

2004

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

PHARMACY AMENDMENT BILL 2004

EXPLANATORY STATEMENT

Circulated by authority
of Minister for Health
Mr Simon Corbell MLA

OUTLINE

The *Pharmacy Amendment Act 2004* has the effect of facilitating the entry of friendly society pharmacies into the ACT pharmacy sector. The impetus for the amendment was a result of the recognition that friendly society pharmacies provide a benefit to the community. The amendment also results in compliance by the Territory with its obligations under National competition Policy by removing any anticompetitive barriers in the pharmacy sector.

The registration process for a friendly society pharmacy is predicated on the fact that friendly societies are governed by the *Commonwealth Corporations Act 2001* and the *Corporations Regulations 2001*. Based on the modes of how a friendly society is defined and assessed under the *Corporations Regulations 2001*, the amendment safeguards the pharmacy sector against unintended participants by requiring that the constitution of the friendly society must provide that the only object of the company is to carry on the business of a pharmacy and any other business that is closely related to pharmacy.

Whilst allowing for the entry of friendly society pharmacies into the Territory, the amendment ensures that the safety and integrity of the provision of pharmacy services is maintained by providing that a registered pharmacist is employed or engaged by the friendly society pharmacy to supervise the dispensing and provision of pharmacy products.

NOTES ON CLAUSES

Clause 1

This clause provides that the name of the Act is the *Pharmacy Amendment Act 2004*.

Clause 2

This clause provides that the Act commence on the day after its notification.

Clause 3

Clause 3 provides that the Act amends the *Pharmacy Act 1931*.

Clause 4

Clause 4 inserts two new definitions into section 2 of the *Pharmacy Act 1931*.

‘Friendly society’ is defined to mean a friendly society under the *Corporations Act 2001*. In 1999 the governance of friendly society pharmacies was transferred from individual State and Territory legislation to the *Corporations*

Act 2001. The *Corporations Regulations 2001* provide three circumstances in which the term ‘friendly society’ may be used by a company.

By simply making reference to ‘a friendly society under the *Corporations Act*’, any foreseeable changes to the *Corporations Act 2001* in relation to friendly societies are automatically captured under the *Pharmacy Act 1931*.

‘friendly society pharmacy’ is defined to be a friendly society that is registered as a pharmacist under the *Pharmacy Act 1931*.

Clause 5

Clause 5 inserts a new definition into section 2 of the *Pharmacy Act 1931*.

‘incorporated pharmacist’ is defined as a company other than a friendly society that is registered under the *Pharmacy Act 1931*. Thus the term ‘incorporated pharmacist’ is a reference to a company owned pharmacy where the company is not a friendly society company. As a consequence of this new definition of incorporated pharmacist, the Act has also been amended where appropriate to substitute references to ‘company’ with ‘incorporated pharmacist’.

Clause 6

Clause 6 amends the existing heading for section 9A. Section 9A provides the eligibility requirements for companies to register as pharmacists under the *Pharmacy Act 1931*. In order to clarify and differentiate between companies and friendly society companies, the section heading has been amended to provide that the section is in relation to non-friendly society companies.

Clause 7

Clause 7 provides that the words ‘that is not a friendly society’ be inserted after the mention of company in subsection 9A(1). This clarifies any possible ambiguity by differentiating between companies and friendly societies.

Clause 8

Clause 8 inserts a new section 9B to provide for the eligibility requirements of friendly society seeking registration as pharmacists under the Act. Thus a friendly society as established under the *Corporations Act 2001*, would also be subject to the criteria set out in the new section 9B for the purposes of the *Pharmacy Act 1031*. A friendly society would be eligible for registration as a pharmacist if it provides mutual benefits to its members, it is a non-profit organisation, it has a constitution, the only object of the company is to carry on the business of a pharmacists and any other business commonly

associated with the practice of pharmacy and its constitution is appropriate to a company formed to carry on the business of pharmacist.

Clause 9

Clause 9 inserts a new section 14(4) that provides that section 14 does not apply if the applicant for registration is a friendly society. This exemption has its rationale in the fact that the directors and employees of a friendly society company are not actually going to be practising pharmacy in the capacity of dispensing pharmacy products or providing advice.

Clause 10

Clause 10 inserts a new section 15(4) that provides that section 15 does not apply if the applicant for registration is a friendly society. This exemption has its rationale in the fact that the directors and employees of a friendly society company are not actually going to be practising pharmacy in the capacity of dispensing pharmacy products or providing advice.

Clause 11

Clause 11 inserts a new section 16(3) that provides that section 16 does not apply to a friendly society pharmacy. This exemption has its rationale in the fact that the directors and employees of a friendly society company are not actually going to be practising pharmacy in the capacity of dispensing pharmacy products or providing advice.

Clause 12

Clause 12 substitutes the words 'if the person is a company' with 'if the person is an incorporated pharmacist'. This incorporates the new definition of 'incorporated pharmacists' into this section.

Clause 13

Clause 13 amends the existing section 32(3)(b) by providing that if a friendly society pharmacist or incorporated pharmacist establishes a registered office in the ACT, they must within 1 month of the change or establishment notify the chairperson in writing.

Clause 14

Clause 14 has the effect of requiring the board to remove from the register the name of either a friendly society pharmacists or incorporated pharmacists that

has been wound up or deregistered as a company; or a friendly society pharmacist that has ceased to be a friendly society or a registered pharmacist whose registration has been cancelled. The amendment substitutes the existing sections 33(1)(b) and (c) and inserts a new section 33(1)(d).

Clause 15

Clause 15 substituted the existing section 35(f) and has the effect of replacing the term 'company' with incorporated pharmacist.

Clause 16

Clause 16 replaces sections 16(m) and (n) and inserts a new section 16(o). The new section 16(m) substituted the reference to company, with incorporated pharmacist.

The new section 16(n) had the effect of empowering the board to cancel or suspend the registration of a friendly society that ceases to be a friendly society. Section 16(o) has the effect of empowering the board to cancel or suspend the registration of a friendly society or incorporated pharmacist in the event that they are placed into liquidation.

Clause 17

Clause 17 has the effect of substituting the word company with incorporated pharmacist in accordance with the new inserted definition of incorporated pharmacist.

Clause 18

Clause 18 has the effect of substituting the word company with incorporated pharmacist in accordance with the new inserted definition of incorporated pharmacist.

Clause 19

Clause 19 inserts a new section 48B which has the same effect of section 48A in relation to incorporated pharmacists. Thus the business of a friendly society pharmacy must be carried on under the actual supervision of a registered pharmacist who is an individual and is employed or engaged by the friendly society pharmacist. The intention of this provision is that acts such as dispensing of pharmaceutical products and the provision of pharmaceutical advice is conducted under the supervision of a registered pharmacist in order to ensure that safety is paramount..