

Pharmacy Bill 2010

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Defined Terms

Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

Pharmacy Bill 2010

A Bill for

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

The Parliament of Western Australia enacts as follows:

1 **Part 1 — Preliminary**

2 **1. Short title**

3 This is the *Pharmacy Act 2010*.

4 **2. Commencement**

5 This Act comes into operation as follows —

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

10 **3. Terms used**

11 (1) In this Act, unless the context otherwise requires —

12 ***applicant*** means a person who has made an application under
13 section 42;

14 ***application*** means an application for registration;

15 ***approved*** means approved by the Board in writing;

16 ***Board*** means the Pharmacy Registration Board of Western
17 Australia established by section 4;

18 ***certificate of registration*** means a certificate of registration
19 issued under section 51(1);

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

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

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

29 ***condition*** includes restriction;

- 1 **Corporations Act** means the *Corporations Act 2001*
2 (Commonwealth);
- 3 **dispense**, in relation to a medicine or drug that is, or contains, a
4 poison, as defined in the *Poisons Act 1964* section 5(1), means
5 to supply that medicine or drug in accordance with that Act;
- 6 **document** includes any tape, disk or other device or medium on
7 which information is recorded or stored;
- 8 **friendly society** means a company that is a friendly society
9 under the Corporations Act and that —
- 10 (a) provides mutual benefits to its members; and
11 (b) is a non-profit organisation; and
12 (c) has a constitution that provides that the main object of
13 the company is to carry on the business of pharmacy;
- 14 **member of the Board** includes a person acting under section 17;
- 15 **officer**, in relation to a body corporate, has the meaning given to
16 “officer” of a corporation in the Corporations Act section 9 but
17 does not include an employee of the body corporate unless the
18 employee is concerned in the management of the body
19 corporate;
- 20 **pharmacist** means a person registered under the *Health*
21 *Practitioner Regulation National Law (Western Australia)* in
22 the pharmacy profession;
- 23 **pharmacist controlled company** means a company within the
24 meaning of the Corporations Act —
- 25 (a) in which —
26 (i) at least one director is a pharmacist; and
27 (ii) every director is either a pharmacist or a close
28 family member of a pharmacist who is a director;
29 and
30 (b) where each holder of shares, or of a beneficial or legal
31 interest in shares, in the company is a pharmacist or a
32 close family member of such a pharmacist; and

s. 3

- 1 (c) in which a pharmacist is, or pharmacists are, entitled to
2 control the exercise of more than 50% of the voting
3 power —
4 (i) at meetings of the directors of the company; or
5 (ii) attached to voting shares issued by the company;

6 **pharmacy business** means a business —

- 7 (a) consisting of the provision of pharmaceutical services;
8 and
9 (b) from which goods and services relating to the provision
10 of pharmaceutical services may be available,
11 other than a business carried on at premises operated by —
12 (c) a public hospital, as defined in the *Hospitals and Health*
13 *Services Act 1927* section 2(1); or
14 (d) the holder of a permit or licence under the *Poisons*
15 *Act 1964* of a type prescribed by the regulations;

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

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

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

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

28 and has a meaning affected by subsection (2);

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

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

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

- 1 **registrar** means the person employed or engaged to be registrar
2 under section 30;
- 3 **registration** includes renewal of registration;
- 4 **supermarket** means a retail store or market the primary business
5 of which is the sale of a range of food, beverages, groceries and
6 other domestic goods;
- 7 **the practice of pharmacy** includes to —
- 8 (a) compound, dispense or otherwise supply; and
- 9 (b) advise or counsel on the effective and safe use of,
10 medicines or drugs but does not include something that an
11 endorsed health practitioner (other than a pharmacist) or a
12 veterinary surgeon is authorised to do under the *Poisons*
13 *Act 1964* section 23(2).
- 14 (2) Without limiting the generality of the expression, a person will
15 be taken to hold a proprietary interest in a pharmacy business
16 if —
- 17 (a) the person is a party to an arrangement of a kind
18 prescribed by the regulations; or
- 19 (b) the person, in the course of carrying on a business,
20 provides a benefit to another for which the person is
21 entitled to receive the profits or income, or a share in the
22 profits or income, of a pharmacy business; or
- 23 (c) the person has, under a franchise or other commercial
24 arrangement, a right to receive consideration that varies
25 according to the profits or income of a pharmacy
26 business.

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Part 2 — Pharmacy Registration Board

Division 1 — The Board

4. Board established

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

5. Membership of Board

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

6. Presiding member and deputy presiding member

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

7. Remuneration and allowances

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

1 **Division 2 — Functions and powers**

2 **8. Functions**

3 The functions of the Board are as follows —

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

10 **9. Powers**

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

12 **10. Delegation by Board**

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

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

2 **11. Directions by Minister**

3 (1) Subject to subsection (2), the Minister may, after consulting
4 with the Board, give directions in writing to the Board with
5 respect to the performance of its functions either generally or in
6 relation to a particular matter, and the Board is to give effect to
7 any such direction.

8 (2) The Minister must not under subsection (1) direct the Board
9 with respect to the performance of its functions in respect of —

- 10 (a) a particular person; or
11 (b) a particular application or proceeding.

12 (3) The text of a direction given under subsection (1) must be —

- 13 (a) laid before each House of Parliament within 14 sitting
14 days of that House after the direction is given; and
15 (b) included in the annual report submitted by the Board
16 under section 38(1).

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

18 (1) In this section —

19 ***information*** means information specified, or of a description
20 specified, by the Minister that relates to the functions of the
21 Board.

22 (2) The Minister is entitled —

- 23 (a) to have information in the possession of the Board; and
24 (b) if the information is in or on a document, to have, and
25 make and retain copies of, that document.

26 (3) For the purposes of subsection (2) the Minister may —

- 27 (a) request the Board to furnish information to the Minister;
28 or

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

Division 4 — Committees

16

17 **13. Committees**

- 18 (1) The Board may from time to time establish any committee.
- 19 (2) The Board may —
- 20 (a) determine the functions, membership and constitution;
21 and
- 22 (b) appoint such members and other persons as it thinks fit
23 to be members; and
- 24 (c) give directions with respect to the functions and
25 procedures,
- 26 unless that person has consented to the disclosure.
- 27 (3) A committee is to comply with a direction given to it under
28 subsection (2)(c).

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

4 **14. Provisions relating to committees**

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

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

20 **15. Term of office**

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

1 **16. Functions of deputy presiding member**

2 (1) The deputy presiding member is to perform the functions of the
3 presiding member when the presiding member is unable to do
4 so by reason of illness, absence or other cause, or when the
5 office of presiding member is vacant.

6 (2) No act or omission of the deputy presiding member acting as
7 presiding member is to be questioned on the ground that the
8 occasion for his or her so acting had not arisen or had ceased.

9 **17. Deputy members**

10 (1) The Minister may appoint an eligible person to be a deputy of a
11 member and may terminate such an appointment at any time.

12 (2) The provisions of section 5 that apply to and in relation to the
13 appointment of a member apply, with any necessary
14 modification, to and in relation to the appointment of the deputy
15 of that member.

16 (3) A deputy of a member may perform the functions of the
17 member when the member is unable to do so by reason of
18 illness, absence or other cause.

19 (4) Despite anything in this Act, a deputy of a member may
20 continue to act as a member, after the occasion for so acting has
21 ceased, for the purpose of completing any function.

22 (5) A deputy of a member, while acting as a member, has all the
23 functions of and all the protection given to a member.

24 (6) No act or omission of a person acting in place of another under
25 this section is to be questioned on the ground that the occasion
26 for so acting had not arisen or had ceased.

27 **18. Vacation of office by member**

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

- 1 (2) A member who resigns under subsection (1) is to give a copy of
2 the notice of resignation to the registrar.
- 3 (3) A member of the Board may be removed from office by the
4 Minister —
- 5 (a) for mental or physical disability, incompetence, neglect
6 of duty or misconduct that impairs the performance of
7 the member's duties; or
- 8 (b) if the member is, according to the *Interpretation*
9 *Act 1984* section 13D, a bankrupt or a person whose
10 affairs are under insolvency laws; or
- 11 (c) if the member is absent without leave of the Board from
12 3 consecutive meetings of the Board of which the
13 member has had notice; or
- 14 (d) for any other act or omission that in the opinion of the
15 Minister may cause prejudice or injury to the Board.
- 16 (4) A member of the Board must be removed from office by the
17 Minister if the member ceases to hold a position or qualification
18 by virtue of which the member was appointed or if, in the case
19 of a member who is a pharmacist, the registration of the
20 member under the *Health Practitioner Regulation National Law*
21 (*Western Australia*) is suspended.
- 22 **19. General procedure concerning meetings**
- 23 (1) The presiding member is to preside at all meetings of the Board
24 at which he or she is present.
- 25 (2) If both the presiding member and deputy presiding member are
26 absent from a meeting the members present are to appoint one
27 of their number to preside.
- 28 (3) A quorum for a meeting of the Board is 3 members.
- 29 (4) The procedure for convening meetings of the Board and the
30 conduct of business at those meetings is, subject to this Act, to
31 be as determined by the Board.

1 **20. Voting**

2 (1) A decision of the majority of members at a meeting of the
3 Board at which a quorum is present is the decision of the Board.

4 (2) If the votes of members present at a meeting and voting are
5 equally divided the member presiding at the meeting is to have a
6 casting vote in addition to a deliberative vote.

7 **21. Holding meetings remotely**

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

12 **22. Resolution without meeting**

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

17 **23. Minutes**

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

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

22 **24. Term used: member**

23 In this Division —

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

26 **25. Disclosure of interests**

27 (1) A member who has a material personal interest in a matter being
28 considered or about to be considered by the Board or a

1 committee must, as soon as possible after the relevant facts have
2 come to the member's knowledge, disclose the nature of the
3 interest at a meeting of the Board or the committee, as is
4 relevant.

5 Penalty: a fine of \$10 000.

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

8 **26. Exclusion of interested member**

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

11 (a) must not vote, whether at a meeting or otherwise, on the
12 matter; and

13 (b) must not be present while the matter is being considered
14 at a meeting.

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

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

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

21 (a) specifies the member, the interest and the matter; and

22 (b) states that the members voting for the resolution are
23 satisfied that the interest should not disqualify the
24 member from considering or voting on the matter.

25 **28. Quorum where section 26 applies**

26 (1) Despite section 19(3), when the Board is dealing with a matter
27 in relation to which a member of the Board is disqualified under
28 section 26, 2 members who are entitled to vote on any motion
29 that may be moved in relation to the matter constitute a quorum.

1 (2) The Minister may deal with a matter to the extent that the Board
2 cannot deal with it because of subsection (1).

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

4 (1) The Minister may by writing declare that section 26 or 28 does
5 not apply in relation to a specified matter, either generally or for
6 the purpose of dealing with particular proposed resolutions.

7 (2) The Minister is to, within 14 sitting days after a declaration
8 under subsection (1) is made, cause a copy of the declaration to
9 be laid before each House of Parliament.

10 **Division 7 — Registrar and other staff**

11 **30. Registrar**

12 (1) The Board is to employ or engage a person to be the registrar.

13 (2) The registrar has the functions that are conferred under this Act
14 or that the Board directs the registrar to perform.

15 (3) The registrar may delegate to a person employed or engaged by
16 the Board any power or duty of the registrar under another
17 provision of this Act.

18 (4) The delegation must be in writing executed by the registrar.

19 (5) A person to whom a power or duty is delegated under this
20 section cannot delegate that power or duty.

21 (6) A delegate exercising or performing a power or duty that has
22 been delegated to the person under this section is to be taken to
23 do so in accordance with the terms of the delegation unless the
24 contrary is shown.

25 **31. Other staff**

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

Division 8 — General

32. Duty not to make improper use of information

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

Penalty: a fine of \$5 000.

33. Meetings and minutes of meetings

(1) Subject to this section, every meeting of the Board is to be open to members of the public.

(2) Despite subsection (1), the Board may of its own initiative order that in any particular case a meeting, or part of a meeting, of the Board is to be closed.

(3) The minutes of a meeting of the Board are to be open for inspection at its principal place of business by members of the public during normal office hours without fee, other than minutes relating to —

(a) a matter determined to be confidential under subsection (5); or

(b) a meeting, or part of a meeting, that the Board ordered be closed under subsection (2).

(4) A person may, on payment of the fee prescribed by the regulations, if any, obtain a copy of any minutes of the Board available for inspection under subsection (3).

(5) The Board may determine that a matter is confidential if it considers that its disclosure is likely to infringe the reasonable privacy of any person.

34. Execution of documents by Board

(1) The Board is to have a common seal.

- 1 (2) A document is duly executed by the Board, if —
2 (a) the common seal of the Board is affixed to it in
3 accordance with subsections (3) and (4); or
4 (b) it is signed on behalf of the Board by a person or
5 persons authorised by the Board to do so under
6 subsection (5).
- 7 (3) The common seal of the Board is not to be affixed to any
8 document except as authorised by the Board.
- 9 (4) The common seal of the Board is to be affixed to a document in
10 the presence of 2 members of the Board and each of them is to
11 sign the document to attest that the common seal was so affixed.
- 12 (5) The Board may, by writing under its seal, authorise —
13 (a) a member or members of the Board; or
14 (b) a member or members of staff,
15 to sign documents on behalf of the Board, either generally or
16 subject to such conditions as are specified in the authorisation.
- 17 (6) A document executed under this section without the common
18 seal of the Board is not to be regarded as being a document
19 under seal.
- 20 (7) A document purporting to be executed in accordance with this
21 section is to be presumed to be duly executed until the contrary
22 is shown.
- 23 (8) When a document is produced bearing a seal purporting to be
24 the common seal of the Board, it is to be presumed that the seal
25 is the common seal of the Board until the contrary is shown.

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Part 3 — Finance and reports

35. Funds of the Board

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

36. Accounts

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

37. Audit

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

1 **38. Annual report and other reports**

- 2 (1) The Board, not later than 31 December in each year, is to make
3 and submit to the Minister an annual report of its proceedings
4 for the preceding year ending on 30 June together with a copy
5 of its financial statements for that year and the auditor's report
6 on those statements.
- 7 (2) The Board's annual report must include details of —
- 8 (a) the number of applications for the registration of
9 pharmacies; and
 - 10 (b) the number of applications for the registration of
11 pharmacies granted and refused; and
 - 12 (c) the number of pharmacies owned by individuals, bodies
13 corporate and friendly societies, respectively; and
 - 14 (d) any trends or special problems that may have emerged;
15 and
 - 16 (e) forecasts of the workload of the Board in the year after
17 the year to which the report relates; and
 - 18 (f) any proposals for improving the operation of the Board.
- 19 (3) The Minister is to cause a copy of the Board's annual report and
20 financial statements and of the auditor's report submitted under
21 subsection (1) to be laid before each House of Parliament within
22 14 sitting days of that House after receipt of the report by the
23 Minister.
- 24 (4) The Board is to ensure that after subsection (3) has been
25 complied with copies of the reports and statements referred to in
26 that subsection are available on request for inspection at its
27 principal place of business.

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Part 4 — Registration

Division 1 — Registration of pharmacies

39. Registration of premises as pharmacies

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

40. Who may apply for registration

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

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

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

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

- 1 **42. Application for registration**
- 2 (1) An application for the registration of premises under this
- 3 Division must be —
- 4 (a) made in writing; and
- 5 (b) made in an approved manner and form; and
- 6 (c) accompanied by the application fee, if any, prescribed
- 7 by the regulations; and
- 8 (d) accompanied by such information as is required by the
- 9 regulations.
- 10 (2) The Board may request that an applicant provide to the Board
- 11 such further information as the Board reasonably requires to
- 12 decide the application.
- 13 (3) The Board may request that an applicant —
- 14 (a) attend before the Board for the purpose of satisfying the
- 15 Board as to a matter relevant to the application; or
- 16 (b) agree with the Board as to a mutually convenient time
- 17 for the inspection of the premises to ensure that the
- 18 premises meet the requirements prescribed by the
- 19 regulations for the minimum standards of fitness for the
- 20 competent and safe practice of pharmacy.
- 21 (4) A request under subsection (2) or (3) is to —
- 22 (a) be in writing; and
- 23 (b) be given to the applicant; and
- 24 (c) specify, if relevant —
- 25 (i) the time within which the information must be
- 26 provided; or
- 27 (ii) the time and place the person is to attend before
- 28 the Board.
- 29 (5) Information requested under subsection (2) must be provided —
- 30 (a) in writing; and

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

5 **43. Grounds for refusal**

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

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

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

- 30 (1) The Board may enter any registered pharmacy during business
31 hours and inspect the pharmacy or anything in or on the

1 pharmacy to ensure that the pharmacy meets the requirements
2 prescribed by the regulations for the minimum standards of
3 fitness for the competent and safe practice of pharmacy.

4 (2) A pharmacist practising at registered premises, and a person in
5 whose name the premises are registered, are to provide all
6 reasonable assistance to a person entering and inspecting a
7 pharmacy under subsection (1).

8 Penalty:

9 (a) for an individual, a fine of \$1 000;

10 (b) for a body corporate, a fine of \$2 500.

11 **45. Duration of registration**

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

14 (a) has effect for the period prescribed by the regulations;
15 and

16 (b) may be renewed in accordance with the regulations for a
17 further period prescribed by the regulations.

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

19 (1) The Board must cancel or refuse to renew the registration of
20 premises under this Division if —

21 (a) the Board is not satisfied that the premises meet the
22 requirements prescribed by the regulations for the
23 minimum standards of fitness for the competent and safe
24 practice of pharmacy; or

25 (b) the registration was obtained by fraud or
26 misrepresentation; or

27 (c) a person who owns, or holds a proprietary interest in, the
28 pharmacy business carried on at the premises —

29 (i) is not, or has ceased to be, a person who is
30 entitled to own, or hold a proprietary interest in,
31 a pharmacy business under section 54; or

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Part 4 Registration

Division 1 Registration of pharmacies

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- 1 (ii) is in breach of section 55;
- 2 or
- 3 (d) the person in whose name the premises are registered
- 4 does not carry on a pharmacy business at the premises;
- 5 or
- 6 (e) the Board is satisfied that the premises are —
- 7 (i) located wholly or partly within a supermarket; or
- 8 (ii) capable of being entered from a supermarket; or
- 9 (iii) capable of being used to gain entry to a
- 10 supermarket;
- 11 or
- 12 (f) where the premises are registered in the name of the
- 13 preserved company, the premises are not in compliance
- 14 with section 41.
- 15 (2) If the Board proposes to cancel or refuse to renew the
- 16 registration of a pharmacy under this Division, the Board is to
- 17 give the person in whose name the pharmacy is registered notice
- 18 in writing of the proposal to cancel or refuse to renew the
- 19 registration and the reasons for the proposal.
- 20 (3) A notice given under subsection (2) must state that within
- 21 14 days after the notice is given the person to whom it is given
- 22 may make representations in writing to the Board concerning
- 23 the matter, and the Board is not to determine the matter without
- 24 considering any representations received within that period.
- 25 **47. Conditions on registration**
- 26 (1) The Board may, at the time of granting registration of premises
- 27 as a pharmacy under this Division or at a later time, impose
- 28 such conditions on that registration as the Board reasonably
- 29 requires to ensure that the premises are of a minimum standard
- 30 of fitness for the competent and safe practice of pharmacy.

- 1 (2) A condition imposed by the Board under this section may apply
- 2 indefinitely or for a period of time specified by the Board in the
- 3 written notice of the decisions given under section 67.
- 4 (3) The Board may, on its own motion or on the application of a
- 5 person the subject of a condition imposed under this section, on
- 6 reasonable grounds, revoke or vary the condition.

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

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

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

20 **Division 2 — The register**

21 **49. The register**

- 22 (1) The Board is required to keep an accurate and up-to-date
- 23 register of registered pharmacies in such manner and form as
- 24 the Board determines.
- 25 (2) The following information is to be recorded in the register in
- 26 respect of a registered pharmacy —
- 27 (a) the address of the pharmacy;
- 28 (b) the name of the person in whose name the pharmacy is
- 29 registered;
- 30 (c) any conditions imposed on the registration of the
- 31 pharmacy;

- 1 (d) such other information, if any, as is prescribed by the
2 regulations.

3 **50. Inspection of register**

- 4 (1) The register must be kept in the office of the registrar.
- 5 (2) The register must be available for inspection by members of the
6 public during normal office hours.
- 7 (3) The register may be made available for inspection by members
8 of the public on a website maintained by the Board.
- 9 (4) A person may, on application to the registrar, and payment of
10 the fee prescribed by the regulations, if any, obtain a certified
11 copy of the register or a particular entry in the register.
- 12 (5) Information made available under subsections (2), (3)
13 and (4) —
- 14 (a) need not include the information, or all of the
15 information, prescribed by the regulations as
16 information to be recorded in the register; and
- 17 (b) is not to include a person's private address without the
18 consent of the person.
- 19 (6) No fee is payable under subsection (4) if the application is
20 made —
- 21 (a) by an officer of the department of the Public Service
22 principally assisting the Minister in the administration of
23 this Act; and
- 24 (b) for the purpose of carrying out the functions of an
25 officer of that department.

26 **51. Certificates of registration for premises**

- 27 (1) On the registration of premises as a pharmacy the Board is to
28 issue to the person in whose name the premises are registered a
29 certificate of registration of the premises as a pharmacy in the
30 approved form.

1 (2) In the absence of evidence to the contrary a certificate of
2 registration of premises as a registered pharmacy is evidence
3 that the premises specified in the certificate are registered as a
4 pharmacy.

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

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

11 Penalty:

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

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Part 5 — Pharmacy business

53. Pharmacy business to be carried on at registered premises

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

Penalty:

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

54. Ownership of, and interests in, pharmacy business

(1) A person must not own, or hold a proprietary interest in, a pharmacy business unless the person is —

- (a) a pharmacist; or
 - (b) a person who is a partner in a partnership that carries on the business and in which every partner is either —
 - (i) a pharmacist; or
 - (ii) a close family member of a partner who is a pharmacist;
- or
- (c) a pharmacist controlled company; or
 - (d) a friendly society; or
 - (e) the preserved company.

(2) For the purposes of subsection (1), a person is not to be treated as having a proprietary interest in a pharmacy business owned by a company referred to in subsection (1)(c), (d) or (e) in respect of an interest as a director, officer, trustee, member or shareholder of that company.

Penalty:

- (a) for an individual, a fine of \$5 000;

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

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

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

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

- 28 (1) If the person in whose name a pharmacy is registered under
29 section 39 is a pharmacist then that pharmacist has overall
30 responsibility for the pharmacy business carried on at the
31 pharmacy.

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

5 Penalty: a fine of \$5 000.

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

10 (a) the name and address of the pharmacist appointed to
11 have overall responsibility for the pharmacy business
12 carried on at the pharmacy; and

13 (b) the date from which the appointment of the pharmacist
14 commenced or is to commence; and

15 (c) evidence that the pharmacist has agreed to the
16 appointment.

17 Penalty: a fine of \$2 500.

18 (4) A person must not —

19 (a) carry on a pharmacy business at a pharmacy; or

20 (b) practise pharmacy at a pharmacy,

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

24 Penalty:

25 (a) for an individual, a fine of \$5 000;

26 (b) for a body corporate, a fine of \$10 000.

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

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

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

9 Penalty:

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

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

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

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

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

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

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

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

3 Penalty: a fine of \$5 000.

4 (3) Within 7 days after appointing a pharmacist under
5 subsection (2), the person who appointed the pharmacist is to
6 give written notice to the Board specifying —

7 (a) the name and address of the pharmacist appointed to
8 have overall responsibility of the pharmacy business
9 carried on at the pharmacy; and

10 (b) the date from which the appointment of the pharmacist
11 commenced or is to commence; and

12 (c) evidence that the pharmacist has agreed to the
13 appointment.

14 Penalty: a fine of \$1 000.

15 (4) On a person ceasing to be a close family member of a
16 pharmacist due to death, divorce or separation —

17 (a) a proprietary interest held by that person in a pharmacy
18 business is to be dealt with in accordance with the
19 regulations; and

20 (b) for such period as the Board approves in writing, being
21 not longer than 12 months, section 54 does not apply in
22 respect of the proprietary interest held by that person.

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

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

27 (a) the person in whose name the pharmacy is registered
28 under section 39; or

29 (b) a pharmacist who is in partnership with that person; or

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

3 Penalty:

- 4 (a) for an individual —
- 5 (i) for a first offence, a fine of \$5 000, and for
6 each separate and further offence committed
7 by the person under the *Interpretation*
8 *Act 1984* section 71, a fine of \$200;
- 9 (ii) for a subsequent offence, a fine of \$10 000,
10 and for each separate and further offence
11 committed by the person under the
12 *Interpretation Act 1984* section 71, a fine of
13 \$400;
- 14 (b) for a body corporate —
- 15 (i) for a first offence, a fine of \$10 000, and for
16 each separate and further offence committed
17 by the person under the *Interpretation*
18 *Act 1984* section 71, a fine of \$400;
- 19 (ii) for a subsequent offence, a fine of \$20 000,
20 and for each separate and further offence
21 committed by the person under the
22 *Interpretation Act 1984* section 71, a fine of
23 \$800.

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

25 A person must not —

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

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- 1 (b) advertise or otherwise hold out or imply that premises at
2 which the person is carrying on a business are a
3 pharmacy unless —
- 4 (i) the premises at which the business is carried on
5 are registered as a pharmacy; and
- 6 (ii) the business is a pharmacy business; and
- 7 (iii) the person is entitled under section 54(1) to own,
8 or hold a proprietary interest in, such a business.
- 9 Penalty:
- 10 (a) for a first offence —
- 11 (i) a fine of \$2 500;
- 12 (ii) for each separate and further offence
13 committed by the person under the
14 *Interpretation Act 1984* section 71, a fine of
15 \$100;
- 16 (b) for a subsequent offence —
- 17 (i) a fine of \$5 000;
- 18 (ii) for each separate and further offence
19 committed by the person under the
20 *Interpretation Act 1984* section 71, a fine of
21 \$200.

Part 6 — Rules, regulations and forms

61. Rules

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

62. Regulations

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

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

25 **63. Forms**

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

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

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Part 7 — Miscellaneous

64. False or misleading information

(1) A person must not do any of the things set out in subsection (2) —

- (a) in relation to an application; or
- (b) in relation to the compliance, or purported compliance, with any requirement of this Act to give the Board or the registrar advice or information.

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

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

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

65. Surrender of certificate

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

Penalty: a fine of \$1 000.

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

5 **66. Protection from liability**

6 (1) An action in tort does not lie against a person for anything that
7 the person has done, in good faith, in the performance or
8 purported performance of a function under this Act.

9 (2) The State is also relieved of any liability that it might otherwise
10 have had for another person having done anything as described
11 in subsection (1).

12 (3) The protection given by this section applies even though the
13 thing done as described in subsection (1) may have been
14 capable of being done whether or not this Act had been enacted.

15 (4) In this section, a reference to the doing of anything includes a
16 reference to an omission to do anything.

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

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

19 (a) any decision refusing an application to the Board for
20 registration;

21 (b) any decision under section 46;

22 (c) any decision to impose, or vary, a condition under
23 section 47.

24 (2) If the Board makes a decision to which this subsection applies,
25 it is to record the grounds on which the decision was based, and
26 its reasons, and is as soon as is practicable, but in any case not
27 later than 30 days after making the decision, to give written
28 notice of the decision together with those grounds and reasons,
29 to the person to whom the decision relates.

1 **68. Review**

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

5 **69. Publication of proceedings etc.**

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

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

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

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

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

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

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1 **70. Legal proceedings**

2 (1) Any proceedings for an offence against this Act may be taken in
3 the name of the Board by the registrar or any other person
4 authorised in that behalf by the Board.

5 (2) All proceedings for offences against this Act are to be heard by
6 a court of summary jurisdiction constituted by a magistrate.

7 (3) In any proceedings no proof is required of —

8 (a) the appointment of a member or deputy of a member of
9 the Board or a member of a committee; or

10 (b) the authorisation of a person under subsection (1),

11 but an averment in a prosecution notice that the person is so
12 appointed or authorised is to be taken to be proved in the
13 absence of evidence to the contrary.

14 (4) In all courts and before all persons and bodies authorised to
15 receive evidence, in the absence of evidence to the contrary —

16 (a) a copy of or extract from a register or any statement that
17 purports to reproduce matters entered in the register that
18 is certified by the registrar as a true copy, extract or
19 statement, is evidence of the facts appearing in that
20 copy, extract or statement; and

21 (b) judicial notice is to be taken of the fact that a person is
22 the holder of the office of registrar and of the signature
23 of the registrar on a certificate purporting to be issued
24 under paragraph (a).

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

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

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

22 **72. Review of Act**

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

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

1 **Part 8 — Consequential amendments**

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

3 **73. Act amended**

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

6 **74. Schedule V Part 3 amended**

7 In Schedule V Part 3 insert in alphabetical order:

8
9 The Pharmacy Registration Board of Western Australia
10 established under the *Pharmacy Act 2010*.
11

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

13 **75. Act amended**

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

16 **76. Schedule 1 amended**

17 In Schedule 1 insert in alphabetical order:

18
19 *Pharmacy Act 2010*
20

1 **Part 9 — Transitional and savings provisions**

2 **Division 1 — Preliminary**

3 **77. Terms used**

4 In this Part —

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

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

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

15 **commencement day** means the day on which the *Health*
16 *Practitioner Regulation National Law (WA) Act 2010*
17 section 15(j) comes into operation;

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

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

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

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

1 **National Agency** means the Australian Health Practitioner
2 Regulation Agency established under the *Health Practitioner*
3 *Regulation National Law (Western Australia)* section 23(1);
4 **National Board** means the Pharmacy Board of Australia
5 established under the *Health Practitioner Regulation National*
6 *Law (Western Australia)* section 31(1);
7 **new Board** means the Pharmacy Registration Board of Western
8 Australia established under section 4(1) of this Act;
9 **repealed Act** means the *Pharmacy Act 1964*;
10 **right** means any right, power, privilege or immunity whether
11 actual, contingent or prospective;
12 **unincorporated Pharmaceutical Society** means the
13 Pharmaceutical Society of Western Australia referred to in
14 section 6 of the repealed Act.

15 **78. Interpretation Act 1984 not affected**

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

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

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

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

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

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

5 **81. Board members**

6 Two of the members of the new Board as first constituted under
7 this Act are to hold office for such term, not exceeding
8 18 months, as is specified in the member's instrument of
9 appointment.

10 **82. The registrar and other staff**

11 (1) The registrar who held office under section 15 of the repealed
12 Act immediately before the commencement day continues in
13 office, under and subject to this Act, as the registrar of the new
14 Board.

15 (2) An officer who held office under the repealed Act immediately
16 before the commencement day, other than an officer to whom
17 subsection (4) applies, continues in office, under and subject to
18 this Act, as an officer of the new Board.

19 (3) A person mentioned in subsection (1) or (2) is to be regarded as
20 having been engaged or employed under this Act.

21 (4) An officer who held office under the repealed Act immediately
22 before the commencement day is to be employed or engaged by
23 the incorporated Pharmaceutical Society if he or she has so
24 agreed and on such terms and conditions as are agreed, in
25 writing, with the former Council before the commencement day.

26 (5) An agreement under subsection (4) with the former Council is
27 to have effect on the commencement day as if —

28 (a) the incorporated Pharmaceutical Society were
29 substituted for the former Council as a party to the
30 agreement; and

1 (b) any reference in the agreement to the former Council
2 were (unless the context otherwise requires) a reference
3 to the incorporated Pharmaceutical Society.

4 (6) Except as otherwise agreed by a person mentioned in
5 subsection (1), (2) or (4), the remuneration, existing or accrued
6 rights, rights under a superannuation scheme or continuity of
7 service of the person are not affected, prejudiced or interrupted
8 by the operation of this section or the repeal of the *Pharmacy*
9 *Act 1964*.

10 **83. Registered pharmacies**

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

19 **84. Register**

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

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

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

28 **86. Agreements and instruments**

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

- 1 day related to the regulation of a pharmacy business, pharmacy
2 premises, a pharmacy department or any other pharmacy related
3 entity that is not an individual —
- 4 (a) to which the former Council was a party; or
5 (b) which contains a reference to the former Council,
6 has effect after the commencement day as if —
- 7 (c) the new Board were substituted for the former Council
8 as a party to the agreement or instrument; and
9 (d) any reference in the agreement or instrument to the
10 former Council were (unless the context otherwise
11 requires) a reference to the new Board.

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

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

23 **Division 3 — Incorporated Pharmaceutical Society**

24 **88. Incorporation of Pharmaceutical Society**

- 25 (1) On the commencement day —
- 26 (a) the unincorporated Pharmaceutical Society is to be taken
27 to be an association incorporated under the *Associations*
28 *Incorporation Act 1987* with the name of the
29 Pharmaceutical Society of Western Australia
30 (Incorporated); and
31 (b) the rules of the unincorporated Pharmaceutical Society
32 in existence immediately before the commencement day

- 1 are to be taken to be the rules of the incorporated
2 Pharmaceutical Society for the purposes of the
3 *Associations Incorporation Act 1987* (the **Rules**); and
- 4 (c) any member of the former Council in office immediately
5 before the commencement day is to be taken to be a
6 member of the committee or other body having
7 management of the incorporated Pharmaceutical Society
8 until the first annual general meeting held after the
9 commencement day; and
- 10 (d) the president and deputy president of the former Council
11 in office immediately before the commencement day are
12 to be taken to be the president and deputy president of the
13 incorporated Pharmaceutical Society until the first
14 annual general meeting held after the commencement
15 day; and
- 16 (e) any trustee or member of the unincorporated
17 Pharmaceutical Society immediately before the
18 commencement day is to be taken to be a trustee or
19 member of the incorporated Pharmaceutical Society.
- 20 (2) As soon as practicable after the Pharmaceutical Society of
21 Western Australia (Incorporated) is incorporated, the
22 Commissioner is to issue a certificate of incorporation to the
23 incorporated Pharmaceutical Society.
- 24 (3) As soon as practicable after the Pharmaceutical Society of
25 Western Australia (Incorporated) is incorporated, the
26 incorporated Pharmaceutical Society must lodge a copy of the
27 Rules with the Commissioner accompanied by any fee
28 prescribed for making an application for the incorporation of an
29 association under the *Associations Incorporation Act 1987*
30 section 5(1).
- 31 (4) If the Commissioner is of the opinion that the Rules lodged by
32 the incorporated Pharmaceutical Society do not conform to the
33 requirements of the *Associations Incorporation Act 1987*, the
34 Commissioner may by a written notice given to the incorporated
35 Pharmaceutical Society direct that the Rules are to be altered in

1 the manner specified in the notice and the Rules are to be taken
2 to have been altered in that manner.

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

5 (1) On the commencement day —

6 (a) the assets and rights vested in the former Council
7 immediately before the commencement day that were
8 concerned with, or related to, the management of the
9 unincorporated Pharmaceutical Society by that Council
10 vest in the incorporated Pharmaceutical Society by force
11 of this section; and

12 (b) the liabilities of the former Council (including a share of
13 a liability) that immediately before the commencement
14 day were concerned with, or related to, the management
15 of the unincorporated Pharmaceutical Society by that
16 Council become the liabilities of the incorporated
17 Pharmaceutical Society by force of this section; and

18 (c) any proceedings by or against the former Council
19 commenced before the commencement day in relation to
20 the assets, rights and liabilities referred to in
21 paragraphs (a) and (b) are to be taken to be proceedings
22 to which the incorporated Pharmaceutical Society is a
23 party; and

24 (d) any proceedings or remedy that immediately before the
25 commencement day might have been commenced by or
26 available against or to the former Council in relation to
27 the assets, rights and liabilities referred to in
28 paragraphs (a) and (b), may be commenced and are
29 available, by or against or to the incorporated
30 Pharmaceutical Society; and

31 (e) any act, matter or thing done or omitted to be done in
32 relation to the assets, rights and liabilities referred to in
33 paragraphs (a) and (b) before the commencement day
34 by, to or in respect of the former Council (to the extent

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

23 **90. Agreements and instruments**

- 24 Any agreement or instrument subsisting immediately before the
25 commencement day that relates to assets, rights or liabilities
26 referred to in section 89(1)(a) or (b) —
- 27 (a) to which the former Council was a party; or
28 (b) which contains a reference to the former Council,
- 29 has effect after the commencement day as if —
- 30 (c) the incorporated Pharmaceutical Society were
31 substituted for the former Council as a party to the
32 agreement or instrument; and

- 1 (d) any reference in the agreement or instrument to the
2 former Council were (unless the context otherwise
3 requires) a reference to the incorporated Pharmaceutical
4 Society.

5 **Division 4 — Miscellaneous**

6 **91. Exemption from State taxation**

7 (1) In this section —
8 *state tax* includes duty chargeable under the *Duties Act 2008*
9 and any other tax, duty, fee, levy or charge under a law of the
10 State.

11 (2) State tax is not payable in relation to —
12 (a) anything that occurs by the operation of this Part; or
13 (b) anything done —
14 (i) under this Part; or
15 (ii) to give effect to this Part; or
16 (iii) for a purpose connected with, or arising out of,
17 giving effect to this Part,

18 including a transaction entered into or an instrument or
19 document of any kind made, executed, lodged or given.

20 (3) The Treasurer or a person authorised by the Treasurer may, at
21 the request of the National Board, the new Board or the
22 incorporated Pharmaceutical Society, certify in writing that a
23 specified thing —
24 (a) occurred by the operation of this Part; or
25 (b) was done —
26 (i) under this Part; or
27 (ii) to give effect to this Part; or
28 (iii) for a purpose connected with, or arising out of,
29 giving effect to this Part.

1 (4) For all purposes and in all proceedings, a certificate under
2 subsubsection (3) is conclusive evidence of the matters it certifies,
3 except so far as the contrary is shown.

4 **92. Registration of documents**

5 (1) In this section —

6 *relevant official* means the Registrar of Titles, the Registrar of
7 Deeds, the Minister administering the *Mining Act 1978* or any
8 other person authorised by a written law to record and give
9 effect to the registration of documents.

10 (2) The relevant officials are to take notice of the provisions of this
11 Part and are empowered to record and register in the appropriate
12 manner the necessary documents, and otherwise to give effect to
13 this Part.

14 **93. Saving**

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

17 (a) as a breach of contract or otherwise as a civil wrong; or

18 (b) as a breach of any contractual provision prohibiting,
19 restricting or regulating the assignment or transfer of
20 assets, rights or liabilities or the disclosure of
21 information; or

22 (c) as giving rise to any remedy by a party to an instrument
23 or as causing or permitting the termination of any
24 instrument, because of a change in the beneficial or legal
25 ownership of any asset, right or liability; or

26 (d) as causing any contract or instrument to be void or
27 otherwise unenforceable; or

28 (e) as releasing or allowing the release of any surety.

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

30 (1) If there is no sufficient provision in this Part for dealing with a
31 transitional matter in connection with the enactment of this Act

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- 1 the Governor may make regulations prescribing all matters that
2 are required, necessary or convenient to be prescribed in
3 relation to that matter.
- 4 (2) Regulations made under subsection (1) may provide that
5 specific provisions of this Act —
6 (a) do not apply; or
7 (b) apply with specific modifications,
8 to or in relation to any matter.
- 9 (3) Regulations made under subsection (1) must be made within
10 12 months after the commencement day.
- 11 (4) If regulations made under subsection (1) provide that a specified
12 state of affairs is to be taken to have existed, or not to have
13 existed, on and from a day that is earlier than the day on which
14 the regulations are published in the *Gazette* but not earlier than
15 the commencement day, the regulations have effect according to
16 their terms.
- 17 (5) In subsection (4) —
18 *specified* means specified or described in the regulations.
- 19 (6) If regulations contain a provision referred to in subsection (4),
20 the provision does not operate so as —
21 (a) to affect in a manner prejudicial to any person (other
22 than the State), the rights of that person existing before
23 the day of publication of those regulations; or
24 (b) to impose liabilities on any person (other than the State
25 or an authority of the State) in respect of anything done
26 or omitted to be done before the day of publication of
27 those regulations.

28

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
applicant.....	3(1)
application.....	3(1)
approved	3(1)
assets	77
Board.....	3(1)
certificate of registration	3(1)
close family member.....	3(1)
commencement day	77
Commissioner	77
committee	3(1)
condition	3(1)
Corporations Act.....	3(1)
dispense.....	3(1)
document.....	3(1)
former Council	77
friendly society	3(1)
incorporated Pharmaceutical Society.....	77
information	12(1)
liability	77
member	24
member of the Board	3(1)
National Agency	77
National Board.....	77
new Board.....	77
new friendly society	55(6)
officer.....	3(1)
pharmacist.....	3(1)
pharmacist controlled company	3(1)
pharmacy.....	3(1)
pharmacy business	3(1)
preserved company	3(1)
presiding member	3(1)
proprietary interest.....	3(1)
register	3(1)
registered.....	3(1)
registered pharmacy	3(1)
registrar	3(1)
registration	3(1)
relevant official	92(1)

Defined Terms

repealed Act	77
right.....	77
Rules	88(1)
specified.....	94(5)
state tax	91(1)
supermarket.....	3(1)
the practice of pharmacy	3(1)
unincorporated Pharmaceutical Society.....	77