

# Pharmacy Business Ownership in Queensland

## Guidelines

*Pharmacy Business Ownership Act 2001*  
(Applicable to Forms 1, 2 and 3)

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# Contents

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<b>1. Introduction</b>	<b>3</b>
<b>2. Ownership restrictions</b>	<b>4</b>
2.1 Definition of 'own'	4
2.2 Who can own a pharmacy business?	4
2.3 Restrictions on numbers	4
2.4 Special cases	5
<b>3. Responsibilities of pharmacy owners</b>	<b>5</b>
3.1 Supervision	5
3.2 Void arrangements	5
<b>4. When notification must be given</b>	<b>6</b>
<b>5. Change of ownership of a pharmacy or business details</b>	<b>6</b>
5.1 Change of ownership	6
<b>6. Change in ownership particulars of a pharmacy business</b>	<b>7</b>
<b>7. Other requests for documents and information</b>	<b>7</b>
7.1 Death of a pharmacy business owner	7
7.2 Insolvency of a pharmacy business	8
<b>8. Further questions</b>	<b>8</b>
<b>Appendices</b>	<b>8</b>
Appendix 1 – Supporting documentation surrounding section 139I of the Act	8
Appendix 2 - Legislative framework	12
Overview of regulation	12
Investigation and enforcement	12
Liability of executive officers	13

# 1. Introduction

These Guidelines have been prepared to assist pharmacy business owners to understand the regulatory scheme in Queensland. In particular, the Guidelines set out the information and documents that pharmacy owners are required to provide to Queensland Health as part of making the necessary notifications about changes in pharmacy ownership and ownership particulars of a pharmacy business.

The Guidelines relate to obligations arising for pharmacy business owners and do not deal with other regulations that relate to the practice of pharmacy in Queensland, including:

- (i) the handling of medications in Queensland in accordance with the Health (Drugs and Poisons) Regulation 1996 (Qld);
- (ii) the scheduling, manufacture and use of medicines;
- (iii) day to day pharmacy activities, such as medicine storage, labelling, storage and dispensing and advertising of therapeutic goods;
- (iv) pharmacy businesses operated by the State of Queensland at a public sector hospital or any other business at a hospital that provides pharmacy services only to patients at the hospital;
- (v) the regulation of pharmaceuticals and where pharmacies that dispense medicines subsidised under the PBS can be located (known as the Pharmacy Location Rules), which are administered by the Commonwealth Government; and
- (vi) the regulation of pharmacists, interns and pharmacy students regarding compliance with their own personal professional registration requirements.

The Guidelines should not be relied upon as an exhaustive statement of the relevant law. In order to assess compliance with the statutory requirements, owners should have regard to the Act, and independent legal advice.

Information regarding the legislative framework of pharmacy ownership in Queensland (including investigation & enforcement and the liability of executive officers) can be found in Appendix 2.

**Please note:** The Guidelines are general in nature and should not be relied upon as an exhaustive statement of the relevant law. In order to assess compliance with the statutory requirements, owners should have regard to the *Pharmacy Business Ownership Act 2001* (Qld) (**the Act**), and independent legal advice.

## 2. Ownership restrictions

### 2.1 Definition of 'own'

The term 'own' is defined to include having a proprietary interest in the pharmacy business but does not include having an interest in the pharmacy business arising under a bill of sale, mortgage, or other form of security, for the pharmacy business.

See Section 139A of the Act for more detail.

### 2.2 Who can own a pharmacy business?

A person must not own a pharmacy business unless the person is:

- a. a pharmacist; or
- b. a corporation whose directors and shareholders are all pharmacists; or
- c. a corporation:
  - i. whose directors and shareholders are a combination of pharmacists and relatives of the pharmacists (defined as the pharmacist's spouse or a child of the pharmacist who is at least 18 years of age); and
  - ii. in which the majority of shares are held by pharmacists; and
  - iii. in which only pharmacists hold voting shares; or
  - iv. a friendly society; or
  - v. Mater Misericordiae Health Services Brisbane Limited.

See Section 139B of the Act for more detail

The maximum penalty is 200 penalty units (equates to \$26,690 from 1 July 2019).

### 2.3 Restrictions on numbers

In Queensland there are restrictions on the number of pharmacy businesses an eligible person can own, these are:

- (a) A pharmacist or eligible corporation must not have a beneficial interest in more than five pharmacy businesses at the same time (section 139H of the Act).
- (b) Friendly societies and Mater Misericordiae Health Services Brisbane Limited can own up to six pharmacy businesses at a time (section 139H of the Act).
- (c) The maximum penalty for exceeding the allowable numbers is 200 penalty units (equates to \$26,690 from 1 July 2019).

## 2.4 Special cases

There are provisions allowing for continued ownership of a pharmacy business for a limited time in the following circumstances:

- a. a pharmacist whose registration is suspended or cancelled (section 139C of the Act);
- b. a person who stops being a pharmacist's spouse (section 139D of the Act);
- c. an executor, administrator or trustee of a pharmacist's estate (section 139E of the Act);
- d. a friendly society that demutualises (section 139F of the Act).

In addition, a trustee, liquidator or administrator does not commit an offence against the ownership provisions where a corporation that owns a pharmacy business is in liquidation or receivership, or under administration (section 139G of the Act).

# 3. Responsibilities of pharmacy owners

## 3.1 Supervision

A pharmacy business must at all times be carried on under the personal supervision and management of a pharmacist. This means that a pharmacist must be personally present in the premises while the premises is open for business, other than for a period of not more than one hour per day or another period approved by the chief executive (section 141 of the Act). The maximum penalty is 50 penalty units (equates to \$6,672.50 from 1 July 2019).

## 3.2 Void arrangements

A bill of sale, mortgage, lease, franchise, agency or other service or commercial arrangement for a pharmacy business is void to the extent it:

- a. gives to a person, other than the owner of the business:
  - i. the right to control in whole or part the way in which the business is carried on; or
  - ii. the right to receive any consideration that varies according to the profits or takings of the business; or
- b. requires goods or services for the business to be obtained from a stated person or body.

Refer Section 139I of the Act for more detail.

## 4. When notification must be given

Change of ownership of a pharmacy business: Notification must be given to Queensland Health by a person who starts to own the business and a person who ceases to own the business, within 21 days after the change of ownership of the pharmacy business (section 141A of the Act). The maximum penalty is 50 penalty units (equates to \$6,672.50 from 1 July 2019).

Change in ownership particulars of a pharmacy business: Notification must be given to Queensland Health by a person who owns the pharmacy business within 21 days after the change of ownership particulars of the pharmacy business (section 141B of the Act). The maximum penalty is 50 penalty units (equates to \$6,672.50 from 1 July 2019).

'Ownership particulars' are:

- a. the name or location of the pharmacy business; or
- b. the directors or shareholders of a company that owns the pharmacy business; or
- c. the shareholdings of shareholders of a company that owns the pharmacy business; or
- d. the share held by a partner of a partnership that owns the pharmacy business.

## 5. Change of ownership of a pharmacy or business details

### 5.1 Change of ownership

Under the Pharmacy Business Ownership Act 2001 (the Act), a person 'owns' a pharmacy business if they have a proprietary or beneficial interest in the pharmacy business, but ownership does not include a person having an interest in the pharmacy business arising under a bill of sale, mortgage or other form of security, in relation to the pharmacy business.

Where there is a change in interest and ownership of a pharmacy business the buyer and seller, transferor and transferee or new owner/s (Party) of a pharmacy business must complete the appropriate Form 1 in relation to the change.

The relevant 'Form 1 – Change of Ownership Notification Form' should be sent to Queensland Health, electronically where possible, via email at [PharmacyOwnership@health.qld.gov.au](mailto:PharmacyOwnership@health.qld.gov.au) within 21 days after the interest is acquired or the business is purchased. Lodgement directions are set out on the form.

There are a number of 'Change of ownership of a pharmacy or business details forms ranging through Form 1a – e, depending on the circumstances of the change required. These include:

- a. Form 1a – Change of interest in and ownership of a pharmacy business (acquiring an interest in a pharmacy business).
- b. Form 1b – Change of interest in and ownership of a pharmacy business (restructure of a pharmacy business).
- c. Form 1c – Change of interest in and ownership of a pharmacy business (disposal of an entire interest).
- d. Form 1d – Change of interest in and ownership of a pharmacy business (opening of a new pharmacy business).
- e. Form 1e – Change of interest in and ownership of a pharmacy business (closure of a pharmacy business).

## 6. Change in ownership particulars of a pharmacy business

All owners of a pharmacy business are required to notify the Department of changes to pharmacy business details. This may include, but is not limited to:

- a. change of trade name;
- b. change in Pharmaceutical Benefits Scheme approval status, or change in approval number; and
- c. change of the pharmacy business' premises address or relocation (including within a shopping centre or complex).

A 'Form 2 – Change of Ownership Notification Form - Change in pharmacy business details' it is preferred the form is submitted to Queensland Health, electronically, within 21 days after the change in details. Lodgement directions are set out on the form.

## 7. Other requests for documents and information

### 7.1 Death of a pharmacy business owner

Where Queensland Health is made aware of a pharmacy business owner's death, a request will be made for:

- a. a copy of the pharmacist's death certificate and grant of probate (if available); and
- b. written confirmation that an executor, administrator or trustee of the estate of the deceased pharmacist has been appointed.

The executor, administrator or trustee should dispose of the interest or sell the pharmacy business within one year of the death of the pharmacist, or a longer period if agreed by Queensland Health having regard to the objects of the Act and the financial circumstances of the pharmacy business.

The continuation of ownership of a pharmacy business beyond that timeframe will constitute an offence against section 139B of the Act.

## 7.2 Insolvency of a pharmacy business

Where Queensland Health is made aware that a pharmacist who owns, or is the director of or a shareholder in a company that owns, a pharmacy business is insolvent under administration, a request will be made for:

- a. written confirmation from the trustee, liquidator or administrator that they have been formally appointed and the date of appointment; and
- b. notification to Queensland Health once their involvement ceases.

## 8. Further questions

If you have any further questions about the notification process, please contact the Pharmacy Ownership Team on 07 3708 5258 or by email using [PharmacyOwnership@health.qld.gov.au](mailto:PharmacyOwnership@health.qld.gov.au)

## Appendices

### Appendix 1 – Supporting documentation surrounding section 139I of the Act

When completing Forms 1 or 2, you may be requested to supply supporting documentation to ascertain compliance with section 139I of the Act. The Documentation List (section 13 and section 7 of Forms 1 and 2 respectively) provides the types of documents you should supply, however the below further expands on the examples provided.

**Please note:** The below list is **not exhaustive** and is general in nature. The list must not be relied upon as a definitive or explicit list of required documentation as owners should have regard to section 139I of the *Pharmacy Business Ownership Act 2001* (Qld) when determining which documents are required.

## Franchise agreement, licence or other agreement

Where the pharmacy business uses a trademark, brand or name (**Banner Brand**) owned by a third party or entity, it is likely the pharmacy business will have an arrangement with that party or entity. These arrangements may consist of:

- a. A franchise agreement (which may be called something else and may consist of more than one document i.e. the franchise agreement), which is generally an agreement between the owner of the Banner Brand (franchisor) and the owners/s of the pharmacy business (franchisee). In addition to the right to use the Brand, the franchise agreement may include the provision of additional services <sup>1</sup> by the franchisor to the franchisee, along with other rights and obligations;
- b. A licence, which is similar to a franchise agreement, but is generally limited (but not always) to the use of the Banner Brand (i.e. no additional services provided by the Banner Brand owner) and will be between the owners of the Banner Brand and the owners/s of the pharmacy business. A licence will set out the terms on which the owners/s of the pharmacy business can use the Banner Brand and the fee (if any) for doing so; or
- c. Another type of agreement, which is similar to a franchise agreement and licence, will set out the terms (including any fee) on which the owners/s of the pharmacy business can use the Banner Brand. Such other agreement may also include the provision of additional services<sup>2</sup> by the owners of the Banner Brand to the pharmacy business owner/s.

## Service or supply agreement or other contractual arrangement

Agreements or other contractual arrangements generally refer to the provision of services or products for the pharmacy business. These services may include, marketing and promotion programs, recruitment, staffing, locum services, management services such as bookkeeping and human resources, or other functions of a pharmacy business that an owner may outsource to a third party.

**NB:** Some of these services may also be included in other agreements (for example, a franchise agreement).

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<sup>1</sup> This will vary from pharmacy business to pharmacy business. Each pharmacy business will know what arrangements it has with third parties in relation to services to the pharmacy business.

<sup>2</sup> This will vary from pharmacy business to pharmacy business. Each pharmacy business will know what arrangements it has with third parties in relation to services to the pharmacy business.

## Hire purchase or equipment lease arrangement

Hire purchase or equipment lease agreements are generally agreements between a financier or equipment supplier and the pharmacy for the provision of, or lending for equipment that a pharmacy business may possess. Examples include computers or dispensing robots.

## Leases or licenses for premises

Where the owners/s of the pharmacy business do not own the premises from which the pharmacy business operates, this will generally be subject to a lease, sub-lease (where there is head lease) or licence to occupy.

### *Lease*

This is a written agreement between the owners of the land (lessor) from which the pharmacy business operates and the pharmacy business owners/s (lessee). The lease sets out the terms on which the owners/s of the pharmacy business can occupy the premises (i.e. the rights and obligations of the lessee and lessor).

### *Sub-lease*

This is a written agreement like a lease but is subject to a head lease. In other words, the lessee under a lease sub-leases their interest in the lease to the owners/s of the pharmacy business with the lessor's consent.

Please note, where the premises are subject to a sub-lease, a copy of the head-lease should also be provided.

### *Licence to occupy*

A licence to occupy is a written agreement where the owner of the premises (licensor) give the pharmacy business owners/s (licensee) non-exclusive possession of the premises.

## Leases and licences for equipment, software and systems

Leases and licences may exist in relation to the operation of the pharmacy business, including for software, systems or the provision of other products or services to the pharmacy business.

Pharmacy owners may be 'licensed' by a third party to access, use or obtain things for use in the pharmacy business.

## Employment agreements or contracts

The employment agreements or contracts being sought under this section specifically relate to agreements or contracts between pharmacy business owner/s and:

- Another person (including a corporation) that pharmacy business owners have an agreement or contract with (including franchisor, service providers, financier, lessor); or
- An employee of the pharmacy business where the operational control of the pharmacy owners is transferred to the employee (e.g. management arrangement, pharmacist-in-charge)

## List of security interests

Section 12 of the *Personal Property Securities Act 2009* (Cth) defines a security interest as:

*'an interest in personal property provided for by a transaction that, in substance, secures payment or performance of an obligation (without regard to the form of the transaction or the identity of the person who has title to the property).'*

A creditor may register a security interest on the Personal Properties Securities Register (**PPSR**) over assets of the pharmacy business including but not limited to:

- Stock or merchandise provided on an account or credit arrangement,
- Leased equipment, or equipment under finance, or;
- Branded equipment provided by a vendor, generally for the use of the vendor's products (e.g. beverage fridge).

Although it would be uncommon for some of these arrangements to exercise control (in full or in part) of the pharmacy business, you should familiarise yourself with, and provide a list of security interests so you and Queensland Health are satisfied that all arrangements that may contain void provisions under section 139I of the Act are supplied and assessed.

You can obtain a list of security interests from the PPSR<sup>3</sup>

When conducting a PPSR search, it is suggested the 'Search by organisation grantor' feature is used. The grantor will depend on a pharmacy business' structure. Therefore, it is suggested you consult the 'grantors' section of the PPSR website<sup>4</sup> to best determine the search criteria.

## Another other agreement or arrangement

This question on the Form and Documentation List is intentionally general in nature to ensure pharmacy owners consider any other agreement or arrangement that may exist.

Any other agreement or arrangement that gives control (in whole or in part) to anybody other than the pharmacy owner/s should be provided, so that it may be assessed for compliance against the Act.

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<sup>3</sup> <https://www.ppsr.gov.au/>

<sup>4</sup> <https://www.ppsr.gov.au/grantors>

## Appendix 2 - Legislative framework

### Overview of regulation

Queensland Health administers the Pharmacy Business Ownership Act 2001 (the Act), which regulates ownership of pharmacy businesses in Queensland.

- (a) The objects of the Act are set out in section 8(1) as:
  - a. to promote the professional, safe and competent provision of pharmacy services; and
  - b. to maintain public confidence in the pharmacy profession.
- (b) In accordance with section 8(2), the objects are to be achieved mainly by:
  - a. limiting who may own a pharmacy business; and
  - b. limiting the number of pharmacy businesses that may be owned by a person; and
  - c. providing for compliance with the Act to be monitored and enforced.

### Investigation and enforcement

An inspector appointed under the Act may enter a place with the consent of the occupier or with a warrant issued by a Magistrate; or a public place when the place is open to the public (section 150 of the Act). Upon entry, an inspector may undertake a search or inspection, take a thing or a sample, and require a person to provide information (section 156 of the Act). It is an offence to fail to give an inspector reasonable assistance unless an exemption applies (sections 157 and 158 of the Act). The maximum penalty is 50 penalty units (equates to \$6,672.50 from 1 July 2019).

An inspector is able to seize evidence if the inspector reasonably believes the thing is evidence of an offence against the Act (sections 159 and 160 of the Act).

An inspector also has power to require a person to provide their name and address where the inspector finds a person committing an offence against the Act, or the inspector reasonably suspects the person has just committed an offence against the Act (section 170 of the Act). It is an offence to fail to provide the information requested, unless the person has a reasonable excuse (section 171 of the Act). The maximum penalty is 50 penalty units (equates to \$6,672.50 from 1 July 2019).

It is an offence to give information or a document to an inspector where the person knows that the information or document is false or misleading in a material particular (sections 177 and 178 of the Act). The maximum penalty is 50 penalty units (equates to \$6,672.50 from 1 July 2019).

It is an offence to obstruct an inspector in the exercise of a power, unless the person has a reasonable excuse (section 179 of the Act). The maximum penalty is 100 penalty units (equates to \$13,345 from 1 July 2019).

It is an offence to impersonate an inspector (section 180 of the Act). The maximum penalty is 50 penalty units (equates to \$6,672.50 from 1 July 2019).

## Liability of executive officers

If a corporation commits an offence against certain provisions of the Act (namely, sections 139B(b), 139H(3), 139H(4), or 139H(5)), each executive officer of the corporation is taken to have also committed the offence if:

- a. the officer authorised or permitted the corporation's conduct constituting the offence; or
- b. the officer was, directly or indirectly, knowingly concerned in the corporation's conduct, (section 197 of the Act).