National Health Amendment (Pharmaceutical Benefits Determinations)  
Bill 1989  
(Private Senators’ Bill)

Date Introduced: 1 September 1989  
House: Senate  
Presented by: Senator John Coulter

Digest of Bill

Purpose
To overturn a recent decision of the Pharmaceutical Benefits Remuneration Tribunal (the Tribunal) and to make decisions of the Tribunal subject to Parliamentary disallowance.

Background
The Tribunal was established in 1981 in accordance with a recommendation of the Joint Select Committee of Public Accounts following allegations that an error in a previous survey of pharmacists resulted in over payments of up to $253 million between 1973–4 and 1980. The criteria on which subsequent decisions were based was formalised late in 1981. Basically, a professional dispensing fee was paid together with a mark up on the agreed wholesale price of drugs. The degree of mark up depended on whether the drugs were already prepared (25%) or prepared by the chemist (33%) and the professional fee also varied on this basis with a higher fee paid for the latter category. For example, in the latest determination by the Tribunal under this criteria, 1 February 1989, the professional fees stood at $2.54 and $3.68. As well, an allowance of $1.35 per item is paid for the dispensing of dangerous drugs, such as narcotics.

Determinations made by the Tribunal are based on surveys of pharmacies to determine the appropriate remuneration. Such surveys are relatively rare, the penultimate survey was held in 1977–78, and adjustments between surveys are based on movements in the labour and non-labour costs. In its ninth determination delivered in June 1987, the Tribunal stressed that the current survey results were out-of-date and that a new survey should be commissioned to provide up to date information. The Pharmacy Guild of Australia was opposed to a new inquiry, regarding the exercise as too dependent on subjective assumptions and arbitrary decisions while also arguing that no other group whose remuneration is determined by the Tribunal had its remuneration determined in this manner. The Guild subsequently advised members not to co-operate with the new survey.\(^1\) There was a low response to the survey, with 53 of the initial 168 pharmacies selected responding. The lowest response rate was from Victoria,
with only two of the 37 pharmacies selected responding. Additional information regarding hours of opening and staff employed was sought from the non-respondents by phone. Fifty six pharmacies responded. Further information on the respondents was gained from Department of Community Services and Health records on dispensing and the Australian Bureau of Statistics (ABS) Retail Census Survey. The Tribunal considered that the information gained was sufficient to develop a model of pharmacists costs and the ABS concluded ‘...there is not enough statistical evidence to indicate that the Model cannot be used to predict the cost of dispensing , for the respondents to the telephone component of the [study]’. The results of the survey were released for comment on 26 April 1989 and a number of groups, including the Guild, made submissions to the Tribunal which held a public hearing on 2 June 1989.

Subsequently, the Tribunal made the decision that is the subject of this Bill. The determination abandoned the previous system based on a professional fee and mark up on the wholesale price of drugs, and introduced a new system based on labour and non-labour costs. The Tribunal stated in its report that the determination was based on a consideration of the evidence as a whole and was not based on a simple arithmetic exercise. The labour component of the new fee was set at $2.45 per item and was based on notional salary and on-costs. This component will be adjusted in line with wage movements in accordance with principles laid down by the Industrial Relations Commission. However, movements in wages which impose no significant costs as a result of improved productivity or offsets will not be included. If the award wage rate for pharmacists employees increases by more than the general increase approved by the Industrial Relations Commission, the Tribunal will hold a hearing to determine if the labour component of the new fee should be changed. The non-labour component was set at $1.05 per item and is to be adjusted twice annually in line with movements in the CPI. This gives a total fee of $3.50 per item, compared with the Tribunals estimate of average revenue per item of $4.55 under the previous system. The Tribunal decided that the reductions should be phased in with three reductions of 35 cents on 1 October 1989, 1 May 1990 and 1 November 1990. The additional allowance for dangerous drugs is to be increased to $2.

The Tribunal also examined the likely effect on the structure of the industry of the new fee. The density of the industry was noted, with a survey showing that 25% of pharmacies had a competitor within 100 meters and 62% had a competitor within 1 kilometer. The Tribunals stated ‘Some smaller less efficient pharmacies .... may be significantly disadvantaged by the determination... In all of the material and evidence produced, there is no justification to be found for the payment of a subsidy to those pharmacies whose existence, while perhaps providing a useful service to the public are not essential for the functioning of the PBS.’ However, the Tribunal did identify a need for a special category of essential pharmacies. The main criteria to be used in determining if a pharmacy is essential are whether there is a community need for the pharmacy to ensure the supply of drugs, that the pharmacy will cease operations if an additional payment is not made and the absence of another pharmacy to which people can have reasonable and convenient access. For such pharmacies, it was determined that an additional $1.05 per item should be paid for the first 1000 items supplied.
The Commonwealth's submission to the Tribunal focused on increased payments to pharmacies due to an increase in the number of drugs supplied and the price of those drugs. The Commonwealth submitted that gross pharmacy profits had increased by 85% over the past five years, compared to increases in the CPI of 43% and average weekly earnings of 39% in the same period. The Commonwealth submitted that the mark up on drugs was a large anomaly and should be eliminated, with a factor to replace the mark up being incorporated in the professional fee.\(^5\) The Commonwealth also submitted that the appropriate notional salary for the proprietor should be $15 per hour. A major concern of the Commonwealth is to reduce the increases in costs associated with the PBS. Outlays on pharmaceutical benefits increased by an average of 16% per year during the period 1979–80 to 1988–89.\(^6\)

Considering the Guild's approach to the data base survey, its submission to the Tribunal and the reduced return to pharmacists, the reaction of the Guild could be expected. A spokesperson for the Guild is reported as saying that the changes would reduce the average pharmacists income by $32,000 per year and would result in the closure of up to 1,000 pharmacies.\(^7\) The Guild has foreshadowed industrial action involving the closure of pharmacies to protest the Government's acceptance of the Tribunals decision. Another possible option for the pharmacists is legal action. In June the Federal Court set aside a decision of the Tribunal to cut the professional fee. However, a basis of the decision, that the Tribunal merely followed an arithmetic formula, may not apply in this case. The decision is also the subject of an appeal.

The PBS is an administrative scheme and the decisions of the Tribunal are not subject to Parliamentary disallowance. This can be compared with the Remuneration Tribunal which is responsible for determining a range of salaries. Section 7 of the Remuneration Tribunal Act 1973 requires the tabling of determinations and provides for their disallowance by either House.

**Main Provisions**

The Bill will come into force on 30 September 1989 (clause 2).

Clause 3 provides that the determination of the Tribunal dated 28 August 1989 will have no effect.

A new section 98BAA will be inserted into the National Health Act 1953 by clause 4 and will make determinations and the approval of criteria disallowable instruments.
References

2. Ibid., Report p. 12.
3. Ibid., Decision p. 20.
4. Ibid., Decision p. 17.
5. Ibid., Appendix III p. 9.

For further information, if required, contact the Education and Welfare Group.

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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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