

Act No. 127

MEDICAL PRACTITIONERS (AMENDMENT) BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Defamation (Medical Practitioners) Amendment Bill 1987 is cognate with this Bill.

The objects of this Bill are—

- (a) to incorporate the New South Wales Medical Board as a self-funding body;
- (b) to provide for Professional Standards Committees and a Medical Tribunal to inquire into and determine complaints about registered medical practitioners;
- (c) to establish a Medical Education and Research Account to be used to fund medical education and research relating to the practice of medicine out of registration and roll fees paid by medical practitioners;
- (d) to require certain overseas qualified medical practitioners to pass an examination held by the Australian Medical Council before being registered in New South Wales; and
- (e) to enable the regulation of after-hours medical and medical deputising services.

Clause 1 specifies the short title of the proposed Act.

Clause 2 specifies that the proposed Act will, with minor exceptions, commence on a day or days to be appointed by the Governor-in-Council.

Clause 3 states that the Medical Practitioners Act 1938 is referred to as the Principal Act.

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Clause 4 gives effect to the schedules of amendments.

Clause 5 repeals the Medical Practitioners (Private Health Establishments) Amendment Act 1982.

Clause 6 amends Schedule 2 to the Public Finance and Audit Act 1983, so as to make the Board subject to the provisions of that Act.

Clause 7 gives effect to the schedule of savings and transitional provisions.

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

Schedule 1 (1) inserts into section 3 (Interpretation) of the Principal Act definitions of "Australian Medical Council", "Board", "Deputy President" and "Registrar", as well as a provision defining "function" and "the exercise of a function". The definition of "Member" is omitted.

Schedule 1 (2) substitutes Part II of the Principal Act with a new Part II (The New South Wales Medical Board) containing the following proposed sections:

Section 5 (The Board) constitutes the New South Wales Medical Board. The Board will consist of 18 members, including 10 registered medical practitioners nominated by members of the medical profession. Of the remaining members, 6 will be nominated by the Minister, at least 2 of whom will be persons who are conversant with the interests of patients as consumers of medical services.

Section 6 (Staff of the Board) empowers the Board to employ staff and, with the concurrence of the Health Administration Corporation, to fix their conditions of employment.

Section 7 (Registrar) provides for the appointment of a Registrar who will be the chief executive officer of the Board.

Section 8 (Committees) enables the Board to establish committees to assist it in connection with the exercise of any of its functions.

Section 9 (Functions of the Board) sets out additional functions of the Board, including the promotion and maintenance of high standards of medical practice, advising the Minister and publishing and distributing information about the Principal Act and its regulations to medical practitioners and other interested persons.

Section 10 (Financial provisions) provides for the payment by the Board of the expenses of administering the Principal Act and of the Medical Services Committee out of fees paid to the Board under the Principal Act.

Section 11 (Medical Education and Research Account) obliges the Board to establish a Medical Education and Research Account into which such amounts as are determined by the Board are to be paid from registration and roll fees received by the Board. The Account will be used to fund medical education and research connected with the practice of medicine and for other purposes.

Section 12 (Disclosure of information) makes it an offence to disclose, except in certain cases, information obtained in connection with the administration or execution of the Principal Act and imposes a maximum fine of \$1,000.

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Section 13 (Delegation by Board and Registrar) enables the Board and the Registrar to delegate their respective functions.

Section 14 (Annual report) provides that particulars of complaints about medical practitioners and action taken in relation to them shall be included in the Board's annual report.

Section 14A (Shortened references to the Board) requires references in other instruments to the "Medical Board" to be read as references to the "New South Wales Medical Board".

Section 14B (Service of documents) provides for the service of documents on the Board.

Section 14C (Authentication of certain documents) states that documents of the Board are sufficiently authenticated if signed by the President, the Registrar or an authorised officer of the Board.

Section 14D (Recovery of charges etc. by the Board) provides for the recovery of money owed to the Board.

Section 14E (Proof of certain matters not required) precludes proof of matters, such as the constitution of the Board, from being required in legal proceedings.

Schedule 1 (3), (4), (5) and (7) amend the Principal Act consequentially on the reconstitution of the Board.

Schedule 1 (6) amends section 24 (Annual roll fee) of the Principal Act so as to provide that the Board may determine the annual roll fee with the approval of the Minister and also makes an amendment consequent on the reconstitution of the Board.

Schedule 1 (8) omits section 48 (Financial) from the Principal Act as a consequence of the enactment of proposed section 10 of the Principal Act.

Schedule 1 (9) omits from section 53 (Regulations) of the Principal Act a power to make regulations as to the old Board's meeting procedures. The new Board will determine its own meeting procedures.

Schedule 1 (10) inserts Schedules 2 (Provisions relating to the members of the Board) and 3 (Provisions relating to the procedure of the Board) into the Principal Act.

Proposed Schedule 2 provides for the appointment of a President and Deputy President of the Board and of acting members, as well as for other matters, such as terms of office, remuneration, casual vacancies and liability, relating to the members of the Board.

Proposed Schedule 3 states that the Board may determine the procedure at its meetings and provides for other matters, such as a quorum of 10 members, and for voting.

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

Schedule 2 (1) inserts into section 3 (Interpretation) of the Principal Act definitions of "Chairperson", "Committee", "Deputy Chairperson", "Secretary" and "Tribunal" and also defines competence to practise medicine. The present definitions of "Disciplinary tribunal" and "Investigating committee" are omitted.

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Schedule 2 (2), (4), (5), (6), (7), (9), (12) and (14) amend the Principal Act consequentially on the abolition of the investigating committee and the disciplinary tribunal and their replacement by Professional Standards Committees and the Medical Tribunal.

Schedule 2 (3) amends section 19 (Application for registration) of the Principal Act so as to enable the Board to hold an inquiry into the physical and mental competence to practise medicine of an applicant for registration as a registered medical practitioner. The Board will be able to require such an applicant to undergo a medical examination.

Schedule 2 (8) substitutes section 23c (Appeals from determinations of the Board) so as to give a right to appeal to the Tribunal from a determination of the Board relating to an application for registration (this is instead of the previous right to appeal to the Supreme Court).

Schedule 2 (10) inserts proposed sections 26A (Inquiries by the Board) and 26B (Decisions of the Board in an inquiry) into the Principal Act. Section 26A provides that, for the purposes of an inquiry by it, the Board has the same functions and witnesses appearing before it have the same obligations as apply to an inquiry before a Professional Standards Committee. The Board will consist of 3 members for the purpose of its conducting an inquiry. A person in relation to whom an inquiry is held may be accompanied, but not represented, by a barrister or solicitor or another adviser and the Secretary may intervene and be heard in an inquiry. Section 26B makes provision with respect to decisions of the Board in an inquiry.

Schedule 2 (11) omits sections 27–32A of the Principal Act and inserts a new Part IIIA (Complaints and disciplinary proceedings) containing the following proposed Divisions and sections:

DIVISION 1—Complaints relating to registered medical practitioners

Section 27 (Interpretation) sets out an expanded definition of “professional misconduct”. In addition to the matters presently set out in the Principal Act, conduct demonstrating a lack of adequate knowledge, experience, skill, judgment or care and conduct by a registered medical practitioner in the practice of medicine that is improper or unethical will constitute professional misconduct. Definitions of “conduct”, so as to make it clear that the term includes both an act and an omission, and “complainant”, so as to make it clear that the term includes a nominal complainant, are also contained in the proposed section.

Section 28 (Complaints) provides for the making of complaints about registered medical practitioners to or by the Board or the Secretary of the Department of Health.

Section 29 (Referral of mental health matters to Registrar) requires notification to the Registrar of registered medical practitioners who become patients under State mental health legislation or protected persons under the Protected Estates Act 1983.

Section 30 (Referral of matters by courts) re-enacts provisions of the Principal Act requiring courts and coroners to send a certificate of conviction or a transcript of evidence to the Board, as the case requires, in certain matters arising before them involving registered medical practitioners.

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Section 31 (Referral or dismissal of complaints by the Board) provides for the referral of complaints to a Committee or the Tribunal by the Board. The Board must refer any complaint which may warrant the suspension or deregistration of a registered medical practitioner to the Tribunal, but may also refer complaints involving the health of doctors to a Committee.

Section 32 (Referral or dismissal of complaints by the Secretary) provides for the referral of complaints to the Board, a Committee or the Tribunal by the Secretary. The Secretary must refer any complaint which may warrant the suspension or deregistration of a registered medical practitioner to the Tribunal, but may also refer complaints involving the health of doctors to the Board.

Section 32A (Investigation of complaints) requires the Board to refer certain complaints to the Secretary for investigation and the Secretary to investigate such complaints as well as any complaint referred by the Secretary to the Board, a Committee or the Tribunal.

Section 32B (Suspension etc. by the Board) empowers the Board to suspend (for a period not exceeding 30 days), or impose conditions on, a registered medical practitioner if it is satisfied that such action is necessary for the purpose of protecting the life, or the physical or mental health, of any person. If the Board takes such action, the matter must be referred to the Tribunal or in cases involving the health of a doctor it may be referred to a Committee. A period of suspension may be extended for periods of up to 30 days, but only with the written approval of the Chairperson or a Deputy Chairperson of the Tribunal.

Section 32C (Suspension by the Board for certain Commonwealth offences) provides for the automatic suspension (for a period of up to 5 years) by the Board of a registered medical practitioner who has been convicted of certain Commonwealth offences and fully disqualified from receipt of medicare benefits by the Medicare Participation Review Committee established under the Health Insurance Act 1973 of the Commonwealth.

Section 32D (Appeals against suspension etc. by the Board) gives a person affected by a suspension or conditions imposed under section 32B or 32C a right to appeal to the Tribunal.

DIVISION 2—Hearing of complaints by Professional Standards Committees

Section 32E (Professional Standards Committees) provides for Professional Standards Committees. For the purposes of hearing a complaint, a Committee will consist of 2 registered medical practitioners appointed by the Board and a lay person nominated by the Minister who may or may not be members of the Board. More than one Committee may be constituted at one time so as to enable more than one matter to be heard at one time.

Section 32F (Proceedings before a Committee) provides that proceedings before a Committee shall be held in the absence of the public, unless the Committee otherwise directs, and that the Committee may conduct the proceedings as it thinks fit.

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Section 32G (Representation before a Committee) enables a complainant or a registered medical practitioner about whom a complaint is made to be accompanied, but not represented, by a barrister or solicitor or another adviser in an inquiry before a Committee.

Section 32H (Referral of certain matters to the Tribunal) requires a Committee to terminate an inquiry and refer a complaint to the Tribunal if at any time the Committee forms the opinion that a complaint may provide grounds for the suspension or deregistration of a registered medical practitioner or becomes aware that the complaint or another complaint about the same person has been referred to the Tribunal.

Section 32I (Determinations of Committees) sets out the powers of a Committee if it finds the subject-matter of a complaint to have been proved.

Section 32J (Complaints relating solely to physical and mental capacity) enables a Committee, in a case involving the health of a doctor, to recommend to the Chairperson or a Deputy Chairperson that the medical practitioner concerned be suspended or deregistered. The Chairperson or Deputy Chairperson may act on the recommendation and there is a right of appeal to the Tribunal under proposed section 32L.

Section 32K (Decisions of a Committee) provides for the making of decisions by a Committee and requires it to make its reasons for its decisions available to the complainant, the registered medical practitioner concerned and such other persons as it thinks fit.

Section 32L (Appeals against decisions of a Committee etc.) gives a complainant or a registered medical practitioner a right to appeal to the Tribunal against a finding of or the exercise of a power by a Committee. Appeals will be dealt with by way of rehearing. Appeals with respect to a point of law may also be made, whether or not an inquiry has concluded.

DIVISION 3—Hearing of matters by the Medical Tribunal

Section 32M (The Medical Tribunal) constitutes the Medical Tribunal. For the purposes of conducting an inquiry or hearing an appeal, the Tribunal will consist of the Chairperson or a Deputy Chairperson, 2 registered medical practitioners appointed by the Board and a lay person nominated by the Minister who may or may not be members of the Board. More than one group of persons constituting the Tribunal may sit at one time so as to enable more than one matter to be heard at one time.

Section 32N (Chairperson and Deputy Chairpersons of the Tribunal) provides for District Court judges to be appointed as the Chairperson and Deputy Chairpersons of the Tribunal.

Section 32O (Proceedings before the Tribunal) provides that proceedings before the Tribunal shall be held in public, unless the Tribunal otherwise directs, and that the Tribunal may conduct the proceedings as it thinks fit.

Section 32P (Representation before the Tribunal) enables a complainant or a registered medical practitioner about whom a complaint is made to be represented by a barrister or solicitor or another adviser in proceedings before the Tribunal.

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Section 32Q (Chairperson or Deputy Chairperson not to review own decisions) prohibits the Chairperson or a Deputy Chairperson who has decided a question in a matter from sitting on an inquiry or appeal concerning the matter in which the decision was made.

Section 32R (Determinations of the Tribunal) sets out the powers of the Tribunal if it finds the subject-matter of a complaint to have been proved.

Section 32s (Suspension orders) makes provision in relation to suspended medical practitioners.

Section 32T (Decisions of the Tribunal) provides for the making of decisions by the Tribunal and requires it to make its reasons for its decisions available to the complainant and the registered medical practitioner concerned and such other persons as it thinks fit.

Section 32U (Appeals against decisions of the Tribunal) gives to a complainant or a registered medical practitioner a right to appeal to the Supreme Court from a decision of the Tribunal with respect to a point of law or against the exercise of a power by the Tribunal. Appeals with respect to a point of law may be made whether or not an inquiry has concluded.

Section 32v (Review of suspension or deregistration by the Tribunal) gives the Tribunal power, on application by a person who has been suspended from practising medicine or deregistered, to end the suspension or to have the person registered.

Section 32w (Inquiries etc. where other proceedings) removes any doubt as to whether an inquiry may be conducted into a complaint about a registered medical practitioner before any relevant criminal or civil proceedings are completed.

Schedule 2 (13) substitutes section 50A (Protection from liability) so as to protect members of a Committee or the Tribunal or a person acting as a nominal complainant from liability for acts done in good faith for the purposes of executing the Principal Act or any other Act.

Schedule 2 (15) inserts proposed Schedule 4 (Proceedings before a Committee and the Tribunal) into the Principal Act. The Schedule contains the following proposed clauses:

Clause 1 (Proceedings generally) states that a Committee and the Tribunal are not bound to observe the rules of law governing the admission of evidence.

Clause 2 (Power to summon witnesses and take evidence) sets out the powers of a Committee and the Tribunal in relation to compelling the attendance of witnesses and the giving of evidence at an inquiry or appeal.

Clause 3 (Power to obtain documents) sets out the powers of a Committee and the Tribunal to require documents to be produced.

Clause 4 (Evidence of other proceedings) allows a Committee and the Tribunal to admit as evidence the result of or evidence given in the course of proceedings in other courts (whether or not in New South Wales).

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Clause 5 (Additional complaints) provides for inquiries to be conducted by a Committee or the Tribunal into more than one complaint and for a Committee or the Tribunal to deal with additional matters arising during proceedings as if a complaint had been made in respect of them.

Clause 6 (Release of information) empowers a Committee and the Tribunal to direct that the name or address of a complainant, a registered medical practitioner or a witness in proceedings, that evidence given in proceedings or that the subject-matter of a complaint not be published, except in a professional publication. It will be an offence with a maximum fine of \$2,000 to contravene such a direction.

Clause 7 (Authentication of documents by a Committee or the Tribunal) sets out the manner in which documents of a Committee or the Tribunal may be authenticated.

Clause 8 (Nominal complainant) provides for the Secretary or a person appointed by the Secretary to act as nominal complainant in proceedings before a Committee or the Tribunal.

Clause 9 (Intervention by Secretary) empowers the Secretary to intervene in proceedings before a Committee or the Tribunal.

Clause 10 (Expedition of inquiries and appeals) imposes a duty on a Committee and the Tribunal to hold and determine inquiries and appeals as soon as practicable after a complaint or matter is referred to the Committee or the Tribunal, or an appeal or application is made to the Tribunal, as the case may be.

Clause 11 (Evidentiary certificate) provides for the use of a certificate, signed by the Registrar and certifying certain matters relating to the suspension or registration of a person, as evidence of those matters in proceedings before a Committee or the Tribunal or other courts or tribunals.

Clause 12 (Certain complaints may not be heard) enables a Committee and the Tribunal to decide not to commence or to terminate certain proceedings.

SCHEDULE 3—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

Schedule 3 (1) omits section 2 (Division into Parts) of the Principal Act.

Schedule 3 (2) amends section 15 (Full entitlement to registration) of the Principal Act so as to make holding an Australian university degree accredited by the Australian Medical Council or a New Zealand degree set out in Schedule 1 one of the necessary qualifications for full registration as a registered medical practitioner.

Schedule 3 (3) amends section 16 (Limited entitlement to registration) of the Principal Act so as to enable an overseas qualified medical practitioner to obtain limited registration if he or she has obtained results satisfactory to the Board in an examination conducted by the Australian Medical Council.

Schedule 3 (4) amends section 24 (Annual roll fee) of the Principal Act so as to enable a person who has been deregistered for not paying an annual roll fee and who pays the fee to be registered with effect from the date the person was deregistered.

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Schedule 3 (5) amends section 26 (Removal from New South Wales Register after removal from other register) of the Principal Act so as to remove the requirement for a 2 month period to have elapsed before the name of a practitioner who has been deregistered elsewhere than in New South Wales can be removed from the Register.

Schedule 3 (6) amends section 39 (Powers of entry, search and seizure) of the Principal Act to authorise entry on to premises for the purposes of investigating a complaint or a complaint intended to be made under proposed Part IIIA of the Principal Act. The power to enter premises and seize and copy documents is also extended to include a power to enter premises in or on which it is believed medical records are kept, rather than only premises in which a medical practitioner practises, as is presently the case.

Schedule 3 (7) amends section 39AA (Search warrant) of the Principal Act so as to provide for the obtaining of search warrants to enter premises in the additional circumstances referred to in section 39 of the Principal Act, as amended by the proposed Act.

Schedule 3 (8) inserts proposed section 41C (Medical records to be kept) into the Principal Act. The proposed section imposes an obligation on registered medical practitioners (not being employees) to keep prescribed records for a period of not less than 7 years.

Schedule 3 (9) and (10) amend the Principal Act consequentially on the insertion of a definition of "Secretary" into the Principal Act.

Schedule 3 (11) amends section 52 (Offences and penalties) of the Principal Act to substitute an outdated reference to a court of petty sessions.

Schedule 3 (12) amends section 53 (Regulations) of the Principal Act so as to enable regulations to be made with respect to after-hours medical services and medical deputising services.

Schedule 3 (13) substitutes Schedule 1 to the Principal Act. The effect of this is to exempt holders of New Zealand medical degrees from the requirement to sit the Australian Medical Council's examination before being registered.

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

Clause 1 (Interpretation) contains definitions of terms used in the Schedule.

Clause 2 (Members of old Board) provides that members of the old Board shall cease to hold office from the commencement of Schedule 1 (2) to the proposed Act.

Clause 3 (References to certain officers and to old Board) requires references to the president of the old Board and to the old Board in other Acts or instruments to be read as references to the President of the new Board and the new Board, respectively, from the commencement of Schedule 1 (2) to the proposed Act.

Clause 4 (Appointments etc. before commencement) enables appointments of members of the new Board to be made and other related things to be done before the commencement of Schedule 1 (2) to the proposed Act.

Clause 5 (First meeting of new Board) provides that the Minister shall call the first meeting of the new Board.

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Clause 6 (Members of investigating committee and non-judicial members of disciplinary tribunal previously holding office) provides that non-judicial members of the investigating committee and disciplinary tribunal formerly constituted under the Principal Act shall cease to hold office from the commencement of Schedule 2 (11) to the proposed Act.

Clause 7 (Chairman or deputy chairman of disciplinary tribunal) provides that the chairman and deputy chairmen of the disciplinary tribunal shall continue in office as Chairperson and Deputy Chairpersons of the Medical Tribunal.

Clause 8 (Funding) states that the expenses of administration of the Principal Act are to be funded from money provided by Parliament until such time as the funds of the new Board are sufficient to meet those costs and provides for repayment by the Board of any money advanced to it for those expenses.

Clause 9 (Matters before investigating committee and disciplinary tribunal) makes provision for matters currently being dealt with by the present investigating committee and the present disciplinary tribunal to be referred as complaints to the Board and the Tribunal, respectively, and to be dealt with by way of rehearing after the commencement of Schedule 2 (11) to the proposed Act.

Clause 10 (Penalties) enables penalties and certain other requirements imposed by the disciplinary tribunal before the commencement of Schedule 2 (11) to the proposed Act to be enforced as if they were imposed under proposed section 32R of the Principal Act and enables applications for review of a suspension or deregistration to be made by persons suspended or deregistered before the commencement of Schedule 2 (11) to the proposed Act.

Clause 11 (Secretary to the old Board etc.) makes provision with respect to fees payable to and documents issued by, or lodged with, the secretary to the old Board before the commencement of Schedule 1 (2).

Clause 12 (Amendment relating to Private Health Establishments Act 1982) amends the Principal Act in consequence of the enactment of the Private Health Establishments Act 1982.

Clause 13 (Regulations) enables savings and transitional regulations to be made.
