

MEDICAL PRACTITIONERS (AMENDMENT) ACT 1987
No. 127

NEW SOUTH WALES



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MEDICAL PRACTITIONERS (AMENDMENT) ACT 1987 No. 127

NEW SOUTH WALES



Act No. 127, 1987

An Act to amend the Medical Practitioners Act 1938 with respect to the reconstitution of the New South Wales Medical Board, the establishment of new disciplinary bodies and procedures for regulating the practice of medicine; and for other purposes. [Assented to 16 June 1987]

See also Defamation (Medical Practitioners) Amendment Act 1987.

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Medical Practitioners (Amendment) Act 1987".

Commencement

2. (1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.

(2) The several provisions of Schedules 1, 2 and 3, and section 4 in its application to those provisions, and section 6 shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

Principal Act

3. The Medical Practitioners Act 1938 is referred to in this Act as the Principal Act.

Amendment of Act No. 37, 1938

4. The Principal Act is amended in the manner set forth in Schedules 1-3.

Repeal of Act No. 131, 1982

5. The Medical Practitioners (Private Health Establishments) Amendment Act 1982 is repealed.

Amendment of Act No. 152, 1983

6. The Public Finance and Audit Act 1983 is amended by inserting in Schedule 2, in appropriate alphabetical order, the following words:

New South Wales Medical Board.

Savings and transitional provisions

7. Schedule 4 has effect.

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SCHEDULE 1

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
NEW SOUTH WALES MEDICAL BOARD(1) Section 3 (**Interpretation**)—

- (a) Section 3 (1), definitions of “Australian Medical Council”,
-
- “Board”—

Omit the definition of “Board”, insert instead:

“Australian Medical Council” means the body incorporated in the Australian Capital Territory, for the purpose of advising on standards for the registration of medical practitioners, known as the Australian Medical Council Incorporated.

“Board” means the New South Wales Medical Board constituted by this Act.

- (b) Section 3 (1), definition of “Deputy President”—

Before the definition of “Medicine”, insert:

“Deputy President” means the Deputy President of the Board.

- (c) Section 3 (1), definition of “Member”—

Omit the definition.

- (d) Section 3 (1), definition of “President”—

Omit “president”, insert instead “President”.

- (e) Section 3 (1), definition of “Registrar”—

After the definition of “Registered medical practitioner”, insert:

“Registrar” means the Registrar of the Board.

- (f) Section 3 (2A)—

After section 3 (2), insert:

(2A) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and

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SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
NEW SOUTH WALES MEDICAL BOARD—*continued*

- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

- (g) Section 3 (4)—

Omit “secretary to the Board”, insert instead “Registrar”.

- (2) Part II—

Omit the Part, insert instead:

PART II

THE NEW SOUTH WALES MEDICAL BOARD

The Board

5. (1) There is constituted by this Act a corporation under the corporate name of the “New South Wales Medical Board”.

(2) The Board shall have and may exercise the functions conferred or imposed on it by or under this or any other Act.

(3) The Board shall consist of 18 members who shall be appointed by the Governor.

- (4) Of the members—

- (a) 1 shall be a registered medical practitioner who is an officer of the Department of Health (not being a person nominated under any other paragraph);
- (b) 1 shall be a barrister or solicitor nominated by the Minister;
- (c) 2 shall be registered medical practitioners nominated by The New South Wales Branch of the Australian Medical Association;
- (d) 1 shall be a registered medical practitioner nominated by the Ethnic Affairs Commission of New South Wales;

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SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
NEW SOUTH WALES MEDICAL BOARD—*continued*

- (e) 1 shall be a registered medical practitioner nominated by the Minister from among 3 registered medical practitioners comprised of—
 - (i) 1 person nominated by the Senate of the University of Sydney;
 - (ii) 1 person nominated by the Council of the University of New South Wales; and
 - (iii) 1 person nominated by the Council of the University of Newcastle;
- (f) 8 shall be registered medical practitioners nominated respectively by—
 - (i) The Royal Australasian College of Physicians, New South Wales State Committee;
 - (ii) The Royal Australian College of Obstetricians and Gynaecologists, New South Wales State Committee;
 - (iii) The Royal Australasian College of Surgeons, New South Wales State Committee;
 - (iv) The Royal Australian College of General Practitioners, New South Wales Faculty;
 - (v) The Royal Australian College of Medical Administrators, New South Wales State Committee;
 - (vi) The Royal Australian and New Zealand College of Psychiatrists, New South Wales Branch;
 - (vii) The Royal College of Pathologists of Australasia; and
 - (viii) The Royal Australasian College of Radiologists; and
- (g) 4 shall be persons nominated by the Minister not less than 2 of whom shall be persons who, in the opinion of the Minister, are conversant with the interests of patients as consumers of medical services.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
NEW SOUTH WALES MEDICAL BOARD—*continued*

(5) Schedule 2 has effect with respect to the members of the Board.

(6) Schedule 3 has effect with respect to the procedure of the Board.

(7) If a body referred to in subsection (4) (c)–(f) does not nominate a registered medical practitioner—

(a) within such time; or

(b) in such manner,

as may be specified by the Minister by notice in writing to the body, the Governor may instead appoint to be a member a registered medical practitioner nominated by the Minister.

(8) A registered medical practitioner is not eligible to be nominated by the Minister under subsection (7) instead of a practitioner nominated by a body referred to in subsection (4) (c) or (f) unless the practitioner nominated by the Minister is a member of that body.

Staff of the Board

6. (1) The Board may employ such staff as may be necessary to enable the Board to exercise its functions.

(2) The Board may, with the concurrence of the Health Administration Corporation, fix the salaries, wages, allowances and conditions of employment of any such staff in so far as they are not fixed by or under another Act or law.

Registrar

7. (1) A Registrar of the Board shall be employed by the Board in accordance with section 6.

(2) The Registrar—

(a) is responsible, as the chief executive officer of the Board, for the management of the affairs of the Board subject to and in accordance with any directions of the Board; and

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SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
NEW SOUTH WALES MEDICAL BOARD—*continued*

(b) shall have and may exercise such other functions as are conferred or imposed on the Registrar by or under this or any other Act.

(3) The Registrar shall so maintain the Register as to give effect to any decision relating to the Register made by the Board, a Committee, the Tribunal or the Supreme Court.

(4) The Registrar shall cause a record to be kept of all proceedings and decisions of Committees and the Tribunal and of all inquiries held by the Board.

(5) The Board may, from time to time, appoint a person to act as Registrar during the illness or absence of the Registrar, and the person, while so acting, shall have and may exercise all the functions of the Registrar and shall be deemed to be the Registrar.

Committees

8. (1) The Board may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter if any or all of the members of a committee are not members of the Board.

(3) The procedure for the calling of meetings of any such committee and for the conduct of business at those meetings shall be as determined by the Board or (subject to any determination of the Board) by the committee.

Functions of the Board

9. In addition to any other functions conferred or imposed on the Board by or under this or any other Act, the Board shall have the following functions:

- (a) to promote and maintain high standards of medical practice in New South Wales;
- (b) to advise the Minister on matters relating to the registration of medical practitioners, standards of medical practice and any other matter arising under or related to this Act or the regulations;

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
NEW SOUTH WALES MEDICAL BOARD—*continued*

- (c) to publish and distribute information concerning this Act and the regulations to medical practitioners and other interested persons.

Financial provisions

10. (1) The fees payable to the Board under this Act and the regulations, and any other money received by the Board, shall be paid into an account or accounts established by the Board.

(2) The following amounts shall be paid from the account or accounts established by the Board:

- (a) amounts required to meet the expenses of the administration or execution of this Act (other than expenses incurred by the Department of Health in relation to the investigation of complaints and nominal complainants);
- (b) such amounts as are, in the opinion of the Board, necessary to meet expenses relating to the Medical Services Committee established under the Health Administration Act 1982;
- (c) amounts for such other purposes as are set out in regulations made for the purposes of this section on the recommendation of the Board.

(3) The Board may appropriate amounts from an account or accounts established under this section for or towards the expenses of the Australian Medical Council.

(4) An appropriation under subsection (3) shall not be made unless it is authorised by a resolution supported by at least 10 members of the Board.

Medical Education and Research Account

11. (1) The Board shall establish a Medical Education and Research Account.

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SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
NEW SOUTH WALES MEDICAL BOARD—*continued*

(2) Such amounts as are determined by the Board from time to time shall be paid by the Board from registration and annual roll fees received by the Board into the Medical Education and Research Account.

(3) The Board may appropriate amounts from the Medical Education and Research Account for or towards any one or more of—

- (a) medical education;
- (b) education or research for any public purpose connected with the practice of medicine;
- (c) the publication and distribution of information concerning this Act and the regulations; or
- (d) meeting administrative expenditure incurred with respect to the Account and the purposes for which it is used,

or any related purpose.

(4) An appropriation under subsection (3) shall not be made unless it is authorised by a resolution supported by at least 10 members of the Board.

Disclosure of information

12. A person shall not disclose any information obtained in connection with the administration or execution of this Act (or any other Act conferring or imposing functions on the Board) unless that disclosure is made—

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration or execution of this Act (or any such other Act);
- (c) for the purposes of any legal proceedings arising out of this Act (or any such other Act) or of any report of any such proceedings;

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
NEW SOUTH WALES MEDICAL BOARD—*continued*

(d) in accordance with a requirement imposed under the Ombudsman Act 1974; or

(e) with other lawful excuse.

Penalty: \$1,000.

Delegation by Board and Registrar

13. (1) The Board may delegate to a person the exercise of any of its functions, other than this power of delegation.

(2) The Registrar may delegate to a person the exercise of any of the functions of the Registrar under this Act or any functions delegated to the Registrar (unless the Board otherwise provides in its instrument of delegation to the Registrar) by the Board.

(3) A delegation—

(a) shall be in writing;

(b) may be general or limited; and

(c) may be revoked, wholly or partly, by the Board or the Registrar, as the case requires.

(4) A delegate is, in the exercise of a delegated function, subject to such conditions as are specified in the instrument of delegation.

(5) A delegated function, when exercised by the delegate, shall be deemed to have been exercised by the Board or the Registrar, as the case requires.

(6) A delegation does not prevent the exercise of a function by the Board or the Registrar.

(7) A function purporting to have been exercised by a delegate shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

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SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
NEW SOUTH WALES MEDICAL BOARD—*continued***Annual report**

14. (1) An annual report prepared by the Board under the Annual Reports (Statutory Bodies) Act 1984 shall include particulars of all complaints—

- (a) received by the Board during the year to which it relates;
or
- (b) received by the Board before that year but which (in the opinion of the Board) had not, at the commencement of that year, been finally disposed of,

and the action taken during that year in relation to complaints received by the Board and the results of that action up to the end of that year.

(2) Nothing in subsection (1) requires the identity of any complainant, any person about whom a complaint is made or any other person to be disclosed in an annual report.

Shortened references to the Board

14A. In any other Act, in any instrument made under any Act or in any other instrument of any kind, except in so far as the context or subject-matter otherwise indicates or requires, a reference to the "Medical Board" shall be read as a reference to the New South Wales Medical Board constituted by this Act.

Service of documents

14B. (1) A document (other than a complaint made under section 28) may be served on the Board by leaving it at, or by sending it by post to—

- (a) the office of the Board; or
- (b) if it has more than one office, any of its offices.

(2) Nothing in subsection (1) affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Board in a manner not provided for by subsection (1).

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
NEW SOUTH WALES MEDICAL BOARD—*continued***Authentication of certain documents**

14C. Every certificate, summons, process, demand, order, notice, statement, direction or other document requiring authentication by the Board may be sufficiently authenticated without the seal of the Board if signed by—

- (a) the President or the Registrar; or
- (b) any officer of the Board authorised to do so by the Registrar.

Recovery of charges etc. by the Board

14D. Any charge, fine, fee or other money due to the Board may be recovered by the Board as a debt in a court of competent jurisdiction.

Proof of certain matters not required

14E. In any legal proceedings, proof is not required (until evidence is given to the contrary) of—

- (a) the constitution of the Board;
- (b) any resolution of the Board;
- (c) the appointment of, or the holding of office by, any member of the Board; or
- (d) the presence of a quorum at any meeting of the Board.

(3) Section 18A (Removal of names of prescribed persons from Register)—

Section 18A (2)—

Omit “secretary to the Board”, insert instead “Registrar”.

(4) Section 19 (Application for registration)—

- (a) Section 19 (1), definition of “prescribed period”—

From paragraph (a), omit “secretary to the Board”, insert instead “Registrar”.

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SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
NEW SOUTH WALES MEDICAL BOARD—*continued*

- (b) Section 19 (2) (b)—
Omit “fee prescribed”, insert instead “fee determined by the Board and approved by the Minister”.
- (c) Section 19 (2) (d)—
Omit “secretary to the Board”, insert instead “Registrar”.
- (d) Section 19 (6)—
Omit “president”, insert instead “President”.
- (5) Section 20 (**Provisional certificates**)—
 - (a) Section 20 (8) (a)—
Omit “president”, insert instead “President”.
 - (b) Section 20 (8) (b)—
Omit the paragraph, insert instead:
(b) the Registrar,
- (6) Section 24 (**Annual roll fee**)—
 - (a) Section 24 (1), (3), (5) (a) (ii)—
Omit “secretary to the Board” wherever occurring, insert instead “Board”.
 - (b) Section 24 (1)—
Omit “such annual roll fee as may be prescribed”, insert instead “the annual roll fee determined by the Board and approved by the Minister”.
 - (c) Section 24 (3)—
Omit “secretary pursuant”, insert instead “Board pursuant”.
- (7) Section 25 (**Amendment of Register if person wrongfully registered or if particulars incorrect**)—
Section 25 (5)—
Omit “secretary to the Board”, insert instead “Registrar”.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
NEW SOUTH WALES MEDICAL BOARD—*continued*

(8) Section 48 (**Financial**)—

Omit the section.

(9) Section 53 (**Regulations**)—

(a) Section 53 (1) (a)—

Omit the paragraph.

(b) Section 53 (1) (e)—

After “fees” wherever occurring, insert “(other than registration and annual roll fees)”.

(c) Section 53 (1) (e1)—

Omit “without limiting the generality of paragraph (e),”.

(10) Schedules 2, 3—

After the first Schedule, insert:

SCHEDULE 2

(Sec. 5 (5))

PROVISIONS RELATING TO THE MEMBERS OF THE BOARD

Age of members

1. A person of or above the age of 70 years is not eligible to be appointed as a member of the Board or to act in the office of a member.

President and Deputy President of the Board

2. (1) Of the members of the Board, one shall, in and by the relevant instrument of appointment as such a member, or by another instrument executed by the Governor, be appointed as President of the Board and one shall be so appointed as Deputy President of the Board.

(2) The Governor may remove a member from the office of President or Deputy President.

(3) A person who is the President or Deputy President shall be deemed to have vacated office as President or Deputy President if the person—

(a) is removed from that office by the Governor under subclause (2);

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SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
NEW SOUTH WALES MEDICAL BOARD—*continued*

(b) resigns that office by instrument in writing addressed to the Minister;
or

(c) ceases to be a member.

Acting members and acting President

3. (1) The Governor may, from time to time, appoint a person to act in the office of a member of the Board during the illness or absence of the member, and the person, while so acting, shall have and may exercise all the functions of the member and shall be deemed to be a member.

(2) The Deputy President may act in the office of President during the illness or absence of the President, and while so acting shall have and may exercise all the functions of the President and shall be deemed to be the President.

(3) The Governor may, from time to time, appoint a member to act in the office of President during the illness or absence of both the President and Deputy President, and the member, while so acting, shall have and may exercise all the functions of the President and shall be deemed to be the President.

(4) A person is not eligible to be appointed under subclause (1) to act in the office of a member of the Board nominated by a body referred to in section 5 (4) (c) or (f) unless the person is a member of that body.

(5) The Governor may remove any person from any office to which the person was appointed under this clause.

(6) A person while so acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(7) For the purposes of this clause, a vacancy in the office of a member, the President or the Deputy President shall be deemed to be an absence from office of the member, President or Deputy President, as the case may be.

Terms of office

4. Subject to this Schedule, a member of the Board shall hold office for such period, not exceeding 5 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

5. A member of the Board is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
NEW SOUTH WALES MEDICAL BOARD—*continued***Filling of vacancy in office of member**

6. If the office of any member of the Board becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

Casual vacancies

7. (1) A member of the Board shall be deemed to have vacated office if the member—

- (a) dies;
- (b) absents himself or herself from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings;
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
- (f) resigns the office by instrument in writing addressed to the Minister;
- (g) reaches the age of 70 years; or
- (h) is removed from office by the Governor under subclause (3) or (4).

(2) Without limiting the generality of subsection (1), a member who is appointed under—

- (a) section 5 (4) (a)—and who either ceases to be an officer of the Department of Health or a registered medical practitioner;
- (b) section 5 (4) (b)—and who ceases to be a barrister or solicitor; or

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SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
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- (c) section 5 (4) (d)-(f)—and who ceases to be a registered medical practitioner.

shall be deemed to have vacated office.

- (3) The Governor may remove a member from office.

(4) Without affecting the generality of subclause (3), the Governor may remove from office a member who contravenes the provisions of clause 8.

Disclosure of pecuniary interests

8. (1) A member of the Board who has a direct or indirect pecuniary interest—

- (a) in a matter that is being considered, or is about to be considered, at a meeting of the Board; or
- (b) in a thing being done or about to be done by the Board.

shall, 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.

(2) A disclosure by a member at a meeting of the Board that the member—

- (a) is a member, or is in the employment, of a specified company or other body;
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or a specified person,

shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) The Board shall cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Board from time to time.

(4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1) or (2), the member shall not, unless the Board otherwise determines—

- (a) be present during any deliberation of the Board, or take part in any decision of the Board, with respect to that matter; or

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SCHEDULE 1—*continued***AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
NEW SOUTH WALES MEDICAL BOARD—*continued***

(b) exercise any functions under this Act with respect to that thing,
as the case requires.

(5) Notwithstanding that a member contravenes the provisions of this clause, that contravention does not invalidate any decision of the Board or the exercise of any function under this Act.

(6) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing which arises merely because the member is a medical practitioner.

(7) A reference in this clause to a meeting of the Board includes a reference to a meeting of a committee of the Board.

Effect of certain other Acts

9. (1) The Public Service Act 1979 does not apply to or in respect of the appointment of a member of the Board and a member is not, as a member, subject to that Act.

(2) If by or under any other Act provision is made—

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision shall not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

(3) The office of a member shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

Liability of members etc.

10. No matter or thing done or omitted to be done by the Registrar, the Board, any member of the Board or any person acting under the direction of the Board shall, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this or any other Act, subject the Registrar or a member or a person so acting personally to any action, liability, claim or demand.

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SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
NEW SOUTH WALES MEDICAL BOARD—*continued*

SCHEDULE 3

(Sec. 5 (6))

PROVISIONS RELATING TO THE PROCEDURE OF THE BOARD

General procedure

1. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Board.

Quorum

2. Except as otherwise provided by this Act, the quorum for a meeting of the Board is 10 members.

Presiding member

3. (1) The President or, in the absence of the President, the Deputy President or in the absence of both of them, another member of the Board elected to chair the meeting by the members present, shall preside at a meeting of the Board.

(2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

4. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present shall be the decision of the Board.

Minutes

5. The Board shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.

SCHEDULE 2

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS(1) Section 3 (**Interpretation**)—

- (a) Section 3 (1), definitions of “Chairperson”, “Committee”,
-
- “Deputy Chairperson”—

After the definition of “Board”, insert:

“Chairperson” means the Chairperson of the Tribunal.

“Committee” means a Professional Standards Committee
constituted under section 32E.“Deputy Chairperson” means a Deputy Chairperson of the
Tribunal.

- (b) Section 3 (1), definition of “Disciplinary tribunal”—

Omit the definition.

- (c) Section 3 (1), definition of “Investigating committee”—

Omit the definition.

- (d) Section 3 (1), definitions of “Secretary”, “Tribunal”—

After the definition of “Regulations”, insert:

“Secretary” means the Secretary of the Department of Health.

“Tribunal” means the Medical Tribunal constituted under
section 32M.

- (e) Section 3 (2) (a)—

Omit “recording; and”, insert instead “recording;”.

- (f) Section 3 (2) (b), (c)—

At the end of section 3 (2) (b), insert:

; and

- (c) a reference to a person who has the competence to practise
-
- medicine is a reference to a person who has, in the opinion
-
- of the Board or the Tribunal, as the case requires, sufficient
-
- physical capacity, mental capacity and skill so to practise.

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SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*(2) Section 18A (**Removal of names of prescribed persons from Register**)—

Section 18A (3)—

Omit “or 30”, insert instead “or by a Committee or the Tribunal”.

(3) Section 19 (**Application for registration**)—

Section 19 (7)–(9)—

After section 19 (6), insert:

(7) An inquiry under subsection (5) may include an inquiry into the applicant’s competence to practise medicine.

(8) Before holding an inquiry under subsection (5), the Board may require the applicant, by notice in writing given personally or by post to the applicant, to undergo at the Board’s expense a medical examination—

(a) by a registered medical practitioner; and

(b) at any reasonable time and place,

specified in the notice.

(9) A failure by an applicant, without reasonable cause, to comply with a notice given under subsection (8) is, for the purposes of this Part or any inquiry or appeal under this Part, prima facie evidence that the applicant does not have the competence to practise medicine.

(4) Section 20 (**Provisional certificates**)—

Section 20 (2) (b)—

Omit “, within the meaning of section 21,”.

(5) Section 21 (**Registration**)—

(a) Section 21 (1) (a)—

Omit “or section 30 (6) (c) (i)”.

(b) Section 21 (2) (e)—

Omit “or section 30 (6) (c) (i)”.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(c) Section 21 (4)—

Omit “, within the meaning of this section,”.

(d) Section 21 (4)—

Omit “under section 30”, insert instead “under section 19 (5)”.

(e) Section 21 (4A)—

After section 21 (4), insert:

(4A) Notwithstanding subsection (1), the Board shall not register an applicant for registration whose name was removed from the Register pursuant to an order made by the Chairperson or a Deputy Chairperson, the Tribunal or the Supreme Court except in accordance with an order made under section 32U or 32V.

(f) Section 21 (5) (b)—

Omit “his conduct in a professional respect”, insert instead “conduct of the person amounting to professional misconduct”.

(g) Section 21 (6) (b)—

Omit the paragraph, insert instead:

(b) on the ground specified in subsection (5) (b), unless the reason for the erasure or removal was conduct amounting to professional misconduct for which the Tribunal may have by its order directed the removal of the name of the person from the Register if it had been recorded in the Register.

(h) Section 21 (8)—

Omit the subsection.

(6) Section 23 (**Removal of name from Register**)—

(a) Section 23 (2) (a), (3) (a) (ii)—

Omit “under section 30 (6) (c) (i) or (ii)” wherever occurring, insert instead “by a Committee or the Tribunal”.

*Medical Practitioners (Amendment) 1987*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(b) Section 23 (2) (b), (3) (b) (ii)—

Omit “30 (6) (c) (i) or (ii)” wherever occurring, insert instead “by a Committee or the Tribunal”.

(7) Section 23B (**Rights to practise medicine**)—

Section 23B (3)—

Omit “30 (6) (c) (i) or (ii)”, insert instead “32B or by a Committee or the Tribunal”.

(8) Section 23C—

Omit the section, insert instead:

Appeals from determinations of the Board

23C. (1) A person may appeal to the Tribunal against a determination of the Board because of which—

- (a) under section 21 (1) (a), the person has been registered pursuant to a provision other than that pursuant to which, in the person’s application for registration, the person claims to be entitled to be registered;
- (b) under section 21 (1) (b) or (5), the person’s application for registration has been dismissed; or
- (c) under section 21 (3) (a) or (b), a condition has been imposed on the person’s registration.

(2) An appeal under this section shall be lodged with the Registrar who shall refer it to the Tribunal (which shall be constituted in accordance with this Act to deal with the appeal).

(3) If a determination in respect of which an appeal is made under this section was made as a consequence of an inquiry held by the Board—

- (a) the appeal shall be dealt with by way of rehearing; and
- (b) fresh evidence, or evidence in addition to or in substitution for the evidence received at the inquiry, may be given.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(4) On an appeal under this section, the Tribunal may—

(a) dismiss the appeal; or

(b) order that the determination of the Board be revoked and be replaced by a different determination made by the Tribunal and specified in the order,

and may make such other ancillary orders as it thinks proper.

(5) A determination made under subsection (4) shall (except for the purposes of subsection (1)) be deemed to be a determination of the Board.

(6) An appeal under this section does not affect any determination with respect to which it has been made until an order is made under subsection (4) (b).

(9) Section 26 (**Removal from New South Wales Register after removal from other register**)—

(a) Section 26 (1), (1A)—

Omit section 26 (1), insert instead:

(1) If the Board is satisfied that the name of a person has, since the person was registered, been erased or removed for professional misconduct from any register of medical practitioners in any country, State (other than New South Wales) or Territory, the Board may remove the person's name from the Register.

(1A) The Board shall not remove the name of a person from the Register if the reason for the previous erasure or removal from a register was conduct amounting to professional misconduct unless it was conduct for which the Tribunal may have by its order directed the removal of the name of a registered medical practitioner from the Register.

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SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(b) Section 26 (3)–(7)—

Omit section 26 (3) and (4), insert instead:

(3) A person whose name has been removed from the Register under this section may appeal to the Tribunal against the decision of the Board to remove the person's name.

(4) An appeal under this section shall be lodged with the Registrar who shall refer it to the Tribunal (which shall be constituted in accordance with this Act to deal with the appeal).

(5) On an appeal under this section, the Tribunal may—

(a) dismiss the appeal; or

(b) by its order direct that the person's name be restored to the Register.

(6) An appeal under this section does not affect the removal from the Register of the name of the person concerned until an order is made under subsection (5) (b).

(7) In any case where the Tribunal dismisses an appeal, the Tribunal—

(a) may by its order fix a time after which the person whose name has been removed from the Register may apply to be registered; and

(b) where a time has been so fixed, the person is not entitled to be registered before that time notwithstanding section 15, 16 or 17 (c) or (d).

(10) Sections 26A, 26B—

After section 26, insert:

Inquiries by the Board

26A. (1) For the purposes of an inquiry conducted by the Board under this Part—

(a) the Board has the same functions as a Committee has under section 32F and Schedule 4;

Medical Practitioners (Amendment) 1987

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

- (b) the person in relation to whom an inquiry is being held is entitled to attend and to be accompanied by a barrister or solicitor or another adviser, but is not entitled to be represented by a barrister or solicitor or other adviser; and
- (c) Schedule 4 applies to and in respect of a person so appearing or a witness appearing or evidence given at such an inquiry in the same way as it applies to a person or witness appearing or evidence given before a Committee.

(2) For the purposes of conducting an inquiry under this Part, the Board shall consist of 3 members of the Board appointed for the purpose of conducting the inquiry by the President.

(3) Without limiting the operation of subsection (1) (b), the Secretary may intervene in any inquiry before the Board, and has a right to be heard personally or by an officer of the Department of Health.

Decisions of the Board in an inquiry

26B. (1) A decision supported by at least 2 of the 3 members of the Board conducting an inquiry under this Part on any question arising during the inquiry is the decision of the Board.

(2) The Board shall, as soon as practicable after any such inquiry is concluded, make available to the person in relation to whom the inquiry was held and such other persons as it thinks fit the reasons for the decision resulting from that inquiry.

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SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(11) Part IIIA—

Omit sections 27–32A, insert instead:

PART IIIA

COMPLAINTS AND DISCIPLINARY PROCEEDINGS

DIVISION 1—*Complaints relating to registered medical practitioners***Interpretation**

27. (1) In this Act—

“complainant” includes a person acting as a nominal complainant in accordance with clause 8 of Schedule 4;

“conduct” means any act or omission;

“professional misconduct”, in relation to a registered medical practitioner, includes the following:

(a) any conduct that demonstrates a lack of adequate—

(i) knowledge;

(ii) experience;

(iii) skill;

(iv) judgment; or

(v) care,

by the practitioner in the practice of medicine;

(b) the practitioner’s contravening (whether by act or omission) a provision of this Act or the regulations;

(c) any conduct which results in the practitioner’s being convicted of an offence under section 128A, 128B, 129, 129AA or 129AAA of the Health Insurance Act 1973 of the Commonwealth;

(d) practising medicine contrary to a requirement made of the practitioner under section 23B (3) or (4);

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

- (e) permitting an assistant employed by the practitioner (in connection with the practitioner's professional practice) who is not a registered medical practitioner to attend, treat or perform operations on patients in respect of matters requiring professional discretion or skill;
 - (f) by the practitioner's presence, countenance, advice, assistance or co-operation, knowingly enabling a person who is not a registered medical practitioner (whether or not that person is described as an assistant)—
 - (i) to perform any act of operative as distinct from manipulative surgery on a patient in respect of any matter requiring professional discretion or skill; or
 - (ii) to issue or procure the issue of any certificate, notification, report or other like document, or to engage in professional practice, as if the person were a registered medical practitioner;
 - (g) using any certificate, diploma, membership, degree, licence, letters, testimonial or other title, status, document or description—
 - (i) in relation to himself or herself; or
 - (ii) in the practice of medicine;other than those which are recorded in the Register in respect of the practitioner;
 - (h) refusing or failing, without reasonable cause, to attend, within a reasonable time after being requested to do so, on a person for the purpose of rendering professional services in the capacity of a registered medical practitioner in any case where the practitioner has reasonable cause to believe that the person is in need of urgent attention by a registered medical practitioner,
- or any other improper or unethical conduct relating to the practice of medicine.

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SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(2) A registered medical practitioner is not guilty of professional misconduct if—

(a) in the case of conduct referred to in paragraph (e) or (f) of the definition of “professional misconduct” in subsection (1), it took place in connection with—

(i) the proper training and instruction of students; or

(ii) the lawful employment of dressers, nurses, dispensers, surgery attendants, technicians or skilled mechanics,

under the immediate personal supervision of the practitioner;

(b) in the case of conduct referred to in paragraph (e) or (f) of the definition of “professional misconduct” in subsection (1), it took place in connection with collaborating in experimental or research work in medicine with a person who is the holder of a university degree in science or of another degree recognised by the Board generally or in a particular case for the purposes of this paragraph;

(c) in the case of conduct referred to in paragraph (g) of the definition of “professional misconduct” in subsection (1), it related only to the use of—

(i) a certificate, diploma, membership, degree, licence, letters, testimonial or other title, status, document or description lawfully used by the practitioner before the commencement of this Act; or

(ii) the description “doctor”, “medical practitioner”, “general practitioner” or another expression recognised by the Board generally or in a particular case for the purposes of this subparagraph; or

(d) in the case of conduct referred to in paragraph (h) of the definition of “professional misconduct” in subsection (1), the practitioner caused another registered medical practitioner to attend, within a reasonable time, instead.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued***Complaints**

28. (1) A complaint may be made that a registered medical practitioner—

- (a) has been convicted in New South Wales of an offence;
- (b) has been convicted elsewhere than in New South Wales in respect of an act or omission that would, if it had taken place in New South Wales, have constituted an offence;
- (c) has been habitually drunk or addicted to any deleterious drug;
- (d) has been guilty of professional misconduct;
- (e) does not have sufficient physical and mental capacity to practise medicine; or
- (f) is not of good character.

(2) A complaint may be made by any person—

- (a) to the Board; or
- (b) to the Secretary,

or may be made by the Board or the Secretary.

(3) A complaint made to the Board (other than a complaint made by the Secretary) or to the Secretary shall—

- (a) be in writing;
- (b) contain particulars of the allegations on which it is founded;
- (c) be verified by statutory declaration;
- (d) if made to the Board, be lodged with the Registrar; and
- (e) if made to the Secretary, be lodged at an office of the Department.

(4) The Secretary and the Board shall inform the other when a complaint is made to or by either of them.

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SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(5) The Board or the Secretary may require the complainant to provide further particulars of a complaint.

(6) A complaint about a registered medical practitioner may be dealt with even though the practitioner has ceased to be registered and, for that purpose, references in this Part and Schedule 4 to a registered medical practitioner shall include references to a person who has ceased to be registered.

Referral of mental health matters to Registrar

29. If a registered medical practitioner becomes—

- (a) a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958;
- (b) a forensic patient within the meaning of the Mental Health Act 1983; or
- (c) a protected person within the meaning of the Protected Estates Act 1983,

the prescribed person shall cause notice of that fact to be forwarded to the Registrar in accordance with the regulations.

Referral of matters by courts

30. (1) If—

- (a) a person is convicted in New South Wales of an offence, other than a prescribed offence; and
- (b) the court before which the person is convicted has reasonable grounds to believe the person is or was, at the time the offence was committed, a registered medical practitioner,

that court shall cause a certificate of conviction in respect of the person to be sent to the Registrar.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(2) If a Coroner has reasonable grounds to believe that the evidence given or to be given in any proceedings conducted or to be conducted before the Coroner may indicate that a complaint could be made under section 28 about a person, the Coroner may cause a transcript of that evidence to be furnished to the Registrar.

(3) If a certificate of conviction or a transcript of evidence is furnished to the Registrar under this section, a complaint shall be deemed to have been made to the Board about the person to whom the certificate or transcript relates.

Referral or dismissal of complaints by the Board

31. (1) The Board shall, as soon as practicable after a complaint is lodged with the Registrar or the Board has decided to make a complaint—

- (a) refer the complaint to a Committee or the Tribunal (which shall be constituted in accordance with this Act to deal with the complaint), as the Board thinks fit, notwithstanding any previous action taken by the Board or the Secretary;
- (b) direct the registered medical practitioner concerned to attend for counselling; or
- (c) except where the Board has decided to make the complaint, determine that no further action should be taken.

(2) Without limiting the generality of subsection (1), if the Board is of the opinion that the subject-matter of a complaint (not being, in the Board's opinion, a frivolous or vexatious complaint), if substantiated, may provide grounds for the suspension or deregistration of a registered medical practitioner, the Board shall refer the complaint to the Tribunal.

(3) If—

- (a) a complaint is made under section 28 (1) (e) or the Board has decided to make a complaint under section 28 (1) (e); and

Medical Practitioners (Amendment) 1987

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

- (b) the Board is of the opinion that no other complaint under any other provision of section 28 (1) relating to the registered medical practitioner concerned should be referred to the Tribunal,

the Board may refer the complaint to a Committee even though, if substantiated, it may provide grounds for the suspension or deregistration of the practitioner.

(4) Two or more members of the Board may be appointed by the Board for the purpose of carrying out the functions of the Board under this section, and in this Act and the regulations a reference to the referral of a complaint by the Board shall be deemed to include a reference to a referral of a complaint by those members.

(5) The Board may, before taking any action under subsection (1) or (3), require the registered medical practitioner concerned, by notice in writing given personally or by post to the practitioner, to undergo at the Board's expense a medical examination—

- (a) by a registered medical practitioner; and
- (b) at any reasonable time and place,

specified in the notice.

(6) A failure by a registered medical practitioner, without reasonable cause, to comply with a direction under subsection (1) (b) or a notice given under subsection (5) is, for the purposes of this Part or any inquiry or appeal under this Part, *prima facie* evidence that the practitioner does not have sufficient physical and mental capacity to practise medicine.

(7) The Board—

- (a) shall not refer a complaint about a registered medical practitioner who has died; and
- (b) may decide not to refer a complaint—
 - (i) if the complainant fails to provide further particulars requested under section 28 (5); or

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

- (ii) if the registered medical practitioner concerned ceases to be registered.

Referral or dismissal of complaints by the Secretary

32. (1) The Secretary shall, as soon as practicable after a complaint is lodged with the Secretary or the Secretary has decided to make a complaint—

- (a) refer the complaint to the Board, or, after consultation with the Board, to a Committee or the Tribunal (which shall be constituted in accordance with this Act to deal with the complaint), as the Secretary thinks fit notwithstanding any previous action taken by the Secretary or the Board; or
- (b) except where the Secretary has decided to make the complaint, determine that no further action should be taken.

(2) Without limiting the generality of subsection (1), if the Secretary is of the opinion that the subject-matter of a complaint (not being, in the Secretary's opinion, a frivolous or vexatious complaint), if substantiated, may provide grounds for the suspension or deregistration of a registered medical practitioner, the Secretary shall refer the complaint to the Tribunal.

(3) If—

- (a) a complaint is made under section 28 (1) (e) or the Secretary has decided to make a complaint under section 28 (1) (e); and
- (b) the Secretary is of the opinion that no other complaint under any other provision of section 28 (1) relating to the registered medical practitioner concerned should be referred to the Tribunal,

the Secretary may refer the complaint to the Board even though, if substantiated, it may provide grounds for the suspension or deregistration of the practitioner.

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SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(4) If the Secretary refers a complaint to a Committee or the Tribunal, the Secretary shall inform the Board accordingly.

(5) The Secretary—

(a) shall not refer a complaint about a registered medical practitioner who has died; and

(b) may decide not to refer a complaint—

(i) if the complainant fails to provide further particulars requested under section 28 (5); or

(ii) if the registered medical practitioner concerned ceases to be registered.

Investigation of complaints

32A. (1) The Board shall, at or before the time it refers a complaint to a Committee or the Tribunal, also refer the complaint to the Secretary for investigation.

(2) The Secretary shall, on receipt of a complaint referred by the Board to the Secretary for investigation, investigate the complaint or cause it to be investigated.

(3) The Secretary shall, if the Secretary refers a complaint to the Board, a Committee or the Tribunal, investigate the complaint or cause it to be investigated.

Suspension etc. by the Board

32B. (1) The Board may at any time—

(a) by its order suspend a registered medical practitioner from practising medicine for such period (not exceeding 30 days) as is specified in the order; or

(b) impose on a registered medical practitioner's registration such conditions, relating to the practitioner's practising medicine, as it considers appropriate,

if it is satisfied that such action is necessary for the purpose of protecting the life, or the physical or mental health, of any person.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(2) The Board may take action under subsection (1) whether or not a complaint has been made to the Board about the registered medical practitioner.

(3) The Board shall, at or before the time it takes action under subsection (1), refer—

(a) any complaint about the registered medical practitioner;
and

(b) particulars of the action taken and the Board's reasons for taking the action,

to the Tribunal, or, if the matter is one which could be referred to a Committee under section 31 (3), it may refer it to a Committee, and the matter shall be deemed to be a complaint referred to the Tribunal or the Committee by the Board.

(4) The Tribunal or a Committee shall be constituted in accordance with this Act to deal with a matter referred to it under this section.

(5) The Board shall inform the Secretary when it takes any action under this section.

(6) A period of suspension imposed by the Board under this section may be extended, from time to time, by the Board by its order for a further period or further periods, each of not more than 30 days, if—

(a) the extension has been approved in writing by the Chairperson or a Deputy Chairperson; and

(b) the complaint about the registered medical practitioner has not been disposed of.

(7) While an order under subsection (1) (a) or (6) is in force, the person suspended from practising medicine by the order shall, except in the application to the person of a provision of Part III (other than section 23B) or this Part, be deemed not to be a registered medical practitioner.

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SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(8) Subject to any order made by the Tribunal, on the expiry of a period of suspension imposed under subsection (1) (a) or (6), the person's rights and privileges as a registered medical practitioner are revived.

(9) Conditions imposed under subsection (1) (b) shall have effect until such time as the complaint about the medical practitioner is disposed of.

Suspension by the Board for certain Commonwealth offences

32C. (1) If a registered medical practitioner commits, in New South Wales or elsewhere, a Commonwealth offence for which the practitioner is fully disqualified from the receipt of medicare benefits by the Medicare Participation Review Committee under section 124F (2) (e) of the Health Insurance Act 1973 of the Commonwealth, the Board shall, on receipt of notification of the conviction and disqualification, make an order suspending the practitioner from practising medicine for a period not exceeding 5 years.

(2) If a registered medical practitioner is convicted in New South Wales of a Commonwealth offence, the court shall cause a certificate of conviction in respect of the person to be sent to the Registrar.

(3) Nothing in this section affects the operation of any other provision of this Part, and proceedings under this section or under any other provision of this Part, or both, may be taken in respect of the one conviction.

(4) The Board shall not, while an order made under section 32I (4), 32R or 32U is in force in relation to a person because of a conviction, make an order suspending the person under this section because of the same conviction.

(5) If a person convicted of a Commonwealth offence is consequently suspended under this section, the Board shall not take any action under this section in relation to any other Commonwealth offence of which the person was convicted before the commencement of the period of suspension.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(6) While an order under this section is in force the person suspended from practising medicine by the order shall, except in the application to the person of a provision of Part III (other than section 23B) or this Part, be deemed not to be a registered medical practitioner.

(7) On the expiry of a period of suspension imposed under this section the person's rights and privileges as a registered medical practitioner are revived.

(8) The Board shall inform the Secretary when it receives any notification or certificate of conviction as referred to in subsection (1) or (2).

(9) In this section—

“Commonwealth offence” means an offence committed against section 128A, 128B, 129, 129AA or 129AAA of the Health Insurance Act 1973 of the Commonwealth;

“notification” means notification sent to the Registrar by an officer of the Department of Health of the Commonwealth or by an officer of the Commonwealth Health Insurance Commission.

Appeals against suspension etc. by the Board

32D. (1) A person—

- (a) who has been suspended by the Board from practising medicine or on whom conditions have been imposed under section 32B, may appeal to the Tribunal against the suspension or conditions or any extension under that section of the period of suspension; or
- (b) who has been suspended by the Board from practising medicine under section 32C, may appeal to the Tribunal for a review of the period of suspension.

(2) An appeal under this section shall be lodged with the Registrar who shall refer it to the Tribunal (which shall be constituted in accordance with this Act to deal with the appeal).

Medical Practitioners (Amendment) 1987

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(3) An appeal under this section against an order made or conditions imposed under section 32B shall be lodged not later than 7 days after notice of the order is given to the affected person.

(4) On an appeal under this section, the Tribunal may by its order—

- (a) terminate, vary or confirm the period of suspension; or
- (b) revoke, vary or confirm the conditions,

as it thinks proper, but only so that the order does not—

- (c) in the case of a suspension or conditions imposed under section 32B—have effect beyond the day on which any related complaint about the person is disposed of; or
- (d) in the case of a suspension under section 32C—impose a suspension exceeding 5 years.

(5) An appeal under this section does not affect any suspension or conditions with respect to which it has been made until an order is made under subsection (4).

DIVISION 2—*Hearing of complaints by Professional Standards Committees***Professional Standards Committees**

32E. (1) There shall be Professional Standards Committees.

(2) The Committees shall have and may exercise the jurisdiction and functions conferred or imposed on them by or under this Act.

(3) When the Board decides to refer a complaint or is informed by the Secretary of the Secretary's decision to refer a complaint to a Committee, the Board shall appoint 3 persons to sit as the Committee for the purpose of conducting an inquiry into the complaint.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(4) For the purposes of conducting an inquiry, a Committee shall consist of—

- (a) 2 registered medical practitioners having such qualifications as may be prescribed; and
- (b) one lay person (that is, a person who is not a medical practitioner) appointed from among a panel of lay persons for the time being nominated by the Minister,

one of whom shall be appointed by the Board as chairperson of that Committee.

(5) A person may be appointed to sit on a Committee whether or not the person is a member of the Board, but not if the person has previously dealt with the particular matter before the Committee in his or her capacity as such a member.

(6) One or more Committees may conduct more than one inquiry at the same time.

(7) A member of a Committee, while sitting on the Committee, is entitled to be paid by the Board at the same rate as a witness who gives expert evidence in the Supreme Court.

Proceedings before a Committee

32F. (1) A Committee appointed under section 32E shall hold an inquiry into any complaint referred to it.

(2) On appointment under section 32E, the chairperson of a Committee shall fix a time and place for the holding of an inquiry by the Committee into the complaint and shall give not less than 7 days' notice of the inquiry to—

- (a) the registered medical practitioner concerned;
- (b) the complainant, if any; and
- (c) the Secretary and the Board.

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SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(3) In conducting an inquiry, a Committee—

(a) shall, unless it otherwise directs, sit in the absence of the public; and

(b) may conduct the proceedings as it thinks fit.

(4) A Committee may be assisted by a legally qualified officer of the Board appointed by the Registrar for that purpose on the request of the Committee.

(5) Schedule 4 has effect with respect to any inquiry conducted by a Committee.

Representation before a Committee

32G. (1) At an inquiry conducted by a Committee—

(a) the registered medical practitioner concerned; and

(b) the complainant, if any,

are entitled to attend and to be accompanied by a barrister or solicitor or another adviser, but are not entitled to be represented at the inquiry by the barrister or solicitor or other adviser.

(2) A Committee may grant leave for any other person (not being a barrister or solicitor or another adviser representing any person) to appear at an inquiry if the Committee is satisfied that it is appropriate for that person to appear.

Referral of certain matters to the Tribunal

32H. (1) If, before or during an inquiry a Committee to which a complaint has been referred—

(a) forms the opinion that the complaint (not being a complaint referred under section 31 (3)) may provide grounds for the suspension or deregistration of a registered medical practitioner; or

(b) becomes aware that the Board or the Secretary has referred the complaint or another complaint about the registered medical practitioner concerned to the Tribunal,

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

the Committee shall forthwith terminate the inquiry and (if it has not already been referred to the Tribunal) refer the complaint to the Tribunal (which may be the Tribunal as already constituted to deal with another complaint or the Tribunal as constituted in accordance with this Act to deal with the referred complaint).

(2) A Committee shall inform the Board when it takes any action under this section.

Determinations of Committees

321. (1) If a Committee finds the subject-matter of a complaint made against a person to have been proved, it may—

- (a) caution or reprimand the person;
- (b) order that the person seek medical or psychiatric treatment or counselling;
- (c) direct that such conditions, relating to the person's practising medicine, as it considers appropriate be imposed on the person's registration;
- (d) order that the person complete such educational courses as are specified by the Committee;
- (e) order that the person report on his or her medical practice at the times, in the manner and to the persons specified by the Committee;
- (f) order that the person seek and take advice, in relation to the management of his or her medical practice, from such persons as are specified by the Committee; or
- (g) by its order impose a fine on the person of an amount, not exceeding \$5,000, specified in the order,

or exercise any combination of the powers conferred on it by paragraphs (a)–(g).

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SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(2) A power conferred by subsection (1) (b)–(f) may not be exercised unless the person concerned is a registered medical practitioner, but an order may be made by a Committee that a person who is not registered may be registered only subject to compliance with an order made under paragraph (b), (d), (e) or (f) of subsection (1) or conditions that might, if the person were registered, be imposed under paragraph (c) of that subsection.

(3) If the Board has reason to believe that a person in respect of whom a Committee has—

- (a) made an order under subsection (1) (b), (d), (e) or (f);
- (b) imposed conditions under subsection (1) (c); or
- (c) made an order under subsection (2),

has failed to comply with the order or conditions, the Board may refer the matter to the Tribunal.

(4) Where the Tribunal finds the failure to have been proved, it may—

- (a) if the person is a registered medical practitioner, exercise any power or combination of powers that the Tribunal may exercise under section 32R (1) or (5); or
- (b) if the person is not registered, make any order that the Tribunal may make under section 32R (2) or (5).

(5) An order made by a Committee or the Tribunal under this section shall take effect on the day on which the order is made or on such later day as is specified in the order.

(6) A Committee may impose a fine on a person only if it finds the person to have been guilty of professional misconduct (other than conduct in respect of which a fine or other penalty has already been imposed by a court).

(7) A fine imposed under this section shall be paid to the Board.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(8) A Committee shall inform the Registrar of the exercise of any power under this section by the Committee.

(9) Where any person other than a Committee exercises a power of a Committee under this section, the power shall be deemed to have been exercised by a Committee.

Complaints relating solely to physical and mental capacity

32J. (1) If a complaint is referred under section 31 (3) to a Committee and the Committee finds the subject-matter of the complaint made against a person to have been proved, the Committee may, in addition to any other power it may exercise under section 32I, refer the matter to the Chairperson, or a Deputy Chairperson nominated by the Chairperson, with a recommendation that—

- (a) the person be suspended from practising medicine for such period as it specifies; or
- (b) the name of the person be removed from the Register, or if the person has ceased to be registered, that the person not be registered until after a specified time.

(2) On receipt of a recommendation under this section, the Chairperson or a Deputy Chairperson shall—

- (a) make an order in the terms recommended; or
- (b) make such other order as to the suspension or registration of the person concerned as the Chairperson or Deputy Chairperson thinks proper or exercise any power or combination of powers of a Committee under section 32I.

(3) In any case where, by an order under this section, the Chairperson or Deputy Chairperson directs that the name of a person be removed from the Register or a person has ceased to be registered—

- (a) the Chairperson or Deputy Chairperson may by that order fix a time after which the person may apply to be registered; and

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SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

- (b) where a time has been so fixed, the person is not entitled to be registered before that time notwithstanding section 15, 16 or 17 (c) or (d).

(4) An order made by the Chairperson or a Deputy Chairperson under this section shall take effect on the day on which the order is made or on such later day as is specified in the order.

Decisions of a Committee

32K. (1) A decision supported by at least 2 members of a Committee on any question arising during an inquiry is the decision of the Committee.

(2) A Committee shall, as soon as practicable after concluding an inquiry, make available to the complainant, the registered medical practitioner concerned and such other persons as it thinks fit its reasons for the decision resulting from that inquiry.

Appeals against decisions of a Committee etc.

32L. (1) A registered medical practitioner about whom a complaint is referred to a Committee, or the complainant, may appeal to the Tribunal against—

- (a) a finding of the Committee;
- (b) the exercise by the Committee of any power or combination of powers under section 32I; or
- (c) the exercise by the Chairperson or a Deputy Chairperson of any power under section 32J,

within the prescribed time.

(2) An appeal under this section shall be lodged with the Registrar who shall refer it to the Tribunal (which shall be constituted in accordance with this Act to deal with the appeal).

(3) An appeal under subsection (1) shall be dealt with by way of rehearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the inquiry, may be given.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(4) On an appeal under this section, the Tribunal may—

- (a) dismiss the appeal; or
- (b) make any finding or exercise any power or combination of powers that the Tribunal could have made or exercised if the complaint had been originally referred to the Tribunal.

(5) An appeal under this section does not affect any finding or exercise of power with respect to which it has been made until an order is made under subsection (4) (b).

(6) A registered medical practitioner about whom a complaint is referred to a Committee, or the complainant, may appeal to the Chairperson, or a Deputy Chairperson nominated by the Chairperson, with respect to a point of law.

(7) An appeal under subsection (6) may be made in accordance with the regulations during an inquiry conducted by a Committee or within the prescribed time.

(8) If an appeal is made under subsection (6) and an inquiry conducted by a Committee has not been completed—

- (a) the inquiry before the Committee shall not continue until the appeal has been disposed of; and
- (b) the Committee, on recommencing the inquiry, shall not make any decision that is inconsistent with the Chairperson's or Deputy Chairperson's determination with respect to the point of law.

DIVISION 3—*Hearing of matters by the Medical Tribunal***The Medical Tribunal**

32M. (1) There shall be a Medical Tribunal.

(2) The Tribunal shall have and may exercise the jurisdiction and functions conferred or imposed on it by or under this or any other Act.

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SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(3) When—

- (a) the Board decides to refer a complaint to the Tribunal or is informed by a Committee or the Secretary of a decision by the Committee or Secretary to refer a complaint or another matter to the Tribunal; or
- (b) an appeal or application under section 32v to the Tribunal is lodged with the Registrar,

the Board shall—

- (c) inform the Chairperson accordingly; and
- (d) appoint 3 other persons to sit on the Tribunal for the purpose of conducting the inquiry or of hearing the appeal.

(4) On being informed of a complaint, matter, appeal or application under subsection (3), the Chairperson shall nominate—

- (a) himself or herself; or
- (b) a Deputy Chairperson,

to sit on the Tribunal for the purpose of conducting an inquiry into the complaint, matter or application or hearing the appeal.

(5) For the purpose of conducting an inquiry or hearing an appeal, the Tribunal shall consist of—

- (a) the Chairperson or a Deputy Chairperson;
- (b) 2 registered medical practitioners having such qualifications as may be prescribed, appointed by the Board; and
- (c) one lay person (that is, a person who is not a medical practitioner) appointed by the Board from among a panel of lay persons for the time being nominated by the Minister.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(6) A person may be appointed to sit on the Tribunal whether or not the person is a member of the Board, but not if the person has previously dealt with the particular matter before the Tribunal in his or her capacity as such a member.

(7) The Tribunal, as constituted by different persons or the same persons, may conduct or hear more than one inquiry or appeal at the same time.

(8) A member of the Tribunal (other than the Chairperson or a Deputy Chairperson), while sitting on the Tribunal, is entitled to be paid by the Board at the same rate as a witness who gives expert evidence in the Supreme Court.

(9) The Tribunal shall have a seal of which all courts and persons acting judicially shall take judicial notice.

Chairperson and Deputy Chairpersons of the Tribunal

32N. (1) The Governor may appoint—

- (a) a Judge of the District Court as Chairperson of the Tribunal; and
- (b) one or more Judges of the District Court as Deputy Chairpersons of the Tribunal.

(2) The Chairperson and each Deputy Chairperson shall hold office for such period not exceeding 7 years as may be specified in the instrument of appointment as Chairperson or Deputy Chairperson, but is eligible (if otherwise qualified) for re-appointment.

(3) Without limiting the generality of subsection (2), a Deputy Chairperson may be appointed by the Governor for the purpose only of conducting or hearing a particular inquiry or appeal described in the instrument of appointment of the Deputy Chairperson.

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SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(4) A Deputy Chairperson, while sitting on the Tribunal, shall have and may exercise all the functions conferred or imposed on the Chairperson by this Act (other than those conferred by section 32M (4)).

(5) The Chairperson or a Deputy Chairperson sitting on the Tribunal is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of each of them.

(6) The Governor may appoint a Deputy Chairperson to act in the office of Chairperson during the illness or absence of the Chairperson and the Deputy Chairperson, while so acting, shall have and may exercise all the functions of the Chairperson and shall be deemed to be the Chairperson.

(7) If a person who is the Chairperson or a Deputy Chairperson ceases to be a Judge of the District Court, the person also ceases to hold office under this section.

Proceedings before the Tribunal

32O. (1) The members of the Tribunal nominated and appointed under section 32M shall conduct an inquiry into any complaint, matter or application and shall hear any appeal referred to it.

(2) On nomination under section 32M, the Chairperson or a Deputy Chairperson shall fix a time and place for the conducting of the inquiry or the hearing of the appeal by the Tribunal and shall give not less than 7 days' notice of the inquiry or appeal to—

- (a) the registered medical practitioner concerned;
- (b) the complainant, if any;
- (c) the Secretary and the Board; and
- (d) the chairperson of the relevant Committee, if appropriate.

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SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(3) In conducting an inquiry or hearing an appeal, the Tribunal—

- (a) shall, unless it otherwise directs, be open to the public; and
- (b) may conduct the proceedings as it thinks fit.

(4) Schedule 4 has effect with respect to any inquiry conducted or appeal heard by the Tribunal.

Representation before the Tribunal

32P. (1) At an inquiry conducted or appeal heard by the Tribunal—

- (a) the registered medical practitioner concerned; and
- (b) the complainant, if any,

are entitled to attend and to be represented by a barrister or solicitor or another adviser.

(2) The Tribunal may grant leave for any other person to appear (whether in person or by a barrister or solicitor or another adviser) at an inquiry or appeal if the Tribunal is satisfied that it is appropriate for that person to appear.

Chairperson or Deputy Chairperson not to review own decisions

32Q. If a decision has been made by the Chairperson or a Deputy Chairperson in relation to a particular matter before the Tribunal, the Chairperson or Deputy Chairperson shall not sit on the Tribunal for the purpose of conducting any inquiry or hearing any appeal relating to the matter.

Determinations of the Tribunal

32R. (1) If the Tribunal finds the subject-matter of a complaint made against a person to have been proved, it may—

- (a) caution or reprimand the person;
- (b) order that the person seek medical or psychiatric treatment or counselling;

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SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

- (c) direct that such conditions, relating to the person's practising medicine, as it considers appropriate be imposed on the person's registration;
- (d) order that the person complete such educational courses as are specified by the Tribunal;
- (e) order that the person report on his or her medical practice at the times, in the manner and to the persons specified by the Tribunal;
- (f) order that the person seek and take advice, in relation to the management of his or her medical practice, from such persons as are specified by the Tribunal;
- (g) by its order—
 - (i) suspend the person from practising medicine for such period as it specifies; or
 - (ii) direct that the person's name be removed from the Register; or
- (h) by its order impose a fine on the person of an amount, not exceeding \$25,000, specified in the order,

or exercise any combination of the powers conferred on it by paragraphs (a)–(h).

(2) A power conferred by subsection (1) (b)–(g) may not be exercised unless the person is a registered medical practitioner, but an order may be made by the Tribunal that a person who is not registered may be registered only subject to compliance with an order under paragraph (b), (d), (e) or (f) of subsection (1) or conditions that might, if the person were registered, be imposed under paragraph (c) of that subsection.

(3) If the Board has reason to believe that a person in respect of whom the Tribunal has—

- (a) made an order under subsection (1) (b), (d), (e) or (f);
- (b) imposed conditions under subsection (1) (c); or

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

- (c) made an order under subsection (2),
has failed to comply with the order or conditions, the Board may refer the matter to the Tribunal.
- (4) Where the Tribunal finds the failure to have been proved, it may—
 - (a) if the person is a registered medical practitioner, exercise any power or combination of powers that it may exercise under subsection (1) or (5); or
 - (b) if the person is not registered, make an order that the Tribunal may make under subsection (2) or (5).
- (5) If the Tribunal makes an order under subsection (1) (g) (ii) or the Tribunal finds the subject-matter of a complaint against a person who has ceased to be registered to be proved—
 - (a) the Tribunal may by its order fix a time after which the person whose name is removed from the Register, or a person who has ceased to be registered, may apply to be registered; and
 - (b) where a time has been so fixed, the person is not entitled to be registered before that time notwithstanding section 15, 16 or 17 (c) or (d).
- (6) An order made by the Tribunal under this section shall take effect on the day on which the order is made or on such later day as is specified in the order.
- (7) The Tribunal may impose a fine on a person only if it finds the person to have been guilty of professional misconduct (other than conduct in respect of which a fine or other penalty has already been imposed by a court).
- (8) A fine imposed under this section shall be paid to the Board.
- (9) The Tribunal shall inform the Registrar of the exercise of any power under this section by the Tribunal.

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SCHEDULE 2—continued**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—continued**

(10) Where the Supreme Court exercises a power of the Tribunal under this section, the power shall, except for the purposes of any appeal, be deemed to have been exercised by the Tribunal.

Suspension orders

32s. (1) While an order suspending a person from practising medicine under section 32i (4), 32R or 32U is in force, the person subject to the order shall, except in the application to the person of a provision of Part III (other than section 23B) or this Part, be deemed not to be a registered medical practitioner.

(2) On the expiry of a period of suspension imposed under section 32i (4), 32R or 32U the person's rights and privileges as a registered medical practitioner are revived.

Decisions of the Tribunal

32t. (1) The decision of the Chairperson, or a Deputy Chairperson, on any question of law or procedure arising during an inquiry or appeal at which the Chairperson or Deputy Chairperson presides is the decision of the Tribunal for the purposes of the inquiry or appeal.

(2) A decision supported by at least 3 members of the Tribunal with respect to a question (other than with respect to a point of law or procedure) arising during an inquiry or appeal before the Tribunal is the decision of the Tribunal or, if 2 members support the decision and 2 members oppose the decision, the decision of the Chairperson or Deputy Chairperson presiding is the decision of the Tribunal.

(3) The Tribunal shall, as soon as practicable after concluding an inquiry or appeal, make available to the complainant, the registered medical practitioner concerned and such other persons as it thinks fit the reasons for the decision resulting from that inquiry or appeal.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued***Appeals against decisions of the Tribunal**

32U. (1) A person about whom a complaint is referred to the Tribunal under section 31, 32 or 32H, or the complainant, may appeal to the Supreme Court against—

- (a) a decision of the Tribunal with respect to a point of law;
or
- (b) the exercise of any power under section 32R by the Tribunal,

within the prescribed time.

(2) The Supreme Court may stay any order made by the Tribunal, on such terms as the Court sees fit, until such time as the Court determines an appeal made under this section.

(3) In determining an appeal under this section, the Supreme Court may—

- (a) dismiss the appeal; or
- (b) make such order as it thinks proper having regard to the merits of the case and the public welfare and, in doing so, may exercise any one or more of the powers of the Tribunal under section 32R.

(4) In any case where the Supreme Court dismisses an appeal against an order directing that the name of a registered medical practitioner be removed from the Register or a person has ceased to be registered—

- (a) the Court may by its order fix a time after which the person whose name is removed from the Register, or the person who has ceased to be registered, may apply to be registered; and
- (b) where a time has been so fixed, the person is not entitled to be registered before that time notwithstanding section 15, 16 or 17 (c) or (d).

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SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(5) An appeal under this section with respect to a point of law may be made during an inquiry conducted by the Tribunal or within the prescribed time.

(6) If an appeal with respect to a point of law is made under this section and an inquiry conducted by the Tribunal has not been completed—

- (a) the inquiry before the Tribunal shall not continue until the appeal has been disposed of; and
- (b) the Tribunal, on recommencing the inquiry, shall not make any decision that is inconsistent with the Supreme Court's determination with respect to the point of law.

Review of suspension or deregistration by the Tribunal

32v. (1) A person who is—

- (a) suspended from practising medicine under section 32i (4) or 32R; or
- (b) whose name has been removed from the Register under section 32i (4), 32R or 32U,

may apply to the Tribunal for a review of the suspension or removal.

(2) An application under this section shall be lodged with the Registrar who shall refer it to the Tribunal (which shall be constituted in accordance with this Act to deal with the application).

(3) An application under this section—

- (a) may not be made by a person while the person is subject to an order fixing a time after which the person may apply to be registered; and
- (b) may not be made if an appeal to the Supreme Court in respect of the same matter under section 32U has not been disposed of.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(4) On an application being made under this section, the Tribunal may, after such inquiry as it thinks fit—

- (a) dismiss the application;
- (b) by its order, terminate any suspension; or
- (c) order—
 - (i) that a person whose name has been removed from the Register be registered under the provision of this Act under which the person was registered immediately before the person ceased to be registered or under any equivalent provision of this Act; and
 - (ii) that such conditions, if any, as the Board may impose on the person's registration and as are specified in the order be imposed on the person's registration.

(5) A person registered pursuant to an order referred to in subsection (4) (c) (i) shall (except for the purposes of section 23c) be deemed to be registered pursuant to a determination made by the Board under section 21 (1) (a).

(6) A condition imposed pursuant to an order referred to in subsection (4) (c) (ii) shall (except for the purposes of section 23c) be deemed to be a condition that has been imposed by the Board under section 21 (3).

Inquiries etc. where other proceedings

32w. A complaint may be referred to a Committee or the Tribunal, and dealt with by the Committee or Tribunal, even though the registered medical practitioner about whom the complaint is made is the subject of proposed or current criminal or civil proceedings relating to the subject-matter of the complaint.

(12) Section 47 (**Penalties for false statements etc.**)—

Section 47 (b)—

Omit "the investigating committee or the disciplinary tribunal" wherever occurring, insert instead "a Committee or the Tribunal".

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SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(13) Section 50A—

Omit the section, insert instead:

Protection from liability

50A. No matter or thing done or omitted to be done by—

- (a) a Committee;
- (b) the Tribunal;
- (c) any member of a Committee or the Tribunal or any person acting under the direction of a Committee or the Tribunal;
or
- (d) a nominal complainant.

shall, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

(14) Section 53 (**Regulations**)—

(a) Section 53 (1) (b)—

Omit the paragraph.

(b) Section 53 (1) (c)—

Omit “an investigation by the investigating committee or an inquiry by the disciplinary tribunal”, insert instead “an inquiry or appeal by a Committee or the Tribunal and prescribing matters relating to the custody and use of the seal of the Tribunal”.

(c) Section 53 (1) (c1)—

Omit “disciplinary tribunal”, insert instead “Tribunal”.

*Medical Practitioners (Amendment) 1987*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(15) Schedule 4—

After Schedule 3, insert:

SCHEDULE 4

(Secs. 32F (5), 32O (4))

PROCEEDINGS BEFORE A COMMITTEE AND THE TRIBUNAL

Proceedings generally

1. In proceedings before it, a Committee or the Tribunal is not bound to observe the rules of law governing the admission of evidence, but may inform itself of any matter in such manner as it thinks fit.

Power to summon witnesses and take evidence

2. (1) A member of a Committee or the Tribunal may summon a person to appear in proceedings before the Committee or the Tribunal, to give evidence and to produce such documents (if any) as are referred to in the summons.

(2) The person presiding at the proceedings may require a person appearing in the proceedings to produce a document.

(3) A Committee or the Tribunal may, in proceedings before it, take evidence on oath or affirmation and, for that purpose a member of the Committee or the Tribunal—

(a) may require a person appearing in the proceedings to give evidence either to take an oath or to make an affirmation in a form approved by the person presiding; and

(b) may administer an oath to or take an affirmation from a person so appearing in the proceedings.

(4) A person served with a summons to appear in any such proceedings and to give evidence shall not, without reasonable excuse—

(a) fail to attend as required by the summons; or

(b) fail to attend from day to day unless excused, or released from further attendance, by a member of a Committee or the Tribunal.

(5) A person appearing in proceedings to give evidence shall not, without reasonable excuse—

(a) when required to be sworn or affirm—fail to comply with the requirement;

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COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

- (b) fail to answer a question that the person is required to answer by the person presiding; or
- (c) fail to produce a document that the person is required to produce by this clause.
- (6) A person who contravenes subclause (4) or (5) is guilty of an offence and is liable to a penalty not exceeding \$2,000.

Power to obtain documents

- 3. (1) A member of a Committee or the Tribunal may, by notice in writing served on a person, require the person—
 - (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Committee or the Tribunal or a person authorised by the Committee or the Tribunal in that behalf; and
 - (b) to produce, at that time and place, to the person so specified a document specified in the notice.
- (2) A person who fails, without reasonable excuse, to comply with a notice served on the person under this clause is guilty of an offence and liable to a penalty not exceeding \$2,000.

Evidence of other proceedings

- 4. A Committee or the Tribunal may receive and admit on production, as evidence in any proceedings—
 - (a) the judgment and findings of any court (whether civil or criminal and whether or not of New South Wales) or tribunal;
 - (b) the verdict or findings of a jury of any such court;
 - (c) a certificate of the conviction of any person; or
 - (d) a transcript of the depositions or of shorthand notes, duly certified by the Registrar or clerk of the court or tribunal as correct, of the evidence of witnesses taken in any such court or tribunal,

where the Committee or the Tribunal is of the opinion that the judgment, findings, verdict, certificate or evidence is relevant to the proceedings.

Additional complaints

- 5. (1) A Committee or the Tribunal may in proceedings before it deal with one or more complaints about a registered medical practitioner.

SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—*continued*

(2) If, during any such proceedings, it appears to a Committee or the Tribunal that, having regard to any matters that have arisen, another complaint could have been made against the registered medical practitioner concerned—

- (a) whether instead of or in addition to the complaint which was made; and
- (b) whether or not by the same complainant,

the Committee or the Tribunal may deem that other complaint to have been referred to it and may deal with it in the same proceedings.

(3) If another complaint is deemed to have been referred to a Committee or the Tribunal under subclause (2), the complaint may be dealt with after such an adjournment (if any) as is, in the opinion of the Committee or the Tribunal, just and equitable in the circumstances.

Release of information

6. (1) The person presiding in proceedings before a Committee or the Tribunal may, on the request of a complainant, the registered medical practitioner concerned or any other person, if the person presiding thinks it appropriate in the particular circumstances of the case—

- (a) direct that the name of any witness is not to be disclosed in the proceedings; or
- (b) direct that all or any of the following matters:
 - (i) the name and address of any witness;
 - (ii) the name and address of a complainant;
 - (iii) the name and address of a registered medical practitioner;
 - (iv) any specified evidence;
 - (v) the subject-matter of a complaint,

shall not be published, except in a publication intended primarily for the use of members of the legal or medical profession.

(2) A direction may be amended or revoked at any time by the person presiding.

(3) A direction may be given before or during proceedings, but shall not be given before the proceedings unless notice is given to—

- (a) the person who requested the direction;

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(b) the complainant or the registered medical practitioner concerned, as appropriate; and

(c) such other persons as the person presiding thinks fit,

of the time and place appointed by the person presiding for consideration of the request.

(4) A person who contravenes a direction given under this clause is guilty of an offence and liable to a penalty not exceeding \$2,000.

Authentication of documents by a Committee or the Tribunal

7. Every document requiring authentication by a Committee or the Tribunal may be sufficiently authenticated—

(a) in the case of a Committee, if signed by the chairperson of that Committee or by a member of that Committee authorised to do so by that chairperson; or

(b) in the case of the Tribunal, without the seal of the Tribunal, if signed by the Chairperson of the Tribunal or by a member of the Tribunal authorised to do so by the Chairperson.

Nominal complainant

8. In any proceedings before a Committee or the Tribunal, the Secretary or an officer of the Department of Health appointed by the Secretary—

(a) may, with the consent of a complainant, act as the nominal complainant; and

(b) when so acting, shall, for the purposes of this Act and the regulations, be deemed to be the person who made the complaint.

Intervention by Secretary

9. Without limiting the operation of clause 8, the Secretary may intervene in any proceedings before a Committee or the Tribunal, and has a right to be heard—

(a) personally or by an officer of the Department of Health; and

(b) also, in the case of any proceedings before the Tribunal, by a barrister or solicitor who is not an officer of the Department of Health.

Expedition of inquiries and appeals

10. (1) It is the duty of a Committee and the Tribunal to hear inquiries and appeals under this Act and to determine those inquiries and appeals as soon as is reasonably practicable.

SCHEDULE 2—continued**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
COMPLAINTS AND DISCIPLINARY PROCEEDINGS—continued**

(2) Without affecting the generality of subclause (1), a Committee or the Tribunal may postpone or adjourn proceedings before it as it thinks fit.

Evidentiary certificate

11. A certificate purporting to have been signed by the Registrar, to the effect that—

- (a) a person specified in the certificate was or was not a registered medical practitioner at a time or during a period so specified;
- (b) the name of a person specified in the certificate was removed from the Register at a time so specified;
- (c) a person specified in the certificate was suspended from practising medicine from a time so specified and for a period so specified; or
- (d) a condition, particulars of which are set out in the certificate, was, at a time or during a period so specified—
 - (i) imposed on the registration of a person so specified; or
 - (ii) revoked or not in force,

shall, without proof of the signature of the person by whom the certificate purports to have been signed, be received by a Committee, the Tribunal and all courts as *prima facie* evidence of that fact.

Certain complaints may not be heard

12. (1) A Committee or the Tribunal may decide not to conduct an inquiry, or at any time to terminate an inquiry or appeal, if—

- (a) a complainant fails to comply with a requirement made of the complainant by the Committee or the Tribunal; or
- (b) the person about whom the complaint is made ceases to be a registered medical practitioner.

(2) A Committee or the Tribunal shall not conduct or continue any inquiry or any appeal if the registered medical practitioner concerned dies.

Medical Practitioners (Amendment) 1987

SCHEDULE 3

(Sec. 4)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 2 (**Division into Parts**)—

Omit the section.

(2) Section 15 (**Full entitlement to registration**)—

(a) Section 15 (2) (a) (i)—

Omit the subparagraph, insert instead:

- (i) is the holder of a degree in medicine and a degree in surgery, in each case being a degree of an Australian university and accredited for the time being by the Australian Medical Council for the purpose of registration; and

(b) Section 15 (3)—

Omit the subsection, insert instead:

- (3) For the purposes of subsection (2) (b) (i), a person is the holder of a prescribed degree if the person is the holder of the qualification or qualifications granted by a university, college or other body named in Column 1 of Schedule 1 that is or are specified in Column 2 of that Schedule opposite the name of the university, college or other body.

(3) Section 16 (**Limited entitlement to registration**)—

(a) Section 16 (a)—

Omit “listed in Column One of Schedule One”, insert instead “listed in Schedule 1 or a degree in medicine and a degree in surgery, in each case being a degree of an Australian university and accredited for the time being by the Australian Medical Council for the purpose of registration”.

SCHEDULE 3—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(b) Section 16 (c)—

Omit the paragraph, insert instead:

(c) the person—

- (i) has obtained results satisfactory to the Board in an examination conducted by the Australian Medical Council; or
- (ii) satisfies the Board that the person should not, for the purpose of being entitled to be so registered, be required to be so examined or should not be required to obtain those results;

(4) Section 24 (**Annual roll fee**)—

Section 24 (5) (a)—

After “removed”, insert “and shall be deemed to have been so registered on and from the day the person’s name was so removed or on and from such later day as the Board determines and notifies to the person”.

(5) Section 26 (**Removal from New South Wales Register after removal from other register**)—

Section 26 (2)—

Omit “shall not be removed from the Register before the expiration of 2 months”, insert instead “shall be removed from the Register”.

(6) Section 39 (**Powers of entry, search and seizure**)—

(a) Section 39 (1)—

Omit the subsection, insert instead:

(1) In this section—

“authorised person” means a person authorised as referred to in subsection (2);

Medical Practitioners (Amendment) 1987

SCHEDULE 3—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

“records” includes any book, account, document, paper and other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means;

“registered medical practitioner” includes a former registered medical practitioner or a registered medical practitioner who is suspended from practising medicine.

(b) Section 39 (2)—

Omit “of the Department of Health”.

(c) Section 39 (2)—

Omit “with”, insert instead “with or of investigating a complaint made or intended to be made under Part IIIA”.

(d) Section 39 (2)—

Omit “accounts, records, books or other documents” wherever occurring, insert instead “records”.

(e) Section 39 (2A)—

After section 39 (2), insert:

(2A) Any person authorised under this section in writing by the Secretary may, for the purpose of ascertaining whether the provisions of this Act or any regulation are being complied with or of investigating a complaint made or intended to be made under Part IIIA—

- (a) at any reasonable time, enter any premises in or on which the authorised person reasonably believes records relating to the carrying out of professional practice by a registered medical practitioner are kept;
- (b) require any person within those premises to produce any records in the possession or under the control of that person and relating to the carrying out of that professional practice; or

*Medical Practitioners (Amendment) 1987*SCHEDULE 3—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(c) take copies of, or extracts or notes from, any such records,

but nothing in this subsection empowers an authorised person to enter any premises without the consent of the owner or occupier of the premises except under the authority of a search warrant issued under section 39AA.

(f) Section 39 (7)—

Omit “of the Department of Health”.

(7) Section 39AA (**Search warrant**)—

Section 39AA (2), (2A)—

Omit section 39AA (2), insert instead:

(2) An authorised person may apply to an authorised justice for a search warrant if the person has reasonable grounds for believing—

(a) that a provision of this Act or the regulations has been or is being contravened in or on any premises; or

(b) that entry into or onto any premises is necessary for the purpose of investigating a complaint made or intended to be made under Part IIIA that, if substantiated, may provide grounds for the suspension or deregistration of a registered medical practitioner.

(2A) An authorised person shall not apply for a search warrant unless the person or the Secretary has caused the President to be notified of the application.

(8) Section 41C—

After section 41B, insert:

Medical Practitioners (Amendment) 1987

SCHEDULE 3—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
*continued***Medical records to be kept**

41C. A registered medical practitioner who is in practice on his or her own account or who is a principal in a practice shall, unless the Board otherwise directs, keep such records for a period of not less than 7 years, or such other period as may be prescribed, after the records are made as the practitioner may be required to keep by the regulations.

Penalty: \$2,000.

(9) Section 43 (Penalties for certain offences)—

Section 43 (2)—

Omit “of the Department of Health”.

(10) Section 45 (Advertisement to promote sale of food, drug or appliance)—

Section 45 (1)—

Omit “of the Department of Health”.

(11) Section 52 (Offences and penalties)—

Omit “before a court of petty sessions comprised of a stipendiary magistrate”, insert instead “before a Local Court constituted by a Magistrate”.

(12) Section 53 (Regulations)—**(a) Section 53 (1) (i)—**

Omit “or” where lastly occurring.

(b) Section 53 (1) (j), (k)—

At the end of section 53 (1) (j), insert:

; or

(k) with respect to regulating after-hours medical services and medical deputising services, including (without limiting the generality of this power) regulations as to—

(i) the management and ownership of such services;

*Medical Practitioners (Amendment) 1987*SCHEDULE 3—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (ii) the employment of persons in such services;
- (iii) the hours of operation and premises to be provided by such services; and
- (iv) the advertising of such services.

(13) Schedule 1—

Omit Schedule One, insert instead:

SCHEDULE 1

(Sec. 15 (3))

Column 1		Column 2
University, college or other body granting qualifications		Qualifications
Name of university, college or other body	Location of university, college or other body	
University of New Zealand	New Zealand	Bachelor of Medicine and Bachelor of Surgery
University of Otago	New Zealand	Bachelor of Medicine and Bachelor of Surgery
University of Auckland	New Zealand	Bachelor of Medicine and Bachelor of Surgery

Medical Practitioners (Amendment) 1987

SCHEDULE 4

(Sec. 7)

SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation

1. In this Schedule—

“disciplinary tribunal” means the tribunal of that name under the Principal Act before the commencement of Schedule 2 (11);

“investigating committee” means the committee of that name under the Principal Act before the commencement of Schedule 2 (11);

“new Board” means the New South Wales Medical Board under the Principal Act on the commencement of Schedule 1 (2);

“old Board” means the New South Wales Medical Board under the Principal Act before the commencement of Schedule 1 (2).

Members of old Board

2. A person who, immediately before the commencement of Schedule 1 (2), held office as a member of the old Board—

(a) shall cease to hold office as such on that commencement; and

(b) is eligible (if otherwise qualified) to be appointed as a member of the new Board.

References to certain officers and to old Board

3. On and from the commencement of Schedule 1 (2), a reference in any other Act, in any instrument made under any Act or in any other instrument of any kind (enacted, made or executed before that commencement)—

(a) to the president of the old Board shall be read as a reference to the President appointed under the Principal Act, as amended by this Act; or

(b) to the New South Wales Medical Board shall be read as a reference to the new Board.

Appointments etc. before commencement

4. For the purpose only of enabling the new Board to be constituted on or after (but not before) the commencement of Schedule 1 (2), appointments may be made under the Principal Act, as so amended, and anything else may be done, before that commencement as if the whole of this Act commenced on the date of assent to this Act, but so that no appointment as a member of the new Board as so constituted takes effect before that commencement.

First meeting of new Board

5. The Minister shall call the first meeting of the new Board in such manner as the Minister thinks fit.

Medical Practitioners (Amendment) 1987

SCHEDULE 4—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Members of investigating committee and non-judicial members of disciplinary tribunal previously holding office**

6. A person who, immediately before the commencement of Schedule 2 (11), held office under the Principal Act as a member of the investigating committee or the disciplinary tribunal (otherwise than as chairman or a deputy chairman of that tribunal)—

- (a) shall cease to hold office as such on that commencement; and
- (b) is eligible (if otherwise qualified) to be appointed as a member of a Committee or the Tribunal constituted under the Principal Act, as amended by this Act.

Chairman or deputy chairman of disciplinary tribunal

7. (1) A person who, immediately before the commencement of Schedule 2 (11), was the chairman or a deputy chairman of the disciplinary tribunal under the Principal Act shall be deemed to have been appointed to the office of Chairperson, or a Deputy Chairperson, as the case requires, of the Medical Tribunal under the Principal Act, as amended by this Act.

(2) A person appointed to an office by the operation of subclause (1) shall, subject to the Principal Act, as amended by this Act, be deemed to have been appointed to the office until the expiration of the period for which the person was, but for this Act, appointed to the disciplinary tribunal.

Funding

8. (1) Until such time as the funds of the new Board are sufficient to meet the amounts required to be paid from those funds under section 10 of the Principal Act, as amended by this Act, any shortfall in the new Board's funds shall be paid from money provided by Parliament.

(2) Any amount advanced to the new Board under subclause (1) shall be repaid by the new Board as far as is practicable in the same financial year of the Board as it was received.

(3) The new Board shall not establish the Medical Education and Research Account until it has repaid all of the money advanced to it under subclause (1).

Matters before investigating committee and disciplinary tribunal

9. (1) A complaint lodged with the secretary to the investigating committee before the commencement of Schedule 2 (11) and in relation to which an investigation had then not been completed—

- (a) shall be deemed to be a complaint made to the new Board under section 28 of the Principal Act, as amended by this Act; and
- (b) shall be dealt with accordingly.

Medical Practitioners (Amendment) 1987

SCHEDULE 4—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(2) Any uncompleted hearing that is being conducted by the investigating committee or any inquiry being conducted by the old Board under section 30 of the Principal Act, immediately before that commencement—

(a) shall be terminated on and from that commencement; and

(b) shall be dealt with by the new Board as if a complaint has been made to the new Board under section 28 of the Principal Act, as amended by this Act.

(3) Any uncompleted inquiry that is being conducted by the disciplinary tribunal immediately before the commencement of Schedule 2 (11)—

(a) shall be terminated on and from that commencement;

(b) shall be deemed to have been referred to the Tribunal under section 31 of the Principal Act, as amended by this Act; and

(c) shall be dealt with by way of rehearing.

(4) In any inquiry conducted by the Tribunal as a result of the operation of subclause (3)—

(a) fresh evidence, or evidence in addition to or in substitution for the evidence received during the investigation or the inquiry, may be given; and

(b) evidence given in any uncompleted investigation or inquiry before the investigating committee or the disciplinary tribunal may be received in the form of a transcript of the depositions or of shorthand notes, duly certified as correct by the secretary to the old Board or the Registrar of the new Board.

(5) Nothing in this Act affects—

(a) any appeal made to the Supreme Court under—

(i) section 23C of the Principal Act, as in force before the commencement of Schedule 2 (8);

(ii) section 26 (3) of the Principal Act, as in force before the commencement of Schedule 2 (9); or

(iii) section 29 (4) of the Principal Act, as in force before the commencement of Schedule 2 (11); or

(b) the operation or enforcement of any order or decision of that Court with respect to any such appeal.

Medical Practitioners (Amendment) 1987

SCHEDULE 4—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Penalties**

10. (1) If before or after the commencement of Schedule 2 (11), a registered medical practitioner or former registered medical practitioner has failed or fails to comply with an order made by the disciplinary tribunal under section 29 (1) or by the old Board under section 30 of the Principal Act, as in force before that commencement—

- (a) the order shall be deemed to be an order made by the Tribunal under section 32R of the Principal Act, as amended by this Act; and
- (b) the Tribunal may take such action in relation to the failure to comply with the order as it could have taken had the order been made under section 32R of the Principal Act, as so amended.

(2) For the purposes of section 32v of the Principal Act, as amended by this Act, a person who was suspended from practising medicine or whose name was removed from the Register under the Principal Act, as in force before the commencement of Schedule 2 (11), shall be deemed to be a person suspended or whose name was removed under section 32R of the Principal Act, as amended by this Act.

Secretary to the old Board etc.

11. (1) Any certificate or notice issued or given by the secretary to the old Board before the commencement of Schedule 1 (2) shall be deemed to have been issued or given on behalf of the new Board or the Registrar of the new Board, as the case requires.

(2) Any application lodged with the secretary to the old Board under section 19 of the Principal Act and not dealt with before the commencement of Schedule 1 (2) shall be deemed to have been lodged with the Registrar of the new Board.

(3) Particulars of a change of name or address of a registered medical practitioner lodged with the secretary to the old Board or required to be so lodged before the commencement of Schedule 1 (2) shall be deemed to have been lodged or required to be so lodged with the Registrar of the new Board.

(4) Any prescribed roll fees payable to the secretary to the old Board before the commencement of Schedule 1 (2) shall be deemed—

- (a) if paid, to have been paid in accordance with the Principal Act, as amended by this Act; or
- (b) if not paid, to be unpaid roll fees payable under section 24 of the Principal Act, as amended by this Act.

Amendment relating to Private Health Establishments Act 1982

12. (1) Subclause (2) shall have effect on and from the day appointed and notified under section 2 (2) of the Private Health Establishments Act 1982.

Medical Practitioners (Amendment) 1987

SCHEDULE 4—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(2) Section 27 of the Principal Act, as amended by this Act, is amended by inserting after paragraph (c) of the definition of “professional misconduct” in section 27 (1) (c) the following paragraph:

- (c1) is convicted of an offence against a provision of Part IV of the Private Health Establishments Act 1982;

Regulations

13. (1) The regulations under the Principal Act may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to this Act or a later day and may so have effect notwithstanding any other provision of this Schedule.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; 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 date of its publication therein.