



New South Wales

# Medical Practice Amendment Bill 2008

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Medical Practice Act 1992* and the *Health Care Complaints Act 1993* so as:

- (a) to provide that the protection of the health and safety of the public is to be the paramount consideration in the administration of each Act, and
- (b) to make provision with respect to contraventions of the *Medical Practice Act 1992* or the regulations under that Act that constitute unsatisfactory professional conduct, and
- (c) to make provision with respect to:
  - (i) the circumstances in which the New South Wales Medical Board (***the Board***) may exercise its powers under section 66 of the *Medical Practice Act 1992*, and
  - (ii) action that may be taken in the exercise of those powers and the subsequent termination or variation of the effects of such action, and
- (d) to require registered medical practitioners to furnish reports to the Board in relation to misconduct by other registered medical practitioners, and

- (e) to confer certain immunities on complainants under Part 4 of the *Medical Practice Act 1992* and on other persons who have provided complainants with information or otherwise been concerned in the making of complaints, and
- (f) to enable a Professional Standards Committee (*a Committee*) or the Medical Tribunal (*the Tribunal*), when imposing an order or condition of registration on a medical practitioner, to provide that a contravention of the order or condition is to result in deregistration of the practitioner, and
- (g) to require that a review of the suspension, deregistration or placing of conditions on registration of a medical practitioner must consider any complaints made about the person (whether before or after the order being reviewed was made), and
- (h) to require the audio recording of certain meetings of the Board, and
- (i) to authorise the Board:
  - (i) to require any person to provide it with certain information, records or evidence, and
  - (ii) to require a registered medical practitioner to provide details of the practitioner's employment, and
  - (iii) to provide information obtained in connection with its functions to the Health Care Complaints Commission (*the Commission*), and
  - (iv) to notify any person or body the Board considers it appropriate to notify of certain disciplinary action taken by the Board, and
- (j) to provide a registered medical practitioner affected by certain disciplinary action taken by the Board with a right:
  - (i) to have the decision to take the action reconsidered, and
  - (ii) to appeal to the Tribunal on a point of law, and
- (k) to enable the Board to have regard to other relevant complaints against a practitioner in the exercise of its disciplinary and complaint-related functions, and
- (l) to enable a Committee or the Tribunal:
  - (i) to take into account the judgment or findings of a professional standards committee or tribunal constituted under a health registration Act when making certain findings relating to the conduct of a registered medical practitioner, and
  - (ii) to have regard to the totality of the evidence before it when dealing simultaneously with more than one complaint about a practitioner, and
- (m) to enable the Commission to take into account associated complaints about a health practitioner or health organisation, or other relevant findings, decisions, reports or recommendations relating to a health practitioner when assessing a complaint, and

- (n) to provide that consultation between the Commission and a registration authority or the Registrar on dealing with a complaint is to include consultation on any relevant associated complaint, and to allow a discontinued or terminated associated complaint to be reopened as a result of the consultation, and
- (o) to make provision with respect to the concurrent investigation and prosecution of associated complaints, and
- (p) to require:
  - (i) a Committee or the Tribunal to list as soon as practicable an inquiry or appeal relating to action taken by the Board under section 66 of the *Medical Practice Act 1992*, and
  - (ii) the Commission to deal as quickly as practicable with matters referred to it following such action, or action taken by another health registration board under equivalent powers under a health registration Act, and
- (q) to require that proceedings of a Committee are to be open to the public unless the Committee otherwise directs in the public interest, and
- (r) to provide for the Board to make a decision of a Committee publicly available unless the Committee otherwise orders, and
- (s) to provide for the appointment of an additional member of a Committee who is to be legally qualified and is to be appointed as chairperson of the Committee, and
- (t) to make minor miscellaneous and consequential amendments.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *Medical Practice Act 1992* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the *Health Care Complaints Act 1993* set out in Schedule 2.

**Clause 5** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

## Schedule 1 Amendment of Medical Practice Act 1992

### Principle of administration of Act

**Schedule 1 [1]** gives effect to the object set out in paragraph (a) of the Overview.

### **Suspension or conditions to protect the public**

Section 66 of the *Medical Practice Act 1992* sets out the Board's powers to suspend a registered medical practitioner or impose conditions on a practitioner's registration if the Board is satisfied such action is necessary for the purpose of protecting the life or physical or mental health of any person.

**Schedule 1 [8]** substitutes section 66 to:

- (a) enable the Board, with the concurrence of the Commission, to impose a condition on a registered medical practitioner's registration requiring the practitioner to participate in an assessment of the practitioner's professional performance, and
- (b) make it clear that the Board must exercise its section 66 powers if the Board is satisfied such action is appropriate for the protection of the health or safety of any person or persons or if satisfied that the action is otherwise in the public interest, and
- (c) require that if the Board delegates any function of the Board under section 66 to a group of persons, at least one member of the group must be a person who is not a registered medical practitioner.

**Schedule 1 [10]** enables the Board:

- (a) to terminate or shorten a period of suspension imposed under section 66, or
- (b) to alter or remove conditions imposed under that section, or
- (c) at any time after having taken action under that section, to take any other action it could have taken at the time of taking the original action.

**Schedule 1 [16]** makes a consequential amendment.

**Schedule 1 [14]** makes provision with respect to the Commission's concurrence with the Board's imposition of a condition on a registered medical practitioner's registration requiring performance assessment. If the Commission concurs, the matter giving rise to the proposal is to be dealt with under Part 5A. If the Board and the Commission agree, the matter may also be referred to the Commission to be dealt with as a complaint. If the Commission does not concur with the imposition of the condition, the Commission is to deal with the matter giving rise to the proposal as a complaint. **Schedule 1 [13]** makes a consequential amendment.

**Schedule 1 [15]** provides for the extension of a suspension order made by the Board under section 66 if the Chairperson or a Deputy Chairperson of the Tribunal is satisfied there has been no material change in the circumstances that gave rise to the making of the order.

**Schedule 1 [9]** requires the audio recording of meetings of the Board in connection with the exercise of certain of its disciplinary powers and:

- (a) at which the registered medical practitioner concerned, or the practitioner's adviser, is present, or

- (b) that a person other than a member or staff member of the Board attends in order to give the Board oral information relevant to the exercise, or proposed exercise, of its powers.

A recording will not be admissible in evidence in civil or criminal proceedings, other than proceedings connected with the Act, or in a coronial inquest or inquiry.

### **Reportable misconduct**

**Schedule 1 [18]** inserts a new Division 7 (comprising proposed section 71A) into Part 4. The proposed section defines *reportable misconduct* to mean practising medicine while intoxicated, flagrantly departing from accepted standards of professional practice and competence and engaging in sexual misconduct in connection with the practice of medicine. Registered medical practitioners will be required to report to the Board on reportable misconduct committed by other registered medical practitioners. Reports will be made and dealt with in the same way as complaints under Part 4.

### **Protection of complainants and other persons**

**Schedule 1 [4]** inserts a new section 47 into Division 2 of Part 4. The proposed section provides that the making of a complaint will not constitute a breach of professional etiquette or ethics, or a departure from accepted standards of professional conduct, and will give rise to no liability for defamation, malicious prosecution or conspiracy. These protections will extend not only to complainants but also to persons who have provided complainants with information or otherwise been concerned in the making of complaints.

### **Deregistration for breach of orders or conditions of registration**

**Schedule 1 [5]** provides that a Committee or the Tribunal may when imposing an order or condition of registration on a medical practitioner provide that the order or condition is a *critical compliance order or condition* a contravention of which will result in the practitioner's deregistration.

**Schedule 1 [8]** (proposed section 66 (2)) provides that the Board must suspend a medical practitioner from practising medicine if satisfied that the practitioner has contravened a critical compliance order or condition and must then refer the matter to the Tribunal as a complaint.

**Schedule 1 [6]** provides that the Tribunal must deregister a medical practitioner if satisfied when finding on a complaint about the practitioner that the practitioner has contravened a *critical compliance order or condition*. **Schedule 1 [7]** makes a consequential amendment.

### **Obtaining and disclosing information**

**Schedule 1 [17]** enables the Board to require any person to provide it with information, documents or evidence that would assist the Board in making a determination. It will be an offence, punishable by a maximum penalty of 20 penalty units, for a person who is required to comply with such a request to fail to do so

without reasonable excuse. **Schedule 1 [22]** enables the Board to require a registered medical practitioner to provide details of the practitioner's employment. Failure to provide information, or the provision of false or misleading information, is also to be an offence.

**Schedule 1 [12]** ensures there is no legal impediment to the Board providing any information, records or evidence obtained in connection with its functions under section 66 and related sections to the Commission, and **Schedule 1 [30]** enables the Board to give notice of any action it takes under Division 5 of Part 4 to any person or body the Board considers it appropriate to notify. **Schedule 1 [31] and [32]** make consequential amendments.

### **Applications for reconsideration, inquiries and appeals**

A registered medical practitioner affected by certain disciplinary action taken by the Board will have:

- (a) a right to apply to the Board to have the decision to take the action reconsidered (**Schedule 1 [11]**), and
- (b) a right of appeal to the Tribunal on a point of law (**Schedule 1 [20] and [24]**).

An application to the Supreme Court for judicial review of action taken by the Board under Division 5 of Part 4 will not be able to be made until an appeal to the Tribunal under the new provision has been made and disposed of.

**Schedule 1 [39]** requires a Committee or the Tribunal to list any inquiry or appeal relating to action taken by the Board under section 66 for hearing as soon as practicable.

### **Amendments relating to disciplinary bodies**

**Schedule 1 [23]** requires the Board to have regard to various matters, including previous complaints (including discontinued or terminated complaints) and further complaints about a registered medical practitioner in the exercise of its disciplinary and complaint-related functions in respect of the practitioner, to the extent that it reasonably considers any such complaint to be relevant.

**Schedule 1 [34]** enables a Committee or the Tribunal to admit as evidence in any proceedings any finding, decision or determination of a professional standards committee or a tribunal constituted under a health registration Act. **Schedule 1 [37]** enables a Committee or the Tribunal to take any such evidence (or other evidence currently admissible, such as the judgment or findings of a court) into account for the purposes of its disciplinary powers or the making of a finding that a practitioner is guilty of unsatisfactory professional conduct or professional misconduct. **Schedule 1 [36]** makes a consequential amendment. **Schedule 1 [3]** amends the definition of *professional misconduct* to make it clear that a finding of professional misconduct can be made on the basis of a series of instances of unsatisfactory professional conduct that, taken together, are of sufficient seriousness to justify the finding.

**Schedule 1 [38]** provides that, when a Committee or the Tribunal is dealing with more than one complaint about a registered medical practitioner, the Committee or Tribunal may have regard to the totality of the evidence when making a finding of fact in relation to the conduct of a registered medical practitioner or a finding that a registered medical practitioner is guilty of unsatisfactory professional conduct or professional misconduct in respect of any of the complaints.

**Schedule 1 [19]** provides that a review body reviewing the suspension, deregistration or placing of conditions on registration of a medical practitioner must (in addition to any other matters that it may take into account) take into account any complaints to the Board about the person whether made before or after the order being reviewed was made.

**Schedule 1 [28]** provides that proceedings of a Committee are to be open to the public unless the Committee otherwise directs in the public interest. Currently proceedings of a Committee are closed to the public unless the Committee otherwise directs.

**Schedule 1 [29]** provides for the Board to make decisions of a Committee publicly available unless the Committee has ordered otherwise.

**Schedule 1 [25]–[27]** provide for the appointment of an additional member of a Committee. The additional member is to be legally qualified (and not a registered medical practitioner) and is to be appointed as chairperson of the Committee to which they are appointed.

### **Miscellaneous amendments**

**Schedule 1 [2]** makes it clear that there is no need for a registered medical practitioner to have been prosecuted for or convicted of an offence relating to a contravention of the *Medical Practice Act 1992* or the regulations under that Act before a finding of unsatisfactory professional conduct can be made in respect of the contravention.

**Schedule 1 [23]** enables the Board to exercise any of its functions under the Act with the consent of the registered medical practitioner concerned.

**Schedule 1 [33] and [35]** correct typographical errors.

**Schedule 1 [40] and [41]** enact consequential savings and transitional provisions.

**Schedule 1 [21]** requires a registered medical practitioner to include with their annual return to the Board a copy of a certificate or policy of insurance for the professional indemnity insurance cover required to be held by the practitioner or such documents as the Board may require to establish that the medical practitioner is not required to have professional indemnity insurance cover.

## **Schedule 2     Amendment of Health Care Complaints Act 1993**

### **Principle of administration of Act**

**Schedule 2 [1]** gives effect to the object set out in paragraph (a) of the Overview.

### **Associated complaints and other matters**

**Schedule 2 [2]** inserts a new definition of *associated complaint*. An *associated complaint* is a complaint (including a discontinued or terminated complaint) made or referred to the Commission about a health practitioner who is, or a health organisation that is, the subject of another complaint being assessed or investigated by the Commission or prosecuted by the Commission before a disciplinary body established under a health registration Act.

**Schedule 2 [5]** provides that in assessing and reviewing its assessment of a complaint, the Commission is to have regard to any of the following matters, to the extent the Commission reasonably considers the matter to be relevant:

- (a) any associated complaint,
- (b) if the complaint relates to a health practitioner:
  - (i) any previous finding or determination of a professional standards committee or a tribunal constituted under a health registration Act in respect of the practitioner, and
  - (ii) any recommendation or statement made as a consequence of an assessment of the practitioner's professional performance under Part 5A of the *Medical Practice Act 1992*.

**Schedule 2 [3]** requires regard to be given to any relevant associated complaint during consultation between the Commission and the appropriate registration authority or the Registrar on how a complaint is to be dealt with. **Schedule 2 [4]** will allow an associated complaint that has been discontinued or terminated and to which regard has been given during consultation to be reopened and investigated.

**Schedule 2 [7]** requires the Commission to consider investigating associated complaints concurrently and, if it does not decide to do so, to have regard when investigating a complaint to any associated complaint. **Schedule 2 [6]** makes a consequential amendment. **Schedule 2 [8]** requires the Director of Proceedings to consider prosecuting associated complaints concurrently.

### **Miscellaneous amendments**

**Schedule 2 [9]** requires the Commission to deal as soon as practicable with matters referred to it following the exercise of emergency powers by a health registration board under a health registration Act.

**Schedule 2 [2]** relocates a definition of *disciplinary body* so that it applies to the entire Act and **Schedule 2 [12]** makes a consequential amendment.

**Schedule 2 [10] and [11]** enact consequential savings and transitional provisions.



New South Wales

# Medical Practice Amendment Bill 2008

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New South Wales

# Medical Practice Amendment Bill 2008

No. , 2008

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## A Bill for

An Act to amend the *Medical Practice Act 1992* and the *Health Care Complaints Act 1993* with respect to the principles of administration of and the exercise of disciplinary powers under those Acts; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Medical Practice Amendment Act 2008</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5
<b>3 Amendment of Medical Practice Act 1992 No 94</b>	6
The <i>Medical Practice Act 1992</i> is amended as set out in Schedule 1.	7
<b>4 Amendment of Health Care Complaints Act 1993 No 105</b>	8
The <i>Health Care Complaints Act 1993</i> is amended as set out in Schedule 2.	9 10
<b>5 Repeal of Act</b>	11
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	12 13
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	14 15

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<b>Schedule 1</b>	<b>Amendment of Medical Practice Act 1992</b>	1
	(Section 3)	2
<b>[1] Section 2A</b>		3
	Omit the section. Insert instead:	4
<b>2A Object and principle of administration of Act</b>		5
(1)	The object of this Act is to protect the health and safety of the public.	6 7
(2)	The object of this Act is achieved by providing mechanisms designed to ensure that:	8 9
	(a) medical practitioners are fit to practise medicine, and	10
	(b) medical students are fit to undertake medical studies and clinical placements.	11 12
(3)	In the exercise of functions under this Act the protection of the health and safety of the public is to be the paramount consideration.	13 14 15
<b>[2] Section 36 Meaning of “unsatisfactory professional conduct”</b>		16
	Insert “, whether or not the practitioner has been prosecuted for or convicted of an offence in respect of the contravention” after “regulations” in section 36 (1) (b).	17 18 19
<b>[3] Section 37</b>		20
	Omit the section. Insert instead:	21
<b>37 Meaning of “professional misconduct”</b>		22
	For the purposes of this Act, <i>professional misconduct</i> of a registered medical practitioner means:	23 24
	(a) unsatisfactory professional conduct, or	25
	(b) more than one instance of unsatisfactory professional conduct that, when the instances are considered together, amount to conduct,	26 27 28
	of a sufficiently serious nature to justify suspension of the practitioner from practising medicine or the removal of the practitioner’s name from the Register.	29 30 31

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<b>[4] Section 47</b>	1
Insert after section 46:	2
<b>47 Protection of complainants and other persons</b>	3
(1) If a person makes a complaint, and does so in good faith:	4
(a) the making of the complaint does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, and	5 6 7
(b) no liability for defamation is incurred because of the complaint, and	8 9
(c) the making of the complaint does not constitute a ground for civil proceedings for malicious prosecution or for conspiracy.	10 11 12
(2) The protections given to a complainant by this section extend to:	13
(a) any person who, in good faith, provided the complainant with any information on the basis of which the complaint was made, and	14 15 16
(b) any person who, in good faith, was otherwise concerned in the making of the complaint.	17 18
(3) This section does not limit or otherwise affect the operation of section 96 of the <i>Health Care Complaints Act 1993</i> .	19 20
<b>[5] Section 61 General powers to caution, reprimand, counsel etc</b>	21
Insert after section 61 (2):	22
(3) When a Committee or the Tribunal acting under this section makes an order or directs that any condition be imposed on a person's registration, the Committee or Tribunal may order that a contravention of the order or condition will result in the person being deregistered. The order or condition concerned is then a <b>critical compliance order or condition</b> under this section.	23 24 25 26 27 28
<b>[6] Section 64 Tribunal can suspend or deregister in certain cases</b>	29
Insert after section 64 (1):	30
(1A) The Tribunal must by order direct that a person be deregistered if the Tribunal is satisfied (when it finds on a complaint about the person) that the person has contravened an order or condition of the person's registration that is a critical compliance order or condition under section 61.	31 32 33 34 35

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<b>[7] Section 64 (2A)</b>	1
Omit “order under subsection (1)”.	2
Insert instead “order under this section”.	3
<b>[8] Section 66</b>	4
Omit the section. Insert instead:	5
<b>66 Suspension or conditions to protect the public</b>	6
(1) The Board must, if at any time it is satisfied that it is appropriate to do so for the protection of the health or safety of any person or persons (whether or not a particular person or persons) or if satisfied that the action is otherwise in the public interest:	7
(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	8
(b) impose on a registered medical practitioner’s registration such conditions relating to the practitioner’s practising medicine as the Board considers appropriate.	9
(2) If at any time the Board is satisfied that a registered medical practitioner has contravened an order or condition of the practitioner’s registration that is a critical compliance order or condition under section 61, the Board must:	10
(a) by order suspend the practitioner from practising medicine until a complaint concerning the matter is dealt with by the Tribunal, and	11
(b) refer the matter to the Tribunal as a complaint.	12
(3) The Board may take action under this section:	13
(a) whether or not a complaint has been made or referred to the Board about the practitioner, and	14
(b) whether or not proceedings in respect of such a complaint are before a Committee or the Tribunal.	15
(4) Without limiting the conditions that may be imposed under subsection (1) (b), the Board may (for the purpose of having the professional performance of a registered medical practitioner assessed under Part 5A) impose a condition requiring the practitioner to take part in the assessment, but such a condition has no effect unless and until the Commission concurs with the imposition of the condition.	16
(5) The Board is to give written notice of any action taken under this section to the practitioner concerned.	17
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- (6) If the Board delegates any function of the Board under this section to a group of 2 or more persons, at least one of those persons must be a person who is not a registered medical practitioner. 1  
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**[9] Section 66AA** 5

Insert after section 66: 6

**66AA Audio recording of meeting** 7

- (1) The Board must cause an audio recording to be made of any proceedings of the Board in connection with the consideration by the Board of the exercise (including proposed exercise) of any function under this Division in respect of a registered medical practitioner: 8  
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- (a) during which the practitioner (or the practitioner's adviser) is present, or 13  
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- (b) during which a person other than a member of the Board or a staff member of the Board is present and gives the Board oral information relevant to the Board's consideration. 15  
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- (2) A recording under this section is not admissible in evidence in any civil or criminal proceedings in a court of law (other than proceedings for an offence under this Act) or in an inquest or inquiry under the *Coroners Act 1980*. 18  
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**[10] Section 66A Power to remove or alter conditions or terminate suspension** 22  
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Omit section 66A (1). Insert instead: 24

- (1) The Board may, at any time: 25
- (a) by order, shorten or terminate a period of suspension imposed by the Board under this Division, or 26  
27
- (b) alter or remove conditions imposed under this Division. 28
- (1A) The Board may, at any time after taking action under section 66 with respect to a registered medical practitioner (*the original action*), take any other action it could have taken under that section at the time of taking the original action. 29  
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<b>[11] Section 66AB</b>	1
Insert before section 66B:	2
<b>66AB Review of certain decisions</b>	3
(1) A registered medical practitioner may apply to the Board for the review of a decision of the Board under section 66 or 66A to:	4
(a) suspend the practitioner from practising medicine, or	5
(b) impose conditions on the practitioner's registration or alter any such conditions.	6
(2) On receiving an application for review, the Board:	7
(a) may refuse to reconsider its decision if, in the opinion of the Board, the application is frivolous or vexatious, or	8
(b) must otherwise reconsider its decision, and in so doing is to consider any new evidence or material submitted by the practitioner or that the Board reasonably considers is relevant.	9
(3) Following its reconsideration of a decision, the Board may affirm or vary the decision or set it aside and take any action the Board has the power to take under section 66.	10
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<b>[12] Section 66B Referral of matter to Commission</b>	19
Insert after section 66B (1):	20
(1A) The Board may (despite any other Act or law) provide to the Commission any information obtained by the Board in connection with the exercise of functions under section 66 (including any information, copies of documents or evidence obtained under section 69B and a copy of any recording made under section 66AA) in respect of a matter that the Board refers to the Commission under this section.	21
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<b>[13] Section 66B (5)</b>	28
Omit the subsection. Insert instead:	29
(5) This section does not apply if the Board takes action against a registered medical practitioner under section 66:	30
(a) because the Board is of the opinion that the practitioner suffers from an impairment, or	31
(b) that is action of a kind referred to in section 66 (4).	32
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<b>[14] Section 66BA</b>	1
Insert after section 66B:	2
<b>66BA Special provision—performance assessment</b>	3
(1) If the Commission concurs with the proposed imposition by the Board under section 66 (4) of a condition on a registered medical practitioner’s registration requiring the practitioner to take part in a performance assessment under Part 5A, the matter giving rise to the proposal:	4
(a) is to be dealt with by way of performance assessment under Part 5A, and	5
(b) may, if the Board and the Commission agree, also be dealt with by the Commission as a complaint against the practitioner.	6
(2) If the Commission does not concur with the imposition of such a condition, the matter giving rise to the proposal is to be dealt with by the Commission as a complaint against the practitioner.	7
(3) The Board may (despite any other Act or law) provide to the Commission any information obtained by the Board in connection with the exercise of functions under section 66 (including any information, copies of documents or evidence obtained under section 69B and a copy of any recording made under section 66AA) in respect of a matter to be dealt with by the Commission under this section.	8
(4) If a matter is to be dealt with under this section by way of performance assessment under Part 5A, it may be so dealt with despite anything to the contrary in section 86D.	9
(5) If a matter is to be dealt with under this section as a complaint, 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.	10
(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 a Committee or the Tribunal.	11
(7) Section 52 (Serious complaints must be referred to Tribunal) applies in respect of any such action by the Commission.	12
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<b>[15] Section 67 Extension of suspension</b>	1
Omit section 67 (a). Insert instead:	2
(a) the Chairperson or a Deputy Chairperson is satisfied, on	3
the basis of information provided by the Board, that there	4
is no material change in the circumstances that gave rise to	5
the making of the order imposing the suspension and has	6
approved the extension in writing, and	7
<b>[16] Section 68</b>	8
Omit the section. Insert instead:	9
<b>68 Expiry or termination of suspension</b>	10
On the expiry or termination of a period of suspension imposed	11
under this Division, the person's rights and privileges as a	12
registered medical practitioner are revived, subject to any other	13
action taken by the Board under this Division or any order of the	14
Tribunal on a complaint that is referred to the Tribunal.	15
<b>[17] Section 69B</b>	16
Insert after section 69A:	17
<b>69B Powers of Board to obtain information, records and evidence</b>	18
(1) If the Board is of the opinion that a person is capable of giving	19
information, producing documents (including medical records)	20
or giving evidence that would assist the Board in making a	21
determination with respect to any action taken or proposed to be	22
taken by the Board under this Division, the Board may, by notice	23
in writing given to the person, require the person to do any one or	24
more of the following:	25
(a) to give the Board, in writing signed by the person (or, in	26
the case of a corporation, by a competent officer of the	27
corporation), within the time and in the manner specified	28
in the notice, any such information of which the person has	29
knowledge,	30
(b) to produce to the Board, in accordance with the notice, any	31
such documents,	32
(c) to appear before the Board or a member of staff of the	33
Board authorised by the President or Deputy President of	34
the Board at a time and place specified in the notice that is	35
reasonable and give any such evidence, either orally or in	36
writing, and produce any such documents.	37

(2)	Information and documents may be given or provided to the Board in compliance with this section despite any other Act or law.	1 2 3
(3)	A person who is subject to a requirement made under subsection (1) must not:	4 5
(a)	without reasonable excuse, fail to comply with the requirement, or	6 7
(b)	in purported compliance with the requirement, provide information, documents or evidence knowing the information, documents or evidence to be false or misleading in a material particular.	8 9 10 11
	Maximum penalty: 20 penalty units.	12
[18]	<b>Part 4, Division 7</b>	13
	Insert after Division 6 of Part 4:	14
	<b>Division 7 Reportable misconduct</b>	15
<b>71A</b>	<b>Reportable misconduct</b>	16
(1)	A registered medical practitioner commits <i>reportable misconduct</i> in the following circumstances:	17 18
(a)	if he or she practises medicine while intoxicated by drugs (whether lawfully or unlawfully administered) or alcohol,	19 20
(b)	if he or she practises medicine in a manner that constitutes a flagrant departure from accepted standards of professional practice or competence and risks harm to some other person,	21 22 23 24
(c)	if he or she engages in sexual misconduct in connection with the practice of medicine.	25 26
(2)	A registered medical practitioner who believes, or ought reasonably to believe, that some other registered medical practitioner has committed reportable misconduct must, as soon as practicable, report the conduct to the Board.	27 28 29 30
	<b>Note.</b> Pursuant to sections 36 (1) (b) and 37, failure to comply with this section will constitute either unsatisfactory professional conduct or professional misconduct.	31 32 33
(3)	A report under this section:	34
(a)	is to be made and dealt with in the same way as a complaint, and	35 36

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(b)	is taken to be a complaint, both for the purposes of this Part and for the purposes of sections 96 and 98 of the <i>Health Care Complaints Act 1993</i> .	1 2 3
<b>[19]</b>	<b>Section 94A Inquiry into review application</b>	4
	Insert after section 94A (2):	5
(3)	In addition to any other matter that the review may take into account, the review must take into account any complaint made or notified to the Board about the person, whether the complaint was made or notified before or after the making of the order that is the subject of the review and whether or not the complaint was referred under Division 3 of Part 4 or any other action was taken on the complaint.	6 7 8 9 10 11 12
<b>[20]</b>	<b>Section 95A</b>	13
	Insert after section 95:	14
	<b>95A Appeal on point of law</b>	15
(1)	Without affecting any right of appeal under section 95, a registered medical practitioner who is the subject of action taken by the Board under section 66, 66A or 66AB may appeal with respect to a point of law to the Chairperson of the Tribunal or a Deputy Chairperson nominated by the Chairperson.	16 17 18 19 20
(2)	An appeal under this section does not operate to stay the effect of the Board's decision unless the Chairperson or Deputy Chairperson otherwise orders.	21 22 23
(3)	The Board must not make any decision that is inconsistent with the Chairperson's or Deputy Chairperson's determination with respect to a point of law under this section.	24 25 26
(4)	A registered medical practitioner may not make an application to the Supreme Court for judicial review of action taken by the Board under section 66, 66A or 66AB, being an application alleging any error of law, until an appeal under this section in respect of the point of law concerned has been made and disposed of.	27 28 29 30 31 32
<b>[21]</b>	<b>Section 127A Practitioners to submit annual return</b>	33
	Insert after section 127A (1):	34
(1A)	A registered medical practitioner must include with each return furnished to the Board under this section such of the following documents as may be necessary for the purpose of demonstrating that the medical practitioner has complied with section 19	35 36 37 38

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(Medical practitioners must be covered by approved professional indemnity insurance) of the *Health Care Liability Act 2001* in respect of medical practice during the return period or was not required to comply with that section:

(a) a copy of a certificate or policy of insurance for professional indemnity insurance cover held by the practitioner,

(b) such documents as the Board indicates (by guidelines published by the Board) will be accepted by the Board as demonstrating that the practitioner is not required to comply with that section.

**[22] Section 127C** 12

Omit the section. Insert instead: 13

**127C Board may require further information from practitioner** 14

- (1) The Board may, by written notice to a registered medical practitioner, require 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. 15-19
- (2) The Board may, for the purpose of facilitating the exercise of its functions under section 191B, by written notice to a registered medical practitioner, require the practitioner to provide to the Board, within a reasonable period specified in the notice, any of the following: 20-24
- (a) details of any employer of the practitioner during the period or periods specified in the notice, 25-26
- (b) details of the chief executive officer (however described) of any public health organisation in respect of which the practitioner is or was a visiting practitioner or is or was otherwise accredited during the period or periods specified in the notice, 27-31
- (c) details of the chief executive officer (however described) of any private hospital or day procedure centre in respect of which the practitioner is or was accredited during the period or periods specified in the notice, 32-35
- (d) details of the chief executive officer (however described) of any nursing home (within the meaning of the *Public Health Act 1991*) in respect of which the practitioner is or was accredited during the period or periods specified in the notice. 36-40

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(3) A registered medical practitioner must not:	1
(a) without reasonable excuse, fail to comply with a requirement under this section, or	2
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(b) in purported compliance with a requirement under this section, provide information knowing it to be false or misleading in a material particular.	4
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Maximum penalty: 20 penalty units.	7
<b>[23] Part 10, Division 1A</b>	8
Insert after section 140:	9
<b>Division 1A Proceedings of the Board</b>	10
<b>140A Other matters to be taken into account</b>	11
In the exercise of any of its functions under Division 3 or 5 of Part 4 with respect to a complaint about a registered medical practitioner, the Board is to have regard to any of the following matters, to the extent the Board reasonably considers the matter to be relevant to the complaint:	12
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(a) any other complaint about the practitioner that has been made or notified to the Board, including a complaint:	17
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(i) in respect of which the Board or the Commission has determined no further action should be taken, and	19
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(ii) that is not required to be referred, or that the Board or the Commission decides not to refer, under Division 3 of Part 4,	22
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(b) any previous finding or determination of a professional standards committee or a tribunal constituted under a health registration Act in respect of the practitioner,	25
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(c) any written report made by an assessor following an assessment of the practitioner's professional performance under Part 5A,	28
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(d) any recommendation made, or written statement of decision on a performance review provided, by a Performance Review Panel following a review of the practitioner's professional performance under that Part.	31
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<b>140B Exercise of functions with consent</b>	35
(1) The Board may exercise any of its functions under this Act with respect to a registered medical practitioner with the consent in writing of the practitioner concerned.	36
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(2)	A function exercised by the Board with the consent of the registered medical practitioner concerned may be exercised even though any conditions otherwise required to be met or procedures otherwise required to be followed before its exercise have not been met or followed.	1 2 3 4 5
(3)	If a registered medical practitioner withdraws his or her consent under this section the Board must take such action as is necessary to give effect to the withdrawal of consent.	6 7 8
<b>[24]</b>	<b>Section 164 Adjournments and interlocutory orders</b>	9
	Insert after section 164 (2):	10
(3)	The Tribunal may, in respect of an appeal under section 95A, make an order staying the decision of the Board appealed against until the appeal has been disposed of.	11 12 13
<b>[25]</b>	<b>Section 168 Board to constitute Committee when required</b>	14
	Omit “3 persons” from section 168 (2). Insert instead “4 persons”.	15
<b>[26]</b>	<b>Section 169 Membership of Committee</b>	16
	Omit section 169 (1) and (2). Insert instead:	17
(1)	A Committee is to consist of:	18
(a)	2 registered medical practitioners having such qualifications as may be prescribed, and	19 20
(b)	one person who is legally qualified and not a registered medical practitioner and who is to be appointed by the Board as chairperson of the Committee, and	21 22 23
(c)	one lay person (that is, a person who is not a registered medical practitioner) appointed from among a panel of lay persons for the time being nominated by the Minister.	24 25 26
<b>[27]</b>	<b>Section 171 How a Committee decides</b>	27
	Omit “2 members”. Insert instead “3 members”.	28
<b>[28]</b>	<b>Section 176 Procedure for inquiry</b>	29
	Omit section 176 (1) and (2). Insert instead:	30
(1)	A Committee is to conduct proceedings on an inquiry as it thinks fit. Proceedings of a Committee are to be open to the public except when the Committee otherwise directs.	31 32 33

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(2)	A Committee is not to direct that proceedings are to be closed to the public unless satisfied that it is desirable to do so in the public interest for reasons connected with the subject-matter of the inquiry or the nature of the evidence to be given.	1 2 3 4
<b>[29]</b>	<b>Section 180 Committee to provide details of its decision</b>	5
	Omit section 180 (4). Insert instead:	6
(4)	The Board:	7
(a)	must make publicly available a statement of a decision provided to it under this section if the decision is in respect of a complaint that has been proved or admitted in whole or in part, and	8 9 10 11
(b)	may disseminate any other statement of a decision as the Board thinks fit,	12 13
	unless the Committee that provided the statement has ordered otherwise.	14 15
<b>[30]</b>	<b>Section 191B Notification of orders to practitioner’s employer and others</b>	16
	Insert after section 191B (1):	17
(1A)	Without limiting subsection (1), the Board may give notice of any action taken under Division 5 of Part 4 to any person or body the Board reasonably considers it appropriate to notify.	18 19 20
<b>[31]</b>	<b>Section 191B (2)</b>	21
	Omit “The notice”. Insert instead “A notice under subsection (1)”.	22
<b>[32]</b>	<b>Section 191B (3)</b>	23
	Omit “The notice”. Insert instead “A notice under this section”.	24
<b>[33]</b>	<b>Schedule 2 Proceedings before a Committee or the Tribunal</b>	25
	Insert “any of the following” after “on production” in clause 4.	26
<b>[34]</b>	<b>Schedule 2, clause 4</b>	27
	Insert after clause 4 (b):	28
(b1)	a finding, decision or determination of a professional standards committee constituted under a health registration Act,	29 30 31
<b>[35]</b>	<b>Schedule 2, clause 4 (c)</b>	32
	Omit “or” where secondly occurring.	33

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<b>[36] Schedule 2, clause 4</b>	1
Insert “, decision, determination” after “certificate” where secondly occurring.	2
<b>[37] Schedule 2, clause 4 (2)</b>	3
Insert at the end of clause 4:	4
(2) If the Committee or Tribunal is of the opinion that evidence so admitted is capable of establishing that a registered medical practitioner has engaged in conduct that is sufficiently similar to the conduct alleged against the practitioner in the proceedings, it may rely on the evidence in:	5
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(a) making a finding that a registered medical practitioner is guilty of unsatisfactory professional conduct or professional misconduct, or	10
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(b) exercising any of its powers under Division 4 of Part 4.	13
<b>[38] Schedule 2, clause 5 (2A)</b>	14
Insert after clause 5 (2):	15
(2A) In proceedings in which a Committee or the Tribunal is dealing with more than one complaint about a registered medical practitioner, the Committee or Tribunal may have regard to all the evidence before it (whether the evidence arose in relation to a complaint in respect of which the Committee or Tribunal is making a finding or any other complaint or complaints in the proceedings) when making any of the following findings:	16
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(a) a finding on a question of fact in relation to the conduct of a registered medical practitioner,	23
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(b) a finding that a registered medical practitioner is guilty of unsatisfactory professional conduct or professional misconduct.	25
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<b>[39] Schedule 2, clause 10 (2)</b>	28
Omit the subclause. Insert instead:	29
(2) Without affecting the generality of subclause (1):	30
(a) an inquiry or appeal related to action taken by the Board under section 66 is to be listed for hearing by a Committee or the Tribunal as soon as practicable, and	31
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(b) a Committee or the Tribunal may postpone or adjourn proceedings before it as it thinks fit.	34
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<b>[40]</b>	<b>Schedule 5 Savings and transitional provisions</b>	1
	Insert at the end of clause 2 (1):	2
	<i>Medical Practice Amendment Act 2008</i> (but only to the extent that it amends this Act)	3 4
<b>[41]</b>	<b>Schedule 5, Part 8</b>	5
	Insert after Part 7:	6
	<b>Part 8 Provisions consequent on enactment of Medical Practice Amendment Act 2008</b>	7 8
<b>37</b>	<b>Definition</b>	9
	In this Part:	10
	<i>amending Act</i> means the <i>Medical Practice Amendment Act 2008</i> .	11
<b>38</b>	<b>Definition of “professional misconduct”</b>	12
	Section 37, as substituted by the amending Act, extends to instances of unsatisfactory professional conduct occurring before the section is substituted.	13 14 15
<b>39</b>	<b>Changes to conditions or suspension of registration</b>	16
	An amendment made by the amending Act to section 66A extends to action taken by the Board before the commencement of the amendment.	17 18 19
<b>40</b>	<b>Review of Board decisions</b>	20
	Section 66AB extends to decisions of the Board made before the commencement of that section.	21 22
<b>41</b>	<b>Provision of information to Commission</b>	23
	Sections 66B (1A) and 66BA (3) extend to information obtained by the Board before the commencement of those subsections.	24 25
<b>42</b>	<b>Extension of suspension</b>	26
	The amendment of section 67 by the amending Act applies to the extension (after the commencement of the amendment) of the period of a suspension even if the suspension was imposed before the commencement of the amendment.	27 28 29 30

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<b>43</b>	<b>Appeal on point of law</b>	1
	Section 95A extends to action taken by the Board before the commencement of that section.	2 3
<b>44</b>	<b>Matters to be taken into account by Board</b>	4
	Section 140A extends to authorise the Board to have regard to matters occurring before the commencement of that section.	5 6
<b>45</b>	<b>Notification of orders to employers etc</b>	7
	An amendment of section 191B by the amending Act extends to the giving of notice of action taken before the commencement of the amendment.	8 9 10
<b>46</b>	<b>Matters to be taken into account by Committee or Tribunal</b>	11
	An amendment made by the amending Act to Schedule 2 extends to:	12 13
	(a) any judgment, finding, decision, determination, verdict, certificate or evidence made or given before the commencement of the amendment, and	14 15 16
	(b) proceedings pending before the Committee or the Tribunal on the commencement of the amendment.	17 18
<b>47</b>	<b>Matters to be taken into account on inquiry into review application</b>	19
	Section 94A (3) as inserted by the amending Act extends to any complaint made or notified to the Board before the commencement of that subsection.	20 21 22
<b>48</b>	<b>Delegation by Board</b>	23
	Section 66 (6) as inserted by the amending Act does not extend to a delegation made before the commencement of that subsection.	24 25 26
<b>49</b>	<b>Professional Standards Committees</b>	27
	(1) An amendment made to section 168, 169 or 171 by the amending Act does not apply to a Professional Standards Committee constituted before the commencement of the amendment.	28 29 30
	(2) Section 180 (4) as substituted by the amending Act does not apply to a statement of a decision provided to the Board before the substitution of the subsection.	31 32 33

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<b>Schedule 2</b>	<b>Amendment of Health Care Complaints Act 1993</b>	1
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	(Section 4)	3
<b>[1] Section 3 Object and principle of administration of Act</b>		4
	Omit section 3 (2). Insert instead:	5
	(2) In the exercise of functions under this Act the protection of the health and safety of the public must be the paramount consideration.	6 7 8
<b>[2] Section 4 Definitions</b>		9
	Insert in alphabetical order:	10
	<i>associated complaint</i> means a complaint made or referred to the Commission in respect of a health practitioner who is, or a health organisation that is, the subject of another complaint being assessed or investigated by the Commission or being prosecuted by the Commission before a disciplinary body, and includes:	11 12 13 14 15
	(a) a complaint made at any time prior to the completion of the assessment, investigation or prosecution of that other complaint, and	16 17 18
	(b) a complaint that has been discontinued or terminated.	19
	<i>disciplinary body</i> means a person or body (including a professional standards committee) established under a health registration Act that has the power to discipline a health practitioner or to suspend or cancel (by whatever means) the registration of a health practitioner.	20 21 22 23 24
<b>[3] Section 12 Consultation between the Commission, a registration authority and the Registrar</b>		25 26
	Insert after section 12 (2):	27
	(3) Consultation under this section is to include consultation about any associated complaint, to the extent the Commission and the appropriate registration authority or the Registrar consider the associated complaint to be relevant.	28 29 30 31
<b>[4] Section 13 The outcomes of consultation</b>		32
	Insert after section 13 (2):	33
	(2A) If either the Commission or the appropriate registration authority is of the opinion that an associated complaint that has been	34 35

discontinued or terminated and to which regard was given during consultation:	1
	2
(a) should be reopened or investigated—the complaint must be reopened and investigated in accordance with Division 5, or	3
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(b) should be referred to the appropriate registration authority for consideration as to whether the registration authority should take any action under the relevant health registration Act—the complaint must be so referred,	6
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as if it had not been discontinued or terminated.	10
<b>[5] Section 22A</b>	11
Insert after section 22:	12
<b>22A Associated complaints to be taken into account</b>	13
In assessing, and reviewing its assessment of, a complaint relating to a health practitioner or a health organisation, the Commission is to have regard to any of the following matters, to the extent the Commission reasonably considers the matter to be relevant to the complaint:	14
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(a) any associated complaint,	19
(b) if the complaint relates to a health practitioner:	20
(i) any previous finding or determination of a professional standards committee or a tribunal constituted under a health registration Act in respect of the practitioner, and	21
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(ii) any recommendation made, or written statement of decision on a performance review provided, by a Performance Review Panel following a review of the practitioner’s professional performance under Part 5A of the <i>Medical Practice Act 1992</i> and that is provided to the Commission by the New South Wales Medical Board.	25
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<b>[6] Section 29 The purpose of investigation</b>	32
Omit section 29 (2).	33

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<b>[7] Section 29A</b>	1
Insert after section 29:	2
<b>29A Conduct of investigations</b>	3
(1) Without affecting the generality of section 92A, the investigation of a complaint is to be conducted as expeditiously as the proper investigation of the complaint permits. Expedition is particularly appropriate if the complainant or the person on whose behalf the complaint is made is seriously ill.	4 5 6 7 8
(2) Before investigating a complaint, the Commission is to consider conducting a concurrent investigation into any associated complaint (other than one that has been discontinued or terminated and not reopened).	9 10 11 12
(3) In investigating a complaint, the Commission is to have regard to any associated complaint that is not being investigated concurrently, to the extent the Commission considers the associated complaint to be relevant.	13 14 15 16
<b>[8] Section 90C Criteria relevant to determinations of Director of Proceedings</b>	17 18
Insert after section 90C (1):	19
(1A) When determining whether a complaint should be prosecuted by the Commission before a disciplinary body, the Director of Proceedings is to consider making a determination with respect to any associated complaint that has been referred to the Director of Proceedings (other than an associated complaint that is a complaint that has been discontinued or terminated and not reopened) so that the complaints are prosecuted concurrently.	20 21 22 23 24 25 26
<b>[9] Section 92A</b>	27
Insert after section 92:	28
<b>92A Expedition of certain matters</b>	29
The Commission is to assess, investigate and, where appropriate, prosecute as quickly as practicable matters referred to it following action by:	30 31 32
(a) the Chiropractors Registration Board under section 54 of the <i>Chiropractors Act 2001</i> , or	33 34
(b) the Dental Board under section 72 of the <i>Dental Practice Act 2001</i> , or	35 36

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(c)	the Dental Technicians Registration Board under section 19B of the <i>Dental Technicians Registration Act 1975</i> , or	1 2 3
(d)	the New South Wales Medical Board under section 66 of the <i>Medical Practice Act 1992</i> , or	4 5
(e)	the Nurses and Midwives Board under section 48 of the <i>Nurses and Midwives Act 1991</i> , or	6 7
(f)	the Optometrists Registration Board under section 58 of the <i>Optometrists Act 2002</i> , or	8 9
(g)	the Osteopaths Registration Board under section 54 of the <i>Osteopaths Act 2001</i> , or	10 11
(h)	the Pharmacy Board under section 67 of the <i>Pharmacy Practice Act 2006</i> , or	12 13
(i)	the Physiotherapists Registration Board under section 55 of the <i>Physiotherapists Act 2001</i> , or	14 15
(j)	the Podiatrists Registration Board under section 54 of the <i>Podiatrists Act 2003</i> , or	16 17
(k)	the Psychologists Registration Board under section 54 of the <i>Psychologists Act 2001</i> .	18 19
<b>[10]</b>	<b>Schedule 4 Savings, transitional and other provisions</b>	20
	Insert at the end of clause 1 (1):	21
	<i>Medical Practice Amendment Act 2008</i> (but only to the extent that it amends this Act)	22 23
<b>[11]</b>	<b>Schedule 4, Part 7</b>	24
	Insert as Part 7:	25
	<b>Part 7 Provisions consequent on enactment of Medical Practice Amendment Act 2008</b>	26 27
	<b>19 Definition</b>	28
	In this Part:	29
	<b>amending Act</b> means the <i>Medical Practice Amendment Act 2008</i> .	30
	<b>20 Associated complaints</b>	31
	An amendment made by the amending Act in relation to associated complaints extends to associated complaints made or referred before the commencement of the amendment.	32 33 34

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<b>21</b>	<b>Concurrent investigation of associated complaints</b>	1
	Section 29A extends to the investigation of a complaint made or referred to the Commission before the commencement of that section.	2 3 4
<b>[12]</b>	<b>Schedule 5 Special provisions relating to Walker Special Commission of Inquiry</b>	5 6
	Omit the definition of <i>disciplinary body</i> from clause 1.	7