

# ***Pharmacy Business Ownership Act 2024***

Frequently asked questions



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# Introduction

The Queensland Pharmacy Business Ownership Council will be responsible for regulating pharmacy business ownership under the *Pharmacy Business Ownership Act 2024* (new Act). The Council will be an independent statutory body. The information below addresses some frequently asked questions about the new Act. However, Queensland Health cannot provide advice about how Council will interpret, apply or enforce the new Act. **You should carefully consider how the new Act applies to your individual circumstances and seek legal advice if needed.**

The examples below are based on the licensing provisions commencing on 1 July 2025. A commencement date has not yet been set and is dependent on a range of factors. Queensland Health acknowledges there is a high level of interest in the commencement date and will provide advice on the commencement date as soon as possible. The licensing provisions are not expected to commence before 1 July 2025, to ensure pharmacy business owners have sufficient time to transition to the new legislation. **We encourage all existing owners to take steps now to consider the application of the new Act to your business, to ensure you have sufficient time to adjust your ownership structure if needed.**

## Who needs to apply for a licence?

Under the new Act, a person must not own a pharmacy business unless they hold a licence for the business. A business is a pharmacy business under the Act if the business provides either or both:

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

All existing pharmacy business owners must apply for a licence under the new Act, when the new Act commences.

The new Act provides that the following are not pharmacy businesses for the purpose of the new Act:

- 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.

## Who is eligible to own a pharmacy under the new Act?

Under section 23 of the new Act, only an eligible person can apply to the Council for a pharmacy business licence.

Section 10 of the new Act sets out who is an eligible person for the purposes of the new Act:

- a practising pharmacist (defined as a person who is registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession with general registration)
- a corporation whose directors and shareholders are all practising pharmacists
- a corporation:
  - whose directors and shareholders are a combination of practising pharmacists and close adult relatives (spouses or adult children) of practising pharmacists, and
  - in which a majority of shares, and all voting shares, are held by 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 two or more friendly societies, where both friendly societies carried on businesses in Queensland or another State on 29 April 2005
- the Mater.

## When do I need to apply for a licence?

Parts 3 and 4 of the new Act set out who is eligible to hold a pharmacy business licence and require pharmacy business owners to hold a licence. These parts of the Act are expected to commence by late 2025. This timing is subject to the implementation process and government approvals.

Most current owners will have to apply for a licence within one year from the date these parts of the Act come into force. Owners will be able to apply for a licence at any time during this year.

The Council will take time to consider and decide each licence application. As long as a current owner has applied for a licence by the end of the one-year period, the owner won't commit an offence for failing to hold a licence during the period that Council is considering their application.



**Note:** this example assumes the licensing provisions in the new Act will commence on 1 July 2025. A commencement date for the licensing provisions has not been set.

Under the new Act, existing owners who have corporate shareholders or corporate beneficiaries within a trust arrangement have two years in which to apply for a licence, in certain circumstances. This additional year allows time for existing owners to change their ownership structure so that they comply with the new Act. The two-year transitional period only applies to existing owners who meet the eligibility criteria in section 214(2) of the new Act. More information about this is set out below.

## My ownership structure includes corporate shareholders and/or corporate beneficiaries – what do I need to do under the new Act?

Under the new Act, a corporation is eligible to own a pharmacy if:

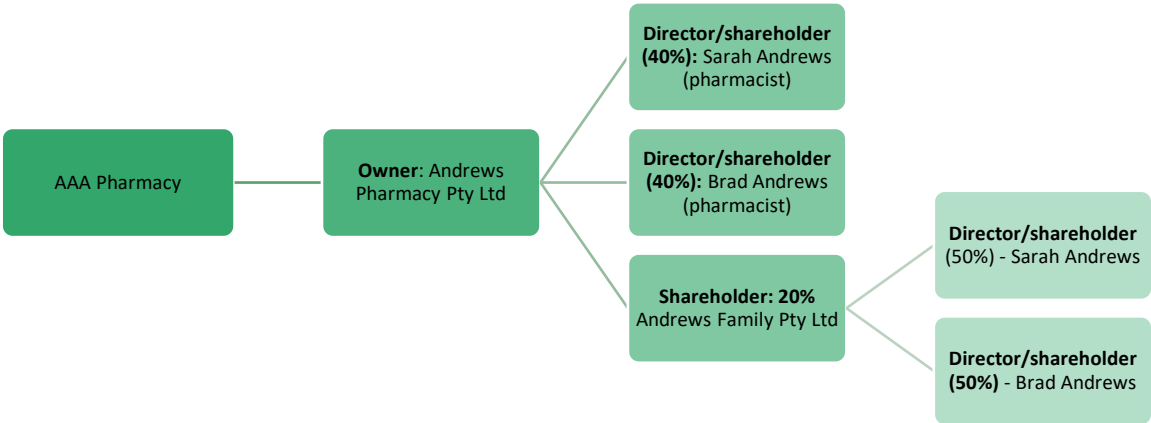
- all of the directors and shareholders of the corporation are practising pharmacists, and
- it is a corporation:
  - whose directors and shareholders are all a combination of practising pharmacists and close adult relatives of practising pharmacists, and
  - the majority of shares, and all voting shares, are held by practising pharmacists.

This means that all of the directors and shareholders of the corporate owner must be natural persons – they cannot be another corporation.

Some current owners may also hold their business on trust and have beneficiaries who are corporations. This isn't permitted under the new Act because the interest of a beneficiary is a material interest. Only practising pharmacists and close adult relatives of practising pharmacists may hold a material interest. Material interest holders must therefore be natural persons.

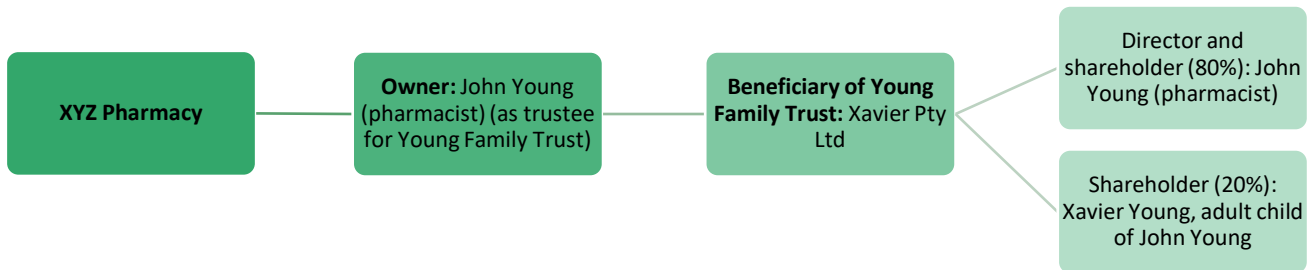
### Example of structures that include corporate shareholders or corporate beneficiaries that are not permitted under the new Act

#### Example 1: Corporate shareholders



*This arrangement is not permitted under the new Act. A corporation is only eligible to own a pharmacy under the new Act if all of its directors and shareholders are natural persons. In this case, one of the shareholders is Andrews Family Pty Ltd, a corporation.*

## Example 2: Corporate beneficiaries of trusts



*This arrangement is not permitted under the new Act. That is because the beneficiary of the trust is a corporation, Xavier Pty Ltd. Under section 10 of the new Act, the beneficiary of the Young Family Trust will be a material interest holder in the business. Section 16 provides that only pharmacists and their close adult relatives are eligible to hold a material interest in a pharmacy business.*

Under section 216 of the new Act, owners with corporate shareholders or corporate beneficiaries have two years from the date that parts 3 and 4 of the new Act commence in which to apply for a licence. This two-year transitional period only applies to corporations that meet the eligibility criteria in section 214 of the new Act. The eligibility criteria are set out in full in section 214 and provide that a corporation is only eligible if immediately before the licensing provisions commenced:

- the corporation owned an existing pharmacy business; and
- the directors of the corporation were all:
  - practising pharmacists, or
  - close adult relatives, of practising pharmacists, who also held a material interest in the business immediately before commencement, and
- the shareholders of the corporation consisted of only:
  - practising pharmacists
  - close adult relatives of practising pharmacists
  - one or more corporations whose directors and shareholders were:
    - all practising pharmacists, or
    - a combination of practising pharmacists and close adult relatives, of practising pharmacists, who also held a material interest in the business immediately before commencement, and
- if the corporation owned the existing pharmacy as a trustee of a trust, the beneficiaries of the trust consisted of only the following:
  - practising pharmacists
  - close adult relatives of practising pharmacists
  - one or more corporations whose directors and shareholders were:
    - all practising pharmacists, or
    - a combination of practising pharmacists and close adult relatives, of practising pharmacists, who also held a material interest in the business immediately before commencement.



**Note:** this example assumes the licensing provisions in the new Act will commence on 1 July 2025. A commencement date for the licensing provisions has not been set.

If your ownership structure includes a corporation that has corporate shareholders, or a trust arrangement where one of the beneficiaries is a corporation, you should carefully consider the provisions of the new Act, including the transitional provisions in sections 214, 216 and 217 of the new Act, and seek legal advice if needed.

## What is a material interest in a pharmacy business?

Under the new Act, a person will hold a material interest in a pharmacy business if:

- they have an interest in the business as a shareholder of an owner of the business

*Example: the pharmacy business is owned by Smith Pty Ltd. Jane Smith is a shareholder of Smith Pty Ltd. Jane Smith holds a material interest in the business.*

- they have an interest in the business as a beneficiary of a trust, where the owner of the business is a trustee of the trust

*Example: the pharmacy business is owned by the David Brown as trustee for the Brown Family Trust. John Brown is a beneficiary in the trust. John Brown holds a material interest in the business.*

- they have another interest in the business (other than as an owner) that entitles them to receive consideration that varies according to the profits or takings of the business.

*Example: The business is owned by Tim Jones. Sarah McDonald gives Tim Jones \$500,000 to establish the business and Tim agrees to repay Sarah at a rate of 5% of the pharmacy's profits. Sarah McDonald holds a material interest in the business.*

## Who may hold a material interest in a pharmacy?

Under section 16 of the new Act, a person can only hold a material interest in a pharmacy business if they are:

- a practising pharmacist
- A close adult relative of a practising pharmacist who holds an interest in that particular pharmacy business.

*Example: Bill Taylor owns the Brisbane Local Pharmacy. His wife, Penny Taylor, can hold a material interest in the Brisbane Local Pharmacy but cannot hold a material interest in another pharmacy that her husband has no interest in.*

## How many pharmacies can a person own or hold an interest in?

Section 17 of the new Act provides that a person must not hold an interest in more than the following number of pharmacies at the same time:

- five pharmacies – if the person is a practising pharmacist, a corporation whose directors and shareholders are all practising pharmacists, or a corporation:
  - whose directors and shareholders are a combination of practising pharmacists and close adult relatives of practising pharmacists, and
  - in which a majority of shares, and all voting shares, are held by practising pharmacists
- six pharmacies if the person is:
  - 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 two or more friendly societies, where both friendly societies carried on businesses in Queensland or another State on 29 April 2005
  - the Mater.

An interest is defined to mean:

- an interest as an owner of the business, or
- a material interest in the business.

*Example: Tom Roberts owns five pharmacies and is a shareholder in a company that owns another pharmacy. Tom has an interest in six pharmacies. This is not permitted under the new Act.*

*Example: Jennifer Jackson owns two pharmacies and is a shareholder of Pharmacy Business Pty Ltd. Pharmacy Business Pty Ltd owns another three pharmacies. Jennifer has an interest in five pharmacies. This is permitted under the new Act.*



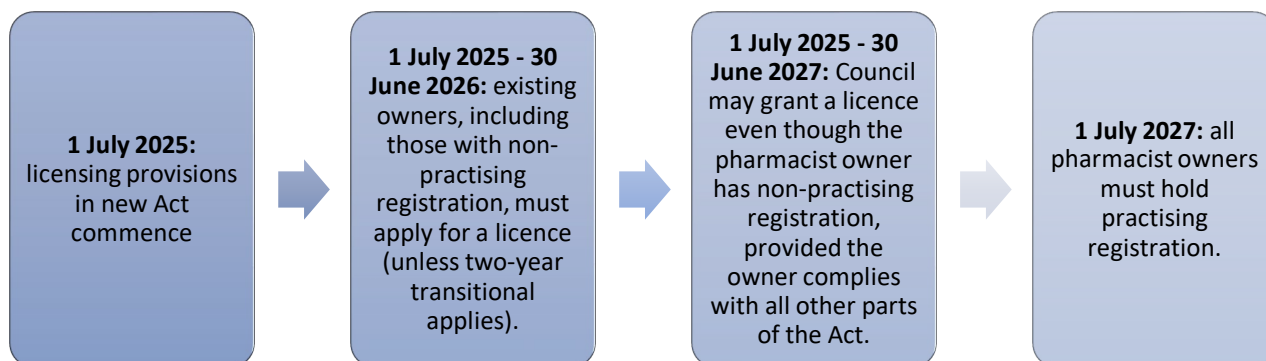
# I'm a non-practising pharmacist and I own a pharmacy – what do I need to do?

The *Pharmacy Business Ownership Act 2001* (2001 Act) has been interpreted as permitting pharmacists with non-practising registration to own a pharmacy.

Section 10 of the new Act provides that only practising pharmacists are eligible to own a pharmacy. A practising pharmacist is a person who is registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession with general registration.

If you are an owner who holds non-practising registration, you will need to take steps to ensure you comply with the new Act. Section 219 of the new Act gives existing non-practising pharmacist owners 2 years from the date the licensing provisions commence in which to ensure that all pharmacist owners have practising registration. This 2-year period only applies to a pharmacist owner who held non-practising registration immediately before the licensing provisions commence.

If you are a non-practising pharmacist who owns a pharmacy business, you should carefully consider how the new Act applies to your individual circumstances and seek legal advice if needed.



**Note:** this example assumes the licensing provisions in the new Act will commence on 1 July 2025. A commencement date for the licensing provisions has not been set.

# I'm a non-practising pharmacist and I hold an interest in a pharmacy – what do I need to do?

The 2001 Act has been interpreted as permitting pharmacists with non-practising registration to hold an interest in a pharmacy.

Section 16 of the new Act provides that only **practising** pharmacists are permitted to hold a material interest in a pharmacy. A practising pharmacist is a person who is registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession with general registration.

If you have non-practising registration and hold an interest in a pharmacy, you will need to take steps to ensure you comply with the new Act. Section 219 of the new Act gives owners 2 years from the date the licensing provisions commence in which to ensure that all pharmacist material interest holders have practising registration. This 2-year period only applies to a person who held non-practising registration immediately before the licensing provisions commence.

If you are a non-practising pharmacist who holds an interest in a pharmacy business, you should carefully consider how the new Act applies to your individual circumstances and seek legal advice if needed.



**Note:** this example assumes the licensing provisions in the new Act will commence on 1 July 2025. A commencement date for the licensing provisions has not been set.

# My ownership structure includes a discretionary trust – what do I need to do?

Queensland Health does not currently monitor the beneficiaries of discretionary trusts.

Section 13 of the new Act makes clear that a person who is a beneficiary of a trust, where the owner of the business is a trustee, is a material interest holder in the business. This includes beneficiaries of discretionary trusts.

Section 16 of the new Act provides that the only people who can hold a material interest in a pharmacy business are:

- a practising pharmacist, or
- a close adult relative of a practising pharmacist who owns in interest in that particular business

If your ownership structure includes a discretionary trust, you will need to ensure that all beneficiaries of the trust comply with section 16, that is, they are pharmacists who hold practising registration, or they are close adult relatives of a practising pharmacist who owns an interest in the business.

Under section 219, beneficiaries of current owners with discretionary trusts are taken to be compliant with these requirements for two years from commencement. After this time, owners who have discretionary trusts will need to ensure that their beneficiaries meet these requirements. Any beneficiaries who are not practising pharmacists or close adult relatives will be committing an offence under section 16.

A **close adult relative** means a spouse or child of the pharmacist who is an adult. An **adult** means an individual who is 18 years or more. A child who is under the age of 18 cannot hold a material interest in a pharmacy business.

If your ownership structure includes a discretionary trust, you should carefully consider the provisions of the new Act, including the transitional provisions in section 218 of the new Act, and seek legal advice if needed.

## Who can be a beneficiary of a trust?

The new Act makes clear that if a pharmacy business is owned on trust, all beneficiaries of the trust are material interest holders in the business. The only people who can hold a material interest in a pharmacy business are:

- a practising pharmacist, or
- a close adult relative of a practising pharmacist who owns in interest in that particular business.

That means that children under the age of 18 and other extended family members cannot be beneficiaries in a trust. This includes a discretionary trust or a unit trust.

## My pharmacy business is in, or directly accessible from, a supermarket – what do I need to do?

Under the new Act, a pharmacy business cannot be located in, or directly accessible from, a supermarket. A **supermarket** means a premises used primarily for selling a range of food, beverages, groceries and other domestic goods.

Section 220 of the new Act provides a limited exception to this for existing businesses. The exception only applies if, on 28 March 2024, the business was operating at a premises that is in or directly accessible from a supermarket. The exception applies for as long as the business is continually carried out by the same owner. The exception will not apply, for example, if the business changes owners or relocates to a different premises.

If your pharmacy business operates from premises that are in or directly accessible from a supermarket, you should carefully how the new Act applies to your circumstances, including sections 11, 28 and 220 of the new Act and seek legal advice if needed.

## How will Council members be appointed?

The Bill will establish the Queensland Pharmacy Business Ownership Council to regulate pharmacy business ownership in Queensland. The Council must have a minimum of 5 members including at least 1 pharmacy business owner and 1 employee pharmacist.

Council members will be appointed by Governor in Council, on the Minister for Health's recommendation.

A recruitment process will be undertaken for Council members. Information about this process will be published on Queensland Health's website.

## What fees will apply?

Fees will apply for applications under the new Act, for example, applications for a licence. The fees will be set out in a regulation made under the new Act.

**Proposed fees** - Refer to the Tiers table for business rules to determine which tier applies.

Fee type	Proposed fee
Tier 1 application for a licence	\$2,200
Tier 2 application for a licence	\$2,500
Tier 3 application for a licence	\$3,200
Tier 1 application for annual licence renewal	\$1,700
Tier 2 application for annual licence renewal	\$1,900
Tier 3 application for annual licence renewal	\$2,500
Application for restoration of a licence (after a licence has expired)	As per renewal fee plus late fee of \$100
Licence fee (payable on approval of licence application or renewal application)	\$400
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. Note that an inspection fee (\$900) may be applicable.
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

**Tiers** - The below table lists tier categories based on ownership structure.

Tier	Business Rules
Tier 1	Maximum financial interest: <ul style="list-style-type: none"><li>• 1 natural person</li><li>• 1 company</li></ul> The ownership structure may only include 1 discretionary trust
Tier 2	Maximum financial interests: <ul style="list-style-type: none"><li>• 3 natural persons</li><li>• 2 companies</li></ul> The ownership structure may only include 2 discretionary trusts
Tier 3	Any other business structure outside of tiers 1 and 2 (complex)