

## Guidance: Sale of Business Agreements

Rather than setting up a new pharmacy business from scratch, a licensee may decide to purchase an existing pharmacy business.

When selling or purchasing a pharmacy business it is very important to be aware of the ownership and control provisions of the *Pharmacy Regulation Act 2010 (Vic)* (**the Act**).

In particular, the Act places restrictions on:

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

### **Ownership and proprietary interests**

Section 5 of the Act provides that:

- (1) A person must not own or have a proprietary interest in a pharmacy business unless the person is:
  - a) a registered pharmacist; or
  - b) a company registered under the Corporations Act-
    - i. whose directors are all registered pharmacists; and
    - ii. in which all of the beneficial and legal interests in those shares are held by registered pharmacists.<sup>1</sup>

(that is, a **Pharmacy Company**)

- (2) A registered and Pharmacy Company must not own or have a proprietary interest in more than 5 separate pharmacy businesses.

A proprietary interest is defined in section 3 of the Act to mean:

“a legal or beneficial interest and includes a proprietary interest as a sole proprietor, as a partner, as a director, member or shareholder of a company and as the trustee or beneficiary of a trust.”

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<sup>1</sup> 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.

In order to avoid a breach of the Act you **must ensure** that:

- if you are purchasing a pharmacy business as an individual (i.e. not as a partnership or company):
  - you are a registered pharmacist;
  - you do not already own or hold (or as a result of the purchase, will not own or hold) a proprietary interest in 5 pharmacy businesses. This includes an interest as shareholder of a company or beneficiary of a trust, in which the company or trustee company owns the pharmacy.
  
- if the pharmacy business is being purchased by a company:
  - the company is a Pharmacy Company;
  - the company does not already own or hold (or as a result of the purchase, will not own or hold more than) a proprietary interest in 5 pharmacy businesses. This includes through a wholly owned subsidiary of the company (see section 18 of the Act);
  - the directors and shareholders of the company do not already own or hold (or as a result of the purchase, will not own or hold more than) a proprietary interest in 5 pharmacy businesses.
  
- if you are purchasing the pharmacy business as a partnership:
  - any individual forming part of the partnership is a registered pharmacist;
  - any company forming part of the partnership is a Pharmacy Company;
  - no individual or company forming part of the partnership owns or has (or, as a result of being part of the partnership, will not own or have) a proprietary interest in more than 5 separate pharmacy businesses.

### **Undue influence**

Section 11 of the Act makes void any provision of a 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.

Persons buying or selling a pharmacy business should make certain that the sale of business agreement does not provide that anyone **other than the person(s) who will be licensed to carry on the pharmacy business after completion of the sale** will hold any of the rights set out in sub paragraphs (a)- (c) above.

### **Other important matters**

Please note that there are other provisions of the Act that you will need to be aware of when buying or selling a business, which extend beyond the sale of business agreement (and the scope of this Guidance). They include (this is not an exhaustive list):

- obtaining a licence to carry on a pharmacy business;
- ensuring the premises from which the business is intended to be operated is registered under the Act; and
- notifying the VPA of an intention to carry on the pharmacy business (or, for the seller, notifying the VPA of an intention to cease to carry on a pharmacy business).

For further information or to download the appropriate forms, please visit the VPA website.

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