

CLAUSE NOTES

Pharmacists Registration Amendment Bill 2010

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| Clause 1 | Short title |
| Clause 2 | Commencement

This clause provides that the Act will commence on a day to be proclaimed. |
| Clause 3 | Principal Act

This clause provides that the principal Act being amended is the <i>Pharmacists Registration Act 2001</i> . |
| Clause 4 | Long title amended

This clause provides that the long title of the Principal Act is being amended to properly reflect the nature of the amended Act. |
| Clause 5 | Section 1 amended (Short Title)

This clause provides that the name of the amended Act will be the <i>Pharmacy Control Act</i> . |
| Clause 6 | Section 3 amended (Interpretation)

This clause provides that section 3 of the Principal Act is to have a number of definitions added or omitted. |
| Clause 7 | Section 4 amended (Act binds Crown)

This clause provides that Parts 4, 5A and 6A of the amended Act will not bind the Crown. |
| Clause 8 | Section 5 substituted

This clause provides that the amended Act does not apply to licensed manufacturing chemists or licensed wholesale chemists within the meaning of the <i>Poisons Act 1971</i> . |
| Clause 9 | Parts 2 and 3 substituted

This clause provides that Parts 2 and 3 of the Principal Act are replaced with a single, new Part 2.

Division 1 of the new Part 2 establishes the Tasmanian Pharmacy Authority (the TPA). It provides that the TPA will consist of 3 |

members, appointed by the Minister on the nomination of the Secretary of the Department of Health and Human Services. The Secretary, in determining nominations, may consult with any body that purports to represent the interests of pharmacists or may accept nominations from individuals.

Division 2 of the new Part 2 sets out the functions and powers of the TPA. It enables the TPA to delegate its functions or powers to its Registrar, a member or a committee. The TPA may issue guidelines to provide practical guidance and directions to pharmacy business owners and must comply with Treasurer's Instructions in relation to procurement.

Division 3 of the new Part 2 provides that the TPA may establish committees to assist it in carrying out its functions. The TPA must appoint a Registrar.

Division 4 of the new Part 2 directs the TPA in relation to finances. It provides that the TPA must furnish annual reports to the Minister and that the annual report will be tabled in Parliament.

Clause 10

Part 4: Heading amended

This clause provides that the heading of Part 4 of the Principal Act is amended.

Clause 11

Part 4: Divisions 1, 2 and 3 repealed

Clause 12

Part 4, Division 4: Heading amended

This clause provides that the heading for Part 4, Division 4 of the Principal Act is repealed.

Clause 13

Section 58 substituted

This clause provides that section 58 of the Principal Act is substituted with a clause that defines "relevant party" for the purposes of Part 4 of the Principal Act.

Clause 14

Section 59 amended (Authorisation and powers of inspectors)

This clause provides that section 59 of the Principal Act is broadly amended to establish the circumstances under which the TPA may appoint inspectors. It also provides the functions and powers that an inspector has during an inspection. It provides that an inspector is to provide a written report to the TPA following an inspection and makes it an offence for a person to bribe an inspector.

Clause 15**Section 59A and 59B inserted**

This clause provides that two new sections – 59A and 59B – are to be inserted following section 59.

Section 59A provides the TPA with powers to take action in relation to a report provided to it by an inspector. The TPA may issue a notice requiring that works are carried out to premises where those premises are deemed to be unsuitable for use as pharmacy premises. It may also require that unsuitable premises be closed until those works have been completed. It also reinforces that the TPA may take steps to prosecute parties who operate in unregistered premises.

A relevant party can appeal the decision of the TPA to the Health Practitioners Tribunal.

Section 59B provides steps that the TPA may take if a relevant party fails to comply with an order under section 59A.

Clause 16**Section 60 amended (Right of Appeal)**

This clause maintains a right of appeal against a decision of the new TPA, consistent with provisions under the Principal Act. The forum for the hearing of appeals is to be the Health Practitioners Tribunal instead of the Supreme Court.

Clause 17**Section 61 amended (Hearing of appeals)**

This clause provides for the decisions that can be made by the Tribunal.

Clause 18**Part 5A inserted**

Under the Principal Act, it was an offence for a person to hold an interest in a pharmacy business unless the person fit within certain exemptions. In practice, the Pharmacy Board of Tasmania had been assessing potential owners of pharmacy businesses, deeming those exempted by the Act suitable to hold an interest.

This clause provides for the insertion of Part 5A and regularises the practice of assessing suitability to hold an interest in pharmacy premises. The Part requires a person who proposes to hold an interest in a pharmacy business to apply to the TPA for a certificate deeming them eligible. A person is eligible to hold an interest if they are a pharmacist or a member of the pharmacist's family. There are provisions for interests to be held by bodies corporate, however limitations on the body corporate membership apply. A person is required to provide certain information to demonstrate their suitability to hold an interest

and to renew their certificate annually.

Certain persons, set out in the proposed section 61D are exempt from applying for a certificate.

The ability of the TPA to assess eligibility is an important tool in preventing the illegal sale of licit substances in Tasmania.

Clause 19 Part 6: Heading amended

This clause renames the heading of Part 6.

Clause 20 Section 62 substituted

This clause provides that section 62 of the Principal Act is replaced by a new section entitled, 'Offence to hold interest in pharmacy business, &c.'

The new clause provides that unless a person holds an eligibility certificate or is exempt from holding an eligibility certificate, then it is an offence to hold an interest in a pharmacy business and penalties apply. It is also an offence for a person who holds an eligibility certificate to hold an interest in a pharmacy business if the person knows that the facts relied upon in support of their application for eligibility have changed.

Clause 21 Sections 63 and 64 repealed

This clause provides that section 63 and 64 of the Principal Act are repealed.

Clause 22 Section 65 amended (Limitation on number of pharmacies in which person may have interest)

This clause amends section 65 of the Principal act to ensure that the language of the Act properly reflects the intended restriction on the ownership of pharmacy businesses.

Clause 23 Section 66 substituted

This clause provides that section 66 of the Principal Act is to be replaced. The new section 66 provides a prohibition on using the word, 'pharmacy' to describe a business or premises if the business premises are not registered.

Clause 24 Section 67 substituted

This clause provides that section 67 of the Principal Act is to be replaced. The new section 67 provides that the time limit for prosecuting an offence under the Act is 24 months.

Clause 25	<p>Section 68 amended (Offence of dishonesty)</p> <p>This clause clarifies the offence of dishonesty and increases the penalties for the commission of an offence.</p>
Clause 26	<p>Section 69 amended (Obstruction, &c.)</p> <p>This clause increases the penalty associated with the offence of obstruction.</p>
Clause 27	<p>Section 70 amended (Offences relating to inspections, &c.)</p> <p>This clause clarifies the offences relating to inspections and increases the penalties for the commission of an offence.</p>
Clause 28	<p>Sections 70A and 70B inserted</p> <p>This clause provides that two new sections, 70A and 70B are to be inserted following section 70.</p> <p>Section 70A provides that a person must notify the TPA of certain changes in particulars. It is an offence for a person to fail to notify the TPA.</p> <p>Section 70B provides that a person must not induce or assist another person to breach the Act and prescribes a penalty for so doing.</p>
Clause 29	<p>Section 71 substituted</p> <p>This clause provides that section 71 of the Principal Act is to be replaced by a new section. The new section provides that a person must comply with orders made by the TPA. It is an offence to fail to comply with orders.</p>
Clause 30	<p>Section 71A amended (Interpretation of Part)</p> <p>This clause amends section 71A by inserting definitions relevant to this Part of the Act.</p>
Clause 31	<p>Section 71B amended (Application of Part)</p> <p>This clause amends section 71B(2) in line with the defined terms in the Act.</p>
Clause 32	<p>Section 71C amended (Pharmacy business premises to be registered)</p> <p>This clause amends section 71C of the Principal Act. It increases the maximum penalty payable for committing an offence under</p>

this section.

- Clause 33 Section 71D amended (application for registration of pharmacy business premises)**
- This clause provides that section 71D of the Principal Act is amended in line with new terminology.
- Clause 34 Section 71E amended (Consideration of applications for registration of pharmacy business premises)**
- This clause provides that section 71E of the Principal Act is amended in line with new terminology.
- Clause 35 Section 71F amended (Approval or refusal of applications)**
- This clause provides that section 71F of the Principal Act is amended in line with new terminology. It also provides that the TPA must issue a certificate of registration to a registrant.
- Clause 36 Section 71G amended (Nature of registration of pharmacy business premises)**
- This clause provides that section 71G of the Principal Act is amended so that the period of registration of pharmacy business premises does not exceed 12 months.
- Clause 37 Section 71H amended (Registration of pharmacy business premises may be cancelled or suspended)**
- This clause provides that section 71H of the Principal Act is amended in line with new terminology. It also provides an additional basis for cancelling or suspending a registration of premises and provides that a certificate of registration must be returned to the TPA if registration is cancelled.
- Clause 38 Section 71I amended (Registration of pharmacy business premises may be relinquished)**
- This clause provides that section 71I of the Principal Act is amended in line with new terminology. It also provides that if registration is relinquished, any certificate of registration issued must be returned to the TPA.
- Clause 39 Section 71J amended (Premises exempt from registration requirements)**
- This clause provides that section 71J of the Principal Act is amended in line with new terminology.

Clause 40	<p>Sections 71K, 71L, 71M, 71N and 71O inserted</p> <p>This clause inserts a series of additional clauses into the Act.</p> <p>The new section 71K provides for annual renewals of certificates of registration of pharmacy business premises. It provides the process by which an application is made and considered by the TPA.</p> <p>The new section 71L provides that the Authority is to maintain a register that records particulars about the pharmacy business premises that it has registered.</p> <p>The new section 71M provides that a member of the public may inspect the register.</p> <p>The new section 71N provides that the TPA may publish a copy of the register in the Gazette.</p> <p>The new section 71O provides that private information may not be included in the Gazetted version of the register, or in the register that is available for public inspection.</p>
Clause 41	Section 72 repealed
Clause 42	<p>Section 73 amended (Information about bodies corporate)</p> <p>This clause provides that section 73 of the Principal Act is amended in line with new terminology.</p>
Clause 43	<p>Section 73A inserted</p> <p>This clause provides for the insertion of a new clause following section 73. The new clause provides the TPA with the power to share certain information with the Health Complaints Commissioner or a relevant registration board.</p>
Clause 44	<p>Section 74 amended (Service of documents)</p> <p>This clause provides that section 74 of the Principal Act is amended in line with new terminology.</p>
Clause 45	<p>Section 75 amended (Common seal)</p> <p>This clause provides that section 75 of the Principal Act is amended in line with new terminology.</p>
Clause 46	<p>Section 76 amended (Presumptions)</p> <p>This clause provides that section 76 of the Principal Act is amended in line with new terminology.</p>

- Clause 47** **Section 77 amended (Appropriation of fees, penalties and fines)**
- This clause provides that section 77 of the Principal Act is amended in line with new terminology.
- Clause 48** **Section 78 repealed**
- Clause 49** **Section 80 amended (Regulations)**
- This clause provides that section 80 of the Principal Act is amended in line with new terminology.
- Clause 50** **Section 81 amended (Administration of Act)**
- This clause provides that section 81 of the Principal Act is amended in line with new terminology.
- Clause 51** **Sections 82 and 83 repealed**
- Clause 52** **Schedule 1 amended (Provisions with respect to membership of the Board)**
- This clause provides that Schedule 1 of the Principal Act is amended in line with new terminology.
- Clause 53** **Schedule 2 amended (Provisions with respect to meetings of the Board)**
- This clause provides that Schedule 2 of the Principal Act is amended in line with new terminology.
- Clause 54** **Schedules 3, 4 and 5 repealed**
- Clause 55** **Principal Order**
- This clause provides that the *Administrative Arrangements Order (No. 2) 2010* is the Principal Order in this Part.
- Clause 56** **Schedule 1 amended**
- This clause provides that Schedule 1 of the Principal Order is amended.
- Clause 57** **Legislation rescinded**
- This clause provides that legislation set out in Schedule 2 of the Act is amended.
- Clause 58** **Savings and transitional provisions**
- This clause provides that Schedule 1 sets out the savings and

transitional provisions for the purposes of this Bill.

Clause 59

Repeal of Act

This clause provides that the amendment Act is repealed on the ninetieth day from the day on which it commences.

Schedule I

Savings and Transitional Provisions

This Schedule sets out the savings and transitional provisions that apply to the amendment Act. The Schedule provides that:

- details on the register kept by the former Board are to transfer to the new register maintained by the TPA.
- finances of the former Board are taken to belong to the TPA from the commencement day of the Act.
- applications made to the Board prior to commencement are to be processed by the TPA as if the Principal Act had not been amended.
- any premises registered on commencement of the Act are taken to be registered under this Act until the later of 3 months from commencement or 31 December 2010. Payment of a transition fee ensures that the registration continues until the start of the new financial year.
- owners of pharmacy businesses are taken to hold an eligibility certificate under this act if they pay a transition fee within 3 months from the commencement date or by 31 December 2010 (whichever is the later).
- if the former Board had made orders under the Principal Act, the order must still be complied with.
- members of the former Board are eligible to apply to be members of the TPA, although their membership does not automatically transfer to the TPA.
- a Registrar appointed by the former Board continues to act as Registrar of the TPA until the TPA appoints a new Registrar, or until 30 June 2011 (whichever occurs sooner).
- the first annual report prepared by the TPA must incorporate any period that has not been reported by the former Board.