

## Guidance: Leases

Throughout this guidance we will be referring to leases. However, this guidance also applies to all documents which give a pharmacy business the right to occupy premises (this includes leases, sub-leases and licences to occupy). All such documents must be compliant with the Act and must be submitted to the Authority for review.

The *Pharmacy Regulation Act 2010 (Vic)* (**the Act**) places restrictions on who can control or influence the way in which a pharmacy business is carried on.

Most relevant for leases, the Act makes void any provision in a lease (or any commercial arrangement) that gives any person other than the person licenced to carry on the pharmacy business:

- a) the right to control the manner in which the pharmacy business is carried on; or
- b) the right to access books of accounts or records kept in respect of that business, otherwise than for the purpose of determining whether or not the conditions of the relevant document are being complied with; or
- c) the right to receive any consideration that varies according to the profits or takings of the business.

When negotiating and entering into a lease, pharmacy business licensees should be wary of certain clauses which are common in many retail leases for non-pharmacy businesses.

In particular, pharmacists are urged to be wary of clauses in lease agreements that:

- allow the landlord to dictate the way in which the business is operated;
- provide that the rent payable increases or decreases in accordance with the profits of the business (for example, rent that is a base amount plus a % of profits);
- provide that amounts contributed by the pharmacy business to such things as shopping centre marketing funds or building service providers are calculated by reference to the profit of the business;
- dictate that the pharmacy business must provide the landlord with financial reports or audits (extending beyond that required to allow the landlord to ascertain whether the terms of the lease are being complied with - for example, showing the landlord that the pharmacy business is solvent).
- give the landlord a right to review or access the businesses records and accounts (extending beyond that required to allow the landlord to ascertain whether the terms of the lease are being complied with - for example whether the pharmacy business has been operating during the trading hours required by the lease).

The following checklist will assist with the preparation and negotiation of leases (and other agreements for the occupation of premises). If you answer “yes” to any question in the list, we recommend that you seek legal advice before entering into the lease:

<b>Lease undue influence indicator checklist</b>	<b>No</b>	<b>Yes</b>
Does the lease provide that any payment is calculated with reference to the profit, turnover or takings of the business (for example, does the agreement provide that the pharmacy business pay the landlord a % of its profit)?		
Does the lease provide an obligation on the pharmacy business to provide the landlord with financial reports, summaries or audits, otherwise than for the purpose of determining whether or not the conditions of the lease are being complied with? (for example reports as to profits or takings)		
Does the lease give the landlord the right to review or access any records of the pharmacy business otherwise than for the purpose of determining whether or not the conditions of the lease are being complied with? (for example, patient or supply records)		
Does the lease give the landlord the right to review or access the accounts of the pharmacy business otherwise than for the purpose of determining whether or not the conditions of the lease are being complied with? (for example, income, profit and loss or tax records)		
Does the lease allow the landlord to dictate the way in which the business is operated?		

**Important Note – Trust or other commercial arrangement assessment:**

*All Leases will be examined by an Authority officer for compliance with the Act. If deemed non-compliant, documents may (with an applicant or licensee’s authorisation) be referred to the Authority’s lawyers for preparation of a schedule of amendments necessary to ensure compliance, and the licensee will incur a fee. The fee for the preparation of these documents is **\$1,900.00 per commercial arrangement** (exempt from GST).*

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