

*I hereby certify that this PUBLIC BILL has finally passed the  
Legislative Assembly of Queensland.*

*McRae*

*Legislative Assembly Chamber,  
Brisbane,*

*The Clerk of the Parliament.*

*28 March 2024*

*In the name and on behalf of the King, I assent to this Bill.*

*Government House,  
Brisbane,*

*Chris King*

*28th March*

*2024.*



Queensland

**No. 9 of 2024  
A BILL for**

**An Act to regulate ownership, control and operation of pharmacy businesses, and for other purposes, and to repeal the Pharmacy Business Ownership Act 2001, and to amend this Act, the Public Sector Act 2022 and the Termination of Pregnancy Act 2018 for particular purposes**





Queensland

# Pharmacy Business Ownership Bill 2024

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# 2024

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## A Bill

for

**An Act to regulate ownership, control and operation of pharmacy businesses, and for other purposes, and to repeal the *Pharmacy Business Ownership Act 2001*, and to amend this Act, the *Public Sector Act 2022* and the *Termination of Pregnancy Act 2018* for particular purposes**

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[s 1]

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**The Parliament of Queensland enacts—**

## **Part 1                      Preliminary**

### **1            Short title**

This Act may be cited as the *Pharmacy Business Ownership Act 2024*.

### **2            Commencement**

This Act commences on a day to be fixed by proclamation.

### **3            Main purposes**

The main purposes of this Act are—

- (a) to promote the professional, safe and competent provision of pharmacy services by pharmacy businesses; and
- (b) to maintain public confidence in the pharmacy profession.

### **4            How main purposes are to be achieved**

The main purposes of this Act are to be achieved mainly by—

- (a) limiting—
  - (i) who may be an owner of, or hold a material interest in, a pharmacy business; and
  - (ii) how many pharmacy businesses a person may be an owner of or hold a material interest in; and
  - (iii) how and where pharmacy businesses may be carried on; and

- (b) imposing obligations on owners of, and persons who hold material interests in, pharmacy businesses; and
- (c) establishing the Queensland Pharmacy Business Ownership Council to administer, including to monitor and enforce compliance with, this Act.

## 5 Act binds all persons

- (1) This Act binds all persons, including the State.
- (2) However, the State can not be prosecuted for an offence against this Act.

## 6 Relationship with Medicines and Poisons Act 2019

This Act does not limit the application of the *Medicines and Poisons Act 2019*.

# Part 2 Interpretation

## 7 Definitions

The dictionary in schedule 1 defines particular words used in this Act.

## 8 What is a *pharmacy business*

- (1) A *pharmacy business* is a business that provides pharmacy services in Queensland that include core pharmacy services.
- (2) However, none of the following is a *pharmacy business*—
  - (a) a business carried on by the State at a public sector hospital;
  - (b) a business carried on at a hospital that provides core pharmacy services only to patients at the hospital;

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- (c) a business carried on by a veterinary surgeon at premises used by the surgeon in the practice of the surgeon's profession;
- (d) a business that compounds medicines for sale, or dispenses medicines, to members of the public solely in connection with the manufacture of animal food under a manufacturing licence under the *Medicines and Poisons Act 2019*.

(3) In this section—

***core pharmacy service*** means—

- (a) the compounding of medicines for sale to members of the public; or
- (b) the dispensing, by or under the supervision of a practising pharmacist, of medicines to members of the public.

***hospital*** means—

- (a) a public sector hospital; or
- (b) a private health facility under the *Private Health Facilities Act 1999*.

***public sector hospital*** see the *Hospital and Health Boards Act 2011*, schedule 2.

***veterinary surgeon*** see the *Veterinary Surgeons Act 1936*, schedule.

## 9 Who is a ***practising pharmacist***

A ***practising pharmacist*** is a person who is registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession with general registration.

## 10 Who is an ***eligible person***

- (1) Each of the following is an ***eligible person***—
  - (a) a practising pharmacist;



- (b) a corporation whose directors and shareholders are all practising pharmacists;
- (c) a corporation—
  - (i) whose directors and shareholders are a combination of practising pharmacists and close adult relatives of practising pharmacists; and
  - (ii) in which the majority of shares, and all voting shares, are held by practising pharmacists;
- (d) a friendly society that, on 29 April 2005, carried on a pharmacy business in Queensland or another State;
- (e) a friendly society that is an amalgamation of 2 or more friendly societies mentioned in paragraph (d);
- (f) Mater Misericordiae Ltd ACN 096 708 922.

- (2) In this section—

***friendly society*** means a corporation—

- (a) that is registered under the Corporations Act under a name that includes the words ‘friendly society’; and
- (b) that is not carrying on business for the dominant purpose of securing a profit or pecuniary gain for its members; and
- (c) for which any object or intention of providing a dividend to its members is a limited, and not a dominant, purpose; and
- (d) that applies its property and income towards the objects of the corporation.

## 11 What are ***authorised premises***

- (1) Premises are ***authorised premises*** if the premises—
- (a) are not located in, or directly accessible from, a supermarket; and
  - (b) meet the standards prescribed by regulation.

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- (2) The Minister may recommend to the Governor in Council the making of a regulation under subsection (1)(b) only after receiving advice from the council on the standards.
- (3) In this section—  
*supermarket* means premises used primarily for selling a range of food, beverages, groceries and other domestic goods.

## 12 Who is an *owner* of a pharmacy business

A person is an *owner* of a pharmacy business if the person owns the business—

- (a) solely; or
- (b) jointly with 1 or more other persons, including, for example, in a partnership.

## 13 What is a *material interest* in a pharmacy business

- (1) Each of the following is a *material interest* in a pharmacy business—
  - (a) an interest in the business as a shareholder of an owner of the business;
  - (b) an interest in the business as a beneficiary of a trust of which an owner of the business is trustee;
  - (c) another interest in the business, other than an interest of an owner of the business, that entitles the person who holds the interest to receive consideration that varies according to the profits or takings of the business.
- (2) To remove any doubt, it is declared that if an owner of a pharmacy business is a friendly society, the interest of a member of the owner is not a material interest in the business.

## 14 Pharmacy business licences held jointly

- (1) This section applies in relation to a pharmacy business licence held jointly by 2 or more persons under this Act.

- (2) Unless the context otherwise indicates or requires—
  - (a) a reference in this Act to the holder of the pharmacy business licence is taken to be a reference to each of the persons; and
  - (b) an application made under this Act by the holder of the pharmacy business licence must be made jointly by each of the persons.
- (3) If the persons make an application jointly under this Act in relation to a pharmacy business licence, a reference in this Act to the applicant in relation to the application is taken to be a reference to each of the persons.
- (4) If a provision of this Act requires the persons to give the council a notice in relation to the pharmacy business licence in their capacity as the holder of the licence, each of the persons is taken to comply with the requirement if any 1 of the persons gives notice under the provision.

## **Part 3                      Pharmacy businesses**

### **Division 1                      Ownership and material interests**

#### **15              Owner of pharmacy business must hold pharmacy business licence**

- (1) A person must not own a pharmacy business unless the person holds a pharmacy business licence for the business that is in effect.

Maximum penalty—200 penalty units.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 203, to have also committed the offence.

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- (2) However, an owner of a pharmacy business does not commit an offence against subsection (1) during either of the following periods—
- (a) a period for which the pharmacy business licence for the business is suspended under section 65;
  - (b) within 28 days after the expiry of the pharmacy business licence for the business.

## **16 Who may hold material interest in pharmacy business**

A person must not hold a material interest in a pharmacy business unless the person is—

- (a) a practising pharmacist; or
- (b) a close adult relative of a practising pharmacist who holds an interest in the business.

Maximum penalty—200 penalty units.

## **17 Limit on number of pharmacy businesses a person may hold interest in**

A person must not hold an interest in more than the following number of pharmacy businesses at the same time—

- (a) for a person mentioned in section 10(1)(d), (e) or (f)—6;  
or
- (b) for another person—5.

Maximum penalty—200 penalty units.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 203, to have also committed the offence.

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## Division 2                      Operation

### 18            Definition for division

In this division—

*carry on*, a pharmacy business, does not include carry on as an employee of the business.

### 19            Pharmacy business must be licensed

A person must not carry on a pharmacy business unless the business is a licensed pharmacy business.

Maximum penalty—200 penalty units.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 203, to have also committed the offence.

### 20            Licensed pharmacy business must be carried on at or from licensed premises

- (1) A person must carry on a licensed pharmacy business only at or from the licensed premises for the business.

Maximum penalty—200 penalty units.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 203, to have also committed the offence.

- (2) For subsection (1), a person carries on a licensed pharmacy business at or from the licensed premises if the pharmacy services the business provides are provided—
- (a) entirely at the licensed premises; or
  - (b) mainly at the licensed premises and also partly at another place, as long as the pharmacy services provided at the other place—

[s 21]

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- (i) do not involve the compounding or dispensing of a medicine at the place; and
- (ii) are provided under the direction or control of—
  - (A) the person; or
  - (B) an authorised pharmacist for the business.

*Examples of pharmacy services provided at other places—*

- administering vaccinations in a way, and at a place, authorised under the *Medicines and Poisons Act 2019*
- conducting a medication review at an aged-care facility
- providing health-related information at a community event

## **21 Authorised pharmacist for licensed pharmacy business must be present at licensed premises**

- (1) An owner of a licensed pharmacy business must, unless the owner has a reasonable excuse, ensure an authorised pharmacist for the business is personally present at the licensed premises for the business at all times the business is open, other than for—
  - (a) a period, or periods totalling, not more than 1 hour in a day; or
  - (b) another period or periods approved by the council.

Maximum penalty—50 penalty units.

- (2) In deciding whether to approve another period under subsection (1)(b), the council must have regard to the needs of customers of the pharmacy services provided by the licensed pharmacy business.

## **22 Particular activities relating to licensed pharmacy business prohibited**

- (1) A person, other than an owner of a licensed pharmacy business, must not do or purport to do any of the following—
  - (a) control how pharmacy services involving medicines are provided to the public by the business;

- (b) restrict the types of medicine or health service the business may provide to the public;

*Examples of a health service—*

- 1 Queensland Needle and Syringe Program service
  - 2 opioid dependency treatment program service
  - 3 sexual or reproductive health service
- (c) require medicine for the business to be bought from a particular supplier;
- (d) impose a sales target for the business in relation to a particular medicine.

Maximum penalty—200 penalty units.

- (2) Subsection (1) does not apply to—
  - (a) an employee carrying out the duties of an employee of a licensed pharmacy business; or
  - (b) a person imposing a requirement about a licensed pharmacy business that is about only 1 or more of the following—
    - (i) opening hours;
    - (ii) advertising, branding, product displays or other marketing activities;
    - (iii) information technology systems;
    - (iv) staff training;
    - (v) staff uniforms.
- (3) A provision of a contract, agreement or arrangement is void to the extent it purports to authorise or permit an activity in relation to a licensed pharmacy business that is prohibited under subsection (1).

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## **Part 4                      Pharmacy business licences**

### **Division 1                      Application and grant**

#### **23              Who may apply**

An eligible person may apply to the council for a pharmacy business licence.

#### **24              Joint applications**

- (1) An application for a pharmacy business licence may be made jointly by 2 or more eligible persons.
- (2) For an application made jointly as permitted under subsection (1), a reference in this division to the applicant is taken to be a reference to each person making the application.

#### **25              Requirements for application**

- (1) An application for a pharmacy business licence must—
  - (a) be in the approved form; and
  - (b) state the following—
    - (i) the address of the premises at which the pharmacy business to which the application relates is, or is to be, carried on;
    - (ii) if the applicant is a corporation—the name of each director and shareholder of the applicant;
    - (iii) if the applicant is, or is to be, an owner of the business as trustee of a trust—the name of each beneficiary of the trust;
    - (iv) the name of each person who, to the best of the applicant's knowledge, holds a material interest in the business mentioned in section 13(1)(c); and



- (c) be accompanied by the application fee prescribed by regulation.
- (2) The application must not state more than 1 address for premises for subsection (1)(b)(i).

## **26 Requesting further information or document**

- (1) The council may, by notice given to an applicant for a pharmacy business licence, ask the applicant for further information or a document the council needs to decide the application.
- (2) The notice must be given to the applicant within 30 days after the application is made.
- (3) The application is taken to be withdrawn if the applicant does not give the council the information or document—
  - (a) within 14 days after receiving the notice; or
  - (b) by a later day agreed between the council and the applicant.

## **27 Requesting inspection of premises**

- (1) The council may, by notice given to an applicant for a pharmacy business licence, ask the applicant to—
  - (a) ensure the premises mentioned in section 25(1)(b)(i) are made available for inspection by the council on—
    - (i) the day stated in the notice; or
    - (ii) another day to be agreed between the applicant and the council; and
  - (b) pay to the council the fee for inspecting the premises prescribed by regulation.
- (2) The notice must be given to the applicant within 30 days after the application is made.

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- (3) The day on which the premises are to be made available for inspection by the council must be within 14 days after the day the notice is given to the applicant.
- (4) If the council asks the applicant to pay the fee under subsection (1)(b), the applicant must pay the fee within 14 days after the notice is given to the applicant.
- (5) If the premises are not made available for inspection by the council on the stated or agreed day, or if the applicant does not pay the fee as required under subsection (4)—
  - (a) the application is taken to be withdrawn; and
  - (b) if the applicant has paid the fee—the council must refund the fee to the applicant.

## **28 Criteria for grant**

The council may grant an application for a pharmacy business licence for a pharmacy business only if satisfied—

- (a) the applicant—
  - (i) is an eligible person; and
  - (ii) is a fit and proper person to own a pharmacy business; and
  - (iii) does not already hold an interest in the maximum number of pharmacy businesses permitted under section 17 for the applicant; and
- (b) the proposed licensed premises for the pharmacy business are authorised premises; and
- (c) each person who the council is aware holds a material interest in the pharmacy business is a person who—
  - (i) is permitted, under section 16, to hold a material interest in the pharmacy business; and
  - (ii) does not already hold an interest in the maximum number of pharmacy businesses permitted under section 17 for the person.

## 29 Deciding application

- (1) After considering an application for a pharmacy business licence and any other information or document obtained in relation to the application, the council may decide to—
  - (a) grant the pharmacy business licence; or
  - (b) refuse to grant the pharmacy business licence.
- (2) If the application is made jointly by 2 or more applicants, the council may decide to grant, or refuse to grant, the pharmacy business licence to 1 or more, but not all, the applicants.
- (3) If the council decides to grant the pharmacy business licence to 1 or more applicants (each an ***approved applicant***)—
  - (a) the council must give each approved applicant—
    - (i) a copy of the licence; and
    - (ii) if a condition is imposed on the licence under section 30—an information notice for the decision to impose the condition; and
  - (b) the approved applicants must pay to the council the licence fee for the licence prescribed by regulation.

*Note—*

See sections 65(1)(c) and 66(1)(a) in relation to suspension and cancellation of pharmacy business licences for contraventions of this Act.

- (4) If the council decides to refuse to grant the pharmacy business licence to 1 or more applicants (each a ***refused applicant***), the council must give each refused applicant an information notice for the decision.

## 30 Conditions

The council may impose conditions on a pharmacy business licence that the council considers appropriate.

*Note—*

If a holder of a pharmacy business licence, or a director or shareholder of the holder, contravenes a condition of the licence, the council may—

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- (a) suspend the licence under section 65; or
- (b) cancel the licence under section 66.

### **31 Term**

- (1) A pharmacy business licence—
  - (a) is granted for the term of up to 1 year stated in the licence; and
  - (b) comes into effect on the day stated in the licence.
- (2) A pharmacy business licence stops having effect if—
  - (a) the licence is suspended, cancelled or surrendered under division 4; or
  - (b) each holder of the licence disposes of the holder's entire interest as an owner of the pharmacy business to which the licence relates; or
  - (c) for a pharmacy business licence held by only 1 person—the holder of the licence dies.
- (3) However, a pharmacy business licence that is suspended stops having effect only for the period of the suspension.

### **32 Form of licence**

A pharmacy business licence must state the following—

- (a) the name of the holder of the licence;
- (b) the address of the licensed premises for the business;
- (c) if a holder of the licence is a corporation—each director and shareholder of the holder;
- (d) if a holder of the licence owns the pharmacy business to which the licence relates as trustee of a trust—the name of each person who, to the best of the council's knowledge, is a beneficiary of the trust;
- (e) the name of each person who, to the best of the council's knowledge, holds a material interest in the business mentioned in section 13(1)(c);

- (f) the business name for the business;
- (g) the term of the licence;
- (h) the conditions, if any, applying to the licence.

## **Division 2                      Renewal and restoration**

### **33            Application for renewal**

- (1) The holder of a pharmacy business licence may, before the licence expires, apply to the council to renew the licence.
- (2) Subsection (3) applies if—
  - (a) an application is made under this section; and
  - (b) the council has not made a decision about whether to renew the pharmacy business licence to which the application relates before the licence expires.
- (3) The pharmacy business licence is taken to continue in effect until the council decides the application or the application is withdrawn, whichever happens first.
- (4) The application must be—
  - (a) in the approved form; and
  - (b) accompanied by the application fee prescribed by regulation.

### **34            Application for restoration of expired licence**

- (1) A person whose pharmacy business licence has expired may, within 28 days after the expiry, apply to the council to restore the licence.
- (2) If an application is made under this section, the pharmacy business licence to which the application relates is taken to be in effect from the time the licence expired until the council decides the application or the application is withdrawn, whichever happens first.

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- (3) The application must be—
  - (a) in the approved form; and
  - (b) accompanied by the application fee prescribed by regulation.

### **35 Deciding application**

For deciding an application for renewal or restoration of a pharmacy business licence under this division, sections 26 to 30 apply—

- (a) as if—
  - (i) a reference to an application for a pharmacy business licence were a reference to the application for renewal or restoration; and
  - (ii) a reference to an applicant for a pharmacy business licence were a reference to the applicant for the renewal or restoration; and
  - (iii) a reference to the grant of a pharmacy business licence were a reference to the grant of the renewal or restoration; and
- (b) with other necessary changes.

### **36 Term**

- (1) A renewal of a pharmacy business licence under this division extends the term of the licence by a period of 1 year, starting on—
  - (a) if the application for the renewal is granted before the licence expires—the day after the day the licence would have expired but for the renewal; or
  - (b) otherwise—the day the application for the renewal is granted.
- (2) A restoration of a pharmacy business licence under this division extends the term of the licence by a period of 1 year

starting on the day the application for the restoration is granted.

- (3) A pharmacy business licence renewed or restored under this division stops having effect if—
  - (a) the licence is suspended, cancelled or surrendered under division 4; or
  - (b) each holder of the licence disposes of the holder's entire interest as an owner of the pharmacy business to which the licence relates; or
  - (c) for a pharmacy business licence held by only 1 person—the holder of the licence dies.
- (4) However, if a pharmacy business licence renewed or restored under this division is suspended, the licence stops having effect only for the period of the suspension.

## **Division 3                      Changing pharmacy business licences**

### **Subdivision 1              Adding a licence holder**

#### **37              Definition for subdivision**

In this subdivision—

*incoming party*, in relation to an application under section 38, see section 38(1).

#### **38              Application to add a licence holder**

- (1) The holder of a pharmacy business licence and 1 other eligible person (the *incoming party*) may jointly apply to the council to add the incoming party as a holder of the licence.
- (2) The application must be—
  - (a) in the approved form; and

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- (b) accompanied by the application fee prescribed by regulation.

### **39 Requesting further information or document**

- (1) The council may, by notice given to an applicant who makes an application under section 38, ask the applicant for further information or a document the council needs to decide the application.
- (2) The notice must be given to the applicant within 30 days after the application is made.
- (3) The application is taken to be withdrawn if the applicant does not give the council the information or document—
  - (a) within 14 days after receiving the notice; or
  - (b) by a later day agreed between the council and the applicant.

### **40 Criteria for grant**

The council may grant an application under section 38 only if satisfied the incoming party—

- (a) is an eligible person; and
- (b) is a fit and proper person to own a pharmacy business; and
- (c) does not already hold an interest in the maximum number of pharmacy businesses permitted under section 17 for the incoming party.

### **41 Deciding application**

- (1) After considering an application under section 38 and any other information or document obtained in relation to the application, the council may decide to—
  - (a) grant the application; or
  - (b) refuse to grant the application.



- (2) If the council decides to grant the application—
  - (a) the council must give each applicant—
    - (i) a notice stating the decision; and
    - (ii) a replacement copy of the pharmacy business licence incorporating the addition of the incoming party as a holder of the licence and the conditions, if any, imposed on the licence under section 42; and
    - (iii) if a condition is imposed on the licence under section 42—an information notice for the decision to impose the condition; and
  - (b) the addition of the incoming party takes effect on the day stated in the notice given under paragraph (a)(i).
- (3) The day stated in the notice under subsection (2)(b) must be—
  - (a) after the day the notice is given to each applicant; or
  - (b) an earlier day agreed between the council and each applicant.
- (4) If the council decides to refuse to grant the application, the council must give each applicant an information notice for the decision.

## **42 Conditions**

The council may, in granting an application under section 38, impose conditions on the licence that the council considers appropriate in relation to the grant.

## **Subdivision 2 Removing a licence holder from licence held jointly**

### **43 Application for removal by licence holder**

- (1) This section applies to a person who—

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- (a) holds a pharmacy business licence jointly with 1 or more other persons; and
  - (b) is no longer an owner of the pharmacy business to which the licence relates.
- (2) The person may apply to the council to remove the person as a holder of the pharmacy business licence.
- (3) The application must be—
  - (a) in the approved form; and
  - (b) accompanied by the application fee prescribed by regulation.

#### **44 Requesting further information or document**

- (1) The council may, by notice given to an applicant who makes an application under section 43, ask the applicant for further information or a document the council needs to decide the application.
- (2) The notice must be given to the applicant within 30 days after the application is made.
- (3) The application is taken to be withdrawn if the applicant does not give the council the information or document—
  - (a) within 14 days after receiving the notice; or
  - (b) by a later day agreed between the council and the applicant.

#### **45 Criterion for grant**

The council may grant an application under section 43 only if satisfied the applicant is not an owner of the pharmacy business to which the licence relates.

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## **46 Deciding application**

- (1) After considering an application under section 43 and any other information or document obtained in relation to the application, the council may decide to—
  - (a) grant the application; or
  - (b) refuse to grant the application.
- (2) If the council decides to grant the application—
  - (a) the council must—
    - (i) give the applicant a notice stating the decision; and
    - (ii) give the remaining holders of the pharmacy business licence a replacement copy of the licence incorporating the removal of the applicant as a holder of the licence; and
  - (b) the removal of the applicant as a holder of the licence takes effect on the day stated in the notice.
- (3) The day stated in the notice under subsection (2)(b) must be—
  - (a) after the day the notice is given to each applicant; or
  - (b) an earlier day agreed between the council, the applicant and each holder of the pharmacy business licence.
- (4) If the council decides to refuse to grant the application, the council must give the applicant an information notice for the decision.

## **47 Removal of licence holder on council's own initiative**

- (1) This section applies in relation to a person who holds a pharmacy business licence jointly with 1 or more other persons if—
  - (a) the person has died; or
  - (b) the council reasonably suspects the person is not an owner of the pharmacy business to which the licence relates; or

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- (c) the council reasonably suspects a ground for cancelling the licence under section 66 exists—
    - (i) in relation to the person; and
    - (ii) not in relation to all the holders of the licence.
- (2) The council may decide to remove the person as a holder of the pharmacy business licence by giving the person or, if the person has died, the executor, administrator or trustee of the person's estate, an information notice for the removal.
- (3) The removal takes effect on the day stated in the information notice.
- (4) The day stated in the information notice must be—
  - (a) after the day the notice is given under subsection (2); or
  - (b) an earlier day agreed between the council, the person to whom the notice is given under subsection (2) and each holder of the pharmacy business licence.
- (5) If the council decides to remove the person as a holder of the pharmacy business licence under this section, the council must give each remaining holder of the licence—
  - (a) a notice stating the decision; and
  - (b) a replacement copy of the licence incorporating the removal of the person as a holder of the licence.

#### **48 Show cause notice before removal**

- (1) This section applies if the council is proposing to remove a person as a holder of a pharmacy business licence under section 47(1)(b) or (c).
- (2) The council must first give each holder of the pharmacy business licence a notice stating—
  - (a) that the council proposes to remove the person as a holder of the licence; and
  - (b) the ground for the proposed removal; and

- (c) that each holder of the licence may, within 28 days after the notice is given, give the council a written response to the proposed removal.
- (3) The council must consider any written response given by a holder of the pharmacy business licence under subsection (2)(c) before deciding whether to remove the person as a holder of the licence.

### **Subdivision 3 Changing licensed premises**

#### **49 Application by licence holder**

- (1) The holder of a pharmacy business licence may apply to the council to change the licensed premises for the pharmacy business to which the licence relates.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) state the address of the proposed licensed premises; and
  - (c) be accompanied by the application fee prescribed by regulation.

#### **50 Requesting further information, document or inspection of premises**

- (1) The council may, by notice given to an applicant who makes an application under section 49—
  - (a) ask the applicant for further information or a document the council needs to decide the application; or
  - (b) ask the applicant to—
    - (i) ensure the proposed licensed premises are made available for inspection by the council on—
      - (A) the day stated in the notice; or
      - (B) another day to be agreed between the applicant and the council; and

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- (ii) pay to the council the fee for inspecting the premises prescribed by regulation.
- (2) The notice must be given to the applicant within 30 days after the application is made.
- (3) If the notice asks the applicant to ensure premises are made available for inspection under subsection (1)(b)(i), the day on which the premises are to be made available must be within 14 days after the day the notice is given to the applicant.
- (4) If the council asks the applicant to pay a fee under subsection (1)(b)(ii), the applicant must pay the fee within 14 days after the notice is given to the applicant.
- (5) The application is taken to be withdrawn if—
  - (a) the applicant does not give the council the information or document requested under subsection (1)(a)—
    - (i) within 14 days after receiving the notice; or
    - (ii) by a later day agreed between the council and the applicant; or
  - (b) if the council makes a request under subsection (1)(b)(i)—the premises are not made available for inspection on the stated or agreed day; or
  - (c) the applicant does not pay a fee as required under subsection (4).
- (6) If the applicant has paid the fee under subsection (4) and the application is taken to be withdrawn under subsection (5), the council must refund the fee to the applicant.

## **51 Criteria for grant**

- (1) The council may grant an application under section 49 only if satisfied the proposed licensed premises are authorised premises.
- (2) However, subject to subsection (1), the council must grant the application if the proposed licensed premises were the licensed premises for the pharmacy business immediately

before the premises the applicant is applying to change became the licensed premises for the business.

## **52 Deciding application**

- (1) After considering an application under section 49 and any other information or document obtained in relation to the application, the council may decide to—
  - (a) grant the application; or
  - (b) refuse to grant the application.
- (2) If the council decides to grant the application—
  - (a) the council must give the applicant—
    - (i) a notice stating the decision; and
    - (ii) a replacement copy of the pharmacy business licence incorporating the change of licensed premises applied for; and
  - (b) the change takes effect on the day stated in the notice.
- (3) The day stated in the notice under subsection (2)(b) must be after the day the notice is given to the applicant.
- (4) If the council decides to refuse to grant the application, the council must give the applicant an information notice for the decision.

## **Subdivision 4 Adding or removing material interest holder or director**

### **53 Application by licence holder**

- (1) The holder of a pharmacy business licence may apply to the council to add to, or remove from, the licence the name of a person as—
  - (a) a holder of a material interest in the pharmacy business to which the licence relates; or

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- (b) a director of a holder of the licence that is a corporation.
- (2) The application must be—
  - (a) in the approved form; and
  - (b) accompanied by the application fee prescribed by regulation.

## **54 Requesting further information or document**

- (1) The council may, by notice given to an applicant who makes an application under section 53, ask the applicant for further information or a document the council needs to decide the application.
- (2) The notice must be given to the applicant within 30 days after the application is made.
- (3) The application is taken to be withdrawn if the applicant does not give the council the information or document—
  - (a) within 14 days after receiving the notice; or
  - (b) by a later day agreed between the council and the applicant.

## **55 Criteria for grant**

The council may grant an application under section 53 only if satisfied—

- (a) the applicant is still a fit and proper person to own a pharmacy business; and
- (b) for an application to add the name of a person as a holder of a material interest in the pharmacy business, the person—
  - (i) is permitted, under section 16, to hold a material interest in the pharmacy business; and
  - (ii) does not already hold an interest in the maximum number of pharmacy businesses permitted under section 17 for the person; and



- (c) for an application to remove the name of a person as a holder of a material interest in the business—the person no longer holds a material interest in the business; and
- (d) for an application to add, or remove, the name of a person as a director of a holder of the pharmacy business licence that is a corporation—the person is, or is no longer, a director of the holder.

## **56 Deciding application**

- (1) After considering an application under section 53 and any other information or document obtained in relation to the application, the council may decide to—
  - (a) grant the application; or
  - (b) refuse to grant the application.
- (2) If the council decides to grant the application, the council must give each holder of the pharmacy business licence to which the application relates—
  - (a) a notice stating the decision; and
  - (b) a replacement copy of the licence incorporating the addition or removal of the material interest holder's or director's name applied for.
- (3) If the council decides to refuse to grant the application, the council must give the applicant an information notice for the decision.

## **57 Addition or removal of material interest holder or director on council's own initiative**

- (1) This section applies if the council reasonably suspects that the list of persons stated on a pharmacy business licence is incorrect because it includes, or does not include, the name of a person as—
  - (a) a holder of a material interest in the pharmacy business to which the licence relates; or

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- (b) a director of the holder of the licence that is a corporation.
- (2) The council may decide, by giving each holder of the pharmacy business licence an information notice for the decision, to correct the list of persons stated on the licence by adding to, or removing from, the list the name of a person.
- (3) If the council decides to add to, or remove from, a list of persons stated on a pharmacy business licence the name of a person under this section, the council must give each holder of the licence—
  - (a) a notice stating the decision; and
  - (b) a replacement copy of the licence incorporating the addition or removal of the person's name.

## **58 Show cause notice before addition or removal**

- (1) This section applies if the council is proposing to correct the list of persons stated on a pharmacy business licence by adding to, or removing from, the list the name of a person under section 57.
- (2) The council must first give each holder of the pharmacy business licence a notice stating—
  - (a) that the council proposes to add to, or remove from, the list the name of a stated person as—
    - (i) a holder of a material interest in the pharmacy business to which the licence relates; or
    - (ii) a director of a holder of the licence that is a corporation; and
  - (b) the ground for the proposed addition or removal; and
  - (c) that each holder of the licence may, within 28 days after the notice is given, give the council a written response to the proposed addition or removal.
- (3) The council must consider any written response given by a holder of the pharmacy business licence under subsection

(2)(c) before deciding whether to add to, or remove from, the list the name of a person.

## **Subdivision 5      Other changes**

### **59      Application by licence holder**

- (1) The holder of a pharmacy business licence may apply to the council to change any of the following stated on the licence—
  - (a) the business name for the pharmacy business to which the licence relates;
  - (b) a condition of the licence;
  - (c) if the name of a holder of the licence, a director of a holder of the licence that is a corporation, or a person who holds a material interest in the pharmacy business to which the licence relates, has changed—the name of the holder, director or person.

*Examples for paragraph (c)—*

- a holder of a pharmacy business licence that is a corporation changes its name
- a person who holds a material interest in a pharmacy business changes the person's surname

- (2) The application must be—
  - (a) in the approved form; and
  - (b) accompanied by the application fee prescribed by regulation.

### **60      Requesting further information or document**

- (1) The council may, by notice given to an applicant who makes an application under section 59, ask the applicant for further information or a document the council needs to decide the application.
- (2) The notice must be given to the applicant within 30 days after the application is made.

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- (3) The application is taken to be withdrawn if the applicant does not give the council the information or document—
  - (a) within 14 days after receiving the notice; or
  - (b) by a later day agreed between the council and the applicant.

## **61 Criterion for grant**

The council may grant an application under section 59 only if satisfied the grant is reasonable and appropriate in the circumstances.

## **62 Deciding application**

- (1) After considering an application under section 59 and any other information or document obtained in relation to the application, the council may decide to—
  - (a) grant the application; or
  - (b) refuse to grant the application.
- (2) If the council decides to grant the application, the council must give the applicant—
  - (a) a notice stating the decision; and
  - (b) a replacement copy of the pharmacy business licence incorporating the change applied for.
- (3) If the council decides to refuse to grant the application, the council must give the applicant an information notice for the decision.

## **63 Change on council's own initiative**

- (1) This section applies if the council reasonably believes it is necessary in the circumstances to change the conditions of a pharmacy business licence to ensure—
  - (a) the proper operation of the pharmacy business to which the licence relates; or

- (b) the health and wellbeing of customers of the pharmacy business to which the licence relates.
- (2) Also, this section applies if the council—
  - (a) reasonably suspects a ground for suspending a pharmacy business licence under section 65, or cancelling a pharmacy business licence under section 66, exists; and
  - (b) reasonably believes it is necessary in the circumstances, to ensure the health and wellbeing of customers of the pharmacy business to which the licence relates, to change the conditions of the licence instead of suspending or cancelling the licence.
- (3) The council may decide to change the conditions of the pharmacy business licence by giving each holder of the licence—
  - (a) an information notice for the change; and
  - (b) a replacement copy of the licence incorporating the change.
- (4) The change takes effect on the day stated in the information notice.
- (5) The day stated in the information notice must be after the day the notice is given to all holders of the pharmacy business licence under subsection (3)(a).
- (6) In this section—

*change*, for the conditions of a pharmacy business licence, includes impose a new condition on the licence.

## **64 Show cause notice before change**

- (1) This section applies if the council is proposing to change the conditions of a pharmacy business licence under section 63.
- (2) The council must first give each holder of the pharmacy business licence a notice stating—

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- (a) that the council proposes to change the conditions of the licence; and
  - (b) the reasons for the proposed change; and
  - (c) that each holder of the licence may, within 28 days after the notice is given, give the council a written response to the proposed change.
- (3) The council must consider any written response given by a holder of the pharmacy business licence under subsection (2)(c) before deciding whether to change the conditions of the licence.

## Division 4 Suspension, cancellation and surrender

## 65 Suspension

- (1) This section applies in relation to a pharmacy business licence if the council reasonably suspects—
  - (a) the licence was granted, renewed or restored because of materially incorrect, false or misleading information; or
  - (b) a holder of the licence, or a director or shareholder of a holder of the licence, has contravened a condition of the licence; or
  - (c) a holder of the licence, or a director or shareholder of a holder of the licence, has contravened this Act, the Health Practitioner Regulation National Law or the *Medicines and Poisons Act 2019*, whether or not the person has been convicted of an offence for the contravention; or
  - (d) the licensed premises for the licence are not authorised premises; or
  - (e) a holder of the licence, or a director or shareholder of a holder of the licence, is a practising pharmacist whose registration under the Health Practitioner Regulation National Law to practise in the pharmacy profession

- with general registration is suspended under that Law;  
or
- (f) a holder of the licence holds another pharmacy business licence that has been suspended under this Act.
- (2) However, this section does not apply in relation to a ground mentioned in subsection (1) if the council forms the reasonable belief mentioned in section 63(2)(b) in relation to the ground.
  - (3) The council may suspend the pharmacy business licence by giving each holder of the licence an information notice for the suspension.
  - (4) The suspension—
    - (a) takes effect on the day stated in the information notice; and
    - (b) continues for—
      - (i) if the suspension was made on the ground mentioned in subsection (1)(e)—the period for which the registration under the Health Practitioner Regulation National Law to practise in the pharmacy profession with general registration is suspended under that Law; or
      - (ii) otherwise—the period of not more than 90 days stated in the information notice.
  - (5) The day stated in the information notice must be after the day the notice is given to all holders of the pharmacy business licence.

## **66 Cancellation**

- (1) This section applies in relation to a pharmacy business licence if the council reasonably suspects—
  - (a) any of the grounds mentioned in section 65(1)(a) to (f) apply in relation to the licence; or
  - (b) a holder of the licence is not an eligible person; or

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- (c) a holder of the licence is not a fit and proper person to own a pharmacy business; or
  - (d) a person who holds a material interest in the pharmacy business to which the licence relates is not permitted to hold a material interest in the business under section 16; or
  - (e) a holder of the licence, or a person who holds a material interest in the pharmacy business to which the licence relates, holds an interest in more than the maximum number of pharmacy businesses permitted under section 17 for the holder; or
  - (f) a holder of the licence holds another pharmacy business licence that has been cancelled under this Act.
- (2) However, this section does not apply in relation to a ground mentioned in subsection (1) if the council forms the reasonable belief mentioned in section 63(2)(b) in relation to the ground.
- (3) Also, this section does not apply if a ground mentioned in subsection (1) applies in relation to 1 or more, but not all, of the holders of the licence and the council decides to act under section 47 instead in relation to the ground.
- (4) The council may cancel the pharmacy business licence by giving each holder of the licence an information notice for the cancellation.
- (5) The cancellation takes effect on the day stated in the information notice.
- (6) The day stated in the information notice must be after the day the notice is given to all holders of the pharmacy business licence.

## **67 Show cause notice before suspension or cancellation**

- (1) This section applies if the council is proposing to—
- (a) suspend a pharmacy business licence under section 65; or



- (b) cancel a pharmacy business licence under section 66.
- (2) The council must first give each holder of the pharmacy business licence a notice stating—
  - (a) that the council proposes to suspend or cancel the licence; and
  - (b) the reasons for the proposed suspension or cancellation; and
  - (c) that each holder of the licence may, within 28 days after the notice is given, give the council a written response to the proposed suspension or cancellation.
- (3) The council must consider any written response given by a holder of the pharmacy business licence under subsection (2)(c) before deciding whether to suspend or cancel the licence.

## **68 Immediate suspension or cancellation without show cause notice**

- (1) This section applies if the council reasonably suspects—
  - (a) either of the following exists for a pharmacy business licence—
    - (i) a ground for suspending the licence under section 65;
    - (ii) a ground for cancelling the licence under section 66; and
  - (b) carrying on the pharmacy business to which the licence relates poses an immediate risk to public health or safety.
- (2) The council may, without giving each holder of the pharmacy business licence a notice under section 67—
  - (a) if subsection (1)(a)(i) applies in relation to the licence—immediately suspend the licence; or
  - (b) if subsection (1)(a)(ii) applies in relation to the licence—immediately cancel the licence.

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- (3) However, the council must immediately tell each holder of the pharmacy business licence about the suspension or cancellation by giving the holder an information notice.
- (4) The suspension or cancellation takes effect on the day stated in the information notice.
- (5) The council may not suspend a pharmacy business licence under subsection (2)(a) for a period of more than 90 days.

## **69 Surrender**

- (1) This section applies in relation to a pharmacy business licence held by only 1 person.
- (2) The holder of a pharmacy business licence must, unless the holder has a reasonable excuse, surrender the licence by notice to the council within 14 days after the holder—
  - (a) stops being an eligible person; or
  - (b) disposes of the holder's interest as owner of the pharmacy business to which the licence relates.

Maximum penalty—50 penalty units.

- (3) The holder of a pharmacy business licence to whom subsection (2) does not apply may surrender the licence by notice to the council at any time.
- (4) A surrender of a pharmacy business licence under this section takes effect on the day the notice surrendering the licence is given to the council.

## **Division 5 Miscellaneous**

### **70 Dealings with pharmacy business licences prohibited**

- (1) The holder of a pharmacy business licence must not—
  - (a) sell or transfer the licence to someone else; or
  - (b) notify or advertise that the licence is available for sale or transfer; or

- (c) permit or allow someone else to hold out that the person is the holder of the licence.

Maximum penalty—200 penalty units.

- (2) A person must not buy or receive a transfer of a pharmacy business licence.

Maximum penalty—200 penalty units.

## **71 False or misleading information**

- (1) A person must not, in relation to a pharmacy business licence or an application under this Act—

- (a) state anything to the council the person knows is false or misleading in a material particular; or
- (b) give the council information or a document the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to a person who, when making the statement or giving the information or document—

- (a) tells the council, to the best of the person's ability, how the statement, information or document is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information to the council.

# **Part 5 Fit and proper persons**

## **72 Deciding whether person is fit and proper to own pharmacy business**

In deciding whether a person is a fit and proper person to own a pharmacy business, the council must have regard to the following—

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- (a) whether the person, or a director or shareholder of the person, holds or has previously held a pharmacy business licence;
- (b) any conditions of a pharmacy business licence held or previously held by the person, or a director or shareholder of the person;
- (c) whether a pharmacy business licence held or previously held by the person, or a director or shareholder of the person, is or has been suspended or cancelled;
- (d) whether the person, or a director or shareholder of the person, has contravened this Act, the Health Practitioner Regulation National Law or the *Medicines and Poisons Act 2019*, whether or not the person, director or shareholder has been convicted of an offence for the contravention;
- (e) whether the person is a party to a contract, agreement or arrangement in relation to a licensed pharmacy business containing a provision to which section 22(3) applies;
- (f) whether the person, or a director or shareholder of the person, has been convicted of an indictable offence;
- (g) if the person is an individual—whether the person is, or has been—
  - (i) an insolvent under administration; or
  - (ii) disqualified from managing corporations under the Corporations Act;
- (h) if the person is a corporation—whether the person is, or has been—
  - (i) placed into administration, receivership or liquidation; or
  - (ii) wound up or deregistered under the Corporations Act;
- (i) any condition, undertaking, suspension or cancellation that applies, or has applied, under the Health Practitioner Regulation National Law in relation to the

registration of the person, or a director or shareholder of the person, under that Law to practise in the pharmacy profession with general registration;

- (j) another matter the council considers relevant in deciding whether the person is a fit and proper person to own a pharmacy business.

### **73 Criminal history report**

- (1) This section applies if the council is considering whether a person is a fit and proper person to own a pharmacy business under section 72.
- (2) The council may ask the commissioner of the police service for a criminal history report about—
  - (a) the person; or
  - (b) a director or shareholder of the person.
- (3) However, the council may make the request only if the person, director or shareholder has given the council written consent for the request.
- (4) The commissioner of the police service must comply with the request.
- (5) However, the duty to comply applies only to information in the possession of the commissioner of the police service or to which the commissioner has access.
- (6) The council must ensure any information received under this section—
  - (a) is destroyed as soon as practicable after the information is no longer needed for the purpose for which it was requested; and
  - (b) is not used for any purpose other than the purpose for which it was requested.
- (7) Subsection (6)(a) does not apply to the extent the information is part of communication that must be preserved as a public record under the *Public Records Act 2023*.

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*Example of part of a communication—*  
an attachment to an email

## **74 Review of written contract, agreement or arrangement**

- (1) This section applies if a person gives the council a document requested by the council under this Act for the purpose of determining whether the person is a party to a contract, agreement or arrangement mentioned in section 72(e).

*Note—*

See, for example, sections 26, 39, 54 and 81 for provisions under which the council may ask for a document as mentioned in subsection (1).

- (2) The council may—
- (a) appoint an appropriately qualified person (the *reviewer*) to—
    - (i) review the document for the purpose of determining the matter mentioned in subsection (1); and
    - (ii) prepare a report on the review for the council; and
  - (b) by notice to the person, ask the person to pay to the council the fee prescribed by regulation for having the reviewer carry out the review and prepare the report.
- (3) If the council asks the person to pay a fee under subsection (2)(b), the person must pay the fee within 14 days after the notice is given to the person.
- (4) If the reviewer does not conduct the review and give a copy of the report to the council within 60 days after the appointment, the council may decide that the person is not a party to a contract, agreement or arrangement mentioned in section 72(e).

## **Part 6**

# **Obligations of holders of pharmacy business licences and material interests**

### **75 Notification of new convictions**

- (1) This section applies if a holder, or a director or shareholder of a holder, of a pharmacy business licence is convicted of an indictable offence during the term of the licence.
- (2) The holder, director or shareholder must, within 14 days after being convicted of the offence, give notice of the conviction to the council, unless the holder, director or shareholder has a reasonable excuse.

Maximum penalty—100 penalty units.

- (3) The notice must include—
  - (a) the existence of the conviction; and
  - (b) details adequate to identify the offence; and
  - (c) details of when the offence was committed; and
  - (d) the sentence imposed, if any, on the holder, director or shareholder.

### **76 Notification of change in circumstances relating to whether holder of pharmacy business licence etc. is fit and proper person**

- (1) This section applies if the circumstances relating to any of the following matters change for a holder, or a director or shareholder of a holder, of a pharmacy business licence—
  - (a) a matter mentioned in section 72(a) to (e) or (g) to (j);
  - (b) a matter mentioned in section 72(j) that the holder, director or shareholder knows, or ought reasonably to know, the council considered in deciding whether to grant the licence.

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- (2) The holder, director or shareholder must give the council notice of the change within 14 days after the change, unless the holder, director or shareholder has a reasonable excuse.

Maximum penalty—50 penalty units.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 203, to have also committed the offence.

- (3) However, the holder, director or shareholder does not commit an offence against subsection (2) if—
- (a) the change relates to a contravention of this Act, the Health Practitioner Regulation National Law or the *Medicines and Poisons Act 2019*; and
  - (b) complying with the subsection might tend to incriminate the person or expose the person to a penalty.

## **77 Notification of death of joint licence holder**

- (1) This section applies if—
- (a) 2 or more persons jointly hold a pharmacy business licence; and
  - (b) 1 of the holders dies.
- (2) The holder of the pharmacy business licence after the death must, unless the holder has a reasonable excuse, give the council notice of the death within 14 days after the death.

Maximum penalty—50 penalty units.

*Note—*

See also section 47, under which the council may decide to remove a person as a holder of a pharmacy business licence if the person has died.



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**78 Notification of change of contact details for licensed pharmacy business**

- (1) This section applies if the postal address, phone number or email address for a licensed pharmacy business changes.

*Examples of a change of a postal address for a licensed pharmacy business—*

- a change of the street address details for the licensed premises for the business by Australia Post
  - for licensed premises in a shopping centre—a change of the shop number allocated to the premises by the owner of the centre
- (2) The holder of the pharmacy business licence for the pharmacy business must, unless the holder has a reasonable excuse, give the council notice of the change within 14 days after the change.

Maximum penalty—50 penalty units.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 203, to have also committed the offence.

**79 Notification of change relating to holder of material interest in pharmacy business or director of licence holder**

- (1) This section applies if a holder of a pharmacy business licence becomes aware of—
- (a) a change in the number or type of shares a person holds in the holder; or
  - (b) a change in a person's material interest in the pharmacy business to which the licence relates, including, for example, a person acquiring a new material interest in the pharmacy business or disposing of the person's material interest in the pharmacy business; or
  - (c) a change of a director of a holder of the licence.

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- (2) The holder of the pharmacy business licence must, unless the holder has a reasonable excuse, give the council notice of the change—
- (a) in the approved form; and
  - (b) within 14 days after becoming aware of the change.

Maximum penalty—50 penalty units.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 203, to have also committed the offence.

- (3) Subsection (2) does not apply in relation to a change mentioned in subsection (1)(b) or (c) if the holder of the pharmacy business licence makes an application under section 53 in relation to the change within the 14 day period mentioned in subsection (2).

## **80 Notification of temporary closure of licensed pharmacy business**

- (1) This section applies if the holder of a pharmacy business licence is proposing to temporarily stop carrying on the pharmacy business to which the licence relates for a period of more than 1 week.
- (2) The holder must, unless the holder has a reasonable excuse, give the council notice stating the period for which the licensed pharmacy business will not be carried on, before the stoppage happens.

Maximum penalty—10 penalty units.

## **81 Council may require holder of pharmacy business licence to give particular information**

- (1) The council may, by notice given to a holder of a pharmacy business licence, require the holder to give the council, within a reasonable period of at least 14 days stated in the notice,

information or a document in the possession or control of the holder that the council—

- (a) requires to determine whether the holder is—
    - (i) an eligible person; or
    - (ii) a fit and proper person to own a pharmacy business; or
  - (b) requires to determine whether a person holds a material interest in the pharmacy business to which the licence relates; or
  - (c) otherwise considers necessary for the administration of this Act.
- (2) The holder must comply with the notice, unless the holder has a reasonable excuse.

Maximum penalty—50 penalty units.

## Part 7                      **Ownership and operation of pharmacy businesses for which licences have stopped having effect**

### **82        Definitions for part**

In this part—

***decision criteria***, in relation to a decision under this part about a pharmacy business, means the following—

- (a) the purposes of this Act;
- (b) the financial and operational circumstances of the business;
- (c) the health and wellbeing of customers of the business.

***previous holder***, of a cancelled pharmacy business licence, means the person who held the licence immediately before the cancellation.

### **83 Death of licence holder**

- (1) This section applies if a pharmacy business licence ends under section 31(2)(c) or 36(3)(c).
- (2) The executor, administrator or trustee of the deceased licence holder's estate may be an owner of, or carry on, the pharmacy business to which the licence relates—
  - (a) for the period starting on the day the holder dies and ending 1 year after that day; or
  - (b) for a longer period, of not more than 2 years starting on the day the holder dies, approved by the council having regard to the decision criteria.

*Note—*

See section 88 in relation to requirements about carrying on the pharmacy business.

- (3) The council may grant an approval under subsection (2)(b) on conditions the council considers appropriate.
- (4) Sections 15, 19 and 20 do not apply to the executor, administrator or trustee in relation to being an owner of, or carrying on, the pharmacy business until the period mentioned in subsection (2) ends.

### **84 Registration cancellation**

- (1) This section applies if the council cancels a pharmacy business licence on a ground mentioned in section 66(1)(b) because the registration of a holder of the licence, or a director or shareholder of a holder of the licence, under the Health Practitioner Regulation National Law to practise in the pharmacy profession with general registration has been cancelled under that Law.
- (2) The previous holder of the pharmacy business licence may continue to be an owner of, or to carry on, the pharmacy business to which the licence relates for a period, or periods, approved by the council.

*Note—*

See section 88 in relation to requirements about carrying on the pharmacy business.

- (3) In deciding whether to grant an approval under subsection (2), the council must have regard to the decision criteria.
- (4) Each period approved by the council under subsection (2) must not be more than 3 months.
- (5) The total of all periods approved by the council under subsection (2) must not be more than 1 year.
- (6) The council may grant an approval under subsection (2) on conditions the council considers appropriate.
- (7) Sections 15, 19 and 20 do not apply to the previous holder of the pharmacy business licence in relation to being an owner of, or carrying on, the pharmacy business during any period approved by the council under this section.

## **85 Director, shareholder or beneficiary no longer spouse of practising pharmacist**

- (1) This section applies if the council cancels a pharmacy business licence—
  - (a) on the ground mentioned in section 66(1)(b) because a director or shareholder of a holder of the licence stops being a practising pharmacist's spouse; or
  - (b) on the ground mentioned in section 66(1)(d) because a beneficiary of a trust of which a holder of the licence is trustee stops being a practising pharmacist's spouse.
- (2) The previous holder of the pharmacy business licence may continue to be an owner of, or to carry on, the pharmacy business to which the licence relates—
  - (a) for the period starting on the day the licence is cancelled and ending 1 year after that day; or
  - (b) for a longer period, of not more than 2 years starting on the day the licence is cancelled, approved by the council having regard to the decision criteria.

*Note—*

See section 88 in relation to requirements about carrying on the pharmacy business.

- (3) The council may grant an approval under subsection (2)(b) on conditions the council considers appropriate.
- (4) Until the period mentioned in subsection (2) ends—
  - (a) sections 15, 19 and 20 do not apply to the previous holder of the pharmacy business licence in relation to being an owner of, or carrying on, the pharmacy business; and
  - (b) section 16 does not apply to the former spouse of the practising pharmacist in relation to holding a material interest in the business.

## **86 Demutualisation of licence holder**

- (1) This section applies if the council cancels a pharmacy business licence on the ground mentioned in section 66(1)(b) because—
  - (a) the holder of the licence is a corporation whose constitution is modified; and
  - (b) the demutualisation provisions apply to the modification.
- (2) The previous holder of the pharmacy business licence may continue to be an owner of, or to carry on, the pharmacy business to which the licence relates for the period starting on the day the licence is cancelled and ending 6 months after that day.

*Note—*

See section 88 in relation to requirements about carrying on the pharmacy business.

- (3) Sections 15, 19 and 20 do not apply to the previous holder in relation to being an owner of, or carrying on, the pharmacy business until the period mentioned in subsection (2) ends.
- (4) In this section—

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*demutualisation provisions* means the Corporations Act, schedule 4, part 5.

## **87      Licence holder being insolvent etc.**

- (1) This section applies if—
  - (a) the council cancels a pharmacy business licence on the ground mentioned in section 66(1)(c) having regard to the matters mentioned in section 72(g) or (h); and
  - (b) the property of the previous holder of the licence vests in, or comes under the control of, a trustee, liquidator, receiver or administrator.
- (2) Sections 15 and 22 do not apply to the trustee, liquidator, receiver or administrator in relation to the pharmacy business to which the pharmacy business licence relates.
- (3) Subsections (4) to (9) apply if the property of the previous holder of the pharmacy business licence vests in an administrator.
- (4) The administrator may continue to carry on the pharmacy business to which the licence relates for a period, or periods, approved by the council.

*Note—*

See section 88 in relation to requirements about carrying on the pharmacy business.

- (5) In deciding whether to grant an approval under subsection (4), the council must have regard to the decision criteria.
- (6) Each period approved by the council under subsection (4) must not be more than 3 months.
- (7) The total of all periods approved by the council under subsection (4) must not be more than 1 year.
- (8) The council may grant an approval under subsection (4) on conditions the council considers appropriate.
- (9) Sections 19 and 20 do not apply to the administrator in relation to carrying on the pharmacy business during any period approved by the council under this section.

## **88 Requirements for temporary operators of pharmacy businesses**

- (1) This section applies to a person (a *temporary operator*) who carries on a pharmacy business, after the pharmacy business licence for the business stops having effect, for a period as permitted under this part.
- (2) The temporary operator must carry on the pharmacy business only at or from the premises in relation to which the pharmacy business licence was in effect.

Maximum penalty—200 penalty units.

- (3) For subsection (2), the temporary operator carries on the pharmacy business at or from the premises if the pharmacy services the business provides are provided—
  - (a) entirely at the premises; or
  - (b) mainly at the premises and also partly at another place, as long as the pharmacy services provided at the other place—
    - (i) do not involve the compounding or dispensing of a medicine at the place; and
    - (ii) are provided under the direction or control of a practising pharmacist employed or otherwise engaged by the operator.

*Examples of pharmacy services provided at other places—*

- administering vaccinations in a way, and at a place, authorised under the *Medicines and Poisons Act 2019*
- conducting a medication review at an aged-care facility
- providing health-related information at a community event

- (4) The temporary operator must, unless the operator has a reasonable excuse, ensure a practising pharmacist is personally present at the premises at all times the business is open, other than for—
  - (a) a period, or periods totalling, not more than 1 hour in a day; or



(b) another period or periods approved by the council.

Maximum penalty—50 penalty units.

(5) The temporary operator must, unless the operator has a reasonable excuse, give the council notice of the name of each practising pharmacist—

(a) under whose direction or control pharmacy services are to be provided under subsection (3)(b)(ii); or

(b) who is to be personally present at the premises at a time the pharmacy business is open under subsection (4).

(6) The temporary operator must give the council notice of the name of each practising pharmacist who is to be personally present at the premises at a time the pharmacy business is open, unless the temporary operator has a reasonable excuse.

Maximum penalty—50 penalty units.

(7) In deciding whether to approve another period under subsection (4)(b), the council must have regard to needs of customers of the pharmacy services provided by the pharmacy business.

(8) A temporary operator who carries on a pharmacy business for a period approved by the council under this part must comply with—

(a) any condition stated in the approval; and

(b) a condition of the pharmacy business licence for the business, to the extent—

(i) the condition relates to the carrying on of the business; and

(ii) the condition is not inconsistent with a condition mentioned in paragraph (a).

Maximum penalty—200 penalty units.

(9) A condition of the pharmacy business licence is taken to continue in effect to the extent necessary for subsection (7)(b).

## Part 8 Investigation and enforcement

### Division 1 Interpretation

#### 89 Definitions for part

In this part—

**disposal order** see section 129(2).

**occupier**, of a place, includes the following—

- (a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;
- (b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;
- (c) if no-one apparently occupies the place—any person who is an owner of the place.

**of**, a place, includes at or on the place.

**offence warning**, for a direction or requirement by an inspector, means a warning that, without a reasonable excuse, it is an offence for the person to whom the direction is given, or of whom the requirement is made, not to comply with the direction or requirement.

**owner**, of a thing that has been seized under division 4, includes a person who would be entitled to possession of the thing had it not been seized.

**person in control**, of a thing, includes any person who reasonably appears to be, claims to be, or acts as if the person is, the person in possession or control of the thing.

**place** includes the following—

- (a) premises;
- (b) vacant land;
- (c) a place in Queensland waters;

- (d) a place held under more than 1 title or by more than 1 owner;
- (e) the land or water on or in which a building or other structure, or a group of buildings or other structures, is situated.

**public place** means a place, or part of a place—

- (a) that the public is entitled to use, that is open to members of the public or that is used by the public, whether or not on payment of money; or

*Examples of a place that may be a public place under paragraph (a)—*

a beach, a park, a road

- (b) the occupier of which allows, whether or not on payment of money, members of the public to enter.

*Examples of a place that may be a public place under paragraph (b)—*

a saleyard, a showground

## **90 References to exercise of powers**

A reference in this part to the exercise of a power by an inspector, other than a reference to the exercise of a specific power, is a reference to the exercise of all or any of an inspector's powers under this part or a warrant, to the extent the powers are relevant.

## **Division 2                      General provisions about inspectors**

### **Subdivision 1              Appointment**

#### **91 Inspectors under part**

This part includes provision for the appointment of inspectors, and gives inspectors particular powers.

## **92 Functions of inspectors**

An inspector has the following functions—

- (a) to investigate, monitor and enforce compliance with this Act;
- (b) to investigate or monitor whether an occasion has arisen for the exercise of powers under this Act;
- (c) to facilitate the exercise of powers under this Act.

## **93 Appointment**

- (1) The council may, by instrument in writing, appoint any of the following persons as an inspector—
  - (a) a member of the council's staff;
  - (b) a contractor of the council;
  - (c) a health service employee;
  - (d) a public sector employee;
  - (e) another person of a class prescribed by regulation.
- (2) However, the council may appoint a person as an inspector only if satisfied the person is appropriately qualified.

## **94 Appointment conditions and limit on powers**

- (1) An inspector holds office on any conditions stated in—
  - (a) the inspector's instrument of appointment; or
  - (b) a signed notice given to the inspector; or
  - (c) a regulation.
- (2) The instrument of appointment, signed notice or regulation may limit the inspector's powers.
- (3) In this section—

***signed notice*** means a notice signed by the council.

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## 95 Accountability of inspectors

- (1) An inspector must give written notice to the council of all interests that the inspector has, or acquires, and that conflict or could conflict with the proper performance of the inspector's functions.
- (2) The council must give a direction to an inspector not to deal, or to no longer deal, with a matter if the council becomes aware that the inspector has a potential conflict of interest in relation to a matter and the council considers that the inspector should not deal, or should no longer deal, with the matter.

*Note—*

Failure by an inspector to comply with subsection (1) or a direction given by the council under subsection (2) may result in action by the council under section 96 or disciplinary action under the *Public Sector Act 2022*.

## 96 Suspension and ending of appointment of inspectors

- (1) The office of a person as an inspector ends if any of the following happens—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the office ends;
  - (c) the inspector's resignation under section 97 takes effect.
- (2) The council may suspend or end the appointment of an inspector.
- (3) Subsections (1) and (2) do not limit the ways the office of a person as an inspector ends.
- (4) In this section—

***condition of office*** means a condition under which the inspector holds office.

## 97 Resignation

An inspector may resign by signed notice given to the council.

## **Subdivision 2      Identity cards**

### **98      Issue of identity card**

- (1) The council must issue an identity card to each inspector.
- (2) The identity card must—
  - (a) contain a recent photo of the inspector; and
  - (b) contain a copy of the inspector’s signature; and
  - (c) identify the person as an inspector under this Act; and
  - (d) state an expiry date for the card.

### **99      Production or display of identity card**

- (1) In exercising a power in relation to a person in the person’s presence, an inspector must—
  - (a) produce the inspector’s identity card for the person’s inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person’s inspection at the first reasonable opportunity.
- (3) For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place as mentioned in section 101(1)(b) or (d).

### **100      Return of identity card**

If the office of a person as an inspector ends, the person must return the person’s identity card to the council within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

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## **Division 3                      Entry of places by inspectors**

### **Subdivision 1              Power to enter**

#### **101      General power to enter places**

- (1) An inspector may enter a place if—
  - (a) an occupier of the place consents under subdivision 2 to the entry and section 104 has been complied with for the occupier; or
  - (b) the place is a public place and the entry is made when the place is open to the public; or
  - (c) the entry is authorised under a warrant and, if there is an occupier of the place, section 111 has been complied with for the occupier; or
  - (d) the place is the licensed premises for a licensed pharmacy business and is—
    - (i) open for carrying on the business; or
    - (ii) otherwise open for entry.
- (2) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.
- (3) If the power to enter is under a warrant, the power is subject to the terms of the warrant.

### **Subdivision 2              Entry by consent**

#### **102      Application of subdivision**

This subdivision applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place under section 101(1)(a).

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### **103 Incidental entry to ask for access**

For the purpose of asking the occupier for the consent, an inspector may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the inspector considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

### **104 Matters inspector must tell occupier**

Before asking for the consent, the inspector must—

- (a) explain to the occupier the purpose of the entry, including the powers intended to be exercised; and
- (b) tell the occupier that—
  - (i) the occupier is not required to consent; and
  - (ii) the consent may be given subject to conditions and may be withdrawn at any time.

### **105 Consent acknowledgement**

- (1) If the consent is given, the inspector may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—
  - (a) the purpose of the entry, including the powers to be exercised; and
  - (b) that the occupier has been given an explanation about the purpose of the entry, including the powers intended to be exercised; and
  - (c) that the occupier has been told—
    - (i) that the occupier is not required to consent; and
    - (ii) that the consent may be given subject to conditions and may be withdrawn at any time; and



- (d) that the occupier gives the inspector or another inspector consent to enter the place and exercise the powers; and
  - (e) the day and time the consent was given; and
  - (f) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the inspector must immediately give a copy to the occupier.
- (4) If—
  - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) a signed acknowledgement complying with subsection (2) for the entry is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

## **Subdivision 3      Entry under warrant**

### **106      Application for warrant**

- (1) An inspector may apply to a magistrate for a warrant for a place.
- (2) The inspector must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the written application to be given by statutory declaration.

## **107 Issue of warrant**

- (1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence of an offence against this Act.
- (2) The warrant must state—
  - (a) the place to which the warrant applies; and
  - (b) that a stated inspector or any inspector may with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for entry to the place; and
    - (ii) exercise the inspector's powers; and
  - (c) particulars of the offence that the magistrate considers appropriate; and
  - (d) the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and
  - (e) the evidence that may be seized under the warrant; and
  - (f) the hours of the day or night when the place may be entered; and
  - (g) the magistrate's name; and
  - (h) the day and time of the warrant's issue; and
  - (i) the day, within 14 days after the warrant's issue, the warrant ends.

## **108 Electronic application**

- (1) An application under section 106 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the inspector reasonably considers it necessary because of—

- (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the inspector's remote location.
- (2) The application—
  - (a) may not be made before the inspector prepares the written application under section 106(2); but
  - (b) may be made before the written application is sworn.

### **109 Additional procedure if electronic application**

- (1) For an application made under section 108, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
  - (a) it was necessary to make the application under section 108; and
  - (b) the way the application was made under section 108 was appropriate.
- (2) After the magistrate issues the original warrant—
  - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the inspector, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the inspector; or
  - (b) otherwise—
    - (i) the magistrate must tell the inspector the information required to be stated in the warrant under section 107(2); and
    - (ii) the inspector must complete a form of warrant, including by writing on it the information mentioned in subparagraph (i).
- (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.

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- (4) The inspector must, at the first reasonable opportunity, send to the magistrate—
  - (a) the written application complying with section 106(2) and (3); and
  - (b) if the inspector completed a form of warrant under subsection (2)(b), the completed form of warrant.
- (5) Despite subsection (3), if—
  - (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
  - (b) the original warrant is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (6) This section does not limit section 106.

## **110 Defect in relation to a warrant**

- (1) A warrant is not invalidated by a defect in the warrant or compliance with this subdivision, unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—  
*warrant* includes a duplicate warrant mentioned in section 109(3).

## **111 Entry procedure**

- (1) This section applies if an inspector is intending to enter a place under a warrant issued under this division.
- (2) Before entering the place, the inspector must do or make a reasonable attempt to do the following things—
  - (a) identify themselves to a person who is an occupier of the place and is present by producing the inspector's

- identity card or another document evidencing the inspector's appointment;
- (b) give the person a copy of the warrant;
  - (c) tell the person the inspector is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the inspector immediate entry to the place without using force.
- (3) However, the inspector need not comply with subsection (2) if the inspector reasonably believes that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.
- (4) In this section—
- warrant** includes a duplicate warrant mentioned in section 109(3).

## **Subdivision 4      General powers of inspectors after entering places**

### **112      Application of subdivision**

- (1) The powers under this subdivision may be exercised if an inspector enters a place under section 101(1)(a), (c) or (d).
- (2) However, if the inspector enters under section 101(1)(a) or (c), the powers under this subdivision are subject to any conditions of the consent or terms of the warrant.

### **113      General powers**

- (1) The inspector may do any of the following—
  - (a) search any part of the place or a vehicle at the place;
  - (b) inspect, examine or film any part of the place or any vehicle or other thing at the place;
  - (c) take for examination a thing, or a sample of or from a thing, at the place or in a vehicle at the place;

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- (d) place an identifying mark in or on any vehicle or other thing at the place;
  - (e) take an extract from, or copy, a document at the place or in a vehicle at the place, or take the document to another place to copy;
  - (f) reproduce sounds, images or writings at the place from an electronic document or, to the extent it is not practicable, take either or both of the following to another place to reproduce sounds, images or writings from an electronic document—
    - (i) a thing that is or contains an electronic document;
    - (ii) a thing that can be used to reproduce sounds, images or writings from an electronic document;
  - (g) take to, into or onto the place and use any person, equipment and materials the inspector requires for exercising the inspector's powers under this part;
  - (h) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The inspector may do anything necessary to exercise a power under subsection (1).
  - (3) If the inspector takes a document from the place or vehicle to copy it, the inspector must copy the document and return it to the place or vehicle as soon as practicable.
  - (4) If the inspector takes from the place a thing to produce an image or writing from an electronic document, the inspector must produce the image or writing from the document and return the thing to the place as soon as practicable.
  - (5) In this section—

***examine*** includes analyse, test, account for, measure, weigh, grade, gauge and identify.

***film*** includes photograph, videotape and record an image in another way.

***inspect***, a thing, includes open the thing and examine its contents.

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## **114 Power to require reasonable help**

- (1) The inspector may require an occupier of the place or a person at the place to give the inspector reasonable help to exercise a power under section 113(1), including, for example, to produce a document or to give information.
- (2) When making a requirement under subsection (1), the inspector must give the person an offence warning for the requirement.

## **115 Offence to contravene help requirement**

- (1) A person of whom a requirement is made under section 114(1) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with a requirement under section 114(1) if complying might tend to incriminate the individual or expose the individual to a penalty.
- (3) However, subsection (2) does not apply if a document or information the subject of the requirement under section 114(1) is required to be held or kept by the individual under this Act.

*Note—*

See, however, section 142.

# **Division 4 Seizure by inspectors and forfeiture**

## **Subdivision 1 Power to seize**

### **116 Seizing evidence at a place that may be entered without consent or warrant**

An inspector who enters a place the inspector may enter under this part without the consent of an occupier of the place and

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without a warrant may seize a thing at the place if the inspector reasonably believes the thing is evidence of an offence against this Act.

**117 Seizing evidence at a place that may be entered only with consent or warrant**

- (1) This section applies if—
  - (a) an inspector is authorised to enter a place only with the consent of an occupier of the place or a warrant; and
  - (b) the inspector enters the place after obtaining the consent or under a warrant.
- (2) If the inspector enters the place with the occupier's consent, the inspector may seize a thing at the place only if—
  - (a) the inspector reasonably believes the thing is evidence of an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.
- (3) If the inspector enters the place under a warrant, the inspector may seize the evidence for which the warrant was issued.
- (4) The inspector may also seize anything else at the place if the inspector reasonably believes—
  - (a) the thing is evidence of an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.
- (5) The inspector may also seize a thing at the place if the inspector reasonably believes the thing has just been used in committing an offence against this Act.

**118 Seizure of property subject to security**

- (1) An inspector may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.



- (2) However, the seizure does not affect the other person's claim to the lien or other security against a person other than the inspector or a person acting under the direction or authority of the inspector.

## **Subdivision 2 Powers to support seizure**

### **119 Power to secure seized thing**

- (1) Having seized a thing under this division, an inspector may—
- (a) leave the thing at the place where it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
  - (b) move the thing from the place of seizure.
- (2) For subsection (1)(a), the inspector may, for example—
- (a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or
  - (b) for equipment—make it inoperable; or
- Example—*
- make the equipment inoperable by dismantling it or removing a component without which the equipment can not be used
- (c) require a person the inspector reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an inspector could do under subsection (1)(a).

### **120 Offence to contravene seizure requirement**

A person must comply with a requirement made of the person under section 119(2)(c) unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

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## **121 Offence to interfere**

- (1) If access to a seized thing is restricted under section 119, a person must not tamper with the thing or with anything used to restrict access to the thing without—

- (a) an inspector's approval; or
- (b) a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) If access to a place is restricted under section 119, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—

- (a) an inspector's approval; or
- (b) a reasonable excuse.

Maximum penalty—50 penalty units.

## **Subdivision 3 Safeguards for seized things**

### **122 Receipt and information notice for seized thing**

- (1) This section applies if an inspector seizes anything under this division unless—

- (a) the inspector reasonably believes there is no-one apparently in possession of the thing or the thing has been abandoned; or
- (b) because of the condition, nature and value of the thing it would be unreasonable to require the inspector to comply with this section.

- (2) The inspector must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—

- (a) a receipt for the thing that generally describes the thing and its condition; and

- (b) an information notice about the decision to seize the thing.
- (3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place in which the thing is seized.
- (4) The receipt and information notice may—
  - (a) be given in the same document; and
  - (b) relate to more than 1 seized thing.
- (5) The inspector may delay giving the receipt and information notice if the inspector reasonably suspects giving them may frustrate or otherwise hinder an investigation by the inspector under this part.
- (6) However, the delay may be only for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep the thing under observation.

## **123 Access to seized thing**

- (1) Until a seized thing is forfeited or returned, the inspector who seized the thing must allow an owner of the thing—
  - (a) to inspect it at any reasonable time and from time to time; and
  - (b) if it is a document—to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (3) The inspection or copying must be allowed free of charge.

## **124 Return of seized thing**

- (1) This section applies if a seized thing is not—
  - (a) forfeited or transferred under subdivision 4 or 5; or

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- (b) subject to a disposal order under division 5.
- (2) As soon as the council stops being satisfied there are reasonable grounds for retaining the thing, the council must return the thing to its owner.
- (3) If the thing is not returned to its owner within 3 months after it was seized, the owner may apply to the council for its return.
- (4) Within 30 days after receiving the application, the council must—
  - (a) if the council is satisfied there are reasonable grounds for retaining the thing and decides to retain the thing—give the owner notice of the decision, including the grounds for retaining the thing; or
  - (b) otherwise—return the thing to the owner.
- (5) For this section, there are reasonable grounds for retaining a seized thing if—
  - (a) the thing is being, or is likely to be, examined; or
  - (b) the thing is needed, or may be needed, for the purposes of—
    - (i) a proceeding for an offence against this Act that is likely to be started or that has been started but not completed; or
    - (ii) an appeal from a decision in a proceeding for an offence against this Act; or
  - (c) it is not lawful for the owner to possess the thing.
- (6) Subsection (5) does not limit the grounds that may be reasonable grounds for retaining the seized thing.
- (7) Nothing in this section affects a lien or other security over the seized thing.
- (8) In this section—  
***examine*** includes analyse, test, account for, measure, weigh, grade, gauge and identify.

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## Subdivision 4      Forfeiture

### 125      Forfeiture by council decision

- (1) The council may decide a seized thing is forfeited to the State if an inspector—
  - (a) after making reasonable inquiries, can not find an owner; or
  - (b) after making reasonable efforts, can not return the thing to an owner; or
  - (c) reasonably believes it is necessary to keep the thing to prevent it being used to commit the offence for which it was seized.
- (2) However, the inspector is not required to—
  - (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
  - (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.

*Example for paragraph (b)—*

The owner of the thing has migrated to another country.

- (3) Regard must be had to the thing's condition, nature and value in deciding—
  - (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

### 126      Information notice about forfeiture decision

- (1) If the council decides under section 125(1) that a thing is forfeited, the council must as soon as practicable give a person who owned the thing immediately before the forfeiture an information notice about the decision.

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- (2) If the decision was made under section 125(1)(a) or (b), the information notice may be given by leaving the notice at the place where the thing was seized, in a conspicuous position and in a reasonably secure way.
- (3) The information notice must state that the person may apply for a stay of the decision if the person appeals against the decision.
- (4) However, subsections (1) to (3) do not apply if—
  - (a) the decision was made under section 125(1)(a) or (b); and
  - (b) the place where the thing was seized is—
    - (i) a public place; or
    - (ii) a place where the notice is unlikely to be read by the person.

## **Subdivision 5      Dealing with property forfeited or transferred to State**

### **127      When thing becomes property of the State**

A thing becomes the property of the State if—

- (a) the thing is forfeited to the State under section 125(1); or
- (b) the owner of the thing and the State agree, in writing, to the transfer of the ownership of the thing to the State.

### **128      How property may be dealt with**

- (1) This section applies if, under section 127, a thing becomes the property of the State.
- (2) The chief executive may deal with the thing as the chief executive considers appropriate, including, for example, by destroying the thing or giving it away.

- (3) The chief executive must not deal with the thing in a way that could prejudice the outcome of an appeal against the decision to forfeit the thing under this division.
- (4) If the chief executive sells the thing, the chief executive must, after deducting the costs of the sale, make reasonable efforts to return the proceeds of the sale to the person who owned the thing immediately before the thing became the property of the State.
- (5) This section is subject to any disposal order made for the thing.

## Division 5                      Disposal orders

### 129      Disposal order

- (1) This section applies if a person is convicted of an offence against this Act.
- (2) The court may make an order (a *disposal order*), on its own initiative or on an application by the prosecution, for the disposal of any of the following things owned by the person—
  - (a) anything that was the subject of, or used to commit, the offence;
  - (b) another thing the court considers is likely to be used by the person or another person in committing a further offence against this Act.
- (3) The court may make a disposal order for a thing—
  - (a) whether or not the thing has been seized under this part; and
  - (b) if the thing has been seized—whether or not the thing has been returned to the person who owned the thing immediately before the seizure.
- (4) In deciding whether to make a disposal order for a thing, the court—

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- (a) may require notice to be given to any person the court considers appropriate, including, for example, a person who may have any property in the thing; and
- (b) must hear any submissions that a person claiming to have any property in the thing may wish to make.
- (5) The court may make any order it considers appropriate to enforce the disposal order.
- (6) This section does not limit the court's powers under another law.

## **Division 6                      Other information-obtaining powers of inspectors**

### **130      Power to require personal details**

- (1) This section applies if an inspector—
  - (a) finds a person committing an offence against this Act; or
  - (b) finds a person in circumstances that lead the inspector to reasonably suspect the person has just committed an offence against this Act; or
  - (c) has information that leads the inspector to reasonably suspect a person has just committed an offence against this Act.
- (2) The inspector may require the person to state the person's name and residential address.
- (3) The inspector may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—
  - (a) be in possession of evidence of the correctness of the stated name or address; or
  - (b) otherwise be able to give the evidence.



- (4) When making a requirement under this section, the inspector must give the person an offence warning for the requirement.

### **131 Offence to contravene personal details requirement**

- (1) A person of whom a requirement is made under section 130 must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) A person may not be convicted of an offence against subsection (1) unless the person is found guilty of the offence in relation to which the requirement was made.

### **132 Power to require production of document or certification of copy**

- (1) An inspector may require a person to make available for inspection by an inspector, or to produce to the inspector for inspection, at a reasonable time and place nominated by the inspector—

(a) a document—

(i) granted or issued to, or required to be kept by, the person under this Act; or

(ii) a copy of which is required to be given to the council under this Act; or

(b) if a document mentioned in paragraph (a), or information required to be kept by the person under this Act, is kept, stored or recorded electronically—a document that is a clear written reproduction of the document or information that is kept, stored or recorded electronically.

- (2) The inspector may copy the document or an entry in the document.
- (3) If the inspector copies the document, or an entry in the document, the inspector may require the person responsible

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for keeping the document to certify the copy as a true copy of the document or entry.

- (4) The inspector must not keep the document after copying the document or an entry in the document.
- (5) However, if a requirement is made of a person under subsection (3), the inspector may keep the document until the person complies with the requirement.

### **133 Offence to contravene production requirement**

- (1) A person of whom a production requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is not a reasonable excuse for a person to fail to comply with a production requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

*Note—*

See, however, section 142.

- (3) The inspector must inform the person, in a way that is reasonable in the circumstances, that—
  - (a) the person must comply with the production requirement even though complying might tend to incriminate the person or expose the person to a penalty; and
  - (b) if the person is an individual—there is a limited immunity under section 142 against the future use of the information or document given in compliance with the production requirement.
- (4) If the person fails to comply with the production requirement when the inspector has failed to comply with subsection (3), the person may not be convicted of the offence against subsection (1).

- (5) If a court convicts a person of an offence against subsection (1), the court may, as well as imposing a penalty for the offence, order the person to comply with the production requirement.
- (6) In this section—  
*production requirement* means a requirement under section 132(1).

### **134 Offence to contravene certification requirement**

- (1) A person of whom a certification requirement is made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is not a reasonable excuse for a person to fail to comply with a certification requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

*Note—*

See, however, section 142.

- (3) The inspector must inform the person, in a way that is reasonable in the circumstances, that—
  - (a) the person must comply with the certification requirement even though complying might tend to incriminate the person or expose the person to a penalty; and
  - (b) if the person is an individual—there is a limited immunity under section 142 against the future use of the information or document given in compliance with the certification requirement.
- (4) If the person fails to comply with the certification requirement when the inspector has failed to comply with subsection (3), the person may not be convicted of the offence against subsection (1).
- (5) In this section—

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*certification requirement* means a requirement under section 132(3).

### **135 Power to require information**

- (1) This section applies if an inspector reasonably believes—
  - (a) an offence against this Act has been committed; and
  - (b) a person may be able to give information about the offence.
- (2) The inspector may, by notice given to the person, require the person to give the inspector by a stated reasonable time—
  - (a) information related to the offence; or
  - (b) if the information mentioned in paragraph (a) is kept, stored or recorded electronically—a clear written reproduction of the information.
- (3) In this section—

*information* includes a document.

### **136 Offence to contravene information requirement**

- (1) A person of whom a requirement is made under section 135(2) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.
- (2) It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.

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## Division 7                      Miscellaneous provisions relating to inspectors

### Subdivision 1              Damage

#### 137      Duty to avoid inconvenience and minimise damage

In exercising a power, an inspector must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

*Note—*

See also section 139.

#### 138      Notice of damage

- (1) This section applies if—
  - (a) an inspector damages something when exercising, or purporting to exercise, a power; or
  - (b) a person (the *assistant*) acting under the direction or authority of an inspector damages something.
- (2) However, this section does not apply to damage the inspector considers is trivial or if the inspector reasonably believes—
  - (a) there is no-one apparently in possession of the thing; or
  - (b) the thing has been abandoned.
- (3) The inspector must give notice of the damage to a person who appears to the inspector to be an owner, or person in control, of the thing.
- (4) However, if for any reason it is not practicable to comply with subsection (3), the inspector must—
  - (a) leave the notice at the place where the damage happened; and
  - (b) ensure the notice is left in a conspicuous position and in a reasonably secure way.

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- (5) The inspector may delay complying with subsection (3) or (4) if the inspector reasonably suspects complying with the subsection may frustrate or otherwise hinder the performance of the inspector's functions.
- (6) The delay may be only for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place.
- (7) If the inspector believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the inspector or the assistant, the inspector may state the belief in the notice.
- (8) The notice must state—
  - (a) particulars of the damage; and
  - (b) that the person who suffered the damage may claim compensation under section 139.

## **Subdivision 2      Compensation**

### **139      Compensation**

- (1) A person may claim compensation from the council if the person incurs loss because of the exercise, or purported exercise, of a power by or for an inspector including a loss arising from compliance with a requirement made of the person under division 4 or 6.
- (2) The compensation may be claimed and ordered in a proceeding—
  - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for an alleged offence against this Act the investigation of which gave rise to the claim for compensation.
- (3) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.

- 
- (4) In considering whether it is just to order compensation, the court must have regard to—
    - (a) any relevant offence committed by the claimant; and
    - (b) whether the loss arose from a lawful seizure or lawful forfeiture.
  - (5) Section 137 does not provide for a statutory right of compensation other than as provided by this section.
  - (6) In this section—  
*loss* includes costs and damage.

### **Subdivision 3      Other offences relating to inspectors**

#### **140      Giving inspector false or misleading information**

- (1) A person must not, in relation to the administration of this Act, give an inspector information the person knows is false or misleading in a material particular.  
Maximum penalty—50 penalty units.
- (2) Subsection (1) applies to information given in relation to the administration of this Act whether or not the information was given in response to a specific power under this Act.
- (3) Subsection (1) does not apply to a person if the person, when giving information in a document—
  - (a) tells the inspector, to the best of the person's ability, how the document is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

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## **141 Obstructing inspector**

- (1) A person must not obstruct an inspector exercising a power, or someone helping an inspector exercising a power, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) If a person has obstructed an inspector, or someone helping an inspector, and the inspector decides to proceed with the exercise of the power, the inspector must warn the person that—
  - (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
  - (b) the inspector considers the person’s conduct an obstruction.
- (3) In this section—

*obstruct* includes hinder, resist, attempt to obstruct and threaten to obstruct.

## **Division 8 Other provision**

### **142 Evidential immunity for individuals complying with particular requirements**

- (1) Subsection (2) applies if an individual gives or produces information or a document to an inspector under section 114 or 132.
- (2) Evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any proceeding to the extent the evidence tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.
- (3) Subsection (2) does not apply to—
  - (a) a proceeding about the false or misleading nature of the information or anything in the document or in which the



false or misleading nature of the information or document is relevant evidence; or

- (b) a proceeding against an individual for an offence against this Act; or
  - (c) a proceeding in relation to an administrative action taken against the individual.
- (4) In this section—

*administrative action*, taken against an individual, means action—

- (a) changing a condition of a pharmacy business licence held by the individual; or
- (b) suspending or cancelling a pharmacy business licence held by the individual.

## Part 9                      Queensland Pharmacy Business Ownership Council

### Division 1              Establishment

#### 143      Establishment

The Queensland Pharmacy Business Ownership Council (the *council*) is established.

#### 144      Legal status

- (1) The council—
- (a) is a body corporate; and
  - (b) may sue and be sued in its corporate name.

#### 145      Council does not represent the State

The council does not represent the State.

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## **146 Application of other Acts**

The council is—

- (a) a statutory body under the *Financial Accountability Act 2009*; and
- (b) a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*; and

*Note—*

The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way that Act affects the council's powers.

- (c) a unit of public administration under the *Crime and Corruption Act 2001*.

## **Division 2 Functions and powers**

### **147 Functions**

- (1) The council has the following functions—
  - (a) deciding applications relating to pharmacy business licences under this Act;
  - (b) changing, suspending and cancelling pharmacy business licences under this Act;
  - (c) monitoring and enforcing compliance with this Act;
  - (d) advising the Minister on—
    - (i) standards premises must meet to be authorised premises; and
    - (ii) other matters relating to this Act;
  - (e) administering the fund under this Act;
  - (f) keeping a register of licensed pharmacy businesses under section 207;
  - (g) any other function given to the council under this Act or another Act.

- (2) The council may advise the Minister about a matter mentioned in subsection (1)(d) on its own initiative or at the Minister's request.
- (3) The council must, in performing its functions, act independently, impartially and in the public interest.

## **148 Powers**

The council has all the powers of an individual and may do anything necessary or convenient to be done in the performance of its functions.

## **149 Direction by Minister**

- (1) The Minister may, after consulting with the council, give the council a written direction about a matter relevant to the performance of the council's functions.
- (2) However, the Minister may not give a direction under subsection (1) about a particular person, application or proceeding.
- (3) The council must comply with a direction given under subsection (1).
- (4) The council must include details, in the council's annual report prepared under section 183, of—
  - (a) any direction given by the Minister under subsection (1) during the financial year to which the report relates; and
  - (b) the actions taken by the council as a result of the direction.

# **Division 3                      Membership**

## **150 Appointing members**

- (1) The council consists of at least 5 members (each a *council member*).

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- (2) Each member must be appointed by the Governor in Council on the recommendation of the Minister.
- (3) The Minister may recommend a person for appointment as a council member only if—
  - (a) the person is—
    - (i) an individual who owns a licensed pharmacy business; or
    - (ii) a director of a corporation that owns a licensed pharmacy business; or
    - (iii) a practising pharmacist who is an employee of a licensed pharmacy business; or
  - (b) the person has qualifications or experience in 1 or more of the following areas—
    - (i) accounting;
    - (ii) business;
    - (iii) financial management;
    - (iv) law;
    - (v) carrying on a pharmacy business;
    - (vi) another area that—
      - (A) in the Minister’s opinion, qualifies the person to represent consumers of pharmacy services; or
      - (B) the Minister considers appropriate or beneficial to the performance of the council’s functions.
- (4) The council must consist of at least—
  - (a) 1 person mentioned in subsection (3)(a)(i); and
  - (b) 1 person mentioned in subsection (3)(a)(iii).

## **151 Disqualification**

- (1) A person is disqualified from becoming, or continuing as, a council member if the person—
  - (a) has a conviction, other than a spent conviction, for an indictable offence; or
  - (b) is an insolvent under administration; or
  - (c) is disqualified from managing corporations because of the Corporations Act, part 2D.6; or
  - (d) is the chief executive officer or another member of the council's staff; or
  - (e) is a contractor of the council; or
  - (f) contravenes a provision of this Act.
- (2) Also, a person is disqualified from becoming a council member if—
  - (a) the Minister asks the person for written consent for a request by the Minister under section 181(2) in relation to the person; and
  - (b) the person does not give the Minister the written consent within 14 days after the Minister asks for it.

## **152 Conditions of appointment**

- (1) A council member is to be paid the remuneration and allowances decided by the Governor in Council.
- (2) For matters not provided for by this Act, a council member holds office on the terms and conditions decided by the Governor in Council.

## **153 Term of appointment**

- (1) A council member is appointed for the term, of not more than 4 years, stated in the member's instrument of appointment.
- (2) Subsection (1) does not prevent a council member from being reappointed.

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## **154 Chairperson and deputy chairperson**

- (1) The Minister may appoint—
  - (a) a council member to be the chairperson of the council; and
  - (b) another council member to be the deputy chairperson of the council.
- (2) A person may be appointed as the chairperson or deputy chairperson at the same time the person is appointed as a council member.
- (3) The chairperson or deputy chairperson holds office for the term, ending not later than the person's term of appointment as a council member, stated in the person's instrument of appointment as chairperson or deputy chairperson.
- (4) However, a person's appointment as chairperson or deputy chairperson ends if, during the term of appointment, the person stops being a council member.
- (5) The deputy chairperson must act as chairperson during—
  - (a) a vacancy in the office of chairperson; and
  - (b) all periods when the chairperson is absent on leave or for another reason can not perform the duties of the office.

## **155 Resignation**

- (1) A council member may resign from the office of chairperson, deputy chairperson or council member by signed notice given to the Minister.
- (2) The resignation takes effect—
  - (a) on the day the notice is given; or
  - (b) if a later day is stated in the notice—on the later day.
- (3) A council member who resigns from the office of chairperson or deputy chairperson may continue to be a council member.

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## 156 Vacancy in office

- (1) The office of a council member becomes vacant if—
  - (a) the member completes the member's term of office and is not reappointed; or
  - (b) the member is disqualified from continuing as a member under section 151; or
  - (c) the member resigns office as a council member under section 155; or
  - (d) the member is absent, other than as approved under section 157, from 3 consecutive council meetings of which at least 21 days notice has been given; or
  - (e) the member's appointment is ended by the Minister under subsection (2).
- (2) The Minister may, at any time, end a council member's appointment if satisfied the member—
  - (a) has been guilty of misconduct; or
  - (b) is incapable of performing the member's duties; or
  - (c) has neglected the member's duties or performed the member's duties incompetently.
- (3) In this section—

***misconduct***, for a council member, means—

  - (a) inappropriate or improper conduct in performing the duties of the member; or
  - (b) inappropriate or improper conduct in a private capacity that reflects seriously or adversely on the council.

## 157 Leave of absence for council members

- (1) The Minister may—
  - (a) approve a leave of absence of 3 or more meetings for the chairperson or deputy chairperson; and

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- (b) appoint another council member to act in the office of the deputy chairperson while the deputy chairperson is absent on leave; and
  - (c) if the Minister appoints another council member under paragraph (b)—give the other council member an additional vote on questions to be decided by the council while the deputy chairperson is absent on leave.
- (2) The chairperson may—
  - (a) approve a leave of absence of 3 or more meetings for a council member, other than the chairperson or deputy chairperson; and
  - (b) give another council member an additional vote on questions to be decided by the council while the member is absent on leave.

## **Division 4                      Business of the council**

### **158      Conduct of business**

Subject to this division, the council may conduct its business, including its meetings, in the way the council considers appropriate.

### **159      Times and places of meetings**

- (1) The chairperson decides the times and places for meetings of the council.
- (2) However, the chairperson must call a meeting at least once every 3 calendar months.
- (3) Also, the chairperson must call a meeting if asked, in writing, by—
  - (a) the Minister; or
  - (b) at least 2 council members.



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## **160 Quorum**

A quorum for a meeting of the council is one-half of the number of its members, or if one-half is not a whole number, the next highest whole number.

## **161 Conduct of meetings**

- (1) A question at a meeting of the council is decided by a majority of the votes of the council members present at the meeting.
- (2) Subject to section 157(1)(c) and (2)(b), each council member at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding at the meeting also has a casting vote.
- (3) A meeting may be held using any technology that reasonably allows council members to hear and take part in discussions as they happen.

*Example—*

teleconferencing

- (4) A council member who takes part in a meeting under subsection (3) is taken to be at the meeting.
- (5) A resolution is validly made by the council, even if the resolution is not passed at a meeting, if—
  - (a) notice of the resolution is given under procedures approved by the council; and
  - (b) a majority of the council members who do not, under section 164, have a personal interest in the matter the subject of the resolution agree in writing to the resolution.

## **162 Minutes and records of resolutions**

The council must keep—

- (a) minutes of its meetings; and
- (b) a record of its resolutions made under section 161(5).

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### **163 Presiding at meetings**

- (1) The chairperson must preside at all meetings of the council at which the chairperson is present.
- (2) If the chairperson is absent from a meeting, but the deputy chairperson is present, the deputy chairperson must preside.
- (3) If the chairperson and deputy chairperson are both absent from a meeting or those offices are vacant, a council member chosen by the council members at the meeting must preside.

### **164 Disclosure of interests at meetings**

- (1) This section applies if—
  - (a) a matter is to be considered at a meeting of the council; and
  - (b) at or before the meeting, a council member becomes aware that the member has a personal interest in the matter.
- (2) For subsection (1)(b), a council member has a ***personal interest*** in a matter if any of the following entities stands, or could reasonably be perceived to stand, to gain a benefit or suffer a loss, either directly or indirectly, because of the outcome of the consideration of the matter—
  - (a) the member;
  - (b) the member's spouse;
  - (c) a parent, child or sibling of the member;
  - (d) a corporation of which the member is a director or in which the member holds shares;
  - (e) an employer or employee of the member;
  - (f) an employee or director of a corporation of which the member is a director or in which the member holds shares;
  - (g) a person in a partnership with the member;

- (h) a person who is a trustee or beneficiary of a trust of which the member is a trustee or beneficiary;
  - (i) a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the member.
- (3) The council member must—
- (a) if the member becomes aware of the personal interest at the meeting—immediately disclose the nature of the interest to the other members at the meeting; or
  - (b) otherwise—give a notice disclosing the nature of the personal interest to the other members before the meeting.

Maximum penalty—100 penalty units.

- (4) The council member must not—
- (a) be present when the council considers the matter; or
  - (b) take part in a decision of the council about the matter.

Maximum penalty—100 penalty units.

- (5) Subsection (6) applies if—
- (a) because of this section, a council member is not present at a council meeting for considering or deciding a matter; and
  - (b) there would be a quorum if the member were present.
- (6) The remaining council members present are a quorum of the council for considering or deciding the matter at the meeting.
- (7) A disclosure under subsection (3) must be recorded in the council's minutes for the meeting.
- (8) A failure to make a disclosure under subsection (3) does not, of itself, invalidate a decision of the council.

## **165 Validity of decisions**

A decision of the council is not invalidated only because—

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- (a) there is a vacancy in the membership of the council; or
- (b) there is a defect or irregularity in the appointment of a member of the council.

## **Division 5                      Staff of the council**

### **Subdivision 1              Chief executive officer**

#### **166      Appointing chief executive officer**

- (1) The council must have a chief executive officer.
- (2) The chief executive officer must be appointed by the Governor in Council on the recommendation of the Minister.
- (3) The Minister may recommend a person for appointment as the chief executive officer only if—
  - (a) the Minister is satisfied the person is appropriately qualified to perform the functions of the officer; and
  - (b) the council has approved the appointment.
- (4) The chief executive officer—
  - (a) is an employee of the council; and
  - (b) is appointed under this Act and not under the *Public Sector Act 2022*.

#### **167      Disqualification**

- (1) A person is disqualified from becoming, or continuing as, the chief executive officer if the person—
  - (a) has a conviction, other than a spent conviction, for an indictable offence; or
  - (b) is an insolvent under administration; or
  - (c) is disqualified from managing corporations because of the Corporations Act, part 2D.6; or

- (d) is a council member; or
  - (e) is a contractor of the council; or
  - (f) contravenes a provision of this Act.
- (2) Also, a person is disqualified from becoming the chief executive officer if—
- (a) the Minister asks the person for written consent for a request by the Minister under section 181(2) in relation to the person; and
  - (b) the person does not give the Minister the written consent within 14 days after the Minister asks for it.

## **168 Conditions of appointment**

- (1) The chief executive officer is to be paid the remuneration and allowances decided by the Governor in Council.
- (2) For matters not provided for by this Act, the chief executive officer holds office on the terms and conditions decided by the Governor in Council.

## **169 Term of appointment**

- (1) The chief executive officer is appointed for the term, of not more than 4 years, stated in the officer's instrument of appointment.
- (2) Subsection (1) does not prevent a person from being reappointed.

## **170 Resignation**

- (1) The chief executive officer may resign from the office of chief executive officer by signed notice given to the council.
- (2) The resignation takes effect—
  - (a) on the day the notice is given; or
  - (b) if a later day is stated in the notice—on the later day.

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## **171 Vacancy in office**

The office of the chief executive officer becomes vacant if the chief executive officer—

- (a) completes the officer's term of office and is not reappointed; or
- (b) is disqualified from continuing as the chief executive officer under section 167; or
- (c) resigns office as chief executive officer under section 170.

## **172 Acting chief executive officer**

- (1) This section applies if—
  - (a) the office of the chief executive officer is vacant; or
  - (b) the chief executive officer is absent from duty or otherwise unable to perform the chief executive officer's functions.
- (2) The Minister may appoint a person to act as chief executive officer for a period of not longer than 6 months.
- (3) However, the Minister may extend the appointment for a further period of not longer than 6 months.
- (4) A person can not be appointed to act in the office unless the Minister could recommend the person for appointment as the chief executive officer under section 166.
- (5) This section does not limit the Governor in Council's power under the *Acts Interpretation Act 1954*, section 25(1)(b)(iv) or (v).

## **173 Chief executive officer's functions**

- (1) The chief executive officer is responsible for the day-to-day administration of the council, including—
  - (a) employing persons under section 175(1); and
  - (b) engaging contractors of the council.

- (2) In performing the chief executive officer's functions, the chief executive officer must comply with the written policies and directions of the council.
- (3) The chief executive officer is accountable to the council.

## **174 Conflicts of interest**

If the chief executive officer has an interest that conflicts, or may conflict, with the performance of the officer's functions, the officer—

- (a) must disclose the nature of the interest and conflict to the council as soon as practicable after the relevant facts come to the officer's knowledge; and
- (b) must not take action or further action concerning a matter that is, or may be, affected by the conflict unless authorised by the council.

## **Subdivision 2 Other staff**

### **175 Council staff**

- (1) The chief executive officer may employ other staff the officer considers appropriate to perform the council's functions.
- (2) The other staff are employed under the *Public Sector Act 2022*.

## **Subdivision 3 Preservation of rights**

### **176 Preservation of rights of particular employees**

- (1) This section applies to—
  - (a) a person appointed as the chief executive officer who was, immediately before taking up the appointment, a public sector employee or health service employee; or

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- (b) a person employed as another member of the council's staff who was, immediately before taking up the employment, a health service employee.
- (2) The person is entitled to retain all existing and accruing rights to superannuation or recreation, sick, long service or other leave as if service as the chief executive officer or another member of the council's staff were a continuation of the person's service as a public sector employee or health service employee.

**177 Preservation of rights of particular persons appointed as health service employee or public sector employee**

- (1) This section applies to a person appointed as a health service employee or a public sector employee if the person was—
  - (a) the chief executive officer, or another member of the council's staff, immediately before taking up the appointment; and
  - (b) a person to whom section 176 applied at the time the person was appointed as the officer or member.
- (2) The person's service as chief executive officer or another member of the council's staff must be regarded as service as a health service employee or public sector employee.

**Division 6                      Queensland Pharmacy Business  
Ownership Council Fund**

**178 Establishment**

- (1) The Queensland Pharmacy Business Ownership Council Fund is established.
- (2) The fund is to be administered by the council.
- (3) The fund does not form part of the consolidated fund.



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**179 Payments of amounts into fund**

- (1) The following amounts are payable into the fund—
  - (a) fees paid under this Act;
  - (b) other amounts received by the council under this Act;
  - (c) an amount appropriated by Parliament for the purposes of the fund;
  - (d) any amount paid into the fund at the direction of or with the approval of the Minister and the Treasurer.
- (2) If the council receives an amount mentioned in subsection (1), the council must pay the amount into the fund.

**180 Payments out of fund**

The council may pay out of the fund an amount for expenses incurred in—

- (a) the administration or enforcement of this Act; or
- (b) performing another function, or exercising another power, under this Act.

**Division 7 Other matters**

**181 Criminal history report**

- (1) This section applies for deciding if a person is disqualified from becoming, or continuing as, a council member or the chief executive officer under section 151 or 167.
- (2) The Minister may ask the commissioner of the police service for a criminal history report about the person.
- (3) However, the Minister may make the request only if the person has given the Minister written consent for the request.
- (4) The commissioner must comply with the request.

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- (5) However, the duty to comply applies only to information in the commissioner's possession or to which the commissioner has access.
- (6) The Minister must ensure any information received under this section—
  - (a) is destroyed as soon as practicable after the information is no longer needed for the purpose for which it was requested; and
  - (b) is not used for any purpose other than the purpose for which it was requested.
- (7) Subsection (6)(a) does not apply to the extent the information is part of communication that must be preserved as a public record under the *Public Records Act 2023*.

*Example of part of a communication—*

an attachment to an email

## **182 Disclosing new convictions**

- (1) This section applies if a council member or the chief executive officer is convicted of an indictable offence during the term of the person's appointment.
- (2) The person must, within 14 days after being convicted of the offence, give notice of the conviction to the Minister, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (3) The notice must include—
  - (a) the existence of the conviction; and
  - (b) details adequate to identify the offence; and
  - (c) details of when the offence was committed; and
  - (d) the sentence imposed, if any, on the person.

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## **183 Report about council's functions**

- (1) The council must, within 3 months after the end of each financial year, give the Minister a report about the performance of the council's functions during the financial year.
- (2) The report must not include confidential information unless the information was provided to the council by the person to whom the information relates for the purpose of publication.
- (3) The council must, within 14 days after giving a report to the Minister under subsection (1), publish the report on the council's website.

## **184 Delegations**

- (1) The council may delegate its functions under this Act to a council member or the chief executive officer.
- (2) A council member or the chief executive officer may subdelegate a function delegated to the member or officer under subsection (1) to an appropriately qualified member of the council's staff.
- (3) In this section—  
*function* includes power.

# **Part 10 Review of decisions**

## **Division 1 Preliminary**

### **185 Definitions for part**

In this part—

*affected person*, in relation to a decision, means—

- (a) if the decision is an original decision—a person who must be given an information notice for the decision; or

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- (b) if the decision is an internal review decision—the person who applied for the internal review.

**court** means Magistrates Court.

**decision notice**, for an internal review decision, means a notice stating the following information—

- (a) the decision;
- (b) the reasons for the decision;

*Note—*

See the *Acts Interpretation Act 1954*, section 27B for matters that must be included with the reasons.

- (c) that the person to whom the notice is given may appeal against the decision under division 5;
- (d) how, and the period within which, the appeal may be started;
- (e) how the person may apply for a stay of the operation of the decision under section 190.

**internal review**, of an original decision, see section 187(1).

**internal review decision** means a decision made, or taken to have been made, under section 189 on an application for internal review of an original decision.

**original decision** means a decision for which an information notice must be given under this Act.

**QCAT information notice**, for a decision, means a notice complying with the QCAT Act, section 157(2).

**seizure or forfeiture decision** means a decision—

- (a) to seize a thing under part 8, division 4; or
- (b) that a thing is forfeited under section 125(1).

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## Division 2                      Internal review

### 186      Review process must start with internal review

An affected person for an original decision may apply to QCAT for a review of the decision, or appeal against the decision under division 5, only if a decision on an application for internal review of the decision has been made, or taken to have been made, under this division.

### 187      Who may apply for internal review

- (1) An affected person for an original decision may apply to the council for a review of the decision under this division (an *internal review*).
- (2) If the affected person has not been given an information notice for the original decision, the affected person may ask the council for an information notice for the decision.
- (3) A failure by the council to give the affected person an information notice for the original decision does not limit or otherwise affect the person's right to apply for an internal review of the decision.

### 188      Requirements for application

- (1) An application for internal review of an original decision must—
  - (a) be in the approved form; and
  - (b) for a person who has been given an information notice for the decision—include enough information to enable the council to decide the application; and
  - (c) be made to the council within—
    - (i) for a person who has been given an information notice for the decision—20 business days after the day the person is given the notice; or

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- (ii) for a person who has not been given an information notice for the decision—20 business days after the day the person becomes aware of the decision.
- (2) The council may, at any time, extend the period within which the application may be made.
- (3) The application does not affect the operation of the original decision or prevent the decision being implemented.

*Note—*

Division 3 provides for a stay of the original decision.

## **189 Internal review**

- (1) The council must, within 20 business days after receiving an application for internal review of an original decision—
  - (a) review the original decision; and
  - (b) decide to—
    - (i) confirm the original decision; or
    - (ii) amend the original decision; or
    - (iii) substitute another decision for the original decision; and
  - (c) give the affected person for the original decision—
    - (i) if the original decision is a seizure or forfeiture decision—a decision notice for the decision made under paragraph (b); or
    - (ii) otherwise—a QCAT information notice for the decision made under paragraph (b).
- (2) The council and the affected person may, before the period stated in subsection (1) ends, agree to a longer period for the council to comply with the subsection.
- (3) The application may be dealt with only by a person who—
  - (a) did not make the original decision; and
  - (b) holds a more senior office than the person who made the original decision.

- (4) Subsection (3) does not apply to an original decision made by the chairperson, or the deputy chairperson acting as chairperson, personally.
- (5) If the council does not give the affected person a decision notice or QCAT information notice within the period required under subsection (1) or a longer period agreed under subsection (2), the council is taken to confirm the original decision.

## **Division 3                      Stays**

### **190      Stay of operation of seizure or forfeiture decision**

- (1) This section applies if, under division 2, an application is made for an internal review of an original decision that is a seizure or forfeiture decision.
- (2) The applicant may immediately apply to the court for a stay of the operation of the seizure or forfeiture decision.
- (3) The court may, by order, stay the operation of the seizure or forfeiture decision to secure the effectiveness of the internal review or any later appeal against the decision under division 5.
- (4) The court may stay the operation of the seizure or forfeiture decision on conditions the court considers appropriate.
- (5) The stay operates for the period decided by the court.
- (6) However, the period of the stay must not extend past the time when the court decides the appeal.

### **191      Stay of operation of other original decision**

- (1) This section applies if, under division 2, an application is made for an internal review of an original decision, other than a seizure or forfeiture decision.
- (2) The applicant may immediately apply, as provided under the QCAT Act, to QCAT for a stay of the decision.

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- (3) QCAT may make an order staying the operation of the original decision to secure the effectiveness of the internal review or any later review by QCAT of the decision.
- (4) A stay by QCAT under this section—
  - (a) may be given on conditions QCAT considers appropriate; and
  - (b) operates for the period fixed by QCAT; and
  - (c) may be amended or revoked by QCAT.
- (5) The period of a stay by QCAT under this section must not extend past the end of the period within which an application for a review of the internal review decision may be made under the QCAT Act.

## **Division 4                      External review**

### **192      Applying for external review**

- (1) This section applies to a person who must be given a QCAT information notice for an internal review decision.
- (2) The person may apply to QCAT, as provided under the QCAT Act, for a review of the internal review decision.

*Note—*

The QCAT Act, section 22(3) enables QCAT to stay the operation of the internal review decision, either on application by a person or on its own initiative.

## **Division 5                      Appeals**

### **193      Appealing internal review decision**

- (1) This section applies to a person who must be given a decision notice for an internal review decision.



- (2) The person may appeal to a court against the internal review decision by filing a notice of appeal with the registrar of the court.
- (3) The notice of appeal must state fully the grounds of the appeal.
- (4) The person must file the notice of appeal within 28 days after a decision notice for the internal review decision is given to the person.
- (5) However, the court may, on application and at any time, extend the time for filing the notice of appeal.
- (6) The person must serve a copy of the notice of appeal, and any application to extend the time for filing the notice of appeal, on the council.
- (7) The appeal does not affect the operation of the seizure or forfeiture decision or prevent the decision being implemented.

## **194 Powers of court on appeal**

- (1) When deciding an appeal against an internal review decision, the court—
  - (a) has the same powers as the council in making the decision; and
  - (b) is not bound by the rules of evidence; and
  - (c) must comply with natural justice.
- (2) An appeal is by way of rehearing.
- (3) The court may—
  - (a) confirm the internal review decision; or
  - (b) substitute another decision for the internal review decision; or
  - (c) set aside the internal review decision and return the matter to the council with directions the court considers appropriate.

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## **195 Effect of court's decision on appeal**

- (1) If the court substitutes another decision for the internal review decision—
  - (a) the substituted decision is taken to be a decision of the council; and
  - (b) the council may give effect to the decision as if—
    - (i) the decision were the original decision of the council; and
    - (ii) no application for review or appeal of the original decision had been made.
- (2) If the court sets aside the internal review decision and returns the matter to the council with directions, any decision made by the council in accordance with the directions may not be reviewed or appealed against under this part.

# **Part 11 Legal proceedings**

## **196 Application of part**

This part applies in relation to a proceeding under this Act.

## **197 Appointments and authority**

The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) the appointment of a council member, the chairperson, the deputy chairperson, the chief executive officer or an inspector;
- (b) the authority of the Minister, the council, a council member, the chairperson, the deputy chairperson, the chief executive officer or an inspector to do anything under this Act.

## **198 Signatures**

A signature purporting to be the signature of the Minister, a council member, the chairperson, the deputy chairperson, the chief executive officer or an inspector is evidence of the signature it purports to be.

## **199 Evidentiary provisions**

A certificate purporting to be signed by the chairperson or the chief executive officer and stating any of the following matters is evidence of the matter—

- (a) a stated document is any of the following—
  - (i) a pharmacy business licence;
  - (ii) an approval granted under this Act;
  - (iii) a notice or direction given under this Act;
  - (iv) an approved form;
  - (v) an identity card;
  - (vi) an acknowledgement of consent signed under section 105;
  - (vii) the register of licensed pharmacy businesses kept under section 207;
  - (viii) a stated record kept under this Act;
- (b) a stated document is a copy of, or an extract from or part of, a document mentioned in paragraph (a);
- (c) on a stated day, or during a stated period, a person's appointment as a council member, the chairperson, the deputy chairperson, the chief executive officer or an inspector was, or was not, in effect;
- (d) on a stated day, or during a stated period, a pharmacy business licence—
  - (i) was or was not in effect; or
  - (ii) was or was not subject to a stated condition;

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- (e) on a stated day, or during a stated period, an approval to carry on a pharmacy business granted under part 7—
  - (i) was or was not in effect; or
  - (ii) was or was not subject to a stated condition;
- (f) on a stated day, a stated person was given a stated notice or direction under this Act;
- (g) on a stated day, a stated requirement was made of a stated person;
- (h) a stated amount is payable under this Act by a stated person and has not been paid.

## **200 Limitation on time for starting offence proceeding**

A proceeding for an offence against this Act must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

## **201 Allegations of false or misleading information or documents**

In a proceeding for an offence against section 71(1) or 140(1), it is enough for a charge to state that the information or document to which the offence relates was, without specifying which, 'false or misleading'.

## **202 Conduct of representatives**

- (1) If it is relevant to prove a person's state of mind about particular conduct, it is enough to show—
  - (a) the conduct was engaged in by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.

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- (2) Conduct engaged in for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have also been engaged in by the person unless the person proves—
- (a) the person was not in a position to influence the representative in relation to the conduct; or
  - (b) if the person was in a position to influence the representative in relation to the conduct—the person took reasonable steps to prevent the conduct.
- (3) In this section—
- engaging*, in conduct, includes failing to engage in conduct.
- representative* means—
- (a) for a corporation—an agent, employee or executive officer of the corporation; or
  - (b) for an individual—an agent or employee of the individual.
- state of mind*, of a person, includes the person's—
- (a) belief, intention, knowledge, opinion or purpose; and
  - (b) reasons for the belief, intention, knowledge, opinion or purpose.

## **203 Executive officer may be taken to have committed offence against deemed executive liability provision**

- (1) If a corporation commits an offence against a deemed executive liability provision, an executive officer of the corporation is taken to have also committed the offence if—
  - (a) the officer authorised or permitted the corporation's conduct constituting the offence; or
  - (b) the officer was, directly or indirectly, knowingly concerned in the corporation's conduct constituting the offence.
- (2) The executive officer may be proceeded against for, and convicted of, the offence against the deemed executive

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liability provision whether or not the corporation has been proceeded against for, or convicted of, the offence.

- (3) This section does not affect—
- (a) the liability of the corporation for the offence against the deemed executive liability provision; or
  - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against the deemed executive liability provision.

- (4) In this section—

*deemed executive liability provision* means any of the following provisions—

- section 15(1)
- section 17
- section 19
- section 20(1)
- section 76(2)
- section 78(2)
- section 79(2).

## Part 12 Confidentiality

### 204 Application of part

This part applies in relation to confidential information that a person—

- (a) has obtained in performing a function under this Act; or
- (b) has obtained access to, whether directly or indirectly, from a person in relation to whom paragraph (a) applies.

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## **205 Confidentiality of information**

- (1) A person must not, directly or indirectly, disclose confidential information to another person unless the disclosure is permitted under subsection (2).

Maximum penalty—50 penalty units.

- (2) A person is permitted to disclose confidential information to another person—
- (a) under this Act; or
  - (b) if the disclosure is otherwise required or permitted by law; or
  - (c) if the disclosure is necessary for the performance of a function under this Act; or
  - (d) if the person to whom the information relates consents to the disclosure.
- (3) Subsection (2) applies despite the *Hospital and Health Boards Act 2011*, section 142.

## **206 Disclosure of confidential information to entities performing relevant functions**

- (1) A person may disclose confidential information to—
- (a) a coroner investigating the death of a person under the *Coroners Act 2003*; or
  - (b) a law enforcement agency, for the purposes of detecting, investigating, preventing or prosecuting an offence in relation to a regulated substance under the *Medicines and Poisons Act 2019*.
- (2) A person may disclose confidential information, other than criminal history information, to—
- (a) the council; or
  - (b) the chief executive officer; or
  - (c) a National Health Practitioner Board, or the Australian Health Practitioner Regulation Agency, established

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- under the Health Practitioner Regulation National Law;  
or
  - (d) an entity established under the *National Health Act 1953* (Cwlth); or
  - (e) an official under the *Health Ombudsman Act 2013*; or
  - (f) another entity of the Commonwealth or another State, for performing the entity's functions relating to the regulation of pharmacy businesses or pharmacy services.
- (3) However, a person may disclose confidential information to an entity under subsection (1) or (2) only if the person is satisfied—
- (a) the disclosure is reasonably necessary for the entity to exercise its functions; and
  - (b) the confidential information will be collected, stored and used by the entity in a way that protects the privacy of the persons to whom the information relates from unjustified intrusion.

## Part 13                      Miscellaneous

### **207      Council must keep register of licensed pharmacy businesses**

- (1) The council must keep a register of licensed pharmacy businesses.
- (2) The register must contain the following information for each licensed pharmacy business—
  - (a) the business name for the business;
  - (b) the address of the licensed premises for the business.
- (3) The register may, if the council considers it appropriate, contain information about pharmacy services provided by a licensed pharmacy business.



- (4) The register must be kept in the way the council considers appropriate, including, for example, in an electronic form.
- (5) The council may publish the information contained in the register on the council's website.
- (6) However, the council must not publish confidential information unless the information was provided to the council by the person to whom the information relates for the purpose of publication.

## **208 Auditing of licence holders**

- (1) The council may audit the operations of a holder of a pharmacy business licence.
- (2) However, the council may audit the operations only to the extent they relate to the obligations of the holder under this Act.
- (3) The holder of the pharmacy business licence must, for the purpose of allowing the council to conduct the audit, give the council, at all reasonable times, full and free access to all documents and property belonging to, in the custody of, or under the control of, the holder to the extent the document or property is relevant to the audit.

Maximum penalty—50 penalty units.

## **209 Council must publish report about compliance and audits for financial year**

- (1) The council must, within 3 months after the end of each financial year, prepare a report about—
  - (a) audits conducted by the council under section 208 during the financial year; and
  - (b) actions taken by the council during the financial year to ensure compliance with this Act by holders of pharmacy business licences.

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- (2) The report must not include confidential information unless the information was provided to the council by the person to whom the information relates for the purpose of publication.
- (3) The council must publish the report on the council's website.

## **210 Protection from liability**

- (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the council.
- (3) In this section—

*official* means—

- (a) a council member; or
- (b) the chief executive officer; or
- (c) another member of the council's staff; or
- (d) an inspector; or
- (e) a person acting under the direction of a person mentioned in any of paragraphs (a) to (d).

## **211 Approved forms**

The council may approve forms for use under this Act.

## **212 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about any of the following—
  - (a) fees payable under this Act;
  - (b) the waiver of fees;
  - (c) the keeping of records under this Act, including the form in which records are to be kept;

- (d) any other matter provided for under this Act.
- (3) A regulation may provide for a maximum penalty of not more than 20 penalty units for a contravention of the regulation.

## Part 14 Transitional provisions

### Division 1 Interpretation

#### 213 Definitions for part

In this part—

***certified agreement*** see the *Industrial Relations Act 2016*, schedule 5.

***deemed eligible person*** means a corporation deemed to be an eligible person under section 214.

***existing instruments*** means the following instruments as they were in effect immediately before the commencement—

- (a) a Queensland Health certified agreement;
- (b) a Queensland Health award;
- (c) a public sector directive;
- (d) a health employment directive.

***existing pharmacy business*** means a pharmacy business being carried on under the repealed Act immediately before the commencement.

***health employment directive*** means a health employment directive issued by the chief executive under the *Hospital and Health Boards Act 2011*, section 51A.

***initial council employee*** see section 223.

***new certified agreement*** means a certified agreement made after the commencement.

***public sector directive***—

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- (a) means a directive under the *Public Sector Act 2022*, schedule 2; and
- (b) includes—
  - (i) a joint directive made under section 226 of that Act; and
  - (ii) a directive continued under section 307 or 308 of that Act.

***Queensland Health*** means the department administering the *Hospital and Health Boards Act 2011*.

***Queensland Health award*** means the following awards under the *Industrial Relations Act 2016*—

- (a) the Hospital and Health Service General Employees (Queensland Health) Award – State 2015;
- (b) the Health Practitioners and Dental Officers (Queensland Health) Award – State 2015;
- (c) another award that, immediately before the commencement, covered Queensland Health in relation to the employment of public sector employees.

***Queensland Health certified agreement*** means the following certified agreements—

- (a) the Queensland Public Health Sector Certified Agreement (No. 11) 2022;
- (b) the Health Practitioners and Dental Officers (Queensland Health) Certified Agreement (No. 4) 2022.

***repealed***, for a provision, means that provision of the repealed Act as in force from time to time before the commencement.

***repealed Act*** means the repealed *Pharmacy Business Ownership Act 2001*.

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## **Division 2                      Interests in, and operation of, existing pharmacy businesses**

### **214      Particular corporations deemed to be eligible persons**

- (1) This section applies to a corporation that—
  - (a) immediately before the commencement, owned an existing pharmacy business; and
  - (b) is not an eligible person; and
  - (c) meets the eligibility criteria mentioned in subsection (2).
- (2) The eligibility criteria are that, immediately before the commencement—
  - (a) the directors of the corporation were all—
    - (i) practising pharmacists; or
    - (ii) close adult relatives, of practising pharmacists, who also held a material interest in the business immediately before the commencement; and
  - (b) the shareholders of the corporation consisted of only the following—
    - (i) practising pharmacists;
    - (ii) close adult relatives of practising pharmacists;
    - (iii) 1 or more corporations whose directors and shareholders were—
      - (A) all practising pharmacists; or
      - (B) a combination of practising pharmacists and close adult relatives, of practising pharmacists, who also held a material interest in the business immediately before the commencement; and
  - (c) if the corporation owned the existing pharmacy business as trustee of a trust, the beneficiaries of the trust consisted of only the following—

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- (i) practising pharmacists;
  - (ii) close adult relatives of practising pharmacists;
  - (iii) 1 or more corporations whose directors and shareholders were—
    - (A) all practising pharmacists; or
    - (B) a combination of practising pharmacists and close adult relatives, of practising pharmacists, who also held a material interest in the business immediately before the commencement.
- (3) From the commencement, the corporation is deemed to be an eligible person.
- (4) However, the corporation stops being a deemed eligible person if a material interest in the existing pharmacy business is transferred to a person who is not permitted to hold a material interest in the business under section 16.

## **215 Eligible persons carrying on existing pharmacy businesses**

- (1) This section applies in relation to an existing pharmacy business if the person who owned the business immediately before the commencement is an eligible person.
- (2) The person may continue to own and carry on the existing pharmacy business, without holding a pharmacy business licence for the business, until—
  - (a) the day that is 1 year after the commencement; or
  - (b) if the person applies for a pharmacy business licence for the business under this Act before the day mentioned in paragraph (a)—the day the application is decided or withdrawn.
- (3) However, subsection (2) stops applying to the person if the person stops being an eligible person.

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- (4) Repealed sections 139C to 139G continue to apply in relation to the existing pharmacy business as if this Act had not been enacted.
  - (5) For any period a person may continue to own, and carry on, an existing pharmacy business under this section—
    - (a) sections 15, 16 and 19 do not apply in relation to the person owning, or carrying on, the business; and
    - (b) repealed sections 139I, 141, 141A and 141B continue to apply in relation to the business as if this Act had not been enacted.

## **216 Deemed eligible persons carrying on existing pharmacy businesses**

- (1) This section applies in relation to an existing pharmacy business if the person who owned the business immediately before the commencement is a deemed eligible person.
- (2) The person may continue to own and carry on the existing pharmacy business, without holding a pharmacy business licence for the business, until—
  - (a) the day that is 2 years after the commencement; or
  - (b) if the person applies for a pharmacy business licence for the business under this Act before the day mentioned in paragraph (a)—the day the application is decided or withdrawn.
- (3) However, subsection (3) stops applying to the person if the person stops being a deemed eligible person.
- (4) Repealed sections 139C to 139G continue to apply in relation to the existing pharmacy business as if this Act had not been enacted.
- (5) For any period a person may continue to own, and carry on, an existing pharmacy business under this section—
  - (a) sections 15, 16 and 19 do not apply in relation to the person owning, or carrying on, the business; and

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- (b) repealed sections 139I, 141, 141A and 141B continue to apply in relation to the business as if this Act had not been enacted.

**217 Particular material interests in existing pharmacy businesses held by particular corporations**

- (1) This section applies to a corporation that holds a material interest in an existing pharmacy business owned by a deemed eligible person under section 216 as—
  - (a) a shareholder of the deemed eligible person; or
  - (b) a beneficiary of a trust of which the deemed eligible person is trustee.
- (2) The corporation, and its shareholders, do not commit an offence against section 16 in relation to holding the material interest.
- (3) Subsection (2) applies only while the deemed eligible person is carrying on the existing pharmacy business under section 216.

**218 Interests in existing pharmacy businesses held by beneficiaries of discretionary trusts**

- (1) This section applies if—
  - (a) immediately before the commencement, the owner of an existing pharmacy business owned the business as trustee of a discretionary trust; and
  - (b) on the commencement, the owner continues to own and carry on the business under section 215 or 216.
- (2) A beneficiary of the trust who is not a practising pharmacist or a close adult relative of a practising pharmacist does not commit an offence against section 16 in relation to holding an interest in the existing pharmacy business because of the trust.
- (3) Also, if a beneficiary of the trust is a practising pharmacist or a close adult relative of a practising pharmacist, the beneficiary's interest in the existing pharmacy business



because of the trust is not to be included in the number of interests the beneficiary holds in pharmacy businesses.

- (4) Subsections (2) and (3) apply in relation to an existing pharmacy business owned by an eligible person until—
  - (a) the day that is 2 years after the commencement; or
  - (b) if any of the following happens before the day mentioned in paragraph (a), when the following happens—
    - (i) the owner does not apply for a pharmacy business licence for the business within the period stated in section 215(2)(a);
    - (ii) the owner's application for a pharmacy business licence for the business is refused or withdrawn;
    - (iii) the owner's pharmacy business licence for the business is cancelled.
- (5) Subsections (2) and (3) apply in relation to an existing pharmacy business owned by a deemed eligible person until the owner stops carrying on the business under section 216.

## **219 Particular provision for pharmacy businesses owned by existing holders of non-practising registration**

- (1) Subsection (2) applies to a person who, immediately before the commencement—
  - (a) held a non-practising registration; and
  - (b) owned or held an interest in an existing pharmacy business.
- (2) The person is taken, for the purposes of this Act, to be a practising pharmacist in relation to the pharmacy business until the earlier of—
  - (a) the day the person stops holding the non-practising registration; or
  - (b) the day that is 2 years after the commencement.
- (3) In this section—

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*non-practising registration* means a non-practising registration in the pharmacy profession under the Health Practitioner Regulation National Law.

**220 Particular provision for existing pharmacy businesses carried on at or from premises in, or directly accessible from, supermarkets**

- (1) This section applies to premises if—
  - (a) a pharmacy business was being carried on at or from premises on the day this Act received assent; and
  - (b) since the day this Act received assent, the pharmacy business has continuously been carried on at or from the premises, under the repealed Act or this Act, by the person; and
  - (c) the premises—
    - (i) are in, or are directly accessible from, a supermarket; and
    - (ii) would, other than for subparagraph (i), be authorised premises.
- (2) The premises are taken, for the purposes of this Act, to be authorised premises.
- (3) In this section—

*supermarket* see section 11(3).

**221 Continued limited ownership or operation of pharmacy businesses**

- (1) This section applies if, immediately before the commencement—
  - (a) a person continued to own or operate a pharmacy business under repealed section 139C, 139D, 139E or 139F; and

- (b) the period for which the person could continue to own or operate the business under that repealed section had not ended.
- (2) Until the period mentioned in subsection (1)(b) ends—
  - (a) sections 15, 16 and 19 do not apply in relation to the person owning, or carrying on, the pharmacy business; and
  - (b) repealed sections 139I, 141, 141A and 141B continue to apply in relation to the business as if this Act had not been enacted.

## **222 Approvals for continued ownership of pharmacy businesses if registration suspended or cancelled**

- (1) This section applies if, immediately before the commencement, the chief executive was deciding whether to grant an approval for a person to continue to own a pharmacy business for a period or periods under repealed section 139C(2).
- (2) The chief executive must decide whether to grant the approval under the repealed Act as if this Act had not been enacted.
- (3) However, the chief executive may grant the approval for only 1 period of not more than 3 months.
- (4) For the period of any approval under subsection (3) under which a person may continue to own an existing pharmacy business—
  - (a) sections 15, 16 and 19 do not apply in relation to the person owning, or carrying on, the pharmacy business; and
  - (b) repealed sections 139I, 141, 141A and 141B continue to apply in relation to the business as if this Act had not been enacted.

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## **Division 3                      Employment terms and conditions                                          of initial council employees**

### **223      Application of division**

- (1) This division applies to a person (an *initial council employee*) who is employed after the commencement as a member of the council's staff, other than the chief executive officer, including a person who was a health service employee or public service employee employed by Queensland Health immediately before being transferred to the council.
- (2) However, a person stops being an initial council employee if a new certified agreement, covering the person as a member of the council's staff, takes effect.

### **224      Application of existing instruments**

- (1) Subsection (2) applies to an initial council employee who—
  - (a) was a health service employee immediately before being transferred to the council; or
  - (b) was a public service employee employed by Queensland Health immediately before being transferred to the council.
- (2) The terms and conditions of employment of the initial council employee are—
  - (a) for an initial council employee mentioned in subsection (1)(a)—the terms and conditions that applied, immediately before the commencement, to health service employees under the existing instruments; or
  - (b) for an initial council employee mentioned in subsection (1)(b)—the terms and conditions that applied, immediately before the commencement, to public service employees employed by Queensland Health under the existing instruments other than a health employment directive.

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- (3) The terms and conditions of employment of an initial council employee to whom subsection (2) does not apply are the terms and conditions that applied, immediately before the commencement, to health service employees under the existing instruments.
- (4) For subsections (2) and (3)—
- (a) the *Hospital and Health Boards Act 2011*, sections 51B and 51C apply in relation to an existing instrument that is a health employment directive; and
  - (b) the *Public Sector Act 2022*, sections 228 and 229, apply in relation to an existing instrument that is a public sector directive; and
  - (c) to the extent an existing instrument applied to health service employees, or public service employees employed by Queensland Health, immediately before the commencement, the instrument is taken to apply to an initial council employee; and
  - (d) to the extent an existing instrument applied to Queensland Health in relation to its employment of health service employees or public service employees immediately before the commencement, the instrument is taken to apply to the council in place of Queensland Health in relation to an initial council employee.
- (5) This section applies despite any other Act but subject to sections 225 to 228.

## **225 Change to existing instrument other than health employment directive**

- (1) This section applies to an existing instrument other than a health employment directive.
- (2) To the extent a change to the existing instrument takes effect after the commencement, the change applies for the purposes of the instrument's application under section 224.

[s 226]

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**226 Revocation of existing public sector directive**

- (1) This section applies if an existing instrument that is a public sector directive is revoked or otherwise stops having effect after the commencement.
- (2) The public sector directive stops applying under section 224.

**227 Application of public sector directive made after commencement**

- (1) The terms and conditions of employment of an initial council employee are subject to a public sector directive made after the commencement if the directive states that it applies to initial council employees.
- (2) The *Public Sector Act 2022*, sections 228 and 229, apply in relation to a public sector directive mentioned in subsection (1).

**228 Fixed term contracts not affected**

- (1) This section applies if a fixed term contract was in effect for an initial council employee to whom section 224(2) applies immediately before the employee was transferred to the council.
- (2) Nothing in this division affects the operation of the fixed term contract.

**229 Transfer of health service employee or public service employee**

- (1) For initial council employees to whom section 224(2) applies, the transfer to the council does not—
  - (a) affect the employees' benefits, entitlements or remuneration; or
  - (b) prejudice the employees' existing or accruing rights to superannuation or recreation, sick, long service or other leave; or

- (c) interrupt continuity of service, except that the employees are not entitled to claim the benefit of a right or entitlement more than once in relation to the same period of service; or
  - (d) entitle the employees to a payment or other benefit from the State because the employees are no longer employed by Queensland Health.
- (2) This section does not limit the operation of the *Public Sector Act 2022*, chapter 4, part 4 in relation to the transfer of employees to the council as members of the council's staff.

## **Division 4                      Other matters**

### **230       Proceedings for particular offence**

- (1) This section applies in relation to an offence against repealed section 139B committed by a person before the commencement.
- (2) The person may not be convicted of or punished for the offence unless the person was charged with the offence before the commencement.
- (3) If the person was charged with the offence before the commencement, a proceeding for the offence may be continued, and the person may be convicted of and punished for the offence, as if this Act had not been enacted.

### **231       Seized things**

- (1) This section applies if, immediately before the commencement, a thing seized under repealed section 159 or 160 was being kept under the repealed Act.
- (2) Repealed part 3, division 3, subdivision 4 continues to apply in relation to the thing as if this Act had not been enacted.

[s 232]

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## **232      Reviews of forfeiture decisions not decided**

- (1) This section applies in relation to a review started under repealed section 181 before the commencement that had not been decided before the commencement.
- (2) QCAT may continue to hear, and decide, the review under the repealed Act as if this Act had not been enacted.

## **233      Existing review rights**

- (1) This section applies if, immediately before the commencement—
  - (a) a person could have, but had not, applied to QCAT for a review of a decision under repealed section 181; and
  - (b) the period within which the person could apply for the review had not ended.
- (2) The person may, within the period mentioned in subsection (1)(b), apply for the review, and QCAT may hear and decide the review, under the repealed Act as if this Act had not been enacted.

# **Part 15                      Repeal and amendments of legislation**

## **Division 1                  Repeal**

### **234      Repeal**

The Pharmacy Business Ownership Act 2001, No. 12 is repealed.



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## **Division 2                      Amendment of this Act**

### **235      Act amended**

This division amends this Act.

### **236      Amendment of long title**

Long title, from ‘, and to amend’—  
*omit.*

## **Division 3                      Amendment of Public Sector Act 2022**

### **237      Act amended**

This division amends the *Public Sector Act 2022*.

### **238      Amendment of sch 1 (Public service entities under section 9(b))**

Schedule 1—  
*insert—*

Queensland Pharmacy Business  
Ownership Council under the  
*Pharmacy Business Ownership Act  
2024*

chief executive officer  
under the *Pharmacy  
Business Ownership Act  
2024*

## **Division 4                      Amendment of Termination of Pregnancy Act 2018**

### **239      Act amended**

This division amends the *Termination of Pregnancy Act 2018*.

[s 240]

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**240     Amendment of sch 1 (Dictionary)**

Schedule 1, definition *pharmacy*—  
*omit, insert—*

*pharmacy* means the licensed premises for a  
licensed pharmacy business within the meaning  
of the *Pharmacy Business Ownership Act 2024*.

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## Schedule 1 Dictionary

### section 7

***affected person***, in relation to a decision, for part 10, see section 185.

***approved form*** means a form approved under section 211.

***authorised pharmacist***, for a licensed pharmacy business, means—

- (a) a holder of the pharmacy business licence for the business who is a practising pharmacist; or
- (b) a practising pharmacist who is—
  - (i) a director or shareholder of a holder of the pharmacy business licence for the business; or
  - (ii) employed by a holder of the pharmacy business licence for the business to carry on the business.

***authorised premises*** see section 11.

***beneficiary***, of a trust, includes a holder of a unit in a unit trust.

***business name***, for a pharmacy business, means—

- (a) if the *Business Names Registration Act 2011* (Cwlth), section 18(1) applies in relation to the business—the business name registered for the business under that Act; or
- (b) otherwise—the name under which the business is carried on.

***carry on***, a pharmacy business, for part 3, division 2, see section 18.

***chairperson*** means the person who holds an appointment as the chairperson of the council under section 154(1)(a).

***chief executive officer*** means the chief executive officer of the council appointed under section 166.

**close adult relative**, of a practising pharmacist, means a spouse or child of the pharmacist who is an adult.

**compound**, a medicine, means mixing, compounding, formulating or reconstituting a medicine with any other substance.

**confidential information**—

- (a) means the following information about a person—
  - (i) personal information;
  - (ii) information about the person's commercial activities;
  - (iii) criminal history information; but
- (b) does not include information that is publicly available.

**contractor**, of the council, means—

- (a) a person appointed by the council to review and prepare a report on a document under section 74(2)(a); or
- (b) another person, other than the chief executive officer or another staff member of the council, who performs a service for the council under a contract or other arrangement between the person and the council.

**conviction** means a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

**council** see section 143.

**council member** see section 150(1).

**court**, for part 10, see section 185.

**criminal history**, of a person, means the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions.

**criminal history information** means information from a criminal history report, other than information in the report that is lawfully available to the public.

**criminal history report**, about a person, means a written report about the criminal history of the person that includes a

brief description of the circumstances of a conviction or allegation mentioned in the criminal history.

***decision criteria***, in relation to a decision under part 7 about a pharmacy business, see section 82.

***decision notice***, for an internal review decision, for part 10, see section 185.

***deputy chairperson*** means the person who holds an appointment as the deputy chairperson of the council under section 154(1)(b).

***director***, of a corporation, see the Corporations Act, section 9.

***dispense***, a medicine, see the *Medicines and Poisons Act 2019*, section 25(2).

***disposal order***, for part 8, see section 129(2).

***eligible person*** see section 10.

***executive officer***, of a corporation, means—

- (a) a director of the corporation; or
- (b) a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director of the corporation or the person's position is given the name of executive officer.

***fit and proper person***, in relation to owning a pharmacy business, means a person the chief executive decides is a fit and proper person to own a pharmacy business under part 5.

***fund*** means the Pharmacy Business Ownership Council Fund established under section 178.

***health service employee*** means a person appointed as a health service employee under the *Hospital and Health Boards Act 2011*, section 67.

***identity card*** means an identity card issued to an inspector under section 98.

***incoming party***, in relation to an application under section 38, for part 4, division 3, subdivision 1, see section 38(1).

**information notice**, for a decision, means a notice stating the following information—

- (a) the decision;
- (b) the reasons for the decision;

*Note—*

See the *Acts Interpretation Act 1954*, section 27B for matters that must be included with the reasons.

- (c) that the person to whom the notice is given may ask for a review of the decision under this Act;
- (d) how, and the period within which, the review may be started;
- (e) if the person may apply for a stay of the operation of the decision under this Act—how the person may apply for the stay.

**insolvent under administration** see the Corporations Act, section 9.

**inspector** means a person who holds office under part 8, division 2 as an inspector.

**interest**, in relation to a pharmacy business, means—

- (a) an interest as an owner of the business; or
- (b) a material interest in the business.

**internal review**, of an original decision, for part 10, see section 187(1).

**internal review decision**, for part 10, see section 185.

**licensed pharmacy business** means a pharmacy business for which a pharmacy business licence is in effect.

**licensed premises**, for a licensed pharmacy business, means the premises in relation to which the pharmacy business licence for the business is in effect.

**material interest**, in a pharmacy business, see section 13.

**medicine** see the *Medicines and Poisons Act 2019*, section 11.

**notice** means written notice.

***occupier***, of a place, for part 8, see section 89.

***of***, a place, for part 8, see section 89.

***offence warning***, for a direction or requirement by an inspector, for part 8, see section 89.

***original decision***, for part 10, see section 185.

***owner***—

- (a) of a pharmacy business—see section 12; or
- (b) of a thing that has been seized under part 8, division 4—see section 89.

***partnership*** see the *Partnership Act 1891*, section 5.

***personal information*** see the *Information Privacy Act 2009*, section 12.

***person in control***, of a thing, for part 8, see section 89.

***pharmacy business*** see section 8.

***pharmacy business licence*** means a licence to own, and to carry on, a pharmacy business granted under this Act.

***place***, for part 8, see section 89.

***practising pharmacist*** see section 9.

***premises*** includes the following—

- (a) a building or other structure;
- (b) a part of a building or other structure;
- (c) a caravan or vehicle;
- (d) premises held under more than 1 title or by more than 1 owner.

***previous holder***, of a cancelled pharmacy business licence, for part 7, see section 82.

***public place***, for part 8, see section 89.

***public sector employee*** see the *Public Sector Act 2022*, section 12.

***QCAT information notice***, for a decision, for part 10, see section 185.

Schedule 1

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***reasonably believes*** means believes on grounds that are reasonable in the circumstances.

***reasonably suspects*** means suspects on grounds that are reasonable in the circumstances.

***seizure or forfeiture decision***, for part 10, see section 185.

***vehicle*** means a vehicle under the *Transport Operations (Road Use Management) Act 1995*.

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