

Review of National Competition Policy

Chemist Warehouse Group submission
September 2024

Executive summary**Pharmacy Location Rules****Pharmacy Ownership****PBS medicine pricing and discounts****Who we are and what we do****From the Consultation Paper:**

The NCP reform agenda will consider the evidence for improved community outcomes from actions that...

Objective 3: Reduce costs and improve access to necessary health services and products.

- Improve and streamline government regulation and intervention to better manage the price and accessibility of services and goods.

Executive summary

The key components of regulation that underpin the community pharmacy model in Australia are the Location Rules, which are Federal, and the ownership rules which are State and Territory based.

The Chemist Warehouse Group believes the current over-regulation of community pharmacy is adversely affecting price and accessibility of medicines and other pharmacy products for Australian healthcare consumers. Many consumers in Australia are paying more for their medications than they should be because of pharmacy regulation, specifically the pharmacy Location Rules.

The ability of Chemist Warehouse to deliver the benefits of price competition is directly constrained by rules that prevent the expansion of our popular business model into locations where the market would support the establishment of new outlets.

As such, it is a matter that falls squarely within the scope of the National Competition Policy reform agenda.

Chemist Warehouse strives to provide the Australian public with the best retail pharmacy experience possible at the very best price. The current Rules act contrary to the wants, needs and desires of Australian healthcare consumers. The existing regulatory framework acts to protect the economic interests of a select few to the detriment of the vast majority. The Location Rules and ownership laws actively smother competition. We look forward to the day when it is the needs of the majority that our regulations serve.

- Chemist Warehouse Group calls for the abolition or substantial reform of the pharmacy Location Rules so as to allow more competition in the sector.

- Chemist Warehouse Group also calls on the States and Territories to abandon the anachronistic pharmacy ownership laws which hinder innovation, expansion and competition.
- Chemist Warehouse Group also believes pharmacies should be allowed to discount the Pharmaceutical Benefits Scheme patient co-payment by any amount they see fit, in the interests of competition and increased value for consumers.

Location Rules

The principal focus of Chemist Warehouse in reform of the community pharmacy sector is Location Rules, and the anti-competitive effect they are now having on the modern pharmacy market, to the detriment of consumers. The key focus should be practical commonsense reform that puts patients first by removing some of the blatant constraints on competition.

The pharmacy Location Rules ('the Rules') were introduced in the early 1990s to address a malapportionment in the distribution of community pharmacies around Australia, and as an industry rationalisation measure. While there were good public policy reasons for the application of the Rules at that time, over the course of the past three decades the policy purpose of the Rules has been supplanted by anti-competitive and protectionist effects.

The Rules have calcified in a way that distorts market forces and has a negative impact on price and accessibility of Pharmaceutical Benefits Scheme medicines for Australian consumers. In 2024, the case for reform or abolition of the pharmacy Location Rules is stronger than ever.

Make no mistake – many consumers in Australia are paying more for their medications than they should be because of the Location Rules.

There should be no restrictions placed on pharmacists wishing to risk their own capital in establishing a business in a location where they believe they can effectively service a community. Existing pharmacies should not be protected from competition under the guise of ensuring universal service to all Australians.

Chemist Warehouse maintains that the Location Rules should be abolished or substantially reformed, and there should be no restriction on where community pharmacies can be located. The Chemist Warehouse Group has held this view and expressed it publicly for more than 25 years.

Chemist Warehouse's experience demonstrates that the benefits of the introduction of competition into the market for pharmaceutical products in a particular area or community are not confined to pharmacy customers. Chemist Warehouse has observed a competitive response by all retailers of medical and related products, once it enters a market and introduces its price discounting strategy. For example, when Chemist Warehouse entered the Tasmanian market some years ago, the price for the popular hay fever medication Telfast was more than \$75. Chemist Warehouse retailed the same product at \$29. Within months the prices charged by other providers had fallen to similar levels.

The ability of Chemist Warehouse to deliver the benefits of price competition is directly constrained by the current rules which prevent the expansion of our business model into locations where the market would support the establishment of new outlets.

About the Location Rules

PBS medicines can only be dispensed at registered pharmacies. The Location Rules prescribe specific and general requirements relating to the establishment of a new pharmacy, or the relocation of an existing pharmacy under section 90 of the National Health Act 1953. The Rules are quite complex - the Handbook for pharmacy applicants runs to 56 pages. The application of the Rules depends on the distance to the nearest existing pharmacy and the number of supermarkets. They typically prohibit a new pharmacy from opening within a certain distance of an existing pharmacy, usually either 1.5 or 10 km depending on the location and medical practitioners located within a particular area. Rejected applications can be the subject of a Ministerial Discretion, if sought and received from the Minister for Health.

The Location Rules penalise those consumers who shop or reside in locations that would in the absence of the Rules attract competitive retail pharmacy offers. If there are locations where the commercial conditions are such that patients would not be able to access medicines without intervention, a limited and targeted incentive to address points of proven market failure is preferable to the present approach.

Chemist Warehouse notes that its position is consistent with the recommendations of the Federal Government's National Commission of Audit Report 2014, as well as the findings of the Harper Competition Policy Review of March 2015, the King Review of September 2017, and numerous Productivity Commission reports. We can also cite a report we commissioned from Deloitte Access Economics in 2016, with findings and recommendations which have well and truly stood the test of time.

In the absence of Location Rules, mechanisms can be considered to ensure accessibility in rural and remote locations, such as through differential registration fees for pharmacies based on location.

If Location Rules are not abolished, they should at the very least be reformed to remove the worst of the red tape and artificial constraints on legitimate commercial transactions.

A prime example is the shift to a five-year waiting period for short re-locations which has had an ongoing impact on legitimate business plans. This means, for example, that where an existing approved pharmacy is purchased by a pharmacist or group of pharmacists, but the existing premises are too small or otherwise inappropriate for the intended discount business model, that pharmacy owner is prohibited from moving to a new, more appropriate premises until five years have passed.

Such artificial constraints serve no good public purpose and in fact reduce the accessibility and affordability of PBS medicines for many consumers.

Harper Competition Policy Review 2015:

Recommendation 14 — Pharmacy 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...

... A range of alternative mechanisms exist to secure access to medicines for all Australians that are less restrictive of competition among pharmacy services providers. In particular, tendering for the provision of pharmacy services in underserved locations and/or funding through a community service obligation should be considered. The rules targeted at pharmacies in urban areas should continue to be eased at the same time that alternative mechanisms are established to address specific issues concerning access to pharmacies in rural locations.

The King Review of Pharmacy Remuneration and Regulation 2017

Concentration of pharmacy ownership

The Pharmacy Location Rules have not established robust competition between independent pharmacies in some locations. Rather, in some locations, either individual pharmacists or small groups of pharmacists have been able to monopolise some or all pharmacies. This is inconsistent with the objective of Australia's competition laws.

Deloitte Access Economics 2016 Report: Reforming ownership and location rules for community pharmacy in Australia (Commissioned by Chemist Warehouse)

There are many options for reforming location and ownership rules. Both partial reform and full reform of location and ownership rules could be pursued to yield benefits to competition and decrease the administrative burden. Further, in the event existing measures and incentives already in place are insufficient to meet the original policy objectives, there is a range of more targeted ways to accomplish these goals. In terms of accessibility, when location rules are repealed, this can take the form of new ways to remunerate pharmacies that further encourage operating in rural areas, including greater direct funding assistance and tendering for the supply of PBS medicines in regional areas. In terms of maintaining safe and ethical practice standards, options include an enforced community pharmacy code of practice, making it an offence to interfere with a pharmacist's professional judgment, or negative licensing. When evaluating the list of options against four criteria - enhanced competition, minimised administrative burden, equitable access, and service standards - the full removal of both sets of regulations provides the most beneficial outcome, even if their repeal is not immediately accompanied by additional non-regulatory measures.

Pharmacy Ownership Laws

In Australia, only a pharmacist can own a pharmacy. This is a flagrantly unnecessary and anti-competitive constraint.

In addition to the national regulation of pharmacy location, the States and Territories prescribe their own variations of regulations in relation to pharmacy ownership. Pharmacy ownership laws typically operate to limit the ownership, control, and operation of community pharmacies to pharmacists or corporations controlled by pharmacists, with limited exceptions in particular States and Territories.

The requirements that pharmacies must be owned by pharmacists, and that a pharmacist can own only a certain number of pharmacies in any one State, are archaic. Further, these constraints can create financial instability that is more likely to threaten than secure the ability of the industry to continue to provide equitable access to medicine.

For individual pharmacists, ownership restrictions limit the market for those wishing to dispose of their business, suppressing valuations and limiting credit worthiness. For larger pharmacy enterprises, such as Chemist Warehouse, the ownership structure required by the current regulatory regime inhibits innovation, expansion and modernisation. The constraint on pharmacists from owning more than, for example, five pharmacies in a particular State, and Location Rules that prevent pharmacist entrepreneurs from opening wherever and whenever they believe they can profitably do so, has had the effect of denying consumers the benefits of competition.

We maintain the ethical and clinical responsibilities imposed on a pharmacist as a health professional are sufficient to ensure appropriate care and accountability for patients, without requiring that the business where that care is delivered also be owned by the pharmacist.

Deloitte Access Economics 2016 Report: Reforming ownership and location rules for community pharmacy in Australia (Commissioned by Chemist Warehouse)

Local monopolies

Restrictions imposed by the ownership and location rules have led to the formation of local monopolies, which restrict competition by creating barriers to entry in certain localities and an increase in prices. This problem is most evident in regional towns where there are a small number of pharmacies, often owned by the one pharmacist or same group of pharmacists. There are numerous examples of regional towns throughout Australia where pharmacists have used ownership rules to control ownership in a town, with a single or small group of pharmacists owning all the pharmacies and dictating price and service delivery. In these cases, consumers have said they would travel to other nearby towns to access cheaper services. Small ownership groups can also control access to services when they have no competition, e.g. reduced opening times.

PBS pricing and discounts

The gradual removal of the current allowable \$1 discount of the PBS co-payment – announced in the Federal Budget in May 2024 - is a backward and anti-competitive step.

It will mean patients who currently shop at pharmacies that pass on the maximum permissible discount of the PBS co-payment will face a Government-imposed price rise over time. The ability of pharmacies to voluntarily charge their patients cheaper prices for PBS subsidised medicines will be removed.

It should be noted that this change only affects the \$1 discount of the PBS co-payment. Medicines priced below the PBS co-payment for general patients (\$31.60) will continue to be discounted by Chemist Warehouse. We will always give our customers the best possible allowable price.

Chemist Warehouse has discounted the PBS co-payment – at no cost to the Government - for all of our customers since the optional \$1 discount was introduced in 2016 (legislated 2015). The current discounted co-payment is \$6.70 for pensioners.

In the years since its introduction, Chemist Warehouse estimates our pharmacies have provided in the order of \$125 million in value to our customers through offering the optional dollar discount.

With the gradual reduction in the allowable discount on the PBS co-payment, our pensioner and concession cardholder customers who currently enjoy the benefit of that particular discount will face a price increase for PBS medicines at our pharmacies. This is an anti-competitive backward step in the current cost of living crisis.

Chemist Warehouse Group believes pharmacies should be allowed to discount the Pharmaceutical Benefits Scheme patient co-payment by any amount they see fit, in the interests of competition and increased value for consumers.

Chemist Warehouse Group – who we are, and what we do

Chemist Warehouse Group is a pharmacy services, supply and marketing company, and also a franchisor serving over 550 community pharmacies across Australia, all of which are privately owned by pharmacists. Our franchisees employ over 17,000 staff, including over 3,000 pharmacists and around 500 pharmacy interns.

We are committed to serving Australian consumers with the best quality healthcare at the most affordable prices. Consumers have shown strong support for the convenience and value our pharmacies provide. With around 9 per cent of the total number of Australian pharmacies, we have upward of 25 per cent of the market. Annual network sales are now approaching \$10 billion. Chemist Warehouse franchise pharmacies provide a service that people value and which they are independently choosing to engage with as consumers and patients. Chemist Warehouse and its pharmacists are rightly proud of the manner in which we deliver professional services which make a significant contribution to public health.

Chemist Warehouse pharmacies are not members of the Pharmacy Guild of Australia. Our views on pharmacy regulation and competition do not align with those of the Pharmacy Guild.

Conclusion

The pharmacy market is highly regulated. These regulations have the effect of artificially preventing business models within the pharmacy industry from evolving in the same way as has occurred in other similar, but unregulated, retail markets.

There are two business models that have grown in popularity as consumers' preferences change. The first is for large, high volume, lower margin pharmacies offering deep price discounts. Chemist Warehouse is the market leader of this approach, and has been rated the number one pharmacy group for customer satisfaction (Roy Morgan Survey Data). The second model is for high service pharmacies offering detailed personal health advice and testing services, in addition to retail distribution of medicines and health products. In addition, online health and pharmacy websites are rapidly growing in popularity. The development of the pharmacy industry into these models is consistent with the experience in many retail industries and suggests that consumer preferences, in the consumption of pharmaceutical goods and services, are no different from those for other retail goods and services.

Chemist Warehouse acknowledges that ensuring access to medicines at affordable prices, particularly for disadvantaged consumers, is an important matter of public policy. However, the present policy settings not only fail to serve this end, but are preventing competitive market conduct that would be more effective in delivering more medicines at lower prices to more consumers. These restraints on ordinary trade should be removed in favour of a competitive approach to pharmacy in line with consumer demand.

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