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| **PHARMACY PREMISES COMMITTEE OF THE NORTHERN TERRITORY**  **PG3: NT GUIDANCE – SALE OF BUSINESS** |

Rather than setting up a new pharmacy business from scratch, a pharmacist may decide to purchase an existing pharmacy business.

When selling or purchasing a pharmacy business it is very important to be aware of the ownership and control provisions of the *Health Practitioners Act 2004* (**the Act**).

In particular, 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.

# Ownership

Schedule 7 clause 2 (1)(a) of the Act provides that:

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

* 1. a registered pharmacist; or
  2. a partnership of which all partners are registered pharmacists
  3. a corporation -
     1. whose directors are all registered pharmacists; and
     2. all shareholders are registered pharmacists.[1](#_bookmark0)

In order to avoid a breach of the Act you **must ensure** that:

* if you are purchasing a pharmacy business as an individual (i.e. not as a partnership or company):
  + you are a registered pharmacist;
* if the pharmacy business is being purchased by a company:
  + all directors and shareholders are registered pharmacists;
* if you are purchasing the pharmacy business as a partnership:
  + any individual forming part of the partnership is a registered pharmacist;
  + all directors and shareholders of any company forming part of the partnership

are registered pharmacists;

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

# 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.

Persons buying or selling a pharmacy business should make certain that the sale of business agreement does not provide that anyone **other than** an authorised pharmacy business owner **who will carry on the pharmacy business after completion of the sale** will hold any of the rights set out above.

**Transfer of shares of pharmacy owned by a body corporate formed prior to**

**23 February 2005**

It is strongly recommended that potential purchasers a pharmacy business formed prior to 23 February 2005 with non-pharmacist owners seek their own legal advice as this guideline is only intended for general use.