



**The
PHARMACY
GUILD of
AUSTRALIA**

**SUBMISSION by
THE PHARMACY GUILD OF AUSTRALIA
to the
SENATE ECONOMICS COMMITTEE**

INQUIRY INTO THE PROVISIONS OF THE TRADE PRACTICES LEGISLATION
AMENDMENT BILL (NO 1) 2007 AND TRADE PRACTICES AMENDMENT
(PREDATORY PRICING BILL) 2007

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The Pharmacy Guild Of Australia

The Pharmacy Guild of Australia is a national employers' organisation registered under the *Workplace Relations Act 1996*, which functions as a single legal entity rather than a federation. It was first established in 1928 and currently has Branches in every State and Territory. The Guild's members are the pharmacist proprietors of some 4,500 community pharmacies, which are small retail businesses operating throughout Australia. Almost 90% of all pharmacist proprietors are Guild members.

Community pharmacy makes a significant contribution to the Australian economy with an annual turnover of \$8 billion and \$200 million in tax revenue, employing some 15,000 salaried pharmacists and 25,000 pharmacy assistants. Through the Pharmacy Assistant Training Scheme, the Pharmacy Guild provides a significant career path for young Australians, particularly young Australian women.

The Guild's mission is to service the needs of proprietors of independent community pharmacies. The Guild aims to maintain community pharmacies as the most appropriate primary providers of health care to the community through optimum therapeutic use of medicines, medicine management and related services. A range of services are provided to members including:

- (a) to negotiate an ongoing Agreement between the Government and the Guild to facilitate suitable conditions for approved pharmacies to dispense under the PBS, including an appropriate level of remuneration;
- (b) to maintain close liaison and negotiation with governments, manufacturers, wholesalers and other organisations involved in the health care delivery system;
- (c) to implement strategies to enhance the professional role of pharmacists and to assist community pharmacists practising in rural and regional areas of Australia to ensure that the current network of community pharmacies in Australia is maintained; and
- (d) to provide economic and management information to community pharmacists to assist them in making their pharmacies more efficient.

Background

The Pharmacy Guild of Australia is a member of the Fair Trading Coalition (FTC) which is an informal grouping of small business organisations committed to the strengthening of the *Trade Practices Act 1974*.

The Fair Trading Coalition is providing a comprehensive and detailed submission to the Senate Economics Committee Inquiry into the *Provisions of the Trade Practices Legislation Amendment Bill (No. 1) 2007 and Trade Practices Amendment (Predatory Pricing Bill) 2007* and the Guild, as a member of the FTC, fully supports the contents of that submission.

However, the Guild felt that it would also like to submit a few additional points for consideration by the Committee to follow on from our submission to the earlier Senate Economics References Committee Inquiry into the *Effectiveness of the Trade Practices Act 1974 in Protecting Small Business*.

General Comments

The Guild continues to support, as it did in its earlier submission, further amendments to the Trade Practices Act which seek to strengthen and clarify the operation of Section 51AC and supports all of the recommendations made in the FTC submission in this regard.

The Guild also continues to support need for structural amendment to Section 46, particularly to address uncertainty in identifying:

- (a) when a business has a substantial degree of power in a market; and
- (b) the scope of anti-competitive behaviour which falls within the ambit of Section 46.

In this context, the Guild certainly supports the inclusion of specific reference to predatory pricing.

Predatory Pricing

Predatory behaviour by large businesses is a matter of significant concern to the members of The Pharmacy Guild of Australia, as the owners of small businesses. The Guild sees as essential the introduction of specific measures into the Act to strengthen Section 46 in relation to predatory pricing behaviour.

We therefore welcome the inclusion in the Government's Bill to do that and, although we believe the predatory pricing amendment does not go far enough in strengthening Section 46, the Guild acknowledges that the introduction of statutory recognition provides some assistance from a small business perspective.

With regard to the specific wording used in the amendment, the Guild has some concern about the term ‘relevant cost’ and how it may be determined. The proposed new Section 46(4A) provides that a court may have regard to certain conduct of a corporation defined by reference to ‘a price that was less than the relevant cost to a corporation’ of supply. However, the meaning of ‘relevant cost’ is unclear.

As the Bill does not include a declaratory provision as to the meaning of ‘relevant cost’, the meaning of the concept will therefore be determined by the court. Whilst this may introduce some flexibility to assess what cost is relevant in particular circumstances, it also introduces uncertainty.

The Guild feels that a more precise measure of cost would be preferable to the broader measure outlined in the amendment. A more precise measure would be to insert the term ‘avoidable cost’ as outlined below.

Proposed Subsection 46(4A)

(Incorporating the recommended amendments by The Pharmacy Guild of Australia)

Without limiting the matters to which the Court may have regard for the purpose of determining whether a corporation has contravened Subsection (1), the Court may have regard to:

- (a) any conduct of the corporation that consisted of supplying goods or services for a sustained period at a price that was less than avoidable cost to the corporation of supplying such goods or services; and
- (b) the reasons for that conduct.

Insert After Subsection 46(4A)

“For the purposes of Subsection 46(4A), a corporation is taken to have priced goods or services below avoidable cost if the revenues it obtains, or could reasonably expect to obtain, from the supply of those goods or services is less than the costs it could have saved, or could reasonably have expected to save, had it not supplied those goods or services.”

The Guild believes that these proposed changes and additions would produce greater certainty as to the meaning of the wording in the amendment.

Conclusion

The Pharmacy Guild is pleased that the Senate Economics Committee in undertaking this current Inquiry into the provisions of the Trade Practices Legislation Amendment Bill (No 1) 2007 and the Trade Practices Amendment (Predatory Pricing Bill) 2007 and looks forward to the outcome of the Inquiry.