

EXPLANATORY STATEMENT
STATUTORY RULES 2004 NO. 389

Issued by the Authority of the Minister for Health and Ageing

National Health Act 1953

National Health (Pharmaceutical Benefits) Amendment Regulations 2004 (No. 1)

Subsection 140(1) of the *National Health Act 1953* (the Act) provides in part that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *National Health (Pharmaceutical Benefits) Regulations 1960* (the Principal Regulations) provide for matters relating to the Pharmaceutical Benefits Scheme.

The Regulations amend the Principal Regulations to reflect amendments to be made to the Act by Part 3 of Schedule 1 to the *Health Legislation Amendment (Podiatric Surgery and Other Matters) Act 2004* (the Amendment Act). Subsection 2(1) of the Amendment Act provides that Part 3 of Schedule 1 to the Amendment Act will commence on the first day after the period of 6 months beginning on the day the Amendment Act receives the Royal Assent, unless commenced by Proclamation. In effect, the Amendment Act will commence on 13 January 2005.

Part 3 of Schedule 1 to the Amendment Act will make amendments to the Act relating to the Pharmaceutical Benefits Scheme, providing for the continuing supply of pharmaceutical benefits in the event of the death of a pharmacist who was approved under section 90 of the Act to supply pharmaceutical benefits at or from particular premises (an ‘approved pharmacist’).

The purpose of the Regulations is to:

- amend the current definition of *approved pharmacist* in the Principal Regulations to accord with the revised definition of *approved pharmacist* in subsection 84(1) of the Act that will be inserted by the Amendment Act;
- amend regulation 8A of the Principal Regulations to clarify that if the Secretary grants permission to a person to supply pharmaceutical benefits under the new provisions of the Act, the Secretary may allot a number to the approval, consistent with the Secretary’s power to allot a number to an approval granted to a person under section 90 of the Act; and
- make various minor amendments to the Principal Regulations to remove gender-specific language and to modernise the drafting style.

The Act does not specify any conditions that need to be met before the power to make the Regulations may be exercised.

Details of the Regulations are set out in the Attachment.

Subsections 4(1) and (2A) of the *Acts Interpretation Act 1901*, read together, provide that regulations may be made between the passing and commencement of legislation on which they rely for their authority, as long as such regulations do not commence prior to the commencement of that legislation.

The Regulations commence on the commencement of Part 3 of Schedule 1 to the Amendment Act. In effect, the Regulations commence on 13 January 2005.

ATTACHMENT

**DETAILS OF THE NATIONAL HEALTH (PHARMACEUTICAL BENEFITS)
AMENDMENT REGULATIONS 2004 (No. 1).**

Regulation 1 provides for the Regulations to be referred to as the *National Health (Pharmaceutical Benefits) Amendment Regulations 2004 (No. 1)*.

Regulation 2 provides for the Regulations to commence on the commencement of Part 3 of Schedule 1 to the *Health Legislation Amendment (Podiatric Surgery and Other Matters) Act 2004*. In effect, the Regulations commence on 13 January 2005.

Regulation 3 provides for Schedule 1 to amend the *National Health (Pharmaceutical Benefits) Regulations 1960* (the Principal Regulations).

Schedule 1 – Amendments**Item [1]**

This item amends subregulation 5(1) of the Principal Regulations by substituting a revised definition of the term “approved pharmacist” to ensure consistency with the definition of “approved pharmacist” set out in subsection 84(1) of the *National Health Act 1953* (the Act). The note to the item explains that any reference to an “approved pharmacist” includes reference to a person granted permission to supply pharmaceutical benefits under subsection 91(1) of the Act.

Item [2]

This item amends subregulation 8A(1) of the Principal Regulations to bring the provision into accordance with modern drafting style. The substance of the provision is unchanged.

Item [3]

This item inserts a new subregulation 8A(1A) that provides that in circumstances where the Secretary grants permission to a person to supply pharmaceutical benefits under subsection 91(1) of the Act, the Secretary may allot a number to the approval that, under paragraph 91(7)(a) of the Act, is treated as having been granted to the person under section 90 of the Act. This is consistent with the Secretary’s power in subregulation 8A(1) to allot a number to an approval granted under section 90 of the Act.

Item [4]

This item amends subregulation 8A(2) of the Principal Regulations to bring the provision into accordance with modern drafting style. The substance of the provision is unchanged.

Item [5]

This item amends various regulations 8A(1), 8A(2), 15, 19(1)(ca), 19A(2)(b), 24, 26A(2)(b), 27(1), 28(1) and 30 to remove gender-specific language. The substance of these provisions is unchanged.