

CHAPTER 4

CONCLUSIONS AND RECOMMENDATIONS

Part 1

4.1 The Committee's Terms of Reference for the conduct of an inquiry into the implementation of pharmaceutical restructuring measures related specifically to three government agencies: the Health Insurance Commission (HIC), the Pharmacy Restructuring Authority (PRA), and the Department of Health, Housing and Community Services (DHH&CS) and their respective contribution to the program of restructure.

4.2 The first element which affected the course of the program was the use of media releases for the adoption of new procedures in public administration. The absence of an adequate legislative framework during the initial stage of the restructuring meant that confusion existed during the transition period about the obligations associated with the implementation of the program.

4.3 The Committee found that the implementation process itself was inadequate and that this placed the agencies in a difficult position even before operations began. This was particularly the case for the operations of the PRA, the main administrator of the restructuring.

4.4 In the opinion of the Committee, the dominant part played by the Pharmacy Guild of Australia on behalf of pharmacists in negotiations with the Government for a two-pronged agreement was fraught with potential difficulties in that the Guild, representing only 43 per cent of pharmacists, and only owner pharmacists at that, appeared to ignore the interests of a number of more specialised pharmacists' organisations such as the After Hours Pharmacy Association and the Isolated and Essential Pharmacy Association.

4.5 Another major problem which the Committee identified was the priority given to the 'remuneration agreement' over the 'restructuring agreement'. The emphasis placed on finalisation of the former meant that the latter was inadequately designed and, as examined in the second chapter, comprised some inappropriate provisions, incompletely and inadequately expressed. In this regard, the agencies were at a disadvantage from the start, due to factors quite unrelated to their performance. The Committee considers that the faulty nature of the restructuring framework may have influenced the manner in which the agencies dealt with the program.

4.6 The Committee has noted that, after the enactment of relevant legislation, there were several instances of disregard and ignorance of the legislative basis of their operations by the HIC and the PRA.

4.7 The interrelationship between the three agencies involved did not simplify the task of attributing responsibility. This interweaving of several administrative strands has had a significant impact on the course of the restructuring.

4.8 The time lag between the July 1990 announcement on the restructuring and the finalisation of all the legislation necessary for the full implementation of the program prolonged the transition period and accentuated the effects of the tenuous foundations on which operations were based at that time. The compounded effects of these two elements were a backlog of applications awaiting the establishment of the PRA and a general state of uncertainty among the pharmacists affected which further complicated the administration of the program.

4.9 Besides weaknesses in the framework of the restructuring, the Inquiry revealed a number of inadequacies in the agencies' performance of their functions which further accentuated the consequences of a poorly designed program.

4.10 The most noticeable aspect of the agencies' performance which has impacted on the course of the restructuring revealed by the inquiry is poor communication within and between agencies and the Department. While the Committee acknowledges that the involvement of several agencies has had a deleterious effect on communications – each considering one of the other responsible for communication with either pharmacists or the Minister – there is ample evidence to show that there were gross deficiencies in areas not related to this factor.

- The HIC was not properly briefed on the new procedures it was to apply in the granting of certain approvals and had a minimum of information to disseminate on that aspect of the restructuring which it handled during the transition period;
- Pharmacists were not advised that new rules were operative from 9 August 1990, remained ignorant of the requirements they had to meet and were subjected to unnecessary difficulties and embarrassments;
- HIC State Offices were inadequately informed about new procedures to be adopted, and so provided conflicting advice to pharmacists and were not certain of their new responsibilities;
- The PRA was not told and did not inquire about the conditions applicable to the payment of an Essential Pharmacy Allowance so leading to incorrect decisions;
- As neither the HIC nor the PRA was prepared to take the initiative and discuss the loopholes which soon appeared in the restructuring arrangements, a number of unsatisfactory developments occurred within the restructuring to further confuse pharmacists.

4.11 The Committee considers that the informal manner in which the HIC had traditionally approached the question of approvals had created a casual attitude both at agency and pharmacy levels. Neither the HIC nor the pharmacists found it easy to make a relatively sudden transition to more formal and demanding procedures.

4.12 The Committee found that the attitude prevalent at the HIC is impacting on the operations of the PRA. Since all the data required by the latter is provided or checked by the former, the persisting informal approach of the HIC has undermined the soundness of some decision-making. For example, the relative position of pharmacy 'A' which applies for an approval, to pharmacy 'B' which has just received a closure package is only available through postcode identification. The Committee considers that this procedure is quite inadequate in relation to the aims of the restructuring.

Part 2

4.13 Since the beginning of the inquiry, the Government has adopted a number of measures which aim at overcoming some of the difficulties identified by the Committee.

Appeal mechanism

4.14 The Committee's attention was drawn to the absence of appeal mechanisms to the Administrative Appeals Tribunal (AAT) for pharmacists whose application had not been recommended, that is, had been rejected, by the PRA. Subsection 105AB(7) of the Act provided for appeals to the AAT in respect of decisions made by the Secretary of the Department and was not amended to reflect new procedures in decision-making. This drafting oversight has now been remedied by the necessary amendment to the Act, and all pharmacists whose appeal could not proceed for lack of legislative provisions have now been notified of their rights. However, the Committee noted that some pharmacists who have been aggrieved by the inadequate decision-making of the HIC or the PRA have no appeal rights.

The Committee RECOMMENDS:

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.

Essential Pharmacy Allowance (EPA)

4.15 The Committee found that the criteria for EPA eligibility were relatively vague and unreliable: the number of prescriptions could be affected by a change in a medical practitioner's prescribing habits or a sudden change in local population; the number of hours of opening could be reduced so as to preclude eligibility for EPA, but ensure eligibility for the more lucrative closure payment. These criteria have now been removed from the Ministerial Guidelines and ceased to be applicable on 1 January 1992. Whilst the Committee considers this is a step in the right direction to enhance the credibility of the restructuring program, it remains nevertheless concerned at the developments which occurred during the first year of operations of the PRA, where a number of pharmacists were refused EPA but applied for and received a more costly closure package.

4.16 The provisions relating to the review of these eligibility criteria have now become redundant. Consequently, there is no need for pharmacists in receipt of EPA to apply annually for the allowance and this provision has also been removed from the Guidelines.

4.17 The Inquiry revealed that payments of EPA were intended to have taken effect on 1 January 1991. This was not the arrangement arrived at by the PRA. The matter has now been settled with all payments begun prior to 30 June 1991 adjusted retrospectively to 1 January 1991 and all payments approved after 30 June 1991 taking effect from 1 January 1991.

4.18 Another problem relating to the payment of EPA raised during the Inquiry was the rate of payment of the allowance. The Committee was told that the rate adopted by the PRA did not meet the intended purpose of ensuring that pharmacists in isolated areas were not disadvantaged by the new fee structure. The Government has now issued a new Ministerial Determination No. PB10 of 1991 which brings the rate of payment in line with the intended aim. The new rate came into effect on 1 January 1992.

Unmet public need

4.19 The Committee noted the difficulties which arose from the inability or unwillingness of the agency concerned to define 'unmet public need' and the consequent failure to take this important criterion into consideration when making a recommendation in respect of an approval. Ministerial Determination No. PB4 of 1991 amended by PB10 of 1991, has been further amended by the insertion of a new provision ensuring that demonstration of an unmet public need by the pharmacist is the only criterion to apply for the granting of an approval where there is no approved pharmacist within a 10 kilometre radius. The demonstration of an 'unmet public need' remains, nevertheless, an ill-defined concept in processing procedures.

4.20 The relative ease with which a pharmacist could qualify for a closure payment has been of concern to the Committee which noted, that in a number of instances, this had left some communities without access to pharmaceutical benefits, a development which was counter to one of the aims of the restructuring. The Government has amended Ministerial Determination No. PB4 as amended by PB10 of 1991 to remove the link between the EPA and closure eligibility and ensure that where there is no approved pharmacist within a radius of 10 kilometres, no closure package payment will be made. In other words, payment of an EPA will also be automatic where there is no pharmacy within a 10 kilometre radius. The Committee notes that this should considerably simplify procedures for granting of EPA, providing that there is reliable data against which to match the only requirement.

Part 3

The Committee RECOMMENDS:

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 2.65

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

Paragraph 2.104

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

Paragraph 3.39

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

Paragraph 3.67

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

Paragraph 3.84

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 3.87

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

Paragraph 3.93

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.

A. Olive Zakharov

Senator A. Olive Zakharov
Chairperson

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