

## Guidance on pharmacy business ownership, proprietary interests and undue influence

### About the Victorian Pharmacy Authority

The Victorian Pharmacy Authority (**Authority**) regulates the ownership and operation of pharmacy businesses under the *Pharmacy Regulation Act 2010 (Act)*.

The Authority is responsible for:

- registering the premises of pharmacy businesses; and
- licensing pharmacists to carry on those pharmacy businesses.

The Authority is not responsible for the regulation of individual pharmacists. This is the responsibility of the Pharmacy Board of Australia.

### About this Guidance

This Guidance sets out the Authority's approach to interpreting the requirements of the Act relating to ownership, proprietary interests and undue influence.

It addresses the following provisions of the Act:

- section 5, which deals specifically with requirements for the ownership of pharmacy businesses; and
- section 11, which is concerned with "undue influence", and provides that certain provisions in commercial arrangements about pharmacy businesses are void.

It sets out the Authority's:

- general approach to interpreting the requirements regarding ownership of and proprietary interests in pharmacy businesses under the Act and includes some common examples of commercial arrangements it considers to contravene these requirements;
- interpretation of which provisions in commercial arrangements are considered by the Authority to be void under the "undue influence" provisions of the Act; and
- priorities for compliance, investigation and enforcement in relation to these matters.

This Guidance is general in nature and does not replace or alter the effect of the Act, or any other relevant legislation and regulations. The Authority recommends that pharmacists always seek independent legal advice when required.

## Application of this Guidance

Every pharmacist who carries on a pharmacy business must be aware of the requirements of the Act and ensure they are not entering into commercial arrangements that:

- contravene the requirements in the Act regarding ownership and proprietary interests; and
- may be void under the "undue influence" provisions in the Act.

The Authority recommends that pharmacists regularly consider this Guidance, especially:

- when applying for a licence to carry on a pharmacy business; and
- before making any changes to commercial arrangements for a pharmacy business.

## Ownership requirements

This section contains guidance about the ownership requirements under the Act. If the Authority believes that a person is not entitled to own or have a proprietary interest in a pharmacy business, the Authority may prioritise investigating that pharmacy business and, where appropriate, take compliance or enforcement action under the Act.

### Section 5 of the Act – Ownership of pharmacy businesses

Section 5 of the Act sets out the ownership requirements in relation to pharmacy businesses.

A pharmacy business is a business carried on at a pharmacy. It includes the business of providing pharmacy services and that part of the business where goods of any kind are sold or offered to be sold.<sup>1</sup>

In Victoria, with some limited exceptions, a person must not own or have a proprietary interest in a pharmacy business unless that person is either:

- a registered pharmacist;<sup>2</sup> or
- a company whose directors are all registered pharmacists, and which all the shares and the beneficial and legal interest in those shares are held by registered pharmacists<sup>3</sup> (**eligible company**); or
- a company that immediately before 1 July 1999 was registered or incorporated as a friendly society, and which satisfies a number of other requirements under section 5(1)(c) and section 5(4) of the Act.<sup>4</sup>

<sup>1</sup> *Pharmacy Regulation Act 2010* s 3(1).

<sup>2</sup> *Pharmacy Regulation Act 2010* s 5(1)(a).

<sup>3</sup> *Pharmacy Regulation Act 2010* s 5(1)(b).

<sup>4</sup> *Pharmacy Regulation Act 2010* ss 5(1)(c), 5(4).

Relevantly, a 'proprietary interest' means '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 a trustee or beneficiary of a trust'.<sup>5</sup>

A registered pharmacist or eligible company must not own or have a proprietary interest in more than 5 separate pharmacy businesses.<sup>6</sup>

A person who owns or has a proprietary interest in a pharmacy business where they are not entitled to do so will have committed an offence against section 5. The penalty for contravening section 5 is a fine of:

- 240 penalty units<sup>7</sup> in the case of a natural person (\$48,842.40 in 2025-26); and
- 1200 penalty units in the case of a body corporate (\$244,212 in 2025-26).<sup>8</sup>

### **Section 21 of the Act – Establishment of pharmacy businesses**

Further, section 21 of the Act provides that a person must not establish or carry on a pharmacy business unless:

- that person is entitled to own or have a proprietary interest in a pharmacy business under section 5;
- the Authority has registered the premises of the pharmacy business; and
- the Authority has granted a licence to that person to carry on a pharmacy business at the registered premises.

A person who establishes or carries on a pharmacy business<sup>9</sup> where they are not entitled to do so commits an offence against section 21<sup>10</sup>, and is liable to a fine of:

- 240 penalty units for a natural person (\$48,842.40 in 2025-26); or
- 1200 penalty for a body corporate (\$244,212 in 2025-26).<sup>11</sup>

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This means that, no matter how a pharmacy business is structured, all of the legal or beneficial interests in that business must ultimately be held by one of the persons listed under section 5.

For example, in the case of a pharmacy business that is carried on by:

- a sole proprietor, the sole proprietor must be a registered pharmacist;

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<sup>5</sup> *Pharmacy Regulation Act 2010* s 3(1).

<sup>6</sup> *Pharmacy Regulation Act 2010* s 5(2).

<sup>7</sup> See <https://www.dtf.vic.gov.au/indexation-fees-and-penalties>

<sup>8</sup> *Pharmacy Regulation Act 2010* s 5(1); Sentencing Advisory Council, 'Fine', <https://www.sentencingcouncil.vic.gov.au/about-sentencing/fine>.

<sup>9</sup> See *Pharmacy Regulation Act 2010* s 3(2) for the definition of 'carrying on a business'.

<sup>10</sup> *Pharmacy Regulation Act 2010* s 21.

<sup>11</sup> *Pharmacy Regulation Act 2010* s 21(1); Sentencing Advisory Council, 'Fine', <https://www.sentencingcouncil.vic.gov.au/about-sentencing/fine>.

- an eligible company, all of the company's directors, members or shareholders must be registered pharmacists; and
- a partnership, all partners must be registered pharmacists and/or an eligible company whose directors, members or shareholders are registered pharmacists.

The list of business structures outlined as examples above is not exhaustive.

The Authority:

- has observed that, either on paper or in practice, some pharmacy businesses are owned through complex commercial arrangements and business structures;
- cautions pharmacists about complex ownership arrangements which may risk giving a person other than a registered pharmacist ownership of, or a proprietary interest in, their pharmacy business;
- warns that the more complex a commercial arrangement becomes, then:
  - the less well-understood it may be by the pharmacist;
  - the greater the risk of breaching of section 5; and
  - the greater the number of persons who may be involved in any breach.

### **Priorities relating to ownership**

If the Authority believes that a person other than a pharmacist owns or has a proprietary interest in a pharmacy business, the Authority may prioritise investigating that pharmacy business.

If it investigates, the Authority may give particular scrutiny to arrangements which give a non-pharmacist an entitlement to receive the profits or income, or a share in the profits or income, of a pharmacy business.

Despite these priority areas, the Authority may investigate any potential breach of the Act at any time.

## Undue influence requirements

This section contains guidance about the undue influence requirements under the Act. The Authority will apply particular scrutiny to priority control provisions that have been identified in this document.

### Section 11 of the Act – Undue influence

Section 11 of the Act addresses undue influence.

A provision in a bill of sale, mortgage, lease, or any other commercial arrangement in respect of a pharmacy or pharmacy business is void if it gives to any person other than a licensee (a person who is licensed to carry on a pharmacy business) the right to:

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

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This means that any commercial arrangement that tries to allow anyone other than the licensee to:

- control how a pharmacy business runs;
- have a right of access to books of account or records kept in respect of the business otherwise than for the purpose of determining whether the agreement is being complied with, as opposed to the licensee having the option to provide certain information (e.g., so that service provider can provide book keeping services); or
- receive a fee (e.g., a franchise fee or service fee) or rent that varies according to the profits or takings of the pharmacy business,

is unenforceable, and parties do not need to comply with it.

Pharmacists and other parties to commercial arrangements about pharmacy businesses should ensure that they are not acting, or being made to act, in accordance with terms that are void under section 11.

### ***Concept of control***

In relation to section 11 of the Act, the Authority approaches the concept of control by reference to the general law: meaning the capacity to determine the outcome of decisions about an entity's financial and operating policies.<sup>12</sup>

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<sup>12</sup> *Amcor Ltd v Barnes* [2016] VSC 707.

This is not just about strict legal rights, but whether an entity has the capacity, in a real and practical sense, to determine the important decisions of a pharmacy business.<sup>13</sup>

When looking at the capacity to determine the outcome of such decisions, any practice or pattern of behaviour is to be taken into account.<sup>14</sup>

### ***Types of commercial arrangements***

Section 11 applies to *all* commercial arrangements in respect of a pharmacy or pharmacy business. This might include any of the following (alone or in combination), or other arrangements:

- Franchise agreements;
- Service agreements;
- Leasing agreements;
- Member agreements;
- Licence agreements;
- Loan agreements;
- Security agreements;
- Supply agreements;
- Trusts;
- Partnerships/partnership agreements.

A licensee must also notify the Authority of any proposed changes to the commercial arrangements for the pharmacy business, prior to those changes taking effect.<sup>15</sup>

### ***Terms of commercial arrangements***

The Authority will not generally provide individual guidance about whether a particular term is or may be void, unless considering that as part of a broader investigation. Therefore, pharmacists should seek their own independent legal advice about whether a provision is or may be void.

### **Priorities relating to undue influence**

There are some provisions involving "undue influence" over pharmacy businesses (**priority control provisions**) that are of particular concern to the Authority. The priority control provisions can be found at Appendix 1.

The Authority will give particular scrutiny to these commercial arrangements to ensure any "undue influence" over pharmacy businesses is investigated and any necessary action taken.

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<sup>13</sup> *Amcor Ltd v Barnes* [2016] VSC 707.

<sup>14</sup> *Amcor Ltd v Barnes* [2016] VSC 707.

<sup>15</sup> VP31 Notification of Change to Commercial Arrangements for Pharmacy Business, <https://pharmacy.vic.gov.au/vpa-forms/vp31-change-to-commercial-arrangements-for-pharmacy-business/#/>.

When deciding whether to pursue a matter relating to undue influence, the Authority will generally prioritise the control provisions listed in Appendix 1. This does not limit the Authority's powers or the operation of the Act.

The Authority will also give consideration to any other commercial arrangements that:

- are of a significant public interest or concern;
- result in a substantial detriment to consumers;
- involve a significant new or emerging market issue; or
- where the Authority's action is likely to have an educative or deterrent effect.

## **Authority's approach to compliance and enforcement**

The Authority is responsible for monitoring compliance with and enforcing the Act.

The Authority's approach to compliance and enforcement is strategic, risk-based, and driven by the objective of protecting:

- the public; and
- the integrity of the pharmacy regulation regime.

## **How does the Authority respond to non-compliance?**

Where the Authority considers that a breach of the Act has occurred, it will take compliance or enforcement action it considers proportionate to the seriousness of the conduct and the level of harm, or potential harm, that the conduct poses to the public, and the integrity of the Act and the pharmacy regulation regime.

## **Compliance and enforcement options**

The Authority has a range of compliance and enforcement options available to respond to and resolve breaches of the ownership requirements of the Act.

A person may notify the Authority about any matter relating to a licensee, including if the person believes it indicates that a licensee has contravened the requirements regarding ownership of pharmacies.<sup>16</sup> The Authority may also investigate a matter relating to a licence without notification.<sup>17</sup>

The Authority may convene a panel to hear a matter which has been the subject of an investigation.<sup>18</sup>

At a panel hearing, the panel may decide that:

- a condition be placed on a licence and / or registration; or
- a licence / registration be revoked; or

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<sup>16</sup> *Pharmacy Regulation Act 2010* s 53(1)(c).

<sup>17</sup> *Pharmacy Regulation Act 2010* s 54(1).

<sup>18</sup> *Pharmacy Regulation Act 2010* s 57(1).

- a licensee or registration holder be cautioned or reprimanded; or
- the licence or registration continue.<sup>19</sup>

A decision of the panel is taken to be the decision of the Authority.<sup>20</sup>

The Authority may also revoke a licence without referring the matter to a panel:

- if it gives prior written notice to the person who holds the licence or registration that it may revoke the licence or registration,<sup>21</sup> or
- without giving written notice if it believes it is necessary to immediately revoke the licence or registration to reduce or prevent a serious risk to public health and safety.<sup>22</sup>

The Authority may also:

- write to a person it considers to be in breach of the Act, and encourage them to change their behaviour to bring them into compliance; or
- impose a condition on that person's licence or registration;<sup>23</sup> or
- issue proceedings under the Act.<sup>24</sup>

If a person carrying on the pharmacy business is convicted of an offence against section 5 of the Act, the Authority may revoke the licence in respect of the pharmacy business.<sup>25</sup>

| Version Control Table | Date             |
|-----------------------|------------------|
| Version 1             | 15 December 2025 |

<sup>19</sup> *Pharmacy Regulation Act 2010* s 59(1).

<sup>20</sup> *Pharmacy Regulation Act 2010* s 59(2).

<sup>21</sup> *Pharmacy Regulation Act 2010* ss 60(1)-(2).

<sup>22</sup> *Pharmacy Regulation Act 2010* s 60(4).

<sup>23</sup> *Pharmacy Regulation Act 2010* ss 40, 49.

<sup>24</sup> *Pharmacy Regulation Act 2010* s 64.

<sup>25</sup> *Pharmacy Regulation Act 2010* s 55.

### Appendix 1: Priority control provisions

| Control provisions   | Indicative Factors   | Explanation  |
|--|--|--|
| Where someone other than a licensee controls the medicine or health services provided by a pharmacy business | <p>Arrangements actually or purporting to give a person other than the licensee the right to control:</p> <ul style="list-style-type: none"> <li>• how the pharmacy business provides medicines or health products to the public, e.g.:               <ul style="list-style-type: none"> <li>○ restricting types of medicines;</li> <li>○ restricting suppliers of medicines;</li> <li>○ imposing sales targets for particular medicines</li> </ul> </li> <li>• the supply of health services, such as:               <ul style="list-style-type: none"> <li>○ needle and syringe programs;</li> <li>○ opioid dependency treatment programs;</li> <li>○ sexual or reproductive health services;</li> </ul> </li> <li>• government vaccination programs.</li> </ul> | <ul style="list-style-type: none"> <li>• Pharmacy businesses play a vital role in providing medicines and health services to members of the public.</li> <li>• To perform this role, pharmacists must control what medicines and health services they provide to the public, and do so in accordance with their skills and professional judgment.</li> <li>• The Authority is concerned that pharmacists are entering into certain commercial arrangements that give third parties the right to control the types of medicines and/or health services that pharmacists may provide.</li> </ul> |
| Where someone other than a licensee controls the layout of a pharmacy business                               | <p>Arrangements actually or purporting to give a person other than the licensee the right to control the layout or setup of the pharmacy, including in ways that:</p>  | <ul style="list-style-type: none"> <li>• The Victorian Pharmacy Authority Standards require a private, dedicated dispensary area of the pharmacy business.</li> </ul>  |

| Control provisions   | Indicative Factors   | Explanation   |
|--|--|---|
|  | <ul style="list-style-type: none"> <li>• prevent pharmacists dispensing, supplying or compounding medications in a dedicated, private area;</li> <li>• impact pharmacists' ability to adequately supervise the dispensing, supplying or compounding of medications;</li> <li>• interfere with the safe and secure storage of medicines and patient records;</li> <li>• control where stock is stored and displayed.</li> </ul> | <ul style="list-style-type: none"> <li>• The Authority is aware of cases of third parties controlling the layouts of pharmacy businesses, interfering with private, dedicated dispensing or counselling.</li> </ul>   |
| Where someone other than a licensee controls the stock levels of a pharmacy business | <p>Arrangements which restrict the licensee's supply of stock, including by:</p> <ul style="list-style-type: none"> <li>• imposing minimum or maximum stock levels;</li> <li>• interfering with the proper storage of stock, especially Schedule 8 poisons.</li> </ul>   | <ul style="list-style-type: none"> <li>• The <i>Drugs, Poisons and Controlled Substances Regulations 2017</i> requires Schedule 8 poisons to be kept within compliant storage facilities at all times.</li> <li>• The Authority is aware of third parties requiring pharmacists to order stock in quantities that are too large to be stored safely, and which make it difficult to monitor expiry dates, creating risks to public safety.</li> </ul> |

| <b>Control provisions</b>  | <b>Indicative Factors</b>   | <b>Explanation</b>  |
|--|---|---|
| <p>Where someone other than a licensee controls access to the books of accounts or other business records for purposes other than determining whether or not the conditions of the relevant commercial arrangement are being complied with</p> | <p>Commercial arrangements that give franchisors, networks or other parties an unrestricted right to access business records or, particularly records containing personal and health information.</p> | <ul style="list-style-type: none"> <li>• Franchise and similar commercial arrangements often include terms allowing access to pharmacy business records.</li> <li>• The Authority is aware of commercial arrangements that give third parties unrestricted access to records of pharmacy businesses, beyond what is necessary to determine compliance with those commercial arrangements.</li> <li>• An unrestricted right to records may interfere with good pharmacy practice and harm the public by leading to the unnecessary or unlawful disclosure of patients' personal and health information, such as patients' dispensing records.</li> </ul> |