HEALTH PRACTITIONERS' COMPETENCY BILL
SUBMISSION BY FOODSTUFFS

EXECUTIVE SUMMARY

This submission is presented by Foodstuffs (NZ) Ltd on behalf of all the Foodstuffs companies. Background information on the organisation is attached (Appendix 1).

Foodstuffs submission is restricted to Part 9 of the Bill which deals with amendments to the Medicines Act 1981, and more specifically, provisions restricting the ownership of pharmacies. In first instance, Foodstuff wishes to acknowledge and support the submission of the New Zealand Retailers' Association in regard to this matter.

We note that the Health Practitioners' Competency Bill essentially maintains pharmacists' monopoly control over the ownership of pharmacies, contrary to the Government's stated intentions of moving to a system of open ownership. Foodstuffs urge the Select Committee to reconsider the option of open ownership.

Open ownership will provide better and fairer outcomes for the following reasons:

- Open ownership will result in a greater number of pharmacies, wider geographical spread of pharmacies (benefiting rural populations), extended pharmacy hours, and will lower the price of medicines and other pharmacy-only products. This all adds up to greater accessibility for all New Zealanders to medicines – a key objective of the primary health care strategy.
- Open ownership will remove the pharmacists' monopoly on the ownership of pharmacy services – an anomaly of history which places pharmacists in a privileged trading position and enables them to maintain margins higher than the norm in the retail industry – to the obvious disadvantage of consumers.
- Open ownership will open up new career opportunities and employment options for pharmacists and may revitalise an aging profession.

Open ownership will not affect standards or the safety of pharmacy services, only who can own a chemist shop - pharmacies will still have to operate under the supervision and control of a registered pharmacist. The argument put by pharmacists that they must retain their monopoly over pharmacy ownership to ensure public safety has no real foundation and is contrived to protect existing trading privileges and high margins.

BACKGROUND TO DEVELOPMENT OF CURRENT POLICY

The Pharmacy Act 1970 currently prohibits non-pharmacists from having more than a 25% ownership interest in pharmacy. In addition, pharmacists are prevented from owning more than one pharmacy and pharmacies have to be physically separate from any other business. These rules are now considered to be outdated, unnecessarily restrictive, and counter-productive to achievement of the Government's primary health objectives.

In January 2001, the Ministry of Health announced the Government's proposed reforms of pharmacy ownership, which were to form part of the Health Practitioners' Competency Bill (HPCB). The proposed reforms included opening up the ownership of pharmacies to non-pharmacists to enhance public access to primary health services, while maintaining tight safety controls through the following provisions:

- Pharmacies to be *always be under the supervision and control of a registered pharmacist* when open to sell medicines.
- Introduction of a licensing regime, administered by Medsafe, requiring pharmacy owners to be licensed and enabling Medsafe to reject unsuitable applications.
- A requirement that any licensee operating more than one pharmacy be required to appoint one of their pharmacists to the position of superintendent pharmacist, to be responsible for the maintenance of professional standards.
- Requirements for pharmacists to maintain their professional competence under the HPCB, and strengthened disciplinary mechanisms and penalties.

The proposals had the universal support of officials and were also supported by the New Zealand Retailers Association (NZRA), the Consumers' Institute, and some individual pharmacists, but were strongly opposed by the Pharmacy Guild and Pharmaceutical Society.

As a direct consequence of lobbying by the Pharmacy Guild, provisions in the draft Bill were changed to accommodate their interests. Specifically, an individual or company cannot be granted a licence to operate a pharmacy unless that person is a pharmacist and at all times has an interest of at least 51% of the business undertaken in the pharmacy (unless the person is exempted from that shareholding under an Order in Council).

ARGUMENTS FOR OPEN OWNERSHIP OF PHARMACIES

Foodstuffs do not dispute the proposition that every pharmacy should operate under the supervision and control of a registered pharmacist. However, we see no legitimate reasons for maintaining pharmacists' current monopoly on the ownership of pharmacies. Arguments for open ownership of pharmacies are summarised below:

The Health Argument: Improved access to primary health services

Opening up the ownership of pharmacies will increase public access to pharmacy services and therefore directly support the Government's Primary Health Care Strategy:

- Open ownership will lead to an increase in the total number of pharmacy outlets. More outlets equates to greater access for the general public.
- The 1996 New Zealand Health Survey revealed that ten percent of adults who received a prescription did not collect the medicine. Thirty seven percent of these people did not collect the prescription because of the cost.[1] Greater competition is likely to lead to lower prices for prescription drugs – lower prices means greater affordability, especially for those on low incomes.
- The co-location of pharmacies with other retail business (such as supermarkets) and other health service providers (such as doctors' surgeries) will reduce time and transport barriers that currently impact on the uptake of medicines. A visit to a pharmacy usually involves a special trip. Virtually every household visits a grocery outlet once or more a week. Co-location means greater convenience.
- Supermarkets generally open longer hours than pharmacies. The NZRA's survey of 315 supermarkets showed that trading hours were on average almost double that of the closest pharmacy – supermarket pharmacies could provide access to pharmacy services outside traditional pharmacy hours.[2]
- Grocery stores and other large retail chains are often represented in many small rural towns where specialist pharmacies are not – providing greater access to marginalized rural communities.
- We note that the Ministry of Health, Pharmac, Ministry of Women's Affairs, Police, Te Puni Kokiri, and Ministry of Justice all support licensed open ownership.

[1] Taking the Pulse, 1996/97 New Zealand Health Survey, Ministry of Health, May 1999, p32
[2] Submissions of the New Zealand Retailers Association, November 2002

The Business Argument: A level playing field

The efficiency of competition is well understood and accepted by Government and consumers. Competition generally provides better outcomes because it promotes efficiency, keeps prices lower than would be expected in a monopoly situation, and encourages market participants to provide good quality service.

Consumer support for the deregulation of the pharmacy ownership has been demonstrated by independent market research commissioned by the NZRA. The key results showed:

- 64% of respondents supported the concept of non-pharmacy ownership allowing pharmacies to be located in other stores e.g. a supermarket or department store.
- 75% of respondents saw positive benefits in "in-store" pharmacies.[3]

Pharmacy products are one of only two consumer products that supermarkets are not permitted to retail (other being spirits). This restriction on competition cannot be justified and should be lifted for the following reasons:

- Optometry - the only other health profession to enjoy a monopoly ownership position supports its removal - as will occur with the passing of the HPCB.[4]
- The professional standards of other health services have not been adversely affected by having non-professional owners. Non-professionals are permitted to own hospitals, doctor surgeries, dental surgeries, and other health care businesses.
- Even within the local pharmacy industry, there is no evidence that non-pharmacy ownership has jeopardized the quality or safety of pharmacy services:
    - Fifteen United Friendly Societies run pharmacies under "grand-parented" provisions in the Medicines Act.
    - Public and private hospitals run pharmacies (not owned by pharmacists).
    - Medicine manufacturing businesses, wholesalers, and medicine packing businesses deal with large quantities of drugs (under licence arrangements).
- Open ownership is common overseas. The UK, Eire, Poland, Switzerland, Italy, Holland, Norway, Belgium, Hungary, the Czech Republic, Singapore, Malaysia, Brazil and all but one State in America operate open ownership regimes.
- We note the Treasury, Ministry of Consumer Affairs, Ministry of Foreign Affairs, and Ministry of Economic Development, also support licensed open ownership.[5]

[3] Ibid
[4] Memorandum to Cabinet Committee on Education and Health: Amendments to the Medicines Act 1981, Office of the Minister of Health, 2001, page 5

For the Good of the Pharmacy Profession

Data from the New Zealand Census confirms that the retail pharmacist population is shrinking relative to the general population, and that it is also aging.

In the ten years from 1991 (the first year retail pharmacist statistics are available), the retail pharmacist population increased by just 30, from 1974 to 2004 (1.52 percent). Over this period, the general population increased by 355,483 to 3,792,654 (10.34 percent). As a result, the ratio of retail pharmacists to the total population ratio fell from 1:1,741 to 1:1,893. The number of pharmacists aged 40 years and over increased 5 percentage points to 58 percent, while those aged 60 years and over doubled from 8 percent to 16 percent.

Unless these trends are reversed, the retail pharmacy sector may face critical skill shortages in the future - with flow-on effects for the Government's primary health strategy. Open ownership would provide new sources of capital for the industry and greater job opportunities and career pathways for new graduates. Accordingly, open ownership may have the additional advantage of revitalizing the pharmacy profession.

REBUTTAL OF ARGUMENTS AGAINST REFORM

We note that the only major groups opposing open ownership of pharmacies are organisations representing pharmacists' interests. To our knowledge, no Government agency or consumer organisation opposes open ownership. In this section we rebut the pharmacy owners' arguments against open ownership:

Consumer safety will <u>not</u> be jeopardized.

Pharmacy owners argue that opening up the ownership of pharmacies to non-pharmacists will jeopardize public safety. What they are implying is that that the registered pharmacists that would be employed by supermarkets could not be trusted to act professionally and competently. In reality, such claims are totally irrational and play to the emotional fears of the most vulnerable in our society – the sick and the elderly. This attempt to establish a moral high ground over supermarkets is clearly driven by competitive motives. The claim has absolutely no substance.

[5] Ibid

Existing controls ensuring the safe distribution of the medicines include:

- Provisions in the Medicines Act which make it illegal for a pharmacy to sell or give away medicines improperly.
- Provisions in the HPCA which aim to protect the health and safety of the public by ensuring all health practitioners (including pharmacists) are competent to practice.
- Miscellaneous provisions in the following statutes, contracts, and Codes of Practice designed to protect consumers from unsafe practices:
  - Misuse of Drugs Act 1975
  - Ministry of Health's Code of Good Manufacturing Practice for Manufacture and Distribution of Therapeutic Goods Part 3 Compounding and Dispensing
  - Pharmaceutical Society's Quality Standards
  - Contractual obligations of the Ministry of Health Pharmacy Services Agreements
  - Code of Health and Disability Services Consumers' Rights
  - Consumer Guarantees Act 1993[6]

The following additional safeguards were proposed as part of the intended move to open ownership (before the policy of moving to open ownership was abandoned):

- Extending the existing licensing arrangements for medicine manufacturers, wholesalers and packers, to pharmacy owners i.e. those wishing to own a pharmacy would need to obtain a licence and prove they were of suitable character.
- Requiring all pharmacies to operate under the supervision and control of a registered pharmacist. NB: All pharmacists are subject to the Pharmaceutical Society's Code of Ethics and associated disciplinary processes.
- Requiring the appointment of a superintendent pharmacist (a system which works very effectively in the UK which operates a system of open ownership).
- Requiring security arrangements for medicines when the pharmacist is absent.

Foodstuffs support all these existing and proposed measures for a "belt and braces" approach which ensures consumers' safety.

[6] Memorandum to Cabinet Committee on Education and Health: Amendments to the Medicines Act 1981, Office of the Minister of Health, 2001, page 6.

Open ownership systems can and do operate safely and effectively. Open ownership regimes operate in the UK, Eire, Poland, Switzerland, Italy, Holland, Norway, Belgium, Hungary, the Czech Republic, Singapore, Malaysia, and Brazil. In Canada, with the exception of Quebec, Nova Scotia, and Ontario, the remaining eight territories allow non-pharmacists to own pharmacies. In the United States, with the exception of North Dakota, all states allow non-pharmacists to own pharmacies.[7]

The Bill will permit pharmacists to open pharmacies in other retail stores

Existing restrictions in the Pharmacy Act requiring pharmacies to be run in separate premises are not carried over to the HPCB which means that, theoretically, pharmacists will be able to open pharmacies inside other retail outlets in joint venture type arrangements. However, pharmacists will retain effective ownership control through the requirement that a pharmacist own at least 51% of the business. In practice, joint venture arrangements are a poor compromise for open ownership. Most of the potential joint venture partners already compete directly with pharmacists in the health and beauty and personal care products market. A joint venture based solely on dispensing activities is unlikely to be sufficiently profitable to be an attractive option to a pharmacist.

The Bill provides exemptions to the pharmacy ownership restrictions

The Bill allows the Minister to grant an exemption to the ownership restrictions, by Order in Council, where health services or access to health services would be improved. Aside from the fact that this is the exception that proves the rule – an exemption regime could not be contemplated if it were "unsafe" for non-pharmacists to own pharmacies, we argue that every additional pharmacy to be opened must improve the public's access to health services, by definition.

Security – is <u>not</u> an issue.

Supermarkets already handle security sensitive items – alcohol, tobacco and cash (lots of it) and already operate effective security systems (security guards are not uncommon). However we would not oppose additional measures if a need was proven.

[7] Letter to Pharmacists, Gillian Durham, Deputy Director General - Sector Policy, Ministry of Health, 16 January 2002.

Some pharmacists may go out of business – that's competition

Legislation designed to ensure public health and safety should not be used to protect the commercial interests of health professionals. A move to open ownership will increase competition in the pharmacy industry and may reduce the profitability of some individual businesses (we note that margins in pharmacy are currently much higher than other retail segments, particularly grocery). However, open ownership will also open up many opportunities for new business activity. Ultimately the success of any retail venture depends on how well customers' needs are met – and it is customers that will decide this.

The licensing regime required for open ownership will be costly to administer

The Government's original proposal involved prospective pharmacy owners obtaining a licence to operate a pharmacy. MedSafe was to act as the licensing authority with the ability to check applicants' background. This system simply extended the licensing regime that currently applies to medicine manufacturers, packers and wholesalers. The added administrative costs were to be funded by pharmacy owners by increasing the annual registration fee by $250. Accordingly, officials advised Cabinet that there were be no additional cost to the Government.[8]

Australia considered and rejected competition in pharmacy services

In 1999, Australia, whose states operate similar pharmacy ownership restrictions to that applying in New Zealand, conducted a Competition Policy Review of Pharmacy regulation. While acknowledging potential efficiency gains could be made through open ownership, the Commonwealth decided to retain restrictions on pharmacy ownership because of concerns about impacts on the viability of smaller community pharmacies, the quality of pharmacy services and the co-ordination of health care services. However, as officials' advice to the New Zealand Cabinet pointed out, the review did not include analysis of the capability of other possible regulatory means for ensuring the safe and efficient distribution of medicines. In addition, it did not analyse how the restrictions would impact on public health care strategies[9] as its focus was competition policy.

[8] Memorandum to Cabinet Committee on Education and Health: Amendments to the Medicines Act 1981, Office of the Minister of Health, 2001, p13
[9] Ibid, p11.

We note that the Productivity Commission[10] made these observations in its submission:

> *"Ownership restrictions have contributed to the small scale of the community pharmacy sector and the increased cost of dispensing medicines that this entails. Also, by preventing supermarkets and other general retail outlets from operating pharmacies in conjunction with their other activities, the restrictions may have precluded the provision of pharmacy services in some smaller rural towns*."[11]

The Productivity Commission concluded:

> "*…greater competition might in fact improve access to pharmacy services. For instance, scope to offer pharmacy services within supermarkets and other general retail outlets could reduce the minimum population required to support a pharmacy service"…*"*this submission suggests that the careful implementation of greater competition in the pharmacy sector has the potential to provide cost savings and convenience benefits to a wide range of consumers, as well as reducing the cost of the PBS[12] for taxpayers.*[13]

The Commonwealth's own submission also acknowledged the potential benefits of open ownership:

> *'The Commonwealth acknowledges that the present controls limit competition in that they prevent ownership of pharmacies, for example, by large general retailers. It is also noted that there would be potential efficiency gains if such organisations bought their business acumen and purchasing power to the running of community pharmacies. Efficiency gains could be expected to be achieved through:*
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> - *Capitalising on the economies of scale possible in dispensing by centralizing dispensing services and thereby reducing overhead costs.*
> - *Major retail operations using their own wholesaling operations rather than relying upon existing pharmacy wholesalers for the distribution of pharmacy products."*[14]

These submissions suggest that, had the review had a wider scope, an altogether different outcome is likely to have eventuated. We note that Australia's two Territories have operated open ownership systems for many years.

[10] The Productivity Commission, an independent Commonwealth agency, is the Australian Government's principal review and advisory body on microeconomic policy and regulation.
[11] Productivity Commission Submission to the National Review of Pharmacy, November 1999, p37.
[12] The PSB is a Commonwealth scheme that subsidises the cost to consumers of a wide range of medicines.
[13] Productivity Commission Submission to National Review of Pharmacy, November 1999, Overview.
[14] Commonwealth Submission, National Competition Policy Review of Pharmacy Regulation, 1999, p31

CONCLUSION

Open ownership should be supported for the following reasons:

- Open ownership will result in a greater number of pharmacies, wider geographical spread of pharmacies (benefiting rural populations), extended pharmacy hours, and will lower the price of medicines and other pharmacy-only products. This all adds up to greater accessibility for all New Zealanders to medicines – a key objective of the primary health care strategy.
- Open ownership will remove the pharmacists' monopoly on the ownership of pharmacy services – an anomaly of history which places pharmacists in a privileged trading position and enables them to maintain margins higher than the norm in the retail industry – to the obvious disadvantage of consumers.
- Third party ownership will open up new career opportunities and employment options for pharmacists and may revitalise an aging profession.
- The safety of pharmacy services will not be affected - only who can own a chemist shop.

Appendix 1

Background information on Foodstuffs

The Foodstuffs organisation was first established as a co-operative buying group for independent grocers 80 years ago. Today, the Foodstuffs companies combined businesses rank the organisation as one of New Zealand's largest.

The group now comprises three regionally based, retailer owned grocery co-operatives [Foodstuffs (Auckland) Ltd, Foodstuffs (Wellington) Co-op Soc. Ltd, and Foodstuffs (South Island) Ltd], together with a Federation body – Foodstuffs (NZ) Ltd.

Retailing operations are franchised and are structured to cover the major retail segments in the grocery market. Retail brands include New World, Pak 'N Save, Write Price and Four Square.

Collectively, member stores total 745. Of these, 167 are supermarkets and these account for 3.2 million customer visits per week.

All of Foodstuffs franchised supermarkets are wholly New Zealand owned and operated.

Appendix 2

Resident Population employed in the Retail Pharmacist Occupation Group

Age	1991	%	2001	%
15-19 Years	24	1	12	1
20-24 Years	210	11	141	7
25-29 Years	213	11	198	10
30-34 Years	261	13	270	13
35-39 Years	231	12	237	12
40-44 Years	234	12	273	14
45-49 Years	174	9	219	11
50-54 Years	276	14	192	10
55-59 Years	189	10	147	7
60-64 Years	117	6	207	10
65+ Years	48	2	111	6
Total	1,974	100	2,004	100

Source: St atistics New Zealand