

2001

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Ms Tucker)

Pharmacy Amendment Bill 2001

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2001

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Pharmacy Amendment Bill 2001

A Bill for

An Act to amend the *Pharmacy Act 1931*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Pharmacy Amendment Act 2001*.

2 Commencement

This Act commences on a day fixed by the Minister by notice in the Gazette.

Note 1 The naming and commencement provisions automatically commence on the notification day (see *Legislation Act 2001*, s 75).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see *Legislation Act 2001*, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see *Legislation Act 2001*, s 79).

3 Act amended

This Act amends the *Pharmacy Act 1931*.

4 Interpretation

Section 2 (1), new definitions of *company*, *director*, *employee member*, *executive officer*, *incorporated pharmacist* and *member*

insert

company means a company registered under the Corporations Act.

director—see the Corporations Act, section 9 (Dictionary).

employee member, of a company, means a registered pharmacist who is a member and employee of the company, but is not a director of the company.

executive officer, of a company, means a person, by whatever name called and whether or not the person is a director of the company, who is concerned with, or takes part in, the company's management.

incorporated pharmacist means a company registered as a pharmacist under this Act.

member, of a company—see the Corporations Act, section 231 (Membership of a company).

5 Section 2 (1), definition of *member*

omit

6 Section 2 (4)

omit

a person shall be deemed

substitute

an individual is taken

7 Section 2 (4) (c)

omit

firm.

substitute

firm; or

8 New section 2 (4) (d)

insert

- (d) the person practises pharmacy as a director of an incorporated pharmacist.

9 Competence to practise pharmacy
Section 3

omit

a person shall be

substitute

an individual is

10 Section 3

omit

the person

substitute

the individual

11 Impairment
Section 4 (1)

omit

a person shall be

substitute

an individual is

12 Section 4 (1)

omit

the person

substitute

the individual

13 Section 4 (1)

omit

the person's

substitute

the individual's

**14 Constitution of Board
Section 6 (2)**

substitute

- (2) A person is eligible for appointment as a member of the board only if the person—
- (a) is an individual; and
 - (b) is a registered pharmacist; and
 - (c) at all times during the 3 years immediately before the appointment was entitled to practise as a pharmacist under this Act or in a State.

Note **State** includes the Northern Territory (see *Legislation Act 2001*, dict pt 1, def of **State**).

**15 Registration based on qualifications and training
Section 9, heading**

substitute

9 Registration for individuals based on qualifications and training

16 Section 9 (1)

omit

A person

substitute

An individual

17 Section 9 (1)

omit

the person

substitute

the individual

18 New section 9A

insert

9A Eligibility of companies for registration

- (1) A company is eligible for registration as a pharmacist if—
- (a) its name has been approved by the board; and
 - (b) it has a constitution; and
 - (c) the constitution provides that the only object of the company is to carry on the business of pharmacist and any other business commonly associated with the practice of pharmacy; and
 - (d) the constitution provides that only an individual who is a registered pharmacist may be a director; and
 - (e) the constitution provides that a director may not also be a director of another incorporated pharmacist without the consent of the board; and
 - (f) the constitution makes provision for ensuring that at all times each share in the company is beneficially owned by—

- (i) a registered pharmacist who is a director or employee of the company; or
 - (ii) a specified relative of a person mentioned in subparagraph (i); and
- (g) the constitution provides that all voting rights exercisable at a general meeting are exercisable only by or on behalf of registered pharmacists who are directors or employees of the company; and
- (h) if the company intends to carry on business as a trustee—
 - (i) the constitution provides that the company may be a party to a trust deed that relates to its business only if the deed provides that all beneficiaries are to be registered pharmacists who are directors or employees of the company or specified relatives of such pharmacists; and
 - (ii) the proposed trust deed has been approved by the board; and
- (i) the constitution is appropriate to a company formed to carry on the business of pharmacist and any other business commonly associated with the practice of pharmacy.

- (2) In this section:

specified relative means a spouse, parent, child, grandchild or de facto spouse.

19 Registration at discretion of Board

Section 11

omit (other than in section 11 (3) (a))

a person

substitute

an individual

20 Section 11

omit

the person

substitute

the individual

21 Section 11 (3) (a)

omit

a person

substitute

the individual

**22 Interim registration
Section 12 (1) (a)**

after

section 9

insert

or 9A

23 Section 12 (1) (b)

after

person

insert

is an individual and

24 Section 12 (3) (a)

omit

him or her

substitute

the person

25 Section 12 (3) (b)

omit

his or her

substitute

the person's

26 Section 12 (6)

omit

he or she

substitute

the person

**27 Conditions of registration in cases of impairment
Section 13**

omit

a person's

substitute

an individual's

28 Section 13

omit

the person

substitute

the individual

**29 Refusal of registration where applicant convicted of offence
Section 14, heading**

substitute

14 Refusal of registration in case of conviction

30 Section 14 (1) (a)

omit

the applicant

insert

the applicant or, if the applicant is a company, a director or employee member of the company,

**31 Refusal of registration where applicant deregistered outside Territory
Section 15, heading**

substitute

15 Refusal of registration where applicant deregistered outside ACT

32 Section 15 (1)

substitute

(1) The board may refuse an application for registration—

- (a) if the applicant is an individual—if the applicant's name has been removed from a foreign pharmacy register for any reason relating to—
 - (i) the conduct of the applicant as a pharmacist; or
 - (ii) the physical or mental capacity of the applicant to practise pharmacy; or
- (b) if the applicant is a company—if the name of a person who is a director or employee member of the company has been removed from a foreign pharmacy register for any reason relating to—
 - (i) the conduct of the person as a pharmacist; or
 - (ii) the physical or mental capacity of the person to practise pharmacy.

33 Applicants to be competent and of good character
Section 16 (1)

substitute

- (1) The board must not register a person as a pharmacist unless it is satisfied that—
 - (a) if the person is an individual—the person is competent to practise pharmacy and is of good character; or
 - (b) if the person is a company—each director and employee member of the company is competent to practise pharmacy and is of good character.

34 Section 20

substitute

20 Registration of applicants

- (1) The board must, subject to this Act, register an applicant who applies for registration under this Act if the applicant—

- (a) complies with this Act; and
 - (b) complies with a request of the board to appear before the board in support of the application; and
 - (c) is entitled to be registered.
- (2) A person requested to appear before the board must appear—
- (a) if the applicant is an individual—personally; or
 - (b) if the applicant is a company—by a director of the company.

35 Particulars to be entered in Register
Section 24 (b)

omit

the person's

substitute

for an individual—the person's

36 New section 24 (ba)

insert

(ba) for a company—

- (i) if its registered office is in the ACT—the address of the registered office; or
- (ii) if its registered office is outside the ACT—the address of its principal place of business in the ACT; and

37 Section 24 (c)

omit

particulars

substitute

for an individual—particulars

38 Section 24

renumber paragraphs when Act next republished under Legislation Act 2001

39 Deregistration on basis of disciplinary action under foreign law

Section 25 (1) (a) and (b) and (3) (a) and (b)

substitute

- (a) if the person is an individual—
 - (i) the conduct of the person as a pharmacist; or
 - (ii) the physical or mental capacity of the person to practise pharmacy; or
- (b) if the person is an incorporated pharmacist—
 - (i) the conduct of a director or employee member of the company as a pharmacist; or
 - (ii) the physical or mental capacity of a director or employee member of the company to practise pharmacy;

40 Cessation of registration

Section 27 (a)

omit

his or her

substitute

the person's

**41 Annual registration fee
Section 28 (2) and (3)**

omit

him or her

substitute

the pharmacist

**42 Registration to be cancelled for non-payment
Section 29 (1)**

omit

him or her

substitute

the pharmacist

43 Section 29 (1)

omit

his or her

substitute

the pharmacist's

**44 Entitlement to re-registration on payment of fees
Section 30 (2)**

omit everything after

before the

substitute

cancellation of the registration.

45 Section 30 (3)

substitute

- (3) The board may refuse to re-register a person under this section if it is satisfied that—
- (a) if the person is an individual—the person is not competent to practise pharmacy or is not of good character; or
 - (b) if the person is a company—a director or employee member of the company is not competent to practise pharmacy or is not of good character.

46 New division 3.4A

insert

Division 3.4A Special obligations of companies

30A Failure to comply with constitution

- (1) If an incorporated pharmacist fails to comply with a provision of its constitution that, under section 9A (1) (c) to (h), is required to be in the constitution as a condition of eligibility for registration, the pharmacist must report the failure to the board in writing within 14 days after the day that the failure happens.

Maximum penalty: 20 penalty units.

- (2) If the board receives a report under subsection (1) from an incorporated pharmacist, the board may give the pharmacist a written direction to comply with the relevant provision of its constitution within a time stated in the direction.
- (3) The direction must state that, if the provision is not complied with within the time stated, the registration of the pharmacist will be automatically suspended.
- (4) If an incorporated pharmacist does not comply with a direction under subsection (2), the pharmacist's registration is automatically suspended at the end of the time stated in the direction.

- (5) A suspension under subsection (4) remains in force until the board tells the pharmacist in writing that it is satisfied that the direction has been complied with.

30B Alteration to constitution or name

- (1) An incorporated pharmacist must not change its constitution unless—

- (a) the proposed change has been approved by the board; or
- (b) the change is made at the direction of the board.

Maximum penalty: 20 penalty units.

- (2) An incorporated pharmacist must not change its name unless the proposed name has been approved by the board.

Maximum penalty: 20 penalty units.

30C Companies not to practise in partnership

An incorporated pharmacist must not practise in partnership unless the board has—

- (a) authorised it to practise in partnership; and
- (b) approved the partner.

Maximum penalty: 20 penalty units.

30D Returns by companies

- (1) If the membership of an incorporated pharmacist or the membership of the board of directors of an incorporated pharmacist changes, the pharmacist must give written notice of the change to the board within 1 month after the day the change happens.

Maximum penalty: 20 penalty units.

Note If a form is approved under s 57A (Approved forms) for a notice, the form must be used.

- (2) On or before 31 July in each year, an incorporated pharmacist must give the board a written return.

Maximum penalty: 20 penalty units.

Note If a form is approved under s 57A (Approved forms) for a return, the form must be used.

**47 Certificate of registration
Section 31 (1)**

omit

him or her

substitute

the person

48 Section 31 (1A)

omit

his or her

substitute

the person's

49 Section 31 (4), (6) and (7)

omit

his or her

substitute

the person's

50 Change of address to be notified
Section 32 (b)

substitute

- (b) a registered pharmacist who is an individual establishes a professional address, or an additional professional address, in the ACT; or
- (c) an incorporated pharmacist establishes a registered office in the ACT;

51 Alteration of Register
Section 33 (1) (b)

substitute

- (b) an incorporated pharmacist that has been wound up or deregistered as a company; or
- (c) a registered pharmacist whose registration has been cancelled.

52 Publication of names etc of registered pharmacists
Section 34 (1)

omit

professional

53 Cancellation or suspension of registration
Section 35 (d)

omit

the pharmaceutical

substitute

if the person is an individual—the pharmaceutical

54 Section 35 (e)

omit

his or her

substitute

the person's

55 Section 35 (f)

omit

the person

substitute

the person or, if the person is a company, a director or employee member of the company,

56 Section 35 (f)

omit

him or her

substitute

the person

57 Section 35 (g)

omit

the person

substitute

if the person is an individual—the person

58 Section 35 (n)

substitute

- (n) if the person is an individual—the person is not competent to practise pharmacy; or
- (o) if the person is a company—a director or employee member of the company is not competent to practise pharmacy; or
- (p) if the person is a company—the company is placed in liquidation.

**59 Power of Board to caution, reprimand etc.
Section 38 (1) (b)**

omit

order

substitute

if the pharmacist is an individual—order

60 New section 38 (1) (ba)

insert

- (ba) if the pharmacist is a company—order that a director or employee member of the company seek and undergo medical or psychiatric treatment or counselling;

61 Section 38 (d)

omit

his or her

substitute

the pharmacist's

62 Section 38 (1) (e)

omit

order

substitute

if the pharmacist is an individual—order

63 Section 38 (1) (e)

omit

courses.

substitute

courses;

64 New section 38 (1) (f)

insert

- (f) if the pharmacist is a company—order that a director or employee member of the company complete specified educational courses.

65 Section 38 (2)

omit

Paragraph (1) (e)

substitute

Subsection (1) (e) and (f)

66 Power of Board to impose fines
Section 39 (1)

omit

him or her a fine not exceeding \$1,000

substitute

the person a fine not more than \$2 000

67 New section 39 (5) and (6)

insert

- (5) The payment of a fine imposed on a company is enforceable against every person who was a director when the fine was imposed.
- (6) If a fine imposed on a company is not paid in the time stated in the order by which the fine was imposed, the board may take the same action against every person who was a director when the fine was imposed as it takes against the company under subsection (4).

68 Application for re-registration
Section 40 (1)

omit

he or she

substitute

the person

69 Section 40

omit

his or her

substitute

the person's

70 Persons other than registered pharmacists not to practise
Section 42, heading

substitute

42 People other than registered pharmacists not to carry on business of pharmacist etc

71 Section 42 (1)

omit

he or she

substitute

the person

72 Section 42 (1)

omit

or is qualified

substitute

or (if the pharmacist is an individual) is qualified

73 Record of prescriptions
Section 47

omit

him or her

substitute

the pharmacist

74 Conduct of business by pharmacist
Section 48

omit

pharmacist shall

substitute

registered pharmacist who is an individual must

75 Section 48

omit

registered pharmacist

substitute

registered pharmacist who is an individual

76 New section 48A

insert

48A Business of incorporated pharmacists

The business of an incorporated pharmacist must be carried on under the actual personal supervision of—

- (a) a director of the incorporated pharmacist; or
- (b) an employee member of the incorporated pharmacist; or
- (c) another registered pharmacist who is an individual and is employed or engaged by the incorporated pharmacist.

77 Review of decisions
Section 54 (f)

omit

subsection 25 (4) or 30 (4) or section 40

substitute

section 25 (4), 30 (3) or 40

78 New sections 59 and 59A

insert

59 Offences by companies

- (1) If a company contravenes, whether by an act or omission, a provision of this Act, each person who is an executive officer of the company is taken to have contravened the provision if the person knowingly authorised or allowed the contravention.
- (2) For subsection (1), an executive officer of the company may be prosecuted for, and convicted of, the offence whether or not the company has been prosecuted for, or convicted of, the offence.
- (3) This section does not affect any liability imposed on a company for an offence committed by the company against this Act.

59A Acts and omissions of representatives

- (1) In this section:

representative, of a person, means—

- (a) if the person is an individual—an employee or agent of the person; or
- (b) if the person is a company—an employee, agent or executive officer of the person.

state of mind, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose;
and
 - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) An act done or omitted to be done on behalf of a person by a representative of the person is also taken to have been done or omitted to be done by the person if the representative was acting within the scope of the representative's actual or apparent authority.
- (3) However, subsection (2) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (4) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
 - (a) the act was done or omission was made by a representative of the person within the scope of the representative's actual or apparent authority; and
 - (b) the representative had the state of mind.
- (5) An individual who is convicted of an offence cannot be punished by imprisonment for the offence if the individual would not have been convicted of the offence without subsection (2) or (4).

Endnotes

Act amended

1. Republished as in force on 28 February 1995. See also Acts 1998 No 54 and 2001 No 44.

Penalty units

- 2 The *Legislation Act 2001*, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

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