From:	Leanne Dearlove
To:	AMOD
Cc:	Sharlene Wellard; gregp@restaurantcater.asn.au; luis.izzo@ablawyers.com.au; rtait@clubsnsw.com.au; hcarayannis@clubsnsw.com.au; leanne.cruden@aigroup.com.au; djmacken@macken.com.au; kburke@vicbar.com.au; Stephen.Bull@unitedvoice.org.au; nrt@fcbgroup.com.au; mseck@stjames.net.au
Subject:	AM2014/305 - Penalty Rates
Date:	Thursday, 17 September 2015 3:58:21 PM
Attachments:	Affidavit of Sharlene Wellard.pdf

Dear Amod Team,

Attached is an Affidavit sworn by Sharlene Wellard on 17 September 2015 in relation to the objections to expert evidence of Ms Pezzullo of Deloitte Access Economics. This matter is to be heard by the Full Bench at 9.15am tomorrow.

Regards,
Leanne Dearlove | Solicitor

MERIDIAN LAWYERS

Level 6, 20 Bond Street, Sydney NSW 2000
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IN THE FAIR WORK COMMISSION

PENALTY RATES

Matter No: AM2014/305

I, SHARLENE WELLARD, Principal at Meridian Lawyers Limited, say on oath:

1. I am employed in the position of Principal at Meridian Lawyers Limited (Meridian Lawyers) located at Level 6, 20 Bond Street Sydney.

2. Meridian Lawyers act for the Pharmacy Guild of Australia (the Guild) and the Australian Hotels Association (AHA) in the penalty rates case (AM2014/305). I have conduct and carriage of the matter.

3. Meridian Lawyers engaged Deloitte Access Economics to conduct research and prepare the report filed in these proceedings called *The Modern Face of Weekend* Work (the Weekend Work Report). A copy of the engagement letter with Deloitte Access Economics in relation to the Weekend Work Report is annexed and marked **SW1**.

4. The Guild engaged Deloitte Access Economics to conduct research and prepare the report filed in these proceedings called *The Effect of the Pharmacy Industry Award 2010 on Community* Pharmacy (the Pharmacy Report). A copy of the engagement letter with Deloitte Access Economics in relation to the Pharmacy Report is annexed and marked **SW2**.

5. As identified in the respective engagement letters, work on each report was carried out by a team of Deloitte Access Economics staff.

6. The team members working on the Weekend Work Report identified in the engagement letter were:

    a) Lynne Pezzullo
    b) David Rumbens
    c) Dr Kiu Tay-Teo
    d) Dr Paul Barnsley
    e) Bryce Stevens
    f) Adam Elderfield

7. The team members working on the Pharmacy Report, identified in the engagement letter were:

    a) Lynne Pezzullo
    b) Mike Kissane
    c) Dr Kiu Tay-Teo
    d) Barbara Dixon
    e) Katie Cooper
    f) Bryce Stevens

8. A short biography of the Deloitte Access Economic staff is set out in the engagement letters.

SWORN
At Sydney
On 17 September 2015
Signature of deponent

Name of witness Leanne Dearlove
On 17 September 2015
Address of witness Level 6, 20 Bond St Sydney.
Capacity of witness [~~#Justice of the peace~~ #Solicitor ~~#Barrister #Commissioner~~ for affidavits ~~#Notary public~~]

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

1 #I saw the face of the deponent. [OR, delete whichever option is inapplicable]
~~#I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.[1]~~

2 #I have known the deponent for at least 12 months. [OR, delete whichever option is inapplicable]
~~#I have confirmed the deponent's identity using the following identification document:~~

Identification document relied on (may be original or certified copy)[2]

Signature of witness X. Dearlove

[1] The only "special justification" for not removing a face covering is a legitimate medical reason.]

[2] "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011 or refer to the guidelines in the NSW Department of Attorney General and Justice's "Justices of the Peace Handbook" section 2.3 "Witnessing an affidavit" at the following address: http://www.jp.nsw.gov.au/Documents/jp%20handbook%202014.pdf]

"SW1"

THIS AND THE FOLLOWING PAGES ARE THE ANNEXURE MARKED WITH THE LETTER "SW1" REFERRED TO IN THE AFFIDAVIT OF SHARLENE WELLARD SWORN/AFFIRMED THE 17 DAY OF Sept BEFORE ME: X. Dearlove

Leanne Dearlove
Solicitor

Deloitte Access Economics

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Marion Whalan
Workplace relations Manager
Pharmacy Guild of Australia (PGA)
Level 2, 'Pharmacy Guild House'
15 National Circuit, Barton ACT 2600

20 August 2014

Dear Marion,

Analysis of working atypical hours in the services sector

We are pleased to assist the Pharmacy Guild of Australia (PGA) with an analysis of working atypical hours across a number of services industries in Australia. This letter and our standard terms and conditions (the "Terms") which are enclosed with this letter set out the basis on which we would provide our services to you.

1. Our engagement

   You have discussed with us and provided written correspondence in relation to us providing a report that researches consumer activity during 'atypical hours' and employee preferences regarding hours of work and to draw conclusions regarding the necessity of regulating penalty rate premiums (the "Services"). The Services we would undertake are described in more detail in Section 4 of this letter.

   We understand that the intention of the Services is to provide evidence in relation to the Fair Work Commission's review of modern awards (the "Purpose"). The scope of our engagement is limited to the matters set out in this letter. So that we are able to assist you effectively, please ensure that you are satisfied with the scope of our engagement and the Services we will provide are sufficient for your needs. If you wish to discuss this with us further, please let us know.

   We understand that you will be the nominated contact and would instruct us on this project.

2. Background

   Your brief to us notes that every four years the Fair Work Commission is required to conduct a review of modern awards. That review commenced in January 2014, and a number of parties will be seeking to vary the overtime and penalty rate provisions within modern awards as part of the review. The Fair Work Commission has foreshadowed that parties will be required to adduce probative evidence in order to demonstrate the need for change to a modern award provision.

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Deloitte

You have asked us to undertake two streams of research, namely to:

- collate and provide an analysis of data regarding **consumer activity** on the weekend, public holidays and after usual business hours (that is, traditionally "atypical hours") across the services sector (retail, hospitality, fast food, restaurants and pharmacy) to assess whether there is a societal shift towards commercial activity at these times; and
- provide an analysis of **workplace composition and employment characteristics** across the services sector, and whether additional remuneration for employees working traditionally "atypical hours" is, based on the evidence collected regarding consumer trends, necessary.

Specifically, you have specified that the report should address the following lines of enquiry:

a) Provide an overview of when consumers utilise, or most frequently utilise, services sector outlets. For example, are those services accessed on weekends and public holidays as frequently as during the week?

b) Provide an analysis of the type of consumer who accesses service sector outlets during "atypical hours" and on weekends/public holidays and whether/how that has changed since award modernisation;

c) Describe what consumers typically spend their weekends and public holidays doing if they are not utilising services sector outlets;

d) Provide an overview of the workforce composition across the services sector. What type of employee typically works "atypical hours" and/or on the weekend/public holidays; and

e) Where an employee works atypical hours on Saturdays, Sundays and/or public holidays, how does the employee still maintain familial and social interaction?

In addition to the collation and analysis of descriptive statistics in relation to these questions, we could, at the discretion of the PGA, provide an (optional) synthesis of these findings under the following headings:

I. Whether, having regard to the consumer access of services sector outlets during atypical hours (i.e. demand for services) and the characteristics of services sector employees who work "atypical" hours (Labour supply), additional remuneration for employees working those hours is warranted;

II. The impact (if any) of that additional remuneration on the consumer access to services sector outlets during "atypical" hours or on weekends/public holidays.

These optional elements could be undertaken either immediately after the completion of elements (a) through (e), or, if the PGA prefers, at some point in time thereafter.

3. Our team

The project would be led by **Lynne Pezzullo**, Lead Partner and founder of the Health Economics and Social Policy (HESP) group for Deloitte Australia and Office Managing Partner of Deloitte Canberra, who would be the Engagement Partner for the project. Lynne is also a reviewer for *Medical Journal of Australia* and *British Medical Journal*, a World Health Organization (WHO) burden of disease special adviser, and an ACT NDIS Exert Panel member. Lynne has conducted numerous health workforce studies and analyses of the impact of regulation in labour markets, particularly in relation to workplace health and safety and impacts of Award conditions in relation to nursing workforce participation and costs. Lynne has also led various consumer preference and employee preference studies (e.g. discrete

choice modelling studies of health care consumers and studies of work life balance), using mixed qualitative and quantitative methods. Lynne's role in this project for PGA would be to provide quality control and oversight of all deliverables.

David Rumbens (Partner, Deloitte Access Economics) would provide Quality Assurance and peer review over the deliverables. **Dr Kiu Tay-Teo** (Associate Director, HESP) would provide methodological direction on this project. **Dr Paul Barnsley** (Manager, HESP) would manage the project on a day-to-day basis and undertake the analysis. He would work with **Bryce Stevens** (Manager, HESP) and **Adam Elderfield** (Analyst), who would support the research and analysis. Short biographies for our core team members are presented below while full CVs can be provided on request.

David Rumbens, Partner Deloitte Access Economics, BEc (Hons) Grad. Dip. Applied Finance & Investment, would provide quality assurance on the project. David is a macroeconomist with a depth of experience. David is the author of the quarterly publication, Retail Forecasts, which provides a detailed analysis of the drivers of retail spending and trends likely to emerge. He also prepares a weekly economic briefing for a broad audience, and is a well-known speaker on economic trends. David has also recently led a range of labour market analysis projects including detailed modelling for the Australian Workforce and Productivity Agency and Queensland Ministerial Industry Commission, along with a scoping study of the effect of penalty rates in the Queensland tourism industry.

Dr Kiu Tay-Teo, Associate Director BPharm (Hons) MPubHlth PhD is a registered pharmacist and an experienced health economist, specialising in cost-effectiveness modelling, funding studies, and pricing and costing analyses across a range of clinical and social policy areas. He has strong project management skills and a firm understanding of the Australian healthcare system, including regulatory, reimbursement and clinical environments.

Dr Paul Barnsley, Manager BEc(Hons) Llb(Hons) PhD is an experienced health economist, specialising in health state valuation, Health Technology Assessment (HTA) and health policy. He has worked internationally across a range of health care and HTA systems and participated in the redesign of the English HTA system to recognise wider definitions of value in health. Paul has a strong background in microeconomics, econometrics, cost benefit analysis, patient reported outcomes, decision making and uncertainty. His work on decision making in HTA and opportunity cost of health technology approvals has been published in peer reviewed journals and presented internationally. Paul has experience managing cross disciplinary teams and developing bespoke modelling tools for a range of governmental, pharmaceutical and non-government organisations.

Bryce Stevens, Manager, MAppEcmets (in progress), BBusComm, DipFin has been involved in a range of projects which require strong quantitative methodologies, survey design and undertaking data collection and processing, including regression analysis.

Adam Elderfield, Economist, BComm (1st Class Hons), recently provided the Queensland Department of Justice and Attorney General with a scoping study into the empirical analysis of penalty rates on employment. The study looked both at the theoretical foundations and existing literature on penalty rates, the role of penalty rates in the Queensland tourism sector, and proposed an empirical framework for future analysis. Adam has provided econometric and data analysis on a range of projects including estimating probabilities of apprenticeship retention for the Department on Industry and forecasting skills needs in the resources sector for the Australian Workforce and Productivity Agency. Adam graduated from the University of Wollongong with first class honours in economics.

From time to time, we may need to include other partners and staff to assist us to provide our Services to you.

4. Our services

The Services would include the following aspects:

Stage I – Project Inception Meeting (PIM) and project planning

A Project Meeting (PIM) would be conducted between our team members and nominated members of PGA, via teleconference or face-to-face for those located in the same city. The purpose would be to confirm project scope, methods and timelines, establish desired communication structures for the project, and receive any additional background information from PGA or information that PGA would like to input to the project.

We suggest that a reference group is established comprising representatives of the peak bodies of other industry sectors (retail, hospitality, fast food and restaurants) in order for us to consult and liaise also with these bodies, to inform the literature review, data scan and survey elements to follow.

Stage II – Targeted literature review and data scan

We would undertake a targeted review of the literature according to each line of enquiry. This would include peer-reviewed literature and report published by relevant bodies or organisations (e.g. Centre for Work Life, Productivity Commission).

We would investigate and review a number of data and information sources to explore the research questions, including but not limited to:

- Australian Bureau of Statistics (ABS), *4153.0 - How Australians Use Their Time*, based on the Time Use Survey;
- ABS labour force data by industry, which includes information on hours worked in the five services industries under review;
- Household, Income and Labour Dynamics in Australia Survey ("HILDA") survey
- Information and documents from relevant institutions such as the Fair Work Commission, the Centre for Work + Life (South Australia), the Australian Centre for Family Studies, and the *Guild Digest*;
- Proprietary datasets and information owned by Deloitte Access Economics, including 'Retail Forecasts' and 'Employment Forecasts'[1]; and
- other material identified in the literature review, data scan and industry consultation process, such as studies from similar overseas experience.

Data from these sources would provide information to elucidate historical trends in consumer activities during atypical working hours and working patterns. Where appropriate, these data would be compared against the findings of the survey below.

Stage III – Survey development, implementation and data analysis

We would develop a questionnaire to investigate the following:

- Characteristics, activity and preference for services of consumers during atypical hours;

[1] https://www.deloitteaccesseconomics.com.au/publications+and+reports/subscription+publications

- Characteristics, activity and preference to work during atypical hours; and
- **[Optional]** price elasticity of labour supply, and time as a determinant of elasticity of consumer demand.

The design of this survey would be informed by findings of the literature review and data analysis in stage II, such that the survey would be as succinct as possible so as to encourage greater response rates by participants. Some data points would be measured in line with the ABS's survey to allow comparison. Some of the data items and questions to be included in the survey are listed in Table i.

Table i: Domains and data items for the survey

Survey domain	Examples of data items or questions

Participant characteristics	• Working status during weekend
	  ○ Employee group: Working on weekends, Sundays, or other atypical hours (Hours outside of 8am to 7pm, Monday to Friday)
	  ▪ Industry sector: Retail or hospitality*
	  ○ Consumer group: not working on weekends
	• Age group
	• Gender
	• Geographic location
	• Income level
	• Living arrangement
	• Labour force status

Consumer activities during atypical hours	• Purchasing goods and services ○ Industry sectors: Retail or hospitality* • Personal care • Employment related • Education • Domestic activities • Child care • Voluntary work and care • Social and community interaction • Recreation and leisure

Consumer experience and preferences	• Reasons for using retail and hospitality services during atypical hours
	  ○ Social interaction
	  ○ Necessity
	• Ability to access services with existing opening hours
	• Timeliness in receiving services
	• **[Optional]:** Time as a determinant of elasticity of consumer demand

Employee working patterns	• Frequency of working during atypical hours • Remuneration received for working these hours • Willingness to work additional hours • **[Optional]:** Price elasticity of labour supply

Employee preferences and impact of social interaction	• Reasons for working atypical hours
	• Work-Life interference‡:
	  ○ frequency with which work interferes with responsibilities or activities outside work
	  ○ frequency with which work restricts time with family or friends
	  ○ frequency with which work affects workers' ability to develop or maintain connections and friendships in their local community)
	  ○ Satisfaction with overall work-life 'balance
	  ○ Frequency of feeling 'rushed or pressed for time'.

*in line with ANZSIC industry grouping: **Retail** – Food, Household goods; clothing, footwear and personal accessory; department stores; other retailing (including pharmaceutical) **Hospitality** – accommodation; Pubs, bars and taverns; Cafes and restaurants; licensed clubs; casinos
‡In line with the AWALI index measured by the Centre for Choice

The survey would be fielded by Galaxy Research using their validated online techniques.[2] Notably, Galaxy has an established database of survey respondents whom we could sample in a manner that ensures adequate sample size, demographic and geographic representativeness across the target population (consumers and employees in the relevant industries), and quick turnaround of results in a cost-effective manner. The survey would be piloted prior to fielding.

Based on previous experience with such surveying, we have allowed an estimate in this quotation for the survey component. However, the exact number of questions would not be known until we have completed survey design. Upon completion of the survey design, we would be able to quantify the sample size needed such that subgroup analyses would be robust. If needed, we could cap the survey component to the amount quoted. Should any industry organisation also be able to field the same survey questions among their workforce, this could also be undertaken for an additional small fee to cover our time collating and analysing the additional data.

We would employ the most appropriate techniques of Descriptive Statistics (vis-à-vis Inferential Statistics) for the type of quantitative data i.e. continuous variable or discrete variable. We would conduct univariate analysis to describe the data, examining its distribution, central tendency (e.g. mean and median) and statistical dispersion (e.g. range, interquartile range, and standard deviation where applicable). Where appropriate and informative, we would also conduct by subgroup analyses.

In undertaking the analysis, we would consider several hypotheses, including:

- Consumer activities during atypical hours have changed over time, with a current preference to access retail and hospitality services during atypical hours.
- Employees who work during atypical hours experience minimal life interference because:
    - atypical hours fit better with their living arrangement;
    - they don't frequently work during atypical hours;
    - they find other ways to make up for lost social interactions during atypical hours
- a significant number of employees wish to work additional hours, suggesting that reducing penalty rates would increase employment opportunity during atypical hours.

Stage IV – Reporting and project conclusion

We would provide a draft report and a final report, which would summarise the methods and present the findings of the analysis. A suggested report structure would be:

- **Executive Summary:** 2-3 pages;
- **Chapter 1 – Introduction:** briefly describing the context of the analysis and its purpose and methods;
- **Chapter 2 – Targeted literature review and data scan**: presenting the approach to and findings from the review of existing evidence;

[2] http://www.galaxyresearch.com.au/what-we-do/

- **Chapter 3 – Survey**: specifying the survey questions, techniques and findings;
- **Chapter 4 – Conclusions**: providing a summary of the findings and, optionally, their implications in relation to the regulation of remuneration for 'atypical hours' in the five industries.

OPTIONAL COMPONENTS TO ADDRESS ENQUIRIES I AND II IN SECTION 2

Stage A: Considering the policy implications of characteristics of labour demand

Taking into account the features of the labour market identified in the survey data, we would consider whether, having regard to the consumer access of services sector outlets during atypical hours (i.e. demand for services) and the characteristics of services sector employees who work "atypical" hours (Labour supply), additional remuneration for employees working those hours is warranted.

This would involve drawing together the data produced as part of the primary analysis and using it to draw conclusions for optimal economic policy in relation to penalty rates. We would consider whether the data gathered were consistent with the PGA position that the appropriateness of penalty rates has declined through time.

Stage B: Modelling the impact of penalty rates on employment

Economic theory predicts that raising the cost of employing people during atypical hours will lead to business offering less total hours of employment at these times in the long run. This can result both in existing workers receiving less work during atypical hours than they would prefer ("underemployment"), or in people being driven out of work entirely ("unemployment").

We would use information gathered from the literature review, data collection and surveys to arrive at a quantitative estimate of underemployment (workers who wish they could work additional atypical hours). We would estimate the degree to which a small reduction in penalty rates would increase business' willingness to add extra hours and extra employees during atypical hours ("elasticity of labour demand") by looking at how employment levels vary in response to different penalty rates. This would enable us to approximate the effects of a reduction in penalty rates on underemployment and unemployment, and to discuss the benefits to currently underemployed and unemployed workers of increasing labour demand. These benefits include not only the financial benefits of earning additional income (albeit at a lower hourly wage), but also the value of providing younger and less skilled workers with an entry into the labour market and the chance to gain experience. These may translate into a reduction in youth unemployment and improved societal engagement and wellbeing.

Subject to the assumptions built into this exercise – which will depend on the precise data sources we use to estimate how penalty rates reduce employment during atypical hours – an estimate of elasticity of labour demand and consequent under and unemployment would allow us to suggest the potential social benefits to workers of reducing penalty rates and thereby increasing employment.

Stage C: Sensitivity analysis and conclusions

We would undertake sensitivity analysis on up to three key assumptions in the model, to deal with any major sources of uncertainty. Based on the findings from the base case model and

sensitivity analysis, we would then draw conclusions in relation to whether additional remuneration for employees during 'atypical hours' is warranted, from a social perspective, and also from the perspectives of consumers, employees and employers (i.e. who would be the net winners and losers, if any, from a postulated removal of regulation).

The scope of our engagement is limited to the tasks set out above. If the scope or the Services do not meet your needs, please let us know so that we can vary this letter and our fees accordingly.

5. Our work

We will provide you with a draft report and would accept one consolidated set of typed comments on the questionnaire and one set of comments on the draft report. The final questionnaire and report would incorporate responses to your comments. The report would be submitted to you in colour portable document format (pdf) in our standard branded template report style.

Deloitte Access Economics could assist with any public release of the findings if desired, including any graphic design, briefings to the Fair Work Commission, presentations (using Power Point) or media involvement. We would reserve the right to view and provide inputs as necessary to media releases or any other public material released in relation to this task. We also reserve the right to correct any public misperceptions that may arise through partial or selective citation of the report. Any graphic design, media or launch work undertaken by Deloitte Access Economics is separate from this quotation and would be quoted separately, if this need arises.

Any deliverables we provide to you may be used only by you for the Purpose and in the manner described in the Terms.

6. Your responsibilities

In addition to the responsibilities which are described in the Terms, you would be responsible for providing timely sign-off for this engagement letter and for comments on the draft report, to enable us to deliver the final report in the time frame. You would also be responsible for providing us with any information you may have, including any information that is not publicly available at the PIM. We will provide our work on the following assumptions:

- Our Work will be based only on the information held by you and provided to us or that publicly available at the time of commencing the Work; and
- We will assume that the information provided is true, correct and complete and not misleading. If the information is untrue, incorrect, incomplete or misleading then our Work may be incorrect or inappropriate for you.

You acknowledge that our ability to deliver the Services is dependent on you meeting your responsibilities, as well as you providing us with instructions and making timely decisions.

7. Our fees

(a) Fees

The fees charged by us reflect the seniority and expertise of the staff involved as well as factors such as the time spent on the Services and the complexity of the Services. Deloitte Access Economics' proposed fee for this project is **$135,056**.

Table ii: Proposed budget

Component	Cost (Australian $)
Project inception and project management	$6,040
Literature review and data collation	$15,413
Survey design and data analysis	$20,063
Survey fielding (Galaxy allowance, ESTIMATE ONLY)	$35,040
Data analysis	$24,370
Reporting, QA, liaison and comments	$26,100
Total consulting	**$116,932**
5% administrative fee	$5,847
GST	$12,278
Total	**$135,056**

Table iii outlines the proposed fee for the optional components of the project.

Table iii : Proposed budget for optional components

Component	Cost (Australian $)
Modelling the impact of Penalty rates on employment	
Stage A data analysis and reporting	$10,094
Model construction and validation	$10,395
Implementation of model and interpreting findings	$13,475
Sensitivity analysis and conclusions	$6,505
Total consulting	**$40,469**
5% administrative fee	$2,023
GST	$4,249
Total	**$46,742**

(b) Expenses

The fee above includes a 5% administrative charge to cover expenses such as teleconferencing, copying, printing, communications and the like. The cost of larger expenses, such as data orders, substantial reference materials or travel are not included in the budget and would be charged at cost if any are required. Of course, we would seek approval in advance for any such expenditure (none are envisaged at this stage).

(c) Billing

Deloitte Access Economics' billing schedule for this project is 50% on commencement, 40% on provision of the draft report, and 10% on provision of the final reports. Our invoices will be addressed to and paid by the PGA, unless you tell us otherwise. All payments would need to be made within 30 days of invoice.

8. Project assumptions

The scope of the Services, the timeframes for completion and the fees have been prepared on the following assumption:

- there are no undue complications or delays in providing the Services;
- the scope of work and the Services are the same as those which are outlined in this letter; and
- you meeting your responsibilities as outlined in this letter and the Terms in a timely manner.

If these assumptions are wrong or the circumstances change, then we may need to change the scope of the Services, vary the fees or extend the timeframes for completion.

9. Timing

An indicative timeline is provided in Table iv for the core project tasks, based on a project start-up date of 22 August 2014. Timelines may also be extended if there are delays in obtaining the required literature/information/data or in receiving comments from you on the draft report. We have developed this proposed timeline with a September completion in mind; however, we are flexible with timing.

Table iv: Proposed timeline

Date in 2014	Task
22 August	Receive this signed engagement letter and schedule PIM
25-29 August	Undertake targeted literature review and data scan
28 August -10 September	Develop survey questionnaire
5 September	First project update discussion (pre-survey)
11 September – 2 October	Survey implementation
6 -15 October	Data analysis
10 October	Second project update report (post-survey)
12 -26 October	Report preparation and quality assurance
27 October	Provide draft report to PGA
8 November	Receive comments on draft report from PGA
15 November	Provide final report to PGA

10. Acceptance

Please confirm that you agree to these terms by signing, dating and returning this letter to us.

Naturally please contact me if you would like to discuss this letter and the terms of engagement with us. We look forward to working with you.

Yours sincerely,

Lynne Pezzullo
Director, Deloitte Access Economics Pty Limited
Lead Partner, Health Economics and Social Policy, Deloitte Touche Tohmatsu

Sign off by the Pharmacy Guild of Australia

The Pharmacy Guild of Australia agrees to the terms of this Agreement. Signed for and on behalf of the Pharmacy Guild of Australia by ~~its~~ their duly authorised representative:

and the Australian Hotels Association

and the Australian Hotels Association

Signature

Sharlene Wellard

Name

Principal - Meridian Lawyers

Title

22 August 2014

Date

"SW2"

THIS AND THE FOLLOWING PAGES ARE THE ANNEXURE MARKED WITH THE LETTER "SW2" REFERRED TO IN THE AFFIDAVIT OF SHARLENE WELLARD SWORN/AFFIRMED THE 17 DAY OF Sept BEFORE ME: X Pearlee

Deloitte Access Economics

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Marion Whalan
Workplace Relations Manager
Pharmacy Guild of Australia
Level 2, 'Pharmacy Guild House'
15 National Circuit, Barton ACT 2600.

15 May 2014

Dear Ms Whalan,

Assessing the current state of community pharmacies in Australia and the effect of Pharmacy Industry Award

Thank you for your interest in Deloitte Access Economics undertaking work for The Pharmacy Guild of Australia (PGA) to assess the current state of community pharmacies in Australia, and the effect that the Pharmacy Industry Award 2010 has had on community pharmacies. This letter and our standard terms and conditions (the "Terms") which are enclosed with this letter set out the basis on which we would provide our services to you.

1. **Our engagement**

   The PGA has discussed with us the provision of a report that outlines the current state of community pharmacies in Australia, and the effect that the Pharmacy Industry Award 2010 has had on community pharmacies (the "Services"). The Services we would undertake are described in more detail in Section 4 below.

   We understand that the intention of the Services is to inform the PGA with evidence in support of its proposed changes to the Fair Work Commission (FWC) as part of FWC's 2014 review of all modern awards (the "Purpose"). The scope of our engagement is limited to the matters set out in this letter. So that we are able to assist you effectively, please ensure that you are satisfied with the scope of our engagement and the Services we will provide are sufficient for your needs. If you wish to discuss this with us further, please let us know.

   We understand that you would be the nominated contact and would instruct us on this project.

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2. Our understanding of the task

On 1 July 2009, the Australian Government introduced the Fair Work system under the legislative framework and rules of the *Fair Work Act 2009* and the associated *Fair Work Regulations 2009*. The new system aims to provide a wider range of legally enforceable minimum employment entitlements, with a view to providing protection for employees stronger than the previous *Work Choices* system. The system took full effect from 1 January 2010 and covered all private sector employers and employees in Australia, except unincorporated enterprises[1] in Western Australia.

One of the key changes in the new system is the modernisation of awards and consolidation of most existing awards into industry or occupation-based categories. This change is to reduce the confusion surrounding proper minimum employment entitlements. The Pharmacy Industry Award 2010 ('the Award') covers employers throughout Australia in the community pharmacy industry and employees working as Pharmacy Assistants, Pharmacists, Experienced Pharmacists, Pharmacists in Charge, Pharmacist Managers, Pharmacy Students and Pharmacy Interns. Other employees in a pharmacy, such as beauticians and nurses, may be covered by another modern award.

The National Employment Standards (NES) specifies 10 minimum employment conditions[2]:

i **Maximum weekly hours of work**: 38 hours per week, plus reasonable additional hours.

ii **Requests for flexible working arrangements**: an entitlement allowing employees in certain circumstances as set out in the *Fair Work Act 2009* to request a change in their working arrangements because of those circumstances.

iii **Unpaid parental leave and related entitlements**: up to 12 months unpaid leave, plus other entitlements. These include the right to request an extra 12 months unpaid leave and the right to return to the pre-parental leave position.

iv **Annual leave**: 4 weeks paid leave per year, plus an extra week for some shift workers.

v **Personal or carer's leave and compassionate leave**: 10 days paid personal or carer's leave per year, 2 days unpaid carer's leave as needed, and 2 days compassionate leave (unpaid for casuals) as needed.

vi **Community service leave**: unpaid leave for voluntary emergency activities and leave for jury service.

vii **Long Service Leave (LSL)**: an entitlement for some employees with LSL entitlements before 1 January 2010, pending a uniform national LSL standard.

viii **Public holidays**: a paid day off on a public holiday, except where reasonably requested to work.

ix **Notice of termination** of employment and redundancy pay based on age and/or length of service.

x **Provision of a Fair Work Information Statement**: employers must provide this statement to all new employees.

In addition to NES, modern awards may include:

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[1] Sole traders, partnerships, other unincorporated entities and non-trading corporations in Western Australia who remain under their state industrial relations system

[2] Fair Work Ombudsman and The Pharmacy Guild of Australia. Pharmacy industry Handbook version 1.03 December 2013. https://www.fairwork.gov.au/Documents/Pharmacy-Industry-Handbook.pdf [Accessed February 2014]

i **minimum wages** as specified under clauses 17 and 18 of the Award;

ii **types of employment:** full-time, part-time or casual as specified under clauses 10-13 of the Award;

iii **overtime and penalty rates** as specified under clause 26 of the Award;

iv **work arrangements** such as rostering or variations to working hours as specified under clauses 12 and 25 of the Pharmacy Award;

v **breaks** as specified under clause 28 of the Award;

vi **allowances** such as a laundry allowance for employees required to launder their uniform;

vii **leave, leave loading and arrangements for taking leave** as specified under clauses 29 - 32 of the Award;

viii **superannuation** as specified under clause 21 of the Award; and

ix **procedures for consultation, representation and dispute settlement.**

Pharmacy employers and employee(s) may enter an enterprise agreement (EA) or individual flexibility arrangement (IFA) to tailor the wages and conditions to a workplace's or individual's needs. However, EA and IFA cannot remove or reduce those requirements under the national entitlement standards (i.e. the employee has to be better off overall).

Similar to other sectors in the Australian retail industry, the community pharmacy industry is highly labour intensive, with labour costs accounting for a high percentage of the sales revenue. The requirements for wage and workplace flexibility under the modern Award have raised concerns among pharmacy proprietors on the future viability of the Pharmacy Industry, particularly with the increasingly challenging business environment due to a series of reforms[3] on the Pharmaceutical Benefits Scheme – a main source of revenue for most community pharmacies. Issues noted by retailers in other retail sectors may have also be applicable to the Pharmacy industry, including[4]:

- a one-size-fits-all regulation that fail to tailor to industrial regulation;
- reduced capacity for employers and employees to make individual agreements which suit the needs of both parties; and
- concerns that staff hours would be reduced in response to the Fair work system.

The PGA is the national peak body representing community pharmacy in Australia. We understand that the PGA will make a proposal to the FWC as part of its 2014 review of all modern awards. To inform this proposal, PGA is seeking to undertake a research project with the following aims:

- to provide an overview of the current state of the community pharmacy industry;
- to assess the impact that the award (if any) has had on the current state of the community pharmacy industry since its introduction in 2010; and
- to comment on the effectiveness and applicability of the award to community pharmacy.

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[3] From 1 January 2011, as part of the Government's PBS sustainability package following on from the 2007 PBS reforms, all non-exempt products on the F2 formulary (i.e. PBS medicines which are subject to competition) become subject to expanded and accelerated price disclosure (EAPD).

[4] Productivity Commission 2011, Economic Structure and Performance of the Australian Retail Industry, Report no. 56, Canberra.

3. Our team

Lynne Pezzullo, Lead Partner of the Health Economics and Social Policy (HESP) group, is the nominated engagement partner for this project. Lynne would be responsible for all aspects of the project including quality of the deliverables, methodological direction, high level liaison and oversight. Lynne will also provide advice throughout. **Mike Kissane** (Partner, HESP) would provide Quality Assurance peer review over the deliverables. **Dr Kiu Tay-Teo** (Manager, HESP) would manage the project on a day-to-day basis and would work with **Barbara Dixon** (Manager, HESP), **Katie Cooper** (Manager, HESP), and **Bryce Stevens** (Senior Analyst, HESP) to plan and undertake the survey and assessment.

Additional health economists at Deloitte Access Economics may assist with the project as required, or if any of the team members above become unavailable due to unforeseen circumstances. However, we would not substitute any staff unless absolutely necessary and with your imprimatur.

4. Our services

The Services would involve the following components.

Stage I – Project Inception Meeting (PIM)

Upon receiving confirmation of the engagement from PGA, we would hold a PIM by phone. If you prefer a face-to-face meeting there will be an additional fee for travel costs. The intention of the PIM would be to:

- meet the team;
- confirm the project scope and expectations, including the project timelines, mechanisms for presentation of the findings, and deliverables;
- clarify the project governance arrangements;
- discuss and agree on communication processes, including reporting and liaison arrangements, timelines and milestone dates;
- receive relevant data from PGA and discussion of arrangements for accessing other information, including a list of contact details of PGA members for survey recruitment;
- where needed, discuss and agree on relevant stakeholders external to PGA to be consulted (i.e. industry reference group or key informants) and the consultative purpose, process and timeframes; and
- discuss other business as required.

Stage II – Analysis of the current state of community pharmacy

We would undertake an analysis of the current state of community pharmacy based on the existing data and literature[5] provided to us by PGA. Specifically, the analysis would examine the following parameters:

- **Type of pharmacies**: pharmacy franchises and smaller community pharmacies;
- **Workforce composition**: the number of full time, part time, and casual employees;

[5] For example, annual digest prepared by the PGA.

- **Hours of operation** of community pharmacies;
- **Profitability of community pharmacies**, including the breakdown of sales volume from medicines as compared to retail sales; and
- **Government / regulatory impacts** on community pharmacy, such as PBS reforms.

In order to assess the over-time changes to the state of community pharmacy since the introduction of the Fair Work System, it would be preferable if PGA could provide the above data between 2010 and 2013 to allow for trend analysis. The data and trend would be corroborated with the data collected from the online survey in Stage III.

Stage III – Online survey development, implementation and data analysis

The online survey would be a key component to:

- elucidate what impact the award (if any) has had on community pharmacy since its introduction in 2010 from the perspective of pharmacy proprietors; and
- assess the applicability of the Award to the Pharmacy Industry, and the effectiveness of the Award to ensure stronger safety net for employees.

An online survey (rather than a paper-based survey) is appropriate because a majority of pharmacy proprietors have access to the internet and participants would have sufficient computer literacy.

The design of this survey would be informed by findings of the literature review and data analysis in stage II, so that the survey would be as succinct as possible to encourage greater response rates by participants. We would conduct a pilot study with five randomly selected members of the PGA prior to 'fielding' the survey instrument to ensure the clarity, validity, robustness and utility of the instrument.

Some of the data items to be included in the survey, subject to agreement with the PGA, are listed in Table 1.1. We anticipate that most of these items would be organised as selection lists but with comment fields to capture qualitative information, where appropriate. To inform the trend over time and to support time series regression analysis, we would ensure that the data collection method aligns with that of the annual PGA survey.

Table 1.1: Domains and data items for the online survey

Survey domain	Examples of data items
Participant characteristics	• Type of pharmacy: Franchise or individually owned • Workforce composition: number of full time, part-time and casual employees • Hours of operation • Profitability of community pharmacies*: annual revenue, prescription volume, breakdown of sales volume and medicines • Geographic location: rural, metropolitan

Components of the Awards	• Identify up to five components of the Awards according to the level of concern.
	• Select and explain the reasons why these are most concerning:
	  ○ Impact on financial viability
	  ○ Impact on business flexibility (e.g. trading hours, employee's needs)

Survey domain	Examples of data items
	○ Other, please specify
Impacts of the modern awards	• Percentage increase in employment costs; • Changes to workforce composition of business; • Changes to provision of services to the public (e.g. trading hours) • Flexibility of workplace arrangements, including in response to changing business environment: ○ Adjusting workforce size through engaging or dismissing employees ○ Short-term use of casuals ○ Varying the scheduling and intensity of the existing workforce ○ Incentivising remuneration through performance rather than hours worked ○ Annual leave arrangements.
Applicability and effectiveness of the Award	• Applicability of the Award to the Pharmacy Industry e.g. adoption of IFA and EA, efficiency of negotiation to meet the "better off overall" test. • Effectiveness of the Pharmacy Award in enhancing the welfare of pharmacy employee e.g. regular hours, certainty of income

*Where appropriate, these items would be collected in the same way as the Annual Pharmacy Guild Survey.

We propose the survey to be hosted on the online survey platform of Survey Monkey. We would ascertain the best recruitment method in consultation with the PGA at project inception. Some recruitment options include: (a) the PGA provides us with a contact list of potential survey participants; or (b) the PGA sends the survey link directly to potential participants.

We understand that the PGA would like to recruit a much larger sample of participants if possible, with a view of providing a picture close to a census of all community pharmacies in Australia, potentially collecting up to 4,000 responses (i.e. up to 75% of the total population). We understand that past surveys undertaken by the PGA have indicated that this recruitment rate is achievable and the PGA would assist Deloitte in achieving this recruitment target.

We would employ the most appropriate techniques of Descriptive Statistics (vis-à-vis Inferential Statistics) for the type of quantitative data i.e. continuous variable or discrete variable. We would conduct univariate analysis to describe the data, examining its distribution, central tendency (e.g. mean and median) and statistical dispersion (e.g. range, interquartile range, and standard deviation where applicable). Where appropriate and informative, we would also conduct bi-variate analysis (e.g. by jurisdiction and by year, by type of analysis). To examine trends over time, we would undertake time-series multiple regression analysis using historical data collected by the PGA and the data collected as part of the current survey.

Stage IV – Reporting and project conclusion

Following completion of all methodological components, a concise report would be provided to the PGA outlining the methodology, findings in Tables and Charts and comments about the effectiveness and applicability of the Award to the industry. The draft report and the final report would be delivered in portable document format (pdf).

5. Our work

The proposed deliverables for this project are draft and final project reports. The quoted fee for the evaluation accommodates one set of consolidated comments from the PGA. Further comments processes (e.g. more than one set of comments) would need to be discussed as these may have implications for timelines and budget.

6. Your responsibilities

In addition to the responsibilities which are described in the Terms, you would be responsible for providing timely sign-off for this engagement letter and for comments on the draft report, to enable us to deliver the final report in the timeframe. You would also be responsible for providing us with any information you may have, including any information that is not publicly available, which you feel would be useful for the development of the report, at project commencement. Specifically, you would provide us with the detailed statistics that describe the current state of the pharmacy collected by the PGA on an annual basis. You would support the recruitment of survey participants, possibly by issuing communications to encourage participations from members. If applicable, you would be responsible for setting up a reference group or providing a list of key informants. You would also be responsible for providing us with feedback on our survey design and findings at the proposed date.

You acknowledge that our ability to deliver the Services is dependent on you meeting your responsibilities, as well as you providing us with instructions and making timely decisions.

7. Our fees

For this project, Deloitte Access Economics proposes a fee of $113,204, including GST. Table 1.2 provides a breakdown of the fee for this project, based on the methodology above. A 5% administrative fee is charged to cover minor expenses and overheads such as printing, copying, phone and ICT expenses. Please note that the costs of using any third parties, data orders, or obtaining reference materials (journal articles, etc) are not included in the budget and would be charged at cost if required. Travel costs outside Melbourne or Canberra would also be charged at cost. Of course, we would seek approval from you in advance for any such expenditure.

Table 1.2: Proposed budget

Project element	Cost
Stage I – Project inception meeting and project planning	$6,448
Stage II – Analysis of select data from PGA survey	$13,010
Stage III – Online survey development, implementation and data analysis including econometric analysis	$41,285
Stage IV – Report preparation and quality assurance	$37,270
Consulting fees	$98,013
Administration fee (5%)	$4,900
GST (10%)	$10,291
Total costs (including GST)	$113,204

All payments would need to be made in Australian dollars within 30 days of invoice. Payment conditions would comprise:

- an initial down-payment of 90% at the start of the project;
- 10% of the fee on delivery of the final report.

8. Project assumptions

The scope of the Services, the timeframes for completion and the fees have been prepared on the following assumption:

- there are no undue complications or delays in providing the Services;
- the scope of work and the Services are the same as those which are outlined in this letter; and
- you meeting your responsibilities as outlined in this letter and the Terms in a timely manner.

If these assumptions are wrong or the circumstances change, then we may need to change the scope of the Services, vary the fees or extend the timeframes for completion.

9. Timing

A suggested timeline is provided in Table 1.3 for the core project tasks. This letter would need to be accepted by 20 May 2014 in order to meet these timelines. Any variation to this proposed start date may impact the timeframes below. These timelines may also be delayed if there are delays in either obtaining the required literature or in receiving comments on the survey and draft report from the PGA.

Table 1.3: Project milestone dates

Date in 2014	Milestone
21 May	Project Inception Meeting
21-23 May	Data and information collation, including data verification
26 May – 4 June	Analysis of the relevant data from the Annual PGA survey
26 May – 4 June	Development of the online survey
4 June	Survey questionnaire sent to the PGA for comment
11 June*	Comments on survey received from the PGA
13 June	Revised questionnaire sent to the PGA for final approval
16-18 June	Survey uploaded and launched on online platform, links sent to members
18 June- 9 July	Survey data collection
25 June	Teleconference –Project update meeting
9-31 July	Survey data analysis, including time series analysis
4 August	Teleconference with the PGA to discuss preliminary findings
4 - 22 August	Preparation of draft report including undertaking Deloitte's Quality Assurance
25 August	Draft report delivered to the PGA for comment
1 September	One set of comments received from the PGA
5 September	Final report delivered to the PGA

*9 June is the Queens Birthday

10. Acceptance

Please confirm that you agree to these terms by signing, dating and returning this letter to us.

Please contact me if you would like to discuss this letter and the terms of engagement with us. We look forward to working with you.

Yours sincerely,

Lynne Pezzullo
Director, Deloitte Access Economics Pty Limited
Lead Partner, Health Economics and Social Policy, Deloitte Touche Tohmatsu

Sign off by The Pharmacy Guild of Australia:

The Pharmacy Guild of Australia agrees to the terms of this Agreement. Signed for and on behalf of The Pharmacy Guild of Australia by its duly authorised representative:

M. Whalan

Signature

MARION WHALAN.

Name

NATIONAL MANAGER BUSINESS SUPPORT

Title

15th May 2014

Date

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