



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

**VICE PRESIDENT HATCHER
SENIOR DEPUTY PRESIDENT HAMBERGER
DEPUTY PRESIDENT GOSTENCNIK
COMMISSIONER JOHNS**

s.156 - 4 yearly review of modern awards

**Four yearly review of modern awards
(AM2014/67)
Black Coal Mining Industry Award 2010**

Sydney

10.05 AM, TUESDAY, 8 NOVEMBER 2016

Continued from 7/11/2016

PN990

VICE PRESIDENT HATCHER: All right. Yes, Mr Bukarica?

PN991

MR BUKARICA: If the Commission pleases, I call Professor David Peetz.

PN992

VICE PRESIDENT HATCHER: All right. Professor Peetz, can you come forward please up here?

PN993

THE ASSOCIATE: Will you please state your full name and address?

PN994

PROF PEETZ: David Robert Peetz (address supplied).

<DAVID ROBERT PEETZ, AFFIRMED [10.06 AM]

EXAMINATION-IN-CHIEF BY MR BUKARICA [10.06 AM]

PN995

MR BUKARICA: Professor, for the transcript can you please restate your full name and address?---David Robert Peetz (address supplied).

PN996

Thank you. And did you prepare for these proceedings an expert report dated 23 June which you appended to a witness statement?---Yes.

PN997

And similarly did you prepare for these proceedings a second supplementary expert report dated 31 October 2016 for these proceedings?---Yes.

PN998

And before I ask you to affirm as to their truth, can I just ask you, in your supplementary report you had a corrigendum of matters that you wish to correct in respect of the first report?---That's right.

PN999

Correct. Now is there any other matter in the report, either your original or your supplementary report, that you wish to correct at this stage?---Yes, when I was reading through it recently I noticed on page 7 of the first report, the paragraph at the bottom of the page under the heading number and type of mines the second line has a sentence that says.

PN1000

Sorry, could you just slow down for a moment? Sorry?---Sorry.

*** DAVID ROBERT PEETZ

XN MR BUKARICA

PN1001

I'm not sure your Honours have located the page. Sorry, please proceed?---So the second line has a sentence that starts:

PN1002

The majority located in New South Wales and Queensland.

PN1003

And it says after that where:

PN1004

60.1 per cent of total Australian raw coal production in 2011 and '12 was produced.

PN1005

And I looked at that and I thought straight away, no, that's not right. And it's where the top 30 mines accounted for 60.1 per cent of the total Australian raw coal production in 2011/12. And the words "was produced" can be deleted.

PN1006

I see. So you're saying there should be some words appearing after the word "where" in the second sentence to the effect of, you can correct me if I'm wrong:

PN1007

The top 30 mines accorded for - - -

PN1008

?---Accounted for, yes.

PN1009

Sorry, accounted for. And then 60.1 per cent?---Yes, that's right.

PN1010

Yes?---And then - - -

PN1011

And then the words "was produced" can be deleted?---Can be deleted just because that makes it more grammatically correct, yes.

PN1012

Thank you. Now, apart from that correction, is there any other matter you wish to correct in these either the first report or the second report?---No, I mean, there's a couple of typos but they'll be self-evident to anybody who reads it, so I'm not worried about that.

PN1013

All right. So taking into account those corrections, Mr Peetz, do you say, in respect to your first statement and report dated 23 June 2016 that's true and correct to the best of your information, knowledge and belief?---Yes.

*** DAVID ROBERT PEETZ

XN MR BUKARICA

PN1014

I tender that?

PN1015

VICE PRESIDENT HATCHER: Any objections.

PN1016

MR SHARIFF: Yes, there are. I hope the Commission has received a list of objections, or it will shortly. These are a list of objections to all of the evidence, the statements filed by the various union parties. In relation to the first report of Professor Peetz, we take a global objection, as your Honours will see in the first row, to the whole of the report to the extent that it relies on the essential media survey, because we say the assumptions and the facts based upon this survey have not been established. And further aspects of the survey are in essence hearsay or second and third-hand hearsay. Can I just give an example of what I mean by the second or third-hand hearsay?

PN1017

VICE PRESIDENT HATCHER: Mr Shariff, did you go through the objections with the witness?

PN1018

MR SHARIFF: Only briefly, and what I've said to my learned friends is I accept that some of these matters, in accordance with the Commission's ruling yesterday, would go to weight rather than admissibility. I'm content if my list of objections is received as an exhibit and I can address the matters I now raise on questions of weight. We do say some of these go beyond questions of weight and go to admissibility but that's a matter I can address on in closing submissions. And I can have a further discussion with my learned friends about that during the course of the morning.

PN1019

VICE PRESIDENT HATCHER: All right. Mr Bukarica, is that an acceptable course to you?

PN1020

MR BUKARICA: Yes, it is, your Honour.

PN1021

VICE PRESIDENT HATCHER: All right. Well, I'll mark the list of CMIG objections as exhibit 10.

EXHIBIT #10 LIST OF CMIG OBJECTIONS

PN1022

VICE PRESIDENT HATCHER: At this stage we'll note the objections in exhibit 10 and note that submissions will be made about those matters at a later stage in the proceedings subject to further advice from the parties. I'll mark the witness statement of Professor David Peetz dated 23 June 2016 as exhibit 11.

*** DAVID ROBERT PEETZ

XN MR BUKARICA

EXHIBIT #11 WITNESS STATEMENT OF PROFESSOR DAVID PEETZ DATED 23/06/2016

PN1023

VICE PRESIDENT HATCHER: Mr Bukarica, you tendered a second statement as well?

PN1024

MR BUKARICA: I did. Yes, the second statement.

PN1025

VICE PRESIDENT HATCHER: I'll mark the statement of Professor David Peetz dated 31 October 2016 as exhibit 12.

EXHIBIT #12 WITNESS STATEMENT OF PROFESSOR DAVID PEETZ DATED 31/10/2016

PN1026

MR BUKARICA: No further questions.

PN1027

VICE PRESIDENT HATCHER: All right. Mr Shariff?

CROSS-EXAMINATION BY MR SHARIFF

[10.11 AM]

PN1028

MR SHARIFF: Yes, thank you. Professor, in both your reports that you've prepared for the purpose of the proceedings, you, in various parts, rely upon data made available by the ABS; that's so, isn't it?---That's right.

PN1029

And where appropriate you provided an ABS catalogue reference number to the data set that you're relying upon?---Yes.

PN1030

And you, in providing that data, have not examined the underlying survey or raw data, have you?---Sorry, do you mean the unit record data set that's held by the ABS that generally is kept within the ABS? Is that what you're referring to?

PN1031

Just the raw data upon which the catalogue reports are based upon. You yourself have not examined the raw data, have you?---So I haven't got hold of the – by raw data I presume you would mean the information that's held by the ABS that comes from the respondents themselves, that is, the unit record data sets?

PN1032

Correct?---Well, no. I mean, they're not. They're often not made available and it's not really necessary to examine them.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1033

And what you primarily do in your report is refer to and rely upon the published ABS catalogues; correct?---The data I've got from the ABS are published, yes, in one way or the other.

PN1034

And you've taken that data as you found it as published in the ABS reports; correct?---Yes. That's right. I mean, one has to be aware of the limitations of ABS data. So, for example, when looking at the data on employment in the mining industry you've got to be aware that the ABS labour force survey is a survey. It's a survey of less than 1 in 300 people and so the smaller the number of observations you're looking at the greater is the potential of relative standard error on those. So you've probably noticed that in relation to the estimates of mining employment that I used in an early part of the report I pointed out the high variability of those data which largely reflects, not entirely, because there's probably some underlying variability in the mining industry itself but a large part of it is sampling variability, and if you look at the ABS data from one quarter to the next you'll see it goes up and down, you know, like a proverbial yo-yo. So the – and this is something that affects not just the industry raw data it affects the national raw data so the ABS has, you know, when it publishes its monthly labour force statistics, for example, it will trend the data, all right, because it basically takes the view that one month's figures, even after seasonal adjustment, can, you know, not be relied upon necessarily as a true indication of what's happened between one month and the next. And I've applied a similar methodology of trending to the employment data in the mining industry as a whole because of that variability. The variability is greater the smaller the number of observations you get at.

PN1035

Now, just in relation to ABS data insofar as it relates to the mining industry we heard some questions yesterday from Mr Taylor, the counsel for Professionals Australia, that there isn't particular data kept by the ABS specifically for the black coal mining industry; that's correct, isn't it?---It depends on which data set you're looking at and how they've coded the data, and how they've released the data. So sometimes they'll release data that relates specifically to coal mining. Usually in most ABS data sources you'll see data about mining. Sometimes you'll see coal mining. Very rarely you can identify black coal mining but that's pretty unusual. Most of the data published by the ABS will just be about mining or occasionally about coal mining.

PN1036

Could you please go to page 4 of your first report which is exhibit 11?---Yes.

PN1037

And just please look at figure 2?---Yes.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1038

And is that a figure that you have derived from the joint black coal board black coal statistics or is it a figure that was contained within those statistics. Is it something that you've derived?---Well, it's something that I derived. But to be

precise it would have been something that I got my research assistant to derive, but, yes.

PN1039

In any event, what that data is showing is a steady increase in production in black coal; correct?---Yes.

PN1040

And in fact from the years post 1973 a fairly rapid increase in production of black coal; correct?---It's a significant increase over that period of time, yes.

PN1041

And so rates of production, you would agree with me, in 2012 are much higher than what they were in 1973; correct?---Rates of production in 2012 were higher than they were in 1973, yes.

PN1042

And it's safe then to conclude that the industry has exponentially multiplied in terms of coal production since 1973?---Well, that's not really an exponential curve there.

PN1043

All right?---It's more of a linear curve actually, or it's a linear trend curve, so I wouldn't call it exponential.

PN1044

All right. But in any event I think you accepted that it's substantially increased since 1973?---Yes, that's right. There's been some ups and downs but between nineteen – sorry, did you say '73?

PN1045

Yes?---Between 1973 and 2012 definitely there was an increase.

PN1046

And you would agree that there's been, in that time, a sophistication in the means of production; correct?---Well, in most industries that would be the case, so certainly that would include coal, yes.

PN1047

And you would accept that since that time there's been greater training and skill development of the workforce as well?---In black coal mining? That's the empirical question that I haven't collected data on, so it might or might not be the case. I'm not sure.

PN1048

And - - ?---Because there's been – you know, there's that shift between underground and open cut, so it's really a change in technology and whether that's an upskilling or a down-skilling it's certainly different types of skills employed these days. Whether it's higher or lower I've no – I don't have the data on that.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1049

To your knowledge the regions in which mining is occurring now is similar to the areas in which mining was occurring in 1973; correct?---Well, the regions in the sense that it was predominantly New South Wales and Queensland and it's still predominantly New South Wales and Queensland, and was in 2012. In the late seventies, for example, there are a whole lot of coal mines opened up in the Bowen Basin area. So if you're talking about the Bowen basin as a region that became much more important for coal mining from, you know, after 1973 than it was beforehand. You know, and they were mainly open cut mines when open cut mining wasn't such a big deal before then.

PN1050

And as you understand it the level of growth of mining in Queensland has continued since 1973 including because of the development of the Bowen Basin; correct?---Well, between '73 and 2012 it would have increased definitely, yes.

PN1051

And likewise in New South Wales there's been new growth, to your knowledge, in production of coal because of development of coal fields in the Hunter Valley and in Gloucester and places like Gunnedah?---Yes, I would say – I hadn't been pedantic, but I'd say there was growth rather than there has been continued growth because that, you know, there may have been points where production went backwards, but over time between those two points in time, you'd say, yes, there was certainly growth between 1973 and 2012 in New South Wales and in Queensland.

PN1052

And coal production, to your knowledge, has continued in the Illawarra region; correct?---Well, there's – what do you mean by has continued? Do you mean since 2012 or before 2012?

PN1053

Since 1973?---Since 1973? Well, I'm not – I wouldn't comment specifically on the Illawarra region between '73 and 2012 because I'm not certain about the age of those mines. It's probably the case but I haven't specifically researched that area so I couldn't tell you off the top of my head.

PN1054

Is it a fair assumption to make that the regions that we have spoken about, about which you have some knowledge, Bowen Basin, Hunter Valley, are more developed now in 2016 than they were in 1973?---Are they more developed, now? In terms of mines?

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1055

Yes. Just in terms of the mines?---Well, there would certainly have been more mines in 2012 than there would've been in 1973. I don't – like, I know there were mines opened up in the Bowen Basin; there'd been mines opened up, you know, since the late seventies as well. And some – and a relatively small number of mining towns were created as a result of that, so if, by development, you're

referring to the existence of mining towns like Tieri and Middlemount and so on, and Dysart then they basically emerged out of the opening of those Bowen Basin mines in the 1970s. I'm not so familiar with Illawarra. I would expect that there – because of the, you know, much greater proximity to the population centres they probably didn't need to have new towns built down there. I can't think of any that I would associate with new mines.

PN1056

And what about to the extent that you have any knowledge about it, what's your view about development in the Hunter Valley?---Well, my understanding, but again this is not an area that I've been heavily researching, would be there'd be some new mines opened in the Hunter Valley. There's been a lot of population centres in there for a long time. You know, there's other industries in the Hunter Valley so I – again, I'd expect there'd be new mines that have opened since 1973 without necessarily new towns being opened.

PN1057

And in your report you also address increases in exports of black coal. Do you accept that the export market for black coal from Australia has varied since 1973?---The export market for Australian coal, yes, it has varied since 1973 definitely.

PN1058

And I think you said this before, and it's addressed in your report, that there is now, both in Queensland and in New South Wales, a combination of open cut and underground mines; correct?---Yes. That's right.

PN1059

And those are mines at which there are different types of trade based employees who are engaged; that's so, isn't it?---Different types of trade based? By trade based you mean the occupation called tradespersons and other occupations, as opposed to occupations related to overseas trade? Is that what you mean?

PN1060

Yes, the former?---Yes, yes, okay. Yes, well, there'd be – if employment grows then necessarily when a new mine opens they'll require some trades employees, whether that's a higher or lower proportion of total employment in those areas I couldn't tell you off the top of my head. That's not the sort of analysis I've done.

PN1061

Have you got any knowledge yourself of the types of classifications of employees engaged in open cut or underground mines?---I've come across a bit but it depends on what you want to ask me about as to whether I can give you an adequate answer to a question on it.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1062

You accept, for example, at open cut mines a predominant part of the workforce is drivers; people who drive vehicles of different descriptions?---Yes. That's right.

There's – well, by the nature of open cut mines you've got a lot more people employed as drivers than you do in underground mines.

PN1063

And in underground mines you're going to have a fair proportion of people who are electricians, fitters, turners and the like; correct?---Yes, you will. Whether that's higher than the proportion in open cut, that hasn't really been part of my analysis.

PN1064

And you're going to have production engineers and managers; correct?---Yes, similar sort of thing. I'd be hesitant to say that there's a substantial difference in that particular occupation, those particular occupations you mentioned between open cut and underground. That's an empirical question.

PN1065

But would you accept that there's a fair proportion of people engaged in black coal mining that have at least trade qualification or higher?---Yes, I – yes, there'd be a fair proportion of people in black coal mining who would have trade qualifications. A fair proportion is a pretty broad statement, so it covers a lot of things, so I'm happy to agree to that.

PN1066

Could you please go to page 6 of your first report?---Yes.

PN1067

There, top of the page, you have extracted – I withdraw that question. Again, is figure 3 a table that you have prepared from the data source that you identified, being the ABS catalogue 5368?---Yes. That's right. Well, again, to be precise, one that my research assistant did, but, yes, that's derived from a spreadsheet produced by the ABS with that code.

PN1068

Likewise is figure 4 a table that you prepared or had someone prepare based on data made available from the Australian Government Department of Industry?---Yes. Well, it's come from likewise under – in the first instance by my research assistant from the – she's got that from data from the Department of Industry Resources and Energy.

PN1069

VICE PRESIDENT HATCHER: Mr Shariff, can I ask you to raise your voice a little? I'm having trouble hearing some of the questions.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1070

MR SHARIFF: Sorry. It's usually not a complaint I receive. Would you accept this as a general proposition, looking at both the figures, that the unit price for black coal by tonnage has increased certainly since 1973; correct?---The unit price of black coal, which is shown in – you know, as that solid line in figure 4, it went up substantially after the early 2000s, hold around a bit, went down a bit, went up

again, reached a peak, and it went down since then as shown in that graph and a bit more recently there's been a bit of a recovery.

PN1071

So there was, if I could just be clear about this, there appears, at least on your graphical representations a peak around 2009 to 2010; correct?---Yes. Well, that's around about right I guess. And then there's been - - -

PN1072

VICE PRESIDENT HATCHER: Can I just ask, Professor Peetz, are these prices deflated by – or are they nominal prices or they are real?---They'd be nominal prices I reckon.

PN1073

Okay?---Because I can't – I don't know what deflator you would use.

PN1074

Yes, I know. I was wondering. Yes?---Yes.

PN1075

MR SHARIFF: And I think you mentioned that the price of coal more recently has sparked again?---Yes. That's right.

PN1076

You accept that. Could I trouble you to go to pages 16 of 17 of your first report? You there set out your analysis of mine size and ownership?---Mm.

PN1077

You accept, do you, that the mining industry has been consolidated into eight or so international operators?---It's certainly now dominated by a small number of organisations like as in all industries there's some small players, but there's probably – they're the large players or more relevant in this industry and they tend to be overseas owned, yes.

PN1078

And that is a position that is different to that which prevailed in 1973 and 1983, wasn't it?---I'm not sure. Like, in the 1970s there was a report done by Mr Fitzgerald for the then Whitlam Government about foreign ownership of the minerals industry. And that showed a fairly high level of foreign ownership then. So I'd be – I wouldn't want to make a comment on whether foreign ownership has increased or decreased.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1079

Well, would you accept this, that with greater consolidation of mining operators operating a finite number of mines there's greater opportunities for employees to be redeployed within a group of employers?---Well, whether – so, I said I don't know about whether foreign ownership has increased. Obviously I didn't answer your other thing about consolidation of a smaller number of large players, and again that's an empirical question, I didn't look at changes over time on that, so I wouldn't say. Is it the case that where you've got a large employer with multiple

mine sites there are greater opportunities for redeployment, that is indeed the case. So there's one of the later tables in the report where we list retrenchments and where it's been stated that all the staff will be redeployed they haven't been included in that list, for example. And, yes, you would certainly expect that a large operator would have more opportunities for redeployment than a small operator.

PN1080

You say that you relied upon a table in your report, but it is the case, isn't it, that when you were briefed by the CFMEU you were provided a copy of the statement of Mr John Edwards; that's so, isn't it?---Sorry, could you repeat that? I didn't quite get it.

PN1081

At the time that you were briefed by the CFMEU for the purpose of giving your evidence in these proceedings, you were briefed with a copy of the statement of John Edwards, weren't you?---I was given a copy of it, yes.

PN1082

In fact, you were asked, at page 10 of your letter of instructions, to read – sorry, I'll withdraw the question. You were told that those statements were attached including a statement of John Edwards, and you were asked to comment upon any of the evidentiary material relied upon in the conclusions advanced by those witnesses, including Mr Edwards. Do you recall being asked to do that as part of your instructions?---Yes. So what I did there really was, like, my main task is really to - - -

PN1083

No, no, I'm sorry to interrupt you. My question is a very plain one?---Okay.

PN1084

You understood that part of your task was to look at the statements and to comment upon the evidence that had been filed? Is that a yes or a no?---Well, I only commented to the extent it was necessary to get data that was useful for presenting my report. So I didn't see this report as being a critique of other evidence that had been presented. But you will see that on a couple of occasions in my report I've used data from some of that evidence submitted by the employer group to generate some tables. But I haven't, in that particular report, done a critique of the other evidence.

PN1085

So I take it that you didn't focus on the fact that Mr Edwards gave some evidence that the Mannering mine operated by Centennial ceased operations on 30 November 2012 was placed into care and maintenance in January 2013, and all 113 employees at Mannering were transferred to other mines within the Centennial Group. You didn't consider that to be relevant to anything that you were commenting upon in this report?---Well, I wasn't looking at those documents for that purpose.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1086

I see. And likewise would your answer be the same in relation to Mr Edwards' evidence about the redeployment opportunities provided to employees at the Newstan mine who were retrenched from that mine? That would be the same response, wouldn't it?---Yes. It's not the sort of thing that I was interested in those documents for.

PN1087

And likewise you weren't interested in the redeployment opportunities provided by Centennial Coal to the employees retrenched from the Angus Place mine in November 2014?---Well, that's not information that I was seeking to use to generate an overall understanding of the labour market in the coal industry.

PN1088

Yes. But you see none of the – I'll withdraw the question. You had part responsibility for the formulation of the questions that were asked in the essential survey; correct?---Yes.

PN1089

You would agree with me that none of the questions posed to employees in the survey sought to investigate or elicit from them information as to whether they were redeployed following closure or retrenchment of the mine; correct?---I'm not sure. I'd have to look at that. I just can't remember.

PN1090

VICE PRESIDENT HATCHER: Mr Shariff, where's the survey questions?

PN1091

MR SHARIFF: The survey questions are an annexure to Gavin White's statement.

PN1092

MR BUKARICA: In the other folder?

PN1093

MR SHARIFF: Annexure GW2?---Yes, the survey doesn't specifically ask, if my memory is right.

PN1094

I'm being directed to question 16?---Yes, okay.

PN1095

But isn't it right that this question is only asked of the smaller cohort of people who answer yes to the question that their employment has been terminated at question 3?---So it was in effect asked of people who said they were made redundant.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1096

So what the survey is not going to pick up are the people who are retrenched from the mine but then are offered redeployment to another mine?---Well, it will pick

up whether they've got employment again, right. So the survey doesn't specifically ask, "Were you re-employed at the same mine you were working at?" or "Were you re-employed by the same company you were working for?" It does ask, of those people who were made redundant, it asks, "Are you in employment?" in effect. And so the group that you're referring, the people who were redeployed will be a subset of people who are in employment.

PN1097

Aren't you speculating about that? Aren't you assuming that a survey participant is going to respond in the way that you've just said?---So, sorry, how is that speculation? You've lost me.

PN1098

Well, please go to question 3(a) that was posed. Or let's start at question 2?---Yes.

PN1099

What they're asked is:

PN1100

Which of the following best describes your situation?

PN1101

?---Mm-hm.

PN1102

You see that? And then at question 3(a) the question is asked:

PN1103

Thinking specifically about jobs in the coal industry which, if any, of the following have happened to you?

PN1104

And option (a) is:

PN1105

I was made redundant.

PN1106

?---Indeed.

PN1107

But aren't you assuming that a survey participant is going to associate the end of employment at one mine with a company and redeployment to another mine at the same company as a redundancy?---Well, if they don't think of that as a redundancy then they won't report having been made redundant.

PN1108

All right?---But, I mean, generally speaking I would think that if somebody is made redundant and redeployed to a different mine I think they'd consider they were made redundant.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1109

All right. That's the position that you take. Can I suggest to you that if people responded differently what your survey doesn't pick up is that job creation developed at other mines with the same employer; correct?---The job creation at other mines with the same employer. But it does pick up, if they've been made redundant and they've got work again, then it's picked up.

PN1110

I'm asking you to assume against yourself?---It doesn't tell you whether it's with the same employer or not, but it picks up whether they've got a job again.

PN1111

Professor, I think you're answering that question on the assumption that people are going to respond to that question in the way that you think that they're going to respond. I'm asking you to make this assumption - please focus on my question.

PN1112

VICE PRESIDENT HATCHER: We're still talking about question 3(a), are we?

PN1113

MR SHARIFF: Yes, I am?---So you're suggesting that somebody who's made redundant, when he's redeployed to another mine, won't think that they're made redundant?

PN1114

Correct. Just assume that that's the case. If people responded to the survey on that basis, the survey would not pick up the jobs created at other mines with the same employer; correct?---Well, if a respondent, when they are asked, "Were you made redundant?" said "No" because they were redeployed, then they would not be treated as having been made redundant in the first place. So the survey would, in effect, it would underestimate the extent of redundancy that's taken place. And so it would not pick up people who are – if people answer the survey wrongly, by saying, "No, I wasn't made redundant", when I was, then it's not going to pick them up.

PN1115

No, I'm sorry, Professor, my point isn't that it wouldn't pick up the redundancy, which is I think you've got a particular view about what a redundancy means. My point is that your survey would then not pick up, for example, the 113 jobs created for the people who were redeployed from the Mannering Mine; correct?---Well, if all 113 of those people thought they weren't made redundant, then it would not pick them up. If they all thought, "No, I'm in the same job", then, no, it wouldn't pick them up.

PN1116

VICE PRESIDENT HATCHER: Just to be clear, Mr Shariff, is the assumption that they would answer (a) and (d) in 3(a)?

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1117

MR SHARIFF: I don't know. This is a survey that's been prepared by, including this witness and others, and our point is ultimately going to be that the question, as framed, and we'll come to some of the survey results, at least the way I read it, is that it's ambiguous as to whether it's picked up; people at the time at Mannering or Angus Place or Newstan.

PN1118

DEPUTY PRESIDENT GOSTENCNIK: Is 3(b) included to give you a second chance in case 3(a) was wrongly answered?

PN1119

MR SHARIFF: Yes. But it would still require - - -

PN1120

DEPUTY PRESIDENT GOSTENCNIK: Sorry, it's a joke.

PN1121

MR SHARIFF: I'm sorry, yes.

PN1122

DEPUTY PRESIDENT GOSTENCNIK: I'm saying it's the same question.

PN1123

VICE PRESIDENT HATCHER: You've asked the witness to make an assumption. I'm just trying to work out what you're asking him to assume.

PN1124

MR SHARIFF: The assumption is that assume that people, when they were asked the question - - -

PN1125

VICE PRESIDENT HATCHER: 3(a)?

PN1126

MR SHARIFF: 3(a), where they had not lost employment with Centennial Coal, because their employment at Mannering came to an end, but they were redeployed to another mine, they are likely to have answered no to 3(a).

PN1127

VICE PRESIDENT HATCHER: What if they had answered (d) none of these?

PN1128

MR SHARIFF: No, because they have not been terminated from a job for other reasons. At least that's my classical understanding of contract law. And then there's a separate question as to whether they received any retrenchment pay. Now, that is a question that was posed, and I'll come to that. And I have some very specific questions for this witness about the number of people who say that they actually received retrenchment pay. I will come to that.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1129

VICE PRESIDENT HATCHER: So, I might have missed that. So are you asking the witness to assume that they would have answered, in your scenario, (c) and not (a) or (d) and not (a)?

PN1130

MR SHARIFF: None of these, yes, (d).

PN1131

VICE PRESIDENT HATCHER: (d). In which case they'd go straight to 43 and they would miss question 16. Is that the point?

PN1132

MR SHARIFF: Correct.

PN1133

VICE PRESIDENT HATCHER: All right.

PN1134

MR SHARIFF: I'm sorry, I might have been at cross-purposes there. All right. Now, if I could trouble you to go to, please, page 22 of your report? Here you're talking about employment numbers, and you see the final paragraph on that page, you say:

PN1135

For much of the last century black coal mining employed an average of approximately 25,000 persons.

PN1136

You see that?---Yes.

PN1137

And then I think you say:

PN1138

Grew up to 50,000 around 2012.

PN1139

You see that?---I can see that, yes.

PN1140

That's what you're saying in your report?---Yes.

PN1141

And you say at page 23, according to the ABS:

PN1142

Coal mining is the second largest segment of the mining sector employing around 44,000 people.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1143

See that?---Yes.

PN1144

And what we can discern from the figure that you, I think, derived at figure 14, either yourself or through some staff, is that there's been some peaks and troughs in employment numbers over the years; correct?---Yes.

PN1145

But both on the basis of a JCB and the ABS data, although there are some differences between them, there's been a rapid increase in employment since 2000?---There was up until the period shown in that chart.

PN1146

Up until 2012?---Yes.

PN1147

And then you say over the page at 24:

PN1148

The data suggests a number of relatively brief upturns and downturns in the coal sector over the period.

PN1149

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

PN1150

They also indicate considerable growth, as we've been to, since 2002 and a downturn in 2012; correct?---Yes.

PN1151

Now, as part of your report you've not examined the case of any redundancies that occurred during periods of growth, have you?---Well, not examined? I wouldn't say that. There's a table later on in the chart or a list of where redundancies have been recorded and that covers a period of time from, I don't know, maybe - - -

PN1152

Two thousand and eight?--- - - -2008, 2009. So that includes both periods of growth and decline.

PN1153

And so do I take it from that answer you accept that redundancies occurred during periods of growth as well?---?---There are some mines that have redundancies during periods of growth.

PN1154

And you would accept that - - -?---You know, growth overall, you know, the ore runs out or whatever.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1155

Well, one of the phenomena that's occurred in the black coal mining industry has been the increase in contractor employment; correct?---Mm.

PN1156

And, in fact, you address that at page 26 that:

PN1157

Contractor employment is a share of total New South Wales black coal employment average 30 per cent over the six year period.

PN1158

?---Yes.

PN1159

You see that. And so you accept, don't you, that the black coal mining industry is one where there's been a degree of outsourcing; correct?---Indeed.

PN1160

A degree of contracting?---Yes.

PN1161

And contracting to both expert labour providers but also to expert providers of plant equipment and labour; correct?---Contracting both to firms that only do labour hire and to firms that also provide the equipment along with the labour, yes.

PN1162

And that you say now accounts for 31 per cent of all employment in black coal in New South Wales?---That appeared to be the case, yes.

PN1163

And you also accept that mines, because of natural reasons, through depletion and otherwise, will come to an end at any point of the economical cycle; you accept that?---They could. They could come – they could close because of drops in the coal price or because of other decisions made within the company, whatever.

PN1164

VICE PRESIDENT HATCHER: Professor Peetz, I'm just comparing, slightly off-topic, figure 2 with figure 14. At figure 2 it shows fairly linear growth in production since the seventies and certainly to the mid-eighties?---Mm.

PN1165

But when you look at employment there was a significant drop from the mid-eighties to about 2000 and then a sharp increase. How do you explain there's a lack of correlation between the employment numbers and the production volume?---Yes, that's a good question. I couldn't tell you off the top of my head.

PN1166

MR SHARIFF: In your supplementary report you were asked to respond to the submissions of the CMIG. Do you recall that?---Sorry, could you say that again?

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1167

In your supplementary report, you were asked to respond to the submissions of the CMIG; correct?---Yes.

PN1168

One of the things that you responded to, commencing at page 11 and following, in that supplementary report, was some reliance by Mr Gunzburg on ABS data?---Yes.

PN1169

And one of the criticisms you made of that reliance on that data was that the data set that Mr Gunzburg had looked at was looking at unemployment; correct?---Yes.

PN1170

And your criticism was that unemployment as defined by the ABS for that data set includes people who left the job voluntarily?---Well, it's partly people who left the job voluntarily and also – so there's a group in there that aren't made redundant, and the other problem, which is really the bigger problem, is that it represents only a small part of those people who were made redundant because quite a lot of the people who were made redundant get new jobs, and another portion basically leave the labour force, or at least are classified by the ABS as not being in the labour force because to be in the labour force you've either got to be in employment or you've got to be in employment for a week or more – for a day or an hour or more, sorry, to be classified as employed. To be classified as unemployed you've got to be, you know, not employed for an hour or more, and to have actively looked for work in the last four weeks, and to be available for, you know, to start a job within the week of the survey.

PN1171

All right?---And there'll be some people who maybe, you know, what sometimes are called the hidden unemployed or discouraged job seekers who want work but they don't fit that definition. They'll be classified by the ABS as being not in the labour force. And there'll be some other people who have given up altogether and they've left the labour force.

PN1172

At paragraph - - -?---So that group of unemployed people that's in that ABS category it's only a minority of people that are made redundant.

PN1173

Okay. At paragraph 33 of that supplementary report, one of the things you say is that labour turnover is high in mining and that it's amongst the highest of any industry?---Mm.

PN1174

And you rely upon ABS labour mobility data catalogue number 6309 for that?---Yes.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1175

And so one of the things you comment about is that that's unusual because the mining industry has the highest hourly earnings?---Mm.

PN1176

And can I just provide you with some data. And whilst that's coming up to you, if you could just hold that but return to your first report at page 90.

PN1177

MR BUKARICA: Page what?

PN1178

MR SHARIFF: I'm sorry, page 19. If I could just, before you look at that document, go to page 19 of your first report?---Mm.

PN1179

At page 19 you say that real wages per employee averaged \$125,100?---Yes.

PN1180

You accept, I think I took you to, in the supplementary report that mining employees are amongst the highest paid in the economy?---That's so.

PN1181

And if you now look at the document I've provided you which is Australian Bureau of Statistics catalogue number 6302, average weekly earnings, Australia, for May 2016?---Mm-hm.

PN1182

That's reflected in that report, isn't it; that mining is the highest paid sector of the economy?---Yes.

PN1183

And in many cases it's more than double the wages paid on average to other employees; correct?---Yes. That's right. And that means your full-time adult the average weekly overtime - ordinary time earnings. Yes.

PN1184

And so just so I can get the figures, in the 12 months to May 2016 the full-time adult average weekly ordinary time earnings was \$1516, and the average weekly ordinary time earnings for a person in the mining industry was \$2597.30; correct?---I don't see your first number there, but I can see your second number there, yes.

PN1185

I see. All right. But do you have any trouble with accepting that the full-time adult weekly ordinary time earnings annualised is something in the order of \$78,000?---Okay. So you're multiplying 2.597,000 by 52?

PN1186

Yes. Something in the order of \$78,000?---Well, 52 times two-and-a-half would be about 130 – 140.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1187

VICE PRESIDENT HATCHER: I think he's talking about the average. He's talking about the average full-time weekly earnings not for mining?---Sorry, say that again? I missed - - -

PN1188

MR SHARIFF: Would you accept that the full-time average adult weekly earnings annualised - - -?---You mean in the economy as a whole?

PN1189

In the economy as a whole, is something in the order of \$78,000?---I don't have data in front of me to dispute that. It sounds like the right order of magnitude.

PN1190

And would you accept that in the mining industry it's something in the order of \$135,000 annualised?---Yes, that sounds – that's plausible, yes.

PN1191

Now, the full-time average weekly earnings doesn't pick up industries where there are many employees who earn a lot less than that; correct?---Sorry, say that again?

PN1192

Well, there'd be many industries in which the average employee would not be earning anywhere near \$78,000; correct?---Well, the wage distribution is skewed, so in almost every industry the majority of employees will earn less than the mean, and there'll be quite a few industries as well. By definition there'll be a half of industries where the average wage is less than the median average wage and therefore you'd expect that there'd be at least half of the industries where the industry mean would be less than the overall national mean.

PN1193

So if you look at, for example, the table I've provided you, in the manufacturing industry, the mining industry's pay is substantially greater than the manufacturing industry on an average basis; correct?---Yes.

PN1194

Greater than the construction industry; correct?---Yes.

PN1195

Both the manufacturing and the construction industries are also industries that are prone to cyclical changes in the economy; correct?---Yes, they follow different cycles than the mining sector, but they're both subject to cyclical factors, yes.

PN1196

Retail - - -

PN1197

VICE PRESIDENT HATCHER: So the last five total of all industries, is that the economy wide average?---I see, down the bottom there. Yes, that would be right.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1198

Is that it? Yes.

PN1199

MR SHARIFF: That's what I had been working on. Yes. Retail trade is another industry that's prone to cycles in the economy; correct?---Yes.

PN1200

Could I please tender that?

PN1201

VICE PRESIDENT HATCHER: Yes. Document entitled 6302.0 Average Weekly Earnings, Australia, May 2016 will be marked as exhibit 13.

EXHIBIT #13 DOCUMENT 6302.0 - AVERAGE WEEKLY EARNINGS, AUSTRALIA, MAY 2016

PN1202

MR SHARIFF: Now, at page 31 of your first report?---Sorry, what were you going to ask me about this table?

PN1203

I've finished asking you questions about that?---You've finished it.

PN1204

Yes. You can put it to one side?---Yes.

PN1205

At page 31 of your report you're addressing the employment outlook?---Mm.

PN1206

And you say:

PN1207

Forecasts of future employment in the coal industry very considerable.

PN1208

?---Yes. That's right.

PN1209

And I think I touched upon this with you earlier that the commodity prices have doubled since the position in 1989. Sorry, I didn't ask you that further, but would you accept that?---The commodity prices have what since when, sorry?

PN1210

Doubled since 1989?---You mean coal prices or commodity prices overall?

PN1211

Coal prices, I'm sorry?---I'd have to go back and check on that chart but it sounds plausible. It sounds plausible.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1212

But you've also accepted that the coal prices have increased in the last quarter?---Yes. That's right. There's been some movements in the coal price since – yes, since my first report was done.

PN1213

And do you yourself have any knowledge as to the basis upon which mining companies might enter into long-term contracts with their customers to fix in coal prices at all?---Well, companies actually vary in how they do their contracts. Some will engage in long-term contracts. Some will basically do it on the spot market and some will sort of do something in between, so I think it varies quite a bit between them as to what extent they'll rely on long-term contracts or on spot price contracts.

PN1214

If I could now trouble you to go to page 33 and following where you deal with the age profile on the industry. And at page 34 you, I think, again had prepared a figure ,that is, either something that you prepared or one of your researchers has done based upon the ABS catalogue, is it?---Yes. That's right, the latter.

PN1215

And for mining employees as a cohort, just looking at that table, it seems that if we look at the red dotted lines that's 25 to 34 years, that age bracket; correct?---Yes, unfortunately the version I printed off here in front of me is in black and white but if you want to hand me the coloured version then I can answer your question.

PN1216

I might just have a colour version off my instructor to provide to you.

PN1217

VICE PRESIDENT HATCHER: My version I have is in colour but the coding is missing the lines. Except for the last I'm not sure which line is what age group. Perhaps if someone could just tell us what the red dotted line is?

PN1218

MR SHARIFF: Yes. The red dotted line is 25 to 34 years?---Yes.

PN1219

VICE PRESIDENT HATCHER: Twenty-five to 34, yes. And the - - -

PN1220

MR SHARIFF: The solid black line is thirty - - -

PN1221

VICE PRESIDENT HATCHER: No we have that. The dotted line, grey - - -

PN1222

MR SHARIFF: The very faint dotted line is 15 to 24 years.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1223

VICE PRESIDENT HATCHER: Yes. And the sort of mid-dotted line which is a grey/black colour? The third from the top?

PN1224

MR SHARIFF: The third from the top is 45 to 54.

PN1225

VICE PRESIDENT HATCHER: Then the third from the bottom at the end with the long black dashes, what's that one?

PN1226

MR SHARIFF: I think that's 55 to 64. Perhaps, your Honour, we could assist by just giving you a copy that your Associate may be able to make some further copies of.

PN1227

VICE PRESIDENT HATCHER: Yes. That would have been easier.

PN1228

MR SHARIFF: Is this right, that as it currently stands, according to your report, majority of workers in the mining industry are in the 25 to 34 age bracket?---No, I wouldn't say the majority because none of those groups would be more than 50 per cent. There's a plurality which is, you know, the largest number that's less than 50 per cent. And looking at that chart it's pretty similar proportions between the 25 to 34, 35 to 44 and 45 to 54 age groups and the last data point in that series.

PN1229

Yes. I think you make the point that that might be reflecting that since the removal of the mandatory retirement cap in mining a number might be willing to work beyond the age of 60?---Well, not so much those three numbers – those three age groups I just discussed, but the – so the age composition of the mining sector is basically, historically it's had very low representations of young workers and, you know, particularly those under 24 that is. And a low representation of older workers above about 60 and that's been partly because – well, mining companies haven't sought to recruit people from the young category and, you know, a lot of them probably don't want to go there, and amongst the older category there's been – you know, there's various age limitations historically have existed. I don't know the details of all of them but I know that there was, you know, an age limit in New South Wales for example.

PN1230

One of the things you say - - -?---And, you know, those have ended – that age limit has ended so gradually you'll get more older workers, you know, workers staying on in the industry beyond a date when they otherwise would've retired. And there's also a trend towards – away from early retirement towards later retirement across the labour force.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1231

But that's not unique. Yes, that's not unique to the black coal mining industry, is it?---That trend towards later retirement is not unique to the black coal industry, no.

PN1232

And one of the things that you say in your report is that with the blue collar labour intensive industry people don't tend to work for longer periods because of health issues and the like?---Well, there can be that tendency, yes.

PN1233

And I think you've published an article on that issue, The Labour of a Lifetime Health and Occupation Type as a Predictor of Workforce Exit Among Older Australians; that's right, isn't it?---That was done by Samara McPhedran, published in the journal of Aging and Health.

PN1234

I'm Sorry, it was done by her?---I cited it.

PN1235

But you cited it?---Yes.

PN1236

And I think you cite that to support one of your conclusions that people in blue collar and labour intensive workforces tend to exit earlier than employees in other industries; correct?---Yes, that's the point that's being made there, yes.

PN1237

All right. And one of the things you then address at pages 35 and following is that there's a relationship between age and tenure?---There's a relationship?

PN1238

Between age and tenure?---Between age and tenure? Yes, that's right.

PN1239

That seems pretty logical, doesn't it?---Yes.

PN1240

And I think you say, at page 38, that that's not unique to the black coal mining industry; that's correct, isn't it?---Yes. Yes.

PN1241

At page 46 and following you deal with the incidents of redundancy?---Mm.

PN1242

And at page 51 in the intervening periods you set out that table that you mentioned before?---Yes.

PN1243

And at page 51 under that table you say this:

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1244

The table identifies approximately 9500 redundancies over a period of seven years four months.

PN1245

That's an equivalent to around about 1300 per year?---Yes. But the numbers would vary a lot from year to year.

PN1246

I accept that. But this includes redundancies from before the downturn in 2012; correct?---Yes. Well, that – those data we'd sourced starting back in December 2008.

PN1247

But this is just data that you collated from newspaper articles and media alerts?---Yes. That's right. So as I said, you know, it wouldn't be an exhaustive list by any means.

PN1248

But if we take your averaged figure of 1300 over a workforce of about 44,000 that's roughly three per cent redundancies across the workforce; correct?---That sounds about right, yes.

PN1249

And if you could go to your supplementary report at page 33? I'm sorry, if you could go to your supplementary report, one of the things you attached to your supplementary report is a report of the OECD. Have you got that?---No, I don't actually.

PN1250

It's annexure DP7?---Yes, sorry.

PN1251

I'll asked my friend to provide a copy. Have you got that?---Yes.

PN1252

Could you please go to the OECD report which is part of your annexures?---Yes.

PN1253

And please go to page 33. They're numbered at the top right-hand corner?---I've only got page 32. I haven't been given a complete thing of it.

PN1254

Someone needs to try harder?---Yes.

PN1255

It's fortunate for my opponents that the University students have left?---I think it goes to about page 46 or something.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1256

VICE PRESIDENT HATCHER: I'll provide it from the copy of my version?---Thank you. Okay. Page 33.

PN1257

MR SHARIFF: Yes, at page 33, just pause for a moment there, Professor?---Yes, that looks more like it. Yes.

PN1258

So if you just look at page 33 it's dealing with characteristic of displaced workers?---Mm.

PN1259

As regard aged and education workers aged 55 to 64 at a greater risk of displacement. There's a particular defined meaning to the word "displacement"; that's so, isn't it?---Sorry?

PN1260

There's a defined meaning to the word "displacement" for the purpose of the OECD report?---Yes. That's right. They've measured it in a particular way.

PN1261

All right?---Yes.

PN1262

I'll come back to that.

PN1263

VICE PRESIDENT HATCHER: What was that answer?---Yes, the OECD have measured it in a particular way.

PN1264

Okay.

PN1265

MR SHARIFF: I'll come back and I'll explore that with you in a while. But if you look at the final paragraph on that page, according to HILDA data:

PN1266

Manufacturing workers are over-represented amongst displaced workers. Their probability of being displaced being twice as high as workers for a category in other services.

PN1267

?---Mm-hm.

PN1268

This is also the case for construction workers?---Yes.

PN1269

And if you look across to page 34 there are two graphs?---Yes.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1270

The second one tries to represent displaced workers across industries?---Yes.

PN1271

What is said about manufacturing certainly is borne out on the graphs. Now, mining we find as a sub-set of an overall group called agricultural forestry, fishing and mining. You see that?---Mm.

PN1272

Did you have some role at all in the HILDA survey?---Did I have some role in the HILDA survey? Not that's related to this, no.

PN1273

Well, did you have any role in it, whether it was related to this or not?---The HILDA survey is very old. Like, it started, I don't know, a decade and-a-half ago and it's a – you know, the process of designing something like that involves a lot of consultation. And, of course, it's a major survey that's repeated every year and it's funded by the Commonwealth Government so they've got to – you know, they want to get it right, and it's meant to, you know, attract people over time.

PN1274

In any - - -?---So it's possible I might have been consulted a lot time ago or not. I really don't know. I'd have to look it up. I would have to look it up. I don't – but I don't think that what you're asking me would be relevant for this anyway so.

PN1275

All right. Now, doing your best and doing my best to look at the percentage of displaced workers across the economy for the group called agricultural, forestry, fishing and mining, it seems to be somewhere between zero and 10 per cent, probably a little bit higher than five, maybe six?---That's not really the risk. That's the distribution of displacement.

PN1276

Yes?---Okay. So if you look, for example, at the very first two entries for women and men, you'll see for displaced they add up to 100 per cent, 40 and 60 and 100 per cent.

PN1277

Yes?---The second two around about 49 or 59. They add up to 100 per cent. These are distributions, so these are telling you what proportion of workers are in each of these two categories. So that is what proportion of displaced workers and what proportion of all employees are in each of the categories in this chart.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1278

Right. But - - -?---So the first one tells you 40 per cent of displaced workers are female, 60 per cent are male; 49 per cent of all employees are female, 51 per cent are male and so on. And that's how you read it. So when it gets to the thing you're referring to in the left-hand side of the second row, what it's telling you is that, well, you know, you've got to stretch your eyes a bit, but something like four

or five per cent of displaced workers are in the combined industries of agriculture, forestry, fishing and mining.

PN1279

All right?---And around about, say, three or four per cent of all employees are in those industries. So the fact that the blue bar is higher than the white bar I wouldn't bet much money on by how much here. I'm just going by my failing eyes. The fact the blue bar is higher than the white bar basically means that a worker in that industry is more likely to be displaced than they are, you know, to be in that industry as a whole, and therefore – a better way of putting it is workers in that industry have a higher probability of displacement than the average of workers. Okay. And you can't tell easily from that. But also and the other point is of course that because of the smaller sample size they've aggregated industries together, and aggregated industries that have quite different characteristics.

PN1280

All right. Now, in your actual report, coming back to it at page 51?---Yes.

PN1281

And this is your first report. You say in the final paragraph there that the essential survey of employees identified that approximately 16 per cent of that sample had been made redundant since July 2013. That's 16 per cent across three years; correct?---Mm.

PN1282

Allowing for – I'm sorry, I think you mentioned before that the current downturn commenced in 2012?---Yes, roughly. Yes.

PN1283

So what this is looking at is a percentage of the sample that had been displaced during a period of downturn; correct?---Yes. That's right.

PN1284

And I think you accept later in your report that having selectively picked that period from July 2013 for the purposes of the survey you are focusing upon a particular period of time where there is that cyclical decline?---Well, I wouldn't quite use the word selectively because whenever you conduct a survey you're relying on people's memories and so there's a limit to how far back in time you want to go. So because the survey was done in 2016 you would only go back to 2013. If we'd done the survey in 2010 it would've been going back to, you know, 2007 or whatever. So it is - - -

PN1285

But it's not going to be - - -?---It's not by design that it's during a period of downturn which is what the word "selective" implies. It is the – it happened during a period of downturn.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1286

But you accept, and I think you state, that the incidents of redundancy over that three year period is going to be higher than the average rate of redundancies over

the past decade?---Yes. I'd expect that to be the case. To the extent that this is a period of downturn compared to, you know, there are some periods that aren't downturns, therefore if you've got some periods of downturns and some that aren't and redundancies are worse during downturns then you would expect that the rate of redundancies during a downturn would be greater than the average during the whole period.

PN1287

Just give me a moment there. Now, if you go to pages 60 to 61. In fact, if you could just go to page 59. What you're doing in this part of your report under the heading, National Level Data on Labour Market Experiences of Redundant Workers, is looking at some academic studies together with some ABS data from 1997 and 2001 about the experience of those workers who'd been retrenched; correct?---Mm.

PN1288

And you basically summarise those studies in the data over the course of the next 10 or so pages?---Yes. I should - - -

PN1289

Through to page 69; correct?---Coming to this page reminds me that I should correct an answer to an earlier question. So I think right at the beginning or very near the beginning you asked me whether I relied entirely on unpublished ABS data in my report, and the data on these pages, some of them, come from a special data request that I put in to the ABS quite some time ago, and the results were published in an article. But I thought they were, you know, potentially relevant to understanding how labour markets operate including in this industry, so that's why they're here. So there's a little bit of data in here that's on these pages that is not published by the ABS as such. But I didn't have – I wasn't using the unit record data set of the ABS. I was putting in a request to them and they've – you know, we had some discussions back and forth of what was feasible and not and this was the nature of the data they produced. So technically it's unpublished data.

PN1290

All right. Now, in this part of your report, from pages 59 to 69 you were drawing on data, such as it is, impacting upon all workers in the economy not selectively the black coal mining industry; correct?---Yes. That's right. Yes.

PN1291

And for example at page 64 looking at that under Unemployment Duration you say in 1997 some 50 per cent of retrenched employees with prior job tenure of five years or more had been unemployed for 26 weeks or more. That's an observation that's consistent across the economy; correct?---Well, that's an observation taken from data that comes across – from across the economy, yes. Whether it's consistent or not I couldn't say but it comes – it's from data that's economy wide.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1292

Page 68, if you could go to that, Changes in Employment Status and Conditions. You say a number of things:

PN1293

Retrenchment can be the catalyst to different and less secure forms of employment. These workers transition into casualised employment.

PN1294

You see that?---Mm.

PN1295

And again that's an economy wide observation; correct? Based on the data?---Yes. That's right. That is something that is known to happen across the economy, the extent to which it varies between industries isn't covered in that particular paragraph but you'd expect, and indeed it does, that it would vary between industries as to how severe that effect is.

PN1296

All right. Now, you, I think you answered this before, participated in the process to settle the questions that were asked of survey participants in the Essential Media survey; correct?---Mm.

PN1297

The Essential Media survey report, as we've seen, asked a question of participants, which of the following best describes their situation. They had four options. If they answered yes to the fact that they were made redundant or yes to the fact that their contract had expired and not been renewed or yes to the fact that their job was terminated by other reasons, they were then asked other questions; correct?---Mm.

PN1298

If they said no to any of those things, they weren't asked any further questions?---If they said no to all of them.

PN1299

Right. I'm sorry, if they said no to all of them. And so the frame of analysis for asking further questions of the survey participants wasn't limited to those people who were genuinely redundant. They've extended to people whose employment had come to an end because of contract expiry or for other reasons; correct?---There was - - -

PN1300

Is the answer to that yes or no?---Well, the questions were asked of more than one group, but the analysis doesn't necessarily relate to all of those groups.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1301

All right. Is the answer to my question the survey questions that followed after question 3 were asked of only those people who said yes to redundancy, yes to expiry of fixed term contract, and yes to termination of job for other reasons, which must have meant that they were asked of people who were not exclusively

made redundant?---Those questions were not only asked of people who were made redundant. They were also asked of people whose contract had expired or who were terminated from a job for other reasons, and that's about – those two groups between them would be about a fifth of that population. So four-fifths would be people who were made redundant.

PN1302

Now, if you could go to your first report, to the second page of that report?---Yes.

PN1303

You say the survey was over 2000 employees and equals 2224 as to members of the CFMEU and 334 being members of Professionals Australia?---Yes.

PN1304

And then you say:

PN1305

Four hundred and twenty-one respondents had experienced redundancy since July 2013. This group being included in a total of 455 that had experienced job loss either through redundancy or the non-renewal of an employment contract.

PN1306

See that?---Yes. That's right. And I've just noticed in looking at this that the survey, the fifth line where it says the survey was conducted in June 2013, it would obviously be 2016.

PN1307

The conclusions that you've stated in this report, the first report, are based upon the proposition that 421 survey respondents had been redundant or claimed to have been made redundant; correct?---Based upon the proposition. Well, that's the group which was used when analysing employees who were made redundant.

PN1308

Right. So I think I'm right that when you're expressing opinions in the latter parts of this report trying to draw conclusions from the survey you have operated on the basis that 421 of the overall respondents have been made redundant; correct?---Yes. Yes, I think so.

PN1309

And did you also make the assumption that all of those 421 respondents were the employees who'd be covered by the Black Coal Mining Industry Award?---Did I make the assumption they were – the question does - the survey isn't specifically about award coverage. We didn't ask respondents whether they were covered by an award. You would have to assume that one way or another the vast majority of respondents would have been covered by the award, and really if you like to get award coverage data from employees is, you know, it's very difficult. In fact, pretty unreliable really. I wouldn't use an employee data source to get data on award coverage.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1310

Is this case, you weren't given any instructions by either the CFMEU or Professionals Australia so to limit the number of survey respondents to those who would actually fall within the coverage provisions of the award; that's so, isn't it?---Well, given instructions it was – like, how would you? How would you? I don't – it's about - - -

PN1311

Is the answer to my question no, you weren't given any instructions to that effect?---No, no, I wasn't given instructions.

PN1312

Right?---I'm not sure how one would be able to carry out those instructions anyway if they existed.

PN1313

And is this the case, that all that had happened was that you were consulted about the survey questions, you settled them, and then it was left to Essential Media to contact some 12,000-odd people from a database of members of the CFMEU northern division and Professionals Australia at a point in time, being July 2013? I'll withdraw the question. Is that a convenient time, so I can get clear from Mr Bukarica precisely who the (indistinct) was.

PN1314

VICE PRESIDENT HATCHER: Yes. So we'll adjourn for morning and we'll resume in approximately 10 to 15 minutes.

<THE WITNESS WITHDREW [11.28 AM]

SHORT ADJOURNMENT [11.28 AM]

RESUMED [11.47 AM]

PN1315

VICE PRESIDENT HATCHER: Mr Bukarica?

PN1316

MR BUKARICA: Your Honour, before my friend starts his cross-examination again, I apologise for the photocopying error that appears to have occurred in relation to annexure DP7 to Professor Peetz's supplementary expert report and with the leave of the Commission I'd hand up some - - -

PN1317

VICE PRESIDENT HATCHER: Well, we've fixed that now.

PN1318

MR BUKARICA: You've already fixed that?

PN1319

VICE PRESIDENT HATCHER: Yes, we have.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1320

MR BUKARICA: Okay. Thank you.

PN1321

VICE PRESIDENT HATCHER: That's the one with the graph?

PN1322

DEPUTY PRESIDENT GOSTENCNIK: DP7.

PN1323

MR BUKARICA: It's the whole of the OECD chapter.

PN1324

VICE PRESIDENT HATCHER: What was wrong with the version that we have?

PN1325

MR BUKARICA: As I understood there was a problem with whether you had an entire copy.

PN1326

VICE PRESIDENT HATCHER: Fifty-four pages.

PN1327

MR BUKARICA: And that it was in colour.

PN1328

VICE PRESIDENT HATCHER: Fifty-four pages.

PN1329

MR BUKARICA: Fifty-four pages.

PN1330

VICE PRESIDENT HATCHER: No, we have the whole document.

PN1331

DEPUTY PRESIDENT GOSTENCNIK: Predominantly blue?

PN1332

MR BUKARICA: It must only be my problem then, sorry. I apologise for wasting your time.

PN1333

VICE PRESIDENT HATCHER: All right.

<DAVID ROBERT PEETZ, RECALLED [11.48 AM]

CROSS-EXAMINATION BY MR SHARIFF, CONTINUING [11.48 AM]

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1334

MR SHARIFF: Professor, before we adjourned then I was asking a question about who the survey sample was. To your knowledge was there an attempt made

by Essential Media to contact something in the order of 12,000 members of the CFMEU Northern Queensland and South Western Branch and members of Professionals Australia who were employed in July 2013?---I think that would be a lot less than 7000. And it would be - basically it's these – the sample frame is the people who are on the membership registers of those organisations as of that date; as of July 2013. So there's no differentiation in those databases as to whether people were covered or not covered by the relevant award.

PN1335

Thank you. Now, can I provide to you what's been produced by the CFMEU as the surveyed results. I have four copies for the Commission and one for the witness. The document is paginated down the – if you look at it in landscape format in the middle of the page?---Yes.

PN1336

So could I ask you to go to page 2 of the document? The first question which was asked is:

PN1337

Which of the following describes your situation? I was working in the coal mining industry in June 2013 and had continuously worked in the same job.

PN1338

And at 74 per cent of respondents. And then the second and third were:

PN1339

I was working in the coal mining industry in June 2013 but moved out of the job I was in in June 2013.

PN1340

So that's people who remain in the coal mining industry but moved to another job; correct?---Yes.

PN1341

And then the third option was:

PN1342

You were working in the coal mining industry in June 2013 but are no longer working in the industry.

PN1343

?---Yes.

PN1344

And it was some 398 of the 2618 people who responded; correct?---Yes.

PN1345

At page 2 what you're doing is you're excluding from the data set the 1940 people who remain in the industry in the same job?---The idea was to exclude those who worked continuously in the same job the whole time.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1346

Right. So what you're then picking up is categories (b) and (c)?---Yes. That's right.

PN1347

And then over the page, page 3, you have a further breakdown of that. And if I could just understand this, in response to option (b) 214 people said no that meant that didn't apply to them; is that right? Page 3?---3A(d).

PN1348

So if you look at question 2(b) the question is:

PN1349

I was working in the coal mining industry in June 2013 but had moved out of the job I was in in June 2013.

PN1350

And 214 people say no to that. So is the no saying that that doesn't apply to them?---Because Q3A(d) is none of these.

PN1351

No, I'm going to come to question 3 - - -?---Yes, yes, but you've got to understand the table.

PN1352

All right. Go on?---Right. So the no and yes, it says at the top:

PN1353

Which of the following best describes your situation by Q3A(d).

PN1354

Yes?---So which of the following best describes your situation is what's in the rows.

PN1355

Yes?---Q3A(d) is in the column.

PN1356

Yes?---All right. So - - -

PN1357

So just explain to me how that question then gets asked?---So then the no's that you're referring to are people – it's in effect a double negative. People saying no, it's not none of these that apply to me, that is, at least one of these applies to me, of the previous three options.

PN1358

So if I look at question 2(b) how many of those people are saying that they are still in the coal mining industry but have moved to another job?---Two hundred and eighty. Because it's cross-tabulated by 3A(d) which is "none of the above".

PN1359

I see. All right. Now, if you go to page 4 - - -

PN1360

VICE PRESIDENT HATCHER: So just to be clear, these are people who answered yes, so out of the 280, the 66 who answered yes are saying, they weren't made redundant; they didn't have a contract expired and not renewed; and they weren't terminated from the job for other reasons. They're saying – so that's the 3A – so they're saying yes to 3A(d) which is none of those things?---Yes.

PN1361

Yes?---Yes.

PN1362

Right.

PN1363

MR SHARIFF: If you come back to page 2 if you include those who said yes to (a) and (b) you accept the vast majority of people remain in the coal mining industry?---Yes. You've got to remember that the majority of people are not made redundant.

PN1364

Right?---Right. So therefore the majority of people remain in the industry.

PN1365

Now, if you go to page 4, what are you doing at page 4? You're cross-referencing this question to question 26; is that right?---Yes. Remember this is not data I produced. It's data that Essential produced. So, "Which of the following best describes your situation" is in the rows. And question 26 "Have you done any paid work since you were put off?" is the columns.

PN1366

Right. So any person who said, "Have you done any paid work since you were put off?" who said yes, was then asked, this is correlating those people to the people who'd also said that they remained in the coal mining industry but had left their job, or who had left the coal mining industry altogether?---Sorry, can you say that again? I was looking at the chart.

PN1367

So if you go to page 4 - - -?---Yes.

PN1368

- - -that's question 26?---Yes.

PN1369

Have you done paid work since you were put off?

PN1370

You see that?---Yes.

DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1371

Now, 124 of those people said no, 45 of those people said yes. Right?---Yes. Well, that's the - - -

PN1372

This is then coming back to page 4 it's providing a breakdown of those people. Is that what's happening?---Yes, I'd say so.

PN1373

All right?---Yes.

PN1374

Now, please go to page 5. This is now question 3A(a) which is:

PN1375

Thinking specifically about jobs in the coal industry which, if any, of the following have happened to you?

PN1376

(a) was, "I was made redundant". And 423 people said yes to that?---That's right or are coded as saying yes. That's right.

PN1377

And that was of 678, the 678 being the total of people who answered 2(b) and 2(c); correct?---Yes.

PN1378

MR BUKARICA: No, just 2(b). Not 2(b) and 2(c). 2(c) is the next page.

PN1379

THE WITNESS: 2(b) or 2(c).

PN1380

MR SHARIFF: Just explain to me on page 5 the number of 678 total has come from where?---Well, that 678 would be the number of people who have described their situation in Q2 as being either (b) or (c), that is, they're not continuously working in the same job. They've either moved out of that job into another job in the industry or they're not working in the coal industry now.

PN1381

Right. That's what I thought I'd asked you. But if you then come to page 6, that's question 3A(b), they had a contract that expired and not renewed there were 42 who responded yes to that?---Yes. That's right.

PN1382

Then if you go to page 7, 73 said that they had their contract terminated for other reasons?---Yes.

PN1383

And then none of these 165 said none of that applied to them?---Yes.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1384

So of the 678 that had either moved to another job in the industry or left the industry altogether, 165 of them had not been made redundant, had their contract expire, or had been terminated for any other reason; correct?---Yes. That's right. So they could have retired or moved to another job outside the industry of their own volition.

PN1385

Or resigned?---Or resigned.

PN1386

Yes?---Yes, which is otherwise saying the same one. Yes.

PN1387

So then we get to page 9, the derived count for (a), (b) and (c). That's 513. How do you get to 513?---That's basically people who'd given – the first row is people who responded yes to one of (a), (b) or (c), all right. So they've said either I was made redundant or fixed term contract wasn't renewed or dismissed for other reasons. So they said one of those. The second line is people who have given two of those responses and the third line is somebody who gave all three responses.

PN1388

So, just picking up the second of those, some of the survey participants gave more than one response?---Yes, that's right.

PN1389

Now if you come back to page 5, these are the people who had said that they'd been made redundant, the number is 423?---yes.

PN1390

The number on page 2 of your first report is 421. Is there a reason for the difference? Is that just a typographical error?---No, no, it's not a typo. I got the data set, well a few days before the - basically in order to have this written up and subsequent to me getting a data set from them, Essential would have done some more data cleaning and so on and what - I had a look because I was intrigued as to why I had 421 and they had 423 and basically, they've picked up - there were some people who were not asked, or their answer wasn't recorded to question 3, but they were subsequently asked questions 5 and 6 and so on. So they were asked something like you know, 'Which of the following best describes your being put off' - 'Didn't want to leave, but was forced to', 'would have preferred to stay but was offered a package too good to reject; I wanted to leave anyway; was pleased to be able to take a package'. So those questions, if you answer yes to any of those, or you choose one of those, you must have been made redundant. The question wouldn't make sense if you weren't made redundant and so what they've done, is they've identified some people who answered those questions but didn't - an answer wasn't recorded for 3(a) 'I was made redundant' and they treated them as being made redundant.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1391

So what, you excluded them?---So I didn't go looking through the data set for those people who - you know, to change the answer to 4(a) because I'm gaining more on the data than I got from Essential; they've in effect, done some data cleaning which is what you'd normally do.

PN1392

Right, so I think the conclusion from all of that is that you took the data and you adjusted it or cleaned it to arrive at a figure of 421 of the people that you say - - - ?---No, it's the other way round actually. The data set I received had 421 on it; the data set they worked on had 423 because they have made these adjustments to it afterwards.

PN1393

I'm sorry, you did say that. Now, if you go to page 10, this question seems to elicit responses as to the timing of the redundancies, was asked of the pool of 513, correct?---Well, the timing of whatever it was that had happened that had left them being put off, yes.

PN1394

It was asked of all of them. So 176 said that they'd left in the last year; 191 in the two years before hand, etcetera?---Yes.

PN1395

Those numbers of 176, 191 and 137 are necessarily picking up people who have had either left because of contract expiry, or some other reason?---Yes, that's right.

PN1396

But even then, if we look at the figure of 176, take that as a proportion of the overall sample size which is 2,618, it's roughly 67 percent?---It's roughly what, sorry?

PN1397

Six to seven percent, correct?---Well, the 2,618 includes people who refused. So, the - I don't know, maybe about 300 of them, so it would be a little bit more than that.

PN1398

But isn't one of the positions you state in your supplementary report that you seem to be satisfied with this sample size as being a basis upon which one can draw conclusions?---Yes, that's right. The sample size for most of the analysis is the 421 odd who basically were made redundant or a subset of that. The analysis that Essential have done includes those other groups as well, but for my purposes, I've restricted it to a smaller subset.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1399

All right. Could you now go to page 12. Question five asked the cohort of 513 which of the following best describes you were being put off. Some 31 percent - sorry, I'll withdraw that question. 12 percent said they would have preferred to stay, but were offered a package that was too good. 19 percent said that they

wanted a package to leave anyway and they were pleased to take the package. So some 31 percent of people were in substance, happy enough to go, correct?---Well, I mean it's an interesting question about what is 'happy enough to go'? Like there's quite a bit of a research into redundancies that basically says well, you know, sometimes people are forced to go; sometimes they want to go and then there are some who ostensibly it's voluntary, but it's not really because there's various sorts of pressure put on them to leave, or they feel they don't have much choice. And, so for example, the OECD analysis which is based on you know, which you've already referred to, the displacement of workers, their definition of displaced doesn't take account of whether or not somebody took a voluntary - voluntarily left the job in the sense of okay, great, I will retire on this. And I thought it made more sense to really try to untangle that question about okay, what's voluntary and what's not voluntary. So it strikes me there's really three broad ways in which - three broad situations which people can be - they're happy to go; they really don't want to go at all; or they don't want to go but they feel they've got to take the package.

PN1400

VICE PRESIDENT HATCHER: Question 5(b), is that necessarily referring to a voluntary redundancy? That is that, the use of the word 'offer' suggests that it was open to them to reject, which means that it can't have been a compulsory redundancy?---The previous question doesn't say 'were you offered a voluntary package' so the - and yes, the word 'offer' here is probably - yes, that's an interesting question. I think that there would be some people who would have said that for whom it wasn't really an offer, but there wasn't much choice involved. Clearly the first group didn't want to leave and were forced to. Clearly the third group were happy to leave and the second group, which is quite small, were in that category where they weren't happy to leave, but this was the best option available to them.

PN1401

MR SHARIFF: But this is just speculation on your part, isn't it? You didn't frame the question so as to elicit all those contextual types of nuanced responses you're now giving. The question, as put to them, is simply I would have preferred to stay, but was offered a package that was too good to reject?---Well, there's a limit to how much context you can put into a telephone survey.

PN1402

Quite?---And I thought this was probably the best way of phrasing to identify these three groups.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1403

All right, just come to page 13. The question was asked 'did you receive a redundancy payment', that is a payment in addition to any unused entitlements. 380 said that they had received a redundancy payment. That would suggest, wouldn't it, that the answers in (b) and (c), that is 'the package was too good to reject', or 'was pleased to be able to take a package' applied those 60 and 96 people would have been a subset of the 380; that is people who were actually

offered some money?---You expect that if you answered (b) or (c) to five, it wouldn't make sense if you didn't answer yes to six.

PN1404

So, of the 513 people, and noting that the 513 also includes people whose contracts have expired or have been terminated for other reasons, we're talking about a pool of 380 who actually got paid redundancy pay?---Yes that's right.

PN1405

Now if you go to page 14, they're asked well 'why didn't you receive a redundancy payment'? 45 of the people - 45 of the 80 and the 80 comes from the 77 who said 'no' or the three who were unsure whether they got paid; 45 of them were casuals or a contractor?---Yes.

PN1406

Now, if they were casuals, then your figure of 513 now also picks up not only people who have had their contract expire, terminated for other reasons and perhaps were casuals to start with; correct?---Well, out of the employees who were made redundant, there were some who were casuals and that comes up later on, too. We didn't - the population which is basically, people on membership lists, didn't distinguish between permanents and casuals and there was no good reason to screen out casuals.

PN1407

So, then there were 28 who said that there were other reasons why they didn't receive any redundancy payment and there was no follow up question to ask why that might have been?---Well, they were asked to specify, but I don't have the data.

PN1408

So if we come back to page 13 the 380 people who were actually paid redundancy pay, of something in the order of 2,618 people who were surveyed, that results in a figure of roughly 14.5 percent over three years. Is that right?---Well, I don't have a calculator here; bear in mind that the numerator used includes refusals so it would be slightly higher than that.

PN1409

All right, I'm just asking you to assume that 'N' equals 2,216 and I'll have that checked from the Essential survey, which, if you accept my proposition, is 14.5 percent over three years. That's roughly 4.8 percent each year?---So you're saying that roughly five percent of people each year get a redundancy payment; is that what you're saying?

PN1410

I'm trying to draw some conclusions from the survey based upon the questions you designed and the data set that's been provided to my side of the record?---But what are those conclusions, sorry?

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1411

The conclusion is that if you accept that 380 people of the survey from a pool of 2,618 said that they received a redundancy payment; that's a figure of 14.5 percent. Which divided over three years is a figure of 4.8 percent?---Well, you don't need me to verify the math, and bearing in mind like I said about the numerator.

PN1412

Now, if you could then come to page 16, the cohort of 513 was asked whether they were employed by a mine operator, a labour hire contractor that provided labour only or a specialised contractor that provided labour and machinery. Do you see that?---Yes.

PN1413

Only 320 of the 513 were employed by a mine operator, correct?---That's what it says, yes.

PN1414

I take it that in any of the analysis you conducted of these figures, no one from the CFMEU or Professionals Australia gave you any assistance in order to determine whether persons engaged by a labour hire contractor, providing labour, or a specialised contractor providing labour and machinery, would fall within the coverage of the Black Coal Mining Industry Award. Is that right?---Yes, bear in mind these aren't my tables, but also yes, it's correct that the question as to whether particular contractors are covered by the relevant award is not the - you know, it wasn't the consideration; all that was relevant was whether they were on the membership list of one of the unions at the point in time that was relevant.

PN1415

So in terms of - I'll withdraw that question. I think you answered this question before, but these employees weren't asked whether they were currently covered by an enterprise agreement - sorry I'll withdraw the question. These employees weren't asked the question whether at the time that they were terminated for reasons of redundancy, they were at that point in time covered by an enterprise agreement that applied to their employment. Is that right?---They weren't asked and I wouldn't ask a question like that of employees, because my reading of surveys indicates to me that that data would not be reliable.

PN1416

But so when we're looking at the figures then that draw out from the data set in the survey, looking at the 513, or the 421 or the 380, we actually can't discern from that how many of those employees would actually be covered by the Black Coal Mining Industry Award, number one, correct?---Yes that's correct. There's not data specifically attached to individuals that identifies whether that individual is covered by the award.

PN1417

Number two, we can't tell - - -

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1418

VICE PRESIDENT HATCHER: I'm only raising this because it's from a matter I did last week; when you say covered, do you mean within the scope of this coverage, or somebody to whom the award actually applies?---I didn't catch the last bit?

PN1419

Well, there's a distinction between coverage and application. So the award can cover you, but it may not apply to you. So, for an example an agreement might cover you.

PN1420

MR SHARIFF: Yes, I accept that.

PN1421

VICE PRESIDENT HATCHER: So in an enterprise agreement you might be covered by the Black Coal Award, but it doesn't apply to you because you're under an enterprise agreement. I'm just wondering in what sense you're using the word.

PN1422

MR SHARIFF: I'm using the word in the sense of - I think I should probably clarify this. But I think I'm using the word in the sense of applied, because that's what we're dealing with here, ultimately; we're seeking to vary.

PN1423

VICE PRESIDENT HATCHER: And that is it doesn't deal with people who are covered by enterprise agreements as distinct from somebody who might not be in the coal industry at all.

PN1424

MR SHARIFF: Well, there's a separate issue as to whether contractors of a particular type have either that applied to them. That is, whether they're covered or apply.

PN1425

MR TAYLOR: Sorry, I shouldn't have made a noise. But I didn't think this case was going to manifest into a demarcation case.

PN1426

MR SHARIFF: No it's not, and I know how much my friend loves that case; it's not. But what's being presented to us is a data set and a survey and conclusions in a report relying upon that in a case that seeks to vary a modern award. Conclusions are being drawn about what the - first, what the extent of redundancies is for people covered by the award and to whom the award applies, and secondly, conclusions are being drawn about what the impact on those people is going to be. I'm just challenging that in that way. It's not about demarcation; it's just about testing the evidence.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1427

VICE PRESIDENT HATCHER: Right, in any event, the point you're making is that leaving aside the contractor question that enterprise agreement employees would be included in the survey, but not necessarily have the award apply to them.

PN1428

MR SHARIFF: Just looking at page 16, in relation to those who said that their employer was a mine operator. That figure of 320 will of course include, as we know from the cohort of 513 people who had their contract expire, people who had been terminated for other reasons and casual employees, correct?---Well, there's no reason to think that there's none of those workers there, you'd expect that there'd be some of them there. The majority - like I would expect that to the extent that there are casuals, they'd be concentrated amongst the labour hire contractors or amongst the other contractors, so I don't think there would be many casuals who were employed by the mine operator who would be part of this because there's not many - you know, most casuals are in the industry as employees of the contractors.

PN1429

You've got an evidentiary foundation to express that opinion, do you?---Well, that's from my knowledge of the industry. Other people here might offer different views.

PN1430

Now, if you go to page 17 - - -

PN1431

VICE PRESIDENT HATCHER: Mr Shariff, the award doesn't allow for casuals except in respect of staff, doesn't it?

PN1432

MR SHARIFF: Can I just get the evidence out in cross-examination; we'll have things to say about this in closing submissions, but enterprise agreements make provisions for the engagement of casual labour and it's a matter for submissions at the end of the day. If I could just keep moving - unless your Honour wanted me to answer a direct question.

PN1433

At page 17, people were asked did your job you had then, entitle you to paid annual and sick leave?---Yes.

PN1434

And so 51 of the 513 were already in a position where they were claiming that they weren't being paid annual and sick leave. Is that right?---Yes, that's right.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1435

So later in your report and in these questions, when we come to it, there's something in the order of 160 people who've now left the industry and been re-employed in jobs where they don't have annual and sick leave. That might include the 51 that were in that position to start with, correct?---Well, indeed

there's a comparison made between those - how many who had annual leave, in effect how many were permanent employees before the redundancy and how many had it afterwards. The wording of those two questions is designed to enable that comparison to be made.

PN1436

All right?---I use the term paid, annual and sick leave basically to get as close to what the ABS uses as possible. The ABS, once upon a time would ask people if they were casual employees, but now they ask them if they have access to annual and sick leave.

PN1437

When you came to prepare your supplementary report and you were comparing the people who had gone into casual employment in the Black Coal Mining industry based upon the results of this survey, the determinative of that, that you relied upon was whether they answered - - -?---Was whether what, sorry?

PN1438

Was whether they had answered yes to the question that their current job provided for annual or sick leave?---That's right.

PN1439

You were comparing that figure to the figure in other industries referred to in the OECD report?---That's right.

PN1440

Aggregated?---Yes.

PN1441

You weren't doing an industry by industry comparison?---No.

PN1442

So if you were to compare, for example, the coal mining industry to the cleaning industry, you might get a different result, correct?---Well, there's mainly interest in comparing the coal mining industry to the national average to either industries. So I wouldn't - you would probably get numbers that were slightly different from most every industry, just because - but they would cluster around the mean for all industries, and there would be some outliers.

PN1443

In relation to the basis of that comparison that you conducted, you did so on the figure of approximately 160, but not allowing for the fact that there were at least 50 of the overall cohort of 513 who'd said that they were already in jobs, but they didn't have sick leave or annual leave, correct?---It compares how many who had sick leave before - or how many were casuals in effect before and how many were afterwards.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1444

If you go to page 18 now, this question is asking how long had a person been working with the employer before being put off?---Yes.

PN1445

Again, this was asked of the entire 513, but wasn't limited to those you say 421, that had said that they had been made redundant, correct?---Yes.

PN1446

I think if we draw a line after six to nine years, there's something in the order of 30 percent of people who said that they had over nine years' service?---Yes.

PN1447

That is, the flip side of that is 70 percent of the people said they had less than nine years' service?---Well, 60 percent had less than, and 10 percent gave no answer.

PN1448

I'm sorry, yes - 60 percent. Now in your report, the first report, at page 83.

PN1449

VICE PRESIDENT HATCHER: What was the percentage of those who gave an answer, six to nine years?---Well, it would be - there would have been 30 out of 90, so it would have been 33 percent of those who gave an answer would have had ten years or more, and the other 67 percent would have had tenure of nine years or less.

PN1450

MR SHARIFF: If you go to page 83 of your first report, you set out a formula and a basis upon which to calculate loss of entitlements if my client's application -
--

PN1451

VICE PRESIDENT HATCHER: What page was that Mr Shariff?

PN1452

MR SHARIFF: Page 83. I'll start my question again. You undertake an analysis to value the loss of entitlements if my client's application to a variation to the award was accepted; do you see that?---Yes.

PN1453

About half way on the page, you say for many employees made redundant, almost two thirds the effect is zero?---Yes.

PN1454

Then, what you are then concluding is that a third of then would be affected and then you try and aggregate the value per employee over the period of their service?---In effect, yes.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1455

Do you accept that one thing you don't take into account is that if there's a variation made to the award, that some of those two thirds of employees would continue to be covered - sorry, some of the one third of employees would continue to be covered by enterprise agreements that entitle them to three weeks' severance pay per year of service, in effect?---The estimate is basically of employees in the

industry, so it would assume that changes to the award would eventually translate into changes in enterprise agreements. So, yes it doesn't - I haven't attempted there to estimate - I don't think I have, no, estimate the award coverage. So, but I mean, in earlier parts of it, there's some estimates of the award coverage and you could simply discount it by whatever you wanted to take as being the proportion of employees who are only subject to the award or whose pay and conditions on this topic are subject to the award and those who, would not be affected. So that's in effect, an assessment of the flow through the industry of changes to the award into changes in practice which is - I don't need to, and wouldn't be in a position to make, and I'm happy for you and others to lay claims about that one way or the other, as to how far the flow-through would be.

PN1456

Is this the position that - from page 18 and the data from the Essential survey, which you say is an acceptable sample size from which to draw conclusions about the black coal mining industry, your conclusion is first, that two thirds of the employees who had been made redundant since 2013 wouldn't be affected by any of the change?---Yes, broadly speaking, yes.

PN1457

Of the third who you say would be affected, you really have no basis upon which to conclude whether they would be affected by reason of them having been covered by and have an enterprise agreement apply to their employment?---Of the third who would be affected, the proportion - of the third who would be potentially affected, the proportion whose actual pay would change would depend upon the flow-through or the award variations to variations in enterprise agreements and actual terms and conditions. So if people were under individual contracts it's also hard to estimate to what extent will those individual contracts be varied to reflect the award or not.

PN1458

The examination of outcomes for employees who are engaged in collective bargaining as opposed to individual bargaining has been an area of research of yours, hasn't it?---Indeed.

PN1459

One of the conclusions you've drawn in other research is that collective bargaining has provided a means for negotiating better terms and conditions than individual contracts, correct?---Yes.

PN1460

One of the things you've mentioned in your report is that this is an industry where there's high union density, correct?---In coal there's higher union density than there is in the other parts of the mining sector. I think that's what I say, yes.

PN1461

It's also an industry which you point out in your report, at least the production and trades employees, there's a high incidence of coverage by collective agreements, correct?---Yes, relative to other mining industries, that's right.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1462

You purport in your report to look at the outlook for the industry in terms of economic results, but one thing you don't do is try and predict what the future might hold in terms of collective bargaining in the industry, do you?---No, I don't try and predict what would happen to collective bargaining in the industry.

PN1463

But you, having examined these types of matters in other areas of study, have got no reason to believe that collective bargaining wouldn't remain strong in this industry, do you?---Well, that's an interesting question because it depends on the strategies of unions and employer associations in the sector and like in terms of my willingness to predict, you'll note that I said in regard to employment projections, there's a wide variety, a wide range in which projections are being made and that reflects uncertainty over a whole range of issues, including coal prices and I wouldn't see any particular merit in this report in trying to predict what's going to happen to collective bargaining when it depends on a whole range of factors that go even beyond coal prices and so on to - the behaviour of unions and employers and so on. That's not what I was asked to do; it's not what I'm attempting to do and that's - you now, you'll notice that in this part - this part eight of the report, I refer to ranges within the expected number of 'X' would be between 'A' and 'B' and I said that a couple of times. So there's clearly uncertainty in this and it's up to other people to really say okay, well we're going to assume on the basis of some other information we've got or whatever, that these are the assumptions we make in valuing the notional transfer of contingent redundancy entitlements. So, it's a very big range that's there as it is. You've identified another uncertainty in the sense that it would be a function of the extent to which there's flow-through from the award to enterprise agreements and to employer behaviour where there's coverage by individual contracts as well.

PN1464

Do you have any knowledge as to what - - -

PN1465

VICE PRESIDENT HATCHER: Are you going to ask that question?

PN1466

MR SHARIFF: I'm receiving the education that I now wish I'd paid for, or the government had paid for. Can I just ask you this? You don't have any data available to you to examine the incidents of collective bargaining; that is the making of localised agreements, as it stood in 1973 as opposed to its promulgation now, do you?---There was no ABS survey of union membership, let alone of collective agreement coverage in 1973. But, I think it would be well established that there was a high rate of union density and a high rate of collective bargaining coverage at that point in time and that both of those would have declined since 1973, in the mining industry.

PN1467

All right. Just go to page 38 of the survey results?---38?

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1468

Yes, 38. Now this question was after you were put off. "How long did it take you to get new paid work?" And again, this was asked of all 513 of the cohort - do you see that?---Yes.

PN1469

Is this the case that 26 percent of people were able to obtain a job in less than four weeks?---Out of that 513, yes, that's right.

PN1470

Well, a lit bit more than 26 percent, because 15 percent gave no answer, so, the denominator would be - it would be 85 percent in total.

PN1471

And so 40 percent then of the population of 513 got another job within 13 weeks?---40 percent within 13 weeks, yes, that looks right.

PN1472

And 48, give or take allowing for the ones that didn't answer, got jobs within 26 weeks?---Yes.

PN1473

And 54 percent got jobs within 52 weeks, correct?---54 percent - allowing for rounding, but it's around about 54 percent.

PN1474

Of the 28 percent who had not worked since, that would include of course, people who might have either voluntarily retired after receiving a redundancy package, or people who, after looking for a job for some time, decided that they would retire in any event, correct?---And it would ask to include some people who would still like a job but they haven't actively looked within the last four weeks. But the other thing also to bear in mind is that that 54 percent includes some people who may have only worked for one week or two weeks or whatever. So they may have got employment within a few months, but they may have also lost it again since then.

PN1475

Why did you place that qualification on that response?---Because that's what the question tells you.

PN1476

It could also pick up people, couldn't it, who received a very sizeable payout and got a job within four week, correct?---Indeed.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1477

Well you didn't place that qualification in your response, did you?---But I wasn't asked how many people out of these got sizeable payout; I was asked about their re-employment and I'm just wanting to make it clear that you understand that the job people have now, if they have a job now, might or might not be the same job

that's being referred to in this question which is after you're put off, how long did it take to get new paid work.

PN1478

Of the statistics here though, you accept don't you that only 380 of the overall 513 got paid a redundancy payment, correct?---If that's - yes I presume that's the number you referred to earlier, yes.

PN1479

There's 42 who had their contracts expire, correct?---Sounds right.

PN1480

60 odd had been terminated for other reasons?---Yes, 60, 70, something like that, yes.

PN1481

Could you please to page 39, if you just look at that question, but the survey participants were asked what was the highest qualifications they had before they were put off, something in the order of 74 percent had trade qualifications or higher. Would you accept that?---74 percent, yes that's roughly right.

PN1482

That would pick up, as I put to you before, lots of the different trade qualified employees who work in the black coal mining industry?---I'd presume so.

PN1483

Engineers?---I'd presume so.

PN1484

Scientists, managers?---Yes.

PN1485

Where would drivers be picked up?---Well, it depends on what they're - this isn't qualifications you needed for the job. This is the qualifications that you had. So if somebody was - had worked as a professional chemist and had a degree over that, but were driving a truck, they would say well I got a degree; that would be their answer to that.

PN1486

If you could no go to page 48, the employees were asked - sorry, the survey participants were asked "Have you a job that enabled you to work for one hour or more in the past week"? That was asked of 299 people, being who?---Being those people who worked in the industry, but were no longer working. Now I'll just have to check that. Sorry, who had been in the mining industry in 2013, but were no longer in the industry. I'm not sure that's been correctly ascribed there.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1487

VICE PRESIDENT HATCHER: Why was the question only asked about (indistinct), Professor?---Because if you say I'm still working in the industry, then

you're working, right. So if somebody says they're still working in the industry, you don't need to ask them are you working.

PN1488

I see.

PN1489

MR SHARIFF: So 127 of the people said yes, they've worked more than an hour and 160 said no?---Yes.

PN1490

You then go to page 49. Of those that said how many hours - I'm just not following this - who is question 23 then being asked to?---So, if they were working, that is, they either said they were still working in the coal industry, or they said in response to the previous question, they'd worked for at least one hour, then they're asked how many hours a week they are working. So that basically identifies whether in the job that people now have, are they working part time or full time and how many hours are they working. So the first part the question referred to before 22, "Have you a job that enabled you to work for one or more in the past week", that's basically a part of - that's used to help identify people as defined as employed consistent with the ABS defines them.

PN1491

Right, but if you just focus on my questions, 127 people on page 48 said that they had a job that enabled them to work for more than one hour in the past week?---Yes.

PN1492

215 on page 49 said that they were working 38 hours or more. What's the reason for the difference between 127 and 215?---Because as I said, people who answered 23 were either those who said yes to 22, or those who had earlier said I'm still working in the coal industry, but I'm working in a different job.

PN1493

In a different job?---Yes.

PN1494

I see. So, of those people being a total of 341, some 77 percent were working in jobs where they were working 30 hours or more, is that right?---Yes, that looks right, yes.

PN1495

Then if you go to page 50, this is now being asked "Would you rather work more hours per week than you presently do?" This is being asked of the 127, is this right?---It's being asked of those people who were working part time.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1496

And, 44 of them said no, they didn't want to work any more hours, but 54 of them did?---Yes, that's right. It's basically a measure of under-employment, a concept that the ABS has been putting more attention on in the last few years.

PN1497

Then at page 51, the 214 people are the people who answered no to question 22, that's the 124, or yes to question 23, that's the 63?---Yes.

PN1498

So, only 63 of those people were actively looking for work in the past four weeks?---Yes, that's right. That's a question that again is used to try to capture the ABS definition.

PN1499

So if we just layer this down and excluding all the people who've either got jobs working 30 or more hours, we end with a figure of 63 people who are actually looking for work in the past four weeks at the time of the survey?---Yes, that's right.

PN1500

Then of those 63 people, there asked at page 52 "If work was available, could you start work within a week" and 57 of them say yes?---Yes. And again, that's to get to that ABS definition of unemployed.

PN1501

Then at page 53 this is now being asked of people who said no to question 24 and no to question 24(a) which is a total of 127, 20 of them would like a job but have not been actively looking for work in the past month?---Yes.

PN1502

So 63 were actively looking for work; 20 have not actively looked for work in the past month but would like a job, correct?---Yes.

PN1503

Gives us a total of 83. There's 59 of these people who have retired, correct?---Yes.

PN1504

And 35 don't want a job now, but might want one in the future?---Yes.

PN1505

So, out of that cohort of 513 that we started with, there are 63 who are looking for a job and a further 20 who are not looking for a job but would like one; a total of 83 of the 513, is that correct?---Yes, that's right and maybe - there's another 35 who say well, I don't want a job now, but I might want one in the future.

PN1506

Then at page 54, these are people who answered yes to question 26 and responded to question 25 "Have you done any paid work since you were put off?", of the 184 that's obviously not the people who have already said I'm working 38 hours or more, or 30 hours or more; this is just being asked of a smaller pool, correct?---Yes.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1507

And 124 say they haven't done any paperwork since they were put off?---Yes.

PN1508

And you don't know what the reasons are for that, correct?---What the reasons for what - the yes or the no?

PN1509

As to why they haven't done any paid work?---Well, these data don't tell you why; you could - in theory you could do a cross table of the previous question to see okay, are these people who haven't had work. Are they people who want a job or are they people who don't want a job. But you can't tell that from this particular question.

PN1510

Thank you. Now if you go to page 55, they're asked how much of the work they had done in the coal mining industry; if they were working 38 hours or more; or they answered yes or no to questions 23(a) and 26. 120 say all of it has been in the coal mining industry?---Yes.

PN1511

If you just skip ahead for a moment to page 57, this is a question asked of those who answered yes to I'm working 38 hours or more, or yes or no to question 23(a) or 26 and 108 people said that they were working in a full time job in a coal mining industry, correct? I'm sorry, 108 said that they were in full time employment?---Yes, they're not necessarily in the coal mining industry.

PN1512

120 say that they're working - at least some of them are working 38 hours or more in a coal mining industry?---Sorry, how do you - question 27 doesn't ask how many hours they're working.

PN1513

It includes people who said that they worked 38 hours or more?---Let me have a look. Well, it does, but it also includes people who said they didn't work 38 hours or more.

PN1514

That's why I put to you, some of those people would be people who would be working 38 hours or more?---Some of them would be, yes.

PN1515

So, isn't this the position that if one starts with your cohort of 513 who've been made redundant or had their contract expire etcetera, there are still a number of those 513 people, some of them, who have picked up full time employment in the coal mining industry after a redundancy?---There's certainly some employees who are made redundant and who find full time in the coal industry. There's certainly some, yes.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1516

That doesn't account for people who weren't made redundant, but whose job at a particular mine might have come to an end and they were redeployed or transferred to another mine, correct?---Well, the word 'some' - the word 'some' means there are some employees who were made redundant from the coal mining industry and who have a full time job now in the coal mining industry.

PN1517

I took you earlier to the statement of Mr Edwards who had given that evidence, and you'd been briefed with it, correct?---Yes.

PN1518

You didn't look at that evidence for the purposes of analysing this type of data at all, did you?---I didn't look at it for the purpose of writing the report, so. I didn't look at that particular - I wasn't - when I looked at that evidence, my main interest was in what can be drawn upon to find data that helps build up a picture of the industry, so I used some of the raw data there to create tables or charts and yes, so.

PN1519

You used data from a survey or people that were asked questions but didn't take into account the direct evidence of the human resources manager about the circumstances of mines coming to a close and redeployment opportunities. Is that right?---Well, but redeployment, as I said before, redeployment is dealt with. Partly there's a question as to whether there are redeployment services available to them and also, being in mind like I said, if somebody is made redundant and redeployed to a different mine, then they would very likely report that they were made redundant and they would turn up as being employed in this data set. So, like you said earlier, there's some people who are full time who are made redundant and they're still full time employees in the coal mining industry. Presumably a subset of that would be people who were redeployed by the same employer. Indeed in the - one of the other studies I refer to there is a survey of professionals and there's a certain proportion, a relatively small proportion, but there is a proportion of people who are made redundant and then re-employed at the same mine.

PN1520

Right. Can you please go to page 59. This is what's called a derived summary variable. Do you know how that was derived?---Well, it's not my table, like I said.

PN1521

Okay, we'll move on?---Okay, so in question 30 they were asked in weeks and months, "How much of the time since you were put off, have you been without paid work?" So, the way those data I imagine were entered was in both weeks and months and then Essential would have had to code them into another framework and they've done that by doing it for three months or less and more than three months. So that, I presume is - - -

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1522

Why is the figure 309? What's the source of the 309 figure of total? Who's that cohort?---I'm just trying to work out whether it's all people who were unemployed at the time or people who report that they were unemployed for part of the time.

PN1523

It couldn't have been all people unemployed at the time because 101 of them said that they got paid work in three months or less?---Sorry, say that again.

PN1524

I'm saying it couldn't have been people who are unemployed because 101 of them said that they'd got paid work within three months or less?---Well, they're not mutually exclusive because you can work for three months or less and then become unemployed again.

PN1525

Right, but just pause there; if they get paid employment and then later lose that employment for some other reason, those people are picked up in the survey as well, are they?---Say that again?

PN1526

If they obtain employment and then lose it for one reason or another, some of those types of people would be within the 513 cohort, wouldn't they?---Well, if they're - anybody who is made redundant is within that 513. So, regardless of whether they find work or not - - -

PN1527

Why is the question at 30 representative of this data set as having responses that are discriminating on the basis of three months or less or more than three months?---I don't know the answer to that. It's not a variable I've used myself, but it's probably because that looks like where the distribution lied. Like, that's a convenient break point in the responses to distinguish between one group and another, but I couldn't answer that, because I didn't do the table.

PN1528

Could you now go to page 64; I asked you about this earlier?---To go back to that, looking at page 13 of the Essential report, it says it's asked of those who had at least some paid work since they were made redundant, which makes sense, so. I'm not sure, but I think that would be it.

PN1529

So looking at page 64, I'm not sure - all right, please focus on page 64. This question is asked of the people who answered yes to 2(b) and 2(c) and yes to question 22, which is they've had at least I think an hour paid work?---Yes.

PN1530

Of those who have hit into that cohort, 194 said that they were now in a job that did not entitle them to paid annual or sick leave?---Sorry, what are you asking me.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1531

Are you on page 64?---Yes.

PN1532

I'm asking you of the - where does the 470 figure come from?---They would be people who can't get employment.

PN1533

Right, of those - and you've answered yes to 2(b) or 2(c), correct?---Yes, and yes to 22. So they're either still working in the industry or they're not working in the industry but they've had one hour or more a week of work.

PN1534

Of those, 194 say that their current job did not entitle them to paid annual or sick leave?---Yes.

PN1535

118 said that they did?---Yes.

PN1536

There was 120 who said that they were in full time employment at page 55?---At page what, 55?

PN1537

Yes?---Yes.

PN1538

And how do you account for the differences?---Full time employment is not the same as casual permanent status.

PN1539

I know, but if people are saying yes I'm getting paid annual and sick leave, is that just picking up some part time employees who might also be entitled to annual and sick leave but aren't in full time employment. Is that the idea?---There's quite a lot of full time jobs that are casual these days, anyway. So, just as there are a lot of part time jobs that are not casual.

PN1540

That's not exclusive to the black coal mining industry, is it?---That's right.

PN1541

At question 37 on page 65, it was asked of the employees, it was a subjective question, asking them to make an assessment as to whether they were a lot better now; a little bit better now; much the same; a little worse; or a lot worse, correct?---If the question has asked them to do that.

PN1542

Yes. You then take the responses given in what you must accept is a highly subjective question to put and try and draw comparison and quantifiable data in the OECD report, correct?---Well, I don't think it's all that subjective to ask somebody if you're better or worse off. I think most people are going to give a pretty accurate assessment. If we ask them by what percentage are you better or worse off, that would be a lot less reliable.

PN1543

But how do you determine a lot, a little, much, a little worse, a lot worse?---Well, that's up to the respondent basically. So the key thing is really, although - - -

PN1544

So it's subjective in their own mind about whether it's a little or a lot?---Well, the distinction between a little and a lot is subjective, but the distinction between whether you're the same, better off or worse off; I think that would be pretty clear to most people. I think that would be very clear.

PN1545

VICE PRESIDENT HATCHER: Time Mr Shariff.

PN1546

MR SHARIFF: Yes, I can indicate I'll be about no more than an hour after lunch.

PN1547

VICE PRESIDENT HATCHER: All right. We will adjourn and resume at 2 pm.

<THE WITNESS WITHDREW [1.01 PM]

LUNCHEON ADJOURNMENT [1.01 PM]

RESUMED [2.01 PM]

<DAVID ROBERT PEETZ, RECALLED [2.01 PM]

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

PN1548

VICE PRESIDENT HATCHER: Mr Shariff.

PN1549

MR SHARIFF: Thank you, your Honour. Can you please go to page 66 of the survey results? This question was being posed to those who had said that they were made redundant or had their contract expired and not renewed?---Yes.

PN1550

So that was a total of 455. Why, for the purpose of this question was the size of 513 reduced?---It's a while ago; you have to go back quite a few questions before you find a question that was asked of the whole sample. So, I guess the issue is, is it important to know for those employees who are terminated for other reasons whether or not they've remained at the same address or moved to another address. It's not an important enough thing to consider in the context of the survey.

PN1551

I find that somewhat puzzling and I'll tell you why, because for a whole number of other questions you've included a full cohort of 513 as being the subject matter of the questions. You accept that don't you?---In some of the other questions, yes.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1552

Then you concede, the question is to these people about where they remain or whether they left, is excluding people who might have been terminated for other reasons. One example might be because they retired, they resigned, left voluntarily, correct?---No. Well, but they're excluded from most of the questions. They're excluded by virtue of the operation of questions two and three.

PN1553

As we've got through the questions, questions (a), (b), (c) and (d) - (a) was redundant; (b) was contract expiry; (c) terminated for other reasons; (d) none. None of those. So if they were in (d) they got excluded; no further questions were asked other than about age, correct?---Age and income, yes.

PN1554

Right, so despite the 513 who fell into (a), (b) and (c), you say are relating to people who had been terminated for either redundancy or other reasons. As we've gone through, we've seen that the 513 includes casual employees, correct?---Yes.

PN1555

Includes a small group of people who didn't look for further work because they had retired, correct?---Yes.

PN1556

So that cohort of 513 potentially, and you don't know the answer to this, included people who just left, happy to leave?---Sorry, what do you mean by who just left?

PN1557

Left employment?---But only after either being made redundant or having their fixed term contract not renewed or being terminated for other reasons.

PN1558

All right?---So, somebody who you know, retires or moves to another industry and is not part of a redundancy or an expiry or a termination, they don't answer these questions.

PN1559

That's the way you viewed it when you postulated the questions or assisted in settling those questions?---Yes, what the alternative interpretation.

PN1560

Is that - let me put it a different way - that's what you had in mind when you put the questions that way?---That the main interest is about what happens to workers, in effect, who lose their jobs either because they're made redundant or their fixed term contracts aren't renewed or they're terminated for other reasons. And really, within that, the group that I'm most interested in and focus on most in my report is those who are made redundant.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1561

Now, all right?---So, those who just sort of say okay, I'm leaving; I've still got a job, but I'm going to leave, that's not really of great concern.

PN1562

Looking at the 452 to whom this question was asked, the vast majority remained at the same residential address, correct?---Yes.

PN1563

Then if you look at page 67 of the 62 who said that they - if you just come back to page 66, 72 percent remained at the same residential address and eight percent moved to another address in the same town and area?---Yes.

PN1564

62 people or 14 percent moved to a location 50 kilometres away from their pre-redundancy residential address, correct?---Yes.

PN1565

50 kilometres or more. Of those 62 people, they were asked questions, the question at page 67, which of the following best describes the reasons why you moved?---Yes.

PN1566

14 moved to access better job opportunities; 16 to enable them to take up a new job; only one because they couldn't keep up with mortgage payments and 26 for personal reasons?---Yes.

PN1567

Do you address these issues anywhere in your first or second report?---No, well, in writing the report I had to prioritise things and that wasn't at the top of the priority list.

PN1568

But one conclusion to draw at least from that data set at pages 66 and 67 is that the vast majority of employees who were made redundant, prefer to stay within the same area, correct?---It's a bit more subtle than that, because it's the majority of people who we were able to contact.

PN1569

See Professor, you now place that qualification on a response you're given, but when you produced your first report and your second report, you don't place any qualification on the data you wish to use, do you?---I think there's quite a few explanations of the nature of the data and so on and it cross refers back to what Essential are expected to say in their report.

PN1570

In your supplementary report, you in fact suggest that the sample size that was used here was a statistically valid sample size, correct?---Yes.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1571

VICE PRESIDENT HATCHER: Professor, is the point you're making now in relation to this question that it may under-represent those who have moved because they couldn't be contacted to do a survey in the first place?---I think it's likely that we will probably have under-estimated the extent of redundancy in the

sense that people who are made redundant, are probably, but we don't know for sure, probably more likely to move. Only able to poll all the people who still had contact addresses, or who could be contacted through the mechanism that was provided from the 2013 database.

PN1572

That is your assessment that the unions would have an out of date address on their records?---The database that was used or the databases that were used were basically the membership registers as of July 2013, whatever the date was. So if they had moved since then, if they're got a mobile phone you can track them down; if there's an email address you can track them down. If there's just a landline that's much harder.

PN1573

Thank you.

PN1574

MR SHARIFF: Look, were you sure about that? Are you sure that the contact details that you were given were for the contact details of the people reported in 2013? Or were they the contact details as presently in the union's respective databases as at 2016?---Well, they weren't given to me, they were given to Essential Research.

PN1575

Right, you just don't know?---My understanding is that they were the contact details as they stood in July 2013.

PN1576

In answer to the VP's question you said well there might have been a number of other people who were made redundant that you weren't able to contact. As I understand it, please correct me if I am wrong, there were some 12,000 members who were identified to Essential Media, correct?---Yes, but they didn't attempt to contact all of those 12,000.

PN1577

Of those some 12,000 members, there was contact made with something in the order of 2,600 people who gave positive responses, correct?---There was contact made with 2,600 people of whom around about 300 refused to participate; the great majority agreed to participate and there was some people for whom it was arranged that they would call back, but basically the survey had to be terminated at a particular point in time.

PN1578

Please go back to page two of the survey results?---On page two on this one?

PN1579

Yes. Doesn't that suggest that 2,618 people responded to question 2?---Yes, that's true, that's true.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1580

Thank you. Now of those people that responded, you were able to elicit responses that apparently 513 of them met the description of question 3A(a), (b) or (c), correct?---Yes.

PN1581

You were quite happy to use the responses you got from those employees falling within that cohort to draw conclusion in your report without qualification, correct?---I'm not sure about the words without qualification there.

PN1582

VICE PRESIDENT HATCHER: Professor, I'm going to miss a step; out of the database, how were the ones to be contacted, how were they selected?---They were randomly selected.

PN1583

Randomly?---Yes. So Essential is - now they're used to doing random search and they're a well-established survey company.

PN1584

The database, was that members simply on the books, or was it financial members, that is people who were still paying fees? Do you know?---I can't tell you whether the database made that distinction or not.

PN1585

Thank you.

PN1586

MR SHARIFF: Could you now go to page 75. This was a question asked to all of the 2,618, correct?---Yes.

PN1587

No question was asked of the subset of 513 as to what their age profile was, correct?---Well, they're included in this group.

PN1588

Page 76 then asked all the 2,618 their approximately weekly pay, correct?---Yes.

PN1589

Now can I invite you to go to your supplementary report and can I invite you to look at the OECD report which is an annexure at page 49?---Page 49?

PN1590

49, yes. At item 7 the OECD defines job displacement as having left a job since the previous year for economic reasons, see that?---However, HILDA and ABS LMS do not distinguish between economic reasons and dismissal for course?---Yes.

PN1591

Hence the latter group is also included in the analysis, see that?---Yes.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1592

Just pausing there. So when you do a comparative analysis between the OECD data and the Essential Survey results, the OECD data is specifically including employees who have lost their job because they are dismissed for some kind of conduct on their part?---Indeed.

PN1593

Then they say this "Termination of a temporary or seasonal contact is another possible reason for having left a job, but it is not possible to distinguish workers who left a temporary contact voluntarily from those who do not have their contact for temporary reasons". In other words, what the OECD's definition is saying, is that they are including people who get terminated for a temporary or a seasonal contact, correct?---But it is not possible to distinguish, so their last sentence says "For their purposes, workers who left their job after termination of their contact are not considered to be displaced".

PN1594

Can I suggest to you that that's a third category that they're excluding, that is people who leave their contact after expiry is a category that they exclude from their cohort; could I suggest that?---So what the OECD has treated basically is, people who were dismissed for economic reasons or people who were dismissed for other reasons, what they call of course, who have been in their job for one year or more so it excludes those who had not been in a job for one year or more. It excludes those who left their job after termination of their contact and as a result of that particular definition used by the OECD, in my second report, I have likewise restricted the data to match as far as possible, the OECD definitions. So I have just used those people who agreed to either (a) or (c), that is, made redundant or terminated for other reasons and who said that their time in that previous job was for one year or more.

PN1595

But the OECD's definition of displaced worker includes casual employees, doesn't it?---There's no reason to think it wouldn't, so yes that's right and likewise the same would apply in the way I've made those comparisons.

PN1596

If you come to page 36 in the OECD report where it's talking about the type of displaced workers who find work most rapidly, in the second complete paragraph "The type of employment contract an employer also affect re-employment outcomes. For example, the re-employment rate for workers displaced from jobs where they had casual contracts are 21 percentage points lower than those workers displaced from jobs where they had permanent contracts." See that?---Yes.

PN1597

That would suggest, wouldn't it, that the OECD's definition of displaced worker includes employees who were engaged on a casual basis, correct?---Yes.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1598

And that would impact upon any of the results stated in the OECD report, correct?---That's true.

PN1599

VICE PRESIDENT HATCHER: So Professor, to go back to footnote seven on page 49, the last sentence, who's being talked about there? People with, for economic reasons are included; people terminated are included, so what's the last sentence talking about?---The last sentence in footnote seven is about people who had a fixed term job.

PN1600

Fixed term contact?---and the job was not renewed. So that's equivalent to category (b) in that (a), (b), (c) thing that I was using and it's excluded them, so therefore in making those comparisons in the second report, I've also excluded them.

PN1601

Why are they excluded but casuals are included?---Why has the OECD done that?

PN1602

Yes?---Well, I guess they figure that people could be made redundant from a job regardless of whether they're a permanent or casual employee and, you know, there's evidence from other ABS data when they did their retrenchment and redundancy survey, they didn't exclude casuals, they included them and you saw different post-employment experiences between casuals and permanent workers but they were still classified as people who had been made redundant.

PN1603

MR SHARIFF: Would you agree to this, that the rate of casual workers varies from industry to industry?---Yes.

PN1604

So, in your supplementary report, what you did was to compare results from the Essential Survey to the aggregated result for rest of industry, agreed?---Yes.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1605

That necessarily takes into account some industries where the rate of casualisation is higher and therefore the results as to rate of re-employment or return to permanent or non-permanent work is different, correct?---That would also tend to understate the difference between mining and other industries because if, as you pointed out, the post-employment experiences of casuals are worse than they are for permanent workers, and the proportion of casuals in all other industries is higher than it is in mining, then if everything else was the same, then the post-employment experiences of workers in all other industries would be worse than it is in mining, because there's those differences in casual employment rates. So if you're making a comparison between - if it turns out that mining has worse outcomes than does the rest of industry on average, then the degree to which those outcomes are worse, is going to be understated by the fact that the casual

employment is higher in all other industries. When I say understated, I mean if you did a multi-variant regression and so on.

PN1606

But you're not comparing - can I suggest to you, like data with like data. For example, when you compare the results of the black coal mining workers as a result of the Essential survey, as to whether they're better or worse off, you're looking at a qualitative response based on subjective questions and I put that to you. Whereas the OECD analysis is a quantifiable analysis where people say that they suffered wage losses - 44 percent and the like, correct?---Well, the OECD is - HILDA data basically compares people stated earnings before and after and so they're basically asking a question about how much you earn, and they're able to do that because it's a longitudinal survey. Right, so you can see okay, what did people say in T1 was their income; what did people say in T3 was their income - you can compare the two. So you're not going to get reliable data going back in time from the survey response - what was your income two years ago, it's too much to ask of people. But we did ask what was your income, as you saw. You mentioned that question there.

PN1607

I was going to say that. You asked them what their income was?---And so, instead of being able to compare income now and back in time, we're able basically to compare those who were retrenched with those who weren't - or those who were made redundant with those who weren't made redundant.

PN1608

All right?---And there's, I didn't put it in my report because I only did this a couple of days ago, but there's about a 30 percent difference between the two. So the people who were made redundant or who've been made redundant in the past are now having an income that is about 30 percent less on average, huge variation, but on average it's about 30 percent less than for the same group of people who weren't made redundant. So I did that as basically a reality check to think okay, because when you look at the data, one of the things that really strikes you is the high proportion of people who are saying I'm worse off than before and it's a lot bigger than in the OECD report. Like it's one of the really stark findings. It's not so much a difference as in unemployment rates or unemployment duration, it's the differences in types of jobs people have afterwards. There are some differences in other things, but these are the big differences and I thought well, let's do a reality check, let's compare the earnings of people, the average earnings of people who've been made redundant versus those who haven't been made redundant.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1609

I'm sorry to stop you, but you don't have the data from the survey participants as to what they're actually earning now compared to what they're earning before. You only have their qualitative subjective responses to that. Do you agree with that?---No, because we have their - what you call their qualitative responses, but we also have their response about what their income is, which is a similar sort of concept that's got up in HILDA and which is used by the OECD. Now it doesn't have, it's not a longitudinal survey, it's a cross-sectional survey so it doesn't have

what was their income three years ago because it can't really be observed and if you ask people you wouldn't get reliable data, but it does have cross-sectional data that you can use to compare those who were made redundant and those who won't.

PN1610

Can I ask you this, in the supplementary report that came about because you were shown submissions that the CMIG had provided in writing to this Commission, correct?---Yes.

PN1611

And you were asked to comment on some particular paragraphs of those submissions, correct? Is that right?---Yes, yes.

PN1612

If I can put it to you this way, the three features - sorry, I'll withdraw the question. What you were being asked to do in the supplementary report, was to identify the ways in which the black coal mining industry might be different to other industries in relation to the experience for redundant or displaced workers, correct? That's what you were being asked, in general?---Well, there was a comment that - I can't remember the paragraph number - there was a comment that the survey didn't make comparisons between the black coal industry and the rest of industry and so, in my second report I basically sought to redress that.

PN1613

So, can I put it to you this way, you raise, as I see it, essentially three points of distinction. The first is the rates of re-employment comparing the survey results to the OECD report; secondly the type of employment to which displaced workers in the black coal mining industry go to following retrenchment; and a third is whether they're worse or better off in doing quantitative analysis to qualitative analysis - my words, not yours. They're the three areas?---Your words, yes.

PN1614

Yes - identifies points of distinction. One point of distinction that you don't address in the report that I took you to earlier, is that black coal mining workers earn substantially greater than the rest of industry in terms of average weekly and annual earnings, correct?---Yes.

PN1615

You don't address that in your supplementary report, do you?---Was that raised in the submissions in paragraph 45 or whatever it was?

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1616

I'm asking you, I thought you said that one of the points that you were trying to do was try and identify points of distinction between the black coal mining industry and other industries. I went through the three areas of distinction and I'm pointing out to you one area of distinction that you don't point out in your report is the greater average earnings there, as a point of distinction?---Well, I mean it's

actually in the supplementary report. I refer to the higher levels of earnings in mining than elsewhere and indeed we talked about that a bit earlier.

PN1617

But you do so in the context of - if you go to it, the end of your report in paragraphs 30 and following where what you're doing is responding to Mr Gunzburg's use of and reliance upon an ABS data set to critique his reliance upon a data set referable to unemployment data. That's what you're doing?---Yes.

PN1618

And your critique of that is well, the definition of unemployment is going to pick up people, not just who are retrenched, but a group of others including those who leave voluntarily and in that context you say, well there's a higher degree of labour turnover in the black coal mining industry at the highest compared to other industries which is unusual, because these people earn a lot of money?---Yes I mean that's part of the distinction I draw, yes, part of difference I draw.

PN1619

I'm suggesting to you that you don't raise that as a point of distinction, you raise that as a one sentence response at paragraph 33 when responding to the data set that Mr Gunzburg relied upon, correct?---Yes, it's not a secret that mining workers are highly paid and that's the reference in that chart there and paragraph 33 or whatever it was.

PN1620

Can I ask that you be - I'm sorry just at that point, could I tender the survey results.

PN1621

VICE PRESIDENT HATCHER: Yes the Essential Media Survey Results will be marked exhibit 14.

EXHIBIT #14 ESSENTIAL MEDIA SURVEY RESULTS

PN1622

MR SHARIFF: Can I now ask that you be shown a bundle of documents that have been produced collectively by the unions? These are a bundle of documents that have been produced; could you just go to - they're numbered at the bottom in the middle of the page; could you go to page 97? This is an email to you on 17 December 2015 from Mr Bukarica. Do you see that?---Yes.

PN1623

You received that email?---Yes.

PN1624

In the third last paragraph in his email to you, the second sentence, Mr Bukarica says "the case is pretty important in terms of its potential impact on members and your report will provide a central evidentiary foundation for our submissions". Do you see that?---Yes.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1625

So is this the case that as early as mid-December last year, you were aware that your report was needed to support the submissions that the union was presenting in this case?---Well, I was aware - - -

PN1626

Is the answer to that yes or no?---Well, I received that email, so yes.

PN1627

Can I now take you to the email that's located at page 115 at the bottom. This is an email that commences at page 114 on the previous page. It's from Mr Bukarica to Ms Bolger and in the second paragraph he says this "I don't mean to stuff you around, but as a result of the discussions with Peetz, the survey will now move away from pre-selecting redundant employees and instead will be a wider survey of members so that there is a comparison group". See that?---Yes.

PN1628

Now, that's in fact what happened because you examined the - as I said, questions were asked of 2,618 participants. They were, as it were, the control group being those who weren't - I'm sorry, I'll withdraw the question. The control group because those who responded 'yes' to paragraph 3A(d), correct?---3A(d), hold on a second, just let me have a look. Some of those will be 3A(d) and there would be 2A as well.

PN1629

All right. So the comparison group is going to be - I'll withdraw the question. Initially the plan was only to ask questions of those employees who had been made redundant, a select group of them, correct?---The plan was initially. Well, I had done some number crunching on the data available, a lot of which is in the first two thirds of the report and what is fairly obvious from doing that is there's quite a bit of information about - there's a lot of information about mining; there's a small amount of information about coal mining; there's a very small amount of information about black coal mining. Really, there's not enough information about redundant employees in the black coal mining industry to be able to make definitive statement. You'd be saying, well this is what happens in coal mines, there's a whole with retrenched workers or whatever. So, at some stage the CFMEU came up with some money to do a survey and their original idea would have been to survey those made redundant and I would have said well, to do it proper you also need to have a control group of some type.

PN1630

So that there could be comparisons drawn between those who get made redundant and those who are not made redundant?---Yes, that's right. So, you're still doing with resource constraints in all this and time constraints as well, but yes.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1631

Now, in terms of the comparison that was contemplated, we've gone through the survey results, I haven't taken you to every question, but we've gone through a fair number of them. The only other questions the cohort of people who responded

negative to 3A(d) were asked, was in relation to their age and their income, correct?---Yes, that's about right, yes.

PN1632

So, what do you tell the Commission is the comparison that you've done?---Well, there's no point in having comparisons between those people who are made redundant and those people who aren't made redundant in terms of what was their redundancy experience; the concept makes no sense. So a large slab, really the majority, probably almost all of the questions, are focusing on the redundancy experience.

PN1633

Right?---And in the end, as you said, the only comparison questions that could be done within the resource constraints and the time constraints that were available were about age and income where I've already told you what the comparison was on terms of income and the comparison in terms of age, I think it's in the first report as well.

PN1634

And is this right, you told Mr Bukarica that your estimate was that you could obtain responses from about 600 to 700 redundant workers out of a total response group of 2,000?---I couldn't tell you off the top of my head; it's plausible but it might be wrong.

PN1635

Does that mean you had at this stage, in or about April of this year, a preconceived idea as to the proportion or amount of redundant workers that you were going to identify in the black coal mining industry?---A preconceived idea? Well, when you're doing a survey, you have to make some sort of assumptions when the population you're drawing from is different to the main population you're interested in. So there is no central database of - at least none that I know of - of redundant - workers made redundant in the black coal mining industry. So if you're going to estimate what's the number that you'd likely turn up, you just have to make assumptions. They may be too high or too low, or whatever, that I think - I mean looking at that now, I'd say that would have been too optimistic if that's what I was saying.

PN1636

All right?---But it's not a preconceived notion because that implies that I'm somehow basing my report around a preconceived notion. It's something that, no matter what you think, you have to make assumptions about something in order to do - to try and model what size survey you'd end up with.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1637

If you could just come back to page 110, an email from Mr Taylor to Mr Bukarica which then is forwarded on to you. At the bottom of the page on page 110, Mr Taylor makes a point that at page 59 what was then a draft report, you've analysed data from the Essential survey and in particular, the subset of employees who were made involuntary redundant. He says "you include a group that say they

would have preferred to remain employed but they were made an offer too good to refuse. Arguably, they were not made redundant involuntarily. It may be too late to adjust these figures, but I anticipate the subsequent analysis which does not exclude that subgroup will be made - said to be unreliable". Did you take heed of that advice and amend your report accordingly to account for that?---Well, I looked at it and I thought that the term involuntary, which is what's used there in the second line, which I imagine was what I had in my earlier draft, is probably overstating the point and so in the final draft I would have referred - I did refer to reluctantly redundant, which I think is a more accurate way of describing it. It's like when you're writing anything as an academic, you'll show - if time permits, you'll show drafts around; you'll get comments from people; some that you'll think are spot on; some you'll think are rubbish and some you'll think well, that's not really - that comment isn't quite getting to the point, but maybe my words you use to express something are different, so you'll make some change to the way it's worded.

PN1638

If you go ahead to page 255, in relation to your supplementary report, you sent a copy of that to Mr Bukarica with some of his comments and at, for example, page 263, paragraph 21, in relation to one of the matters that you say is a point of distinction between the black coal mining industry and other industries, you'd actually stated in your original draft, the former appear a little less likely to be able to obtain another job. It has been suggested to you that it was more than a little, see that?---Yes, yes, in the third line of paragraph 21, that's what you're referring to, isn't it?

PN1639

If you go to page 275 Mr Taylor sends an email?---Sorry, what page number is that?

PN1640

Page 275, where he says - well just focusing on the first point, it says in relation to paragraph 8 he identifies that this material might be objected to as it might be said that you should have really engaged in this exercise in the primary report that you provided.

PN1641

VICE PRESIDENT HATCHER: So where's that on the page Mr Shariff?

PN1642

MR SHARIFF: Paragraph 8.

PN1643

VICE PRESIDENT HATCHER: Paragraph what?

PN1644

MR SHARIFF: 8 - next to paragraph 8.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1645

VICE PRESIDENT HATCHER: I see.

PN1646

MR SHARIFF: And that is so, isn't it, that you hadn't done any real comparison between the experiences of, as it were, retrenched employees in the black coal mining industry and other industries in your primary report? That's right, isn't it?---With the time that was available to me, which it's also commented on was limited, I really focussed on what I thought were the main priority issues and fair enough, when the coal industry employer group made their response, they commented on the fact that it was a bit rushed for time and I hadn't done those comparisons. So, I responded by doing those comparisons. So whether that would be objected to as being late or not, that's not a matter for me to comment on. That's for you people to work out.

PN1647

Then Mr Taylor says in relation to paragraph 21, to Mr Bukarica "Perhaps the expression a little less likely can be changed to a percentage reference?" In your final report, the supplementary report, just give me a moment - at paragraph 22. In the second sentence you then changed the words "little less likely" to "less likely?---Well, the earlier formulation was the former appear a little less likely to be able. The second formulation was the former appear to some extent less likely. So I saw that comment.

PN1648

A bit like being a little less worse off, a little bit better off? You suggested earlier today that there is a difference in the evaluation of these things. Isn't there a significant difference, according to you, between a "little less likely" and "less likely?---It's less likely to some extent. So I'm basically looking for a qualifier to put in there to highlight the fact that there's a difference in this area but it's not as big as the difference in other areas, such as in relation to the type of job people go to or whether they're better or worse off, and in my original formulation I used the "little less likely" which, on reflection, after seeing the comment, I thought yes, well it's a fair comment, so I changed it "appear to some extent."

PN1649

If you go to page 135, is this right, that Mr Peter Colley from the CFMEU also provided input into your draft report and provided various comments?---Yes, Peter Colley sent a - - -

PN1650

PowerPoint presentation to you?---A PowerPoint presentation? I think if you go over to page 137 you'll see he's annotated in the comments field, as one does with Word documents, various comments on different aspects of it.

PN1651

But didn't Mr Bukarica at one point provide to you a PowerPoint presentation that Mr Colley had provided?---He might have. It's possible. One of the - - -

PN1652

Just before you move on, I call for the PowerPoint presentation provided to this expert.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1653

VICE PRESIDENT HATCHER: Has it been established that there was one? Is any such document present in Court?

PN1654

MR BUKARICA: I don't believe it is, your Honour, but we could produce it.

PN1655

MR SHARIFF: Can I ask you this question? Did you take any of the data from the PowerPoint presentation that Mr Colley had provided to include it as data in your report?---I don't recall doing so. I didn't put any data in my report that I thought were sus. There's some data about the mining industry that I obtained from public sources, some data that I obtained from the union - for example, the union has - and I didn't have access to the Australian coal reports and then the Kiwi coal reports, or whatever - so I got them and we then went through looking for redundancies, when doing up that table, of known instances of redundancies using those data plus newspaper searches. But the PowerPoint presentation, I mean I'd have to see it to answer your question, but I don't recall using anything from it, because I suspect it was a little bit off-topic probably.

PN1656

Could you then go to page 217?---217, did you say?

PN1657

Yes. This is the email correspondence between you, Mr White from Central Media and Mr Bukarica. If you just come back to page 218, Mr White sends you and Mr Bukarica an email about survey wording, and he says:

PN1658

I imagine there will be people who have always been planning to leave when their contract expired.

PN1659

?---Sorry, where are you reading that from?

PN1660

Page 218, do you see that?---And whereabouts on page 218?

PN1661

Midway through?---Okay, yes - I imagine there will be people who have been planning to leave - yes.

PN1662

He suggests that a proposed question would be: Did you anticipate or hope that your contract would be renewed once it was expired, and he's raising that because in the final sentence of his previous paragraph, he says:

PN1663

I've heard people were doing that during the mining boom. They saw it as a way to make quick bucks before going back to their ordinary lives.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1664

Do you see that?---Yes.

PN1665

No question to that effect was asked, but you included in the questions a question about whether employees had lost their job because of expiry of a fixed-term contract. What was the relevance of expiry of a fixed-term contract to the issues that you were being told were at stake in this case?---Sorry, are you asking about this particular suggestion or about the question on the fixed-term contract?

PN1666

I've drawn your attention to that suggestion. I'm now asking you because you give a response to it, but before I come to your response I'm asking you why in the survey were you including as a cohort people who had left employment because of an expiry of a fixed-term contract?---Okay, well to deal with the first part, there's an awful lot of ideas that get tossed around in the drafting of a survey questionnaire, and I'd say a large slab of the emails you've got here are dealing with various aspects of drafting, and it's a very iterative process and a lot of things get put in and a lot more things get put out, and usually when you're drafting a survey you have many more data items than you want and you whittle it down; you also change the wording of them, make them more precise and so on. So as to the second thing, which is why is there a question in there about fixed-term employment, well, some people lose their jobs and they want to be kept on, so when their contract expires it is another way in which in effect they become redundant - their jobs are not renewed; that's the - - -

PN1667

That's your idea of redundancy, is it?---No, the earlier part of that question explicitly refers to redundant. So this is looking for another group of people who have in effect involuntarily lost their jobs. Some people might define them as redundant, some people don't. When I'm writing my report it's very clear as to whether we're including people who are redundant or whether it also includes people who have, you know, not been able to get renewed their fixed-term employment contract.

PN1668

VICE PRESIDENT HATCHER: Professor, it's at page 241 of the bundle; there seems to have been some agonising about which term to use?---Sorry, 241?

PN1669

Yes?---Yes, that's right, there was.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1670

Did that mean that you clearly had in your mind the possibility that the term of describing redundancy is inherently ambiguous?---We were basically looking for a form of words that would be understood by everybody, so in fact my initial thinking was along the lines probably of "laid off", but that's more an American term than an Australian term. Of course there are questions about what happens when you were blah - you know, what happens when you were put off - and so we

tossed around the question of okay, what's the best wording to get at exactly the concept that is involved here, which is basically, you know, when you involuntarily lost your job, but you're not going to use a long phrase like that. So I'd done some previous interviews, some qualitative interviews in this several years ago, did a search through the transcripts of those, and the term "sacked" actually came up more often, but it seemed to itself have a potential meaning, that is, some people might think well, you know, they're sacked because they're alleged to have undertaken some form of misbehaviour or whatever, whereas "put off" seemed to be a word that was used fairly often; people understood it, and it could encompass the concepts we were talking about there. If you asked somebody about, you know, what happened when you were put off then they'll know what you're talking about, so that's why that discussion went on there.

PN1671

Thank you?---In a sense it's a quite - well, like all the discussion about the wording in the questionnaire really - it's quite technical about what's the best way to express a particular concept: what's the best words to use, what's the best way to use them in order to get the respondents to understand what's the piece of - - -

PN1672

But "put off" was an expression used to describe any form of involuntary termination, not just by reason of redundancy?---Because some of those questions were referring to that. Like, say they get put into certain questions by virtue of the preceding questions, and then we need a word that can encompass those different experiences that they might have had.

PN1673

Why do you associate a non-renewal of a contract with redundancy?---Well, for some people non-renewal of a contract is, you know, they've lost their job and they wanted to keep it. In my report, when I've made comment, when I've done analyses of redundant workers, they're not included, and in my second report where I've done comparisons with the OECD, again they're not included, because the OECD uses a definition that doesn't include them and therefore I'd use a definition that doesn't include them. So, you know, there's a variety of different experiences that people might have to lead them to involuntarily losing their job. We've captured several of them and then, you know, looked at, in particular their interest is in - okay, what about those workers who were made redundant.

PN1674

Yes. Sorry.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1675

MR SHARIFF: Professor, one of the difficulties with that is that as I took you through the survey questions, the way the survey questions were put to the respondents, they didn't discriminate to just those who'd responded positively to question 3A(a), so the 513 people who were the pool, the sub-questions that were asked were asked to all 513 and then subcategories of those, weren't they? And they necessarily included people, 42 who had had their contracts expire, and 60-odd who had been terminated for other reasons, is that right?---Well, in this

print-out that you've got here that's the case, because that's a frequencies report of - but that's not what's in my report.

PN1676

What I'm putting to you is that if one looks at the data set in the responses, any one of those sub-questions could include people who were fixed-term contract employees, casual employees, and employees terminated for other reasons, correct?---There would be some respondents in there who were casual employees at the time they were made redundant, there are some people who at the time they lost their job were a fixed-term employee and they lost it because the contract was not renewed, but you have to understand that the analysis that's undertaken isn't of everybody who answered that question - like, it might be in this, but that's not my report.

PN1677

Go to page 75, for example, of your first report, and just as you're turning that up, I think what you said earlier was there are some 421 employees who'd been made redundant, right? The table at page 75, at table 14, N equals 465, correct?---Yes, so it says - - -

PN1678

Just, please - - -?---Well, it says N equals 465.

PN1679

So the number for the purpose of that table is greater than 421, correct?---And it explains what the population is there that it's drawn from.

PN1680

And if you then go over to the table which I think you've now corrected at page 79, what you don't do in this report, or even in your supplementary report, is in relation to the final row, "Total N with data" - the 46, the 170 to 88 - tell us where you're drawing that data from, do you?---Yes, I do. It says straight underneath that line, "Population" - it tells you what the population is.

PN1681

Where do you say that?---

PN1682

Population: Black coal mining industry workers made reluctantly redundant since 1 July 2013. The reluctantly redundant includes those who said that they did not want to leave but were forced to and those who said that they would have preferred to stay but were offered a package that was too good to reject.

PN1683

But this doesn't exclude people who might have been casuals, fixed-term employees or - - -?---Well, it does exclude fixed-term employees, unless they were made redundant before their contract expired.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1684

If you'd now come back - leave that page open - - -

PN1685

VICE PRESIDENT HATCHER: Mr Shariff, before we leave that page, you've said you've now corrected it. What's that referring to?

PN1686

MR SHARIFF: As I understand it, your Honour - I might be wrong about this - in the corrigendum to the supplementary report, at page 17 - I'm sorry, there's been a correction to table 16, not table 15. Now, can I come back to the other bundle of documents I was cross-examining you on at page 217?---Okay, sorry, so this is the emails?

PN1687

Yes. What you say at the bottom of the page on 217 to Mr White and Mr Bukarica is that: "Either way" - this is the survey participants -

PN1688

Either way, they would still be asked the remaining questions and would not be skipped out because they received redundancy payments, and we're interested in everybody in that group.

PN1689

What you seem to be suggesting in this email to Mr White is that who you're really interested in is the people who got redundancy payments, correct?---It doesn't say that we're only interested in people who got redundancy payments.

PN1690

Isn't that what you're saying?---I don't see the word "only" there.

PN1691

"We're interested in everybody" - - -?---It says we're interested in everybody in that group. It doesn't mean we're only interested in that group.

PN1692

And that group was a number of 380, correct?---If you say so.

PN1693

Could I then take you to page 229? This seems to be an early version of a letter of instructions to you, and at page 233, question 8 asks you to look at a number of things, including making assumptions about an award-dependant employee - - - ?---Sorry, are you in paragraph 8 there?

PN1694

Yes?---So what's the question?

PN1695

I'm asking you to look at it?---Okay, I'm looking.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1696

Did you ask for any assistance from those instructing you as to how you would have engaged in that task?---I would have told them that those data wouldn't be available in exactly that form.

PN1697

Could I tender that bundle of documents?

PN1698

VICE PRESIDENT HATCHER: Yes, but (indistinct), what was requested to be produced?

PN1699

MR SHARIFF: These are documents produced by the unions relating to Professor Peetz's report.

PN1700

VICE PRESIDENT HATCHER: So bundle of documents produced by unions relating to Professor Peetz's report will be marked exhibit 15.

**EXHIBIT #15 BUNDLE OF DOCUMENTS PRODUCED BY UNIONS
RELATING TO PROF PEETZ'S REPORTS**

PN1701

MR SHARIFF: My friend says that that might not have been the basis upon which they're produced but we all think in agreement that we made a request for documents relating to the preparation of Professor Peetz's report, any letters of instructions and the like, and we were served with that bundle together with - I'm sorry, I should have noted this - there were three further documents provided to us this morning that I haven't had the opportunity to make copies of, but I'll ensure I have those when we resume.

PN1702

VICE PRESIDENT HATCHER: Well, it's only tentatively a shorthand description.

PN1703

MR SHARIFF: Yes, and I should indicate that at page 99 of that bundle there's the reference to the PowerPoint presentation that was provided.

PN1704

COMMISSIONER JOHNS: I think that's the one at the bottom of page 13 as well.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1705

MR SHARIFF: Yes, I think that's right. Thank you, Commissioner?---I don't - well okay, firstly, in relation to what you're talking about at page 233, the ultimate form that took whatever it was - I don't really remember - is on pages 44 and 45 of my report, which basically shows the estimates of award coverage from two different sources, one being the ABS Employment Earnings and Hours survey, and the other being the Fair Work Commission's own Australian

Workplace Relations survey, and they come up with quite different estimates, and so I've put both of them there. That's basically as far as I can go in terms of independent data about that, unless you've got something else that I'm unaware of. And in page 99, I think, about the PowerPoint presentation, like I said, I don't have a strong memory of it; it might have been some presentation about the future of the industry that Peter Colley gave - I'm not really certain. But basically, if that had pointed to the existence of some data that I thought were useful I would have gone to the original source; if it didn't, I would have ignored it.

PN1706

Professor, you have studied the Australian labour market for several decades now?---Yes.

PN1707

You've agreed with me earlier that there are other industries outside the black coal mining industry that are also cyclical, correct?---Yes.

PN1708

You have in the past few years conducted research and studies for the Australian Workers' Union in relation to employment projections, correct?---Yes.

PN1709

You have also studied the national retail industry in 2015, correct?---Mm-hm.

PN1710

The nation retail industry, you would accept, is a highly casual, part-time based workforce, correct?---Yes.

PN1711

You've also examined pay equity issues in the Australian labour market, correct?---Mm-hm.

PN1712

You've also edited a book entitled, "Wealth, Poverty and Survival", correct?---Indeed. That's going back a long way - 1983, if my memory serves me right.

PN1713

You've examined low-paid industries and labour markets in Australia, correct?---Yes.

PN1714

You've got a fair idea of the general trend towards the casualisation and part-time work arrangements and the trends in relation to that in the economy, correct?---Yes.

PN1715

You're aware of itinerant workforces, marginal workforces, low-paid workforces that are common in the economy, correct?---Yes.

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1716

And in any of your studies, have you come across in any of those workforces a redundancy entitlement of three weeks per year of service that's uncapped?---Well, I have to say in most of those studies, most of those areas of research, that has to be the focus of my research - the value of redundancy payments and the value of those packages.

PN1717

No, but you gave evidence in the 2004 redundancy test case?---I did.

PN1718

You were commissioned to do so by the ACTU?---Yes.

PN1719

Are you familiar at all with what the standard was that was then promulgated by the AIRC in - - -?---I was at the time. You'll be stretching my memory now.

PN1720

Are you aware of what the National Employment Standard currently provides?---I've got a reasonable idea of it.

PN1721

Are you aware that for a person with 20 years' service who's only covered by the National Employment Standards, they would get a maximum of 12 weeks' severance pay?---If all they got was the National Employment Standard, then I presume - like, I'm not actually looking it up while I'm sitting up here - but I presume you're correct.

PN1722

That person with 20 years' service could be 60 or 65 years of age, correct?---The age - yes, it's basically - it's service-related.

PN1723

But a person who's say 40 years old with nine years' service would get 16 weeks of pay under the NES?---I'll take your word for that.

PN1724

A person engaged in the manufacturing industry who gets terminated on the ground of redundancy and who's only entitled to the NES standard with 20 years' service would get 12 weeks' pay severance, do you accept that?---I'll take your word for that, yes.

PN1725

An employee who's covered by the Black Coal Mining Award with 20 years' service would get 60 weeks retrenchment pay in total. Based upon your experience and study as a labour market economist who has studied various vulnerable workforces, you don't say, do you, that there's any economic justification to value the work for the black coal mining worker at 48 weeks higher than a manufacturing worker, do you?

*** DAVID ROBERT PEETZ

XXN MR SHARIFF

PN1726

MR BUKARICA: I object. There's nothing in the reports of this that Professor Peetz has produced that go to that question and he hasn't been asked to address that in any reports, and it's really irrelevant to the matters that he's given evidence in respect to.

PN1727

VICE PRESIDENT HATCHER: Mr Shariff?

PN1728

MR BUKARICA: And it's got no probative value either.

PN1729

VICE PRESIDENT HATCHER: I mean, I'm not sure - it's just the element of economic justification; I mean, there's certainly a value judgment involved, but what do you mean by economic justification?

PN1730

MR SHARIFF: The witness has been presented as a labour market economist. Someone who's studied the labour markets across the economy has a fair idea of the trends in the economy and I'm putting that question on that basis. It doesn't matter whether this witness has addressed the matter in the reports or not.

PN1731

VICE PRESIDENT HATCHER: I'll allow the question. Can you answer that (indistinct)?---Yes. I mean, I'm not really here to answer should questions; I'm here to answer questions about what is - what is the situation in the industry or whatever, so is a black coal mining worker worth more than a worker in some other industry - well, you could get a lot of people arguing about that, including on the huge differences in rates of pay. On the other hand, there are also huge differences in the value of profit and revenue for employee and so on, so I think there are a lot of considerations to take into account. I'm not really wanting to make a comment one way or the other about that.

PN1732

MR SHARIFF: I have no further questions.

PN1733

VICE PRESIDENT HATCHER: Any re-examination, Mr Bukarica?

PN1734

MR BUKARICA: Just one or two matters arising, if the Commission pleases.

RE-EXAMINATION BY MR BUKARICA

[3.12 PM]

PN1735

MR BUKARICA: Mr Peetz, Mr Shariff spent a lot of time taking you through a document which is now marked exhibit 14. Do you have that in front of you?---That's this one, right?

DAVID ROBERT PEETZ

RXN MR BUKARICA

PN1736

Yes. Can I just ask you to clarify - so, it's beyond that - the document that he took you to is not a document that you produced, that's correct?---No, it's not a document I produced.

PN1737

In terms of the data set or data that you used in the compilation of your expert report, in what form was that firstly?

PN1738

MR SHARIFF: I object. We'll get the necessary correspondence if it's necessary, but my instructors wrote to the union asking for production of the data relied upon for the purpose of the survey and report, and what was produced to us is what I've cross-examined on.

PN1739

VICE PRESIDENT HATCHER: I'll allow the question but obviously if the answer's inconsistent with what you were told then you might be entitled to raise that issue further.

PN1740

MR SHARIFF: I apologise. I've conducted a cross-examination on the force of what was presented to me on instructions.

PN1741

VICE PRESIDENT HATCHER: Let's see what the answer is first.

PN1742

MR BUKARICA: Mr Peetz, are you able to address that question? Do you remember the question I put to you?---Yes. I basically received the data from Essential in the form of a unit record data set. It was either in Excel or SPSS - I can't actually remember right now - but probably in SPSS but I'm not certain about that.

PN1743

VICE PRESIDENT HATCHER: Was it in the form of exhibit 14?---No, that's not a document I produced.

PN1744

But you hadn't seen that before?---I think I saw it a couple of days ago. It looks like something that I'd seen - yes, but it's not one that I was familiar with, I haven't gone through every page of it all or whatever.

*** DAVID ROBERT PEETZ

RXN MR BUKARICA

PN1745

It's not the data you used to prepared your report?---No. The data were collected by Essential, right - they did their telephone survey and they basically generated the unit record data set from it, and at some point they provided me with a copy of it. I did some cleaning of it myself, sent it back to them, and then used that version of it, which would have been - I don't know - a few days before the final preparation of the report, as a basis for my report.

PN1746

So subsequent to my receiving it and sending it back to them, they'd done some further cleaning, which is why there's that 421 versus 423 thing, why they've categorised some people who answered yes to some of the other questions about the details of redundancy. They've treated them as being redundant because obviously they couldn't have said so without that, so they've got a slightly number than me. So that's basically the - and we basically produced our reports independently. I knew Essential would do an overview, so in my report I mainly focussed on tenure patterns - you know, what difference did tenure make - because I wasn't expecting Essential to be doing that. They would have been hard-pressed enough to get the summary report done in time, so I concentrated on the tenure patterns.

PN1747

MR BUKARICA: Professor Peetz, perhaps if I could assist in jogging your memory or bringing to your attention something you've put in your original report, and tell me if this is the process that you were referring to - and this is at page 2 of your report, and it begins at the second last line from the bottom of the first paragraph:

PN1748

I was consulted in the design of the questionnaire and have received an advance copy of a CSV format data file that has formed the basis for the analysis and later sections of this report.

PN1749

Is that what you were referring to?---Yes. I've seen it in a CSV format. So that's basically - CSV is an unformatted file, but basically when you open it it reads into Excel, so I then created the relevant variable names in SPSS, yes.

PN1750

If the Commission pleases, nothing further.

PN1751

VICE PRESIDENT HATCHER: Thank you. Mr Shariff, can I excuse Professor Peetz or is there some issue you want to raise?

PN1752

MR SHARIFF: There's I think two issues. The first is the production of the PowerPoint. The second is - - -

PN1753

VICE PRESIDENT HATCHER: I think Mr Bukarica has agreed to do that.

PN1754

MR SHARIFF: Yes. I don't think there will be anything flowing from it. The second is just in relation to the data set. I can address this in closing, but - - -

*** DAVID ROBERT PEETZ

RXN MR BUKARICA

PN1755

VICE PRESIDENT HATCHER: But did you receive what's referred to as the CSV format data file or did you request it?

PN1756

MR SHARIFF: I am told that we were sent a PDF copy of - I apologise, I better get some clear instructions on this - but I am told currently that we weren't given the .csv data set because there's proprietary issues involved, but we were given what survey results were - that's when we print the document out; the document prints out in the form that I've tendered it in exhibit 14. I hope nothing comes of this because - and I think the professor can be released - if it can be agreed that what I've cross-examined on reflects the raw data that the professor had in any event. I don't think it makes the difference, but my friends are in the position to tell us that, not me.

PN1757

VICE PRESIDENT HATCHER: Mr Bukarica, can you clarify this issue?

PN1758

MR BUKARICA: Perhaps it's a matter that counsel and I can have a discussion about, because I'm reluctant to give evidence from the Bar table, if it pleases, and it might be an issue that I can satisfy Mr Shariff's concern about outside of court hearing time.

PN1759

VICE PRESIDENT HATCHER: Mr Taylor, did you want to say something?

PN1760

MR TAYLOR: I think Mr Shariff has quite rightly said that he's going to be checking his instructions. Mr White from Essential also gives evidence, not required for cross-examination, and a call for a document relevant to his statement was sought, and so it might be that Mr Shariff needs to just confirm what documents were produced relevant to what requests.

PN1761

MR SHARIFF: I accept that that may or may not be the case. I'll check what my instructions were on the request made. But in any event, I also thought, on my current instructions, that there was a request made late last week of documents relating to the preparation of Professor Peetz's report.

PN1762

VICE PRESIDENT HATCHER: Anyway, should I excuse Professor Peetz, or should I allow an adjournment for you to get instructions and confer first?

PN1763

MR SHARIFF: Yes.

PN1764

VICE PRESIDENT HATCHER: Yes to which?

*** DAVID ROBERT PEETZ

RXN MR BUKARICA

PN1765

MR SHARIFF: Yes to both.

PN1766

VICE PRESIDENT HATCHER: Thank you, Professor Peetz for your evidence. You're excused and you're free to go.

<THE WITNESS WITHDREW [3.20 PM]

PN1767

VICE PRESIDENT HATCHER: Mr Shariff, do you want to take that adjournment now or shall we proceed to tender the other statements before you do that?

PN1768

MR SHARIFF: I think we should take that adjournment now.

PN1769

VICE PRESIDENT HATCHER: All right.

SHORT ADJOURNMENT [3.20 PM]

RESUMED [3.26 PM]

PN1770

VICE PRESIDENT HATCHER: Mr Shariff, is it all sorted?

PN1771

MR SHARIFF: Can I just correct something? My friend, Mr Taylor, is right. What was asked for was the data relied upon by Mr White who gives evidence in relation to the Essential survey. The dot says the document referred to in Professor Peetz's report might be something different, but as I have asked my friends, and I think I'm right about this but I don't want to speak for them, that really the data should be the one and the same data.

PN1772

VICE PRESIDENT HATCHER: Except for the minor cleaning up that was - - -

PN1773

MR SHARIFF: The minor cleaning up. What my friends say is that when Professor Peetz is referring to a composite data set in his report, he's referring to segments of the overall data. I think that much can be accepted in a way, but part of our proposition will be in closing that the survey results, which we've gone to, they're the original raw data; we can look to those and then critique Professor Peetz's report on that basis. So I think the upshot of that is that nothing further needs to be done at this point.

PN1774

VICE PRESIDENT HATCHER: All right.

*** DAVID ROBERT PEETZ

RXN MR BUKARICA

PN1775

MR SHARIFF: Can I also correct another thing? The last exhibit which was tendered - I think it's exhibit 14 - I think it's been given a short description of - - -

PN1776

VICE PRESIDENT HATCHER: 15, isn't it?

PN1777

MR SHARIFF: 15, I'm sorry - documents relating to Professor Peetz's report. The specific call that we made to our friends was all correspondence between the CFMEU, APESMA and Professor Peetz; any notes or minutes of discussions or meetings between officers of the CFMEU and Professor Peetz concerning engaging or commissioning of Professor Peetz and the preparation of the first and second Peetz reports for the proceedings, including but not limited to the letter dated 10 September 2015; any notes or minutes of the meeting of 9 February 2016 referred to in the report; any letter of engagement or instructions provided by the CFMEU, APESMA to Professor Peetz to prepare the questionnaire for the survey conducted by Essential, et cetera. That's what was asked for, so the short description should be read as referring to all of that which I've just read out.

PN1778

VICE PRESIDENT HATCHER: Perhaps I'll need simply to say bundle of documents produced by unions relating to the preparation of Professor Peetz's reports (plural). Is that close enough?

PN1779

MR TAYLOR: Yes, as long as it's understood that what the actual description doesn't do is even attempt to capture what Mr Shariff has quite rightly read out was the actual call for documents, so it is a call for a specific category of documents. Inevitably there will be other documents which in some broad way relate to the report but were not captured by the call, and I don't think there's any misunderstanding about that between us and Mr Shariff. I just thought I'd make that clear.

PN1780

VICE PRESIDENT HATCHER: The ones that were produced do relate.

PN1781

MR TAYLOR: They do. They are certainly a subset that do, yes.

PN1782

VICE PRESIDENT HATCHER: All right.

PN1783

MR SHARIFF: Can we withdraw his permission to appear? I think my friends now want to complete their case, and then if I could be heard on closing submissions.

PN1784

MR TAYLOR: There were just two matters, I think, my friend intended to mention. One was that the CSV file was offered, as I understand it, but ultimately wasn't required to be produced. The other things gone out of my head, I'm sorry.

PN1785

MR SHARIFF: I don't doubt what my friends have said about that but we don't have all our email correspondence here, but perhaps I can respond to that when we come back to closing submissions.

PN1786

VICE PRESIDENT HATCHER: Mr Bukarica, do you want to tender your remaining statements?

PN1787

MR BUKARICA: Yes, your Honour, if it pleases. Your Honour, I'm not sure which order you've received the statements but if I - - -

PN1788

VICE PRESIDENT HATCHER: I think Gavin White was next.

PN1789

MR BUKARICA: Gavin White? I tender that statement.

PN1790

VICE PRESIDENT HATCHER: The statement of Gavin White made on 24 June 2016 will be marked exhibit 16.

EXHIBIT #16 STATEMENT OF GAVIN WHITE DATED 24/06/2016

PN1791

MR BUKARICA: If the Commission pleases.

PN1792

VICE PRESIDENT HATCHER: Andrew Vickers, so the statement of Andrew Vickers dated 22 June 2016 will be marked exhibit 17.

**EXHIBIT #17 STATEMENT OF ANDREW VICKERS DATED
22/06/2016**

PN1793

VICE PRESIDENT HATCHER: The next one is Peter Colley.

PN1794

MR BUKARICA: I tender that.

PN1795

VICE PRESIDENT HATCHER: What's the date on that?

PN1796

MR BUKARICA: 23 June 2016, I think.

PN1797

VICE PRESIDENT HATCHER: The statement of Peter Colley dated 23 June 2016 will be marked exhibit 18.

**EXHIBIT #18 STATEMENT OF PETER COLLEY DATED
23/06/2016**

PN1798

VICE PRESIDENT HATCHER: The statement of Robert Timbs dated 10 June 2016 will be marked exhibit 19.

EXHIBIT #19 STATEMENT OF ROBERT TIMBS DATED 10/06/2016

PN1799

VICE PRESIDENT HATCHER: The statement of Anthony John Fardell dated 20 June 2016 will be marked exhibit 20.

**EXHIBIT #20 STATEMENT OF ANTHONY JOHN FARDELL
DATED 20/06/2016**

PN1800

VICE PRESIDENT HATCHER: The statement of Barry Elliot dated 20 June 2016 will be marked exhibit 21.

EXHIBIT #21 STATEMENT OF BARRY ELLIOT DATED 20/06/2016

PN1801

VICE PRESIDENT HATCHER: The statement of Craig Steven Trusty dated 15 June 2016 will be marked exhibit 22.

EXHIBIT #22 STATEMENT OF CRAIG TRUSTY DATED 15/06/2016

PN1802

VICE PRESIDENT HATCHER: The statement of Dan Watson dated 20 June 2016 will be marked exhibit 23.

EXHIBIT #23 STATEMENT OF DAN WATSON DATED 20/06/2016

PN1803

VICE PRESIDENT HATCHER: The statement of Dennis James Edwards dated 18 June 2016 will be marked exhibit 24.

**EXHIBIT #24 STATEMENT OF DENNIS JAMES EDWARDS
DATED 18/06/2016**

PN1804

VICE PRESIDENT HATCHER: The statement of Geordie Estatheo dated 23 June 2016 will be marked exhibit 25.

**EXHIBIT #25 STATEMENT OF GEORDIE ESTATHEO DATED
23/06/2016**

PN1805

VICE PRESIDENT HATCHER: The statement of Mark Joseph Wallace dated 9 June 2016 will be marked exhibit 26.

**EXHIBIT #26 STATEMENT OF MARK JOSEPH WALLACE
DATED 09/06/2016**

PN1806

VICE PRESIDENT HATCHER: The statement of Paul Byron, undated - - -

PN1807

MR BUKARICA: I had 7 July.

PN1808

VICE PRESIDENT HATCHER: The version we've got is unsigned and undated, but if you want to supply us with a signed version at some stage we'll put that in. Exhibit 27.

EXHIBIT #27 STATEMENT OF PAUL BYRON, UNDATED

PN1809

VICE PRESIDENT HATCHER: The statement of Robert John Bennett dated 20 June 2016 will be marked exhibit 28.

**EXHIBIT #28 STATEMENT OF ROBERT JOHN BENNETT DATED
20/06/2016**

PN1810

VICE PRESIDENT HATCHER: The statement of Wayne Douglas Saunders dated 17 June 2016 will be marked exhibit 29.

**EXHIBIT #29 STATEMENT OF WAYNE DOUGLAS SAUNDERS
DATED 17/06/2016**

PN1811

VICE PRESIDENT HATCHER: The statement of Wilfred John O'Donnell dated 13 June 2016 will be marked exhibit 30.

**EXHIBIT #30 STATEMENT OF WILFRED JOHN O'DONNELL
DATED 13/06/2016**

PN1812

VICE PRESIDENT HATCHER: Is that all your statement, Mr Bukarica?

PN1813

MR BUKARICA: That's our evidence.

PN1814

VICE PRESIDENT HATCHER: Thank you.

PN1815

MR SHARIFF: Your Honour, I should note that what was exhibit 10 contains objections to all but two of those statements that have been tendered.

PN1816

VICE PRESIDENT HATCHER: All right. The objections to those statements set out in exhibit 10 are noted and will be dealt with further in submissions. Mr Taylor?

PN1817

MR TAYLOR: Yes, if it please, we have seven statements of witnesses who are not required for cross-examination that we would like to tender. I'm happy to take them in the order that your Honour has them.

PN1818

VICE PRESIDENT HATCHER: All right. Thank you. The statement of Geoff Wright dated 23 June 2016 will be marked exhibit 31.

**EXHIBIT #31 STATEMENT OF GEOFF WRIGHT DATED
23/06/2016**

PN1819

VICE PRESIDENT HATCHER: The statement of Greg Davey dated 23 June 2016 will be marked exhibit 32.

EXHIBIT #32 STATEMENT OF GREG DAVEY DATED 23/06/2016

PN1820

VICE PRESIDENT HATCHER: The statement of Jayne Erica Farrey dated 23 June 2016 will be marked exhibit 33.

**EXHIBIT #33 STATEMENT OF JAYNE ERICA FARREY DATED
23/06/2016**

PN1821

VICE PRESIDENT HATCHER: The statement of Justin James Smith dated 23 June 2016 will be marked exhibit 34.

**EXHIBIT #34 STATEMENT OF JUSTIN JAMES SMITH DATED
23/06/2016**

PN1822

VICE PRESIDENT HATCHER: The statement of Steve Peter Bartlett dated 24 June 2016 will be marked exhibit 35.

**EXHIBIT #35 STATEMENT OF STEVE PETER BARTLETT
DATED 24/06/2016**

PN1823

VICE PRESIDENT HATCHER: The statement of Stephen Donald Took dated 23 June 2016 will be marked exhibit 36.

**EXHIBIT #36 STATEMENT OF STEPHEN DONALD TOOK DATED
23/06/2016**

PN1824

VICE PRESIDENT HATCHER: The statement of Catherine Bolger dated 24 June 2016 will be marked exhibit 37.

**EXHIBIT #37 STATEMENT OF CATHERINE BOLGER DATED
24/06/2016**

PN1825

VICE PRESIDENT HATCHER: Is that all your statements, Mr Taylor?

PN1826

MR TAYLOR: It is. We also wish to tender some documents that have been produced. Could I hand to the Commission a folder and a further loose document? If the Commission could start with the folder and turn to page 7, numbered in the bottom right-hand corner, you will see there is a copy of an order requiring production of documents. The tender is a tender in respect of two subcategories, which are found at 5(a), which is found at the bottom of page 8, and 5(c), which is found on page 9.

PN1827

VICE PRESIDENT HATCHER: What were they again? 5(c) and what?

PN1828

MR TAYLOR: 5(a) and 5(c).

PN1829

VICE PRESIDENT HATCHER: All right.

PN1830

MR TAYLOR: The earlier pages, starting from page 1 in reverse chronological order, contain correspondence between the parties which confirm in effect that the original production call was narrowed by agreement and so are included so that it can be properly understood what was ultimately produced. In that regard, I ask the Commission to note firstly page 5, at the top of page 5, at those acting for the employers identified, firstly in respect of item 5(a), that some policies of the relevant employers were contained in omnibus policies and it was proposed providing relevant extracts.

PN1831

Also on page 5, in the middle of the page in respect to item 5(c), it was said that the call as drafted was oppressive because it would require the production of every contract of employment. It was then suggested, at the bottom of page 2, in respect of category 5(a) that my client was prepared to receive relevant extracts of policies, and on page 3 at paragraph (c) that they were content to receive a sample of contracts which are representative of the contracts used by each employer; and at page 1, in effect, the response was that that's what would be produced.

PN1832

What then follows from pages 10 to 154 are documents which meet the amended call for documents against 5(a) and 5(c). The additional document that was separately handed up, which starts on the first page with the name Adam Guy, G-u-y, an email dated 2 November 2016, in short, attaches a document which it

was accepted should have been or falls within the call of documents and is in effect subsequently produced. So we tender that individual document along with the folder as a single tender.

PN1833

VICE PRESIDENT HATCHER: All right. I'll describe this as bundle of CMIG member redundancy policies and sample contractual terms concerning redundancy, exhibit 38.

EXHIBIT #38 BUNDLE OF CMIG MEMBER REDUNDANCY POLICIES AND SAMPLE CONTRACTUAL TERMS CONCERNING REDUNDANCY

PN1834

MR TAYLOR: There is one more matter. I'd like to tender one further document which relates to the issue of the concern that my client has raised that there remains an outstanding document or documents which have not been produced in answer to that same call. I have had a chance to speak to my friend about this and I think the position can be dealt with fairly briefly, but nevertheless we want to do so by way of evidence and a formal response.

PN1835

The document I seek to tender is an email that I provided to the Commission, being a BHP Billiton email to, as it appears, supervisors and senior leadership team, which deals as a subject matter with these proceedings and notes information in relation to non-EA redundancy entitlements. There is then what appears to be - and I'm saying this really from the date at the end of the document - an extract from an earlier communication. Just pause - it's to be recalled that this email of 12 August occurs after the call for documents and, under the heading, "No impact to our non-EA employees", it is said:

PN1836

The position for Coal's employees is that their respective redundancy entitlements will not be determined by the award but by BHP Billiton policy.

PN1837

On the next page it says:

PN1838

In accordance with the BHP Billiton policy, employees receive a far more generous redundancy payment than they would receive under the award. The BHP Billiton policy specifically does not cap employees' years of service when calculating redundancy entitlements. The redundancy entitlements of BHP Billiton's non-EA employees will continue to be governed by BHP Billiton policy and not determined by the award.

PN1839

And the final sentence says:

PN1840

However, the main point is that your redundancy entitlement is not determined by the award and will continue to be determined by BHP Billiton policy.

PN1841

We tender that document and formally call for any document or documents which record the content of the policy that is described in that document.

PN1842

VICE PRESIDENT HATCHER: Firstly I'll mark the document, so I'll describe it as email concerning BHP Billiton non-EA staff redundancy entitlements, dated 12 August 2016. That will be marked exhibit 39.

EXHIBIT #39 EMAIL CONCERNING BHP BILLITON NON-EA STAFF REDUNDANCY ENTITLEMENTS DATED 12/08/2016

PN1843

VICE PRESIDENT HATCHER: Mr Shariff, is there any difficulty in responding to that call in a timely fashion?

PN1844

MR SHARIFF: Your Honour, the position is - - -

PN1845

VICE PRESIDENT HATCHER: Sorry, I say it on the assumption that BHP Billiton is one of the companies you're representing, or not?

PN1846

MR SHARIFF: Yes, via the BMA.

PN1847

VICE PRESIDENT HATCHER: Yes.

PN1848

MR SHARIFF: Your Honour, the position is this, and it's been stated both by me and my instructing solicitor to the other side of the record, there is no written document consisting of the policy to be produced. There was a letter sent on 17 October 2016 by my instructors, which attached a letter dated 24 March 2016 from BHP Billiton to my friend's client, and that stated what the position was, and I can tell your Honours that there is no document to produce, but I think for caution I should tender the correspondence that was sent to my friend's instructor.

PN1849

MR TAYLOR: I have no objection to that.

PN1850

MR SHARIFF: I should identify it is correspondence dated 17 October 2016 from my instructors to my friend's instructor and that encloses correspondence from 24 March 2016 and 14 March 2016, and it also encloses the original I think email that my friend's taken your Honours to.

PN1851

VICE PRESIDENT HATCHER: All right. Bundle of correspondence re response to order for production re BMA, exhibit 40.

EXHIBIT #40 BUNDLE OF CORRESPONDENCE RE RESPONSE TO ORDER FOR PRODUCTION RE BMA

PN1852

VICE PRESIDENT HATCHER: Mr Taylor, you've heard that response, so you can - - -

PN1853

MR TAYLOR: That's all. I anticipated, of course, that response because I'd had that conversation with Mr Shariff.

PN1854

VICE PRESIDENT HATCHER: All right. Is that all the evidence?

PN1855

MR SHARIFF: I think that's all the evidence.

PN1856

MR TAYLOR: It is all the evidence, yes.

PN1857

VICE PRESIDENT HATCHER: So it was the parties' preference to submissions on Thursday?

PN1858

MR SHARIFF: Yes. We've had a discussion. If we could have tomorrow, subject to the convenience of the Commission, to prepare what we're going to address on Thursday. I have raised the prospect with my learned friends that there be an equal division or at least a fair division of time, having regard to the fact that there's two of them and two parties and I can see Mr Fagir has been typing away some things that undoubtedly he's going to turn into a 50 or 60-page submission that they're going to provide. The parties have addressed in writing the primary issues as between them. I had indicated to my friends that I'd be about an hour to an hour-and-a-half addressing what I need to address in my closing submissions. My friends share the time between them. As long as I'm left with an hour 45 minutes to reply. That was the way we were looking at division of time. I haven't got their agreement to that.

PN1859

VICE PRESIDENT HATCHER: Shall we start at 9 am for more abundant caution, or is that unnecessary?

PN1860

MR SHARIFF: My friends say 9.30, which is probably more convenient.

PN1861

VICE PRESIDENT HATCHER: Yes, all right. 9.30?

PN1862

MR SHARIFF: Yes.

PN1863

VICE PRESIDENT HATCHER: Anything we need to deal with now?

PN1864

MR SHARIFF: Other than to inquire if there are particular issues that your Honours want us to address?

PN1865

VICE PRESIDENT HATCHER: There probably will be but I think you'll find out about that on Thursday. We will now adjourn and resume at 9.30 am on Thursday.

ADJOURNED UNTIL THURSDAY, 10 NOVEMBER 2016

[3.51 PM]

LIST OF WITNESSES, EXHIBITS AND MFIs

DAVID ROBERT PEETZ, AFFIRMED	PN994
EXAMINATION-IN-CHIEF BY MR BUKARICA	PN994
EXHIBIT #10 LIST OF CMIG OBJECTIONS.....	PN1021
EXHIBIT #11 WITNESS STATEMENT OF PROFESSOR DAVID PEETZ DATED 23/06/2016	PN1022
EXHIBIT #12 WITNESS STATEMENT OF PROFESSOR DAVID PEETZ DATED 31/10/2016	PN1025
CROSS-EXAMINATION BY MR SHARIFF	PN1027
EXHIBIT #13 DOCUMENT 6302.0 - AVERAGE WEEKLY EARNINGS, AUSTRALIA, MAY 2016	PN1201
THE WITNESS WITHDREW	PN1314
DAVID ROBERT PEETZ, RECALLED	PN1333
CROSS-EXAMINATION BY MR SHARIFF, CONTINUING.....	PN1333
THE WITNESS WITHDREW	PN1547
DAVID ROBERT PEETZ, RECALLED	PN1547
CROSS-EXAMINATION BY MR SHARIFF, CONTINUING.....	PN1547
EXHIBIT #14 ESSENTIAL MEDIA SURVEY RESULTS	PN1621
EXHIBIT #15 BUNDLE OF DOCUMENTS PRODUCED BY UNIONS RELATING TO PROF PEETZ'S REPORTS	PN1700
RE-EXAMINATION BY MR BUKARICA.....	PN1734
THE WITNESS WITHDREW	PN1766
EXHIBIT #16 STATEMENT OF GAVIN WHITE DATED 24/06/2016	PN1790
EXHIBIT #17 STATEMENT OF ANDREW VICKERS DATED 22/06/2016.....	PN1792
EXHIBIT #18 STATEMENT OF PETER COLLEY DATED 23/06/2016	PN1797
EXHIBIT #19 STATEMENT OF ROBERT TIMBS DATED 10/06/2016.....	PN1798
EXHIBIT #20 STATEMENT OF ANTHONY JOHN FARDELL DATED 20/06/2016	PN1799

EXHIBIT #21 STATEMENT OF BARRY ELLIOT DATED 20/06/2016.....	PN1800
EXHIBIT #22 STATEMENT OF CRAIG TRUSTY DATED 15/06/2016.....	PN1801
EXHIBIT #23 STATEMENT OF DAN WATSON DATED 20/06/2016.....	PN1802
EXHIBIT #24 STATEMENT OF DENNIS JAMES EDWARDS DATED 18/06/2016	PN1803
EXHIBIT #25 STATEMENT OF GEORDIE ESTATHEO DATED 23/06/2016	PN1804
EXHIBIT #26 STATEMENT OF MARK JOSEPH WALLACE DATED 09/06/2016	PN1805
EXHIBIT #27 STATEMENT OF PAUL BYRON, UNDATED.....	PN1808
EXHIBIT #28 STATEMENT OF ROBERT JOHN BENNETT DATED 20/06/2016	PN1809
EXHIBIT #29 STATEMENT OF WAYNE DOUGLAS SAUNDERS DATED 17/06/2016	PN1810
EXHIBIT #30 STATEMENT OF WILFRED JOHN O'DONNELL DATED 13/06/2016	PN1811
EXHIBIT #31 STATEMENT OF GEOFF WRIGHT DATED 23/06/2016 ...	PN1818
EXHIBIT #32 STATEMENT OF GREG DAVEY DATED 23/06/2016	PN1819
EXHIBIT #33 STATEMENT OF JAYNE ERICA FARREY DATED 23/06/2016	PN1820
EXHIBIT #34 STATEMENT OF JUSTIN JAMES SMITH DATED 23/06/2016	PN1821
EXHIBIT #35 STATEMENT OF STEVE PETER BARTLETT DATED 24/06/2016	PN1822
EXHIBIT #36 STATEMENT OF STEPHEN DONALD TOOK DATED 23/06/2016	PN1823
EXHIBIT #37 STATEMENT OF CATHERINE BOLGER DATED 24/06/2016	PN1824
EXHIBIT #38 BUNDLE OF CMIG MEMBER REDUNDANCY POLICIES AND SAMPLE CONTRACTUAL TERMS CONCERNING REDUNDANCY	PN1833
EXHIBIT #39 EMAIL CONCERNING BHP BILLITON NON-EA STAFF REDUNDANCY ENTITLEMENTS DATED 12/08/2016.....	PN1842

**EXHIBIT #40 BUNDLE OF CORRESPONDENCE RE RESPONSE TO
ORDER FOR PRODUCTION RE BMAPN1851**