

Pharmacy Business Ownership Bill 2023

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The Pharmacy
Guild of Australia

SUBMISSION

Parliamentary Committees Economic and Governance Committee Inquiry into Pharmacy Business Ownership Bill 2023

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CONTENTS

INTRODUCTION.....	3
BACKGROUND.....	4
EXECUTIVE SUMMARY	5
GUILD RESPONSE TO THE INQUIRY INTO PHARMACY BUSINESS OWNERSHIP BILL 2023	6
Key Issues of Concern Requiring Amendment	6
1. Definition of core pharmacy services [Clause 8(3)].....	6
2. What is a material interest in a pharmacy business [clause 13]	7
3. Void provisions of contracts, agreements or arrangements with inappropriate third-party control [clause 22(3)]	8
4. Queensland Pharmacy Business Ownership Council	9
1. Functions (of council) [Clause 147(1)(g)]	9
2. Appointing members [Clause 150].....	9
3. Appointing members [Clause 153].....	9
4. Council must keep register of licensed pharmacy businesses [Clause 207]	10
5. Amendments to futureproof the Bill	11
1. Definition of supermarket [Clause 11]	11
2. Disposal orders [Clause 129]	11
6. Amendments to enhance interpretation of the Bill	11
1. Licensed pharmacy business must be carried on at or from licensed premises [Clause 20(2)(b)]	11
2. Close adult relative [Clause 10 and Schedule 1 Dictionary].....	11
3. Beneficiary, of a trust, includes a holder of a unit in a unit trust [Schedule 1].....	12
7. Other amendments.....	12
1. An eligible person – A friendly society [Clause 10(1)(d)].....	12
CONCLUSION	13

INTRODUCTION

- The Pharmacy Guild of Australia (the Guild) is the national peak organisation representing and supporting community pharmacy in its role of delivering quality health outcomes for all Australians. It strives to promote, maintain, and support community pharmacies as the appropriate providers of primary healthcare to the community through optimum therapeutic use of medicines, medicines management and related services.
- Ownership requirements are in place in all states and territories in Australia to ensure that pharmacies maintain a strong health focus, through a competitive small business sector, which is a key reason for the high level of patient satisfaction.
- The regulation of the pharmacy sector assists in reconciling tensions between commercial imperatives and public health policy objectives, thus creating an environment conducive to upholding the National Medicines Policy.
- The Guild is committed to ensuring that the regulatory framework pertaining to pharmacy business ownership regulation in Queensland is maintained and improved and to ensuring all ownership transactions fully comply with the *Pharmacy Business Ownership Act 2001*, and the *Pharmacy Business Ownership Bill 2023* which will replace that Act.
- Community pharmacies, of which there are approximately 6,000 across Australia (and 1,244 in Queensland¹) have long been the key to providing timely and accessible primary healthcare to all Queenslanders. Community pharmacy is consistently seen by the Australian public as a trusted and valued part of our nation's health care system.
- 96.68% of Queensland community pharmacies are compliant with the *Australian Standard: AS 85000:2017 Quality Care Community Pharmacy Standard*². Mandatory compliance with this standard for all pharmacy businesses would support the achievement of the Bill's main purposes, to promote the professional, safe and competent provision of pharmacy services.
- Despite the corporate influences that have significantly and, often negatively, impacted many other primary healthcare businesses, the community pharmacy sector has been able to remain relatively robust and extensively distributed throughout Queensland, thanks to the strong state and federal legislation protecting pharmacy business ownership and pharmacy business location. This has been to the benefit of Queensland communities and patients.
- Over the past twenty years, several health professions have undergone ownership deregulation (such as dentistry and optometry) or have not been subject to ownership regulation at all, and patients have suffered the consequences. As corporate ownership increases (as high as 77% of general practices³) the interests of the corporate owner and the patient continue to diverge. Health professionals who practise under a corporate entity, naturally, lose their capacity to direct their attention to the needs of the patient, and their capacity to act in the best interests of the profession.
- While the *Pharmacy Business Ownership Act 2001* (the Act) has maintained the foundations for pharmacy business ownership in Queensland, the Act or the inability to ensure compliance with the Act has allowed the creep of corporate entities into the sector. Corporates have been able to exploit the vague and dated legislative provisions, at the expense of community pharmacy, and patients in the communities of those pharmacies.
- To allow large corporations and supermarkets like Coles and Woolworths to own or influence pharmacy businesses, would facilitate analysis, and exploit patient health records. In addition, it would reduce competition and increases upward pressure on the cost of living of Queenslanders, as we have seen in the grocery sector. It would be remiss to expect that the pharmacy profession would be exempt from the price setting practices and market power exerted by the major corporate entities currently within the industry.

¹ Customer Relationship Management Data, Pharmacy Guild of Australia; Accessed 11/01/2024.

² Client Relationship Management Data, Quality Care Pharmacy Program; Accessed 10/01/2024.

³ <https://www.racgp.org.au/general-practice-health-of-the-nation-2023>

BACKGROUND

The *Pharmacy Business Ownership Act 2001* (2001 Act) has been in place for over 20 years and has been significantly amended during that time. The Government has advised that the 2001 Act is outdated and limits Queensland Health's ability to ensure compliance with its requirements. *The Pharmacy Business Ownership Bill 2023* (Bill) was introduced into the Queensland Legislative Assembly in November 2023. The Bill repeals the 2001 Act and replaces it with a modern and effective framework for regulation of the ownership of pharmacy businesses. The Bill was referred to the Economics and Governance Committee.

The policy objectives⁴ of the Bill are to:

- clearly state who may own or hold an interest in a pharmacy business, and retain the limits on the number of pharmacy businesses that a person may own or hold an interest in;
- establish a regulatory council as a statutory body to administer the Act and transfer regulatory functions from Queensland Health to this council;
- establish a licensing framework for the ownership of and interests in pharmacy businesses;
- prohibit the regulatory council from issuing a licence if the pharmacy business is located in a supermarket or is directly accessible from a supermarket;
- prohibit third parties from exercising inappropriate control over how pharmacy business owners provide pharmacy services related to medicines, and provide that clauses in a contract or agreement that allow a third party to exercise inappropriate control are void;
- require the regulatory council to report the results of compliance audits;
- require the regulatory council to maintain a register of pharmacies, to assist the community to locate pharmacies and services provided by pharmacies;
- modernise existing provisions relating to the functions and powers of inspectors, legal proceedings, delegations and protections from civil liability;
- restrict disclosure of information obtained in connection with the administration of the legislation to limited circumstances; and
- confirm that regulations may be made about fees, waiver of fees, record keeping and pharmacy premise standards.

The Bill follows the two consultation draft versions which were circulated to stakeholders in October 2022 and February 2023. The Guild provided a submission to these and has continued to engage with the government as well as Queensland Health to highlight our concerns with the Bill and provide workable solutions.

⁴ <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=167&id=4310>

EXECUTIVE SUMMARY

The Bill, in its current form, is an improvement on draft versions, but additional important changes would strengthen the Bill. The Guild would be able to support the Bill, if the amendments it proposes are accepted.

From a Guild perspective, the improvements in the Bill include:

1. Reinforcement of who may own or hold an interest in a pharmacy business, and retaining the limits on the number of pharmacy businesses that a person may own or hold an interest in.
2. The establishment of a regulatory council as a statutory body (the Queensland Pharmacy Business Ownership Council) to administer the Act and transfer regulatory functions from Queensland Health to the council.
3. The establishment of a licensing framework for the ownership of and interests in pharmacy businesses.
4. The prohibition of the regulatory council issuing a licence if the pharmacy business is located in a supermarket or premises directly accessible from a supermarket.

These reforms in the *Pharmacy Business Ownership Bill 2023* (the Bill) are welcomed by the Guild and go a long way to closing the various legislative loopholes used to circumvent the ownership laws and restoring the integrity of community pharmacy in Queensland.

However, experience shows that corporate entities continually operate in grey areas of the legislation, pushing the boundaries. Therefore, to better curb this damaging conduct, the Guild remains of the view that there are still some critical items within the Bill that must be addressed to protect the future of community pharmacy in Queensland and the patients of these pharmacies.

The clauses that require amendment include:

1. Broadening of the definition of core pharmacy services (clause 8), with amendments to subsequent clause 22.
2. Amendment to the definition of material interest in a pharmacy (clause 13), with amendments to subsequent clause 22.
3. Addition to clause 22 to enable the council to decide a person is not a fit and proper person under clause 72 if they are a party to a contract, agreement or arrangement containing a voided provision.
4. Modifications to the functions and powers and membership of the Pharmacy Business Ownership Council (clauses 147, 150, 153 & 207).
5. The addition and clarification of definitions to enhance interpretation.

What follows are details of the aforementioned clauses within the Bill, that while drafted with sound justification of intent offered in the explanatory notes, are naïve in their wording leaving the Bill open to exploitation in its interpretation. Without urgent amendment, the main purposes of the Bill may fail to be met.

The new Act can only achieve these purposes if it is built on solid foundations with robust legal definitions, closing the legislative loopholes which have the potential for corporate exploitation and flow on impacts to communities and patients.

GUILD RESPONSE TO THE INQUIRY INTO PHARMACY BUSINESS OWNERSHIP BILL 2023

Key Issues of Concern Requiring Amendment

1. Definition of core pharmacy services [Clause 8(3)]	
Legislative Intent	By using a narrow definition of core pharmacy services that ties pharmacy services to those strictly related to medicines, the Bill seeks to avoid inadvertently capturing other business types as pharmacy businesses.
Issue	Recommendations
<p>The definition is too narrow, limited to dispensing and compounding when modern pharmacy practice is much broader. It does not reflect evolving contemporary pharmacy practice and how community pharmacies deliver primary health services in Queensland and does not align with the definition used in other jurisdictions. South Australia has a broader and more appropriate definition.</p> <p>The definition of core pharmacy services is carried through the entirety of the Bill and has influenced and weakened subsequent clauses.</p> <p>Clause 22 Particular activities relating to licensed pharmacy business prohibited</p> <ul style="list-style-type: none"> A narrow definition of core pharmacy services renders this clause ineffective when attempting to prohibit control of pharmacy services not involving medicines. The clause may be interpreted that pharmacy services that are not either dispensing or compounding medicines are not activities that must be free of control and influence of non-eligible persons. 	<p>1. The Guild recommends the definition of <i>core pharmacy services</i> be replaced with the below.</p> <p><i>pharmacy services</i> means –</p> <ul style="list-style-type: none"> (a) health services (including dispensing, supply, prescribing, selling, administering, repackaging, compounding, possessing, disposing of medicines and the provision of clinical service or advice (either at or from a licensed premises or through digital platforms)) provided in the course of practice by a pharmacist or a person who holds themselves out, or is held out by another, as a pharmacist; (b) and other kind of service prescribed by regulation. <p>The definition is similar to the South Australian definition with additional reference to approved dealings in the Queensland <i>Medicine and Poisons (Medicines) Regulation 2021</i>.</p> <p>2. The Guild recommends that the existing clause 22 is replaced with the below revised:</p> <p>22 Particular activities relating to licensed pharmacy business prohibited</p> <p>(1) A person, other than an owner of a licensed pharmacy business, must not do or purport to do any of the following -</p> <ul style="list-style-type: none"> (a) control and influence how pharmacy services, <i>including but not limited to medicines</i>, are provided to the public by the business; (b) restrict the types of medicine or health service the business may provide to the public; (c) require medicine <i>or goods and services</i> for the business to be bought from a particular supplier;

	(d) impose a sales target for the business in relation to a particular medicine <i>or goods and services</i> .
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2. What is a material interest in a pharmacy business [clause 13]

Legislative Intent	The Bill seeks to distinguish between someone who is defined as a pharmacy owner, and someone who can be described to hold a 'lesser' <i>material interest</i> in the business.	
Issue	Recommendations	
<ul style="list-style-type: none"> In creating division in definition, the Bill has lost its ability to adequately describe what constitutes a material interest or a 'lesser' interest in the business in practical application. The current definition fails to sufficiently capture the nuances of what constitutes an interest in a pharmacy business. 	<p>1. The Guild recommends that clause 13(1)(c) is amended as follows:</p> <p style="padding-left: 40px;"><i>(c) any other interest, legal or beneficial in the business, other than an interest of an owner of the business.</i></p> <p><i>(2) to remove any doubt, an interest includes but is not limited to, having a right to receive consideration directly or indirectly that varies according to the profits or takings of the pharmacy business.</i></p> <p>The existing clause 13(2) would be renumbered 13(3).</p>	
<p style="text-align: center;">Clause 13(1)(c)</p> <ul style="list-style-type: none"> There is a lack of certainty in the application of 13(1)(c) without the inclusion in the Bill of a definition of the term 'interest'. As it is currently written, any interest in question would need to give rise to an entitlement <i>that varies according to the profits and takings of the business</i> before it could be captured by the definition of 'material interest'. It is uncertain whether 13(1)(c) is expressed sufficiently broadly to capture the type of agreement, arrangement of understanding that may be utilised to circumvent the primary ownership model the Bill exists to enshrine. 	<p>2. The Guild recommends that consideration is given to adding a definition of 'interest' to the Bill to prevent reference to the definition in the Acts Interpretation Act 1954, which does not meet the contemporary needs of this Bill and may not allow the Bill to apply to commercial arrangements designed to circumvent its operation.</p>	
<p style="text-align: center;">Clause 22(2)(b)</p> <ul style="list-style-type: none"> The objective of this subclause is to clarify those activities which are not intended to be prohibited, however, the inadequate definition of material interest opens the door for the exertion of inappropriate control over pharmacy owners. If the definition of material interest does not include the terms 'legal' and 'beneficial', the scope of interests cannot be captured by the Bill and recognised as interests that should not be permitted. 	<p>3. The Guild recommends that the list of exemptions in clause 22(2)(b) is reduced by removing subsection (ii) as follows:</p> <p style="padding-left: 40px;"><i>(b) a person imposing a requirement about a licensed pharmacy business that is about only 1 or more of the following –</i></p> <p style="padding-left: 80px;"><i>(i) opening hours;</i></p> <p style="padding-left: 80px;"><i>(ii) information technology systems;</i></p> <p style="padding-left: 80px;"><i>(iii) staff training;</i></p> <p style="padding-left: 80px;"><i>(iv) staff uniforms.</i></p>	

3. Void provisions of contracts, agreements or arrangements with inappropriate third-party control [clause 22(3)]

Legislative Intent	<p>If a provision of a contract, agreement or arrangement purports to authorise or permit an activity prohibited by subclause (1), that provision is void.</p> <p>This clause also relates to the criteria that the Queensland Pharmacy Business Ownership Council must apply when deciding whether a person is fit and proper person to own a pharmacy business (clause 72). If the person is a party to a contract in breach of clause 22(1), then this will be considered when issuing a business licence.</p>
Issues	Recommendations
<ul style="list-style-type: none"> While the Guild acknowledges that the power of the Bill lies in the council’s ability to refuse to grant a pharmacy business licence, it must be patently clear that if a contract, agreement or arrangement exists with a clause in breach of clause 22(1), then the person(s) would not pass the fit and proper persons test in clause 72, and they must be refused a pharmacy business licence. 	<ol style="list-style-type: none"> The Guild recommends the addition of a subclause 22(4) as follows: <p><i>(4) If a person is a party to a contract, agreement or arrangement containing a voided provision they cannot be decided by the council to be a fit and proper person under section 72.</i></p> The Guild recommends that for the council to be able to identify contracts in breach of clause 22(1) and apply clause 22(3) in a timely manner, amendments to clause 53 are needed so that applicants are required to provide information about the business structure to the council, so that material interests can be identified and assessed. Additionally, at initial licence application, the same information must be provided.
<ul style="list-style-type: none"> The council has the power to request further information or documents from an applicant to decide the application (either on initial application, or when any amendments to the business licence are sought), however, this will not happen with any regularity. There is, therefore, a risk that pharmacies could operate for extended periods under contracts in breach of clause 22(1), which is only incidentally discovered upon request for further information. 	
<ul style="list-style-type: none"> While the council can act on its own initiative and has the powers to do anything necessary or convenient in the performance of its functions, there are no regular intervals at which the council will have the opportunity to review relevant documents, as a matter of course, when deciding to grant or refuse a business licence. 	

4. Queensland Pharmacy Business Ownership Council

While the Guild commends and welcomes the establishment of the Queensland Pharmacy Business Ownership Council (the council), there are some modifications needed to ensure that the council is fit for purpose and is empowered to act in the public interest.

1. Functions (of council) [Clause 147(1)(g)]

Clause 147 states that the council will have functions under this Act or another Act.

The purpose of the council is, fundamentally, to regulate pharmacy business ownership and ensure pharmacy businesses comply with the requirements of the Act. Its purpose should not be diluted by the gaining of functions under other Acts.

Recommendation

The Guild recommends that clause 147(1)(g) is amended as follows:

(g) any other function given to the council under this Act.

2. Appointing members [Clause 150]

Clause 150 gives detail on the composition of the council, which, in its current form is entirely unacceptable to the industry.

The Guild acknowledges that there is a need for diverse representation of skills and experience of members of the council, however, industry-specific experience is paramount if the council is to achieve its functions.

As it is currently written, pharmacy business owners risk being outnumbered on the council, which will result in unbalanced representation, lack of industry experience, and a council without a united vision.

In all other jurisdictions, pharmacists represent the majority of the membership of the respective council. There is simply no precedent for the council in Queensland to be an anomaly in this regard.

Recommendation

Amend clause 150(4) is as follows:

(4) The council must consist of—

- (a) a majority of persons mentioned in subsection (3)(a)(i) and (3)(a)(ii) with the actual number dependent on the size of the council;
- (b) 1 person mentioned in subsection (3)(a)(iii)

3. Appointing members [Clause 153]

Clause 153 describes the term of appointment for members of the council.

The Guild accepts the term of appointment as 4 years, but as this is a longer term than that of a council member in any other jurisdiction, there must be a limit to the number of times a member may be reappointed.

The Guild acknowledges that the ability to reappoint members of the council is important for the retention of experience and the continuity of function. However, the public must be assured that the members of the council represent a contemporary and diverse range of skills and experience.

Recommendation

To ensure that the council remains reflective of contemporary community pharmacy practice, the Guild recommends that a limit to the number of times a member can be reappointed is

implemented. This will align the council with those in New South Wales, Tasmania, Western Australia, and Northern Territory.

Amend clause 153(2) as follows:

(2) Subsection (1) does not prevent a council member from being reappointed, but not for more than two consecutive terms.

4. Council must keep register of licensed pharmacy businesses [Clause 207]

Clause 207 details the register of licensed pharmacy businesses to be kept by the council.

The information to be contained in the register under the clause 207(2) does not include ownership details. This clause fails the intent of the Bill where it is in the public's best interest for information about the ownership of the business to be publicly available.

Not only is there no requirement to display the ownership details in the pharmacy, the clause 207(5) uses the word 'may' instead of 'must' in relation to the council publishing information contained in the register on the council's website.

These amendments are needed to fulfill the intention of the Act to provide transparency to the public around the ownership of community pharmacies.

Recommendation

The Guild recommends that clause 207 is amended as follows:

207 Council must keep register of licensed pharmacy businesses

(2) The register must contain the following information for each licensed pharmacy business

- (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 is a beneficiary of the trust;
- (e) the name of each person who 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.

(3) The licensed business must display at or near the main entrance of each premises that the pharmacist is the owner of, or has a financial interest in, the owner's name. The displayed name(s) must be the name(s) registered with the Council.

All subsequent subclauses will need an adjustment to number.

(4) (previously (3)) The register will contain information about pharmacy services provided by a licensed pharmacy business.

(6) (previously (5)) The council must publish the information contained in the register on the council's website.

5. Amendments to futureproof the Bill

1. Definition of supermarket [Clause 11]

Clause 11(3) provides the definition of a supermarket. The application of this Bill is not limited to physical premises, which the Guild supports. However, there is a risk that as an increasing number of supermarket services move into the digital landscape, the current definition of a supermarket may not endure.

Recommendation

Amend clause 11(3) to reference physical premises and digital platforms.

2. Disposal orders [Clause 129]

This clause is not a divestment provision however may have the same effect. It could be improved by the addition of 'interest in a pharmacy business' in clause 129(2)(b). This will support the outcome that interests held in breach of the Act cannot be carried on as a further offence against the Act and would give the court adequate power.

Recommendation

Amend wording to 129(2)(b) to add 'interest in a pharmacy business'.

another thing or interest in a pharmacy business the court considers is likely to be used by the person or another person in committing a further offence against this Act.

6. Amendments to enhance interpretation of the Bill

1. Licensed pharmacy business must be carried on at or from licensed premises [Clause 20(2)(b)]

This section also refers to pharmacy services being provided **mainly** at the licensed premises and **partly** at another place. The Guild queries whether these terms are necessary and whether they would be interpreted in favour of restructuring the business that is not intended by the Act.

Recommendation

Provide further clarification or definition for the terms 'mainly' and 'partly' for this section.

2. Close adult relative [Clause 10 and Schedule 1 Dictionary]

Clause 16(b) (who may hold material interest in pharmacy business) specifies '*a close adult relative of a practising pharmacist who holds an interest in the business*'.

However, the dictionary under schedule 1 offers the following definition '*close adult relative, of a practising pharmacist, means a spouse or child of the pharmacist who is an adult.*'

Further, under clause 10 (who is an eligible person) clause 10(c)(i) states '*whose directors and shareholders are a combination of practising pharmacists and close adult relatives of practising pharmacists*'.

The two meanings of *close adult relative* provided in clause 10 and schedule 1, have the potential to allow close adult relatives of *any* practising pharmacists, even those unrelated to the business in question, to hold a material interest in that business. Close adult relatives must be related to the practising pharmacists who hold an interest in the pharmacy business that is subject to registration.

Recommendation

All clauses relating to *close adult relative* must be consistent to reflect that the *close adult relative* must relate to the practising pharmacist who holds an interest in the licensed business.

Amend the definition in schedule 1 as follows:

close adult relative, of a practising pharmacist, means a spouse or child of the pharmacist who holds an interest in the business, who is an adult.

3. Beneficiary, of a trust, includes a holder of a unit in a unit trust [Schedule 1]

There is a need to deal with, and regulate, both discretionary and **unit** trusts. If both categories of trusts are not dealt with by an inclusive definition there may be scope to circumvent the legislation.

Recommendation

Add a definition to the dictionary – ***trust*** means a trust whether discretionary or unit.

7. Other amendments

1. An eligible person – A friendly society [Clause 10(1)(d)]

The Guild notes a Friendly Society's inclusion as an *eligible person* and them being able to own six pharmacies as is currently the case. However, this clause could be used to gain up to six pharmacies from **another state** and be a new entrant into Queensland, disadvantaging existing owners in Queensland who are capped at five.

Recommendation

The word '***or another State***' should be removed from clause 10(1)(d).

CONCLUSION

The Guild wishes to commend the Miles Labor Government on the reforms included in the current version of the Pharmacy Business Ownership Bill 2023. Our members appreciate the ongoing and public support for the current model of community pharmacy ownership, and for the vital role that community pharmacy owners play in providing the most accessible primary healthcare to their communities.

The current version of the Bill goes a long way in responding to the Government's stated policy positions in response to the outcome of Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee's 2018 *Inquiry into the establishment of a pharmacy council and transfer of pharmacy ownership in Queensland*.

However, it must be stated that the conduct of modern-day pharmacy practices and businesses are complex and varied. As discussed throughout the above submission, the Guild has identified several areas within the Bill that leave it open to the potential exploitation from large corporate entities.

As has been the case for all previous submissions on this Bill, the comments made are not intended to be critical. Instead, they are based on practical experience and a close understanding of contemporary pharmacy practices and ownership arrangements.

The recommendations in this submission are intended to offer a constructive insight into the nuances of pharmacy business ownership and to ensure that the final version of the legislation gives meaningful and workable effect to Government policy regarding pharmacy business ownership in Queensland.

The repeal and modernisation of legislative Acts is infrequent, so any amendments or additions should be made with a view that the replacement Act will be in force for many years to come. While it is not possible to predict the way in which community pharmacy will evolve in the future, it is critical that every effort is made to strengthen and future-proof the legislation to protect the current model of community pharmacy. This will ensure that community pharmacies can continue to provide essential and accessible healthcare to all Queenslanders, free from undue commercial influence.