

Pharmacy Business Ownership Bill 2023

Submission No: 82
Submitted by: TerryWhite Chemmart
Publication:
Attachments:
Submitter Comments:

PRIVATE AND CONFIDENTIAL

19 January 2024

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

By email: egc@parliament.qld.gov.au

Dear Sir/Madam,

COMMITTEE INQUIRY - PHARMACY BUSINESS OWNERSHIP BILL 2023 (BILL)

We refer to your email of 5 December 2023 inviting TerryWhite Chemmart to make a submission on the Bill. Thank you for the opportunity to provide our feedback.

Background

As you may be aware, TW&CM Pty Ltd (**TerryWhite Chemmart**) operates as the franchisor to one of Australia's largest and leading retail pharmacy networks delivering frontline healthcare. With over 550 community pharmacies across Australia and some 120 pharmacies located in Queensland, we are committed to providing the support and services to each TerryWhite Chemmart branded pharmacy to enable them to deliver professional, safe and effective pharmacy products and services to their patients.

TerryWhite Chemmart is a subsidiary of EBOS Group Limited, which is the largest and most diversified Australasian marketer, wholesaler and distributor of healthcare, medical and pharmaceutical products. EBOS Group is dual listed on the ASX and NZX and takes the legal frameworks in which it operates seriously.

As a franchisor, we remain committed in our role to provide TerryWhite Chemmart pharmacies with the necessary systems and processes, resources and capability to enable them to ultimately deliver enhanced and effective pharmacy products and services to their patients, many of which are not possible by pharmacies on an individual basis. Examples of this includes:

- Developing infrastructure, systems, and support services to enable TerryWhite Chemmart pharmacies to provide over 375,000 COVID vaccinations across Queensland since the commencement of the COVID 19 pandemic;

Brisbane Office

Ground Floor
50 Park Road
Milton QLD 4064

Melbourne Office

Level 9
606 St Kilda Road
Melbourne VIC 3004

Adelaide Office

16-20 Hindmarsh
Avenue
Welland SA 5007

Sydney Office

7 Dolerite Way
Pemulwuy NSW 2145

Perth Office

11/63 Knutsford Avenue
Rivervale WA 6103



- Delivering education programs and systems to support and enhance the rapid adoption and implementation of state government initiatives such as the Queensland community scope of practice pilot to extend pharmacies' scope of practice - ultimately reducing the burden on the health system in Queensland;
- Helping TerryWhite Chemmart pharmacies to implement an in-pharmacy clinic room offering with an efficient patient booking system to facilitate in pharmacy consultations;
- Providing sophisticated technology to help pharmacies' patients improve medicine adherence; and
- Engaging with suppliers to enable convenient and timely access to and certainty in supply of medicines.

Pharmacies that decide to join the TerryWhite Chemmart franchise network place significant value on our continued ability to enhance their capability to provide effective pharmacy products and services to their patients.

We recognise that various industry stakeholders have raised concerns about the 'corporatisation' of pharmacies and the push to drive pharmacy as a retail business with the dispensary as an aside. The government will no doubt be aware of the concerns regarding the complexity of some franchise arrangements and this 'corporatisation' of the sector, brought to the fore with the recently announced reverse listing of Chemist Warehouse through the Sigma Healthcare transaction.

We accept that these are legitimate concerns, but it does not mean that franchising and related arrangements do not have a place as a model within pharmacy or that all pharmacy franchising are the same.

Franchising has been a feature of how a pharmacist owner may wish to operate their pharmacy for over 3 decades. It is in many respects a legitimate and ordinary commercial arrangement and should not ordinarily result in the franchisor being considered to hold a 'material interest' in the pharmacy or otherwise 'control' the pharmacy.

We agree with the concept that where a non-pharmacist third party holds a 'material interest' in or otherwise 'controls' a pharmacy, that should be regulated. In this regard we are supportive of the new Bill and its potential to clarify the boundary of what is considered a 'material interest' and inappropriate 'control' of a pharmacy, considering the increasing complexity of arrangements in the industry. To that end we are supportive of the introduction of a council with appropriate remit and powers to investigate and pursue non-pharmacist third parties that may have a 'material interest' in or inappropriate 'control' of a pharmacy.

That being said, the government also need to recognise that it is not a new concept in franchising that a franchisee may find benefit from the marketing of a core range of products and services and in leveraging the services of a franchisor to assist them in navigating the myriad of challenges and issues that a pharmacy may face. It is a decision that a pharmacist makes in joining our network, that there is an overall net commercial benefit to them to operate within our franchise system.

There is an expectation from TerryWhite Chemmart franchisees, that the pharmacies within the franchise system all operate, to some degree, with a consistent approach to ranging, how pharmacy products and services are delivered to patients, how pharmacy businesses within the brand are presented, marketing of the value proposition, etc. Anything less would dilute the value of being in a

Brisbane Office
Ground Floor
50 Park Road
Milton QLD 4064

Melbourne Office
Level 9
606 St Kilda Road
Melbourne VIC 3004

Adelaide Office
16-20 Hindmarsh
Avenue
Welland SA 5007

Sydney Office
7 Dolerite Way
Pemulwuy NSW 2145

Perth Office
11/63 Knutsford Avenue
Rivervale WA 6103



franchise to the detriment of the owners of the pharmacies that have each independently chosen to be a part of that franchise.

Legislation that operates in a manner that denies a franchise pharmacy owner the benefits from choices and commercial decisions they have made for their business to operate in 'partnership' with a franchisor will ultimately impact their ability to delivery enhanced and effective pharmacy products and services to their patients.

Of course the challenge for government will be to draw the appropriate line between a legitimate and appropriate franchise arrangement and a complex one which operates in contravention of the 'material interest' or 'control' requirements.

Our recommendations below are made with this background in mind and proffers a position which we believe draws the appropriate 'line'. Ultimately, we believe that the provision of franchise services has and will continue to enhance the role pharmacy can play as a key stakeholder in delivering primary healthcare to the community.

What is a *material interest* in a pharmacy business (clause 13)

It is important that clause 13 strikes an appropriate balance in recognising many legitimate and common commercial arrangements that should not be considered a 'material interest' under the Bill.

In the absence of express wording in clause 13 that excludes a franchise relationship, we believe it is important that the government ensures that franchising does not come within the 'material interest' test in that clause. In this regard we submit as follows:

1. The government should resist any further widening of what is considered a 'material interest' in a pharmacy business.

The general breadth of the words 'another interest in the business, other than an interest of an owner of the business' in clause 13(1)(c) is currently qualified by the words 'that entitles the person who holds an interest to receive consideration that varies according to the profits and takings of the business'.

The qualification is important to limit the breadth of the first part of that clause and necessarily qualify what is meant by 'another interest in the business'.

2. We submit that the clause 13(1)(c) can be further clarified by making it clear that the 'consideration' must be an amount that is paid or payable by the owner (as opposed to any other party) to the relevant person.

We submit that this could be clarified by amending clause 13(1)(c) as follows:

(c) *another interest in the business, other than an interest of an owner of the business, that entitles the person who holds the interest to receive consideration from the owner that varies according to the profits or takings of the business.*

3. We consider that there are still some legitimate commercial activities, such as volume-based pricing (i.e., where products have lower 'net into store' price if a pharmacist buys more), whether manifested as discounts or rebates, that could inadvertently fall within the meaning of 'consideration that varies according to the profits or takings of the business'.

Brisbane Office

Ground Floor
50 Park Road
Milton QLD 4064

Melbourne Office

Level 9
606 St Kilda Road
Melbourne VIC 3004

Adelaide Office

16-20 Hindmarsh
Avenue
Welland SA 5007

Sydney Office

7 Dolerite Way
Pemulwuy NSW 2145

Perth Office

11/63 Knutsford Avenue
Rivervale WA 6103

For those types of arrangements, it would be helpful to include within clause 13(2) provisions confirming that typical supply arrangements, do not fall within the definition of 'material interest'.

Additionally we believe that clause 13(1)(c) can be made clearer by stipulating that merely because consideration for services that a pharmacy may pay for, comes from its 'profits or takings', does not necessarily result in that third party having a 'material interest' in the business.

We submit that this could be clarified by amending clause 13(2) as follows:

(2) *To remove any doubt, it is declared that:*

(a) if an owner of a pharmacy business is a friendly society, the interest of a member of the owner is not a material interest in the business; and

(b) for the purposes of section 1(c):

(i) having a right to receive consideration that may be payable from the profits or takings of the business, or which may vary indirectly with the profits or takings of the business, or

(iii) supply arrangements including arrangements that provide volume-based pricing, discounts or rebates to an owner of a business,

does not of itself, amount to consideration that varies according to the profits and takings of the business.

Particular activities relating to licensed pharmacy business prohibited (clause 22)

We believe it is important that clause 22 strikes the appropriate balance between the many common and legitimate commercial arrangements between pharmacies and third parties and matters which must be controlled by the pharmacists owner.

Pharmacists ultimately choose to operate under a franchise system and brand as they attribute a value to the services and support that a franchisor can provide to them in operating their business. In many instances, a pharmacy operating under a franchise system can only access benefits from the system if there is consistency, to a certain degree, across all members within franchise system.

In the absence of express wording in clause 22 that excludes franchise relationships, we believe it is important that the government ensures that certain fundamental indicia of pharmacy franchising not be regarded as prohibited 'control' of a pharmacy business. In this regard we submit as follows:

1. While we acknowledge that the proposed clause 22(1)(c), prohibiting an ability to require medicines to be purchased from a particular supplier, reflects the old s.139(1)(b), we think that to perpetuate this scenario as a prohibited activity is misconceived.

The main purpose of the Bill is stated in clause 3 as:

- (a) to promote the professional, safe and competent provision of pharmacy services by pharmacy businesses; and

(b). to maintain public confidence in the pharmacy profession.

In the pharmacy context, there is no quality or therapeutic difference between the medicines that are therapeutically or bioequivalent to each other but that are provided by different suppliers.

This is regulated by the Therapeutic Goods Administration (TGA) under its own legislative framework and hence further regulation under the Bill is not required.

For example - a requirement that a pharmacy range paracetamol supplied by Supplier A rather than Supplier B enables us to better represent pharmacies in negotiations with the supplier – allowing us to secure appropriate supply, negotiate appropriate price and/or discounts (which would not otherwise be accessible to an individual pharmacy) and certainty around availability of supply – ultimately benefiting the pharmacist owner and their patients.

We recommend that clause 22(1)(c) be deleted.

2. The government has sought to recognise, in clause 22(2)(b), some of the elements of franchising which may legitimately be controlled by a person other than an owner of a pharmacy business. However we do not believe it is wide enough to recognise some key aspects of franchising that are integral to the proper operation of a franchise system.

We submit that the following exclusions be included in respect of proposed clause 21(2) to clarify that clause 21(1) does not apply to:

- (a). clauses requiring support for a 'core range' of product as a minimum,
- (b). clauses ensuring a level of product availability,
- (c). clauses requiring a range of pharmacy services to be provided as a minimum and to a particular standard or quality, and
- (d). supply arrangements, including arrangements that provide volume-based pricing, discounts or rebates.

We consider that a franchise system which provides for these matters, should be specifically referenced in clause 21(2) as activities that are not prohibited, as they are:

- (a). for the benefit of patients and the community in supporting access to a fully stocked dispensary and front of shop; and
- (b). supportive of certainty in sourcing and procuring medicine supply from suppliers – enhancing patient's access to and availability of medicines and services.

Ultimately pharmacy owners elect to operate their pharmacy under the TerryWhite Chemmart brand as they see benefit in operating under a group that maintain minimum standards regarding the provision of high-quality pharmacy products and services.

The Bill does not recognise and exclude appropriately in clause 22(2) these other instances where we 'partner' with TerryWhite Chemmart pharmacies to enable them to deliver high quality pharmacy products and services for the benefit of their businesses and patients.

Brisbane Office

Ground Floor
50 Park Road
Milton QLD 4064

Melbourne Office

Level 9
606 St Kilda Road
Melbourne VIC 3004

Adelaide Office

16-20 Hindmarsh
Avenue
Welland SA 5007

Sydney Office

7 Dolerite Way
Pemulwuy NSW 2145

Perth Office

11/63 Knutsford Avenue
Rivervale WA 6103



We submit that clause 22(2) should be expanded to ensure that these other features of pharmacy franchising are not prohibited by the Bill.

Deciding whether person is fit and proper to own pharmacy business (clause 72)

We note that clause 72(e) provide that the *'council must have regard to...whether the person is a party to a contract, agreement or arrangement...containing a provision to which section 22(3) applies'*.

Whether clause 22 is breached may be a matter of contention, judgement, and consideration of the degree of control and the application of certain exemptions. In those circumstances we submit that inclusion of clause 72(e) is inappropriate.

We note that the words 'contract, agreement or arrangement' is used in clause 72(e). We are concerned that this may be interpreted to suggests that a pharmacist, by simply seeking to organise how they carry on their business to their best advantage such as entering into a franchise agreement, is somehow not 'fit and proper'. Accordingly we recommend that clause 72(e) be deleted.

Timelines for approval

To ensure a level playing field for all pharmacist owners in Queensland we are supportive of an approach that requires all pharmacist owners (whether that ownership interest arose before or after the commencement of the new Bill) to meet the new requirements. We believe that the Bill requiring all pharmacist owners to apply for and hold pharmacy business licenses is an appropriate approach.

That being said, we do note the likely significant increase in administrative compliance costs (including legal, stamp duty and capital gains tax) for pharmacist owners that will no doubt arise from restructuring their ownership structures, obtaining a pharmacy business licence and annual renewal of those licenses. Whilst we are fully supportive of pharmacies continuing to be owned by pharmacists, we would advocate for a streamlined renewal process focused on material changes from the initial application for a pharmacy business licence. It is unclear whether clause 35 operates to provide this streamlined approach to renewals.

Ultimately, we hold concerns that the administrative burden from the new licensing regime and annual process results in extended or protracted timelines for consideration and approvals from the council. In this regard we would recommend that the Bill provide for consideration and decisions in a timely manner.

For an approval process for granting a pharmacy business licence, adding a licence holder etc, we would suggest that the council should be required to make a decision within a 'reasonable period of time', say 30 days of receipt of an application.

The lack of time limit for the making of a decision on an application is both distinct from many other aspects of the Bill (such as the period for Internal Review) and has the potential to unreasonably delay usual commercial transactions, such as changes of ownership, even where no regulatory risk is apparent.

Finally, please note that our views have been provided on a confidential basis to the Economics and Governance Committee for the purposes of its consideration and will not be provided to any third party or other interested stakeholders.

Brisbane Office

Ground Floor
50 Park Road
Milton QLD 4064

Melbourne Office

Level 9
606 St Kilda Road
Melbourne VIC 3004

Adelaide Office

16-20 Hindmarsh
Avenue
Welland SA 5007

Sydney Office

7 Dolerite Way
Pemulwuy NSW 2145

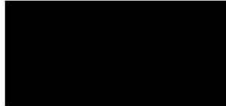
Perth Office

11/63 Knutsford Avenue
Rivervale WA 6103



Thank you again for the opportunity to provide our comments in relation to the Bill. Should you have any queries in relation to our submission or wish to discuss our views further, please do not hesitate to contact me on [REDACTED].

Yours sincerely,
TerryWhite Chemmart



Nick Munroe
Executive General Manager

Address Ground Floor, 50 Park Road
Milton QLD 4064

Phone
email



Brisbane Office
Ground Floor
50 Park Road
Milton QLD 4064

Melbourne Office
Level 9
606 St Kilda Road
Melbourne VIC 3004

Adelaide Office
16-20 Hindmarsh
Avenue
Welland SA 5007

Sydney Office
7 Dolerite Way
Pemulwuy NSW 2145

Perth Office
11/63 Knutsford Avenue
Rivervale WA 6103