

Guidance: Trusts

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 and includes a proprietary interest as a trustee or beneficiary of a trust.

A pharmacy trust must not have as a trustee or beneficiary a person or company unless that person or company 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 shares and beneficial and legal interest in those shares are held by registered pharmacists; or
- (c) a company registered under the Corporations Act that was registered or incorporated as a friendly society.

Additionally, a trustee or a beneficiary of a pharmacy trust must not own or have a proprietary interest in more than five separate pharmacy businesses in Victoria.

If a trust is involved in the ownership of a pharmacy business (e.g. the licensee is acting as a trustee) a copy of the relevant trust deed(s) must be submitted to the Authority for review, regardless of whether it is a discretionary trust, fixed trust or unit trust.

The trust deed will be examined by an Authority officer for compliance with the Act. If a trust is deemed non-compliant it will be referred to the Authority's lawyers for preparation of a Schedule of Amendments, in which case the applicant will incur an additional fee. The fee for the preparation of these documents will be \$1900 per trust deed (exempt from GST). If amendments are required, the amendments must be actioned before the Authority can consider the licence application(s).

If the trust deed includes a Guardian, the Authority may refer the trust deed to its lawyers to ensure that the powers of the Guardian comply with the Act.

To comply with the Act, there must be appropriate restrictions on the eligibility of the Trustee, beneficiaries or unit holders and also the powers of the Trustee. To avoid the need for amendment of your Trust, it is recommended that the Trust deed be drafted with the proprietary interest and undue influence provisions of the Act in mind.

The following checklist will assist with the preparation of trust deeds:

Trust Deed Proprietary Interest and Undue Influence Checklist (A tick in the shaded area may indicate non-compliance)	Yes	No
If the trustee is a natural person, is that person a registered pharmacist?		
If the trustee is a corporation, are the directors, shareholders, and any person who holds a beneficial or legal interest in the shares, all registered pharmacists?		
Is each beneficiary or unit holder a registered pharmacist?		
If the trust provides for classes of beneficiaries, are such classes limited to registered pharmacists?		
Is any person or entity that is not a registered pharmacist eligible to be a trustee?		
Is a person or entity that is not a registered pharmacist eligible to be a beneficiary or unit holder?		
Does the trust provide any person, other than a person licensed under section 38 of the Act, a right to control the manner in which the pharmacy business is carried on?		
Does the trust provide any person, other than a person licensed under section 38 of the Act, a right of access to books of accounts or records kept in respect of the pharmacy business, otherwise than for the purpose of determining whether or not the conditions of the trust are being complied with?		
Does the trust provide any person, other than a person licensed under section 38 of the Act, a right to receive any payment that varies according to the profits and takings of the pharmacy business?		

Important Note – Trust or other commercial arrangement assessment:

*All trust deeds 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 trust deed** (exempt from GST).*

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