

PHARMACY (AMENDMENT) BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Pharmacy Act 1964 so as:

- (a) to incorporate the Pharmacy Board of New South Wales and to vary its composition and functions; and
- (b) to make more extensive provision for the handling of complaints against pharmacists, including provision for inquiries by Professional Standards Committees and for further options for the Board in dealing with pharmacists who are guilty of professional misconduct or are complained about for other reasons; and
- (c) to revise certain other provisions of that Act, such as those dealing with the operation of pharmacies; and
- (d) to provide for a Pharmacy Education and Research Account.

The Bill also makes other provisions of a minor, consequential, saving or transitional nature.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation, subject to minor exceptions.

Clause 3 gives effect to the amendments contained in Schedules 1-4.

Clause 4 gives effect to the savings and transitional provisions contained in Schedule 5.

Pharmacy (Amendment) 1989

**SCHEDULE 1 - AMENDMENTS RELATING TO THE
PHARMACY BOARD**

Incorporation

At present, the Pharmacy Board of New South Wales is an unincorporated body. The Board is to be constituted as a body corporate so that it will have a separate legal identity. (Schedule 1 (1) - proposed section 4)

Additional functions

The Board, as presently constituted, has the functions of registering suitably qualified persons as pharmacists and of disciplining pharmacists (by suspending or cancelling their registration) in appropriate cases. The new Board is to be given further functions, including the duty of promoting the highest standards of professional conduct and ethics in the pharmacy profession and other functions relating to the carrying out of research, the training of pharmacists, publicising relevant matters and advising the Minister. (Schedule 1 (1) - proposed section 5)

Membership

The Board presently consists of 5 pharmacists elected by pharmacists (one at least of whom must be a country pharmacist), one officer of the Department of Health nominated by the Minister, one person nominated by the University of Sydney, one nominated by Friendly Societies and a barrister or solicitor nominated by the Minister. The new Board will also consist of 9 members, of whom 5 will be elected by pharmacists, one will be nominated by a New South Wales University, one will be a barrister or solicitor nominated by the Minister, one will be a person (but not a pharmacist) nominated by the Minister to represent consumers and one will be an officer of the Department of Health nominated by the Minister. (Schedule 1 (1) - proposed section 6)

President

Further provision is to be made concerning the office of president of the Board (for example, by permitting a person holding that office to resign the office of president without resigning the office of a member). (Schedule 1 (1) - proposed section 7)

Committees

The new Board is to be expressly empowered to establish committees to assist it in carrying out its non-disciplinary functions. Any such committee may include or consist wholly of persons who are not members of the Board. (Schedule 1 (1) - proposed section 8)

Provisions relating to members and meetings

A Schedule to the Act is intended to be inserted which will state in greater detail provisions concerning members of the Board and its meetings. (Schedule 1 (1) and (10) - proposed section 9 and proposed Schedule 1 to the Act)

Pharmacy (Amendment) 1989

The registrar and other staff

At present, the registrar and other staff of the Board are employed under the Public Sector Management Act 1988. The Board is to be empowered to appoint a registrar and other staff and to provide for certain of their conditions of employment. (Schedule 1 (2) - proposed section 11)

Fees

Fees for the registration of persons as pharmacists, for provisional registration or for restoration of a person's name to the Register of Pharmacists and the annual roll fee payable by pharmacists are all currently fixed by regulations. The Board is to be given power to fix those fees and any other fees for its services, but the fees specified above may be fixed only with the approval of the Minister. The Board is also to be given a power to recover fees due to it. (Schedule 1 (8) - proposed section 36)

Consequential amendments

References to the prescribed fees are to be removed and a power to make regulations relating to the payment of fees to the Board is to be conferred. (Schedule 1 (3) - (7) and (9))

SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE OF PHARMACISTS

Meaning of "professional misconduct"

It is intended, without limiting the meaning of the term "professional misconduct" to add certain specific examples to those presently provided. For example, it will be professional misconduct for a pharmacist to engage in conduct that demonstrates a lack of adequate knowledge, experience, skill, judgment or care. (Schedule 2 (2) - proposed section 19A)

Complaints about former pharmacists

At present, a complaint may only be dealt with by the Board if it relates to a currently registered person. Because the Board is to be given a power to impose a fine as a penalty, a person who was guilty of professional misconduct as a pharmacist up to 5 years before a complaint is made will be able to be made the subject of disciplinary action under the Act, even though the person has ceased to be registered under the Act during that period. (Schedule 2 (2) - proposed section 19B)

Professional Standards Committees

The Board is to be empowered to appoint Professional Standards Committees, each consisting of 2 pharmacists and one lay person, to conduct inquiries into complaints, if it considers that course appropriate. (Schedule 2 (2) - proposed section 19C))

Pharmacy (Amendment) 1989

Nature of complaints

It is intended to expressly authorise a complaint about a pharmacist advertising in contravention of regulations made under the Act or about a pharmacist not being of good character. Complaints will be able to relate to any of the additional conduct to be included in the new definition of "professional misconduct" referred to above and will still be able to be made on any of the present grounds. (Schedule 2 (2) - proposed section 19D)

Procedure for dealing with complaints

The procedure for dealing with complaints is to be set out in more detail than the Act presently provides. Under the proposed procedures, when a complaint is received, the Board may deal with it at a meeting of the Board, investigate the complaint itself or refer it to 3 members of the Board or to a Professional Standards Committee to conduct an inquiry into the complaint. Details of the powers of the Board and of such a Committee when conducting such an inquiry are set out, but do not include fixing any punishment. A complaint may be dismissed by the Board at any time. (Schedule 2 (2) and (7) - proposed sections 19E - 19H and proposed Schedule 2 to the Act)

Powers of the Board where complaint substantiated

At present, the Board may caution or reprimand a pharmacist or suspend or cancel the registration of a pharmacist as a consequence of disciplinary proceedings. The Board is to be given power to require a pharmacist to undergo medical treatment or counselling, to impose conditions on registration, to order further education be undertaken, to require reports to be made to it or the taking of advice and to impose a fine not exceeding 40 penalty units (currently \$4,000). (Schedule 2 (3) - proposed section 20)

Consequential amendments

The Register of Pharmacists will be required to include particulars of any conditions imposed by the Board on a person's registration.

Other consequential amendments are made to provisions of the Act dealing with the effect of certain orders made by the Board and relating to appeals to the District Court against orders or decisions of the Board. (Schedule 2 (1), (4), (5) and (6)).

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS

Definition of "pharmacy"

The term is defined so as to make it clear that, if a pharmacist operates a dispensary on premises (other than those of a public hospital) and sells other goods from the same premises, the whole of the premises comprise a pharmacy. The provisions of the Act that relate to the carrying on in open shop by a person of the business of a pharmacist are extended to the carrying on of that business in a pharmacy, as so defined. (Schedule 3 (1))

Pharmacy (Amendment) 1989

Qualification for registration - time served as assistant

At present, pharmacists who qualify for registration by being New South Wales graduates are required to have served not less than the period fixed by the Act as an assistant. To provide greater flexibility, it is intended that regulations made under the Act will fix that period. (Schedule 3 (2) (a), (e) and (f))

Qualification for registration - age of pharmacist

The Act prohibits registration of a person as a pharmacist unless the person is at least 21 years old. It is intended to lower that age to 18 years. (Schedule 3 (4) (a))

Qualification for registration - knowledge of English language

Applicants for registration are to be required to prove to the satisfaction of the Board that they have an adequate knowledge of the English language. (Schedule 3 (4) (b))

Qualification for re-registration after lapse of 5 years

The Board is to be allowed to require a person whose registration has lapsed for 5 years or more to undergo examination before being re-registered as a pharmacist. (Schedule 3 (4) (c))

Approval of pharmacies and registration of their owners

Provision is made for a Register of Pharmacies to be maintained by the Board. The register will contain particulars of all pharmacies approved by the Board and their registered owners. An appeal lies to the District Court against refusal or failure to approve or register. It will be an offence to carry on the business of a pharmacist at premises that are not approved or if the owner of the business is not registered. (Schedule 3 (6) - proposed sections 24A - 24C)

Persons other than pharmacists who may have interests in pharmacies

It is intended to simplify provisions of the Act that provide for specified persons (who are not pharmacists) to have an interest in a pharmacy business carried on in a pharmacy. (Schedule 3 (7))

Supply of information about pecuniary interests and about pharmacies

The Board is to be empowered to direct a pharmacist to supply information to the Board about pecuniary interests in any business of a pharmacist carried on by the pharmacist. Failure to comply with such a direction will constitute professional misconduct about which disciplinary proceedings may be commenced. The regulation - making power under the Act is to be extended so that regulations may be made requiring the Board to be notified of the opening or closing of pharmacies. (Schedule 3 (8) and (20) (b) - proposed sections 25B and 38 (1) (e1))

Pharmacy (Amendment) 1989

Restriction on pharmacists involved in pharmacies

A pharmacist is to be permitted to carry on a pharmacy business or to have a pecuniary interest in a pharmacy business carried on in a total of not more than 3 pharmacies. Such an interest may be held by a pharmacist in a partnership of pharmacists. (Schedule 3 (9))

Sale of medicines by medical practitioners

Medical practitioners are to be prohibited from selling medicines at a profit unless in the circumstances of the case it would be unreasonable to require the medicine to be obtained from a pharmacist or the sale is conducted in circumstances prescribed by the regulations. (Schedule 3 (11) - proposed section 28)

Appointment of inspectors

A new provision is to be inserted into the Act to provide for the appointment of inspectors by the Director-General of the Department of Health. (Schedule 3 (14) - proposed section 31)

General penalty for offences against the Act

At present, the maximum penalty for an offence against the Act, if no other penalty is expressly provided, is \$200. The maximum penalty is to be increased to 5 penalty units. (currently \$500) (Schedule 3 (18))

Pharmacy Education and Research Account

The Board is to be required to establish a Pharmacy Education and Research Account. Amounts out of the fee income derived under the Act by the Board are to be paid into the Account and may be used for education about pharmacy, for pharmaceutical research and for other specified matters. (Schedule 3 (19) - proposed section 36A)

Maximum penalty for offences against Regulations

The present maximum penalty of \$40 that may be imposed for a breach of Regulations made under the Act is to be increased to 2 penalty units (currently \$200). (Schedule 3 (20) (h))

Consequential amendments

Minor and consequential amendments will be made to the Act because of the other changes made by this Schedule and mentioned above.

SCHEDULE 4 - AMENDMENTS BY WAY OF STATUTE LAW REVISION

Division of the Act into Parts

The Act is to be divided into Parts (Schedule 4 (1)).

Pharmacy (Amendment) 1989

Repeal of redundant provisions

Certain provisions of the Act that are spent are to be repealed. (Schedule 4 (2))

SCHEDULE 5 - SAVINGS AND TRANSITIONAL PROVISIONS

This Schedule contains provisions of a savings and transitional nature arising from the amendments contained in Schedules 1 - 4. Clause 2 of Schedule 5 also enables further savings and transitional provisions to be made by regulation.

As transitional matters:

- (a) any claim pending against members of the former Board will become a claim pending against the incorporated Board; and
- (b) the members of the former Board will vacate office when the provisions establishing the incorporated Board commence; and
- (c) elections may be held and appointments and nominations of members of the incorporated Board may be made before those provisions commence; and
- (d) a person whose time to appeal under the present disciplinary provisions of the Act had not expired will have the residue of that time to appeal under the corresponding new provisions of the Act.

As savings matters:

- (a) complaints, inquiries and appeals that were pending under the Act immediately before the commencement of the new disciplinary provisions will continue to be dealt with under the former provisions of the Act; and
 - (b) regulations made and fees prescribed under the provisions of the Act will continue until amended or repealed, or fixed by the Board, under the new provisions of the Act.
-