

IN THE FAIR WORK COMMISSION

Title: s 156 of the *Fair Work Act* 2009 - 4 yearly review of modern awards

Award: Pharmacy Industry Award 2010

Matter No.: AM2014/209

Subject: Penalty rates

FINAL SUBMISSIONS FOR THE PHARMACY GUILD OF AUSTRALIA

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Annexure A - Summary of Pharmacy Guild proprietor evidence

A. Introduction

1. As part of the 4 yearly review of modern awards under s 156(1) of the *Fair Work Act 2009* (Cth) (**FW Act**), The Pharmacy Guild of Australia (**the Guild**) requests the Fair Work Commission (the **Commission**) to vary the additional remuneration payable to employees covered by the Pharmacy Industry Award 2010 (the **Pharmacy Award**).
2. The Guild is a peak body representing pharmacy proprietors in the Australian community pharmacy industry and is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth).
3. The two principal trade unions representing employees in the community pharmacy industry are the Shop, Distributive and Allied Employees Association (**SDA**) (representing retail and pharmacy assistants) and the Association of Professional Engineers, Scientists & Managers, Australia (**APESMA**) (representing pharmacists). The SDA has taken an active role in participating in the review of penalty rates. APESMA has had limited involvement other than tendering a short statement on a confidential basis.
4. The Guild does not seek to abolish penalty rates but seeks merely to adjust them to meet the modern award objective. The draft determination sought by the Guild is attached to the letter from Meridian Lawyers, the solicitors for the Guild, dated 13 February 2015 and is set out below:

Hours worked	Additional Remuneration Fulltime and Part-time Employees	Additional Remuneration Casual Employees (inclusive of casual loading)
Monday to Friday		
% of minimum hourly rate		
Before 7.00 am	150	175
Between 9.00 pm and midnight	125	150
Saturday		
Before 7.00 am	200	200
Between 7.00 pm and 9.00pm	125	125
Between 9.00 pm and midnight	150	150
Sunday		
Before 7.00 am	200	200
Between 7.00 am and 9.00pm	150	150
Between 9.00 pm and midnight	175	175
Public Holiday	200	125

4. In summary, the Guild seeks the following:

(a) In relation to Monday to Friday work for permanent employees:

(i) the current 50% loading for morning work for work performed be applied before 7.00am rather than 8.00am;

- (ii) the current 25% loading for work performed between 7.00pm and 9.00pm be removed;
 - (iii) a 25% loading, rather than the current 50% loading, be applied for work between 9.00pm and midnight;
- (b) In relation to Monday to Friday work for casual employees:
- (i) the current 75% loading for morning work for work performed be applied before 7.00am rather than 8.00am;
 - (ii) the current 50% loading for work performed between 7.00pm and 9.00pm be removed;
 - (iii) a 50% loading, rather than the current 75% loading, be applied for work between 9.00pm and midnight;
- (c) In relation to Saturday work for permanent employees:
- (i) the current 100% loading for morning work for work performed be applied before 7.00am rather than 8.00am;
 - (ii) current 25% loading for work performed between 8.00am and 6.00pm be instead applied from 7.00am to 9.00pm;
 - (iii) a 50% loading, rather than the current 75% loading, be applied for work between 9.00pm and midnight;
- (d) In relation to Saturday work for casual employees:
- (i) the current 125% loading for morning work performed be removed and replaced with a 100% loading to apply before 7.00am rather than 8.00am;
 - (ii) the current 50% loading for work performed between 8.00am and 6.00pm be instead applied from 7.00am to 9.00pm;

(iii) a 50% loading, rather than the current 75% loading, be applied for work between 9.00pm and midnight;

(e) In relation to Sunday work:

(i) the current 100% loading for permanent employees be replaced by a 50% loading; and

(ii) the current 125% loading for casual employee be replaced by a 50% loading.

5. These submissions should be read in conjunction with the Guild's outline of submissions dated 7 August 2015.

B. The modern award 4 yearly review

6. The Full Bench of the Commission has set out the relevant considerations for the conduct of the 4 yearly review of modern awards in *4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues* [2014] FWCFB 1788 at [60]. Having regard to the Full Bench's observations on the requirements for justifying a proposed variation to a modern award, the Guild submits that there is sufficient probative evidence demonstrating the facts supporting the merits of the proposed variation.

7. In exercising its powers in conducting the 4 yearly review in relation to penalty rates, the Commission must relevantly take into account the modern award objective in s 134 of the FW Act.

8. In s 134(1)(da) of the FW Act, the modern award objective requires the Commission, in providing a "fair and relevant" minimum safety net of terms and conditions, "*the need to provide additional remuneration*" for employees working "*unsocial, irregular or unpredictable hours*" (s 134(da)(ii)) and "*on weekends or public holidays*" (s 134(da)(iii)). This paragraph was inserted by the *Fair Work Amendment Act 2013* (Cth) and became operative from 1 January 2014.

9. In determining whether the safety net is “fair and relevant” for the purposes of s 134(1) of the FW Act, the Commission must undertake a comparison between the historical facts and rationale underpinning the basis for the imposition of penalty rates in the community pharmacy industry and determine whether such facts and rationale continue to exist.
10. If current level and scope of penalty rates are no longer “fair” or “relevant” in the sense that the social and economic assumptions which underlie their justification has changed, then the Commission has an obligation under s 136, in accordance with the modern award objective, to review the penalty rates payable to ensure that they remain “fair and relevant” to current circumstances in the community pharmacy industry.
11. The Commission is not just limited to examining a single provision or set of provisions in a modern award to determine whether there is a fair and relevant safety net of terms and conditions but may have regard to different combination of provisions in the same award in meeting the modern awards objective¹.

C. The justification for weekend penalty rates

12. The original purpose of penalty rates was that a premium on the wages outside ordinary hours of work acted as a deterrent to employers from engaging employees and opening their business outside standard working hours and compensated employees for the disabilities associated with working unsociable hours².
13. The historical justification for the imposition of penalty rates emerged out of social norms and behaviours established in Victorian times that:
 - (a) standard working hours were usually daytime hours between Monday and Friday;

¹ Preliminary Issues Decision at [34] and [60]

² *Barrier Branch of Amalgamated Miners Association v Broken Hill Pty Company Ltd* (1909) 3 CAR 1; *Australasian Society of Engineers and Ors and the South Australian Railways Commissioner* (1935) 35 CAR 370; *Milk Processing and Cheese Etc. Manufacturing Case* (1938-9) 15 SAIR 61; *Applications by Organizations of Employees for Awards and Variations of Certain Awards* (1947) 58 CAR 610; *Re Engine Drivers General (State) Interim Award* [1950] AR (NSW) 260 at 267

- (b) Saturday is a “great day of recreation” during which people participate in competitive sports, recreation, outdoor activities and social events;
 - (c) Sunday is a day for “religious observance and family activities”³;
 - (d) Public holidays is a day designed by statute or part of general custom where traditional ceremonies, celebrations and festivities taken place⁴.
14. A higher penalty rate for Sunday work relative to Saturday work⁵ has generally been awarded on the basis of “*the very special position of Sunday in relation to religious and family life in our society*”⁶.
15. Historical context of previous decisions is an important consideration in determining whether a set of provisions are “fair and relevant” to maintain an appropriate safety net of terms and conditions of employment⁷. The relevance of historical context is more important where the relevant provisions, such as penalty rates, have been determined by reference to economic, social and industrial considerations existing at a point in time.
16. It is relevant to observe that the seminal penalty rates cases arose in the following social, economic and industrial context:
- (a) Most workers were engaged in full-time work, male, married and regular church goers.
 - (b) The cases involved workers in the primary production and manufacturing industries which generally operated in accordance with a standard working week

³ *Gas Employees Case* (1919) 13 CAR 437 at 469; (1949) 62 CAR 558; *Re Engine Drivers General (State) Interim Award* (1950) AR (NSW) 260 at 267; *Metal Trades Award re Rheem Manufacturing* (1947) 58 CAR 609 at 621 and 627

⁴ *In re Butter, Cheese and Bacon Factories and Milk and Cream Condenseries, &c. (State) and Butter, Cheese and Bacon Factories and Milk and Cream Condenseries, &c. (Newcastle and Northern) Awards* [1950] AR 62 at 64 – 65; *In re Boarding Houses, &c., Employees (State) Award and Other Awards* [1961] AR 383 at 392 – 393; *In re Iron and Steel Works Employees (Australian Iron and Steel Limited - Port Kembla) and Other Awards* [1954] AR 562; *Employers’ Federation of New South Wales v Australian Liquor, Hospitality and Miscellaneous Workers’ Union, Miscellaneous Workers’ Division, New South Wales Branch* (1994) 87 IR 335

⁵ *Metal Trades Award re Rheem Manufacturing* (1947) 58 CAR 609 at [621] and [627]

⁶ *Metal Trades Award re Rheem Manufacturing* (1947) 58 CAR 609 at [627]

⁷ *Preliminary Jurisdictional Issues Decision* at [33] and [60(3)]; *Re Fourly Yearly Review of Modern Awards - Transitional Provisions* [2015] FWCFB 3523 at [16] and [146]

of Monday to Friday. These test case standards have then been applied to other industries.

- (c) The standard working week for a full-time employee was much longer (e.g. 46 hours per week in 1921) but has gradually reduced over time to 38 hours per week as a result of the introduction of tighter working time restrictions.
- (d) Working on weekends was generally in circumstances where workers had already worked during weekdays and rates were determined because “*seven days per week for work are too many*”⁸.
- (e) Weekend penalty rates (along with the reduction of standard working hours and overtime rates) arose out of the social policy objective of reducing working hours and encouraging working people to recuperate and engage in activities outside work.

17. The modern justification for the imposition of penalty rates is that it is a loading which compensates for disabilities working at unsociable times and provides a sufficient incentive for workers to work voluntarily during such times⁹. The rationale of deterring business from operating at certain times has ceased to be a legitimate basis for justifying or determining the application and level of penalty rates¹⁰.

18. In the Modern Award Review 2012, the Full Bench of the Commission refused to grant the proposed variation to the relevant awards in relation to penalty rates because evidence continued to exist of “disabilities associated with work at unsociable times” (at [218]). However, the Full Bench recognised that the adverse effects of working outside ordinary hours will vary depending on individual circumstances¹¹ and that the 4 yearly review would provide a more fulsome opportunity to explore these issues¹².

⁸ *South Australia Railways Case* (1935) 35 CAR 370 at [371]

⁹ *Modern Awards Review 2012 - Penalty Rates* [2013] FWCFC 1635 at [205] - [206]

¹⁰ *Shop Distributive and Allied Employees Association v \$2 and Under and Ors* [2003] AIRC 46 (PR926620) at [86] - [88]; *Retail Industry (South Australia) Award - Variation* [2004] SAIRComm 54 at [210]; *Restaurant and Catering Association of Victoria* [2014] FWCFC 1996 at [103]

¹¹ *Modern Awards Review 2012 - Penalty Rates* [2013] FWCFC 1635 at [156]

¹² *Modern Awards Review 2012 - Penalty Rates* [2013] FWCFC 1635 at [235] - [236]

19. The Full Bench's most recent consideration of penalty rates in the *Restaurant Industry Award 2012 Modern Award Review*¹³ reduced the penalty rates for level 1 and level 2 casual workers. The reasons for the adjustment in penalty rates were that:
- (a) the restaurant industry workforce comprised chiefly young people pursuing full-time studies or women with weekday carer's responsibilities who work less than full-time hours on a casual basis who wanted to work on weekends and therefore did not suffer the same level of disability as career workers in the industry; and
 - (b) there was disproportionality between penalty rates for Sunday and the penalty rates for Saturday, weeknights and shift work (in combination with the casual loading) which overcompensated those employees¹⁴.
20. Since 2010, the Commission has not reviewed the penalty rates contained in the Pharmacy Award. This review represents the Commission's first opportunity to review the particular and unique circumstances of the Australian community pharmacy industry in relation to current level of penalty rates.
21. Industrial tribunals have emphasised that the level of penalty rates is not immutable and is subject to review. The Commission's starting point is not the retention of the status quo but a review of existing award provisions to determine whether they meet the modern award objective¹⁵. In these decisions, Federal and State industrial tribunals have noted that social and economic changes and shifts in community norms may warrant variations to penalty rates. These changes included the liberalisation of trading hours¹⁶, increasing consumer preference to shop on weekends¹⁷, the significant decline in religious observance on Sundays¹⁸, the demand from employees to work on

¹³ [2014] FWCFB 1996

¹⁴ at [132] - [139]

¹⁵ *Re Stevedoring Industry Award 2010* [2105] FWCFB 1729 at [77]

¹⁶ *Hotel, Resorts and Hospitality Industry Award 1992* 541/1993 [1993] AIRC 481 (Print K7601); *Shop, Distributive and Allied Employees' Association v \$2 and Under and others re Shop, Distributive & Allied Employees' Association - PR941526* [2003] AIRC 1504; *Retail Industry (South Australia) Award - Variation* [2004] SAIRComm 54 at [200]

¹⁷ *Hotel, Resorts and Hospitality Industry Award 1992* 541/1993 [1993] AIRC 481 (Print K7601); *Shop, Distributive and Allied Employees Association, Re - 1440/98 M Print Q9229* [1998] AIRC 1739; *Retail Industry (South Australia) Award - Variation* [2004] SAIRComm 54 at [200]

¹⁸ *Hotel, Resorts and Hospitality Industry Award 1992* 541/1993 [1993] AIRC 481 (Print K7601)

Sundays¹⁹ and the growth in higher education and female participation in the workforce²⁰.

22. None of the seminal cases regulating penalty rates relied upon extensive survey evidence of workers and, in particular, the retail and community pharmacy industry, to determine time use on weekdays, weekends and public holidays. The present review represents the first occasion in which the Commission has had the benefit of detailed survey and statistical evidence from several sources of the social habits and views of workers regarding working on weekends and public holidays.

D. Award regulation of the Australian pharmacy industry

21. There is an extensive history to award regulation of the Australian pharmacy industry. Before 1996, the conditions of employment of pharmacists and pharmacy assistants were regulated principally under applicable State and Territory awards.
22. The first award applicable to pharmacists made by a Federal industrial tribunal was the *Community Pharmacy (Victoria) Interim Award 1995* (the **Federal Victorian Award**). Its making arose out of the shift of Victorian industrial relations regulation to the Federal jurisdiction.
23. On 6 March 1996, Commissioner O’Shea arbitrated a number of “leave reserved” issues including classification structure, pay and pay relativities and penalty rates: see *Community Pharmacy (Victoria) Interim Award 1995* (Commissioner O’Shea, Print M9831).
24. There were three principal features of the Federal Victorian Award:
 - (a) community pharmacists were broadly aligned with professional scientists under Part IV of the *Metal Industry Award 1976* for the purposes of determining relativities and establishing the minimum rate of pay;

¹⁹ *Retail Industry (South Australia) Award - Variation* [2004] SAIRComm 54 at [200]

²⁰ *Restaurant and Catering Association of Victoria* [2014] FWCFB 1996 at [265]

- (b) the Commission accepted the parties' agreement that the issue of salaries, classification structure and penalty rates should be considered and determined together "*in an integrated way*"; and
- (c) having regard to the parties' agreement as to the approach for calculating penalty rates and the applicable first award making principles, the Commission established a regime for penalty rates observing that:

The Commission has applied the first award principle by looking at all the material presented by the parties as well as looking generally at penalty rates in federal awards, and more directly at retail awards.

...

These rates, in the Commission's view, represent fair and reasonable compensation for salaried pharmacists, given the material before the Commission as to the changes in trading hours and community expectations of availability of services. Looking at other workers under federal awards who are required to work their ordinary hours outside a "nine-to-five" five day pattern, they seek to strike the right balance between the costs to employers in the industry of meeting the public's demand for services with the rights of employees to reasonable compensation for the additional demands of late evening/weekend work.

- 25. On 24 December 1996, Commissioner O'Shea made, by consent, the first national award covering the community pharmacy industry known as the *Community Pharmacy Award 1998* (the **Federal Pre-Reform Award**) applicable only to the employment of pharmacists. The Federal Pre-Reform Award bound the Guild (and thus each of its members) and a list of named employers.
- 26. However, a patchwork of State and Territory common rules awards continued to regulate pharmacy and pharmacy assistants not covered by the Federal Pre-Reform Award. Relevantly, subcl 21.8 of the Federal Pre-Reform Award appears to have been a compromise to preserve the existing penalty rates applicable in each State and

Territory and did not reflect the earlier position contained in the Federal Victorian Award. The Pharmacy Pre-Reform Award was subsequently simplified.

27. Before the making of the Pharmacy Award as a result of the award modernisation process, no national award had ever been made applicable to pharmacy assistants. However, on 3 August 1994, Senior Deputy President Drake made a common rule award that applied to pharmacy assistants in Victoria known as the *Shop, Distributive and Allied Employees Association - Victorian Pharmacy Assistants Award 1994* (the **Victorian Pharmacy Assistants Award**) (Print L4568).
28. In 1999, Commissioner Hingley simplified the Victorian Pharmacy Assistants Award in order “to move the conditions of employment of pharmacy assistants away from an acknowledged traditional nexus with other retail awards to a closer reflection of those contained in the Community Pharmacy Award 1998 [the Federal Pre-Reform Award applicable to pharmacists]” (Print R4358). In giving effect to the simplification, the Commissioner accepted the submissions of the Guild that there was a:

... past nexus with retail awards, but ... a different approach [was required] as part of the Item 51 process outcome and in terms of its s.113 application, and set out a number of developments which it submitted were “special circumstances which apply in this industry which warrant a departure.” viz:

- *"community pharmacy is evolving into more sophisticated 'wellness' centres rather than retail outlets";*
- *the developments in the last ten years warrant national industrial regulation of both pharmacists and pharmacy assistants;*
- *the terms and conditions of employment of both pharmacists and pharmacy assistants should be as similar as possible;*
- *ideally, there should be a single national award for both pharmacists and pharmacy assistants and the Guild hopes to achieve this in time;*

- *pharmacists and pharmacy assistants are subject to the same State terms and conditions in New South Wales, Tasmania and South Australia, although a new national award for pharmacists has now been created for members of the Guild; and*
- *“a national award for pharmacy assistants is the next logical development in this area, and an appropriate springboard for the creation of a national award...”*
- *“the introduction of a pharmacy assistant career path (four level classification structure) and the establishment of pharmacy assistant competency standards and pharmacy specific qualifications.”*

29. In another matter involving the Chemists (ACT) Award 1994, Commissioner Larkin made the following pertinent observations about the Federal Pre-Reform Award:

The discussions involving the National Award to cover the pharmaceutical [sic] industry have been ongoing since 1993. In 1996, Commissioner O’Shea made the Consent National Award. However, the National Award, in reality, is a compilation of State Awards. I do not underestimate the challenge before the parties in agreeing to standardised terms and conditions in the one award when those terms and conditions are different in the awards to be consolidated.

30. As part of the award modernisation process, the Australian Industrial Relations Commission (the **AIRC**) merged the prescription for penalty rates into a single standard. An analysis of subcl 26.2 of the Pharmacy Award indicates that the scope and level of penalty rates originated from different rates applicable in different State and Territories. Under the Pharmacy Award, it appears that the current penalty rates for:

- (a) overtime on weekdays reflects the position under the Pharmacy Assistants (State) Award (NSW) and the Chemists (ACT) Award;
- (b) Saturday reflects the position for Victoria in the Federal Pre-Reform Award; and

(c) Sunday reflects the position for Victoria and South Australia in the Federal Pre-Reform Award.

31. However, the Commission did not provide reasons for the basis upon which it established penalty rates. No reference was made to the approach to penalty rates that emerged out of earlier arbitrated decisions on penalty rates in the community pharmacy industry or the apparent basis for determining the State and Territory penalty rates that were adopted.

32. In light of this history of award regulation of the community pharmacy sector, the following propositions emerge:

(a) The Federal industrial tribunal (the AIRC) has produced only a single arbitrated decision on penalty rates applicable to pharmacists (in Victoria).

(b) The AIRC decision treated the questions of appropriate wage rates, classifications and penalty rates as part of a single inquiry “in an integrated way” based on the premise that the wage relativities for pharmacists were best aligned to professional scientists under the Metal Industry Award. This suggests that penalty rates have also been established by reference to work value considerations and not solely assessing the disability associated with working unsocial hours.

(c) The Commission’s decision on penalty rates for pharmacists has not been applied in subsequent Federal awards but, rather, consent awards have preserved existing differences between State and Territory awards.

(d) The wage and penalty rates for pharmacists and pharmacy assistants in different jurisdictions have reflected divergent and, often conflicting, notions that pharmacists and pharmacy assistants as being both retail workers and health professionals which has resulted in incoherent approaches to determining work value and the setting of penalty rates.

(e) The disparate approaches in relation to determination of penalty rates in Federal awards and State and Territory awards has resulted in penalty rates in the Pharmacy Award that incorporates a mishmash of different prescriptions based on the different social and economic conditions applicable to different jurisdictions.

33. Having regard to the history of penalty rates in the Australian pharmacy industry, it is apparent the current application and level of penalty rates is a product of precedent, compromise and incoherence. The different levels of penalty rates contained in different State and Territory penalty rate regimes applicable in the Australian community pharmacy industry (before award modernisation) and between modern awards are clear evidence of this proposition.

E. The Australian community pharmacy industry

35. In determining whether to grant the proposed variations to penalty rates under the Pharmacy Award, the Guild submits that it is relevant for the Commission to have regard to:

- (a) the central role that community pharmacies play in the delivery of primary health care in Australia and the public service which they provide to local communities²¹;
- (b) the unique business and regulatory context that applies to Australian community pharmacies²²; and
- (c) the particular characteristics of the pharmacy workforce, in particular, the high level of female participation and part-time work²³.

36. In demonstrating these matters, the Guild relies on:

²¹ Exhibit PG29 at [8]

²² Exhibit PG29 at [7]

²³ Exhibit PG29, Annexure D at [281]. These submissions refer to the page numbers in the LARGE font at the bottom right hand corner of each page; Exhibit PG35 at [23]. These submissions refer to the page numbers in the LARGE font at the bottom right hand corner of each page.

- (a) the evidence of pharmacy proprietors;
- (b) the evidence of Steven Armstrong, the former Chief Economist of the Guild; and
- (c) Part 2 of the Report entitled “*The effect of Pharmacy Industry Award 2010 on community pharmacy in Australia: Final Report*” prepared by Deloitte Access Economics²⁴ (the **Deloitte Pharmacy Award Report**).

(a) The role of community pharmacy in Australia

(i) Community pharmacy provides important public services

37. Community pharmacies dispense medicines and provide relevant counselling to accompany the sale of medicines, and assist members of the public who may seek pharmaceutical advice on medications, including their use and effects, as well as general health care²⁵.
38. The services provided by community pharmacies include:
- (a) dispensing prescription medicines including medicines listed on the Pharmaceutical Benefits Scheme (**PBS**) which has its prices set by the Commonwealth Government and supplying over the counter medicines available only from pharmacies²⁶;
 - (b) providing advice and a range of health services, including services that enhance the quality use of medicines and reduce costs in other areas of the health system, such as²⁷:
 - (i) home deliveries to the elderly, disabled or infirm;
 - (ii) health monitoring and advice e.g. blood pressure, cholesterol, blood glucose, respiratory function;

²⁴ Exhibit PG35

²⁵ Exhibit PG29 at [6]

²⁶ Exhibit PG29 at [29]

²⁷ Exhibit PG5 at [11]; Exhibit PG7 at [10]; Exhibit PG8 at [15]; Exhibit PG23 at [9]; Exhibit PG25 at [28]; Exhibit PG29 at [31]; Exhibit PG35 at [25]

- (iii) chronic disease self-management support;
- (iv) staged supply of medicines at the request of the prescriber;
- (v) dose administration aids;
- (vi) MedsChecks;
- (vii) wound care services;
- (viii) sleep apnoea screening services;
- (ix) bowel cancer screening;
- (x) skin checks - a service whereby a doctor practicing in skin cancer medicine checks patient's spots or moles in-store;
- (xi) community HIV dispensing;
- (xii) adherence and compliance support for patients with chronic conditions;
- (xiii) gut health appraisal;
- (xiv) bone density testing;
- (xv) pain management services;
- (xvi) palliative support services;
- (xvii) vaccinations;
- (xviii) assistance with using drug delivery devices (such as for asthma and chronic obstructive pulmonary disease patients);
- (xix) medicine packing service for those on multiple medications, the aged and infirm;
- (xx) hiring medical equipment;

- (xxi) needle exchange;
- (xxii) return of unwanted medicines;
- (xxiii) crisis visits by the public, including febrile children, children suffering from asthma attacks and penetrating wounds, which need to be handled expertly and quickly;
- (xxiv) issuing absences from work certificates; and

(c) supplying other products also available from general retail stores.

39. In addition, community pharmacists provide services as part of public health campaigns, including baby and maternal health services²⁸, screening and care-management programs²⁹, methadone and buprenorphine dosing³⁰, needle exchange³¹ and participation in ‘quit smoking’ and weight management programs³². In many cases, these are offered to patients at little or no charge and without remuneration or without the need to make an appointment³³.
40. Community pharmacists perform a critical triage role in determining the appropriate course of action for people presenting with injuries or illnesses. Unlike other professions, community pharmacists do not primarily operate on a “fee for service” basis for this role, providing “free” advice without the need for an appointment³⁴.
41. As part of a consultation with a patient, a pharmacist may give advice or recommend treatment in the form of non-prescription medicine or direct that the patient seek medical advice from a medical practitioner or allied health provider³⁵. Pharmacists also ensure safe and quality use of medicine by managing problems with prescriptions, such as minimising side-effects or preventing adverse interactions with other

²⁸ Exhibit PG7 at [11]

²⁹ Exhibit PG5 at [11]

³⁰ Exhibit PG7 at [14] - [16]

³¹ Exhibit PG15 at [17]

³² Exhibit PG8 at [15]

³³ Transcript, 12 October 2015 at PN13072; Exhibit PG29 at [48]

³⁴ Exhibit PG15 at [17]

³⁵ Exhibit PG12 at [15] - [16]; Exhibit PG14 at [16] - [23]

medicines being taken by the patient³⁶. Pharmacists also help patients reduce their dependency on legal and illegal drugs and to manage their addiction as safely as possible³⁷.

42. Pharmacists support people to manage minor ailments that that would have otherwise required a visit to a medical practitioner or a hospital emergency department³⁸, thereby easing the burden on a strained medical system³⁹. It is estimated that pharmacists provide services in relation to more than 300 million patient visits annually and 3.9 million patients seek health-related advice from their pharmacist (not related to medicines) at least once a year⁴⁰.
43. Pharmacies also support the more vulnerable members of society. The key segments of the population that regularly use pharmacies are older people and young families (such as mothers with young children)⁴¹. As Australia's population continues to grow older, there is, and will be, an increased demand on pharmacies. The elderly have more chronic conditions, and use more medicines more often. There is therefore greater complexity associated with their health management, and pharmacies provide ongoing management and counselling to those patients, at a time and place convenient to them.
44. The services provided by community pharmacies are highly accessible in regional and urban areas and to older and poorer members of the community⁴². Community pharmacies are highly accessible as patients often find them easier to use and access than other health service providers and other essential services such as supermarkets, banks and medical centres⁴³ because of their retail presence and convenient locations within local communities. A PricewaterhouseCoopers (PwC) research project of 3,000 consumers in the community reported that 98 per cent of participants stated that they

³⁶ Exhibit PG14 at [24]

³⁷ Exhibit PG5 at [11]

³⁸ Exhibit PG5 at [11]; Exhibit PG29 at [49]

³⁹ Exhibit PG29 at [49]

⁴⁰ Exhibit PG29 at [47]

⁴¹ Exhibit PG29 at [26]

⁴² Exhibit PG29 at [22]

⁴³ Exhibit PG29 at [23]

had no difficulty in accessing a community pharmacy⁴⁴. This leads to pharmacists developing strong relationships with their patients as many people enjoy the benefits of patronising a single pharmacy. As pharmacists become knowledgeable about a patient's health and personal circumstances, this strengthens the relationship with their patients and results in better health outcomes⁴⁵.

45. Community pharmacies are different to any other retail business or any other healthcare provider because they combine the functions of both health professional and retail services within the same premises.

(ii) The central importance of community pharmacies in Commonwealth health care

46. The community pharmacy sector is a key participant in implementing the Commonwealth Government's National Medicines Policy. The National Medicines Policy is a cooperative endeavour between, amongst others, various levels of government, health practitioners, healthcare providers and suppliers in the medicines industry to provide medication and related services⁴⁶.

47. The National Medicines Policy has four central objectives:

- (a) timely access to medicines that Australians need, at a cost individuals and the community can afford;
- (b) medicines meeting appropriate standards of quality, safety and efficacy;
- (c) ensuring the quality use of medicines; and
- (d) maintaining a responsible and viable medicines industry⁴⁷.

48. The community pharmacy model is important in ensuring that the National Medicines Policy is properly implemented. The community pharmacy sector, which is currently supported by the regulatory arrangements in the pharmacy sector, delivers medicines

⁴⁴ Exhibit PG29 at [25]

⁴⁵ Exhibit PG6 at [9]

⁴⁶ Exhibit PG29 at [44]

⁴⁷ Exhibit PG29 at [45]

to the public in a safe, timely, convenient, affordable and equitable manner, consistent with the central objectives of the National Medicines Policy.

49. By offering advice and many services at little or no charge, pharmacists help to maintain the sustainability of the PBS and the wider health system. Many of the services provided by pharmacists are low-margin or loss-making and are sometimes provided free of charge and without remuneration⁴⁸. In a professionally-controlled environment, pharmacist services in the identification and treatment of minor ailments and other conditions results in significant savings to the health care system through reduced or avoided outlays. This business model also has important public benefits for those who are not in a position to afford or readily access other health care advisors.
50. Under s 98BAA of the *National Health Act* 1953 (Cth), the Minister for Health (acting on the Commonwealth's behalf) and the Guild may enter into an agreement regarding how the price of pharmaceutical benefits is to be determined for the purpose of the Commonwealth making payments to pharmacies that supply pharmaceutical benefits⁴⁹.
51. Since 1990, the Commonwealth Government and the Guild have entered into Community Pharmacy Agreements. These agreements set out the level of remuneration that pharmacists will receive for dispensing medicines covered by the PBS and the arrangements regulating the location of pharmacies approved to supply these medicines. More recent agreements have increased in scope to include provision for professional pharmacy programs and services.
52. The Fifth Community Pharmacy Agreement (the **5CPA**) between the Commonwealth Government and the Guild commenced on 1 July 2010. It established the remuneration received by pharmacies dispensing PBS medicines, providing pharmacy programs and services and for the community service obligation arrangements with pharmaceutical wholesalers⁵⁰. The 5CPA recognised the key role played by

⁴⁸ Transcript, 12/10/15, PN13072

⁴⁹ Exhibit PG29 at [55]

⁵⁰ Exhibit PG35 at [31]

community pharmacies in primary health care and provides support for patient medication management and clinical intervention services⁵¹.

53. A key aspect of 5CPA was the rollout of the Pharmacy Practice Incentive (**PPI**) Program which sought to deliver certain primary healthcare services through community pharmacies⁵². The Program's priority areas include dose administration aids; clinical intervention related to medications; staged supply of PBS medicines in instalments to patients; primary health care through the provision of medication management services; and community services support⁵³. The PPI incentive payments made to community pharmacies required that community pharmacies meet specific performance indicators concerning delivery of a range of services to patients that improve their quality use of medicines and achieve defined outcomes⁵⁴.
54. The central role of community pharmacies within the infrastructure of the Australian health care system was enlarged under the Sixth Community Pharmacy Agreement (the **6CPA**) between the Commonwealth Government and the Guild, commencing on 1 July 2015⁵⁵. Under the 6CPA, the Commonwealth Government increased the funding to \$1.26 billion⁵⁶.
55. Relevantly, the 6CPA encourages pharmacies to participate in community pharmacy programs and services and receive a standardised fee from the Commonwealth Government in return⁵⁷. The Community Pharmacy Programs (**CPPs**) include:
- (a) home medicine reviews - a comprehensive medication review conducted by an accredited pharmacist in the patient's home;

⁵¹ Exhibit PG35 at [31]

⁵² Exhibit PG29 at [34]

⁵³ Exhibit PG29 at [35]

⁵⁴ Exhibit PG29 at [36]

⁵⁵ Exhibit PG29 at [57]

⁵⁶ Exhibit PG29 at [59]

⁵⁷ Exhibit PG29 at [38]

- (b) dose administration aids - a community pharmacy service that assists consumers in the community to better manage their medicines, with the objective of avoiding medication misadventure and associated hospitalisation;
- (c) staged supply - a community pharmacy service providing at-risk people with support to improve medicine adherence and reduce risks of medicine abuse or misuse;
- (d) residential medication management reviews - an assessment conducted by an accredited pharmacist to identify, resolve and prevent medication-related problems when requested by a resident's general practitioner; and
- (e) MedsCheck - an in-pharmacy review of a patient's medication with the aim of identifying any problems a patient may be experiencing, and improve the effective use of medicines.

56. Under the 6CPA, community pharmacies will be increasingly remunerated (staged over the term of the 6CPA) for implementation of the CPPs by a targeted, fee for service arrangement rather than relying on incentive payments under the PPI⁵⁸. Importantly, the 6CPA programs reinforce the role of community pharmacists as primary healthcare providers and expands their role as part of a patient's team of health professionals. It underscores one of the main functions of the community pharmacy sector: to participate, as part of a multi-disciplinary primary health care team, in community health, preventive health and other public health services and programs⁵⁹.

57. Critically, Commonwealth Government funding to community pharmacies to provide CPPs under the 6CPA is conditional on the achievement of "*real improvement in patient access to community pharmacies (including through increased opening hours)*"⁶⁰. Unless community pharmacies open for longer hours, the additional government funding for pharmacists to provide more cost-effective accessible health

⁵⁸ Exhibit PG29 at [59]. The start date for passing on the funding is staged over the life of 6CPA to 2020.

⁵⁹ Exhibit PG29 at [61]

⁶⁰ Exhibit PG29 at [59]

care under CPPs may be in jeopardy. Importantly, this creates a direct nexus between opening hours, health care funding and patient accessibility to medication and related health services⁶¹.

(b) Regulation of community pharmacies achieves public goals of cost-effective health care for the Australian community

58. Community pharmacies have a number important social functions aimed at achieving the national health policy objectives of better health outcomes by⁶²:

- (a) providing access to pharmaceuticals for all Australians;
- (b) ensuring patients receive effective advice on the use of potentially harmful drugs; and
- (c) containing the cost of the PBS so as to maintain its future financial viability.

59. The regulatory scheme governing community pharmacies is multi-faceted and is intended to achieve a number of objectives. The Commonwealth Government has a clear interest in minimising public expenditure on subsidised medicines whilst supporting the wellbeing of the Australian community, ensuring that all patients are able to access medicines (and therefore pharmacies), that patients are informed about the effective and safe use of medicines, and that certain ancillary health services are provided to patients⁶³.

60. Community pharmacies have a central place within this regulatory framework by combining the function of dispensing PBS prescriptions and the delivery of health care services on behalf of the Commonwealth Government and the provision of over-the-counter medicines. From a public policy perspective, the role of pharmacies is largely one of agents who provide dispensing and advisory services to consumers on behalf of the Commonwealth Government⁶⁴. In this context, the Commonwealth Government

⁶¹ Exhibit PG29 at [59]

⁶² Exhibit PG29, Annexure B at [23] - [24]

⁶³ Exhibit PG29 at [44]

⁶⁴ Exhibit PG29 at [58]

has an interest in ensuring that such services are provided efficiently, equitably, and to a high standard⁶⁵.

61. To achieve these outcomes, the community pharmacy sector is regulated through a combination of Commonwealth, State and Territory laws that restrict:
 - (a) the persons who may sell and dispense certain types of medicines;
 - (b) the persons who may practice the profession of pharmacy;
 - (c) the persons who may conduct a pharmacy business;
 - (d) the supply of medicines under the PBS; and
 - (e) the location of pharmacies.
62. In combination with Commonwealth Government agreements negotiated with the Guild, the relevant statutes and regulations regulating pharmacies define the method, the persons and the context in which medicines are dispensed to consumers, the type and quality of services that pharmacies provide to consumers, the level of remuneration and consumer access to medication.
63. As a result of government regulation, community pharmacists do not operate in accordance with a standard corporatised profit-driven model but fulfil an important public health function on behalf of the Commonwealth Government that supplements the services provided by other ‘fee-for-service’ healthcare professionals for patients who are often the most vulnerable or in-need members of society⁶⁶. These services are essential in nature and are attended by special obligations in the public interest.
64. Community pharmacies have a significant role in the provision of primary health care via their network throughout Australia. Community pharmacies provide cost-effective services relative to other health care options in rolling out public health programs and

⁶⁵ Exhibit PG29, Annexure B at [11]

⁶⁶ Exhibit PG29 at [33]

primary healthcare services designed to improve the overall efficiency of Australia's health care system.

65. Given the central role of pharmacies in achieving these objectives and delivering these services, there is an important community benefit in ensuring the ongoing viability of community pharmacies and their accessibility to members of the public⁶⁷. The types of government regulation applicable to the community pharmacy industry are summarised below.

(i) Restrictions on selling and dispensing Scheduled Medicines

66. The *Therapeutic Goods Act 1989* (Cth) (**TG Act**) provides a framework for the States and Territories to adopt a uniform approach to control the availability and accessibility, and ensure the safe handling, of medicines in Australia. This framework is currently set out in the *Poisons Standard 2012* (Cth) (**Poisons Standard**), made pursuant to the TG Act.

67. In the Poisons Standard, medicines for human use are classified for control purposes into schedules. Sale and dispensation of medicine included in the schedules to the Poisons Standard ("scheduled medicines") is restricted to certain persons, including pharmacists, by State and Territory Acts and Regulations. Other medicines ("unscheduled medicines") are available for sale generally (e.g. in supermarkets).

(ii) Restrictions on practising and owning a pharmacy

68. To practise pharmacy, an individual must be registered by the Pharmacy Board of Australia (**Pharmacy Board**) as a pharmacist⁶⁸. To be registered as a pharmacist, a person must satisfy certain registration standards established by the Pharmacy Board, including, for example, having certain educational qualifications as well as practical experience, competencies and continuing professional development⁶⁹.

⁶⁷ Exhibit PG29, Annexure B at [24]

⁶⁸ Health Practitioner Regulation National Law as enacted in each Australian State and Territory

⁶⁹ Exhibit PG29 at [50]

69. State and Territory legislation prohibits a person from owning, conducting or having a proprietary interest in a pharmacy business⁷⁰ unless the person is:
- (a) a registered pharmacist;
 - (b) a company whose directors and shareholders are registered pharmacists (or in some cases close relatives of those pharmacists);
 - (c) a friendly society; or
 - (d) a person otherwise approved by the relevant legislative authority.
70. These legislative provisions are administered by the State and Territory pharmacy registering authorities, who have the mandate of protecting the public. The applicable State and Territory pharmacy legislation requires that a pharmacy be supervised and managed by a registered pharmacist, and be owned either by a pharmacist or by some form of legal entity in which pharmacists have effective and undisputed control of the decision-making of a pharmacy business⁷¹.
71. These restrictions ensure that quality of service standards are maintained through professional regulation of pharmacists. Ownership rules prevent economic concentration of the pharmacy sector, which would otherwise increase costs to the Commonwealth Government and ultimately to Australians⁷² and ensure that owners can provide effective supervision of the operation of their pharmacies.
72. As professionals, pharmacists are subject to professional and ethical standards and their continuing registration and approval to dispense medication under the PBS depends on their presence in the pharmacy and abiding by the codes and guidelines of the Pharmacy Board of Australia⁷³. Professional regulation is strict. If a pharmacist is found to have engaged in either unprofessional conduct or professional misconduct,

⁷⁰ Exhibit PG29 at [72]

⁷¹ Exhibit PG29 at [73]

⁷² Exhibit PG29 at [71]

⁷³ Exhibit PG29 at [50] - [51]

penalties may be imposed including de-registration⁷⁴. In cases of pharmacy ownership, de-registration means that the pharmacist is ineligible to own a pharmacy business which operates as a powerful incentive for pharmacy owners to operate in a manner that does not compromise patient care.

73. The ethical obligations placed on community pharmacists also requires them to decline a sale based on a medical concern, even though it may have a detrimental effect on a pharmacists' income. Community pharmacists thus provide their professional services in the discharge of their professional obligations, in addition to, and often at the expense of, profit.

(iii) Supply of medicines under PBS

74. The PBS has the stated objective to provide “reliable, timely and affordable access to cost-effective, sustainable and high quality medicines and pharmaceutical services”⁷⁵. Under the PBS, the Commonwealth Government provides a universal pharmaceutical subsidy for medicines listed on the scheme, and extra assistance to those most in need, by concessional co-payments and safety net arrangements.
75. Remuneration to pharmacists for dispensing PBS medicines is determined under the community pharmacy agreements. By law, for subsidised PBS medicines pharmacists cannot charge higher than the regulated price for any items listed on the PBS⁷⁶. The determination of fees is given effect by the Pharmaceutical Benefits Remuneration Tribunal⁷⁷. On average, remuneration from dispensing PBS medication is approximately between 65 and 70 per cent of a pharmacy's income⁷⁸. As PBS remuneration is fixed, including the maximum patient co-payment, pharmacies cannot add a surcharge for dispensation to take into account higher costs that may be associated with operating outside standard hours (such as penalty rates).

⁷⁴ Health Practitioner Regulation National Law Act 2009, ss 55, 136 and 137; in NSW, also s 139B, 139D and 139E

⁷⁵ Exhibit PG23, Annexure B at [20]

⁷⁶ *National Health Act* 1953 (Cth), s 87(1)

⁷⁷ *National Health Act* 1953 (Cth), s 98B

⁷⁸ Transcript 6 November 2015 PN22292

76. In participating in the PBS, since 2007, community pharmacies must also comply with the Commonwealth Government's price disclosure regime⁷⁹. Under this policy, pharmacies must reveal to the Commonwealth Government any discounts on pharmaceutical prices that manufacturers provide them⁸⁰. This involves community pharmacies submitting data regarding sales revenue, sales volume, and the value of incentives (such as bonus stock) for each PBS medicine subject to price disclosure⁸¹. As a result of price disclosure, the Commonwealth Government reduces the amount that it pays for PBS listed medicines in line with the price at which they are supplied to the market⁸². Over time, the Commonwealth Government has progressively tightened the price disclosure regime. On 13 March 2014, the Commonwealth Government introduced Simplified Price Disclosure (**SPD**)⁸³, which reduced the sixth monthly data collection cycles from suppliers rather than up to 18 months⁸⁴, resulting in faster and earlier reductions in medicine prices. In the 6CPA, the Commonwealth Government made further changes including the exclusion of originator medicines from price disclosure calculations and more stringent treatment of combination medicines, all of which will further reduce any difference between the prices paid by pharmacies for PBS medicines and the official PBS price⁸⁵.
77. The practical effect of the price disclosure policy is that where discounting is occurring as a result of competition, price disclosure progressively reduces the price of PBS medicines and ensures better value for money for the Commonwealth Government but reduces the margin for profit for community pharmacies⁸⁶. The Commonwealth Government's policy of price disclosure, and in particular SPD, has lowered the cost of PBS medicines purchased by the Commonwealth Government which, in turn, has lowered the income that pharmacies receive to dispense PBS

⁷⁹ Exhibit PG29 at [62]

⁸⁰ Exhibit PG29 at [62]

⁸¹ *National Health Act 1953* (Cth) s 99ADC; Exhibit PG29 at [63]

⁸² Exhibit PG29 at [64]

⁸³ Exhibit PG29 at [65]

⁸⁴ Exhibit PG29 at [65]; Exhibit PG35 at 30

⁸⁵ Exhibit PG29 at [65]; Exhibit PG35 at [30]

⁸⁶ Exhibit PG29 at [64] and [66]

scripts⁸⁷. As a result of these reforms, there has been a significant decline in the profitability of pharmacies and reduced growth of the pharmacy sector in the last 5 years⁸⁸. In 2014-2015, it was conservatively estimated that price disclosure reduced the profit before tax of an average pharmacy by approximately \$90,000 per year⁸⁹.

(iv) Location rules

79. Under the *National Health Act* 1953, the Commonwealth imposes controls on approving a new pharmacy, and on relocating existing pharmacies, for PBS purposes⁹⁰. The Pharmacy Location Rules (**Location Rules**) are a fundamental component of the 6CPA⁹¹.
80. The Location Rules are divided into two general types: those that apply to the relocation of an existing pharmacy; and those for the establishment of a new pharmacy⁹². The rules set out location-based criteria which must be met in order for the Australian Community Pharmacy Authority to recommend approval of a pharmacy⁹³.
81. The Location Rules were amended in 2010 and provided an increased ability to establish a new pharmacy in a shopping centre, large medical centre, private hospital or in towns where there is only one pharmacy⁹⁴. The increase in the number of pharmacies has meant that, on average, pharmacies have seen little growth in prescription volume⁹⁵.

⁸⁷ Exhibit PG29 at [69]

⁸⁸ Exhibit PG29 at [70]

⁸⁹ Exhibit PG29 at [70] and [84]; Transcript; Exhibit PG35 at [30]

⁹⁰ Exhibit PG29 at [74]

⁹¹ Exhibit PG29 at [75]

⁹² Exhibit PG29 at [76]

⁹³ Exhibit PG29 at [77]

⁹⁴ Exhibit PG29 at [78]

⁹⁵ Exhibit PG29 at [78]

(c) The commercial position of community pharmacies

83. In 2013-2014, the community pharmacy sector generated approximately \$15.38 billion in revenue including \$10.27 billion in prescriptions on an annual basis⁹⁶. During this period, the community pharmacy industry dispensed 285 million prescriptions⁹⁷. In 2014, 5,456 pharmacies operated in Australia⁹⁸ serving an average community size of 4,305 people⁹⁹. In 2012-2013, the community pharmacy industry added \$42.38 billion in value and represented 6.2 per cent of all retail trade (representing the second biggest retail segment after supermarkets and grocery stores)¹⁰⁰.
84. Pharmacy businesses vary in terms of size¹⁰¹ and they are highly fragmented due to differing State and Territory legislation governing pharmacy ownership¹⁰². The majority of pharmacies have a turnover between \$1.5 million and \$4 million¹⁰³ and fall into the category of small-to-medium size business.
85. In recent years, the business revenue and profitability of community pharmacies has come under increasing pressure. Relevantly, survey evidence undertaken by the Guild indicates that: average sales in pharmacies have been declining since 2008-2009¹⁰⁴; expenses for pharmacies have grown on average by 7 per cent a year for the last decade including 4.6 per cent in 2010-2011, 7.47 per cent in 2011-2012 and 3.99 per cent in 2012-2013¹⁰⁵; the profitability of pharmacies has decreased since 2008-2009¹⁰⁶ including by 11 per cent in 2014 and pharmacies forecasted a further 7 per cent reduction in profitability for the 2015¹⁰⁷; 1 in 10 pharmacies intend to reduce trading by at least one day per week due to revenue pressures¹⁰⁸; 1 in 4 pharmacies intend to

⁹⁶ Exhibit PG29, Annexure D at [281], [295]

⁹⁷ Exhibit PG29, Annexure D at [281], [295]

⁹⁸ Exhibit PG29 at [17]

⁹⁹ Exhibit PG35 at 20 (based on 2013 figures)

¹⁰⁰ Industry profile - Retail trade December 2015 Table 4.1 at [6]

¹⁰¹ Exhibit PG29 at [16]

¹⁰² Exhibit PG35 at [21]

¹⁰³ Exhibit PG29 at [16]

¹⁰⁴ Exhibit PG29 at [89]; Exhibit PG35 at [27]

¹⁰⁵ Exhibit PG29 at [109]

¹⁰⁶ Exhibit PG35 at [29]

¹⁰⁷ Exhibit PG29 at [85(c)]

¹⁰⁸ Exhibit PG29 at [83]

reduce opening hours on average by 5.4 hours per week because of lower remuneration from the sale of PBS medicines¹⁰⁹; 15.5 per cent of pharmacies reported a high or almost certain risk of their business failing in the next 5 years which had doubled from 7.6 per cent and 7.4 per cent reported in equivalent surveys conducted in 2013 and 2014¹¹⁰; 75 per cent of pharmacies expect that the value of the business will decrease in the next 5 years¹¹¹.

86. The decline in business profitability has been attributed to the pressures of prices disclosure and the competitive pressures of the marketplace¹¹². The further strengthening of the price disclosure regime in the 6CPA combined with other associated Commonwealth Government budget savings, such as the de-listing from the PBS of certain high-volume medicines that are available over-the-counter¹¹³ and the optional co-payment discount of up to \$1, mean the ongoing business conditions for pharmacies continue to be very challenging¹¹⁴.
87. Community pharmacies have been increasingly impacted by higher levels of competition in the market including regulatory changes to the scheduling of medicines¹¹⁵. These changes have allowed non-pharmacy outlets (such as supermarkets) to sell items traditionally stocked and sold by community pharmacies. Competition in the community pharmacy industry has also intensified with the expansion of a number of discount community pharmacy groups with aggressive pricing strategies¹¹⁶.
88. The challenging business environment has had an adverse impact on the ability of pharmacy to provide services. Survey evidence reveals that over 40 per cent of pharmacies indicated they were planning to discontinue the home delivery service, with a further 12 per cent reducing availability, and about 60 per cent of pharmacies

¹⁰⁹ Exhibit PG29 at [83]

¹¹⁰ Exhibit PG29 at [85(a)]

¹¹¹ Exhibit PG29 at [85(b)]

¹¹² Exhibit PG35 at [26]

¹¹³ Exhibit PG29 at [60(a)]

¹¹⁴ Exhibit PG29 at [60(b)]

¹¹⁵ Exhibit PG35 at [22]

¹¹⁶ Exhibit PG35 at [22] and [30]

indicated that they may be forced to increase the cost to patients for dose administration aids¹¹⁷.

(d) Pharmacy workforce

89. In 2011-2012, there were approximately 55,000 employees (excluding proprietors) employed in the community pharmacy industry¹¹⁸. In November 2015, the entire pharmaceutical, cosmetics and toiletry segment had approximately 170,600 employees comprising 13.1 of total retail employment in Australia (the second highest after supermarket and grocery stores)¹¹⁹.
90. Over the last 5 years, there has been a downward trend in employment in the Australian community pharmacy industry. Relevantly, there had been a 4.8 per cent decrease in 2013-2014 and a projected 6.7 per cent decrease in 2014-2015¹²⁰. Survey evidence confirms these projections¹²¹. In 2014-2015, pharmacies lost on average one full staff member per store, and staff hours were expected to decrease by an average of 6.1 per cent¹²².
91. The community pharmacy industry is labour intensive with labour costs amounting to between 40 per cent and 50 per cent of total expenses between 1998-1999 and 2011-2012¹²³.
92. The demographics of the pharmacy workforce has a number of unusual characteristics relative to other industries. Based on the most recent estimates in November 2015¹²⁴, 51.2 per cent of the workforce work part-time and 77.1 per cent of total employment is female (the highest amongst all segments in the retail industry).

¹¹⁷ Exhibit PG29 at [100]

¹¹⁸ Exhibit PG35 at [26]

¹¹⁹ Industry profile - Retail trade December 2015 Table 4.1 at [6]

¹²⁰ Exhibit PG35 at [23]

¹²¹ Exhibit PG29 at [94] - [95]: Pharmacies reported, on average, they had reduced by 0.6 staff per business due to the loss of profit from price disclosure equating to an estimated total current impact on pharmacies of 3,200 jobs lost in 2013-14 and more than one third of pharmacies intended to reduce the number of pharmacists employed last year, with over 50 per cent anticipating a reduction the number of pharmacy assistants employed in the next twelve months

¹²² Exhibit PG29 at [94]

¹²³ Exhibit PG35 at [62]

¹²⁴ Industry profile - Retail trade December 2015 Table 5.1 at 37

93. The shift from full-time to part-time employment in the pharmacy industry has been pronounced. Between November 2010 and November 2015, there has been a decrease of 0.2 per cent in full-time employment and an increase of 2.5 per cent in part-time employment¹²⁵. The average hours actually worked per week in part-time jobs is 15.9 per cent, amongst the lowest in the retail industry¹²⁶.

F. The impact of penalty rates on the Australian community pharmacy industry

95. The Guild has adduced lay and expert evidence from Deloitte Access Economics demonstrating the negative impact of penalty rates on business profitability, service provision and employment in the community pharmacy sector.

96. The evidence is set out below.

(a) The Deloitte Pharmacy Award Report

97. The Deloitte Pharmacy Award Report¹²⁷ investigated the impact of the Pharmacy Award, in particular, the impact of penalty rates, on pharmacies by surveying pharmacy business proprietors and managers¹²⁸ and using a regression analysis to test a variety of hypotheses regarding the impact of the Pharmacy Award¹²⁹. 302 pharmacies participated in the survey.

98. Relevantly, the survey reported in the Deloitte Pharmacy Award Report found:

- (a) over 76 per cent of survey respondents considered that the Pharmacy Award had a negative impact on their business¹³⁰;
- (b) nearly 75 per cent of survey respondents agreed or strongly agreed that the Pharmacy Award:
 - (i) reduced the financial viability of their business;

¹²⁵ Industry profile - Retail trade December 2015 Table 5.9 at 44

¹²⁶ Industry profile - Retail trade December 2015 Table 5.3 at 39

¹²⁷ Exhibit PG35

¹²⁸ Exhibit PG35 at [33] - [35]

¹²⁹ Exhibit PG35 at [35] - [42]

¹³⁰ Exhibit PG35 at [43]

- (ii) reduced their ability to employ casual staff; and
 - (iii) reduced or will reduce their potential for pharmacy opening hours on the weekend and on public holidays¹³¹;
- (c) nearly two-thirds of respondents considered that the Pharmacy Award:
- (i) reduced their ability to employ new staff;
 - (ii) reduced the number of staff working during after-hours, on weekends and public holidays; and
 - (iii) reduced the potential for pharmacy opening hours after 7.00pm during the week¹³²;
- (d) 91.59 per cent of respondents expressed concern about overtime and penalty rates under the Pharmacy Award (at a weighted level of concern of 7.32 where 1 is the least concerning and 10 is the most concerning)¹³³;
- (e) in relation to the concerns of respondents regarding their business in the future:
- (i) penalties and overtime rates were ranked as the second highest concern;
 - (ii) staffing levels during after-hours and weekends was ranked as the fourth highest concern; and
 - (iii) operating hours was ranked as the seventh highest concern¹³⁴;
- (f) of the respondents which were required to open during weekends and public holidays (due to lease and other stipulations):
- (i) 93.59 per cent reported that trading on public holidays to be unprofitable;
 - (ii) 88.89 per cent reported that trading on Sundays to be unprofitable;

¹³¹ Exhibit PG35 at [44]

¹³² Exhibit PG35 at [44]

¹³³ Exhibit PG35 at [45]

¹³⁴ Exhibit PG35 at [46] - [47]

(iii) over 50 per cent reported that trading extended hours (i.e. after 7.00pm on weekdays and after 6.00pm on Saturdays) to be unprofitable¹³⁵;

(g) since December 2009 (i.e. before the commencement of the Pharmacy Award), most respondents have decreased rather than increased trading hours, in particular, after 6.00pm on Saturdays, Sundays and public holidays (coinciding with penalty rates)¹³⁶;

(h) close to two-thirds of respondents stated that the decrease in trading hours has been driven by the need to reduce expenses on wages¹³⁷; and

(i) the number of hours worked by pharmacy proprietors providing professional pharmacy services had increased by 5 hours and 22 minutes per week since the introduction of the Pharmacy Award¹³⁸.

99. Following a regression analysis of the survey results and, once confounding factors were controlled for, the Deloitte Pharmacy Award Report estimated impact of the Pharmacy Award has been:

(a) a contraction of the community pharmacy workforce of 0.13 FTE per pharmacy and a decrease of 3.11 FTE for casual staff which is equivalent to 123.38 employee hours per week per pharmacy¹³⁹; and

(b) an average decrease of 3 trading hours per week per pharmacy¹⁴⁰, with staffing levels lower on weekends.

(b) The lay evidence of pharmacy proprietors

100. The evidence of the pharmacy proprietors corroborates the conclusions made in the Deloitte Pharmacy Award Report.

¹³⁵ Exhibit PG35 at [47]

¹³⁶ Exhibit PG35 at [48]

¹³⁷ Exhibit PG35 at [50]

¹³⁸ Exhibit PG35 at [55]

¹³⁹ Exhibit PG35 at [64]

¹⁴⁰ Exhibit PG35 at [65]

101. The Guild adduced direct evidence from the following 23 pharmacy proprietors, each of whom were cross-examined¹⁴¹. In particular, the common themes in the evidence of pharmacy proprietors are that:

- (a) their pharmacies do not open the same range of hours on weekends and public holidays as they do on weekdays and, in some cases, their pharmacies do not open on Sundays or public holidays at all;
 - (b) in relation to the pharmacies that open outside ordinary hours of work on weekdays under the Pharmacy Award, on weekends and public holidays:
 - (i) the staff numbers are less than the usual levels during weekdays;
 - (ii) in some cases, as a result of lower staffing, there is increased risk of theft;
 - (iii) in some cases, during these periods, the pharmacies roster less experienced or less qualified staff members or pharmacy assistants which reduced the quality of care and attention given to patients; and
 - (iv) in some cases, pharmacies could not engage pharmacy students and pharmacy interns to work during these periods to enable them to obtain practical experience;
- as a result:
- (v) there are longer waiting times for patients to speak to a pharmacist; and
 - (vi) pharmacies are not able to offer the same suite of professional services to their patients offered during ordinary hours on weekdays;
- (c) based on their experience in dealing with their patients:

¹⁴¹ Anthony Tassone (Exhibit PG2); Paul Thomas Keane (Exhibit PG3); Angelo Pricolo (Exhibit PG4); Gregory Da Rui (Exhibit PG5); David Martin Heffernan (Exhibit PG6); Quinn On (Exhibit PG7); Samantha Kourtis (Exhibit PG8); Kin Chong (Exhibit PG9); Lia Jane Mahony (Exhibit PG10); Hassan El-Ahmad (Exhibit PG11) Michael Farrell (Exhibit PG12); Trent Playfod (Exhibit PG13); Craig Bird (Exhibit PG14); Michelle Spiro (Exhibit PG15); Peter Crothers (Exhibit PG16); John Cagney (Exhibit PG17); Dean Pollock (Exhibit PG18); Timothy Logan (Exhibit PG19); Patrick Costigan (Exhibit PG20); Maria Xynias (Exhibit PG22); Ian Lewellin (Exhibit PG23); Georgia Twomey (Exhibit PG24); and Andrew Topp (Exhibit PG25)

- (i) as injury, illness or other emergencies where professional advice and services is required often strikes at short notice, patients have a need to use pharmacies in urgent circumstances outside ordinary business hours at locations which are quick and safe to reach from their homes;
 - (ii) if pharmacies are open outside standard hours, pharmacists can address urgent health problems rather than patients having to attend busy and overcrowded hospital emergency departments which usually have long waiting times;
 - (iii) some patients cannot, or find it highly inconvenient, to attend a pharmacy during ordinary hours on weekdays due to other personal (e.g. child or elder care) and professional commitments and prefer visiting pharmacies outside ordinary hours and on weekends;
 - (iv) to ensure that there is “continuity of care”, patients prefer visiting a pharmacist who has ongoing knowledge of their medical history and their medication needs;
- (d) until recently, community pharmacies have been able to cross-subsidise the unprofitable aspects of their business such as opening outside ordinary hours but price disclosure has diminished this ability and will continue to do so even more so in the future;
- (e) a large number of regional and rural communities do not have access to the services provided by a community pharmacy outside standard working hours to address urgent or emergency medication needs;
- (f) the pharmacy proprietors expressed a desire:
- (i) to open their pharmacies for longer hours on weekdays after ordinary hours, as well as on weekends and public holidays to provide continuity of service at the same level as during normal trading hours and also to offer the same

range of professional services for their patients who need their services during these times;

- (ii) to align their pharmacies' trading hours with the trading hours of nearby medical centres which are open during evenings, on weekends and public holidays;
 - (iii) to increase their staffing during these hours to have sufficient time to provide professional care to patients and to be able to offer the same suite and quality of professional services to patients as are offered during ordinary hours on weekdays;
- (h) the vast majority of community pharmacies consider that it would be unprofitable to open on Sundays, public holidays and outside standard hours of work and, given the choice, do not open during these unprofitable periods;
- (i) of the community pharmacies required to open outside standard hours between Monday and Friday due to lease or other legal requirements or to provide ongoing patient care and a service to the community:
- (i) almost all pharmacies trading on Sundays and public holidays are unprofitable; and
 - (ii) the majority of pharmacies opened for weekday extended hours and on Saturdays are unprofitable;
- (j) the main reason that pharmacies are unprofitable after ordinary hours on weekdays, on weekends and public holidays is the higher costs of employing staff on penalty rates under the Pharmacy Award;
- (k) in smaller pharmacies, some proprietors and managers worked hours outside ordinary weekday hours, on weekends and public holidays to avoid having to incur penalty rates required to be paid to a pharmacist engaged as an employee;
- (l) if the pharmacies opened for longer hours:

- (i) patients would have greater access to medication, professional advice and services at these times in particular in dealing with urgent cases of medical emergencies;
 - (ii) there would be better patient care by ensuring continuity of services through the same pharmacy (e.g. keeping scripts on file and knowledge of the existing health of patients); and
 - (iii) through the provision of these services, there would be better healthcare provided to the Australian community;
- (m) if the Guild's proposal is granted, the pharmacy proprietors would give serious consideration to:
- (i) extending trading hours, after normal hours on weekdays, on weekends and public holidays;
 - (ii) reducing their own hours and those of their managers during these times; and
 - (iii) offering more hours of work for existing staff or engaging more staff to work during these times.

102. The evidence supporting these propositions is summarised in a table set out in Annexure A to these submissions.

(c) Key findings based on evidence on the community pharmacy industry

103. The evidence allows the following findings to be made:

- (a) the imposition of penalty rates under the Pharmacy Award increases employment costs thereby making it unprofitable for the vast majority of community pharmacies to open for extended trading hours¹⁴²;

¹⁴² Exhibit PG35 at [47] and [52]

- (b) if the Commission varies penalty rates in accordance with the Guild’s proposal, it will:
- (i) improve the chances that pharmacies can operate profitably during extended hours of trade on weekdays, weekends and public holidays;
 - (ii) provide an incentive to increase opening hours and therefore create opportunities for more hours of work and employment; and
 - (iii) enable patients to obtain greater access to medication and professional services across expanded operating hours and higher quality staff through the rostering of more experienced and qualified pharmacy assistants;
- (c) in the event that community pharmacies are able to open for longer hours and engaged more qualified and experienced staff during these times, the Australian economy will benefit in terms of greater accessibility to patient care and therefore lower health care costs. This is because:
- (i) pharmacists provide a range of health services that enhance the quality use of medicines, and prevent medical issues arising or becoming worse thereby reducing costs in other areas of the health system;
 - (ii) pharmacists have the ability to triage medical problems at an early stage thereby minimising the need to refer to more expensive health care options, crowded and busy emergency wards, when medical surgeries are not open, thereby avoiding the risk of medication misadventure;
 - (iii) pharmacists have a central role under the National Medicines Policy to improve health care and improved accessibility will help mitigate the risk of illness and disease in the Australian community and therefore reduce health care costs and government spending on health care; and
 - (iv) 6PCA requires “real improvement in patient access to community pharmacies (including through increased opening hours) under Community Pharmacy Programs” in exchange for the Commonwealth Government

making available the funding for CPP (of up to \$1.26 billion for CPPs), and unless penalty rates are reduced so as to make it profitable for community pharmacies to improve patient access, then the increased funding for CPPs will be in jeopardy.

G. Changes to Australian demographics and social habits

104. As set out in Part C of these submissions, the historical foundation for the imposition of penalty rates arose out of social norms and habits prevailing in the Australian community at the time of their insertion into awards. Over the last three decades, there have been significant social and economic changes which have impacted on the role of weekends and the demand for weekend work in the Australian community.

105. These changes include the following:

- (a) Since the 1970s, there has been liberalisation of shopping hours in all Australian jurisdictions and concomitant changes in social norms about shopping times outside standard hours and during weekends and public holidays¹⁴³. Rising household incomes have increased the demand for discretionary consumer services including shopping on weekends¹⁴⁴. In one recent survey, shopping centres are now seen as the most important gathering place in the community (39 per cent of survey respondents)¹⁴⁵ and there is strong evidence to suggest weekend trading is higher than weekdays¹⁴⁶.
- (b) The growth in participation of higher education means that there is a higher demand for part-time and casual work on weekends and outside standard hours¹⁴⁷. This is evidenced by:

¹⁴³ The Productivity Commission, “Workplace Relations Framework: Productivity Commission Inquiry Report” No 76 30 November 2015 (the **Productivity Commission Final Report**) at 424 - 425; 431 - 432

¹⁴⁴ Productivity Commission Final Report at 131-132; 424 and 432

¹⁴⁵ Productivity Commission Final Report at 431

¹⁴⁶ Productivity Commission Final Report at 425; PG34 at [85]; Exhibit PG34 at 57

¹⁴⁷ Productivity Commission Final Report at 110 - 114 Figures 2.11-2.12 and 2.14

- (i) the increase in young people completing Year 12 and enrolling in tertiary education¹⁴⁸;
 - (ii) the increase in dependent students between 2004 and 2012, (either living at home or receiving income from parents or other sources) from approximately 15 per cent to approximately 25 per cent¹⁴⁹;
 - (iii) the large number of young people engaged in paid casual and part-time work and education activities;¹⁵⁰;
 - (iv) the disproportionately high number of young people working on a part-time basis¹⁵¹ and on a casual basis¹⁵²;
 - (v) in the community pharmacy industry, evidence of pharmacists who have expressed a desire to engage pharmacy interns and students as part of providing work experience training¹⁵³;
- (c) Higher female workforce participation rates¹⁵⁴, in particular in the community pharmacy industry¹⁵⁵, has led to:
- (i) both parents of children working and increased the need for part-time and casual weekend work to allow women to co-ordinate scheduling with their partners of child care responsibilities; and

¹⁴⁸ ABI 3 at 8 -10 Figures 6 and 7

¹⁴⁹ Exhibit PG34 at 19, 45, Chart 4.3).

¹⁵⁰ Australian employees aged 15 to 19 years averaged 10 hours per week in paid work and 21 hours per week in education and Australian employees aged 20 to 24 years averaged 27 hours per week in paid work and 8 hours in education-related activities. State of Australia's Young People Report AiG Tender Bundle at 235 and 265

¹⁵¹ In May 2015, 75.8 per cent of all Australian employees aged 15 to 19 years and 41.3 per cent of all Australian employees aged 15 to 24 years worked: AiG Tender Bundle, Document 1 at 7); see also State of Australia's Young People Report, p44 (AiG Tender Bundle, Document 3 at 236

¹⁵² In November 2013, 71.4 per cent of all Australian employees aged 15 to 19 years and 49.6 per cent of all Australian employees aged 15 to 24 years worked: AiG Tender Bundle, Document 1 at 15

¹⁵³ See Annexure A

¹⁵⁴ Over the last three decades, the participation rate for women has been rising steadily. In 1978, the female participation rate was less than 45 per cent; in 1990, it was approximately 52 per cent; in 2014, it is approximately 60 per cent: Exhibit ABI 3 at 76 Figure 5; Changing Work Patterns Report at 2 Chart 2.1; Productivity Commission Final Report at 99 Figure 2.1; 430.

¹⁵⁵ 77.1 per cent of the total employment in the pharmaceutical, toiletries and cosmetics is female. Industry profile - Retail trade December 2015 Table 5.1 at 37; see also Exhibit PG35 Deloitte Pharmacy Award Report at 23 which cites evidence that 60 per cent of the pharmacist population in 2014 is female.

- (ii) women's relative earnings rising¹⁵⁶ and a preference to access shopping and services outside the normal working week¹⁵⁷.
- (d) Although Sunday has traditionally been considered as a day of Christian worship, as a result of a dramatic decline in religious beliefs¹⁵⁸ and observance and church attendance on Sundays¹⁵⁹ especially amongst young people¹⁶⁰, it is no longer the case for the vast majority of the Australian population.
- (e) The decline in the average number of hours worked by Australian employees between 1918 to 1998 from 2,600 hours per annum to 1,600 hours per annum has increased the opportunity for socialising and non-work activities¹⁶¹. For those who work on weekdays, it has also reduced the cumulative disabilities associated with working on weekends.
- (f) Concomitant with decrease in average working hours, there has been an increase in the incidence of weekend work, in particular, casual and part-time work in the retail industry¹⁶². In particular, between 2006 and 2013, the HILDA survey data indicates that there has been an increase in weekend workers working in retail industry¹⁶³; who work in casual¹⁶⁴ or part-time employment¹⁶⁵; and are studying¹⁶⁶.

¹⁵⁶ Exhibit PG34 at 33

¹⁵⁷ Productivity Commission Final Report at 424 and 430

¹⁵⁸ From 1911 to 2010, the number of Australians who identify themselves as Christian has declined from 96 per cent to 60 per cent: Exhibit ABI 3 at 34. In 2011, approximately 4.8 million Australians (representing approximately 22 per cent of all Australians) chose the option of "no religion" on their census form and approximately 2.4 million Australians who chose the option "no religion" on their census form were less than 30 years of age: ABS Catalogue 4102.0, *Losing My Religion* (November 2013)

¹⁵⁹ From 1950 to 2007, the proportion of the Australian population that attended church frequently (that is, at least monthly) declined from 44 per cent to 17 per cent: Exhibit ABI 3 at 34. In 2014, 71.4 per cent of Australians attended church as rarely as once a year or less and only 18.1 per cent of Australians attended church once a month or more: Workplace and Economic Research Section, Tribunal Services Branch entitled "Changing work patterns" dated December 2015 at 23

¹⁶⁰ Productivity Commission Final Report at 431-432

¹⁶¹ Productivity Commission Final Report, section 9.2 at 387; Exhibit PG34 at 33

¹⁶² Between 1985 and 2014, casual employment has increased from around 15 per cent to 25 per cent of total employment: Exhibit ABI 3 at 6; in the pharmacy industry, one in three pharmacists work part-time: Exhibit PG35 Deloitte Pharmacy Award Report; see also Industry profile - Retail trade December 2015 Table 5.1 at 37 which says 51.2 per cent of employees in the pharmaceutical, toiletries and cosmetics industry work part-time.

¹⁶³ Changing Work Pattern Report at 19 Table 3.15

¹⁶⁴ Changing Work Pattern Report at 15 - 16 Table 3.11

¹⁶⁵ Changing Work Pattern Report at 19 Table 3.15

¹⁶⁶ Changing Work Pattern Report at 15 Table 3.10

(g) Since the introduction of penalty rates, there have been significant legal and industrial reforms which have improved the protections afforded to workers and minimise many of the perceived disabilities associated with working unsocial hours. These reforms include the introduction of work health and safety legislation, the introduction of the 38 hour standard working week, reasonable working hour restrictions, the introduction of annual leave, long service leave and other kinds of paid leave and rights to casual conversion to permanent employment¹⁶⁷.

H. The level of disabilities associated with working on weekends and public holidays

106. Australian life revolves around a standard Monday to Friday working week. This is a notorious fact and is not contested in these proceedings. The Guild acknowledges that, in the case of some individual workers, there is a degree of disability working on weekends. By its nature, weekend work must displace other weekend activities. Indeed, s 134(1)(da)(iii) of the FW Act operates on this premise.

107. In determining the appropriate level of penalty rates, the real question for determination is the degree of the disability imposed on employees in the community pharmacy industry with regards to working on weekends. It must be shown that the level of penalty rates contained in the Pharmacy Award remain “fair and relevant” to the current circumstances which exist in the community pharmacy industry.

108. There are several methods of measuring the level of the disabilities associated with working on weekends by determining the social attitudes and time use preferences and practices of the Australian community (in particular in the Australian community pharmacy industry). In the present case, these sources include:

(a) Survey evidence including:

¹⁶⁷ Productivity Commission Final Report at 418 Table 10.2

- (i) Deloitte Access Economics report entitled “The modern face of weekend work: survey results and analysis” dated 25 June 2015¹⁶⁸ (the **Deloitte Weekend Work Report**);
 - (ii) the expert report of Professor John Rose dated 3 July 2015¹⁶⁹ (the **Rose Report**);
 - (iii) the Australia Work and Life Index (**AWALI**) survey analysed in the joint expert report of Professor Sara Charlesworth and Dr Fiona McDonald of a number of AWALI survey participants comprising two parts authored separately (the **Charlesworth Report** and the **McDonald Report**)¹⁷⁰;
- (b) Data from the Australian Bureau of Statistics reported in the ABS study entitled “How Australians Use Their Time” (2006) (the **ABS Time Use Census**); and
 - (c) Evidence of weekend and non-weekend workers adduced by the SDA and APESMA.

(a) Survey data

109. There are three key sources of survey data relevant to the assessment of the level of disability associated with working on weekends:

- (a) the Deloitte Weekend Work Report;
- (b) the Rose Report; and
- (c) 2014 AWALI survey.

The Deloitte Weekend Work Report

110. The Deloitte Weekend Work Report sets out, amongst other things, the outcome and analysis of a survey of 2,100 people (including 1000 weekend workers in the retail

¹⁶⁸ Exhibit PG34. These submissions refer to the page numbers in the LARGE font at the bottom right hand corner of each page.

¹⁶⁹ Exhibit ABI1

¹⁷⁰ Exhibit SDA43

industry) to understand their time use patterns, the frequency and duration of their weekend work and their attitudes to working on weekends.

111. Relevantly, the survey results in the Deloitte Weekend Work Report show that:

- (a) a majority of weekend workers report either no problem or only minor problems with working on weekends¹⁷¹;
- (b) in the case of part-time and casual workers, the number of weekend workers not troubled by working on weekends is much higher than full-time workers¹⁷²;
- (c) the majority of people (55 per cent) viewed Saturday and Sunday as equally important and less than a third viewed Sunday as more important than Saturday¹⁷³;
- (d) in the case of younger workers under the age of 35¹⁷⁴:
 - (i) 69 per cent of young people viewed Saturdays and Sundays as equally important;
 - (ii) 12 per cent of young people chose Saturday as more important and 19 per cent of young people chose Sunday as more important compared to 31 per cent of the population as a whole;
- (e) in the case of part-time and casual employees, 53 per cent of part-time employees and 57 per cent of casual employees viewed Saturday and Sunday of equal importance with 21 per cent choosing Saturday and 22 per cent choosing Sunday as being more important¹⁷⁵;

¹⁷¹ Exhibit PG34 at 46 - 48.

¹⁷² Exhibit PG34 at 48

¹⁷³ Exhibit PG34 at 49

¹⁷⁴ Exhibit PG34 at 49

¹⁷⁵ Exhibit PG34 at 49

- (f) only 22.7 per cent of weekend workers work every weekend and their weekend hours are short (casual workers work an average of 5.3 hours on Sundays compared to an average of 7.9 hours on weekdays)¹⁷⁶; and
- (g) weekend workers spend less time on recreation and leisure, child care and personal care compared to non-weekend workers on weekends and during the week¹⁷⁷ but the average difference is not significant (amounting to less than an hour)¹⁷⁸.

112. The Deloitte Weekend Work Report survey shows that weekend workers use their time differently and shift some of their recreational and social activities to weekdays, especially in the case of casual workers (who are more likely to be employed to work on the weekend in the retail industry). In the case of weekend casual workers, they

- (a) spend more time on religious observance and education¹⁷⁹;
- (b) spend more time on attending sporting matches and concerts on weekends¹⁸⁰;
- (c) spend more time with family, friends and shopping and shift use of personal services to weekdays¹⁸¹; but
- (d) are more likely to spend less time on other activities suggesting that patterns of time use are complicated, personal and vary in unmeasured ways¹⁸².

113. The differences in the time-use between weekend and non-weekend workers (in particular, young people, part-time and casual workers) indicates that weekend work is qualitatively different in the way it displaces other activities from weekday work. If the sole difference between weekend workers and non-weekend workers is that weekend workers work on weekends, then one would not expect to observe

¹⁷⁶ Exhibit PG34 at 53 - 54 and in particular Table 4.6

¹⁷⁷ Exhibit PG34 at 49

¹⁷⁸ Exhibit PG34 at 49

¹⁷⁹ Exhibit PG34 at 51 Table 4.8

¹⁸⁰ Exhibit PG34 at 51 Table 4.9

¹⁸¹ Exhibit PG34 at 51 Table 4.9

¹⁸² Exhibit PG34 at 51 - 52

differences in weekday activities between the two groups¹⁸³. Rather, the survey data shows that weekend and non-weekend workers spend their time on activities outside work differently and that weekend workers have some flexibility in determining when these activities are undertaken¹⁸⁴.

114. The differences in time use between particular groups of weekend and non-weekend workers suggests that employees work weekend hours for a range of reasons. This is likely to be the result of, or to be influenced by, the characteristics of individual workers, with weekend workers having different demographic characteristics, family structures and arrangements and different lifestyle and preferences from the population as a whole. In particular, as casual workers devote more to education than non-weekend workers, this indicates that casual weekend workers are more likely to be students and arrange their work schedules around their studies¹⁸⁵.
115. Based on these results, the Deloitte Weekend Work Report concludes that, based on standard economic theory, a reduction in penalty rates is likely to result in self-selection of employees working on weekends. For employees who work on weekends who are motivated chiefly by penalty rates, those employees are likely to seek to work more weekday hours in substitution for weekend work¹⁸⁶. This is likely to increase the availability of weekend shifts for those who prefer to work weekends for personal reasons.

The Rose Report

116. The Rose Report is a study of survey conducted of employees covered by the Restaurant Industry Award 2010 and the General Retail Industry Award 2010 using discrete choice modelling to determine the relative importance placed on time of normal working hours, unsocial working hours and public holidays.
117. The key results of the modelling exercise were that:

¹⁸³ Exhibit PG34 at 51

¹⁸⁴ Exhibit PG34 at 52

¹⁸⁵ Exhibit PG34 at 52 - 53

¹⁸⁶ Exhibit PG34 at 48

- (a) overall, Friday was considered the most important day of the week, with Sunday and Saturday being the second and third most important days respectively (although the difference between Saturday and Sunday was not substantial)¹⁸⁷;
- (b) the relative importance of times across weekdays and weekends did not vary materially but varied according to the *time* of each day, with the period between 6.00pm and 10.00pm representing the most important time of day for employees (regardless of the day other than Friday) and the period between 6.00pm and 9.00am representing the least important time of day for employees (regardless of the day other than Friday)¹⁸⁸; and
- (c) on average the survey respondents valued:
 - (i) working on Saturdays as being somewhere between 106 to 135 per cent of their current normal hourly pay;
 - (ii) working on Sundays as somewhere between 126 and 165 per cent of their average current hourly pay rate (which was approximately 50 per cent less than the existing Sunday rates); and
 - (iii) working on public holidays as being between 124 per cent and 224 per cent of average current normal weekly pay¹⁸⁹.

118. A measure of the level of interference experienced by weekend workers working on weekends is the premium required to be paid to weekend workers. In determining the appropriate level of wage, employees weigh up their decisions about the nature of their jobs (e.g. wages and conditions, hours worked, career prospects and skills development) against the level of work-life interference experienced¹⁹⁰. Accordingly, an employee's willingness to work without receipt of penalty rates is a strong indicator of the level of work-life interference. The results of the Rose Report strongly suggest

¹⁸⁷ Exhibit ABI 1 at 22

¹⁸⁸ Exhibit ABI 1 at 24

¹⁸⁹ Exhibit ABI 1 at vii

¹⁹⁰ Productivity Commission Final Report at 447 - 450

that the current level of penalty rates overcompensates employees for the time worked on weekends, in particular, on Sundays.

AWALI

119. The 2014 AWALI survey is designed to measure the work-life quality of survey participants based on five areas where work may affect social life, namely, time strain; work-to-community interference; satisfaction with overall work-life balance; feelings of being pressed for time; and general interference¹⁹¹. The AWALI work-life index is a composite measure of these five aspects of work-life interferences. The level of interference is measured on a scale of 1 to 100 where a higher AWALI score indicates a higher level of interference¹⁹². Each aspect is treated equally and is unweighted. No evidence has been adduced to indicate that each aspect has an equal impact on work-life quality.
120. The expert report of Professor Sara Charlesworth and Dr Sarah McDonald¹⁹³ sets out the AWALI scores for all weekend workers and weekend workers in the retail industry. Professor Charlesworth authored Part A of the report analysing the AWALI survey in relation to the level of interference for weekend workers (the **Charlesworth Report**). The expert report of Professor Charlesworth and Dr McDonald built on the original work undertaken by Natalie Skinner and Barbara Pocock¹⁹⁴. A paper by Tony Daly entitled “Evenings, nights and weekends: Working unsocial hours and penalty rates” used the AWALI 2-14 data to investigate specifically the issue of unsocial hours and penalty rates in more depth (the **Daly Report**)¹⁹⁵.
121. The AWALI survey discloses that the level of work-life interference as measured in the AWALI scores is, generally speaking, higher for weekend workers compared to non-weekend workers¹⁹⁶. This proposition is not in contest. The Guild accepts that, on

¹⁹¹ Exhibit SDA43 at 5[2]

¹⁹² Exhibit SDA43 at 5[3]

¹⁹³ Exhibit SDA43

¹⁹⁴ Exhibit SDA45. Skinner N and Pocock B “The Persistent Challenge: Living, Working and Caring in Australia in 2014”, Centre for Work + Life, University of South Australia, September 2014

¹⁹⁵ Exhibit PG33

¹⁹⁶ Exhibit SDA43 at 7[13] - 10[27]

average, weekend workers suffer a higher level work-life interference compared to non-weekend workers.

122. The real question is whether the level of work-life interference, measured on the AWALI index, has changed or remained the same since the introduction of penalty rates for weekend workers in the community pharmacy industry.
123. AWALI is not a longitudinal survey of the same people: it surveys different people on each occasion¹⁹⁷. As penalty rates have been a feature of Federal and State retail and community pharmacy awards for many decades, in order to undertake a proper comparison, the AWALI scores at the time of their introduction must be identified. No such evidence exists. The AWALI survey measure of work-life interference first took place in 2008. It therefore does not provide basis to determine whether there has been a material change in work-life interference since penalty rates were introduced.

The Charlesworth Report

124. The Charlesworth Report found that there was no significant difference in average AWALI scores between the 2008 survey and the 2014 survey¹⁹⁸. However, no relevant findings were recorded or made in relation to the retail industry (even though that data seems to have been available).
125. There are several problems concerning the reliability of the AWALI survey.
126. First, the AWALI survey methodology has a high risk of bias. The AWALI survey used a computer-assisted telephone interview over 4 weekends in March 2014 to contact household telephones¹⁹⁹ (i.e. landline and not mobile or internet based telephones e.g. Skype). This tends to be biased against young people who use mobile telephones and who may not be home during weekends (possibly working)²⁰⁰. It also excludes weekend workers under the age of 18²⁰¹. This bias is significant given that

¹⁹⁷ Exhibit SDA45 at 9

¹⁹⁸ Exhibit SDA43 at 12[42]

¹⁹⁹ Exhibit SDA43 at 6[6]

²⁰⁰ Transcript 15 December 2015 PN23830; Exhibit SDA43 at 7[12]

²⁰¹ Transcript 15 December 2015 PN23644

young people are a key group of the population who are more likely to work on weekends. The survey methodology also tends to be biased against weekend workers who are likely to be busier or feel more stressed working on weekends²⁰² and against unemployed people who were excluded altogether²⁰³. Moreover, the questions asked during the survey had a tendency to elicit a negative response²⁰⁴.

127. Second, the AWALI index is a raw composite score based on an overall average. A more sophisticated and detailed analysis of the data conducted by the Productivity Commission shows that most people do not experience major problems with their work-life interference regardless of their working arrangements²⁰⁵. Indeed, the AWALI survey demonstrates that the proportion of people who never, rarely or sometimes experience adverse work-life interference not regularly working weekends or evenings is *higher* than workers who regularly work on weekends or evenings²⁰⁶. The AWALI survey also shows that vast majority of people, including weekend workers, are satisfied with their work-life balance²⁰⁷. The exception appears to be that there is evidence that some people feel rushed for time but this level of work-life interference applies to all working arrangements²⁰⁸.

128. Third, the AWALI index measures only negative outcomes associated with work²⁰⁹. To properly determine the level of disability, it is appropriate to balance *both* the positive and negative impacts of weekend work. Due to constraints of data collection, the AWALI index does not measure potential positive interactions of working known in academic studies as “positive spillover”²¹⁰. This limitation represents a “compromise”²¹¹. For example, the AWALI index does not capture the benefits of

²⁰² Exhibit PG36 at 15

²⁰³ Exhibit PG36 at 14

²⁰⁴ Transcript 15 December 2015 PN23703 - PN23705

²⁰⁵ Productivity Commission Final Report at 440 Box 12.2 and at 442 Figure 12.3

²⁰⁶ The Productivity Commission Final Report at 440 Box 12.2

²⁰⁷ Transcript 15 December 2015 PN24258; PN23906; Exhibit SDA43 at 38 Table 23 and Table 24

²⁰⁸ Productivity Commission Final Report p 440 Box 12.2

²⁰⁹ Transcript 15 December 2015 PN23775 - PN23782

²¹⁰ Exhibit PG31 Pocock B, Williams P and Skinner N “The Australia Work and Life Index (AWALI): Concepts, Methodology and Rationale. Discussion Paper No.1/07”, Centre for Work + Life, University of South Australia, May 2007 at 13

²¹¹ Exhibit PG31 at 13

social engagements with colleagues and customers²¹², the social and economic benefits of earning income to improve living standards²¹³, the flexibility of working hours to suit preferred working hours²¹⁴, the psychological benefits of performing meaningful and interesting work and being gainfully employed²¹⁵ and the opportunity to gain work experience as a stepping stone to other job opportunities.

129. Skinner and Pocock also recognised the limitations of the AWALI index in focusing on the negative aspects of managing work-life balance and in the 2014 AWALI survey also considered “positive mental health” involving characteristics of optimism, resilience and engagement²¹⁶. In the academic literature, this is known as ‘flourishing’. The evidence indicates that workers who have the flexibility to work their preferred hours at their preferred times have a higher level of flourishing²¹⁷. This suggests that, for those employees where weekend work provides the flexibility to schedule working hours to suit their other personal commitments²¹⁸ (e.g. full-time students and mothers who co-ordinate their childcare with their partners’ work schedule), there is a positive association with working on weekends. This position is confirmed in Australian²¹⁹ and international studies²²⁰.
130. Fourth, the AWALI index does not account for potential confounding factors which may drive work-life interference. The low explanatory power (R-squared) of Professor Charlesworth’s regression analysis suggests that it is likely there are many confounding factors affecting work-life interference which are not reflected in the AWALI scores²²¹. These factors may include a carer’s responsibilities for young or

²¹² Productivity Commission Final Report at 440 Box 12.2

²¹³ Productivity Commission Final Report at 440 Box 12.2

²¹⁴ Exhibit SDA45 at 48

²¹⁵ Transcript 4 November 2015 PN21160

²¹⁶ Exhibit SDA45 at 47 - 49

²¹⁷ Exhibit SDA45 at 48 - 49

²¹⁸ Costa G, Satori S and Akerstedt T “Influence of flexibility and variability of working hours on health and well-being” *Chronobiology International* (2006) 23(6) 1125 - 1137; Transcript 4 November 2015 at ON21084 - PN21086

²¹⁹ Baxter J “Flexible Work Hours and Other Job Control Factors in Parental Time with Children” *Social Indicators Research* (2011) 101: 239 - 242 at 241 - 242; Transcript 4 November 2015 PN21134 - PN21136

²²⁰ Strazdins L, Clements M, Korda RJ, Broom DH and D’Souza RM (2006) “Unsociable hours? Nonstandard work schedules, family relationships and children’s well-being” *Journal of Marriage and Family* 68(2), 394 - 410 at 406; Transcript 4 November 2015, PN201137 - PN21143

²²¹ Exhibit PG36 at 15

multiple children or elderly people, long commuting times and traffic congestion, health and financial problems, local economic and social conditions, inadequate support at home for domestic work or parenting, combining education and work and being from a culturally and linguistically diverse background²²². Each of these potential confounding factors must be controlled to be able to draw robust conclusions²²³. The AWALI scores do not account for these factors.

131. Fifth, the regression analysis undertaken by Professor Charlesworth has serious flaws. The Reply of Deloitte Access Economics sets out these deficiencies in detail²²⁴. These include the potential for multicollinearity in using number of hours worked and weekend work as independent variables when the variables are related; the methodology for grouping responses together; and the weak explanatory power of the regression indicating there are other unspecified matters which may explain work-life interference for weekend workers.
132. Sixth, AWALI also does not take into account the impact of any compensatory strategies or measures that weekend workers may adopt to reduce potential work-life interference²²⁵. These may include scheduling non-work activities on weekdays, reducing non-social activities (e.g. household work) using flexible work arrangements or obtaining caring or household assistance.
133. Seventh, AWALI is an absolute and static measure which requires participants to record their subjective impressions about working at particular times of the day. Unlike the Rose Report, it does not measure the level of work-life interference during different times of the day or *relative* to other days in the week. Discrete choice modelling is a superior and more reliable method of measuring employee preferences and behaviour. This is because it requires the survey participant to rank the value of undertaking certain activities at certain times based on a finite list of alternative available to them thus simulating real world choices rather than the AWALI method of

²²² Exhibit PG36 at 5 and 15

²²³ Exhibit PG36 at 15

²²⁴ Exhibit PG36 at 15

²²⁵ Productivity Commission Final Report at 436

asking survey participants to assign a subjective value to general and non-specific questions.

134. Eighth, the small sample size in relation to retail workers reduces the capacity to determine whether a statistically significant difference exists in work-life interference between weekend and non-weekend retail workers²²⁶. This reduces the explanatory power of any analysis that focuses specifically on comparing the two groups in the retail industry.
135. To the extent that the AWALI survey has probative value, it is much more useful to conduct a more detailed sub-group analysis of the impact of weekend work on the *groups* of weekend workers more likely to be engaged *in the retail industry*²²⁷ by reference to their specific demographic characteristics and personal circumstances. This is much more likely to provide more precise and meaningful evidence on the specific impact of weekend work on the specific weekend workers working in the Australian community pharmacy industry.
136. The AWALI survey confirmed that retail industry employees (which include employees in the community pharmacy industry), compared to other employees, were more likely to be female; younger; sales workers; casual or part-time and working fewer hours²²⁸. The AWALI survey also showed that employees more likely to working on weekends tended to be younger²²⁹; single²³⁰; working in sales²³¹ in the retail industry²³²; and casual²³³. In relation to those groups of employees who are more likely to work weekends in the retail industry, the AWALI data indicates that

²²⁶ Exhibit SDA43 at 7[12] and 10[31]

²²⁷ The reference to retail industry is the ABS ANZSIC classification Digit One. This includes the pharmaceutical, toiletries and cosmetic segment.

²²⁸ Exhibit SDA43 at 10[28]

²²⁹ Exhibit PG33 at 9 Table 3

²³⁰ Exhibit PG33 at 9 Table 4

²³¹ Exhibit PG33 at 10-11 Table 7

²³² Exhibit PG33 at 11-12 Table 8

²³³ Exhibit PG33 at 11-12 Table 8

they were more likely to experience a lower level of work-life interference²³⁴ relative to the general survey population.

137. The AWALI survey evidence reviewed in the Daly Report also indicates that retail workers have a higher level of willingness to work without penalty rates than others workers. In particular, 53 per cent of employees in the retail industry were prepared to work unsocial hours without receipt of penalty rates compared to an average of 37.6 per cent²³⁵; and 48.8 per cent of sales workers were prepared to work unsocial hours without receipt of penalty rates compared to an average of 37.9 per cent²³⁶. Additionally, a significant proportion of workers with characteristics typical of workers engaged in the retail industry were prepared to work on weekends without receiving penalty rates, in particular, younger²³⁷, single²³⁸ and casual employees²³⁹.
138. The Daly Report provides support for the analysis conducted in the Rose Report. Based on a sub-group analysis of the workers most likely to be working weekends, a higher proportion of these categories of workers are prepared to work without penalty rates. It is reasonable to expect that the proportion of workers willing to accept the Guild's proposed penalty rates would be even higher than the proportions who would be prepared to work weekends without penalty rates altogether.

The McDonald Report

139. The McDonald Report involved telephone interviews with 25 AWALI 2014 survey respondent who stated that they 'sometimes', 'often' or 'always' worked on Sundays

²³⁴ Retail industry employees (see Exhibit SDA45 at 37 Table 7); Sales workers (Exhibit SDA45 at 36 Figure 17); Younger workers between the age groups of 18-24 and 25-34 (Exhibit SDA45 at 32 Figure 16); part-time employees (Exhibit SDA45 at 20); casual workers (based on actual hours worked although once adjusted for hours of work, casuals have the equivalent work-life interference to permanent and fixed term employees.) (Exhibit SDA45 at 34 - 35); Workers who worked regularly on weekends but not regularly on evening or night shift are more likely to experience a lower level of work-life interference compared to those who regularly worked evening or night shift but not regularly on weekends (Exhibit SDA45 at 28 Figure 13)

²³⁵ Exhibit PG33 at 17 Table 14

²³⁶ Exhibit PG33 at 16 Table 13

²³⁷ 52.8% of employees aged 18-24 were prepared to work unsocial hours without receipt of penalty rates compared to an average of 37.8% (Exhibit PG33 at 14 Table 10)

²³⁸ 39.2% of single employees with no children were prepared to work unsocial hours without receipt of penalty rates compared to an average of 35.5% (Exhibit PG33 at 15 Table 11)

²³⁹ 54.8% of casual employees were prepared to work unsocial hours without receipt of penalty rates compared to an average of 37.9% (Exhibit PG33 at 16 Table 13)

(23 of whom also regularly worked on Saturdays)²⁴⁰. Dr McDonald concludes that Sunday was not viewed as a regular work day and regarded as different from Saturday in terms of its effect on an employee's work-life balance²⁴¹.

140. The McDonald Report has serious deficiencies which significantly weakens its conclusions. These deficiencies include the following:

- (a) The sample was not random but developed on the basis of a theoretical sampling framework²⁴². It excluded persons who did not provide their contact details and refused to answer questions²⁴³. In light of the very small sample size, the absence of a random sample has the potential for producing biased outcomes. It is also not apparent that there has been any weighting to ensure that the survey participants were representative in nature.
- (b) Many of the questions asked were leading in nature and proceeded on the biased premise that Saturday and Sundays were different²⁴⁴; Sunday work interfered with non-work activities²⁴⁵ and Sunday work deserved a higher hourly rate²⁴⁶. Had neutral open questions been asked, different answers may have been elicited. Unlike lay witnesses whose answers could be tested in cross-examination, the employer groups did not have the opportunity to cross-examine the interviewees to enable the Commission to form a view of the credit of the witnesses.
- (c) The order and number of questions about Sunday questions were likely to produce answers about the negative impact of Sunday work. The interviewees were asked about the impact of Sunday work before asking about Saturday work²⁴⁷. This has the effect of prompting the interviewees to address the impact of their work-life on Sundays and then comparing Saturdays to Sundays, rather

²⁴⁰ Exhibit SDA43 at 13[3]

²⁴¹ Exhibit SDA43 at 13[6]

²⁴² Transcript 15 December 2015 PN24103

²⁴³ Transcript 15 December 2015 PN24103

²⁴⁴ SDA43 at 21[44]

²⁴⁵ SDA43 at 51

²⁴⁶ SDA43 at 51

²⁴⁷ Transcript 15 December 2015 PN24434 – PN24446

than asking an open general question as to which day on a weekend caused interference to their work-life balance. Moreover, there were more questions asked that concerned work-life interference caused by Sunday work (10 questions) and not Saturday work (3 questions)²⁴⁸.

- (d) The evidence and quotations cited in the McDonald Report are highly selective and are not truly representative of the views expressed by the interviewees²⁴⁹. It is apparent that a number of interviewees expressed qualified or opposite views about working on weekends that were not reported. These include that the interviewees working on weekends accepted the employment with the knowledge that it required weekend work; the interviewees volunteered to work on weekends by accepting shifts to work on such days; interviewees chose to work weekends because it suited their work/life balance (e.g. many university students that went to university Monday to Friday); that there was no significant difference in hardship between Saturday and Sunday work. It suggests that Dr McDonald's report had been set out to prove a hypothesis and excluded substantial evidence that contradicted her hypothesis.

(b) ABS Time Use Survey

141. The Australian Bureau of Statistics Time Use Survey 2006 (**ABS Time Use Survey 2006**)²⁵⁰ represents another source of data measuring the daily activity patterns of paid work across the community. Based on the data reported in the ABS Time Use Survey 2006, the ABS has published a report entitled "Time Use on Recreation and Leisure Activities" (**ABS Time Use on Recreation and Leisure Report 2006**) presenting selected results on how people choose to spend their time, with a focus on activities conducted during free time, in particular, sport and outdoor activities²⁵¹. The ABS Time Use Survey 2006 has been preceded by similar surveys conducted in 1992 and 1997.

²⁴⁸ SDA43 at 51 - 52

²⁴⁹ See Transcript 15 December 2015 PN24206 - PN24418

²⁵⁰ Australian Bureau of Statistics "How Australians Use Their Time" 2006

²⁵¹ Australian Bureau of Statistics "Time Use on Recreation and Leisure Activities" 2006

142. The data shows that the average time people spent on free time activities increased on the weekend when compared with weekdays. In 2006 men spent 6 hours and 43 minutes and women spent 5 hours and 46 minutes on free time activities per day on the weekend²⁵². This means that the average amount of time that people spent on recreational and leisure activities also increased on the weekend compared with weekdays, with men spending more time (5 hours and 32 minutes a day) on the weekend on recreation and leisure activities than women (4 hours and 33 minutes a day)²⁵³.
143. However, the ABS Time Use Survey 2006 reports data on an aggregate basis. The Report of the survey results does not distinguish between different demographic characteristics and does not disaggregate the data regarding weekend workers. The Productivity Commission Final Report conducted its own disaggregation and found that in most cases there is no or just a small difference in time foregone on social activities and participation in sport and physical recreation on weekends compared to weekdays²⁵⁴.
144. The ABS Time Use Survey 2006 confirms that, overall, weekend workers miss out on opportunities to engage in rest and recreation²⁵⁵. However, the academic research presents a more nuanced picture in relation to time use of certain weekend workers and shows that the negative associations of working weekends is not the case for all people.
145. In particular, a more detailed study of the ABS Time Use Survey 2006 indicates that:
- (a) students who undertake weekend work engaged in more educational activity in the week following weekend work which suggests that some students schedule their weekend work around their education²⁵⁶;

²⁵² ABS Time Use on Recreation and Leisure Report 2006 at 5

²⁵³ ABS Time Use on Recreation and Leisure Report 2006 at 5

²⁵⁴ Productivity Commission Final Report at 436 - 437

²⁵⁵ Exhibit ABI 13 Craig L and Brown J "Weekend Work and Leisure Time With Family and Friends: Who Misses Out?" *Journal of Marriage and Family* 76 (August 2015) 710 - 727 at 717

²⁵⁶ Craig L and Brown J "Nonstandard employment and nonwork activities, time alone and with others: Can weekend workers make up lost time?" *Journal of Industrial Relations* (2015) 57(1) 3-23 at 13-14 and 17

- (b) men spend significantly more time alone with children if their spouse worked non-standard hours (including weekends) which suggests that women arrange their working hours around their partners' schedules in order to co-ordinate child minding needs and maximise paid work by working non-standard hours²⁵⁷;
- (c) couples (with or without children) who undertake weekend work had more leisure time with friends on weekdays which suggests that couples who are weekend workers have friends who have the same common time available to spend together²⁵⁸;
- (d) part-time workers who undertake weekend work have more weekday leisure time which suggests that the number of hours worked and when such time is worked is positively associated with recouplement of leisure time on weekdays²⁵⁹; and
- (e) there was no significant difference between the leisure time displaced by Saturday work and Sunday work for singles with no children and couples without children (but weekend days have different average shared leisure patterns with Sunday being allocated more for family and Saturday being allocated more for friends)²⁶⁰.

146. Based on the above, the evidence suggests that for some employees, such as full-time students, mothers with children, single people with no children, couples with no children and part-time workers, are more likely to choose to work on weekends to suit their personal circumstances. As Craig and Brown note: “*selection effects may be at play, such that some workers choose weekend shifts to give themselves more options about how to spend their time, and we cannot rule out unobserved heterogeneity*”²⁶¹.

²⁵⁷ Craig L and Powell A “Non-standard work schedules, work-family balance and the gendered division of childcare” *Work, employment and society* (2011) 25(2) 274-291 at 285 - 286; see also Baxter J “Flexible Work Hours and Other Job Control Factors in Parental Time with Children” *Social Indicators Research* (2011) 101: 239 - 242 at 241 - 242

²⁵⁸ Exhibit ABI 13 at 722 - 723

²⁵⁹ Exhibit ABI 13 at 723 - 724

²⁶⁰ Exhibit ABI 13 at 717 - 718; see also Zuzanek J “Sunday blues: Have Sunday time use and its emotional connotations changed over the past two decades?” *Time and Society*

²⁶¹ Craig and Brown (2015) at 19; see also Exhibit ABI 13 at 724

(c) Productivity Commission Final Report

147. The Productivity Commission Final Report has also made some relevant observations and recommendations based on the survey data:

- (a) In current times, regular Sunday work does not have an especially adverse social impact when compared with other asocial work²⁶²;
- (b) There is relatively little difference in the degree to which Australian employees engage in social activities between Saturdays and Sundays (compared with weekdays)²⁶³; and
- (c) In current times, the difference between working on a Saturday and Sunday, including the impact on work-life quality, is minimal²⁶⁴.

(d) Lay evidence of employees

148. The SDA and APESMA relied on the evidence of one witness each regarding the impact of working on weekends. In light of the vigorous opposition to the proposed variation to penalty rates, one would have expected a higher number of union members in the community pharmacy industry to have given direct evidence about the negative impact of working on weekends.

149. The evidence of the employee witnesses in any event supports the Guild's contention, consistent with survey and statistical evidence, that employees choose to work, or not to work, weekends because of their personal circumstances.

APESMA Witness

150. APESMA relied on the evidence of a pharmacist (**APESMA Witness**)²⁶⁵. The APESMA Witness does not currently work on weekends other than on rare

²⁶² Productivity Commission Final Report at 443 and 458

²⁶³ Productivity Commission Final Report at 437 and 1116 - 1117

²⁶⁴ Productivity Commission Final Report at 441

²⁶⁵ Exhibit APESMA1

occasions²⁶⁶. In his previous job, the APESMA Witness worked on a part-time basis²⁶⁷ including some Saturdays but not on Sundays²⁶⁸. He accepted a job working on Saturdays because he could not otherwise find a full-time job only working on Monday to Friday²⁶⁹. He has never worked Sundays²⁷⁰ and therefore was not in a position to give evidence as to the level of interference caused by working on Sundays. During his employment with his former employer, the APESMA Witness sought full-time employment which did not involve working on Sundays²⁷¹.

151. The APESMA witness is an example of an employee who found a job working only on weekdays because of his personal circumstances. His evidence supports the proposition that employees weigh up the costs to their private lives in deciding whether to work on weekends.

SDA Witness

152. The SDA relied upon the evidence of a one pharmacy assistant²⁷² (**SDA Witness**). The SDA Witness works on a part-time basis in accordance with a 4 weekly roster²⁷³. On weeks 1 and 3, the SDA Witness works 4 days per week (29.5 hours in total) including Saturday 12.30pm - 9.00pm and Sunday 12.30pm - 9.00pm. On week 2 and 4, the SDA Witness works 3 days per week including Saturday 9.00am-5.30pm (20.5 hours).

153. The SDA Witness nominated herself to work on weekends and not on certain weekdays²⁷⁴ because it suited her personal circumstances²⁷⁵. She worked her weekend schedule voluntarily. She did not work on certain weekdays, in part, so that she could

²⁶⁶ Exhibit APESMA1 at [7]

²⁶⁷ Exhibit APESMA1 at [4]

²⁶⁸ Exhibit APESMA1 at [8]

²⁶⁹ Transcript 27 October 2015 PN19798

²⁷⁰ Transcript 27 October 2015 PN19789

²⁷¹ Transcript 27 October 2015 PN19790 - PN19791; PN18797-PN19799

²⁷² Exhibit SDA15

²⁷³ Exhibit SDA15 at [3]

²⁷⁴ Transcript 20 October 2015 PN17655 - PN17659

²⁷⁵ Transcript 20 October 2015 PN17674

look after her grandchildren²⁷⁶, attend personal classes²⁷⁷ and catch up with other friends who were mainly retired or semi-retired²⁷⁸ (and therefore available to catch up during those times).

154. The SDA Witness asserted that she suffered inconvenience from working on weekends such as participating in walking clubs, attending local agricultural shows and markets held on Sunday²⁷⁹. However, the SDA Witness acknowledged in cross-examination that working on weekends did not prevent her from attending these events because she could undertake the activities on weekdays²⁸⁰. She also claimed that she could not attend irregular family celebrations such as children's birthdays²⁸¹. However, given that the SDA Witness nominated the days she worked, it is not apparent why she could not have requested to be rostered on those days or not taken annual leave to attend those events.
155. The SDA Witness also claimed she worked on weekends because she wanted to receive penalty rates and not stand for long periods due to her health condition²⁸². However, she acknowledged that she could work longer hours on week 2 and 4 of her roster²⁸³ to make up for the shortfall.
156. The evidence of the SDA Witness supports the case that many employees choose to work on weekends because it suits their personal circumstances. The SDA Witness did not suffer any real interference with other non-work activities because she was able to recoup time on social activities lost during weekends during the week or otherwise had the opportunity to change her roster or take annual leave to attend occasional family gatherings.

²⁷⁶ Transcript 20 October 2015 PN17673 - PN17674

²⁷⁷ Transcript 20 October 2015 PN17787-PN17788

²⁷⁸ Transcript 20 October 2015 PN17685-PN17691

²⁷⁹ Exhibit SDA15 at [8]

²⁸⁰ Transcript 20 October 2015 PN17794; PN17820-PN17823

²⁸¹ Exhibit SDA15 at [8]

²⁸² Transcript 20 October 2015 PN17678

²⁸³ Transcript 20 October 2015 PN17683

(c) Conclusions about the evidence on the level of disabilities associated with working on weekends

157. The Guild submits that the disability associated with working on weekends does not support the current level of penalty rates on the following grounds:

- (a) Survey evidence indicates that the level of disabilities associated with working on weekends is not high relative to other days of the week. The level of the disabilities associated with working on weekends will depend on the individual characteristics of the worker, their specific personal circumstances including their individual preferences, the nature of their leisure interests, their carer's responsibilities (of children and the elderly), their study commitments and their family situation;
- (b) In the retail industry (including the community pharmacy industry), a majority of workers seek out part-time or casual jobs and a large number of them (such as young people, students, mothers and single people) do not mind and, indeed in many cases, prefer to work on weekends rather than weekdays. Reasons include full-time study commitments during weekdays, their social groups are weekend workers, their social activities are shifted to weekdays and a desire for flexibility around life commitments (such as mothers working on a casual or part-time basis to co-ordinate caring arrangements with their husband). This is similar to the grounds which supported the reduction in penalty rates in the Restaurant Industry Award.
- (c) Workers are willing to work on weekends for a lower premium than the current level of penalty rates. The market value placed on working on weekends by workers is a strong indicator that the level of disabilities associated with working on weekends is lower. Common sense suggests that it is likely that those employees who are prepared to working on weekends will make themselves available to work on weekends at the adjusted rate and those are unwilling to do so will seek more work on weekdays.

- (d) There is no material difference between the disabilities working on Saturdays and Sundays which warrant the significant difference in penalty rates between Saturday and Sunday.

I. Appropriate rate to provide incentive to work during asocial hours

158. One of the justifications advanced for establishing the appropriate level of penalty rates is to provide sufficient incentive for workers to work voluntarily outside ordinary hours.
159. It is not clear that this rationale for the imposition of penalty rates is relevant for establishing a “fair and relevant” minimum safety net of conditions under s 134(1) of the FW Act. By its nature, a minimum safety net must establish the minimum conditions and not the market rate for labour²⁸⁴. Orthodox economic theory suggests that the labour market will establish a market rate which will induce workers to provide their services during unsocial hours. There is no need to establish a regulated minimum rate to achieve this outcome.
160. An increasing number of weekend workers in the retail industry have stated their desire to work more hours. The HILDA survey data shows that between 2006 and 2014, there has been an increase in weekend workers wishing to work more hours from 20.9 per cent to 28.5 per cent of workers²⁸⁵. This suggests that the demand for weekend work is greater than the supply of weekend work and that the current level of penalty rates overcompensates employees for working these hours.

J. Working on weekends and public holidays is not unhealthy

161. There is no direct and probative evidence demonstrating that weekend work in the community pharmacy industry results in negative health consequences.
162. In support of its claim that weekend work has adverse health impacts, United Voice filed the expert report of Dr Olav Muurlink entitled “The impact of weekend work:

²⁸⁴ See Productivity Commission Final Report at 448

²⁸⁵ Changing work patterns at 21 Table 3.20

connectivity, overload, uncontrollability, unpredictability, synchronicity and arrhythmia”²⁸⁶ (the **Muurlink Report**). The Muurlink Report does not contain any original research but is a survey of local and international articles in the area.

163. Neither the accepted rationale for penalty rates nor the modern award objective identifies health impacts as a relevant consideration to determining the quantum of penalty rates. To the contrary, s 134(1)(da) presumes that work during unsocial times, weekends and public holidays is acceptable but there should be additional remuneration for working such times.
164. In any event, the Muurlink Report contains no evidence relevant to the review of the Pharmacy Award. It is clear that Dr Muurlink did not consider the specific circumstances of employees in the Australian community pharmacy industry²⁸⁷. He also accepted the academic literature did not demonstrate that working on weekends *per se* caused negative health problems but that it was irregular rostering, working excessive consecutive days and regular night and shift work that led to these problems²⁸⁸.

K. Casuals working on weekends and public holidays

165. The Guild submits that the combination of casual loadings and penalty rates overcompensate employees for the disabilities associated with working weekends and public holidays. This is consistent with the justifications for the reduction in penalty rates for level 1 and 2 workers in the Restaurant Industry Award 2010²⁸⁹.

L. Modern Award Objective

166. The Guild submits that its proposal to vary the scope and level of penalty rates in the Pharmacy Award meets the modern award objective in s 134(1) of the FW Act. Each matter is considered below.

²⁸⁶ Exhibit UV26

²⁸⁷ Transcript 4 November 2015 PN21087 - PN21088

²⁸⁸ Transcript 4 November 2015 PN20955 - PN20963; PN20979

²⁸⁹ *Restaurant and Catering Association of Victoria* [2014] FWCFB 1996 at [265]

(a) Relative living standards and the needs of the low paid (s 134(1)(a))

167. There is no direct evidence that employees in the Australian community pharmacy industry are low paid or have low relative living standards.

168. To the contrary, the AWALI survey evidence reveals that the groups of workers who are likely to work on weekends, such as young people²⁹⁰, single people without children²⁹¹, sales workers²⁹², casuals²⁹³ and retail industry workers²⁹⁴ rely on penalty rates less than other groups in the community.

169. In any event, the needs of the low paid is a matter that is best left to be addressed in establishing the minimum wage²⁹⁵.

(b) The need to encourage collective bargaining (s 134(1)(b))

170. There is no direct evidence in relation to the incidence of collective bargaining or enterprise agreements in the Australian community pharmacy industry.

171. Consistent with the approach taken in earlier decisions²⁹⁶, the Guild submits that this is a neutral factor.

(c) The need to promote social inclusion through increased workforce participation (s 134(1)(c))

172. It is self-evident that more job opportunities means that the unemployed are able to participate in the workforce. The Commission has accepted this proposition in previous cases²⁹⁷.

²⁹⁰ 21.5 per cent of 18-24 year olds rely on penalty rates compared to 34.7 per cent on average (Exhibit PG33 at 14 Table 10)

²⁹¹ 29.5 per cent of single people with no children rely on penalty rates compared to 35.9 per cent on average (Exhibit PG33 at 15 Table 11)

²⁹² 30.6 per cent of sales workers rely on penalty rates compared to 34.7 per cent on average (Exhibit PG33 at 16 Table 13)

²⁹³ 29.3 per cent of casuals rely on penalty rates compared to 34.7 per cent on average (Exhibit PG33 at 16 Table 13)

²⁹⁴ 32 per cent of retail industry workers rely on penalty rates compared to 34.7 per cent on average (Exhibit PG33 at 17 Table 14)

²⁹⁵ *Annual Wage Review 2014-2015* [2015] FWCFB 3500

²⁹⁶ *The Restaurant and Catering Association of Victoria* [2014] FWCFB 1996; (2014) 243 IR 132 at [139](b)

²⁹⁷ *Annual Wage Review 2015* [2015] FWCFB 3500 at [51], [419]

173. The Guild submits that its proposed variation will lower the costs of employment and therefore increase employment and workforce participation.

(d) The need to promote flexible modern work practices and efficient and productive performance of work (s 134(1)(d))

174. The Guild submits this factor is not relevant to this review.

(e) The need to provide additional remuneration for working unsocial hours or weekends or public holidays (s 134(1)(da))

175. The Guild submits that its proposal provides for additional remuneration for working unsocial hours, weekends and public holidays.

(f) Principle of equal remuneration for equal work (s 134(1)(e))

176. The Guild submits that its proposal satisfies the principle of equal remuneration for equal work. It does not provide for different remuneration for employees based on any prohibited characteristic.

(g) Likely impact on business including productivity, employment costs and regulatory burden (s 134(1)(f))

177. The evidence reveals that Guild's proposal will reduce employment costs and make it profitable for community pharmacies to open for extended trading hours. This will result in higher business productivity as the fixed costs of running a pharmacy such as licenses, franchise fees leasing and rental costs, fittings and equipment, repairs, insurance premiums etc, are spread over longer opening times and higher demand

(h) Need for a simple and sustainable modern award system (s 134(1)(g))

178. The Guild submits that this factor is not relevant to this review.

(i) Likely impact on employment growth, inflation and the sustainability, performance and competitiveness of the Australian economy (s 134(1)(h))

179. The Guild's proposal will mean lower employment costs which will lead to:

- (a) higher capital utilisation places downward pressure on average unit costs and prices and therefore leads to lower inflation;
- (b) more hours of work available for employees and therefore higher employment growth and higher overall wages for employees;
- (c) lower health care costs because community pharmacies are more accessible to those in need at times of need.

M. Conclusion

180. The Pharmacy Award prescribes penalty rates that are inconsistent with the modern award objective. The quantum of penalty rates does not establish a “fair and relevant safety net of conditions of employment”.

181. Balancing the various factors set out in s 134(1) of the FW Act, the Guild submits that the proposed variation to the Pharmacy Award set out in the draft determination is consistent with the modern award objective and should be made.

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Final Submissions for the Pharmacy Guild of Australia: Amended Annexure A

Summary of Pharmacy Guild Proprietor Evidence

Issue	Detail	Evidence	Source (Exhibit Number, Transcript)
<p>Pharmacies do not open the same range of hours on weekends and public holidays as they do on weekdays, and, in some cases, do not open Sundays or public holidays at all.</p>		No longer open on New Years Day, largely due to penalty rates.	Exhibit PG2, statement of Anthony Tassone at [12].
		The effect of paying the current penalty rates means that the Pharmacy may not be able to, and will have difficulty in, extending its current trading hours despite requests by the shopping centre and a soon to be opening 24/7 medical centre to do so across the week.	Exhibit PG2, statement of Anthony Tassone at [16].
		Currently the Pharmacy is not open on Public Holidays due to high cost by penalty rates that are incurred.	Exhibit PG3, statement of Paul Thomas Keane at [9].
		The current penalty rates are excessive to the point that we do not employ staff outside ordinary hours as profitability is compromised.	Exhibit PG3, statement of Paul Thomas Keane at [15].
		Due to the current penalty rates, rosters are mostly equalised across employed staff to avoid any overtime hours.	Exhibit PG3, statement of Paul Thomas Keane at [16].

		<p>Around 10 years ago the pharmacy was open for 24 hours a day. That lasted for around 5 years by the impact of penalty rates was too great to maintain 24 hour operations. Unfortunately the pharmacy gets paid the same for dispensing a script as 3pm or 3am, but the pay rates do not reflect that.</p>	<p>Exhibit PG4, statement of Angelo Pricolo at [22].</p>
		<p>I believe it would be impossible for us to keep our pharmacy open longer than we do due to the impact of penalty rates.</p>	<p>Exhibit PG4, statement of Angelo Pricolo at [25].</p>
		<p>I will be considering reducing opening hours after 6 months into the 6CPA unless profitability increases.</p>	<p>Exhibit PG5, statement of Gregory Da Rui at [19].</p>
		<p>The reason for the Culburra Pharmacy not opening on Sundays and public holidays is due to the penalty rates and staff availability that are imposed on those days. The rates make it unprofitable to open.</p>	<p>Exhibit PG6, statement of David Martin Heffernan at [13].</p>
		<p>When penalty rates are between 200% and 250%, it is not financially viable to open the pharmacy. Accordingly, we close the pharmacy and casual staff miss out on additional shifts.</p>	<p>Exhibit PG7, statement of Quinn On at [22].</p>
		<p>Due to penalty rates in the Award we have had to restrict our opening hours, especially on Sundays and public holidays.</p>	<p>Exhibit PG9, statement of Kin Chong at [12].</p>

		<p>This decrease in profitability is important. Penalty rates are another hindrance in the ability to provide these extra pharmaceutical care services in the Pharmacy. With the expectation that the Pharmacy is open for extended hours by the public, coupled with the expectation the Pharmacist needs to offer 6CPA services to generate income, yet the inability to provide the adequate staff levels to offer these services due to higher wages costs, creates the inability to serve the customer as desired nor generate the appropriate income at the same time.</p>	<p>Exhibit PG10, statement of Lia Jane Mahony at [20].</p>
		<p>Due to the penalty rates that are currently imposed, we have had to reduce the hours that the Mega Save Chemist opens. We were previously:</p> <ul style="list-style-type: none"> a. Open from 8.00am Monday to Saturday (we now open at 8.30am); b. Open until 9.00pm on Thursdays (we now close at 7.30pm); c. Traded from 10.00am until 4.00pm on Sundays (we now trade 10.00am-2.00pm). 	<p>Exhibit PG12, statement of Michael Patrick Farrell at [22].</p>
		<p>Due to the cost to the business of penalty rates imposed, it was necessary to reduce the trading hours on a Sunday from 9.00am to 5.00pm to 10.00am to 4.00pm.</p>	<p>Exhibit PG13, statement of Trent Gregory Playford at [18].</p>
		<p>Penalty rates are particularly prohibitive in respect of early opening. As our pharmacy is located in a busy area near public transport I would like to be open from 7am so that people are able to access the pharmacy on the way to work.</p>	<p>Exhibit PG15, statement of Michelle Spiro at [14].</p>

		<p>For us, opening on Sundays will depend on several things, including increasing staff numbers and receiving support from other local health service providers an/or commissioning agents, but it is not even contemplatable unless we have lower Sunday penalty rates./ Given the high penalty rates that are currently imposed, it is not currently feasible to open on Sundays, public holidays or for more than half a day on Saturdays.</p>	<p>Exhibit PG16, statement of Peter William Ashley Crothers at [23-24].</p>
		<p>As a result of the penalty rates under the Pharmacy Industry Award 2010, it is not financially viable to open the pharmacy on Sundays or Public Holidays. Accordingly, the Monarch Pharmacy is closed on these days./ I believe that the penalty rates have now become so high that the cost to open the Pharmacy at times that attract penalty rates is too high and therefore it is not possible to open. This means that patients suffer as a result.</p>	<p>Exhibit PG17, statement of John Francis Cagney at [14-15].</p>
		<p>Although we would like the pharmacy to be open all weekend and longer during the week to provide the best possible service to our patients and the community, we cannot afford to trade for longer hours than we do. That is because if we rostered staff to work additional hours we would be required to pay them high penalty rates.</p>	<p>Exhibit PG18, statement of Dean Pollock at [10].</p>
		<p>The pharmacy does not trade on public holidays as the cost of wages is too high to justify opening. Ideally I would like to open for 365 days a year, as providing a continuous and accessible healthcare service would benefit my patients and the community.</p>	<p>Exhibit PG18, statement of Dean Pollock at [13].</p>
		<p>Current penalty rates make staying open longer an uneconomical proposition. A reduction to the proposed levels would make it more affordable. The current penalty rates mean that I only employ one Pharmacist on weekends. This means I am unable to deliver non-dispensing professional services on those days.</p>	<p>Exhibit PG19, statement of Timothy John Logan at [20].</p>

		<p>And I'm suggesting to you that underlying your decisions about trading hours, is the assessment that you must make that in a town of 3,000-odd people, there's not enough business, not enough custom to justify trading on public holidays. Is that so? It is marginal. We have been asked by the local doctors to provide a Sunday and public holiday service and I get repeated requests from customers. They say to me, "Well, why don't you open on Sundays anymore?" And I said, "It is purely the cost of the wages".</p>	<p>Transcript, cross-examination of Paul Thomas Keane, 12/10/15, P12531.</p>
		<p>...The manager pharmacist said why don't you just try opening for six hours and see if it's worth opening, you know, future public holidays apart from just opening on those two Easter holidays. So I said okay, let's do it. So I put on two 16 year olds and one 19 year old and also the pharmacist because it's quite a big store and I need a bit of coverage to prevent theft, because we have quite a bit of theft in that area. On analysing the results on that particular Monday on 5 October this year, I did a profit analysis and the profit on that day was \$920, around that, but the wages itself was \$980, so I came back to the pharmacists and I discussed it with them and they said well, okay, well maybe it's not worthwhile to actually open on a public day. I said that's the reason why I don't usually open on public holidays because the wages are just too high. Even though I put on two 16 year olds and a 19 year old to try and reduce the wages that way, it still exceeded the amount of profit that we made.</p>	<p>Transcript, cross-examination of Quinn On, 12/10/15, PN13425.</p>

<p>In relation to the pharmacies that open outside of ordinary hours of work on weekdays, on weekends and public holidays:</p>	<p>Staff numbers are less than the usual levels during weekdays.</p>	<p>Reduction of staff members at the Pharmacy has meant longer waiting times for patients and less access to Pharmacists.</p>	<p>Exhibit PG3, statement of Paul Thomas Keane at [12].</p>
		<p>The Mega Save Chemist no longer employs any casual staff given the penalty rates attracted by these staff members. If staff members that are rostered on for weekends and public holidays are sick, the business will operate with one less staff member for that day.</p>	<p>Exhibit PG12, statement of Michael Patrick Farrell at [29].</p>
		<p>In my opinion, penalty rates has the greatest impact on employing staff from the 12 midday on Saturdays, Sundays and public holidays./ As a result on penalty rates incurred on weekends and public holidays. I have arranged rosters so that the minimum number of staff required to open the Pharmacy are rostered on.</p>	<p>Exhibit PG14, statement of Craig Francis Bird at [29-30].</p>
		<p>Due to penalty rates imposed on a Sunday, it is necessary to run the Good Price Pharmacies on the bare minimum number of staff required. By doing this, we are able to make enough profit to simply cover the wage expense.</p>	<p>Exhibit PG20, statement of Patrick Gerard Costigan at [17].</p>
		<p>Due to the cost to the business, at times when penalty rates are incurred, the minimum number of staff required to open the pharmacy are rostered on.</p>	<p>Exhibit PG22, statement of Maria Michelle Xynias at [13].</p>
		<p>And, you know, the staffing levels that I'm able to afford on those days means that I can't not be the dispensing pharmacist and, you know, sit down with someone and provide a meds check, for example, or the fact that I'm the only pharmacist there... I can't do it viably under the current penalty rate regime.</p>	<p>Transcript, cross-examination of Timothy John Logan, 14/10/15, PN15226.</p>

	In some cases, as a result of lower staffing, there was increased risk of theft.	To stay open beyond 12pm we were also required to have a security guard present which was an additional cost.	Exhibit PG4, statement of Anthony Tassone at [23].
		By reducing staffing levels to the bare minimum of Sundays, it compromises the service that we are able to offer to our patients. It also increases the risk of security issues such as theft.	Exhibit PG20, statement of Patrick Gerard Costigan at [19].
		Fair enough, I'll put it more clearly. What's in issue then in your mind in terms of public holidays, since you do already open on two public holidays is whether or not you can open on the remaining public holidays? I've done - I would every now and then open on a public holiday based on what my manager pharmacist would tell me. If they say, you know, they might come up and tell me there's a few customers that said they wished we open on a certain public holiday, so actually we actually just opened one public holiday just last week on the 5th of this month, it was Labour Day. I thought - the manager pharmacist said why don't you just try opening for six hours and see if it's worth opening, you know, future public holidays apart from just opening on those two Easter holidays. So I said okay, let's do it. So I put on two 16 year olds and one 19 year old and also the pharmacist because it's quite a big store and I need a bit of coverage to prevent theft, because we have quite a bit of theft in that area. On analysing the results on that particular Monday on 5 October this year, I did a profit analysis and the profit on that day was \$920, around that, but the wages itself was \$980, so I came back to the pharmacists and I discussed it with them and they said well, okay, well maybe it's not worthwhile to actually open on a public day. I said that's the reason why I don't usually open on public holidays because the wages are just too high. Even though I put on two 16 year olds and a 19 year old to try and reduce the wages that way, it still exceeded the amount of profit that we made.	Transcript, cross-examination of Quinn On, 12/10/15, PN13425.

	If pharmacies that roster less experienced or qualified staff members or pharmacy assistants, this reduced the quality of care and attention given to patients during these periods.	I run the pharmacy on skeleton staff at times when penalty rates are incurred. This means that it is not possible to offer a number of services at these times.	Exhibit PG8, statement of Samantha Jane Kourtis at [30].
		The West Gosford Pharmacy runs on skeleton staff (mostly junior pharmacy assistants) at times that incur penalty rates as it is otherwise not financially viable to open. This means that the Pharmacy is not able to offer additional services on weekends to patients such as medical certificates and Webster packs.	Exhibit PG13, statement of Trent Gregory Playford at [19].
		Given only minimal staff are rostered on weekends and public holidays, I believe this decreases the ability to provide an adequate service to patients. For example, patients have less access to a Pharmacist on weekends to ask questions and seek advice as the Pharmacist is needed to dispense prescriptions.	Exhibit PG14, statement of Craig Francis Bird at [31].
		I will usually roster my more junior employees to work on weekends as they are engaged as a less-expensive classification under the Award. The downside of that approach is those employees are not as fast or experiences as my more senior staff and when it is busy (which weekends often are) the level of customers service can be compromised.	Exhibit PG18, statement of Dean Pollock at [24].
	Pharmacies could not engage pharmacy students and interns to work during these periods to enable them to obtain practical experience.	Traditionally, the Mega Save Chemist employed a number of Pharmacy students. Believe that obtaining experience by working in a Pharmacy is invaluable to their learning. Unfortunately, due to the cost of penalty rates on weekends, it is not financially viable to employ students and train them.	Exhibit PG12, statement of Michael Patrick Farrell at [21].

		<p>At Chermside – at Stones Corner we have one on Tuesday and one on Sunday, because we have that, but we have an intern – a pharmacy intern – on the Tuesday, which we don't have on the Sunday. At Chermside we have three pharmacists and an intern on Tuesday, and on Sunday we have two pharmacists.</p>	<p>Transcript, cross- examination of Maria Michelle Xynias, 15/10/15, PN15762.</p>
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<p>As a result of the reduced staff levels, less experienced or qualified staff and inability to engage pharmacy students or interns:</p>	<p>Longer waiting times to speak with a pharmacist.</p>	<p>Reduction of staff members at the Pharmacy has meant longer waiting times for patients and less access to Pharmacists.</p>	<p>Exhibit PG3, statement of Paul Thomas Keane at [12].</p>
		<p>I believe that penalty rates have impacted on continuity of care. Due to the reduced staff availability in the Pharmacy, I have notice an increased demand for our express delivery service as patients do not want to wait in the Pharmacy. Although this is a valuable service for those that cannot get into the pharmacy, it reduces the amount of pharmacist/patient interaction time which ultimately impacts on the quality use of medicines as patients do not get to ask questions or voice concerns about their medications.</p>	<p>Exhibit PG5, statement of Gregory Da Rui at [21].</p>
		<p>Given staffing is kept to a minimum at times when penalty rates are incurred, it is difficult for pharmacists to spend time with patients and provide them with the best healthcare service possible.</p>	<p>Exhibit PG8, statement of Samantha Jane Kourtis at [31].</p>
		<p>Given only minimal staff are rostered on weekends and public holidays, I believe this decreases the ability to provide an adequate service to patients. For example, patients have less access to a Pharmacist on weekends to ask questions and seek advice as the Pharmacist is needed to dispense prescriptions.</p>	<p>Exhibit PG14, statement of Craig Francis Bird at [31].</p>
	<p>Not able to offer same quality and suite of professional services outside ordinary hours on weekdays.</p>	<p>The Opioid Substitution Program: patients that have an addiction to opioids and attend the pharmacy each date for a dose of methadone to assist with their addiction. It is vital these patients receive a dose of methadone daily. Not opening on public holidays means that patients need to either go elsewhere for their Methadone dose that day, or we need to organise a takeaway dose. There are only a limited number of pharmacies that offer this service. If we are not open, patients need to attend Sutherland Methadone Clinic. The Sutherland Methadone Clinic</p>	<p>Exhibit PG7, statement of Quinn On at [14-16].</p>

		<p>is so busy that it often refers patients to the Menai DDS.</p>	
		<p>The Menai DDS currently has the facilities to offer Spirometry services to patients however due to time constraints on pharmacists it is not possible to offer this service. Spirometry is the best lung function test for diagnosing asthma and to measure lung function for asthma sufferers. If the PGA'S proposal was accepted, it would mean that we could roster additional pharmacists on so that we could offer this important service to patients.</p>	<p>Exhibit PG7, statement of Quinn On at [26].</p>
		<p>I run the pharmacy on skeleton staff at times when penalty rates are incurred. This means that it is not possible to offer a number of services at this times including:</p> <ul style="list-style-type: none"> a. Baby clinic; b. MedsChecks; c. Diabetes clinic; d. Medical compression garment service; and <p>Smoking cessation counselling.</p>	<p>Exhibit PG8, statement of Samantha Jane Kourtis at [30].</p>
		<p>If penalty rates were reduced and our trading hours were extended my patients would have access to improved health care as we would be able to provide the above services at more times, and at greater volume.</p>	<p>Exhibit PG9, statement of Kin Chong at [27].</p>

		<p>It is necessary to limit the times when additional services are offered at the Mega Save Chemist. For example, dose administration aid services are not offered on weekends or public holidays. Also, the provision of flu vaccinations requires two pharmacists on duty. Accordingly, flu vaccinations are not offered on Sundays. On a number of occasions we have had to turn customers away who are seeking this service.</p>	<p>Exhibit PG12, statement of Michael Patrick Farrell at [26].</p>
		<p>The West Gosford Pharmacy runs on skeleton staff (mostly junior pharmacy assistants) at times that incur penalty rates as it is otherwise not financially viable to open. This means that the Pharmacy is not able to offer additional services on weekends to patients such as medical certificates and Webster packs.</p>	<p>Exhibit PG13, statement of Trent Gregory Playford at [19].</p>
		<p>I believe patients would have access to improved healthcare if penalty rates were reduced and trading hours were extended as the pharmacy would open for longer and all of our services would be available earlier in the morning and later in the evening.</p>	<p>Exhibit PG15, statement of Michelle Spiro at [20].</p>
		<p>I will usually roster my more junior employees to work on weekends as they are engaged as a less-expensive classification under the Award. The downside of that approach is those employees are not as fast or experienced as my more senior staff and when it is busy (which weekends often are) the level of customers service can be compromised.</p>	<p>Exhibit PG18, statement of Dean Pollock at [24].</p>
		<p>By reducing staffing levels to the bare minimum of Sundays, it compromises the service that we are able to offer to our patients. It also increases the risk of security issues such as theft.</p>	<p>Exhibit PG20, statement of Patrick Gerard Costigan at [19].</p>

		<p>Only the minimum staff levels required to open the Pharmacies are rostered on during times that attract Penalty rates. Also, less experienced staff are rostered on during these times as they are not as expensive./ Accordingly, this means that patients have to wait longer and the quality of the service is less than the service provided during times that do not attract penalty rates.</p>	<p>Exhibit PG23, statement of Ian David Lewellin at [16-17].</p>
		<p>So I decided to only open on those two public holidays out of - there's probably 10 in a year. Reason being because during the Easter break there are four public holidays in a row and because we do provide the methadone program and the syringe exchange program and it can be very difficult for the patients to come and get their takeaways if we actually close for four days. So I try to at least open consecutive - two consecutive days - not - alternate days, in order for the patients to come and get their methadone.</p>	<p>Transcript, cross-examination of Quinn On, 12/10/15, PN13422.</p>

<p>Need to use pharmacies for professional advice and services in urgent circumstances for injury, illness or other emergencies outside of ordinary business hours, instead of attending busy and overcrowded hospital emergency departments with long waiting times.</p>		<p>There are times when we are called upon to provide an emergency or continued supply of medication due to a doctor not being available.</p>	<p>Exhibit PG2, statement of Anthony Tassone at [24].</p>
		<p>The irony is that is it after 9pm, that most pharmacies shut, and as a result we see a lot of people seeking emergency scripts and advice at that time. Those patients are very appreciative we are open – it’s either us or a very long stay at the public hospital.</p>	<p>Exhibit PG4, statement of Angelo Pricolo at [21].</p>
		<p>Given a number of local General Practitioners are closed on Sundays, we find that we are the first port of call for a number of conditions. Sometimes this is as simple as a tick removal, first aid skin aberrations but have also included compound fractures and possible stroke./ On the last three Sundays, I have had to advise a patient to immediately attend a medical centre or hospital after taking their blood pressure as it was at a level that was of considerable concern.</p>	<p>Exhibit PG14, statement of Craig Francis Bird at [22-23].</p>
		<p>We also provide a valuable triage service for patients who may need to see a doctor, and often see patients that do not want to wait at the adjoining medical centre. Our early mornings are very popular for families with young children who need some medicate and associated advice after a long night with a crying child.</p>	<p>Exhibit PG25, statement of Andrew Topp at [28].</p>

Inability or inconvenience of some patients to attend pharmacies during ordinary hours on weekdays due to personal (eg. child, elder care) and professional commitments.	<p>Patients and the local community would have greater access to the Pharmacy's services if there was an extension of trading hours to help cope with lifestyles of our local community, particularly young families where parents needs to take kids to school or have work duties and would like to access a pharmacy service prior to starting work or school drop off.</p>	<p>Exhibit PG2, statement of Anthony Tassone at [19].</p>
	<p>People cannot plan when they get sick or a pre-existing ailment will be exacerbated. Also, it is my experience that people do not work traditional 9am to 5pm hours any more. There is a demand for access to health care services 24 hours a day.</p>	<p>Exhibit PG4, statement of Angelo Pricolo at [32].</p>
	<p>Penalty rates are particularly prohibitive in respect of early opening. As our pharmacy is located in a busy area near public transport I would like to be open from 7am so that people are able to access the pharmacy on the way to work.</p>	<p>Exhibit PG15, statement of Michelle Spiro at [14].</p>
	<p>We also provide a valuable triage service for patients who may need to see a doctor, and often see patients that do not want to wait at the adjoining medical centre. Our early mornings are very popular for families with young children who need some medication and associated advice after a long night with a crying child.</p>	<p>Exhibit PG25, statement of Andrew Topp at [28].</p>

<p>Ensuring ‘continuity of care’ through patronising the same pharmacy.</p>	<p>The Pharmacy has a large number of patients who keep their prescriptions on file and have all of their medicines dispensed from it. Our customers visit the Pharmacy for the care and service they receive from our empathetic staff. There is no such care or service from a supermarket.</p>	<p>Exhibit PG2, statement of Anthony Tassone at [25].</p>
	<p>The Culburra Pharmacy has a number of patients who regularly attend for their medication. By returning to the same Pharmacy, we are able to check a patient’s new medication and advise on any contradictions with their current medication.</p>	<p>Exhibit PG6, statement of David Martin Heffernan at [9].</p>
	<p>One of the services that is very popular with patients and used by hundred is keeping their script on file. This means that the patient leaves their script with the pharmacy. The pharmacy monitors the script and contacts the patient either by SMS, email or telephone to advise them when they need to collect their script. This alleviates the inconvenience to patients of having to return to their doctor if they have lost their script or it has expired prior to having it filled.</p>	<p>Exhibit PG7, statement of Quinn On at [17].</p>
	<p>Over 70% of our dispensed medications are repeats and for that reason continuity of care is particularly important to my patients.</p>	<p>Exhibit PG9, statement of Kin Chong at [19].</p>
	<p>Often patients run out of medication. To ensure there is continuity with their treatment, the pharmacist will phone the prescriber to facilitate new prescriptions being issued. This is a very time consuming process however is vital to patients to ensure their treatment is not disrupted.</p>	<p>Exhibit PG12, statement of Michael Patrick Farrell at [13].</p>
	<p>The Belrose Chemist has a large number of patients who regularly attend for repeat medication. By attending the same Pharmacy, the patient receives a number of benefits including the Pharmacist being able to:</p> <ul style="list-style-type: none"> a) Identify inconsistencies in prescribing – for example, the doctor may have prescribed the incorrect strength or medication; b) Identify potential interactions between medications that have been 	<p>Exhibit PG14, statement of Craig Francis Bird at [24].</p>

		prescribed for the patient; c) Identify patient deterioration.	
		For patients seeking repeats of medicines, or follow up advice, continuity of care is important. Those patients expect the pharmacy to be open for longer hours so they can consult with their pharmacist at a time that suits them. That is also the case in respect of patients obtaining repeat medicines, or those that may have forgotten to have a script filled and require their medications as a matter of urgency.	Exhibit PG18, statement of Dean Pollock at [15].

Effect of price disclosure on profitability and ability to cross-subsidise unprofitable aspects of their business.	<p>Around 10 years ago the pharmacy was open for 24 hours a day. That lasted for around 5 years by the impact of penalty rates was too great to maintain 24 hour operations. Unfortunately the pharmacy gets paid the same for dispensing a script as 3pm or 3am, but the pay rates do not reflect that.</p>	<p>Exhibit PG4, statement of Angelo Pricolo at [22].</p>
	<p>Reducing penalty rates on Saturdays, Sundays and Public Holidays are most important to the Pharmacy. It is considered standard practice for pharmacies to open all day Saturday, and most if not all day Sunday and Public holidays. Pharmacies are unable to impose a 10-15% surcharge as many cafes/hospitality venues charge for these hours.</p>	<p>Exhibit PG10, statement of Lia Jane Mahony at [14].</p>
	<p>Given 80% of the Pharmacy's profit comes from PBS medication where the cost is fixed, it is not possible to offset the additional cost of penalty rates the way it is in other industries. The majority of patients at the Pharmacy are concession or pension card holders and therefore the price of medication is set by the Government. Therefore, the price that can be charged is the same regardless of the time or day that the prescription is dispensed.</p>	<p>Exhibit PG13, statement of Trent Gregory Playford at [20].</p>
	<p>Costs are increasing however the competitive nature of the industry means that there is minimal elasticity in pricing. This is especially so given there are only certain items in a Pharmacy that can be re-priced.</p>	<p>Exhibit PG14, statement of Craig Francis Bird at [28].</p>
	<p>I have not been able to increase prices for medications with PBS co-payments as this is set by the National Health Act 1953. Consumers expect that non-PBS medicines should be the same price regardless of the time they choose to access them and therefore discretionary raising of prices at time when higher penalty rates apply is not consumer friendly.</p>	<p>Exhibit PG19, statement of Timothy John Logan at [16].</p>

		<p>I expressed that pharmacies are price takers and not price makers. And I was trying to express that the majority of a typical pharmacy's business is dispensing prescription medicines, the majority of which are Pharmaceutical Benefits Scheme subsidised medicines - governed by the agreement, yes - but unlike other businesses, such as a café or restaurant, who could potentially add a surcharge on particular periods of trade to offset impacts of penalty rates, pharmacies cannot, when they're delivering Pharmaceutical Benefits Scheme subsidised medicines.</p>	<p>Transcript, cross-examination of Anthony Tassone, 12/10/15, P12387.</p>
		<p>So this subsidy that's increased - an increase subsidy in the sixth agreement is really a reinvestment of the savings that the government has made as a result of the reduced prices they pay for goods which pharmacies traditionally relied upon as a main source of their income and profit.</p>	<p>Transcript, cross-examination of Anthony Tassone, 12/10/15, P12456.</p>
		<p>Sure? What the 6CPA has redressed is simply to hold us at a level whereby we have some predictability to our incomes but, let me tell you, it at best might achieve where we were halfway through the fifth CPA but it by no means gets us back to a level where we're sitting back comfortably. Not even close. PN15159</p> <p>No. I'm not suggesting that but I am suggesting that paragraph 26 of your affidavit, Mr Pollock, needs to be read in the context of the 6CPA and the fact that the impact of disclosure of Pharmaceutical Benefit Scheme medicines has been arrested by the 6CPA? No, it's ongoing. It's just the degree to which it erodes our turnover and profit has been lessened somewhat but it's still marching on. You know, every time there is a price disclosure drop, there is a drop still.</p>	<p>Transcript, cross-examination of Dean Pollock, 14/10/15, PN15158-PN15159.</p>

<p>Lack of access to community pharmacy outside of ordinary working hours in rural and regional areas to address urgent or emergency medication needs.</p>	<p>Our Pharmacists and assistants are the point of contact for many customers who do not have access to doctors in a timely way. Health services are provided by the Pharmacy when doctors are not available and waiting times for appointments may be days or weeks.</p>	<p>Exhibit PG3, statement of Paul Thomas Keane at [11].</p>
	<p>The Pharmacy is located in a rural area and has regular patients who attend for medications. Patients sometimes have to travel long distances to access a Pharmacy that is open on weekends and Public Holidays.</p>	<p>Exhibit PG3, statement of Paul Thomas Keane at [12].</p>
	<p>In the Culburra region, general practitioners are not available outside normal business hours. Accordingly, the Culburra Pharmacy has a number of patients that attend seeking urgent advice regarding issues such as a child's fever and whether it warrants attending the hospital emergency room.</p>	<p>Exhibit PG6, statement of David Martin Heffernan at [11].</p>
	<p>By not opening on Sundays and Public Holidays, patients are forced to travel to the larger metropolitan area of Nowra.</p>	<p>Exhibit PG6, statement of David Martin Heffernan at [14].</p>
	<p>The impact of restricted hours is felt on the community as a whole. We are located in a country area and provide healthcare services to not only our town but also to neighbouring towns. That is because Kerang has a hospital, and people that attend the hospital will also use our pharmacy to obtain medication.</p>	<p>Exhibit PG9, statement of Kin Chong at [13].</p>
	<p>As our town is isolated it is not uncommon for people to travel over one hour to attend the pharmacy and have scripts filled. Having restricted trading hours means patients are required to make special arrangements to attend the pharmacy and obtain their medications and advice.</p>	<p>Exhibit PG9, statement of Kin Chong at [19].</p>
	<p>In addition to the above, the pharmacy acts as a screening service before a client attends the emergency department or doctor. That is because on a number of occasions we have had no doctor in town for servicing the</p>	<p>Exhibit PG9, statement of Kin Chong at [26].</p>

		community. We also act as suppliers to the hospital due to our extensive range of medications.	
		If the Guild’s proposal is accepted we will consider opening longer on weekdays, weekends and public holidays to provide increased access to pharmacy services in our town. As noted above, the closest town which has extended pharmacy trading hours is about 2 hours away.	Exhibit PG9, statement of Kin Chong at [32].
		We are also open when the doctor surgery next to us is not (they are only open 3 days a week).	Exhibit PG10, statement of Lia Jane Mahony at [17].
		The Towers Drug Co is the only pharmacy in Bourke and serves an area of approximately 45,000 square kilometres. Accordingly, the service we offer is highly valued by the community.	Exhibit PG16, statement of Peter William Ashley Crothers at [14].
		The Bourke District Hospital does not have a pharmacy department. Also, there are no doctors that are employed to work solely at the hospital. Rather, the hospital relies on a 24 hour roster with local general practitioners in the area./ I and the other employed Pharmacist make ourselves available to the community after hours by voluntarily being on call. If the Pharmacy is closed and there is an emergency, the patient will go to the hospital and if the doctor requires, they will phone one of us and the hospital will pay a call our fee for us to assist. We are called out up to a dozen times a year./ In recent years there has been a high turnover of general practitioners in the local area resulting in loss of continuity of medical care. By comparison, the community see the pharmacy as providing excellent continuity of care. The community also recognises that we are adept at navigating the healthcare system so that they get the best care appropriate for their needs. For these reasons patients tend to utilise us as a ‘first port of call’ for all manner of health	Exhibit PG16, statement of Peter William Ashley Crothers at [15-17].

		and medical problems. We are not paid for this work.	
		The local doctors' surgeries are not open on Saturdays, when the pharmacy is open. Accordingly, a lot of patients who would normally go to the doctor attend the pharmacy on a Saturday for advice and assistance instead. It is reasonable to assume that this would also be the case on Sundays, if we were able to open.	Exhibit PG16, statement of Peter William Ashley Crothers at [21].

<p>Desire of pharmacy proprietors to have longer opening hours, and increase staffing during these times to be able to offer the same level of professional services.</p>	<p>Longer hours on weekdays after ordinary hours, weekends and public holidays.</p>	<p>With the expectation that the Pharmacy is open for extended hours by the public, coupled with the expectation the Pharmacist needs to offer 6CPA services to generate income, yet the inability to provide the adequate staff levels to offer these services due to higher wages costs, creates the inability to serve the customer as desired nor generate the appropriate income at the same time.</p>	<p>Exhibit PG10, statement of Lia Jane Mahony at [20].</p>
		<p>The local doctors' surgeries are not open on Saturdays, when the pharmacy is open. Accordingly, a lot of patients who would normally go to the doctor attend the pharmacy on a Saturday for advice and assistance instead. It is reasonable to assume that this would also be the case on Sundays, if we were able to open.</p>	<p>Exhibit PG16, statement of Peter William Ashley Crothers at [21].</p>
		<p>There is a clear demand from the community for Sunday trading.</p>	<p>Exhibit PG16, statement of Peter William Ashley Crothers at [22].</p>
		<p>And I'm suggesting to you that underlying your decisions about trading hours, is the assessment that you must make that in a town of 3,000-odd people, there's not enough business, not enough custom to justify trading on public holidays. Is that so? It is marginal. We have been asked by the local doctors to provide a Sunday and public holiday service and I get repeated requests from customers. They say to me, "Well, why don't you open on Sundays anymore?" And I said, "It is purely the cost of the wages".</p>	<p>Transcript, cross-examination of Paul Thomas Keane, 12/10/15, P12531.</p>
		<p>So I decided to only open on those two public holidays out of - there's probably 10 in a year. Reason being because during the Easter break there are four public holidays in a row and because we do provide the methadone program and the syringe exchange program and it can be very difficult for the patients to come and get their takeaways if we actually close for four days. So I try to at least open consecutive - two consecutive days - not - alternate days, in order for the patients to come</p>	<p>Transcript, cross-examination of Quinn On, 12/10/15, PN13422.</p>

		and get their methadone.	
		<p>COMMISSIONER HAMPTON: Mr Crothers, just while we're on paragraph 27 how does that work in practice, this fact that there's a pharmacist on call? We put - for several years now we've put notices in the pharmacy in the fortnight leading up to a public holiday weekend, we put notices in the local newspaper informing them of that arrangement, and we put a notice on the - we put three copies of the same notice on the front of the pharmacy on the weekend explaining what the emergency arrangement is and directing people to the hospital, and at the same time we have quite a good, although very informal arrangement with our local hospital and we send a notice up to them as well explaining which one of our mobile numbers to ring first, because sometimes one of us won't be there at all, and Jake who's my employed pharmacist and I have just - we've just decided it's a reasonable thing to do. We don't have to do it, but we've decided that on balance it probably works best both for us and the community. Is that clear?</p>	<p>Transcript, cross-examination of Peter William Ashley Crothers, 14/10/15, PN14930.</p>
	<p>Increase staffing outside of ordinary hours to have sufficient time to provide professional care to patients and to offer the same suite and quality of professional services offered during ordinary hours on weekdays.</p>	<p>... more specialist services such as weight management, nutritionist advice and medication management services or medical certificates could be offered as additional staff could be hired.</p>	<p>Exhibit PG2, statement of Anthony Tassone at [29].</p>
		<p>If the Guild's proposal was accepted, it would also mean that the Pharmacy could offer additional services to patients on weekends and Public Holidays. This would mean that the local pharmacy has greater access to health care services.</p>	<p>Exhibit PG3, statement of Paul Thomas Keane at [20].</p>

		<p>It would allow me to roster on additional Pharmacists meaning that they to could spend more time with patients to answer their questions.</p>	<p>Exhibit PG5, statement of Gregory Da Rui at [23].</p>
		<p>Most importantly, if the PGA's proposal was accepted, it would be possible to offer customers additional services. For example, it would be possible to offer MedsChecks and dose administration aid services on Sundays. It would also be possible to provide discharge services for rehabilitation hospitals on weekends. This would be of great benefit to the community.</p>	<p>Exhibit PG12, statement of Michael Patrick Farrell at [34].</p>
		<p>If the PGA's proposal was accepted, I would firstly change the composition of staff rostered on weekends and public holidays. Rather than only rostering on junior staff, I would also roster on more senior staff who have greater professional knowledge./ I would also consider rostering on two pharmacists which would enable additional services to be offered to patients on weekends and public holidays.</p>	<p>Exhibit PG14, statement of Craig Francis Bird at [36-37].</p>
		<p>If the Guild proposal was accepted, it would mean that our customers will have greater access to medication checks, urgent home deliveries, influenza vaccinations and CPAP sleep apnoea checks. This is because these services would be available on weekends and Public Holidays as I would be in a position to employ an additional Pharmacist and other staff to assist with the provision of these services.</p>	<p>Exhibit PG19, statement of Timothy John Logan at [23].</p>
		<p>It would also be possible to roster additional staff to work on weekends and public holidays so that services such as Webster packs, flu vaccinations, blood pressure monitoring and MedsChecks would be more readily offered to patients. Also, by rostering on additional staff, pharmacists could spend more time with patients answering their questions and assisting them with their medication.</p>	<p>Exhibit PG22, statement of Maria Michelle Xynias at [18].</p>

		<p>We would also be able to offer more services to more people, using a greater number of better qualified staff because we could afford to hire them.</p>	<p>Exhibit PG25, statement of Andrew Topp at [42].</p>
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<p>The vast majority of community pharmacies consider that it is unprofitable to open on Sundays, public holidays and outside standard hours of work, and given the choice, do not open during these unprofitable periods.</p>	<p>No longer open on New Years Day, largely due to penalty rates.</p>	<p>Exhibit PG2, statement of Anthony Tassone at [12].</p>
	<p>Currently the Pharmacy is not open on Public Holidays due to high cost by penalty rates that are incurred.</p>	<p>Exhibit PG3, statement of Paul Thomas Keane at [9].</p>
	<p>The current penalty rates are excessive to the point that we do not employ staff outside ordinary hours as profitability is compromised.</p>	<p>Exhibit PG3, statement of Paul Thomas Keane at [15].</p>
	<p>It is impossible to make a profit after 7pm and on Sundays and public holidays due to penalty rates. We open as a service to the public during unprofitable periods, but waiting times have increased.</p>	<p>Exhibit PG5, statement of Gregory Da Rui at [15].</p>
	<p>Unfortunately despite having only the minimum staff required, some Sundays do not produce enough profit to cover the wages incurred. Accordingly, we are currently considering reducing the trading hours on a Sunday.</p>	<p>Exhibit PG20, statement of Patrick Gerard Costigan at [18].</p>
	<p>... I can demonstrate quite clearly that Sundays in particular run at a loss. The cost of the wages is greater than the gross profit generated on the day. So I would state that our opening hours on Sunday or our opening at all on Sundays and public holidays is constantly up for review, and there may come a point in time when that imbalance between cost of wages versus income generated is such that we will cease to do it. Perhaps the same would go with the early morning start and the late evening finish.</p>	<p>Transcript, cross-examination of Andrew Topp, 19/10/15, PN17356.</p>

<p>Almost all pharmacies trading outside standard hours between Monday and Friday due to lease or legal requirements on Sundays and public holidays are unprofitable, and the majority of pharmacies opened for weekday extended hours and on Saturdays are unprofitable.</p>	<p>As the Pharmacy is located in a shopping centre and there are core trading hours which it has to open with as a condition of the lease, such as opening for extended hours on Thursday and Friday evenings along with weekends till at least 5pm and public holidays. Therefore the Pharmacy has to open when the business may not be profitable and this may be on a Sunday morning or on some Public Holidays.</p>	<p>Exhibit PG2, statement of Anthony Tassone at [17].</p>
	<p>The Menai DDS opens Easter Saturday and Easter Monday 9:00am-4:00pm. Limited public holidays as required by the lease agreement with the landlord. The sole reason for not opening on other public holidays is due to the high wage costs as a result of the penalty rates that are currently imposed. Only time I will open is if full time people will work on public holiday.</p>	<p>Exhibit PG7, statement of Quinn On at [6].</p>
	<p>Due to our leasing arrangements, it is necessary to open the pharmacy on all public holidays except for Christmas Day and New Years Day. If we did not have this arrangement we would not open on public holidays as the cost of penalty rates are so high. In order to try and make opening on public holidays financially viable, I roster on less experienced staff which attract a lower rate of pay. This means that patients are not receiving the same level of service on these days.</p>	<p>Exhibit PG11, statement of Hassan El-Ahmad at [20].</p>
	<p>The current lease agreement requires that the pharmacy be open from 9:00am to 6:00pm Monday to Wednesday, 9:00am to 9:00pm Thursdays and Fridays, 9:00am to 5:00pm on Saturdays and 10:00am to 5:00pm on Sundays and public holidays. I choose to keep the pharmacy open until 7:00pm on Monday to Wednesday as this additional hour does not incur penalty rates.</p>	<p>Exhibit PG11, statement of Hassan El-Ahmad at [23].</p>
	<p>The leasing arrangements of the Mega Save Chemist require the pharmacy to be open at certain times. However, we are prohibited from doing this due to the high wage cost incurred when opening the pharmacy outside of normal business hours. / Due to non-compliance with our lease agreement, we have received a number of letters from our landlord. Accordingly, it is a balance between complying with our lease</p>	<p>Exhibit PG12, statement of Michael Patrick Farrell at [17-18].</p>

		obligations and ensuring the pharmacy is profitable.	
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<p>The main reason pharmacies are unable to open for longer trading hours or roster more or better experienced or qualified staff or engage pharmacy interns and students during these times is that it is unprofitable to do so due to the higher costs of employing staff on penalty rates under the Pharmacy Award.</p>		No longer open on New Years Day, largely due to penalty rates.	Exhibit PG2, statement of Anthony Tassone at [12].
		Penalty rates will impact on the likelihood of the Pharmacy being able to maintain its current trading hours on weekends.	Exhibit PG2, statement of Anthony Tassone at [15].
		The effect of paying the current penalty rates means that the Pharmacy may not be able to, and will have difficulty in, extending its current trading hours despite requests by the shopping centre and a soon to be opening 24/7 medical centre to do so across the week.	Exhibit PG2, statement of Anthony Tassone at [16].
		Currently the Pharmacy is not open on Public Holidays due to high cost by penalty rates that are incurred.	Exhibit PG3, statement of Paul Thomas Keane at [9].
		The current penalty rates are excessive to the point that we do not employ staff outside ordinary hours as profitability is compromised.	Exhibit PG3, statement of Paul Thomas Keane at [15].
		Due to the current penalty rates, rosters are mostly equalised across employed staff to avoid any overtime hours. Staff hours have been cut to save costs.	Exhibit PG3, statement of Paul Thomas Keane at [16].

		<p>Unfortunately we struggle to maintain our trading hours due in part to the extremely high penalty rates in the award.</p>	<p>Exhibit PG4, statement of Angelo Pricolo at [14].</p>
		<p>I am aware of the Sixth Pharmacy Agreement negotiated with the Federal Government that there be a real improvement in patient access to community pharmacies (including through increased opening hours) in exchange for Commonwealth funding for Community Pharmacy programmes over the term of the agreement. I believe it would be impossible for us to keep our pharmacy open longer than we do due to the impact of penalty rates.</p>	<p>Exhibit PG4, statement of Angelo Pricolo at [24-25].</p>
		<p>On Public Holidays (even busy public holidays like Christmas) I run with less staff because the financial loss to the business would be too great.</p>	<p>Exhibit PG4, statement of Angelo Pricolo at [40].</p>
		<p>The current penalty rates are a deterrent to employing staff. I have had a Dispensary Technician go on maternity leave and have not been able to replace her due to the heavy impost penalty rates have on my wages budget. The penalty rates have actually forced me to reduce staff. It is impossible to make a profit after 7pm and on Sundays and public holidays due to penalty rates. We open as a service to the public during unprofitable periods, but waiting times have increased.</p>	<p>Exhibit PG5, statement of Gregory Da Rui at [15].</p>
		<p>As a result of penalty rates, it was necessary to cut staff.</p>	<p>Exhibit PG5, statement of Gregory Da Rui at [17].</p>
		<p>The Saturdays, Sundays and public holiday penalty rates are the most severe penalties on the pharmacy and those are impact profitability and my ability to hire new staff.</p>	<p>Exhibit PG5, statement of Gregory Da Rui at [18].</p>

		<p>The reason for the Culburra Pharmacy not opening on Sundays and public holidays is due to the penalty rates and staff availability that are imposed on those days. The rates make it unprofitable to open.</p>	<p>Exhibit PG6, statement of David Martin Heffernan at [13].</p>
		<p>When penalty rates are between 200% and 250%, it is not financially viable to open the pharmacy. Accordingly, we close the pharmacy and casual staff miss out on additional shifts.</p>	<p>Exhibit PG7, statement of Quinn On at [22].</p>
		<p>Due to penalty rates in the Award we have had to restrict our opening hours, especially on Sundays and public holidays.</p>	<p>Exhibit PG9, statement of Kin Chong at [12].</p>
		<p>This decrease in profitability is important. Penalty rates are another hindrance in the ability to provide these extra pharmaceutical care services in the Pharmacy. With the expectation that the Pharmacy is open for extended hours by the public, coupled with the expectation the Pharmacist needs to offer 6CPA services to generate income, yet the inability to provide the adequate staff levels to offer these services due to higher wages costs, creates the inability to serve the customer as desired nor generate the appropriate income at the same time.</p>	<p>Exhibit PG10, statement of Lia Jane Mahony at [20].</p>
		<p>Traditionally, the Mega Save Chemist employed a number of Pharmacy students. believe that obtaining experience by working in a Pharmacy is invaluable to their learning. Unfortunately, due to the cost of penalty rates on weekends, it is not financially viable to employ students and train them. To ensure financial viability, dispensary assistants are used instead. This means that pharmacy students do not get the practical experience which is invaluable to their practice as a pharmacist.</p>	<p>Exhibit PG12, statement of Michael Patrick Farrell at [21].</p>

		<p>Unfortunately despite having only the minimum staff required, some Sundays do not produce enough profit to cover the wages incurred. Accordingly, we are currently considering reducing the trading hours on a Sunday.</p>	<p>Exhibit PG20, statement of Patrick Gerard Costigan at [18].</p>
		<p>If there is no reduction in the amount of penalty rates, and sales do not soften the cost of us opening on Sundays and Public Holidays, we will most likely reduce the hours we are open or simply decide not to open at all on those days.</p>	<p>Exhibit PG25, statement of Andrew Topp at [32].</p>
		<p>...The manager pharmacist said why don't you just try opening for six hours and see if it's worth opening, you know, future public holidays apart from just opening on those two Easter holidays. So I said okay, let's do it. So I put on two 16 year olds and one 19 year old and also the pharmacist because it's quite a big store and I need a bit of coverage to prevent theft, because we have quite a bit of theft in that area. On analysing the results on that particular Monday on 5 October this year, I did a profit analysis and the profit on that day was \$920, around that, but the wages itself was \$980, so I came back to the pharmacists and I discussed it with them and they said well, okay, well maybe it's not worthwhile to actually open on a public holiday. I said that's the reason why I don't usually open on public holidays because the wages are just too high. Even though I put on two 16 year olds and a 19 year old to try and reduce the wages that way, it still exceeded the amount of profit that we made.</p>	<p>Transcript, cross-examination of Quinn On, 12/10/15, PN13425.</p>
		<p>And I'm suggesting to you that underlying your decisions about trading hours, is the assessment that you must make that in a town of 3,000-odd people, there's not enough business, not enough custom to justify trading on public holidays. Is that so? It is marginal. We have been asked by the local doctors to provide a Sunday and public holiday service and I get repeated requests from customers. They say to me, "Well, why don't you open on Sundays anymore?" And I said, "It is purely the cost of the wages".</p>	<p>Transcript, cross-examination of Paul Thomas Keane, 12/10/15, P12531.</p>

		<p>... I can demonstrate quite clearly that Sundays in particular run at a loss. The cost of the wages is greater than the gross profit generated on the day. So I would state that our opening hours on Sunday or our opening at all on Sundays and public holidays is constantly up for review, and there may come a point in time when that imbalance between cost of wages versus income generated is such that we will cease to do it. Perhaps the same would go with the early morning start and the late evening finish.</p>	<p>Transcript, cross- examination of Andrew Topp, 19/10/15, PN17356.</p>
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<p>In smaller pharmacies, some proprietors worked hours on weekends and public holidays to avoid having to incur penalty rates to be paid to an employee pharmacist.</p>	<p>As noted above, in an attempt to save costs and reduce the impact of penalty rates on our business I work days that attract penalty rates. I also open for reduced hours despite the community demand that the pharmacy stay open.</p>	<p>Exhibit PG9, statement of Kin Chong at [28].</p>
	<p>However, due to the amount that is costs in wages I can only afford to a casual employee to work behind the till on a Sunday and pay a pharmacist to work on that day is simply not viable. In an attempt to save costs my partner and I work on a Sunday ourselves.</p>	<p>Exhibit PG15, statement of Michelle Spiro at [11].</p>
	<p>As we are a discount pharmacy on the Chemsave banner we are unable to increase our prices to offset the amount we pay in respect on penalty rates. The only option available to us it to work more hours ourselves.</p>	<p>Exhibit PG15, statement of Michelle Spiro at [16].</p>
	<p>On weekdays we do not staff the pharmacy with Award staff outside of ordinary hours that attract penalty rates. Instead the managers work during the hours that we open early and late on weekdays. Managers also work public holidays to avoid paying penalty rates.</p>	<p>Exhibit PG25, statement of Andrew Topp at [15, 18].</p>

If pharmacies opened for longer hours:	Patient access to medication, professional advice and services at these times, including medical emergencies.	It would mean that I cost roster more staff on and hire additional staff members. This would have the flow on effect of allowing pharmacists time to spend valuable one on one time with patients at all times and provide a high level healthcare service to patients at all times.	Exhibit PG8, statement of Samantha Jane Kourtis at [35].
		The most important part of the Guild's claim for us is in respect of penalty rates on Saturday, Sunday and public holidays. That is because on those days we open significantly shorter hours than usual and when we are closed there is nowhere else for the community to obtain healthcare services.	Exhibit PG9, statement of Kin Chong at [20].
		Even if the Pharmacy was only open for reduced hours on public holidays, this would provide a great benefit to patients who run out of medication or require assistance with acute ailments.	Exhibit PG13, statement of Trent Gregory Playford at [23].
	Better patient care through continuity of care through services through the same pharmacy.	In the twenty five years we have been operating we have assisted travellers, and people from almost every suburb of Melbourne without access to a pharmacy, with extended trading hours and maintained the continuity and integrity of their health care.	Exhibit PG4, statement of Angelo Pricolo at [18].
		I believe that penalty rates have impacted on continuity of care. Due to the reduced staff availability in the Pharmacy, I have notice an increased demand for our express delivery service as patients do not want to wait in the Pharmacy. Although this is a valuable service for those that cannot get into the pharmacy, it reduces the amount of pharmacist/patient interaction time which ultimately impacts on the quality use of medicines as patients do not get to ask questions or voice concerns about their medications.	Exhibit PG5, statement of Gregory Da Rui at [21].
		For patients seeking repeats of medicines, or follow up advice, continuity of care is important. Those patients expect the pharmacy to be open for longer hours so they can consult with their pharmacist at a time that suits them. That is also the case in respect of patients obtaining repeat medicines, or those that may have forgotten to have a script filled and require their medications as a matter of urgency.	Exhibit PG18, statement of Dean Pollock at [15].

		<p>It has been reported to me that patients have run out of medications of Public Holidays when we have been closed. This has meant there is a break in the continuity of care to our regular customers who attend the Pharmacy for repeat medications and has impacted in the maintenance of their health and treatment of their symptoms by our ability to make urgent suppliers of prescription medication when prescriptions have expired or been lost or damaged.</p>	<p>Exhibit PG19, statement of Timothy John Logan at [13].</p>
	<p>Better healthcare provided to the Australian community.</p>	<p>If the Guild proposal was accepted, patients would have better access to improved healthcare.</p>	<p>Exhibit PG5, statement of Gregory Da Rui at [23].</p>
		<p>I believe patients would have access to improved healthcare if penalty rates were reduced and trading hours were extended as the pharmacy would open for longer and all of our services would be available earlier in the morning and later in the evening.</p>	<p>Exhibit PG15, statement of Michelle Spiro at [20].</p>
		<p>If penalty rates were reduced and the pharmacy was able to stay open for longer I believe my patients would have improved access to healthcare. That is because the above services would be available at more times.</p>	<p>Exhibit PG18, statement of Dean Pollock at [22].</p>
		<p>The pharmacy does not trade on public holidays as the cost of wages is too high to justify opening. Ideally I would like to open for 365 days a year, as providing a continuous and accessible healthcare service would benefit my patients and the community.</p>	<p>Exhibit PG18, statement of Dean Pollock at [13].</p>

<p>If the Guild’s proposal were granted, pharmacy proprietors would give serious consideration to:</p>	<p>Extending trading hours, after normal hours on weekdays, weekends and public holidays.</p>	<p>If the Guild proposal was adopted it would be possible to extend trading hours on weeknights, weekends and possibly Public Holidays as there is a 24/7 365 day a year medical centre opening at the shopping centre soon.</p>	<p>Exhibit PG2, statement of Anthony Tassone at [27].</p>
		<p>If the Guild proposal was accepted I would open the Pharmacy earlier, close later on Saturdays and would also open on Sundays and Public Holidays.</p>	<p>Exhibit PG3, statement of Paul Thomas Keane at [19].</p>
		<p>If the Guild's proposal is accepted, I would most likely open the pharmacy earlier- perhaps at 7am. I would also consider reverting back to 24 hour trading.</p>	<p>Exhibit PG4, statement of Angelo Pricolo at [45-46].</p>
		<p>If the PGA's proposal is accepted, it would mean that the Culburra Pharmacy could open every day of the year, except for Christmas Day. That would provide an invaluable service to the local Culburra Beach community. It would also be of great assistance to the Culburra Retirement village.</p>	<p>Exhibit PG6, statement of David Martin Heffernan at [17].</p>
		<p>I would be able to immediately extend the trading hours of the Menai DDS if the PGA’s proposal is accepted./ I would also consider opening from 9:00am to 5:00pm on all public holidays except for Christmas and Good Friday.</p>	<p>Exhibit PG7, statement of Quinn On at [24-25].</p>
		<p>Although I already operate the pharmacy on extended hours, if the PGA's proposal is accepted it would allow me to extend the trading hours even further to open from 7:30am to 9:00pm every day.</p>	<p>Exhibit PG8, statement of Samantha Jane Kourtis at [33-34].</p>

	<p>The Pharmacy is already open for extended hours. If the Guild Proposal was adopted, it would make these extended hours more profitable and I would be able to offer some of my current team members more weekend shifts and later shifts that suit their desired working conditions.</p>	<p>Exhibit PG10, statement of Lia Jane Mahony at [27].</p>
	<p>If the PGA's proposal is accepted, it would mean that I could immediately look at extending the trading hours. Ultimately, I would like to trade until midnight on weekdays and until 6.00pm on weekends to provide a greater service to patients who attend nearby medical centres.</p>	<p>Exhibit PG11, statement of Hassan El-Ahmad at [25].</p>
	<p>If the PGA's proposal is accepted, it would mean that we could extend the Mega Save Chemist's trading hours.</p>	<p>Exhibit PG12, statement of Michael Patrick Farrell at [32].</p>
	<p>If the PGA's proposal was accepted, it may be possible for the West Gosford Pharmacy to open on public holidays.</p>	<p>Exhibit PG13, statement of Trent Gregory Playford at [23].</p>
	<p>If the Guild's proposal is accepted, I would consider increasing the pharmacy's trading hours from 7am to 7pm.</p>	<p>Exhibit PG15, statement of Michelle Spiro at [24].</p>
	<p>If the PGA's proposal is accepted, it would mean that we could consider opening the pharmacy for extended trading hours, particularly on Sundays. This would provide greater access for patients to a very important health care service in the remote area of Bourke.</p>	<p>Exhibit PG16, statement of Peter William Ashley Crothers at [30].</p>

		If the PGA's proposal is accepted, it would mean that we could potentially extend the Monarch Pharmacy's trading hours to including evenings and Sundays. If this was possible, it would mean that more staff would be employed.	Exhibit PG17, statement of John Francis Cagney at [17].
		If the guild's proposal is accepted we will likely extend our Saturday and Sunday trading. We would also consider extending trading during the week until 8:00pm.	Exhibit PG18, statement of Dean Pollock at [28].
		If the Guild proposal was adopted, I would open on Public Holidays and for longer hours on Saturdays and Sundays.	Exhibit PG19, statement of Timothy John Logan at [22].
		If the proposal was accepted, we would look at extending our trading hours, particularly on Sundays.	Exhibit PG22, statement of Maria Michelle Xynias at [17].
		If the PGA's proposal is accepted, it would mean that both Pharmacies could have extended trading hours on public holidays.	Exhibit PG23, statement of Ian David Lewellin at [21].
	Offering more hours of work for existing staff or engaging more staff to work during these times.	If trading hours were extended, existing staff depending on their availability, would be offered additional hours and new positions could be made available.	Exhibit PG2, statement of Anthony Tassone at [28].
		It would also be possible to hire new staff to work on Sundays and Public Holidays.	Exhibit PG3, statement of Paul Thomas Keane at [19].

		Opening 24 hours would also mean that I would be forced to increase my staffing levels and I would certainly engage more employees and offer more hours to existing staff.	Exhibit PG4, statement of Angelo Pricolo at [45-46].
		I would also look at hiring new staff.	Exhibit PG5, statement of Gregory Da Rui at [24].
		This would also mean that I could hire additional staff.	Exhibit PG7, statement of Quinn On at [24].
		It would mean that I cost roster more staff on and hire additional staff members. This would have the flow on effect of allowing pharmacists time to spend valuable one on one time with patients at all times and provide a high level healthcare service to patients at all times.	Exhibit PG8, statement of Samantha Jane Kourtis at [35].
		We will also consider offering more hours to our current employees, in addition to hiring new staff- especially younger people from within the town.	Exhibit PG9, statement of Kin Chong at [33].
		The Pharmacy is already open for extended hours. If the Guild Proposal was adopted, it would make these extended hours more profitable and I would be able to offer some of my current team members more weekend shifts and later shifts that suit their desired working conditions.	Exhibit PG10, statement of Lia Jane Mahony at [27].
		This would also mean that I could employ more staff and offer current staff additional hours.	Exhibit PG11, statement of Hassan El-Ahmad at [26].

		This in turn would mean that we could offer existing staff members additional hours and potentially hire new staff members.	Exhibit PG12, statement of Michael Patrick Farrell at [32].
		We have current staff who are seeking additional hours and this would mean that we could offer these staff members the additional hours.	Exhibit PG13, statement of Trent Gregory Playford at [24].
		If the PGA's proposal was accepted, I would firstly change the composition of staff rostered on weekends and public holidays. Rather than only rostering on junior staff, I would also roster on more senior staff who have greater professional knowledge./ I would also consider rostering on two pharmacists which would enable additional services to be offered to patients on weekends and public holidays.	Exhibit PG14, statement of Craig Francis Bird at [36-37].
		I would also offer more hours to my existing staff which would enable me to open earlier in the morning and make a big difference in Sundays as I would not have to work every Sunday myself.	Exhibit PG15, statement of Michelle Spiro at [25].
		If the PGA's proposal is accepted, it would mean that we could potentially extend the Monarch Pharmacy's trading hours to including evenings and Sundays. If this was possible, it would mean that more staff would be employed.	Exhibit PG17, statement of John Francis Cagney at [17].
		Hiring new staff would also be something the pharmacy would seriously consider, as we are currently stretched to capacity. As it currently stands, we are paying so much in wages as a result of the penalty rate regime in the Award that is it too expensive to consider employing additional staff.	Exhibit PG18, statement of Dean Pollock at [29].

		I would also employ additional staff (particularly trainees) and provide existing staff with additional hours particularly on Saturdays and Sundays.	Exhibit PG19, statement of Timothy John Logan at [22].
		We would also be able to hire additional staff to work on weekends and public holidays.	Exhibit PG23, statement of Ian David Lewellin at [21].
		If the Guild's proposal is accepted, we would look in the long term to staffing the pharmacy properly, especially on weekends, and probably use more student pharmacists which would be a benefit to the community.	Exhibit PG25, statement of Andrew Topp at [41].
		A reduction in penalty rates that is slightly less than sought by the Guild would still be a benefit to my Pharmacy. Any such reduction will potentially lead to an improvement in trading outcomes, as we would consider having more staff rostered to work during busy periods. Ultimately, any additional earnings may assist us in retaining public holiday trading.	Exhibit PG25, statement of Andrew Topp at [43].