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| **PHARMACY PREMISES COMMITTEE OF THE NORTHERN TERRITORY****PG7: NT GUIDANCE – SERVICE AGREEMENTS** |

It is not unusual for persons operating a pharmacy business to enter into an agreement with a service entity (often a related company or subsidiary) to assist in the operation and administration of the business. The services provided pursuant to such agreements usually include things like book keeping, administrative support, human resources and management, stock management, advertising and marketing and managing accounts payable and receivable.

When negotiating and entering into a Services Agreement it is very important to be aware of the undue influence provisions of the *Health Practitioners Act 2004* (**the Act**).

**Undue influence**

Schedule 7 clause 2 of the Act in effect makes void any provision of a commercial arrangement that gives any person other than an authorised pharmacy business owner the right to exercise **any** control over the conduct of a pharmacy business. This may include, for example;

* 1. the right to access books of accounts or records kept in respect of that business, otherwise than for the purpose of determining whether or not the conditions of a relevant document are being complied with; or
	2. the right to receive any consideration that varies according to the profits or takings of the business.

Further, clause 11 of Schedule 7 of the Act makes it an offence for anyone to directly or indirectly attempt to coerce or otherwise cause a pharmacist to engage in conduct that contravenes the Act.

Accordingly, pharmacy business owners should be wary of and avoid the following types of clauses in Service Agreements:

* clauses that provide the service provider with unfettered (or unlimited) discretion to make decisions with respect to the business;
* clauses that provide a service provider with a **right** of access to books of account or records kept in respect of the business (otherwise than for the purpose of determining whether the agreement is being complied with), as opposed to the licensee having the **option** to provide certain information to the service provider so that a specific requested service can be provided (for example, book keeping or management services).
* clauses that provide that any fee payable to the service provider will be increased if the profits of the business increase (even if the increase in profits is as a result of the services being provided).

1