

PHARMACY (AMENDMENT) ACT 1989 No. 224

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Pharmacy Act 1964 No. 48
4. Savings and transitional provisions

SCHEDULE 1 - AMENDMENTS RELATING TO THE PHARMACY BOARD

SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE OF
PHARMACISTS

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS

SCHEDULE 4 - AMENDMENTS BY WAY OF STATUTE LAW REVISION

SCHEDULE 5 - SAVINGS AND TRANSITIONAL PROVISIONS

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

REPORT OF THE

COMMISSION ON THE
STATUS OF THE
PHYSICS DEPARTMENT
AT THE UNIVERSITY OF CHICAGO
IN 1964

PHARMACY (AMENDMENT) ACT 1989 No. 224

NEW SOUTH WALES



Act No. 224, 1989

An Act to amend the Pharmacy Act 1964 so as to incorporate the Pharmacy Board and vary its composition; to make further provision about the discipline of pharmacists and the ownership of pharmacies; and for other purposes. [Assented to 21 December 1989]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Pharmacy (Amendment) Act 1989.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.

- (2) Section 4 and Schedule 5 commence on the date of assent.

Amendment of Pharmacy Act 1964 No. 48

3. The Pharmacy Act 1964 is amended as set out in Schedules 1-4.

Savings and transitional provisions

4. Schedule 5 has effect.

SCHEDULE 1 - AMENDMENTS RELATING TO THE PHARMACY BOARD

(Sec. 3)

- (1) Sections 4-9:

Omit sections 4-10, insert instead:

Constitution of the Board

4. There is constituted by this Act a corporation under the corporate name of the Pharmacy Board of New South Wales.

Functions of the Board

5. (1) The Board has the functions conferred or imposed on it by or under this or any other Act.

- (2) The principal functions of the Board are the following:

- (a) to promote and maintain the highest standards of professional conduct and ethics in the pharmacy profession;
- (b) to provide for education about pharmacy and for pharmaceutical research;

SCHEDULE 1 - AMENDMENTS RELATING TO THE
PHARMACY BOARD - *continued*

- (c) to consult with and to advise the appropriate authorities on standards of training for pharmacists;
- (d) to determine the length and content of training and re-training programs for the purposes of this Act;
- (e) to make recommendations in relation to education courses which form part of the prerequisite for registration;
- (f) to publish and distribute information concerning this Act and the regulations to pharmacists and other interested persons;
- (g) to publish reports, information and advice to the general public concerning any pharmaceutical matter;
- (h) to advise the Minister on matters relating to the registration of pharmacists, standards of pharmacy practice and any other matter arising under or related to this Act;
- (i) to generally carry out all matters relating to the practice of pharmacy authorised or required by this Act.

Membership of the Board

- 6. (1) The Board is to consist of 9 members.
- (2) Of the members:
 - (a) 5 are to be pharmacists elected in accordance with the regulations by pharmacists; and
 - (b) 3 are to be appointed by the Governor and to be comprised of:
 - (i) a pharmacist nominated by the governing body of a University in New South Wales designated for the time being by the Minister, being a University that has a Faculty or Department of Pharmacy; and
 - (ii) a barrister or solicitor nominated by the Minister; and

SCHEDULE 1 - AMENDMENTS RELATING TO THE
PHARMACY BOARD - *continued*

- (iii) a person (other than a pharmacist) nominated by the Minister to represent the interests of members of the community as consumers of services provided by pharmacists; and
- (c) 1 is to be an officer of the Department of Health nominated for the time being by the Minister.

(3) If the governing body of the University designated for the time being does not nominate a person within such time or in such manner as may be specified by the Minister by notice in writing to the body, the Governor may instead appoint to be a member a person nominated by the Minister.

President of the Board

7. (1) One of the elected members of the Board is, in and by an instrument executed by the Governor, to be appointed as president of the Board.

(2) The Governor may remove a member from the office of president.

(3) A person who is the president is to be taken to have vacated office as president if the person:

- (a) is removed from that office by the Governor under this section; or
- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to be a member.

Committees

8. (1) The Board may, under this section, establish committees to assist it in connection with the exercise of any of its functions, other than functions relating to complaints about pharmacists or former pharmacists or inquiries into such complaints.

**SCHEDULE 1 - AMENDMENTS RELATING TO THE
PHARMACY BOARD - *continued***

(2) It does not matter that any or all of the members of such a committee are not members of the Board.

(3) The procedure for the calling of meetings of such a committee and for the conduct of business at those meetings may be determined by the Board or (subject to any determination of the Board) by the committee.

Other provisions relating to the Board

9. Schedule 1 has effect with respect to the members and procedure of the Board.

(2) Section 11:

Omit the section, insert instead:

The registrar and other staff

11. (1) The Board may appoint a person to be registrar for the purposes of this Act.

(2) The Board may employ such other staff as may be necessary to enable the Board to exercise its functions.

(3) The Board may, with the concurrence of the Health Administration Corporation, fix the salaries, wages, allowances and conditions of employment of its staff in so far as they are not fixed by or under another Act or law.

(4) The Public Sector Management Act 1988 does not apply to the employment of staff under this section and a person is not, as a member of that staff, subject to that Act.

(3) Section 12 (**Register of Pharmacists**):

From section 12 (2) and (5), omit "prescribed fee" wherever occurring, insert instead "fee fixed by the Board".

(4) Section 17 (**Additional requirements for registration**):

From section 17 (1) (b), omit "prescribed registration fee", insert instead "registration fee fixed by the Board".

SCHEDULE 1 - AMENDMENTS RELATING TO THE
PHARMACY BOARD - *continued*

(5) Section 17A (**Provisional registration**):

From section 17A (2), omit "prescribed fee", insert instead "fee fixed by the Board".

(6) Section 19 (**Roll fee**):

- (a) From section 19 (1), omit "of such amount as may be prescribed", insert instead "fixed by the Board".
- (b) From section 19 (4), omit "prescribed fee", insert instead "fee fixed by the Board".

(7) Section 24 (**Restoration of name to register**):

Omit "prescribed registration fee", insert instead "current registration fee".

(8) Section 36:

Omit the section, insert instead:

Fees

36. (1) The Board may make written orders fixing fees for services provided by the Board in exercising its functions.

(2) The Board may fix a fee for registration of a person as a pharmacist, for provisional registration or for restoration of a name to the Register of Pharmacists and an annual roll fee only if the fees have been approved by the Minister.

(3) Fees payable under this Act are to be paid to the registrar on behalf of the Board.

(4) Any such fee may be recovered by the registrar or any person authorised in writing by the Board in a court of competent jurisdiction as a debt due to the Board.

(5) Fees and other money received by the registrar or the Board are to be paid into an account or accounts established by the Board.

**SCHEDULE 1 - AMENDMENTS RELATING TO THE
PHARMACY BOARD - *continued***

(6) There may be paid from an account or accounts established by the Board:

- (a) amounts required to meet the expenses of the administration or execution of this Act; and
- (b) amounts for such purposes as are set out in regulations made for the purposes of this section on the recommendation of the Board.

(9) Section 38 (**Regulations**):

Omit section 38 (1) (d), insert instead:

- (d) the payment of fees to the Board;

(10) Schedule 1:

After section 38, insert:

**SCHEDULE 1 - PROVISIONS RELATING TO THE
MEMBERS AND PROCEDURE OF THE BOARD**

(Sec. 9)

PART 1 - THE MEMBERS

Acting members and acting president

1. (1) The Governor may, from time to time, appoint a person to act in the office of an appointed member of the Board during the illness or absence of the member, and the person, while so acting, has all the functions of the member and is to be taken to be a member.

(2) The Governor may, from time to time, appoint an elected member to act in the office of president during the illness or absence of the president, and the member, while so acting, has all the functions of the president and is to be taken to be the president.

(3) A person is not eligible to be appointed under subclause (1) to act in the office of the member of the Board nominated by the governing body of a University unless the person is nominated by that body.

**SCHEDULE 1 - AMENDMENTS RELATING TO THE
PHARMACY BOARD - *continued***

(4) The Governor may remove any person from any office to which the person was appointed under this clause.

(5) A person while so acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(6) For the purposes of this clause, a vacancy in the office of a member or the president is to be taken to be an absence from office of the member or the president, as the case may be.

Term of office

2. (1) Subject to this Schedule:

- (a) an elected member of the Board holds office for 3 years from the date of the member's election, but is eligible (if otherwise qualified) for re-election; and
- (b) an appointed member of the Board holds office for such period, not exceeding 3 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

(2) The regulations may make provision for determining the date of a member's election for the purposes of this clause.

Remuneration

3. A member of the Board is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Filling of casual vacancy in office of member

4. (1) If the office of any member of the Board becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

SCHEDULE 1 - AMENDMENTS RELATING TO THE
PHARMACY BOARD - *continued*

(2) In the case of a vacancy in the office of an elected member, the vacancy is to be filled by a pharmacist nominated by the Board.

(3) A person nominated to fill a vacancy in the office of an elected member is to be taken, for the purposes of this Act, to be an elected member.

Casual vacancies

5. (1) A member of the Board is to be taken to have vacated office if the member:

- (a) dies; or
- (b) absents himself or herself from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings; or
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
- (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable; or

SCHEDULE 1 - AMENDMENTS RELATING TO THE
PHARMACY BOARD - *continued*

- (f) resigns the office by instrument in writing addressed to the Minister; or
 - (g) in the case of an appointed member, is removed from office by the Governor under subclause (3) or (4) or under Part 8 of the Public Sector Management Act 1988.
- (2) Without limiting the generality of subclause (1), a member who is appointed under:
- (a) section 6 (2) (b) (ii) - and who ceases to be a barrister or solicitor; or
 - (b) section 6 (2) (c) - and who ceases to be an officer of the Department of Health,
- is to be taken to have vacated office.
- (3) The Governor may remove an appointed member from office.
- (4) Without affecting the generality of subclause (3), the Governor may remove from office a member who contravenes the provisions of clause 6.

Disclosure of pecuniary interests

6. (1) A member of the Board who has a direct or indirect pecuniary interest:
- (a) in a matter that is being considered, or is about to be considered, at a meeting of the Board; or
 - (b) in a thing being done or about to be done by the Board,
- must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.
- (2) A disclosure by a member at a meeting of the Board that the member:
- (a) is a member, or is in the employment, of a specified company or other body; or

SCHEDULE 1 - AMENDMENTS RELATING TO THE
PHARMACY BOARD - *continued*

- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or a specified person,

is to be taken to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) The Board is required to cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book is to be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Board from time to time.

(4) After a member has, or is taken to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1) or (2), the member must not, unless the Board otherwise determines:

- (a) be present during any deliberation of the Board, or take part in any decision of the Board, with respect to that matter; or
- (b) exercise any functions under this Act with respect to that thing,

as the case requires.

(5) Notwithstanding that a member contravenes the provisions of this clause, that contravention does not invalidate any decision of the Board or the exercise of any function under this Act.

(6) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing which arises merely because the member is a pharmacist.

(7) A reference in this clause to a meeting of the Board includes a reference to a meeting of a committee of the Board.

SCHEDULE 1 - AMENDMENTS RELATING TO THE
PHARMACY BOARD - *continued*

Effect of certain other Acts

7. (1) The Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member of the Board and a member is not, as a member, subject to that Act (except Part 8).

(2) If by or under any other Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

(b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

(3) The office of a member is to be taken for the purposes of any Act not to be an office or place of profit under the Crown.

PART 2 - THE PROCEDURE OF THE BOARD

General procedure

8. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Board.

Quorum

9. Except as otherwise provided by this Act, the quorum for a meeting of the Board is 5 members.

Voting

10. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

**SCHEDULE 1 - AMENDMENTS RELATING TO THE
PHARMACY BOARD - *continued***

Presiding member

11. (1) The president or, in the absence of the president, another member of the Board elected to chair the meeting by the members present, is to preside at a meeting of the Board.

(2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Minutes

12. The Board is required to cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.

**SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS**

(Sec. 3)

(1) Section 12 (**Register of Pharmacists**):

After section 12 (2) (d), insert:

(e) particulars of any conditions imposed on the pharmacist by an order of the Board;

(2) Sections 19A-19H:

Before section 20, insert:

Definitions

19A. In this Act:

"**Committee**" means a Professional Standards Committee constituted under section 19C;

"**conduct**" means any act or omission;

"**professional misconduct**", in relation to a pharmacist, includes:

(a) any conduct that demonstrates a lack of adequate:

SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued*

- (i) knowledge;
- (ii) experience;
- (iii) skill;
- (iv) judgment; or
- (v) care,
by the pharmacist in the practice of pharmacy;
and
- (b) the pharmacist's contravening (whether by act or omission) a provision of this Act or the regulations; and
- (c) the pharmacist's contravening a condition imposed on the pharmacist's registration by the Board; and
- (d) the pharmacist's contravening an order made or a direction given by the Board; and
- (e) the pharmacist's carrying on the business of a pharmacist, or having a direct or indirect pecuniary interest in such a business, for or on behalf of, or in association with, a person, corporation or partnership that is not entitled to carry on that business or to have that interest; and
- (f) the pharmacist's being an habitual drunkard or being addicted to any deleterious drug; and
- (g) any other improper or unethical conduct of the pharmacist relating to the practice of pharmacy.

Complaints about former pharmacists

19B. (1) A complaint may be made under this Act about a person who, although not a pharmacist when the complaint is made to, or lodged with, the Director-General of the Department of Health or the registrar, was registered as a pharmacist not more than 5 years before that time.

SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued*

(2) For the purposes of this Act, a reference to a pharmacist against whom a complaint has been made includes a reference to a person against whom a complaint has been made pursuant to this section.

Professional Standards Committees

19C. (1) There are to be Professional Standards Committees.

(2) The Committees are to have and may exercise the jurisdiction and functions conferred or imposed on them by or under this Act.

(3) When the Board decides to refer a complaint to a Committee for inquiry, the Board must:

- (a) appoint 3 persons (including a barrister or solicitor) to sit as the Committee for the purpose of conducting an inquiry into the complaint; and
- (b) nominate one of those persons to be chairperson of the Committee.

(4) A Committee is to consist of:

- (a) 2 pharmacists; and
- (b) one lay person (that is, a person who is not a pharmacist) appointed from among a panel of lay persons for the time being nominated by the Minister.

(5) A person may be appointed to sit on a Committee whether or not the person is a member of the Board, but not if the person has dealt with the particular matter before the Committee in his or her capacity as such a member.

(6) One or more Committees may conduct more than one inquiry at the same time.

(7) A member of a Committee, while sitting on the Committee, is entitled to be paid by the Board at the same rate as a witness who gives expert evidence in the Supreme Court.

SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued*

Making of complaints about pharmacists

19D. (1) A complaint may be made by any person that a pharmacist:

- (a) has been convicted in New South Wales of an offence; or
- (b) has been convicted elsewhere than in New South Wales in respect of an act or omission that would, if it had taken place in New South Wales, have constituted an offence; or
- (c) has been guilty of professional misconduct; or
- (d) has advertised in contravention of the regulations; or
- (e) does not have sufficient physical or mental capacity to carry on the business of a pharmacist; or
- (f) is not of good character.

(2) A complaint is to be made to or lodged with the Director-General of the Department of Health or the registrar.

Procedure on receipt of complaint

19E. (1) On receipt of a complaint, the Director-General or the registrar is to refer it to the Board.

(2) The Board may require the complainant to provide further particulars of the complaint and may make such preliminary inquiries concerning the complaint as it thinks fit.

(3) The Board may inform the pharmacist against whom the complaint is made of the nature of the complaint and invite the pharmacist to make, within such time as the Board specifies in the notice, such representations to the Board with respect to the complaint as the pharmacist thinks fit.

(4) The Board is required to consider any representations made to it within the time specified in its notice.

**SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued***

Determination of how complaint to be dealt with

19F. The Board may decide at any time in relation to a complaint:

- (a) that it will deal with the complaint at a meeting of the Board; or
- (b) that it will investigate the complaint; or
- (c) that it will refer the complaint to a Committee for inquiry if, in the opinion of the Board, it is appropriate for it to be dealt with by the Committee; or
- (d) that it will conduct an inquiry into the complaint; or
- (e) that it will decline to deal with or will dismiss the complaint.

Investigation by the Board

19G. (1) In investigating a complaint, the Board:

- (a) may conduct the investigation in such manner as it thinks fit; and
- (b) may inform itself on any matter in such manner as it thinks fit; and
- (c) may receive written or oral submissions; and
- (d) is not required to conduct its proceedings in a formal manner; and
- (e) is not bound by rules of evidence.

(2) Neither the complainant nor the pharmacist concerned are entitled to be legally represented at any appearance before the Board in the course of an investigation under this section.

(3) A finding or recommendation of the Board made during or as a consequence of such an investigation is admissible as evidence in any legal proceedings.

SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued*

Conduct of inquiry by the Board or a Committee

19H. (1) If the Board decides to conduct an inquiry into a complaint or a complaint is referred to a Committee for an inquiry:

- (a) the Board or Committee, in conducting the inquiry, is to sit as in open court unless it determines to do otherwise; and
- (b) the person against whom the complaint was made is to be afforded an opportunity of defence either in person or by a barrister or solicitor or another adviser.

(2) For the purposes of conducting an inquiry, the Board is to consist of 3 members of the Board (including a barrister or solicitor) appointed to conduct the inquiry by the president.

(3) When the president nominates members of the Board to conduct an inquiry, the president is to nominate one of those members to be chairperson of the Board for the purposes of the inquiry.

(4) The president may nominate himself or herself as a member or as chairperson under this section.

(5) Schedule 2 applies with respect to an inquiry by the Board or a Committee.

(3) Section 20:

Omit the section, insert instead:

Consequences of misconduct etc.

20. (1) If the Board (after an inquiry conducted by itself or a Committee) is satisfied that the subject-matter of a complaint against a pharmacist is proved, the Board may do any one or more of the following:

- (a) caution or reprimand the person;
- (b) order that the person seek medical or psychiatric treatment or counselling;

SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued*

- (c) order that such conditions, relating to the person's practising pharmacy, as it considers appropriate be imposed on the person's registration;
- (d) order that the person complete such educational courses as are specified by the Board;
- (e) order that the person report on his or her pharmacy practice at the times, in the manner and to the persons specified by the Board;
- (f) order that the person seek and take advice, in relation to the management of his or her pharmacy practice, from such persons as are specified by the Board;
- (g) by its order, impose a fine on the person of an amount, not exceeding 40 penalty units, specified in the order;
- (h) by its order, suspend the person's registration for such period (not exceeding 12 months) as the Board thinks fit;
- (i) by its order, remove the person's name from the register.

(2) If a pharmacist's registration is suspended under this section, the secretary must note in the register the suspension and its date and cause.

(3) The Board is not to suspend a person's registration or remove a person's name from the register for having committed an offence if, having regard to the nature of the offence or the circumstances under which it was committed, the Board is of the opinion that it does not render the person unfit in the public interest to be registered as a pharmacist.

(4) Any fine imposed under this section may be recovered by the Board as a debt in a court of competent jurisdiction.

SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued*

(4) Section 20AA (**Removal of name etc. from register outside New South Wales**):

From section 20AA (1) (b), omit "section 20", insert instead "this Act".

(5) Section 21 (**Effect of Board's order**):

From section 21 (1), omit "subsection (1) of section 20, or subsection (1) of section 20AA, that the name of a pharmacist be removed from the register or that he be suspended from practice as a pharmacist shall", insert instead "section 20 or 20AA does".

(6) Section 22 (**Appeal against orders of the Board**):

Section 22 (1)-(3A):

Omit section 22 (1)-(3), insert instead:

(1) Any person aggrieved:

(a) by an order made under section 20; or

(b) by any refusal or failure to register the person as a pharmacist,

may, not later than 1 month after being served or sent notice of the order in accordance with section 21 or not later than 3 months after the application for registration was lodged, appeal to the District Court against the order or the refusal or failure.

(2) Any such appeal is to be made in accordance with rules of court and will be in the nature of a new hearing at which new evidence may be given.

(3) The District Court may make such order as it thinks fit, which is final and without appeal.

(3A) The Board is to give effect to the District Court's order.

**SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued***

(7) Schedule 2:

At the end of the Act, insert:

**SCHEDULE 2 - INQUIRIES BY THE BOARD OR
A COMMITTEE**

(Sec. 19H)

Proceedings generally

1. (1) At an inquiry conducted by it, the Board or a Committee is not bound to observe the rules of law governing the admission of evidence, but may inform itself of any matter in such manner as it thinks fit.

(2) At a meeting of the Board or of a Committee conducting an inquiry, the chairperson of the Board nominated for the purposes of the inquiry or the chairperson of the Committee is to preside.

(3) A decision supported at a meeting by at least 2 of the members of the Board or a Committee conducting an inquiry is the decision of the Board or Committee.

Power to summon witnesses and take evidence

2. (1) A member of the Board or a Committee may summon a person to appear at an inquiry conducted by the Board or Committee, to give evidence and to produce such documents (if any) as are referred to in the summons.

(2) The person presiding at the inquiry may require a person appearing at the inquiry to produce a document.

(3) The Board or a Committee may, at an inquiry conducted by it, take evidence on oath or affirmation and, for that purpose, a member of the Board or Committee:

- (a) may require a person appearing at the inquiry to give evidence either to take an oath or to make an affirmation in a form approved by the person presiding; and
- (b) may administer an oath to or take an affirmation from a person so appearing at the inquiry.

**SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued***

(4) A person served with a summons to appear at such an inquiry and to give evidence must not, without reasonable excuse:

- (a) fail to attend as required by the summons; or
- (b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Board or Committee.

(5) A person appearing at an inquiry to give evidence must not, without reasonable excuse:

- (a) when required to be sworn or affirm - fail to comply with the requirement; or
- (b) fail to answer a question that the person is required to answer by the person presiding; or
- (c) fail to produce a document that the person is required to produce by this clause.

Maximum penalty: 20 penalty units.

Power to obtain documents

3. (1) A member of the Board or a Committee may, by notice in writing served on a person, require the person:

- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Board or Committee or a person authorised by the Board or Committee in that behalf; and
- (b) to produce, at that time and place, to the person so specified a document specified in the notice.

(2) A person must not fail, without reasonable excuse, to comply with a notice served on the person under this clause.

Maximum penalty: 20 penalty units.

Evidence of other proceedings

4. The Board or a Committee may receive and admit on production, as evidence at any inquiry:

SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued*

- (a) the judgment and findings of any court (whether civil or criminal and whether or not of New South Wales) or tribunal; or
- (b) the verdict or findings of a jury of any such court; or
- (c) a certificate of the conviction of any person; or
- (d) a transcript of the depositions or of shorthand notes, duly certified by the registrar or clerk of the court or tribunal as correct, of the evidence of witnesses taken in any such court or tribunal,

where the Board or Committee is of the opinion that the judgment, findings, verdict, certificate or evidence is or are relevant to the proceedings.

Additional complaints

5. (1) The Board or a Committee may at an inquiry conducted by it deal with one or more complaints about a pharmacist.

(2) If, during any such inquiry, it appears to the Board or a Committee that, having regard to any matters that have arisen, another complaint could have been made against the pharmacist concerned:

- (a) whether instead of or in addition to the complaint which was made; and
- (b) whether or not by the same complainant,

the Board or Committee may take that other complaint as having been referred to it and may deal with it at the same inquiry.

(3) If another complaint is taken to have been referred to the Board or a Committee under subclause (2) the complaint may be dealt with after such an adjournment (if any) as is, in the opinion of the Board or Committee, just and equitable in the circumstances.

SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued*

Release of information

6. (1) The person presiding at an inquiry conducted by the Board or a Committee may, on the request of a complainant, the pharmacist concerned or any other person, if the person presiding thinks it appropriate in the particular circumstances of the case:

- (a) direct that the name of any witness is not to be disclosed in the proceedings; or
- (b) direct that all or any of the following matters:
 - (i) the name and address of any witness;
 - (ii) the name and address of a complainant;
 - (iii) the name and address of a pharmacist;
 - (iv) any specified evidence;
 - (v) the subject-matter of a complaint,must not be published, except in a publication intended primarily for the use of members of the legal or medical profession.

(2) A direction may be amended or revoked at any time by the person presiding.

(3) A direction may be given before or during an inquiry, but is not to be given before the inquiry unless notice is given to:

- (a) the person who requested the direction; and
- (b) the complainant or the pharmacist concerned, as appropriate; and
- (c) such other persons as the person presiding thinks fit,

of the time and place appointed by the person presiding for consideration of the request.

(4) A person must not contravene a direction given under this clause.

Maximum penalty: 20 penalty units.

**SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued***

Authentication of documents by the Board or a Committee

7. Every document requiring authentication by the Board or a Committee may be sufficiently authenticated:

- (a) in the case of the Board, without the seal of the Board, if signed by the president of the Board or by a member of the Board authorised to do so by the president; or
- (b) in the case of a Committee, if signed by the chairperson of the Committee or by a member of the Committee authorised to do so by that chairperson.

Nominal complainant

8. At any inquiry conducted by the Board or a Committee, the registrar or an officer of the Department of Health appointed by the Director-General:

- (a) may, with the consent of a complainant, act as the nominal complainant; and
- (b) when so acting, is, for the purposes of this Act and the regulations, to be taken to be the person who made the complaint.

Intervention by Director-General

9. Without limiting the operation of clause 8, the Director-General may intervene in any inquiry conducted by the Board or a Committee, and has a right to be heard:

- (a) personally or by an officer of the Department of Health; and
- (b) also, in the case of any inquiry conducted by the Board, by a barrister or solicitor who is not an officer of the Department of Health.

**SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued***

Expedition of inquiries

10. (1) It is the duty of the Board and a Committee to conduct inquiries under this Act and to determine those inquiries as soon as is reasonably practicable.

(2) Without affecting the generality of subclause (1), the Board or a Committee may postpone or adjourn an inquiry being conducted by it as it thinks fit.

Evidentiary certificate

11. A certificate purporting to have been signed by the registrar, to the effect that:

- (a) a person specified in the certificate was or was not a pharmacist at a time or during a period so specified; or
- (b) the name of a person specified in the certificate was removed from the register at a time so specified; or
- (c) a person specified in the certificate was suspended from practising pharmacy from a time so specified and for a period so specified; or
- (d) a condition, particulars of which are set out in the certificate, was, at a time or during a period so specified:
 - (i) imposed on the registration of a person so specified; or
 - (ii) revoked or not in force,

is required, without proof of the signature of the person by whom the certificate purports to have been signed, to be received by the Board, a Committee and all courts as prima facie evidence of that fact.

Certain complaints may not be heard

12. (1) The Board or a Committee may decide not to conduct an inquiry, or at any time to terminate an inquiry, if:

**SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued***

- (a) a complainant fails to comply with a requirement made of the complainant by the Board or Committee; or
 - (b) the person about whom the complaint is made ceases to be a pharmacist.
- (2) The Board or a Committee is not to conduct or continue any inquiry or any appeal if the pharmacist concerned dies.

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**):

(a) In alphabetical order, insert:

"Pharmacy" means any premises in or on which a person carries on the business of a pharmacist and includes such portion (if any) of those premises in or on which the person sells or offers for sale goods of any kind, but does not include any such premises located in a hospital mentioned in the Second Schedule to the Public Hospitals Act 1929.

(b) At the end of section 3, insert:

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(2) Section 13 (**Qualifications for registration - New South Wales graduates**):

- (a) From section 13 (1) (b), omit "for not less than the prescribed period", insert instead "(for not less than the period, or aggregate period, prescribed by the regulations)".

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

- (b) From section 13 (1) (b) (i), omit "keeping open shop for the purpose of", insert instead "at a pharmacy used for".
 - (c) From section 13 (1) (b) (iii), omit "in open shop kept", insert instead "in a pharmacy used".
 - (d) From section 13 (1) (b) (iv), omit "an open shop kept", insert instead "a pharmacy used".
 - (e) Omit section 13 (1A).
 - (f) From section 13 (2), omit the definition of "prescribed period".
- (3) Section 16 (**Qualifications for registration - New South Wales apprentices**):
- (a) From section 16 (a), omit "keeping open shop for the purpose of", insert instead "at a pharmacy used for".
 - (b) From section 16 (a), omit "in open shop kept", insert instead "in a pharmacy used".
 - (c) From section 16 (a), omit "an open shop kept", insert instead "a pharmacy used".
- (4) Section 17 (**Additional requirements for registration**):
- (a) From section 17 (1) (a), omit "twenty-one", insert instead "18".
 - (b) At the end of section 17 (1) (a), insert:
 - ; and
 - (a1) the person proves to the satisfaction of the Board that the person has a knowledge of the English language adequate to carry on the business of a pharmacist; and
 - (c) After section 17 (2), insert:
 - (3) If a person applies to be registered as a pharmacist later than 5 years after the person was last registered as a pharmacist, the Board may refuse to register the person until the person has passed, at a standard satisfactory to

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

the Board, such oral or written examination (or oral and written examinations) as the Board considers appropriate.

(5) Section 23 (**Surrender of certificates of registration**):

Omit the last paragraph, insert instead:

(2) Any person who, without reasonable excuse, contravenes this section is guilty of an offence against this Act and liable to a penalty not exceeding 2 penalty units.

(6) Section 24A-24C:

Before section 25, insert:

Register of Pharmacies

24A. (1) An application for:

- (a) an approval of premises as suitable for carrying on the business of a pharmacist; or
- (b) registration of an owner of such a business,

is required to be made to the registrar in a form approved by the Minister and to be accompanied by the fee fixed by the Board.

(2) The Board may require any such application to be verified by a statutory declaration.

(3) The Board may:

- (a) reject the application; or
- (b) by its order, approve the premises or direct that the owner be registered.

(4) Premises are not to be approved if they fail to comply with any standard prescribed for them by the regulations.

(5) The Board may, by its order, revoke an approval under this section if the premises concerned are found not to comply with any such standard.

(6) The Board is to keep a register containing particulars of approved premises and registered owners, to be called the Register of Pharmacies which, on payment of the fee

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

fixed by the Board, may be inspected at the office of the Board at any reasonable time.

Appeals against refusal to approve pharmacy or to register owner

24B. (1) Any person aggrieved by a decision or an order of the Board under section 24A relating:

(a) to an application for the approval of premises or the registration of an owner; or

(b) to revocation of an approval of premises,

may appeal against the decision or order to the District Court.

(2) For the purposes of such an appeal, an application for an approval or for registration that has not been dealt with by the Board within one month of its having been lodged (or such longer period as may be agreed by the applicant and the Board) is to be taken to have been rejected.

(3) Any such appeal is to be made in accordance with rules of court and will be in the nature of a new hearing at which new evidence may be given.

(4) The District Court may make such order as it thinks fit, which is final and without appeal.

(5) The Board is to give effect to the District Court's order.

Pharmacies to be approved and owners registered

24C. (1) A person must not carry on the business of a pharmacist at any premises unless:

(a) the premises are the subject of a current approval of the Board; and

(b) the owner of the business is registered in the Register of Pharmacies.

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

(2) This section does not apply so as to require the approval of premises at which a pharmacist carried on the business of a pharmacist immediately before the date of assent to the Pharmacy (Amendment) Act 1989 until the second anniversary of that date of assent.

(7) Section 25 (**Persons other than pharmacists not to have interest in pharmacists' businesses**):

(a) From section 25 (1), (1A), (5), (6) (b) and (7), omit "open shop" wherever occurring, insert instead "a pharmacy".

(b) Omit section 25 (2), insert instead:

(2) Subsection (1) does not prevent:

(a) an individual from being employed in the carrying on of the business of a pharmacist; or

(b) an individual, a body corporate or an unincorporated body from having a pecuniary interest, direct or indirect, in the business of a pharmacist as a party to a bill of sale given in respect of that business; or

(c) an individual, a body corporate or an unincorporated body from having such an interest in circumstances prescribed by the regulations.

(c) Omit section 25 (2B) and (2C).

(8) Section 25B:

After section 25A, insert:

Direction to supply information about pecuniary interests

25B. The Board may, by a written notice given personally or by post to a pharmacist, direct the pharmacist to supply to the Board, within the time specified in the notice, such information relating to pecuniary interests in any business of a pharmacist carried on by the pharmacist as is required by the notice.

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

(9) Section 26 (**Restrictions on carrying on business of a pharmacist in pharmacies**):

(a) Omit section 26 (1) and (2), insert instead:

(1) A pharmacist (whether as owner or otherwise and whether alone or as a partner) must not:

- (a) carry on the business of a pharmacist in more than 3 pharmacies; or
- (b) have a direct or indirect pecuniary interest in the business of a pharmacist carried on in more than 3 pharmacies; or
- (c) carry on such a business in one or more pharmacies and have such an interest in one or more pharmacies so that the total number of pharmacies involved exceeds 3.

(2) A pharmacist must not:

- (a) carry on the business of a pharmacist in a pharmacy; or
 - (b) have a direct or indirect pecuniary interest in the business of a pharmacist carried on in a pharmacy, as a member of more than one partnership of pharmacists.
- (b) From section 26 (3) (a), omit "an open shop", insert instead "a pharmacy".
- (c) From section 26 (3) (a) and the definition of "the prescribed area" in section 26 (3), omit "open shop" wherever occurring (except where firstly occurring), insert instead "pharmacy".
- (d) From section 26 (3) (a), omit "open shops", insert instead "pharmacies".
- (e) Omit section 26 (3) (b).
- (f) From section 26 (3) (c), omit "in open shop", insert instead "in a pharmacy".

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

(g) Omit section 26 (3A), insert instead:

(3A) A pharmacist is not guilty of an offence under this section only because the pharmacist:

- (a) carries on, as a partner, not more than one after-hours pharmacy in addition to any business of a pharmacist that is being carried on without contravening this section; or
- (b) carries on the business of a pharmacist or has a direct or indirect pecuniary interest in such a business, conducted at a branch pharmacy approved by the Board in accordance with the regulations.

(h) From section 26 (3B) (a), omit "or (b)".

(i) From section 26 (3B), omit "either of those paragraphs" wherever occurring, insert instead "that paragraph".

(10) Section 27 (**Pharmacist to be in charge of every pharmacy and dispensary**):

From section 27, omit "open shop" wherever occurring, insert instead "a pharmacy".

(11) Section 28:

Omit the section, insert instead:

Medicines to be dispensed by pharmacists

28. (1) A person, other than a pharmacist or a person acting under the personal supervision of a pharmacist, must not dispense or compound any medicine on the order or prescription of a medical practitioner.

(2) This section does not prevent a medical practitioner from dispensing medicine in the ordinary course of medical practice:

- (a) if the practitioner does not charge for the medicine more than its cost to the practitioner; or

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

- (b) if, because of the circumstances of the case (such as where the medicine is dispensed in a location in which there is no pharmacist), it would be unreasonable to require the medicine to be obtained from a pharmacist; or
 - (c) in such circumstances as may be prescribed by the regulations.
- (12) Section 29 (**Business of deceased pharmacist may be carried on temporarily**):
Omit "open shop", insert instead "a pharmacy".
- (13) Section 30 (**Pharmacists to use only registered qualifications**):
From section 30 (2), omit "an open shop", insert instead "a pharmacy".
- (14) Section 31:
Before section 32, insert:
Appointment of inspectors
31. The Director-General of the Department of Health may from time to time appoint inspectors for the purposes of this Act.
- (15) Section 32 (**Power of entry of inspectors and authorised persons**):
From section 32 (1), omit "appointed under section 11".
- (16) Section 34 (**Board may summon and examine witnesses**):
Omit the section.

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

(17) Section 34A:

After section 34, insert:

Protection of Board and others from liability

34A. No matter or thing done or suffered in good faith by a person being:

- (a) the Board or a member of the Board; or
- (b) the registrar or any other member of the staff of the Board; or
- (c) an inspector,

in the execution or intended execution of this Act or the exercise or discharge of the person's functions, subjects the person, or the Crown, to any action, liability, claim or demand.

(18) Section 35 (**Penalties**):

- (a) From section 35 (1), omit "two hundred dollars", insert instead "5 penalty units".
- (b) From section 35 (2), omit "section 11", insert instead "this Act".

(19) Section 36A:

After section 36, insert:

Pharmacy Education and Research Account

36A. (1) The Board is required to establish a Pharmacy Education and Research Account.

(2) Such amounts as are recommended by the Board and determined by the Minister from time to time are to be paid into the Account by the Board from fees payable under this Act or the regulations.

(3) Money in the Account may be expended by the Board for or towards any one or more of the following:

- (a) education about pharmacy and pharmaceutical research;

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

- (b) the publication and distribution of information concerning this Act and the regulations;
 - (c) meeting administrative expenditure incurred with respect to the Account and the purposes for which it is used,
- or any related purpose.

(4) An expenditure of money under this section is not to be made unless it is authorised by a resolution of the Board supported by at least 6 members.

(20) Section 38 (**Regulations**):

- (a) From section 38 (1) (e) and (e2), omit "open shop" wherever occurring, insert instead "a pharmacy".
- (b) Omit section 38 (1) (e1), insert instead:
 - (e1) the supply of information to the Board about pecuniary interests in the business of a pharmacist carried on in a pharmacy, about the acquisition or disposition of any such interests and about the opening or closing of pharmacies;
- (c) From section 38 (1) (g) and (h), omit "open shop" wherever occurring, insert instead "pharmacy".
- (d) After section 38 (1) (g), insert:
 - (g1) the standards to be complied with by pharmacies (including after-hours and branch pharmacies);
- (e) From section 38 (1) (ha), omit "(ha)", insert instead "(h1)".
- (f) In section 38 (1) (h1) (as renumbered), after "after-hours", insert "or branch".
- (g) After section 38 (1) (h1) (as renumbered), insert:
 - (h2) the approval of pharmacies as branch pharmacies by the Board;
- (h) From section 38 (2), omit "forty dollars", insert instead "2 penalty units".

**SCHEDULE 4 - AMENDMENTS BY WAY OF STATUTE LAW
REVISION**

(Sec. 3)

(1) **Division of the Pharmacy Act 1964 into Parts:**

- (a) Before section 1, insert:

PART 1 - PRELIMINARY

- (b) After section 3, insert:

**PART 2 - THE PHARMACY BOARD OF NEW SOUTH
WALES**

- (c) After section 11, insert:

PART 3 - REGISTRATION OF PHARMACISTS

- (d) After section 19, insert:

**PART 4 - COMPLAINTS AND DISCIPLINARY
PROCEEDINGS**

- (e) After section 24, insert:

PART 5 - CONTROL OF PHARMACIES

- (f) After section 27, insert:

PART 6 - GENERAL

(2) **Repeal of spent provisions:**

Omit sections 1 (3), 2 (1) and (5), 39 and 40 and the Schedule.

SCHEDULE 5 - SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 4)

Definitions

1. In this Schedule:

"**new Board**" means the Pharmacy Board constituted by the Pharmacy Act 1964, as amended by this Act;

"**old Board**" means the Pharmacy Board constituted by the Pharmacy Act 1964, as in force before the date of assent to this Act.

SCHEDULE 5 - SAVINGS AND TRANSITIONAL PROVISIONS
- continued

Savings and transitional regulations

2. (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect as from the date of assent to this Act or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

General savings

3. Except as provided otherwise by this Schedule or by a regulation made under clause 2, anything:

- (a) that was done by the old Board under or for the purposes of a provision of the Pharmacy Act 1964; and
- (b) that had an effect immediately before the commencement of Schedule 1 (1),

is to be taken to have been done under or for the purposes of the corresponding provision of that Act, as amended by this Act.

Vesting of personal property

4. On the commencement of Schedule 1 (1), any personal property held by the members of the old Board in their capacity as such members becomes personal property of the new Board.

Claims and liabilities

5. On the commencement of Schedule 1 (1):

- (a) all money and liquidated and unliquidated claims that, immediately before that commencement, was or were payable

SCHEDULE 5 - SAVINGS AND TRANSITIONAL PROVISIONS
- continued

to or recoverable by the members of the old Board in their capacity as such members is or are money and liquidated and unliquidated claims payable to or recoverable by the new Board; and

- (b) the new Board may, in addition to pursuing any other remedies or exercising any other powers that may be available to it, pursue the same remedies for the recovery of any such money or claims as the members of the old Board might have done in their capacity as such members but for the enactment of this Act; and
- (c) the new Board is liable for all money and liquidated and unliquidated claims for which the members of the old Board would have been liable in their capacity as such members but for the enactment of this Act.

Members of old Board

6. (1) A person who, immediately before the commencement of Schedule 1 (1), held office as a member of the old Board:

- (a) ceases to hold office as such on that commencement; and
- (b) is eligible (if otherwise qualified) to be elected, appointed or nominated as a member of the new Board.

(2) A person who ceases to hold office as a member of the old Board because of the operation of this Act is not entitled to be paid any remuneration or compensation because of ceasing to hold that office.

Elections, appointments etc. before commencement

7. For the purpose only of enabling the new Board to be constituted on or after (but not before) the commencement of Schedule 1 (1), elections may be held and appointments and nominations may be made under the Pharmacy Act 1964 and anything else (including the making of regulations) may be done before that commencement as if the whole of this Act commenced on the date of assent to this Act, but so that no member of the new Board takes office as such a member before that commencement.

SCHEDULE 5 - SAVINGS AND TRANSITIONAL PROVISIONS
- continued

First meeting of new Board

8. The Minister is to call the first meeting of the new Board in such manner as the Minister thinks fit.

Inspectors

9. A person holding office as an inspector under section 11 of the Pharmacy Act 1964 immediately before the commencement of Schedule 3 (14) is, on that commencement, to be taken to have been appointed as an inspector under section 31 of that Act, as amended by this Act, and to have been appointed subject to the same terms and conditions as applied to the appointment immediately before that commencement.

Complaints, inquiries and appeals pending

10. (1) The provisions of the Pharmacy Act 1964, as in force immediately before the commencement of Schedule 2 (2), apply to and in respect of a complaint made, or an inquiry or appeal commenced, under that Act and pending immediately before that commencement.

(2) Any order or decision resulting from an inquiry or appeal to which this clause applies is to be taken to have been made under the corresponding provisions of that Act, as amended by this Act, and is to have effect accordingly.

Appeal rights

11. A person who, immediately before the commencement of Schedule 2 (6), was entitled to commence (but had not commenced) an appeal has, after that commencement, the residue of the time within which that appeal might have been commenced to commence an appeal under section 22 of the Pharmacy Act 1964, as amended by this Act.

Complaints etc. relating to previous conduct

12. A complaint or investigation under the Pharmacy Act 1964, as amended by this Act, may be made with respect to conduct or any other matter or thing that occurred before or after, or partly before and partly after, the commencement of Schedule 2 (2).

SCHEDULE 5 - SAVINGS AND TRANSITIONAL PROVISIONS
- continued

Construction of certain references

13. A reference in any other Act, in any instrument made under any Act or in any other instrument of any kind to the old Board shall, on the commencement of Schedule 1 (1), be read as a reference to the new Board.

Saving of certain regulations

14. A regulation:

- (a) that was in force under the Pharmacy Act 1964 immediately before the date of assent to this Act; and
- (b) that could lawfully be made under that Act, as amended by this Act,

is not repealed only because of an amendment made to that Act by this Act.

Saving of certain fees

15. A fee that, immediately before the date of assent to this Act, was prescribed for the purposes of a provision of the Pharmacy Act 1964 is to be treated as a fee fixed by the Board with the approval of the Minister until the Board fixes a corresponding fee under that Act, as amended by this Act.

[*Minister's second reading speech made in -
Legislative Assembly on 23 November 1989
Legislative Council on 29 November 1989*]



THE UNIVERSITY OF CHICAGO
LIBRARY

FIRST PRINT

PHARMACY (AMENDMENT) BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Pharmacy Act 1964 so as:

- (a) to incorporate the Pharmacy Board of New South Wales and to vary its composition and functions; and
- (b) to make more extensive provision for the handling of complaints against pharmacists, including provision for inquiries by Professional Standards Committees and for further options for the Board in dealing with pharmacists who are guilty of professional misconduct or are complained about for other reasons; and
- (c) to revise certain other provisions of that Act, such as those dealing with the operation of pharmacies; and
- (d) to provide for a Pharmacy Education and Research Account.

The Bill also makes other provisions of a minor, consequential, saving or transitional nature.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation, subject to minor exceptions.

Clause 3 gives effect to the amendments contained in Schedules 1-4.

Clause 4 gives effect to the savings and transitional provisions contained in Schedule 5.

Pharmacy (Amendment) 1989

SCHEDULE 1 - AMENDMENTS RELATING TO THE PHARMACY BOARD

Incorporation

At present, the Pharmacy Board of New South Wales is an unincorporated body. The Board is to be constituted as a body corporate so that it will have a separate legal identity. (Schedule 1 (1) - proposed section 4)

Additional functions

The Board, as presently constituted, has the functions of registering suitably qualified persons as pharmacists and of disciplining pharmacists (by suspending or cancelling their registration) in appropriate cases. The new Board is to be given further functions, including the duty of promoting the highest standards of professional conduct and ethics in the pharmacy profession and other functions relating to the carrying out of research, the training of pharmacists, publicising relevant matters and advising the Minister. (Schedule 1 (1) - proposed section 5)

Membership

The Board presently consists of 5 pharmacists elected by pharmacists (one at least of whom must be a country pharmacist), one officer of the Department of Health nominated by the Minister, one person nominated by the University of Sydney, one nominated by Friendly Societies and a barrister or solicitor nominated by the Minister. The new Board will also consist of 9 members, of whom 5 will be elected by pharmacists, one will be nominated by a New South Wales University, one will be a barrister or solicitor nominated by the Minister, one will be a person (but not a pharmacist) nominated by the Minister to represent consumers and one will be an officer of the Department of Health nominated by the Minister. (Schedule 1 (1) - proposed section 6)

President

Further provision is to be made concerning the office of president of the Board (for example, by permitting a person holding that office to resign the office of president without resigning the office of a member). (Schedule 1 (1) - proposed section 7)

Committees

The new Board is to be expressly empowered to establish committees to assist it in carrying out its non-disciplinary functions. Any such committee may include or consist wholly of persons who are not members of the Board. (Schedule 1 (1) - proposed section 8)

Provisions relating to members and meetings

A Schedule to the Act is intended to be inserted which will state in greater detail provisions concerning members of the Board and its meetings. (Schedule 1 (1) and (10) - proposed section 9 and proposed Schedule 1 to the Act)

Pharmacy (Amendment) 1989

The registrar and other staff

At present, the registrar and other staff of the Board are employed under the Public Sector Management Act 1988. The Board is to be empowered to appoint a registrar and other staff and to provide for certain of their conditions of employment. (Schedule 1 (2) - proposed section 11)

Fees

Fees for the registration of persons as pharmacists, for provisional registration or for restoration of a person's name to the Register of Pharmacists and the annual roll fee payable by pharmacists are all currently fixed by regulations. The Board is to be given power to fix those fees and any other fees for its services, but the fees specified above may be fixed only with the approval of the Minister. The Board is also to be given a power to recover fees due to it. (Schedule 1 (8) - proposed section 36)

Consequential amendments

References to the prescribed fees are to be removed and a power to make regulations relating to the payment of fees to the Board is to be conferred. (Schedule 1 (3) - (7) and (9))

SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE OF PHARMACISTS

Meaning of "professional misconduct"

It is intended, without limiting the meaning of the term "professional misconduct" to add certain specific examples to those presently provided. For example, it will be professional misconduct for a pharmacist to engage in conduct that demonstrates a lack of adequate knowledge, experience, skill, judgment or care. (Schedule 2 (2) - proposed section 19A)

Complaints about former pharmacists

At present, a complaint may only be dealt with by the Board if it relates to a currently registered person. Because the Board is to be given a power to impose a fine as a penalty, a person who was guilty of professional misconduct as a pharmacist up to 5 years before a complaint is made will be able to be made the subject of disciplinary action under the Act, even though the person has ceased to be registered under the Act during that period. (Schedule 2 (2) - proposed section 19B)

Professional Standards Committees

The Board is to be empowered to appoint Professional Standards Committees, each consisting of 2 pharmacists and one lay person, to conduct inquiries into complaints, if it considers that course appropriate. (Schedule 2 (2) - proposed section 19C))

Pharmacy (Amendment) 1989

Nature of complaints

It is intended to expressly authorise a complaint about a pharmacist advertising in contravention of regulations made under the Act or about a pharmacist not being of good character. Complaints will be able to relate to any of the additional conduct to be included in the new definition of "professional misconduct" referred to above and will still be able to be made on any of the present grounds. (Schedule 2 (2) - proposed section 19D)

Procedure for dealing with complaints

The procedure for dealing with complaints is to be set out in more detail than the Act presently provides. Under the proposed procedures, when a complaint is received, the Board may deal with it at a meeting of the Board, investigate the complaint itself or refer it to 3 members of the Board or to a Professional Standards Committee to conduct an inquiry into the complaint. Details of the powers of the Board and of such a Committee when conducting such an inquiry are set out, but do not include fixing any punishment. A complaint may be dismissed by the Board at any time. (Schedule 2 (2) and (7) - proposed sections 19E - 19H and proposed Schedule 2 to the Act)

Powers of the Board where complaint substantiated

At present, the Board may caution or reprimand a pharmacist or suspend or cancel the registration of a pharmacist as a consequence of disciplinary proceedings. The Board is to be given power to require a pharmacist to undergo medical treatment or counselling, to impose conditions on registration, to order further education be undertaken, to require reports to be made to it or the taking of advice and to impose a fine not exceeding 40 penalty units (currently \$4,000). (Schedule 2 (3) - proposed section 20)

Consequential amendments

The Register of Pharmacists will be required to include particulars of any conditions imposed by the Board on a person's registration.

Other consequential amendments are made to provisions of the Act dealing with the effect of certain orders made by the Board and relating to appeals to the District Court against orders or decisions of the Board. (Schedule 2 (1), (4), (5) and (6)).

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS

Definition of "pharmacy"

The term is defined so as to make it clear that, if a pharmacist operates a dispensary on premises (other than those of a public hospital) and sells other goods from the same premises, the whole of the premises comprise a pharmacy. The provisions of the Act that relate to the carrying on in open shop by a person of the business of a pharmacist are extended to the carrying on of that business in a pharmacy, as so defined. (Schedule 3 (1))

Pharmacy (Amendment) 1989

Qualification for registration - time served as assistant

At present, pharmacists who qualify for registration by being New South Wales graduates are required to have served not less than the period fixed by the Act as an assistant. To provide greater flexibility, it is intended that regulations made under the Act will fix that period. (Schedule 3 (2) (a), (e) and (f))

Qualification for registration - age of pharmacist

The Act prohibits registration of a person as a pharmacist unless the person is at least 21 years old. It is intended to lower that age to 18 years. (Schedule 3 (4) (a))

Qualification for registration - knowledge of English language

Applicants for registration are to be required to prove to the satisfaction of the Board that they have an adequate knowledge of the English language. (Schedule 3 (4) (b))

Qualification for re-registration after lapse of 5 years

The Board is to be allowed to require a person whose registration has lapsed for 5 years or more to undergo examination before being re-registered as a pharmacist. (Schedule 3 (4) (c))

Approval of pharmacies and registration of their owners

Provision is made for a Register of Pharmacies to be maintained by the Board. The register will contain particulars of all pharmacies approved by the Board and their registered owners. An appeal lies to the District Court against refusal or failure to approve or register. It will be an offence to carry on the business of a pharmacist at premises that are not approved or if the owner of the business is not registered. (Schedule 3 (6) - proposed sections 24A - 24C)

Persons other than pharmacists who may have interests in pharmacies

It is intended to simplify provisions of the Act that provide for specified persons (who are not pharmacists) to have an interest in a pharmacy business carried on in a pharmacy. (Schedule 3 (7))

Supply of information about pecuniary interests and about pharmacies

The Board is to be empowered to direct a pharmacist to supply information to the Board about pecuniary interests in any business of a pharmacist carried on by the pharmacist. Failure to comply with such a direction will constitute professional misconduct about which disciplinary proceedings may be commenced. The regulation-making power under the Act is to be extended so that regulations may be made requiring the Board to be notified of the opening or closing of pharmacies. (Schedule 3 (8) and (20) (b) - proposed sections 25B and 38 (1) (e1))

Pharmacy (Amendment) 1989

Restriction on pharmacists involved in pharmacies

A pharmacist is to be permitted to carry on a pharmacy business or to have a pecuniary interest in a pharmacy business carried on in a total of not more than 3 pharmacies. Such an interest may be held by a pharmacist in a partnership of pharmacists. (Schedule 3 (9))

Sale of medicines by medical practitioners

Medical practitioners are to be prohibited from selling medicines at a profit unless in the circumstances of the case it would be unreasonable to require the medicine to be obtained from a pharmacist or the sale is conducted in circumstances prescribed by the regulations. (Schedule 3 (11) - proposed section 28)

Appointment of inspectors

A new provision is to be inserted into the Act to provide for the appointment of inspectors by the Director-General of the Department of Health. (Schedule 3 (14) - proposed section 31)

General penalty for offences against the Act

At present, the maximum penalty for an offence against the Act, if no other penalty is expressly provided, is \$200. The maximum penalty is to be increased to 5 penalty units. (currently \$500) (Schedule 3 (18))

Pharmacy Education and Research Account

The Board is to be required to establish a Pharmacy Education and Research Account. Amounts out of the fee income derived under the Act by the Board are to be paid into the Account and may be used for education about pharmacy, for pharmaceutical research and for other specified matters. (Schedule 3 (19) - proposed section 36A)

Maximum penalty for offences against Regulations

The present maximum penalty of \$40 that may be imposed for a breach of Regulations made under the Act is to be increased to 2 penalty units (currently \$200). (Schedule 3 (20) (h))

Consequential amendments

Minor and consequential amendments will be made to the Act because of the other changes made by this Schedule and mentioned above.

SCHEDULE 4 - AMENDMENTS BY WAY OF STATUTE LAW REVISION

Division of the Act into Parts

The Act is to be divided into Parts (Schedule 4 (1)).

Repeal of redundant provisions

Certain provisions of the Act that are spent are to be repealed. (Schedule 4 (2))

SCHEDULE 5 - SAVINGS AND TRANSITIONAL PROVISIONS

This Schedule contains provisions of a savings and transitional nature arising from the amendments contained in Schedules 1 - 4. Clause 2 of Schedule 5 also enables further savings and transitional provisions to be made by regulation.

As transitional matters:

- (a) any claim pending against members of the former Board will become a claim pending against the incorporated Board; and
- (b) the members of the former Board will vacate office when the provisions establishing the incorporated Board commence; and
- (c) elections may be held and appointments and nominations of members of the incorporated Board may be made before those provisions commence; and
- (d) a person whose time to appeal under the present disciplinary provisions of the Act had not expired will have the residue of that time to appeal under the corresponding new provisions of the Act.

As savings matters:

- (a) complaints, inquiries and appeals that were pending under the Act immediately before the commencement of the new disciplinary provisions will continue to be dealt with under the former provisions of the Act; and
 - (b) regulations made and fees prescribed under the provisions of the Act will continue until amended or repealed, or fixed by the Board, under the new provisions of the Act.
-

FIRST PRINT

PHARMACY (AMENDMENT) BILL 1989

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Pharmacy Act 1964 No. 48
4. Savings and transitional provisions

SCHEDULE 1 - AMENDMENTS RELATING TO THE PHARMACY BOARD
SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE OF
PHARMACISTS
SCHEDULE 3 - MISCELLANEOUS AMENDMENTS
SCHEDULE 4 - AMENDMENTS BY WAY OF STATUTE LAW REVISION
SCHEDULE 5 - SAVINGS AND TRANSITIONAL PROVISIONS

PHARMACY (AMENDMENT) BILL 1989

NEW SOUTH WALES



No. , 1989

A BILL FOR

An Act to amend the Pharmacy Act 1964 so as to incorporate the Pharmacy Board and vary its composition; to make further provision about the discipline of pharmacists and the ownership of pharmacies; and for other purposes.

Pharmacy (Amendment) 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Pharmacy (Amendment) Act 1989.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
(2) Section 4 and Schedule 5 commence on the date of assent.

Amendment of Pharmacy Act 1964 No. 48

3. The Pharmacy Act 1964 is amended as set out in Schedules 1-4.

Savings and transitional provisions

4. Schedule 5 has effect.

SCHEDULE 1 - AMENDMENTS RELATING TO THE PHARMACY BOARD

(Sec. 3)

- (1) Sections 4-9:

Omit sections 4-10, insert instead:

Constitution of the Board

4. There is constituted by this Act a corporation under the corporate name of the Pharmacy Board of New South Wales.

Functions of the Board

5. (1) The Board has the functions conferred or imposed on it by or under this or any other Act.

(2) The principal functions of the Board are the following:

- (a) to promote and maintain the highest standards of professional conduct and ethics in the pharmacy profession;
- (b) to provide for education about pharmacy and for pharmaceutical research;

**SCHEDULE 1 - AMENDMENTS RELATING TO THE
PHARMACY BOARD - *continued***

- (c) to consult with and to advise the appropriate authorities on standards of training for pharmacists;
- (d) to determine the length and content of training and re-training programs for the purposes of this Act;
- (e) to make recommendations in relation to education courses which form part of the prerequisite for registration;
- (f) to publish and distribute information concerning this Act and the regulations to pharmacists and other interested persons;
- (g) to publish reports, information and advice to the general public concerning any pharmaceutical matter;
- (h) to advise the Minister on matters relating to the registration of pharmacists, standards of pharmacy practice and any other matter arising under or related to this Act;
- (i) to generally carry out all matters relating to the practice of pharmacy authorised or required by this Act.

Membership of the Board

- 6. (1) The Board is to consist of 9 members.
- (2) Of the members:
 - (a) 5 are to be pharmacists elected in accordance with the regulations by pharmacists; and
 - (b) 3 are to be appointed by the Governor and to be comprised of:
 - (i) a pharmacist nominated by the governing body of a University in New South Wales designated for the time being by the Minister, being a University that has a Faculty or Department of Pharmacy; and
 - (ii) a barrister or solicitor nominated by the Minister; and

SCHEDULE 1 - AMENDMENTS RELATING TO THE
PHARMACY BOARD - *continued*

- (iii) a person (other than a pharmacist) nominated by the Minister to represent the interests of members of the community as consumers of services provided by pharmacists; and
- (c) 1 is to be an officer of the Department of Health nominated for the time being by the Minister.

(3) If the governing body of the University designated for the time being does not nominate a person within such time or in such manner as may be specified by the Minister by notice in writing to the body, the Governor may instead appoint to be a member a person nominated by the Minister.

President of the Board

7. (1) One of the elected members of the Board is, in and by an instrument executed by the Governor, to be appointed as president of the Board.

(2) The Governor may remove a member from the office of president.

(3) A person who is the president is to be taken to have vacated office as president if the person:

- (a) is removed from that office by the Governor under this section; or
- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to be a member.

Committees

8. (1) The Board may, under this section, establish committees to assist it in connection with the exercise of any of its functions, other than functions relating to complaints about pharmacists or former pharmacists or inquiries into such complaints.

**SCHEDULE 1 - AMENDMENTS RELATING TO THE
PHARMACY BOARD - *continued***

(2) It does not matter that any or all of the members of such a committee are not members of the Board.

(3) The procedure for the calling of meetings of such a committee and for the conduct of business at those meetings may be determined by the Board or (subject to any determination of the Board) by the committee.

Other provisions relating to the Board

9. Schedule 1 has effect with respect to the members and procedure of the Board.

(2) Section 11:

Omit the section, insert instead:

The registrar and other staff

11. (1) The Board may appoint a person to be registrar for the purposes of this Act.

(2) The Board may employ such other staff as may be necessary to enable the Board to exercise its functions.

(3) The Board may, with the concurrence of the Health Administration Corporation, fix the salaries, wages, allowances and conditions of employment of its staff in so far as they are not fixed by or under another Act or law.

(4) The Public Sector Management Act 1988 does not apply to the employment of staff under this section and a person is not, as a member of that staff, subject to that Act.

(3) Section 12 (**Register of Pharmacists**):

From section 12 (2) and (5), omit "prescribed fee" wherever occurring, insert instead "fee fixed by the Board".

(4) Section 17 (**Additional requirements for registration**):

From section 17 (1) (b), omit "prescribed registration fee", insert instead "registration fee fixed by the Board".

SCHEDULE 1 - AMENDMENTS RELATING TO THE
PHARMACY BOARD - *continued*

(5) Section 17A (**Provisional registration**):

From section 17A (2), omit "prescribed fee", insert instead "fee fixed by the Board".

(6) Section 19 (**Roll fee**):

(a) From section 19 (1), omit "of such amount as may be prescribed", insert instead "fixed by the Board".

(b) From section 19 (4), omit "prescribed fee", insert instead "fee fixed by the Board".

(7) Section 24 (**Restoration of name to register**):

Omit "prescribed registration fee", insert instead "current registration fee".

(8) Section 36:

Omit the section, insert instead:

Fees

36. (1) The Board may make written orders fixing fees for services provided by the Board in exercising its functions.

(2) The Board may fix a fee for registration of a person as a pharmacist, for provisional registration or for restoration of a name to the Register of Pharmacists and an annual roll fee only if the fees have been approved by the Minister.

(3) Fees payable under this Act are to be paid to the registrar on behalf of the Board.

(4) Any such fee may be recovered by the registrar or any person authorised in writing by the Board in a court of competent jurisdiction as a debt due to the Board.

(5) Fees and other money received by the registrar or the Board are to be paid into an account or accounts established by the Board.

**SCHEDULE 1 - AMENDMENTS RELATING TO THE
PHARMACY BOARD - *continued***

(6) There may be paid from an account or accounts established by the Board:

- (a) amounts required to meet the expenses of the administration or execution of this Act; and
- (b) amounts for such purposes as are set out in regulations made for the purposes of this section on the recommendation of the Board.

(9) Section 38 (**Regulations**):

Omit section 38 (1) (d), insert instead:

- (d) the payment of fees to the Board;

(10) Schedule 1:

After section 38, insert:

**SCHEDULE 1 - PROVISIONS RELATING TO THE
MEMBERS AND PROCEDURE OF THE BOARD**

(Sec. 9)

PART 1 - THE MEMBERS

Acting members and acting president

1. (1) The Governor may, from time to time, appoint a person to act in the office of an appointed member of the Board during the illness or absence of the member, and the person, while so acting, has all the functions of the member and is to be taken to be a member.

(2) The Governor may, from time to time, appoint an elected member to act in the office of president during the illness or absence of the president, and the member, while so acting, has all the functions of the president and is to be taken to be the president.

(3) A person is not eligible to be appointed under subclause (1) to act in the office of the member of the Board nominated by the governing body of a University unless the person is nominated by that body.

**SCHEDULE 1 - AMENDMENTS RELATING TO THE
PHARMACY BOARD - *continued***

(4) The Governor may remove any person from any office to which the person was appointed under this clause.

(5) A person while so acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(6) For the purposes of this clause, a vacancy in the office of a member or the president is to be taken to be an absence from office of the member or the president, as the case may be.

Term of office

2. (1) Subject to this Schedule:

- (a) an elected member of the Board holds office for 3 years from the date of the member's election, but is eligible (if otherwise qualified) for re-election; and
- (b) an appointed member of the Board holds office for such period, not exceeding 3 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

(2) The regulations may make provision for determining the date of a member's election for the purposes of this clause.

Remuneration

3. A member of the Board is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Filling of casual vacancy in office of member

4. (1) If the office of any member of the Board becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

**SCHEDULE 1 - AMENDMENTS RELATING TO THE
PHARMACY BOARD - *continued***

(2) In the case of a vacancy in the office of an elected member, the vacancy is to be filled by a pharmacist nominated by the Board.

(3) A person nominated to fill a vacancy in the office of an elected member is to be taken, for the purposes of this Act, to be an elected member.

Casual vacancies

5. (1) A member of the Board is to be taken to have vacated office if the member:

- (a) dies; or
- (b) absents himself or herself from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings; or
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
- (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable; or

SCHEDULE 1 - AMENDMENTS RELATING TO THE
PHARMACY BOARD - *continued*

- (f) resigns the office by instrument in writing addressed to the Minister; or
 - (g) in the case of an appointed member, is removed from office by the Governor under subclause (3) or (4) or under Part 8 of the Public Sector Management Act 1988.
- (2) Without limiting the generality of subclause (1), a member who is appointed under:
- (a) section 6 (2) (b) (ii) - and who ceases to be a barrister or solicitor; or
 - (b) section 6 (2) (c) - and who ceases to be an officer of the Department of Health,
- is to be taken to have vacated office.
- (3) The Governor may remove an appointed member from office.
- (4) Without affecting the generality of subclause (3), the Governor may remove from office a member who contravenes the provisions of clause 6.

Disclosure of pecuniary interests

6. (1) A member of the Board who has a direct or indirect pecuniary interest:

- (a) in a matter that is being considered, or is about to be considered, at a meeting of the Board; or
- (b) in a thing being done or about to be done by the Board,

must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a member at a meeting of the Board that the member:

- (a) is a member, or is in the employment, of a specified company or other body; or

SCHEDULE 1 - AMENDMENTS RELATING TO THE
PHARMACY BOARD - *continued*

- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or a specified person,

is to be taken to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) The Board is required to cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book is to be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Board from time to time.

(4) After a member has, or is taken to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1) or (2), the member must not, unless the Board otherwise determines:

- (a) be present during any deliberation of the Board, or take part in any decision of the Board, with respect to that matter; or
- (b) exercise any functions under this Act with respect to that thing,

as the case requires.

(5) Notwithstanding that a member contravenes the provisions of this clause, that contravention does not invalidate any decision of the Board or the exercise of any function under this Act.

(6) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing which arises merely because the member is a pharmacist.

(7) A reference in this clause to a meeting of the Board includes a reference to a meeting of a committee of the Board.

**SCHEDULE 1 - AMENDMENTS RELATING TO THE
PHARMACY BOARD - *continued***

Effect of certain other Acts

7. (1) The Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member of the Board and a member is not, as a member, subject to that Act (except Part 8).

(2) If by or under any other Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

(b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

(3) The office of a member is to be taken for the purposes of any Act not to be an office or place of profit under the Crown.

PART 2 - THE PROCEDURE OF THE BOARD

General procedure

8. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Board.

Quorum

9. Except as otherwise provided by this Act, the quorum for a meeting of the Board is 5 members.

Voting

10. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

**SCHEDULE 1 - AMENDMENTS RELATING TO THE
PHARMACY BOARD - *continued***

Presiding member

11. (1) The president or, in the absence of the president, another member of the Board elected to chair the meeting by the members present, is to preside at a meeting of the Board.

(2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Minutes

12. The Board is required to cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.

**SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS**

(Sec. 3)

(1) Section 12 (**Register of Pharmacists**):

After section 12 (2) (d), insert:

(e) particulars of any conditions imposed on the pharmacist by an order of the Board;

(2) Sections 19A-19H:

Before section 20, insert:

Definitions

19A. In this Act:

"Committee" means a Professional Standards Committee constituted under section 19C;

"conduct" means any act or omission;

"professional misconduct", in relation to a pharmacist, includes:

(a) any conduct that demonstrates a lack of adequate:

SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued*

- (i) knowledge;
- (ii) experience;
- (iii) skill;
- (iv) judgment; or
- (v) care,
by the pharmacist in the practice of pharmacy,
and
- (b) the pharmacist's contravening (whether by act or omission) a provision of this Act or the regulations; and
- (c) the pharmacist's contravening a condition imposed on the pharmacist's registration by the Board; and
- (d) the pharmacist's contravening an order made or a direction given by the Board; and
- (e) the pharmacist's carrying on the business of a pharmacist, or having a direct or indirect pecuniary interest in such a business, for or on behalf of, or in association with, a person, corporation or partnership that is not entitled to carry on that business or to have that interest; and
- (f) the pharmacist's being an habitual drunkard or being addicted to any deleterious drug; and
- (g) any other improper or unethical conduct of the pharmacist relating to the practice of pharmacy.

Complaints about former pharmacists

19B. (1) A complaint may be made under this Act about a person who, although not a pharmacist when the complaint is made to, or lodged with, the Director-General of the Department of Health or the registrar, was registered as a pharmacist not more than 5 years before that time.

**SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued***

(2) For the purposes of this Act, a reference to a pharmacist against whom a complaint has been made includes a reference to a person against whom a complaint has been made pursuant to this section.

Professional Standards Committees

19C. (1) There are to be Professional Standards Committees.

(2) The Committees are to have and may exercise the jurisdiction and functions conferred or imposed on them by or under this Act.

(3) When the Board decides to refer a complaint to a Committee for inquiry, the Board must:

- (a) appoint 3 persons (including a barrister or solicitor) to sit as the Committee for the purpose of conducting an inquiry into the complaint; and
- (b) nominate one of those persons to be chairperson of the Committee.

(4) A Committee is to consist of:

- (a) 2 pharmacists; and
- (b) one lay person (that is, a person who is not a pharmacist) appointed from among a panel of lay persons for the time being nominated by the Minister.

(5) A person may be appointed to sit on a Committee whether or not the person is a member of the Board, but not if the person has dealt with the particular matter before the Committee in his or her capacity as such a member.

(6) One or more Committees may conduct more than one inquiry at the same time.

(7) A member of a Committee, while sitting on the Committee, is entitled to be paid by the Board at the same rate as a witness who gives expert evidence in the Supreme Court.

**SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued***

Making of complaints about pharmacists

19D. (1) A complaint may be made by any person that a pharmacist:

- (a) has been convicted in New South Wales of an offence; or
- (b) has been convicted elsewhere than in New South Wales in respect of an act or omission that would, if it had taken place in New South Wales, have constituted an offence; or
- (c) has been guilty of professional misconduct; or
- (d) has advertised in contravention of the regulations; or
- (e) does not have sufficient physical or mental capacity to carry on the business of a pharmacist; or
- (f) is not of good character.

(2) A complaint is to be made to or lodged with the Director-General of the Department of Health or the registrar.

Procedure on receipt of complaint

19E. (1) On receipt of a complaint, the Director-General or the registrar is to refer it to the Board.

(2) The Board may require the complainant to provide further particulars of the complaint and may make such preliminary inquiries concerning the complaint as it thinks fit.

(3) The Board may inform the pharmacist against whom the complaint is made of the nature of the complaint and invite the pharmacist to make, within such time as the Board specifies in the notice, such representations to the Board with respect to the complaint as the pharmacist thinks fit.

(4) The Board is required to consider any representations made to it within the time specified in its notice.

**SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued***

Determination of how complaint to be dealt with

19F. The Board may decide at any time in relation to a complaint:

- (a) that it will deal with the complaint at a meeting of the Board; or
- (b) that it will investigate the complaint; or
- (c) that it will refer the complaint to a Committee for inquiry if, in the opinion of the Board, it is appropriate for it to be dealt with by the Committee; or
- (d) that it will conduct an inquiry into the complaint; or
- (e) that it will decline to deal with or will dismiss the complaint.

Investigation by the Board

19G. (1) In investigating a complaint, the Board:

- (a) may conduct the investigation in such manner as it thinks fit; and
- (b) may inform itself on any matter in such manner as it thinks fit; and
- (c) may receive written or oral submissions; and
- (d) is not required to conduct its proceedings in a formal manner; and
- (e) is not bound by rules of evidence.

(2) Neither the complainant nor the pharmacist concerned are entitled to be legally represented at any appearance before the Board in the course of an investigation under this section.

(3) A finding or recommendation of the Board made during or as a consequence of such an investigation is admissible as evidence in any legal proceedings.

**SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued***

Conduct of inquiry by the Board or a Committee

19H. (1) If the Board decides to conduct an inquiry into a complaint or a complaint is referred to a Committee for an inquiry:

- (a) the Board or Committee, in conducting the inquiry, is to sit as in open court unless it determines to do otherwise; and
- (b) the person against whom the complaint was made is to be afforded an opportunity of defence either in person or by a barrister or solicitor or another adviser.

(2) For the purposes of conducting an inquiry, the Board is to consist of 3 members of the Board (including a barrister or solicitor) appointed to conduct the inquiry by the president.

(3) When the president nominates members of the Board to conduct an inquiry, the president is to nominate one of those members to be chairperson of the Board for the purposes of the inquiry.

(4) The president may nominate himself or herself as a member or as chairperson under this section.

(5) Schedule 2 applies with respect to an inquiry by the Board or a Committee.

(3) Section 20:

Omit the section, insert instead:

Consequences of misconduct etc.

20. (1) If the Board (after an inquiry conducted by itself or a Committee) is satisfied that the subject-matter of a complaint against a pharmacist is proved, the Board may do any one or more of the following:

- (a) caution or reprimand the person;
- (b) order that the person seek medical or psychiatric treatment or counselling;

SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued*

- (c) order that such conditions, relating to the person's practising pharmacy, as it considers appropriate be imposed on the person's registration;
- (d) order that the person complete such educational courses as are specified by the Board;
- (e) order that the person report on his or her pharmacy practice at the times, in the manner and to the persons specified by the Board;
- (f) order that the person seek and take advice, in relation to the management of his or her pharmacy practice, from such persons as are specified by the Board;
- (g) by its order, impose a fine on the person of an amount, not exceeding 40 penalty units, specified in the order;
- (h) by its order, suspend the person's registration for such period (not exceeding 12 months) as the Board thinks fit;
- (i) by its order, remove the person's name from the register.

(2) If a pharmacist's registration is suspended under this section, the secretary must note in the register the suspension and its date and cause.

(3) The Board is not to suspend a person's registration or remove a person's name from the register for having committed an offence if, having regard to the nature of the offence or the circumstances under which it was committed, the Board is of the opinion that it does not render the person unfit in the public interest to be registered as a pharmacist.

(4) Any fine imposed under this section may be recovered by the Board as a debt in a court of competent jurisdiction.

**SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued***

- (4) **Section 20AA (Removal of name etc. from register outside New South Wales):**

From section 20AA (1) (b), omit "section 20", insert instead "this Act".

- (5) **Section 21 (Effect of Board's order):**

From section 21 (1), omit "subsection (1) of section 20, or subsection (1) of section 20AA, that the name of a pharmacist be removed from the register or that he be suspended from practice as a pharmacist shall", insert instead "section 20 or 20AA does".

- (6) **Section 22 (Appeal against orders of the Board):**

Section 22 (1)-(3A):

Omit section 22 (1)-(3), insert instead:

(1) Any person aggrieved:

(a) by an order made under section 20; or

(b) by any refusal or failure to register the person as a pharmacist,

may, not later than 1 month after being served or sent notice of the order in accordance with section 21 or not later than 3 months after the application for registration was lodged, appeal to the District Court against the order or the refusal or failure.

(2) Any such appeal is to be made in accordance with rules of court and will be in the nature of a new hearing at which new evidence may be given.

(3) The District Court may make such order as it thinks fit, which is final and without appeal.

(3A) The Board is to give effect to the District Court's order.

**SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued***

(7) Schedule 2:

At the end of the Act, insert:

**SCHEDULE 2 - INQUIRIES BY THE BOARD OR
A COMMITTEE**

(Sec. 19H)

Proceedings generally

1. (1) At an inquiry conducted by it, the Board or a Committee is not bound to observe the rules of law governing the admission of evidence, but may inform itself of any matter in such manner as it thinks fit.

(2) At a meeting of the Board or of a Committee conducting an inquiry, the chairperson of the Board nominated for the purposes of the inquiry or the chairperson of the Committee is to preside.

(3) A decision supported at a meeting by at least 2 of the members of the Board or a Committee conducting an inquiry is the decision of the Board or Committee.

Power to summon witnesses and take evidence

2. (1) A member of the Board or a Committee may summon a person to appear at an inquiry conducted by the Board or Committee, to give evidence and to produce such documents (if any) as are referred to in the summons.

(2) The person presiding at the inquiry may require a person appearing at the inquiry to produce a document.

(3) The Board or a Committee may, at an inquiry conducted by it, take evidence on oath or affirmation and, for that purpose, a member of the Board or Committee:

(a) may require a person appearing at the inquiry to give evidence either to take an oath or to make an affirmation in a form approved by the person presiding; and

(b) may administer an oath to or take an affirmation from a person so appearing at the inquiry.

**SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued***

(4) A person served with a summons to appear at such an inquiry and to give evidence must not, without reasonable excuse:

- (a) fail to attend as required by the summons; or
- (b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Board or Committee.

(5) A person appearing at an inquiry to give evidence must not, without reasonable excuse:

- (a) when required to be sworn or affirm - fail to comply with the requirement; or
- (b) fail to answer a question that the person is required to answer by the person presiding; or
- (c) fail to produce a document that the person is required to produce by this clause.

Maximum penalty: 20 penalty units.

Power to obtain documents

3. (1) A member of the Board or a Committee may, by notice in writing served on a person, require the person:

- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Board or Committee or a person authorised by the Board or Committee in that behalf; and
- (b) to produce, at that time and place, to the person so specified a document specified in the notice.

(2) A person must not fail, without reasonable excuse, to comply with a notice served on the person under this clause.

Maximum penalty: 20 penalty units.

Evidence of other proceedings

4. The Board or a Committee may receive and admit on production, as evidence at any inquiry:

SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued*

- (a) the judgment and findings of any court (whether civil or criminal and whether or not of New South Wales) or tribunal; or
- (b) the verdict or findings of a jury of any such court; or
- (c) a certificate of the conviction of any person; or
- (d) a transcript of the depositions or of shorthand notes, duly certified by the registrar or clerk of the court or tribunal as correct, of the evidence of witnesses taken in any such court or tribunal,

where the Board or Committee is of the opinion that the judgment, findings, verdict, certificate or evidence is or are relevant to the proceedings.

Additional complaints

5. (1) The Board or a Committee may at an inquiry conducted by it deal with one or more complaints about a pharmacist.

(2) If, during any such inquiry, it appears to the Board or a Committee that, having regard to any matters that have arisen, another complaint could have been made against the pharmacist concerned:

- (a) whether instead of or in addition to the complaint which was made; and
- (b) whether or not by the same complainant,

the Board or Committee may take that other complaint as having been referred to it and may deal with it at the same inquiry.

(3) If another complaint is taken to have been referred to the Board or a Committee under subclause (2) the complaint may be dealt with after such an adjournment (if any) as is, in the opinion of the Board or Committee, just and equitable in the circumstances.

SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued*

Release of information

6. (1) The person presiding at an inquiry conducted by the Board or a Committee may, on the request of a complainant, the pharmacist concerned or any other person, if the person presiding thinks it appropriate in the particular circumstances of the case:

- (a) direct that the name of any witness is not to be disclosed in the proceedings; or
- (b) direct that all or any of the following matters:
 - (i) the name and address of any witness;
 - (ii) the name and address of a complainant;
 - (iii) the name and address of a pharmacist;
 - (iv) any specified evidence;
 - (v) the subject-matter of a complaint,must not be published, except in a publication intended primarily for the use of members of the legal or medical profession.

(2) A direction may be amended or revoked at any time by the person presiding.

(3) A direction may be given before or during an inquiry, but is not to be given before the inquiry unless notice is given to:

- (a) the person who requested the direction; and
- (b) the complainant or the pharmacist concerned, as appropriate; and
- (c) such other persons as the person presiding thinks fit,

of the time and place appointed by the person presiding for consideration of the request.

(4) A person must not contravene a direction given under this clause.

Maximum penalty: 20 penalty units.

**SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued***

Authentication of documents by the Board or a Committee

7. Every document requiring authentication by the Board or a Committee may be sufficiently authenticated:

- (a) in the case of the Board, without the seal of the Board, if signed by the president of the Board or by a member of the Board authorised to do so by the president; or
- (b) in the case of a Committee, if signed by the chairperson of the Committee or by a member of the Committee authorised to do so by that chairperson.

Nominal complainant

8. At any inquiry conducted by the Board or a Committee, the registrar or an officer of the Department of Health appointed by the Director-General:

- (a) may, with the consent of a complainant, act as the nominal complainant; and
- (b) when so acting, is, for the purposes of this Act and the regulations, to be taken to be the person who made the complaint.

Intervention by Director-General

9. Without limiting the operation of clause 8, the Director-General may intervene in any inquiry conducted by the Board or a Committee, and has a right to be heard:

- (a) personally or by an officer of the Department of Health; and
- (b) also, in the case of any inquiry conducted by the Board, by a barrister or solicitor who is not an officer of the Department of Health.

**SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued***

Expedition of inquiries

10. (1) It is the duty of the Board and a Committee to conduct inquiries under this Act and to determine those inquiries as soon as is reasonably practicable.

(2) Without affecting the generality of subclause (1), the Board or a Committee may postpone or adjourn an inquiry being conducted by it as it thinks fit.

Evidentiary certificate

11. A certificate purporting to have been signed by the registrar, to the effect that:

- (a) a person specified in the certificate was or was not a pharmacist at a time or during a period so specified; or
- (b) the name of a person specified in the certificate was removed from the register at a time so specified; or
- (c) a person specified in the certificate was suspended from practising pharmacy from a time so specified and for a period so specified; or
- (d) a condition, particulars of which are set out in the certificate, was, at a time or during a period so specified:
 - (i) imposed on the registration of a person so specified; or
 - (ii) revoked or not in force,

is required, without proof of the signature of the person by whom the certificate purports to have been signed, to be received by the Board, a Committee and all courts as prima facie evidence of that fact.

Certain complaints may not be heard

12. (1) The Board or a Committee may decide not to conduct an inquiry, or at any time to terminate an inquiry, if:

**SCHEDULE 2 - AMENDMENTS RELATING TO DISCIPLINE
OF PHARMACISTS - *continued***

- (a) a complainant fails to comply with a requirement made of the complainant by the Board or Committee; or
 - (b) the person about whom the complaint is made ceases to be a pharmacist.
- (2) The Board or a Committee is not to conduct or continue any inquiry or any appeal if the pharmacist concerned dies.

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**):

(a) In alphabetical order, insert:

"Pharmacy" means any premises in or on which a person carries on the business of a pharmacist and includes such portion (if any) of those premises in or on which the person sells or offers for sale goods of any kind, but does not include any such premises located in a hospital mentioned in the Second Schedule to the Public Hospitals Act 1929.

(b) At the end of section 3, insert:

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(2) Section 13 (**Qualifications for registration - New South Wales graduates**):

- (a) From section 13 (1) (b), omit "for not less than the prescribed period", insert instead "(for not less than the period, or aggregate period, prescribed by the regulations)".

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

- (b) From section 13 (1) (b) (i), omit "keeping open shop for the purpose of", insert instead "at a pharmacy used for".
 - (c) From section 13 (1) (b) (iii), omit "in open shop kept", insert instead "in a pharmacy used".
 - (d) From section 13 (1) (b) (iv), omit "an open shop kept", insert instead "a pharmacy used".
 - (e) Omit section 13 (1A).
 - (f) From section 13 (2), omit the definition of "prescribed period".
- (3) **Section 16 (Qualifications for registration - New South Wales apprentices):**
- (a) From section 16 (a), omit "keeping open shop for the purpose of", insert instead "at a pharmacy used for".
 - (b) From section 16 (a), omit "in open shop kept", insert instead "in a pharmacy used".
 - (c) From section 16 (a), omit "an open shop kept", insert instead "a pharmacy used".
- (4) **Section 17 (Additional requirements for registration):**
- (a) From section 17 (1) (a), omit "twenty-one", insert instead "18".
 - (b) At the end of section 17 (1) (a), insert:
 - ; and
 - (a1) the person proves to the satisfaction of the Board that the person has a knowledge of the English language adequate to carry on the business of a pharmacist; and
 - (c) After section 17 (2), insert:
 - (3) If a person applies to be registered as a pharmacist later than 5 years after the person was last registered as a pharmacist, the Board may refuse to register the person until the person has passed, at a standard satisfactory to

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

the Board, such oral or written examination (or oral and written examinations) as the Board considers appropriate.

(5) Section 23 (Surrender of certificates of registration):

Omit the last paragraph, insert instead:

(2) Any person who, without reasonable excuse, contravenes this section is guilty of an offence against this Act and liable to a penalty not exceeding 2 penalty units.

(6) Section 24A-24C:

Before section 25, insert:

Register of Pharmacies

24A. (1) An application for:

(a) an approval of premises as suitable for carrying on the business of a pharmacist; or

(b) registration of an owner of such a business,

is required to be made to the registrar in a form approved by the Minister and to be accompanied by the fee fixed by the Board.

(2) The Board may require any such application to be verified by a statutory declaration.

(3) The Board may:

(a) reject the application; or

(b) by its order, approve the premises or direct that the owner be registered.

(4) Premises are not to be approved if they fail to comply with any standard prescribed for them by the regulations.

(5) The Board may, by its order, revoke an approval under this section if the premises concerned are found not to comply with any such standard.

(6) The Board is to keep a register containing particulars of approved premises and registered owners, to be called the Register of Pharmacies which, on payment of the fee

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

fixed by the Board, may be inspected at the office of the Board at any reasonable time.

Appeals against refusal to approve pharmacy or to register owner

24B. (1) Any person aggrieved by a decision or an order of the Board under section 24A relating:

- (a) to an application for the approval of premises or the registration of an owner; or
 - (b) to revocation of an approval of premises,
- may appeal against the decision or order to the District Court.

(2) For the purposes of such an appeal, an application for an approval or for registration that has not been dealt with by the Board within one month of its having been lodged (or such longer period as may be agreed by the applicant and the Board) is to be taken to have been rejected.

(3) Any such appeal is to be made in accordance with rules of court and will be in the nature of a new hearing at which new evidence may be given.

(4) The District Court may make such order as it thinks fit, which is final and without appeal.

(5) The Board is to give effect to the District Court's order.

Pharmacies to be approved and owners registered

24C. (1) A person must not carry on the business of a pharmacist at any premises unless:

- (a) the premises are the subject of a current approval of the Board; and
- (b) the owner of the business is registered in the Register of Pharmacies.

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

(2) This section does not apply so as to require the approval of premises at which a pharmacist carried on the business of a pharmacist immediately before the date of assent to the Pharmacy (Amendment) Act 1989 until the second anniversary of that date of assent.

(7) Section 25 (Persons other than pharmacists not to have interest in pharmacists' businesses):

(a) From section 25 (1), (1A), (5), (6) (b) and (7), omit "open shop" wherever occurring, insert instead "a pharmacy".

(b) Omit section 25 (2), insert instead:

(2) Subsection (1) does not prevent:

(a) an individual from being employed in the carrying on of the business of a pharmacist; or

(b) an individual, a body corporate or an unincorporated body from having a pecuniary interest, direct or indirect, in the business of a pharmacist as a party to a bill of sale given in respect of that business; or

(c) an individual, a body corporate or an unincorporated body from having such an interest in circumstances prescribed by the regulations.

(c) Omit section 25 (2B) and (2C).

(8) Section 25B:

After section 25A, insert:

Direction to supply information about pecuniary interests

25B. The Board may, by a written notice given personally or by post to a pharmacist, direct the pharmacist to supply to the Board, within the time specified in the notice, such information relating to pecuniary interests in any business of a pharmacist carried on by the pharmacist as is required by the notice.

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

(9) Section 26 (**Restrictions on carrying on business of a pharmacist in pharmacies**):

(a) Omit section 26 (1) and (2), insert instead:

(1) A pharmacist (whether as owner or otherwise and whether alone or as a partner) must not:

- (a) carry on the business of a pharmacist in more than 3 pharmacies; or
- (b) have a direct or indirect pecuniary interest in the business of a pharmacist carried on in more than 3 pharmacies; or
- (c) carry on such a business in one or more pharmacies and have such an interest in one or more pharmacies so that the total number of pharmacies involved exceeds 3.

(2) A pharmacist must not:

- (a) carry on the business of a pharmacist in a pharmacy; or
- (b) have a direct or indirect pecuniary interest in the business of a pharmacist carried on in a pharmacy, as a member of more than one partnership of pharmacists.

(b) From section 26 (3) (a), omit "an open shop", insert instead "a pharmacy".

(c) From section 26 (3) (a) and the definition of "the prescribed area" in section 26 (3), omit "open shop" wherever occurring (except where firstly occurring), insert instead "pharmacy".

(d) From section 26 (3) (a), omit "open shops", insert instead "pharmacies".

(e) Omit section 26 (3) (b).

(f) From section 26 (3) (c), omit "in open shop", insert instead "in a pharmacy".

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

- (g) Omit section 26 (3A), insert instead:

(3A) A pharmacist is not guilty of an offence under this section only because the pharmacist:

- (a) carries on, as a partner, not more than one after-hours pharmacy in addition to any business of a pharmacist that is being carried on without contravening this section; or
- (b) carries on the business of a pharmacist or has a direct or indirect pecuniary interest in such a business, conducted at a branch pharmacy approved by the Board in accordance with the regulations.

- (h) From section 26 (3B) (a), omit "or (b)".

- (i) From section 26 (3B), omit "either of those paragraphs" wherever occurring, insert instead "that paragraph".

- (10) Section 27 (**Pharmacist to be in charge of every pharmacy and dispensary**):

From section 27, omit "open shop" wherever occurring, insert instead "a pharmacy".

- (11) Section 28:

Omit the section, insert instead:

Medicines to be dispensed by pharmacists

28. (1) A person, other than a pharmacist or a person acting under the personal supervision of a pharmacist, must not dispense or compound any medicine on the order or prescription of a medical practitioner.

(2) This section does not prevent a medical practitioner from dispensing medicine in the ordinary course of medical practice:

- (a) if the practitioner does not charge for the medicine more than its cost to the practitioner; or

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

- (b) if, because of the circumstances of the case (such as where the medicine is dispensed in a location in which there is no pharmacist), it would be unreasonable to require the medicine to be obtained from a pharmacist; or
 - (c) in such circumstances as may be prescribed by the regulations.
- (12) Section 29 (**Business of deceased pharmacist may be carried on temporarily**):
Omit "open shop", insert instead "a pharmacy".
- (13) Section 30 (**Pharmacists to use only registered qualifications**):
From section 30 (2), omit "an open shop", insert instead "a pharmacy".
- (14) Section 31:
Before section 32, insert:
Appointment of inspectors
31. The Director-General of the Department of Health may from time to time appoint inspectors for the purposes of this Act.
- (15) Section 32 (**Power of entry of inspectors and authorised persons**):
From section 32 (1), omit "appointed under section 11".
- (16) Section 34 (**Board may summon and examine witnesses**):
Omit the section.

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

(17) Section 34A:

After section 34, insert:

Protection of Board and others from liability

34A. No matter or thing done or suffered in good faith by a person being:

- (a) the Board or a member of the Board; or
- (b) the registrar or any other member of the staff of the Board; or
- (c) an inspector,

in the execution or intended execution of this Act or the exercise or discharge of the person's functions, subjects the person, or the Crown, to any action, liability, claim or demand.

(18) Section 35 (Penalties):

- (a) From section 35 (1), omit "two hundred dollars", insert instead "5 penalty units".
- (b) From section 35 (2), omit "section 11", insert instead "this Act".

(19) Section 36A:

After section 36, insert:

Pharmacy Education and Research Account

36A. (1) The Board is required to establish a Pharmacy Education and Research Account.

(2) Such amounts as are recommended by the Board and determined by the Minister from time to time are to be paid into the Account by the Board from fees payable under this Act or the regulations.

(3) Money in the Account may be expended by the Board for or towards any one or more of the following:

- (a) education about pharmacy and pharmaceutical research;

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

- (b) the publication and distribution of information concerning this Act and the regulations;
 - (c) meeting administrative expenditure incurred with respect to the Account and the purposes for which it is used,or any related purpose.
- (4) An expenditure of money under this section is not to be made unless it is authorised by a resolution of the Board supported by at least 6 members.
- (20) Section 38 (**Regulations**):
 - (a) From section 38 (1) (e) and (e2), omit "open shop" wherever occurring, insert instead "a pharmacy".
 - (b) Omit section 38 (1) (e1), insert instead:
 - (e1) the supply of information to the Board about pecuniary interests in the business of a pharmacist carried on in a pharmacy, about the acquisition or disposition of any such interests and about the opening or closing of pharmacies;
 - (c) From section 38 (1) (g) and (h), omit "open shop" wherever occurring, insert instead "pharmacy".
 - (d) After section 38 (1) (g), insert:
 - (g1) the standards to be complied with by pharmacies (including after-hours and branch pharmacies);
 - (e) From section 38 (1) (ha), omit "(ha)", insert instead "(h1)".
 - (f) In section 38 (1) (h1) (as renumbered), after "after-hours", insert "or branch".
 - (g) After section 38 (1) (h1) (as renumbered), insert:
 - (h2) the approval of pharmacies as branch pharmacies by the Board;
 - (h) From section 38 (2), omit "forty dollars", insert instead "2 penalty units".

**SCHEDULE 4 - AMENDMENTS BY WAY OF STATUTE LAW
REVISION**

(Sec. 3)

(1) Division of the Pharmacy Act 1964 into Parts:

(a) Before section 1, insert:

PART 1 - PRELIMINARY

(b) After section 3, insert:

**PART 2 - THE PHARMACY BOARD OF NEW SOUTH
WALES**

(c) After section 11, insert:

PART 3 - REGISTRATION OF PHARMACISTS

(d) After section 19, insert:

**PART 4 - COMPLAINTS AND DISCIPLINARY
PROCEEDINGS**

(e) After section 24, insert:

PART 5 - CONTROL OF PHARMACIES

(f) After section 27, insert:

PART 6 - GENERAL

(2) Repeal of spent provisions:

Omit sections 1 (3), 2 (1) and (5), 39 and 40 and the
Schedule.

SCHEDULE 5 - SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 4)

Definitions

1. In this Schedule:

"**new Board**" means the Pharmacy Board constituted by the
Pharmacy Act 1964, as amended by this Act;

"**old Board**" means the Pharmacy Board constituted by the Pharmacy
Act 1964, as in force before the date of assent to this Act.

SCHEDULE 5 - SAVINGS AND TRANSITIONAL PROVISIONS

- continued

Savings and transitional regulations

2. (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect as from the date of assent to this Act or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

General savings

3. Except as provided otherwise by this Schedule or by a regulation made under clause 2, anything:

- (a) that was done by the old Board under or for the purposes of a provision of the Pharmacy Act 1964; and
- (b) that had an effect immediately before the commencement of Schedule 1 (1),

is to be taken to have been done under or for the purposes of the corresponding provision of that Act, as amended by this Act.

Vesting of personal property

4. On the commencement of Schedule 1 (1), any personal property held by the members of the old Board in their capacity as such members becomes personal property of the new Board.

Claims and liabilities

5. On the commencement of Schedule 1 (1):

- (a) all money and liquidated and unliquidated claims that, immediately before that commencement, was or were payable

SCHEDULE 5 - SAVINGS AND TRANSITIONAL PROVISIONS

- continued

to or recoverable by the members of the old Board in their capacity as such members is or are money and liquidated and unliquidated claims payable to or recoverable by the new Board; and

- (b) the new Board may, in addition to pursuing any other remedies or exercising any other powers that may be available to it, pursue the same remedies for the recovery of any such money or claims as the members of the old Board might have done in their capacity as such members but for the enactment of this Act; and
- (c) the new Board is liable for all money and liquidated and unliquidated claims for which the members of the old Board would have been liable in their capacity as such members but for the enactment of this Act.

Members of old Board

6. (1) A person who, immediately before the commencement of Schedule 1 (1), held office as a member of the old Board:

- (a) ceases to hold office as such on that commencement; and
- (b) is eligible (if otherwise qualified) to be elected, appointed or nominated as a member of the new Board.

(2) A person who ceases to hold office as a member of the old Board because of the operation of this Act is not entitled to be paid any remuneration or compensation because of ceasing to hold that office.

Elections, appointments etc. before commencement

7. For the purpose only of enabling the new Board to be constituted on or after (but not before) the commencement of Schedule 1 (1), elections may be held and appointments and nominations may be made under the Pharmacy Act 1964 and anything else (including the making of regulations) may be done before that commencement as if the whole of this Act commenced on the date of assent to this Act, but so that no member of the new Board takes office as such a member before that commencement.

SCHEDULE 5 - SAVINGS AND TRANSITIONAL PROVISIONS

- continued

First meeting of new Board

8. The Minister is to call the first meeting of the new Board in such manner as the Minister thinks fit.

Inspectors

9. A person holding office as an inspector under section 11 of the Pharmacy Act 1964 immediately before the commencement of Schedule 3 (14) is, on that commencement, to be taken to have been appointed as an inspector under section 31 of that Act, as amended by this Act, and to have been appointed subject to the same terms and conditions as applied to the appointment immediately before that commencement.

Complaints, inquiries and appeals pending

10. (1) The provisions of the Pharmacy Act 1964, as in force immediately before the commencement of Schedule 2 (2), apply to and in respect of a complaint made, or an inquiry or appeal commenced, under that Act and pending immediately before that commencement.

(2) Any order or decision resulting from an inquiry or appeal to which this clause applies is to be taken to have been made under the corresponding provisions of that Act, as amended by this Act, and is to have effect accordingly.

Appeal rights

11. A person who, immediately before the commencement of Schedule 2 (6), was entitled to commence (but had not commenced) an appeal has, after that commencement, the residue of the time within which that appeal might have been commenced to commence an appeal under section 22 of the Pharmacy Act 1964, as amended by this Act.

Complaints etc. relating to previous conduct

12. A complaint or investigation under the Pharmacy Act 1964, as amended by this Act, may be made with respect to conduct or any other matter or thing that occurred before or after, or partly before and partly after, the commencement of Schedule 2 (2).

SCHEDULE 5 - SAVINGS AND TRANSITIONAL PROVISIONS
- continued

Construction of certain references

13. A reference in any other Act, in any instrument made under any Act or in any other instrument of any kind to the old Board shall, on the commencement of Schedule 1 (1), be read as a reference to the new Board.

Saving of certain regulations

14. A regulation:

- (a) that was in force under the Pharmacy Act 1964 immediately before the date of assent to this Act; and
- (b) that could lawfully be made under that Act, as amended by this Act,

is not repealed only because of an amendment made to that Act by this Act.

Saving of certain fees

15. A fee that, immediately before the date of assent to this Act, was prescribed for the purposes of a provision of the Pharmacy Act 1964 is to be treated as a fee fixed by the Board with the approval of the Minister until the Board fixes a corresponding fee under that Act, as amended by this Act.
