

**Draft Legislative Proposal for Amendments to
the *Pharmacists Registration Act 2001***

Queensland

NCP Review of Pharmacy

**Response
of**

**Queensland Friendly Societies Pharmacies
Association.**

(QFSPA)

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Executive Summary

1. **This response is made by the Queensland Friendly Society Pharmacies Association. It is made on behalf of all friendly society pharmacies in Queensland and elsewhere in Australia . It strongly submits that the *Pharmacists Registration Act 2001* should be amended as proposed in the Draft Legislative Proposal as circulated for comment.**
2. **Friendly society pharmacies have been operating in Queensland since 1885 when the first friendly society dispensary was established in this State. Since that time they have continued to provide pharmacy services to their members and the communities where they are located, to the highest standard.**

The present restrictions that prevent them relocating existing pharmacies or establishing a new one without Ministerial approval and being prohibited from purchasing an existing pharmacy are anti competitive; and as no public benefit has been identified for their retention, they should be removed.

3. **This submission strongly supports the proposal that the present restrictions on the number of pharmacies allowed to be owned should be repealed. Such restrictions are in fact artificial barriers to entry to an industry and as such are anti-competitive. The National Review found the restrictions are in practice easy to breach by a determined proprietor and extremely difficult to enforce by regulatory authorities.**
4. **The recent intervention of the Prime Minister is regrettable and his proposed new 'template' to restrict the number of pharmacies permitted to be owned should be resisted.**
5. **However, if the Queensland Government believes that adopting the Prime Minister's proposal becomes necessary then this submission recommends consideration of the implementation of an incremental growth formula in lieu of a specific 'cap' or restriction on the maximum number of pharmacies permitted to be owned.**

1. Background to the Draft Legislative Proposal for Amendments to the *Pharmacists Registration Act 2001*

The proposed amendments are as a direct consequence of commitments entered into by all governments in Australia when they 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 make up a package of reforms referred to as the National Competition Policy (NCP).

Under the provisions of the second Agreement, the CPA, it was agreed that a joint national review of State/Territory pharmacy legislation and certain provisions of Commonwealth legislation relating to the Pharmaceutical Benefits Scheme (PBS) and the *National Health Act 1953* would be conducted.

That review was conducted by Mr Warwick Wilkinson (the National Review) and his recommendations were released in his Final Report in February 2000.

The fundamental recommendation of the National Review was:

Recommendation 1:

- *legislative restrictions on who may own and operate and operate community pharmacy be retained; and*
- *with existing exceptions, the ownership and control of community pharmacies continues to be confined to registered pharmacists.*

In other words, the National Review recommended that no new entities be permitted to own and operate a pharmacy and that the existing permitted entities, including friendly societies, be retained.

Subsequently the Prime Minister wrote to all Premiers and Chief Ministers proposing that COAG provide a coordinated response to the recommendations of the National Review to promote a nationally consistent approach to pharmacy legislation.

COAG referred the recommendations of the National Review to a Senior Officials Working Group for consideration and to advise whether a coordinated response could be made by COAG and to advise on appropriate responses from each jurisdiction.

The COAG Senior Officials Working Group Report was released on 2 August 2002. It recommended that COAG accept most of the National Review's recommendations and highlighted some significant parts of those recommendations that it recommended to COAG not to accept.

In regard to friendly societies the Senior Officials Working Group Report recommended against introducing new restrictions that would prevent the entry of new friendly societies into the community pharmacy industry noting that the National Review did not demonstrate a net public benefit to justify such restrictions.

Additionally, in recognition of an election commitment made by the Prime Minister to the Pharmacy Guild of Australia (the Guild) in October 2001 it agreed that the ACCC should be requested to inquire into the relative financial and corporate differences between friendly society dispensaries (FSDs) and pharmacist owned community pharmacies and whether these adversely affected competition in the pharmacy industry.

The Treasurer referred this matter to the ACCC as follows:

“(The ACCC) will need to consider whether the tax treatment of FSDs and other competition related factors provide FSDs with significant competitive advantages over pharmacist-owned pharmacies.”

The ACCC concluded its review and its report was furnished to the Treasurer. The ACCC prepared its report in consultation with interested parties, relevant Government bodies as well as expert advice.

It concluded that friendly societies do not have significant competitive advantages over pharmacist-owned pharmacies.

2. About 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 is opened to it *except for those businesses or industries for which it can 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.

It aims to promote economic goals such as a better allocation of resources between industries and greater flexibility to adapt to rapid changes such as external shocks. The reforms to Government businesses allow them to more transparently address their social obligations as well as providing the opportunity for more informed decisions on whether those obligations are best met by in-house providers or otherwise.

Competition policy also provides a greater element of public scrutiny *and makes it more difficult for governments to provide favours for "friendly" business groups or to strike deals behind closed doors.*¹

The NCP processes do not seek to favour any kind of business over another, nor are they designed to improve the profitability or viability of specific industries themselves. Rather, they are intended to foster conditions in which the businesses that most benefit the community prevail or prosper.

Whilst many sectors of the economy are exposed on a daily basis to the true rigours of a competitive marketplace, some groups are not subject to the same disciplines. As a matter of equity it is right to question the incomes and conditions enjoyed by all special groups *to the extent that those incomes and conditions derive from unwarranted restrictions on competition.*²

Under the NCP Agreements the onus of proof is on those groups who want to retain legislative restrictions to prove that they should be retained.

Once a legislative restriction is identified it must go unless it be robustly demonstrated that the benefits of the restrictions outweigh the costs and that the objective of the restrictions cannot be achieved in other ways.

3. National Competition Council 2003 Report

The 2003 Progress report on the legislative review progress of all governments found that no governments had satisfied their compliance obligations in regard to pharmacy.

For pharmacy, the NCC indicated that to be assessed as having complied with the National Competition Agreement sufficiently to merit full payment of the competition monies, governments were required to implement the following two core Council of Australian Governments (COAG) recommendations:

- removal of the restriction on the number of pharmacies able to be owned by pharmacist-owners and friendly societies; and
- removal of any discriminatory legislative provisions applying to friendly society owned pharmacies.

In reaching this conclusion the NCC in its report emphasised the extensiveness of the review process that had been undertaken, the detail of the work performed by the COAG Senior Officers Working Group which consisted of senior officials from all jurisdictions and that all governments had signed off on the final recommendations but noting a reservation from NSW.

¹ Graeme Samuel, President NCC, speech to Economics Society Qld 25 November 1998.

² Graeme Samuel, President NCC, speech to Australian Retailers Association 30 May 1998

The NCC went on to report that against this background it expected governments to expedite progress in the pharmacy area and that it would scrutinise reforms to ensure that they did not discriminate against friendly societies in those jurisdictions where they are located currently, or in jurisdictions where they do not currently have a presence.

4. Interstate Developments

NEW SOUTH WALES

On the first sitting day for 2004 of the NSW Parliament the Premier introduced the National Competition Amendments (Commonwealth Financial Penalties) Bill. Amongst other things this Bill proposes to amend the Pharmacy Act in that State to remove the cap on the number of pharmacies that a pharmacist is permitted to own and remove all the restrictions against friendly societies including permitting the entry of new friendly societies into NSW.

These proposed amendments were exactly in accordance with the COAG recommendations and as required by the NCC.

The Pharmacy Guild objected vociferously to these reforms and mounted a significant community and media campaign against them by claiming that the amendments would lead to the ownership of pharmacies by non-pharmacists or corporations such as supermarkets, would cause the closure of many pharmacies and lead to lower standards of services.³

The political response to this campaign culminated in the Prime Minister's direct intervention. On the 5 May he wrote to the NSW Premier advising that after consultation with the Pharmacy Guild he had agreed that if NSW amended its legislation to increase the maximum number of pharmacies from 3 to 5 and restrict friendly societies to own and operate 6 pharmacies, then NSW would not incur any penalties under the NCPs.

On 19 May the NSW Premier advised the Australian Friendly Societies Pharmacies Association (AFSPA) that whilst his Government intends to implement the amendments proposed by the Prime Minister it will still proceed with its original intention to remove the long standing location restrictions against friendly societies and their need to seek Ministerial approval for an additional pharmacy.

AFSPA responded to the NSW Premier's advice by letter dated 27 May with an alternative proposal. It was pointed out that the Guild campaign was based on a most deceptive campaign. The proposed NSW amendments in fact had nothing to do with the supermarket issue. That was, and continues to be, a separate issue and its resolution is not related to the issue of friendly societies and their ownership of pharmacies. And implementation of the Prime Minister's proposal will only have the effect of substituting one set of restrictions on friendly societies for new restrictions.

As an alternative AFSPA has proposed to NSW that instead of a cap on the maximum number of pharmacies each friendly society is permitted to own NSW consider instead that a friendly society be permitted an annual incremental growth formula

³ Pharmacy Guild Petition to the NSW Parliament distributed from website jacko@nsw.guild.org.au

could be as low as 2 or even 1 pharmacy per year. AFSPA submitted that would be a preferable and importantly, a more equitable and just outcome in the circumstances.

This Association is advised that to date no response has been received by AFSPA but in light of the developments in Victoria as set out below, it can be presumed that the concept of controlled incremental growth in lieu of maximum caps, is certainly being actively considered.

VICTORIA

The Government of Victoria tabled a Bill on the 13 May to amend its pharmacy legislation as recommended by COAG and following its own very lengthy and detailed review conducted after the release of the COAG recommendations.

In Victoria pharmacists are restricted to the ownership of 3 pharmacies and friendly societies are unrestricted. The Bill proposed amendments that would have allowed registered pharmacists, in partnership or incorporated, to own 5 pharmacies (based on the new NSW model), continuation of the unrestricted provision for friendly societies and included a definition of a friendly society to ensure that only mutual not-for-profit friendly societies were permitted to own and operate a pharmacy. This provision was particularly welcomed by all friendly society pharmacies.

On the 2 June the Prime Minister advised the Premier that his Government was prepared to accept pharmacy ownership arrangements in Victoria similar to those he had proposed for NSW and if implemented Victoria would also not incur any financial penalties. In regard to friendly societies the Prime Minister has proposed that those friendly societies which already owned more than 6 pharmacies should be "grandfathered" and not permitted to increase their holdings.

The Victorian Government in negotiations with the Pharmacy Guild advised that whilst it is not prepared to implement the Prime Minister's proposal as it stands, it was also not prepared to continue with the amendments at this time and the Bill was withdrawn on the evening of 1 June.

In response, the Pharmacy Guild on 1 June submitted to the Government a compromise position for consideration. The Guild has now proposed that each friendly society in Victoria be permitted to increase their numbers by 30% over a five year period after which they would then be "grandfathered" at their final numbers.

Submissions on the proposal have now been requested.

It is against this background but still within the context of the National Competition Policy, that amendments to the *Pharmacists Registration Act 2001* are now being considered.

For that purpose a Discussion Paper (DP) has been released which identifies a range of issues arising from the Reviews and Reports referred to above and on which comment has been requested.

This submission is now made by the Queensland Friendly Societies Pharmacies Association (QFSPA) on behalf of all friendly society pharmacies.

5. Friendly Society Pharmacies and their Associations

The Australian Friendly Societies Pharmacies Association Inc. is the national body representing the interests of its members who are not-for-profit friendly society pharmacies recognised by relevant legislation within the Commonwealth of Australia.

Within the National Association there are two State based Associations, this Association (QFSPA) and the Victoria Friendly Societies Pharmacies Association (VFSPA).

Australia wide there are 34 friendly societies which own and operate a total of 131 not-for-profit pharmacies which represents around 2.3% of the total number of approved pharmacies. Collectively these friendly societies have memberships of approximately 400,000 representing some 800,000 individuals and in 2002/03 dispensed over 7.3 million prescriptions.

At **Appendix A** is a list of all existing friendly society pharmacies and the number of pharmacies each operates.

The first friendly society pharmacy in Queensland was the BAFS Dispensary which opened for business in January 1885 and still operates today from the premises it moved into in 1916 at the corner of George and Turbot Streets Brisbane. The Brisbane Dispensary's opening was followed by Townsville in 1887; Mt Morgan in 1894; Toowoomba in 1898; and by 1924 there were 14 friendly societies owning dispensaries.

Today there are still 12 friendly societies which own a total 21 pharmacies employing some 400 people including 52 (Full Time Equivalent) pharmacists and pharmacy membership of approximately 85,000.

All friendly society owned pharmacies are accredited under the Guild's Quality Care Pharmacy Program. In fact friendly society owned pharmacies were the first "banner" group of pharmacies to achieve 100% accreditation.

6. Friendly Society Pharmacies

A History

Friendly society dispensaries were first established in Australia by friendly societies in the 1840's. Their establishment then was in direct response to two significant problems of the day:

- The high cost of medicines for their, mainly poor, members; and
- The fact that many chemists commonly adulterated their drugs⁴.

The purpose of friendly societies in establishing their own Dispensaries was 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 friendly societies on a true not-for-profit, co-operative principle.

Throughout their history in Australia from those very early days up to and including the present time the not-for-profit pharmacies have had to struggle for their continued survival against the powerful vested interests of the members of the Pharmacy Guild.

⁴ *Mutual Aid or Welfare State* Australia's Friendly Societies David Green & Lawrence Cromwell ISBN 086861 6567

The present restrictions on friendly society pharmacies contained in the *Pharmacists Registration Act 2001* are as a direct consequence of the successful campaign of the Guild to persuade the Government at that time to restrict friendly societies so that they could not compete with the pharmacist owned pharmacies.

It was argued then that the development of the Pharmaceutical Benefits Scheme (PBS) by the Commonwealth meant that as all members of the community would have access to subsidised medicines there was no longer a role for the not-for-profit pharmacies.

The friendly society pharmacies vehemently disagreed with that premise then, as it continues to do so today.

The irony of the present circumstances is that in the space of time since this DP was released for comment, the Guild has again used its awesome political lobbying power to now persuade the Prime Minister to intervene on behalf of the its members with two State Governments and effect a change of Government policy to either continue restrictions or impose new restrictions against friendly societies.

And this is despite the fact that under the Third Community Pharmacy Agreement between itself and the Federal Government, the Guild is committed to the continued development of an effective, efficient and well distributed community pharmacy service in Australia which takes account of the recommendations of the Competition Policy Review of Pharmacy and the Objectives of National Competition Policy.⁵

The Guild continues to use the language of yesteryear to justify its members' absolute monopoly of the provision of an essential public health function: the safe and professional custody and dispensing of prescribed medicines to the community. As recently as 1 June 2004 in a letter to the Victorian Premier the Guild described friendly society pharmacies as an "anachronistic sector which at least one economist has described as a dinosaur".

The reality is that friendly society pharmacies continue to flourish and where they operate they have brought more affordable pharmaceuticals to their members and increased competition and professional service to the community⁶. They continually provide the best range and quality of pharmaceutical products at the most affordable prices. For the payment of an annual membership contribution to a friendly society pharmacy a member obtains rebates/discounts on their pharmacy purchases. The pharmacy prices are competitive and available to members of the public.

Additionally, friendly society pharmacies are a major supporter of country pharmacy with the majority of pharmacies in Queensland located in its regional and rural areas. In those communities they are significant employers and supporters of a diverse range of community based activities and organisations.

Friendly society pharmacies are the longest, continuous operators of the business of pharmacy in Australia. They have achieved this with no prosecutions for breaches of professional regulations and they hold a legitimate place in the future of the community pharmacy industry.

Their Role Today

⁵ Third Community Pharmacy Agreement, Objectives c) page 8

⁶ Report to the Pharmacy Board Victoria: The Regulation of Pharmacists and Pharmacy Business August 1998

It has been argued that the rise of the welfare state and the provision of Government services in industries where once only charitable and not-for-profit organisations operated means that there is now no longer a role for such entities. Such arguments might have had more validity some decades ago when the costs of such services provided by Government were more balanced against the community's needs for such services. That is certainly not so today.

The ability of Government to continue to meet the rising needs of the community in a range of social welfare areas and particularly in the health care industry is limited. The role of the not-for-profit sector is as important today as it ever was. This was emphasised by the Prime Minister in his Federation speech when he outlined the view that traditional state-centered welfare has failed to prevent social problems. The role of community organisations needed to be enhanced and that his Government was committed to promoting a re-engagement with the community and the work performed by the not-for-profit sector.⁷

The Prime Minister's recent personal intervention into the community pharmacy industry against the not-for-profit pharmacy sector seems to represent a retreat from this position. This is unfortunate and bodes ill for the not-for-profit sector because what starts in one sector as a result of Government policy or intervention generally is often carried through to other sectors.

The value to the community of the work performed by the not-for-profit sector has long been recognised by the taxation system as providing a measure of vertical equity that could not be compensated by government provided services at the same costs. Not-for-profit entities such as friendly society pharmacies do not provide their services for a commercial intent; they provide their services as true co-operatives investing in services for the benefit of the community for the purpose of improving members' better health outcomes at the lowest possible cost.

Friendly society pharmacies are taxed as mutuals or co-operatives under the "principle of mutuality" in accordance with the provisions of Division 9 of the *Income Tax Assessment Act 1936*. Simply, this provides that income derived from trading with its members is not taxed and furthermore, the expenses incurred in earning that member income is excluded as a taxable deduction. But when applied to friendly society pharmacies all income received under the PBS is excluded from the mutuality principle and is fully taxable in the same manner as other pharmacies.

During 1998 the Ralph committee undertook a full review of Australia's tax laws. That committee, in taxation terms, described in a Discussion Paper horizontal equity as being, broadly, taxpayers (including business entities) in similar circumstances should be taxed similarly. Vertical equity was described also broadly, as being that tax burdens should depend on ability to pay and that those more able to pay (should pay) more tax.⁸

That Discussion Paper focused on business taxation policy and to what extent business tax should be based on horizontal equity allowing the personal tax system and social security and related payments systems to reflect vertical equity concerns. It particularly looked at the operation of the mutuality principle as part of the business tax system.

⁷ Federation Address "The Australian Way" delivered by Prime Minister, 28 January 1999

⁸ Review of Business Taxation (RBT) Discussion Paper *A Strong Foundation*. November 1998

The Ralph Review concluded that the mutuality principle should continue to be applied to certain business entities *including friendly societies and their dispensaries* and that this should be given explicit effect to in the tax law⁹.

Despite these findings the Guild and the Pharmaceutical Society of Australia continue to proclaim that this provision gives friendly society pharmacies an unfair trading advantage¹⁰. This issue has now, as reported above, been finally concluded by the inquiry most recently conducted by the ACCC which reported that friendly societies do not have a significant competitive advantage in relation to pharmacist-owned pharmacies.

For-profit entities provide services for which the profit margins are within commercial benchmarks in order to provide a return on capital invested. In contrast the emphasis of not-for-profit entities is to return surpluses to the business to fund services, reinvest in and replace assets and in improving services to their members and the public that would be unlikely to be undertaken by the for-profit entity.

The election of office holders and members of the Board and attendance at annual and general meetings vest ownership of these pharmacies in their members who participate in the policy development of their pharmacy by the normal manner of such societies whilst the management of the pharmacy is in the control of the pharmacist superintendent. Ownership is transparent, accountable and not a tradable commodity.

Friendly society pharmacies as mutual co-operatives have been stringently controlled under State legislation for financial and other probity matters and as of 1 July 1999, as a result of Financial Sector Reform legislative changes, are fully corporatised under the Commonwealth Corporations legislation and under regulation of the Australian Securities and Investments Commission.

7. Issues For Comment

(1) Repeal of Existing Legislation

- **Remove restrictions on the number of pharmacy businesses a pharmacist may own**

This issue has been fully canvassed by first the National Review and then by the COAG Senior Officers Working Group. Both reviews concluded that there was no identifiable public interest in the retention of the restriction. In fact the National Review identified a range of reasons in the public interest why this restriction should be removed.

Friendly society pharmacies have not to date made any substantial submissions on this issue. That is because we have always regarded it as a matter for the Guild and its members to advocate. After all the only reason why any pharmacy legislation in Australia has such restrictions is because it is Guild policy and was only introduced because the Guild advocated for its introduction.

Consequently pharmacists have had their ownership of the number of pharmacies they could own in each jurisdiction restricted to 4 in SA and QLD, 3 in NSW and VIC, 2 in WA & TAS and unrestricted in both of the Territories. A reading of Hansard for each of

⁹ RBT *A Tax System Redesigned* Report, July 1999 (the Ralph Report).

¹⁰ Pharmacy Guild letter to Premier Victoria 1 June 2004

the parliaments at the time the restrictions were introduced confirms that the reason for the restrictions was to prevent the introduction of competition from overseas interests.

Subsequent reasons for the restrictions as being for professional purposes only on the grounds that a pharmacist owner could only be professionally responsible for a limited number of premises/businesses are an artful rewriting of history. It is important to note however that this artificially manufactured reason for limiting the number of pharmacies a pharmacist could own was not applied to friendly societies.

The restrictions that came to be applied to friendly societies came at a somewhat later stage and were successfully argued for by the Guild on the basis that their not-for-profit status gave friendly society pharmacies a competitive advantage.

The present campaign by the Guild against the lifting of the restriction on the number of pharmacies permitted to be owned by either a pharmacist or a friendly society is based on claims that somehow this translates into deregulation of the community pharmacy industry and the entry into the industry of supermarket style pharmacy. No evidence appears to have been presented to support this claim.

The National Review examined the issue of numerical restrictions in detail and found no compelling evidence that the retention of such restrictions was necessary for the delivery of a highly professional health service and that there was no net public benefit in their existence.

It also reported that the restrictions are easily able to be circumvented by the use of various lawful means and are frequently done so. Additionally, it reported that as there are already in existence many examples of a large number of pharmacies owned by a single owner providing pharmacy services at the highest standards, the retention of such restrictions could not be justified.

The Pharmacy Guild of Australia and the Pharmaceutical Society of Australia continue to vehemently oppose the recommendations of the National Review and the COAG Senior Officials Working Group. Their reasons for their opposition have varied from review to review. Most recently in a joint submission to the NSW review of that State's Pharmacy Act it was claimed that friendly societies are "expanding aggressively" interstate.

In fact, no expansion has occurred in any State or Territory except Victoria and as the table below demonstrates the increase in numbers in that State reflects the revitalisation of the friendly society pharmacy movement only to levels it enjoyed decades ago when by 1982 after 27 years of the oppressive 10% turnover tax¹¹ had had its effect and decimated the friendly society pharmacies movement throughout Australia.

State	Year	Friendly Societies	Pharmacies
Victoria	1968	34	53
	1978	24	48
	1981	23	31

¹¹ The present taxation arrangements only came into effect in the income year 1982-83 These changes repealed the then existing special taxation arrangements that applied only to Friendly Society Pharmacies. The special basis taxation referred to in the Budget Speech was an unfair and onerous effective 10% turnover tax regardless of positive earnings or otherwise. Income Tax Laws Amendment Bill (No 3) 14 October 1981 Senate Hansard Page 1199

	2002	14	59
NSW	1969	31	48
	2002	4	9
QLD	1982	12	23
	2002	12	24
SA	1983	2	32
	2002	2	32
WA	1973	3	10
	2002	1	1
TAS	1981	2	3
	2002	2	3

On behalf of all friendly societies the QFSPA submits in the strongest terms that whatever the Guild may advocate on this issue on behalf of its members such a restriction should not be applied to friendly societies.

• Remove restrictions on friendly society businesses that do not also apply to other proprietors of pharmacy businesses

Presently under the *Pharmacists Registration Act 2001* a friendly society may only relocate its pharmacy business to other premises or establish a new pharmacy business with the approval of the Minister and upon the recommendation of the Pharmacists Board of Queensland. A friendly society is also prohibited from purchasing an established pharmacy.

Further, only those friendly societies that owned a pharmacy in Queensland at the time the Act was enacted are permitted to own a pharmacy in Queensland.

These responses were considered in detail by first the National Review and second by the Senior Officers Working Group. The National Review concluded that friendly societies provided pharmacy services of the highest quality and should continue to be permitted owners of pharmacy.

However, it also recommended that they should not be permitted to enter jurisdictions where they did not already operate. The Senior Officers Working Group found that this was an illogical conclusion and there was no evidence presented to support such a position.

The Senior Officers Working Group's report went on to conclude that the only issue that should determine the extent of friendly societies participation in community pharmacy is whether they run good pharmacies. On this basis the restrictions that do not apply to other pharmacy businesses should be removed.

(2) Ownership of Pharmacy Businesses

This submission supports the proposal that ownership structures available to pharmacists be expanded to include corporations with shareholders who are all registered pharmacists or registered pharmacists and other prescribed persons.

However, it submits that if new flexible corporate structures are to be provided for pharmacist owners, then the rules that may be considered appropriate to apply to an incorporated pharmacist's body should not be applied to friendly societies.

Friendly societies are, as of 1 July 1999, corporations under the (Commonwealth) Corporations Law and as such are subject to the strict provisions, governing membership of boards, eligibility for election and responsibilities of Directors of Boards, of that Law.

The Pharmacy Guild of Australia has submitted to other Reviews and publicly advocated for a requirement that if friendly societies are permitted to continue to own pharmacies then the pharmacist manager should be a member of the Board of the friendly society¹².

Under Corporations Law directors have many specific and direct responsibilities that they can be held, under the Law, personally liable for. The first duty of a director is to look after the welfare of the company.

The Law sees the company as a "person" in its own right. Since the company can only act through the people who direct it and work for it, the company's directors must take responsibility for what the company does. Accordingly, there is no provision for directors to excuse themselves from deliberations of issues that they may consider outside their field of knowledge, experience or expertise.

A key function of the Board of a company is to set, in conjunction with the senior executives, the parameters within which the corporation is to operate and set the internal controls which ensure that it operates within those parameters. It is not the board's role to supervise or involve itself in the day to day management within those parameters or to supervise the implementation of board policy.

It has been stated that there is a fear that a board composed of non-pharmacists will or could routinely, and as a consequence of company policy to maximise profits, or for other unethical purposes, improperly direct a registered pharmacist in the conduct or performance of their professional duties. This was alluded to in debate in the ACT Legislative Assembly whilst debating amendments to that jurisdiction's Pharmacy Act,¹³ but such a broad statement is a misrepresentation of both the robustness of the pharmacy profession and the regulatory and supervisory role of the relevant Pharmacy Board.

Corporations Law requires directors to be elected. If a person is appointed as a director to fill a vacancy they must present themselves for election within a specified period if they wish to continue to serve as a director. This is in accordance with the principles of good corporate governance and democratic principles.

A specification that an appointment to a position of pharmacist manager for a friendly society includes mandatory appointment to the Board is likely to be in many cases either a disincentive to appointment to an otherwise very rewarding position or be, overall, a burden of responsibility on the pharmacist manager quite disproportionate to the reasons for the provision in the first instance.

(3) Treatment of Friendly Societies that de-mutualise

¹² Pharmacy Review April 2000.

¹³ Hansard ACT Legislative Assembly week 08/2527

The issue of possible demutualisation by a friendly society and the effect this should have on it continuing to be a permitted owner of pharmacy was considered comprehensively by the National Review and its conclusions were supported by the COAG Senior Officials Working Group.

The National Review reached two conclusions. First, it concluded that if after a process of demutualisation a friendly society lost its distinguishing feature of being a not-for-profit entity then its right to own pharmacy should not continue as a friendly society. Second, it concluded that if after an amalgamation or corporate change with one or more other friendly societies, the friendly society still retained its distinguishing feature of being a not-for-profit entity then, its right to own pharmacy should be retained.

In reaching these conclusions the National Review was required to consider the provisions of Schedule 4 of the Corporations Law relating to transferred financial institutions and the regulatory guidelines issued by ASIC. It took into consideration that these provisions do not currently refer to or make provision for possible mergers, amalgamations or transfer of business between two or more mutual organisations without triggering the demutualisation provisions of Part 5 of Schedule 4 of the Corporations Law.

Under these provisions if a mutual, not-for-profit entity seeks to effect a structural change with another similar entity, one entity may need to “demutualise” in order to effect the necessary corporate change to merge or amalgamate with another. This may result in the “demutualised” entity becoming a wholly owned subsidiary of another mutual entity or some other arrangement, but, importantly, the constitution of the “demutualised” entity retains its dominant not-for-profit purpose.

The task of this review in its implementation of the National Review, as endorsed by the Senior Officials Working Group, is to understand that whilst all mutuals are (by definition) not-for-profit, not all not-for-profits are mutuals. Thus an entity may “demutualise” but still remain a not-for-profit organisation.

The feature that distinguishes a friendly society from for-profit corporate bodies is that they are organisations that are primarily concerned with providing a benefit to their members. That is, the dominant purpose of the company is not of yielding a return on capital.

This submission agrees that if this characteristic is lost through a demutualisation resulting in conversion of the company to one run for the purpose of yielding a return to shareholders, then that body should no longer be permitted to own pharmacies. In those circumstances then a requirement for divestment of its pharmacy business/es would not be inappropriate.

However, if a technical “demutualisation” takes place only in order to effect a corporate change, but the entity still retains its not-for-profit characteristic as its dominant purpose, then its right to own pharmacy as a friendly society should continue.

The test for determining first, whether a demutualisation has occurred and second, the form and purpose of that demutualisation, should be the ASIC Policy Statement PS 147.

8. Conclusion

Under the NCP process the review of pharmacy legislation has been one of the most comprehensive, detailed and protracted reviews undertaken.

The recommendations for changes to the community pharmacy finally arrived at namely:

- that the restrictions on the number of pharmacies permitted to be owned, be removed;
and
- that the restrictions on friendly societies be removed.

are modest and balanced. The implementation of them was judged as being capable of opening the community pharmacy industry only to a degree carefully calculated to give the industry the potential to become more competitive and more responsive to the needs of both urban and rural communities.¹⁴

Removal of the long standing and unfair restrictions on the ability of friendly societies to be able to relocate their existing pharmacies without Ministerial approval and permit them to purchase a pharmacy does not constitute deregulation of the community pharmacy industry.

The intervention of the Prime Minister now is to be regretted. His proposed "template" to restrict the number of pharmacies allowed to be owned by a friendly society is both regressive and unjust and it is recommended instead that consideration be given to the incremental growth formula as referred to earlier.

¹⁴ Chairman, National Review of Pharmacy Mr W Wilkinson. Letter to Prime Minister 8 January 2000.

**FRIENDLY SOCIETY PHARMACIES
SUMMARY BY NUMBER, STATE AND QCPP ACCREDITED
(as at May 2004)**

	Pharmacies	QCPP
New South Wales		
Auburn & Lidcombe United Friendly Society Pharmacy Board Ltd	-	-
Combined Dispensaries Friendly Society Ltd (Sydney)	6	6
Friendly Societies Pharmacy Limited (Grafton)	1	1
Lismore & District Pharmacy Ltd	1	1
Friendly Society Medical Association Limited (National Pharmacies)	1	1
Western Australia		
Victoria Park & Districts United Friendly Societies' Council Limited	1	1
Tasmania		
Hobart Friendly Society Dispensary Ltd	2	2
Launceston Friendly Society Pharmacy Limited	1	1
The Queenstown Medical Union Friendly Society Limited	1	0
Queensland		
Friendly Care Chemists Friendly Society (Australia) Ltd (Brisbane)	4	4
Ayr Friendly Society Pharmacy Ltd	1	1
Bundaberg Associated Friendly Society Medical Institute Limited	1	1
The Dalby and District Friendly Society Dispensary Ltd	1	1
The United Friendly Society Association of Gympie & District Ltd.	1	1
The Ipswich & West Moreton United Friendly Society Dispensary Ltd	2	2
Mackay Assoc. Friendly Societies Pharmacy Limited	2	2
Maryborough/Hervey Bay Friendly Society Chemists Ltd	2	2
CQ Friendly Society Ltd (Rockhampton)	3	3
The Toowoomba Friendly Society Dispensary Ltd	1	1
The Townsville Associated Friendly Society Pharmacy Ltd	2	2
The Warwick Friendly Society Association Limited	1	1
South Australia		
Friendly Society Medical Association Limited (National Pharmacies)	31	31
The Mount Gambier UFS Dispensary Limited	1	1
Victoria		
Australian Unity Dispensaries Friendly Society Limited (Melbourne)	13	13
UFS Dispensaries Ltd (Ballarat)	7	7
Bendigo United Friendly Societies Dispensaries Limited	2	2
Bentleigh UFS Pharmacy Limited	-	-
Box Hill Pharmacist Advice Friendly Society Ltd	1	1
Friendly Pharmacy (Vic) Ltd (Coburg/Brunswick)	4	4
Cheltenham Friendly Society Dispensary Ltd	2	2
Community Pharmacy Friendly Society Ltd (Elsternwick)	5	5
Eaglehawk United Friendly Societies Dispensary Ltd	1	1
Community Care Chemist Friendly Society Ltd (Geelong)	3	3
Friendly Society Medical Association Limited (National Pharmacies)	19	19
North West Dispensaries Friendly Society Ltd (Fairfield/Sunshine)	2	2
Wonthaggi Miners Friendly Societies Dispensary Ltd	1	1
Yallourn Friendly Society Limited	4	4
TOTAL	131	131