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SUBMISSION

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AMA submission to National Competition Policy Analysis

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Introduction

The AMA welcomes the Productivity Commission's study of national competition policy. Australia has one of the most efficient healthcare systems in the world, however as the Productivity Commission points out there are improvements to be made.[1] The AMA's submission will focus on reforms that could improve access to medications while reducing costs to consumers and governments. The AMA recommends the areas the study explores are community pharmacy ownership and location rules, discounting of Pharmaceutical Benefits Scheme (PBS) medicines, and the community pharmacy agreement.

From the outset, the AMA would highlight the many reports and inquiries that have called for Australia's archaic and anticompetitive pharmacy regulations to be removed or reformed. A selection of reports dating back almost 25 years calling for the removal of pharmacy ownership and location rules is listed below:

- 2023 Productivity Commission 5-year Productivity Inquiry: Advancing Prosperity Inquiry report – volume 1[2]
- 2022 Productivity Commission 5-year Productivity Review 'A competitive, dynamic and sustainable future' Interim Report[3]
- 2018 Queensland Productivity Commission 'Cost-benefit analysis of establishing a pharmacy council' Report[4]
- 2017 Commonwealth Government Review of Pharmacy Remuneration and Regulation Final Report (King Review)[5]
- 2017 Productivity Commission 'Shifting the Dial' 5 Year Productivity Review Inquiry Report[6]
- 2017 Grattan Institute submission 'The effect of red tape on pharmacy rules'[7]

[1] Productivity Commission (2024), Advances in measuring healthcare productivity
[2] Productivity Commission (2023), 5-year Productivity Inquiry: Advancing Prosperity Inquiry report – volume 1.
[3] Productivity Commission (2022), 5-year Productivity Review 'A competitive, dynamic and sustainable future' Interim Report.
[4] Queensland Productivity Commission (2018), 'Cost-benefit analysis of establishing a pharmacy council' Report.
[5] S King, W.J. Scott and J Watson (2017), Review of Pharmacy Remuneration and Regulation Final Report.
[6] Productivity Commission (2017), 'Shifting the Dial' 5 Year Productivity Review Inquiry Report.
[7] Grattan Institute (2017), The effect of red tape on pharmacy rules - Grattan Institute submission to the Senate Select Committee on Red Tape.

- 2015 Productivity Commission 'Efficiency in Health' Research Paper[8]
- 2015 Commonwealth Government Competition Policy Review Final Report (Harper Review)[9]
- 2014 National Commission of Audit Report[10]
- 2005 Productivity Commission Review of National Competition Policy Reforms[11]
- 2000 National Competition Policy Review of Pharmacy (Wilkinson Review)[12]
- 1999 Productivity Commission Submission to the National Review of Pharmacy.[13]

These reviews have clearly stated the restrictions on pharmacy ownership and location are anticompetitive and undermine patients' access to medicines. The AMA again calls for the recommendations of these reports to be implemented. We also call for increased competition by allowing pharmacies to discount PBS discounted medicines by as much as they want, not the soon-to-be scrapped limit of $1.

Pharmacy location and ownership rules

The Productivity Commission has repeatedly highlighted the inefficiencies of Australia's community pharmacy and ownership rules, including this call for them to be scrapped from 2023:

> "Regulations on location and ownership of Australia's pharmacies have reduced competition in local markets — there are now fewer pharmacies per head of population than when the regulations were introduced — and have facilitated the establishment of local monopolies — four pharmacy operators control 73% of the market share (through franchising and the like). Australian governments should follow the lead of the United Kingdom and the United States where pharmacy colocation — for example, pharmacies located in supermarkets — is allowed."[14]

This is by our counting the sixth time the Productivity Commission has called for the ownership and location rules to be removed, yet they remain.

The 1999 Productivity Commission Submission to the National Review of Pharmacy noted that "the main impact of the ownership restrictions on the price/cost of pharmacy services is likely to be to inflate the cost base".[15]

The 2005 Productivity Commission Review of National Competition Policy Reforms argues that Australia's pharmacy ownership and location rules are much stricter than pharmacy regulations in other countries and in comparison to the rest of the health sector. The example of Europe shows us that the increased competition from relaxing ownership and location rules of pharmacies benefits consumers.[16]

The 2014 National Commission of Audit Report supported relaxing ownership and location rules:

> "Allowing a wide range of new competitors to enter the market would provide greater access and choice for consumers and, over time, place greater downward pressure on pharmaceutical prices. This could

[8] Productivity Commission (2015), 'Efficiency in Health' Research Paper.
[9] Ian Harper, Peter Anderson, Su McCluskey and Michael O'Bryan (2015), Competition Policy Review Final Report.
[10] Australian National Audit Office (2014), Administration of the Fifth Community Pharmacy Agreement. ANAO Report No.25 2014–15 Performance Audit.
[11] Productivity Commission (2005), Review of National Competition Policy Reforms.
[12] Warwick Williamson (2000), National Competition Policy Review of Pharmacy.
[13] Productivity Commission (1999) Productivity Commission Submission to the National Review of Pharmacy.
[14] Productivity Commission (2023), 5-year Productivity Inquiry: Advancing Prosperity Inquiry report – volume 1, page 33.
[15] Productivity Commission (1999) Productivity Commission Submission to the National Review of Pharmacy.
[16] Productivity Commission (2005), Review of National Competition Policy Reforms.

> involve non-pharmacists owning pharmacies and relaxing location rules allowing pharmacies to collocate in other retail outlets such as supermarkets."[17]

The 2015 Productivity Commission 'Efficiency in Health' Research Paper noted that beyond ownership and location rules continuing at the expense of the consumer:

> "Restrictions on retail pharmacy location and ownership are clearly more about protecting the vested interests of incumbent pharmacists than about promoting consumers' interests and maximising benefits for society as a whole. These rules limit competition in the sector and can make it harder for some consumers to access pharmacy services. There is much to gain from removing these regulations while targeting safety and access objectives more directly."[18]

The Harper Review, also in 2015, reinforced that these restrictions are not about safety and efficacy, rather they exist to limit competition:

> "The Panel considers that current restrictions on ownership and location of pharmacies are not needed to ensure the quality of advice and care provided to patients. Such restrictions limit the ability of consumers to choose where to obtain pharmacy products and services, and the ability of providers to meet consumers' preferences. The Panel considers that the pharmacy ownership and location rules should be removed in the long-term interests of consumers. They should be replaced with regulations to ensure access to medicines and quality of advice regarding their use that do not unduly restrict competition."[19]

One of the significant disadvantages of the ownership rules is that they prevent pharmacies from being owned by health services seeking to serve their communities. In particular, the AMA is supportive of recommendation 3-2 of the King Review, which states: "The Australian Government should remove any restrictions on the ability of an Aboriginal Health Service to own and operate a pharmacy located at that Aboriginal Health Service."[20] The AMA supports this recommendation and has advocated for this explored as part negotiations for the upcoming 8th Community Pharmacy Agreement (CPA).

The 2022 Productivity Commission Interim Report again stated:

> "current regulations that have the stated aim of reducing market concentration are likely to instead reduce competition and establish local monopolies, with little countervailing benefit. These impediments to competition are purely due to the regulatory framework and could be changed by governments immediately."[21]

Additionally, in 2011 there was a notice in the Australian Senate for a review of the 5CPA to be conducted by the Community Affairs Reference Committee on:

- Pharmacy remuneration and value for taxpayer funds
- the effective provision of professional and patient services
- the effectiveness of governance arrangements
- the Community Service Obligation

[17] Australian National Audit Office (2014), Administration of the Fifth Community Pharmacy Agreement.
[18] Productivity Commission (2015), 'Efficiency in Health' Research Paper.
[19] Ian Harper, Peter Anderson, Su McCluskey and Michael O'Bryan (2015), Competition Policy Review Final Report.
[20] Productivity Commission (2017), 'Shifting the Dial' 5 Year Productivity Review Inquiry Report.
[21] Productivity Commission (2022), 5-year Productivity Review 'A competitive, dynamic and sustainable future' Interim Report.

- the Pharmacy Location Rules
- the CPA processes involving a single entity, the Pharmacy Guild of Australia
  - being granted the status as the sole organisation representing registered pharmacists
  - negotiating the CPA with the Commonwealth
  - overseeing the operation of the CPA, through the two-party Agreement Consultative Committee (ACC)
  - approving allocation and expenditure of funds under the CPA, through the two-party ACC
  - negotiating pharmacy location and ownership rules
- potential conflicts of interest between the provision of ethical and professional pharmacy services and the commercial interests of pharmacy owners
- other matters related to the role played by pharmacists in the health system.

While the review did not proceed, the proposed matters to be reviewed illustrate the scale of concern with the CPA at the time.

Current pharmacy ownership and location rules are anticompetitive. They mean Australians pay more for medicines than they need to, and they do not guarantee supply or quality of services for Australian patients.

The AMA is also open to further exploring innovative models of medicines dispensing. In the Future of Dispensing Discussion Paper, the AMA explored online dispensing, as well as through supermarkets and with vending machines. While online pharmacies are now part of our healthcare system, Australia can and should explore the options of dispensing at supermarkets and with vending machines.

Supermarket pharmacies could operate with a supermarket owning a chain of pharmacies and employing pharmacists to run them, or through a strategic alliance, where a pharmacy chain has smaller versions of its stores inside a supermarket. Supermarket pharmacies in the UK have been demonstrated to lower prices of medicines while providing higher-quality advice to patients receiving their medicine than is provided in community pharmacies.[22]

This was supported by the King Review which concluded:

> "The current restriction on the accessibility by the public to a community pharmacy from within a supermarket should be discontinued, provided that any pharmacy located within a supermarket is required to operate in accord with all relevant practice requirements for an Approved Pharmacy."[23]

Discounting PBS medicines

While there is overwhelming support for the abolition of pharmacy ownership and location restrictions, there has been less discussion of other means through which competition could be increased in the pharmacy sector.

[22] Department of Health (2014), Post-Implementation Review: Amendments to the National Health Act 1953 to Extend the Pharmacy Location Rules to 30 June 2015.
[23] S King, W.J. Scott and J Watson (2017), Review of Pharmacy Remuneration and Regulation Final Report.

A simple change to increase competition and drive down medicine costs for patients would be to allow pharmacies to apply greater discounts to PBS medicines. Currently, pharmacies may only discount the PBS co-payment by up to $1, an amount that has never been indexed since the measure was introduced in 2016 and that will soon be removed as per the 2024-25 Budget announcement.[24] This measure generates no savings for the Government and is the opposite of the direction policy in the community pharmacy sector should be headed. The AMA recommends that community pharmacies are permitted to discount medicines as much as they would like.

We know that parts of the pharmacy sector have demonstrated the capacity to provide significant discounts for patients and there is no apparent policy reason why this should not be further encouraged. It happens overseas and in New Zealand there is evidence that patients can face no copayment at all to access medicine because of discounting arrangements.

The government made positive contributions to lowering the costs of medicines by lowering the PBS copayment from $42.50 to $30 in 2022 and then introducing 60 day dispensing in 2023. However, hundreds of millions of PBS scripts are dispensed each year and we would like to see discounts applied to a far greater number of them. The AMA acknowledges the further announcements in the 2024-25 budget that will freeze the co-payment for one year at $7.70 and $31.60. While positive, the Government can do more for consumers by increasing competition within the sector.

The Community Pharmacy Agreement

The Community Pharmacy Agreement (CPA) is an agreement between the Australian Government and the Pharmacy Guild of Australia that aims to ensure equitable access to PBS. The initial agreement was implemented in the late 1980s to address a conflict between the government and the pharmaceutical profession and the associated market failure. Other controls were subsequently introduced to ensure access to PBS medicines via "*commercially viable, competitive, responsive and geographically distributed pharmacies*".[25]

These agreements control pharmacy remuneration for dispensing medicines on the PBS. Australian Government expenditure on pharmaceutical benefits (and related services) accounts for approximately 15 per cent of its total health expenditure.[26]

In addition to the series of independent reviews which have concluded the CPAs are anti-competitive and put the interests of pharmacy owners before patients, several government reports have demonstrated that the CPAs lack transparency and accountability. For example, the evaluation of the fifth CPA found that the governance and administrative arrangements were not aligned to public sector principles of contestability, transparency, and independence.[27]

These findings have been largely ignored by governments and recommendations have not been addressed in subsequent CPAs, including the current agreement (7CPA) which is a five-year agreement between 2020–2025. While similar agreements with other health professionals have existed in the past (such as the Pathology Funding Agreement 1996–2016, Diagnostic Imaging

[24] Australian Government Department of Health and Aged Care, Cheaper Medicines Budget 2024-25.
[25] Department of Health and Aged Care (2005), Fourth Community Pharmacy Agreement between the Commonwealth of Australia and the Pharmacy Guild of Australia.
[26] Australian Institute of Health and Welfare (2016), *25 Years of health expenditure in Australia 1989–90—2013–14*.
[27] Siggins Miller (2015), *Review of the Governance Structures established under the Fifth Community Pharmacy Agreement*.

Agreement 1998–2008, and Memorandum of Understanding with organisations representing general practitioners 1999–2002)[28] they have not been sustained.

A key example of this was in the analysis of the 7CPA. The Australian Government's Regulation Impact Statement (RIS) process seeks to assist government officials to move towards 'best practice' regulatory design and implementation by requiring the completion of a detailed cost-benefit analysis. The RIS for the 7CPA was not finalised by the Department of Health and Aged Care and assessed by the Office of Best Practice Regulation (now called the Office of Impact Analysis (OIA)) before it was signed in June 2020.[29] According to the OIA, a draft RIS was provided, however it was not finalised or assessed. The OIA stated: "*this draft RIS did not provide a level of detailed analysis commensurate with the complexity of the proposal and the potential impacts of the decision*".[30] An updated RIS was subsequently prepared by the Department of Health and Aged Care, however it was not formally assessed by the OIA, and it was therefore deemed as "insufficient". The OIA noted that the Department of Health and Aged Care would need to conduct a post-implementation review as there was no assessed RIS[31] which was subsequently conducted in 2022.[32]

In addition, the CPA is developed in secret between the Australian Government and the Pharmacy Guild of Australia, without the meaningful involvement of other community pharmacy groups, consumers, doctor's groups, independent experts, regulators, pharmaceutical manufacturers, wholesalers, or state and territory governments. While the government and the Department of Health and Aged Care have sought greater input from other stakeholders during the current negotiations of the 8 CPA, the negotiations remain fundamentally the same.

Lack of data collection under the CPA

The OIA assessment of the 2022 post-implementation review performed by the Department of Health was rated as "*inadequate under the Australian Government's Impact Analysis framework*" because the review was unable to demonstrate how the 7CPA delivers a net benefit to the community and the impacts it has on health outcomes, accessibility of medicines, and the operation of the market.[33] Specifically, the review noted *"a lack of successful evaluation and assessment mechanisms in relation to the operation of programs and related activities funded through the agreement. In particular, the scarcity and quality of available data for robust and meaningful analysis of health outcomes is a continuing concern*".[34] The review noted that this is a consistent issue across the previous CPAs that has not been addressed.[35] For example, the ANAO report on the 5CPA reported "*Shortcomings in Health's performance reporting and fifth CPA evaluation framework mean that the department is not well positioned to assess whether the Commonwealth is receiving value for money from the agreement overall, or performance against its six principles and objectives*" and "*there is no ready basis for the Parliament or other stakeholders to determine the actual cost of pharmacy remuneration delivered under the fifth CPA*".[36]

The ANAO determined that the CPA failed to deliver on government goals as only a small portion of the money allocated to patient-focused programs was spent on direct patient care, while dispensing

[28] Mackey P, (2022). *Delivering equity in the Australian health system through funding agreements*. Deakin University. Note: not publicly available.
[29] Australian Government Department of the Prime Minister and Cabinet, Office for Impact Analysis (2020). Insufficient Regulatory Impact Analysis - Seventh Community Pharmacy Agreement - the Department of Health.
[30] *Ibid.*
[31] *Ibid.*
[32] Australian Government Department of Health and Aged Care. *Post-Implementation Review of the Seventh Community Pharmacy Agreement*.
[33] Australian Government Department of the Prime Minister and Cabinet, Office for Impact Analysis (2023). *7CPA post implementation review*.
[34] Australian Government Department of Health and Aged Care. *Post-Implementation Review of the Seventh Community Pharmacy Agreement*.
[35] *Ibid.*
[36] Australian National Audit Office (2015). *Administration of the Fifth Community Pharmacy Agreement*.

fee remuneration received by pharmacists was inflated due to the use of an indexation rate higher than applied by the Department of Finance, and funding paid to the Pharmacy Guild of Australia to administer programs came from budgets allocated for payment of pharmacists for professional services. Despite these concerning findings, which are in direct conflict with one of the objectives of the 5CPA to ensure proper expenditure of funds, and accountability findings (and transparency in the administration and delivery of programs in accordance with Commonwealth guidelines)[37] the draft RIS provided by the Department of Health and Aged Care for the 7CPA provided little information on how this would be improved, although new governance arrangements were implemented.

This lack of accurate data is a critical issue that needs to be addressed. Analysis of each CPA reveals that the lack of an evidence-base to support the design of each new agreement has resulted in a situation where incremental adjustments are made to minimise uncertainty, as opposed to larger reforms which would deliver a better outcome. This could be one of the reasons why the recommendations of successive reviews have not been implemented — because there is little evidence to support the design of alternative solutions. This may also be why the 7CPA does not incorporate many of the contemporary elements of healthcare delivery in Australia, such as collaborative patient-focused care, technological advancements, and value-based funding. It is for this reason that many consider the CPA to be an industry policy cloaked as health policy.

The challenge however is that the power yielded by the Pharmacy Guild of Australia appears to be one of the key barriers, with reports that the Pharmacy Guild has discouraged members to participate in government efforts to obtain data to support efforts in understanding the costs associated with dispensing PBS medicines.[38]

General Comment

All Australians can benefit from greater innovation in the community pharmacy sector with respect to the supply of medicines. The Productivity Commission has repeatedly highlighted this for successive governments at both state/territory and Commonwealth levels, only for the recommendations to be ignored. Governments cannot allow another Productivity Commission study to reach the same conclusions only for them to be ignored and should instead work through National Cabinet processes to deliver national reforms that encourage greater competition and improve access and affordability of medicines for patients.

Contact

[37] *Ibid*.
[38] Australian Journal of Pharmacy (2017). *Pharmacy attached over King Review financial survey*.