

Western Australia

## **Medical Practitioners Act 2008**



## Medical Practitioners Act 2008

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Western Australia

## **Medical Practitioners Act 2008**

**An Act to —**

- **provide for the regulation of the practice of medicine and registration of persons as medical practitioners; and**
- **repeal the *Medical Act 1894*; and**
- **make consequential amendments to various Acts, and for related purposes.**

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Medical Practitioners Act 2008*.

### **2. Commencement**

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed for different provisions.

Note: Under the *Interpretation Act 1984* section 22, this section and section 1 come into operation on the day on which this Act receives the Royal Assent.

### **3. Objects of Act**

The objects of this Act are —

- (a) to ensure that only properly qualified and competent persons practise medicine and to regulate the practice of medicine by those persons; and
- (b) to establish, maintain and promote suitable standards of knowledge and skills among medical practitioners,

for the purpose of protecting consumers of medical services provided by medical practitioners in Western Australia.

### **4. Terms used in this Act**

In this Act, unless the contrary intention appears —

***approved*** means approved by the Board in writing;

***assessor*** means a person or persons appointed under section 106;

***Board*** means the Medical Board of Western Australia established by section 6;

***certificate of registration*** means a certificate of registration issued under section 50;

**committee** means a committee established by the Board under this Act;

**competency matter** means a matter referred to in section 77;

**complainant** means a person who lodges a complaint under section 83(1) or (2);

**complaint** means —

- (a) a complaint lodged under section 83(1) or (2); and
- (b) a matter the Board has determined under section 83(3) to deal with as if it were the subject of a complaint; and
- (c) a matter referred to the impairment review committee under section 98(3); and
- (d) a complaint referred to the Board by the Director under the *Health Services (Conciliation and Review) Act 1995* section 31 or 43(3);

**complaints assessment committee** means the committee established under section 79;

**condition** includes restriction;

**Corporations Act** means the *Corporations Act 2001* of the Commonwealth;

**corresponding law** means a law of another State or a Territory —

- (a) that provides for the registration of medical practitioners; and
- (b) is prescribed by the regulations to be a corresponding law for the purposes of this Act;

**criminal record check** means a document issued by the Australian Federal Police or another body or agency approved by the Board that sets out the criminal convictions of an individual for offences under the law of Western Australia, the Commonwealth, another State or a Territory;

**defence force medical officer** means a person taken to be registered under section 65(1) or 66(2);

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**Director** means the Director of the Office of Health Review under the *Health Services (Conciliation and Review) Act 1995*;

**disciplinary matter** means a matter referred to in section 76(1);

**document** includes any tape, disc or other device or medium on which information is recorded or stored;

**impairment** means —

- (a) mental disability; or
- (b) injury; or
- (c) physical illness;

**impairment matter** means a matter referred to in section 78;

**impairment review committee** means the committee established under section 81;

**interstate practitioner** means a person taken under section 68 to be registered under section 30 or 38;

**investigator** means a person appointed under section 90(1);

**medical practitioner** means a person who is registered;

**medical student** means a person enrolled in a course of medical study at a medical school in this State accredited by the Australian Medical Council;

**medicine** includes surgery;

**member of the Board** includes a person acting under Schedule 1 clause 3;

**officer**, in relation to a body corporate, has the meaning given to “officer of a corporation” in the Corporations Act section 9 but does not include an employee of the body corporate unless the employee is concerned in the management of the body corporate;

**presiding member** means the presiding member of the Board referred to in section 8;

**professional standards committee** means the committee established under section 80;

**register** means the register referred to in section 48;



**registered** means registered by the Board under this Act;

**registrar** means the person engaged or employed to be the registrar under section 18;

**registration** includes renewal of registration;

**regulatory authority** —

- (a) in relation to this State, means the Board or the State Administrative Tribunal; and
- (b) in relation to another State or a Territory, means a person or body whose functions under a corresponding law of that State or Territory correspond closely to the functions of the Board or the State Administrative Tribunal under this Act;

**respondent** means a person the subject of a complaint;

**sexual misconduct** means —

- (a) sexual intercourse or other forms of physical sexual relations between a medical practitioner and a patient; or
- (b) touching of a sexual nature, of a patient by a medical practitioner; or
- (c) behaviour or remarks of a sexual nature by a medical practitioner towards a patient;

**specialist** means a person who is registered under section 38;

**speciality** means a branch of medicine prescribed under section 37(1) to be a specialty.

## **5. Application**

- (1) This Act, does not apply to, or in respect of, or in any way affect the practice of a person's profession as —
  - (a) a chiropractor registered under the *Chiropractors Act 2005*; or
  - (b) a dentist registered under the *Dental Act 1939*; or
  - (c) a dental prosthetist registered under the *Dental Prosthetists Act 1985*; or

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- (d) a medical radiation technologist registered under the *Medical Radiation Technologists Act 2006*; or
  - (e) an enrolled, nurse practitioner, registered nurse or midwife registered under the *Nurses and Midwives Act 2006*; or
  - (f) an occupational therapist registered under the *Occupational Therapists Act 2005*; or
  - (g) an optometrist registered under the *Optometrists Act 2005*; or
  - (h) an osteopath registered under the *Osteopaths Act 2005*; or
  - (i) a physiotherapist registered under the *Physiotherapists Act 2005*; or
  - (j) a podiatrist registered under the *Podiatrists Registration Act 2005*; or
  - (k) a psychologist registered under the *Psychologists Act 2005*.
- (2) A reference in subsection (1) to an Act (the ***new Act***) that will replace another Act (the ***old Act***) is to be taken to be a reference to the old Act until the old Act is repealed by the new Act.

## **Part 2 — Medical Board and committees**

### **Division 1 — The Board**

#### **6. Board established**

- (1) A body called the Medical Board of Western Australia is established.
- (2) The Board —
  - (a) is a body corporate; and
  - (b) has perpetual succession and a common seal; and
  - (c) may sue and be sued in its corporate name.
- (3) The Board does not represent, and is not an agent of, the Crown.

#### **7. Membership of Board**

- (1) In this section —  
*medical practitioner* does not include an interstate practitioner or a defence force medical officer.
- (2) The Board consists of 12 members appointed by the Minister, of whom —
  - (a) 6 are to be medical practitioners; and
  - (b) one is to be a medical practitioner who is a member of the full-time academic staff of a university in this State with a medical school accredited by the Australian Medical Council; and
  - (c) one is to be a person nominated by the chief executive officer who is —
    - (i) a medical practitioner; and
    - (ii) a public service officer, as defined in the *Public Sector Management Act 1994* section 3(1), or employed on the salaried staff of a public

authority, as defined in the *Industrial Relations Act 1979* section 7(1);

and

- (d) one is to be the chief executive officer of the department principally assisting the Minister in the administration of the *Consumer Affairs Act 1971* or an officer of the Public Service of the State nominated by that chief executive officer; and
  - (e) 2 are to be persons who have knowledge of and experience in representing the interests of consumers; and
  - (f) one is to be a legal practitioner as defined in the *Legal Practice Act 2003* section 3.
- (3) Each member of the Board is to be a natural person.

**8. Presiding member and deputy presiding member**

The presiding member and the deputy presiding member of the Board are to be elected by the Board from amongst its members.

**9. Constitution and proceedings**

Schedule 1 has effect with respect to the constitution and proceedings of the Board.

**10. Remuneration**

A member of the Board, or of a committee, is to be paid such remuneration and allowances (if any) as the Minister, on the recommendation of the Minister for Public Sector Management, determines from time to time.

**Division 2 — Functions and powers**

**11. Functions of Board**

The functions of the Board are as follows —

- (a) to advise the Minister on matters to which this Act applies;

- (b) to administer the scheme of registration under Part 4;
- (c) to perform functions in relation to disciplinary, competency and impairment matters under Part 6;
- (d) to support and promote public education in relation to the practice of medicine and the rights and duties of medical practitioners;
- (e) to monitor and support the development of standards for the registration of medical practitioners and the assessment of qualifications for registration under this Act;
- (f) to promote and encourage —
  - (i) the continuing education of medical practitioners in the practice of medicine; and
  - (ii) increased levels of skill, knowledge and competence in the practice of medicine;
- (g) to perform other functions that are conferred on the Board under this Act or any other Act.

**12. Powers**

The Board has all the powers it needs to perform its functions.

**13. Delegation by Board**

- (1) The Board may delegate any power or duty of the Board under another provision of this Act, other than those referred to in the Table to this subsection, to —
  - (a) a member of the Board; or
  - (b) a committee; or
  - (c) a member of a committee.

**Table**

s. 30	s. 38	s. 86	s. 99
s. 31	s. 39	s. 87	s. 103
s. 33	s. 46	s. 97	s. 109
s. 34	s. 47	s. 98	

- (2) The delegation must be in writing executed by the Board.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Board to perform a function through the registrar or any other member of staff or an agent.

**Division 3 — Relationship of Board with Minister**

**14. Directions by Minister**

- (1) Subject to subsection (2), the Minister may, after consulting with the Board, give directions in writing to the Board with respect to the performance of its functions either generally or in relation to a particular matter, and the Board is to give effect to any such direction.
- (2) The Minister must not under subsection (1) direct the Board with respect to the performance of its functions in respect of —
  - (a) a particular person; or
  - (b) a particular qualification; or
  - (c) a particular application, complaint or proceeding.

- (3) The text of a direction given under subsection (1) must be —
- (a) laid before each House of Parliament within 14 sitting days of that House after the direction is given; and
  - (b) included in the annual report submitted by the Board under section 28(1).

**15. Minister to have access to information**

- (1) In this section —  
**information** means information specified, or of a description specified, by the Minister that relates to the functions of the Board.
- (2) The Minister is entitled —
- (a) to have information in the possession of the Board; and
  - (b) if the information is in or on a document, to have, and make and retain copies of, that document.
- (3) For the purposes of subsection (2) the Minister may —
- (a) request the Board to furnish information to the Minister; or
  - (b) request the Board to give the Minister access to information; or
  - (c) for the purpose of paragraph (b), make use of the staff of the Board to obtain the information and furnish it to the Minister.
- (4) The Board is to comply with a request under subsection (3) and make its staff and facilities available to the Minister for the purposes of subsection (3)(c).
- (5) The Minister is not entitled to have information under this section in a form that —
- (a) discloses the identity of a person involved in a particular application, complaint, investigation or other proceeding; or

- (b) might enable the identity of any such person to be ascertained,

unless that person has consented to the disclosure.

#### **Division 4 — Committees**

#### **16. Committees**

- (1) In addition to the complaints assessment committee, the professional standards committee and the impairment review committee, the Board may from time to time establish any other committee.
- (2) The Board may —
  - (a) determine the functions, membership and constitution; and
  - (b) appoint such members and other persons as it thinks fit to be members; and
  - (c) give directions with respect to the functions and procedures,of a committee established under this section.
- (3) A committee is to comply with a direction given to it under subsection (2)(c).
- (4) At the request of the Board, a committee established under this section is to report on the performance of its functions to the Board, in accordance with the Board's request.

#### **17. Provisions relating to committees**

- (1) Each member of a committee is to be a natural person.
- (2) The Board may remove a person from membership of a committee and may reconstitute or discharge a committee established by the Board.



- (3) A committee is to ensure that an accurate record is kept and preserved of the proceedings of each meeting of the committee and of each resolution passed by the committee.
- (4) Subject to this Act, a committee may determine its own procedures.
- (5) A person with special knowledge or experience may be invited to act in an advisory capacity to a committee if the committee is of the opinion that the person will assist the committee in the performance of its functions and the Board has approved the invitation.

### **Division 5 — Registrar and other staff**

#### **18. Registrar**

- (1) The Board is to engage or employ a person to be the registrar.
- (2) The registrar has the functions that are conferred by this Act or that the Board directs the registrar to perform.
- (3) The registrar may delegate to a person engaged or employed by the Board any power or duty of the registrar under another provision of this Act.
- (4) The delegation must be in writing executed by the registrar.
- (5) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (6) A delegate exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (7) The registrar is not to be employed under the *Public Sector Management Act 1994* Part 3.

**19. Other staff**

- (1) The Board may engage or employ persons to provide such professional, technical or other assistance that the Board considers necessary to enable it or a committee to perform its functions.
- (2) A person referred to in subsection (1) is not to be employed under the *Public Sector Management Act 1994* Part 3.

**20. Use of other government staff etc.**

- (1) The Board may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee —
  - (a) in the Public Service; or
  - (b) in a State agency or instrumentality; or
  - (c) otherwise in the service of the Crown in right of the State.
- (2) The Board may by arrangement with —
  - (a) a department of the Public Service; or
  - (b) a State agency or instrumentality,make use of any facilities of the department, agency or instrumentality.
- (3) An arrangement under subsection (1) or (2) is to be made on such terms as are agreed to by the parties.

**Division 6 — General**

**21. Duty not to make improper use of information**

A member or former member of the Board, a member or former member of a committee or a person referred to in section 17(5) must not, whether within or outside the State, make improper use of information acquired by virtue of that position to gain,

directly or indirectly, an advantage for himself or herself or for any other person.

Penalty: a fine of \$5 000.

**22. Meetings**

- (1) Subject to this section, a meeting of the Board is to be closed to members of the public.
- (2) Despite subsection (1), the Board may, of its own initiative or on the application of any person, order that in any particular case a meeting, or part of a meeting, of the Board is open to members of the public.

**23. Execution of documents by Board**

- (1) The Board is to have a common seal.
- (2) A document is duly executed by the Board, if —
  - (a) the common seal of the Board is affixed to it in accordance with subsections (3) and (4); or
  - (b) it is signed on behalf of the Board by a person or persons authorised by the Board to do so under subsection (5).
- (3) The common seal of the Board is not to be affixed to any document except as authorised by the Board.
- (4) The common seal of the Board is to be affixed to a document in the presence of 2 members of the Board and each of them is to sign the document to attest that the common seal was so affixed.
- (5) The Board may, by writing under its seal, authorise —
  - (a) a member or members of the Board; or
  - (b) a member or members of staff,

to sign documents on behalf of the Board, either generally or subject to such conditions as are specified in the authorisation.

- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.
- (7) When a document is produced bearing a seal purporting to be the common seal of the Board, it is to be presumed that the seal is the common seal of the Board until the contrary is shown.

**24. Recovery of penalties, costs and expenses required to be paid to the Board**

A penalty or any costs or expenses required to be paid to the Board under this Act is recoverable by the Board in a court of competent jurisdiction as a debt due to the Board.

## **Part 3 — Finance and reports**

### **25. Funds of the Board**

- (1) The funds of the Board consist of —
  - (a) fees received by the Board; and
  - (b) grants (if any) by the State, and all gifts and donations made to the Board, but subject to any trusts declared in relation to the grants, gifts or donations; and
  - (c) penalties, costs and expenses received under section 24 or required to be paid under section 123; and
  - (d) other money or property lawfully received by the Board in connection with the performance of its functions.
  
- (2) The funds of the Board may be applied —
  - (a) for the purposes of the administration and enforcement of this Act, including the remuneration of members of the Board and committees and of the registrar and other persons engaged or employed by the Board; and
  - (b) for the payment of examinations and reports in accordance with section 101(4); and
  - (c) for the furtherance of education, including public education, and research in relation to the practice of medicine; and
  - (d) by way of contribution to the Australian Medical Council and other professional bodies for medical practitioners for the development by that Council or body of professional standards; and
  - (e) for any other purpose that the Board may recommend and the Minister may approve to enable the Board to perform its functions.

### **26. Accounts**

- (1) The Board is to cause to be kept proper accounts and records of the transactions and affairs of the Board and is to prepare

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financial statements in accordance with Australian Accounting Standards.

- (2) The financial statements are to be prepared on an accrual basis unless the Board determines otherwise.

**27. Audit**

The accounts and financial statements of the Board are to be audited at least once a year, at the expense of the Board, by the Auditor General.

**28. Annual report and other reports**

- (1) The Board, not later than 30 September in each year, is to make and submit to the Minister an annual report of its proceedings for the preceding year ending on 30 June together with a copy of its financial statements for that year and the auditor's report on those statements.
- (2) The Board's annual report is to include details of —
- (a) the number, nature and outcome of —
    - (i) complaints made, taken to be made or referred under this Act during the year to which the report relates; and
    - (ii) investigations and proceedings undertaken under this Act during the year to which the report relates; and
    - (iii) matters that have been brought before the State Administrative Tribunal by the Board during the year to which the report relates;
  - and
  - (b) the number and nature of matters referred to in paragraph (a) that are outstanding; and
  - (c) the text of a direction given to the Board under section 14(1) or 146(4); and

- (d) any reasons given to the Board by the Minister under section 146(5); and
  - (e) any trends or special problems that may have emerged; and
  - (f) forecasts of the workload of the Board in the year after the year to which the report relates; and
  - (g) any proposals for improving the operation of the Board.
- (3) The Minister is to cause a copy of the Board's annual report and financial statements and of the auditor's report submitted under subsection (1) to be laid before each House of Parliament within 14 sitting days of that House after receipt of the report by the Minister.
- (4) Within 30 days after the end of the months of March, June, September and December the Board is to prepare a report containing the following information for the preceding 3 months —
- (a) the number, nature and outcome of complaints;
  - (b) the number and nature of matters referred to in paragraph (a) that are outstanding;
  - (c) the major items of business discussed by the Board or a committee;
  - (d) the resolutions passed by the Board or a committee.
- (5) The Board is to ensure that, after subsections (3) and (4) have been complied with, copies of the reports and statements referred to in those subsections are available on request for inspection at its principal place of business.
- (6) If a direction is in force under section 121(1), any matter that must not be published under that direction must not be disclosed in a report under subsection (2) or (4).

## **Part 4 — Registration of medical practitioners**

### **Division 1 — Registration**

#### **29. Natural persons may be registered**

Registration under this Act may be granted only to a natural person.

#### **30. General registration**

- (1) The Board is to register an applicant as a medical practitioner if satisfied that the applicant has —
  - (a) complied with the requirements of subsection (2); and
  - (b) paid the registration fee, if any, prescribed by the regulations.
- (2) The requirements for registration are that the applicant —
  - (a) is a fit and proper person to be registered as a medical practitioner; and
  - (b) has not been convicted of an offence the nature of which renders the person unfit to practise medicine; and
  - (c) is competent to practise medicine (that is, the person has sufficient physical capacity, mental capacity and skill to practise medicine); and
  - (d) has a sound knowledge of the English language and possesses sufficient skill in the expression of that language, both written and oral, for the practice of medicine; and
  - (e) has a recognised medical qualification; and
  - (f) has successfully completed a period of internship or supervised clinical practice approved by the Board in writing or prescribed by the rules.



- (3) For the purposes of subsection (2)(e) a person has a recognised medical qualification if the person —
- (a) is a graduate of a medical school accredited by the Australian Medical Council; or
  - (b) has successfully completed examinations held by that Council for the purposes of registration as a medical practitioner; or
  - (c) is certified by that Council as having a qualification that is substantially equivalent to a qualification referred to in paragraph (a) or has successfully completed examinations that are substantially equivalent to those referred to in paragraph (b); or
  - (d) has been certified by the Council as having skills, knowledge and training of a standard suitable for registration.
- (4) The entitlement to registration of a person referred to in subsection (1) is an entitlement to general registration.
- (5) The Board may, by written notice to a medical practitioner, impose such conditions on registration under subsection (1) as the Board reasonably requires to ensure the competent and safe practice of medicine by the medical practitioner.
- (6) A condition imposed under subsection (5) may apply indefinitely or for a period of time specified by the Board in the written notice.
- (7) Subject to section 39, the Board may, on its own motion or on the application of a person the subject of a condition imposed under this section, on reasonable grounds, revoke or vary the condition.

**31. Conditional registration for internship or supervised clinical practice**

- (1) The Board may grant a person conditional registration as a medical practitioner if the Board is satisfied that the person —
  - (a) meets the requirement of section 30(2)(a), (b), (c), (d) and (e) but does not meet the requirements of section 30(2)(f); and
  - (b) has paid the registration fee, if any, prescribed by the regulations.
- (2) The Board may grant a person conditional registration as a medical practitioner if the Board is satisfied that the person —
  - (a) meets the requirements of section 38(3)(a), (b), (c), (d) and (e) but does not meet the requirement of section 38(3)(f); and
  - (b) has paid the registration fee, if any, prescribed by the regulations.
- (3) The Board may impose such conditions on registration under subsection (1) or (2) as the Board reasonably requires for the purpose of enabling the person to complete a period of internship or supervised clinical practice and specifies by written notice given to the person.
- (4) The Board may at any time cancel a conditional registration under this section.
- (5) The Board may, on its own motion or on the application of a person the subject of a condition imposed under this section, on reasonable grounds, revoke or vary the condition.

**32. Provisional registration**

- (1) The registrar or any member of the Board may register an applicant provisionally under section 30, 31, 34 or 38 if satisfied that —
  - (a) the applicant has applied to be registered under section 30, 31, 34 or 38; and

- (b) the requisite evidence is likely to be produced to enable the Board to be satisfied as to the matters set out in section 30(2), 31(1)(a), 34(2)(a) or 38(2), (3) or (4), as the case requires; and
  - (c) that the applicant has paid the registration fee, if any, prescribed by the regulations.
- (2) Provisional registration has effect for a period of 3 months beginning on the day on which it is granted unless earlier cancelled.
  - (3) The Board may, by written notice given to a medical practitioner, impose such conditions on registration under subsection (1) as the Board reasonably requires to ensure the competent and safe practice of medicine by the medical practitioner.
  - (4) If the Board, before the period referred to in subsection (2) expires, has reason to believe that a person granted provisional registration is not entitled to be registered as a medical practitioner under section 30, 31 or 34 or as a specialist under section 38, the Board may, without prejudice to the person's application to be registered, cancel the person's provisional registration.

**33. Conditional registration for general practice in remote and rural WA**

- (1) In this section —  
*practise as a general practitioner* means practise as a medical practitioner engaged in primary, continuing, comprehensive, whole-patient care of individuals, families and their community;  
*remote and rural WA* means any part of the State outside the metropolitan region, as defined in the *Planning and Development Act 2005* section 4(1), determined by the Minister to be remote and rural WA for the purposes of this section.
- (2) The Board is to register an applicant as a medical practitioner if satisfied that the applicant has —

- (a) complied with the requirements of subsection (3); and
  - (b) paid the registration fee, if any, prescribed by the regulations.
- (3) The requirements for registration are that the applicant —
- (a) meets the requirements of section 30(2)(a), (b) and (d); and
  - (b) is competent, having regard to the person's qualifications and experience, to practise as a general practitioner in this State; and
  - (c) has qualifications and experience in general practice obtained outside Australia.
- (4) Registration under this section is subject to the following conditions —
- (a) that the person practises only as a general practitioner; and
  - (b) that the person practises only in remote and rural WA; and
  - (c) if the person is not a fellow of the Royal Australian College of General Practitioners or a member of a body (if any) prescribed under the regulations at the time of registration under this section, that he or she becomes such a fellow or member within 2 years of being so registered.
- (5) The Board may, on the application of a person the subject of a condition imposed under subsection (4)(c), if satisfied that there is good reason to do so, vary the period of 2 years.
- (6) The Board may, by written notice to the person, impose such other conditions as it thinks appropriate on the registration of a person under this section as the Board reasonably requires to ensure the competent and safe practice of medicine by the person.

- (7) The Board may, on its own motion or on the application of a person the subject of a condition imposed under subsection (6), on reasonable grounds, revoke or vary the condition.
- (8) The Board may at any time on reasonable grounds cancel registration under this section.

**34. Special purpose conditional registration**

- (1) In subsection (2)(b)(iv) —  
***an unmet area of need*** means an area of need determined by the Minister.
- (2) The Board may grant a person conditional registration as a medical practitioner if —
  - (a) the Board is satisfied that the person meets the requirements of section 30(2)(a), (b), (c) and (d); and
  - (b) the Board is satisfied that —
    - (i) the applicant is a graduate of medicine from an institution which is not accredited by the Australian Medical Council and registration is necessary on a temporary basis to enable the applicant to undertake a period of assessment or postgraduate training in medicine approved by the Board; or
    - (ii) the applicant desires registration to enable the applicant to fill a medical teaching position and the applicant has qualifications that the Board recognises for that purpose; or
    - (iii) the applicant desires to be registered for the purpose of enabling the applicant to fill a medical research position and the applicant has qualifications that the Board recognises for that purpose; or
    - (iv) registration of the applicant would enable an unmet area of need to be met and the applicant

- has suitable qualifications and experience to practise medicine in that area of need; or
- (v) the applicant has specialist qualifications and experience in medicine obtained outside Australia and registration is for the purpose of enabling the person to undergo further specialist training or examination as approved by the Board; or
  - (vi) it is in the public interest to register the applicant on a temporary basis;
- and
- (c) the person has paid the registration fee, if any, prescribed by the regulations.
- (3) Conditional registration under this section has effect —
- (a) in relation to the type of registration referred to in subsection (2)(b)(i) to (vi) for which the conditional registration is granted; and
  - (b) until the day specified in the certificate of registration (unless earlier cancelled).
- (4) The Board may, by written notice given to the person granted conditional registration, impose such conditions on registration under subsection (2) as the Board reasonably requires, in any particular case, to ensure the competent and safe conduct of the activity or practice for which conditional registration is granted.
- (5) The Board may at any time on reasonable grounds cancel a conditional registration under this section.
- (6) The Board may, on its own motion or on the application of a person the subject of a condition imposed under this section, on reasonable grounds, revoke or vary the condition.

**35. Non-practising registration**

- (1) The Board is to register an applicant as a non-practising medical practitioner if satisfied that the applicant has —
  - (a) complied with the requirements of subsection (2); and
  - (b) paid the registration fee, if any, prescribed by the regulations.
- (2) The requirements for registration are that the applicant —
  - (a) is a fit and proper person to be registered as a medical practitioner; and
  - (b) has not been convicted of an offence the nature of which renders the person unfit to practise medicine; and
  - (c) has a qualification referred to in section 30(2)(e), 34(2)(b)(i) or (ii), or 38; and
  - (d) will not practise medicine whilst registered under this section.
- (3) Registration under subsection (1) is subject to the condition that the applicant is not to practise medicine.

**36. Voluntary change in registration**

- (1) A person who —
  - (a) is registered under section 30(1); and
  - (b) is not the subject of proceedings under Part 6,  
may apply to the Board to —
    - (c) remove the name of the person from the register; and
    - (d) grant the person conditional registration for a type referred to in section 34(2)(b)(i) to (vi).
- (2) If the Board grants the application the Board is to —
  - (a) cancel the applicant's registration under section 30(1);  
and

- (b) grant the applicant conditional registration for the type referred to in section 34(2)(b) requested by the applicant.
- (3) Section 34 applies in relation to a person granted conditional registration under subsection (2)(b).

**37. Specialties to be prescribed**

- (1) The Governor, on the recommendation of the Board, may make regulations prescribing —
  - (a) branches of medicine that are specialties with respect to which a person may be registered as a specialist; and
  - (b) the title or titles of the specialty.
- (2) Before making a recommendation to the Governor, the Board is to seek advice from, and have regard to any advice provided by, the Australian Medical Council as to whether or not a branch of medicine should be prescribed as a specialty.

**38. Registration of specialists**

- (1) The Board is to register an applicant as a specialist in a specialty if satisfied that the applicant has —
  - (a) complied with a set of requirements in subsection (2), (3) or (4); and
  - (b) paid the registration fee, if any, prescribed by the regulations.
- (2) A set of requirements for registration as a specialist is that —
  - (a) the applicant is registered under section 30; and
  - (b) the applicant —
    - (i) has an Australian or New Zealand qualification, in the specialty, that is prescribed by the regulations for the specialty; or
    - (ii) has a qualification in a specialty that the Board considers is substantially equivalent to, or based



on similar competencies to, a qualification prescribed under subparagraph (i).

- (3) A set of requirements for registration as a specialist is that —
- (a) the applicant is competent to practise in a specialty (that is, the applicant has sufficient physical capacity, mental capacity and skill to practise the specialty); and
  - (b) the applicant has a sound knowledge of the English language and possesses sufficient skill in the expression of that language, both written and oral, for the practice of the specialty; and
  - (c) the applicant is a fit and proper person to be registered as a specialist; and
  - (d) the applicant has not been convicted of an offence the nature of which renders the person unfit to practise as a specialist; and
  - (e) the applicant —
    - (i) has an Australian or New Zealand qualification, in the specialty, that is prescribed by the regulations for the specialty; or
    - (ii) has a qualification that the Board considers is substantially equivalent to, or based on similar competencies to, a qualification prescribed under subparagraph (i);and
  - (f) has successfully completed a period of supervised clinical practice approved by the Board in writing or prescribed by the rules.
- (4) A set of requirements for registration as a specialist is that the applicant —
- (a) is registered under section 30; and
  - (b) has practised in a specialty in the period immediately preceding the day on which the specialty was prescribed under section 37; and

- (c) is competent to practise in the specialty (that is, the applicant has sufficient physical capacity, mental capacity and skill to practise the specialty); and
  - (d) has knowledge of, and experience in the practise of, the specialty that the Board considers are sufficient as a basis for specialist registration in the specialty.
- (5) In making its decision under subsection (1), the Board may have regard to the advice and recommendation of any one or more of the following —
  - (a) the Australian Medical Council;
  - (b) an Australian specialist college or institution for the specialty.
- (6) The Board may, by written notice to the specialist, impose such conditions on registration under subsection (1) as the Board reasonably requires to ensure the safe and competent practise of the specialty by the specialist.
- (7) Subject to section 39, a condition imposed under subsection (6) may apply indefinitely or for a period specified by the Board in the written notice.
- (8) Subject to section 39, the Board may, on its own motion or on the application of a person the subject of a condition imposed by the Board under this section, on reasonable grounds, revoke or vary the condition.
- (9) It is a condition of a specialist's registration under subsections (1) and (3) that the specialist can practise only the specialty in relation to which the specialist is registered.
- (10) Subject to this Act, registration of a person as a specialist confers on that person the right to carry on in the State the practice of the specialty for which the person was granted registration as a specialist under the title or titles prescribed by the regulations as the title or titles under which the specialty may be practised.

**39. Review of condition imposed under section 30(5), 33(6), 34(4) or 38(6)**

- (1) If the Board imposes a condition under section 30(5), 33(6), 34(4) or 38(6) it is to specify in the written notice a period of time (the *restriction period*) within which the person to whom the condition applies may not apply to the Board for the condition to be revoked or varied.
- (2) A person the subject of a condition referred to in subsection (1) may not make an application to the Board for the condition to be revoked or varied until —
  - (a) after the end of the restriction period; and
  - (b) thereafter, not less than 6 months after the day on which the previous application was made.
- (3) The Board is to determine an application for a condition to be revoked or varied within 2 months of receiving the application.
- (4) On an application for a condition to be revoked or varied, the Board may on reasonable grounds revoke or vary a condition referred to in subsection (1).

**40. Professional indemnity insurance**

- (1) In this section —

*professional indemnity insurance* means professional indemnity insurance that meets the minimum terms and conditions approved by the Board.
- (2) Without limiting the Board's powers under section 30, 32, 33, 34 or 38, the Board may by written notice impose both of the following conditions as a conditions of registration under section 30, 32, 33, 34 or 38 —
  - (a) that —
    - (i) the medical practitioner must hold professional indemnity insurance; or

- (ii) the medical care provided by the medical practitioner must be covered by professional indemnity insurance; or
  - (iii) the medical practitioner must be specified or referred to in professional indemnity insurance, whether by name or otherwise, as a person to whom the professional indemnity insurance extends even though the medical practitioner is not a party to the professional indemnity insurance;
- (b) that the professional indemnity insurance must meet the minimum terms and conditions approved by the Board.
- (3) A condition imposed under this section may apply indefinitely or for a period of time specified by the Board in the written notice of the decision given under section 151.
- (4) The Board may, on its own motion or on the application of a person the subject of a condition imposed under this section, on reasonable grounds, revoke or vary the condition.

**41. Application**

- (1) This section applies to the following applications —
  - (a) an application for registration;
  - (b) an application under section 35 or 36;
  - (c) an application under section 39 for a condition to be revoked or varied.
- (2) An application is to be —
  - (a) in writing; and
  - (b) made in an approved manner and form; and
  - (c) accompanied by the application fee, if any, prescribed.
- (3) Subject to section 39(3), the Board is to determine an application to which this section applies expeditiously.

- (4) The registrar is to, if required to do so by the Board —
- (a) investigate the application and the person who made the application; and
  - (b) report to the Board on the results of the investigation.
- (5) The applicant must provide the Board or the registrar —
- (a) with such further information as the Board or the registrar requires, in any particular case, and if required by the Board or the registrar must verify the information by statutory declaration; and
  - (b) at the request of the Board or the registrar, with the applicant's written consent to seek from another person, specified by the Board or the registrar, information about the applicant relevant to the application.
- (6) The Board may, in writing, require an applicant to attend before the Board for the purpose of satisfying the Board as to a matter relevant to the application and, if the person fails to attend, may refuse the application.
- (7) In relation to an application for registration, the Board may, in writing, require an applicant to —
- (a) submit to a physical or mental examination carried out by a person nominated by the Board; or
  - (b) submit to an oral or written examination carried out by a person nominated by the Board; or
  - (c) perform a clinical examination of one or more patients under the supervision of a person nominated by the Board,
- as the Board may reasonably require in relation to any requirement for registration with which the applicant must comply in order to be registered under this Act.
- (8) The Board is to nominate a person who is competent to carry out the examination or supervise the clinical examination.

- (9) In relation to an application for renewal of registration, the applicant must provide the Board with details of any development or educational activities related to the practice of medicine undertaken during his or her latest period of registration.
- (10) If the applicant fails to submit to the examination or perform the clinical examination required by the Board or provide the details referred to in subsection (9), the Board may refuse the application.

**42. Board may request consent to undertake a criminal record check**

- (1) The Board may request, by notice in writing given to an applicant for registration, that the applicant provide written consent for the Board to undertake a criminal record check in respect of the applicant.
- (2) Notice to an applicant under subsection (1) is to state that the consent and the fee for conducting the check, if any, specified in the notice is to be given to the Board within 14 days of the notice being given, or such later time as is specified in the notice.
- (3) If consent for the Board to undertake a criminal record check, together with any fee for conducting the check specified in the notice, is not given to the Board by an applicant within the time stated in a notice given to the applicant under subsection (1), the Board may refuse the application.

**43. Criminal record check**

- (1) In this section —  
*authorised person* and *criminal records agency* have the meanings given to those terms in the *Working with Children (Criminal Record Checking) Act 2004* section 34(1);  
*Commissioner* means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*.

- (2) The Board may ask the Commissioner or a criminal records agency for information or access to the respective records of the Commissioner or the criminal records agency —
  - (a) to determine whether an applicant for registration under this Part has a criminal record; and
  - (b) if the applicant has a criminal record, to obtain details of the criminal record.
- (3) If the applicant has a criminal record, the Board may ask an authorised person or a criminal records agency for information about the circumstances of a conviction or charge mentioned in the criminal record.
- (4) An authorised person may comply with a request made by the Board under this section despite another Act or law.

**44. Effect of registration**

Subject to this Act, registration confers on the person registered the right to carry on in the State the practice of medicine under the title of “medical practitioner”.

**45. Duration of registration**

- (1) Subject to this Act, registration —
  - (a) has effect for the period prescribed by the regulations or specified in the medical practitioner’s certificate of registration, whichever is the shorter; and
  - (b) may be renewed in accordance with the regulations for a further period prescribed by the regulations.
- (2) This section does not apply to, or in respect of, a medical practitioner who is an interstate practitioner or defence force medical officer.

**46. Renewal of registration**

- (1) If the Board believes on reasonable grounds that an applicant for renewal of registration —
  - (a) does not have sufficient practical experience; or
  - (b) has not maintained adequate knowledge and skill,relating to his or her type of registration, the Board may —
  - (c) refuse to renew the registration; or
  - (d) renew the registration subject to such conditions on registration as the Board reasonably requires.
- (2) A medical practitioner must pay to the Board a fee prescribed by the regulations for the renewal of registration, and if the fee is not paid on or before the day on which it falls due under the rules —
  - (a) the person ceases to be registered; and
  - (b) the person's name must be removed from the register.
- (3) A person whose name is removed from the register under subsection (2) may, at any time, pay to the Board —
  - (a) all fees that are in arrears; and
  - (b) all fees that would be in arrears if the person had continued to be registered; and
  - (c) any additional amount prescribed by the regulations for the purposes of this subsection.
- (4) On payment of the fees and amount referred to in subsection (3), the person is then entitled, subject to this Act, to have his or her registration renewed and name restored to the register.
- (5) For the purposes of Part 6, the registration of a person whose name is restored to the register under subsection (4) is taken to have continued during the period that the person's name was removed from the register under subsection (2).



- (6) The Board is to give written notice of the renewal fee to a medical practitioner, sent to that medical practitioner's address as recorded in the register, at least 42 days before the fee falls due under the regulations.
- (7) A person may apply to the Board for the remission of fees payable by the person under this section that are in arrears, and the Board may remit those fees in whole or in part.

**47. Application for registration by a person whose registration has been cancelled under section 116(1)(k)**

- (1) In this section —  
*disqualified person* means a person whose registration has been cancelled and name removed from the register under section 116(1)(k).
- (2) A disqualified person may not apply for registration for a period of 2 years after that person's registration was cancelled.
- (3) The Board cannot grant an application for registration by a disqualified person unless it has applied for, and obtained, the approval of the State Administrative Tribunal to do so.
- (4) Registration of, and the practice of medicine by, a disqualified person may be made subject to such conditions as the Board in any particular case imposes.

**Division 2 — The register**

**48. The register**

- (1) In subsection (2) —  
*medical practitioner* does not include an interstate practitioner.
- (2) The Board is required to keep an accurate and up-to-date register of all medical practitioners in such manner and form as the Board determines and in respect of each medical practitioner is to record —
  - (a) the name of that person; and

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- (b) the business, or other, address of that person; and
  - (c) a unique numerical identification number for that person; and
  - (d) the date on which the person was first registered; and
  - (e) particulars of all of the medical qualifications recognised by the Board and held by that person; and
  - (f) the provision or provisions of this Act under which the person is registered; and
  - (g) any conditions applying to the registration; and
  - (h) any condition or change of condition, notice of which is given under section 64; and
  - (i) details of the exercise of any power under Part 6 in respect of that person or any order made or penalty imposed in respect of that person by the Board or in a proceeding before the State Administrative Tribunal under Part 6; and
  - (j) such other information, if any, as is prescribed by the regulations.
- (3) If —
- (a) the Board or the State Administrative Tribunal imposes a condition on the registration of a medical practitioner who is an interstate practitioner; or
  - (b) a condition relating to an interstate practitioner is varied under section 69(2); or
  - (c) written advice of any condition imposed or any change of a condition is given under section 69(5),
- the Board is to record under subsection (2) —
- (d) the name of the interstate practitioner; and
  - (e) a unique numerical identification number for that practitioner; and
  - (f) the provision or provisions of this Act under which the person is taken to be registered; and

- (g) any condition imposed on the registration of the practitioner by the Board or the Tribunal; and
- (h) any condition as varied under section 69(2); and
- (i) any condition or change of condition, notice of which is given under section 69(5); and
- (j) such other information relating to an interstate practitioner, if any, as is prescribed by the regulations.

**49. Inspection of register**

- (1) The register must be kept at the office of the Board.
- (2) The register must be available for inspection by members of the public during normal office hours.
- (3) The register must be available for inspection by members of the public on an internet website maintained by the Board.
- (4) A person may, on application to the registrar in respect of the register or an entry in the register, and payment of the fee prescribed by the regulations, if any, obtain a certified copy of the register or the entry.
- (5) No fee is payable under subsection (4) if the application is made —
  - (a) by an officer of the department of the Public Service principally assisting the Minister charged with the administration of this Act; and
  - (b) for the purpose of carrying out the functions of an officer of that department.

**50. Certificate of registration**

- (1) On the registration of a person the Board is to issue to that person a certificate of registration in an approved form.
- (2) If the particulars entered in the register relating to a medical practitioner are amended so that that person's particulars recorded on his or her certificate of registration are not the same

as those entered in the register, the Board is to issue to that person a certificate of registration in the approved form containing particulars that are the same as those entered in the register.

- (3) In the absence of evidence to the contrary a certificate of registration is evidence that the person to whom the certificate is issued is registered.
- (4) This section does not apply to, or in respect of, a medical practitioner who is an interstate practitioner or defence force medical officer.

**51. Replacement of certificate of registration**

- (1) If a person's certificate of registration is lost, stolen, damaged or destroyed, that person may apply to the Board for the issue to him or her of a duplicate certificate of registration.
- (2) On an application under subsection (1), if the Board is satisfied that the applicant's certificate of registration has been lost, stolen, damaged or destroyed, the Board may, on payment of the prescribed fee, if any, issue a duplicate certificate of registration to the applicant.
- (3) This section does not apply to, or in respect of, a medical practitioner who is an interstate practitioner or defence force medical officer.

**52. Voluntary removal from register**

- (1) A medical practitioner who is not an interstate practitioner may, in writing, request the registrar to remove the name of that medical practitioner from the register.
- (2) Upon receipt of a request under subsection (1) the registrar is to refer the request to the Board and may, if the Board so approves, remove the name of the medical practitioner from the register.
- (3) Subsections (1) and (2) do not apply to a medical practitioner who is the subject of proceedings under Part 6.

**53. Amendment of particulars**

A medical practitioner may at any time apply to the Board for the amendment of the particulars entered in the register relating to that medical practitioner, and if the Board is satisfied that the amendment may properly be made, the Board, on payment of the prescribed fee, if any, is to cause those particulars to be amended.

**54. Removal of names in certain circumstances**

The registrar, on being satisfied that a medical practitioner has been convicted of an offence under section 133(1)(a) in relation to an application under this Act for registration, is to remove the name of the medical practitioner from the register.

**55. Removal of names of deceased persons**

The registrar, on being satisfied of the death of a medical practitioner, is to remove the name of the medical practitioner from the register.

**56. Suspension or cancellation of registration in another State or a Territory**

- (1) If the Board is satisfied that the registration of a medical practitioner under the laws of another State or a Territory has been —
  - (a) suspended, the Board may suspend the registration of the practitioner in this State; or
  - (b) cancelled, or that the name of the practitioner has been removed from the register of medical practitioners of that State or Territory, the Board may cancel the registration of the person and direct the registrar to remove the name of the practitioner from the register in this State.
- (2) If, in relation to a person whose registration has been suspended or cancelled under subsection (1), the Board is satisfied that —

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- (a) the suspension of the person's registration under the laws of the other State or Territory has ended, the Board is to revoke the suspension of the registration of the person in this State; or
  - (b) the person's registration has been restored or the person's name has been restored to the register under the laws of another State or a Territory, the Board is to restore the registration of the person and direct that the name of the person be restored to the register in this State.
- (3) This section does not apply to, or in respect of, a medical practitioner who is an interstate practitioner or defence force medical officer.

**57. Effect of removal of name from register**

If the name of a registered person is removed from the register under a provision of this Act, that person ceases to be registered.

**Division 3 — Notifications to Board**

**58. Change of address**

- (1) In this section —  
*medical practitioner* does not include an interstate practitioner or a defence force medical officer.
- (2) A medical practitioner must give the registrar written advice of any change to the address that is recorded in the register in relation to the person.  
Penalty: a fine of \$1 000.
- (3) The advice referred to in subsection (2) must be given no later than 30 days after the change to the address.

**59. Loss of qualifications**

- (1) In this section —

*medical practitioner* does not include an interstate practitioner or a defence force medical officer.

- (2) A medical practitioner must give the registrar written advice if a qualification that enabled the person to be registered is withdrawn or cancelled by the body that conferred the qualification.

Penalty: a fine of \$1 000.

- (3) The advice referred to in subsection (2) must be given no later than 7 days after the withdrawal or cancellation.

**60. Insolvency**

- (1) In subsection (2) —

*insolvent* means a person who is an insolvent under administration as defined in the Corporations Act section 9;

*medical practitioner* does not include an interstate practitioner or a defence force medical officer.

- (2) A medical practitioner must, within 14 days of becoming an insolvent, give the registrar written advice of the insolvency.

Penalty: a fine of \$5 000.

**61. Civil or criminal proceedings**

- (1) A medical practitioner must give the registrar written advice of any of the following matters within 14 days after legal process commencing —

- (a) any civil proceedings claiming damages or other compensation arising out of the practice of medicine;
- (b) any criminal proceedings for an offence arising out of the practice of medicine or an offence against the *Health Insurance Act 1973* of the Commonwealth,

is served on that medical practitioner.

Penalty: a fine of \$5 000.

- (2) A medical practitioner must give the registrar written advice of any of the following matters within 14 days after —

- (a) any proceedings of a kind referred to in subsection (1) commenced against that medical practitioner are withdrawn or settled;
- (b) any such proceedings are determined by a court or other tribunal.

Penalty: a fine of \$5 000.

**62. Information about professional indemnity insurance**

- (1) If it is a condition of a medical practitioner's registration that —
  - (a) the medical practitioner must hold professional indemnity insurance; or
  - (b) medical care provided by the medical practitioner must be covered by professional indemnity insurance; or
  - (c) the medical practitioner must be specified or referred to in the professional indemnity insurance, whether by name or otherwise, as a person to whom the professional indemnity insurance extends even though the medical practitioner is not a party to the professional indemnity insurance,

the medical practitioner must give the registrar written advice —

- (d) if the professional indemnity insurance is cancelled; or
- (e) if the terms or conditions of the professional indemnity insurance are changed such that the terms or conditions do not comply with the minimum terms and conditions approved by the Board for the purpose of the definition of “professional indemnity insurance” in section 40(1).

Penalty: a fine of \$1 000.

- (2) The advice referred to in subsection (1) must be given no later than 14 days after the cancellation or change in the terms or conditions.



**63. Notification of cancellation or suspension of registration elsewhere**

- (1) In this section —  
*medical practitioner* does not include an interstate practitioner or a defence force medical officer.
- (2) If the registration of a medical practitioner is cancelled or suspended by a regulatory authority in another State or a Territory, the medical practitioner must give the registrar written advice of the cancellation or suspension.
- (3) The advice referred to in subsection (2) must be given no later than 7 days after the cancellation or suspension.  
Penalty: a fine of \$5 000.

**64. Notification of condition imposed on registration elsewhere**

- (1) In this section —  
*medical practitioner* does not include an interstate practitioner or a defence force medical officer.
- (2) If —
  - (a) a condition is imposed on the registration of a medical practitioner; or
  - (b) a condition is changed,by a regulatory authority in another State or a Territory, the medical practitioner must give the registrar written advice of the condition or change.
- (3) The advice referred to in subsection (2) must be given no later than 7 days after the imposition of the condition or the change.  
Penalty: a fine of \$5 000.

**Division 4 — Defence force medical officer**

**65. Medical officer of a defence force of the Commonwealth**

- (1) A natural person who —
- (a) applies to the Board in writing and satisfies it that he or she complies with the requirements of subsection (2); and
  - (b) is given a written notice by the Board to the effect that the Board is satisfied that he or she complies with the requirements of subsection (2),

is to be taken to be registered during such time as he or she —

- (c) continues to fulfil the requirements of subsection (2)(a); and
  - (d) provides medical services only for members of the defence forces of the Commonwealth, an employee of the Department of Defence of the Commonwealth or members of a visiting force as defined in section 66(1).
- (2) The requirements referred to in subsection (1) are that —
- (a) the applicant —
    - (i) is registered as a medical practitioner under the laws of another State or a Territory; and
    - (ii) is not an interstate practitioner;and
  - (b) is a medical officer of any of the defence forces of the Commonwealth.

**66. Medical officer of visiting forces**

- (1) In this section —

***visiting force*** means any body, contingent or detachment of the naval, military or air force of a country that is for the time being present in the State by arrangement with the Minister of State for Defence for the Commonwealth;

***visiting force medical practitioner*** means a person taken to be registered under subsection (2).

- (2) A natural person who —
- (a) applies to the Board in writing and satisfies it that he or she complies with the requirements of subsection (3); and
  - (b) is given a written notice by the Board that it is satisfied that he or she complies with the requirements of subsection (3),
- is to be taken to be registered subject to the conditions set out in subsection (4) during such time as he or she continues to fulfil the requirements of subsection (3).
- (3) The requirements referred to in subsection (2) are that the applicant —
- (a) is resident in another country; and
  - (b) has been appointed, employed, contracted or otherwise engaged by a visiting force to provide medical services to members of the force while that force is in this State; and
  - (c) is qualified to provide the services referred to in paragraph (b).
- (4) The conditions referred to in subsection (2) are —
- (a) that the visiting force medical practitioner must not provide medical services other than medical services that may be lawfully provided in this State by a medical practitioner; and
  - (b) that the visiting force medical practitioner must not possess, use or supply a substance in the course of providing medical services other than a substance that may be lawfully possessed, used or supplied in this State by a medical practitioner; and

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- (c) that the visiting force medical practitioner provide medical services only for members of the defence forces of the Commonwealth or a visiting force; and
- (d) such further conditions as the Board may reasonably require and specify in the written notice to the visiting force medical practitioner.

## **Part 5 — Interstate practitioners**

### **Division 1 — Preliminary**

#### **67. Terms used in this Part**

In this Part, unless the contrary intention appears —

*equivalent specialty* means a branch of medicine that is substantially the same as a branch of medicine prescribed as a specialty under section 37;

*registered* means registered, or otherwise authorised, under a corresponding law of another State or a Territory to practise medicine or a specialty in that State or Territory.

### **Division 2 — Practice by an interstate practitioner**

#### **68. Persons who are to be taken to be registered under section 30 or 38**

- (1) A natural person is to be taken to be registered by the Board under section 30 if —
  - (a) the person is registered to practise medicine under a provision of a corresponding law; and
  - (b) the person's principal place of practice of medicine is in another State or a Territory; and
  - (c) the person is not registered under Part 4.
- (2) A natural person is to be taken to be registered by the Board under section 38 if —
  - (a) the person is registered to practise an equivalent specialty under a provision of a corresponding law; and
  - (b) the person's principal place of practice of that specialty is in another State or a Territory; and
  - (c) the person is not registered under Part 4.
- (3) A natural person taken to be registered by the Board under section 38 is to be taken to be registered to practise the branch

of medicine prescribed to be a specialty under section 37 that is substantially the same as the equivalent specialty that he or she is registered to practise under the corresponding law.

**69. Practising in this State**

- (1) If an interstate practitioner practises medicine or a specialty in this State, without limiting anything in this Part, the interstate practitioner, in so doing —
  - (a) is subject to both of the conditions referred to in section 40(2)(a) and (b) during any period that he or she practises medicine or his or her specialty in this State unless the conditions are revoked under subsection (2); and
  - (b) is subject to any condition, limitation or prohibition imposed on the registration of the interstate practitioner by a regulatory authority of this or any other State or a Territory (whether as a result of disciplinary action or otherwise).
- (2) The Board may, on its own motion or on the application of a person the subject of the conditions imposed under subsection (1)(a), on reasonable grounds, revoke the conditions or vary a condition.
- (3) A condition on the registration of an interstate practitioner imposed, or varied, under this Act must not be more onerous than would be imposed under this Act in the same or similar circumstances on a medical practitioner who is not an interstate practitioner.
- (4) Subject to subsection (3), the Board may, by written notice to an interstate practitioner, vary a condition, limitation or prohibition imposed on the registration of the interstate practitioner by a regulatory authority of another State or a Territory in such manner as the Board reasonably requires to ensure the competent and safe practice of medicine or a specialty by the interstate practitioner.

- (5) An interstate practitioner must not practise medicine or a specialty in this State if the interstate practitioner has not given the registrar written advice of any condition imposed or any change of a condition made by a regulatory authority of another State or a Territory (whether as a result of disciplinary action or otherwise).

Penalty: a fine of \$5 000.

- (6) An interstate practitioner must give the registrar written advice —
- (a) if his or her professional indemnity insurance required under a condition imposed under section 69(1)(a) is cancelled; or
  - (b) of any change in the terms or conditions of that professional indemnity insurance.

Penalty: a fine of \$1 000.

- (7) The advice referred to in subsection (6) must be given no later than 14 days after the cancellation or change in the terms or conditions.

**70. Interstate practitioner not to be taken to be registered in some circumstances**

An interstate practitioner is not to be taken to be registered —

- (a) under section 30 during any period of time that the practitioner is suspended from the practice of medicine under a corresponding law; or
- (b) under section 38 as a specialist in a specialty during any period of time that the practitioner is suspended from the practice of an equivalent specialty under a corresponding law.

**71. Effect of suspension under this Act**

- (1) Despite section 68, if an interstate practitioner is suspended from the practice of medicine under section 116(1)(j), 117(d)

or 118(f), the practitioner is not to be taken to be registered under section 30 or 38 during the period of the suspension.

- (2) The Board may, by notice in writing, revoke a suspension referred to in subsection (1) and may direct in the notice that the revocation has effect from a date specified in the notice.
- (3) The Board cannot revoke a suspension that was imposed by the State Administrative Tribunal under section 116(1)(j), 117(d) or 118(f) unless it has applied for, and obtained, the approval of the Tribunal to do so.
- (4) Despite section 68, if the State Administrative Tribunal makes an order under section 116(1)(k), 117(e) or 118(g) in relation to an interstate practitioner, the practitioner is not to be taken to be registered under section 30 or 38.

### **Division 3 — Complaints about interstate practitioners**

#### **72. Referral of complaint to regulatory authority in another State or a Territory**

- (1) If it considers it appropriate to do so, the Board may refer a complaint lodged with it in relation to an interstate practitioner to a regulatory authority of another State or a Territory to be dealt with according to the law of that State or Territory.
- (2) If it considers it appropriate to do so, the Board may request a regulatory authority of another State or a Territory to investigate the conduct of an interstate practitioner in accordance with the law of that State or Territory.
- (3) After a referral under subsection (1) or a request under subsection (2) has been made, no further action is to be taken by the Board in relation to the subject matter of the referral or request, other than action required to comply with section 154, unless the regulatory authority of the other State or Territory declines to deal with the matter.



**73. Dealing with matters referred by a regulatory authority in another State or a Territory**

- (1) The Board may deal with a matter involving an interstate practitioner referred to it by a regulatory authority of another State or a Territory whether or not the matter arose in or outside this State as if the matter were a complaint.
- (2) Except as otherwise provided in Part 6, that Part applies to a complaint against an interstate practitioner referred to the Board by a regulatory authority of another State or a Territory whether or not the subject matter of the complaint allegedly occurred in or outside this State.
- (3) If a regulatory authority of another State or a Territory requests the Board to investigate the conduct of an interstate practitioner, the Board may investigate that conduct under Part 6 whether or not the conduct allegedly occurred in or outside this State.

**Division 4 — Miscellaneous**

**74. Interstate practitioner disqualified in another State or a Territory**

If a regulatory authority of another State or a Territory has disqualified an interstate practitioner from applying to be registered in that State or Territory for a period specified by the authority, the practitioner may not apply for registration under Part 4 during that period.

**75. Interstate certificate**

In the absence of evidence to the contrary, a certificate of registration issued to an interstate practitioner under a corresponding law is evidence of the matters stated in it.

## **Part 6 — Disciplinary, competency and impairment matters**

### **Division 1 — Preliminary**

#### **76. Disciplinary matters**

- (1) The following are disciplinary matters —
- (a) that a person has contravened a condition applying to that person's registration or the practice of medicine by that person;
  - (b) that a person in the course of his or her practise as a medical practitioner —
    - (i) acted carelessly;
    - (ii) acted incompetently;
    - (iii) acted improperly;
    - (iv) breached this Act;
    - (v) failed to comply with an undertaking given to the Board under this Act;
    - (vi) provided services that were excessive, unnecessary or not reasonably necessary for the recipient's wellbeing;
  - (c) that a person has been convicted of an offence the nature of which renders the person unfit to practise as a medical practitioner;
  - (d) that a person has engaged in conduct in a professional respect that falls short of the standard —
    - (i) that a member of the public is entitled to expect of a medical practitioner; or
    - (ii) that a member of the medical profession would reasonably expect of a medical practitioner;
  - (e) that a person has engaged in sexual misconduct.

- (2) The matters referred to in subsection (1)(a), (b)(i) to (iii), (v) and (vi), and (c) to (e) are disciplinary matters whether or not they occur in this State or in a State or Territory that has a corresponding law.

**77. Competency matters**

The following are competency matters —

- (a) that a person does not have sufficient knowledge and skill to practise medicine safely and competently either generally or in a particular area of medicine in which the person is practising or is likely to practise;
- (b) if the person is a specialist, the person does not have sufficient knowledge and skill to practise his or her specialty.

**78. Impairment matters**

The following are impairment matters —

- (a) that a person is affected by his or her use of or dependence on alcohol or any other drug to such an extent that the ability of the person to practise medicine is, or is likely to be, affected adversely;
- (b) that a person suffers from an impairment to such an extent that the ability of the person to practise medicine is, or is likely to be, affected adversely.

**Division 2 — Committees**

**79. Complaints assessment committee**

- (1) The Board is to establish a committee to be known as the complaints assessment committee.
- (2) The complaints assessment committee is to consist of not more than 4 persons appointed in writing by the Board from time to time —
  - (a) a majority of whom must be medical practitioners (one or more of whom may be a member of the Board); and

- (b) one of whom (who may be a member of the Board) —
  - (i) must be neither a medical practitioner nor qualified to be registered as a medical practitioner; and
  - (ii) must have knowledge of and experience in representing the interests of consumers.
- (3) In subsection (2)(a), *medical practitioner* does not include an interstate practitioner or a defence force medical officer.
- (4) The Board is to appoint a member of the complaints assessment committee to be the committee's chairperson.
- (5) The complaints assessment committee is to submit an annual report to the Board as soon as is practicable after 30 June in each year in respect of the functions performed by the committee during the year that ended on that day.
- (6) A notice or appointment authorised by this Act to be given or made by the complaints assessment committee is taken to have been given or made by the committee if it is signed on behalf of the committee —
  - (a) by the chairperson of the committee; or
  - (b) by some other person authorised by the committee to sign the notice or appointment.
- (7) A meeting of the complaints assessment committee is not open to members of the public.

**80. Professional standards committee**

- (1) The Board is to establish a committee to be known as the professional standards committee.
- (2) The professional standards committee is to consist of 3 persons appointed in writing by the Board from time to time —
  - (a) 2 of whom must be medical practitioners; and
  - (b) one of whom must not be a medical practitioner; and

- (c) one of whom must be a member of the Board; and
  - (d) 2 of whom must be members of the panel referred to in section 82.
- (3) In subsection (2)(a), *medical practitioner* does not include an interstate practitioner or a defence force medical officer.
  - (4) The Board is to appoint a member of the professional standards committee to be the committee's chairperson.
  - (5) A decision supported by at least 2 members of the professional standards committee on any question before the committee is the decision of the committee.
  - (6) The professional standards committee must submit an annual report to the Board as soon as is practicable after 30 June in each year in respect of the functions performed by the committee during the year that ended on that day.
  - (7) Subject to subsection (8), a meeting of the professional standards committee is not open to members of the public.
  - (8) Despite subsection (7), if the committee is dealing with a disciplinary matter, the committee may, of its own initiative or on the application of any person, order that in any particular case a meeting, or part of a meeting, of the committee is to be open to members of the public.
  - (9) Subsection (8) does not apply to a meeting, or part of a meeting, at which the committee is dealing with a complaint relating to sexual misconduct and the person who claims to be the person the subject of the misconduct requests that that meeting or part of the meeting not be open to the public.

#### **81. Impairment review committee**

- (1) In this section —  
*medical practitioner* does not include an interstate practitioner or a defence force medical officer.

- (2) The Board is to establish a committee to be known as the impairment review committee.
- (3) The impairment review committee is to consist of 2 persons, one of whom must be a medical practitioner, appointed in writing by the Board from time to time.
- (4) A member of the impairment review committee is to be —
  - (a) a member of the Board; or
  - (b) a member of the panel referred to in section 82.
- (5) The Board is to appoint a member of the impairment review committee to be the committee's chairperson.
- (6) A decision supported by both members of the impairment review committee is the decision of the committee.
- (7) If the members of the committee disagree as to any matter that is being dealt with by the committee, the committee's report to the Board must include details of the disagreement and the reasons for it.
- (8) A meeting of the impairment review committee is not open to members of the public.

**82. Panel**

- (1) For the purposes of sections 80(2) and 81(4)(b) the Minister may —
  - (a) select a panel of persons suitable to be appointed to either the professional standards committee or the impairment review committee; and
  - (b) from time to time add persons to or remove persons from the panel.
- (2) In considering the suitability of a person to be selected for the panel, the Minister is to have regard to the person's personal attributes and knowledge of and experience of matters likely to come before the professional standards committee or the impairment review committee.

- (3) The panel established under subsection (1) is to comprise such number of persons appointed in writing by the Minister as the Minister from time to time thinks necessary to meet the needs of the committees.

### **Division 3 — Complaints**

#### **83. Complaints**

- (1) A person may lodge a complaint in relation to a competency matter or an impairment matter with the Board in relation to a person who is a medical practitioner.
- (2) A person may lodge a complaint in relation to a disciplinary matter with the Board in relation to —
- (a) a person who is a medical practitioner; or
  - (b) a person who was a medical practitioner when the disciplinary matter allegedly occurred but who is no longer a medical practitioner.
- (3) The Board may determine that a disciplinary matter, a competency matter or an impairment matter is to be dealt with as if it were the subject of a complaint lodged with the Board, despite no complaint having been made to it.
- (4) The Board must not make a determination under subsection (3) unless it is of the opinion that —
- (a) in respect of a person who is a medical practitioner, there is cause to investigate whether a disciplinary matter, an impairment matter or a competency matter exists or has occurred; or
  - (b) in respect of a person who was a medical practitioner when the disciplinary matter allegedly occurred, there is cause to investigate whether a disciplinary matter occurred.
- (5) Subject to subsection (7), a complaint to the Board under subsection (1) or (2) must be in writing.

- (6) A complainant must give the Board —
- (a) his or her name; and
  - (b) such other information relating to the person's identity as the Board or registrar may require; and
  - (c) particulars of the complaint made in relation to the respondent.
- (7) The Board may deal with a complaint under subsection (1) or (2) made orally if —
- (a) it believes that it is in the public interest to do so; and
  - (b) the complainant's identity is established to the satisfaction of the Board; and
  - (c) particulars of the complaint in relation to the respondent are given to the Board.
- (8) The Board may reject a complaint under subsection (1) or (2) if the Board is not satisfied as to the identity of the complainant.
- (9) If it considers it appropriate to do so, the Board may refer a complaint lodged with it in relation to a medical practitioner to a regulatory authority of another State or a Territory to be dealt with according to the law of that State or Territory.
- (10) After a referral under subsection (9), no further action is to be taken by the Board in relation to the subject matter of the referral unless the regulatory authority of the other State or Territory declines to deal with the matter.
- (11) Unless a complaint is rejected by the Board under subsection (8) or referred to a regulatory authority of another State or a Territory under subsection (9), the Board must refer a complaint to the complaints assessment committee.



**84. Action by complaints assessment committee**

- (1) Subject to subsection (2), if a complaint is referred to the complaints assessment committee, the committee by a written notice is to —
  - (a) advise the respondent that a complaint has been referred to the committee and the subject matter of the complaint; and
  - (b) give the respondent the name of the complainant (if any); and
  - (c) give the respondent information about the role of the committee and the recommendations that the committee can make to the Board; and
  - (d) give the respondent an opportunity to make a written submission to the committee within 14 days of the day on which the notice was sent to the respondent.
- (2) If the complaints assessment committee believes on reasonable grounds that a notice under subsection (1) would be likely to —
  - (a) prejudice the investigation of the complaint; or
  - (b) result in the health or safety of a patient being put at risk; or
  - (c) result in the complainant or another person being put at risk of intimidation or harassment,

the committee is not required to send the notice to the respondent.

**85. Complaints assessment committee to determine action required**

- (1) Within 28 days of a complaint being referred to the complaints assessment committee by the Board under section 83(11), the committee must, in respect of the complaint —
  - (a) if the committee is of the opinion that the complaint —
    - (i) is frivolous, vexatious or without substance; or

- (ii) does not warrant any further action; or
  - (iii) does not involve a disciplinary, competency or impairment matter,  
recommend to the Board that the Board reject the complaint; or
  - (b) if the committee is of the opinion that the complaint requires action under Division 4, refer it to the Board for action under that Division; or
  - (c) in the case of a complaint relating to a disciplinary matter, refer it to the Board for action under Division 5; or
  - (d) in the case of a complaint relating to an impairment matter, refer it to the Board for action under Division 6; or
  - (e) in the case of a complaint relating to a competency matter, refer it to the Board for action under Division 7; or
  - (f) if the subject matter of the complaint is sufficiently serious to warrant suspension or cancellation of the medical practitioner's registration, recommend to the Board that the Board make an allegation in relation to the complaint to the State Administrative Tribunal; or
  - (g) if the complainant consents to the complaint being dealt with by conciliation, recommend to the Board that the Board attempt to settle the complaint by conciliation under Division 8.
- (2) Despite subsection (1), the complaints assessment committee may extend the 28 day period for a further period not exceeding 28 days if it is in the interest of the complainant for the committee to do so.
- (3) To enable the complaints assessment committee to make a decision under subsection (1) the committee may make such inquiries as it considers appropriate.

- (4) A recommendation or referral to the Board under subsection (1) must be accompanied by the committee's reasons for making the recommendation or referral.

**86. Role of Board**

- (1) If the Board receives a recommendation or referral from the complaints assessment committee under section 85, the Board is either to —
- (a) act on the recommendation or referral; or
  - (b) take action of a kind referred to in section 85(1) other than that in the committee's recommendation or referral.
- (2) If the Board decides to reject a complaint, the Board is, within 14 days of making the decision, to give the complainant (if any) written notice of that decision together with short particulars of the reasons for the decision.

**Division 4 — Summary orders of Board**

**87. Interim orders by Board**

- (1) If the Board is of the opinion that an activity of a medical practitioner involves or will involve a risk of imminent injury or harm to the physical or mental health of any person, the Board may, without further inquiry, do any or all of the following —
- (a) give to the medical practitioner who is carrying on that activity an order prohibiting the carrying on of the activity for a period of not more than 30 days;
  - (b) give to the medical practitioner —
    - (i) an order to comply, for a period of not more than 30 days, with such conditions as the Board thinks fit in relation to the practice of medicine by that medical practitioner; or

- (ii) an order suspending the person from the practice of medicine, either generally or in relation to any specified circumstances or service, for a period of not more than 30 days.
- (2) An order given under subsection (1) must —
  - (a) state that the Board is of the opinion that the activity of the medical practitioner involves or will involve a risk of imminent injury or harm to the physical or mental health of any person; and
  - (b) specify the activity that in the Board’s opinion involves or will involve the risk and the matters that give or will give rise to the risk; and
  - (c) advise that, within 14 days of the making of the order, the Board will revoke the order or make an allegation about the matter to the State Administrative Tribunal.
- (3) The Board may give a copy of an order referred to in subsection (1) relating to a medical practitioner to any person the Board considers should be advised of the order.
- (4) The Board may, by order given to the person to whom the order made under subsection (1) was given, revoke or vary an order made under that subsection at any time before making an allegation about the matter to the State Administrative Tribunal under section 88.
- (5) If the Board revokes an order under subsection (4), the Board may decide to take action under Division 5, 6 or 7 if the complaint relates to a disciplinary matter, impairment matter or competency matter, respectively.
- (6) The Board may deal under this section with a complaint even if —
  - (a) the Board, the professional standards committee, the impairment review committee or the complaints assessment committee is already dealing with the complaint, or a complaint including elements of the first-mentioned complaint, under this Act; or

- (b) the same complaint, or a complaint including elements of the complaint before the Board, has been made under the *Health Services (Conciliation and Review) Act 1995* or is being treated as a complaint that was made under that Act.

**88. Complaint dealt with summarily to be referred to the State Administrative Tribunal**

- (1) Within 14 days of giving an order under section 87(1), if that order is not revoked under section 87(4), the Board is to —
  - (a) make an allegation about the complaint or matter in respect of which the order was made to the State Administrative Tribunal; and
  - (b) order that any other proceedings under this Part in respect of the complaint or matter commenced before the making of the order be discontinued.
- (2) Upon an allegation made under subsection (1) the State Administrative Tribunal may, in addition to any other order it may make, affirm or revoke an order under section 87(1) or vary the order by extending the period for which it applies or in any other respect.

**Division 5 — Disciplinary matters**

**89. Action by Board**

- (1) If the Board decides —
  - (a) under section 86(1), 87(5), 103(2) or 109(2) to take action on a complaint relating to a disciplinary matter; or
  - (b) under section 111(e) to deal with a complaint,under this Division, the Board is to —
  - (c) advise the respondent by written notice that a complaint is going to be dealt with under this Division and give the respondent a brief summary of the effect of this Division; and

- (d) if the respondent has not previously been advised as to the subject matter of the complaint, advise the respondent by written notice as to the subject matter of the complaint; and
  - (e) refer the complaint to the professional standards committee.
- (2) If the Board believes on reasonable grounds that a notice under subsection (1) would be likely to —
- (a) prejudice the investigation of the complaint; or
  - (b) result in the health or safety of a patient being put at risk; or
  - (c) result in the complainant or another person being put at risk of intimidation or harassment,

the Board is not required to send the notice to the respondent.

**90. Investigator**

- (1) The Board may appoint a person to investigate a complaint relating to a disciplinary matter and report to the Board.
- (2) The Board is to issue to each investigator it appoints a certificate of appointment in an approved form.
- (3) The certificate of appointment must state —
  - (a) the particular issue that the investigator has been appointed to investigate; and
  - (b) the powers that the investigator has under this Act.
- (4) A certificate purporting to have been issued under this section is evidence in any court of the appointment to which the certificate purports to relate.

**91. Report of investigator**

- (1) An investigator must —
  - (a) within such period as the Board requires prepare a report on the investigation of a complaint, and make

- recommendations as to the manner in which the complaint should be dealt with; and
- (b) immediately after preparing the report, provide the Board with a copy of the report.
- (2) Unless the Board decides to make an allegation to the State Administrative Tribunal under section 97(1), the Board is to give a copy of the report to the professional standards committee dealing with the complaint.
- (3) The investigator must return his or her certificate of appointment at the time the Board is provided with a copy of the report.

**92. Powers of investigator**

- (1) An investigator may for the purposes of an investigation enter premises at which the respondent the subject of the investigation practises medicine or stores records relating to his or her practice at any reasonable time —
- (a) with the consent of the respondent and the occupier (if any) of the premises; or
- (b) without the consent of the respondent and the occupier (if any) of the premises, if the investigator has given the respondent and the occupier (if any) 5 days' notice in writing of the investigator's intention to enter the premises.
- (2) An investigator may for the purposes of an investigation enter and inspect the premises named in a warrant issued under section 94(1).
- (3) If an investigator enters premises under subsection (1) or under the authority of a warrant issued under section 94(1), the investigator may for the purposes of an investigation —
- (a) examine equipment on the premises used by the respondent in connection with his or her medical practice; and

- (b) require a person on the premises to produce medical supplies, including therapeutic substances, that are in the possession or under the control of the person; and
  - (c) take photographs of the premises, equipment or medical supplies; and
  - (d) require a person on the premises to produce to the investigator any document or other thing concerning the investigation that is in the possession or under the control of the person; and
  - (e) inspect any document or other thing produced to the investigator and retain it for such reasonable period as the investigator thinks fit, and make copies of a document or any of its contents; and
  - (f) require the occupier of the premises (if any) to provide such assistance and facilities as the investigator reasonably requires to carry out the investigator's functions; and
  - (g) require a person on the premises —
    - (i) to give the investigator such information as the investigator requires; and
    - (ii) to answer any question put to that person, in relation to the matter the subject of the investigation; and
  - (h) exercise other powers prescribed by the regulations.
- (4) A requirement made under subsection (3)(d) —
- (a) must be made by notice in writing given to the person required to produce the document or other thing; and
  - (b) must specify the time at or within which the document or other thing is to be produced; and
  - (c) may, by its terms, require that the document or other thing required be produced at a place and by means specified in the requirement; and



- (d) where the document required is not in a readable format, is to be treated as a requirement to produce —
  - (i) the document itself; and
  - (ii) the contents of the document in a readable format.
- (5) A requirement made under subsection (3)(g) —
  - (a) may be made orally or by notice in writing served on the person required to give information or answer a question, as the case may be; and
  - (b) must specify the time at or within which the information is to be given or the question is to be answered, as the case may be; and
  - (c) may, by its terms, require that the information or answer required —
    - (i) be given orally or in writing;
    - (ii) be given at or sent or delivered to a place specified in the requirement;
    - (iii) in the case of written information or answers be sent or delivered by means specified in the requirement;
    - (iv) be verified by statutory declaration.
- (6) If under subsection (3)(d) an investigator requires a person to produce a document or thing, the investigator must inform that person that the person is required under this Act to produce the document or thing.
- (7) If under subsection (3)(g) an investigator requires a person to give information or answer a question, the investigator must inform that person that the person is required under this Act to give the information or answer the question.
- (8) An investigator must produce his or her certificate of appointment if requested to do so by a person in respect of

whom the investigator has exercised, or is about to exercise, a power under this section.

**93. Warrant to enter premises**

- (1) If the Board has determined in a particular case that —
- (a) there are reasonable grounds for believing that entry to premises is necessary for the purpose of substantiating a complaint that may involve a threat to the life or physical or mental health of a person; or
  - (b) the subject matter of the complaint is sufficiently serious to warrant the suspension or cancellation of the respondent's registration,

the investigator may apply to a magistrate for a warrant to be issued in respect of those premises.

- (2) An application for a warrant must —
- (a) be in writing; and
  - (b) be accompanied by a notice in writing from the Board stating that it has determined in the particular case that —
    - (i) there are reasonable grounds for believing that entry to premises is necessary for the purpose of substantiating a complaint that may involve a threat to the life or physical or mental health of a person; or
    - (ii) the subject matter of the complaint is sufficiently serious to warrant the suspension or cancellation of the respondent's registration;
- and
- (c) set out the grounds for seeking the warrant; and
  - (d) describe the premises that are to be entered.

- (3) A magistrate to whom an application is made under this section is to refuse it if —
  - (a) the application does not comply with the requirements of this Act; or
  - (b) when required to do so by the magistrate, the investigator does not give to the magistrate more information about the application.
- (4) The information in an application or given to a magistrate under this section must be verified before the magistrate on oath or affirmation or by affidavit, and the magistrate may for that purpose administer an oath or affirmation or take an affidavit.

**94. Issue of warrant**

- (1) A magistrate to whom an application is made under section 93 may issue a warrant, if satisfied that there are reasonable grounds for believing that entry and inspection of the premises are necessary for a purpose referred to in that section.
- (2) A warrant under subsection (1) authorises the investigator —
  - (a) to enter and inspect the premises named in the warrant; and
  - (b) exercise the powers referred to in section 92(3)(a) to (h).
- (3) There must be stated in a warrant —
  - (a) the purpose for which the warrant is issued; and
  - (b) the name of the person to whom the warrant is issued; and
  - (c) a description of the premises that may be entered.
- (4) A magistrate who issues a warrant is to cause a record to be made of particulars of the grounds that the magistrate has relied on to justify the issue of the warrant.

**95. Execution of warrant**

- (1) If asked by an occupier, or a person in charge, of premises, the person executing a warrant at those premises must produce it for inspection.
- (2) A warrant ceases to have effect —
  - (a) at the end of the period of one month after its issue; or
  - (b) if it is withdrawn by the magistrate who issued it; or
  - (c) when it is executed,

whichever occurs first.

**96. Role of professional standards committee**

- (1) The professional standards committee must investigate a complaint referred to it by the Board.
- (2) Unless a complaint is withdrawn under section 97(1)(d), on completion of the investigation and after —
  - (a) considering any report given to the committee under section 91(2); and
  - (b) giving the respondent an opportunity to make a written submission to, or attend before and make a representation to, the committee; and
  - (c) having regard to any submission or representation made by the respondent,

the professional standards committee must submit a report in writing to the Board —

- (d) detailing its findings and conclusions in relation to the complaint referred to it; and
- (e) making a recommendation to the Board under subsection (3); and
- (f) giving reasons for its recommendation.

- (3) The committee may make the following recommendations to the Board under subsection (2)(e) —
- (a) that the Board take no further action in relation to the complaint;
  - (b) if the complaint involves an impairment matter, that the Board take action under Division 6;
  - (c) if the complaint involves a competency matter, that the Board take action under Division 7;
  - (d) that the Board caution or reprimand the respondent;
  - (e) if the complaint relates to a service provided by the respondent, that the Board require the respondent to give an undertaking to the Board —
    - (i) if the patient agrees, to provide further services to the patient at no cost or at an amount determined by the Board; or
    - (ii) to pay, wholly or in part, for further services to be provided to the patient by a medical practitioner; or
    - (iii) to reduce or refund the amount of any fees paid in respect of services provided to a patient, to such an extent as is determined by the Board;
  - (f) that the Board require a respondent who is a medical practitioner to give an undertaking to the Board to undergo counselling specified by the professional standards committee;
  - (g) that the Board impose conditions specified by the committee on the registration of a respondent who is a medical practitioner;
  - (h) that the Board require a respondent who is a medical practitioner to give an undertaking to the Board to report, at intervals specified by the Board, on his or her medical practice to a medical practitioner nominated by the Board;

- (i) that the Board require a respondent who is a medical practitioner to give an undertaking to the Board to obtain advice on the management of his or her medical practice from a person specified by the Board;
  - (j) that the Board require the respondent to pay the Board a penalty not exceeding \$5 000 determined by the Board;
  - (k) if the subject matter of the complaint is sufficiently serious to warrant —
    - (i) a penalty exceeding \$5 000; or
    - (ii) the suspension or cancellation of the registration of a respondent who is a medical practitioner,that the Board make an allegation to the State Administrative Tribunal.
- (4) The professional standards committee may recommend that the Board do more than one of the things referred to in subsection (3)(d), (e), (f), (g), (h), (i) and (j).

**97. Role of Board**

- (1) If, after receiving a report under section 91(1)(b), the Board decides that the subject matter of the complaint is sufficiently serious to warrant —
- (a) a penalty exceeding \$5 000; or
  - (b) the suspension or cancellation of the registration of a respondent who is a medical practitioner,
- the Board may —
- (c) make an allegation to the State Administrative Tribunal; and
  - (d) withdraw the complaint from the professional standards committee.

- (2) If the Board receives a report from the professional standards committee under section 96, the Board is to consider the committee's recommendation and either —
  - (a) act on the recommendation; or
  - (b) take action of a kind referred to in section 96(3) other than that recommended by the committee.
- (3) The Board may take more than one of the actions referred to in section 96(3)(d), (e), (f), (g), (h), (i) and (j) in respect of a complaint.
- (4) If the Board proposes to take action under subsection (2) that is materially different to, or has more restrictive consequences than, that recommended by the professional standards committee, the Board is to —
  - (a) give the respondent an opportunity to make a written submission to, or attend before and make a representation to, the Board; and
  - (b) have regard to any submission or representation made by the respondent,before taking that action.
- (5) Within 7 days of deciding to take action under subsection (1) or (2), the Board is to give written notice to the complainant (if any) and the respondent of the action taken or proposed to be taken by the Board together with short particulars of the reasons for the decision to take the action.

### **Division 6 — Impairment matters**

#### **98. Request by medical practitioner for imposition of condition**

- (1) A medical practitioner who believes that his or her ability to practise medicine is affected because of an impairment matter may ask the Board to impose a condition with respect to his or her registration.

- (2) If the Board and the medical practitioner agree upon the condition to be imposed, the Board is to impose it on his or her registration.
- (3) If the Board and the medical practitioner do not agree upon the condition to be imposed, the Board is to refer the matter to the impairment review committee for investigation under this Part.

**99. Revocation of condition**

The Board may revoke a condition imposed under section 98(2) if the medical practitioner satisfies the impairment review committee that his or her ability to practise medicine is no longer affected because of the impairment matter that gave rise to the imposition of the condition.

**100. Action by Board**

- (1) Subject to subsection (2), if the Board decides —
  - (a) under section 86(1), 87(5), 97(2) or 109(2) to take action on a complaint relating to an impairment matter; or
  - (b) under section 111(e) to deal with a complaint,under this Division, the Board is to —
  - (c) advise the respondent by written notice that a complaint is going to be dealt with under this Division and give the respondent a brief summary of the effect of this Division; and
  - (d) if the respondent has not previously been advised as to the subject matter of the complaint, advise the respondent by written notice as to the subject matter of the complaint; and
  - (e) refer the complaint to the impairment review committee.
- (2) If the Board decides that the subject matter of a complaint is sufficiently serious to warrant suspension or cancellation of the medical practitioner's registration, the Board may, instead of



referring the complaint to the impairment review committee, make an allegation to the State Administrative Tribunal.

**101. Medical examination of medical practitioner**

- (1) If the Board —
- (a) decides under section 86(1), 87(5), 97(2) or 109(2) to take action on a complaint relating to an impairment matter under this Division; or
  - (b) refers a matter to the impairment review committee under section 98(3); or
  - (c) decides under section 111(e) to deal with a complaint under this Division,

the Board may require the medical practitioner to undergo, within the time specified by the Board, an examination by a medical practitioner nominated by the Board.

- (2) The nature of the examination is to be determined by the Board but must be reasonable having regard to the subject matter of the complaint.
- (3) The medical practitioner must be given written notice of the requirement stating —
- (a) the name of the medical practitioner who has been nominated by the Board to conduct the examination; and
  - (b) the time and place at which the examination is to be conducted; and
  - (c) the consequence if he or she, without reasonable excuse, fails to comply with the requirement.
- (4) The Board is to pay for an examination conducted and a report prepared under this section.
- (5) A medical practitioner who carries out an examination for the purposes of subsection (1) is to prepare a report on the examination and give the report to the Board.

- (6) Unless the Board decides to make an allegation to the State Administrative Tribunal under section 103(1), the registrar is to give a copy of the report of the examination to the impairment review committee for consideration (if the complaint has been referred to the committee) and to the medical practitioner.
- (7) If a medical practitioner, without reasonable excuse, fails to comply with a requirement to undergo an examination by a medical practitioner nominated by the Board, the Board may make an allegation in relation to the complaint to the State Administrative Tribunal.
- (8) A medical practitioner who is required to undergo, within the time specified by the Board, an examination by a medical practitioner nominated by the Board under subsection (1) may apply, in writing, to the Board for that requirement to be reviewed.
- (9) If an application is made under subsection (8), the Board is to refer the matter to the impairment review committee to review the requirement and report to the Board.
- (10) On receipt of a report under subsection (9) and after taking the review into account the Board is to —
  - (a) revoke or amend the requirement; or
  - (b) confirm the requirement.

**102. Role of the impairment review committee**

- (1) The impairment review committee must investigate a complaint referred to it by the Board.
- (2) On completion of the investigation and after —
  - (a) considering any report given to the committee under section 101(6); and
  - (b) giving the medical practitioner an opportunity to make a written submission to, or attend before and make a representation to, the committee; and

- (c) having regard to any submission or representation made by the medical practitioner,
- the impairment review committee must submit a report in writing to the Board —
- (d) detailing its findings and conclusions in relation to the complaint referred to it; and
- (e) making a recommendation to the Board under subsection (3); and
- (f) giving reasons for its recommendation.
- (3) The committee may make the following recommendations to the Board under subsection (2)(e) —
- (a) that the Board take no further action in relation to the complaint;
- (b) if the medical practitioner consents to being suspended from the practice of medicine for a period not exceeding 2 years specified by the impairment review committee, that the Board suspend the medical practitioner from the practice of medicine for a period recommended by the committee or specified by the Board;
- (c) if the complaint involves a disciplinary matter, that the Board take action under Division 5;
- (d) if the complaint involves a competency matter, that the Board take action under Division 7;
- (e) that the Board requires the medical practitioner to give an undertaking to the Board to undergo counselling specified by the impairment review committee;
- (f) that the Board impose conditions specified by the committee on the medical practitioner's registration;
- (g) if the subject matter of the complaint is sufficiently serious to warrant suspension or cancellation of the medical practitioner's registration, that the Board make an allegation to the State Administrative Tribunal.

- (4) The impairment review committee may recommend that the Board do both of the things referred to in subsection (3)(e) and (f).

**103. Role of Board**

- (1) If, after receiving a report under section 101(5), the Board decides that it would be appropriate to make an allegation to the State Administrative Tribunal, the Board may —
- (a) make an allegation to the Tribunal; and
  - (b) withdraw the complaint from the impairment review committee.
- (2) If the Board receives a report from the impairment review committee under section 102, the Board is to consider the report and either —
- (a) act on any recommendation in the report; or
  - (b) take action of a kind referred to in section 102(3) other than that recommended by the committee.
- (3) The Board may take both of the actions referred to in section 102(3)(e) and (f) in respect of a complaint.
- (4) For the purpose of taking action of a kind referred to in section 102(3)(b), the Board may suspend the medical practitioner from the practice of medicine for the period recommended by the impairment review committee or specified by the Board.
- (5) If the Board proposes to take action under subsection (2) that is materially different to, or has more restrictive consequences than, that recommended by the impairment review committee, the Board must —
- (a) give the medical practitioner an opportunity to make a written submission to, or attend before and make a representation to, the Board; and

- (b) have regard to any submission or representation made by the medical practitioner,  
before taking that action.
- (6) Within 7 days of deciding to take action under subsection (1) or (2), the Board is to give written notice to the medical practitioner and complainant (if any) of the action taken or proposed to be taken by the Board together with short particulars of the reasons for the decision to take the action.

### **Division 7 — Competency matters**

#### **104. Action by Board**

- (1) Subject to subsection (2), if the Board decides —
  - (a) under section 86(1), 87(5), 97(2) or 103(2) to take action on a complaint relating to a competency matter; or
  - (b) under section 111(e) to deal with a complaint,  
under this Division, the Board is to —
    - (c) advise the respondent by written notice that a complaint is going to be dealt with under this Division and give the respondent a brief summary of the effect of this Division; and
    - (d) if the respondent has not previously been advised as to the subject matter of the complaint, advise the respondent by written notice as to the subject matter of the complaint; and
    - (e) refer the complaint to the professional standards committee.
- (2) If the Board decides that the subject matter of a complaint is sufficiently serious to warrant suspension or cancellation of the medical practitioner's registration, the Board may, instead of referring the complaint to the professional standards committee, make an allegation to the State Administrative Tribunal.

**105. Assessment of medical practitioner**

- (1) If the Board decides —
  - (a) under section 86(1), 87(5), 97(2) or 103(2) to take action on a complaint relating to a competency matter; or
  - (b) under section 111(e) to deal with a complaint,  
under this Division, the Board may order the medical practitioner the subject of the complaint to submit, within the time specified by the Board, to an assessment by an assessor.
- (2) The nature of the assessment is to be determined by the Board but must be reasonable having regard to the subject matter of the complaint.
- (3) The order may require the medical practitioner to take part, if practicable, in an assessment exercise based on a simulated clinical situation (for example, a mock consultation).
- (4) The Board is to give the medical practitioner written notice of the order stating —
  - (a) the name of the assessor appointed by the Board to conduct the assessment; and
  - (b) the nature of the assessment that the Board has determined should be made; and
  - (c) the time and place at which the assessment is to be conducted; and
  - (d) the consequence if the medical practitioner, without reasonable excuse, fails to comply with the order.
- (5) The Board may give the assessor directions as to how the assessment is to be conducted.
- (6) The medical practitioner must pay for the assessment and report prepared under this section.
- (7) An assessor who carries out an assessment for the purposes of subsection (1) is to prepare a report on the assessment and give the report to the Board.

- (8) Unless the Board decides to make an allegation to the State Administrative Tribunal under section 109(1), the registrar is to give a copy of the report of the assessment to the professional standards committee (if the complaint has been referred to the committee) for consideration and to the medical practitioner.
- (9) If a medical practitioner, without reasonable excuse, fails to comply with an order to submit to an assessment by an assessor, the Board may make an allegation to the State Administrative Tribunal.

**106. Assessor**

- (1) The Board may appoint one or more medical practitioners to conduct an assessment under section 105.
- (2) The Board is to issue to each assessor it appoints a certificate of appointment in an approved form.
- (3) The certificate of appointment must state —
  - (a) the nature of the assessment that the assessor has been appointed to conduct; and
  - (b) the powers under this Act that the assessor may exercise.
- (4) A certificate purporting to have been issued under this section is evidence in any court of the appointment to which the certificate purports to relate.

**107. Powers of assessor**

- (1) An assessor may for the purposes of conducting an assessment of a medical practitioner enter at any reasonable time premises at which the medical practitioner practises medicine or stores records relating to his or her practice —
  - (a) with the consent of the medical practitioner and the occupier (if any) of the premises; or
  - (b) without the consent of the medical practitioner and the occupier (if any) of the premises, if the assessor has given the medical practitioner and the occupier (if any)

5 days' notice in writing of the assessor's intention to enter the premises.

- (2) Subsection (1)(b) does not apply to residential premises.
- (3) If an assessor enters premises under subsection (1), the assessor may for the purposes of an assessment —
  - (a) examine equipment on the premises used by the medical practitioner in connection with his or her medical practice; and
  - (b) require a person on the premises to produce medical supplies, including therapeutic substances, that are in the possession or under the control of the person; and
  - (c) take photographs of the premises, equipment or medical supplies; and
  - (d) require a person on the premises to produce to the assessor any document or other thing concerning the assessment that is in the possession or under the control of the person; and
  - (e) inspect any document or other thing produced to the assessor and retain it for such reasonable period as the assessor thinks fit, and make copies of a document or any of its contents; and
  - (f) require the occupier (if any) of the premises to provide such assistance and facilities as the assessor reasonably requires to carry out the assessor's functions; and
  - (g) require a person on the premises —
    - (i) to give the assessor such information as the assessor requires; and
    - (ii) to answer any question put to that person, in relation to the assessment; and
  - (h) exercise other powers prescribed by the regulations.



- (4) A requirement made under subsection (3)(d) —
- (a) must be made by notice in writing given to the person required to produce the document or other thing; and
  - (b) must specify the time at or within which the document or other thing is to be produced; and
  - (c) may, by its terms, require that the document or other thing required be produced at a place and by means specified in the requirement; and
  - (d) where the document required is not in a readable format, must be treated as a requirement to produce —
    - (i) the document itself; and
    - (ii) the contents of the document in a readable format.
- (5) A requirement made under subsection (3)(g) —
- (a) may be made orally or by notice in writing served on the person required to give information or answer a question, as the case may be; and
  - (b) must specify the time at or within which the information is required to be given or the question is required to be answered, as the case may be; and
  - (c) may, by its terms, require that the information or answer requested —
    - (i) be given orally or in writing;
    - (ii) be given at or sent or delivered to a place specified in the requirement;
    - (iii) in the case of written information or answers be sent or delivered by means specified in the requirement;
    - (iv) be verified by statutory declaration.
- (6) If under subsection (3)(g) an assessor requires a person to give information or answer a question, the assessor must inform that

person that the person is required under this Act to give the information or answer the question.

- (7) An assessor must produce his or her certificate of appointment if requested to do so by a person in respect of whom the assessor has exercised, or is about to exercise, a power under this section.

**108. Role of the professional standards committee**

- (1) The professional standards committee must investigate a complaint referred to it by the Board.
- (2) On completion of the investigation of the medical practitioner and after —
- (a) considering any report given to the committee under section 105(8); and
  - (b) giving the medical practitioner an opportunity to make a written submission to, or attend before and make a representation to, the committee; and
  - (c) having regard to any submission or representation made by the medical practitioner,

the professional standards committee is to submit a report in writing to the Board —

- (d) detailing its findings and conclusions in relation to the complaint referred to it; and
  - (e) making a recommendation to the Board under subsection (3); and
  - (f) giving reasons for its recommendation.
- (3) The committee may make the following recommendations to the Board under subsection (2)(e) —
- (a) that the Board take no further action in relation to the complaint;
  - (b) if the complaint involves a disciplinary matter, that the Board take action under Division 5;

- (c) if the complaint involves an impairment matter, that the Board take action under Division 6;
  - (d) that the Board impose conditions specified by the committee on the medical practitioner's registration;
  - (e) that the Board require the medical practitioner to give an undertaking to the Board to complete an educational course specified by the professional standards committee;
  - (f) that the Board require the medical practitioner to give an undertaking to the Board to report, at intervals specified by the Board, on his or her medical practice to a medical practitioner nominated by the Board;
  - (g) that the Board require the medical practitioner to give an undertaking to the Board to obtain advice on the management of his or her medical practice from a person specified by the Board;
  - (h) if the subject matter of the complaint is sufficiently serious to warrant suspension or cancellation of the medical practitioner's registration, that the Board make an allegation to the State Administrative Tribunal.
- (4) The professional standards committee may recommend that the Board do more than one of the things referred to in subsection (3)(d), (e), (f) and (g).

**109. Role of Board**

- (1) If, after receiving a report under section 105(7), the Board decides that the subject matter of the complaint is sufficiently serious to warrant suspension or cancellation of the medical practitioner's registration, the Board may —
- (a) make an allegation to the State Administrative Tribunal; and
  - (b) withdraw the complaint from the professional standards committee.

- (2) If the Board receives a report from the professional standards committee under section 108, the Board is to consider the recommendation of the committee and either —
  - (a) act on the recommendation; or
  - (b) take action of a kind referred to in section 108(3) other than that recommended by the committee.
- (3) The Board may take more than one of the actions referred to in section 108(3)(d), (e), (f) and (g) in respect of a complaint.
- (4) If the Board proposes to take action under subsection (2) that is materially different to, or has more restrictive consequences than, that recommended by the professional standards committee, the Board is to —
  - (a) give the medical practitioner an opportunity to make a written submission to, or attend before and make a representation to, the Board; and
  - (b) have regard to any submission or representation made by the medical practitioner,before taking that action.
- (5) Within 7 days of deciding to take action under subsection (1) or (2), the Board is to give written notice to the medical practitioner and complainant (if any) of the action taken or proposed to be taken by the Board together with short particulars of the reasons for the decision to take the action.

### **Division 8 — Conciliation**

#### **110. Conciliation process**

- (1) If the Board decides that an attempt should be made to settle a complaint by conciliation, the Board is to refer the complaint to the complaints assessment committee.

- (2) The complaints assessment committee must commence conciliation procedures within 14 days of the complaint being referred to it under subsection (1) and may for that purpose —
  - (a) cause conferences of the complainant or person affected by the conduct of the respondent and the respondent (the *parties*), or their representatives, to be arranged and to be presided over by a person appointed in accordance with the regulations; and
  - (b) give advice and make recommendations to assist in the reaching of an agreement; and
  - (c) cause the parties, or any of them, either separately or together, to appear before the complaints assessment committee.
- (3) The Board may, with the consent of each of the parties to an agreement negotiated under this Division, by order give effect to the agreement.
- (4) If the Board makes an order under subsection (3) —
  - (a) the terms of the agreement reached between the parties referred to in the order are final and binding on those parties; and
  - (b) the order may include any action that the State Administrative Tribunal might have taken under section 116(1) or (2).
- (5) Evidence of anything lawfully said or done, or any record prepared and produced for the purpose of conciliation, by a person in the course of the conciliation process is not to be used in any subsequent consideration of the complaint by the Board nor, unless that person waives the right to object, is it admissible in evidence against that person in any subsequent civil proceedings concerning the subject matter of the complaint.

**111. Action if conciliation fails**

If —

- (a) the conciliation process fails to result in an agreement between the complainant or other person affected by the conduct of the respondent and the respondent; or
- (b) the Board is satisfied that the parties are not cooperating with the conciliation process; or
- (c) the Board is not satisfied with the result of the conciliation process,

the Board is to —

- (d) make an order under Division 4; or
- (e) deal with the complaint under Division 5, 6 or 7; or
- (f) make an allegation to the State Administrative Tribunal.

**Division 9 — Medical students**

**112. Impaired ability to participate in a clinical activity**

- (1) If the Board believes on reasonable grounds that a medical student's ability to participate in a clinical activity is affected by —
  - (a) his or her use of or dependence on alcohol or a drug; or
  - (b) an impairment,

to such an extent that the student's participation in that activity safely and competently is, or is likely to be, adversely affected, the Board may refer the matter to the Dean of the medical school at which the student is studying medicine.

- (2) If the medical student and the Dean agree on a condition to ensure that the student can participate in a clinical activity safely and competently and the student fails to comply with that condition, or the medical student and the Dean cannot agree on such a condition, the Dean may refer the matter to the Board.

- (3) Section 101(1) to (5) apply in respect of a medical student referred back to the Board as if the medical student was a medical practitioner the subject of a complaint.
- (4) If a medical student, without reasonable excuse, fails to comply with an order to submit to an examination by a medical practitioner nominated by the Board, the Board may make an allegation to the State Administrative Tribunal that there is proper cause for action to be taken under section 119.

**113. Referral to impairment review committee**

- (1) After considering any report given to the Board in relation to a medical student under section 101(5) (as applied by section 112(3)), the Board may refer the matter and the report to the impairment review committee.
- (2) After considering —
  - (a) the medical report; and
  - (b) giving the medical student an opportunity to make a written submission to, or attend before and make a representation to, the committee; and
  - (c) having regard to any submission or representation made by the medical student,

the impairment review committee may make any one or more of the following recommendations to the Board —

- (d) that the Board take no further action in relation to the matter;
- (e) if the medical student consents to ceasing to participate in a clinical activity for a period recommended by the impairment review committee or specified by the Board, that the Board require that the student not participate in a clinical activity for a period recommended by the impairment review committee or specified by the Board;

- (f) that the Board require the medical student to undergo counselling specified by the impairment review committee;
  - (g) that the Board impose conditions specified by the committee on the medical student's participation in a clinical activity;
  - (h) that the Board make an allegation to the State Administrative Tribunal that there is proper cause for action to be taken under section 119.
- (3) The Board must consider the recommendation of the impairment review committee and either —
- (a) act on the recommendation; or
  - (b) take action of a kind referred to in subsection (2)(d) to (h) other than that recommended by the committee.
- (4) For the purpose of taking action of a type referred to in subsection (2)(e), the Board may require that the medical student not participate in a clinical activity for a period recommended by the impairment review committee or specified by the Board.

**114. Revocation of prohibition**

- (1) The Board may, by notice in writing, revoke a prohibition and may direct in the notice that the revocation has effect from a date specified in the notice.
- (2) The Board cannot revoke a prohibition imposed by order of the State Administrative Tribunal under section 119 unless it has applied for, and obtained, the approval of the State Administrative Tribunal to do so.



### **Division 10 — Role of the State Administrative Tribunal**

#### **115. Constitution of State Administrative Tribunal**

- (1) When the State Administrative Tribunal is exercising jurisdiction under this Act, it is to be constituted by 4 members specified by the President being —
  - (a) one person who is a legally qualified member; and
  - (b) 2 persons who are medical practitioners with extensive or special experience as medical practitioners; and
  - (c) one person who is not a medical practitioner but is familiar with the interests of medical practitioners or has knowledge and experience enabling understanding of those interests.
- (2) In subsection (1)(b) *medical practitioner* does not include an interstate practitioner or a defence force medical officer.
- (3) Despite subsection (1), the President can specify that the Tribunal is to be constituted by 5 members if the President is satisfied that it is appropriate to do so in particular circumstances and the additional member is to be a person of a kind referred to in subsection (1)(a) or (c) specified by the President.
- (4) The member specified under subsection (1)(a) is to be the presiding member.
- (5) Subsections (1), (3) and (4) do not apply when the Tribunal is holding a directions hearing or other procedural hearing.
- (6) Terms used in this section relating to the Tribunal have the meaning given to them in the *State Administrative Tribunal Act 2004* section 3(1).

**116. Powers of the State Administrative Tribunal in relation to a disciplinary matter**

- (1) If, in a proceeding commenced by an allegation under this Act against a medical practitioner, the State Administrative Tribunal is of the opinion that a disciplinary matter exists in relation to the person, the Tribunal may do one or more of the following —
- (a) decline to make an order or a requirement under this subsection;
  - (b) order the registrar to amend the particulars entered in the register in respect of the person;
  - (c) caution or reprimand the person;
  - (d) require that the person —
    - (i) if the patient agrees, to provide further services to a patient at no cost or at an amount determined by the Tribunal;
    - (ii) to pay, wholly or in part, for further services to be provided to a patient by another medical practitioner;
    - (iii) to reduce or refund the amount of any fees paid in respect of services provided to a patient, to such an extent as is determined by the Tribunal;
  - (e) order the person to undergo counselling specified in the order;
  - (f) order that the person comply with such conditions as the Tribunal may impose on the registration of that person;
  - (g) order the person to report, at intervals specified by the Tribunal, on his or her medical practice to a medical practitioner nominated by the Board and specified in the order;
  - (h) order the person to obtain advice on the management of his or her medical practice from a person nominated by the Board and specified in the order;
  - (i) order the person to pay a penalty not exceeding \$25 000;

- (j) order that the person be suspended from the practice of medicine for a period, not exceeding 2 years, specified in the order;
  - (k) order that the medical practitioner's registration be cancelled and name be removed from the register.
- (2) If, in a proceeding commenced by an allegation under this Act against a person who was a medical practitioner when the disciplinary matter allegedly occurred but who is no longer a medical practitioner, the State Administrative Tribunal is of the opinion that a disciplinary matter exists in relation to that person, the only powers that the Tribunal may exercise are the powers in subsection (1)(a), (c), (d)(ii) and (iii), and (i).

**117. Powers of the State Administrative Tribunal in relation to an impairment matter**

If, in a proceeding commenced by an allegation under this Act, the State Administrative Tribunal is of the opinion that an impairment matter exists in relation to a medical practitioner, the Tribunal may do one or more of the following —

- (a) decline to make an order or requirement under this subsection;
- (b) require the medical practitioner to seek and undergo counselling specified by the Tribunal;
- (c) order that the medical practitioner comply with such conditions as the Tribunal may impose on the registration of that person;
- (d) order that the medical practitioner be suspended from the practice of medicine for the period of time, not exceeding 2 years, specified by the Tribunal in the order;
- (e) order that the medical practitioner's registration be cancelled and name be removed from the register.

**118. Powers of the State Administrative Tribunal in relation to a competency matter**

If, in a proceeding commenced by an allegation under this Act, the State Administrative Tribunal is of the opinion that a competency matter exists in relation to a medical practitioner, the Tribunal may do one or more of the following —

- (a) decline to make an order under this subsection;
- (b) order that the medical practitioner comply with such conditions as the Tribunal may impose on the registration of that person;
- (c) order that the medical practitioner complete an educational course specified by the Tribunal;
- (d) order that the medical practitioner report, at intervals specified by the Tribunal, on his or her medical practice to a medical practitioner nominated by the Board and specified in the order;
- (e) order that the medical practitioner obtain advice on the management of his or her medical practice from a person nominated by the Board and specified in the order;
- (f) order that the medical practitioner be suspended from the practice of medicine for a period, not exceeding 2 years, specified in the order;
- (g) order that the medical practitioner's registration be cancelled and name be removed from the register.

**119. Powers of the State Administrative Tribunal in relation to a medical student**

If, in a proceeding commenced by an allegation under this Act in relation to a medical student, the State Administrative Tribunal is of the opinion that a medical student's ability to participate in a clinical activity is affected by —

- (a) his or her use of or dependence on alcohol or a drug; or
- (b) an impairment,

to such an extent that the student's participation in that activity safely and competently is, or is likely to be, adversely affected, it may, by order, prohibit the medical student from participation in a clinical activity specified in the order for a period specified in the order or if no period is specified, indefinitely.

**120. Ancillary powers of the State Administrative Tribunal**

- (1) In a proceeding commenced by an allegation under this Act, the State Administrative Tribunal may order that the medical practitioner the subject of the allegation —
  - (a) undergo an examination, within the time specified by the Tribunal, by a medical practitioner nominated by the Tribunal; or
  - (b) submit, on a date specified by the Tribunal, to an assessment by an assessor.
- (2) If the Tribunal makes an order under subsection (1)(a), section 101(2), (3) and (5) apply to the exercise of the power as if a reference in those subsections —
  - (a) to the Board were a reference to the Tribunal; and
  - (b) to a requirement were a reference to the order.
- (3) If the Tribunal makes an order under subsection (1)(b), sections 105(2), (3), (4), (5) and (7), 106 and 107 apply to the exercise of the power as if a reference in those provisions to the Board were a reference to the Tribunal.

**Division 11 — Miscellaneous**

**121. Release of information: Board, professional standards committee and impairment review committee**

- (1) The —
  - (a) presiding member may, if he or she thinks it appropriate in the particular circumstances of a complaint being dealt with by the Board; or

- (b) chairperson of the professional standards committee or the impairment review committee may, if he or she thinks it appropriate in the particular circumstances of a complaint being dealt with by his or her committee,

direct that all or any of the following matters not be published —

- (c) the name and address of the complainant;
  - (d) the name and address of the respondent;
  - (e) any specified evidence;
  - (f) all or any part of any report given to the committee;
  - (g) the name and address of any person who gave information to the committee.
- (2) A direction may be amended or revoked at any time by the presiding member or chairperson, as the case may be.
- (3) A person who contravenes a direction given under subsection (1) commits an offence.

Penalty:

- (a) in the case of an individual, a fine of \$5 000;
- (b) in any other case, a fine of \$10 000.

**122. Suspension**

- (1) If, under section 87(1)(b)(ii), 103(4), 116(1)(j), 117(d) or 118(f), a person is suspended from the practice of medicine, the person is to be regarded as not being registered during the period of the suspension.
- (2) The Board may, by notice in writing, revoke a suspension and may direct in the notice that the revocation has effect from a date specified in the notice.
- (3) The Board cannot revoke a suspension that was imposed by the State Administrative Tribunal under section 116(1)(j), 117(d) or 118(f) unless it has applied for, and obtained, the approval of the Tribunal to do so.

- (4) This section does not apply to an interstate practitioner.

**123. Costs**

The Board may, in addition to or instead of exercising a power under section 97(1) or (2), order the respondent to pay the Board such costs and expenses of or arising from the investigation and exercise of that power as the Board thinks fit.

## **Part 7 — Offences**

### **124. Persons who may practise medicine**

A person must not practise medicine unless that person is a medical practitioner.

Penalty:

- (a) in the case of an individual —
  - (i) for a first offence, a fine of \$5 000, and a daily penalty of \$200;
  - (ii) for a second or subsequent offence, a fine of \$10 000, and a daily penalty of \$400;
- (b) in any other case —
  - (i) for a first offence, a fine of \$10 000, and a daily penalty of \$400;
  - (ii) for a second or subsequent offence, a fine of \$20 000, and a daily penalty of \$800.

### **125. Persons who may be employed or engaged to practise medicine**

A person must not employ or engage a person to practise medicine unless the person employed or engaged is a medical practitioner.

Penalty:

- (a) in the case of an individual —
  - (i) for a first offence, a fine of \$5 000, and a daily penalty of \$200;
  - (ii) for a second or subsequent offence, a fine of \$10 000, and a daily penalty of \$400;
- (b) in any other case —
  - (i) for a first offence, a fine of \$10 000, and a daily penalty of \$400;



- (ii) for a second or subsequent offence, a fine of \$20 000, and a daily penalty of \$800.

**126. Exceptions to sections 124 and 125**

For the purposes of sections 124 and 125, a person is not practising medicine only because —

- (a) the person is a student practising medicine under the immediate personal supervision of a medical practitioner; or
- (b) the person employs or engages a person who practises medicine.

**127. Use of title “medical practitioner” or a title of a specialist, or pretending to be registered**

- (1) A person must not —
  - (a) use the title “medical practitioner” unless the person is a registered person; or
  - (b) use a title under which a specialty may be practised that is prescribed under section 37(1) unless that person is registered to practise that specialty; or
  - (c) advertise, or otherwise hold out or imply, that the person is registered or entitled, either alone or with others, to practise medicine or a specialty, unless that person is a registered person.

Penalty:

- (a) for a first offence, a fine of \$2 500, and a daily penalty of \$100;
  - (b) for a second or subsequent offence, a fine of \$5 000, and a daily penalty of \$200.
- (2) Subsection (1)(b) does not apply in relation to the title under which a specialty may be practised until the day 6 months after the day on which that title is prescribed under section 37(1).

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- (3) Subsection (1)(c) does not apply to a newspaper proprietor or printer who publishes an advertisement unless he or she has been notified in writing by the registrar before the advertisement was published that the advertisement contravenes subsection (1)(c).

**128. Medical services provided by a person registered elsewhere**

- (1) In this section —

*foreign practitioner* means a natural person who is registered as a medical practitioner under the law in force in another State or a Territory but does not include an interstate practitioner or defence force medical officer.

- (2) In proceedings against a foreign practitioner for a breach of section 124 or 127(1)(a), (b) or (c), it is a defence to show that the practitioner —

- (a) practised medicine or a specialty; or
- (b) used the title “medical practitioner”; or
- (c) used a title under which a specialty may be practised,

in an emergency or for the purpose of the removal of tissue under the *Human Tissue and Transplant Act 1982*.

**129. Medical practitioners to arrange consultation in certain cases**

- (1) In subsection (2) —

*relative*, in relation to a patient, includes a de facto partner of the patient.

- (2) A medical practitioner who is requested so to do by —

- (a) a patient; or
- (b) a relative of a patient who for any reason is unable to make the request himself or herself,

must endeavour to arrange for a professional consultation between that medical practitioner and another medical

practitioner with respect to the condition of the patient and the medical or surgical treatment appropriate in the circumstances.

- (3) Any medical practitioner who without lawful excuse contravenes subsection (2) commits an offence.

Penalty:

- (a) for a first offence, a fine of \$2 500;
- (b) for a second or subsequent offence, a fine of \$5 000.

- (4) A medical practitioner who arranges a consultation with another medical practitioner in accordance with the provisions of subsection (2) does not thereby become liable for the charges of the medical practitioner in relation to the consultation.

**130. Restriction on administration of anaesthetics in certain cases**

Except in an emergency, a medical practitioner must 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:

- (a) for a first offence, a fine of \$2 500;
- (b) for a second or subsequent offence, a fine of \$5 000.

**131. Offences related to advertising medical services**

A person must not advertise, or cause to be advertised, services that are provided by a medical practitioner in a manner that —

- (a) is false in a material particular; or
- (b) is misleading or deceptive or is likely to mislead or deceive; or
- (c) creates, or is likely to create, an unjustified expectation of beneficial treatment; or

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- (d) promotes the unnecessary or inappropriate use of medical services; or
- (e) refers to, uses or cites actual or purported testimonials; or
- (f) offers a discount, gift or inducement to attract a person to use the services unless the advertisement also states the terms of the offer; or
- (g) compares those services with those provided by another medical practitioner other than on the basis of scientific comparison.

Penalty:

- (a) in the case of an individual —
  - (i) for a first offence, a fine of \$5 000, and a daily penalty of \$200;
  - (ii) for a second or subsequent offence, a fine of \$10 000, and a daily penalty of \$400;
- (b) in any other case —
  - (i) for a first offence, a fine of \$20 000, and a daily penalty of \$800;
  - (ii) for a second or subsequent offence, a fine of \$40 000, and a daily penalty of \$1 600.

**132. Failure to comply with an order or requirement of the Board**

A person must not —

- (a) contravene or fail to comply with an order of the Board given to that person under section 87; or
- (b) fail to comply with a requirement made by the Board under section 97(2), 103(2) or 109(2).

Penalty:

- (a) in the case of an individual, a fine of \$5 000;
- (b) in any other case, a fine of \$10 000.

**133. False or misleading information**

- (1) A person must not do any of the things set out in subsection (2) —
- (a) in relation to an application under this Act; or
  - (b) in relation to the compliance, or purported compliance, with any requirement of this Act to give the Board or the registrar advice or information; or
  - (c) in relation to proceedings of the Board, the complaints assessment committee, the professional standards committee or the impairment review committee; or
  - (d) in relation to an attempt at conciliation under section 110.

Penalty: a fine of \$24 000 or imprisonment for 2 years.

- (2) The things to which subsection (1) applies are —
- (a) making a statement which the person knows is false or misleading in a material particular; or
  - (b) making a statement which is false or misleading in a material particular, with reckless disregard as to whether or not the statement is false or misleading in a material particular; or
  - (c) providing, or causing to be provided, information that the person knows is false or misleading in a material particular; or
  - (d) providing, or causing to be provided, information that is false or misleading in a material particular, with reckless disregard as to whether the information is false or misleading in a material particular.

**134. Confidentiality**

A medical practitioner who carries out an examination under section 101 and an assessor who carries out an assessment under section 105 must not, directly or indirectly, record, disclose or

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make use of any information obtained in the course of carrying out that examination or assessment except —

- (a) for the purpose of performing functions under this Act; or
- or
- (b) as required or allowed by this Act or under another written law; or
- (c) for the purpose of proceeding under Part 6; or
- (d) with the written consent of the person to whom the information relates.

Penalty: a fine of \$5 000.

**135. Offences in relation to assessment or investigation**

- (1) Where under section 92 or 107 a person is required to give any information, answer any question, or produce any document or thing and that person, without reasonable excuse (proof of which lies on the person) —
  - (a) fails to give that information or answer that question at or within the time specified in the requirement; or
  - (b) gives any information or answer that is false in any particular; or
  - (c) fails to produce that document or thing at or within the time specified in the requirement,

the person commits an offence.

Penalty:

- (a) in the case of an individual, a fine of \$5 000;
  - (b) in any other case, a fine of \$10 000.
- (2) It is a defence in any proceeding for an offence under subsection (1)(a) or (c) for the accused to show —
  - (a) that, in the case of an alleged offence arising out of a requirement made orally under section 92 or 107, the assessor or investigator did not, when making the requirement, inform the accused that he or she was

required under this Act to give the information or answer the question, as the case may be; or

- (b) that, in the case of an alleged offence arising out of a requirement made by notice in writing under section 92 or 107, the notice did not state that he or she was required under this Act to give the information, answer the question, or produce the document or thing, as the case may be; or
- (c) that the time specified in the requirement did not afford the accused sufficient notice to enable him or her to comply with the requirement; or
- (d) that, in any case, the assessor or investigator did not, before making the requirement, have reasonable grounds to believe that compliance with the requirement would materially assist in the assessment or investigation being carried out.

**136. Obstruction of assessor or investigator**

A person must not prevent or attempt to prevent an assessor or an investigator from entering premises or otherwise obstruct or impede an assessor or an investigator in the exercise of his or her powers under section 92 or 107.

Penalty:

- (a) in the case of an individual, a fine of \$5 000;
- (b) in any other case, a fine of \$10 000.

**137. Impersonating an investigator or assessor**

A person must not impersonate an investigator or assessor.

Penalty:

- (a) in the case of an individual, a fine of \$5 000;
- (b) in any other case, a fine of \$10 000.

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**138. Information relating to certain business structures**

- (1) If a medical practitioner practises medicine under a form of business structure recognised by law (the *business*) other than —
- (a) a practice on his or her own account; or
  - (b) a partnership in which all of the partners are medical practitioners,

the business must give the Board written notice of the particulars prescribed by the regulations.

Penalty: a fine of \$1 000.

- (2) A business must give the Board written notice of any change to the particulars that the business has given to the Board within 14 days after the change occurs.

Penalty: a fine of \$1 000.

- (3) If the business is a partnership, this section applies to the partnership as if the partnership were a person, but any offence against this section that would otherwise be an offence by a partnership is to be taken to have been committed by each of the partners.

- (4) In subsection (1) the reference to a form of business structure recognised by law does not include an agency or a board as those terms are defined in the *Hospitals and Health Services Act 1927* section 2(1).

- (5) The regulations may provide that subsections (1) and (2) do not apply to a person or class of person specified in the regulations.

**139. Undue influence**

A person must not cause or induce a medical practitioner to do any thing in the course of practising medicine that the person is aware, or ought reasonably to be aware, is conduct that would constitute a disciplinary matter.

Penalty: a fine of \$50 000.



**140. Payment, or acceptance of payment, for referrals prohibited**

- (1) In this section —

*associate of a medical practitioner* means, if a medical practitioner engages in medical practice under a form of business structure recognised by law with another person, that other person.

- (2) A medical practitioner or an associate of a medical practitioner must not, directly or indirectly, pay an amount or give another benefit, or attempt to pay an amount or give another benefit, to a person in return for the person referring another person either to the medical practitioner or the associate.

- (3) A medical practitioner or an associate of a medical practitioner must not, directly or indirectly, accept payment or another benefit for referring a user of the professional services provided either by the medical practitioner or the associate to a person providing, or carrying on a business providing, a service for maintaining, improving or restoring a person's health and wellbeing.

Penalty applicable to subsections (2) and (3): a fine of \$50 000.

**141. Persons may be prohibited from supplying health services etc.**

- (1) If a person is convicted of an offence against section 139 or 140, the court sentencing the person for the offence may make an order under subsection (2) or (4).
- (2) The court may make an order, applying for a period specified by the court —
- (a) prohibiting the person from providing, carrying on, or managing a business providing, a health service; or
  - (b) prohibiting the person from having a financial interest in a business providing a health service; or
  - (c) if the person is a corporation, prohibiting an executive officer of the corporation, who was in a position to

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influence the conduct of the corporation in relation to the offence, from managing a corporation that carries on a business providing a health service.

- (3) For the purpose of subsection (2)(c), a person manages a corporation if the person is a director, or is in any way concerned in or takes part in the management, of the corporation.
- (4) The court may also make an order, applying for a period specified by the court —
  - (a) prohibiting the person from entering into commercial arrangements with a person who provides, carries on, or manages a business providing, a health service; or
  - (b) if the person is a corporation, prohibiting an executive officer of the corporation, who was in a position to influence the conduct of the corporation in relation to the offence, from entering into commercial arrangements with a person who provides, carries on, or manages a business providing, a health service.
- (5) A reference in subsection (4) to a person entering into commercial arrangements includes the entering into commercial arrangements on behalf of another person.
- (6) An order under subsection (2) or (4) may apply generally or be limited in its application by reference to specified conditions, exceptions or factors.
- (7) A person must not contravene an order under subsection (2) or (4).

Penalty:

- (a) in the case of an individual, a fine of \$10 000, and a daily penalty of \$400;
- (b) in any other case, a fine of \$40 000, and a daily penalty of \$1 600.

**142. Assistance to execute a warrant**

A medical practitioner, and any person —

- (a) who engages or employs the medical practitioner to practise medicine; or
- (b) who is engaged or employed by the medical practitioner in the medical practitioner's practice; or
- (c) with whom the medical practitioner practises medicine in partnership,

at the premises named in a warrant issued under section 94 is to provide all reasonable assistance to an investigator executing the warrant.

Penalty:

- (a) in the case of an individual, a fine of \$2 500;
- (b) in any other case, a fine of \$5 000.

**143. Surrender of certificate**

(1) If —

- (a) a person's registration is cancelled and name removed from the register; or
- (b) a person is suspended from the practice of medicine,

the person is to surrender to the Board his or her certificate of registration within 14 days after the day on which the person is notified by the Board of the cancellation and removal of name or suspension.

Penalty: a fine of \$1 000.

- (2) The Board may direct in writing that a person who is suspended from the practice of medicine under section 87 is not obliged to comply with subsection (1) and, in that case, the subsection does not apply to that person.
- (3) If the Board issues a certificate of registration to a person under section 50(2), the person must surrender to the Board, within

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14 days of the day on which the certificate was issued under that subsection, any previous certificate of registration issued to the person by the Board that has not been surrendered to the Board.

Penalty: a fine of \$1 000.

- (4) It is a defence to a prosecution for an offence against subsection (1) or (3) for the accused to show that the failure to surrender the certificate was due to its loss or destruction.

**144.      Incriminating information, questions or documents**

An individual is not excused from complying with a requirement under section 92 or 107 on the ground that the answer to a question or the production of a document or other thing might incriminate the individual or render the individual liable to a penalty, but neither —

- (a) an answer given by the individual that was given to comply with the requirement; nor
- (b) the fact that a document or other thing produced by the individual to comply with the requirement was produced,

is admissible in evidence in any civil or criminal proceedings against the individual other than proceedings for an offence against section 135(1)(b).

**145.      Legal professional privilege**

- (1) Nothing in Part 6 or this Part prevents a person from refusing to answer a question, provide information or produce a document or other thing because the answer or information would relate to, or the document or thing contains, information in respect of which the person claims legal professional privilege.
- (2) The Board may apply to the Supreme Court or a judge for a declaration that legal professional privilege does, or does not, apply to the answer, information, document or thing provided or acquired under Part 6 or this Part.

- (3) A person who claims the benefit of legal professional privilege in relation to an answer, information, document or thing may apply for an order under subsection (2).
- (4) Nothing in this section prevents a person entitled to claim legal professional privilege from waiving its application to an answer, information, document or thing and a waiver once made cannot later be revoked.
- (5) A person, either personally or on another's behalf, who claims that legal professional privilege applies to an answer, information, document or thing and who knows, or ought to know at the time that claim is made that it is false, misleading, or without substance, commits an offence.

Penalty:

- (a) in the case of an individual, a fine of \$5 000;
- (b) in any other case, a fine of \$10 000.

## **Part 8 — Codes of practice, rules, regulations and forms**

### **146. Codes of practice**

- (1) The Board may, with the approval of the Minister, issue codes of practice for the practice of medicine and the conduct of medical practitioners.
- (2) A code of practice comes into operation on the day of publication or on such other day as is determined by the Minister, after consultation with the Board, and specified in the code of practice.
- (3) The Minister is not to give approval under subsection (1) unless the Minister is satisfied that —
  - (a) a draft of the code of practice and an impact assessment statement for the draft code have been prepared by the Board in accordance with such requirements as the Minister may from time to time determine; and
  - (b) the draft code of practice and impact assessment statement have been made available for public comment for such period and in the manner (if any) directed by the Minister; and
  - (c) the Board has taken into account submissions (if any) from members of the public on the draft code of practice before submitting the code to the Minister for his or her approval; and
  - (d) the Board has submitted to the Minister with the code of practice the impact assessment statement and a report on the submissions (if any) received from members of the public; and
  - (e) the impact of the code of practice has been assessed effectively by the Board in accordance with any requirements of the Minister; and

- (f) the code of practice is necessary or convenient having regard to the purposes of this Act.
- (4) Before approving a code of practice, the Minister may —
- (a) direct the Board to review the draft code of practice to ensure that it complies with any requirements determined by the Minister; or
  - (b) after consulting the Board, direct the Board to amend the draft code of practice in the manner specified by the Minister; or
  - (c) give both of the directions referred to in paragraphs (a) and (b).
- (5) If the Minister —
- (a) refuses to approve the issue of a code of practice; or
  - (b) gives a direction under subsection (4),
- the Minister is to give the Board reasons in writing for his or her refusal or direction and the reasons or direction are to be laid before each House of Parliament within 14 sitting days of being given to the Board.
- (6) A code of practice may adopt wholly or partly any standards, rules, code or other provisions published by some other body and may adopt them —
- (a) with or without any amendment or modification; and
  - (b) as in force at the time of adoption or as amended from time to time.
- (7) A breach of a code of practice does not of itself constitute a disciplinary matter for the purposes of section 76 but in any proceedings under Part 6 such a breach may be asserted and may be taken into account in determining any question that arises under that Part.
- (8) Except as provided in subsection (7), no civil or criminal liability attaches to a person by reason only that the person has committed a breach of a code of practice.

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- (9) The *Interpretation Act 1984* sections 41, 42, 43 and 44 apply to the code of practice as if the code of practice were regulations.

**147. Rules**

- (1) The Board may make rules prescribing all matters required or permitted by this Act to be prescribed by rules or necessary or convenient to be prescribed for carrying out this Act.
- (2) Without limiting subsection (1), rules may be made for all or any of the following purposes —
- (a) regulating the keeping and disposal of, and the means of protecting the confidentiality of, patient records;
  - (b) regulating the keeping, sterilisation and disposal of instruments and equipment used in the practice of medicine;
  - (c) prescribing the means of infection control in the practice of medicine.
- (3) A rule made under subsection (1) has no effect unless and until it is confirmed by the Governor.
- (4) Nothing in subsection (3) affects the operation of the *Interpretation Act 1984* Part VI.
- (5) The rules may provide that contravention of a rule is an offence, and provide, for an offence against the rules, a penalty not exceeding a fine of \$5 000.

**148. Regulations**

- (1) The Governor may make regulations —
- (a) prescribing all matters that are required or permitted by the Act to be prescribed by regulation; and
  - (b) with respect to any matter on which the Board may make rules.



- (2) Without limiting subsection (1), regulations may be made for all or any of the following purposes —
- (a) regulating the meetings and proceedings of, and the conduct of business by, the Board or a committee;
  - (b) making provisions relating to registration, including applications for and the amendment or renewal of registration;
  - (c) maintaining the accuracy of the register;
  - (d) regulating the issue, display and use of certificates of registration;
  - (e) regulating the manner of making to the Board any complaint against or concerning a person who is, or was, registered and who may make such a complaint;
  - (f) regulating the conduct of investigations under Part 6;
  - (g) regulating the conduct of conciliation conferences under section 110 and the appointment of persons to preside over those conferences;
  - (h) prescribing the fees to be paid for the purposes of this Act and the persons liable for payment;
  - (i) prescribing returns and notices that are to be given to the Board, and the manner in which they are to be given;
  - (j) providing that information supplied to the Board may be required to be verified by statutory declaration.
- (3) Where a regulation is inconsistent with a rule the regulation prevails to the extent of the inconsistency.
- (4) The regulations may provide that contravention of a regulation is an offence, and provide, for an offence against the regulations, a penalty not exceeding a fine of \$5 000.

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**149. Forms**

Forms that are convenient for the purposes of this Act may be —

- (a) prescribed by the regulations or rules; or
- (b) approved in writing by the Board.

## Part 9 — Miscellaneous

### 150. Protection

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The Crown is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.
- (5) A person who, in relation to any investigation under Part 6 —
  - (a) performs any function under that Part; or
  - (b) is otherwise concerned in proceedings under that Part,has, in respect of any such function or concern, the same protection and immunity as a member or officer of the Supreme Court, or a witness or party before the Supreme Court, would have in respect of a function or concern of a like nature related to the jurisdiction of the Supreme Court.

### 151. Notice of decision to be given

- (1) Subsection (2) applies to the following —
  - (a) any decision or order referred to in section 152;
  - (b) any decision to remove a name from the register under section 54;
  - (c) any decision under section 56.
- (2) If the Board makes a decision or order to which this subsection applies, it is to record the grounds on which the decision or

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order was based, and its reasons, and is as soon as is practicable, but in any case not later than 30 days after making the decision or order, to give written notice of the decision or order, together with those grounds and reasons, to the person to whom the decision or order relates.

**152. Review**

A person who is aggrieved by —

- (a) a decision to refuse to grant registration under section 30, 31, 34 or 38, or to refuse to renew registration under section 46(1); or
- (b) a decision to impose a condition under section 30(5) or (6), 31(3), 34(4), 38(6) or (7), 40 or 46(1)(d); or
- (c) a decision, whether or not to revoke or vary a condition, under section 30(7), 31(5), 34(6), 39(3), 38(8), 40(4) or 69(2) or (4); or
- (d) a decision to cancel registration under section 33(8) or 34(5); or
- (e) a decision of the Board not to give a notice under section 65(1)(b) or 66(2)(b); or
- (f) a decision of the Board under section 86(1); or
- (g) an order under section 87; or
- (h) a decision of the Board under section 87(5), 103(2) or 109(2) to take action or under section 111(e) to deal with a complaint under Part 6 Division 5; or
- (i) a decision of the Board under section 97(2), other than a decision to make an allegation to the State Administrative Tribunal; or
- (j) a decision of the Board under section 87(5), 97(2) or 109(2) to take action or under section 111(e) to deal with a complaint under Part 6 Division 6; or
- (k) a decision of the Board under section 101(1) to require a medical practitioner to undergo an examination; or

- (l) a decision of the Board under section 103(2), other than a decision to make an allegation to the State Administrative Tribunal; or
- (m) a decision of the Board under section 87(5), 97(2) or 103(2) to take action or under section 111(e) to deal with a complaint under Part 6 Division 7; or
- (n) an order of the Board under section 105(1) that a medical practitioner submit to an assessment; or
- (o) a decision of the Board under section 109(2), other than a decision to make an allegation to the State Administrative Tribunal; or
- (p) a decision of the Board under section 113(3), other than a decision to make an allegation to the State Administrative Tribunal,

may apply to the State Administrative Tribunal for a review of the order or decision.

**153. Publication of proceedings etc.**

- (1) Subsection (2) applies to the following —
  - (a) the Board, any member of the Board, the registrar or any officer or delegate of the Board or the registrar;
  - (b) any committee or any member of a committee or person referred to in section 17(5);
  - (c) any board or authority outside the State charged with regulating the registration and supervision of medical practitioners or any officer or agent of or person engaged or employed by the board or authority;
  - (d) any journalist for, the proprietor or any person concerned in the publication or operation of, any newspaper or periodical or of any electronic medium.
- (2) Without limiting the operation of section 150, no action, claim or demand lies against a person to whom this subsection applies in respect of the communication or publication in good faith of

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any finding, reason or decision of the Board, the complaints assessment committee, the professional standards committee, the impairment review committee or the State Administrative Tribunal.

- (3) The Board may give notice of a finding, reason or decision of the Board, the complaints assessment committee, the professional standards committee, the impairment review committee or the State Administrative Tribunal in respect of a person to —
- (a) any person referred to in subsection (1)(c) or (d); and
  - (b) any body that has granted the person a qualification that is entered in the register; and
  - (c) any relevant professional association or trade union of which the person is a member; and
  - (d) any person who has engaged or employed the person to practise medicine or provide medical services or any person with whom the person practises medicine in partnership; and
  - (e) any other person who, in the opinion of the Board, should be made aware of the finding, reason or decision,

and may publish notice of the finding, reason or decision in the *Gazette* or in such other manner as the Board thinks fit.

**154. Furnishing information**

- (1) A regulatory authority of this State must furnish without delay any information about a medical practitioner reasonably required by a regulatory authority of another State or a Territory in connection with —
- (a) a disciplinary matter, competency matter or impairment matter relating to a practitioner who is not an interstate practitioner; or
  - (b) actual or possible disciplinary action against a practitioner who is an interstate practitioner.

- (2) A regulatory authority of this State may provide the information despite any law of this State relating to secrecy or confidentiality.
- (3) Nothing in this section affects any obligation or power to provide information apart from this section.

**155. Legal proceedings**

- (1) Any proceedings for an offence against this Act may be taken in the name of the Board by the registrar or any other person authorised in that behalf by the Board.
- (2) All proceedings for offences against this Act are to be heard by a court of summary jurisdiction constituted by a magistrate.
- (3) In any proceedings no proof is required of —
  - (a) the appointment of a member or deputy of a member of the Board or a member of a committee; or
  - (b) the authorisation of a person under subsection (1),but an averment in a prosecution notice that the person is so appointed or authorised is to be taken to be proved in the absence of evidence to the contrary.
- (4) In all courts and before all persons and bodies authorised to receive evidence, in the absence of evidence to the contrary —
  - (a) a certificate purporting to be issued on behalf of the Board and stating that a person was or was not registered by the Board, the conditions to which a registration was subject, or that a person was suspended from the practice of medicine, on any day or days or during a period mentioned in the certificate, is evidence of the matters so stated; and
  - (b) a copy of or extract from a register or any statement that purports to reproduce matters entered in the register that is certified by the registrar as a true copy, extract or statement, is evidence of the facts appearing in that copy, extract or statement; and

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- (c) judicial notice is to be taken of the fact that a person is the holder of the office of registrar and of the signature of the registrar on a certificate purporting to be issued under paragraph (b).
- (5) A notice or appointment purporting to be signed by the chairperson or a person referred to in section 79(6)(b) is to be presumed to be duly signed until the contrary is shown.

**156. Liability of certain officers of body corporate: offences**

- (1) If a body corporate is charged with an offence under this Act, every person who was an officer of the body corporate at the time of the alleged offence may also be charged with the offence.
- (2) If a body corporate and an officer are charged as permitted by subsection (1) and the body corporate is convicted of the offence, the officer is to be taken to have also committed the offence, subject to subsection (5).
- (3) If a body corporate commits an offence under this Act, then, although the body corporate is not charged with the offence, every person who was an officer of the body corporate at the time the offence was committed may be charged with the offence.
- (4) If an officer is charged as permitted by subsection (3) and it is proved that the body corporate committed the offence, the officer is to be taken to have also committed the offence, subject to subsection (5).
- (5) If under this section an officer is charged with an offence it is a defence to prove —
  - (a) that the offence was committed without the officer's consent or connivance; and
  - (b) that the officer took all the measures to prevent the commission of the offence that he or she could



reasonably be expected to have taken having regard to the officer's functions and to all the circumstances.

**157. Confidentiality of certain reports**

- (1) In this section and section 158 —  
*court* includes any tribunal, authority or person having power to require the production of documents or the answering of questions, but does not include the State Administrative Tribunal, a committee, the Board, or the Supreme Court in respect of appeal proceedings under the *State Administrative Tribunal Act 2004* arising from proceedings under this Act;  
*report* includes a copy, reproduction and duplicate of the report or any part of a copy, reproduction or duplicate.
- (2) A report by the impairment review committee under section 102, or by the professional standards committee under section 108, to the Board may not be admitted or used in any civil proceedings before a court.
- (3) A person may not be compelled to produce a report referred to in subsection (2) or to give evidence in relation to the report or its contents in any civil proceedings before a court.

**158. Assessment and medical report**

- (1) In this section —  
*assessment report* means a report on an assessment given to the Board under section 105(7);  
*medical report* means a report given to the Board under section 101(5).
- (2) An assessment report and a medical report may not be admitted or used in any civil proceedings before a court except with the consent of —
  - (a) the person who gave the report to the Board; and
  - (b) the person who is the subject of the report.

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- (3) A person may not be compelled to produce an assessment report or a medical report or to give evidence in relation to the report or its contents in any civil proceedings before a court unless the report is admitted or used under subsection (2).

**159. Review of Act**

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from its commencement and every fifth anniversary of that day, and in the course of that review the Minister is to consider and have regard to —
- (a) the effectiveness of the operations of the Board; and
  - (b) the need for the continuation of the functions of the Board; and
  - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (2) The Minister is to prepare a report based on the review made under subsection (1) and, as soon as is practicable after the preparation of the report, cause it to be laid before each House of Parliament.
- (3) If the prohibition in section 124 on persons other than medical practitioners practising medicine has not been replaced by regulation of the practice of medicine based on defined core practices within 3 years of the commencement of this Act, the Minister is to carry out a review of that section.
- (4) The Minister is to prepare a report based on the review made under subsection (3) within 3 years and 9 months of the commencement of this Act and, as soon as is practicable after the preparation of the report, cause it to be laid before each House of Parliament.

**160. Repeals**

- (1) The *Medical Act 1894* is repealed.

(2) The *Medical Rules 1987* are repealed.

**161. Savings and transitional provisions**

Schedule 2 sets out savings and transitional provisions.

**162. Consequential amendments**

Schedule 3 sets out consequential amendments.

## **Schedule 1 — Constitution and proceedings of the Board**

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### **Division 1 — General provisions**

#### **1. Term of office**

- (1) Subject to clause 4, a member of the Board appointed by the Minister under section 7(2)(a), (b), (c), (e) or (f) —
  - (a) holds office for such term, not exceeding 3 years, as is specified in the member's instrument of appointment; and
  - (b) is not to hold office for more than 9 years consecutively.
- (2) A person who has been a member of the Board for 9 years consecutively may be appointed for a further term not exceeding 3 years if 3 years have elapsed since the person ceased to be a member of the Board.

#### **2. Functions of deputy presiding member**

- (1) The deputy presiding member is to perform the functions of the presiding member when the presiding member is unable to do so by reason of illness, absence or other cause, or when the office of presiding member is vacant.
- (2) No act or omission of the deputy presiding member acting as presiding member is to be questioned on the ground that the occasion for his or her so acting had not arisen or had ceased.

#### **3. Deputy members**

- (1) The Minister may —
  - (a) appoint a person eligible to be appointed under section 7(2)(b), (c) or (d) to be a deputy of any person appointed to be a member under those respective paragraphs; and
  - (b) appoint such number of persons eligible to be appointed under section 7(2)(a), (e) or (f) as the Minister considers necessary to form a pool of deputies of the members referred to in those respective paragraphs.

- (2) The Minister may terminate an appointment made under subclause (1) at any time.
- (3) The provisions of section 7 that apply to and in relation to the appointment of a member apply, with any necessary modification, to and in relation to the appointment of the deputy or deputies of that member.
- (4) A deputy of a member referred to in subclause (1)(a) may perform the functions of the member when the member is unable to do so by reason of illness, absence or other cause.
- (5) If a member of the Board referred to in section 7(2)(a), (e) or (f) is unable to perform the functions of the member by reason of illness, absence or other cause (*absent member*), the presiding member may request a deputy member from the relevant pool to be the deputy of the absent member and that deputy may perform the functions of the absent member until the occasion for so acting has ceased.
- (6) Despite anything in this Act, a deputy of a member may continue to act as a member, after the occasion for so acting has ceased, for the purpose of completing any function.
- (7) A deputy of a member, while acting as a member, has all the functions of and all the protection given to a member.
- (8) No act or omission of a person acting in place of another under this clause is to be questioned on the ground that the occasion for so acting had not arisen or had ceased.

**4. Vacation of office by member**

- (1) A member of the Board may resign from office by notice in writing given to the Minister.
- (2) A member who resigns under subclause (1) is to give a copy of the notice of resignation to the registrar.
- (3) A member of the Board may be removed from office by the Minister —
  - (a) for mental or physical disability, incompetence, neglect of duty or misconduct that impairs the performance of the member's duties; or

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**Division 1** General provisions

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- (b) if the member is convicted of an offence that in the opinion of the Minister renders the person unfit to be a member of the Board; or
  - (c) if the member is an insolvent under administration, as defined in the Corporations Act section 9; or
  - (d) if the member is absent without leave of the Board from 3 consecutive meetings of the Board of which the member has had notice; or
  - (e) for any other act or omission that in the opinion of the Minister may cause prejudice or injury to the Board.
- (4) A member of the Board is to be removed from office by the Minister if the member ceases to hold a position or qualification by virtue of which the member was appointed or if, in the case of a member who is a medical practitioner, the registration of the member under this Act is suspended.

**5. General procedure concerning meetings**

- (1) At a meeting of the Board —
- (a) the presiding member, or in his or her absence the deputy presiding member, is to preside; or
  - (b) in the absence of both of those members, a member elected by the members present is to preside.
- (2) A quorum for a meeting of the Board is 5 members, at least 3 of whom are medical practitioners.
- (3) The procedure for convening meetings of the Board and the conduct of business at those meetings is, subject to this Act, to be as determined by the Board.
- (4) The first meeting of the Board is to be convened and presided over by a member of the Board nominated in writing by the Minister.
- (5) A presiding member and deputy presiding member are to be elected by the Board at the first meeting of the Board.

**6. Voting**

- (1) A decision of the majority of members at a meeting of the Board at which a quorum is present is the decision of the Board.

- (2) If the votes of members present at a meeting and voting are equally divided the member presiding at the meeting is to have a casting vote in addition to a deliberative vote.

**7. Holding meetings remotely**

The presence of a person at a meeting of the Board need not be by attendance in person but may be by that person and each other person at the meeting being simultaneously in contact by telephone, or other means of instantaneous communication.

**8. Resolution without meeting**

A resolution in writing signed by each member of the Board or assented to by each member by letter, facsimile transmission, electronic mail or other written means has effect as if it had been passed at a meeting of the Board.

**9. Minutes**

The Board is to ensure that an accurate record is kept and preserved of the proceedings at each meeting of the Board and of each resolution passed by the Board.

**Division 2 — Disclosure of interests etc.**

**10. Meaning of “member”**

In this Division —

*member* means a member of the Board or a member of a committee, as the case may be.

**11. Disclosure of interests**

- (1) A member who has a material personal interest in a matter being considered or about to be considered by the Board or a committee must, as soon as possible after the relevant facts have come to the member’s knowledge, disclose the nature of the interest at a meeting of the Board or the committee.

Penalty: a fine of \$5 000.

- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

**12. Exclusion of interested member**

- (1) A member who has a material personal interest in a matter that is being considered by the Board or a committee —
  - (a) is not to vote, whether at a meeting or otherwise, on the matter; and
  - (b) is not to be present while the matter is being considered at a meeting.
- (2) In subclause (1)(a) or (b) a reference to a matter also refers to a proposed resolution under clause 13 in respect of the matter, whether relating to that member or a different member.

**13. Board or committee may resolve that clause 12 inapplicable**

Clause 12 does not apply if the Board or a committee has at any time passed a resolution that —

- (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

**14. Quorum where clause 12 applies**

- (1) Despite clause 5(2), when the Board is dealing with a matter in relation to which a member of the Board is disqualified under clause 12, 3 members who are entitled to vote on any motion that may be moved in relation to the matter constitute a quorum.
- (2) The Minister may deal with a matter to the extent that the Board cannot deal with it because of subclause (1).

**15. Minister may declare clauses 12 and 14 inapplicable**

- (1) The Minister may by writing declare that clause 12 or 14 does not apply in relation to a specified matter, either generally or for the purpose of dealing with particular proposed resolutions.
- (2) The Minister must, within 14 sitting days after a declaration under subclause (1) is made, cause a copy of the declaration to be laid before each House of Parliament.



## **Schedule 2 — Savings and transitional provisions**

[s. 161]

### **1. Terms used in this Schedule**

In this Schedule —

***commencement day*** means the day on which this Act comes into operation;

***liability*** means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, or whether owed alone or jointly or jointly and severally with any other person;

***right*** means any right, power, privilege or immunity whether actual, contingent or prospective;

***the former Board*** means the Medical Board established under the repealed Act;

***the new Board*** means the Medical Board of Western Australia established under this Act;

***the repealed Act*** means the *Medical Act 1894*.

### **2. Interpretation Act 1984 not affected**

The provisions of this Schedule do not prejudice or affect the application of the *Interpretation Act 1984* to and in relation to the repeal effected by section 160.

### **3. The Medical Board continues**

- (1) The new Board is a continuation of, and the same legal entity as, the former Board and the rights and liabilities of the entity are not affected.
- (2) If in a written law or other document or instrument there is a reference to the former Board established under the repealed Act, that reference may, where the context so requires, be read as if it had been amended to be a reference to the new Board.

### **4. Board members**

- (1) A member of the former Board ceases to be a member on the commencement day.

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- (2) Six of the members of the new Board as first constituted under this Act are to hold office for such term, not exceeding 18 months, as is specified in the member's instrument of appointment.

**5. The registrar and other staff**

- (1) The registrar of the former Board who held office immediately before the commencement day continues in office, under and subject to this Act, as the registrar of the new Board.
- (2) The other officers of the former Board who held office immediately before the commencement day continue in office, under and subject to this Act, as officers of the new Board.
- (3) A person mentioned in subclause (1) or (2) is to be regarded as having been engaged or employed, as is relevant, under this Act.
- (4) Except as otherwise agreed by a person mentioned in subclause (1) or (2), the remuneration, existing or accrued rights, rights under a superannuation scheme or continuity of service of the person are not affected, prejudiced or interrupted by the operation of subclause (1) or (2) or the repeal of the *Medical Act 1894*.
- (5) The rights under a superannuation scheme of a person who was a registrar or officer of the former Board are not affected, prejudiced or interrupted by the repeal of the *Medical Act 1894*.

**6. Natural persons registered under the repealed Act**

- (1) A natural person who immediately before the commencement day was registered under section 11 of the repealed Act is, on the commencement day, to be taken to be registered under section 30 for a period ending on 30 September immediately following the commencement day, and subject to the same conditions as applied to that person's registration under the repealed Act.
- (2) A natural person who immediately before the commencement day was registered under section 11AB(1) of the repealed Act is, on the commencement day, to be taken to be registered in accordance with section 65 during such time as he or she fulfils the requirements of section 65(2).
- (3) A natural person who immediately before the commencement day was registered under section 11AB(2) of the repealed Act is, on the

commencement day, to be taken to be registered in accordance with section 66 during such time as he or she fulfils the requirements of section 66(3).

- (4) A natural person who immediately before the commencement day was registered under section 11AC of the repealed Act is, on the commencement day, to be taken to be registered under section 31 for the period that, and subject to the same conditions as, applied to that person's registration under the repealed Act.
- (5) A natural person who immediately before the commencement day was registered under section 11AD of the repealed Act is, on the commencement day, to be taken to be registered under section 31 for the period that, and subject to the same conditions as, applied to that person's registration under the repealed Act.
- (6) A natural person who immediately before the commencement day was registered under section 11AF (other than section 11AF(1)E) of the repealed Act is, on the commencement day, to be taken to be registered under section 34 for the same type of registration referred to in section 34(2)(b) as he or she was registered under section 11AF of the repealed Act for the period that, and subject to the same conditions as, applied to that person's registration under the repealed Act.
- (7) A natural person who immediately before the commencement day was registered under section 11AF(1)E of the repealed Act is, on the commencement day, to be taken to be registered under section 38(1) and (3) for the period that, and subject to the same conditions as, applied to that person's registration under the repealed Act.
- (8) If immediately before the commencement day a determination of an unmet area of need by the Minister under section 11AF(2) of the repealed Act is in force, that unmet area of need is, on the commencement day, to be taken to be an area of need determined by the Minister for the purposes of the definition of "an unmet area of need" in section 34(1).
- (9) A natural person who immediately before the commencement day was registered under section 11AG of the repealed Act is, on the commencement day, to be taken to be registered under section 33, for the period that, and subject to the same conditions as, applied to that person's registration under the repealed Act.

**cl. 7**

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- (10) If immediately before the commencement day a determination of part of this State to be remote and rural WA by the Minister for the purposes of the definition of “remote and rural WA” in section 11AG(7) of the repealed Act is in force, that part of the State is, on the commencement day, to be taken to be the part of the State determined by the Minister to be remote and rural WA for the purposes of the definition of “remote and rural WA” in section 33(1).
- (11) If a person is taken to be registered under this Act under subclause (4), (5), (6), (7) or (9) for the period that applied to that person’s registration under the repealed Act, during the period that the person is so taken to be registered —
- (a) the person must pay to the Board the fee prescribed under section 46(2) for the renewal of registration on or before the day it falls due under the rules; and
  - (b) section 46(2), (3), (4), (5), (6) and (7) apply to the person as if a reference in those subsections to a medical practitioner were a reference to the person.

**7. Provisional registration**

A natural person who immediately before the commencement day had a provisional certificate of registration or a provisional certificate of conditional registration granted under section 12B(1) of the repealed Act that had not been cancelled is, on the commencement day, to be taken to be registered under and subject to section 32 until the date stated in the certificate or fixed by the Board.

**8. Certificates of registration issued under the repealed Act**

A certificate of registration (other than a certificate referred to in clause 7) in force under the repealed Act immediately before the commencement day is, subject to this Act, to be taken to be a certificate of registration for the purposes of this Act.

**9. Suspensions**

If immediately before the commencement day a natural person was suspended under the repealed Act, section 122 applies to the suspension as if the person had been suspended under section 116(1)(j).

**10. Undertakings under the repealed Act**

- (1) If a person has given an undertaking under a provision of the repealed Act that undertaking is not affected by the repeal of that Act.
- (2) If the Board is satisfied that the person has breached the undertaking before, on or after the commencement day, the Board may deal with the person as if the person had failed to comply with an undertaking given under a provision of this Act.

**11. Matter referred to the professional standards committee under section 13 of the repealed Act**

- (1) If immediately before the commencement day, the professional standards committee is dealing with a matter referred to it under the repealed Act section 13(2a) but has not dealt with the matter under the repealed Act section 13(5), on or after the commencement day the committee is to continue for the purpose of dealing with the matter as if the repealed Act section 13(5), (6) and (6a) had not been repealed.
- (2) A fine that the committee imposes under subclause (1) is recoverable in a court of competent jurisdiction as a debt due to the Board.

**12. Investigations**

If immediately before the commencement day an investigator was investigating a complaint under the repealed Act section 12C, the investigator is to continue investigating the matter as if he or she had been appointed under section 90 and the appointing body were the new Board.

**13. Failure to comply with an order made under the repealed Act**

If immediately before the commencement day an order made by the Board was in effect in relation to a person under the repealed Act, that order is not affected by the repeal of that Act and failure to comply with it before, on or after the commencement day may be dealt with under section 132 as if the order were an order made under section 87.

**14. Medical call services**

An approval of a medical call service under the repealed Act in force immediately before the commencement day ceases to have effect on the commencement day.

**cl. 15**

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**15. Annual report for part of a year**

- (1) The former Board is to make and submit an annual report as required by the repealed Act section 21G, but limited to the period from 1 July preceding the commencement day to the commencement day, and that section applies as if that period were a year.
- (2) Despite the repeal of the repealed Act and this Schedule, the former Board remains in existence for the purpose of subclause (1) and is entitled to receive from the new Board and its staff such assistance as it may require for the purpose.

**16. Powers in relation to transitional provision**

- (1) If there is no sufficient provision in this Schedule for dealing with a transitional matter the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed in relation to that matter.
- (2) Regulations made under subclause (1) may provide that specific provisions of this Act —
  - (a) do not apply; or
  - (b) apply with specific modifications,to or in relation to any matter.
- (3) Regulations made under subclause (1) must be made within 12 months after the commencement day.
- (4) If regulations made under subclause (1) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement day, the regulations have effect according to their terms.
- (5) In subclause (4) —  
*specified* means specified or described in the regulations.
- (6) If regulations contain a provision referred to in subclause (4), the provision does not operate so as —
  - (a) to affect in a manner prejudicial to any person (other than the State), the right of that person existing before the day of publication of those regulations; or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

### Schedule 3 — Consequential amendments

[s. 162]

**1. *Adoption Act 1994* amended**

- (1) The amendments in this clause are to the *Adoption Act 1994*.
- (2) Section 4(1) is amended in the definition of “medical practitioner” by deleting “*Medical Act 1894*” and inserting instead —  
“ *Medical Practitioners Act 2008* ”.

**2. *Alcohol and Drug Authority Act 1974* amended**

- (1) The amendments in this clause are to the *Alcohol and Drug Authority Act 1974*.
- (2) Section 4 is amended by deleting the definition of “medical practitioner” and inserting instead —  
“  
*medical practitioner* has the meaning given to that term in the *Medical Practitioners Act 2008* section 4;  
”.

**3. *Anatomy Act 1930* amended**

- (1) The amendments in this clause are to the *Anatomy Act 1930*.
- (2) Section 2 is amended by deleting the definition of “medical practitioner” and inserting instead —  
“  
*medical practitioner* has the meaning given to that term in the *Medical Practitioners Act 2008* section 4;  
”.

**4. *Bail Act 1982* amended**

- (1) The amendments in this clause are to the *Bail Act 1982*.
- (2) Schedule 1 Part D clause 2(7) is amended by deleting the definition of “medical practitioner” and inserting instead —



“  
*medical practitioner* has the meaning given to that term in  
the *Medical Practitioners Act 2008* section 4;

”.

**5. *Births, Deaths and Marriages Registration Act 1998* amended**

- (1) The amendments in this clause are to the *Births, Deaths and Marriages Registration Act 1998*.
- (2) Section 4 is amended by deleting the definition of “doctor” and inserting instead —

“

*doctor* has the meaning given to “medical practitioner”  
in the *Medical Practitioners Act 2008* section 4;

”.

**6. *Blood Donation (Limitation of Liability) Act 1985* amended**

- (1) The amendments in this clause are to the *Blood Donation (Limitation of Liability) Act 1985*.
- (2) Section 3 is amended in the definition of “medical practitioner” by deleting “by section 3 of the *Medical Act 1894*,” and inserting instead —

“

to that term in the *Medical Practitioners Act 2008*  
section 4;

”.

**7. *Chiropractors Act 2005* amended**

- (1) The amendments in this clause are to the *Chiropractors Act 2005*.
- (2) Section 3 is amended in the definition of “medical practitioner” by deleting “*Medical Act 1894*,” and inserting instead —

“ *Medical Practitioners Act 2008*; ”.

**8. *Civil Liability Act 2002* amended**

- (1) The amendments in this clause are to the *Civil Liability Act 2002*.

**cl. 9**

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- (2) Section 5PA is amended in paragraph (d) of the definition of “health professional” by deleting “*Medical Act 1894* section 3(1);” and inserting instead —

“ *Medical Practitioners Act 2008* section 4; ”.

- (3) Section 5AB is amended in paragraph (a) of the definition of “medical qualifications” by deleting “*Medical Act 1894*;” and inserting instead —

“ *Medical Practitioners Act 2008*; ”.

**9. Constitution Acts Amendment Act 1899 amended**

- (1) The amendments in this clause are to the *Constitution Acts Amendment Act 1899*.

- (2) Schedule V Part 3 is amended by deleting the item commencing “The Medical Board” and inserting instead —

“

The Medical Board of Western Australia established under the *Medical Practitioners Act 2008*.

”.

**10. Coroners Act 1996 amended**

- (1) The amendments in this clause are to the *Coroners Act 1996*.

- (2) Section 3 is amended by deleting the definition of “doctor” and inserting instead —

“

**doctor** has the meaning given to “medical practitioner” in the *Medical Practitioners Act 2008* section 4;

”.

**11. Corruption and Crime Commission Act 2003 amended**

- (1) The amendments in this clause are to the *Corruption and Crime Commission Act 2003*.

- (2) Section 54(1) is amended in the definition of “medical practitioner” by deleting “*Medical Act 1894*;” and inserting instead —

“ *Medical Practitioners Act 2008*; ”.

**12.      *Court Security and Custodial Services Act 1999* amended**

- (1) The amendments in this clause are to the *Court Security and Custodial Services Act 1999*.
- (2) Section 3 is amended in the definition of “doctor” by deleting “*Medical Act 1894*” and inserting instead —  
“ *Medical Practitioners Act 2008* ”.

**13.      *Cremation Act 1929* amended**

- (1) The amendments in this clause are to the *Cremation Act 1929*.
- (2) Section 2 is amended in the definition of “medical practitioner” by deleting “*Medical Act 1894*.” and inserting instead —  
“ *Medical Practitioners Act 2008*. ”.

**14.      *Criminal Injuries Compensation Act 2003* amended**

- (1) The amendments in this clause are to the *Criminal Injuries Compensation Act 2003*.
- (2) Section 3 is amended in paragraph (b) of the definition of “health professional” by deleting “*Medical Act 1894*; or” and inserting instead —  
“ *Medical Practitioners Act 2008*; or ”.

**15.      *Criminal Investigation (Identifying People) Act 2002* amended**

- (1) The amendments in this clause are to the *Criminal Investigation (Identifying People) Act 2002*.
- (2) Section 52 is amended in the definition of “doctor” by deleting “*Medical Act 1894*;” and inserting instead —  
“ *Medical Practitioners Act 2008*; ”.

**cl. 16**

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**16. *Criminal Investigation Act 2006* amended**

- (1) The amendments in this clause are to the *Criminal Investigation Act 2006*.
- (2) Section 73 is amended in the definition of “doctor” by deleting “*Medical Act 1894*,” and inserting instead —  
“ *Medical Practitioners Act 2008* section 4; ”.

**17. *Criminal Property Confiscation Act 2000* amended**

- (1) The amendments in this clause are to the *Criminal Property Confiscation Act 2000*.
- (2) The Glossary is amended by deleting the definition of “medical practitioner” and inserting instead —  
“  
“**medical practitioner**” has the meaning given to that term in the *Medical Practitioners Act 2008* section 4;  
”.

**18. *Dental Act 1939* amended**

- (1) The amendments in this clause are to the *Dental Act 1939*.
- (2) Section 4 is amended in the definition of “medical practitioner” by deleting “*Medical Act 1894*,” and inserting instead —  
“ *Medical Practitioners Act 2008*; ”.

**19. *Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981* amended**

- (1) The amendments in this clause are to the *Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981*.
- (2) Section 14 is amended in the definition of “medical practitioner” by deleting “*Medical Act 1894*,” and inserting instead —  
“ *Medical Practitioners Act 2008*; ”.



**cl. 24**

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- (3) Section 246D(1)(n) is amended by deleting “within the meaning of section 3 of the *Medical Act 1894*” and inserting instead —

“

within the meaning given to that term in the *Medical Practitioners Act 2008* section 4

”.

**24. *Health Legislation Administration Act 1984* amended**

- (1) The amendments in this clause are to the *Health Legislation Administration Act 1984*.
- (2) Section 6(4)(a) is amended by deleting “*Medical Act 1894*;” and inserting instead —
- “ *Medical Practitioners Act 2008*; ”.

**25. *Health Professionals (Special Events Exemption) Act 2000* amended**

- (1) The amendments in this clause are to the *Health Professionals (Special Events Exemption) Act 2000*.
- (2) Section 3(1) is amended in the definition of “Health Registration Act” by deleting “*Medical Act 1894*;” and inserting instead —
- “ *Medical Practitioners Act 2008*; ”.

**26. *Health Services (Conciliation and Review) Act 1995* amended**

- (1) The amendments in this clause are to the *Health Services (Conciliation and Review) Act 1995*.
- (2) Schedule 1 item 3 is deleted and the following item is inserted instead —
- “
3. Medical Board of Western Australia under the *Medical Practitioners Act 2008*.

”.



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“ *Medical Practitioners Act 2008*; ”.

**31. *Juries Act 1957* amended**

- (1) The amendments in this clause are to the *Juries Act 1957*.
- (2) The Second Schedule Part II item 2 is amended by deleting “*Medical Act 1894*” and inserting instead —  
“ *Medical Practitioners Act 2008* ”.

**32. *Magistrates Court Act 2004* amended**

- (1) The amendments in this clause are to the *Magistrates Court Act 2004*.
- (2) Schedule 1 clause 13(3) is amended by deleting “(within the meaning of the *Medical Act 1894*)” and inserting instead —  
“ (as defined in the *Medical Practitioners Act 2008* section 4) ”.

**33. *Medical Radiation Technologists Act 2006* amended**

- (1) The amendments in this clause are to the *Medical Radiation Technologists Act 2006*.
- (2) Section 3 is amended in the definition of “medical practitioner” by deleting “*Medical Act 1894*,” and inserting instead —  
“ *Medical Practitioners Act 2008*; ”.

**34. *Mental Health Act 1996* amended**

- (1) The amendments in this clause are to the *Mental Health Act 1996*.
- (2) Section 3 is amended by deleting the definition of “medical practitioner” and inserting instead —  
“  

*medical practitioner* has the meaning given to that term in the *Medical Practitioners Act 2008* section 4;

”.
- (3) Section 17(1) is amended by deleting “The Medical Board appointed under the *Medical Act 1894*” and inserting instead —



“

The Medical Board of Western Australia established under  
the *Medical Practitioners Act 2008*

”.

**35.      *Miner’s Phthisis Act 1922* amended**

- (1) The amendments in this clause are to the *Miner’s Phthisis Act 1922*.
- (2) Section 8(2) is amended by deleting “*Medical Act 1894*” and inserting instead —  
“ *Medical Practitioners Act 2008* ”.

- (3) Section 8(3) is amended by deleting “*Medical Act 1894*” and inserting instead —  
“ *Medical Practitioners Act 2008* ”.

**36.      *Minimum Conditions of Employment Act 1993* amended**

- (1) The amendments in this clause are to the *Minimum Conditions of Employment Act 1993*.
- (2) Section 3(1) is amended in the definition of “medical practitioner” by deleting “*Medical Act 1894*” and inserting instead —  
“ *Medical Practitioners Act 2008* ”.

**37.      *Misuse of Drugs Act 1981* amended**

- (1) The amendments in this clause are to the *Misuse of Drugs Act 1981*.
- (2) Section 3(1) is amended in the definition of “medical practitioner” by deleting “*Medical Act 1894*,” and inserting instead —  
“ *Medical Practitioners Act 2008*; ”.

**38.      *Nurses and Midwives Act 2006* amended**

- (1) The amendments in this clause are to the *Nurses and Midwives Act 2006*.
- (2) Section 3 is amended in the definition of “medical practitioner” by deleting “*Medical Act 1894*,” and inserting instead —

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“ *Medical Practitioners Act 2008*; ”.

**39. Oaths, Affidavits and Statutory Declarations Act 2005 amended**

- (1) The amendments in this clause are to the *Oaths, Affidavits and Statutory Declarations Act 2005*.
- (2) Schedule 2 item 15 is amended by deleting “within the meaning of the *Medical Act 1894*.” and inserting instead —  
“ as defined in the *Medical Practitioners Act 2008* section 4. ”.

**40. Occupational Therapists Act 2005 amended**

- (1) The amendments in this clause are to the *Occupational Therapists Act 2005*.
- (2) Section 3 is amended in the definition of “medical practitioner” by deleting “*Medical Act 1894*,” and inserting instead —  
“ *Medical Practitioners Act 2008*; ”.

**41. Optometrists Act 2005 amended**

- (1) The amendments in this clause are to the *Optometrists Act 2005*.
- (2) Section 3 is amended in the definition of “medical practitioner” by deleting “*Medical Act 1894*,” and inserting instead —  
“ *Medical Practitioners Act 2008*; ”.

**42. Osteopaths Act 2005 amended**

- (1) The amendments in this clause are to the *Osteopaths Act 2005*.
- (2) Section 3 is amended in the definition of “medical practitioner” by deleting “*Medical Act 1894*,” and inserting instead —  
“ *Medical Practitioners Act 2008*; ”.

**43. Pharmacy Act 1964 amended**

- (1) The amendments in this clause are to the *Pharmacy Act 1964*.
- (2) Section 5(1) is amended in the definition of “medical practitioner” by deleting “*Medical Act 1894*” and inserting instead —

“ *Medical Practitioners Act 2008* ”.

**44.      *Physiotherapists Act 2005* amended**

- (1) The amendments in this clause are to the *Physiotherapists Act 2005*.
- (2) Section 3 is amended in the definition of “medical practitioner” by deleting “*Medical Act 1894*,” and inserting instead —  
“ *Medical Practitioners Act 2008*; ”.

**45.      *Podiatrists Act 2005* amended**

- (1) The amendments in this clause are to the *Podiatrists Act 2005*.
- (2) Section 3 is amended in the definition of “medical practitioner” by deleting “*Medical Act 1894*,” and inserting instead —  
“ *Medical Practitioners Act 2008*; ”.

**46.      *Poisons Act 1964* amended**

- (1) The amendments in this clause are to the *Poisons Act 1964*.
- (2) Section 5(1) is amended in the definition of “medical practitioner” by deleting “*Medical Act 1894*” and inserting instead —  
“ *Medical Practitioners Act 2008* ”.
- (3) Section 61(b)(i) is amended by deleting “constituted under the *Medical Act 1894*,” and inserting instead —

“

of Western Australia established under the  
*Medical Practitioners Act 2008*;

”.

**47.      *Prisons Act 1981* amended**

- (1) The amendments in this clause are to the *Prisons Act 1981*.
- (2) Section 3(1) is amended in paragraph (a) of the definition of “medical practitioner” by deleting “*Medical Act 1894*; and” and inserting instead —

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“ *Medical Practitioners Act 2008*; and ”.

- (3) Section 46 is amended by deleting “*Medical Act 1894*” and inserting instead —

“ *Medical Practitioners Act 2008* ”.

**48. *Prostitution Act 2000* amended**

- (1) The amendments in this clause are to the *Prostitution Act 2000*.

- (2) Section 29(7) is amended in the definition of “medical practitioner” by deleting “*Medical Act 1894*,” and inserting instead —

“ *Medical Practitioners Act 2008*; ”.

**49. *Psychologists Act 2005* amended**

- (1) The amendments in this clause are to the *Psychologists Act 2005*.

- (2) Section 3 is amended in the definition of “medical practitioner” by deleting “*Medical Act 1894*,” and inserting instead —

“ *Medical Practitioners Act 2008*; ”.

**50. *Queen Elizabeth II Medical Centre Act 1966* amended**

- (1) The amendments in this clause are to the *Queen Elizabeth II Medical Centre Act 1966*.

- (2) Section 16(4a) is amended by deleting “within the meaning of section 3 of the *Medical Act 1894*.” and inserting instead —

“

as defined in the *Medical Practitioners Act 2008*  
section 4.

”.

**51. *Road Traffic Act 1974* amended**

- (1) The amendments in this clause are to the *Road Traffic Act 1974*.

- (2) Section 65 is amended by deleting the definition of “medical practitioner” and inserting instead —

“

*medical practitioner* has the meaning given to that term in the *Medical Practitioners Act 2008* section 4;

”.

**52.      *Sentencing Act 1995* amended**

- (1) The amendments in this clause are to the *Sentencing Act 1995*.
- (2) Schedule 1 is amended by deleting the item relating to the “*Medical Act 1894*” and inserting instead —

“

*Medical Practitioners Act 2008*      Medical Board of Western  
Australia

”.

**53.      *State Administrative Tribunal Act 2004* amended**

- (1) The amendments in this clause are to the *State Administrative Tribunal Act 2004*.
- (2) Schedule 1 is amended by deleting “*Medical Act 1894*” and inserting instead —

“    *Medical Practitioners Act 2008*    ”.

**54.      *Workers’ Compensation and Injury Management Act 1981*  
amended**

- (1) The amendments in this clause are to the *Workers’ Compensation and Injury Management Act 1981*.
- (2) Section 5(1) is amended by deleting paragraph (a) of the definition of “specialist” and “or” after it and inserting instead —

“

- (a) who is resident in the State and who is registered as a specialist under the *Medical Practitioners Act 2008* section 38; or

”.

**cl. 55**

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**55. *Young Offenders Act 1994* amended**

- (1) The amendments in this clause are to the *Young Offenders Act 1994*.
- (2) Section 179(1) is amended in the definition of “medical officer” by deleting “*Medical Act 1894*,” and inserting instead —  
“ *Medical Practitioners Act 2008*; ”.

## Notes

<sup>1</sup> This is a compilation of the *Medical Practitioners Act 2008*. The following table contains information about that Act <sup>1a</sup>.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Medical Practitioners Act 2008</i>	22 of 2008	27 May 2008	s. 1 and 2: 27 May 2008 (see s. 2); Act other than s. 1 and 2: 1 Dec 2008 (see s. 2 and <i>Gazette</i> 25 Nov 2008 p. 4989)

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Health and Disability Services Legislation Amendment Act 2010</i> s. 59 <sup>2</sup>	33 of 2010	30 Aug 2010	To be proclaimed (see s. 2(b))
<i>Health Practitioner Regulation National Law (WA) Act 2010</i> s. 14(d) <sup>3</sup>	35 of 2010	30 Aug 2010	To be proclaimed (see s. 2(b))

<sup>2</sup> On the date as at which this compilation was prepared, the *Health and Disability Services Legislation Amendment Act 2010* s. 59 had not come into operation. It reads as follows:

**59. Medical Practitioners Act 2008 amended**

- (1) This section amends the *Medical Practitioners Act 2008*.
- (2) In section 4:
  - (a) in the definition of **complaint** paragraph (d) delete “*Health Services (Conciliation and Review) Act 1995*” and insert:

*Health and Disability Services (Complaints)  
Act 1995*

- (b) delete the definition of **Director** and insert:

**Director** means the Director of the Health and Disability Services Complaints Office appointed under the *Health and Disability Services (Complaints) Act 1995*;

- (3) In section 87(6)(b) delete “*Health Services (Conciliation and Review) Act 1995*” and insert:

*Health and Disability Services (Complaints) Act 1995*

<sup>3</sup> On the date as at which this compilation was prepared, the *Health Practitioner Regulation National Law (WA) Act 2010* s. 14(d) had not come into operation. It reads as follows:

**14. Acts repealed**

These Acts are repealed:

- (d) the *Medical Practitioners Act 2008*;