



Pharmacy Business Ownership Bill 2023

**Report No. 1, 57th Parliament
Cost of Living and Economics Committee
March 2024**

Cost of Living and Economics Committee¹

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All web address references were current at the time of publishing.

¹ The Cost of Living and Economics Committee (committee) of the 57th Parliament was established as a portfolio committee of the Legislative Assembly on 13 February 2024, at which time it took on responsibility for the examination of the Pharmacy Business Ownership Bill 2023 from the former Economics and Governance Committee (former committee), which was discharged on the same date. The committee took carriage of all evidence provided to the former committee, which has informed its reporting on the Bill. The committee was also aided by the fact that 5 of its 6 members were members of the former committee. (Ms Amanda Camm, Member for Whitsunday was not a member of the former committee. The committee acknowledges the contribution of Mr Dan Purdie MP, Member for Ninderry, who was the sixth member of that committee).

Contents

Chair’s foreword	iv
Recommendations	v
Executive Summary	vi
1 Introduction	8
1.1 Policy objectives of the Bill	8
1.2 Background	8
1.3 Legislative compliance	11
1.3.1 <i>Legislative Standards Act 1992</i>	11
1.3.2 <i>Human Rights Act 2019</i>	14
1.4 Should the Bill be passed?	14
2 Pharmacy business ownership restrictions	15
2.1 Eligibility requirements and accompanying definitions	15
2.2 Definition of a pharmacy business	16
2.3 Number of pharmacies that can be owned	17
2.4 Operation of a pharmacy business	17
2.5 Transitional provisions	18
2.6 Issues of fundamental legislative principle – restrictions on ordinary business activities	18
Committee comment	19
2.7 Human rights considerations	19
Committee comment	20
2.8 Stakeholder views	20
2.8.1 Eligible persons	21
Committee comment	24
2.8.2 Definition of pharmacy business	24
Committee comment	28
2.8.3 Definition of material interest	28
Committee comment	31
2.8.4 Limitations on the number of pharmacy businesses	32
2.8.5 Operation of a pharmacy business	32
2.8.6 Transitional provisions	32
3 Pharmacy business location restrictions	34
3.1 Issue of fundamental legislative principle – restriction of ordinary activities	34
Committee comment	34
3.2 Stakeholder views	35
3.3 The department’s response	36
4 External control of pharmacy businesses	37
4.1 Issue of fundamental legislative principle – restriction of ordinary activities	38
Committee comment	38
4.2 Stakeholder views	38
4.3 The department’s response	40

5	Establishment of the Pharmacy Business Ownership Council	41
5.1	Issues of fundamental legislative principle and human rights – natural justice and the right to a fair hearing	43
	Committee comment	44
5.2	Other human rights considerations – the right to take part in public life and the right to privacy	44
	Committee comment	46
5.3	Stakeholder views and the department’s response	46
5.3.1	Role of the council	46
5.3.2	Functions of the council	47
5.3.3	Composition of the council	48
5.3.4	Council member terms	49
6	Licensing framework	50
6.1	Licensing framework	50
6.2	Information for licensing decisions	50
6.3	Applications for a license	51
6.4	Changes to a licence	52
6.5	Proposed fee framework	53
6.6	Issues of fundamental legislative principle	53
6.6.1	Administrative power and natural justice	53
	Committee comment	54
	Committee comment	56
6.6.2	Relevance and proportionality of penalties	56
	Committee comment	58
6.7	Human rights considerations	58
6.7.1	Right to privacy and reputation	58
	Committee comment	58
6.7.2	Right to a fair hearing and rights in criminal proceedings	59
	Committee comment	59
6.8	Stakeholder views	60
6.9	The department’s response	62
7	Monitoring, investigation and enforcement	64
7.1	Issues of fundamental legislative principle and human rights	67
7.1.1	Power to enter premises and seize property and implications for the rights to property and privacy and reputation	67
	Committee comment	68
7.1.2	Protection against self-incrimination and the right to a fair hearing and rights in criminal proceedings	69
	Committee comment	70
7.2	Other human rights considerations	70
7.2.1	Right to privacy and reputation	70
	Committee comment	71
7.2.2	Right to equality before the law	71

Committee comment	72
7.3 Stakeholder views and the department's response	72
7.3.1 Full and free access to documents and property	72
7.3.2 Publication of reports about compliance and audits for a financial year	73
8 Register of pharmacy businesses	73
8.1 Stakeholder views	73
8.2 The department's response	75
Appendix A – Submitters	76
Appendix B – Officials at the public departmental briefing	80
Appendix C – Witnesses at the public hearing	81
Appendix D – Proposed fee framework	82

Chair's foreword

This report presents a summary of the Cost of Living and Economics Committee's consideration of the Pharmacy Business Ownership Bill 2023.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights, in accordance with the *Human Rights Act 2019*.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank Queensland Health and our Parliamentary Service staff for their assistance.

I commend this report to the House.



Linus Power MP

Chair

Recommendations

Recommendation 1 14

The committee recommends the Pharmacy Business Ownership Bill 2023 be passed. 14

Executive Summary

Pharmacy business ownership in Queensland is regulated under the *Pharmacy Business Ownership Act 2001* (2001 Act), which has been in place for over 20 years. The 2001 Act has been subject to significant amendment and is considered to be outdated and a constraint on Queensland Health's ability to ensure compliance with its requirements. The Bill seeks to repeal and replace the 2001 Act to more effectively promote the professional, safe and competent provision of pharmacy services by pharmacy businesses and maintain public confidence in the pharmacy profession.

The Bill aims to achieve this by:

- clarifying the requirements in the 2001 Act relating to who may own or hold an interest in a pharmacy business, and retaining the limits on the number of pharmacy businesses that a person may own or hold an interest in
- establishing a regulatory council as a statutory body to administer the Act and transfer regulatory functions from Queensland Health to the regulatory council
- establishing a licensing framework for the ownership of and interests in pharmacy businesses
- prohibiting the regulatory council from issuing a licence if the pharmacy business is located in a supermarket
- prohibiting third parties from exercising inappropriate control over how pharmacy business owners provide pharmacy services related to medicines and providing that clauses in a contract or agreement that allow a third party to exercise inappropriate control are void
- requiring the regulatory council to report the results of compliance audits
- requiring the regulatory council to maintain a register of pharmacies, to assist the community to locate pharmacies and services provided by pharmacies
- modernising existing provisions relating to the functions and powers of inspectors, legal proceedings, delegations and protections from civil liability
- restricting disclosure of information obtained in connection with the administration of the legislation to limited circumstances
- confirming that regulations may be made about fees, waiver of fees, record keeping and pharmacy premise standards.

The pharmacy business owners and groups who made up the majority of submitters were broadly supportive of the Bill (albeit having identified a number of requested changes to certain definitions and provisions). However, other stakeholders – including the Australian Medical Association Queensland, Royal Australian College of General Practitioners Queensland, Queensland Aboriginal and Islander Health Council, Productivity Commission and others – queried the evidence base for the proposed licensing framework, regulatory council and ownership restrictions, submitting that the Bill's provisions are anticompetitive and will not support improvements in the accessibility or affordability of pharmacy services, or otherwise be of net benefit to the community. In addition, a subset of pharmacy owners outlined concerns that the proposed legislation would impose an undue compliance burden and costs with detrimental effects on the profession and its delivery of pharmacy services, submitting that the 2001 Act should have been amended to improve investigation and enforcement powers, rather than repealing and replacing the 2001 Act.

The committee's assessment of the Bill identified potential limitations on the rights to take part in public life, to property, to recognition and equality before the law, to privacy and reputation and to a fair hearing and rights in criminal proceedings. However, where these limitations occur, the committee was satisfied that they are reasonable and proportionate in the circumstances, and therefore justified. Further, the committee noted that many of the limitations are designed to have positive rights impacts by aiming to ensure independently owned pharmacies continue to operate and serve their communities and provide adequate access to medicines and services.

The committee's assessment of the Bill's compliance with the *Legislative Standards Act 1992* identified a number of issues in relation to the restriction of ordinary activities, administrative power, relevance and proportionality of penalties, natural justice (including the right to be heard, being afforded procedural fairness and having an unbiased decision maker), delegation of administrative power, reversal of the onus of proof in criminal proceedings, conferral of immunity from proceedings or prosecution, delegation of legislative power, power to enter premises and seize property, and protection against self-incrimination. However, ultimately the committee was satisfied that the provisions have sufficient regard to fundamental legislative principles, noting the purpose and nature of the provisions and the accompanying processes and requirements or safeguards.

The committee has recommended that the Pharmacy Business Ownership Bill 2023 be passed.

1 Introduction

1.1 Policy objectives of the Bill

The Bill seeks to repeal and replace the *Pharmacy Business Ownership Act 2001* (2001 Act) with a contemporary and effective framework for the regulation of the ownership of pharmacy businesses which:

- promotes the professional, safe and competent provision of pharmacy services by pharmacy businesses
- maintains public confidence in the pharmacy profession.²

It aims to achieve this by:

- clarifying the requirements in the 2001 Act relating to who may own or hold an interest in a pharmacy business, and retaining the limits on the number of pharmacy businesses that a person may own or hold an interest in
- establishing a regulatory council as a statutory body to administer the Act and transfer regulatory functions from Queensland Health to the regulatory council
- establishing a licensing framework for the ownership of and interests in pharmacy businesses
- prohibiting the regulatory council from issuing a licence if the pharmacy business is located in a supermarket
- prohibiting third parties from exercising inappropriate control over how pharmacy business owners provide pharmacy services related to medicines and providing that clauses in a contract or agreement that allow a third party to exercise inappropriate control are void
- requiring the regulatory council to report the results of compliance audits
- requiring the regulatory council to maintain a register of pharmacies, to assist the community to locate pharmacies and services provided by pharmacies
- modernising existing provisions relating to the functions and powers of inspectors, legal proceedings, delegations and protections from civil liability
- restricting disclosure of information obtained in connection with the administration of the legislation to limited circumstances
- confirming that regulations may be made about fees, waiver of fees, record keeping and pharmacy premises standards.³

1.2 Background

Pharmacy business ownership in Queensland is regulated under the 2001 Act, which has been in place for over 20 years and has been subject to significant amendment. The explanatory notes advise that the 2001 Act is now 'outdated and limits Queensland Health's ability to ensure compliance with its requirement'.⁴

The new regulatory framework to be established by the Bill is informed by recommendations of the former Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (Health Committee), in its *Report No. 12, 56th Parliament – Inquiry into the establishment of a pharmacy council and transfer of pharmacy ownership in Queensland* (Health Committee report), which was tabled in October 2018.⁵

² Queensland Health, public briefing transcript, 14 December 2023, p 2.

³ Explanatory notes, p 1.

⁴ Explanatory notes, p 1.

⁵ Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, *Report No. 12, 56th Parliament – Inquiry into the establishment of a pharmacy council and transfer of pharmacy ownership in Queensland*, 1 October 2018 (Health Committee report), <https://documents.parliament.qld.gov.au/tp/2018/5618T1639.pdf>.

In addition to receiving submissions and holding hearings, the Health Committee's inquiry included:

- obtaining a report from the Queensland Audit Office (QAO) about the administration of transfers of pharmacy ownership by Queensland Health for compliance with the 2001 Act (QAO Report)
- obtaining a report from the Queensland Productivity Commission on the cost-benefit analysis of establishing a pharmacy council in Queensland
- meeting with representatives from the Victorian Pharmacy Authority in Melbourne, and
- seeking expert advice from Queensland Health.⁶

The Health Committee report included 11 recommendations relating to the regulation of pharmacy ownership in Queensland, the establishment of a pharmacy advisory council, scope of practice for pharmacists and pharmacy assistants, and the communication of pharmacy services.⁷

On 16 April 2019, the Queensland Government Response (Government Response) to the Health Committee report was tabled in the Legislative Assembly.⁸ The Government Response:

- accepted all 11 recommendations in full or in principle and identified that legislative amendments were required to respond to recommendations 6, 8, 9, 10 and 11⁹
- committed to introducing 'a licensing and registration scheme to support the regulation of pharmacy ownership in Queensland as is common in other jurisdictions' and give effect to 'multiple recommendations from the [Health Committee] report', including by providing a mechanism for 'monitoring ongoing compliance'.¹⁰

The Bill proposes to implement the Government Response to recommendations 8, 9, 10 and 11 of the Health Committee report, but departs from the Government Response in relation to recommendation 6. Recommendation 6 called for 'the establishment of a Queensland Pharmacy Advisory Council to advise the Department of Health in its administration of the *Pharmacy Business Ownership Act 2001* and the fulfilment of its regulatory responsibilities'.¹¹ The Bill instead establishes a regulatory council as an independent statutory body, and transfers responsibility for administration of pharmacy ownership regulation from Queensland Health to the regulatory council.¹²

The explanatory notes advise that the decision to establish a regulatory council rather than an advisory council was 'based on stakeholder feedback received during consultation on the Bill'.¹³ This consultation included:

- the July 2020 issuing of a Consultation Regulatory Impact Statement exploring various options for the monitoring and enforcement of pharmacy ownership legislation and establishment of a

⁶ Explanatory notes, p 2.

⁷ Explanatory notes, p 2.

⁸ Queensland Government, Response to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee's Report No. 12 – Inquiry into the establishment of a pharmacy council and transfer of pharmacy ownership in Queensland, 16 April 2019 (Government Response), <https://documents.parliament.qld.gov.au/tp/2019/5619T562.pdf>.

⁹ Explanatory notes, p 2.

¹⁰ Government Response, p 7.

¹¹ Committee report, recommendation 6, p xii, 65.

¹² Explanatory notes, p 2.

¹³ Explanatory notes, p 4.

statutory body, on which Queensland Health received submissions through to November 2020¹⁴

- two rounds of consultation with stakeholders, in October 2022 and in February 2023, on drafts of the Bill and a confidential consultation paper.¹⁵

In addition, input was received through an Interim Pharmacy Roundtable,¹⁶ which was convened to advise the Queensland Health (the department) on the policy issues and legislative frameworks being considered for the modernised regulation of pharmacy ownership in Queensland.¹⁷

Queensland Health advised that through these processes, the Pharmacy Guild of Australia (Pharmacy Guild) and many current pharmacy owners supported the introduction of a pharmacy council ‘but strongly advocated for the council to be regulatory in nature rather than advisory’.¹⁸ The resulting regulatory council to be established by the Bill reflects this pharmacy industry feedback and also ‘aligns with most other Australian jurisdictions’.¹⁹

Queensland Health has also acknowledged, however, that other stakeholders have strongly opposed pharmacy ownership restrictions and the associated regulatory model set out in the Bill;²⁰ and this divergence of views has been reflected in the submissions and evidence presented to the committee.

That is, while the pharmacy business owners and groups who made up the majority of submitters were broadly supportive of the Bill (albeit having identified a number of requested changes to certain definitions and provisions); other stakeholders – including the Australian Medical Association Queensland, Royal Australian College of General Practitioners Queensland, Queensland Aboriginal and Islander Health Council, Productivity Commission and others – queried the evidence base for the proposed licensing framework, regulatory council and ownership restrictions, submitting that the Bill’s provisions are anticompetitive and will not support improvements in the accessibility or affordability of pharmacy services, or otherwise be of net benefit to the community. In addition, a subset of pharmacy owners outlined concerns that the proposed legislation would impose an undue compliance burden and costs with detrimental effects on the profession and its delivery of pharmacy services, submitting that the 2001 Act should have been amended to improve investigation and enforcement powers, rather than repealing and replacing the 2001 Act.

Queensland Health noted the views that these submitters expressed and confirmed that the further amendment of the 2001 Act was explored as an option.²¹ However, this approach was ultimately ‘considered unsuitable because the 2001 Act is significantly outdated, contains a number of ambiguous provisions throughout, and is difficult to apply’.²² Queensland Health further stated:

¹⁴ Queensland Health, ‘Proposed Regulatory Fees and Licensing Framework for Pharmacy Ownership in Queensland’, webpage, last updated 30 November 2020, <https://www.health.qld.gov.au/system-governance/licences/pharmacy/pharmacy-ownership/proposed-fees-and-licensing-framework>; Queensland Health, *Proposed Regulatory Fees and Licensing Framework for Pharmacy Ownership in Queensland: Consultation Regulatory Impact Statement*, July 2020.

¹⁵ Queensland Health, correspondence, 8 December 2023, p 4.

¹⁶ The Interim Pharmacy Roundtable comprises a mix of ‘pharmacy owners and consumer representatives, and experts from law, accounting, and business management’. See Queensland Health, *Interim Pharmacy Roundtable*, webpage, last updated 28 March 2022, <https://www.health.qld.gov.au/system-governance/licences/pharmacy/interim-pharmacy-roundtable>

¹⁷ Queensland Health, *Progress Report on Delivery of Government Response to the Pharmacy Inquiry*, p 5.

¹⁸ Queensland Health, correspondence, 8 December 2023, p 4.

¹⁹ Queensland Health, correspondence, 8 December 2023, p 4.

²⁰ Queensland Health, correspondence, 8 December 2023, p 4; Queensland Health, correspondence, 2 February 2024, p 3.

²¹ Queensland Health, correspondence, 2 February 2024, p 3.

²² Queensland Health, correspondence, 2 February 2024, p 3.

The amendments that would have been required to implement the Government Response to the Committee Report were complex and significant. Drafting of the amendments would have been constrained by the current structure of the legislation.²³

The *Pharmacy Business Ownership Act 2023* that the Bill would establish (proposed Act) is expected to commence by proclamation approximately 12 to 18 months after assent.²⁴ Queensland Health advised:

This will allow time for implementation activities including development of the IT system required for the licensing framework, set up of the council, development of subordinate legislation (fees regulation and premises standards), and industry education.²⁵

1.3 Legislative compliance

The committee's deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992*, and *Human Rights Act 2019*.

1.3.1 *Legislative Standards Act 1992*

The committee's assessment of the Bill's compliance with the *Legislative Standards Act 1992* identified potential issues of fundamental legislative principle²⁶ associated with a number of the Bill's provisions. Issues relating to the following provisions are not canvassed further in this report, owing to the committee's satisfaction that they have sufficient regard to the rights and liberties of individuals and to the institution of parliament:

- provisions allowing the council to delegate its functions under the proposed Act to a council member or chief executive officer, and allowing a council member or chief executive officer to further delegate a function to an 'appropriately qualified' member of the council's staff²⁷
- provisions reversing the onus of proof for a number of offences²⁸ under the Bill²⁹

²³ Queensland Health, correspondence, 2 February 2024, p 3.

²⁴ Queensland Health, correspondence, 8 December 2023, p 4.

²⁵ Queensland Health, correspondence, 8 December 2023, p 4.

²⁶ The fundamental legislative principles are set out in section 4 of the *Legislative Standards Act 1992* and require that legislation should have sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

²⁷ Bill, cl 184 (proposed Act, s 184). Section 4(3)(c) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether it allows the delegation of administrative power only in appropriate cases and to appropriate persons. In this instance, the explanatory notes assert that the Bill's inclusion of a general delegation power is justified as there are a range of administrative powers under the proposed Act that would be impractical for the council to carry out personally, and the powers can only be delegated to a person with the necessary qualifications or experience to exercise the power (p 21-22). It has generally been considered acceptable practice for delegations to be made to 'appropriately qualified' officers in such instances. See Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC Notebook* (Notebook), p 33. The *Acts Interpretation Act 1954* (s 27A) also contains extensive provisions relating to delegations.

²⁸ See, specifically, cls 21, 69, 75, 76, 77, 78, 79, 80, 81, 88, 100, 115, 120, 121, 131, 133, 134, 136, 141 and 182 of the Bill.

²⁹ Section 4(3)(d) of the *Legislative Standards Act 1992* provides that legislation should not reverse the onus of proof in criminal proceedings without adequate justification. The Bill contains approximately 30 'reasonable excuse' provisions which effectively reverse the onus of proof as they place the burden of proof on the individual to establish the existence of a reasonable excuse for the contravention. An example highlighted in the explanatory notes is cl 75, which provides that a licence holder, director or shareholder must notify the council if they are convicted of an indictable offence during the term of their licence, within 14 days of conviction, unless they have a reasonable excuse. A reasonable excuse may be that the person had been unwell in hospital and therefore was unable to provide the required notification. The notes then go on to justify the inclusion of this, and other reasonable excuse provisions in the Bill, on the basis that the potential defendant is best positioned to provide evidence of a reasonable excuse (see explanatory notes, p 22). Whilst

- the Bill's provision for the use of evidentiary certificates,³⁰ presumed appointments and authority,³¹ and presumed signatures^{32,33}
- the Bill's provision that an executive officer of a corporation can be taken to have committed certain deemed executive liability provision offences³⁴ committed by the corporation³⁵
- the provision that an official³⁶ is not civilly liable for an act done, or omission made, honestly and without negligence under the proposed Act³⁷

the notes do not address each reasonable excuse provision individually, it can be seen from a review of the relevant clauses that the information that would support the existence of a reasonable excuse would be within the knowledge of the individuals subject to the offences, and that without the reasonable excuse provisions, the offences would be unnecessarily punitive.

³⁰ Bill, cl 197-199 (proposed Act, ss 197-199).

³¹ Bill, cl 197 (proposed Act, s 197).

³² Bill, cl 198 (proposed Act, s 198).

³³ Evidentiary provisions, such as the use of evidentiary certificates or presumption that authorities, appointments or signatures of Ministers, council members, and other officials are what they are purporting to be (without requiring evidence of that fact), could be considered to involve a reversal of the onus of proof (an issue contemplated in s 4(3)(d) of the *Legislative Standards Act 1992*). However, as set out in the explanatory notes (pp 22-23), the purpose of these provisions is to 'remove the unnecessary burden of proving administrative, technical or scientific matters that are unlikely to be dispute in proceedings – for example, proving that a council member has been appointed properly (cl 197) or that a signature of a Minister is actually the signature of the Minister (cl 198). The explanatory notes state that the use of these provisions 'makes efficient use of a court's time and streamlines proceedings' (p 23). Similar evidentiary provisions appear in other Acts, such as the *Medicines and Poisons Act 2019* (ss 208, 209) and the *Hospital and Health Boards Act 2011* (ss 267, 268).

³⁴ As set out cl 203(4) of the Bill, with the deemed executive liability provisions being ss 15(1), 17, 19, 20(1), 76(2), 78(2) and 79(2).

³⁵ Legislation requiring executive officers of a corporation to ensure the corporation complies with a law and providing that, if the corporation commits an offence, each executive officer also commits an offence, can be seen as involving a reversal of the onus of proof. This is because under law, a person generally cannot be found guilty of an offence unless they have the necessary intent (see OQPC, Notebook, pp 40-41; s 4(3)(d) of the *Legislative Standards Act 1992*). However, the explanatory notes (p 23) state that cl 203 is justified because the executive officer is taken to have committed the offence 'only where they authorised or permitted the corporation's conduct or were, directly or indirectly, knowingly concerned in the conduct'. Further, the notes assert that: 1) the State would have the burden of proving that the officer authorised or permitted the conduct, or was knowingly concerned in it, such that the burden of proof is not reversed as such; and 2) the provisions are justified on the basis that they promote effective accountability at the corporate level, which is necessary given the potential for serious risk of harm to the health and safety of the public. Similar provisions are also contained in a range of other Acts, including the *Medicines and Poisons Act 2019* (s 214), *Private Health Facilities Act 1999* (s 143) and *Radiation Safety Act 1999* (s 205A).

³⁶ The Bill proposes to define 'official' to mean a council member, or the chief executive officer, or another member of the council's staff or an inspector (or a person acting under the direction of an aforementioned person). Bill, cl 210(3) (proposed Act, s 210(3)).

³⁷ Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation confers immunity from proceeding or prosecution without adequate justification (*Legislative Standards Act 1992*, s 4(3)(h)). The explanatory notes (p 25) state that the conferral of immunity in this instance is justified, as: 1) immunity from civil liability is appropriate if it is conferred on persons carrying out statutory functions; 2) the immunity will be appropriately limited in scope (as it will not attach to acts done or omissions made which are reckless, unreasonable or excessive, but only to acts done or omissions made honestly and without negligence); and 3) liability for the consequences of actions done, or omissions made, will not be extinguished by the Bill, as liability will instead attach to the council.

- the establishment of a general head of power under the proposed Act for making regulations³⁸ which may prescribe fees, standards for authorised premises, and a class of persons who can be appointed as inspectors and the conditions for their appointment.^{39,40}

Fundamental legislative principle issues identified by the committee which raised more significant concerns, and which are therefore explored in greater detail in this report, included those relating to the Bill's:

- restrictions on the ordinary business activities of individuals associated with the proposed ownership restrictions, licensing requirements, limitations on where pharmacy businesses can be located, and requirement for an authorised pharmacist to be present at the pharmacy when it is open for business⁴¹ (see chapters 2.6, 3.1 and 4.1)
- provisions for the appointment and disqualification of council members⁴² (see chapter 5.1)
- provisions for the proposed regulatory council to decide, change, suspend or cancel pharmacy business licences⁴³ (see chapter 6.6.1)
- provision for maximum penalties applicable to 38 offence provisions⁴⁴ (see chapter 6.6.2)
- establishment of powers for council-appointed inspectors to enter premises and seize property⁴⁵ (see chapter 7.1.1)
- provision that when an inspector has required a person to produce a document or certify a document as a true copy of the document, it is not a reasonable excuse for the person to fail to comply on the basis that compliance might tend to incriminate the person or expose the person to penalty⁴⁶ (see chapter 7.1.2).

Ultimately, as outlined in the above sections of the report, the committee was satisfied that these provisions also have sufficient regard to fundamental legislative principles, noting the purpose and nature of the provisions and the accompanying processes and requirements or safeguards.

Explanatory notes were tabled on the introduction of the Bill, as required by s 22 of the *Legislative Standards Act 1992*. The notes contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

³⁸ Bill, cl 212 (proposed Act, s 212).

³⁹ Eg see Bill cls 11, 25, 27, 29, 33, 34, 38, 43, 49, 50, 53, 59, 74, 93, 94 and 212.

⁴⁰ Section 4(4)(a) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to the institution of Parliament depends on whether the legislation allows for the delegation of legislative power only in appropriate cases and to appropriate persons. The use of regulations can raise this issue of fundamental legislative principle, as regulations are not subject to the same level of parliamentary oversight and scrutiny as primary legislation. The explanatory notes (pp 32-33) justify the use of regulations on the basis that they are technical (such as standards to be prescribed under cl 11) or administrative in nature (such as the regulations prescribing various fees), and using regulations allows for flexibility in changing circumstances. Whilst there are a number of clauses where the Bill provides for the use of regulations, the circumstances do appear technical and administrative in nature and future regulations will be subject to parliamentary scrutiny and oversight through tabling and disallowance (see *Statutory Instruments Act 1992*, ss 49, 50).

⁴¹ See Bill, cls 10, 11, 17, 19, 20.

⁴² Bill, pt 9, div 3.

⁴³ Bill, pts 4 and 5.

⁴⁴ Including some provisions that replicate or align with offences in the 2001 Act and other, new offences to prohibit inappropriate third-party control, ensure the proper operation of the licensing framework and support the functioning of the council (explanatory notes, p 29). Eg see Bill, cls 15, 16, 17, 19, 20, 32, 22, 69, 70, 71, 75, 76, 77, 78, 79, 82, 88, 115, 120, 121, 131, 133, 134, 141, 144, 164, 182, 205 and 208.

⁴⁵ Bill, pt 8, div 3, subdivs 2, 3 and 4. .

⁴⁶ Bill, cls 133 and 134 (proposed Act, ss 133 and 134).

1.3.2 *Human Rights Act 2019*

The committee's assessment of the Bill's compatibility with the *Human Rights Act 2019* identified potential limitations on the following rights:

- the right to take part in public life⁴⁷
- the right to property⁴⁸
- the right to recognition and equality before the law⁴⁹
- the right to privacy and reputation⁵⁰
- the right to a fair hearing and rights in criminal proceedings.⁵¹

However, where these limitations occur, the committee was satisfied that they are reasonable and proportionate in the circumstances, and therefore justified. Further, the committee notes that many of the limitations are designed to have positive rights impacts – particularly in terms of the right to health services recognised in section 27 of the *Human Rights Act 2019* – by aiming to ensure independently owned pharmacies continue to operate and serve their communities and provide adequate access to medicines and services.

The committee's consideration of key aspects of these matters is set out in:

- chapters 2.7 and 6.7, regarding the proposed ownership control and licensing requirements
- chapters 5.1 and 5.2, regarding the composition of the council, provisions for council appointments and disqualifications, and the operations of the council and its officers
- chapter 6.7, regarding licensing suitability assessments and processes and associated decision making powers of the council, and provisions for executive officer liability for certain offences of corporations under the licensing scheme
- chapters 7.1 and 7.2, regarding the provision for inspectors to exercise a range of monitoring and enforcement powers, the associated requirement for a person to comply with a document production requirement request, certain information sharing provisions, and protections against civil liability for officials.

A statement of compatibility was tabled on the introduction of the Bill, as required by section 38 of the *Human Rights Act 2019*. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

1.4 **Should the Bill be passed?**

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Pharmacy Business Ownership Bill 2023 be passed.

The committee's examination of the Bill's provisions is set out in chapters 2 to 8 of this report.

⁴⁷ *Human Rights Act 2019*, s 34.

⁴⁸ *Human Rights Act 2019*, s 24.

⁴⁹ *Human Rights Act 2019*, s 15.

⁵⁰ *Human Rights Act 2019*, s 25.

⁵¹ *Human Rights Act 2019*, ss 31 and 32.

2 Pharmacy business ownership restrictions

The objectives of the 2001 Act are to ‘promote the professional, safe and competent provision of pharmacy services and maintain public confidence in the pharmacy profession’.⁵² To help support these objectives, the 2001 Act provides a regulatory framework for pharmacy ownership in Queensland which specifies that:

- only pharmacist, a corporation whose directors and shareholders are all pharmacists, or a combination of pharmacists and their prescribed relatives, certain friendly societies, and the Mater Misericordiae Limited (Mater), may own or have an interest in a pharmacy business⁵³
- a pharmacist or corporation must not own or have an interest in more than 5 pharmacy businesses at the same time, while friendly societies and the Mater must not own or have an interest in more than 6 pharmacy businesses at the same time.⁵⁴

The Health Committee noted that there were a diverse range of views from stakeholders on whether these ownerships requirements remain necessary to protect consumers and deliver accessible and affordable medicine report. However, the committee ultimately recommended that the requirements be retained (recommendation 9), as informed by concerns that:

- a proprietor who was not a qualified pharmacist subject to professional ethics may be more likely to place profit before patient welfare (eg by limiting the availability of non-profitable medicines or declining to offer non-profitable services, such as delivery to homebound patients, blood pressure and diabetes screening, medication packaging and health advice and education)⁵⁵
- any removal or relaxation of the ownership requirements may result in reduced access to medicines and quality of services, particularly in rural and regional areas of Queensland
- relaxing ownership restrictions could result in the formation of monopolies focussed on maximising shareholder profits, to the detriment of patient and community health outcomes
- large corporate retailers may concentrate their services in regional centres, resulting in probable closure of smaller pharmacy businesses in surrounding rural and remote areas and reduced access to pharmacy services in those communities
- an increased concentration of ownership in the pharmacy market may ultimately see Queensland consumers paying more for their medicines in the longer term.⁵⁶

The Bill serves to implement the Health Committee’s recommendation by replicating both the current restriction on ownership to pharmacists and the limitation on the number of pharmacy businesses in which a person may have an interest, subject to a number of clarifications as to the application of the provisions.⁵⁷

2.1 Eligibility requirements and accompanying definitions

As previously noted, the Bill retains the existing stipulation under the 2001 Act that only an ‘eligible person’ may hold a licence to own a pharmacy business, with an eligible person defined as:

- a practising pharmacist⁵⁸

⁵² Explanatory notes, p 2.

⁵³ 2001 Act, s 139B.

⁵⁴ 2001 Act, s 139H.

⁵⁵ Explanatory notes, p 3. Note: The Health Committee also heard the reasons for limiting the number of pharmacies is ‘intended to ensure proprietors can provide the required level of oversight, personally supervise and maintain an active interest in each of their pharmacy businesses’.

⁵⁶ Explanatory notes, p 3.

⁵⁷ Explanatory notes, p 4.

⁵⁸ Defined as a person who is registered under the Health Practitioner Regulation National Law to practice in the pharmacy profession with general registration (Bill, cl 9).

- a corporation whose directors and shareholders are all practising pharmacists or a combination of practising pharmacists and close adult relatives (spouses or adult children) of practising pharmacists
- a friendly society that, on 29 April 2005, carried on a pharmacy business in Queensland or another State
- a friendly society that is an amalgamation of 2 or more friendly societies mentioned above, or
- the Mater.⁵⁹

The Bill seeks to clarify these requirements, however, by making a distinction between ‘owning’ a pharmacy business and holding a lesser interest, which is termed a ‘material interest’.⁶⁰

A material interest includes ‘the interest of a shareholder of a corporate owner, or a beneficiary of a trustee owner’, or another interest which entitles a person ‘to receive consideration that varies according to the profits or takings of the pharmacy business also holds a material interest’.⁶¹

Only a practising pharmacist, or close adult relative of a practising pharmacist, may hold a material interest in a pharmacy business. A ‘close adult relative’ means a spouse or adult child.⁶²

The maximum penalty for non-compliance is 200 penalty units (\$30,960),⁶³ which is consistent with the maximum penalty for contravening the ownership offences in the 2001 Act.⁶⁴

2.2 Definition of a pharmacy business

To support the operation of the restriction on who may own a ‘pharmacy business’, the Bill defines a ‘pharmacy business’ as a business that provides pharmacy services in Queensland that include core pharmacy services.⁶⁵ Under the Bill, a ‘core pharmacy service’ means:

- the compounding of medicines for sale to members of the public, or
- the dispensing, by or under the supervision of a practising pharmacist, of medicines to members of the public.⁶⁶

The department noted that the definition of core pharmacy services differs across jurisdictions, and that the proposed definition for Queensland was designed to be narrow so as not to inadvertently capture other types of businesses as a pharmacy business for the purpose of the ownership restrictions.⁶⁷ The explanatory notes add the following:

Pharmacy businesses offer a wide variety of services including, for example, advice on and sale of medicines, sale of non-pharmaceutical items such as cosmetics and toiletries, and various other health and wellbeing services. Many of these services are also offered by other businesses, for example, doctors providing advice on medicines, and supermarkets selling medicines such as paracetamol or ibuprofen. The definition of core pharmacy service in clause 8 is therefore deliberately narrower than the common understanding of the term pharmacy services, to distinguish between pharmacy businesses and other businesses that offer similar services to some services offered by pharmacy businesses, and avoid capturing those other businesses under the definition of pharmacy business. It also ensures that other

⁵⁹ Bill, cl 10 (proposed Act, s 10).

⁶⁰ Bill, cl 12, 13 (proposed Act, ss 12, 13).

⁶¹ Queensland Health, correspondence, 8 December 2023, p 1. See also Bill, cl 13 (proposed Act, s 13). Note: The Bill specifies that ‘to remove any doubt, it is declared that 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’.

⁶² Queensland Health, correspondence, 8 December 2023, p 1.

⁶³ The value of a penalty unit is \$154.80: Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, ss 5, 5A.

⁶⁴ Explanatory notes, p 7.

⁶⁵ Bill, cl 8(1) (proposed Act, s 8(1)).

⁶⁶ Explanatory notes, p 39. See Bill, cl 8(3) (proposed Act, s 8(3)).

⁶⁷ Public briefing transcript, Brisbane, 14 December 2023, p 4.

businesses that employ pharmacists as part of a multidisciplinary team to provide services such as medicine reviews and vaccinations (for example, general practice surgeries and aged care facilities) are not captured as a pharmacy business only because they employ a pharmacist.⁶⁸

According to the department, the definition was designed to ‘provide as much certainty as possible to the regulator and to industry’.⁶⁹

The Bill also outlines what is not a pharmacy business, which is:

- a business carried on by the State at a public sector hospital
- a business carried on at a hospital that provides core pharmacy services only to patients at the hospital
- a business carried on by a veterinary surgeon at premises used by the surgeon in the practice of the surgeon’s profession
- a business that compounds medicines for sale, or dispenses medicines, to members of the public solely in connection with the manufacture of animal food under a manufacturing licence under the *Medicines and Poisons Act 2019* (Medicines and Poisons Act).⁷⁰

2.3 Number of pharmacies that can be owned

The Bill also retains existing restrictions on the number of pharmacies a pharmacist or corporation can own, specifying that:

- a practising pharmacist or corporation can hold an interest (defined to include both an ownership interest and a material interest) in a maximum of 5 pharmacy businesses
- permitted friendly societies and the Mater may hold an interest in a maximum of 6 pharmacy businesses.⁷¹

As an example, Queensland Health advised that ‘it would be permissible for a practising pharmacist to own ... three pharmacy businesses and hold material interests in a further two pharmacy businesses (a total of five)’.⁷² However, a person could not ‘own five pharmacy businesses and hold material interests in a further five pharmacy businesses (a total of 10)’.⁷³

2.4 Operation of a pharmacy business

The Bill requires a pharmacy business to be licensed and for the licensed pharmacy business to be carried on from or at a licensed premises for the business.⁷⁴

This means the pharmacy services the business provides must be either provided entirely at the licensed premises, or ‘mainly at the licensed premises and also partly at another place’, as long as the pharmacy services provided at the other place:

- do not involve the compounding or dispensing of a medicine
- are provided under the direction or control of the pharmacy owner or an authorised pharmacist for the business.⁷⁵

In addition, an owner of a licensed pharmacy business must, unless the owner has a reasonable excuse, ensure an authorised pharmacist for the business is personally present at the licensed

⁶⁸ Explanatory notes, p 39.

⁶⁹ Public briefing transcript, Brisbane, 14 December 2023, p 4.

⁷⁰ Bill, cl 8 (proposed Act, s 8).

⁷¹ Bill, cl 17 (proposed Act, s 17)

⁷² Queensland Health, correspondence, 8 December 2023, p 1.

⁷³ Queensland Health, correspondence, 8 December 2023, p 1.

⁷⁴ Bill, cls 19, 20 (proposed Act, ss 19, 20).

⁷⁵ Bill, cl 20 (proposed Act, s 20).

premises for the business at all times the business is open, other than for periods totalling not more than one hour in a day, or another period or periods approved by the council.⁷⁶

2.5 Transitional provisions

The department advised that ‘there are a number of provisions in the current act that are somewhat ambiguous’.⁷⁷ As a result, the interpretation of these provisions has allowed certain ownership types, such as ‘ownership by a pharmacist with non-practising registration or ownership by a corporation that has shareholders that are also corporations’.⁷⁸

To assist pharmacies which would be in breach of the ownership provisions in the Bill, the department advised:

Those owners affected by those transitional provisions are not considered to be in breach of the current act; it is just that they will not comply with the clarified requirements of the bill. The bill contains a range of transitional provisions which provide time for those owners to restructure their business affairs or their trusts to ensure that they are compliant with the requirements of the bill. They will primarily have a two-year period to restructure or for a non-practising pharmacist to obtain general registration so that they are a practising pharmacist or if they are unable to restructure or obtain that registration to become compliant with the bill they would need to divest of their interest otherwise they would possibly face the penalties in the bill for operating without a licence.⁷⁹

2.6 Issues of fundamental legislative principle – restrictions on ordinary business activities

Legislation should not, without sufficient justification, unduly restrict ordinary activities.⁸⁰

The Bill contains clauses which may impact upon the rights and liberties of individuals (primarily, pharmacy owners or prospective owners) by:

- limiting who may own or have a material interest in a pharmacy business⁸¹
- limiting how many pharmacy businesses a person may hold an interest in⁸²
- requiring an authorised pharmacist to be present at the pharmacy when it is open for business.⁸³

Other restrictions on ordinary activities are discussed further in chapter 3.1 and 4.1, which consider the Bill’s:

- limitations on where pharmacy businesses can be located (eg specifying that they may not be located in or directly accessible from a supermarket)
- prohibition on third parties exercising control over pharmacy businesses.

The explanatory notes justify the limitations on who may own or hold an interest in a pharmacy on the basis that ‘medicines are not ordinary items of commerce and have the potential to cause significant harm to individuals if misused’.⁸⁴ More broadly, the notes highlight the potential negative

⁷⁶ Bill, cl 21 (proposed act, s 21).

⁷⁷ Public briefing transcript, Brisbane, 14 December 2023, p 7.

⁷⁸ Public briefing transcript, Brisbane, 14 December 2023, p 7.

⁷⁹ Public briefing transcript, Brisbane, 14 December 2023, p 7.

⁸⁰ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC Notebook* (Notebook), p 118. See also *Legislative Standards Act 1992*, s 4(2)(a).

⁸¹ Bill, cls 15, 16 (proposed Act, ss 15, 16). These clauses provide the owner of a pharmacy business must hold a licence (cl 15) and that a person cannot hold a material interest in a pharmacy business unless they are a practising pharmacist or a close adult relative of a practising pharmacist who holds an interest in the business (cl 16).

⁸² Bill, cls 10, 17 (proposed Act, ss 10, 17).

⁸³ Bill, cl 21 (proposed Act, s 21).

⁸⁴ Explanatory notes, p 28.

impact on the community if these items are distributed improperly – for example, if they are diverted to criminal organisations.⁸⁵

Limiting the number of pharmacy businesses a person may own or hold an interest in, according to the explanatory notes, is designed to prevent ‘the formation of monopolies’ which may result in a lack of oversight of pharmacy businesses and lead to a lesser quality of care.⁸⁶

Similar oversight and health and safety justifications are provided in regard to requirements that an authorised pharmacist be on the premises (for example, to oversee the dispensing of restricted medicines), and related requirements that the premises be appropriately fit for purpose and safe for customers and staff, and that pharmacists act autonomously and ethically without commercial pressure.⁸⁷

Together, the explanatory notes state, these limitations are designed to achieve the purpose of the proposed Act, which is to promote the professional, safe and competent provision of pharmacy services and maintain public confidence in the pharmacy profession.⁸⁸

Committee comment

While the Bill may potentially restrict the ordinary business activities of pharmacy owners and businesses, the committee is satisfied that the proposed limitations are justified, given the reasons provided in the explanatory notes and the overall purpose of the proposed Act.

2.7 Human rights considerations

The Bill’s introduction of rules regarding who is eligible to own a pharmacy (and limit on the number of pharmacies in which a person may hold a material interest) also have implications in respect of section 24 of the *Human Rights Act 2019*, which guarantees the right of all persons to own property and protects them against arbitrary interferences with their property. Property includes real and personal property, including shares, money, intellectual property, and contractual rights.

It is important to note, however, that the right to property is not absolute. This is evident in the wording of the *Human Rights Act 2019*, which protects against ‘arbitrary deprivation’ of one’s property, leaving considerable scope for legitimate limitations. The right to property is frequently impacted by laws which provide other benefits for the rest of the community – for example, through taxation, building codes, vegetation management laws, and so on.⁸⁹ In line with this, the right to property recognises that restrictions on the use of property will not violate this right ‘so long as they serve objectives of general interest and do not constitute a disproportionate and intolerable interference with the rights of the owner, impinging on the substance of the right’.⁹⁰

⁸⁵ Explanatory notes, p 28.

⁸⁶ Explanatory notes, p 29.

⁸⁷ Explanatory notes, p 29.

⁸⁸ Explanatory notes, p 29; Bill, cl 3 (proposed Act, s 3).

⁸⁹ It is also important to note that the right to property does not necessarily include the right to acquire property, extending only to ‘future’ property where there is an existing enforceable claim – for example, an award of damages (*Pressos Compania Naviera SA and others v. Belgium*) or an entitlement to inherit (*Marckx v. Belgium; Inze v. Austria*). As such, a breach of the right would only occur where a person has a legitimate expectation that they would obtain a licence, but the licence is refused without reasonable justification (such that the interference may be considered ‘arbitrary’).

⁹⁰ N Jayawickrama, *The Judicial Application of Human Rights Law* (2002) at 916. See statement of compatibility, p 6.

In addressing the potential limitation, the statement of compatibility emphasises that:

- Here the limitation is not arbitrary, and rather helps to ensure that an appropriately qualified person has oversight and control of the pharmacy business, and that pharmacy operations are being conducted in accordance with applicable laws, policies, guidelines and good pharmacy practice – which, given the importance of pharmacies as providers of health care to the community, can be understood as being in the public interest.⁹¹
- Limiting the number of pharmacy businesses an individual or entity can own may also help to prevent market dominance or inappropriate ownership and ensure that independently owned pharmacies continue to operate and serve their communities, particularly in rural and regional areas. This supports the right to health services in section 37 of the *Human Rights Act 2019*.⁹²
- Similar justifications for limiting the right to property by restricting pharmacy ownership and interest requirements have been echoed both nationally and internationally: ‘In 2009, the European Court of Justice ruled that pharmacy ownership restrictions are justified as they aim to ensure the provision of medicinal products to the public is reliable and of good quality’.⁹³
- Alternative options (such as retaining the current regulatory approach and making minor amendments to improve compliance processes) would not achieve the stated objectives ‘or be appropriate, given the QAO’s finding that Queensland Health’s current systems are not properly enforcing and regulating the requirements’.⁹⁴

Committee comment

Noting the above, the committee is satisfied that the interferences on the right to property are proportionate to the legitimate objectives of the Bill.

2.8 Stakeholder views

The Pharmacy Guild and the Pharmaceutical Society of Australia (Pharmaceutical Society) expressed general support for provisions restricting ownership to pharmacists and retaining existing limits on how many pharmacy businesses a person may own. The support was on the basis of ensuring that pharmacy businesses place the health and wellbeing of consumers and the community ahead of commercial considerations.⁹⁵

In contrast, the Australian Medical Association Queensland (AMAQ), the Queensland Aboriginal and Islander Health Council (QAIHC), and the Royal Australian College of General Practitioners Queensland (RACGP) expressed their opposition to the Bill, stating that it is anticompetitive and restricts access to cheaper medicines, limits consumer choice, creates barriers for new businesses, unfairly protects existing businesses and slows sector improvements.⁹⁶

The AMAQ submitted that there is ‘no evidence to support ongoing ownership restrictions’, and that ‘this has been repeatedly stated by various competition reviews’.⁹⁷ The AMAQ also referred to the ‘professional standards that pharmacists have to adhere to to maintain registration and their professional standards in the same way that general practices have to do this’, and stated that: ‘Opening up the business ownership of general practices has not deteriorated the standards that GPs provide’.⁹⁸

⁹¹ Statement of compatibility, p 4.

⁹² Statement of compatibility, p 4.

⁹³ Statement of compatibility, p 5. See *Commission v Italy*, Ownership and Operation of Pharmacies can be Restricted to Pharmacists Alone (Court of Justice of the European Communities, 19 May 2009), <http://www.curia.europa.eu/jcms/upload/docs/application/pdf/2009-05/cp090044en.pdf>.

⁹⁴ Statement of compatibility, p 5.

⁹⁵ Submission 52, p 5; submission 71, pp 7, 9.

⁹⁶ Submission 1, p 2; submission 35, p 4; submission 119, p 5.

⁹⁷ Submission 35, p 6.

⁹⁸ Public hearing transcript, Brisbane, 12 February 2024, p 12.

The QAIHC questioned how the stated policy aims relate to safety and submitted that the Bill will restrict, or is a barrier to:

- expanded or innovative models of pharmacy service provision, particularly in rural and remote communities
- options for models of care needed to support the provision of culturally appropriate comprehensive health care to Queensland’s Aboriginal and Torres Strait Islander peoples, including opportunities for community-controlled pharmacy ownership arrangements and innovative models of care supported by genuine partnerships between Aboriginal and Torres Strait Islander Community Controlled Health Organisations (ACCHOs)
- patients’ access to cheaper medicines and better pharmacy services.⁹⁹

While supporting the need for safely prescribing and dispensing of pharmaceuticals, the QAIHC called for the exploration of models that:

- impose strict requirements about the dispensing of medicines without restricting ownership arrangements, and
- facilitate the medicines being dispensed in supermarkets and other locations to improve access, particularly in rural and remote areas.¹⁰⁰

The QAIHC also submitted: ‘No evidence is offered to suggest the proposed policy option, legislating in the way proposed in the Bill, offers the greatest net benefit — regulatory or non-regulatory — for Queensland when compared to alternative policy options’.¹⁰¹

The Productivity Commission advised it does not support the retention of existing restrictions on pharmacy business ownership in the Bill because regulations on the ownership (and location) of Australia’s pharmacies have reduced competition in local markets, and it is debatable whether ownership restrictions have helped to maintain the viability of smaller rural or regional pharmacies.¹⁰²

Both the Productivity Commission and the Australian College of Nurse Practitioners questioned the view that owner-pharmacists are less susceptible to commercial pressures than non-pharmacist owners.¹⁰³

The following provides more specific feedback received from stakeholders on elements of the Bill regarding ownership restrictions.

2.8.1 Eligible persons

The Pharmaceutical Society supported the proposed definition because ‘medicines are not standard items of commerce’ and the restrictions ensure ‘an appropriately qualified person, who has the professional ethics associated with the qualification and a thorough understanding of the risks of the restricted substances stored and sold in the pharmacy, has oversight and control of the pharmacy business’.¹⁰⁴ The Pharmaceutical Society argued that owners will put consumer needs before commercial needs because it is a requirement of their registration and provided the following example:¹⁰⁵

Obviously, there are commercial considerations with running a pharmacy business. It has to be sustainable but, ultimately, that pharmacy owner is a pharmacist so they have to put the consumer needs first and that is a priority over the commercial needs. They might consider, for example, stocking some high-risk drugs or high-cost drugs that are not commercially viable. The fees involved in dispensing them

⁹⁹ Submission 1, p 2.

¹⁰⁰ Submission 1, p 2.

¹⁰¹ Submission 1, p 1.

¹⁰² Submission 70, p 6.

¹⁰³ Submission 70, p 5; submission 124, p 2.

¹⁰⁴ Public hearing transcript, Brisbane, 12 February 2024, p 18; submission 71, p 7.

¹⁰⁵ Public hearing transcript, Brisbane, 12 February 2024, p 18.

may not cover the cost of storage and supply, but pharmacy owners, as pharmacists, know that they are important and they will stock them for their local community.¹⁰⁶

In contrast, the RACGP raised the following issues with the Bill's eligibility for ownership provision, which it states 'solidifies pharmacist ownership, to the exclusion of 'others'':¹⁰⁷

- medical practitioners working in remote locations where there is no convenient and efficient pharmaceutical service are able apply to become an approved medical practitioner for the purpose of supplying Pharmaceutical Benefit Scheme medicines (creating a precedence that another health professional such as a GP could technically be a 'pharmacy business' under the current definitions)
- a qualified health professional cannot have ownership rights, but the bill permits other non-pharmacists to own or hold an interest in a pharmacy business, including an unqualified adult child or spouse, an executor, administrator, or trustee of the deceased licence holder's estate,¹⁰⁸ a deregistered pharmacist,¹⁰⁹ and a non-practising pharmacist.¹¹⁰

In raising these issues, the RACGP questioned 'how an unqualified adult child, spouse, executor, administrator or trustee (who is not a practising pharmacist) could provide better clinical governance than a GP or other health professional'.¹¹¹

The Pharmacy Guild noted a friendly society's inclusion as an eligible person and the ability for them to own up to six pharmacies, as is currently the case. The Pharmacy Guild raised concerns that 'this clause could be used to gain up to six pharmacies from another state and be a new entrant into Queensland, disadvantaging existing owners in Queensland who are capped at five'.¹¹² To address this, the Pharmacy Guild recommended the words 'or another state' should be removed from this clause in the Bill.¹¹³

Some pharmacy owners opposed to the Bill raised concerns that it limits pharmacists with non-practising registration from owning or having an interest in a pharmacy without justification, and is in contrast to other jurisdictions in this regard. These submitters also referred to the 2-year compliance timeframe as 'arbitrary' and a 'burden'.¹¹⁴ One submitter pointed out that 'the majority of pharmacists holding non-practising registration having practised pharmacy for many years', plus there is still a requirement for there 'to be an authorised pharmacist, being a practising pharmacist, present in the pharmacy at all times'.¹¹⁵

The RACGP, QAIHC and Productivity Commission also noted that Aboriginal and Torres Strait Islander Health Services have been excluded from owning and operating a pharmacy located within that service. The RACGP stated that this 'does not serve to benefit the cultural needs of these communities', while the QAIHC and Productivity Commission submitted that removing ownership restrictions to allow Aboriginal

¹⁰⁶ Public hearing transcript, Brisbane, 12 February 2024, p 20.

¹⁰⁷ Submission 119, p 5.

¹⁰⁸ For up to one year, and 2 years if approved by the council with no apparent requirement that the executor, administrator, or trustee be a pharmacist.

¹⁰⁹ In the event that a pharmacist's general registration has been cancelled under Health Practitioner Regulation National Law, the Bill permits the to continue to be a holder of their pharmacy business licence and may continue to carry on the pharmacy business to which the licence relates for up to one year (via approval by council of 3-month periods).

¹¹⁰ The transitional arrangements permit non-practising pharmacist owners to continue to own their businesses, and the requirement to be a practising pharmacist only kicks in if they were to transfer their business.

¹¹¹ Submission 119, p 6.

¹¹² Submission 52, p 12.

¹¹³ Submission 52, p 12.

¹¹⁴ See, for example, submissions 75, 76, 85, 99, 100.

¹¹⁵ Mr Allan Milostic, submission 109, p 3.

health services to own and operate pharmacies would support commitments made in the National Agreement on Closing the Gap.¹¹⁶

These submitters referred to the benefits of the culturally safe, team-based approach of an Aboriginal and Torres Strait Island Community Controlled Health Organisations (ACCHO), with QAIHC stating that if that 'is absent from the healthcare environment for Indigenous people they tend not to comply with the instructions related to the use of medicines and, as a consequence, do not use medicines appropriately or at all'.¹¹⁷ Culturally safe care was described as 'a team-based, holistic approach that ensures a trusted group of individuals are working with a client consistently over time to follow up, to check on them, to see how they are going with their medications and to see them regularly'.¹¹⁸ It was submitted that: 'Putting a pharmacy onsite that is owned by the community controlled sector will improve the compliance with medication and the accessibility'.¹¹⁹

The QAIHC referred to alternative approaches that can be taken to enable community-control and ownership of pharmacies, such as those in other jurisdictions including the Northern Territory, which permits co-located pharmacies at ACCHOs, and in Canada.¹²⁰ The Productivity Commission similarly referred to the 2017 *Review of pharmacy remuneration and regulation* which noted that Aboriginal health services 'in the Northern Territory are able to own and operate a community pharmacy, subject to ministerial discretion'.¹²¹

The QAIHC recommended that the bill be amended to:

... expressly exempt Aboriginal and Torres Strait Islander community controlled services from the ownership requirements posed in the bill and instead put in place requirements that would allow these services to own pharmacies, provided they are staffed by appropriately skilled and qualified pharmacists who operate from the health organisation's premises.¹²²

2.8.1.1 *The department's response*

Queensland Health advised that the Bill gives effect to recommendation 9 of the Health Committee report, which was to retain the pharmacy business ownership requirements of the 2001 Act, including:

- the ability of close adult relatives to hold a material interest in the business
- the types of friendly societies able to own or hold an interest in pharmacy businesses in Queensland, and
- allowing an executor, administrator, or trustee of a deceased licence holder's estate and deregistered pharmacists to continue to hold an interest for a limited period.¹²³

On the latter, Queensland Health advised: 'These provisions recognise that in particular circumstances, it is in the interest of the public to allow pharmacy businesses to continue to operate while alternative ownership arrangements are finalised'.¹²⁴

Queensland Health added that safeguards are built into the Bill, including the requirement that 'regardless of the ownership arrangements, an authorised pharmacist must be present in a pharmacy

¹¹⁶ Submission 119, p 6; submission 1, p 2.

¹¹⁷ AMAQ, public hearing transcript, Brisbane, 12 February 2024, p 13; QAIHC, public hearing transcript, Brisbane, 12 February 2024, p 14.

¹¹⁸ QAIHC, public hearing transcript, Brisbane, 12 February 2024, p 15.

¹¹⁹ AMAQ, public hearing transcript, Brisbane, 12 February 2024, p 13; QAIHC, public hearing transcript, Brisbane, 12 February 2024, p 14.

¹²⁰ QAIHC, correspondence, 16 February 2024, pp 2-3.

¹²¹ Public hearing transcript, Brisbane, 12 February 2024, p 6.

¹²² Public hearing transcript, Brisbane, 12 February 2024, p 15.

¹²³ Queensland Health, correspondence, 2 February 2024, pp 4-5.

¹²⁴ Queensland Health, correspondence, 2 February 2024, p 5.

business at all times the business is open, other than for the short periods identified in that clause', which aligns with the Medicines and Poisons legislative framework.¹²⁵

In relation to ownership by non-practising pharmacists, Queensland Health advised:

- it is unclear whether the definition of pharmacist in the 2001 Act includes non-practising pharmacists, and during consultation on the Bill, Queensland Health received 'strong feedback from industry that ownership of pharmacy businesses should be limited to practising pharmacists, to ensure owners maintain awareness of current laws, standards and guidelines to protect public health and safety'¹²⁶
- the Bill contains a transitional provision which allows the small number of current owners in Queensland with non-practising registration to continue to own or hold their existing interest in a pharmacy business for two years, provided they retain the non-practising registration (once they no longer have non-practising registration, or 2 years has passed from commencement, they will not be eligible to own or hold an interest in a pharmacy business).¹²⁷

On the issue of Aboriginal and Torres Strait Islander Health Services being excluded from owning a pharmacy, Queensland Health advised that while the 2001 Act does not exempt Aboriginal health services from pharmacy business ownership restrictions, 'the Bill gives effect to Government policy, including recommendations of the Committee Report, and the Government's Response to the Committee Report'.¹²⁸

Nonetheless, Queensland Health advised that:

- It is 'committed to providing culturally appropriate health care to Queensland's Aboriginal and Torres Strait Islander peoples and identifying opportunities to support innovative models of care for Aboriginal and Torres Strait Islander communities'.¹²⁹
- 'Any changes to address these issues would require further analysis and policy development and would ultimately be a matter for Government'.¹³⁰

Committee comment

The committee recognises the specific needs of Aboriginal and Torres Strait Islander communities, and the important role Aboriginal and Torres Strait Island Community Controlled Health Organisations play in enhancing the provision of health services to these communities. To this end, the committee notes Queensland Health's commitment to providing culturally appropriate health care and its support for innovative models of care to work towards better use of medicines for the benefit of these communities.

2.8.2 Definition of pharmacy business

The Pharmaceutical Society supported the definition of 'pharmacy business' included in the Bill. While acknowledging that community pharmacies provide a much larger range of health services to their communities, the Pharmaceutical Society submitted:

This deliberately narrow definition ensures that other health practitioners authorised to dispense in Queensland (e.g., medical practitioners) and pharmacists practising in other healthcare settings such as general practices and aged care facilities do not fall under the remit of the PBOB [Pharmacy Business Ownership Bill] and attenuate the intent of the PBOB which is to support the current community pharmacy model of ownership.

¹²⁵ Queensland Health, correspondence, 2 February 2024, p 5.

¹²⁶ Queensland Health, correspondence, 2 February 2024, p 5.

¹²⁷ Queensland Health, correspondence, 2 February 2024, p 5.

¹²⁸ Queensland Health, correspondence, 2 February 2024, p 14.

¹²⁹ Queensland Health, correspondence, 2 February 2024, p 14.

¹³⁰ Queensland Health, correspondence, 2 February 2024, p 14.

The definition minimises the risk of unintended negative consequences to the public and the profession by ensuring much needed health services delivered by pharmacists outside community pharmacies (such as consultant pharmacists providing medication reviews in the home or pharmacists working in a multidisciplinary team at an ACCHO, in general practice or in aged care) are not negatively impacted or ceased due to the new Act.

The Office of the Health Ombudsman similarly supported the Bill's exclusion of services provided to hospitals (day, private or public) from the definition of pharmacy business.¹³¹

The Pharmaceutical Society also noted that the definition of 'compound' in Schedule 1 is different to the definition of compound in the *Medicines and Poisons (Medicine) Regulation 2021*, which excludes reconstituting a registered medicine for a particular patient or animal in accordance with the manufacturer's instructions for reconstituting the medicine. With health practitioners, such as medical practitioners, nurses, or pharmacists reconstituting a medicine to sell to members of the public in a range of health care settings, the Pharmaceutical Society submitted that:

- such reconstituting is not compounding and should not be captured under this definition, and
- the definition does not recognise that reconstitution may be required to be undertaken at another place.¹³²

Submissions from the Pharmacy Guild, Interim Pharmacy Roundtable and the majority of pharmacy business owners raised concerns that the definition of core pharmacy services in the Bill is too narrow because it doesn't accurately provide a reflection of the services a modern pharmacist provides. These services may include health services, medication advice, clinical advice, counselling, digital platform offerings, medication packing, immunisations, disposing of medicines,¹³³ and in the near future, potentially diagnosis and prescribing.¹³⁴ To illustrate the point, some submitters advised that under the proposed definition, the dispensing of a medicine is considered a pharmacy service, however the provision of advice about that medicine is not.¹³⁵ Hence the Pharmacy Guild stated that the definition 'must encompass the cognitive, consultative and other professional services connected with dispensing and compounding'.¹³⁶

These submitters argued that if control of pharmacy services is linked to the definition of core pharmacy services, there is a risk that a number of relevant pharmacy services other than compounding and dispensing will be left outside the regulatory control of the Bill.¹³⁷ The Pharmacy Guild submitted that current drafting 'may be interpreted that pharmacy services that are not either dispensing or compounding medicines are not activities that must be free of control and influence of non-eligible persons'.¹³⁸ This was echoed by other submitters who raised concerns that the definition could then compromise the effectiveness of subsequent clauses, particularly those relating to a business being operated from a licensed premises and the imposition of requirements about a business, such as opening hours and advertising (as discussed further in chapters 3 and 4 of this report).¹³⁹

The Pharmaceutical Society also sought clarity on whether businesses that only sell scheduled medicines that can be lawfully sold without a prescription are covered by the Bill, and was supportive of such businesses being covered.¹⁴⁰

¹³¹ Submission 9, p 1.

¹³² Submission 71, p 6.

¹³³ See, for example, submissions 2, 6, 11, 23, 33, 45, 51, 64, 81, 98, 111.

¹³⁴ See, for example, submissions 11, 18.

¹³⁵ See, for example, submissions 3, 5, 8, 11, 16, 28, 41, 56, 83, 106, 118, 123.

¹³⁶ Public hearing transcript, Brisbane, 12 February 2024, p 2.

¹³⁷ See for example submissions 6, 15, 20, 21, 34, 74, 95.

¹³⁸ Submission 52, p 6.

¹³⁹ See for example submissions 5, 14, 17, 21, 36, 57, 72, 83, 94, 116

¹⁴⁰ Submission 71, p 6.

Similarly, concerns were also raised by the Pharmacy Guild and the Interim Pharmacy Roundtable that a business could present as a pharmacy by selling schedule 2, 3 and 4 medicines (which do not require a prescription), but not engage in the compounding or dispensing medicines, and therefore not be captured under the Bill.¹⁴¹ The Interim Pharmacy Roundtable argued that ‘To the community, if it employs a pharmacist, looks like a pharmacy and has some form of medication there, then the community has an expectation that it will be held to the same standards as my business’.¹⁴² This group called for a broader definition ‘to ensure that pharmacy services are provided in line with community expectations and that unregulated persons do not provide services that the community would expect to be provided at a regulated pharmacy business.’¹⁴³

The South Australian definition was proposed by the Pharmacy Guild as a model for the definition, explaining that it:

... ring fences the pharmacy services definition to the pursuit of someone as a pharmacist or being held out as a pharmacist or holding themselves out as a pharmacist. It does that for a few reasons. Given that it is a regulated environment, it allows for enforcement action if someone is holding themselves out as a pharmacist and they are not. That enables the state to take action in that circumstance. The other circumstance is that it limits it to not affect nurse practitioners, GPs or other health professionals because they are obviously not an Ahpra [Australian Health Practitioner Regulation Agency] registered pharmacist. If you had a similar definition in this act, you would then rely on the definition of what a pharmacist is, and it has to be a registered pharmacist with Ahpra. There are safety mechanisms that already exist in the act if you enhance that definition that will avoid unintended consequences.¹⁴⁴

Hence, the Pharmacy Guild and some submitters recommended a definition that broadens the definition of core pharmacy services to include:

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.¹⁴⁵

Pharmacy owners Andrew Calabro and Daniel Calabro questioned whether the Bill ‘adequately regulates the digital presence of pharmacy businesses’ and states that ‘a pharmacy business operating digitally should not be able to circumvent the intent of the legislative framework’ because a ‘digital business may be owned or operated by a person in any jurisdiction’. These submitters argued that consideration should be given to the operation of digital pharmacy businesses which may circumvent the intent of the legislation.¹⁴⁶

The RACGP raised concerns about the definitions of a pharmacy business/core pharmacy services and potential overlap with general practice and sought assurances that the Bill:

- won’t inhibit pharmacists from working to their full scope of practice in general practices or other primary care environments
- prohibit general practices and GPs from storing, supplying or administering medicines directly to their patients.¹⁴⁷

¹⁴¹ Public hearing transcript, Brisbane, 12 February 2024, p 2 (The Pharmacy Guild), p 26 (Interim Pharmacy Roundtable).

¹⁴² Public hearing transcript, Brisbane, 12 February 2024, p 27.

¹⁴³ Public hearing transcript, Brisbane, 12 February 2024, p 26.

¹⁴⁴ Public hearing transcript, Brisbane, 12 February 2024, p 4.

¹⁴⁵ See, for example, submissions 3, 5, 6, 7, 8, 10, 12, 14, 16, 20, 22, 23, 24, 27, 32, 33, 38, 52, 74, 95.

¹⁴⁶ Submission 105, pp 7-8.

¹⁴⁷ Submission 119, pp 8-9.

2.8.2.1 *The department's response*

Queensland Health advised it will give further consideration to the Pharmaceutical Society's issue regarding the definition of compounding.¹⁴⁸

In response to the concerns raised by the Pharmacy Guild and most pharmacy business owners who provided submissions, Queensland Health noted that the definition of 'core pharmacy services' has deliberately been drafted more narrowly than the common understanding of the term 'pharmacy services' to 'capture particular businesses for the purposes of this act'.¹⁴⁹ The department explained:

Pharmacy businesses offer a wide variety of services including, for example, advice on and sale of medicines, sale of non-pharmaceutical items such as cosmetics and toiletries, and various other health and wellbeing services. Many of these services are also offered by other businesses, for example, doctors providing advice on medicines, and supermarkets selling medicines such as paracetamol or ibuprofen.

The definition of core pharmacy service in clause 8 of the Bill is designed to distinguish between pharmacy businesses and other businesses that offer similar services to some services offered by pharmacy businesses (for example, a general practice surgery advising on medicines or a supermarket selling paracetamol) and avoid capturing those other businesses under the definition of pharmacy business.

A business will only be a pharmacy business, for the purposes of the Bill, if it provides the core pharmacy services of compounding medicines for sale to members of the public or selling medicine on prescription, by or under the supervision of a pharmacist, to members of the public.

The definition of core pharmacy services is not intended to in any way restrict the services that a pharmacy business can offer or imply that pharmacy businesses only provide the services of compounding and dispensing.¹⁵⁰

Queensland Health also advised that it does not consider the definition of 'core pharmacy services' impacts the interpretation of the provisions prohibiting inappropriate external control of pharmacy businesses (as discussed further in chapter 4), stating:

Clause 22 of the Bill prohibits a person other than the owner of a pharmacy business from doing or purporting to do certain activities, which amount to unacceptable external control over the business. These activities are clearly set out within clause 22 and include under subsection (1)(a), controlling how pharmacy services involving medicines are provided by the business. As clause 22(1)(a) refers to "pharmacy services" rather than "core pharmacy services", the ordinary and broader meaning of pharmacy services is intended.¹⁵¹

Queensland Health advised that businesses that do not provide the core pharmacy services of compounding medicines for sale to members of the public or selling medicine on a prescription, by or under the supervision of a pharmacist, to members of the public, will not be captured as a pharmacy business under the Bill.¹⁵² On the issue of a business that sold schedule 2, 3 and 4 medicines, but did not offering compounding and dispensing services, the department advised that while it wouldn't be captured under the Bill:

It would still be subject to the medicines and poisons legislative regime. The pharmacists working within that business would still need to comply with the Health Practitioner Regulation National Law. In no way is it an unregulated business. It is simply not captured for the purpose of the ownership restrictions. They are still subject to all other professional obligations and the medicines and poisons regulations.¹⁵³

¹⁴⁸ Queensland Health, correspondence, 2 February 2024, p 8.

¹⁴⁹ Public hearing transcript, Brisbane, 12 February 2023, p 31.

¹⁵⁰ Queensland Health, correspondence, 2 February 2024, p 9.

¹⁵¹ Queensland Health, correspondence, 2 February 2024, p 9.

¹⁵² Queensland Health, correspondence, 2 February 2024, p 8.

¹⁵³ Public hearing transcript, Brisbane, 12 February 2024, p 31. Further information on schedule 2, 3 and 4 medicines and how these medicines are regulated can be found in Queensland Health's response to questions taken on notice from the public hearing held on 12 February 2024 on the committee's website under 'related publications'.

The department added that supermarkets can only sell unscheduled medicines, while schedule 2 and 3 medicines, which are typically considered to be largely over-the-counter and pharmacist-only medicines, are not medicines that can be sold in supermarkets.¹⁵⁴

Queensland Health responded to the alternative definition proposed by the Pharmacy Guild and some pharmacy business owners, which was based on the South Australian definition, by advising:

The alternative definitions of “pharmacy business” and “pharmacy service” suggested by the Guild and some business owners would mean that any business that employed a pharmacist to provide any health service (for example, general practice surgeries who employ pharmacists as part of a multidisciplinary team to provide specialist advice on medication to patients, or aged care facilities who employ pharmacists to provide medication reviews to residents) could be considered to be a “pharmacy business” for the purpose of the ownership restrictions, and therefore could only be owned by a pharmacist or pharmacist-controlled corporation. This would likely result in other types of businesses not employing pharmacists, limiting career options for pharmacists who may wish to work in environments other than community pharmacy. This goes beyond the scope of the Bill.¹⁵⁵

To address the issue of the definition covering an online business, Queensland Health advised:

A business will be a pharmacy business under the Bill, if it is a business that provides pharmacy services in Queensland that include core pharmacy services. This includes an online business that provides core pharmacy services in Queensland.¹⁵⁶

In response to the RACGP’s concerns about the impact on general practitioners, the department advised:

“Core pharmacy service” is defined to mean the compounding of medicines for sale to members of the public, or the dispensing, by or under the supervision of a practising pharmacist, of medicines to members of the public. This definition will not prohibit general practices and general practitioners from storing, supplying or administering medicines directly to their patients.¹⁵⁷

Committee comment

The committee notes the proposed Pharmacy Business Ownership Council (referred to in section 5 of the report) will have the capacity to advise the Minister if the definition of pharmacy services creates issues with the implementation of the Act, should they arise in the future. The committee encourages Queensland Health to work with the future Pharmacy Business Ownership Council if issues are raised in relation to the definition of pharmacy services.

2.8.3 Definition of material interest

The Pharmacy Guild submitted that the definition of material interest ‘fails to sufficiently capture the nuances of what constitutes an interest in a pharmacy business’.¹⁵⁸ There was a concern that if ‘there is a lack of proper definition of what constitutes material interest, then that material interest can not only be financial but also be in the control of the pharmacy business itself’.¹⁵⁹ In particular, the Pharmacy Guild raised issues with:

- the lack of certainty in the application of the definition without a definition of the term ‘interest’
- whether the definition is sufficiently broad to capture the type of agreement, arrangement or understanding that may be used to circumvent the primary ownership model the Bill exists to enshrine

¹⁵⁴ Public hearing transcript, Brisbane, 12 February 2024, p 33.

¹⁵⁵ Queensland Health, correspondence, 2 February 2024, p 9.

¹⁵⁶ Queensland Health, correspondence, 16 February 2024, p 4.

¹⁵⁷ Queensland Health, correspondence, 2 February 2024, p 9.

¹⁵⁸ Submission 52, p 7.

¹⁵⁹ Public hearing transcript, Brisbane, 12 February 2024, p 3.

- the definition of material interest potentially allowing for the exertion of inappropriate control over pharmacy owners, despite the clause clarifying what is not intended to be prohibited.¹⁶⁰

Similarly, some pharmacy business owners raised concerns that the definition of material interest does not include the terminology ‘legal and beneficial’, which means:

- it is not in keeping with other jurisdictions
- the proposed definition does not capture the types of interests that may be held in a pharmacy business and therefore may not cover unlawful interests.¹⁶¹

For example, one submitter argued that ‘if ANY party has an ability to affect the operation of a pharmacy business via some controlling influence over the pharmacist-owner (either financial or legal) then that party really has a material interest in that pharmacy, and that should counted as such’.¹⁶² Another submitter provided the following example of interests that would fall outside of the definition in the Bill:

There are clear circumstances where the current definition would be inadequate to prevent unwanted and detrimental interference in the operation of a Queensland pharmacy business. This includes the impending majority ownership of a Queensland pharmaceutical wholesaler by a single pharmacy group.¹⁶³

One pharmacy owner expanded on the current practices of corporations to circumvent current legislation:

The current legislative framework, as outlined in the *Pharmacy Business Ownership Act (PBOA) 2001*, has face challenges from certain pharmacy groups within Queensland. They exploit proxies, intricate accounting and legal structures to maintain proprietary and pecuniary interests in their businesses. Regrettably, the current administration by Queensland Health falls short of upholding the PBOA's legislative intent by not clearly determining the true financial and managerial control of pharmacies. This was highlighted by the Queensland Audit Office (QAO) report in 2018.

The existing 'Tick and Flick' exercise by Queensland Health for pharmacy registrations is easily circumvented by corporate entities, concealing the true ownership. Utilizing complex contracts and financial strategies, these entities funnel profits away from the business to undisclosed owners. The legitimacy of these strategies as market-competitive business transactions remains challenging to ascertain without adequate industry expertise.¹⁶⁴

There was also concern that the current definition lacks clarity which may lead to courts relying on the definition of ‘interest’ in the *Acts Interpretation Act 1954* (Acts Interpretation Act) which the Pharmacy Guild considered too broad.¹⁶⁵

The Pharmacy Guild, Interim Pharmacy Roundtable and some pharmacy owners called for a more comprehensive definition, with the following amended definition proposed by some:

(c) any other interest, **legal** or **beneficial** in the business, other than an interest of an owner of the business.

(2) to remove any doubt, an interest includes, but is not limited to, having a right to receive consideration directly or indirectly that varies according to the profits or takings of the pharmacy business.¹⁶⁶

The Pharmacy Guild also recommended that advertising, branding, product displays or other marketing activities not be included as an exemption to activities that are prohibited.¹⁶⁷

¹⁶⁰ Submission 52, p 7.

¹⁶¹ See, for example, submissions 13, 21, 23, 33, 64, 77, 89, 97, 102, 117.

¹⁶² Gregory Smith, submission 22, p 2.

¹⁶³ Craig Finn, submission 27, p 2.

¹⁶⁴ Neil Owen, submission 30, p 2.

¹⁶⁵ Submission 52, p 28.

¹⁶⁶ See, for example, submissions 3, 5, 6, 7, 8, 12, 16, 20, 24, 33, 34.

¹⁶⁷ Submission 52, p 7.

In addition, the Pharmacy Guild submitted that references to ‘close adult relatives’ should be clarified to ensure that close adult relatives must be related to the practising pharmacists who hold an interest in the pharmacy business that is subject to registration.¹⁶⁸

One submitter also commented on the definition of close adult relative, submitting that close relatives should include children under 18 years of age, and therefore the term ‘adult’ should be removed.¹⁶⁹

TerryWhite Chemmart submitted that it agrees with the concept that ‘where a non-pharmacist third party holds a ‘material interest’ in or otherwise ‘controls’ a pharmacy, that should be regulated’, but stated that franchising ‘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’.¹⁷⁰ 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’, TerryWhite Chemmart proposed the government:

- should resist any further widening of what is considered a ‘material interest’ in a pharmacy business
- make it clear that the ‘consideration’ (that varies according to the profits or takings of the business) must be an amount that is paid or payable by the owner (as opposed to any other party) to the relevant person
- include provisions confirming that typical supply arrangements do not fall within the definition of ‘material interest’
- stipulate 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.¹⁷¹

The Shopping Centre Council of Australia submitted that ‘the limitation of consideration that varies according to the profits or takings of the business should only extend to pharmaceutical services and not general retail items being sold within a pharmacy’.¹⁷²

The Pharmacy Guild raised the issue of the definition of trusts, submitting that ‘There is a need to deal with, and regulate, both discretionary and unit trusts. If both categories of trusts are not dealt with by an inclusive definition there may be scope to circumvent the legislation’.¹⁷³ The Pharmacy Guild recommended that the definition of trust mean a trust whether discretionary or unit.¹⁷⁴

2.8.3.1 The department’s response

Queensland Health did not support the inclusion of the terms ‘legal and beneficial’ for the following reasons:

- the Bill provides an exhaustive definition of ‘material interest’
- the term ‘legal and beneficial interest’ does not have a precise legal meaning and it is unclear what types of interests in the business would and would not be captured by this term
- the terms may introduce a level of ambiguity requiring reference to extrinsic materials to aid interpretation, and certainty is required given it is an offence under clause 16 for a person to have a material interest in a pharmacy business unless they are a pharmacist or close adult relative of a pharmacist, with a maximum penalty of 200 penalty units (\$30,960)

¹⁶⁸ Submission 52, p 11.

¹⁶⁹ Simon Sporza, submission 49, p 1.

¹⁷⁰ Submission 82, p 2.

¹⁷¹ Submission 82, pp 3-4.

¹⁷² Submission 104, p 3.

¹⁷³ Submission 52, p 12.

¹⁷⁴ Submission 52, p 12.

- the change would make the definition uncertain and breach the fundamental legislative principle that legislation must have sufficient regard to rights and liberties of individuals, including by being drafted in an unambiguous and sufficiently clear and precise way.¹⁷⁵

Queensland Health responded to the Pharmacy Guild's comment on the definition of close adult relative by advising:

Clause 16 provides that a person must not hold a material interest in a pharmacy business unless the person is a practising pharmacist or a close adult relative of a practising pharmacist who holds an interest in the business. Queensland Health does not consider that further clarification is necessary.¹⁷⁶

Queensland Health also advised it does not consider it is appropriate to amend the Bill to allow children who are minors to hold an interest in a pharmacy business because the Bill gives effect to the Health Committee's recommendation to retain the ownership restrictions in the 2001 Act.¹⁷⁷

In response to the concern about the use of the definition of 'interest' in the Acts Interpretation Act, Queensland Health advised:

Section 4 of the Acts Interpretation Act provides that the application of the Acts Interpretation Act may be displaced, wholly or partly, by a contrary intention appearing in any Act. Queensland Health considers the exhaustive definition of "material interest" in the Bill would displace the application of the general definition of "interest" in the Acts Interpretation Act.¹⁷⁸

In relation to TerryWhite Chemmart's recommendation relating to supply agreements, Queensland Health noted that:

... clause 13(1)(c) states that a material interest includes an 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 that varies according to the profits or takings of the business. This is intended to capture ongoing financial interests in a business, not typical supply arrangements which involve pharmacy owners purchasing goods.¹⁷⁹

Queensland Health advised it 'considers that implementing the Shopping Centre Council of Australia's suggestion would make assessing material interest holdings unworkably complex' and that the drafted provision 'aligns with the ownership requirements in the 2001 Act, giving effect to the Health Committee report's recommendation that the current ownership restrictions be retained'.¹⁸⁰

Finally, Queensland Health did not support the Pharmacy Guild's recommendation to amend the definition of trust to include both unit trusts and discretionary trusts, stating: 'The Bill expressly refers to discretionary trusts in a number of provisions. Schedule 1 of the Bill also defines "beneficiary, of a trust" to include a holder of a unit in a unit trust'.¹⁸¹

Committee comment

The committee notes the proposed Pharmacy Business Ownership Council (referred to in section 5 of the report) will have the capacity to advise the Minister if the definition of material interest creates issues with the implementation of the Act, should they arise in the future.

¹⁷⁵ Queensland Health, correspondence, 2 February 2024, p 12.

¹⁷⁶ Queensland Health, correspondence, 2 February 2024, p 15.

¹⁷⁷ Queensland Health, correspondence, 2 February 2024, p 15.

¹⁷⁸ Queensland Health, correspondence, 2 February 2024, p 12.

¹⁷⁹ Queensland Health, correspondence, 2 February 2024, pp 12-13.

¹⁸⁰ Queensland Health, correspondence, 2 February 2024, p 13.

¹⁸¹ Queensland Health, correspondence, 2 February 2024, p 15.

2.8.4 Limitations on the number of pharmacy businesses

The Office of the Health Ombudsman supported the limits on the number of pharmacy businesses within Queensland that a person may own or hold an interest in, but pointed out that the Bill does not include any requirement for pharmacists to declare their related holdings/material commercial interests outside of Queensland.¹⁸²

2.8.4.1 The department's response

The department noted the Office of the Health Ombudsman's suggestion regarding the declaration of interests outside of Queensland, but stated: 'The 2001 Act does not restrict, or require declarations in relation to, interest holdings in other jurisdictions. The Bill aligns with the 2001 Act in this regard. No Australian jurisdiction requires a declaration of interest holdings in other jurisdictions'.¹⁸³

2.8.5 Operation of a pharmacy business

In relation to the clause referring to pharmacy services being provided 'mainly at the licensed premises and partly at another place', the Pharmacy Guild questioned whether the terms 'mainly' and 'partly' are necessary and whether they would be interpreted in favour of restructuring the business that is not intended by the proposed Act. The Pharmacy Guild recommended the terms be clarified or defined.¹⁸⁴

2.8.5.1 The department's response

Queensland Health advised it does not consider the terms 'partly' and 'mainly' in clause 20 require definitions: 'These terms are given sufficient context and meaning by the surrounding words and examples in the clause'.¹⁸⁵

2.8.6 Transitional provisions

A number of pharmacy business owners raised issues with the transitional provisions, including submitting that:

- they impose compliance requirements that will require pharmacists to amend their ownership arrangements before the new laws commence (given only eligible persons have access to the amnesty, and the majority of discretionary trusts – a common ownership structure – have classes of potential beneficiaries that extend much beyond this limited subset of persons)
- discretionary trusts have been engaged by a significant proportion of pharmacists as recommended by accountants because they offer flexibility and taxation advantages and notably are compliant under the 2001 Act
- these businesses will face undue pressure as there is insufficient time to restructure these business arrangements
- given there are also costly tax implications, stamp duty and capital gains tax (CGT) exemptions should apply in relation to any changes to business structures or trust arrangements required to become compliant with the Bill.¹⁸⁶

In sum, these submitters considered that the restrictions on access to the transitional provisions for trust ownerships are discriminatory, costly and ignorant of the complexities involved in changing ownership structure. They argued that the proposed provisions should not have 'retrospective' effect in terms of making unlawful structures that were lawfully entered into, and recommended the grandfathering of existing, compliant accounting structures given they are compliant with the 2001 Act.¹⁸⁷

¹⁸² Submission 9, p 1.

¹⁸³ Queensland Health, correspondence, 2 February 2024, p 4.

¹⁸⁴ Submission 52, p 11.

¹⁸⁵ Queensland Health, correspondence, 2 February 2024, p 10.

¹⁸⁶ See, for example, submissions 73, 75, 79, 84, 86, 88, 91, 99, 100, 108, 109, 110, 113, 120, 121.

¹⁸⁷ See, for example, submissions 73, 75, 79, 84, 86, 88, 91, 99, 100, 108, 109, 113, 120, 121.

2.8.6.1 *The department's response*

Queensland Health responded to the concerns about discretionary trusts by advising:

The 2001 Act is silent on discretionary trusts. Queensland Health has historically taken an interpretation which has resulted in discretionary trusts not being monitored or required to comply with pharmacy ownership restrictions. Stakeholders provided strong feedback during consultation that in order to protect and promote the community pharmacy model, and ensure appropriate regulation of the sector, any person or entity who holds an interest in a pharmacy business should be required to comply with the ownership restrictions. The Bill responds to this feedback by requiring all interest holders, including beneficiaries under discretionary trusts, to be pharmacists or close adult relatives. This aligns with other jurisdictions including NSW and Victoria, where beneficiaries of discretionary trusts must also comply with the ownership requirements.¹⁸⁸

Further, in terms of transitional arrangements for such trusts, Queensland Health stated:

Clause 218 of the Bill is a transitional provision relating to discretionary trusts. This clause applies if immediately before commencement, the owner of an existing pharmacy business owned the business as trustee of a discretionary trust and on commencement, the owner continues to own and carry on the business as either an eligible person (as defined in clause 10) or a deemed eligible person (as defined in clause 214). Clause 218(2) provides that the beneficiary of the trust who is not a practising pharmacist or a close adult relative of a practising pharmacist does not commit an offence against clause 16 in relation to holding an interest in the existing pharmacy business because of the trust.

If a beneficiary of the trust is a practising pharmacist or a close adult relative of a practising pharmacist, the beneficiary's interest in the existing pharmacy business because of the trust is not to be included in the number of interests the beneficiary holds in pharmacy businesses.

This clause stops applying the day that is two years after the commencement, or if one of the following occurs earlier:

- the owner does not apply for a licence within the one-year period stated in clause 215;
- the owner's application for a licence is refused or withdrawn; or
- the owner's licence is cancelled.

This also stops applying if the owner is a deemed eligible person who stops carrying on the business under clause 216.

This allows current owners (both individuals and corporations) who have discretionary trusts sufficient time to vary their trusts to ensure they comply with the requirements of the Act (that is, ensure that beneficiaries of the discretionary trusts are practising pharmacists or close adult relatives). It also allows pharmacists and close adult relatives who may be beneficiaries of discretionary trusts and also own or hold interests in other pharmacy businesses sufficient time to divest of interests to ensure they meet the requirements of clause 17.¹⁸⁹

On the issue of stamp duty and CGT, Queensland Health noted that stamp duty in Queensland is regulated under the *Duties Act 2001 (Qld)* which falls within the portfolio responsibilities of the Deputy Premier, Treasurer and Minister for Trade and Investment. As such, any exemptions from stamp duty are a matter for Queensland Treasury. Similarly, CGT is regulated by the Commonwealth Government. As such, Queensland Health stated it is unable to advise on CGT exemptions.¹⁹⁰

¹⁸⁸ Queensland Health, correspondence, 2 February 2024, p 15.

¹⁸⁹ Queensland Health, correspondence, 2 February 2024, p 14.

¹⁹⁰ Queensland Health, correspondence, 2 February 2024, p 14.

3 Pharmacy business location restrictions

In addition to maintaining restrictions on pharmacy ownership, the Bill imposes a new restriction on the location of pharmacy businesses, such that they cannot be located in or accessible from a supermarket.¹⁹¹

For the purposes of the Bill, a supermarket ‘means premises used primarily for selling a range of food, beverages, groceries and other domestic goods’.¹⁹²

The explanatory notes advise that pharmacy business owners strongly advocated for the proposed change during consultation on the Bill, with reasons including:

... that supermarkets are not an appropriate healthcare environment, consumers are unlikely to feel comfortable receiving services such as opioid treatment programs, vaccinations and medication counselling in a supermarket, and it was unlikely supermarket premises could meet the standards required for safe and competent delivery of pharmacy services and primary health care.¹⁹³

The explanatory notes also state that the change will bring Queensland into line with most other Australian jurisdictions, where pharmacy businesses similarly must not be located in or accessible from a supermarket.¹⁹⁴

3.1 Issue of fundamental legislative principle – restriction of ordinary activities

As noted in chapter 2.6, legislation should not, without sufficient justification, unduly restrict ordinary activities.¹⁹⁵ In respect of the proposed restriction on the location of authorised pharmacy businesses (such that premises may not be located in or directly accessible from a supermarket),¹⁹⁶ the Bill potentially has implications for the rights and liberties of individuals and their ordinary activities, including the rights of individuals to conduct their business without interference.

The explanatory notes assert that the proposed restriction is justified, however, as requiring pharmacy businesses to be carried on only at or from licensed premises (which do not include supermarkets), ‘ensures that the premises have been assessed as fit for purpose, and safe for customers and staff’.¹⁹⁷

Queensland Health also emphasised that Queensland has been the ‘outlier’ in terms of its legislation failing to include this prohibition in respect of supermarkets.¹⁹⁸

Committee comment

The committee is satisfied that any impact on the ordinary activities of individuals as associated with the Bill’s restrictions on the location of pharmacy businesses is appropriately justified, and therefore consistent with fundamental legislative principles, given their stated aim of ensuring pharmacy businesses operate in settings best suited to the delivery of healthcare advice and other pharmacy services.

¹⁹¹ Specifically, the Bill (cl 11) provides that premises are only ‘authorised premises’ on which a pharmacy business may be carried out if the premises ‘are not located in, or directly accessible from, a supermarket’, and ‘meet the standards prescribed by regulation’. Further, a pharmacy licence can only be issued to a pharmacy business if the proposed regulatory council is satisfied that the proposed premises for the business are authorised premises (cl 28(b)); and a licensed pharmacy business must be carried out at or from licensed premises (cl 20).

¹⁹² Bill, cl 11(3); public briefing transcript, Brisbane, 14 December 2023, p 5.

¹⁹³ Explanatory notes, pp 8-9.

¹⁹⁴ Explanatory notes, pp 8-9.

¹⁹⁵ OQPC, Notebook, p 118. See also *Legislative Standards Act 1992*, s 4(2)(a).

¹⁹⁶ Bill, cls 11, 20 (proposed Act, ss 11, 20). Premises must not be located in, or directly accessible from a supermarket, and must meet standards to be prescribed by regulation (cl 11). Further, pharmacy businesses must be located at a licensed premises (cl 20).

¹⁹⁷ Explanatory notes, p 29.

¹⁹⁸ Economics and Governance Committee, public briefing transcript, 14 December 2023, p 4.

3.2 Stakeholder views

The Office of the Health Ombudsman, Pharmacy Guild and Pharmaceutical Society expressly supported the specific prohibition of pharmacies being located within or attached directly to a supermarket.¹⁹⁹ The Pharmaceutical Society provided the following reasoning:

Health care interactions within a pharmacy should occur as a partnership between the consumer and the pharmacist or pharmacy staff. Such interactions would not be optimal from a QUM [Quality Use of Medicines] perspective unless the environment is conducive for, and the consumer's mindset is receptive to, the provision of health care advice and discussion which may complement the supply of therapeutic goods.

PSA [Pharmaceutical Society of Australia] does not believe supermarkets provide an environment conducive to patient-centred care, promotion of patient understanding, interdisciplinary collaboration, opportunistic interventions, or effective operation of the health care team.

Having a pharmacy located in a supermarket also has the potential for consumers to develop the perception that potent, scheduled medicines are allowed to be located within an unregulated environment and therefore able to be self-selected in the absence of professional advice. PSA believes it is undesirable to portray this type of message as it can dilute and undermine the rigour underpinning the extensive regulatory processes that medicines are subjected to for the safety and benefit of consumers.²⁰⁰

While in support of the prohibition, the definition of supermarket was raised as an issue by a number of pharmacy owner stakeholders, due to concerns that the use of the term 'premises' limits its scope to a physical premises and excludes online supermarkets. These stakeholders requested the definition include an explicit reference to online services.²⁰¹

Some submitters proposed the following alternative as the definition of 'supermarket':

... a premises or online store used primarily for selling a range of food, beverages, groceries and other domestic goods.²⁰²

Similarly, the Interim Pharmacy Roundtable recommended the clause be broadened to 'include well established and emerging trading platforms, such as online businesses, digital marketplaces or corporations'.²⁰³

The Australian College of Nurse Practitioners supported the prohibition of issuing licenses for pharmacy businesses located in supermarkets to ensure that pharmacies protect 'their role as specialised and safe healthcare services'.²⁰⁴ However, they also raised concerns 'that prohibiting supermarket and pharmacy services integration in remote areas might restrict medication access, particularly if the standalone pharmacy service becomes non-viable'.²⁰⁵

Such concerns were also cited by those who opposed the location restrictions. In contrast to the pharmacy owner and peak body support for the provision, the QAIHC submitted that models that facilitate the medicines being dispensed in supermarkets (and other locations that allow quality and safe care closer to home), should be explored to facilitate pharmacy service provision, particularly in rural and remote communities.²⁰⁶

Similarly, the RACGP questioned the argument that supermarkets aren't 'appropriate healthcare environments and that consumers may not feel comfortable receiving that kind of healthcare advice

¹⁹⁹ Submission 9, p 1; submission 52, p 5; submission 71, p 8.

²⁰⁰ Submission 71, p 8.

²⁰¹ See, for example, submissions 7, 8, 16, 20, 34, 52, 71, 77, 87, 107, 116.

²⁰² See, for example, submissions 8, 17, 28, 32, 59, 78 105, 122.

²⁰³ Submission 77, p 3.

²⁰⁴ Submission 124, p 3.

²⁰⁵ Submission 124, p 3.

²⁰⁶ Submission 1, p 2.

or other health services provided by pharmacy businesses'.²⁰⁷ The RACGP referred to pharmacies selling 'supermarket-like products', such as lollies, perfumes and hair products, submitting:

Retail pharmacies in Australia operate in a unique environment in which they provide government-funded health services and retail products. Pharmacies apply commercial principles to the health environment, selling a number of products that are non-evidence based and unrelated to health as a way to maintain a viable business.²⁰⁸

The RACGP also referred to Costco supermarket pharmacies, which they stated 'are set up like larger versions of existing Australian pharmacies', where the 'dispensary is at the rear of the store, separated from the rest of the store': 'Consumers can drop off their prescriptions and complete their shopping whilst they wait. In Australian retail pharmacies, consumers drop off their prescriptions whilst they wait (or shop for other retail products)'.²⁰⁹

The RACGP concluded: '[t]here is no logical distinction between a supermarket and any other pharmacy retail environment. Thus, there is no reason to preclude pharmacies from operating within supermarkets'.²¹⁰

The AMAQ took a similar position, arguing that the reform lacks evidence and is anti-competitive, citing the findings of a Productivity Commission review which concluded that prohibitions on the co-location of pharmacies in supermarkets should be discontinued, provided that any pharmacy operating in this environment is required to operate in accordance with all relevant practice requirements for an approved pharmacy.²¹¹ The Productivity Commission similarly agreed that consumers 'should be able to access pharmacy services at places that are most convenient for them, including in supermarkets'.²¹²

3.3 The department's response

Queensland Health acknowledged the feedback provided by the QAIHC, RACGP, AMAQ and Productivity Commission in relation to the prohibition against pharmacy businesses being located in or accessible from supermarkets. However, the department reiterated that the proposal 'brings Queensland into line with most other Australian jurisdictions, where pharmacy businesses must not be located in or accessible from a supermarket, and gives effect to strong feedback provided during consultation on the Bill'.²¹³

In response to the call for an expansion to the definition of 'supermarket' in the Bill to expressly refer to online supermarkets, Queensland Health advised:

The Bill prohibits pharmacy businesses from being located within physical supermarkets based on feedback from stakeholders that supermarkets are not an appropriate healthcare environment, with customers unlikely to feel comfortable receiving pharmacy services in a supermarket environment, and to align with other Australian jurisdictions.

Clause 11 as drafted generally aligns with other jurisdictions. The concerns about customers feeling uncomfortable in the "supermarket environment" are unlikely to apply to online environments. Queensland Health does not consider the prohibition against a pharmacy business being located in or directly accessible from a supermarket could be applied to an online supermarket, as the prohibition relates to the physical location of a "bricks and mortar" supermarket (that is, the business must not be located in or directly accessible from a supermarket).

Most Australian jurisdictions prohibit a pharmacy business from being located in, or directly accessible from, a supermarket. There are slight variations in definitions of "supermarket", but generally, all align with the

²⁰⁷ Submission 119, p 6.

²⁰⁸ Submission 119, p 6.

²⁰⁹ Submission 119, p 6.

²¹⁰ Submission 119, p 7.

²¹¹ Submission 35, p 11.

²¹² Public hearing transcript, Brisbane, 12 February 2024, p 11.

²¹³ Queensland Health, correspondence, 2 February 2024, p 11.

proposed Queensland definition, which is “premises used primarily for selling a range of food, beverages, groceries and other domestic goods.” No jurisdictions expressly refer to online supermarkets.

However, any online business that provides the core pharmacy services of compounding medicines or dispensing medicines by or under the supervision of a pharmacist would be captured as a pharmacy business for the purposes of the Bill and required to be owned by an eligible person such as a pharmacist.²¹⁴

4 External control of pharmacy businesses

The 2001 Act provides that a bill of sale, mortgage, lease, franchise, agency or other service or commercial arrangement for a pharmacy business is void to the extent it gives to a person, other than the owner of the business, the right to control in whole, or part, the way in which the business is carried on, or to receive any consideration that varies according to the profits or takings of the business.²¹⁵ An agreement is similarly void to the extent it requires goods or services for the business to be obtained from a stated person or body.²¹⁶

The QAO Report provided as part of the Health Committee’s inquiry recommended Queensland Health amend the 2001 Act to enable more effective management of the pharmacy ownership notification process, including defining the legal implications if a commercial arrangement does not meet the above requirement.²¹⁷ The Health Committee in turn recommended the establishment of offences for breaches of these provisions.²¹⁸

The Bill seeks to respond to the QAO and Health Committee recommendations by making it an offence for a third party to engage in or purport to engage in prohibited activities which involve controlling ‘how the business provides services relating to medicines and public health’.²¹⁹ As an example, the proposed offence provisions specify that it would be an offence for a third party to restrict the medicines the pharmacy may sell, restrict the business from offering certain public health services (such as needle exchange programs), require medicine for the business to be bought from a particular supplier, or impose sales targets related to particular medicines. The applicable maximum penalty is 200 penalty units (\$30,960).²²⁰

The Bill also provides further clarity about the types of third-party control that are intended to be prohibited, by identifying the types of legitimate and common activities that are not intended to be captured by the provisions and therefore are not prohibited. Examples given include employees carrying out their duties, and franchisors and lessors imposing requirements relating to opening hours, advertising, branding, information technology systems, marketing, product displays, staff training or staff uniforms.²²¹ This clarification addresses difficulties with the operational administration and enforcement of this provision due to the absence of a definition of ‘control’.²²²

In addition, the Bill confirms that a provision of a contract, agreement or arrangement is void to the extent that it purports to authorise or permit an activity that is prohibited.²²³

According to the explanatory notes, these amendments:

... ensure that pharmacy business owners can operate autonomously and professionally, in the best interests of members of the public. Focusing the types of inappropriate control on medicine and public

²¹⁴ Queensland Health, correspondence, 2 February 2024, pp 11-12.

²¹⁵ 2001 Act, s139I.

²¹⁶ Explanatory notes, p 5. See also 2001 Act, s 139I.

²¹⁷ Explanatory notes, p 5.

²¹⁸ Recommendation 8 of the Health Committee’s report called for amendments ‘including the establishment of offence provisions for breaches of s 139(I)’.

²¹⁹ Explanatory notes, pp 6, 10. See Bill, cl 22(1) (proposed Act, s 22(1)).

²²⁰ See Bill, cl 22(1)(a)-(d) (proposed Act, s 22(1)).

²²¹ Explanatory notes, p 10. Bill, cl 22(2) (proposed Act, s 22(2)).

²²² Explanatory notes, p 6.

²²³ Explanatory notes, p 10. See Bill, cl 22(3) (proposed Act, s 22(3)).

health services ensures pharmacy business owners can deliver services impacting on the health of customers or the community based on health considerations, not commercial pressures.²²⁴

4.1 Issue of fundamental legislative principle – restriction of ordinary activities

As noted in chapters 2.6 and 3.1, legislation should not, without sufficient justification, unduly restrict ordinary activities.²²⁵ It can be identified that the Bill's restriction on third party control over the activities of pharmacy businesses has implications for the rights and liberties of individuals and their ordinary activities, including the rights of individuals to conduct their business without interference.

However, the explanatory notes assert:

Prohibiting third parties from exercising inappropriate control over how pharmacy businesses deliver particular services ensures pharmacists can act autonomously using their professional expertise and ethics to deliver services impacting on wellbeing of customers or the community based on health considerations, not commercial pressures imposed by third parties.²²⁶

Committee comment

The committee is satisfied that any impact on the ordinary activities of individuals as associated with the Bill's restrictions on third party control of pharmacy businesses is justified in the circumstances, and therefore consistent with fundamental legislative principles, given their aim of supporting the delivery of pharmacy services which put customer health considerations at the forefront of pharmacy service interactions.

4.2 Stakeholder views

The Pharmaceutical Society supported the Bill's prohibition of particular activities relating to a licensed pharmacy business so that a pharmacist owner can 'exercise autonomy and professional judgement' and not be 'compromised by commercial business practices'.²²⁷ The Pharmaceutical Society also recommended that 'equal consideration should be given to a person compelling the owner to stock certain medicines or provide certain health services when the owner deems them inappropriate for the pharmacy business and local community'.²²⁸

The Pharmacy Guild submitted that the prohibition on external control should refer to 'control and influence' not just control, and should not be limited only to services involving medicines. The Pharmacy Guild also submitted that it should be prohibited for goods or services, as well as medicine, to be bought from a particular supplier, or for sales targets to be imposed in this regard. Finally, the Pharmacy Guild recommended excluding the exemptions to the prohibitions, which include imposing a requirement about opening hours, information technology systems, staff training, and staff uniforms.²²⁹

TerryWhite Chemmart, a franchisor, supported the 'inappropriate "control" of a pharmacy', but also called for an 'appropriate balance between the many common and legitimate commercial arrangements between pharmacies and third parties and matters which must be controlled by the pharmacist's owner'.²³⁰ This submitter stated that the prohibition on the ability to require medicines to be purchased from a particular supplier is 'misconceived' because 'there is no quality or therapeutic difference between the medicines that are therapeutically or bioequivalent to each other but that are

²²⁴ Explanatory notes, p 10.

²²⁵ Office of the Queensland Parliamentary Counsel (OQPC), 'Fundamental legislative principles: the OQPC Notebook' (Notebook), p 118. See also *Legislative Standards Act 1992*, s 4(2)(a).

²²⁶ Explanatory notes, p 28.

²²⁷ Submission 71, p 9.

²²⁸ Submission 71, p 10.

²²⁹ Submission 52, pp 6, 7.

²³⁰ Submission 82, pp 2, 4.

provided by different suppliers’.²³¹ TerryWhite Chemmart provided the following example as to why this prohibition may not be helpful:

... 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 sure up 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.²³²

TerryWhite Chemmart also recommended that the exclusions recognise the legitimacy of franchising, such as support for a ‘core range’ of products as a minimum, or supply arrangements, including arrangements that provide volume-based pricing, discounts or rebates.²³³

Some pharmacy owner submitters considered that the Bill’s explicit prohibition of certain activities of third parties introduces overly restrictive measures that extend beyond the ordinary course of business.²³⁴ One of these submitters stated:

The voiding consequences for activities deemed to imply control create an atmosphere of legal uncertainty, potentially rendering past agreements void. The retrospective nature of this provision raises concerns about the fairness of penalising pharmacists for conduct that was previously considered lawful.²³⁵

The Shopping Centre Council of Australia (SCCA) also considered the provisions as drafted to represent an ‘overreach’ and as potentially undermining existing legal agreements, albeit with a focus on the retail lease agreements into which pharmacy businesses have engaged. The SCCA submitted that the provisions:

- could confer rights to a pharmacy business well beyond the medicines and health services that they provide, and therefore beyond the remit of the Bill
- ‘would ignore commercial realities, create uncertainty, disregard existing legal agreements that have been freely made between parties’.²³⁶

Elaborating on these concerns, the SCCA suggested that allowing pharmacy businesses to make unilateral decisions could see third parties (such as shopping centre owners) have their rights ‘unjustifiably interfered with, with possible ‘unintended consequences’, such as providing a competitive (legal and commercial) advantage on general retailing to pharmacy businesses and imposing ‘external risks or harm to the shopping centre, surrounding tenants, or the broader community’ ‘rise to adverse impacts on other tenants within shopping centres’.²³⁷

The SCCA added ‘we do not wish to see our rights infringed by the granting of additional rights to pharmacies or to see our rights as landlords overridden’.²³⁸

Further, the SCCA submitted that consideration should be given to whether or not it is appropriate for health services to be provided at pharmacies in shopping centres due to the environment (i.e. where there is a large amount of foot traffic, hundreds of other tenants and businesses, and various other community activities and parties).²³⁹

²³¹ Submission 82, pp 4, 5.

²³² Submission 71, p 5.

²³³ Submission 82, p 5.

²³⁴ See, for example, submissions 75, 100, 109, 110, 121.

²³⁵ Stephen Thompson, submission 75, p 2.

²³⁶ Submission 104, pp 1, 3.

²³⁷ Submission 104, pp 1, 2.

²³⁸ Public hearing transcript, Brisbane, 12 February 2024, p 22.

²³⁹ Submission 104, p 3.

To address these issues, the SCCA suggested the following:

- provisions regarding external control should only relate to the supply of medicines, given the intention of the section is to prohibit third parties from being able to control how a pharmacy business provides services related to medicines and public health (e.g. restricting the medicines that a pharmacy may sell)²⁴⁰
- a pharmacy business should have a right to request from a shopping centre owner the ability to provide health services from their tenancy, and a shopping centre owner cannot unreasonably refuse this request, but could have a right to require certain conditions to be met before they provide these health services²⁴¹
- the language regarding trading hours should be clearer so that the activities excluded by the Bill as not being prohibited include core trading hours for a retail shopping centre²⁴²
- the proposed amendments should only apply to new leases entered into or renewed on or after a date that is 6 months after the Bill passes the Queensland Parliament to provide businesses with time to prepare and make any necessary adjustments to standard form arrangements and give businesses greater certainty.²⁴³

The SCCA added in relation to the second recommendation, that:

As landlords, we would strike a lease agreement with the tenancies with the understanding that those services would not be delivered, but I think those two examples in particular are of concern in a shopping centre environment. The bill as drafted now would enable tenants to start to deliver those services. We absolutely do not object to the delivery of those services—it is not our place to do that—but, when it comes to them taking place in a shopping centre, there are concerns about surrounding tenants in terms of the surrounding foot traffic. Many thousands of customers come through shopping centres each day. Those services have flow-on effects that we would absolutely want to talk to the tenant about and not allow them unfettered capacity to start delivering those services.

...

It is not for us to veto. It is that, No. 1, we are made aware of these things.²⁴⁴

4.3 The department's response

In response to the Pharmaceutical Society's suggestion that consideration be given to including a prohibition against third parties compelling the owner to stock certain medicines or provide certain health services, Queensland Health advised it considers that the clause as drafted captures the type of inappropriate control most likely to be imposed by third parties.²⁴⁵

Queensland Health did not see the need for the Pharmacy Guild proposal for this provision to refer control *and influence*. The department stated:

... pharmacy business owners may be influenced by any number of external factors in relation to how pharmacy services involving medicines are provided to the public by the business – for example, competitive supplier costs or lower prices on similar medicines offered by a competing business. It is not intended to regulate these practices.²⁴⁶

In relation to the Pharmacy Guild's call for the removal of certain exemptions (including relating to opening hours, staff training and uniforms), Queensland Health stated:

²⁴⁰ Submission 104, p 3.

²⁴¹ Submission 104, p 3.

²⁴² Submission 104, p 3.

²⁴³ Submission 104, p 3.

²⁴⁴ Public hearing transcript, Brisbane, 12 February 2024, pp 22, 23.

²⁴⁵ Queensland Health, correspondence, 2 February 2024, p 10.

²⁴⁶ Queensland Health, correspondence, 2 February 2024, p 10.

... it is not necessary to remove clause 22(2)(b)(ii) which provides that control does not include requirements imposed about advertising, branding, product displays or other marketing activities. These are common arrangements within franchising relationships and do not prevent businesses from acting in the best interests of members of the public.²⁴⁷

Further, in respect of the Pharmacy Guild's suggestion that prohibitions should be introduced against requiring purchases from particular suppliers and imposing sales targets for non-pharmaceutical retail goods as well as medicines, and TerryWhite Chemmart's contrary submission that a prohibition on purchases from particular suppliers may be misconceived, Queensland Health stated that:

... the purpose of clause 22 is to ensure that pharmacy business owners can operate autonomously and professionally, in the best interests of members of the public. Focusing the types of inappropriate control on medicine and public health services ensures pharmacy business owners can deliver services impacting on the health of customers or the community based on health considerations, not commercial pressures. For this reason, Queensland Health does not consider that the prohibitions against requiring purchases from particular suppliers and imposing sales targets should apply in relation to nonpharmaceutical retail goods as well as medicines²⁴⁸

Queensland Health also acknowledged the SCCA's concerns about the provisions, but noted that the Bill's 'external control provisions have a far narrower and more clearly defined application than the current Act, which currently applies to all pharmacy businesses located within Queensland'.²⁴⁹ Queensland Health added that the intent of the prohibition of inappropriate external control 'is to ensure pharmacy business owners can operate autonomously and professionally, in the best interests of members of the public'.²⁵⁰

In relation to SCCA's proposal that the clause should only apply to new leases entered into or renewed on or after a date that is 6 months after the Bill passes the Queensland Parliament, Queensland Health advised the Bill is intended to commence by proclamation, and that it anticipates that the legislation would be proclaimed to commence 12 – 18 months after assent, if the Bill is passed. Queensland Health stated: 'This should provide businesses with sufficient time to make any necessary adjustments, including to standard form arrangements'.²⁵¹

In response to some pharmacy owners raising concerns about the 'retrospective' nature of this provision, the department advised:

Clause 22(1) does not operate retrospectively to capture actions taken prior to commencement as offences. However, clause 22(3) will capture relevant agreements entered into prior to commencement that are still in force at commencement. Such agreements are likely to be subject to section 139I of the 2001 Act currently, which provides that a bill of sale, mortgage, lease, franchise, agency or other service or commercial arrangement for a pharmacy business is void to the extent it gives to a person, other than the owner of the business, the right to control in whole or part the way in which the business is carried on.²⁵²

5 Establishment of the Pharmacy Business Ownership Council

The Bill establishes the Pharmacy Business Ownership Council (council) as a statutory body, with the responsibility for regulating pharmacy business ownership being transferred from Queensland Health to the council.²⁵³

The Bill provides the functions of the council would include:

²⁴⁷ Queensland Health, correspondence, 2 February 2024, p 10.

²⁴⁸ Queensland Health, correspondence, 2 February 2024, p 10.

²⁴⁹ Queensland Health, correspondence, 2 February 2024, p 10.

²⁵⁰ Queensland Health, correspondence, 2 February 2024, p 10.

²⁵¹ Queensland Health, correspondence, 2 February 2024, p 10.

²⁵² Queensland Health, correspondence, 2 February 2024, pp 10-11.

²⁵³ Explanatory notes, p 4.

- deciding applications relating to pharmacy business licences, including the capacity to audit individual operators as part of the licensing scheme
- changing, suspending and cancelling pharmacy business licences
- monitoring and enforcing compliance with the Act (on its own initiative or at the Minister's request)
- advising the Minister on premise standards and other matters relating to the Act
- administering the Queensland Pharmacy Business Ownership Council Fund established under the Act
- keeping a register of pharmacy businesses, and
- any other function given to the council under the Act or another Act.²⁵⁴

The Bill provides for the composition of the council as follows:

- at least 5 members, appointed by the Governor in Council on recommendation of the Minister
- at least one individual who is a pharmacy business owner (or the director of a corporate owner) and one who is an employee pharmacist
- the remaining members to have experience and skills in areas such as law, accounting, business, financial management, pharmacy business ownership, or have expertise in representing consumers or another area or field which the Minister considers necessary or beneficial for the council to perform its functions.²⁵⁵

The Bill also provides for the appointment of a chief executive officer and council staff, including inspectors.²⁵⁶

The department advised that the Bill does not prescribe a maximum number of members, and that the number will 'depend on the council and what they consider to be an operationally beneficial number',²⁵⁷ stating:

Initially it will be up to the minister to make those decisions and recommend members for appointment. It may be that down the line the council considers they need additional members and recommends that to the minister. The bill sets out a minimum of five. It does not set a maximum. It is to allow flexibility for operational circumstances, as they may change over time.²⁵⁸

The explanatory notes also advise that the Bill contains 'robust conflict of interest provisions' to 'ensure the integrity and transparency of decisions made by the council'.²⁵⁹ Under these provisions, a council member must give other council members notice of any potential conflicts of interest and must not take part in decisions relating to the matter in question. Noncompliance with these provisions entails a maximum penalty of 100 penalty units (\$15,480).²⁶⁰

The Queensland Government will provide transitional funding of approximately \$9.8 million over 4 years to cover the cost of establishing the council to administer community pharmacy business ownership regulation, and to implement a community pharmacy ownership licensing scheme in Queensland. It is

²⁵⁴ Queensland Health, correspondence, 8 December 2023, p 2; public briefing transcript, Brisbane, 14 December 2023, p 3; explanatory notes, p 7. See Bill, cl 147 (proposed Act, s 147). The Bill also specifies in proposed s 147(3) that the council 'must, in performing its functions, act independently, impartially and in the public interest'.

²⁵⁵ Queensland Health, correspondence, 8 December 2023, p 2. See Bill, cl 150 (proposed Act, s 150).

²⁵⁶ Queensland Health, correspondence, 8 December 2023, p 2. See Bill, cls 93, 166, 175 (proposed Act, ss 93, 166, 175).

²⁵⁷ Public briefing transcript, Brisbane, 14 December 2023, p 2.

²⁵⁸ Public briefing transcript, Brisbane, 14 December 2023, p 3.

²⁵⁹ Explanatory notes, p 8.

²⁶⁰ Bill, cl 164 (proposed Act, s 164); public briefing transcript, Brisbane, 14 December 2023, p 6.

intended the council's operating costs be met from fees from 2025-2026.²⁶¹ According to Queensland Health:

The \$9.8 million that has been articulated in the papers accounts for the estimated total cost for the council to be set up, to run and from 2025-26 and be self-sufficient. It incorporates all the aspects of ensuring that the statutory body is set up, that officers are appointed to the statutory body to run the business and all the other aspects as well in terms of the sitting fees ...²⁶²

In terms of remuneration for the council members, the department advised:

Queensland Health has not looked at the specific detail in terms of what the fees might look like, but we anticipate that the fees will be consistent with government policies in relation to remuneration on statutory bodies; therefore, we would not expect at this stage to consider departing from the standard policies with regard to statutory bodies.²⁶³

5.1 Issues of fundamental legislative principle and human rights – natural justice and the right to a fair hearing

In addition to providing for the appointment of council members,²⁶⁴ and for the appointment of a chief executive officer of the council,²⁶⁵ the Bill sets out the circumstances in which:

- a person may be disqualified from becoming, or continuing as, a council member²⁶⁶ or chief executive,²⁶⁷ or
- the office of a council member²⁶⁸ or the office of the chief executive officer becomes vacant.²⁶⁹

Specifically, the Bill provides that a person is disqualified from becoming, or continuing as, a council member if the person:

- has a conviction (other than a spent conviction) for an indictable offence
- is an insolvent under administration
- is disqualified from managing corporations under the *Corporations Act 2001*
- contravenes a provision of the proposed Act.²⁷⁰

Similar provisions apply in relation to disqualification of a chief executive officer.²⁷¹

In addition, the Minister may end a council member's appointment at any time if the council member has been guilty of misconduct, is incapable of performing the member's duties, or has neglected the member's duties or performed the member's duties incompetently.²⁷²

Whilst the criteria set out in the Bill are clear and appear reasonable given the powers and functions of the council, and role of the council members and the chief executive, there is no process for council members or the chief executive officer to make a submission in relation to a decision to disqualify them or end their appointment. This goes towards the natural justice principle of a right to be heard,

²⁶¹ Queensland Health, correspondence, 8 December 2023, p 3.

²⁶² Public briefing transcript, Brisbane, 14 December 2023, p 7.

²⁶³ Public briefing transcript, Brisbane, 14 December 2023, p 7.

²⁶⁴ Bill, cl 150 (proposed Act, s 150).

²⁶⁵ Bill, cl 166 (proposed Act, s 166).

²⁶⁶ Bill, cl 151 (proposed Act, s 151).

²⁶⁷ Bill, cl 166 (proposed Act, s 167).

²⁶⁸ Bill, cl 156 (proposed Act, s 156).

²⁶⁹ Bill, cl 171 (proposed Act, s 171).

²⁷⁰ Bill, cl 151 (proposed Act, s 151); explanatory notes, p 20.

²⁷¹ Bill, cl 167 (proposed Act, s 167); explanatory notes, p 20.

²⁷² Bill, cl 156 (proposed Act, s 156); explanatory notes, p 20.

which is relevant to considering the extent to which the Bill has regard to the rights and liberties of individuals,²⁷³ including the human right to a fair hearing.²⁷⁴

The explanatory notes justify these provisions on public interest grounds, noting the responsibilities associated with the council's regulatory function, and that council members should be held to high standards of integrity and propriety.²⁷⁵ Further, the statement of compatibility asserts that providing an opportunity to make submissions 'would not achieve the purpose of maintaining the integrity of the council':²⁷⁶

The disqualifying circumstances are those which are sufficiently serious to threaten the integrity and public standing of the council, regardless of any contextual or mitigating factors. They are also simple to establish as a matter of fact. An opportunity to make submissions therefore serves no purpose. Further, allowing a person who has a conviction for an indictable offence, or is disqualified from managing corporations under the Corporations Act 2001, to continue serving on the council while making submissions would reduce public confidence in the council.²⁷⁷

Committee comment

While the committee notes that there is no explicit opportunity for individuals to make a submission in relation to a decision to disqualify them or otherwise end their appointment, the committee is satisfied that the provisions are reasonable and justified, given the nature of the circumstances in question and the importance of ensuring public confidence in the integrity of the council and its chief executive officer.

5.2 Other human rights considerations – the right to take part in public life and the right to privacy

The Bill's provisions governing the establishment of the council and its operations can also be identified as having implications for the right to take part in public life²⁷⁸ and the right to privacy,²⁷⁹ which are recognised under the *Human Rights Act 2019*.

The right to take part in public life encompasses a right for every eligible person to have the opportunity, without discrimination, to participate in the conduct of public affairs, including through access on general terms of equality to the public service and to public office.²⁸⁰

The Bill potentially limits this right by:

- outlining specific requirements for the composition of the council²⁸¹
- setting out disqualifying factors and providing for the Minister to end a person's conduct where they have been guilty of misconduct, neglected their duties or performed them incompetently,²⁸² and

²⁷³ Section 4(3)(c) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether it is consistent with the principles of natural justice.

²⁷⁴ *Human Rights Act 2019*, s 31. The right to a fair hearing affirms the right of all individuals to procedural fairness when coming before a court or tribunal. This includes the right to a fair and public hearing before a competent, independent and impartial court or tribunal established by law. In the case of the disqualification provisions, no such hearing will be available.

²⁷⁵ Explanatory notes, pp 19-20.

²⁷⁶ Statement of compatibility, p 20.

²⁷⁷ Statement of compatibility, p 20.

²⁷⁸ *Human Rights Act 2019*, s 23.

²⁷⁹ *Human Rights Act 2019*, s 25.

²⁸⁰ *Human Rights Act 2019*, s 23.

²⁸¹ Bill, cl 150 (proposed Act, s 150).

²⁸² Bill, cls 151, 156 (proposed Act, ss 151, 156).

- restricting the ability of council members with a conflict of interest to take part in the council's decision about the matter to which the conflict of interest relates.²⁸³

The statement of compatibility acknowledges these potential limitations, but emphasises that their purpose is to:

- ensure council members collectively have the appropriate experience, skills and knowledge for the efficient and effective performance of the council's functions, and
- support 'the integrity and accountability of council members and transparency in decision making'.²⁸⁴

Further, the statement emphasises that:

Similar limitations on the membership of statutory boards and councils are common across the statute book and ensure that such bodies can fulfil their purposes and functions effectively and with an appropriate level of accountability.²⁸⁵

The right to privacy, which protects individuals against unlawful or arbitrary interference with their privacy, family, home, or correspondence, is potentially enlivened by the Bill's provisions:

- enabling the Minister to obtain the criminal history of a person applying to be a member of the council or its chief executive officer (to ascertain their eligibility for the role), subject to the person's consent²⁸⁶
- requiring council members and the chief executive officer to disclose information about changes in their criminal history.²⁸⁷

The statement of compatibility asserts that any impact on a person's privacy resulting from the power to obtain the criminal history of council members and requiring council members to disclose new convictions, 'is justified to ensure the integrity and appropriateness of those appointed, or being considered for appointment, to the council':

Council members will be expected to uphold the public trust invested in the body and should therefore be held to high standards of integrity and propriety. Corresponding considerations apply in relation to the chief executive officer.²⁸⁸

Further, the statement emphasises that the Bill contains safeguards including that:

- the Minister is only able to obtain the proposed council member or chief executive officer's criminal history if they consent, and they have the option of not consenting (though they will not be eligible for appointment)²⁸⁹
- the Minister must ensure any criminal history information is not used for any other purpose than the purpose for which it was requested and is destroyed as soon as practicable after the information is no longer needed for that purpose²⁹⁰
- while it will be an offence for a council member or chief executive officer to fail to advise of new convictions within a 14-day timeframe, the offence will not apply if the person has a reasonable excuse for noncompliance²⁹¹

²⁸³ Bill, cl 164 (proposed Act, s 164).

²⁸⁴ Statement of compatibility, p 15.

²⁸⁵ Statement of compatibility, p 16.

²⁸⁶ Bill, cl 181 (proposed Act, s 181).

²⁸⁷ Bill, cl 182 (proposed Act, s 182).

²⁸⁸ Statement of compatibility, p 17.

²⁸⁹ Bill, cl 181(3) (proposed Act, s 181(3)).

²⁹⁰ Bill, cl 181(6) (proposed Act, s 181(6)).

²⁹¹ Bill, cl 182(2) (proposed Act, s 182(2)).

- the collection and use of the personal information will be ‘subject to the requirements of the Information Privacy Act, including the Information Privacy Principles that require the corporation to make the individual aware of the purpose of the collection of information and its potential disclosure’.²⁹²

Committee comment

The committee is satisfied that the potential limitations on a person’s right to public life and right to privacy are reasonable and demonstrably justified when balanced against the public interest in ensuring the council is constituted with the appropriate expertise, and that the exercise of its functions is transparent, accountable, and consistent with good governance. The committee notes that the provisions are similar to equivalent limitations imposed for other statutory boards and councils, and that a number of informational safeguards apply.

5.3 Stakeholder views and the department’s response

5.3.1 Role of the council

The role of the council was supported by the Pharmaceutical Society and TerryWhite Chemmart.²⁹³ The Pharmacy Guild and the Interim Pharmacy Roundtable also supported the role of the council but proposed some modifications, which are outlined in the sections below.²⁹⁴ The Pharmacy Guild referred to the QAO report which found a lack of enforcement and oversight of ownership rules by Queensland Health, and stated that the new council would have ‘the sole focus of understanding who owns these pharmacies’.²⁹⁵

The Productivity Commission, AMAQ, RACGP and some pharmacy owners opposed the establishment of the council as a regulatory body. The Productivity Commission advised that it does not support the establishment of the council as a new statutory body nor 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, including the former Queensland Productivity Commission’s (QPC) 2018 report on ‘Cost-benefit analysis of establishing a pharmacy council’. It also noted that the Health Committee’s inquiry found there was ‘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’.²⁹⁶

The Productivity Commission and AMAQ referred to the 2018 report of the former QPC which found ‘administering the ownership regulations more intensively, as proposed by creating a pharmacy council, is unlikely to produce material benefits’, and that the results of the inquiry suggested ‘the Queensland community will be unambiguously worse off with the transfer of the functions from Queensland Health’.²⁹⁷ The AMAQ also raised concerns about ‘a new statutory body by which established businesses can exert direct control over both entry to their market and their own competitors’.²⁹⁸

The RACGP also referred to the former QPC’s 2018 report and pointed to the findings there is no evidence that:

- other Australian states with pharmacy councils have better outcomes for producers and consumers than Queensland

²⁹² Statement of compatibility, p 18.

²⁹³ Submission 71, p 10; submission 82, p 2.

²⁹⁴ Submission 52, p 5; submission 71, p 10; submission 82, p 2; submission 77, p 1.

²⁹⁵ Public hearing transcript, Brisbane, 12 February 2024, p 4.

²⁹⁶ Submission 70, p 4.

²⁹⁷ Submission 70, p 4; submission 35, p 10.

²⁹⁸ Public hearing transcript, Brisbane, 12 February 2024, p 10.

- that the existing premises regulation is resulting in unsafe conditions in pharmacies
- more intensive enforcement of the ownership restrictions would provide greater consumer benefits.²⁹⁹

The Productivity Commission further commented on the fees associated with the establishment and operation of the council, stating:

These fees will inevitably increase the cost of operating a community pharmacy in Queensland and will inevitably be, partially at least, passed through to consumers, or there may be some offsetting cost savings through the Department of Health no longer having a direct role with the ownership rules. The Productivity Commission is unaware of the existence or size of these savings.³⁰⁰

Some pharmacy owners raised concerns that the transformation of the council's role from an advisory capacity to a regulatory one would add a 'significant' layer of bureaucracy.³⁰¹ Concerns were also raised about the introduction of 'substantial' costs with a number of fees and delays in the processing of the applications that require council approval. These submitters also referred to the 'lack of obligation for timely responses from the council', stating that this was 'particularly concerning and may lead to disruptions in commercial transactions'.³⁰²

5.3.1.1 *The department's response*

Queensland Health acknowledged that the establishment of a regulatory council does not align with the QPC Report findings, and advised:

The decision to establish a regulatory council rather than an advisory council was based on stakeholder feedback received during consultation on the Bill. Stakeholders expressed divergent views about the proposed framework for regulating pharmacy business ownership, including the proposal to establish an advisory council. The Guild and most pharmacy business owners who provided feedback on the Bill, submitted that the council should have regulatory and enforcement powers. They considered a regulatory council with practical experience in the pharmacy industry would be better placed to regulate pharmacy business ownership in Queensland.

A regulatory council will also ensure consistency with the approach taken in most other Australian jurisdictions including New South Wales, Victoria, South Australia and Western Australia, where pharmacy business ownership laws are administered by regulatory councils.³⁰³

Queensland Health also acknowledged the concerns raised by some submitters about the regulatory burden associated with the council but advised:

... the Guild and most pharmacy business owners who provided feedback during development of the Bill strongly supported improved regulation and enforcement of pharmacy ownership requirements in Queensland by a pharmacy council rather than Queensland Health. This Bill responds to this feedback.³⁰⁴

5.3.2 **Functions of the council**

The Pharmaceutical Society supported the functions of the council, noting that they do not duplicate the existing legislative framework.³⁰⁵

In respect of the Bill's provision for the council's functions to include 'any other function given to the council under this Act or another Act',³⁰⁶ the Pharmacy Guild, the Interim Pharmacy Roundtable and a number of pharmacy business owners submitted that as the council will be funded by the industry

²⁹⁹ Submission 119, pp 7-8.

³⁰⁰ Public hearing transcript, Brisbane, 12 February 2024, p 6.

³⁰¹ See, for example, submissions 109, 114, 115.

³⁰² See, for example, submissions 88, 99, 109, 115, 121.

³⁰³ Queensland Health, correspondence, 2 February 2024, p 5.

³⁰⁴ Queensland Health, correspondence, 2 February 2024, p 5.

³⁰⁵ Submission 71, p 10.

³⁰⁶ Bill, cl 147(1)(g) (proposed Act, s 147(1)(g)).

to perform a critical function in registering and licensing pharmacy businesses, its jurisdiction should remain focused solely on matters concerning pharmacy business ownership and licensing. These stakeholders considered the council should not have functions related to commenting on other acts, with some referring to the Pharmacy Council of NSW as having too broad a remit.³⁰⁷

5.3.2.1 *The department's response*

Queensland Health advised it 'is not currently anticipated that the council will be required to perform functions under another Act. However, this clause provides flexibility in the future should such a function become necessary or appropriate'.³⁰⁸

5.3.3 **Composition of the council**

The Pharmaceutical Society supported the 'proposed diversity of the members particularly the mandatory requirement that the Council must consist of at least one pharmacy business owner and one employee practising pharmacist'.³⁰⁹

The RACGP submitted that if the council proceeds, it agrees with the approach to setting a minimum number and no maximum number of members to the council.³¹⁰ However, both the RACGP and the AMAQ raised concerns about the independence of the council. The RACGP stated the pharmacy sector could 'begin to look like a self-regulated industry' given that non-pharmacist eligible persons are not mandatory and therefore there is no compulsion on a council to ensure a diverse membership.³¹¹ The RACGP also stated that the absence of council members who might represent consumers 'is worrisome'.³¹²

Both the RACGP and AMAQ also raised concerns about the management of conflicts of interest if the pharmacy council members were also pharmacy owners and were tasked with enforcing pharmacy ownership regulation.³¹³ The RACGP submitted that: 'Membership composition would become particularly important when the Council is ruling on decisions in which members with a declared conflict of interest would be required to remove themselves from the discussion and decision making and could effectively rule the group inquorate'.³¹⁴

The AMAQ also raised a concern that an industry-dominated institution, such as the proposed pharmacy council, may dampen innovation and competition in the industry at a cost to Queensland consumers.³¹⁵

In contrast, the Pharmacy Guild and the Interim Pharmacy Roundtable submitted that the council should be made up of a majority of pharmacy business owner members to ensure industry expertise, in keeping with other jurisdictions, and so that the council is able to function as intended.³¹⁶ The Interim Pharmacy Roundtable further explained that the 'regulatory strength of the new act relies on how proactively the council monitors and enforces compliance, and that effective oversight requires a majority of pharmacy business owners with relevant experience because the council will have the internal expertise it needs to execute its functions without the need for extensive and ongoing external counsel'.³¹⁷

³⁰⁷ See, for example, submissions 2, 23, 54, 80, 93, 118.

³⁰⁸ Queensland Health, correspondence, 2 February 2024, p 5.

³⁰⁹ Submission 71, p 10.

³¹⁰ Submission 119, p 8.

³¹¹ Submission 119, p 8.

³¹² Submission 119, p 8.

³¹³ Submission 35, p 10, submission 119, p 8.

³¹⁴ Submission 119, p 8.

³¹⁵ Submission 35, p 10.

³¹⁶ Submission 52, p 9; submission 77, p 1.

³¹⁷ Public hearing transcript, Brisbane, 12 February 2024, p 26.

Most pharmacy business owners who provided submissions referred to the absence of clear guidelines on the membership of the council allowing potential imbalances where pharmacy business owners might be outnumbered. These submitters called for clear guidelines for council member composition, encompassing pharmacy owners, employees, consumer representatives, legal experts, among others.³¹⁸

5.3.3.1 The department's response

Queensland Health referred to the Bill providing for the council to have at least 5 members (and more if considered appropriate by the minister and Governor-in-Council), with a mix of experience and skills in law, accounting, business, financial management, as well as representatives from the pharmacy sector (both owners and employees), consumer representatives, or persons with expertise in another area or field which the Minister considers necessary or beneficial for the council to perform its functions.³¹⁹

In support of these provisions as drafted, the department advised:

The council will be required to make decisions on a variety of legal, consumer and financial issues. The Bill therefore allows the Minister to recommend members who have qualifications and skills in these area in addition to those who have experience owning a pharmacy business. It is common across the statute book for statutory bodies to have a membership comprised of individuals with a range of skills, qualifications and experience that are complementary, to ensure that the functions of the body can be fulfilled and good governance achieved. The appointment process for the council will carefully consider the balance of skills and experience needed to ensure well-rounded and effective membership.

The proposed membership of the council also gives effect to the Committee's recommendation that the council include members with expertise in law, accounting, and business management and members representing the pharmacy sector and consumers.³²⁰

5.3.4 Council member terms

The Pharmacy Guild, Interim Pharmacy Roundtable and most pharmacy business owners who provided submissions noted that there is currently no limit to the number of terms that a member of the council is permitted to serve and that the term of appointment of 4 years is a longer term than that of a council member in other jurisdictions. They identified it as a matter of concern in relation to accountability and diversity of representation over time.³²¹

To ensure that the council remains reflective of contemporary community pharmacy practice and incorporates a diverse range of skills, submitters suggested that the Bill be amended to limit the number of consecutive terms, and terms in total, that a member is permitted to serve to a maximum of 2 terms.³²²

5.3.4.1 The department's response

Queensland Health acknowledged that the Bill does not prescribe a maximum number of terms that a member can serve, and advised:

Whether a member is suitable for reappointment will be a matter for the Governor in Council, on recommendation of the Minister, having regard to the operational needs of the council and the skills, experience and qualifications of the member and other members. As drafted, the Bill provides Governor in Council with sufficient flexibility to ensure that the most suitable individuals are appointed.³²³

³¹⁸ See, for example, submissions 19, 38, 69, 122.

³¹⁹ Queensland Health, correspondence, 2 February 2024, p 6.

³²⁰ Queensland Health, correspondence, 2 February 2024, p 5.

³²¹ See, for example, submissions 12, 16, 23, 46, 60, 74, 90, 101.

³²² See, for example, submissions 27, 41, 58, 93, 107.

³²³ Queensland Health, correspondence, 2 February 2024, p 6.

6 Licensing framework

Owners of pharmacy businesses are not currently required to be licensed in Queensland, and premises do not need to be registered,³²⁴ though various regulatory requirements under Part 4 of the Health Regulation 1996 apply to the operation of a pharmacy business.

During the Health Committee's inquiry, the QAO Report included findings that under current administrative processes, Queensland Health does not:

- routinely involve obtaining sufficient information to allow it to determine if undeclared pharmacy ownership exists, such as people owning multiple pharmacies through different corporate structures or trusts
- monitor if pharmacies make any changes to their structure or commercial arrangements after notifying Queensland Health of ownership changes.³²⁵

The QAO suggested it could mitigate these risks by actively monitoring or annually reviewing pharmacy ownerships.³²⁶ In addition, in an effort to recognise the more complex business structures and commercial arrangements pharmacy businesses now use, the QAO Report, and subsequently the Health Committee, recommended amendments be made to the 2001 Act to enable Queensland Health to more effectively manage the pharmacy ownership notification process.³²⁷

The Government Response to the Health Committee report committed to establishing a licensing framework to support the regulation of pharmacy ownership in Queensland, which would, in part, provide a mechanism for enforcing and monitoring ongoing compliance with ownership provisions.³²⁸

6.1 Licensing framework

The Bill serves to implement the Government Response, by introducing a licensing framework comprising the following:

- a natural person or corporation is only able to apply for a pharmacy licence if the person or corporation is an eligible person (see section 2.1 for the definition of an eligible person)
- the council may only grant a licence if satisfied that the applicant is an eligible person, a fit and proper person, and does not own or hold a material interest in more than the maximum permitted number of pharmacy businesses (see section 2.3 for the maximum permitted number)
- when considering if the applicant is a fit and proper person, the matters the council will consider include whether the applicant is party to an agreement that provides a prohibited form of control of the business to a third party
- the council must also be satisfied that persons who hold a material interest in the business are entitled to do so
- the council also needs to be satisfied that the proposed premises for the business are authorised premises – that is, they comply with the premise standards prescribed by regulation and are not located in, or directly accessible from, a supermarket.³²⁹

6.2 Information for licensing decisions

To support the council in undertaking licensing decisions, the Bill includes provisions enabling the council to request further information to make those decisions, including information:

³²⁴ Explanatory notes, p 4.

³²⁵ Explanatory notes, pp 4, 5.

³²⁶ Explanatory notes, p 5.

³²⁷ Explanatory notes, p 5.

³²⁸ Explanatory notes, p 5.

³²⁹ Explanatory notes, p 8; Queensland Health, correspondence, 8 December 2023, p 2. See also Bill, pts 4 and 5 (proposed Act, pts 4 and 5).

- required to determine whether the licence holder is an eligible person, or a fit and proper person to own a pharmacy business
- required to determine whether a person holds a material interest in the pharmacy business to which the licence relates, or
- otherwise considered necessary for the administration of the Act.³³⁰

The Bill also allows the council to request further information or documents relevant to any application.³³¹

6.3 Applications for a license

Under the proposed provisions, applications for licenses could be made by 2 or more people. If the application is made jointly by 2 or more applicants, the council may decide to grant, or refuse to grant, the pharmacy business licence to one or more, but not all, the applicants.³³²

In addition, the council would be empowered to impose conditions on a pharmacy business licence that the council considers appropriate.³³³ Queensland Health advised that the clause allowing for the imposition of conditions is designed to be flexible and to allow the council to ‘respond as necessary’, providing the following example:

... the bill requires a licence to be owned for each business, so there may be a number of owners under that particular licence. The bill facilitates the council imposing a condition on a licence instead of cancelling a licence, where one of the owners has done something that may lead to cancellation. They may impose, for example, a condition that that owner not be involved in carrying on the business rather than cancel the licence for all of the owners.³³⁴

The Bill contains provisions relating to surrender, suspension and cancellation of licences. A licence can be suspended in a variety of circumstances, including for example:

- where the licence was granted, renewed or restored because of materially incorrect, false or misleading information
- where the licence holder, or a director or shareholder of the licence holder, has contravened a condition of the licence, the Act, the Health Practitioner Regulation National Law, the Medicines and Poisons Act, or
- where the licence holder is a practising pharmacist whose registration under the Health Practitioner Regulation National Law has been suspended.³³⁵

A licence may be cancelled in various circumstances, including:

- where the licence holder is no longer an eligible person or fit and proper person or
- where the licence holder holds an interest in more than the maximum permitted number of pharmacy businesses.³³⁶

If the council proposes to suspend or cancel a licence, the council must issue the licence holder with a show cause notice, allowing the licence holder to respond to the proposed action. If there are grounds to suspend or cancel a licence, and carrying on the pharmacy business to which the licence

³³⁰ Explanatory notes, p 10.

³³¹ Explanatory notes, p 10.

³³² Bill, cl 29(2) (proposed Act, s 29(2)).

³³³ Bill, cl 30 (proposed Act, s 30).

³³⁴ Public briefing transcript, Brisbane, 14 December 2023, p 5.

³³⁵ Explanatory notes, p 9.

³³⁶ Explanatory notes, p 9.

relates poses an immediate risk to public health or safety, the council may immediately suspend or cancel the licence without a show cause notice.³³⁷

The obligations of licence holders under the Bill include:

- ensuring an authorised pharmacist for the business is personally present at the licensed premises for the business at all times the business is open
- licence holders, and their directors and shareholders, being required to disclose any convictions for indictable offences that occur during the term of the licence, and
- notifying the council of changes of circumstances relating to a matter considered in determining whether the licence holder is a fit and proper person.

6.4 Changes to a licence

Under the Bill, licences must not be sold or transferred to any other person. If a licence holder sells their business, the licence holder must surrender their licence and the purchaser must apply for a licence.³³⁸

A licence holder may apply for certain changes to a licence under the Bill, including adding or removing a licence holder (such as when an existing licence holder who is a sole trader enters into a partnership with another pharmacist, or a partnership ends), changing the licensed premises, and adding or removing a material interest holder or director.³³⁹

The holder of the pharmacy business licence for the pharmacy business must, unless the holder has a reasonable excuse, give the council notice of a change of postal address, phone number or email address for a licensed pharmacy business within 14 days after the change. A maximum penalty of 50 penalty units (\$7,740) applies if the holder of the license does not comply.³⁴⁰

The Bill provides for an annual licence renewal process, as intended to support regular and effective oversight of compliance with legislative requirements, including the ownership requirements.³⁴¹

The Bill provides that a person affected by a licensing decision may apply for internal review of the decision and subsequently for Queensland Civil and Administrative Tribunal (QCAT) review of the decision.³⁴² The ability seek a review includes for decisions to cancel a licence, suspend a licence or impose conditions.³⁴³

Licensing fees will be prescribed by regulation before commencement of the licensing scheme. Proposed licensing fees are discussed further in the next section.³⁴⁴

Offences with a maximum penalty of 200 penalty units (\$30,960) will apply if a person carries on a pharmacy business without a licence or at premises which are not licensed premises.³⁴⁵ This is consistent with existing ownership offences in the 2001 Act.³⁴⁶

If a corporation commits this offence (or otherwise owns more than the permitted number of pharmacies, operates a pharmacy business at unlicensed premises, or fails to give notice of a change relating to a licence holder's fit and proper person status, the contact details for licensed premises, or

³³⁷ Explanatory notes, p 9.

³³⁸ Explanatory notes, p 9.

³³⁹ Bill, Part 4, Division 3; Explanatory notes, p 9.

³⁴⁰ Bill, cl 78 (proposed Act, s 78).

³⁴¹ Explanatory notes, p 9.

³⁴² Queensland Health, correspondence, 8 December 2023, p 2.

³⁴³ Public briefing transcript, Brisbane, 14 December 2023, p 7.

³⁴⁴ Queensland Health, correspondence, 8 December 2023, p 2.

³⁴⁵ Bill, cls 20 and 21 (proposed Act, ss 20 and 21).

³⁴⁶ Explanatory notes, p 8.

the death of a joint licence holder), the executive officer of the corporation is also deemed to have committed the offence if:

- the officer authorised or permitted the corporation's conduct constituting the offence, or
- was knowingly concerned in the corporation's conduct constituting the offence, either directly or indirectly.³⁴⁷

6.5 Proposed fee framework

A tiered fee approach is proposed to ensure licensing fees reflect the relative complexity of pharmacy ownership structures and corresponding regulatory effort to administer licence requirements and monitor ongoing compliance. The cost of a licence application associated with a tier reflects the cost of assessing and monitoring compliance for that tier.³⁴⁸ Table 1 in Appendix D shows the proposed recurrent fees for each tier.

The fee structure also includes a number of non-recurrent fees for licence changes, including fees:

- for an application to add or remove a person from an existing licence
- for an application for a change of pharmacy premises
- associated with inspections or re-inspections (if required), and
- associated with assessment of a trust or other commercial arrangement (if required).³⁴⁹

Table 2 of Appendix D shows the proposed non-recurrent fees.

The proposed fees and charges are based on cost recovery. Queensland Health advised that all fees will be indexed annually in line with government indexation policy.³⁵⁰

6.6 Issues of fundamental legislative principle

6.6.1 Administrative power and natural justice

The *Legislative Standards Act 1992* makes clear that:

- legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review³⁵¹
- legislation should be also consistent with the principles of natural justice.³⁵²

In respect of natural justice, this includes the right to be heard, being afforded procedural fairness, and having an unbiased decision maker.³⁵³

As noted above, the Bill would establish the council with proposed functions including deciding applications for pharmacy business licences and changing, suspending or cancelling pharmacy business licences.³⁵⁴ This potentially raises issues of administrative power, due to the impact these decisions could have on individual pharmacy owners.

³⁴⁷ Bill, cl 203 (proposed Act, s 203).

³⁴⁸ Queensland Health, correspondence, 2 February 2024, p 3.

³⁴⁹ Queensland Health, correspondence, 2 February 2024, p 3.

³⁵⁰ Queensland Health, correspondence, 2 February 2024, p 3.

³⁵¹ *Legislative Standards Act 1992*, s 4(3)(a).

³⁵² *Legislative Standards Act 1992*, s 4(3)(b).

³⁵³ OQPC, Notebook, pp 24-32.

³⁵⁴ Bill, cl 143 (proposed Act, s 143).

6.6.1.1 *Licensing – Fit and proper person test*

The Bill sets out the criteria upon which a council must decide an application for a pharmacy licence, which include that the applicant is a 'fit and proper person' to own a pharmacy business.³⁵⁵ The factors that the council *must* have regard to when deciding if a person is a fit and proper person³⁵⁶ include, for example, whether the person has previously held a pharmacy business licence and any conditions on that licence, or if that licence was suspended or cancelled³⁵⁷. However, there is also discretion for the council to consider *another matter the council considers relevant*.³⁵⁸ This goes to whether the power is appropriately defined.

The overall intent of the fit and proper person test is to ensure individuals with access to and control over pharmacy businesses have high levels of integrity and professionalism.³⁵⁹ The explanatory notes justify the discretionary power given to the council on the basis that 'there are various circumstances that are relevant to a person being inappropriate to hold a licence and it would not be possible to provide for every circumstance in legislation'.³⁶⁰ Further, the notes highlight that the use of a discretionary fit and proper person test is used in a range of legislative schemes involving protection of the public, including for liquor licences and permits under the *Liquor Act 1992*,³⁶¹ for admission to the legal profession under the *Legal Profession Act 2007*,³⁶² and eligibility for registration as an engineer under the *Professional Engineers Act 2002*.³⁶³

Additionally, the notes state that to balance the exercise of discretionary power, council decisions will be subject to internal review under the proposed Act, and external review to the QCAT.³⁶⁴

Committee comment

The committee is satisfied that the provision for a discretionary power for the council to determine whether a person is a 'fit and proper' person to hold a pharmacy business is justified in the circumstances, noting the overall intent of the provisions and the availability of internal and external reviews of licence decisions.

³⁵⁵ Bill, cl 28 (proposed Act, s 28). The other criteria include that the applicant is an eligible person; does not already hold an interest in the maximum number of pharmacies permitted under clause 17; the premises are authorised premises; the persons who hold a material interest in the pharmacy business are permitted to hold such interests under clause 16 and do not already hold an interest in the maximum number of businesses permitted under clause 17.

³⁵⁶ These factors are also relevant to a decision by the council to add a licence holder (clause 40) or material interest holder (clause 55) to an existing licence, or cancel an existing licence (clause 66).

³⁵⁷ Bill, cl 72 (proposed Act, s 72).

³⁵⁸ Bill, cl 72(j) (proposed Act, s 72(j)).

³⁵⁹ Explanatory notes, pp 17-18.

³⁶⁰ Explanatory notes, p 18.

³⁶¹ See section 107 of that Act.

³⁶² See section 31 of that Act.

³⁶³ See section 11 of that Act.

³⁶⁴ Explanatory notes, p 18. See also pt 10 of the Bill, which contains the review processes available for decisions made under the proposed Act, which include internal review to council (cls 188, 189), external review to QCAT (cl 192) and appeal to a court against an internal review decision (clause 193). The provision for internal and external review for decisions made under the proposed Act are consistent with principles of natural justice (*Legislative Standards Act 1992*, s 4(3)(b)).

6.6.1.2 *Licensing – changes, suspension, cancellations*

As noted above, in addition to being able to grant a licence,³⁶⁵ or grant a licence with conditions,³⁶⁶ the council has the power to renew a licence,³⁶⁷ make changes to a licence³⁶⁸ or suspend or cancel a licence.³⁶⁹ As with assessments of whether a person is a fit and proper person, a number of these licence decisions can be made at the council's discretion. In addition to raising an issue of administrative power, considerations of natural justice – and particularly procedural fairness – are relevant from a fundamental legislative principle perspective.

If the council 'reasonably suspects' a person is not the owner of the pharmacy business to which the licence relates, the council may remove the person as holder of the licence.³⁷⁰ The council may also remove a person if the council reasonably suspects that a licence holder is no longer a fit and proper person to hold a licence.³⁷¹ However, a person must be given an information notice if a decision is made to remove them from a licence, which means they can apply for review under the proposed Act.³⁷²

Similarly, if the council 'reasonably believes it is necessary in the circumstances' to change the conditions of a licence to ensure the proper operations of a pharmacy or the health and wellbeing of pharmacy customers, it may do so.³⁷³ There is, however, a show cause process contained in the proposed Act which provides the licence holder with 28 days to respond to the proposed changes.³⁷⁴ If the council goes ahead with a decision to change the conditions of a licence, an information notice must be provided to the licence holder which allows them access to the review processes under the proposed Act.³⁷⁵

The explanatory notes provide an example of when this power may be used:

... if the relevant pharmacy business is located in a rural or remote area and cancelling or suspending the licence would have the effect of preventing people from accessing necessary medicines and health care advice. The council may instead, for example, impose a condition requiring that a practising pharmacist other than the licence holder carry on the business for a prescribed period.³⁷⁶

The explanatory notes state that the circumstances in which these powers will be used are likely to be very limited, and that in these cases, the council must have either a 'reasonable belief' or a 'reasonable suspicion' to exercise the power.³⁷⁷

The council also has discretion to suspend or cancel a licence if it reasonably suspects the relevant criteria are met³⁷⁸ (for example, council may suspend a licence if it reasonably suspects the licensed premises for the licence are not authorised premises,³⁷⁹ or cancel a licence if it reasonably suspects a holder of a licence is not an eligible person³⁸⁰). However, before a decision is made, the show cause process under the proposed Act would provide the holder of the licence the opportunity to respond

³⁶⁵ Bill, cl 29 (proposed Act, s 29).

³⁶⁶ Bill, cl 30 (proposed Act, s 30).

³⁶⁷ Bill, pt 4, div 2 (proposed Act, pt 4 div 2).

³⁶⁸ Bill, pt 4, div 3 (proposed Act, pt 4, div 3).

³⁶⁹ Bill, pt 4, div 4 (proposed Act, pt 4, div 4).

³⁷⁰ Bill, cl 47 (proposed Act, s 47).

³⁷¹ Bill, cls 47, 66 (proposed Act, ss 47, 66).

³⁷² Bill, cl 47(2) (proposed Act, s 47(2)). Review processes are set out in Part 10 of the Bill.

³⁷³ Bill, cl 63 (proposed Act, s 63).

³⁷⁴ Bill, cl 64 (proposed Act, s 64).

³⁷⁵ Bill, cl 63(3) (proposed Act, s 63(3)). Review processes are set out in pt 10 of the Bill.

³⁷⁶ Explanatory notes, p 14.

³⁷⁷ Explanatory notes, p 15.

³⁷⁸ See clause 65 of the Bill for criteria relating to suspension, and clause 66 for criteria relating to cancellation.

³⁷⁹ Bill, cl 65(1)(d) (proposed Act, s 65(1)(d)).

³⁸⁰ Bill, cl 66(1)(b) (proposed Act, s 66(1)(b)).

to the proposed suspension or cancellation.^{381,382} If the council makes a decision to suspend or cancel a licence, it must provide the affected person with an information notice (meaning the decisions are subject to the review processes under the proposed Act).

According to the explanatory notes, the power to suspend or cancel a licence is necessary to achieve the purposes of the proposed Act in promoting the professional, safe and competent provision of pharmacy services and maintaining public confidence in the pharmacy profession.³⁸³

Committee comment

The committee is satisfied that the discretionary powers given to the council to make changes to individual pharmacy business licences are reasonable in the circumstances, noting the availability for internal and external review, that decisions must be based on a reasonable belief or suspicion, and the intent of the provisions to ensure continued access to quality health care and limit the impact on the remaining joint licence holders. The review processes and inclusion, in most instances, of a show cause process, also reduce the committee's concerns from a natural justice perspective.

6.6.2 Relevance and proportionality of penalties

To have sufficient regard for the rights and liberties of individuals, the consequences of legislation should be relevant and proportionate. In line with this, a penalty should be proportionate to the offence, and penalties within legislation should be consistent with each other.³⁸⁴

The Bill contains 38 offence provisions, including some that replicate or align with offences in the 2001 Act (as discussed in chapter 2) and other new offences to ensure the proper operation of the licensing framework (as well as to prohibit inappropriate external control, as discussed in chapter 4).³⁸⁵

The key offences, for which a maximum penalty of 200 penalty units (\$30,960)³⁸⁶ apply, include:

- failure to hold a pharmacy business licence³⁸⁷
- failure to comply with requirements for holding a material interest in a pharmacy³⁸⁸
- holding more than a maximum number of interests allowed in a pharmacy business³⁸⁹
- carrying on a pharmacy business that is not a licensed pharmacy business³⁹⁰
- failure to carry on a pharmacy business from a licensed premises³⁹¹
- exercising third-party control over a pharmacy business³⁹²
- transferring or selling (or receiving or buying) a pharmacy business licence³⁹³

³⁸¹ Bill, cl 67 (proposed Act, s 67).

³⁸² In limited cases, the Bill provides for immediate suspension or cancellation without a show cause process. This would occur where the council reasonably suspects grounds for suspension or cancellation exist, and carrying on the pharmacy business to which the licence relates will pose an immediate risk to public health or safety. Bill, cl 68 (proposed Act, s 68). Explanatory notes, p 16.

³⁸³ Explanatory notes, p 16. See also Bill, cl 3 (proposed Act, s 3).

³⁸⁴ *Legislative Standards Act 1992*, s 4(2)(a). See also OQPC, Notebook, p 120.

³⁸⁵ Explanatory notes, p 29.

³⁸⁶ The value of a penalty unit is \$154.80: Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, ss 5, 5A.

³⁸⁷ Bill, cl 15 (proposed Act, s 15).

³⁸⁸ Bill, cl 16 (proposed Act, s 16).

³⁸⁹ Bill, cl 17 (proposed Act, s 17).

³⁹⁰ Bill, cl 19 (proposed Act, s 19).

³⁹¹ Bill, cl 20 (proposed Act, s 20).

³⁹² Bill, cl 22 (proposed Act, s 22).

³⁹³ Bill, cl 70 (proposed Act, s 70).

- failure of a temporary operator to carry on a pharmacy business from the licensed premises or comply with relevant conditions.³⁹⁴

The explanatory notes emphasise that the maximum penalty for these offences is consistent with existing penalties for similar offences in the 2001 Act, and further, assert that that this level of penalty is necessary to ensure the objectives of the proposed Act are achieved (in promoting the professional, safe and competent provision of pharmacy services by pharmacy businesses and maintaining public confidence in the pharmacy profession).³⁹⁵

Several other offences attract a maximum penalty of 100 penalty units (\$15,480), mostly concerning the provision of information by licence holders or council members. For example, it is an offence for a licence holder to provide false or misleading information in relation to a pharmacy business licence or other application under the proposed Act.³⁹⁶ It is also an offence for licence holders to fail to notify the council if they are convicted of an indictable offence during the term of the licence.³⁹⁷ Similarly, it is an offence for council members or the chief executive to fail to notify the council if they are convicted of an indictable offence during their appointment,³⁹⁸ or for council members to fail to disclose if they have a personal interest in a matter being considered by council.³⁹⁹

The justification for these offence provisions and corresponding penalties is that ‘honest self-reporting is critical to the operation of the licensing framework’⁴⁰⁰ and that council members and licence holders must be held to high standards of integrity and propriety.⁴⁰¹

The majority of offences proposed by the Bill have corresponding maximum penalties of 50 penalty units (\$7,740), and relate to the licensing framework (such as for a failure to surrender a licence when no longer an eligible person⁴⁰² and failure to notify a change in circumstances relating to the fit and proper person condition⁴⁰³) or the investigation and enforcement framework (discussed further in chapter 7 and including, for example, providing an inspector with false or misleading information⁴⁰⁴ or failing to comply with a document production requirement⁴⁰⁵).⁴⁰⁶

The explanatory notes justify these offence and penalty provisions on the basis of deterrence and ensuring compliance with, and effective enforcement of, the proposed Act.⁴⁰⁷ Additionally, the notes advise that the penalties for these offences are ‘equivalent or lower’ than penalties for similar offences in other health legislation such as the *Hospital and Health Boards Act 2011* and the *Medicines and Poisons Act*.⁴⁰⁸

Finally, there are 2 offences with corresponding penalties of 10 penalty units (\$1,548), being failure to notify the council if a licence holder temporarily stops carrying on their business for more than one

³⁹⁴ Bill, cl 88 (proposed Act, s 88).

³⁹⁵ Explanatory notes, p 30.

³⁹⁶ Bill, cl 71 (proposed Act, s 71).

³⁹⁷ Bill, cl 75 (proposed Act, s 75).

³⁹⁸ Bill, cl 182 (proposed Act, s 182).

³⁹⁹ Bill, cl 164 (proposed Act, s 164).

⁴⁰⁰ Explanatory notes, p 30.

⁴⁰¹ Explanatory notes, p 32.

⁴⁰² Bill, cl 69 (proposed Act, s 69).

⁴⁰³ Bill, cl 76 (proposed Act, s 76).

⁴⁰⁴ Bill, cl 140 (proposed Act, s 140).

⁴⁰⁵ Bill, cl 133 (proposed Act, s 133).

⁴⁰⁶ See also, Bill cls 21, 77, 78, 79, 81, 88, 115, 120, 121, 131, 134, 136, 141, 205 and 208 (proposed Act, ss 21, 77, 78, 79, 81, 88, 115, 120, 121, 131, 134, 136, 141, 205 and 208) for further offences that attract a maximum of 50 penalty units.

⁴⁰⁷ Explanatory notes, p 31.

⁴⁰⁸ Explanatory notes, p 31.

week,⁴⁰⁹ and the failure of an inspector to return an identity card within 21 days of their office ending.⁴¹⁰ The explanatory notes justify these offences and penalties on the basis of keeping the public pharmacy register up to date and ensuring inspectors cannot use their cards to falsely represent themselves as current inspectors if they are not.⁴¹¹

Committee comment

Overall, the proposed maximum penalties appear proportionate to the conduct to which they relate, with more serious offences attracting higher penalties than less serious offences. The committee also notes that the penalties are largely consistent with equivalent regimes. As such, the committee is satisfied that these provisions have sufficient regard for individual rights and liberties.

6.7 Human rights considerations

6.7.1 Right to privacy and reputation

As noted in chapter 5.2, the right to privacy protects individuals against unlawful or arbitrary interferences with their privacy, family, home, or correspondence. Section 25(2) of the *Human Rights Act 2019* recognises that it also includes the right not to have one's reputation unlawfully attacked.

It can be identified that the process of assessing whether a person is eligible for a pharmacy licence, and particularly whether they are a fit and proper person, may constitute a limitation on their privacy or an interference with their reputation. Specifically, the assessment of eligibility will require disclosure of information relating to criminal and financial history, history of involvement with corporate governance, and any disciplinary proceedings from professional bodies.

However, the limitation inherent in gathering this personal information to assess eligibility is not arbitrary but rather goes directly to the purpose of the assessment, as intended to ensure that persons who own and operate pharmacies are suitably qualified to deliver the important health services that pharmacies provide to the community. While it could be argued it would be less restrictive to require less information from applicants, this may hamper the assessment of eligibility and undermine the purpose of the provisions. In this regard, the statement of compatibility notes:

Such information will bring to light any history or incidents that may indicate that a person may not operate the pharmacy business in a safe and competent fashion, for example, previous convictions relating to serious drug offences, or cancellation of professional registration for unsafe practices.⁴¹²

The statement also highlights the Bill's inclusion of safeguards to ensure that the information is used only for appropriate purposes, including:

- the provision for an offence for the disclosure of confidential information unless the disclosure is required or permitted by the Bill
- a requirement for the council to seek a person's written consent to obtain their criminal history report (thus allowing them to deny consent if they so wish), and
- a requirement for the criminal history information to be destroyed following use for the purpose for which it was obtained.⁴¹³

Committee comment

The committee is satisfied that the information required to be disclosed appears necessary for the assessment, and that any limitation on the right to privacy and reputation is justified and appropriate for achieving the objectives of the licensing regime.

⁴⁰⁹ Bill, cl 80 (proposed Act, s 80).

⁴¹⁰ Bill, cl 100 (proposed Act, s 100).

⁴¹¹ Explanatory notes, p 31.

⁴¹² Statement of compatibility, p 8.

⁴¹³ Statement of compatibility, p 9.

6.7.2 Right to a fair hearing and rights in criminal proceedings

As discussed in chapter 6.7.1 above, the Bill's provisions for the council (and its delegates) to make decisions regarding pharmacy licences have implications for natural justice, which are also relevant to the right to a fair hearing and rights in criminal proceedings, as recognised under sections 31 and 32 of the *Human Rights Act 2019* respectively.

In this regard, the statement of compatibility acknowledges that the council's power to decide to refuse an application, set a condition on the licence, or immediately suspend or cancel a licence, can be exercised without first affording the impacted applicant or licence holder an opportunity to respond to the decision and be heard.⁴¹⁴ Further, the Bill's replication of the existing provisions in the 2001 Act which deem that executive officers can be taken to have committed the offences of their corporate entity create a presumption of guilt or responsibility. This relieves the obligation on the prosecution to prove the elements of the offence for the person to have committed it.⁴¹⁵

The statement advises that the purpose of the limitation on an applicant's right to be heard is to:

- ensure efficient functioning of the licensing scheme in achieving the objectives of the Bill, and
- empower council to 'act quickly to ameliorate an immediate risk to public health posed by the carrying on of a pharmacy business'.⁴¹⁶

In addition, with regard to the provisions for immediate suspension or cancellation of a licence: 'Requiring the council to issue a show cause notice and allowing the licence holder a period of time to respond would impair the council's ability to act quickly to address the immediate risk'.⁴¹⁷

Further, the statement emphasises that:

- the Bill provides for internal and external review processes which afford an opportunity for an individual to be heard, albeit after the decision, with the same effect
- a show cause process is available for other provisions enabling the council to set licence conditions to address non-immediate risks
- by participating in a statutory scheme, a person has, as a condition of participation, accepted these limitations.⁴¹⁸

In relation to the 'deemed executive liability provision',⁴¹⁹ the statement of compatibility emphasises that it applies to the relevant offences only where the executive officers authorise, permit, or are knowingly concerned in the corporation's conduct constituting the offence.⁴²⁰ Further:

It is appropriate that an executive officer who is in a position to influence the conduct of a corporation be required to ensure the corporation complies with the legislation. The executive officer who is responsible for a contravention of the legislation should be accountable for their actions and not be able to 'hide' behind the corporation.⁴²¹

Committee comment

The committee is satisfied that the provisions governing council licensing decisions strike an appropriate balance in ensuring public safety through streamlined and efficient decision making, while still offering scheme participants the opportunity to seek an internal or external review.

⁴¹⁴ Statement of compatibility, p 10.

⁴¹⁵ Statement of compatibility, p 26.

⁴¹⁶ Statement of compatibility, p 11.

⁴¹⁷ Statement of compatibility, p 10.

⁴¹⁸ Statement of compatibility, p 13.

⁴¹⁹ Bill, cl 203 (proposed s 203).

⁴²⁰ Statement of compatibility, p 27. See Bill, cl 203.

⁴²¹ Statement of compatibility, p 26.

Further, the committee considers that the replication of the existing executive liability provisions under the 2001 Act is reasonably and demonstrably justified, serving to ensure clear lines of accountability where executive officers of corporate entities allow or are knowingly involved in breaches of the licensing scheme.

6.8 Stakeholder views

The Pharmacy Guild and the Pharmaceutical Society supported the establishment of a licensing framework for the ownership of and interests in pharmacy businesses.⁴²²

Community pharmacists and owners of 4 Queensland pharmacies, Neil and Helen Owen, were broadly supportive of the Bill's provisions because: 'Unfortunately, the previous Act and administration by Queensland Health falls short of upholding the legislative intent by not clearly determining the true financial and managerial control of pharmacies, as highlighted by the 2018 Queensland Audit Office (QAO) report'.⁴²³ These submitters called for 'significant enough penalties to ensure compliance of third parties contracts to prevent revenue syphoning'.⁴²⁴

In contrast, some pharmacy business owners opposed what they described as 'prescriptive legislation' and instead suggested that enhancing investigation and enforcement powers within the current legislative framework would address compliance issues without the need for the extensive regulatory overhaul proposed by the Bill.⁴²⁵

TerryWhite Chemmart expressed support for the licensing framework but raised 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'.⁴²⁶ To address concerns about the administrative compliance leading to 'extended or protracted timelines for consideration and approvals from the council', TerryWhite Chemmart suggested the council should be required to make a decision within a 'reasonable period of time', such as 30 days within receipt of an application.⁴²⁷

Some submitters raised issues with the level of control the Bill has over pharmacist's activities, and referred to the penalties associated with administrative matters, and the notification of change of contact details for licensed pharmacy business, as a particular concern.⁴²⁸ These submitters noted that the 'failure to notify even minor changes could lead to prosecution, summons, conviction, and fines up to \$7,740', which was described as 'disproportionate' and could possibly impose 'undue stress' on pharmacists facing personal challenges, such as the death of a partner or co-director.⁴²⁹ One submitter stated that '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'.⁴³⁰

The Productivity Commission opposed the introduction of a new licensing framework on the basis that:

- it would add to the red tape burden faced by pharmacy business owners⁴³¹
- it's not a targeted or proportionate policy response to monitoring and compliance issues because 'it is far from clear there is a problem that needs solving' in relation to noncompliance with the pharmacy ownership rules and it is 'unaware of any evidence to show that other

⁴²² Submission 52, p 5; submission 71, p 9.

⁴²³ Submission 30, p 1; Submission 31, p 2.

⁴²⁴ Submission 30, p 2; submission 31, p 1.

⁴²⁵ See, for example, submissions 91, 99, 100, 110, 113, 121.

⁴²⁶ Submission 82, p 6.

⁴²⁷ Submission 82, p 6.

⁴²⁸ See, for example, submissions 84, 86, 115.

⁴²⁹ See, for example, submissions 84, 86, 115.

⁴³⁰ Martin Dines, submission 73.

⁴³¹ Submission 70, p 3.

jurisdictions which have regulatory processes similar to those considered in the bill have better compliance with their pharmacy ownership laws than occurs in Queensland'.⁴³²

The consideration of whether an applicant is a 'fit and proper person' to own a pharmacy business was raised by a number of submitters. The Pharmacy Guild argued that the Bill must make it clear that if a contract, agreement or arrangement exists with a clause that authorises or permits a prohibited activity under the Bill, then the person(s) would not pass the fit and proper persons test under the licensing framework, and they must be refused a pharmacy business licence.⁴³³ The Interim Pharmacy Roundtable agreed with this argument, stating 'without such direction the policy intent is uncertain and the council's position is weakened'.⁴³⁴

In contrast, TerryWhite Chemmart expressed concerns that including consideration of whether an owner is party to a contract, agreement or arrangement containing a provision that is prohibited under the Bill, is 'inappropriate' because whether there is a breach 'may be a matter of contention, judgement, and consideration of the degree of control and the application of certain exemptions'. This submitter recommended that being party to such a contract should not be included as part of the 'fit and proper person' consideration.⁴³⁵

Owners of pharmacy businesses who opposed the Bill raised potential issues of subjectivity and control by the council, submitting that granting the council the authority to determine the 'fit and proper' status of individuals based on 'contentious contractual provisions' could lead to 'subjective judgments' and 'a direct threat to the autonomy of pharmacists in structuring their businesses'.⁴³⁶

Andrew Calabro and Daniel Calabro raised concerns in particular that the use of a 'fit and proper person' test would mean that a person would be subjected to character suitability assessments twice, once on registration as a pharmacist under the Health Practitioner Regulation National Law, and secondly by the proposed Pharmacy Council under the Bill on application for a licence for pharmacy ownership.⁴³⁷ These submitters suggested that a presumption should be applied in favour of an applicant or licence holder, to deem them a fit and proper person if they hold general registration as a pharmacist.

They also raised concerns that the 'fit and proper person' test includes consideration of whether the person, or a director or shareholder of the person, has contravened the Act, the Health Practitioner Regulation National Law or the Medicines and Poisons Act, whether or not the person, director or shareholder has been convicted of an offence for the contravention. The submitters stated that:

Punishing a person who has not been convicted of an offence is a breach of human rights. The clause also breaches a fundamental legislative principle as it does not have sufficient regard to the rights and liberties of individuals. Furthermore, the provision infringes upon the principle of the presumption of innocence. This is because an administrative power may be exercised to grant, suspend or cancel a licence based on a contravention without conviction.⁴³⁸

Andrew Calabro and Daniel Calabro also raised a number of other concerns about the licensing regime's consistency with fundamental legislative principles. The first of these was in relation to the council being able to act on having formed a reasonable suspicion, rather than a reasonable belief, in relation to:

- suspending or cancelling a licence

⁴³² Submission 70, p 3; public hearing transcript, Brisbane, 12 February 2024, p 6.

⁴³³ Submission 52, p 8.

⁴³⁴ Public hearing transcript, Brisbane, 12 February 2024, p 27.

⁴³⁵ Submission 82, p 6.

⁴³⁶ See, for example, submissions 75, 79, 88, 91, 100.

⁴³⁷ Submission 105, p 4.

⁴³⁸ Submission 105, p 4.

- immediately suspending or cancelling a licence action without a show cause notice (which requires a ground for suspending or cancelling the licence and an ‘immediate risk’ to public health or safety)
- removing a licence holder on the Council’s own initiative.⁴³⁹

These submitters argued that ‘the threshold test of a ‘reasonable suspicion’ is too low and not commensurate with the gravity of the consequences’, and added:

Suspending or cancelling a licence is a serious administrative action that should only occur if the Council forms a ‘reasonable belief’ that a set of circumstances exist. A ‘reasonable belief’ is a higher threshold that is commensurate with the consequences of acting. Therefore, the authors argue that the threshold test should be changed from a ‘reasonable suspicion’ to a ‘reasonable belief’.⁴⁴⁰

The submitters also argued that a reasonable suspicion in relation to the 2 limbs of immediately suspending or cancelling a licence without a show cause notice is also too low a threshold, and argue in addition that:

... given the consequences of taking immediate administrative action, the test in cl 68(1)(b) should require a ‘serious risk’ or a ‘significant risk’. A higher threshold test is required because taking immediate administrative action without a show cause notice is a breach of natural justice principles.⁴⁴¹

The Calabros also referred to the requirement of a licence holder to notify the Council of a temporary closure exceeding one week’s duration as ‘arbitrary and unnecessarily burdensome’. They provided examples of periods when closure for longer may be required, such as the impacts of a pandemic, small pharmacies in rural/remote areas who may be a single pharmacist or sole owner-operator who needs to take a period of annual leave (such as 10 days over Christmas), or the impact of natural disasters or unforeseen events. The submitters argued for an increase to 15 business days.⁴⁴²

Finally, on the issue of subdelegation by a council member or the chief executive officer of a function that has been delegated to them by the Council, these submitters noted that the administrative powers of the council include taking serious action such as suspending or cancelling a licence. The authors argue that subdelegating the power to suspend or cancel a licence to a member of the Council’s staff is a breach of the fundamental legislative principle which requires that the delegation of a power only occur in ‘appropriate cases and to appropriate persons’. The authors argue that such a severe administrative action should only be exercised by the council or a council member and not sub-delegated any further.⁴⁴³

6.9 The department’s response

In respect of stakeholder concerns about the increased burden of administrative compliance with the licensing requirements, Queensland Health advised: ‘The Bill is not prescriptive with regards to the process for renewals and as such it is open to the council to adopt a streamlined process if considered appropriate’.⁴⁴⁴

On the issue of the lack of an explicit timeframe for council decision-making in the Bill, Queensland Health stated:

The complexity of applications submitted to the council will vary significantly. Imposing a fixed timeframe would impede the council from giving thorough consideration to more complex applications. As drafted, the application provisions within the Bill allow the council the flexibility to process each application in a timeframe commensurate with its complexity, ensuring all applications are given proper consideration.

⁴³⁹ Submission 105, p 5.

⁴⁴⁰ Submission 105, p 5.

⁴⁴¹ Submission 105, p 6.

⁴⁴² Submission 105, pp 5-6.

⁴⁴³ Submission 105, p 5.

⁴⁴⁴ Queensland Health, correspondence, 2 February 2024, p 7.

Where the applicant is an existing licensing holder seeking a renewal of their licence, the Bill provides that the licence continues in force until the application is decided.

The Bill ensures that where the council has referred a commercial agreement to an external reviewer, for the purpose of seeking advice on whether the agreement contains an external control provision under clause 22(3), the reviewer must conduct the review and give a copy of the report to the council within 60 days. This ensures that the council's decision-making is not excessively delayed due to this review process.

Furthermore, the council has an overarching obligation under clause 147 to act independently, impartially and in the public interest in performing its functions.⁴⁴⁵

Queensland Health responded to the Productivity Commission's concerns that the licensing framework will add to the red tape burden faced by pharmacy business owners by advising:

Improved regulation and enforcement of pharmacy ownership requirements in Queensland has been strongly supported by the industry and by the body representing pharmacy business owners, the Guild. The Government Response to the Committee Report committed to introducing a licensing scheme to support the regulation of pharmacy ownership in Queensland as is common in other jurisdictions. The Government Response noted this would support implementation of a number of recommendations from the Committee Report and provide a mechanism for enforcing pharmacy ownership restrictions and monitoring ongoing compliance.⁴⁴⁶

On the issue of the 'fit and proper person' assessment, Queensland Health advised it does not consider it necessary to amend the Bill to provide that a licence cannot be granted if a person is party to an agreement that may be void under clause 22(3), as proposed by the Pharmacy Guild. The department advised:

As drafted, the Bill includes this as a factor to be considered by the council when determining whether a person is fit and proper to hold a licence. There may be circumstances where the council considers that a person may be fit and proper, notwithstanding the existence of such an agreement. The Bill provides the council with the appropriate level of flexibility to make decisions on a case-by-case basis.⁴⁴⁷

In response to TerryWhite Chemmart's recommendation that the consideration of engagement in a contract containing a prohibited activity under the Bill, Queensland Health advised that during consultation on the Bill, most industry stakeholders strongly supported the issue of external control being considered as part of the licensing framework.⁴⁴⁸

Queensland Health responded to Andrew and Daniel Calabro's concerns about the fit and proper test by advising:

The fit and proper person test in the Bill sets out several considerations relevant to ownership that would not be relevant or considered when determining if a person is fit and proper to practice as a pharmacist under the National Law. For example, the Bill requires consideration of whether a person has previously held a pharmacy business licence, any conditions placed on that licence, and whether a previously held licence has been suspended or cancelled. The Bill also requires consideration of whether the person is party to a contract, agreement or arrangement containing a provision to which clause 22(3) applies, and whether the person has been an insolvent under administration, or disqualified from managing corporations. The Bill also includes fit and proper criteria specific to corporations which would not apply to individuals applying for registration as a pharmacist – for example, whether the corporation has been placed into administration, receivership or liquidation, or wound up or deregistered under the *Corporations Act 2001*. As such, Queensland Health does not consider that a presumption should be applied in favour of an applicant or licence holder to deem them a fit and proper person if they hold general registration as a pharmacist.

The Bill provides that a licence may be suspended or cancelled if a person has contravened the Bill, the National Law or the Medicines and Poisons Act, and whether or not the person has been convicted of an offence for the contravention. This is also a matter that can be considered by the council when

⁴⁴⁵ Queensland Health, correspondence, 2 February 2024, p 7.

⁴⁴⁶ Queensland Health, correspondence, 2 February 2024, p 8.

⁴⁴⁷ Queensland Health, correspondence, 2 February 2024, p 8.

⁴⁴⁸ Queensland Health, correspondence, 2 February 2024, p 8.

determining if a person is fit and proper to hold a pharmacy business licence. Compliance with these legislative frameworks is essential to ensuring the safety of the public and as such any contravention requires appropriate action. This is common in industrial regulation frameworks where compliance with key governing legislation is essential – see for example, the *Tobacco and Other Smoking Products Act 1998*, the *Tattoo Industry Act 2013* and the *Labour Hire Licensing Act 2017*.⁴⁴⁹

As to the expressed concerns about subdelegation, the department advised:

As noted in the explanatory notes, the ability for the council to delegate its power is necessary for the administration of the scheme, as it would be impractical for the council to exercise all day-to-day functions under the Act. Similarly, the ability for the chief executive officer and council members to sub-delegate to council staff will support the effective operation of the council and enable licence applications and other matters for administering the Act to be processed in a timely manner. Ultimately, the council will be responsible for decisions made by the delegates. The council's decisions must be made in accordance with the criteria outlined in the Bill and are subject to the review mechanisms set out in Part 10 of the Bill.⁴⁵⁰

On the test of 'reasonable suspicion' and 'immediate risk' raised by Andrew Calabro and Daniel Calabro, Queensland Health stated:

As noted, numerous clauses throughout the Bill permit the council to act on forming a 'reasonable suspicion'. These include:

- clause 65 – the council may suspend a licence if it reasonably suspects a ground in (1)(a) to (f) applies;
- clause 66 – the council may cancel a licence if it reasonably suspects a ground in (1)(a) to (f) applies;
- clause 68 – the council may immediately suspend or cancel a licence if it reasonably suspects a ground for suspending and cancelling the licence exists and carrying on the pharmacy business to which the licence relates poses an immediate risk to public health or safety.

Queensland Health considers that the reasonable suspicion threshold is appropriate in the circumstances, noting that this incorporates both a subjective and objective assessment, in that the basis for the suspicion must be reasonable.

Queensland Health also considers that the 'immediate risk' threshold in clause 68 is appropriate. The council must be empowered to take immediate action where there is a current risk to public health or safety.

Decisions of the council are subject to internal and external review provisions, as set out in Part 10 of the Bill.⁴⁵¹

Lastl the department provided the following in response to the issue of notification of temporary closures:

Clause 84 requires notification to be given to the council of the temporary closure of a pharmacy business of more than one week. The requirement does not apply if the licence holder has a reasonable excuse. This requirement ensures that the register of pharmacy businesses can be kept up to date and consumers provided with current information.

Queensland Health does not consider the current requirement to be unduly onerous and notes it will be open to the council to develop mechanisms allowing licence holders to easily notify the council of such closures.⁴⁵²

7 Monitoring, investigation and enforcement

Currently, Queensland Health has responsibility for inspecting pharmacies to audit their compliance with legislative requirements, with pharmacy premises audited by authorised officers of the Public Health Units of the Hospital and Health Services.⁴⁵³

⁴⁴⁹ Queensland Health, correspondence, 16 February 2024, p 2.

⁴⁵⁰ Queensland Health, correspondence, 16 February 2024, p 2.

⁴⁵¹ Queensland Health, correspondence, 16 February 2024, p 3.

⁴⁵² Queensland Health, correspondence, 16 February 2024, p 4.

⁴⁵³ Health Committee report, pp 68, 74.

In raising concerns about the adequacy of the existing compliance monitoring regime, the Health Committee cited a 2018 report by the Queensland Productivity Commission which identified that between 2013-14 and 2017-18, an average of 246 inspections were carried out per year in Queensland. This meant that ‘on average pharmacies were inspected approximately every 4.6 years’.⁴⁵⁴

This was one of the grounds on which the Health Committee recommended the establishment of a dedicated pharmacy body, which it considered would help enhance ‘capacity to proactively monitor and enforce the pharmacy regulatory environment’.⁴⁵⁵

In addition, the Health Committee report noted stakeholder concerns about a lack of transparency regarding the results of compliance audits, given the results of those audits are not made public.⁴⁵⁶ Accordingly, it recommended that Queensland Health improve transparency regarding the compliance of pharmacists with the 2001 Act and relevant regulations ‘by publishing its compliance audit results, at least annually’ (recommendation 10).⁴⁵⁷

Accompanying the establishment of the council and new licensing framework, the Bill seeks to act on the Health Committee’s findings by:

- providing the council with appropriate monitoring and enforcement powers, to ensure that it is empowered to properly audit the operations of a licence holder (and investigate incidences of non-compliance)⁴⁵⁸
- requiring the council to publish a report about audits conducted by the council and actions taken by the council to ensure compliance with the Act by licence holders, within 3 months after the end of the financial year.⁴⁵⁹

In terms of the proposed monitoring and enforcement powers in particular, the Bill provides that:

- the council may appoint inspectors⁴⁶⁰ to:
 - investigate, monitor and enforce compliance with the proposed Act
 - determine whether an occasion has arisen for the exercise of powers under the proposed Act
 - facilitate the exercise of powers under the proposed Act.⁴⁶¹
- any of the following would be eligible for appointment as an inspector, provided the council is satisfied that the person is appropriately qualified:
 - a member of the council’s staff
 - a contractor of the council
 - a health service employee
 - a public sector employee
 - another class of person prescribed by regulation.⁴⁶²

⁴⁵⁴ Queensland Productivity Commission, *Cost-benefit analysis of establishing a pharmacy council*, 2018, p 19. See also Health Committee report, p 74.

⁴⁵⁵ Health Committee Report, recommendation 6.

⁴⁵⁶ Health Committee report, pp xi, 74, 82-83.

⁴⁵⁷ Health Committee report, p 83 (recommendation 10).

⁴⁵⁸ Explanatory notes, p 98. See Bill, cl 208(1) and (2).

⁴⁵⁹ Explanatory notes, pp 6, 11. See Bill, cl 209.

⁴⁶⁰ Bill, cl 91, 93. Note, the Bill also provides for the suspension and termination of appointment of inspectors (cl 93) and the resignation of inspectors (cl 94).

⁴⁶¹ See, Bill, cl 92 (proposed Act, s 92, ‘Functions of inspectors’).

⁴⁶² Bill cl 93 (proposed Act, s 93).

Inspectors would have access to a range of powers under the Bill to assist them to discharge their functions, including being able to:

- enter a place:
 - under warrant, or
 - with the consent of the occupier, or
 - if the place is a public place or a licensed pharmacy business that is open for carrying out business or otherwise open for entry⁴⁶³
- search any part of the place or a vehicle at the place
- inspect, examine or film any part of the place or any vehicle or other thing at the place
- take for examination a thing, or a sample of or from a thing, at the place or in a vehicle at the place
- place an identifying mark in or on any vehicle or other thing at the place
- take an extract from, or copy, a document at the place or in a vehicle at the place, or take the document to another place to copy
- reproduce sounds, images or writings at the place from an electronic document or, to the extent it is not practicable, take either or both of the following to another place to reproduce sounds, images or writings from an electronic document—
 - a thing that is or contains an electronic document
 - a thing that can be used to reproduce sounds, images or writings from an electronic document
- take to, into or onto the place, and use any person, equipment and materials the inspector requires for exercising the inspector's powers
- remain at the place for the time necessary to achieve the purpose of the entry.⁴⁶⁴

Further, the Bill also provides that:

- an inspector may do anything necessary to exercise these powers⁴⁶⁵
- an inspector may also seize evidence and decide a seized thing is forfeited to the State under certain circumstances.⁴⁶⁶

To support the council's discharge of its compliance auditing responsibilities, the Bill also provides that licence holders must give the council full and free access to all documents and property belonging to, in the custody of, or under the control of the licence holder, to the extent the document or property is relevant to the audit.⁴⁶⁷ In addition:

- a person of whom an inspector has made a production requirement (requiring them to produce a document for inspection) must comply with the requirement unless they have a reasonable excuse⁴⁶⁸

⁴⁶³ Bill, cl 101 (proposed Act, s 101).

⁴⁶⁴ Bill, cl 113 (proposed Act, s 113, 'General powers').

⁴⁶⁵ Bill, cl 113(2) (proposed Act, s 113(2)).

⁴⁶⁶ Bill, pt 8 div 4 (proposed Act, pt 8 div 4).

⁴⁶⁷ Bill, cl 208(3). Note: The explanatory notes advise that: 'It is intended that the council will give guidance to licence holders on the types of documents that will be required, to ensure that licence holders are not criminalised for unintentionally not providing a document' (p 11).

⁴⁶⁸ A production requirement means a requirement under proposed section 132(1), which provides that an inspector may require a person to make available for inspection by an inspector, or to produce to the inspector for inspection, at a reasonable time and place nominated by the inspector, a specified document. Bill, s 133(6) (proposed Act, s 133(6)).

- a person of whom an inspector has made a certification requirement (requiring them to certify a copy an inspector makes of a document or document entry as a true copy of the document (or document entry) must comply with the requirement unless they have a reasonable excuse⁴⁶⁹
- it is not a reasonable excuse to fail to comply with a production requirement or certification requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.⁴⁷⁰

A failure to comply with any of the above requirements for the provision of access to items and documents or the certification of documents would constitute an offence with a maximum penalty of 50 penalty units (\$7,740).⁴⁷¹

Further, in relation to the provisions for annual public reporting of the results of compliance audits (with such reports to be published on the council's website)⁴⁷², the explanatory notes emphasise that:

- the report 'will not include confidential information unless the information was provided to the council by the person to whom the information relates for the purpose of publication'⁴⁷³
- the provisions are in line with equivalent annual public reporting requirements for relevant regulatory authorities in South Australia, Western Australian, Tasmania and the Northern Territory.⁴⁷⁴

7.1 Issues of fundamental legislative principle and human rights

7.1.1 Power to enter premises and seize property and implications for the rights to property and privacy and reputation

Section 4(3)(e) of the *Legislative Standards Act 1992* provides that legislation should confer power to enter premises and search for or seize documents or other property only with a warrant issued by a judge or other judicial officer.⁴⁷⁵ This principle upholds the longstanding rule of common law that protects the property of citizens.⁴⁷⁶

Also relevant are the related human rights of property and privacy and reputation (as protected under sections 24 and 25 of the *Human Rights Act 2019* and discussed in previous chapters of this report).

All of these considerations arise frequently in the context of inspectoral powers, which are likely to interfere directly with individual rights and liberties.⁴⁷⁷

As noted above, the Bill provides for the council to appoint inspectors who:

- may enter a place if the place if the occupier consents, the inspectors' entry is authorised by a warrant, or if the place is open to the public (including if the place is a licensed pharmacy business that is open for business or otherwise open for entry)
- engage a range of search, inspection, recording, temporary removal, and seizure powers.⁴⁷⁸

⁴⁶⁹ A certification requirement means a requirement under proposed section 132(3), which provides that if the inspector copies the document, or an entry in the document, the inspector may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry. Bill, s 134(5) (proposed Act, s 134(5)).

⁴⁷⁰ Bill, cl 133(2); 134(2).

⁴⁷¹ Bill, cl 133(1); 134(1); 208(3). Note – the current value of a penalty unit is \$154.80. See Penalties and Sentences Regulation 2015, s 5A(1), as amended by the Penalties and Sentences (Penalty Unit Value) Amendment Regulation 2023.

⁴⁷² Bill, cl 209(3) (proposed Act, s 209(3)).

⁴⁷³ Explanatory notes, p 11. See also Bill, cl 209(2) (proposed Act, s 209(3)).

⁴⁷⁴ Explanatory notes, p 37.

⁴⁷⁵ *Legislative Standards Act 1992*, 4(3)(e).

⁴⁷⁶ OQPC, Notebook, p 44.

⁴⁷⁷ OQPC, Notebook, p 45.

⁴⁷⁸ Bill, pt 8, divs 3, 4 and 6.

In addition, certain provisions would enable inspectors to require a person to provide their name and address or other information, and require a person to produce a document.⁴⁷⁹

It can be noted, however, that:

- consistent with s 4(3)(e) of the *Legislative Standards Act 1992*, those powers are subject to requirements for a warrant (or consent for entry, unless the place is open to the public, including as a licensed business open for trade)
- the Bill includes a number of other safeguards to protect individual rights and liberties and ensure the limitations represent the least restrictive and reasonably available means by which inspectors may discharge their functions.⁴⁸⁰

The relevant safeguards include that:

- inspectors must have an identity card⁴⁸¹ and produce or display that card when exercising their powers⁴⁸²
- an information notice must be given if property is seized, giving the owner access to review under the proposed Act⁴⁸³
- seized property can be inspected and copied by the owner and must be returned to the owner as soon as the council stops being satisfied there are reasonable grounds for retaining it⁴⁸⁴
- in exercising a power, inspectors must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible⁴⁸⁵
- if damage occurs during an inspection, notice must be given to the owner and a person may claim compensation.⁴⁸⁶

More broadly, the explanatory notes state that these powers are necessary to ensure inspectors can collect accurate and relevant information and evidence to achieve the monitoring and enforcement functions of the proposed Act, 'including ensuring pharmacy businesses are operating safely and in accordance with expected healthcare standards'.⁴⁸⁷

The statement of compatibility also emphasises the importance of the proposed powers in enabling the collection of critical information to support a robust regulatory system, as well as noting that similar powers 'exist within licensing and regulatory frameworks across the statute book'.⁴⁸⁸

Committee comment

Noting the important purposes of the proposed powers of entry, search and seizure in assisting with the monitoring and enforcement of the proposed Act, and given the safeguards included in the Bill to minimise the impact on individual rights and liberties, the committee is satisfied that the provisions are consistent with fundamental legislative principles and that any imposition on rights to property and privacy is reasonably and demonstrably justified.

⁴⁷⁹ Bill, pt 8, divs 3, 4 and 6.

⁴⁸⁰ Explanatory notes, pp 24-25; Statement of compatibility, p 21-22.

⁴⁸¹ Bill, cl 98 (proposed Act, s 98).

⁴⁸² Bill, cl 99 (proposed Act, s 99).

⁴⁸³ Bill, cl 122 (proposed Act, s 122).

⁴⁸⁴ Bill, cls 123, 124 (proposed Act, ss 123, 124).

⁴⁸⁵ Bill, cl 137 (proposed Act, s 137).

⁴⁸⁶ Bill, cls 138, 139 (proposed Act, ss 138, 139).

⁴⁸⁷ Explanatory notes, p 24.

⁴⁸⁸ Statement of compatibility, p 21.

7.1.2 Protection against self-incrimination and the right to a fair hearing and rights in criminal proceedings

Section 4(3)(f) of the *Legislative Standards Act 1992* states that legislation should provide appropriate protection against self-incrimination.⁴⁸⁹ This principle has as its source the long-established common law principle that an individual accused of a criminal offence should not be obliged to incriminate themselves.⁴⁹⁰ Similarly, the right to a fair hearing as outlined in section 31 of the *Human Rights Act 2019* affirms the right of all individuals to procedural fairness when coming before a court or tribunal. Related to this are rights in criminal proceedings under section 32 which set out minimum guarantees for persons charged with criminal offences, many of which also assist in establishing a fair trial – include a person’s right to be presumed innocent until proven guilty and the onus on the prosecution to prove the offence beyond a reasonable doubt.

As noted above, the Bill contains provisions requiring a person to comply with a production requirement or a certification requirement unless they have a reasonable excuse; and stipulating that it is not a reasonable excuse for a person to fail to comply on the basis that compliance might tend to incriminate the person or expose the person to a penalty.⁴⁹¹ This may effectively oblige the person to self-incriminate. Further, the provisions could be considered to reverse the onus of proof, by requiring the accused person (rather than the prosecution) to provide the necessary evidence of the reasonable excuse.

The explanatory notes emphasise that both the production requirement and certification requirement provisions state that the inspector must inform the person, in a way that is reasonable in the circumstances, that:

- they must comply with the requirement even though complying might tend to incriminate them or expose them to a penalty
- (if the person is an individual) there is a limited immunity under proposed section 142 against the future use of the information or document given in compliance with the requirement.⁴⁹²

The proposed immunity is limited in that it does not apply to a proceeding against an individual for an offence against the proposed Act, or to a proceeding in relation to an administrative action⁴⁹³ taken against the individual under the Act (though it would apply to other proceedings).⁴⁹⁴

The explanatory notes acknowledge that the proposed provisions are likely to depart from fundamental legislative principles, but assert that the departure is ‘mitigated by the fact that the Bill provides a limited immunity in clause 142 against the future use of the information or document given in compliance with the requirement’.⁴⁹⁵

Further, the explanatory notes justify the denial of the protection against self-incrimination in these instances as follows:

To effectively undertake compliance with the scheme, inspectors require proper access to documents kept under the Act. Where a person is required to keep or certify a document under legislation, it is appropriate to waive the benefit of the self-incrimination rule in relation to that document. To allow a

⁴⁸⁹ *Legislative Standards Act 1992*, s 4(3)(f).

⁴⁹⁰ OQPC, Notebook, p 52.

⁴⁹¹ Bill, cl 133 and 134 (proposed Act, s 133 and 134).

⁴⁹² Proposed s 142 provides that evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any proceeding to the extent the evidence tends to incriminate the individual, or expose the individual to a penalty, in the proceeding. Bill, cl 142 (proposed Act, s 142).

⁴⁹³ Administrative action means action changing a licence condition, or suspending or cancelling a pharmacy business licence held by an individual. Bill, cl 142(4) (proposed Act, s 142(4)).

⁴⁹⁴ Nor to a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence. Bill, cl 142(3) (proposed Act, s 142(3)).

⁴⁹⁵ Explanatory notes, p 25.

claim of privilege in relation to such documents would effectively facilitate a failure to keep or certify the records, or their destruction or falsification. A similar provision applies in relation to document production compelled under section 180 of the Medicines and Poisons Act.⁴⁹⁶

The Queensland Law Reform Commission has also stated in this regard that:

... by participating in a statutory regime (through obtaining a licence or other form of registration) a person has, as a condition of participation, accepted the enforcement provisions and thus waived the benefit of the privilege against self-incrimination.⁴⁹⁷

Further, in respect of the burden of proof associated with the reasonable excuse provisions, the statement of compatibility notes:

In the circumstances where a reasonable excuse exception arises, the facts giving rise to the reasonable excuse would be within the particular knowledge of the accused person. For example, clause 133 provides that a person must not contravene a document provision unless the person has a reasonable excuse. The reasons for a person not complying ... is a matter within their own knowledge and which they can prove by giving evidence.⁴⁹⁸

The statement of compatibility then adds: 'Without a 'reasonable excuse' exception, the relevant offences would be unnecessarily strict and penalise individuals for non-compliance with obligations that they may be unable to comply with'.⁴⁹⁹

Committee comment

On balance, the committee is satisfied that the production requirement and certification requirement provisions are consistent with fundamental legislative principles and human rights, noting the limited immunity contained in the Bill to minimise the impact on individual rights and liberties, and the overall purpose of the provisions in supporting compliance with the licensing scheme.

The committee is also satisfied that the reasonable excuse exceptions strike a fair balance between the rights of the person subject to the offence and the purpose of the provisions in ensuring the integrity of pharmacy businesses, given the facts of the defence would be entirely within the accused person's knowledge.

7.2 Other human rights considerations

7.2.1 Right to privacy and reputation

Much as the Bill's provisions for the exercise of inspector powers raise issues in relation to the right to privacy and reputation (as discussed in chapter 7.1.1), the Bill's provisions for compliance audits of the operations of the licence holder (and the publication of reports about the results of compliance audits) potentially also have implications in this regard.

Further, the Bill includes a provision allowing disclosure of confidential information by officials to prescribed entities – including, for example, a coroner, law enforcement agency, or an official under the *Health Ombudsman Act 2013* – for certain limited purposes.⁵⁰⁰ Confidential information is defined under the Bill as personal information, information about a person's commercial activities, and criminal history information (but not information that is publicly available).⁵⁰¹

⁴⁹⁶ Explanatory notes, p 25.

⁴⁹⁷ OQPC, *Principles of good legislation: OQPC guide to FLPs – Self-incrimination*, pp 12-13. Quoting from Queensland Law Reform Commission, *The abrogation of the privilege against self-incrimination* (2004), Report No 59, p 37, para 4.11.

⁴⁹⁸ Statement of compatibility, p 27.

⁴⁹⁹ Statement of compatibility, p 26.

⁵⁰⁰ Bill, cl 206 (proposed Act, s 206).

⁵⁰¹ Bill, schedule 1, definition of 'confidential information'.

In respect of the requirement for audited licence holders to give the council full and free access to documents and property relevant to a compliance audit,⁵⁰² the statement of compatibility advises that this ensures ‘the council has access to the information it needs to properly assess licence holder’s compliance with the Bill’:⁵⁰³

Audits provide the council with the opportunity to review a licence holder outside of the usual licence renewal process, to assess whether the licence holder is operating in compliance with the Bill. Without undertaking audits, noncompliance may not be detected until the annual licence renewal process.⁵⁰⁴

Further, in respect of the publication of annual reports on audit results, the statement advises that this:

- will provide transparency regarding ‘the degree of compliance by industry with the Act and actions taken by the council to ensure compliance’
- will be appropriately balanced ‘with safeguards on the permitted scope of the audit and prohibition on the published report containing confidential information unless the information was provided to the council by the person to whom the information relates for the purposes of publication’.⁵⁰⁵

In relation to the Bill’s provision for the disclosure of confidential information to certain other relevant compliance entities, the statement of compatibility advises that the purpose of the potential limitation is to facilitate information sharing necessary to assist the entities to ‘undertake well-informed and comprehensive investigations into activities that may endanger the health and safety of the public’.⁵⁰⁶

The statement also asserts:

Information sharing processes are necessary within Queensland and national health systems to ensure their effective functioning and to protect and promote the health and safety of Queenslanders. Permitting disclosure to an exhaustive list of prescribed entities in limited circumstances is appropriately balanced with safeguards on the use of disclosed information and penalties for its misuse.⁵⁰⁷

Committee comment

The committee is satisfied that any limitations associated with these provisions are appropriately justified, noting the importance of ensuring officials have access to the information required to effectively administer the licensing scheme and enforce compliance in a transparent way, and of supporting broader compliance with relevant laws and regulations applying within the health sector, to minimise risks of adverse impacts for public health and safety.

7.2.2 Right to equality before the law

The right to equality before the law recognised in section 15 of the *Human Rights Act 2019* affirms the principle that no one is above the law. That is, in general, the government, and those acting on its behalf, should be subject to the same liabilities as any individual.

The Bill potentially infringes on the right to equality by establishing an immunity from prosecution for officials (including council members, the chief executive officer, inspectors and council employees) for acts done, or omissions made, honestly and without negligence under the *Human Rights Act 2019*.⁵⁰⁸

The statement of compatibility advises that the purpose of the limitation is to ‘create certainty for officials when undertaking their functions’:

⁵⁰² As required under cl 208 of the Bill (proposed Act, s 208).

⁵⁰³ Statement of compatibility, p 28.

⁵⁰⁴ Statement of compatibility, p 28

⁵⁰⁵ Statement of compatibility, p 29.

⁵⁰⁶ Statement of compatibility, p 24.

⁵⁰⁷ Statement of compatibility, p 25.

⁵⁰⁸ Bill, cl 210 (proposed Act, s 210).

Exposure to civil liability may discourage officials from undertaking their functions. It is not considered appropriate for an individual to be made personally liable as a consequence of carrying out their responsibilities under the legislation, where the person has acted honestly and without negligence.⁵⁰⁹

The statement of compatibility also emphasises that:

- the immunity ‘aligns with section 198 of the 2001 Act and with similar immunities for officials in other regulatory schemes’
- adequate safeguards are incorporated, because:
 - a person who is unable to take civil action against an official can instead seek legal redress from the council
 - the immunity is limited to civil liability where the official acted honestly and without negligence, such that persons ‘may still take legal action against an official for the tort of negligence, or other civil wrongs where the official acted dishonestly’.⁵¹⁰

Committee comment

The committee is satisfied that any potential limitation on the right to equality before law is appropriate when considering the need for officials to effectively undertake their responsibilities, the scope of the immunity, and the limitations and conditions attaching to the immunity.

7.3 Stakeholder views and the department’s response

7.3.1 Full and free access to documents and property

While most stakeholders focussed their commentary on other aspects of the Bill, Andrew and Daniel Calabro outlined concerns about the Bill’s requirement for a licence holder to give ‘full and free access to all documents and property’ relevant to an audit, querying its adequacy in terms of protection against self-incrimination.⁵¹¹

While acknowledging the rationale for limiting such immunity in respect of investigation and enforcement mechanisms, Andrew and Daniel Calabro considered that the purpose of an audit is distinct from the purposes of such monitoring and enforcement action:

It is unreasonable to compel a person to give full and free access during an audit and then expose them to punishment. If an audit is intended to educate licence holders, then an immunity should be offered from prosecution against an identified non-compliance. This would provide an opportunity for licence holders to voluntarily comply with the regulatory framework based on the outcome of the audit. The circumstances are different if a subsequent and separate investigation finds non-compliance, as enforcement mechanisms would be appropriate in this instance.⁵¹²

On this basis, these submitters considered that an immunity should be offered in respect of a person’s provision of full and free access to documents and property, particularly noting the separate provisions in the Bill relating to investigations and enforcement, and that ‘licence holders—as practising pharmacists—are subject to professional and ethical standards under the National Law and therefore, would be presumed to voluntarily comply with the framework’.⁵¹³

7.3.1.1 The department’s response

In response to these submitters, Queensland Health asserted that:

- the proposed provision is appropriately restricted to the limited immunity it provides in respect of legislative requirements, as ‘it allows the council to audit the operations of a licence holder only to the extent they relate to the obligations of the holder under the Bill’

⁵⁰⁹ Statement of compatibility, p 30.

⁵¹⁰ Statement of compatibility, p 30.

⁵¹¹ Submission 105, pp 4-5.

⁵¹² Submission 105, p 5.

⁵¹³ Submission 105, pp 4-5.

- by participating in a statutory licensing regime, it can be taken that ‘a person has, as a condition of participation, accepted the monitoring and enforcement provisions of the scheme’.⁵¹⁴

Further, as to the council’s approach to monitoring and enforcement broadly (including as to education rather than penalisation in some circumstances), Queensland Health reiterated that it will be ‘a matter for the council to determine its approach to enforcement’.⁵¹⁵

7.3.2 Publication of reports about compliance and audits for a financial year

The Pharmaceutical Society addressed the provisions requiring the council to publish a report about compliance and audits for the financial year, submitting that it considers such public reporting ‘supports the objectives of maintaining public confidence in the pharmacy profession and promoting safe and competent provision of pharmacy services by pharmacy businesses’.⁵¹⁶

Queensland Health noted the Pharmaceutical Society’s expression of support.⁵¹⁷

8 Register of pharmacy businesses

The Bill requires the council to maintain a register of licensed pharmacy businesses and allows for the publication of the register on the council’s website (providing that the Council ‘may’ publish the information contained in the register on its website).⁵¹⁸

The register must contain, for each licensed pharmacy business:

- the business name for the business
- the address of the licensed premises for the business.⁵¹⁹

The explanatory notes advise that these provisions are in line with register requirements established in nearly all Australian jurisdictions (with the exception of the Australian Capital Territory and Northern Territory).⁵²⁰

However, the Bill also provides for the Council to include in the register, if considered appropriate, information about pharmacy services provided by a licensed pharmacy business⁵²¹ – a level of detail not incorporated in other state registers.⁵²²

The explanatory notes advise of the provision: ‘This will allow the council to better communicate to members of the public about particular services offered by pharmacies, including, for example, vaccinations’.⁵²³ It is not intended to communicate details of ownership.⁵²⁴

8.1 Stakeholder views

Most submitting pharmacists and pharmacy bodies (including the Pharmacy Guild and Pharmaceutical Society) raised a concern that there is no mandatory requirement for the register of licensed pharmacy

⁵¹⁴ Queensland Health, correspondence, 16 February 2024, p 2.

⁵¹⁵ Queensland Health, correspondence, 16 February 2024, p 2.

⁵¹⁶ Submission 77, p 11.

⁵¹⁷ Queensland Health, correspondence, 2 February 2024, p 15.

⁵¹⁸ The Bill provides that the council *may* publish the information contained in the register on its website, but ‘must not publish confidential information unless the information was provided to the council by the person to whom the information relates for the purposes of publication’. See Bill, cl 207(5)-(6).

⁵¹⁹ Bill, cl 207(1)-(2).

⁵²⁰ Explanatory notes, p 36.

⁵²¹ Bill, cl 207(3).

⁵²² Explanatory notes, p 36.

⁵²³ Explanatory notes, p 11.

⁵²⁴ Explanatory notes, p 36.

businesses to be listed on the council's website. In the interests of transparency, these submitters recommended that the Bill be amended so that the council is required to publish the register, to maintain public confidence in the pharmacy profession.⁵²⁵ One individual pharmacist submitter stated: 'This ought not be controversial as a similar practice is adopted by the Queensland Law Society with respect to the registrar of solicitors to name one example'.⁵²⁶

Submitters also had a range of views about the information to be contained in the register.

The Office of the Health Ombudsman expressed support for the register including information about the pharmacy location and services provided and 'not owners and interest holders', as previously contemplated.⁵²⁷ In contrast, while the Interim Pharmacy Roundtable, Pharmaceutical Society and Pharmacy Guild were also supportive of the register including information about the pharmacy services provided by a licensed pharmacy business, they considered that information about owners and interest holders should in fact be incorporated into the register.⁵²⁸ In particular, the Interim Pharmacy Roundtable called for the register to list 'beneficial owners' as well as the business name and address,⁵²⁹ while the Pharmaceutical Society highlighted the example of the searchable public register on the Victorian Pharmacy Authority's website, which it noted includes:

- the name of each licensee of a pharmacy business or pharmacy department
- the number of pharmacies owned by the person
- the registration status of the premises of a pharmacy business
- any conditions on a licence or registration.⁵³⁰

The Pharmacy Guild similarly considered that the register should include licensee names (albeit with more specificity)⁵³¹ and details of any licence conditions as outlined in the Victorian register, but also suggested the inclusion of the term of the licence.⁵³²

Further, the Pharmacy Guild also called for further amendments to require licenced businesses to display at or near the main entrance of each premises the pharmacist is the owner of, or has a financial interest in, the owner's name(s)' (which must be the name(s) registered with the council).⁵³³

Distinct from these issues of content, the RACGP submitted that while it is understandable that the council would need a register of licences businesses:

... the RACGP is of the opinion that the use of taxpayer funds to promote the interests of one section of primary care (through publication of above information) over all others cannot be justified. Such a register must list all primary care service providers and the services they provide. The cost of upkeep of

⁵²⁵ See, for example, submissions 2-5, 7, 8, 10-16, 18-24, 26, 27, 31-34, 36-41, 44-47, 49-69, 71, 72, 77, 78, 80-83, 87, 89, 90, 94-97, 101, 103, 105-107, 111, 112, 116, 122, 123. These submissions considered the Bill (in cl 207(5)) should state that the council 'must' rather than 'may' publish the information contained in the register on its website.

⁵²⁶ Phuong Ngyuen, submission 117, p 3.

⁵²⁷ Submission 9, p 1.

⁵²⁸ See submission 52, p 10; submission 71, p 11; submission 72, p 2.

⁵²⁹ Submission 72, p 2.

⁵³⁰ Submission 71, p 11. Note: in promoting this example, the Pharmaceutical Society noted that disclosure of ownership 'should be done in accordance with privacy and legal considerations to balance transparency with the protection of sensitive information'.

⁵³¹ The Pharmacy Guild suggested that the register should specify: 1) if the holder of the licence is a corporation – each director and shareholder of the licence holder; 2) if the holder of the licence owns the pharmacy business to which the licence relates as trustee of a trust – the name of each person who is a beneficiary of the trust; and c) the name of each person who holds a material interest in the business. See submission 52, p 10.

⁵³² Submission 52, p 10.

⁵³³ Submission 52, p 10.

such a register in the public domain would not have a cost benefit for consumers, particularly when the Federal Government has already established 'healthdirect' to provide similar details.⁵³⁴

8.2 The department's response

In response to these stakeholder comments about the contents of the register and its publication, Queensland Health advised that:

- the Bill's provision for a public register responds to the recommendation of the Health Committee that Queensland Health 'investigate ways to improve communication to consumers about the services individual pharmacies provide, such as vaccinations'
- the 2018 Government Response 'committed to Queensland Health delivering a public-facing website that lists pharmacies and the services they provide'.⁵³⁵

In terms of the publication of the register on the website, Queensland Health stated: 'Reflecting the transfer of regulatory responsibility to the council, it will be a matter for the council to determine whether it is appropriate for the register to be published on the council's website'.⁵³⁶

⁵³⁴ Submission 119, p 9.

⁵³⁵ Queensland Health, correspondence, 2 February 2024, p 13.

⁵³⁶ Queensland Health, correspondence, 2 February 2024, p 13.

Appendix A – Submitters

Sub #	Submitter
1	Queensland Aboriginal and Islander Health Council
2	Kennyth Woods
3	Amanda Seeto
4	Sophia Ligouras
5	Gavin Lau
6	John Cook
7	Brendan West
8	Petros Ioannidis
9	Office of the Health Ombudsman
10	Adam Rodger
11	Alex Chung
12	Michael Kaluschke
13	Linda Lee
14	Tingwei Yan
15	Matthew Newman (on behalf of the ownership group of the Foote Group of pharmacies located in Ipswich and the Scenic Rim)
16	Fred Yeow
17	Maree Keating
18	Carina Finn
19	Jonathan Bray
20	John Douglas
21	Mark Hope
22	Gregg Smith
23	Jolon Thompson
24	Boyd Busiko
25	Michael Iu
26	Leonie Brown
27	Craig Finn
28	Sanjil Parekh
29	Carolyn Clementson
30	Neil Owen
31	Helen Owen
32	Nick Efstathis
33	Georgina Twomey
34	Jack Clark

- 35 Australian Medical Association Queensland
- 36 Sahil Parekh
- 37 Matthew Picker
- 38 Keegan Wu
- 39 Lucy Walker
- 40 Christopher McMullen
- 41 Kirsty Allen
- 42 Sai Milan Tappoo
- 43 Prince Patel
- 44 Ameet Jeraj
- 45 Simon Carpenter
- 46 Russell Harding
- 47 Ben Wishaw
- 48 Kyril Raniga
- 49 Simon Sponza
- 50 Nathan Jervis
- 51 Hamish Heads
- 52 The Pharmacy Guild of Australia, Qld
- 52a The Pharmacy Guild of Australia, Qld – Supplementary submission
- 53 Craig Menegon
- 54 Adrian Walton
- 55 Phillip Derlagen
- 56 Jason Keily
- 57 Peter Kolb
- 58 Andrew Lerch
- 59 Louise Horrocks
- 60 Tony Fiore
- 61 Lisa O'Brien
- 62 Jackie Hua
- 63 Michael Lane
- 64 Paul Scholz
- 65 Nielma Grant-Taylor
- 66 Paddington Central Pharmacy
- 67 Montague Markets Pharmacy
- 68 Jacqueline Trang
- 69 Jie Lu van der Horst
- 70 Productivity Commission

- 71 Pharmaceutical Society of Australia
- 72 Loretta Musumeci
- 73 Martin Dines
- 74 Tony Lau
- 75 Stephen Thompson
- 76 Matthew McLean
- 77 Interim Pharmacy Roundtable
- 78 Satish Maganlal
- 79 James Buckley
- 80 Julian Beumer
- 81 Sanam Souzani
- 82 TerryWhite Chemmart
- 83 James Wang
- 84 Brad Reilly
- 85 Adam Fraser
- 86 Larelle Reilly
- 87 Alice Si and Choon Yik Voon
- 88 Name Withheld
- 89 Paul Chan
- 90 Jenny Acton
- 91 Alex Themistocleous
- 92 Rick Howell
- 93 Davinder Bansal
- 94 Jake McIntosh
- 95 Brodie Grant-Taylor
- 96 Michelle Duncan
- 97 Andrew Twist
- 98 Bianca Hope
- 99 Christian Mee
- 100 Stephen Winnett
- 101 Therese Lambert
- 102 Nutcha Ketworn
- 103 Cate Whalan
- 104 Shopping Centre Council of Australia (SCCA)
- 105 Andrew Calabro and Daniel Calabro
- 106 Richard Spencer
- 107 Vy Tran

- 108 Clint Coker
- 109 Allan Milostic
- 110 Lee McLennan
- 111 Amy Ford
- 112 Martin Leung
- 113 Amy Simpson
- 114 Pete Ashenden
- 115 Tessa Drew
- 116 Eliese Lloyd
- 117 Phuong Nguyen
- 118 Ben Stonehouse
- 119 The Royal Australian College of General Practitioners Ltd (RACGP)
- 120 Sam Harbison
- 121 Robert Ranson
- 122 Raymond Wilson
- 123 Amin Javanmard
- 124 Australian College of Nurse Practitioners
- 125 Will Chang, The Infinity Group

Appendix B – Officials at the public departmental briefing

Queensland Health

- Mr Nick Steele, Deputy Director-General, Queensland Public Health and Scientific Services
- Mr Justin Lee, A/Executive Director, Queensland Public Health and Scientific Services
- Mr Karson Mahler, Director, Legislative Policy Unit
- Ms Kate Sanderson, Manager, Legislative Policy Unit

Appendix C – Witnesses at the public hearing

The Pharmacy Guild of Australia, Queensland Branch

- Mr Chris Owen, President, Queensland Branch
- Professor Trent Twomey, National President
- Mr Gerard Benedet, Executive Director
- Ms Amanda Seeto, Vice President, Queensland Branch

Productivity Commission

- Dr Stephen King, Commissioner (*via video conference*)

Australia Medical Association of Queensland

- Dr Brett Dale, Chief Executive Officer
- Ms Erin O'Donnell, Policy Lead

Royal Australian College of General Practitioners Queensland

- Dr Cathryn Hester, Chair
- Mr James Flynn, State Manager

Queensland Aboriginal and Islander Health Council

- Mr David Harmer, Executive Policy Director

Pharmaceutical Society of Australia

- Ms Nicole Floyd, State Manager Queensland
- Ms Karen Castle, Policy Pharmacist
- Ms Karla Wright, Vice-President, Queensland Branch Committee

Shopping Centre Council of Australia

- Mr Angus Nardi, Chief Executive (*via video conference*)
- Mr James Newton, Head of Policy and Regulatory Affairs

Interim Pharmacy Roundtable

- Ms Fiona Watson, Chair
- Mrs Lucy Walker, Interim Pharmacy Roundtable member

Queensland Health

- Mr Nick Steele, Deputy Director-General, Queensland Public Health and Scientific Services
- Mr Justin Lee, Director, Queensland Public Health and Scientific Services
- Ms Kirsten Law, Director, Legislative Policy Unit
- Ms Kate Sanderson, Manager, Legislative Policy Unit

Appendix D – Proposed fee framework

Table 1: Recurrent fees

Tier	Complexity of ownership structure	Example	Est. % of Qld pharmacy businesses	Initial licence application costs	Proposed annual licence renewal costs
Tier 1	Low	<ul style="list-style-type: none"> Sole individual; or One corporation (max of 1 discretionary trust) 	49	\$2,600 (App fee \$2,200 + licence fee \$400)	\$2,100 (App fee \$1,700 + licence fee \$400)
Tier 2	Medium	<ul style="list-style-type: none"> Three individuals; or Two corporations (max of 2 discretionary trusts) 	34	\$2,900 (App fee \$2,500 + licence fee \$400)	\$2,300 (App fee \$1,900 + licence fee \$400)
Tier 3	High	<ul style="list-style-type: none"> More than 3 owners 	17	\$3,600 (App fee \$3,200 + licence fee \$400)	\$2,900 (App fee \$2,500 + licence fee \$400)

Table 2: Non-recurrent fees

Task	Proposed fee
Application for restoration of a licence (after a licence has expired)	\$100 (in addition to renewal application fee and licence fee)
Application to add a new person to an existing licence	\$500 plus \$400 licence fee to reissue the licence
Application to remove a person from an existing licence	\$100 plus \$400 licence fee to reissue the licence
Application to remove material interest holder or director	\$100 plus \$400 licence fee to reissue the licence
Application for change of premises	\$250 plus \$400 licence fee to reissue the licence. An inspection fee may be applicable (\$900 – see below)
Application for other change (change of business name, change of name of person, change in commercial arrangement, etc.)	\$400 licence fee to reissue the licence where the change results in a change to the licence. A fee for review of trust or commercial arrangement may apply.
Site inspection or re-inspection (as required)	\$900
Trust or other commercial arrangement assessment / legal fees for external legal review (if required)	\$2,500

Source: Queensland Health, correspondence, 2 February 2024, Attachment 1.

