

BILL NO. 43 OF 2022

A BILL

FOR AN ACT TO AMEND THE PHARMACY PROFESSION ACT 2011

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Pharmacy Profession (Budget Amendment) Act 2022.

(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

(3) In this Act, the Pharmacy Profession Act 2011 is referred to as the “Principal Act”.

Section 3 amended

2. Section 3 of the Principal Act is amended by—

(a) in the definition of “approved” after “Board”, inserting “, Minister, Commission or Registrar, as applicable”; and

(b) inserting the following new definition—

““Commission” means the Fijian Competition and Consumer Commission established under section 7 of the Fijian Competition and Consumer Commission Act 2010;”.

*Section 32 amended***3.** Section 32(1) of the Principal Act is amended by—

- (a) in paragraph (f) after “;”, inserting “and”;
- (b) in paragraph (g), deleting “;” and substituting “.”; and
- (c) deleting paragraphs (h), (i) and (j).

*Section 45 amended***4.** Section 45 of the Principal Act is amended by—

- (a) in subsection (3) in the chapeau, deleting “are authorised” and substituting “may be authorised by the Commission”;
- (b) in subsection (3)(d)—
 - (i) in the chapeau, deleting “, or other person approved by the Board,”;
 - (ii) in subparagraph (i), deleting “2 pharmacies;” and substituting “5 pharmacies; and”;
 - (iii) in subparagraph (ii), deleting “Board to carry on a pharmacy business in an area that the Board determines needs a pharmacy business; and” and substituting “Commission to carry on a pharmacy business in an area that the Commission determines needs a pharmacy business,”; and
 - (iv) deleting subparagraph (iii) and substituting the following as the post-amble of paragraph (d)—

“and, if there is no person referred to in paragraphs (a) and (b) with a proprietary interest in 5 pharmacies or less who is willing and able to own and carry on a pharmacy business in the area; and”;
- (c) after subsection (3), inserting the following new subsections—

“(3A) A person eligible for authorisation under subsection (3) must apply in writing to the Commission for an authorisation to own or have a proprietary interest in a pharmacy business.

(3B) An authorisation issued to a person to own or have a proprietary interest in a pharmacy business must be revoked by the Commission for breach of any condition of the authorisation.

(3C) Where an authorisation is refused or revoked, the Commission must inform the applicant in writing of the decision, including the reasons for the decision.”;

- (d) in subsection (4), deleting “subsection (3)(c), must not own or have a proprietary interest in more than 2 separate pharmacy businesses” and substituting “subsection (3)(d), must not own or have a proprietary interest in more than 5 separate pharmacy businesses”;

- (e) in subsection (6), deleting “Board” and substituting “Commission”;
- (f) in subsection (6A), deleting “12 months and may be renewed annually” and substituting “up to 5 years and may be renewed by the Commission at the end of the period”; and
- (g) in subsection (7), deleting “Board” and substituting “Commission”.

Section 45A amended

5. Section 45A(3A) of the Principal Act is amended by deleting “is valid for a period of 12 months from the date of issue and may be renewed annually” and substituting “may be issued for a period of up to 5 years from the date of issue and may be renewed by the Minister at the end of the period”.

Section 45C inserted

6. The Principal Act is amended after section 45B by inserting the following new section—

“Transition – Pharmacy Profession (Budget Amendment) Act 2022

45C. A person authorised under section 45 or 45A on or before the commencement of the Pharmacy Profession (Budget Amendment) Act 2022 must apply to the Commission for a new authorisation at least one month before the expiry of the existing authorisation.”.

Section 46 amended

7. Section 46 of the Principal Act is amended by deleting “Board” wherever it appears and substituting “Commission”.

Section 47 amended

8. Section 47 of the Principal Act is amended by—

- (a) deleting “Board” wherever it appears and substituting “Commission”; and
- (b) deleting subsection (3).

Section 48 amended

9. Section 48 of the Principal Act is amended by deleting “Board” wherever it appears and substituting “Commission”.

Section 48A amended

10. Section 48A(1) of the Principal Act is amended by deleting “Board” and substituting “Commission”.

Section 49 amended

11. Section 49 of the Principal Act is amended by deleting “Board” wherever it appears and substituting “Commission”.

Section 50 amended

12. Section 50 of the Principal Act is amended by deleting “Board” and substituting “Commission”.

Section 51 amended

13. Section 51 of the Principal Act is amended by—

- (a) in the heading, deleting “with Registrar”;
- (b) in subsection (1), deleting “within 2 months after the execution of the partnership agreement or”;
- (c) after subsection (1), inserting the following new subsection—

“(1A) The parties to a partnership agreement in regards to the ownership of a pharmacy that is executed after the commencement of the Pharmacy Profession (Budget Amendment) Act 2022, must lodge a copy of the agreement with the Commission within 2 months after the execution of the agreement.”; and
- (d) in subsection (2), deleting “subsection (1)” and substituting “this section”.

Section 52 amended

14. Section 52 of the Principal Act is amended by deleting “Board” wherever it appears and substituting “Commission”.

Section 52A inserted

15. The Principal Act is amended after section 52 by inserting the following new section—

“Registered general and dental practitioners engaged under PPP Scheme

52A.—(1) Notwithstanding the provisions of this Part, a registered general practitioner or registered dental practitioner may supply or dispense medicines, provided—

- (a) the registered general practitioner or registered dental practitioner is engaged under a PPP Scheme;
- (b) the nearest pharmacy is not operating; and
- (c) the medicines supplied or dispensed are sufficient only for a 24-hour period.

(2) The registered general practitioner or registered dental practitioner must, when supplying or dispensing medicines, provide advice and counsel on the effective and safe use of the medicines.

(3) Any registered general practitioner or registered dental practitioner who supplies or dispenses medicines while the nearest pharmacy is operating commits an offence and is liable on conviction to a fine not exceeding \$5,000.

(4) In this section—

“general practice” has the meaning given in section 119 of the Medical and Dental Practitioner Act 2010;

“medicines” means the medicines approved by the Permanent Secretary for supply or dispensation under subsection (1);

“PPP Scheme” means a public private partnership scheme with the Government, for the engagement of the following persons—

(a) registered general practitioners, as approved by the Government; and

(b) registered dental practitioners practising on their own account, as approved by the Government; and

“registered general practitioner” means a registered medical practitioner who engages in general practice on his or her own account.”.

Section 103 amended

16. Section 103 of the Principal Act is amended by—

(a) in subsection (1) after “Board”, inserting “or Commission, as applicable”; and

(b) in subsection (2)(a)(ii) after “Board”, inserting “or Commission, as applicable,”.

PHARMACY PROFESSION (BUDGET AMENDMENT) BILL 2022

EXPLANATORY NOTE

(This note is not part of the Bill and is intended only to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Pharmacy Profession Act 2011 (**‘Act’**) provides for the protection of the health and safety of the public in relation to the practice of pharmacy. Pharmacy services include the supply, compounding or dispensation of medicines, and the provision of advice and counsel on the effective and safe use of medicines. The Act also regulates the operation of pharmacies, pharmacy businesses and the provision of pharmacy services in Fiji.
- 1.2 However, many private pharmacy services are only available at limited times or are not available, even in populated areas of Fiji. The anti-competitive nature of the legislative framework set out under the Act contributes to these limited services since it places *inter alia* the decision-making for pharmacy business matters in the hands of a select group of competing pharmacists.
- 1.3 The Pharmacy Profession (Budget Amendment) Bill 2022 (**‘Bill’**) seeks to amend the Act to:
 - (a) address the anti-competitive nature of the Act to ensure that pharmacy businesses are able to compete more effectively; and
 - (b) provide for a wider reach of medical and dental services to the public through the engagement of general and dental practitioners practising on their own account, under a public private partnership scheme with the Government of the Republic of Fiji (**‘PPP Scheme’**).
- 1.4 The Bill seeks to address the indirect limits on competition in the Act by removing the Fiji Pharmacy Profession Board’s (**‘Board’**) role in authorising the operations of pharmacy businesses and the premises and locations for these businesses. As the Board consists of registered pharmacists operating their own pharmacy businesses, by allowing the Board to determine what and where pharmacy businesses may operate, as well as giving the Board access to the

details of the operations of pharmacy businesses, the Act has created a system where some competing pharmacists have an unfair advantage over others. This is not a system which is conducive to fair and dynamic competition in this market and as such, the Act seeks to transfer the business and market control role of the Board to the Fijian Competition and Consumer Commission ('FCCC'). FCCC is a third-party independent regulator established under section 7 of the Fijian Competition and Consumer Commission Act 2010. FCCC possesses expertise in competition and market dynamics and is better placed to determine the business-related aspects of the pharmacy business market. The proposed amendment seeks to transfer business and market regulation from the Board to FCCC to provide for accountability and transparency and to avoid any conflict of interest which may arise during the running of a pharmacy business in Fiji.

- 1.5 The Bill also seeks to increase the number of pharmacies a registered pharmacist may own from 2 to 5, to allow for a registered pharmacist to expand his or her business wherever pharmacy services are needed. Furthermore, to allow for greater certainty in business practice, the Bill extends the period of authorisation and licence under sections 45 and 45A of the Act to up to 5 years.
- 1.6 Additionally, the Bill seeks to broaden the availability of medical and dental services by, as a complement to the objectives of the PPP Scheme, empowering general and dental practitioners engaged under the PPP Scheme to supply and dispense medicines approved by the Permanent Secretary for Health and Medical Services, provided the nearest pharmacy is not operating.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on a date or dates appointed by the Minister by notice in the Gazette.
- 2.2 Clause 2 of the Bill amends section 3 of the Act to expand the definition of the term "approved" and insert the definition of the term "Commission", which is the FCCC.
- 2.3 Clause 4 of the Bill amends section 45 of the Act to transfer the business and market control role of the Board to FCCC for grant of authorisation to own or have a proprietary interest in a pharmacy business, to increase the number of pharmacies a registered pharmacist may own from 2 to 5, and to allow for a registered pharmacist to expand his or her business wherever pharmacy services are needed. Clause 4 also corrects minor cross-referencing errors, clarifies ambiguities in section 45 of the Act and extends the period of authorisation to up to 5 years.
- 2.4 Clause 5 of the Bill amends section 45A of the Act to extend the period of a private hospital pharmacy licence from 12 months to up to 5 years.

- 2.5 Clause 6 of the Bill amends the Act to insert a new section 45C, which provides for the transition of the role of pharmacy business and premises authorisation to FCCC. The transitional provision requires all currently authorised pharmacies or licensed private hospitals with an existing authorisation under section 45 or 45A to apply to FCCC for an authorisation one month before the expiry of their authorisation.
- 2.6 Clauses 3, 7 to 14 and 16 of the Bill amend sections 32, 46 to 52 and 103 of the Act to facilitate the amendments proposed in clause 4 of the Bill.
- 2.7 Clause 15 of the Bill amends the Act by inserting a new section 52A to provide for the supply or dispensation of medicines by general and dental practitioners engaged under the PPP Scheme.
- 2.8 Clause 15 of the Bill also amends the Act to provide that such general and dental practitioners may only supply or dispense medicines if the nearest pharmacy is not operating, and the medicines supplied or dispensed are sufficient only for a 24-hour period.
- 2.9 Furthermore, clause 15 of the Bill amends the Act to ensure that when supplying or dispensing medicines, such general and dental practitioners must also provide advice and counsel on the effective and safe use of the medicines.
- 2.10 Moreover, clause 15 of the Bill amends the Act to provide that such general and dental practitioners who supply or dispense medicines while the nearest pharmacy is operating, commit an offence and are liable on conviction to a fine not exceeding \$5,000.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The Act comes under the responsibility of the Minister responsible for health.

A. SAYED-KHAIYUM
Attorney-General