



The Pharmacy
Guild of Australia

Health Professions Regulations Act (2005)

Review of Section 174(4) Sunset Provisions

11 March 2008

Victoria Branch

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The Pharmacy Guild of Australia
Supporting Community Pharmacy



11 March 2008

The Hon. Daniel Andrews MP
Minister for Health
GPO Box 4057
MELBOURNE VIC 3001
FACSIMILE: 9096 8355

Attention: Mr Dan Harvey

Dear Minister

**HEALTH PROFESSIONS REGISTRATION ACT 2005 (“THE ACT”)
REVIEW OF SECTION 174(4) – “SUNSET PROVISIONS”**

The Guild makes this submission in response to your letter of 24 January 2008.

At the outset we wish to reinforce the position of the Pharmacy Guild that pharmacies should be owned by pharmacists. In today’s commercial environment, the rationale for the taxation benefits allowed to friendly society pharmacies no longer exist.

The Pharmaceutical Benefits Scheme was introduced to ensure that all members of the community have access to the lowest cost medication. This is available through all pharmacies.

The additional tax benefits that apply to the corporately owned friendly societies do not apply to pharmacist owned pharmacies.

A LEGISLATIVE BACKGROUND

- 1 The Pharmacy Practice Act 2004 (“PPA”) came into force on 16 November 2004.
- 2 Section 25 of the PPA contained restrictions on ownership of pharmacy businesses.
- 3 When the Bill was first introduced into parliament in about May 2004, it allowed friendly societies, provided they complied with the criteria set out in section 25(1)(c) of the PPA, to own or have a proprietary interest in, an unlimited number of pharmacies.
- 4 In contrast, section 25(1)(a) and (b) imposed ownership restrictions respectively in respect to:
 - registered pharmacists, and
 - companies, all of whose directors were registered pharmacists, and in which all the shares and the beneficial and legal interest in those shares, were held by registered pharmacists.

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In each case, these parties were restricted to ownership of or a proprietary interest in, not more than 5 separate pharmacy businesses.

Later in 2004, the Bill was amended by the introduction of, inter alia, section 147, which imposed a “cap” on growth of pharmacy ownership for friendly societies. This cap on growth was to last for a period of 4 years, which terminates on 16 November 2008. It is commonly called a “sunset provision”.

In simplified terms, section 147 allowed:

- friendly societies which owned less than 6 pharmacies to own a maximum of 6, and
- friendly societies which owned more than 6 pharmacies, to increase the number of pharmacies owned by no more than 30% over the next 4 years.

5 The Health Professions Registration Act 2005, replicated, on these issues, the terms of the PPA.

6 In the absence of legislative intervention, section 174 of the Act (which was in the same terms as section 147 of the PPA) will cease to have any operation, after 16 November next.

B REVIEW OF SUNSET PROVISIONS

1 The then Minister for Health, the Honourable Bronwyn Pike, gave a commitment to review the effects of the restriction on ownership for friendly societies, before the sunset period expired on 16 November 2008.

2 The Pharmacy Guild of Australia is an organization of employers, registered under the Workplace Relations Act. It was registered under the predecessor of that legislation, in 1928. The Guild represents the interests of pharmacists throughout Australia. It has a Branch in every State and Territory. The Victorian Branch membership is 928, representing approximately 80% of pharmacy proprietors in this State.

3 The Guild would like to think that it will have the opportunity of making further submission, when the position of friendly societies (and for that matter, other interested parties), is known. The Guild appreciates the request of the Government to place submissions on the DHS website. To that end the Guild has no objection to this submission being made available to others.

C FACTUAL POSITION

1 As at about November 2004, there were some 1,160 pharmacies operating in Victoria. Of that number, only 64 were owned and operated by genuine friendly societies, that is, friendly societies that could be said to conform to the criteria set out in section 25(1)(c) of the PPA.

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- 2 The “capping” arrangements set out in section 147 of the PPA if given maximum operation, would have seen the growth in friendly society ownership increasing to 99 over the relevant 4 year period. In fact, the number of pharmacies owned by friendly societies has scarcely moved. The Guild’s inquiries suggest that the number is 55.
- 3 It should be mentioned that two friendly societies, which owned pharmacies in 2004, subsequently sold all their pharmacies. Australian Unity owned some 13 pharmacies and has disposed of them all. Yallourn Friendly Society Pharmacies Ltd owned 4 pharmacies and has disposed of them all.

The major friendly society operating in Victoria in 2004 was National Pharmacies, which at the time of the introduction of the PPA owned 19 pharmacies, and this has grown to 24.

- 4 From these figures it can be seen that, whilst friendly societies had the opportunity to increase the number of pharmacies owned and operated by them after November 2004, none of them appear to have taken that opportunity. In fact, the reverse has occurred – see attachment “Friendly Society Pharmacies in Victoria”.
- 5 Friendly societies are companies incorporated under the Corporations Act. The same is the case for company pharmacies, which comply with the strict requirements of section 101(b) of the Act. In that case, it is hard to see why different ownership requirements should apply. In other words, if a pharmacy company may own only 5 pharmacies, why shouldn’t the same restrictions apply to a friendly society. It would seem illogical and commercially discriminatory if pharmacy companies are subject to an ownership restriction of 5, whereas friendly societies would be completely unrestricted if the sunset provisions expire. The Guild supports limitation on pharmacy ownership, and in particular supported the imposition of a limit of 5 on registered pharmacists and company pharmacies. Those requirements are in conformity with the concept of community pharmacy which is widely accepted throughout Victoria and also throughout Australia.
- 6 All the factual evidence leads to the conclusion that apart from any other factor, friendly societies themselves have not sought to avail themselves of the opportunity to increase ownership since November 2004 – in fact rather the opposite has occurred. The introduction of the sunset provision specifically afforded friendly societies this opportunity over 4 years to increase their numbers, and that has not occurred.

D WHAT SHOULD BE DONE?

- 1 As previously stated, this submission by the Guild should be regarded as a preliminary submission. The Guild assumes that all parties who make submissions, will be afforded an opportunity to make further submissions in the light of what might be put forward by the interested groups. It is only if that process is pursued, and there is the opportunity of discussion with your department that the review process itself could be productive.

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- 2 On a preliminary basis, the Guild believes the best procedure to follow, is generally as follows:
- (i) there should be no extension of the “sunset provision”.
 - (ii) after 16 November 2008:
 - if a friendly society then owns less than 5 pharmacies, it should in the future be restricted to that number. This supports the position of the Guild that pharmacies should be owned by pharmacists so we do not support the future expansion of friendly society pharmacies.
 - if a friendly society owned 6 or more pharmacies, it would be restricted in the future to that number. There should be no right of further increase based on any particular percentage.
- 3 Put simply, the Guild supports the ownership limitations in the case of registered pharmacists and company pharmacies, and considers that the same type of concept should apply to friendly societies – and in the case of friendly societies owning more than 5 pharmacies, the status quo is maintained, so that no further increase would be allowed.

E CONCLUSION

The Guild has endeavoured to keep this submission brief and looks forward to the opportunity of discussion with the Minister’s staff on these points, and as previously stated would expect to be afforded the opportunity of making a further submission when further information generally is to hand.

Yours faithfully

Dipak Sanghvi
PRESIDENT

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Friendly Society Pharmacies in Victoria

Friendly Society	2002	2004	2008
Australian Unity Dispensaries Friendly Society Limited (Melbourne) DEMUTUAL	14	13	SOLD
Friendly Society Medical Association Limited (National Pharmacies)	12	19	24
UFS Dispensaries Ltd (Ballarat)	7	8	11
Community Pharmacy Friendly Society Ltd (Elsternwick)	5	5	5
Friendly Society Pharmacy (Vic) Ltd (Coburg/Brunswick)	4	3	3
Yallourn Friendly Society Ltd	4	4	SOLD
Community Care Chemist Friendly Society Ltd (Geelong UFS Dispensaries Ltd)	3	3	3
North West Dispensaries Friendly Society Ltd (Fairfield/Sunshine)	3	3	1
Bendigo United Friendly Societies Dispensaries Ltd	2	2	4
Cheltenham Friendly Society Dispensary Ltd	2	2	1
Box Hill Pharmacist Advice Friendly Society	1	1	1
Eaglehawk United Friendly Societies Dispensary Ltd	1	1	1
Wonthaggi Miners Friendly Societies Dispensary Ltd	1	1	1
Total	59	64	55

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