



Health Legislation Amendment (Australian Community Pharmacy Authority) Bill 2005

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Health Legislation Amendment (Australian Community Pharmacy Authority) Bill 2005

Date Introduced: 11 May 2005

House: Representatives

Portfolio: Health and Ageing

Commencement: On Royal Assent, except that Schedule 1, item 1 commences on 13 January 2005 (the day the provision being corrected commenced).

Purpose

This Bill proposes to amend the *National Health Act 1953* to extend, until 31 December 2005, the existing arrangements for approving pharmacists to provide medicines under the Pharmaceutical Benefits Scheme (PBS).

The Bill also proposes a technical amendment to the *Health Legislation Amendment (Podiatric Surgery and Other Matters) Act 2004* to correct a misdescription.

Background

Schedule 1, Items 2 & 3—extension of arrangements for approving pharmacists to supply PBS medicines

Australian Community Pharmacy Authority

The Australian Community Pharmacy Authority (ACPA) is the body authorised under the *National Health Act 1953* (the Act) to consider and make recommendations in relation to applications by pharmacists to supply medicines under the PBS.

ACPA is required to consider all applications against location-based criteria which must be satisfied in order for a pharmacist to obtain approval to supply PBS medicines from particular premises. These criteria are set out in what are known as the Pharmacy Location Rules and apply both to the establishment of a new pharmacy or relocation of an existing pharmacy. The Pharmacy Location Rules are determined by the Minister for Health and Ageing in accordance with the Act.¹

The Pharmacy Location Rules were established as part of the Third Community Pharmacy Agreement between the Commonwealth and the Pharmacy Guild of Australia, which commenced on 1 July 2000 and will end on 30 June 2005. The purpose of the Location Rules is twofold: first, to provide widespread community access to pharmaceutical services, and second, to ensure the continued viability of existing pharmacies.

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The Location Rules have been somewhat controversial since their introduction, with some commentators and interest groups suggesting that they are a source of insufficient competition within the pharmacy sector.² The Rules are being reviewed as part of negotiations between the Government and the Pharmacy Guild of Australia for the Fourth Community Pharmacy Agreement.³

The Fourth Agreement is due to commence on 1 July 2005.

Pharmacy Location Rules

Under the Location Rules concerning **new pharmacies**, approval of a pharmacist must be recommended if the applicant has a legal right to occupy those premises for the purpose of operating a pharmacy and:

- those premises are situated at least 1.5 kilometres, by straight line measurement, from the nearest other premises in respect of which a pharmacist is approved to supply pharmaceuticals under the PBS; and
- ACPA is satisfied that there is a definite community need for pharmaceutical services in the area in which those premises are situated;

or

- those premises are situated at least 10 kilometres, measured door to door by the shortest lawful access route, from the nearest other premises in respect of which a pharmacist is approved to supply pharmaceutical under the PBS; and
- those premises are situated in a location classified as being in a remote area of need.⁴

Regulations concerning **relocation of existing pharmacies** are more complex than those for new pharmacies and, in summary, include regulations related to:

- the minimum distance between pharmacies;
- whether the proposed pharmacy is to be in an area classified as being in a remote area of need;⁵
- the need for pharmaceutical services in the area in which the proposed premises are situated (measured in terms of existence of other such services in the area, adequacy of other such services in the area, income levels, population and extent of public transport in a particular area);
- the number of pharmacies that can exist within a 'large shopping centre'.

In addition to these restrictions, the Minister for Health and Ageing released a Determination on 12 August 2004, amending Pharmacy Location Rules to prevent pharmacies which are located within, adjacent to, or connected to, a **supermarket**, and to

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which members of the public have direct access from within the premises of the supermarket, from being approved to supply pharmaceutical benefits.⁶ The amendment also defines what constitutes a supermarket.

Basis of policy commitment

Provisions for the Pharmacy Location Rules and ACPA will no longer be in force after 30 June 2005. As noted above, the Locations Rules are currently being reviewed by the Government and the Pharmacy Guild as part of negotiations for the Fourth Community Pharmacy Agreement.

According to the Government, the purpose of the review is:

[T]o evaluate the net public benefit of the [Pharmacy Location] Rules in terms of achieving their policy objectives, identify any significant anomalies in their application and administration and report on alternatives to remedy any such deficiencies and anomalies.⁷

While the review is expected to report before 30 June 2005, the Government says that it will require further time to ‘consider and make decisions in relation to the findings and recommendations of the review’.⁸

Therefore, the purpose of the Bill is to make time for consideration of the review findings by extending the arrangements relating to the Location Rules and ACPA until 31 December 2005.

While, as noted above, issues related to the Community Pharmacy Agreement (including the location rules) have been somewhat controversial, the measures contained in the Bill are relatively procedural and have not attracted significant public commentary or analysis.

Schedule 1, Item 1—correction of misdescribed amendment in unrelated Act

The Bill also proposes to make an amendment to the *Health Legislation Amendment (Podiatric Surgery and Other Matters) Act 2004*. This amendment is to correct a misdescribed amendment in the Act and, according to the Government, is minor and technical in nature.⁹ It is unrelated to the pharmacy location measures described above.

Main provisions

Schedule 1, Items 2 & 3— extension of arrangements for approving pharmacists to supply PBS medicines

Item 2 proposes to amend subsection 90 (3C) of the *National Health Act 1953* so that subsections relating to the role of APCA in approving applications to supply

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pharmaceutical benefits will continue in force until the end of 31 December 2005 unless sooner repealed.

Item 3 proposes to amend subsection 99Y to provide that provisions relating to the establishment, membership and functions of the ACPA, and the requirement for the Minister to determine the rules with which ACPA must comply in making its recommendations, will continue in force until the end of 31 December 2005.

Schedule 1, Item 1—correction of misdescribed amendment in unrelated Act

Item 1 proposes to amend Item 11 of Schedule 1 to the *Health Legislation Amendment (Podiatric Surgery and Other Matters) Act 2004* to correct a grammatical misdescription.

Concluding comments

As noted above, a review of Pharmacy Location Rules is currently taking place as part of negotiations between the Government and the Pharmacy Guild for the Fourth Community Pharmacy Agreement. Given the controversy surrounding these rules, the outcome of the review will be eagerly anticipated by various stakeholders, including the pharmacy sector, the supermarket sector, consumer groups, and medical profession representatives.

Nevertheless, as also noted above, the proposal contained in the Bill to extend the arrangements for approving pharmacists to supply PBS medicines is essentially procedural and hence has not attracted significant public commentary or analysis.

Further, the proposal to make an amendment to the *Health Legislation Amendment (Podiatric Surgery and Other Matters) Act 2004* to correct a misdescribed amendment is also apparently minor and technical in nature and hence uncontroversial.

Endnotes

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- 1 A consolidated version of the Pharmacy Location Rules can be accessed from the Australian Community Pharmacy Authority website at:
<http://www.health.gov.au/internet/wcms/publishing.nsf/Content/health-pbs-general-pharmacy-acpa-consdeterm.htm> (accessed 22 May 2005).
 - 2 See for example, Mark Metherell, 'Pharmacy profits hit a nerve', *Sydney Morning Herald*, 16 May 2005; Bill Glasson, 'Getting tough on turf', *Australian Doctor*, 18 February, 2005; Allan Fels and Fred Brenchley, 'Dispense some competition to the pharmacies', *Sydney Morning Herald*, 8 April 2004; Janet Albrechtsen, 'Strip these white coats of subsidies', *Australian*, 1 September 2004.
 - 3 Hon. Tony Abbott, *Fourth Community Pharmacy Agreement*, media release, 18 April 2005.

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- 4 This is measured in relation to category 2, 3, 4, 5 or 6 in the PhARIA index. The PhARIA (or Pharmacy Access/Remoteness Index) seeks to provide a comprehensive, standardised measurement of the physical and professional remoteness of pharmacies throughout Australia. It is used for such matters as identifying the rural or urban status of locations for the purposes of Rules 6A and 6B (exceptional circumstances), Rule 5(b) (new rural approvals) and also determining eligibility for rural and remote pharmacy allowances.
- 5 See note 4.
- 6 [*Pharmaceutical Benefits Determination under Subsection 99L \(1\)*](#), No. PB 14 of 2004.
- 7 Explanatory Memorandum, Health Legislation Amendment (Australian Community Pharmacy Authority) Bill 2005, p. 1.
- 8 *ibid.*
- 9 *ibid.*, p. 2.

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