

TASMANIA

PHARMACISTS REGISTRATION AMENDMENT BILL 2005

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**PHARMACISTS REGISTRATION AMENDMENT
BILL 2005**

*(Brought in by the Minister for Health and Human Services,
the Honourable David Edward Llewellyn)*

A BILL FOR

An Act to amend the *Pharmacists Registration Act 2001*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Pharmacists
Registration Amendment Act 2005*.

2. Commencement

This Act commences on the day on which this
Act receives the Royal Assent.

3. Principal Act

In this Act, the *Pharmacists Registration Act
2001** is referred to as the Principal Act.

*No. 90 of 2001

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by omitting the definition of “business address”;
- (b) by omitting the definition of “pharmacy” and substituting the following definitions:

“pharmacy business” means a business that involves the compounding and dispensing of medicines and drugs on the prescription of medical practitioners and other health professionals;

“pharmacy business premises” means a shop or other premises where a pharmacy business is carried on;

- (c) by inserting the following definition after the definition of “*Pharmacy Code*”:

“pharmacy premises” means a place in or from which a person engages in the practice of pharmacy;

5. Section 4 amended (Act binds Crown)

Section 4 of the Principal Act is amended by inserting “, other than Part 6A,” after “Act”.

6. Section 8 amended (Functions of Board)

Section 8 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “pharmacists” and substituting “pharmacy”;
- (b) by inserting in paragraph (f) “respect of the practice of” after “in”.

7. Section 9 amended (Powers of Board)

Section 9 of the Principal Act is amended as follows:

- (a) by inserting in paragraph (d) “the practice of” after “in”;
- (b) by inserting in paragraph (e) “the practice of” after “pharmacists or”.

8. Section 10 amended (Objectives of Board)

Section 10(b) of the Principal Act is amended by omitting “practise as pharmacists” and substituting “engage in the practice of pharmacy”.

9. Section 28 amended (Special grounds for refusing to grant registration)

Section 28 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “practise as a pharmacist” and substituting “engage in the practice of pharmacy”;
- (b) by omitting from paragraph (b) “practise as a pharmacist” and substituting “engage in the practice of pharmacy”.

10. Section 30 amended (Certificates of registration)

Section 30(3)(b) of the Principal Act is amended by omitting “practise as a pharmacist” and substituting “engage in the practice of pharmacy”.

11. Section 32 amended (Register)

Section 32(3) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (f) “person.” and substituting “person;”;
- (b) by inserting the following paragraph after paragraph (f):
 - (g) such other matters as this Act may require to be recorded in the register.

12. Section 37 amended (Annual registration fees)

Section 37(7) of the Principal Act is amended by omitting “practised” and substituting “engaged in the practice of”.

13. Section 38 amended (Removal from register)

Section 38(1)(b)(vii) of the Principal Act is amended by omitting “practise as a pharmacist” and substituting “engage in the practice of pharmacy”.

14. Section 43 amended (Specific matters of complaint)

Section 43 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(c) “practise as a pharmacist” and substituting “engage in the practice of pharmacy”;
- (b) by inserting in subsection (2)(a) “, section 71C” after “section 59(4)”;
- (c) by omitting from subsection (2)(i) “practising as a pharmacist” and substituting “the practice of pharmacy”;
- (d) by omitting from subsection (2)(j) “practising as a pharmacist” and substituting “the practice of pharmacy”.

15. Section 53 amended (Actions that Board may take following formal disciplinary proceedings)

Section 53(5) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (g) “business premises” and substituting “pharmacy premises”;

- (b) by omitting from paragraph (h) “business premises” and substituting “pharmacy premises”.

16. Section 56 amended (Suspension of registration)

Section 56 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(b) “practise as a pharmacist” and substituting “engage in the practice of pharmacy”;
- (b) by omitting from subsection (1)(g) “a provision of”;
- (c) by inserting in subsection (1)(j) “pharmacy” after “inappropriate”;
- (d) by omitting from subsection (3) “business premises” and substituting “pharmacy premises”;
- (e) by omitting from subsection (4) “business premises” and substituting “pharmacy premises”.

17. Section 59 amended (Inspections)

Section 59 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(d) “practise as a pharmacist” and substituting “engage in the practice of pharmacy”;

- (b) by inserting in subsection (1)(e) “pharmacy” after “inappropriate”;
- (c) by omitting from subsection (2) “business” and substituting “pharmacy”;
- (d) by omitting from subsection (3) “business premises” and substituting “pharmacy premises”.

18. Section 60 amended (Right of appeal)

Section 60(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (g) “section 53(1).” and substituting “section 53(1); or”;
- (b) by inserting the following paragraphs after paragraph (g):
 - (h) refuse to register premises as pharmacy business premises under Part 6A; or
 - (i) suspend or cancel the registration of pharmacy business premises under Part 6A; or
 - (j) refuse to grant an exemption under Part 6A; or
 - (k) revoke an exemption under Part 6A.

19. Section 62 amended (Offence to engage in pharmacy, &c., if unregistered)

Section 62 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(b) “or in the business carried on in a pharmacy.” and substituting “business.”;
- (b) by omitting from subsection (2)(b) “or in the business carried on in a pharmacy” and substituting “business”;
- (c) by omitting from subsection (2)(e) “practice, pharmacy or business, as the case may be, are” and substituting “pharmacy practice or pharmacy business is”;
- (d) by omitting from subsection (3)(a) “or in the business carried on in a pharmacy” first occurring and substituting “business”;
- (e) by omitting from subsection (3)(a)(ii) “the pharmacy” second occurring and substituting “pharmacy business”;
- (f) by omitting from subsection (3)(a)(iii) “pharmacy in this State or in the business carried on in a pharmacy” and substituting “pharmacy business”;
- (g) by omitting from subsection (3)(b) “pharmacy or in the business carried on in a pharmacy” and substituting “pharmacy business”.

20. Section 65 amended (Limitation on number of pharmacies in which pharmacist may have interest)

Section 65 of the Principal Act is amended as follows:

- (a) by omitting “A” and substituting “(1) A”;
- (b) by omitting from subsection (1) “pharmacies or in the business carried on in more than 4 pharmacies.” and substituting “pharmacy businesses.”;
- (c) by inserting the following subsection:
 - (2) In this section –

“pharmacy business” means a pharmacy business that is carried on in or from the one premises.

21. Section 67 amended (Failure to notify Board of civil claims)

Section 67(1) of the Principal Act is amended by omitting “his or her practice as a pharmacist” and substituting “the practice of pharmacy”.

22. Part 6A inserted

After section 71 of the Principal Act, the following Part is inserted:

**PART 6A – REGISTRATION OF PHARMACY
BUSINESS PREMISES**

71A. Interpretation of Part

In this Part –

“eligible person” means any of the following:

- (a) the holder of full or interim registration as a pharmacist;
- (b) an applicant for registration as a pharmacist;
- (c) a body corporate lawfully providing, or proposing to lawfully provide, pharmacy services;
- (d) a body that is –
 - (i) lawfully permitted to call itself a Friendly Society; and
 - (ii) lawfully providing, or proposing to lawfully provide, pharmacy services;

“responsible occupier”, of premises, means a person who is, for the

time being, providing pharmacy services in or from those premises, other than a person who works under the control and supervision of a registered pharmacist at those premises.

71B. Application of Part

- (1) This Part does not bind the Crown.
- (2) This Part does not apply to –
 - (a) premises that are used for the purposes of a pharmacy business and are located wholly within a hospital operated by an agency or instrumentality of the Crown in right of Tasmania or the Commonwealth; or
 - (b) prescribed premises, prescribed persons or prescribed pharmacy practices or services.

71C. Pharmacy business premises to be registered

After 1 September 2006, a person must not use any premises for the purposes of a pharmacy business unless those premises are –

- (a) registered as pharmacy business premises; or

- (b) exempt, under section 71J, from the requirement to be registered as pharmacy business premises.

Penalty: Fine not exceeding 25 penalty units and, in the case of a continuing offence, a further fine not exceeding 2.5 penalty units for each day during which the offence continues.

71D. Applications for registration of pharmacy business premises

- (1) A person may apply to the Board to have premises registered as pharmacy business premises.
- (2) The application is to be –
 - (a) in an approved form; and
 - (b) lodged with the Registrar; and
 - (c) accompanied by the prescribed application fee, if any; and
 - (d) accompanied by such information or evidence as the Board requires.
- (3) The Board may require the applicant to provide such further information or evidence as it considers necessary in order to consider the application.
- (4) The Board may waive all or part of the fee.

71E. Consideration of applications for registration of pharmacy business premises

- (1) The Board, after considering an application to have premises registered as pharmacy business premises, may –
 - (a) approve the application; or
 - (b) refuse the application.
- (2) However, the Board must not approve the application unless it is satisfied that –
 - (a) the applicant –
 - (i) is an eligible person; or
 - (ii) has, by virtue of some other status, reasonable grounds for making the application; and
 - (b) the premises sought to be registered are used, or are being made ready to be used, for the purposes of a pharmacy business; and
 - (c) the premises –
 - (i) are not located wholly or partly within a supermarket; or
 - (ii) are not capable of being entered from within a supermarket; or

- (iii) are not capable of being used to gain entry to a supermarket; and
 - (d) in terms of the objectives set out in section 10, the premises sought to be registered are suitable, or are being made suitable, to be used for the purposes of a pharmacy business.
- (3) The matters that the Board may have regard to for the purposes of subsection (2)(d) include, but are not limited to –
 - (a) the standard or proposed standard of presentation of the premises, including the external appearance and internal fittings; and
 - (b) the physical condition of the premises, and the condition of associated amenities such as lighting, ventilation and sanitation; and
 - (c) the security of the premises and, in particular, the security of dispensing and storage areas; and
 - (d) key professional requirements such as the need for –
 - (i) professional supervision of the sale and supply of medicines and drugs; and
 - (ii) customer privacy and counselling; and

- (iii) sufficient storage for medicines and drugs; and
 - (e) whether there is or will be reasonable public access to the premises and, in particular, access for disabled persons; and
 - (f) if there is or will be direct access to or from adjoining premises, the nature of the activities carried out on those adjoining premises; and
 - (g) any issues of compliance regarding State or council legislative requirements on matters such as fire safety and occupational health and safety; and
 - (h) in the case of leased premises, the terms of the lease.
- (4) For the purposes of subsection (2)(c) –
- (a) a supermarket is taken to be any large enclosed shop that primarily sells fresh and processed foods (including beverages) and where the selection of goods is organised on a self-serve basis, even though –
 - (i) customer advice may always or sometimes be available in the shop; and
 - (ii) customer service and assistance may always or

sometimes be available in a part of the shop; and

- (iii) other goods (including household goods like cleaning and kitchen products and personal care products like toiletries) may also be offered for sale in the shop; and

- (b) a large enclosed shop that sells general merchandise (commonly known as a department store) is not taken to be a supermarket even though it may –

- (i) contain a restaurant or café; or

- (ii) sell specialty foods such as biscuits, confectionery and condiments.

- (5) If the Board is unsure, in respect of an application under this Part, whether or not any premises are a supermarket, it may apply to the Secretary for a ruling.

- (6) If subsection (5) applies –

- (a) the Secretary, after making such inquiries as he or she considers necessary, may, in writing, make the ruling; and

- (b) the Board is bound by that ruling.

71F. Approval or refusal of applications

- (1) If an application to have premises registered as pharmacy business premises is approved –
 - (a) the Board is to register the premises by making an appropriate entry in the register; and
 - (b) the registration takes effect as soon as the Board has complied with paragraph (a).
- (2) The Board must, as soon as practicable after registering the premises, give the applicant notice of the approval and the date of registration together with a notice or certificate, in an approved form, in evidence of the registration.
- (3) If an application to have premises registered as pharmacy business premises is refused, the Board is to give the applicant notice of –
 - (a) the refusal; and
 - (b) the reasons for the refusal; and
 - (c) the applicant's right of appeal.

71G. Nature of registration of pharmacy business premises

- (1) The registration of pharmacy business premises remains in force, subject to any

period of suspension, until it is cancelled by the Board or relinquished.

- (2) However, the Board, having regard to the objectives set out in section 10, is to periodically review the registration of pharmacy business premises.
- (3) For the avoidance of doubt, the registration of pharmacy business premises is not affected by a transfer in the ownership of the premises or of the pharmacy practice or pharmacy business conducted in or from the premises.

71H. Registration of pharmacy business premises may be cancelled or suspended

- (1) The Board may cancel or suspend the registration of premises as pharmacy business premises if it is satisfied that –
 - (a) the premises have temporarily ceased to be used for the purposes of a pharmacy business; or
 - (b) having regard to the objects set out in section 10, and the matters set out in section 71E(3), the premises are no longer suitable to be used for the purposes of a pharmacy business.
- (2) The Board is to cancel the registration of premises as pharmacy business premises if it is satisfied that –

- (a) the premises have been, or are about to be, demolished; or
 - (b) the premises have ceased permanently to be, or are incapable of ever again being, used for the purposes of a pharmacy business.
- (3) If the Board decides to cancel or suspend the registration of any premises as pharmacy business premises, it is to make an appropriate entry to that effect in the register and give the responsible occupier of the premises notice of –
 - (a) the cancellation or suspension; and
 - (b) the reasons for the cancellation or suspension; and
 - (c) in the case of a suspension on the ground referred to in subsection (1)(b), the actions that need to be taken to have the suspension revoked; and
 - (d) the responsible occupier's right of appeal.
- (4) The cancellation or suspension takes effect when the notice is given to the responsible occupier of the premises, or on such later date as is specified in the notice.
- (5) The Board may, for any reason it considers sufficient, revoke the suspension of the registration of premises

as pharmacy business premises at any time.

- (6) If the Board decides to suspend the registration of premises as pharmacy business premises it may afford the responsible occupier of the premises an opportunity to be heard but it is not required to do so.

71I. Registration of pharmacy business premises may be relinquished

- (1) The responsible occupier of premises that are registered as pharmacy business premises may relinquish that registration at any time by –
 - (a) giving an appropriate notice to the Board; and
 - (b) returning the certificate or notice of registration to the Board.
- (2) On receiving the notice the Board is to cancel the registration of the premises by making an appropriate entry to that effect in the register.
- (3) However, the Board is not required to comply with subsection (2) if it is not satisfied that –
 - (a) the giver of the notice is the responsible occupier; and

- (b) each other eligible person with an interest in the registration has been consulted in the matter; and
- (c) those other persons, if any, have no objection, or no justifiable objection, to the registration being relinquished.

71J. Premises exempt from registration requirements

- (1) The Board, by instrument in writing, may exempt any premises used for the purposes of a pharmacy business from the requirement to be registered as pharmacy business premises.
- (2) An exemption may be granted on the Board's own initiative, at the written request of the Director of Public Health or on an application by or on behalf of a registered pharmacist.
- (3) An application under subsection (2) is to be –
 - (a) in an approved form; and
 - (b) lodged with the Registrar; and
 - (c) accompanied by the prescribed application fee, if any; and
 - (d) supported by such information or evidence as the Board requires.
- (4) The Board may waive all or part of the fee.

- (5) An exemption may be granted –
- (a) for individual premises or a class of premises; and
 - (b) unconditionally or on conditions.
- (6) Without limiting subsection (5)(b), the conditions of an exemption may restrict its operation according to matters or limitations, whether as to time, circumstance or otherwise, specified in the instrument of exemption.
- (7) A registered pharmacist must not engage in the practice of pharmacy contrary to a condition of an exemption under this section.
- Penalty: Fine not exceeding 25 penalty units.
- (8) The Board may revoke an exemption if it is satisfied on reasonable grounds that the exemption is no longer justified or required.
- (9) In determining whether to grant or revoke an exemption the Board is to have regard to the prescribed criteria, if any.
- (10) The Board may publicise exemptions and their revocation in the *Gazette* and in such other ways as the Board thinks fit having regard to the nature of the exemptions.

23. Section 80 amended (Regulations)

Section 80 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(c) “pharmacies” and substituting “pharmacy business premises”;
- (b) by omitting from subsection (6) “pharmacies” and substituting “pharmacy business premises”.