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TASMANIA



PHARMACY CONTROL ACT 2001

No. 90 of 2001

An Act to provide for the regulation of pharmacy business ownership, the registration of pharmacy premises and for related purposes

[Royal Assent 17 December 2001]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

Part 1 – Preliminary

1. Short title

This Act may be cited as the *Pharmacy Control Act 2001*.

2. Commencement

Whole(Proclaim) This Act commences on a day to be proclaimed.

3. Interpretation

In this Act, unless the contrary intention appears –

"applicant" means a person who submits an application to the Authority;

"approved" means approved by the Authority;

"Authority" means the Tasmanian Pharmacy Authority established under section 6;

"certificate of registration" means a certificate issued by the Authority under section 71F;

"chairperson" means chairperson of the Authority;

"committee" means a committee established by the Authority under section 13;

"eligibility certificate" means an eligibility certificate issued by the Authority under section 61C;

"financial year" means the 12 month period ending on 30 June in any year;

"functions" includes duties;

"guidelines" means guidelines issued by the Authority;

"Health Complaints Commissioner" means the person appointed as Health Complaints Commissioner under the *Health Complaints Act 1995*;

"inspection" means a routine inspection under section 58 or other inspections under section 59;

"member" means member of the Authority and includes the chairperson;

"notice" means notice in writing;

"pharmacist" means a person who is registered under the Health Practitioner National Law (Tasmania) in the pharmacy profession;

"pharmacy business" means a business that involves the compounding and dispensing of medicines and drugs on the prescription of medical practitioners and other health professionals;

"pharmacy business premises" means a shop or other premises where a pharmacy business is carried on;

"pharmacy premises" means a place in or from which a person engages in the practice of pharmacy;

"register" means the Pharmacy Business Premises Register kept under section 71L;

"registered" means registered under this Act;

"registration board" means a National Board within the meaning of the Health Practitioner Regulation National Law (Tasmania);

"report" includes publish;

"responsible occupier", of premises, means a person who is, for the time being, providing pharmacy services in or from those premises, other than a person who works under the control and supervision of a pharmacist at those premises;

"responsible tribunal" means the Health Professions Tribunal established under the *Health Professions Tribunal Act 2010*;

"Secretary" means Secretary of the Department;

"specified" means specified in writing by the Authority.

4. Act binds Crown

This Act, other than Part 6A, binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

5. Application of Act

Nothing in this Act extends to or affects the business of manufacturing chemists or wholesale chemists.

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Part 2 – Tasmanian Pharmacy Authority

Division 1 – The Authority

6. Establishment of Authority

- (1) The Tasmanian Pharmacy Authority is established.
- (2) The Authority –
 - (a) is a body corporate with perpetual succession; and
 - (b) may acquire, hold, dispose of and otherwise deal with property; and
 - (c) may sue and be sued in its corporate name.

7. Membership of Authority

- (1) The Authority consists of –
 - (a) two pharmacists nominated by the Secretary; and
 - (b) one person, who is not a pharmacist, nominated by the Secretary to represent the interests of the consumers.
- (2) The members are appointed by the Minister.
- (3) The Secretary, on the recommendation of the members, must appoint a member as chairperson.

- (4) For the purpose of making nominations under subsection (1)(a), the Secretary may –
- (a) request any body that purports to represent the professional interests of pharmacists to provide the Secretary within 28 days of the date of the request with a list of names; and
 - (b) accept a recommendation from any body that purports to represent the professional interests of pharmacists or from any pharmacist; and
 - (c) accept an expression of interest from any pharmacist.
- (6) Schedule 1 has effect with respect to membership of the Authority.
- (7) Schedule 2 has effect with respect to meetings of the Authority.

Division 2 – Functions, powers and objectives

8. Functions of Authority

The Authority has the following functions:

- (a) to administer a scheme of registration of pharmacy business premises;
- (b) to approve the ownership of and interests in pharmacy businesses;
- (c) to prosecute offences against this Act;
- (d) to advise the Minister on matters relating to this Act;

- (e) such other functions as are imposed on the Authority by this or any other Act or as may be prescribed.

9. Powers of Authority

The Authority has power to do all things necessary or convenient to be done in connection with the performance of its functions and, in particular, has power to –

- (a) share information with pharmacists registration authorities and other relevant bodies; and
- (b) publish and distribute information about this Act to pharmacists and other interested persons; and
- (c) do anything incidental to any of its powers.

10. Delegation

The Authority may delegate any of its functions or powers, other than this power of delegation, to a member of the Authority, the Registrar or a committee.

11. Guidelines

- (1) The Authority may issue guidelines from time to time for the purpose of providing practical guidance and direction to a person who holds a certificate of registration or a responsible occupier in relation to –

- (a) the matters specified in section 71E(3);
 - (b) any other prescribed matter.
- (2) Guidelines issued under subsection (1) are not statutory rules within the meaning of the *Rules Publication Act 1953*.

12. Compliance with Treasurer's Instructions

Treasurer's instructions issued under the *Financial Management and Audit Act 1990* in relation to procurement and disposal apply to the Authority as if the Authority were an Agency within the meaning of that Act.

Division 3 – Miscellaneous

13. Committees

- (1) The Authority may establish such committees as it considers necessary for the purpose of assisting it in the performance of any of its functions or the exercise of any of its powers or advising it on any matter relating to this Act.
- (2) Except as otherwise provided in this Act –
 - (a) a committee comprises such persons as the Authority appoints; and
 - (b) a member of the Authority may be a member of a committee.
- (3) A member of a committee is entitled to be paid such remuneration, including travelling and subsistence allowances, as the Authority may

from time to time determine and any such remuneration is to be paid by the Authority.

- (4) The Authority may give written directions to a committee and the committee must comply with any such directions.
- (5) A committee must keep accurate minutes of its proceedings.
- (6) Except as otherwise provided in this Act, a committee may regulate its own proceedings.

14. Registrar

- (1) The Authority must appoint a Registrar.
- (2) The Registrar may be –
 - (a) an independent contractor to the Authority; or
 - (b) a person whose services are made available to the Authority pursuant to an arrangement under section 15.
- (3) The Registrar is to act as secretary to the Authority.

15. Use by Authority of services of persons

- (1) The Authority may arrange with the Head of an Agency within the meaning of the *State Service Act 2000* for the services of persons employed in that Agency to be made available to the Authority.

- (2) The Authority may arrange with any other person for the services of persons employed by that person to be made available to the Authority.
- (3) The cost of making a person's services available to the Authority in accordance with this section is to be met by the Authority.

16. Protection from liability

- (1) A person engaged in the administration of this Act does not incur any personal liability for an act done or purported or omitted to be done by the person in good faith for that purpose.
- (2) A person who makes a complaint in good faith does not incur any personal liability in respect of any loss, damage or injury suffered by another person as a result of the making of the complaint.

Division 4 – Finance and reports

17. Funds of Authority

- (1) The Authority is to keep such authorised deposit-taking institution accounts as it considers necessary.
- (2) The funds of the Authority are to be paid to the credit of such of the accounts referred to in subsection (1) as the Authority determines and are to consist of –

- (a) money received by way of fees, fines, penalties and charges paid to or recovered by the Authority; and
 - (b) any money borrowed by the Authority; and
 - (c) any money received by the Authority from other sources.
- (3) The funds of the Authority are to be applied –
- (a) in payment or discharge of the expenses, charges and obligations incurred or undertaken by the Authority in the performance of its functions and the exercise of its powers; and
 - (b) in the payment of any remuneration payable by the Authority.
- (4) The Authority may invest any money that it is holding in any manner in which a trustee is authorised by law to invest trust funds.

18. Audit

- (1) The accounts and records of the Authority are subject to the *Audit Act 2008*.
- (2) The Authority must pay into the Consolidated Fund such amounts as the Treasurer may require towards the reasonable costs and expenses of audits conducted pursuant to this section.

19. Accounts

The Authority must keep proper accounts and records of its financial affairs and, not later than 15 August after the end of each financial year, prepare a statement of accounts in a form approved by the Auditor-General exhibiting a true and correct view of the financial position and transactions of the Authority for that financial year.

20. Annual report

- (1) The Authority must, not later than 31 August after the end of each financial year, give the Minister a report on its operations for that financial year.
- (2) The report is to incorporate the audited statement of accounts prepared for the relevant financial year under section 19.
- (3) The Minister may, in writing, direct the Authority to prepare the report in a particular way or to include particular information in the report.
- (4) The report may be appended to an annual report of the Department.
- (5) Subsection (4) has effect notwithstanding section 36(3) of the *State Service Act 2000* or section 27(2) of the *Financial Management and Audit Act 1990*.
- (6) If the Authority's report is not appended to an annual report of the Department, the Minister must cause the Authority's report to be laid

before each House of Parliament by not later than 31 October after the end of the financial year to which it relates.

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Part 4 – Inspections

58. Routine inspections

- (1) The Authority is to perform routine inspections of registered pharmacy business premises.
- (2) The Authority may charge a prescribed fee for performing a routine inspection.
- (3) A routine inspection cannot be carried out more frequently than once every 5 calendar years.
- (4) A person must not give, agree to give or offer a person performing an inspection a gift, reward or other inducement to do or abstain from doing anything in relation to an inspection.

Penalty: Fine not exceeding 25 penalty units.

59. Authorisation and powers of inspectors

- (1) Notwithstanding section 58, if –
 - (a) the Authority reasonably suspects that a person may be operating a pharmacy business in breach of this Act; or
 - (b) the Authority reasonably suspects that a person may be operating a pharmacy business from premises that may not be suitable for registration having regard to the matters set out in section 71E; or
 - (c) the Authority receives a referral of a complaint from the Health Complaints Commissioner –

it may, in writing, authorise a person to act as an inspector.

- (2) On production of the authorisation, the inspector may at any reasonable time enter premises at or from which a person is, suspected to be operating in breach of this Act and do all or any of the following:
 - (a) inspect the premises generally;
 - (b) require the person apparently in charge of the premises to produce for inspection any document held at the premises;
 - (c) inspect and take notes of or extracts from any such document;
 - (d) make a copy of any such document;
 - (e) ask questions of and require answers from persons on the premises;
 - (f) take photographs;
 - (g) open and inspect containers or packages that the inspector reasonably suspects are used for the purpose of, or in connection with, the practice of pharmacy;
 - (h) examine or test any equipment held on the premises;
 - (j) if the inspector reasonably suspects that an offence has been committed against this Act seize and, on furnishing a receipt, remove anything that in the reasonable opinion of the inspector is evidence of the offence or contravention;

- (k) remove, on furnishing a receipt, any document found on the premises to the custody and control of the Authority for as long as the Authority considers necessary or expedient.
- (3) If the Authority is satisfied that for legitimate reasons a person needs access to a document that has been removed from the person's pharmacy premises to the custody and control of the Authority under subsection (2)(k), the Authority in its discretion may –
- (a) grant the person reasonable access to the document or to a copy of the document; or
 - (b) provide the person with a copy or certified copy of the document; or
 - (c) retain a copy of the document and return the original to the person.
- (4) A person must not give, agree to give or offer to an inspector a gift, reward or other inducement to do or abstain from doing anything in relation to an inspection.

Penalty: Fine not exceeding 25 penalty units.

59A. Powers of Authority following inspection

- (1) Following an inspection, the Authority may make a decision –
- (a) that no further action be taken; or

- (b) require the responsible occupier to do one or more of the following things as it considers appropriate:
 - (i) carry out specified work or actions in relation to his or her pharmacy business premises;
 - (ii) if subparagraph (i) applies, close the pharmacy business premises until the responsible occupier has carried out the work or actions.
- (2) The Authority is to serve written notice of its decision under subsection (1) on the responsible occupier.
- (3) The written notice of the Authority is to contain the following information:
 - (a) the reasons for the decision;
 - (b) in the case of a decision referred to in subsection (1)(b) –
 - (i) the day on which the decision is to take effect; and
 - (ii) the responsible occupier's right to appeal against the decision.
- (4) A decision of the Authority referred to in subsection (1)(b), does not take effect until –
 - (a) the expiration of the period within which the responsible occupier may lodge an appeal against the decision; or
 - (b) if the responsible occupier lodges an appeal against the decision, the decision

is affirmed or varied by the responsible tribunal or the appeal is withdrawn.

- (5) The period referred to in subsection (4)(a) is taken to have commenced when notice of the Authority's decision is given to the responsible occupier.
- (6) If the Authority's decision takes effect, it may do any or all of the following:
 - (a) give notice of its decision to a registration board and such other bodies as it considers appropriate to notify;
 - (b) give notice of its decision to the Secretary;
 - (c) cause notice of its decision to be published in the *Gazette*, in any newspaper or in any professional publication related to the practice of pharmacy;
 - (d) cause notice of its decision to be published in any other way it considers appropriate.
- (7) The Authority, as an alternative to taking action under subsection (1)(b)(i) or (ii), may accept an undertaking from the responsible occupier to take or refrain from taking specified action either generally or within a specified period of time.
- (8) If the Authority has appointed an inspector following the referral of a complaint from the Health Complaints Commissioner, the Authority must, within a reasonable period, notify the Health Complaints Commissioner of

the outcome of the inspection, including details of any notice served under subsection (2).

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Part 5 – Appeals

60. Right of appeal

- (1) A person may appeal to the responsible tribunal if the person is aggrieved by a decision of the Authority.
- (2) The appeal is to be instituted within 30 days after notice of the Authority's decision is given to the person.

61. Hearing of appeals

- (1) On hearing an appeal against a decision of the Authority, the responsible tribunal may –
 - (a) affirm the decision; or
 - (b) vary the decision; or
 - (c) quash the decision.
- (2) If the responsible tribunal quashes the decision it may, according to the circumstances of the case –
 - (a) substitute for the decision it has quashed any decision that the Authority would have had jurisdiction to make in those circumstances; or
 - (b) remit the matter to the Authority, with or without directions, for further hearing or consideration or for rehearing or reconsideration.

- (3) The responsible tribunal may make any further order that it considers just in the circumstances of the case and, without limiting the generality of this, may order the Authority to take or refrain from taking any action in relation to the appellant.

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Part 6 – Interests in Pharmacy Businesses

Division 1 – Eligibility

61A. Eligibility to hold an interest

(1) In this Division, –

"lapsing date" means –

- (a) 30 June; or
- (b) such other date as is prescribed.

(2) A person is eligible to hold an interest in a pharmacy business if –

- (a) in the case of an individual, that person is a pharmacist; or
- (b) in the case of a body corporate, that body corporate holds an eligibility certificate issued by the Authority.

(3) Notwithstanding subsection (2) –

- (a) a person or body corporate is eligible to hold an interest in a pharmacy business if –
 - (i) that body is lawfully permitted to call itself a Friendly Society; and
 - (ii) control and supervision of the pharmacy services or pharmacy business is vested in a pharmacist; and
 - (iii) that body provided pharmacy services in this State, or held an

interest in a pharmacy business in this State, before the commencement of the *Pharmacists Registration Amendment Act 2010*; and

- (b) a pharmacist whose registration has been suspended within the meaning of the Health Practitioner Regulation National Law (Tasmania) is eligible to retain an interest in a pharmacy business; and
- (c) the executor, administrator or trustee of a pharmacist who has died or become bankrupt whilst providing pharmacy services is eligible to continue providing those services for a period not exceeding 12 months, or such greater period as the Authority may allow, if –
 - (i) the executor, administrator or trustee so notifies the Authority within 7 days after the first day on which those services continue to be so provided; and
 - (ii) control and supervision of those services is vested in a pharmacist; and
- (d) a person who assumes the administration of the property of a pharmacist under a mortgage, bill of sale or security interest is eligible to continue providing that pharmacist's pharmacy services for a period not exceeding 12 months, or such greater period as the Authority may allow, if –

- (i) the person so notifies the Authority within 7 days after the first day on which those services continue to be so provided; and
- (ii) control and supervision of those services is vested in a pharmacist.

61B. Application of Part

- (1) This Division does not bind the Crown.
- (2) This Division does not apply to –
 - (a) a pharmacy business located wholly within a hospital operated by an agency or instrumentality of the Crown in right of Tasmania or the Commonwealth; or
 - (b) a business prescribed by the regulation to be exempt.

61C. Eligibility certificates

- (1) A body corporate that intends to hold an interest in a pharmacy business, must apply to the Authority for a certificate deeming them to be eligible to hold an interest in a pharmacy business.
- (2) An application is to be –
 - (a) in an approved form; and
 - (b) lodged with the Authority; and

- (c) accompanied by the prescribed application fee, if any; and
 - (d) accompanied by such information or evidence as the Authority requires.
- (3) The Authority may require the applicant to provide such further information or evidence as it considers necessary in order to consider the application.
- (4) The Authority may waive all or part of the fee.
- (5) The Authority, after considering an application for an eligibility certificate may –
 - (a) issue an eligibility certificate; or
 - (b) refuse to issue an eligibility certificate.
- (6) The Authority must issue an eligibility certificate to an applicant if –
 - (a) each member of the body corporate is –
 - (i) a pharmacist; or
 - (ii) the spouse, father, mother, son, daughter, grandson, granddaughter, brother or sister of a pharmacist who is a member of the body corporate and –
 - (A) the controlling interest in the body corporate is held by a person who is a pharmacist or by persons who are pharmacists; and
 - (B) control and supervision of the pharmacy practice

or pharmacy business is vested in a person who is a pharmacist or in persons who are pharmacists; and

- (b) each member of the body corporate is, in the opinion of the Authority, a fit and proper person to hold an interest in a pharmacy business; and
 - (c) the applicant complies with subsections (2) and (3).
- (7) An eligibility certificate remains in force until the earlier of –
- (a) the lapsing date; or
 - (b) a change occurs in the matters relied upon in support of the application for the certificate.
- (8) If the Authority refuses to issue an eligibility certificate, the Authority is to give the applicant notice of –
- (a) the refusal; and
 - (b) the reasons for the refusal; and
 - (c) the applicant's right of appeal against the refusal.
- (9) Nothing precludes a body corporate whose eligibility certificate is no longer in force by virtue of section 61C(7) from applying to the Authority, under this section, for a new eligibility certificate.
- (10) In subsection (6) –

"spouse", in relation to a pharmacist, includes the person who is in a significant relationship, within the meaning of the *Relationships Act 2003*, with that pharmacist.

61D. Annual renewal of eligibility certificate

- (1) On or before the lapsing date each year, the holder of an eligibility certificate may apply for the renewal of the eligibility certificate.
- (2) Section 61C applies, with all necessary modifications and adaptations, to an application for the renewal of an eligibility certificate.
- (3) The Authority may refuse to renew an eligibility certificate if it is satisfied that the facts or matters relied upon by the body corporate, including the particulars of the body corporate, in support of the original application have changed.
- (4) If a person applies for a renewal of an eligibility certificate on or before the lapsing date in accordance with this section, the eligibility certificate is taken to continue from the lapsing date until the earlier of –
 - (a) the date upon which the Authority issues a renewed eligibility certificate; or
 - (b) the date upon which the Authority gives a notice under section 61C(8).

Division 1A – Public and professional safeguards

62. Offence to hold interest in pharmacy business, &c.

- (1) A person must not hold an interest in a pharmacy business unless –
- (a) in the case of an individual, that person is a pharmacist; or
 - (b) in the case of a body corporate, that body corporate holds an eligibility certificate.

Penalty: Fine not exceeding 200 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.

- (2) A person who holds an eligibility certificate, must not hold an interest in a pharmacy business if the person knows or ought to know that the facts relied upon in support of the application for an eligibility certificate have changed.

Penalty: Fine not exceeding 200 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.

65. Limitation on number of pharmacies in which person may have interest

- (1) A person, including a body corporate, must not, at any one time, either alone or in partnership

with another person or as a member of a body corporate, hold a direct or indirect interest in more than 4 pharmacy businesses.

Penalty: Fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

(2) In this section –

"pharmacy business" means a pharmacy business that is carried on in or from the one premises.

Division 2 – General offences

68. Offences of dishonesty

(1) A person must not make or produce, or cause to be made or produced, a false or misleading statement, either orally or in writing, in connection with –

- (a) an application; or
- (c) an inspection.

Penalty: Fine not exceeding 25 penalty units.

69. Obstruction, &c.

A person must not obstruct, hinder, threaten or intimidate another person –

- (a) in the exercise by the other person of a power conferred by this Act; or

- (b) in the performance of a duty imposed on the other person by this Act.

Penalty: Fine not exceeding 25 penalty units.

70. Offences relating to inspections, &c.

- (1) A person must not, without reasonable excuse –
 - (a) fail to attend an inspection; or
 - (c) fail to produce a document when required to do so by a person conducting an inspection; or
 - (d) fail to answer a question when required to do so by a person conducting an inspection.

Penalty: Fine not exceeding 25 penalty units and, in the case of a continuing offence, a further fine not exceeding 2.5 penalty units for each day during which the offence continues.

- (2) A person may be required by a person conducting an inspection to answer a question or produce a document notwithstanding that the answer to the question or the contents of the document may tend to incriminate the person.
- (3) If a person objects to answering a question or producing a document on the grounds that to do so may tend to incriminate the person, the answer to the question or the contents of the document are not admissible in evidence in any other proceedings in relation to the person, other than proceedings in relation to an offence under

section 68 or in relation to an appeal under Part 5

71. Failure to comply with orders

A person must not –

- (a) report or otherwise disclose any proceedings of a meeting of the Authority contrary to an order of the Authority; or
- (b) report or otherwise disclose any information in relation to a meeting of the Authority contrary to an order of the Authority.

Penalty: In the case of –

- (a) a body corporate – a fine not exceeding 50 penalty units; or
- (b) an individual – a fine not exceeding 25 penalty units.

Part 6A – Registration of pharmacy business premises

71A. Interpretation of Part

In this Part –

"eligible person" means any of the following:

- (a) an individual who is the holder of general or provisional registration as a pharmacist;
- (b) an individual who is an applicant for general or provisional registration as a pharmacist;
- (c) a body corporate that holds an eligibility certificate;
- (d) a body that is –
 - (i) lawfully permitted to call itself a Friendly Society; and
 - (ii) lawfully providing, or proposing to lawfully provide, pharmacy services;

"lapsing date" means –

- (a) 30 June; or
- (b) such other date as is prescribed.

71B. Application of Part

- (1) This Part does not bind the Crown.
- (2) This Part does not apply to –
 - (a) pharmacy business premises that are located wholly within a hospital operated by an agency or instrumentality of the Crown in right of Tasmania or the Commonwealth; or
 - (b) prescribed premises, prescribed persons or prescribed pharmacy practices or services.

71C. Pharmacy business premises to be registered

A person must not use any premises for the purposes of a pharmacy business unless those premises are –

- (a) registered as pharmacy business premises; or
- (b) exempt, under section 71J, from the requirement to be registered as pharmacy business premises.

Penalty: Fine not exceeding 25 penalty units and, in the case of a continuing offence, a further fine not exceeding 2.5 penalty units for each day during which the offence continues.

71D. Applications for registration of pharmacy business premises

- (1) A person may apply to the Authority to have premises registered as pharmacy business premises.
- (2) The application is to be –
 - (a) in an approved form; and
 - (b) lodged with the Authority; and
 - (c) accompanied by the prescribed application fee, if any; and
 - (d) accompanied by such information or evidence as the Authority requires.
- (3) The Authority may require the applicant to provide such further information or evidence as it considers necessary in order to consider the application.
- (4) The Authority may waive all or part of the fee.

71E. Consideration of applications for registration of pharmacy business premises

- (1) The Authority, after considering an application to have premises registered as pharmacy business premises, may –
 - (a) approve the application; or
 - (b) refuse the application.
- (2) However, the Authority must not approve the application unless it is satisfied that –

- (a) the applicant –
 - (i) is an eligible person; or
 - (ii) has, by virtue of some other status, reasonable grounds for making the application; and
 - (b) the premises sought to be registered are used, or are being made ready to be used, for the purposes of a pharmacy business; and
 - (c) the premises –
 - (i) are not located wholly or partly within a supermarket; or
 - (ii) are not capable of being entered from within a supermarket; or
 - (iii) are not capable of being used to gain entry to a supermarket; and
 - (d) the premises sought to be registered are suitable, or are being made suitable, to be used for the purposes of a pharmacy business.
- (3) The matters that the Authority may have regard to for the purposes of subsection (2)(d) include, but are not limited to –
- (a) the standard or proposed standard of presentation of the premises, including the external appearance and internal fittings; and
 - (b) the physical condition of the premises, and the condition of associated amenities

such as lighting, ventilation and sanitation; and

(c) the security of the premises and, in particular, the security of dispensing and storage areas; and

(d) key professional requirements such as the need for –

(i) professional supervision of the sale and supply of medicines and drugs; and

(ii) customer privacy and counselling; and

(iii) sufficient storage for medicines and drugs; and

(e) whether there is or will be reasonable public access to the premises and, in particular, access for disabled persons; and

(f) if there is or will be direct access to or from adjoining premises, the nature of the activities carried out on those adjoining premises; and

(g) any issues of compliance regarding State or council legislative requirements on matters such as fire safety and occupational health and safety; and

(h) in the case of leased premises, the terms of the lease.

(4) For the purposes of subsection (2)(c) –

(a) a supermarket is taken to be any large enclosed shop that primarily sells fresh and processed foods (including beverages) and where the selection of goods is organised on a self-serve basis, even though –

(i) customer advice may always or sometimes be available in the shop; and

(ii) customer service and assistance may always or sometimes be available in a part of the shop; and

(iii) other goods (including household goods like cleaning and kitchen products and personal care products like toiletries) may also be offered for sale in the shop; and

(b) a large enclosed shop that sells general merchandise (commonly known as a department store) is not taken to be a supermarket even though it may –

(i) contain a restaurant or café; or

(ii) sell specialty foods such as biscuits, confectionery and condiments.

(5) If the Authority is unsure, in respect of an application under this Part, whether or not any premises are a supermarket, it may apply to the Secretary for a ruling.

(6) If subsection (5) applies –

- (a) the Secretary, after making such inquiries as he or she considers necessary, may, in writing, make the ruling; and
- (b) the Authority is bound by that ruling.

71F. Approval or refusal of applications

- (1) If an application to have premises registered as pharmacy business premises is approved –
 - (a) the Authority is to register the premises by making an appropriate entry in the register; and
 - (b) the registration takes effect as soon as the Authority has complied with paragraph (a).
- (2) The Authority, as soon as practicable after registering the premises, must give the applicant a certificate of registration, in an approved form, in evidence of the registration.
- (3) If an application to have premises registered as pharmacy business premises is refused, the Authority is to give the applicant notice of –
 - (a) the refusal; and
 - (b) the reasons for the refusal; and
 - (c) the applicant's right of appeal.

71G. Nature of registration of pharmacy business premises

- (1) The registration of pharmacy business premises remains in force, subject to any period of suspension, until the lapsing date.
- (2) However, the period of registration of pharmacy business premises is not to exceed 12 months.
- (3) For the avoidance of doubt, the registration of pharmacy business premises is not affected by a transfer in the ownership of the premises or of the pharmacy practice or pharmacy business conducted in or from the premises.

71H. Registration of pharmacy business premises may be cancelled or suspended

- (1) The Authority may cancel or suspend the registration of premises as pharmacy business premises if it is satisfied that –
 - (a) the premises have temporarily ceased to be used for the purposes of a pharmacy business; or
 - (b) having regard to the matters set out in section 71E(3), the premises are no longer suitable to be used for the purposes of a pharmacy business.
- (2) The Authority is to cancel the registration of premises as pharmacy business premises if it is satisfied that –
 - (a) the premises have been, or are about to be, demolished; or

- (b) the premises have ceased permanently to be, or are incapable of ever again being, used for the purposes of a pharmacy business.
- (3) If the Authority decides to cancel or suspend the registration of any premises as pharmacy business premises, it is to make an appropriate entry to that effect in the register and give the responsible occupier of the premises notice of –
 - (a) the cancellation or suspension; and
 - (b) the reasons for the cancellation or suspension; and
 - (c) in the case of a suspension on the ground referred to in subsection (1)(b), the actions that need to be taken to have the suspension revoked; and
 - (d) the responsible occupier's right of appeal.
- (4) The cancellation or suspension takes effect when the notice is given to the responsible occupier of the premises, or on such later date as is specified in the notice.
- (5) The Authority, for any reason it considers sufficient, may revoke the suspension of the registration of premises as pharmacy business premises at any time.
- (6) If the Authority decides to suspend the registration of premises as pharmacy business premises it may afford the responsible occupier of the premises an opportunity to be heard but it is not required to do so.

- (7) If the Authority cancels the registration of premises as pharmacy business premises, the responsible occupier must return the certificate of registration to the Authority within 14 days from the date that the cancellation takes effect.

Penalty: Fine not exceeding 5 penalty units.

71I. Registration of pharmacy business premises may be relinquished

- (1) The responsible occupier of premises that are registered as pharmacy business premises may relinquish that registration at any time by –
 - (a) giving an appropriate notice to the Authority; and
 - (b) returning the certificate of registration to the Authority.
- (2) On receiving the notice the Authority is to cancel the registration of the premises by making an appropriate entry to that effect in the register.
- (3) However, the Authority is not required to comply with subsection (2) if it is not satisfied that –
 - (a) the giver of the notice is the responsible occupier; and
 - (b) each other eligible person with an interest in the registration has been consulted in the matter; and
 - (c) those other persons, if any, have no objection, or no justifiable objection, to the registration being relinquished.

71J. Premises exempt from registration requirements

- (1) The Authority, by instrument in writing, may exempt any premises used for the purposes of a pharmacy business from the requirement to be registered as pharmacy business premises.
- (2) An exemption may be granted on the Authority's own initiative, at the written request of the Director of Public Health or on an application by or on behalf of a pharmacist.
- (3) An application under subsection (2) is to be –
 - (a) in an approved form; and
 - (b) lodged with the Authority; and
 - (c) accompanied by the prescribed application fee, if any; and
 - (d) supported by such information or evidence as the Authority requires.
- (4) The Authority may waive all or part of the fee.
- (5) An exemption may be granted –
 - (a) for individual premises or a class of premises; and
 - (b) unconditionally or on conditions.
- (6) Without limiting subsection (5)(b), the conditions of an exemption may restrict its operation according to matters or limitations, whether as to time, circumstance or otherwise, specified in the instrument of exemption.

- (7) A person must not engage in the practice of pharmacy contrary to a condition of an exemption under this section.

Penalty: Fine not exceeding 25 penalty units.
- (8) The Authority may revoke an exemption if it is satisfied on reasonable grounds that the exemption is no longer justified or required.
- (9) In determining whether to grant or revoke an exemption the Authority is to have regard to the prescribed criteria, if any.
- (10) The Authority may publicise exemptions and their revocation in the *Gazette* and in such other ways as the Authority thinks fit having regard to the nature of the exemptions.

71K. Annual renewal of registration

- (1) On or before the lapsing date each year, the holder of a certificate of registration may apply for a renewal of the certificate of registration.
- (2) Sections 71D, 71E and 71F apply, with all necessary modifications and adaptations, to an application for the renewal of a certificate of registration.
- (3) If a person applies for a renewal of a certificate of registration on or before the lapsing date in accordance with this section, the certificate of registration is taken to continue from the lapsing date until the earlier of –
 - (a) the date upon which the Authority issues a renewed certificate of registration; or

- (b) the date upon which the Authority gives a notice under section 71F(3).

71L. Register

- (1) The Authority is to keep a register called the Pharmacy Business Premises Register.
- (2) The Authority is to record the following information in the register in relation to each pharmacy business premises that it registers:
 - (a) the name of the applicant for registration of the address of the pharmacy business premises;
 - (b) the date of registration of the pharmacy business premises;
 - (c) the address of the premises registered as pharmacy business premises.
- (3) The Authority is to also record the following matters in the register:
 - (a) the renewal of registration of premises as pharmacy business premises; and
 - (b) the cancellation or suspension of registration of premises as pharmacy business premises.
- (4) The register may contain such other information as the Authority considers necessary or appropriate.

71M. Inspection of register

- (1) A person may, on payment of the prescribed fee, inspect the register at the office of the Authority.
- (2) A person inspecting the register may, on payment of the prescribed fee, obtain a copy or an extract from the register.
- (3) The Authority may waive all or part of the fee.

71N. Publication of register, &c.

- (1) The Authority may publish in the *Gazette* a copy of the register or a part of the register.
- (2) The Authority may provide a person with a copy of a notice referred to in subsection (1) on payment of the prescribed fee.
- (3) The Authority may waive all or part of the fee.

71O. Protection of private information

Notwithstanding sections 71M and 71N –

- (a) the register made available for public inspection need not include the information or all of the information referred to in section 71L(4); and
- (b) a copy of the register or a part of the register published in the *Gazette* need not include the information, or all of the information, referred to in section 71L(4).

Part 7 – Miscellaneous

Division 1 – Obligations to provide information

73. Information about bodies corporate

(1) In this section –

"corporate provider" means a body corporate that provides pharmacy services or causes or allows such services to be provided in its name or on its behalf;

"reasonable period" means a period, of not less than 21 days, determined by the Authority;

"relevant information" means information that the Authority reasonably considers it necessary or expedient to have for the purpose of exercising its power or performing its functions.

(2) The Authority, by notice, may require a corporate provider to give it any one or more of the following:

- (a) any relevant information about the corporate provider's membership, shareholdings, officers or employees;
- (b) any other relevant information about the corporate provider's structure, management or operations;
- (c) a copy of the corporate provider's replaceable rules or constitution.

- (3) A corporate provider must comply with a notice under subsection (2) within such reasonable period as is specified in the notice.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

73A. Power of Authority to give information to registration boards &c.

- (1) For the purpose of assisting a registration board to perform its functions under any Act, the Authority may make available to the board any information that it receives in the administration of this Act.
- (2) For the purpose of assisting the Health Complaints Commissioner to perform his or her functions under the *Health Complaints Act 1995*, the Authority may make available to the Commissioner any information that it receives in the administration of this Act.

Division 2 – Administrative and legal

74. Service of documents

- (1) A document may be given to the Authority or a committee by –
 - (a) leaving it at, or sending it by post to, the Authority's address; or

- (b) sending it by way of facsimile transmission to the Authority's facsimile number; or
 - (c) sending it by way of electronic mail to the Authority's electronic mail address.
- (2) A document may be given to another person by –
- (a) in the case of an individual –
 - (i) handing it to the person; or
 - (ii) leaving it at, or sending it by post to, the person's postal or residential address or place of business or employment last known to the giver of the document; or
 - (iii) sending it by way of facsimile transmission to the person's facsimile number; or
 - (iv) sending it by way of electronic mail to the person's electronic mail address; and
 - (b) in the case of another person –
 - (i) leaving it at, or sending it by post to, the person's principal or registered office or principal place of business; or
 - (ii) sending it by way of facsimile transmission to the person's facsimile number; or

- (iii) sending it by way of electronic mail to the person's electronic mail address.
- (3) A document that is posted to a person is taken not to have been given to the person until the time when it would have been delivered in the ordinary course of post.

75. Common seal

- (1) The Authority may have a common seal and, if so, it is to be kept and used as authorised by the Authority.
- (2) All courts and persons acting judicially must take judicial notice of the imprint of the common seal on a document and presume that it was duly sealed by the Authority.

76. Presumptions

In any proceedings, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the Authority or a committee; or
- (b) any resolution of the Authority or a committee; or
- (c) the presence of a quorum at any meeting of the Authority or a committee; or
- (d) the appointment of any member of the Authority or a committee.

77. Appropriation of fees, penalties and fines

- (1) All fees payable and all penalties imposed and recovered under this Act are to be paid to the Authority.
- (2) A fee payable under this Act may be recovered as a debt due to the Authority.
- (3) A fine imposed on a person under this Act may be recovered as a debt due to the Authority.

79. Offences by bodies corporate

- (1) If a body corporate commits an offence against this Act, each person concerned in the management of the body corporate is taken to have also committed the offence and may be convicted of the offence unless the person proves that the act or omission constituting the offence took place without the person's knowledge or consent.
- (2) A person referred to in subsection (1) may be convicted of an offence against this Act whether or not the body corporate is charged with or convicted of the offence.

80. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), regulations may be made under that subsection for and in relation to any one or more of the

following matters to the extent that any such matters :

- (a) the control of infection;
 - (c) standards for pharmacy business premises and other premises used for or in connection with the provision of pharmacy services.
- (3) Regulations made under this section, including any regulations prescribing fees, may –
- (a) apply generally or be limited in their application by reference to specified exemptions or specified factors; and
 - (b) apply differently according to different factors, limitations or restrictions of a specified kind; and
 - (c) authorise any matter to be from time to time determined, applied or regulated by the Authority.
- (4) Regulations made under this section may –
- (a) provide that a contravention of any of the regulations is an offence; and
 - (b) in relation to any such offence, provide for the imposition of a fine not exceeding 25 penalty units and, in the case of a continuing offence, a further fine not exceeding 2.5 penalty units for each day during which the offence continues.
- (5) The Governor may make regulations of a savings or transitional nature consequent on the enactment of this Act.

- (6) Regulations made under subsection (5) may, without limiting the scope of that subsection, prescribe interim standards for pharmacy business premises and other premises used for or in connection with the provision of pharmacy services.
- (7) A provision of a regulation made pursuant to subsection (5) may, if the regulation so provides, take effect on the day proclaimed under section 2 or a later date.

Division 3 – Consequential and transitional

81. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Health ; and
- (b) the department responsible to the Minister for Health in relation to the administration of this Act is the Department of Health and Human Services.

84. *Pharmacy Act 1908* repealed

Amendment The *Pharmacy Act 1908* is repealed.

**Schedule 1 – Provisions with respect to membership of
Authority**

Section 7(6)

1. Term of office

- (1) A member is to be appointed for such period, not exceeding 3 years, as is specified in the member's instrument of appointment.
- (2) A member is eligible to serve any number of terms of office but may not serve more than 4 of those terms in succession.

2. Holding other office

The holder of an office who is required under any Act to devote the whole of his or her time to the duties of that office is not disqualified from –

- (a) holding that office and also the office of a member; or
- (b) accepting any remuneration payable to a member.

3. Remuneration of members

A member is entitled to be paid such remuneration, including travelling and subsistence allowances, as the Minister determines.

4. Vacation of office

- (1) A member vacates office if he or she –
 - (a) dies; or
 - (b) resigns; or
 - (c) is removed from office under subclause (2) or (3); or
 - (d) ceases to be qualified for office by virtue of subclause (4).

- (2) The Minister may remove a member from office if the member –
 - (a) is absent from 3 consecutive meetings of the Authority without the permission of the other members of the Authority; or
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or
 - (c) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for a period exceeding 12 months; or
 - (d) fails, without reasonable excuse, to comply with the obligation referred to in clause 5 of Schedule 2; or
 - (e) is convicted of an offence against this Act.

- (3) The Minister may remove a member from office if satisfied that the member is unable to perform the duties of office competently.
- (4) A member appointed under section 7(1)(a) vacates office if he or she ceases to be a pharmacist.

5. Filling of vacancies

If the office of a member becomes vacant, the Minister may appoint an appropriate person to the vacant office for the remainder of that member's term of office.

6. Validity of proceedings, &c.

- (1) An act or proceeding of the Authority or of a person acting under the direction of the Authority is not invalid by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the membership of the Authority.
- (2) An act or proceeding of the Authority or of a person acting under the direction of the Authority is valid even if –
 - (a) the appointment of a member of the Authority was defective; or
 - (b) a person appointed as a member of the Authority was disqualified from acting as, or incapable of being, such a member.
- (3) This clause applies to the Authority acting in any capacity.

Schedule 2 – Provisions with respect to meetings of Authority

Section 7(7)

1. Convening of meetings

A meeting of the Authority may be convened by the chairperson or by any 2 members.

2. Procedure at meetings

- (1) Two members form a quorum at any duly convened meeting of the Authority.
- (2) Any duly convened meeting of the Authority at which a quorum is present is competent to transact any business of the Authority.
- (3) Questions arising at a meeting of the Authority are to be determined by a majority of votes of the members present and voting.
- (4) In the event of an equality of votes on a question arising at a meeting of the Authority, the question stands adjourned until its next meeting.

3. Who presides at meetings

- (1) The chairperson is to preside at all meetings of the Authority at which he or she is present.
- (2) If the chairperson is not present at a meeting of the Authority, a member elected by the members present is to preside at that meeting.

4. Minutes

The Authority must keep accurate minutes of its meetings.

5. Disclosure of interest

- (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Authority must, as soon as practicable after the relevant facts come to the knowledge of the member, disclose the nature of that interest at a meeting of the Authority.
- (2) A disclosure under subclause (1) is to be recorded in the minutes and the member must not, unless the Authority exclusive of that member determines otherwise –
 - (a) be present during any deliberations of the Authority in relation to that matter; or
 - (b) take part in any decision of the Authority in relation to that matter.

6. Meetings to be open to public

- (1) In this clause,

"meeting" means a meeting of the Authority.
- (2) Except as provided in subclause (3), a meeting is to be open to the public.
- (3) The Authority may do either or both of the following at a meeting if it considers that there are compelling grounds to do so:

- (a) make an order excluding any person who is not a member from the meeting;
 - (b) make an order prohibiting the reporting or other disclosure of all or any of the proceedings at the meeting or prohibiting the reporting or other disclosure of particular information in relation to the meeting.
- (4) Without limiting the range of grounds that may be relevant for the purposes of subclause (3), the Authority may exercise its power under that subclause if –
- (a) it is dealing with privileged information or information that has been communicated to the Authority in confidence; or
 - (b) it is dealing with information concerning the personal affairs, finances or business arrangements of a pharmacist; or
 - (c) the disclosure of the proceedings or the information may be unfairly prejudicial to the reputation of a pharmacist or any other person.

7. General procedures

- (1) Subject to this Schedule, the procedure for calling meetings of the Authority and for the conduct of business at meetings of the Authority is as determined by the Authority.

- (2) The Authority may permit members to participate in a particular meeting by a telephone or other means of communication.
- (3) A member who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.
- (4) The Authority may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

8. Report to Minister

The Authority, if requested to do so by the Minister, must furnish the Minister with any information the Minister may require in relation to the proceedings of the Authority.

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