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| **PHARMACY PREMISES COMMITTEE OF THE NORTHERN TERRITORY**  **PG1: NT GUIDANCE - TRUSTS** |

The *Health Practitioners Act 2004* (**the Act**) restricts:

* who can own a pharmacy business to registered pharmacists; and
* who can exercise any control over the conduct of a pharmacy business to registered pharmacists.

A pharmacy trust must not have as a trustee or beneficiary a person or company unless that person or company is:

* 1. a registered pharmacist; or
  2. a partnership of which all partners are registered pharmacists; or
  3. a company registered under the Corporations Act –
     1. whose directors are all registered pharmacists, and
     2. in which all shares and beneficial and legal interest in those shares are held by registered pharmacists.

If a trust is involved in the ownership of a pharmacy business (e.g. the authorised pharmacy business owner is acting as a trustee) a copy of the relevant trust deed(s) must be submitted to the Pharmacy Premises Committee for review.

As a guide, the Pharmacy Premises Committee will itself only consider fixed trusts or unit trusts in which all trustees and beneficiaries are registered pharmacists. Discretionary trusts will not be considered by the Pharmacy Premises Committee.

If a corporate trustee or beneficiary is involved, all directors and shareholders of the trustee or beneficiary are registered pharmacists and the beneficial and legal interests of all beneficiaries interests are held by registered pharmacists.

If another form of trust is proposed, it would have to be considered by legally qualified advisors and the cost would be borne by the applicant. The Pharmacy Premises Committee could not give any assurances as to the time such an application would take to be determined.

To comply with the Act, there must be appropriate restrictions on the eligibility of the Trustee, beneficiaries or unit holders and also the powers of the Trustee. To avoid the need for amendment of your Trust, it is recommended that the Trust deed be drafted with the ownership, control and undue influence provisions of the Act in mind.

A pharmacy business ownership structure which was formed prior to 23 February 2005 and which was then partially or fully owned by a trust is not subject to the ownership or control restrictions set out above and only relates to those pre-existing trusts\*.

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* *Schedule 7 sub-clause 2(4) of the Act states that an owner of a pharmacy business prior to 23 February 2005 is exempt from ownership restrictions as detailed in Schedule 7 subclause 2(1).*

The following checklist will assist with the preparation of trust deeds:

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| **Trust Deed Proprietary Interest and Undue Influence Checklist**  (A tick in the shaded area may indicate non-compliance) | **Yes** | **No** |
| If the trustee is a natural person, is that person a registered pharmacist? |  |  |
| If the trustee is a corporation, are the directors, shareholders, and any person who holds a beneficial or legal interest in the shares, all registered pharmacists? |  |  |
| Is each beneficiary or unit holder a registered pharmacist? |  |  |
| If the trust provides for classes of beneficiaries, are such classes limited to registered pharmacists? |  |  |
| Is any person or entity that is not a registered pharmacist eligible to be a trustee? |  |  |
| Is a person or entity that is not a registered pharmacist eligible to be a beneficiary or unit holder? |  |  |
| Does the trust provide any person, other than an authorised pharmacy business owner, any right to exercise any control over the conduct of the pharmacy business? |  |  |
| Does the trust provide any person, other than an authorised pharmacy business owner, a right of access to books of accounts or records kept in respect of the pharmacy business? |  |  |
| Does the trust provide any person, other than an authorised pharmacy business owner, a right to receive any payment that varies according to the profits and takings of the pharmacy business? |  |  |