

## Pharmacy Business Ownership Bill 2023

**Submission No:** 109  
**Submitted by:** Allan Milostic  
**Publication:**  
**Attachments:**  
**Submitter Comments:**



ABN: 94 169 101 820

LiveLife Pharmacy Airlie Beach

277a Shute Harbour Road  
Airlie Beach QLD 4802

T: 07 4946 6156

F: 07 4946 5191

E: [airliebeach@lifelifepharmacy.com](mailto:airliebeach@lifelifepharmacy.com)

W: [www.lifelifepharmacy.com](http://www.lifelifepharmacy.com)

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

Friday 19<sup>th</sup> January 2023

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

Dear Sir/Madam,

RE: Committee inquiry into the Queensland Pharmacy Business Ownership Bill 2023

In my capacity as a community pharmacy owner in regional and remote Northern Queensland, I would like to take the opportunity express some concerns regarding the regarding the Pharmacist Business Ownership Bill currently under review by the Economics and Governance Committee.

I fully support pharmacy ownership by pharmacists and believe that it is the very Cornerstone on which the fabric of community pharmacy in Australia is built. It ensures integrity and direct accountability of the profession in it provision of primary healthcare services.

The current interaction between the Pharmacy Business Ownership Act (2001), the Community Pharmacy Agreements with the Commonwealth Government and location rules attached to PBS Approval numbers ensures the ongoing survival of community pharmacy – particularly in remote, rural and regional areas in which healthcare professionals are scarce.

As part of the Livelife Pharmacy Group, we have discussed at length and received legal and accounting advice regarding ten areas of concern with the implementation of the Bill as it stands. These areas of concern will be similar for all LiveLife Partners.

**The unfairness of the retrospective nature of the legislation being applied to business ownership structures created lawfully and in compliance with the Pharmacy Business Ownership Act 2001.**

More than 50% of pharmacists in Queensland who have acquired their pharmacy or pharmacy interest over the past 20 years, particularly over the past 10 years, have done so with a discretionary family trust and have done so on the advice of their accountant or lawyer.

The bill, by applying new regulations to existing structures imposes an unfair burden on pharmacist who were compliant with laws at the time. There will need to be a restructuring at significant personal expense with Stamp Duty and Capital Gains Tax implications – this is despite general judicial caution against retrospective legislation that renders conduct unlawful when it was initially lawful

This will unfairly penalise many law-abiding pharmacists.

 *Life... Let us help you Live it!*

### **Restriction on use of common trust ownership structure and insufficient time to restructure business affairs prior to or after the Act becomes law in certain circumstances.**

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 – a common practise amongst family groups.

### **Limited Transitional Provisions**

S216 purports to provide a 2 year amnesty for pharmacists with trusts to organise their affairs however that amnesty likely to apply to very few as it applies to corporations that are deemed eligible persons under s214. and in order to be deemed eligible), the beneficiaries of the trust must be limited to the practising pharmacist, their spouse or adult children immediately before the new laws commence. As the majority of discretionary trusts have classes of potential beneficiaries that extend much broader some will need to make changes to their trust deed before the new laws commence.

### **Control**

S22 will prohibit certain activities by anyone other than the owner (third parties). The voiding consequences for activities deemed to imply control may lead to unintended legal consequences and hinder ordinary business activity

### **Fit and proper person Determination**

The council is given power to determine who is a fit and proper based on contractual provisions (say a franchise agreement) as outlined in section 72(e). This may lead to subjective judgements and hinder the ability of a pharmacist to structure their business and enter agreements that are reasonable and suit their needs.

### **Transformation of the council from an advisory body to regulatory Body**

This change has introduced significant regulatory burden, substantial costs with a number of fees and will cause considerable delays in the processing of the numerous applications necessitating approval from the council, such as pharmacy business licenses, license renewals, modifications to license holders (e.g., partners, directors, shareholders), changes in premises, addition or removal of material interest holders, alterations in business or holder names. The lack of obligation for timely responses from the council is particularly concerning and may lead to disruptions in commercial transactions.

**Definition of a pharmacy service:**

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.

Change as proposed by the Pharmacy Guild: 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;

**Pharmacists with non-practising registration will no longer be able to own or have an interest in a pharmacy.**

That is despite the majority of pharmacists holding non-practising registration having practised pharmacy for many years and as required by s21, there having to be an authorised pharmacist, being a practising pharmacist, present in the pharmacy at all times. This seems unjustified.

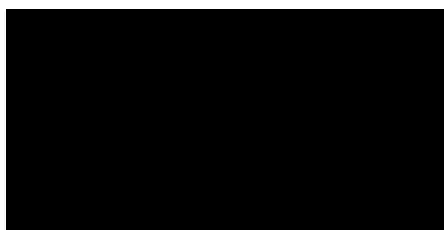
**Stamp Duty and CGT impost:**

I respectfully request that the government seek a Private Ruling from the Commissioner of Taxation *before* the legislation is passed so that current Pharmacy owners understand their taxation liability and the approach the Commission would take to valuation.

A private ruling would create certainty for the government, pharmacy owners and pharmacy consumers and would clarify the economic and financial impost as a result new law.

I urge the committee to consider especially the retrospective nature of the bill and subsequent Stamp Duty and CGT implications on average pharmacists who have simply follow legal and accounting advice and just wish to continue looking after their communities as best they can

Yours



Allan Milostic

LiveLife Pharmacy Airlie Beach