



The Pharmacy
Guild of Australia

Submission

Extending Unfair Contract Term Protections to Small Businesses – Consultation Paper

August 2014

National Secretariat

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1. Introduction

The Pharmacy Guild of Australia (the Guild) is pleased to provide a submission to the Australian Government Treasury for consideration under the Consumer Affairs Australia and New Zealand's *Extending Unfair Contract Term Protections to Small Businesses – Consultation Paper* (the Consultation Paper).

The Pharmacy Guild of Australia

The Pharmacy Guild of Australia is the national peak pharmacy organisation representing community pharmacies. The Guild strives to promote, maintain and support community pharmacies as the most appropriate primary providers of health care to the community through optimum therapeutic use of medicines, medicines management and related services.

There are over 5,300 community pharmacies across Australia. Most of these are either small or medium sized businesses. Not only do they dispense over 250 million prescriptions annually, community pharmacies also retail health care items, over the counter medicines, cosmetics, toiletries and other items. Prescribed medicines account for approximately 70 percent of sales, whilst other controlled medicine, health and retail products make up the remaining 30 percent.

In addition community pharmacies operate as a primary health destination which customers will attend for immediate medical advice and health services. Ninety four percent of Australians will visit a pharmacy every year, and for those with chronic conditions visiting a pharmacy is part of their essential shopping routine.

Prescription drugs are exclusively available through pharmacies, and pharmacy staff have a range of professional obligations and a duty of care to their patients. This positions pharmacy as uniquely important for each local community, but also restricts the nature and options for the business.

Community pharmacies are a trusted network in Australia. The *Roy Morgan Image of Professionals Survey 2014* found that 86 percent of respondents rate pharmacists highly on ethics and honesty – up two percent on last year's result. This annual survey has confirmed that pharmacists are valued and respected. The community pharmacy network is Australia's most accessible health care destination where people can seek advice, services and lifesaving medication in many cases seven days a week, after hours and without an appointment.

Proposed legislative amendments

Contracts are a fundamental part of doing business in Australia. A contract is an agreement between two or more parties that identifies the commitments the parties have made to each other. Contracts also allocate risk between the parties and provide a mechanism for enforcement.

The Australian Government has identified that small businesses often enter into contracts that include terms which are unfair to the small business. These contracts are usually offered on a ‘take it or leave it’ basis. Small businesses are choosing to enter into these contracts because, due to the imbalance in bargaining power or commercial size, the small business does not have the scope to negotiate more favourable terms. Small businesses also often do not have the time or resources to critically review these terms.

To address this problem the Australian Government has stated the following policy objective:

The policy objective is to help to provide a level playing field for small businesses when interacting with other businesses through standard form contracts. This will enhance the welfare of Australians by increasing small business certainty and confidence. Small business customers interacting with other businesses through standard form contracts should have confidence that the contract they have entered into is fair and reasonable and that risks are allocated efficiently. (p.20)

To meet this policy objective the Australian Government has proposed extending the existing Unfair Contract Term (UCT) provisions in the Australian Consumer Law (ACL) to contracts involving small businesses.

The Australian Consumer Law (ACL), a national, State and Territory law, aims to protect consumers and ensure fair trading in Australia. The ACL includes unfair contract terms legislation introduced on 1 July 2010. These unfair contract provisions apply to standard form consumer contracts.

There is no definition of ‘standard form contract’ in unfair contract terms law. However in general terms a standard form contract is considered to be a contract that has been prepared by one party and is not subject to negotiation between the parties. This type of contract is generally offered on a ‘take it or leave it’ basis.

Unfair contract terms are determined by applying a three-pronged test. A term is considered to be unfair if it

- would cause a significant imbalance in the parties’ rights and obligations arising under the contract and
- is not reasonably necessary to protect the legitimate interests of the party who would be advantaged by the term and
- would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.

In the event a court finds a term to be unfair, the term is void and treated as if it never existed.

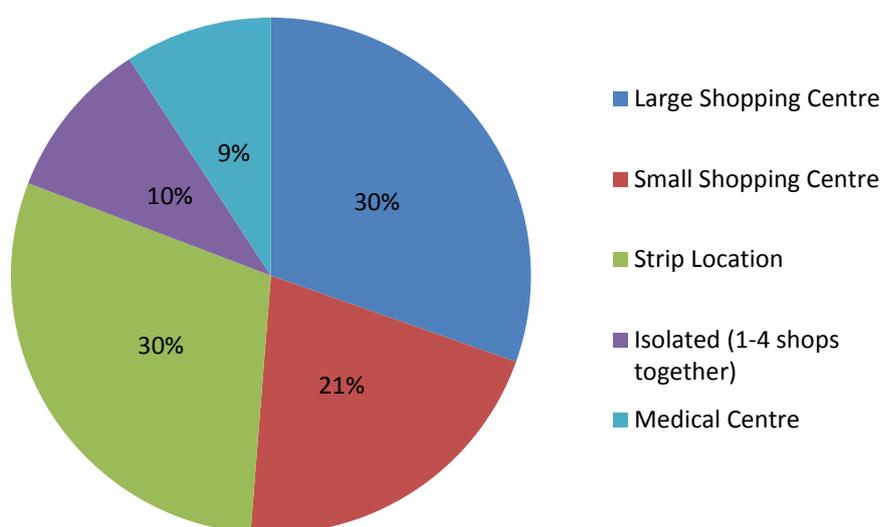
2. Providing a level playing field

The Guild supports the Government’s policy objective of providing a level playing field for small businesses when interacting with other businesses.

Leases and fair contracting

There are over 5300 community pharmacies Australia-wide servicing on average over 4,291 people per pharmacy in both metropolitan and rural areas. The community pharmacy industry makes a significant contribution to the Australian economy with an annual turnover of \$15.31 billion and employing some 63,000 persons. Community pharmacies are located in a diverse mix of premise locations with formats ranging from single building outlets through to super regional centres. (See Figure 1).

Figure 1: Premise location of community pharmacies in Australia



Source: Guild Digest 2013

The majority of community pharmacies seek to operate in shopping centre environments as the preferred vehicle to merchandise their products, and it is safe to assume the consumer prefers on the whole this format as well. Fifty one percent of all pharmacies are operating in a shopping centre environment.

Approximately 98 percent of pharmacies rent the property from which they operate. When negotiating a lease community pharmacy owners seek a lease term of sufficient length so as to be able to amortise all costs of establishment, operation, ongoing investment and trade to normal profitability. They also seek security of tenure.

Many original leases proceed on the basis that there is a high probability that leases will be renewed. Rental structures reflect this. Investment can include the purchase price of the business, fit out

(average \$1300 per square metre), and building the brand value of the business as a business or as an established business trading at the location. Costs also include the cost of stock (approximately \$1426 per square metre), and procurement of a Pharmaceutical Benefits Scheme (PBS) number and other establishment costs (average \$300,000 per pharmacy).

The previous government commissioned the Productivity Commission to examine the state of the retail tenancy market, which gave rise to the report *The Market for Retail Leases in Australia* (the retail lease inquiry).

One of the principal issues that arose during the retail lease inquiry was the concentration of ownership of larger shopping centres. The inquiry found that there are 500 separate owners of shopping centres around Australia. Sixty three percent of all retail space is owned by institutional or company investors, 31 percent by private investors/owner occupiers, with the remainder owned by other companies.

Six companies or funds own 85 percent of retail space in Australia's super-regional centres. The Westfield group is the largest. In 2006, it had a financial interest in 44 centres, covering 3.3 million square metres of leasable land and almost 10,000 retail outlets.¹

For community pharmacies this concentration of shopping centre ownership means most are dealing with large landlords when negotiating or renegotiating leases. In this relationship there is clear imbalance in the relative bargaining position of the listed companies operating the larger shopping centres and small business tenants such as pharmacies. There is also information asymmetry between companies specialising in the leasing of commercial properties and small business operators who may only have to consider leasing issues a couple of times during their business career.

Members of the Guild have found it increasingly difficult to negotiate leases with landlords when leases come up for renewal. It is the experience of the Guild that when renegotiating leases, some landlords make an offer on a 'take it or leave it basis' as someone else (unspecified as to use or identity) will take the premises. Alternatively, the landlord will seek a rent increase at renewal that is pitched at a level that captures much of the value that has been earned by the tenant, but just low enough that permits the tenant to continue trading – knowing that the tenant, who is bound to cover finance costs and the like cannot simply walk away.

The last few years have seen a rise in the need for pharmacy owners to engage specialist lease negotiators. This adds to the cost of doing business. In some cases, this is not welcomed by the landlord and yet it is indicative of the pressure that pharmacy businesses face.

A number of case studies detailing problems pharmacies have faced when negotiating leases are detailed in Appendix 1.

¹ Retail lease inquiry p21;24.

3. Options for legislative amendment

Defining ‘small business’ for the purpose of the unfair contract term provisions

The government has proposed extending the existing UCT provisions in the ACL to contracts involving small businesses. However how a small business is defined varies. The Consultation Paper provides four options

- apply to all business-to-business standard form contracts with an exception that a publicly listed company cannot rely on the provisions;
- define on the basis of a transaction threshold;
- define on the basis of annual turnover; or
- define on the basis of the number of employees.

The Guild **does not** support the extension of UCT provisions based on business-to-business transactions for less than a prescribed amount. To apply the legislation only to transactions that are below a certain threshold would be counterproductive for Guild members. Unfair contract terms in lease negotiation have been identified as a particular concern for community pharmacies. Lease transactions are usually for substantial amounts and would likely not be captured by the UCT provisions if this definition was used.

The Consultation Paper suggests

“...it could be argued that businesses (small or large) dealing in large commercial transactions have a responsibility to engage the required legal resources to ensure there are no UCTs in the contracts for these transactions. Businesses engaging in larger transactions should have the legal resources to deal with these transactions, otherwise they should not be entering into them.” (p.62)

However the provision of legal advice does not preclude the inclusion of UCTs in a contract. For example, if you wish to trade in a particular location and there is only one landlord in that location (for example, a super-regional shopping centre) then the provision of legal advice does not stop the landlord from including UCTs. The imbalance of power still exists.

The Guild **does not** support the defining of small business based on turnover. While one would expect a small business to have a lower turnover than larger businesses, businesses with low margins that rely on high turnover still may have many of the characteristics and vulnerabilities of a small business.

The Guild **does not** support the defining of small business based on the number of employees. Pharmacy has a very high level of female employment with many working on a part time or casual basis. This results in a higher number of employees than one would expect in a small business. Yet this business may also have the same susceptibilities as other small businesses.

Of the four options suggested in the Consultation Paper the most feasible option is that UCT provisions should be extended to businesses that are not publicly listed companies. However this would mean a large number of businesses would be captured by the reforms.

Alternatively the Guild suggests a small business be defined as a business that is not a publicly listed company and that has **EITHER** a turnover below a certain threshold **OR** that employs less than a certain number of people. The turnover and employee thresholds should be generous so as not to exclude small businesses with genuine vulnerabilities.

Should the extension capture a contract where a small business either acquires or supplies goods or services?

It is the Guild's opinion that the government's preferred option of legislative amendment to extend the existing unfair contract term provisions to small business contracts **SHOULD** apply to contracts involving both the supply and acquisition of goods and services by small businesses. Like other small businesses, community pharmacies have a dual role in Australia's competition and consumer policy framework as both consumers and suppliers of goods and services.

Guild members can be subject to UCTs in contracts when they acquire goods and services. This is especially evident during lease negotiation. It is also the experience of the Guild that from time to time large pharmaceutical companies can impose strenuous terms of supply on pharmacists that may be regarded as objectively unfair. For example, some drug companies may not supply product to pharmacists at a particular price unless they commit to a particular sales growth target and a requirement to hold particular levels of stock. On occasion, this can be objectively unfair because it is an exercise of inequality of bargaining power. This will particularly be the case if the catchment area for consumers of a particular pharmacy is so small that it is simply uneconomic for a pharmacist to stock a drug servicing the clinical needs of a very small portion of the consumer base. Moreover, if the commercial decision is then made not to stock the product, consumers will encounter increased difficulty in obtaining the particular drug, leading to self-evident health policy concerns.

Guild members can also be subject to UCTs in contracts when they provide goods and services. An example of this situation may be when providing pharmacy services to a nursing home. In this situation the nursing home may have drawn up the contract for the supply. This contract may contain terms that permit the nursing home to avoid or limit the performance of the contract, terminate it, vary its terms or renew or not to renew the contract. These same rights are not extended to the pharmacy.

4. Other recommendations

Extend the legislation beyond standard form contracts

The proposed changes which extend existing UCT provisions in the ACL to contracts involving small businesses only apply to standard form contracts. While there is no definition of ‘standard form contract’, a standard form contract is generally considered to be a contract that has been prepared by one party and is not subject to negotiation between the parties.

The Guild has long been concerned about the dichotomy of bargaining power between larger businesses and small businesses such as pharmacies, particularly as it relates to the negotiation of retail leases with the large corporations operating shopping centres (particularly) in the growth corridors of Australia’s major cities. The Guild is of the view that when a large corporation (such as a landlord of a major shopping complex) takes advantage of the asymmetric relative dependency that it possesses over the smaller trader (such as a pharmacist) to such an extent that ‘hard bargaining’ becomes objectively unfair, this should be grounds to call into aid remedial legislation.

Obviously, these types of transactions are not covered in standard form contracts.

It is the Guild’s recommendation the proposed changes should apply to contracts involving small businesses generally and not only to standard form contracts.

5 Conclusion

The Guild supports the Government’s policy objective of providing a level playing field for small businesses when interacting with other businesses. However there is a concern that limiting the legislative changes to standard form contracts does not address power imbalances between small business and larger organisations. It is the Guild’s recommendation that the proposed changes should apply to contracts involving small businesses generally and not be confined to standard form contracts.

The Guild also recommends that, in the context of the proposed changes, a small business be defined as a business that is not a publicly listed company and that has **EITHER** a turnover below a certain threshold **OR** that employs less than a certain number of people. Turnover and employee thresholds should be generous so as not to exclude small businesses with genuine vulnerabilities.

It is also the Guild’s opinion that the proposed legislative amendment **SHOULD** apply to contracts involving both the supply and acquisition of goods and services by small businesses.

Appendix 1

CASE STUDY ONE

Three months prior to my market review due date, I was presented with a letter from my landlord informing me that my rent was to be increased by 65 percent. I thought that this was totally unreasonable as our centre had not been maintained and was in a state of neglect. Based on the condition of the centre I would have argued for a rent reduction.

I informed the landlord that I was protesting the increase and he pretended not to understand what my protest meant at which point I informed him that I would not accept his new rental.

I made an offer of a ten percent increase based on information I had obtained from other similar centres. He rejected my offer and demanded the 65 percent increase.

I advised him that I would like to obtain a valuation as is my right. He wrote back to me informing me that I should reconsider this as should the valuation reflect a higher market rent than their initial offer, they would want the higher amount. I ignored this threatening letter and engaged the services of a valuer.

On obtaining my valuation, I provided my landlord with a copy of the assessment and offered to pay the amount as per the independent valuation report.

He rejected my offer and engaged the services of a valuer. Unfortunately his valuer mistakenly posted his valuation to me, realising their mistake I forwarded the valuation to the landlord. As the valuation was addressed to me, I had opened it and did see the valuation which actually came in at a lower valuation than the one I had obtained.

My landlord sent me a letter stating that they had had a valuation which would equate to an approximate 50 percent rental increase. I knew this wasn't true as I had seen his valuation. I asked him to provide a copy of his valuation but he refused.

I decided to make an application to the State Administrative Tribunal to compel him to provide me with a copy of his valuation. At our first appearance at the Tribunal the landlord was chastised by the member for not cooperating with the process and ordered to provide me with a copy of his valuation.

The valuation he produced was by another valuer and was considerably more than his first valuation BUT still not as high as the valuation he claims (in writing) to have obtained.

We went back to the Tribunal at which point the member instructed us to negotiate a resolution based on the two valuations presented.

I was by now so sick and tired of the whole affair that I agreed and negotiated the increase.

I feel that he acted in an unconscionable manner in the following ways:

- attempting to increase my rent by 65 percent without any valuation or basis for the increase
- threatening me with an even higher increase should we complete an independent valuation
- lying (in writing) about the valuation he had obtained
- obstructing the rent review mechanism

CASE STUDY TWO

I have owned my pharmacy for 19 years which occupies 414 square metres in a shopping centre containing 65 shops including a Coles and Target. The centre is in a low socio-economic area and was recently purchased by a new landlord.

Currently my Base Rent is \$198,081 and outgoings are \$72,712 with rent increases of three percent per annum and I had a six year lease with an option of another six years. I had no percentage rent in my agreement and did not require either a bank guarantee or guarantor as when I commenced the lease I had already been here for eight years.

Now, after nineteen years in this location, I am required to provide both a bank guarantee and a personal guarantee to the landlord.

The base rent is to increase by 236 percent with increases of five percent per annum. In addition, ten percent of gross sales per annum (plus GST) where such amount exceeds the base rent is payable and I am required to complete a total refit, including replacement of the shop front.

I have been unable to agree to such terms and as a result will have to close the business on expiry of the lease.

CASE STUDY THREE

In our dealings with our landlord, the proposal for our lease included the redevelopment of the centre, the air conditioning of the common areas and the construction of a two tier flat parking area to replace the existing car park which is on a slope. We were offered an increased area inside the centre, from 200 square meters to 250 as part of the redevelopment of the existing centre.

The shopping centre redevelopment proceeded; we accepted the offer, increased our area and refitted our shop. The common area air conditioning and car park never eventuated, and in response to our query over that we were told that those projects were proposals only. Nevertheless, in our view, those proposals were part of our reasoning for accepting the offer. The butcher shop in the centre tried to pursue the centre over the same problems, were given the same response and they were told that any legal action would be defended vigorously by their lawyers.

In addition to these issues, our shopping centre owners are forcing us to open Boxing Day otherwise we will be in breach of our lease. We are located 100 kilometres from a large regional centre in a shopping centre with a Woolworths, Target and seven specialty stores. We have never had to do this before and it will be a huge cost due to the double time and a half I will have to pay my staff under the Pharmacy Industry Award.

CASE STUDY FOUR

I have owned my pharmacy for seven years which occupies 500 square metres.

I spent \$480,000 on shop fit out costs.

I have engaged a lease negotiator to represent me in talks with my landlord for the past six months.

The base rent they are asking (which was their starting figure) is \$690,000 and represents a 44 percent increase over the current rent of \$480,000 plus approximately \$90,000 in outgoings.

This new rent would make my business unsustainable.

My representative has advised that [REDACTED] are hardline, advising if they were to chop it up they could achieve the \$690,000 rental they are asking for my premises.

They have advised they would prefer not to do this and if I was prepared to offer \$550,000 they would consider it, but not guarantee acceptance, the feeling is they would come back with another figure.

CASE STUDY FIVE

A pharmacy business with an area of 289 square metres was purchased. At the time of purchase, the rent was approximately \$36,000 per month, or \$430,000 p.a.

Five years later the lease was renegotiated as the centre was due to undergo a major renovation and expansion. At this renegotiation, the owner was offered premises of 500 square metres at a rent of \$60,000 per month (or \$730,000 per annum). When the owner objected to the size and shape of the premises, he was told the conditions were not negotiable – take it or leave it. The owner had no option but to accept as he was not in a position to walk away with a large loan still owing.

The following year the pharmacy was relocated into temporary premises for six months, which subsequently turned out to be ten months.

The pharmacy finally moved into the new 500 square metre premises. At the same time the builders walked off the job and a court battle ensued between the builders and the shopping centre owners. The end of the centre where the pharmacy was relocated to remained half finished. Unfortunately, this meant that certain conditions that were promised were left incomplete. For instance, the pharmacy was to be positioned close to both a large medical centre within the shopping centre and access to a large medical centre on the street outside. Additionally, a significant number of untenanted premises on the pharmacy level inside the centre ensured that traffic remained low.

A further sixteen months passed before new builders were appointed. However, the pharmacist has still not received any news on when the centre will be finished and when the new medical centre will be opened.

To add further insult the only elevator at the pharmacy end of the centre has been closed for the last two months for renovation. This elevator was the only practical means for the elderly moving between four levels of a major shopping centre.

Three months after moving into the new premises the owner approached the centre management for rental relief. Initially this was declined and threats of immediate legal action were made. After a number of months it became apparent that the centre was in disarray. A number of tenants were forced to vacate. Therefore, the centre eventually agreed to provide rental relief on a four month basis. This was extended a further three months. Finally a further single month was offered.

When it became apparent that the problems of a half-finished centre were going to carry on indefinitely, the pharmacist approached the centre to try to renegotiate the lease as the centre could not provide the conditions that had been promised. Irreparable damage has been done to the business, and even once all works are completed, it is unlikely that it will be rebuilt to where it once was – or, for that matter, where it should have been. The shopping centre refused to renegotiate or offer an option on the lease. Instead, they offered a further two months rental relief at a significantly reduced rate. However, in order obtain this relief, the shopping centre required the pharmacist to sign a letter that agreed to finalise all issues with respect to the lease, as well as all issues outlined in previous correspondence.

At this point, the pharmacist had no choice but to engage the services of a lease negotiator. Discussions have been continuing since that time, with still no final resolution, and without any indication of when the shopping centre will be complete or the medical centre operational.

CASE STUDY SIX

We are presently renegotiating our pharmacy lease. The original proposal from the shopping centre management included a 20 percent increase in base rent with yearly increases of CPI plus two percent, as well as a complete shop fit (which requires a significant level of capital for pharmacies).

This proposal was made in a climate where the shopping centre has experienced continued decreases in traffic flow for the past three years – reaching a critical point where the decrease in traffic flow was over ten percent 10%. These decreases in traffic flow have been acknowledged by centre management. Consequently, the pharmacy has experienced a decrease in turnover – largely due to these traffic decreases. The pharmacy annual turnover is down on where it was two years previously, and yet there have been three rent increases of CPI plus one and a half percent since that time. Additionally, the future of the centre has been made even more uncertain by the news that a number of the local competing centres are currently planning major upgrades.

Following numerous meetings and discussions, the pharmacy put forward a proposal to the shopping centre that consisted of a seven percent increase in base rent, a full shop fit with a two year deferral on start, as well as the request for a ten year lease to spread the cost of the shop fit over. The seven percent figure was worked out to be the highest increase that could be afforded whilst still ensuring the viability of the business. This offer was rejected by the shopping centre, who indicated that they would not accept anything below a ten percent increase.

Since this offer, shopping centre management is no longer returning emails or phone calls to the pharmacy. The owner of the pharmacy suspects that the shopping centre is deliberately not negotiating in order to let the lease expire – thus further weakening the pharmacy owner's negotiating position. They have clearly stated that if the pharmacy does not propose an offer of over ten percent, they will simply offer the site to another pharmacy business – which would then enjoy the patronage and goodwill built up over many years by the existing pharmacy.

CASE STUDY SEVEN

A pharmacy owner – the longest surviving small tenant in a shopping centre –

- Three lots of centre owners.
- Lease had nine percent per annum increase then reduced to five percent per annum.
- Never given or allowed to negotiate or the ability to ‘go to market’.
- Grown size of shop to accommodate centre owners.
- Been to arbitration once with owner wanting to introduce a third pharmacy.
- Been to owners several times regarding a sale and in one way or another always had the sale blocked – e.g. shopping centre refused to re-negotiate the lease.
- We asked for an extension of lease.
- Came back to us with another extension from four and a half to ten years, but:
 - Change shape of shop – reduce size.
 - Remove two pharmacy clause (restriction to two pharmacies in centre).
 - Do complete shop fit including shop front and signage.
 - Do structural renovation for owner.
 - Increase rent.
 - Remove relocation rule to allow for relocation.
- Result
 - Business would be non-viable re rent which is already double that of other similar tenancies re shape and customer flow.
 - Reduced access of tenancy to major source of customer flow (i.e. food court).
- The new lease proposal was:
 - Confidential.
 - Written by them but stating it was our proposal.
 - Hassled the pharmacist almost on a daily basis to sign the lease.
 - Eventually told us it could be negotiated – introduced a potential purchase of the business – who was immediately told the lease was “not negotiable”.
- We employed a negotiator who made a proposal – no answer three weeks later.

We purchased the existing Terry White store in its new site in the knowledge that the shopping centre was due to expand within the next couple of years, but with the understanding that we would (after the expansion) occupy a new larger site. The landlord assured us at the time that they were happy to have two large pharmacies – even though the expanded centre could legally accommodate three pharmacies. Unfortunately, this assurance was not in writing, and after the expansion of the centre a third pharmacy opened.

Prior to the opening of the third pharmacy, our business began to suffer as a result of the commencement of renovations to the centre, as access and parking were both restricted during the construction phase. Following months of negotiation with Lend Lease, we did receive some compensation from the landlord for the loss of trade during the centre renovation.

Upon completion of the centre renovation, a number of other changes occurred in the centre, in addition to the opening of a third pharmacy. A major banking tenant was relocated from our end of the centre to the new end. Over a period of time, a number of other destination sites relocated from our end, including the post office. The bottom line was that the customer traffic through the old end (ours) was greatly decreased as a result of the expansion of the centre and relocation of destination tenants. Throughout all of this, we were trying to negotiate with Lend Lease for a new site, in a better customer traffic area. Although Lend Lease suggested a number of better sites would be available in the short term, they never eventuated.

An option on our current lease was due to be exercised. Due to our decrease in trade, and with the possibility of a new site being offered by Lend Lease, we did not take up the option. By the following year, being on a month to month lease, we realised that no new site was going to be offered, and with the on-going losses sustained in our current site, we decided to close the pharmacy. After six years, and with the cost of the initial purchase of the pharmacy and the large losses sustained over this time, and telling fifteen staff that they no longer had a job, you can understand the anguish that this decision caused us. We accommodated a few of the staff at another pharmacy we owned in a nearby town.

Currently, the landlord's attitude is that if your store performs well, they expect more money. But if it sustains losses, due to changes made by the landlord, then they accept no responsibility! We were in the centre for six years, and the only time we were visited by the centre manager was when we stopped paying our rent!

When you enter into a lease, you assess the value of the site by the customer traffic past its door. If the landlord makes changes to a centre that decreases this traffic, surely there should be some compensation! In our case, due to the changes in customer traffic, if we had paid no rent for the site, our pharmacy would still have been unprofitable! The only alternative was a new site, which never eventuated.