price disclosure started in 2007, so not 2009. So it didn't start in the start year.

PN25029

Thank you. Price disclosure was one of the independent variables - - -?---Yes.

PN25030

- - - you control for, so what the - and you see that on page 25, that's right?---That's correct, yes, sorry.

PN25031

There were other factors which as set out in table 3.9 which I took you to earlier, that pharmacy proprietors identified. Do you recall that as PBS price disclosure referred to as having impact on business then competition, then the impact of the PIA, and then the proprietors also referred to changes to pharmacy location rules, the availability of staff, the availability of pharmacists and the implementation of the 5th Community Pharmacy Agreement. Do you recall that?---That's correct, yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25032

So the regression analysis you've undertaken in 3.2 leaves open the possibility that all of - any or all of those factors or any others could have explained or generated the results that you identify?---Only if they started in 2009 and completed in 2014.

PN25033

The effect of - accepting what you say that any impact of changes to pharmacy location rules, the availability of staff, the availability of pharmacists and the implementation of the 5th CPA, would be included within what was labelled the PIA dummy variable. Accept that?---No, because those effects did not start in 2009 and complete in 2014.

PN25034

The regression analysis also has the consequence that any changes in broader government policy or economic conditions or labour market conditions, would also be caught by the estimated PIA dummy variable co-efficient?---We did consider the impact of the GFC which also occurred in that year and would have had impacts to 2014 but the impact of the GFC actually would make - would suppress wages and employment and therefore if we are still getting an effect size despite that effect, it would be - it would make our estimates conservative.

PN25035

So I take it that your answer to my question is yes, that any other changes in government policy or economic conditions would also be caught by the PIA dummy variable co-efficient?---We did look at the main one which was the GFC and it would have affected the base, as I said, to suppress it. Therefore any effect that we have despite those negative economic conditions is - if it were an effect, the effect of the PIA was in fact greater than what our regression would suggest.

PN25036

Can I suggest to you that the conclusions you seek to draw on the basis of the regression analysis in 3.2, that the award in particular directly resulted in increases in wages, reductions in trading hours, reductions in casual full-time employment but increases in permanent full-time equivalents, and an increase in proprietor hours is not logically sound?---I reject that and as I've written in my reply we did consider the other economic variables that could be influencing the regression specification and decided to go with that specification because a priori we could not speculate on another variable that would have changed over that particular period, in a way that would cause spurious results in our regression analysis.

PN25037

In the regression analyses in section 3.2, and there's I think five of them that are conducted in 3.2, the effects of both PBS reform and - I'm sorry, the effects of increases in price disclosure and competition were estimated to be statistically insignificant. Is that correct?---I'm sorry, could you direct me to where you're referring?

PN25038

Perhaps if I take the first regression, which is at page 26?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25039

Table 3.4?---Yes.

PN25040

Here you're examining changes in average annual wage cost due to the PIA, as you put it?---Yes.

PN25041

As the footnote under the table indicates a double asterix indicates a significance value of 5 per cent and a single asterix indicates a significance value of 10 per cent. So in this analysis the only variables identified to have any significance were the - what you've defined to be the PIA variable?---PIA, yes.

PN25042

And the sales?---Those are the two significant variables, yes.

PN25043

Coming back to my earlier questions, in all of the five analyses regressions set out in this part of the report, it's the case that in all of them - in none of them I'm sorry competition or price disclosure have any statistical significance?---No, they have not come out of the regression but we have included them in there because we believe, and this is best practice, that you would potentially introduce omitted variable bias by leaving them out, so when we have evidence to suggest that they have been important.

PN25044

I don't criticise you for leaving them out. I just want to clarify that in none of the regressions competition and price disclosure are identified as having any statistical significance?---That's correct.

PN25045

Yet according to the survey in table 3.9 which I took you to before, they were the two greatest concerns identified by proprietors weren't they?---They were.

PN25046

That's an unexpected result then, in terms of what the regressions show?---No - - -

PN25047

Compared to the survey responses I mean?---It's the direct relationship that they have on wage costs which is being explored in the regression analysis. The relationship that may have caused concern may have been a relationship with something else. So for example they may have concern in relation to competition on their long run viability of their own business or in relation to particular emotional concerns that don't relate directly to wage costs. So concern can reflect a whole variety of things rather than wage costs when we are testing specifically the wage cost variable.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25048

JUSTICE ROSS: Mr Moore, there's a matter I just need to bring to the parties' attention. We've received a notification of a security incident. There was a caller

on the helpline who made reference to bringing a firearm into the registry premises. The caller was either from Victoria or Canberra. Victoria Police will be attending the premises in Melbourne shortly and we're engaging additional security on the ground floor, and we've taken the steps of closing the hearing room to the public, but we don't have any further information than that.

PN25049

MR SECK: Thank you, your Honour. I hope that door can be left open.

PN25050

JUSTICE ROSS: Well you can follow us if there's a problem, if there's any further information but at the moment it's a fairly general comment without any specificity of location, but we think it's either Canberra or Victoria. If it gets worse I'll let you know.

PN25051

MR MOORE: I'll return to the safe harbour of regression analysis?---I can elaborate. If we were testing the variable concern then you would expect to have a significant relationship but we're testing the variable wage cost.

PN25052

Can I suggest to you that you had nearly 89 per cent ranking PBS price disclosure of respondents, 89 per cent of respondents identified that as the issue of greatest concern and then competition, and then the implementation of the PIA. Would you - it would have struck you, would it not, in the face of those responses, the results of the regression analysis which identified PBS price disclosure and competition as having no statistical significance would seem to be an anomalous result would it not?---No, for the reasons I've just stated.

PN25053

Would it not have led you to think that the way in which you had formulated your analysis, that you may have missed an external confounding factor or that some aspect of your analysis was unsound?---Not in relation to wage costs, no.

PN25054

Well in terms of wage costs, in terms of the regressions in 3.2, wage costs and perhaps if I identify on page 27, to look at exhibit PG35, this is one of the - table 3.5 records the results of one of the regressions, and one of the variables is wage costs. They're identified, see that?---Yes.

PN25055

That was identified as a variable in four of the five regressions?---Yes.

PN25056

It was identified as being statistically insignificant or to put it in a negative, to have no statistical significance in all of them. That's correct?---That's correct, regressed against the dependent variables in that specification.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25057

Yes. Considering your evidence that you gave before, given that you were trying to examine the effects of the award, did it not appear to you that the regressions were throwing up anomalous or perverse results in identifying wage costs as having no statistical significance in terms of the analysis you undertaking?---Not at all, because PAA is significant and therefore you would be looking for wage costs over and above the impact of the awards.

PN25058

But the PIA captures everything other than what you controlled for in the regression. It doesn't just capture the award effects, does it?---As I've been through before, it captures other variables that may have had an impact that are not specified in the regression equation and it started in 2009 and completed in 2014.

PN25059

Those other variables are not confined to factors constituted by a specific award matters?---If you can suggest another variable that might have been relevant that was not included, then we would be happy to again re-run regressions and put them in; but we had given this very serious thought and could not identify another variable.

PN25060

I just want to be clear. The PIA variable was not formulated to be referable or specific to and combined to specific award matters. That's correct?---It was designed to capture the impacts from when the award was introduced to when the award - to the end of the data series. It's quite typical to conduct an analysis in that manner if you are confident that there are no other variables that will be influencing the analysis in a way which would upset the regression conclusions. So you put the other variables that you think might be relevant into the regression specification on the right-hand side and then you test the whole thing, and see what shows up as significant and what doesn't.

PN25061

The submission which will be put in due course to the Commission is that it was manifest on the face of the results of these regression analyses that they were analytically unsound and provide no basis for you to conclude that the award specifically had the negative effects you identify in section 3.2. Do you accept that?---No, I categorically reject that for the reasons I've stated. These are well specified regression equations with careful thought behind them and no reason to suspect any problematic inference.

PN25062

Just to be clear on this point, as well: at table 3.4 page 26, and in all the regressions, there an entry towards the bottom of each, "Observations." You see that entry?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25063

"Number of pharmacies", underneath that. In considering the regression, the results of which are set out in table 3.4, that table tells us that the regression there

undertaken was undertaken on the basis of the survey data generated from 61 responding pharmacies - or 61 responses?---Yes.

PN25064

Who provided a total of 108 observations?---That's correct.

PN25065

The 108 observations is because it was at two different points in time?---That's correct. You'd have to capture all the variables. He would have had to report all the variables and their answers.

PN25066

Then at table 3.5, that regression has been undertaken on the basis of the responses provided by 59 pharmacists. That's right?---Across 102 observations. That's correct, yes.

PN25067

You would accept that these are very low numbers for you to be conducting a reliable regression analysis?---No. The reliability is based on the significance of a particular variable.

PN25068

The results of the regression - if I can take you back to the executive summary - are summarised there and on page (ii) - do you have that?---I do. Thank you.

PN25069

The second paragraph at the top of the page summarises the results of the regressions in 3.2. That's right?---Yes.

PN25070

What you're there saying is that:

PN25071

*Analysis of the average impact -*

PN25072

"of the award" as you put it -

PN25073

*of the PIA on pharmacies, after controlling for the impact of other confounding factors such as price disclosure and changes in competition, found that, per pharmacy -*

PN25074

the award had each of the five effects you there identify?---That's correct, yes.

PN25075

One of those effects is an increase in the annual wage cost by \$60,000?---That's correct.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25076

But there is also a - you would recognise in the third and fourth dot points - a net reduction of three full-time equivalent employees?---Yes, casually employed staff decreased by five and permanently employed staff increased by two.

PN25077

So there is a net reduction. We have, on its face, a rather surprising result that the regression analysis says that the average impact of the award was to increase the annual wage cost for pharmacies by \$60,000, but that there would be a net reduction in three full-time equivalent staff?---It's not anomalous, no. If price goes up, then that can offset the volume effect. Wage cost is a product of price and volume.

PN25078

So for the average pharmacy, it doesn't surprise you that there would be an increase in wages bill of \$60,000 per annum notwithstanding a reduction in three full-time equivalent employees overall?---No, it's completely in line with economic theory, which would suggest that if you did have an increase in the price of labour, that the response of the proprietors would be to reduce FTE where they could, but obviously to have to pay more in total because of the price increase for the other employees.

PN25079

Well, if you can go to page 27 of the Pharmacy report, PG35. Have you got that there?---Yes, I do, thanks.

PN25080

This is where you are dealing with the issue that I have just been asking you about. You say in the second whole paragraph:

PN25081

*While an increase in \$60,462 may seem counter-intuitive to the wage results reported in the survey and a reduction in the reported FTE in the workforce, this increase in expenditure on wages occurs when other factors are held constant.*

PN25082

?---Exactly. Very important.

PN25083

It goes on:

PN25084

*That is, it is a comparison of pharmacies before and after the introduction of the PIA, based on the impacts of the PIA alone, after accounting for the effects of price disclosure, greater competition, changes*

PN25085

*in FTEs, hours, sales and so on).*

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25086

To be clear then, are you saying that when all other factors are held constant, the average impact of the PIA on pharmacies is either an increase in the annual wage cost of \$60,000 or a net decrease in full-time equivalents, not both at the same time?---No, we're saying it's an anomalous finding relative to the survey results which are not taking into account all the other factors. So if you go to page (ii) immediately below those five dot points, you'll see that the pharmacy workforce is contracted and the survey results show that on average there has been a decrease of point 1 permanently employed FTEs. Now, clearly that's different from the effect of the PI Act - sorry, the award, which has increased the numbers of permanently employed staff by two FTEs, so the award has an impact of switching, substituting, between casually employed and permanently employed staff, but the effects overall in the industry once you take all the other factors into account like price disclosure, means that overall there is actually a reduction in permanently employed FTEs.

PN25087

I want to suggest to you that what I put to you before is the only analysis that can soundly be put here. That is, the results of the regression are that the PIA either had an increase in annual wage costs of \$60,000 or a decrease in full-time equivalents, not both?---No, that's not the case for the reasons I explained. Wage costs is a product of both price and volume, so you can have a reduction in FTE, but an overall increase in price.

PN25088

Can you look at exhibit SDA47, which is the emails, Ms Pezzullo, from Mr Stephens to Mr Whalan of 5 September. It has got two attachments, so it's quite a heavy document. It's the email by which the final report was provided on 5 September?---Yes.

PN25089

Do you have that email?---Yes.

PN25090

As I identified earlier, it had two attachments to it?---Yes.

PN25091

Just looking at the email, you'll see that Mr Stephens tells Ms Whalan:

PN25092

*Please find attached the final report on "The effect of the Pharmacy Industry Award on community pharmacy". It incorporates the feedback received and we have included notes to each piece of feedback so that you are aware how we have accommodated it.*

PN25093

The first attachment is the final report, dated 5 September. Then if I could ask you to look at the second attachment, which is the "Responses to comments on Deloitte draft report". Do you see that document?---Yes, thank you.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25094

If you could go to the second - it's not numbered, but it's actually page 4. It might be best if I use the headings in the document. You'll see that the document has headings through it, "Comment 1, comment 2", et cetera. Do you see that?---That's correct, yes.

PN25095

On the fourth printed page, you'll see there is comment 4?---Yes.

PN25096

You see that? Comment 4 reads:

PN25097

*Hi, Marion and Andrew, Having reviewed the document, I have concerns regarding the accuracy of the results they have presented. To illustrate this, see two of their key results as examples. See page 2 of the executive summary. Casually employed staff decreased by five FTE. An average pharmacy has about 12 staff equating to 8.2 full-time equivalent of staff, including the proprietor. Of this, on average 7.5 part-time casuals, probably around four FTE.*

PN25098

*Either Deloitte have a very far off estimate for how many staff are in a normal pharmacy or they have just suggested that every single casual staff member in the industry will be fired and that the industry will shrink by 40,000 jobs. We recorded over 13 FTE in our survey, including the proprietor, as already alluded to in table 4.18, which excludes the proprietor. Further, our survey results excluding isolating the impact of the PIA, demonstrated a reported decrease of three FTEs.*

PN25099

The comment goes on:

PN25100

*We have expanded the section in 3.1.3 of the report outlining, amongst sources of potential bias, the difference between our number of FTEs and the recorded number of staff in the guild digest. The only way to ensure consistency with the numbers in the comment above would be to use the same data.*

PN25101

Then following the strike-throughs, there is a dot point:

PN25102

*Annual wages increased by 60K. Presuming the staff cuts they expect, an increase is not internally consistent. Even without staff cuts, this would be an increase of approximately 17 per cent. I believe they have misinterpreted their regression algorithm and are comparing between incongruent data samples.*

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25103

*The results are consistent as outlined in 4.2.1 and evident from the regression specification itself. The regression does not take into account changes to dependent and independent variables from the PIA simultaneously. Rather, it only takes into account change, the isolated partial effect, from the PIA on the dependent variable. Therefore, the results are consistent.*

PN25104

*These results are saying that the result from the PIA, if everything else is held constant, is an increase in annual wages or a decrease in casual FTE, not both happening at the same time.*

PN25105

This comments document was provided to you. Do you recall receiving it?---Yes.

PN25106

You look at it?---Yes.

PN25107

Would you agree with this summation - and I'm just taking you to comment 4 - it shows an exchange of comments between Deloitte's staff and the client about particular matters in the report?---Yes. It's entirely consistent with what I've said. I can explain - - -

PN25108

The last paragraph on the page that I just read to you, it would appear to me to be an explanation or a view expressed by a member of your staff dealing with this question around annual wages increased by \$60,000. Do you understand that to be so?---That's correct.

PN25109

It's a view which would appear to have been expressed by Mr Stephens. Is that as you'd understand it?---That's correct, yes.

PN25110

Mr Stephens had carriage of the regression analysis - the conduct of the regression analysis?---Under a lot of supervision and with a lot of instruction, and so on.

PN25111

Mr Stephens, do you accept, has expressed the view that what the results are saying is that if everything else is held constant, there will be an increase in annual wages of the amount identified or a decrease in casual full-time equivalents, not both at the same time. Do you accept that's the view he has expressed?---That is the view he has expressed, yes.

PN25112

I would suggest to you that the evidence you've given previously that both effects - that is, an increase in wages costs at the same time as a net reduction in full-time equivalents - is wrong?---No.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25113

JUSTICE ROSS: Can I just clarify, is the position that you say there is no inconsistency between the reduction in FTE and the increase in wages costs because the methodology used was to look at one change at a time?---Exactly.

PN25114

So the regression analysis looks at an increase in wages costs with FTEs remaining constant?---Yes.

PN25115

And then looks at a decrease in FTEs with wages costs remaining constant?---That's right. That's why there are five specifications and the overall results are as they are, and they are consistent because it's possible that the PIA had an impact which had put pressure on wage costs while also substituting part-time for full-time FTE, so that those effects would be occurring.

PN25116

You're making the assumption that you're testing one variable and you're assuming that everything else remains constant. The other point is a different point: it's the consequence point of an increase in wages cost?---That's quite correct.

PN25117

It may lead to a shift, but, yes - - -?---So this is addressing - the commentary of Mr Stephens is addressing the former point and my points earlier were addressing the latter point, yes.

PN25118

Is that a convenient time, Mr Moore? Do you want to finish this one off or - by all means keep going.

PN25119

MR MOORE: I have - I think I only have about five or 10 minutes to go on the community pharmacy - - -

PN25120

JUSTICE ROSS: No, that's fine. That's convenient; yes, sure.

PN25121

MR MOORE: Thank you. Now, if I could ask you to look at page 51 of the pharmacy report, please, Ms Pezzullo: PG35. This is in the conclusion section of your report. In the first paragraph you purport to summarise the results of the survey. At the conclusion of that paragraph you say that the introduction of the award has had a negative impact on their businesses - that is pharmacy businesses - and threatens the viability of the industry. You say that this is according to a majority of pharmacy proprietors who responded to the survey. You see that?---That's correct.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25122

There was no question in the survey which would have enabled you to make that - to express that conclusion. Do you accept that's right, as to the threat to the

viability of the industry?---The threat to the viability of the industry is a conclusion that we have drawn from the analysis of all the survey evidence and the literature and so on.

PN25123

It's a gloss?---It's a conclusion which I would stand by. The negative impact was substantial. Those dollar amounts, the FTE impacts, were quite substantial.

PN25124

Well, you set this up by saying, "According to a majority of pharmacy proprietors who responded to the survey", et cetera. So you want to anchor your claims in the survey results and that is just wrong, when it comes to the claimed threat to the viability of the industry?---We showed that it was the third most significant concern, along with the impacts of price disclosure and the competitive environments. We showed that the impact was in the order of \$60,000 per pharmacy per year in terms of wage costs. We showed that it was changing the ways that FTEs and employment was being structured and that it was adjusting the hours that pharmacies were opening. I would suggest that those - provide sufficient evidence for a threat to ongoing viability.

PN25125

By including the threat to the viability of the industry in a sentence which attributes this to a majority of pharmacy proprietors who responded to the survey, can I suggest what you were doing is just simply taking up the cudgels for your client to advance the argument which had always been understood to be your task: that is to produce evidence and argument in support of the guild's case in this Commission?---Not at all, Mr Moore; so if you want to put a comma in the sentence, perhaps that will help: "According to the majority of pharmacy proprietors who responded to the PIA survey the modernisation of the awards and subsequent introduction of the PIA on 1 January 2010 in the context of a rapidly changing regulatory environment for pharmacy has had a negative impact on their businesses, and threatens the viability of the industry."

PN25126

Now, in the same page in the second paragraph, you say that: "As outlined in section 1.1, the modernisation of the industry awards had the following objectives and considerations" - and you there identify four matters. When you say in the following sentence that proprietors have indicated that overall the PIA is not meeting the original objectives of award modernisation, I take it you're referring to those four dot points above?---That's correct.

PN25127

Now, can I ask you to go back to the letter of engagement, which is attached to the affidavit of Ms Wellard? It's the first document I asked you about this morning. Do you have the affidavit of Ms Wellard?---I do, thank you.

PN25128

Yes, and if you could turn to the second attachment to it, SW2?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25129

You have that? On the third page of that letter, which I asked you a little bit about before, earlier today, the last paragraph of page 3 you say - as I asked you about before: "We understand that the PGA will make a proposal to the FWC as part of its 2014 review of all modern awards. To inform this proposal PGA is seeking to undertake a research project with the following aims" - those aims are said to be: "to provide an overview of the current state of the community pharmacy industry; to assess the impact that the award has had on the current state of the community pharmacy industry and to comment on the effectiveness and the applicability of the award to community pharmacy." You follow that?---Yes.

PN25130

Yes? You were never asked to comment on whether the award was meeting what you understood to be the original objectives of award modernisation, were you?---Well, as I mentioned at the beginning, the project changes sometimes in its objectives and intent as one goes through and you agree with the client on what you would like to include in a report and what not. So we have our own views as we undertake research as well. So it's not unheard of to express views that are in addition to the original scope of an engagement letter to change the team members, et cetera.

PN25131

Are you suggesting that in this case in your discussions with the guild you were - it was agreed between you that you would go further and beyond the three aims set out in those dot points to express an opinion about whether the objectives of award modernisation were being fulfilled?---No, we just put it in ourselves and if it wasn't directly commented on we would leave it in.

PN25132

You saw that as a useful matter to include - - -?---As part of an independent - - -

PN25133

Let me finish the question: you saw that as a useful matter to include because it assisted what you understood to be the argument that the guild wanted to put to this Commission?---No, we included it because we are independent evaluators and we were quite surprised by the size of the impact and therefore thought it - deemed it worthy of comment.

PN25134

All right. Now, if I could ask you to go back to the report, PG35; if you go to page 51, do you have the heading there, "Applicability of the PIA"?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25135

The - under the subheading 4.1.1, you say amongst other things: "However, stipulations in the PIA regarding penalty rates are making this difficult for many businesses, especially in the context of declining sales revenue and a challenging regulatory environment." Now, as to the last of those - I'm sorry, the first of those things, the decline in sales revenue, your survey and research did not produce any

results or information dealing with changes in sales revenue at particular times at which penalty rates applied, did it?---This piece of research did not.

PN25136

I'm sorry, could you repeat your answer?---This piece of research I don't think did.

PN25137

No?---I would have to check right through if there is any reference in the material.

PN25138

You say that this is especially pronounced in the pharmacy industry, given that the workforce is paid significantly higher standard hourly wage rates than specified in the PIA. You see that?---Actually, I need to correct my last answer, I'm afraid: chart 2.2 does show the decline in - - -

PN25139

Chart - I'm sorry, which chart?---2.2 on page 16 does show in this report the decline in sales revenue in real terms from 2009 to 2012.

PN25140

Chart 2.2 on page 16?---That's correct, yes.

PN25141

But that is a - that provides no information about declining sales revenue at the time when penalty rates apply, does it?---Yes, it's got 2009, 2010, 2011 - - -

PN25142

You misunderstand my question, I'm sorry. It provides no insight into the amount of sales referable on any particular day to a time of the day when penalty rates apply. It's just total sales?---Well, that's not what the paragraph is saying. It's saying stipulations in the PIA regarding penalty rates are making this difficult for many businesses, especially in the context of declining sales revenue.

PN25143

So in that paragraph 51, in the last sentence: "This is especially pronounced in the pharmacy industry, given that the workforce is paid significantly higher standard hourly rates than specified in the award." Did you say that because as you understood it under the applicable award legal obligations pharmacies are obliged to pay penalty rates on the basis of the higher standard hourly wage rates which are paid by pharmacies above award rates?---I'm sorry, you'll have to break that question up. I couldn't quite follow it.

PN25144

So you find in your report on the basis of your survey that for certain categories of employees, they're paid higher than the award rate?---Exactly, yes.

PN25145

So let's say for the sake of the discussion a rate for an employee is \$25 that they're actually paid and the award rate is \$20?---Exactly.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25146

The award provides for penalty rates to be paid at different times. When you expressed the view that this is especially pronounced in the pharmacy industry, given the workforce is paid significantly higher standard hourly rates than specified in the PIA, did you say that because it's your understanding that the penalty rates that apply would apply to the \$25 an hour the employees are paid rather than the award minimum of \$20 per hour?---No, it relates to the fact that the \$25 an hour is more than the \$20 an hour.

PN25147

I see?---In other words there is a competitive tension, where to compete for staff there is a premium over and above the award base rate so pharmacies are faced with the issue of do they want to retain their staff by continuing to pay at that market rate. That's what that's alluding to, that last sentence.

PN25148

Could I ask you to turn to the page to page 52 at 4.1.1.1 - this is the imbalance in standard wage rates and penalty rates to which you I think have just made reference. You say at about the second line: "The high standard wage rates actually paid by pharmacies in combination with the penalty rates stipulated in the PIA and decreased sales revenue is making trade during extended hours and on weekends overly burdensome." That is a statement - I withdraw that. You accept that there is no evidence in your report about decreased sales revenue at the times at which penalty rates are payable?---That's right. It's the same issue as the one before. It's a situation of overall decline in sales revenue, which is the issue for the pharmacy practice as a whole. After that they will make strategic decisions when they're not impeded by requirements to open at particular times.

PN25149

In the next heading, 4.1.1.2, "How can the applicability of the PIA to the pharmacy industry be improved", you say that a decrease in penalty rates may allow businesses to operate more profitably during the weekends. Now, is the only basis from your report for that claim what you've set out in section 3.3.5, which is at page 36? I take it that's where you've derived that from?---The unprofitable trading hours section, yes.

PN25150

Yes, so that's the conclusion you express in 4.1.2, is derived solely from the analysis that you've set out in 3.3.5?---Not solely, no; it's also derived from the entirety of the findings.

PN25151

There is no other specific findings or analysis that you've set out that I can see - and please disabuse me if I'm wrong at that - which deals with the question of profitability, other than that?---Well, for example, in section 252 on page 18 - - -

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25152

I see, yes?---There is the summary of what has been happening to profit overall between 2008/2009 and 2011/2012. It shows a steady decline over those years. So that would be a factor as well, for example.

PN25153

Excuse me a moment. Nothing further, your Honour.

PN25154

JUSTICE ROSS: Do you have an estimate of how much further you're likely to be?

PN25155

MR MOORE: That was nothing further, my learned junior points out - - -

PN25156

JUSTICE ROSS: I appreciate that.

PN25157

MR MOORE: - - in relation to the pharmacy sector.

PN25158

JUSTICE ROSS: This matter - - -

PN25159

MR MOORE: How much longer?

PN25160

JUSTICE ROSS: Yes.

PN25161

MR MOORE: I don't think I'll be as long. I won't be as long with the weekend report as I will be with the pharmacy.

PN25162

JUSTICE ROSS: Okay, thanks for that, Mr Moore. So we'll adjourn until 2 pm.

PN25163

MR DIXON: Your Honour - - -

PN25164

JUSTICE ROSS: Yes, Mr Dixon.

PN25165

MR DIXON: - - I'm sorry. I wonder if we could impose on the Commission to ask that if there has been an update on that earlier report that we could be advised in possible before we leave this floor to go down to the ground floor?

PN25166

JUSTICE ROSS: I'm told there's no update and the relevant manager came in the room before. But we'll just check.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25167

MR DIXON: Thank you.

PN25168

JUSTICE ROSS: No, there is no update. But I suggest Mr Gotting goes first, Mr Dixon. That might - all right?

PN25169

MR DIXON: With a family of three.

PN25170

JUSTICE ROSS: 2 pm.

**<THE WITNESS WITHDREW [12.56 PM]**

**LUNCHEON ADJOURNMENT [12.56 PM]**

**RESUMED [2.06 PM]**

PN25171

JUSTICE ROSS: Mr Stanton, you've got a matter you wanted to - I'm sorry, Mr Dixon, did you want to add something?

PN25172

MR DIXON: Your Honour, if Mr Gotting and I could excuse ourselves. We apologise and we mean no disrespect from that.

PN25173

JUSTICE ROSS: No, not at all.

PN25174

MR DIXON: Thank you.

PN25175

MR STANTON: Your Honour may recall that on 11 September, Mr Lovell gave evidence for the Hotels Association. He was at that time invited to provide some further calculations on the public holiday rates. I can hand up five copies of those calculations. I understand there is no objection to them. I might also add that it is proposed to be covered by a confidentiality order which my instructing solicitors had forwarded to the Commission.

PN25176

JUSTICE ROSS: Yes. I think we had to fill in some exhibit numbers and other details, so that will take care of that.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25177

MR STANTON: Yes, your Honour. The only other matter was in relation to Mr Ovenden, whose evidence was heard on the 16th. Similarly, he was invited to provide some calculations, which he has done and they are contained in a statement. Unfortunately, I don't have hard copies of that statement. It has been

forwarded to United Voice. I understand that there is no objection to its admission. It is contained in an email that my instructing solicitors forwarded to the Commission, I believe last week.

PN25178

JUSTICE ROSS: Okay.

PN25179

MR STANTON: May it please. If both matters could be dealt with by way of exhibits.

PN25180

JUSTICE ROSS: Sure. We'll mark the additional material provided in relation to the Marryatville Hotel, as exhibit AHA85.

**EXHIBIT #AHA85 ADDITIONAL MATERIAL FROM MR LOVELL  
IN RELATION TO MARRYATVILLE HOTEL**

PN25181

JUSTICE ROSS: The material that has been filed electronically but we don't yet have - and you've seen this material?

PN25182

MR DOWLING: We have, your Honour. We have no objection.

PN25183

JUSTICE ROSS: All right. When we get hold of that, we'll mark that AHA86.

PN25184

MR STANTON: May it please.

**EXHIBIT #AHA86 ADDITIONAL MATERIAL SUPPLIED BY MR  
OVENDEN**

PN25185

JUSTICE ROSS: I'll take care of the confidentiality order later this afternoon.

PN25186

MR STANTON: May it please.

PN25187

MR MOORE: We're right to resume with Ms Pezzullo now?

PN25188

JUSTICE ROSS: Yes. Ms Pezzullo, you're still under your previous oath.

**<MARGARET LYNNE PEZZULLO, RECALLED ON FORMER  
OATH** [2.09 PM]

**CROSS-EXAMINATION BY MR MOORE** [2.09 PM]

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25189

MR MOORE: Ms Pezzullo, I'm going to ask you some questions now about your report entitled "The modern face of weekend work", which is exhibit PG34. I'm right in understanding, aren't I, that Deloitte's was engaged to produce that report pursuant to a letter of engagement which is attached to Ms Wellard's affidavit, PG1. That letter is attachment SW1 to that affidavit which you have in front of you?---I've actually left the affidavit itself there, thinking that we had dispensed with that, but I agree with the statement there.

PN25190

We might arrange for it to be provided to you. I'm not sure what documents the witness is - - -?---I can get it if that's acceptable.

PN25191

I have no difficulty with the witness leaving the witness box to retrieve certain documents.

PN25192

JUSTICE ROSS: No, that's okay.

PN25193

MR MOORE: You have got the affidavit of Ms Wellard there?---I do.

PN25194

If you can turn to SW1, the first attachment to that affidavit, and just confirm that that's the letter of engagement pursuant to which Deloitte's was engaged to produce the "Modern face of weekend work" report?---Yes.

PN25195

Prior to that engagement, you had provided Ms Whalan of the guild with a number of proposals?---Yes, a number being one or more.

PN25196

One or more, yes. I'll hand to you, to look at, one of those now. If the witness could please be shown a document dated 22 April 2014?---Thank you.

PN25197

You will see this is a letter address to Ms Whalan, dated 22 April 2014, and on the seventh page it bears your signature?---Yes.

PN25198

Is that a copy of a proposal you provided to Ms Whalan?---Yes.

PN25199

I tender that, if the Commission pleases.

PN25200

JUSTICE ROSS: That will be exhibit SDA50.

**EXHIBIT #SDA50 LETTER TO MS WHALAN DATED 22/04/2015**

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25201

MR MOORE: This was a proposal which on the front page has the subject of being an analysis of working unsociable hours in the services sector. I note that in the engagement letter which we were looking at a few moments ago, of 20 August 2014, the engagement is in relation to an analysis of working atypical hours in the services sector. Your report, the weekend report, uses that language of atypical hours. Do you know how that change of language came about from referring to unsociable hours to atypical hours?---I can't recall the exact detail, but the unsociable hours is in inverted commas in the 22 April document and is expressed that way because it's not an expression which is in common use any more.

PN25202

Do you have any recollection as to how the language in your report as ultimately finalised - - -?---No.

PN25203

- - - and in the engagement came to refer to atypical hours?---No, I don't have any recollection of that.

PN25204

Looking at the proposal, exhibit SDA50, and if you go to page 3, there is a heading "Our services" and then over the page - and there are two dot points, I should say, "Project inception" and then "Literature review and data scan", and then over the page "Survey development". Now, at about the sixth last line of that dot point of "Survey development", you'll see it states this:

PN25205

*We imagine that the survey would mainly be needed to capture expression of consumers' preferences to access services at unsociable hours and employees' preferences to work after hours and on weekends in order to enable other activities such as educational commitments, eg, upper high school and university, and caring for children while a partner works standard hours, thus avoiding formal child care costs and access issues.*

PN25206

You understood that by this proposal what you were putting forward to the guild was to undertake an analysis to produce evidence for use in the Commission's review of modern awards?---It stated in the purpose that we understand the intention of the services is to provide evidence in relation to the Fair Work Commission's review of modern awards.

PN25207

And you understood that the intention was for your analysis to be relied on as evidence to support proposed reductions in penalty rate provisions?---That was the intention of the guild, yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25208

You understood that part of the rationale sought to be advanced to justify a reduction in penalty rates was to the effect that there was an increase in demand to

access services at unsociable hours?---I think at the point of 22 April when this was drafted, we didn't have a strong understanding of all those various issues. It was more a matter of providing evidence and again that would not be evidence necessarily for or in relation to penalty rates per se, but in relation to all the different factors that would be considered in relation to working unsociable or atypical hours.

PN25209

Well, I understand the survey at this point of course hadn't been conducted, so you didn't know what the survey was going to show. I'm asking about a state of mind earlier than that. That is, before you did the survey, you understood that part of the rationale which the guild wanted to make good was penalty rates needed to be reduced for reasons including that there was an increase in demand to access services at unsociable hours?---I don't recall that specific last part was part of my understanding at the time.

PN25210

Did you understand that an important purpose, as you understood it, of the survey was to show that consumers wanted to access services in unsociable hours?---Yes, demand rather than increasing demand is certainly an aspect.

PN25211

You also understood that that part of the rationale the guild sought to advance in a proceeding in the Commission in the Modern Award Review, for a reduction in penalty rates was that some employees preferred to work after hours and on weekends to fit in with their other commitments, and for reasons associated with caring arrangements?---That's a general understanding that we have from our social policy work.

PN25212

What you proposed to the Guild was to conduct a survey to capture evidence to that effect, that's right?---Yes, as well as evidence that may also be pertinent.

PN25213

I'll just show you another document. It's correct that you received comments on the proposal of 22 April 2014, which is exhibit SDA50, that is comments from the Guild?---Yes, that's quite common.

PN25214

Sorry?---It's quite common to receive comments on a proposal, yes.

PN25215

By this stage the Guild was your - Deloitte's contact point but sitting behind or next to the Guild were a number of other employer organisations who were seeking to be part of the engagement of Deloitte. Is that a fair general statement?---Yes, I'm not sure when we became aware of the other parties. I can't recall that.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25216

Now looking at the document I've just handed you, you'll see that there's a - at the top of the page there's an email from Kiu Tay-Teo to Ms Whalan and cc'd to you of 16 July 2014. In that email Kiu states;

PN25217

*Thanks for providing your comments on our proposal. Please find attached the revised proposal with consideration to the points you have noted above.*

PN25218

I want to ask you about the email which is underneath that, which is the email from Ms Whalan to Kiu Tay-Teo of 11 July. This was an email, just take a moment to look over it, this was an email which contained consolidated comments in relation to your earlier proposal of 22 April 2014?---That's correct.

PN25219

So you'll see that Ms Whalan states in the second paragraph;

PN25220

*I have summarised the comments received which I have set out as (a) to (g) in line with section 2 of the proposal.*

PN25221

If you look back at exhibit SDA50, the letter from you to Ms Whalan of 22 April 2014, you'll see that on page 2 there are subparagraphs numbered (a) through to (g). You see that?---Yes.

PN25222

You see that?---Yes.

PN25223

So you understood that here what Ms Whalan was doing was providing consolidated comments which addressed the paragraphs (a) through to (g) in the proposal of 22 April 2014?---Yes, that's right.

PN25224

You'll recall that in the proposal of 22 April 2014, exhibit SDA50, at subparagraph (b), that stated including the introductory sentence specifically, you specified that;

PN25225

*The report should address the following lines of inquiry. At (b) provide an analysis of the type of consumer who accesses our service sector outlets during unsociable hours and on weekends/public holidays and whether that has changed since award modernisation.*

PN25226

Then if you come back to the email chain that I have just handed to you at paragraph (b), at the top of the second page. Ms Whalan states;

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25227

*Some concern with the reference to unsociable hours as some say that we don't want that to be the starting -*

PN25228

Sorry, let me repeat that. I'll read that again.

PN25229

*Some concern with the reference to unsociable hours as some say that we don't want that to be starting the conversation on this point.*

PN25230

Now Ms Pezzullo, did you understand why some did not want the words unsociable hours to be the starting point of the conversation?---Well as I mentioned it's becoming a bit archaic in its intonation. Also I was obviously not copied into that correspondence at the time.

PN25231

No, but the correspondence came to you - - -?---Eventually, yes.

PN25232

Came to you on 16 July, that's right?---Mm-hm.

PN25233

You just need to speak your answer, sorry?---Yes.

PN25234

Thank you. Are you saying that the concern with starting the conversation around words "unsociable hours" was to do with that being an archaic term?---Yes, often terminology changes in the health sector and in the social policy sector over time, and we're very conscious of that. For example people don't refer to diabetics anymore, they refer to people with diabetes. So we would be conscious of making sure that the semantics were in accord with current practice - best practice.

PN25235

Is that something you know or is that something you're just speculating might have been the concern that Ms Whalan and her colleagues?---I don't know the exact concern but I do know that the terminology is a bit archaic like schizophrenics or diabetics.

PN25236

Now looking at Ms Whalan's email and perhaps for convenience I'll tender this document now so that I can refer to the exhibit number, your Honour.

PN25237

JUSTICE ROSS: Mark that exhibit SDA51

**EXHIBIT #SDA51 EMAIL FROM MS WHALAN**

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25238

MR MOORE: Thank you. Looking at exhibit SDA51 and Ms Whalan's email, at paragraph (c) Ms Whalan is addressing paragraph (c) in exhibit SDA50 which states;

PN25239

*Describe what consumers typically spend their weekends and public holidays doing if they are not utilising service sector outlets.*

PN25240

You follow that?---Yes.

PN25241

You'll see that Ms Whalan states at the start of paragraph (c) in her email;

PN25242

*This is the key one in everyone's view.*

PN25243

Then she refers to ABS type use data as being important and there's reference in the following paragraph about disaggregating some of the outcomes so that we can reflect against (d). Then she states;

PN25244

*Some also wonder in all of this whether we should be attacking Sundays in particular, or at least as an additional question. Part of the minority finding in the restaurants case was that there is no real difference between Saturday and Sunday. Could this be an additional point for Deloitte to consider in the survey analysis and report.*

PN25245

So Ms Pezzullo, by the time you received this email which is on 16 July, you understood I take it that it was an important consideration and objective for your client in commissioning this analysis, that the analysis produced by Deloitte support an attack on the existence of differential penalty dates between Saturday and Sunday work?---Well again the Guild's motivations and ours are different. Ours are to understand the issues and that's if people have particular concerns about the differentiation between Saturday and Sunday then that would be an important part of the evidence for the survey to explore.

PN25246

You incorporated, I'd suggest to you, this comment that came to you by ensuring that the survey questions specifically identified whether employees worked on Sundays?---That's correct, yes.

PN25247

That was to ensure that you were able to elicit responses to survey questions which might support an attack on the maintenance of higher penalty rates for Sunday work over Saturday work?---Not to support an attack, to provide evidence which would inform.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25248

If I could ask you to look at the paragraph (d) of Ms Whalan's email in exhibit SDA51, you'll see that Ms Whalan states;

PN25249

*Another really key point, but some think we need to go further, in addressing the modern award objective, we are always at risk of falling down on the needs of the low paid. The group feels we need to come up with ways of minimising the impact. Would Deloitte be in a position to provide an analysis of broad working patterns and income received and from this identify the actual impact on employees who work these hours? It would be good to cover off on how often people work on weekends. The union experts always talk about the disadvantage of working on weekends from the perspective of those who work every weekend. They bleat about them not getting the chance to interact with family, friends et cetera. If we can show that in general they are only working, for example, every second Sunday then this immediately halves the disadvantage.*

PN25250

Now you understood from reading that, that something your client was hoping to show through your research was to reduce the disadvantage associated with unsociable hours of work by seeking to show that employees did not always work those unsociable hours?---Yes, we frequently have clients who have a point of view that they wish to prove, and as I mentioned earlier as independent economists who provide economic advice to governments, to some of our very small clients like the Guild and to others, we take with a grain of salt the starting point of the clients and we like to explore the evidence.

PN25251

Well I suggest you did more than take with a grain of salt, you incorporated it this time when you then revised the proposal and having received three comments you adjusted what was proposed to be undertaken in relation to paragraph (d). Can I show you this so you understand what I'm saying. If you look at the proposal, exhibit SDA50, 22 April 2014, and paragraph (d) provides;

PN25252

*Provide an overview of the workforce composition across the services sector. What type of employee typically works unsociable hours or on the weekend/public holidays?*

PN25253

Now if you then look at the attachment to exhibit SDA51, you'll see that this is a revised proposal. You see that?---(No audible reply)

PN25254

You just need to speak your answer?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25255

That's a revised proposal now called, "Analysis of working atypical hours in the services sector", dated 16 July 2014, and you see you signed that?---Yes.

PN25256

If you go to paragraph (d), do you see that paragraph (d) now includes the additional words;

PN25257

*And how effectively do these shifts still accommodate familial and social interaction.*

PN25258

So it's correct, isn't it, that those additional words were included as a means of eliciting evidence which might provide a means of diminishing the impact of the disadvantage of working unsociable hours. That's right?---No, that's not correct. They validly explore that legitimate issue, they didn't seek to minimise it. They just sought to explore it. It could have been a finding and we were certainly open at the time that people do work every weekend, all of the time. But we remove the emotive language obviously and look at the important social issue.

PN25259

Can I ask you to look at paragraph (e) of Ms Whalan's email of 11 July. She there stated - and I should perhaps go to paragraph (e) first of all of exhibit SDA50, being the proposal of 22 April 2014, and (e) provided;

PN25260

*Whether having regard to the consumer access of services sector outlets during unsociable hours or on weekends/public holidays, additional remuneration for employees working those hours is warranted.*

PN25261

In relation to that Ms Whalan stated, you'll see in paragraph (e);

PN25262

*Whilst all agree with the intent of the questions, some wonder whether Deloitte are going to be in a position to provide compelling analysis of this. Some wonder whether it might be a two stage process, where we derive all of the information from the (a) to (d) and then go back for a second report based on the outcomes of those lines of inquiry. Some think without additional information we would be criticised for any conclusions reached here. Deloitte might be seen as just a gun for hire delivering on the wants of their clients. We are asking Deloitte about one factor that goes to the question of additional remuneration and getting them to reach a conclusion on that factor only. Some think (e) and (f) could be combined into one question with the addition that they consider the ABS time use stuff as well.*

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25263

Now it's correct that you responded to these comments by adjusting - if you look at the proposal attached to Ms Whalan's - sorry, if you look at the proposal which is in exhibit SDA51, the revised proposal, it's correct isn't it that what was in (e)

has actually been split into two things. Do you see that?---So (e), (f) and (g) no longer exists. There is a new (e).

PN25264

Yes. Excuse me a moment, your Honour. What you have proposed in the revised proposal you see on page 2, the above components, you'll see at about - just above point 3;

PN25265

*The above components can be considered in two stages; collation and analysis of descriptive statistics to address inquiries (a) to (d).*

PN25266

Then;

PN25267

*Synthesis of findings to address inquires (d) and (f).*

PN25268

See that?---This is back on the original?

PN25269

Sorry, I'm looking at the revised proposal. Ms Whalan's - - -?---The one dated 20 August?

PN25270

The one dated 16 July. I know this is rather difficult moving between the documents. I'll just take you through this again, Ms Pezzullo. Beginning with the one dated 22 April 2014?---Yes.

PN25271

Which is exhibit SDA50, on page 2 you see the (a) through to (g), the considerations?---Yes, yes.

PN25272

See that?---Mm-hm.

PN25273

The comments that I was just taking you - that I put to you, I'm sorry, a few moments ago from Ms Whalan concern (e)?---Yes, so the - one was the cover email, which starts on July 16, has six parts, A through F.

PN25274

Yes, that's right. And you look at the revised proposal of 16 July 2014 which is part of Exhibit SDA51, you'll see that a two-stage process is proposed above the heading "Our Team" on page 2. Do you see that?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25275

And that wasn't part of the original proposal?---Well, the proposal changes again, before we get to the final version, and the reason for that is that we continued to

explore and develop the lines of inquiry until we're satisfied that they're empirically sound and they're also what, you know, the client wasn't to investigate.

PN25276

I just want to identify that what you were here doing in the ways in which I've just been directing your attention, was accommodating the nature of your proposed work to meet the case and the concerns that your client had?---They weren't concerns that we'd compromised the findings or the method, so that was fine. Happy to accommodate those sorts of alterations.

PN25277

In developing the proposal, which ultimately crystallised in an engagement in relation to which the weekend report was ultimately produced, you always understood that the purpose of the report was for it to be relied on as evidence in this proceeding to support your client's claim for reductions in penalty rates?---We understood that that was their aim, yes.

PN25278

And you were attentive to adjusting the terms of your proposed to research to meet the needs and comments of your client?---We didn't consider that they would change the nature of the findings, one way or the other.

PN25279

Ultimately, you understood that your task was to bring together the results of the survey and what you refer to as a review of the literature, to support a case for reductions in penalty rates?---No, we understood that our work was to investigate and explore the different lines of inquiry and then, on that basis, to analyse the findings from the survey.

PN25280

But your analysis of the findings of the survey and consideration of the research was never undertaken with an independence of mind, but instead with a mind to make good and provide a reason basis for your client's proposed case?---Not at all. We, as I've mentioned earlier, typically have to understand what our clients want and make adjustments. That so long as they don't compromise the integrity and independence of our work, we're happy to accommodate. Those changes do not change anything to do with the ability to better understand the evidence, which I think is important in this case.

PN25281

Now, I want to ask you about your report now. I think I asked you this morning about the team members involved in the production of the report, this particular report, so I won't go over that again. But can I clarify that, in relation to the weekend report, the work was principally undertaken, am I right in understanding, by Mr Barnsley and Kiu Tay-Teo?---And also Sveta Siljanovksa.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25282

It's a difficult name, but thank you. You, of course, didn't draft the report?---I do, as I mentioned, provide heavy editing of reports, typically, yes.

PN25283

But you didn't draft it? That was done by people in your team?---The first drafts of chapters and sub-chapters is typically done by the team.

PN25284

Yes?---And then I will go through them and redraft as necessary.

PN25285

And you didn't undertake the literature review referred to in chapter 3?---No, again, it's a matter of direction, so the literature review was undertaken in accordance with the specified literature for the - that was in the engagement letter and the report itself and the oversights goes, as I said this morning, in relation to identifying any key findings or things that might be important or - I will re-read those items of literature.

PN25286

As you would recall, the weekend report contains a summary of the number of articles said to have been considered- - -?---Yes.

PN25287

- - -as part of the literature review?---So I would typically read the abstracts but not the whole article.

PN25288

And in terms of the survey in the weekend report, that survey was designed by people in your team?---Yes. Again, I would sign off on it, make alterations to questions as needed, provide advice in relation to the original specification of the survey.

PN25289

And the interrogation or analysis of the results of the survey were undertaken by people in your team, which you then read and reviewed?---Yes, and go through the spreadsheets. Do black box and white box testing.

PN25290

Your role, as I think you say, in - it's actually in the engagement letter, which is PG1, the attachment there, the team is outlined and - on page 2 and 3, and in relation to - it states, and I won't read it all, that the project would be led by you and at the end of that paragraph it states that your role in this project for PGA would be to provide quality control and oversight of deliverables?---Exactly.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25291

And in layman's terms, your oversight of deliverables was making sure that Deloitte delivered to its client what Deloitte had been engaged to provide?---That's correct. The quality control involves all the other tasks that I mentioned before and the black box and white box testing of spreadsheets, the review to ensure the literature has been correctly interpreted, etc.

PN25292

Now, the engagement document, which is the attachment to Ms Wellard's affidavit, PG1, included some optional components, didn't it?---Yes. It's getting quite common in early understanding.

PN25293

I'm not asking about whether it's common or not, Ms Pezzullo. Page 5 - sorry, page 4 is headed "Our Services" and there are stages set out. And at the bottom of page 4, stage 3 is "Survey Development, Implementation and Data Analysis". And over the page, in the second dot point, in the square brackets, "Optional Price Elasticity of Labour Supply and Time as a Determinant of Elasticity of Consumer Demand"?---Yes.

PN25294

So that was - I withdraw that. I just wanted to draw your attention to another part of the letter, on page 7, can you read the heading which appears after the first two dot points?---On page 7?

PN25295

Yes, page 7 of the proposal?---Sensitivity analysis of conclusions- - -

PN25296

Of the engagement, I'm sorry?---Sensitivity analysis and conclusions.

PN25297

Page 7 - excuse me a moment. While I'm just getting a document checked, just to clarify, I'm looking at the engagement document, which is 20 August 2014, attached to Ms Wellard's statement?---Yes.

PN25298

And at page 7 of that document- - -?---Yes.

PN25299

- - -you see the heading, after the first two dot points "Optional Components to Address Inquiries 1 and 2 in Section 2". Do you see that?---My page 7 commences with chapter 3 survey, chapter 4 conclusions and then stage A.

PN25300

Yes, I think there's a slight difficulty here in the copying, the font. There is a heading which appears after the second dot point, which is obviously not on the witness's copy and which is, in fact, nearly illegible on mine, but it reads - this is immediately after the second dot point "Optional Components to Address Inquiries 1 and 2 in Section 2". I take it those words are legible on your copy?---I can't read them, no.

PN25301

No. We have an unsigned copy of the engagement which contains those words. If I perhaps hand that up.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25302

JUSTICE ROSS: I would tender it separately too and we'll mark it as an exhibit, just in case anything arises from this.

PN25303

MR MOORE: Ms Pezzullo, this is an unsigned copy of the engagement document dated 20 August 2014. I'm handing it- - -

PN25304

JUSTICE ROSS: We might make it - sorry, SDA52.

**EXHIBIT #SDA52 OPTIONAL COMPONENTS TO ADDRESS  
INQUIRIES 1 AND 2 IN SECTION 2**

PN25305

MR MOORE: Thank you, your Honour.

PN25306

If you go to page 7, do you see the heading "Optional Components to Address Inquires 1 and 2 in Section 2"?---Yes.

PN25307

Yes. And does that - and if you see underneath that heading, stage A is considering the policy implications of characteristics of labour demand. And then a couple of paragraphs down, stage B, modelling the impact of penalty rates on employment. Does that remind you that there were a number of optional or additional components of research, which might or might not be undertaken - that the Guild might or might not request Deloitte to undertake?---Yes.

PN25308

And those optional components were those referred to on page 7 that I've just taken you to?---That's correct. All the important aspects of the overall social policy issue.

PN25309

Yes. Now, the report that you ultimately finalised doesn't address, as I understand it, any of those optional components. Is that how you would see it?---That's correct. We didn't do specific modelling of the impacts of penalty rates on employment, for example.

PN25310

And is that because Deloitte was never commissioned to do that optional work, or was it, in fact, undertaken?---No, we were never commissioned to do it.

PN25311

Thank you. So all that Deloitte was commissioned to do, putting aside the optional elements, are those things which are set out in part 4 of the letter of 20 August 2014?---That's correct. And again, that is a common part of providing engagement letters, yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25312

I'm sure it is, thank you. Now, I just want to ask you some questions about the content of your report, and in particular, chapter 3 which deals with evidence from the literature, as it's entitled. Now, might I inquire, what pagination system you have on your document, Ms Pezzullo?---So this one is the one that has the large numbers at the bottom and then it also has the smaller numbers, which are the report numbering.

PN25313

Thank you. So at the risk of making it confusing, I'll refer to the large numbers?---Okay.

PN25314

In directing your attention to parts of the weekend report, which is Exhibit PG34, if you could go to page 31, that's where chapter 3 "Evidence from Literature" begins?---Yes.

PN25315

You see that?---Yes.

PN25316

And you'll see that in the first paragraph, on the third line down, it states:

PN25317

*The overall objective of the literature review was to identify extant evidence regarding the following.*

PN25318

First dot point:

PN25319

*Consumer activity during atypical hours across the services sector, retail, hospitality, fast food restaurants and pharmacy, to assess whether there is a societal shift towards commercial activity at these times.*

PN25320

And second dot point:

PN25321

*Workplace composition and employment characteristics across the services sector and whether additional remuneration for employees working traditionally atypical hours, is necessary, based on the evidence collected regarding consumer trends.*

PN25322

Now, looking at the first dot point, which is to abbreviate, consumer activity during atypical hours, it's correct that within the whole of this chapter, the only section that deals with consumer activity, weekend hours or atypical hours, is section 3.2.5 on page 37, in which you see the heading "Consumer Activity on Weekends". That's right?---Yes.

PN25323

And the only article, paper, referred to under the heading "Consumer Activity on Weekends" is the paper authored by Craig and Brown in 2006. That's right?---That's correct, yes.

PN25324

And if you - do you agree with me that on the face of the summary of that article that there appears, that has got nothing to do with consideration of consumer activity during atypical hours across the services sector and whether there has been a change in such activities at these times?---It does look at leisure time.

PN25325

You're pointing - you say, do you, that the article Craig and Brown of 2009 - 2006, I'm sorry - is germane to the subject matter of consumer activity on weekends because there's some reference to leisure time?---Yes. The conclusion is that for all groups, weekend work was associated with less shared leisure time, one day is worked.

PN25326

Well, have you read the Craig and Brown article?---I've read the summary of it, yes, the abstract.

PN25327

Can I suggest to you that, on any fair reading of it, it has got effectively nothing to do with the question of changes in consumer activity or consumer activity on weekends. You accept that, or you don't know?---No, I think that leisure time involves consumer activity as well as other activities.

PN25328

Does it surprise you that other than Craig and Brown 2006, there are no other articles dealing with consumer activity on weekend that your good officers or staff were able to turn up?---It was a target. The searches are quite clearly explained, we were only going to look at the information that is summarised on page 31, which aligns with that summarised on page 4 of the engagement letter. And it says:

PN25329

*We would investigate and review a number of data and information sources to explore the research questions.*

PN25330

And then it lists them. So that's what we did.

PN25331

Well, as I understand from your evidence, one of the key aspects, matters you were to investigate in the literature review, was consumer activity during atypical hours across the services sector. That's so?---And if the only reference to that particular line of inquiry, in that literature, was the Craig and Brown Leisure Activity, then that is why that would be the only thing reported in relation to that.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25332

So being the person responsible for deliverables and quality control, was it rather startling to you that the only literature one could - your people could identify out there which dealt with the matter of consumer activity during atypical hours or weekends, was the work by Craig and Brown?---Well, the rest of it is labour force industry data, HILDA, the Fair Work - Centre for Work and Life Guild Digest (indistinct) data sets on employment forecasts and retail forecasts, so, no, that wouldn't be particularly surprising. As I said, it's a targeted literature review and supplemented by extensive surveying, so we would then rely for our information on the surveying rather than from that limited literature review element.

PN25333

On page 19 of the weekend report, you identify as one of your survey findings that:

PN25334

*Weekend workers use their time differently and shift some activities to weekdays.*

PN25335

That's right?---Yes, I think. I can't see it there right now, but - - -

PN25336

It appears on page 19 in the "Executive summary" by way of heading:

PN25337

*Weekend workers use their time differently and shift some activities to weekdays.*

PN25338

That's not identified from the literature. That's identified from the survey.

PN25339

I understand that?---Yes.

PN25340

I'm sorry, I've changed to the survey; but that is one of the key findings that you made from the survey?---It is, from the survey, yes.

PN25341

I take it that the question of "time use patterns between weekend and non-weekend workers, on both weekends and weekdays" was significant and relevant to your examination - your inquiries?---I'm sorry, could you repeat the question.

PN25342

Well, given that's a finding you've made on the basis of the survey, I take it that the question of "time use patterns between weekend and non-weekend workers, on weekends and weekdays" was a matter of significant relevance to your research?---Yes, it was one of the lines of inquiry.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25343

Yes?---However, it's not always able to find conclusive findings from a very targeted literature review.

PN25344

I'm sorry, could you repeat the last part of your evidence?---A targeted literature review is just that. It may not contain evidence that is relevant to your line of inquiry, in which case, as I said earlier, we would be relying on our much more useful and rich information from the survey to draw conclusions. That's why one would use a mixed methods approach in the first place.

PN25345

On page 19 of the report under the heading "Weekend workers use their time differently and shift some activities to weekdays", the end of that paragraph after referring to -

PN25346

*Casual weekend workers show an increased commitment of time to education both during the week and on weekends, and appear to shift their social activity, shopping and use of personal services to weekdays -*

PN25347

you say:

PN25348

*This is consistent with the hypothesis that weekend work alters but does not necessarily disrupt patterns of social interaction.*

PN25349

?---Yes.

PN25350

That last concept that you refer to in that sentence was a matter of central importance in the overall research you were undertaking. Do you agree?---The hypothesis?

PN25351

Yes?---It's one of many, yes.

PN25352

You understand that the Craig and Brown article bears upon this, that is referred to on page 37?---Yes, as we have reported.

PN25353

You read the abstract of that article, did you?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25354

All right. I'll show you the article. This is the article "Weekend work and leisure time with family and friends: Who misses out" and the abstract as appears in

italics on the first page at about midway down - you can read it all for yourself if you would please - states:

PN25355

*Analyses were stratified by three family types: (a) couples without children, (b) couples with children, and (c) singles without children. For all groups, weekend work was associated with significantly less shared leisure time on days worked.*

PN25356

Just pausing there, Ms Pezzullo, you'll see that that sentence I think is reflected perhaps verbatim on page 37 of your report. You see that?---That's correct, yes.

PN25357

Then going back to the abstract, in the following sentence the author states:

PN25358

*Some weekend workers, eg, part-time employees, men, recouped some shared leisure time, notably with friends, over the following week, but most did not. Indeed, for some forms of shared leisure - most importantly, with partners and children - there were further negative associations on weekdays.*

PN25359

Now, having read this abstract, do you accept that what the authors state in the two last sentences is relevant and germane to the research that you were undertaking?---I think it's consistent with how we've reported it, both in the executive summary and in section 3.2.5.

PN25360

I'm just asking you direct yourself to the question at hand if you could, please, Ms Pezzullo. Do you accept that what is set out in the last two sentences of that abstract is relevant and germane to the overall research you were undertaking?---Yes. That doesn't necessarily mean we report every part of every piece of literature in our reports.

PN25361

Do you accept that what is set out in those two last sentences which conveys that most weekend workers did not recoup shared leisure time and that there were further negative associations on weekdays for some forms of shared leisure time - that that is a matter of real significance that ought to have been referred to in your summary of Craig and Brown at page 37?---No, I wouldn't say it was necessary to include the last - - -

PN25362

I'm sorry?---We have, for example, later in the report in chart 4.6, the differences and activities between weekend and non-weekend workers. That shows exactly the same effect in terms of the lower level of participation in recreation and leisure of weekend workers relative to weekday workers by point 8 of an hour on average across all groups. So it's the same finding.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25363

I'm sorry, where do you say the same finding is?---Chart 4.6.

PN25364

What page is that?---It's page 50.

PN25365

I see. Chart 4.6. This is the chart which shows in very broad terms that weekend workers spend less time than non-weekend workers in relation to various types of activities on both Saturdays, Sundays and weekdays?---Exactly, so they don't recoup the time. Same finding.

PN25366

All right. Your response to the question I asked you a moment ago is to say, is it, that in the context of the literature review it wasn't necessary to go further and set out the totality of the relevant part of the abstract of Craig and Brown because, well, you found that in your survey results?---It's in alignment. If it was substantially in contradiction to what we had found, it would be relevant.

PN25367

I see. I want to just ask you about one other article. I'm not going to take you through them all. There is an article Campbell and Mathews. You refer to this on page 15 of your report?---This is small numerals (xv) now?

PN25368

No, large pagination, page 15?---Okay, yes.

PN25369

Campbell and Mathews is referred to at the top of the page, saying, "Studies using ABS data", and you cite Campbell and Mathews and Dawkins et al?---Yes.

PN25370

On page 35 - - -?---Yes.

PN25371

- - - you refer to it. You say, just to read the first sentence:

PN25372

*Campbell and Mathews (1998) and Dawkins et al (1986) investigated working hours preferences based on ABS data, including labour force statistics.*

PN25373

You didn't read Campbell and Mathews, I assume?---Again, I tend to read the abstracts, the small summaries, unless there's something anomalous or different.

PN25374

Would it be of concern to you to know that the article did not use any ABS data?---That would surprise me, yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25375

Can I take you back to page 31, the first two dot points which identify the two objectives. Look at the second dot point. Do you accept that none of the articles or papers to which you refer in chapter 3 deal with the question of workplace composition across the services sector?---I'm sorry, could you repeat the question. None of the articles - - -

PN25376

None of the articles or papers to which you refer in chapter 3 of the report deal with the question of workplace composition across the services sector?---They allude to it, but don't cover it directly. That's correct.

PN25377

None of them deal with the employment characteristics across the services sector, do they?---Again, they allude to it, but don't deal with the issue exactly.

PN25378

This dot point on page 31 then refers to whether additional remuneration for employees working traditionally atypical hours is necessary by reason of changes in consumer trends. You accept that none of the literature to which you refer in part 3 deals with the question of the connection between additional remuneration for atypical hours of work and changes in trends and consumer activity?---Well, it does state that the overall objective is to review extant evidence from the targeted literature search, so if there was no existing evidence in that targeted literature search, we couldn't make it up.

PN25379

You understand that Dr Muurlink has given evidence to this Commission - - - ?---Yes.

PN25380

- - - which, if I might summarise it, the import of his evidence is to the effect that your literature review was manifestly inadequate. Do you understand that he gives evidence to that effect?---We have responded to that in our reply, yes.

PN25381

Do you accept that his evidence is in fact an accurate summary of the quality of your literature review?---No, I don't, because we never intended to do a systematic literature review. We were commissioned to and undertook a targeted literature search, not a comprehensive literature review.

PN25382

Going back to page 31, the two objectives or themes to which the literature review was to be directed, they didn't refer to the question of the elasticity of labour demand or elasticity of labour supply?---Well, to the extent that they cover whether additional remuneration for employees working traditional atypical hours is necessary, that would look at that issue of elasticity.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25383

Can I ask you to go to page 39 now of exhibit PG34. This is the summary of literature. There's a heading "Summary of Literature". Do you see that?---That's right, of a targeted literature search.

PN25384

Now, in the second paragraph, third last line, you state:

PN25385

While the evidence clearly suggests that penalty rates reduce overall employment by some amount, it is not robust enough to allow the calculation of a specific estimate of the amount of employment forgone.

PN25386

You see that?---Yes. It's consistent with other findings, I understand.

PN25387

Can you identify the specific research referred to in this chapter which supports your statement that the evidence clearly suggests that penalty rates reduce overall employment by some amount?---So penalty rates in two of the studies were used together with minimum wage to look at different aspects of the wage elasticity of demand, so that's the connection. The two studies we've cited there are Lewis and MacDonald 2002, and Borjas 2013. There was also the earlier Price work; Price 2004.

PN25388

You rely upon - just so I'm clear - the work of Borjas?---The elasticity estimates that lie between point zero one and - sorry, I'll just go back - - -

PN25389

I just want to clarify what your evidence is. The first work that you say supports that statement is the work of Borjas. Is that right?---Borjas 2013, and Lewis and MacDonald 2002, talked about the range of elasticity of labour which lies between zero - sorry, negative zero point one and negative zero point eight.

PN25390

But they don't deal with penalty rates?---They deal with the elasticity of demand for labour in response to changes in price.

PN25391

You don't say to the Commission, do you, that either of those pieces of work deal specifically with penalty rates?---So the price elasticity of demand is directly relevant to the issue of penalty rates.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25392

I see. As I understood it, looking at page 34 of your report, the only paper that you were able to identify which you say supports the proposition that penalty rates reduce overall employment by some amount, was the paper by Price?---Price 2004 specifically alluded to penalty rates, but as I mentioned earlier, anything that talks about price elasticity of demand is relevant in consideration of how penalty rates may also affect labour demand, because it's the same issue. Penalty rates

impose a price premium and a price premium is the component of elasticity of demand.

PN25393

Can I put to you squarely, Ms Pezzullo, that there is no literature referred to in chapter 3 of your report which could be said to clearly suggest that penalty rates reduce overall employment by some amount. Do you accept that that is an overstatement?---No, I don't accept that.

PN25394

Your reference to the article by Price on page 34 - and you're there referring to Price and her work of 2005, and you refer also to the same work on page 40, where you state;

PN25395

*Finally, Price 2005 indicates the penalty rates caused changes in the composition of the workforce potentially reducing the number of full-time employees, particularly in accommodation and food services.*

PN25396

Did you read that article?---I would not have read the whole article.

PN25397

Can I suggest to you that that paper did not examine the question of whether penalty rates negatively affected the employment of staff?---No, as the report clearly states some of the evidence is about minimum wages and other situations where the price of labour adjusts and the employment response of that, which is what wage elasticity of demand is. Penalty rates is factor which causes the same phenomenon to occur is therefore of direct relevance.

PN25398

I'm just looking at your words on page 34, first line, under the heading

PN25399

*Price 2005 examined the effect of penalty rates on Sunday trading and the composition of the workforce on Sunday.*

PN25400

?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25401

I just want to suggest to you that on no fair reading of the article could it be said that Price examined the effect of penalty rates on Sunday trading, and the composition of the workforce?---Well again this is alluded to in our response. I'm having difficulty locating the exact page, I do apologise for that but perhaps somebody else is aware of it. The Price article has an allusion to penalty rates and then goes on to talk about regulation in exactly the same context. So our inference was that the regulation and the intent of the article, and we understand this to be correct, is that that includes penalty rates as one aspect of changes in regulation. Therefore - - -

PN25402

This is - sorry?--- - - - Price 2004 R would argue does in fact comment on the issue.

PN25403

Can I suggest to you the evidence you've just given is an expression of your attempt to justify the incorrect inclusion and reliance upon the Price article in your report?---No, we are aware of the porosity of direct information that investigates relationships between penalties per se and employment. Therefore, in order to look at the effects of penalty rates in terms of them providing a price premium, it's necessary to look at other literature that investigates minimum wages and other regulatory changes that may have wage impacts. In our very targeted literature review, those were the only issues that were - those were the only papers that were identified.

PN25404

In general terms you accept that one of the real troubles here is the absence of research and commentary about the specific effects of penalty rates on employment and hours of work?---Yes.

PN25405

You agree with that?---Yes, it's a bugbear.

PN25406

So any learnings which shed light on that directly are of particular interest?---Of course, particularly all the learnings that we can gain from minimum wages and the other impacts of wage changes.

PN25407

One of the pieces of work which examine that topic quite squarely was the work by Synergies in 2014, wasn't it?---Yes.

PN25408

You refer to that - well before I go on, Synergies is actually - Synergies Economic Consulting is a reputable Australian based firm which provides specialist economic and finance advisory services?---Yes, that's my understanding.

PN25409

At page - I think you refer to it twice - page 14 you say in the end of the second last paragraph;

PN25410

*However, another study Synergies found a positive relationship between wages and employment in tourism related industries, including accommodation and food.*

PN25411

?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25412

Then in page 38 you say about that under the heading "Other demand site discussion";

PN25413

*The potential effect of penalty rates on labour demand has been considered in a recent study conducted by Synergies Economic Consulting. The empirics utilised in the study are built on the assumption that penalty rates can be treated analogously with increases in the minimum wage.*

PN25414

?---Yes.

PN25415

Continuing:

PN25416

*However, due to a lack of publically available data, the Synergy study was unable to isolate the specific effect of penalty rates, instead estimating the general elasticity of labour demand with regard to wages for tourism related industries.*

PN25417

?---Yes.

PN25418

I want to show you a copy of that report. You've seen this before I take it, Ms Pezzullo?---Yes.

PN25419

Did you read it for the purposes of preparing your report PG34?---The only part of it that I read was the bit that says "Executive summary".

PN25420

So can I take you to the executive summary and that commences on page 3. The last paragraph of the executive summary appears to be on page 5 above the heading "Specific findings", and there the authors state as follows:

PN25421

*In short, while penalty rates from the demand site clearly don't assist in employment growth or hours worked in tourism related industries. On the basis of the extensive research in this report it would be unrealistic to expect any major increase in employment or hours worked in these industries if wages were lowered by the abolition of reduction in penalty rates. As well it should be remembered that the results reported above are average results and may not accurately reflect the conditions of smaller and marginal enterprises within those industries.*

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25422

Since you prepared your report, I take it you would have had a more - a close look at this Synergies report beyond the executive summary?---No, I think the

executive summary again is a good reflection of our conclusion which says at the very beginning on page 14;

PN25423

*The overall position of the literature - - -*

PN25424

I'm just asking you to - if you could address yourself to the question, Ms Pezzullo?---Yes, I have not read the entire article subsequently.

PN25425

Do you agree that the article is a substantial and detailed piece of economic analysis related to the economic effects on employment and hours worked of penalty rates in the tourism services industry?---It's one example of one piece of work in one part of Australia, in one part of Queensland.

PN25426

It's one piece of work, like all of the other pieces of work it is a substantial and detailed piece of economic analysis. Do you accept that characterisation?---No, I don't actually.

PN25427

The paragraph I read to you on page 5 of the executive summary and you've said that you have given evidence that you read the executive summary before you authored your report in this proceeding. Would you accept that that conclusion is a highly relevant matter to the issues you were considering in your report?---No, it's one of a number of issues.

PN25428

I'm just asking you if it's highly relevant, the conclusion expressed there. Do you accept that?---Which conclusion are you referring to?

PN25429

The conclusion in which the author's stated in part;

PN25430

*It would be unrealistic to expect any major increase in employment or hours worked in these industries if wages were lowered by the abolition or reduction in penalty rates.*

PN25431

I suggest to you that that is a conclusion which is highly relevant to the matters you were addressing in your report?---We have noted it as an exception in our executive summary.

PN25432

I'll ask the question to you a third time. Do you accept that the conclusion is highly relevant to the matters you were addressing in your report?---No, it's no more relevant than any of the other aspects of the literature or evidence.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25433

Just like any other report out there by a specialist economic consulting firm of some 81 pages. It can be that readily dismissed can it, Ms Pezzullo?---Well Synergies do not occupy a high proportion of the economic consultancy provision of services in Australia.

PN25434

What I don't understand, Ms Pezzullo, it was relevant enough for you to address it?---Yes.

PN25435

Well why did you not - - ?---And to note that it was an exception to everything else.

PN25436

Why did you not refer specifically to this most important conclusion on page 5 of the executive summary?---We did, Mr Moore. We said another study found a positive relationship between wages and employment in tourism related industries, including accommodation and food. We said that quite clearly on the very first page of our executive summary.

PN25437

You would accept that the results of the analysis in the Synergies work were in keeping with the Card and Krueger results of analysis in the US fast food industries?---That's right. We've also mentioned them in that summary.

PN25438

I'm sorry, you're referring to which page?---To page 14, the executive summary.

PN25439

I think you do indeed refer to it at that page - - -

PN25440

JUSTICE ROSS: The question wasn't whether you referred to it, the question was whether it was the same.

PN25441

MR MOORE: Yes, and I'm going to come to that. The Card and Krueger article you address quite specifically at some greater length on page 37 of your report, that's so?---Yes. Yes.

PN25442

In the Synergies report at page 68, the authors state at the bottom of page 68;

PN25443

*The results when log of employment was used as the dependent variable are more difficult to reconcile. They all show a small but positive and significant relationship between wages and employment. Results more in keeping with the Card and Krueger results in the US fast food industry.*

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25444

Do you see that?---Yes.

PN25445

So there is a debate at least in the academy about the relationship between employment and wage levels. We accept that?---Absolutely.

PN25446

Card and Krueger is a seminal piece of work. Do you accept that?---It's one of the pieces of work which has obviously been looked at a number of times and disputed and so forth.

PN25447

It's a seminal piece of work?---It's received a lot of attention, yes.

PN25448

Yes, it's at the heart or near the heart of many of the controversies about the relationship between employment and wages?---Yes.

PN25449

So what we have here is a contemporary Australian study about the impact of penalty rates on employment in a specific Australian industry, which finds according to the authors supports the conclusions which emerged and were stated by Card and Krueger. That's so?---I don't know the detail on page 68 of the report enough to be able to verify that.

PN25450

I want to suggest to you that having taken it upon yourself to address the Card and Krueger article on page 37, setting out in summary terms what the authors found and then some criticisms of it, it would have been highly relevant for you to refer specifically to a contemporary Australian study which supported the conclusions which emerged from that article?---I think we have given the right weighting to the different studies in the work that we've done, and we have certainly mentioned the issue that it's an ambiguous position, that there are differences in findings and highlighted the fact that the Synergies reports provides that positive relationship. I think that's a fair summary of the literature that we reviewed.

PN25451

Did you understand that the Synergies report concerned tourism related industries and that those industries included some of the services sectors which you were concerned to examine in your Weekend Report?---Yes.

PN25452

For example, accommodation and food services?---Yes.

PN25453

Retail?---Yes.

PN25454

2014?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25455

It's examining penalty rates?---Yes.

PN25456

It says;

PN25457

*Unrealistic to expect any major increase in employment or hours worked in these industries if wages were lowered by the abolition or reduction in penalty rates.*

PN25458

?---That's correct.

PN25459

Can I suggest to you that the reason you did not refer to that conclusion at the end of the executive summary in the Synergies report, is that that was a conclusion at odds with the case that your client wanted to advance on the basis of your research. That's why you did not give it extensive or proper consideration in your report?---No, that's not the case. In the executive summary we mentioned that report, we noted its findings and as I mentioned before, I think we provide the balance of evidence in relation to our reporting of the literature we reviewed.

PN25460

Before I move to a different topic, do you accept that the Synergies work offers valuable insight into the relationship between wages and employment?---Yes, it was not part of our specified literature.

PN25461

Sorry, what was your answer to the question?---Yes.

PN25462

It offers valuable insight into the relationship between wages, wage increases and employment in a contemporary Australian context in industries including those the subject of your weekend report?---Yes, but I would put a caveat on the degree of value. I think you're over-emphasising the value that it places. I think it's one of many items of literature which have some value.

PN25463

Before I move on, I think I have forgotten to tender the Craig and Brown article. It's already in is it?

PN25464

SPEAKER: It's ABI12 according to my notes.

PN25465

MR MOORE: Thank you. There's a dispute at the Bar table about the exhibit number.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25466

JUSTICE ROSS: The Synergies?

PN25467

MR MOORE: Synergies, yes, I do ender that.

PN25468

JUSTICE ROSS: Mark that exhibit SDA53.

**EXHIBIT #SDA53 SYNERGIES REPORT**

PN25469

MR MOORE: Looking at page 37 of your report, the Weekend Report, Ms Pezzullo, and that's the section at 3.2.6 where you refer to Card and Krueger, and the criticisms of it?---Yes.

PN25470

Did you write those paragraphs?---I edited them.

PN25471

You edited them?---Mm-hm.

PN25472

Can I show you this document. I've just handed to you a document by Deloitte Access Economics entitled "Scoping study empirical analysis of the effect of penalty rates on employment, Department of Justice and Attorney-General, 20 May 2014"?---Yes.

PN25473

Now this is the paper that is referred to in your weekend report as Deloitte (2014), that's so?---Exactly, yes. I think it's 2014B actually.

PN25474

Thank you. 2014B, I'll just check that. If you go to page 14 of this article - - -

PN25475

JUSTICE ROSS: What article are you referring to?

PN25476

MR MOORE: Sorry, I'm referring to the 20 May 2014 Deloitte's scoping study.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25477

(To witness) You'll see that on page 14, there's a section 3.2.2, Card and Kruger, four paragraphs thereunder, then a heading "Academic Critique of the Study" and two paragraphs. Would you accept that this characterisation that the paragraphs which appear on page 37 of your weekend report, under heading 3.2.6 "Wage Elasticity of Labour Demand" the four paragraphs there and then the italicised quotation at the bottom of page 37 on to page 38, subject to a couple of edits, put a cut and paste of what is set out on page 14 of the scoping paper?---Sorry, the paragraph 2 of page 14 of what I'm going to refer to as the Rumbens' report,

because it's actually my colleague, David Rumbens who was the engagement partner for this earlier piece of work.

PN25478

And Mr Rumbens, I'm sorry to interrupt your evidence, was a part of your team in preparing the weekend report, wasn't he?---Yes, he has - he's a specialist labour economist, so we often invite him to comment on and review work that is in the labour market domain.

PN25479

Yes, I'm sorry, what were you going to say before I interrupted?---So I'm comparing, to answer your question.

PN25480

Yes?---The first paragraph has got, as you mentioned, edits in relation to the first paragraph that's in the Rumbens' report. The second one has very few edits. The third one has more edits and so on. So yes, there is substantially similar contents.

PN25481

One of the edits that appears to have been made it looking at the Rumbens' article, the scoping study - the Rumbens' report, I'm sorry, under the heading "Academic Critique of the Study" there's the first sentence is:

PN25482

Like the majority of journal articles, even a seminal article such as Card and Kruger, can be criticised. In your report, the last whole paragraph on page 37 commences with the next sentence, the second sentence from that paragraph on page 14 of the Rumbens study and that first sentence does not appear. Is that a sentence that you edited out?---I can't recall whether I edited it out or whether the original author's edited it out, but it's certainly, you know, necessary to try to reduce length from time to time.

PN25483

So it's fair to say that the consideration that you gave - I withdraw that. Do you accept this characterisation that section 3.2.6, as it appears on page 37 of your report, is largely a cut and paste from the Rumbens paper of 20 May 2014?---Yes, again, we would often refer to other work that we have previously conducted.

PN25484

So I take it then that in being responsible for quality control, as you say, and delivering this report, it must follow, I take it, that you did not give any separate and independent consideration to the issues around the wage elasticity of labour demand, as you set out in page 37 of the report. You simply adopted what Mr Rumbens had written in May 2014?---With discussion, that's correct. I think there's- - -

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25485

And you - I'm sorry?---I was going to say, I thought there was additional work - yes, it's in relation to the Productivity Commission's paper, looking at these wages

and employments and the responsiveness of demands in that context, which is additional obviously.

PN25486

I tender the 20 May 2014.

PN25487

JUSTICE ROSS: That will be SDA54.

**EXHIBIT #SDA54 RUMBENS' REPORT DATED 20 MAY 2014**

PN25488

MR MOORE: I want to ask you about the surveys referred to in your report. To begin with, to keep things simple and manageable, there two online surveys were conducted. Yes?---That's correct.

PN25489

And the first comprised of a sample of 1,000 persons described as weekend workers, being persons who reported having - working on the weekend?---That's correct.

PN25490

And the second survey was a sample of 1,100 non-weekend workers?---It actually comprised people yes, who worked on - who did not work on weekends. But then we had an overlap of 500 people. It was quite a complex design actually, where we had two groups answering different sets of the same survey questionnaire.

PN25491

Yes. And I'm just trying to go a step at a time here- - - -Yes.

PN25492

- - -because there is some complexity to it. Looking at the second survey, which is the sample of 1,100 non-weekend workers- - -?---Yes.

PN25493

- - -as you say in page 16, at the top of page 16 of the weekend report:

PN25494

*Participants in the second survey were asked questions as consumers about their time use and the use of business staff by relevant award workers and their preferred times for using those facilities in order to gain an understanding of when and how the population, as a whole, interacts with the selected services.*

PN25495

?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25496

Now, the reference there to relevant, in that sentence to "relevant award workers" picks up, I assume, what you refer to in chapter 2 of your report, is called "Industry Awards and Penalty Rates" and you there refer to and provide an

overview of the relevant awards?---That's correct. That also answers that line of inquiry in relation to the evidence from the literature in chapter 3, about the workplace composition, which you referred to earlier.

PN25497

Yes. So the relevant award workers are those employed under awards in the retail industry, the hospitality industry, the fast food industry, the restaurant's industry and the pharmacy industry?---Yes.

PN25498

All right, thank you. If I could ask you to look at the engagement letter, which is PG1, attachment to that, 20 August 2014?

PN25499

JUSTICE ROSS: Can I just interrupt you for a moment, Mr Moore? Can I put something to Mr Dixon and Mr Gotting. You recall the discussion in relation to the interim Productivity Commission report and the debate about when it might be released and the exchange about if you applied the required number of sitting days, that that expired in May and some scepticism about whether it would be available before then. For what it's worth, there's at least talk that it will be released next week.

PN25500

Now, that may change your, if it's accurate and I've got no particular way of knowing that, then that may change your view in relation to whether you want to rely on the interim report or the final report. And it would also affect issues of objection and the timing of submissions in relation to that. So if that does occur, I'd ask you to confer with both your employer colleagues and the other side and let us know what your position is, but also perhaps reframe the draft timeframe, so that we don't need to bring you back just for that purpose. And you can take it that we'll be content with whatever timeframe the parties settle on, on what they want to say about reliance on it and also on the objection process and the resolution of it.

PN25501

I just don't want us to be caught unawares, if it does happen.

PN25502

MR DIXON: We appreciate that and we'll respond as promptly as we can, your Honour.

PN25503

JUSTICE ROSS: Thanks, Mr Dixon.

PN25504

MR DIXON: I apologise to my learned friend for interrupting him. THANK YOU.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25505

MR MOORE: No, I thought it might have arisen at a more convenient time.

PN25506

MR DIXON: Indeed.

PN25507

MR MOORE: Now, going to the engagement letter, have you got that there?---I do, yes.

PN25508

Page 5. And page 5 appears within stage 3 "Survey Development, Implementation and Data Analysis" which appears at the bottom of page 4. And there's a table (i) "Domains and Data Items for the Survey". And you'll see that the first domain is identified as "Participant characteristics" and there's a dot point, "Working status during a weekend". And then it says "Employee Group Working on Sundays or other Atypical Hours". And then "Industry Sector, Retail or Hospitality" and then another dot point "Consumer Group Not Working on Weekends". So the employee group, what's referred to there as the employee group, that is what you ultimately refer to in the report as "The Weekend Workers' Survey"?---That's correct. So we asked a screening question which was "Do you work on weekends?"

PN25509

Yes?---Those that said "Yes" were put into the weekend workers' group and the ones that did not work weekends were put into the second group.

PN25510

And what's referred to at this time, of the engagement as the employee group and which ultimately is referred to as the weekend worker survey, concerned those employees who worked at the relevant times, that is weekends, in the industry sector, then identified as retail or hospitality?---I am not sure that we ended up doing the retail or hospital segmentation. Let me check the survey.

PN25511

I think the - I think to assist you, Ms Pezzullo, ultimately there was some expansion beyond retail and hospitality to include pharmacy and fast food and- - - ?---That's correct, yes.

PN25512

- - -cafes and so on?---Yes.

PN25513

But the point of my question is just to identify that the survey identified in the proposal - sorry, the engagement as the "Employee Group Survey" and which ultimately is referred to as the "Weekend Worker Survey" are workers who - was intended to be workers in the retail or hospitality industry?---Again, there is a lot of change that occurs between a scoping exercise, which clearly has options in it still, and what one eventually decides to put into a survey. So if there was a decision on that and on many other factors, then we would be making those alterations as we developed the survey tool itself and agree the survey tool.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25514

But the- -?---In its final form.

PN25515

I'm sorry. Yes, if you turn the page to page 6 of the engagement?---Engagement letter, yes.

PN25516

The first main paragraph states:

PN25517

*The survey would be fielded by Galaxy Research.*

PN25518

Now, pausing there, it wasn't Galaxy Research who ended up doing it?---No.

PN25519

It was some other entity?---We got a cheaper quote, yes.

PN25520

You got a better quote.

PN25521

*The survey would be fielded by Galaxy Research using their validated online techniques. Notably, Galaxy has an established data base of survey respondents whom we could sample in a manner that ensures adequate sample size, demographic and geographic representativeness across the target population (consumers and employees in the relevant industries) and quick turnaround of results in a cost-effective manner.*

PN25522

So the consumers, the reference there in the brackets to consumers being one part of the target population, ultimately ended up being the non-weekend workers?---That's correct.

PN25523

Yes?---The idea was to sample the views of consumers, but we did put 500 weekend workers into the consumer group as well.

PN25524

Yes, yes. And the target population for the other survey were employees in the relevant industries?---Exactly.

PN25525

All right. And those relevant industries were initially conceived of as retail and hospitality, but that subsequently expanded to include those industries and awards to which you refer to in chapter 2 of your report?---Yes. And there was also the other category, which was quite substantial.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25526

Now, I want to ask you about the Weekend Worker Survey. Even though it was workers - even though the target population in relation to the Weekend Worker Survey were employees in the industries of retail, fast food, hospitality, restaurants, pharmacy, as set out in chapter 2, the survey was not though drawn from a population which reflected - was not though drawn from a population comprised of workers in those industries, was it?---It was all weekend workers and those industries represented, as you can see from chart 4 on page 44.

PN25527

Well, thank you. The population from which the Weekend Worker Survey was drawn, in practical terms, was a large online population of 282,000 people? That's right?---That's correct, yes.

PN25528

Right. So the point I'm just wanting to confirm with you is the population from which the 1,000 survey respondents in the weekend survey was drawn, it was not drawn from a population comprised of workers in the target population. You accept that?---That's correct, you have to find - you have to identify your target population first.

PN25529

Now it is, as you point out on page 44, there's a graph - chart 4.2, it is correct that only about a third of the 1,000 respondents in the Weekend Worker Survey were collectively from the target population. That's correct?---Well, they were all weekend workers and we had to include those industries which we did, so we were quite happy with the results.

PN25530

You've agreed that the target population were workers in the identified industries, Ms Pezzullo?---They were weekend workers, in total.

PN25531

No, you have given evidence, Ms Pezzullo, that the target population, let me be clear, were workers in the industries, hotels, cafes, fast food, retail and pharmacy. You've accepted that in your evidence before, that that was the target population, people performing weekend work in those industries. And it is the case, isn't it, that those respondents to that survey, were overwhelmingly not from the target population?---Your Honour, I'll need to correct my evidence in that case because the target population was weekend workers, which comprised representatives from those industries, which is what we've ended up with in the sample.

PN25532

There's a thousand people, respondents to this Weekend Worker Survey, so it makes the arithmetic in relation to chart 4.2 on page 44, relatively simple for my non-arithmetic mind. But am I right in understanding that what that chart tell us is that in the survey sample of a thousand weekend workers, 14 people were from the pharmacy industry?---That's correct.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25533

All right. 230 were from the retail?---Yes.

PN25534

20 from fast food?---Yes.

PN25535

50 from cafes?---That's correct.

PN25536

And 43 from hotels?---That's right.

PN25537

Right, thank you?---And a thousand were from - were weekend workers.

PN25538

And the remaining - so that's a total of 357 workers - the remainder were - all we know about them, if we look at the survey questions which is at the end of your report, there were - turn to page 67, please. Question 1 is about selecting age, and then 2 gender, 3 state, living situation in 4, and then 5:

PN25539

*Are you currently employed doing paid work?*

PN25540

If a person ticked not employed in seeking a job they were in practical terms taken out of this, the weekend worker survey; that's right?---Yes, that's correct, because they wouldn't be working weekends if they weren't working at all.

PN25541

And likewise if they ticked not employed and not seeking a job they were also diverted out of the weekend worker survey?---That's correct. It's not actually the weekend worker survey it's the survey tool of which we stratify to the weekend worker group and the other group.

PN25542

I understand. Thank you. Then in question 6 if a person selected the second option that they work week days only they were also taken out of that part of the survey - - -?---Exactly.

PN25543

- - - directed at the weekend workers as you describe in your report?---That's correct.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25544

And then question 7 asks the respondents to identify which industry in which you work the most weekend hours. Having regard to those seven questions - before I go on I should say thereafter the survey questions are directed at eliciting preferences and frequency of work and so on and so forth. Do you agree with this; looking at those first seven questions all we know about the 64 per cent of survey respondents in the weekend worker survey that you refer to in your report

is that they are or they were employed and that they either work on weekends only or both week days and weekends, and the industry in which they work is not pharmacy, retail, fast food, cafes and restaurants, hotels and accommodation?---It's the industry in which they work most weekend hours.

PN25545

Yes. Thank you for that last clarification, but subject to that clarification do you agree with the proposition I just put to you?---Some people work in more than one industry on weekends, so it's important to have that clarifying question that they would be a relatively small group I would imagine who work in two industries on weekends.

PN25546

I understand the point you make, and subject to that clarification do you agree with the proposition I just put to you before?---Yes.

PN25547

Thank you.

PN25548

JUSTICE ROSS: Mr Moore, we need to take a short break for five minutes. Can I just ask, you see the question 7 that asks you to identify the industry cafes and restaurants, this is on page 68, then when you go to the chart 4.2 on page 44 it says cafes, but I am assuming that's a reference - the 5 per cent there - - -?---It's cafes and restaurants. It's been truncated in the Excel spreadsheet.

PN25549

And restaurants. Yes, that's fine. Do you have any idea how long you are going to be?

PN25550

MR MOORE: Ten minutes.

PN25551

JUSTICE ROSS: I thought you were going to say shorter than this morning. Any idea on re-examination? It's just some of the Bench members have a Full Bench commitment that we just need to sort out.

PN25552

MR SECK: Probably just two questions at the moment, your Honour.

PN25553

JUSTICE ROSS: All right.

PN25554

MR MOORE: I think my friend Mr Dowling has some questions.

PN25555

MR DOWLING: Yes, I do, your Honour. I anticipate somewhere between 20 and 30 minutes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25556

JUSTICE ROSS: All right. We will just take a five minute break.

<THE WITNESS WITHDREW [4.01 PM]

SHORT ADJOURNMENT [4.01 PM]

RESUMED [4.10 PM]

<MARGARET LYNNE PEZZULLO, RECALLED ON FORMER OATH [4.10 PM]

CROSS-EXAMINATION BY MR MOORE [4.10 PM]

PN25557

JUSTICE ROSS: Yes, Mr Moore.

PN25558

MR MOORE: Thank you, your Honour. (To witness) Just to finish a couple of questions to do with the weekend worker survey - - -

PN25559

JUSTICE ROSS: You are still on your former oath.

PN25560

MR MOORE: Ms Pezzullo, I just want to ask you a couple of last questions about this weekend worker survey. The simple fact is that in terms of the survey questions asked a reader of your report has no idea of the industry or occupation in which 64 per cent of the survey respondents are said to work; that's right?---They have an understanding of the occupation.

PN25561

Do they?---Whether they're full-time, part-time, what their age is, what their gender distribution is, their living situation, et cetera, and the stratification of that group.

PN25562

The reader of the report has no idea what industry 64 per cent of the respondents work in; that's right?---That's correct.

PN25563

And they have no idea what their occupation of those 64 per cent of people are. Do you accept that?---That's correct, yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25564

Thank you. I take it that given the way in which the survey was designed you didn't take any steps to ensure that the weekend worker survey was representative of the views of weekend workers in the services sector which you were attempting to target?---So I have clarified we were attempting to target the population of weekend workers and we were attempting to include workers in that group who

are in the services sector. So that was our target population, and we have achieved that target population.

PN25565

Your target population was indeed weekend workers in the target industries of hotels, cafes, fast food, retail and pharmacy. That's what you committed to do to your client The Guild; that's right, isn't it?---We were to include those groups within our weekend worker sample, yes, and to ensure that they were represented.

PN25566

And you didn't take any steps to ensure that the weekend worker survey was representative of employees in those industries, did you?---Well it's representative because of the sample size.

PN25567

JUSTICE ROSS: You mean representative in the sense that it extrapolates the broad population?

PN25568

MR MOORE: Yes.

PN25569

JUSTICE ROSS: So in a statistical sense?

PN25570

MR MOORE: Yes.

PN25571

JUSTICE ROSS: Perhaps that might be (indistinct).

PN25572

MR MOORE: Thank you, your Honour. (To witness) You didn't take any steps to ensure that the results of the weekend worker survey were statistically representative of a target population of workers in the identified industries, did you?---Again I have to object to the use of the word "target population" in relation to the specific industries, because our target population was weekend workers that included those working in those sectors. So as a target population of weekend workers, including workers in those sectors it was representative.

PN25573

The objection to which to take is an objection to your own engagement with the client, which as I have taken you to and as you agreed earlier in your evidence today on page 6 of the engagement letter the target population was consumers, and putting consumers to one side, employees in the identified industries. Do you accept that?---I can't see that now on page 6.

PN25574

It's the letter of 20 August 2014, which is PG1, Attachment 1 to that on page 6?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25575

And the first whole paragraph?---

PN25576

*That ensures adequate sample size, demographic and geographic representatives across the target population which is both consumers and employees in the relevant industries and quick turnaround of results.*

PN25577

So that's again in line with what I've just said, consumers - - -

PN25578

Do you want to change your evidence from earlier today, do you, as to - - -?---I did clarify my evidence earlier saying that's the group that we were looking at, and that's the group we surveyed.

PN25579

One last question on this; I take it in light of the evidence you have given and how you say the weekend worker survey was designed you don't say to the Commission that the weekend worker survey can be treated as being statistically representative of the views of employees in the industries of hotels, cafes, fast food, retail and pharmacy?---Well in fact wherever the sample size is greater than 20 it is, but the intent was to make it statistically representative in relation to weekend workers, not every sub-segments, which is what we've specified as well.

PN25580

I take it you're agreeing to the proposition I put to you?---With a caveat.

PN25581

With a caveat you're agreeing to the proposition that you're not saying to the Commission that this survey is representative of the broader population of workers in those industries. That's not what you attempted to do?---There was one case where there were 14, a sample size of 14, it would not be representative in that case. It would be in the other cases. But the intent is not to do segmentation analysis, which is to look at the representativeness of every segment, but simply to look at the representativeness as a whole.

PN25582

As my last question on this topic I want to put squarely to you that the weekend worker survey to which you refer to in your report cannot be treated as being representative of the broader population of workers in any or all of the sectors of hotels, cafes, fast food, retail and pharmacy?---I reject that. We didn't do any segment analysis, and our overall analysis is quite representative.

PN25583

Could I ask you to turn to page 69 of the report, thank you; in fact page 68, and the question there identified at question 9 is:

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25584

*What other reasons you don't like working on weekends?*

PN25585

You see that?---Yes.

PN25586

To take Sundays as an illustration in terms of the fields by which a respondent could answer the respondents were invited to tick 1, 2 or 3 or does not apply to you in relation to each of the identified fields on the left?---That's correct, yes.

PN25587

Do you agree that in the face of the question posed, which is:

PN25588

*What other reasons you don't like working on weekends?*

PN25589

The reason of none of the above, which last appears, may reasonably invite a response, that is for someone to tick it as being applicable to them if there were other reasons why the person did not like working on Sundays?---If they were in 1, 2 or 3.

PN25590

Yes. You agree with that?---But not if they were in doesn't apply to you.

PN25591

Perhaps if I come at it another way. If a person didn't like working on weekends for reasons which were not related to religious observance or socialising or spending time with family or friends or with responsibilities or activities outside of work, it's hard to maintain work life balance, let's say that they thought they didn't like working Sundays because in their mind it was a day of rest, it's a day they like to sit in bed and do nothing all day and they didn't see that as being an explanation which fell within any of the other categories, do you accept that it would be quite rational or reasonable for a person to check the box "None of the above" and even number 3 if they had strong feelings in that regard?---If they had strong feelings they would check number 3, that's correct.

PN25592

And they would check number 3 if they had strong feelings, if they don't like working on Sundays for reasons which did not fall within the first four fields. They could reasonably do that?---That's correct, yes.

PN25593

All right. Thank you. You deal with - you analyse or consider those results to that question on pages 47 and 48?---Yes, particularly chart 4.5 is relevant and we can see that people who - - -

PN25594

I will ask you a question in a moment, Ms Pezzullo. If I could direct you to the top of page 48 and you state:

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25595

*Overall this paints a picture of a large percentage of weekend workers, 44 per cent of the total in the case of Saturdays and 43 per cent for Sundays untroubled by weekend work, even when specifically prompted to list their difficulties with their work schedules.*

PN25596

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

PN25597

Again for the purposes of this questioning let's focus on Sundays. The percentage of 43 per cent you have derived that by adding together the percentages which appear in table 4.3 in respect of Sundays; that's correct?---That's correct, yes.

PN25598

So you've added together those who have identified, the 29 per cent who have said, "I have no real problem working on the weekend"?---Yes.

PN25599

Plus the 14 per cent who have said "None of the above reasons apply to me". That's what you have done?---That's correct, and there is a reason for that.

PN25600

Can I suggest to you that in light of the evidence you have just given about question 9 and how a person might reasonably or rationally complete question 9 the inclusion of the category of those who indicated "None of the above reasons apply to me" was erroneous, because those persons could reasonably include people who in fact were highly troubled by weekend work just for reasons other than those set out in question 9. Do you accept that?---No, I don't because there were no such people. If you look at the chart 4.5 you can see that all of those who selected none of the above also ticked "Not applicable". So there were none in minor, quite or very, and the same is true for Saturday.

PN25601

In relation to Sundays there are 13.7 per cent of people ticked the box saying "None of the above reasons apply to me"; that's right?---That's correct, and all of them ticked the box "Not applicable". So if you look at chart 4.5 in the very top bar, the 13.7 - - -

PN25602

Yes?---There is no blue bar, light blue, dark blue or dark green. So if they ticked "None of the above" they also selected "Not applicable" in both the Saturday and Sunday cases.

PN25603

JUSTICE ROSS: So they didn't tick 1, 2 or 3?---Exactly. Even though it was possible that they could have had a different issue.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25604

MR MOORE: I see. So those who checked - perhaps just catching up on the president's understanding - none of the above also checked "Does not apply to you"?---Exactly.

PN25605

Thank you?---So we can be again quite confident in that finding.

PN25606

Chart 4.6 on page 50, to aid an understanding of this can I ask you if this is a correct understanding; that taking the descriptor "recreation and leisure" weekend workers as compared to non-weekend workers spent on average 0.8 hours less on recreation and leisure on Sundays. Is that right?---Yes.

PN25607

And as well as that on average they spent less than 0.8 hours less than non-weekend workers on recreation and leisure on Saturdays?---Yes, that's correct.

PN25608

Additionally, 0.6 less hours on recreation and leisure on weekdays than non-weekend work?---Yes.

PN25609

In total then looking at recreation and leisure, weekend workers across the week spent 2.2 hours less than non-weekend workers on recreation and leisure?---Yes. I couldn't say that across the whole sample because there may be compositional issues but - - -

PN25610

But generally - - -?---It might be around that number, yes.

PN25611

So if one looks through chart 4.6 and for - I'll put to one side if I may the attending church or other religious observers. Putting that to one side and putting to one side purchasing goods and services, it would be - if one wanted to understand the - if one wanted to obtain a picture across the week of the differences across activities and time spent on activities between weekend and non-weekend workers, one could add up all of the bars on the - that are depicted in that chart. I'm expressing that rather inelegantly but as I calculate it, as I put to you before, with recreation and leisure there's a total of 2.2 hours across the week that weekend workers spend less than non-weekend workers on recreation and leisure. That's right?---There are compositional effects so it's not quite as simple as adding them all up.

PN25612

But in accepting that there may be detailed compositional issues, one can broadly speaking, add these amounts up?---No, suppose somebody ticked the box on recreation and leisure but didn't tick the other boxes for example.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25613

Yes?---Then the overall average would be changed.

PN25614

Yes, I see. So it will be the statistical analysis?---Yes.

PN25615

If I take child care, the graph is there recording that across the week weekend workers spend 1.3 hours less than non-weekend workers on child care, that's right?---Yes.

PN25616

Likewise - - -?---Approximately again.

PN25617

I'm sorry?---Approximately again because there may be compositional issues.

PN25618

In relation to domestic activities, the total number is 0.5 hours?---Yes, and the range could be between .1 and .5.

PN25619

Education 0.1, personal care the total approximately is 0.8?---Yes, range between .2 and .8.

PN25620

So as an approximation if one looks across all of those activities aside from church attendance and purchasing goods and services, as I calculate it approximately, depending upon of course the personal circumstances of the workers concerned. That is if they have for example children or if they don't have children, weekend workers spend about 4.9 hours less in total than non-weekend workers across all of these activities?---That's the maximum.

PN25621

Yes. That's a reasonable approximation of them, it's a reasonable approximation?---Of the maximum, yes.

PN25622

That is a significant matter you would agree?---They're spending 4.9 hours per week on something else, up to 4.9 hours per week on something else, which is different from the weekday workers.

PN25623

Then it didn't seem to me that - I couldn't see in your report where you had identified that aggregation as it were, that in relation to all activities weekend worker could spend just about five hours less a week than weekend workers across all these activities?---We didn't ask any further questions in relation to the alternative ways they might spend their time, and as did I mentioned 4.9 would be a maximum. There are 168 hours in a week so.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25624

When it comes to social activities which you deal with in 4.7, the big one there so to speak is - well, if one looks at family and household including partners, if one

wants to get a week, a picture of the course of a week one can add up the three graphs there, that's right?---The three bars of the final - - -

PN25625

Yes?---Again, the .97 would be - sorry, the .81 would be - .8 would be the minimum, I have to put my glasses up for that one. But yes, the maximum would be just below 3.

PN25626

That's right. I think on my sums it's about 2.6?---2.6, 2.7.

PN25627

The position is this, if one adds together the totals generated through chart 4.6 that I've taken you through and 4.7 in relation to family and household, the position is that weekend workers could spend up to seven and a half hours less a week on average than non-weekend workers on social activities relating to family and household and in relation to social activities in chart 4.6?---Again, they're not additive so I can't confirm that. The social activities people could have answered as a subset of recreation and leisure, for example. They're different questions.

PN25628

I understand they're different questions and I'm not suggesting to you it can be as distilled to a precise and absolute number but as a reasonable approximation, the conclusions, the data that you've identified in these two charts would make it reasonable to say that weekend workers could spend up to about seven and a half hours less than non-weekend workers over the week on social activities and social activities with family, than non-weekend workers. Do you accept that?---I think it's a possibility but again it's very unlikely for the reasons I've mentioned. Now we're getting a lot of additive effects starting to aggregate on top of each other. One question could have been answered as a subset of the other and there would be too many complications to be able to draw that conclusion in my view.

PN25629

There is no suggestion in your report that insofar as weekend workers spend less time on any of the activities identified in charts 4.6 and 4.7 that they make up that time at other points in the week?---We have talked a little bit about that in the preamble, so on page - yes, the section starting 4.5 on page 49. So it concluded;

PN25630

*The data suggested on average weekend workers spent less time on recreation and leisure, child care and personal care compared to non-weekend workers and also during the work week. However, on average differences were less than an hour and interestingly the weekend workers report spending more time attending church, religious activities et cetera.*

PN25631

And there were also some other interesting observations that we made through the reports about the time use patterns.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25632

Then just to - I want to direct your attention to page 52 of the report. You say there, beginning at the bottom of 51, that;

PN25633

*Even if we view weekend work as substituting for weekday work, we would not expect to see weekend work associated with reductions in weekday activity, such as the 0.6 hours per weekdays less which weekend workers reported spending socialising, because caused by weekend work.*

PN25634

And then you go on to say:

PN25635

*Rather, weekend and non-weekend workers likely spend their time differently, including the times they are not working because, on average, they are drawn from different groups with different demographic characteristics, family structures and different priorities. Since weekend workers appear to differ systematically from non-weekend workers in ways which go beyond the demographic measures obtained, it is not weekend work which causes weekend workers to spend less time sleeping on weekdays, it would be erroneous to attribute observed differences in their use of time, solely to weekend work.*

PN25636

I just want to ask you two questions about that. You accept though, that your own survey shows that reductions in time spent on social and family activities for those working on weekends is closely associated with the fact that they work on weekends?---It may not be. It may be the fact that 22 per cent of them are students, for example, so they don't spend time with their families if they're students. They tend to go out and do other things.

PN25637

You say that, and you go on to deal with the AWALI paper in the following paragraph and you make the point and your evidence is that you reject the proposition, if I may paraphrase, that there's any causation between weekend work and work-life interference. That's right?---We acknowledge that there are many factors that contribute to work-life interference and that clearly, working on weekends is not causing all of it.

PN25638

You accept that it may well be causing some of it?---It may be causing some of it and it may not be. It's not clear.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25639

And you would accept that it may be causing some of it because it's clear that there's a correlation or an association between reductions in time spent on social and other activities by weekend workers with the fact that they work on weekends?---Well, they also reduce their time on social, or they have less time on social activities during weekdays, so in that case, I'd have to reject your hypothesis. Because if it was weekend work that was interfering with social

activities, they would be - you would expect to see similarity in relation to the weekday activity.

PN25640

Your thesis, if I can call it that, that different demographic characteristics, family structures and different priorities, explain these differences, that thesis is not supported in any of the academic literature or evidence to which you refer in your report, is it?---It is. So I have cited the Work-Life Balance Reality Check report, which lists a number of other facts that would- - -

PN25641

I'm sorry, which report are you saying supports your analysis that the cause of - that work-life interference and less time spent on social and related activities by weekend workers is not caused by weekend work but actually a result of the different demographic profile, if I can say that? What learning or analysis supports that view?---Well certainly the survey results support that view, as we can see from the charts.

PN25642

All right well, Ms Pezzullo, I'm not asking you to elevate the survey results to academic learnings- - -?---And the second- - -

PN25643

- - -but what are - can you direct the Commission to any research or learnings that support the hypothesis you advance, on page 52, that it's because of differences in demographic characteristics and family structures and different priorities that explains the different experiences of weekend and non-weekend workers?---Yes, so we have referenced reality check work-life balance and provided a web link to that evidence and then cited the different characteristics.

PN25644

Can you direct me to where you are looking at in your report?---Yes, I'm trying to find it.

PN25645

Is the work to which you are trying to find, Ms Pezzullo, on page 36? I'm not suggesting, wanting to lead you that it is, I'm just endeavouring to assist you?---Thank you, yes.

PN25646

*The risk factors for work-life conflict included having young or many children. People with young or many children have both more stress and are more likely to work atypical hours"*

PN25647

And there are other potential confounding factors that we provide in our reply evidence.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR MOORE

PN25648

I'm sorry, you're reading the paragraph which starts "Risk factors for work-life conflict" on page 36. Is that right?---That's correct, but there's a more fulsome explanation of that particular reference in the reply evidence, if you want to look at the more fulsome response.

PN25649

The only reference in that paragraph is the footnote, that I see, which is "Women's' Forum Australia, Reality Check". Is that the paper to which you refer?---That's correct, yes.

PN25650

I see?---And then- - -

PN25651

All right, that's what you refer, that's what you say supports your thesis?---That's one piece of evidence, yes. But it's also almost self-evident that work-life conflicts is caused by a multiplicity of factors and that stratified populations that have different demographic samples can have compositional factors. So again, it goes back to the charts themselves, which show that the hours that are spent on different activities are systematically different for the weekend workers from the non-weekend workers.

PN25652

Thank you, Ms Pezzullo. Nothing further, your Honour. Well, there may be something further next week, but today.

PN25653

JUSTICE ROSS: Mr Dowling?

**CROSS-EXAMINATION BY MR DOWLING**

**[4.44 PM]**

PN25654

MR DOWLING: Ms Pezzullo, my name is Craig Dowling and I represent United Voice?---Okay.

PN25655

Do you still have before you, or perhaps you can get in front of you, the Weekend Report which was marked PG74, together with the reply evidence to union opinions, which was marked PG36?---Yes.

PN25656

Do you have those two documents?---I do, I'll just move some of the other ones.

PN25657

There are only three documents that I'll take you to. Those two and a third one which I'll hand to you now?---Thank you.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR DOWLING

PN25658

The witness has just been handed the report by Dr Oliver, which is marked as Exhibit UB28. I don't need you to look at Dr Oliver's report immediately, but that's a report you've seen before?---I can't recall, I may have.

PN25659

I can tell you that, to jog your memory, it's a report to which you've replied in your reply to union evidence, so- - -?---Very good, thank you. I couldn't tell from the- - -

PN25660

- - -I assume from that that you've seen it?---Yes.

PN25661

All right, so they are the only three documents that I need to take you to and if you can put all the others to one side. You were asked some questions about the characteristics of the LiveTribe sample that the thousand weekend workers, I understand there was a thousand weekend workers and the 1,100 non-weekend workers?---Yes.

PN25662

I'm just focussing on the thousand weekend workers, and you were asked some questions about their characteristics, and I want to ask you some additional questions that largely pertain to what you've said in section 4.7 of your weekend report. But before I do that, can I just confirm that in your report, you have referred to, and I think made use of the HILDA Survey data, do you recall doing that?---That's correct, yes.

PN25663

All right, and you've also referred to and made use of ABS data, is that fair?---That's correct.

PN25664

All right, thank you. Now, can I ask you to turn to section 4.7? Well, perhaps before you do that, if you could turn to 4.1 of PG34, the Weekend Report, and just to be different, I'm going to refer to the small numbers because some of the large numbers in my report are missing. So that's on page 23 of that report and it's headed at the top of the page "4.2 Sample Demographics". Do you see that?---Yes.

PN25665

I think from what I understand in reading your report you accept that your population, the larger population of 1000 weekend workers had significantly more older people than then LiveTribe population. Is that a fair characterisation?---Yes.

PN25666

I think in your reply report and I'll take you to it if it doesn't jog your memory, your evidence is that the mean age of weekend workers in your population was 45.2?---I believe it was. Sorry, I'm getting a little tired.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR DOWLING

PN25667

To be fair to you, have a look at PG36 and if you go to page 9?---I'm sorry, what is PG36?

PN25668

PG36 is the reply report?---Evidence, yes.

PN25669

The second of the documents you have there. If you go to page 9 and you'll see there's a dot point at the bottom of the page and immediately above that there's an indented dot point and you say there;

PN25670

*As the mean age of the LiveTribe population is 45.2.*

PN25671

?---Yes, 45.2.

PN25672

I think you accept or you say if you return back to the Weekend Report this time on page 26, you refer there to the first paragraph below chart 4.3 to the HILDA data and the mean age of those weekend workers as being 30.8. So the HILDA data was 30.8 mean and your mean was 45.2?---Yes.

PN25673

Can I deal then with the bottom age group. If you turn to page 23 and table 4.1, you have there broken down the respondents by age demographics amongst other things and if we look at 16 to 17 and 18 to 21 combined there were 35 of the weekend workers, 1000 population, and 35 of them were 21 or below. Is that right?---Were 21 or below, that's correct.

PN25674

So we can immediately translate that into we've got 1000 to 3.5 per cent?---That's correct, yes.

PN25675

If I can ask you to have a look at Dr Borland's report and if I can ask you first to go to appendix E of that report which appears on page 54 of that report. Not right at the back but towards the back. You'll see there appendix E comparison of sample characteristics. Do you have that?---Mm-hm.

PN25676

He's dealing with slightly different age categories but if we combine his 15 to 19 and 20 to 24, that comes to on my maths 53.5. Do you see that?---That's correct, yes.

PN25677

I appreciate I'm comparing under 22 with 24 and under but your sample was 3.5 per cent in that category and on the HILDA data for accommodation and food services it's 53.5 per cent?---Yes, it does vary across sectors.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR DOWLING

PN25678

You'd certainly accept that your sample is not representative in terms of age of the accommodation and food services employees, I take it?---No, it's representative of the people that worked weekend hours across any of the industries.

PN25679

Yes, I'm not asking what is representative of. I'm asking what it's not representative of?---Yes.

PN25680

You'd accept that it is not representative of a spread on age of employees within the accommodation and food services

PN25681

Industry group?---That's correct, which is why we took special care to look at the younger workers as a separate segment of the under 35s.

PN25682

Just to complete that picture and out of fairness because I referred to ABS data also a moment ago, if you turn back to Dr Oliver's report to page 49, and that is appendix B and is there setting out personal employment characteristics of the hospitality industry ANZIC division in respect of ABS data, and again if you go to age in the left-hand column, dealing with 15 to 19 and 20 to 24 on my maths those two figures come to 47.1 per cent. So again your sample was certainly not consistent for this group of workers with the ABS data. Do you accept that?---That's correct. There are a large group of 22 to 35 year olds however in our sample. You've got 20 to 24, so you can't directly compare them.

PN25683

No, you can't. Is there a reason that you grouped 22 to 35?---We were interested in the school age 16 to 17 and the 18 to 21s as university students and the post university to see if there was an education influence. The response rates I am speculating may have been influenced by the fielding period, which was in late November, may have been caused under sampling of students because they might have been doing exams.

PN25684

I'm not asking you about response rates. I'm asking you why in particular you grouped 22 to 35. I'm not asking you why you grouped 18 to 21 but that large group of 22 to 35, why you didn't break that up further. Is there a reason for that?---No, exactly as I said. We were looking at the people that were post university in one category but still young.

PN25685

And you considered anything above 21 would be post university?---22 to 35 we considered to be starting to move into more independent living, yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR DOWLING

PN25686

While you've got Dr Oliver's report, can I ask you also to keep it there and to turn to page 24 of your report, which is the continuation of table 4.1 as I understand it?---Yes.

PN25687

The last category that you set out prior to chart 4.1 is employment status?---That's correct.

PN25688

Part-time, full-time and casual, and casual employees of your weekend workers was 21.3. Do you see that?---Yes.

PN25689

Again, we can turn that into a percentage easily and it represents 21.3 per cent of your workers, yes?---That's correct.

PN25690

If you turn back to appendix E of Dr Oliver, and he is there looking at the HILDA data and he also deals with employment status and you'll see in the third column from the left beside casual, the percentage of casual, there is 70.2 per cent. Do you see that?---Yes, casual work is much more common in the accommodation and food services sector.

PN25691

So you'd accept that your sample in terms of employment status is certainly not consistent with the spread of employment type in the accommodation and food and services ANZIC category?---That's correct. They're different samples.

PN25692

Just for completeness, if you can turn to page 37 of Dr Oliver's report because in dealing with employment status he identifies not only the percentage of casuals in accommodation and food services but the percentage of casuals who usually work on Saturday or Sunday. You'll see there that that's 73.6 per cent. So again it's a long way from your sample of 21.3 per cent. You accept that?---So approximately three-quarters of HILDA respondents who usually work weekends are employed on a casual basis. Is that the point you're referring to?

PN25693

Yes?---Paragraph 119?

PN25694

That's right. Sorry, the table itself, table 18 on page 37, the table reflects what Dr Oliver said in paragraph 119. You will see there in the third column from the left:

PN25695

*Usually works either Saturday and/or Sunday.*

PN25696

And beside a line employed on a casual basis that's 73.6 per cent. Do you see that?---That's correct, yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR DOWLING

PN25697

You accept your sample doesn't reflect that level, doesn't reflect employment status in the accommodation and food services HILDA sample?---That's why we also did a separate segment analysis of casual workers as well as of young workers.

PN25698

All right?---Which again is a typical response when there is a sample population which is different from, substantially different from for example the HILDA population data.

PN25699

Can I ask you about two things then; if you go back to the reply report, which is PG36, and if you go to page 9 of that report you will see there - I took you to the second last indented dot point I think - if you then go to the last dot point and the second last sentence of that last dot point:

PN25700

*As such the sampling was designed to reflect the view of the Australian working age and older population on weekend work, time, use and access to service.*

PN25701

Now, I just want to be clear. You have not set out anywhere in the report that I have read how it is that the LiveTribe sample was designed to reflect the Australian working age. Is that a fair statement?---The 1100 people who are recruited from that population were representative of the Australian population. They were under-represented in the oldest old category.

PN25702

That's not the question I am asking you. You say that the sample was designed to reflect the Australian working age. Have you set out anywhere how it is that the LiveTribe sample was designed to reflect the Australian working age?---Well we've presented the demographics of the 1100 people and they are roughly approximated to the Australian working age population, so they're 16 - 16 plus people and they are actually slightly over-represented in employment.

PN25703

In your grouping of under 22 there are 3.5 per cent of your population is under 22. Is it your - - -?---That's only of the weekend workers, not as a whole sample.

PN25704

Yes. Let's concentrate on the weekend workers, because I take it your statement that the sampling was designed to reflect the view of the Australian working age applies equally in respect of your 1000 sample of weekend workers and your 1100 sample of non-weekend workers. Is that a fair statement?---No, it's over in relation to the consumer questions that that is to represent the questions the population stratification should be representative of the working age population.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR DOWLING

PN25705

So should I understand from that that in respect of the 1000 weekend workers there was no effort to ensure that they properly reflected the Australian working age?---Well the LiveTribe sample we expected would give us a demographically consistent response. It's a very large sample as I mentioned. It was surprising to us that it did under-sample. We then speculated afterwards that it could have been because it was fielded during exam period and then made corrections by separately reporting the segment analysis for the young group and for the casual workers.

PN25706

I didn't ask you what you expected to find, you have said - - -?---Well that's about design.

PN25707

Sorry?---That answers your question in relation to design.

PN25708

The design is what you expected?---That's - no, the design is what we expected and then we - the design did not deliver what we expected and we looked at the reasons why and the reasons that the design may not have delivered what we expected potentially because it was fielded during school exam and university exam period.

PN25709

There are two parts to this question; whether there was a design and you say it didn't deliver on that design, but you haven't set out how it is that it was designed to reflect the Australian working age?---Because the LiveTribe population we would expect to be able to - for the 16 pluses you would expect for 282,000 people it would be reflective of the same demographics. It's a very large sample.

PN25710

That's not a design, that's just your expectation that the LiveTribe sample is going to represent the Australian working age?---If you sampled 24 million people you would expect the result to give you - - -

PN25711

I am not asking you what you expect, you positively stated that the sample was designed in a particular way, and I am just asking you can you explain how it was that it was designed in a particular way to reflect the Australian working age?---The random sampling method should have delivered that.

PN25712

Can I take you to page 25 of your weekend report, which is PG34, number 25 of the small numbers, and it's chart 4.2. Mr Moore took you here earlier and you there set out the breakdown of weekend workers by industry. Do you see that?---I'm still getting to it.

PN25713

Sorry?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR DOWLING

PN25714

And I think you have already confirmed that that shows us in respect of your weekend workers that 43 of them were employed in the hotel and accommodation industry?---That's correct.

PN25715

And 50 of them were employed in cafes and restaurants, 20 in fast food, et cetera, yes?---Yes.

PN25716

All right. Are you able to say whether given what you've said about what you recognised in respect of age whether there was in respect of your sample any weighting done to ensure that your sample was more properly reflective of the Australian working population on age and employment status, whether there were any weightings applied?---Because we didn't do any segment analysis it was not necessary to apply any weightings. We didn't look specifically at hotel workers or café workers for example.

PN25717

I said I would ask you some questions about 4.7 and I have been making my way there. If you can turn ahead to page 35 of the report and that part is 4.7, and page 36 sets out table 4.7 and at page 37 sets out table 4.8. Can I just take you to table 48 for the purposes of the question. You will see there in response to a question dealing with Saturdays whether the respondents to the survey thought they did more work or less work or about the same amount of work on a Saturday. 26.8 per cent of them said they did more work and 16.2 per cent of them said they did less work. Do you see that?---That's correct, yes.

PN25718

Have you set out anywhere in your report any statistical analysis that was done to determine whether for example that difference of 10 per cent was statistically significant?---No, but you can almost tell by looking at it that it is.

PN25719

So was any work done at all in respect of tables 4.7 and 4.8, any analyses done to determine whether the differences demonstrated were statistically significant?---Well we could provide the statistical significant, but I can see by looking at them that they are.

PN25720

I am not asking you whether you can tell by looking at them, I am asking you whether any analysis was done to demonstrate and to set out - - -?---I'm not sure if it was done or not, but it's quite obvious that it's different, significantly different.

PN25721

You don't know whether it was done is your answer, is that right?---I am not sure. It doesn't - it always doesn't need to be done when the differences are so enormous.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR DOWLING

PN25722

All right. You say that in respect of your Saturday workers, the difference between the 26.8 and the 16.2?---Yes.

PN25723

That 10 per cent you say is an enormous difference and you would not need to do any statistical analysis. Is that your evidence?---That's my supposition. I'd have to look at the data to confirm.

PN25724

All right. Can I ask you to turn back to the start of the section 4.7? You refer there to, in the very first paragraph, it appears under the heading "4.7" commencing the fourth line, you refer to:

PN25725

*The economic expert commissioned by the proponents of the status quo that served that labour would only ever be used in a fixed ratio.*

PN25726

Do you see that sentence?---So you're in section 4.7, the first paragraph?

PN25727

The first, yes, and commencing on the fourth line?---In relation to the restaurant industry, that one?

PN25728

Hm-mm?---Yes, got it.

PN25729

And in terms of the economic expert commissioned by the proponents of the status quo, I think you footnote Professor Mitchell and a report that he prepared in 2012. Do you see that?---That's correct, yes.

PN25730

Is it your understanding that the position of the union parties is that that was set out in Professor Mitchell's report?---We just said that it was ascribed to one economic expert.

PN25731

You understand now, I take it, that nothing Professor Mitchell has said has been relied upon by any of the union parties in this proceeding?---If that's what you tell me now, that's good to know.

PN25732

All right, you didn't know that?---No.

PN25733

All right. And do you understand that the union parties in this proceeding are not asserting that the labour would only ever be used in a fixed ratio of the size of the restaurant?---No, we were looking at the literature about those particular proponents, not ascribing it to any unions or other particular groupings.

PN25734

Well, you have said the economic expert commissioned by the proponents of the status quo. Who did you understand were the proponents of the status quo?---There was a group of literature which was status quo literature and that was one of those.

PN25735

Can you turn over the page to page 36? And you'll see there, towards the end of the second paragraph on that page, the sentence three lines from the bottom of that paragraph, you begin:

PN25736

*This ability is sufficient to demonstrate that the economic model suggested by the unions, that whenever a business is able to employ labour in a fixed ratio to the size of the business.*

PN25737

So were you attributing what it was that Professor Mitchell had to say as the economic model suggested by the union?---No, we aren't. My understanding is that unions had provided separate information in relation to fixed ratios. So for example- - -

PN25738

The evidence in this proceeding?---Yes.

PN25739

Is that your answer?---Not in this proceeding, just generally from the work, from the literature that we had looked at.

PN25740

All right?---And our understanding of the situation.

PN25741

But not in this proceeding?---Not in this proceeding.

PN25742

All right. Can I ask you to turn back to page 35 and that part of your report under the heading "4.7 Weekend Labour Demand"?---Yes.

PN25743

You'll see the first paragraph - sorry, the last paragraph on that page commences "The first relevant responses are in relation to weekend and week day opening hours". Do you see that?---Yes.

PN25744

And I take it that the comments you make here, and in the following paragraph, arise from question 14 that was asked of the respondents to the survey, which you will find at page 52, small number page 52 of your report? Do you have question 14?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR DOWLING

PN25745

And it says:

PN25746

*How many hours does your employer typically open on the following days?*

PN25747

?---That's correct.

PN25748

*Saturdays, Sundays and average weekday.*

PN25749

?---Yes.

PN25750

You don't set out in the report that I have seen, and please tell me if I'm wrong, how many respondents answered that question?---We don't always set out the answers to every question. No, I think we haven't tabled that particular one. But there are average reported weekday opening hours of 10.3 hours on the top of page 36.

PN25751

Yes?---So basically, it can be lower at 9.2, Sunday opening average is nine.

PN25752

Yes, these are the answers you've taken from - this is what you say, taken from question 14, I understand it. Is that right?---Yes.

PN25753

So you get 10.3 for a weekday, 9.2 for a Saturday and nine for a Sunday?---That's correct.

PN25754

And there's some similar, but not the same results when it's restricted to casuals?---That's correct.

PN25755

Can I just ask firstly, are they figures that were analysed to determine the statistical significance between those, the 10.3, the 9.2 and the nine?---I would have to check whether statistical significance was undertaken.

PN25756

It's certainly not set out in the report?---It's not set out in the report, no. It's not put into a tabular form for that particular piece of information.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR DOWLING

PN25757

All right. And certainly, in respect of the industries that are the subject of this proceeding, we know that two-thirds of those people that answered the survey are not employed in the industries that are the subject of this proceeding. We know

that, don't we?---We didn't do segment analysis, I'll keep repeating it. But we are very happy to provide, your Honour, the statistical significance in relation to those differences, should you wish them.

PN25758

Now, what it is you say, from those three figures, the 10.3, the 9.2 and the nine, is that penalty rates may be reducing profitable opening hours. Now, I suggest to you that from that information alone, you cannot reliably say at all, that penalty rates are reducing profitable opening hours on Saturday and Sundays?---Well something is reducing opening hours and we were saying it may be the case and we did have the evidence from the Pharmacy Industry Award report to suggest that was supported in that analysis as well.

PN25759

The highest you are able to put it is that it may be attributable to penalty rates?---It may be.

PN25760

All right. But if you were asked to provide an assessment of whether it is - those opening hours are attributable to penalty rates in the Accommodation and Food Services Industry category, I take it you'd not be prepared to make any assessment of what's causing it because your sample, in respect of that industry, is so small?---That's correct, we didn't do segment analysis in relation to specific industry sub-groups.

PN25761

Now, can I then ask you to turn to page 37 of your report?---I might just caveat my last answer, your Honour. Economic theory applies to everyone in that price elasticity functions in one particular segment of the community, it's likely to function in another.

PN25762

Now, dealing with page 37, can you see in the first two paragraphs under table 4.8, you set out what you describe as a hypothesis, and that is where the respondents have reported that there are more staff on the weekend but they still have more work to do. You say that that may indicate staffing increases are being suppressed by penalty rates?---That's correct, it may indicate that.

PN25763

It may. Your premise is that if there is more work, any more staff, that that means they are understaffed and that must be attributable to something and you say it may be penalty rates?---That's correct, because economic theory- - -

PN25764

And you accept it may be - sorry?---Economic theory suggests and the literature suggests there is a negative price elasticity of demand and our previous analysis in relation to pharmacy, showed that there was a relationship there.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR DOWLING

PN25765

All right. You accept though, of course, that it may be attributable to many other factors? Demand might be the most significant of them, you'd agree with me?---Well, demand would actually work in the opposite way. So if people were busier and they were working more hours than they are - demand is one factor and supply is one factor, but if people - you have to work at how it works in two different ways. So, for example, demand increases the - if the business owners, the proprietors opened their premises and kept the supply commensurate with the demand then they wouldn't be busier would they? They would just work more hours. If they're busier and they work more hours then supply has been reduced relative to the demand increase. So you can see that there is a supply impact occurring which helps to negate the demand increase.

PN25766

You're attributing busyness to demand effectively. I am suggesting to you that's just not reliable?---No, I'm suggesting that - - -

PN25767

Just what it is that these employees say - sorry, just let me finish the question. What it is that these employees say about their level of busyness is not an accurate indicator of demand, do you accept that?---No, it's an interaction of demand and supply, as I've just elucidated.

PN25768

Perhaps if we look at the sample from which you've drawn this conclusion. Perhaps if we deal with Sunday first. Am I correct in saying - if we go back to page 36 and the third paragraph on that page, you will see commencing the fourth line. "The numbers for Sunday show greater differences, 50 per cent of responding weekend workers said Sunday's were lower staffed, 38.8 per cent said the staffing was the same and 11.2 per cent reported higher staffing." So our base number to begin with is 668, relevantly answered this question in terms of staffing level on Sundays, is that right?---I'm trying to find the 668.

PN25769

My apologies. 668 appears in the fifth line of the third paragraph on page 36?---The fifth line of the third paragraph, N equals 668, thank you I've got it.

PN25770

So should we understand that in terms of those responding to the question about the level of staffing on a Sunday was in total 668 of the 1000 respondents, is that right?---That's correct, yes.

PN25771

We are, as part of this hypothesis, dealing with those that reported higher staffing levels. So that is 11.2 per cent of the 668 indicated higher staffing levels on a Sunday?---That's correct.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR DOWLING

PN25772

Then you go over the page to 37 and the second paragraph where you're dealing with this hypothesis, "Those who reported higher staffing levels on Saturdays and

Sundays also reported that they had higher workloads on weekends, 60.6 per cent, 61.8 per cent Saturday/Sunday". So we should understand from that that of the sample that said they had higher staffing levels on a Sunday, 61.8 per cent of those said they had higher workloads, is that right?---That's correct, yes.

PN25773

I will get you to correct my maths but the 11.2 per cent of the 668, which gives us those with an increase staff level, is 69?---I can't multiply 11.2 per cent by 668 but it sounds approximately correct, yes.

PN25774

You say so in the second line of the second paragraph on page 37?---Thank you.

PN25775

You see 94 and 69 respectively?---Yes.

PN25776

You are referring to the 11.2 per cent of the 668?---Yes, correct.

PN25777

Now of those 61.8 per cent of those also reported more work. I'm suggesting to you that 61.8 per cent of 69 is 42?---Yes.

PN25778

So of those that reported more staff on a Sunday and more work on a Sunday that was 42 out of 1000?---That's correct, yes.

PN25779

4.2 per cent of your sample?---That's correct, yes.

PN25780

That was in circumstances where there are 300-odd, 332 people who didn't answer this question at all?---That's correct.

PN25781

It's possible, I take it, that of the 332 that didn't answer it might have included all of those employed in the hotel and accommodation services sector?---It's possible.

PN25782

It might have included all of those employed in cafes and restaurants, there's only 50 of those?---It's possible but, again, it's not particularly relevant to the analysis that we were doing which was of the whole sample.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR DOWLING

PN25783

If we are looking at the café and restaurant sector, I know the evidence you've already given about the stratification. But if we are looking at that sector and we are trying to rely on your hypothesis and they answered in proportion to the sample we know that 5 per cent of the sample is the café and restaurant workers. So in terms of the 42 on which you based your hypothesis, 5 per cent of those are

in the café and restaurant sector?---It could be 5 per cent or it could be more or less.

PN25784

But I am assuming for the purposes of my question to you that they've answered in proportion to their proportion in the sample?---Well, that's your assumption.

PN25785

Well, if that is right, they answered in that proportion, there in fact two people from the café and restaurant sector out of your 1000 that reported more staffing more work?---If all of those assumptions are correct.

PN25786

Do you accept that care should be taken not to over-interpret results from much smaller groups than the 1000 person overall weekend worker sample?---My conclusion would be as follows, that the analysis was never intended to provide stratification by industry and therefore results and this line of questioning about industry specific analysis is really not relevant to the overall conclusions.

PN25787

I asked you a more general question. Do you accept that care should be taken not to over-interpret results for much smaller groups than the 1000 person overall weekend workers. Is that a fair statement?---It depends on how the sub-sample is selected. There can be quite robust analyses of other segments which were representative and which we have done, like the young people and the casual workers, for example.

PN25788

I should be fair to you and say that the words that I used are your words, not mine. On page 23 of your report, PG34, you there say, "Care should be taken not to over-interpret results for much smaller", in the first paragraph commencing on the fourth line, "Care should be taken not to over-interpret results for much smaller sample groups than the 1000 person overall weekend worker sample"?---Exactly and it's important, as I said, to understand that that would be relevant in relation to, for example, the industry sub-stratification but that there would be other robust ways of doing it. But, yes, to take care.

PN25789

If the Commission as part of this process is looking at industry specific information and they want to make an assessment of whether your hypothesis is right for the purposes of the café and restaurant sector, I am suggesting to you that they shouldn't, given the sample and given what they've identified, they shouldn't reliably rely on your conclusion under 4.7 in respect of that sector?---It's up to the Commission what they rely upon, I can't really comment on it.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR DOWLING

PN25790

That's not quite what I'm asking you. If it is that they're looking - for example, at the café and restaurant sector, and they're looking at your hypothesis that I've just taken you to, but they're looking at it within the context of the café and restaurant

sector. I am suggesting to you that it would not be reliable for that sector, do you agree?---The entirety of the evidence is relevant. The stratification - if you were to try to assume that all the results were identical for that sector, would not be reliable.

PN25791

Can I take you back to page 37 and commencing in the third paragraph you identify a further hypothesis as I understand it, and that is businesses that employ fewer staff on the weekend may be doing so due to the additional cost of penalty rates or due to lower weekend demand, or both. So should I understand we are now looking at the sub group that have answered the question, "Less staff on the weekend but more work"?---That's correct.

PN25792

All right. And just to identify the size of this sample, again dealing with Sunday, we already know that the sample size for those who answered with respect to Sunday is 668, yes?---Yes.

PN25793

And if you go back to page 36 in that paragraph I took you to, we know that 50 per cent responded that they were lower staffed. We were before dealing with the 11.2 per cent who reported higher staffing. We're now dealing with the 50 per cent that are lower staffed?---Yes.

PN25794

If we go back to page 37 and we go to the second-last sentence in the third paragraph, "Figure for Sunday are broadly equivalent with 27.1 per cent reporting a lower workload, 23.4 per cent reporting more". So that's our relevant figure for this hypothesis. We've got less staff. We know that that is 50 per cent of the 668, so that is 334. We know that there were 23.4 per cent of those reporting more work?---That's correct.

PN25795

So that's - on my calculation 23.4 per cent of 334 is 78, so our sample out of the 1000 that reported less staff but more work, is 78, eight per cent of your sample?---That's correct.

PN25796

All right, and again I take it you'd accept that if the Commission wanted to undertake a stratification process and work out whether this hypothesis held for particular industries, your hypothesis is not reliable for the purpose of any industry-specific process, is that fair?---That's correct. We would go on and do segments analysis if the Commission wanted us to do that, to negate the assumptions that have been made in this line of argument.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR DOWLING

PN25797

One last question then about this hypothesis, you hypothesise that where there are less staff but more, that that may be attributable to penalty rates. What do you say is the cause of the inverse of that proposition, and that is where there is less staff,

but less work? What's causing that scenario?---The workload can reduce for a variety of reasons and it can increase for a variety of reasons. The main reasons are the demand and supply factors. There could be other reasons that might include – that would be part of the supply influences that were not penalty rates, for example.

PN25798

Nothing further.

PN25799

JUSTICE ROSS: I've only got one question. Are you content for me to ask it before you re-examine?

PN25800

MR SECK: There's no re-examination.

PN25801

JUSTICE ROSS: Then I suppose the answer to that is yes. I just want to follow on from the last series of questions and the hypothesis you put on page 37, and this is the proposition that for workers who reported higher weekend staffing, I think it's the – well, it's the proposition that says that it may indicate that staffing increases are being suppressed by penalty rates?---Yes.

PN25802

So the idea is here, they're working on a weekend, they've got more work to do - - -?---Yes.

PN25803

And an explanation for that may be that the employers are reluctant to engage more people because of the penalty rate issue?---Exactly.

PN25804

I'm just looking at a practical example of perhaps another explanation to see whether that may also provide an explanation. If you take a café and you've got a sort of short order cook and you've got a barista, during the week the demand for their services might be at the, let's say, an 80 per cent level - - -?---Yes.

PN25805

But on a Saturday they're very busy because of their location. So they get more people through and they're busier but the level of demand may not be such as to warrant engaging two baristas?---Yes.

PN25806

You'll get a point where an economically rational employer will look at the level of demand that's coming in and whether that warrants an additional person, based on their price and all of the rest of it?---Yes.

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR DOWLING

PN25807

So there may be a number of explanations. So one may be the one that you're proposing. Another may be that they're busier but their busy-ness isn't such as to

warrant the engagement of another person. It's just that they've got a lower level of activity during the week but there's not as many people are coming in for coffees?---Yes, that's a good point about lumpiness in the data. However, you would expect that if there were lumpiness in the employment that it would round up as much as it would round down, so the overall effect shouldn't be biased in a particular direction.

PN25808

Anything arising? No? Anything further? All right, Ms Pezzullo, other than Monday, 2.30. All right?---Thank you.

PN25809

Thank you, very much. We'll see you then.

**<THE WITNESS WITHDREW [5.34 PM]**

**ADJOURNED UNTIL MONDAY, 21 DECEMBER 2015 [5.34 PM]**

\*\*\* MARGARET LYNNE PEZZULLO

XXN MR DOWLING

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<b>EXHIBIT #SDA52 OPTIONAL COMPONENTS TO ADDRESS INQUIRIES 1 AND 2 IN SECTION 2.....</b>	<b>PN25304</b>
<b>EXHIBIT #SDA53 SYNERGIES REPORT.....</b>	<b>PN25468</b>
<b>EXHIBIT #SDA54 RUMBENS' REPORT DATED 20 MAY 2014.....</b>	<b>PN25487</b>

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<b>MARGARET LYNNE PEZZULLO, RECALLED ON FORMER OATH .</b>	<b>PN25556</b>
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<b>CROSS-EXAMINATION BY MR DOWLING.....</b>	<b>PN25653</b>
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