



# Pharmacy Premises Change of Location Application Checklist

Please note that this checklist **is intended as a guide only** to assist you to complete your application for a change in your Pharmacy Premises location. It is not intended to be exhaustive.

This checklist should be read in conjunction with the PRASA's 'Guidelines for the operation of pharmacy premises by pharmacy services providers' and the *Health Practitioner Regulation National Law (South Australia) Act 2010 (SA)* ("**the Act**") and *Health Practitioner Regulation National Law (South Australia) Regulations 2010* ("**the Regulations**").

Completing this checklist does not guarantee that your application will be approved by the PRASA.

If you are unsure about any aspect of this checklist, you may wish to obtain independent legal advice before submitting your application.

Applicants should read the following notes 1-4 prior to completing the checklist:

**1. Ownership and proprietary interests (s51(1a))**

A person may only own or hold a proprietary interest in a pharmacy business if they are:

- a) a pharmacist; or
- b) a prescribed relative of a pharmacist who holds a proprietary interest in the pharmacy business; or
- c) a recognised corporate pharmacy services provider; or
- d) a recognised trustee pharmacy services provider; or
- e) a partner in the partnership that carries on the pharmacy business and in which every partner is:
  - o a pharmacist; or
  - o a prescribed relative of a partner who is a pharmacist; or
  - o a recognised corporate pharmacy services provider; or
  - o a recognised trustee pharmacy services provider.

The Act defines a 'prescribed relative' as a parent, spouse, domestic partner, child, grandchild, or sibling of a pharmacist.

Before approving an application for registration of premises as a pharmacy, the PRASA will need to be satisfied that only persons permitted under the Act will own or hold a proprietary interest in your pharmacy business.

Accordingly, when negotiating or entering into commercial arrangements concerning your pharmacy business, care should be taken to ensure that the agreement does not confer a proprietary interest on anyone other than the above classes of persons permitted under the Act.

Under the Act (s 26(2)), a person will have a proprietary interest in a pharmacy business if:

- they have any legal or beneficial interest in the pharmacy business; or
- in the course of carrying on a business, the person provides a benefit to another for which the person is entitled to receive the profits or income, or a share in the profits or income, of the pharmacy business; or
- under a commercial arrangement, the person has a right to receive consideration that varies according to the profits or income of the pharmacy business.

**2. Position of authority in a recognised corporate pharmacy services provider or a recognised trustee pharmacy services provider**

Applicants who own their pharmacy business through a recognised corporate pharmacy service provider or recognised trustee pharmacy services provider should also ensure that no person occupies a 'position of authority' in the company or trust unless that person is one of the classes of people described in paragraphs (a)-(d) of Note 1, above.

For the purposes of the Act (s26(5)), a person occupies a position of authority in a company if they:

- are a director of the company; or
- exercise, or are in a position to exercise, control or substantial influence over the company in the conduct of its affairs; or

- manage, or are to manage, the business of the company insofar as that business consists of the provision of pharmacy services.

Where the company is a public company a person will also be regarded as occupying a position of authority if they hold more than 10% of the issued share capital of that company (s 26(6)).

For the purposes of the Act (s 26(7)), a person occupies a position of authority in a trust if that person is a trustee or beneficiary of the trust (other than a minor or charitable organisation).

### **3. Restricted pharmacy services**

The Act also places limitations on who may provide ‘restricted pharmacy services’ in a pharmacy business.

As such, when entering into commercial arrangements applicants should ensure that the arrangements do not provide or allow for restricted pharmacy services to be provided by (or through the instrumentality of) anyone other than a pharmacist holding general registration to practice in the pharmacy profession under the *Health Practitioner Regulation National Law*.

Under the Act (s 26(1)) restricted pharmacy services means—

- a) dispensing drugs or medicines on the prescription of a medical practitioner, dentist, veterinary surgeon or other person authorised to prescribe the drugs or medicines; or
- b) other services declared by the regulations to be restricted pharmacy services.

Under reg 5 of the Regulations, the following services are also declared to be restricted pharmacy services:

- a) the assessment of a medication, whether on account of a prescription, recommendation or request, followed by the selection and preparation of the medication and its supply (with or without information about health outcomes associated with the medication);
- b) the custody, control or dispensing, provision and management of therapeutic goods, health care products and other products or items commonly associated with the practice of a pharmacist;
- a) the provision of information and other services commonly associated with the practice of a pharmacist.

### **4. Limitations on the Provision of Pharmacy Services**

The Act (s 26(1)) limits the number of pharmacies at which any one person may provide pharmacy services. The limits are as follows:

- for a natural person or a company – 6 pharmacies;
- for Friendly Society Medical Association Limited - 40 pharmacies;
- for any other friendly society - 9 pharmacies.

Under the Act pharmacy services or pharmacy means—

- a) restricted pharmacy services (discussed at Note 3, above); or
- b) other health services (including the supply of goods and the provision of advice) provided in the course of practice by a pharmacist or a person who holds himself or herself out, or is held out by another, as a pharmacist.

A ‘pharmacy services provider’ also means any person who holds a ‘proprietary interest’ in a pharmacy business.

Further, a person is also deemed to provide pharmacy services at a pharmacy if they occupy a position of authority in a company or trust which provides pharmacy services at that pharmacy (see Note 2 above regarding positions of authority).

<b>1. Applicants</b>			
<p>The PRASA requires all applicants for registration of a pharmacy premises to submit with their application a diagram setting out the ownership structure of the pharmacy business and how it complies with the ownership restrictions set out in the Act (the restrictions are discussed in Notes 1-4 above). <u>All entities and individuals listed in the pharmacy premises registration application must be included in the ownership structure diagram.</u></p>			
<b>a.</b>	<p>Are all applicants either:</p> <ul style="list-style-type: none"> <li>• a pharmacist;</li> <li>• a prescribed relative of a pharmacist (which pharmacist also holds a proprietary interest in the pharmacy business in question);</li> <li>• a recognised corporate pharmacy services provider; or</li> <li>• a recognised trustee pharmacy service provider?</li> </ul> <p><i>[If the answer is “No”, then the arrangement is not compliant with the Act].</i></p>	Yes	No

<b>2. Pharmacy Business Sale Agreement, Contract of Sale or Bill of Sale (change of ownership of an existing pharmacy business)</b>			
<p>[NOTE: If you are applying for new registration in respect of an existing pharmacy business, you must include a copy of the sale agreement with your application. If you are not applying for registration in respect of an existing pharmacy business, then please go to question 3]</p>			
<b>b.</b>	<p>Are the purchaser(s) listed in the pharmacy sale agreement <u>one and the same</u> as the individual(s)/entities(s) applying for the pharmacy premises registration?</p> <p><i>[if the answer is “No” the arrangement may not be compliant with the Act].</i></p>	Yes	No
<b>c.</b>	Does the sale agreement provide for the transfer of full legal and beneficial		

	<p>ownership of the pharmacy business to the applicants?</p> <p><i>[if the answer is “No” the arrangement may not be compliant with the Act].</i></p>		
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**3. Partnership Agreement (pharmacy businesses owned in partnership)**

[NOTE: If your proposed pharmacy business is owned in partnership, a copy of the partnership agreement must be submitted with the application. If your proposed pharmacy business is not owned in partnership, then please go to question 4]

<b>d.</b>	<p>Are the persons or entities who form the partnership (and are listed as partners in the Partnership Agreement accompanying the application) identical to the persons or entities applying for registration of the pharmacy premises?</p> <p><i>[if the answer is “No” the arrangement may not be compliant with the Act].</i></p>	Yes	No
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**2. Franchise, licence, service, or other commercial agreements**

[NOTE: Applicants must include a copy of the commercial agreements pursuant to which it is proposed that the pharmacy business will be owned and operated, so that they may be reviewed by the PRASA for compliance with the Act]

<b>a.</b>	<p>Has the PRASA previously considered and approved any of your proposed commercial agreements?</p> <p><i>[if the answer is “No”, please proceed to question d below]</i></p>	Yes	No
<b>b.</b>	<p>If the answer to question a, above, is “Yes”:</p> <p>Is the submitted version of the agreement identical to the version previously considered and approved by PRASA?</p>	Yes	No
<b>c.</b>	<p>If the answer to question b, above, is “Yes”:</p> <p>Please specify, in the space below, the commercial agreement that has previously been approved so that it may be readily identified by the PRASA:</p> <p>_____</p> <p>_____</p>	Yes	No
<b>d.</b>	<p>Does any commercial arrangement or agreement give any third party the right to:</p> <p>a) share in the profits or income of your pharmacy business, as a result of the third party providing a benefit to you or your pharmacy business? <b>or</b></p>	Yes	No

	b) receive any payment that varies according to the profits or income of your pharmacy business?		
e.	<p>If a recognised corporate pharmacy services provider <b>does not</b> own or hold a proprietary interest in the pharmacy business, go straight to question f below.</p> <p>If a recognised corporate pharmacy services provider <b>does</b> own or hold a proprietary interest in the pharmacy business, does any commercial arrangement require or allow a third party to:</p> <p>a) exercise, or be in a position to exercise, control or substantial influence over the corporate pharmacy services provider?</p> <p>b) manage the business of the corporate pharmacy services provider?</p> <p><i>[if the answer to the above is “Yes” the arrangement may not be compliant with the Act]</i></p>	Yes	No
f.	<p>Does any commercial arrangement or agreement require or allow any person other than a pharmacist who holds general registration to practice in the pharmacy profession under the <i>Health Practitioner National Law</i> to provide any of the following services in the pharmacy business:</p> <ul style="list-style-type: none"> <li>• dispensing of drugs or medicines on prescription;</li> <li>• assessment of any medication (whether on account of a prescription or not);</li> <li>• providing recommendations or making requests, before selecting and preparing and supplying medication;</li> <li>• having custody or control of therapeutic goods, health care products and other products or items commonly associated with the practice of a pharmacist;</li> <li>• dispensing, providing and managing of therapeutic goods, health care products and other products or items commonly associated with the practice of a pharmacist; or</li> <li>• providing information and other services commonly associated with the practice of a pharmacist?</li> </ul> <p><i>[if the answer to any of the above is “Yes” the arrangement is not compliant with the Act]</i></p>	Yes	No

3.	<p><b>Right of Occupancy</b></p> <p>[NOTE: The PRASA requires a copy of the agreement pursuant to which the pharmacy business is permitted to occupy and operate from the premises (this may be a lease, sub-lease, assignment or transfer of lease or a licence to occupy)]</p>		
a.	<p>Will the premises be occupied pursuant to a written agreement?</p> <p>If the answer is “No”, the PRASA will require further information.</p> <p>Please set out in the space below the basis on which the premises will be occupied by the applicant(s):</p> <hr/> <hr/>	Yes	No
b.	<p>Does the agreement provide the applicant(s) with a right to occupy and operate your pharmacy business from the proposed pharmacy premises?</p> <p><i>[if the answer is “No” then the agreement is not suitable]</i></p>	Yes	No
c.	<p>Does the agreement provide for any payments (including rent or outgoings) to be calculated based on the revenue or profits of your pharmacy business?</p> <p><i>[if the answer is “Yes” the agreement may not be compliant with the Act]</i></p>	Yes	No
d.	<p>Does the agreement provide for any third party (such as the landlord or shopping centre management) to receive:</p> <p>c) profits or income, or a share in the profits or income, of your pharmacy business; or</p> <p>d) any payment (for example rent, outgoings or a contribution to a marketing or building maintenance fund) that varies according to the profit or income of your pharmacy business?</p> <p><i>[if the answer to either of the above is “Yes” the agreement may not be compliant with the Act]</i></p>	Yes	No
e.	<p>If the applicant is a company or in partnership with a company, does the agreement provide for any third party (such as the landlord or licensor) to:</p> <p>a) exercise, or be in a position to exercise, control or substantial influence over the company; or</p> <p>b) manage the business of the company?</p> <p><i>[if the answer to either of the above is “Yes” the agreement may not be compliant with the Act]</i></p>	Yes	No

<b>4. Loan and Security Agreements</b>			
[Note: a copy of any loan agreement or security agreement must be submitted with the application]			
<b>a.</b>	<p>Does the loan or security agreement provide for any third party (such as the lender or secured creditor) to receive:</p> <p>e) profits or income, or a share in the profits or income, of your pharmacy business; or</p> <p>f) any payment (such as loan repayment instalments, fees or interest) that varies according to the profit or income of your pharmacy business?</p> <p><i>[if the answer to either of the above is "Yes" the agreement may not be compliant with the Act]</i></p>	Yes	No
<b>b.</b>	<p><u>If the applicant is a company or in partnership with a company</u>, does the loan or security agreement provide or allow for a third party (such as the lender or secured creditor) to:</p> <p>a) exercise, or be in a position to exercise, control or substantial influence over the company; or</p> <p>b) manage the business of the company?</p> <p><i>[if the answer to either of the above is "Yes" the agreement may not be compliant with the Act]</i></p>		
<b>5. Number of pharmacies</b>			
<b>a. Natural persons (to be completed when an applicant is an individual)</b>			
<b>i)</b>	<p>How many pharmacy businesses in South Australia does the applicant own or hold a proprietary interest in?</p> <p>Provide a separate figure for each applicant who is a natural person.</p>	Number	
<b>ii)</b>	<p>At how many pharmacies in South Australia does the applicant provide pharmacy services personally (for example as a sole proprietor or an employee)?</p> <p>Provide a separate figure for each applicant who is a natural person.</p>	Number	
<b>iii)</b>	<p>At how many pharmacies in South Australia does the applicant provide pharmacy services as a member of a partnership which provides pharmacy services?</p> <p>Provide a separate figure for each applicant who is a natural person.</p>	Number	
<b>iv)</b>	<p>At how many pharmacies in South Australia does a company in which the applicant is a director or shareholder provide pharmacy services?</p> <p>Provide a separate figure for each applicant who is a natural person.</p>	Number	

v)	At how many pharmacies in South Australia does a trust of which the applicant is a trustee or beneficiary provide pharmacy services? Provide a separate figure for each applicant who is a natural person.	Number
vi)	At how many pharmacies in South Australia does a trust with a corporate trustee or beneficiary (of which company the applicant is a director or shareholder) provide pharmacy services? Provide a separate figure for each applicant who is a natural person.	Number
b.	<b>Companies (to be completed when an applicant is a company)</b>	
vi)	How many pharmacies in South Australia does the applicant own or hold a proprietary interest in? Provide a separate figure for each applicant that is a company.	Number
vii)	At how many pharmacies in South Australia does the applicant provide pharmacy services? Provide a separate figure for each applicant that is a company.	Number
viii)	At how many pharmacies in South Australia does any other company in which an applicant is a shareholder provide pharmacy services? Provide a separate figure for each applicant that is a company.	Number
ix)	At how many pharmacies in South Australia does any trust of which the company is a trustee or beneficiary provide pharmacy services? Provide a separate figure for each applicant that is a company.	Number
	<b>Total</b> Calculate the total number of pharmacy businesses at which each applicant provides pharmacy services in South Australia using the criteria at (i)- (ix) above. <b>[NB: each pharmacy should only be counted once for each applicant, even if it falls into several of the categories above.]</b>	
x)	If any applicant provides pharmacy services at more than 6 pharmacy businesses in South Australia, is that applicant a friendly society? <i>[If the answer is "No" the arrangement is not complaint with the Act. If the answer is "Yes", please complete <b>part c (friendly societies)</b>, below.]</i>	Yes
		No

c.	Friendly societies		
xi)	<p><b><i>Friendly Society Medical Association Limited</i></b></p> <p>If the applicant is Friendly Society Medical Association Limited, does it currently provide pharmacy services more than 40 pharmacies in South Australia?</p> <p><i>[If the answer is "No" the arrangement is not compliant with the Act.]</i></p>		
xii)	<p><b><i>Friendly Societies other than Friendly Society Medical Association Limited</i></b></p> <p>If the applicant is a friendly society <u>other than</u> Friendly Society Medical Association Limited, does it currently provide pharmacy services at more than 9 pharmacies in total in South Australia?</p> <p><i>[If the answer is "No" the arrangement is not complaint with the Act]</i></p>		