

Pharmacy Practice Act 2006 No 59

[2006-59]



New South Wales

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Does not include amendments by**
[Private Health Facilities Act 2007 No 9](#) (not commenced)
- **See also**
[Miscellaneous Acts \(Local Court\) Amendment Bill 2007](#)
[Health Legislation Amendment Bill 2007](#)

Authorisation

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Pharmacy Practice Act 2006 No 59



New South Wales

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Pharmacy Practice Act 2006 No 59



New South Wales

An Act to provide for the registration of pharmacists and to regulate pharmacy businesses; to repeal the *Pharmacy Act 1964*; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Pharmacy Practice Act 2006*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedule 7.12 and section 156 commence on the date of assent to this Act.

3 Object of Act

The object of this Act is to protect the health and safety of members of the public in relation to the practice of pharmacy including by providing mechanisms to ensure that pharmacists are fit to practise.

4 Definitions

(1) In this Act:

associated professional services room, in relation to a pharmacy business, means a professional services room specified as being associated with the pharmacy business in an approval granted and in force under clause 1 of Schedule 2.

Board means the Pharmacy Board constituted by this Act.

Chairperson means the Chairperson of the Tribunal.

Commission means the Health Care Complaints Commission constituted under the *Health Care Complaints Act 1993*.

Committee means the Pharmacy Care Assessment Committee constituted by this Act.

competence to practise pharmacy has the meaning given by section 9.

complaint means a complaint against a pharmacist under Part 4 (Complaints and disciplinary proceedings).

conduct means any act or omission.

criminal finding means a finding by a court that a person is guilty of an offence without proceeding to conviction.

Note—

Section 140 makes special provision with respect to the application for the purposes of this Act of the [Criminal Records Act 1991](#) in respect of criminal findings.

Deputy Chairperson means a Deputy Chairperson of the Tribunal.

Deputy President means the Deputy President of the Board.

Director-General means the Director-General of the Department of Health.

drug related offence means an offence under the [Poisons and Therapeutic Goods Act 1966](#) or the [Drug Misuse and Trafficking Act 1985](#) or regulations under those Acts.

exercise a function includes perform a duty.

firm means a partnership or other unincorporated association of persons.

full registration means registration under section 11.

function includes a power, authority or duty.

health registration Act has the same meaning as in the [Health Care Complaints Act 1993](#).

health service has the same meaning as in the [Health Care Complaints Act 1993](#).

Impaired Registrants Panel means an Impaired Registrants Panel constituted under this Act.

impairment has the meaning given by section 10.

midwife practitioner means a person authorised under the [Nurses and Midwives Act 1991](#) to practise as a midwife practitioner.

Mutual Recognition laws means the [Mutual Recognition Act 1992](#) of the Commonwealth and the [Trans-Tasman Mutual Recognition Act 1997](#) of the Commonwealth.

nurse practitioner means a person authorised under the [Nurses and Midwives Act 1991](#) to practise as a nurse practitioner.

pecuniary interest means a direct or indirect monetary or financial interest and includes:

- (a) a proprietary interest (including a proprietary interest as a sole proprietor, partner, director, member or shareholder, or trustee or beneficiary), and
- (b) any interest that is prescribed by the regulations as constituting a pecuniary interest for the purposes of this Act,

but does not include the following:

- (c) (except in clause 9 of Schedule 3) any interest in a pharmacy business that a person has by virtue of the person being:
 - (i) a member of a friendly or other society that has a pecuniary interest in such a business permitted by section 26, or
 - (ii) a member of a listed corporation within the meaning of the *Corporations Act 2001* of the Commonwealth that carries on or has a pecuniary interest in such a business under section 27,
- (d) (except in section 31 (2) and clause 9 of Schedule 3) any interest in a pharmacy business that a person has by virtue of the person being a member of a body corporate (other than a listed corporation referred to in paragraph (c) (ii)) that carries on or has a pecuniary interest in such a business under section 27, but only if the person was a member of the body corporate before the commencement of Schedule 7.12 to this Act,
- (e) any interest that is prescribed by the regulations as not constituting a pecuniary interest for the purposes of this Act.

pharmacists' body corporate means a body corporate all the shareholders and directors of which are registered pharmacists.

pharmacists' partnership means a partnership consisting only of registered pharmacists.

pharmacy means any premises in or on which a person carries on a pharmacy business and includes:

- (a) such portion (if any) of those premises in or on which the person sells or offers for sale goods of any kind, and
- (b) a professional services room,

but does not include any such premises located in a public hospital controlled by a public health organisation (within the meaning of the *Health Services Act 1997*).

pharmacy business means the business of an apothecary or a chemist,

pharmaceutical chemist, pharmacist, druggist, homoeopathic chemist, dispensing chemist or dispensing druggist in which the dispensing and compounding of prescriptions for any substance specified in the Poisons List proclaimed under section 8 of the *Poisons and Therapeutic Goods Act 1966* occurs.

President means the President of the Board.

professional misconduct is defined in Part 4 (Complaints and disciplinary proceedings).

professional services room means premises in or on which a person carries on a pharmacy business that involves only:

- (a) the preparation and packaging of drugs, or the packaging of drugs, by or under the personal supervision of a registered pharmacist, for supply to individual patients or to a health care facility for supply to patients or residents of that facility, and
- (b) the storage of those drugs.

prohibition order has the same meaning as in section 66 (3A).

provisional registration means registration under section 14.

Register means the Register of Pharmacists kept by the Board under this Act.

Register of Pharmacies means the Register of Pharmacies kept by the Board under this Act.

registered means registered under this Act.

Registrar means the Registrar of the Board.

registration authority has the same meaning as in the *Health Care Complaints Act 1993*.

security interest in respect of a pharmacy business means a mortgage, bill of sale or charge over, or other arrangement of a kind prescribed by the regulations in respect of, a pharmacy business, that secures the payment of a debt or performance of some other obligation under a contract or other legally enforceable arrangement.

sex or violence offence means an offence involving sexual activity, acts of indecency, child pornography, physical violence or the threat of physical violence.

sex or violence, or drug related, criminal finding means a criminal finding for a sex or violence, or drug related, offence.

supervised registration means registration under section 13.

temporary registration means registration under section 15.

Tribunal means the Pharmacy Tribunal constituted under this Act.

unsatisfactory professional conduct is defined in Part 4 (Complaints and disciplinary proceedings).

- (2) In this Act, a reference to a pharmacy business is a reference to a pharmacy business carried on in a pharmacy.

5 Notes

Notes included in this Act do not form part of this Act.

6 Mutual Recognition laws

This Act does not limit or otherwise affect the operation of the Mutual Recognition laws.

Part 2 Registration

7 Registration necessary for certain representations

- (1) A person who is not a registered pharmacist must not indicate that the person practises pharmacy or is qualified to practise pharmacy.

Maximum penalty: 50 penalty units.

- (2) Without limiting the ways in which a person may be taken to have indicated that the person practises pharmacy or that the person is qualified to practise pharmacy, a person is taken to have so indicated if the person uses:
- (a) the title of “chemist” or any other title or name, initials, word, symbol or description that (having regard to the circumstances in which it is used) indicates, or is capable of being understood to indicate, or is calculated to lead a person to infer, that the person is qualified to practise pharmacy or that the person practises pharmacy, or
 - (b) the title of “apothecary”, “compounding chemist”, “dispensing chemist”, “dispensing druggist”, “druggist”, “homoeopathic chemist”, “pharmaceutical chemist”, “pharmaceutist” or “pharmacist”.

8 Qualifications for registration

- (1) A person has the necessary qualifications for registration as a pharmacist if the person:

- (a) has the educational qualifications required by this section, and
- (b) satisfies the requirements of this section as to practical experience in pharmacy.

- (2) A person has the educational qualifications required by this section if the person:
- (a) has such qualifications as may be prescribed by the regulations for the purposes of this paragraph, or
 - (b) has successfully completed a course of study that is recognised by the Board as meeting criteria prescribed by the regulations for the purposes of this paragraph, or
 - (c) has such qualifications as may be approved by the Board on the recommendation of an accreditation body recognised by the Board for the purposes of this section, or
 - (d) has passed an examination arranged or approved by the Board to assess the person's competence to practise pharmacy.
- (3) A person satisfies the requirements of this section as to practical experience in pharmacy if the person, after attaining the educational qualifications required by this section, gains experience in dispensing and compounding medical prescriptions that the Board regards as sufficient to enable the person to carry on a pharmacy business in New South Wales.
- (4) An educational or training institution may apply to the Board for the recognition by the Board (under subsection (2) (b)) of a course of study offered by the institution. The institution may apply to the Administrative Decisions Tribunal for a review of the decision of the Board on the application.
- (5) In determining for the purposes of subsection (2) (b) whether a particular course of study meets the criteria prescribed by the regulations, the Board may have regard to and rely on any findings made on an assessment prepared for the Board in respect of the course of study.

- (6) In this section:

qualification means a degree, diploma, certificate or other academic award conferred or awarded for the successful completion of a course of training in pharmacy.

9 Competence

For the purposes of this Act, a person is competent to practise pharmacy only if the person has sufficient physical capacity, mental capacity and skill to practise pharmacy and has sufficient communication skills for the practice of pharmacy, including an adequate command of the English language.

10 Impairment

- (1) For the purposes of this Act, a person suffers from an impairment if the person suffers

from any physical or mental impairment, disability, condition or disorder that detrimentally affects or is likely to detrimentally affect the person's physical or mental capacity to practise pharmacy.

- (2) For the purposes of this Act, a person who habitually abuses alcohol or is addicted to a deleterious drug is taken to suffer from an impairment.

11 Full registration

- (1) A person is entitled to registration as a pharmacist if the Board is satisfied that the person has the necessary qualifications for registration as a pharmacist, and is of good character.
- (2) Registration under this section is **full registration**.
- (3) An entitlement to full registration does not prevent conditions being imposed on that registration in accordance with this Act.

Note—

Under section 20 of the [Mutual Recognition Act 1992](#) of the Commonwealth a person is entitled to be registered as a pharmacist if the person is registered in another State or a Territory for an equivalent occupation (if that State or Territory participates in the mutual recognition scheme). The entitlement arises once the person lodges a notice under section 19 of that Act and, until registered under this Act, the person is then deemed (by section 25 of that Act) to be registered. See also the [Trans-Tasman Mutual Recognition Act 1997](#) of the Commonwealth.

12 Ancillary provisions relating to registration

- (1) The Board may grant registration for the purposes of this Act.
- (2) Part 4 of the [Licensing and Registration \(Uniform Procedures\) Act 2002](#) (the **applied Act**) applies to and in respect of registration under this Act, subject to the modifications and limitations prescribed by or under this Act.
- (3) The regulations may make provision for or with respect to such matters concerning registration as are relevant to the operation of Part 4 of the applied Act.
- (4) Schedule 1 has effect with respect to registration under this Act.

13 Registration during internship

- (1) Registration as a pharmacist may be granted to a person who has attained the educational qualifications required by section 8, for the purpose of enabling the person to gain the practical experience in pharmacy required by that section for full registration as a pharmacist.
- (2) Registration under this section is **supervised registration**.
- (3) Supervised registration is granted by the Board by a grant of a certificate of supervised registration.

- (4) A person granted supervised registration is a registered pharmacist until the registration expires or is cancelled. Supervised registration expires on the date stated in the certificate or such later date as may be fixed by the Board.
- (5) The Board may impose such conditions as it thinks fit on a person's supervised registration and may at any time remove, add to or vary those conditions by notice in writing to the registered person.
- (6) The Board may cancel a person's supervised registration for any reason that the Board considers proper. Cancellation does not affect any application for full registration by the person.

14 Provisional registration

- (1) Registration as a pharmacist may be granted:
 - (a) to a person entitled to full registration, pending the Board's determination of the person's application for full registration, or
 - (b) to a person who will be entitled to full registration when a degree, diploma, certificate or other academic award to which the person is entitled is granted or conferred, pending its grant or conferral.
- (2) Registration under this section is ***provisional registration***.
- (3) Provisional registration is granted by the Board or the President. In the President's absence it can be granted by any member of the Board authorised by the Board to do so. Provisional registration is granted by the grant of a certificate of provisional registration.
- (4) A person granted provisional registration is a registered pharmacist until the registration expires or is cancelled. Provisional registration expires on the date stated in the certificate or such later date as may be fixed by the Board.
- (5) The Board may impose such conditions as it thinks fit on a person's provisional registration and may at any time remove, add to or vary those conditions by notice in writing to the registered person.
- (6) The Board may cancel a person's provisional registration for any reason that the Board considers proper. Cancellation does not affect any application for registration by the person.
- (7) If a person granted provisional registration is granted full registration before the person's provisional registration expires, the person's full registration dates from the granting of provisional registration, unless the Board decides otherwise.

15 Temporary registration

- (1) Registration for a limited period may be granted to a person who is not normally resident in New South Wales, for the purpose of enabling the person to carry out educational or research activities or such other activities as the Board considers to be in the public interest.
- (2) Registration under this section is **temporary registration**.
- (3) Temporary registration can only be granted to a person:
 - (a) who is registered or certified as a pharmacist in accordance with a law in force in the person's normal place of residence providing for the registration or certification of pharmacists, or
 - (b) who holds such qualifications or has such experience in the practice of pharmacy as the Board considers satisfactory for the purposes of temporary registration.
- (4) Temporary registration is granted by the Board by the grant of a certificate of temporary registration.
- (5) A person granted temporary registration is a registered pharmacist until the temporary registration expires or is cancelled. Temporary registration expires on the date stated in the certificate unless the period of temporary registration is extended.
- (6) The Board may extend and further extend a period of temporary registration by the issue of a further certificate of temporary registration.
- (7) The Board may cancel a person's temporary registration for any reason that the Board considers proper. Cancellation does not affect any application for full registration by the person.
- (8) The Board may impose such conditions as it thinks fit on the temporary registration of a person and may at any time remove, add to or vary those conditions by notice in writing to the registered person.

16 Power to refuse or impose conditions on full registration

- (1) The Board may refuse to register a person who would otherwise be entitled to full registration if:
 - (a) the Board is of the opinion, following an inquiry under Schedule 1, that the person is not competent to practise pharmacy or suffers from an impairment, or
 - (b) the person has been convicted of or made the subject of a criminal finding for an offence, either in or outside New South Wales, and the Board is of the opinion that the circumstances of the offence are such as to render the person unfit in the public interest to practise pharmacy, or

- (c) the person's registration under a health registration Act has been cancelled or suspended because of conduct that would (if the person were a registered pharmacist) authorise cancellation or suspension of the person's registration under this Act, or
 - (d) the person's registration or certification under a pharmacists registration law has been cancelled or suspended because of conduct that would (if it occurred in New South Wales and the person were a registered pharmacist) authorise cancellation or suspension of the person's registration under this Act.
- (2) As an alternative to refusing to register a person under subsection (1), the Board may grant the person registration subject to conditions if the Board considers that refusal of registration is not warranted and that the person should be granted registration subject to appropriate conditions.
- (3) Conditions of registration may relate to the duration of registration, the aspects of the practice in which the person may be engaged, and any other matters, as the Board thinks appropriate.

Note—

The Mutual Recognition laws also provide for the imposition of conditions on registration. Conditions can also be imposed on a person's registration as a result of disciplinary proceedings to which the person has been subject.

- (4) In this section:

pharmacists registration law means any law of a place outside the State that provides for the registration or certification of pharmacists.

17 Cancellation and suspension of registration

- (1) A person ceases to be registered as a pharmacist if the person's name is removed from the Register. A reference in this Act to the cancellation of a pharmacist's registration is a reference to the removal of the pharmacist's name from the Register.
- (2) A person whose registration as a pharmacist is suspended is taken not to be a registered pharmacist during the period of the suspension, except for the purposes of Part 4 (Complaints and disciplinary proceedings).

18 Restrictions on registration of deregistered persons

- (1) A person cannot apply for registration (and any such application must be rejected) if:
 - (a) the person's registration is cancelled pursuant to an order of the Chairperson or a Deputy Chairperson, the Tribunal or the Supreme Court, or
 - (b) the Chairperson or a Deputy Chairperson, the Tribunal or the Supreme Court orders that the person not be re-registered.

- (2) The only way such a person can again be registered is on a review under Division 3 of Part 6 of the order by which the person's registration was cancelled.

19 Appeals concerning registration

- (1) A person who is aggrieved by any of the following decisions of the Board may appeal to the Tribunal against the decision:
- (a) the Board's refusal to grant the person full registration,
 - (b) the Board's refusal to grant the person supervised registration,
 - (c) the Board's refusal to grant the person temporary registration,
 - (d) the Board's decision to refuse to register the person under section 16 or to grant the person registration subject to conditions under that section,
 - (e) the Board's cancellation of the person's supervised registration, provisional registration or temporary registration,
 - (f) the Board's refusal to register the person under clause 22 (Entitlement to re-registration if fee paid) of Schedule 1.
- (2) An appeal must be made within 28 days (or such longer period as the Chairperson may allow in a particular case) after notice of the decision is given to the person. The appeal is to be lodged with the Registrar who is to refer it to the Tribunal.
- (3) If the decision in respect of which an appeal is made was made as a consequence of an inquiry held by the Board, the appeal is to be dealt with by way of rehearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the inquiry, may be given.
- (4) An appeal does not affect any determination with respect to which it is made until the appeal is determined.
- (5) When it determines an appeal, the Tribunal may dismiss the appeal or order that the decision of the Board be revoked and replaced by a different decision made by the Tribunal and specified in the order. The Tribunal may also make such ancillary orders as it thinks proper.
- (6) The Tribunal's decision is taken to be a decision of the Board (but this does not confer a right of appeal under this section in respect of the Tribunal's decision).
- (7) No appeal lies under this Act against a decision of the Board under the Mutual Recognition laws in relation to its functions under that Act.

Note—

The Mutual Recognition laws provide that a person may, subject to the [Administrative Appeals Tribunal Act 1975](#) of the Commonwealth, apply to the Administrative Appeals Tribunal for a review of a decision of a local

registration authority in relation to its functions under the Mutual Recognition laws. Those functions include registration, the imposition or waiver of conditions on registration and the postponement, refusal or reinstatement of registration.

Part 3 Practice of pharmacy

Division 1 Conduct of practice

20 Use of titles

- (1) A registered pharmacist must not use any certificate, diploma, membership, degree, licence, letters, testimonial or other title, status, document or description in relation to himself or herself as a pharmacist or the practice of pharmacy other than:
 - (a) those (if any) that the Board from time to time authorises the pharmacist to use, or
 - (b) the description of “apothecary”, “chemist”, “compounding chemist”, “dispensing chemist”, “dispensing druggist”, “druggist”, “homoeopathic chemist”, “pharmaceutical chemist”, “pharmaceutist” or “pharmacist”.

Maximum penalty: 10 penalty units.

- (2) A registered pharmacist must not use the title “doctor” in the course of the practice of pharmacy unless the pharmacist is the holder of a qualification conferred by a university that entitles the pharmacist to use that title and that qualification is a recognised qualification at the time the pharmacist uses the title.

Maximum penalty: 10 penalty units.

- (3) In subsection (2):

recognised qualification means:

- (a) a qualification that is prescribed by the regulations as a recognised qualification, or
- (b) when no qualification is prescribed under paragraph (a), a qualification that is for the time being recognised by the Board for the purposes of this section.

Note—

See also section 105 (Use of misleading titles etc) of the [Medical Practice Act 1992](#).

21 Indicating a corporation or firm to be a pharmacy business

- (1) A corporation must not indicate that it is a pharmacy business unless it is:
 - (a) a pharmacists’ body corporate that carries on a pharmacy business, or
 - (b) a friendly or other society that has a pecuniary interest in a pharmacy business

permitted by section 26 and that carries on that business, or

(c) a body corporate that carries on a pharmacy business under section 27.

Maximum penalty: 50 penalty units.

(2) A person must not indicate that a corporation is a pharmacy business if the person knows, or ought reasonably to know, that any such indication by the corporation itself would be a contravention of subsection (1).

Maximum penalty: 50 penalty units.

(3) A partner or member of a firm must not indicate that the firm is a pharmacy business unless the firm is a pharmacists' partnership that carries on a pharmacy business.

Maximum penalty: 50 penalty units.

(4) This section does not apply to a person who has a pecuniary interest in a pharmacy business as referred to in section 25 (5), but only in relation to indications made in the course of, and in relation to, carrying on that business.

22 Code of professional conduct

(1) The Board may, following consultation with the pharmacy profession, establish a code of professional conduct setting out guidelines that should be observed by registered pharmacists in their professional practice. The Board may from time to time amend or replace a code of professional conduct following consultation with the pharmacy profession.

(2) The Minister may require the Board to develop guidelines relating to any conduct of registered pharmacists that the Minister considers should be the subject of a code of professional conduct.

(3) For that purpose, the Minister may:

(a) direct the Board to establish a code of professional conduct, or

(b) direct the Board to amend or replace a code of professional conduct,

so that the code includes guidelines relating to that conduct.

(4) The Board is to comply with any such direction of the Minister.

(5) The provisions of a code of professional conduct are a relevant consideration in determining for the purposes of this Act what constitutes proper and ethical conduct by a pharmacist.

(6) The procedure for the establishment of a code of professional conduct is as follows:

(a) the Board is to prepare a proposed code in draft form and is to prepare an impact

assessment statement for the proposed code in accordance with such requirements as the Minister may from time to time determine,

- (b) the draft code and impact assessment statement are to be publicly exhibited for a period of at least 21 days,
 - (c) the Board is to seek public comment on the draft code during the period of public exhibition and public comment may be made during the period of public exhibition and for 21 days (or such longer period as the Board may determine) after the end of that period,
 - (d) the Board is to submit the draft code to the Minister for approval together with a report by the Board giving details of public comment received during the period allowed for public comment and the Board's response to it,
 - (e) the Board is not to establish the draft code as a code of professional conduct unless the Minister approves the draft.
- (7) The procedure for the amendment or replacement of a code of professional conduct is the same as for the establishment of the code unless the Minister otherwise directs in respect of a particular amendment.

Division 2 Control of pharmacies

23 Pharmacies to be approved and holders of pecuniary interests registered

- (1) Subject to subsection (2), a person must not carry on a pharmacy business unless:
- (a) the premises on which the pharmacy business is carried on are the subject of a current approval of the Board, and
 - (b) all holders of a pecuniary interest in the pharmacy business are registered in the Register of Pharmacies.

Maximum penalty: 50 penalty units.

- (2) A person who has lodged an application under clause 1 (1) (b) of Schedule 2 may carry on the pharmacy business to which the application relates pending the Board's determination of the application if:
- (a) the premises at which the business is carried on are the subject of a current approval of the Board, and
 - (b) any holder of a pecuniary interest in the business who is not the subject of the application is registered in the Register of Pharmacies.
- (3) Schedule 2 has effect with respect to approval of premises and registration of pecuniary interests.

24 Notification of pecuniary interests in pharmacy businesses

- (1) A person who intends to acquire a pecuniary interest in a pharmacy business (other than such an interest referred to in section 25 (4)) must, at least 14 days before acquiring the interest, give written notice to the Board of the following matters:
 - (a) the nature of the interest and the date on which it is intended to be acquired,
 - (b) the basis on which the person is entitled to hold the interest under this Act (for example, as a registered pharmacist, a pharmacists' body corporate or a friendly or other society under section 26).

Maximum penalty: 50 penalty units.

- (2) A person who acquires a pecuniary interest in a pharmacy business as referred to in section 25 (4) must, within 28 days after acquiring the interest, give written notice to the Board of that fact, the nature of the interest concerned and the date on which it was acquired.
- (3) A person who ceases to have a pecuniary interest in a pharmacy business must, within 14 days after doing so, give written notice to the Board of that fact and the nature of the interest concerned.

Maximum penalty: 50 penalty units.

- (4) The regulations may prescribe additional matters to be included in a notice under this section.

25 Restrictions on who may have a pecuniary interest in a pharmacy business

- (1) A person must not own or otherwise have a pecuniary interest in a pharmacy business (including as a partner or member of a firm) unless as one of the following:
 - (a) a registered pharmacist,
 - (b) a partner in a pharmacists' partnership,
 - (c) a pharmacists' body corporate or a member of a pharmacists' body corporate.

Maximum penalty: 100 penalty units.

- (2) Subsection (1) does not prevent a person from having a pecuniary interest in a pharmacy business in circumstances prescribed by the regulations.
- (3) Subsection (1) does not prevent a person from having a security interest in respect of a pharmacy business.
- (4) Subsection (1) does not prevent a person who:
 - (a) is the executor, administrator or trustee of the estate of a deceased person who

carried on a pharmacy business on the day of his or her death, or

(b) is appointed or authorised under the laws relating to bankruptcy to administer the property of a person who carried on a pharmacy business and who has become bankrupt,

from having a pecuniary interest in that business during a period not exceeding 6 months or such further period as the Board may authorise in writing.

(5) If:

(a) a person's registration as a pharmacist is cancelled or suspended, and

(b) the person owned or otherwise had a pecuniary interest in a pharmacy business immediately before the cancellation or suspension took effect,

subsection (1) does not prevent the person from having a pecuniary interest in that business during a period not exceeding 6 months immediately following the day on which the cancellation or suspension took effect.

(6) A person who has a pecuniary interest in a pharmacy business pursuant to subsection (5) must not, during the period during which the person so holds that interest, enter or be in any premises in which that business is carried on unless the person:

(a) has the consent of the Board to do so, and

(b) complies with any conditions imposed by the Board in giving its consent.

(7) The Board may at any time vary or revoke any such consent, or any condition imposed on any such consent.

(8) Despite subsections (4) and (5), a person may have a pecuniary interest in a pharmacy business pursuant to those subsections only if the business is in the charge of a registered pharmacist who personally supervises the carrying on of that business.

(9) A person who is granted supervised registration under section 13 is taken not to be a registered pharmacist for the purposes of subsection (1) during the period of that registration.

Note—

Sections 26 and 27 provide for the exemption from section 25 (1) of friendly and other societies and certain bodies corporate, respectively, in the circumstances set out in those sections.

26 Exemption for friendly societies

(1) Section 25 does not prevent a friendly society from owning or otherwise having a pecuniary interest in a pharmacy business in accordance with a written approval given by the Minister.

- (2) Such an approval must not be given unless the Minister is satisfied that:
 - (a) the net profits arising from the operation of the pharmacy business will be applied solely to the provision of benefits (other than benefits in the form of dividends or shares) to members of the friendly society, and
 - (b) the operation of the pharmacy business is justified in the interests of members of the friendly society or of members of the public, or both.
- (3) The Minister may give such an approval unconditionally or subject to conditions, and may at any time vary or revoke such an approval.
- (4) The Minister must revoke such an approval given to a friendly society if the Minister is satisfied that the net profits arising from the operation of the pharmacy business will no longer be applied solely to the provision of benefits to members of the friendly society in accordance with subsection (2) (a).
- (5) Section 25 does not prevent a friendly or other society that was, immediately before the repeal of section 27A (1) of the *Pharmacy Act 1964*, lawfully carrying on a pharmacy business under that provision, from owning or otherwise having a pecuniary interest in a pharmacy business.
- (6) An approval granted to a friendly or other society under section 27A (2) of the *Pharmacy Act 1964* and in force immediately before the repeal of that Act is taken to be an approval granted to the friendly society or other society (as if it were a friendly society), and in force, under subsection (1).
- (7) Subsection (4) does not apply in relation to a society referred to in subsection (6) that, immediately before the repeal of section 27A of the *Pharmacy Act 1964*, no longer satisfied the criteria referred to in section 27A (3) (a) of that Act.
- (8) A friendly or other society to which subsection (1), (5) or (6) applies must not own or otherwise have a pecuniary interest in more than 6 pharmacy businesses.

Maximum penalty: 100 penalty units.
- (9) A pharmacy business and an associated professional services room are counted as one pharmacy business for the purposes of subsection (8).

27 Exemption for certain bodies corporate

- (1) This section applies to a body corporate that, immediately before the repeal of the *Pharmacy (General) Regulation 1998*, lawfully carried on a pharmacy business or had a pecuniary interest in such a business under clause 21 of that Regulation.
- (2) Section 25 does not prevent a body corporate to which this section applies from continuing to carry on such business or continuing to have such a pecuniary interest in accordance with and subject to the provisions of clause 21 of the *Pharmacy (General)*

Regulation 1998 as in force immediately before its repeal.

Note—

The definition of **pecuniary interest** in section 4 (1) and sections 25 and 27 of this Act operate to prohibit a person (other than a registered pharmacist, a partner in a pharmacists' partnership or a pharmacists' body corporate or a member of a pharmacists' body corporate) from having a pecuniary interest (including as a shareholder) in a body corporate to which section 27 applies (other than a listed corporation within the meaning of the *Corporations Act 2001* of the Commonwealth). That prohibition, however, does not apply where the person was a member of the body corporate before the commencement of Schedule 7.12 to this Act.

28 Restriction on number of pharmacy businesses in which pharmacists may have a pecuniary interest

- (1) A registered pharmacist must not (whether as an individual or as a partner in a pharmacists' partnership or a member of a body corporate) own or otherwise have a pecuniary interest in more than 5 pharmacy businesses.

Maximum penalty: 100 penalty units.

- (2) A pharmacy business and an associated professional services room are counted as one pharmacy business for the purposes of subsection (1).

29 Certain provisions in certain instruments to be void

- (1) Any provision in a lease or a licence, or an arrangement that creates a security interest, in respect of a pharmacy business:
- (a) that requires the lessee or the licensee, or the grantor of the security interest (as the case may be), to purchase or otherwise obtain goods or services in connection with that business from the lessor or the licensor, or the grantee of the security interest, or
 - (b) that gives to the lessor, the licensor or the grantee power to control the manner in which that business is to be carried on (including power to determine whether or not the pharmacy may participate in any public health programs), or
 - (c) that gives to the lessor, the licensor or the grantee access to the books of account kept in respect of that business otherwise than for the purposes of determining whether or not the lessee, the licensee or grantor is complying with the terms and conditions of the lease, licence or arrangement, or
 - (d) that provides that the lessor, the licensor or the grantee is to receive any consideration that varies according to the profits or takings of that business,
- is void.
- (2) Subsection (1) (b) does not affect a provision relating to the opening or closing hours of a pharmacy business that is located in a retail shopping centre.

30 Pharmacist to be in charge of every pharmacy business

- (1) A pharmacy business carried on on approved premises must be in the charge of a registered pharmacist who must personally supervise the carrying on of the business.
- (2) If a pharmacy business is carried on on approved premises in contravention of subsection (1):
 - (a) the owner of the pharmacy business is guilty of an offence, and
 - (b) if the pharmacist in charge of the approved premises is by the terms of the pharmacist's employment required to be in charge of the approved premises at the time of the contravention, the pharmacist is guilty of an offence.

Maximum penalty: 100 penalty units.

- (3) It is a defence in any proceedings against an owner for a contravention of subsection (1) if the owner proves to the satisfaction of the court that the owner used all due diligence to prevent the contravention.
- (4) In this section, a reference to approved premises is a reference to premises approved under clause 1 of Schedule 2.
- (5) To avoid doubt, during any period in which a pharmacy business carried on in an associated professional services room, and the pharmacy business with which those premises are associated, operate simultaneously, subsection (1) requires each business to be in the charge of a separate registered pharmacist who must personally supervise the carrying on of each business.
- (6) A person who is granted supervised registration under section 13 is taken not to be a registered pharmacist for the purposes of this section during the period of that registration.

Division 3 Returns and information

31 Annual return to be submitted

- (1) A registered pharmacist must, on or before the return date in each year, furnish in writing to the Board in a form approved by the Board a return for the return period specifying the following information:
 - (a) details of any conviction of the pharmacist for an offence in this State or elsewhere during the return period (together with details of any penalty imposed for the offence),
 - (b) details of the making of a sex or violence, or drug related, criminal finding against the pharmacist for an offence, in this State or elsewhere, during the return period (together with details of any penalty imposed for the offence),

- (c) details of the making of a criminal finding against the pharmacist for an offence committed in the course of the practice or purported practice of pharmacy, in this State or elsewhere, during the return period (together with details of any penalty imposed for the offence),
- (d) details of any criminal proceedings pending against the pharmacist at the end of the return period, in this State or elsewhere, for a sex or violence, or drug related, offence alleged to have been committed in the course of the practice or purported practice of pharmacy,
- (e) details of any criminal proceedings pending against the pharmacist at the end of the return period, in this State or elsewhere, for a sex or violence offence alleged to have been committed against a minor or to involve child pornography (whether or not alleged to have been committed in the course of the practice or purported practice of pharmacy),
- (f) details of any conviction of, or the making of a finding against, the pharmacist for an offence that arises out of or is connected with the supply of pharmaceutical benefits or special pharmaceutical products (within the meaning of the *National Health Act 1953* of the Commonwealth) under Part VII of that Act,
- (g) details of any significant illness (physical or mental) from which the pharmacist suffered at any time during the return period and that may reasonably be thought likely to detrimentally affect the pharmacist's physical or mental capacity to practise pharmacy,
- (h) details of any suspension of, cancellation of, or imposition of conditions on, the registration of the pharmacist as a pharmacist in another jurisdiction (either within Australia or elsewhere) during the return period,
- (i) details of any suspension of, cancellation of, or imposition of conditions on, any registration of the pharmacist under a health registration Act during the return period,
- (j) a statement as to whether the pharmacist is registered under a health registration Act as at the date of the return,
- (k) a statement as to whether the pharmacist has been refused registration as a pharmacist in another jurisdiction (either within Australia or elsewhere) during the return period,
- (l) a description of any pecuniary interest the pharmacist has in a pharmacy business,
- (m) details of any continuing professional education undertaken by the pharmacist during the return period,
- (n) such other information as may be prescribed by the regulations.

- (2) A person who holds a pecuniary interest in a pharmacy business must, on or before the return date in each year, furnish in writing to the Board in a form approved by the Board a return for the return period specifying the following information:
- (a) the nature of the interest,
 - (b) the basis on which the person is entitled to hold the interest under this Act (for example, as a registered pharmacist, a member of a pharmacists' body corporate, a friendly or other society under section 26 or a body corporate under section 27),
 - (c) the number of pharmacy businesses in which the person has a pecuniary interest,
 - (d) in relation to each pharmacy business the person owns, a description of the policies or systems in place to ensure safe and competent delivery of pharmacy services,
 - (e) such other information as the regulations may prescribe.

Maximum penalty (subsection (2)): 20 penalty units.

- (3) The Board may require a return under this section to be verified by statutory declaration.
- (4) The regulations may provide that subsection (1) (a) does not apply in respect of particular offences.
- (5) In this section:

return date means a date notified to pharmacists or pharmacy owners (as the case may be) by the Board in writing at least 1 month in advance.

return period means the period of 12 months ending 2 months before the return date.

32 Notification of convictions, criminal findings and charges

- (1) A registered pharmacist must notify the Board in writing within 7 days after:
- (a) the pharmacist is convicted of an offence or made the subject of a sex or violence, or drug related, criminal finding for an offence, in this State or elsewhere, giving details of the conviction or criminal finding and any penalty imposed for the offence, or
 - (b) the pharmacist is, in this State or elsewhere, convicted of, or made the subject of a criminal finding for, an offence that arises out of or is connected with the supply of pharmaceutical benefits or special pharmaceutical products (within the meaning of the *National Health Act 1953* of the Commonwealth) under Part VII of that Act, giving details of the conviction or criminal finding and any penalty imposed for the offence, or

- (c) criminal proceedings are commenced against the pharmacist, in this State or elsewhere, in respect of a sex or violence, or drug related, offence alleged to have been committed in the course of the practice or purported practice of pharmacy, or
 - (d) criminal proceedings are commenced against the pharmacist, in this State or elsewhere, in respect of a sex or violence offence alleged to have been committed against a minor or to involve child pornography (whether or not alleged to have been committed in the course of the practice or purported practice of pharmacy).
- (2) The regulations may provide that subsection (1) (a) does not apply in respect of particular offences.

33 Courts to provide information on convictions

- (1) As soon as practicable after a registered pharmacist is convicted of an offence or a sex or violence, or drug related, criminal finding is made against a registered pharmacist, the registrar or other proper officer of the court must (if the court is aware that the person is a registered pharmacist) notify the Board of the conviction or criminal finding together with details of any penalty imposed for the offence.
- (2) The regulations may provide that this section does not apply in respect of particular offences.

34 Referral of mental health matters to Registrar

If a registered pharmacist becomes a mentally incapacitated person, the person prescribed by the regulations must cause notice of that fact to be given to the Registrar in accordance with the regulations.

35 Direction to supply information about pecuniary interests

- (1) The Board may, by notice in writing, direct a person:
- (a) to give to the Board, within the time specified in the notice, such information as the notice requires relating to any pecuniary interest the person has in a pharmacy business, or
 - (b) to produce to the Board, within the time specified in the notice, any document the notice requires relating to any such interest.
- (2) A person must not:
- (a) fail or refuse to comply with a direction of the Board under subsection (1) to the extent that the person is capable of complying with it, or
 - (b) in purported compliance with such a direction, knowingly give information or produce a document that is false or misleading.

Maximum penalty: 50 penalty units.

Part 4 Complaints and disciplinary proceedings

Division 1 Interpretation

36 Meaning of “professional misconduct”

For the purposes of this Act, **professional misconduct**, in relation to a registered pharmacist, means unsatisfactory professional conduct of a sufficiently serious nature to justify suspension or cancellation of the pharmacist’s registration.

37 Meaning of “unsatisfactory professional conduct”

- (1) For the purposes of this Act, **unsatisfactory professional conduct**, in relation to a registered pharmacist, includes any of the following:
- (a) any conduct that demonstrates that the knowledge, skill or judgment possessed, or care exercised, by the pharmacist in the practice of pharmacy is significantly below the standard reasonably expected of a pharmacist of an equivalent level of training or experience,
 - (b) a contravention by the pharmacist of a provision of this Act or the regulations or of a condition of the pharmacist’s registration,
 - (c) practising pharmacy for remuneration in the course of employment by, or in association with, a non-pharmacist,
 - (d) a failure without reasonable excuse by the pharmacist to comply with a direction by the Board to provide information with respect to a complaint under this Part against the pharmacist,
 - (e) a failure by the pharmacist to comply with an order made or a direction given by the Board or the Tribunal under this Act,
 - (f) a contravention by the pharmacist of section 34A (4) (Power of Commission to obtain information, records and evidence) of the [Health Care Complaints Act 1993](#),
 - (g) the supply of precursor drugs, or preparations, admixtures, extracts or other substances containing any proportion of precursor drugs, by the pharmacist in circumstances where the supply of those drugs, preparations, admixtures, extracts or other substances is unnecessary, not reasonably required, or excessive,
 - (h) any other improper or unethical conduct by a pharmacist in the course of the practice or purported practice of pharmacy (including, for example, commission of sex or violence, or drug related, offences).

- (2) For the purposes of subsection (1) (c):

non-pharmacist means a person or body who is not a registered pharmacist, but does not include any of the following:

- (a) the Crown,
 - (b) a public health organisation or a charitable or philanthropic institution,
 - (c) a pharmacists' partnership or pharmacists' body corporate,
 - (d) a friendly or other society that owns a pharmacy business as permitted by section 26,
 - (e) a body corporate that owns or carries on a pharmacy business under section 27,
 - (f) a person who has a pecuniary interest in a pharmacy business as referred to in section 25 (4) or (5) and who carries on that business,
 - (g) a person who, in assuming the administration of the property of another person under a security interest granted in respect of that other person's pharmacy business, carries on that pharmacy business,
 - (h) any person or body that has been approved in writing by the Board for the purposes of this paragraph.
- (3) The Board must not grant approval under paragraph (h) of the definition of **non-pharmacist** in subsection (2) unless it is satisfied that it is in the public interest (not including the interests of registered pharmacists) to do so.
- (4) The Board may impose any conditions that it thinks fit on an approval under subsection (2) (h) and may vary or revoke any such approval, or any condition imposed on any such approval.
- (5) For the purposes of subsection (1) (g):

precursor drug has the same meaning as **precursor** has in section 24A of the [Drug Misuse and Trafficking Act 1985](#).

Note—

Part 11 makes it an offence for a person who employs a registered pharmacist to direct or incite the pharmacist to engage in conduct in the course of professional practice that would constitute unsatisfactory professional conduct or professional misconduct. That Part also enables the Director-General to prohibit persons who have been convicted of, or made the subject of a criminal finding for, such an offence from operating a business that provides pharmacy services.

38 References to “complaint”

In section 49 and Divisions 3, 4 and 5 of this Part and Divisions 1 and 2 of Part 6 (Appeals and review of disciplinary action), a reference to a complaint includes a reference to a matter arising out of the investigation of a complaint in accordance with this or any other

Act.

Division 2 Complaints

39 Grounds for complaints

- (1) A complaint may be made under this Act concerning:
- (a) the professional conduct of a registered pharmacist, or
 - (b) the provision of a pharmacy service by a registered pharmacist.

Note—

Subsection (1) ensures consistency between this Act and the [Health Care Complaints Act 1993](#) with respect to the kinds of complaints that can be made about registered pharmacists.

- (2) Without limiting the generality of subsection (1), a complaint may be made that a registered pharmacist:
- (a) has, either in or outside New South Wales, been convicted of or made the subject of a criminal finding for an offence, and the circumstances of the offence are such as to render the pharmacist unfit in the public interest to be registered as a pharmacist, or
 - (b) is guilty of unsatisfactory professional conduct or professional misconduct, or
 - (c) is not competent to practise pharmacy, or
 - (d) suffers from an impairment, or
 - (e) is not of good character.
- (3) A complaint need not be made in terms that are strictly in accordance with the terminology of this section.
- (4) In determining for the purposes of this Act whether a pharmacist is of good character regard may be had to conduct of the pharmacist before becoming registered as a pharmacist.

40 Complaint can be made even if person no longer registered

A complaint about a registered pharmacist may be made and dealt with even though the pharmacist has ceased to be registered. For that purpose, a reference in this Part to a pharmacist or registered pharmacist includes a reference to a person who has ceased to be registered or whose registration is suspended.

41 Who can make a complaint

Any person (including the Board) can make a complaint.

42 Complaints to be made to Board

Complaints are to be made to the Board and are to be lodged with the Registrar.

Note—

Complaints may also be made to the Commission.

43 Form of complaint

- (1) A complaint must be in writing, must identify the complainant and must contain particulars of the allegations on which it is founded.
- (2) The Board may consider and investigate a complaint even if it does not comply with the requirements of this section (except the requirement that it identify the complainant) but must not proceed to deal with the complaint under this Part until they are complied with.
- (3) The Board may require the complainant to provide further particulars of a complaint.

44 Board to notify Commission of complaints

The Board must notify the Commission of any complaint made under this Part and this is to be done as soon as practicable after the complaint is made.

45 Board to notify person against whom complaint is made

- (1) Written notice of the making of a complaint, the nature of the complaint and the identity of the complainant is to be given by the Board to the pharmacist against whom the complaint is made, as soon as practicable after the complaint is made.
- (2) Notice is not required to be given if the Commission is handling the complaint.
- (3) Notice is not required to be given if the giving of the notice will or is likely to:
 - (a) prejudice the investigation of the complaint, or
 - (b) place the health or safety of a person at risk, or
 - (c) place the complainant or another person at risk of intimidation or harassment.

46 Investigation of complaint by Board

The Board may make such inquiries concerning a complaint as it thinks fit.

47 Role of Commission

- (1) Before the Board deals with or refers a complaint under this Part, the Board and the Commission must consult in order to see if agreement can be reached between them as to the course of action to be taken concerning a complaint.
- (2) Division 2 of Part 2 of the *Health Care Complaints Act 1993* applies to the consultation

and the outcomes of the consultation.

48 How complaints are dealt with

- (1) When a complaint is made, the Board may at any time decide:
 - (a) to refer the complaint for investigation by the Commission, or
 - (b) to refer the complaint to the Commission for conciliation or to be dealt with under Division 9 of Part 2 of the *Health Care Complaints Act 1993*, or
 - (c) to refer the complaint to the Pharmacy Care Assessment Committee under Division 3, or
 - (d) to refer the matter to an Impaired Registrants Panel under Part 5, or
 - (e) to deal with the complaint by inquiry at a meeting of the Board under Division 4, or
 - (f) to refer the complaint to the Tribunal, or
 - (g) to deal with the complaint by directing the pharmacist to attend counselling, or
 - (h) to deal with the complaint by providing advice or making recommendations to the pharmacist, or
 - (i) to decline to deal with or dismiss the complaint.
- (2) If the Commission recommends to the Board in accordance with the *Health Care Complaints Act 1993* that a complaint (whether made under that Act or this Act) be dealt with by inquiry at a meeting of the Board under Division 4, the Board must comply with that recommendation (but only if the complaint is of a kind that can be made under this Act).
- (3) The Board may decline to deal with a complaint if the pharmacist concerned has ceased to be registered.
- (4) The Board may decline to deal with a complaint if the complainant fails to provide further particulars required by the Board.
- (5) A complaint may be withdrawn by the complainant at any time. The Board and the Commission are to consult as to whether the complaint should be proceeded with in the public interest.
- (6) The Board is to notify the pharmacist of any action taken by the Board under this section.

49 Serious complaints must be referred to Tribunal

- (1) Both the Board and the Commission are under a duty to refer a complaint to the

Tribunal if at any time either forms the opinion that it may, if substantiated, provide grounds for the suspension or cancellation of the pharmacist's registration.

- (2) However, either the Board or the Commission may decide not to refer the complaint to the Tribunal if of the opinion that the allegations on which the complaint is founded (and on which any other pending complaint against the pharmacist is founded) relate solely or principally to the physical or mental capacity of the pharmacist to practise pharmacy.
- (3) If the Board decides not to refer the complaint to the Tribunal, the Board must instead deal with the complaint at a meeting of the Board under Division 4. If the Commission decides not to refer the complaint to the Tribunal, the Commission must instead refer the complaint to the Board.
- (4) This section does not require the Board or the Commission to refer a complaint that the Board or Commission thinks is frivolous or vexatious.

50 Medical examination of pharmacist

- (1) The Board may, before or while taking any action under this Part or Part 5 (Impairment), by notice to the pharmacist concerned, require the pharmacist to undergo an examination at the Board's expense by a registered medical practitioner, or other appropriate health professional, specified in the notice, at any reasonable time and place specified in the notice.
- (2) A failure by a pharmacist, without reasonable cause, to comply with a notice given under this section to undergo an examination is, for the purposes of this Part or any inquiry or appeal under this Part, evidence that the pharmacist does not have sufficient physical and mental capacity to practise pharmacy.
- (3) A registered medical practitioner or other health professional who conducts an examination under this section is to report to the Board on the results of the examination. The Board is to provide a copy of the report to the pharmacist.
- (4) A person must not directly or indirectly make a record of or divulge to any person any information contained in a report to the Board under this section that has come to the person's notice in the exercise of the person's functions under this Act, except for the purpose of exercising functions under this Act.

Maximum penalty: 50 penalty units.

- (5) A person cannot be required in civil proceedings in any court to produce or permit access to any report made to the Board under this section or to divulge the contents of any such report.
- (6) In this section:

court includes any tribunal, authority or person having power to require the

production of documents or the answering of questions but does not include the Tribunal.

report includes a copy, reproduction and duplicate of the report or any part of the report, copy, reproduction or duplicate.

51 Notification of orders to employer and others

- (1) The Board is required to give notice of any order made in respect of a registered pharmacist under this Act, or the placing of conditions on the registration of a registered pharmacist, to the following persons:
 - (a) the employer (if any) of the pharmacist concerned,
 - (b) the chief executive officer (however described) of any public health organisation (within the meaning of the *Health Services Act 1997*) in respect of which the pharmacist concerned is a visiting practitioner or is otherwise accredited,
 - (c) the chief executive officer (however described) of any private hospital or day procedure centre (within the meaning of the *Private Hospitals and Day Procedure Centres Act 1988*) in respect of which the pharmacist concerned is accredited.
- (2) The notice is to be given within 7 days after:
 - (a) in the case of an order made or conditions imposed by the Board—the date the order is made or the conditions are imposed, or
 - (b) in any other case—the date the Board is given a copy of the decision of the body that made the order or imposed the conditions.
- (3) The notice is to include such information as the Board considers appropriate.

Division 3 Referral of complaints to Pharmacy Care Assessment Committee

52 Kinds of complaints that can be referred to Committee

- (1) The Board may refer a complaint to the Committee only if the Commission has decided not to investigate the complaint.
- (2) A complaint may not be referred to the Committee if it is a complaint that the pharmacist is not of good character or has been convicted of, or made the subject of a criminal finding for, an offence.
- (3) This section does not operate to limit the Committee in the exercise of its functions under this Division in respect of any matter that arises in the course of the Committee's investigation of a complaint.

53 How complaints are dealt with

- (1) When a complaint is referred to the Committee, the Committee is to investigate the complaint and may in any particular case encourage the complainant and the pharmacist against whom the complaint is made to settle the complaint by consent.
- (2) The Committee may obtain such pharmaceutical, medical, legal, financial or other advice as it thinks necessary or desirable to enable it to exercise its functions.
- (3) The Committee may not determine a complaint referred to it except by settlement by consent.
- (4) The Committee is to make a report to the Board on a complaint referred to it whether or not it is able to effect settlement of the complaint by consent.

54 Skills testing of pharmacist

- (1) The Committee may, by notice to the pharmacist who is the subject of a complaint referred to the Committee, require the pharmacist to undergo skills testing at the Board's expense by an appropriately qualified person specified in the notice, at any reasonable time and place specified in the notice.
- (2) A failure by a pharmacist, without reasonable cause, to comply with a notice given under this section to undergo skills testing is, for the purposes of this Part or any inquiry or appeal under this Part, evidence that the pharmacist does not have sufficient skill to practise pharmacy.
- (3) The person who conducts skills testing under this section is to report to the Committee on the results of the examination. The Committee is to provide a copy of the report to the pharmacist.
- (4) A person must not directly or indirectly make a record of or divulge to any person any information contained in a report to the Committee under this section that has come to the person's notice in the exercise of the person's functions under this Act, except for the purpose of exercising functions under this Act.

Maximum penalty: 50 penalty units.

- (5) A person cannot be required in civil proceedings in any court to produce or permit access to any report made to the Committee under this section or to divulge the contents of any such report.
- (6) In this section:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions but does not include the Tribunal.

report includes a copy, reproduction and duplicate of the report or any part of the report, copy, reproduction or duplicate.

55 Recommendations of Committee

- (1) The Committee's report to the Board may include such recommendations with respect to the complaint as the Committee considers appropriate, including (without being limited to) any of the following recommendations:
 - (a) a recommendation that the Board deal with the complaint by inquiry at a meeting of the Board as a complaint of unsatisfactory professional conduct,
 - (b) a recommendation that the Board direct the pharmacist to attend counselling,
 - (c) a recommendation that the Board dismiss the complaint.
- (2) The Board is to provide the pharmacist and the Commission with a copy of the Committee's report and recommendations as soon as practicable after the report is made.
- (3) The Board must comply with a recommendation of the Committee that the Board deal with the complaint by inquiry at a meeting of the Board as a complaint of unsatisfactory professional conduct.
- (4) Otherwise the Board is to allow the Commission and the pharmacist at least 21 days after they have been provided with a copy of the Committee's report and recommendations to make submissions in respect of the report and recommendations.
- (5) After considering the Committee's report and recommendations and any submissions made by the pharmacist or the Commission in respect of the report or recommendations, the Board is to proceed to deal with the complaint as provided by section 48.
- (6) This section is subject to section 49 (Serious complaints must be referred to Tribunal).

56 No legal representation for parties appearing before Committee

A complainant and the pharmacist against whom the complaint is made are not entitled to be legally represented at any appearance before the Committee.

Division 4 Dealing with complaint by inquiry at meeting of Board

57 Procedures for dealing with complaint at meeting

- (1) If the Board decides to deal with a complaint by inquiry at a meeting of the Board, the meeting is to be held in accordance with Schedule 4 and this Division.
- (2) The Board may be assisted by an Australian legal practitioner when dealing with a complaint at a meeting of the Board.

- (3) The Board is to provide the Commission with a copy of any submission made to the Board by the pharmacist in respect of the complaint or in respect of any recommendation of the Committee concerning the complaint.

58 General procedure

The procedure for the calling of a meeting to deal with a complaint and for the conduct of the meeting is, subject to this Act and the regulations, to be as determined by the Board.

59 Conduct of meeting

At a meeting to deal with a complaint, the Board:

- (a) may inform itself on any matter in such manner as it thinks fit, and
- (b) may receive written or oral submissions, and
- (c) is to proceed with as little formality and technicality, and as much expedition, as the requirements of this Act and the proper consideration of the complaint permit, and
- (d) is not bound by rules of evidence, and
- (e) may proceed to deal with the complaint in the absence of the pharmacist.

60 Making submissions to inquiry

- (1) The pharmacist is entitled to attend the meeting during the course of the Board's inquiry and to make submissions to the Board.
- (2) The Committee may, if the Board so requires, make a submission to the Board with respect to the complaint and may for that purpose attend the meeting during the course of the Board's inquiry.
- (3) The Board is to afford the Commission the opportunity to make a submission to the Board with respect to the complaint and the Commission may for that purpose attend the meeting during the course of the Board's inquiry.
- (4) The Committee or the Commission may not be present at the meeting except while actually making a submission in accordance with this section, unless the Board otherwise determines.
- (5) Despite subsection (4), the Commission is to be present throughout the Board's inquiry where the complaint is the subject of a recommendation of the Commission under section 48 (2) that it be dealt with by inquiry at a meeting of the Board under this Division.
- (6) The pharmacist is not entitled to be legally represented at the inquiry but may be accompanied by a support person. The support person can be an Australian legal practitioner.

(7) The Commission is not entitled to be legally represented at the inquiry.

61 Decision of Board

(1) The Board must, within 30 days of making its decision on a complaint, make available to the complainant, the pharmacist concerned and such other persons as it thinks fit, a written statement of the decision.

(2) If the Commission made a submission to the Board with respect to the complaint, the Board is to provide the Commission with a copy of the written statement of the decision.

(3) The written statement of a decision must give the reasons for the decision.

(4) The Board is not required to include confidential information in any such statement. If a statement would be false or misleading if it did not include the confidential information, the Board is not required to provide the statement.

(5) When confidential information is not included in the statement of a decision provided to a person or the statement is not provided to a person because of subsection (4), the Board must give a confidential information notice to the person.

(6) A **confidential information notice** is a notice that indicates that confidential information is not included or that the statement will not be provided (as appropriate) and gives the reasons for this. The notice must be in writing and must be given within one month after the decision is made.

(7) This section does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.

(8) In this section:

confidential information means information that:

(a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared, and

(b) relates to the personal or business affairs of a person, other than a person to whom the Board is required (or would, but for subsection (4), be required) to provide a written statement of a decision, and

(c) is information:

(i) that was supplied in confidence, or

(ii) the publication of which would reveal a trade secret, or

(iii) that was provided in compliance with a duty imposed by an enactment, or

(iv) the provision of which by the Board would be in breach of any enactment.

62 Admissibility of Board's findings

A finding of the Board under this Division is admissible as evidence in any legal proceedings.

Division 5 Disciplinary powers of Board and Tribunal

63 Powers may be exercised if complaint proved or admitted

The Board or the Tribunal may exercise any power or combination of powers conferred on it by this Division if the Board (pursuant to an inquiry at a meeting of the Board under Division 4 of this Part) or the Tribunal finds the subject-matter of a complaint of a kind referred to in section 39 (2) to have been proved or the person admits to it in writing to the Board or the Tribunal.

64 General powers of Board

- (1) The Board may do any one or more of the following:
 - (a) caution or reprimand the person,
 - (b) make an order for the withholding or refunding of part or all of the payment with respect to the fees to be charged or paid for the pharmacy services that are the subject of the complaint,
 - (c) order that the person seek and undergo medical or psychiatric treatment or counselling,
 - (d) direct that such conditions relating to the person's practice of pharmacy as it considers appropriate be imposed on the person's registration,
 - (e) order that the person complete a specified educational course or courses,
 - (f) order that the person report on his or her pharmacy practice at specified times, in a specified manner and to specified persons,
 - (g) order that the person seek and take advice, in relation to the management of his or her pharmacy practice, from a specified person or persons.
- (2) If the person is not registered, an order or direction can still be given under this section but has effect only so as to prevent the person being registered unless the order is complied with or to require the conditions concerned to be imposed when the person is registered, as appropriate.

65 Power of Board to recommend suspension or cancellation of registration

- (1) The Board may recommend that the registration of a pharmacist be suspended for a

specified period or cancelled if the Board is satisfied (when it finds on a complaint about the pharmacist) that the pharmacist does not have sufficient physical and mental capacity to practise pharmacy.

- (2) If the pharmacist is not registered, a recommendation can be made under this section that the pharmacist not be re-registered.
- (3) The Board makes its recommendation by referring the matter with its recommendation to the Chairperson or to a Deputy Chairperson nominated by the Chairperson.
- (4) The Chairperson or Deputy Chairperson may then make an order in the terms recommended or may make such other order as to the suspension or registration of the pharmacist as the Chairperson or Deputy Chairperson thinks proper based on the findings of the Board.
- (5) An order may also provide that an application for review of the order under Division 3 of Part 6 may not be made until after a specified time.
- (6) Instead of making an order under this section, the Chairperson or Deputy Chairperson may exercise any power or combination of powers of the Board under this Division.

66 Powers of Tribunal

- (1) The Tribunal may exercise any power that the Board can exercise under this Division.
- (2) The Tribunal may by order suspend a person's registration for a specified period or direct that a person's registration be cancelled if the Tribunal is satisfied (when it finds on a complaint about the person):
 - (a) that the person is not competent to practise pharmacy, or
 - (b) that the person is guilty of professional misconduct, or
 - (c) that the person has been convicted of or made the subject of a criminal finding for an offence, either in or outside New South Wales, and the circumstances of the offence are such as to render the person unfit in the public interest to practise pharmacy, or
 - (d) that the person is not of good character.
- (3) An order that a person's registration be cancelled is an order that the person's name be removed from the Register or (if the person has already ceased to be registered) that the person not be re-registered.
- (3A) If the Tribunal makes an order under subsection (2) in respect of a person and it is satisfied that the person poses a substantial risk to the health of members of the public, it may by order (a **prohibition order**) do any one or more of the following:

- (a) prohibit the person from providing health services or specified health services for the period specified in the order or permanently,
- (b) place such conditions as the Tribunal thinks appropriate on the provision of health services or specified health services by the person for the period specified in the order or permanently.

Note—

Section 10AK (1) of the *Public Health Act 1991* provides that it is an offence for a person to provide a health service in contravention of a prohibition order.

- (3B) If the Tribunal is aware that a person in respect of whom it is proposing to make a prohibition order is registered under a health registration Act other than this Act, the Tribunal is, before making the prohibition order, to notify the board constituted under that other Act of the proposed order and give that board an opportunity to make a submission.
- (4) An order may also provide that an application for review of the order under Division 3 of Part 6 may not be made until after a specified time.

Division 6 Powers of Board for protection of public

67 Suspension or conditions to protect public

- (1) The Board must, if at any time it is satisfied that such action is necessary for the purpose of protecting the life or physical or mental health of any person:
 - (a) by order suspend the registration of a registered pharmacist for such period (not exceeding 8 weeks) as is specified in the order, or
 - (b) impose on a registered pharmacist's registration such conditions, relating to the pharmacist's practising pharmacy, as it considers appropriate.
- (2) The Board may take such action:
 - (a) whether or not a complaint has been made or referred to the Board about the pharmacist, and
 - (b) whether or not proceedings in respect of such a complaint are before the Tribunal.

68 Power to remove or alter conditions

The Board may at any time alter or remove conditions imposed under this Division.

69 Referral of matter to Commission

- (1) The Board must, as soon as practicable after taking any action under section 67 and, in any event, within 7 days after taking that action, refer the matter to the Commission for investigation.

- (2) The matter is to be dealt with by the Commission as a complaint made to the Commission against the pharmacist concerned.
- (3) The Commission is to investigate the complaint or cause it to be investigated and, as soon as practicable after it has completed its investigation, refer the complaint to the Tribunal or to the Board to be dealt with by inquiry at a meeting of the Board under Division 4 of this Part.
- (4) Section 49 (Serious complaints must be referred to Tribunal) applies in respect of any such action by the Commission.
- (5) This section does not apply if the Board takes action against a registered pharmacist under section 67 because the Board is of the opinion that the pharmacist suffers from an impairment.

70 Special provisions—impairment

- (1) This section applies if the Board takes action against a registered pharmacist under section 67 because the Board is of the opinion that the pharmacist suffers from an impairment.
- (2) The Board must, as soon as practicable after taking that action and, in any event, within 7 days after taking that action, notify the Commission that it has taken that action.
- (3) The Board is to consult with the Commission to see if agreement can be reached as to whether the matter should be:
 - (a) dealt with as a complaint against the pharmacist, or
 - (b) referred to an Impaired Registrants Panel.
- (4) The matter is to be dealt with as a complaint against the pharmacist only if, following that consultation:
 - (a) the Board and the Commission agree that it should be dealt with as a complaint, or
 - (b) either the Board or the Commission is of the opinion that the matter should be dealt with as a complaint.
- (5) In such a case, the Board is to refer the matter to the Commission and the matter is to be dealt with by the Commission as a complaint made to the Commission against the pharmacist concerned.
- (6) The Commission is to investigate the complaint or cause it to be investigated and, as soon as practicable after it has completed its investigation, refer the complaint to the Tribunal or to the Board to be dealt with by inquiry at a meeting of the Board under

Division 4 of this Part.

- (7) Section 49 (Serious complaints must be referred to Tribunal) applies in respect of any such action by the Commission.
- (8) If subsection (4) does not apply, the Board is to refer the matter to an Impaired Registrants Panel.
- (9) A matter may be referred to an Impaired Registrants Panel under this section even though the pharmacist has been suspended under section 67. Part 5 applies in respect of such a referral as if the pharmacist were a registered pharmacist.

71 Tribunal to be notified of suspensions

If the Board suspends the registration of a registered pharmacist under section 67, the Board must notify the Chairperson that it has taken that action as soon as practicable after making the order and, in any event, within 7 days.

72 Extension of suspension

A period of suspension imposed by the Board under this Division may be extended, from time to time, by the Board by order for a further period or further periods, each of not more than 8 weeks, but only if:

- (a) the extension has been approved in writing by the Chairperson or a Deputy Chairperson, and
- (b) the complaint about the pharmacist has not been disposed of.

73 Expiration of suspension

On the expiration of a period of suspension imposed under this Division, the person's rights and privileges as a registered pharmacist are revived, subject to any order of the Tribunal on the complaint that is referred to the Tribunal.

74 Duration of conditions—complaint matters

- (1) This section applies if the Board imposes conditions on the registration of a registered pharmacist under section 67 and the matter is dealt with as a complaint against the pharmacist.
- (2) The conditions imposed by the Board have effect until the complaint about the pharmacist is disposed of, or the conditions are removed by the Board, whichever happens first.
- (3) This section:
 - (a) does not prevent conditions being imposed under another provision of this Act, and

(b) is subject to anything done by the Tribunal on an appeal under section 89.

75 Duration of conditions—impairment matters

- (1) This section applies if the Board imposes conditions on the registration of a registered pharmacist under section 67 and the matter is referred to an Impaired Registrants Panel.
- (2) The conditions imposed by the Board have effect until:
 - (a) the complaint about the pharmacist is disposed of if the matter is subsequently dealt with by the Board as a complaint, or
 - (b) the conditions are removed by the Board,whichever happens first.
- (3) The Board is not required to alter or remove conditions imposed under this Division merely because a pharmacist agrees to the imposition of conditions on the pharmacist's registration pursuant to the recommendations of an Impaired Registrants Panel (as referred to in section 84).
- (4) A registered pharmacist who agrees to the imposition of conditions on the pharmacist's registration pursuant to the recommendations of an Impaired Registrants Panel may, by notice in writing to the Board, request that the conditions imposed under this Division be removed or altered.
- (5) On receipt of such a request, the Board is to review the matter, and may:
 - (a) refuse to remove or alter any of the conditions, or
 - (b) remove or alter the conditions.
- (6) The Board is to give the pharmacist concerned notice in writing of its decision in respect of the request.
- (7) The Board may specify in the notice a period in which a further request by the pharmacist under this section is not permitted. The Board may reject a request that the conditions be removed or altered if it is made during that period.
- (8) This section:
 - (a) does not prevent conditions being imposed under another provision of this Act, and
 - (b) is subject to anything done by the Tribunal on an appeal under section 89.

Part 5 Impairment

76 Referral of impairment matters concerning pharmacists

- (1) The Board may refer any matter to an Impaired Registrants Panel if the Board considers that the matter indicates that a registered pharmacist suffers from an impairment. This is not limited to matters that are the subject of a complaint to the Board.
- (2) If the Board is aware that a complaint has been made to the Commission about a pharmacist who is the subject of a referral to an Impaired Registrants Panel, the Board is to notify the Commission of the referral.

77 Persons may notify Board of impairment matters concerning pharmacists

A person may notify the Board of any matter that the person thinks indicates that a registered pharmacist suffers or may suffer from an impairment.

78 Commission may refer impairment matters to Board

- (1) If the Commission becomes aware of any matter that the Commission considers indicates that a registered pharmacist suffers or may suffer from an impairment, the Commission may refer the matter to the Board.
- (2) This section does not affect the functions of the Board in relation to a complaint made to the Commission or a matter referred to the Commission for investigation.

79 Panel to inquire into matters referred to it

- (1) An Impaired Registrants Panel is to inquire into any matter referred to it and may obtain reports and other information concerning the matter from any source it considers appropriate.
- (2) The Panel may request a registered pharmacist who is the subject of a matter referred to the Panel by the Board, to attend before the Panel for the purpose of enabling the Panel to obtain information on the matter and make an assessment.

80 Panel not to take action while Commission investigating

An Impaired Registrants Panel is not to investigate or take any other action in relation to any matter if the Panel is aware that the matter is the subject of an investigation by the Commission, while the investigation is being conducted.

81 Board to give notice of proposed inquiry

The Board is to give notice to a registered pharmacist of any proposed inquiry by an Impaired Registrants Panel concerning the pharmacist. The notice is to include sufficient details of the matters to which the inquiry is to relate.

82 Pharmacist entitled to make representations

- (1) A registered pharmacist who is the subject of any inquiry by an Impaired Registrants Panel is entitled to make oral or written representations to the Panel with respect to the matters being or to be the subject of the inquiry.
- (2) This section does not prevent the Panel from conducting an inquiry in the absence of the registered pharmacist to whom it relates, as long as the pharmacist has been given notice of the inquiry under section 81.

83 Assessment, report and recommendations by Panel

- (1) An Impaired Registrants Panel is to make an assessment in respect of each referral to it, based on the results of its inquiry into the matter.
- (2) On the basis of its assessment, the Panel may do any one or more of the following things:
 - (a) counsel the pharmacist concerned or recommend that he or she undertake specified counselling,
 - (b) recommend that the pharmacist concerned agree to conditions being imposed on his or her registration or to having his or her registration suspended for a specified period,
 - (c) make recommendations to the Board as to any action that the Panel considers should be taken in relation to the matter.
- (3) The Panel is to report in writing to the Board on each referral to the Panel. The report is to detail the results of the Panel's inquiries and assessment in respect of the referral and any action taken by the Panel under this Part in relation to it.

84 Voluntary suspension or conditions on registration

The Board may place conditions on a registered pharmacist's registration or suspend the pharmacist's registration if:

- (a) an Impaired Registrants Panel has recommended that the Board do so, and
- (b) the Board is satisfied that the pharmacist has voluntarily agreed to the recommendation.

85 Review of conditions or suspension

- (1) A registered pharmacist who agrees to conditions being imposed on his or her registration or to having his or her registration suspended may, by notice in writing to the Board, request:
 - (a) that those conditions be removed or altered, or

(b) that the suspension be terminated or shortened.

- (2) On receipt of such a request, the Board is to require an Impaired Registrants Panel to review the matter and report in writing to the Board on the results of its review.
- (3) If the Panel recommends that the Board refuse to remove or alter any of the conditions, or refuse to terminate or shorten the suspension, the Board may do so.
- (4) The Board is to give the pharmacist concerned notice in writing of its decision in respect of the request.
- (5) The Board may specify in the notice a period in which a further request by the pharmacist under this section is not permitted. The Board may reject a request that the conditions be removed or altered, or that the suspension be terminated or shortened, if it is made during that period.

86 Some matters to be dealt with as complaints

- (1) If an Impaired Registrants Panel recommends that a registered pharmacist agree to conditions being imposed on his or her registration or to having his or her registration suspended and the pharmacist fails to agree in accordance with the recommendation, the Board is to deal with the matter that was the subject of the referral to the Panel as a complaint against the pharmacist.
- (2) If the Panel recommends that a matter referred to it be dealt with as a complaint, the Board is to deal with the matter as a complaint against the pharmacist concerned.
- (3) In any other case that the Board thinks it appropriate to do so, the Board may treat a matter that has been referred to a Panel as grounds for a complaint under this Act and may deal with the matter accordingly.

87 Confidentiality of Panel's report

- (1) A report by an Impaired Registrants Panel to the Board may not be admitted or used in any civil proceedings before a court.
- (2) A person may not be compelled to produce the report or to give evidence in relation to the report or its contents in any such civil proceedings.
- (3) A person must not directly or indirectly make a record of or disclose to any person any information contained in a report by an Impaired Registrants Panel to the Board that has come to the person's notice in the exercise of the person's functions under this Act, except for the purposes of exercising functions under this Act.

Maximum penalty: 50 penalty units.

- (4) This section does not prevent the disclosure of such a report to the Commission.
- (5) In this section:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions, but does not include the Tribunal or the Board, or the Supreme Court (in respect of appeal proceedings under this Act).

report includes a copy, reproduction and duplicate of the report or any part of the report, copy, reproduction or duplicate.

Part 6 Appeals and review of disciplinary action

Division 1 Appeals against actions of Board

88 Appeals against actions of Board on a complaint

- (1) When a complaint has been dealt with at a meeting of the Board under Division 4 of Part 4, the pharmacist or the Commission may appeal to the Tribunal against:
 - (a) a finding of the Board, or
 - (b) the exercise of any power by the Board under Division 5 (Disciplinary powers of Board and Tribunal) of Part 4.
- (2) An appeal must be made within 28 days (or such longer period as the Chairperson may allow in a particular case) after:
 - (a) the Board's written statement of the decision by which the Board's finding is made is made available to the appellant, or
 - (b) the exercise of the power against which the appeal is made.
- (3) The appeal must be lodged with the Registrar who is to refer it to the Tribunal.
- (4) The appeal is to be dealt with by way of rehearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the meeting of the Board, may be given.
- (5) The Tribunal may:
 - (a) dismiss the appeal, or
 - (b) make any finding or exercise any power or combination of powers that the Tribunal could have made or exercised if the complaint had been originally referred to the Tribunal.
- (6) An appeal under this section does not affect any finding or exercise of power with respect to which it has been made until the Tribunal makes an order on the appeal.

89 Appeal against suspension or imposition of conditions by Board—impairment matters

- (1) A person may appeal to the Tribunal:
 - (a) against a suspension or extension of a suspension by the Board under Division 6 (Powers of Board for protection of public) of Part 4, or
 - (b) against conditions imposed by the Board on the person's registration under Division 6 of Part 4 or Part 5 or any alteration of those conditions by the Board, or
 - (c) against a refusal by the Board to alter or remove conditions imposed by the Board under Division 6 of Part 4 in accordance with a request made by the person under section 75, or
 - (d) against a refusal by the Board to remove or alter conditions imposed on the person's registration, or to shorten or terminate a suspension, imposed under Part 5 in accordance with a request made by the person under section 85.
- (2) An appeal may not be made in respect of a request by a person that is rejected by the Board because it was made during a period in which the request was not permitted under section 75 or 85.
- (3) An appeal must be made within 28 days (or such longer period as the Chairperson may allow in a particular case) after notice of the action taken by the Board, or the Board's refusal, is given to the person.
- (4) An appeal is to be lodged with the Registrar who is to refer it to the Tribunal.
- (5) On an appeal, the Tribunal may, by order, do any of the following:
 - (a) dismiss the appeal,
 - (b) remove or alter the conditions to which the pharmacist's registration is subject (including by imposing new conditions on the pharmacist's registration),
 - (c) terminate or shorten the period of the suspension concerned.
- (6) The Tribunal's order must not cause a suspension or conditions imposed by the Board to have effect beyond the day on which any related complaint about the person is disposed of.
- (7) An appeal under this section does not affect any suspension or conditions with respect to which it has been made until the Tribunal makes an order on the appeal.

90 Appeal on point of law

- (1) When a complaint is dealt with at a meeting of the Board under Division 4 of Part 4, the pharmacist or the Commission may appeal with respect to a point of law to the Chairperson or a Deputy Chairperson nominated by the Chairperson.

- (2) An appeal may be made in accordance with the regulations during the meeting of the Board to deal with the complaint or within the period after the date of giving of notice of the meeting and before the commencement of the meeting.
- (3) If the meeting of the Board to deal with the complaint has not been completed when an appeal is made, the Board must not continue to deal with the complaint until the appeal has been disposed of.
- (4) The Board must not make any decision that is inconsistent with the Chairperson's or Deputy Chairperson's determination with respect to the point of law.

Division 2 Appeals against actions of Tribunal

91 Preliminary appeal on point of law

- (1) An appeal with respect to a point of law may be made to the Supreme Court by the pharmacist or the complainant during an inquiry on a complaint conducted by the Tribunal or after the complaint is referred to the Tribunal and before the commencement of the inquiry, but can only be made with the leave of the Chairperson or a Deputy Chairperson.
- (2) If an inquiry conducted by the Tribunal has not been completed when an appeal with respect to a point of law is made, the inquiry before the Tribunal is not to continue until the appeal has been disposed of.
- (3) The Tribunal must not make any decision that is inconsistent with the Supreme Court's determination with respect to the point of law when it recommences the inquiry.

92 Appeal against Tribunal's decisions and actions

- (1) A pharmacist about whom a complaint is referred to the Tribunal, or the complainant, may appeal to the Supreme Court against:
 - (a) a decision of the Tribunal with respect to a point of law, or
 - (b) the exercise of any power by the Tribunal under Division 5 (Disciplinary powers of Board and Tribunal) of Part 4.
- (2) The appeal must be made within 28 days (or such longer period as the Court may allow in a particular case) after the Tribunal's written statement of the decision by which the Tribunal's finding is made is made available to the appellant.
- (3) The Supreme Court may stay any order made by the Tribunal, on such terms as the Court sees fit, until such time as the Court determines the appeal.

93 Powers of Court on appeal

- (1) In determining the appeal, the Supreme Court may:
 - (a) dismiss the appeal, or
 - (b) make such order as it thinks proper having regard to the merits of the case and the public welfare, and in doing so may exercise any one or more of the powers of the Tribunal under this Act.
- (2) If the Court dismisses an appeal against an order of the Tribunal, the Court may by order direct that the Tribunal's order is to be taken to include provision that an application for its review under Division 3 may not be made until after a specified time.

Division 3 Review of suspension, cancellation or conditions

94 Right of review

- (1) A person may apply to the appropriate review body for a review of a prohibition order in respect of the person or of an order of the Board, the Chairperson or a Deputy Chairperson, the Tribunal or the Supreme Court:
 - (a) that the registration of the person is suspended, or
 - (b) that the person's name be removed from the Register or that the person not be re-registered, or
 - (c) that conditions be imposed on the person's registration.
- (2) A person may also apply to the appropriate review body for a review of an order made under this Division.
- (3) An application for review of an order may not be made:
 - (a) while the terms of the order provide that an application for review may not be made, or
 - (b) while an appeal under this Part to the Tribunal or the Supreme Court in respect of the same matter is pending.

95 Appropriate review body

- (1) The **appropriate review body** is the Tribunal except in a case where the order being reviewed provides that it may be reviewed by the Board, in which case the Board is the appropriate review body.
- (2) An application for review must be lodged with the Registrar who is to refer it to the appropriate review body.

96 Powers on review

- (1) The appropriate review body is to conduct an inquiry into an application for review and may then do any of the following:
 - (a) dismiss the application,
 - (b) by its order terminate or shorten the period of the suspension concerned,
 - (c) make a reinstatement order,
 - (d) make an order altering the conditions to which the person's registration is subject (including by imposing new conditions),
 - (e) by its order terminate or shorten the period of a prohibition order or alter the conditions to which the person is subject under a prohibition order (including by imposing new conditions).
- (2) A **reinstatement order** is an order that the person be registered subject to the same conditions and limitations (if any) to which the person's registration was subject immediately before the person ceased to be registered. The appropriate review body may also impose conditions on the person's registration or alter the conditions to which the person's registration is to be subject under the reinstatement order.
- (3) The Commission is entitled to make submissions in respect of the application at the inquiry into the application.
- (4) The Board is to take such action as may be necessary to give effect to a reinstatement order.
- (5) The order on a review under this section may also provide that the order is not to be reviewed under this Division until after a specified time.

97 Nature of review

- (1) A review under this Division is a review to determine the appropriateness, at the time of the review, of the order concerned.
- (2) The review is not to reconsider the decision to make the order or any findings made in connection with the making of that decision, unless significant fresh evidence is produced that was not previously available for consideration and the appropriate review body is of the opinion that, in the circumstances of the case, that decision or any such finding should be reconsidered.

Part 7 Pharmacy Board

98 Constitution of Board

There is constituted by this Act a body corporate under the corporate name of the

Pharmacy Board of New South Wales.

99 Functions of Board

- (1) The Board has the functions conferred or imposed on it by or under this or any other Act.
- (2) The principal functions of the Board are as follows:
 - (a) to promote and maintain the highest standards of professional conduct and ethics in the pharmacy profession,
 - (b) to provide for education about pharmacy and for pharmaceutical research,
 - (c) to consult with and to advise the appropriate authorities on standards of training for pharmacists,
 - (d) to make recommendations in relation to education courses which form part of the prerequisite for registration,
 - (e) to publish and distribute information concerning this Act and the regulations to pharmacists, consumers and other interested persons,
 - (f) to publish reports, information and advice to the general public concerning any pharmaceutical matter,
 - (g) to advise the Minister on matters relating to the registration of pharmacists, standards of pharmacy practice and any other matter arising under or related to this Act,
 - (h) to generally carry out all matters relating to the practice of pharmacy authorised or required by this Act.
- (3) The Board is to exercise its functions in a manner that is consistent with the object of this Act.

100 Membership of Board

- (1) The Board is to consist of 10 members, of whom:
 - (a) 5 are to be registered pharmacists elected by registered pharmacists in accordance with the regulations, and
 - (b) 5 are to be appointed by the Governor in accordance with subsection (2).
- (2) The appointed members are to be:
 - (a) one person nominated by the Minister, being an officer of the Department of Health or an employee of an area health service, statutory health corporation or affiliated health organisation within the meaning of the *Health Services Act 1997*,

- (b) one registered pharmacist nominated by the Minister, being a registered pharmacist involved in the tertiary education of persons for qualification in New South Wales as pharmacists,
- (c) 2 persons (who are not registered pharmacists) nominated by the Minister to represent the community,
- (d) one Australian legal practitioner nominated by the Minister.

101 Staff

- (1) The Board may appoint a person to be Registrar for the purposes of this Act.
- (2) The Board may employ such other staff as may be necessary to enable the Board to exercise its functions.
- (3) The Board may, with the concurrence of the Health Administration Corporation, fix the salaries, wages, allowances and conditions of employment of its staff in so far as they are not fixed by or under another Act or law.
- (4) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to the employment of its staff under this section and a person is not, as a member of that staff, subject to that Act.

102 Committees

- (1) The Board may establish committees to assist it in connection with the exercise of any of its functions.
- (2) It does not matter that any or all of the members of a committee are not members of the Board.
- (3) A member of a committee, while sitting on the committee, is entitled to be paid by the Board such amount as the Board from time to time determines in respect of the member.
- (4) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings may be determined by the Board or (subject to any determination of the Board) by the committee.

103 Delegation of functions

- (1) The Board may delegate any of its functions (other than this power of delegation and the function of authorising by resolution the expenditure of money from the Pharmacy Education and Research Account) to:
 - (a) the President, or
 - (b) the Deputy President, or

- (c) a committee consisting of 2 or more members of the Board, or
 - (d) the Registrar or any other member of staff of the Board.
- (2) The Board must not delegate any of its functions under Part 4 (Complaints and disciplinary proceedings) to the Registrar or any other member of the staff of the Board.
- (3) The Registrar may delegate to a member of the staff of the Board the exercise of:
- (a) any of the functions of the Registrar under this Act, other than this power of delegation, or
 - (b) any functions delegated to the Registrar by the Board, unless the Board otherwise provides in its instrument of delegation to the Registrar.

104 Other provisions relating to Board

- (1) Schedule 3 has effect with respect to the members of the Board.
- (2) Schedule 4 has effect with respect to the procedure of the Board.

Part 8 Pharmacy Care Assessment Committee

105 Constitution of Pharmacy Care Assessment Committee

There is constituted by this Act the Pharmacy Care Assessment Committee.

106 Functions of Committee

The Committee has the functions conferred or imposed on it by or under this or any other Act.

107 Membership of Committee

- (1) The Committee is to consist of 4 members appointed by the Minister.
- (2) Of the members:
 - (a) one is to be a registered pharmacist nominated by the Board, and
 - (b) two are to be registered pharmacists appointed from a panel of names furnished to the Minister by the Board, and
 - (c) one is to be a person appointed by the Minister to be a representative of consumers.
- (3) If the Board does not furnish a panel of names within such time or in such manner as may be specified by the Minister by notice in writing to the Board, the Minister may instead appoint to be members 2 registered pharmacists determined by the Minister.

- (4) A person cannot be a member of the Committee while the person is a member of the Board.

108 Other provisions relating to Committee

Schedule 5 has effect with respect to the members and the procedure of the Committee.

Part 9 Impaired Registrants Panels

109 Impaired Registrants Panels

There are to be Impaired Registrants Panels for the purposes of this Act. An Impaired Registrants Panel has and may exercise the jurisdiction and functions conferred or imposed on it by or under this or any other Act.

110 Board to constitute Panel when required

- (1) When the Board decides to refer a matter to an Impaired Registrants Panel it is to appoint 3 persons, at least one of whom is a registered pharmacist, to sit as the Panel for the purpose of dealing with the matter.
- (2) A person may be appointed to sit on an Impaired Registrants Panel whether or not the person is a member of the Board, but not if the person has previously dealt with the particular matter before the Panel in his or her capacity as a member of the Board.
- (3) A member of an Impaired Registrants Panel, while sitting on the Panel, is entitled to be paid by the Board at the rate determined by the Board from time to time.

111 Decisions of a Panel

- (1) A decision supported by 2 members of a Panel is the decision of the Panel.
- (2) If the members of an Impaired Registrants Panel disagree as to any matter that is dealt with by the Panel, the Panel's report to the Board is to include details of the disagreement and the reasons for it.

Part 10 Pharmacy Tribunal

Division 1 Constitution of Tribunal

112 Pharmacy Tribunal

- (1) There is to be a Pharmacy Tribunal for the purposes of this Act.
- (2) The Tribunal is to be constituted in accordance with this Act to deal with a matter referred to it or an appeal or application made to it under this Act.
- (3) The Tribunal has and may exercise the jurisdiction and functions conferred or imposed on it by or under this or any other Act.

113 Chairperson and Deputy Chairpersons of Tribunal

- (1) The Governor may appoint an Australian legal practitioner of at least 7 years' standing as Chairperson of the Tribunal and may appoint one or more Australian legal practitioners of at least 7 years' standing as Deputy Chairpersons of the Tribunal.
- (2) The Chairperson and each Deputy Chairperson hold office for such period not exceeding 7 years as may be specified in the instrument of appointment as Chairperson or Deputy Chairperson, but are eligible (if otherwise qualified) for re-appointment.
- (3) A Deputy Chairperson can be appointed by the Governor for the purpose of conducting or hearing a particular inquiry or appeal, as described in the instrument of appointment of the Deputy Chairperson.
- (4) A Deputy Chairperson, while sitting on the Tribunal, has and may exercise all the functions conferred or imposed on the Chairperson by this Act (other than those conferred by section 114 (2)).
- (5) The Chairperson or a Deputy Chairperson sitting on the Tribunal is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of each of them.
- (6) The Governor may appoint a Deputy Chairperson to act in the office of Chairperson during the illness or absence of the Chairperson and the Deputy Chairperson, while so acting, has and may exercise all the functions of the Chairperson and is taken to be the Chairperson.
- (7) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of the Chairperson or a Deputy Chairperson.

114 Tribunal to be constituted to deal with complaints etc

- (1) The Board is to inform the Chairperson and appoint 3 other persons to sit on the Tribunal when:
 - (a) a complaint or other matter is referred to the Tribunal, or
 - (b) the Commission decides, in accordance with the *Health Care Complaints Act 1993*, to prosecute a complaint before the Tribunal, or
 - (c) an appeal or application under this Act to the Tribunal is lodged with the Registrar.
- (2) The Chairperson is then to nominate himself or herself or a Deputy Chairperson to sit on the Tribunal for the purpose of conducting an inquiry into the complaint, matter or application or hearing the appeal.
- (3) For the purpose of conducting an inquiry or hearing an appeal, the Tribunal is to

consist of:

- (a) the Chairperson or a Deputy Chairperson, and
 - (b) 2 registered pharmacists having such qualifications as may be prescribed, appointed by the Board, and
 - (c) one lay person (that is, a person who is not a registered pharmacist) appointed by the Board from a panel of lay persons for the time being nominated by the Minister.
- (4) A person may not be appointed to sit on the Tribunal if the person is a member of the Board.
 - (5) A person may not be appointed to sit on the Tribunal if the person has previously dealt with the particular matter before the Tribunal in his or her capacity as a member of the Board or the Committee.
 - (6) The Tribunal, as constituted by different persons or the same persons, may conduct or hear more than one inquiry or appeal at the same time.

115 Effect of vacancy on Tribunal

- (1) If one of the members (other than the Chairperson or Deputy Chairperson) constituting the Tribunal for the purpose of conducting a hearing vacates office for any reason before an inquiry or appeal is completed or a decision is made in respect of an inquiry or appeal, the inquiry or appeal may be continued and a determination made by the remaining members of the Tribunal.
- (2) If more than one of the members vacate office or the Chairperson or Deputy Chairperson vacates office for any reason before the Tribunal has completed an inquiry or appeal or made a determination in respect of an inquiry or appeal, the inquiry or appeal is terminated.
- (3) When an inquiry or appeal is terminated, the Tribunal may be reconstituted in accordance with this Part for the purposes of conducting a new inquiry or appeal in respect of the matter concerned.

116 Payment of non-legal Tribunal members

A member of the Tribunal (other than the Chairperson or a Deputy Chairperson) is while sitting on the Tribunal entitled to be paid by the Board at the rate determined by the Board from time to time.

117 Seal of Tribunal

The Tribunal is to have a seal of which all courts and persons acting judicially are to take judicial notice.

Division 2 Proceedings of Tribunal

118 Decisions of Tribunal

- (1) The decision of the Chairperson or a Deputy Chairperson on any question of law or procedure arising during an inquiry or appeal at which the Chairperson or Deputy Chairperson presides is the decision of the Tribunal for the purposes of the inquiry or appeal.
- (2) A decision supported by at least 3 members of the Tribunal with respect to a question (other than with respect to a point of law or procedure) arising during an inquiry or appeal before the Tribunal is the decision of the Tribunal.
- (3) If 2 members support the decision and 2 members oppose the decision, the decision of the Chairperson or Deputy Chairperson presiding is the decision of the Tribunal.

119 Time when orders take effect

An order of the Tribunal under this Act takes effect on the day on which the order is made or on such later day as is specified in the order.

120 Powers of Tribunal exercised by Supreme Court

A power of the Tribunal exercised under this Act by the Supreme Court is, except for the purposes of any appeal, taken to have been exercised by the Tribunal.

121 Registrar to be informed of disciplinary action

The Tribunal is to inform the Registrar of the exercise of any power under Part 4 (Complaints and disciplinary proceedings) by the Tribunal.

Division 3 Inquiries, appeals etc before Tribunal

122 Jurisdiction

- (1) The members of the Tribunal are to conduct an inquiry into any complaint, matter or application and are to hear any appeal referred to it.
- (2) No inquiry need be conducted into a complaint if the pharmacist who is the subject of the complaint admits the subject-matter of the complaint in writing to the Tribunal.

123 Notice of time and place of inquiry or appeal

The Chairperson or a Deputy Chairperson nominated to sit on the Tribunal is to fix a time and place for the conducting of the inquiry or the hearing of the appeal by the Tribunal and is to give not less than 14 days' notice of the inquiry or appeal to each of the following:

- (a) the pharmacist concerned,

- (b) the complainant, if any,
- (c) the Director-General and the Board,
- (d) in the case of an appeal or an inquiry into a complaint, the Commission.

124 Conduct of proceedings

- (1) The Tribunal is to conduct proceedings on an inquiry or appeal as it thinks fit.
- (2) Proceedings of the Tribunal are to be open to the public except when the Tribunal otherwise directs.
- (3) The Tribunal is not to direct that proceedings are to be closed to the public unless satisfied that it is desirable to do so in the public interest for reasons connected with the subject-matter of the inquiry or appeal or the nature of the evidence to be given.
- (4) The Tribunal may proceed to determine an inquiry or appeal in the absence of the pharmacist.
- (5) Schedule 6 has effect with respect to any inquiry conducted or appeal heard by the Tribunal.

125 Representation before Tribunal

- (1) At an inquiry conducted or appeal heard by the Tribunal, the registered pharmacist and any complainant concerned are entitled to attend and to be represented by an Australian legal practitioner or another adviser.
- (2) The Tribunal may grant leave for any other person to appear (whether in person or by an Australian legal practitioner or another adviser) at an inquiry or appeal if the Tribunal is satisfied that it is appropriate for that person to appear.

126 Chairperson or Deputy Chairperson not to review own decisions

The Chairperson or Deputy Chairperson must not sit on the Tribunal for the purpose of conducting any inquiry or hearing any appeal relating to a particular matter before the Tribunal if a decision has been made by the Chairperson or a Deputy Chairperson in relation to the matter.

127 Adjournments and interlocutory orders

- (1) The Tribunal may adjourn proceedings for any reason it thinks fit.
- (2) The Tribunal may, during any proceedings, exercise any power or combination of powers conferred on the Tribunal by section 66 (Powers of Tribunal), except the power to caution or reprimand.

128 Tribunal to provide details of its decision

- (1) The Tribunal must provide a written statement of a decision on an inquiry or appeal to the complainant, to the pharmacist concerned and to the Board, and must do so as soon as practicable after the decision is made (bearing in mind the public welfare and seriousness of the matter).
- (2) The statement of a decision must:
 - (a) set out any findings on material questions of fact, and
 - (b) refer to any evidence or other material on which the findings were based, and
 - (c) give the reasons for the decision.
- (3) The Tribunal may also provide the statement of a decision to such other persons as the Tribunal thinks fit.
- (4) The Board:
 - (a) must make publicly available a statement of a decision provided to it under this section if the decision is in respect of a complaint that has been proved or admitted in whole or in part, and
 - (b) may disseminate any other statement of a decision as the Board thinks fit, unless the Tribunal has ordered otherwise.

129 Statement need not contain confidential information

- (1) The Tribunal is not required to include confidential information in the statement of a decision. If a statement would be false or misleading if it did not include the confidential information, the Tribunal is not required to provide the statement.
- (2) When confidential information is not included in the statement of a decision provided to a person or the statement is not provided to a person because of subsection (1), the Tribunal must give a confidential information notice to the person.
- (3) A **confidential information notice** is a notice that indicates that confidential information is not included or that the statement will not be provided (as appropriate) and gives the reasons for this. The notice must be in writing and must be given within one month after the decision is made.
- (4) This section does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.
- (5) In this section:

confidential information means information that:

- (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared, and
- (b) relates to the personal or business affairs of a person, other than a person to whom the Tribunal is required (or would, but for subsection (1), be required) to provide a written statement of a decision, and
- (c) is information:
 - (i) that was supplied in confidence, or
 - (ii) the publication of which would reveal a trade secret, or
 - (iii) that was provided in compliance with a duty imposed by an enactment, or
 - (iv) the provision of which by the Tribunal would be in breach of any enactment.

Part 11 Prohibition against directing or inciting misconduct

130 Definition

In this Part:

pharmacy services means services provided by a registered pharmacist in the course of practising pharmacy.

131 Prohibition against directing or inciting misconduct

- (1) A person (**the employer**) who employs a registered pharmacist must not direct or incite the pharmacist to engage in conduct in the course of professional practice that would constitute unsatisfactory professional conduct or professional misconduct.

Maximum penalty:

- (a) in the case of a corporation, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence, or
 - (b) in any other case, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence.
- (2) For the purposes of this section, any actions of an agent or employee of the employer are taken to be actions of the employer unless the employer establishes:
 - (a) that the employer had no knowledge of those actions, and
 - (b) that the employer could not, by the exercise of due diligence, have prevented those actions.
 - (3) If a person is convicted of or made the subject of a criminal finding for an offence

against this section in respect of the actions of an agent or employee of the person, the agent or employee is for the purposes of this Part taken to have been convicted of or made the subject of a criminal finding for the offence also.

- (4) When a court convicts or makes a criminal finding against a person for an offence against this section, the registrar or other proper officer of the court must notify the Director-General in writing of the conviction or criminal finding.
- (5) This section does not apply in respect of the employment of a registered pharmacist by a public health organisation within the meaning of the *Health Services Act 1997*.

Note—

A registered pharmacist is guilty of unsatisfactory professional conduct (as defined in section 37 (1)) if he or she practises pharmacy for remuneration in the course of employment by, or in association with, a non-pharmacist (as defined in section 37 (2)).

132 Extended concept of employment

- (1) When a registered pharmacist engages in the practice of pharmacy in the course of the carrying on of a business, any person who owns, manages, controls, conducts or operates that business is for the purposes of this Part taken to employ the pharmacist (in addition to any person who actually employs the pharmacist).
- (2) When a registered pharmacist is employed by a corporation, each of the following persons is for the purposes of this Part also considered to be the employer of the pharmacist (in addition to the corporation):
 - (a) a person who is a director, secretary or executive officer (as defined in the *Corporations Act 2001* of the Commonwealth) of the corporation or is concerned in the management of the corporation, or
 - (b) any other employee of the corporation in accordance with whose directions the pharmacist is required or expected to act.

133 Extended concept of carrying on business

- (1) If a registered pharmacist engaged in the practice of pharmacy is provided, in the course of the carrying on of a business, with services that facilitate that practice and the operator of the business is entitled, in connection with the provision of those services, to a share or interest in the profits or income arising from the practice of pharmacy by the pharmacist:
 - (a) that business is taken for the purposes of this Part to be a business that provides the pharmacy services that are provided by the pharmacist in the course of that practice, and
 - (b) the pharmacist is taken for the purposes of this Part to be engaged in the practice of pharmacy in the course of the carrying on of that business.

- (2) Subsection (1) does not apply in respect of the practice of pharmacy by a registered pharmacist in such circumstances as may be prescribed by the regulations as exempt from that subsection.
- (3) For the purposes of this Part, a person is considered to operate a business if the person:
 - (a) owns, manages, controls, conducts or operates the business, or
 - (b) has (within the meaning of section 137) a management role or substantial interest in a corporation that operates the business or a substantial interest in a trust under which the business is operated.

134 Convicted offenders may be prohibited from carrying on business

- (1) The Director-General may, by notice in writing given to a person who has been convicted of or made the subject of a criminal finding for an offence against this Part, prohibit the person from operating a business that provides pharmacy services.
- (2) The prohibition may be expressed to be:
 - (a) for a fixed period (in which case the prohibition remains in force only for that fixed period), or
 - (b) for an unlimited period subject to an entitlement to apply after a specified time for the lifting of the prohibition (in which case the prohibition remains in force until it is lifted).
- (3) A prohibition may not be imposed under this section unless the Director-General is of the opinion that the person is not a fit and proper person to operate a business that provides pharmacy services. The Director-General is entitled to presume, in the absence of evidence to the contrary, that a person who has been convicted of or made the subject of a criminal finding for an offence against this Part on 2 or more occasions in any period of 10 years is not a fit and proper person to operate such a business.
- (4) A prohibition under this section may be limited in its operation in either or both of the following ways:
 - (a) it may be limited to specified premises, but only where the person concerned operates a business that provides pharmacy services at those premises and at other premises,
 - (b) it may be limited to premises within a specified area.
- (5) If a prohibition under this section is subject to an entitlement to apply after a specified time for the prohibition to be lifted, such an application may be made to the Director-General after that time. The Director-General may lift the prohibition or confirm the

prohibition and set a further period after which an application for the prohibition to be lifted can be made under this subsection.

135 Offence of operating business while prohibited

- (1) A person who in contravention of a prohibition under this Part operates a business that provides pharmacy services is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence, or
- (b) in any other case, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence.
- (2) If a continuing state of affairs is created by an offence against this section the offender is liable to a maximum penalty of:
- (a) 100 penalty units in the case of a corporation, or
- (b) 50 penalty units in any other case,
- in respect of each day on which that offence continues, in addition to the penalty specified in subsection (1).
- (3) If pharmacy services are provided on premises on which a business is carried on, it is to be presumed for the purposes of this section, unless the contrary is established, that the business provides those pharmacy services.

136 Effect of appeal against conviction

A prohibition under this Part has no effect while an appeal is pending against the conviction or criminal finding for the offence on which the prohibition is based.

137 Business interests—effect of prohibition

- (1) When a corporation or the trustee of a trust is the subject of a prohibition under this Part in connection with the operation of a business operated by the corporation or under the trust:
- (a) each person who has a management role or substantial interest in the corporation or a substantial interest in the trust is for the purposes of this Part taken to be the subject of that prohibition also, and
- (b) each corporation in which a person referred to in paragraph (a) has a management role or substantial interest is for the purposes of this Part taken to be the subject of that prohibition also (whether or not the corporation was in existence at the time of the relevant offence), and

- (c) the trustee and any manager of a trust in which a person referred to in paragraph (a) has a substantial interest are for the purposes of this Part taken to be the subject of that prohibition also (whether or not the trust was in existence at the time of the relevant offence).
- (2) A person is considered to have a management role or substantial interest in a corporation if:
 - (a) the person is a director, secretary or executive officer (as defined in the *Corporations Act 2001* of the Commonwealth) of the corporation, or
 - (b) the person is entitled to more than 10% of the issued share capital of the corporation (with the shares to which a person is entitled including shares in which the person or an associate of the person has a relevant interest within the meaning of the *Corporations Act 2001* of the Commonwealth).
- (3) A person is considered to have a substantial interest in a trust if the person (whether or not as the trustee of another trust) is the beneficiary in respect of more than 10% of the value of the interests in the trust.
- (4) The regulations may create exceptions to this section.

138 Power to require information from convicted persons and others

- (1) When a corporation or the trustee of a trust is convicted of or made the subject of a criminal finding for an offence against this Part in connection with the operation of a business operated by the corporation or under the trust, the Director-General may require certain persons to provide specified information to the Director-General, as provided by this section.
- (2) The corporation or trustee may be required to provide information that the Director-General may reasonably require to ascertain the identity of each person who has a management role or substantial interest in the corporation or a substantial interest in the trust.
- (3) A person whom the Director-General reasonably believes has a management role or substantial interest in the corporation or a substantial interest in the trust may be required to provide information that the Director-General may reasonably require to ascertain:
 - (a) the identity of each corporation in which that person has a management role or substantial interest, or
 - (b) the identity of the trustee and any manager of a trust in which that person has a substantial interest.
- (4) A requirement to provide information is to be imposed by a direction in writing served on the person, corporation or trustee concerned. The direction must specify a period

of not less than 7 days as the period within which the required information must be provided.

- (5) A person who fails without reasonable excuse to comply with a requirement under this section is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence, or
- (b) in any other case, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence.

- (6) A person who in purported compliance with a requirement under this section provides information that is false or misleading in a material particular is guilty of an offence unless the person satisfies the court that he or she did not know and could not reasonably be expected to have known that the information was false or misleading.

Maximum penalty:

- (a) in the case of a corporation, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence, or
- (b) in any other case, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence.

139 Evidentiary certificate

- (1) The Director-General may issue a certificate to the effect that a person specified in the certificate is or was prohibited under this Part from operating a business that provides pharmacy services during a period specified in the certificate.
- (2) Such a certificate is evidence of the matters certified.
- (3) A certificate purporting to be a certificate issued by the Director-General under this section is presumed to have been so issued unless the contrary is established.

Part 12 Miscellaneous

140 Application of Criminal Records Act

For the purposes of the application of this Act (including Part 4 of the *Licensing and Registration (Uniform Procedures) Act 2002*, as applied to this Act by section 12) in respect of a criminal finding, the *Criminal Records Act 1991* applies in respect of a criminal finding as if section 8 (2) and (4) of that Act were omitted.

Note—

Section 8 (2) and (4) of the *Criminal Records Act 1991* make special provision for when criminal findings become “spent” under that Act. The omission of those subsections will mean that in determining when a criminal finding

becomes spent for the purposes of this Act, criminal findings will be treated as ordinary convictions and the relevant crime-free period will be as provided by section 9 of that Act.

141 How notice is to be given

- (1) A requirement of this Act that a person be given notice is a requirement that the person be given notice in writing either personally or by post.
- (2) For the purposes of section 76 of the *Interpretation Act 1987*, a notice served by post on a person for the purposes of this Act is to be treated as being properly addressed if it is addressed to the address of the person last known to the Registrar or last recorded in the Register.

142 Service of documents on Board

A document (other than a complaint made under Part 4) may be served on the Board by leaving it at or sending it by post to any office of the Board. This section does not affect the operation of any provision of a law or of the rules of a court authorising a document to be served on the Board in any other manner.

143 Written statement of decisions

- (1) If the Board, the Board's President or a member authorised by the Board makes a decision concerning a person under any provision of this Act, the person may request in writing that the Board, President or member provide the person with a written statement of the decision.
- (2) Any such request is to be made no later than 60 days after the decision to which it relates.
- (3) The Board, the President or the member is to provide a written statement of the decision within 30 days after receiving such a request.
- (4) A written statement of a decision must give the reasons for the decision.
- (5) The Board, the President or the member is not required to include confidential information in the statement of a decision. If a statement would be false or misleading if it did not include the confidential information, the Board, the President or the member is not required to provide the statement.
- (6) When confidential information is not included in the statement of a decision provided to a person or the statement is not provided to a person because of subsection (5), the Board, the President or the member must give a confidential information notice to the person.
- (7) A **confidential information notice** is a notice that indicates that confidential information is not included or that the statement will not be provided (as appropriate) and gives the reasons for this. The notice must be in writing and must be given within

one month after the decision is made.

- (8) This section does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.
- (9) In this section:

confidential information means information that:

- (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared, and
- (b) relates to the personal or business affairs of a person, other than a person to whom the Board, the President or the member is required (or would, but for subsection (5), be required) to provide a written statement of a decision, and
- (c) is information:
- (i) that was supplied in confidence, or
 - (ii) the publication of which would reveal a trade secret, or
 - (iii) that was provided in compliance with a duty imposed by an enactment, or
 - (iv) the provision of which by the Board, the President or the member would be in breach of any enactment.

144 Notice of disciplinary action to other Boards

- (1) When the registration of a pharmacist is suspended or cancelled or any condition is imposed on the registration of a pharmacist:
- (a) the Board must without delay notify particulars of that action to the local registration authority of each neighbouring jurisdiction, and
 - (b) the Board may notify particulars of that action to the local registration authority of any other jurisdiction.
- (2) When the registration of a pharmacist is suspended or cancelled or any condition is imposed on the registration of a pharmacist, and the Board is aware that the pharmacist is registered under a health registration Act, the Board must without delay notify particulars of that action to the registration authority under that Act.
- (3) The Board is required or authorised to act under this section despite any law relating to secrecy or confidentiality.
- (4) This section does not affect any obligation or power to provide information under the Mutual Recognition laws.

(5) In this section:

local registration authority of a jurisdiction means the person or authority in the jurisdiction having the function conferred by legislation of registering persons in connection with the carrying on of pharmacy in the jurisdiction.

neighbouring jurisdiction means each Australian State, the Australian Capital Territory, the Northern Territory and New Zealand.

registration includes the licensing, approval, admission, certification (including by way of practising certificates), or any other form of authorisation, of a person required by or under legislation for the carrying on of the practice of pharmacy.

144A Cancelled registrations to be publicly available

(1) The Board is to make publicly available:

(a) the name of each person who is subject to an order of the Tribunal or the Supreme Court that the person's registration be cancelled or that the person not be re-registered, and

(b) such other information about the person as may be prescribed by the regulations.

(2) The Board is to ensure that the information required to be made publicly available under subsection (1) is provided to the Commission.

(3) The Board is not required to make publicly available information about a person:

(a) who is deceased, or

(b) who belongs to a class of persons prescribed by the regulations for the purposes of this section.

144B Protection from liability for certain publications

(1) A publication in good faith under section 128 or 144A does not subject a protected person to any liability (including liability in defamation).

(2) In this section:

protected person means:

(a) the Board or Tribunal or a member of the Board or Tribunal, or

(b) the proprietor, editor or publisher of a newspaper, or

(c) the proprietor or broadcaster of a radio or television station or the producer of a radio or television show, or

(d) an internet service provider or internet content host, or

- (e) a member of staff of or a person acting at the direction of any person or entity referred to in this definition, or
- (f) any person, or person belonging to a class of persons, prescribed by the regulations for the purposes of this section.

145 False or misleading entries and statements

A person must not:

- (a) make or cause to be made in the Register an entry that the person knows to be false or misleading or alter an entry in the Register with intent to render the entry false or misleading, or
- (b) for the purposes of obtaining registration as a pharmacist either for that person or for anyone else, make a statement, whether orally or in writing, that the person knows to be false or misleading.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

146 Evidentiary certificates and evidence of entry in registers

- (1) A certificate purporting to have been signed by the Registrar to the effect that:
 - (a) a person specified in the certificate was or was not a registered pharmacist at a time or during a period so specified, or
 - (b) the name of a person specified in the certificate was removed from the Register at a time so specified, or
 - (c) the registration of a person specified in the certificate was suspended from a time so specified and for a period so specified, or
 - (d) a condition, particulars of which are set out in the certificate, was, at a time or during a period so specified:
 - (i) imposed on the registration of a person so specified, or
 - (ii) revoked or not in force,

is, without proof of the signature of the person by whom the certificate purports to have been signed, admissible in any proceedings and is prima facie evidence of the matter certified in it.

- (2) A certificate purporting to have been signed by the Registrar to the effect that:
 - (a) a person specified in the certificate was or was not registered under clause 1 of Schedule 2 as the holder of a pecuniary interest so specified at a time or during a period so specified, or

(b) premises specified in the certificate were or were not, at a time or during a period so specified, approved by the Board under clause 1 of Schedule 2,

is, without proof of the signature of the person by whom the certificate purports to have been signed, admissible in any proceedings and is prima facie evidence of the matter certified in it.

- (3) An entry in the Register or the Register of Pharmacies is admissible in any proceedings and is prima facie evidence of the matter stated in it.
- (4) A document purporting to be a copy of an entry in the Register or the Register of Pharmacies, purportedly signed by the Registrar, is admissible in any proceedings and is prima facie evidence of the matter stated in it.

147 Authentication of certain documents

Every certificate, summons, process, demand, order, notice, statement, direction or other document requiring authentication by the Board may be sufficiently authenticated without the seal of the Board if signed by:

- (a) the President or the Registrar, or
- (b) any officer of the Board authorised to do so by the Registrar.

148 Fees

- (1) The Board may make written orders fixing fees for services provided by the Board in exercising its functions.
- (2) Fees payable under this Act or the regulations are to be paid to the Registrar on behalf of the Board.
- (3) The Registrar or any person authorised in writing by the Board may recover any such fee in a court of competent jurisdiction as a debt due to the Board.
- (4) All money received by the Board (whether for fees or otherwise) is to be paid into an account or accounts established by the Board.
- (5) There may be paid from an account or accounts established by the Board:
 - (a) amounts required to meet the expenses of the administration or execution of this Act, and
 - (b) amounts for such purposes as are set out in the regulations made for the purposes of this section on the recommendation of the Board.
- (6) The Board may at any time waive payment of part or all of a fee payable under this Act, whether in a particular case or in a class of cases.

- (7) The power to waive payment of fees extends to any fee payable in relation to registration as a pharmacist under the Mutual Recognition laws.

149 Pharmacy Education and Research Account

- (1) The Board is to establish a Pharmacy Education and Research Account.
- (2) Such amounts as are recommended by the Board and determined by the Minister from time to time are to be paid into the Account by the Board from fees payable under this Act or the regulations.
- (3) Money in the Account may be expended by the Board for or towards any one or more of the following:
- (a) education about pharmacy and pharmaceutical research,
 - (b) the publication and distribution of information concerning this Act and the regulations,
 - (c) meeting administrative expenditure incurred with respect to the Account and the purposes for which it is used,
- or any related purpose.
- (4) An expenditure of money under this section is not to be made unless it is authorised by a resolution supported by at least 6 members of the Board.

150 Appointment and powers of inspectors

- (1) The Director-General may appoint any person as an inspector for the purposes of this Act. The Director-General is to provide an inspector with a certificate of authority.
- (2) An inspector may exercise the powers conferred by this section for the purpose of:
- (a) ascertaining whether the provisions of this Act or the regulations are being complied with or have been contravened, or
 - (b) investigating a complaint made or intended to be made under Part 4.
- (3) An inspector may enter and inspect at any reasonable time any premises that the inspector believes on reasonable grounds are being used for the carrying on of the practice of pharmacy.
- (4) While on premises entered under this section or under the authority of a search warrant under section 151, an inspector may do any one or more of the following:
- (a) require any person on those premises to produce any records in the possession or under the control of that person relating to the carrying on of the practice of pharmacy (including any records relating to policies or systems in place to ensure

safe and competent delivery of services),

- (b) inspect and take copies of, or extracts or notes from, any such records and, if the inspector considers it necessary to do so for the purpose of obtaining evidence, seize any such records,
 - (c) examine and inspect any apparatus or equipment used or apparently used in the course of the practice of pharmacy,
 - (d) take such photographs, films and audio, video and other recordings as the inspector considers necessary,
 - (e) require any person on those premises to answer questions or otherwise furnish information in relation to the carrying on of the practice of pharmacy,
 - (f) require the owner or occupier of those premises to provide the inspector with such assistance and facilities as is or are reasonably necessary to enable the inspector to exercise the functions of an inspector under this section.
- (5) An inspector is not entitled to enter a part of premises used for residential purposes, except:
- (a) with the consent of the occupier of the part, or
 - (b) under the authority of a search warrant.
- (6) An inspector must, when exercising on any premises any function of the inspector under this section, produce the inspector's certificate of authority to any person apparently in charge of the premises who requests its production.
- (7) A person must not:
- (a) without reasonable excuse, refuse or fail to comply with any requirement made or to answer any question asked by an inspector under the authority of this section, or
 - (b) wilfully delay, hinder or obstruct an inspector in the exercise of the inspector's powers under this section, or
 - (c) furnish an inspector with information knowing it to be false or misleading in a material particular.

Maximum penalty: 5 penalty units.

- (8) If an inspector seizes any records under this section, they may be retained by the inspector until the completion of any proceedings (including proceedings on appeal) in which they may be evidence but only if the person from whom the records were seized is provided, within a reasonable time after the seizure, with a copy of the

records certified by an inspector as a true copy.

- (9) A copy of records provided under subsection (8) is, as evidence, of equal validity to the records of which it is certified to be a copy.

151 Search warrants

- (1) A person appointed under this Act as an inspector may apply to an authorised officer for the issue of a search warrant for premises if the inspector believes on reasonable grounds:
- (a) that a provision of this Act or the regulations is being or has been contravened on the premises, or
 - (b) that there is on the premises evidence of a contravention of a provision of this Act or the regulations.
- (2) A person appointed under this Act as an inspector must not apply for a search warrant unless the person or the Director-General has caused the President of the Board to be notified of the application.
- (3) An authorised officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant:
- (a) to enter and inspect the premises, and
 - (b) to exercise on the premises any function of an inspector under section 150.
- (4) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (5) In this section, **authorised officer** has the same meaning as in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

152 Liability of officers and members

No matter or thing done or omitted to be done by:

- (a) the Board or a member of the Board, or
- (b) the Registrar or any other officer of the Board, or
- (c) the Committee or a member of the Committee, or
- (d) an Impaired Registrants Panel or a member of an Impaired Registrants Panel, or
- (e) the Tribunal or a member of the Tribunal, or
- (f) a nominal complainant,

subjects the member, or the Registrar, or officer, or nominal complainant, personally to any action, liability, claim or demand, if the matter or thing was done in the exercise, or intended exercise, of any of his or her functions or done in good faith for the purpose of executing this or any other Act.

153 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

154 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court.
- (2) Despite anything in any other Act, proceedings for an offence against this Act or the regulations may be instituted within the period of 2 years after the act or omission alleged to constitute the offence.

155 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following:
 - (a) the proceedings of the Board,
 - (b) any kinds of certificates of registration under this Act,
 - (c) the manner in which any notice under this Act may be served,
 - (d) the procedure to be followed at and any matters incidental to the holding of an inquiry or appeal by the Committee or the Tribunal, and matters relating to the custody and use of the seal of the Tribunal,
 - (e) the procedure before an Impaired Registrants Panel,
 - (f) the establishment by the Board of standards for the conduct and marking of

examinations and the remuneration of examiners,

(g) the setting of fees by the Board in relation to examinations conducted by it,

(h) the forms to be used for the purposes of this Act and the regulations,

(i) the manner in which, and the extent to which, a registered pharmacist or other person may advertise pharmacy services,

(j) requiring a pharmacist to disclose specified information to a person to whom the pharmacist provides pharmacy services, including information disclosing any pecuniary interest of the pharmacist in any business or service provider to whom the pharmacist refers such a person,

(k) the inspection by or on behalf of the Board of pharmacy businesses,

(l) the making and keeping of records by registered pharmacists and the obligations of pharmacists to allow release of, access to or inspection of those records.

(3) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

(4) In this section:

pharmacy services has the same meaning as in Part 11.

156 Amendment of other Acts and instruments

Each Act and instrument specified in Schedule 7 is amended as set out in that Schedule.

157 Repeals

(1) The following are repealed:

(a) the *Pharmacy Act 1964*,

(b) the *Pharmacy (Elections) Regulation 1998*,

(c) the *Pharmacy (General) Regulation 1998*.

(2) Different days may be appointed for the commencement of the provisions of subsection (1) for the purpose of repealing, on different days, different provisions of the Act or instruments referred to in the subsection.

158 Savings and transitional provisions

Schedule 8 has effect.

Schedule 1 Procedures for registration as a pharmacist

(Section 12)

Part 1 Application and registration

1 Application fee

- (1) An application for registration is to be accompanied by the fee determined by the Board.
- (2) Different fees may be determined in respect of different types of applications.
- (3) The Board is entitled to refuse to determine an application until the fee is paid.
- (4) The Board may in a particular case waive the requirement for a fee or reduce a fee.

2 How a person is registered

The Board registers a person by recording the person's name in the Register together with such particulars as the Board considers appropriate.

Part 2 Inquiries

3 Board may hold inquiry into eligibility

- (1) The Board may hold an inquiry, in such cases as it considers appropriate, into the eligibility of an applicant to be registered as a pharmacist.
- (2) The inquiry may include an inquiry into the applicant's competence to practise pharmacy.

4 Commission to be notified of inquiry

- (1) The Board must give the Commission at least 7 days' notice in writing before the Board holds an inquiry under this Part.
- (2) The Commission may appear and be heard at an inquiry under this Part.

5 Applicant to be notified of inquiry

The Registrar is to fix a time and place for the holding of an inquiry and is to cause the applicant concerned to be given at least 14 days' notice in writing of the time and place for the inquiry.

6 Powers etc of Board in an inquiry

For the purposes of an inquiry conducted by the Board under this Part, the Board has the same functions that the Tribunal has under this Act. However, proceedings on an inquiry conducted by the Board are not to be open to the public.

7 Applicant entitled to attend

- (1) The person in relation to whom an inquiry is being held is entitled to attend and to be accompanied by an Australian legal practitioner or another adviser, but is not entitled to be represented by an Australian legal practitioner or other adviser.
- (2) This clause does not prevent the Board from proceeding with an inquiry in the absence of the applicant so long as the applicant has been given notice of the inquiry in accordance with clause 5.

8 Provisions concerning witnesses etc

Schedule 6 applies to and in respect of a person or witness appearing or evidence given at an inquiry in the same way as it applies to a person or witness appearing or evidence given before the Tribunal.

9 Constitution of Board for inquiry

- (1) If the Board decides to hold an inquiry, the Board is to appoint 3 persons to conduct the inquiry.
- (2) The persons appointed to conduct the inquiry need not be members of the Board.
- (3) The persons appointed to conduct an inquiry are taken to be members of the Board and to constitute the Board for the purposes of the inquiry and, accordingly, may exercise the functions of the Board in relation to the inquiry.

10 Director-General may intervene at inquiry

The Director-General may intervene in any inquiry before the Board and is entitled to be heard personally or by being represented by an officer of the Department of Health.

11 Preliminary medical examinations of applicants for registration

- (1) Before or during an inquiry under this Part, the Board may require the applicant for registration, by notice in writing given personally or by post to the applicant, to undergo at the Board's expense a medical examination by a registered medical practitioner specified in the notice, at any reasonable time and place so specified.
- (2) A failure by an applicant, without reasonable cause, to comply with such a notice is, for the purposes of this Part (including any inquiry or appeal under this Act) evidence that the applicant does not have sufficient physical and mental capacity to practise pharmacy.

12 Decisions of Board in an inquiry

A decision supported by at least 2 of the 3 persons appointed to conduct an inquiry under this Part on an inquiry, or on any question arising during an inquiry, is a decision of the Board.

13 Details of decision to be supplied to applicant

- (1) The Board must provide a written statement of a decision on an inquiry to the person in relation to whom the inquiry was held and must do so within one month after the decision is made.
- (2) The statement of a decision must:
 - (a) give the reasons for the decision, and
 - (b) include information about any appeal rights the person has under section 19.
- (3) The Board may also provide the statement of a decision to such other persons as the Board thinks fit.

14 Statement need not contain confidential information

- (1) The Board is not required to include confidential information in the statement of a decision. If a statement would be false or misleading if it did not include the confidential information, the Board is not required to provide the statement.
- (2) When confidential information is not included in the statement of a decision provided to a person or the statement is not provided to a person because of subclause (1), the Board must give a confidential information notice to the person.
- (3) A **confidential information notice** is a notice that indicates that confidential information is not included or that the statement will not be provided (as appropriate) and gives the reasons for this. The notice must be in writing and must be given within one month after the decision is made.
- (4) This clause does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.
- (5) In this clause:

confidential information means information that:

- (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared, and
- (b) relates to the personal or business affairs of a person, other than a person to whom the Board is required (or would, but for subclause (1), be required) to provide a written statement of a decision, and
- (c) is information:
 - (i) that was supplied in confidence, or
 - (ii) the publication of which would reveal a trade secret, or

- (iii) that was provided in compliance with a duty imposed by an enactment, or
- (iv) the provision of which by the Board would be in breach of any enactment.

Part 3 Keeping and alteration of Register

15 Board is to keep Register

- (1) The Board is to keep a register, called the Register of Pharmacists for New South Wales.
- (2) The Register is to be kept in such form as the Board determines.
- (3) The Register must be available for inspection by any person:
 - (a) in person at the office of the Board at all reasonable times, and
 - (b) by such other means (such as Internet access) and at such other times as the Board determines.
- (4) A right to inspect the Register does not include a right to access the address of a pharmacist, and the Board must ensure that any such access is restricted to, or to persons authorised by, the Board, the Commission and the Director-General.
- (5) The Board may charge a fee for an inspection of the Register, not exceeding such amount as may be prescribed by the regulations.
- (6) The Board may carry out searches of the Register on a person's behalf and may charge such fee as it determines for the search.

16 Information to be recorded in Register

- (1) The Board is to record in the Register such particulars of the registration of each registered pharmacist as the Board considers appropriate, subject to the regulations. The regulations may make provision for or with respect to the information to be recorded in the Register.
- (2) Any conditions to which a pharmacist's registration is subject must be recorded in the Register.
- (3) The Board may, on application by a registered pharmacist and payment of the prescribed fee, record in the Register any particulars in addition to those required to be recorded in the Register, as the Board approves.
- (4) The Board must make such other recordings in the Register as may be necessary for the purpose of maintaining the Register as an accurate record of the particulars relating to each registered pharmacist.

17 Method of removal from Register

- (1) The name of a registered pharmacist is removed from the Register by the making in the Register of such recording as the Board directs.
- (2) The Board must cause a person to be given notice that the person's name has been removed from the Register unless the person's name was removed in accordance with an order of the Chairperson, a Deputy Chairperson, the Tribunal or the Supreme Court under this Act.

18 Surrender of certificates

- (1) The Board may by notice require a person who has ceased to be registered to furnish to the Board within a time specified in the notice a certificate issued to the person under this Act in respect of that registration.
- (2) A person on whom such a notice has been served must not, without reasonable cause, fail to comply with the requirements of the notice.

Maximum penalty: 10 penalty units.

19 Making a recording in Register—extended meaning

A reference in this Act to the making of a recording in the Register includes a reference to amending, cancelling or deleting a recording in the Register.

Part 4 Annual registration fees

20 Annual registration fee payable

- (1) A registered pharmacist must, on or before a date notified by the Board in writing to the pharmacist at least 1 month in advance, pay to the Board the annual registration fee determined by the Board.
- (2) Different fees may be determined for the purposes of this clause in respect of different classes of registration.

21 Pharmacist's name may be removed from Register for non-payment

- (1) The Board is to notify a registered pharmacist who does not pay the annual registration fee on or before the due date that if the fee is not paid on or before a later date specified in the notification the pharmacist's name will be removed from the Register.
- (2) The Board may cause to be removed from the Register the name of any registered pharmacist who has been so notified and fails to pay the fee on or before that later date.

22 Entitlement to re-registration if fee paid

- (1) A person whose name has been removed from the Register for failure to pay the annual registration fee is entitled to re-registration if the person pays to the Board any unpaid annual registration fee or fees together with any applicable late payment fee.
- (2) A late payment fee is applicable when more than 3 months have elapsed since the person's name was removed from the Register. The late payment fee is such amount as the Board determines.
- (3) The Board may waive payment of a late payment fee in a particular case if the Board thinks it appropriate to do so.
- (4) The entitlement to re-registration is an entitlement to registration on the same terms and subject to the same conditions (if any) as applied to the person's registration immediately before the removal of his or her name from the Register.
- (5) The Board may refuse to register a person under this clause if the Board is of the opinion, following an inquiry under Part 2 of this Schedule, that the person is not competent to practise pharmacy or is not of good character.
- (6) A person registered pursuant to an entitlement to re-registration under this clause is taken to have been so registered on and from the day the person's name was removed from the Register or on and from such later day as the Board determines and notifies to the person.
- (7) An entitlement to re-registration under this clause does not override any other provision of this Act pursuant to which a person's name is authorised or required to be removed from the Register.

23 Board may waive registration fee

The Board may, for such reason as it considers proper, waive the requirement that an annual registration fee be paid by a registered pharmacist in any particular year.

Part 5 Removal from and alteration of Register

24 Removal of person wrongfully registered

- (1) The Board may remove the name of any person from the Register who has been registered by reason of any false or fraudulent representation or declaration or by reason of a mistake.
- (2) A person whose name has been removed from the Register under this clause may appeal to the Tribunal against the Board's decision.
- (3) An appeal must be made within 28 days (or such longer period as the Chairperson may allow in a particular case) after notice of the decision is given to the person. The

appeal is to be lodged with the Registrar who is to refer it to the Tribunal.

- (4) An appeal does not affect the decision with respect to which it is made until the appeal is determined.
- (5) When it determines an appeal, the Tribunal may dismiss the appeal or order that the decision of the Board be revoked and replaced by a different decision made by the Tribunal and specified in the order. The Tribunal may also make such ancillary orders as it thinks proper.
- (6) The Tribunal's decision is taken to be a decision of the Board (but this does not confer a right of appeal under this clause in respect of the Tribunal's decision).

25 Removal on death or at own request

The Board must remove the name of a registered pharmacist from the Register if the pharmacist has died or has requested the Board to remove his or her name.

26 Removal or amendment pursuant to disciplinary order

- (1) The Board must remove the name of a person from the Register if removal of the person's name is required by any order under this Act of the Chairperson, a Deputy Chairperson, the Tribunal or the Supreme Court.
- (2) The Board is to make such recordings in the Register as may be necessary to give effect to any order under this Act of the Board, the Chairperson, a Deputy Chairperson, the Tribunal or the Supreme Court as to the conditions to be imposed on a person's registration.

27 Pharmacist to be notified of action

The Board must give the pharmacist concerned notice of action taken by the Board under this Part.

Schedule 2 Procedures for approval of premises and registration of pecuniary interests

(Section 23)

1 Application for approval of premises or registration of pecuniary interest

- (1) An application for:
 - (a) an approval of premises as suitable for carrying on a pharmacy business by a registered pharmacist, or
 - (b) registration of the holder of a pecuniary interest in a pharmacy business,must be made to the Registrar in a form approved by the Board.

- (2) An application referred to in subclause (1) (a) must be made by the owner (or one of the owners) of the pharmacy business.
- (3) An application referred to in subclause (1) (b) must be made:
 - (a) by the owner (or one of the owners) of the pharmacy business, or
 - (b) if required to be made during any period in which a person referred to in section 25 (4) (a) or (b) assumes the administration of the pharmacy business, by that person, or
 - (c) if required to be made during any period in which a person assumes the administration of the pharmacy business under a security interest granted in respect of the pharmacy business, by that person.
- (4) A person who is the owner of a pharmacy business to be carried on in a professional services room may apply for approval of those premises only if:
 - (a) the person is the owner of a pharmacy business that is carried on in or on approved premises other than a professional services room, and
 - (b) in the application, the person nominates that pharmacy business (or, if the owner of more than one such pharmacy business, nominates one of those businesses) as the business with which the professional services room is associated.
- (5) Any such application is to be accompanied by the fee determined by the Board.
- (6) The Board may require any such application to be verified by a statutory declaration.
- (7) The Board may:
 - (a) reject the application, or
 - (b) approve the premises or register the holder of the pecuniary interest.
- (8) The Board must not approve any premises:
 - (a) that fail to comply with any standard prescribed for them by the regulations, or
 - (b) that are within or partly within, or adjacent or connected to, a supermarket and that the public can directly access from within the premises of the supermarket.
- (9) The regulations may prescribe standards for the purposes of subclause (8) (a) only for or with respect to the safe and competent delivery of pharmacy services.
- (10) The Board may revoke an approval under this section if:
 - (a) the premises concerned are found not to comply with any such standard, or
 - (b) the premises become premises of a type described in subclause (8) (b), or

(c) the Board becomes aware that the premises the subject of the approval are no longer being used for the purposes of carrying on a pharmacy business.

(11) For the purposes of this clause:

supermarket means any retail store, or market, selling food and other domestic goods, whether or not by self-service operation and regardless of size, but does not include a retail store or market:

(a) commonly known as a department store, or

(b) in which food or produce is sold only in a cafe, coffee shop, restaurant or other prepared food or beverage counter.

Note—

The definition of **supermarket** in subclause (11) is based on a definition of that term contained in the [Pharmaceutical Benefits Determination under subsection 99L \(1\) \(No. PB 8 of 2006\)](#), being a determination made under section 99L (1) of the [National Health Act 1953](#) of the Commonwealth.

2 Board is to keep register

(1) The Board is to keep a register containing particulars of approved premises and registered holders of pecuniary interests, to be called the Register of Pharmacies.

(2) The Register is to be kept in such form as the Board determines.

(3) The Register must be available for inspection by any person:

(a) in person at the office of the Board at all reasonable times, and

(b) by such other means (such as Internet access) and at such other times as the Board determines.

(4) The Board may charge a fee for an inspection of the Register, not exceeding such amount as may be prescribed by the regulations.

(5) The Board may make such alterations and additions to the Register as are necessary to ensure that the information recorded in the Register is accurate.

3 Appeals against refusal to approve pharmacy or to register holder of a pecuniary interest

(1) Any person aggrieved by a decision of the Board under clause 1 relating:

(a) to an application for the approval of premises or the registration of the holder of a pecuniary interest, or

(b) to revocation of an approval of premises,

may apply to the Administrative Decisions Tribunal for a review of the decision.

- (2) For the purposes of such a review, an application for an approval or for registration that has not been dealt with by the Board within one month of its having been lodged (or such longer period, determined by the Board and notified to the applicant before the expiry of that one month, as is reasonable in the circumstances) is to be taken to have been rejected.

Schedule 3 Provisions relating to members of Board

(Section 104)

1 Definitions

In this Schedule:

appointed member means a member of the Board appointed by the Governor under section 100 (1) (b).

elected member means a member of the Board elected under section 100 (1) (a).

2 President and Deputy President of Board

- (1) Of the members of the Board:
- (a) one who is a registered pharmacist is to be appointed as President of the Board, and
 - (b) one is to be appointed as Deputy President of the Board.
- (2) Those appointments may be made in and by the instrument of appointment of the relevant member as member or by another instrument executed by the Governor.
- (3) The Governor may remove a member from the office of President or Deputy President.
- (4) A person who is the President or Deputy President vacates office as President or Deputy President if the person:
- (a) is removed from that office by the Governor, or
 - (b) resigns that office by instrument in writing addressed to the Minister, or
 - (c) ceases to be a member.

3 Acting members and acting President

- (1) The Governor may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, has all the functions of the member and is taken to be the member.
- (2) The Deputy President may act in the office of President during the illness or absence of the President, and while so acting has all the functions of the President and is taken

to be the President.

- (3) The Governor may, from time to time, appoint a member to act in the office of President during the illness or absence of both the President and Deputy President, and the member, while so acting, has all the functions of the President and is taken to be the President.
- (4) The Governor may remove any person from any office to which the person was appointed under this clause.
- (5) A person while acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Board may from time to time determine in respect of the person.
- (6) For the purposes of this clause, a vacancy in the office of a member, the President or the Deputy President is taken to be an absence from office of the member, President or Deputy President.

4 Elections of elected members

- (1) An election of elected members is to be held so that the results of the election are declared at least one month before the day that is the fourth anniversary of the commencement of section 98.
- (2) In every fourth calendar year after the calendar year in which the election referred to in subclause (1) is held, an election of elected members is to be held so that the results of the election are declared at least one month before the day that is the anniversary of the commencement of section 98.
- (3) The members elected at an election referred to in this clause assume office as elected members on the day in the calendar year in which the election is held that is the anniversary of the commencement of section 98.

5 Terms of office

- (1) Subject to this Schedule:
 - (a) an appointed member holds office for such period (not exceeding 4 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment, and
 - (b) an elected member holds office for a period of 4 years but is eligible (if otherwise qualified) for re-election.
- (2) A person may not be appointed or elected to serve more than 3 consecutive terms of office as a member of the Board.

6 Remuneration

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Board may from time to time determine in respect of the member.

7 Vacancy in office of member

(1) The office of a member becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not re-appointed (in the case of an appointed member) or re-elected (in the case of an elected member), or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Governor under this clause or under Chapter 5 of the *Public Sector Employment and Management Act 2002*, or
- (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (i) in the case of an elected member or an appointed member referred to in section 100 (2) (b), the member's registration under this Act is suspended or cancelled, or the member's name is for any reason removed from the Register, or
- (j) in the case of an appointed member referred to in section 100 (2) (a), the member ceases to be an officer or employee referred to in that paragraph, or
- (k) in the case of an appointed member referred to in section 100 (2) (d), the member ceases to be an Australian legal practitioner.

(2) The Governor may remove a member from office at any time.

(3) Without affecting the generality of subclause (2), the Governor may remove from office a member who contravenes the provisions of clause 9.

8 Filling of vacancy in office of member

- (1) If the office of an appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.
- (2) If the office of an elected member becomes vacant, a registered pharmacist nominated by the Minister is to be appointed to fill the vacancy. The person appointed is taken to be an elected member.
- (3) A member appointed to fill a casual vacancy under this clause holds office for the balance of the term of office of the member whose office was vacated, and is eligible for re-appointment or re-election to the Board.

9 Disclosure of pecuniary interests

- (1) If:
 - (a) a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member 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.
- (2) A disclosure by a member at a meeting of the Board that the member:
 - (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this clause.
- (3) Particulars of any disclosure made under this clause are to be recorded by the Board in a book kept for the purpose and that book is to be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:
 - (a) be present during any deliberation of the Board with respect to the matter, or
 - (b) take part in any decision of the Board with respect to the matter.

- (5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a pecuniary interest in a matter to which the disclosure relates must not:
 - (a) be present during any deliberation of the Board for the purpose of making the determination, or
 - (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.
- (7) This clause does not apply to or in respect of an interest of a member in a matter that arises merely because the member is a pharmacist.
- (8) A reference in this clause to a meeting of the Board includes a reference to a meeting of a committee of the Board.

10 Effect of certain other Acts

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a member.
- (2) If by or under any other Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,that provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

Schedule 4 Provisions relating to procedure of Board

(Section 104)

1 First meeting of Board

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

2 General procedure

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

3 Quorum

The quorum for a meeting of the Board is 6 members.

4 Presiding member

- (1) The President or, in the absence of the President, the Deputy President or, in the absence of both of them, another member of the Board elected to chair the meeting by the members present, is to preside at a meeting of the Board.
- (2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

5 Voting

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

6 Minutes

The Board must cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.

7 Proof of certain matters not required

In any legal proceedings, proof is not required (until evidence is given to the contrary) of:

- (a) the constitution of the Board, or
- (b) any resolution of the Board, or
- (c) the appointment of, or the holding of office by, any member of the Board, or
- (d) the presence of a quorum at any meeting of the Board.

Schedule 5 Provisions relating to Committee

(Section 108)

Part 1 Members

1 Chairperson of Committee

The member referred to in section 107 (2) (a) is to be the Chairperson of the Committee.

2 Term of office

Subject to this Schedule, a member of the Committee holds office for such period, not exceeding 4 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

3 Remuneration

A member of the Committee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Board may from time to time determine in respect of the member.

4 Filling of vacancy in office of member

If the office of any member of the Committee becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

5 Casual vacancies

(1) A member of the Committee is to be taken to have vacated office if the member:

- (a) dies, or
- (b) absents himself or herself from 4 consecutive meetings of the Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings, or
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (d) becomes a mentally incapacitated person, or
- (e) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (f) resigns the office by instrument in writing addressed to the Minister, or
- (g) is removed from office by the Minister under subclause (3).

(2) Without limiting the generality of subclause (1), a member who is appointed under section 107 (2) (a) or (b) and who ceases to be a registered pharmacist is to be taken to have vacated office.

(3) The Minister may remove a member from office.

Part 2 Procedure of Committee

6 General procedure

The procedure for the calling of meetings of the Committee and for the conduct of

business at those meetings is, subject to this Act, to be as determined by the Committee.

7 Quorum

The quorum for a meeting of the Committee is 3 members.

8 Voting

A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present is the decision of the Committee.

9 Presiding member

- (1) The Chairperson of the Committee or, in the absence of the Chairperson, another member of the Committee elected to chair the meeting by the members present, is to preside at a meeting of the Committee.
- (2) The person presiding at any meeting of the Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Schedule 6 Proceedings before Tribunal

(Section 124)

1 Proceedings generally

In proceedings before it, the Tribunal is not bound to observe the rules of law governing the admission of evidence, but may inform itself of any matter in such manner as it thinks fit.

2 Power to summon witnesses and take evidence

- (1) The Chairperson or Deputy Chairperson may summon a person to appear in proceedings before the Tribunal, to give evidence and to produce such documents (if any) as are referred to in the summons.
- (2) The person presiding at the proceedings may require a person appearing in the proceedings to produce a document.
- (3) The Tribunal may, in proceedings before it, take evidence on oath or affirmation and, for that purpose, a member of the Tribunal:
 - (a) may require a person appearing in the proceedings to give evidence either to take an oath or to make an affirmation in a form approved by the person presiding, and
 - (b) may administer an oath to or take an affirmation from a person so appearing in the proceedings.
- (4) A person served with a summons to appear in any such proceedings and to give evidence must not, without reasonable excuse:

- (a) fail to attend as required by the summons, or
 - (b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Tribunal.
- (5) A person appearing in proceedings to give evidence must not, without reasonable excuse:
- (a) when required to be sworn or to affirm—fail to comply with the requirement, or
 - (b) fail to answer a question that the person is required to answer by the person presiding, or
 - (c) fail to produce a document that the person is required to produce by this clause.

Maximum penalty: 20 penalty units.

3 Power to obtain documents

- (1) A member of the Tribunal may, by notice in writing served on a person, require the person:
- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Tribunal or a person authorised by the Tribunal in that behalf, and
 - (b) to produce, at that time and place, to the person so specified a document specified in the notice.
- (2) A person who fails, without reasonable excuse, to comply with a notice served on the person under this clause is guilty of an offence.

Maximum penalty: 20 penalty units.

4 Evidence of other proceedings

The Tribunal may receive and admit on production, as evidence in any proceedings, such of the following as the Tribunal considers relevant to the proceedings:

- (a) the judgment and findings of any court (whether civil or criminal and whether or not of New South Wales) or tribunal,
- (b) the verdict or findings of a jury of any such court,
- (c) a certificate of the conviction of or the making of a criminal finding in respect of any person,
- (d) a transcript of the depositions or of shorthand notes, duly certified by the Registrar or registrar of the court or tribunal as correct, of the evidence of witnesses taken in any such court or tribunal.

5 Additional complaints

- (1) The Tribunal may in proceedings before it deal with one or more complaints about a registered pharmacist.
- (2) If, during any such proceedings, it appears to the Tribunal that, having regard to any matters that have arisen, another complaint could have been made against the pharmacist concerned:
 - (a) whether instead of or in addition to the complaint that was made, and
 - (b) whether or not by the same complainant,the Tribunal may take that other complaint to have been referred to it and may deal with it in the same proceedings.
- (3) If another complaint is taken to have been referred to the Tribunal under subclause (2), the complaint may be dealt with after such an adjournment (if any) as is, in the opinion of the Tribunal, just and equitable in the circumstances.

6 Release of information

- (1) The person presiding in proceedings before the Tribunal may, if the person presiding thinks it appropriate in the particular circumstances of the case (and whether or not on the request of a complainant, the pharmacist concerned or any other person):
 - (a) direct that the name of any witness is not to be disclosed in the proceedings, or
 - (b) direct that all or any of the following matters are not to be published:
 - (i) the name and address of any witness,
 - (ii) the name and address of a complainant,
 - (iii) the name and address of a pharmacist,
 - (iv) any specified evidence,
 - (v) the subject-matter of a complaint.
- (2) A direction may be amended or revoked at any time by the person presiding.
- (3) A direction may be given before or during proceedings, but must not be given before the proceedings unless notice is given of the time and place appointed by the person presiding for consideration of the matter to:
 - (a) a person who requested the direction, and
 - (b) the complainant or the pharmacist concerned, as appropriate, and
 - (c) such other persons as the person presiding thinks fit.

(4) A person who contravenes a direction given under this clause is guilty of an offence.

Maximum penalty: 150 penalty units in the case of a body corporate and 20 penalty units in any other case.

7 Authentication of documents by Tribunal

Every document requiring authentication by the Tribunal may be sufficiently authenticated without the seal of the Tribunal, if signed by the Chairperson or by a member of the Tribunal authorised to do so by the Chairperson.

8 Nominal complainant

(1) In any proceedings before the Tribunal, a person appointed by the Commission:

- (a) may act as nominal complainant in place of the actual complainant, and
- (b) when so acting, is, for the purposes of this Act and the regulations, to be taken to be the person who made the complaint.

(2) A reference in this Act to a complainant includes a reference to a nominal complainant.

9 Intervention by Director-General and Commission

(1) Without limiting the operation of clause 8, the Director-General personally (or an officer of the Department of Health appointed by the Director-General) or a person appointed by the Commission may intervene, and has a right to be heard, in any proceedings before the Tribunal.

(2) The Director-General and the Commission may be represented by an Australian legal practitioner.

10 Expedition of inquiries and appeals

(1) It is the duty of the Tribunal to hear inquiries and appeals under this Act and to determine those inquiries and appeals expeditiously.

(2) Without affecting the generality of subclause (1), the Tribunal may postpone or adjourn proceedings before it as it thinks fit.

11 Evidentiary certificate

(1) A certificate, purporting to have been signed by the Registrar, to the effect that:

- (a) a person specified in the certificate was or was not a registered pharmacist at a time or during a period so specified, or
- (b) the name of a person specified in the certificate was removed from the Register at a time so specified, or

- (c) the registration of a person specified in the certificate was suspended from a time so specified and for a period so specified, or
- (d) a condition, particulars of which are set out in the certificate, was, at a time or during a period so specified, imposed on the registration of a person so specified or revoked or not in force,

is, without proof of the signature of the person by whom the certificate purports to have been signed, to be received by the Tribunal and all courts as evidence of that fact.

(2) A certificate purporting to have been signed by the Registrar to the effect that:

- (a) a person specified in the certificate was or was not registered under clause 1 of Schedule 2 as the holder of a pecuniary interest so specified at a time or during a period so specified, or
- (b) premises specified in the certificate were or were not, at a time or during a period so specified, approved by the Board under clause 1 of Schedule 2,

is, without proof of the signature of the person by whom the certificate purports to have been signed, to be received by the Tribunal and all courts as evidence of that fact.

12 Certain complaints may not be heard

(1) The Tribunal may decide not to conduct an inquiry, or at any time to terminate an inquiry or appeal, if:

- (a) a complainant fails to comply with a requirement made of the complainant by the Tribunal, or
- (b) the person about whom the complaint is made ceases to be a registered pharmacist.

(2) The Tribunal must not conduct or continue any inquiry or any appeal if the pharmacist concerned dies.

13 Tribunal can award costs

(1) The Tribunal may order the complainant, if any, the registered pharmacist concerned, or any other person entitled to appear (whether as of right or because leave to appear has been granted) at any inquiry or appeal before the Tribunal to pay such costs to such person as the Tribunal may determine.

(2) When an order for costs has taken effect, the Tribunal is, on application by the person to whom the costs have been awarded, to issue a certificate setting out the terms of the order and stating that the order has taken effect.

- (3) The person in whose favour costs are awarded may file the certificate in the District Court, together with an affidavit by the person as to the amount of the costs unpaid, and the Registrar of the District Court is to enter judgment for the amount unpaid together with any fees paid for filing the certificate.

Schedule 7 Amendment of other Acts and instruments

(Section 156)

7.1 Casino Control Regulation 2001

Schedule 6 Applied provisions of [Liquor Act 1982](#) as modified

Omit "[Pharmacy Act 1964](#)" from section 6 (b).

Insert instead "[Pharmacy Practice Act 2006](#)".

7.2 Co-operatives Act 1992 No 18

Section 42 Power to carry on business as pharmacist in open shop

Omit the section.

7.3 Drug Misuse and Trafficking Act 1985 No 226

Section 3 Definitions

Omit the definition of **pharmacist** from section 3 (1).

Insert instead:

pharmacist means a person registered as a pharmacist under the [Pharmacy Practice Act 2006](#).

7.4 Freedom of Information Regulation 2005

Schedule 1 Principal offices

Omit "Professional Standards Committee constituted under the [Pharmacy Act 1964](#)" from column 1 (Public authority).

Insert instead "Pharmacy Care Assessment Committee constituted by the [Pharmacy Practice Act 2006](#)".

7.5 Health Care Complaints Act 1993 No 105

Section 4 Definitions

Omit "[Pharmacy Act 1964](#)" from the definition of **health registration Act**.

Insert instead:

Pharmacy Practice Act 2006

7.6 Health Professionals (Special Events Exemption) Act 1997 No 90

Section 3 Definitions

Omit "*Pharmacy Act 1964*" from the definition of **Health Registration Act**.

Insert instead:

Pharmacy Practice Act 2006

7.7 Health Services Act 1997 No 154

Section 117 Duty to report certain criminal conduct and disciplinary matters

Omit "*Pharmacy Act 1964*" from paragraph (j) of the definition of **relevant health professional registration Act** in section 117 (3).

Insert instead "*Pharmacy Practice Act 2006*".

7.8 Interpretation Act 1987 No 15

Section 21 Meaning of commonly used words and expressions

Insert in alphabetical order in section 21 (1):

registered pharmacist and each of the following expressions means a pharmacist registered under the *Pharmacy Practice Act 2006*:

- (a) pharmacist,
- (b) legally (or duly) qualified pharmacist,
- (c) qualified pharmacist.

7.9 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 2 Search warrants under other Acts

Insert in alphabetical order:

Pharmacy Practice Act 2006, section 151

7.10 Licensing and Registration (Uniform Procedures) Act 2002 No 28

Schedule 3 Registration to which Part 4 of Act applies

Insert in alphabetical order of Acts:

Pharmacy Practice Act 2006

section 11, full registration as a pharmacist

7.11 Liquor Act 1982 No 147

Section 6 Application of Act

Omit section 6 (1) (d) (iv). Insert instead:

(iv) a person registered as a pharmacist under the *Pharmacy Practice Act 2006*,

7.12 Pharmacy Act 1964 No 48

[1] Section 3 Definitions

Insert in appropriate order in section 3 (1):

Pecuniary interest means a direct or indirect monetary or financial interest and includes:

- (a) a proprietary interest (including a proprietary interest as a sole proprietor, partner, director, member or shareholder, or trustee or beneficiary), and
- (b) any interest that is prescribed by the regulations as constituting a pecuniary interest for the purposes of this Act,

but does not include the following:

- (c) (except in clause 6 of Schedule 1) any interest in a business of a pharmacist that a person has by virtue of the person being:
 - (i) a member of a friendly or other society that has a pecuniary interest in such a business permitted by section 27A, or
 - (ii) a member of a listed corporation within the meaning of the *Corporations Act 2001* of the Commonwealth that carries on or has a pecuniary interest in such a business under section 25 (2) (c), or
 - (iii) a member of a body corporate (other than a listed corporation referred to in subparagraph (ii)) that carries on or has a pecuniary interest in such a business under section 25 (2) (c), but only if the person was a member of the body

corporate before the commencement of this definition,

- (d) any interest that is prescribed by the regulations as not constituting a pecuniary interest for the purposes of this Act.

[2] Section 3 (1)

Omit “statutory health corporation” from the definition of **Pharmacy**.

Insert instead “public health organisation”.

[3] Section 13 Qualifications for registration—New South Wales graduates

Omit “of at least three years’ duration” from section 13 (1) (a).

[4] Section 40A

Insert after section 40:

40A Savings provision regarding new definition of “Pecuniary interest”

Section 25 does not prevent a person who lawfully had a pecuniary interest in a business of a pharmacist before the insertion of the definition of **Pecuniary interest** into section 3 by the *Pharmacy Practice Act 2006* from continuing to have that interest after the commencement of that definition.

7.13 Poisons and Therapeutic Goods Act 1966 No 31

[1] Section 4 Definitions

Omit the definitions of **Pharmacist** and **Pharmacy trainee** from section 4 (1).

Insert instead:

Pharmacist means a person registered as a pharmacist under the *Pharmacy Practice Act 2006*.

[2] Section 36AA

Insert before section 36A:

36AA Medicines to be dispensed by pharmacists

- (1) A person, other than a pharmacist or a person acting under the personal supervision of a pharmacist, must not dispense or compound any substance specified in the Poisons List on the prescription of a medical practitioner, a nurse practitioner, a midwife practitioner, an optometrist, a dentist or a veterinary

practitioner.

Maximum penalty: 50 penalty units.

(2) Subsection (1) does not prevent:

- (a) a medical practitioner, a nurse practitioner, a midwife practitioner, an optometrist, a dentist or a veterinary practitioner from supplying a substance to which that subsection refers in the ordinary course of his or her profession, or
- (b) a person from supplying a substance to which that subsection refers under, and in accordance with the conditions of, an authority issued under this Act or the regulations.

7.14 Poisons and Therapeutic Goods Regulation 2002

[1] Clause 3 Definitions

Omit the definition of **pharmacist** from clause 3 (1).

[2] Clause 3 (1)

Omit “section 24A of the *Pharmacy Act 1964*” wherever occurring in the definitions of **retail pharmacist** and **retail pharmacy**.

Insert instead “clause 1 of Schedule 2 to the *Pharmacy Practice Act 2006*”.

7.15 Privacy Code of Practice (General) 2003

Schedule 2 Modification of Part 6 of the Act

Omit “section 12 of the *Pharmacy Act 1964*” from item 15 in Column 1.

Insert instead “clause 15 of Schedule 1 to the *Pharmacy Practice Act 2006*”.

7.16 Private Hospitals Regulation 1996

Schedule 1 Licensing standards for all private hospitals

Omit clause 26 (c). Insert instead:

- (c) the dispensary must comply with the standards prescribed by the regulations under the *Pharmacy Practice Act 2006* for or with respect to the safe and competent delivery of pharmacy services,

7.17 Public Health Act 1991 No 10

Section 10AH Certain foot care services not to be provided by unregistered persons

Omit section 10AH (3) (i). Insert instead:

- (i) a registered pharmacist.

7.18 Public Health (Skin Penetration) Regulation 2000

Clause 4 Skin penetration procedure powers of environmental health officers to enter and inspect premises

Omit clause 4 (2) (a) (vi). Insert instead:

- (vi) *Pharmacy Practice Act 2006*,

7.19 Shops and Industries (Trading) Regulation 2002

Schedule 1 Trades taken to be usually carried on in certain shops

Omit "*Pharmacy Act 1964*" from the matter relating to chemists' shops in column 2 (Kinds of goods) of Schedule 1.

Insert instead "*Pharmacy Practice Act 2006*".

7.20 Stock Medicines Act 1989 No 182

Section 3 Definitions

Omit "under the *Pharmacy Act 1964*" from the definition of **pharmacist** in section 3 (1).

Insert instead "as a pharmacist under the *Pharmacy Practice Act 2006*".

Schedule 8 Savings and transitional provisions

(Section 158)

Part 1 Preliminary

1 Definitions

In this Schedule:

new Board means the Pharmacy Board constituted by this Act.

old Board means the Pharmacy Board of New South Wales constituted by the 1964 Act.

the 1964 Act means the *Pharmacy Act 1964*.

2 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

 this Act

Health Legislation Amendment (Unregistered Health Practitioners) Act 2006 (but only to the extent that it amends this Act)

- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or
 - (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 date of that publication.

Part 2 Provisions consequent on enactment of this Act

3 General

The provisions of this Part are subject to any regulations made under clause 2.

4 Members of old Board

- (1) A person who, immediately before the repeal of the 1964 Act, held office as a member of the old Board:
 - (a) ceases to hold office as such on that repeal, and
 - (b) is eligible (if otherwise qualified) to be appointed or elected as a member of the new Board.
- (2) Despite subclause (1), a person who, immediately before the commencement of section 98, held office as an elected member of the old Board commences a new term of office for a term of 4 years as an elected member of the new Board on the commencement of that section.
- (3) A person who ceases to hold office as a member of the old Board because of the operation of this Act is not entitled to be paid any remuneration or compensation because of ceasing to hold that office.

- (4) Nothing in subclause (2) prevents a member who holds office as an elected member of the new Board as a result of the operation of that subclause from being removed from office under clause 7 of Schedule 3.

5 Continuity of Board

Unless the regulations otherwise provide, anything done by or in relation to the old Board and having effect immediately before the dissolution of the old Board is taken to have been done by or in relation to the new Board.

6 Appointments and other action before commencement

For the purpose only of enabling the new Board to be constituted in accordance with this Act on or after (but not before) the commencement of section 98 (Constitution of Board), appointments may be made under this Act, and anything else may be done, before that commencement, as if the whole of this Act commenced on the date of assent, but so that no appointment as a member of the new Board as so constituted takes effect before the commencement of section 98.

7 Register

As soon as practicable after the commencement of this clause, the new Board is to compile the Register from the relevant information and particulars entered in the Register of Pharmacists kept under the 1964 Act in respect of persons registered as pharmacists immediately before that commencement.

8 Registration as pharmacist

- (1) A person who was a registered pharmacist under the 1964 Act immediately before the commencement of this clause is on that commencement taken to be registered under this Act. Registration under this Act is subject to the same conditions (if any) as the person's registration under the 1964 Act was subject immediately before that commencement.
- (2) A certificate of provisional registration as a pharmacist in force under the 1964 Act immediately before the commencement of this clause is taken, on that commencement, to have been granted under this Act.

9 Fees

A fee paid or which remains unpaid under a provision of the 1964 Act immediately before its repeal is taken, on commencement of the relevant provision of this Act, to have been paid or to remain unpaid under the provision of this Act that corresponds to that provision and is taken to have been so paid or to so remain unpaid for or in relation to the same period as that which applied to the fee under the 1964 Act.

10 Applications for registration

An application for registration as a pharmacist under the 1964 Act which had not been determined by the old Board before the repeal of that Act is taken to be an application for registration under this Act.

11 Electronic applications for registration

- (1) Despite Part 4 of the *Licensing and Registration (Uniform Procedures) Act 2002* (as applied by section 12 of this Act), an application referred to in section 68 of that Act may not be made by means of electronic communication.
- (2) Subclause (1) does not limit the effect of the *Electronic Transactions Act 2000*.
- (3) This clause ceases to have effect on a day to be appointed by proclamation.

12 Appeals to District Court

- (1) An appeal to the District Court under section 22 or 24B of the 1964 Act that was pending immediately before the repeal of that Act is to be continued and disposed of as if, except as provided by subclause (2), this Act had not been enacted.
- (2) The decision of the Court on any such appeal is final, and binding on the new Board and the appellant and for the purposes of this Act is taken to be the final decision of the new Board.

13 Complaints

- (1) A complaint made to the old Board concerning the conduct of a registered pharmacist under the 1964 Act and pending immediately before the repeal of that Act is, to the extent that the conduct concerned could be the subject of a complaint under this Act, to be dealt with as a complaint under this Act, except as provided by this clause.
- (2) If a complaint pending under the 1964 Act on the commencement of this clause is the subject of an inquiry by a Professional Standards Committee or an inquiry by or appeal before the old Board under that Act immediately before that commencement:
 - (a) the complaint or appeal is to continue to be dealt with and determined under the 1964 Act as if the 1964 Act had not been repealed, and
 - (b) any finding, order, direction, decision or determination arising from or in connection with the determination of the complaint or appeal under the 1964 Act has effect for the purposes of the corresponding provision of this Act, and
 - (c) the 1964 Act continues to apply as if it had not been repealed for the purposes of any appeal against any such order, direction, decision or determination.
- (3) This clause applies for the purposes of this Act and for the purposes of the *Health Care Complaints Act 1993* (including any conciliation under that Act) in its application

to any complaint or investigation pending under the 1964 Act immediately before the repeal of the 1964 Act.

14 Complaints relating to previous conduct

A complaint or investigation may be made under this Act with respect to conduct or any other matter or thing that occurred before, or partly before and partly after, the commencement of the provisions of this Act under which the complaint or investigation is made.

15 Continuity of disciplinary action under 1964 Act

Any finding, order, direction, decision or determination under Part 4 (Complaints and disciplinary proceedings) of the 1964 Act is, to the extent that it had any operation immediately before the commencement of this clause, taken to have been made under the corresponding provision of this Act and is to be given effect to accordingly.

16 Pharmacy Education and Research Account

Money standing to the credit of the Pharmacy Education and Research Account under the 1964 Act immediately before the commencement of this clause is to be paid to the credit of the Pharmacy Education and Research Account under this Act.

17 Construction of certain references

Unless the regulations otherwise provide, on and from the commencement of this clause, a reference in any other Act, in any instrument made under any Act or in any other instrument of any kind:

- (a) to the old Board is to be read as a reference to the new Board, and
- (b) to the registrar under the 1964 Act is to be read as a reference to the Registrar under this Act, and
- (c) to the Register of Pharmacists referred to in section 12 of the 1964 Act is to be read as a reference to the Register under this Act, and
- (d) to the registration of a person as a registered pharmacist under the 1964 Act is to be read as a reference to the registration of the person as a pharmacist under this Act, and
- (e) to the Register of Pharmacies referred to in section 24A of the 1964 Act is to be read as a reference to the Register of Pharmacies kept under this Act, and
- (f) to the registration of a person as a registered owner of a pharmacy business under the 1964 Act is to be read as a reference to the registration of the person as holder of such a pecuniary interest under this Act, and
- (g) to the registration of premises as registered approved premises under the 1964 Act is

to be read as a reference to the registration of the premises as approved premises under this Act.

18 Register of Pharmacies and approval of premises

- (1) As soon as practicable after the commencement of this clause, the new Board is to compile the Register of Pharmacies from the relevant particulars entered in the Register of Pharmacies kept under the 1964 Act in respect of premises registered as approved premises and persons registered as owners immediately before that commencement.
- (2) An approval of premises (including premises of a kind referred to in clause 1 (8) (b) of Schedule 2) granted under section 24A of the 1964 Act and in force immediately before the repeal of that Act is taken to be an approval granted under clause 1 of Schedule 2 to this Act.
- (3) Clause 1 (10) (b) of Schedule 2 does not apply to an approval to which subclause (2) of this clause applies of premises of a kind referred to in clause 1 (8) (b) of Schedule 2.
- (4) A person who is a registered owner of a pharmacy business under the 1964 Act immediately before the commencement of this clause is on that commencement taken to be the registered holder of such a pecuniary interest under this Act.
- (5) Premises that are registered premises under the 1964 Act immediately before the commencement of this clause are on that commencement taken to be registered premises under this Act.
- (6) An application for approval of premises as suitable for carrying on a pharmacy business or for the registration of an owner of such a business under the 1964 Act which had not been determined by the old Board before the repeal of that Act is taken to be an application for approval of premises or for the registration of the holder of a pecuniary interest in a pharmacy business under this Act.

19 Requirement to notify pecuniary interests in pharmacy businesses

- (1) For the purposes of satisfying section 24 (1), any period of notice given under clause 15 (1) of the *Pharmacy (General) Regulation 1998*:
 - (a) less than 14 days before the commencement of section 24, or
 - (b) of an intended acquisition of a pecuniary interest that occurs on or after the commencement of section 24,is taken to be a period of notice given under section 24 (1) in relation to that acquisition.
- (2) For the purposes of satisfying section 24 (2), an acquisition of a pecuniary interest in a pharmacy business that occurred, but in respect of which an intention to acquire was

not notified to the old Board, before the commencement of section 24 must be notified within 28 days of the day that section commences.

- (3) For the purposes of satisfying section 24 (3), a disposal of a pecuniary interest in a pharmacy business that occurred, but was not notified to the old Board, before the commencement of section 24 must be notified within 28 days of the day that section commences.
- (4) Notice duly given under clause 15 (1) or (2) of the *Pharmacy (General) Regulation 1998* is taken to be notice duly given under section 24 (1) and (3), respectively.

20 Savings provision regarding definition of “pecuniary interest”

Section 25 does not prevent a person who lawfully had a pecuniary interest in a pharmacy business before the insertion of the definition of **Pecuniary interest** into section 3 of the *Pharmacy Act 1964* by Schedule 7.12 [1] to this Act from continuing to have that interest.

Part 3 Provisions consequent on enactment of Health Legislation Amendment (Unregistered Health Practitioners) Act 2006

21 Definition

In this Part:

amending Act means the *Health Legislation Amendment (Unregistered Health Practitioners) Act 2006*.

22 Prohibition orders

The Tribunal may make a prohibition order under section 66 (3A) with respect to either or both of the following:

- (a) conduct or any other matter or thing that occurred before, or partly before and partly after, that subsection was inserted by the amending Act,
- (b) a complaint that has been made but not fully dealt with before that subsection was inserted by the amending Act.

23 Decisions of the Tribunal

Section 128 (4), as substituted by the amending Act, applies only in respect of a statement of a decision that is given after the commencement of that subsection.

24 Cancelled registrations to be publicly available

Section 144A, as inserted by the amending Act, extends to a person who was, immediately before the commencement of that section, subject to an order of the Tribunal or the Supreme Court that the person’s registration be cancelled or that the person not be re-registered.