



New South Wales

Medical Practice Amendment Act 2000 No 64

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New South Wales

Medical Practice Amendment Act 2000 No 64

Act No 64, 2000

An Act to amend the *Medical Practice Act 1992* to make further provision for the registration of medical practitioners and the professional practice of medical practitioners; to amend certain other Acts; and for other purposes. [Assented to 5 July 2000]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Medical Practice Amendment Act 2000*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Medical Practice Act 1992 No 94

The *Medical Practice Act 1992* is amended as set out in Schedule 1.

4 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of Medical Practice Act 1992

(Section 3)

[1] Section 2A

Insert after section 2:

2A Object of Act

- (1) The object of this Act is to protect the health and safety of the public by providing mechanisms designed to ensure that:
 - (a) medical practitioners are fit to practise medicine, and
 - (b) medical students are fit to undertake medical studies and clinical placements.
- (2) The Board must exercise its functions under this Act in a manner that is consistent with this object.

[2] Section 3 Definitions

Insert at the end of section 3:

- (2) Notes included in this Act are explanatory notes and do not form part of this Act.

[3] Section 7 Conditional registration at the discretion of the Board

Omit “practise” from section 7 (2). Insert instead “practice”.

[4] Section 10 Conditions may be imposed in cases of impairment

Omit section 10 (1). Insert instead:

- (1) The Board may impose conditions on a person’s registration, as an alternative to refusing to register the person, if the Board is satisfied that the person suffers from an impairment and the conditions are reasonably required having regard to the impairment.

[5] Section 11

Omit the section. Insert instead:

11 Entitlement to registration does not prevent conditions being imposed

An entitlement to registration under this Act (including an entitlement to general registration) does not prevent conditions being imposed on that registration in accordance with this Act.

[6] Section 15 Registration may be refused if applicant convicted of offence

Omit section 15 (1). Insert instead:

- (1) The Board may refuse an application for registration if:
 - (a) the applicant has been convicted of or made the subject of a criminal finding for an offence (either in or outside the State), and
 - (b) the Board is of the opinion that the circumstances of the offence are such as to render the applicant unfit in the public interest to practise medicine.

[7] Section 16

Omit the section. Insert instead:

16 Registration may be refused if applicant deregistered on disciplinary grounds in another jurisdiction

- (1) The Board may refuse an application for registration if the person has been deregistered under a foreign law:
 - (a) for any reason relating to the conduct of the applicant amounting to professional misconduct (within the meaning of this Act), or
 - (b) on any basis relating to the applicant's physical or mental capacity to practise medicine.
- (2) For the purposes of this section, a person is *deregistered* under a foreign law when:
 - (a) the person's name is removed from any register or roll established or kept under a foreign law, or

(b) the person's entitlement to practise medicine is suspended under a foreign law (in the case of a person who is not entitled to registration under the Mutual Recognition laws).

(3) In this section:

foreign law means the law of any other State or a Territory or of another country providing for the registration, licensing or certification of medical practitioners.

[8] Section 30 Practitioner to be notified of action

Insert at the end of the section:

(2) This section does not apply if the Board removes a person's name from the Register in accordance with an order of the Chairperson, a Deputy Chairperson, the Tribunal or the Supreme Court under this Act.

[9] Section 32 Deregistration on basis of disciplinary action under foreign law

Omit section 32 (1). Insert instead:

(1) This section applies when it is proved to the satisfaction of that Board that, after a person was registered under this Act, the person was deregistered under a foreign law:

- (a) for any reason relating to conduct of the person amounting to professional misconduct (within the meaning of this Act), or
- (b) for any reason relating to the person's physical or mental capacity to practise medicine.

[10] Section 32 (4)

Insert after section 32 (3):

- (4) For the purposes of this section, a person is *deregistered* under a foreign law when:
 - (a) the person's name is removed from any register or roll under a foreign law, or

- (b) the person's entitlement to practise medicine is suspended under a foreign law (in the case of a person who is not entitled to registration under the Mutual Recognition laws).

[11] Section 35 Appeal

Insert "under this Division" after "Register" in section 35 (1).

[12] Section 36

Omit the section. Insert instead:

36 Meaning of "unsatisfactory professional conduct"

- (1) For the purposes of this Act, *unsatisfactory professional conduct* of a registered medical practitioner includes each of the following:
 - (a) *Lack of skill etc*
Any conduct that demonstrates a lack of adequate knowledge, skill, judgment or care, by the practitioner in the practice of medicine.
 - (b) *Contravention of Act or regulations*
Any contravention by the practitioner (whether by act or omission) of a provision of this Act or the regulations.
 - (c) *Contravention of conditions of registration*
Any contravention by the practitioner (whether by act or omission) of a condition to which his or her registration is subject.
 - (d) *Criminal convictions and criminal findings*
Any conduct that results in the practitioner being convicted of or being made the subject of a criminal finding for any of the following offences:
 - (i) an offence under section 204 of the *Mental Health Act 1990*,
 - (ii) an offence under section 20B of the *Children (Care and Protection) Act 1987*,
 - (iii) an offence under section 35 of the *Guardianship Act 1987*,

- (iv) an offence under section 128A, 128B, 129, 129AA or 129AAA of the *Health Insurance Act 1973* of the Commonwealth,
 - (v) an offence under section 46 of the *Private Hospitals and Day Procedure Centres Act 1988*,
 - (vi) an offence under section 43 of the *Nursing Homes Act 1988*.
- (e) *Accepting a benefit for a referral or recommendation to a health service provider*
Accepting from a health service provider (or from another person on behalf of the health service provider) a benefit as inducement, consideration or reward for:
- (i) referring another person to the health service provider, or
 - (ii) recommending another person use any health service provided by the health service provider or consult with the health service provider in relation to a health matter.
- (f) *Accepting a benefit for a recommendation of a health product*
Accepting from a person who supplies a health product (or from another person on behalf of the supplier) a benefit as inducement, consideration or reward for recommending that another person use the health product.
- (g) *Offering a benefit for a referral or recommendation*
Offering or giving any person a benefit as inducement, consideration or reward for the person:
- (i) referring another person to the registered medical practitioner, or
 - (ii) recommending to another person that the person use any health service provided by the practitioner or consult the practitioner in relation to a health matter.

- (h) *Failure to disclose pecuniary interest in giving referral or recommendation*
Referring a person to, or recommending that a person use or consult:
- (i) another health service provider, or
 - (ii) a health service, or
 - (iii) a health product,
- when the practitioner has a pecuniary interest in giving that referral or recommendation (as provided by subsection (2)), unless the practitioner discloses the nature of that interest to the person before or at the time of giving the referral or recommendation.
- (i) *Engaging in overservicing*
Engaging in overservicing, as provided by subsection (3).
- (j) *Supervision of assistants*
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.
- (k) *Assisting unregistered practitioners*
By the practitioner's presence, countenance, advice, assistance or co-operation, knowingly enable a person who is not a registered medical practitioner (whether or not that person is described as an assistant) to:
- (i) perform any act of operative surgery (as distinct from manipulative surgery) on a patient in respect of any matter requiring professional discretion or skill, or
 - (ii) 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.
- (l) *Failing to render urgent attention*
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, unless the practitioner has taken all reasonable steps to ensure that another registered medical practitioner attends instead within a reasonable time.

(m) *Other improper or unethical conduct*

Any other improper or unethical conduct relating to the practice or purported practice of medicine.

Note. Sections 37A and 38 provide for some exceptions to the above provisions.

- (2) A registered medical practitioner has a ***pecuniary interest*** in giving a referral or recommendation:
- (a) if the health service provider, or the supplier of the health product, to which the referral or recommendation relates is a public company and the practitioner holds 5% or more of the issued share capital of the company, or
 - (b) if the health service provider, or the supplier of the health product, to which the referral or recommendation relates is a private company and the practitioner has any interest in the company, or
 - (c) if the health service provider, or the supplier of the health product, to whom the referral or recommendation relates is a natural person who is a partner of the practitioner, or
 - (d) in any circumstances prescribed by the regulations.
- (3) A registered medical practitioner engages in ***overservicing*** if the practitioner, in the course of professional practice:
- (a) provides a service in circumstances in which provision of the service is unnecessary, not reasonably required or excessive, or
 - (b) engages in conduct prescribed by the regulations as constituting overservicing.
- (4) For avoidance of doubt, a reference in this section to a referral or recommendation that is given to a person includes a referral or recommendation that is given to more than one person or to persons of a particular class.

(5) In this section:

benefit means money, property or anything else of value.

recommend a health product includes supply or prescribe the health product.

supply includes sell.

[13] Section 37A

Insert after section 37:

37A Exception—advertising and other prescribed exceptions

A registered medical practitioner is not guilty of unsatisfactory professional conduct described in section 36 (1) (e), (f), (g) or (h):

- (a) in respect of any recommendation made in a public advertisement, or
- (b) in any circumstances prescribed by the regulations as not being a contravention of section 36 (1) (e), (f), (g) or (h).

[14] Section 38 Exception—training, employment and research

Omit “under the heading ‘Supervision of assistants’ or ‘Assisting unregistered practitioners’ in section 36” from section 38.

Insert instead “in section 36 (1) (j) and (k)”.

[15] Section 39 Grounds for complaint

Omit the paragraph with the heading “*Criminal conviction*” (including the heading).

Insert instead:

- (a) *Criminal conviction or criminal finding*
A complaint that the practitioner has, either in this State or elsewhere, been convicted of or made the subject of a criminal finding for an offence.

[16] Section 39

Insert paragraph letters before each paragraph heading in section 39, in appropriate sequential order, as indicated by item [15].

[17] Section 50 Courses of action available to Board on a complaint

Omit section 50 (1). Insert instead:

- (1) The following courses of action are available to the Board in respect of a complaint made to the Board, referred to the Board by the Commission or that the Board has decided to make:
 - (a) the Board may refer the complaint to the Commission for investigation, a Committee or the Tribunal, as the Board thinks fit,
 - (b) the Board may:
 - (i) refer the matter to an Impaired Registrants Panel, or
 - (ii) refer the professional performance of the practitioner concerned for assessment under Part 5A,
 - (c) the Board may direct the practitioner concerned to attend counselling,
 - (d) the Board may refer the complaint for conciliation in accordance with section 13 (2) of the *Health Care Complaints Act 1993*,
 - (e) the Board may determine that no further action should be taken in respect of the complaint.

[18] Section 50 (4)

Insert after section 50 (3):

- (4) If the Board makes a referral under subsection (1) (b), the matter ceases to be a complaint for the purposes of this Act and the *Health Care Complaints Act 1993*.
- (5) Subsection (4) ceases to apply in respect of any matter that the Board subsequently deals with as a complaint.

[19] Section 51 Courses of action available to the Commission on a complaint

Omit section 51 (1). Insert instead:

- (1) The following courses of action are available to the Commission in respect of a complaint made to the Commission or that the Commission has decided to make:
 - (a) the Commission may refer the complaint to the Board or, after consultation with the Board, to a Committee or the Tribunal (but may not refer it to an Impaired Registrants Panel or refer the professional performance of the practitioner concerned for assessment under Part 5A),
 - (b) the Commission may refer the complaint for conciliation in accordance with section 13 (2) of the *Health Care Complaints Act 1993*,
 - (c) the Commission may determine that no further action should be taken in respect of the complaint,
 - (d) the Commission may take any other action that it can take under the *Health Care Complaints Act 1993*.

[20] Section 52 Serious complaints must be referred to Tribunal

Omit “if of the opinion that” from section 52 (1).

Insert instead “if at any time either forms the opinion that”.

[21] Section 63 Committee can recommend suspension or deregistration on grounds of lack of physical or mental capacity

Insert after section 63 (1):

- (1A) If the person is not registered, a recommendation can be made under this section that the person not be re-registered.

[22] Section 64 Tribunal can suspend or deregister in certain cases

Omit “convicted of an offence (either in or outside New South Wales)” from section 64 (1) (c).

Insert instead “convicted of or made the subject of a criminal finding for an offence, either in or outside New South Wales,”.

[23] Sections 66–66D

Omit section 66. Insert instead:

66 Suspension or conditions to protect the public

- (1) The Board must, if at any time it is satisfied that such action is necessary for the purpose of protecting the life or physical or mental health of any person:
 - (a) by order suspend a registered medical practitioner from practising medicine for such period (not exceeding 8 weeks) 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.
- (2) The Board may take such action:
 - (a) whether or not a complaint has been made or referred to the Board about the practitioner, and
 - (b) whether or not proceedings in respect of such a complaint are before the Tribunal or a Committee.
- (3) The Board is to give written notice of any action taken under this section to the practitioner concerned.

66A Power to remove or alter conditions

- (1) The Board may at any time alter or remove conditions imposed under this Division.
- (2) The Board is to give written notice of any action taken under this section to the practitioner concerned.

66B Referral of matter to Commission

- (1) The Board must, as soon as practicable after taking any action under section 66 and, in any event, within 7 days after taking that action, refer the matter to the Commission for investigation.
- (2) The matter is to be dealt with by the Commission as a complaint made to the Commission against the practitioner concerned.

- (3) The Commission is to investigate the complaint or cause it to be investigated and, as soon as practicable after it has completed its investigation, refer the complaint to the Tribunal or a Committee.
- (4) Section 52 (Serious complaints must be referred to Tribunal) applies in respect of any such action by the Commission.
- (5) This section does not apply if the Board imposes conditions on the registration of a registered medical practitioner under section 66 because the Board is of the opinion that the practitioner suffers from an impairment.

66C Special provisions—impairment

- (1) This section applies if the Board imposes conditions on the registration of a registered medical practitioner under section 66 because the Board is of the opinion that the practitioner suffers from an impairment.
- (2) The Board must, as soon as practicable after taking that action and, in any event, within 7 days after taking that action, notify the Commission that it has taken that action.
- (3) The Board is to consult with the Commission to see if agreement can be reached as to whether the matter should be:
 - (a) dealt with as a complaint against the practitioner, or
 - (b) referred to an Impaired Registrants Panel.
- (4) The matter is to be dealt with as a complaint against the practitioner only if, following that consultation:
 - (a) the Board and the Commission agree that it should be dealt with as a complaint, or
 - (b) either the Board or the Commission is of the opinion that the matter should be dealt with as a complaint.
- (5) In such a case, the Board is to refer the matter to the Commission and the matter is to be dealt with by the Commission as a complaint made to the Commission against the practitioner concerned.
- (6) The Commission is to investigate the complaint or cause it to be investigated and, as soon as practicable after it has completed its investigation, refer the complaint to the Tribunal or a Committee.

- (7) Section 52 (Serious complaints must be referred to Tribunal) applies in respect of any such action by the Commission.
- (8) If subsection (4) does not apply, the Board is to refer the matter to an Impaired Registrants Panel.

66D Tribunal to be notified of suspensions

If the Board suspends a registered medical practitioner from practising medicine under section 66, the Board must notify the Chairperson that it has taken that action as soon as practicable after making the order and, in any event, within 7 days.

[24] Section 67 Extension of suspension

Omit “30 days” from section 67.
Insert instead “8 weeks”.

[25] Sections 69 and 69A

Omit section 69. Insert instead:

69 Duration of conditions—complaint matters

- (1) This section applies if the Board imposes conditions on the registration of a registered medical practitioner under section 66 and the matter is dealt with as a complaint against the practitioner.
- (2) The conditions imposed by the Board have effect until the complaint about the practitioner is disposed of, or the conditions are removed by the Board, whichever happens first.
- (3) This section:
 - (a) does not prevent conditions being imposed under another provision of this Act, and
 - (b) is subject to anything done by the Tribunal on an appeal under section 95.

69A Duration of conditions—impairment matters

- (1) This section applies if the Board imposes conditions on the registration of a registered medical practitioner under section 66 and the matter is referred to an Impaired Registrants Panel.

- (2) The conditions imposed by the Board have effect as follows:
 - (a) if the matter is subsequently dealt with by the Board as a complaint (see section 82), until the complaint about the practitioner is disposed of, or
 - (b) until the conditions are removed by the Board, whichever happens first.
- (3) The Board is not required to alter or remove conditions imposed under this Division merely because a practitioner agrees to conditions being imposed on the practitioner's registration in accordance with the recommendations of an Impaired Registrants Panel (as referred to in section 81).
- (4) A registered medical practitioner who agrees to conditions being imposed on his or her registration in accordance with the recommendations of an Impaired Registrants Panel may, by notice in writing to the Board, request that the conditions imposed under this Division be altered or removed.
- (5) On receipt of such a request, the Board is to review the matter, and may:
 - (a) refuse to alter or remove any of the conditions, or
 - (b) alter or remove the conditions.
- (6) The Board is to give the practitioner concerned notice in writing of its decision in respect of the request.
- (7) The Board may specify in the notice a period in which a further request by the practitioner under this section is not permitted. The Board may reject a request that the conditions be altered or removed if it is made during that period.
- (8) This section:
 - (a) does not prevent conditions being imposed under another provision of this Act, and
 - (b) is subject to anything done by the Tribunal on an appeal under section 95.

[26] Section 71 Referral of matters by courts

Omit section 71 (1). Insert instead:

- (1) A court in New South Wales before which a person is convicted of an offence, or is made the subject of a criminal finding for a sex or violence offence, other than an offence prescribed by the regulations, is to cause notice of the conviction or criminal finding, and of any penalty imposed on the person, to be sent to the Registrar if the court has reasonable grounds to believe that the person is or was, at the time the offence was committed, a registered medical practitioner.

[27] Section 71 (3)

Omit the subsection. Insert instead:

- (3) If a notice or a transcript of evidence is furnished to the Registrar under this section, a complaint is taken to have been made to the Board about the person to whom the notice or transcript relates.

[28] Part 5, heading

Omit “**Alternatives to disciplinary procedures**”.
Insert instead “**Impairment**”.

[29] Sections 72, 78, 79 and 82

Omit “a Panel” wherever occurring in sections 72 (2), 78, 79 (1) and 82 (3).
Insert instead “an Impaired Registrants Panel”.

[30] Sections 75, 76 and 80

Omit “A Panel” wherever occurring in sections 75 (1), 76 and 80 (1).
Insert instead “An Impaired Registrants Panel”.

[31] Section 77 Board to give notice of proposed inquiry

Omit “the Panel” from section 77.
Insert instead “an Impaired Registrants Panel”.

[32] Section 78 Practitioner or student entitled to make representations

Insert at the end of section 78:

- (2) This section does not prevent the Panel from conducting an inquiry in the absence of the registered medical practitioner or medical student to whom it relates, as long as the practitioner or student has been given notice of the inquiry under section 77.

[33] Section 78A

Insert after section 78:

78A Board may require practitioner to undergo medical examination

- (1) The Board may by notice given to a registered medical practitioner who is the subject of a matter referred or proposed to be referred to an Impaired Registrants Panel direct the practitioner to undergo a medical examination by a specified registered medical practitioner at a specified time and place.
- (2) A practitioner must not be directed to undergo a medical examination unless it is reasonable to require the examination, given the nature of the matter that is the subject of the referral or proposed referral. The time and place specified for the examination must be reasonable and the examination is to be at the expense of the Board.
- (3) If a registered medical practitioner refuses, without reasonable excuse, to comply with a direction to undergo a medical examination, that refusal is, for the purposes of this Act and any inquiry or appeal under this Act, evidence that the practitioner does not have sufficient physical and mental capacity to practise medicine.

[34] Section 79 Board may require student to undergo medical examination

Omit section 79 (3)–(5). Insert instead:

- (3) If a medical student fails, without reasonable excuse, to comply with a direction to undergo a medical examination, the Board may by order in writing prohibit the student undertaking clinical studies, or undertaking a clinical placement in a public hospital, until the student complies with the direction.

- (4) The Board's order takes effect when a copy of it is served on the educational institution responsible for the clinical studies or clinical placement of the student.
- (5) A medical student is not permitted to undertake clinical studies or a clinical placement in a public hospital contrary to the terms of the order.

[35] Section 80 Assessment, report and recommendations by Panel

Omit "consent" from section 80 (2) (b). Insert instead "agree".

[36] Sections 81 and 81A

Omit section 81. Insert instead:

81 Voluntary suspension or conditions on registration

The Board may impose conditions on a registered medical practitioner's registration or suspend the practitioner from practising medicine if:

- (a) an Impaired Registrants Panel has recommended that the Board do so, and
- (b) the Board is satisfied that the practitioner has voluntarily agreed to the conditions.

81A Review of conditions

- (1) A registered medical practitioner who agrees to conditions being imposed on his or her registration, or to being suspended from practising medicine, may, by notice in writing to the Board, request:
 - (a) that those conditions be altered or removed, or
 - (b) that the suspension be terminated or shortened.
- (2) On receipt of such a request, the Board is to require an Impaired Registrants Panel to review the matter and report in writing to the Board on the results of its review.
- (3) If the Panel recommends that the Board refuse to alter or remove any of the conditions, or refuse to terminate or shorten the suspension, the Board may do so.

- (4) The Board is to give the practitioner concerned notice in writing of its decision in respect of the request.
- (5) The Board may specify in the notice a period in which a further request by the practitioner under this section is not permitted. The Board may reject a request that the conditions be altered or removed, or that the suspension be terminated or shortened, if it is made during that period.

[37] Section 82 Some matters to be dealt with as complaints

Omit section 82 (1). Insert instead:

- (1) If an Impaired Registrants Panel recommends that a registered medical practitioner agree to conditions being imposed on his or her registration or to being suspended from practising medicine and the practitioner fails to agree with the recommendation, the Board is to deal with the matter that was the subject of the referral to the Panel as a complaint against the practitioner.

[38] Section 83

Omit the section. Insert instead:

83 Prohibition or conditions on student

- (1) An Impaired Registrants Panel that investigates a matter concerning a medical student may recommend to the Board that it is in the public interest that the Board:
 - (a) prohibit the student from undertaking clinical studies or from undertaking a clinical placement in a public hospital, or
 - (b) impose specified conditions on the undertaking of clinical studies or a clinical placement by the student.
- (2) If the Panel makes such a recommendation and the Board is satisfied that it is in the public interest to do so, the Board may by order in writing:
 - (a) prohibit the student undertaking clinical studies or a clinical placement in a public hospital, or
 - (b) impose specified conditions on the undertaking of clinical studies or a clinical placement by the student.

- (3) An order under this section takes effect when notice of it is served on the educational institution responsible for the conduct of the clinical studies or the patronage of the clinical placement of the student.
- (4) A medical student is not to be permitted to undertake clinical studies or a clinical placement in a public hospital contrary to the terms of an order in force under this section.
- (5) An order remains in force for the period (up to 2 years) specified in the order unless it is revoked by the Board. The Board may issue further orders in respect of a student but only on the recommendation of an Impaired Registrants Panel.

[39] Section 84 Appeal by student against order

Omit section 84 (1). Insert instead:

- (1) A person may appeal to the Tribunal against a decision of the Board to issue an order:
 - (a) prohibiting the person from undertaking clinical studies or a clinical placement in a public hospital, or
 - (b) imposing conditions on the undertaking of clinical studies or a clinical placement by the person.

[40] Section 85

Omit the section. Insert instead:

85 Confidentiality of Panel's report

- (1) A report by an Impaired Registrants Panel to the Board may not be admitted or used in any civil proceedings before a court.
- (2) A person may not be compelled to produce the report or to give evidence in relation to the report or its contents in any such civil proceedings.
- (3) A report referred to in this section is a *protected report* for the purposes of this Act.

(4) In this section:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions, but does not include the Tribunal, a Committee or a Performance Review Panel or the Supreme Court (in respect of appeal proceedings under this Act).

report includes a copy, reproduction and duplicate of the report or any part of the report, copy, reproduction or duplicate.

[41] Section 86 Board to consider Panel's reports when assessing application for registration

Omit "a Panel" wherever occurring in section 86 (1).

Insert instead "an Impaired Registrants Panel".

[42] Part 5A

Insert after Part 5:

Part 5A Performance assessment

Division 1 Preliminary

86A Meaning of "professional performance"

For the purposes of this Part, a reference to the *professional performance* of a registered medical practitioner is a reference to the knowledge, skill or care possessed and applied by the practitioner in the practice of medicine.

86B Meaning of "unsatisfactory" in relation to professional performance

For the purposes of this Part, the professional performance of a registered medical practitioner is *unsatisfactory* if it is below the standard reasonably expected of a practitioner of an equivalent level of training or experience.

Division 2 Board may obtain performance assessment

86C Power to obtain assessment

The Board may have the professional performance of a registered medical practitioner assessed under this Part if any matter comes to its attention that indicates that the professional performance of the registered medical practitioner, or any aspect of the practitioner's professional performance, is unsatisfactory. This is not limited to matters that are the subject of a complaint or notification to the Board.

86D Serious matters not to be referred for assessment

- (1) The Board must not have the professional performance of a registered medical practitioner assessed under this Part if a matter giving rise to the proposed assessment:
 - (a) raises a significant issue of public health or safety, or
 - (b) raises a prima facie case of professional misconduct by the registered medical practitioner, or unsatisfactory professional conduct by the registered medical practitioner of a significant nature.
- (2) Any such matter is to be dealt with as a complaint.

86E Persons may notify the Board of professional performance matters

- (1) A person may notify the Board of any matter that the person thinks indicates that the professional performance of a registered medical practitioner is unsatisfactory.
- (2) The Board is not to have the professional performance of the practitioner concerned assessed on the basis of that notification if it is made anonymously.

Note. A complaint can be made by any person (see section 41). The complaint must be in writing and contain particulars of the allegations on which it is founded (see section 43). A complaint can be treated by the Board as a performance assessment matter (see section 50), but the Board must consult with the Commission before taking any action with respect to the complaint (see section 49).

86F Commission may refer professional performance matters to Board

- (1) If the Commission becomes aware of any matter that the Commission considers indicates that the professional performance of a registered medical practitioner is unsatisfactory, the Commission may refer the matter to the Board.
- (2) This section does not affect the functions of the Board in relation to a complaint made to the Commission or a matter referred to the Commission for investigation.

Division 3 Assessment of professional performance by assessor

86G How Board obtains an assessment

The Board has the professional performance of a registered medical practitioner assessed by having one or more assessors conduct an assessment of the practitioner's professional performance, or of any particular aspect or aspects of the practitioner's professional performance.

86H Information to be given to medical practitioner

- (1) As soon as practicable after deciding to have the professional performance of a registered medical practitioner assessed, the Board is to inform the practitioner in writing of that decision.
- (2) The information given to the practitioner is to include the following:
 - (a) details of the matter or matters that gave rise to the assessment,
 - (b) information about how the performance assessment process under this Part works.

86I Report and recommendations by assessor

- (1) An assessor who is required by the Board to conduct an assessment of a registered medical practitioner's professional performance is to:
 - (a) conduct an assessment of the practitioner's professional performance, and

- (b) report in writing on that assessment to the Board.
- (2) The report is to include such recommendations as the assessor considers appropriate.
- (3) If more than one assessor is appointed to assess the professional performance of a registered medical practitioner, the report may be made jointly or separately, but in any case is to be made in the manner directed by the Board.

86J Action that may be taken by Board

- (1) After receiving the report of an assessor, the Board may:
 - (a) determine that no further action should be taken in respect of the practitioner concerned, or
 - (b) require a Performance Review Panel to conduct a review of the professional performance of the practitioner, or
 - (c) make a complaint against the practitioner in accordance with Division 2 of Part 4, or
 - (d) refer the matter to an Impaired Registrants Panel, or
 - (e) counsel the practitioner concerned or direct the practitioner concerned to attend counselling.
- (2) The Board must make a complaint against the practitioner concerned if the assessment:
 - (a) raises a significant issue of public health or safety, or
 - (b) raises a prima facie case of professional misconduct by a registered medical practitioner, or unsatisfactory professional conduct by a registered medical practitioner of a significant nature.
- (3) This section does not limit the Board's powers under section 66.

Division 4 Performance review by Performance Review Panel

86K Panel to conduct performance review

- (1) A Performance Review Panel is to conduct a review (referred to in this Part as a *performance review*) of the professional performance of a registered medical practitioner if required to do so by the Board.
- (2) The chairperson of the Panel is to inform the registered medical practitioner concerned in writing that a performance review will be conducted not less than 14 days before the time and place appointed for the performance review.

86L Panel not to take action while Commission investigating

A Performance Review Panel is not to take any action in relation to a registered medical practitioner if the Panel becomes aware that the practitioner is the subject of a complaint that is being investigated by the Commission, unless the Commission agrees to the continuation of the performance review.

86M Panel must refer certain matters to Board

- (1) A Performance Review Panel must terminate a performance review if before or during the performance review the Panel forms an opinion that:
 - (a) the performance review raises a significant issue of public health or safety, or
 - (b) the performance review raises a prima facie case of professional misconduct by a registered medical practitioner, or unsatisfactory professional conduct by a registered medical practitioner of a significant nature.
- (2) When the Panel terminates a performance review because of subsection (1), it must refer the issue or case back to the Board with a recommendation that a complaint be made against the registered medical practitioner concerned.
- (3) The Board is to deal with the matter accordingly.

86N Actions by Panel

- (1) At the completion of a performance review, a Performance Review Panel may make such recommendations to the Board in respect of the registered medical practitioner concerned as the Panel considers appropriate.
- (2) Without limiting subsection (1), if the Panel finds that the professional performance of the practitioner, or a particular aspect of the professional performance of the practitioner, is unsatisfactory, the Panel may do any one or more of the following things:
 - (a) direct that such conditions, relating to the person's practising medicine, as it considers appropriate be imposed on the person's registration,
 - (b) order that the practitioner complete such educational courses as are specified by the Panel,
 - (c) order that the practitioner report on his or her medical practice at the times, in the manner and to the persons specified by the Panel,
 - (d) order that the practitioner seek and take advice, in relation to the management of his or her medical practice, from such persons as are specified by the Panel.
- (3) If the Panel finds that a matter:
 - (a) raises a significant issue of public health or safety, or
 - (b) raises a prima facie case of professional misconduct by a registered medical practitioner, or unsatisfactory professional conduct by a registered medical practitioner of a significant nature,the Panel must recommend to the Board that a complaint be made against the practitioner concerned, in which case the Board is to deal with the matter accordingly.
- (4) In any other case that the Board thinks it appropriate to do so, the Board may make a complaint in respect of a matter that has been considered by a Performance Review Panel, after consulting with the Commission.

86O Re-assessment

- (1) Without limiting section 86N, a Performance Review Panel may direct that a registered medical practitioner's professional performance be re-assessed at a future date.
- (2) The Board is to have one or more assessors conduct that assessment, when it is required, and report to the Board on the assessment.
- (3) The Board may take any action in respect of that assessment that is available to the Board under section 86J, including requiring a Performance Review Panel to conduct a further performance review in relation to the practitioner.

86P Decision

- (1) A Performance Review Panel must provide a written statement of a decision on a performance review to the registered medical practitioner concerned and to the Board, and must do so within one month after the decision is made.
- (2) The statement of the decision must include reasons for the decision.
- (3) The Board may provide a copy of the statement of decision to such other persons as the Board thinks fit.

86Q Statement need not contain confidential information

- (1) A Performance Review Panel is not required to include confidential information in the statement of a decision. If a statement would be false or misleading if it did not include the confidential information, the Panel is not required to provide the statement.
- (2) When confidential information is not included in the statement of a decision provided to a person or the statement is not provided to a person because of subsection (1), the Panel must give a confidential information notice to the person.
- (3) A confidential information notice is a notice that indicates that confidential information is not included or that the statement will not be provided (as appropriate) and gives the reasons for this. The notice must be in writing and must be given within one month after the decision is made.

- (4) This section does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court, subject to the provisions of this Act relating to protected reports.

Division 5 Miscellaneous

86R Monitoring by Board

- (1) Following a performance review by a Performance Review Panel, the Board is to:
- (a) monitor compliance with any orders made by the Panel, and
 - (b) from time to time evaluate the effectiveness of those orders in improving the professional performance of the registered medical practitioner concerned to a standard that is commensurate with other practitioners of an equivalent level of training or experience.
- (2) The Board may take any action under this Act in respect of a registered medical practitioner that it considers appropriate as a result of the exercise of its functions under subsection (1).

86S Other provisions relating to performance assessments

Schedule 3A has effect.

[43] Part 6, heading

Omit “of disciplinary action”.

[44] Section 88 Appeals on points of law

Omit section 88 (2). Insert instead:

- (2) An appeal may be made:
- (a) during an inquiry—within 28 days after the date of the Committee’s decision on the point of law which is the subject of the appeal, or
 - (b) before the commencement of an inquiry but after the date of giving notice of the inquiry.

[45] Section 89

Omit the section. Insert instead:

89 Preliminary appeal on point of law

- (1) An appeal with respect to a point of law may be made to the Supreme Court:
 - (a) during an inquiry conducted by the Tribunal, or after a complaint is referred to the Tribunal and before the commencement of the inquiry by the Tribunal, or
 - (b) during an appeal conducted by the Tribunal against the exercise by the Chairperson or Deputy Chairperson of the Tribunal of any power under Division 4 of Part 4, or after an appeal is made to the Tribunal against the exercise of such a power and before the commencement of the appeal before the Tribunal.
- (2) An appeal under this section can be made only with the leave of the Chairperson or a Deputy Chairperson of the Tribunal.
- (3) If the inquiry or appeal conducted by the Tribunal has not been completed when an appeal with respect to a point of law is made to the Supreme Court, the inquiry or appeal before the Tribunal is not to continue until the appeal to the Supreme Court has been disposed of.
- (4) The Tribunal must not make any decision that is inconsistent with the Supreme Court's determination with respect to the point of law when it recommences the inquiry or appeal.

[46] Section 90 Appeal against Tribunal's decisions and actions

Insert after section 90 (1):

- (1A) A person who is a party to an appeal to the Tribunal against the exercise by the Chairperson or a Deputy Chairperson of the Tribunal of any power under Division 4 of Part 4 (including the complainant in respect of the matter), 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 by the Tribunal under section 87.

[47] Section 90 (2)

Omit “The appeal”. Insert instead “An appeal under this section”.

[48] Section 92 Right of review

Insert “a Performance Review Panel,” after “a Committee,” in section 92 (1).

[49] Section 93 The appropriate review body

Omit “Registrar” from section 93 (2).
Insert instead “Registrar of the Tribunal”.

[50] Section 94A

Insert after section 94:

94A Inquiry into review application

- (1) A review under this Division is a review to determine the appropriateness, at the time of the review, of the order concerned.
- (2) The review is not to review the decision to make the order, or any findings made in connection with the making of that decision, unless significant fresh evidence is produced that was not previously available for consideration, and the appropriate review body is of the opinion that, in the circumstances of the case, the decision to make the order, or any finding on which the decision was based, should be reconsidered.

[51] Section 95

Omit the section. Insert instead:

95 Right of appeal

- (1) A person may appeal to the Tribunal:
 - (a) against a suspension or extension of a suspension by the Board under Part 4, or
 - (b) against conditions imposed by the Board on the person’s registration under Part 4 or Part 5 or any alteration of those conditions by the Board, or

- (c) against a refusal by the Board to alter or remove conditions imposed by the Board under Part 4 in accordance with a request made by the person under section 69A, or
 - (d) against a refusal by the Board to alter or remove conditions imposed on the person's registration, or to terminate or shorten a suspension, imposed under Part 5 in accordance with a request made by the person under section 81A.
- (2) An appeal may not be made in respect of a request by a person that is rejected by the Board because it was made during a period in which the request was not permitted under section 69A or 81A.
 - (3) An appeal must be made within 28 days (or such longer period as the Registrar may allow in a particular case) after notice of the action taken by the Board, or the Board's refusal, is given to the person.

[52] Part 6, Division 5

Insert after Division 4 of Part 6:

Division 5 Appeal against actions of Performance Review Panel

98A Appeals against decisions of Panel

- (1) A registered medical practitioner who is the subject of a performance review by a Performance Review Panel may appeal to the Tribunal against a decision of the Panel or any order or direction made by the Panel under Part 5A.
- (2) An appeal must be made within 28 days (or such longer period as the Registrar may allow in a particular case) after notice of the decision or the making of the order or direction is given to the registered medical practitioner.
- (3) The appeal must be lodged with the Registrar who is to refer it to the Tribunal.

- (4) The appeal is to be dealt with by way of rehearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the performance review, may be given.
- (5) The Tribunal may, as it thinks appropriate:
 - (a) dismiss the appeal, or
 - (b) make any finding or exercise any power or combination of powers that the Performance Review Panel could have made or exercised.
- (6) An appeal under this section does not affect any finding or exercise of power with respect to which it has been made until the Tribunal makes an order on the appeal.

98B Appeals on points of law

- (1) A registered medical practitioner who is the subject of a performance review by a Performance Review Panel may appeal with respect to a point of law to the Chairperson of the Tribunal or a Deputy Chairperson nominated by the Chairperson.
- (2) An appeal may be made:
 - (a) during a performance review—within 28 days after the date of the Panel’s decision on the point of law that is the subject of the appeal, or
 - (b) before the commencement of a performance review by a Panel but after the date the practitioner is informed of the performance review.
- (3) If a performance review has not been completed when an appeal is made, the Performance Review Panel must not continue with the performance review until the appeal has been disposed of.
- (4) The Performance Review Panel must not make any decision that is inconsistent with the Chairperson’s or Deputy Chairperson’s determination with respect to the point of law.

[53] Section 99A

Insert after section 99:

99A Code of professional conduct

- (1) The Board may establish a code of professional conduct setting out guidelines that should be observed by registered medical practitioners in the conduct of their professional practice. The Board may from time to time amend or replace a code of professional conduct.
- (2) The Minister may require the Board to develop guidelines relating to any conduct of registered medical practitioners that the Minister considers should be the subject of a code of professional conduct. For that purpose, the Minister may:
 - (a) direct the Board to establish a code of professional conduct, or
 - (b) direct the Board to amend or replace a code of professional conduct,so that the code includes guidelines relating to that conduct.
- (3) The Board is to comply with any such direction of the Minister.
- (4) The provisions of a code of professional conduct are a relevant consideration in determining for the purposes of this Act what constitutes proper and ethical conduct by a registered medical practitioner.
- (5) The procedure for the establishment of a code of professional conduct is as follows:
 - (a) the Board is to prepare a proposed code in draft form and is to prepare an impact assessment statement for the proposed code in accordance with such requirements as the Minister may from time to time determine,
 - (b) the draft code and impact assessment statement are to be publicly exhibited for a period of at least 21 days,
 - (c) the Board is to seek public comment on the draft code during the period of public exhibition and public comment may be made during the period of public

- exhibition and for 21 days (or such longer period as the Board may determine) after the end of that period,
- (d) the Board is to submit the draft code to the Minister for approval together with a report by the Board giving details of public comment received during the period allowed for public comment and the Board's response to it,
 - (e) the Board is not to establish the draft code as a code of professional conduct unless the Minister approves the draft.
- (6) The procedure for the amendment or replacement of a code of professional conduct is the same as for the establishment of the code unless the Minister otherwise directs in respect of a particular amendment.

[54] Section 102 Fees cannot be sued for until 3 months after bill given

Omit the section.

[55] Section 104 Fees cannot be recovered for medical service provided by unregistered person

Omit the section.

[56] Section 108 Prohibition against advertising cures for certain diseases

Omit the section.

[57] Section 109 Cancer treatments not to be given or offered by unregistered persons

Omit the section.

[58] Part 7, Division 3

Insert after Division 2 of Part 7:

Division 3 Other restrictions

112A Prohibition against accepting benefits for recommendations or referrals

A person must not accept from a registered medical practitioner, or the employer of a registered medical practitioner, a benefit as inducement, consideration or reward for the person:

- (a) referring another person to the registered medical practitioner, or
- (b) recommending to another person that the other person use any health service provided by the registered medical practitioner or consult with the registered medical practitioner in relation to a health matter.

Maximum penalty:

- (a) in the case of a corporation, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence, or
- (b) in any other case, 100 penalty units for a first offence or 200 penalty units for a second or subsequent offence.

112B Prohibition against offering or giving benefits for recommendation or referrals

A person (*the offeror*) must not offer or give a registered medical practitioner, or the employer of a registered medical practitioner, a benefit as inducement, consideration or reward for the registered medical practitioner:

- (a) referring another person to the offeror, or
- (b) recommending to another person that the other person use any health service provided by the offeror or consult with the offeror in relation to a health matter, or

- (c) recommending to another person that the other person use any health product supplied by the offeror.

Maximum penalty:

- (a) in the case of a corporation, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence, or
- (b) in any other case, 100 penalty units for a first offence or 200 penalty units for a second or subsequent offence.

112C Exception—advertising and prescribed exceptions

Sections 112A and 112B do not apply:

- (a) to any recommendation that is made in a public advertisement, or
- (b) in any circumstances prescribed by the regulations as not being a contravention of section 112A or 112B.

112D Interpretation

- (1) In this Division:

benefit means money, property or anything else of value.

employer of a registered medical practitioner means a person who employs a registered medical practitioner, and includes a person who is taken to be the employer of a registered medical practitioner under section 116B.

recommend a health product includes supply or prescribe the health product.

supply includes sell.

- (2) For avoidance of doubt, a reference in this Division to a referral or recommendation that is given to a person includes a referral or recommendation that is given to more than one person or to persons of a particular class.

[59] Part 8A

Insert after Part 8:

Part 8A Overservicing and unprofessional conduct

116A Prohibition against directing or inciting overservicing or misconduct

- (1) A person (*the employer*) who employs a registered medical practitioner must not direct or incite the practitioner to do either of the following in the course of professional practice:
- (a) engage in overservicing,
 - (b) engage in conduct that would constitute unsatisfactory professional conduct or professional misconduct.

Maximum penalty:

- (a) in the case of a corporation, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence, or
 - (b) in any other case, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence.
- (2) For the purposes of this section, any actions of an agent or employee of the employer are taken to be actions of the employer unless the employer establishes:
- (a) that the employer had no knowledge of those actions, and
 - (b) that the employer could not, by the exercise of due diligence, have prevented those actions.

- (3) If a person is convicted of or made the subject of a criminal finding for an offence against this section in respect of the actions of an agent or employee of the person, the agent or employee is for the purposes of this Part taken to have been convicted of or made the subject of a criminal finding for the offence also.
- (4) When a court convicts or makes a criminal finding against a person for an offence against this section, the Clerk or other proper officer of the court must notify the Director-General in writing of the conviction or criminal finding.
- (5) This section does not apply in respect of the employment of a medical practitioner by any of the following:
 - (a) a public health organisation within the meaning of the *Health Services Act 1997*,
 - (b) a private hospital or day procedure centre,
 - (c) a nursing home within the meaning of the *Nursing Homes Act 1988*.
- (6) In this section:

engage in overservicing means:

 - (a) provide a service in circumstances in which provision of the service is unnecessary, not reasonably required or excessive, or
 - (b) engage in conduct prescribed by the regulations as constituting overservicing.

116B Extended concept of employment

- (1) When a registered medical practitioner engages in the practice of medicine in the course of the carrying on of a business, any person who owns, manages, controls, conducts or operates that business is for the purposes of this Part taken to employ the practitioner (in addition to any person who actually employs the practitioner).
- (2) When a registered medical practitioner is employed by a corporation, each of the following persons is for the purposes of this Part also considered to be the employer of the practitioner (in addition to the corporation):

- (a) a person who is a director, secretary or executive officer (as defined in the *Corporations Law*) of the corporation or is concerned in the management of the corporation, or
- (b) any other employee of the corporation in accordance with whose directions the practitioner is required or expected to act.

116C Extended concept of carrying on business

- (1) If a medical practitioner engaged in the practice of medicine is provided, in the course of the carrying on of a business, with services that facilitate that practice and the operator of the business is entitled, in connection with the provision of those services, to a share or interest in the profits or income arising from the practice of medicine by the practitioner:
 - (a) that business is taken for the purposes of this Part to be a business that provides the medical services that are provided by the practitioner in the course of that practice, and
 - (b) the practitioner is taken for the purposes of this Part to be engaged in the practice of medicine in the course of the carrying on of that business.
- (2) Subsection (1) does not apply in respect of the practice of medicine by a medical practitioner in such circumstances as may be prescribed by the regulations as exempt from that subsection.
- (3) For the purposes of this Part, a person is considered to operate a business if the person:
 - (a) owns, manages, controls, conducts or operates the business, or
 - (b) has (within the meaning of section 116G) a management role or substantial interest in a corporation that operates the business or a substantial interest in a trust under which the business is operated.

116D Convicted offenders may be prohibited from carrying on business

- (1) The Director-General may by notice in writing given to a person who has been convicted of or made the subject of a criminal finding for an offence against this Part prohibit the person from operating a business that provides medical services.
- (2) The prohibition may be expressed to be:
 - (a) for a fixed period (in which case the prohibition remains in force only for that fixed period), or
 - (b) for an unlimited period subject to an entitlement to apply after a specified time for the lifting of the prohibition (in which case the prohibition remains in force until it is lifted).
- (3) A prohibition may not be imposed under this section unless the Director-General is of the opinion that the person is not a fit and proper person to operate a business that provides medical services. The Director-General is entitled to presume, in the absence of evidence to the contrary, that a person who has been convicted of or made the subject of a criminal finding for an offence against this Part on 2 or more occasions in any period of 10 years is not a fit and proper person to operate such a business.
- (4) A prohibition under this section may be limited in its operation in either or both of the following ways:
 - (a) it may be limited to specified premises, but only where the person concerned operates a business that provides medical services at those premises and at other premises,
 - (b) it may be limited to premises within a specified area.
- (5) If a prohibition under this section is subject to an entitlement to apply after a specified time for the prohibition to be lifted, such an application may be made to the Director-General after that time. The Director-General may lift the prohibition or confirm the prohibition and set a further period after which an application for the prohibition to be lifted can be made under this subsection.

116E Offence of operating business while prohibited

- (1) A person who in contravention of a prohibition under this Part operates a business that provides medical services is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence, or
- (b) in any other case, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence.
- (2) If a continuing state of affairs is created by an offence against this section the offender is liable to a maximum penalty of:
- (a) 100 penalty units in the case of a corporation, or
- (b) 50 penalty units in any other case,
- in respect of each day on which that offence continues, in addition to the penalty specified in subsection (1).
- (3) If medical services are provided on premises on which a business is carried on, it is to be presumed for the purposes of this section, unless the contrary is established, that the business provides those medical services.

116F Effect of appeal against conviction

A prohibition under this Part has no effect while an appeal is pending against the conviction or criminal finding for the offence on which the prohibition is based.

116G Business interests—effect of prohibition

- (1) When a corporation or the trustee of a trust is the subject of a prohibition under this Part in connection with the operation of a business operated by the corporation or under the trust:
- (a) each person who has a management role or substantial interest in the corporation or a substantial interest in the trust is for the purposes of this Part taken to be the subject of that prohibition also, and

- (b) each corporation in which a person referred to in paragraph (a) has a management role or substantial interest is for the purposes of this Part taken to be the subject of that prohibition also (whether or not the corporation was in existence at the time of the relevant offence), and
 - (c) the trustee and any manager of a trust in which a person referred to in paragraph (a) has a substantial interest is for the purposes of this Part taken to be the subject of that prohibition also (whether or not the trust was in existence at the time of the relevant offence).
- (2) A person is considered to have a management role or substantial interest in a corporation if:
- (a) the person is a director, secretary or executive officer (as defined in the *Corporations Law*) of the corporation, or
 - (b) the person is entitled to more than 10% of the issued share capital of the corporation (with the shares to which a person is entitled including shares in which the person or an associate of the person has a relevant interest within the meaning of the *Corporations Law*).
- (3) A person is considered to have a substantial interest in a trust if the person (whether or not as the trustee of another trust) is the beneficiary in respect of more than 10% of the value of the interests in the trust.
- (4) The regulations may create exceptions to this section.

116H Power to require information from convicted persons and others

- (1) When a corporation or the trustee of a trust is convicted of or made the subject of a criminal finding for an offence against this Part in connection with the operation of a business operated by the corporation or under the trust the Director-General may require certain persons to provide specified information to the Director-General, as provided by this section.

- (2) The corporation or trustee may be required to provide information that the Director-General may reasonably require to ascertain the identity of each person who has a management role or substantial interest in the corporation or a substantial interest in the trust.
- (3) A person whom the Director-General reasonably believes has a management role or substantial interest in the corporation or a substantial interest in the trust may be required to provide information that the Director-General may reasonably require to ascertain:
 - (a) the identity of each corporation in which that person has a management role or substantial interest, or
 - (b) the identity of the trustee and any manager of a trust in which that person has a substantial interest.
- (4) A requirement to provide information is to be imposed by direction in writing served on the person, corporation or trustee concerned. The direction must specify a period of not less than 7 days as the period within which the required information must be provided.
- (5) A person who fails without reasonable excuse to comply with a requirement under this section is guilty of an offence.

Maximum penalty:

 - (a) in the case of a corporation, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence, or
 - (b) in any other case, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence.
- (6) A person who in purported compliance with a requirement under this section provides information that is false or misleading in a material particular is guilty of an offence unless the person satisfies the court that he or she did not know and could not reasonably be expected to have known that the information was false or misleading.

Maximum penalty:

 - (a) in the case of a corporation, 400 penalty units for a first offence or 800 penalty units for a second or subsequent offence, or

- (b) in any other case, 200 penalty units for a first offence or 400 penalty units for a second or subsequent offence.

116I Evidentiary certificate

- (1) The Director-General may issue a certificate to the effect that a person specified in the certificate is or was prohibited under this Part from operating a business that provides medical services during a period specified in the certificate.
- (2) Such a certificate is evidence of the matters certified.
- (3) A certificate purporting to be a certificate issued by the Director-General under this section is presumed to have been so issued unless the contrary is established.

116J Authorised persons—special provisions

- (1) Despite section 118, an authorised person may, for the purpose of ascertaining whether the provisions of this Part are being complied with, exercise the powers conferred by Part 9 to enter premises without the consent of the owner or occupier of the premises, and without a search warrant.
- (2) However, an authorised person is not entitled to enter a part of premises used for residential purposes, except:
 - (a) with the consent of the occupier of that part of the premises, or
 - (b) under the authority of a search warrant granted as referred to in Part 9.
- (3) Any information obtained by, or provided to, an authorised person who enters premises for the purpose of ascertaining whether the provisions of this Part are being complied with is not inadmissible in proceedings merely because the proceedings do not relate to a contravention of this Part.
- (4) A reference in Part 9 to a function conferred or imposed on, or exercised by, an authorised person under that Part is taken to include a function conferred or imposed on, or exercised by, an authorised person under this section.

[60] Section 120 Powers of entry, search and seizure

Insert after section 120 (3) (e):

- (e1) power to take such photographs, films and audio, video and other recordings as the authorised person considers necessary,

[61] Section 121 Offences

Omit “Maximum penalty: 5 penalty units” from section 121 (1).

Insert instead:

Maximum penalty:

- (a) for an offence under paragraph (a) or (b)—50 penalty units, or
- (b) for an offence under paragraph (c) or (d)—20 penalty units.

[62] Section 122

Omit the section. Insert instead:

122 Self-incrimination

- (1) A person is not excused from answering any question asked by an authorised person under this Part on the ground that the answer might tend to incriminate the person.
- (2) However, any information furnished by a natural person in answering a question asked by an authorised person under this Part is not admissible against the person in any criminal proceedings (except proceedings for an offence against section 121 or 188) if:
 - (a) the person objected at the time of doing so on the ground it might incriminate the person, or
 - (b) the person was not warned on that occasion that the person may object to furnishing the information on the ground it might incriminate the person.

-
- (3) A person is not excused from producing any record to an authorised person under this Part on the ground that the record might tend to incriminate the person, and any such record is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.

Note. Section 187 of the *Evidence Act 1995* provides that the privilege against self-incrimination does not apply to bodies corporate.

[63] Section 123 Offence of impersonating authorised person

Omit “2 penalty units”. Insert instead “50 penalty units”.

[64] Sections 127A–127C

Insert after section 127:

127A Practitioners to submit annual return

- (1) A registered medical practitioner must, on or before the return date in each year, furnish in writing to the Board in a form approved by the Board a return for the return period specifying the following information:
- (a) details of any conviction of the practitioner for an offence, in this State or elsewhere, during the return period (together with details of any penalty imposed for the offence),
 - (b) details of the making of a sex/violence criminal finding against the practitioner for an offence, in this State or elsewhere, during the return period (together with details of any penalty imposed for the offence),
 - (c) details of the making of a criminal finding against the practitioner for an offence committed in the course of the practice or purported practice of medicine, in this State or elsewhere, during the return period (together with details of any penalty imposed for the offence),
 - (d) details of any criminal proceedings pending against the practitioner at the end of the return period in this State or elsewhere for a sex or violence offence alleged to have been committed in the course of the practice or purported practice of medicine,

- (e) details of any significant illness (physical or mental) from which the practitioner suffered at any time during the return period and that may reasonably be thought likely to detrimentally affect the practitioner's physical or mental capacity to practise medicine,
 - (f) details of any suspension of, cancellation of, or imposition of conditions on, the registration of the practitioner as a medical practitioner in another jurisdiction (either within Australia or elsewhere) during the return period,
 - (g) a statement of whether the practitioner has been refused registration as a medical practitioner in another jurisdiction (either within Australia or elsewhere) during the return period,
 - (h) details of any continuing professional education undertaken by the practitioner during the return period,
 - (i) such other information as may be prescribed by the regulations.
- (2) The Board may require a return under this section to be verified by statutory declaration.
- (3) This section does not apply in respect of an offence if the offence is an excluded offence.
- (4) In this section:

return date means a date notified to registered medical practitioners by the Board in writing at least 1 month in advance.

return period means the period of 12 months ending 2 months before the return date.

127B Practitioners to notify convictions, criminal findings and charges

- (1) A registered medical practitioner must notify the Board in writing within 7 days after:
- (a) the practitioner is convicted of an offence or made the subject of a sex/violence criminal finding for an offence, in this State or elsewhere, giving details of the

conviction or criminal finding and any penalty imposed for the offence, or

- (b) criminal proceedings are commenced against the practitioner in respect of a sex or violence offence alleged to have been committed, in this State or elsewhere, in the course of the practice or purported practice or medicine.

- (2) This section does not apply in respect of an offence if the offence is an excluded offence.

127C Board may request further information from practitioner

- (1) The Board may by notice to a registered medical practitioner request the practitioner to provide to the Board, within a reasonable period specified in the notice, further information about any complaint or other matter concerning the practitioner that has come to the attention of the Board.
- (2) A registered medical practitioner must not, without reasonable excuse, fail to comply with any such request.

[65] Section 130 Membership

Omit “18 members” from section 130 (1).
Insert instead “20 members”.

[66] Section 130 (2) (d)

Omit “a registered medical practitioner”. Insert instead “a person”.

[67] Section 130 (2) (g)

Omit the paragraph. Insert instead:

- (g) 6 are to be persons nominated by the Minister, not less than 4 of whom are to be persons who, in the opinion of the Minister, are conversant with the interests of patients as consumers of medical services.

[68] Section 135 Annual report

Insert at the end of section 135 (1) (b):

- , and
- (c) all matters referred to a Performance Review Panel for performance review during that year, or referred to such a Panel before that year but which (in the opinion of the Board) had not, at the commencement of that year, been finally disposed of, and
 - (d) the results of all performance reviews conducted by Performance Review Panels that were finally disposed of during that year.

[69] Section 135 (2)

Omit the subsection. Insert instead:

- (2) This section does not require the identity of a complainant, a person who notifies a professional performance matter to the Board, any person about whom a complaint is made or who is the subject of a performance review or any other person to be disclosed in an annual report.

[70] Section 135A

Insert after section 135:

135A Information to be made available to public

- (1) The Board is to ensure that the following information, in relation to a registered medical practitioner, is made available to the public on request:
 - (a) any conditions imposed on the registration of the practitioner,
 - (b) any other order made in respect of the practitioner under this Act.
- (2) This section does not require the Board to disclose anything that the Board considers relates solely or principally to the physical or mental capacity of a person to practise medicine.

[71] Section 143, heading

Omit the heading. Insert instead “**Consultants**”.

[72] Section 150

Omit the section. Insert instead:

150 Payment of non-judicial Tribunal members

- (1) A member of the Tribunal (other than the Chairperson or a Deputy Chairperson) is while sitting on the Tribunal entitled to be paid by the Board at a rate determined by the Board.
- (2) The rate is to be determined by the Board having regard to the rate paid to witnesses who give expert evidence in the Supreme Court.

[73] Section 162 Representation before the Tribunal

Insert after section 162 (2):

- (3) This section does not prevent the Tribunal from proceeding in the absence of the registered medical practitioner concerned, as long as the practitioner has been given notice of the inquiry or appeal.

[74] Section 166 Statement need not contain confidential information

Omit section 166 (4). Insert instead:

- (4) This section does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court, subject to the provisions of this Act relating to protected reports.

[75] Section 169 Membership of Committee

Omit section 169 (4). Insert instead:

- (4) A member of a Committee, while sitting on the Committee, is entitled to be paid by the Board at a rate determined by the Board.

- (5) The rate is to be determined by the Board having regard to the rate paid to witnesses who give expert evidence in the Supreme Court.

[76] Section 174

Omit the section. Insert instead:

174 Chairperson may exercise certain powers of Committee

- (1) The chairperson of a Committee may exercise the following powers of the Committee:
- (a) power to terminate an inquiry,
 - (b) power to hand down a decision of the Committee on an inquiry.
- (2) A power of the Committee exercised by the chairperson of the Committee under this Act is taken to have been exercised by the Committee.

[77] Section 177 Representation at inquiry

Insert after section 177 (3):

- (4) This section does not prevent a Committee from proceeding in the absence of the practitioner concerned or the complainant, as long as they have been given notice of the inquiry.

[78] Section 181 Statement need not contain confidential information

Omit section 181 (4). Insert instead:

- (4) This section does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court, subject to the provisions of this Act relating to protected reports.

[79] Section 182 Impaired Registrants Panel

Omit “A Panel” from section 182.

Insert instead “An Impaired Registrants Panel”.

[80] Sections 183 and 184

Omit “a Panel” wherever occurring in sections 183 (2) and 184.
Insert instead “an Impaired Registrants Panel”.

[81] Section 183 (3) and (4)

Omit section 183 (3). Insert instead:

- (3) A member of an Impaired Registrants Panel, while sitting on the Panel, is entitled to be paid by the Board at a rate determined by the Board.
- (4) The rate is to be determined by the Board having regard to the rate paid to witnesses who give expert evidence in the Supreme Court.

[82] Part 13A

Insert after Part 13:

Part 13A Performance Review Panels and Assessors

184A Performance Review Panels

- (1) There are to be Performance Review Panels for the purposes of this Act.
- (2) A Panel has and may exercise the jurisdiction and functions conferred or imposed on it by or under this or any other Act.

184B Constitution of Panel

- (1) When the Board decides to require a Performance Review Panel to conduct a performance review of the professional performance of a registered medical practitioner, the Board is to appoint 3 persons to sit as the Panel for the purpose of that performance review.
- (2) Of those 3 persons:
 - (a) 2 are to be registered medical practitioners, and
 - (b) one is to be a lay person (that is, a person who is not a registered medical practitioner).

- (3) One of the members of the Panel is to be appointed by the Board as chairperson of the Panel.
- (4) A person may be appointed to sit on a Panel 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 Panel in his or her capacity as a member of the Board.
- (5) A member of a Panel, while sitting on the Panel, is entitled to be paid by the Board at a rate determined by the Board.
- (6) The rate is to be determined by the Board having regard to the rate paid to witnesses who give expert evidence in the Supreme Court.

184C Decisions of Panel

A decision supported by a majority of members of a Performance Review Panel is the decision of the Panel.

184D Certain powers may be exercised by chairperson

- (1) The chairperson of a Performance Review Panel may exercise the following functions of a Panel:
 - (a) power to terminate a performance review,
 - (b) power to hand down a decision of the Panel on a performance review.
- (2) Any power of a Performance Review Panel that is exercised by the chairperson of the Panel under this Act is taken to have been exercised by the Panel.

184E Assessors

- (1) The Board may appoint suitably qualified persons to be assessors for the purposes of this Act.
- (2) Assessors are to be appointed on such terms and conditions as the Board thinks fit.
- (3) An assessor has such functions as are conferred on an assessor by this Act and such other functions, in connection with Part 5A, as may be conferred on an assessor by the Board.

[83] Section 186 Student registration

Omit section 186 (1). Insert instead:

- (1) A person is not entitled:
 - (a) to undertake a course of medical study at a Medical School in the State accredited by the Australian Medical Council, or
 - (b) to undertake a clinical placement in a public hospital in the State under the auspices of an educational institution accredited by the Australian Medical Council,unless the person is registered with the Board as a medical student.

[84] Section 186 (2)

Insert “or clinical placement” after “course of study”.

[85] Section 187 Offences by corporations

Omit section 187 (1). Insert instead:

- (1) If a corporation commits an offence against this Act or the regulations under this Act, each person who is a director of the corporation, or who is concerned in the management of the corporation, is taken to have committed the same offence unless he or she proves that:
 - (a) the offence was committed without his or her knowledge, and
 - (b) he or she exercised all such due diligence to prevent the commission of that offence as he or she ought to have exercised, having regard to the nature of his or her functions in that capacity and to all the circumstances.

[86] Section 188 Penalties for false statements etc

Insert “, a Performance Review Panel” after “a Committee” wherever occurring.

[87] Section 189 Protection from liability

Omit section 189 (c). Insert instead:

- (c) an Impaired Registrants Panel, or
- (c1) a Performance Review Panel, or
- (c2) an assessor, or
- (c3) an authorised person, or

[88] Section 189 (f)

Omit “a Panel” wherever occurring.

Insert instead “an Impaired Registrants Panel, a Performance Review Panel”.

[89] Section 190 Confidentiality

Omit section 190 (b). Insert instead:

- (b) in any other case—with the consent of the person to whom the information relates or from whom the information was obtained, or

[90] Sections 190A and 190B

Insert after section 190:

190A Medical reports

- (1) This section applies to a report made in connection with a medical examination of a person (*a medical report*), being a report that is obtained for the Board pursuant to:
 - (a) a requirement made by the Board under section 54 or 78A, or clause 17 of Schedule 1, or
 - (b) a condition of registration or an order imposed by a person or body exercising functions under this Act.
- (2) Such a medical report may not be admitted or used in any civil proceedings before a court except with the consent of:
 - (a) the person giving the report, and
 - (b) the person who is the subject of the report.

- (3) A person may not be compelled to produce such a medical report or to give evidence in relation to the report or its contents in any such civil proceedings.
- (4) Such a medical report is a *protected report* for the purposes of this Act.
- (5) In this section:
court includes any tribunal, authority or person having power to require the production of documents or the answering of questions, but does not include the Tribunal, a Committee or a Performance Review Panel or the Supreme Court (in respect of appeal proceedings under this Act).
report includes a copy, reproduction and duplicate of the report or any part of the report, copy, reproduction or duplicate.

190B Confidentiality of protected reports

- (1) A person must not directly or indirectly make a record of or disclose to any person any information contained in a protected report which has come to the person's notice in the exercise of the person's functions under this Act, except for the purposes of exercising functions under this Act.
Maximum penalty: 50 penalty units.
- (2) This section does not prevent the disclosure of a protected report to the Commission.
Note. Protected reports are medical reports (as referred to in section 190A), reports by an Impaired Registrants Panel to the Board and reports by assessors.

[91] Section 191 Notification of certain matters to other States

Insert after section 191 (b):

- (b1) any order made under this Act by a Performance Review Panel, or any report made by such a Panel to the Board in respect of a performance review,

[92] Section 191 (c)

Omit "a Panel". Insert instead "an Impaired Registrants Panel".

[93] Sections 191A and 191B

Insert after section 191:

191A Board is to consult with affected third parties

- (1) If an order or direction of the Tribunal, a Committee or a Performance Review Panel with respect to a registered medical practitioner requires the Board to approve any matter and the terms of the approval will, in the opinion of the Board, impose an appreciable burden on an identifiable third party in connection with the practitioner's practice, the Board:
 - (a) is to give the third party an opportunity to make submissions to the Board with respect to the matter, and
 - (b) is to take any such submission into account before giving any approval, and
 - (c) is to give notice of the terms of the approval to the third party affected.
- (2) An example of an approval that may impose an appreciable burden on an identifiable third party in connection with a registered medical practitioner's practice is an approval of an arrangement under which an identified third party is required to supervise the practitioner's practice.
- (3) In this section:

third party means a person other than the registered medical practitioner to whom an order or direction relates, but does not include a person or body exercising functions conferred by this Act or the *Health Care Complaints Act 1993*.

191B Notification of orders to practitioner's employer and others

- (1) The Board is required to give notice of any order made in respect of a registered medical practitioner under this Act, or the imposition of conditions on the registration of a registered medical practitioner, to the following persons:
 - (a) the employer (if any) of the practitioner concerned,
 - (b) the chief executive officer (however described) of any public health organisation in respect of which the practitioner concerned is a visiting practitioner or is otherwise accredited,

- (c) the chief executive officer (however described) of any private hospital or day procedure centre in respect of which the practitioner concerned is accredited,
 - (d) the chief executive officer (however described) of any nursing home (within the meaning of the *Nursing Homes Act 1988*) in respect of which the practitioner concerned is accredited.
- (2) The notice is to be given within 7 days after:
- (a) in the case of an order made or conditions imposed by the Board—the date the order is made or the conditions are imposed, or
 - (b) in any other case—the date the Board is given a copy of the decision of the body that made the order or imposed the conditions.
- (3) The notice is to include such information as the Board considers appropriate.

[94] Sections 192A and 192B

Insert after section 192:

192A Evidentiary certificates and evidence of entry in Register

- (1) 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, or
 - (b) the name of a person specified in the certificate was removed from the Register at a time so specified, or
 - (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,

is, without proof of the signature of the person by whom the certificate purports to have been signed, admissible in any proceedings and is prima facie evidence of the matter certified in it.

- (2) An entry in the Register is admissible in any proceedings and is prima facie evidence of the matter stated in it.
- (3) A document purporting to be a copy of an entry in the Register, purportedly signed by the Registrar, is admissible in any proceedings and is prima facie evidence of the matter stated in it.

192B Application of Criminal Records Act

For the purposes of the application of this Act in respect of a criminal finding, the *Criminal Records Act 1991* applies in respect of a criminal finding as if section 8 (2) and (4) of that Act were omitted.

Note. Section 8 (2) and (4) of the *Criminal Records Act 1991* make special provision for when criminal findings become “spent” under that Act. The omission of those subsections will mean that in determining when a criminal finding becomes spent for the purposes of this Act, criminal findings will be treated as ordinary convictions and the relevant crime-free period will be as provided by section 9 of that Act.

[95] Section 194 Regulations

Omit “5 penalty units” from section 194 (4).
Insert instead “10 penalty units”.

[96] Schedule 1 Registration procedure

Insert after clause 3:

3A Disclosure of convictions, criminal findings and charges

- (1) The Board may require an applicant for registration to disclose:
 - (a) details of any offence for which the applicant has been convicted or made the subject of a criminal finding, in this State or elsewhere (together with details of any penalty imposed for the offence), other than an excluded offence, and

- (b) details of any criminal proceedings pending against the applicant in this State or elsewhere for a sex or violence offence.
- (2) The Board may require a disclosure for the purposes of this clause to be in the form of a statutory declaration.
- (3) Any power of the Board to require disclosure of a conviction or criminal finding for an offence or to have regard to the conviction of or the making of a criminal finding in respect of an applicant for registration for an offence extends to a conviction or criminal finding for an offence committed before the commencement of this clause.

Note. The *Criminal Records Act 1991* makes provision for convictions to become "spent" after a certain crime-free period. If a conviction of a person is spent, the person is not required to disclose the conviction under this section (see section 12 of that Act).

[97] Schedule 1, clause 9

Omit the clause. Insert instead:

9 Inquiries by Board

- (1) The Board may hold an inquiry, in such cases as it considers appropriate, into the eligibility of an applicant to be registered as a medical practitioner.
- (2) An inquiry may include an inquiry into the applicant's competence to practise medicine.
- (3) In this clause, a reference to the eligibility of an applicant to be registered as a medical practitioner includes the following:
 - (a) the eligibility of an applicant who has been granted registration of a kind referred to in section 5 (conditional registration for interns) or section 9 (non-practising registration) to be granted registration of a kind referred to in section 4 (general registration),
 - (b) the eligibility of an applicant whose name has been removed from the Register, and whose application for registration is not required to be rejected under section 14, to be re-registered as a medical practitioner.

[98] Schedule 1, clause 13

Insert at the end of clause 13:

- (2) This clause does not prevent an inquiry from proceeding in the absence of the person in relation to whom the inquiry is being held, as long as the person has been given notice of the inquiry under clause 11.

[99] Schedule 1, clause 13A

Insert after clause 13:

13A Commission to be notified of inquiry

- (1) The Commission is to be given at least 7 days notice of an inquiry and may, if the Board consents, appear at the inquiry.
- (2) The Commission may appoint an officer of the Commission to appear at the inquiry on behalf of the Commission.
- (3) This clause does not apply if the inquiry relates solely or principally to the physical or mental capacity of an applicant to practise medicine.

[100] Schedule 1, clause 15

Omit the clause. Insert instead:

15 Constitution of Board for inquiry

- (1) If the Board decides to hold an inquiry, the Board is to appoint 3 persons to conduct the inquiry.
- (2) The persons appointed to conduct the inquiry need not be members of the Board.
- (3) The persons appointed to conduct an inquiry are taken to constitute the Board for the purposes of the inquiry and, accordingly, may exercise the functions of the Board in relation to the inquiry.
- (4) The persons so appointed are taken to be members of the Board for the purposes of this Act and may exercise the functions of such a member in relation to an inquiry.

[101] Schedule 1, Part 3A, heading

Insert “**Part 3A Decisions of Board**” before clause 18.

[102] Schedule 1, clause 18

Omit the clause. Insert instead:

18 Decisions of Board in an inquiry

A decision supported by at least 2 of the 3 persons appointed to conduct an inquiry under Part 3, on the inquiry or any question arising during the inquiry, is a decision of the Board.

[103] Schedule 1, clause 19

Insert “held under Part 3” after “inquiry” in clause 19 (1).

[104] Schedule 1, clause 19 (2)

Omit the subclause. Insert instead:

- (2) The statement of a decision must:
 - (a) give the reasons for the decision, and
 - (b) include information about any appeal rights the person has under section 17.

[105] Schedule 1, clause 19A

Insert after clause 19:

19A Details of decision to refuse application to be supplied to applicant

- (1) If the Board refuses or rejects an application for registration, without holding an inquiry under Part 3, the Board must provide the applicant with a written statement of the decision of the Board and must do so within one month after the decision is made.
- (2) The statement of a decision must:
 - (a) give the reasons for the decision, and
 - (b) include information about any appeal rights the person has under section 17.

- (3) The Board may also provide a statement of a decision to such other persons as the Board thinks fit.

[106] Schedule 1, clause 20

Omit “the statement of a decision” from clause 20 (1).

Insert instead “a statement of a decision”.

[107] Schedule 1, clauses 21 and 22

Omit the clauses. Insert instead:

21 Board is to keep Register

- (1) The Board is to keep a register, called the Register of Medical Practitioners for New South Wales.
- (2) The Register is to be kept in such form as the Board determines.
- (3) The Register must be available for inspection by any person:
 - (a) in person at the office of the Board at all reasonable times, and
 - (b) by such other means (such as Internet access) and at such other times as the Board determines.
- (4) The Board may charge a fee for an inspection of the Register, not exceeding such amount as may be prescribed by the regulations.
- (5) The Board may carry out searches of the Register on a person’s behalf and may charge such fee as it determines for the search.

22 Information to be recorded in Register

- (1) The Board is to record in the Register such particulars of the registration of each registered medical practitioner as the Board considers appropriate, subject to the regulations. The regulations may make provision for or with respect to the information to be recorded in the Register.
- (2) The Board may, on application by a registered medical practitioner and payment of the prescribed fee, record in the Register any particulars in addition to those required to be recorded in the Register, as the Board approves.

- (3) The Board must make such other recordings in the Register as may be necessary for the purpose of maintaining the Register as an accurate record of the particulars relating to each registered medical practitioner.

[108] Schedule 2 Proceedings before a Committee or the Tribunal

Insert after clause 3:

3A Submissions by third parties

- (1) If as a result of an inquiry or appeal a Committee or the Tribunal proposes to give a direction or make an order under section 61 (General powers to caution, reprimand, counsel etc) and the Committee or the Tribunal is of the opinion that the direction or order will impose an appreciable burden on an identifiable third party, in connection with a registered medical practitioner's practice, the Committee or the Tribunal:
- (a) is to give the third party an opportunity to make submissions with respect to the direction or order, and
 - (b) is to take any such submission into account before giving the direction or making the order.
- (2) If a Committee or the Tribunal decides to give a direction or make an order that will, in the opinion of the Committee or the Tribunal, impose an appreciable burden on an identifiable third party in connection with a registered medical practitioner's practice, the Committee or the Tribunal is to give the third party notice of the direction or order as soon as practicable after it is given or made.
- (3) An example of a direction or order that may impose an appreciable burden on an identifiable third party in connection with a registered medical practitioner's practice is a direction or order that has the effect of requiring the medical practice of a registered medical practitioner to be supervised by an identified third party.
- (4) This clause does not apply in respect of any power exercised by a Committee or the Tribunal under section 164 or 178.

(5) In this clause:

third party means a person other than the registered medical practitioner to whom an inquiry or appeal relates, but does not include a person or body exercising functions conferred by this Act or the *Health Care Complaints Act 1993*.

[109] Schedule 2, clause 4 (c)

Insert “or the making of a criminal finding in respect of” after “conviction of”.

[110] Schedule 2, clause 11

Omit the clause.

[111] Schedule 2, clause 12 (1) (c)

Insert at the end of clause 12 (1) (b):

, or

- (c) the complaint before the Committee or the Tribunal is withdrawn.

[112] Schedule 2, clause 12 (3)

Insert after clause 12 (2):

- (3) The power conferred on a Committee or the Tribunal by this clause may be exercised by the chairperson of the Committee or the Tribunal, and in such a case is taken to have been exercised by the Committee or the Tribunal.

[113] Schedule 3, Provisions relating to the members and procedure of the Board

Omit “10 members” from clause 10. Insert instead “11 members”.

[114] Schedule 3A

Insert after Schedule 3:

Schedule 3A Provisions relating to performance assessments

(Section 86S)

Part 1 Provisions relating to assessors

1 General

- (1) An assessor may exercise the powers conferred by this Part only for the purpose of conducting an assessment of the professional performance of a registered medical practitioner when required by the Board or a Performance Review Panel.
- (2) An assessment is to be conducted in accordance with any directions given by the Board or a Performance Review Panel.
- (3) If the Board or a Panel instructs an assessor to limit his or her assessment to a particular aspect or aspects of a registered medical practitioner's professional performance, the assessment is to be limited to that aspect or those aspects.
- (4) However, an assessor may assess other aspects of the professional performance of a registered medical practitioner if during the course of an assessment the assessor forms the opinion that other aspects of the professional performance of the practitioner may be unsatisfactory and should be assessed.

2 Entry to premises

- (1) An assessor may at any reasonable time enter and inspect:
 - (a) any premises that the assessor reasonably believes are used by a registered medical practitioner in connection with his or her professional practice, and
 - (b) any premises in or on which the assessor reasonably believes records relating to the carrying out of a professional practice by a registered medical practitioner are kept.

- (2) An assessor may enter premises only:
 - (a) with the consent of the occupier and the medical practitioner to whom the assessment relates, or
 - (b) after having given the occupier of the premises, and the medical practitioner to whom the assessment relates, at least 14 days notice of the assessor's intention to enter the premises.
- (3) On premises entered on the basis that they are used by a registered medical practitioner in connection with his or her professional practice, an assessor has the following powers:
 - (a) power to examine any equipment that the assessor reasonably believes is, has or may be used in connection with the professional practice,
 - (b) power to take photographs of the premises, or of any equipment on the premises (being equipment that the assessor reasonably believes is, has or may be used in connection with the professional practice),
 - (c) power to require the production of and inspect any stocks of any substance or drugs in or about those premises,
 - (d) power to require any person on those premises to produce any records in the possession or under the control of that person relating to the carrying out of that professional practice,
 - (e) power to take copies of, or extracts or notes from, any such records,
 - (f) power to ask questions of any person on those premises,
 - (g) power to require the owner or occupier of those premises to provide the assessor with such assistance and facilities as is or are reasonably necessary to enable the assessor to exercise the functions of an assessor under this clause.

- (4) On premises entered on the basis that records relating to the carrying out of professional practice by a registered medical practitioner are kept there, an assessor has the following powers:
 - (a) power to require any person on 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,
 - (b) power to take copies of, or extracts or notes from, any such records.
- (5) This clause does not authorise an assessor to enter any part of premises that is being used for residential purposes except with the consent of the occupier.
- (6) This clause does not authorise an assessor to require a person to answer any question, and a failure or refusal by a person answer any question does not constitute an offence against clause 5.
- (7) However, a failure or refusal by a registered medical practitioner, without reasonable excuse, to answer any question asked by an assessor is evidence that the professional performance of the registered medical practitioner is unsatisfactory.

3 Power to conduct assessment exercise

- (1) An assessor may, by notice given to a registered medical practitioner who is the subject of an assessment, require the registered medical practitioner to take part in an assessment exercise.
- (2) An assessment exercise is an exercise during which the assessor observes and assesses the professional performance of the registered medical practitioner.
- (3) If practicable, an assessment exercise is to be based on a simulated clinical situation (for example, a mock consultation).
- (4) However, an assessment exercise may be based on an actual clinical situation (that is, an actual consultation or examination or the giving or performance of any other medical treatment, by a registered medical practitioner) if a simulated exercise is not practicable in the circumstances.

- (5) The time and place for, and the length of, the assessment exercise must be reasonable.
- (6) A failure or refusal by a registered medical practitioner to take part in, or to continue with, an assessment exercise does not constitute an offence against clause 5.
- (7) However, a failure or refusal by a registered medical practitioner, without reasonable excuse, to take part in or to continue with an assessment exercise is evidence that the professional performance of the registered medical practitioner is unsatisfactory.
- (8) This clause does not authorise an assessor to be present during any medical examination of a person, or at the giving or performance of any other medical service or treatment by a registered medical practitioner in respect of a person, without the consent of the person.

4 Answers to questions

- (1) Any information furnished by a person in answering a question asked by an assessor for the purposes of an assessment under Part 5A of this Act is not admissible against the person in any civil proceedings before a court except with the consent of the person.
- (2) Subclause (1) does not extend to any information furnished by a person that is a record required to be kept by or under this or any other Act.
- (3) In this clause:
court includes any tribunal, authority or person having power to require the production of documents or the answering of questions, but does not include the Tribunal, a Committee or a Performance Review Panel or the Supreme Court (in respect of appeal proceedings under this Act).

5 Offences

A person must not:

- (a) prevent an assessor from exercising any function conferred or imposed on the assessor under this Part, or
- (b) hinder or obstruct an assessor in the exercise of any such function, or

- (c) furnish an assessor with information knowing it to be false or misleading in a material particular.

Maximum penalty:

- (a) for an offence under paragraph (a) or (b)—50 penalty units, or
- (b) for an offence under paragraph (c)—20 penalty units.

6 Offence of impersonating assessor

A person must not impersonate or falsely represent that the person is an assessor.

Maximum penalty: 50 penalty units.

7 Certificates of authority

- (1) An assessor is to be provided with a certificate of authority in a form approved by the Board.
- (2) An assessor must, on exercising in any place any function of the assessor under this Part, produce the assessor's certificate of authority to any person apparently in charge of the place who requests its production.

8 Confidentiality of assessor's report

- (1) A report by an assessor to the Board or a Performance Review Panel about his or her assessment of the professional performance of a registered medical practitioner may not be admitted or used in any civil proceedings before a court except with the consent of:
 - (a) the person giving the report, and
 - (b) the registered medical practitioner concerned.
- (2) A person may not be compelled to produce the report or to give evidence in relation to the report or its contents in any such civil proceedings.
- (3) A report referred to in this clause is a *protected report* for the purposes of this Act.

(4) In this clause:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions, but does not include the Tribunal, a Committee or a Performance Review Panel or the Supreme Court (in respect of appeal proceedings under this Act).

report includes a copy, reproduction and duplicate of the report or any part of the report, copy, reproduction or duplicate.

Part 2 Provisions relating to performance reviews

9 Conduct of performance review

- (1) A performance review is to be conducted in the manner determined by the Performance Review Panel.
- (2) The performance review is to be conducted:
 - (a) with as little formality and technicality, and as much expedition, as the requirements of this Act and the proper consideration of the matter permit, and
 - (b) in the absence of the public.
- (3) In conducting a performance review a Performance Review Panel is not bound by the rules of evidence but may inform itself on any matter in any way it thinks appropriate.

10 Power to summon witnesses and take evidence

- (1) The chairperson of a Performance Review Panel may summon a person to appear at a performance review and to produce such documents (if any) as are referred to in the summons.
- (2) The chairperson of the Panel may require a person appearing at the performance review to produce a document.
- (3) A person served with a summons to appear at a performance review to give evidence must 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 the Panel.

Maximum penalty: 20 penalty units.

- (4) A person appearing at a performance review to give evidence must not, without reasonable excuse:
 - (a) fail to answer a question that the person is required to answer by the chairperson of the Panel, or
 - (b) fail to produce a document that the person is required to produce by this clause.

Maximum penalty: 20 penalty units.

11 Power to obtain documents

- (1) A member of a Performance Review Panel 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 Performance Review Panel or a person authorised by the Panel 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.

Maximum penalty: 20 penalty units.

12 Practitioner entitled to make representations

- (1) A registered medical practitioner who is the subject of a performance review is entitled to attend at the performance review and make oral or written representations to the Performance Review Panel with respect to the subject matter of the performance review.
- (2) The practitioner is entitled to be accompanied by a legal practitioner or other adviser, but is not entitled to be represented by the legal practitioner or other adviser.

- (3) This clause does not prevent a Performance Review Panel from conducting a performance review in the absence of the registered medical practitioner, as long as the practitioner has been informed of the performance review.

13 Panel may obtain reports

- (1) A Performance Review Panel may, for the purpose of conducting a performance review, obtain a report from a person who, in the opinion of the Panel, is sufficiently qualified or experienced to give expert advice on the matter that is the subject of the performance review.
- (2) Such a report may not be admitted or used in any civil proceedings before a court except with the consent of:
- (a) the person giving the report, and
 - (b) the registered medical practitioner concerned.
- (3) A person may not be compelled to produce the report or to give evidence in relation to the report or its contents in any such civil proceedings.
- (4) A report referred to in this clause is a *protected report* for the purposes of this Act.
- (5) In this clause:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions, but does not include the Tribunal, a Committee or a Performance Review Panel or the Supreme Court (in respect of appeal proceedings under this Act).

report includes a copy, reproduction and duplicate of the report or any part of the report, copy, reproduction or duplicate.

14 Assessors may assist Panel

- (1) The Board may appoint one or more assessors to assist a Performance Review Panel with a performance review.
- (2) The Panel may direct such an assessor:
- (a) to conduct an assessment of the professional performance of a registered medical practitioner, and report on that assessment to the Panel, and

- (b) to provide such other assistance in connection with the performance review as the Panel directs.

15 Release of information

- (1) The chairperson of a Performance Review Panel may, if the chairperson thinks it appropriate in the particular circumstances of the case (and whether or not on the request of the practitioner concerned or any other person):
 - (a) direct that the name of any witness is not to be disclosed in the performance review, or
 - (b) direct that all or any of the following matters are not to be published:
 - (i) the name and address of any witness,
 - (ii) the name and address of a registered medical practitioner,
 - (iii) any specified evidence,
 - (iv) the subject matter of the performance review.
- (2) A direction may be amended or revoked at any time by the chairperson of the Panel.
- (3) A direction may be given before or during a performance review, but must not be given before the performance review unless notice is given of the time and place appointed by the chairperson of the Panel for consideration of the matter to the following persons:
 - (a) a person who requested the direction,
 - (b) the practitioner concerned,
 - (c) such other persons as the person presiding thinks fit.
- (4) A person who contravenes a direction given under this clause is guilty of an offence.
Maximum penalty:
 - (a) in the case of a corporation, 150 penalty units, or
 - (b) in any other case, 20 penalty units.

16 Panel to consider impact of order or direction on third parties

- (1) If as a result of a performance review a Performance Review Panel proposes to give a direction or make an order that in the opinion of the Panel will impose an appreciable burden on an identifiable third party in connection with a registered medical practitioner's practice, the Panel:
 - (a) is to give the third party an opportunity to make submissions to the Panel with respect to the direction or order, and
 - (b) is to take any such submission into account before giving the direction or making the order.
- (2) If a Performance Review Panel decides to give a direction or make an order that will, in the opinion of the Panel, impose an appreciable burden on an identifiable third party in connection with a registered medical practitioner's practice, the Panel is to give the third party notice of the direction or order as soon as practicable after it is given or made.
- (3) An example of a direction or order that may impose an appreciable burden on an identifiable third party in connection with a registered medical practitioner's practice is a direction or order that has the effect of requiring the medical practice of a registered medical practitioner to be supervised by an identified third party.
- (4) In this clause:

third party means a health service provider other than the registered medical practitioner to whom an inquiry relates, but does not include a person or body exercising functions conferred by this Act or the *Health Care Complaints Act 1993*.

[115] Schedule 4 Regulations

Insert "or a Performance Review Panel" after "Impaired Registrants Panel" in clause 3.

[116] Schedule 5 Savings and transitional provisions

Insert at the end of clause 2 (1):

Medical Practice Amendment Act 2000

[117] Schedule 5, Part 3

Omit the Part.

[118] Schedule 5, Part 5

Insert after Part 4 of Schedule 5:

Part 5 Provisions consequent on Medical Practice Amendment Act 2000

22 Review of performance assessment program

- (1) The Board is to conduct a review for the purpose of:
 - (a) evaluating the effectiveness of the performance assessment provisions, and
 - (b) evaluating the effectiveness of the processes adopted by the Board in administering or implementing the performance assessment provisions.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the date of commencement of Part 5A of this Act.
- (3) A report of the outcome of the review is to be given to the Minister within 6 months after the end of the period of 3 years.
- (4) The *performance assessment provisions* of this Act are the provisions of Part 5A, Part 13A and Schedule 3A.

23 Registration

- (1) The amendments made to Part 2 and Schedule 1 by the *Medical Practice Amendment Act 2000* extend to applications for registration under the Act made to the Board, but not determined, before the commencement of those amendments, but the amendments to Schedule 1 do not apply in respect of any inquiry commenced before the commencement of those amendments.
- (2) Any such inquiry is to be disposed of as if those amendments had not been made.

24 Complaints

- (1) The amendments made to sections 50 and 51 by the *Medical Practice Amendment Act 2000* do not apply in respect of any complaint made to the Board or the Commission before the commencement of those amendments that has not been disposed of by that commencement.
- (2) Any such complaint is to be dealt with as if those amendments had not been made.

25 Powers of Board to protect public

- (1) Division 5 of Part 4, as in force immediately before the amendments made by the *Medical Practice Amendment Act 2000*, continues to apply in respect of any order made or conditions imposed by the Board under section 66 before the commencement of those amendments, as if those amendments had not been made.
- (2) Accordingly, sections 67 and 69 (as in force immediately before the amendments made to those sections by the *Medical Practice Amendment Act 2000*) continue to apply with respect to the duration or suspension of those conditions.

26 Saving of regulation

The amendment made to section 71 by the *Medical Practice Amendment Act 2000* does not affect any regulation made under that section before the commencement of that amendment, and any such regulation continues in force despite the amendment (but can be repealed or amended).

27 Removal of conditions or suspension agreed to by practitioner

- (1) Section 81, as in force immediately before the substitution of that section by the *Medical Practice Amendment Act 2000*, continues to apply in respect of any conditions imposed on the registration of a practitioner, or any suspension, that had effect under that section before that substitution.
- (2) Section 81A does not apply in respect of those conditions or that suspension.

28 Amendments to appeal, review and other procedural provisions

- (1) Section 89 does not confer a right of appeal in respect of any power exercised by the Chairperson or Deputy Chairperson under Division 4 of Part 4 before the substitution of that section by the *Medical Practice Amendment Act 2000*.
- (2) Section 94A does not apply in respect of any review under Division 3 of Part 6 that was commenced before that section commences.
- (3) Section 95, as in force immediately before the substitution of that section by the *Medical Practice Amendment Act 2000*, continues to apply in respect of any power exercised by the Board before that substitution.
- (4) Clause 3A of Schedule 2 does not apply in respect of an inquiry or appeal commenced before that clause commences.

29 Recovery of fees

- (1) Section 102, as in force immediately before its repeal by the *Medical Practice Amendment Act 2000*, continues to apply in respect of any professional services of any kind rendered or performed by a registered medical practitioner before that repeal.
- (2) Section 104, as in force immediately before its repeal by the *Medical Practice Amendment Act 2000*, continues to apply in respect of any medical or surgical advice, service, attendance or operation given or performed before that repeal.

30 Annual returns

- (1) In section 127A, the return period for the first return date means the period of 12 months ending 2 months before the first return date, even if that period, or any part of the period, occurred before the commencement of that section.
- (2) The *first return date* means the first return date notified by the Board under section 127A.

31 Offences by corporations

Section 187, as in force immediately before its amendment by the *Medical Practice Amendment Act 2000*, continues to apply in respect any contravention by a corporation that occurred or is alleged to have occurred before the commencement of that amendment.

[119] Dictionary

Insert in alphabetical order in clause 1:

assessor means a person appointed as an assessor under this Act.

authorised person means a person appointed as an authorised person under Part 9.

criminal finding means:

- (a) a finding that an offence has been proved without proceeding to a conviction, or
- (b) a finding that an offence has been proved and the discharging of, or the making of an order releasing, the offender conditionally on entering into a good behaviour bond for a specified period or on other conditions determined by the court.

day procedure centre has the meaning given by the *Private Hospitals and Day Procedure Centres Act 1988*.

excluded offence means an offence prescribed by the regulations under section 71 (1).

health product means a pharmaceutical product or other product used for health purposes.

health service has the meaning given by the *Health Care Complaints Act 1993*.

health service provider has the meaning given by the *Health Care Complaints Act 1993*.

Impaired Registrants Panel means an Impaired Registrants Panel constituted under this Act.

Mutual Recognition laws means the *Mutual Recognition Act 1992* of the Commonwealth and the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth.

performance review means a review of a registered medical practitioner's professional performance, conducted by a Performance Review Panel under Part 5A.

Performance Review Panel means a Performance Review Panel constituted under this Act.

private hospital has the meaning given by the *Private Hospitals and Day Procedure Centres Act 1988*.

protected report means a report that is a protected report for the purposes of this Act.

public hospital has the meaning given by the *Health Services Act 1997*.

sex or violence offence means an offence involving sexual activity, acts of indecency, child pornography, physical violence or the threat of physical violence.

sex/violence criminal finding means a criminal finding for a sex or violence offence.

visiting practitioner has the meaning given by the *Health Services Act 1997*.

[120] Dictionary, clause 1, definition of "medical student"

Omit the definition. Insert instead:

medical student means:

- (a) a student enrolled in a course of medical study at a Medical School in Australia accredited by the Australian Medical Council, or
- (b) a student undertaking a clinical placement in a public hospital under the auspices of an educational institution accredited by the Australian Medical Council.

[121] Dictionary, clause 1, definition of "Panel"

Omit the definition.

[122] Dictionary, clause 4 (g)

Insert after clause 4 (f):

- (g) it is a protected report or would reveal the contents of a protected report.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Defamation Act 1974 No 18

Section 17FA Matters arising under Medical Practice Act 1992

Omit section 17FA (1). Insert instead:

- (1) There is a defence of absolute privilege:
 - (a) for a publication to or by:
 - (i) the New South Wales Medical Board, or
 - (ii) an Impaired Registrants Panel, or
 - (iii) a Performance Review Panel, or
 - (iv) a Professional Standards Committee, or
 - (v) the Medical Tribunal, or
 - (vi) a member of any of the bodies referred to in subparagraphs (i)–(v), or
 - (vii) an assessor,

for the purpose of the assessment or referral of a complaint or other matter or the holding of any inquiry, performance review, investigation or appeal under the *Medical Practice Act 1992*, and
 - (b) for a publication by a body or person referred to in paragraph (a) of a report of a decision or determination in respect of a complaint or other matter or any inquiry, performance review, investigation or appeal, and of the reasons for that decision or determination.

2.2 Public Health Act 1991 No 10

[1] Part 2A

Re-number Part 2A as Part 2B.

[2] Part 2A

Insert after Part 2:

Part 2A Promotion and provision of health services

10AA Proceedings for offences against this Part

Proceedings for an offence against this Part may be instituted by the Director-General of the Department of Health, a registration authority (within the meaning of the *Health Care Complaints Act 1993*), the Health Care Complaints Commission or by any other person.

10AB Advertisement or promotion of health services

- (1) A person must not advertise or otherwise promote a health service in a manner that:
- (a) is false, misleading or deceptive, or
 - (b) creates an unjustified expectation of beneficial treatment.

Maximum penalty:

- (a) for a first offence—100 penalty units, or
 - (b) for a second or subsequent offence—200 penalty units.
- (2) In this section:

health service has the meaning given it by the *Health Care Complaints Act 1993*.

[3] Sections 10L and 10M

Omit “**Part 2A**” from the headings to those sections.

Insert instead “**Part 2B**”.

[Minister's second reading speech made in—
Legislative Assembly on 9 June 2000
Legislative Council on 29 June 2000]

BY AUTHORITY
