

# Pharmacy Business Ownership Bill 2023

## Explanatory Notes

### Short title

The short title of the Bill is the Pharmacy Business Ownership Bill 2023.

### Policy objectives and the reasons for them

The *Pharmacy Business Ownership Act 2001* (2001 Act) has been in place for over 20 years and has been significantly amended during that time. The 2001 Act is outdated and limits Queensland Health's ability to ensure compliance with its requirements. The Pharmacy Business Ownership Bill 2023 (Bill) repeals the 2001 Act and replaces it with a modern and effective framework for regulation of the ownership of pharmacy businesses.

The policy objectives of the Bill are to:

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

The Bill will implement the Government Response to several recommendations of the Health, Communities, Disability Services and Domestic and Family Violence Prevention Parliamentary Committee's (Committee) *Report No. 12 – Inquiry into the establishment of a pharmacy council and transfer of pharmacy ownership in Queensland* (Committee Report).

In May 2018, the Committee was tasked with inquiring into the establishment of a pharmacy council and the transfers of pharmacy ownership in Queensland. For the inquiry, the Committee:

- accepted and published 210 written submissions;

- obtained 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;
- obtained a report from the Queensland Productivity Commission on the cost-benefit analysis of establishing a pharmacy council in Queensland;
- held five public hearings, including in Toowoomba, Cairns and Townsville to examine the issues raised by submitters;
- met with representatives from the Victorian Pharmacy Authority in Melbourne; and
- sought expert advice from Queensland Health.

The Committee's inquiry considered the following key issues:

- the pharmacy ownership requirements in the 2001 Act;
- the merits of establishing a separate statutory authority, such as a pharmacy council, to administer transfers in pharmacy ownership; and
- the administration of transfers of pharmacy ownership by Queensland Health.

The Committee Report, tabled on 16 October 2018, made 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 communication of pharmacy services.

On 16 April 2019, the Government Response to the Committee Report (Government Response) was tabled in the Legislative Assembly. 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 11. The Government Response also committed to introducing a licensing scheme to support the regulation of pharmacy ownership in Queensland and the implementation of multiple recommendations from the Committee Report.

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

### **Ownership restrictions**

The 2001 Act sets out the regulatory framework for pharmacy ownership in Queensland. 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. The 2001 Act provides these objectives are achieved by prescribing requirements relating to pharmacy business ownership including:

- only a 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 business (section 139B); and

- a pharmacist or corporation must not own or have an interest in more than five pharmacy businesses at the same time, while friendly societies and the Mater must not own or have an interest in more than six pharmacy businesses at the same time (section 139H).

Limiting the ownership of and interests in pharmacy businesses to pharmacists and pharmacist-controlled corporations, with limited exceptions, is common in all Australian jurisdictions. Submitters to the Committee explained this ensures 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. This aims to ensure that pharmacy businesses are operated in a manner that places the health and wellbeing of customers and the community ahead of commercial considerations.

During Committee proceedings, several submitters expressed views that a proprietor who was not a pharmacist would be more likely to place profit before patient welfare than a proprietor pharmacist, to the detriment of consumers. This could result in reduced access to certain medicines that are essential for some members of the community but have low or zero profit margins. Some noted that non-pharmacist proprietors may also be less likely to offer services that do not return a profit – for example, delivery to homebound patients, blood pressure and diabetes screening, medication packaging and health advice and education.

The limitation relating to the number of pharmacy businesses that a person may own or have an interest in is also common to many jurisdictions. This limitation 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. This helps to ensure that each pharmacy operation is being conducted in accordance with applicable laws, policies, guidelines and good pharmacy practice, protecting the health and safety of the general public and promoting public confidence in the services provided by pharmacy businesses.

During Committee proceedings, several submitters also expressed concerns that relaxing ownership restrictions could result in the formation of monopolies focussed on maximising shareholder profits, to the detriment of patient and community health outcomes. Submitters raised concerns that 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.

The Committee reviewed the ownership requirements in the 2001 Act and noted there were a diverse range of views from stakeholders on whether they remain necessary to protect consumers and deliver accessible and affordable medicine. After examining relevant evidence and submissions, the Committee assessed, on balance, that the objectives of the 2001 Act are best achieved by maintaining the restrictions on who may own a pharmacy business.

The Committee expressed concerns that any removal or relaxation of the ownership requirements would result in reduced access to medicines and quality of services, particularly in rural and regional areas of Queensland. It was concerned that heightened competition from large corporations would force many small, independent pharmacies to close and it was not clear that they would be replaced by a corporate pharmacy. The Committee was also concerned that an increased concentration of ownership in the pharmacy market may ultimately see Queensland consumers paying more for their medicines in the longer term.

The Committee concluded that no reason for deregulation of ownership requirements for pharmacies in Queensland had been demonstrated and recommended the requirements be retained (Recommendation 9).

The Bill retains and clarifies the existing requirements relating to pharmacy ownership. The Bill also retains the limits on the number of pharmacy businesses a person may have an interest in from the 2001 Act.

Under the 2001 Act, owners and holders of lesser interests who derive their interest from or through the owner, for example, the interest of a shareholder of a corporate owner or the beneficiary of a trustee owner, are collectively referred to as ‘owners’. The Bill makes a distinction between ‘owning’ a pharmacy business and holding a lesser interest, which is termed a ‘material interest’.

### **Queensland Pharmacy Business Ownership Council**

Recommendation 6 of the Committee Report recommended *‘the establishment of a Queensland Pharmacy Advisory Council to advise the Department of Health in its administration of the Pharmacy Business Ownership Act and the fulfilment of its regulatory responsibilities.’*

The Bill establishes the Queensland Pharmacy Business Ownership Council (council) as a statutory body that does not represent the State. It is intended that the function of regulating pharmacy business ownership in Queensland will transfer from Queensland Health to the council on commencement of the Bill.

The decision to establish a regulatory council rather than an advisory council is 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 Pharmacy Guild of Australia, which represents pharmacy business owners, and most pharmacy business owners who provided feedback on the Bill, submitted that the council should have regulatory and enforcement powers. They consider a regulatory council with practical experience in the pharmacy industry will 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 (NSW), Victoria, South Australia and Western Australia, where pharmacy business ownership laws are administered by regulatory councils.

### **Licensing framework**

Owners of pharmacy businesses are not currently required to be licensed in Queensland, and premises do not need to be registered. Queensland Health’s current administrative process requires the pharmacy owner to complete a transfer of ownership form (a notification).

The QAO found that Queensland Health’s current administrative processes do not routinely involve obtaining sufficient information to allow it to determine if undeclared pharmacy ownership exists, for example, people may own multiple pharmacies through different corporate structures or trusts. The QAO also found that under current processes, Queensland Health does not monitor if pharmacies make any changes to their structure or commercial

arrangements after notifying Queensland Health of ownership changes, and suggested it could mitigate this risk by actively monitoring or annually reviewing pharmacy ownerships.

The QAO considered there was a need for processes to be adapted to recognise the more complex business structures and commercial arrangements pharmacy businesses now use. The QAO recommended amendments be made to the 2001 Act to enable Queensland Health to more effectively manage the pharmacy ownership notification process.

The Committee endorsed the QAO's findings and recommended the 2001 Act be amended to enable more effective management of the pharmacy ownership notification process (Recommendation 8). The Committee also noted that while the requirements on who can own pharmacies in Queensland remain part of the Act, there is a clear expectation from the pharmacy industry and other stakeholders that those requirements are effectively administered and proactively enforced.

The Government Response to the Committee Report committed to amending the 2001 Act to introduce a licensing framework to support the regulation of pharmacy ownership in Queensland. The Government Response noted this would support the implementation of multiple recommendations from the Committee Report and provide a mechanism for enforcing and monitoring ongoing compliance with ownership provisions.

The Bill addresses the issues raised by the QAO and Committee, and implements the Government Response, by providing for a new licensing framework to be established.

### **Monitoring and enforcement**

The 2001 Act is deficient in a number of ways and does not provide sufficient powers to assess compliance with the ownership requirements, or to adequately enforce those requirements. In particular, the 2001 Act does not provide sufficient information gathering powers, or sufficiently define the obligations of business owners. The investigation and enforcement powers in the 2001 Act are also outdated.

To ensure that pharmacy business ownership requirements can be properly monitored and enforced, the Bill includes provisions enabling the council to request any further information required to make licensing decisions, and more generally, to ensure compliance with the ownership requirements. The Bill also modernises the investigation and enforcement powers, to ensure that the council, as the regulator, can properly investigate and address incidences of non-compliance.

### **Inappropriate control**

Section 139I of 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. 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.

The QAO Report 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 section 139I of the 2001 Act. The

Committee recommended the 2001 Act be amended to include an offence provision relating to section 139I.

Section 139I of the 2001 Act has historically been operationally difficult to administer and enforce because *control* is not defined. Many common and legitimate commercial arrangements contain clauses that may be considered to give a degree of control to a person other than the owner, for example, a franchise agreement requiring the wearing of uniforms or use of particular branding, or a lease agreement for a business located in a shopping centre requiring the lessee to operate the business during particular trading hours.

The Bill responds to the Committee and QAO recommendations and provides further clarity about the types of third-party control that are intended to be prohibited.

### **Public register of pharmacies**

The Committee recommended Queensland Health investigate ways to improve communication to consumers about the services individual pharmacies provide (Recommendation 11). The Committee noted this would make accessing services easier for the general community. It would also be useful for government in times of pandemic, natural disaster and for population health initiatives. The Government Response committed to a public-facing website that lists pharmacies and the services they provide.

The Bill implements the Government Response to this recommendation by requiring the council to maintain a register of information about pharmacy businesses.

### **Public reporting of compliance audits**

The Committee found there is a lack of transparency about the compliance of pharmacies and pharmacists with Queensland's pharmacy ownership requirements. The Committee recommended that Queensland Health improve transparency about the compliance of pharmacists with the 2001 Act by publishing its compliance audit results, at least annually (Recommendation 10).

The Bill gives effect to this recommendation by requiring the council to publish the results of its monitoring and enforcement activities.

## **Achievement of policy objectives**

### **Ownership restrictions**

The Bill retains and clarifies the existing requirements about pharmacy ownership. Only an eligible person may own a pharmacy business. *Eligible person* is defined in clause 10 to include:

- a practising pharmacist;
- 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 of practising pharmacists, in which the 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 mentioned above; or
- Mater Misericordiae Ltd ACN 096 708 922.

Clause 9 of the Bill defines a *practising pharmacist* as a person who is registered under the Health Practitioner Regulation National Law to practice in the pharmacy profession with general registration.

The Bill also retains the limits on the number of pharmacy businesses a person may have an interest in from the 2001 Act. Clause 17 provides that a permitted person or corporation may have an interest in a maximum of five pharmacy businesses. Permitted friendly societies and the Mater may have an interest in a maximum of six pharmacy businesses. *Interest* is defined in schedule 1 to mean the interest of an owner of a pharmacy business, or a material interest in the business.

A *material interest* is defined in clause 13 to mean an interest:

- as a shareholder of the owner of business (applicable to corporate owners);
- the interest of a beneficiary under a trust, of which an owner of the business is a trustee; or
- another 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.

Under clause 16 of the Bill, a person may only hold a material interest in a pharmacy business if the person is a practising pharmacist or a close adult relative of a practicing pharmacist that holds an interest in that business. A *close adult relative* is defined in schedule 1 to mean a spouse or child of a pharmacist who is an adult. The maximum penalty for non-compliance is 200 penalty units, consistent with the maximum penalty for contravening the ownership offences in the 2001 Act.

## **Queensland Pharmacy Business Ownership Council**

Part 9 of the Bill establishes the council as a statutory body that does not represent the State. The council is a body corporate that may sue and be sued in its corporate name. The council will be a statutory body under the *Financial Accountability Act 2009* and *Statutory Bodies Financial Arrangements Act 1982* and a unit of public administration under the *Crime and Corruption Act 2001*.

The Bill provides that the functions of the council are:

- deciding applications relating to pharmacy licences;
- changing, suspending and cancelling pharmacy business licences;
- monitoring and enforcing compliance with the Act;
- advising the Minister on premise standards and other matters relating to the Act;
- administering the Queensland Pharmacy Business Ownership Council Fund established under the Bill;
- keeping a register of pharmacy businesses; and
- any other function given to the council under the Act or another Act.

The council may advise the Minister about premise standards and other matters relating to the Act on its own initiative or at the Minister's request. The council must, in performing its functions, act independently, impartially and in the public interest.

The council has all the powers of an individual and may do anything necessary or convenient to be done in the performance of its functions.

The council consists of at least five members, appointed by the Governor in Council upon recommendation of the Minister. A person is eligible for appointment to the council if the person is the owner of a licensed pharmacy business (or the director of a corporate owner), a practising pharmacist who is an employee of a licensed pharmacy business, or a person with qualifications or experience in accounting, business, financial management, law or carrying on a pharmacy business. A person is also eligible for appointment to the council if they have qualifications or experience in another area, that in the Minister's opinion, qualifies the person to represent consumers of pharmacy services, or another area that the Minister considers appropriate or beneficial to the performance of the council's functions. The council must include at least one individual who is the owner of a licensed pharmacy business and at least one who is an employee pharmacist.

These requirements reflect the Committee's recommendation that the membership of the council be diverse and include representatives to represent the pharmacy sector and consumers, and others with expertise in relevant areas.

The Bill contains robust conflict of interest provisions. 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. This is to ensure the integrity and transparency of decisions made by the council.

### **Licensing framework**

The Bill provides that it is an offence to carry on a pharmacy business without a licence (clause 19). A pharmacy business must be carried on at or from the licensed premises (clause 20). The maximum penalty for each offence is 200 penalty units, consistent with existing ownership offences in the 2001 Act.

A natural person or corporation is only able to apply for a pharmacy licence if the person or corporation is an eligible person under clause 10. The council may only grant a licence if satisfied that the applicant is an eligible person, a fit and proper person, and does not already hold an interest in the maximum permitted number of pharmacy businesses. 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 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. These changes bring Queensland into line with most other Australian jurisdictions, where licensing or registration is required to own a pharmacy business, and pharmacy businesses must not be located in or accessible from a supermarket. During consultation, pharmacy business owners strongly advocated for the Bill to include a prohibition on pharmacy businesses being located in or accessible from supermarkets. Reasons included 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.

The Bill provides for an annual licence renewal process, allowing regular and effective oversight of compliance with legislative requirements, including the ownership requirements.

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 2019*, or where the licence holder is a practising pharmacist whose registration under the Health Practitioner Regulation National Law has been suspended. 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. 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 relates poses an immediate risk to public health or safety, the council may immediately suspend or cancel the licence without a show cause notice.

The Bill also sets out the obligations of licence holders, which 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.

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. The Bill also contains provisions allowing an existing licence to be changed to reflect incoming or outgoing owners. This could include, for example, when an existing licence holder who is a sole trader enters into a partnership with another pharmacist, or a partnership ends. The Bill permits licensing fees to be prescribed by regulation.

The licensing framework will enable the effective and robust administration of the pharmacy ownership requirements. This will ensure that those requirements are easily understood by those bound by them, and in doing so, reduce regulatory uncertainty for the pharmacy industry.

The licensing framework will also improve transparency and public accountability through the full and complete collection of pharmacy ownership information, allowing the council to effectively fulfil its regulatory responsibilities to proactively monitor and enforce compliance with the pharmacy ownership legislation.

## **Monitoring and enforcement**

The Bill ensures that the council can properly monitor compliance with ownership requirements by providing it with the power to request further information from a licence holder that the council:

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

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

To promote effective administration of the pharmacy business ownership requirements, the Bill modernises the existing investigation and enforcement powers by updating part 3 of the 2001 Act, to align with current drafting standards and reflect the transfer of responsibility from Queensland Health to the council.

## **Inappropriate control**

Clause 22 of the Bill deals with matters previously covered by section 139I of the 2001 Act and provides further clarity about the types of third-party control that are intended to be prohibited.

Under this clause, a third party commits an offence if they do or purport to do particular activities which are prohibited. The prohibited activities involve a third-party controlling how the business provides services relating to medicines and public health, for example, restricting the medicines the pharmacy may sell, restricting the business from offering certain public health services (such as needle exchange programs) or imposing sales targets related to particular medicines. The maximum penalty is 200 penalty units.

The clause also clarifies the types of legitimate and common activities that are not intended to be captured and therefore are not prohibited, for example, 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.

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.

Clause 22 is designed 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.

## **Public register of pharmacies**

The Bill requires the council to maintain a register of licensed pharmacy businesses and allows the publication of the register on the council's website. The register must contain, for each licensed pharmacy business, the business name and address of the licensed premises for the business. The register may, if the council considers it appropriate, contain information about pharmacy services provided by a licensed pharmacy business.

This will allow the council to better communicate to members of the public about particular services offered by pharmacies including, for example, vaccinations.

## **Public reporting of compliance audits**

The Bill provides that the council may audit the operations of the licence holder to the extent they relate to the obligations of the licence holder under the Act. 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. Failure to comply will be an offence, with a maximum penalty of 50 penalty units. 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.

Within three months after the end of each financial year, the council must publish a report about audits conducted by the council and actions taken by the council to ensure compliance with the Act by licence holders. 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.

Annual reporting will allow industry and members of the community to consider the degree of compliance by industry with the Act and actions taken by the council to ensure compliance, improving transparency.

## **Alternative ways of achieving policy objectives**

The Bill proposes to repeal and replace the 2001 Act with a new Act to create a modern framework for the regulation of the ownership of pharmacy businesses. Alternatives to repealing and replacing the 2001 Act were considered, including retaining the current legislation or significantly amending the current framework to modernise it. These options were not considered appropriate as the current legislative framework is not fit for purpose. The 2001 Act is outdated, difficult to apply and prevents proper regulation and enforcement. Amending the current framework to modernise it would be a significant process due to its size and complexity and the age of the legislation. The amendments required would be significant and drafting would be constrained by the current structure of the legislation. As such, repealing and replacing the 2001 Act is considered the most appropriate option.

Alternative models to the proposed regulatory council, such as Queensland Health retaining responsibility for pharmacy ownership regulation and establishing an advisory council to make recommendations to Queensland Health have also been considered. However, stakeholders raised significant concerns that establishing an advisory council without a clear role in the licensing process may create unnecessary duplication and unclear roles and responsibilities.

The proposed regulatory council also responds to stakeholder feedback and brings Queensland into alignment with most other Australian jurisdictions.

The objective of establishing a licensing framework is to ensure the requirements relating to who may own or hold an interest in a pharmacy business, and how many pharmacy businesses a person may own or hold an interest in, can be properly monitored and enforced. Alternative options include retaining the current notification approach and making minor amendments to the 2001 Act to improve compliance processes. However, this would not achieve the stated objectives, given the QAO's finding that Queensland Health's current systems do not allow for proper enforcement and regulation of the requirements.

## **Estimated cost for government implementation**

It is estimated the cost to Government to establish the Queensland Pharmacy Business Ownership Council to administer community pharmacy business ownership regulation, and to implement a community pharmacy ownership licensing scheme in Queensland will be approximately \$9.8 million over four years. This will be sourced from existing Queensland Health resources. In the longer-term, it is expected that licensing fees will offset regulation and compliance costs.

## **Consistency with fundamental legislative principles**

The Bill has been drafted with regard to the fundamental legislative principles in section 4 of the *Legislative Standards Act 1992*.

The Bill seeks to ensure the existing requirements relating to the ownership and interests in pharmacy businesses can be appropriately monitored and enforced. However, the Bill also seeks to recognise the rights of business owners to independently carry on their business, while harmonising with existing controls on medicines in other legislation at a state and national level. It is necessary to strike a balance between promoting the autonomy of business owners, while also protecting the health and safety of the community, by ensuring those who own and control pharmacy businesses are appropriately qualified professionals.

For this reason, the Bill potentially departs from some fundamental legislative principles to ensure the safety of Queenslanders is paramount. The potential breaches are discussed in further detail below and are considered justified to achieve the main purposes of the Bill, being to promote the professional, safe and competent provision of pharmacy services by pharmacy businesses and to maintain public confidence in the pharmacy profession. Wherever possible, the impact of potential breaches of fundamental legislative principles has been mitigated and minimised.

### **Whether the legislation has sufficient regard to the rights and liberties of individuals (Legislative Standards Act, section 4(2)(a))**

*Does the legislation make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?*

Section 4(3)(a) of the Legislative Standards Act states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation makes rights

and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Given the size and complexity of the scheme, the Bill contains administrative powers for the council to support the operation and administration of the scheme. However, these powers are sufficiently defined and subject to appropriate review, as outlined below.

#### *Licensing framework – applications*

Part 4 of the Bill sets up the licensing framework for pharmacy businesses and includes provisions for a person to apply to the council for:

- grant of a licence;
- renewal or restoration of a licence;
- adding a person to a licence;
- removing a person from a licence;
- a change to the premises for the business; and
- a change to other details stated on the licence.

The Bill contains a number of administrative powers available to the council to deal with the applications outlined above, which are essential to support the effective operation of the licensing framework:

- clauses 26, 39, 44, 50, 54 and 60 allow the council to request any further information or documents the council needs to decide the relevant application;
- clauses 27 and 50 allow the council to ask an applicant to ensure the premises for which the application is made be available for inspection on a stated day, or another day agreed between the applicant and the council;
- clause 29 provides the council may grant or refuse to grant a licence;
- clause 30 provides the council may impose conditions on a licence that the council considers appropriate;
- clause 41 provides the council may grant or refuse to grant an application to add a person to a licence;
- clause 42 provides the council may impose conditions on the application granted under clause 41 that the council considers appropriate;
- clause 46 provides the council may grant or refuse to grant an application to remove a licence holder from a licence;
- clause 52 provides the council may grant or refuse to grant an application to change the premises related to a licence;
- clause 56 provides the council may grant or refuse to grant an application to add or remove a material interest holder or director from a licence; and
- clause 62 provides the council may grant or refuse to grant an application to change other details on a licence.

The following factors ensure the powers are appropriately defined:

- the applicant has a reasonable period of up to 14 days (or longer if the council and applicant agree to a later date) to comply with any notice for further information or documents, and the council may only request information or documents that the council needs to decide the application; and
- the council's ability to approve or refuse to grant an application is subject to the decision criteria specified for each type of application.

These powers are also subject to appropriate review through the following mechanisms:

- clauses 29, 41, 46, 52, 56 and 62 provide that if the council refuses to grant a relevant application, the council must give the applicant an information notice for the decision, including reasons for the decision and information about review rights and processes;
- clause 187 provides that person who has been given an information notice for a decision under the Act may apply to the council for an internal review of the decision;
- clause 189 requires the council, within 20 business days after receiving an application for internal review of an original decision, to review the original decision and confirm or amend the decision, or substitute a new decision, and give the person a Queensland Civil and Administrative Tribunal information notice (QCAT information notice) for the decision;
- clause 192 allows a person who has been given a QCAT information notice for the decision to apply to the Queensland Civil and Administrative Tribunal (QCAT), for an external review of the internal review decision.

#### Licensing framework – changes on the council’s own initiative

Clause 47 allows the council to remove a person from a jointly held licence, if the council is satisfied the person has died or the council reasonably suspects the person is not an owner of the pharmacy business for which the licence is granted. Clause 57 allows the council to make changes to a licence on the council's own initiative to add or remove a material interest holder, or director, in circumstances where the council reasonably suspects that the licence does not accurately reflect these details.

The council may also remove a person from a jointly held licence under clause 47 if the council reasonably suspects that a ground for cancelling the licence exists because of that person, but not because of the other holders of the licence. For example, if one holder of a joint licence is no longer a fit and proper person to hold a licence, the council may remove that person from the licence rather than cancelling the licence. This would allow the remaining licence holder or holders under the joint licence to continue carrying on the pharmacy business under the licence.

Similarly, clause 63 allows the council to change or impose a condition on a licence. The council must first reasonably believe that the change is necessary in the circumstances to ensure either the proper operation of the pharmacy business for which the licence is granted, or the health and wellbeing of customers of the pharmacy business for which the licence is granted.

The council may make use of this power if it reasonably suspects a ground for cancelling or suspending a pharmacy business licence exists, and it is necessary in the circumstances to ensure the health and wellbeing of customers of the pharmacy business for which the licence is granted, or to make a required change to the licence instead of suspending or cancelling the licence. This may apply, for example, 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.

These clauses are essential to ensure that changes that may not otherwise be notified to the council (for example, the death of a licence holder) can be reflected on the licence and updated in the council's records. In addition, these clauses ensure the council can take appropriate action to address non-compliance to protect public health and safety while ensuring the best outcome for the community, by ensuring continued access to quality health care, and limiting the impact on joint licence holders who remain eligible to hold the licence.

The following factors ensure the powers outlined above are appropriately defined:

- the circumstances in which the council may exercise power to change a licence on its own initiative are very limited and require the council to have either a 'reasonable belief' or 'reasonable suspicion' of certain matters;
- the powers enable a less serious consequence, for example, removal of a single owner, or imposition of a condition, in circumstances in which the licence could otherwise be cancelled, to the benefit of the remaining joint licence holders and the community.

These powers are also subject to appropriate review because:

- if the council proposes to remove a licence holder, or make a required change to a licence, the council must give each licence holder an information notice for the decision; and
- part 10 facilitates internal and external review rights.

The Bill also requires the council, if proposing to remove a licence holder, or interest holder, to first give the licence holder or holders a show cause notice, stating the council proposes to remove the licence holder or interest holder, providing the reasons for the proposed action, and advising the holder may, within 28 days after the notice is given, give the council a written response to the proposed action.

This ensures the licence holder has an adequate opportunity to present their case to the decision maker. The council must consider the written response before deciding whether or not to proceed with the relevant action.

#### Licensing framework – suspension and cancellation

Clauses 65, 66 and 68 provide the council with powers to suspend, cancel or immediately suspend or cancel a licence.

The council may suspend a licence if the council reasonably suspects:

- the licence was granted, renewed or restored because of materially incorrect, false or misleading information;
- a licence holder, or a director or shareholder of the licence holder, has contravened a condition of the licence;
- a licence holder, or a director or shareholder of the licence holder, has contravened the Act, the Health Practitioner Regulation National Law or the Medicines and Poisons Act, (regardless of whether they have been convicted of an offence for the contravention);
- the licensed premises are not authorised premises;
- the general registration of a holder of the licence, or a director or shareholder of the holder, is suspended; or
- another licence held by the licence holder has been suspended.

The ability to suspend a licence is necessary to ensure the council can fully investigate the circumstances relating to the ground for suspension and allow the licence holder to further explain or remedy the issue, where possible. This protects the public by preventing the licence holder from continuing to operate under the licence in a way that may pose a risk to public health and safety.

The council may cancel a licence if:

- any of the grounds for suspension of a pharmacy business licence under clause 65(1)(a) to (f) apply;
- a licence holder is not an eligible person;
- a licence holder is not a fit and proper person to own a pharmacy business; or
- a person who holds a material interest in the pharmacy business is not permitted to hold a material interest in the business under clause 16; or
- another licence held by the licence holder has been cancelled.

The ability to cancel a licence is necessary to ensure the council can respond to serious incidences of non-compliance with the Act. This is essential to achieve the purposes of the Act in promoting the professional, safe and competent provision of pharmacy services and maintaining public confidence in the pharmacy profession.

The council may immediately suspend or cancel a licence if the council reasonably suspects a ground for suspending or cancelling the licence exists, and carrying on the pharmacy business for which the licence is granted poses an immediate risk to public health or safety. This is essential to allow the council to respond to emergency situations, which may lead to harm if not immediately addressed and the licence holder continues carrying on the business.

The suspension and cancellation powers under the Bill are appropriately defined because the circumstances in which the powers apply are clearly stated. The suspension powers limit the period of suspension to a maximum of 90 days (or for a suspension relating to the suspension of registration under the Health Practitioner Regulation National Law, the period of that registration suspension).

The powers are subject to appropriate review because the council is required to give an information notice to a licence holder in relation to a proposed suspension, cancellation or immediate suspension or cancellation. Part 10 facilitates relevant internal and external review rights.

For suspension and cancellation, the council is also required to give the licence holder a show cause notice, stating the council proposes to suspend or cancel the licence, providing the reasons for the proposed suspension or cancellation, and advising that the holder may, within 28 days after the notice is given, give the council a written response to the proposed suspension or cancellation. The council must consider any written response before deciding whether to suspend or cancel the licence.

This ensures the licence holder has an adequate opportunity to present their case to the decision maker, and the case is considered by the council before coming to a final decision.

#### Fit and proper person requirement



The power of the council to consider whether a person is a fit and proper person in deciding an application or in relation to administrative action may be seen to breach the fundamental legislative principle that rights and liberties, or obligations, should be dependent on administrative power only if the power is sufficiently defined and subject to appropriate review because the consideration of other relevant matters may be subjectively applied.

Several clauses in the Bill require the council to consider whether a person is a fit and proper person:

- clause 28 provides the council may grant an application for a licence, only if satisfied the applicant is a fit and proper person to own a pharmacy business;
- clauses 40 and 55 provides the council may only grant an application to add an incoming party or material interest holder to a licence if satisfied the incoming party is a fit and proper person to own a pharmacy business, or if after the addition of the material interest holder, the licence holder will still be a fit and proper person; and
- clause 66 allows the council to cancel a licence if the licence holder is not a fit and proper person to own a pharmacy business.

Clause 72 outlines the factors the council must have regard to when deciding whether a person is a fit and proper person to own a pharmacy business:

- whether the person, or a director or shareholder of the person, holds or has previously held a pharmacy business licence;
- any conditions of a pharmacy business licence held or previously held by the person, or a director or shareholder of the person;
- whether a pharmacy business licence held or previously held by the person, or a director or shareholder of the person, is or has been suspended or cancelled;
- whether the person, or a director or shareholder of the person, has contravened the Act, Health Practitioner Regulation National Law or Medicines and Poisons Act;
- whether the person is a party to a contract, agreement or arrangement in relation to a licensed pharmacy business containing a provision to which clause 22(3) applies (that is, a provision that is void because it purports to authorise prohibited external control);
- whether the person, or a director or shareholder of the person, has been convicted of an indictable offence;
- if the person is an individual—whether the person is, or has been, an insolvent under administration or disqualified from managing corporations under the Corporations Act;
- if the person is a corporation—whether the person is, or has been, placed into administration, receivership or liquidation, or wound up or deregistered under the Corporations Act;
- any condition, undertaking, suspension or cancellation that applies, or has applied, under the Health Practitioner Regulation National Law in relation to the registration of the person, or a director or shareholder of the person, under that law to practise in the pharmacy profession with general registration; or
- another matter the council considers relevant in deciding whether the person is a fit and proper person to own a pharmacy business.

Medicines are not ordinary items of commerce, and pharmacies are unique among health practitioner businesses, in that they carry large quantities of medicines, including significant stock of drugs with a high potential for misuse and abuse, and illicit value. Determining whether an applicant is a fit and proper person to own a pharmacy business is necessary to ensure individuals with access to and control over pharmacy businesses, and the significant

quantities of medicines held by pharmacy businesses, have high levels of integrity and professionalism. This promotes the safe and competent provision of pharmacy services and protects the public. It also maintains public confidence in the pharmacy profession.

Providing discretion allows the council to have regard to matters including the person's current and previous compliance with pharmacy business ownership laws, whether the person has committed any relevant offences, and any conditions or other limitations placed on a practitioner's registration, or disciplinary action taken against the practitioner, under the Health Practitioner Regulation National Law.

This discretion is appropriate because 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. To balance the exercise of this power, the council's relevant decisions are subject to internal review and external review by QCAT.

The use of a discretionary 'fit and proper person' test is used in a range of legislative schemes involving protection of the public, such as for liquor licences and permits under the *Liquor Act 1992* (section 107), for admission to the legal profession under the *Legal Profession Act 2007* (section 31) and eligibility for registration as an engineer under the *Professional Engineers Act 2002* (section 11).

The imposition of discretion in these provisions is therefore considered justified.

#### Criteria relating to Council members

Clause 150 provides that a person is eligible for appointment as a council member only if the person is an individual who owns a licensed pharmacy business, director of a corporation that owns a licensed pharmacy business, a practicing pharmacist who is an employee of a licensed pharmacy business or has qualifications or experience in one or more of the following areas:

- accounting;
- business;
- financial management
- law;
- carrying on a pharmacy business;
- another area that in the Minister's opinion, qualifies the person to represent consumers of pharmacy services or the Minister considers appropriate or beneficial to the performance of the council's function.

The council must consist of at least one individual who owns a licensed pharmacy business and one practicing pharmacist who is an employee of a licensed pharmacy business

Under clause 151, 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, is the chief executive officer of the council, a member of the council's staff or a contractor of the council, or contravenes a provision of the Act.

A person is also disqualified from becoming a council member if the Minister asks the person for written consent to seeking their criminal history to assess their suitability, and the person does not give the Minister the written consent within 14 days after the Minister asks for it.

These powers are appropriately defined because they are based on clear criteria and relate directly to the skills, experience and level of integrity necessary for members of the council. They are justified due to the responsibilities associated with the council's regulatory functions. 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.

***Is the legislation consistent with principles of natural justice?***

Section 4(3)(b) of the Legislative Standards Act considers whether legislation has sufficient regard to rights and liberties of individuals and whether the legislation is consistent with the principles of natural justice.

The principles of natural justice are principles developed by the common law. The first principle is that something should not be done to a person that will deprive the person of some right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present the person's case to the decision-maker. The second principle is that the decision-maker must be unbiased. The third principle is that procedural fairness is required, involving a flexible obligation to adopt fair procedures that are appropriate and adapted to the circumstances of the particular case.

The licensing framework set out in the Bill and detailed above may impact on fundamental legislative principles relating to natural justice as it allows for licence holders to be deprived of a right (the right to own or hold an interest in a pharmacy) in circumstances where a licence application is refused or a licence is suspended or cancelled. These provisions are considered necessary to support the operation of the licensing framework and to ensure the requirements relating to who may own or hold an interest in a pharmacy business can be effectively monitored and enforced.

*Right to be heard*

Licences

The Bill provides the council may:

- refuse an application for a licence (clause 29);
- impose conditions on a licence (clause 30);
- refuse an application to add an incoming party to a licence (clauses 41 and 56);
- grant an application to add an incoming party to a licence, subject to a condition (clause 42);
- refuse an application to remove a party from a joint licence (clauses 46 and 56);
- remove a licence holder from a joint licence in circumstances where the licence would otherwise be cancelled (clause 47);
- refuse an application to change the licensed premises of a pharmacy business (clause 52);
- refuse an application to change another detail stated on the licence (clause 62);
- change the condition on a licence (clause 63);
- suspend a licence (clause 65);
- cancel a licence (clause 66); or
- immediately suspend or cancel a licence (clause 68).

In all of the above circumstances, the council is required to provide the relevant person or persons with an information notice, identifying the decision, outlining the reasons for the decision, and providing information about review rights.

Where the council is proposing to suspend or cancel a licence, or on their own initiative, make changes to a licence, or remove a licence or interest holder, the council must also provide the affected person or persons with a “show cause” notice and allow them the opportunity to make submissions in response. These submissions must be considered by the council before taking the proposed action.

Clause 68 provides the council may decide to suspend or cancel a licence on a ground mentioned in clause 65 or 66 without giving the licence holder a show cause notice if they consider it reasonably necessary because carrying on the pharmacy business for which the licence is granted poses an immediate risk to public health or safety.

This power is justified noting the high bar for immediate administrative action – the council is required to consider immediate suspension or cancellation is necessary because carrying on the pharmacy business for which the licence is granted poses an immediate risk to public health or safety. For example, the council may take immediate action to suspend a licence holder’s licence, if an action by the licence holder has resulted in significant harm to a patient of the pharmacy, and it is necessary to investigate whether the licence holder remains a suitable person to own a pharmacy business.

If the council decides to immediately suspend or cancel a licence, the council is required to give the licence holder an information notice for their decision. This means that the council’s decision under clause 68 is subject to internal review. An affected person may apply to QCAT for external review if a decision on an application for internal review of the decision has been made.

### Council

Clause 151 of the Bill provides that a person is disqualified from 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* or contravenes a provision of the Act. Under clause 156, the Minister may also end a Council member’s appointment at any time if the 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.

This raises the issue of whether the Bill has sufficient regard for the rights of individuals through consistency with natural justice principles, because it allows for the immediate removal of a person’s authority to continue as a Council member, without receiving and considering submissions from the person (right to be heard).

There is sufficient justification in this case due to the responsibilities associated with the Council’s regulatory function. 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.

### *Procedural fairness*

The Bill contains a number of clauses that relate to procedural fairness. Matters to be considered in relation to procedural fairness include whether a person who is the subject of the decision will be provided with adequate notice of when any hearing will take place, adequate notice of any allegation being considered, adequate notice of any particular requirements of the decision-maker and a reasonable opportunity to present the person's case and respond to any adverse material.

#### Show cause notice requirements

As noted above, where the council proposes to remove a licence holder from a licence, add or remove a material interest holder, change the conditions on a licence, or suspend or cancel a licence, the council must first provide the affected person or persons with a 'show cause' notice and allow them the opportunity to make submissions in response (see clauses 48, 58 and 64,). These submissions must be considered by the council before taking the proposed action.

#### Review provisions

Part 10 of the Bill provides for review of decisions. These provisions ensure natural justice for persons affected by decisions made under the licensing framework, setting out the processes for internal and external review of a decision.

Division 2 sets out the requirements for internal review of a decision. An affected person for an original decision of the council, for which an information notice must have been provided, may apply to the council for an internal review of the decision (clause 187). The application must be in the required form and made within 20 business days after the person was given an information notice about the decision (clause 188). The council must review the decision, and decide to confirm the original decision, amend the decision, or substitute a new decision. The council must then give the person a QCAT information notice relating to the internal review decision, which states the decision, the reasons for the decision, and information about the person's right to have the decision reviewed by QCAT (clause 189).

Division 4 provides a person who is given a QCAT information notice for an internal review decision may apply to QCAT for a review of the internal review decision (clause 192).

Division 5 permits a person who has applied for internal review of a seizure and forfeiture decision to appeal to a court in relation to the decision (clause 193).

These comprehensive provisions ensure administrative decisions made under the Act are subject to appropriate review.

#### ***Does the legislative allow the delegation of administrative power only in appropriate cases and to appropriate persons?***

Section 4(3)(c) of the Legislative Standards Act states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation allows for the delegation of administrative power only in appropriate cases and to appropriate persons.

The Bill enables the council to delegate functions and powers under the Act to council members and the chief executive officer. Council members and the chief executive officer may subdelegate their powers to an appropriately qualified member of the council's staff (clause 184). The inclusion of this delegation power is justified as there are a range of administrative

powers under the Act, and it would be impractical for the council to exercise day-to-day functions under the Act personally. The requirement that the staff member be appropriately qualified ensures that powers can only be subdelegated to a person with the necessary qualifications or experience to exercise the power.

***Does the legislation provide for the reversal of the onus of proof in criminal proceedings without adequate justification?***

Section 4(3)(d) of the Legislative Standards Act requires consideration of whether legislation has sufficient regard to rights and liberties of individuals and whether the legislation reverses the onus of proof in criminal proceedings without adequate justification.

Generally, for a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt. For example, if legislation prohibits a person from doing something ‘without reasonable excuse’, it is generally appropriate for a defendant to provide the necessary evidence of the reasonable excuse if evidence of the reasonable excuse does not appear in the case for the prosecution.

If legislation provides that something is conclusive evidence of a fact, without justification, this may also impinge on this principle.

Reasonable excuses

A number of offences within the Bill contain a reasonable excuse provision which may be considered to reverse the onus of proof. For example, the Bill provides that a licence holder, director or shareholder must notify the council if they are convicted of an indictable offence during the term of the licence, within 14 days after the conviction, unless they have a reasonable excuse (clause 75). A reasonable excuse might be, for example, that the person had been unwell in hospital and therefore unable to provide the required notification. Similarly, if an inspector requires a person to help the inspector during an inspection (for example, produce a document or give information), the person must comply, unless they have a reasonable excuse (clause 115).

In the examples above and in other instances where ‘reasonable excuse’ provisions exist in the Bill, the potential defendant (the person required to notify or provide help or their personal details) is best positioned to provide evidence of the reasonable excuse. Without a ‘reasonable excuse’ provision, the relevant offences would be unnecessarily strict and penalise individuals for non-compliance with obligations that they may be unable to comply with. Any departure from fundamental legislative principles is therefore considered justified.

Evidentiary provisions

Clauses 197, 198 and 199 of the Bill include certain evidentiary provisions which may reverse the onus of proof. For example, clause 198 provides that a signature purporting to be the signature of the Minister, a council member, the chairperson, the deputy chairperson, the chief executive or an inspector is evidence of the signature it purports to be. These clauses modernise existing evidentiary provisions in part 4 of the 2001 Act.

These provisions are considered appropriate to remove an unnecessary administrative burden for the prosecution to prove administrative, technical and scientific matters that are unlikely to

be in dispute in proceedings. This makes efficient use of a court's time and streamlines proceedings. Similar evidentiary provisions appear in other Acts, including for example, sections 208 and 209 of the Medicines and Poisons Act and sections 267 and 268 of the *Hospital and Health Boards Act 2011*.

### Executive liability

The Bill replicates the derivative liability provisions under the 2001 Act by providing in clause 203 that an executive officer of a corporation can be taken to have committed certain deemed executive liability provision offences committed by the corporation. However, this does not affect the liability of the corporation for the relevant offence, or the liability of any person for the offence under chapter 2 of the Criminal Code.

This provision is considered justified as 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. This is not considered a reverse onus of proof, as the State would have the burden of proving that the officer authorised or permitted the conduct, or was knowingly concerned in it. This type of provision requires the prosecution to prove the individual knew the essential facts that constitute the corporate offence, and through their own act or omission, was a participant in the offence.

As the legislation deals with situations where there may be serious risk of harm to the health and safety of the public (for example, allowing a pharmacy business to be carried on without supervision of a pharmacist), 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. An 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. The executive liability provisions are therefore warranted to ensure there is effective accountability at a corporate level for individuals concerned.

Similar provisions are contained in a range of other Acts, including section 214 of the Medicines and Poisons Act, section 143 of the *Private Health Facilities Act 1999* and section 205A of the *Radiation Safety Act 1999*.

### ***Does the legislation provide 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?***

Section 4(3)(e) of the Legislative Standards Act states that whether legislation has sufficient regard to rights and liberties of individuals depends on whether the legislation confers 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.

The Office of the Queensland Parliamentary Counsel's Fundamental Legislative Principle Notebook provides that current Queensland drafting practice relating to legislation setting out inspector's powers includes the following requirements:

- an inspector must be issued with official identification documents and, when the inspector is exercising a power, the inspector must produce them to any person against whom the power is being exercised;
- entry of any premises without consent is strictly controlled through requirements for warrants and limitation of circumstance;

- entry without consent into anywhere a person lives requires the highest justification;
- the powers that may be exercised, particularly on entry of premises, must be specified as far as practical, and justifiable in proportion to the interference in rights and liberties involved;
- if it is an offence to obstruct or fail to obey, help, or provide information to an inspector, reasonable excuse must be provided as a defence;
- property must not be interfered with or seized without particular justification;
- if property may be seized, the circumstances of its return must be specified and the circumstances must be fair, and the owner must be permitted reasonable access to it while it is seized; and
- if property is damaged, provision must be made for notice to be given to the owner of property and for payment of compensation unless there is particular justification for not providing compensation.

Generally, the inspectors' powers in the Bill are consistent with these principles, contain appropriate safeguards and are considered necessary to support the effective and transparent exercise of inspectors' powers for monitoring, compliance and enforcement of the Act.

Safeguards in the Bill include:

- clause 98 provides the council must issue an identity card to each inspector, and the card must contain a recent photo of the inspector, a copy of their signature, identify the person as an inspector under the Act, and state an expiry date for the card;
- clause 99 provides in exercising a power in relation to a person in the person's presence, an inspector must produce their identity card for the person's inspection before exercising the power, or have the identity card displayed so it is clearly visible to the person when exercising the power. If it is not practicable to comply with these requirements, the inspector must produce the identity card for the person's inspection at the first reasonable opportunity;
- clause 122 requires an information notice to be provided to a person from whom a thing has been seized, entitling the person to review of the seizure decision;
- clause 123 provides that the council must allow the owner of a seized thing to inspect it and copy it;
- clause 124 requires the council to return a seized thing to its owner, as soon as the council stops being satisfied there are reasonable grounds for retaining the thing;
- clause 137 provides if an inspector exercises a power, they must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible;
- clause 138 provides that if an inspector damages something when exercising a power, they must give notice of the damage to the owner of the thing; and
- clause 139 provides a person may claim compensation from the State if they incur loss because of the exercise of a power by an inspector.

In light of the relevant safeguards, the entry, search and seizure powers in the Bill are considered justified as they ensure authorised persons can access and collect accurate and relevant information and evidence to achieve the monitoring and enforcement functions of the public health and wellbeing aims of the Act, including ensuring pharmacy businesses are operating safely and in accordance with expected healthcare standards.



The monitoring and enforcement functions and overall aims of the Bill would be undermined and offences would not be able to be effectively investigated, prosecuted and enforced if the above powers were not available.

***Does the legislation provide appropriate protection against self-incrimination?***

Section 4(3)(f) of the Legislative Standards Act states that whether legislation has sufficient regard to rights and liberties of individuals depends on whether the legislation provides adequate protection against self-incrimination.

Clause 133 of the Bill provides it is not a reasonable excuse for a person to fail to comply with a document production requirement on the basis that complying with the requirement might incriminate the person or expose the person to a penalty. Similarly, clause 134 provides that it is not a reasonable excuse for a person to fail to comply with a certification requirement on the basis that complying with the requirement might incriminate the person or expose the person to a penalty. This is likely to depart from the fundamental legislative principle above. However, the departure under clause 134 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. The limited immunity does not apply in relation to an offence under the Act or administrative action.

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 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.

***Does the legislation confer immunity from proceeding or prosecution without adequate justification?***

Under section 4(3)(h) of the Legislative Standards Act, 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.

Clause 210 of the Bill provides that officials, being council members, the chief executive officer, inspectors and staff of the council are not civilly liable for an act done, or omission made, when they are carrying out functions under the Act. The conferral of immunity in this instance is justified as:

- immunity from civil liability is appropriate if it is conferred on persons carrying out statutory functions, as is the case in this instance;
- 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
- liability for the consequences of actions done, or omissions made, will not be extinguished by the Bill. The liability will instead attach to the council. Therefore, where persons

consider themselves to have been injured by the actions or omissions of a person carrying out a statutory function in good faith, legal redress remains open to them.

***Does the legislation in all other respects have sufficient regard to the rights and liberties of individuals?***

The list of examples in the Legislative Standards Act is not exhaustive of the issues relevant to deciding whether legislation has sufficient regard to the rights and liberties of individuals. Further considerations include whether the legislation infringes on the privacy of individuals, unduly restricts ordinary activities (including the right to conduct business without interference) and whether the penalties imposed by legislation are proportionate and relevant to the actions to which the penalties are applied.

***Does the legislation infringe on the right to privacy?***

The right to privacy, the disclosure of private or confidential information, and privacy and confidentiality issues have generally been identified by the former Scrutiny of Legislation Committee as relevant to consideration of whether legislation has sufficient regard to individuals' rights and liberties.

The Bill contains a range of provisions that may be seen to infringe upon the privacy of individuals, including provisions relating to collection and storage of personal information, confidentiality requirements and the keeping and publishing of a register of licensed pharmacy businesses. These provisions are justified as adequate safeguards are in place and the provisions enable the operation of the Act and protect the health and safety of the public.

Licensing framework

The Bill provides the council with the power to request the police commissioner provide a criminal history report about a person who is or has applied to be a licence holder (or is a director or shareholder of a corporate licence holder), to assist in determining whether the person is a fit and proper to hold a licence (or in the case of directors and shareholders, exercise an element of control over the licence holder) (clause 73). In the Bill, *criminal history* means 'the convictions recorded against that person in respect of offences', as defined in section 3 of the *Criminal Law (Rehabilitation of Offenders) Act 1986*. It does not include spent convictions.

This is a potential departure from the fundamental legislative principle that sufficient regard be given to an individual's rights and liberties, including privacy and confidentiality, as it provides for the council to obtain and consider the criminal history of particular individuals. However, it is mitigated by the safeguards included in the Bill, including the requirements for requests from criminal history to only be made with consent and for the criminal history information be kept confidential and destroyed after use.

The Bill also requires licence holders and directors and shareholders of a licence holder to notify the council if convicted of an indictable offence during the term of the licence (clause 75), and to notify of any changes in circumstances relating to whether the person is a fit and proper person under the Act (clause 76). The council can request from a licence holder, any further information that is necessary to determine whether the licence holder is an eligible

person or a fit and proper person, or whether a person holds a material interest in the relevant pharmacy business, or any other information necessary for the administration of the Act (clause 81). These provisions may also be regarded as adversely affecting an individual's privacy in relation to their personal information. However, it is mitigated by the requirement for confidential information (which includes personal information) to be treated in accordance with the confidentiality provisions in the Act, which prohibit disclosure other than in very limited circumstances.

Any departure is justified by the fact that pharmacy businesses hold large quantities of potentially dangerous substances and there is a need to ensure that the individuals who own or exert significant control over those businesses are fit and proper to do so, to minimise the risk of diversion or inappropriate use of substances. Provisions of this nature are common in occupational regulation legislation where for public health and safety reasons, the integrity of applicants or licence holders must be rigorously assessed.

### Investigation and enforcement

Part 8 of the Bill provides authority for inspectors to seize evidence, require a person to provide their name and address or other information, and require a person to produce a document. These provisions may also be regarded as adversely affecting an individual's privacy in relation to their personal information (which may be contained within seized evidence or a document required to be produced). The Bill also replicates a power in the 2001 Act for an inspector to enter a place, if the occupier consents, the place is open to the public, or the inspector's entry is authorised by a warrant, which may breach the right to privacy.

The Bill replicates existing safeguards in the 2001 Act, including for example, retaining the requirement for an inspector to present their identity card before exercising a power under the Act in relation to another person, outlining particular processes that must be followed by an inspector who is entering a place pursuant to consent or a warrant and requiring a receipt and information notice (allowing for review) to be provided for seized items.

Any departure is justified on the basis that the powers provided to inspectors will enable them to obtain critical information relating to the affairs and activities of pharmacy owners, which is necessary to support a robust regulatory system and enable effective monitoring and enforcement of compliance with the legislation.

### Council

The Bill allows the Minister to request a criminal history report about a person who is being considered for membership of the council (clause 181). The Bill also requires council members to disclose any convictions for indictable offences that occur during the term of the member's appointment, unless the member has a reasonable excuse (clause 182).

Again, this may depart from the fundamental legislative principle that sufficient regard be given to an individual's rights and liberties, including privacy and confidentiality, as it provides for the Minister to obtain and consider the criminal history of particular individuals. However, it is mitigated by the requirement for requests from criminal history to only be made with consent and for the criminal history information be kept confidential and destroyed after use.

It is considered that any impact on a person's right to privacy resulting from the power in the Bill to obtain the criminal history of Council members, and the requirement for Council

members to disclose certain information, is justified in order 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 council and should therefore be held to high standards of integrity and propriety.

### Confidentiality provisions

Part 12 of the Bill provides for the disclosure of confidential information that a person has obtained in performing a function under the Act or obtained access to from a person performing a function under the Act. Disclosure is allowed in limited circumstances, and to particular entities performing relevant functions (clauses 205 and 206). This may be considered to adversely affect an individual's privacy in relation to their personal information.

However, any departure from the fundamental legislative principle is mitigated by the appropriate safeguards in the Bill. This includes the condition that information may only be disclosed to these entities where the administrator is satisfied both that the disclosure is reasonably necessary for the entity to exercise its functions, and that the confidential information will be collected, stored and used by the entity in a way that protects the privacy of the persons to whom the information relates from unjustified intrusion (clause 206). It is an offence for a person to unlawfully disclose this information, with a maximum penalty of 50 penalty units (clause 205).

Any departure is justified because adequate safeguards are in place and appropriate information sharing is necessary to ensure relevant compliance entities can undertake well-informed and comprehensive investigations into activities that may endanger the health and safety of the public.

### ***Does the legislation unduly restrict ordinary activities (including the right to conduct business without interference)***

Legislation should not, without sufficient justification, unduly restrict ordinary activities. Regulation of business is an intervention in a right to conduct business in the way in which the persons involved consider appropriate.

The Bill regulates the business of pharmacy ownership by limiting who may own or have a material interest in the business (clauses 15 and 16) and how many businesses they may own or hold a material interest in (clause 17). The Bill also limits or mandates certain aspects of how the business may be carried on – for example, by providing that it may only be carried on at or from the licensed premises (clause 20) and requiring an authorised pharmacist to be present when the pharmacy is open for business (clause 21). The Bill prevents pharmacy owners from allowing third parties to exercise control over aspects of their business relating to medicines or health services by providing that it is an offence for third parties to do certain activities and making void provisions of a commercial agreement which authorise or permit such activities (clause 22).

Limiting who may own or hold an interest in a pharmacy business is justified on the basis that medicines are not ordinary items of commerce and have the potential to cause significant harm to individuals if misused (for example, where a person takes the wrong medicine or incorrect dosage) and negatively impact the community if distributed improperly (for example, diverted to criminal organisations).

Limiting the number of pharmacy businesses that a person may own or hold an interest in prevents the formation of monopolies which may result in a lack of owner oversight of pharmacy businesses, resulting in increased levels of non-compliance with relevant laws and good practice approaches, and reduced access to health care for some members of the community.

Limiting or mandating certain aspects of how a pharmacy business is run promotes the efficient operation of the licensing framework and ensures that an appropriately qualified person has appropriate oversight of the day to day running of the business, particularly in relation to core pharmacy services such as the dispensing of restricted medicines. Requiring the pharmacy business to be carried on only at or from the licensed premises ensures that the premises have been assessed as fit for purpose, and safe for customers and staff.

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.

These interventions will help to achieve the purposes of protecting and promoting community safety and ensuring adequate community access to medicines and pharmacy services.

### ***Does the legislation include offence provisions?***

Legislation should have sufficient regard to the rights and liberties of individuals by ensuring any consequences such as new offences are appropriate and reasonable. A penalty should be proportionate and relevant to the offence.

The Bill contains a range of offence provisions, including some that replicate or align with offences in the 2001 Act, and new offences to prohibit inappropriate third-party control, ensure the proper operation of the licensing framework, and support the functioning of the council.

A considered approach was undertaken when determining the proposed penalty unit amount for each offence provision. Under this approach, each proposed penalty unit amount was assessed to ensure it aligns with similar offence provisions in the 2001 Act and other jurisdictions, and is commensurate with the nature of the offence and the harm that may arise from a breach.

The Bill includes the following offence provisions, for which a maximum penalty of 200 penalty units applies:

- a person must not own a pharmacy business unless the person holds a pharmacy business licence for the business that is in effect (clause 15);
- 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 practicing pharmacist (clause 16);
- a person must not hold an interest (being an ownership interest or a material interest) in more than the maximum permitted number of pharmacy businesses (clause 17);
- a person must not carry on a pharmacy business unless the business is a licensed pharmacy business (clause 19);
- a person must carry on a licensed pharmacy business only at or from the licensed premises for the business (clause 20);

- a person, other than the owner, must not control how pharmacy services involving medicines are provided, restrict the types of medicine or health service the business may provide, require medicine for the business to be bought from a particular supplier, impose a sales target for the business in relation to a particular medicine or receive consideration that varies according to the profits or takings of the business (clause 22);
- the holder of a pharmacy business licence must not sell or transfer the licence to someone else, notify or advertise that the licence is available for sale or transfer, or permit or allow someone else to hold out that the person is the holder of the licence (clause 70);
- a person must not buy or receive a transfer of a pharmacy business licence (clause 70);
- a temporary operator must carry on the pharmacy business only at the authorised premises in relation to which the pharmacy business licence was granted (clause 88); and
- a temporary operator who carries on a pharmacy business for a period approved by the council under part 7 must comply with all relevant conditions (clause 88).

These are the key offences under the Bill, which are necessary to ensure that the objectives of the Act, in promoting the professional, safe and competent provision of pharmacy services by pharmacy businesses and maintaining public confidence in the pharmacy profession, can be achieved. The maximum penalty level for these offences is consistent with the existing penalties for similar offences in the 2001 Act (a maximum of 200 penalty units).

The Bill also contains the following offences relevant to the licensing framework, for which a maximum penalty of 50 penalty units applies:

- failure to ensure an authorised pharmacist is personally present at the pharmacy business at all times the business is open, other than one hour per day or other periods approved by the council (clause 21);
- failure to surrender licence when no longer an eligible person or after disposing of an interest as an owner (clause 69);
- failure to notify of a change in conditions relating to the fit and proper person assessment (clause 76);
- failure to notify of the death of a joint licence holder (clause 77);
- failure to notify of a change of business contact details (clause 78);
- failure to notify of a change of material interest holder, shareholdings, or director (clause 79); and
- failure to provide other information required by the council (clause 81).

These offence provisions are necessary to ensure the effective operation of the licensing framework. The offence provisions compel compliance with the requirements to provide particular information to the council, to ensure appropriate oversight of ownership and interests in pharmacies in Queensland.

Clause 71 provides a person must not, in relation to a pharmacy business licence or an application under the Act, provide information that is false or misleading in a material particular. The maximum penalty is 100 penalty units. This recognises that honest self-reporting is critical to the operation of the licensing framework.

Clause 75 requires licence holders, and directors and shareholders of licence holders, to notify the council if they are convicted of an indictable offence during the term of the licence. The maximum penalty applicable for non-compliance is 100 penalty units. This requirement ensures that individuals who own or exercise control or influence over pharmacy businesses

are fit and proper to do so. This recognises pharmacy businesses hold large quantities of potentially dangerous substances which could cause significant harm to individuals or the community if inappropriately used or distributed.

Clauses 21 and 88 require licence holders and temporary operators of pharmacy businesses under part 7 to ensure an authorised pharmacist is personally present when the business is open. A maximum penalty of 50 penalty units applies for non-compliance. This ensures that essential services of the business (including, for example, dispensing and advising about medicines) can occur when the business is open to the public, and that those services are provided by a qualified professional. This supports the public health objectives of the Bill.

Clause 80 requires a licence holder who is proposing to temporarily stop carrying on their business for a period of more than one week to notify the council, unless they have a reasonable excuse. The maximum penalty is 10 penalty units. This will ensure the public register of pharmacies can be kept up to date and consumers can be provided with current information. It will also support public health initiatives by ensuring the council's records of operating pharmacy businesses are accurate.

Clause 100 requires an inspector to return their identity card to the council within 21 days after their office ends, unless they have a reasonable excuse. The maximum penalty is 10 penalty units. This ensures that a person cannot falsely represent that they are a current inspector when they are not.

Part 8 of the Bill contains offence provisions relevant to the investigation and enforcement framework, for which a maximum penalty of 50 penalty units applies:

- a person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse (clause 115);
- a person who is required to seal a seized thing, or make it inoperable, must comply with the requirement unless the person has a reasonable excuse (clause 120);
- a person must not tamper with a seized thing or enter a restricted place, without approval or a reasonable excuse (clause 121);
- a person must comply with a personal details requirement unless the person has a reasonable excuse (clause 131);
- a person must comply with a document production requirement unless the person has a reasonable excuse (clause 133);
- a person must comply with a document certification requirement unless the person has a reasonable excuse (clause 134);
- a person must comply with an information requirement unless the person has a reasonable excuse (clause 136);
- a person must not give an inspector false or misleading information (clause 140); and
- a person must not obstruct an inspector (clause 141).

These offence provisions are necessary to ensure there is sufficient deterrence from committing non-compliant activities, such as limiting the ability of inspectors to carry out their functions or exercise their powers. This ensures effective enforcement of the Act and ultimately promotes public health and safety. The penalties relating to the inspection and enforcement regime are equivalent to or lower than penalties for similar offences in other health legislation such as the Hospital and Health Boards Act and the Medicines and Poisons Act.

Part 9 of the Bill also contains offence provisions relating to the council. Clause 182 requires Council members to notify the council if they are convicted of an indictable offence during the term of their appointment to the council. The maximum penalty applicable for non-compliance is 100 penalty units. This is necessary to ensure the integrity and appropriateness of those appointed to the council. Council members will be expected to uphold the public trust invested in the council and should therefore be held to high standards of integrity and propriety.

Clause 164 requires council members to disclose if they have a personal interest in a matter being considered by council. Subclause (4) provides that a council member who has such an interest must not be present when council considers the matter, or take part in a decision of council about the matter. A maximum penalty of 100 penalty units applies for contravention of either provision. These provisions promote good governance and ensure the transparency and integrity of the council, and its decisions. For council members who are also pharmacy business owners, this also reduces the risk of actual or perceived conflicts of interest by ensuring they are not involved in licensing decisions for which they may have a specific conflict of interest, such as a decision about a pharmacy in their local area.

Clause 205 provides that it is an offence for a person to directly or indirectly disclose confidential information to another person unless the disclosure is permitted under the Act. The maximum penalty is 50 penalty units. This appropriately protects the privacy of individuals.

Clause 208 requires a holder of the pharmacy business licence who is being audited to give the council, at all reasonable times, full and free access to all documents and property belonging to, in the custody of, or under the control of, the holder to the extent the document or property is relevant to the audit. The maximum penalty applicable for non-compliance is 50 penalty units. This ensures the council is able to effectively audit compliance with the Act and identify instances of non-compliance that may be able to be addressed through educative or enforcement mechanisms.

**Whether the legislation has sufficient regard to the institution of Parliament (*Legislative Standards Act 1992, s 4(2)(b)*)**

***Does the legislation sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly?***

Section 4(4)(a) of the Legislative Standards Act states that legislation has sufficient regard to the institution of Parliament if the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons.

Clause 212 of the Bill provides a regulation-making power and specifies that regulations may be made in relation to fees, waiver of fees, and the keeping of records under the Act. Regulations may also be made about any other matter provided for under the Act – this includes making of pharmacy premises standards under clause 11.

The Bill provides for the regulation to prescribe offences against the regulation which carry a maximum penalty of 20 penalty units. This is consistent with section 202 of the 2001 Act.

These provisions are considered to have sufficient regard to the institution of Parliament because:



- the matters to be prescribed are consistent with the policy objectives and purpose of the authorising law;
- the matters to be prescribed in relation to premise standards and documents required to be kept under the Act are technical in nature and relate to the operational aspects of running a pharmacy business such as ensuring safe and appropriate storage of medicines – this approach will allow the Government to respond promptly and flexibly if changes are needed in future to accommodate various matters, including public safety and changes in pharmacy operations; and
- matters relating to fees are administrative in nature and subject to change.

## Consultation

Queensland Health conducted two rounds of consultation with stakeholders in October 2022 and February 2023 on a confidential consultation paper and draft Bill. The stakeholders consulted included all current Queensland pharmacy business owners and interest holders, pharmacy franchisors, Pharmaceutical Society of Australia (PSA), Pharmacy Guild of Australia, Australian Health Practitioner Regulation Agency, Mater, Australian Medical Association – Queensland Branch (AMAQ), Royal Australian College of General Practitioners (Qld) (RACGP) and friendly societies.

Feedback on the draft Bill varied. Many stakeholders including pharmacy owners and interest holders, PSA and Pharmacy Guild strongly supported retaining the current pharmacy business ownership restrictions. AMAQ and RACGP strongly opposed pharmacy ownership restrictions and advocated for deregulation. The Bill gives effect to the Parliamentary Committee's recommendation and Government Response that the current ownership restrictions be retained.

The 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. The regulatory role of the council reflects the feedback provided by the industry to be regulated and aligns with the majority of other Australian jurisdictions.

Some stakeholders considered that clause 22 should prohibit external control over any aspect of the business. However, clause 22 captures the types of third-party control likely to have a negative impact on community or individual health without inadvertently capturing common place and acceptable arrangements that do not impact on health, for example, requirements by franchisors that staff in franchised businesses wear particular uniforms.

Some stakeholders suggested the offences and penalties proposed are not sufficient to discourage large operators from non-compliance. The Pharmacy Guild and some current owners also advocated for the Bill to contain divestment powers which would require an owner to sell or otherwise dispose of their business, and impose a further penalty if they did not comply. The maximum penalty of 200 penalty units included in the Bill aligns with the 2001 Act and is consistent with the penalties that apply in other jurisdictions. Regulation activities under this Bill also sit within a broader compliance framework for pharmacy owners, including that corporations may be fined five times the maximum amount as an individual under the *Penalties and Sentences Act 1992* and a finding of guilt for an offence under the Bill may impact on other professional licences and approvals, such as the professional registration of a pharmacist. Divestment powers do not exist in any other jurisdiction's pharmacy ownership laws and were considered unnecessary in light of the offences in the Bill and other consequences for non-compliance.

## Consistency with legislation of other jurisdictions

Pharmacies are regulated businesses in all states and territories of Australia.

### *Ownership by pharmacists*

In all jurisdictions, ownership of pharmacy businesses is restricted primarily to pharmacists and companies controlled by pharmacists. Some exceptions apply in relation to friendly societies and other organisations. Various penalties apply for non-compliance with these restrictions.

In NSW, schedule 5F of the *Health Practitioner Regulation National Law 2010* provides that a person must not own or otherwise have a financial interest in a pharmacy business unless the person is a pharmacist, a partner in a pharmacists' partnership or a pharmacists' body corporate or a member of a pharmacists' body corporate. Exemptions apply for approved friendly societies and State Vaccine Centres. *Financial interest* is defined broadly, to include interests held by sole proprietors, partners, directors, members, shareholders, trustees and beneficiaries.

In Victoria, the *Pharmacy Regulation Act 2010* provides that a person must not own or have a proprietary interest in a pharmacy business unless the person is a registered pharmacist, a company whose directors and shareholders are all registered pharmacists, and certain friendly societies. *Proprietary interest* means a legal or beneficial interest and includes a proprietary interest as a sole proprietor, as a partner, as a director, member or shareholder of a company and as the trustee or beneficiary of a trust.

In the Australian Capital Territory (ACT), part 3B of the *Public Health Act 1997* provides that a person must not own a pharmacy unless the person is a pharmacist, or a corporation whose directors are pharmacists and shareholders are pharmacists or close relatives of pharmacists. *Own* means having a legal or beneficial interest in the pharmacy business.

Western Australia's *Pharmacy Act 2010* provides that a person must not own or hold a proprietary interest in a pharmacy business unless the person is a pharmacist, a person in a pharmacy partnership made up of pharmacists and close family members of pharmacists, a pharmacist-controlled company or a friendly society. *Proprietary interest* means a legal or beneficial interest, and includes an interest as a sole proprietor, a partner, a director, member or shareholder of a company, or a trustee or beneficiary of a trust.

In South Australia, part 4 of the *Health Practitioner Regulation National Law 2010* provides that a person must not own or hold a proprietary interest in pharmacy business unless the person is a pharmacist, a prescribed relative of a pharmacist who holds a proprietary interest in the pharmacy business, a pharmacist-controlled trust or a pharmacist controlled-corporation. *Proprietary interest* means a legal or beneficial interest, and includes an interest as a sole proprietor, a partner, a director, member or shareholder of a company, or a trustee or beneficiary of a trust.

In Tasmania, the *Pharmacy Control Act 2001* provides a person is only eligible to hold an interest in a pharmacy business if the person is a pharmacist; for partnerships, if all partners are pharmacists; and for corporations, if the controlling interest is held by a pharmacist or pharmacists, and all shares and beneficial interest is vested in pharmacists and close relatives of pharmacists. Certain friendly societies are also eligible. The expression *interest in a pharmacy business* means any legal or beneficial interest, and includes an interest as a sole proprietor, a partner, a director, member or shareholder of a company, or a trustee or beneficiary of a trust.

The Northern Territory's *Health Practitioners Act 2004* provides a person must not own a pharmacy business unless the person is an *authorised pharmacy business owner* (being a pharmacist, a partner in a pharmacist partnership or a corporation in which all directors and shareholders are pharmacists) or an *authorised pharmacy service provider* (meaning an organisation that operates an Aboriginal health service, a pharmacy service that is part of a public hospital, or a pharmacy service that is part of a defence force facility).

#### *Number of pharmacy businesses that may be owned*

In NSW and Victoria, a pharmacist must not (whether as an individual or a member of a body corporate) own or otherwise have a financial interest in more than five pharmacy businesses. In Tasmania and Western Australia, a person or entity may only own or hold an interest in a maximum of four pharmacy businesses. In South Australia, a person may own or have an interest in six pharmacy businesses. In the ACT and the Northern Territory, there is no limit on the number of pharmacy businesses that a person may own or hold an interest in.

#### *Pharmacy councils*

Regulatory pharmacy councils exist in NSW, Victoria, South Australia, Western Australia, Northern Territory and Tasmania. In each jurisdiction, membership must include several members representing pharmacists and a consumer representative. In NSW and Victoria, the council must also include a lawyer. In all jurisdictions with a council, the council is responsible for assessing compliance with legislated ownership restrictions. Councils in all jurisdictions are funded primarily by licence and registration fees.

#### *Licensing or registration requirements*

There are varying requirements for licensing of owners and registration of premises across jurisdictions.

For example, in Victoria, a person is required to be licensed by the Victorian Pharmacy Authority to carry on a pharmacy business. A person is only eligible to apply for a licence if they meet the legislated ownership requirements. The pharmacy premises is also required to be registered by the Victorian Pharmacy Authority and must meet relevant prescribed standards.

In the ACT, a person must hold a Community Pharmacy Licence issued by the ACT Government in order to carry on a pharmacy business.

In NSW, a pharmacy premises must be approved as ‘suitable for carrying on a pharmacy business’ by the Pharmacy Council of New South Wales. Holders of financial interests in a pharmacy business must also be registered with the Pharmacy Council of New South Wales.

In South Australia, a person must not provide pharmacy services except at premises registered as a pharmacy by the Pharmacy Regulation Authority SA.

Similarly, in Western Australia, a person must not own or hold a proprietary interest in a pharmacy business unless the business is carried on at premises that are registered as a pharmacy by the Pharmacy Registration Board of Western Australia.

In Tasmania, a person who intends to hold an interest in a pharmacy business must apply to the Tasmanian Pharmacy Authority for an eligibility certificate deeming the person to be eligible to hold an interest in a pharmacy business.

#### *Prohibition against third party control*

In NSW, a provision in a lease, licence or arrangement that creates a security interest is void if it requires the purchase of goods for the pharmacy business from the lessor, licensor or grantee of the security interest, gives the lessor, licensee or grantee power to control the way in which the business is to be carried on (including power to decide whether or not the pharmacy may participate in any public health program), gives a right of access to books of account, or allows for consideration that varies according to the profits or takings of the business. No offence provision applies.

Similarly, in Victoria, a provision in a bill of sale, mortgage, lease or in any other commercial arrangement that gives a person other than the owner the right to control the manner in which the business is to be carried on, right of access to books of account or records, or the right to receive consideration that varies according to the profits or takings of the business, is void. No offence provision applies.

The approach taken in the Bill aligns with the Committee’s recommendation that an offence provision should apply and gives further certainty about what does, and does not, constitute inappropriate control.

#### *Public register of pharmacies*

In all jurisdictions other than the ACT and Northern Territory, the regulatory authority is required to maintain a register of pharmacy businesses which includes particulars of the pharmacy business, including its address and the name of the owners. The registers must be made available for inspection by the public and may be published online. No jurisdiction provides for the register to include details of particular services provided by each pharmacy, as is proposed by the Bill and recommended by the Committee. The purpose of the register proposed by the Bill is to communicate services provided by pharmacy businesses to consumers, not to communicate details of ownership.

#### *Public reporting of compliance audit results*

In South Australia, Western Australia, Tasmania and the Northern Territory, the relevant regulatory authorities must provide annual reports to the relevant Minister about their operations and functions in the preceding financial year. These reports contain information about the compliance activities conducted by the authorities and are required to be tabled in Parliament in all jurisdictions other than the Northern Territory.

# Notes on provisions

## Part 1 Preliminary

### Short title

*Clause 1* provides that the short title of the Act will be the *Pharmacy Business Ownership Act 2023 (Act)*.

### Commencement

*Clause 2* states the Act commences on a day to be fixed by proclamation.

### Main purposes

*Clause 3* states the main purposes of the Act are to promote the professional, safe and competent provision of pharmacy services by pharmacy businesses and to maintain public confidence in the pharmacy profession.

These purposes are consistent with the objects of the *Pharmacy Business Ownership Act 2001 (2001 Act)*.

### How main purposes are to be achieved

*Clause 4* sets out how the main purposes of the Act are to be achieved. The main purposes of the Act are to be achieved mainly by:

- limiting:
  - who may be an owner of, or hold a material interest in a pharmacy business;
  - how many pharmacy businesses a person may be an owner of or hold a material interest in; and
  - how and where pharmacy businesses may be carried on;
- imposing obligations on owners of, and persons who hold material interests in, pharmacy businesses; and
- establishing the Queensland Pharmacy Business Ownership Council to administer the Act, including to monitor and enforce compliance with it.

### Act binds all persons

*Clause 5* states provides that the Act binds all persons, including the State. However, the State can not be prosecuted for an offence against the Act.

### Relationship with Medicines and Poisons Act 2019

*Clause 6* states the Act does not limit the application of the *Medicines and Poisons Act 2019*.

## Part 2 Interpretation

### Definitions

*Clause 7* provides that particular words used in the Act are defined in the dictionary, which is in schedule 1.

### What is a *pharmacy business*

*Clause 8* defines a *pharmacy business* as a business that provides pharmacy services in Queensland that include core pharmacy services.

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.

*Compound* is defined in schedule 1 to mean mixing, compounding, formulating or reconstituting a medicine with any other substance.

*Dispense* is defined in schedule 1 with reference to section 25(2) of the Medicines and Poisons Act and means ‘to sell medicine to a person on prescription’.

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 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.

A business will only be a pharmacy business, for the purposes of the Act, 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.

Clause 8 clarifies that the following are not pharmacy businesses for the Act, even if they are businesses that may provide compounding or dispensing services:

- 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; or

- 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.

Clause 8 also provides or refers to definitions of *hospital*, *public sector hospital* and *veterinary surgeon* for the purposes of the above exceptions.

### **Who is a practising pharmacist**

Clause 9 defines *practising pharmacist* as a person registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession with general registration.

This clarifies the 2001 Act, which defined a *pharmacist* as a person registered under the Health Practitioner Regulation National Law to practise in the profession of pharmacy, other than as a student.

The application of the definition of pharmacist in the 2001 Act is unclear and there are a small number of existing owners or interest holders who have non-practising registration. Part 14 contains a transitional provision relating to these owners.

Prospectively, only practising pharmacists with general registration will be able to own or hold an interest in a pharmacy business in Queensland. This ensures that pharmacy business owners and interest holders maintain awareness of current laws, standards and guidelines, to ensure and promote public health and safety.

### **Who is an eligible person**

Clause 10 defines *eligible person*. Under clause 23 of the Bill, only an eligible person may apply for a licence to own a pharmacy business.

Under clause 10(1), an *eligible person* is a person who is:

- a practising pharmacist;
- 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 of practising pharmacists, in which the 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;
- an amalgamation of two or more friendly societies that carried on pharmacy businesses in Queensland or another State on 29 April 2005; or
- Mater Misericordiae Ltd (Mater).

Subclause (2) replicates the definition of *friendly society* in section 139A of the 2001 Act.

*Close adult relative* of a person is defined in schedule 1 to mean the spouse or adult child of the person, consistent with the definition of ‘relative’ in the 2001 Act.



### **What are authorised premises**

*Clause 11* defines *authorised premises* as premises that are not located in, or directly accessible from, a supermarket and meet the standards prescribed by regulation.

The Minister may recommend the Governor in Council make a regulation prescribing standards under subclause (1)(b), but only after receiving advice from the council on the standards.

*Supermarket* is defined to mean premises used primarily for selling a range of food, beverages, groceries and other domestic goods.

### **Who is an owner of a pharmacy business**

*Clause 12* provides that a person is an *owner* of a pharmacy business if the person owns the business solely or jointly with one or more other persons, including, for example, in a partnership.

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

*Clause 13* defines the term *material interest* in a pharmacy business as an interest as a shareholder of an owner of the business, or an interest as a beneficiary of a trust of which an owner of the business is trustee.

A person who holds another interest which entitles them to receive consideration that varies according to the profits or takings of the business is also considered to hold a material interest in a pharmacy business.

To remove any doubt, the interest of a member of a friendly society that owns a pharmacy business is not a material interest in that business.

### **Pharmacy business licences held jointly**

*Clause 14* provides that where a pharmacy business licence is held jointly by two or more persons, a reference in the Act to the holder of the licence is taken to be a reference to each of the persons who hold the joint licence. An application made by the holder of a pharmacy business licence that is held jointly by two or more persons under the Act must be made jointly by each of the persons. This applies unless the context indicates or requires otherwise.

If a provision of the Act requires the holder of a jointly held licence to give a notice to the council in relation to a pharmacy business licence, it is sufficient for any one of the joint licence holders to give that notice.

## **Part 3 Pharmacy businesses**

### **Division 1 Ownership and material interests**

#### **Owner of pharmacy business must hold pharmacy business licence**

*Clause 15* provides that a person must not own a pharmacy business unless the person holds a licence for the business that is in effect. The maximum penalty for non-compliance with this provision is 200 penalty units. This is an executive officer liability offence, and as such, if committed by a corporation, an executive officer of the corporation may be taken to have also committed the offence. Under section 181B of the *Penalties and Sentences Act 1992*, corporations may be fined five times the maximum amount for an individual, meaning a non-compliant corporation would be liable for a maximum penalty of 1000 penalty units.

Clause 15, in combination with the provisions of the Bill requiring applicants and licence holders to be and remain eligible persons, has the effect of retaining the ownership requirements set out in section 139B of the 2001 Act, within the context of a licensing framework. The licensing framework is a mechanism to assist in ensuring those requirements can be properly monitored and enforced.

The maximum penalty for non-compliance with clause 15 aligns with the maximum penalty for non-compliance with section 139B of the 2001 Act.

Subclause (2) clarifies that an offence is not committed under subclause (1) for the period in which a licence is suspended, or within 28 days after the expiry of the licence for the business (during which time the licence holder can apply for a restoration of the expired licence).

#### **Who may hold material interest in pharmacy business**

*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.

This aligns with and clarifies the requirements in the 2001 Act about who may hold an interest other than an ownership interest in a pharmacy business. The maximum penalty for non-compliance with clause 16 is 200 penalty units (and 1000 penalty units for corporations, due to section 181B of the *Penalties and Sentences Act*). This aligns with the maximum penalty for non-compliance with section 139B of the 2001 Act.

#### **Limit on number of pharmacy businesses a person may hold interest in**

*Clause 17* replicates the caps on the number of businesses that may be owned, or in which a material interest may be held, from section 139H of the 2001 Act.

Under clause 17, a person must not hold an interest in more than five pharmacy businesses (or six pharmacy businesses, for friendly societies and the Mater).

*Interest* is defined in the dictionary in schedule 1 to mean an interest as an owner of a pharmacy business or a material interest in the business.

This means it would be permissible for a practising pharmacist to own, for example, three pharmacy businesses and hold material interests in a further two pharmacy businesses (a total of five). It would not be acceptable for that person to own five pharmacy businesses and hold material interests in a further five pharmacy businesses (a total of 10).

The maximum penalty for non-compliance with clause 17 aligns with the maximum penalty for non-compliance with section 139H of the 2001 Act (200 penalty units and 1000 penalty units for corporations).

The offence in clause 17 is an executive liability offence. As such, if it is committed by a corporation, an executive officer of the corporation may be taken to have also committed the offence.

## **Division 2                      Operation**

### **Definition for division**

*Clause 18* clarifies that for the purpose of division 2, *carry on* a pharmacy business, does not include to carry on the business as an employee of the business. For example, a pharmacist employed by the licence holder to manage the pharmacy business, would not be considered to be carrying on the business for the purposes of the division.

### **Pharmacy business must be licensed**

*Clause 19* provides that a person must not carry on a pharmacy business unless the business is a licensed pharmacy business. A *licensed pharmacy business* is defined in the dictionary in schedule 1 as a pharmacy business for which a pharmacy business licence is in effect.

A maximum penalty of 200 penalty units, or 1000 penalty units for corporations due to section 181B of the Penalties and Sentences Act, applies for carrying on a pharmacy business for which a pharmacy business licence is not in effect. This is also an executive liability offence.

This clause requires every pharmacy business to be licensed, which helps to ensure appropriate oversight of pharmacies in Queensland and provides an appropriate deterrent to carrying on unauthorised pharmacy businesses, in the interests of public health and safety.

### **Licensed pharmacy business must be carried at or from licensed premises**

*Clause 20* provides a person must carry on a licensed pharmacy business only at or from the licensed premises for the business. *Licensed premises* is defined in the dictionary in schedule 1 to mean the premises in relation to which the pharmacy business licence granted for the business is in effect. A licence will only be granted if the council is satisfied the proposed licensed premises for the pharmacy business are authorised premises. *Authorised premises* are defined in clause 11 as premises that are not located within, and are not directly accessible from, a supermarket and meet the standards prescribed by regulation.

This clause provides that a person carries on a licensed pharmacy business at or from the licensed premises, if the pharmacy services the business provides are provided entirely at the licensed premises, or mainly at the licensed premises and also partly at another place. Pharmacy services provided at the other place must not involve the compounding or dispensing of

medicine at the place and must be provided under the direction or control of the licence holder, or an authorised pharmacist for the business.

*Authorised pharmacist* for a licensed pharmacy business is defined in schedule 1 to mean a licence holder who is a practising pharmacist, a director or shareholder of the licence holder who is a practising pharmacist or an employed practising pharmacist.

This clause recognises that pharmacy businesses provide a variety of outreach services from their licensed premises.

Examples of outreach services that may be provided from the premises include providing vaccinations in a way, and at a place, authorised under the Medicines and Poisons Act, conducting medication reviews at an aged-care facility and providing health-related information at a community event.

Each licence operates only in relation to a single authorised premises. Under clause 20, it is an offence for a person to carry on a pharmacy business other than at or from the authorised premises related to that licence. The maximum penalty is 200 penalty units. This is an executive liability offence.

### **Authorised pharmacist for licensed pharmacy business must be present at licensed premises**

*Clause 21* provides that the owner of a licenced pharmacy business must, unless they have a reasonable excuse, ensure an authorised pharmacist is personally present at the licensed premises when the pharmacy business is open. This clause modernises section 141 of the 2001 Act. The maximum penalty is 50 penalty units, consistent with the maximum penalty for non-compliance with section 141 of the 2001 Act.

The clause provides that the business may be open without an authorised pharmacist being present for a period, or periods totalling, not more than one hour per day or another period or periods approved by the council. This ensures pharmacists in small businesses where there may only be a sole pharmacist working are able to have a break during the day.

The council may approve another period during which the pharmacy business may be open without an authorised pharmacist being present, but in doing so, must have regard to the needs of customers of the pharmacy services provided by the business.

*Authorised pharmacist* for a licensed pharmacy business is defined in schedule 1.

Schedule 9 of the *Medicines and Poisons (Medicines) Regulation 2021* identifies the dealings that are authorised by members of the pharmacy profession. A pharmacist is authorised to dispense any medicine upon prescription, and to sell any medicine not requiring a prescription. However, a pharmacy assistant is only able to sell medicines under the direct supervision of a pharmacist.

Therefore, requiring a pharmacist to be personally present in a pharmacy ensures that crucial services of the business including, for example, dispensing and advising about medicines, can occur when the business is open to the public to meet the needs of consumers.

## **Particular activities relating to licensed pharmacy business prohibited**

*Clause 22* provides a person, other than an owner of a licensed pharmacy business, must not do or purport to do any of the following:

- control how pharmacy services involving medicines are provided to the public by the business;
- restrict the types of medicines or health service the business may provide to the public (for example, preventing the business from offering health services such as the Queensland Needle and Syringe Program service, an opioid dependency treatment program service, or a sexual or reproductive health service);
- require medicines for the business to be bought from a particular supplier; or
- impose a sales target for the business in relation to a particular medicine.

Clause 22(1) primarily focuses on certain activities relating to medicines and health services that should be undertaken by the pharmacy business owner based on health considerations of customers and the community, not commercial pressures from third parties. This ensures pharmacy owners can act autonomously and use their professional judgement in relation to matters that may impact on a person's health.

A person who does an activity prohibited by subclause (1) commits an offence, with a maximum penalty of 200 penalty units (or 1000 penalty units for corporations).

Subclause (2) provides that the prohibitions in subclause (1) do not apply to particular activities including an employee carrying out their duties as an employee, or a person who imposes a requirement about the opening hours, advertising, marketing, displays, staff training or staff uniforms to be used by the business. These are common and acceptable business arrangements.

Subclause (3) provides that a provision of a contract, agreement or arrangement is void to the extent it purports to authorise or permit an activity in relation to a licensed pharmacy business that is prohibited by subclause (1). This provision does not void the rest of the contract, agreement or arrangement.

## **Part 4 Pharmacy business licences**

### **Division 1 Application and grant**

#### **Who may apply**

*Clause 23* provides that an eligible person may apply to the council for a pharmacy business licence. Clause 10 defines who is an *eligible person*.

#### **Joint applications**

*Clause 24* provides that an application for a pharmacy business licence may be made jointly by two or more eligible persons. This will apply, for example, where a business is owned under a partnership structure.

Where an application is made jointly, a reference to 'the applicant' is taken to be a reference to each person making the application.

## Requirements for application

*Clause 25* provides an application for a pharmacy business licence must be in the approved form and state the following:

- the address of the premises at which the relevant pharmacy business is, or is to be, carried on;
- if the applicant is a corporation—the name of each director and shareholder of the applicant;
- if the applicant is, or is to be, an owner of the business as trustee of a trust—the name of each beneficiary of the trust; and
- the name of each person, who, to the best of the applicant’s knowledge, holds a material interest in the business.

The application must be accompanied by the fee prescribed by regulation. The application must not state more than one address for the premises.

## Requesting further information or document

*Clause 26* enables the council to seek further information or a document from an applicant for a licence, where needed by the council to decide the application. The council must request the information by way of a notice given to the applicant within 30 days after the application is made.

If the applicant does not give the information or document to the council within 14 days after receiving the notice, or a later day agreed between the council and the applicant, the application is taken to be withdrawn.

## Requesting inspection of premises

*Clause 27* provides that the council may ask an applicant to ensure that the premises to which the licence relates is made available for inspection by the council on a stated day, or another day to be agreed between the applicant and the council. The notice must be given to the applicant within 30 days after the application is made. The day on which the premises are to be made available for inspection by the council must be within 14 days after the day the notice is given to the applicant. The council may also ask the applicant to pay a fee for inspecting the premises. The fee must be paid within 14 days after the notice is given to the applicant.

This clause facilitates inspections of premises to ensure compliance with the standards prescribed by regulation.

If the premises are not made available for inspection by the council on the stated or agreed day or if the fee is not paid within 14 days, the application is taken to be withdrawn and the council must refund the fee to the applicant.

## Criteria for grant

*Clause 28* sets out the criteria for granting a pharmacy business licence. The council may only grant a pharmacy business licence if the council is satisfied that:

- the applicant is an eligible person;

- the applicant is a fit and proper person to own a pharmacy business;
- the applicant does not already hold an interest in the maximum number of pharmacy businesses permitted under clause 17;
- the proposed premises are authorised premises; and
- the persons who the council is aware hold a material interest in the pharmacy business are each entitled to hold a material interest under clause 16 and do not have a material interest in more than the maximum permitted number of pharmacy businesses under clause 17.

## **Deciding application**

*Clause 29* provides that after considering an application, and any other relevant information or document, the council may decide to grant or refuse to grant the pharmacy business licence. If the application is made jointly, the council may decide to grant or refuse to grant the licence to one or more, but not all, applicants.

If the council decides to grant the licence, the council must provide a copy of the licence to each approved applicant. The approved applicant or applicants must pay the licence fee prescribed by regulation.

If the council decides to refuse to grant the licence, or grant the licence subject to conditions, the council must provide each applicant with an information notice relating to the decision to refuse the licence or impose conditions on the licence. Also, if the council refuses to grant the licence to one or more applicants, the council must give each refused applicant an information notice for the decision. The information notice must contain information about the decision, including the reason for the decision, and outline the applicant's review rights in relation to the decision which are set out in part 10.

## **Conditions**

*Clause 30* allows the council to grant a licence on any conditions the council considers appropriate. It is not an offence to contravene a condition of a licence, however, contravention of a condition is a ground for suspension or cancellation of the licence.

## **Term**

*Clause 31* provides a pharmacy business licence is granted for a term of up to one year and comes into effect on the day stated in the licence. The licence stops having effect if it is suspended, cancelled or surrendered, or if each holder of the licence disposes of their entire interest in the relevant pharmacy business, or if the licence is held by one person only, that person dies.

A suspended licence stops having effect only for the period of the suspension.

A one-year licence term will enhance the council's ability to provide effective oversight and regulation of pharmacy business ownership in Queensland.

## Form of licence

*Clause 32* sets out the formal requirements for a licence. The licence must contain the following details:

- the name of the holder of the licence;
- the address of the licensed premises for the pharmacy business;
- if the licence holder is a corporation, the name of each director and shareholder of the corporation;
- if the owner of the business owns the business in a trustee capacity, the name of each person who, to the best of the council's knowledge, is a beneficiary of the trust;
- the name of each person who, to the best of the council's knowledge, holds a material interest in the business mentioned in clause 13(1)(c);
- the business name for the pharmacy business;
- the term of the licence; and
- the conditions, if any, applying to the licence.

## Division 2                      Renewal and restoration

### Application for renewal

*Clause 33* provides that a licence holder may apply for a renewal of their licence prior to its expiry. Where an application for renewal has been made, the licence is taken to continue in effect until the council decides the application for renewal or the application is withdrawn, whichever happens first. The application must be in the approved form and accompanied by the application fee prescribed by regulation.

### Application for restoration of expired licence

*Clause 34* provides for a 28-day period following the expiry of a licence, in which the holder of the expired licence may apply for the restoration of that licence. If an application is made within the required timeframe to restore an expired licence, the licence remains in effect until the application is decided by the council, or is withdrawn, whichever happens first.

The application must be in the approved form and accompanied by the application fee prescribed by regulation.

### Deciding application

*Clause 35* provides that when deciding an application for renewal or restoration of a licence, the application is assessed in the same way as an application for a licence, with the necessary changes.

### Term

*Clause 36* provides that a renewal of a pharmacy licence extends the term of the licence by a period of one year. If the application for the renewal is granted before the licence expires, the term begins the day after the licence would have expired but for the renewal. In any other case, the term begins the day the application for renewal is granted.



A restoration of a pharmacy business licence extends the term of the licence by a period of one year starting on the day the application for the restoration is granted.

A renewed or restored licence stops having effect if it is suspended, cancelled or surrendered, or if each holder of the licence disposes of their entire interest in the relevant pharmacy business, or if the licence is held by only one person, the holder of the licence dies. If the licence is suspended, it stops having effect only for the period of the suspension.

## **Division 3            Changing pharmacy business licences**

### **Subdivision 1        Adding a licence holder**

#### **Definition for subdivision**

*Clause 37* provides that the term *incoming party* in subdivision 1 refers to the incoming party described in clause 38(1) – that is, a person who is applying to be added to an existing pharmacy business licence as a joint licence holder. This will be relevant when a new owner acquires an interest in an existing pharmacy business for which a licence is held.

#### **Application to add a licence holder**

*Clause 38* provides that the holder of a pharmacy business licence and another eligible person (the *incoming party*) may apply together to the council, to add the incoming party to the pharmacy business licence.

The application must be in the approved form and accompanied by the application fee prescribed by regulation.

#### **Requesting further information or document**

*Clause 39* allows the council to request any further information or a document necessary to decide an application to add a person to an existing pharmacy business licence.

The request must be made by a notice given to the applicant within 30 days after the application is made. If the applicant fails to provide the requested information or document within 14 days after receiving the notice, or by a later date agreed between the council and the applicant, the application is taken to be withdrawn.

#### **Criteria for grant**

*Clause 40* provides that the council may only grant an application to add an incoming party to a licence if satisfied the incoming party:

- is an eligible person under clause 10;
- is a fit and proper person to own a pharmacy business; and
- does not already hold an interest in the maximum number of pharmacy businesses permitted under clause 17.

## **Deciding application**

*Clause 41* provides that after considering an application to add an incoming party to an existing licence, and any other relevant information or document, the council may decide to grant or refuse to grant the application.

If the council decides to grant the application, the council must give each applicant a notice stating the decision and a replacement copy of the licence, which incorporates the incoming party as a licence holder.

If the council decides to refuse to grant the application, or grants the application subject to conditions, the council must provide each applicant with an information notice relating to the decision to refuse the application or impose conditions. The information notice must contain information about the decision, including the reason for the decision, and outline the applicants' review rights in relation to the decision which are set out in part 10.

## **Conditions**

*Clause 42* allows the council, when granting an application to add an incoming party to an existing licence, to impose conditions that the council considers appropriate.

## **Subdivision 2      Removing a licence holder from licence held jointly**

### **Application for removal by licence holder**

*Clause 43* applies to a person who is a joint holder of a pharmacy business licence, but is no longer an owner of the business (for example, where a joint owner has sold or otherwise disposed of their interest in the business). The person may apply to the council to be removed from the licence. The application must be in the approved form and accompanied by the fee prescribed by regulation.

### **Requesting further information or document**

*Clause 44* allows the council to request any further information or a document necessary to decide an application to remove a person from a pharmacy business licence held jointly by the person and one or more other persons.

The request must be made by a notice given to the applicant within 30 days after the application is made. If the applicant fails to provide the requested information or document within 14 days after receiving the notice, or a later date agreed between the council and the applicant, the application is taken to be withdrawn.

### **Criterion for grant**

*Clause 45* provides the council may grant an application to remove a person from a joint licence only if satisfied the person is not an owner of the pharmacy business to which the pharmacy business licence relates.

## **Deciding application**

*Clause 46* provides that after considering an application to remove a person from a joint licence, and any other relevant information or document, the council may decide to grant or refuse to grant the application.

If the council decides to grant the application, the council must give the applicant a notice stating the decision. The council must give the remaining licence holders a replacement copy of the licence, incorporating the removal of the applicant as a licence holder.

The removal of the applicant from the licence takes effect on the day stated in the notice, which must be after the day the notice is given to the applicant, or an earlier day that is agreed between the council, the applicant and the other licence holders.

If the council decides to refuse to grant the application, the council must provide the applicant with an information notice relating to the decision to refuse the application.

## **Removal of licence holder on council's own initiative**

*Clause 47* allows the council to remove a person from a joint licence if the person has died or the council reasonably suspects the person is not an owner of the relevant pharmacy business.

The council may also, on the council's own initiative, remove a person from a joint licence if the council reasonably suspects that a ground for cancelling the licence exists because of that person, but not because of the other holders of the licence.

For example, if one holder of a joint licence is no longer a fit and proper person to hold a licence, the council may remove that person from the licence rather than cancelling the licence. This would allow the remaining licence holder or holders under the joint licence to continue carrying on the pharmacy business under the licence.

The council must give the person who is proposed to be removed from the licence, or, if the person has died, the executor, administrator or trustee of their estate, an information notice for the removal. The information notice must contain information about the decision to remove the person from the licence, including the reason for the decision, and outline the review rights which exist in relation to the decision which are set out in Part 10.

The removal of the person from the licence takes effect on the day stated in the information notice, which must be after the day the notice is given to the person, or if the person has died, after the day the notice is given to the executor, administrator or trustee of their estate.

If the council decides to remove the person from the licence, the council must give each other holder of the joint licence a notice stating the decision, and a replacement copy of the pharmacy business licence incorporating the removal of the person from the joint licence.

## **Show cause notice before removal**

*Clause 48* requires the council to provide a show cause notice before removing a person from a joint pharmacy business licence on the basis that the council reasonably suspects either that the person is not an owner of the licensed pharmacy business, or that a ground exists for cancelling the licence because of the person, but not the other holders of the licence.

The notice must be given to each holder of the licence and must state the council proposes to remove a person as a holder of the joint licence, the grounds for the proposed removal and that each holder of the licence may, within 28 days after the notice is given, give the council a written response to the proposed removal.

The council must consider any written response before deciding whether to remove a person from the joint licence.

### **Subdivision 3      Changing licensed premises**

#### **Application by licence holder**

*Clause 49* provides that a licence holder may apply to the council to change the licensed premises for the pharmacy business. The application must be in the approved form, state the address of the proposed licensed premises, and be accompanied by the prescribed fee.

#### **Requesting further information, document or inspection of premises**

*Clause 50* provides the council may request any further information or a document necessary to decide an application to change a licensed premises. The council may also ask the applicant to ensure that the proposed new premises are made available for inspection, on the day stated in the notice or another day agreed to by the applicant and the council and to pay to the council a fee for inspecting the premises prescribed by regulation.

If a notice is given asking the applicant to ensure premises are available for inspection, the day requested must be within 14 days after the notice is given to the applicant.

The request must be made by a notice given to the applicant within 30 days after the application is made. If the applicant fails to provide the requested information or document within 14 days after receiving the notice, fails to ensure the proposed new premises are made available for inspection on the stated or agreed day, or fails to pay the fee as required, the application is taken to be withdrawn. If the applicant has paid the fee and the application is taken to be withdrawn, the council must refund the fee to the applicant.

#### **Criteria for grant**

*Clause 51* provides that the council may only grant an application relating to a proposed change of premises for the pharmacy business, if the council is satisfied the new premises are authorised premises – that is, the new premises are not located wholly or partly within, or directly accessible from, a supermarket and comply with the standards prescribed by regulation.

Where the application relates to a change of premises, if the applicant is applying to return to previous premises following a temporary absence (for example, following renovations), the council must grant the application.

## **Deciding application**

*Clause 52* provides that after considering an application to change the licensed premises for a pharmacy business, and any other relevant information or document, the council may decide to grant or refuse to grant the application.

Where the council decides to grant the application, the council must give the applicant a notice stating the decision and a replacement copy of the licence, which incorporates the change of premises.

If the council decides to refuse to grant the application, the council must provide the applicant with an information notice relating to the decision to refuse the application. The information notice must contain information about the decision, including the reason for the decision, and outline the applicant's review rights in relation to the decision set out in part 10.

## **Subdivision 4 Adding or removing a material interest holder or director**

### **Application by licence holder**

*Clause 53* provides that a holder of a pharmacy business licence may apply to the council to add to, or remove from, the licence the name of a person who holds a material interest in the pharmacy business to which the licence relates or the name of a director of a corporation to which the licence relates.

The application must be in the approved form and be accompanied by the fee prescribed by regulation.

### **Requesting further information or document**

*Clause 54* allows the council to request any further information or a document necessary to decide an application to add or remove a material interest holder, or the name of a director of a corporation to which the licence relates, to or from the licence.

The request must be made by a notice given to the applicant within 30 days after the application is made. If the applicant fails to provide the requested information or document within 14 days after receiving the notice, or a later date agreed between the applicant and the council, the application is taken to be withdrawn.

### **Criteria for grant**

*Clause 55* provides the council may only grant an application to add or remove a material interest holder if the council is satisfied that the applicant is entitled to make the application because they are permitted under clauses 16 and 17 to hold the interest.

The council must also be satisfied that change will not result in the applicant no longer being a fit and proper person – for example, if the new interest holder is a shareholder who has been convicted of an indictable offence, the corporate licence holder may no longer be fit and proper.

For an application to remove a material interest holder or a director of a corporate licence holder, the council must be satisfied that the person no longer holds a material interest in the business, or the person is no longer a director of the corporate licence holder.

### **Deciding application**

*Clause 56* provides that after considering an application to add or remove a material interest holder or director and any other information or document obtained in relation to the application, the council may decide to grant or refuse to grant the application.

If the council decides to grant the application, the council must give each holder of the licence a notice stating the decision and a replacement copy of the licence, which incorporates the change applied for.

If the council decides to refuse to grant the application, the council must provide the applicant with an information notice relating to the decision to refuse the application. The information notice must contain information about the decision, including the reason for the decision, and outline the applicant's review rights in relation to the decision set out in part 10.

### **Addition or removal of material interest holder or director on council's own initiative**

*Clause 57* applies if the council reasonably suspects the persons stated on a pharmacy business licence as persons who hold a material interest in the business are incorrect, either because it does or does not include a person who holds a material interest in the business, or it does or does not include a person who is a director of the corporate licence holder.

In these circumstances, the council may decide, by giving each holder of the pharmacy business licence an information notice for the decision, to add or remove the name of the relevant person to or from the licence.

The council must then give each holder of the licence a notice stating the decision and a replacement copy of the licence incorporating the addition or removal of the relevant person's name.

### **Show cause notice before addition or removal**

*Clause 58* requires the council to provide a show cause notice to each licence holder if proposing to add to, or remove from, a pharmacy business licence the name of a person under clause 57.

The notice must state the council proposes to add to, or remove from, the licence the name of the stated person and the ground for the proposed removal or addition. The notice must also state that each holder of the licence may, within 28 days after the notice is given, give the council a written response to the proposed addition or removal.

The council must consider any written response given by a holder of the pharmacy business licence before deciding whether to add to, or remove from, the licence the name of the stated person.

## **Subdivision 5 Other changes**

### **Application by licence holder**

*Clause 59* provides a licence holder may apply to the council to change the business name, a condition of the licence or to reflect a change to the name of a licence holder, director or shareholder, or material interest holder (for example, a change of surname of an individual, or a change to a corporation's name). The application must be in the approved form and accompanied by the prescribed fee.

### **Requesting further information or document**

*Clause 60* provides that the council may request further information or a document necessary to decide an application to change a licence.

The request must be made by a notice given to the applicant within 30 days after the application is made. If the applicant fails to provide the requested information or document within 14 days after receiving the notice, or a later date agreed between the council and the applicant, the application is taken to be withdrawn.

### **Criterion for grant**

*Clause 61* provides that the council may only grant an application to change a detail on a pharmacy business licence if satisfied the grant is reasonable and appropriate in the circumstances.

### **Deciding application**

*Clause 62* provides that after considering an application to change a detail on a licence, and any other relevant information or document obtained in relation to the application, the council may decide to grant or refuse to grant the application.

If the council decides to grant the application, the council must give each applicant a notice stating the decision and a replacement copy of the licence, which incorporates the change applied for.

If the council decides to refuse to grant the application, the council must provide the applicant with an information notice relating to the decision to refuse the application. The information notice must contain information about the decision, including the reason for the decision, and outline the applicant's review rights in relation to the decision set out in part 10.

### **Change on council's own initiative**

*Clause 63* applies in circumstances where the council reasonably believes it is necessary to change a licence, to ensure the proper operation of the licensed pharmacy business, or the health and wellbeing of customers of the licensed pharmacy business.

The clause also applies if the council reasonably suspects that a ground for suspending or cancelling the licence exists, and reasonably believes it is necessary and appropriate in the circumstances to ensure the health and wellbeing of customers of the business, to change the conditions of the licence, instead of suspending or cancelling the licence.

This power may be used, for example, if the relevant pharmacy business is the only pharmacy business in a rural or regional 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.

The council may decide to change the conditions of the licence by giving each licence holder an information notice for the change, and a replacement copy of the licence incorporating the change. The information notice must contain information about the decision, including the reason for the decision, and outline the applicant's review rights in relation to the decision set out in part 10.

This clause defines *change*, for the conditions of a licence, to include imposing a new condition on the licence.

### **Show cause notice before change**

*Clause 64* requires the council to provide each holder of the licence with a show cause notice before changing a licence condition.

The notice must state that the council proposes to make the change, the reasons for the proposed change, and that the holder of the licence may, within 28 days after the notice is given, give the council a written response to the proposed change.

The council must consider any written response before deciding whether to make the change to the licence conditions.

## **Division 4                    Suspension, cancellation and surrender**

### **Suspension**

*Clause 65* sets out the circumstances in which the council may suspend a pharmacy business licence. The council may suspend a licence if the council reasonably suspects:

- the licence was granted, renewed or restored because of materially incorrect, false or misleading information;
- a licence holder, or a director or shareholder of the holder of the licence, has contravened a condition of the licence;
- a licence holder, or a director or shareholder of the holder of the licence, has contravened the Act, Health Practitioner Regulation National Law or Medicines and Poisons Act (regardless of whether they have been convicted of an offence for the contravention);
- the relevant licensed premises are not authorised premises (for example, because they do not meet the standard prescribed by regulation); or
- the general registration of a holder of the licence, or a director or shareholder of the holder of the licence to practise in the pharmacy profession, is suspended.

The council may also suspend a licence if another pharmacy business licence held by the licence holder has been suspended under the Act.



However, the option to suspend a pharmacy business licence is only available to the council if the council does not reasonably believe it necessary in the circumstances, to ensure the health and wellbeing of customers of the pharmacy business, to instead change or impose a condition on the licence.

The council may suspend the licence by giving each holder of the licence an information notice for the suspension. The suspension takes effect on the day stated in the information notice and continues for a period of not more than 90 days. However, if the suspension has occurred because the licence holder's general registration as a pharmacist has been suspended, the licence is suspended for the period for which the licence holder's registration is suspended.

Where a joint licence is held, and the ground for suspension applies to only one licence holder, the council may instead decide to impose a condition on the licence, for example, prohibiting the involvement of the offending licence holder in the carrying on of the business for a set period of time.

## **Cancellation**

*Clause 66* outlines the grounds for cancellation of a pharmacy business licence. The council may cancel a licence if the council reasonably suspects:

- any of the grounds for suspension of a pharmacy business licence under clause 65(1)(a) to (f) apply;
- a holder of the licence is not an eligible person;
- a holder of the licence is not a fit and proper person to own a pharmacy business;
- a person who holds a material interest in the pharmacy business is not permitted to hold a material interest in the business under clause 16;
- a holder of the licence, or a person who holds a material interest in the business, holds an interest in more than the maximum number of pharmacy businesses permitted under clause 17; or
- a holder of the licence holds another pharmacy business licence that has been cancelled under the Act.

When deciding if a holder of the licence is a fit and proper person to own a pharmacy business, the council will have regard to the criteria in clause 72. A person may not be fit and proper if, for example, the person's registration to practise in the pharmacy profession has been cancelled under the Health Practitioner Regulation National Law, or if the person becomes insolvent under administration.

However, the option to cancel a pharmacy business licence is only available to the council if the council does not reasonably believe it necessary in the circumstances, to ensure the health and wellbeing of customers of the pharmacy business, to instead impose or change a condition on the licence.

The council may cancel the licence by giving each holder of the licence an information notice for the cancellation. The cancellation takes effect on the day stated in the information notice, which must be after the day the notice is given to all licence holders.

Where a joint licence is held, and the ground for cancellation applies to only one licence holder, the council may instead decide to impose a condition on the licence, or remove the offending

licence holder from the licence. This ensures the remaining licence holders can continue carrying on the pharmacy business.

### **Show cause notice before suspension or cancellation**

*Clause 67* requires the council to provide each holder of the licence with a show cause notice before suspending or cancelling a licence.

The notice must state the council proposes to suspend or cancel the licence, the reasons for the proposed suspension or cancellation, and the holder of the licence may, within 28 days after the notice is given, give the council a written response to the proposed suspension or cancellation.

The council must consider any written response before deciding whether to suspend or cancel the licence.

### **Immediate suspension or cancellation without show cause notice**

*Clause 68* provides the council with the power to immediately suspend or cancel a licence, without providing a show cause notice.

This power will only apply in circumstances where the council reasonably suspects that a ground for suspending or cancelling a licence exists, and the carrying on of the pharmacy business poses an immediate risk to public health or safety. Any immediate suspension must not exceed a period of 90 days.

The council must immediately tell each licence holder about the suspension or cancellation by providing an information notice. The suspension or cancellation takes effect on the day stated in the information notice.

### **Surrender**

*Clause 69* relates to the surrender of licences that are held by only one person. A licence holder must surrender their licence, within 14 days after they stop being an eligible person or dispose of their interest as an owner of the business. The maximum penalty for non-compliance with this requirement is 50 penalty units.

A licence holder who does not meet the criteria in subclause (2) may surrender their licence at any time, by giving notice to the council. The licence stops having effect the day that notice is given to the council.

## **Division 5                      Miscellaneous**

### **Dealings with pharmacy business licences prohibited**

*Clause 70* prohibits dealings with pharmacy business licences. Pharmacy business licences are non-transferable. The holder of a licence must not sell or transfer the licence to someone else, notify or advertise that it is available for sale or transfer to someone else, or permit, or allow someone else to hold out that the person is the holder of the licence.

A person must also not buy or receive a transfer of a licence. The maximum penalty for non-compliance with each requirement is 200 penalty units.

This is a common prohibition in licensing schemes and ensures appropriate oversight and regulation of the sector being licensed.

### **False or misleading information**

*Clause 71* provides that when applying for a pharmacy business licence or making another application under the Act, a person must not state anything to the council the person knows is false or misleading in a material particular, or give the council information or a document the person knows is false or misleading in a material particular.

The maximum penalty for non-compliance is 100 penalty units. The offence does not apply if the person tells the council, to the best of their ability, how the statement, information or document is false or misleading, and gives the correct information to the council (provided the person has the correct information or can reasonably obtain it).

## **Part 5                      Fit and proper persons**

### **Deciding whether person is fit and proper to own pharmacy business**

*Clause 72* sets out the criteria that the council must have regard to when deciding whether a person is a fit and proper person to own a pharmacy business. This includes:

- whether the person, or a director or shareholder of the person, holds or has previously held a pharmacy business licence;
- any conditions of a pharmacy business licence held or previously held by the person, or a director or shareholder of the person;
- whether a pharmacy business licence held or previously held by the person, or a director or shareholder of the person, is or has been suspended or cancelled;
- whether the person, or a director or shareholder of the person, has contravened the Act, Health Practitioner Regulation National Law or Medicines and Poisons Act;
- whether the person is party to contract, agreement or arrangement in relation to a licensed pharmacy business containing a provision to which clause 22(3) applies (that is, is void because it purports to authorise a prohibited form of control over the pharmacy business);
- whether the person, or a director or shareholder of the person, has been convicted of an indictable offence;
- if the person is an individual—whether the person is, or has been, an insolvent under administration or disqualified from managing corporations under the Corporations Act;
- if the person is a corporation—whether the person is, or has been, placed into administration, receivership or liquidation, or wound up or deregistered under the Corporations Act;
- any condition, undertaking, suspension or cancellation that applies, or has applied, under the Health Practitioner Regulation National Law in relation to the registration of the person, or a director or shareholder of the person, to practise in the pharmacy profession with general registration under the National Law; or
- another matter the council considers relevant in deciding whether the person is a fit and proper person to own a pharmacy business.

Obtaining this information is necessary because it will reveal any history or information indicating that a person is not suitable to own a pharmacy business. Owners of pharmacy businesses have access to and control over pharmacy businesses, and the large quantities of medicines held by the businesses. Medicines have the potential to cause significant harm to individuals and the community if misused or improperly distributed. There is a need to ensure that those who own pharmacy businesses have high levels of integrity and professionalism. For example, a person who has previous convictions relating to organised crime or drug trafficking is unlikely to be suitable to own a pharmacy business. It also ensures that the owners are not party to agreements that permit prohibited forms of external control over the pharmacy business under clause 22. This promotes the safe and competent provision of pharmacy services.

### **Criminal history report**

*Clause 73* applies if the council is considering whether a person is a fit and proper person to own a pharmacy business. The council may ask the commissioner of the police service for a criminal history report about the person, or a director or shareholder of the person.

The commissioner must comply with the request, to the extent that the request applies to information in the possession of the commissioner or to which the commissioner has access.

The criminal history must be destroyed as soon as practicable after it is no longer needed for the purpose for which it was obtained, except where it must be preserved as a public record. The council may only make this request if the person, director or shareholder has given written consent for the request.

This power is necessary for the council to be able to independently verify a person's criminal history in considering whether a person is a fit and proper person to own a pharmacy business.

### **Review of written contract, agreement or arrangement**

*Clause 74* applies if a person gives the council a document for the purpose of the council considering if the person is a party to a contract, agreement or arrangement mentioned in clause 72(e).

The council may appoint an appropriately qualified person to review the document to determine if it contains a provision to which clause 22(3) applies – that is, a clause that is void because it purports to authorise or permit a prohibited form of external control under clause 22(1). The reviewer may prepare a report for the council on the review.

The council may give notice to the applicant to pay a fee prescribed by regulation for having the reviewer carry out the review and prepare the report.

If the council asks the applicant to pay a fee, it must be paid within 14 days after the notice is given.

If the reviewer does not conduct the review and give a copy of the report to the council within 60 days after the appointment, the council may decide that the person is not a party to a contract, agreement or arrangement mentioned in section 72(e).

This clause ensures that the council can seek legal advice or other professional advice if necessary to determine whether a complex commercial agreement is void under clause 22(3).

## **Part 6                      Obligations of holders of pharmacy business licences and material interests**

### **Notification of new convictions**

*Clause 75* requires a licence holder, or the director or shareholder of a licence holder, to notify the council if they are convicted of an indictable offence during the term of the licence. Notification must be made within 14 days after the conviction, unless the licence holder, director or shareholder has a reasonable excuse. The notice must include details:

- about the existence of the conviction;
- adequate to identify the offence;
- about when the offence was committed; and
- about the sentence imposed, if any, on the licence holder, director or shareholder.

The maximum penalty for non-compliance is 100 penalty units.

This provision ensures that the council becomes aware of offences during the term of a licence that may impact upon the suitability of the licence holder to continue to hold the licence and own a pharmacy business.

### **Notification of change in circumstances relating to whether holder of pharmacy business licence etc. is fit and proper person**

*Clause 76* requires licence holders, and directors and shareholders of licence holders, to notify the council if there is a change in their circumstances relating to a matter considered by the council in determining whether they were a fit and proper person to own a pharmacy business. This may include for example, a person becoming insolvent, or a condition being placed on the person's general registration as a pharmacist.

A licence holder, director or shareholder must also notify the council of changes to a matter that they know, or ought reasonably to know, was considered by the council in deciding whether to change the licence. A person ought reasonably to know a matter was considered by the council if, for example, the council advised the person that they were considering the matter, or asked the person for more information about that matter, during the licence application process.

Notification must be made within 14 days of the change, unless the person required to give it has a reasonable excuse. The maximum penalty for non-compliance is 50 penalty units.

A person does not commit an offence against this provision if the change relates to a contravention of the Act, Health Practitioner Regulation National Law or Medicines and Poisons Act and complying with the notification requirement might tend to incriminate the person or expose the person to a penalty.

### **Notification of death of joint licence holder**

*Clause 77* applies when two or more persons jointly hold a licence, and one person dies. The surviving licence holder, or holders, must notify the council of the death, within 14 days after

the death. The maximum penalty for non-compliance is 50 penalty units. Clause 77 does not apply if the surviving licence holder has a reasonable excuse for not giving notice.

### **Notification of change of contact details for licensed pharmacy business**

*Clause 78* requires a licence holder to notify the council if the postal address, phone number or email address of the pharmacy business changes. A change of postal address may occur, for example, if a shopping centre changes the shop number allocated to the premises. This clause does not apply where there is a change of premises leading to a change of address.

Notification of a change of contact details under this clause must be made within 14 days after the change occurs, unless the licence holder has a reasonable excuse. The maximum penalty for non-compliance is 50 penalty units. This is an executive liability offence and as such, if committed by a corporation, an executive officer of the corporation may be taken to have also committed the offence.

### **Notification of change relating to holder of material interest in pharmacy business or director of licence holder**

*Clause 79* requires licence holders to notify the council if they become aware of a change in the number or types of shares a person holds in the licence holder, or a change in a person's material interest in the pharmacy business to which the licence relates, including, for example, a person acquiring a new material interest in the pharmacy business or disposing of their material interest in the business. A corporate licence holder must also notify the council if there is a change of directors of the corporation.

The licence holder must give the council notice in the approved form and within 14 days of becoming aware of the change. The requirement to notify of changes to material interest holders or directors does not apply if the licence holder has made an application relating to the relevant change under clause 53.

### **Notification of temporary closure of licensed pharmacy business**

*Clause 80* requires licence holders to notify the council if they propose to temporarily stop carrying on the business for a period of more than one week. The licence holder must give the council notice of the stoppage before it happens, unless the licence holder has a reasonable excuse. The notice must state the period for which the business will not be carried on. The maximum penalty for this offence is 10 penalty units.

This provision will ensure the public register of pharmacy businesses can be kept up to date and consumers can be provided with current information.

### **Council may require holder of pharmacy business licence to give particular information**

*Clause 81* allows the council to require licence holders to provide information or a document that is in the possession or control of the licence holder that the council requires to determine whether the licence holder is an eligible person or a fit and proper person to own a pharmacy business.

The council may also request information or a document the council requires to determine whether a person holds a material interest in the pharmacy business to which the licence relates, or that the council otherwise considers necessary for the administration of the Act. This provision responds to the QAO's findings that Queensland Health's current systems do not allow a proper assessment of whether undeclared pharmacy ownership exists.

The council must provide a reasonable period of at least 14 days to comply with a requirement made under this clause. The licence holder must comply with the request, unless the licence holder has a reasonable excuse. The maximum penalty is 50 penalty units.

This clause ensures the council can request information or documents required to properly assess compliance with the Act and effectively regulate pharmacy business ownership and material interests in pharmacy businesses in Queensland.

## **Part 7                      Ownership and operation of pharmacy businesses for which licences have stopped having effect**

### **Definitions for part**

*Clause 82* provides that for the purposes of part 7 of the Bill, the term *decision criteria* means the purposes of the Act, the financial and operational circumstances of the business, and the health and wellbeing of customers of the business.

Clause 82 also defines *previous holder* of a cancelled business licence as the person who held a pharmacy business licence immediately before its cancellation.

### **Death of licence holder**

*Clause 83* applies if a pharmacy business licence stops having effect because the last licence holder dies.

Where this occurs, the executor, administrator or trustee of the deceased licence holder's estate may be an owner of or carry on the business, for a period of one year starting when the licence holder dies. The council may also approve a longer period of not more than two years, having regard to the decision criteria. The council may grant this approval on conditions the council considers appropriate.

The executor, administrator or trustee does not commit an offence under clauses 15, 19 or 20 in relation to being an owner of, or carrying on, the pharmacy business until the relevant period ends. This replicates section 139E of the 2001 Act.

### **Registration cancellation**

*Clause 84* applies if the council cancels a pharmacy licence because the general registration of licence holder, or a director or shareholder of the licence holder, to practice in the profession of pharmacy, has been cancelled.

In these circumstances, the previous licence holder may continue to own, or carry on the pharmacy business, for a period or periods approved by the council. In deciding whether to

grant this approval, the council must have regard to the decision criteria. The approval is subject to any conditions imposed by the council.

Each period approved by the council must not be more than three months and the total of all periods must not be more than one year.

The previous licence holder does not commit an offence under clauses 15, 19 or 20 in relation to being an owner of, or carrying on, the pharmacy business until the relevant period ends. This replicates section 139C of the 2001 Act.

### **Director, shareholder or beneficiary no longer spouse of practising pharmacist**

*Clause 85* applies if the council cancels a licence because a director, shareholder or beneficiary of a corporate licence holder stops being the spouse of a practising pharmacist.

In these circumstances, the previous licence holder may continue to own or carry on the pharmacy business for a period of one year after the cancellation, or for a longer period (of not more than two years) approved by the council. In approving a longer period, the council must have regard to the decision criteria. The approval is subject to any conditions imposed by the council.

The previous licence holder does not commit an offence under clauses 15, 19 or 20 in relation to being an owner of, or carrying on, the pharmacy business until the relevant period ends. This replicates section 139D of the 2001 Act. The former spouse does not commit an offence under clause 16.

### **Demutualisation of licence holder**

*Clause 86* applies if the council cancels a pharmacy business licence because of the demutualisation of the licence holder. This will apply only to licence holders that are friendly societies. Demutualisation is a method by which a mutual company such as a friendly society changes to a corporation with shareholders and share capital.

Where this occurs, the previous licence holder may continue to be an owner of, or carry on, the pharmacy business for the period starting on the day the licence cancellation occurs and ending six months after that day.

The previous licence holder does not commit an offence under clauses 15, 19 or 20 in relation to being an owner of, or carrying on, the pharmacy business until the relevant period ends. This replicates section 139F of the 2001 Act.

### **Licence holder being insolvent etc.**

*Clause 87* applies if:

- the council cancels a licence because the licence holder is an insolvent under administration, or a licence holder or director or shareholder of the licence holder is in liquidation or receivership, under administration, or wound up or deregistered under the Corporations Act, and
- the property of the previous licence holder vests in or comes under the control of, a trustee, liquidator, receiver or administrator.



If this occurs, clauses 15 and 22 do not apply to the trustee, liquidator, receiver or administrator.

If the previous licence holder is under administration, the administrator may continue to carry on the business for a period, or periods, approved by the council. In deciding whether to grant this approval, the council must have regard to the decision criteria. Each period approved by the council must not be more than three months and the total of all periods must not be more than one year. The council may grant this approval on conditions the council considers appropriate.

Clauses 19 and 20, which relate to the carrying on of the pharmacy business, do not apply to the administrator in relation to carrying on the business during any period approved by the council. An administrator who continued to carry on the business beyond the period approved by the council would be subject to these clauses.

This clause modernises section 139G of the 2001 Act.

### **Requirements for temporary operators of pharmacy businesses**

*Clause 88* applies to a *temporary operator*, which is defined as a person who carries on a pharmacy business after the licence for the business stops having effect, as permitted by part 7 of the Bill. This would include, for example, an executor or administrator, or a previous licence holder, who is permitted to own or carry on a pharmacy business following the cancellation of a licence.

This clause outlines obligations of temporary operators. A temporary operator is only permitted to carry on the pharmacy business at or from the authorised premises in relation to which the pharmacy business licence was granted. The maximum penalty for non-compliance is 200 penalty units. This aligns with the obligations of licence holders under clause 20 of the Bill.

This clause provides that the temporary operator carries on a licensed pharmacy business at or from the licensed premises if the pharmacy services the business provides are provided entirely at the licensed premises, or mainly at the licensed premises and also partly at another place. Pharmacy services provided at the other place must not involve the compounding or dispensing of medicine at the place and must be provided under the direction or control of a practising pharmacist employed or otherwise engaged by the operator.

A temporary operator must also ensure a practising pharmacist is personally present in the premises whenever the business is open, other than for a period of, or periods totalling, not more than one hour in a day, or another period approved by the council. The maximum penalty is 50 penalty units.

In deciding whether to approve another period, the council must have regard to needs of customers of the pharmacy services provided by the pharmacy business.

The temporary operator must also give the council notice of the name of each practising pharmacist under whose direction or control pharmacy services are to be provided or who will be present during open hours, unless they have a reasonable excuse. The maximum penalty is 50 penalty units.

A temporary operator who carries on a pharmacy business for a period approved by the council under part 7 must comply with any condition stated in the approval. A temporary operator must also comply with a condition of a pharmacy business licence, to the extent that it relates to the carrying on of the business and it is not inconsistent with a condition stated in the approval.

The maximum penalty for non-compliance is 200 penalty units. This is intended to provide sufficient deterrence for non-compliance with these requirements, noting the sanction of suspending or cancelling a licence is not available in relation to a temporary operator.

## **Part 8 Investigation and enforcement**

### **Division 1 Interpretation**

#### **Definitions for part**

*Clause 89* defines particular terms used in part 8.

#### **References to exercise of powers**

*Clause 90* states that a reference in part 8 to the exercise of a power by an inspector, other than a reference to the exercise of a specific power, is a reference to the exercise of all or any of an inspector's powers under this part or a warrant, to the extent the powers are relevant.

### **Division 2 General provisions about inspectors**

#### **Subdivision 1 Appointment**

##### **Inspectors under part**

*Clause 91* states that part 8 includes provisions about the appointment and powers of inspectors.

##### **Functions of inspectors**

*Clause 92* outlines the functions of inspectors. An inspector's functions under the Act are to investigate, monitor and enforce compliance, to investigate or monitor whether powers under the Act are required to be exercised on particular occasions, and to facilitate the exercise of powers under the Act.

##### **Appointment**

*Clause 93* provides that the council may, by instrument in writing, appoint any of the following persons as an inspector:

- a member of the council's staff;
- a contractor of the council;
- a health service employee;
- a public sector employee; or
- another person of a class prescribed by regulation.

The council must be satisfied that the person is appropriately qualified.

## **Appointment conditions and limit on powers**

*Clause 94* provides that an inspector holds office subject to any conditions stated in their instrument of appointment, a notice signed by the council and given to the inspector, or a regulation. The instrument of appointment, signed notice or regulation may limit the inspector's powers.

## **Accountability of inspectors**

*Clause 95* provides that an inspector must give written notice to the council of all interests that the inspector has, or acquires, and that conflict or could conflict with the proper performance of the inspector's functions.

Where a conflict exists, and the council considers the inspector should not deal or no longer deal with the matter, the council must give a direction to the inspector to this effect.

## **Suspension and ending of appointment of inspectors**

*Clause 96* provides for how an inspector's appointment may be suspended or ended.

If the inspector's term of office stated in a condition of office ends, or under another condition of office, the office ends, or the inspector resigns, the appointment comes to an end.

The council may also suspend or end the appointment of an inspector. *Clause 96* does not limit the ways an inspector's appointment ends.

This clause defines *condition of office* as a condition under which the inspector holds office.

If a person is employed as member of the council's staff, the ending of the person's appointment as an inspector under this clause does not impact on their employment as a member of the council's staff.

## **Resignation**

*Clause 97* provides that an inspector may resign by providing a signed notice of resignation to the council.

## **Subdivision 2      Identity cards**

### **Issue of identity card**

*Clause 98* requires the council to issue an identity card to each inspector, which contains a recent photo of the inspector, a copy of their signature, identifies the person as an inspector under the Act, and states an expiry date for the card.

### **Production or display of identity card**

*Clause 99* requires an inspector, when exercising a power under the Act in a person's presence, to show their identity card to the person. The person must be able to inspect or clearly see the card. If it is not practicable for the inspector to do so, they must produce the identity card to the person at the first reasonable opportunity. This aligns with section 149 of the 2001 Act.

An inspector is not considered to be exercising a power which requires the production of their identity card only because the inspector has entered a public place at a time the place is open to the public, or the licensed premises for the pharmacy business when it is open.

### **Return of identity card**

*Clause 100* requires a person whose appointment as an inspector has ended to return their identity card to the council within 21 days after their office as an inspector ends, unless they have a reasonable excuse. The maximum penalty for non-compliance is 10 penalty units. This aligns with section 148 of the 2001 Act, but provides a longer period for compliance.

## **Division 3            Entry of places by inspectors**

### **Subdivision 1        Power to enter**

#### **General power to enter places**

*Clause 101* sets out general powers of entry for inspectors. An inspector may enter a place if the occupier of the place consents to the entry (and the inspector has complied with the information requirements in clause 104), if the place is a public place that is open to the public, under a warrant, or if the place is the licensed premises for a pharmacy business which is open for business or otherwise open for entry.

Where an inspector enters a place with consent, their entry is subject to any conditions placed on the consent, and their power to be in the place ends if the consent is withdrawn. If the power to enter is under a warrant, it is subject to the terms of the warrant and clause 111 must be complied with.

### **Subdivision 2        Entry by consent**

#### **Application of subdivision**

*Clause 102* states that subdivision 2 applies if an inspector is seeking consent to enter a place under clause 101(1)(a).

#### **Incidental entry to ask for access**

*Clause 103* provides that an inspector may enter land around a place to seek consent to enter the place (for example, an inspector may enter the driveway of a building to speak to the occupier of the building). Consent or a warrant is not required to enter the land around a place for this purpose. The inspector may only enter the land around the place to the extent that it is necessary to contact the occupier to ask consent to enter the place.

The inspector may also enter part of the place that the inspector considers members of the public usually are allowed to enter if they wish to contact an occupier of the place.

## **Matters inspector must tell occupier**

*Clause 104* sets out information requirements that must be complied with by an inspector, before an inspector seeks consent to enter a place. The inspector must tell the occupier of the place the purpose of the entry, including the powers intended to be exercised and confirm that the occupier is not required to consent, and that consent can be subject to conditions and withdrawn at any time.

This ensures occupiers are fully informed of relevant facts and their rights, before consenting to an inspector's entry.

## **Consent acknowledgement**

*Clause 105* provides for a written acknowledgement of consent. An inspector may ask an occupier to sign an acknowledgement of consent, which states:

- the purpose of the entry (including the powers to be exercised);
- that the occupier has been provided with the information required to be provided under clause 104;
- that the occupier gives consent;
- the day and time the consent was given; and
- any conditions of the consent.

If the occupier signs the acknowledgement, the inspector must immediately give a copy to the occupier.

Subclause (4) is an evidentiary provision, which provides that if there is a dispute about whether an inspector's entry to a place was lawful, and a signed acknowledgement complying with this clause is not produced as evidence, the person in the proceeding who asserts that entry was lawful bears the onus of proof in establishing the occupier consented to the entry.

## **Subdivision 3      Entry under warrant**

### **Application for warrant**

*Clause 106* allows an inspector to apply to a magistrate for a warrant for a place. The inspector must prepare a written application that states the grounds on which the warrant is sought. The written application must be sworn.

If all the information required by the magistrate about the application is not provided in the way the magistrate requires, the magistrate may refuse to consider the application. For example, the magistrate may require additional information supporting the written application to be given by statutory declaration.

### **Issue of warrant**

*Clause 107* provides for a magistrate to issue a warrant for a place only if satisfied there are reasonable grounds for suspecting that there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence of an offence against the Act.

The warrant must state the following:

- the place to which the warrant applies;
- that an inspector may with necessary and reasonable help and force, enter the place and any other place necessary for entry to the place and exercise their powers;
- particulars of the offence that the magistrate considers appropriate;
- the name of the person suspected of having committed the offence unless the name is not known or the magistrate considers it inappropriate to state the name;
- the evidence that may be seized under the warrant;
- the hours of the day or night when the place may be entered;
- the magistrate's name;
- the day and time of the warrant's issue; and
- the warrant's end day, which must be within 14 days of the warrant's issue.

### **Electronic application**

*Clause 108* provides for an application for a warrant to be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the inspector reasonably considers it necessary because of urgent circumstances or because of other special circumstances, for example, remoteness of location. The written application must be prepared before the electronic application is made, however, the electronic application may be made before the written application is sworn.

### **Additional procedure if electronic application**

*Clause 109* provides that for an electronic application, the magistrate may issue the warrant (the *original warrant*) only if satisfied the application was necessary and appropriately made.

After the magistrate issues the original warrant, they must either give the inspector a copy of the warrant if reasonably practicable (for example, sending a copy by fax or email), or otherwise the magistrate must tell the inspector the information mentioned in clause 107(2).

The inspector must then complete a form of warrant containing these details. Either the copy of the warrant or the form of warrant (the duplicate warrant), whichever is produced, is a duplicate warrant and has the same effect as the original warrant.

At the first reasonable opportunity, the inspector must send the magistrate the written application complying with clause 106(2) and (3) and, if a form of warrant was produced, the completed form of warrant. If an issue arises in a proceeding about whether an exercise of power was authorised by a warrant issued under this clause and the original warrant is not produced in evidence, the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

This clause does not limit clause 106.

### **Defect in relation to a warrant**

*Clause 110* provides that a warrant, including a duplicate warrant, is not invalidated by a defect in the warrant or a defect in compliance with subdivision 3 unless the defect affects the substance of the warrant in a material particular. In this clause, *warrant* includes a duplicate warrant.

## **Entry procedure**

*Clause 111* applies if an inspector is intending to enter a place under a warrant. The inspector must make a reasonable attempt to identify themselves to a person who is an occupier of the place and is present by producing their identity card, give the person a copy of the warrant (or duplicate warrant), inform the person that the warrant permits the inspector's entry to the place and give the person an opportunity to allow the inspector immediate entry without using force.

However, the inspector does not need to comply with these requirements if they believe on reasonable grounds that immediate entry to the place is required to ensure the execution of the warrant is not frustrated.

## **Subdivision 4      General powers of inspectors after entering places**

### **Application of subdivision**

*Clause 112* states that the powers under subdivision 4 may be exercised if an inspector enters with consent, because the place is a public place open to the public, or the place is a licensed premises for a pharmacy business that is open to the public for business, or otherwise open. The powers are subject to any conditions of consent to entry or terms of a warrant.

### **General powers**

*Clause 113* allows for the inspector to carry out any of the following:

- 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 things or a sample of or from a thing, at the place or in a vehicle for examination;
- place an identifying mark in or on any vehicle or other things 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 a thing that is or contains an electronic document, or a thing that can be used reproduce sounds, images or writings from an electronic document, or both, to another place to reproduce sounds, images or writings from an electronic document;
- take to, into or onto the place and use any person, equipment and materials required to enable the inspector to exercise their powers (for example, by taking recording equipment onto the place, or taking a person who has a specific expertise but is not an inspector to assist with identifying relevant evidence); and
- remain at the place for the time necessary to achieve the purpose of the entry.

The inspector may take a necessary step to allow the exercise of a general power. If the inspector takes a document or a device or article reasonably capable of producing a document from an electronic document (for example, a computer or USB drive) from the place or a vehicle, the inspector must copy or produce the document and return the original document or device to the place or vehicle as soon as possible.

This clause provides definitions for the terms *examine*, *film* and *inspect* for the purposes of this clause. *Examine* includes analyse, test, account for, measure, weigh, grade, gauge and identify. *Film* includes photograph, videotape and record an image in another way. *Inspect*, a thing, includes open the thing and examine its contents.

### **Power to require reasonable help**

*Clause 114* empowers an inspector to require the occupier of the place or another person at the place to provide reasonable help to exercise a power under clause 113(1). For example, the inspector may ask the other person to produce a document or give information. The inspector must warn the person it is an offence not to comply with a help requirement unless the person has a reasonable excuse.

### **Offence to contravene help requirement**

*Clause 115* provides it is an offence for a person to fail to comply with a requirement under clause 114(1), unless the person has a reasonable excuse. The maximum penalty for non-compliance is 50 penalty units.

It is a reasonable excuse that complying with the requirement might incriminate the person or expose them to a penalty. However, this excuse is not available if a document or information the subject of a requirement under clause 114(1) is required to be held or kept by the person under the Act.

## **Division 4            Seizure by inspectors and forfeiture**

### **Subdivision 1        Power to seize**

#### **Seizing evidence at a place that may be entered without consent or warrant**

*Clause 116* empowers an inspector, who enters a place under Act without the consent of the occupier of the place and without a warrant, to seize a thing at the place if the inspector reasonably suspects the thing is evidence of an offence against the Act.

#### **Seizing evidence at a place that may be entered only with consent or warrant**

*Clause 117* applies if an inspector enters a place they may only enter with consent or under a warrant. The inspector may seize a thing at the place which they reasonably suspect is evidence of an offence against the Act, only where the seizure is consistent with the purpose of entry as explained to the occupier when asking for consent or the evidence is that for which a warrant has been issued.

However, the inspector may also seize anything else at the place if they reasonably suspect the thing is evidence of an offence against the Act and its seizure is necessary to prevent it from being hidden, lost or destroyed, or if they reasonably suspect the thing has just been used in the commission of an offence against the Act.



## **Seizure of property subject to security**

*Clause 118* states that an inspector may carry out a seizure for a thing and exercise powers relating to the thing despite a lien or other security over the thing being claimed by another person. However, the seizure does not affect the other person's claim to the lien or other security against a person, but this claim does not extend to the inspector or a person acting under the direction or authority of the inspector. For example, an inspector may seize a piece of pharmacy equipment as evidence, despite the fact that the equipment is leased from a third party, or under finance.

The seizure will not affect the security interest held by that third party over the piece of equipment. The security interest claim will not extend to the inspector, or a person acting under the direction or authority of the inspector. The security interest claim will remain against the person who is the party to the security interest.

## **Subdivision 2 Powers to support seizure**

### **Power to secure seized thing**

*Clause 119* provides that where a thing has been seized by an inspector, the inspector may leave it at the place it was seized from and take reasonable action to restrict access to it, or move it to another place.

Where the seized item is left at the place of seizure, the inspector may restrict access to it by, for example, sealing it, or the entrance to the place seizure, and marking it to show access is restricted. Where the seized thing is equipment, the inspector may restrict access to it by rendering it inoperable.

An inspector may also require a person who is in control of the place to restrict access to the seized thing.

### **Offence to contravene seizure requirement**

*Clause 120* provides that a person who is required to assist in restricting access to a seized thing or making it inoperable must comply with the requirement, unless the person has a reasonable excuse. The maximum penalty for non-compliance is 50 penalty units.

### **Offence to interfere**

*Clause 121* states that if access to a seized thing is restricted under clause 119, a person must not tamper with the seized thing, or with anything used to restrict access to the seized thing, without either an inspector's approval or a reasonable excuse.

Similarly, if access to a place is restricted under clause 119, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place, without either an inspector's approval or a reasonable excuse.

The maximum penalty for non-compliance with each of these requirements is 50 penalty units.

## **Subdivision 3      Safeguards for seized things**

### **Receipt and information notice for seized thing**

*Clause 122* provides that if an inspector seizes a thing under this division, the inspector must, as soon as practicable after seizing the thing, give the owner or the person in control of the item both a receipt describing the thing and its condition, and an information notice about the decision to seize the thing.

This requirement does not apply if the inspector reasonably believes that nobody is in possession of the thing or it has been abandoned, or because of the condition, nature and value of the thing, it would be unreasonable to require the inspector to provide a receipt and information notice.

The inspector may also leave the receipt and information notice (which may be in the same document) in a conspicuous place, if the owner or person from whom the thing was seized is not present.

An inspector may delay giving the receipt and information notice if the inspector reasonably suspects providing them is likely to frustrate or otherwise hinder the inspector's investigation. However, the delay may only continue while the inspector has the reasonable suspicion and remains in the vicinity of the place to keep the thing under observation.

### **Access to seized thing**

*Clause 123* requires an inspector who has seized a thing to allow the owner to inspect it at any reasonable time, and, if it is a document, to copy it. The inspection or copying must be allowed free of charge. This requirement does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

### **Return of seized thing**

*Clause 124* provides that a seized thing must be returned to the owner as soon as the council stops being satisfied there are reasonable grounds for retaining the thing. This does not apply if the thing is forfeited or transferred under subdivision 4 or 5, or subject to a disposal order under division 5.

If the thing is not returned to its owner within 3 months after it was seized, the owner may apply to the council for its return. Within 30 days of receiving the application, the council must either return the thing, or if satisfied that there are reasonable grounds for retaining the thing, give the owner notice of the decision, including the grounds for the decision.

Reasonable grounds for retaining a seized thing may include that the thing is being examined, or is needed for the purposes of a proceeding for an offence against the Act, or it is not lawful for the owner to possess the thing.

## **Subdivision 4      Forfeiture**

### **Forfeiture by council decision**

*Clause 125* allows the council to decide to forfeit a seized thing to the State, if after reasonable efforts, an owner cannot be found, the thing cannot be returned to the owner, or an inspector believes it is necessary to keep the thing to stop it from being used to commit the offence for which it was seized.

An inspector is not required to make unreasonable inquiries or efforts to find the owner or return the thing to its owner. Regard must be had to the condition, nature and value of the thing when deciding whether and what level of inquiries or efforts are made.

### **Information notice about forfeiture decision**

*Clause 126* provides that if the council decides to forfeit a seized thing, the council must as soon as practicable give the former owner of the thing an information notice about the decision.

If, when seizing the thing, the inspector was unable to find the owner, or return it to the owner, the information notice may be given by leaving it at the place where the thing was seized, in a conspicuous position and in a reasonably secure way.

However, the requirement to give an information notice does not apply if the inspector was unable to find the owner, or return the thing to the owner, and the thing seized either from a public place or a place where the notice is unlikely to be read by the former owner.

## **Subdivision 5      Dealing with property forfeited or transferred to State**

### **When thing becomes property of the State**

*Clause 127* provides that a thing becomes the property of the State if it is forfeited to the State, or the owner and the State agree in writing to transfer the ownership of the thing to the State.

### **How property may be dealt with**

*Clause 128* provides that where a thing becomes the property of the State, the chief executive may deal with the thing as the chief executive considers appropriate, including, for example, by destroying it or giving it away.

However, the chief executive must not deal with the thing in a way that could prejudice the outcome of a review of the decision to forfeit the thing. If the chief executive sells the thing, the chief executive must, after deducting the costs of the sale, make reasonable efforts to return the proceeds of the sale to the former owner of the thing.

This clause is subject to any disposal order made for the thing.

## **Division 5                    Disposal orders**

### **Disposal order**

*Clause 129* applies if a person is convicted of an offence against the Act and provides that the court may make an order (a *disposal order*), on its own initiative or on an application by the prosecution, for the disposal of anything that was the subject of, or used to commit, the offence, or another thing the court considers is likely to be used by the person or another person in committing a further offence against the Act. This applies whether or not the thing has been seized, or seized and returned to the owner.

The court may require notice to be given to any person the court considers appropriate, including, for example, a person who may have any property in the thing, and must hear any submissions that a person claiming to have any property in the thing may wish to make. The court may make any order it considers appropriate to enforce the disposal order.

This clause does not limit the court's powers under another law.

## **Division 6                    Other information-obtaining powers of inspectors**

### **Power to require personal details**

*Clause 130* provides that an inspector may require a person to give their name and residential address if the inspector:

- finds a person committing an offence against the Act;
- finds a person in circumstances that lead them to reasonably suspect the person has just committed an offence against the Act; or
- has information that leads the inspector to reasonably suspect a person has just committed an offence against the Act.

The inspector may also require evidence to be given that verifies the correctness of the name and address provided by the person, if it is reasonable to expect the person to be in possession of this evidence or otherwise able to give the evidence.

When making a requirement under this clause, the inspector must advise the person it is an offence not to comply with the requirement.

### **Offence to contravene personal details requirement**

*Clause 131* provides it is an offence for a person not to comply with a requirement under clause 130, unless the person has a reasonable excuse. The maximum penalty for non-compliance is 50 penalty units. However, a person may not be convicted of an offence under this clause unless they are also found guilty of the offence in relation to which the requirement was made.

## **Power to require production of document or certification of copy**

*Clause 132* permits an inspector to require a person to make the following available for inspection at a nominated reasonable time and place:

- a document granted or issued to, or required to be kept by the person under the Act or a copy of a document required to be given to the council under the Act;
- a clear written reproduction of a document or information required to be kept under the Act which is kept, stored or recorded electronically (for example, an electronic prescription).

The inspector may copy the document or an entry in the document and require the person responsible for keeping the document to certify the copy as a true copy, and may only keep the document until the certification requirement is complete. Otherwise, the inspector may not keep the document.

## **Offence to contravene document production requirement**

*Clause 133* provides it is an offence for a person to fail to comply with a requirement under clause 132(1) (referred to as a *production requirement*), unless the person has a reasonable excuse. However, it is not a reasonable excuse to fail to comply on the basis that complying might tend to incriminate the person or expose the person to a penalty. The maximum penalty for non-compliance is 50 penalty units.

The inspector must inform the person that they must comply with the production requirement even though complying might tend to incriminate them or expose them to a penalty and that there is a limited immunity for individuals under clause 142 against the future use of the information or document given in compliance with the requirement. A person may not be convicted of an offence under this provision if the inspector has failed to inform them of these matters.

A court which convicts a person under this provision may, as well as imposing a penalty, order the person to comply with the production requirement.

## **Offence to contravene certification requirement**

*Clause 134* provides it is an offence for a person to fail to comply with a requirement under clause 132(3) (referred to as a *certification requirement*), unless the person has a reasonable excuse. It is not a reasonable excuse to fail to comply on the basis that complying might tend to incriminate the person or expose the person to a penalty. The maximum penalty for non-compliance is 50 penalty units.

The inspector must inform the person that they must comply with the requirement even though complying might tend to incriminate them or expose them to a penalty and that there is a limited immunity for individuals under clause 142 against the future use of the information or document given in compliance with the requirement. A person may not be convicted of an offence under this provision if the inspector has failed to inform them of these matters.

## **Power to require information**

*Clause 135* provides that an inspector, who reasonably believes an offence against the Act has been committed and a person may be able to give information about the offence, may give a notice to the person requiring them to give information related to the offence by a stated

reasonable time. If the information required is an electronic document, the person must provide a clear written reproduction of the electronic document.

In this clause, *information* includes a document.

### **Offence to contravene information requirement**

*Clause 136* provides it is an offence for a person to fail to comply with a requirement made under clause 135(2), unless the person has a reasonable excuse. It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate or expose the individual to a penalty. The maximum penalty for non-compliance is 50 penalty units.

## **Division 7                    Miscellaneous provisions relating to inspectors**

### **Subdivision 1            Damage**

#### **Duty to avoid inconvenience and minimise damage**

*Clause 137* states that an inspector must, in exercising a power, take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

#### **Notice of damage**

*Clause 138* applies if an inspector or their assistant damages a thing in the exercise or purported exercise of a power. The inspector must give a notice of the damage to a person who appears to be an owner or person in control of the damaged thing. If it is not practical to give the notice to a person, the inspector must leave the notice in a reasonably secure way and conspicuous position at the place where the damage happened.

The obligation to give notice of damage does not arise where the inspector reasonably considers the damage trivial or reasonably believes there is no one apparently in possession of the thing or it has been abandoned.

If the inspector reasonably suspects that complying with the requirement to give the notice may frustrate or hinder the performance of the inspector's function, the inspector may delay giving the notice. However, the inspector may only delay giving notice while they continue to have the reasonable suspicion and while they remain in the vicinity of the place.

If the damage is believed to have been caused by a latent defect in the thing or by other circumstances beyond the control of the inspector or their assistant, that belief may be stated in the notice.

The notice must state the particulars of the damage and that the person who suffered the damage may claim compensation under clause 139.

## **Subdivision 2      Compensation**

### **Compensation**

*Clause 139* provides that a person may claim compensation from the council if the person incurs loss because of the exercise or purported exercise of a power by or for an inspector. The loss may include a loss arising from compliance with a requirement made under the seizure, forfeiture, or information-obtaining provisions of part 8, division 4 or 6.

Compensation may be claimed and ordered in a proceeding brought in a court with jurisdiction for the recovery of the amount claimed, or in a proceeding for an alleged offence against the Act where the investigation of the offence gave rise to the claim.

If the court is satisfied it is just to make the order in the circumstances of the particular case, the court may order the payment of compensation.

Clause 137 does not provide for a statutory right of compensation other than as provided by clause 139.

In this clause, *loss* includes costs and damage.

## **Subdivision 3      Other offences relating to inspectors**

### **Giving inspector false or misleading information**

*Clause 140* provides it is an offence to knowingly give an inspector information that is false or misleading in a material particular. This offence applies to information given in relation to the administration of the Act, whether or not the information was given in response to exercise of a specific power under the Act. The maximum penalty for non-compliance is 50 penalty units.

However, an offence is not committed if the information is in a document given by the person and the person tells the inspector, to the best of the person's ability, how the document is false or misleading and, if they have or can reasonably obtain the correct information, gives the correct information.

### **Obstructing inspector**

*Clause 141* states it is an offence to obstruct an inspector exercising a power unless the person has a reasonable excuse. It is also an offence to obstruct a person who is assisting an inspector to exercise a power. The maximum penalty for each offence is 50 penalty units.

Where a person has obstructed an inspector or their assistant, the inspector must warn the person that it is an offence to cause an obstruction, unless there is a reasonable excuse, and that they consider the person's conduct an obstruction.

In this clause, *obstruct* includes hinder, resist, attempt to obstruct and threaten to obstruct.

## **Division 8                      Other provision**

### **Evidential immunity for individuals complying with particular requirements**

*Clause 142* states that, where a person complies with a requirement to provide information or a document to an inspector under clause 114 or 132, evidence of the information or document and other evidence directly or indirectly derived from the information or document is not admissible against the individual to the extent the evidence tends to incriminate the individual or expose them to a penalty.

However, this immunity does not apply 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. The immunity also does not apply to a proceeding in relation to administrative action taken against the individual.

In this clause, *administrative action* means action changing a licence condition, or suspending or cancelling a pharmacy business licence.

## **Part 9                      Queensland Pharmacy Business Ownership Council**

### **Division 1                      Establishment**

#### **Establishment**

*Clause 143* provides that the Queensland Pharmacy Business Ownership Council is established.

#### **Legal status**

*Clause 144* states that the council is a body corporate and may sue and be sued in its corporate name.

#### **Council does not represent the State**

*Clause 145* provides that the council does not represent the State.

#### **Application of other Acts**

*Clause 146* provides that the council is a unit of public administration under the *Crime and Corruption Act 2001*. This ensures that the provisions relating to corrupt conduct will apply to the council and that the council must act with the necessary level of integrity and transparency to reflect its important role.

The council is also a statutory body under the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*. This ensures that these Acts apply to the council and that it must manage its financial affairs appropriately.



## Division 2                      Functions and powers

### Functions

*Clause 147* provides that the functions of the council are:

- deciding applications relating to pharmacy business licences under the Act;
- changing, suspending and cancelling pharmacy business licences under the Act;
- monitor and enforce compliance with the Act;
- advising the Minister on premise standards and other matters relating to the Act;
- administering the Queensland Pharmacy Business Ownership Council Fund; and
- keeping a register of licensed pharmacy businesses under clause 207.

The council also has the functions given to it under this Act or another Act.

The council must act independently, impartially and in the public interest, in performing its functions.

These functions are necessary to ensure the council can achieve the purpose of the Act, which is to promote the professional, safe and competent provision of pharmacy services by pharmacy businesses and to maintain public confidence in the pharmacy profession.

### Powers

*Clause 148* states that the council has all the powers of an individual and may do anything necessary or convenient to be done in the performance of its functions. It may, for example, enter into contracts or agreements.

This is a standard provision for the necessary powers for an independent statutory body to enable it to perform its functions effectively. These powers are necessary for the council to fulfil its duties and core roles of administering the pharmacy business ownership requirements in the Act and monitoring and enforcing compliance with those requirements.

### Direction by Minister

*Clause 149* provides that the Minister may, following consultation with the council, give the council a written direction about a matter relevant to the performance of the council's functions.

The council must comply with a direction given under this clause. Any direction given by the Minister must be reported in the council's annual report, along with the actions taken by the council as a result of the direction.

However, the Minister may not give a direction about a particular person, application or proceeding. This assists in maintaining the independence of the council.

## Division 3                      Membership

### Appointing members

*Clause 150* provides that the council consists of at least 5 members, each a *council member*, appointed by Governor in Council on recommendation of the Minister.

This clause states that a person is eligible for appointment as a council member if:

- the person is an owner of a licensed pharmacy business who is an individual, a director of a corporation that owns a licensed pharmacy business or a practising pharmacist who is an employee of a licensed pharmacy business; or
- the person has qualifications or experience in one or more of the following areas:
  - accounting;
  - business;
  - financial management;
  - law;
  - carrying on a pharmacy business; or
  - another area that, in the Minister's opinion, qualifies the person to represent consumers of pharmacy services or the Minister considers appropriate or beneficial to the performance of the council's functions.

The council must consist of at least one individual owner of a licensed pharmacy business and a practising pharmacist who is an employee of a licensed pharmacy business.

These requirements respond to the Committee's recommendation that the council have a diverse membership. It ensures there is flexibility to enable the council to be made up of members who will bring a range of experience and skills to the council.

## **Disqualification**

*Clause 151* 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 part 2D.6 of the Corporations Act;
- is the chief executive officer or another member of the council's staff;
- is a contractor of the council; or
- contravenes a provision of the Act.

If the Minister asks the person for written consent, so that the Minister may make a request for a criminal history report from the commissioner of police, and the person does not provide the consent within 14 days, the person is disqualified from becoming a council member.

This ensures that members of the council have and maintain the high levels of integrity and accountability necessary to fulfil their roles.

## **Conditions of appointment**

*Clause 152* provides that a council member is to be paid the remuneration and allowances that are decided by the Governor in Council.

Other terms and conditions of office of the council member, where not provided for by the Act, are decided by the Governor in Council.

## **Term of appointment**

*Clause 153* provides that a council member is appointed for a term of not more than four years, as stated in the member's instrument of appointment.

A council member may be reappointed.

## **Chairperson and deputy chairperson**

*Clause 154* provides that the Minister may appoint members of the council as chairperson and deputy chairperson. A person may be appointed as chairperson or deputy chairperson at the same time as being appointed as a council member.

The chairperson or deputy chairperson holds office for a term that is not longer than their term of council member, as stated in the instrument of appointment as chairperson or deputy chairperson.

The appointment of a chairperson or deputy chairperson ends if the person stops being a council member.

While there is a vacancy in the office of chairperson or where the chairperson is absent on leave or cannot perform the duties of the office, the deputy chairperson must act as chairperson.

## **Resignation**

*Clause 155* states that a council member may resign from the office of chairperson, deputy chairperson or council member by signed notice given to the Minister. The resignation takes effect on the day the notice is given or on a later day that is stated in the notice.

If a person resigns from the office of chairperson or deputy chairperson, they may continue to be a council member.

## **Vacancy in office**

*Clause 156* provides that the office of a council member becomes vacant if the member:

- completes their term of office and is not reappointed;
- is disqualified from continuing as a member;
- resigns office as a council member;
- is absent without an approved leave of absence, from three consecutive council meetings where at least 21 days' notice has been given; or
- has their appointment ended by the Minister.

The Minister is permitted to end a council member's appointment at any time if satisfied that the member:

- has been guilty of misconduct; or
- is incapable of performing the member's duties; or
- has neglected the member's duties or performed the member's duties incompetently.

This clause defines *misconduct*, for a council member, as inappropriate or improper conduct in performing the duties of the member, or inappropriate or improper conduct in a private capacity that reflects seriously or adversely on the council.

### **Leave of absence for council members**

*Clause 157* provides for a leave of absence for council members. The Minister may approve a leave of absence for the chairperson or deputy chairperson and appoint another council member to act in the office of deputy chairperson, while the deputy chairperson is on leave.

If a council member is appointed as deputy chairperson under this provision, the Minister may grant the council member an additional vote on questions to be decided by the council.

The chairperson may approve a leave of absence of three or more meetings for a council member, other than the chairperson or deputy chairperson. The chairperson may give another council member an additional vote on questions to be decided by the council while the other member is absent on leave.

## **Division 4                      Business of the council**

### **Conduct of business**

*Clause 158* provides that, subject to division 4, the council may conduct its business, including its meetings, in the way the council considers appropriate.

This clause gives the council flexibility in managing its functions and exercising its powers.

### **Times and places of meetings**

*Clause 159* states that the chairperson decides the times and places for meetings of the council. The chairperson must call a meeting at least once every three calendar months.

The chairperson must also call a meeting if asked in writing by the Minister or at least two council members.

This ensures that the council meets with sufficient regularity to carry out its functions.

### **Quorum**

*Clause 160* provides that a quorum for a meeting of the council is one-half of the number of its members, or if one-half is not a whole number, the next highest whole number.

### **Conduct of meetings**

*Clause 161* provides that a question at a meeting of the council is decided by a majority of the votes of the council members present at the meeting.

Each council member at the meeting has a vote on each question to be decided. If the votes are equal, the presiding member of the meeting has a casting vote. This is subject to the granting of an additional vote by the Minister when the deputy chairperson is on a leave of absence or by the chairperson when a council member is on a leave of absence.

The meeting may be held using any technology that reasonably allows council members to hear and take part in discussions as they happen, for example using teleconferencing. A member taking part in a meeting under these circumstances is taken to be at the meeting.

A resolution is taken to be validly made by the council, even if the resolution is not passed at a meeting, if notice of the resolution is given under procedures approved by the council and a majority of the council members who do not have a personal interest in the matter, agree in writing to the resolution.

### **Minutes and records of resolutions**

*Clause 162* requires the council to keep minutes of its meetings and a record of its resolutions.

### **Presiding at meetings**

*Clause 163* provides that the chairperson must preside at all meetings of the council at which the chairperson is present. If the chairperson is absent from a meeting, but the deputy chairperson is present, the deputy chairperson must preside.

If both the chairperson and deputy chairperson are absent from a meeting or those offices are vacant, a council member chosen by the council members at the meeting must preside.

### **Disclosure of interests at meetings**

*Clause 164* provides for disclosure of interests at meetings, if a matter is to be considered at a meeting of the council and at or before the meeting, a council member becomes aware they have a personal interest in the matter.

A council member is taken to have a *personal interest* in a matter if certain entities stand, or could reasonably be perceived to stand, to gain a benefit or suffer a loss, either directly or indirectly, because of the outcome of the consideration of the matter. Those entities are:

- the member;
- the member's spouse;
- a parent, child or sibling of the member;
- a corporation of which the member is a director or in which the member holds shares;
- an employer or employee of the member;
- an employee or director of a corporation of which the member is a director or in which the member holds shares;
- a person in a partnership with the member;
- a person who is a trustee or beneficiary of a trust of which the member is a trustee or beneficiary; or
- a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the member.

If the council member only becomes aware of the personal interest at the meeting, they must immediately disclose the nature of the interest to other members at the meeting. Otherwise, the council member must give a notice disclosing the nature of the personal interest to the other members before the meeting. A disclosure must be recorded in the minutes of the meeting. A

maximum penalty of 100 penalty units applies for failing to disclose. A failure to make a disclosure, however, does not of itself invalidate a decision of the council.

If the council member discloses a personal interest, it is an offence for them to be present when the council considers the matter or to take part in a decision of the council about the matter. A maximum penalty of 100 penalty units applies.

If a council member is not present for considering a matter because of this provision and there would be a quorum if they were present, the remaining council members are taken to be a quorum for considering or deciding the matter at the meeting.

This provision is intended to ensure that the council acts with transparency and high levels of integrity, in the public interest.

### **Validity of decisions**

*Clause 165* states that a decision of the council is not invalidated only because there is a vacancy in the membership of the council or there is a defect or irregularity in the appointment of a member of the council.

## **Division 5                      Staff of the council**

### **Subdivision 1                Chief executive officer**

#### **Appointing chief executive officer**

*Clause 166* provides that the council must have a chief executive officer, who is appointed by the Governor in Council on the recommendation of the Minister.

The Minister may recommend a person for appointment as the chief executive officer only if the Minister is satisfied that the person is appropriately qualified to perform the functions of the officer and the council has approved the appointment.

The chief executive officer is an employee of the council and is appointed under the Act, not the *Public Sector Act 2022*.

#### **Disqualification**

*Clause 167* provides that a person is disqualified from becoming, or continuing as, the chief executive officer 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 because of part 2D.6 of the Corporations Act;
- is a council member;
- is a contractor of the council; or
- contravenes a provision of the Act.

The first three of these reasons for disqualification are common provisions which ensure chief executive officers of independent statutory bodies maintain necessary levels of integrity,

professionalism and compliance with legal and ethical requirements throughout the term of their appointment.

The requirement that the chief executive officer is disqualified if they are a council member or contractor of the council assists in ensuring the chief executive officer does not have a conflict of interest in relation to their role. The requirement that the chief executive officer is disqualified if they contravene the Act ensures the person has not breached the Act making them unsuitable for the role.

If the Minister asks a potential chief executive officer for written consent, so that the Minister may make a request for a criminal history report from the commissioner of police, and the person does not provide the consent within 14 days, the person is disqualified from becoming the chief executive officer.

### **Conditions of appointment**

*Clause 168* provides that the chief executive officer's remuneration and allowances are decided by the Governor in Council. For matters not specified in the Act, the chief executive officer holds office on the terms and conditions decided by the Governor in Council.

### **Term of appointment**

*Clause 169* provides that the chief executive officer is appointed for a term of not more than four years, as stated in the officer's instrument of appointment. This provision does not prevent a person from being reappointed.

### **Resignation**

*Clause 170* provides that the chief executive officer may resign by giving notice to the council. The resignation takes effect the day the notice is given, or if a later date is stated in the notice, on the later date.

### **Vacancy in office**

*Clause 171* provides that the office of the chief executive officer becomes vacant if the chief executive officer:

- completes a term of office and is not reappointed;
- becomes disqualified from continuing as the chief executive officer; or
- resigns office by signed notice given to the council.

Section 25(1)(b)(i) of the *Acts Interpretation Act 1954* provides that a power under an Act to appoint a person to an office includes the power to remove or suspend, at any time, a person appointed to the office.

### **Acting chief executive officer**

*Clause 172* applies if the office of the chief executive officer is vacant, or the chief executive officer is absent from duty or otherwise unable to perform their functions.

The Minister may appoint a person to act as chief executive officer for a period of no longer than six months, but may also extend the appointment for a further period of no longer than six months.

A person cannot be appointed unless the Minister could recommend the person for appointment as the chief executive officer in the same manner as an appointment of a chief executive officer.

This provision does not limit the Governor in Council's power of appointment under section 25(1)(b)(iv) or (v) of the Acts Interpretation Act.

### **Chief executive officer's functions**

*Clause 173* provides that the chief executive officer is responsible for the day-to-day administration of the council. This includes employing persons and engaging contractors of the council.

The chief executive officer is accountable to the council and must comply with the written policies and directions of the council.

### **Conflicts of interest**

*Clause 174* provides that if the chief executive officer has an interest that conflicts, or may conflict, with the performance of the officer's responsibilities, the officer:

- must disclose the nature of the interest and conflict to the council as soon as practicable after the relevant facts come to the officer's knowledge; and
- must not take action or further action concerning a matter that is, or may be, affected by the conflict unless authorised by the council.

This provision helps to ensure that the chief executive officer acts in the best interests of the council.

## **Subdivision 2                      Other staff**

### **Council staff**

*Clause 175* states that the chief executive officer may employ other staff the officer considers appropriate to perform the council's functions. Staff are employed under the Public Sector Act.

## **Subdivision 3                      Preservation of rights**

### **Preservation of rights of particular employees**

*Clause 176* sets out the circumstances where a person is appointed as the chief executive officer and immediately before taking up the appointment, the person was a health service employee or public sector employee. The clause also applies to a person who is employed as another member of the council's staff who was, immediately before taking up the employment, a health service employee.



The person is entitled to retain all existing and accruing rights to superannuation or recreation, sick, long service and other leave as if service as the chief executive officer or staff member were a continuation of their service as a health service employee or public sector employee.

This ensures that a person who becomes the chief executive officer or a member of the council's staff who was previously employed by a health service or the public sector is not disadvantaged by the appointment.

### **Preservation of rights of particular persons appointed as health service employee or public sector employee**

*Clause 177* applies if a person is appointed as a health service employee or a public sector employee, and immediately before that appointment, they were the chief executive officer of the council, or another member of the council's staff.

If that person is someone to whom clause 176 applied at the time the person was appointed as the council's chief executive officer or staff member of the council, the person's service with the council is regarded as service as a health service employee or public sector employee.

## **Division 6                      Queensland Pharmacy Business Ownership    Council Fund**

### **Establishment**

*Clause 178* establishes the Queensland Pharmacy Business Ownership Council Fund. The fund is to be administered by the council and does not form part of the consolidated fund. *Consolidated fund* is defined in the Acts Interpretation Act.

The Queensland Pharmacy Business Ownership fund is designed to ensure that any amounts that come into the fund are spent on the operations of the council, to ensure that the council can effectively administer the requirements of the Act.

### **Payments of amounts into fund**

*Clause 179* provides that fees paid under the Act, other amounts received by the council under the Act, any amount appropriated by Parliament for the purposes of the fund and any amount paid into the fund at the direction of or with the approval of the Minister and the Treasurer, are payable into the fund.

### **Payments out of fund**

*Clause 180* states that the council may pay out of the fund an amount for expenses incurred in the administration or enforcement of the Act, or performing another function, or exercising another power under the Act.

This ensures that there is transparency about what amounts paid into the fund can be used for.

## **Division 7      Other matters**

### **Criminal history report**

*Clause 181* applies in relation to a decision about whether a person is disqualified from becoming or continuing as, a council member or the chief executive officer.

The Minister may ask the commissioner of the police service for a criminal history report about the person. The Minister may only make the request if the person has given the Minister written consent for the request.

The commissioner must comply with the request. However, the duty to comply applies only to information in the commissioner's possession or to which the commissioner has access.

The Minister must ensure the destruction of this information as soon as practicable after it is no longer needed and ensure it is not used for any purpose other than that for which it was requested.

The destruction of information does not apply to the extent the information is part of a communication that must be preserved as a public record under the *Public Records Act 2023*. An example of part of a communication is an attachment to an email.

### **Disclosing new convictions**

*Clause 182* applies if a council member or the chief executive officer is convicted of an indictable offence during the term of their appointment.

The person must give notice of the conviction to the Minister within 14 days after their conviction, unless they have a reasonable excuse. A maximum penalty of 100 penalty units applies.

The person is required to include in the notice:

- the existence of the conviction;
- details adequate to identify the offence;
- details of when the offence was committed; and
- the sentence imposed, if any, on the person.

A person is disqualified from continuing as a council member if the person has a conviction, other than a spent conviction, for an indictable offence.

This requirement reinforces the expectation that council members, and the chief executive officer, who are in positions of trust, must observe ethical and legal behaviour.

### **Report about council's functions**

*Clause 183* requires the council to give the Minister a report at the end of each financial year about the performance of the council's functions during the financial year. The report must be provided within three months after the end of the financial year.

The report must 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.

The council must publish the report on the council's website within 14 days after giving it to the Minister.

## **Delegations**

*Clause 184* provides that the council may delegate its functions under the Act to a council member or the chief executive officer.

A council member or the chief executive officer may subdelegate a function delegated to the member or officer to an appropriately qualified member of the council's staff.

For this clause, *function* includes power.

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.

## **Part 10                      Reviews of decisions**

### **Division 1                      Preliminary**

#### **Definitions for part**

*Clause 185* defines particular terms for the purposes of part 10. These include *affected person*, *internal review*, *internal review decision*, *original decision* and *QCAT information notice*.

### **Division 2                      Internal review**

#### **Review process must start with internal review**

*Clause 186* provides that an affected person for an original decision may apply to the Queensland Civil and Administrative Tribunal (QCAT) for a review of the decision, or appeal against the decision under division 5, only if the person has first applied for an internal review of the decision, and the internal review decision has been made, or taken to have been made, under this division.

#### **Who may apply for internal review**

*Clause 187* states that an affected person for an original decision may apply to the council for a review of the decision under this division (*internal review*).

A person who is entitled to be given an information notice for an original decision but has not yet received one may ask the council for that notice. However, the council's failure to give

such notice does not limit or otherwise affect the person's right to apply for an internal review of the decision.

### **Requirements for application**

*Clause 188* requires an internal review application to be in the approved form and supported by enough information to enable the council to decide the application. The application must be made within 20 business days after the applicant is given the information notice. However, the council may at any time extend the time for making the internal review application.

If the person has not been given an information notice, the application must be made within 20 business days after the day the person becomes aware of the decision.

The application does not affect the operation of the decision or prevent the decision being implemented.

### **Internal review**

*Clause 189* requires that, within 20 business days after receiving an internal review application, the council must conduct an internal review of the original decision. The council must decide whether to confirm the original decision, amend the decision or substitute another decision. If the original decision is a seizure or forfeiture decision (as defined in clause 185), the council must give the person a decision notice. Otherwise, the council must give the affected person a QCAT information notice for the decision.

*Seizure or forfeiture decision* is defined in clause 185 to mean a decision to seize a thing under part 8, division 4 or a decision that a thing is forfeited under clause 125(1).

*QCAT information notice* is defined in clause 185 to mean a notice complying with section 157(2) of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act).

The council and the affected person may, before the 20 business days period is over, agree to a longer period for the council to conduct the internal review.

The application for internal review must be dealt with by a person who did not make the original decision and who is in a more senior officer than the person who made the original decision. This does not apply to an original decision made by the chairperson, or the deputy chairperson acting as chairperson, personally.

The power under section 27A of the Acts Interpretation Act to delegate functions does not alter this provision.

If the council does not give the affected person a decision notice or QCAT information notice within 20 business days, or the agreed longer period, the council is taken to confirm the original decision.

## **Division 3                      Stays**

### **Stay of operation of seizure or forfeiture decision**

*Clause 190* applies if an application is made for an internal review of an original decision that is a seizure or forfeiture decision.

The applicant may immediately apply to the court for a stay of the operation of the seizure or forfeiture decision. The court may order a stay to secure the effectiveness of the internal review or any later appeal.

The court may stay the operation of the seizure or forfeiture decision on conditions the court considers appropriate.

The stay operates for the period decided by the court. However, the period must not extend past the time when the court decides the appeal.

### **Stay of operation of other original decision**

*Clause 191* applies if an application is made for an internal review of an original decision, other than a seizure or forfeiture decision.

The applicant may immediately apply to QCAT, as provided under the QCAT Act, for a stay of the operation of the decision.

QCAT may make an order staying the operation of the original decision to secure the effectiveness of the internal review or any later review by QCAT.

A stay by QCAT under this clause may be given on conditions QCAT considers appropriate, operates for the period fixed by QCAT and may be amended or revoked by QCAT.

The period of a stay by QCAT must not extend past the end of the period within which an application for review of the internal review decision may be made under the QCAT Act.

The QCAT Act enables QCAT to stay the operation of the internal review decision, either on application by a party or on its own initiative if the decision is under review by QCAT.

## **Division 4                      External review**

### **Applying for external review**

*Clause 192* provides that a person given or entitled to be given a QCAT information notice for an internal review decision may apply to QCAT for a review of the decision. The application to QCAT will be made under the QCAT Act.

## **Division 5                      Appeals**

### **Appealing internal review decision**

*Clause 193* applies to a person who must be given a decision notice for an internal review decision. This clause allows the person to appeal to a court against the decision by filing a notice of appeal with the registrar of the court.

The notice of appeal must state fully the grounds of the appeal and be filed within 28 days after a decision notice for the internal review decision is given to the person. However, the court has the power to extend the time for filing the notice of appeal.

The person is required to serve a copy of the notice of appeal, and any application to extend the time for filing the notice of appeal, on the council.

The appeal does not affect the operation of the seizure or forfeiture decision or prevent the decision being implemented.

### **Powers of court on appeal**

*Clause 194* outlines the powers of the court on appeal. When deciding an appeal against an internal review decision, the court has the same powers as the council in making the decision and is not bound by the rules of evidence. However, the court must comply with natural justice. The appeal is by way of rehearing.

The court may confirm the internal review decision, substitute another decision for the internal review decision or set aside the internal review decision and return the matter to the council with directions the court considers appropriate.

### **Effect of court's decision on appeal**

*Clause 195* provides that where the court substitutes another decision for the internal review decision, the substituted decision is taken to be a decision of the council. The council may give effect to the decision as if the decision were the original decision of the council and no application for review or appeal of the original decision had been made.

If the court sets aside the internal review decision and returns the matter to the council with directions, any decision made by the council in accordance with the directions cannot be reviewed or appealed against.

## **Part 11                              Legal proceedings**

### **Application of part**

*Clause 196* provides that this part applies to a proceeding under the Act.

## Appointments and authority

*Clause 197* establishes that the following matters must be presumed unless a party requires proof of it:

- the appointment of a council member, the chairperson, the deputy chairperson, the chief executive officer or an inspector;
- the authority of the Minister, the council, a council member, the chairperson, the deputy chairperson, the chief executive officer or an inspector to do anything under the Act.

This ensures that legal proceedings are not delayed by requiring proof of matters which are not in contention.

This clause is based on section 187 of the 2001 Act.

## Signatures

*Clause 198* provides that a signature purporting to be the signature of the Minister, a council member, the chairperson, the deputy chairperson, the chief executive officer or an inspector is evidence of the signature it purports to be. This ensures that legal proceedings are not delayed by requiring proof of matters which are not in contention and aligns with section 188 of the 2001 Act.

## Evidentiary provisions

*Clause 199* is an evidentiary aid which provides that a certificate purporting to be signed by chairperson or the chief executive officer and stating any of the following matters is evidence of the matter:

- a stated document is one of the following:
  - a pharmacy business licence;
  - an approval granted under the Act;
  - a notice or direction given under the Act;
  - an approved form;
  - an identity card;
  - an acknowledgement of consent signed under clause 105;
  - the register of licensed pharmacy businesses kept under clause 207;
  - a stated record kept under the Act;
- a stated document is a copy of, or an extract from or part of, a thing mentioned above;
- on a stated day, or during a stated period, a person's appointment as a council member, the chairperson, the deputy chairperson, chief executive officer or an inspector was, or was not, in effect;
- on a stated day, or during a stated period, a pharmacy business licence—
  - was or was not in effect; or
  - was or was not subject to a stated condition;
- on a stated day, or during a stated period, an approval to carry on a pharmacy business granted under part 7—
  - was or was not in effect; or
  - was or was not subject to a stated condition;
- on a stated day, a stated person was given a stated notice or direction under the Act;
- on a stated day, a stated requirement was made of a stated person; or

- a stated amount is payable under the Act by a stated person and has not been paid.

This clause is based on section 189 of the 2001 Act but modernised to reflect the new licensing framework, and the updated inspection and enforcement provisions created by the Act.

### **Limitation on time for starting offence proceeding**

*Clause 200* provides that a proceeding for an offence under the Act must start within one year after the offence was allegedly committed, or within six months of the offence coming to the complainant's knowledge but within two years after the offence was allegedly committed.

This clause is based on section 193 of the 2001 Act.

### **Allegations of false or misleading information or documents**

*Clause 201* provides that in a proceeding for an offence against clause 71(1) or 140(1), relating to the providing false or misleading information, it is enough for a charge to state that the information or document to which the offence relates was 'false or misleading', without specifying whether it was 'false' or 'misleading'.

This clause is based on section 194 of the 2001 Act.

### **Conduct of representatives**

*Clause 202* deals with the relationship of a person and their representative (agent). In particular, it deals with how a person's state of mind about particular conduct may be proven by the conduct and state of mind of their representative.

Under subclause (1), if it is relevant to prove a person's state of mind about particular conduct, it is sufficient to show that conduct was engaged in by a representative of the person within the representative's actual or apparent authority, and the representative held the state of mind.

*State of mind* is defined in this clause to include the person's belief, intention, knowledge, opinion or purpose, and their reasons for the belief, intention, knowledge, opinion or purpose.

Under subclause (2), conduct engaged in by the person's representative that is within the scope of their actual or apparent authority is presumed to have been engaged in by the person. This presumption is rebutted if the person proves they could not influence the representative's conduct or, if the person who was in a position to influence the representative's conduct, the person took reasonable steps to prevent the conduct.

For this clause *engaging*, in conduct, includes failing to engage in conduct.

The effect of this clause is that if a representative of a person is working within the scope of their actual or apparent authority, and the representative engages in conduct while holding the relevant state of mind, the person is also taken to have engaged in that conduct while holding the same state of mind. However, the person is able to rebut this presumption by proving the person was unable to influence the representative or took reasonable steps to prevent the conduct.



This clause is based on section 196 of the 2001 Act.

### **Executive officer may be taken to have committed offence against deemed executive liability provision**

*Clause 203* states that if a corporation commits an offence against a *deemed executive liability provision* (being an offence against any of the following clauses: 15(1), 17, 19, 20(1), 76(2), 78(2), or 79(2)), an executive officer of the corporation is taken to have also committed the offence if they authorised or permitted the corporation's conduct constituting the offence, or they were knowingly concerned, either directly or indirectly, in the corporation's conduct.

Proceedings may be conducted against the executive officer, and they may be convicted of the offence, whether or not the corporation has also been proceeded against or convicted in relation to that offence. However, this does not affect the liability of the corporation for the offence, or the liability of any person for the offence under chapter 2 of the Criminal Code, whether or not the person is an executive officer of the corporation.

This clause reflects section 197 of the 2001 Act.

## **Part 12 Confidentiality**

### **Application of part**

*Clause 204* provides that part 12 applies in relation to confidential information that a person has obtained in performing a function under the Act. This will include council members, the chief executive officer and staff of the council.

Part 12 also applies to a person who has obtained access to confidential information, whether directly or indirectly, from a person who has obtained it in performing a function under the Act.

*Confidential information* is defined in schedule 1 as personal information, information about a person's commercial activities and criminal history information. It does not include information that is publicly available.

### **Confidentiality of information**

*Clause 205* provides it is an offence, with a maximum penalty of 50 penalty units, for a person, either directly or indirectly, to disclose confidential information unless the disclosure is permitted under subclause (2).

Under subclause (2), a person is permitted to disclose confidential information to another person:

- under the Act;
- if disclosure is otherwise required or permitted by law;
- if the disclosure is necessary for the performance of a function under the Act; or
- with the consent of the person to whom the information relates.

Subclause (3) clarifies that section 142 of the Hospital and Health Boards Act does not prevent disclosures under subclause (2).

## Disclosure of confidential information to entities performing relevant functions

*Clause 206* states a person may disclose confidential information to

- a coroner investigating the death of a person under the *Coroners Act 2003*; or
- a law enforcement agency, for the purposes of detecting, investigating, preventing or prosecuting an offence in relation to a regulated substance under the Medicines and Poisons Act.

A person may also disclose confidential information, other than criminal history information, to:

- the council;
- the chief executive officer;
- a National Health Practitioner Board, or the Australian Health Practitioner Regulation Agency, established under the Health Practitioner Regulation National Law;
- an entity established under the *National Health Act 1953* (Cth);
- an official under the *Health Ombudsman Act 2013*; or
- another entity of the Commonwealth or another State, for performing its functions relating to the regulation of pharmacy businesses or pharmacy services.

A person may only disclose confidential information to an entity mentioned above if satisfied the disclosure is reasonably necessary for the entity to exercise its functions, and the information will be collected, stored and used by the entity in a way that protects the privacy of the persons to whom the information relates from unjustified intrusion.

## Part 13                      Miscellaneous

### Council must keep register of licensed pharmacy businesses

*Clause 207* requires the council to keep a register of licensed pharmacy businesses. The register must include the business name and address of the licensed premises for each pharmacy business.

The council may also choose to list information about pharmacy services provided by a pharmacy business, such as vaccinations. The council may publish the register on the council's website, but the information published must 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.

This responds to recommendation 11 of the Committee, which was that Queensland Health investigate ways to improve communication to consumers about the services individual pharmacies provide such as vaccinations.

### Auditing of licence holders

*Clause 208* allows the council to audit the operations of a licence holder. However, the council may only audit the operations to the extent that they relate to obligations of the licence holder under the Act.

The licence holder must allow 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 relevant document or property is relevant to the audit.

The maximum penalty for non-compliance with this requirement is 50 penalty units.

### **Council must publish report about compliance and audits for financial year**

*Clause 209* requires the council to prepare a report about audits conducted by the council under clause 208 during the financial year, and actions taken by the council during the financial year to ensure compliance with the Act by licence holders.

The report must be prepared within three months after the end of each financial year and published on the council's website.

The report must not contain any confidential information, unless it was provided to the council by the person to whom it relates for the purpose of publication.

This responds to recommendation 10 of the Committee report, which was that Queensland Health improve transparency regarding the compliance of pharmacists with pharmacy ownership requirements by publishing its compliance audit results, at least annually, and reflects the transfer of regulatory responsibility to the council.

### **Protection from liability**

*Clause 210* specifies that an official is not civilly liable for an act done, or omission made, honestly and without negligence, under the Act.

For this clause, *official* means a council member, the chief executive officer, another member of the council's staff, an inspector, or a person acting under the direction of an abovementioned person.

It is not considered appropriate for an individual to be made personally civilly liable for carrying out his or her responsibilities under the legislation honestly and without negligence. As such, this clause prevents a civil liability attaching to an individual. Instead, subclause (2) provides that liability attaches to the council.

The proposed immunity under this clause does not extend to negligent or dishonest acts or omissions by an official.

This aligns with section 198 of the 2001 Act.

### **Approved forms**

*Clause 211* allows the council to approve forms for use under the Act.

## Regulation-making power

Clause 212 provides a regulation-making power for the Governor in Council. A regulation may be made about the following matters:

- fees payable under the Act;
- the waiver of fees;
- the keeping of records under the Act, including the form in which records are to be kept; and
- any other matter provided for under the Act, including for example standards for authorised premises under clause 11.

Regulations may also be made about other matters.

Clause 212 clarifies that a regulation may provide for a maximum penalty of not more than 20 penalty units for a contravention of the regulation.

This aligns with section 202 of the 2001 Act.

## Part 14 Transitional provisions

### Division 1 Interpretation

#### Definitions for part

Clause 213 defines a number of terms for the purposes of part 14, including:

- *certified agreement* has the meaning defined in the *Industrial Relations Act 2016*, schedule 5;
- *deemed eligible person* means a corporation deemed to be an eligible person under clause 214;
- *existing instruments* means the following instruments as they were in effect immediately before the commencement: a Queensland Health certified agreement, a Queensland Health award, a public sector directive and a health employment directive;
- *existing pharmacy business* means a pharmacy business being carried on under the repealed Act immediately before the commencement;
- *public sector directive* means a directive under the *Public Sector Act 2022*, schedule 2, and includes a joint directive made under section 226 and a directive continued under section 307 or 308 of that Act;
- *Queensland Health award* means the Hospital and Health Service General Employee (Queensland Health) Award – State 2015 and the Health Practitioners and Dental Officers (Queensland Health) Award – State 2015, and another award that, immediately before the commencement, covered Queensland Health in relation to the employment of public sector employees, made under the Industrial Relations Act;
- *Queensland Health certified agreement* means the Queensland Public Sector Certified Agreement (No. 11) 2022 and the Health Practitioners and Dental Officers (Queensland Health) Certified Agreement (No. 4) 2022;
- *repealed*, for a provision, means that provision of the repealed Act as in force from time to time before the commencement; and
- *repealed Act* means the repealed *Pharmacy Business Ownership Act 2001*.

## **Division 2                    Interests in, and operation of, existing pharmacy businesses**

### **Particular corporations deemed to be eligible persons**

*Clause 214* provides that a corporation that owns an existing pharmacy business is deemed to be an eligible person if directors of the corporation were, before commencement, all practising pharmacists or close adult relatives of practising pharmacists with a material interest in the business, and the shareholders of the corporate licence holder were either:

- practising pharmacists;
- close adult relatives of practising pharmacists; or corporations whose directors and shareholders were either all practising pharmacists or a combination of practising pharmacists and close adult relatives.

Also, if the corporation owned the pharmacy business as a trustee the corporation is deemed eligible only if the beneficiaries of the trust were any of the following:

- practising pharmacists;
- close adult relatives of practising pharmacists;
- corporations whose directors and shareholders were either all practising pharmacists or a combination of practising pharmacists and close adult relatives.

This provision recognises that under the 2001 Act, business owners were not prohibited from having corporate shareholders and beneficiaries and a number of existing owners have business structures of this nature.

Deemed eligibility under this clause does not survive transfer of a material interest to a person who is not permitted to hold a material interest under clause 16.

### **Eligible persons carrying on existing pharmacy businesses**

*Clause 215* applies in relation to existing pharmacy businesses owned by eligible persons immediately before commencement.

Under this clause, existing owners may continue to own and carry on the pharmacy business, without holding a pharmacy business licence, until:

- the day that is one year after the commencement; or
- if the person applies for a pharmacy business licence before the one-year period ends, the day the licence application is decided or withdrawn.

However, this does not apply if the person stops being an eligible person.

Repealed sections 139C to 139G continue to apply in relation to the existing pharmacy business as if the Act had not been enacted.

A person permitted to own or carry on a pharmacy business under this clause does not commit an offence under clauses 15, 16 or 19, and repealed sections 139I, 141, 141A and 141B of the 2001 Act continue to apply in relation to the business as if the Act had not been enacted.

This clause ensures that existing owners have sufficient time from commencement of the Act to apply for a licence.

### **Deemed eligible persons carrying on existing pharmacy businesses**

*Clause 216* applies in relation to owners who are deemed eligible persons, immediately before commencement. These owners may continue to own and carry on their pharmacy business without a licence for a period of two years from commencement. In this time, those owners will need to either restructure their businesses so as to comply with the eligibility criteria in clause 10, or divest of their ownership.

If the owner applies for licence before the end of the two-year period (for example, because they have restructured and are now an eligible person under clause 10), this clause ceases to apply on the day the licence application is decided or withdrawn.

This clause also ceases to apply if the person stops being a deemed eligible person.

A person permitted to own or carry on a pharmacy business under this clause does not commit an offence under clauses 15, 16 or 19, and repealed sections 139I, 141, 141A and 141B of the 2001 Act continue to apply in relation to the business as if the Act had not been enacted.

### **Particular material interests in existing pharmacy businesses held by particular corporations**

*Clause 217* applies to a corporation that holds a material interest in an existing pharmacy business owned by a deemed eligible person, either as a shareholder of the deemed eligible person, or a beneficiary of a trust, of which the deemed eligible person was a trustee.

The corporation and its shareholders do not commit an offence under clause 16 in relation to the holding of the interest.

From commencement, corporations will not be able to become material interest holders. This clause provides a limited exemption for certain existing corporate shareholders and beneficiaries.

This exception applies only while the deemed eligible person is carrying on the existing pharmacy business under clause 216.

### **Interests in existing pharmacy businesses held by beneficiaries of discretionary trusts**

*Clause 218* applies to a person who immediately before commencement, held an interest in a pharmacy business as the beneficiary of a discretionary trust, and another person owned an existing pharmacy business as trustee of the trust.

Provided that on commencement, the trustee owner continues to own and carry on the business under clause 215 or 216, the beneficiary does not commit an offence under clause 16 in relation to the holding of the interest.

Also, if the beneficiary is a practicing pharmacist or a close adult relative, their interest as a beneficiary under the discretionary trust does not count for the purposes of the limit on the number of interests allowed to be held under clause 17.

This provision is necessary because discretionary trusts were not monitored under the 2001 Act but will be under the Act. A number of existing owners have discretionary trusts where beneficiaries may be a person not entitled to hold a material interest under clause 16, or alternatively, may be a pharmacist or close adult relative who if their interest under the discretionary trust is counted, will be in breach of clause 17.

This 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 who have discretionary trusts sufficient time to vary their trusts to ensure that 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 time to sufficient time to divest of interests to ensure they meet the requirements of clause 17.

From commencement, beneficiaries of discretionary trusts will be considered to hold a material interest under clause 13. Therefore, anyone acquiring an interest of this type after commencement must meet the requirements in clause 16 – that is, be a practising pharmacist or close adult relative. The person's interest will be counted for the purposes of the limits set out in clause 17.

### **Particular provision for pharmacy businesses owned by existing holders of non-practising registration**

*Clause 219* applies to persons who immediately prior to commencement, held a non-practising registration in the pharmacy profession under the Health Practitioner Regulation National Law and owned or held an interest in an existing pharmacy business. That person is taken, for the purposes of the Act, to be a practising pharmacist in relation to the pharmacy business until the person stops holding the non-practising registration, or it is two years from commencement (whichever is earliest)

This recognises that there a small number of existing owners and interest holders who have a non-practising registration. These individuals can continue to own or hold their existing interest in a pharmacy business for two years, provided they retain the non-practising registration. However, once they no longer have non-practising registration, or two years has passed from commencement, they will not be eligible to own or hold an interest in a pharmacy business.

**Particular provision for pharmacy businesses carried on at or from premises wholly or partly within, or directly accessible from, supermarkets**

*Clause 220* applies to a pharmacy business that has been continuously carried on at or from a premises by the same owner since the day the Act received assent. If the premises are located within, or directly accessible from, a supermarket, and other than for that fact, would be authorised premises (that is, the premises meet the standards prescribed by regulation under clause 11), the premises are taken to be authorised premises.

This recognises that while the Act will not permit a licence to be issued for a business located wholly or partly within, or that are directly accessible from, a supermarket, this is a new restriction. There are a very small number of existing businesses that do not meet the requirement. This clause facilitates the continued operation of those businesses by providing that the premises are authorised premises, notwithstanding that they are located within, or directly accessible from, a supermarket.

**Continued limited ownership or operation of pharmacy businesses**

*Clause 221* provides a person who was able to own a pharmacy business for a specified period of time under section 139C, 139D, 139E or 139F of the 2001 Act may continue to own the business until the specified period ends.

For the specified period, the person may continue to own, and carry on, the pharmacy business and does not commit an offence under clauses 15, 16 or 19.

Repealed sections 139I, 141, 141A and 141B continue to apply in relation to the business as if the Act had not been enacted.

**Approvals for continued ownership of pharmacy businesses if registration suspended or cancelled**

*Clause 222* applies if a pharmacist's professional registration was cancelled or surrendered, and the council was deciding under section 139C of the 2001 Act whether to grant an approval to allow the person to continue to own the business for a specified period or periods.

Where these circumstances apply, the council must decide whether to grant the approval under the 2001 Act as if the Act was not enacted. However, the council may grant the approval for only one period of not more than three months.

For the period stated in the approval, sections 15, 16 and 19 do not apply in relation to the person owning, or carrying on, the pharmacy business and repealed sections 139I, 141, 141A and 141B continue to apply in relation to the business as if the Act had not been enacted.

**Division 3            Employment terms and conditions of initial council employees****Application of division**

*Clause 223* provides that this division applies to a person (an *initial council employee*) who is employed after the commencement of the Act as a member of the council's staff, other than



the chief executive officer, who was a health service employee or public service employee employed by Queensland Health immediately before being transferred to the council.

However, a person stops being an initial council employee if a new certified agreement, covering the person as an employee of the council, takes effect.

### **Application of existing instruments**

*Clause 224* provides that subclause (2) applies to an initial council employee who was a health service employee immediately before being transferred to the council, or a public service employee employed by Queensland Health immediately before being transferred to the council.

The terms and conditions of these employees are the terms and conditions that applied to health service employees, and public service employees, respectively, under existing instruments.

The terms and conditions of an initial council employee who was not a health service employee or Queensland Health public service employee transferred to the council (that is, an initial council employee appointed directly by the council) are the terms and conditions that applied, immediately before the commencement, to health service employees under the existing instruments.

This clause maintains the terms and conditions of employees transferred from Queensland Health to the council, and ensures that there is an employment framework that is applicable to new employees.

Clause 224 applies despite any other Act but subject to clauses 225 to 228.

### **Change to existing instruments other than health service employment directive**

*Clause 225* provides that if an existing instrument, other than a health employment directive, changes following commencement, the change applies in relation to initial council employees.

### **Revocation of existing public sector directive**

*Clause 226* provides that if a relevant public sector directive is revoked or otherwise stops having effect after the commencement, the public sector directive stops applying in relation to initial council employees.

### **Application of public sector directive made after commencement**

*Clause 227* provides that the terms and conditions of employment of an initial council employee are subject to a public sector directive made after the commencement if the directive states that it applies to initial council employees.

The Public Sector Act, sections 228 and 229 apply to such a public sector directive. These sections determine the relationship between public sector directives and other legislation and industrial instruments.

### **Fixed term contracts not affected**

*Clause 228* applies if a fixed term contract was in effect for an initial council employee who was a health services employee or Queensland Health public service employee immediately before being transferred to the council. Nothing in the division affects the operation of the fixed term contract.

### **Transfer of health service employee or public service employee**

*Clause 229* provides that for initial council employees who were health service employees or public service employees employed by Queensland Health, immediately before being transferred to the council, the transfer does not:

- affect the employees' benefits, entitlements or remuneration;
- prejudice the employees' existing or accruing rights to superannuation or recreation, sick, long service or other leave;
- interrupt continuity of service, except that the employees are not entitled to claim the benefit of a right or entitlement more than once in relation to the same period of service; or
- entitle the employees to payments or benefits from the State because the employees are no longer employed by Queensland Health.

This clause does not limit the operation of chapter 4, part 4 of the Public Sector Act in relation to the transfer of employees to the council as members of the council's staff.

This clause applies to the small number of staff who will be transferred from Queensland Health to the council. It does not apply to individuals directly appointed by the council.

## **Division 4            Other matters**

### **Proceedings for particular offence**

*Clause 230* provides that if a person had committed an offence under section 139B of the 2001 Act before commencement of the Act, the person may not be convicted of or punished for the offence unless they were charged with the offence before commencement.

If this had occurred, a proceeding for the offence could be continued, and the person may be convicted of and punished for the offence, as if the Act had not been enacted.

### **Seized things**

*Clause 231* provides that if a thing was seized under the 2001 Act prior to commencement, repealed part 3, division 3, subdivision 4 of the 2001 Act continues to apply in relation to the seized thing as if the Act had not been enacted.

### **Reviews of forfeiture decisions not decided**

*Clause 232* provides that where a review was started under section 181 of the 2001 Act prior to commencement, and that review had not been decided before commencement, QCAT may continue to hear and decide the review as if the Act had not been enacted.

## **Existing review rights**

*Clause 233* allows a person who could have, but had not, applied to QCAT for a review under section 181 of the 2001 Act, to apply for the review. QCAT is empowered to hear and decide the review, under the 2001 Act as if the Act had not been enacted. This only applies where the relevant period in which the person could have applied for the review has not ended.

## **Part 15                    Repeal and amendments of legislation**

### **Division 1                Repeal**

#### **Repeal**

*Clause 234* provides that the *Pharmacy Business Ownership Act 2001*, No. 12 is repealed.

### **Division 2                Amendment of this Act**

#### **Act amended**

*Clause 235* states that division 2 amends the Act.

#### **Amendment of long title**

*Clause 236* amends the long title of the Act to remove the reference to the amendments to the *Public Sector Act 2022* and the *Termination of Pregnancy Act 2018*.

### **Division 3                Amendment of Public Sector Act 2022**

#### **Act amended**

*Clause 237* states that the division 3 amends the Public Sector Act.

#### **Amendment of sch 1 (Public service entities under section 9(b))**

*Clause 238* amends the Public Sector Act, schedule 1, to insert the council as a public service entity and the chief executive officer as its head.

### **Division 4                Amendment of Termination of Pregnancy Act 2018**

#### **Act amended**

*Clause 239* provides that division 3 amends the *Termination of Pregnancy Act 2018*.

#### **Amendment of sch 1 (Dictionary)**

*Clause 240* contains the amendment to the Termination of Pregnancy Act.

Schedule 1 of the Termination of Pregnancy Act provides that *pharmacy* means premises in which a pharmacy business within the meaning of the 2001 Act is carried on.

Clause 240 amends the dictionary definition of *pharmacy* in schedule 1 of the Termination of Pregnancy Act, to provide that it means the licensed premises for a licensed pharmacy business within the meaning of the *Pharmacy Business Ownership Act 2023*.

## **Schedule 1            Dictionary**

Schedule 1 contains definitions for terms used in the Act.

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