

## Pharmacy Business Ownership Bill 2023

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**AMA Queensland Submission****Economics and Governance Committee Inquiry into the Pharmacy Business Ownership Bill 2023**

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AMA Queensland thanks the Economics and Governance Committee (ECG) for providing an opportunity for public submissions to its inquiry into the Pharmacy Business Ownership Bill 2023 (the Bill).

The Bill is wholly inadequate and serves only to enhance existing, outdated and anticompetitive regulations that will harm consumers and inappropriately benefit vested interests. Worse still, it raises serious questions about the integrity of Queensland Government processes. AMA Queensland implores the ECG to recommend the Bill not be passed and consider whether other appropriate action and/or investigations should be initiated about the circumstances in which it has been able to progress.

Given the serious concerns surrounding the Bill, AMA Queensland submits in full its feedback provided to Queensland Health during the Department's confidential consultation on the March 2023 draft of the Bill (attached). The ECG should also note that Queensland Health have not formally responded to date to that submission or answered the questions set out therein, despite assuring AMA Queensland by email that:

*The Department takes these concerns seriously and has taken steps to ensure they are investigated appropriately.*

In addition to the concerns set out in our March 2023 submission, AMA Queensland wishes to submit the following issues for the ECG's consideration.

- The Explanatory Notes and the Bill are deficient in several respects as follows:
  - Page 33 of the Explanatory Notes states:

*Queensland Health conducted two rounds of consultation with stakeholders in October 2022 and February 2023 on a confidential consultation paper and draft Bill. The stakeholders consulted included all current Queensland pharmacy business owners and interest holders, pharmacy franchisors, Pharmaceutical Society of Australia (PSA), Pharmacy Guild of Australia, Australian Health Practitioner Regulation Agency, Mater, Australian Medical Association – Queensland Branch (AMAQ), Royal Australian College of General Practitioners (Qld) (RACGP) and friendly societies.*

It is patently false that AMA Queensland and RACGP were consulted in October 2022 and outrageous that this has been wrongfully stated in the Explanatory Notes. This same statement also appears in Queensland Health's briefing on the Bill to the EGC.

AMA Queensland and RACGP never received the consultation documents in October 2022 and made serious remonstrations to Queensland Health in early 2023 when this failure was realised by both organisations. The details of that failure and associated complaint are documented in AMA Queensland's March 2023 submission to Queensland Health under '2.2 October 2022 consultation documents not received by AMA Queensland or RACGP'.

It is inexcusable that such a misleading statement has been included in the Explanatory Notes and Queensland Health EGC briefing. The reasons for this must be investigated given the concerns raised by AMA Queensland with the Bill. The Explanatory Notes and briefing must also be immediately corrected to reflect the true nature of the Department's inadequate consultations on the Bill and its previous iterations.

- The Explanatory Notes reference the Queensland Productivity Commission (QPC) report but fail to highlight key statements that clearly indicate the current Bill should not be progressed. Some of these statements are also set out under the heading '2018 QPC Report' in AMA Queensland's March 2023 submission to Queensland Health.

The absence from the Explanatory Notes of these points and statements from the QPC report is concerning. AMA Queensland urges the EGC to read the QPC report in full and consider its implications for the Committee's recommendations regarding the Bill. The EGC should also consider whether the briefings provided to it by Queensland Health have been conducted comprehensively, appropriately and in accordance with standard requirements and expectations.

- Page 12 of the Explanatory Notes estimates the cost to Government to establish the Queensland Pharmacy Business Ownership Council and licensing scheme will be approximately \$9.8 million over four years and states:

*This will be sourced from existing Queensland Health resources. In the longer-term, it is expected that licensing fees will offset regulation and compliance costs.*

This means the Bill fails to implement Recommendation 6 of the 2018 Committee report (which was accepted in principle by the Queensland Government) and explicitly states the Council:

*would... be funded on a cost recovery basis by the pharmacy sector (that is, no costs to be borne by government).*

It is unacceptable that the Bill does not implement this recommendation in full immediately to ensure Queenslanders do not fund the Council which amounts to an anticompetitive protection regime for existing pharmacy businesses and will likely hasten the decline in taxpayers' access to local and affordable medicines. This must be corrected.

- AMA Queensland met with Queensland Health on 10 March 2023 to discuss initial issues and concerns identified with the March 2023 draft of the Bill and confidential consultation process. At this meeting, AMA Queensland queried the inclusion in the confidential consultation papers of a possible prohibition on the colocation of pharmacies within supermarkets since this was not one of the 2018 Committee report recommendations.

AMA Queensland was advised by Queensland Health during that meeting that the proposal was not part of the (then) draft Bill but only being considered as part of the consultation. No further explanation for its inclusion in the confidential consultation documents was provided by the Department.

AMA Queensland is disappointed and concerned to see this reform has now inexplicably made its way into the Bill. As set out in our March 2023 submission to Queensland Health (refer '1.3. Prohibition of supermarket pharmacies'), this reform lacks evidence and is anti-competitive. The King Review clearly stated such a prohibition was 'not appropriate' and 'should be discontinued'. AMA Queensland urges the ECG to recommend it does not progress and that an investigation into its inclusion be undertaken.

- AMA Queensland has been privileged to review the Queensland Aboriginal and Islander Health Council's (QAIHC's) submission to the ECG inquiry. We likewise submit the concerns raised by QAIHC and endorse its position on the Bill as part of this submission. We urge the ECG to carefully consider the issues raised by QAIHC and ensure its recommendations specifically address those concerns.

**16 January 2024**

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**AMA Queensland Submission**  
**Queensland Health on the Pharmacy Business Ownership Bill 2023 – 17 March 2023 [revised 16 January 2024]**

AMA Queensland completely rejects the draft *Pharmacy Business Ownership Bill 2023* and associated proposals in the confidential Consultation Paper (collectively, the 'draft Bill'). The proposal is inappropriate, lacks integrity and independence and raises serious questions about the improper influence on government decisions by pharmacy enterprise lobby groups.

The draft Bill is a prime example of the type of conduct the *Let the sunshine in: Review of culture and accountability in the Queensland public sector* report seeks to stamp out. The Grattan Institute has likewise documented the abuse of government process by the ongoing campaign by pharmacy owners that make large financial donations to political parties:

*Existing red tape is designed principally to protect the interests of pharmacy owners, not consumers... Independent reviews of pharmacy regulation have been ignored by successive governments. This policy purgatory now houses a plethora of independent reviews, Grattan Institute research and national audits. Report after report disappears, with the only explanation being that the pharmacy industry has far too great an influence on its own regulation.<sup>1</sup>*

It is clear that these lobbyists relentlessly seek to change the law for their own commercial interests to protect their profits at the expense of patients and the broader public. The current proposal is another example in a long chain of questionable actions by politicians and the public service at the behest of these groups. The draft Bill must be immediately withdrawn and the Government's actions in promulgating it likewise referred to the Queensland Integrity Commissioner and/or other appropriate investigative body. The proposal must not be further progressed.

Given these alarming concerns, it is near impossible for AMA Queensland to provide input on any of the draft Bill's proposed amendments. The proposals are demonstrably anti-competitive, and the consultation process conducted by Queensland Health can only be described as a sham. Some further discussion of key concerns are outlined below, however, AMA Queensland reiterates its complete rejection of the draft Bill and urgent call for an investigation into the integrity of the process that has led to the proposal.

### **1. Anti-competitive**

The draft Bill creates barriers to entry for new businesses, unfairly protects existing pharmacy owners, limits consumer choice and will harm patients by retaining and proposing to implement significant anti-competitive market restrictions. The proposal wantonly disregards the overwhelming evidence and

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<sup>1</sup> <https://grattan.edu.au/wp-content/uploads/2017/10/Pharmacy-Red-Tape-sub-FINAL.pdf>, pp 3, 7.

multiple competition reviews by federal and state agencies, independent statutory authorities and research bodies advising against increasing regulation of the pharmacy sector including:

- 2022 Productivity Commission 5-year Productivity Review ‘A competitive, dynamic and sustainable future’ Interim Report;<sup>2</sup>
- 2018 Queensland Productivity Commission ‘Cost-benefit analysis of establishing a pharmacy council’ Report;<sup>3</sup>
- 2017 Commonwealth Government Review of Pharmacy Remuneration and Regulation Final Report (King Review);<sup>4</sup>
- 2017 Productivity Commission ‘Shifting the Dial’ 5 Year Productivity Review Inquiry Report;<sup>5</sup>
- 2017 Grattan Institute submission ‘The effect of red tape on pharmacy rules’;<sup>6</sup>
- 2015 Productivity Commission ‘Efficiency in Health’ Research Paper;<sup>7</sup>
- 2015 Commonwealth Government Competition Policy Review Final Report (Harper Review);<sup>8</sup>
- 2014 National Commission of Audit Report;<sup>9</sup>
- 2005 Productivity Commission Review of National Competition Policy Reforms;<sup>10</sup>
- 2000 National Competition Policy Review of Pharmacy (Wilkinson Review);<sup>11</sup> and
- 1999 Productivity Commission Submission to the National Review of Pharmacy.<sup>12</sup>

Such reviews have clearly stated the restrictions are anticompetitive and harm patients. Many have inferred that deregulation of pharmacy services should be the aim of state governments, including the 2018 Queensland Productivity Commission’s Report which was undertaken to inform proposals leading to the current draft Bill.

Despite this (and like the current draft Bill), the Queensland Government’s 2018 committee inquiry into the establishment of a pharmacy council and transfer of pharmacy ownership in Queensland (the ‘2018 Committee Inquiry’) and subsequent 2022 proposal also ignore the various reviews listed above. An appropriate investigative body must investigate why this overwhelming evidence has been unjustifiably and repeatedly disregarded by the Queensland Government.

Given the wholly anticompetitive nature of the proposal, the draft Bill (including options canvassed in the associated confidential consultation paper) must also be referred to the Australian Competition and Consumer Commission and other appropriate bodies for assessment to determine compliance with

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<sup>2</sup> <https://www.pc.gov.au/inquiries/completed/productivity/interim4-business/productivity-interim4-business.pdf>

<sup>3</sup> [https://s3.treasury.qld.gov.au/files/Review-Pharmacy\\_CBA\\_final\\_report.pdf](https://s3.treasury.qld.gov.au/files/Review-Pharmacy_CBA_final_report.pdf)

<sup>4</sup> [https://www1.health.gov.au/internet/main/publishing.nsf/content/7E5846EB2D7BA299CA257F5C007C0E21/\\$File/revi-ew-of-pharmacy-remuneration-and-regulation-final-report.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/content/7E5846EB2D7BA299CA257F5C007C0E21/$File/revi-ew-of-pharmacy-remuneration-and-regulation-final-report.pdf)

<sup>5</sup> <https://www.pc.gov.au/inquiries/completed/productivity-review/report>

<sup>6</sup> <https://grattan.edu.au/wp-content/uploads/2017/10/Pharmacy-Red-Tape-sub-FINAL.pdf>

<sup>7</sup> <https://www.pc.gov.au/research/completed/efficiency-health/efficiency-health.pdf>

<sup>8</sup> [https://treasury.gov.au/sites/default/files/2019-03/Competition-policy-review-report\\_online.pdf](https://treasury.gov.au/sites/default/files/2019-03/Competition-policy-review-report_online.pdf)

<sup>9</sup> <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publications%2Ftabledpapers%2F78383b0c-5c65-429b-a524-55f016fe0359%22;src1=sm1>

<sup>10</sup> <https://www.pc.gov.au/inquiries/completed/national-competition-policy/report/ncp.pdf>

<sup>11</sup> [https://www1.health.gov.au/internet/main/publishing.nsf/Content/3FC1206410A83FBDC257BF0001DAD71/\\$File/finaloverview.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/3FC1206410A83FBDC257BF0001DAD71/$File/finaloverview.pdf)

<sup>12</sup> <https://www.pc.gov.au/research/supporting/pharmacy-review/pharmacyreview.pdf>

Australian and state competition laws. The Office of Productivity and Red Tape Reduction must also be tasked with reviewing the proposal.

### **1.1. Ownership restrictions**

AMA Queensland is wholly opposed to restricting ownership of pharmacies, whether that be to pharmacists, close-relatives of pharmacists, pharmacist-controlled organisations or any other entity or person. No other health or medical business has such ownership restrictions and it beggars belief that the pharmacy sector has been able to retain these anticompetitive, patient-harming, vested-interest protections.

There is absolutely no evidence to support ongoing ownership restrictions, and this has been repeatedly stated by various competition reviews including those listed above. Despite this, the Queensland Government and 2018 Committee Inquiry ignored those reviews and have persisted with proposals to increase regulation, without justification or supporting evidence. This must be investigated.

#### 2018 Committee Inquiry

The Queensland Parliament's own 2018 Committee Inquiry disregarded the evidence of multiple independent witnesses including the Queensland Productivity Commission (QPC), the Grattan Institute and consumer groups. Despite clear evidence that the proposals should not be supported, the committee's final report recommendations favoured the views given by self-interested pharmacy lobbyists and owners who stood to directly gain from the proposal.

Dr Stephen King, co-author of the 2017 King Review and 2018 QPC Report, gave evidence at the committee's inquiry proceedings and the following exchange appears in the transcript:

*Mr McArdle: Dr King, thank you for your testimony here today. From what you have said, I take it that you believe that the restrictions should stay in place in regard to ownership?*

*Dr King: No. Actually, if I do a simple bottom line, I think the current ownership rules are ineffective. I do not think there is any evidence that I saw that an absentee pharmacy owner would be any different from an absentee shareholder, a cooperative owners or any other form of ownership structure. I think the ethical and professional role has to come back onto the pharmacist who is running the dispensary and overseeing the dispensary. That is the relevant point, to make sure that the ethics are there. That view is simply that the current ownership rules are leading to absentee owners at the moment who are interested in profit maximizing; they just happen to be limited to people who also happen to have pharmacy degrees or be registered pharmacists.*

*It would be better to focus back in on the professionalism at the correct point, which is the point of dispensing.*

The inquiry report itself also makes the following statements that are then contradicted by its subsequent recommendations.

*Most independent submitters and new franchise/discount pharmacists consider the ownership restrictions are not required to achieve public health objectives. However, most traditional pharmacy owners and the Pharmacy Guild of Australia believed they are necessary to maintain public health objectives.<sup>13</sup>*

*... Health Consumers Queensland, the peak organisation representing the interests of health consumers in the state, suggested the ownership restrictions are unnecessary because of the significant clinical governance and professional standards governing employee pharmacists (that is, dispensing pharmacists):*

The pharmacy ownership restrictions imposed by the Pharmacy Business Ownership Act 2001 are not necessary to protect consumers and deliver accessible and affordable medicines and services. Health Consumers Queensland believes that deregulating pharmacy ownership and location rules can still ensure the professional, safe and competent provision of pharmacy services, and maintain public confidence in the pharmacy profession through strong clinical governance and professional standards of employee pharmacists.<sup>14</sup>

*The Grattan Institute, an independent public policy think tank, believed there is no public interest in restricting pharmacy ownership to pharmacists:*

The only justification for restrictions on ownership of pharmacies is that no one other than a pharmacist can be trusted to run the pharmacy and the risk of allowing doctors, brewers or bakers to own pharmacies is too great. However, it is unclear what these potential risks are, and whether pharmacy ownership controls add any value to other existing controls.

*In describing the current ownership laws, Dr Stephen King [Queensland Productivity Commission] alluded to the fact that it is the professionalism and ethics of dispensing pharmacists (which are incentivized by the regulatory framework) that drive public health benefits not the ownership structure of the pharmacy: [refer Dr King quote at 1.1].<sup>15</sup>*

*Dr Jeannette Young of Queensland Health also supported the essential role of the dispensing pharmacist (rather than the pharmacy ownership structure):*

My point is that you have to have a qualified pharmacist in that pharmacy at all times. That is essential. Whether or not the pharmacy needs to be owned by a pharmacist I think is a different issue, especially as one pharmacist can own five pharmacies in Queensland then another five in another state, six in another and four in another.

The Electoral Commission of Queensland's electronic disclosure system records that the Pharmacy Guild of Australia Queensland Branch (the 'PGA Qld') donated \$11000 to the Queensland Labor Party on 23 August 2018, during the period in which the 2018 Committee Inquiry was holding public hearings (20 August to 11 September 2018). The Committee included 3 Labor MPs, one of whom also served as Chair.

<sup>13</sup> <https://documents.parliament.qld.gov.au/tableOffice/TabledPapers/2018/5618T1639.pdf>, p 56-57

<sup>14</sup> <https://documents.parliament.qld.gov.au/tableOffice/TabledPapers/2018/5618T1639.pdf>, p 57.

<sup>15</sup> <https://documents.parliament.qld.gov.au/tableOffice/TabledPapers/2018/5618T1639.pdf>, p 59.



Eleven days after this \$11000 donation, on 3 September, the committee permitted the PGA Qld to appear as a witness to its inquiry and give evidence, despite not being on the official program and having already been granted at least three other, separate opportunities for it, its officials or their family members to give evidence over the course of the public hearings. It is understood and implied in the following statements by the Chair that this decision was made following a 'private' meeting between the PGA Qld and the Chair and Deputy Chair that same day:

*CHAIR: ...I would like to advise that the deputy chair and I met privately this morning with the representatives from the Pharmacy Guild of Australia at the guild's request to clarify procedural issues about the inquiry. We did not take documentation or evidence in relation to this inquiry.<sup>16</sup>*

*...We welcome your contribution here this morning. As we indicated earlier, we met to talk about a procedural issue of allowing a balance to respond to issues raised in today's hearing and, given the fact that you are here and have travelled, we have allowed that as a committee procedure. Would you like to start with an opening statement perhaps to take on some of the issues raised by previous submitters before we go to questions.<sup>17</sup>*

Evidence provided by the PGA Qld during the hearings was also the subject of a letter to the committee by Ramsay Pharmacy on 20 September to address 'evidence reflecting adversely' on it under rule (m) of Schedule 3 of the Standing Rules and Orders of the Legislative Assembly.<sup>18</sup> Ramsay Pharmacy's letter stated:

*We are concerned that some of the Guild's public comments are designed to simply further Guild control of regulation and could erroneously undermine public confidence in Queensland's administration of pharmacy practice. We offer these additional comments to ensure that any misleading comments that might be intended to reflect on Ramsay Pharmacy or indeed the professionalism of our franchisees do not afford the Guild or others an opportunity to wrongly use the platform of this Inquiry for a self-interested business purpose – namely to push their own agenda and to outsource the administration of the public health to bodies they can dominate.<sup>19</sup>*

Serious questions must be asked about the conduct of the 2018 Committee Inquiry. Close scrutiny must also be made of the process that led to the committee's recommendations, which were in clear contradiction to the evidence of its independent witnesses.

<sup>16</sup> <https://documents.parliament.qld.gov.au/com/HCDSDVPC-48D8/RN1256PIQ-1FCA/trns-ph-pharm-3Sep2018.pdf>, p1.

<sup>17</sup> <https://documents.parliament.qld.gov.au/com/HCDSDVPC-48D8/RN1256PIQ-1FCA/trns-ph-pharm-3Sep2018.pdf>, p32.

<sup>18</sup> <https://documents.parliament.qld.gov.au/assembly/procedures/StandingRules&Orders.pdf>, p91.

<sup>19</sup> <https://documents.parliament.qld.gov.au/com/HCDSDVPC-48D8/RN1256PIQ-1FCA/cor-20Sep2018.pdf>

2018 QPC Report

Despite being restricted by the terms of reference set down by the Queensland Government, QPC made statements in its report to indicate that less, not more, regulation was more likely needed in the pharmacy sector. QPC's report shows the current draft Bill and associated proposals should not have even been considered, let alone put forward for possible legislative amendment.

*Based on the available data, the [Queensland Productivity] Commission found no evidence that... more intensive enforcement of the ownership restrictions would provide greater consumer benefits.<sup>20</sup>*

*...there may be many options to achieve government objectives for Queensland consumers, such as reforming the regulatory framework, as well as non-regulatory or deregulatory options...*

*...A cost-benefit analysis would typically examine the nature and extent of the problem (such as the need to ensure quality products and services for consumers) and then consider a range of regulatory and non-regulatory scenarios to address any identified problem. However, given the scope of the direction, the Commission has not included non-regulatory or deregulatory options, nor scenarios to improve the efficiency of the broader regulatory framework. Rather, options have been selected in line with the pharmacy council proposal.<sup>21</sup>*

*There is the potential that greater enforcement of the ownership restrictions may affect competition in the industry by discouraging innovation in ownership and entry. More intensive enforcement of ownership regulations is likely to be designed to prevent market entry. If this prevents innovation, economies of scale and product service offerings, it will likely come at a cost to Queensland consumers... ownership restrictions may dampen incentives for price competition, particularly for non-PBS pharmacy-only medicines.*

*...The Commission has not been able to identify evidence that pharmacist-owned pharmacies in aggregate have a greater focus on consumers/less focus on profit than other professions owning a business or different corporate structures. Based on available market information... whilst revenue has declined in recent years, profitability is relatively high and has increased.*

*...Profit motives appear to exist for pharmacies regardless of the type of owner... The research found significant rates of overselling of medicines relative to recommended treatment in TGA guidelines in Queensland pharmacies – with overtreatment rates between 23 and 31 per cent for three symptoms tested.<sup>22</sup>*

*...Similarly, domestic reviews have found that ownership restrictions may not benefit the community, and they recommended easing or removing ownership regulation.<sup>23</sup>*

*...It is unlikely, given the lack of targeting of location decisions, that ownership rules provide any spatial benefit for remote and regional Queenslanders.<sup>24</sup>*

<sup>20</sup> [https://s3.treasury.qld.gov.au/files/Review-Pharmacy\\_CBA\\_final\\_report.pdf](https://s3.treasury.qld.gov.au/files/Review-Pharmacy_CBA_final_report.pdf), pi

<sup>21</sup> [https://s3.treasury.qld.gov.au/files/Review-Pharmacy\\_CBA\\_final\\_report.pdf](https://s3.treasury.qld.gov.au/files/Review-Pharmacy_CBA_final_report.pdf), pp2, 11.

<sup>22</sup> Ibid 17-18.

<sup>23</sup> Ibid, 19.

<sup>24</sup> Ibid 22.

*...Depending on the members selected for the pharmacy council, independence might be reduced. There would be a potential conflict of interest if the pharmacy council members were also pharmacy owners and were tasked with enforcing pharmacy ownership regulation.<sup>25</sup>*

*...The Commission has found that any of the possible impacts it has identified from forming a pharmacy council are unlikely to produce a material benefit. The absence of benefits from a pharmacy council stems from the fact that more direct regulations are already operating to achieve the objectives sought from the ownership regulations. In this context, administering the ownership regulations more intensively, as proposed by creating a pharmacy council, is unlikely to produce material benefits. Rather, it simply adds to the general cost of regulation.*

*Of more concern, is that an industry-dominated institution, such as the proposed pharmacy council, may dampen innovation and competition in the industry at a cost to Queensland consumers.*

*Overall, the results suggest the Queensland community will be unambiguously worse off with the transfer of the functions from Queensland Health.<sup>26</sup>*

The Queensland Government must explain why it is persisting with the current proposal when its remarkably similar precursor was so categorically rejected by the QPC.

### 1.2. Location restrictions

Like ownership restrictions, the continuation of location restrictions is anti-competitive and must be abolished. Ongoing failure to repeal these arrangements amounts to a protection regime by federal and state governments for vested interest lobby groups. The Queensland Parliament's own 2018 Committee Inquiry report stated the introduction of pharmacy location rules in 1991:

*...resulted in industry restructuring that lowered pharmacy numbers and encouraged greater efficiency, profitability and economies of scale in individual pharmacy businesses... Despite the significant increase in Australia's population since that time, the growth in the number of approved pharmacies has not kept pace with population growth... [the location rules] limit the potential for new pharmacies to open and existing pharmacies to relocate.<sup>27</sup>*

The 2015 Harper Review also called for the removal of both ownership and location rules:

*The Panel considers that current restrictions on ownership and location of pharmacies are not needed to ensure the quality of advice and care provided to patients. Such restrictions limit the ability of consumers to choose where to obtain pharmacy products and services, and the ability of providers to meet consumers' preferences.*

<sup>25</sup> Ibid 22.

<sup>26</sup> Ibid 27.

<sup>27</sup> <https://documents.parliament.qld.gov.au/tableOffice/TabledPapers/2018/5618T1639.pdf>, p98.

*The Panel considers that the pharmacy ownership and location rules should be removed in the long-term interests of consumers. They should be replaced with regulations to ensure access to medicines and quality of advice regarding their use that do not unduly restrict competition.<sup>28</sup>*

The Grattan Institute's 2017 submission was far more critical of the location rules:

*Existing location rules restrict the establishment, relocation and expansion of pharmacies across Australia. Several independent reviews of the pharmacy sector over the past decade have found these rules to be anti-competitive, especially in urban areas.*

*Far from serving the public interest, these rules tend to protect incumbent pharmacies and restrict market entry. Stifling competition between pharmacies results in higher retail drug prices – a cost borne by patients and taxpayers. It also limits the choice of drugs for many consumers.<sup>29</sup>*

The continued operation of these rules cannot be supported, and they must be immediately repealed.

### **1.3. Prohibition of supermarket pharmacies**

Again, Queensland Health's canvassing of an option to prohibit pharmacies in supermarkets runs against competition reviews by multiple bodies, is inappropriate and smacks of improper influence by pharmacy lobbyists and existing pharmacy owners. It was also canvassed in the 2018 process and shown to be inappropriate. The committee's report cited the King Review as follows:

*In relation to the co-location of community pharmacies within supermarkets, the Review Panel assessed that the current restrictions on accessing a pharmacy from within a supermarket is not appropriate. The final report did not include an explicit recommendation, however it concluded:*

*The current restrictions on the accessibility by the public to a community pharmacy from within a supermarket should be discontinued, provided that any pharmacy located within a supermarket is required to operate in accord with all relevant practice requirements for an Approved Pharmacy.<sup>30</sup>*

The Queensland Government must explain why it is persisting with this anticompetitive policy which will do nothing but increase pharmacy owner profits and harm Queenslanders through increased prices and reduced access. The impression given is that the Government has been inappropriately influenced by lobbyists to the detriment of the public. This must be thoroughly investigated by an independent body and the draft Bill must be immediately abandoned.

## **2. Sham consultation**

AMA Queensland submits that it is inappropriate that the proposed amendments and consultation paper have been provided to a select group of stakeholders on a confidential, not-for-further-

<sup>28</sup> [https://s3.treasury.qld.gov.au/files/Review-Pharmacy\\_CBA\\_final\\_report.pdf](https://s3.treasury.qld.gov.au/files/Review-Pharmacy_CBA_final_report.pdf) p21.

<sup>29</sup> <https://grattan.edu.au/wp-content/uploads/2017/10/Pharmacy-Red-Tape-sub-FINAL.pdf>, p 5.

<sup>30</sup> <https://documents.parliament.qld.gov.au/tableOffice/TabledPapers/2018/5618T1639.pdf> p101.

distribution basis. The anti-competitive nature of the existing legislation and the draft Bill warrant broad public consultation and input given the impact for consumers. They must be provided openly and transparently to the public generally.

Aspects of the draft Bill also stand to provide inappropriate government market protections for pharmacy owners and the fact it has only been provided on a confidential basis to select stakeholders implies inappropriate influence and lobbying by pharmacy owners. The reasons for and appropriateness of this decision must be investigated and rectified urgently.

All submissions made to Queensland Health must also be made public to ensure transparency and accountability of government decisions relating to the proposals. Accepting confidential submissions prevents the public scrutiny of government decisions, including whether lobby groups and political donors have been able to inappropriately influence government in a manner that is detrimental to the public.

### **2.1. Timeframe**

Given the serious competition and consumer ramifications of the proposals in the draft Bill, the under two-week timeframe for submissions was completely inadequate. Whilst AMA Queensland thanks Queensland Health for extending the date for our submission by four days to 17 March, this is still inadequate for considered feedback on this controversial proposal.

The short timeframe also raises questions about the genuineness of Queensland Health's engagement on the draft Bill and desire for meaningful consultation. This should form part of the investigation into the handling and influence over the process leading to the proposal.

### **2.2. October 2022 consultation documents not received by AMA Queensland or RACGP**

Whilst Queensland Health's email for the latest consultation process states both AMA Queensland and the Royal Australian College of General Practitioners (RACGP) were consulted in October 2022 on the previous iteration of the draft Bill, neither organisation received those documents nor made a submission in response.

Whilst Queensland Health's Legislative Policy Unit have since provided the documents (and emails claiming to prove they were sent in October 2022), serious questions must be answered about the actions of the Department in October 2022. This includes why Queensland Health did not contact AMA Queensland and RACGP when each failed to make a submission or even respond at all to the invitation, especially given:

- both organisations made submissions on the previous iteration of the draft Bill in 2018;
- both organisations appeared as witnesses and gave evidence to the relevant committee inquiry in 2018;
- both organisations expressed strong opposition to many of the reforms in 2018;
- the consultation process was confidential and targeted, with stakeholders limited by Queensland Health itself meaning:

- both organisations had no ability to know they had not received the documents and therefore contact Queensland Health to rectify the failure; and
- the views of the organisations were key to Queensland Health obtaining non-pharmacy lobbyist and owner input to the proposal; and
- significant controversy surrounded the 2018 proposed reforms and remains regarding pharmacy ownership and location rules, particularly amongst various organisations (including AMA Queensland, independent think tanks and government bodies) not aligned with pharmacy lobby groups and owners.

Again, this October 2022 consultation process should not have been subject to confidentiality restrictions and smacks of inappropriate influence over the government's decisions with respect to the proposal. It too must be investigated as a priority.

### **2.3. February-June 2022 pharmacy owner lobbyist meetings with Queensland Government and MPs**

Many organisations have highlighted the concerning historical and ongoing influence of pharmacy lobby groups over government policy. The Grattan Institute has stated:

*In 2015, the Australian National Audit Office conducted an audits of how the Commonwealth Health Department administers the Community Pharmacy Agreement. Among many negative findings, the audit found that the Health Department... Did not keep formal records of meetings with the Pharmacy Guild (which represents pharmacy owners, who receive billions in funding from the Agreement)...*

*Whilst we welcome [the 2017 Senate Review on Red Tape], we hope that it proves the last of its kind. A 15-year cycle of inquiry, recommendations and further review can only be breeding public cynicism and disengagement. Pharmacy regulation is overdue for reform, not further review with implementation stymied by vested interests.<sup>31</sup>*

The Queensland Integrity Commissioner Lobbyists Register reveals that between February and June 2022 alone, pharmacy owner groups used two separate professional lobbyist agencies to meet at least 96 times with senior Queensland Government Ministers and officials, and members of parliament on their behalf. That is approximately one meeting every weekday.

At least 17 of these pharmacy owner lobbyist meetings were with the Health Minister, her staff or Queensland Health. At least another 13 were with the Premier, her staff or the Department of Premier and Cabinet.

The register records the purpose of these meetings as:

- 'development or amendment of a government policy or program' (at least 21 meetings);
- 'commercial-in-confidence' (at least 1 meeting); and
- 'introduction' (at least 1 meeting).

<sup>31</sup> <https://grattan.edu.au/wp-content/uploads/2017/10/Pharmacy-Red-Tape-sub-FINAL.pdf>, pp 7-8.

The purpose of the approximately 73 remaining meetings is simply listed as 'other'. The topics or nature of discussions held during any of the meetings are not further detailed in the register.

These figures are staggering. Given the sheer number of meetings, the Queensland Government must release full details of their true nature and purpose and the topics and issues discussed.

The Electoral Commission of Queensland's electronic disclosure system records that the following donations were also made over the over the same period that these meetings were occurring:

- \$23590 in total by the PGA Qld to the Qld Labor Party;
- \$14000 in total by the PGA Qld and 'Pharmacy Guild of Australia' to the Qld LNP;
- \$87752 in total by Anacta Strategies Pty Ltd (one of the professional lobbyist agencies that met with Queensland Government Ministers and officials and MPs on the PGA Qld's behalf during the same period) to the Qld Labor Party; and
- \$2000 by Hawker Britton Group (the second professional lobbyist agency as per the dot point above) to the Qld Labor Party.

AMA Queensland notes that the timeframe of February to June 2022 would roughly align with the timing of policy development for the October 2022 draft Bill, being 3-4 months prior to the legislative drafting process. These issues must be the subject of an independent investigation.

#### **2.4. Urgent questions to answer by the Queensland Government**

Given the serious nature of the concerns raised by AMA Queensland in this submission, the Queensland Government must immediately answer the following questions, and refer the entire process that has led to the draft Bill (i.e. from pre-2018 to now) to an independent body for investigation:

- What and who were the drivers behind the proposals included in the various documents, drafts and process leading to the draft Bill, from before 2018 to now (the 'draft Bill proposals')?
- What area/s of Queensland Health and/or other government departments were responsible for the policy development for the draft Bill proposals?
- Where is the research and evidence to support all aspects of the draft Bill proposals?
- Why was the research and evidence (if it exists/ever existed) not included in the draft Bill proposals?
- Why have the draft Bill proposals disregarded a plethora of previous competition and productivity review by both federal and state governments, independent statutory authorities and research organisations indicating increased regulation would reduce competition, harm consumers, not improve the sector and, more likely, deregulation would lead to improved consumer outcomes and the sector?
- Why has consultation on the draft Bill proposals been conducted as a secretive, confidential process? How is this appropriate?
- On what grounds have the draft Bill proposals been conducted in this manner?

- Who approved for the consultation and associated aspects of the draft Bill proposals to be conducted in this secretive, confidential manner?
- Who are the stakeholders who have been consulted in this secretive, confidential manner?
- Will those stakeholders be publicly identified? If not, why and how can that be justified?
- Why, when AMA Queensland and RACGP did not respond or make a submission to the October 2022 confidential, targeted consultation did Queensland Health not contact either organisation to confirm they had received the documents and intended not to make a submission?
- How can this be justified when consideration is given to the points set out in 2.1 above?
- What have Queensland Health done since being advised by AMA Queensland and RACGP that they both did not receive the October 2022 consultation documents to:
  - determine why the documents were not received?
  - determine the impact this failure has had on the policy development of the draft Bill and associated documents and proposals?
  - ensure this does not occur again?