

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

**IMPLEMENTATION OF COMMONWEALTH
PHARMACEUTICAL
RESTRUCTURING MEASURES**

**REPORT OF THE SENATE STANDING COMMITTEE
ON COMMUNITY AFFAIRS**

MAY 1992

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LIST OF ACRONYMS USED IN THE REPORT

AAT	Administrative Appeals Tribunal
DHH&CS	Department of Health, Housing and Community Services
EPA	Essential Pharmacy Allowance
HIC	Health Insurance Commission
JCPA	Joint Committee of Public Accounts
PBRT	Pharmaceutical Benefits Remuneration Tribunal
PBS	Pharmaceutical Benefits Scheme
PRA	Pharmacy Restructuring Authority

SUMMARY OF CHRONOLOGICAL TABLE LOCATED AT PARAGRAPH 2.3 OF THIS REPORT

1 July 1981

Issue of departmental procedures in respect of approval of pharmaceutical chemists – still operative at 8 August 1990.

24 July 1990

Joint announcement by Government and Pharmacy Guild of Australia of an Agreement for the restructuring of the retail pharmacy industry.

8 August 1990

The Minister for Aged, Family and Health Services announces immediate restrictions in the granting of new approvals to pharmacists to dispense pharmaceutical benefits.

9 August 1990

The Health Insurance Commission (HIC) begins applying new procedures in respect of certain applications for approval to dispense pharmaceutical benefits received from that date.

20 September 1990

Community Services and Health Legislation Amendment Bill 1990 introduced in the House of Representatives includes provisions for the establishment and functions of the Pharmacy Restructuring Authority (PRA).

10 October 1990

Social Welfare Legislation (Pharmaceutical Benefits) Amendment Bill 1990 introduced in the Senate includes a provision to enable the Pharmaceutical Benefits Remuneration Tribunal (PBRT) to give effect to the remuneration aspects of an Agreement between the Minister and the Pharmacy Guild of Australia.

18 October 1990

Above Bill passed.

30 October 1990

Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990 receives Royal Assent.

23 November 1990

The Commonwealth of Australia and the Pharmacy Guild of Australia sign an Agreement for the restructuring of the retail pharmacy industry. Agreement found to be null and void on a technicality.

6 December 1990

The Minister for Aged, Family and Health Services and the Pharmacy Guild sign an Agreement for the restructuring of the retail pharmacy industry.

18 December 1990

Community Services and Health Legislation Amendment Act 1990 receives Royal Assent.

20 December 1990

PBRT makes a determination giving effect to the Agreement between the Government and the Pharmacy Guild of Australia as from 1 January 1991.

9 January 1991

The Minister for Aged, Family and Health Services signs Determination No PB1 of 1991 required under section 99L of the *National Health Act* for the PRA to carry out its functions.

23 January 1991

Ministerial Determination No PB1 of 1991 is gazetted. The PRA is now fully empowered to begin operations.

8 February 1991

The PRA begins processing applications.

RECOMMENDATIONS

CHAPTER 2

1. That all legislation and subordinate legislation relating to the Pharmaceutical Benefits Scheme and the pharmaceutical restructuring measures be consolidated in one Act and associated Regulations.

Paragraph 2.16

2. That the Government discontinue the practice of relying on press releases to introduce changes in public administration.

Paragraph 2.30

3. That the Government take necessary steps to ensure the elimination of loopholes in the restructuring measures identified by the Committee.

Paragraph 2.64

4. That the development of any national program be supported by an organised strategy.

Paragraph 2.105

CHAPTER 3

5. That negotiations affecting all pharmacists include consultation with representatives of all existing pharmacists' organisations as relevant.

Paragraph 3.40

6. That legislation awareness courses be mandatory for relevant officers of the Australian Public Service whose duties require knowledge of that legislation.

Paragraph 3.69

7. That streamlined procedures be adopted to enable the implementation of restructuring measures to proceed without unnecessary duplication of resources.

Paragraph 3.86

8. That evaluation procedures be set in place immediately to assess the effects of the restructuring on the pharmacy retail industry and on the Australian community.

Paragraph 3.88

9. That the Department of Health, Housing and Community Services establish appropriate liaison units for any program implemented through several agencies.

Paragraph 3.94

CHAPTER 4

10. That the Government consider a possible form of appeal for pharmacists who were financially disadvantaged through being given wrong advice and who are not covered by any appeal rights under the existing legislation.

Paragraph 4.14

11. That the Senate agree that any case not resolved by the time the report is tabled be considered still referred to the Committee for reporting if necessary.

FOREWORD

This Report of the Senate Standing Committee on Community Affairs focuses on the restructuring measures aimed at government control over the number and location of pharmacies approved to dispense prescriptions covered by the Pharmaceutical Benefits Scheme (PBS). These measures were contained in Part Two of an Agreement between the Minister for Aged, Family and Health Services and the Pharmacy Guild of Australia signed on 6 December 1990.

The key features of the restructuring measures proposed by the Guild and accepted by the Government were:

- offer of a payment package for the voluntary closure or amalgamation of existing pharmacies meeting certain criteria;
- introduction of strict criteria for the issue of new approvals to dispense PBS drugs; and
- payment of an Essential Pharmacy Allowance (EPA) to pharmacists in remote and isolated areas who met certain criteria.

The Agreement put an end to the bitter dispute between the Government and the Guild which erupted in 1988-89 over remuneration for pharmacists dispensing PBS prescriptions. The dispute itself arose from the long standing conflict of interest between the two parties over the costs of running the Scheme.

Between 1948, when the Scheme was introduced, and 1984 the number of drugs in respect of which the Government covered the cost to the community increased steadily. In view of the parallel increase in costs, the Government exercised greater control and the number of such drugs has since declined. Despite this, the higher cost of the drugs still listed has kept the cost of the PBS on a rising curve. As far as pharmacists were concerned, calculation of remuneration should take into account the greater number of PBS prescriptions to handle in claiming reimbursement from the Government. Since the early 1960s, the Pharmacy Guild, acting as the pharmacists' advocate in negotiations with the Government, has frequently campaigned against any erosion of pharmacists' income. Similarly, the Government has constantly altered the framework of the Scheme in an attempt to contain costs.

The 1988-89 dispute was precipitated by the lack of cooperation by pharmacists, acting on the recommendation of the Guild, in a survey aimed at updating data on labour costs associated with PBS dispensing. The ensuing confrontation highlighted the need for a reorientation in the running of the PBS and gave a new lease of life to the rationalisation of the pharmacy industry which had first been raised in 1972.

The Agreement was first publicly announced by the Minister as soon as it had been reached, on 24 July 1990, and the introduction of partial restrictions on the granting of approvals to dispense PBS prescriptions was to take effect immediately after the

Minister issued a Media Release on this matter on 8 August 1990. At the time, the Health Insurance Commission (HIC) had carriage of approval procedures for pharmacists. By the time the Agreement was signed, the HIC had therefore been acting on the Minister's Media Releases for four months.

In addition, the legislative instruments constituting and empowering a specific body to administer the restructuring measures, the Pharmacy Restructuring Authority (PRA), were not fully in place until 23 January 1991. This time gap between the announcement that restructuring would take place and the completion of all the necessary legislative and administrative machinery left the HIC to administer a program within a rather ill-defined framework.

The initial implementation of restructuring measures was further weakened by the particular relationship which existed between the Commission and the then Department of Community Services and Health for the running of the PBS and associated procedures: in July 1989, the HIC was given responsibility for the operational aspects of the Scheme while the Department retained control over policy and budgeting. Division of responsibilities, on the ground that greater efficiency in the administration of the PBS would follow, in fact led to greater inefficiency. The HIC, which had not been a party to negotiations on restructuring, was not in a sound position to play a part in administering a program within entirely new parameters. Furthermore, it appears to have received little support or direction from the Department in the wake of the Minister's statements.

A more complex problem became apparent when the operations of the Pharmacy Restructuring Authority (PRA) began on 23 January 1991. Although constituted specifically:

to implement those aspects of the Agreement between the Government and the Guild concerning restructuring the retail pharmacy industry and to administer the Ministerial Guidelines established for that purpose¹

the PRA requires the on-going cooperation of the HIC to obtain all the necessary data concerning pharmacists applying for consideration under the restructuring measures.

On 11 March 1991, two questions on notice were put to the Minister for Community Services and Health regarding alleged irregularities in the implementation of the restructuring arrangements in respect of an approval to open a new pharmacy at Port Macquarie.² On 3 June 1991, the Senate Standing Committee on Community Affairs received a reference to inquire into the implementation of the Commonwealth Government pharmaceutical restructuring measures including:

1. *Transcript of Evidence*, (Pharmacy Restructuring Authority), 15 November 1991, p. 815.

2. Dr. R.L. Woods, M.P., Questions on Notice, No 552 (1) and (2), 11 March 1991.

- (a) the operation of the Pharmacy Restructuring Authority, including the objectives, guidelines and methods used when dealing with the matters placed before it;
- (b) the relationship between the Pharmacy Restructuring Authority and the Health Insurance Commission and the degree of cooperation between both organisations concerning the operation of the Pharmacy Restructuring Scheme: and
- (c) the operation of the Health Insurance Commission in approving applications for new pharmacies subsequent and prior to the setting up of the Pharmacy Restructuring Authority.

The Committee received thirty-five submissions and held public hearings in Canberra on 23 August, 6 September, 15 November and 27 November 1991 and in Sydney on 2 October 1991. Submissions received are listed at Appendix 1 and witnesses heard are listed at Appendix 2.

Evidence received and information gathered point to a wide range of problems which are considered to result primarily from the administrative practices of the then Department of Community Services and Health (now Health, Housing and Community Services), the Health Insurance Commission and the Pharmacy Restructuring Authority, the unique position of the Pharmacy Guild of Australia in restructuring, and problems of administration.

The problems outlined above aggravated inherent weaknesses in the planning of the restructuring as evidenced by the phraseology used in the Minister's statements and in the Agreement, by the unrealistic criteria used to achieve rationalisation, and by the delays in putting in place the necessary legislation.

The Government has already taken remedial action in respect of certain restructuring measures. The Committee has possible explanations for the shortcomings still outstanding in the planning and administration of the PBS restructuring measures and has made a number of recommendations to address these problems.