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| **PHARMACY PREMISES COMMITTEE OF THE NORTHERN TERRITORY**  **PG2: NT GUIDANCE - PARTNERSHIPS** |

A partnership is a popular business structure, particularly for small businesses. It involves two or more persons (or companies) conducting a business in common with a view to making a profit.

The *Health Practitioners Act 2004* (the Act) places restrictions on:

* who can own a pharmacy business; and
* who can control or influence the way in which a pharmacy business is carried on.

When forming a partnership for the purposes of carrying on a pharmacy business, it is important that all individuals or companies that form part of the partnership are compliant with the Act.

In particular:

a) each individual comprising the partnership must be a registered pharmacist*1*

(NB this includes limited partners (*Partnership Act 1997* NT pt 3) who would not normally have a management role); and

1. if an individual or company forming part of the partnership is acting as a trustee for others (or the shares in a company which forms part of the partnership are to be held on trust), the trust arrangements **must be in compliance with the Act**. For more information on trusts, please refer to the Pharmacy Premises Committee’s PG1: NT Guidance - Trusts.

It is also important that any partnership agreement is created with the undue influence provisions of the Act in mind.

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.

*1Schedule 7 sub-clause 2(4) of the Act sets out some limited exceptions to this requirement which are beyond the scope of this Guidance.*

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.

It is also critical to bear in mind that a partnership is not a separate legal entity and can be created:

* + by written agreement;
  + by verbal agreement; or
  + by implication from the surrounding circumstances.

Therefore, if you are in fact carrying on a pharmacy business with another person or company, even though you have not signed a formal written agreement, a partnership may nevertheless be found to exist.

If a pharmacy business is to be conducted as a partnership, a copy of the relevant partnership agreement (or if no written agreement exists, a written explanation as to how and on what terms the partnership operates) must be submitted to the Pharmacy Premises Committee for review and approval.

A pharmacy business which was formed prior to 23 February 2005 and which was then subject to a partnership agreement is not subject to the ownership or control restrictions set out above and only relates to those pre-existing partnerships2.

*2 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).*