

The Pharmacy Guild of Australia

Submission to the Productivity Commission

Performance Benchmarking of Australian Regulation

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**The
PHARMACY
GUILD of
AUSTRALIA**

Contact

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1. Introduction

- 1.1 The Pharmacy Guild of Australia was established in 1928 and registered under the then Conciliation and Arbitration Act (now Workplace Relations Act) as a national employers' organisation. The Guild's mission is to service the needs of its members, who are the pharmacist proprietors of some 4,500 independent community pharmacies, which are small retail businesses spread throughout Australia. Almost 90% of all pharmacist proprietors are Guild members.
- 1.2 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 30,000 pharmacy assistants. Through the Pharmacy Assistant Training Scheme, the Pharmacy Guild provides a significant career path for young Australians, particularly young Australian women.
- 1.3 The Guild aims to maintain community pharmacies as the most appropriate providers of pharmacy and related health care services to the community through optimum therapeutic use of medicines, medicine management and related services.

2. Background

- 2.1 Pharmacists who are the proprietors of community pharmacies play a dual role being both health professionals as well as small business retailers. This dual role means that they have to cope with a dual set of regulations.
- 2.2 The Pharmacy Guild and the community pharmacists it represents are not against regulations. In fact, we are strong supporters of the continuation of regulations which maintain the current system of pharmacist-owned community pharmacies which is based on a health-care rather than a retail model. Such a system provides the Australian community with an assurance that it is served by qualified and competent professional pharmacist practitioners who will protect their health interests.
- 2.3 However, unnecessary or excessive regulations are a burden on all small businesses, including pharmacies and Governments are aware of the need to reduce them. For instance, one of the main areas of regulatory burden is having to report the same or similar data to different integers of government.
- 2.4 This was an issue that was considered by the *Report on the Taskforce on Reducing Regulatory Burdens on Business and* ¹Recommendation 6.3 of the Taskforce was to introduce something like the Netherlands Business Reporting Standards Project, which would allow businesses to provide one set of information once, for the general use of government.
- 2.5 The Australian Government has agreed to this in principle and has established the Standard Business Reporting project within the Treasury which aims to reduce regulatory burden on business by:
- a reduction in the volume of reporting from businesses to government;
 - improved consistency in business to government reporting; and
 - a reduction in the number of channels for business to government reporting.
- 2.6 **The Pharmacy Guild of Australia is of the view that the aims of Standard Business Reporting Project, if properly executed, will be an effective way of reducing the regulatory burden on small business.**
- 2.7 The Guild recognises that there has been an increasing acknowledgement from government over the last few years that there is a cost to business in having to comply with regulations. The International Standard Cost Model (as adapted in Australia in the Australian Business Cost Calculator) requires decision makers to identify how much it would cost someone to comply with a regulation.

¹ *Rethinking Regulation - Report of the Taskforce on Reducing Regulatory Burdens on Business* (January 2006)

- 2.8 The method of determining whether regulations should be made in a particular areas has been set out in documents such as *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies* (COAG 1995, as subsequently amended) and *A Guide to Regulation* (Productivity Commission 1998), all of which require the proponents of a regulation to determine the possible effect of a rule on the population to be subject to the regulation.
- 2.9 An important element of the regulatory process prescribed in these documents is the need for the continued requirement and monitoring of properly prepared regulatory impact statements prior to the introduction of any new regulation. It is the experience of the Guild that some agencies still significantly underestimate the effect that a new regulation might have on business. **The Guild believes that regulatory impact statements prepared by agencies should be more rigorous in assessing the impact of a new regulation on business, and that this process should be monitored to ensure this occurs.**
- 2.10 As part of the movement to improve the quality of regulation, COAG decided on 10 February 2006 to:
-agree, in principle, to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden across all levels of government, subject to governments considering the recommendations of the current Productivity Commission study on regulatory benchmarking and performance indicators.²
- 2.11 **For the reasons expressed in this submission, the Guild agrees that performance benchmarking of regulations has a role in improving regulation quality, but only:**
- **if the tool is used for the purpose for which it is best suited – namely, to identify the manner of delivering a public policy outcome which is the least costly to business in terms of money and/or hours needed to comply with regulation; and**
 - **the benchmarking exercise doesn't require business, and small business in particular, to generate more data uniquely for the purposes of the exercise.**

² Decision 5.3 in Attachment B of COAG Communiqué, 10 February 2006

3. The benchmarking concept, as used in the context of the COAG Decision

3.1 The concept of benchmarking is well known and indeed, the Pharmacy Guild has been involved in previous government benchmarking activities.

3.2 In 1996, the Guild formed part of a reference group for the purposes of a Bureau of Industry Economics exercise relating to the international benchmarking of business licensing requirements.³

3.3 In its report *Workers Compensation in Australia* (1994) the Productivity Commission defined benchmarking as:

.... the continuous process of measuring products, services and practices against the toughest competitors or those companies recognised as industry leaders

to deliver the objective of:

identify(ing) best practice and to measure the gap between actual performance and best practice performance.

3.4 In the context of the COAG resolution, the definition referred to above is adopted, but modified so that the performance benchmarking of regulation is to be:

the continuous process of measuring regulation of one jurisdiction against that body of regulation recognised as best practice *in that particular area of public policy*.

³ Industry Commission (1996) Report 96/9 *Business Licences International Benchmarking* and 96/10 *Business Licences and Regulation Reform*

4. When should a benchmarking exercise be used?

4.1 Benchmarking has a place when comparing regulations in force in other jurisdictions-but only if relevant data is available.

4.2 As discussed in the work *Benchmarking Electricity Liberalisation in Europe* (2006):

The key to benchmarking is collecting comparable data from each country and years into its third how well the country is performing. Three points immediately come to mind. **First it is important to collect information that actually sheds or light upon the industry's performance, rather than gathering data simply because it is available.** Second, some types of data give useful information about the industry's performance, it cannot be used in themselves as indicators of good or bad practice. For example, population density and a country is important in explaining the level of transmission and distribution costs, but a country cannot be accused of good or bad practice on the basis of its population density! Third, even when the data is suitable to indicate how well industry is likely to be performing, there may be exceptions, and so each case should always be the subject of further into the patient before final judgments are made. Benchmarks should be seen as signals rather than definitive indicators. **The right choice of benchmarks, however, can minimise the number of times that misleading signal is sent.**

(emphasis added)⁴

4.3 As an example of the last point emphasised in the above quotation, the Bureau of Industry Economics undertook an international benchmarking exercise to assess the performance of various elements of Australia's infrastructure during 1995.⁵

4.4 Table 12.1 of the publication *International Benchmarking Overview 1995* details the worst and best observed infrastructure performance in Australia, and then compares that performance in the best practice in the world. However, it should be noted that like is compared with like: the performance of airports were compared with other comparable airports; the performance of the gas supply industry were compared against other gas suppliers (and so forth).

4.5 It is finally noted that in the 1996 exercise the Guild was involved in, only regulations affecting a particular profession were compared. Equally, it is noted that in its publication *The Victorian Regulatory System*, the Victorian Competition and Efficiency Commission seems to suggest that the performance of regulatory agencies can really best be compared against the performance of similar interstate agencies with similar responsibilities.

4.6 It is therefore difficult to see how a generic performance benchmark for Australian regulation can be created. As with benchmarking infrastructure performance, a benchmarking exercise with regards to business regulation can only be effective if seeking to compare jurisdictions seeking to achieve the same public policy outcomes – that is, how much does it cost business to give effect to public policy outcome x ?

⁴ Green, Lorenzoni, Perez and Pollitt *Benchmarking Electricity Liberalisation in Europe* Cambridge Working Papers in Economics No. 629, March 2006 <http://ideas.repec.org/p/cam/camdae/0629.html> accessed 27 September 2006

⁵ Bureau of Industry Economics *International Benchmarking Overview 1995* (Report 95/20)

4.7 To keep the exercise manageable, it is suggested the development of performance benchmarks be initially restricted to the six regulatory hotspots identified by COAG in February 2006:

- rail safety regulation;
- occupational health and safety;
- national trade measurement;
- chemicals and plastics;
- development assessment arrangements; and
- building regulation.

4.8 Finally, the *Issues Paper* asks “what purposes can benchmarking most usefully serve”.

4.9 **The Productivity Commission should make it clear in its work that benchmarking regulatory performance is:**

- (a) **a tool to identify the manner of delivering a public policy outcome which is the least costly to business in terms of money and/or hours needed to comply with regulation; and**
- (b) **in a particular case, the public interest may still require the imposition of a regulatory burden not found in comparable jurisdictions.**

4.10 Knowledge of the cost of regulation to industry is an important consideration when designing legislation. However, it is only one consideration when weighing up what is in the public interest.

4.11 As the Full Federal Court has recently said:

The public interest is not one homogenous undivided concept. It will often be multi-faceted and the decision-maker will have to consider and evaluate the relative weight of these facets before reaching a final conclusion as to where 'the public interest' resides. This ultimate evaluation of the public interest will involve a determination of what are the relevant facets of the public interest that are competing and the comparative importance that ought to be given to them so that 'the public interest' can be ascertained and served. In some circumstances, one or more considerations will be of such overriding significance that they will prevail over all others. In other circumstances, the competing considerations will be more finely balanced so that the outcome is not so clearly predictable.⁶

4.12 As an example, Australia ratified the World Health Organisation Framework Convention on Tobacco Control on 27 October 2004, in which Article 8 reads:

1. Parties recognise that scientific evidence has unequivocally established their exposure to tobacco smoke causes death, disease and disability.
2. Each party shall adopt and implement in areas of existing national jurisdiction as determined by national law and actively promote at other jurisdictional levels the adoption and implementation of effective legislative, executive, administrative and/or other measures, providing for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places and, as appropriate, other public places.

⁶ *McKinnon v. Secretary, Department of Treasury* (2005) 145 FCR 70

- 4.13 NSW has enacted the *Smoke-Free Environment 2000*, which prohibits smoking in enclosed public places. Amongst other things, this gives effect to the convention obligation referred to above. The law will apply to licensed establishments as from 2007.⁷
- 4.14 The liquor industry has submitted that implementing the prohibition will give rise to a loss of income and employment, and is thus a burden imposed by regulation. However, notwithstanding this, the NSW Government has still acted so there is compliance with (amongst other things) international obligations.⁸
- 4.15 It is suggested that the Government was right to do so even if it could be shown that the cost of enforcing anti-smoking legislation is a cost that is not imposed on, for example, hotels, in other comparable jurisdictions.

⁷ *Smoke-Free Environment 2000 (NSW)* Part 3

⁸ In the particular case, OHS concerns are also present

5. What data should be used in a benchmarking exercise

5.1 **The Guild is of the view that only relevant data already available in the public domain should be used in benchmarking exercises.**

5.2 We recognise that public policy decision makers require data to determine whether or not a particular initiative (or regulation) is achieving its goals and that, in many circumstances, the best source of data will be business and businesses.

5.3 A regulator could therefore require business to spend time and money creating a mechanism by which specific data is collected and transmitted for the purposes of determining the regulatory efficiency of a regulation.

5.4 Most would call this “paperwork” - it is also called “regulatory burden”, that businesses (and COAG) would like to see reduced, if not removed.

5.5 As has been observed:

What may seem to a bureaucrat to be a small piece of additional paperwork for one rule, creates centimetres of paperwork burden and potentially metres of regulatory guidance when added across all rules.⁹

5.6 And, as the US General Accounting Office indicated:

Businesses recognised some benefits to regulation. Nevertheless, they were concerned about the high compliance costs; unreasonable, unclear and inflexible demands; excessive paperwork; they tendency of regulators to focus on deficiencies rather than outcomes; and poorly coordinated requirements among agencies and between government jurisdictions.¹⁰

5.7 These observations are also noted:

.... none of the survey businesses could provide comprehensive data on the costs of regulatory compliance because, among other things, their financial systems were not geared to identify the costs they would have incurred in the absence of regulation.

GAO was unable to verify most of the data businesses provided on the costs of reefer to compliance because there was little documentation to support their cost estimates.¹¹

5.8 If business had to provide data for the specific purpose of measuring regulatory burden, paradoxically that burden would increase. The point of the exercise would be defeated.

5.9 **For that reason, only relevant currently available data should be used in a benchmarking exercise.**

⁹ Productivity Commission, *Design Principles for Small Business Programs and Regulations* p. 210

¹⁰ Productivity Commission, *Performance Benchmarking of Australian Business Regulation Issues Paper* (2006) p.17

¹¹ Ibid