



TRANSCRIPT OF PROCEEDINGS

*Fair Work Act 2009*

1052569

**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**

**9.32 AM, WEDNESDAY, 14 OCTOBER 2015**

**Continued from 13/10/2015**

PN14747

MR SECK: Just one or two housekeeping issues. This morning before the Vice President there was very useful dialogue between the Guild and the SDA on both the Pezzullo report and the Armstrong statement. I was just having a discussion with my learned friend in relation to Armstrong, and he may want to say something on these issues.

PN14748

MR MOORE: Yes.

PN14749

MR SECK: Can I just simply convey that I think we're making very good progress in trying to resolve the objections, and we've sought to provide to the SDA the material which underpins the factual propositions contained in the Armstrong statement. It's quite voluminous. A lot of it refers to ABS statistics and things of that nature. We're in the process of preparing a road map or a ready reckoner which cross-references the paragraphs with the page number pertaining in the reports, which we can hopefully provide to the Full Bench as well.

PN14750

My learned friend indicates that given the rate things are going, he may make the decision not to cross-examine Mr Armstrong, but he may not be able to form a view on that yet. Can I indicate - - -

PN14751

JUSTICE ROSS: I'm sorry? What was the last bit?

PN14752

MR SECK: My learned friend indicates that he may decide not to cross-examine Mr Armstrong.

PN14753

JUSTICE ROSS: Yes.

PN14754

MR SECK: Depending on the concessions made that certain paragraphs are read as submissions.

PN14755

JUSTICE ROSS: Yes.

PN14756

MR SECK: And the provision of the underlying evidentiary material which supports the factual propositions contained in Mr Armstrong's statement. Mr Armstrong does not live in Sydney and he's in the process of flying down at the moment.

PN14757

JUSTICE ROSS: Where does he live?

PN14758

MR SECK: I think he lives - - -

PN14759

MS FORSYTH: Regional Victoria.

PN14760

MR SECK: Regional Victoria. He will be here at about 1.30 pm. I don't know if we can stop him from coming here, because I think that he's already on his way to the airport. However, what I'm conscious of is to ensure that my learned friend has the opportunity to review that material properly, so if he does have any questions, he can do that with sufficient time to prepare; but I'm also conscious that if a decision was made not to cross-examine first Armstrong, the Bench may wish to ask questions of Mr Armstrong.

PN14761

JUSTICE ROSS: If the material is largely converted into submissions and it's really a vehicle to admit into evidence a range of documents, I doubt if we would require - I don't think you would want to engage in questioning about submissions. I think that's something we will do later in the process.

PN14762

MR SECK: Indeed. I will let my learned friend talk now and indicate his position. I've got one more thing to say after my learned friend in relation to another issue.

PN14763

JUSTICE ROSS: Okay. As I understand it, the arrangement is that the two witnesses - the late witnesses that were to be on tomorrow afternoon will now be at 9.30 and 10.10.

PN14764

MR SECK: That's correct.

PN14765

JUSTICE ROSS: To be followed by Mr Armstrong if required. Is that the arrangement?

PN14766

MR SECK: Yes. That's so, your Honour. That was the second issue I was going to raise.

PN14767

JUSTICE ROSS: No, that's fine. Yes, Mr Moore.

PN14768

MR MOORE: Thank you, your Honour. The issue with Mr Armstrong is - there are two key issues from my perspective. One is that in the last 24 hours my friend and I have found ourselves on a constructive trajectory. Now, if that trajectory continues we might come to a landing - I don't want to put it any higher than might - that Mr Armstrong is not required cross examination. That's the first proposition.

PN14769

The second is that - and it is no criticism of my learned friend, but we've got - I got a folder of documents yesterday; there are more to come, apparently; there is a question of my capacity to digest that material properly and to work out - to resolve the question of admissibility, and then to consider any question of cross examination.

PN14770

So in those circumstances - I understand the situation with Mr Armstrong may be in terms of travelling, that's inconvenient - but being mindful of the desire to minimise the time the Full Bench needs to spend in hearing witnesses and reserving time, I would like to suggest to the Bench that in the circumstances the most preferable course may be just to defer Mr Armstrong to an another time. It may be that he is ultimately not required; or if he is required, I can confidently say it will be a much more confined exercise.

PN14771

JUSTICE ROSS: Do we need to make that decision now, though? It won't affect Mr Armstrong because he's en route anyway, and he's going to be here in any event.

PN14772

MR MOORE: I thought perhaps there might have been a suggestion that his travel plans might be able to be altered at the last minute. Not sure.

PN14773

JUSTICE ROSS: I didn't gain the impression from Mr Seck. Do I take it that he's en route and his travel plans can't be altered at this stage? Is that the - - -

PN14774

MR SECK: That's my impression, your Honour. But I suppose the best way of dealing with it is to make a phone call to him now.

PN14775

JUSTICE ROSS: Okay. No. We can stand it down for five or 10 minutes to allow that to happen. Was there anything else you want to say, Mr Moore?

PN14776

MR MOORE: In relation to Mr Armstrong, no.

PN14777

JUSTICE ROSS: And where are you up to in relation to the Pezzullo matter?

PN14778

MR SECK: My learned friend has reduced the number of objections significantly. It seems to be that arising out of the conference today before the Vice President, the scope of the objections have narrowed considerably.

PN14779

JUSTICE ROSS: Am I right in thinking the scope is now largely the extent to which the survey results can be extrapolated?

PN14780

MR SECK: That's my understanding, your Honour. The Pezzullo report seeks to extrapolate from the survey results more general conclusions applicable to the general population.

PN14781

JUSTICE ROSS: That really comes down to - I think there are a couple of union experts that deal with survey material that we're hearing in the early part of November. The capacity to extrapolate a sample survey to a broader population depends on a number of factors, including sample size, response rate, whether it's a random stratified sample, and the like. Those sorts of matters are often dealt with by submission in annual wage cases.

PN14782

For example, a party puts in a survey and makes a submission: here are the parameters, we say it can be extrapolated; and no doubt if that's put as part of the Pezzullo statement, and if it's put in those terms then it can be the subject of scrutiny by later witnesses.

PN14783

MR SECK: Indeed, your Honour.

PN14784

JUSTICE ROSS: So it's probably useful that you've foreshadowed that it's going to be sought to be extrapolated, and it may be useful that that's done in a witness statement, but it can be done as a submission. If it's to be done as evidence, then I suppose that becomes an issue of Ms Pezzullo's expertise in survey design and the like.

PN14785

MR SECK: What I'm seeking to do, your Honour, is to obtain instructions on that point. I understand your Honour's point. What I can say is that Ms Pezzullo does look at the sample size and whether or not it's statistically large enough to extrapolate; and then she examines the population demographics of the sample size - of the survey respondents and matches it against the general population to say: well, it does match in general terms and it's large enough to be able to be extrapolated.

PN14786

I certainly understand your Honour's point that it might be more of a submission ultimately, but we do say given Ms Pezzullo's expertise and background in this matter, she's able to say that it can be extrapolated, because her affidavit sets out -  
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PN14787

JUSTICE ROSS: Yes, but in any event, the simple fact is this: whether it is expressed as an opinion evidence or a submission, we're not bound to accept it.

PN14788

MR SECK: I understand that, your Honour.

PN14789

JUSTICE ROSS: And we will review it in any event, so - - -

PN14790

MR SECK: Indeed. And it might be - - -

PN14791

JUSTICE ROSS: - - - I'm not sure what turns on that proposition, because we will look at the overall material and what's said about the survey and the like.

PN14792

MR SECK: I understand that, your Honour. And it might be in those circumstances just simply accepted, and then your Honours can make a judgement as to the weight to be placed on those conclusions, given all the parameters that your Honour has just identified. I think that might be the best way forward to - and my learned friend - - -

PN14793

JUSTICE ROSS: My point is really whether - I'm not sure what difference it makes whether it's opinion evidence and whether it's a submission. We're not bound to accept opinion evidence by experts in any event, even if it's unchallenged; we're not bound to accept it.

PN14794

MR SECK: I understand that, your Honour. And I suppose my point is this: Ms Pezzullo doesn't expertise on it - - -

PN14795

JUSTICE ROSS: Well, you will need to prove - - -

PN14796

MR SECK: - - - which your Honour may or may not accept.

PN14797

JUSTICE ROSS: You will need to prove her as an expert if that's the proposition you're putting forward.

PN14798

MR SECK: Yes.

PN14799

JUSTICE ROSS: And you haven't done that yet.

PN14800

MR SECK: Well, we haven't done that yet, and we will do that, because there is an affidavit which demonstrates that.

PN14801

JUSTICE ROSS: Well, you will need to see how much further you want to go with it and whether it's worth the effort.

PN14802

MR SECK: I hear what your Honour says.

PN14803

JUSTICE ROSS: All right.

PN14804

MR MOORE: Your Honour, can I just say one thing about that so my silence doesn't get interpreted in any different way. I think without going into the controversy around the Pezzullo report, we have confined our objections. We understand that it's now put that she seeks to give evidence in the nature of opinion evidence as an expert in relation to economic matters, and we have withdrawn objections in that regard.

PN14805

We accept that she can give evidence in relation to the survey that she has conducted or had conducted, and to draw - to describe those survey results and to posit conclusions that might follow from those survey results. Where the controversy remains are the opinions that she seeks to express about the experience of weekend workers and the dis-amenities attached to weekend work, and the preferences and motivations of weekend workers.

PN14806

JUSTICE ROSS: Where she derived that material from?

PN14807

MR MOORE: Well, it appears - certain points in the report, it is about her describing and drawing possible conclusions from the survey. Now, we don't - in so far as the survey - cast light on those matters around weekend work. We don't have a difficulty with that. It's the last stage, where there's a - - -

PN14808

JUSTICE ROSS: I see - - -

PN14809

MR MOORE: - - - where there are broad conclusions about the population as a whole of weekend workers where we object to that, because she doesn't expertise in relation to those matters.

PN14810

JUSTICE ROSS: But is the - well look, I mean, at some stage we may have to deal with it with more precision than this, but - so the objection, is it about the proposition that: here's a survey; we say given the design, the response rate, et cetera, you can make certain inferences from the survey about the general population?

PN14811

MR MOORE: The way - - -

PN14812

JUSTICE ROSS: I mean, let me just break it down.

PN14813

MR MOORE: Yes.

PN14814

JUSTICE ROSS: There's that proposition. I understood you to be saying that, well, you don't object to that as a broad proposition, but you say that the inferences she seeks to draw go well beyond what's actually in the survey.

PN14815

MR MOORE: That's correct.

PN14816

JUSTICE ROSS: It's not so much that it's a challenge around the proposition that she can put evidence you might cross-examine on it or bring later evidence to counter it. It's not about the representativeness of the survey per se.

PN14817

MR MOORE: No.

PN14818

JUSTICE ROSS: What it's about is she's seeking to then go beyond that, not just extrapolate what are properly the survey results to the broad population, but to take some additional observations that are said to come from the survey but you say don't.

PN14819

MR MOORE: That's right.

PN14820

JUSTICE ROSS: Well if that's so, isn't that a cross-examination issue?

PN14821

MR MOORE: Well if it was admitted it would be a cross-examination issue.

PN14822

JUSTICE ROSS: Yes. Because ultimately if she's seeking to extrapolate from material that's not able to be extrapolated from the survey, isn't the best way to expose that evidence through cross-examination. Rather than us, as it were, sort of in a pre-emptive way look at the material - I only raise this, and I haven't looked at it Mr Moore so I don't - and I haven't looked at the detail of your objection, so I'm in no position to make any observation having said that.

PN14823

MR MOORE: No.

PN14824

JUSTICE ROSS: That's a sort of intuitive reaction. If what you say is right, it's a legitimate issue for forensic examination. I'm just not sure what the most appropriate way of doing that. It can certainly be dealt with in cross-examination. For us to do it and to knock it out, there would be plenty of - and there has been - plenty of material in the statements that you've exposed in cross-examination as not having a proper factual foundation. I'm not sure how this differs.

PN14825

MR MOORE: I suppose we approach it in the way of saying in orthodox terms, is it admissible in the first place and that's the threshold question and - - -

PN14826

JUSTICE ROSS: Sure, but that's a question of relevance and is she properly qualified to give the opinion and the like.

PN14827

MR MOORE: Exactly.

PN14828

JUSTICE ROSS: But to the extent that she's seeking to extrapolate material from a survey, even though she may be on your submission wrong about the extrapolation, she's - if she's proved as an expert in relation to the survey which you don't contest then she's entitled to express an opinion, even though it's an erroneous one.

PN14829

MR MOORE: Her report proceeds on two foundations; one is a survey and one is a literature review. So she comes to the Commission and says done a literature review, done a survey and she along the way provides a description and commentary about the literature and the survey.

PN14830

JUSTICE ROSS: Well almost all the experts have done a literature review and a commentary.

PN14831

MR MOORE: Yes, and our controversies about the literature review remaining are quite confined. But then at the end of her analysis, and this appears along the way, one will see a statement to this effect, there does not appear to be evidence to suggest that weekend work is qualitatively different in the way it displaces other activities from weekday work. Much of the evidence to the contrary captures differences in worker characteristics et cetera. So this is a general conclusion - - -

PN14832

JUSTICE ROSS: That's not related to the survey.

PN14833

MR MOORE: Well it's - I can't say it's not related to the survey.

PN14834

JUSTICE ROSS: You see perhaps if it's sharpened up and if her evidence was her opinion is based on the survey and its extrapolation this is proposition, then experts are entitled to express opinions like that even though they may be on examination erroneous. But look I'm not trying to convert this into the evidentiary ruling hearing, Mr Moore.

PN14835

MR MOORE: No, no.

PN14836

JUSTICE ROSS: I'm just trying to explore. I had understood the objection to be slightly different. I've got a better appreciation of it now - - -

PN14837

MR MOORE: That's what I wanted to elucidate that for.

PN14838

JUSTICE ROSS: I wanted to raise with you, you having raised it, that's my - - -

PN14839

MR MOORE: I'll give that consideration.

PN14840

JUSTICE ROSS: Yes. Look it may mean that that requires the evidence to be sharpened up to make it clear what is that opinion based on. If it's based on the survey and its extrapolation to the general population then it seems to me that's a clearer proposition. If it's some unconnected generalised assertion then I understand your - - -

PN14841

MR MOORE: Which is how we see it.

PN14842

JUSTICE ROSS: Well then I understand your objection if that's the way it's put, but if it's put and it may mean that the statement needs to be amended accordingly. But if that statement is clearly linked that on the basis of the survey this is the opinion she expresses and that is the basis, then I think that is in a different category and that's something that could be properly explored in cross-examination without adversely affecting your interests.

PN14843

MR MOORE: I'll give that some consideration, your Honour.

PN14844

JUSTICE ROSS: Yes. Please don't misunderstand either of you what I'm saying. I've not read the material and I'm simply trying to provide some assistance so that when you do have the discussions they can be a bit more productive, that's all.

PN14845

MR MOORE: Yes, I appreciate that, your Honour.

PN14846

JUSTICE ROSS: Do you want us to stand down for 10 minutes and you can make that - - -

PN14847

MR SECK: Your Honour, we're very keen to move Mr Crothers, he has a flight at 11.40. What we've done, your Honour, in relation to Mr Armstrong, the representative of the Guild will ring Mr Armstrong right now and hopefully I can communicate the position shortly.

PN14848

JUSTICE ROSS: We'll deal with Mr Crothers and then we'll take the five or 10 minutes.

PN14849

MR SECK: May it please, your Honour.

PN14850

JUSTICE ROSS: The others are VC so they'll be fine.

PN14851

MR MOORE: If the Commission please, Ms Forsyth will be taking the witness this morning, if I might be excused.

PN14852

JUSTICE ROSS: Yes, certainly. Thanks, Mr Moore.

PN14853

MR SECK: I call Peter William Ashley Crothers.

PN14854

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

PN14855

MR CROTHERS: Peter William Ashley Crothers, (address supplied).

**<PETER WILLIAM ASHLEY CROTHERS, AFFIRMED [9.51 AM]**

**EXAMINATION-IN-CHIEF BY MR SECK [9.51 AM]**

PN14856

MR SECK: Mr Crothers, you're a pharmacist by occupation, that's correct?---Yes, I am.

PN14857

You are the owner of Towers Drug Co at Bourke?---Yes, I am.

PN14858

Mr Crothers, you have prepared an affidavit in these proceedings, that's so?---That's correct.

PN14859

The date of that affidavit is 13 August 2015?---Yes.

PN14860

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

PN14861

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

\*\*\* PETER WILLIAM ASHLEY CROTHERS

XN MR SECK

PN14862

I understand you wish to make a small change to your affidavit, that's correct?---Yes, on reading the affidavit, in point 19, third last word on the page, I should have used the word "father" instead of "patient".

PN14863

So it should say "the father rushed his" et cetera?---"Father rushed his daughter", I think it should read.

PN14864

Other than that change, Mr Crothers, is the content of your affidavit true and correct to the best of your knowledge and belief?---Yes.

PN14865

I've spoken to my learned friend, Ms Forsyth. There are no objections to the affidavit. I read the affidavit.

PN14866

JUSTICE ROSS: Mark the affidavit exhibit PG16.

PN14867

MR SECK: May it please.

**EXHIBIT #PG16 AFFIDAVIT OF PETER CROTHERS DATED  
13/08/2015**

PN14868

JUSTICE ROSS: Yes, Ms Forsyth.

**CROSS-EXAMINATION BY MS FORSYTH**

**[9.53 AM]**

PN14869

MS FORSYTH: Thank you, your Honour. Mr Crothers, you are an owner I understand it and the manager of the Towers Drug Company Pharmacy in Bourke?---Yes, I own it and I also run it. I also manage it on a day to day basis.

PN14870

Are you the sole proprietor of that pharmacy?---Yes, I'm the sole proprietor.

PN14871

As I understand it, you're the only pharmacy in Bourke. Is that right?---The only pharmacy in the postcode which is about the size of Denmark.

PN14872

Understood, you're rather remote?---Rather.

\*\*\* PETER WILLIAM ASHLEY CROTHERS

XXN MS FORSYTH

PN14873

Thank you for coming down. What's the population of Bourke, is it about 3500, is that - - -?---That'll be the population of the district. We probably serve a slightly larger population because we - even though our postcode's fairly vast we tend to pick up a few people in neighbouring postcodes who are actually closer to us or

for whom we constitute a more accessible service. For example, our next nearest pharmacy is 100 kilometres to our east in a town called Brewarrina and it doesn't open on Friday afternoons and Saturdays, so we tend to get people would come to our pharmacy from Brewarrina from time to time. Similarly we get a few people from Cobar and Nyngan shires as well.

PN14874

So within the vicinity, you'd service within the service of somewhere between 3500 to 4000, is that - - ?---It'd be about that. We get - through the winter months we get quite a lot of tourists who are mostly of the so-called grey nomad variety, who are an interesting group of people.

PN14875

I haven't come across that turn of phrase myself.

PN14876

JUSTICE ROSS: We'll all get there eventually, Ms Forsyth.

PN14877

MS FORSYTH: I'm sure that's right. The pharmacy as I understand it is the only pharmacy that you have ownership or a financial interest in. That's correct?---That's correct, yes.

PN14878

I take it that the hours that you've set out, and I'll take you to paragraph 10 specifically of your statement, have remained constant since your proprietorship of the Towers Drug store?---Yes, they haven't changed since 2001. I bought the pharmacy in 2001 from my father. At different times it did have slightly longer opening hours and if you go a long way back it had much longer opening hours.

PN14879

I see, but since around 2001 it's remained consistent with - - ?---Yes, it's remained the same, yes.

PN14880

- - - with those hours that you've articulated in paragraph 10?---Yes.

\*\*\* PETER WILLIAM ASHLEY CROTHERS

XXN MS FORSYTH

PN14881

You currently work, I think, 300 days a year which isn't a small amount of time. You've I take it done that since moving to Bourke. I'd imagine it would be part and parcel of that sort of undertaking?---Yes, it is. The hours that I'm - or the days or hours that I'm required to work in the pharmacy have probably grown since 2001. The business of community pharmacy has in many ways become more complex and more commercially exacting. What we call the front of shop side of the business, which is the side that it's strictly prescription medicines has become more commercially important. That side of the business is also less systemisable and harder to manage and most pharmacies nowadays have a position that they call retain manager. I can't recruit a retail manager where I am because that type of person simply doesn't exist where I live. So I've chosen to deal with it by employing a pharmacist, bringing in a pharmacist, buying them a

house and having them work in the pharmacy so that the pharmacist side of it is mostly taken care of and I do the retail manager work but I also work as a pharmacist. But what it means is that a lot of the management, you know, the business management and the behind the scenes management doesn't actually get done during working hours. So I sort of end up working most Sundays and Saturday afternoons and things after the pharmacy's closed.

PN14882

In sort of undertaking that retail management position, I take it that that would largely involve you looking after the retail sales non-prescription if you like component of the store. Is that right?---Well yes, a lot of its infantry management and it's making sure that you buy the things that people want and that you don't buy the things that you're not going to sell, and that they're appropriately presented and priced. Pricing is a huge issue for us. We - - -

PN14883

And - sorry, finish your - - -?---Yes, I haven't checked in the last couple of years but a couple of years ago mine was that - my postcode had the highest proportion of internet shopping in the country, you know, per head of population. We're also - it's an unusual community and there's a very high - there's a high proportion of public servants in the town, at local, State and Commonwealth level and a lot of those people in particular, but people generally travel quite regularly to Dubbo where there's a discount pharmacy and people routinely do their shopping in Dubbo and that's a problem for us in all sorts of ways because every dollar that doesn't get spent in our community is a dollar that leaves it and doesn't sort of go round and get re-spent. So, you know, we have to - it's a constant struggle for us to encourage people to shop in the community and being price-competitive is hugely important.

PN14884

Yes, and I understand that. But I mean obviously there's a percentage of, if you like, your turnover that would be derived from non-PBS prescription medication, it sounds though that's - - -?---Yes, it's - - -

PN14885

You deal with a lot of the products that you sell that are non-PBS, is that correct?---Yes, it would be in the vicinity of 40 per cent.

PN14886

40 per cent of your revenue?---For - yes, for my business.

PN14887

And that's of your revenue, of your - - -?---That's revenue - yes, that's revenue.

PN14888

And 60 per cent on, if you like, PBS or prescription - - -?---Yes, I think it would be - I think it was 61, I think, in the last financial year. I'm not quite sure.

\*\*\* PETER WILLIAM ASHLEY CROTHERS

XXN MS FORSYTH

PN14889

And your work primarily involves looking after the 40 per cent, the retail product sales?---Yes, well, primarily, yes, 50 per cent of my work would be involved in that and making sure that we buy at the right price and in the right quantities and those sort of things. And it's actually quite a - well, I think it's diabolically complex compared to the pharmacist side of the work but probably because I don't have the right type of brain.

PN14890

Sure. And you talk about, in paragraph 10, the fact that you're open Monday to Friday 9 to 5, I take it they would be pretty standard hours in Bourke for most stores?---Well - well, we close for lunch and probably a third of the businesses in Bourke close for lunch.

PN14891

Yes?---Including the doctor's surgeries.

PN14892

And Saturday 9 to 12, they would be pretty standard hours for Bourke, I understand the retail industry there?---Yes, a couple of businesses stay open an extra hour.

PN14893

And on Sundays and public holidays I take it most would be closed on those days?---Increasingly businesses are open, tourism is increasing important to the town so a lot of the hospitality businesses obviously - well, I don't know if it is obvious, but a lot of the hospitality businesses trade on Sunday, the supermarkets trade on Sunday, the hardware shop next to us has started to trade on Sunday, and there's a bit of a move on - to try to get more businesses to trade on Sunday morning.

PN14894

In terms of your own profession, if you like, the sort of primary health care profession, the GPs in Bourke, I understand, aren't open on weekends?---No, they're not. They have a - the GPs in Bourke have two jobs, one of them is the normal sort of GP job or they have two incomes if you like. They derive a normal income, as most GPs do, you know, with seeing people in appointments in their - by appointment in their surgery so they collect Medicare fees, everything is bulk billed.

PN14895

Yes?---But they're also paid quite well to cover a 24-hour roster at the local hospital.

PN14896

Yes, I think you talk about that in your statement and I think you also mention that you will get a call-out fee to assist at times when the pharmacy is closed and there is an emergency, is that right?---Yes, well that is something we do voluntarily to try to maintain some continuity of care.

\*\*\* PETER WILLIAM ASHLEY CROTHERS

XXN MS FORSYTH

PN14897

And when you say - - -?---When I get called out I usually don't charge the fee. But when my employed pharmacist gets called out I feel obliged to pay him and I would charge the hospital a call-out fee in that situation.

PN14898

How often would that happen?---Never less than three times a year and never more than 12 times a year.

PN14899

Sure. And you say at paragraph 7 that in recent years there has been a high turnover of general practitioners in the local area resulting in a loss of continuity of medical care. And then you talk about the role of a pharmacy being important in stepping in to providing that type of continuity of care and you say "We are not paid for this work." There is, you would accept, Commonwealth funding under the 6 Community Pharmacy Agreement for programs of this nature in assisting the community with accessing, if you like, primary health?---I'm unaware of any such funding under the 6CPA for that. There's funding under the 6CPA for various things.

PN14900

Yes?---Including medication review services, dose administration aids which doesn't go close to covering the cost of it, and a thing called clinical interventions which have an agreed price of \$10 but are currently paid at \$4 due to program capping. And clinical interventions must be directly related to PBS dispensing in order to be claimable. So a lot of the work that we do is in the general primary healthcare space, it is diagnostic and it is assessing and diagnostic in nature, although we're not allowed - we have to use the word "diagnostic" carefully because doctors get upset, but that is the nature of the work is people walking into the pharmacy with a problem that is not necessarily drug-related who, for one reason or another, are seeking our advice in the first instance, and that can be for lots and lots of reasons but there's no remuneration available for that.

\*\*\* PETER WILLIAM ASHLEY CROTHERS

XXN MS FORSYTH

PN14901

Well, I take it that you're - when you say that diagnostic sort of work, that would be work that would be undertaken by your pharmacist as opposed to a pharmacy assistant, for example?---Yes. The pharmacy assistants are trained to have structured conversations with people that - so a large majority of people who come into a pharmacy come in with a problem of some sort that they're seeking a solution for. And it's important for us to get fairly quickly to the point of their problems so a lot of - some of those people are seeking to self-treat and it's often very appropriate that they do and there isn't a problem. So the pharmacy assistants are trained to have a structured conversation with the people which is designed to garner a certain amount of basic information, you know, who is the patient and what is the actual condition, what are the symptoms, how long has it been going on and whether they've - whether the person or the parent or whoever it is has actually tried anything before. And they're trained to respond to the patient's response or to certain patient responses by involving the pharmacist. So what actually happens in our pharmacy is that the pharmacist gets involved in most of that because a lot of the time there are two pharmacists on the floor, I

might not necessarily be on the floor for the purposes of practising as a pharmacist but I'm there and as soon as I'm involved I'm a pharmacist again. And we will get involved with people and we will go into it in a bit more depth and what we're looking for are signs that there may be some serious illness - - -

PN14902

And then it would be for you to appropriately refer them to the hospital, I understand it?---Yes.

PN14903

It wouldn't be appropriate for anything further for your pharmacy to do, it would be an issue for the doctors at the hospital?---Yes, assuming the patient takes the advice. Sometimes we will actually discuss it with the doctor if we can contact them.

PN14904

And at paragraph 19 of your statement you say, Mr Crothers, that - and you've given an example, I should say, in paragraph 19 about a particular situation in which your pharmacy assisted a woman who had developed a rash that could have had some serious consequences. You say that:

PN14905

*Once again there are hundreds of examples per year where we provide triage and referral to other care without payment and it is more likely to happen when the local GP surgeries are closed, such as on weekends.*

PN14906

So in effect that would mean that these sorts of things are coming to you most commonly on Saturdays between 9 to 12, given that you're not open on Sundays, is that correct?---No, I think the frequency on a Saturday morning is probably a tick higher than it normally is but these sorts of things are happening throughout the week.

PN14907

And do you - - -?---People are - people are not necessarily aware that they're seriously ill or potentially seriously ill.

PN14908

Indeed. And again that might involve you triaging something out to the local hospital?---Yes, well I mean triage is - triage is originally a term from military hospitals of deciding what's the most serious and what requires the most urgent attention and what is not so serious, and that's a sort of a process that we're doing all the time, just continuously. When we're dispensing, when we're talking to people about primary care ailments that just, you know, come into the pharmacy, it's just a background process that's going on all the time and we're trying to ensure that people get the appropriate care.

\*\*\* PETER WILLIAM ASHLEY CROTHERS

XXN MS FORSYTH

PN14909

And you say at paragraph 22 of your statement that there's a clear demand - or I should perhaps not paraphrase your evidence but put it to you. You say that:

PN14910

*There is a clear demand from the community for Sunday trading.*

PN14911

I take it that's just anecdotal, you haven't actually conducted any sort of empirical analysis of that?---We did a little bit of a survey about three years ago and it - it - I don't think we - I think we got, from memory, between 50 and 60 respondents and it was a very, very simple thing that we didn't keep and it - and what it indicated was that of the resident population there were some who were very clearly in favour - I mean it was a - you know, a third, something like that, who were very adamant that they wanted it. The reason I make a statement like that, that there's clear demand, is that people tell you on Monday morning that they needed you yesterday. The Medicare Local - Medicare Local has now been disbanded, but they were organisations that were involved in the commissioning and delivery of primary health care services in communities. We had a Medicare Local office headquartered next to the pharmacy until quite recently. The Medicare Local was very interested in this whole issue of after-hours care and was adamant that there was community demand for it, for both medical and pharmacy care. But the other reason I say it is that for us an increasingly important patient group are these tourists, these grey nomads, who are elderly, retired - they're basically self-funded retirees who have decided to look around Australia and they will buy a caravan or a Winnebago and they will travel for months on end. They're very - they're very unaware of time. One of them said to me, you know, he said - he was signing for his prescription and he said, "What's the date, mate" and I told him the date, and he said, "It's Sunday, right?" And I said, "No, it's Thursday" and he said, "Mate, every day is a Sunday." They're very time unaware and they come into town, typically we get them on the way out to the outback and on the way back. So typically you will get - and you see it most often in the first days of school holidays. They actually leave Sydney on Friday when the school breaks up and they get as far as Dubbo and they stay the night in Dubbo and they have a bit of a look around and they take the kids to the zoo in Dubbo and then they spend Saturday there and they turn up in Bourke on Sunday and realise that, you know, they didn't get their prescription dispensed, or whatever, and they'll be - they'll be hanging around, and they don't know to go to the hospital.

PN14912

Sure, but I mean that's a very different reality to saying that you've got enough demand or there's enough custom for you to justify opening on a Sunday?---No, and - - -

PN14913

It would have to be fair to say that - - -?---And I don't - I don't know that there is, and I say elsewhere in the submission that opening on a Sunday for us would depend on a number of things.

\*\*\* PETER WILLIAM ASHLEY CROTHERS

XXN MS FORSYTH

PN14914

Yes, I think you say that in the next paragraph, you say that it would depend on several things including increasing staff numbers and receiving support from other local health service providers. I imagine given that the local GP or GPs are closed

on the weekends including Sunday it's going to put a necessary cap on the level of demand or custom or trade you're going to have on those days?---Well, except that - except that the people who run primary care in my area are trying to change that, they're trying to create a situation where the GPs are open every - seven days a week, and, you know, that may - that could be a game changer for us, but - but I'm not saying that people are beating down the door, but I'm saying there is an access to health care issue, and for me it's not completely about the dollars. I mean, you know, I would be far better off taking my \$2m investment and sticking it in the stock market if I was just interested in making money, because I don't actually make much profit. I make about a wage, about an \$80,000 wage and I don't actually make much more than that, and I will be far better off, you know, if it was just about the money investing it somewhere else. What I'm - I'm there because these are my people, it's my community, it's where I grew up. I feel as though they belong to me and I belong to them, and I don't - at an intellectual level, and to some extent at an emotional level I don't accept the argument that says that because you happen to live in a place like Bourke you have to put up with an inferior level of health service. It's crap.

PN14915

Look there's no doubt that that's the case, but I mean that's a multi-factorial issue, isn't it?---Absolutely is.

PN14916

I mean that involves things like attracting staff to the area, is that right?---Absolutely is a multi-factorial issue.

PN14917

It would also involve having the support from your perspective of your local health care providers opening around you on Sundays?---It would.

PN14918

I mean a lot of things would need to change before that unfortunately could become a reality for you?---Well, yes, the people I spoke about before, the Medicare local people who are still involved in primary health care delivery are still talking about it and, you know, they're talking about - you know, they don't want it to be something that happens in a decade's time, they want - they want it to happen quickly. You know, they have talked about it for five years now and there's actually quite a lot of money in the health care system, in the publically funded part of the health care system. I mean for example, you know, I talked about this 24 hour medical roster, you know, the GPs in Bourke were told by the people, by these funding agencies they're getting \$87,000 a fortnight to cover the hospital roster and they can't keep the bloody surgery open. It's just - you know, it makes you wonder. So maybe it's much more possible than we think.

PN14919

Well, it's at this stage, you would have to agree, not feasible for you to open on a Sunday?---No, it's not - it's certainly feasible for me to open on a Sunday at the moment.

\*\*\* PETER WILLIAM ASHLEY CROTHERS

XXN MS FORSYTH

PN14920

That's not something that is due to the Sunday penalty rates, is it?---In part. It's a factor that would help. If the penalty rates were lower on Sunday it - it would help make it more feasible, but - - -

PN14921

Have you undertaken that feasibility analysis, have you looked at - - -?---If you're saying that - if you're saying - what I'm saying to you is what you said to me before, is that it's a multi-factorial issue and I'm agreeing with you that penalty rates is not the major factor.

PN14922

You have also mentioned in paragraph 27 of your statement that:

PN14923

*The community is aware that there is always a pharmacist on call over public holiday weekends. We generally receive one or two calls each public holiday weekend.*

PN14924

Again the level of demand would seem to indicate that opening on public holidays would not be something that at this stage at least for better or worse is going to be open to you?---No, and - and what we've done - - -

PN14925

Is that right?---Yes. The on-call arrangement is a result of the fact that it isn't feasible for us to open on public holidays, Sundays and public holidays, and particularly public holiday weekends, and we - - -

PN14926

And unfortunately again you would say that that's not just an issue - or that penalty rates aren't the major issue there?---No, they aren't the major - they aren't the major issue, it was really a follow on from the previous point about the importance of educating the community. We've - we've educated the resident community that if there's a really serious problem we will be there for them.

PN14927

Yes?---But through a particular mechanism.

PN14928

Yes, but penalty rates aren't the major issue there?---They aren't the major issue there.

PN14929

You would agree with that?---I would agree with that.

\*\*\* PETER WILLIAM ASHLEY CROTHERS

XXN MS FORSYTH

PN14930

COMMISSIONER HAMPTON: Mr Crothers, just while we're on paragraph 27 how does that work in practice, this fact that there's a pharmacist on call?---We put - for several years now we've put notices in the pharmacy in the fortnight

leading up to a public holiday weekend, we put notices in the local newspaper informing them of that arrangement, and we put a notice on the - we put three copies of the same notice on the front of the pharmacy on the weekend explaining what the emergency arrangement is and directing people to the hospital, and at the same time we have quite a good, although very informal arrangement with our local hospital and we send a notice up to them as well explaining which one of our mobile numbers to ring first, because sometimes one of us won't be there at all, and Jake who's my employed pharmacist and I have just - we've just decided it's a reasonable thing to do. We don't have to do it, but we've decided that on balance it probably works best both for us and the community. Is that clear?

PN14931

Yes, thanks very much.

PN14932

MS FORSYTH: Thank you, Mr Crothers?---Thank you.

PN14933

JUSTICE ROSS: Any re-examination?

PN14934

MR SECK: No, your Honour.

PN14935

JUSTICE ROSS: Thank you for your evidence, Mr Crothers, thank you for coming down today, you're excused.

**<THE WITNESS WITHDREW**

**[10.23 AM]**

PN14936

We might take that five to 10 minute break. If you can ascertain whether Mr Armstrong is able to be stopped and we will get the link up to Adelaide.

PN14937

MR SECK: May it please, your Honour.

**SHORT ADJOURNMENT**

**[10.23 AM]**

**RESUMED**

**[10.40 AM]**

PN14938

MR SECK: Your Honour, we've made contact with Mr Armstrong so thank you for that opportunity. The next witness is John Francis Cagney.

PN14939

JUSTICE ROSS: With your contact with Mr Armstrong, what's the result of that?

\*\*\* PETER WILLIAM ASHLEY CROTHERS

XXN MS FORSYTH

PN14940

MR SECK: The result of that is he is on his way to the airport and he was going to come down anyway. So after having a discussion with him, we're going to use

the opportunity to discuss further matters with him. So he's going to fly down but he's not going to be required for – to come to the Commission to give evidence.

PN14941

JUSTICE ROSS: Well, I suppose we will see where that goes with Mr Moore later.

PN14942

MR SECK: Yes.

PN14943

JUSTICE ROSS: Yes. All right.

PN14944

MR SECK: May it please, your Honour.

PN14945

MS FORSYTH: Your Honour, just to be clear with that just in terms of communicating with Mr Moore, will Mr Armstrong be required at 2 o'clock this afternoon?

PN14946

JUSTICE ROSS: No, he was never going to be required at 2 o'clock this afternoon.

PN14947

MS FORSYTH: I beg your pardon. It was for tomorrow, wasn't it?

PN14948

JUSTICE ROSS: Yes. Whether he will be required tomorrow is going to be a matter for you.

PN14949

MS FORSYTH: Indeed.

PN14950

MR SECK: As I understood it, Mr Armstrong is no longer required by - - -

PN14951

JUSTICE ROSS: No, that's not how I understood it, no. No. Mr Moore was putting the proposition that Mr Armstrong might be brought back later, if at all, and I said, well, it's a bit premature to make that decision. So just to be clear, we have not made that decision.

PN14952

MR SECK: Right.

PN14953

JUSTICE ROSS: As far as we're concerned, he will be here tomorrow. Now, if you don't require him for cross-examination or you want an adjournment of his evidence you're going to have to make that application formally.

PN14954

MS FORSYTH: Understood. Thank you, your Honour.

PN14955

JUSTICE ROSS: Yes.

PN14956

MR SECK: He is coming, your Honour, and we had understood that that application for adjournment was sought. We weren't going to oppose it.

PN14957

JUSTICE ROSS: Well, it hasn't been granted so we haven't heard it.

PN14958

MR SECK: Yes.

PN14959

JUSTICE ROSS: And we will deal with it when it is put.

PN14960

MR SECK: I understand, your Honour. Your Honour, I have spoken to my learned friend, Ms Forsyth, and as a result of those discussions I can indicate that there were parts of Mr Cagney's affidavit I do not read. Might I take the Bench to paragraph 15, after the words "that" in the first line, "I believe that" – if the Commission can take out the words "employees should be compensated for working outside of normal hours, however". That part is not read. So it should now read, "I believe that the penalty rates have now become so high," etcetera. The other part of the affidavit which is not read is paragraph 18.

PN14961

JUSTICE ROSS: I suppose you – right. Might the witness be sworn now?

PN14962

MR SECK: Yes, your Honour.

**<JOHN FRANCIS CAGNEY, SWORN**

**[10.43 AM]**

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

**[10.43 AM]**

PN14963

MR SECK: Mr Cagney, you are a pharmacist by occupation?---Yes, I am. Who am I speaking to?

PN14964

Sorry. You are speaking to Mr Seck. I am the counsel for the Pharmacy Guild?---Yes. It's just a little bit difficult to see you from here. That's all.

PN14965

That's all right?---Okay.

\*\*\* JOHN FRANCIS CAGNEY

XN MR SECK

PN14966

All right. Can you see me in the centre standing up, Mr Cagney?---Yes. Yes, I can. Yes.

PN14967

And, Mr Cagney, you are currently the proprietor – part proprietor of Monarch Chemist, Chemmart Pharmacy in Whyalla. That's correct?---Yes.

PN14968

You have prepared an affidavit in these proceedings. That's so?---Yes, it is.

PN14969

And it's dated 12 August 2015 on the last page?---Yes.

PN14970

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

PN14971

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

PN14972

Do you wish to make any changes to the affidavit, Mr Cagney?---No, thank you.

PN14973

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

PN14974

Subject to the redactions, I read the affidavit.

PN14975

JUSTICE ROSS: Mark the affidavit exhibit PG17.

**EXHIBIT #PG17 AFFIDAVIT OF JOHN CAGNEY AS AMENDED  
DATED 12/08/2015**

PN14976

MR SECK: I'm passing you now, Mr Cagney, to the counsel for the SDA?---Thank you.

**CROSS-EXAMINATION BY MS FORSYTH**

**[10.45 AM]**

PN14977

MS FORSYTH: Mr Cagney, it's Anna Forsyth, representing the SDA. Can you see me?---Faintly, but I know who I'm talking to then. That's fine.

PN14978

I'm just going to ask you a few questions about your statement, Mr Cagney?---Yes.

\*\*\* JOHN FRANCIS CAGNEY

XXN MS FORSYTH

PN14979

I understand you're the proprietor of Monarch Pharmacy in Whyalla. Is that correct?---Yes, I am.

PN14980

How long have you been a proprietor of that pharmacy, Mr Cagney?---I became a partner in the business on 1 July 1987, having worked there previously for six and a half years. So that would be about 27 years, I've been a proprietor.

PN14981

Loyal service. And how many partners do you have, Mr Cagney?---I have currently one other business partner.

PN14982

Do you have an interest in or ownership of any other pharmacies in the area or otherwise, Mr Cagney?---I currently have an interest in two other pharmacies that are distinctly different to the one I mainly work in, which is the one I've written the affidavit about.

PN14983

I see. And how are they different?---The branding of one is totally different, and the function of the other is more of a retail pharmacy - traditional pharmacy. The one I'm currently working in has a very high nursing home function for producing dosage administration aides for both the nursing homes, currently 150 beds; and about 380 private patients that we provide that service to.

PN14984

And that's a service that you provide out of Whyalla, the Monarch Pharmacy. Is that correct?---That's the one, in 94 Essington Lewis Avenue, that's correct.

PN14985

So the pharmacy that you have an ownership interest in in Whyalla, the Monarch Pharmacy, provides a very high level of service to, as you said, nursing home, as well as private patients in the area with respect to DAA aides?---Yes.

PN14986

You mentioned two other pharmacies, and you said - - - ?---Yes.

PN14987

- - - there was one that was branded differently and one that had a slightly different function. If I can take you to the first of those pharmacies, the one that you say is branded differently than your Monarch Pharmacy; where is that located, and what is the name of that pharmacy?---That's called Priceline Pharmacy Norrie Avenue, and it's located on Norrie Avenue in Whyalla.

PN14988

So it's another pharmacy. It's a Priceline Pharmacy in Whyalla?---It's a Priceline branded pharmacy in Whyalla, yes.

\*\*\* JOHN FRANCIS CAGNEY

XXN MS FORSYTH

PN14989

And are you in partnership in that pharmacy, Mr Cagney?---I am in partnership in that pharmacy, yes.

PN14990

And what about the third pharmacy that you've mentioned? What's that called and where is that located?---That is Monarch Chemmart Westland Pharmacy. That's located in the Westland shopping centre in Whyalla - Nicolson Avenue, Whyalla, which is the major shopping precinct of the town.

PN14991

And how many pharmacies are there in Whyalla, Mr Cagney?---Currently there are three pharmacies in Whyalla.

PN14992

And you have an interest in all three?---Currently I have an interest in all three pharmacies, having purchased the pharmacy in Norrie Avenue in the last couple of years, and another pharmacy, which we've combined with ours because they were struggling to be run effectively and professionally. And having been there for 35 years, it was something I felt a responsibility to maintain a local and a level - a local ownership and a level of service commensurate with what I believe the people of my town deserve.

PN14993

Is that the Monarch Chemmart that you're referring to?---No, that was the Priceline.

PN14994

I see?---We bought that and we converted that into a Priceline to provide a different level of service and value to the community. It was unbranded when we purchased it.

PN14995

I see. And the hours that you provide in paragraph 7 of your affidavit - - - ?---Yes.

PN14996

- - - Mr Cagney, with respect to the Monarch Pharmacy?---Yes.

PN14997

Are they the same hours that the Priceline Pharmacy and the Chemmart Pharmacy operate under?---No. They vary at each site. The Priceline Pharmacy is open from 8.30 in the morning and the Chemmart Pharmacy at Westlands is open 9.00 till 9.00, seven days a week. And that's at the completely other end of the town to where we operate the pharmacy that's in the affidavit.

PN14998

I see. When you say that the Priceline Pharmacy opens from 8.30, I take it that it closes at 6 pm. Is that right?---That's correct, yes.

\*\*\* JOHN FRANCIS CAGNEY

XXN MS FORSYTH

PN14999

That's Monday to Friday?---Yes. And 9.00 till 1.00 on Saturdays.

PN15000

And Sundays?---No.

PN15001

Do either of your other two pharmacies - the Priceline Pharmacy or the Chemmart Pharmacy - operate on public holidays?---Currently at the Westland shopping centre we do operate on public holidays, yes.

PN15002

That's the Chemmart Pharmacy, is it?---That's the Chemmart Pharmacy at Westlands shopping centre, yes.

PN15003

And that's all public holidays?---No. It's not open Christmas Day or Good Friday out of respect for the Christian values of this country.

PN15004

And in terms of the employees that are employed at the Priceline Pharmacy, is that within the vicinity of 16, akin to the Monarch Pharmacy; or are there more employees at Priceline?---There are less.

PN15005

How many employees do you have at Priceline?---Let me think. Six, roughly. I can't remember exactly. I don't deal with it every day, so I'm not always there.

PN15006

Okay. And at Chemmart?---Again I'm not quite clear because I don't operate there on a regular basis. 20, 25, maybe - depends on the weeks and the busy times of the year.

PN15007

Sure. At paragraph 13 of your statement, Mr Cagney, you talk about a number of the services that the Monarch Pharmacy provides. Do you see that?---Yes.

PN15008

Can you please identify for the Commission which of those services you charge a fee for service for?---Can you explain that more clearly, what you actually want.

PN15009

I would like you to explain, please, to the Commission, which of those services you require your customers to provide a fee for?---Health checks, number (f), it's stated there \$20.

\*\*\* JOHN FRANCIS CAGNEY

XXN MS FORSYTH

PN15010

Yes, I see that?---They pay that fee. Impromy Health and Weight management program, they purchase products associated with that. They don't actually pay a fee apart from a joining fee, which they then receive a CSIRO book on diet for

that fee of \$50, as well as access to the smartphone application, which they use in conjunction with the program. What's the other one - - -

PN15011

And then they would buy products on top of that from your pharmacies?---They buy the products on top of that, and that is how we generate income, from the purchase of the meal replacements. Number (m) - not number - item (m), the spot check; it's stated there the cost of the service starts at just \$35 for one mole, going up to about \$60 for three moles. That's all that we charge the customer directly.

PN15012

I understand. And looking at the same list of services, can you please tell the Commission which of those services you receive - - - ?---I'm sorry, can I just - can I just go back? The National Diabetes Service Scheme, there is a co-payment which we don't receive. The patient pays us, but we pay that straight back to the government. We get absolutely no compensation for item (e). We do that for no profit at all, and we just get a compensation from the government in setting up that system when it started. And we've done that for years - 10 years or more. Sorry, go on.

PN15013

Just on that National Diabetes Service Scheme Program, Mr Cagney?---Yes.

PN15014

I understand that under the 6CPA for the first time pharmacies will be directly remunerated for the provision of diabetes products under the NDSS. Is that your understanding?---From 1 July we will be paid \$1 per item. Many of these items are worth \$60, and we have to bear the cost of holding that stock, and it will then be purchased from our wholesaler. Currently the NDSS replenish our supplies. So we've spent thousands of dollars getting the stock in, holding it, and it's replenished by NDSS when we supply it. But from 1 July the government is going to give us \$1 per item, yes.

PN15015

I see. And - - - ?---That's my understanding, anyway.

PN15016

And in relation to the remaining services, in terms of identifying which of the services you've listed at (a) through to (m), which of those services do you receive funding for - government funding?---Home medication reviews, item (g).

PN15017

Yes?---Meds checks, item (j); and diabetes meds checks, item (d).

\*\*\* JOHN FRANCIS CAGNEY

XXN MS FORSYTH

PN15018

Thank you, Mr Cagney. You say at paragraph 14 of your statement that you - bear with me, Mr Cagney, you say that - this is at paragraph 14 of your statement that as a result of the penalty rates under the Pharmacy Industry Award, it is not financially viable to open the pharmacy on Sundays or public holidays?---Yes, that's correct.

PN15019

Accordingly, the Monarch Pharmacy is closed on these days?---Mm-hm.

PN15020

You understand don't you that prior to the Pharmacy Industry Award coming into operation, Sundays at double time for both pharmacists and pharmacy assistants was the same as it is now under the modern award. That penalty rate hasn't changed?---Is that correct? Are you asking me do I understand that or not?

PN15021

Yes?---Are you telling me it's correct or are you asking me if I know it's correct?

PN15022

Well I'm asking you whether you understand that to be the position, I'm putting to you that that is the case, that in South Australia there has been no increase in the Sunday penalty rate for pharmacies?---That's correct. But there has been an increase in the public holiday rates as I understand it.

PN15023

Yes, I'm just asking you about Sundays but - - -?---Yes, but I'm just clarifying that the public holiday rate has changed hasn't it?

PN15024

Yes, I appreciate that that has changed but insofar as Sundays are concerned, you'd accept would you not that the penalty rate has remained the same for both pharmacists and pharmacy assistants?---You're telling me that, yes.

PN15025

Well I'm asking you to give your understanding of that, whether you understand that to be the case or not?---I understand that, yes.

PN15026

You say finally at paragraph 7, Mr Cagney, that if the PGA is - - -?---Sorry, paragraph 7 or 17. Sorry, I didn't quite catch that.

PN15027

No, no, 17?---1-7, yes. You're fading in and out a little bit when you move away from the microphone, I'm sorry.

PN15028

I apologise. Paragraph 17?---Yes.

PN15029

It says there that:

PN15030

*If the Pharmacy Guild of Australia's proposal is accepted, it would mean that we could potentially extend the Monarch Pharmacy's trading hours to include evenings and Sundays. If this was possible it would mean more staff would be employed.*

\*\*\* JOHN FRANCIS CAGNEY

XXN MS FORSYTH

PN15031

The evenings that you refer to, are they weekdays or on weekends?---Both. The situation - the situation is that we are next to supermarket which trades till 8 o'clock every night and Sundays till 6 and public holidays - sorry, and public holidays 9 till 6, Sundays till 8 o'clock. With our growth in dose administration aid production for our community to aid people to stay in their homes and help them look after their own medication, we are currently getting to the capacity in the area we have to produce those. We physically produce them, Monday to Friday, 9 to 5. The only way - we've got two options to increase our production. Either we automate, we make staff redundant and put in automatic machines or we extend the trading time or employ people over weekends or evenings to provide that, and also it gives us continuity of service to our nursing homes and patients that don't always remember in the restricted hours to pick up their Webster-Paks and then I don't get calls after hours to go and open up to provide essential medications if we traded seven days in that location. We'd just provide a more complete service, especially to our nursing home and we also do a lot of discharge from our local hospital with people who are only able to be discharged because they go home with a dosage administration aid so they can manage their medication in the homes. Because the hospital doesn't provide that service, we provide that for the patients at our cost.

PN15032

Just so that I understand that service that you provide a little more, Mr Cagney?---Yes.

PN15033

You provide it both to, as I understand it, nursing home residents as well as private customers. Is that right?---We provide it to 150 nursing home beds or aged care beds and about 380 community patients as well.

PN15034

Is that something from which you derive revenue, Mr Cagney?---Yes, we derive revenue from the dispensing of the prescriptions. We do charge a fee to cover the costs of number one, the consumables like the plastic casing, the paper that it's packed in, the blister packs as well as the delivery we provide to our residents. We have a permanent delivery person who - a boy that works 9 till 5.30 Monday to Friday, delivers morning and afternoon to all our patients who can't get into the pharmacy as well.

PN15035

What percentage of your revenue would you derive from that service, perhaps combining the nursing home and private customer service in one?---The revenue? What do you mean by revenue?

\*\*\* JOHN FRANCIS CAGNEY

XXN MS FORSYTH

PN15036

Well what - perhaps to put it a simpler way, what percentage of your turnover is derived from providing these dose administration aids both to your nursing home residents and private customers?---That's very hard to disseminate because they also might purchase other items which are not in the dosage administration aids,

which would be allocated to them so I'm not very keen on giving a ball park figure because I'm not exactly sure. I could give an estimate but it would be just an estimate. Maybe 30 to 35 per cent of our total turnover which doesn't always equate to the same percentage of gross profit which certainly doesn't equate to the same percentage of net profit, because the cost of producing those prescriptions and packs is quite considerable compared to someone walking in off the street getting a prescription dispensed.

PN15037

Certainly. But there's enough demand obviously in the local community for that service that you provide for you to justify opening on Sundays and extended hours, whether it be on the weekends or through the weekdays. Is that your evidence?---What you have to understand is that our population is getting older, staying in their homes more and we're noticing this dramatically that we're getting requests on a daily basis for more and more people to go on that. So yes, our demand is just increasing and it's just increasing dramatically. Especially in an isolated rural community.

PN15038

I imagine with some of those older patients there are a number of add-ons or other products that they require from you as a sort of, if you like, bi-product of receiving the DAA aid service?---I don't think you can really say that succinctly. Yes, there might be some but it's not a major issue, no. Most older people require their medication and they don't have too many other needs apart from that.

PN15039

Thank you, Mr Cagney?---Thank you.

PN15040

JUSTICE ROSS: Re-examination?

PN15041

MR SECK: No, your Honour.

PN15042

JUSTICE ROSS: Thank you for your evidence, Mr Cagney, and your attendance today. You're excused?---Thank you.

<THE WITNESS WITHDREW

[11.10 AM]

PN15043

Mr Pollock?

PN15044

MR SECK: Yes, your Honour. I call Dean Pollock.

PN15045

JUSTICE ROSS: Any objections in relation to the statement filed?

\*\*\* JOHN FRANCIS CAGNEY

XXN MS FORSYTH

PN15046

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

PN15047

MR POLLOCK: Dean Andrew Pollock, (address supplied).

**<DEAN ANDREW POLLOCK, SWORN [11.11 AM]**

**EXAMINATION-IN-CHIEF BY MR SECK [11.11 AM]**

PN15048

MR SECK: I understand there are no objections to the affidavit, your Honour. Mr Pollock, you are a pharmacist by occupation, that's correct?---Correct.

PN15049

You operate and you are the owner of Atherton Discount Drug Store located in Atherton, Queensland?---Yes.

PN15050

You have prepared an affidavit in these proceedings, sworn on 4 August 2015. That's correct?---I have.

PN15051

Do you have a copy of that affidavit with you?---I do.

PN15052

Have you read that recently?---Yes.

PN15053

I understand you wish to make some small changes to the affidavit. That's correct, Mr Pollock?---Yes.

PN15054

Can I take you to paragraph 7. I understand you just wish to make a small adjustment to paragraph 7, that's right?---Just a clarification on the staff numbers.

PN15055

Can you give the Commission the clarification?---Yes, point 7 I have quoted the staff, specifically professional staff at the Atherton Discount Drug Store. In point 8, which is to clarify the 30 staff are employed across the two pharmacies in town that I have a pecuniary interest in.

PN15056

What is the other pharmacy in town which you have a pecuniary interest in?---It's the Atherton AMCAL.

PN15057

Subject to those changes, Mr Atherton[sic], are the contents of your affidavit true and correct to the best of your knowledge and belief?---Absolutely, yes.

\*\*\* DEAN ANDREW POLLOCK

XN MR SECK

PN15058

I tender the affidavit.

PN15059

JUSTICE ROSS: I'll mark that exhibit PG18.

PN15060

MR SECK: May it please.

**EXHIBIT #PG18 AFFIDAVIT OF DEAN POLLOCK DATED  
04/08/2015**

PN15061

JUSTICE ROSS: Ms Forsyth.

**CROSS-EXAMINATION BY MS FORSYTH**

**[11.13 AM]**

PN15062

MS FORSYTH: Thank you, your Honour. Mr Pollock, other than being an owner of the Atherton Discount Drug Store and the AMCAL pharmacy in Atherton, do you have any other interests in pharmacies either in Atherton or elsewhere?---No, just those two.

PN15063

Those two. Are they sole proprietorships or are they - - -?---No, partnerships.

PN15064

They're partnership arrangements?---Yes.

PN15065

How long have you been a partner in the Atherton Discount Drug Store?---Atherton Discount Drug Store has only existed for 18 months.

PN15066

Yes?---Prior to that it was Watley's Discount Drug Store in a slightly different location in town. We made changes within the town to try and better service the community.

PN15067

You've been a proprietor of Watley's prior to it becoming the Atherton Discount Drug Store, is that right?---Correct, yes, that's since about '99.

PN15068

1999?---Correct.

PN15069

With respect to the AMCAL pharmacy in Atherton, how long have you been a proprietor or a partner?---Since '99.

PN15070

Since 1999?---Correct.

\*\*\* DEAN ANDREW POLLOCK

XXN MS FORSYTH

PN15071

And you mentioned that the 30 pharmacy assistants that you refer to in paragraph 8 are employed across those two pharmacies?---That's correct.

PN15072

I take it then that the staff that you identify in paragraph 7, I think you refer to them as your professional staff?---That's correct.

PN15073

Are also across the two pharmacies?---Yes, that's the clarification I made.

PN15074

Right?---They just work for DDS.

PN15075

Right?---There are - I can tell you how many pharmacists work at the AMCAL if you like.

PN15076

That would be useful?---Okay. There are two pharmacists at the AMCAL one of which is my other partner.

PN15077

Yes?---And that's it.

PN15078

Okay. And you've always worked as part of your interest in those two businesses as a pharmacist as well as a partner or a manager?---Well, I like being a partner in those businesses. Correct, yes.

PN15079

And that's since 1999 at Watley's and 1999 at AMCAL?---Yes. I've been an owner in those two pharmacies since 1999. Yes.

PN15080

Yes. And you've also worked as a pharmacist giving your own hours in those businesses?---Correct.

PN15081

Throughout that time?---Throughout that time and I mean I've lived and worked in that town for most of my life. So I was working there in the '80's.

PN15082

Right. As a pharmacist?---Correct, yes.

PN15083

You know the area and the custom well then I imagine?---Oh, God - yeah - yes, absolutely. Yes.

\*\*\* DEAN ANDREW POLLOCK

XXN MS FORSYTH

PN15084

And your hours I take it have remained constant throughout the time of your interest in both of those pharmacies. I think you've said that at Atherton you're open 8.00 am until 6.00 pm Monday to Friday and 8.30 until 1.00 pm on Saturday and 9.00 till 1.00 on Sunday. But you don't open public holidays. That's accurate, isn't it?---No, those hours have changed over the years depending on - you know - influences in the town. What's happening in the profession, expectations of the community. Those hours have varied - you know - by bits and pieces over the years.

PN15085

Sure?---Back in the '80's we used to do Thursday night trading. We don't now.

PN15086

Yes?---It's not worth it.

PN15087

Yes?---When we - - -

PN15088

You don't get the foot traffic?---No. When we made changes 18 months ago to try and enhance services in town we extended our trading hours but commercial pressures have meant that we've had to pare those hours back in recent times this year.

PN15089

I see. And you found that you just haven't had the demand for the service?---Yes, well there's always demand there. It's just whether it's enough demand to warrant opening and the costs incurred in remaining open are too great to justify it.

PN15090

And on what days do you find that it's particularly slow?  
---Well, obviously Saturday afternoons, Sunday afternoons.

PN15091

Yes?---Yes.

PN15092

And in relation to the AMCAL pharmacy are your hours that are listed in paragraph five are they reflected in the current hours for AMCAL?---The AMCAL at present opens exactly those same hours barring they open at 8.00 o'clock on a Saturday.

PN15093

Okay. So have an additional hour?---Additional half an hour.

PN15094

Sorry, additional half an hour?---Yes.

\*\*\* DEAN ANDREW POLLOCK

XXN MS FORSYTH

PN15095

I beg your pardon?---Day two we had to recently reduce their trading hours as well.

PN15096

I see?---And that was to remove Saturday afternoon.

PN15097

Yes?---And to pare them back they started opening until 7.00 o'clock week days but that just - you know - didn't work.

PN15098

And other than that paring back have the hours that you've indicated in paragraph five for both the Atherton Discount Drug Store and the Amcal Pharmacy remained constant over the last five years?---No, no, no. Those hours have been in operation for four months.

PN15099

I see. And prior to that you, I think, your evidence is that with respect to the Amcal Pharmacy there was trading on Saturday afternoons?---Yes.

PN15100

But that the - - - ?---And with the Atherton DDS.

PN15101

And that's the same with the Atherton?---Correct.

PN15102

And I think your evidence was also with respect to AMCAL and it may be with respect to Atherton as well that it was for an extra hour on the weekdays, is that right? Until 7.00?---No, no, no. That was only the Amcal.

PN15103

That's only Amcal. Okay. And, again, that was an issue of foot traffic not justifying the opening - the custom and trade not supporting the - - -?---Well, you know obviously the longer we can trade the better the problem becomes as we need to find efficiencies in the business there's very little we can adjust except for trading hours and wages.

PN15104

Are you part of - are you stand alone stores? Or are you part of the shopping complex or - - -?---No. They're both in small shopping centres.

PN15105

I see?---Yes.

\*\*\* DEAN ANDREW POLLOCK

XXN MS FORSYTH

PN15106

You say at paragraph 15 that a patient seeking repeats of medicines or follow-up of advice, continuity of care is important. I beg your pardon it's paragraph 16 I wish to take you to. You say it's essential that when any medicines are dispensed it is accompanied with professional advice. And then you say "It is for that reason

that people rely on pharmacies for their medicines and not retail stores or supermarkets." I take it you're not suggesting there the PBS medications, as I understand it, general retail stores and supermarkets are not licensed to provide PBS - prescription medications?---No, they're not obviously.

PN15107

No. So, when you say that it's essential that medicines are dispensed it's accompanied with professional advice you're talking about the prescription medications primarily?---No. I'm talking about over-the-counter medications, paracetamol, ibuprofen, treating toe rot - you know - all sorts of things that people can choose to treat themselves with the assistance of a pharmacist but obviously can get that disastrously wrong when they're doing it without advice.

PN15108

Sure, and you would see people come in for, I take it, over the counter medication as well as prescription medication on a regular basis? In your - - - ?---Yes, that's our business. Yes. Yes.

PN15109

Yes. And the non-PBS medication, is there a - I take it there's a higher margin that you're able to charge on those products compared to your PBS medications?---That's a very, very longwinded question. Some things we can and some things we can't achieve a higher mark-up on. Yes.

PN15110

Yes?---But, you know - that's the commercial reality and I should add that the kind of medications that - okay, you're referring to as far as over-the-counter goes you can buy small packets of paracetamol in Woolworths. The margin on those is actually extremely small because of competitive commercial pressures. You know those things don't make as much money, yes.

PN15111

And as well as the products that you have in terms of the sort of the medical component of the pharmacy - so your PBS and non-PBS medication you have a retail component of both of your pharmacies?---They both have - - -

PN15112

A product?---Retail offering as well as dispensaries? Sorry? Is that what you're asking?

PN15113

Yes. That's what I was asking?---Yes, correct. Yes. Yes.

PN15114

And what component of your turnover would consist of those sort of retail product-type?---In the Atherton Discount Drug Store.

PN15115

Yes?---It's about a 65/35 mix.

\*\*\* DEAN ANDREW POLLOCK

XXN MS FORSYTH

PN15116

Yes?---Sixty-five percent being PBS prescription.

PN15117

Yes?---The Atherton Amcal is a little more weighted towards prescriptions. It has a lesser retail side. Probably 70/30.

PN15118

Thank you. And you say that at paragraph 18 that the doctor's surgeries in Atherton only open business hours 9.00 to 5.00 Monday to Friday and Saturday morning. And the Atherton Hospital is a medium-sized regional hospital with a focus on emergency only services. I take it that having the doctor's surgeries open during normal business hours somewhat lessens the demand that you would have outside of those hours for prescription medications for the filling of scripts if you like?---Not at all. I mean, you know, people don't go to the doctor every time they need a script. There's repeats to be filled, you know? That's the issue - I guess I'm getting at there is that outside of hours health care in Atherton is a big problem. When I go back on Thursday night we've actually got the Division of General Practices convened a meeting.

PN15119

Yes?---To try and determine how we can best cover health care in the Tablelands after hours.

PN15120

Yes?---Because we have no bulk billing doctors.

PN15121

Yes?---The doctor's surgeries are only open and run a very limited call service.

PN15122

Yes?---The hospital is very much an emergency department. They triage. My wife's a clinical nurse and part time nurse unit manager of the emergency ward. They triage patients upon entry and seriously if you walk in there with a headache or a rash between your toes you will have a four or five wait most days to see someone. We attempted to extend our hours. You know? To try and cover that need in the community.

PN15123

Sure?---And that was our sole motivator. The long story is we had three pharmacies who were not able to trade extended hours. The changes we made tried to bring that about. The commercial reality in pharmacy now is we just can't afford to open the extended hours that we need to. Health care in - you know - the Tablelands is very lacking after hours and we're the only ones who can pick up that slack.

\*\*\* DEAN ANDREW POLLOCK

XXN MS FORSYTH

PN15124

But, I mean there are clearly some very real issues with providing primary health care after hours in the Tablelands or the Atherton. Let's be specific the Atherton region?---Correct.

PN15125

And I imagine one of those is about even retaining pharmacists and other doctors and medical practitioners to the area to remain?---Doctors - yes. Pharmacists, no. We've got a very good group of pharmacists who have been there - you know - most of them as long as I have or longer. So, no professionally we've got enough pharmacists to fill the roles, yes.

PN15126

And in terms of paragraph 20 of your statement where you say that:

PN15127

*The most important service our pharmacy offers is the provision of medical advice once the doctors' surgeries and other pharmacies in town are closed. During that time we are the only source of healthcare information and product advice for a patient.*

PN15128

It's fair to say that the hospital is open at that time?---Correct.

PN15129

So you wouldn't be the only source of healthcare information and product advice for a patient?---To seek advice – now, I'm not talking about an amputated limb. I'm talking about, you know, I've got a headache, my kid has stripped over and hurt his arm, that sort of thing.

PN15130

Sure. Sure?---You know, people can go up to the hospital, you're absolutely correct. They are triaged there by the triage nurse on duty.

PN15131

Yes?---For the kind of complaints that we would deal with and advise people on, a five-hour wait. You know, it is a true emergency ward and they're busy.

PN15132

And the services that you say you provide to your patients listed in paragraph 21, are they services that you say you provide for your patients listed in paragraph 21, are they services for which you receive funding or are there some for which you receive funding and some for which you don't?---Now, are you talking about all of the services within the pharmacy or are you just talking about offering after-hours  
- - -

\*\*\* DEAN ANDREW POLLOCK

XXN MS FORSYTH

PN15133

Those services that you list at paragraph 21 of your witness statement?---Got you. Running through medication management programs, there's a Commonwealth government part of the 5 and now 6CPA. Same with DAAs. Heart assessment, no. Asthma, no. Diabetes, no. Then my (indistinct) screening, no. Health clinics, sometimes, if there are – yes, there are some clinics for which we can charge a small fee to the patient but most of them, no. In-store medication reviews, there's Medicare funding. Blood pressure monitoring, no; that's purely a service with no fee attached. CPAP is – there's no fee for service on advice but

obviously people have needs of equipment that funds that. RUM, no. Home medication delivery, there is no charge to the community for those.

PN15134

Yes?---And, well, special orders and similar are no, obviously not. We source whatever we can with no additional charge on sourcing special items.

PN15135

And what about fee for service? Are fees for service charged with respect to any of these services?---That's kind of what I just answered.

PN15136

Sorry, I understood that your answer was with respect to funding?---Yes. Okay. Sorry. All right. So patient fee for service would apply to DAAs, the packing. Patients pay a four dollar fee per week for that.

PN15137

Yes?---Health clinics, occasionally. Some health clinics they will.

PN15138

Yes?---And that's it.

PN15139

I see. Just bear with me for a moment, Mr Pollock. You say at paragraph 23 of your statement that reduced wages cost would mean we could afford to employ more staff to provide the healthcare services that you've just taken the Commission through. I take it there that you mean you would offer more hours to your existing staff?---Yes and no. I mean, we have staff that specifically are employed on weekends. However, having staff that specialise and can perform those tasks, at the moment we largely don't have them on out-of-hours times. Obviously if wage conditions allowed it, then we would have – we would amend hours to have those staff crossing over into those other times, yes.

PN15140

Well, yes, I mean, it wouldn't just be about whether wages allowed it, would it, Mr Pollock, just in terms of your earlier evidence about the difficulty of the other primary healthcare providers in your local community. Obviously the pharmacy would require further investment and support from your other primary healthcare providers in order to - - -?---Well, these are stand-alone services that don't need other healthcare professionals involved at all.

PN15141

Well, perhaps in taking it to a more general level, if what you say, for example, at paragraph 22 is to be understood in its context, you say:

PN15142

*If penalty rates were reduced and the pharmacy was able to stay open for longer, I believe my patients would have improved access to healthcare more broadly.*

\*\*\* DEAN ANDREW POLLOCK

XXN MS FORSYTH

PN15143

?---Yes.

PN15144

So taking it away from these specific services - - -?---Well, to my pharmacy services, yes.

PN15145

To your pharmacy. Exactly?---Yes.

PN15146

And that's because you say you would be available at more times throughout the week?---Correct. Yes.

PN15147

It's going to require some substantial change beyond just a reduction in penalty rates though, isn't it, for that to become a viable proposition for your pharmacy?---No. That's the only cost that has a significant bearing on our trading hours. All of our other costs are fixed, you know, by and large and there's very little we can do to influence those. Trying to reduce our wage costs in those other times is pretty much the biggest influencer on our ability to trade longer hours.

PN15148

Have you done the analysis required to assess your capacity to in fact open those extended hours if the Pharmacy Guild's proposal was accepted and they were in fact reduced? Have you looked at your business' viability to support those extended hours?---Well, probably better than that because we have had those hours – extended hours open, and they just – we weren't making enough to cover the cost of wages. When we had to trim our hours, obviously we were going to trim the hours that were costing us more in wages and that had the lowest number of patients in the pharmacy in those hours.

PN15149

Yes, and I think your evidence was earlier that Saturday afternoons and Sundays were particularly slow?---Yes. I guess, you know, the thing to remember is that they're slow times but, you know, if a patient comes in and has a very specific need on a Sunday afternoon, they can't choose when they're going to get a headache. So if that happens to be on a Sunday after 1 o'clock, you know, they are really stretching to find good professional advice on the Tablelands.

PN15150

Sure. You say that – how many other pharmacies are in Atherton other than the two that you've got an interest in?---There's one other pharmacy.

PN15151

So there's one other pharmacy in Atherton?---Correct. I do mention that in my statement.

\*\*\* DEAN ANDREW POLLOCK

XXN MS FORSYTH

PN15152

I think you do. I beg your pardon. At paragraph 26, Mr Pollock, you mention the Pharmaceutical Benefits Scheme medicines and you say that:

PN15153

*Recent financial pressures on the pharmacy, mainly as a result of the mandated price disclosure of Pharmaceutical Benefits Scheme medicines have meant that we are required to run our business as tightly as possible.*

PN15154

You're aware, I think you mentioned earlier, of the 6CPA And are you aware that under the 6CPA there has been some change to the way in which disbursement for prescription or dispensing is performed or is remunerated, I should say, is remunerated?---Remunerated. Yes. Correct. Yes.

PN15155

You would be aware there is a fee, the AHI, that under the 6CPA provides pharmacies with an official dispensive remuneration and that is seen to – and I'm quoting here from the Guild website, to virtually make the impact of price disclosure something that is immune from pharmacies. Would you - - - ?---Ongoing.

PN15156

Yes?---Absolutely, because it had to.

PN15157

Yes?---I mean, half the pharmacies – I'm gilding the lily a bit here but a lot of pharmacies were in dire straits. This simply arrested the fall in our remuneration.

PN15158

Sure?---What the 6CPA has redressed is simply to hold us at a level whereby we have some predictability to our incomes but, let me tell you, it at best might achieve where we were halfway through the fifth CPA but it by no means gets us back to a level where we're sitting back comfortably. Not even close.

PN15159

No. I'm not suggesting that but I am suggesting that paragraph 26 of your affidavit, Mr Pollock, needs to be read in the context of the 6CPA and the fact that the impact of disclosure of Pharmaceutical Benefit Scheme medicines has been arrested by the 6CPA?---No, it's ongoing. It's just the degree to which it erodes our turnover and profit has been lessened somewhat but it's still marching on. You know, every time there is a price disclosure drop, there is a drop still.

PN15160

But you would accept, would you not, that – I withdraw that. You say at paragraph 28:

\*\*\* DEAN ANDREW POLLOCK

XXN MS FORSYTH

PN15161

*If the Guild's proposal is accepted we will likely extend our Saturday and Sunday trading. We would also consider extending trading during the week until 8.*

PN15162

Have you performed the analysis to show that that would be in fact a viable proposition for your business?---No, because at this stage it's not sort of something that I could look at closely because we had no – you know, until this came up, I had no idea that we were likely to have a reduction in penalty rates. Having said that, over and above everything else, my desire is to get services improved in my hometown. We just have to try and achieve that. That's first and foremost. Now, if it's suddenly – if there's anything that's going to make that more affordable, we will jump at it.

PN15163

I understand but it would have to be put as no more at this stage than an aspiration, than anything based on an empirical analysis of whether or not that's a viable commercial proposition for your business?---Absolutely. Yes.

PN15164

Thank you, Mr Pollock?---No worries. Thank you.

PN15165

JUSTICE ROSS: Mr Pollock, can I just ask you a question about paragraph 6, and I got a little lost with the recent reduction in the trading hours in your Amcal Pharmacy. Can you just explain those to me?---Yes, okay. The Amcal was - we increased its trading hours, 18 months ago, to the 8 to 7 Monday to Friday, and 8 till 4 on Saturdays and 9 till 1 on Sundays.

PN15166

What led you to that decision?---18 months ago we merged three pharmacies into two in town.

PN15167

I see?---The idea being that we had - myself and my partner in two pharmacies, and another partnership in another pharmacy. We came to an agreement with the other guys that we were all floundering along not offering services that, you know, our big city cousins got from pharmacies trading extended hours and that we should merge the three businesses into two so that we could increase the level of services offered. The - yes, the size of the business could justify it. I'm sort of going off track a bit here, but we then had a ministerial discretion decision go against us from some Cairns guys who opened another pharmacy in the main street of Atherton, and that put some pressure on our ability to do what we wanted to do, and then of course the price disclosure impact and everything, it really put the screws down on the pharmacy. We then proceeded to run as tight a ship as we could for the last 18 months.

\*\*\* DEAN ANDREW POLLOCK

XXN MS FORSYTH

PN15168

Okay. So there was an extension of the hours 18 months ago and then at some point you reduced them?---Okay. Over that time and since, you know, we've really had to screw down our efficiencies, we've looked at anywhere we can reduce trading hours. The pharmacy that came in under the ministerial discretion didn't offer any increased services to town at all which - there's a long and sordid

story there but they basically didn't trade extended hours at all, they simply reduced our ability to.

PN15169

By taking some of the business that you would otherwise have had on prescription medication during normal business hours?---Correct.

PN15170

And what hours does the Amcal Chemist currently operate?---Okay. So the Amcal now has reduced its Saturday afternoons back to 1 o'clock and they've reduced their trade on weekdays back to 8 till 6.

PN15171

And that's similar to the Atherton Discount arrangement?---Correct. Yes.

PN15172

Just - the ministerial discretion, is that around the location rules?---Correct, yes.

PN15173

Okay. And so if, on the face of it, the establishment of a new pharmacy in a location was inconsistent with the rules, there's a ministerial capacity to grant a waiver, is that the way it works?---Exactly.

PN15174

Thank you. Anything arising.

PN15175

DEPUTY PRESIDENT ASBURY: Yes. Mr Pollock, can you just explain to me, you said earlier about your attempt to extend hours and you weren't able to do it because you couldn't afford to open for extended hours. I just wanted to understand the factors that led to that. And as I understood your evidence, and you can correct me if I've misunderstood, it was wages as well as customer demand. And I just wondered what - -?---Yes, they're the two influencing factors that will determine whether or not we can extend it. Now, the most important factor there in favour - I guess there are two things. One is in favour of us extending our hours, being able to offer health care services to, you know, people in our community, is very, very important to us. Also with another pharmacy coming to town the commercial advantage we gain by extending our trading hours is there as well, you know, we are more valuable to our customers than the opposition. Countering that, obviously, is the impost of - are our wages costs and there - there we have to find the balance, you know, we have to try and service as well as we can, but realising that our wages costs had to come down, you know, we were spending too much on wages.

PN15176

Thank you?---No worries.

PN15177

JUSTICE ROSS: Anything arising?

\*\*\* DEAN ANDREW POLLOCK

XXN MS FORSYTH

PN15178

MS FORSYTH: No, your Honour.

PN15179

JUSTICE ROSS: Re-examination?

PN15180

MR SECK: No, your Honour.

PN15181

JUSTICE ROSS: Thank you for your evidence, Mr Pollock, and for coming down today?---No worries.

PN15182

You're excused?---Thank you very much.

**<THE WITNESS WITHDREW**

**[11.50 AM]**

PN15183

JUSTICE ROSS: The next witness is Mr Logan via VC from Brisbane, is that right?

PN15184

MR SECK: That is so, your Honour.

PN15185

JUSTICE ROSS: We might just stand down for five minutes while we get the VC up and running.

**SHORT ADJOURNMENT**

**[11.50 AM]**

**RESUMED**

**[12.00 PM]**

PN15186

MR SECK: The next witness is Timothy John Logan. Before I call Mr Logan, I can indicate that there will be – I have spoken to my learned friend, Ms Forsyth, and we have resolved the objections. The Guild does not read paragraph 18, of the affidavit. Going backwards, we don't also read paragraph 14 of the affidavit and the second sentence starting "Consumers" of paragraph 16. Subject to not reading those paragraphs, there are no objections to the affidavit.

PN15187

JUSTICE ROSS: Swear in the witness.

**<TIMOTHY JOHN LOGAN, AFFIRMED**

**[12.01 PM]**

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

**[12.01 PM]**

\*\*\* TIMOTHY JOHN LOGAN

XN MR SECK

PN15188

MR SECK: Mr Logan, my name is Michael Seck. I am the counsel for the Pharmacy Guild of Australia. Can you see me and hear me?---Yes. Yes, I can, Michael.

PN15189

Mr Logan, you are a pharmacist by occupation. That's correct?---Correct.

PN15190

And you are the owner of Tim Logan's Nambour Pharmacy?---Correct.

PN15191

You have prepared an affidavit in these proceedings. That's correct?---Correct.

PN15192

And that affidavit was affirmed on 10 August 2015?---Yes.

PN15193

Do you have a copy of that affidavit with you in the witness box?---Yes.

PN15194

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

PN15195

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

PN15196

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

PN15197

Subject to the redactions, I read the affidavit.

PN15198

JUSTICE ROSS: I mark the affidavit exhibit PG19.

PN15199

MR SECK: May it please.

PN15200

JUSTICE ROSS: With redactions at paragraphs 14, 16 and 18.

**EXHIBIT #PG18 AFFIDAVIT OF TIMOTHY JOHN LOGAN AS  
AMENDED DATED 15/08/2015**

PN15201

JUSTICE ROSS: Ms Forsyth.

**CROSS-EXAMINATION BY MS FORSYTH**

**[12.03 PM]**

\*\*\* TIMOTHY JOHN LOGAN

XXN MS FORSYTH

PN15202

MS FORSYTH: Thank you, your Honour. Mr Logan, I understand that you are the owner of Tim Logan's Nambour Pharmacy. Is that correct?---That is correct.

PN15203

And is that the only pharmacy in which you have ownership?---That is correct, yes.

PN15204

And are you a sole proprietor of that business?---Yes, I am.

PN15205

And it's a profitable ongoing concern, is it?---At the moment, yes.

PN15206

And how long have you been a proprietor at the pharmacy?---20 years at this particular pharmacy.

PN15207

That's a lot of service to the local community?---Yes. I like to think so.

PN15208

And how many employees have you had since your proprietorship? I take it that the 13 that you currently employ, as you've articulated at paragraph 16 of your affidavit, have remained fairly constant over the time of your proprietorship. Is that correct?---Well, I started off quite small with just one pharmacy assistant and myself as the proprietor and operating pharmacist. I got up to a peak of about 18 and currently running with 13 people.

PN15209

I see?---Over the years.

PN15210

And has it been at 13 for – what – the last five years or so?---Probably ranging from 15 down to 13. Some cuts have been made as the rates have been increased over the last few years.

PN15211

And you mention that your pharmacy has certain opening hours. I'm referring to paragraph 8 of your affidavit, Mr Logan?---Yes.

PN15212

I take it those hours have remained constant over the period of your proprietorship. Is that right?---Probably for the last 12 years, yes.

PN15213

And what are the core hours of the shopping centre?---The core hours don't include Sunday but the other hours are the core hours.

\*\*\* TIMOTHY JOHN LOGAN

XXN MS FORSYTH

PN15214

I see. So you operate in addition to those core hours as specified in your lease?---Correct.

PN15215

You mention at – this is at paragraph 20 of your witness statement?---Yes.

PN15216

That:

PN15217

*The current penalty rates make staying open longer an uneconomical proposition. The reduction to the proposed levels would make it more affordable.*

PN15218

I take it nonetheless that the hours that you are open on a Sunday when the shopping centre itself is closed, are still such that they justify you opening those hours, Mr Logan?---I think in paragraph 19 I refer to the fact that at the moment I'm breaking even on a Sunday but that if the wage rates increase beyond a certain level, and also depending on the superannuation guarantee rates that are enacted, that could cease to be economically viable.

PN15219

Are most of the other stores around you in the shopping centre shut on that Sunday?---We used to have a supermarket in that centre that was open on the Sundays which led to my initial decision to open at that time. It was an IGA supermarket which before Woolworths were allowed to trade in Nambour on Sundays was the only supermarket in town that was open on Sundays. Since that relaxation though, they weren't the only ones and now they have departed from the shopping centre. So I'm the only one at the moment trading on the Sunday but there has been a level of expectation amongst a subset of my customer base that find Sundays convenient to access the pharmacy, and so I'm remaining open even though it's a bit of a break-even proposition.

PN15220

Yes, and, I mean, to that end it would be fair to say that the issue that you face on a Sunday is as much to do with the custom level or the lack thereof in terms of foot traffic that might otherwise have come through to the local IGA that is now closed on that day, as it is anything to do with the wages?---I think it's a mix of issues in terms of the remuneration for the pharmaceutical benefits that I'm providing on those days; the level of competition in Nambour and elsewhere; and the penalty rates. The mix, you know, I don't think you can hold one issue out to be the sole cause. But certainly the wages are the most significant expense on those days.

PN15221

And you say that:

\*\*\* TIMOTHY JOHN LOGAN

XXN MS FORSYTH

PN15222

*The current penalty rates mean that I only employ - - -*

PN15223

this is again at paragraph 20 –

PN15224

*one pharmacist on weekends. This means that I am unable to deliver non-dispensing professional services on those days.*

PN15225

?---Correct.

PN15226

Would it not be more accurate to say that if a customer needs a non-dispensing professional service on those days, that customer simply needs to wait a little longer for that consultation with the pharmacist. It's not that it's not provided at all?---Yes. That's why I say on those days. You know, it's a matter of customer convenience, I suppose. Some people like to shop on Sunday given that it's – in Nambour it's a little bit less frenetic in terms of traffic and so forth, than other days. And, you know, the staffing levels that I'm able to afford on those days means that I can't not be the dispensing pharmacist and, you know, sit down with someone and provide a meds check, for example, or the fact that I'm the only pharmacist there – in Queensland we have an influenza vaccine pilot that requires two pharmacists to be available. So I can't do them on Sundays either. I can't do it viably under the current penalty rate regime.

PN15227

Well, just to be clear, you, I take it, still provide non-dispensing services on a Sunday? For example - - -?---Very, very rarely because it's simply not something I'm able to encourage or promote to my customers, or if they come in and ask and, you know, I've got a lot of prescriptions to do, I can't not do the prescriptions and sit down and do the meds check, for example, which requires, you know, a 10 to 15 minute consultation with someone.

PN15228

I see?---So that's why I made the statement I did.

PN15229

Where you say at paragraph 22 of your statement if the Guild proposal was adopted you would open on public holidays and for longer hours on Saturdays and Sundays.

PN15230

*I would also employ additional staff, particularly trainees and provide existing staff with additional hours, particularly on Saturdays and Sundays.*

\*\*\* TIMOTHY JOHN LOGAN

XXN MS FORSYTH

PN15231

Just starting with the longer hours on public – sorry – on Saturdays and Sundays and opening on public holidays, that's something that you would obviously need to consider having done a full analysis of the demand for your service for longer hours on Saturdays and Sundays, as well as opening on public holidays, isn't it?---Well, in terms of the savings that would be made particularly on the Sunday

because the Saturday proposal, I don't trade outside the hours of 7 am and 9 pm, so that would remain the same. But the savings on Sunday, I would be able to invest. You know, obviously I've that at the current level they're unaffordable to me or that they don't allow me to be as viable as I am during the week, as I am on Sundays.

PN15232

But for instance what I was able to do in the past is employ a junior trainee pharmacy assistant on Sundays. It was a quiet time, they were able to learn in a less frenetic environment, you know, that under the current regime it's a luxury I can't really afford. So I would look at that as an opportunity. Some of the other savings I might be able to afford to have, for instance, an immunisation clinic on Saturdays during the flu season where another pharmacist was able to be there for a couple of hours. So, you know, it would be a matter of investing the savings across the couple of days, as well as maybe even during the week while also, you know, retaining a little bit of those funds because as I've said, at the current rate the viability is marginal.

PN15233

But you'd want to be confident having done the analysis, as I think you said, it can be quiet on Sundays I think was your evidence and that may well provide a good training ground for a trainee, but you'd obviously as the owner of the business want to be commercially satisfied, would you not, that opening on public holidays and for longer on Saturdays and Sundays was something that was - - -?---I think I used the words less frenetic. So it's still, you know, there's a degree of customer flow, you know, sometimes I do about 70 prescriptions on a Sunday, so there's a level of customer flow but, you know, compared to during the week where you might have periods of intense activity, you know, you're not exposing a trainee to that kind pressure and they're able to learn in a more - as I said, a less frenetic environment. You've got a bit of time to step them through things. So, yes - - -

PN15234

At this stage you're really expressing a plan or an aspiration as to what you might do should the Guild's proposal be accepted. You haven't actually sat down and committed to opening on public holidays or for longer hours on Saturdays or Sundays have you?---Well I can't commit until it happens, I guess. In my introduction I sort of mentioned the fact that at one stage I had up to 18 people and those were in the days when Saturday and Sundays were being paid at the same rate in Queensland as Monday to Friday. As those rates - as those penalties increased in the implementation period from what was in 2010 to 2015, I have had to gradually make cuts to the number of people because of the extra expense of the people on the ground. So, you know, I know what I had and I know what I could afford and I know what I can afford now, so you know if the proposal was accepted then I can sort of say well, you know, I can - I can look to, you know, train the next - the next crop of my employees, if that's not being disrespectful to employees. But just train the next group of people to come in at an earlier stage, rather than throw them in at the deep end.

\*\*\* TIMOTHY JOHN LOGAN

XXN MS FORSYTH

PN15235

How many pharmacies are there in Nambour, Mr Logan?---There are seven pharmacies in Nambour.

PN15236

You referred back to a time when the penalty rates were the same on Saturday and Sunday. Were there seven pharmacies in Nambour at that time?---No, there's sort of one extra at the moment, so at that time there would have been six. Not all of them were open on Sundays though.

PN15237

No, and I take it that they are now, is that right?---I think that there is one that doesn't open on Sundays but everyone else is open Sundays.

PN15238

It'd be fair to say that there's more competition now than there was back then?---To a certain degree that has occurred, yes.

PN15239

Mr Logan, I asked you earlier whether you had any financial interest in any other pharmacies, and I think your answer was no. I understand though - - -?---No.

PN15240

Is that correct?---That's correct. I have been a serial mono pharmacy owner. I've owned pharmacies in Atherton, Townsville and Nambour but sold out of one to get into the other, so never owned more than one pharmacy at a time.

PN15241

I think you said you'd been there for 20 years. Is that right?---20 years, yes, yes.

PN15242

You are, are you not, though a paid director of the Guild Group Holdings Ltd?---That is correct.

PN15243

That's a position that you've held for some time now?---Two years and a bit.

PN15244

That provides you with an additional source of income, does it not?---That is correct.

PN15245

What is that income per annum, Mr Logan?---Look, I don't have the exact figure on me but you may have the annual report there. I think in the region of \$87,000.

PN15246

I do indeed have the annual report here. I had hoped to tender that document through you. Your Honour - - -

\*\*\* TIMOTHY JOHN LOGAN

XXN MS FORSYTH

PN15247

JUSTICE ROSS: You can tender it later if it's an annual report. What objection can be taken to it?

PN15248

MS FORSYTH: That was what I was hoping might be the position, your Honour.

PN15249

JUSTICE ROSS: It's an annual report of what?

PN15250

MS FORSYTH: It's the annual report of the Guild Group Holdings Ltd.

PN15251

JUSTICE ROSS: What does the Guild Group Holdings Ltd do?

PN15252

MS FORSYTH: It is part of the executive group of companies that own, if you like, the executive part of the Guild, that sit above the administrative arms being the branches.

PN15253

JUSTICE ROSS: Yes.

PN15254

WITNESS: Can I correct that, your Honour?

PN15255

JUSTICE ROSS: Sure?---That's not the case. The Guild Group Holdings is a company that exists to - it holds the Guild insurance company, it holds the Guild super business and it also holds the company by the name of Meridian Lawyers, so it's a wholly owned subsidiary of the Pharmacy Guild of Australia. It has nothing to do with the running of the Pharmacy Guild of Australia. It's a commercial enterprise regulated by APRA and provides a return on investment to the Pharmacy Guild of Australia.

PN15256

Well what's the relevance of it to these proceedings?

PN15257

MS FORSYTH: Look, your Honour, I think we've got the essential evidence through the witness.

PN15258

JUSTICE ROSS: Yes, he said what he - yes.

PN15259

MS FORSYTH: Mr Logan, do you have any other involvement in the Guild, Mr Logan?---Yes, I do.

\*\*\* TIMOTHY JOHN LOGAN

XXN MS FORSYTH

PN15260

Is that as a branch member?---Yes, I am a branch committee member and a member of the branch as well. One has to be a member of the branch to be eligible to be elected to the branch committee.

PN15261

Have you held any presidential positions at all?---I am currently the Queensland branch president of the Pharmacy Guild and I'm also the senior national vice president.

PN15262

Do you know whether or not Chemist Warehouse is a member of the Guild?---To my knowledge, the majority of if not all of the Chemist Warehouse group are not members of the Pharmacy Guild of Australia. There maybe a few pharmacists who have partnerships in those that may have an interest in other pharmacies that we're not aware of, but as far as I'm aware you could pretty confidently state that pretty much all of the Chemist Warehouse group is not a member of the Pharmacy Guild of Australia.

PN15263

Thank you, Mr Logan, no further questions from me.

PN15264

JUSTICE ROSS: Any re-examination?

PN15265

MR SECK: No, your Honour.

PN15266

JUSTICE ROSS: Thank you for your evidence, Mr Logan. You're excused?---Thank you, your Honour.

**<THE WITNESS WITHDREW**

**[12.25 PM]**

PN15267

Mr Costigan?

PN15268

MR SECK: Yes, your Honour. I'm assuming he's outside the room in Brisbane.

PN15269

JUSTICE ROSS: Is he up there as well?

PN15270

MR SECK: He's by video conference in Brisbane as well, your Honour. So I think there are staff members who will arrange for him to come in. I'm told there are no objections, your Honour, to Mr Costigan's statement so I call Patrick Costigan.

\*\*\* TIMOTHY JOHN LOGAN

XXN MS FORSYTH

PN15271

THE ASSOCIATE: Mr Costigan, do you wish to swear an oath or take the affirmation?

PN15272

MR COSTIGAN: The affirmation.

PN15273

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

PN15274

MR COSTIGAN: Patrick Gerard Costigan, (address supplied).

**<PATRICK GERARD COSTIGAN, AFFIRMED [12.25 PM]**

**EXAMINATION-IN-CHIEF BY MR SECK [12.25 PM]**

PN15275

MR SECK: Mr Costigan, my name is Michael Seck, I'm the counsel for the Pharmacy Guild. Can you see me and hear me?---Yes.

PN15276

Mr Costigan, you're a pharmacist by occupation. That's correct?---Correct, yes.

PN15277

You are the owner of two pharmacies; the Costigan's Good Price Pharmacy Warehouse and the Good Price Pharmacy Warehouse Gympie, that's so?---That's correct. Yes, that's correct.

PN15278

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

PN15279

That affidavit was affirmed on 10 August 2015?---Yes.

PN15280

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

PN15281

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

PN15282

Do you wish to make any changes to your affidavit?---(No audible reply)

PN15283

Sorry, Mr Costigan, do you wish to make any changes to your affidavit?---No, I don't, no.

\*\*\* PATRICK GERARD COSTIGAN

XN MR SECK

PN15284

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

PN15285

I read the affidavit.

PN15286

JUSTICE ROSS: Mark the affidavit exhibit PG20.

PN15287

MR SECK: May it please.

**EXHIBIT #PG20 AFFIDAVIT OF PATRICK COSTIGAN DATED  
10/08/2015**

PN15288

JUSTICE ROSS: Ms Forsyth.

**CROSS-EXAMINATION BY MS FORSYTH**

**[12.27 PM]**

PN15289

MS FORSYTH: Thank you, your Honour. Mr Costigan, my name's Anna Forsyth. I'm representing the SDA in these proceedings. I'm just going to ask you a few questions about your affidavit. As I think was just your evidence, you're the owner of both Costigan's and Good Price pharmacies, that's right, isn't it?---That's right.

PN15290

How long have you been an owner of Costigan's Pharmacy?---15 years.

PN15291

How long have you been an owner of Good Price?---Nine years.

PN15292

Their profitability going concerns?---Yes.

PN15293

Do you have any interest in any other pharmacies?---No.

PN15294

You say that both your pharmacies at paragraph 5 are open Monday to Friday 8.30 to 5.30 pm and Saturday 8.30 to 1 pm and Sunday 9 am to 1 pm. I take it that's been consistent over the last five years or so?---The Sunday trading has been for just over three years and the other hours have been for the duration of the pharmacy.

PN15295

So you've added Sunday trading over the last three years, is that correct?---That's correct.

\*\*\* PATRICK GERARD COSTIGAN

XXN MS FORSYTH

PN15296

You say at paragraph 6 that you're open Easter Saturday - sorry, I beg your pardon, I stand corrected, the Good Price pharmacies are closed on all public holidays except for Easter Saturday. I take it that on Easter Saturday there's sufficient custom and trade to justify you opening. Is that right?---It's more about not closing the pharmacy for too many consecutive days. That would be too inconvenient for the customers, so that's why we - that's the only public holiday that we do trade at the moment.

PN15297

I see. But it is - it's a day that you can justify opening commercially. It's not just a - I mean, as an owner, it's not just an issue of convenience, it's commercially viable as well, I take it?---It's probably - yes, it's probably just commercially viable, yes. It would be.

PN15298

The staff numbers, you say you employ 30 staff?---Correct.

PN15299

That's across the two pharmacies?---That's correct, yes, across the two.

PN15300

Like your hours, has that staff pool remained consistent over time?---It has probably reduced over the past three years - three to four years, and it has probably reduced in the Costigan pharmacy by two or three staff, and in the Gympie Good Price Pharmacy, probably by two staff, we've reduced in the last three years.

PN15301

You say - just looking at Sunday, for example, just on the back of the evidence there that you've just given about staffing, I take it that since you've owned both of these pharmacies for 15 years in the case of Costigans and nine years in the case of Good Price, you've been opening Sundays for just over three years, I take it that - I withdraw that. When you say you run on a skeleton staff or you say - to use your words accurately - a bare minimum number of staff on Sundays, how many staff do you employ on those days, Mr Costigan?---Four staff; so one pharmacist and three pharmacy assistants in both stores.

PN15302

So you've got two pharmacists and six pharmacy assistants across both. Is that your evidence?---Correct.

PN15303

In Maryborough where Costigans operates, I take it that your hours broadly reflect the community hours or the other retail hours in the community?---Yes, except for Sundays when there are not that many businesses open in provincial cities and in the main street, yes.

\*\*\* PATRICK GERARD COSTIGAN

XXN MS FORSYTH

PN15304

And that would be the same with Gympie, wouldn't it?---Yes.

PN15305

That your hours are reflective of the typical hours in Gympie, accept that you're open on Sunday where others aren't. Is that right?---Correct, yes.

PN15306

You say that:

PN15307

*If the PGA's proposal is accepted we would be able to continue trading the current hours on Sundays, and it would also mean that we may be able to open on additional public holidays.*

PN15308

Have you done any analysis as to the amount of custom that you might receive on a public holiday in Gympie or in Maryborough respectively?---I haven't done an analysis, but I was thinking probably two extra public holidays, the ones where the pharmacy is closed for more than one day. Again, it's mainly because of not wanting to inconvenience customers for more than one day of closing.

PN15309

Sure. So you're really talking there about the possibility of potentially opening for another two days a year?---Yes. At this stage we are probably looking at Boxing Day and Easter Monday, where there's more than one day of public holiday consecutively.

PN15310

You say that you would also look at rostering on an additional staff member at each pharmacy on Sunday to assist with patient requirements. I take it that that would come from your current pool of employees; you would offer them - your existing staff - more hours?---Yes, that would be the first port of call.

PN15311

How many pharmacies are there in Maryborough, Mr Costigan?---So there are eight pharmacies in Maryborough.

PN15312

And in Gympie?---Nine pharmacies.

PN15313

So there's a fair amount of competition?---Yes, a fair amount of competition, yes.

PN15314

Is there a Chemist Warehouse in Maryborough?---Yes.

PN15315

And is that open extended hours?---Yes.

PN15316

When did that open, Mr Costigan?---In Maryborough, five years ago.

\*\*\* PATRICK GERARD COSTIGAN

XXN MS FORSYTH

PN15317

And in Gympie I think your evidence was there were nine other pharmacies?---Yes.

PN15318

Any Chemist Warehouses there?---Yes. And they have also been there for five years.

PN15319

And just one in Gympie?---Yes.

PN15320

And one in Maryborough?---Correct.

PN15321

No further questions.

PN15322

COMMISSIONER LEE: Mr Costigan, in paragraph 23, the additional staff member that you referred to there, have you given any thought to what type of classification that staff member would be?---Probably a trainee pharmacy assistant, someone who is doing the Pharmacy Guild course. It's a good time to train someone, on the Sunday.

PN15323

Thank you.

PN15324

JUSTICE ROSS: Any re-examination?

PN15325

MR SECK: No, your Honour.

PN15326

JUSTICE ROSS: Nothing further for the witness?

PN15327

Thank you for your evidence, Mr Costigan. You're excused?---Thank you.

**<THE WITNESS WITHDREW**

**[12.39 PM]**

PN15328

MR SECK: That deals with the witnesses scheduled for today, your Honour.

PN15329

JUSTICE ROSS: All right.

PN15330

MR SECK: I know we're scheduled at 2 pm to deal with the objections to Pezzullo and Armstrong - - -

\*\*\* PATRICK GERARD COSTIGAN

XXN MS FORSYTH

PN15331

JUSTICE ROSS: We were going to see whether you would seek more time and perhaps resume at 2.30 to give you a further opportunity to discuss it at this point.

PN15332

MR SECK: I think that would be useful, your Honour. In relation to Mr Armstrong, I've spoken to my learned friend and her instructing solicitor as to - sorry, not instructing solicitor, I'm told, of the SDA - but about whether or not Mr Armstrong would be required or whether or not an adjournment application will be made.

PN15333

JUSTICE ROSS: We will deal with that at 2.30.

PN15334

MR SECK: May it please your Honour.

PN15335

JUSTICE ROSS: All right. We will adjourn till 2.30.

**LUNCHEON ADJOURNMENT** [12.40 PM]

**RESUMED** [2.31 PM]

PN15336

JUSTICE ROSS: Can we deal with Mr Armstrong first, where are we up to in that regard?

PN15337

MR SECK: Well, I think my learned friend wants to make an application first.

PN15338

MR MOORE: Yes. Your Honour, we do formally make an application to adjourn the hearing of Mr Armstrong's evidence to a later convenient time for the reasons I foreshadowed this morning, we have yet to receive all of the documentation that has been flagged and we got a folder of material last night. So I'm not in a position to really, for obvious reasons, be able to proceed with cross-examining him, comprehensively at least.

PN15339

And the other issue, of course, is the significant change which has occurred since we filed our objections to Mr Armstrong and the trajectory, as I described it, that we are hopefully on of trying to resolve substantially the objections of Mr Armstrong's evidence which my learned friend and I intend to continue that discussion after court today. But as I flagged, we have made already some significant progress. If that progress continues it's possible, I won't put it any higher than that, but Mr Armstrong might in fact not be required. Alternatively, if he is required, his cross-examination would be much more directed, I would anticipate.

PN15340

JUSTICE ROSS: And when would we adjourn him to? Because when you say a convenient date, we have got a number of other commitments.

PN15341

MR MOORE: It was suggested to me that - I don't know anything about Mr Armstrong's availability, I think the November dates where there are some experts, are fairly congested, I believe.

PN15342

JUSTICE ROSS: They're all congested. If it's short we can deal with it at 4.30 on one of the days.

PN15343

MR MOORE: It was suggested on our side of the Bar table, I haven't raised it with my learned friend that it might be appropriate if he went over to the December date.

PN15344

JUSTICE ROSS: No.

PN15345

MR MOORE: No. Sooner than that?

PN15346

JUSTICE ROSS: Yes.

PN15347

MR MOORE: Well, I have no difficulty with it being sooner than that, as long as it - - -

PN15348

JUSTICE ROSS: Yes. Well, when is all the material going to be provided to you, with a revised witness statement and the objections resolved?

PN15349

MR SECK: We are hopeful that we can provide it either this afternoon or first thing tomorrow morning, your Honour. So what we're doing is providing or drafting a ready reckoner, in effect, which cross references the material. So hopefully either this afternoon or tomorrow morning.

PN15350

JUSTICE ROSS: And what about dealing with the proposition of which parts will be submissions and which parts - - -

PN15351

MR SECK: I'm hopeful we can probably deal with that this afternoon.

PN15352

JUSTICE ROSS: All right. Well, look for some time in the November dates and if it means he is put on late on one of the days, he will be put on late on one of the days and we will sit late.

PN15353

MR SECK: We will obviously have to ascertain the availability of Mr Armstrong but hopefully he - - -

PN15354

JUSTICE ROSS: Does Mr Armstrong work for the Guild?

PN15355

MR SECK: No longer. He is a consultant, your Honour, but he's not an employee.

PN15356

JUSTICE ROSS: Okay.

PN15357

MR SECK: But obviously we will seek to accommodate his availability during those November dates.

PN15358

JUSTICE ROSS: Yes. Okay.

PN15359

MR SECK: May it please.

PN15360

JUSTICE ROSS: All right.

PN15361

MR SECK: Can I indicate, your Honour, we don't oppose the application - - -

PN15362

JUSTICE ROSS: Well, just - - -

PN15363

MR SECK: Pardon me, your Honour.

PN15364

JUSTICE ROSS: Yes. What is your position in relation to the application?

PN15365

MR SECK: We don't oppose the application for an adjournment, your Honour.

PN15366

JUSTICE ROSS: All right. Just give us a moment. We will grant the adjournment on the basis that Mr Armstrong's evidence will be dealt with during the early November sittings when we're dealing with the expert's evidence and I will leave it to counsel to have a discussion about what is the most convenient time to do that during that period.

PN15367

MR MOORE: I can flag in that regard, I'm told, that 6 November at - on or after 2 pm there is space.

PN15368

JUSTICE ROSS: Yes, at the moment that's right, yes.

PN15369

MR MOORE: That would seem to be a front runner.

PN15370

JUSTICE ROSS: But we will leave it to you to - - -

PN15371

MR MOORE: Certainly.

PN15372

JUSTICE ROSS: Yes. If you're - if you can let us know as soon as you can whether or not you're going to require him for cross-examination because we're releasing any free blocks of time to deal with other matters as we go along.

PN15373

MR MOORE: I understand.

PN15374

JUSTICE ROSS: Yes.

PN15375

MR MOORE: I will make it a priority, your Honour.

PN15376

JUSTICE ROSS: Okay. Thanks. I appreciate you have to get all the material and have the discussion. Now, for Pezzullo?

PN15377

MR MOORE: Thank you, your Honour. Can I enquire whether the Bench received, over the luncheon adjournment, an aide memoire that I trust was sent through to chambers?

PN15378

JUSTICE ROSS: No.

PN15379

MR MOORE: No. I see. If the Commission pleases I have taken time this morning to consolidate our position and to further review and refine our position and it's sought to be captured in this aide memoire, I've provided it to my friend, we've had a discussion about it. Can I tell your Honours what it sets out. It sets out all of the remaining objections pressed by the SDA. I should clarify that these are narrower than the objections that I raised with Vice President Catanzariti this morning. Further, we have revisited the matters once again.

PN15380

So they are - it sets out, in the bold headings, all of the objections we have. My learned friend and I have spoken about this over the luncheon break and I can inform you that we are agreed in relation to the disposition of a number of them. Can I direct the Bench's attention to page 2 and the reference - the first heading,

page 52, third para, last sentence. It's agreed my friend will treat that as a submission, that that sentence be treated as a submission. Likewise with the following heading, page 53, first para, last sentence, that that be treated as a submission.

PN15381

JUSTICE ROSS: Does that deal with 9, 10 and 11?

PN15382

MR MOORE: Yes, 9, 10 and 11 are simply the points we make about page 53, first para, last sentence.

PN15383

JUSTICE ROSS: Yes.

PN15384

MR MOORE: The next heading, page 56, last para commencing with:

PN15385

*It is also likely to -*

PN15386

That's also agreed to be treated as a submission. And then the following heading, page 58, second last paragraph, that's also agreed to be treated as a submission. Over the page at the top, page 58, last para save for the first sentence, it's agreed that that also be treated as a submission. So the end result is that the objections that remain for the Bench to dispose of are the one that appears at the bottom of page 1 and on page 3 the remaining three which haven't been resolved, other than page 58, last para, save for the last sentence which is being treated as a submission. So there are four live objections, as it were.

PN15387

Now, before - I will address the Bench on each of those, if it's convenient. Before I do that, would it - - -

PN15388

JUSTICE ROSS: Sorry. There are four. Yes. Sorry. That one is a submission. Yes.

PN15389

MR MOORE: Is it convenient if I commence just by clarifying what's dealt with in paragraph 1 which are some other parts of the statements which are previously agreed between my learned friend and I to be dealt with in particular ways. Can I - I haven't identified specifically what they are in paragraph 1, but if it's convenient I might do that now.

PN15390

JUSTICE ROSS: Sure.

PN15391

MR MOORE: On page 15 of the Pezzullo report, the second paragraph, the first sentence in that paragraph which commences:

PN15392

*These findings cast a shadow -*

PN15393

It's agreed that that be treated as a submission. Then page 18 the second last paragraph - yes, sorry, your Honour?

PN15394

JUSTICE ROSS: Mr Moore, it might be more useful if we had a document from each of you, a joint document identifying them, then that can be put on the website with the statement rather than having someone having to trawl through the transcript.

PN15395

MR MOORE: Yes, I'm sure we can do that, your Honour.

PN15396

JUSTICE ROSS: And that might obviate the - I mean for our immediate purpose, all we need to know is that the objections have been resolved.

PN15397

MR MOORE: Yes.

PN15398

JUSTICE ROSS: And at some subsequent point your instructors can confer and put together a document that reflects that agreement.

PN15399

MR MOORE: Certainly. We can easily attend to that and it might be that can perhaps conveniently be done once the remaining four objections are resolved so that there's then here a single document or a table which clarifies what's to be treated as a submission, what's not to be read, and any other qualifications, if that's convenient.

PN15400

JUSTICE ROSS: Sure.

PN15401

MR MOORE: Well, in that light I will come to the objections. And can I frame the objections that we have just by drawing the Bench's attention to paragraphs 3 and 4 of the aide. It had been the SDA's position to challenge Ms Pezzullo's expertise and therefore capacity to give opinion evidence on the basis that she didn't have - wasn't qualified to express opinions in respect of economics, survey methodology, and demographics. Her affidavit of 21 September, we accept, establishes her expertise in those fields so that is one significant explanation for the contraction in the objections.

PN15402

Importantly, however, and I direct the Bench's attention to our submissions initially filed in relation to objections, and I don't suggest it necessary to open them, but they're dated 15 September 2015. And we set out there the principles

around Dasreef which the Bench has addressed in a previous ruling and I won't rehash those. And we also advanced submissions there in relation to the objections on Ms Pezzullo's report.

PN15403

The point we make in paragraph 4 is that the Guild has not established or Ms Pezzullo has not established any specialised knowledge to give evidence about the matters that I have set out in the dot points in paragraph 4. They are categories that I formulated to capture the findings that the Guild and other employer organisations seek to make on the basis of Ms Pezzullo's report. The Bench will recall that the High Court says in Dasreef that that's an essential stage in the analysis of considering the admissibility of expert opinion. So that's the anchor point if you like to which regard should be had in considering these objections.

PN15404

And in broad compass, and I will come to the detail of each objection now, what we say is that the four objections that are advanced contain expressions of opinion by Ms Pezzullo about what I might broadly describe as the working time preferences, motivations of weekend and non-weekend workers, which matters she has not established any specialised knowledge in.

PN15405

Further, on the face of the report, the objected sections are not expressed to be the making of opinions or statements on the basis of the survey that it referred to in the report. They appear and are objectively and fairly read to be expressions of opinion put broadly and, therefore, require the necessary foundation in the field.

PN15406

JUSTICE ROSS: Is that the nub of the objection?

PN15407

MR MOORE: Yes.

PN15408

JUSTICE ROSS: And is that the nub in relation to each of the matters that we're looking at?

PN15409

MR MOORE: It's at the heart of the matter, your Honour.

PN15410

JUSTICE ROSS: Okay. So the proposition is that, look, while it's accepted that Ms Pezzullo has some expertise in economic – or the requisite specialist knowledge in economics and survey methodology, the statements to which you're taking exception to are not statements that – where the opinion expressed is based on the survey. It's statements where the opinions are made at large.

PN15411

MR MOORE: That's correct, your Honour.

PN15412

JUSTICE ROSS: And the underlying premise is it's made at large on the basis of some knowledge about the working time preferences of people on weekends.

PN15413

MR MOORE: Your Honour has formulated, with respect, accurately.

PN15414

JUSTICE ROSS: Okay. So – all right.

PN15415

MR MOORE: So with that introduction perhaps I will just turn to the objections themselves.

PN15416

JUSTICE ROSS: Would you mind just - - -

PN15417

MR MOORE: Yes.

PN15418

JUSTICE ROSS: Before you go to the argument on the objection, just because it's not paragraph-numbered, it's sort of page-numbered, if you can just be very clear about which parts you're objecting to.

PN15419

MR MOORE: Indeed. I ask the Bench to deal with the first objection, to please turn to page 51, and the page numbers to which I refer are what might be described as the superimposed, paginated pages.

PN15420

JUSTICE ROSS: Yes.

PN15421

MR MOORE: Page 51 has a chart 4.8 and then a chart 4.9, and then a short paragraph thereunder. The objection commences at the end of the paragraph – the end of the page, I'm sorry, on page 51, with the sentence which starts, "Even if we view weekend" and continues over the page to include all of the first paragraph on page 52. The objection continues – so I might just identify it clearly, the objection continues to include the second paragraph on page 52, save for the first two sentences.

PN15422

JUSTICE ROSS: So is that beginning, "This may mean that"?

PN15423

MR MOORE: Correct, your Honour. To the end of the paragraph.

PN15424

JUSTICE ROSS: Right.

PN15425

MR MOORE: Might I give the Bench a moment to read those rather than dealing with them in a vacuum.

PN15426

JUSTICE ROSS: Sure.

PN15427

MR MOORE: We say that those two paragraphs can be accurately characterised as being expression of opinion, not anchored in the survey results. Expression of opinion to the effect that weekend and non-weekend workers likely spend their time differently, and that they do that not be reason solely of the nature of weekend work.

PN15428

JUSTICE ROSS: It's part of the objection taken to I suppose the second full paragraph on page 52 – that's a bit, "This may mean that" etcetera.

PN15429

MR MOORE: Yes.

PN15430

JUSTICE ROSS: I follow what you say about the first sentence that's subject to the objection. The balance that talks about a relationship between work-related stress and weekend work, is really a commentary on the Owali paper, isn't it?

PN15431

MR MOORE: It is. It's a commentary on the Owali paper which is, as I read it, sought to illustrate the proposition – the more general proposition I put before.

PN15432

JUSTICE ROSS: Well, the comment on the Owali paper, if regarded as a submission, would be unexceptional.

PN15433

MR MOORE: True.

PN15434

JUSTICE ROSS: Because it's really making the point there that – it's trying to provide – I would express it this way, that it's making the observation that the Owali paper reports an association between stress and weekend work. And the observation that the author is making that it might be an association but not necessarily a causative relationship and there might be other factors that lead to the higher level of stress being reported. And it might be the characteristics of workers who predominantly work on weekends.

PN15435

MR MOORE: That is so, your Honour, and that would be a perfectly unremarkable submission.

PN15436

JUSTICE ROSS: Yes.

PN15437

MR MOORE: The difficulty is that it's put as expert evidence and that's my problem. And the witness can't do that because she doesn't have that expertise.

PN15438

JUSTICE ROSS: Well, even if she had that expertise, speaking for myself, I wouldn't – I would make the same observation about the Owali paper. It reports association. There are too many – and it would make the same qualification, itself. It's reporting characteristics of different groups. It's not asserting causation.

PN15439

MR MOORE: Well, I think Professor Charlesworth responds to this debate in her reply paper.

PN15440

JUSTICE ROSS: Yes.

PN15441

MR MOORE: I don't recall precisely what she says, as I stand here now but - - -

PN15442

JUSTICE ROSS: Yes. All right.

PN15443

MR MOORE: But that's the - - -

PN15444

JUSTICE ROSS: Okay.

PN15445

MR MOORE: As I say in paragraph 7 of the aide memoire, it's really the point in a sense that your Honour is making, with respect, which is, well, it's really a submission that's being put. I don't think there's much more I can say about those paragraphs. That's the substantive part of the matter.

PN15446

JUSTICE ROSS: Do you mind if we hear from Mr Seck?

PN15447

MR MOORE: Of course.

PN15448

JUSTICE ROSS: And we just deal with it objection by objection.

PN15449

MR MOORE: Yes.

PN15450

JUSTICE ROSS: We're not proposing to rule on them as we go through but it would be helpful if we get the focus. Well, firstly, do you say that – what do you say about the proposition that these statements, certainly the first part beginning,

"Even if we viewed weekend work" etcetera, is not anchored in the survey results and is a stand-alone statement of opinion?

PN15451

MR SECK: Well, I suppose we would say, your Honour, that it's entirely unrealistic to divorce what's said after the words "Even if we view the weekend" until the end of the report, separate to the survey results. Clearly when one looks at the earlier sentences in that paragraph it refers to the survey results, and then what Ms Pezzullo seeks to do is to look at those survey results and then draw propositions from those survey results.

PN15452

JUSTICE ROSS: Well, are you saying that the propositions beginning, "Even if we view weekend work" that is an expression of opinion drawn from the survey results? Is that - - -

PN15453

MR SECK: Or seeking to derive a potential hypothesis from it. So I think - - -

PN15454

JUSTICE ROSS: Either way it's a statement that is derived from the survey results. Is that your submissions?

PN15455

MR SECK: Yes. Her comments follow from the survey results.

PN15456

JUSTICE ROSS: No, I see it follows. I'm asking you a direct question. Is the opinion there expressed said to be based on the survey results?

PN15457

MR SECK: Well, I think we need to treat some of the propositions separately, your Honour. So the first one where it says, "We would not expect to seek weekend work" is not directly derived. That's a statement of hypothesis. Then I agree that the next sentence, "Rather, weekend and non-weekend workers likely – weekend workers likely spend their time differently".

PN15458

JUSTICE ROSS: And where is – what's the basis for Ms Pezzullo's specialised knowledge in this area?

PN15459

MR SECK: Well, can I ask the Commission to go to Ms Pezzullo's affidavit in this matter. There's a supplementary affidavit file. It's dated 21 September 2015. Hopefully the Full Bench has a copy of that.

PN15460

JUSTICE ROSS: Yes, I'm not sure I have a copy. Yes.

PN15461

MR SECK: The Bench will see Ms Pezzullo's title at Deloitte not only relates to economics but social policy and she sets out - - -

PN15462

JUSTICE ROSS: So what?

PN15463

MR SECK: So I'm just taking it just as a preliminary point.

PN15464

JUSTICE ROSS: Yes.

PN15465

MR SECK: And then I want to take the Bench to her social policy experience. So, firstly, she identifies some of that in paragraph 33 in a general sense. And then one goes to paragraphs 54, in particular. Ms Pezzullo – we don't proclaim that she has expertise in the area of work/life issues specifically. What she does have experience in dealing with are looking at consumer employee preferences and, in particular, using particular methods and seeking to elicit or draw conclusions from those consumer employer preference studies.

PN15466

JUSTICE ROSS: What are consumer employee preference statements?

PN15467

MR SECK: Well, she describes some of them but it's – I assume what - - -

PN15468

JUSTICE ROSS: It's in 54.

PN15469

MR SECK: Well, she refers to one in relation to Alzheimer's Australia where discrete choice modelling techniques were used to rank preferences. That's probably similar to what Dr Rose was doing. And then there's a - - -

PN15470

JUSTICE ROSS: Well, don't say "probably" if you don't know.

PN15471

MR SECK: Well, I think he uses the term "discrete choice modelling" in his report, so I think that's the same.

PN15472

JUSTICE ROSS: Well, have you read the report by Ms Pezzullo on making choices?

PN15473

MR SECK: I can't say I've read that report, your Honour. I'm only using the description and the methodology she has identified in paragraph 54. And then she refers to using approaches to determining – in relation to regular impact statements for Safe Work Australia, which involved substantial consultation with employees and obtaining their views. So she has identified two examples there of where she has actually looked at consumer employee preference studies.

PN15474

JUSTICE ROSS: Yes.

PN15475

MR SECK: And now - - -

PN15476

JUSTICE ROSS: Do any of them deal with work/life balance or weekend work or anything like that?

PN15477

MR SECK: Nothing which is identified in her affidavit, your Honour. Then what we would seek to say there, your Honour, is that where there is a level of specialised knowledge in a general area, it is possible to use the expertise in that general area and apply it to specific instances. And the case law on this issue says that there's obviously a degree of interpretation as to what is specialised knowledge but it is completely appropriate for someone with specialised knowledge in a general area to apply it to different areas, and to areas to which they hadn't applied it to previously, so long as they have the specialised knowledge to do that.

PN15478

JUSTICE ROSS: Sure.

PN15479

MR SECK: Now, in my submission, Ms Pezzullo has specialised knowledge in looking at employee preferences, analysing those employee preferences and seeking to draw conclusions or express opinions about the preferences which are derived from survey results. Can I just take - - -

PN15480

JUSTICE ROSS: I suppose the only difficulty with that is that's your submission but that's not what she says in her supplementary statement.

PN15481

MR SECK: What she – well, your Honour, she does say she has – can I – I will go back to the supplementary statement. I accept she doesn't use the language that I have just used but she does say that she has led consumer employee preference surveys, and identifies the kind of surveys that are involved. Now I accept the propositions I've just put are not words she used but in my submission it can be read that she has experience in dealing with those issues.

PN15482

Now can I just provide the Full Bench with copies of a recent case on this issue and just an extract out of Hayden J's book *Cross on Evidence*. Copy for my learned friend. Might I ask the Bench initially to go to the decision which I've handed up. It's *Hatziandoniou v Ruddy - H-a-t-z-i-a-n-d-o-n-i-o-u v Ruddy* [2015] NSWCA 2034, and in particular can I invited the Full Bench to go to paragraph 38 onwards.

PN15483

One of the key issues that arose in this decision is whether or not the particular expertise of an expert known as Mr Bailey, as an engineer, could be used to look at the hydraulics of a motor bike. The initial - - -

PN15484

JUSTICE ROSS: Is that to determine the point of impact?

PN15485

MR SECK: Indeed. The initial finding made by the trial judge was that Mr Bailey did not have such training, study or experience because he was of a general nature as an engineer and not in relation to the specific issues which were the subject of the proceedings.

PN15486

The Court of Appeal rejected that approach, the primary decision was that of Simpson J and the conclusion - the key parts of her decision are set out in paragraphs 43 and 44, and can I take the Bench to there. It says:

PN15487

*The primary judge adopted the submission of counsel for the respondent that, since Mr Bailey had not "tested the flow of liquid from a motorcycle engine", he was not qualified to express the opinions that he had.*

PN15488

*This was an unduly narrow approach to the question of the qualifications of Mr Bailey to express his opinion as to the mechanism by which the fluid came to be where it was on the road. Mr Bailey had training in fluid dynamics, and expertise in cooling systems in motor vehicles; that expertise was sufficient to support an opinion about the operations of a breached cooling system in a motorcycle. One of the benefits of expertise is that it enables the person who has the relevant training, study or experience to extrapolate from the general to the particular. Mr Bailey had the requisite specialised training to enable him to draw conclusions about the particular circumstances of this collision.*

PN15489

We would adopt in particular the point made by Simpson J that so long as the training, study and experience is in a particular field of expertise, in this case consumer and employee preferences, Ms Pezzullo is able to extrapolate from her general expertise to the particular circumstances of looking at the work life preferences of employees derived from the survey results.

PN15490

Similarly, if I can ask the Bench to - - -

PN15491

JUSTICE ROSS: What's the general expertise you rely on?

PN15492

MR SECK: Her general expertise in actually conducting consumer/employee preference surveys and then deriving conclusions from them. Just to support the point made in the case, the leading text in the area Cross on Evidence by Hayden

J, I've extracted a relevant paragraph. This is the 9th edition 2013, I think it's been superseded by more recent editions but I don't think the relevant part's changed. If the Bench can go to the first paragraph on the next page, 29060, the Bench will see that Hayden J says:

PN15493

*It's for the judge to determine whether the witness has undergone such a course of special study or experience as will render the witness expert in a particular subject.*

PN15494

Then:

PN15495

*Specialisation is a matter of degree. It is not necessary for a doctor to have specialised studies concerned with the rate at which blood destroys alcohol before he can give evidence on such a subject based on analyst tables.*

PN15496

There's a reference to the decision of *R v Somers - S-o-m-e-r-s* [1963] 3 AER 808. We rely upon the decision and the reference in Cross on Evidence for that general proposition that one doesn't look at the particular area of specialised knowledge narrowly. It's ultimately a question of degree and in my submission the way that the area of specialised knowledge should be defined is not in the level of particularity which is urged by the SDA in paragraph 4 of its aide memoire on the specific topics set out in bullet points. It is of a much broader nature, that is looking at the survey results, in this case the survey conducted by i-Link on behalf of Deloitte and then seeking to draw conclusions from those survey results. That is, in my submission, the basis upon which Ms Pezzullo has expertise to express the conclusion she does at page 52.

PN15497

JUSTICE ROSS: Yes, but she's not drawing conclusions from the survey results. You've just acknowledged that that's not what she's doing.

PN15498

MR SECK: Well because it must be read ultimately, your Honour, can I just go back to page 52 - - -

PN15499

JUSTICE ROSS: No, look, you keep changing your view about this. You keep telling me it must be read that way but then you later acknowledge that they don't relate to the survey results, they're expressions of opinion.

PN15500

MR SECK: Because what I - if I've said that, your Honour, then I apologise. What I was seeking to demonstrate was this; is that the whole paragraph must be read in its context ultimately, and this is page 52, the first paragraph, the last sentence, and it goes onto say:

PN15501

*Since weekend workers appear to differ systematically from non-weekend workers in ways which go beyond the demographic measures obtained, it is not weekend work which causes weekend workers to spend less time sleeping on weekdays, it would be erroneous to attribute observed differences in their use of time.*

PN15502

So that does come from the survey, your Honour.

PN15503

JUSTICE ROSS: Yes, but before you were trying to segment the bits that were. Can we be clear about this.

PN15504

MR SECK: Yes, your Honour.

PN15505

JUSTICE ROSS: The paragraph or the section that begins:

PN15506

*Even if we view weekend work -*

PN15507

at the base of page 51 down to the end of the first paragraph appearing on 52, which ends;

PN15508

*in their use of time solely to weekend work itself.*

PN15509

Do you see that paragraph?

PN15510

MR SECK: Pardon me, your Honour. Yes, I do, I do. I understand where your Honour is.

PN15511

JUSTICE ROSS: So it's that first tranche of this objection. Are you submitting that that part of Ms Pezzullo's evidence is derived - is based on the survey and she is expressing an opinion based on the survey results?

PN15512

MR SECK: Yes, your Honour, because the ultimate - - -

PN15513

JUSTICE ROSS: That's right.

PN15514

MR SECK: Yes, I am, your Honour.

PN15515

JUSTICE ROSS: If that's what you're saying then well I think there'd probably need to be the clarification in the evidence itself to say that.

PN15516

MR SECK: Yes.

PN15517

JUSTICE ROSS: But if that's the proposition then I had understood Mr Moore, he doesn't read it that way and I certainly think it's capable of being read in more than one way. But if you were saying it's based solely on the survey and if that's what the evidence is, then I had understood Mr Moore to be well, if that's the concession then he's content with that.

PN15518

MR MOORE: Indeed.

PN15519

JUSTICE ROSS: Well that deals with that objection.

PN15520

MR SECK: It does, your Honour.

PN15521

JUSTICE ROSS: The next one it strikes me as a little more difficult because it doesn't - no, no, I mean the next tranche, Mr Moore. We've only dealt with the first tranche of your first objection. So the second tranche is when you go to what would be the first full paragraph on 52, the one beginning:

PN15522

*The proportion of weekend workers covered by awards.*

PN15523

The first two sentences are not objected to. It's the balance of the paragraph which is in substance, providing some commentary on the AWALI paper, and the association there.

PN15524

MR SECK: Can I deal with each of those points, your Honour.

PN15525

JUSTICE ROSS: I think it's only one. I think that's the point really.

PN15526

MR SECK: I think the words;

PN15527

*This may mean that weekend workers report less positive outcomes -*

PN15528

actually doesn't derive from the AWALI paper.

PN15529

JUSTICE ROSS: No, it doesn't but it's a similar point. She then goes on to make the same point about the AWALI findings, that it's an association not a causation and it's - in fact the AWALI findings are due to not because workers work on weekends but because they are the kind of worker who works on weekends.

PN15530

MR SECK: I accept your Honour's point. The way I read what Ms Pezzullo's doing there is that where she says this may mean, she's deriving that from the survey results and then she's comparing the survey results to what the AWALI paper, what she concludes or what she submits about the AWALI paper. Then in the last sentence of that middle paragraph where she says, "this implies", what she's seeking to do is to say well, we've got our results from the survey, we've got the AWALI paper and based on our survey results we say the AWALI paper - these are the conclusions that can be drawn from the AWALI paper. So it is linked back, in my submission, ultimately to the survey results. I accept whilst there's an analysis in that paragraph of the AWALI paper, that is anchored in her analysis of the survey results.

PN15531

JUSTICE ROSS: Well if then the sentence;

PN15532

*This may mean that weekend workers -*

PN15533

You're putting that that sentence is based on the survey results.

PN15534

MR SECK: Yes.

PN15535

JUSTICE ROSS: And is an opinion based on the survey results.

PN15536

MR SECK: Yes.

PN15537

JUSTICE ROSS: There is then, and I think you said that she's either expressing the opinion or submitting. Do you have any difficulty if the balance of that paragraph beginning;

PN15538

*A relationship between work related stress and weekend work such as the correlation found in the AWALI paper -*

PN15539

et cetera, if that is treated as a submission.

PN15540

MR SECK: I have no difficulty with that, your Honour.

PN15541

JUSTICE ROSS: Do those two matters resolve - - -

PN15542

MR MOORE: Yes.

PN15543

JUSTICE ROSS: Yes. Well let's move to the next - the next objection, as I understood it, might hear from Mr Moore first Mr Seck. That was at page 60.

PN15544

MR MOORE: The next objection, page 60, yes, your Honour. So it is the bottom paragraph, all of it save for the second last sentence, which is the sentence on about the fifth line which reads:

PN15545

*Existing wage rates.*

PN15546

That sentence we don't object to but we object to the rest of the paragraph. I'll give the Bench a moment to read that.

PN15547

JUSTICE ROSS: So it's other than the sentence;

PN15548

*Existing wage rates lead to a particular kind of workforce and market equilibrium and economic terms.*

PN15549

Is that right?

PN15550

MR MOORE: Yes, we don't object to that sentence.

PN15551

JUSTICE ROSS: Difficult to see how if you don't object to that then why is the balance of that paragraph objectionable? Because it's really talking about a disruption to market equilibrium if you change the wage rates.

PN15552

MR MOORE: Well that sentence that we don't object to in isolation is an unremarkable general comment about market equilibrium in a labour market cast in very general terms. The remainder though is the expression of opinion about the distribution of weekend work amongst workers and why workers might seek to work on weekends, and how it would then bear upon such an equilibrium. The fact of the equilibrium is neither here nor there.

PN15553

JUSTICE ROSS: Yes, but you have an equilibrium because of existing wage rates.

PN15554

MR MOORE: Yes.

PN15555

JUSTICE ROSS: As a matter of logic if you change the wage rates, you're going to change the equilibrium.

PN15556

MR MOORE: Yes.

PN15557

JUSTICE ROSS: Because one leads to the other. So the proposition that you say is unexceptional;

PN15558

*Existing wage rates lead to a particular kind of workforce.*

PN15559

Well if you change the existing wage rates then the proposition is that it would lead to a different particular kind of workforce.

PN15560

MR MOORE: Well the composition or the kind of workforce would change because by definition there would be a different equilibrium point.

PN15561

JUSTICE ROSS: That's really what she's saying in the next sentence, in the first part before the words, "but there is no evidence".

PN15562

MR MOORE: Except then the notion of equilibrium is applied to the particular relevant context at hand.

PN15563

JUSTICE ROSS: Sure.

PN15564

MR MOORE: Which is around weekend and not weekend work.

PN15565

JUSTICE ROSS: Yes.

PN15566

MR MOORE: Which is the matter of relevance and of controversy.

PN15567

JUSTICE ROSS: All right.

PN15568

MR MOORE: The fact that there exists an equilibrium at any particular point in time and a change in wage rates by necessity changes the equilibrium point, is neither here nor there; but what's relevant is the commentary that Ms Pezzullo

wants to advance around the distribution between weekend work - non-weekend work and weekend work, and we take issue with that.

PN15569

JUSTICE ROSS: Okay.

PN15570

MR MOORE: And we say that it's plain that it's not drawn from the survey results, as indicated by the first two words - - -

PN15571

JUSTICE ROSS: More generally.

PN15572

MR MOORE: Perhaps that's overstating it, but that would strongly suggest that -  
- -

PN15573

JUSTICE ROSS: Yes. We can get that clarified, about whether - - -

PN15574

MR MOORE: Yes. But otherwise it again takes us into the same zone, that the witness isn't qualified to express an opinion about the motivations and attitudes of workers towards weekend work, and how such work is distributed.

PN15575

JUSTICE ROSS: Yes. All right. We don't need to recite that argument. Let's deal with the other propositions. Mr Seck.

PN15576

MR SECK: So, your Honour, the first sentence I - - -

PN15577

JUSTICE ROSS: Sorry, where is chart 411 from? Is that from the survey?

PN15578

MR SECK: Yes, your Honour.

PN15579

JUSTICE ROSS: I see.

PN15580

MR SECK: And I think you read the first sentence below chart 411 as being derived from the survey.

PN15581

JUSTICE ROSS: Well, perhaps with the deletion of the words "more generally".

PN15582

MR SECK: Well, I think - I had read - "more generally" can be read in different ways: "more generally" in the context of the survey results; and "more generally" as applicable to the population. But what I'm happy to do is read that as arising

from the survey results, and that can be clarified with Ms Pezzullo. But that's how I read it. Can I - - -

PN15583

JUSTICE ROSS: Which bits in this do you say derive from the survey results?

PN15584

MR SECK: Just simply the first sentence.

PN15585

JUSTICE ROSS: So that takes us down to the word "commitments"?

PN15586

MR SECK: Yes.

PN15587

JUSTICE ROSS: And then the proposition:

PN15588

*A change to penalty rates would probably alter the distribution of weekend workers slightly away from those who prioritise earning power along and towards those who, while obviously valuing higher wages, are more concerned about the convenience or flexibility of weekend work.*

PN15589

MR SECK: In my submission that is based on Ms Pezzullo's economic expertise. So what she's positing there is that if there's a change in penalty rates it's going to have these particular effects on the workforce.

PN15590

JUSTICE ROSS: Yes, I follow.

PN15591

MR SECK: And we would say exactly the same arises from the last sentence where she expresses a view about a change in penalty rates affecting the equilibrium. Those are based on her economic expertise, not her survey expertise.

PN15592

JUSTICE ROSS: All right.

PN15593

MR SECK: And she's qualified to give those opinions.

PN15594

JUSTICE ROSS: So does the concession in relation to the survey grounding the first sentence resolve that objection, Mr Moore?

PN15595

MR MOORE: Yes, your Honour.

PN15596

JUSTICE ROSS: And it's the balance that you contest.

PN15597

MR MOORE: Yes, I'm just - it does address the first sentence.

PN15598

JUSTICE ROSS: I mean, look - - -

PN15599

MR MOORE: I think the remainder - I take my friend's point, and I can see how it could rest upon her economic expertise.

PN15600

JUSTICE ROSS: Yes.

PN15601

MR MOORE: So I won't press the remainder.

PN15602

JUSTICE ROSS: And look, we have made the observation that the field of economics is not one with sharp boundaries.

PN15603

MR MOORE: No.

PN15604

JUSTICE ROSS: All right. That would seem to resolve that objection. Can we go to the next one, please.

PN15605

MR MOORE: Page 61, second paragraph. We don't object to the first sentence, which is - if I can pause there and say that's a reference to the literature review. We object, though, to the remainder of the paragraph, starting with the sentence, "It also appears that." I will give the Bench a moment to read that.

PN15606

JUSTICE ROSS: Yes.

PN15607

MR MOORE: The issue here is I think on a previous occasion Mr Seck referred the Bench to an authority that escapes me now which - BI Contracting. Thank you.

PN15608

JUSTICE ROSS: That dealt with the literature review?

PN15609

MR MOORE: The librarian, yes. And I accept there's no difficulty with an appropriately qualified person acting as a librarian, if you like, to assist a Court or Tribunal to say, "Here's the literature on a topic," and summarising it and setting it out. I don't have - there's nothing difficult in that proposition.

PN15610

The problem with the adopted section here is that in this paragraph Ms Pezzullo is not being a mere librarian, she's expressing - she's being a critic. She is engaging with and expressing a view about what the literature about social and familial impact of weekend employment says and giving an appraisal and expressing a critical thing about the literature on the subject matter. And that, we say, is across the line - or to mix my metaphors, a bridge too far. So that's the subject of the objection.

PN15611

JUSTICE ROSS: Look, speaking for myself, I'm not sure how far you can take that. To give you an example, I've criticised some epidemiological studies, knowing nothing about the subject matter - the medical subject matter of the study - but looking at it from an economic perspective or looking at it from an econometric perspective; that is there a - the fact that there's an association between two variables doesn't meet that one causes the other, and there may be confounding factors involved.

PN15612

Now, those observations can be made in a methodological sense without being an expert in the primary subject matter. You don't need to be an expert in liver disease to read a - provided you've got some understanding of statistics and causation and those sorts of issues. So I'm not sure - and given that her expertise is in economics. I must - I had a slightly different question about the paragraph. It's not clear to me which articles she's referring to anyway, so I'm not sure.

PN15613

That can either be dealt with in cross-examination or left as it is, but if she's just making that point there that there may be other factors - confounding factors - at work on some of the studies; well, without more, I'm not sure where such a statement could take us. She doesn't identify with the studies are.

PN15614

MR MOORE: Well, I think in - the studies are referred to earlier in the report. This is a concluding section.

PN15615

JUSTICE ROSS: Yes, I see. So she characterises them. Earlier she explains what she means by - but she says here, "By some previous studies." Well, is that defined earlier?

PN15616

MR MOORE: I think - I don't think it is defined earlier. I believe there's a reference to this - 3.24, my friend thinks - 3.2.4.4, yes.

PN15617

JUSTICE ROSS: Australian centre?

PN15618

MR MOORE: Above that. The last - - -

PN15619

JUSTICE ROSS: Well, that's really - it's making exactly the same point, and that is not objected to.

PN15620

MR MOORE: No, it's not.

PN15621

JUSTICE ROSS: And look, I think - - -

PN15622

MR SECK: I accept that, your Honour.

PN15623

JUSTICE ROSS: I think there's a legitimate debate about - and look, I'm not sure at the end of the day what we're going to make - - -

PN15624

MR MOORE: And the witnesses will be cross-examined about all these matters.

PN15625

JUSTICE ROSS: - - - of all of that. Yes, but there's no perfect study. There's almost always going to be a confounding factor because you can't keep everything stable in the system. And she's making a point there that there might be confounding factors. And as you say, the other witnesses take the view that - and we will hear it also in - you might recall - I think it was Prof Lewis was cross-examined about one of the experts that will be appearing in the - was it Ms Wu - in the - - -

PN15626

MR MOORE: Yes.

PN15627

MR SECK: Ms Yu.

PN15628

JUSTICE ROSS: - - - in the November tranche, and her study of the effects of shifts in penalty rates in retail in New South Wales.

PN15629

MR MOORE: Yes, I cross-examined her. I recall that, yes.

PN15630

JUSTICE ROSS: Yes. And he makes the point: well, has she controlled for everything? And there's a legitimate debate about those things,

PN15631

MR MOORE: I understand the point your Honour makes, and I don't press the objection.

PN15632

JUSTICE ROSS: The next one? As you say, I mean, she can be cross-examined about her view, and Ms Charlesworth's view can be put squarely to her.

PN15633

MR MOORE: Yes. The last objection, I think it is, is to page 62, and the objection is taken to the second paragraph.

PN15634

JUSTICE ROSS: Is that the one beginning "overall", or "there is"?

PN15635

MR MOORE: It is.

PN15636

JUSTICE ROSS: I'm just not sure which - which are you regarding as the second paragraph?

PN15637

MR MOORE: Can I just have a moment. I'm just checking something here.

PN15638

JUSTICE ROSS: No, that's fine.

PN15639

MR MOORE: Yes. Thank you. I clarified it in my mind. The objection is taken to the second paragraph, which commences with the word "overall".

PN15640

JUSTICE ROSS: Yes.

PN15641

MR MOORE: But we don't object to the first sentence. I'm sorry. I'm sorry, I withdraw that. I was reading from the wrong notes. We do object to the totality of that paragraph at, which is really the "overall" - I'm using the words of the author uses, the total conclusion - and we object to it. So it's a general conclusion that there does not appear to be evidence to suggest that weekend work is qualitatively different in the way it displaces other activities from weekday work.

PN15642

It's a critique of the evidence to the contrary and a statement that weekend work does not appear to significantly disrupt the lives of most workers, and some workers gravitate to it. So insofar - the difficulty with this paragraph is it a bit of a magic pudding of a set of wrapped up conclusions, which one can understand. That's logically what one tries to reach at the end of a report. But for it to work, the witness needs to have the right necessary expertise to express those general all-encompassing conclusions, and there's no indication on the face - on the text - that these are conclusions drawn from the survey.

PN15643

JUSTICE ROSS: Yes,

PN15644

MR MOORE: That's my difficulty with that.

PN15645

JUSTICE ROSS: No, I follow.

PN15646

MR MOORE: And there is the critique element and the statement. There's no evidence to suggest these are more general opinions or arguments either. And we do put the objection in that way at the last paragraph. This is a paragraph with a number of different characteristics to it, including an argumentative characteristic.

PN15647

JUSTICE ROSS: Yes. No, it's a little difficult to unpick.

PN15648

MR MOORE: Yes. And I would suggest that it's - a matter for my friend, of course, but I would have thought that it's something that no doubt my learned friend can advance as a submission on the basis of the remainder of the report.

PN15649

JUSTICE ROSS: Well, that's true.

PN15650

MR SECK: Your Honour, the way, I must say, I read that paragraph is that it followed from the earlier paragraph where Ms Pezzullo sets out in bullet point form - and this part is not objected to - the analysis from the survey results. So your Honour - - -

PN15651

JUSTICE ROSS: Yes. No, I follow why you might say that. It's just that the paragraph conflates the commentary on the literature review and some of the material about the survey. And the last sentence, it's not clear whether that's relating to one or the other. It can either be clarified as to the observations there when it talks about the evidence, it's a reference to the survey.

PN15652

Alternatively, as Mr Moore says, the essence of what's put there is contained and drawn from the rest of the report, then it's something that in some ways would have more force if it's in a submission because at some point we're expecting submissions from you which would say, "Well, what do we make of this report and this evidence?" And you would say, "Well, this evidence stands for these propositions."

PN15653

So I think it's either an unpicking of it and a linkage and explaining where these things come from, or the alternative course is for you to - well, it can be left in on the basis that it is a submission or it can be - we can get some explanation as to where the bits come from.

PN15654

MR SECK: Might I have a - - -

PN15655

JUSTICE ROSS: No, that's fine.

PN15656

MR SECK: Your Honour, we're content to read that as a submission. We say all those points can be derived anyway from the survey results.

PN15657

JUSTICE ROSS: All right.

PN15658

MR SECK: And we will make submissions based on those survey results.

PN15659

JUSTICE ROSS: Are you content with that course, Mr Moore? Does that resolve that?

PN15660

MR MOORE: I am, thank you, your Honour.

PN15661

JUSTICE ROSS: Do I take it that then resolves all the outstanding matters? And we will wait for the – the aide memoire can now embrace the additional way that the matters have been dealt with?

PN15662

MR MOORE: Yes. I don't think there's a need for the Bench to rule on any of them. I think they have been disposed of as we have proceeded.

PN15663

JUSTICE ROSS: Okay.

PN15664

MR MOORE: We will check the transcript.

PN15665

JUSTICE ROSS: Of course.

PN15666

MR MOORE: And would it be convenient then for the solicitors to prepare a short document or table and provide that.

PN15667

JUSTICE ROSS: Absolutely. That's just so that everybody is clear about what it is.

PN15668

MR MOORE: Yes.

PN15669

JUSTICE ROSS: And you're not caught unawares and then on the running of it on the day all of a sudden we discover, no, no, that wasn't going to be dealt with that way. That's all I want to avoid.

PN15670

MR SECK: What we can do, your Honour, is that we can just simply prepare a copy of Ms Pezzullo's report with perhaps annotations in the margins if they're necessary, so - - -

PN15671

JUSTICE ROSS: However you do it is really up to you. I just want something that reflects the outcome of your discussions and the exchanges that we've had this afternoon.

PN15672

MR SECK: May it please, your Honour.

PN15673

JUSTICE ROSS: Okay. All right. Thank you. And can I thank both counsel for the way that they've dealt with this. I know that these – nobody ever wants to give away their position but it has been helpful and it means that we have a range of material in front of us. So is it 9.30 tomorrow and we're dealing with those two witnesses. Is that right?

PN15674

MR SECK: Yes, your Honour. Can I just deal with one further issue, your Honour.

PN15675

JUSTICE ROSS: Yes.

PN15676

MR SECK: Your Honour will recall that during the cross-examination of Mr Quinn On yesterday - - -

PN15677

JUSTICE ROSS: Yes.

PN15678

MR SECK: - - - there was a reference to an enterprise agreement he had in place for his Priceline Pharmacy. We have now obtained copies of that enterprise agreement. Might I hand up copies for the Bench and formally tender those agreements.

PN15679

MR MOORE: I've seen this and I have no objection to it being tendered, save to note that the agreements – I think Mr – the witness referred to it as being the Priceline agreement.

PN15680

JUSTICE ROSS: He did.

PN15681

MR MOORE: It's not actually called the Priceline Agreement.

PN15682

JUSTICE ROSS: Yes. He called it an award. The Priceline Award, yes.

PN15683

MR SECK: Can I just note two things before I formally tender the agreement.

PN15684

JUSTICE ROSS: Is it an agreement - - -

PN15685

MR SECK: It's a preserved State agreement which has effect as a transitional instrument under the Fair Work Act.

PN15686

JUSTICE ROSS: Yes.

PN15687

MR SECK: So there is a complication there.

PN15688

JUSTICE ROSS: Do they have an end point or is it - - -

PN15689

MR SECK: I think they keep on going, your Honour. There's an end point in terms of – as to the variation to those agreements, in extending it. But unless terminated, as I understand it, they continue to operate indefinitely.

PN15690

JUSTICE ROSS: I will mark that exhibit PG21.

**EXHIBIT #PG21 QUINN ON'S PRICELINE PHARMACY AGREEMENT**

PN15691

MR SECK: May it please. Can I just note one thing, and I've raised it with my learned friend. If your Honours – if the Bench goes to the second-last page, which is schedule A to the agreement.

PN15692

JUSTICE ROSS: Yes.

PN15693

MR SECK: And go down to number 32 on the list.

PN15694

JUSTICE ROSS: Yes.

PN15695

MR SECK: It refers Menai Soul Pattinson Pharmacy, and it has an address there.

PN15696

JUSTICE ROSS: Yes.

PN15697

MR SECK: That is the address for Priceline and we can adduce further evidence from Mr On by way of supplementary statement if necessary, but Mr On has informed us that he is a sole trader and that he employs the employees. All he has done is switched from one banner group to another banner group. So he was previously a Soul Pattinson pharmacy. He is now a Priceline pharmacy, but the employing entity remains the same. If that's necessary to do by way of supplementary statement, we can do that.

PN15698

JUSTICE ROSS: Well, Mr Moore can have a look at it and work out what he wants to do with it.

PN15699

MR MOORE: Yes, I don't – I appreciate my friend's explanation of that. I'm not in a position now to contest any of that.

PN15700

JUSTICE ROSS: No.

PN15701

MR MOORE: If there is any issue we will raise it, and I will leave it at that.

PN15702

JUSTICE ROSS: Look, and I'm not sure we need to make a detailed forensic inquiry into the provenance of the agreement and how it has been affected by the transitionals, as fascinating as that study is. Was there anything else?

PN15703

MR SECK: No, nothing further, your Honour.

PN15704

JUSTICE ROSS: All right. Nothing further from our side? All right. Thank you very much for your assistance. We will adjourn until 9.30 tomorrow.

**ADJOURNED UNTIL THURSDAY, 15 OCTOBER 2015**

**[3.36 PM]**

**LIST OF WITNESSES, EXHIBITS AND MFIs**

<b>PETER WILLIAM ASHLEY CROTHERS, AFFIRMED.....</b>	<b>PN14855</b>
<b>EXAMINATION-IN-CHIEF BY MR SECK.....</b>	<b>PN14855</b>
<b>EXHIBIT #PG16 AFFIDAVIT OF PETER CROTHERS DATED 13/08/2015.....</b>	<b>PN14867</b>
<b>CROSS-EXAMINATION BY MS FORSYTH .....</b>	<b>PN14868</b>
<b>THE WITNESS WITHDREW .....</b>	<b>PN14935</b>
<b>JOHN FRANCIS CAGNEY, SWORN .....</b>	<b>PN14962</b>
<b>EXAMINATION-IN-CHIEF BY MR SECK.....</b>	<b>PN14962</b>
<b>EXHIBIT #PG17 AFFIDAVIT OF JOHN CAGNEY AS AMENDED DATED 12/08/2015 .....</b>	<b>PN14975</b>
<b>CROSS-EXAMINATION BY MS FORSYTH .....</b>	<b>PN14976</b>
<b>THE WITNESS WITHDREW .....</b>	<b>PN15042</b>
<b>DEAN ANDREW POLLOCK, SWORN.....</b>	<b>PN15047</b>
<b>EXAMINATION-IN-CHIEF BY MR SECK.....</b>	<b>PN15047</b>
<b>EXHIBIT #PG18 AFFIDAVIT OF DEAN POLLOCK DATED 04/08/2015.....</b>	<b>PN15060</b>
<b>CROSS-EXAMINATION BY MS FORSYTH .....</b>	<b>PN15061</b>
<b>THE WITNESS WITHDREW .....</b>	<b>PN15182</b>
<b>TIMOTHY JOHN LOGAN, AFFIRMED .....</b>	<b>PN15187</b>
<b>EXAMINATION-IN-CHIEF BY MR SECK.....</b>	<b>PN15187</b>
<b>EXHIBIT #PG18 AFFIDAVIT OF TIMOTHY JOHN LOGAN AS AMENDED DATED 15/08/2015.....</b>	<b>PN15200</b>
<b>CROSS-EXAMINATION BY MS FORSYTH .....</b>	<b>PN15201</b>
<b>THE WITNESS WITHDREW .....</b>	<b>PN15266</b>
<b>PATRICK GERARD COSTIGAN, AFFIRMED.....</b>	<b>PN15274</b>
<b>EXAMINATION-IN-CHIEF BY MR SECK.....</b>	<b>PN15274</b>
<b>EXHIBIT #PG20 AFFIDAVIT OF PATRICK COSTIGAN DATED 10/08/2015 .....</b>	<b>PN15287</b>

**CROSS-EXAMINATION BY MS FORSYTH .....PN15288**

**THE WITNESS WITHDREW .....PN15327**

**EXHIBIT #PG21 QUINN ON'S PRICELINE PHARMACY AGREEMENTPN15690**