AUSTRALIAN FRIENDLY SOCIETIES PHARMACIES ASSOCIATION (inc)

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30 June 2015

Senate Standing Committee on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Chair and Senators,

The Australian Friendly Society Pharmacies Association (AFSPA) is the national peak body representing the interests of the mutual pharmacy sector. Friendly Society Pharmacies have served their members' interests in pharmacy and healthcare services in Australia for over 160 years.

The Directors of the AFSPA are delighted to have the opportunity to make a submission to this inquiry on behalf of our 28 member organisations. We have attached an extensive submission which provides a comprehensive account of the role and importance of friendly society pharmacy and highlights issues of relevance to the Committee's Terms of Reference

As active members of the Business Council of Cooperatives and Mutuals, AFSPA supports the recommendations which the BCCM has made to the inquiry.

I wish to highlight four salient points in relation to the operations of the friendly society pharmacy sector:

i. Friendly society pharmacies (FSPs) are highly valued by their members and by the local communities in which they work and invest
ii. In an industry where corporate ownership by for-profit public companies is not permitted (only registered pharmacists or friendly societies can legally own pharmacy in Australia) FSPs have amply demonstrated the social benefit and value of delivering critical health programs, such as the PBS and MBS, through a mutual vehicle. FSPs are able to deliver corporate efficiencies however they are free of the risk of dysfunctional attraction to short-term strategies aimed at increasing returns to shareholders at the expense of long-term viability.

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iii. The lack of knowledge and understanding of the existence and operations of mutual pharmacy amongst legislators and public servants represents a major risk to our continued viability. The AFSPA has maintained constant vigilance on the progress of government reviews, including competition policy, taxation, not for profit and charitable sector, etc. and has regularly been required to provide educative briefings during these reviews. In a number of cases, AFSPA representations have averted "near-misses" where policy makers were unaware of the consequences of proposed changes on the mutual sector.

iv. The current legal and regulatory framework for mutual organisations, which means they are unable to raise capital from members, is a major factor limiting their growth and expansion.

We congratulate the Senate Committee on the establishment of this inquiry process, and hope that the findings will lead to reforms which will enable the member-owned pharmacy sector to flourish into the future.

Yours sincerely,

Lynne McLennan

Lynne McLennan
President
Australian Friendly Society Pharmacies Association.

SENATE STANDING COMMITTEE ON ECONOMICS

INQUIRY INTO THE ROLE, IMPORTANCE AND OVERALL PERFORMANCE OF COOPERATIVE, MUTUAL AND MEMBER OWNED FIRMS IN THE AUSTRALIAN ECONOMY

SUBMISSION OF

AUSTRALIAN FRIENDLY SOCIETIES PHARMACIES ASSOCIATION INC. (AFSPA)

June 2015

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Executive Summary

AFSPA is the association representing the friendly society pharmacy associations which transferred to Corporations Law as Transferring Financial Institutions and became companies on 1 July 1999.

These Friendly Societies own and operate pharmacies across Australia and are subject to Commonwealth, State and Territory legislation for the wholesaling and retailing to the community of drugs, poisons and controlled substances.

The Pharmacy industry has been subject to a number of reviews over the last 20 years. Each review has supported the right of Friendly Societies to own and operate pharmacies. Commonwealth legislation treats Friendly Society Pharmacy owners in the same way as Pharmacist-owned pharmacies. It is the individual State and Territory legislation concerning pharmacy ownership which restricts the right of Friendly Society Pharmacy companies to own more pharmacies and to grow.

The Corporations Law environment for the Friendly Society Pharmacy companies is working and causes no problems to the existing entities. However the restricted use of the term "friendly society" and the capital cost of establishing a new entity and acquiring pharmacies are major barriers to growth, with only one new friendly society pharmacy being established since WW2.

There is still the need in Australia for the community to have access to affordable medicines and pharmaceutical products from community-based entities of which they can be a member. This can come about through Commonwealth Government collaboration with the states and territories to improve regulations/legislation. Governments should develop policies which encourage mutual organisations and educate the public of the benefits of mutual organisations in our communities.

There is the need in the Australian community for education on the important role that mutual organisations play in our society. Prior to WW2 more than half of all Australians were members of Friendly Societies for their health needs, life insurance and funeral benefits. This understanding of the powerful role of mutual self-help organisations needs to be re-learnt and reinforced in Australia. Governments themselves have lost some of their organisational knowledge with the way that public servants change roles and departments on a regular basis." Near misses", such as the potential change to the legislation concerning the need for compulsory annual reports where the legislation allowed for members to opt-in for notices for meetings and annual reports were averted but could have imposed a very heavy financial burden to Friendly Society pharmacies.

AFSPA supports the need for government to lead education programmes about the role of mutual organisations and cooperatives in our society. Education is needed within government and in the broader community.

1. The Australian Friendly Societies Pharmacies Association Inc. (AFSPA)

The Australian Friendly Societies Pharmacies Association Inc. (AFSPA) is a not-for-profit national body representing the interests of its members who are mutual Friendly Society Pharmacies.

The objects of the Association include:

- Provide a not-for-profit Association of Friendly Societies Pharmacies which are registered under Corporations Law and have a true mutual status;
- Promote community pharmacy and the interests of affiliated pharmacy societies and their members;
- Monitor and closely consider all matters emanating from Federal legislation that has or may have an effect on the Association or its affiliated pharmacies of their members; and
- Make representations and submissions where deemed necessary or desirable to the appropriate persons, entities or authorities in respect of any matter affecting the interests of affiliated pharmacies or their members.

The Association presently has 28 Friendly Society members operating a total of 130 not-for-profit Friendly Society Pharmacies with memberships of approximately 400,000 covering some 900,000 individuals. This represents about 2.3% of all registered pharmacies in Australia.

AFSPA is an incorporated body under the Associations Incorporated Act 1985 (South Australia)

2. Friendly Society Pharmacies (Dispensaries)

"Dispensary" was the early description of today's modern pharmacy and survives still in some Acts and in the names of the Friendly Societies themselves e.g. UFS Dispensaries Ltd (Ballarat) est. 1880. For this submission the word "Pharmacy" or "Pharmacies" will mainly be used.

Friendly societies have been a fundamental part of the history of pharmacy in Australia since the early days of colonisation. Most societies had their roots in England and were mutual self-help organisations through which members banded together and pooled small amounts of money to provide support for one another in the event of untoward occurrences during a period when governments did not consider social welfare part of their responsibilities. These funds, managed by lodges and branches of friendly societies, provided financial support for members to cover sickness, medical and funeral expenses and thereby promote their happiness and welfare.

Friendly Society dispensaries were first established in Australia by Friendly Societies in the 1840s, the first being the Oddfellows Medical Institute and Dispensary founded in Sydney in 1847. This was followed relatively quickly by other dispensaries in the Sydney area and also in Victoria including at Emerald Hill in 1869, the Melbourne United Friendly Society Dispensary in 1871, Bendigo in 1872, Ballarat United Friendly Societies Dispensary in 1880 and Wonthaggi Miners' Friendly Society Dispensary in 1922. This latter dispensary, still in operation today, as are the Bendigo and Ballarat dispensaries, provides a good example of the friendly society workings with the local Miners' Union arranging for all employees in the local mines to contribute 3d (three pence) a week by payroll deduction towards the cost of a friendly society dispensary. By 1909, there were dispensaries in every state except South Australia due primarily to the concentrated effort of the local medical associations to oppose such a move. Subsequently, legislation changes and public pressure saw the formation in 1911 of the Adelaide United Friendly Societies Dispensary, the precursor of the Friendly Societies Medical Association (FSMA), better known today as "National Pharmacies."

Two significant problems of the day led to the establishment of friendly society dispensaries, namely, the high cost of medicines for their mainly poor members, and the fact that many chemists commonly adulterated their drugs. By establishing their own dispensaries, the societies aimed to ensure the supply to their members of quality medicines as prescribed and at an affordable price. They were able to do this because the dispensaries were established and operated by the societies on a true not-for-profit co-operative principle.

3. Friendly Societies legislative environment

Presently, the legislation covering and regulating the ownership and the practise of the profession of pharmacy is covered by State and Commonwealth legislation. The registration of Friendly Societies and their financial supervision up until the late 1990's was via State based legislation. The financial supervision in each State was by their Treasury and their Office of Financial Supervision. The professional supervision of the practice of pharmacy was by the Pharmacy Board in each State under each Pharmacy Act. The supervision of the dispensing of medicine was also under each State's Drugs, Poisons and Controlled Substances Act which gave each State a drug schedule and control of the wholesaling of drugs.

In the 1990s it was decided, for reasons of national consistency and financial control, to move all credit unions, building societies and friendly societies from State supervision to a national overview as part of the Australian Financial System Reform. Building Societies and Credit Unions were easy to define but Friendly Societies were a little more difficult. The entities moved under the supervision of the Australian Financial Institutions Commission (AFIC) and then on 1 July 1999 they moved again to Corporations Law. At the time it was determined that there were three types of Friendly Societies;

1. Friendly Societies with management funds and benefit funds. These were non-bank financial institutions that held a number of separate benefit funds i.e. for education bonds or prepaid funeral plans, organisations such Australian Unity. These Friendly Societies were transferred to Corporations Law and came under the Australian Securities and Investments Commission (ASIC) as well as the Australian Prudential Regulation Authority (APRA).
2. Friendly Societies with management funds only. These transferred on 1 July 1999 as part of the Transferring Financial Institutions (TFIs) of a State or Territory for the purposes of clause I of Schedule 4 to the Corporations Act 2001. The Friendly Society pharmacy companies were included in this group.
3. Fraternal Friendly Societies that existed only for social purpose. These transferred into State legislation covering incorporated associations.

There were some 34 Friendly Societies which owned pharmacies on 1 July 1999 which transferred to Corporations Law, most of which were and continue to be members of AFSPA. At the time, each organisation could elect to become a corporation limited by guarantee or a company limited by shares and guarantee. Only 16 companies elected to be corporations limited by guarantee. The remainder are companies limited by share and guarantees although none of the societies have issued shares. They own and operate 130 pharmacies across Australia.

Hence regulation of the Friendly Society Pharmacies largely moved from State-based to Federal legislation in 1999. This then allowed Friendly Society Pharmacies to move across State boundaries which previously they were prevented from doing unless they registered as a "Foreign Friendly Society" in another State jurisdiction.

ASIC at the time produced a regulatory guide, Interim Policy Statement 147, which is the guideline for determining how ASIC would decide whether an unlisted transferring financial institution (TFI) had a mutual structure.

4. Pharmacy Acts

Each State and Territory had legislation in place to regulate the practice of pharmacy: Who can practice as a pharmacist in the State or Territory; what qualifications are required and how registration and deregistration is applied. Each State also legislated who could own the practice of pharmacy and the registration and licensing of premises.

The new National Registration and Accreditation Scheme (NRAS) for health professionals created by the Health Practitioners Regulation National Law Act 2009 commenced on 1 July 2010 (in WA in October 2010). This created the Pharmacy Board of Australia with responsibility for registration and accreditation in all jurisdictions. The Pharmacy Boards in each State have been abolished and new legislative structures have been put in place for the licensing of pharmacy premises and the ownership restrictions. Each State still has responsibility for the regulation of pharmacy ownership and licensing of premises.

Friendly Societies have owned pharmacies since the beginning of the 20th Century and some prior to this period. The Pharmacy Acts in each State were amended in the 1940s to restrict ownership to pharmacists, essentially to prevent Boots Chemist from the United Kingdom establishing in Australia. Each State Pharmacy Act however enshrined the right of Friendly Societies to own and operate pharmacies. The restrictions about which Friendly Societies could own pharmacies and how many pharmacies they could own varied between States. In some States there was no limit to the number of pharmacies that could be owned. Subsequent to the reviews of state-based legislation initiated as a result of Commonwealth government Review of Competition Policy in 2005 legislative changes in each state has limited the numbers of pharmacies that Friendly Societies can own. The two Territories have not included Friendly Societies in their Pharmacy Acts because none were operating when their Pharmacy Acts were drafted.

Under current State/Territory legislation the following ownership restrictions apply:

State/Territory	No. of pharmacies permitted to own		
	Pharmacists	Friendly Societies	
Qld	5	6	
NSW	5	6	
Vic	5	6	Some exceptions
Tas	4	4	Only existing FSDs permitted
SA	6	6	FSMA = 40 (max number 49)
WA	4	4	(max number =9)
NT	No limit	Ownership allowed by ministerial discretion	
ACT	No limit	No ownership allowed	

Ownership restrictions are only relevant to the specific jurisdictions, ownership can be across States and Territories, ownership can be cumulative; i.e. an owner can have 6 in NSW, 6 in Qld, 6 in Victoria etc.

5. Drugs, Poisons & Controlled Substances

A complex framework of Commonwealth, State and Territory legislation aims to ensure the safe and effective use of potentially poisonous drugs, poisons and controlled substances. The Commonwealth regulates the quality and efficacy of medicinal products (and agricultural and veterinary chemicals) supplied in Australia. State and Territory legislation is more concerned with the safe use of these products. The States and territories regulate the use of medicines throughout the supply chain and in the community, and also all aspects of household poisons.

Under the Therapeutic Goods Act 1989 (Commonwealth), new medicines must be assessed for safety and entered in the Australian Register of Therapeutic Goods before being supplied in Australia. Subsequently, the National Drugs and Poisons Schedule Committee classifies each substance under the Standard for the Uniform Scheduling of Drugs and Poisons schedules according to its toxicity, the purpose of use, the potential for abuse and safety in its use and the need for the substance.

Each schedule has labelling, packaging and advertising requirements. The schedules also specify the conditions relating to the sale of the product; for example, schedule 4 pharmaceuticals must be prescribed by a medical practitioner and dispensed by a registered pharmacist (with limited exemptions). Scheduling decisions generally have no effect until they are adopted into State and Territory legislation. Each State and Territory has its own legislation.

6. Pharmaceutical Benefits Scheme (PBS)

The Pharmaceutical Benefits Scheme is a scheme that provides subsidised prescription drugs to Australians. It gives Australians access to an affordable wide range of necessary medicines. It subsidises the cost of medicines to all Australians. PBS medicines are distributed through all "approved" pharmacies in Australia, some 5,450 pharmacies. It is almost impossible to operate a pharmacy profitably without being an "approved" pharmacy. Approval comes through the Commonwealth government. All Friendly Society pharmacies have such "approved" licences. Friendly Society pharmacies are treated the same as pharmacist owned pharmacies by the Commonwealth Government.

7. Community Pharmacy Agreements (CPA)

The Community Pharmacy Agreements are five-year agreements, the first of which commenced on 1 July 1990. The agreements are between the Commonwealth of Australia represented by the Department of Health and Ageing and Pharmacy Guild of Australia representing all pharmacy owners (including Friendly Society pharmacies). These agreements govern how pharmacies supply medicines listed on the PBS. Pharmacies purchase drugs from wholesalers, who purchase them from the manufacturers. These agreements dictate remuneration for wholesalers and pharmacists, payments for pharmacy services and monies for research grants and administration. The 6th Community Pharmacy Agreement for the five-year period commencing 1 July 2015 has recently been signed.

The Agreements have, since the first agreement, contained location rules on the "approval' licences given to pharmacies to supply government subsidised medicines. These rules, which control the spread and number of pharmacies around Australia, remain in the current 6th CPA however a review will be undertaken within the first two years of the agreement which commences 1 July 2015. The location rules in the CPA apply to all pharmacies and Friendly Society pharmacies are treated the same as all other pharmacies.

AFSPA member pharmacies are not members of the Pharmacy Guild. However, AFSPA has a Memorandum of Understanding with the Guild in place and supports many of the initiatives of the Guild in the retail community pharmacy industry.

8. Summary of Legislative Provisions:

a) State legislation under the various Acts provide for;

- Registration of those allowed to own a business for the purpose of conducting a pharmacy business;
- Registration of, and in relation to Friendly Society Pharmacies the location of premises where the business of pharmacy is allowed to be conducted; and
- Regulation of the sale and distribution of drugs and poisons on a uniform scheduling basis coordinated by the Advisory Committee on Pharmacy Scheduling; the schedules regulate which drugs and poisons can only be distributed by pharmacists or through pharmacies.

b) Commonwealth legislation regulates;

- Registration and accreditation of those allowed to practice the profession of pharmacy;
- Approval to supply pharmaceutical benefits in accordance with the provisions of the National Health Act 1953 and the rules determined by the Minister under that Act;
- Approval of the location of premises from which an approved pharmacist may supply pharmaceuticals under the Pharmaceutical Benefits Scheme (PBS);
- Cancellation of that approval in certain circumstances;
- Which drugs are to be supplied under the PBS;
- The amount of patient contribution to be paid for drugs supplied under the PBS and the prohibition of any discounting of that contribution;
- The Pharmaceutical Benefits Remuneration Tribunal (PBRT) and determinations made by it;
- The Australian Community Pharmacy Authority (ACPA), its functions and the rules in accordance with which it must make its recommendations for the approval of the location of pharmacy premises to the Secretary of the Department of Health and Ageing;
- The National Standard for the Uniform Scheduling of Drugs and Poisons; and
- By negotiation/agreement the wholesale price at which PBS medicines are supplied to pharmacists.

9. Formation of New Friendly Societies

There has been only one new Friendly Society formed to own pharmacy since the 1950s in our records. This was formed in 2010 where changes to legislation in NSW necessitated the need to create a new Friendly Society to take over the pharmacy; the old entity was no longer allowed to own pharmacy due to its company share structure.

The State pharmacy legislation in some jurisdictions refers to the requirement to use the name 'Friendly Society" in the name of the company; in other jurisdictions they refer to the fact that the Friendly Society must be a listed Transferring Financial Institution on 1 July 1999, or they name the Friendly Societies, thus eliminating any new Friendly Societies to be created in that state for the purpose of owning pharmacies.

The term "Friendly Society" is a restricted word under the Commonwealth Corporations Act 2001. Treasury sets out guidelines and procedures to be followed and the criteria to be applied in considering applications for the Commonwealth Minister's consent to body corporate names that are otherwise not available for reservation or registration under the Corporations Act 2001. The relevant Commonwealth Ministers are the Treasurer, The Assistant Treasurer and Minister for Revenue and the Parliamentary Secretary to the Treasurer.

The Treasury guidelines define a "Friendly Society" as "a society which, by voluntary subscription, provides for;

(a) the relief or maintenance of its members and their families in sickness or old age; and
(b) the relief or maintenance of widows and orphan children of deceased members for funeral benefits etc."

10. Capital Raising

Anyone can join a Friendly Society which owns pharmacies. A member pays an annual subscription and in return is given access to various benefits (discounts) on pharmaceutical products (but generally excluding PBS items) and services and any other benefits i.e. optical, dental and other health services. The benefits not only include discounts but also access to larger product ranges, longer trading hours etc. The member also receives a single vote at the Friendly Society annual general meeting each year. If the member fails to renew their membership they lapse as a member and there is no par value or share value to return to the individual. All profits or surpluses, if they exist, are held within the management fund to create capital or to return to members in the future as additional benefits, or contributions to the community the society serves.

Capital to establish pharmacies in the first place came from affiliated fraternal Friendly Societies in the 1800s or from small groups of individuals who formed the Friendly Society. The Friendly Society Act in each State restricted by legislation the type of assets that Friendly Societies could hold i.e. stock, property and bank deposits.

Friendly Societies today can borrow from financial institutions to expand and grow but they do not issue shares to create equity. ASIC Policy Paper 147 that deals with transferring financial institutions and their mutual structures allows for mutual entities to issue "investment shares". It accepts that a limited purpose of return to shareholders can co-exist with a purpose of service to members. They see that investment shares should not become the "dominant purpose". As mentioned earlier in this paper, some 18 Friendly Society Pharmacy companies elected as transferring financial institutions to be limited by share and guarantee although none to date have issued shares.

In the case of a number of Friendly Societies the member's contribution or subscriptions each year become the capital of the organisation and the organisation essentially trades at break even. This lack of ability to raise capital has significantly inhibited the ability of FSPs to grow, other than at a very slow rate.

11. The Principle of Mutuality

The mutuality principle is a common law principle. Surplus or gains of an organisation from some of its dealings with its members are not ordinary income. Under the common law exception, where a group of people contribute to a common fund created and controlled by them for a common purpose, any surplus created in the fund is not considered income for tax purposes.

The mutuality principle was developed by the Courts in the late 1800s when mutual organisations developed to provide sickness and death benefits to their members. These organisations provided members with a primitive form of insurance, whereby all members would contribute to a common fund and would be entitled to receive payments in the event of sickness or death. The principle is derived from English common law.

The ATO explains the application of the principle of mutuality to a club in the context of income tax as follows:

> "A licensed club is only assessable on trading income which relates to non-members and on income received from sources outside its general trading activities. This is due to the principle of mutuality that recognises that any surplus arising from contributions to a common fund created and controlled by people for a common purpose is not income."

In principle, the proportion of a club's surplus from member is tax-free while that derived from non-members is subject to tax. Friendly Society pharmacies in dispensing Government subsidised medicine deal with the public as well as their own members. The income derived from the non-members as well as income received from the Government for subsidised medicine is taxable.

The taxation calculations for Friendly Society pharmacies are quite complex. The income derived from their member is not taxable but the expenses derived from obtaining that income are not tax deductible either. The income derived from dealing with non-members is taxable and expenses from obtaining the income are deductible. It is then possible to make a profit/surplus in dealing with non-members and pay tax on this and make a loss in dealing with members. Thus it is possible for a Friendly Society to pay tax even though overall the company made a loss!

12. <u>Friendly Society Pharmacies Economic Contribution</u>

The typical Friendly Society Pharmacy Association is in a rural location and owns two pharmacies with a turnover of approximately $8 million per annum. It is an important contributor to the rural location for access to medicines and pharmaceutical products at affordable prices. Many of these societies are dotted down the Queensland coast, Townsville, Rockhampton, Mackay, Maryborough, Hervey Bay, Nambour, Gympie, and country NSW and Victoria. There are, of course, some notable exceptions to this with Ballarat based UFS Dispensaries Ltd with some 16 pharmacies and a turnover of $60m and Friendly Society Medical Association Limited – National Pharmacies with a turnover of around $300m per annum based in South Australia.

In the 2014/2015 financial year, the total turnover of all 28 Friendly Society Pharmacies associations was approximately $432m. They employ some 350 fulltime equivalent pharmacists and have 1,600 fulltime equivalent employees.

How beneficial have the benefits to members been? A survey in 2011 of some 90 Friendly Society pharmacies indicated that they took in $8.5m in membership subscriptions from their members and returned $28.7m in reduced prices as benefits in the financial year, a return of 337.6%. At the same time their net profit after tax was $8.3m, a profit margin of 2.3%, well below the 5.0% to 6.0% of supermarket chains. They thus retained as working capital a little less than the contributions from members of $8.5m for the year.

A look at the annual accounts for National Pharmacies over any five-year period from 2003 would indicate that they took $20m in member contributions and gave back in excess of $100m in reduced prices and benefits to their members. Their prices on the shelf are not inflated because they deal with both their members and the public. That is equivalent to $100m back into the economy of predominantly South Australia and Victoria every five years.

<u>Friendly Society Pharmacies are trainers in the industry</u>

- They have developed training programs, Certificate I and II that are available to RTOs and TAFEs throughout Australia to enhance training. National Pharmacies has RTO status up to Diploma AQF Level 5.
- They operate Pharmacy Conferences focussing on improving the management of retail community pharmacy.
- In South Australia 20% to 25% of all pre-registration interns have been trained through Friendly Societies in the last 10 years and large numbers before this decade.

Friendly Society Pharmacies are highly accredited

- Friendly Society Pharmacies believe strongly in the soundness of the present policy of community-based pharmacies being central to a nationally focused system for the delivery of high quality and effective medicines in the most cost-efficient way by a fully accountable health professional: the pharmacist.
- As their demonstration of this commitment to professionalism, Friendly Society Pharmacies were the first group to achieve 100% accreditation under the Pharmacy Guild's Quality Care Pharmacy Program.

Friendly Society Pharmacies contribute to their local economy

- Friendly Society Pharmacy Associations contribute significant amounts of sponsorship and donations to local community groups and charities. This has been in the hundreds of thousands of dollars every year.

Friendly Society Pharmacies keep prices affordable whilst providing quality services

- There are only two forms of legitimate pharmacy ownership, namely, pharmacist owner operators and Friendly Societies. Friendly Society Pharmacies compete in the marketplace with owner operator pharmacies. The benefits or discounts available from Friendly Society pharmacies in the marketplace traditionally meant that many owner pharmacists price matched the discounts in order to retain sales. In the last ten years the emergence of the low-cost, low-service model offered by the discount pharmacy groups has meant that Friendly Societies are rarely the price setters as they maintain a full service pharmacy model in order to provide optimal service to their members.

Friendly Society Pharmacies contribute to community infrastructure

- UFS Dispensaries Ltd
  This mutual healthcare group, based in Ballarat, Victoria, has been operating pharmacies since 1880, and in that time has grown to now operate 21 member owned pharmacies across western Victoria and inner Melbourne. In 2008 , in response to serious concerns about access to GP services in the regional city of Ballarat, UFS opened a GP clinic, offering a viable practice alternative for GP's who were no longer interested in managing their own practices, but were not attracted to joining one of the emerging large corporate for-profit medical centre companies. At this time there was both a shortage of GPs in the area, and a large cohort of GP's approaching retirement age who had been unable to carry out succession planning due to the difficulties in recruiting doctors to rural and regional areas. The UFS Medical model has been highly successful with both patients and GPs, and a number of GPs have subsequently postponed their retirements, thus adding capacity to the medical workforce. New GPs have been successfully recruited from the UK and there is now an adequate availability of GP services in Ballarat.

  In 2011, UFS made a major investment in local community infrastructure with the completion of a large multi- disciplinary medical centre at a cost of $5.8m. This building was funded by UFS in response to community need. It received only minor government support of $278K from Deakin University for teaching facilities. The Centre (essentially a Super clinic without Commonwealth Government funding) now houses 15 GPs, 1 GP registrar, nurses, physiotherapists, podiatrists, a diabetes educator, mental health social worker, dietitian and speech pathologist. The Centre also offers a pharmacy and pathology service. There is a high degree of satisfaction from patients with the service offered at the centre in relation to continuity of care and the appointment based system. This is a significant example of the capacity and willingness of a mutual organisation to make a long-term investment in its local community. It should be noted that the business case for this project indicated a pay-back period of approximately 20 years!

13. Competition in the retail community pharmacy arena

National Competition Policy (NCP)

Competition Policy commenced when all governments in Australia signed the 1995 Competition Principles Agreement (CPA). The signing of this Agreement was the culmination of work commenced in 1991 when it was agreed to examine a national approach to competition policy.

The first step in this process was the establishment of the National Policy Review Committee chaired by Professor Fred Hilmer. Next, the recommendations of the Hilmer Report resulted in the enactment of the Competition Policy Reform Act 1995 (CPRA). The main elements of this Act: enabled the provisions of Part IV of the Trade Practices Act 1974 to be extended to all jurisdictions and to apply to all businesses and persons carrying on a business whether incorporated or not; established the Australian Competition and Consumer Commission (ACCC) by the merger of the Trade Practices Commission and the Prices Surveillance Authority; and created a new advisory body, the National Competition Council (NCC).

The CPRA is complemented by a number of inter-governmental Agreements including the Conduct Code Agreement (CCA) and the Competition Principles Agreement. This second Agreement sets out the principles governments will follow in relation to prices oversight, structural reform of public monopolies, review of anti-competitive legislation and regulations, access to services provided by essential facilities and the elimination of net competitive advantage enjoyed by government businesses when they compete with the private sector.

All the heads of Australian Governments at the Council of Australian Governments (COAG) meeting in April 1995 signed these Agreements. Collectively, these Agreements made up a package of reforms referred to as the National Competition Policy (NCP).

Broadly, this package of reforms is directed towards ensuring that every business or industry in the Australian economy that is currently sheltered from competition was opened to it except for those businesses or industries for which it could be demonstrated that there is a net community benefit in restricting competition.

This provision is referred to as the public benefit or interest test. This test requires that governments, when reviewing various NCP reform options, must objectively weigh up all the pros and cons of competition including, but not restricted to, its effects on matters such as employment, equity, social welfare, community service obligations and the interests of consumers generally or a class of consumers.

The rationale for competition reform is that, properly harnessed, competition can boost economic performance and enhance consumer welfare. But the reasons go beyond narrow economic efficiency considerations and touch on matters as, for example, business ethics, environmental sustainability and social equity.

Over the last twenty years there have been a number of Commonwealth Government agency led reviews of the pharmaceutical industry and retail community pharmacy; each review examining the industry or part of the industry from a different viewpoint re competition, cost to the government or cost to the consumer. The reviews held are listed below with comments on each review.

May 1996: The Industry Commission Inquiry Report, "The Pharmaceutical Industry", was released.

This was a review of the whole industry including the Pharmaceutical Industry manufacturing sector. It contained sections on the key influences on the industry and options for reform, including reform of the PBS.

February 2000: The National Competition Policy Review of Pharmacy report was released. It is known as the Wilkinson Report, after the chairman of the review, Mr Warwick Wilkinson AO, a pharmacist and associate commissioner of the ACCC.

This review was the first national review of a profession under the National Competition systemic legislative review process. Previously each State and Territory were scheduled to undertake their individual reviews of State and Territory Pharmacy Acts. This review was commissioned through the Council of Australian Governments (COAG) to look at the ownership of pharmacies, the location of pharmacies to disperse benefits under the PBS and the registration of pharmacists. The review was to examine whether the regulatory restrictions on competition were "in the public interest".

This report supported the fact that Friendly Societies should be allowed to continue to own pharmacies.

January 2001: The "Review of Drugs, Poisons and Controlled Substances Legislation" was released. This is known as the Galbally Report after its Chair, Dr Rhonda Galbally AO.

The review was required to examine drugs, poisons and controlled substances legislation against the "Principles of National Competition Policy". In particular, the review needed to assess whether the benefits of the controls outweigh the costs that flow from the regulations so that they provide a net benefit to the community as a whole and that the objectives could only be achieved by restricting competition.

The review determined:

- There are sound reasons for Australia to have a comprehensive system of legislative controls that regulates drugs, poisons and controlled substances – notwithstanding the fact that many of these controls restrict competition.

The review contained some 27 recommendations to improve the control of drugs, poisons and controlled substances in Australia.

August 2002: The Senior Officials Working Group commenting on the National Competition Policy Review of Pharmacy Report was issued. This is known as the "Borthwick" review after Mr David Borthwick, Deputy Secretary, Commonwealth Department of Health and Aged care, who chaired the working group.

This report was a coordinated response to the Wilkinson Review in order to provide national consistency in pharmacy regulation.

A key recommendation from COAG was that there is no sound basis for applying different rules to Friendly Societies compared to pharmacist owned pharmacies and that all restrictions on the ability of Friendly Societies to own pharmacies should be lifted without qualification. Both the Wilkinson Review and the COAG Working Group found that Friendly Societies are capable of providing "safe and competent" pharmacy services and that they had proved that they could operate "a large number of pharmacies at a high standard".

February 2003: "The Report to the Treasurer on the relative financial and corporate differences between Friendly Society dispensaries and pharmacist-owned pharmacies" was released by the Australian Competition and Consumer Commission.

In October 2001 the Prime Minister made an election promise to the Pharmacy Guild of Australia that the contentious issue of whether the tax treatment of Friendly Society owned pharmacies provided them with a significant competitive advantage would be referred to the ACCC. In fulfilment of that commitment the Treasurer formally referred the matter in April 2002.

In response to the reference from the Federal government the ACCC undertook a process of consultation with interested parties and government bodies, and considered expert advice provided by independent consultants. The result was a clear and unambiguous finding that Friendly Society pharmacies do not have a net competitive advantage over pharmacist owned pharmacies.

In its report the ACCC uses the term "Friendly Society dispensaries" and the abbreviation "FSDs". This is the traditional or formal description of pharmacies operated by Friendly Societies and is interchangeable with the more contemporary "Friendly Society Pharmacies" (FSPs).

The Australian Consumer and Competition Commission concluded the following:

Taking into account the expert advice provided by Allens, and based on an assessment of the relative financial and corporate differences between FSDs and pharmacist-owned pharmacies, including the mutual tax treatment of FSDs and other competition related factors, the Commission considers that FSDs do not have significant competitive advantages over pharmacist-owned pharmacies, nor does this adversely affect competition in the community pharmacy industry, particularly given that there is no competitive advantage accruing to FSDs as a result of their income tax treatment.

So there were two reviews which tested against the then National Competition Principles and a formal review by the Australian Consumer and Competition Commission (ACCC) for Friendly Societies' rights to own pharmacies and to grow.

Consequently, COAG agreed that no new restrictions should be placed on Friendly Society ownership of pharmacy and that existing restrictions should be repealed. COAG also recommended that the number of pharmacies able to be owned by a pharmacist in the various jurisdictions should also be repealed.

NSW was the first jurisdiction to table a Bill on pharmacy ownership to provide for the repeal of its restrictions against Friendly Society pharmacy ownership and its longstanding restriction of restricting pharmacists to the ownership of three pharmacies. This was required in order to qualify for payments from the Commonwealth under the Competition Principles.

The Pharmacy Guild mounted a very significant and ultimately successful campaign against these provisions.

The then Prime Minister, the Hon Mr John Howard OM, intervened in the process and wrote to each Premier/Chief Minister advising of a formula tailored to each jurisdiction of their then existing regulations relating to pharmacy ownership and number of pharmacies permitted to be owned by both Friendly Societies and pharmacists. Those jurisdictions which implemented the Prime Minister's formula on the number of pharmacies permitted to be owned by approved entities (pharmacists and Friendly Societies) were guaranteed their competition payments from the Commonwealth.

Measured against the provisions of the Competition Principles this unprecedented policy reversal produced a range of perverse outcomes:

- In Victoria, which previously had no restriction on growth of Friendly Society pharmacies, it resulted in new restrictive growth provisions against Friendly Societies' pharmacy ownership (up to 6 for smaller groups, 30% growth only for larger groups) without any reference to its own detailed regulatory framework; and pharmacists had their "quota" increased from 3 to 5.
- In the ACT where Friendly Societies are not permitted to own pharmacy, but where pharmacists have no restrictions on the number of pharmacies they are permitted to own, no change to its legislation was required.
- In the NT, similar to the ACT, but where friendly societies can own pharmacy under special conditions with Ministerial permission, no change to its legislation was required.
- In NSW where only two Friendly Societies owned pharmacies but where historical restrictive relocation rules and onerous Ministerial approval rules for new pharmacies owned by Friendly Society applied, thus effectively limiting numbers, one received no relief because it already owned six pharmacies and the second was restricted to a new ceiling of six pharmacies, where no such ceiling had previously applied.

Despite the recommendations of COAG, the National and subsequent State Reviews and an ACCC Inquiry all held in accordance with the criteria of the National Competition Principles, it all came down to the sheer political lobbying power exerted by the Pharmacy Guild as a result of its long held views that Friendly Society pharmacies somehow represented a threat to pharmacy ownership (despite a distinct lack of evidence in this regard).

April 2005: The Productivity Commission released its report into a 'Review of National Competition Policy Arrangements".

This was a report on the impact of National Competition Policy (NCP) and related reforms undertaken to date on the Australian economy and community. The report identified areas offering significant gains to the Australian economy from removing impediments to efficiency and enhancing competition.

This report included in its recommendations a further review of pharmacy regulation covering all potential restrictions on competition in the sector.

February 2014: The first report by the National Commission of Audit titled "Towards Responsible Government" was released. This was a report to examine the Australian Government's scope and efficiency, particularly the state of its finances.

The report reviewed the Pharmaceutical Benefits Scheme (PBS) and its sustainability over time. It made recommendations regarding reviewing the PBS and the regulations governing the pharmacy industry. This recommendation was one of 64 recommendations.

April 2015: The Harper Review on Competition Policy was released. This was a review commissioned in December 2013 by the Prime Minister and Minister for Small Business.

The report made recommendations about changes to the pharmacy industry as part of its recommendations.

14. The need for education of individuals involved in legislative reform.

There is a need for those individuals at both state/territory and Commonwealth level who are involved in regulation and legislative change to understand the roles and legislative environments of cooperative and mutual organisations. Many positions in the Commonwealth government departments change incumbent each two to three years. Public servants also quite often change from one department of government to another unrelated area of government i.e. Immigration to Health. This means when that when these individuals review regulations or legislation key may lack a full understanding of the entities they are impacting with the proposed changes.

An example of this with the Friendly Society pharmacy organisations took place with regards to annual reports. As part of the Transferring Financial Institutions (TFI's) on 1st July 1999, it was determined and legislated that members of Friendly Societies could 'opt in' for notices of meetings and copies of annual reports instead of the 'opt out' provisions for shareholders in public companies. Some years later Treasury were making amendments to legislation to allow small organisations to have reduced annual financial reporting however a copy of the annual report was intended to be sent to all members. The team working on the legislative changes were not aware of the 'opt in' provisions. If the legislation were to go ahead this would have caused severe financial difficulties to small Friendly Society pharmacies and cost millions in expenses for no benefit. Fortunately this was highlighted by AFSPA and the draft legislation amended. The draftee of the legislation was not aware of the potential impact on small Friendly Societies pharmacies with their 'opt-in' provisions.

15. SUMMARY:

Since Competition Policy commenced in 1995 some twenty years ago, as illustrated, there have been a number of reviews of the industry and many recommendations with few changes.

The industry still comprises many small pharmacies with many owners. These owners are registered pharmacists or Friendly Societies. They number some 5,450 pharmacies throughout Australia. They are mainly funded through their authority to dispense Government subsidised medicines. This funding of medicines is through five-year agreements between the Pharmacy Guild of Australia, on behalf of all owners of pharmacies and the Commonwealth Government. The sixth agreement covering the period July 2015 to June 2020 has recently been signed.

There is a need to heavily regulate the industry that administers Drugs, Poisons and Controlled Substances in the community. The level of regulation can be debated but there is a public interest need for regulation.

Different countries around the world have different models for the regulation of pharmacies, from open ownership to State-owned and operated pharmacies. Australia has a network of 5,450 pharmacies covering Australia where 87% of the population lives within 2.5 kilometres of a pharmacy. These are neighbourhood, primary care health centres where anyone can walk in and see a pharmacist, a clinical health professional, and within ten minutes be given health advice at no cost and have access to a number of health solutions which they can purchase. This is at no cost to the Commonwealth Government, a very attractive proposition. Successive Governments of both major parties have maintained the current regulations because they have perceived them to "in the public interest".

The Australian Friendly Societies Pharmacies Association supports the current regulations. The regulations support competition amongst pharmacies with many banner brands aiding competition. AFSPA members would however, like to have more growth in the number of pharmacies they can own in each State and Territory. There are 1,200 new pharmacists graduating every year and each graduate can own multiple pharmacies; but there are no new Friendly Societies being created. The growth for Friendly Societies can only come about by changes to the ownership rules within each State and Territory Pharmacy Acts.

Bibliography

Commonwealth Government reports:

Productivity Commission; Inquiry Report, the Pharmacy Industry, May 1996

Productivity Commission; Submission to the National Review of Pharmacy, November 1999

Wilkinson Review: National Competition Policy Review of Pharmacy, February 2000

Galbally Review; National Competition Review of Drugs, Poisons and Controlled Substances Legislation, December 2000

Borthwick Review: COAG Senior Officials Working Group Commentary on the National Competition Policy Review of Pharmacy, August 2002

Australian Competition and Consumer Commission: Report to the Treasurer on the relative financial and corporate differences between friendly society dispensaries and pharmacist owned pharmacies. October 2002

National Competition Commission: 2003 Report Vol 2 Chapter 3, sections on Pharmacists and PBS Dispensing rights December 2003

Productivity Commission: Review of National Competition Policy Arrangements, April 2005

Dept. Health and Ageing: Urbis Review of the Location Rules under the Fourth Community Pharmacy Agreement, June 2010

Commission of Audit: Phase One Report, February 2014

Harper Review: Competition Policy review, Marc 2015

Productivity Commission; Efficiency in Health - Research Paper, April 2015

Others

Donovan P: Values for success – a history of National Pharmacies, Adelaide 2011

Green D, Cromwell L: Mutual Aid or Welfare State – Australia's Friendly Societies, Sydney 1984

Hattingh H L: The Regulation of pharmacy ownership in Australia, Griffith University, Qld 2011

AFSPA submissions to each review of the right for Friendly Societies to own pharmacies.