

**Explanatory Memorandum**  
**Pharmacy Bill 2010**

## **INTRODUCTION**

The *Pharmacy Bill 2010* in part replaces the *Pharmacy Act 1964*. The *Pharmacy Act* is to be repealed by the *Health Practitioner Regulation National Law Bill 2010* (the National Law Bill). Functions relating to pharmacists' registration will be transferred to the new National Law Bill.

The Pharmacy Bill establishes the Pharmacy Registration Board of Western Australia to continue the functions of the Pharmaceutical Council of Western Australia under the *Pharmacy Act* to regulate:

- pharmacy premises; and
- the ownership of pharmacy businesses.

### ***Long Title***

The long title sets out the purpose of the Bill, which is to provide for the registration of premises as pharmacies, to control such premises and pharmacy businesses, make consequential amendments to various Acts and for related purposes.

## **Part 1 – Preliminary**

This part contains the title of the Act, the relevant commencement provisions and definitions of the terms used within the Bill.

### ***Clause 1 Short Title***

This clause provides the short title of the Act.

### ***Clause 2 Commencement***

Apart from sections 1 and 2 which come into operation on the day the Act receives Royal Assent, the remaining provisions of the Act will come into operation on a day fixed by proclamation.

### ***Clause 3 Terms used***

Contains the definitions required for the purposes of the Act.

## **Part 2 – Pharmacy Registration Board**

This part provides for the establishment of the Pharmacy Registration Board of Western Australia. It sets out the composition of the Board's membership, functions and powers and the Board's relationship with the Minister. It also provides for general provisions in relation to the proceedings of the Board such as term of office for Board members, deputy members, vacation of office, resignation or removal of members, calling of meetings and meeting quorum, voting and minutes.

## **Division 1 The Board**

### ***Clause 4 Board established***

The Pharmacy Registration Board of Western Australia (the Board) is a body corporate. Clause 79 provides that the Board is a continuation of the Pharmaceutical Council of Western Australia in relation to the regulation of pharmacy premises and pharmacy businesses. The Board is not an agent of the Crown.

### ***Clause 5 Membership of Board***

The Board will consist of 4 natural persons to be appointed by the Minister. The composition of the Board has been broadened to include a consumer representative and the other 3 positions are to be filled by registered pharmacists.

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

This clause provides for the election of a presiding member and deputy presiding member.

### ***Clause 7 Remuneration and allowances***

The Minister may determine remuneration for a member of the Board or a committee on the recommendation of the Minister for Public Sector Management ensuring that members are paid in accordance with current Government policy.

## **Division 2 Functions and Powers**

### ***Clause 8 Functions***

The functions of the Board include advising the Minister on matters relating to the Act, administering the scheme of registration, to monitor and enforce compliance with the Act and to perform other functions that are conferred on the Board.

### ***Clause 9 Powers***

The Board has all the powers necessary to carry out its functions under the Act.

### ***Clause 10 Delegation by Board***

This provision gives the Board the flexibility to delegate functions to Board members, committees or committee members or the registrar. This allows for effective administration on the part of the Board.

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

### ***Clause 11 Directions by Minister***

The Minister can give written directions to the Board regarding its functions and administration. Any direction must be laid before both Houses of

Parliament. The Minister cannot give directions in relation to a particular person, qualification, application, complaint, investigation or proceeding.

**Clause 12 *Minister to have access to information***

The Minister has access to and, where relevant, may make copies of Board information with the exception of information in a form that may disclose the identity of a person involved.

**Division 4 *Committees***

**Clause 13 *Committees***

This clause provides the Board with the power to establish committees. This will assist the effectiveness and efficiency of the Board. The Board can require the committee established under this provision to comply with directions and report on performance.

**Clause 14 *Provisions relating to committees***

The Board may remove committee members and reconstitute or discharge a committee. Committees are to ensure that accurate records of meetings are kept. Persons with special knowledge or experience can be invited to act in an advisory capacity to committees on the Board's approval.

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

**Clause 15 *Term of office***

Board members are to hold office for 3 years, not exceeding more than 9 years consecutively, unless approved by the Minister for special reasons.

**Clause 16 *Functions of deputy presiding member***

This clause provides for the circumstance in which the deputy presiding member may perform the functions of the presiding member.

**Clause 17 *Deputy members***

This clause provides that the Minister may appoint a deputy of a member and the circumstances in which the deputy may perform the functions of the member.

**Clause 18 *Vacation of office by member***

A Board member may resign by notice in writing given to the Minister. A member of the Board may be removed from office by the Minister for a number of reasons including mental or physical disability, insolvency and extended absences of leave or loss of qualification or position that was required for the appointment.

**Clause 19 *General procedure concerning meetings***

A quorum for a meeting of the Board is 3 members.

**Clause 20 Voting**

A decision of the majority of members at which a quorum is present is a decision of the Board. Where votes are equally divided, the presiding member is to have the casting vote.

**Clause 21 Holding meetings remotely**

A person may attend a Board meeting by telephone or other means of instantaneous communication.

**Clause 22 Resolution without meeting**

Resolutions in writing signed by 3 Board members have effect as if they had been passed at a Board meeting.

**Clause 23 Minutes**

An accurate record of proceedings at each meeting is to be kept by the Board.

**Division 6 Disclosure of interests etc**

**Clause 24 Term used: member**

Defines a “member” as a member of the Board or of a committee.

**Clause 25 Disclosure of interests**

Members must disclose material personal interests in a matter before the Board or an offence is committed.

A penalty of a fine of \$10,000 is provided for failure to disclose a relevant interest.

**Clause 26 Exclusion of interested member**

A member who has a material personal interest in a matter before the Board must not vote on the matter and must not be present when the matter is being considered.

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

The Board may declare section 26 inapplicable if it is satisfied the interest should not disqualify the member from voting.

**Clause 28 Quorum where section 26 applies**

If a member is disqualified under section 26, 2 members will constitute a quorum. The Minister may deal with a matter if there are less than 2 members of the Board who are entitled to vote.

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

The Minister may declare sections 26 and 28 inapplicable and, if so, must cause a copy of the declaration to be laid before each House of Parliament.

**Division 7 Registrar and other staff**

**Clause 30 Registrar**

The Board is to engage or employ a person to be the registrar to perform functions conferred under the Act or as directed by the Board.

**Clause 31 Other staff**

The Board can engage or employ staff to provide such assistance, as the Board considers necessary in performing its functions.

**Division 8 General**

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

It is an offence if a member or former member of the Board or a committee makes improper use of any information acquired to gain an advantage for them self or any other person. A penalty of a fine of \$5000 is provided.

**Clause 33 Meetings and minutes of meetings**

It is important that the actions of the Board are subject to public scrutiny to avoid the perception amongst members of the public that the Board may act in the best interests of the members of the profession rather than in the best interests of the community as a whole. For this reason Board meetings and minutes of a meeting are open to the public except in limited circumstances where confidentiality is appropriate.

**Clause 34 Execution of documents by Board**

The Board executes a document if it is signed on behalf of the Board by authorised person(s) and the common seal of the Board is affixed. The protocol for affixing the common seal is specified.

**Part 3 – Finance and Reports**

Part 3 describes the funds of the Board, how they may be applied, and the requirements relating to accounts and reports.

**Clause 35 Funds of the Board**

Clause 35 describes what constitutes the funds of the Board and specifies for what purposes they may be applied. The funds may be used for any purpose that enables the Board to perform its functions or to carry out the objectives of the Act. The Board derives its operating revenues from fees paid prescribed under regulations (for example, fee for registration of pharmacy premises).

**Clause 36 Accounts**

The Board is to keep accounts and records and prepare financial statements in accordance with Australian Accounting Standards.

**Clause 37 Audit**

Accounts and financial statements are to be audited at least once a year by a registered company auditor approved by the Minister.

**Clause 38 Annual report and other reports**

The Board is to submit to the Minister an annual report of its proceedings along with a copy of its financial statements and the auditor's report of those statements.

**Part 4 – Registration**

Part 4 provides for the registration of pharmacy premises.

**Division 1 Registration of pharmacies**

**Clause 39 Registration of premises as pharmacies**

Unless there are grounds for refusal, as set out in clause 43, the Board is to grant an application for registration of pharmacy premises in the name of the applicant.

**Clause 40 Who may apply for registration**

A pharmacist, friendly society or the preserved company (a company carrying on the practice of a chemist under section 36(2)(a) of the repealed Act) may apply for the registration of pharmacy premises.

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

The preserved company may only carry on the business of a pharmacy at the place where it was carrying on such business immediately before the commencement of the Act.

**Clause 42 Application for registration**

The procedure for making an application for registration is set out in clause 42. This includes that the application must be in writing and made in an approved manner and form. Information provided under this clause must be verified by statutory declaration, if the Board requires, or supported by other evidence required by the Board. In assessing the application, the Board may request the attendance of an applicant before the Board or inspect the premises, the subject of the application.

**Clause 43 Grounds for refusal**

This clause sets out the grounds upon which the Board must refuse to grant an application for registration of pharmacy premises.

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

The Board may enter and inspect any registered pharmacy during business hours to ensure that the pharmacy meets the requirements prescribed by the regulations for the minimum standards of fitness for the competent and safe practice of pharmacy.

**Clause 45 Duration of registration**

Registration has effect for the period as prescribed in the regulations and may be renewed in accordance with the regulations.

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

The Board must cancel or refuse to renew the registration of premises in the circumstances set out under this clause, which includes where the registration was obtained by fraud or misrepresentation. If the Board proposes to cancel or refuse to renew the registration of a pharmacy, the Board is to give written notice of such a proposal.

**Clause 47 Conditions on registration**

The Board may impose such conditions on registration of pharmacy premises under this clause as are reasonably required to ensure that the premises are of a minimum standard of fitness for the competent and safe practice of pharmacy.

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

Despite clauses 43(a) and 46(1)(a), the Board may grant an application for the registration of premises or renew or not cancel even though the premises do not meet the requirements set out in the regulations if the Board decides it is in the public interest for the premises to be registered and a condition has been imposed under clause 47.

**Division 2 The register**

**Clause 49 The register**

A register of pharmacies is to be maintained by the Board and is to record details specified in this clause, including such particulars as the address of the pharmacy and any conditions applying to the registration.

**Clause 50 Inspection of register**

The register is available for inspection by the general public. A fee is payable for a certified copy of a part of the register. The register may be published on an internet website maintained by the Board.

**Clause 51 Certificates of registration for premises**

This clause provides for the Board to issue a certificate in an approved form that, when issued serves as evidence that the premises are registered.

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

A person who intends to acquire or dispose of ownership or a proprietary interest in a pharmacy business must give the Board's registrar at least 14 days notice.

**Part 5 – Pharmacy business**

Part 5 provides for the ownership of pharmacy businesses.

**Clause 53 Pharmacy business to be carried on at registered premises**

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

A penalty of a fine for an individual of \$5000 (body corporate \$10 000) with a fine of \$400 for each separate and further offence is provided.

**Clause 54 Ownership of, and interests in, pharmacy businesses**

A person who may own or have an interest in a pharmacy business is listed under this clause. The list is limited (subject to specified exceptions) to a pharmacist; a person who is a partner in a partnership that carries on the business (every partner must be a pharmacist or a close family member of a partner); a pharmacist controlled company; a friendly society; or the preserved company.

A penalty of a fine for an individual of \$5000 (body corporate \$10 000) with a fine of \$400 for each separate and further offence is provided.

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

A pharmacist must not own or have an interest in more than four pharmacy businesses. The same applies to a friendly society and the preserved company.

A penalty of a fine of \$50 000 is provided.

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

A pharmacist must have overall responsibility for a pharmacy business. In circumstances where the person whose name a pharmacy is registered under is not a pharmacist, that person must appoint a pharmacist to have overall responsibility for a pharmacy business. The pharmacy is not to operate without a responsible pharmacist.

A penalty of a fine for an individual of \$5 000 (body corporate \$10 000) is provided.

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

A pharmacy must be carried on under the direct supervision of a pharmacist at all times and it is the responsibility of the person in whose name the pharmacy is registered under or the pharmacist with overall responsibility to ensure this.

A penalty of a fine for an individual of \$5 000 (body corporate \$10 000) is provided.

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

If a pharmacist dies or becomes bankrupt or a company that has an interest in a pharmacy requires external administration under the *Corporations Act 2001*,

the personal legal representative of the pharmacist or other relevant person may for 12 months (or such further period as the Board approves) carry on the pharmacy business. A pharmacist must be appointed to have overall responsibility of the pharmacy business.

A penalty of a fine of \$5 000 is provided.

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

A person must not carry on a business, other than a pharmacy business, at a registered pharmacy unless the person is the person in whose name the pharmacy is registered.

A penalty of a fine for an individual of \$5 000 (first offence) and for a body corporate of \$10 000 is provided.

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

The use of the title “pharmacy” is restricted to a “pharmacy business” carried on by a person who is entitled to own or hold a proprietary interest in such a business.

A penalty of a fine for an individual of \$2500 (first offence) is provided.

A penalty of a fine of \$24,000 or two years imprisonment is provided.

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

Part 6 provides for the making of rules and regulations necessary for giving effect to the Act.

**Clause 61 *Rules***

The Board, with confirmation of the Governor, may make rules as permitted by the Act. Rules are subsidiary legislation and must be published in the *Government Gazette*, tabled in Parliament and subject to disallowance procedures.

The rules may provide that contravention of a rule is an offence and provide a penalty of a fine of up to \$5,000.

**Clause 62 *Regulations***

The Governor may make regulations for all matters necessary to give effect to the Act and for any matter on which the Board may make rules (refer clause 61). Such purposes include, but are not limited to:

- prescribing the requirements to be met at premises;
- regulating the location of a pharmacy business;
- regulating the conduct of the business of the Board and committees;
- making provisions relating to registration, including applications;

- maintaining the accuracy of the register;
- regulating the issue, display and use of certificates of registration;
- prescribing fees;
- prescribing returns and notices provided to the Board;
- providing that information supplied to the Board may be required to be verified by statutory declaration.

Where a regulation is inconsistent with a rule, the regulation prevails to the extent of the inconsistency. The regulations may provide that contravention of a regulation is an offence, and provide for a penalty of a fine of up to \$5,000.

**Clause 63 Forms**

This clause provides that forms may be either prescribed by regulation or rules, or approved by the Board.

**Part 7 – Miscellaneous**

Part 7 provides for miscellaneous items such as legal proceedings, liability of officers of a body corporate and review of the Act.

**Clause 64 False or misleading information**

This clause provides that it is an offence to make false or misleading statements or provide false or misleading information in relation to an application or a requirement to give the Board or registrar information.

A penalty of a fine of \$24 000 or imprisonment for 2 years is provided.

**Clause 65 Surrender of certificate**

Where the registration of premises is cancelled or not renewed, the person in whose name the premises were registered is to surrender the certificate of registration of the premises of the Board within 14 days.

A penalty of a fine of \$1,000 is provided.

**Clause 66 Protection from liability**

This clause provides protection against an action in tort for a person carrying out a function under the Act in good faith. This protection is also extended to the State.

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

This clause provides that for specified decisions the Board is to make a record of the grounds on which the decision was made and to provide written notice of the decision to the person to whom the decision relates. This includes decisions to refuse registration and to place conditions on registration.

**Clause 68 Review**

This clause provides that persons may apply to the State Administrative Tribunal for a review of a decision by the Board to refuse registration or impose or vary a condition.

**Clause 69 Publication of proceedings etc.**

This clause protects the Board, members and staff of the Board and committees, registration authorities in other States and journalists who communicate or publish findings, reasons or decisions of the Board or the State Administrative Tribunal in good faith.

The Board may publish or give notice of a finding, reason or decision to other specified bodies that have an interest in the matter.

**Clause 70 Legal proceedings**

This clause sets out provisions relating to proceedings for offences under the Act. All offence proceedings under the Act are to be heard in a court of summary jurisdiction constituted by a magistrate.

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

This clause deals with the relationship between a body corporate and officers of the body corporate in relation to offences under the Act. Officers of a body corporate have the same responsibilities as a body corporate unless an offence was committed without the officer's consent or if the officer has taken all reasonable steps to prevent the commission of the offence.

**Clause 72 Review of Act**

This is a standard clause for all new legislation. The Minister is to review the operation of the Act in five years from its commencement to determine the effectiveness and continuation of the Board and any other matters relating to the effectiveness of the Act.

## **Part 8 – Consequential amendments**

This Part provides for consequential amendments to various Acts.

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

**Clause 73 Act amended**

This clause provides that the *Constitution Acts Amendment Act 1899* is to be amended.

**Clause 74 Schedule V Part 3 amended**

This clause inserts a reference to the Pharmacy Registration Board of Western Australia into Schedule V of the *Constitution Acts Amendment Act 1899*.

## **Part 9 – Transitional and savings provisions**

Part 9 provides transitional provisions for the introduction of the new Act relating to the continuation of the Board, membership of the Board, the Registrar and other staff, certificates under the repealed Act, continuation of registration of pharmacy premises and the separation of the Pharmaceutical Council of WA and the Pharmaceutical Society of WA.

### **Division 1 Preliminary**

#### ***Clause 77 Terms used***

Describes the terms used in this Part.

#### ***Clause 78 Interpretation Act 1984 not affected***

This Part does not affect the terms of the *Interpretation Act 1984*.

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

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

The Board is a continuation of the former Pharmaceutical Council to the extent that it regulated pharmacy premises and the ownership of pharmacy businesses.

#### ***Clause 80 Members of former Council cease to hold office***

This clause provides for the members of the former Pharmaceutical Council to cease office when the new Act commences.

#### ***Clause 81 Board members***

Board appointments are staggered to ensure all appointments do not fall due at the same time.

#### ***Clause 82 The registrar and other staff***

The registrar and officers of the former Pharmaceutical Council will continue as registrar and officers of the Board.

#### ***Clause 83 Registered pharmacies***

A pharmacy registered under the repealed Act is taken to be premises registered as a pharmacy under this Act.

#### ***Clause 84 Register***

The Register is to continue as if established under the new Act.

#### ***Clause 85 Certificates of registration issued under the repealed Act***

A certificate of registration under the repealed Act is to be taken to be a certificate of registration for the purposes of this Act.

**Clause 86 *Agreements and instruments***

References to the former Pharmaceutical Council in agreements and instruments will be taken to be references to the Board after the commencement day.

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

The former Pharmaceutical Council is to report on its proceedings, but limited to the period from 1 January preceding the commencement day to the commencement day.

**Division 3 *Incorporated Pharmaceutical Society***

**Clause 88 *Incorporation of Pharmaceutical Society***

At the commencement of the Act, the Board will no longer be responsible for the management of the Pharmaceutical Society of Western Australia. The assets and liabilities of the Pharmaceutical Society of Western Australia will vest in the incorporated Pharmaceutical Society as defined under this clause.

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

This clause sets out how the assets, liabilities, proceedings and documents of the Pharmaceutical Council of Western Australia and the Pharmaceutical Society of Western Australia are to be transferred on the commencement day.

**Clause 90 *Agreements and instruments***

References to the former Pharmaceutical Council in agreements and instruments that relate to the assets and liabilities of the Pharmaceutical Society of Western Australian will be taken to be references to the incorporated Pharmaceutical Society after the commencement day.

**Division 4 *Miscellaneous***

**Clause 91 *Exemption from State taxation***

State tax is not payable in relation to anything that occurs by operation of this Part to effect the separation of the Pharmaceutical Council of Western Australian and the Pharmaceutical Society of Western Australia.

**Clause 92 *Registration of documents***

The relevant officials, as defined under this clause (includes Registrar of Titles), are to take notice of the provisions of this Schedule.

**Clause 93 *Saving***

This clause is a general saving provision.

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

If there is no provision which is sufficient for dealing with a transitional matter the Governor may make regulations prescribing all required matters.

