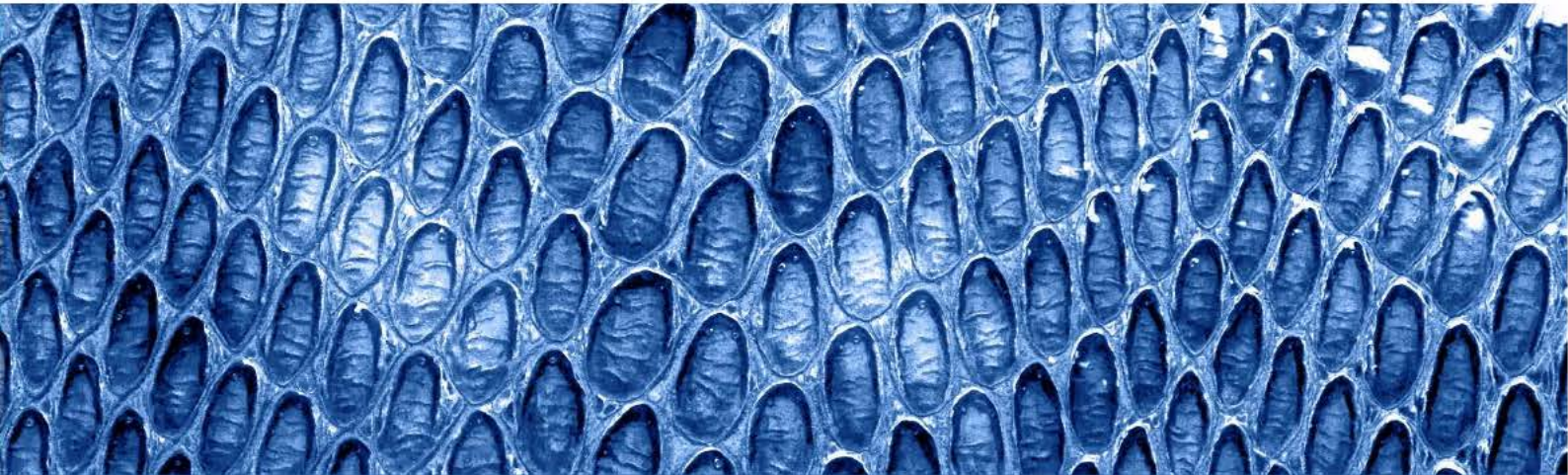


Pharmacy Business Ownership Bill 2023

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Inquiry into the Pharmacy Business Ownership Bill 2023

Productivity Commission submission

The Productivity Commission acknowledges the Traditional Owners of Country throughout Australia and their continuing connection to land, waters and community. We pay our respects to their Cultures, Country and Elders past and present.

The Productivity Commission

The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed most simply, is to help governments make better policies, in the long term interest of the Australian community.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

Further information on the Productivity Commission can be obtained from the Commission's website (www.pc.gov.au).

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Introduction

The Productivity Commission welcomes the opportunity to make this submission to the Queensland Parliament Economics and Governance Committee on the Pharmacy Business Ownership Bill 2023 ('the Bill'). This submission covers the following aspects of the Bill:

- the introduction of pharmacy business licensing
- the establishment a new statutory body to regulate pharmacy ownership
- the retention of the rules relating pharmacy business ownership.

The Productivity Commission is concerned that the changes proposed in these aspects of the Bill are costly and do not provide offsetting policy benefits. We consider these changes are a step in the wrong direction for Queensland pharmacy consumers.

A more competitive pharmacy sector could have a range of potential benefits for consumers, including lower prices, improved convenience and accessibility, and other service improvements.

Pharmacy business licensing

The Productivity Commission does not support the introduction of a new licensing framework, which would require the owners of a pharmacy business to hold a pharmacy business licence.

First, this new requirement simply adds to the red tape burden faced by pharmacy business owners, noting that the Bill makes no substantive changes to who is eligible to own a pharmacy business.

Second, the imposition of new licensing requirements is not a targeted or proportionate policy response. The stated rationale for the proposed licensing framework is to facilitate monitoring of compliance with pharmacy ownership rules. The Explanatory Note to the Bill asserts that the proposed licensing framework 'addresses the issues raised by the [Queensland Audit Office] and [the Parliamentary] Committee' (p. 5). This follows the Queensland Government's commitment, in its response to the Parliamentary Committee report on establishment of a pharmacy council and transfer of pharmacy ownership in Queensland, to:

... introduce a licensing and registration scheme to support the regulation of pharmacy ownership in Queensland as is common in other jurisdictions. (p. 7)

However, it should be noted that neither the Queensland Audit Office nor the Parliamentary Committee recommended the introduction of pharmacy business licensing. The Queensland Audit Office simply made findings about the inadequacies of current monitoring practices:

The Department of Health ... has not designed processes and controls to ensure transfers in pharmacy ownership comply with all the requirements of the Act'. (p. 11)

But it did not uncover evidence about the prevalence of non-compliance in practice, nor did it address the merits or otherwise of pharmacy business licensing in particular.

The Parliamentary Committee, after explicitly examining licensing/registration regimes in other jurisdictions, also did not recommend the adoption of similar requirements in Queensland. Instead, it cited the 2000 Wilkinson Review, which recommended the removal of licensing/registration requirements in Australian jurisdictions that had them.

The Productivity Commission urges the Queensland Government to consider other options for strengthening the Department of Health's monitoring and compliance practices. Any new policy measures should be proportionate to the risks and impacts of non-compliance with pharmacy business ownership rules.

Queensland Pharmacy Business Ownership Council

The Productivity Commission does not support the establishment of the Queensland Pharmacy Business Ownership Council as a new statutory body. Nor does it support the transfer of regulatory powers from Queensland Health to the Council. This is because multiple processes leading up to the drafting of the Bill found that a statutory regulator would have net costs for Queensland.

In July 2018, the Queensland Productivity Commission produced a cost–benefit analysis for establishing a pharmacy council to regulate pharmacy business ownership in Queensland. That report did not support the establishment of a pharmacy council.

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 ... Overall, the results suggest the Queensland community will be unambiguously worse off with the transfer of the functions from Queensland Health. (p. 31)

Similarly, in October 2018, the Parliamentary Committee reported on its inquiry into the establishment of a pharmacy council and transfer of pharmacy ownership in Queensland. It also cautioned against the establishment of a statutory regulator.

The committee found there is no public interest case for establishing a separate statutory authority, such as a pharmacy council, in Queensland to assume the regulatory functions of ensuring compliance with the pharmacy ownership restrictions and pharmacy premises regulation. This is based on three key findings:

- no evidence that other Australian states with pharmacy councils have better community outcomes
- no evidence that the existing premises regulation is resulting in unsafe conditions in pharmacies in Queensland
- no evidence that more intensive enforcement of ownership restrictions would provide greater consumer benefits in Queensland. (p. 82)

Instead, it advocated that regulatory responsibilities should remain with Queensland Health and recommended the establishment of ‘a Queensland Pharmacy Advisory Council to advise the Department of Health on the Act and the fulfilment of its regulatory responsibilities to monitor and enforce compliance with the Act’ (recommendation 6, p. 4).

The Productivity Commission recommends that the Queensland Government refrain from establishing the Queensland Pharmacy Business Ownership Council, given the body of evidence that suggests that doing so would leave Queenslanders worse off.

Ownership restrictions

The Bill contains new provisions about who may own (or hold a material interest in) a pharmacy business and the number of businesses a person may own. In substance, these provisions would preserve ownership restrictions that already exist. As set out by the Explanatory Notes, the new legislative drafting is chiefly

intended to provide greater clarity about existing requirements. The Productivity Commission does not support the retention of existing restrictions on pharmacy business ownership in the Bill.

Safeguarding consumers

Ownership restrictions are intended to ensure the competency of pharmacy businesses and protect consumer interests. In particular, it is claimed that pharmacists are more likely to prioritise professional judgment over commercial considerations, compared to non-pharmacists. But this is claim is controversial. The Parliamentary Committee found:

There were a diverse range of views on whether the ownership restrictions are necessary to protect consumers and deliver accessible and affordable medicine. Most independent submitters and new franchise/discount pharmacists considered 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. (pp. 56-57)

In its 2018 report, the Queensland Productivity Commission said:

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 ... Profit motives appear to exist for pharmacies regardless of the type of owner. (p. 18)

Indeed, it is questionable whether owner-pharmacists are less susceptible to commercial pressures than non-pharmacist owners. Conceivably, the opposite could be true, given the substantial equity involvement of owner-pharmacists and their dependence on the profits of the pharmacy for much of their income.

In the Commission's view, ownership restrictions are, at best, an indirect mechanism for safeguarding consumers. As the quality of pharmacy services depends on the conduct, integrity and professional skills of pharmacists, regulations regarding who may practise pharmacy, and the way pharmacy is practised, are a far more effective means of promoting consumer safety than ownership restrictions.

Competition issues

In its 2023 *5-year Productivity Inquiry: Advancing Prosperity*, the Commission recommended that Governments remove anti-competitive regulations on the ownership of pharmacies.

Pharmacy ownership rules hurt consumers by reducing innovation and entrepreneurship in the sector. Excluding corporations (such as supermarkets and general retail outlets) and non-pharmacists from owning pharmacy businesses limits the scope to leverage specialised management skills and expertise that could reduce costs and improve service quality. Coupled with limits on the number of separate businesses a pharmacist may own, this limits opportunities to reduce costs (and prices) by operating on a larger scale or across a broader range of service offerings.

The ownership rules may not have effectively safeguarded community ownership as intended. Regulations on the ownership (and location) of Australia's pharmacies have reduced competition in local markets – there are now fewer pharmacies per head of population than when the regulations were introduced – and have facilitated the establishment of local monopolies. Indeed, to the extent that such laws restrict the number of pharmacies, they are more likely to lessen competition to the detriment of consumers.

The Explanatory Notes to the Bill report concerns that relaxing ownership restrictions would mean 'large corporate retailers may concentrate their services in regional centres, resulting in probable closures of

smaller pharmacy businesses in surrounding rural and remote areas and reduced access to pharmacy services in those communities' (p. 3).

However, it is debatable whether ownership restrictions have helped to maintain the viability of smaller rural or regional pharmacies. Despite the restrictions, the Australian Government provides direct financial support to rural and remote pharmacies through the Regional Pharmacy Maintenance Allowance to enable these pharmacies to profitably operate. Indeed, enabling rural and regional pharmacies to better exploit economies of scale through the removal of the ownership rules may enhance viability of rural and regional pharmacies.

The Commission is unaware of any credible evidence that indicates that the pharmacy ownership rules in Queensland (as opposed to other regulations and government subsidies) play any role in maintaining access to pharmacies in outer suburban, rural and remote communities.

Removal of the ownership restrictions would strengthen the Aboriginal community controlled health sector

Removing pharmacy ownership restrictions would enable Aboriginal health services to own and operate pharmacies and would support commitments made in the National Agreement on Closing the Gap.

Priority Reform 2 of the National Agreement on Closing the Gap commits governments to strengthening the community-controlled sector to deliver high-quality, holistic and culturally safe services to Aboriginal and Torres Strait Islander people. All parties to the Agreement have agreed that community control is an act of self-determination and that services delivered by community-controlled organisations generally achieve better results and are often preferred over mainstream services.

The 2017 *Review of Pharmacy Remuneration and Regulation* (King, Scott and Watson, p. 50) found that pharmacy ownership restrictions meant Aboriginal Health Services were unable to operate a community pharmacy, which may have undermined culturally appropriate care in some rural and remote areas of Australia. The Review recommended the removal of restrictions on the ability of an Aboriginal health service to own and operate a pharmacy located at that Aboriginal Health Service. The Review recommended this be trialled and evaluated across urban, rural and remote locations to understand any unintended consequences.