



**The Pharmacy
Guild of Australia**

Pharmacy Guild submission in response to

**The Productivity Commission- Draft Report:
The Economic Structure and Performance of the
Australian Retail Industry**

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National Secretariat

Level 2, 15 National Circuit, Barton, ACT 2600 Australia
PO Box 7036, Canberra Business Centre, ACT 2610 Australia
Telephone: + 61 2 6270 1888 · Facsimile: + 61 2 6270 1800
Email: guild.nat@guild.org.au · Internet: www.guild.org.au



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Introduction

The Pharmacy Guild of Australia (the Guild) is pleased to respond to the Productivity Commission's draft *Report into the Economic Structure and Performance of the Australian Retail Industry* (the draft report).

The Guild welcomes the coverage in the draft report of issues pertaining to the regulatory environment that impact on the Australian retail industry, in particular:

- Planning and zoning,
- Retail tenancy, and
- Employment legislation.

The Guild has long had an interest in the development of commercial law in Australia as it affects small business such as community pharmacy. It is these areas the Guild provides comment on in this supplementary paper to our initial submission in May 2011.

Comments

Planning, Zoning and Retail Tenancy

The Guild has long been concerned about the dichotomy of bargaining power between larger businesses and small businesses such as pharmacies, particularly as it relates to the negotiation of retail leases with the large corporations operating shopping centres (particularly) in the growth corridors of Australia's major cities.

The Guild welcomes the Commission's conclusions at pages 248-249 of the draft report.

It is the experience of our members that zoning and planning laws increasingly encourage the development of retail space in a single area (and increasingly under a single roof with a single owner) and discouraging development of retail spaces in other areas. This has led to a degree of ownership concentration, with 63% of all retail space owned by institutional or company investors, 31% by private investors/owner occupiers, and the remainder owned by other companies.¹

The Guild contends that in some circumstances, when small businesses, such as our members, are attempting to supply or purchase goods and services from larger corporations, the party possessing substantial market power will go beyond a 'hard bargain' or 'tough dealing' but rather in a manner that is objectively unfair. The Guild has therefore long held the view that to balance the relationship there should be two things:

- Removal of the unconscionable conduct provisions of the CCA and framing the Australian Consumer Law 'in a manner similar to section 12 of the Independent Contractors Act'. This section permits reviews of contracts that are generally unfair or harsh and uses the term 'unfair' without any statutory extension.², and
- zoning laws that permit adequate numbers of shops.

¹ Retail Lease Report p21;24.

² Retail Lease Report, Page 24

The Guild notes that the Commission said at page 240 that this current enquiry will not revisit the issues addressed in the Commission's 2008 report *The Market for Retail Tenancy Leases in Australia*.

However, the Guild is of the opinion that the current draft report should contain a precise recommendation that the level of zoning should be reviewed and where appropriate relaxed, particularly in light of the draft report findings on page 218.

"Reforming these planning and zoning restrictions would potentially increase retail competition in Australia, particularly in those areas where there are inadequate supplies of retail floor space and/or where there are planning requirements and practices which unjustifiably restrict competition."

That said, the Guild contends that even though changes to zoning legislation may assist in increasing the supply of retail space and thus price pressures on tenants, it is:

- highly unlikely that these sorts of changes to the law will occur anytime soon; and that even if they did,
- it would take some years for the supply of shop space to develop such as to create the competition necessary to drive down prices.

It is the Guild's view that a more immediate remedy is required to address the pressures on retailing set out in the Draft Report.

As the Senate Economic Legislation Committee's Report *Trade Practices Amendment (Australian Consumer Law) Bill 2009 [Provisions]* recorded:

4.43 The Pharmacy Guild recommended removing the unconscionable conduct provisions of the TPA and framing the Australian Consumer Law 'in a manner similar to section 12 of the Independent Contractors Act'. This section permits reviews of contracts that are generally unfair or harsh and uses the term 'unfair' without any statutory extension.³

The Guild notes recommendation 8.1 of the Draft Report which suggests in part that the outstanding recommendations from the retail tenancy report be re-examined with a view to expanding the work plan of the National Tenancy Working Group.

The Guild would recommend that the National Tenancy Working Group work plan be expanded to consider whether the Australian Consumer Law should be expanded so that it is similar to section 12 of the Independent Contractors Act 2006, as recommended by the Guild to the Senate Economics Committee.

³ Page 24

Employment Law

The Guild agrees with the draft report recommendation 10.2 (page 326).

The Guild has been monitoring the impact of the Fair Work Act 2009 on our members, in particular in the areas of national wage decisions, workplace flexibility and the impact of the Pharmacy Industry Award 2010 during its transitional period.

Community pharmacy as a sector has continued to rely on award terms and conditions as the baseline for workplace arrangements and pharmacy employers have not converted to agreement making (in any form) in numbers of any significance.

Growth in wages

The Guild concurs with the Commission's comments in the draft report in relation to the growth of average weekly earnings in the broader retail sector (pages 286-287).

The growth of wages in the pharmacy sector is having a substantial impact on the operating costs of our members. As the Commission noted in the original issues paper (page 5) associated with the draft report, community pharmacy businesses are unique in the commercial retail sector because so much of their income is derived from Government sources. Pharmacies are at the front line in the provision of medicines to the Australian community under the Pharmaceutical Benefits Scheme (PBS). Between 70 to 80 per cent of pharmacy income is derived from the PBS under which the price of most medicines is fixed by Government policy. This means the normal business response to an increase in cost – to increase prices – is not an option for community pharmacies.

Impact of the modern award on employer costs

Penalty rates

Non-standard working time patterns are part of the community pharmacy sector, and enable community pharmacy to provide essential primary health care to the Australian community. These non-standard working time patterns have come about especially so in the provision of extended or continuous service to the public, particularly in health and emergency services provision.

In the community pharmacy sector, extended and seven day a week trading patterns are required to meet the expectations and health care demands of customers and patients. Data from the Guild's census shows that nationally, on average:

- On Saturdays 96 per cent of community pharmacy are open, with 61 per cent open for a full day;
- On Sundays 42 per cent of community pharmacy are open all day;
- On Public Holidays 35 per cent of community pharmacy are open all day;
- Late trading on a Thursday night occurs in 46 per cent of community pharmacy; and
- Late trading on a Friday night occurs in 42 per cent of community pharmacy.

The Guild shares the concerns of other retailers with regard to the impact of the penalty rates contained within the modern awards for retail, including the Pharmacy Industry Award 2010 (PIA).

Minimum shift provisions

The Guild notes the observations by the Commission in the draft report with regard to the minimum shift provisions of the retail awards and the impact on workplace flexibility and employment (pages 314-316).

Since the commencement of the PIA on 1 January 2010, the primary cause for concern for employers, school aged student employees and the parents of these employees in the community pharmacy industry has been the inability of school aged employees to work for any longer than 2 hours due to a range of factors, including transport to and from the place of work and study commitments that restrict the hours a student has to earn what is regarded as valuable income and work experience to that student and the family. Many members of the Guild have been directly approached by their school aged employees and/or the parents of these employees, seeking reassurance that due to the modern award provision, the student employee will not be disadvantaged by the loss of their regular 2 or 1 ½ hour shifts.

The capacity for a shorter than three hour shift for part time and casual employees was an existing industry standard in a number of relevant awards that are now superseded by the PIA.

The Guild strongly supports the need within the PIA and other retail awards for the facilitative capacity for employers and employees to agree to a minimum shift that is less than 3 hours.

Conclusion

The Guild appreciates the opportunity afforded by the Productivity Commission to comment on the draft *Report into the Economic Structure and Performance of the Australian Retail Industry*.

To the last chapter "Other regulatory burdens" and the final draft recommendation 12.1 (page 358), the draft report has comprehensively examined many of the issues that are of concern to the Guild, its members and the community pharmacy proprietors of the 5,000 community pharmacy businesses providing the most accessible network of primary healthcare providers to the Australian community.