

Last year the Pharmacy Guild—the organisation that represents the country’s 5000 community pharmacists—had an excellent year in terms of protecting the business interests of its members. The Prime Minister himself intervened to stymie any moves by supermarkets to get into community pharmacy. The Health Minister issued a declaration restricting new pharmacies, even if they were owned by pharmacists, from setting up within or even close to supermarkets. For a while there it looked like the Guild was getting everything its own way. It had friends in high places and looked as though nothing was going to change very much. This year the Guild and the Government have to negotiate a new Pharmacy Agreement that sets levels of remuneration to pharmacists. Contrary to all expectations things aren’t going all the Guild’s way.

The last issue of *Consuming Interest* uncovered practices in pharmacy pricing that could lead to higher prices for consumers. To recap: ACA found some pharmacists appeared to be routinely charging something called a ‘further additional patient charge’ on some PBS drugs. On pursuing this, ACA also found that certain pharmacy pricing software operated with a default setting that added huge mark-ups leading, ACA believes, to higher prices for consumers. The price guide came from the Pharmacy Guild, the organisation that represents local pharmacists, and in fact one of the software companies is also part-owned by the Guild.

The story became public just as the Pharmacy Guild and the Commonwealth Government were sitting down to renegotiate the Pharmacy Agreement and it received substantial media coverage. The Pharmacy Guild could not understand ACA’s point. In reacting to the story, Stephen Greenwood, Executive Director of the Pharmacy Guild, suggested that the purpose of the price recommendations (for PBS medicines under the co-payment level) was to encourage its members to offer lower prices to consumers than they otherwise would. Mr Greenwood was quoted as saying, “The reason it is there is to moderate prices and stop pharmacists



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The pharmacy: why it can’t stay a closed shop

NICOLA BALLENDEN reports on moves over pharmacy pricing practices triggered by her article in the last edition of *Consuming Interest*. The campaign continues.

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from charging whatever they like—there is an agreement with the Commonwealth and most of our members follow the terms of the agreement. The pharmacists are given various prompts on the software that enables them to use their discretion about whether they charge the additional patient fee.”

By admitting that pharmacists have the power to “charge whatever they like”, Mr Greenwood has provided a clear enunciation of the problems associated with the lack of competition in the pharmacy sector. Retail pharmacy is protected by regulations that reduce competition—restricting pharmacy ownership to pharmacists, limiting the number that any one pharmacist can own and restricting the location of new pharmacies so they are not placed too close to their competitors. Where there is less competition pricing practices are more likely to be, well, dodgy and this is exactly what ACA found when taking a closer look at what was happening with pricing in pharmacies.

By way of illustration, if pharmacists were to follow the Guild’s pricing guidelines as outlined in the software when setting the price for Amoxicillin (the most commonly prescribed unsubsidised PBS medication), the ‘recommended price’ would include a margin of 165% above the wholesale cost of the drug (according to WiniFRED pricing software). This margin sits uneasily alongside the proposition from Mr Greenwood that recommended prices from industry bodies will actually result in lower prices to consumers.

It was for this very reason that the Trade Practices Act was amended back in 1995 to prevent professional associations publishing recommended fee schedules. The Hilmer Committee concluded that even genuine price recommendations issued by professional associations may have the effect of encouraging greater price uniformity between competitors. ACA believes that many pharmacy pricing practices are anti-competitive and warrant action by the ACCC.

In a context where there are already restrictions to competition, as is the case with pharmacy, the distribution of price lists runs a high risk of inflating prices

A WIN FOR CONSUMERS

ACA’s campaign received important vindication when the Pharmacy Guild amended its WiniFRED dispensing software to drop its default mark-up of 75% down to zero. Once ACA identified the problem the Guild acted quickly on this, taking the impetus out of the ACCC’s investigation. That’s a clear admission of substance, confirming the value of keeping a close eye on this industry. Benefits can be achieved for consumers.

Peter Kell

paid by consumers. The fact that the lists are built into the software used by many pharmacists to price products is another factor that makes a compelling case for Government investigation on behalf of consumers.

The ACCC must be careful not to send a signal to other professional associations that the distribution of price lists is acceptable. In situations where there are shortages of labour or pre-existing anti-competitive regulations the consequences of these recommended prices or fees could be deleterious for consumers. If all plumbers decided through their professional association that they would charge \$1000 to fix a toilet, or mechanics decided they had a floor price of \$600, we would all be in trouble.

If the Guild is concerned about pharmacists charging too much, as Mr Greenwood implies, rather than routinely adding on ‘further additional patient charges’ and distributing price lists through software, a more practical solution may be to address the factors that provide pharmacists with such a huge degree of market power when pricing certain medications. A good start may be to allow new pharmacies to locate in competition with existing pharmacies (including in supermarkets).

Making headway

The good news for consumers is that ACA’s campaigning has already produced improvements.

There seems to be much more media attention being paid to the Pharmacy Agreement than was the case in the past. Previously, negotiations have happened behind closed doors with neither side giving too much away. This scrutiny will make both the Government and

the Guild much more accountable for whatever ends up in the Agreement. The Minister’s office is also using the media in its negotiations with the Guild—claiming that the Government expects to save about \$460 million over four years by spending less on payments made to pharmacies to dispense medicines (*Rise in dispensing fee reasonable, says Abbott, Sydney Morning Herald, 12 May*). Predictably enough the Guild has written to all federal MPs warning that “pharmacy services in their electorates may be cut”. Traditionally, the presence of very visible pharmacists in every electorate has been a key source of the Guild’s political power and one it has exercised cleverly. The jury is still out on whether it will work as well this time as it has in the past.

The location rules

Perhaps one of the most interesting developments in the debate has been a Government-commissioned review of the location rules. One of the clauses in the existing Pharmacy Agreement requires the Health Department to review the location rules—including the determination about locating pharmacies within supermarkets—which expired on July 1. The Department commissioned the Allen Consulting Group to conduct the review and the Allen report, which was leaked to the media, made the following conclusions:

- The location rules were a political compromise and there was no particular ‘market failure’ to justify them.
- The location rules are a barrier to entry that raises the price of non-PBS items in relocated pharmacies and leads to unmet demand in certain locations.

- They protect some pharmacists from competitive forces resulting in increased profits for some pharmacists and possibly lower quality services.

Finally, the report had interesting things to say about the effect that a lack of competition has had on pharmacy prices and service: “Some pharmacists are protected from competition that they would otherwise have reasonably expected to face. Although difficult to be definitive because of a lack of pharmacy-specific information, this has had a number of consequences including:

- increased returns for some pharmacy owners — on average pharmacy owners have seen their real (i.e., inflation adjusted) returns double over the past ten years. The Location rules have aided this growth by reducing competition and maintaining higher PBS throughput because of the cap on pharmacy numbers. While such remuneration growth was an implicit goal of the Community Pharmacy Agreements, it is a transfer that has come, at least in part, at the cost of pharmacy customers.
- reduced quality of service ... ‘mystery shopping’ exercises in the United Kingdom and Australia demonstrate that blind faith in the delivery of quality by a community pharmacy model is misplaced.”

The consultants concluded that not only should the location rules be removed and variable pricing arrangements employed to influence location decisions, but any move to compensate pharmacists should be rejected. They quote the National Competition Council (NCC):

“The ‘adverse effects’ some people incur from reform are, in effect, simply a removal of the privileges they have previously enjoyed at the expense of other members of the community. This reduces the strength of any equity arguments for providing special adjustment assistance in those cases.”

(Coincidentally in 1999 when the NCC published the report from which the quote was sourced, Graeme Samuel — current head of the ACCC — was in charge.)

Despite the report’s conclusions, the Government has given no indication

that it is about to reconsider the rules on supermarket entry, even though a report released by Woolworths — itself a vitally interested party — suggested that allowing supermarkets to sell medicines could save taxpayers and consumers \$500 million a year or \$25–\$30 billion by 2042 (*Woolies bid to take on pharmacies, Sydney Morning Herald, 7 May*). But the Government signalled it was looking at the location rules. Rules around supermarkets might not change in a hurry but at least the problems with the existing location rules have been acknowledged.

Overall though, the Guild is having to fight a bit harder on these negotiations than its members might have anticipated.

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It looks possible that something might actually change. It would be rash to conclude, however, that reform is a fait accompli. As the negotiations on the Pharmacy Agreement continue, there is little doubt that the Pharmacy Guild will be doing what it does best — quietly, politely and repeatedly lobbying every backbencher and every member of Parliament and explaining exactly how damaging any reform would be to the pharmacy in their electorate — and to

their chances of re-election should they support any change.

Since starting this campaign ACA has been asked by many pharmacists why it campaigns so hard on the issue, and what it hopes to achieve. No, ACA is not being funded by any of the supermarket chains that want to get into the retail side of pharmacy. Neither does ACA have a particular beef against the pharmacy profession. And it certainly isn’t because ACA derives some sort of perverse pleasure from deciphering the arcane workings of the Pharmacy Agreement. It’s just that consumers are not getting a good deal out of current arrangements. ACA believes too many are paying too much for their medicines. And things need to change. That’s all.

ACCC weighs in

Since the campaign began, the Guild and its software company, PCA, have made changes to the software to set the defaults to \$0 dispensing fee and 0% mark-up. However, the ACCC, “on the basis of available information and the changes already made” has decided it is “unable to conclude that the alleged conduct of the Guild and/or PCA were likely to contravene the Act or raise issues that the Commission should pursue”.

As for the ‘further additional patient charge’ added to the cost of some PBS medicines, the Guild is required to inform its members that this is a ‘discretionary additional charge’ not an amount prescribed by statute, and pharmacists should make their own decisions about pricing. And in what seems to be a real cop-out, the ACCC considers that pharmacists’ failure to tell consumers that the charge is “not government initiated” (as they are required under the Pharmacy Agreement) is a public policy matter best dealt with by the Health Insurance Commission. Oh really?

From ACA’s perspective what the ACCC has done seems to be to provide the gentlest of reminders to one of Australia’s most sophisticated cartels and does little to further competition and lower prices for medicines in the pharmacy sector.

