Pharmacy Business Ownership Bill 2023

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Submitter Comments:

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To:	Economics and Governance Committee
Subject:	Submission on the Pharmacist Business Ownership Bill - Retrospective Nature, Moral Concerns, and Stamp Duty Implications
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Dear Members of the Economics Governance Committee,

I am writing to express my profound concern regarding the Pharmacist Business Ownership Bill currently under review by the Economics and Governance Committee. While the intent of the bill may be to enhance regulatory control, its retrospective nature, certain provisions, and the introduction of stamp duty implications raise significant moral, practical, and financial issues that warrant reconsideration.

I am a Queensland pharmacy business owner and CFO of LiveLife Pharmacy Pty. Ltd. the administrative, services and support centre, supporting pharmacies that make up the LiveLife Pharmacy network of pharmacies. I view the proposed changes not just through the perspective of my own pharmacy ownership structures but also in the knowledge that there are many other similar ownership structures, among LiveLife Pharmacy owners and other pharmacy owners in the industry that will be significantly impacted by these proposed changes. The solicitor I seek advice from advises they he believes approximately 50% of all pharmacy owners in QLD will be materially adversely affected by these changes.

Totalitarian Council and Regulatory Burden

The bill appears to transform what was initially proposed as an advisory council into a regulatory body, burdening pharmacists with unnecessary regulation, costs, and delays. The lack of obligations for timely responses from the council introduces uncertainty, leading to potential disruptions in commercial transactions and increased transaction costs.

Pharmacists with Non-Practising Registration

The provision restricting pharmacists with non-practising registration from owning or having an interest in a pharmacy seems unjustified. Many pharmacists with non-practising registration have extensive experience and ensure the presence of a practising pharmacist, guaranteeing safe and competent services. The two-year time frame for compliance is arbitrary and short, this is likely to create an unfair burden.

Fit and Proper Person Determination

Granting the council the power to determine the "fit and proper" status of a person based on contentious contractual provisions, as outlined in section 72(e), is problematic. This provision may lead to subjective judgments and hinder the ability of pharmacists to structure their business in a way that suits their needs.

Restrictions on Trust Ownership Structure

The limitations on trust ownership structures are not only discriminatory but also hinder the flexibility and tax advantages associated with discretionary trusts. This restriction may disproportionately affect pharmacists with diverse ethnic backgrounds and those who have received from family financial support throughout their career and in turn structured their affairs in a discretionary trust to repay that financial support by distributing a share of business profits to those family members who provided them the capital to enter into business ownership.

Limited Transitional Provisions

The transitional provisions, particularly for corporations, seem to force compliance even before the new laws commence. This rigid timeline may create unnecessary pressure on businesses to reorganize their ownership structures hastily.

Control Provisions

Section 22, prohibiting certain activities by third parties, appears overly restrictive. The voiding consequences for activities deemed to imply control may lead to unintended legal consequences and hinder ordinary business activities.

Unfairness of Retrospective Nature and Stamp Duty Implications

One of the most concerning aspects of the Pharmacist Business Ownership Bill is its retrospective nature, introducing changes that will disrupt the established rights and obligations of pharmacists. The bill, by seeking to apply new regulations to existing ownership structures, imposes a burden on pharmacists who have organized their affairs in compliance with the laws at the time of acquisition. This retrospective element not only undermines the principle of legal certainty but also places an unjustifiable strain on pharmacists who may now face the need to restructure and reorganize their businesses at significant personal expense.

Part of this additional financial burden is through stamp duty implications. Pharmacists who structured their businesses in a legally compliant manner under the Pharmacy Business Ownership Act now face the prospect of incurring stamp duty costs when compelled to restructure to align with the new Pharmacy Business Ownership Act 2023. This unforeseen financial burden further compounds the unfairness of the retrospective legislation, disproportionately impacting some pharmacists who had acted in accordance with the legal framework of their time.

The highest judicial authority has consistently cautioned against retrospective legislation that interferes with vested rights or renders conduct unlawful when it was initially lawful. The retrospective nature of this bill disregards the expectations and arrangements made by pharmacists under the existing legal framework. This approach contradicts fundamental principles of fairness and equity, as individuals should not be penalized for actions that were permitted and lawful when undertaken.

Moreover, the two-year amnesty period provided in Section 216 for pharmacists with trusts does not adequately address the retrospective impact. To benefit from this amnesty, trusts must have limited beneficiaries to the practising pharmacist, their spouse, or adult children immediately before the new laws commence. This requirement fails to account for the reality of discretionary trusts, which often include a broader range of potential beneficiaries. As a result, many pharmacists may find themselves ineligible for the amnesty, leaving them with limited options to navigate the onerous regulatory changes.

In essence, the retrospective nature of the legislation creates an unjust predicament for pharmacists who, in good faith, structured their ownership in compliance with the then-existing laws. Such retroactive changes not only disrupt established practices but also impose an unwarranted burden on pharmacists, forcing them to adapt to a new regulatory landscape without adequate time and resources.

A Simple Solution

Rather than introducing prescriptive legislation, a more effective solution could involve enhancing investigation and enforcement powers within the current legislative framework. Adequate enforcement measures would address compliance issues without the need for the extensive regulatory overhaul proposed by the Pharmacist Business Ownership Bill.

In conclusion, I urge the committee to reconsider the retrospective nature of the bill, the stamp duty implications, and its potential impact on pharmacists, their businesses, and the broader healthcare system.

A more balanced and forward-looking approach is necessary to address concerns without unduly burdening pharmacists.

Thank you for considering my submission. I trust that the committee will carefully review the points raised to ensure the bill aligns with principles of fairness, practicality, and moral integrity.

Sincerely,

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