

# PROOF VERSION ONLY

## LAW REFORM COMMITTEE

### **Inquiry into powers of entry, search, seizure and questioning by authorised officers**

Melbourne – 21 February 2002

#### Members

Mr R. H. Bowden

Ms D. G. Hadden

Mr P. A. Katsambanis

Mr T. Languiller

Ms A. L. McCall

Mr R. E. Stensholt

Mr M. H. Thompson

Chairman: Mr M. H. Thompson  
Deputy Chairman: Ms D. G. Hadden

#### Staff

Executive Officer: Ms M. Mason

Research Officer: Ms K. Giles

#### Witnesses

Mr M. Sheehan, Director; and

Mr D. Nolte, National Pharmacy Guild.

**Necessary corrections to be notified to executive officer of committee**

**The CHAIRMAN** — On behalf of the Victorian Parliament Law Reform Committee, I welcome you to today's hearing. Thank you for taking the time to give evidence.

In welcoming you today, I would like to ask you to speak briefly to the submission you have prepared. We have a number of questions we would like to ask of you. At the outset, if you could introduce yourselves to assist the record.

**Mr SHEEHAN** — Maurice Sheehan is my name. I am the Victorian Director of the Pharmacy Guild of Australia. My colleague this morning is David Nolte. David is a national councillor of the Pharmacy Guild of Australia, and has recently become a member of the Pharmacy Board of Victoria. In addition to that role, he is a pharmacist with pharmacies in Victoria. The points that we have made this morning we have endeavoured to keep very brief. The two pages, Mr Chairman, relate to, the guild as an organisation. We are a national body. We represent some 4.5 thousand pharmacists across Australia; in Victoria, 923 pharmacies — which is approximately 80 per cent of the community pharmacies in the state. We come under the requirements of the Pharmacists Act 1974, and in particular in respect to our opportunity to speak to you today, the key area of that act as we see it is Part 4, Inquiries and Investigations. In addition to that, we see the other area that relates and intertwines within that as being the Pharmacy Board guidelines, which no doubt you are aware of.

The provisions of the act and the provisions of the inspectorial requirements of the guidelines already provide, we believe, what are very adequate responsibilities and controls for pharmacy. I am aware that a submission has been put forward by Steve Marty, the Registrar of the Pharmacy Board of Victoria. The Guild supports that particular submission, because we believe it puts responsibility back onto the profession; it ensures that the community, as a community, is well serviced and, if I can use the words, "well protected by the Act", but certainly that its safety is paramount. It also ensures that so far as being professional, the operation of the pharmacy through the existing provisions of both the act and the Pharmacy Board, ensure that professional standards are being maintained.

The act requires that premises be approved by the Board. In that way, that provides a very broad coverage of the activities of community pharmacy. For that reason, as I said, I believe the current existing requirements as specified in the act work well. And we suggest and recommend to you, Mr Chairman, and to your committee, that these requirements be maintained so far as the future is concerned.

Finally, we believe the recognition of pharmacy within the community as a professional body has been the second highest ranking professional body at 80 per cent — and that has been the situation now for a number of years, because of the professional standards that pharmacy operates under. The provisions of the board ensure that opportunities are there to provide adequate inspectorial roles, and because of that the professional standards are maintained. In addition to that, the community is well serviced. Thank you, Mr Chairman.

**The CHAIRMAN** — Thank you, Maurice.

**Mr STENSHOLT** — Your submission is basically, as I read it, saying that things are pretty good; we are very happy with the regime. I note that in the Pharmacists Act 1974 there have been changes along the way, but there are changes being made to other professions, and the model provisions have now been used for ten of them. No doubt you've kept an eye on those.

**Mr SHEEHAN** — Obviously, Bob.

**Mr STENSHOLT** — Do you have a view on them, because in some way the provisions here could be seen as far more imposing on you? The visions of the model legislation could be seen as having more constrictions and constraints on the powers of inspectors in terms of people knowing what they are doing, if they have warrants and things like that.

**Mr NOLTE** — The Pharmacy Board is very proactive. Every pharmacist should have a very healthy respect for the Pharmacy Board. They can come in at any time, within reason, and do spot checks. The reason for that is that there have been instances over the history of pharmacy where pharmacists haven't been there looking after the personal supervision of the pharmacy, and they have been caught not being there. We are the custodians of legal drugs in the community, and that responsibility is a very important one.

Since I was a child, I have watched drugs become a bigger problem, and the problem it is not getting any better. If you do engage in illicit supply with anabolic steroids, ephedrine, those sorts of things could be dealt with by the police and by the various other law enforcement bodies. But the situation is if it is not broken, why do you have to

fix it?

My wife happens to be a medico, and I watch the Medical Board closely. They are not proactive; they are reactive. When a problem happens, they deal with it. The board does make sure that we have the right books, the right equipment, et cetera, and some pharmacists say they nitpick a lot; but by and large the profession has learnt to live with it, and it is part of our pharmacy culture. You are here as representatives of the people, to make sure the public interest is maintained, and to dilute the system that is in place now, I think, wouldn't be in the public interest. But I suppose that could be debated at length by some people who don't agree with me.

**Mr SHEEHAN** — If I could come back to the issue you raised, Bob, in terms of the structure of the board. As it is now, the board is comprised of all pharmacists. Under the model acts that have been put forward, the structure would change. The Pharmacy Guild has no difficulty with the proposed structure. We recognise that under the review of the Pharmacies Act, as it is being undertaken — — and which commenced back in 1996 — — we would hope that when that is finalised, perhaps later this year or we would think realistically in next year, to see the change in structure of the board at that particular time.

**Mr STENSHOLT** — But you are not looking to any change in the powers of inspectors?

**Mr SHEEHAN** — No, we are not. We think the powers of the inspectors as they are, provide adequate responsibility and controls so far as pharmacies are concerned.

**Mr STENSHOLT** — So the chemists are happy as long as it is reasonable?

**Mr SHEEHAN** — As long as it is reasonable. As David has said, they are reasonable, but at the same time they have a job to do. I think I have said in our submission that there is always apprehension when a Pharmacy Board inspector walks in the door, no matter how professional your operation is. I think that is a healthy respect that needs to be maintained.

**Mr STENSHOLT** — Can they ring up beforehand?

**Mr NOLTE** — No, they come in and say, 'Here is my little card'. You can pick them; they usually have a black bag, and they used to have a little hat.

**Mr SHEEHAN** — The other issue in relation to that is because they understand the nature of the profession — and I only say that not that they are forgiving in any way — but pharmacy right now is facing difficulties so far as supply of pharmacists across not just the state but across the country and worldwide. If an inspector comes in and the pharmacist says, 'Look, could you come back later on today' — provided that the issue was not a major one or an appointment didn't have to be made — there is a recognition, and we think that is a important consideration.

It does not, we believe, allow somebody to say, 'Hey, there are some things we need to fix up before he comes back again', but it does recognise the work environment pressures and the professional requirements that are there.

**The CHAIRMAN** — Peter.

**Mr KATSAMBANIS** — It is refreshing, actually, to hear from the side of the body that represents the pharmacists being examined that the examiners are the inspectors, by and large doing a good job, and it seems like everyone is singing from the same hymn book. I am focusing on the fact that the act now in relation to our Health Act generally in Victoria stands out like a sore thumb, because it hasn't had the refresher, if you like that, the other health acts have had in the 1990s. Forgetting any of the broader policy issues, and just focusing on the powers that inspectors have with or without warrant in the newer health regulation acts that we have, do you see any problems with that sort of regime being imposed in pharmacy? Do you think any potential change from the current structure to the model structure, if you like, has been used for doctors, vets, chiropractors and so forth? Would that create any risks to public safety?

**Mr NOLTE** — If you use the medical example you put up, to my knowledge there is no proactive inspection of the medical practice. There is no medical inspector. They don't rock up as a mystery shopper. I am not saying they set up doctors, but they don't go in and say, 'Well that was a crappy consultation'. There is no public interest that way. That is a big flaw. I can tell you some stories about the medical profession and the pharmacy profession.

**Mr SHEEHAN** — But you won't!

**Mr NOLTE** — I won't.

**Mr KATSAMBANIS** — I have heard a lot of them.

**Mr NOLTE** — We are all consumers of various services. That's not a silly remark, because the public really can't tell whether the service of a pharmacist or a doctor has quality about it; they hope there is quality, but doctors are not paid by outcome; lawyers are. If they don't get a case right, they don't get any more cases or briefs.

One of the things that is really important is that people might think pharmacists inspecting pharmacists is a little closed shop and they are all protecting themselves, and that it is a mateship club. I can assure you it is not.

**Mr KATSAMBANIS** — I know.

**Mr NOLTE** — It is not. You do get into strife; you do get rubbed out; you do get kicked out of the profession. They are tough. I have had a psychiatric nurse come in to inspect me on drugs of addiction which are S8 — things like morphine, cocaine, that kind of stuff. I always ask people what their qualifications are, just out of courtesy, so I know who I am talking to. If you talk to lawyer, you talk to a lawyer; if you talk to a nurse, you talk to a nurse. Because of their background, they don't know the nuances of being a pharmacist. If you were a bad pharmacist, you could probably trip them up a little bit, but a pharmacist knows what is going on, if you get my drift.

**Mr SHEEHAN** — I take your point about singing from the same hymn book. I think we sing from the same hymn book because the profession recognises the power of the board. Community pharmacies are just that, community pharmacies; they are owned by the pharmacist. The pharmacy proprietor recognises, if I can use David's words, that if they are rubbed out, quite frankly, their business is no more, they are no more, and because they are a registered pharmacist their livelihood depends on that. They sing from that book because that is the book they have to operate by. I think that the issues, as I said, that ensure that they do adhere to the requirements, whether it be the structure of the new board or the existing board, I don't believe at this particular stage would change dramatically, but only time will tell.

I know we have looked at some of the issues that have unfolded from some of the other acts as they have changed, and I think there have been both good and bad in terms of the way that has resolved it. So to a degree the jury is still out on that one, and we can only address that when the act changes and the board comes in and takes on those issues.

**Mr STENSHOLT** — Do you want to provide us with a further submission and address these particular issues? You are welcome to do that. Or do you want us to take just your oral evidence? It is a significant issue.

**Mr SHEEHAN** — I will come back to you on that one.

**Mr NOLTE** — One of the important things you should understand is with doctors being corporatised, because doctors are working for large corporations now, and there are policies being put in place which some could argue pressure doctors to see people in a particular way. And there have been a number of press articles about various issues on that matter. Pharmacists can be pressured by all sorts of stimuli, but if they do the wrong thing, they are out of business. They would say the doctors can be out of business too, but when the business is not owned by the doctor, it is a different kettle of fish.

**Mr BOWDEN** — I would like to talk about an aspect of training. There is this regime of inspections, and obviously an important level of interaction between the pharmacist and the inspector. In the written submission to the committee there was a suggestion that the inspector's effectiveness would be enhanced if there were a formal course in the technicalities of obtaining statements. Because we may end up at the end of some exercises having a hearing and people leaving the industry and prosecutions or whatever. I am not saying it is in all cases or most; I am saying it can happen and does happen. I wonder if you would care to tell the committee your views about whether there should be a formal course, a qualification and training to give the inspectors a more formalised, precise ability to collect and gather and prepare formal information if there was to be Rules of Evidence needed at a later date, and also to emphasise the rules of fairness to both sides.

**Mr NOLTE** — Maybe I could answer that. Pharmacists are trained to talk. We are very much a verbal profession. We tend not to document things. A person comes in for a cream; we give them advice, look at the rash, and, 'If it hasn't gone in three days see your doctor' — that barefoot doctor type of thing. We have not been

good at documenting things as a profession. Being a policeman or an undercover cop or whatever, you learn certain skills on your way through the police force. If you are a lawyer, you learn certain skills at that level to be a lawyer. Pharmacists innately don't possess those skills, I don't believe, and it would be an advantage for people who are working in an inspectorial role or a role whereby they are gathering information and where you are dealing with someone with a formal qualification — you have a graduate diploma in forensic pharmacy or whatever. I don't know, that may be too hard to do, I don't know, they may not want to go and do it, but it would be useful to talk to people in various jurisdictions like the magistrates, in whatever jurisdiction, for them to do a little short course on how to get things right. That would be probably very useful.

**Mr SHEEHAN** — The awareness is, as far as the inspectors are concerned, that they are all pharmacists. Certainly, like all of us, ongoing training is a key issue, and I am sure that a recommendation such as that to the Pharmacy Board will be well accepted.

**Mr BOWDEN** — So the board does support a formal training to some extent?

**Mr SHEEHAN** — It is not an issue that we have considered, to be quite honest. But I have to say that the Pharmacy Guild, in conjunction with our colleagues at the Pharmaceutical Society, has a quality assurance program called QCP — quality care — and that whole program, the focus on that, is to increase the standards right across the profession, certainly so far as pharmacy is concerned.

The continuing education philosophy of the profession is such that if we are trying to increase the standards of the individuals, then on the other side those who are inspecting and maintaining a responsible roll over the profession should also be trained, and that should be an ongoing thing.

**Mr NOLTE** — They should have a particular standard. If inspectors in other jurisdictions have a particular qualification, or whatever, the pharmacy inspector should have a similar thing.

**Ms McCALL** — Following on from that, because the inspectors are pharmacists, therefore there is a certain amount, I would hope, of cooperation and camaraderie, because there is an understanding of when the inspector arrives of what is going on in the pharmacy. In the unlikely scenario that there is a complaint about a pharmacist as to how he has been treated by the inspector, how do you go about dealing with that? Have you had any such complaints, or are they just all so friendly that it never happens?

**Mr SHEEHAN** — We have certainly had a number of members ring us and express their concerns, but in the overall, minimal. I think you used the word 'camaraderie'. Again, there may be a professional awareness, but in the discussions that I have with pharmacists, rarely do they use of the word 'camaraderie' when the board inspector arrives on the door.

**Mr LANGUILLER** — It is a good thing in the Labor branch.

**Ms McCALL** — My predecessor in Parliament is my local pharmacist, Graeme Weideman, so I know what goes on in the community pharmacy.

**Mr KATSAMBANIS** — David, you mentioned how doctors don't have a proactive inspectorial regime. You also mentioned the issues that arise with corporatisation of the medical profession. Let's be frank, with pharmacy in the last few years we have seen the emergence of ownership models that can best be called creative.

**Mr NOLTE** — Yes.

**Mr KATSAMBANIS** — Which I would imagine — well, I know — reduces that link between the owner and the person who is at the coalface, the pharmacist giving the advice. Do you think those more creative ownership models reinforce the need for a more proactive inspectorial regime?

**Mr NOLTE** — I would agree with that. I think you really have to keep your eye on the ball. There is always going to be creativity, no matter which way you look. The board has looked at this numerous times. Pharmacists own the pharmacies, and there are various structures in place. You really have to make sure you keep a regime in front of all pharmacists to make sure they are accountable.

**The CHAIRMAN** — Just finally, for the parliamentary record, where are your practices or pharmacies located?

**Mr NOLTE** — Maurice is a CEO; he is not a pharmacist. He is a very capable CEO and knows all about

pharmacy — 701 Rathdowne Street, Carlton, opposite the original La Porchetta. Rocky is the interesting guy! I also have a pharmacy in Wodonga and one in Albury in New South Wales, but I think the rural practice of the professions has been sadly lacking. I also bought a little pharmacy in Wodonga, and we have got that running quite nicely. There are a lot of things I am doing with regard to the Internet, and various other things I have been doing. No-one knows about them yet, but stay tuned.

**The CHAIRMAN** — Maurice and David, thank you very much for your time.

**The witnesses withdrew.**