

THIS bill originated in the Senate; and, having this day passed, is now ready for presentation to the House of Representatives for its concurrence.

HARRY EVANS
Clerk of the Senate

The Senate
Canberra, 29 March 1995

A BILL

FOR

An Act to amend the *National Health Act 1953*, and for related purposes

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *National Health Amendment Act 1995*.

5 (2) In this Act, “**Principal Act**” means the *National Health Act 1953*¹.

Commencement

2.(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) The items in the Schedule (other than item 26) commence on 1 April 1995.

5

(3) Item 26 in the Schedule commences on 1 July 1995.

Amendments of the *National Health Act 1953*

3. The Principal Act is amended in accordance with the applicable items in the Schedule, and the other items in the Schedule have effect according to their terms.

10

SCHEDULE

Section 3

AMENDMENTS OF THE NATIONAL HEALTH ACT 1953

1. Subsection 84(1) (definition of “Authority”):

Omit, substitute:

“‘**Authority**’ means the Australian Community Pharmacy Authority established under section 99J;”.

2. Subsection 84(1):

Insert:

“‘**professional allowance**’ has the meaning given by subsection 99ZDA(1);”.

3. Subsection 90(3A):

Omit, substitute:

“(3A) Subject to subsection (3AA), an application under this section must be referred to the Authority.

“(3AA) Subsection (3A) does not apply to an application for an approval arising out of a change in the ownership of a pharmacy situated at particular premises if the change results or resulted from:

- (a) the sale of the pharmacy; or
- (b) the death of the owner or one of the owners of the pharmacy; or
- (c) a change in the constitution of a partnership that owned the pharmacy;

if the pharmacy is to continue to operate at the same premises.

“(3AB) In subsection (3AA):

‘**pharmacy**’ means a business in the course of the carrying on of which pharmaceutical benefits are supplied.”.

4 Subsection 90(3B):

After “section” insert “in respect of an application to which subsection (3A) applies”.

5. Subsection 90(3C):

Omit, substitute:

“(3C) Unless sooner repealed, subsections (3A), (3AA), (3AB) and (3B) cease to have effect at the end of 30 June 2000.”.

6. Paragraph 92A(1)(d):

Omit “and”.

7 Paragraph 92A(1)(e):

Omit “medicines.”, substitute “medicines;”.

SCHEDULE—continued

8. After paragraph 92A(1)(e):

Insert:

“(f) any other condition determined by the Minister.”.

9. After subsection 92A(1):

Insert:

“(1A) A determination under paragraph (1)(f) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

10. Subsection 98B(1):

Omit, substitute:

“(1) The functions of the Tribunal are:

- (a) to determine the manner in which the Commonwealth price of all or any pharmaceutical benefits is to be worked out for the purpose of payments to approved pharmacists in respect to the supply by them of pharmaceutical benefits; and
- (b) to determine the rate of the professional allowance payable in respect of the provision of a particular professional service or a particular class of professional services if the Minister and the Pharmacy Guild of Australia cannot reach agreement as to the rate of that allowance; and
- (c) to advise the Minister on any matter relating to remuneration for pharmaceutical benefits that is referred to it by the Minister.”.

11. Subsection 98B(2):

Omit “subsection (1)”, substitute “paragraph (1)(a)”.

12. Paragraph 99AAB(2)(d):

Omit, substitute:

“(d) an approved pharmacist who is receiving a remote pharmacy allowance;”.

13. Heading to Division 4B of Part VII:

Omit “*Pharmacy Restructuring Authority*”, substitute “*Australian Community Pharmacy Authority*”.

14. Subsection 99J(2):

Omit “‘Pharmacy Restructuring Authority’”, substitute “‘Australian Community Pharmacy Authority’”.

15. Paragraphs 99K(1)(a), (b), (c) and (d):

Omit, substitute:

SCHEDULE—continued

- “(a) to consider applications under sections 90, 99ZA, 99ZAA and 99ZDA; and
- (b) to make, in respect of an application under section 90:
 - (i) a recommendation whether or not the applicant should be approved under that section in respect of particular premises; and
 - (ii) if an approval is recommended—recommendations as to the conditions (if any) to which the approval should be subject; and
- (c) to make, in respect of an application under section 99ZA:
 - (i) a recommendation whether or not the payment of an allowance under that section should be approved; and
 - (ii) if an approval is recommended—recommendations as to the conditions (if any) to which payment of the allowance should be subject; and”.

16. Before paragraph 99K(1)(e):

Insert:

- “(da) to make, in respect of an application under section 99ZAA:
 - (i) a recommendation whether or not the payment of an allowance under that section should be approved; and
 - (ii) if an approval is recommended—recommendations as to the conditions (if any) to which payment of the allowance should be subject; and
- (db) to make, in respect of an application under section 99ZDA:
 - (i) a recommendation whether or not the payment of an allowance under that section should be approved; and
 - (ii) if an approval is recommended—recommendations as to the conditions (if any) to which payment of the allowance should be subject; and”.

17. Subsection 99K(2):

Omit “guidelines”, substitute “rules”.

18. Subsection 99L(1):

Omit, substitute:

- “(1) The Minister must, by writing:
 - (a) determine the rules subject to which the Authority is to make recommendations under subsection 99K(1); and
 - (b) determine, or determine rules for or in relation to, the rates of, and the qualifications for, allowances payable under section 99ZA; and

SCHEDULE—continued

- (c) determine, or determine rules for or in relation to, the rates of, and the qualifications for, allowances payable under section 99ZAA; and
- (d) determine, or determine rules for or in relation to, the rates of, and the qualifications for, allowances payable under section 99ZDA.”.

19. Section 99N:

Repeal, substitute:

Membership

“99N.(1) The Authority consists of the following part-time members:

- (a) a Chairperson;
- (b) 2 pharmacists who are to be chosen from 4 pharmacists nominated by the Pharmacy Guild of Australia;
- (c) one pharmacist who is to be chosen from 2 pharmacists nominated by the Pharmaceutical Society of Australia;
- (d) an officer of the Department.

“(2) The member referred to in paragraph (1)(d) is to be appointed by the Secretary.

“(3) The other members are to be appointed by the Minister.

“(4) The member referred to in paragraph (1)(d) holds office, subject to this Division, during the pleasure of the Secretary.

“(5) Each member referred to in paragraph (1)(a), (b) or (c) holds office, subject to this Division, for the period of 2 years from the date of his or her appointment, but is eligible for re-appointment.”.

20. Section 99R:

Add at the end:

“(4) In this section:

‘**member**’ means a member other than the member referred to in paragraph 99N(1)(d).”.

21. Section 99S:

After “member” insert “appointed by the Minister”.

22. Section 99U:

Repeal, substitute:

Resignation

“99U. A member may resign by writing signed and delivered:

- (a) if the member was appointed by the Secretary—to the Secretary; or
- (b) otherwise—to the Minister.”.

SCHEDULE—continued

23. Section 99V:

Add at the end:

“(3) In this section:

‘**member**’ means a member appointed by the Minister.”.

24. Paragraph 99W(6)(a):

Omit “4”, substitute “3”.

25. Section 99Y:

Omit “31 March 1995”, substitute “30 June 2000”.

26. Subsection 99ZA(1):

Omit “essential”, substitute “isolated”.

27. After subsection 99ZA(2):

Insert:

“(2A) The rate of an allowance payable under subsection (1) is to be the rate determined under, or in accordance with the rules determined under, paragraph 99L(1)(b).”.

28. Subsection 99ZA(4):

Omit, substitute:

“(4) The Authority may recommend the payment of an allowance under this section only if the applicant is qualified for the allowance under, or under the rules determined by the Minister under, paragraph 99L(1)(b).

“(5) An approval must be in writing and must set out:

(a) the rate at which the allowance is payable; and

(b) any conditions to which payment of the allowance is subject in accordance with the recommendations of the Authority.”.

29. After section 99ZA:

Insert:

Remote pharmacy allowance

“99ZAA.(1) Subject to this section, upon application by a pharmacist or pharmacists in respect of whom an allowance is payable under section 99ZA in respect of particular premises, the Secretary may approve the payment to the pharmacist or pharmacists of a remote pharmacy allowance in respect of the premises for a period or periods occurring on or after 1 July 1995.

“(2) The rate of an allowance payable under subsection (1) is to be the rate determined under, or in accordance with the rules determined under, paragraph 99L(1)(c).

SCHEDULE—continued

“(3) An application under subsection (1) must be referred to the Authority.

“(4) The payment of an allowance may be approved under this section only if the Authority has recommended the making of the payment, but the Secretary may refuse to approve a payment even if it has been recommended by the Authority.

“(5) The Authority may recommend the payment of an allowance under this section only if the applicant is qualified for the allowance under, or under the rules determined by the Minister under, paragraph 99L(1)(c).

“(6) An approval must be in writing and must set out:

- (a) the rate at which the allowance is payable; and
- (b) any conditions to which payment of the allowance is subject in accordance with the recommendations of the Authority.”.

30. After subsection 99ZC(3):

Insert:

“(3A) If:

- (a) any pharmacists have made an application under subsection (1); and
- (b) those pharmacists have not made a request under paragraph 98(1)(a) on or before 30 June 1995;

the application referred to in paragraph (a) is taken to have been withdrawn at the end of 30 June 1995.”.

31. Subsection 99ZC(4):

After “Authority has” insert “, on or before 31 March 1995,”.

32. After subsection 99ZD(4):

Insert:

“(4A) If:

- (a) any pharmacists have made an application under subsection (1); and
- (b) those pharmacists have not made a request under paragraph 98(1)(a) on or before 30 June 1995;

the application referred to in paragraph (a) is taken to have been withdrawn at the end of 30 June 1995.”.

33. Subsection 99ZD(5):

After “Authority has” insert “, on or before 31 March 1995,”.

34. After section 99ZD:

Insert:

SCHEDULE—continued

Professional allowance

“99ZDA.(1) Subject to this section, the Secretary may, upon application by a pharmacist, approve the payment to the pharmacist of an allowance (a ‘**professional allowance**’) in respect of the provision of a professional service, or a class of professional services, at a rate determined under, or in accordance with the rules determined under, paragraph 99L(1)(d).

“(2) An application under subsection (1) must be referred to the Authority.

“(3) The payment of a professional allowance may be approved only if the Authority has recommended the making of the payment, but the Secretary may refuse to approve a payment even if it has been recommended by the Authority.

“(4) The Authority may recommend the payment of a professional allowance only if the applicant is qualified for the allowance under, or under the rules determined by the Minister under, paragraph 99L(1)(d).

“(5) An approval must be in writing and set out:

(a) the rate at which the allowance is payable; and

(b) any conditions to which payment of the allowance is subject in accordance with the recommendations of the Authority.”.

35. Section 99ZE:

Repeal, substitute:

Time limit for making applications

“99ZE. An application made under section 99ZC or 99ZD after 28 February 1995 does not have, and is taken never to have had, any effect.”.

36. Section 99ZF:

Repeal.

37. Section 99ZG:

Omit “31 March 1995”, substitute “30 June 2000”.

38. After subsection 105AB(11):

Insert:

“(11A) An application may be made to the Tribunal for a review of a decision of the Secretary under section 99ZAA refusing to approve the payment of an allowance.

“(11B) An application may be made to the Tribunal for review of a decision of the Secretary under section 99ZDA refusing to approve the payment of an allowance.”.

SCHEDULE—continued

39. Subsection 105AD(1) (definition of “Authority”):

Omit, substitute:

“‘**Authority**’ means the Australian Community Pharmacy Authority;”.

40. Subsection 105AD(1) (definition of “reviewable recommendation”):

Omit “(2)(e)”, substitute “(2)(g)”.

41. Paragraph 105AD(2)(a):

Omit, substitute:

“(a) a recommendation made under subparagraph 99K(1)(b)(i) that an applicant under section 90 not be approved under that section in respect of particular premises;

(aa) a recommendation made under subparagraph 99K(1)(b)(ii) as to the conditions (if any) to which an approval under section 90 should be subject;”.

42. Paragraphs 105AD(2)(b) and (c):

Omit “essential pharmacy”.

43. After paragraph 105AD(2)(c):

Insert:

“(ca) a recommendation made under subparagraph 99K(1)(da)(i) that the payment, under section 99ZAA, of an allowance not be approved;

(cb) a recommendation made under subparagraph 99K(1)(da)(ii) as to the conditions (if any) to which the payment under section 99ZAA of an allowance should be subject;”.

44. After paragraph 105AD(2)(e):

Insert:

“(f) a recommendation made under subparagraph 99K(1)(db)(i) that the payment, under section 99ZDA, of a professional allowance not be approved;

(g) a recommendation made under subparagraph 99K(1)(db)(ii) as to the conditions (if any) to which the payment under section 99ZDA of a professional allowance should be subject;”.

45. Transitional provisions

(1) A recommendation made on or before 31 March 1995 by the Pharmacy Restructuring Authority in relation to an application under section 90, 99ZA, 99ZC or 99ZD of the *National Health Act 1953* has effect on and after that date as if it had been made by the Australian Community Pharmacy Authority.

SCHEDULE—continued

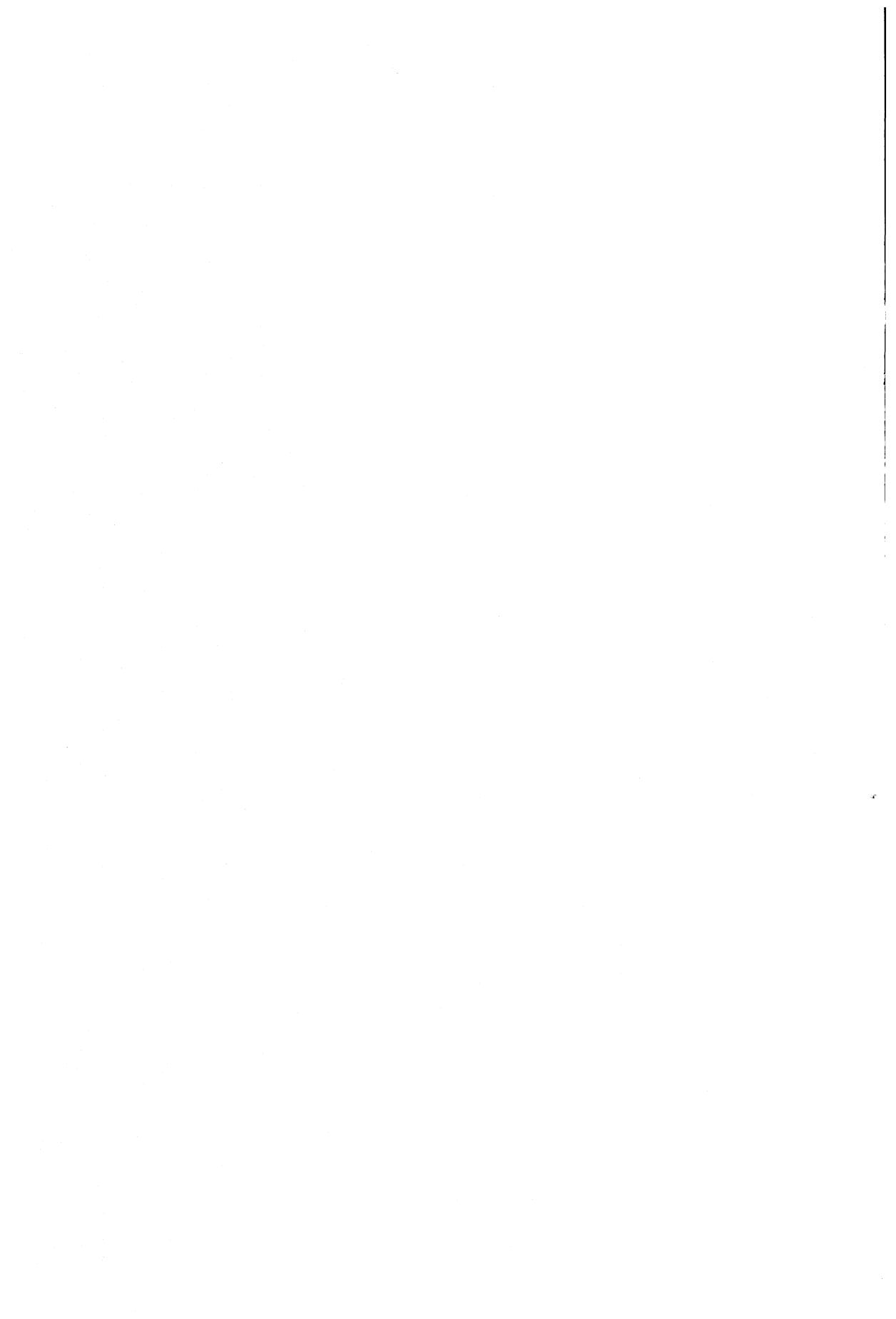
(2) If an approval under section 99ZA of the *National Health Act 1953* for the payment to a pharmacist of an essential pharmacy allowance is in force immediately before 1 July 1995, the payment to that pharmacist of an isolated pharmacy allowance is taken to be approved under that section on that date.

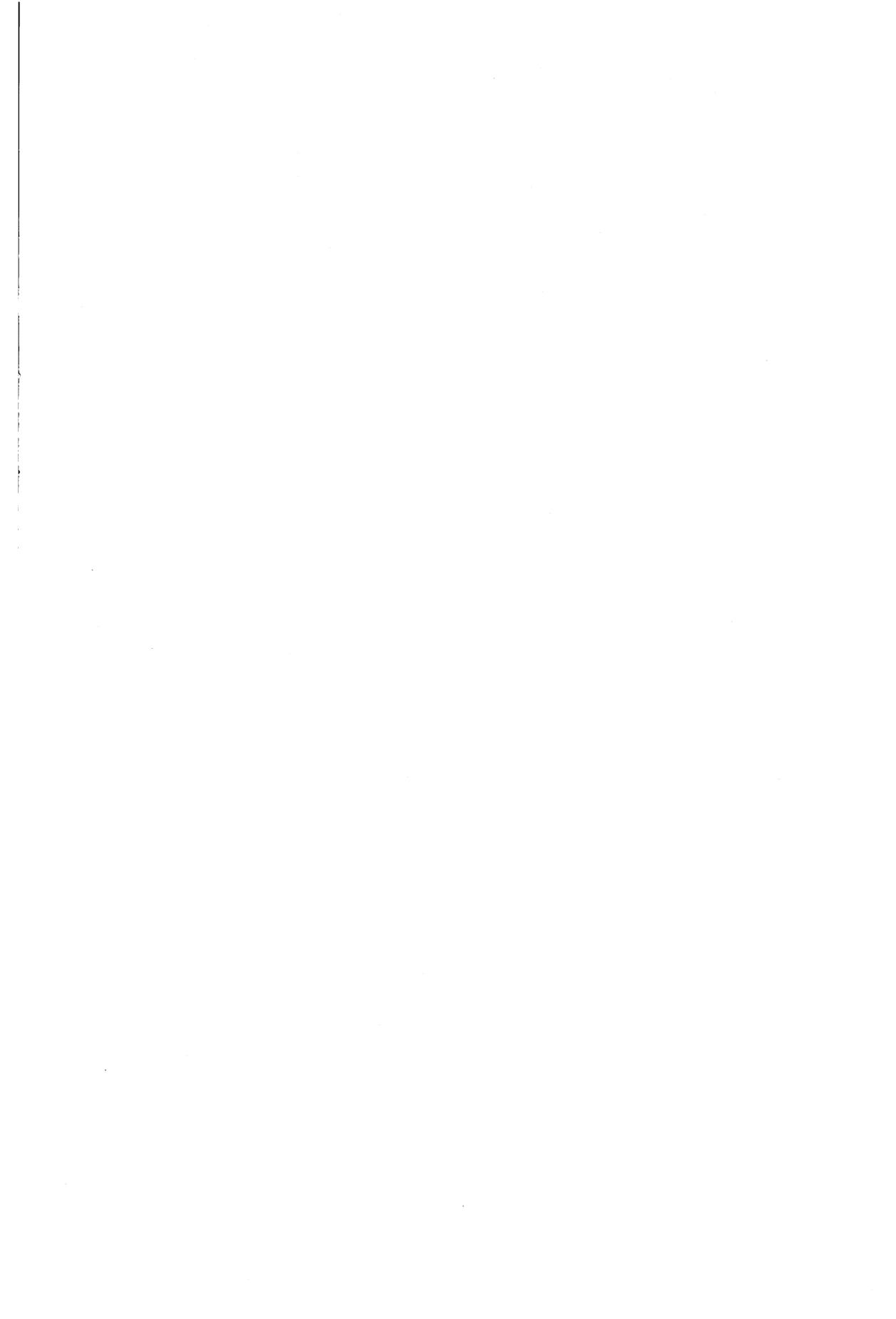
NOTE

1. No. 95, 1953, as amended. For previous amendments, see No. 68, 1955; Nos. 55 and 95, 1956; No. 92, 1957; No. 68, 1958; No. 72, 1959 (as amended by No. 16, 1961); No. 16, 1961; No. 82, 1962; No. 77, 1963; No. 37, 1964; Nos. 100 and 146, 1965; No. 44, 1966; Nos. 14 and 100, 1967; No. 100, 1968; No. 102, 1969; No. 41, 1970; No. 85, 1971; No. 114, 1972; Nos. 49 and 202, 1973; No. 37, 1974; Nos. 1, 13 and 93, 1975; Nos. 1, 60 (as amended by Nos. 91 and 99, 1976), 91, 99, 108, 157 and 177, 1976; Nos. 98 and 100, 1977; Nos. 36, 88 (as amended by No. 132, 1978), 132 and 189, 1978; Nos. 54, 91 and 122, 1979; Nos. 117 and 131, 1980; Nos. 40, 74, 92, 118, 163 and 176, 1981; Nos. 49 (as amended by No. 211, 1991), 80 and 112, 1982; Nos. 35, 54 and 139 (as amended by No. 165, 1984 and No. 115, 1986), 1983; Nos. 46, 63, 72, 120, 135 and 165, 1984; Nos. 24, 53, 65, 70, 95, 127 and 167, 1985; Nos. 28, 75, 94 (as amended by No. 141, 1987) and 115 (as amended by No. 84, 1991), 1986; Nos. 22 (as amended by No. 192, 1992), 44, 72 (as amended by No. 79, 1988), 118, 131 and 132, 1987; Nos. 46, 79 (as amended by No. 155, 1988), 87, 99 and 155, 1988; Nos. 95, 164 and 175, 1989; Nos. 3, 84, 106 and 141, 1990; Nos. 6, 68, 70, 73, 83, 84, 115, 116, 119 (as amended by No. 136, 1992), 122, 141, 169, 175, 208 and 211, 1991; Nos. 70, 81, 88, 136, 192, 200, 204 and 230, 1992; Nos. 28, 61, 76 and 106, 1993 and SR 274, 1993; and Nos. 12, 22, 23, 63, 78, 80, 85, 116, 164, 174 and 184, 1994.

NOTES RELATING TO SECTION HEADINGS

1. The heading to section 98B is altered by omitting “**Function**” and substituting “**Functions**”.
2. The heading to section 99L is altered by omitting “**guidelines**” and substituting “**rules**”.
3. The heading to section 99ZA is altered on 1 July 1995 by omitting “**Essential**” and substituting “**Isolated**”.
4. The heading to section 105AD of the *National Health Act 1953* is altered by omitting “**Pharmacy Restructuring Authority**” and substituting “**Australian Community Pharmacy Authority**”.







9 780644 434553