

**1993**

**AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY**

**PHARMACY (AMENDMENT) BILL 1993**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of the Minister for Health**

**Wayne Berry MLA**

## PHARMACY (AMENDMENT) BILL 1993

### EXPLANATORY MEMORANDUM

#### Outline

The Pharmacy (Amendment) Bill 1993 ("the Bill") amends the *Pharmacy Act 1931* ("the Act") for the purpose of ensuring that the registration and certain other provisions of the Act are consistent with the requirements for registration of pharmacists as recommended by the Australian Health Ministers' Advisory Council (AHMAC) and agreed to by the Australian Health Ministers' Conference and is the second in a series of Bills to amend the ACT's legislation regulating health professions for a similar purpose.

#### *The Pharmacy Act 1931*

The Act regulates the registration of persons as pharmacists and, in particular, Parts III and IV, respectively, set out the qualifications and requirements for registration as a pharmacist and provide that disciplinary action may be taken by the Pharmacy Board established under Part II of the Act in respect of the conduct of a registered pharmacist.

#### *The Pharmacy (Amendment) Bill 1993*

The Bill amends the Act to ensure that the provisions relating to registration of pharmacists and disciplinary action which may be taken under the Act comply with the approach to these matters which has been agreed between the States and Territories.

In particular the Bill recognises the entitlement of a person who is registered as a pharmacist in a State or another Territory to registration in the ACT and provides for conditions which may be imposed upon a pharmacist's registration in another jurisdiction or disciplinary action taken against a pharmacist in another jurisdiction to be applied in respect of the person's registration in the Territory.

These provisions are intended to be consistent with the mutual recognition principle relating to occupations as set out in section 17 of the Commonwealth *Mutual Recognition Act 1992*.

The application of that principle to the Territory and to other jurisdictions has given rise to the desirability of adopting agreed minimum requirements for registration as a pharmacist. Unless all jurisdictions where mutual recognition applies have the same standard for registration of a person as a pharmacist, a jurisdiction with a lower standard will provide a means for a person who satisfies that standard, but not the higher standards required in other jurisdictions, to gain registration in those other jurisdictions under the mutual recognition principle.

#### **Financial implications**

There are no financial implications arising from the Bill.

**Details of the Bill are included in the Attachment.**

## PHARMACY (AMENDMENT) BILL 1993

## Explanatory Memorandum

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## MAIN AMENDMENTS

### *Clause 8- Repeal and substitution of new registration provisions*

*Clause 8* repeals sections 21, 22, 23 and 24 of the Act and divides Part III of the Act into four new Divisions. Section 21 requires the Board to keep a register of pharmacists and sections 22, 23 and 24 set out the qualifications and other general requirements for registration as a pharmacist.

These provisions are replaced with proposed new sections 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 24A, 24B, 24C, 24D, 24E, 24F and 24G dealing with requirements for registration including registration procedure.

### *Registration based on qualifications and training*

New section 10 deals with the requirements for registration as a pharmacist where the applicant relies upon his or her qualifications and training.

New subsection 10(1) entitles a person to registration as a pharmacist if he or she -

is a graduate of a course of study and training in pharmacy offered by -

- an Australian institution in a State or Territory, being a course that is accredited in writing by the Board or recognised by a registration authority in that State or Territory; or
- an overseas institution, being a course accredited in writing by the Board;

· has passed to the satisfaction of the Board an examination conducted by or on behalf of the Board in accordance with a determination made, on the Board's recommendation, by the Minister and published in the *Gazette*; and

· has, if required by the Board and to the satisfaction of the Board, undertaken training or gained experience in the practice of pharmacy in Australia for a period of up to 12 months.

New subsection 10(2) prohibits the Board from accrediting a course offered by an overseas institution unless the course is substantially equivalent to a course offered by an Australian institution in a State or Territory.

**New subsection 10(3)** specifies that registration granted under new section 10 is unconditional registration.

*Registration under mutual recognition principle*

**New section 11** entitles a person who is licensed or registered as a pharmacist in a State or another Territory that is a participating jurisdiction within the meaning of the Mutual Recognition Act, which is defined by the insertion in section 5 of the Act of a new definition to mean the Commonwealth *Mutual Recognition Act 1992*, to registration as a pharmacist under the Act.

**New subsection 11(2)** entitles such a person to unconditional registration under this Act where that person's registration in the other State or Territory is unconditional.

**New subsection 11(3)** qualifies the right of such a person to be registered under this Act by restricting registration under this Act to registration subject to the same conditions (if any) as apply to the person's registration in the other jurisdiction where the person is registered.

*Registration at the discretion of the Board*

**New section 12** provides the Board with a discretion to register a person, in a range of circumstances, notwithstanding that the person is not entitled to registration pursuant to new sections 10 or 11.

**New subsection 12(1)** enables the Board to register a person as a pharmacist for the purpose of filling an unmet area of need provided the Board is satisfied that the person has suitable qualifications and experience to practise in that unmet area of need.

**New subsection 12(2)** enables the Board to register a person as a pharmacist for the purpose of enabling the person to fill a teaching or research position provided that the person has qualifications that the Board considers appropriate for the purpose and the person's application is supported, in writing, by the institution by which it is proposed that the person be engaged in the teaching or research position.

**New subsection 12(3)** enables the Board to register a person as a pharmacist on a temporary basis where the Board is satisfied that it is in the public interest to do so.

**New subsection 12(4)** provides that the Board may impose such conditions upon registration under this section as the Board considers appropriate.

### *Interim registration*

**New section 13** provides for the interim registration of an applicant for registration.

**New subsection 13(1)** enables the interim registration of an applicant -

- . in the case of a person entitled to registration under **new section 10**, where it is not practicable to wait for the Board to consider the application; or
- . where a person would be entitled to registration under **new section 10** but for the fact that a degree or award to which the person is entitled has not yet been conferred or granted by the institution concerned.

**New subsection 13(2)** enables a person authorised by the Board to grant interim registration to an applicant for registration, in accordance with this section. This will enable a person nominated by the Board, such as a member of the Board, to grant interim registration to an applicant for registration in circumstances where it may be some time before the Board will find it possible to meet to consider the person's application.

**New subsection 13(3)** provides that interim registration remains in force until the person to whom it is granted is given written notice that -

- . registration has been granted;
- . registration has been refused; or
- . the interim registration has been cancelled.

**New subsection 13(4)** gives the Board the discretion to cancel a person's interim registration for any reason it considers proper and requires the Board to immediately notify a person, in writing, of the cancellation of his or her interim registration.

The effect of **new subsection 13(5)** is that a person who holds interim registration is taken to be a registered pharmacist.

The effect of **new subsection 13(6)** is to backdate the commencement of a person's registration to the date upon which interim registration was granted, where a person who is granted interim registration is subsequently registered as a pharmacist.

New subsection 13(7) treats interim registration as having been granted by the Board.

*Conditions of registration in cases of impairment*

New section 14 deals with conditions which may be imposed upon the registration of a person as a pharmacist where the person suffers from an impairment. The term impairment is defined in new section 5B to encompass physical or mental impairment, a disability or condition or disorder which detrimentally affects, or is likely to detrimentally affect, a person's physical or mental capacity to practise pharmacy, and it includes habitual drunkenness or addiction to a deleterious drug.

New section 14 enables the Board to impose conditions upon a person's registration where the Board is satisfied that the person suffers from an impairment and the conditions are reasonably required having regard to the impairment.

*Refusal of registration where applicant convicted of offence*

New section 15 gives the Board a discretion to refuse to register an applicant for registration if the applicant has been convicted of an offence in the Territory or convicted in a court elsewhere of an act or omission which, had it taken place in the Territory, would have constituted an offence, where the Board is of the opinion that the conviction renders the person unfit, in the public interest, to practise pharmacy.

New subsection 15(2) requires the Board to have regard to the nature of the offence and the circumstances in which it was committed in making its decision.

In order to be consistent with the provisions of subsection 23(1) of the Mutual Recognition Act, relating to refusal of registration, new subsection 15(3) specifies that new subsection 15(1) does not apply in relation to a person who is entitled to registration pursuant to that Act and who has lodged a notice with the Board pursuant to section 19 of that Act.

*Refusal of registration where applicant deregistered outside Territory*

New section 16 gives the Board a discretion to refuse to register an applicant for registration if the applicant's name has been removed from a pharmacy register kept under the law of another country, State or another Territory for any reason relating



to the conduct of the person amounting to professional misconduct within the meaning of the Act or on any basis relating to the person's physical or mental capacity to practise.

The term "professional misconduct" is defined in **new section 32**.

In order to be consistent with the provisions of subsection 23(1) of the Mutual Recognition Act, relating to refusal of registration, **new subsection 16(3)** specifies that **new subsection 16(1)** does not apply in relation to a person who is entitled to registration pursuant to that Act and who has lodged a notice with the Board pursuant to section 19 of that Act.

*Applicant to be competent and of good character*

**New section 17** prohibits the Board from registering a person as a pharmacist unless the person -

- . has the physical capacity, mental capacity and skill to competently practise pharmacy;
- . has sufficient communication skills for the practise of pharmacy including an adequate command of the English language; and
- . is of good character.

However, in order to be consistent with the provisions of subsection 23(1) of the Mutual Recognition Act, relating to refusal of registration, **new subsection 17(2)** specifies that **new subsection 17(1)** does not apply in relation to a person who is entitled to registration pursuant to that Act and who has lodged a notice with the Board pursuant to section 19 of that Act.

*Restriction on registration of deregistered or suspended persons*

**New section 18** restricts the registration of persons whose registration has been cancelled or suspended. Other than a person whose registration has been cancelled pursuant to **new section 24B**, that is, as a consequence of cancellation of the person's registration in another jurisdiction, or pursuant to **new subsection 24F(2)** for non-payment of a fee or whose registration has been suspended pursuant to section 33(2) pending the outcome of an inquiry, a person may not apply for re-registration or termination of the suspension, other than by applying to the Board pursuant to **new section 32F**.

However, in order to be consistent with the provisions of subsection 23(1) of the Mutual Recognition Act, relating to refusal of registration, new subsection 18(2) specifies that new subsection 18(1) does not apply in relation to a person who is entitled to registration pursuant to that Act and who has lodged a notice with the Board pursuant to section 19 of that Act.

*Applications for registration*

New section 19 applies to applications for registration other than applications by persons who are entitled to registration pursuant to the Mutual Recognition Act and who lodge with the Board a notice under section 19 of that Act.

New subsection 19(2) requires that an application for registration be in a form approved by the Board and be accompanied by the determined fee.

*Applications to be considered and determined*

New section 20 requires the Board to consider and determine all applications for registration under new section 19 and that the determination of applications is to be by either registering the applicant, unconditionally or otherwise, or by refusing the application.

*Registration of applicants*

New section 21 requires that where a person who is applying for registration other than under the Mutual Recognition Act applies for registration in accordance with new section 19 and appears personally before the Board, if required to do so, and is entitled to registration in accordance with the Act, the Board shall register the applicant as a pharmacist.

*Fee for registration pursuant to Mutual Recognition Act*

New section 22 requires an applicant for registration pursuant to the Mutual Recognition Act to pay the determined fee.

### *Conditions of registration*

New section 23 provides that the conditions which the Board may impose upon registration at the time of registration relate to the duration of registration, the aspects of practice in which the person who is registered may be engaged and such other matters as the Board considers appropriate.

### *Register*

New section 24 requires the Board to keep a register of pharmacists and provides that the Register may be kept by electronic means.

### *Particulars to be entered in the Register*

New section 24A provides that registration is effected by the entering of certain particulars in the Register including particulars relating to the identity and address of the applicant, the qualifications of the applicant, the date of registration and registration number of the applicant and any conditions imposed upon the applicant's registration.

### *Deregistration on basis of disciplinary action under foreign law*

New section 24B provides for the deregistration of a person where that person's name has been removed from a register of pharmacists kept under a law of a State or another Territory or a law of another country.

New subsection 24B(1) requires that the Board cancel the registration of a person where the Board is satisfied that the name of the person has been removed from a register kept under a law of a State or another Territory for any reason relating to -

conduct of the person that would constitute professional misconduct under Part IV; or

the physical or mental capacity of the person to practise pharmacy.

Where a person whose registration has been cancelled under new subsection 24B(1) has his or her name restored to the register for the removal from which the person's registration was cancelled and the person applies for re-registration, new subsection 24B(2) requires the Board to re-register the person.

New subsection 24B(3) gives the Board a discretion to cancel the registration of a person where the Board is satisfied that the name of the person has been removed from a register kept under a law of a place outside Australia for any reason relating to -

- . conduct of the person that would constitute professional misconduct under Part IV; or
- . the physical or mental capacity of the person to practise pharmacy.

New subsection 24B(4) gives the Board a discretion to re-register a person whose registration has been cancelled under new subsection 24B(3) where the Board is satisfied that it is appropriate in the circumstances to re-register the person.

*Imposition of conditions under foreign law*

New section 24C provides for the imposition of conditions upon the registration of a person where conditions are imposed upon the registration of that person in another jurisdiction.

New subsection 24C(1) requires that where conditions are imposed upon the registration of a person as a pharmacist under the law of a State or another Territory, the Board must impose similar conditions upon the registration of the person under this Act.

New subsection 24C(2) gives the Board a discretion to impose conditions similar to those it is satisfied have been imposed upon the registration of a person as a pharmacist under the law of a place outside Australia.

*Cessation of registration*

New section 24D provides that a person ceases to be registered as a pharmacist -

- . when the Board gives the person notice that his or her registration has been cancelled in accordance with the Act; or
- . if registration is conditional and the period of registration is specified in the condition - when that period expires.

*Annual fee payable*

New section 24E provides for the payment of an annual fee by a registered pharmacist.

New subsection 24E(1) requires that on or before 31 October each year a registered pharmacist pay to the Board the determined fee.

New subsection 24E(2) requires that the Board send to each registered pharmacist, at least one month before the due date for payment, a notice requiring the pharmacist to pay the fee by the due date.

New subsection 24E(3) precludes a pharmacist from relying upon a failure of the Board to send such a notice as a basis for avoiding liability to pay the fee by the due date.

*Registration to be cancelled for non-payment*

New section 24F provides for the cancellation of a pharmacist's registration where the pharmacist fails to pay the annual fee.

~~New subsection 24F(1)~~ requires that where a pharmacist fails to pay the determined fee by the due date the Board must send the pharmacist a notice requiring him or her to pay the fee by a day specified in the notice and advising him or her that if the fee is not paid by that later date his or her registration will be cancelled.

New subsection 24F(2) requires the Board to cancel the registration of a pharmacist ~~who fails~~ to pay the fee by the day specified in the notice under new subsection 24F(1).

*Entitlement to re-registration on payment of fees*

New section 24G provides for the re-registration of a person where the person pays the determined fee.

New subsection 24G(1) entitles a person whose name has been removed from the Register for failure to pay the annual fee to re-registration if he or she applies in accordance with the requirements of the section and pays the determined fee.

New subsection 24G(2) requires that an application for re-registration be in a form approved by the Board and be accompanied by the determined fee.

New subsection 24G(3) qualifies the entitlement of a person to re-registration by limiting it to a right to re-registration on the same terms and conditions (if any) as applied to the person's registration immediately prior to the removal of the person's name from the Register.

New subsection 24G(4) gives the Board a discretion to refuse re-registration to a person where the Board is satisfied that the person is not competent to practise pharmacy or is not of good character.

New subsection 24G(5) provides that a person's right to re-registration under new section 24G is subject to the other provisions of the Act.

#### *Clause 9 - Certificate of Registration*

*Clause 9* amends section 25 of the Act dealing with certificates of registration.

*Paragraph 9(a)* amends the section by inserting new subsection (1A) to require that a certificate of registration indicates the provision of the Act by virtue of which the certificate holder is entitled to be registered and any conditions to which that person's registration is subject.

*Paragraph 9(b)* effects a technical amendment to subsection 25(2) to bring the language of the provision into accord with modern drafting practice.

*Paragraph 9(c)* omits subsections 25(3), (4), (5) and (6) and inserts new subsections 25 (3), (4), (5), (6), (7), (8), (9) and (10).

New subsection 25(3) requires that where a certificate of registration has been lost or destroyed the Registrar must issue a duplicate to a registered pharmacist, provided the determined fee is paid.

New subsection 25(4) requires that where the Board notifies a pharmacist in writing that his or her registration has been suspended or cancelled the pharmacist must deliver his or her certificate to the Chairperson of the Board. New subsection 25(5) provides a maximum penalty of a \$500 fine for failure to comply with this requirement.

**New subsection 25(6)** requires that where a person whose registration has been suspended delivers his or her certificate of registration to the Board the Board retain the certificate for the duration of the suspension and return it to the person at the expiration of the period of suspension unless the person's registration is sooner cancelled.

**New subsection 25(7)** enables the Chairperson of the Board to request in writing that a certificate be delivered to the Board for the purpose of endorsing the certificate to indicate that conditions have been imposed upon the registration of the person to whom the certificate was issued or that conditions imposed upon the registration of that person have been varied.

**New subsection 25(8)** makes it an offence for a person to fail to comply with a request under new subsection 25(7) and provides for a penalty of a maximum fine of \$500.

**New subsection 25(9)** provides that a notice requesting the delivery of a certificate to the Board, where the registration of the person to whom the certificate was issued has been cancelled or suspended or where conditions have been imposed upon the registration or conditions have been varied, may be served personally or by post.

**New subsection 25(10)** provides that it is a defence to prosecution in respect of a person's failure to deliver his or her certificate to the Board where it has been requested following the cancellation or suspension of that person's registration, or where conditions upon a licence have been imposed or varied where the certificate has been destroyed or is unable to be found following a diligent search.

***Clause 10 - Repeal of section 26***

**Clause 10** repeals section 26 of the Act providing for the payment of annual fees by registered pharmacists. This provision is obsolete as a consequence of the insertion of new sections 24E, 24F and 24G.

*Clause 13 - Repeal of sections 29, 30 and 31*

*Clause 13* repeals sections 29, 30 and 31 of the Act providing for, respectively, provisional registration, temporary registration and special registration. These provisions have been replaced, respectively, by new section 13 and new subsections 12(3) and (2).

*Clause 15 - Repeal of sections 32 and 32A and substitution of new provisions*

*Clause 15* repeals sections 32 and 32A of the Act dealing with the cancellation and suspension of registration and inserts new sections 32, 32A, 32B, 32C, 32D, 32E and 32F.

*Interpretation*

New section 32 is an interpretation provision which defines the term "professional misconduct" to include a reference to conduct of the following kind that is of a sufficiently serious nature to justify suspension of a pharmacist from practising pharmacy or removal of the pharmacist's name from the Register -

- . conduct demonstrating a lack of adequate knowledge, skill, judgment or care by the pharmacist in the practise of pharmacy;
- . a contravention of the Act or the regulations;
- . a contravention of a condition to which a pharmacist's registration is subject;
- . conduct by a pharmacist, whether occurring in the practice of pharmacy or not, that adversely affects the practice of pharmacy by the person or brings pharmacists into disrepute; or
- . any other improper or unethical conduct relating to the practice of pharmacy.

*Cancellation or suspension of registration*

New section 32A deals with the cancellation and suspension of registration and gives the Board a discretion to cancel the registration of a person or order the suspension of the person's registration where the Board is satisfied that -

- . the registration of the person was obtained by fraud or misrepresentation;
- . the pharmaceutical qualification of the person has been withdrawn or cancelled by the body which granted it;
- . the person has contravened a condition of his or her registration;



- . the person has been convicted of an offence punishable by imprisonment for more than one year or any offence which in the opinion of the Board renders the person unfit to practise;
- . the person is guilty of habitual drunkenness or addiction to a drug that renders the person unfit to practise as a pharmacist;
- . the person is guilty of professional misconduct; or
- . the person is not competent to practise pharmacy.

*Cancellation, suspension or restriction of right of practise on health grounds*

**New section 32B** deals with the cancellation, suspension or restriction of a person's right to practise on health grounds.

**New subsection 32B(1)** requires that subject to the provisions of **new subsection 32B(2)** the Board must cancel or order the suspension of the registration of a person where it is satisfied that the mental or physical condition of the person renders him or her unfit to practise.

**New subsection 32B(2)** gives the Board the option of, instead of cancelling or suspending the registration of a person, directing by order, that the person not give or perform specified pharmaceutical services where the Board is satisfied that the person remains fit to give or perform some services.

**New subsection 32B(3)** deems a person upon whom the Board has served an order suspending or restricting practising rights and who provides a pharmaceutical service in contravention of such an order to be other than a registered pharmacist.

*Practising when registration suspended*

**New subsection 32C** gives the Board a discretion to cancel or order the further suspension of a person whose registration has been suspended and who is convicted of an offence of practising pharmacy whilst the person is deemed to be other than a registered pharmacist.

*Power of Board to caution, reprimand, etc.*

**New section 32D** provides the Board with a range of disciplinary or counselling options in addition to the options of cancellation, suspension or restriction of practising rights.

It permits the Board to do one or more of the following in relation to the conduct of a registered pharmacist -

- . caution or reprimand the pharmacist;
- . order the pharmacist to seek and undergo medical or psychiatric treatment or counselling;
- . impose appropriate conditions upon the pharmacist's practise of pharmacy;
- . order that the pharmacist seek and follow advice in relation to his or her practise of pharmacy from persons specified by the Board;
- . order the pharmacist to complete specified educational courses

However, in order to be consistent with the provisions of paragraph 20(4)(b) of the Mutual Recognition Act, new subsection 30D(2) specifies that new paragraph 30D(1)(e), enabling the Board to order a pharmacist to complete specified educational courses, does not apply to a person who has obtained registration pursuant to that Act.

#### *Power of Board to impose fines*

New section 32E provides the Board with a power to impose a fine upon a registered pharmacist.

New subsection 32E(1) enables the Board to impose a fine where the Board finds that a pharmacist has failed to comply with an order of the Board under new section 32D. However, this power is qualified by the operation of new subsection 32E(2) which prohibits the Board from imposing a fine in respect of conduct for which a court has already imposed a fine or other penalty.

New subsection 32E(3) requires that a fine be paid to the Territory within the time specified in the order imposing the fine and new subsection 32E(4) empowers the Board to cancel or order the suspension of the registration of a pharmacist where the registered pharmacist fails to comply with the order imposing the fine.

#### *Application for re-registration*

New section 32F enables a person whose registration has been cancelled other than for non-payment of an annual fee or suspended otherwise than pending an inquiry by the Board, to apply for re-registration or termination of the suspension, as the case may be, on the ground that by reason of a specified change in circumstances that

has occurred since the date of the cancellation or suspension, it is just that the person should be re-registered or his or her suspension should be terminated.

New subsection 32F(2) gives the Board a discretion to order the re-registration of such a person or the termination of the suspension of registration of such a person where the Board is satisfied that by reason of the change of circumstances the person should be re-registered or his or her suspension be terminated, as the case may be.

*Clause 16 - Inquiry by Board*

*Clause 16* amends section 33 of the Act to extend the application of the present requirement that the Board conduct an inquiry before taking certain disciplinary action to require that the Board hold an inquiry prior to taking counselling or disciplinary action under new section 32D and to provide for an order for suspension of registration, pending the holding of an inquiry, to be served on the person to whom the inquiry relates.

*Clause 17 - Repeal of sections 33A and 34*

*Clause 17* repeals sections 33A and 34 of the Act which provide for, respectively, appeals against particular decisions of the Board and the re-registration of a person whose registration has been cancelled for failure to pay an annual fee. These matters are now dealt with under the provisions of new sections 47A and 24G, respectively.

*Clause 18 - Publication of notice of decision*

*Clause 18* amends section 36 of the Act which enables the publication in the *Gazette* of a notice in respect of certain decisions of the Board and the reasons for such decisions, where an appeal is lodged with the Administrative Appeals Tribunal in relation to such a decision.

The amendment extends the application of the provision to decisions concerning disciplinary or counselling action which may be taken by the Board under new section 32D and the imposition of a fine under new section 32E.

***Clause 19 - Insertion of new provisions***

**Clause 19** inserts new sections 47A and 47B to provide for appeals against decisions of the Board and to require the notification of decisions to affected persons to reflect the altered discretionary powers of the Board.

***Review of decisions***

**New section 47A** enables a person to apply to the ACT Administrative Appeals tribunal in respect of a decision of the Board to -

- . impose conditions upon registration;
- . cancel interim registration;
- . refuse to register a person;
- . refuse to re-register a person;
- . cancel the registration of a person;
- . suspend the registration of a person;
- . direct a person not to provide a specified pharmacy service;
- . take one of the forms of disciplinary or counselling action under **new section 32D** in relation to a registered pharmacist;
- . impose a fine on a pharmacist;
- . refuse to terminate the suspension of registration of a person; or
- . refuse to extend beyond 6 months the period during which the executor or executrix of a deceased registered pharmacist's estate or the administrator or administratrix or trustee of such an estate may continue the business of the pharmacist;
- . fix a period longer than 6 months during which the executor or executrix of a deceased registered pharmacist's estate or the administrator or administratrix or trustee of such an estate may continue the business of the pharmacist.

***Notification of decisions***

**New section 47B** deals with the notification of persons affected by decisions of the Board.

**New subsection 47B(1)** requires the Board to give written notice of particular decisions of the Board, in respect of which an appeal may be made to the ACT Administrative Appeals Tribunal, to the person affected by the relevant decision.

New subsection 47B(2) requires that a notice to a person of a decision referred to in new subsection 47B(1) or under new subsection 13(4), advising of the cancellation of interim registration, or a notice under section 31 of the *Health Professions Boards (Procedures) Act 1981* include a statement advising the person of his or her right to appeal to the Administrative Appeals Tribunal and of his or her rights in respect of the provision of a statement of reasons for the decision to the person.

New subsection 47B(3) imposes a similar requirement in respect of a notice to a person in relation to an order suspending the person's registration, restricting the person's right to practise pharmacy or fining the person.

New subsection 47B(4) prevents the validity of a decision of the Board dealt with in new subsections 47B(2) and (3) from being affected by a failure to comply with the notification requirements of new section 47B.

#### *Clause 20 - Repeal*

Clause 20 repeals section 53 of the Act which requires the notification of a person in relation to particular decisions of the Board of that person's right of appeal in respect of such decisions. This provision has been replaced by new section 47B inserted by clause 19 of the Bill.

### TRANSITIONAL PROVISIONS

#### *Clause 22 - Register*

The effect of clause 22 is to make the Register of pharmacists required to be kept under new section 24B a continuation of the Register of pharmacists required to be kept under repealed section 21.

#### *Clause 23 - Continuation of registration*

Clause 23 preserves the registration of persons who were registered, immediately before the commencement of the provisions of the Bill, under those provisions of the Act which are repealed by the Bill and replaced with new registration provisions.

***Clause 24 - Provisional registration***

**Clause 24** has the effect of converting the provisional registration held by a person immediately prior to the repeal of section 29 and the commencement of **new section 13** to interim registration under **new section 13**.

***Clause 25 - Failure to pay annual fee under repealed provisions***

**Clause 25** has the effect of converting a failure to pay an annual fee under provisions which are repealed by the Bill to a failure to pay under the equivalent new provisions inserted in the Act.

**Subclause 25(1)** treats a failure to pay the annual fee under section 26, which is repealed by the Bill, as a failure to pay the annual fee under **new section 24E**.

**Subclause 25(2)** treats the cancellation of a pharmacist's registration for a failure to pay an annual fee under section 26, which is repealed by the Bill, as a cancellation of registration for failure to pay an annual fee under the provisions of **new section 24E**, thus entitling the person to apply for re-registration under the provisions of **new section 24G**.

***Clause 26 - Applications for registration***

**Clause 26** treats an application for registration, under the provisions of the Act repealed by the Bill, which had not been determined prior to the commencement of the new registration provisions, as an application for registration under the new provisions and authorises any inquiry or investigation for the purposes of the application to be continued or completed.

***Clause 27 - Continuation of inquiries and reviews***

**Subclause 27(1)** preserves the application of the provisions of the Act in force immediately prior to the commencement of the amendments effected by the Bill in relation to any inquiry or review commenced under the Act and pending immediately before the commencement of the amendments.

**Subclause 27(2)** treats an order, decision or determination resulting from an inquiry or review under the Act immediately prior to its amendment by the

Bill as an order, decision or determination made under the Act as amended by the Bill and as having effect accordingly.

*Clause 28 - Complaints relating to previous conduct*

*Subclause 28(1)* enables the holding of an inquiry under the Act, as amended by the Bill, with respect to conduct or any other matter or thing that occurred before, or partly before or partly after, the commencement of the amendments.

However *subclause 28(2)* qualifies this provision to the effect that such an inquiry may only be held if it is an inquiry which could have been held under the Act prior to the commencement of the amendments.

*Clause 29 - Existing orders*

*Clause 29* converts an order which has effect under a provision of the Act repealed by the Bill to an equivalent order under the Act as amended.

**FORMAL, TECHNICAL AND CONSEQUENTIAL PROVISIONS**

*Clauses 1 and 2 - Short title and commencement*

*Clauses 1 and 2* are formal provisions dealing with the short title and commencement of the Act, respectively.

*Clause 3 - Principal Act*

*Clause 3* is an interpretation provision which defines the term "Principal Act" to mean the *Pharmacy Act 1931*.

*Clause 4 - Long title*

*Clause 4* is an interpretation provision which amends the long title of the Act to reflect the ambit of the Act.

*Clause 5 - Interpretation*

*Clause 5* effects consequential and technical amendments to section 5 of the Act.

*Paragraphs 5(a), (b) and (c)* insert definitions in section 5 for a number of new terms including "Mutual Recognition Act" and replace the existing definitions for a number of terms including "registered pharmacist" which is newly defined to recognise that a person may be deemed to be registered under the Act by virtue of the operation of section 25 of the Mutual Recognition Act.

*Paragraph 5(d)* repeals subsections 5(2) and (3).

Subsection 5(2) which exempts pharmacists who practise pharmacy in the performance of their duties as public servants and Defence Force personnel from the application of the Act is repealed as it is intended that the Act bind the Crown in right of the Territory and there is no need for a provision to the effect that the Crown in right of the Commonwealth is not bound by the requirements of the Act.

Subsection 5(3) is repealed as it is redundant, all references in the Act to prescribed fees having been removed or replaced with references to determined fees.

#### *Clause 6 - Insertion*

*Clause 6* is an interpretation provision which inserts new sections 5A and 5B in the Act which, respectively -

- establish what is meant by the expression "to be competent to practise pharmacy"; and
- establish what is meant by the expression "to suffer from an impairment".

#### *Clause 7 - Heading to Part III*

*Clause 7* effects a formal amendment to the heading to Part III of the Act to better reflect the ambit of that Part.

#### *Clause 11 - Change of address to be notified*

*Clause 11* is a consequential amendment to section 27 of the Act which -



- removes a reference to a provision of the Act which is repealed by the Bill and substitutes a reference to the new provision which replaces that repealed provision of the Act; and
- omits a redundant reference to section 26 which is repealed by the Bill.

***Clause 12 - Alteration of the Register***

*Clause 12* is a consequential amendment to section 28 of the Act, providing for the amendment of the Register, to the effect that the name of a registered pharmacist must be removed from the Register where the pharmacist's registration has been cancelled.

***Clause 14 - Effect of special and temporary registration***

*Clause 14* amends section 31A of the Act consequentially upon the repeal of sections 29, 30 and 31 and their replacement by the provisions of **new section 13**, and new subsections 12(3) and (2), respectively.

***Clause 21 - Further amendments***

*Clause 21* is a technical provision which amends the Act in accordance with the Schedule. The Schedule amends various provisions of the Act to -

- remove sexist language;
- otherwise amend the language used in the Act to reflect modern drafting practice; and
- replace references in the Act to "prescribed fees" with references to "determined fees".

***Clause 30 - Renumbering of provisions***

*Clause 30* is a technical provision which effects the renumbering of the Act as amended by the Bill. As a consequence of the numerous previous amendments made to the Act and the considerable number of amendments effected by the Bill the numbering of the provisions of the Act has become significantly disrupted.

*Clause 30* renumbers the sections of the Act in a single series so that they bear consecutive numbers making the legislation more understandable to persons who use it.