

South Australia

Health Practitioner Regulation National Law (South Australia) (Miscellaneous) Amendment Act 2012

An Act to amend the *Health Practitioner Regulation National Law (South Australia) Act 2010*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Health Practitioner Regulation National Law (South Australia) (Miscellaneous) Amendment Act 2012*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Health Practitioner Regulation National Law (South Australia) Act 2010*

4—Insertion of section 6A

After section 6 insert:

6A—Time within which appeals must be made

- (1) For the purposes of section 199 of the *Health Practitioner Regulation National Law (South Australia)*, an appeal to the Tribunal must be instituted within 28 days after—
 - (a) the person making the appeal was given notice of the decision being appealed against; or
 - (b) the person making the appeal was given reasons for the decision being appealed against,whichever is the later.
- (2) The Tribunal may, in its discretion, extend the time fixed under subsection (1) for instituting the appeal, even if the time for instituting the appeal has ended.

5—Amendment of section 26—Interpretation

- (1) Section 26(1)—after the definition of *domestic partner* insert:

friendly society means a company that is a friendly society under the *Corporations Act 2001* of the Commonwealth and that—

- (a) provides mutual benefits to its members; and
- (b) is a non-profit organisation; and
- (c) has at least 100 members; and
- (d) has a constitution that provides that the main object of the company is to carry on the business of pharmacy;

- (2) Section 26(1)—after the definition of *pharmacist* insert:

pharmacist controlled company means a company within the meaning of the *Corporations Act 2001* of the Commonwealth—

- (a) in which—
 - (i) at least 1 director is a pharmacist; and
 - (ii) every director is either a pharmacist or a prescribed relative of a pharmacist; and
- (b) where each holder of shares, or of a beneficial or legal interest in shares, in the company is—
 - (i) a pharmacist or a prescribed relative of a pharmacist; or
 - (ii) a recognised corporate pharmacy services provider; or
 - (iii) a recognised trustee pharmacy services provider; and
- (c) in which a pharmacist is, or pharmacists are, entitled to control the exercise of at least 50% of the voting power—
 - (i) at meetings of the directors of the company; or
 - (ii) attached to voting shares issued by the company;

pharmacist controlled trust means a trust where each trustee is—

- (a) a pharmacist; or
- (b) a prescribed relative of a pharmacist as long as at least 1 other trustee is a pharmacist; or
- (c) a pharmacist controlled company; or
- (d) a person of a prescribed class;

- (3) Section 26(1), definition of *pharmacy services provider*—delete the definition and substitute:

pharmacy services provider means—

- (a) any person who holds a proprietary interest in a pharmacy business;
or
- (b) any person referred to in section 51(2);

- (4) Section 26(1)—after the definition of *prescribed relative* insert:

proprietary interest, in relation to a pharmacy business, means a legal or beneficial interest, and includes an interest as—

- (a) a sole proprietor; or
- (b) a partner; or
- (c) a director, member or shareholder of a company, as defined in the *Corporations Act 2001* of the Commonwealth; or
- (d) a trustee or beneficiary of a trust,

and has the meaning affected by subsection (2);

- (5) Section 26(2) to (11)—delete subsections (2) to (11) (inclusive) and substitute:
- (2) Without limiting the generality of the expression, a person will be taken to hold a proprietary interest in a pharmacy business if—
 - (a) the person is a party to an arrangement of a kind prescribed by the regulations; or
 - (b) the person, in the course of carrying on a business, provides a benefit to another for which the person is entitled to receive the profits or income, or a share in the profits or income, of a pharmacy business; or
 - (c) the person has, under a franchise or other commercial arrangement, a right to receive consideration that varies according to the profits or income of a pharmacy business.
 - (3) For the purposes of this Part, each of the following is a ***recognised corporate pharmacy services provider***:
 - (a) a pharmacist controlled company;
 - (b) a friendly society;
 - (c) a company that carried on a pharmacy business on 1 August 1942 and has continued to do so since that date other than—
 - (i) Friendly Society Medical Association Limited; or
 - (ii) The Mount Gambier United Friendly Societies Dispensary Limited.
 - (4) For the purposes of this Part, a ***recognised trustee pharmacy services provider*** is any pharmacist controlled trust.
 - (5) For the purposes of this Part, a person occupies a ***position of authority*** in a recognised corporate pharmacy services provider if the person—
 - (a) is a director of the body corporate; or
 - (b) exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs; or
 - (c) manages, or is to manage, the business of the body corporate insofar as that business consists of the provision of pharmacy services; or
 - (d) where the body corporate is a proprietary company—is a shareholder in the body corporate.
 - (6) For the purposes of this Part, a person who holds more than 10% of the issued share capital of a public company will be regarded as a person occupying a ***position of authority*** in that company.
 - (7) For the purposes of this Part, a person occupies a ***position of authority*** in a recognised trustee pharmacy services provider if the person is a trustee or beneficiary of the trust.

(8) However—

- (a) a minor who is a shareholder in a proprietary company, or a beneficiary under a trust, is not, for that reason, to be regarded as a person occupying a *position of authority*; and
- (b) a charitable organisation that is a beneficiary of a trust is not, for that reason, to be regarded as occupying a *position of authority*; and
- (c) a reference in a preceding provision to a beneficiary of a trust is a reference to a beneficiary who receives distributions from the trust.

6—Amendment of section 34—Functions of Authority

- (1) Section 34(1)(d)—delete "corporate pharmacy service providers or trustee" and substitute:

recognised corporate pharmacy services providers or recognised trustee

- (2) Section 34(4)—delete "corporate pharmacy providers or trustee" and substitute:

recognised corporate pharmacy services providers or recognised trustee

7—Amendment of section 41—Registration of premises as pharmacy

Section 41—after subsection (1) insert:

- (1a) A person must not own, or hold a proprietary interest in, a pharmacy business unless the business is carried on at premises registered as a pharmacy under this section.

Maximum penalty: \$50 000.

8—Amendment of section 43—Supervision of pharmacies by pharmacists

Section 43(4), definition of *pharmacist*—delete the definition and substitute:

pharmacist means a person who holds a general registration under the *Health Practitioner Regulation National Law* to practise in the pharmacy profession.

9—Amendment of section 49—Registers

- (1) Section 49(1)(b)(ii)—delete subparagraph (ii) and substitute:

- (ii) who have been prohibited from being a pharmacy services provider or from occupying a position of authority in a body corporate or trust by disciplinary action under the repealed Act or this Act,

- (2) Section 49(2)(b)—delete "corporate pharmacy services provider or a trustee" and substitute:

recognised corporate pharmacy services provider or recognised trustee

10—Amendment of section 50—Registration of pharmacy services providers

Section 50(1)—delete "act as" and substitute:

be

11—Amendment of section 51—Restrictions relating to provision of pharmacy services

- (1) Section 51(1)(b)(i)—delete subparagraph (i) and substitute:
 - (i) the body corporate is a recognised corporate pharmacy services provider; and
- (2) Section 51(1)(c)(i)—delete subparagraph (i) and substitute:
 - (i) the trust is a recognised trustee pharmacy services provider; and
- (3) Section 51(1)—after subsection (1) insert:
 - (1a) A person must not own, or hold a proprietary interest in, a pharmacy business unless that person is—
 - (a) a pharmacist; or
 - (b) a prescribed relative of a pharmacist who holds a proprietary interest in the pharmacy business; or
 - (c) a recognised corporate pharmacy services provider; or
 - (d) a recognised trustee pharmacy services provider; or
 - (e) a partner in a partnership that carries on the business and in which every partner is either—
 - (i) a pharmacist; or
 - (ii) a prescribed relative of a partner who is a pharmacist; or
 - (iii) a recognised corporate pharmacy services provider; or
 - (iv) a recognised trustee pharmacy services provider.

Maximum penalty: \$50 000 or imprisonment for 6 months.
- (4) Section 51(2)—delete "Subsection (1) does" and substitute:

Subsections (1) and (1a) do
- (5) Section 51(2)(d)—delete "corporate pharmacy services provider" and substitute:

recognised corporate pharmacy services provider
- (6) Section 51(4)—delete "Governor may, by proclamation," and substitute:

Minister may, by notice in the Gazette,
- (7) Section 51(5)—delete "Governor" and substitute:

Minister
- (8) Section 51(5)—delete "proclamation" and substitute:

notice
- (9) Section 51(7)—delete subsection (7) and substitute:
 - (7) The Minister may, by further notice in the Gazette, vary or revoke a notice under subsection (4).

- (10) Section 51(8), definition of *qualified person*, (a)—delete paragraph (a) and substitute:
- (a) a person who holds a general registration under the *Health Practitioner Regulation National Law* to practise in the pharmacy profession; or

12—Amendment of section 53—Cause for disciplinary action

- (1) Section 53(1)(b)—delete "by the provider" and substitute:
- in which the provider has an interest
- (2) Section 53(1)(c)—delete "services by the provider" and substitute:
- services
- (3) Section 53(1)(e)—delete "corporate pharmacy services provider or a trustee" and substitute:
- recognised corporate pharmacy services provider or a recognised trustee
- (4) Section 53(1)(e)(iii)—delete "a corporate pharmacy services" and substitute:
- the
- (5) Section 53(2)—delete "corporate pharmacy services provider or a trustee" and substitute:
- recognised corporate pharmacy services provider or a recognised trustee
- (6) Section 53(2)(c)—delete paragraph (c) and substitute:
- (c) the person is for any reason not a fit and proper person to occupy a position of authority in the provider; or

13—Amendment of section 54—Inquiries as to matters constituting grounds for disciplinary action

- (1) Section 54(4)(c)—delete "carrying on business as" and substitute:
- being
- (2) Section 54(4)(d)—delete paragraph (d) and substitute:
- (d) prohibit the respondent from occupying a position of authority in a recognised corporate pharmacy services provider or a recognised trustee pharmacy services provider.

14—Amendment of section 55—Contravention of prohibition order

- Section 55(2)—delete "corporate pharmacy services provider or a trustee" and substitute:
- recognised corporate pharmacy services provider or a recognised trustee

15—Amendment of section 68—Providers of pharmacy services to be indemnified against loss

Section 68(1)—delete subsection (1) and substitute:

- (1) A person must not, unless exempt by the Authority, provide pharmacy services unless insured or indemnified in a manner and to the extent approved by the Authority against civil liabilities that might be incurred by the person in connection with the provision of pharmacy services.

Maximum penalty: \$50 000.

- (1a) A person who holds a proprietary interest in a pharmacy business under section 26(2) will be taken to provide pharmacy services under subsection (1).

16—Amendment of section 69—Information relating to claims

Section 69—delete "pharmacy services provider" wherever occurring and substitute in each case:

person

17—Amendment of section 71—Evidentiary provision

Section 71(c)—delete paragraph (c) and substitute:

- (c) that the person named in the complaint is, or was on a specified date, occupying a position of authority in a recognised corporate pharmacy services provider or a recognised trustee pharmacy services provider,

18—Amendment of section 82—Regulations

Section 82(2)(a)—delete paragraph (a) and substitute:

- (a) prescribe fees or charges for the purposes of this Act, or empower—
- (i) the Minister; or
 - (ii) in relation to Part 4—Pharmacy Regulation Authority SA, to fix fees or charges, and provide for the recovery of a fee or charge so prescribed or fixed;

19—Amendment of Schedule 1—Repeals and transitional provisions

- (1) Schedule 1, clause 28—after paragraph (d) insert:

(da) the *Occupational Therapy Practice Act 2005*;

- (2) Schedule 1, clause 29, definition of **prescribed body**—after paragraph (d) insert:

(da) the Occupational Therapy Board of South Australia;

- (3) Schedule 1, clause 37(1)—after "a prescribed body" insert:

(other than the Occupational Therapy Board of South Australia)

- (4) Schedule 1, clause 37(2)—after "a prescribed body" insert:

(other than the Occupational Therapy Board of South Australia)

- (5) Schedule 1, clause 37—after subclause (2) insert:
- (2a) A qualifying member of the staff of the Occupational Therapy Board of South Australia who, on the commencement of this subclause, has not gained employment with the National Agency (either by commencing employment with the National Agency by that commencement or by accepting an offer of employment with the National Agency by that commencement) will be incorporated into the Department as a redeployee by force of this clause.
 - (2b) A qualifying member of the staff of the Occupational Therapy Board of South Australia—
 - (a) who, on the commencement of this subclause, has gained employment with the National Agency (either by commencing employment with the National Agency by that commencement or by accepting an offer of employment with the National Agency by that commencement); and
 - (b) who, within the period of 2 years after the commencement of this subclause, is determined by the National Agency to be excess to the requirements of the National Agency,

may, by notice furnished to the Chief Executive within the designated period in a manner and form determined by the Chief Executive, elect to be incorporated into the Department as a redeployee (and will then be so incorporated by force of this clause).
- (6) Schedule 1, clause 37(3)—delete "subclause (1) or (2)" and substitute:
a preceding subclause
- (7) Schedule 1, clause 39(1)—below "nurse" insert:
occupational therapist
- (8) Schedule 1, clause 39(1)—below "a person registered under the *Health Practitioner Regulation National Law* to practise in the nursing and midwifery profession as a nurse (other than as a student)" insert:
a person registered under the *Health Practitioner Regulation National Law* to practise in the occupational therapy profession (other than as a student)

Schedule 1—Transitional provision

1—Interpretation

In this Schedule—

principal Act means the *Health Practitioner Regulation National Law (South Australia) Act 2010*.

2—Transitional provision

The amendments effected to Part 4 of the principal Act by this Act do not affect a person's interest in a pharmacy business as it exists immediately before the commencement of this Schedule and the person may continue to hold any such interest until he or she disposes of the interest.