



TRANSCRIPT OF PROCEEDINGS

*Fair Work Act 2009*

1052570

**JUSTICE ROSS, PRESIDENT  
VICE PRESIDENT CATANZARITI  
DEPUTY PRESIDENT ASBURY  
COMMISSIONER HAMPTON  
COMMISSIONER LEE**

**AM2014/305**

**s.156 - 4 yearly review of modern awards**

**Four yearly review of modern awards  
(AM2014/305)**

**Sydney**

**9.35 AM, TUESDAY, 13 OCTOBER 2015**

**Continued from 12/10/2015**

PN13550

JUSTICE ROSS: Can I raise just one preliminary matter. I understand there's to be a variation in the order of the witnesses, and that's fine. I want to raise the objections to Mr Armstrong's statement and to make some observations about those and suggest a course of action. If we deal with this in the way we've dealt with the other witnesses, then we deal with the objections at the commencement of his evidence. The problem with that is that that might significantly affect the extent of cross-examination required, and we have other witnesses in the afternoon.

PN13551

It would be desirable if we can deal with the objections prior to Thursday. What we had in mind was dealing with them with the Pezzullo objections on Wednesday afternoon and have the Armstrong objections and Pezzullo the subject of the conference that Catanzariti VP will be having with you at lunchtime. Having said all that, can I - speaking for myself - offer some guidance about how you might want to resolve these matters.

PN13552

When I - and I've not given detailed consideration to the objection, but one of the - he's not called as an expert, is the first observation; the second is that the witness makes a number of statements referring to material which is not annexed to his statement. On the face of it that material is of interest to us because it provides information about what's happening in the pharmacy sector, but the material ought to be attached that's being referred to, and there are a number of instances where it's not.

PN13553

The union has not objected to those parts of the statement which attach the relevant material. Their objection is the editorialising, if I can put it that way, on some of the material that's attached, and to statements which are not sourced. Now, he's not an expert, and yet he's expressing - making statements which don't - the source of which is not identified, and they appear to be matters of opinion or fact.

PN13554

So, look, it seems to me, at least, that one way of dealing with this is for the Guild to look closely at attaching all relevant source material and providing that to the union as quickly as possible; and secondly that parts of Mr Armstrong's statement might be regarded as submission rather than evidence. We dealt with previous objections in a similar way, and I imagine both of those steps would curtail the extent of cross examination required, which may mean that some of the witnesses in the afternoon could be heard in the morning.

PN13555

That might not encompass the breadth of the objections, but it might provide you with a way forward. Is there anything either party want to say about that? You're grimacing, Mr Moore.

PN13556

MR MOORE: No, I'm smiling, your Honour.

PN13557

JUSTICE ROSS: In pain? Smiling? All right.

PN13558

MR MOORE: It's sometimes hard to tell.

PN13559

JUSTICE ROSS: Sometimes difficult to tell the difference. No, I have the same problem myself.

PN13560

MR SECK: Your Honour, I'm grateful for your observations. I certainly agree that's probably a way forward in dealing with the issues, and it certainly occurred to me when dealing with the objections raised by the SDA it would address a significant number of - but not necessarily all of their concerns.

PN13561

We will endeavour - and I've already sought instructions on this - to identify all the source material. It might be that the source material has been annexed, but we just haven't linked it to the elections themselves because much of it is contained in the Guild Digest, but we will certainly try to turn our minds to those issues and see whether or not we can address those as soon as we can.

PN13562

JUSTICE ROSS: Yes. I think you need to turn your mind to them pretty quickly, and perhaps get someone working on them while you're dealing with the witnesses. Look, to give you an example, at paragraph 94, subparagraphs there, it refers to the April 2014 APP conference survey. Well, admit, I've not gone through all the annexures, but I've got no idea what that is.

PN13563

Now, it may be that it can be put in through and other means or something like that, but in the normal course the opposing party would be entitled to know what the document is you're referring to and to be able - so they're able to ask questions about: well, what's the provenance of the document; who were the survey respondents; what was the class that was surveyed; what was the response rate, et cetera, in order to test that's the evidence. Well, I'm not sure how you do that.

PN13564

Now look, I say all of this with the preface that we're interested in finding out information about the pharmacy sector, and we do have a broad licence to inform ourselves as we see fit, but we want to ensure that it's done in a fair way.

PN13565

MR SECK: I understand your Honour's concerns, and we will seek to try to address them as we can.

PN13566

JUSTICE ROSS: Okay. And I would encourage you to have a conversation with Mr Moore or Ms Forsyth about how you might address those issues, and they might give some thought to how their concerns might be met as well through some appropriate concessions on your part.

PN13567

MR SECK: It did occur to me, your Honour, if we tried to do that, that may not necessarily give ourselves or my learned friend and a time to consider the material. I know we've scheduled Mr Armstrong for cross-examination on Thursday morning, and we're still keen to go ahead with that, but in order to ensure that there is fairness to the unions - but also, I suppose, to us in making sure that all that material is properly annexed - it might be appropriate, subject to instructions, that we give consideration to deferring Mr Armstrong for that process to be undertaken.

PN13568

JUSTICE ROSS: We're running out of time when we might defer him to.

PN13569

MR SECK: No, I understand, your Honour. It's just a thought that occurred to me, given the - - -

PN13570

JUSTICE ROSS: Well, how long have you had the SDA objections?

PN13571

MR SECK: I think we've had them since the beginning of October.

PN13572

JUSTICE ROSS: 6 October, last Tuesday?

PN13573

MR MOORE: And well before that.

PN13574

JUSTICE ROSS: That was when we got them, I think.

PN13575

MR MOORE: Can I just clarify that. My friend is no doubt right in terms of the document which sets out the objections, but I distinctly recollect my instructors wrote to the Meridian Lawyers soon after Mr Armstrong's affidavit was filed and put them on notice that we would be objecting to this affidavit on the basis squarely that he's purporting to give opinion evidence.

PN13576

JUSTICE ROSS: Yes. No, I appreciate that issue was dealt with. And there was confirmation that he wasn't an expert. But I'm really here talking about the particularisation of the objections.

PN13577

MR MOORE: Yes.

PN13578

JUSTICE ROSS: But in any event, it was a week ago, and I would have expected the parties to have a conversation. As I've said on numerous occasions during this hearing talk to the counsel on the other side and see what can be sorted out, rather than having a paper war and exchanging correspondence between you.

PN13579

I'm not just targeting you with that observation. All parties have been guilty of that. Filing - you know, rather than picking up the phone and talking to one another and trying to sort it out, you drown each other in correspondence; and then it comes here; and then we have to have the conversation. It's just not a very efficient way of dealing with it.

PN13580

So look, if it means that we adjust programmed today to give you time to have that conversation, then that's what we will do. I think that's a much more efficient way, rather than have a whole morning go because you haven't given thought to what attachments might need to be provided.

PN13581

MR SECK: Yes, your Honour. We will get that process underway. I will get some instructions about that issue and we will obviously begin discussions with the SDA as soon as practicable.

PN13582

JUSTICE ROSS: All right. You let me know also whether we need to drop off some of the witnesses from today or tomorrow and move them to Thursday in order to give you sufficient time to resolve the Armstrong issue.

PN13583

MR SECK: Yes, your Honour. We will give some thought to that issue as soon as possible as well.

PN13584

JUSTICE ROSS: Okay. All right. Can you call your first witness, please.

PN13585

MR MOORE: Your Honour, can I just say that in general terms we were - I was going to, in fact, propose a similar course to deal with the objections to Mr Armstrong tomorrow afternoon. I see that as a sensible course because if the objections are not upheld, there's going to be half a day spent on cross-examination. We're very open to having that discussion with the Guild and my learned friend. Our only concern is that the Guild has provided a response to our objections.

PN13586

JUSTICE ROSS: I haven't seen that.

PN13587

MR MOORE: Well, in substance - and I hope this is an accurate summary - it doesn't contain anything in the nature of concessions to the objections we make.

And it's for that reason that we're not in a place where that sort of dialogue has occurred to date.

PN13588

JUSTICE ROSS: Yes. The risk the Guild runs - if you don't come up with source material or supporting, the risk you run is the objection is upheld and the material is excised. And I don't think that's - it's not a course desired from our end, but it's one that fairness might necessitate. And look, it may be that if some of the source material, you want to express a reservation about or an opportunity to look at it, that may mean that either the witness can be recalled or you can seek leave for a further witness to make some statements about that material, given the time at which you're received it.

PN13589

We can deal with unfairness in those ways, but hopefully we can deal with the bulk of his evidence on the time that's presently scheduled.

PN13590

MR SECK: I think so, your Honour. I suspect much of the material which is contained in Mr Armstrong's statement is sourced in a lot of the annexures. There just hasn't been the process of liking it to particular paragraphs.

PN13591

JUSTICE ROSS: Yes.

PN13592

MR SECK: And to the extent that there is material which hasn't been annexed, we will obviously provide it and deal with the additional information, such as survey participants and response rates, et cetera.

PN13593

JUSTICE ROSS: Yes. And if that material isn't provided in a timely way, then he may be recalled to give evidence on a later occasion about those narrow issues. But I would also encourage you to give some thought to which parts of his statement can be characterised as submission, and that way we can deal with the objections on that basis.

PN13594

MR SECK: May it please your Honour.

PN13595

MR MOORE: And I can indicate to facilitate these sorts of discussions, if the parts which are in the character of editorial comment are put forward as submission, we would be minded to withdraw our objection on that basis, as we have in the previous case.

PN13596

JUSTICE ROSS: Okay. Yes. And look, from our perspective it is helpful because it points out what you want to draw from the source material, but it's not evidence in the sense that it's a lay witness pointing out bits in the document that's

presently before I. It can just as easily be done by submission, but we would be content to leave it in the statement as long as it has the character.

PN13597

MR SECK: Your Honour - - -

PN13598

JUSTICE ROSS: So you will make your point, and I don't see that you're prejudiced by it. And at the same time, the SDA can, in due course, make its own submissions about what it takes from that material.

PN13599

MR SECK: Your Honour, I think that's a very pragmatic way moving forward, and we will endeavour to try to frame our evidence in that way.

PN13600

JUSTICE ROSS: All right. Thank you. Can we call the first witness.

PN13601

MR SECK: Yes, your Honour. I call Samantha Jane Kourtis. Just one thing, your Honour, whilst I'm on my feet. The Guild is not pressing, and hopefully the Bench has the redacted versions of Ms Kourtis's statement - - -

PN13602

JUSTICE ROSS: We do.

PN13603

MR SECK: Paragraphs 22, 23 and 26.

PN13604

JUSTICE ROSS: Does that resolve - - -

PN13605

MR SECK: Yes. It does resolve the objections, your Honour.

PN13606

JUSTICE ROSS: Thank you.

PN13607

THE ASSOCIATE: Please state your full name and address.

PN13608

MS KOURTIS: My name is Samantha Jane Kourtis, at (address supplied)

**<SAMANTHA JANE KOURTIS, SWORN** [9.48 AM]

**EXAMINATION-IN-CHIEF BY MR SECK** [9.49 AM]

\*\*\* SAMANTHA JANE KOURTIS

XN MR SECK

PN13609

MR SECK: Ms Kourtis, your occupation is a pharmacist. That's correct?---That's correct.

PN13610

And you're the pharmacist in charge at the Capital Chemist, Charnwood. That's correct?---Yes.

PN13611

You prepared an affidavit in these proceedings dated 10 August 2015. That's so?---Yes.

PN13612

Do you have a copy in front of you?---I do.

PN13613

Ms Kourtis, have you had an opportunity to read your affidavit recently?---Yes.

PN13614

Do you wish to make any changes to the contents of your affidavit?---No, I don't.

PN13615

Are the contents of your affidavit true and correct to the best of your knowledge and belief?---Yes, they are.

PN13616

I read the affidavit.

PN13617

JUSTICE ROSS: I will mark the affidavit exhibit PG8.

**EXHIBIT #PG8 AFFIDAVIT OF SAMANTHA KOURTIS DATED  
10/08/2015**

PN13618

MR SECK: May it please.

PN13619

JUSTICE ROSS: Mr Moore.

PN13620

MR MOORE: Thank you, your Honour.

**CROSS-EXAMINATION BY MR MOORE**

**[9.50 AM]**

PN13621

MR MOORE: Good morning, Ms Kourtis. Have I pronounced your name correctly?---You did, thank you.

\*\*\* SAMANTHA JANE KOURTIS

XXN MR MOORE

PN13622

I see that you became - you were registered as a pharmacist in December 2004. When did you commence as a partner in the Capital Chemist at Charnwood?---My partnership commenced on 1 May 2013.

PN13623

All right. So 1 May 2013 - had you been a proprietor of any pharmacy, either as a sole trader or as a partner before that time?---No.

PN13624

You worked as an employee pharmacist before that time, had you?---That's correct.

PN13625

Do you - are you a proprietor or partner in any other pharmacies?---No, I'm not.

PN13626

In paragraph 8 you set out the Capital Chemist Charnwood's trading hours. I take it they've remained unchanged since you started as the proprietor in May 2013?---No, they have changed.

PN13627

All right, how have they changed?---On 14 October 2013 they changed from 8 am till 7 pm Monday to Friday, to 7.30 am to 9 pm Monday to Friday.

PN13628

Sorry, just bear with me, it's a bit early in the morning?---Yes.

PN13629

So 14 October what year?---2013.

PN13630

Yes - they changed from what on week days?---8.30 - from recollection I believe it was 8.30. It could have been 8 o'clock in the morning, Monday to Friday, till 7 pm at night. So they were the original trading hours.

PN13631

I see?---They changed to the hours in the affidavit: weekends were - Sundays were definitely 9 o'clock till 7. Saturdays may have been 9 o'clock until 7 as well. Sorry, I didn't realise that question would come up. I can't remember. It's been a while. But we certainly weren't trading until 9 o'clock and our Saturday hours definitely we opened earlier, opening at 7.30 in the morning.

PN13632

On Saturday?---Yes.

PN13633

So you don't - as best you can recollect, in October 2013 - so five months or so after you commenced as a partner in the business - the week-day trading hours were expanded from 8.30 to 7 to 7.30 to 9?---Correct.

\*\*\* SAMANTHA JANE KOURTIS

XXN MR MOORE

PN13634

In relation to Saturdays, were the Saturday trading hours expanded as best you recollect?---They were. They were definitely expanded from 7 pm at night to 9 pm at night and we opened at 7.30 in the morning and I believe from memory we were previously opening at 9 o'clock in the morning.

PN13635

I see. The Sunday trading hours, were they also expanded to what they are now?---Yes.

PN13636

What were they previously, as best you recollect?---I believe they were 9 till 7.

PN13637

I see?---Then we extended them 9 till 9.

PN13638

Public holidays, were those trading hours changed?---Significantly: they were - it depended on what public holiday of the year but they were 9 am till 3 or 4 pm.

PN13639

I see?---We changed them from 9 am till 9pm, still maintaining the three days a year that we closed.

PN13640

I follow, thank you. In paragraph 10 you refer to public holidays and one thing you say there is that the pharmacy doesn't open on public holidays as it's difficult to get staff to work. On public holidays, do you pay double-time-and-a-half to your staff?---I do. I pay the award wage as per the penalties in the award.

PN13641

JUSTICE ROSS: Mr Moore, I think paragraph 10 isn't referring to all public holidays but just the public holidays that are noted on paragraph 9.

PN13642

MR MOORE: Thank you, your Honour. That is of course correct. As you say in paragraph 9, you're open on all public holidays, save for the three you identified so in relation to the public holidays that you do trade on you pay your staff the award penalty of double-time-and-a-half?---Correct.

PN13643

Now, in paragraph 15 you refer to a number of additional services offered by Capital Chemist and there is a fairly long list of them. Am I right in thinking that in relation to some of those services, that the pharmacy charges a fee to customers when obtaining those services?---That is correct.

PN13644

Which ones?---We charge a fee for Webster-Pak-ing.

\*\*\* SAMANTHA JANE KOURTIS

XXN MR MOORE

PN13645

Is that - yes, (b), yes, thank you?---We charge a fee for our dose administration aid program. We charge a fee for patient medication profile program. We charge a fee for hire. We charge a fee for Improvy weight loss program. We charge a fee for our maternal and child health nurse to go and do home visits. We charge fees for our wound care service. We charge fees for COPD screening, which comes under asthma services. We charge fees for elements of our diabetes clinic, elements of our home delivery service and elements of our cardiovascular screening.

PN13646

JUSTICE ROSS: Sorry, COPD, is that chronic - - - ?---Chronic obstructive pulmonary disease.

PN13647

MR MOORE: You didn't refer to MedChecks on (a), that is not one that you charge a fee for?---We actually do. The government has several positions which are government funded for eligible patients and if a patient is not eligible for government funding we will charge them.

PN13648

In terms of funding provided by government for the provision of any of the services to which you refer in paragraph 15. You have indicated that in (a) for MedChecks funding is provided by government for some patients for the provision of that service, is that right?---Correct.

PN13649

In relation to the remaining services you there set out, is funding provided for by the Commonwealth for any of those?---There is an element of the Community Pharmacy Agreement which provides funding for parts of dosage administration aids.

PN13650

Anything else?---No, there's no other federal funding.

PN13651

Any other government funding?---Our smoking cessation service is part of an ACT government pilot program and we have received a portion of funding for that service.

\*\*\* SAMANTHA JANE KOURTIS

XXN MR MOORE

PN13652

Could I ask you to look at paragraph 30. You say there that at the times when penalty rates are incurred it is not possible to offer a number of services including - and you then set out five services. Can you be a bit more specific there and tell the Commission what times it's not possible to provide those services?---It varies. So during the week we have these services available standardly between the hours of 8.30 am and 7 pm, Monday to Friday. But there are often instances where we have, say, a mother with a baby who can't drive and so she negotiates with us for her husband to drive her down to see our match nurse before that time, so he can get to work. So we will often change that depending on patient needs. In terms of

weekends and public holidays we don't routinely ever offer these services and the only time we would was when we have a patient in crisis.

PN13653

If you could please look at paragraph 33. You there are referring to the proposal put by the Guild in this proceeding and you say that if the proposal was accepted by the Commission it would allow you to extend the trading hours even further to open from 7.30 am to 9 pm every day. I take it that what you are saying there is that that is something you would think about doing in the event the proposal was accepted. But you are not in a position now to say that that is something you would likely do?---My heart believes that that is something I am likely to do because I hear the community need.

PN13654

So by that I gather you mean that you are keen to do that?---Very keen and my community is encouraging me to do that.

PN13655

But you haven't sat back and made a decision that that's something you would do or likely do?---I don't quite get the question.

PN13656

Have you, in light of the Guild proposal, you haven't made a decision in your own mind that well, if that proposal's granted I will extend the trading hours from 7.30 to 9 pm every day?---I don't have a yes or no answer for that question, if that's - - -

PN13657

So your answer is you don't know?---Correct.

PN13658

Looking at the Guild proposal - I'm sorry, looking at what you say you may or may not do, or that you'd be keen to do I think your evidence is in paragraph 33, putting public holidays to one side for a moment, the upshot of that would be that if you did extend your trading hours, the upshot would be that there would be only an additional one and a half hours additional trading, being those extra hours on Sunday beyond what you current trade?---So can I just clarify that I understand the question?

PN13659

I'll put it again if you like, to clarify?---Yes.

PN13660

If you increased your trading hours from 7.30 to 9 pm every day, that would involve only an increase of one and a half hours trading per week in your case. That's so?---In terms of trading hours, that's correct.

PN13661

I take it that - and that one and a half hours would be early on a Sunday morning?---That's correct.

\*\*\* SAMANTHA JANE KOURTIS

XXN MR MOORE

PN13662

I take it if you increased the trading hours at that time for an extra hour and a half on a Sunday morning you, before you did that, you'd want to be satisfied that there was sufficient business or trade to justify that extension?---Yes.

PN13663

Before you made a decision to do that you would address yourself to that matter?---Yes, that would be one element I would consider.

PN13664

Another element you would consider is calculate the difference in labour costs between double time and time and a half for those hours?---That would be one of two other elements I'd consider.

PN13665

I gather that the import of your evidence is that if the Guild proposal was accepted, you would shut on public holidays?---No.

PN13666

You say that casuals generally work on public holidays. You say that in paragraph 28, and you say that it's difficult to get them to work and you pay them double time and a half. You understand that the Guild proposal is that casuals would get time and a quarter on public holidays. You understand that?---I understand that the Guild's proposal is that casuals would get time and a quarter on public holidays, yes.

PN13667

So in having operated your business for a couple of years in circumstances where you can't get staff to work at double time and a half, you would accept would you not that you've got no serious prospect of inducing casuals to work on public holidays at time and a quarter?---The main challenge I have with my casuals is not the pay rate, it's their social life.

PN13668

They don't want to work on public holidays?---Because they are doing fun things.

PN13669

So I'm suggesting to you that if you can't - if they don't want to work for you on a public holiday at a double time and a half, you're hardly going to change their minds by offering them time and a quarter. Do you accept that?---I don't believe that the pay rate would change their minds whether it's double time and a half or time and a quarter. There's a lot more that comes into it for my staff to sign into work.

PN13670

I'd suggest to you that if the Guild proposal was accepted the natural consequence is that you wouldn't be able to trade on public holidays. Do you accept that's likely? Because you wouldn't have staff?---No, I don't. I can explain why.

\*\*\* SAMANTHA JANE KOURTIS

XXN MR MOORE

PN13671

Now you say that if the claim put by the Guild was accepted and you say this in paragraph 35, it means you could roster more staff on and hire additional staff members?---That is correct.

PN13672

I take it you haven't given that possibility any detailed consideration, that that's a possibility that you would see as something you would turn your mind to in the event that the Guild proposal was accepted?---My staff and I have had long conversations about what services we could offer if we could afford to employ more staff on these days.

PN13673

Would I be right in thinking obviously you take a genuine interest in the work of your staff members and their professional development, that's right?---That is very true.

PN13674

I would gather then that in the event that there was an extension in your trading hours, as a result of the Guild proposal being accepted, which translates into an extra one and a half hours on Sunday mornings, that that would be filled by offering additional hours to your existing staff. Is that right?---Correct, yes.

PN13675

It's hard to see that that would result in you employing any new staff. Do you accept that?---No.

PN13676

Nothing further, thank you.

PN13677

JUSTICE ROSS: Can I just ask you a question about paragraph 34 of your statement, can I take you to that?---Yes.

PN13678

Where you say there you would also be able to offer all of the additional services to patients at all times, is that a reference to the additional services at paragraph 30 of your statement?---At least those services and that's where I'm excited about where I can make more of a contribution to my community.

PN13679

My understanding of your evidence about the services at paragraph 30 is that - leave aside the baby clinic which might be subject to some changes to meet the needs of patients. The services were not routinely offered on weekends or public holidays, they were mainly Monday to Friday services. Is that right?---That's correct.

PN13680

Thank you. Anything further.

\*\*\* SAMANTHA JANE KOURTIS

XXN MR MOORE

PN13681

COMMISSIONER HAMPTON: Yes. Ms Kourtis, where you say at 28, "Casual members generally work on weekends and public holidays". I take it you don't mean that only casual workers?---No, my permanent staff also work. They are required to work weekends and public holidays and my business requires their professional expertise to work those days as well.

PN13682

So what would a typical staffing configuration be for a public holiday?---On a public holiday I have obviously a pharmacist present from 9 am to 9 pm, and I have a second pharmacist present from 10 am to 7 pm. I've got - - -

PN13683

Are they both full-timers?---Yes. No, they're all permanent staff but some of them are permanent part-time because they have families. I also employ from 9 till 6 on public holidays a qualified dispensary technician and for every hour of trade there is a senior permanent pharmacy assistant that's there as well. Then the remaining - there are at least two casual staff there for the rest of trade and on our busy periods, which are usually between 10 and 12, there's another staff member from usually 3 till 7, there's another member as well.

PN13684

Who is what?---A casual generally.

PN13685

Now you were asked some questions about well if the Guild's proposal on public holidays was accepted what, if any, changes do you envisage if that were to happen?---The greatest impact these changes will have on my business is my ability to put qualified healthcare professionals on the floor to deliver healthcare services to the people who need it. In my demographic the majority of my income earners work Monday to Friday 9 till 5, and they need access to services once they finish work. So I see a huge need for them to need to get these services after they finish work in evenings and weekends.

PN13686

COMMISSIONER HAMPTON: In terms of staffing are those qualified healthcare professionals - I think is the term you used?---Yes.

PN13687

Are they weekly hired, that is full-time or part-time employees?---Yes, and they are currently there but the majority of my business is dispensing prescriptions and when I look at the professional service that we do, it's a really important part of what we do but it's such a tiny part the income generated, and so there's a huge opportunity to do more in that space, keeping in mind that my core business is dispensing medications of prescriptions. So at the moment all those healthcare professionals are doing that.

\*\*\* SAMANTHA JANE KOURTIS

XXN MR MOORE

PN13688

DEPUTY PRESIDENT ASBURY: Ms Kourtis, can I just get you to clarify something for me. In paragraph 9 of your statement, you say that the chemist is

open except for Good Friday, Christmas Day and New Year's Day, and then in paragraph 10 you say that the pharmacy doesn't open on those holidays because it's difficult to get staff to work?---Mm-hm.

PN13689

Can you just clarify for me is it difficult to get staff to work on those public holidays or all public holidays? Does your evidence about that relate only to those three or to all public holidays?---I do generally in my experience have not struggled to fill a team out of my 44 staff to work the public holidays where open. When I've had conversations with my staff about opening those days they tell me what's important to them in their life, which is their family time and their social time and what they do New Year's Eve and at Christmas time, and that's where I say it's difficult to get staff to work those three days particularly.

PN13690

DEPUTY PRESIDENT ASBURY: Thank you. Can you also clarify for me, you said that the difference in labour costs would be one of the factors that would make a difference to you opening for longer periods. Can you tell me - and you mentioned two other factors that you'd consider. What would those factors be?---I did. So I understood that question to be would the main factor be that you can trade an extra hour and a half a week. To me that's not the most important thing on the table for my community. With this proposal, if it went through, it would mean I could employ more healthcare professionals to provide the services to my community, so it's not just about that hour and a half on the Sunday or the three public holidays. It's what I could do with my staff that would make a difference.

PN13691

Thank you.

PN13692

JUSTICE ROSS: Anything arising Mr Moore, that you want to cross on?

PN13693

MR MOORE: No, thank you, your Honour.

PN13694

JUSTICE ROSS: Re-examination?

PN13695

MR SECK: No, your Honour.

PN13696

JUSTICE ROSS: Thank you very much for your evidence, Ms Kourtis. You're excused?---Thank you.

<THE WITNESS WITHDREW

[10.13 AM]

PN13697

Next witness.

\*\*\*

SAMANTHA JANE KOURTIS

XXN MR MOORE

PN13698

MR SECK: I call Kin Chong. Just so the Bench knows we've swapped Mr Chong with Mr Playford so they've just moved - - -

PN13699

MR MOORE: No objections.

PN13700

MR SECK: My learned friend tells me there are no objections, your Honour.

PN13701

JUSTICE ROSS: To the moving or to the statement? To the moving of the witnesses or to the statement?

PN13702

MR MOORE: Neither.

PN13703

JUSTICE ROSS: Thank you.

PN13704

THE ASSOCIATE: Please state your full name and address?

PN13705

MR CHONG: My name is Kin Chong (address supplied).

**<KIN CHONG, SWORN**

**[10.14 AM]**

**EXAMINATION-IN-CHIEF BY MR SECK**

**[10.14 AM]**

PN13706

MR SECK: Mr Chong, your occupation is as a pharmacist, that's correct?---That's correct.

PN13707

You are a proprietor of Kerang Terry White Chemist, that's correct?---That's correct.

PN13708

You have prepared an affidavit in these proceedings which was - an undated affidavit in these proceedings. That's correct, Mr Chong?---That's correct.

PN13709

Have you got a copy of your affidavit with you in the witness box?---Yes, I've got it open.

PN13710

Have you read it recently?---Yes.

\*\*\* KIN CHONG

XN MR SECK

PN13711

I understand you wish to make some minor changes to your affidavit. That's correct, Mr Chong?---That's correct.

PN13712

Can I take you to paragraph 10 of your affidavit. I understand you wish to make some changes to the numbers. Can you inform the Commission of the changes you wish to make to paragraph 10?---So unfortunately I haven't - the copy I got - sorry.

PN13713

Can I read out the numbers I have here and you can confirm that these are the changes you wish to make?---Please, yes.

PN13714

To paragraph 10(c), you wish to change it from "five part-time" to "four part-time level 1 pharmacy assistants", that's correct?---That's correct.

PN13715

You wish to also insert "three casual level 1 pharmacy assistants", that's correct?---That's correct.

PN13716

Subparagraph (d), you wish to change it from "two full-time" to "three full-time level 3 pharmacy assistants", that's correct?---That's correct.

PN13717

From "four part-time" to "two part-time level 3 pharmacy assistants"?---That's correct.

PN13718

In subparagraph (e), you wish to change it from "one full-time" to "two full-time level 4 pharmacy assistants", that's so?---That's correct.

PN13719

You want to cross out the reference to the "five part-time pharmacy assistants"?---That's correct.

PN13720

You also wish to make a change to paragraph 14, is that correct Mr Chong?---That's right.

PN13721

It now reads "two hours' drive away", you wish to change that to "one and a half hours drive away", that's right?---Yes, it all depends how you drive.

PN13722

Depends on what you - - -

PN13723

JUSTICE ROSS: Stick within the speed limit, how would that - - -?

\*\*\* KIN CHONG

XN MR SECK

PN13724

MR SECK: That's right. Lastly, Mr Chong, can I take you to paragraph 28 of your affidavit?---Yes.

PN13725

In the second line of that affidavit you wish to put in the words, before the word "I", "my business partners and I", is that right?---That's correct.

PN13726

Then after the word "work" in the second line, you wish to insert the word "some", that's right?---Yes, that's correct.

PN13727

So it should read this:

PN13728

*As noted above, in an attempt to save costs and reduce the impact of penalty rates on our business, my business partners and I work some days that attract penalty rates.*

PN13729

That's correct?---That's correct.

PN13730

Do you wish to make any other changes - pardon me. One more change, Mr Chong. Paragraph 32?---Yes.

PN13731

Again, you wish to change "two hours away" in the last line to "one and a half hours away"?---For the same reason as - - -

PN13732

As the previous one. I think that covers the changes you wish to make, Mr Chong.

PN13733

JUSTICE ROSS: Do the changes to paragraph 10 affect the total numbers of employees?

PN13734

MR SECK: I think that's right, your Honour.

PN13735

JUSTICE ROSS: So does it come down from 16 to 15 or something like that?

PN13736

MR SECK: We're doing our maths?---My apologies.

PN13737

JUSTICE ROSS: No, it's more.

\*\*\* KIN CHONG

XN MR SECK

PN13738

MR SECK: I've got 19.

PN13739

JUSTICE ROSS: Yes, I think that's right.

PN13740

MR SECK: Mr Chong, if we change paragraph 10 from 16 staff to 19 staff, we've done the maths, are you content with that?---Yes.

PN13741

Subject to those changes, Mr Chong, do you wish to make any other changes to your affidavit?---No.

PN13742

Are the contents of your affidavit with those changes true and correct to the best of your knowledge and belief?---Yes.

PN13743

I read the affidavit.

PN13744

JUSTICE ROSS: I'll mark the affidavit exhibit PG9.

PN13745

MR SECK: May it please.

**EXHIBIT #PG9 AFFIDAVIT OF KIN CHONG**

PN13746

JUSTICE ROSS: Mr Moore.

**CROSS-EXAMINATION BY MR MOORE**

**[10.19 AM]**

PN13747

MR MOORE: Mr Chong, when did you start operating the Kerang pharmacy as a proprietor?---As of tomorrow for 10 years.

PN13748

Ten years tomorrow?---Yes, 10 year anniversary tomorrow.

PN13749

MR MOORE: In paragraph 7 you say you decided to operate the Kerang pharmacy because your old boss was retiring and there would have been no-one else to run it and you felt that, "If I did not continue operating the pharmacy the town would have suffered as it would be deprived of an essential, medical service." So I take it what you're there saying is you commenced operating the pharmacy as a proprietor out of a sense of a public duty you felt, is that right?---Yes.

\*\*\* KIN CHONG

XXN MR MOORE

PN13750

Did you also become a partner or proprietor at any of the other four pharmacies that you are a partner in out of a sense of public duty?---Yes.

PN13751

So there is quite a few interests you have, isn't there, Mr Chong, in pharmacies?---Please clarify? I'm not sure what you are referring to.

PN13752

Well, you've told the Commission about the Kerang pharmacy but you've actually got interests in another four pharmacies, is that right?---Yes.

PN13753

There's the Castlemaine Chemmart pharmacy?---Yes.

PN13754

Are you a partner or a sole proprietor of that pharmacy?---I'm a partner in that business.

PN13755

There is another one in Castlemaine, the Thomas and Chong pharmacy?---That's correct.

PN13756

Are you a partner or sole proprietor of that?---I'm a partner in that.

PN13757

There is the - I think you actually own two pharmacies in Kerang, is that right? The one that you refer to here - - -?---No, that's not correct.

PN13758

That's not correct, okay. Do you own the or have an interest in the Kerang Chemmart pharmacy?---No, that's no longer exists.

PN13759

I see. You used to?---Back in the days, yes.

PN13760

Until when?---Go with my memory? Not very good at the moment - about three years ago.

PN13761

Until three years ago, all right. There is the Barham Chemmart pharmacy; is that - are you a partner in that?---Yes, I am, but that's across the border; that's in NSW.

PN13762

Yes. So that's three in addition to the Kerang Terry White chemist. What's the fourth one?---The fourth one is in Mooroopna.

\*\*\* KIN CHONG

XXN MR MOORE

PN13763

Mooroopna?---Yes.

PN13764

What's that one called?---Mooroopna Chemmart pharmacy.

PN13765

Chemmart pharmacy - over what period of time did you assemble this set of interests in pharmacies?---Over the past 18, 19 years.

PN13766

18, 19 years?---Yes.

PN13767

Is the Castlemaine Chemmart pharmacy open seven days?---Yes.

PN13768

How many people do you employ there, approximately?---Approximately? Around the same sort of numbers as Kerang.

PN13769

About 19?---Yes - it would be less, actually.

PN13770

15?---15, let's say.

PN13771

The Thomas and Chong pharmacy in Castlemaine; is that open seven days?---No.

PN13772

Six days, is it?---Five days.

PN13773

Five days, all right - how many do you employ there, approximately?---Four.

PN13774

Four? The Barham Chemmart pharmacy, is that a seven-day-a-week operation?---No, it's five-and-a-half days or six days.

PN13775

Sixth day being a Saturday, is it?---Yes.

PN13776

How many do you employ there?---Probably about 10.

PN13777

The Mooroopna, is that five or six or seven days?---Five-and-a-half days - six days.

\*\*\* KIN CHONG

XXN MR MOORE

PN13778

Yes. How many do you employ there, approximately?---One.

PN13779

One. These pharmacies are part of something called the Thomas and Chong Group, is that right?---Yes.

PN13780

Thomas is a business partner of yours, is that right?---Yes.

PN13781

He's your partner or she's your partner in all of these pharmacies, is that right?---Except Mooroopna - Mooroopna is actually - I'm the sole proprietor in Mooroopna.

PN13782

I see, you're sole in Mooroopna and in all the other four you and Thomas are the two partners?---That's correct.

PN13783

I see. Does the Thomas and Chong group or do you and - I'm sorry, is it Mr Thomas or Ms Thomas?---Mr Thomas.

PN13784

Does the Thomas and Chong group or you and Mr Thomas have other business interests or commercial interests other than the five pharmacies?---Can you clarify?

PN13785

Do you own any other businesses?---No.

PN13786

Do you own any other property?---Property?

PN13787

MR SECK: Objection - relevance.

PN13788

MR MOORE: Well, I'll ask the question more specifically: do you have any other business interests in the nature of property that you own yourself or with Mr Thomas?

PN13789

MR SECK: Objection: relevance.

PN13790

JUSTICE ROSS: What is it?

PN13791

MR MOORE: Well, I'm getting a sense of the witness's commercial interests.

\*\*\* KIN CHONG

XXN MR MOORE

PN13792

JUSTICE ROSS: Well, you might ask him if there's any commercial interests outside of the pharmacies.

PN13793

MR MOORE: Mr Chong, do you have any other commercial interests outside of the five pharmacies?---Me personally? No.

PN13794

Thank you. I take it - you've acquired this set of interests in five pharmacies over the last 18, 19 years, I think you said?---That's correct.

PN13795

Each of the pharmacies, I take it, are profitable, going concerns?---No.

PN13796

All right?---I would say no, because you said, "all."

PN13797

I see, so are you suggesting that one or more is not profitable?---That's correct.

PN13798

Okay. So which is the - which one or more are not profitable?---Mooroopna pharmacy is not profitable. Thomas and Chong pharmacy is not profitable.

PN13799

The others are?---If you ask me this question - I think we need to quantify that. It doesn't matter if you ask me -those two shops meet the actual industry benchmarking. Kerang Terry White chemist is not.

PN13800

I'm not asking you about industry benchmarking. I'm asking you simply whether or not they're profitable or not in the accounting sense of a profit-and-loss statement?---If you said am I losing money, is that what you mean?

PN13801

Do you understand what a profit-and-loss statement is?---Depends on how you define it.

PN13802

Do you know what a profit-and-loss statement is?---I have my understanding.

PN13803

Do you have accountants?---Yes, I do.

PN13804

Do they produce for you on a regular basis a profit-and-loss statement?---Yes, they do.

\*\*\* KIN CHONG

XXN MR MOORE

PN13805

Do they produce for you a profit-and-loss statement in relation to each of these five pharmacies?---Yes, they do.

PN13806

Do they produce that on an annual basis?---Yes, they do.

PN13807

Do they produce it on a monthly basis for you?---No.

PN13808

I see. All right, so you read the profit-and-loss statements, no doubt, they give you?---Yes.

PN13809

Does the profit-and-loss statements you provided in relation to - is your evidence that the profit-and-loss statements that you're given in relation to these five pharmacies record a loss in relation to the Thomas and Chong pharmacy and the Mooroopna pharmacy at the present time?---Yes.

PN13810

The others would record a profit?---Yes.

PN13811

All right. Is the - when did you open the Mooroopna one?---About three years ago; around then.

PN13812

Has it been profitable - you say at the present time Mooroopna is not profitable. Has it been profitable or unprofitable during those three years?---They've all been unprofitable throughout.

PN13813

Unprofitable? With the Thomas and Chong pharmacy in Castlemaine, how long have you operated that for?---13 years.

PN13814

You say that's presently not profitable; how long has it not been profitable for?---Probably for about three or four years.

PN13815

I call for production of the profit and loss statements for each of the past three years in relation to the Thomas and Chong Pharmacy Castlemaine, and the Mooroopna Chemmart Pharmacy.

\*\*\* KIN CHONG

XXN MR MOORE

PN13816

MR SECK: Your Honour, can I object to the call for this reason: on the previous calls the documents sought were directed to a very focused issue; that is the calculation of profitability during specific times, in particular, Sundays and public holidays. In this case the profit and loss statements sought relate to two

pharmacies in a general sense. It hasn't been established yet why those documents are relevant.

PN13817

JUSTICE ROSS: Anything you want to say about that?

PN13818

MR MOORE: No, your Honour. I think - - -

PN13819

JUSTICE ROSS: We will adjourn for five minutes.

**<THE WITNESS WITHDREW [10.34 AM]**

**SHORT ADJOURNMENT [10.34 AM]**

**RESUMED [10.40 AM]**

**<KIN CHONG, RECALLED [10.40 AM]**

**CROSS-EXAMINATION BY MR MOORE, CONTINUING [10.40 AM]**

PN13820

JUSTICE ROSS: Mr Moore, can I just ask you to clarify what the documents are that you're calling for. The profit and loss statements for the three years, what, ending 30 June this year?

PN13821

MR MOORE: Correct.

PN13822

JUSTICE ROSS: For what pharmacies; the ones that the witness has indicated that are operating a loss. Is that right?

PN13823

MR MOORE: Yes.

PN13824

JUSTICE ROSS: And they are?

PN13825

MR MOORE: Thomas and Chong Pharmacy Castlemaine and the Mooroopna - I think it's - Chemmart Pharmacy.

PN13826

JUSTICE ROSS: All right.

\*\*\* KIN CHONG

XXN MR MOORE

PN13827

Mr Chong, having regard to the fact that you've given evidence that those pharmacies are not operating at a profit, we will uphold the application to call for that material?---Yes.

PN13828

What you should do is contact the Guild and provide them with the materials?---Sure.

PN13829

And they will then provide it to Mr Moore?---Sure.

PN13830

Okay? Now, do you have any questions about what's being sought of you?---Yes. Can I actually just clarify, actually, what - when I was hearing the word "profitable". To me, definitely actually I know that as a fact, that actually Mooropna is making a loss; however, I'm actually not certain in this very moment actually if my Thomas and Chong Pharmacy in Castlemaine is running a negative.

PN13831

All right. That's fine. We can take - that can be your evidence and you can be asked questions about that?---Sure.

PN13832

But in order to clarify the position, if you can provide the profit and loss statements for the past three years in relation to both of those enterprises?---Sure. Yes.

PN13833

All right. Thank you.

PN13834

MR MOORE: Thank you, your Honour.

PN13835

Mr Chong, do your accountants provide you with consolidated accounts for the Thomas and Chong group?---Partly.

PN13836

Partly. What do you mean by partly?---He will consolidate the two of the one in Castlemaine, and also the two of the one in Barham, and also in Kerang.

PN13837

So there are consolidated accounts prepared for the Castlemaine pharmacies and consolidated accounts prepared for the Kerang and Barham pharmacies. Is that right?---That's correct.

PN13838

Why is that approach adopted, do you know?---It's a different structure.

PN13839

What is a different structure?---This has a different partnership, ownership structure.

\*\*\* KIN CHONG

XXN MR MOORE

PN13840

I understood from your evidence before that all of the - perhaps I'm mistaken, but please tell me if I am - I understood that your evidence was that in all of the pharmacies you were in partnership with Mr Thomas?---That's correct.

PN13841

I see. So the partners are the same, but there are different structures established?---There's different percentage of ownership.

PN13842

I see?---If you like to call that.

PN13843

I see. And so with those two sets of consolidated accounts, is there then a further consolidated set of accounts which reveal or record the financial position of the group overall?---I don't believe so.

PN13844

Do the consolidated accounts reveal that the pharmacies within the Castlemaine group, if I can call it that - the two pharmacies in Castlemaine - that they have been and are operating profitably?---In - sorry?

PN13845

In the Castlemaine group of consolidated accounts?---Yes.

PN13846

All right. And do the consolidated accounts which cover the Kerang and Barham pharmacy, do they also record that those businesses collectively are operating and have been operating profitably?---Yes.

PN13847

Thank you. Now there's no mention in your statement of these other four pharmacies, is there?---(No audible reply)

PN13848

There's no mention in your affidavit of the other four pharmacies you've got an interest in, that's so?---That's right.

PN13849

You don't talk about the Thomas & Chong group in your pharmacy - in your affidavit, I'm sorry?---No.

PN13850

The reality is that your commercial interests in the form of the five pharmacies that you operate or have an interest in, are far greater than you present in your affidavit. That's so?

PN13851

MR SECK: Objection. I think the question relies on a premise that it somehow is misleading that he hasn't actually disclosed all these other matters.

\*\*\* KIN CHONG

XXN MR MOORE

PN13852

JUSTICE ROSS: He's entitled to ask the question.

PN13853

MR SECK: Well it's the way it's framed, your Honour. It's - - -

PN13854

JUSTICE ROSS: Why? He's asking the reason why he didn't disclose the other interests.

PN13855

MR SECK: Well he says your interests are far greater, as if - - -

PN13856

JUSTICE ROSS: On his evidence they are.

PN13857

MR SECK: I think the implicit suggests - I won't press it any further, your Honour.

PN13858

JUSTICE ROSS: No. Mr Moore.

PN13859

MR MOORE: Do you understand the question?---Not really.

PN13860

Do you need me to repeat it?---Please.

PN13861

The reality is that your commercial interests are far greater than is disclosed in your affidavit provided to this Commission?

PN13862

JUSTICE ROSS: In pharmacies because that's all he's disclosed.

PN13863

MR MOORE: In pharmacies. Do you want me to repeat the question?---Yes, I'm very lost, sorry.

PN13864

You're lost?---Yes.

PN13865

It's a simple question. The reality is that your commercial interests in pharmacies are far greater than what you have revealed in your affidavit filed in this proceeding. That's so?---The affidavit was made actually isolating one of my stores and that's actually how I made my affidavit.

\*\*\* KIN CHONG

XXN MR MOORE

PN13866

So is the answer to my question yes?---If you're talking about the commercial sense, this pharmacy is actually one of the - one of the actual more - I have quite a large weight on the commercial sense in this particular one for the pharmacy I'm more - - -

PN13867

I'll ask the question for a third time. Your commercial interest in pharmacies are far greater than what you have revealed in your affidavit for this Commission. Accept that?---Yes.

PN13868

Collectively, across the five pharmacies you employ about - your partners, partner, employ about 50 people. That's about right?---About right, yes.

PN13869

What's the turnover approximately across the five pharmacies?---Maybe four - say about 12 million.

PN13870

Per annum?---Yes.

PN13871

What's the turnover approximately of the Kerang Terry White Chemist?---About 4.4.

PN13872

Pardon?---About 4.4 million a year.

PN13873

Can I suggest to you that the reason that you didn't make any reference in your affidavit to your other commercial interests in pharmacies is because you wanted to give the impression to this Commission of being a small business operator, driven by a sense of public duty. That's so?---No.

PN13874

The reality is that you are substantially motivated by the pursuit of legitimate commercial goals, that's right?---Can you rephrase that question?

\*\*\* KIN CHONG

XXN MR MOORE

PN13875

The reality is notwithstanding what you say in paragraph 7 where you suggest in answer to a question by me before that you bought a pharmacy out of public duty. The reality is you have been acquiring and developing a substantial set of commercial interests, that's so?---I acquire actually the stores because actually one thing that we didn't realise was actually in a pharmacy setting, because everything has to operate in an ethical and also actually according to the law. Being three and a half hours, four hours from Melbourne, it's impossible almost or actually it's very hard to actually get any qualified to the area. Unless someone actually agreeing and put up with the work hours, it actually has been very hard to get qualified pharmacists actually into the area, let alone someone take over the shops.

PN13876

I want to focus on the pharmacy that you elected to tell the Commission about, the Kerang pharmacy that you refer to in your affidavit. In paragraph 8 you set out its trading hours. I'm sorry I've forgotten your evidence earlier this morning. Have you operated the Kerang pharmacy for 10 years did you say?---That's right.

PN13877

Thank you. Have those trading hours that you describe in paragraph 8 remained unchanged over that period?---No, the Sunday hours has only been in operation for the last three years, and the public holidays as well.

PN13878

Just so I'm clear then, without holding you to a specific - I'll withdraw that. The Sundays - you trade on Sundays between 10 and 1 and you trade on all public holidays save for Christmas Day and Good Friday?---Except Christmas Day and Good Friday.

PN13879

Yes. That's something you've been doing at Kerang for the last three years?---That's right.

PN13880

Before that you did not do that?---No.

PN13881

When you say in paragraph 12;

PN13882

*Due to penalty rates in the award we have had to restrict our opening hours, especially on Sundays and public holidays -*

PN13883

that's not right, is it?---Sorry?

PN13884

Do you not understand the question?---No, no, I'm not sure. Can you please clarify?

PN13885

You understand that the - do you know what the Pharmacy Industry Award 2010 is?---Yes, well not to specific, yes, but I have a good feel on it, yes.

PN13886

You understand that it requires employers such as yourself to pay penalty rates on Sundays?---Yes.

PN13887

Those penalty rates are double time?---Would be more than that I think.

\*\*\* KIN CHONG

XXN MR MOORE

PN13888

I can tell you that the penalty rates the award imposes on Sundays are double time?---Yes.

PN13889

And double time and a half on public holidays?---Yes.

PN13890

Does that accord with your understanding generally?---Yes, that's right.

PN13891

That award has been in operation since 2010?---Yes.

PN13892

Your evidence is that you only started trading in Kerang on Sundays and public holidays in 2012?---Yes.

PN13893

So what I'm suggesting to you is that penalty rates in the award have not restricted your opening hours on Sundays and public holidays as you suggest. In fact you have been able to expand your opening hours on those days. Do you accept that?---No.

PN13894

MR SECK: Objection.

PN13895

JUSTICE ROSS: Do you want it heard without the witness present?

PN13896

MR SECK: It might be appropriate, your Honour.

PN13897

JUSTICE ROSS: Yes. Would you mind just stepping outside for a moment, Mr Chong?---Outside here?

PN13898

Yes, thank you.

<THE WITNESS WITHDREW

[10.54 AM]

PN13899

MR SECK: Your Honour, the objection is this. My learned friend's questions have related only to Sundays and that he's opened on Sundays for the last three years. The questions which - - -

PN13900

MR MOORE: That's not right.

\*\*\* KIN CHONG

XXN MR MOORE

PN13901

JUSTICE ROSS: No, he referred to Sundays and public holidays for the last three years. Paragraph 10 deals with both.

PN13902

MR SECK: I'm sorry, your Honour. I'd understood Sundays but if it was public holidays then I withdraw the objection.

PN13903

JUSTICE ROSS: Well it doesn't matter if it was Sundays, what would be the objection anyway?

PN13904

MR SECK: Sorry, your Honour?

PN13905

JUSTICE ROSS: Even if it was Sundays, what would the objection be? The witness has said that - in paragraph 10, that he's had to restrict his opening hours, especially on Sundays and public holidays and his evidence is in fact that he has extended the opening hours on those days in the past three years. That's what being put to him.

PN13906

MR SECK: The evidence as I understood it, your Honour, and I might be wrong, I'm just going on my notes, is that - and if I'm wrong I stand corrected, is that he had opened on Sundays for the last three years.

PN13907

JUSTICE ROSS: No. And public holidays.

PN13908

DEPUTY PRESIDENT ASBURY: And holidays.

PN13909

MR SECK: Pardon me. So if that's so, your Honour, then I withdraw - - -

PN13910

JUSTICE ROSS: That was his evidence that the Sunday and public holiday hours between 10 am and 1 pm had only been in operation for the past three years. Prior to that he did not open on those days. That's the state of his evidence.

PN13911

MR SECK: Your Honour, then I withdraw the objection.

PN13912

JUSTICE ROSS: Can we ask the witness be brought back in. If there's a need to clarify his evidence about that it can be done but that was my understanding of it.

PN13913

MR SECK: I didn't think there was any lack of clarity in the evidence the witness gave.

<KIN CHONG, RECALLED

[10.56 AM]

PN13914

MR MOORE: Mr Chong, perhaps I'll ask you that question again. In paragraph 12 you say in your affidavit that;

PN13915

*Due to penalty rates in the award we've had to restrict our opening hours especially on Sundays and public holidays.*

PN13916

Can I suggest to you and do you accept that that evidence is wrong because you have in fact expanded your opening hours on Sundays and public holidays, namely about three years ago, at which time penalty rates applied on those days. Do you accept that that's so?---I don't accept that. The reason is that my turnovers for those three years after I opened had not increased at all and my profitability actually overall has not increased due to the opening hours.

PN13917

So you're saying well, I haven't been able to further expand my Sunday and public holiday trading since 2012. Is that what you're saying?---Would I be able to give the reason why I opened on the Sunday or not really?

PN13918

You just need to answer my questions. I want to suggest to you that your evidence in paragraph 12 is wrong. You have on your own evidence expanded your opening hours on Sundays and public holidays in the period of operation of the current penalty rates on those days. Do you accept that your evidence in paragraph 12 is wrong?---No, I don't.

PN13919

Paragraph 13, you refer to there being a hospital in Kerang. Is there a pharmacy at the hospital?---No.

PN13920

How many pharmacies are there in Kerang?---Two.

PN13921

What is the closest pharmacy outside of Kerang to Kerang?---One is about an hour and a bit but they don't open on the weekend and public holidays.

PN13922

What town is that in?---Lake Boga.

PN13923

Lake Boga. Would that be the closest to Kerang?---Yes, I mean if you're talking about major towns there is Swan Hill or Bendigo.

PN13924

They're further away aren't they?---That's right.

\*\*\* KIN CHONG

XXN MR MOORE

PN13925

You say in paragraph 16:

PN13926

*The only reason that we choose to open the pharmacy during hours that attract penalty rates - - -*

PN13927

and you go on to set out what you say is the reason for that. When you're referring there to "during hours that attract penalty rates", what specific hours are you there referring to?---That will be the weekends and the public holidays.

PN13928

Saturdays and Sundays and public holidays is what you're referring there to. In paragraph 18 you say that:

PN13929

*Patients that regularly use the pharmacy often make comments regarding our opening hours, and in particular that they would like us to open longer during public holidays.*

PN13930

Are you able to tell the Commission when a comment to that effect was made directly to you by a patient?---Not a specific time, not specific moment, no.

PN13931

You don't have any specific recollection of that comment being made to you personally? No?---Pardon?

PN13932

You don't have any specific recollection of a patient saying that directly to you? So what you're saying in paragraph 18 is a matter of your opinion and speculation about what patients think?---I disagree on that.

PN13933

You say in paragraph 20, you talk about what you say is the most important of the Guild's claim, and you say that in relation to Saturdays, Sundays and public holidays, which you say is the most important part, you say at the end:

PN13934

*When we're closed there's nowhere else for the community to obtain healthcare services.*

PN13935

?---That's correct.

PN13936

Is there a medical centre in Kerang?---There is.

\*\*\* KIN CHONG

XXN MR MOORE

PN13937

How many medical centres are there in Kerang?---Three.

PN13938

And there's a hospital in the town?---That's correct.

PN13939

So you'd accept that when you're closed for example after 1 pm on a Sunday, or after 2 pm on a Saturday, the people of Kerang could obtain healthcare if they needed by going to the hospital or going to one of the medical clinics?---The medical clinics don't open.

PN13940

All right. That doesn't open on the weekend?---No.

PN13941

They could go to the hospital?---They have to go to the hospital, yes.

PN13942

Where they could - - -?---They have to go to the emergency department.

PN13943

Yes. So your suggestion that when you're closed there's nowhere else to go - for the community to go to obtain healthcare services, that's incorrect?---Say that again?

PN13944

Well, it's incorrect. They can go to the hospital; do you accept that?---Yes, they can go to the hospital.

PN13945

Yes. You say in paragraph 15 going back up the page, you say that you operate on a loss outside of ordinary hours under the award. I take it by that you mean you operate at a loss when you trade on Saturdays, or do you – I'll put the question again. When you say you operate at a loss, or you don't make a profit outside of ordinary hours under the award, what times of the week are you specifically referring to?---Meaning actually the public holidays and the Sundays.

PN13946

I see. Thank you. So I take it that in relation to both of those times in order to give the evidence you've given in paragraph 15, so for public holidays and Sundays, you have calculated your wages bill on those days?---Not specifically.

PN13947

All right. So I take it you haven't calculated the portion of your wages bill specifically referable to penalty rates?---Not specifically.

PN13948

Thank you. And I take it you haven't calculated your profit and loss when you trade on Sundays and public holidays?---Not specifically, no.

\*\*\* KIN CHONG

XXN MR MOORE

PN13949

As a longstanding pharmacist you understand that before the Pharmacy Industry Award commenced in 2010 minimum conditions were prescribed by different awards?---Yes. Yes.

PN13950

And are you generally aware that the minima for pharmacists were those prescribed by the Community Pharmacy Award 1998?---Yes.

PN13951

And that the minima for pharmacy assistants were those set out in the Shop Distributive and Allied Employees Association Pharmacy Assistants Victoria Award 2000?---Yes.

PN13952

You're a member of the committee of management of the Guild, aren't you?---I'm with the fund management.

PN13953

Are you a member of the committee of management of the Victorian branch of The Pharmacy Guild of Australia?---Yes.

PN13954

How long have you been in that - - -?---One and a bit years.

PN13955

Pardon?---One and a bit years.

PN13956

Going back to the awards I just asked you about, I want to put a general question to you?---Please.

PN13957

Do you accept that in moving from those two awards I just mentioned, that is, the Community Pharmacy Award which dealt with pharmacists and the Victorian Pharmacy Assistants Award which dealt with pharmacy assistants, do you accept that in moving from that award regime to the regime now set out in the Pharmacy Industry Award 2010 that that brought about an increase in penalty rates for public holidays from double time to double time and-a-half?---Yes.

PN13958

And that other than that increase in penalty rates the remaining penalty rates either remained the same to what previously applied or in fact were reduced; do you accept that?---I can't be sure.

PN13959

You don't know?---I know that actually the public holiday rate definitely has more.

\*\*\* KIN CHONG

XXN MR MOORE

PN13960

Yes. That's the only one that went up?---I can't be sure.

PN13961

All right?---But that's how – I think that is the case.

PN13962

What I want to suggest to you is that the penalty rates that applied to your business, putting aside the public holidays, put public holidays to one side?---And Sundays.

PN13963

No?---Okay. Yes.

PN13964

Putting public holidays to one side - - -?---Yes.

PN13965

- - -the penalty rates that have applied at all other times, under the Pharmacy Industry Award, are either the same as what previously applied under the two previous awards or in fact are reduced; do you understand that to be so?---Yes.

PN13966

Thank you. So do you accept then that overall, in terms of the movement from those previous awards before 2010 to the 2010 Pharmacy Industry Award, overall your businesses are in a better position in terms of wages costs than they were before?---No.

PN13967

Pardon?---No.

PN13968

And you reject that proposition because of the public holidays change?---I reject that as a whole rather than, but especially with the public holidays.

PN13969

All right. Putting public holidays to one side, do you accept that otherwise your business is in a more favourable position in terms of the minimum obligations for awards than it previously was?---We are actually having – no, I disagree on that. I have to, because actually throughout that time we have minimum wage increases as well.

PN13970

Yes?---And then, as I previously actually mentioned that our turnovers actually in the stores are not increasing dramatically.

PN13971

The turnover, did you say?---Yes.

\*\*\* KIN CHONG

XXN MR MOORE

PN13972

I see. So in some of your stores or all of your stores the turnover has diminished; is that right?---As a general sense, yes.

PN13973

I see. So am I right in understanding, then, that when you say in paragraph 15 and elsewhere in your statement that the difficulties you say you encounter in relation to profitability is, to some considerable extent, a result of reductions in customs and trade?---I disagree on that. It's part of – you got one hand the wages actually is higher, on another hand actually our business actually wasn't actually trading.

PN13974

All right. And when you say the wages were higher, what you're referring to, so I can understand your evidence, is the increases in minimum wages? You're not referring to penalty rates?---Plus the penalty rates.

PN13975

In relation to public holidays?---Yes.

PN13976

The public holiday penalty rate increase is an increase though which affects your bottom line on only eight or so days a year; does it not?---No. Victoria now we have 10.

PN13977

You have 10 in total?---Yes.

PN13978

Yes. But there's two that you don't open?---That's right.

PN13979

So we're talking about eight days?---Yes.

PN13980

And we're talking about an increase from double time to double time and-a-half?---That's correct, yes.

PN13981

All right. Can I ask you about paragraph 21?---Sure.

PN13982

You there refer to the Sixth Community Pharmacy Agreement?---Yes.

PN13983

You're obviously familiar with that, are you?---Not to the absolute details, no.

PN13984

No. All right. Well, let me refresh your memory?---Okay.

\*\*\* KIN CHONG

XXN MR MOORE

PN13985

Could the witness please be shown exhibit SDA9. We've got a copy of it I think. What I've just handed to you is a set of fact sheets which were obtained from the Pharmacy Guild of Australia website in relation to the Sixth Community Pharmacy Agreement?---Yes.

PN13986

These documents are in evidence before the Commission?---Yes.

PN13987

You can look through the document if you wish, but I want to ask you about the last document. The last page of the document which you'll see is headed Benefits of the Sixth Community Pharmacy Agreement. Do you see that?---Yes.

PN13988

And it's got 20 paragraphs on that page and over?---Mm-hm.

PN13989

Have you seen that document before?---Yes, briefly.

PN13990

Briefly?---Mm.

PN13991

Well, I want to ask you a question about it. Just take a moment to read through it if you like?---Yes.

PN13992

Thank you. In another document, which is in evidence before the Commission, The Pharmacy Guild has summarised the Sixth Community Pharmacy Agreement as containing significant benefits for community pharmacies and refers to some of the matters in the document that you've just read?---Mm.

PN13993

Do you agree that the Sixth CPA does confer significant benefits on community pharmacies?---Yes and no.

PN13994

Do you agree that the matters in the document that I've asked you to look at are significant benefits for - offer up potential significant benefits for pharmacies such as yours?---I would say no. Not significantly, no.

PN13995

So when the Pharmacy Guild says that 6CPA contains significant benefits for community pharmacies, it's in error in saying that. Is that your evidence?---To me specifically it actually doesn't offer a significant benefit, no.

PN13996

Your point here, I take it, is about the extent of the benefit. Is that what you're telling the Commission? You don't see it being a huge benefit, it's just a little bit of a benefit. Is that what you're saying?---That's correct.

\*\*\* KIN CHONG

XXN MR MOORE

PN13997

I see. How much of your income at the Kerang pharmacy comes from dispensing medications?---About 83 per cent.

PN13998

Right. So you're well placed to enjoy the benefits of the \$2.4 billion increase over the term of 6CPA in relation to dispensing medications. Do you agree with that?---No.

PN13999

Can I suggest to you - I withdraw that. And in preparing your statement, did you - because in paragraph 21 and 22 you refer to the 6CPA?---Mm-hm.

PN14000

Did you - in preparing your statement did you have that in front of you?---Have - sorry?

PN14001

The agreement in front of you or some other document about it?---No.

PN14002

No. That was - - -?---Not in front of me.

PN14003

Pardon?---Not in front of me.

PN14004

No?---Not like now.

PN14005

Was it suggested to you that you should include this reference in your statement?---No.

PN14006

It was just a thought bubble you had, was it?---Yes.

PN14007

Pardon?---Yes.

PN14008

I see. Well, can I suggest to you that you have again been selective in the evidence you give to this Commission in adverting to one specific aspect of the CPA which you referred to in paragraph 21 and 22, but entirely failing to draw the Commissioner's attention to the other aspects of that agreement, which even on your own evidence offer up some benefits. You accept that?---No.

PN14009

All right. Now, paragraph 23 of your statement, you talk about community services that your pharmacy provides?---Yes.

\*\*\* KIN CHONG

XXN MR MOORE

PN14010

Can you read through that. I want to ask you this question as you read through it: can you identify for the Commission which of the services to which you there refer for which you charge a fee for service to customers or patients?---Okay. Webster packs.

PN14011

Yes?---And in methadone or pharmacotherapy dosing.

PN14012

Yes?---And obviously dispensing medication; that's actually just charged according to what the government has allow us to charge.

PN14013

And in relation to the matters you their set out in paragraph 23, can you tell the Commission any of those services for which you receive funding from the Commonwealth or any other government agency?---Would be the Webster pack and the daily dispense medication.

PN14014

Right. That's it? So with the Webster packs you get funding and you charge the customer too, do you?---Yes.

PN14015

Can I ask you, in paragraph 25 you refer to some services provided by the pharmacy which benefit your patients. In paragraph (g) you say:

PN14016

*Screaming children who only require a dose of painkiller, without the need to see a doctor.*

PN14017

Can you just explain what that means?---Okay. So that means actually someone - there's a kid would come in - - -

PN14018

A kid?---Yes, a mother - nursing mother come in with a child - and then obviously actually the child actually have a suspected - just a bit of a cold, and the mother was worried, and then the kid was not well. So obviously kid not well, if you have young kids you will know what does that mean. So the mother actually need to be surer and need to be screening, and then to be sure, that we need to send them to the hospital or not.

PN14019

I see. In paragraph 32 you deal with the proposal put forward by the Pharmacy Guild of Australia and you say that you would consider opening longer on weekdays, weekends and public holidays if the proposal was granted?---Yes.

\*\*\* KIN CHONG

XXN MR MOORE

PN14020

I take it that your position is that that's something you would think about doing in the event the proposal was granted; you're not saying to this Commission as you sit here today that that's something you would likely do?---Would likely do it.

PN14021

All right. You would likely extend your trading on weekdays, weekends and public holidays, you say?---Probably not weekdays.

PN14022

No?---But definitely would consider weekends and public holidays. That's for us, anyway.

PN14023

And in considering whether you would extend trading on weekends and public holidays, I take it that you would need to critically also consider whether or not the custom and trade justified that extension on those days?---That will be part of the consideration.

PN14024

Yes. And lastly, you say in the event that the Guild proposal was accepted you would consider offering more hours to your current employees, in addition to hiring new staff. Given that what you would give consideration to would be extending trading hours on weekends and public holidays, I take it that what you would expect would be that any addition or extension in trading hours would play out by way of you increasing the availability of work for your existing employees?---That would be part of the picture, yes.

PN14025

That would be, I would suggest, the principal way in which you would see those additional hours, if they materialised, being filled; that is, being allocated to your current staff?---And also, actually, we need to - if we need to extend hours we would probably have to employ new staff anyway.

PN14026

All right. Thank you. Nothing further.

PN14027

DEPUTY PRESIDENT ASBURY: Can I just get some clarification on one issue. The pharmacy where you - just so I'm clear, you're a sole proprietor at one of the pharmacies?---Yes, in Mooroopna.

PN14028

And that is excluded from the consolidated accounts?---That's right. That's correct.

PN14029

And that pharmacy is the one that you say has the loss - one of the two that has the loss?---That's correct.

\*\*\* KIN CHONG

XXN MR MOORE

PN14030

Thank you. Secondly, you were asked questions in relation to the use of the word "restricted" in paragraph 12 of your statement. You said:

PN14031

*Due to penalty rates in the award we have had to restrict our opening hours.*

PN14032

And I just want to make sure you weren't confused about this. In paragraph 20 you also talked about significantly shorter hours in relation to those dates. What I take it is you're saying that you've chosen to open shorter hours on those restricted dates?---Yes.

PN14033

And in paragraph 32, which was drawn to your attention, it is those dates that you would increase the hours if the penalty rates were changed?---That's correct.

PN14034

Thank you.

PN14035

JUSTICE ROSS: Anything arising, Mr Moore?

PN14036

MR MOORE: No, your Honour.

**RE-EXAMINATION BY MR SECK**

**[11.24 AM]**

PN14037

MR SECK: Mr Chong, you were asked some questions by my learned friend Mr Moore about the benefits of the Sixth Community Pharmacy Agreement?---Mm-hm.

PN14038

Do you recall those - the questions?---Mm-hm.

PN14039

And in answer to a question as to whether or not it confers significant benefits on pharmacies, you said, "Yes and no"?---Mm-hm.

\*\*\* KIN CHONG

RXN MR SECK

PN14040

Can you explain what you - when you said no, what did you mean by that?---One thing that I'm not sure actually the Commission aware, the sixth agreement was for over all of the 5000 pharmacies in Australia, but we have a very big country. Every pharmacy - say, for us, we have a very different product mix and product groups. And then the whole remuneration package was not an overall blanket thing, everyone getting increases; it all depends on what sort of product you actually supply and dispense. During - because we are in such remote areas, we're actually using quite a few drugs that are not usually commonly used in, say, a place like Sydney or Melbourne. And also on top of that is actually the agreement so far actually was - I'm sure that the Commission is aware of the price disclosure,

so I don't want to go details into that - and then so that's why this sixth agreement I say no, is because our product mix, our whole (indistinct) increased and all that is not really (indistinct) no.

PN14041

Thank you, Mr Chong. No further questions.

PN14042

JUSTICE ROSS: All right. Thank you, Mr Chong, for your evidence. You're excused.

<THE WITNESS WITHDREW

[11.26 AM]

PN14043

JUSTICE ROSS: Next witness?

PN14044

MR MOORE: If the Commission pleases, Ms Forsyth will take the next witness.

PN14045

JUSTICE ROSS: Sure. Have you been able to resolve the objections?

PN14046

MS FORSYTH: No, we haven't your Honour.

PN14047

JUSTICE ROSS: Let's deal with those now. Which ones do you press?

PN14048

MS FORSYTH: Your Honour will be pleased to note that we don't press paragraph 5, which is the first objection.

PN14049

JUSTICE ROSS: Yes.

PN14050

MS FORSYTH: We also no longer press paragraph 10; but the remaining objections, we do press. If I can perhaps deal with paragraph 11: we press that on the basis that it's argument and conclusion. The witness gives evidence of a stated conclusion without providing evidence as to the matters of fact that support that conclusion.

PN14051

Similarly with paragraph 12 we say the final clause, "But the cost of providing this service is prohibitive," is again objectionable on the basis that its conclusion; the last clause in the final sentence. Paragraph 13, we press on the basis that it's hearsay and speculation, and hearsay that goes beyond what has been accepted, I would say, as community hearsay.

\*\*\* KIN CHONG

RXN MR SECK

PN14052

JUSTICE ROSS: Yes. That's evidence about the employees. Is that right?

PN14053

MS FORSYTH: Indeed.

PN14054

MR SECK: Yes, we don't read that.

PN14055

JUSTICE ROSS: You don't agree with that?

PN14056

MR SECK: No, we don't read that sentence, your Honour.

PN14057

JUSTICE ROSS: All right.

PN14058

MS FORSYTH: Was that to paragraph 13, or was that the sentence to paragraph -  
--

PN14059

JUSTICE ROSS: I think if you take out the first sentence, logically the second one doesn't make any sense, so you would need to - - -

PN14060

MR SECK: We don't read the whole paragraph, your Honour.

PN14061

JUSTICE ROSS: All right.

PN14062

MS FORSYTH: As to paragraph 14, similarly we press the objection on the basis of hearsay, speculation, and indeed there is conclusionary content therein. You will see, your Honour, that it's stated that:

PN14063

*This is because it is considered the norm.*

PN14064

JUSTICE ROSS: Yes, to shop on these days.

PN14065

MS FORSYTH: Indeed. So that goes beyond what has been considered by the Commission to constitute community hearsay. 15, we press, again on the basis of hearsay. You will see a reference in the first sentence to, "Yet the customers expect;" and we also press it on the basis of argument, and likewise conclusion.

PN14066

JUSTICE ROSS: All right. Anything you want to say, Mr Seck?

PN14067

MR SECK: There's further objection.

PN14068

JUSTICE ROSS: What do you want to do about - - -

PN14069

JUSTICE ROSS: Yes. Twenty, 21, 22, 23?

PN14070

MS FORSYTH: Indeed.

PN14071

JUSTICE ROSS: Well?

PN14072

MS FORSYTH: Yes. They're of a very similar nature, your Honour. Twenty: again we say that we object to the whole paragraph on the basis that it's argumentative; it's argument. It makes conclusions that are not supported by evidence as to the matters of fact that support those conclusions. Twenty-one and 22 we press on the basis that they consist purely as speculation.

PN14073

JUSTICE ROSS: Well, we've rejected similar objections in the previous statements.

PN14074

MS FORSYTH: Indeed. And finally, 23 we remain committed to our objection on the basis of it consisting of both hearsay, speculation, conclusion and argument.

PN14075

JUSTICE ROSS: All right. Mr Seck?

PN14076

MR SECK: Your Honour, paragraph 11 we say it merely identifies the opinion of the proprietor and it's been in a form which has been accepted.

PN14077

JUSTICE ROSS: Well, that's right. Yes.

PN14078

MR SECK: Yes. And it's - - -

PN14079

JUSTICE ROSS: Well, it's opinion evidence.

PN14080

MR SECK: But it is in the nature of what other witnesses have said, and the key part is that it's merely expressing – it's linking the - - -

PN14081

JUSTICE ROSS: No, the difference is that she's purporting to give evidence about the extent of training as the norm in any retail environment.

PN14082

MR SECK: What can be crossed out, your Honour, and I understand what your Honour says there - - -

PN14083

JUSTICE ROSS: Well, if - - -

PN14084

MR SECK: The words:

PN14085

*With the expectation of Sunday an extent of trading as a norm in any retail environment –*

PN14086

can be taken out. I think it can still be understood as the current penalty rates are an ongoing problem. It is reducing the viability providing service.

PN14087

JUSTICE ROSS: Yes.

PN14088

MR SECK: So if we take out the words before the comma I think that addresses the issue.

PN14089

JUSTICE ROSS: Yes.

PN14090

MR SECK: So we don't read everything before the comma.

PN14091

JUSTICE ROSS: Yes.

PN14092

MR SECK: That's 11.

PN14093

JUSTICE ROSS: And I think there's a similar issue in 14.

PN14094

MR SECK: Yes, I accept that similar issue, your Honour. So if we took out the second sentence.

PN14095

JUSTICE ROSS: Yes. And that's again:

PN14096

*It's considered standard practice for supermarkets to open.*

PN14097

In the next sentence.

PN14098

MR SECK: If we crossed out the word "and supermarkets", your Honour. And I think that addresses the issue that's been raised by the SDA.

PN14099

JUSTICE ROSS: All right.

PN14100

MR SECK: I don't know if we've addressed paragraph 12. Just going back to paragraph 12.

PN14101

JUSTICE ROSS: They've pressed the last line of paragraph 12 as I understood it. The phrase:

PN14102

*But the cost of providing these services is prohibitive.*

PN14103

MR SECK: I don't read everything – I don't read that part of the paragraph.

PN14104

JUSTICE ROSS: All right.

PN14105

MR SECK: So that can be removed. Paragraph 15: well, I think that's in the nature of community hearsay, your Honour, which has been accepted. Can I then turn over to paragraph 20. I press paragraph 20, your Honour. It's expressing the business owner's point of view as to the impact of penalty rates upon the pharmacy itself. In relation to paragraph 21 I think that follows from paragraph 20. We don't read paragraph 22. I accept that there are difficulties there. And paragraph 23 I think is in the nature of community hearsay.

PN14106

JUSTICE ROSS: All right. Thanks.

PN14107

MR SECK: May it please, your Honour.

PN14108

JUSTICE ROSS: Well, firstly, can we encourage counsel to have a discussion about this before bringing it to us so that we can, if there are concessions to be made that might resolve it, then that would be a better way of doing it. But with the redactions that have been identified we dismiss the balance of the objections. And we clarify the redactions that are made: it would be the second sentence, part of the second sentence at paragraph 11, that is, the words:

PN14109

*with the exception of Sunday and extended trading as the norm in any retail environment.*

PN14110

Those words will be deleted. It would be the last line of paragraph 12, the words:

PN14111

*but the cost of providing this service is prohibitive.*

PN14112

It would be all of paragraph 13 and it would be the second line of paragraph 14 beginning:

PN14113

*This is because.*

PN14114

And in the third sentence, or now the second sentence:

PN14115

*It is considered standard practice for pharmacies –*

PN14116

The words:

PN14117

*and supermarkets –*

PN14118

would be deleted. And paragraph 22 would be deleted. All right.

PN14119

MR SECK: May it please, your Honour.

PN14120

JUSTICE ROSS: Will you call the witness?

PN14121

MR SECK: Yes. I call Lia Jane Mahony.

PN14122

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

PN14123

MS MAHONY: Lia Jane Mahony (address supplied).

**<LIA JANE MAHONY, SWORN**

**[11.37 AM]**

**EXAMINATION-IN-CHIEF BY MR SECK**

**[11.37 PM]**

\*\*\* LIA JANE MAHONY

XN MR SECK

PN14124

MR SECK: Ms Mahony, your occupation is a pharmacist; that's correct?---Yes.

PN14125

And you are the owner of the Mahony Group of Pharmacies in Tamworth; that's correct, isn't it?---That's correct.

PN14126

You have prepared an affidavit in these proceedings; that's correct?---Yes.

PN14127

You have a copy of your affidavit with you in the witness box?---Yes.

PN14128

Have you read that affidavit recently?---Yes.

PN14129

Do you wish to make any changes to your affidavit, Ms Mahony?---No.

PN14130

Are the contents of your affidavit true and correct to the best of your knowledge and belief?---Yes.

PN14131

I read the affidavit of Ms Mahony subject to the parts which have been removed.

PN14132

JUSTICE ROSS: I mark that exhibit PG10.

**EXHIBIT #PG10 AFFIDAVIT OF LIA JANE MAHONY**

PN14133

MR SECK: May it please.

PN14134

JUSTICE ROSS: Ms Forsyth?

**CROSS-EXAMINATION BY MS FORSYTH**

**[11.38 AM]**

PN14135

MS FORSYTH: Thank you, your Honour. Ms Mahony, I understand that you are the owner of the Mahony Group of Pharmacies that's located in Tamworth; is that correct?---In Tamworth and I have a store in Manilla, and one out in Moree.

PN14136

You also have a store in Manilla, is it?---Yes.

PN14137

And one in Moree?---That is correct. So that's the group of pharmacies. The store is Tamworth as well.

\*\*\* LIA JANE MAHONY

XXN MS FORSYTH

PN14138

And is it a franchise?---We are part of the Discount Drug Store Group.

PN14139

And each of the pharmacies, the pharmacies that you have in Tamworth that you've mentioned in your witness statements, that's the one in the Tamworth Shopping Centre, as well as the pharmacy that you have in Manilla and Moree, they're all part of the Discount Drug Store Group; is that correct?---That's correct.

PN14140

Thank you. And how long have you been an owner of the pharmacy in Tamworth?---Since 2000.

PN14141

And how long have you been an owner in Manilla?---The same time.

PN14142

And I take it you're also an owner in Moree at the pharmacy there?---Yes.

PN14143

And are you in partnership or are you a sole proprietor of those pharmacies?---In partnership with my father.

PN14144

And you're in partnership with your father for all three?---Yes.

PN14145

And if you can just repeat for me, is your evidence that you were an owner at Moree since 2000?---No. We opened the store there in 2003. We gained PBS approval there in 2004.

PN14146

I see?---No, sorry, two thousand and – four years ago, 2012 and 2011 we opened. I correct that, sorry. Four years ago that is what I was thinking, not 2004.

PN14147

So you opened in 2012?---We gained – the reason I remember this date, we gained our PBS approval on 29 February 2012. That's why I remember the date so clearly, so four years ago next year. And therefore we opened about eight months before that.

PN14148

Okay?---Which would make it 2011.

PN14149

Okay. And Manilla?---My father has owned that pharmacy since I was a child growing up. I grew up in that store.

PN14150

And he's had ownership of that - - -?---Since the early eighties.

\*\*\* LIA JANE MAHONY

XXN MS FORSYTH

PN14151

And you have taken partnership of that pharmacy since when?---In the group of the – within the group of the pharmacies, so within our group of pharmacies, when we bought the other pharmacy in 2000.

PN14152

Two thousand. So in summary you've been a partner in two of the three Mahony Group of Pharmacies since 2000?---Correct.

PN14153

That's the store in Manilla?---Mm-hm.

PN14154

And the store in Tamworth?---Yes.

PN14155

And you've been in partnership with your father in both those stores. And you've also been a partner in the Moree pharmacy since 2011?---Correct.

PN14156

And was there any reason you chose not to mention the other two pharmacies in your witness statement?---I was just requested to do it for this particular store of the group of pharmacies in which I own. And the address where the office is located is our Tamworth store, hence I put that address in.

PN14157

Sure. Who requested you to do that?---When I was requested from The Guild to make this statement it was with regard to my group of pharmacies and hence I provided my office address rather than the store address.

PN14158

I see. So you just haven't been specific?---Hence I've got the Mahony Group of Pharmacies as opposed to Tamworth Discount Drug Store which is our trading name of that store.

PN14159

Sure. Understood. So insofar as you refer to the pharmacy employing 24 people in paragraph 6?---That's my Tamworth store.

PN14160

That's your Tamworth store. So just to be clear your statement insofar as it provides details about rostering or numbers of employees, that refers specifically to your Tamworth store, does it?---Correct. As there as – as it was easier to nominate one store to give this information.

PN14161

Right. And The Guild asked you to nominate that store, did it?---No, The Guild asked me for my information with regard to the Mahony Group of Pharmacies.

\*\*\* LIA JANE MAHONY

XXN MS FORSYTH

PN14162

I see. And just then to be clear about the number of employees you employ in Manilla - it's Manilla, isn't it?---Mm-hm.

PN14163

And also in Moree, how many employees do you have in Manilla?---One full-time pharmacist manager, one part-time experienced pharmacist, two – three - four part-time grade 4 pharmacy assistants, two part-time grade 3 pharmacy assistants, and a number of grade 1 pharmacy assistants, approximately three.

PN14164

So in total about 12 staff; is that right?---I am guessing that to be accurate.

PN14165

It's about 11 to 12 staff? About a dozen?---I would say – I would have picked around 10, but, yes, probably using the part-time staff that would be correct.

PN14166

And in Moree?---I have one full-time pharmacist manager, one part-time experienced pharmacist, approximately 15 other staff.

PN14167

So about 17 in total?---Correct.

PN14168

And given that your statement only deals with the Tamworth pharmacy insofar as opening hours are concerned, and they're set out in paragraph 8, are you able to just clarify what your opening hours are for the Manilla as well as the Moree pharmacies?---The Manilla pharmacy we open nine till six Monday to Friday and nine till 12 Saturday and nine till 12 on Sunday. In our Moree store we open from 8.30 to 6.30 Monday through Saturday and 10 am to 2 pm Sunday and public holidays.

PN14169

Do you open public holidays in Manilla?---No.

PN14170

JUSTICE ROSS: In Moree you close for the same public holidays you're closed for the Tamworth Pharmacy?---No, sir, we close - we're open Anzac Day there and we are also open on Easter Sunday there.

PN14171

So you're closed Good Friday and Christmas Day?---That is correct.

PN14172

All right.

PN14173

MS FORSYTH: And that was, I'm sorry, in relation to the - you're closed Good Friday and Christmas - - -?---In Moree.

\*\*\* LIA JANE MAHONY

XXN MS FORSYTH

PN14174

Moree. Thank you. And I take it that each of the three pharmacies that form part of the Mahony Group of Pharmacies are profitable?---We had a very lean year the last couple of years but we do make a profit as a rule.

PN14175

Well, each of them are on a profit and loss analysis showing that you're in the black?---Our Moree store has not been in the black since we opened.

PN14176

And you opened that store in 2011, is that right?---Yes, we received our PBS number in 2012 so we've been a fully operational pharmacy since 2012.

PN14177

Okay. And in what years do you say it was not in the black?---Since we've opened.

PN14178

So it hasn't been profitable since 2011?---No.

PN14179

Is that your evidence?---Yes.

PN14180

And that's the Moree Discount Store?---Discount Drug Store.

PN14181

I see. In terms of the employees that you employ with respect to each of those pharmacies, are they all employed subject to the award?---Yes.

PN14182

So they're not - none of them are paid above award rates?---Sorry, I misunderstood the question. Yes, a number are paid above award rates.

PN14183

And are they paid above award rates at the Moree store?---Yes.

PN14184

With respect to the number of employees that you've listed in paragraph 7 of your statement, with respect to the Tamworth pharmacy, has that number remained fairly consistent since your proprietorship?---We have had - we have had a decrease recently, a - yes, we've had a few changes.

PN14185

And how recently was that decrease?---We have, up until approximately May or June this year we had a second intern who we no longer employ. We have had another pharmacy assistant who moved away due to her husband's work commitments and we have not replaced that person either.

\*\*\* LIA JANE MAHONY

XXN MS FORSYTH

PN14186

Okay. And in terms of the hours that you've set out in paragraph 8 of your statement, have they remained consistent since about 2012, the time at which you took ownership of the Tamworth pharmacy?---I took ownership of the Tamworth pharmacy in 2000.

PN14187

2000, I beg your pardon?---We - they have increased and decreased at various times.

PN14188

Okay. And they've been, as you've said the matter, paragraph 8, for how long now?---Approximately two years.

PN14189

And just to be clear, you state there that the Tamworth pharmacy is not open on Anzac Day but I understood the evidence that you gave to the Commission earlier was that Moree is open on Anzac day, is that correct?---Yes.

PN14190

And Moree, I take it, is also open on Easter Saturday, is that correct?---Yes, all my stores are open Easter Saturday.

PN14191

All of them are open Easter Saturday. And the Tamworth store is open on Boxing Day, is that right?---That's correct.

PN14192

And it's also open on Easter Saturday, that would be consistent with the evidence you've just given that all your stores are open on Easter Saturday?---That is correct.

PN14193

You say that you've tried to have the opening hours of the pharmacy in line with the shopping village. What are the hours of the shopping village?---They open 8 am to 8 pm Monday through Friday, they're open 8 am to I believe 7 pm on Saturday and 5 pm on Sunday. But they just open at 9 on Sundays, 9 am to I believe it's 5 pm on Sunday.

PN14194

I see. And you say that you've tried to do that but you're already open at times that you describe as on the borderline of profitability. Have you undertaken any analysis as to the profitability of the hours that you say are on the borderline?---Personally, no, my accountant - account manager who we have has done this and in the discussion she raised a number of points.

PN14195

And are you aware of what those hours are that you say are on the borderline of profitability from what your accountant has given you?---All our Sunday trading hours and our late - our after lunch Saturday trading hours.

\*\*\* LIA JANE MAHONY

XXN MS FORSYTH

PN14196

You say that - this is at paragraph 12 of your statement - that the pharmacy employs more junior team members to reduce the impact, however on weekends it is a time when customers often have more time to shop and thus come in with more complex problems, relying on senior or more experienced team members. I withdraw that, sorry. If I can take you to paragraph 16 of your statement. You say there that the photograph provides many extra services to the community that most pharmacies offer, and you list a couple there, flu vaccination, wound dressing, and breastfeeding consults. You say that they do not, as a rule, generate income. Do you charge a fee for service for any of those services?---The flu vaccine clinic we do, yes, it's a cost neutral to us, the income we receive from the flu vaccinations will pay for the nurse practitioner who does it and the cost of the vaccine but we don't, as a rule, make any profit. Wound dressings we will charge for any particular dressing item that we use, however we don't charge any extra service from there, and the same with the breastfeeding consultations, we don't charge any extra service. In fact we try to dissuade mothers from bottle feeding and encourage breastfeeding as is part of the National Health Guidelines.

PN14197

And do you receive any funding for any of those services?---No.

PN14198

Do you provide any other services for a fee?---We provide dosage administration aids and we also do methadone service, opioid substitution programs, both of which are a fee. However, as they are often utilised by the lowest socioeconomic group we quite frequently waive the fee to ensure continuity of care.

PN14199

And I think you mention that in paragraph 18?---Correct.

PN14200

And that's something that is currently funded under the 6CPA, is that correct?---The methadone program there is a small amount of funding available, yes.

PN14201

And also for the drug administration aids?---For certain patient categories, correct.

PN14202

At paragraph 19 you talk about continuity of care?---Mmm.

PN14203

And you say that the importance of continuing this service, which has previously been supported through high PBS reimbursement, is becoming more difficult?---Yes.

\*\*\* LIA JANE MAHONY

XXN MS FORSYTH

PN14204

And I take it that's because of what you say is a price disclosure difficulty, is that right?---Price disclosure, the changing in a number of PBS remunerations, a

changing in wholesaler margins, there have been a number of reasons why the profitability of the dispensary has decreased.

PN14205

But you would be aware, would you not, that under the 6CPA there has been far greater funding offered with respect to disbursements that effectively sees the difficulties caused by the price disclosure of the PBS no longer having the impact they once did?---I do know that there are some new changes to the funding under the 6CPA that has come through, the exact nature of those is unknown at this point. I do believe they will go some way to reduce the losses experienced to date, however they have been quite significant and I don't believe they will completely take us back to that position.

PN14206

Are you a member of the Pharmacy Guild?---Yes.

PN14207

Have you seen their statements with respect to the 6 Community Pharmacy Agreement?---I've seen some of their documents that have come through, yes.

PN14208

Would you agree with one of their statements which is that the AHI means that for the first time pharmacies official dispensing remuneration will be virtually immune from the impact of price disclosure, the AHI puts a permanent floor on dispensing remuneration, would you agree with that?---My knowledge of the exact specifications of the AHI preclude me from saying I agree or disagree.

PN14209

Would you accept that average dispensing remuneration will be 1.13 dollars more per prescription in 2015 to '16?---Again, I don't know the specific numbers to hand. I would - - -

PN14210

I see. You've mentioned at paragraph 25 that in relation to operating costs such as rent, the pharmacy is currently running a low-cost operation. It would be true to say, though, that rent is a substantial overhead to your business?---Not compared to my wages cost, no. I have traded my cheap rent, I am on the wrong side of the tracks with my business, I have traded my cheaper rent for having higher staffing levels.

PN14211

And you have done that analysis, have you?---Yes.

PN14212

And you can say with certainty that your rent is less than your wages?---Not less than my wages, no, my rent is cheaper than the national benchmark is what I was trying to articulate.

\*\*\* LIA JANE MAHONY

XXN MS FORSYTH

PN14213

I see. So your overall rent costs are higher than your wages, putting aside the national benchmark?---I can't say for certain as my payroll is combined with my three stores and my rent is done separately so I can't say with certainty.

PN14214

You mention that if the Pharmacy Guild's proposal was adopted you may make some changes to your hours of operation, you say that extended trading hours may become more profitable for you. I take it that the hours that you're talking - - -

PN14215

JUSTICE ROSS: No, that's not what she says.

PN14216

MS FORSYTH: I beg your pardon, your Honour.

PN14217

JUSTICE ROSS: She doesn't say that she would extend the trading hours. She notes that the pharmacy is already open for extended trading hours. The proposal, if adopted, would make these extended hours more profitable.

PN14218

MS FORSYTH: I beg your pardon. Thank you, your Honour, I will put the question again. You say that it would make your extended hours more profitable and that you would be able to offer some of your current team members more weekend shifts and later shifts that suit their desired working conditions. I take it that by extended hours you're referring to hours within your current roster, is that right?---Please rephrase that question.

PN14219

You talk about make - that if the Pharmacy Guild's proposal was accepted that some of the extended hours that you already trade would become more profitable.

PN14220

MR SECK: Objection, I don't know if it says "some", it says "these extended hours."

PN14221

JUSTICE ROSS: Perhaps if you ask the witness what extended hours is she referring to in paragraph 27.

\*\*\* LIA JANE MAHONY

XXN MS FORSYTH

PN14222

MS FORSYTH: Thank you, your Honour. Thank you, your Honour. I'm wondering whether you can clarify for me, Ms Mahony, what extended hours you're referring to in paragraph 27?---From approximately 1 pm till we close at 3 pm on a Saturday we are very quiet and not particularly profitable, and from 10 am until we close at 1 pm on Sunday we are also very quiet and not particularly profitable. We open both those hours for our opioid substitution program, our methadone clients primarily. Also, as I mentioned, our pharmacy is on the wrong side of the tracks, we have the lowest socioeconomic client base within Tamworth, these people are less mobile and less able to walk or catch public

transport or a cab to the pharmacies that are open later or in town and so therefore it is a service we provide to enable these community members access to healthcare services that they would not otherwise be able to have access to.

PN14223

I see. So you're very quiet on - between 1 and 3 pm on the Saturday and between 10 and 1 pm on the Sunday?---That's correct.

PN14224

Right. So that is an issue of custom and trade being less than ideal for you?---We have reduced customer numbers, yes.

PN14225

I would just like to return to the Mahony Group of Pharmacies and ask you a further question. I take it that you have accounts that are prepared for the Mahony Group of Pharmacies as a consortium, if you like, or as a group of pharmacies, a consolidated - - -?---We run PT and LJ Mahony Partnership which - - -

PN14226

And notwithstanding your evidence that you've had some years in Moree that I think you said were not in the black, the Mahony Group of Pharmacies themselves, I take it, overall run at a profit?---This last financial year we have not.

PN14227

Thank you, Ms Mahony?---Thank you.

PN14228

JUSTICE ROSS: Can I just ask you a question, Ms Mahony?---Sure.

PN14229

Can I take you to paragraph 18 of your statement. I'm just having a bit of trouble understanding the last sentence. Where you say, "If that -", well, there are a number of parts I'm not understanding but let's deal with the first one. You say, "If that occurs", are you talking there about the proposed reduction in penalty rates?---All right. Sorry, it is a confusing phrase, I take that. On Sundays, because of the four-hour shift requirement I do bring staff in to fill that four-hour shift for our busy period from 9 till 10 when we initially open and then I give them other jobs to do with respect to the dosage administration aids in our quieter time so they can fulfil those roles in times that we are completely unprofitable because we have opened for the full four hour shift we have those jobs. So if we took those jobs away from that - if we didn't have the dosage administration aid jobs for them to do at that particular point in time it increases efficiencies for the rest of the week.

PN14230

I see. Okay. Thank you. Any other questions? Yes?

\*\*\* LIA JANE MAHONY

XXN MS FORSYTH

PN14231

DEPUTY PRESIDENT ASBURY: Ms Mahony, can you just explain, you said in response to a question in cross-examination that there's reduced customer numbers at certain times that you'd referred to as extended hours?---Mmm.

PN14232

And in paragraph 27 you say that you're already open for extended hours and that if the Guild proposal was accepted it would make those extended hours more profitable. Can you explain how that would occur?---Because with the four-hour shift minimum and the size of my store, I can't open with just one pharmacist, I need to have other staff to man that store. So if the penalty rates were reduced it would enable that profitability for the other staff members to be increased with lower employment costs at that particular point in time.

PN14233

JUSTICE ROSS: Anything arising?

PN14234

MS FORSYTH: No, your Honour.

PN14235

JUSTICE ROSS: Any re-examination\?

PN14236

MR SECK: No, your Honour.

PN14237

JUSTICE ROSS: Thank you for your evidence, Ms Mahony. You're excused.

**<THE WITNESS WITHDREW**

**[12.10 PM]**

PN14238

JUSTICE ROSS: And the next witness is Mr El-Ahmad, is that right?

PN14239

MR SECK: Yes. That is so, your Honour. I call Hassan El-Ahmad.

PN14240

JUSTICE ROSS: Okay. While you're organising the witness to get into the box we might take a five minute break.

**SHORT ADJOURNMENT**

**[12.10 PM]**

**RESUMED**

**[12.19 PM]**

PN14241

MR SECK: Just before I call Mr El-Ahmad, I've spoken to my learned friend. I just wish to not read certain sentences in Mr El-Ahmad's affidavit. Can I take the bench to paragraph 15.

\*\*\* LIA JANE MAHONY

XXN MS FORSYTH

PN14242

JUSTICE ROSS: Yes.

PN14243

MR SECK: I don't read the first sentence of paragraph 15. I don't read the word "however" in the second sentence. So the second sentence should start with "due". I don't read the third - I don't read the last sentence of paragraph 15.

PN14244

JUSTICE ROSS: Yes.

PN14245

MR SECK: And I don't read the entirety of paragraph 27. Subject to not reading those parts of the affidavit, my learned friend advises me there are no objections to the affidavit.

PN14246

JUSTICE ROSS: Thank you.

PN14247

MR SECK: I call Hassan El Ahmad.

PN14248

THE ASSOCIATE: Could you please state your full name and address.

PN14249

MR EL-AHMAD: My full name is Hassan El-Ahmad. Address is (address supplied).

**<HASSAN EL-AHMAD, AFFIRMED** [12.21 PM]

**EXAMINATION-IN-CHIEF BY MR SECK** [12.21 PM]

PN14250

MR SECK: Mr El-Ahmad, your occupation is a pharmacist. That's correct?---(Inaudible reply 12:21:35)

PN14251

And you are currently one of the proprietors of Amcal Pharmacy Craigieburn. That's correct?---Correct.

PN14252

You prepared an affidavit in these proceedings dated 10 August 2015. That's correct?---Correct.

PN14253

Do you have a copy of your affidavit with you in the witness box?---I do.

PN14254

Have you read that affidavit recently?---I have.

\*\*\* HASSAN EL-AHMAD

XN MR SECK

PN14255

Do you wish to make any changes to your affidavit?---No.

PN14256

Are the contents of your affidavit true and correct to the best of your knowledge and belief?---Yes.

PN14257

May it please, I read the affidavit of Mr El-Ahmad, subject to the paragraphs which I've indicated will not be read.

PN14258

JUSTICE ROSS: Subject to the reductions I will mark that exhibit PG11.

**EXHIBIT #PG11 AFFIDAVIT OF HASSAN EL-AHMAD AS  
AMENDED DATED 10/08/2015**

**CROSS-EXAMINATION BY MR MOORE**

**[12.22 PM]**

PN14259

MR MOORE: Mr El-Ahmad, have pronounced your name correctly?---You have.

PN14260

Mr El-Ahmad, you've been a proprietor of Amcal Craigieburn, do I take it, since - it has only been operating for a year. Is that right?---A little bit longer than a year.

PN14261

A little bit longer than a year. This is the first pharmacy you've owned?---No, it is not.

PN14262

You've owned others, have you?---I've owned one other, yes.

PN14263

I see. Do you own that one now?---No.

PN14264

What was the first one you owned?---It was a pharmacy in Footscray, Victoria.

PN14265

I see. And when did you owned that one from, approximately?---Approximately from 2014 to 1 October 2015.

PN14266

I see. Until recently?---Correct.

PN14267

I take it with the Craigieburn pharmacy your market is the people in the Craigieburn area?---Yes, that's correct.

\*\*\* HASSAN EL-AHMAD

XXN MR MOORE

PN14268

How many pharmacies are in Craigieburn?---Currently there are approximately seven pharmacies in Craigieburn.

PN14269

Including your own?---Including my own, yes.

PN14270

You're a member of the Victorian branch of the Pharmacy Guild?---I am.

PN14271

I'm sorry, a member of the committee of management of that branch?---The branch committee.

PN14272

Yes. Thank you. I want to ask you about the services that you referred to in paragraph 13 that you describe as additional services. Do you see those?---I do.

PN14273

Could you just look through that and to Commission which of those services you charge a fee to patients?---(c) mobility solutions; (g) dressings.

PN14274

That it?---That's it.

PN14275

And in terms of funding, you're aware generally of the Commonwealth pharmacy program - community pharmacy program operated by the Commonwealth?---Can you - which specific program is that?

PN14276

You're aware of the community pharmacy agreement between the Guild and the Commonwealth?---I am, yes.

PN14277

Yes. And that makes provision for the funding of various community pharmacy programs?---It does to an extent, yes.

PN14278

Yes. And are any of the services that you list in paragraph 13 funded pursuant to that program or any other programs?---There are two services which are partially funded by the Commonwealth.

PN14279

Which ones are they?---Cardiovascular screening through the QCP program - it's a pharmacy practice incentive.

PN14280

Yes?---A very small incentive, I may add. Also a very small incentive for dose administration aides. That only applies to community patients, of course.

\*\*\* HASSAN EL-AHMAD

XXN MR MOORE

PN14281

Thank you. If you look at paragraph 15?---Yes.

PN14282

And if I direct you to the third line and the sentence which on the copy of the affidavit you have in front of you would commence with the word "however". Do you see that?---Yes.

PN14283

If you read the words:

PN14284

*Due to the current restrictions to trading hours caused by the high penalty rates imposed, patients are forced to either wait for the medication; or if they require it urgently, travel to a different pharmacy.*

PN14285

?---Mm-hm.

PN14286

I just want to focus on what you say in that sentence. I don't understand how it is that there is any connection between penalty rates and patients being forced to wait for medication?---Well, forced to wait to get services from my particular pharmacy. So because of the penalty rates, obviously I'm not trading extended hours, as I would like to. These patients can't access me during those times. As -  
- -

PN14287

I see. I'm sorry, go on. Finish your evidence?---They're not able to access me at this particular times, so they're forced to possibly go elsewhere where there's no continuative care, there's no medication history.

PN14288

I see?---That's what I was trying to say.

PN14289

I see. So what you're saying is - your trading hours are set out in paragraph 8?---That's correct.

PN14290

And you're saying patients are forced to wait for their medications in the sense that the only time they can get them are in those hours from you?---If they want to attend a pharmacy.

PN14291

Yes, I understand what you're saying. Thank you. In paragraph 17 this question of trading hours comes up again?---Mm-hm.

\*\*\* HASSAN EL-AHMAD

XXN MR MOORE

PN14292

And you refer there to the desire to extend your trading hours. That's right?---Definitely, yes.

PN14293

Yes. And I take it what you have in mind - because in paragraph 17 in the first sentence - what your specific ambition, if I can call it that, is to extend later at night on Thursdays on Fridays. Is that particularly what you have in focus?---No, that's not my intention.

PN14294

I see?---More so Monday to Wednesday.

PN14295

I'm sorry, I've got it wrong. I see. Monday to Wednesday?---Yes because we're currently forced to trade till 9 pm due to shopping centre hours on Thursdays on Fridays.

PN14296

I see. So your ambition, if I can call it that, is to trade until 9 pm Monday to Wednesday. Is that what you're saying?---I wouldn't say ambition.

PN14297

Okay. Is that what you would like to do?---It is what I would like to do. It's because my patients would like me to do that, yes.

PN14298

In terms of your reference to want to extend your trading hours at paragraph 17, what you're referring to specifically there is your desire to increase to trade till 9 pm Monday to Friday?---My desire, yes.

PN14299

I understand. Thank you. So I take it that implicit in that you see an opportunity - I withdraw that. This desire to extend your trading hours to 9 pm on Monday to Wednesday is tied up closely with your perception around medical centres operating extended hours. Is that a fair comment?---That is a fair comment.

PN14300

To simplify things, what you perceive is that there's a good opportunity for you to trade to 9 pm Monday to Wednesday which currently you don't do because there are medical centres open late?---That and the fact that my patients want it.

PN14301

Yes. How many medical centres are there in the Craigieburn area?---In the Craigieburn area there's approximately four or five medical centres.

PN14302

Have you identified how many of those are open until 9 pm Monday to Wednesday?---I have.

\*\*\* HASSAN EL-AHMAD

XXN MR MOORE

PN14303

How many of them are?---Two. Past 9 pm as well.

PN14304

Those two are open past 9 pm?---Correct.

PN14305

How late are they open?---11 pm.

PN14306

Have you estimated the number of patients that frequent those two medical centres that you think might come to see your pharmacy as distinct from one of the other, I think you said seven pharmacies?---I'm sorry, can you repeat the question?

PN14307

Certainly. Have you estimated - let me go back again, I'll withdraw that. Have you estimated how many of the patients that go to these two late night medical centres in Craigieburn on Mondays to Wednesdays, have you formed an estimate of the number of those patients who you believe would be likely to attend your pharmacy?---Not an accurate estimate.

PN14308

Then you wouldn't have taken it the next step which is to estimate what proportion of those patients would need medication. You wouldn't have worked that out either?---The proportion? Well, I actually can make that approximation.

PN14309

Well you don't know - not everyone that goes to the doctor comes out with a script do they?---Yes, but there's a - there's an average basically.

PN14310

I see, so you have a working assumption?---A working assumption, yes.

PN14311

You've got a working assumption of the number of patients who go to a medical clinic who come out with a script?---Mm-hm.

PN14312

But what you don't have is the number of patients who would be going to a medical clinic late at night in your vicinity to apply that assumption too?---I don't have the numbers that go to that medical clinic so I wouldn't be able to make that assumption.

PN14313

How many of the other medical - I'll withdraw that. How many of the other seven pharmacies or six pharmacies, how many of the other six pharmacies in the Craigieburn area are open to 9 o'clock or later Monday to Wednesday?---My understanding is that only one but I'm not certain.

\*\*\* HASSAN EL-AHMAD

XXN MR MOORE

PN14314

You're aware of one at least that is?---I'm aware of one that might open till 9 pm but I can't be certain. So if you wanted a yes or no it would be no.

PN14315

You've answered the question to the best of your knowledge, I understand that, thank you. In light of the evidence you've given can I suggest to you that your claims in your affidavit that patients are inconvenienced by not being able to see you or come to your pharmacy up to 9 o'clock Monday to Wednesday, that that's really speculation. Do you accept that?---No, I wouldn't accept that.

PN14316

Well you have no idea about the number of patients you're talking about?---I do because they come during the day, during normal trading hours and tell me that they would prefer to come to my pharmacy during that period that I was not open.

PN14317

A patient or two or a number might say that to you but you have no sense of the numbers involved?---Well if your regular customers are coming during your working hours and there's five or six requests for you to open till 9 pm on a daily basis, then I think it's a reasonable assumption to assume that there will be a lot more.

PN14318

Are you saying you get five or six requests to open every day from your regular customers, to open till 9 pm on Monday to Wednesday, is that your evidence?---I am saying that.

PN14319

Do you agree with this proposition as a general proposition I want to put to you, whether it's viable for you to trade at any particular time you'd accept will depend upon your revenues that you're likely to receive during those times, and the expenses you're likely to incur for trading at those times?---Sorry, can you repeat that question?

PN14320

As a general proposition do you accept that the question of whether or not it's viable to trade at any particular time of the day, on any day, depends upon the income that one, it receives during that time and the operating expenses incurred in that time?---Yes, that's a fair assumption, yes.

PN14321

Do you also accept that the revenue the pharmacy generates, your pharmacy generates is variable across different times of different days?---Yes, I'd agree with that.

PN14322

So which days - well can you give the Commission as sense of some of the days when you say the revenue is at its highest?---It would probably - it would definitely be mid-morning.

\*\*\* HASSAN EL-AHMAD

XXN MR MOORE

PN14323

Mid-morning is peak hour in your pharmacy, is it?---Mid-morning is peak hour.

PN14324

Mid-morning on a weekday?---On a weekday.

PN14325

Any other stand out peak times?---Saturday mornings as well.

PN14326

Saturday morning?---Yes.

PN14327

Can you give the Commission an example of two of when your revenue is - certain times of the day or days when your revenue is at its lowest?---Around lunch time.

PN14328

What days?---Weekdays, Saturdays and Sundays as well.

PN14329

Lunch time all days?---Yes.

PN14330

Any other days when it's particularly lower?---Sundays as well. Sundays all day it's pretty - it's consistent but it's - when comparing to a weekday it's lower revenue, yes.

PN14331

When you - in paragraph 19 of your affidavit you say:

PN14332

*The sole reason we cannot open the pharmacy until midnight on weekdays is due to the wages cost as a result of the current penalty rates.*

PN14333

I assume that in order to make that statement you've undertaken an analysis or projection of your revenues you would expect to receive between your current closing times and midnights on weekdays?---It's an assumption based on Thursdays and Friday night trading.

PN14334

Thursday and Friday night trading - - -?---Correct.

PN14335

- - - which you only trade to 9 pm?---Yes.

PN14336

You're assumption that it would be the same revenues received between 9 and 12 pm[sic], are you, as between 7 and 9 pm?---Sorry, can you repeat that question?

\*\*\* HASSAN EL-AHMAD

XXN MR MOORE

PN14337

Well your evidence is, is that the basis of your evidence in paragraph 19 is that you've acted by reference to an assumption of your revenues that you receive on Thursday and Friday nights before 9 pm. Is that what you say?---Correct.

PN14338

But you accept - well, tell me if you don't, are you assuming that the revenues would then be the same between 9 pm and midnight?---No, they would not.

PN14339

Have you undertaken any analysis or projection of what the revenues would be between 9 pm and midnight? If you haven't you can indicate that but if you have please tell the Commission what it is?---Yes, the assumption is that all shops close after 9 pm, so only the major supermarkets remain open after 9 pm, so it's a reasonable assumption that your trade, your traffic flow, would be less after 9 pm on weekdays.

PN14340

So traffic flow would be less after 9 pm, that's an assumption you make?---Correct.

PN14341

On weekdays, but you haven't undertaken any projection or analysis to get a handle on what the revenues would likely be between 9 and 12?---I haven't.

PN14342

I take it you haven't undertaken any analysis or projection of what labour costs you would likely incur in trading between 9 pm and 12 pm[sic] on a weeknight?---No, I have made those.

PN14343

I'm sorry?---I have made those projections for labour costs.

PN14344

You have?---Yes.

PN14345

How did you do that?---Just based on penalty rates.

PN14346

What did you do exactly? How did you - what's this projection?---Well one pharmacist, one assistant, calculate their base rate, multiply it by the penalty rate and you'll get a gross figure.

PN14347

Did you document this?---No, I did not.

PN14348

So you did it in your head?---That's right.

\*\*\* HASSAN EL-AHMAD

XXN MR MOORE

PN14349

It's an impression?---Well my calculations are reasonably pretty solid, so it's not an impression, no.

PN14350

You've done some mental arithmetic on your labour costs for trading between 9 and 12, yes?---Correct.

PN14351

But you haven't done any analysis or projection in relation to the other element, which is your revenues and income that you would like receive in those hours?---That's correct, yes, I haven't done that projection.

PN14352

You would accept that without having done that analysis or projection of your revenues and income between 9 and 12 pm[sic], you're not in a position to have any confidence that it would in fact be viable to trade in those hours?---I disagree. I think I'm in a position to be - to make that assumption based on what I've been told, as I said, by my patients who visit my pharmacy during normal trading hours. And the medical centres that are open in the local area.

PN14353

Have you done an experiment and opened late at all to test out this theory?---I have not. I have not, no.

PN14354

Can I just ask you to look at paragraph 23?---Yes.

PN14355

Am I right in understanding that what you're saying there and also in paragraph 20, is that except for public holidays your trading hours - I'll withdraw that, let me start again. Am I correct in understanding that this is the situation. Is that the hours that you trade, except for Monday to Wednesday, reflect your requirements of your lease. Is that right or have I misunderstood that?---No, you understood that perfectly, that's correct.

PN14356

I've got that right, have I?---Yes.

PN14357

To be clear, when we refer to Monday to Wednesday, we're talking about the extra hour?---Correct.

PN14358

So other than 6 to 7 Monday to Wednesday, the other hours that you trade are hours that you're required to under your lease?---Correct, under my lease, yes.

\*\*\* HASSAN EL-AHMAD

XXN MR MOORE

PN14359

Just to be clear, other than between 6 pm and 7 pm Monday to Wednesday, all the other hours that you trade are hours that you're required to trade under your lease?---That's correct.

PN14360

You entered into this lease about a year ago, I assume?---More than a year ago. It would have been June 2013 or August 2013. Between June to August 2013.

PN14361

So you entered into the lease, what, a year or so before you actually commenced operating the pharmacy, did you?---Less than a year; probably about eight to nine months.

PN14362

Were you paying rent over those eight or nine months?---No.

PN14363

I see?---But the start date of the lease was May 2014.

PN14364

How long is the lease for?---10 years.

PN14365

A 10-year lease?---Yes.

PN14366

Given it's a 10-year lease, that's a substantial commitment, obviously?---Yes.

PN14367

I assume that in entering into that lease and starting this business, you took advice or considered the labour costs associated with running the business in hours required pursuant to the last?---Amongst many other things.

PN14368

So the answer is yes, is it?---Yes.

PN14369

And in doing that, you understood what your obligations were in relation to payment of penalty rates?---Yes.

PN14370

Nothing further. Thank you, your Honour.

PN14371

JUSTICE ROSS: Re-examination?

PN14372

MR SECK: No re-examination, your Honour.

\*\*\* HASSAN EL-AHMAD

XXN MR MOORE

PN14373

JUSTICE ROSS: Thank you for you evidence. You're excused.

<THE WITNESS WITHDREW

[12.46 PM]

PN14374

JUSTICE ROSS: Next witness?

PN14375

MR SECK: The next witness, your Honour, is Michael Farrell. I call Michael Farrell.

PN14376

JUSTICE ROSS: I don't think there were any objections taken to his evidence in the document we received.

PN14377

MR SECK: There is one objection I will just raise with my friend now at the bar table.

PN14378

JUSTICE ROSS: Sure.

PN14379

MR MOORE: We might be able to resolve it.

PN14380

THE ASSOCIATE: Please state your full name and address.

PN14381

MR FARRELL: Michael Patrick Farrell, (address supplied).

<MICHAEL PATRICK FARRELL, SWORN

[12.47 PM]

EXAMINATION-IN-CHIEF BY MR SECK

[12.48 PM]

PN14382

MR SECK: I've just spoken to my learned friend. Can I indicate that in paragraph 14 of Mr Farrell's affidavit I don't read the first and second sentences and the word "however" in the third sentence. So the third sentence would start, "The current penalty rates." Other than that, I think that deals with my learned friend's objections.

PN14383

JUSTICE ROSS: All right.

PN14384

MR MOORE: It does.

\*\*\* MICHAEL PATRICK FARRELL

XN MR SECK

PN14385

MR SECK: Mr Farrell, you're a pharmacist. That's correct?---Correct, yes.

PN14386

And you are currently the manager of Megasave Chemist Caneland Mackay?---Yes.

PN14387

You've prepared an affidavit in these proceedings. That's so?---Yes.

PN14388

That affidavit was sworn on 6 August 2015. That's correct?---Correct, yes.

PN14389

Do you have a copy of your affidavit with you in the witness box?---Yes, I do.

PN14390

Have you read that affidavit recently?---Yes, I have.

PN14391

Do you wish to make any changes to the affidavit?---No.

PN14392

Are the contents of your affidavit true and correct to the best of your knowledge and belief?---They are.

PN14393

Subject to the redaction in paragraph 14, I read the affidavit.

PN14394

JUSTICE ROSS: I will mark that exhibit PG12.

**EXHIBIT #PG12 AFFIDAVIT OF MICHAEL FARRELL AS  
AMENDED DATED 06/08/2015**

**CROSS-EXAMINATION BY MR MOORE**

**[12.49 PM]**

PN14395

MR MOORE: Mr Farrell, you say in your affidavit that you're a pharmacist and manager of the Megasave Chemist Caneland Mackay?---Mm-hm.

PN14396

Are you a proprietor?---Yes, I am. But I have an active role in the management.

PN14397

I see?---Yes.

PN14398

Are you a sole proprietor, or in partnership?---No, in partnership.

\*\*\* MICHAEL PATRICK FARRELL

XXN MR MOORE

PN14399

When did you commence being a proprietor or partner in that pharmacy?---The pharmacy opened in - it's coming up four years in March next year, so it has been open about three and three quarter years, yes.

PN14400

Okay. So 2012?---Yes. March 2012.

PN14401

March 2012?---Yes.

PN14402

Are you a proprietor or a partner in any other pharmacies?---Yes. Terry White Chemist Mackay.

PN14403

It's in the same city?---Correct.

PN14404

How long have you been a proprietor of Terry White?---Since 1988.

PN14405

I see. Do you know how many pharmacies are in Mackay? You probably do, I suppose?---There would be roughly 20, 22, something like that.

PN14406

And there are no other pharmacies that you have an interest in beyond those two?---No.

PN14407

So you would have a good sense - having operated Terry White Pharmacy since 1988 in Mackay, when you decided to become a proprietor of the Megasave Caneland in Mackay you would have had a good sense of the prevailing commercial, regulatory and employment arrangements that applied?--- Yes.

PN14408

You went in with your eyes wide open, I take it?---Yes.

PN14409

And when you - I withdraw that. In paragraph 7 you refer to public holidays?---Mm-hm.

PN14410

You say you open from 10 am to 2 pm on public holiday, but there are only two public holidays that you open on?---Yes. Originally we opened on all, but we've reduced that back to those.

PN14411

I see. So that has changed over the time?---Yes, absolutely. As it has done in the Terry White one as well.

\*\*\* MICHAEL PATRICK FARRELL

XXN MR MOORE

PN14412

You say in your affidavit that it's not financially viable to open on public holidays?---Mm-hm.

PN14413

In saying that, I take it that you've calculated the additional labour costs associated with you opening the Megasave Caneland Pharmacy on public holidays?---Yes, we have.

PN14414

You have, have you?---Yes. We use a wage lock, which is a sign-on sign-off system for staff. It tracks hours. That feeds into a payroll, and we calculate our payroll. I suppose the simplest way I can describe it is on a Sunday if you roster six staff you pay for 12.

PN14415

We're referring to public holidays?---In that case you're paying for 15. So you roster six staff, you're paying for 15. It doesn't need a great deal of - it doesn't need quantitative analysis to come to a conclusion that that's unlikely to be viable.

PN14416

I see. To come to the conclusion that it's not viable, I take it that you had to have a handle on your wages costs associated with the public holiday, and you've just given some evidence as to how you did that?---Mm-hm.

PN14417

And you also needed to understand the gross profit before wages of trading on public holidays?---Yes.

PN14418

Did you do that?---Yes.

PN14419

Did you calculate that?---Yes. Generally our gross profit runs at between 30, 31 per cent. Wages generally run at 15 per cent. On a public holiday you're doubling that, so your wages are going to 30 per cent. And then on top of that you've got your other outgoings, which would include, you know, other outgoings: rent, electricity and whatever. so on those days, in doubling your wages percentage, you have consumed your entire gross profit percentage.

PN14420

COMMISSIONER HAMPTON: Those percentages were of what?---Of turnover.

PN14421

Turnover?---So our gross profit is 31 - 30, 31 per cent of turnover, and wages run at 15 per cent. The other thing I haven't allowed for in there is the on-cost for wages. That would include things like leave liabilities - it does include super, but leave liabilities, WorkCover, payroll tax, et cetera, would be added onto that, so the picture is even worse.

\*\*\* MICHAEL PATRICK FARRELL

XXN MR MOORE

PN14422

MR MOORE: The gross profit that you said you run at, 30 to 31 per cent, is that a percentage referable to public holidays, or is that a general measure for your pharmacy operations overall?---General, but it doesn't change on those days, because our product mix and merchandise, there's no alteration in our retail prices; our product mix remains basically the same; the script remuneration remains the same.

PN14423

The number of customers can presumably vary?---Yes. Correct.

PN14424

And would it be right in assuming that the level of custom on a public holiday would be less than the level of custom on other days?---Correct. Yes.

PN14425

Substantially less?---It varies significantly between the particular day.

PN14426

The particular public holiday?---Yes, it does. And also it varies on local events. If it's a long weekend and you've got a sporting event in town it might be - you will get more customers; if there's a sporting event in Townsville, then everyone has gone to Townsville anyway, so it is a mixed bag. Very hard to predict, very hard to roster for.

PN14427

Can I ask you a question about something else in your affidavit?---Mm-hm.

PN14428

The additional services you refer to in paragraph 12?---Mm-hm.

PN14429

Am I right in assuming - could you have a look through those, please, and answer this question?---Yes.

PN14430

Could you just tell the Commission which, if any, of those you charge a fee for to customers?---Dose administration aides, we charge a nominal fee.

PN14431

Yes?---Vaccinations, we charge a fee; meds checks, we do receive some remuneration from the government for.

PN14432

Well, I'm just asking you about fees that you charge the - - - ?---How much we charge?

PN14433

No. I'm just asking you to identify those services in relation to which you impose a fee on the patient?---Yes. Dose administration aides.

\*\*\* MICHAEL PATRICK FARRELL

XXN MR MOORE

PN14434

Yes?---Vaccinations.

PN14435

Yes?---And that's it.

PN14436

And in terms of those services there listed that you receive funding for from the government, can you identify those?---The meds checks.

PN14437

Meds checks is paragraph (f)?---(f), correct. Bottom, (f); and (h) is not offered in the pharmacy. That involved a service to the patient at their home.

PN14438

Yes?---And we use a third-party provider there.

PN14439

Yes?---And they basically receive - the third-party provider receives that remuneration via us.

PN14440

I see. There's a subsidy provided by the government for that - - - ?---Yes.

PN14441

- - - but it goes to the third party?---And they then bill us.

PN14442

Thank you. Yes. Any others?---No, that would - - -

PN14443

Thank you. In paragraph 17 you refer to leasing arrangements at the chemist. When did you enter into this lease?---2012 - March 2012.

PN14444

At the same time as you set up your business?---Correct. It was a new business

PN14445

What times are you required to open on the lease?---The hours are defined in the terms of the lease, and defined as core hours, and they include trading on Sunday from 10 till 4; and public holidays, apart from the public holidays where no-one trades, the Good Fridays, Labour Day and whatever, so we're expected to open the public holidays that the centre is allowed to open.

PN14446

Between 10 and 4?---Correct.

PN14447

So just to be clear, that's in relation to most but not all public holidays?---Correct.

\*\*\* MICHAEL PATRICK FARRELL

XXN MR MOORE

PN14448

And this is because - I withdraw that. You're located in a shopping centre?---Correct.

PN14449

I see. Your landlord has been accommodating, has it or has it?--- We receive - if we're not open on the required hours they take a photograph of our store, they supply the photograph with a date stamp on it and a letter saying you need to talk to us.

PN14450

That doesn't sound very accommodating at all?---No.

PN14451

In paragraph 21, you say that the chemist used to employ a number of pharmacy students?---Correct.

PN14452

You say that you can't - it's not financially viable to employ them and train them. It's the case though isn't it that pharmacy students are paid the same rate as pharmacy assistants under the 2010 award?---No, the rates are different and I probably - we're located in Mackay and we get a lot of JCU students during their vacation and holidays work for us. They will be employed at a casual rate. The current casual rate for a third year pharmacy student on a Sunday is \$45 per hour. If you annualise that to compare it as to what sort of rate that really means, \$45 - well it's \$45.20 or 21, multiplied by 38, multiplied by the 52 and add super into that, it comes out at about \$98,000 per year as an annualised rate. The students wish to work there during their breaks, their holidays and weekends is when they're available but at that rate it is not - compared to a pharmacy assistant at level 2 is about \$40 or something like that. There's a considerable difference. The concern for me is the students want to work, I think they understand that an annualised rate at \$98,000 is not probably viable, given that we have to mentor them, I have been involved with students from JCU and UQ in training. It's just the sheer quantum of that cost that it's not viable to do it.

PN14453

The pharmacy students and pharmacy assistants can both be employed either on a permanent basis or a casual basis. You agree with that?---Yes.

PN14454

I just want to show you a document. This is exhibit SDA - - -?---Subject, that would be subject to the regularity of their hours.

\*\*\* MICHAEL PATRICK FARRELL

XXN MR MOORE

PN14455

Yes. This is exhibit SDA11. This is a document that is in evidence before the Commission, and I just want to draw your attention to aspects of it. For present purposes you don't need to trouble yourself with the numbers in handwriting, I don't want to confuse you with that but you'll see in the second, the major table,

across the top row, they're all the different classifications provided for under the award. See that?---Yes.

PN14456

See that?---Yes.

PN14457

In the first row under the heading, it sets out the ordinary rate?---Mm-hm.

PN14458

I can tell you that the ordinary rate set out in that row is for a permanent employee, so it doesn't include casual loading?---Yes, I was calculating casual.

PN14459

No, just - I'm taking you through this and I'll ask you a question in a moment. So the pharmacy students are dealt with in the fifth from - you'll see the listing "pharmacy students first year", that column?---Yes.

PN14460

So the ordinary rate - hourly rate of pay for a permanent first year pharmacy student is \$18.99 an hour?---Mm-hm.

PN14461

Then if you go to the left, the ordinary rate for a pharmacy assistant first level is the same at \$18.99. You see that?---Yes.

PN14462

You can run your eye over the comparison for the ordinary rate for second year and third year and fourth year pharmacy students, and likewise second and third and fourth level pharmacy assistants, and you'll see that the rates are the same?---Mm-hm.

PN14463

Now further down the table the numbers that appear are the applicable penalty rates that apply for the different classifications at different times of the day, and you'll see Sunday appears in the third column?---Mm-hm.

PN14464

You'll see again, do you, just confirm you can see this, that the rates for Sunday permanent employee are the same? See that?---Yes, I do.

PN14465

Can I suggest to you that your claim in paragraph 21 in relation to pharmacy students is actually based on a misconception because the minimum rates of pay for permanent employees are the same between pharmacy assistants and pharmacy students. Do you accept that?---Just that the pharmacy assistant level is for - I gather for a 21 year old. There's no ages on that.

PN14466

Well I'm not sure what - - -?---Because the hourly rates are less for - - -

\*\*\* MICHAEL PATRICK FARRELL

XXN MR MOORE

PN14467

Yes, it is an adult rate for 21 year olds, that is the pharmacy assistant or I think for all of the levels are for 21 and up. Yes?---So when - to answer the question is on these high - days where high penalty rates occur, I would choose to use less senior staff to try and ameliorate the effect of the higher wages and also there is a difficulty with employing pharmacy students who are only there for a week or two on a permanent part-time basis. It would I think not meet with the award requirements as far as their engagement, and they would need to be engaged as casual employees because they're only there for a week or two on their holidays.

PN14468

Excuse me a moment. Mr Farrell, you understand that the award contains within it an obligation to pay a casual loading of 25 per cent for casual employees?---Mm-hm.

PN14469

That's a loading that applies to whatever classification a worker is?---Yes.

PN14470

So I'm suggesting to you that the same identity between the rates for a pharmacy assistant and a pharmacy student in relation to permanent employees, the applicable rates are likewise identical for casual employees. Do you accept that?---I'm not disputing your point there but what I am saying is that in Mackay the pharmacy students only come down when they return home or whatever, so then I can't employ them on a permanent basis, permanent part-time basis. So I need to employ them as casuals when they come home for those short periods of time.

PN14471

You need to employ the pharmacy students - - -?---In my situation - - -

PN14472

You need to employ the pharmacy students on a casual basis and what I'm suggesting to you is that you're wrong in suggesting that there is - that employing a - I'll withdraw that. What I'm suggesting to you is that there - I'll withdraw that. You employ pharmacy assistants now?---Correct.

PN14473

There would be no - and you employ some of them as casuals?---No.

PN14474

Or they're all permanents are they?---Yes.

PN14475

I see?---Yes.

\*\*\* MICHAEL PATRICK FARRELL

XXN MR MOORE

PN14476

So your point is well, pharmacy students in the circumstances of your business and where you're located can only realistically be employed on a casual basis. You don't employ any casual pharmacy assistants?---No.

PN14477

The cost then of employing, would you accept this, that the cost then of employing a casual pharmacy student in lieu of the same level pharmacy assistant who is employed on a permanent basis would be the difference of the casual loading?---I agree with that but it's not - it's not something I can use in my business or with pharmacies that aren't located in the same city as the pharmacy school.

PN14478

Now your gross profit before wages varies across different hours - different days and different hours?---Not really, no.

PN14479

It's pretty constant, is it?---Yes. There'll be a small fluctuation from day to day. The mix, you know, the data is over a wider sample size is quite constant.

PN14480

Would it be fair to say that early and late in the day the gross profit for wages is a bit less?---I analyse my data carefully. I have - I would not - I have no data that would support that. The mix is we are a business that sells a lot of different smaller cost items, you know, retail items, so that - statistically that - your GP's date is pretty constant. We look at it each day but we analyse it comparatively each month and it's pretty constant.

PN14481

Thank you. In paragraph 22, you say you had to reduce your hours that the Mega Save Chemist opened due to penalty rates?---Mm-hm.

PN14482

Did you undertake an analysis to generate that conclusion, that is that you reduce the hours due to penalty rates?---What we did, we had rising cost of wages measured as a percentage of our turnover. So from an analysis - - -

PN14483

For what days? I'm sorry to interrupt your answer?---Well that analysis is done monthly.

PN14484

I'm sorry?---Yes. So what you do is you look at your highest unit cost of wages and also analyse your sales volumes and our conclusions were that these were periods where the sales volume was relatively low but the costs were higher, with the exception of the 8 to 8.30. That is normal time, however I do point out that if a pharmacist starts at 8 o'clock we do need to pay them from 7.45 to allow them to enter the premises, unlock it and whatever, so there's penalty rates applying in that first 15 minutes. So it is based upon just looking at our high unit cost of wages and lower turnover times.

PN14485

Thank you. In paragraph 25, you say;

\*\*\* MICHAEL PATRICK FARRELL

XXN MR MOORE

PN14486

*It's not possible to pass the cost of penalty rates onto customers and that the only way is to reduce trading hours.*

PN14487

I would suggest to you that that's got to be an over-statement, does it not, insofar as your revenues are dependent upon sales of other, if I can describe, retail items. That is non-medications. They are - you're able to vary the prices of the other items that you sell other than medications?---You mean in a particular timeframe?

PN14488

No, across any particular week?---Yes, we - like all businesses we face competitive challenges, so yes, we could in theory quickly fix this problem by raising prices considerably. But that would cause a downturn in our turnover, so I'm particularly - I'm very much aware of, you know, the damage that if you're seen as a high priced outlet that you will lose customers, and also the other important point here is that our PBS remuneration is fixed. We have no - which accounts for a considerable proportion of our turnover.

PN14489

What proportion?---Probably 55 per cent.

PN14490

So 45 per cent is income generated from non-medication sales?---Correct.

PN14491

So you accept that there is some capacity to adjust your income, by reference to that 45 per cent of your income sales, of your income, subject to the competitive pressure that you face?---Correct. And that's something that we do review, as partners, on a monthly basis, review our pricing policy, looking for ways that we can maybe scratch a little bit more GP dollars. So it is an area that we - we don't sit on our hands on that, we're constantly looking for higher margin items.

PN14492

I understand, thank you. Paragraph 30, the point you're making here, I take it, is that it's difficult to compete with Coles and Woolworths on the medication that they can sell?---Yes.

PN14493

But they can't sell prescription medication?---No. But the reregulation, there's been a constant deregulation of medicines over probably 10 or 15 years, so we've seen Ibuprofen, all the non-sedating antihistamines, baby formula, it goes on and one. There was a general push to deregulate where safe to do so. That's fine, but they have a significant advantage against us as far as their cost of labour.

PN14494

They have no advantage over you in relation to the sale of prescription medication, that's so?---No, they don't.

\*\*\* MICHAEL PATRICK FARRELL

XXN MR MOORE

PN14495

And you believe, do you, that the penalty rates are much higher under the General Retail Industry Award than the Pharmacy Industry Award, is that what you- - - ?---Particularly on Sunday, Coles and Woolworths have 50 per cent loading on Sunday trade.

PN14496

You understanding is that Coles and Woolworths employ their staff under the General Retail Industry Award, do they?---Look, I- - -

PN14497

You don't know, do you?---I've got a reference document that lists the award rates in the various industries.

PN14498

All right. Well, you accept that if you're wrong in your understanding about the employment arrangements at Coles and Woolworths and the applicable penalty rates, that what you said there in paragraph 30 doesn't follow?---I don't accept that Woolworths and Coles pay 100 per cent penalty on Sundays. They pay 50 per cent.

PN14499

I'm just asking you the questions. I understand what you say to that?---That's the basis of that statement.

PN14500

Now, I want to ask you the last question. In paragraph 32, you say that if the Guild's proposal was extended you could extend your trading hours. I take it that whether or not you would extend your trading hours would depend upon a number of other variables?---Probably badly worded for my part. If the – we work within the confines of the percentages of our GP, our rent and our wages. If there's wages that we save there with penalty rates, we could put back into extending our hours. I would hope that would have an on flow benefit in that our customers really look for us to be open longer hours. And if we are open longer hours, then we will get more trade and hopefully up momentum would actually lead to more – more hours for our staff.

PN14501

Whether or not you would extend your hours would depend, not only upon the proposal put by the Guild being accepted, but also upon your assessment about the level of trade that you would likely receive in any extended hours?---Like I said, at the moment I'm working with a certain amount of wages to turnover. If that is – if those wages are reduced by, you know, some movement in penalty rates I would spend those wages – I could spend up to that limit straight away to extend the hours.

PN14502

And if you did extend your hours, I take it that what your first port of call would be to offer additional hours of work to existing employees?---Yes, I believe so. There's under employment- - -

\*\*\* MICHAEL PATRICK FARRELL

XXN MR MOORE

PN14503

Under employment did you say?---Yes. A number of our staff seek more hours. But hopefully, once that slack was taken up it would be necessary to employ new staff.

PN14504

That is all I have for the witness, your Honour. I'm sorry for the time, I see- - -

PN14505

JUSTICE ROSS: No, that's all right. Any re-examination? Thank you for your evidence, you're excused.

**<THE WITNESS WITHDREW [1.19 PM]**

**LUNCHEON ADJOURNMENT [1.19 PM]**

**RESUMED [2.19 PM]**

PN14506

JUSTICE ROSS: Next witness?

PN14507

MR SECK: I call Trent Gregory Playford. Your Honour, we've dealt with objections. Can I just take the Commission to parts which I no longer read.

PN14508

JUSTICE ROSS: Yes.

PN14509

MR SECK: Paragraph 23, the second sentence, starting, "Even if;" we do not read that sentence in paragraph 23. I think that's it.

PN14510

JUSTICE ROSS: Does that resolve the objection?

PN14511

MS FORSYTH: Thank you, your Honour.

PN14512

THE ASSOCIATE: Please state your full name and address.

PN14513

MR PLAYFORD: Trent Gregory Playford, (address supplied).

**<TRENT GREGORY PLAYFORD, SWORN [2.20 PM]**

**EXAMINATION-IN-CHIEF BY MR SECK [2.20 PM]**

\*\*\* TRENT GREGORY PLAYFORD

XN MR SECK

PN14514

MR SECK: Mr Playford, you are a pharmacist by occupation. That's correct?---Yes, I am.

PN14515

And you are currently the proprietor of West Gosford Pharmacy. That's right?---Yes, that's correct.

PN14516

You've prepared an affidavit in these proceedings. That's right?---Yes, that's true.

PN14517

Do you have a copy of your affidavit with you?---I do.

PN14518

Have you read that affidavit recently?---I have, yes.

PN14519

I understand you wish to make some small changes to your affidavit. That's right?---Yes, if that's possible.

PN14520

May I take you to paragraph 10 of your affidavit. You wish to change paragraph 10 subparagraph (h). That's right?---Yes, that's correct.

PN14521

What do you wish to change it to?---I wish to change it to just one part-time level II pharmacy assistant.

PN14522

Are there any other changes you wish to make to the numbers of employees?---Yes. So that therefore makes it 13 employees.

PN14523

Can I then take you to paragraph 20 of your affidavit?---Yes.

PN14524

I understand you wish to make a change there?---Yes. I wish to change the word "profit" to "turnover" for the pharmacy.

PN14525

Do you wish to make any other changes, Mr Playford?---No, all is correct. Thank you.

PN14526

Subject to those changes, is the content of your affidavit true and correct to the best of your knowledge and belief?---Yes, it is.

PN14527

I read the affidavit subject to those changes and the reductions.

PN14528

JUSTICE ROSS: I will mark that exhibit PG13.

\*\*\* TRENT GREGORY PLAYFORD

XN MR SECK

**EXHIBIT #PG13 AFFIDAVIT OF TRENT PLAYFORD AS  
AMENDED**

**CROSS-EXAMINATION BY MS FORSYTH**

**[2.22 PM]**

PN14529

MS FORSYTH: Mr Playford, you've been a registered pharmacist since 2005. Is that right?---Yes, that's correct.

PN14530

How long have you been an owner of the West Gosford Pharmacy?---I bought the pharmacy on 2 August 2007.

PN14531

Are you a sole proprietor?---In a partnership.

PN14532

Are you an owner - either a sole trader or in partnership - in any other pharmacies?---No, I'm not.

PN14533

You note that - I'm reading specifically from paragraph 7 - after you've talked about your love for the job - you yourself work 50 hours a week; you've worked those sort of hours since you commenced in 2007?---Yes, that's correct.

PN14534

And the hours set out at paragraph 8 of the West Gosford Pharmacy, I take it have remained consistent since that time as well, 2007?---There was a change to our Sunday trading hours. We used to be 9 until 5 o'clock on Sundays.

PN14535

I did note that. I think that is paragraph 18 of your statement. When did that change take place?---That change took place approximately two years ago.

PN14536

And I think you've reduce it by two hours; effectively; one hour between 9 to 10, and another between 4 to 5. Is that right?---That's correct, yes.

PN14537

And I take it that was a result of a lack of good customer trade at those times on a Sunday?---It, yes, came down to profitability of the pharmacy in those periods.

PN14538

Is the Sunday a particular busy trading day for you?---It's not a particularly busy day overall, but we do still see plenty of customers in that time. It doesn't always reflect, in the number of people we see, the actual turnover in the pharmacy.

\*\*\* TRENT GREGORY PLAYFORD

XXN MS FORSYTH

PN14539

I understand. You say at paragraph 9 of your statement that the West Gosford Pharmacy is closed on public holidays, and you say that given the cost of penalty

rates imposed on public holidays, it is not financially viable to open on these days. Have you ever opened on public holidays?---Yes, we have.

PN14540

When did you stop opening on public holidays?---I'm sure it would be approximately two to three years ago.

PN14541

When you say it's not financially viable, I take it there that you don't mean it wasn't profitable, it just simply wasn't worth the pharmacy opening on those days?---No, in those times I was at times making a loss.

PN14542

I see. I think it's now 13 employees that your employ. Is that right?---Yes, that's correct.

PN14543

And that staff base has remained consistent throughout your proprietorship?---Yes. We have kept primarily the same mix of staff throughout the period.

PN14544

In terms of the services you provide, you identify a few at paragraph 14. Mr Playford, you identify a Webster packing service that you offer free of charge. That's something that is funded, isn't it, by the Commonwealth government?---The government funds us not particularly well, not really enough to cover the actual cost of the service, but it helps to offset it.

PN14545

And I think you've mentioned that you also offer services for free - home delivery, if you like - of drugs where patients can't attend your pharmacy for whatever reason?---Yes.

PN14546

Do you receive funding for that?---No, we don't.

PN14547

Do you charge a fee for that?---No, we don't.

PN14548

But it's something that you've done since your proprietorship in 2007?---Yes, that's correct.

\*\*\* TRENT GREGORY PLAYFORD

XXN MS FORSYTH

PN14549

At paragraph 18 you talk about - I withdraw that. At paragraph 23 of your statement, Mr Playford, you say that if the PGA's proposal was accepted it may be possible for the West Gosford Pharmacy to open on public holidays. You've undertaken analysis to establish that that might be a possibility for your pharmacy?---Just looking at the similar sort of things that we do on a Sunday. If

the current rates were to be dropped down to the same as a Sunday, then that's certainly something I think we could consider.

PN14550

Well, you think you could consider but I mean, have you looked at, for example, the sorts of trade that you benefit from on public holidays?---We've had reports from patients and customers who have tried to attend the pharmacy when we haven't been there. So working off the numbers of people that have told us that, you know, they tried to come down, that's showing that we have a service that's required.

PN14551

What sort of numbers are they?---After each public holiday, we've had at least four or five customers tell us that they tried to come by.

PN14552

I see, but other than that anecdotally communicated position, you haven't conducted any sort of analysis of your general gross profit received from trade on public holidays, to assess whether or not, in fact, it would be viable for you to open on those days, in the event that the Guild's proposal was accepted?---No, we haven't at this stage.

PN14553

No. So whilst you say that it may be possible, that's just at this stage, not much more than a guess on your part?---That's certainly something that I've considered, yes.

PN14554

But just considered?---Yes. I obviously haven't been able to put in place yet, just yet.

PN14555

Thank you.

PN14556

JUSTICE ROSS: Any re-examination?

PN14557

MR SECK: No, your Honour.

PN14558

JUSTICE ROSS: Thank you for your evidence, you're excused?---Thank you very much.

<THE WITNESS WITHDREW

[2.32 PM]

PN14559

MR SECK: I call Craig Bird. I had a discussion with my learned friend and we've resolved the objections on this issue.

\*\*\* TRENT GREGORY PLAYFORD

XXN MS FORSYTH

PN14560

Can I indicate to the Full Bench that I do not read paragraph 33, 38 and 39 of Mr Bird's affidavit, and that resolves the objections.

**<CRAIG FRANCIS BIRD, AFFIRMED**

**[2.33 PM]**

**EXAMINATION-IN-CHIEF BY MR SECK**

**[2.33 PM]**

PN14561

MR SECK: Mr Bird, your occupation is as a pharmacist, is that's right?---That's correct.

PN14562

And you are currently the proprietor of Belrose Chemist, is that so?---That's correct.

PN14563

You have prepared an affidavit for the purpose of these proceedings, that's correct?---Yes.

PN14564

That affidavit was affirmed on 10 August 2015, that's correct? On the last page?---Yes, that's correct.

PN14565

Have you read that affidavit recently, Mr Bird?---Yes.

PN14566

I understand you wish to make some small changes to your affidavit, that's right?---Yes, that's correct.

PN14567

Can I firstly take you to paragraph 8?---Mm-hm.

PN14568

Could you please let the Commission know the changes you wish to make to paragraph 8?---Yes, the Belrose Chemist is open on all public holidays except for Christmas Day, Boxing Day, Good Friday and Easter Sunday. We did not open on Labour Day Monday just past in October, the public holiday.

PN14569

And you also wish to make a change to paragraph 18 of your affidavit, is that's right?---That's correct. Yes.

PN14570

What change do you wish to make?---The last sentence which reads, "This is of great benefit to those in the community who are unable to attend our chemist to have this service performed", delete, "to have this service performed".

\*\*\* CRAIG FRANCIS BIRD

XN MR SECK

PN14571

Other than those changes, Mr Bird, you don't wish to make any further changes to your affidavit?---No, I don't.

PN14572

Are the contents of your affidavit true and correct to the best of your knowledge and belief?---Yes, they are.

PN14573

Subject to the changes and reductions, I read the affidavit.

PN14574

JUSTICE ROSS: I mark the affidavit Exhibit PG14.

**EXHIBIT #PG14 AFFIDAVIT OF CRAIG FRANCIS BIRD DATED  
10 AUGUST 2015**

PN14575

MR SECK: May it please.

PN14576

JUSTICE ROSS: Ms Forsyth?

PN14577

MS FORSYTH: Thank you, your Honour. If your Honour can just bear with me one moment?

PN14578

JUSTICE ROSS: Sure.

**CROSS-EXAMINATION BY MS FORSYTH**

**[2.36 PM]**

PN14579

MS FORSYTH: Mr Bird, how long have you been a proprietor at Belrose Chemist?---Since 2 September 1999.

PN14580

Since 1999?---Yes.

PN14581

Long time. And are you a proprietor of any other chemists or pharmacies?---No, I'm not.

PN14582

and you're not in partnership or have any other interest in any other pharmacies?---No, I'm in partnership in this pharmacy, but that's the only one.

PN14583

And that's with your wife, is it?---That's correct, yes.

\*\*\* CRAIG FRANCIS BIRD

XXN MS FORSYTH

PN14584

And I take it that the hours of trade that you specify in paragraph 7 of your witness statement, Mr Bird, are those that have remained fairly consistent throughout your time as a proprietor of the Belrose Pharmacy or Chemist?---Yes, they are.

PN14585

And I daresay that the number of staff that you employ has remained fairly consistent throughout that time as well?---No, it hasn't.

PN14586

How has that changed?---The – in 2010 we amalgamated two pharmacies.

PN14587

I see. And you became in partnership with your wife, the proprietor of the amalgamated pharmacy?---That's correct.

PN14588

And that is trading as Belrose Chemist?---That's correct.

PN14589

So the staff have, no doubt, increased in number- - -?---Yes, they have.

PN14590

- - -to deal with that amalgamation. Have they sort of roughly doubled?---No.

PN14591

What was it before the amalgamation?---I don't – I wouldn't have exact numbers on that before the amalgamation.

PN14592

But it would be fair to say that there's been a substantial increase?---Yes.

PN14593

And are you included in the employees listed there? Are you one of the two part-time pharmacist managers?---No.

PN14594

No? In terms of the services you provide, you list a number of them. They are listed from paragraphs 13 to 18 in your witness statement, Mr Bird. I'm just going to ask you which of those services you receive funding for, if at all. The home deliveries that you mention in paragraph 13, do you receive funding for that? The Webster-Paks in paragraph 14?---The Webster-Paks, we do receive some funding from the Government and we do receive some funding from patients.

PN14595

Funding from patients?---Yes.

PN14596

How does that funding work?---As in a charge.

\*\*\* CRAIG FRANCIS BIRD

XXN MS FORSYTH

PN14597

I see, you- -?---For the service.

PN14598

It's a fee for service you charge?---Yes.

PN14599

And the screening clinics, mentioned in paragraph 15, is that funded?---Screening clinics are not funded. The heart health, diabetes, stroke risk and cholesterol were done free of charge. The bone density was a charge to the patient.

PN14600

I see. And what about the Weight Loss Management Program?---There's no charge for the program itself.

PN14601

And I understand that you've listed there that you're a National Diabetes Scheme sub-agent?---That's correct, yes.

PN14602

And that's received some new funding under the Sixth CPA, as I understand it, is that correct?---I believe that there's a dollar per unit, if I'm correct.

PN14603

And you receive that as direct remuneration for the provision of that service, as I understand it, under the Sixth CPA?---I believe so.

PN14604

Yes. And the Home Medications Review, do you receive funding for that?---That is a Government – yes, a Government payment.

PN14605

And other than the fee for charge or fee for service that you charge with respect to, I think your evidence was, the screening clinics relating to cholesterol and the fee for service that you charge with respect to the Webster-Paks, do you charge a fee for service for any of the other services listed in the paragraphs mentioned?---There wouldn't a fee for service for the cholesterol test.

PN14606

I misunderstood your evidence, I'm sorry. Well, perhaps the easier way is for you to identify what the fee for services are, as listed in your witness statement?---Fee for services would be the dose administration packs and the bone density testing.

PN14607

The dose administration packs being the Webster-Pak, I take it?---The Webster-Paks, yes.

\*\*\* CRAIG FRANCIS BIRD

XXN MS FORSYTH

PN14608

Thank you. If I can take you then across the page to paragraph 26 of your witness statement, you mention there that you're currently using temporary premises- - - ?---That's correct.

PN14609

- - -while the – I take it's the Belrose Shopping Centre complex is being redeveloped. Is that's right?---Yes, the Glenrose – Glenrose- - -

PN14610

Glenrose?---Yes, is being redeveloped.

PN14611

And you say that once the pharmacy returns to the shopping centre, it will be subject to core hours stipulated by the shopping centre and that that will mean that you will have to trade late on a Thursday night and until 5 pm on Saturdays and Sundays. So effectively additional 4 hours for you on the weekend and 3 hours on a Thursday night. So an extra 7 hours effectively?---I think that should be correct, yes.

PN14612

But I take it that you have been a supporter of a move into the shopping complex; is that right?---Sorry, just - - -

PN14613

Perhaps I can be a bit clearer?---Yes.

PN14614

You tended for a lease in order to - - -?---That's correct.

PN14615

- - -have visibility in the shopping complex?---Yes, we have. Yes.

PN14616

And you're looking forward to the opportunity that that will give you in terms of visibility and foot traffic about?---That's correct.

PN14617

Paragraph 27, just while we're on the issue of leases and rent, I take it that your rent is the largest expense for your pharmacy in terms of overheads?---No, wages.

PN14618

Have you done that comparison?---Yes, I have.

PN14619

And when you say that are you referring to your current lease arrangements?---Both current and future.

PN14620

At paragraph 29 and 30, perhaps if I can take you specifically to paragraph 30?---Mm-hm.

PN14621

You say that you've arranged to have minimum staff required on weekends and public holidays, in paragraph 30 of your statement. Do you see that?---Yes.

PN14622

I take it that that's something you've done since you opened or you became a proprietor of the Belrose Chemist, to manage overheads?---Yes, but I didn't have any – prior to ownership I wasn't responsible for any rostering.

PN14623

Sure?---So – yes.

PN14624

I'm sorry, yes. That aside, since you've become a proprietor in, I think it was, 1999 that's how you've managed your rostering, to have more minimum staff on weekends and public holidays?---Yes.

PN14625

And paragraph 31 you talk about:

PN14626

*Patients have less access to a pharmacist on weekends to ask questions and seek advice as the pharmacist is needed to dispense prescriptions.*

PN14627

As I understand that evidence you're not saying that there isn't a pharmacist available at those times, but just simply that patients may have to wait a little longer for service from a pharmacist at those times; is that correct?---Yes. Ease of accessibility has definitely declined.

PN14628

But there is a pharmacist available?---Yes, there is a pharmacist on duty, yes. Yes.

PN14629

Finally, Mr Bird, you mention at paragraph 36 and 37 of your statement that if the PGA's proposal was accepted you would firstly change the composition of staff rostered on weekends and public holidays:

PN14630

*Rather than only rostering on junior staff, I would also roster on more senior staff who have greater professional knowledge.*

PN14631

Have you done the numbers in terms of confirming that that would be a profitable way forward for your business, Mr Bird?---I haven't done an exact spreadsheet.

\*\*\* CRAIG FRANCIS BIRD

XXN MS FORSYTH

PN14632

So that's more of an aspiration or a plan or something that you'd considered rather than something that you would necessarily commit to at this point?---Yes, more of a plan just in terms of meeting the expectation of the community.

PN14633

And you would need to obviously look at profitability, custom and trade and costs to work out whether in fact that would be feasible?---Yes, profitability or loss.

PN14634

Yes?---Depending.

PN14635

And that's not something you've done at this point?---No.

PN14636

Thank you, Mr Bird?---Thank you.

PN14637

COMMISSIONER LEE: Mr Bird?---Certainly.

PN14638

Can I just ask you about paragraph 29 in your statement where you say:

PN14639

*In my opinion penalty rates has the greatest impact on employment staff from 12 midday on Saturday, Sundays and holidays.*

PN14640

What's the basis for saying that? Why do you say it's greater after midday on those days as opposed to before midday?---One is that you do tend to find that trade drops off in the afternoons. At the same time with any business there's a – you like to balance where you're at at any particular time. In many things in pharmacy it's not just a matter of, will I make a profit, it's a matter of looking after your community, and in an ideal situation we would like to have more staff on at those times if you could possibly afford it to cater for that need.

PN14641

Okay. Thank you.

PN14642

JUSTICE ROSS: Any re-examination? Anything arising? No?

PN14643

MR SECK: No, your Honour.

PN14644

JUSTICE ROSS: Thank you for your evidence. You're excused?---Thank you very much.

<THE WITNESS WITHDREW

[2.51 PM]

\*\*\* CRAIG FRANCIS BIRD

XXN MS FORSYTH

PN14645

MR SECK: The last witness for today is Michelle Spiro. I call Michelle Spiro.

PN14646

JUSTICE ROSS: Thank you.

PN14647

MR SECK: I think we've resolved the objection that my learned friend has. I don't read paragraph 10, the first sentence. Besides not reading that sentence I think that deals with my learned friend's objection.

PN14648

MR MOORE: It does.

PN14649

JUSTICE ROSS: So it's the first sentence in paragraph 10?

PN14650

MR SECK: That's so, your Honour.

PN14651

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

PN14652

MS SPIRO: Michelle Spiro (address supplied).

**<MICHELLE SPIRO, SWORN** [2.53 PM]

**EXAMINATION-IN-CHIEF BY MR SECK** [2.53 PM]

PN14653

MR SECK: Ms Spiro, you are a pharmacist by occupation; that's correct?---Yes.

PN14654

And you are the owner of Carrick's Pharmacy in Bondi; that's correct?---Yes.

PN14655

You have prepared an affidavit in these proceedings which you swore on 6 August 2015; that's right?---That's right.

PN14656

Do you have your affidavit with you in the witness box?---Yes.

PN14657

Have you read that affidavit recently?---Yes.

PN14658

Do you wish to make any changes to your affidavit?---No.

\*\*\* MICHELLE SPIRO

XN MR SECK

PN14659

I read the affidavit of Michelle Spiro.

PN14660

JUSTICE ROSS: I mark that exhibit PG15 noting the redaction of the first sentence in paragraph 10.

**EXHIBIT #PG15 AFFIDAVIT OF MICHELLE SPIRO DATED  
06/08/2015**

PN14661

MR SECK: Thank you. Thank you, your Honour.

**CROSS-EXAMINATION BY MOORE**

**[2.54 PM]**

PN14662

MR MOORE: Good afternoon, Ms Spiro. I just want to ask you some questions about your affidavit?---Okay.

PN14663

Carrick's Pharmacy is the only pharmacy that you own?---Yes.

PN14664

I see. And you've operated it for many a year; 33 years in fact. And I take it then it's a profitable going concern?---It is.

PN14665

Thank you?---Yes.

PN14666

And you've set out the trading hours of Carrick's in paragraph 5?---Mm-hm.

PN14667

Am I right in thinking that those trading hours there set out have remained largely unchanged over the duration?---No, we used to open the whole day on Sunday.

PN14668

Right?---But there was a period where there was a big shortage of pharmacists in New South Wales.

PN14669

Right?---And we had problems finding staff for Sundays, so we decided to close after five hours.

PN14670

I see?---Yes.

PN14671

And what period of time was that a problem? When are we talking about there?---I really can't remember. Maybe in the nineties.

\*\*\* MICHELLE SPIRO

XXN MOORE

PN14672

I see?---I don't remember. There was a time when there was a big shortage of pharmacists.

PN14673

Right. But for that episode of pharmacist shortage and an adjustment to your trading hours on Sundays, otherwise your trading hours, as you've outlined in paragraph 5, have remained unchanged over the 33 years?---Yes. Yes.

PN14674

Thank you. And in your statement you also refer to the fact that you work on Sundays with your partner. And I take it that that practice of you working on Sundays has also been a constant over the period of your operation of the pharmacy?---No, that's only been since the new award. So in the last two years I think. I think two years.

PN14675

And about how many hours a week do you work in the business?---Last week I did 40 hours. But I also do all the admin for the business as well, and I - - -

PN14676

So typically how many hours a week would you dedicate to working in the business?---About 45.

PN14677

Thank you. And would you accept that in a business like pharmacy, as a proprietor, it's necessary to work some hours in the business?---It's my only business, so maybe if I had three it would be different. I don't know, but I've only ever had the one, so, yes.

PN14678

But as an operator of a single pharmacy working - - -?---As an operator of a single pharmacy there's a lot of pressure and you have to be on top of it.

PN14679

And working in the pharmacy goes with the territory?---I think so.

PN14680

Yes?---Yes.

PN14681

As I read your statement, and I draw your attention to paragraph 14, as I understand it, the main complaint you're making to this Commission, if I can call it that, is in relation to penalties in the early morning?---That's right.

PN14682

Thank you. And you say, to para-phrase your evidence, if this is a correct summary, that the early morning penalties on weekdays prohibit you from opening earlier than you'd like?---That's right.

\*\*\* MICHELLE SPIRO

XXN MOORE

PN14683

And you open, I see your trading hours are, on weekdays, from 9 am?---Till 7, yes.

PN14684

Yes. Do you understand though that there are no penalty rates between 8 am on 9 am on weekdays?---I wasn't aware.

PN14685

So I can tell you that that's what the award provision contains?---Okay.

PN14686

So you would accept then there's no impediment to you opening at 8 am?---No. I wasn't – I thought I had to pay a penalty.

PN14687

Well, hopefully then you've taken something positive out of today's experience?---Yes.

PN14688

In paragraph 11 and 10 you refer to Sundays and I've already asked you a question about that?---I actually employ a 16 year old girl on Sundays.

PN14689

I'll ask you some questions in a moment, Ms Spiro?---Yes.

PN14690

So as I understand it, and I just want to work through this a step a time, it's a high sales day Sunday, that's right?---Over the counter, yes.

PN14691

When you say that due to the amount it cost you in wages;

PN14692

*I can only afford a casual employee to work behind the till on a Sunday and paying a pharmacist isn't viable -*

PN14693

therefore you or your partner work it?---Mm-hm.

PN14694

In saying that, have you undertaken any analysis of your financial performance in relation to Sundays to reach that conclusion?---Yes.

PN14695

You have. What was that analysis?---What was the analysis?

PN14696

That you undertook?---I looked at the cost of having a pharmacist and the cost of having a senior girl and the wages that we would be paying. We would just be breaking even if you look at the gross profit.

\*\*\* MICHELLE SPIRO

XXN MOORE

PN14697

I see, so if you put a pharmacist on instead of a senior girl, being a senior pharmacy assistant I take it is what you mean?---Yes, senior pharmacy assistant.

PN14698

If you put a pharmacist on - - -?---At the current penalty rates, yes.

PN14699

Yes, you would break even?---Probably.

PN14700

Thank you. So does that mean then that - are you saying that you would only break even if you had the pharmacist instead of the pharmacy assistant? Or are you saying you would break even if you had both a pharmacy assistant on and a pharmacist?---Yes.

PN14701

The latter?---Both the pharmacist and the pharmacy assistant.

PN14702

You would then break even in sales?---Probably break even, yes.

PN14703

Thank you. In paragraph 17, you refer to some specific services you provide in the second sentence. You see that?---Yes.

PN14704

Do you charge customers for any of those services that you there refer to?---No.

PN14705

Including the needle exchange?---No.

PN14706

Do you receive funding for any of those services?---We do for the needle exchange.

PN14707

You refer in paragraph 21 to the Sixth Community Pharmacy Agreement?---Mm-hm.

PN14708

So you have some general understanding of that do you?---Very general. I am not 100 per cent with what it is going to be or what it is. Particularly when I did this it was very new so - - -

PN14709

But your understanding of it at least extended to the detail of what you refer to in paragraph 21, is that right?---I understand that they want to have us being more accessible and open longer hours. That's what I understand.

\*\*\* MICHELLE SPIRO

XXN MOORE

PN14710

Yes Do you - I'm sorry?---Because a lot of people, you know, work 9 to 5 and it would be good to be open before work, like 7 o'clock in the morning and afterwards - after work.

PN14711

Can I ask you this general question. The Pharmacy Guild of Australia has published a document in which it states that 6CPA provides significant benefits for community pharmacy. Would you agree with that?---Benefits to the pharmacist?

PN14712

Yes?---Yes.

PN14713

Thank you. In paragraph 25, you say if the Guild proposal was accepted you'd increase the pharmacy's trade - you would consider increasing the pharmacy's trading hours?---Mm-hm.

PN14714

From 7 am to 7 pm and you would also offer more hours to your existing staff;

PN14715

*which would enable me to open earlier in the morning and make a big difference on Sundays as I wouldn't have to work every Sunday.*

PN14716

Why is it you don't want to work every Sunday?---Every second Sunday, yes.

PN14717

You work - - -?---I alternate.

PN14718

You take it in turns with your partner?---And I also alternate the public holidays with my partner.

PN14719

Why is it that you personally don't want to work on a Sunday?---Just to have more time with the family.

PN14720

If you were not working, when you are working every second Sunday, how would you spend that time?---With my family, yes.

PN14721

Your family - you have children?---Three children.

PN14722

How many children?---Three.

\*\*\* MICHELLE SPIRO

XXN MOORE

PN14723

What age generally are they?---They're older now.

PN14724

They're adult children?---They're adult children, yes. They have their own children, yes.

PN14725

Do you accept though - I'll withdraw that. Do you accept this proposition that in return for the 45 hours you typically work in the business, what you derive is a profit and an asset that you can potentially sell?---Well the pharmacy has dropped in the last few years. I should have sold it five years ago but I didn't, that was a mistake.

PN14726

Hindsight is a wonderful thing. But that is the deal as it were that one commits to in working as a pharmacist, as a sole proprietor or in one pharmacy as you are with a partner. That is one has to put the time into the pharmacy, including potentially on weekends. Do you agree with that?---Yes.

PN14727

In return for that you get to derive a profit?---Mm-hm.

PN14728

The opportunity to have an appreciating asset, hopefully?---Hopefully.

PN14729

Yes, thank you. Nothing further, thank you.

PN14730

COMMISSIONER HAMPTON: I'm just wondering about, you say the goodwill in the business has dropped?---Yes.

PN14731

What are the factors leading to that?---I actually looked to sell it about a year ago just - not seriously but just looking at it and I know that I was getting much less, the value was much less than what I could have got five years ago. So yes, because the profitability is not there today, it's very hard work.

PN14732

Do you own the property or do you lease it?---Fortunately I own the property, that's going to be my saviour, yes. Because I own the property I'm okay.

PN14733

Thank you, Ms Spiro.

PN14734

JUSTICE ROSS: Anything arising? Any re-examination?

\*\*\* MICHELLE SPIRO

XXN MOORE

PN14735

MR SECK: No, your Honour.

PN14736

JUSTICE ROSS: Thank you for your evidence, Ms Spiro. You're excused?---Thank you.

**<THE WITNESS WITHDREW**

**[3.09 PM]**

PN14737

MR SECK: I think that deals with all the witnesses today, your Honour.

PN14738

JUSTICE ROSS: We'll adjourn until 9.30 tomorrow morning.

PN14739

MR SECK: Yes, your Honour.

PN14740

MR MOORE: Your Honour, can I just confirm that the intention is that at 2 pm tomorrow the Bench will deal with the objections to the Pezzullo report insofar as they remain unresolved and hopefully we'll be able to deal with or progress dealing with the Armstrong objections.

PN14741

JUSTICE ROSS: Any outstanding objections in relation to Pezzullo and Armstrong will be dealt with at 2 pm.

PN14742

MR MOORE: Thank you.

PN14743

JUSTICE ROSS: I think you've got a conference before the Vice President at 8.30 to try and resolve the matters that are between you on those two issues.

PN14744

MR SECK: That's so, your Honour. Can I indicate we're making we're making progress in relation to the Armstrong statement in trying to source the information underpinning the factual propositions contained in the statement. We'll provide as much as we can this afternoon but it might be the task won't be complete by tomorrow morning.

PN14745

JUSTICE ROSS: We'll see how we go.

PN14746

MR SECK: Yes, may it please.

**ADJOURNED UNTIL WEDNESDAY, 14 OCTOBER 2015**

**[3.10 PM]**

**LIST OF WITNESSES, EXHIBITS AND MFIs**

<b>SAMANTHA JANE KOURTIS, SWORN .....</b>	<b>PN13608</b>
<b>EXAMINATION-IN-CHIEF BY MR SECK.....</b>	<b>PN13608</b>
<b>EXHIBIT #PG8 AFFIDAVIT OF SAMANTHA KOURTIS DATED 10/08/2015 .....</b>	<b>PN13617</b>
<b>CROSS-EXAMINATION BY MR MOORE .....</b>	<b>PN13620</b>
<b>THE WITNESS WITHDREW .....</b>	<b>PN13696</b>
<b>KIN CHONG, SWORN.....</b>	<b>PN13705</b>
<b>EXAMINATION-IN-CHIEF BY MR SECK.....</b>	<b>PN13705</b>
<b>EXHIBIT #PG9 AFFIDAVIT OF KIN CHONG .....</b>	<b>PN13745</b>
<b>CROSS-EXAMINATION BY MR MOORE .....</b>	<b>PN13746</b>
<b>THE WITNESS WITHDREW .....</b>	<b>PN13819</b>
<b>KIN CHONG, RECALLED.....</b>	<b>PN13819</b>
<b>CROSS-EXAMINATION BY MR MOORE, CONTINUING.....</b>	<b>PN13819</b>
<b>THE WITNESS WITHDREW .....</b>	<b>PN13898</b>
<b>KIN CHONG, RECALLED.....</b>	<b>PN13913</b>
<b>CROSS-EXAMINATION BY MR MOORE .....</b>	<b>PN13913</b>
<b>RE-EXAMINATION BY MR SECK.....</b>	<b>PN14036</b>
<b>THE WITNESS WITHDREW .....</b>	<b>PN14042</b>
<b>LIA JANE MAHONY, SWORN .....</b>	<b>PN14123</b>
<b>EXAMINATION-IN-CHIEF BY MR SECK.....</b>	<b>PN14123</b>
<b>EXHIBIT #PG10 AFFIDAVIT OF LIA JANE MAHONY .....</b>	<b>PN14132</b>
<b>CROSS-EXAMINATION BY MS FORSYTH .....</b>	<b>PN14134</b>
<b>THE WITNESS WITHDREW .....</b>	<b>PN14237</b>
<b>HASSAN EL-AHMAD, AFFIRMED .....</b>	<b>PN14249</b>
<b>EXAMINATION-IN-CHIEF BY MR SECK.....</b>	<b>PN14249</b>

**EXHIBIT #PG11 AFFIDAVIT OF HASSAN EL-AHMAD AS AMENDED  
DATED 10/08/2015 ..... PN14258**

**CROSS-EXAMINATION BY MR MOORE ..... PN14258**

**THE WITNESS WITHDREW ..... PN14373**

**MICHAEL PATRICK FARRELL, SWORN ..... PN14381**

**EXAMINATION-IN-CHIEF BY MR SECK..... PN14381**

**EXHIBIT #PG12 AFFIDAVIT OF MICHAEL FARRELL AS AMENDED  
DATED 06/08/2015 ..... PN14394**

**CROSS-EXAMINATION BY MR MOORE ..... PN14394**

**THE WITNESS WITHDREW ..... PN14505**

**TRENT GREGORY PLAYFORD, SWORN..... PN14513**

**EXAMINATION-IN-CHIEF BY MR SECK..... PN14513**

**EXHIBIT #PG13 AFFIDAVIT OF TRENT PLAYFORD AS AMENDED PN14528**

**CROSS-EXAMINATION BY MS FORSYTH ..... PN14528**

**THE WITNESS WITHDREW ..... PN14558**

**CRAIG FRANCIS BIRD, AFFIRMED ..... PN14560**

**EXAMINATION-IN-CHIEF BY MR SECK..... PN14560**

**EXHIBIT #PG14 AFFIDAVIT OF CRAIG FRANCIS BIRD DATED 10  
AUGUST 2015..... PN14574**

**CROSS-EXAMINATION BY MS FORSYTH ..... PN14578**

**THE WITNESS WITHDREW ..... PN14644**

**MICHELLE SPIRO, SWORN ..... PN14652**

**EXAMINATION-IN-CHIEF BY MR SECK..... PN14652**

**EXHIBIT #PG15 AFFIDAVIT OF MICHELLE SPIRO DATED 06/08/2015PN14660**

**CROSS-EXAMINATION BY MOORE ..... PN14661**

**THE WITNESS WITHDREW ..... PN14736**