

Guidance: Partnerships

A partnership is a popular business structure, particularly for small businesses. It involves two or more persons (or companies) conducting a business in common with a view to making a profit.

The *Pharmacy Regulation Act 2010 (Vic)* (the Act) places restrictions on:

- who can own or have a proprietary interest in a pharmacy business; and
- who can control or influence the way in which a pharmacy business is carried on.

“Proprietary interest” is defined under the Act to mean a legal or beneficial interest.

When forming a partnership for the purposes of carrying on a pharmacy business, it is important that all individuals or companies that form part of the partnership are compliant with the Act.

In particular:

- a) each individual comprising the partnership must be a registered pharmacist; and
- b) each company comprising the partnership must be a company:
 - i. whose directors are all pharmacists; and
 - ii. in which all of the shares and the beneficial and legal interests in those shares are held by registered pharmacists.*
- c) if an individual or company forming part of the partnership is acting as a trustee for others (or the shares in a company which forms part of the partnership are to be held on trust), the trust arrangements **must be in compliance with the Act**. For more information on trusts, please refer to the VPA’s Guidance: Trusts.
- d) no individual or company forming part of the partnership can own or have (or, as a result of being part of the partnership, will own or have) a proprietary interest in more than 5 separate pharmacy businesses.
- e) each partner must be licensed under the Act.

* Section 5(c) of the Act sets out some limited exceptions to this requirement (including for former Friendly Societies and wholly owned subsidiaries), which are beyond the scope of this Guidance.

It is also important that any partnership agreement is created with the undue influence provisions of the Act in mind. In particular, any partnership agreement that gives anyone other than those 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.

will be void under the Act. As such, it is important that control over how the pharmacy business runs and access to accounts, records and profits remain with the partners.

It is also critical to bear in mind that a partnership is not a separate legal entity and can be created:

- by written agreement;
- by verbal agreement; or
- by implication from the surrounding circumstances.

Therefore, if you are in fact carrying on a pharmacy business with another person or company, even though you have not signed a formal written agreement, a partnership may nevertheless be found to exist.

If a pharmacy business is to be conducted as a partnership, a copy of the relevant partnership agreement (or if no written agreement exists, a written explanation as to how and on what terms the partnership operates) must be submitted to the Authority for review and approval.

Important Note – Trust or other commercial arrangement assessment:

*All partnership agreements 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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