



Western Australia

## **Pharmacy Act 2010**

Compare between:

[01 Oct 2010, 00-b0-01] and [18 Oct 2010, 00-c0-02]



Western Australia

## **Pharmacy Act 2010**

**An Act to provide for the registration of premises as pharmacies, to control such premises and pharmacy businesses, make consequential amendments to various Acts and for related purposes.**

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1. Short title**

This is the *Pharmacy Act 2010*.

**2. Commencement**

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

~~[3. — *Has not come into operation*<sup>2</sup>.]~~

~~[Parts 2-9 have not come into operation<sup>2</sup>.]~~

### Notes

<sup>1</sup>—This is a compilation of the *Pharmacy Act 2010*. The following table contains information about that Act<sup>1a</sup>.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>Pharmacy Act 2010</i> s. 1 and 2	32 of 2010	26 Aug 2010	26 Aug 2010 (see s. 2(a))

<sup>1a</sup>—On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

#### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Pharmacy Act 2010</i> s. 3, and Pt. 2-9 <sup>2</sup>	32 of 2010	26 Aug 2010	18 Oct 2010 (see s. 2(b) and <i>Gazette</i> 1 Oct 2010 p. 5076)

<sup>2</sup>—On the date as at which this compilation was prepared, the *Pharmacy Act 2010* s. 3 and Pt. 2-9 had not come into operation. They read as follows:

### 3. Terms used

- (1) In this Act, unless the context otherwise requires —
- applicant*** means a person who has made an application under section 42;
- application*** means an application for registration;
- approved*** means approved by the Board in writing;
- Board*** means the Pharmacy Registration Board of Western Australia established by section 4;
- certificate of registration*** means a certificate of registration issued under section 51(1);

**close family member**, in respect of a pharmacist, means any of the following —

- (a) a spouse, de facto partner, child or parent of the pharmacist;
- (b) another family member in a relationship with the pharmacist prescribed by the regulations for the purposes of this definition;

**committee** means a committee established by the Board under this Act;

**condition** includes restriction;

**Corporations Act** means the *Corporations Act 2001* (Commonwealth);

**dispense**, in relation to a medicine or drug that is, or contains, a poison, as defined in the *Poisons Act 1964* section 5(1), means to supply that medicine or drug in accordance with that Act;

**document** includes any tape, disk or other device or medium on which information is recorded or stored;

**friendly society** means a company that is a friendly society under the Corporations Act and that —

- (a) provides mutual benefits to its members; and
- (b) is a non-profit organisation; and
- (c) has a constitution that provides that the main object of the company is to carry on the business of pharmacy;

**member of the Board** includes a person acting under section 17;

**officer**, in relation to a body corporate, has the meaning given to “officer” of a corporation in the Corporations Act section 9 but does not include an employee of the body corporate unless the employee is concerned in the management of the body corporate;

**pharmacist** means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the pharmacy profession;

***pharmacist controlled company*** means a company within the meaning of the Corporations Act —

- (a) in which —
  - (i) at least one director is a pharmacist; and
  - (ii) every director is either a pharmacist or a close family member of a pharmacist who is a director;
- and
- (b) where each holder of shares, or of a beneficial or legal interest in shares, in the company is a pharmacist or a close family member of such a pharmacist; and
- (c) in which a pharmacist is, or pharmacists are, entitled to control the exercise of more than 50% of the voting power —
  - (i) at meetings of the directors of the company; or
  - (ii) attached to voting shares issued by the company;

***pharmacy business*** means a business —

- (a) consisting of the provision of pharmaceutical services; and
- (b) from which goods and services relating to the provision of pharmaceutical services may be available,

other than a business carried on at premises operated by —

- (c) a public hospital, as defined in the *Hospitals and Health Services Act 1927* section 2(1); or
- (d) the holder of a permit or licence under the *Poisons Act 1964* of a type prescribed by the regulations;

***preserved company*** means St John of God Health Care Incorporated, an association incorporated under the *Associations Incorporation Act 1987*;

***presiding member*** means the presiding member of the Board referred to in section 6;

***proprietary interest***, in respect of a pharmacy business, means a legal or beneficial interest, and includes an interest as —

- (a) a sole proprietor; or
- (b) a partner; or
- (c) a director, member or shareholder of a company, as defined in the Corporations Act; or
- (d) a trustee or beneficiary of a trust,

and has a meaning affected by subsection (2);

**register** means the register referred to in section 49;

**registered** means registered by the Board under this Act;

**registered pharmacy** or **pharmacy** means premises registered as a pharmacy under Part 4 Division 1;

**registrar** means the person employed or engaged to be registrar under section 30;

**registration** includes renewal of registration;

**supermarket** means a retail store or market the primary business of which is the sale of a range of food, beverages, groceries and other domestic goods;

**the practice of pharmacy** includes to —

- (a) compound, dispense or otherwise supply; and
- (b) advise or counsel on the effective and safe use of,

medicines or drugs but does not include something that an endorsed health practitioner (other than a pharmacist) or a veterinary surgeon is authorised to do under the *Poisons Act 1964* section 23(2).

- (2) Without limiting the generality of the expression, a person will be taken to hold a proprietary interest in a pharmacy business if —
  - (a) the person is a party to an arrangement of a kind prescribed by the regulations; or
  - (b) the person, in the course of carrying on a business, 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 a pharmacy business; or
- (c) the person has, under a franchise or other commercial arrangement, a right to receive consideration that varies according to the profits or income of a pharmacy business.

## **Part 2 — Pharmacy Registration Board**

### **Division 1 — The Board**

#### **4. Board established**

- (1) A body called the Pharmacy Registration Board of Western Australia is established.
- (2) The Board —
  - (a) is a body corporate; and
  - (b) has perpetual succession and a common seal; and
  - (c) may sue and be sued in its corporate name.
- (3) The Board does not represent, and is not an agent of, the Crown.

#### **5. Membership of Board**

- (1) The Board consists of 4 members appointed by the Minister, of whom —
  - (a) 3 are to be pharmacists; and
  - (b) one is to be a person who has knowledge of and experience in representing the interests of consumers.
- (2) Each member of the Board is to be a natural person.

#### **6. Presiding member and deputy presiding member**

The presiding member and the deputy presiding member of the Board are to be elected by the Board from amongst its members.

#### **7. Remuneration and allowances**

A member of the Board, or of a committee, is to be paid such remuneration and allowances (if any) as the Minister, on the recommendation of the Minister to whom the administration of the *Public Sector Management Act 1994* is committed, determines from time to time.

## **Division 2 — Functions and powers**

### **8. Functions**

The functions of the Board are as follows —

- (a) to advise the Minister on matters to which this Act applies;
- (b) to administer the scheme of registration under Part 4;
- (c) to monitor, and enforce, compliance with this Act;
- (d) to perform other functions that are conferred on the Board under this Act or any other Act.

### **9. Powers**

The Board has all the powers it needs to perform its functions.

### **10. Delegation by Board**

- (1) The Board may delegate any power or duty of the Board under another provision of this Act or any other Act to —
  - (a) a member of the Board; or
  - (b) a committee or a member of a committee; or
  - (c) the registrar.
- (2) The delegation must be in writing executed by the Board.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Board to perform a function through the registrar or any other member of staff or an agent.

### **Division 3 — Relationship of Board with Minister**

#### **11. Directions by Minister**

- (1) Subject to subsection (2), the Minister may, after consulting with the Board, give directions in writing to the Board with respect to the performance of its functions either generally or in relation to a particular matter, and the Board is to give effect to any such direction.
- (2) The Minister must not under subsection (1) direct the Board with respect to the performance of its functions in respect of —
  - (a) a particular person; or
  - (b) a particular application or proceeding.
- (3) The text of a direction given under subsection (1) must be —
  - (a) laid before each House of Parliament within 14 sitting days of that House after the direction is given; and
  - (b) included in the annual report submitted by the Board under section 38(1).

#### **12. Minister to have access to information**

- (1) In this section —

**information** means information specified, or of a description specified, by the Minister that relates to the functions of the Board.
- (2) The Minister is entitled —
  - (a) to have information in the possession of the Board; and
  - (b) if the information is in or on a document, to have, and make and retain copies of, that document.
- (3) For the purposes of subsection (2) the Minister may —
  - (a) request the Board to furnish information to the Minister;  
or

- (b) request the Board to give the Minister access to information; or
  - (c) for the purposes of paragraph (b) make use of the staff of the Board to obtain the information and furnish it to the Minister.
- (4) The Board is to comply with a request under subsection (3) and make its staff and facilities available to the Minister for the purposes of subsection (3)(c).
- (5) The Minister is not entitled to have information under this section in a form that —
- (a) discloses the identity of a person involved in a particular application or proceeding; or
  - (b) might enable the identity of any such person to be ascertained,
- unless that person has consented to the disclosure.

#### **Division 4 — Committees**

### **13. Committees**

- (1) The Board may from time to time establish any committee.
- (2) The Board may —
- (a) determine the functions, membership and constitution; and
  - (b) appoint such members and other persons as it thinks fit to be members; and
  - (c) give directions with respect to the functions and procedures,
- of a committee established under this section.
- (3) A committee is to comply with a direction given to it under subsection (2)(c).

- (4) At the request of the Board, a committee established under this section is to report on the performance of its functions to the Board, in accordance with the Board's request.

**14. Provisions relating to committees**

- (1) Each member of a committee is to be a natural person.
- (2) The Board may remove a person from membership of a committee and may reconstitute or discharge a committee established by the Board.
- (3) A committee is to ensure that an accurate record is kept and preserved of the proceedings of each meeting of the committee and of each resolution passed by the committee.
- (4) Subject to this Act, a committee may determine its own procedures.
- (5) A person with special knowledge or experience may be invited to act in an advisory capacity to a committee if the committee is of the opinion that the person will assist the committee in the performance of its functions and the Board has approved the invitation.

**Division 5 — Constitution and proceedings of the Board**

**15. Term of office**

- (1) Subject to section 18, a member of the Board holds office for such term, not exceeding 3 years, as is specified in the member's instrument of appointment.
- (2) Subject to subsection (3), a member of the Board is not to hold office for more than 9 years, consecutively or otherwise.
- (3) If in the opinion of the Minister there are special reasons for doing so, a person may be appointed so that he or she holds office for more than 9 years, consecutively or otherwise.

**16. Functions of deputy presiding member**

- (1) The deputy presiding member is to perform the functions of the presiding member when the presiding member is unable to do so by reason of illness, absence or other cause, or when the office of presiding member is vacant.
- (2) No act or omission of the deputy presiding member acting as presiding member is to be questioned on the ground that the occasion for his or her so acting had not arisen or had ceased.

**17. Deputy members**

- (1) The Minister may appoint an eligible person to be a deputy of a member and may terminate such an appointment at any time.
- (2) The provisions of section 5 that apply to and in relation to the appointment of a member apply, with any necessary modification, to and in relation to the appointment of the deputy of that member.
- (3) A deputy of a member may perform the functions of the member when the member is unable to do so by reason of illness, absence or other cause.
- (4) Despite anything in this Act, a deputy of a member may continue to act as a member, after the occasion for so acting has ceased, for the purpose of completing any function.
- (5) A deputy of a member, while acting as a member, has all the functions of and all the protection given to a member.
- (6) No act or omission of a person acting in place of another under this section is to be questioned on the ground that the occasion for so acting had not arisen or had ceased.

**18. Vacation of office by member**

- (1) A member of the Board may resign from office by notice in writing given to the Minister.

- (2) A member who resigns under subsection (1) is to give a copy of the notice of resignation to the registrar.
- (3) A member of the Board may be removed from office by the Minister —
  - (a) for mental or physical disability, incompetence, neglect of duty or misconduct that impairs the performance of the member's duties; or
  - (b) if the member is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
  - (c) if the member is absent without leave of the Board from 3 consecutive meetings of the Board of which the member has had notice; or
  - (d) for any other act or omission that in the opinion of the Minister may cause prejudice or injury to the Board.
- (4) A member of the Board must be removed from office by the Minister if the member ceases to hold a position or qualification by virtue of which the member was appointed or if, in the case of a member who is a pharmacist, the registration of the member under the *Health Practitioner Regulation National Law (Western Australia)* is suspended.

**19. General procedure concerning meetings**

- (1) The presiding member is to preside at all meetings of the Board at which he or she is present.
- (2) If both the presiding member and deputy presiding member are absent from a meeting the members present are to appoint one of their number to preside.
- (3) A quorum for a meeting of the Board is 3 members.
- (4) The procedure for convening meetings of the Board and the conduct of business at those meetings is, subject to this Act, to be as determined by the Board.



**20. Voting**

- (1) A decision of the majority of members at a meeting of the Board at which a quorum is present is the decision of the Board.
- (2) If the votes of members present at a meeting and voting are equally divided the member presiding at the meeting is to have a casting vote in addition to a deliberative vote.

**21. Holding meetings remotely**

The presence of a person at a meeting of the Board need not be by attendance in person but may be by that person and each other person at the meeting being simultaneously in contact by telephone, or other means of instantaneous communication.

**22. Resolution without meeting**

A resolution in writing signed by 3 members of the Board or assented to by 3 members by letter, facsimile transmission, electronic mail or other written means has effect as if it had been passed at a meeting of the Board.

**23. Minutes**

The Board is to ensure that an accurate record is kept and preserved of the proceedings at each meeting of the Board and of each resolution passed by the Board.

**Division 6 — Disclosure of interests etc.**

**24. Term used: member**

In this Division —

***member*** means a member of the Board or a member of a committee, as the case may be.

**25. Disclosure of interests**

- (1) A member who has a material personal interest in a matter being considered or about to be considered by the Board or a committee must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board or the committee, as is relevant.

Penalty: a fine of \$10 000.

- (2) A disclosure under subsection (1) is to be recorded in the minutes of the meeting.

**26. Exclusion of interested member**

- (1) A member who has a material personal interest in a matter that is being considered by the Board or a committee —

- (a) must not vote, whether at a meeting or otherwise, on the matter; and
- (b) must not be present while the matter is being considered at a meeting.

- (2) In subsection (1)(a) or (b) a reference to a matter also refers to a proposed resolution under section 27 in respect of the matter, whether relating to that member or a different member.

**27. Board or committee may resolve that section 26 inapplicable**

Section 26 does not apply if the Board or a committee has at any time passed a resolution that —

- (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

**28. Quorum where section 26 applies**

- (1) Despite section 19(3), when the Board is dealing with a matter in relation to which a member of the Board is disqualified under section 26, 2 members who are entitled to vote on any motion that may be moved in relation to the matter constitute a quorum.
- (2) The Minister may deal with a matter to the extent that the Board cannot deal with it because of subsection (1).

**29. Minister may declare sections 26 and 28 inapplicable**

- (1) The Minister may by writing declare that section 26 or 28 does not apply in relation to a specified matter, either generally or for the purpose of dealing with particular proposed resolutions.
- (2) The Minister is to, within 14 sitting days after a declaration under subsection (1) is made, cause a copy of the declaration to be laid before each House of Parliament.

**Division 7 — Registrar and other staff**

**30. Registrar**

- (1) The Board is to employ or engage a person to be the registrar.
- (2) The registrar has the functions that are conferred under this Act or that the Board directs the registrar to perform.
- (3) The registrar may delegate to a person employed or engaged by the Board any power or duty of the registrar under another provision of this Act.
- (4) The delegation must be in writing executed by the registrar.
- (5) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (6) A delegate exercising or performing a power or duty that has been delegated to the person under this section is to be taken to

do so in accordance with the terms of the delegation unless the contrary is shown.

**31. Other staff**

The Board may employ or engage persons to provide such professional, technical or other assistance that the Board considers necessary to enable it to perform its functions.

**Division 8 — General**

**32. Duty not to make improper use of information**

A member or former member of the Board or a member or former member of a committee must not, whether within or outside the State, make improper use of information acquired by virtue of that position to gain, directly or indirectly, an advantage for himself or herself or for any other person.

Penalty: a fine of \$5 000.

**33. Meetings and minutes of meetings**

- (1) Subject to this section, every meeting of the Board is to be open to members of the public.
- (2) Despite subsection (1), the Board may of its own initiative order that in any particular case a meeting, or part of a meeting, of the Board is to be closed.
- (3) The minutes of a meeting of the Board are to be open for inspection at its principal place of business by members of the public during normal office hours without fee, other than minutes relating to —
  - (a) a matter determined to be confidential under subsection (5); or
  - (b) a meeting, or part of a meeting, that the Board ordered be closed under subsection (2).

- (4) A person may, on payment of the fee prescribed by the regulations, if any, obtain a copy of any minutes of the Board available for inspection under subsection (3).
- (5) The Board may determine that a matter is confidential if it considers that its disclosure is likely to infringe the reasonable privacy of any person.

**34. Execution of documents by Board**

- (1) The Board is to have a common seal.
- (2) A document is duly executed by the Board, if —
  - (a) the common seal of the Board is affixed to it in accordance with subsections (3) and (4); or
  - (b) it is signed on behalf of the Board by a person or persons authorised by the Board to do so under subsection (5).
- (3) The common seal of the Board is not to be affixed to any document except as authorised by the Board.
- (4) The common seal of the Board is to be affixed to a document in the presence of 2 members of the Board and each of them is to sign the document to attest that the common seal was so affixed.
- (5) The Board may, by writing under its seal, authorise —
  - (a) a member or members of the Board; or
  - (b) a member or members of staff,to sign documents on behalf of the Board, either generally or subject to such conditions as are specified in the authorisation.
- (6) A document executed under this section without the common seal of the Board is not to be regarded as being a document under seal.
- (7) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.

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- (8) When a document is produced bearing a seal purporting to be the common seal of the Board, it is to be presumed that the seal is the common seal of the Board until the contrary is shown.

## **Part 3 — Finance and reports**

### **35. Funds of the Board**

- (1) The funds of the Board consist of —
  - (a) fees received by the Board; and
  - (b) grants (if any) by the State, and all gifts and donations made to the Board, but subject to any trusts declared in relation to the grants, gifts or donations; and
  - (c) other money or property lawfully received by the Board in connection with the performance of its functions.
- (2) The funds of the Board may be applied —
  - (a) for the purposes of the administration and enforcement of this Act, including the remuneration of members of the Board and committees and of the registrar and other persons employed or engaged by the Board; and
  - (b) for any other purpose that the Board may recommend and the Minister may approve to enable the Board to perform its functions.

### **36. Accounts**

- (1) The Board is to cause to be kept proper accounts and records of the transactions and affairs of the Board and is to prepare financial statements in accordance with Australian Accounting Standards.
- (2) The financial statements are to be prepared on an accrual basis unless the Board determines otherwise.

### **37. Audit**

The accounts and financial statements of the Board are to be audited at least once a year, at the expense of the Board, by a registered company auditor (as defined in paragraph (a) of the definition of that term in the *Corporations Act* section 9) appointed by the Board with the prior approval of the Minister.

**38. Annual report and other reports**

- (1) The Board, not later than 31 December in each year, is to make and submit to the Minister an annual report of its proceedings for the preceding year ending on 30 June together with a copy of its financial statements for that year and the auditor's report on those statements.
- (2) The Board's annual report must include details of —
  - (a) the number of applications for the registration of pharmacies; and
  - (b) the number of applications for the registration of pharmacies granted and refused; and
  - (c) the number of pharmacies owned by individuals, bodies corporate and friendly societies, respectively; and
  - (d) any trends or special problems that may have emerged; and
  - (e) forecasts of the workload of the Board in the year after the year to which the report relates; and
  - (f) any proposals for improving the operation of the Board.
- (3) The Minister is to cause a copy of the Board's annual report and financial statements and of the auditor's report submitted under subsection (1) to be laid before each House of Parliament within 14 sitting days of that House after receipt of the report by the Minister.
- (4) The Board is to ensure that after subsection (3) has been complied with copies of the reports and statements referred to in that subsection are available on request for inspection at its principal place of business.



## **Part 4 — Registration**

### **Division 1 — Registration of pharmacies**

#### **39. Registration of premises as pharmacies**

- (1) Unless section 43 applies, the Board is to grant an application made under section 42 for the registration of premises as a pharmacy.
- (2) Premises registered under this Division are to be registered in the name of the applicant.

#### **40. Who may apply for registration**

The following persons may apply to the Board for the premises at which a pharmacy business is, or is to be, established or carried on to be registered as a pharmacy in the name of that person —

- (a) a pharmacist or friendly society who —
  - (i) owns, or holds a proprietary interest in, the pharmacy business; or
  - (ii) intends to own, or acquire a proprietary interest in, the pharmacy business;
- (b) subject to section 41, the preserved company.

#### **41. Preserved company to carry on pharmacy business only at certain premises**

The preserved company may not carry on a pharmacy business at any premises other than premises at the place where it was carrying on that business immediately before the *Pharmacy Act 1964* was repealed.

**42. Application for registration**

- (1) An application for the registration of premises under this Division must be —
  - (a) made in writing; and
  - (b) made in an approved manner and form; and
  - (c) accompanied by the application fee, if any, prescribed by the regulations; and
  - (d) accompanied by such information as is required by the regulations.
- (2) The Board may request that an applicant provide to the Board such further information as the Board reasonably requires to decide the application.
- (3) The Board may request that an applicant —
  - (a) attend before the Board for the purpose of satisfying the Board as to a matter relevant to the application; or
  - (b) agree with the Board as to a mutually convenient time for the inspection of the premises to ensure that the premises meet the requirements prescribed by the regulations for the minimum standards of fitness for the competent and safe practice of pharmacy.
- (4) A request under subsection (2) or (3) is to —
  - (a) be in writing; and
  - (b) be given to the applicant; and
  - (c) specify, if relevant —
    - (i) the time within which the information must be provided; or
    - (ii) the time and place the person is to attend before the Board.
- (5) Information requested under subsection (2) must be provided —
  - (a) in writing; and

- (b) within the time specified in the request.
- (6) Information provided under this section must, if the Board so requires, be verified by statutory declaration or supported by other evidence required by the Board.

**43. Grounds for refusal**

The Board must refuse to grant an application for the registration of premises under this Division if —

- (a) the Board is not satisfied that the premises meet the requirements prescribed by the regulations for the minimum standards of fitness for the competent and safe practice of pharmacy; or
- (b) the application contains or is accompanied by information that is false or misleading in a material particular; or
- (c) the applicant has not complied with a request made under section 42(2) or (3); or
- (d) where the applicant is a person referred to in section 40(a), section 55 would be breached if a pharmacy business was carried on at the premises by the applicant; or
- (e) the Board is satisfied that the premises are —
  - (i) located wholly or partly within a supermarket; or
  - (ii) capable of being entered from a supermarket; or
  - (iii) capable of being used to gain entry to a supermarket;or
- (f) where the applicant is the preserved company, the premises are not in compliance with section 41.

**44. Entry and inspection of registered pharmacy**

- (1) The Board may enter any registered pharmacy during business hours and inspect the pharmacy or anything in or on the pharmacy to ensure that the pharmacy meets the requirements prescribed by the regulations for the minimum standards of fitness for the competent and safe practice of pharmacy.
- (2) A pharmacist practising at registered premises, and a person in whose name the premises are registered, are to provide all reasonable assistance to a person entering and inspecting a pharmacy under subsection (1).

Penalty:

- (a) for an individual, a fine of \$1 000;
- (b) for a body corporate, a fine of \$2 500.

**45. Duration of registration**

Subject to this Act, registration of premises under this Division —

- (a) has effect for the period prescribed by the regulations; and
- (b) may be renewed in accordance with the regulations for a further period prescribed by the regulations.

**46. Cancellation and non-renewal of registration**

- (1) The Board must cancel or refuse to renew the registration of premises under this Division if —
  - (a) the Board is not satisfied that the premises meet the requirements prescribed by the regulations for the minimum standards of fitness for the competent and safe practice of pharmacy; or
  - (b) the registration was obtained by fraud or misrepresentation; or

- (c) a person who owns, or holds a proprietary interest in, the pharmacy business carried on at the premises —
    - (i) is not, or has ceased to be, a person who is entitled to own, or hold a proprietary interest in, a pharmacy business under section 54; or
    - (ii) is in breach of section 55;or
  - (d) the person in whose name the premises are registered does not carry on a pharmacy business at the premises; or
  - (e) the Board is satisfied that the premises are —
    - (i) located wholly or partly within a supermarket; or
    - (ii) capable of being entered from a supermarket; or
    - (iii) capable of being used to gain entry to a supermarket;or
  - (f) where the premises are registered in the name of the preserved company, the premises are not in compliance with section 41.
- (2) If the Board proposes to cancel or refuse to renew the registration of a pharmacy under this Division, the Board is to give the person in whose name the pharmacy is registered notice in writing of the proposal to cancel or refuse to renew the registration and the reasons for the proposal.
- (3) A notice given under subsection (2) must state that within 14 days after the notice is given the person to whom it is given may make representations in writing to the Board concerning the matter, and the Board is not to determine the matter without considering any representations received within that period.

**47. Conditions on registration**

- (1) The Board may, at the time of granting registration of premises as a pharmacy under this Division or at a later time, impose such conditions on that registration as the Board reasonably requires to ensure that the premises are of a minimum standard of fitness for the competent and safe practice of pharmacy.
- (2) A condition imposed by the Board under this section may apply indefinitely or for a period of time specified by the Board in the written notice of the decisions given under section 67.
- (3) The Board may, on its own motion or on the application of a person the subject of a condition imposed under this section, on reasonable grounds, revoke or vary the condition.

**48. Premises may be, or continue to be, registered even if requirements as to minimum standards of fitness are not met**

Despite sections 43(a) and 46(1)(a), the Board may grant an application for the registration of premises, or renew, or not cancel, such a registration even though the premises do not meet the requirements prescribed by the regulations for the minimum standards of fitness for the competent and safe practice of pharmacy if —

- (a) the Board is satisfied that it is in the public interest for the premises to be registered under this Division; and
- (b) a condition has, or conditions have, been imposed on the registration of the premises under section 47.

**Division 2 — The register**

**49. The register**

- (1) The Board is required to keep an accurate and up-to-date register of registered pharmacies in such manner and form as the Board determines.

- (2) The following information is to be recorded in the register in respect of a registered pharmacy —
- (a) the address of the pharmacy;
  - (b) the name of the person in whose name the pharmacy is registered;
  - (c) any conditions imposed on the registration of the pharmacy;
  - (d) such other information, if any, as is prescribed by the regulations.

**50. Inspection of register**

- (1) The register must be kept in the office of the registrar.
- (2) The register must be available for inspection by members of the public during normal office hours.
- (3) The register may be made available for inspection by members of the public on a website maintained by the Board.
- (4) A person may, on application to the registrar, and payment of the fee prescribed by the regulations, if any, obtain a certified copy of the register or a particular entry in the register.
- (5) Information made available under subsections (2), (3) and (4) —
  - (a) need not include the information, or all of the information, prescribed by the regulations as information to be recorded in the register; and
  - (b) is not to include a person's private address without the consent of the person.
- (6) No fee is payable under subsection (4) if the application is made —
  - (a) by an officer of the department of the Public Service principally assisting the Minister in the administration of this Act; and

- (b) for the purpose of carrying out the functions of an officer of that department.

**51. Certificates of registration for premises**

- (1) On the registration of premises as a pharmacy the Board is to issue to the person in whose name the premises are registered a certificate of registration of the premises as a pharmacy in the approved form.
- (2) In the absence of evidence to the contrary a certificate of registration of premises as a registered pharmacy is evidence that the premises specified in the certificate are registered as a pharmacy.

**52. Notification of intended change of ownership of, or interests held in, pharmacy business**

A person who intends to acquire, or dispose of, ownership of, or a proprietary interest in, a pharmacy business must give the registrar written advice of the intended acquisition or disposal at least 14 days before the acquisition or disposal occurs.

Penalty:

- (a) for an individual, a fine of \$5 000;
- (b) for a body corporate, a fine of \$10 000.



## **Part 5 — Pharmacy business**

### **53. Pharmacy business to be carried on at registered premises**

A person must not own, or hold a proprietary interest in, a pharmacy business unless the business is carried on at premises that are registered as a pharmacy.

Penalty:

- (a) for an individual, a fine of \$5 000;
- (b) for a body corporate, a fine of \$10 000;
- (c) for each separate and further offence committed by the person under the *Interpretation Act 1984* section 71, a fine of \$400.

### **54. Ownership of, and interests in, pharmacy business**

- (1) A person must not own, or hold a proprietary interest in, a pharmacy business unless the person is —
  - (a) a pharmacist; or
  - (b) a person who is a partner in a partnership that carries on the business and in which every partner is either —
    - (i) a pharmacist; or
    - (ii) a close family member of a partner who is a pharmacist;or
  - (c) a pharmacist controlled company; or
  - (d) a friendly society; or
  - (e) the preserved company.
- (2) For the purposes of subsection (1), a person is not to be treated as having a proprietary interest in a pharmacy business owned by a company referred to in subsection (1)(c), (d) or (e) in respect of an interest as a director, officer, trustee, member or shareholder of that company.

Penalty:

- (a) for an individual, a fine of \$5 000;
- (b) for a body corporate, a fine of \$10 000;
- (c) for each separate and further offence committed by the person under the *Interpretation Act 1984* section 71, a fine of \$400.

**55. Limit on ownership of, and interests in, pharmacy businesses**

- (1) A pharmacist must not own, or hold a proprietary interest in, more than 4 pharmacy businesses at any one time.
- (2) A friendly society must not own, or hold a proprietary interest in, more than 4 pharmacy businesses at any one time.
- (3) The preserved company must not own more than one pharmacy business at any one time.
- (4) A close family member of a pharmacist must not hold a proprietary interest in more than 4 pharmacy businesses at any one time.
- (5) A new friendly society must not acquire, or acquire a proprietary interest in, a pharmacy business, if the total number of pharmacy businesses which are owned by a new friendly society, or in which a new friendly society holds a proprietary interest, is 9 or more than 9.
- (6) In subsection (5) —  
*new friendly society* means a friendly society that did not own, or hold a proprietary interest in, a pharmacy business in this State immediately before the repeal of the *Pharmacy Act 1964*.  
Penalty: a fine of \$50 000.

**56. Pharmacist to have overall responsibility for pharmacy business**

- (1) If the person in whose name a pharmacy is registered under section 39 is a pharmacist then that pharmacist has overall

responsibility for the pharmacy business carried on at the pharmacy.

- (2) If the person in whose name a pharmacy is registered under section 39 is not a pharmacist then that person is to appoint a pharmacist to have overall responsibility for the pharmacy business carried on at the pharmacy.

Penalty: a fine of \$5 000.

- (3) Within 7 days after appointing a pharmacist to have overall responsibility for a pharmacy under subsection (2), the person who appointed the pharmacist is to give written notice to the Board specifying —

- (a) the name and address of the pharmacist appointed to have overall responsibility for the pharmacy business carried on at the pharmacy; and
- (b) the date from which the appointment of the pharmacist commenced or is to commence; and
- (c) evidence that the pharmacist has agreed to the appointment.

Penalty: a fine of \$2 500.

- (4) A person must not —

- (a) carry on a pharmacy business at a pharmacy; or
- (b) practise pharmacy at a pharmacy,

unless a pharmacist appointed under this section has overall responsibility for the pharmacy business carried on at the pharmacy.

Penalty:

- (a) for an individual, a fine of \$5 000;
- (b) for a body corporate, a fine of \$10 000.

**57. Supervision of pharmacy business by pharmacist**

The following persons are to ensure that the pharmacy business carried on at a pharmacy is carried on under the personal supervision of a pharmacist at all times —

- (a) the person in whose name the pharmacy is registered under section 39;
- (b) the person appointed to have overall responsibility for the pharmacy business under section 56(2).

Penalty:

- (a) for an individual, a fine of \$5 000;
- (b) for a body corporate, a fine of \$10 000.

**58. Death or bankruptcy of pharmacist etc.**

(1) Despite Part 4 Division 1 and section 54, where —

- (a) a pharmacist dies; or
- (b) a pharmacist is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
- (c) a company that owned, or held a proprietary interest in, a pharmacy business is an externally administered body corporate within the meaning of the Corporations Act,

the personal legal representative of the pharmacist, or other person in accordance with the laws relating to bankruptcy or the Corporations Act, as is relevant, may for 12 months, or such further period as the Board approves in writing —

- (d) own, or hold a proprietary interest in, a pharmacy business; and
- (e) be the person in whose name the premises are registered as a pharmacy.

(2) A person in whose name a pharmacy is registered under subsection (1) is, after consultation with the Board, to appoint a

pharmacist to have overall responsibility for the pharmacy business carried on at the pharmacy.

Penalty: a fine of \$5 000.

- (3) Within 7 days after appointing a pharmacist under subsection (2), the person who appointed the pharmacist is to give written notice to the Board specifying —
- (a) the name and address of the pharmacist appointed to have overall responsibility of the pharmacy business carried on at the pharmacy; and
  - (b) the date from which the appointment of the pharmacist commenced or is to commence; and
  - (c) evidence that the pharmacist has agreed to the appointment.

Penalty: a fine of \$1 000.

- (4) On a person ceasing to be a close family member of a pharmacist due to death, divorce or separation —
- (a) a proprietary interest held by that person in a pharmacy business is to be dealt with in accordance with the regulations; and
  - (b) for such period as the Board approves in writing, being not longer than 12 months, section 54 does not apply in respect of the proprietary interest held by that person.

**59. Who may carry on a business that is not a pharmacy business at a registered pharmacy**

A person must not carry on a business that is not a pharmacy business at a registered pharmacy unless the person is —

- (a) the person in whose name the pharmacy is registered under section 39; or
- (b) a pharmacist who is in partnership with that person; or

- (c) a pharmacist who is a director of the same pharmacist controlled company as that person.

Penalty:

- (a) for an individual —
  - (i) for a first offence, a fine of \$5 000, and for each separate and further offence committed by the person under the *Interpretation Act 1984* section 71, a fine of \$200;
  - (ii) for a subsequent offence, a fine of \$10 000, and for each separate and further offence committed by the person under the *Interpretation Act 1984* section 71, a fine of \$400;
- (b) for a body corporate —
  - (i) for a first offence, a fine of \$10 000, and for each separate and further offence committed by the person under the *Interpretation Act 1984* section 71, a fine of \$400;
  - (ii) for a subsequent offence, a fine of \$20 000, and for each separate and further offence committed by the person under the *Interpretation Act 1984* section 71, a fine of \$800.

**60. Use of title “pharmacy” etc. restricted**

A person must not —

- (a) use the title “pharmacy” in respect of a business that the person is carrying on unless —
  - (i) the business is a pharmacy business; and
  - (ii) the person is entitled under section 54(1) to own, or hold a proprietary interest in, such a business;

or

- (b) advertise or otherwise hold out or imply that premises at which the person is carrying on a business are a pharmacy unless —
  - (i) the premises at which the business is carried on are registered as a pharmacy; and
  - (ii) the business is a pharmacy business; and
  - (iii) the person is entitled under section 54(1) to own, or hold a proprietary interest in, such a business.

Penalty:

- (a) for a first offence —
  - (i) a fine of \$2 500;
  - (ii) for each separate and further offence committed by the person under the *Interpretation Act 1984* section 71, a fine of \$100;
- (b) for a subsequent offence —
  - (i) a fine of \$5 000;
  - (ii) for each separate and further offence committed by the person under the *Interpretation Act 1984* section 71, a fine of \$200.

## **Part 6 — Rules, regulations and forms**

### **61. Rules**

- (1) The Board may make rules prescribing all matters required or permitted by this Act to be prescribed by rules or necessary or convenient to be prescribed for carrying out this Act.
- (2) Without limiting subsection (1), rules may be made prescribing fees payable to the Board in respect of services provided, or to be provided, by the Board to a pharmacist in relation to a pharmacy business.
- (3) A rule made under subsection (1) has no effect unless and until it is confirmed by the Governor.
- (4) Nothing in subsection (3) affects the operation of the *Interpretation Act 1984* Part VI.
- (5) The rules may provide that contravention of a rule is an offence, and provide, for an offence against the rules, a penalty not exceeding a fine of \$5 000.

### **62. Regulations**

- (1) The Governor may make regulations —
  - (a) prescribing all matters that are required or permitted by the Act to be prescribed by regulation; and
  - (b) with respect to any matter on which the Board may make rules.
- (2) Without limiting subsection (1), regulations may be made for all or any of the following purposes —
  - (a) prescribing the requirements to be met at premises for the minimum standards of competent and safe practice of pharmacy at those premises;
  - (b) prohibiting or regulating the sale or supply of goods and services of a prescribed type at a registered pharmacy in association with the practice of pharmacy;



- (c) prohibiting or regulating the carrying on of a pharmacy business wholly or partly within, or adjacent to, premises where —
    - (i) a business, profession or occupation of a prescribed type is carried on; or
    - (ii) services of a prescribed type are provided;
  - (d) regulating the meetings and proceedings of, and the conduct of business by, the Board or a committee;
  - (e) making provision relating to registration and renewal of registration;
  - (f) maintaining the accuracy of the register;
  - (g) regulating the issue, display and use of certificates of registration;
  - (h) prescribing the fees to be paid for the purposes of this Act and the persons liable for payment;
  - (i) prescribing returns and notices that are to be given to the Board, and the manner in which they are to be given;
  - (j) providing that information supplied to the Board may be required to be verified by statutory declaration.
- (3) Where a regulation is inconsistent with a rule the regulation prevails to the extent of the inconsistency.
- (4) The regulations may provide that contravention of a regulation is an offence, and provide, for an offence against the regulations, a penalty not exceeding a fine of \$5 000.

### **63. Forms**

Forms that are convenient for the purposes of this Act may be —

- (a) prescribed by the regulations or rules; or
- (b) approved.

## **Part 7 — Miscellaneous**

### **64. False or misleading information**

- (1) A person must not do any of the things set out in subsection (2) —
- (a) in relation to an application; or
  - (b) in relation to the compliance, or purported compliance, with any requirement of this Act to give the Board or the registrar advice or information.

Penalty: a fine of \$24 000 or imprisonment for 2 years.

- (2) Subsection (1) applies to the following things —
- (a) making a statement which the person knows is false or misleading in a material particular;
  - (b) making a statement which is false or misleading in a material particular, with reckless disregard as to whether or not the statement is false or misleading in a material particular;
  - (c) providing, or causing to be provided, information that the person knows is false or misleading in a material particular;
  - (d) providing, or causing to be provided, information that is false or misleading in a material particular, with reckless disregard as to whether the information is false or misleading in a material particular.

### **65. Surrender of certificate**

- (1) Where the registration of premises is cancelled or not renewed under section 46, the person in whose name the premises were registered immediately before the cancellation or non-renewal is, within 14 days after the day on which the person is notified by the Board of the cancellation or non-renewal, to surrender to the Board the certificate of registration of the premises.

Penalty: a fine of \$1 000.

- (2) The Board may direct in writing that a person in whose name premises were registered is not obliged to comply with subsection (1) and, in that case the subsection does not apply in respect of that person.

**66. Protection from liability**

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The State is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

**67. Notice of decisions to be given**

- (1) Subsection (2) applies to the following decisions —
- (a) any decision refusing an application to the Board for registration;
  - (b) any decision under section 46;
  - (c) any decision to impose, or vary, a condition under section 47.
- (2) If the Board makes a decision to which this subsection applies, it is to record the grounds on which the decision was based, and its reasons, and is as soon as is practicable, but in any case not later than 30 days after making the decision, to give written notice of the decision together with those grounds and reasons, to the person to whom the decision relates.

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**68. Review**

A person who is aggrieved by a decision referred to in section 67(1) may apply to the State Administrative Tribunal for a review of the decision.

**69. Publication of proceedings etc.**

(1) Subsection (2) applies to the following —

- (a) the Board, any member of the Board, the registrar or any officer or delegate of the Board or registrar;
- (b) any committee or any member of a committee or person referred to in section 14(5);
- (c) any board or authority outside the State charged with regulating the registration and supervision of premises as pharmacies or any officer, agent or person employed or engaged by the board or authority;
- (d) any journalist for, the proprietor or any person concerned in the publication or operation of, any newspaper or periodical or of any electronic medium.

(2) Without limiting the operation of section 66, no action, claim or demand lies against a person to whom this subsection applies in respect of the communication or publication in good faith of any finding, reason or decision of the Board or the State Administrative Tribunal.

(3) The Board may give notice of a finding, reason or decision of the Board or the State Administrative Tribunal in respect of a person to —

- (a) any person referred to in subsection (1)(c) or (d); and
- (b) any other person who, in the opinion of the Board, should be made aware of the finding, reason or decision,

and may publish notice of the finding, reason or decision in the *Gazette* or in such other manner as the Board thinks fit.

**70. Legal proceedings**

- (1) Any proceedings for an offence against this Act may be taken in the name of the Board by the registrar or any other person authorised in that behalf by the Board.
- (2) All proceedings for offences against this Act are to be heard by a court of summary jurisdiction constituted by a magistrate.
- (3) In any proceedings no proof is required of —
  - (a) the appointment of a member or deputy of a member of the Board or a member of a committee; or
  - (b) the authorisation of a person under subsection (1),but an averment in a prosecution notice that the person is so appointed or authorised is to be taken to be proved in the absence of evidence to the contrary.
- (4) In all courts and before all persons and bodies authorised to receive evidence, in the absence of evidence to the contrary —
  - (a) a copy of or extract from a register or any statement that purports to reproduce matters entered in the register that is certified by the registrar as a true copy, extract or statement, is evidence of the facts appearing in that copy, extract or statement; and
  - (b) judicial notice is to be taken of the fact that a person is the holder of the office of registrar and of the signature of the registrar on a certificate purporting to be issued under paragraph (a).

**71. Liability of certain officers of body corporate: offences**

- (1) If a body corporate is charged with an offence under this Act, every person who was an officer of the body corporate at the time of the alleged offence may also be charged with the offence.

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- (2) If a body corporate and an officer are charged as permitted by subsection (1) and the body corporate is convicted of the offence, the officer is to be taken to have also committed the offence, subject to subsection (5).
- (3) If a body corporate commits an offence under this Act, then, although the body corporate is not charged with the offence, every person who was an officer of the body corporate at the time the offence was committed may be charged with the offence.
- (4) If an officer is charged as permitted by subsection (3) and it is proved that the body corporate committed the offence, the officer is to be taken to have also committed the offence, subject to subsection (5).
- (5) It is a defence to a prosecution for an offence against this section for the officer charged to prove —
  - (a) that the offence was committed without the officer's consent or connivance; and
  - (b) that the officer took all the measures to prevent the commission of the offence that he or she could reasonably be expected to have taken having regard to the officer's functions and to all the circumstances.

**72. Review of Act**

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 5 years from the commencement of this section, and in the course of that review the Minister is to consider and have regard to —
  - (a) the effectiveness of the operations of the Board; and
  - (b) the need for the continuation of the functions of the Board; and
  - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.

- (2) The Minister is to prepare a report based on the review made under subsection (1) and as soon as is practicable after the preparation of the report, cause it to be laid before each House of Parliament.

## **Part 8 — Consequential amendments**

### **Division 1 — *Constitution Acts Amendment Act 1899* amended**

**73. Act amended**

This Division amends the *Constitution Acts Amendment Act 1899*.

**74. Schedule V Part 3 amended**

In Schedule V Part 3 insert in alphabetical order:

The Pharmacy Registration Board of Western Australia  
established under the *Pharmacy Act 2010*.

### **Division 2 — *State Administrative Tribunal Act 2004* amended**

**75. Act amended**

This Division amends the *State Administrative Tribunal Act 2004*.

**76. Schedule 1 amended**

In Schedule 1 insert in alphabetical order:

*Pharmacy Act 2010*



## Part 9 — Transitional and savings provisions

### Division 1 — Preliminary

#### 77. Terms used

In this Part —

**assets** means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal and includes without limitation —

- (a) choses in action; and
- (b) goodwill; and
- (c) rights, interests and claims of every kind in or to property,

whether arising from, accruing under, created or evidenced by or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective;

**commencement day** means the day on which the *Health Practitioner Regulation National Law (WA) Act 2010* section 14(j) comes into operation;

**Commissioner** has the meaning given in the *Associations Incorporation Act 1987* section 3(1);

**former Council** means the Pharmaceutical Council of Western Australia referred to in section 7 of the repealed Act;

**incorporated Pharmaceutical Society** means the Pharmaceutical Society of Western Australia (Incorporated) taken under section 88(1)(a) of this Act to be an association incorporated under the *Associations Incorporation Act 1987*;

**liability** means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, or whether owed alone or jointly or jointly and severally with any other person;

**National Agency** means the Australian Health Practitioner Regulation Agency established under the *Health Practitioner Regulation National Law (Western Australia)* section 23(1);

**National Board** means the Pharmacy Board of Australia established under the *Health Practitioner Regulation National Law (Western Australia)* section 31(1);

**new Board** means the Pharmacy Registration Board of Western Australia established under section 4(1) of this Act;

**repealed Act** means the *Pharmacy Act 1964*;

**right** means any right, power, privilege or immunity whether actual, contingent or prospective;

**unincorporated Pharmaceutical Society** means the Pharmaceutical Society of Western Australia referred to in section 6 of the repealed Act.

**78. Interpretation Act 1984 not affected**

This Part does not prejudice or affect the application of the *Interpretation Act 1984* to and in relation to the matters dealt with in this Part as a result of the repeal of the *Pharmacy Act 1964*.

**Division 2 — The Pharmacy Registration Board of Western Australia**

**79. New Board is a continuation of the former Council in relation to certain matters**

The new Board is a continuation of, and the same legal entity as, the former Council, in relation to functions, powers, rights, assets or liabilities that immediately before the commencement day related to the regulation by that Council of a pharmacy business, pharmacy premises, a pharmacy department or any other pharmacy related entity that is not an individual.

**80. Members of former Council cease to hold office**

A person who was a member of the former Council immediately before the commencement day ceases to be a member on that day.

**81. Board members**

Two of the members of the new Board as first constituted under this Act are to hold office for such term, not exceeding 18 months, as is specified in the member's instrument of appointment.

**82. The registrar and other staff**

- (1) The registrar who held office under section 15 of the repealed Act immediately before the commencement day continues in office, under and subject to this Act, as the registrar of the new Board.
- (2) An officer who held office under the repealed Act immediately before the commencement day, other than an officer to whom subsection (4) applies, continues in office, under and subject to this Act, as an officer of the new Board.
- (3) A person mentioned in subsection (1) or (2) is to be regarded as having been engaged or employed under this Act.
- (4) An officer who held office under the repealed Act immediately before the commencement day is to be employed or engaged by the incorporated Pharmaceutical Society if he or she has so agreed and on such terms and conditions as are agreed, in writing, with the former Council before the commencement day.
- (5) An agreement under subsection (4) with the former Council is to have effect on the commencement day as if —
  - (a) the incorporated Pharmaceutical Society were substituted for the former Council as a party to the agreement; and

- (b) any reference in the agreement to the former Council were (unless the context otherwise requires) a reference to the incorporated Pharmaceutical Society.
- (6) Except as otherwise agreed by a person mentioned in subsection (1), (2) or (4), the remuneration, existing or accrued rights, rights under a superannuation scheme or continuity of service of the person are not affected, prejudiced or interrupted by the operation of this section or the repeal of the *Pharmacy Act 1964*.

**83. Registered pharmacies**

A pharmacy registered under section 23 of the repealed Act by the former Council immediately before the commencement day is to be taken to be premises registered as a pharmacy under Part 4 Division 1 of this Act in the name of a person in whose name the pharmacy is registered by the former Council immediately before the commencement day, if that person owns, or has a proprietary interest in, the pharmacy business carried on at the pharmacy.

**84. Register**

Any register of pharmacies kept by the former Council immediately before the commencement day is to be taken to be the register required to be kept under section 49 of this Act.

**85. Certificates of registration issued under the repealed Act**

A certificate of registration of a pharmacy in force under the repealed Act immediately before the commencement day is, subject to this Act, to be taken to be a certificate of registration of the premises as a pharmacy for the purposes of this Act.

**86. Agreements and instruments**

Any agreement or instrument subsisting immediately before the commencement day that relates to assets, rights or liabilities of the former Council that immediately before the commencement

day related to the regulation of a pharmacy business, pharmacy premises, a pharmacy department or any other pharmacy related entity that is not an individual —

- (a) to which the former Council was a party; or
- (b) which contains a reference to the former Council,

has effect after the commencement day as if —

- (c) the new Board were substituted for the former Council as a party to the agreement or instrument; and
- (d) any reference in the agreement or instrument to the former Council were (unless the context otherwise requires) a reference to the new Board.

**87. Annual report for part of a year**

- (1) The former Council is to make and submit an annual report as required under section 16C of the repealed Act, but limited to the period from 1 January preceding the commencement day to the commencement day, and that section applies as if that period were a year.
- (2) Despite the repeal of the repealed Act and this Part, the former Council continues in existence for the purposes of subsection (1) and is entitled to receive from the new Board and its staff and from the incorporated Pharmaceutical Society and its staff such assistance as it may require for that purpose.

**Division 3 — Incorporated Pharmaceutical Society**

**88. Incorporation of Pharmaceutical Society**

- (1) On the commencement day —
  - (a) the unincorporated Pharmaceutical Society is to be taken to be an association incorporated under the *Associations Incorporation Act 1987* with the name of the Pharmaceutical Society of Western Australia (Incorporated); and

- (b) the rules of the unincorporated Pharmaceutical Society in existence immediately before the commencement day are to be taken to be the rules of the incorporated Pharmaceutical Society for the purposes of the *Associations Incorporation Act 1987* (the **Rules**); and
  - (c) any member of the former Council in office immediately before the commencement day is to be taken to be a member of the committee or other body having management of the incorporated Pharmaceutical Society until the first annual general meeting held after the commencement day; and
  - (d) the president and deputy president of the former Council in office immediately before the commencement day are to be taken to be the president and deputy president of the incorporated Pharmaceutical Society until the first annual general meeting held after the commencement day; and
  - (e) any trustee or member of the unincorporated Pharmaceutical Society immediately before the commencement day is to be taken to be a trustee or member of the incorporated Pharmaceutical Society.
- (2) As soon as practicable after the Pharmaceutical Society of Western Australia (Incorporated) is incorporated, the Commissioner is to issue a certificate of incorporation to the incorporated Pharmaceutical Society.
- (3) As soon as practicable after the Pharmaceutical Society of Western Australia (Incorporated) is incorporated, the incorporated Pharmaceutical Society must lodge a copy of the Rules with the Commissioner accompanied by any fee prescribed for making an application for the incorporation of an association under the *Associations Incorporation Act 1987* section 5(1).
- (4) If the Commissioner is of the opinion that the Rules lodged by the incorporated Pharmaceutical Society do not conform to the

requirements of the *Associations Incorporation Act 1987*, the Commissioner may by a written notice given to the incorporated Pharmaceutical Society direct that the Rules are to be altered in the manner specified in the notice and the Rules are to be taken to have been altered in that manner.

**89. Transfer of certain assets and liabilities to the incorporated Pharmaceutical Society**

- (1) On the commencement day —
- (a) the assets and rights vested in the former Council immediately before the commencement day that were concerned with, or related to, the management of the unincorporated Pharmaceutical Society by that Council vest in the incorporated Pharmaceutical Society by force of this section; and
  - (b) the liabilities of the former Council (including a share of a liability) that immediately before the commencement day were concerned with, or related to, the management of the unincorporated Pharmaceutical Society by that Council become the liabilities of the incorporated Pharmaceutical Society by force of this section; and
  - (c) any proceedings by or against the former Council commenced before the commencement day in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b) are to be taken to be proceedings to which the incorporated Pharmaceutical Society is a party; and
  - (d) any proceedings or remedy that immediately before the commencement day might have been commenced by or available against or to the former Council in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b), may be commenced and are available, by or against or to the incorporated Pharmaceutical Society; and

- (e) any act, matter or thing done or omitted to be done in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b) before the commencement day by, to or in respect of the former Council (to the extent that that act, matter or thing has any force or effect) is to be taken to have been done or omitted by, to or in respect of the incorporated Pharmaceutical Society.
- (2) As soon as practicable after the commencement day the new Board is to deliver to the incorporated Pharmaceutical Society all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to —
  - (a) the assets, rights and liabilities referred to in subsection (1)(a) and (b); and
  - (b) proceedings referred to in subsection (1)(c).
- (3) The Minister or a person authorised by the Minister may, at the request of the National Agency, the new Board or the incorporated Pharmaceutical Society, certify in writing that a specified asset, right or liability of the former Council is, or is not, an asset, right or liability that was concerned with, or related to, the management of the unincorporated Pharmaceutical Society by the former Council immediately before the *Health Practitioner Regulation National Law (Western Australia)* section 295 has effect.
- (4) For all purposes and in all proceedings, a certificate under subsection (3) is prima facie evidence of the matters it certifies.

**90. Agreements and instruments**

Any agreement or instrument subsisting immediately before the commencement day that relates to assets, rights or liabilities referred to in section 89(1)(a) or (b) —

- (a) to which the former Council was a party; or



- (b) which contains a reference to the former Council,  
has effect after the commencement day as if —
- (c) the incorporated Pharmaceutical Society were substituted for the former Council as a party to the agreement or instrument; and
- (d) any reference in the agreement or instrument to the former Council were (unless the context otherwise requires) a reference to the incorporated Pharmaceutical Society.

#### **Division 4 — Miscellaneous**

#### **91. Exemption from State taxation**

- (1) In this section —  
*state tax* includes duty chargeable under the *Duties Act 2008* and any other tax, duty, fee, levy or charge under a law of the State.
- (2) State tax is not payable in relation to —
  - (a) anything that occurs by the operation of this Part; or
  - (b) anything done —
    - (i) under this Part; or
    - (ii) to give effect to this Part; or
    - (iii) for a purpose connected with, or arising out of, giving effect to this Part,including a transaction entered into or an instrument or document of any kind made, executed, lodged or given.
- (3) The Treasurer or a person authorised by the Treasurer may, at the request of the National Board, the new Board or the incorporated Pharmaceutical Society, certify in writing that a specified thing —
  - (a) occurred by the operation of this Part; or

- (b) was done —
  - (i) under this Part; or
  - (ii) to give effect to this Part; or
  - (iii) for a purpose connected with, or arising out of, giving effect to this Part.
- (4) For all purposes and in all proceedings, a certificate under subsection (3) is conclusive evidence of the matters it certifies, except so far as the contrary is shown.

**92. Registration of documents**

- (1) In this section —

*relevant official* means the Registrar of Titles, the Registrar of Deeds, the Minister administering the *Mining Act 1978* or any other person authorised by a written law to record and give effect to the registration of documents.
- (2) The relevant officials are to take notice of the provisions of this Part and are empowered to record and register in the appropriate manner the necessary documents, and otherwise to give effect to this Part.

**93. Saving**

Anything that occurs by the operation of this Part is not to be regarded —

- (a) as a breach of contract or otherwise as a civil wrong; or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information; or
- (c) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability; or

- (d) as causing any contract or instrument to be void or otherwise unenforceable; or
- (e) as releasing or allowing the release of any surety.

**94. Powers in relation to transitional provision**

- (1) If there is no sufficient provision in this Part for dealing with a transitional matter in connection with the enactment of this Act the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed in relation to that matter.
- (2) Regulations made under subsection (1) may provide that
  - (a) do not apply; or
  - (b) apply with specific modifications,to or in relation to any matter.
- (3) Regulations made under subsection (1) must be made within 12 months after the commencement day.
- (4) If regulations made under subsection (1) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement day, the regulations have effect according to their terms.
- (5) In subsection (4) —  
***specified*** means specified or described in the regulations.
- (6) If regulations contain a provision referred to in subsection (4), the provision does not operate so as —
  - (a) to affect in a manner prejudicial to any person (other than the State), the rights of that person existing before the day of publication of those regulations; or

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- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

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**Notes**

<sup>1</sup> [This is a compilation of the \*Pharmacy Act 2010\*. The following table contains information about that Act.](#)

**Compilation table**

<b><u>Short title</u></b>	<b><u>Number and year</u></b>	<b><u>Assent</u></b>	<b><u>Commencement</u></b>
<a href="#">Pharmacy Act 2010</a>	<a href="#">32 of 2010</a>	<a href="#">26 Aug 2010</a>	<a href="#">s. 1 and 2: 26 Aug 2010 (see <u>s. 2(a)</u>); Act other than s. 1 and 2: 18 Oct 2010 (see s. 2(b) and <u>Gazette 1 Oct 2010 p. 5076</u>)</a>