

# BLAKE DAWSON WALDRON

L A W Y E R S



Level 39  
101 Collins Street  
Melbourne VIC 3000

legal.info@bdw.com.au

Telephone (03) 9679 3000  
Int + 61 3 9679 3000  
Fax (03) 9679 3111  
DX 187 Melbourne

GPO Box 4958 WW  
Melbourne VIC 3001  
Australia

Australian Competition and Consumer Commission  
470 Northbourne Avenue  
Dickson ACT 2602

**Attention:** Tim Grimwade  
General Manager – Adjudication

**Partner**  
Wayne Cahill  
Telephone (02) 9258 6166

**Contacts**  
Ayman Guirguis  
Telephone (03) 9679 3778  
Wolfgang Hellmann  
Telephone (03) 9679 3263

**Our reference**  
WH:WOR: New File

8 December 2000

Dear Mr Grimwade

## Avondale Retirement Village – Form G Notification

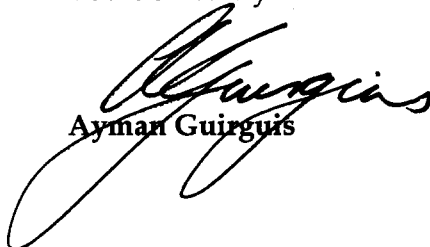
We act for Australasian Conference Association Limited, operated by the North New South Wales Conference Aged Care Board of the Seventh-day Adventist Church, trading as Avondale Retirement Village ("ARV").

On behalf of ARV, we submit the attached Form G notification (including Annexures) pursuant to section 93(1) of the *Trade Practices Act 1974* in relation to an arrangement for the supply of prescription pharmaceutical products and the provision of related medication services to those residents of ARV's three residential aged care facilities (Kressville Hostel, Kressville Lodge, and Charles Harrison Memorial Home) who are unable to self medicate.

ARV claims confidentiality for **Annexures 2, 6, 7a, and 7b** to the notification. We would be grateful if you would confirm that these annexures remain confidential to the ACCC and ARV.

Please do not hesitate to contact Ayman Guirguis (03/9679 3778) or Wolfgang Hellmann (03/9679 3263) if you have any queries as to the notification.

Yours sincerely

  
Ayman Guirguis

MELBOURNE  
SYDNEY  
BRISBANE  
PERTH  
CANBERRA  
LONDON  
PORT MORESBY  
JAKARTA  
SHANGHAI  
HONG KONG

FILE No.
ENTITY
DMAN 000/41283

141054087

## COMMONWEALTH OF AUSTRALIA

*Trade Practices Act 1974 - Sub-section 93(1)*

## EXCLUSIVE DEALING

## NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974* (the "Act"), of particulars of conduct or of proposed conduct of a kind referred to in sub-sections 47(6) or (7) of the Act in which the person giving notice proposes to engage.

1.

(a) **Name of person giving notice**

Australasian Conference Association Limited (ACN 000 003930), operated by the North New South Wales Conference Aged Care Board of the Seventh-day Adventist Church, trading as Avondale Retirement Village ("ARV").

(b) **Short description of business carried on by that person**

ARV is a provider of aged care accommodation and related services.

(c) **Address in Australia for service of documents on that person**

Ayman Guirguis  
Blake Dawson Waldron  
Level 39  
101 Collins Street  
Melbourne, VIC, 3000

2.

(a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates**

The notification relates to an arrangement in relation to the supply of prescription pharmaceutical products and the provision of related medication services to those residents of the three residential aged care facilities (Kressville Hostel, Kressville Lodge, and Charles Harrison Memorial Home) who are unable to self medicate.

ARV operates three residential aged care facilities in Cooranbong in which it provides aged care accommodation and associated services. Over 97% of the residents of ARV's aged care facilities are unable to self medicate. Those residents require, in addition to the "regular" aged care accommodation services, medication services which include the delivery and dispensing of prescription medication, medication counselling and medication monitoring.

ARV itself cannot provide these supplementary medication services. Rather, prescription medication (including the related services) can only be supplied by a pharmacist.

(b) **Description of the conduct**

(i) *The obligation of the residents who cannot self medicate*

ARV has entered into an agreement with Bowen's Health Services ("BHS") under which BHS will supply prescription pharmaceutical product to those residents of ARV's aged care facilities who cannot self medicate.

**Annexures 1(a) and 1(b)** to this notification contain the standard agreements between ARV and residents of its aged care facilities: the "Hostel Resident Agreement (NSW)" of the Kressville Hostels and the "Nursing Home Service Agreement" of the Charles Harrison Memorial Home respectively.

**CONFIDENTIAL Annexure 2** to this notification is the agreement for the provision of pharmaceutical services between ARV and BHS dated 8 May 2000.

**Annexure 3** to this notification is a letter that was sent by BHS to the residents of ARV's aged care facilities (inadvertently to *all* residents, and not only to those residents who are unable to self medicate) informing them that BHS will be the new single pharmaceutical services provider to ARV.

(ii) *The obligation of ARV*

Apart from the "regular" aged care accommodation services, ARV is obliged to arrange for prescription medication and related medication services for those residents who cannot self medicate. To this end, ARV has engaged BHS to provide pre-packed medication unit doses (to be delivered in pre-assembled blister packs) that can be easily administered by ARV's care staff. In addition, ARV has engaged the pharmacist to provide supplementary medication services to those residents and the care staff of its facilities including:

- maintaining medication records (including personal details, medical condition and drug allergies) of each resident;
- educating ARV's care staff in the handling of the medication including safe storage;
- providing medication information and monitoring services to the residents including monitoring adverse drug reactions, identifying residents that require therapeutic drug monitoring, checking suspected drug toxicity, identifying discrepancies and inadequacies in residents' drug therapy, and counselling of possible drug side effects;
- providing regular and after-hours medication delivery service;

3.

- monitoring the medication administration procedure;
- participating in the medication quality improvement program;
- providing a regular audit of the medication administration system; and
- being involved in ARV's Medication Advisory Committee.

(iii) *The tender process for a single pharmacist*

ARV's Medication Committee decided to introduce the pre-assembled blister packs system in ARV's aged care facilities in early 2000. The Medication Committee called for tenders from interested pharmacists for the supply of 7 day medication blister packs and related medication services.

**Annexure 4** to this notification contains ARV's tender document which sets out the specific criteria for the provision of pharmacy services to ARV.

Three pharmacists tendered for the pharmaceutical services contract. The Medication Committee and, subsequently, the North New South Wales Conference Aged Care Board met separately with these 3 pharmacists. The Board then awarded the pharmaceutical services contract to BHS. The contract has a duration of 1 year.

**Annexure 5** to this notification is a copy of the letter advising BHS that its tender was successful.

The decision to award the contract to BHS was mainly based on the pharmacist's considerable experience in providing unit dose medications to aged care providers, and on the competitive conditions of its tender. BHS is a separate legal entity from ARV.

(iv) *The current status*

The residents of ARV's aged care facilities who cannot self medicate are now provided with their prescription pharmaceutical needs by BHS. Under the contractual arrangement with ARV, BHS is obliged to provide the residents of ARV's aged care facilities with the supplementary medication services as listed above under paragraph **2(b)(ii)**. These services are provided to ARV's residents without cost. However, ARV pays a monthly fee to BHS (calculated as an amount of \$ x per resident x per week, totalling to approximately \$1,500 per month) to secure the supplementary medication services for its residents.

BHS also provides a range of services to ARV's care staff and participates in ARV's quality improvement program and medication administration process, as described in paragraph **2(b)(ii)**.

There is an argument that the proposed conduct may contravene sections 47(6) and 47(7) of the *Trade Practices Act* (1974).

(c) **Benefits of the Conduct**(i) *The dispensing of medication by multiple pharmacies*

Until the introduction of the single pharmacist arrangement, the visiting doctors prepared the medication scripts for most of the residents of ARV's aged care facilities which were then sent either to the local pharmacy or to a pharmacy of the resident's preference. As the dispensing of medication to the residents of ARV's aged care facilities was organised by multiple pharmacies, the pharmacists' involvement in ARV's medication administration and monitoring system was only limited. The pharmacists were not under an obligation to provide the supplementary medical services to the residents of ARV's aged care facilities and to ARV's care staff as referred to in paragraph 2(b)(ii) above.

There were two main reasons why the multiple pharmacists could not provide the supplementary services. First, it was not economical for the pharmacies to provide these extensive additional services without having a significant and stable number of customers. Second, it was not practicable to involve multiple pharmacists in ARV's medication administration and monitoring system because ARV could not administer and organise the involvement of multiple pharmacists.

This system raised concerns about increased risk of medication errors, and ARV feared that its facilities would not meet the newly introduced accreditation standards for government licensing and funding. In addition, ARV had learned about the successful use of pre-assembled blister pack technology in other health and aged care facilities. Consequently, in late 1999, ARV engaged *Meditrax*, a Commonwealth Government funded agency, to assist in improving the quality and patient safety of ARV's medication administration process by introducing a system of pre-packed unit doses delivered in pre-assembled blister packs which can be administered by the care staff.

(ii) *The dispensing of medication by a single pharmacy*

Through the appointment of a single pharmacy to supply all residents of ARV's aged care facilities with their prescription pharmaceutical needs, the obstacles described under paragraph 2(c)(i) to provide improved medication services to the residents of ARV's aged care facilities are being overcome. The appointed pharmacist is in a position to economically offer the required additional services and ARV can manage the involvement of the single pharmacist in its internal medication administration and monitoring system.

(iii) *The benefits for ARV's residents*

The single pharmacist arrangement benefits the residents of ARV's aged care facilities in the multiple ways:

- **Lowering the risk of medication errors**  
The risk of medication errors (such as the provision of a wrong drug, an

incorrect dose, at an inaccurate time, or the non-provision of a prescribed drug) is diminished substantially by the continuous supply of the medication by a single pharmacist who is obliged to maintain medication cards for every resident. As the pharmacist is actively involved in the supervision of the medication therapy of each resident, he/she can adjust the medication plan immediately if necessary. Moreover, a single pharmacist can tailor the medication services much better to the special needs of ARV's residents when he/she works continuously for ARV.

- **Cost benefits**

The cost gains in having a single drug and medication services provider benefit both the residents of ARV's aged care facilities and the facilities themselves; as multiple pharmacists could not offer the additional medication services for such a low price as a single pharmacist. Also, a single pharmacist is prepared to offer many medications that are not on PBS benefit at a reduced price to ARV's residents because they procure their whole requirement of prescription medication through him/her.

The after hours services of the single pharmacist incur a fee. This "call out" fee is covered by ARV and is not passed on to the residents. There is a minimum of one pharmacist on duty at all times that BHS is open. There is also an emergency number where a pharmacist is available at all times that BHS is closed, 365 days a year. On site, there is a triple check of all packaging of medication before it goes out.

- **Reducing the administrative burden**

The greater the number of pharmacists that are involved in dispensing medication to ARV's residents the higher the administrative burden for ARV. Reducing the administrative burden means reduced costs and safer and better services.

If the medication administration process is leaner, ARV's care staff can devote more of their time to the residents. The necessary co-operation between ARV's care staff and the medication supplier is significantly facilitated by the appointment of a single pharmacist. The existence of a single medication services provider also reduces possible staff queries and conflicts over medication and packaging. In addition, the medication audits are much faster and more accurate, which means increased safety for the residents.

- **Enhanced care staff education**

The education of ARV's care staff is improved by using a single medication services provider. Consistency and mutual understanding between the care staff and the pharmacist is essential. A single pharmacist is in a much better position to understand the special needs of the residents and, consequently, the information requirements of the care staff.

- **Better quality control and improvement**

Continuous improvement of the medication process is crucial for the safety of the residents of aged care facilities. The appointment of a single medication supplier enables ARV to actively involve the pharmacist in the medication administration and improvement system. This puts the

pharmacist in a position, for example, to contribute to the medication quality improvement program, and to bring in his/her expertise in ARV's Medication Advisory Committee.

In addition, the single pharmacist is required to provide an audit function as part of the quality improvement program. This auditing function can only be accomplished by a pharmacist who provides the whole range of the required medication services.

(iv) *Accreditation by The Aged Care Standards Agency*

In February 2000, Charles Harrison Memorial Home was rated as "satisfactory" in medication management by The Aged Care Standards Agency (the "ACSA"), which was established under the auspices of the Department of Health and Aged Care.

In its Site Audit Report (**CONFIDENTIAL Annexure 6**), the ACSA acknowledged that Charles Harrison Memorial Home has recently undertaken an internal audit to identify areas of improvement, has developed a service agreement which contains quality and service requirements, and has sought tenders from local suppliers.

In March 2000, Kressville Hostel and Kressville Lodge were rated "unacceptable" in medication management. However, in June 2000, after the appointment of Bowen's Pharmacy as a single medication services provider, ACSA rated both facilities as "commendable".

We enclose as **CONFIDENTIAL Annexures 7(a) and 7(b)** are copies of the ACSA's Site Audit Reports for the Kressville Lodge and for the Kressville Hostel respectively. Both Reports refer to the introduction of a new medication management system.

A significant contributing factor in ARV's aged care facilities gaining a "commendable" rating in medication management was the appointment of BHS as a single medication services provider.

(v) *No public detriment of the conduct*

The conduct does not result in any public detriment.

There is no requirement that non-prescription pharmaceutical needs be purchased from a particular pharmacist.

Residents who are able to self medicate are also free to purchase their prescription (and non-prescription) medication requirements from any pharmacist. We refer to ARV's "self administration of medication" policy in **Annexure 8**.

Pharmacies in the Cooranbong-Morisset area have many business opportunities other than providing services to ARV's aged care facilities. Within this vicinity there are numerous of medical centres and hostels/retirement complexes, including:

7.

- **Hospitals:**  
Morisset Hospital
- **Medical Centres:**  
Southlakes Medical Centres (located at Morisset, Dora Creek, Cooranbong, and Mannering Park);  
Cooranbong Medical Centre;  
Family Medical Centre (Bay Shopping Square); and  
Dr. Palmer (Morisset)
- **Hostels/Retirement Complexes:**  
Alcor Manor;  
Riverview;  
Rosedale;  
Eralyn Nursing Home;  
Ambleside Retirement Village;  
Bonnells Bay Village Estate;  
The Grange;  
Henry Kendall Bayside Villages;  
Avonvale (a facility for disabled people);  
Kressville Independent Living Units; and  
Alton Villa Independent Living Units.

3.

(a) **Class or classes of persons to which the conduct relates**

The conduct essentially relates to residents of ARV's three aged care facilities who cannot administer their own medication because, for example, they:

- are too old to self medicate;
- suffer from dementia with consequent memory loss;
- have poor eye sight; or
- have other medical problems which makes it impossible or too risky for them to self medicate.

(b) **Number of those persons**

(i) **At present time**

The total bed capacity of ARV's three aged care facilities ARV is 147, of which:

- 72 beds are at Charles Harrison Memorial Home;
- 40 beds are at Kressville Lodge; and
- 35 beds are at Kressville Hostel.



8.

The current number of residents who are unable to self medicate is 145.

(ii) **Estimated within the next year**

AVR currently has no plans to expand the bed capacity of its three aged care facilities.

(c) **Where number of persons stated in items 3(b)(i) is less than 50, their names and addresses**

Not applicable.

4. **Name and address of persons authorised by the person giving this notice to provide additional information in relation to this notice**

Wayne Cahill  
Blake Dawson Waldron  
Level 37  
Grosvenor Place  
225 George Street  
Sydney, NSW, 2000

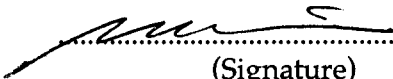
Telephone: (02) 9258 6000  
Facsimile: (02) 9258 6999

Ayman Guirguis  
Blake Dawson Waldron  
Level 39  
101 Collins Street  
Melbourne, VIC, 3000

Telephone: (03) 9679 3000  
Facsimile: (03) 9679 3111

Dated 8 December 2000

Signed on behalf of the person giving this notice

  
.....  
(Signature)

WILLIAM OWEN REID  
.....  
(Full Name)

Partner, Blake Dawson Waldron  
.....  
(Description)