



Review of the *Pharmacists Act 1974*

Victoria

NCP Review of Pharmacy

**Submission
of**

**Australian Friendly Societies Pharmacies
Association Inc.**

(AFSPA)

Table of Contents

Executive Summary

1. Background to the Review of the *Pharmacists Act 1974*

2. About National Competition Policy (NCP)

3. The Association

4. Friendly Society Pharmacies

- A History
- Their Role Today

5. Issues for Comment

(a) Restrictions on Who May Own Pharmacies

- Permitted Entities
- Rules for Permitted Entities
- Definition of Friendly Society
- Demutualisation

(b) Registration Requirements for Pharmacist Ownership

(c) Number of Pharmacies Which May be Owned

(d) Pecuniary Interest Provisions

(e) Registration of Pharmacy Premises

(f) Other Matters

- Composition of the Pharmacy Board

6. Conclusion

Appendix A

Executive Summary

1. **This submission is made by the Australian Friendly Society Pharmacies Association Inc. It is made on behalf of all Friendly Society Pharmacies. It strongly submits that the *Pharmacists Act 1974* should not be amended in a manner that would restrict the present rights of Friendly Societies to own and operate pharmacies in Victoria.**
2. **Friendly Society Pharmacies have been operating in Victoria since 1869 when the first Friendly Society Dispensary was established in this State.¹ Since that time they have continued to be an important and vital part of community based pharmacy in both regional and rural Victoria and in metropolitan Melbourne.**

As a result of the National Review process under the Competition Principles their proper legitimacy should be recognised in the new pharmacy legislation by their identification as permitted pharmacy owners together with pharmacists.

3. **This submission strongly opposes the recommendation that Friendly Society Pharmacies should in the future be restricted to owning pharmacies only in those jurisdictions they operated in at the time. Instead it agrees with the COAG Senior Officials Working Group conclusion that such a provision would be anti-competitive and there was no public benefit to justify such a restriction.**
4. **This submission strongly supports the recommendation of the National Review that the present restrictions on the number of pharmacies allowed to be owned should be repealed.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.**
5. **This Association's members believe that the standard of premises is a key factor in ensuring excellent general pharmacy practice standards and agree that those premises should continue to be subject to overview by regulatory authority. This submission does not support the recommendation for the repeal of such provisions.**
6. **AFSPA strongly supports the principle that the Pharmacy Board should not be a representative body, but as a regulatory body should be an independent, statutory board and that membership rights should not accrue to any particular group.**

¹ Emerald Hill Dispensary, established in 1869; Melbourne UFS Dispensary 1870; Bendigo 1872; Ballarat UFS Dispensary 1880; Brunswick & Coburg UFS Dispensary & Medical Institute 1884; Wonthaggi Miners FS Dispensary 1922.

1. Background to the Review of the *Pharmacists Act 1974*

This Review is being held 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. 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 Australian Competition and Consumer Commission 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 has now advised that it has concluded its review and its report has been 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.*²

² Graeme Samuel, President NCC, speech to Economics Society Qld 25 November 1998.

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.*³

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.

It is against this background and within the context of the National Competition Policy that the *Pharmacists Act 1974* is now being reviewed.

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 on behalf of all Friendly Society Pharmacies.

3. The Association

The Australian Friendly Societies Pharmacies Association Inc. (AFSPA) is a 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 Association there are two State based Associations including the Victoria Friendly Societies Pharmacies Association (VFSPA).

AFSPA presently has 32 Friendly Society members operating a total of 126 not-for-profit Friendly Society Pharmacies representing around 2% of the total approved pharmacies. They have family memberships of approximately 400,000 representing some 800,000 individuals and in 2000/01 dispensed over 7 million prescriptions.

At Appendix A is a list of all existing Friendly Society Pharmacies and the number of pharmacies each operates.

4. 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:

³ Graeme Samuel, President NCC, speech to Australian Retailers Association 30 May 1998

- 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 commercial chemists. Such interests have over many decades been successful in restricting the growth of Friendly Society Pharmacies by promoting oppressive legislation which still today curtails Friendly Society Pharmacies from opening new pharmacies and significantly restricts their ability to relocate existing ones in all other States **except** Victoria.

Notwithstanding these difficulties, Friendly Society Pharmacies continue to operate and where they do they have brought more affordable pharmaceuticals to their members and increased competition and professional service to the community⁵. 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.

Friendly Society Pharmacies are the longest, continuous operators of the practice 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

It may be 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.⁶

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

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

⁵ Report to the Pharmacy Board Victoria: The Regulation of Pharmacists and Pharmacy Business August 1998

⁶ Federation Address "The Australian Way" delivered by Prime Minister, 28 January 1999

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.⁷

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.

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 law⁸.

Despite these findings the Guild and the Pharmaceutical Society of Australia have continued to proclaim that this provision gives Friendly Society Pharmacies an unfair trading advantage. This issue has now, as reported above, been finally concluded by the Review 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

⁷ Review of Business Taxation (RBT) Discussion Paper *A Strong Foundation*. November 1998

⁸ RBT *A Tax System Redesigned* Report, July 1999 (the Ralph Report).

Commonwealth Corporations legislation and under regulation of the Australian Securities and Investments Commission.

5. Issues For Comment

(a) Restrictions on Who May Own Pharmacies

Presently the *Pharmacists Act 1974* (the Act) at Part V s21 provides that a person being a body corporate or a natural person who is not a pharmacist shall not either solely or in partnership with any other person own or have a proprietary interest in a pharmacy practice. And, that a pharmacist shall not either solely or in partnership with any other person own or have a proprietary interest in more than three pharmacy practices.

These provisions do not apply to Friendly Societies and other specified entities; nor do they apply to contrary ownership arrangements by pharmacists that were in existence immediately prior to the commencement of the present Act.

The language of the Act does not use the words *exempt, exempted or exemptions*.

AFSPA submits that the new Pharmacy legislation should be similarly structured. The new legislation should clearly specify the entities and ownership structures permitted to own pharmacies and the specific rules pertaining to that permitted entity.

● Permitted Entities

Permitted entities should be as follows:

1. Pharmacists;
2. Friendly Societies;
3. Historical Companies;
4. Pharmacist Owned Companies; and
5. Deceased Estates and Bankrupt Individuals and Businesses

● Rules for Permitted Entities

1. Pharmacists

AFSPA submits that the number of pharmacies able to be owned by a pharmacist either solely or in partnership should not be restricted. It makes no submissions on any other Rules that may be considered appropriate for pharmacist owners either as sole owners or in partnership

2. Friendly Societies

AFSPA submits in the strongest terms, that the present rules that apply to Friendly Societies that first, allows them to own pharmacies and second, does not restrict the number of pharmacies each is allowed to own, must be maintained.

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 this 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 tax⁹ 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 |
| | 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 |

- **Definition of Friendly Society**

Presently Friendly Societies are referred to at Section 21(4) of the Act. This provides that the provisions of s21 (1) (2) and (3) that prohibits specified bodies from owning pharmacy and pharmacists from having an interest in more than 3 pharmacies, do not apply to a company that, immediately before the transfer date within the meaning of the *Financial Sector Reform (Victoria) Act 1999*, was a Friendly Society or foreign society within the meaning of the Friendly Societies Code.

It is understood that this reference to a foreign society is a reference only to those Societies that were registered under the Victoria Friendly Societies Code before the date of transfer.

It is submitted that the new Pharmacy Act should contain provisions that confirm that reference to a Friendly Society includes all eligible Friendly Societies and does not exclude either a "foreign society" within the meaning of the former Code, nor a new Friendly Society that may result from an amalgamation of two or more existing societies

⁹ 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

Such provisions would be consistent with the COAG Senior Officials Working Group's recommendation that new legislation should not restrict Friendly Societies from jurisdictions that they did not operate in at the time of the amendment.

It is recommended that the definition contained in the (Tasmania) *Pharmacists Registration Act 2001* should be the model as follows:

Section 62 (3) (a)

(i) if that body is lawfully permitted to call it self a Friendly Society;

- **Demutualisation**

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 a permitted entity able to own pharmacies unrestricted. Instead it should be considered to be a grandparented non-pharmacist corporation subject to the rules that apply to that group of permitted owners. However, if a technical “demutualisation” takes place 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 to be permitted.

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

3. Historical Companies;

AFSPA has no submission to make on the Rules that may be considered appropriate to apply to these permitted entities.

4. Pharmacist Owned Companies;

AFSPA supports the recommendation of the National Review 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 were to be provided for pharmacist owners, all the rules that may be considered appropriate for such a new permitted entity should not be considered to apply 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 Society¹⁰.

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

¹⁰ Pharmacy Review April 2000.

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,¹¹ 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.

5 Deceased Estates and Bankrupt Individuals and Businesses

AFSPA has no submission to make on the Rules that may be considered appropriate to apply to these permitted entities.

(b) Registration Requirements for Pharmacist Ownership

This submission supports the recommendations of the National Review and endorsed by the COAG Senior Officials Working Group.

(c) The Number of Pharmacies Which May be Owned

Presently in Australia all State Pharmacy Acts restrict the number of pharmacies allowed to be owned by a pharmacist owner. These restrictions vary from 3 in NSW and VIC to 4 in QLD and SA to 2 in TAS and WA.

There are no such restrictions in either of the Territories and no restrictions on the number of pharmacies able to be owned by a Friendly Society in VIC, NSW and QLD (however there are other significant location related restrictions for Friendly Societies in NSW and QLD). In SA National Pharmacies (Friendly Society Medical Association Limited) is restricted to the ownership of 31.

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 the existing restrictions.

¹¹ Hansard ACT Legislative Assembly week 08/2527

The Review also reported that these restrictions are easily able to be circumvented by the use of various lawful means and thus the true size of a pharmacist's holdings can be masked. 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 professional standards the retention of such restrictions could not be justified on professional grounds.

This issue was also considered in detail by the COAG Senior Officials Working Group and it also concluded that the restrictions are arbitrary, artificial and should be lifted.

This submission agrees with the recommendation that the restrictions on the number of pharmacies able to be owned by a proprietor should be removed. It also strongly agrees with the retention of the requirement for a registered pharmacist to be in attendance at all times the pharmacy is open for business.

(d) Pecuniary Interest Provisions

Presently the Act at Section 21 (1) prohibits generally persons other than pharmacists from having a direct or indirect proprietary or pecuniary interest in a pharmacy practice. Section 21 (2) and (3) prohibits pharmacists either solely or in partnership from owning or having a proprietary or pecuniary interest in more than 3 pharmacy practices.

The purposes of these provisions are first, to ensure the integrity of the "pharmacist only" general ownership provisions and second, to ensure that the practice of pharmacy can occur without undue or improper influence from third parties and third, to ensure the restriction on the number of pharmacies permitted to be owned is not breached.

The National Review recommended generally, that regulation of the commercial aspects of pharmacy practice be wound back or removed and in relation to the *Pharmacists Act 1974* recommended replacing the pecuniary interests provisions in Sections 21 and 22 with clear definitions of the meaning of "proprietary and pecuniary interests" and a provision making it an offence to apply improper or inappropriate interference on the professional conduct of a pharmacist. It also recommended making a pharmacist acting under such influence a ground for professional misconduct.

This submission is generally supportive of the recommendation. However, AFSPA is concerned that the proposal would only capture the prohibited undue influence behaviour but it would not capture the other current prohibited pecuniary interests especially that relating to the number of pharmacies in which a pecuniary interest is permitted.

Accordingly, it is submitted that if the number of pharmacies allowed to be owned by either a pharmacist or a Friendly Society is not to be restricted then implementation of the recommendation in full would be supported.

However, if as a result of this review it was decided that restrictions on the number of pharmacies able to be owned by a pharmacist was to be retained, then in those circumstances this submission would not support the proposed changes to the pecuniary interest rules.

(e) Registration of Pharmacy Premises

This submission does not support the recommendation that pharmacy premises should no longer be registered with the Board and instead supports the retention of the core provision requiring that pharmacy premises should continue to be subject to overview by the regulatory authority.

(f) Other Matters

- **Composition of the Pharmacy Board**

AFSPA strongly supports the principle that a regulatory body such as the Pharmacy Board should be an independent statutory body and that membership rights do not accrue to particular bodies.

In keeping with this principle nominations for appointment should be made in a manner that recognises that there are many diverse stakeholders in any industry including the community pharmacy industry and consultation on appointments should be broad based and not restricted to a narrow interest group.

6. Conclusion

Victoria may be the first jurisdiction to undertake the implementation of the recommendations from the National Review and the COAG Senior Officials Working Group of Pharmacy Legislation as required by each State/Territory legislature in accordance with the National Competition Principles.

If that is so then the outcome of the review of the *Pharmacists Act 1974* will set a benchmark for other jurisdictions.

For the future of Friendly Society Pharmacies and its continuing role in the community pharmacy industry it is most important that Victoria sets the standard and ensures that the new legislation confirms the legitimacy of Friendly Society Pharmacies as permitted owners of pharmacy, able to compete fairly without restriction in the community pharmacy industry.

**FRIENDLY SOCIETY PHARMACIES
SUMMARY BY NUMBER AND STATE
(as at 11 November 2002)**

| | Pharmacies |
|--|-------------------|
| New South Wales | |
| # Auburn & Lidcombe United Friendly Society Pharmacy Board Ltd | 0 |
| Combined Dispensaries Friendly Society Ltd (Sydney) | 6 |
| Friendly Societies Pharmacy Limited (Grafton) | 1 |
| # Lismore & District Pharmacy Ltd | 1 |
| Friendly Society Medical Association Limited (National Pharmacies) | 1 |
| Western Australia | |
| Victoria Park & Districts United Friendly Societies' Council Limited | 1 |
| Tasmania | |
| Hobart Friendly Society Dispensary Ltd | 2 |
| Launceston Friendly Society Pharmacy Limited | 1 |
| Queensland | |
| Friendly Care Chemists Friendly Society (Australia) Ltd (Brisbane) | 6 |
| Ayr Friendly Society Pharmacy Ltd | 1 |
| Bundaberg Associated Friendly Society Medical Institute Limited | 1 |
| The Dalby and District Friendly Society Dispensary Ltd | 1 |
| The United Friendly Society Association of Gympie & District Ltd. | 1 |
| The Ipswich & West Moreton United Friendly Society Dispensary Ltd | 2 |
| Mackay Assoc. Friendly Societies Pharmacy Limited | 2 |
| Maryborough/Hervey Bay Friendly Society Chemists Ltd | 2 |
| CQ Friendly Society Ltd (Rockhampton) | 3 |
| The Toowoomba Friendly Society Dispensary Ltd | 1 |
| The Townsville Associated Friendly Society Pharmacy Ltd | 2 |
| The Warwick Friendly Society Association Limited | 1 |
| South Australia | |
| Friendly Society Medical Association Limited (National Pharmacies) | 31 |
| The Mount Gambier UFS Dispensary Limited | 1 |
| Victoria | |
| Australian Unity Dispensaries Friendly Society Limited (Melbourne) | 14 |
| UFS Dispensaries Ltd (Ballarat) | 7 |
| Friendly Societies Dispensary Ltd (Bentleigh) | 0 |
| Bendigo United Friendly Societies Dispensaries Limited | 2 |
| Box Hill Pharmacist Advice Friendly Society Ltd | 1 |
| Friendly Pharmacy (Vic) Ltd (Coburg/Brunswick) | 4 |
| Cheltenham Friendly Society Dispensary Ltd | 2 |
| Community Pharmacy Friendly Society Ltd (Elsternwick) | 5 |
| Eaglehawk United Friendly Societies Dispensary Ltd | 1 |
| Community Care Chemist Friendly Society Ltd (Geelong) | 3 |
| Friendly Society Medical Association Limited (National Pharmacies) | 12 |
| North West Dispensaries Friendly Society Ltd (Fairfield/Sunshine) | 3 |
| Wonthaggi Miners Friendly Societies Dispensary Ltd | 1 |
| Yallourn Friendly Society Limited | 4 |
| TOTAL | 127 |

Non member