



National Health Amendment (Pharmaceutical Benefits) Act 2019

No. 77, 2019

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

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(<https://www.legislation.gov.au/>)

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No. 77, 2019

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

[Assented to 2 October 2019]

The Parliament of Australia enacts:

1 Short title

This Act is the *National Health Amendment (Pharmaceutical Benefits) Act 2019*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	2 October 2019
2. Schedule 1	The day after the end of the period of 2 months beginning on the day this Act receives the Royal Assent.	2 December 2019
3. Schedule 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	5 December 2019 (F2019N00099)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Application fees for pharmacist applications

National Health Act 1953

1 After paragraph 6(1)(a)

Insert:

(aa) the Minister’s power under subsection 90(10); or

2 At the end of subsection 90(1)

Add:

Note: There is an application fee for the application: see subsection (9).

3 Subsection 90(2)

After “a separate application”, insert “under subsection (1)”.

4 At the end of subsection 90(3)

Add:

Note: There is an application fee for the application: see subsection (9).

5 Subsection 90(3A)

Omit “and (3AE)”, substitute “, (3AE) and (13)”.

6 At the end of section 90

Add:

Application fee

- (9) An application under subsection (1) or (3) must be accompanied by the application fee determined in an instrument under subsection (10).
- (10) The Minister may, by legislative instrument, determine application fees for applications under subsection (1) or (3).
- (11) The Minister may determine different fees for different kinds of applications.

- (12) A fee must not be such as to amount to taxation.

Consequences of application fee not being paid

- (13) An application under subsection (1) or (3) is not required to be referred under subsection (3A) to the Authority if the applicant has not paid the application fee for the application.
- (14) The Secretary may refuse to make a decision on an application under subsection (1) or (3) if the applicant has not paid the application fee for the application.

7 Application provision

The amendments of section 90 of the *National Health Act 1953* made by this Schedule apply in relation to an application made under subsection 90(1) or (3) of that Act on or after the commencement of this item.

Schedule 2—Supply of pharmaceutical benefits following bankruptcy or external administration

National Health Act 1953

1 Subsection 84(1) (paragraph (a) of the definition of *approved pharmacist*)

After “section 91”, insert “or 91B”.

2 Subsection 84(1) (at the end of paragraph (b) of the definition of *approved pharmacist*)

Add “or 91B”.

3 After section 91A

Insert:

91B Application to supply pharmaceutical benefits if approved pharmacist is bankrupt or external administrator in relation to pharmacy

Approved pharmacist is an individual and individual is bankrupt

(1) If:

- (a) an approval under section 90 in respect of particular premises covers one individual and the individual is bankrupt; and
- (b) the trustee (the *applicant*) of the estate of the bankrupt individual makes an application to the Secretary for permission to supply pharmaceutical benefits at those premises;

the Secretary must grant, or refuse to grant, the applicant permission to supply pharmaceutical benefits at those premises.

Approved pharmacist is a partnership and partners are bankrupt

(2) If:

Schedule 2 Supply of pharmaceutical benefits following bankruptcy or external administration

- (a) an approval under section 90 in respect of particular premises covers a partnership that consists only of individuals and each of the partners is bankrupt; and
- (b) either:
 - (i) if the same person is the trustee of the estate of each of the bankrupt partners—the trustee (the *applicant*) makes an application to the Secretary for permission to supply pharmaceutical benefits at those premises; or
 - (ii) otherwise—the trustees (the *applicant*) of the estates of the bankrupt partners make a joint application to the Secretary for permission to supply pharmaceutical benefits at those premises;

the Secretary must grant, or refuse to grant, the applicant permission to supply pharmaceutical benefits at those premises.

External administrator in relation to pharmacy

- (3) If:
 - (a) an approval under section 90 is in force in respect of particular premises; and
 - (b) there is an external administrator in relation to the pharmacy situated at those premises; and
 - (c) the external administrator (the *applicant*) makes an application to the Secretary for permission to supply pharmaceutical benefits at those premises;

the Secretary must grant, or refuse to grant, the applicant permission to supply pharmaceutical benefits at those premises.

Note: For *external administrator*, see subsection (16). For *pharmacy*, see subsection (17).

Application requirements

- (4) An application under subsection (1), (2) or (3) in relation to particular premises must:
 - (a) be in writing and in a form approved by the Secretary; and
 - (b) unless the Secretary otherwise allows, be made before the end of the period of 10 business days beginning on:
 - (i) for an application under subsection (1)—the day the trustee became the trustee of the estate of the bankrupt individual; or

- (ii) for an application under subsection (2)—the first day on which there was a trustee of the estate of each bankrupt partner; or
- (iii) for an application under subsection (3)—the day the applicant became the external administrator; and
- (c) be accompanied by documentary evidence that:
 - (i) for an application under subsection (1) or (2)—there is a trustee of the estate of the bankrupt individual or of the estate of each bankrupt partner; or
 - (ii) for an application under subsection (3)—there is an external administrator in relation to the pharmacy; and
- (d) be accompanied by a statement setting out:
 - (i) whether, at the time of the application, the pharmacy situated at the premises is operating at the premises; and
 - (ii) if the pharmacy is not operating at the premises—the day the pharmacy ceased operating and the day of the proposed resumption of operation; and
 - (iii) the grounds on which the applicant considers the pharmacy can continue or resume operating at the premises.

Secretary may require further information or documents

- (5) For the purposes of considering the application, the Secretary may, by written notice given to the applicant, require the applicant to give the Secretary further specified information, or produce to the Secretary further specified documents, within a specified period.
- (6) If the applicant does not give the information, or produce the documents, within the specified period, the Secretary may treat the application as having been withdrawn.

Rules about grant of permission

- (7) The Secretary must, under subsection (1), (2) or (3), grant the applicant permission to supply pharmaceutical benefits at the premises if the Secretary is satisfied that:
 - (a) at the time of the application, the pharmacy situated at the premises is operating at the premises; and
 - (b) the pharmacy can continue operating after the grant of the permission; and

- (c) the premises are accessible by members of the public for the purpose of receiving pharmaceutical benefits at times that, in the opinion of the Secretary, are reasonable.

Note: If, at the time of the application, the pharmacy situated at the premises is not operating at the premises, the Secretary is still able to grant the permission under subsection (1), (2) or (3).

- (8) However, while a permission granted under this section is in force in relation to particular premises, the Secretary must not grant any further permission under this section in relation to those premises.

Notifying decision on application

- (9) The Secretary must:
 - (a) give the applicant written notice of the Secretary's decision on the application; and
 - (b) if the Secretary refuses to grant the permission—state in the notice the reasons for the refusal.

Effect of permission

- (10) If the Secretary grants a permission under subsection (1), (2) or (3) to supply pharmaceutical benefits at particular premises:
 - (a) the holder of the permission is to be treated for all purposes of this Act as if the holder were, on and after the day the application for the permission was made, approved under section 90 as an approved pharmacist in relation to those premises; and
 - (b) any supply of pharmaceutical benefits at or from those premises by a pharmacist, who is not an approved pharmacist, on or after the day the application for the permission was made and before the grant of that permission is to be treated as if it had been a supply of those pharmaceutical benefits by the holder of the permission; and
 - (c) references in this Act to an approval granted under section 90 include references to an approval treated as having been granted under section 90 by paragraph (a) of this subsection; and
 - (d) the conditions to which an approval granted under section 90 is subject (including any condition that is imposed by means of the Minister's determination for the purposes of

paragraph 92A(1)(f) also apply to an approval treated as having been granted under section 90 by paragraph (a) of this subsection; and

- (e) the rights conferred and obligations imposed on an approved pharmacist apply to the holder of the permission in the holder's activities as such an approved pharmacist.

Note 1: One of the effects of paragraph (a) is that, if the holder of the permission supplies a pharmaceutical benefit, the holder may be entitled to a payment under section 99 for the supply of the benefit.

Note 2: For *pharmacist* see subsection 4(1).

Duration of permission

- (11) A permission granted under subsection (1), (2) or (3) in relation to particular premises continues, unless it is sooner revoked, until the Secretary grants another approval under section 90 in respect of those premises.

Note: Subsections (12) and (13) deal with revocation of the permission and subsection (14) deals with variation of the permission.

Revoking permission

- (12) The Secretary may, by written notice given to the holder of the permission, revoke the permission if the Secretary is satisfied that:
- (a) there has been a contravention of a condition covered by paragraph (10)(d); or
 - (b) the holder of the permission is not carrying on the business of a pharmacist at the premises in respect of which the permission is granted; or
 - (c) the premises are not accessible by members of the public for the purpose of receiving pharmaceutical benefits at times that, in the opinion of the Secretary, are reasonable; or
 - (d) it is otherwise appropriate in the circumstances to revoke the permission.
- (13) The Secretary must, by written notice given to the holder of the permission, revoke the permission if the holder makes a request in writing (including reasons for the request) to the Secretary for revocation of the permission.

Varying permission

- (14) The Secretary may, by notice in writing, vary a permission granted under subsection (1), (2) or (3) to reflect changes in the trustee or trustees of the estate or estates concerned or in the external administrator in relation to the pharmacy concerned. A variation takes effect on the day specified in the notice (which may be earlier than the day the variation is made).

Note: A variation will result in a different holder of the permission.

Effect of certain State and Territory laws

- (15) Nothing in this section authorises the Secretary to grant a permission under subsection (1), (2) or (3) to a person to supply pharmaceutical benefits at premises at which the person is not permitted, under the law of the State or Territory in which the premises are situated, to carry on business.

Definitions

- (16) For the purposes of this section, an **external administrator**, in relation to a pharmacy, is:
- (a) an administrator of the pharmacy; or
 - (b) a managing controller (within the meaning of the *Corporations Act 2001*) in relation to property of any company operating the pharmacy; or
 - (c) an external administrator (within the meaning of section 5-20 of Schedule 2 to the *Corporations Act 2001*) of any company operating the pharmacy.
- (17) For the purposes of this section, a **pharmacy** is a business in the course of the carrying on of which pharmaceutical benefits are supplied.
- (18) A reference in this section to the trustee of the estate of a bankrupt is to be read:
- (a) in relation to an estate in respect of which there are 2 or more joint trustees—as a reference to all the trustees; or
 - (b) in relation to an estate in respect of which there are 2 or more joint and several trustees—as a reference to all of the trustees or any one or more of the trustees.

- (19) A reference in this section to the external administrator in relation to a pharmacy is to be read:
- (a) in relation to a pharmacy in respect of which there are 2 or more joint external administrators—as a reference to all of the external administrators; and
 - (b) in relation to a pharmacy in respect of which there are 2 or more joint and several external administrators—as a reference to all of the external administrators or any one or more of the external administrators.

4 After subsection 98(2)

Insert:

- (2A) Despite subsections (1) and (2), the Secretary may refuse to cancel an approval of an approved pharmacist in respect of particular premises if:
- (a) the approved pharmacist is bankrupt; or
 - (b) there is an external administrator (within the meaning of section 91B) in relation to the pharmacy (within the meaning of that section) situated at those premises.

5 After subsection 98(3)

Insert:

- (3AA) If:
- (a) a permission under section 91B is in force in relation to particular premises; and
 - (b) the holder of the permission requests that the approval of the pharmacist under section 90 in respect of those premises be cancelled;
- the Secretary must cancel the approval. The Secretary must give written notice of the cancellation to the pharmacist and the holder of the permission.
- (3AB) If a permission under section 91B in relation to particular premises is revoked under subsection 91B(12) or (13), the Secretary may cancel the approval of the pharmacist under section 90 in respect of those premises. The Secretary must give written notice of the cancellation to the pharmacist.

6 After subsection 105AB(7AB)

Insert:

- (7AC) An application may be made to the Tribunal for review of a decision of the Secretary:
- (a) under subsection 91B(1), (2) or (3) refusing to grant a permission; or
 - (b) under subsection 91B(6) treating an application under section 91B as having been withdrawn; or
 - (c) under subsection 91B(12) revoking a permission granted under section 91B.

7 Subsection 105AB(8A)

Omit “or (3A) to revoke”, substitute “, (3AB) or (3A) to cancel”.

8 Application provisions

- (1) Subsection 91B(1) of the *National Health Act 1953*, as inserted by this Schedule, applies where the individual becomes bankrupt on or after the commencement of this item, whether the approval under section 90 of that Act was granted before, on or after that commencement.
- (2) Subsection 91B(2) of the *National Health Act 1953*, as inserted by this Schedule, applies where each of the partners becomes bankrupt on or after the commencement of this item, whether the approval under section 90 of that Act was granted before, on or after that commencement.
- (3) Subsection 91B(3) of the *National Health Act 1953*, as inserted by this Schedule, applies where a person becomes an external administrator on or after the commencement of this item, whether the approval under section 90 of that Act was granted before, on or after that commencement.
- (4) Subsection 98(2A) of the *National Health Act 1953*, as inserted by this Schedule, applies where the approved pharmacist becomes bankrupt, or where a person becomes an external administrator, on or after the commencement of this item, whether the approval under section 90 of that Act was granted before, on or after that commencement.

*[Minister's second reading speech made in—
House of Representatives on 4 July 2019
Senate on 11 September 2019]*

(88/19)

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