

Pharmacy Business Ownership Bill 2023

Submission No: 73
Submitted by: Martin Dines
Publication:
Attachments:
Submitter Comments:

Committee Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane Qld 4000

18/01/2024

Via: [<EGC@parliament.qld.gov.au>](mailto:EGC@parliament.qld.gov.au)

Dear Sir/Madam,

RE: Committee inquiry into the Pharmacy Business Ownership Bill 2023

Thank you for providing the opportunity to provide feedback on the proposed Pharmacy Business ownership Bill 2023. As a registrant pharmacy owner in Queensland in four pharmacies, I have the following concerns about the Pharmacy Business Ownership Bill 2023.

Firstly, it does not address at all the original concerns raised by the Pharmacy Guild of Australia regarding corporatisation of community pharmacy in Queensland by big businesses and pharmacy franchise models. They will continue to make good profits from community pharmacy via fees and charges, having a shareholder driven focus on profits, and little regard for patients and customer health care, and the health of Queenslanders generally. These corporate businesses parasitizing community pharmacy remain unaffected by this proposed legislation, and community pharmacists who have the health and care of their community members as their prime focus are now to be hit with new costs, annual fees and bureaucratic delays.

Adjusting the existing legislation would be better, cheaper to run, and at least have an impact where it is needed- on the corporates who take money from the Queensland community pharmacy network and distribute it to mostly institutional shareholders. The local pharmacist is much more likely to invest in a bigger and better range of pharmacy services to help patients, rather than stripping out profits like the corporates do with their fees and profit margins on stock sent to the pharmacies.

The problem with the current legislation in terms of compliance was the almost complete lack of investigation and enforcement powers. Had there been adequate investigation and enforcement powers, most issues and concerns regarding non-compliance with the legislation could have been solved. The solution was not prescriptive legislation in the nature of the Pharmacist Business Ownership Bill but a simple fix of adding adequate investigation and enforcement powers to the current legislation.

The definition of core pharmacy services (Clause 8(3))

Issues:

- The current version of the Bill does not adequately define what a pharmacy service is.
- The definition is too narrow and is limited to dispensing and compounding of medicines only. This is not an accurate reflection of the services that a pharmacist provides and means

that, for example, where the dispensing of a medicine is considered a pharmacy service, the provision of advice about that medicine, is not.

- By having a narrow definition of pharmacy services, it limits how the Bill is able to deal with the concept of external control of how pharmacy services are delivered to the public (clause 22). If control of pharmacy services is linked to the definition of *core pharmacy services* then there is a risk that a number of relevant pharmacy services will be left outside the regulatory control of the Bill.
- Where the intent of the Bill is to describe who may own a pharmacy business, a robust definition of what constitutes a pharmacy business (through definition of the services that business provides) must be offered as part of the Bill.

Proposed change:

- To adopt a broader definition of ‘core pharmacy services’ as ‘pharmacy services’:

pharmacy services means –

- (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;

The definition of a supermarket (Clause 11(3))

Issues:

- The definition of a supermarket is not broad enough to capture the likely increase in online supermarket businesses in the future.
- By inclusion of the word ‘premises’ in the definition, it ties the concept of a supermarket to a bricks and mortar place, and it is not able to capture the growing online marketplace.
- To ensure that the policy objective of the Bill to ‘prohibit the council from issuing a licence if the pharmacy business is located in a supermarket’ is met, the Bill must have application to pharmacy businesses and supermarkets whether they are online or physical locations.

Proposed change:

- To adopt the following definition of a supermarket:

supermarket means a premises or online store used primarily for selling a range of food, beverages, groceries and other domestic goods.

Matters relating to the Queensland Pharmacy Business Ownership Council (the council) (Clauses 147, 150, 153, 207)

- The composition of the council membership as it is currently stated is unacceptable. The council is an industry body that has the potential to be weighted inappropriately, where industry experts may be significantly outnumbered. There must be a majority of pharmacy business owner members to ensure that the council is able to function as intended.
- There is currently no limit to the number of terms that a member of the council is permitted to serve. To ensure a contemporary and representative council, there should be a limit to the number of consecutive terms, and terms in total, that a member is permitted to serve. The term of membership is one year longer than councils in other states and territories, so a maximum number of terms is needed.
- The tone of this bill might best be demonstrated by s78. A failure to notify a change of address, phone number or email address could see a pharmacist prosecuted, have to appear on summons for an offence and be convicted and fined up to \$7,740. If a partner or co-director dies, the survivor faces prosecution and a fine of up to \$7,740 if they do not give notice to the council within 14 days. One would hope it is a 'reasonable excuse' that the partner or co-director has just died and the survivor has much more on their mind than filling out a form to notify the council.

The 'council' has moved from an advisory council to a regulatory body, interposing an unnecessary burden of regulation, costs and inevitable delays. Despite so many applications having to be approved by the council (pharmacy business licence, renewal of licence, adding a licence holder e.g. partner/director/shareholder, removing a licence holder, changing premises, adding or removal a material interest holder, change of business name, change of a holders name), there is no obligation for the council to respond or make decisions in a timely manner. There is no deemed approval or deemed refusal if the council does not respond. The result will be complete uncertainty in sale and purchases, bringing in new partners and other internal structural changes.

- A regulatory body cannot be ordered by a court to make a decision if the legislation does not require the body to make a decision within a certain time. There is no requirement in this bill for the council to make a decision in 14 days (the time limit placed on pharmacists to give a notice or respond to a council request for information), 30 days, 3 months, 6 months or any other time and the council cannot be made to do so. Delays, uncertainty, the termination of commercial transactions and increased transaction costs are inevitable.

Grandfathering provisions. I have adhered strictly to the relevant pharmacy laws and current pharmacy ownership legislation my entire professional career since graduating from the University of Queensland. On my accountants' advice I have discretionary trusts associated with three of my four pharmacies. A discretionary trust is a common business (including pharmacy) ownership structure because it offers flexibility and taxation advantages. Pharmacists have for almost 25 years under the legislation to be repealed, on the advice of their accountants and legal advisers, acquired pharmacies using a discretionary trust. This bill denies to pharmacists what is a common taxation and succession ownership structure and prevents pharmacists from having the same taxation and succession benefits as any other business owner.

The highest judicial authority in the land, the High Court of Australia, has cautioned against retrospective legislation which may interfere with vested rights or make unlawful, conduct which was lawful when done. If there is to be a change to existing laws upon which pharmacists have ordered their affairs, exercised their rights and incurred liabilities and obligations, then the laws should only apply prospectively. That is, for as long as a pharmacist continues to hold their pharmacy or pharmacy interest in the ownership structure that was permitted by law at the time the interest was acquired, then that should have been allowed to continue until the pharmacist stopped holding the interest in that structure. Pharmacists should not be forced to have to restructure and re-organise their affairs at significant personal expense and cost but that will be effect of the new laws.

The costs associated with complying with the new PBOB legislation from the start – ignoring the new annual costs paid to a body that has no time limitation on their actions – are substantial. Asking pharmacists to change their business affairs with all of the associated costs – stamp duty, legals, accounts fees etc - despite having fully complied with the laws of the day, is very unfair. It is only appropriate with new legislation, that will not do what it was originally intended to do anyway, should have its new requirements start to come into effect at the time of its being enacted into law. Grandfathering of existing, compliant accounting structures is the simplest and fairest way to proceed.

At the very least stamp duty on any sales in reconfiguring currently legal structures should be waived. I believe the QLD Pharmacy Guild has had verbal reassurance that this will happen, but it needs to be stated categorically so that pharmacists who are busy being professional health carers can move along with some financial certainty and clarity, and not be worrying about cash flow imposts from this ineffective legislation.

For any pharmacist who needs to adjust their currently legal and compliant accounting structures under the new proposed legislation, a two year amnesty will be required, as is allowed for in Part 14, transitional provisions. The proposed legislation currently does not allow that for corporations. Many currently legal and compliant discretionary trusts owned by pharmacists will be held under a corporation, and it is unfair to punish these pharmacists further by forcing them to pay the associated costs of rearranging their business tax arrangements prior to the legislation even coming into force.

The big corporations and franchises currently making profits from community pharmacies in Queensland will not have these associated costs

Fairness. A registered pharmacist is allowed to have a material interest in five pharmacies in Queensland. If a pharmacist has 1% of 5 pharmacies, or 100% of five pharmacies, they are deemed to be the same. Clearly this is nonsense. A far more sensible way to detail the legislation is for a pharmacist to be allowed to own 500% of pharmacies in Queensland.

This would allow a group of local pharmacists to own shares in each others pharmacies without the financial impact of the 5 pharmacy limit , which then allows better and more sensible and efficient use of resources – pharmacists (which are hard to find) , vaccination hubs, pharmacy health centres with pre and post-natal nursing care/advice, health condition monitoring (blood pressure , obesity , diabetes, loneliness clubs , etc etc . It creates a health care facility with multiple pharmacists overseeing each practice, which creates better health care, mentoring, supervision, community health and resource allocation planning. Fewer specialised and more efficient health hubs within a couple of pharmacies in a town may be more beneficial to community health than every pharmacy having their own smaller , less efficiently staffed treatment/vaccination rooms within each pharmacy, which is the inevitable result of pharmacists owning 100% of their own pharmacy due to pharmacy ownership legal restraints.

It also allows some regional diversification, which is useful when cash flow crises hit , such as we have just experienced in Mossman and Port Douglas. The road between Cairns and Port Douglas has been closed since Cyclone Jasper and the associated rainfall, which impacts all businesses in the Douglas Shire. Regional and fractional ownership diversification also allows employed pharmacists to visit rural and remote Queensland owned by the same pharmacist, improving their experience, skills and abilities as pharmacists. It also enables these younger pharmacists to buy fractional portions of pharmacies, which tends to retain them in the profession for longer (better community health care) and in the same locations for longer (better community health care).

There are many other good reasons for a 500% ownership structure that I won't go into here, but it's a shame that this opportunity has been totally missed by the new legislation. I believe that South Australia may have a 500% ownership rule in place.

Yours faithfully ,

Martin Dines

Owner pharmacist , LiveLife Pharmacy Macrossan St , Port Douglas

[REDACTED]