

HEALTH LEGISLATION AMENDMENT BILL 2004

EXPLANATORY NOTES

FOR

AMENDMENTS TO BE MOVED DURING CONSIDERATION IN DETAIL BY THE HONOURABLE GORDON NUTTALL MP, MINISTER FOR HEALTH

Title of the Bill

Health Legislation Amendment Bill 2004

Objectives of the Amendments

The *Health Legislation Amendment Bill 2004* (the Bill) is to be amended to amend the *Pharmacists Registration Act 2001* (the Pharmacists Act), to ensure that pharmacists and other persons who own a pharmacy business may enter into commercial arrangements for the business without undue or improper interference from other parties.

The amendments also:

- ensure that only pharmacists may have a controlling interest in corporations owning pharmacy businesses;
- clarify the meaning of a provision so that its policy intent is achieved; and
- simplify the Bill's provisions about pharmacists' relatives who may have an interest in a corporation owning a pharmacy business.

Achievement of the Objectives

The amendments insert a provision that makes pharmacy business arrangements void if they give persons, other than the owner of the business, the right to control how the business is carried on, or to receive consideration that varies according to the profits of the business, or require goods or services for the business to be obtained from a stated person. The provision reinstates a modified version of section 238(6) of the Pharmacists Act that was omitted under the Bill. This will remove doubt about whether the Pharmacists Act adequately covers all circumstances where a third party improperly interferes with a pharmacist's control over the conduct of a pharmacy business.

The amendments also:

- prevent relatives of a pharmacist from being majority shareholders or holding voting shares in a corporation owning a pharmacy business;
- delete step-children from the category of pharmacists' relatives allowed to be directors or shareholders of a corporation owning a pharmacy business; and
- substitute an offence provision in a redrafted form that is consistent with its policy intent.

Consultation

The Pharmacy Guild of Australia was consulted about the amendments and supports the amendments.

NOTES ON PROVISIONS

Amendment 1 amends clause 46 to omit "step-child" from the definition of "relative" in section 139A of the Pharmacists Act. This removes the need for undue complexity in the Act by having to provide how the interests of a pharmacist's step-child are to be dealt with if the pharmacist divorces.

Amendment 2 amends clause 46 by replacing section 139B(b) of the Pharmacists Act with new section 139B(b) and (ba). Under new section 139B(ba), only registrants (pharmacists) are allowed to be majority

shareholders, or hold voting shares, in a corporation that owns a pharmacy business.

Amendment 3 amends clause 46 by replacing section 139H(1) and (2) of the Pharmacists Act with redrafted provisions to clarify that a registrant must not own, or be a director of, or shareholder in, a corporation that owns more than 5 pharmacy businesses.

Amendment 4 amends clause 46 by inserting new section 139I in the Pharmacists Act. The new provision specifies that a bill of sale, mortgage, lease, franchise, agency or other service or commercial arrangement for a pharmacy business is void to the extent it:

- gives a person, other than the owner of the business, the right to control in whole or in part the way the business is carried on, or to receive consideration that varies according to the profits or takings of the business; or
- requires goods or services for the business to be obtained from a stated person or body.