

## MEDICAL.

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No. 70 of 1985.

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### AN ACT to amend the Medical Act 1894.

[Assented to 15 November 1985.]

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Medical Amendment Act 1985*.

Short title  
and principal  
Act.

(2) In this Act the Medical Act 1894 is referred to as the principal Act.

Reprinted  
as approved  
23 January  
1969 and  
amended by  
Acts Nos. 75  
of 1975, 70  
of 1976, 56  
of 1979, 28 of  
1981 and 28  
of 1984.

Commence-  
ment.

2. The provisions of this Act shall come into operation on such day as is or days as are, respectively, fixed by proclamation.

Section 3  
amended.

3. Section 3 of the principal Act is amended—

(a) by inserting after the section designation “3.” the subsection designation “(1)”;

(b) by repealing the definition of “Board” and substituting the following definition—

“ “Board” means the Medical Board established under section 4; ”;

(c) by inserting before the definition of “Register” the following definition—

“ “member” means—

(a) in relation to the Board, a member of the Board and includes the president;

(b) in relation to a body corporate, a shareholder or a director or a person in accordance with whose directions or instructions the affairs of the body corporate are customarily conducted; ”;

(d) by repealing the definition of “Medical Practitioner” and substituting the following definitions—

“ “medical call service” means any practice, method or arrangement under which a medical practitioner ensures that any person who needs or desires medical attention during the absence of the medical practitioner shall be attended by

another medical practitioner other than a *locom tenens* in the place of the first mentioned medical practitioner;

“medical practitioner” means—

- (a) a person not being a body corporate who is registered under this Act; or
- (b) a body corporate which is registered under this Act; ”;
- (e) by repealing the definition of “Publish” or “advertise”; and
- (f) by inserting after subsection (1) the following subsection—

“ (2) For the purposes of this Act a statement is deemed to be published or advertised if it is—

- (a) inserted in any newspaper or other publication;
- (b) publicly exhibited—
  - (i) in, on, over or under any building, vehicle, or place (whether a public place or private place); or
  - (ii) in the air;
- (c) contained in any document gratuitously sent or delivered to any person or thrown or

left upon premises in the occupation of any person;

(d) made orally to any person;

or

(e) publicly announced by means of transmission of light or sound. ”.

Section 4  
amended.

4. Section 4 of the principal Act is amended—

(a) by repealing subsection (1) and substituting the following subsections—

“ (1) For the purposes of this Act there shall be established a board to be known as the “Medical Board”.

(1a) The Board shall consist of 9 persons as follows—

(a) the Permanent Head, if the Permanent Head is a medical practitioner, or, if the Permanent Head is not a medical practitioner, an officer of the Public Service of the State who is a medical practitioner and is nominated by the Permanent Head;

(b) 5 persons other than bodies corporate appointed by the Minister who are registered medical practitioners under this Act;

(c) 1 person appointed by the Minister who is a legal practitioner;

(d) the Permanent Head of the department principally assisting the Minister charged with the administration of the Consumer Affairs Act 1971 or

an officer of the Public Service of the State nominated by him; and

(e) 1 person appointed by the Minister who is not a medical practitioner. ”;

(b) by repealing subsection (2) and substituting the following subsection—

“ (2) At any meeting of the Board a quorum shall be constituted by 4 members of whom not less than 2 shall be medical practitioners and the Board may act notwithstanding any vacancies. ”; and

(c) by repealing subsection (5) and substituting the following subsections—

“ (5) A member of the Board referred to in subsection (1a) (b), (c) or (e) shall hold office for such period not exceeding 3 years as is fixed in the instrument of appointment of the member.

(6) Where a vacancy in the office of member referred to in subsection (1a) (b), (c) or (e) occurs otherwise than by effluxion of time the vacancy may be filled by the appointment of an eligible person but the person so appointed shall hold office only for the unexpired period of the term of office of the member in whose place that person is appointed.

(7) Notwithstanding that a body corporate may be registered as a medical practitioner under this Act, a body corporate is not—

(a) eligible to be appointed as, or hold office as; or

(b) entitled to nominate, or to vote for, a person to be elected as,

a member of the Board.

(8) A nomination for the purposes of subsection (1a) (a) or (d) may be made from time to time and may be expressed to operate for a period or in such circumstances as are specified in the instrument of nomination. ”.

Section 5  
repealed and  
substituted.

5. Section 5 of the principal Act is repealed and the following section is substituted—

Governor  
may remove  
member.

“ 5. (1) The Governor may remove a member referred to in section 4 (1a) (b), (c) or (e).

(2) A member referred to in section 4 (1a) (b), (c) or (e) may resign from the office of member by notice in writing addressed to the Minister. ”.

Section 6  
amended.

6. Section 6 of the principal Act is amended—

(a) in subsection (1), by inserting after paragraph (d) the following paragraphs—

“ (da) For the control, regulation and prohibition of advertising by medical practitioners.

(db) For the control, regulation and prohibition of medical call services and the standards, terms and conditions that apply in relation to medical call services and the duties and responsibilities that apply to persons engaged in providing medical call services. ”;

- (b) in subsection (3) by deleting “twenty dollars” and substituting the following—

“ \$2 000 ”; and

- (c) by inserting the following subsection—

“ (4) The Governor may make regulations with respect to any matter on which the Board may make rules and where a regulation is inconsistent with a rule the former prevails to the extent of the inconsistency. ”.

7. Section 9 of the principal Act is amended by repealing subsection (3) and substituting the following subsection— Section 9 amended.

“ (3) The Board shall hold its inquiries under this Act in public but where the Board is satisfied that for the purpose of protecting the confidentiality of any matter it is desirable that the proceedings or any part thereof be conducted *in camera*, the Board may make an order to that effect and may include in the order conditions relating to that purpose, and, if such an order is made, the proceedings shall be conducted in accordance with it. ”.

8. Section 10 of the principal Act is amended— Section 10 amended.

- (a) by repealing subsection (1) and substituting the following subsections—

“ (1) For the purposes of this Act, the Registrar shall keep a register of medical practitioners.

(1a) The Registrar shall, at the direction of the Board, and on payment of the prescribed fee—

(a) where a person, not being a body corporate, has the necessary qualifications under this Act register that person by entering his name together with such other particulars as are prescribed under subsection (2); and

(b) where, in relation to a body corporate, the Board approves of the application pursuant to section 11 register that body corporate by entering the name by which it is incorporated and any other name by reference to which it carries on business, together with such other particulars as may be prescribed,

in the register. ”;

(b) in subsection (2), by deleting “a fee not exceeding twenty-five cents” and substituting the following—

“ the prescribed fee ”; and

(c) by repealing subsection (4) and substituting the following subsections—

“ (4) The Board may cause to be made any necessary alterations in the register so as to ensure that the register is kept correctly posted.

(5) The Board may cause the Registrar to send a letter to any person registered under this Act addressed to that person at the address appearing

in the register, and if no answer is received from that person within 2 months after the date of the posting of that letter, the Board may erase the name of that person from the register.

(6) If the name of a person is erased from the register under this section the Board may restore that name to the register if the medical practitioner whose name is so erased—

- (a) applies to the Board in the prescribed form;
- (b) pays the prescribed practice fee;
- (c) pays the prescribed restoration fee;
- (d) pays a fine not exceeding the prescribed amount that may be imposed by the Board for the non-payment of the annual practice fee on or before the date fixed by the rules;
- (e) satisfies the Board that he or she is a person of good fame and character or if requested by the Board produces to the Board his or her certificate of registration. ”.

9. Section 11 of the principal Act is amended— Section 11 amended.

(a) in subsection (1)—

(i) by deleting “a person shall not be entitled” and substituting the following—

“ a natural person shall not be entitled ”;

- (ii) by deleting “, not exceeding fifty dollars,” in paragraph (a); and
- (iii) by deleting “Australian Medical Examining Council” in paragraph (b) (ii) and substituting the following—
  - “ Australian Medical Council ”;
- (b) in subsection (1ca), by deleting “person” and inserting the following—
  - “ natural person ”;
- (c) in subsection (2)—
  - (i) by deleting “Any person” in paragraph (a) and substituting the following—
    - “ Any natural person ”;
  - (ii) by deleting “Australian Medical Examining Council” in paragraph (a) and substituting the following—
    - “ Australian Medical Council ”;
  - (iii) by deleting “person” in paragraph (aa) and substituting the following—
    - “ natural person ”;
  - (iv) by deleting “person” in paragraph (b) and substituting the following—
    - “ natural person ”;
  - (v) by deleting “person who appears in person before the Board and” in paragraph (c) and substituting the following—
    - “ natural person who ”; and

(d) by inserting the following subsections—

“ (3) Subject to this section, a person, being a body corporate, may at the discretion and direction of the Board be registered as a medical practitioner under this Act if it is proved to the satisfaction of the Board that the body corporate—

(a) is composed entirely of members, not being bodies corporate, who are registered under this Act; or

(b) comprises 2 members, neither of whom is a body corporate, of whom one is entitled to be registered under this Act and the other is a person who is in the opinion of the Board of good fame and character.

(4) A body corporate is not eligible to be registered as a medical practitioner under this section unless in the opinion of the Board—

(a) it has a place of business within the State and the Board is satisfied that the principal executive officer of the corporation is a medical practitioner;

(b) the control of the affairs of the body corporate is vested in a medical practitioner registered under this Act;

(c) any member of the body corporate who is not a medical practitioner holds shares in the body corporate only for the benefit of a member who is a medical practitioner;

- (d) the Board is satisfied that the power of persons to exercise, or to control the exercise of, the rights to vote attached to shares in the body corporate or to dispose of, or to exercise control over the disposal of, such shares is such that the personal supervision and management of the affairs of the body corporate cannot become vested in a person who is not a medical practitioner;
- (e) full personal professional responsibility for the conduct of the affairs of the body corporate in relation to the practice of medicine remains an obligation of each member who is a medical practitioner and no person, other than a medical practitioner has authority over professional matters;
- (f) proper and adequate provision is made for disclosure to the Board of the affairs of the body corporate, on request in writing by the Board to any member who is a medical practitioner, or an undertaking to that effect is given to and accepted by the Board;
- (g) the members are properly and adequately covered by professional indemnity insurance, or capital or other security is maintained, in an amount thought by the Board to be sufficient to offer adequate

protection to the public, for acts or omissions on the part of the member, the body corporate or any employees giving rise to a claim for compensation or damages;

- (h) the memorandum and articles of association of the body corporate are acceptable to the Board and contain a provision that the Board be notified of any intention to amend that memorandum or articles and be furnished with a copy of any proposed resolution or other form of proposal to give effect to that intention; and
- (i) there are no grounds upon which the application ought to be refused.

(5) Any civil liability in connection with the practice of medicine incurred by a body corporate that is a registered medical practitioner under this Act is enforceable jointly and severally against the body corporate and any person who at the time that the liability was incurred, was the medical practitioner in question.

(6) In relation to a body corporate, the Board may impose conditions as to the registration or restriction on the practice of medicine, and failure to comply with any such condition or restriction may be taken to constitute improper conduct in a professional respect. ”.

Section 12  
amended.

10. Section 12 of the principal Act is amended—

(a) in subsection (1) by deleting “or surgical services” and substituting the following—

“ , surgical services or any branch of medicine or surgery that is declared by Order in Council under section 11A (1) to be a speciality ”; and

(b) in subsection (2)—

(i) by inserting after “area” the following—

“ or hospital ”;

(ii) by deleting “person” and substituting the following—

“ natural person ”;

(iii) by deleting “in some part of the British Empire or some other country” in paragraph (a) and substituting the following—

“ not being a school of medicine referred to in section 11 ”;

(iv) by deleting “in such part or country” in paragraph (a) (i) and substituting the following—

“ under the laws of the country in which it is situate ”; and

(v) by deleting “some part of the British Empire or some other” in paragraph (a) (ii) and substituting the following—

“ that ”.

11. Section 12A of the principal Act is amended in subsection (1) by inserting after "surgical service" the following— Section 12A  
amended.

“ or any branch of medical or surgical service that is declared a speciality under section 11A(1) ”.

12. Section 12B of the principal Act is amended in subsection (1) by deleting "When a person" and substituting the following— Section 12B  
amended.

“ When a natural person ”.

13. Section 13 of the principal Act is amended— Section 13  
amended.

(a) by repealing subsections (1) to (6) and substituting the following subsections—

“ (1) Where it appears to the Board that a medical practitioner, not being a body corporate, may be—

(a) guilty of infamous or improper conduct in a professional respect;

(b) affected by a dependence on alcohol or addiction to any deleterious drug;

(c) guilty of gross carelessness or incompetency;

(d) guilty of not complying with or contravening a condition or restriction imposed by the Board with respect to the practice of medicine by that medical practitioner; or

- (e) suffering from physical or mental illness to such an extent that his or her ability to practise as a medical practitioner is or is likely to be affected,

the Board shall hold an inquiry into the matter.

(2) Where it appears to the Board that a medical practitioner or a person who is a member of a body corporate that is registered as a medical practitioner under this Act has been convicted of an offence in this State or elsewhere that in the opinion of the Board renders that person, or would, if that person were a medical practitioner, render that person, unfit to practise as a medical practitioner the Board may without an inquiry order the suspension of the registration of the medical practitioner or the removal of the name of the medical practitioner from the register.

(3) Where after an inquiry the Board is satisfied in relation to a matter referred to in subsection (1) (a), (b), (c) or (d) with respect to a medical practitioner the Board may by order impose any one or more of the following penalties, namely—

- (a) remove the name of the medical practitioner from the register;
- (b) suspend the registration of the medical practitioner for such period not exceeding 12 months as is specified in the order;

- (c) a fine not exceeding \$10 000;
- (d) a reprimand.

(4) Notwithstanding subsection (2) or (3), the Board may, in lieu of imposing a punishment referred to in subsection (2) or (3) (a) or (b) on a medical practitioner, require the medical practitioner to give a written undertaking to be of good behaviour for such period as the Board thinks fit and to comply, during that period, with such restrictions or conditions, or both, if any, relating to the practice of medicine and training for that practice as the Board thinks fit.

(5) The Board shall for the purposes of an inquiry relating to a matter referred to in subsection (1) (e) obtain a preliminary report from a medical practitioner.

(6) The Board shall give the medical practitioner concerned reasonable notice of the time and place of any inquiry to be held under subsection (1) and shall afford the medical practitioner reasonable opportunity to call or give evidence and cross-examine witnesses and to make submissions.

(6a) If the medical practitioner to whom notice has been given pursuant to subsection (6) does not attend at the time and place fixed by the notice, the Board may conduct the inquiry in the absence of the medical practitioner.

(6b) The Board may appoint a legal practitioner to appear in the inquiry to assist the Board.

(6c) A medical practitioner may be represented by a person other than a legal practitioner.

(6d) A person other than a legal practitioner shall not demand or receive any fee or reward for representing a party in an inquiry by the Board.

Penalty: \$500.

(6e) A person authorized by or under this Act to appear before the Board for the purposes of representing a medical practitioner has the same protection and immunity as a barrister has in appearing for a party in proceedings before the Supreme Court and, where the person so authorized is a barrister or solicitor, he or she is subject to the same liabilities as he or she would be in appearing before that Court.

(6f) Where pursuant to subsection (5) the Board receives a report that the physical or mental health of a medical practitioner is affected to such an extent that his or her ability to practise as a medical practitioner is affected or is likely to be affected the Board may direct the medical practitioner to submit himself or herself within the time specified by the Board to an examination by—

- (a) 1 medical practitioner appointed by the Board and 1 medical practitioner nominated by the medical practitioner in question; or

- (b) if the medical practitioner in question fails to nominate a medical practitioner for the purposes of paragraph (a), by 2 medical practitioners appointed by the Board.

(6g) Where after receiving the reports referred to in subsection (6f) the Board is satisfied that the medical practitioner in respect of whom the reports are made is suffering from physical or mental illness to such an extent that his or her ability to practise as a medical practitioner is or is likely to be affected, the Board may—

- (a) remove the name of the medical practitioner from the register;
- (b) suspend the registration of the medical practitioner; or
- (c) impose restrictions or conditions or both on the practice of medicine by the medical practitioner.

(6h) Where a medical practitioner fails to submit himself or herself for examination pursuant to subsection (6f) within the time specified by the Board, the registration of the medical practitioner shall by force of this subsection be suspended until—

- (a) the medical practitioner submits himself or herself for examination as directed by the Board; and
- (b) the Board has received reports from each of the medical practitioners who have conducted the examination as required by subsection (6f).

(6i) The Board may make such order as to the payment of the costs of the inquiry by the medical practitioner into whose conduct the inquiry has been held as the Board thinks fit. ”;

(b) by inserting after subsection (9c) the following subsection—

“ (9d) The Board may exercise its powers under this section in relation to any matter referred to in subsection (1) (a), (b), (c) or (d) notwithstanding the fact that at the time that it commences an inquiry under this section the person the subject of the inquiry has ceased to be registered as a medical practitioner. ”; and

(c) by repealing subsection (10).

Section 13A  
inserted.

14. After section 13 of the principal Act the following section is inserted—

Medical  
practitioner  
struck off  
or suspended  
in another  
State or  
Territory.

“ 13A. Where the Board is satisfied that a person who is registered as a medical practitioner under this Act has been suspended or that his or her name has been erased from the register of medical practitioners under the laws of another State or Territory of the Commonwealth, the Board may, without further inquiry, suspend the medical practitioner or erase the name of the medical practitioner from the register, as the case may be. ”.

Section 14  
amended.

15. Section 14 of the principal Act is amended by deleting “May” and substituting the following—

“ June ”.

16. Section 16A of the principal Act is amended— Section 16A amended.

(a) in subsection (1)—

(i) by repealing paragraph (a) and substituting the following paragraphs—

“ (a) Subject to this section, there shall be paid to the Board annually in advance by all persons registered under this Act and practising in this State such practice fee as is prescribed.

(aa) Where a person commences practice as a medical practitioner or specialist, after 30 June in any year, the practice fee payable under paragraph (a) shall be only one-half the fee prescribed for the purposes of that provision. ”; and

(ii) in paragraph (b) by deleting the penalty provision and substituting the following—

“ Penalty: For a first offence, \$500, and for a subsequent offence \$1 000 or imprisonment for 6 months or both. ”;

and

(b) in subsection (2), by inserting after “Board of” the following—

“ the prescribed fee, ”.

17. Section 19 of the principal Act is amended Section 19 amended. by deleting the penalty provision and substituting the following—

“ Penalty: For a first offence, \$1 000, and for a subsequent offence \$5 000 or imprisonment for 6 months or both. ”.

Section 20  
amended.

18. Section 20 of the principal Act is amended by deleting "twenty dollars" and substituting the following—

" \$1 000 ".

Section 21A  
amended.

19. Section 21A of the principal Act is amended in subsection (1) by deleting the penalty provision and substituting the following—

" Penalty: For a first offence, \$1 000, and for a subsequent offence imprisonment for 6 months. ".

Section 21B  
amended.

20. Section 21B of the principal Act is amended in subsection (2) by deleting "Twenty dollars" and substituting the following—

" \$1 000 ".

Section 21C  
substituted.

21. Section 21C of the principal Act is repealed and the following section is substituted—

" 21C. Except in an emergency, a medical practitioner shall not—

(a) administer a general anaesthetic to a patient on whom the medical practitioner is operating;

or

(b) cause or permit any person other than another medical practitioner to administer a general anaesthetic to such a patient.

Penalty: \$1 000. ".

Restriction  
on admin-  
istration of  
anaesthetics  
in certain  
cases.

Sections  
21CA to 21CD  
inserted.

22. After section 21C of the principal Act the following sections are inserted—

Approval for  
medical call  
services.

" 21CA. (1) On and after the appointed day a person shall not establish or conduct a medical call service unless that person is the holder of a certificate of approval for the medical call service.

Penalty: \$1 000.

(2) A person who desires to obtain a certificate of approval referred to in subsection (1) shall apply to the Board in the form of a form approved by the Board.

(3) The Board shall not issue a certificate of approval referred to in subsection (1) unless the Board is satisfied that—

- (a) the applicant is a fit and proper person or where the applicant is a body corporate the natural persons who manage and control the body corporate are fit and proper persons;
- (b) the applicant or where the applicant is a body corporate each person who manages and controls the body corporate, has the ability to properly manage and provide a medical call service;
- (c) the applicant or where the applicant is a body corporate, each person who manages or controls the body corporate, understands the duties and obligations imposed on him or her in relation to the conduct and management of a medical call service;
- (d) a person who is a medical practitioner is nominated by the applicant as the person responsible for the direction of medical aspects of the services provided by the medical call service;
- (e) the medical services provided by the medical call service are provided only by a person who is a medical practitioner; and
- (f) the prescribed fee has been paid.

(4) The Board may approve a medical call service subject to such conditions, restrictions and prohibitions as it specifies in its approval.

(5) An approval to establish and conduct a medical call service remains in force until 31 December next following from the date of the grant thereof unless it is sooner cancelled or suspended by the Board.

(6) A person to whom an approval is granted may apply for the renewal of the approval in accordance with the rules.

(7) An application under subsection (6) shall be in the form of a form approved by the Board and shall be accompanied by the prescribed fee.

(8) A person who is aggrieved by a decision of the Board not to issue a certificate of approval or to impose any condition, restriction or prohibition in any approval given by the Board under this section may within 30 days of that decision appeal to the District Court in accordance with the rules of court.

(9) In subsection (1)—

“appointed day” means a day fixed by the Board by notice published in the *Government Gazette* for the purposes of subsection (1).

Register of  
medical call  
services.

21CB. The Board shall maintain a register of medical call services established and conducted under this Act.

Changes to  
be notified.

21CC. (1) Where any change occurs in the particulars submitted in an application for the grant of an approval to establish and conduct a medical call service or for the renewal of an approval the person to whom the approval is granted shall notify the Board.

(2) A person who fails to comply with subsection (1) commits an offence.

Penalty: \$1 000.

21CD. (1) The Board shall cancel or suspend a certificate of approval given under section 21CA if the Board is satisfied that—

Cancellation  
and  
suspension of  
approval.

- (a) the name of the medical practitioner responsible for the direction of medical aspects of the services provided by the medical call service is removed from the register or the registration of the medical practitioner is suspended under this Act;
- (b) the medical call service is not provided in an efficient and reliable manner;
- (c) the medical call service is provided in a manner that does not conform to, or that contravenes, the rules;
- (d) any person who manages or controls the medical call service who is not a medical practitioner is not a fit and proper person or is guilty of conduct that would, if that person were a medical practitioner, constitute infamous or improper conduct in a professional respect; or
- (e) any matter prescribed in the rules for the purposes of this paragraph has been proved.

(2) Where the Board suspends or cancels an approval under this section a person shall not conduct or operate the medical call service in question.

Penalty: \$1 000.

(3) A person who is aggrieved by a decision of the Board under subsection (1) may within 30 days of the decision appeal to the District Court in accordance with the rules of court.

(4) Where the Board cancels or suspends a certificate of approval given under section 21CA the person who manages or controls the medical call service shall return the certificate of approval to the Board within 7 days of the date of the decision of the Board.

(5) A person who fails to comply with subsection (4) commits an offence.

Penalty: \$1 000. ”.

Section 24  
inserted.

23. After section 23 of the principal Act the following section is inserted—

Review  
of Act.

“ 24. (1) The Minister shall carry out a review of the operation of this Act as soon as is practicable after 1 January 1991 and every 5th anniversary of that day and in the course of such review the Minister shall consider—

- (a) the attainment of the objects of this Act;
- (b) the administration of this Act;
- (c) the effectiveness of the operations of the Board;
- (d) the need for the continuation of the Board; and
- (e) such other matters as appear to the Minister to be relevant.

(2) The Minister shall prepare a report based on the review referred to in subsection (1) and shall, as soon as is practicable after its preparation, cause the report to be laid before each House of Parliament. ”.

24. (1) A person who immediately before the day that section 4 of this Act comes into operation was a member of the Medical Board constituted under the principal Act as in force before that day continues in office after that day for the remainder of the term of office of member as specified in the instrument of the appointment of that person as member under the principal Act as in force before that day but subject to the provisions of the principal Act as in force after that day.

Savings and  
transitional.

(2) A person who has passed an examination referred to in section 11 (1) (b) (ii) or (2) (a) of the principal Act as in force before the date of the coming into operation of section 9 (a) (iii) and (c) (ii) of this Act shall be deemed to have satisfied the requirements of section 11 (1) (b) (ii) or (2) (a), as the case requires, of the principal Act as in force after that date.

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