

**APPENDIX 6**

**AGREEMENT DATED 6 DECEMBER 1990 BETWEEN THE MINISTER  
OF STATE FOR AGED, FAMILY AND HEALTH SERVICES AND  
THE PHARMACY GUILD OF AUSTRALIA**

1.

THIS AGREEMENT is made the *sixth* day of *December* 1990

BETWEEN

THE HONOURABLE PETER STAPLES, MINISTER OF STATE FOR AGED,  
FAMILY AND HEALTH SERVICES of the one part

AND

THE PHARMACY GUILD OF AUSTRALIA of 14 Thesiger Court, Deakin  
in the Australian Capital Territory ("the Guild") of the  
other part.

WHEREAS:

- A. Section 98 BAA of the National Health Act 1953 provides that where the Minister and The Pharmacy Guild of Australia or another pharmacists' organisation that represents a majority of approved pharmacists have entered into an agreement in relation to the manner in which the Commonwealth price of all or any pharmaceutical benefits is to be ascertained for the purpose of payments to approved pharmacists in respect of the supply by them of pharmaceutical benefits, the Tribunal in making a determination under section 98B of the Act while the agreement is in force, must give effect to the terms of that agreement.
- B. By letter dated 22 July 1990 to the Minister for Community Services and Health and the Minister for Aged, Family and Health Services the Guild made proposals in relation to a remuneration package for approved pharmacists in respect of the supply by them of pharmaceutical benefits.
- C. The Minister accepted those proposals in principle, orally on 24 July 1990 and in writing by letter dated 6 August 1990.

D. The exchange of letters contemplated that a formal written agreement would be executed by the parties.

NOW THIS AGREEMENT WITNESSES THAT:

INTERPRETATION

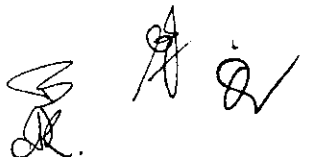
1.1 In this Agreement, unless the contrary intention appears-

"approved pharmacist" means a pharmacist for the time being approved, or deemed to be approved, under section 90 of the Act;

"approved price to pharmacists" means -

(a) in relation to a pharmaceutical benefit that is not a special pharmaceutical benefit or a form of a drug or medicinal preparation referred to in sub-paragraph 98B(2)(a)(ii) of the Act - the amount that the manufacturer of the pharmaceutical benefit and the Minister agree, from time to time, is to be taken to be, for the purposes of Part VII of the Act, the appropriate maximum price for sales of the pharmaceutical benefit to approved pharmacists;

(b) in relation to a pharmaceutical benefit that is a special pharmaceutical benefit, but is not a form of a drug or medicinal preparation referred to in sub-paragraph 98B(2)(a)(ii) of the Act - the amount determined, from time to time, under section 85B of the Act to be the amount that is, for the purposes of Part VII of the Act, to be taken to be the manufacturer's price for sales of the pharmaceutical benefit to approved pharmacists;



- (c) in relation to a pharmaceutical benefit that is a form of a drug or medicinal preparation referred to in sub-paragraph 98B(2)(a)(ii) of the Act, but is not a special pharmaceutical benefit - the amount that the manufacturer of the form of the drug or medicinal preparation and the Minister agree, from time to time, is to be taken to be, for the purposes of Part VII of the Act, the appropriate maximum price for sales of the form of the drug or medicinal preparation to approved pharmacists; or
- (d) in relation to a pharmaceutical benefit that is a form of a drug or medicinal preparation referred to in sub-paragraph 98B(2)(a)(ii) of the Act and also a special pharmaceutical benefit - the amount determined, from time to time, under section 85B of the Act to be the amount that is, for the purposes of Part VII of the Act, to be taken to be the manufacturer's price for sales of the form of the drug or medicinal preparation to approved pharmacists;

"basic wholesale price" in relation to an ingredient in a pharmaceutical benefit, means the amount that The Pharmacy Guild of Australia and the Minister agree from time to time is to be taken to be, for the purposes of Part VII of the Act, the appropriate price for sales of that ingredient to approved pharmacists;

"Commonwealth price" means the Commonwealth price referred to in section 99 of the Act in relation to the supply of pharmaceutical benefits;

"pharmaceutical benefit" means a drug or medicinal preparation in relation to which, by virtue of section 85 of the Act, Part VII of the Act applies;

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"PBS" means the Pharmaceutical Benefits Scheme under Part VII of the Act;

"the Act" means the National Health Act 1953; and

"the Commonwealth" means the Commonwealth of Australia;

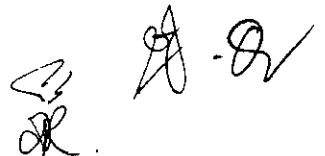
"the Minister" means the Minister of State responsible for the administration of Part VII of the Act pursuant to the Administrative Arrangements Order; and

"Tribunal" means the Pharmaceutical Benefits Remuneration Tribunal established under section 98A of the Act and includes any successors to the Tribunal or any body that performs generally the functions of the Tribunal whether in substitution for or in addition to it.

1.2 In this Agreement,

- (a) words importing a gender include any other gender; and
- (b) words in the singular number include the plural and words in the plural number include the singular.

1.3 Paragraph headings in this Agreement are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer.

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MANNER IN WHICH THE COMMONWEALTH PRICE IS TO BE DETERMINED

2.1 The manner in which the Commonwealth price of pharmaceutical benefits is to be ascertained for the purpose of payments to approved pharmacists in respect of the supply by them of pharmaceutical benefits will be calculated as follows:

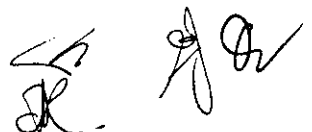
From the first day of the month following the making of a determination by the Tribunal pursuant to section 98B of the Act giving effect to this Agreement the Commonwealth price of:

(a) ready prepared ("RP") items will comprise:

- (i) a dispensing fee of \$3.43 per prescription item ("the RP dispensing fee"); and
- (ii) a separate mark-up of 10% on the approved price to pharmacists for RP items ("the mark-up component"), provided however, that where the approved price to pharmacists is \$180.00 or more the mark-up component will be \$18.00 per RP item until the approved price to pharmacists reaches \$360.00 in which case the mark-up component will be 5% of the approved price to pharmacists.

(b) extemporaneously prepared and related ("EP") items will comprise:

- (i) a dispensing fee of \$4.96 per prescription item ("the EP dispensing fee"); and



- (ii) a separate mark-up of 10% on the basic wholesale price for EP items ("the mark-up component"), provided however, that where the basic wholesale price is \$180.00 or more the mark-up component will be \$18.00 per EP item until the basic wholesale price reaches \$360.00 in which case the mark-up component will be 5% of the basic wholesale price.
- (c) other fees and allowances as currently determined by the Tribunal will continue to apply. The dangerous drug fee and the freight allowance in Western Australia will not be altered during the freeze period as referred to in paragraph 5.

PROVISION FOR WAGE ADJUSTMENT

- 3. For the purposes of this Agreement the Commonwealth's estimated projection for award wage movements for the first twelve months of the freeze period is 5.5%. Where on the basis of information produced to the Tribunal by either or both of the parties that the wage parameters included in the Commonwealth's estimated projection for award wage movements over a relevant period vary by more than 5 percentage points from actual award wage movements for pharmacists and pharmacy assistants in the same period, adjustments shall be determined by the Tribunal in the following manner:

The labour component (75%) of the RP and EP dispensing fees for any given period will be adjusted for the amount by which actual wages for that same period vary by more than 5 percentage points from the Commonwealth's estimated projections for wage movements for that same period.



4. The parties acknowledge that the mark-up component for each of RP and EP items is directly referable to the approved price to pharmacists and the basic wholesale price respectively and changes as these elements change. It is a separate component from the RP and EP dispensing fees and will not be taken into account in the indexation referred to in paragraph 6 hereof.
  
5. The dispensing fees for RP and EP items will remain constant for 18 months following the date of effect of a determination by the Tribunal pursuant to section 98B of the Act giving effect to this Agreement ("the freeze period"), provided however, that the mark-up component will change as the approved price to pharmacists and the basic wholesale price change.
  
6. At the end of the freeze period:
  - (a) the RP and EP dispensing fees will be indexed to take account of movements in labour and non-labour cost increases ("the indexation").

The indexation of RP and EP dispensing fees to take account of movements in labour cost increases will be based on movements in award wages in accordance with principles laid down from time to time by the Australian Industrial Relations Commission during the 6 month period ending one month prior to the end of the freeze period.

The indexation of RP and EP dispensing fees to take account of movements in non-labour cost increases will be based on movements in the Consumer Price Index for the last 2 quarters for which statistics are available immediately prior to the end of the freeze period;





(b) The indexation will be carried out by the Tribunal. Adjustments to the RP and EP dispensing fees will be based on the following:

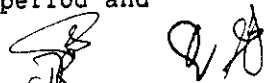
- (i) the criteria already approved by the Tribunal pursuant to sub-section 98B(4) of the Act as at the date of this Agreement, but excluding the application of criteria relating to economies of scale and adjustments on account of the mark-up effect; and
  - (ii) the latest available statistics on labour and non-labour cost increases as specified in paragraph (a) above;
- (c) the indexation will take place at half yearly intervals from the date of the first increase following the freeze period. Indexation will continue for 6 half yearly intervals after the date of the first increase;
- (d) the indexation will be effective upon a determination being made by the Tribunal pursuant to section 98B of the Act.

CONDITION PRECEDENT AND DURATION

7. This Agreement is conditional upon a determination being made by the Tribunal pursuant to section 98B of the Act giving effect to it. This Agreement will commence on the date that such a determination is made ("the commencement date") and will enure for a period of 4½ years from the commencement date.

RESTRUCTURING REDUCTIONS

8. It is agreed between the parties that in relation to a determination by the Tribunal there shall be a reduction in the respective RP and EP dispensing fees of one cent at the end of the freeze period and



an additional one cent reduction at each half yearly increase in the RP and EP dispensing fees ("the reductions"). The reductions will continue until such time as the Tribunal is advised promptly by both parties that they are to cease.

9. The Tribunal will not take the reductions into account for the purposes of indexation referred to in paragraph 6 hereof.

10. In calculating the effect of the indexation at the end of the freeze period, the Tribunal will index the RP and EP dispensing fees as outlined in paragraph 6 to arrive at 'notional' RP and EP dispensing fees ("the notional dispensing fees"). It will then subtract one cent per RP and per EP item to arrive at the actual RP and EP dispensing fees which will then be the subject of a determination to be made by the Tribunal pursuant to section 98B of the Act.

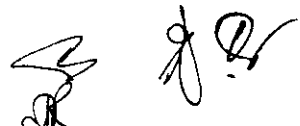
In subsequent half yearly indexations the indexation will apply to the notional dispensing fees for the preceding six month period to arrive at new notional dispensing fees.

The actual RP and EP dispensing fees for any given period will then be determined by the Tribunal based on:

(i) the notional dispensing fees for that same period;

Less

(ii) one cent multiplied by the number of half yearly indexation events (including that immediately following the freeze period).



When the Tribunal is advised by the parties that the reductions are to cease, the latest notional dispensing fees will become the new actual RP and EP dispensing fees by virtue of a determination to be made by the Tribunal pursuant to section 98B of the Act.

11. Immediately upon the execution of this Agreement by both parties the parties shall provide a copy of it to the Tribunal for a determination to be made by the Tribunal pursuant to section 98B of the Act (and in accordance with section 98BAA of the Act) giving effect to it.

WAIVER

12. A waiver by the Guild or the Minister in respect of any breach of a condition or provision of this Agreement shall not be deemed to be a waiver in respect of any other breach or of any subsequent similar breach.

SEVERANCE

13. If any provision of this Agreement is for whatever reason void, voidable by any party, unenforceable or illegal, it shall be read down so as to be valid and enforceable or, if it cannot be read down, the provision (or where possible, the offending words) shall be severed from this Agreement without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of this Agreement which shall continue in full force and effect.

ENTIRE AGREEMENT AND VARIATION

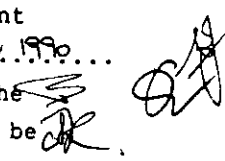
- 14.1 This Agreement constitutes the entire agreement between the parties for the purposes of section 98BAA of the Act and supersedes all communications,

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negotiations, arrangements and agreements, either oral or written, between the parties with respect to the subject matter of this Agreement.

14.2 No agreement or understanding varying or extending this Agreement, shall be legally binding upon either party unless in writing and signed by both parties.

14.3 Notwithstanding the provisions of sub-paragraphs 14.1 and 14.2 hereof this Agreement is interdependent with and collateral to and should be read in conjunction with the written agreement between the same parties dated ...6<sup>th</sup> December 1990... and which relates to matters extraneous to the manner in which the Commonwealth price is to be ascertained.



APPLICABLE LAW

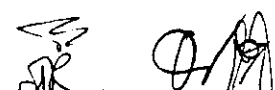
15. This Agreement shall be governed by and construed in accordance with the law for the time being in force in the Australian Capital Territory.

NOTICES

16.1 Any notice, request or other communication to be given or served pursuant to this Agreement shall be in writing and:

- (a) if given to the Minister, signed by the National President of the Guild and forwarded to the Minister;
- (b) if given to the Guild, signed by the Minister and forwarded to the National President of the Guild.

16.2 Any such notice, request or other communication shall be delivered by hand or sent by pre-paid post, facsimile or telex, to the address of the party to which it is sent.



IN WITNESS HEREOF the parties have hereunto affixed their hands and seals the day and year herein before mentioned.

SIGNED by the Minister of State )  
 )  
for Aged, Family and Health Services, )  
 )  
the Honourable Peter Staples )  
 )  
in the presence of: )



.....*Angela Reidy*.....

THE SEAL of THE PHARMACY )  
 )  
GUILD OF AUSTRALIA was hereunto )  
 )  
affixed in pursuance of a )  
 )  
resolution of its National )  
 )  
Executive and in the presence of: )

.....*[Signature]*.....

National President

.....*Robert P. Davies*.....

Executive Director

THIS AGREEMENT is made the *sixth* day of *December* 1990

BETWEEN

THE HONOURABLE PETER STAPLES, MINISTER OF STATE FOR AGED,  
FAMILY AND HEALTH SERVICES, of the one part

AND

THE PHARMACY GUILD OF AUSTRALIA of 14 Thesiger Court, Deakin,  
ACT ("the Guild") of the other part.

WHEREAS:

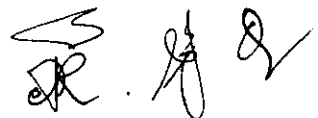
- A. The Minister and the Guild have reached agreement in relation to the implementation of a restructure package for approved pharmacists in Australia.
- B. A statutory body (Pharmacy Restructuring Authority) is to be established under the National Health Act 1953 to make recommendations to the Secretary to the Department of Community Services and Health based on guidelines determined by the Minister for the closure and amalgamation packages, essential pharmacy allowances and for the approval of pharmacists ("the Authority").

NOW THIS AGREEMENT WITNESSES THAT:

1. INTERPRETATION

- 1.1 In this Agreement, unless the contrary intention appears-

"approved pharmacist" means a pharmacist for the time being approved, or deemed to be approved, under section 90 of the Act;



"Commonwealth price" means the Commonwealth price referred to in section 99 of the Act in relation to the supply of pharmaceutical benefits;

"PBS" means the Pharmaceutical Benefits Scheme under Part VII of the Act;

"pharmaceutical benefit" means a drug or medicinal preparation in relation to which, by virtue of section 85 of the Act, Part VII of the Act applies;

"RPBS" means the Repatriation Pharmaceutical Benefits Scheme;

"the Act" means the National Health Act 1953;

"the Commonwealth" means the Commonwealth of Australia;

"the Minister" means the Minister of State responsible for the administration of Part VII of the Act pursuant to the Administrative Arrangements Order; and

"Tribunal" means the Pharmaceutical Benefits Remuneration Tribunal established under section 98A of the Act and includes any successor to the Tribunal or any body which performs generally the function of the Tribunal in substitution for or in addition to it.

1.2 In this Agreement

(a) words importing a gender include any other gender; and



(b) words in the singular number include the plural and words in the plural number include the singular.

1.3 Paragraph headings in this Agreement are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer.

1.4 Notwithstanding any other provision in this Agreement, this Agreement is interdependent with and collateral to and shall be read in conjunction with the written agreement between the same parties dated 6<sup>th</sup> December 1990 being an agreement for the purposes of section 98BAA of the Act ("the section 98BAA Agreement"). Any words or phrases not otherwise defined in this Agreement will have the same meaning as is ascribed to them in the section 98BAA Agreement.

*[Handwritten initials and signature]*

1.5 This Agreement does not fall within the provisions of section 98BAA of the Act for the reason that it does not deal with matters appropriate for determination by the Tribunal pursuant to section 98B of the Act.

1.6 This Agreement will only come into effect immediately upon a determination being made by the Tribunal giving effect to the section 98BAA Agreement. The commencement date for the section 98BAA Agreement (as defined in that Agreement) will be the commencement date for this Agreement. This Agreement will enure for a period of 4½ years from the date on which it comes into effect.

GENERAL OBJECTIVES

2.1 The parties record that it is their intention that the terms of this Agreement will produce a more efficient community pharmacy structure in Australia, resulting in benefits to both parties ("the structural reform").

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- 2.2 The structural reform includes the closure and/or amalgamation of a number of community pharmacies in Australia. Payments for pharmacy closures and amalgamations will be in the form of a package available to pharmacists whose businesses were operational prior to 1 July 1989 ("the closure and amalgamation packages").
- 2.3 The parties agree that the costs of the structural reform will be financed equally by the Commonwealth and approved pharmacists ("the restructuring costs") subject to any formula adjustments as per paragraphs 12 and 13.

#### RESTRUCTURING

- 3.1 Initially, the cost of the closure and amalgamation packages will be fully funded by the Commonwealth. Approved pharmacists will commence to bear part of the burden of the funding of these packages following the end of the freeze period (as defined in the section 98BAA Agreement) in the form of a reduction in the dispensing fee for each PBS processed prescription from what it would otherwise be. There will be a one cent cumulative reduction ("the reduction") from the respective RP and EP dispensing fees at each half yearly review of those fees as part of the indexation process provided for in the section 98BAA Agreement. The reduction will continue until the total cumulative amount equals the approved pharmacists' share of the restructuring costs. The process by which the reduction is taken into account in determining RP and EP dispensing fees is set out in paragraph 10 of the section 98BAA Agreement.



- 3.2 The dollar amount of the approved pharmacists' share of the restructuring costs can only be ascertained once all applications by eligible approved pharmacists have been lodged with the Authority and processed by the Commonwealth. The Minister will, as soon as possible after the precise amount of the approved pharmacists' share of the restructuring costs has been calculated, advise the Guild in writing of the amount and how exactly it has been calculated.
- 3.3 The reduction will not be subject to interest or indexation and for the purposes of the indexation the Tribunal will not take the reduction into account in making any determination whilst the pharmacists' share of the restructuring costs has yet to be recouped by the Commonwealth.

STATEMENT OF ACCOUNT

- 4.1 The Minister will provide to the Guild at half yearly intervals a Statement of Account showing the total of the pharmacists' share of the restructuring costs less the cumulative effect of reductions from RP and EP dispensing fees, leaving the unrecouped balance of the approved pharmacists' share of the restructuring costs as at the end of that half yearly period ("a Statement of Account").
- 4.2 When the approved pharmacists' share of the restructuring costs first falls below \$500,000, the Minister will provide a Statement of Account to the Guild on a monthly basis or more frequently as may be agreed between the parties.



FRESH DETERMINATION

5. Upon the recoupment by the Commonwealth of the approved pharmacists' share of the restructuring costs, the parties will request the Tribunal to make a fresh determination in respect of the RP and EP dispensing fees from the first day of the next month to automatically restore them to the level they would have been had the reductions not been made. The reduction (as accumulated) will therefore be added back to the applicable RP and EP dispensing fees at that time.

CLOSURE AND AMALGAMATION PAYMENTS

- 6.1 Subject to the guidelines issued under the Act not being disallowed by the Federal Parliament, the Authority, in considering applications for closure and amalgamation packages, will first give priority to amalgamations over closures. Secondly, priority will also be given to applications from pharmacists in high density areas in terms of numbers of pharmacies, and finally to applications from pharmacists with low prescription volume pharmacies (less than 15,000 processed PBS prescriptions per annum).



6.2 The total lump sum payment for any closure and/or amalgamation (from which sum, all staff redundancy payments will be met) is calculated as follows:

<u>Years</u>	<u>Payment</u>
0 - 3	\$45,000
4 - 5	\$50,000
6 - 7	\$55,000
8 - 9	\$60,000
10 - 11	\$65,000
12 - 13	\$70,000
14 - 15	\$75,000
More than 15	\$80,000

6.3 "Years" means the number of continuous years prior to 1 January 1991 that an approved pharmacist has completed with the same approval number or with different approval numbers over a continuous period of years in the same premises or reasonably proximate premises. Approved pharmacists who opened pharmacy premises after 30 June 1989 will not be eligible for the closure and amalgamation packages. In relation to partnerships, "years" means the number of continuous years of association with the pharmacy of the longest serving current member of the partnership.

6.4 Payments will be made to the approved pharmacist in respect of the closing pharmacy and only made for each net reduction in approval numbers. Payment will be made within 30 days of cancellation of the approval, consistent with the procedures of the Authority.



- 6.5 A closure or amalgamation payment will not be made to an approved pharmacist unless that pharmacist agrees to make redundancy payments in accordance with the staff redundancy arrangements agreed between the Minister and the Guild and advised to the ACTU (as set out in Schedule 1 hereto).

ESSENTIAL PHARMACY ALLOWANCE

- 7.1 An allowance known as the Essential Pharmacy Allowance ("EPA") will be payable by the Commonwealth to approved pharmacists to maintain an essential pharmacy service and to maintain access to pharmaceutical benefits.
- 7.2 The EPA will be 10% of the R.P. dispensing fee, currently \$3.43, and will be paid for each processed PBS and RPBS prescription up to 1,000 prescriptions in any month.
- 7.3 Subject to the guidelines issued under the Act not being disallowed by Federal Parliament, the guidelines for payment of the EPA are:
- (a) (i) if the pharmacy was trading for the entire 1989/90 period, an annual prescription volume of 15,000 or less based on processed PBS and RPBS prescriptions for that period, or
  - (ii) if the pharmacy was not trading for the entire 1989/90 period the average monthly prescription volume for that pharmacy must be equal to or less than 1250 processed PBS and RPBS prescriptions;



(b) The distance from the nearest pharmacy by reasonable road route is to be greater than 10 kilometres; and

(c) The pharmacy is open to the public for at least 20 hours per week.

7.4 Notwithstanding anything in these guidelines special circumstances will be considered by the Authority.

7.5 Pharmacies accepting the EPA will not be eligible for the closure and amalgamation package.

7.6 Pharmacists receiving the Isolated Pharmacy Allowance ("IPA") will be eligible to apply for the EPA.

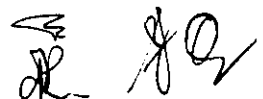
7.7 The guidelines set out in sub-paragraph 7.3 will be reviewed by the parties annually.

7.8 Applicants for the EPA will submit applications for the allowance each year.

GUIDELINES RELATING TO THE GRANTING OF AN APPROVAL PURSUANT TO SECTION 90 OF THE ACT

8.1 To assist in the restructuring process, restrictions will apply from 9 August 1990 to 31 March 1995 on the issue of new approvals.

8.2 Persons who applied for an approval before 9 August 1990 will have their applications dealt with in accordance with procedures in place at the time of application.



- 8.3 Pharmacists who have entered into financial commitments with the expectation of being granted an approval will have their applications dealt with on a case by case basis.
- 8.4 New approvals will only be issued where there is a demonstrated community need.
- 8.5 Subject to the guidelines issued under the Act not being disallowed by the Federal Parliament, the Authority will consider applications for approval based on the following guidelines:
- (a) a new approval will not be granted where there is an existing approved pharmacy operating within 5 kilometres by normal access routes from the proposed site;
  - (b) a new approval will require the demonstration of a definite unmet public need;
  - (c) a new approval will not be granted if a closure or amalgamation payment has been made with respect to a previous approved site within 5 kilometres of the proposed new pharmacy;
  - (d) existing approvals can be relocated within their business centre, which is defined as the area within 500 metres of the existing approved site;
  - (e) existing approvals can be relocated to a new business centre where the new location is between 500 metres and 5 kilometres of the original site and a closure or amalgamation payment has not been made for a site within 5 kilometres of the new site and a definite unmet public need can be demonstrated.



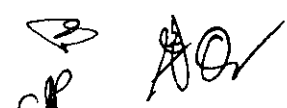
8.6 Nothing in this Agreement will prevent the granting of a new approval number to a pharmacy which continues to operate on the occasion of or following its sale, amalgamation or change in ownership arrangements.

ADDITIONAL CHARGES

9.1 For RP and EP items priced below the maximum general patient contribution as defined in the Act pharmacists will be able to charge:

- (a) the Commonwealth price;
- (b) an additional patient charge (currently 72 cents) which when combined with the Commonwealth price will equal the list or agreed price as referred to in subsection 84C(7) of the Act ("the list price"); and
- (c) a further additional patient charge referable to the maximum general patient contribution applying at the time and in accordance with the following table:

<u>Maximum</u> <u>General</u> <u>Patient</u> <u>Contribution</u>	<u>Additional</u> <u>Patient</u> <u>Charge</u>
\$15	\$2.00
\$16	\$2.10
\$17	\$2.20
\$18	\$2.30
\$19	\$2.40
\$20	\$2.50





- 9.2 If the maximum general patient contribution exceeds \$20 the additional patient charge will be determined by negotiations between the Guild and the Minister.
- 9.3 This further additional patient charge cannot be recorded on the Prescription Record Form ("PRF") to accumulate towards the Safety Net Entitlement limit as defined in Section 87 of the Act ("the Safety Net Limit").
- 9.4 Approved pharmacists will be free to discount these items below the list price.
- 9.5 The Minister will not move to amend existing legislative provisions in relation to discounting of the patient contribution.

CONSUMER INFORMATION

- 10.1 The amount eligible for the Safety Net Limit is to be entered on the PRF for general patients as defined in the Act. The Guild undertakes to recommend to its members that the price charged is to be entered on the prescription label.
- 10.2 The Guild will recommend to its members that they display, for the information of the public, a price book or information sheets showing the actual price to be charged for all items listed on the PBS priced at less than the level of the maximum general patient contribution.
- 10.3 The intention of sub-paragraphs 10.1 and 10.2 is to allow patients to be able to readily compare what the pharmacist charges with the list price.

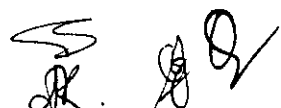


LEGAL ACTIONS

11. The Guild will withdraw its legal actions in train and pending against the Tribunal and/or the Minister subject to the Tribunal making a determination pursuant to section 98B of the Act giving effect to the section 98BAA agreement on the basis that the parties pay their own legal costs.

ADJUSTMENT TO THE SHARE OF RESTRUCTURING COSTS

- 12.1 Adjustment to the parties' shares of the restructuring costs will apply if on the basis of information produced by the Guild to the Minister, the actual number of processed prescriptions varies by more than 5% from the Commonwealth's estimate of total processed PBS prescriptions (as set out in paragraph 14). For this purpose, any volume variation must be based on genuine changes rather than any shifts between categories e.g. any adjustment to patient contributions which moves prescriptions in and out of subsidised areas.
- 12.2 The general PBS prescription volumes for the financial year 1989/90 for items with a Commonwealth price in the range \$11.00 to \$15.00 are set out in Schedule 2 hereto. These volumes are to be indexed by the parties each financial year by a growth factor of 2% which the parties agree is the long term underlying increase in general PBS prescription volumes. Changes in the general PBS prescription volumes resulting from future increases in the general patient contribution and increases in the Commonwealth price of individual pharmaceutical benefits are deemed to balance each other.



13.1 For the purposes of calculating the adjustment to each party's share of the restructuring costs the following formula will apply:-

A - Actual number of processed PBS prescriptions

B - Commonwealth's estimate of total processed PBS prescriptions

T - Actual processed PBS prescriptions which fall below the Commonwealth's estimate of total processed PBS prescriptions adjusted by the agreed 5%

T<sub>1</sub> - Actual processed PBS prescriptions which exceed the Commonwealth's estimate of total processed PBS prescriptions adjusted by the agreed 5%


(i) Where Actual Processed PBS Prescriptions Fall Below The Commonwealth's Estimate:

$$(B \times .95) - A = T$$

The resultant figure T is multiplied by the average gross margin for that year, calculated by adding the average RP dispensing fee and the average mark-up component for that same year. This amount will then be added to the Commonwealth's share of the restructuring costs as defined in paragraph 3 hereof.

(ii) Where Actual Processed PBS Prescriptions Exceed The Commonwealth's Estimate:

$$A - (B \times 1.05) = T_1$$



The resultant figure  $T_1$  is multiplied by the average gross margin for that year as calculated by adding the average RP dispensing fee and the average mark-up component for that same year. This amount will then be deducted from the Commonwealth's share of the restructuring costs as defined in paragraph 3 hereof.

- 14.1 For the purposes of this Agreement the Commonwealth's estimate of processed PBS prescriptions for each of the years set out below is that specified opposite that year:

Year	Estimate in millions
1990/91	115.579
1991/92	128.936
1992/93	143.042
1993/94	157.546

- 14.2 The parties agree that these statistics represent the Commonwealth's estimates of processed PBS prescriptions prior to the 1990/91 PBS Budget changes.
- 15.1 Subject to sub-paragraph 15.2 hereof, the maximum liability of each party to bear part of the burden of the restructuring costs pursuant to paragraph 3 hereof is limited to the extent of the other party's share of the restructuring costs.
- 15.2 If (i) at any point in time the Commonwealth's share of the burden of the restructuring costs exceeds the total restructuring

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costs as a result of the operation of paragraph 13 hereof, the Essential Pharmacy Allowance referred to in sub-paragraph 7.2 will be increased from 10 per cent to a maximum of 20 per cent of the RP dispensing fee applicable at that time; and

(ii) as a result of the operation of paragraph 13 the amount calculated there exceeds the distribution referred to in sub-paragraph 15.2(i) hereof, the Guild and the Minister will consider whether any further adjustment is appropriate.

16. For the purposes of this Agreement, the average approved price to pharmacists for processed PBS prescriptions dispensed between 1 January 1990 and 30 June 1990, will be the basis for calculating the mark-up component for RP and EP items.

The average approved price to pharmacists for any given period is calculated in accordance with the formula:

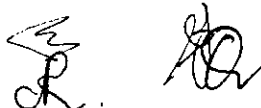
A divided by B equals C

where: -

A = Ingredient and container cost of processed PBS prescriptions

B = Number of processed PBS prescriptions

C = Average approved price to pharmacists



For the 6 month period ending 30 June 1990 the following figures apply:

A - \$412,589,260

B - 50,148,449 and

C - \$8.227

17.1 For the purposes of this Agreement, the basis for calculating the RP dispensing fee is the average approved price to pharmacists for the period 1 January 1990 to 30 June 1990, namely \$8.227.

17.2 The RP dispensing fee is calculated by subtracting the mark-up component from the gross margin, that is:

$$\$4.25 - (10\% \text{ of } \$8.227) = \$3.43.$$

The EP dispensing fee is calculated by applying a multiplier of 1.446 to the RP dispensing fee, that is:

$$\$3.43 \times 1.446 = \$4.96.$$

18.1 Following the automatic indexation period the Guild and the Minister may come to an agreement revising and reviewing the manner of determining the Commonwealth price of pharmaceutical benefits. In the event that such an agreement is reached and executed by the parties, it will be submitted to the Tribunal and the Tribunal will insofar as it is empowered to do so under the Act, give effect to any such agreement by making a determination pursuant to section 98B of the Act.



- 18.2 If no agreement is reached prior to the expiration of the automatic indexation period referred to in the section 98BAA Agreement for the purposes of a determination by the Tribunal pursuant to section 98B of the Act, the Guild or the Minister may request the Tribunal to conduct a review to determine whether the then existing manner of determining the Commonwealth price of pharmaceutical benefits dispensed by approved pharmacists requires revision. The parties acknowledge and agree that the review as proposed, will be designed to set fair and reasonable remuneration for pharmacists based on a reasonably efficient pharmacy structure ("the review").

#### PROVISION OF PHARMACEUTICALS

19. The Minister will not seek to have pharmaceutical benefits supplied through arrangements other than retail pharmacy solely on cost grounds. Where the Minister believes it is appropriate on non-cost grounds to make alternative arrangements the Guild will be genuinely consulted to the maximum extent possible.

#### WHOLESALE SURCHARGES

20. In discussions with wholesalers, the issue of wholesaler surcharges (so that purchases made within the wholesalers' normal trading terms are obtained at the approved price to pharmacists) will be resolved to the satisfaction of the parties.

#### PHARMACY OWNERSHIP

21. The Minister will not initiate or promote action to seek to change pharmacy ownership laws.

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CHANGES TO THE PBS

22. The Minister will genuinely consult with the Guild at an early stage to the maximum extent possible on PBS matters affecting retail pharmacy.

WAIVER

23. A waiver by the Minister or by the Guild in respect of any breach of a condition or provision of this Agreement shall not be deemed to be a waiver in respect of any other breach or of any subsequent similar breach.

SEVERANCE

24. If any provision of this Agreement is for whatever reason void, voidable by any party, unenforceable or illegal, it shall be read down so as to be valid and enforceable or, if it cannot be read down, the provision (or where possible, the offending words) shall be severed from this Agreement without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of this Agreement which shall continue in full force and effect.

ENTIRE AGREEMENT AND VARIATION

- 25.1 This Agreement and the section 98BAA Agreement constitute the entire agreement between the parties and supersede all communications, negotiations, arrangements and agreements, either oral or written, between the parties with respect to the subject matter of these Agreements.

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25.2 No agreement or understanding varying or extending this Agreement, shall be legally binding upon either party unless in writing and signed by both parties.

APPLICABLE LAW

26. This Agreement shall be governed by and construed in accordance with the law for the time being in force in the Australian Capital Territory.

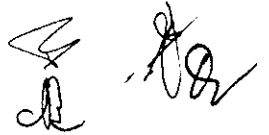
NOTICES

27.1 Any notice, request or other communication to be given or served pursuant to this Agreement shall be in writing and:

(a) if given to the Minister, signed by the National President of the Guild and forwarded to the Minister.

(b) if given to the Guild, signed by the Minister and forwarded to the National President of the Guild.

27.2 Any such notice, request or other communication shall be delivered by hand or sent by pre-paid post, facsimile or telex, to the address of the party to which it is sent.

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IN WITNESS HEREOF the parties have hereunto affixed their hands and seals the day and year herein before mentioned.

SIGNED by the Minister of State )  
 )  
for Aged, Family and Health Services, )  
 )  
the Honourable Peter Staples, )  
 )  
in the presence of: )



..... *Angela Perry* .....

THE SEAL of THE PHARMACY )  
 )  
GUILD OF AUSTRALIA was hereunto )  
 )  
affixed in pursuance of a )  
 )  
resolution of its National )  
 )  
Executive and in the presence of: )

..... *Robert P. Davis* .....

National President  
Executive Director

**STAFF REDUNDANCY ARRANGEMENTS -  
AGREEMENT BETWEEN THE GUILD AND THE MINISTER**

General

- 1.1 The following redundancy package represents a national basic compensation to all permanent full-time and part-time staff employed in retail pharmacy that may be displaced as a result of the Agreement between the Minister of State for Aged, Family and Health Services and The Pharmacy Guild of Australia to implement the Government's objectives for micro-economic reform of the retail pharmacy industry.
- 1.2 This national minimum compensation will of course be over-ridden by awards in those States and Territories that provide more generous benefits than are covered by the relevant benefits under these arrangements.
- 1.3 Notwithstanding the benefits available under these arrangements, all employer pharmacists shall be responsible for paying out to redundant employees entitlements in respect of annual leave and long service leave which may accrue under the provisions of a relevant award or legislation.
- 1.4 Notwithstanding the benefits available under these arrangements, it is open to employer pharmacists, at their discretion, to provide benefits in excess of the minimum requirements, including severance pay entitlements, to employees with longer service histories or for other unspecified reasons that warrant special recognition.

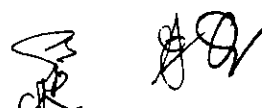


Coverage

- 2.1 This compensation is specifically directed in its application to those affected full-time and part-time employees unable to find on their own behalf, or to be assisted to find through the offices or agents of the Guild, alternative employment.
- 2.2 These arrangements do not apply to displaced staff finding alternative employment either on their own behalf, or through the assistance of the offices or agents of the Guild.
- 2.3 These arrangements apply only to those permanent full-time and part-time employees who were employed immediately prior to the coming into operation of the Community Services and Health Legislation Amendment Bill, 1990, which establishes the Pharmacy Restructuring Authority.

Period of Notice

- 3.1 All employees subject to these arrangements shall be entitled to receive four weeks' notice of termination of employment with one day off during each week of notice to seek other employment, without loss of pay.
- 3.2 In the event that less than four weeks' notice is provided, employees shall be entitled to full payment in lieu of the period of notice falling short of four weeks.



Severance Pay

4.1 Redundant employees shall be entitled to severance pay in accordance with the following scale:

Years of Service	Payment
1 year but less than 2	4 weeks' pay
2 years but less than 3	6 weeks' pay
3 years but less than 4	7 weeks' pay
4 years or more	8 weeks' pay

Weeks' pay means the ordinary time rate of pay.

Assistance with Finding Suitable Alternative Employment

5.1 A committee is to be set up by each Branch of the Guild to facilitate industry restructuring. It is a requirement of these arrangements that the Guild will arrange for each committee to co-ordinate a national industry response to the redeployment, wherever possible, of displaced staff from those pharmacies that choose to amalgamate or close under the terms of the Agreement between the Minister and the Guild dated ... <sup>6<sup>th</sup></sup> December ... 1990 .....

5.2 Where possible, staff from pharmacies that choose to amalgamate will be retained on transfer at the same level without loss of benefits or continuity of service, and shall not be entitled to the benefits of these arrangements by reason of their transfer of employment.

5.3 Where staff are retained on transfer to lower paid duties or reduced hours, they shall be entitled to the same period of notice of transfer as they would have been entitled to on termination. However, at the option of the employer, payment in lieu of such notice, or part

of the period of such notice, may be made. The amount of such payment is to be based on the difference between the former ordinary time rate of pay and the new ordinary time rate of pay, for the period of notice still owing.

5.4 Where staff are not retained, every effort will be made to find alternative employment within the industry in nearby pharmacies. Where such employment is secured, the employee shall not be entitled to the benefits of these arrangements by reason of their transfer of employment. Where the alternative employment involves lower paid work, the employee shall be entitled to the application of the provisions of paragraphs 3.1 and 3.2 above.

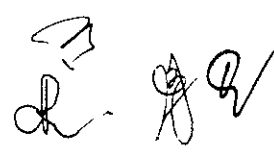
5.5 Where staff are unable to be satisfactorily redeployed, they shall be entitled to all other benefits as set out above.



SCHEDULE 2

PBS PRESCRIPTION VOLUMES FOR 1989/90 FOR ITEMS WITH A  
COMMONWEALTH PRICE IN THE RANGE \$11 TO \$15

RANGE \$	VOLUME
11.01-11.50	3,539,562
11.51-12.00	954,290
12.01-12.50	1,056,758
12.51-13.00	709,941
13.01-13.50	1,260,093
13.51-14.00	429,216
14.01-14.50	368,657
14.51-15.00	202,555
TOTAL	<u>8,521,072</u>

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