

# Medical Practice Act 1992 No 94

[1992-94]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Private Health Facilities Act 2007 No 9](#) (not commenced)
  - [Health Legislation Amendment Act 2009 No 15](#) (not commenced — to commence on 1.11.2009)
  - [Coroners Act 2009 No 41](#) (not commenced)

### Authorisation

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# Medical Practice Act 1992 No 94



New South Wales

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# Medical Practice Act 1992 No 94



New South Wales

An Act to provide for the registration of medical practitioners and medical students and the making of complaints and the taking of disciplinary action against medical practitioners; to repeal the *Medical Practitioners Act 1938*; to amend certain Acts; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Medical Practice Act 1992*.

### 2 Commencement

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

### 2A Object and principle of administration of Act

- (1) The object of this Act is to protect the health and safety of the public.
- (2) The object of this Act is achieved 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.
- (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.

### 3 Definitions

- (1) Expressions used in this Act (or in a particular provision of this Act) which are defined in the Dictionary at the end of this Act have the meanings set out in the Dictionary.
- (2) Notes included in this Act are explanatory notes and do not form part of this Act.

## Part 2 Registration

### Division 1 Qualifications etc for registration

#### 4 Entitlement to general registration based on qualifications and training

- (1) A person is entitled to be registered as a medical practitioner if the person has recognised medical qualifications and has successfully completed a period of internship or supervised training as required by the Board.
- (2) A person has **recognised medical qualifications** if the person:
  - (a) is a graduate of a Medical School (whether within or outside Australia) accredited by the Australian Medical Council, or
  - (b) has successfully completed examinations held by that Council for the purposes of registration as a medical practitioner, or
  - (c) has received a certificate or other kind of qualification in accordance with a process approved by the Board for the purpose of qualifying a person for registration as a medical practitioner.
- (3) The entitlement under this section is an entitlement to general registration.

#### 5 Entitlement to conditional registration for interns

- (1) A person is entitled to be registered as a medical practitioner subject to appropriate conditions if the person would be entitled to registration under section 4 except for the fact that he or she has not completed a period of internship or supervised training required by the Board.
- (2) The **appropriate conditions** of registration are such conditions as the Board thinks appropriate for the purpose of enabling the person to complete that internship or training.

#### 6 (Repealed)

#### 7 Conditional registration at the discretion of the Board

- (1) The Board may register a person as a medical practitioner under any of the following provisions and may impose such conditions on that registration as the Board thinks appropriate:

##### A Graduates from non-accredited institutions—postgraduate training

A person who is a graduate of medicine from an institution which is not accredited by the Australian Medical Council may be registered on a temporary basis to enable the person to undertake a period of postgraduate training in medicine approved by the Board.

**B Candidates for Council examinations approved for supervised training**

A person who is a candidate for an examination held by the Australian Medical Council and has been approved by that Council to undertake a period of supervised training approved by the Board before sitting for the examination may be registered for the purpose of enabling the person to undertake that training.

**C Medical teaching or research**

A person may be registered for the purpose of enabling the person to fill a medical teaching or research position if the person has qualifications that the Board recognises for that purpose.

**D Unmet areas of need**

A person may be registered for the purpose of enabling an unmet area of need to be met if the Board is satisfied that the person has suitable qualifications and experience to practise medicine in that area of need.

**E Recognised specialist qualifications and experience**

A person may be registered if the Board is satisfied that he or she has specialist qualifications and experience in medicine recognised by the relevant Australian specialist college or institution and registration is for the purpose of enabling him or her to practise within that specialty.

**F Foreign specialist qualifications and experience—further training**

A person may be registered if the Board is satisfied that he or she has specialist qualifications and experience in medicine obtained outside Australia, being qualifications which are not recognised by the relevant Australian specialist college or institution, and registration is for the purpose of enabling him or her to undergo further specialist training or examination before being assessed for recognition by that college or institution.

**G Temporary registration in the public interest**

A person may be registered on a temporary basis if the Board is satisfied that it is in the public interest to do so.

- (2) Despite section 13, a person may be registered under this section even though he or she does not have a command of the English language that is adequate for the practice of medicine but only if the Board thinks that registration is appropriate in the circumstances.

**8 Interim registration available in certain cases**

- (1) An applicant for registration may be granted interim registration in either of the following cases:



- (a) if the person is entitled to registration under section 4 (Entitlement to general registration based on qualifications and training) but it is not practicable to wait until the Board can consider the application,
  - (b) if the person would be entitled to registration under section 5 (Entitlement to conditional registration for interns) except for the fact that a degree or award to which the applicant is entitled has not yet been conferred or granted by the institution concerned.
- (2) A person authorised by the Board for the purposes of this section may grant an applicant for registration interim registration in accordance with this section.
  - (3) A person's interim registration is in force from the time of its grant until the person is given notice that any of the following things has happened:
    - (a) the Board has granted him or her registration,
    - (b) the Board has refused the application for registration,
    - (c) the Board has cancelled the interim registration.
  - (4) The Board may cancel a person's interim registration for any reason that it considers proper and must then immediately give the person notice of the cancellation.
  - (5) A person who holds interim registration is for all purposes taken to be a registered medical practitioner.
  - (6) The date on which a person is registered is (if the person was the holder of interim registration immediately before the person is registered), taken to be the date on which interim registration was granted.
  - (7) Interim registration granted under this section is taken to have been granted by the Board.

## **9 Non-practising registration**

A person who is entitled to or eligible for registration under any other provision of this Part but who does not intend to practise may elect to be registered subject to the condition that the person is not to practise medicine. The Board may then register the person subject to such a condition.

## **10 Conditions may be imposed in cases of impairment**

- (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.
- (2) A registered medical practitioner who has had conditions imposed on his or her

registration under this section (including on a review under this section) may apply to the Board for a review of the conditions.

- (3) The Board may decline to review the conditions if the application is made within 12 months after the conditions were last reviewed under this section. No appeal lies in respect of such a decision by the Board to decline to review conditions.
- (4) On a review of conditions the Board may alter or remove conditions or impose new conditions, as it thinks appropriate.

#### **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.

### **Division 2 Grounds for refusing registration**

#### **12 Registration may be refused despite entitlement or eligibility**

The provisions of this Division override any entitlement to or eligibility for registration under Division 1.

#### **13 Applicants must be competent and of good character**

The Board must not register a person as a medical practitioner unless satisfied that the person:

- (a) is competent to practise medicine (that is, the person has sufficient physical capacity, mental capacity and skill to practise medicine and has sufficient communication skills for the practice of medicine, including an adequate command of the English language), and
- (b) is of good character.

#### **14 Restrictions on registration of deregistered persons**

- (1) A person cannot apply for registration (and any such application must be rejected) if the person has been deregistered under this Act.
- (2) A person is **deregistered** when:
  - (a) the person's name is removed from the Register pursuant to an order of the Chairperson or a Deputy Chairperson, the Tribunal or the Supreme Court, or
  - (b) the Chairperson or a Deputy Chairperson, the Tribunal or the Supreme Court orders that the person not be re-registered.
- (3) The only way such a person can again be registered is on a review under Division 3 of

Part 6 of the order by which the person was deregistered.

**15 Registration may be refused if applicant convicted of offence**

- (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.
- (2) The Board is to have regard to the nature of an offence (such as, for example, whether it is of a trivial nature) and the circumstances in which it was committed in making a decision under this section.

**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.

**Division 3 Appeals**

**17 Right of appeal**

- (1) A person may appeal to the Tribunal against any of the following determinations of the Board:
  - (a) a determination because of which the person's application for registration has

been refused or a condition has been imposed on the person's registration,

(b) a determination on a review under section 10 (Conditions may be imposed in cases of impairment) of the conditions to which a person's registration is subject.

(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 determination is given to the person.

### **18 Appeal to be lodged with Registrar**

An appeal must be lodged with the Registrar who is to refer it to the Tribunal.

### **19 Appeal from inquiry decision to be by way of rehearing**

If the determination in respect of which an appeal is made was made as a consequence of an inquiry held by the Board, 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 inquiry may be given.

### **20 Pending appeal does not affect Board's determination**

An appeal does not affect any determination with respect to which it is made until the appeal is determined.

### **21 Determination of appeal**

(1) When it determines an appeal, the Tribunal may dismiss the appeal or order that the determination of the Board be revoked and replaced by a different determination made by the Tribunal and specified in the order. The Tribunal may also make such ancillary orders as it thinks proper.

(2) The Tribunal's decision is taken to be a determination of the Board (but this does not confer a right of appeal under this Division in respect of the Tribunal's decision).

## **Division 4 Registration procedures**

### **22 Machinery provisions**

Schedule 1 has effect. It makes provision with respect to applications for registration, procedures for dealing with applications, inquiries concerning entitlement to and eligibility for registration, the keeping and alteration of the Register, and annual registration fees.

### **23 Some applications for registration to be dealt with by Committee**

(1) An application for registration made by a person whose name was removed from the Register pursuant to an order under this Act on the grounds that the person did not have sufficient physical capacity or mental capacity to practise medicine is to be dealt with by a Committee instead of the Board.

- (2) For that purpose the Committee has all the functions of the Board under this Act with respect to the application and a decision of a Committee on the application is taken to be a decision of the Board.

#### **24 How registration ceases**

A registered medical practitioner ceases to be registered when:

- (a) the Board gives the person notice that the person's name has been removed from the Register in accordance with this Act, or
- (b) if registration is conditional and the period of the registration is specified in a condition—the period expires.

### **Part 3 Removal from and alteration of the Register**

#### **Division 1 General powers to remove from or alter the Register**

##### **25 Removal of person wrongfully registered**

The Board may remove the name of any person from the Register who has been registered by reason of any false or fraudulent representation or declaration, made either verbally or in writing, or who is not entitled or eligible to be registered.

##### **26 Amendment of incorrect particulars concerning qualifications**

- (1) The Board may remove particulars from, or otherwise amend, the Register if any particulars appearing on the Register in respect of the qualifications of a registered medical practitioner are proved to the satisfaction of the Board to be or are to the knowledge of the Board false or erroneous in any respect.
- (2) This requirement applies even if, when the entry in the Register was made, the practitioner had the qualifications concerned or the entry was otherwise correct.

##### **27 Removal on death or at own request**

The Board must remove the name of a registered medical practitioner from the Register if the practitioner has died or has requested the Board to remove his or her name.

##### **28 Removal or amendment pursuant to disciplinary order**

- (1) The Board must remove the name of a person from the Register if removal of the person's name is required by any order under this Act of the Chairperson, a Deputy Chairperson, the Tribunal or the Supreme Court.
- (2) The Board is to make such recordings in the Register as may be necessary to give effect to any order under this Act of the Board, a Committee, the Chairperson, a Deputy Chairperson, the Tribunal or the Supreme Court as to the conditions to be imposed on a person's registration.

## 29 Appeal

- (1) A person whose name has been removed from the Register under section 25 (Removal of person wrongfully registered) or the particulars of whose qualifications have been altered under section 26 (Amendment of incorrect particulars concerning qualifications) may appeal to the Tribunal against the removal or alteration.
- (2) The appeal must be made within 28 days (or such longer period as the Registrar may allow in a particular case) after notice of the removal or alteration is given to the person.
- (3) The Tribunal may make such order in the matter as it thinks fit (or may refuse to make any order) and the Board is to give effect to any order of the Tribunal.

## 30 Practitioner to be notified of action

- (1) The Board must give the practitioner concerned notice of action taken by the Board under this Division and the action does not take effect until the notice is given.
- (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.

## Division 2 Powers resulting from action under foreign law

### 31 Meaning of "foreign law"

In this Division:

**foreign law** means a law of any other State or a Territory or of another country providing for the registration, licensing or certification of medical practitioners under an authority established by a law of that State, Territory or country.

### 32 Deregistration on basis of disciplinary action under foreign law

- (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.
- (2) When this section applies and the foreign law concerned is a law of a place in Australia, the Board must remove the name of the person from the Register. If the foreign law is a law of a place outside Australia, the Board may remove the name of the person from the Register.

- (3) The Board may restore any name so removed from the Register, if it thinks it appropriate in the circumstances.
- (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).

### **33 Imposition of conditions imposed under foreign law**

- (1) This section applies when it is proved to the satisfaction of the Board that, after a person was registered under this Act, a condition has been placed on the person's registration, licensing or certification under a foreign law.
- (2) When this section applies and the foreign law concerned is a law of a place in Australia, the Board must make such recordings in the Register as may be necessary to impose that condition on the person's registration under this Act. If the foreign law is a law of a place outside Australia, the Board may make those recordings in the Register.

### **34 Practitioner to be notified of action**

The Board must give the practitioner concerned notice of action taken by the Board under this Division and the action does not take effect until the notice is given.

### **35 Appeal**

- (1) A person may appeal to the Tribunal against a decision of the Board to remove the person's name from the Register under this Division but there is no right of appeal when the Board is required under this Division to remove the person's name.
- (2) The appeal must be lodged with the Registrar who is to refer it to the Tribunal.
- (3) The appeal must be made within 28 days (or such longer period as the Registrar may allow in a particular case) after notice of the Board's decision is given to the person.
- (4) On the appeal, the Tribunal may dismiss the appeal or order that the person's name be restored to the Register.
- (5) An appeal does not affect the removal of a person's name from the Register unless and until the Tribunal orders that it be restored to the Register.
- (6) If the Tribunal dismisses the appeal, it may by order fix a time after which the person may apply to be registered. The person is then not entitled to be registered before that time (despite any entitlement under this Act to be registered).

## Part 4 Complaints etc about medical practitioners

### Division 1 Interpretation

#### 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) **Conduct significantly below reasonable standard**

Any conduct that demonstrates that the knowledge, skill or judgment possessed, or care exercised, by the practitioner in the practice of medicine is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience.

(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, whether or not the practitioner has been prosecuted for or convicted of an offence in respect of the contravention.

(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 175 of the *Children and Young Persons (Care and Protection) Act 1998*,
- (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*.

(d1) **Contravention of requirement under [Health Care Complaints Act 1993](#)**

A contravention by the practitioner of section 34A (4) (Power of Commission to



obtain information, records and evidence) of the *Health Care Complaints Act 1993*.

**(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.

### **37 Meaning of “professional misconduct”**

For the purposes of this Act, **professional misconduct** of a registered medical practitioner means:

- (a) unsatisfactory professional conduct, or
- (b) more than one instance of unsatisfactory professional conduct that, when the instances are considered together, amount to conduct,

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.

### **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).

### **38 Exception—training, employment and research**

A registered medical practitioner is not guilty of unsatisfactory professional conduct described in section 36 (1) (j) and (k) to the extent that the conduct took place in connection with:

- (a) the proper training and instruction of registered medical students or other students, or
- (b) the lawful employment of dressers, nurses, dispensers, surgery attendants, technicians or skilled mechanics, under the immediate personal supervision of the practitioner, or
- (c) collaborating in experimental or research work in medicine with a person who is the holder of a university degree in science or of another degree recognised by the Board generally or in a particular case for the purposes of this paragraph.

### **38A References to “complaint”**

In Divisions 3 and 4 of this Part and in Divisions 1 and 2 of Part 6 (Appeals and review), a reference to a complaint includes a reference to a matter arising out of the investigation of a complaint in accordance with this or any other Act.

## **Division 2 Making a complaint**

### **39 Grounds for complaint**

Any of the following complaints can be made about a registered medical practitioner:

(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.

(b) **Unsatisfactory professional conduct or professional misconduct**

A complaint that the practitioner has been guilty of unsatisfactory professional conduct or professional misconduct.

(c) **Lack of competence**

A complaint that the practitioner is not competent to practise medicine (that is, the person does not have sufficient physical capacity, mental capacity or skill to practise medicine or does not have sufficient communication skills for the practice of medicine, including an adequate command of the English language).

(d) **Impairment**

A complaint that the practitioner suffers from an impairment.

(e) **Character**

A complaint that the practitioner is not of good character.

#### **40 Complaint can be made even if person no longer registered**

A complaint about a registered medical practitioner may be made and dealt with even though the practitioner has ceased to be registered. For that purpose, a reference in this Act to a registered medical practitioner includes a reference to a person who has ceased to be registered or whose registration is suspended.

#### **41 Who can make a complaint**

Any person can make a complaint. A complaint can also be made by the Board or the Director-General.

#### **42 Complaints to be made to the Board or the Health Care Complaints Commission**

Complaints are to be made to the Board or the Commission.

#### **43 Complaints to be in writing etc**

- (1) A complaint (except one made by the Board or the Director-General) must be in writing and contain particulars of the allegations on which it is founded. A complaint need not be made in terms that are strictly consistent with the terminology of section 36.
- (2) The Board or the Commission may consider and investigate a complaint even if it does not comply with these requirements but must not refer the complaint under Division 3 until they are complied with.

#### **44 Where to lodge complaints**

A complaint made to the Board is to be lodged with the Registrar. A complaint made to the Commission is, in accordance with section 9 of the *Health Care Complaints Act 1993*, to be lodged with the Commission.

#### **45 Further particulars may be required from complainant**

The Board or the Commission may require the complainant to provide further particulars of a complaint.

#### **46 Board and Commission to notify each other of complaints**

- (1) The Board and the Commission are to notify each other when a complaint is made to or by either of them and this is to be done as soon as practicable after the complaint is made.
- (2) The Board and the Commission are also to notify each other of any matter that comes to the notice of either of them which may involve the professional misconduct of a registered medical practitioner. This is to be done as soon as practicable after the

matter comes to the notice of the Board or the Commission.

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

- (1) If a person makes a complaint, and does so in good faith:
  - (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
  - (b) no liability for defamation is incurred because of the complaint, and
  - (c) the making of the complaint does not constitute a ground for civil proceedings for malicious prosecution or for conspiracy.
- (2) The protections given to a complainant by this section extend to:
  - (a) any person who, in good faith, provided the complainant with any information on the basis of which the complaint was made, and
  - (b) any person who, in good faith, was otherwise concerned in the making of the complaint.
- (3) This section does not limit or otherwise affect the operation of section 96 of the [Health Care Complaints Act 1993](#).

### **Division 3 How complaints are to be dealt with**

#### **48 Complaints to be dealt with expeditiously**

All complaints are to be dealt with expeditiously.

#### **49 Board and Commission to consult on complaint**

- (1) Before any action is taken on a complaint, the Board and the Commission are to consult in order to see if agreement can be reached between them as to the course of action to be taken concerning the complaint.
- (2) Division 2 of Part 2 of the [Health Care Complaints Act 1993](#) applies to the consultation, despite the other provisions of this Division.

#### **50 Courses of action available to Board on a complaint**

- (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 to the Commission for conciliation or to be dealt with under Division 9 of Part 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.
- (2) Before or at the same time as it refers a complaint to a Committee or the Tribunal, the Board must refer the complaint to the Commission for investigation.
- (3) The Commission must, on receipt of a complaint referred by the Board for investigation, investigate the complaint or cause it to be investigated.
- (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.

#### **51 Courses of action available to the Commission on a complaint**

- (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,
  - (b) the Commission may refer the complaint for conciliation or deal with the complaint under Division 9 of Part 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*.
- (2) If the Commission refers a complaint to a Committee or the Tribunal, the Commission is to inform the Board accordingly.
- (3) If the Commission refers a complaint to the Board, a Committee or the Tribunal, the Commission is to investigate the complaint or cause it to be investigated.

## **52 Serious complaints must be referred to Tribunal**

- (1) Both the Board and the Commission are under a duty to refer a complaint to the Tribunal if at any time either forms the opinion that it may, if substantiated, provide grounds for the suspension or deregistration of a registered medical practitioner.
- (2) However, either the Board or the Commission may decide not to refer the complaint to the Tribunal if of the opinion that the allegations on which the complaint is founded (and on which any other pending complaint against the practitioner is founded) relate solely or principally to the physical or mental capacity of the practitioner to practise medicine.
- (3) If the Board decides not to refer the complaint to the Tribunal, the Board must instead refer the complaint to a Committee. If the Commission decides not to refer the complaint to the Tribunal, the Commission must instead refer the complaint to the Board.
- (4) This section does not require the Board or the Commission to refer a complaint that the Board or Commission thinks is frivolous or vexatious.

## **53 (Repealed)**

## **54 Board may require practitioner to undergo examination**

- (1) The Board may by notice given to a registered medical practitioner against whom a complaint has been made direct the practitioner to undergo an examination by a specified registered medical practitioner or a specified registered health practitioner at a specified time and place.
- (2) A practitioner must not be directed to undergo an examination under subsection (1) unless it is reasonable to require the examination, given the nature of the complaint against the practitioner. The time and place specified for the examination must be reasonable.
- (3) The examination is to be at the expense of the Board.

## **55 Result of failure to attend counselling or examination**

A failure by a person, without reasonable cause, to comply with a direction under section 50 to attend counselling or under section 54 to undergo an examination is, for the purposes of this Act and any inquiry or appeal under this Act, evidence that the person does not have sufficient physical and mental capacity to practise medicine.

## **56 Inquiries etc not prevented by other proceedings**

A complaint can be referred to a Committee or the Tribunal, and dealt with by the Committee or Tribunal, even though the practitioner concerned is the subject of proposed or current criminal or civil proceedings relating to the subject-matter of the complaint.



**57 Complaint not to be referred if practitioner dead**

A complaint is not to be referred under this Division if the registered medical practitioner concerned is dead.

**58 Complaint need not be referred if practitioner no longer registered**

The Board or the Commission may decide not to refer a complaint under this Division if the registered medical practitioner concerned has ceased to be registered.

**59 Complaint need not be referred if complainant fails to provide further particulars**

The Board or the Commission may decide not to refer a complaint under this Division if the complainant has failed to provide further particulars in response to a request by the Board or the Commission.

**Division 4 Disciplinary powers of Committees and Tribunal**

**60 Powers may be exercised if complaint proved or admitted**

A Committee or the Tribunal may exercise any power or combination of powers conferred on it by this Division if it finds the subject-matter of a complaint against a person to have been proved or the registered medical practitioner who is the subject of the complaint admits to it in writing to the Committee or Tribunal.

**61 General powers to caution, reprimand, counsel etc**

(1) A Committee or the Tribunal may do any one or more of the following:

- (a) caution or reprimand the person,
- (b) order that the person seek and undergo medical or psychiatric treatment or counselling,
- (c) direct that such conditions, relating to the person's practising medicine, as it considers appropriate be imposed on the person's registration,
- (d) order that the person complete such educational courses as are specified by the Committee or Tribunal,
- (e) order that the person report on his or her medical practice at the times, in the manner and to the persons specified by the Committee or Tribunal,
- (f) order that the person seek and take advice, in relation to the management of his or her medical practice, from such persons as are specified by the Committee or Tribunal.

(2) If the person is not registered, an order or direction can still be given under this section but has effect only so as to prevent the person being registered unless the

order is complied with or to require the conditions concerned to be imposed when the person is registered, as appropriate.

- (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 **critical compliance order or condition** under this section.

## **62 Power to fine in certain cases**

- (1) A Committee or the Tribunal may by order impose a fine on the person of an amount of up to 50 penalty units in the case of a Committee or 250 penalty units in the case of the Tribunal.
- (2) A fine is not to be imposed unless the Committee or the Tribunal finds the person to have been guilty of unsatisfactory professional conduct or professional misconduct. A fine is not to be imposed if a fine or other penalty has already been imposed by a court in respect of the conduct.
- (3) A fine must be paid within the time specified in the order imposing the fine and is to be paid to the Board.

## **63 Committee can recommend suspension or deregistration on grounds of lack of physical or mental capacity**

- (1) A Committee may recommend that a person be suspended from practising medicine for a specified period or that a person be deregistered if the Committee is satisfied (when it finds on a complaint about the person) that the person does not have sufficient physical and mental capacity to practise medicine.
  - (1A) If the person is not registered, a recommendation can be made under this section that the person not be re-registered.
- (2) The Committee makes its recommendation by referring the matter with its recommendation to the Chairperson of the Tribunal or to a Deputy Chairperson nominated by the Chairperson.
- (3) The Chairperson or Deputy Chairperson may then make an order in the terms recommended or may make such other order as to the suspension or registration of the person as the Chairperson or Deputy Chairperson thinks proper based on the findings of the Committee.
- (4) An order that a person be deregistered is an order that the person's name be removed from the Register or (if the person has already ceased to be registered) that the person not be re-registered.

- (5) An order may also provide that an application for review of the order under Division 3 of Part 6 may not be made until after a specified time.
- (6) Instead of making an order under this section, the Chairperson or Deputy Chairperson may exercise any power or combination of powers of a Committee under this Division.

#### **64 Tribunal can suspend or deregister in certain cases**

- (1) The Tribunal may by order suspend a person from practising medicine for a specified period or direct that a person be deregistered if the Tribunal is satisfied (when it finds on a complaint about the person):
  - (a) that the person is not competent to practise medicine, or
  - (b) that the person is guilty of professional misconduct, or
  - (c) that the person has been convicted of or made the subject of a criminal finding for an offence, either in or outside New South Wales, and the circumstances of the offence render the person unfit in the public interest to practise medicine, or
  - (d) that the person is not of good character.
- (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.
- (2) An order that a person be deregistered is an order that the person's name be removed from the Register or (if the person has already ceased to be registered) that the person not be re-registered.
- (2A) If the Tribunal makes an order under this section in respect of a person and it is satisfied that the person poses a substantial risk to the health of members of the public, it may by order (a **prohibition order**) do any one or more of the following:
  - (a) prohibit the person from providing health services or specified health services for the period specified in the order or permanently,
  - (b) place such conditions as the Tribunal thinks appropriate on the provision of health services or specified health services by the person for the period specified in the order or permanently.

#### **Note—**

Section 10AK (1) of the [Public Health Act 1991](#) provides that it is an offence for a person to provide a health service in contravention of a prohibition order.

- (2B) If the Tribunal is aware that a person in respect of whom it is proposing to make a prohibition order is registered under a health registration Act other than this Act, the

Tribunal is, before making the prohibition order, to notify the board constituted under that other Act of the proposed order and give that board an opportunity to make a submission.

- (3) An order may also provide that an application for review of the order under Division 3 of Part 6 may not be made until after a specified time.

#### **65 Board may refer breach of disciplinary order to the Tribunal**

- (1) If the Board has reason to believe that a person has failed to comply with any order (or conditions imposed pursuant to an order) made by a Committee or the Tribunal under this Division, it may refer the matter to the Tribunal.
- (2) If the Tribunal finds the failure proved, it may exercise any power or combination of powers conferred on it by this Division.

### **Division 5 Powers of the Board for the protection of the public**

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

- (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:
- (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 the Board considers appropriate.
- (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:
- (a) by order suspend the practitioner from practising medicine until a complaint concerning the matter is dealt with by the Tribunal, and
  - (b) refer the matter to the Tribunal as a complaint.
- (3) The Board may take action under this section:
- (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 a Committee or the Tribunal.
- (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.

- (5) The Board is to give written notice of any action taken under this section to the practitioner concerned.
- (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.

#### **66AA Audio recording of meeting**

- (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:
  - (a) during which the practitioner (or the practitioner's adviser) is present, or
  - (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.
- (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*.

#### **66A Power to remove or alter conditions or terminate suspension**

- (1) The Board may, at any time:
  - (a) by order, shorten or terminate a period of suspension imposed by the Board under this Division, or
  - (b) alter or remove conditions imposed under this Division.
- (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.
- (2) The Board is to give written notice of any action taken under this section to the practitioner concerned.

#### **66AB Review of certain decisions**

- (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:

- (a) suspend the practitioner from practising medicine, or
  - (b) impose conditions on the practitioner's registration or alter any such conditions.
- (2) On receiving an application for review, the Board:
- (a) may refuse to reconsider its decision if, in the opinion of the Board, the application is frivolous or vexatious, or
  - (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.
- (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.

#### **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.
- (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.
- (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 and if it considers it appropriate to do so, 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 takes action against a registered medical practitioner under section 66:
- (a) because the Board is of the opinion that the practitioner suffers from an impairment, or
  - (b) that is action of a kind referred to in section 66 (4).

#### **66BA Special provision—performance assessment**

- (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:

- (a) is to be dealt with by way of performance assessment under Part 5A, and
  - (b) may, if the Board and the Commission agree, also be dealt with by the Commission as a complaint against the practitioner.
- (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.
- (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.
- (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.
- (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.
- (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.
- (7) Section 52 (Serious complaints must be referred to Tribunal) applies in respect of any such action by the Commission.

### **66C Special provisions—impairment**

- (1) This section applies if the Board takes action against 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.
- (9) A matter may be referred to an Impaired Registrants Panel under this section even though the medical practitioner has been suspended under section 66. Part 5 applies in respect of such a referral as if the medical practitioner were a registered medical practitioner.

#### **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.

#### **67 Extension of suspension**

A period of suspension imposed by the Board under this Division may be extended, from time to time, by the Board by order for a further period or further periods, each of not more than 8 weeks, but only if:

- (a) the Chairperson or a Deputy Chairperson is satisfied, on the basis of information provided by the Board, that there is no material change in the circumstances that gave rise to the making of the order imposing the suspension and has approved the extension in writing, and
- (b) the complaint about the practitioner has not been disposed of.



### **68 Expiry or termination of suspension**

On the expiry or termination of a period of suspension imposed under this Division, the person's rights and privileges as a registered medical practitioner are revived, subject to any other action taken by the Board under this Division or any order of the Tribunal on a complaint that is referred to the Tribunal.

### **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.

**69B Powers of Board to obtain information, records and evidence**

- (1) If the Board is of the opinion that a person is capable of giving information, producing documents (including medical records) or giving evidence that would assist the Board in making a determination with respect to any action taken or proposed to be taken by the Board under this Division, the Board may, by notice in writing given to the person, require the person to do any one or more of the following:
  - (a) to give the Board, in writing signed by the person (or, in the case of a corporation, by a competent officer of the corporation), within the time and in the manner specified in the notice, any such information of which the person has knowledge,
  - (b) to produce to the Board, in accordance with the notice, any such documents,
  - (c) to appear before the Board or a member of staff of the Board authorised by the President or Deputy President of the Board at a time and place specified in the notice that is reasonable and give any such evidence, either orally or in writing, and produce any such documents.
- (2) Information and documents may be given or provided to the Board in compliance with this section despite any other Act or law.
- (3) A person who is subject to a requirement made under subsection (1) must not:
  - (a) without reasonable excuse, fail to comply with the requirement, or
  - (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.

Maximum penalty: 20 penalty units.

## **Division 6 Duty of courts etc to refer matters to Registrar**

### **70 Referral of mental health matters to Registrar**

If a registered medical practitioner or medical student becomes a mentally incapacitated person, the person prescribed by the regulations must cause notice of that fact to be given to the Registrar in accordance with the regulations.

### **71 Referral of matters by courts**

- (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.
- (2) If a Coroner has reasonable grounds to believe that the evidence given or to be given in any proceedings conducted or to be conducted before the Coroner may indicate that a complaint could be made under this Part about a person, the Coroner may cause a transcript of that evidence to be furnished to the Registrar.
- (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.
- (4) The Coroner is not the complainant in relation to a complaint that is taken to have been made under subsection (3) and sections 43 (1), 44 and 45 do not apply to such a complaint.

## **Division 7 Reportable misconduct**

### **71A Reportable misconduct**

- (1) A registered medical practitioner commits **reportable misconduct** in the following circumstances:
  - (a) if he or she practises medicine while intoxicated by drugs (whether lawfully or unlawfully administered) or alcohol,
  - (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,
  - (c) if he or she engages in sexual misconduct in connection with the practice of medicine.

- (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.

**Note—**

Pursuant to sections 36 (1) (b) and 37, failure to comply with this section will constitute either unsatisfactory professional conduct or professional misconduct.

- (3) A report under this section:
- (a) is to be made and dealt with in the same way as a complaint, and
  - (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 *Health Care Complaints Act 1993*.

## **Part 5 Impairment**

### **72 Referral of impairment matters concerning practitioners or students**

- (1) The Board may refer any matter to an Impaired Registrants Panel if the Board considers that the matter indicates that a registered medical practitioner or medical student suffers from an impairment. This is not limited to matters that are the subject of a complaint to the Board.
- (2) If the Board is aware that a complaint has been made to the Commission about a practitioner who is the subject of a referral to an Impaired Registrants Panel, the Board is to notify the Commission of the referral.

### **73 Persons may notify Board of impairment matters concerning practitioners or students**

A person may notify the Board of any matter which the person thinks indicates that a registered medical practitioner or medical student suffers or may suffer from an impairment.

### **74 Commission may refer impairment matters to Board**

- (1) If the Commission becomes aware of any matter that the Commission considers indicates that a registered medical practitioner or medical student suffers or may suffer from an impairment, 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.

### **75 Panel to inquire into matters referred to it**

- (1) An Impaired Registrants Panel is to inquire into any matter referred to it and may obtain reports and other information concerning the matter from any source it considers appropriate.

- (2) The Panel may request a registered medical practitioner or medical student who is the subject of a matter referred to the Panel by the Board, to attend before the Panel for the purpose of enabling the Panel to obtain information on the matter and make an assessment.

#### **76 Panel not to take action while Commission investigating**

An Impaired Registrants Panel is not to investigate or take any other action in relation to any matter if the Panel is aware that the matter is the subject of an investigation by the Commission, while the investigation is being conducted.

#### **77 Board to give notice of proposed inquiry**

The Board is to give notice to a registered medical practitioner or medical student of any proposed inquiry by an Impaired Registrants Panel concerning the practitioner or student. The notice is to include sufficient details of the matters to which the inquiry is to relate.

#### **78 Practitioner or student entitled to make representations**

- (1) A registered medical practitioner or medical student who is the subject of any inquiry by an Impaired Registrants Panel is entitled to make oral or written representations to the Panel with respect to the matters being or to be the subject of the inquiry.
- (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.

#### **78A Board may require practitioner to undergo 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 an examination by a specified registered medical practitioner or a specified registered health practitioner at a specified time and place.
- (2) A practitioner must not be directed to undergo an examination under subsection (1) 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 an examination under subsection (1), 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.

### **79 Board may require student to undergo examination**

- (1) The Board may by notice given to a medical student who is the subject of a matter referred or proposed to be referred to an Impaired Registrants Panel direct the student to undergo an examination by a specified registered medical practitioner or a specified registered health practitioner at a specified time and place.
- (2) A medical student must not be directed to undergo an examination under subsection (1) 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 medical student fails, without reasonable excuse, to comply with a direction to undergo an examination under subsection (1), 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.

### **80 Assessment, report and recommendations by Panel**

- (1) An Impaired Registrants Panel is to make an assessment in respect of each referral to it, based on the results of its inquiry into the matter.
- (2) On the basis of its assessment, the Panel may do any one or more of the following things:
  - (a) counsel the practitioner or student concerned or recommend that he or she undertake specified counselling,
  - (b) recommend that the practitioner concerned agree to conditions being placed on his or her registration or to being suspended from practising medicine for a specified period,
  - (c) make recommendations to the Board as to any action that the Panel considers should be taken in relation to the matter.
- (3) The Panel is to report in writing to the Board on each referral to the Panel. The report is to detail the results of the Panel's inquiries and assessment in respect of the referral and any action taken by the Panel under this Part in relation to it.

## **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.

## **82 Some matters to be dealt with as complaints**

- (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.
- (2) If the Panel recommends that a matter referred to it be dealt with as a complaint, the Board is to deal with the matter as a complaint against the practitioner concerned.
- (3) In any other case that the Board thinks it appropriate to do so, the Board may treat a matter which has been referred to an Impaired Registrants Panel as grounds for a complaint under this Act and may deal with the matter accordingly.

### **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.

### **84 Appeal by student against order**

- (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.
- (2) The appeal must be lodged with the Registrar who is to refer it to the Tribunal.
- (3) The appeal must be made within 28 days (or such longer period as the Registrar may allow in a particular case) after notice of the Board's decision is given to the person.
- (4) On an appeal, the Tribunal may by order terminate, vary or confirm the order, as it thinks proper. The Board is to give effect to the Tribunal's order.



### **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.

### **86 Board to consider Panel's reports when assessing application for registration**

- (1) The Board is to take the following matters into account when considering a person's application for registration as a medical practitioner:
  - (a) any report of an Impaired Registrants Panel concerning any matter involving the person (including any recommendations made in the report),
  - (b) any failure by the person to attend before an Impaired Registrants Panel in accordance with a request of the Panel.
- (2) This section does not limit the matters that the Board may take into account when it considers an application.

## **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.
- (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.
- (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.
- (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,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.

## **Part 6 Appeals and review**

### **Division 1 Appeals against actions of a Committee**

#### **87 Appeals against decisions of a Committee**

- (1) A registered medical practitioner about whom a complaint is referred to a Committee, or the complainant, may appeal to the Tribunal against:
  - (a) a finding of the Committee, or
  - (b) the exercise of any power by the Committee under Division 4 (Disciplinary powers of Committees and Tribunal) of Part 4, or
  - (c) the exercise by the Chairperson or a Deputy Chairperson of the Tribunal of any power under that Division.
- (2) An appeal must be made within 28 days (or such longer period as the Registrar may allow in a particular case) after:
  - (a) the handing down of the decision by which the Committee's finding is made, or
  - (b) the exercise of the power against which the appeal is made.
- (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 inquiry, may be given.
- (5) The Tribunal may:
  - (a) dismiss the appeal, or
  - (b) make any finding or exercise any power or combination of powers that the Tribunal could have made or exercised if the complaint had been originally referred to the Tribunal.
- (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.

#### **88 Appeals on points of law**

- (1) A registered medical practitioner about whom a complaint is referred to a Committee or the complainant 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 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.
- (3) If an inquiry conducted by a Committee has not been completed when an appeal is made, the inquiry must not continue until the appeal has been disposed of.
- (4) The Committee must not make any decision that is inconsistent with the Chairperson’s or Deputy Chairperson’s determination with respect to the point of law.

## **Division 2 Appeals against actions of Tribunal**

### **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.

### **90 Appeal against Tribunal’s decisions and actions**

- (1) A person about whom a complaint is referred to the Tribunal, or the complainant, may appeal to the Supreme Court against:
  - (a) a decision of the Tribunal with respect to a point of law, or
  - (b) the exercise of any power by the Tribunal under Division 4 (Disciplinary powers of Committees and Tribunal) of Part 4.



- (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.
- (2) An appeal under this section must be made within 28 days (or such longer period as the Court may allow in a particular case) after the handing down of the decision or the exercise of power against which the appeal is made.
- (3) The Supreme Court may stay any order made by the Tribunal, on such terms as the Court sees fit, until such time as the Court determines the appeal.

#### **91 Powers of Court on appeal**

- (1) In determining the appeal, the Supreme Court may:
- (a) dismiss the appeal, or
  - (b) make such order as it thinks proper having regard to the merits of the case and the public welfare, and in doing so may exercise any one or more of the powers of the Tribunal under this Act.
- (2) If the Court dismisses an appeal against an order of the Tribunal, the Court may by order direct that the Tribunal's order is to be taken to include provision that an application for its review under Division 3 may not be made until after a specified time.

### **Division 3 Review of suspension, deregistration or conditions**

#### **92 Right of review**

- (1) A person may apply to the appropriate review body for a review of a prohibition order in respect of the person or of an order of a Committee, a Performance Review Panel, the Chairperson or a Deputy Chairperson, the Tribunal or the Supreme Court:
- (a) that the person is suspended from practising medicine, or
  - (b) that the person's name be removed from the Register or that the person not be re-registered, or
  - (c) that conditions be placed on the person's registration.
- (2) A person may also apply to the appropriate review body for a review of an order made under this Division.

- (3) An application for review of an order may not be made:
  - (a) while the terms of the order provide that an application for review may not be made, or
  - (b) while an appeal under this Part to the Tribunal or the Supreme Court in respect of the same matter is pending.

### 93 The appropriate review body

- (1) The **appropriate review body** is the Tribunal except in a case where the order being reviewed provides that it may be reviewed by the Board, in which case the Board is the appropriate review body.
- (2) An application for review must be lodged with the Registrar of the Tribunal who is to refer it to the appropriate review body.

### 94 Powers on review

- (1) The appropriate review body is to conduct an inquiry into an application for review and may then do any of the following:
  - (a) dismiss the application,
  - (b) by its order terminate or shorten the period of the suspension concerned,
  - (c) make a reinstatement order,
  - (d) make an order altering the conditions to which the person's registration is subject (including by imposing new conditions),
  - (e) by its order terminate or shorten the period of a prohibition order or alter the conditions to which the person is subject under a prohibition order (including by imposing new conditions).
- (2) A **reinstatement order** is an order that the person be registered subject to the same conditions and limitations (if any) to which the person's registration was subject immediately before the person ceased to be registered. The appropriate review body may also impose conditions on the person's registration or alter the conditions to which the person's registration is to be subject under the reinstatement order.
- (3) The Board is to cause such recordings to be made in the Register as may be necessary to give effect to a reinstatement order.
- (4) The order on a review under this section may also provide that the order is not to be reviewed under this Division until after a specified time.

#### **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.
- (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.

### **Division 4 Appeal against suspension by Board**

#### **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.

#### **95A Appeal on point of law**

- (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.

- (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.
- (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.
- (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.

#### **96 Appeal to be lodged with Registrar**

An appeal is to be lodged with the Registrar who is to refer it to the Tribunal.

#### **97 Tribunal's powers on appeal**

- (1) On an appeal, the Tribunal may by order terminate, vary or confirm the period of suspension or revoke, vary or confirm the conditions, as it thinks proper.
- (2) The Tribunal's order must not cause a suspension or conditions imposed by the Board to have effect beyond the day on which any related complaint about the person is disposed of.

#### **98 Appeal does not stay order**

An appeal under this Division does not affect any suspension or conditions with respect to which it has been made until the Tribunal makes an order on the appeal.

### **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.

## **Part 7 The practice of medicine**

### **Division 1 Registered practitioners**

#### **99 Entitlement to practise medicine**

- (1) A registered medical practitioner may practise medicine.
- (2) A registered medical practitioner whose registration is subject to conditions must not practise medicine in contravention of a condition to which the registration is subject. A breach of this subsection does not give rise to an offence but does constitute a contravention of this Act.

### **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.

### **100 Effect of suspension**

- (1) While an order under this Act suspending a person from practising medicine is in force, the person is taken not to be a registered medical practitioner, except as provided by subsection (2).
- (2) A suspended registered medical practitioner is considered to be a registered medical practitioner for the purposes of the provisions of Part 5 (Annual registration fees) of Schedule 1.

### **101 Registered practitioner entitled to recover fees**

Any charge or remuneration for any medical or surgical advice, service, attendance, or operation rendered or performed by a registered medical practitioner can be recovered by being sued for in any court of competent jurisdiction.

### **102 (Repealed)**

### **103 Emergency measures authorising practise of medicine**

- (1) The Governor may, by proclamation, authorise a conditionally registered medical practitioner specified in the proclamation to perform specified medical services for a specified period.
- (2) The proclamation authorises the practitioner to perform the services specified for the period specified, despite any condition on his or her registration.
- (3) Such a proclamation is not to be made unless it appears to the Governor that, by reason of any emergency or of the occurrence of any epidemic, conditions have rendered it necessary or desirable in the public interest to do so.
- (4) The Governor may, by proclamation, revoke any proclamation in force under this section.

## **Division 2 Restrictions on unregistered practitioners**

### **104 (Repealed)**

### **105 Use of misleading titles etc**

- (1) A person who is not a registered medical practitioner must not take or use any name, initials, word, title, addition, description or symbol which having regard to the circumstances in which it is taken or used indicates or is capable of being understood to indicate or is calculated to lead persons to infer that:
  - (a) the person possesses a degree, diploma, or other qualification of a nature which would entitle the person to be registered as a medical practitioner, or
  - (b) the person is registered as a medical practitioner under this Act.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) A person who is not a registered medical practitioner must not advertise himself or herself, or hold himself or herself out, to be a registered medical practitioner, doctor of medicine, physician, surgeon, legally or duly qualified medical practitioner, qualified medical practitioner or medical practitioner.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (3) A person who is not a registered medical practitioner must not advertise or hold himself or herself out to be entitled, qualified, able or willing to practise medicine or surgery in any of its branches or to give or perform any medical or surgical advice, service, attendance or operation.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (4) This section does not apply to an advertisement or holding out by any member of a life-saving, ambulance or first-aid association that is a charitable institution, or by a member of a mine rescue organisation, in relation to the lawful exercise of his or her functions or duties as a member of the association or organisation.
- (5) Proceedings for an offence against this section may be commenced at any time within 2 years after the alleged commission of the offence.

#### **106 Causing or permitting use of misleading titles etc**

A person must not:

- (a) cause, permit or suffer to be done for or in relation to the person or on the person's behalf, any act, matter or thing which, if done by him or her personally, would render the person liable to conviction for an offence against section 105, or
- (b) do or cause, permit or suffer to be done for or in relation to or on behalf of, any other person, any act, matter or thing which, if done by the other person personally, would render the other person liable to conviction for an offence against section 105.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

#### **107 Business document and advertising with misleading titles etc**

- (1) A person must not exhibit or publish, or cause, permit or suffer to be exhibited or published, any business document or advertisement of any kind whereby any person advertises or holds himself or herself out contrary to section 105 or attempts to do so.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) This section does not apply to the publishing of an advertisement by any person who is a newspaper or magazine proprietor, publisher or printer if the publishing occurs before written notice is given to the person by the Director-General that the



advertisement is contrary to section 105.

(3) In this section:

**business document** means any letter or any circular, handbill, placard, card, letter paper, receipt form, or invoice, or any document or paper to be used in connection with any business, practice, or profession.

**publish** includes publish, or cause to be published, by spoken words whether directly or through the medium of any apparatus for the reproduction of sound.

### **108, 109 (Repealed)**

### **110 Unregistered person not to sign certain certificates**

(1) A person who is not a registered medical practitioner must not sign any medical certificate of the cause of death of any deceased person.

Maximum penalty: 4 penalty units.

(2) No certificate required by or under any Act from any physician, surgeon, licentiate in medicine and surgery or other medical practitioner is valid unless the person signing the certificate is a registered medical practitioner.

(3) This section does not prevent a person who holds a qualification entitling the person to practise medicine or surgery in a country, State (other than New South Wales) or Territory and who holds an appointment as a medical officer on any vessel registered in that country, State or Territory from signing:

(a) any medical certificate of the cause of death of any person who dies on the vessel, or

(b) a certificate required by or under any Act in relation to any passenger on or member of the crew of the vessel.

### **111 Other health care professionals not affected**

(1) Nothing in this Act prejudices or affects the lawful occupation, trade, or business of any registered pharmacist, registered dentist, registered nurse, registered midwife, registered optometrist, registered psychologist, veterinary practitioner (within the meaning of the [Veterinary Practice Act 2003](#)), registered physiotherapist, registered podiatrist, registered chiropractor, registered osteopath or ambulance officer.

(2) In particular, a registered dentist is not guilty of an offence under this Act by reason only that in relation to himself or herself as a dentist or the practice of dentistry by him or her, the person:

(a) uses any certificate, diploma, membership, degree, licence, letters, testimonial or description which the person is authorised to use, or is not precluded from using,

for those purposes, by or under the *Dentists Act 1989*, or

(b) advertises in a manner which is authorised or is not prohibited by or under the *Dentists Act 1989*.

(3) In this section:

**ambulance officer** means a person appointed and employed to carry out duties relating to the provision of ambulance services, or appointed to be an honorary ambulance officer, by the Ambulance Service of New South Wales.

### **112 Medical service rendered by persons registered elsewhere**

(1) The giving or performance of any medical or surgical advice, service, attendance or operation by a recognised foreign practitioner in an emergency or for the purpose of organ harvesting or transplantation in accordance with the *Human Tissue Act 1983* has the same legal effect as if the person had been registered under this Act at that time.

(2) A **recognised foreign practitioner** is a person who is duly registered as a medical practitioner under the law in force in another State or a Territory or in New Zealand.

## **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.

## **Part 8 Advertising**

### **113 What constitutes advertising of medical services**

For the purposes of this Part a person advertises medical services if the person advertises himself or herself or another person, or holds himself or herself or another person out, to be entitled, qualified, able or willing to practise medicine or surgery in any of its branches

or to give or perform any medical or surgical advice, service, attendance or operation.

**114 No advertising except in accordance with the regulations**

- (1) A person (including a corporation) must not advertise medical services except in accordance with the regulations.

Maximum penalty: 250 penalty units.

- (2) In addition, a corporation must not advertise medical services unless there is an appointment in force under this Part of a person to be responsible for medical services advertising by the corporation.

Maximum penalty: 250 penalty units.

**115 Appointment of person to be responsible for advertising by corporation**

- (1) A corporation may by notice in writing to the Board appoint a person to be responsible for medical services advertising by the corporation. The person appointed must be a registered medical practitioner.
- (2) To be effective the notice of appointment must be accompanied by a notice of acceptance of the appointment signed by the appointed person.
- (3) An appointment may be revoked by notice in writing to the Board given either by the corporation or by or on behalf of the appointed person.
- (4) An appointment is automatically revoked if the person appointed ceases to be a registered medical practitioner.

**116 Liability of person responsible for advertising**

- (1) If a corporation advertises medical services in contravention of this Part, the person appointed under this Part to be responsible for medical services advertising by the corporation at the time of the contravention is taken to have contravened the provision that the corporation contravened.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or convicted.
- (3) This section does not affect any liability imposed on a corporation for an offence committed by the corporation against this Part.

**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 *Public Health Act 1991*.

(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 Act 2001](#) of the Commonwealth) 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 Act 2001* of the Commonwealth) 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 Act 2001* of the Commonwealth).



- (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.

## **Part 9 Supervision and enforcement powers**

### **117 Part extends to former and suspended practitioners**

This Part extends to persons who were registered medical practitioners or whose registration under this Act is suspended. Accordingly a reference in this Part to a registered medical practitioner includes a former or suspended registered medical practitioner.

### **118 Powers of entry only to be exercised with consent or under search warrant**

Any power conferred by this Part to enter premises must not be exercised except with the consent of the owner or occupier of the premises or under the authority of a search warrant granted as referred to in this Part.

### **119 Authorisation of persons to exercise powers**

The Director-General may authorise any person in writing to exercise the functions of an authorised person under this Part. A person so authorised is an **authorised person** for the purposes of this Part.

### **120 Powers of entry, search and seizure**

- (1) An authorised person may exercise the powers conferred by this section for the purpose of ascertaining whether the provisions of this Act or the regulations are being complied with or of investigating a complaint made or intended to be made under Part 4.
- (2) The authorised person may at any reasonable time enter and inspect:
  - (a) any premises which the authorised person 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 authorised person reasonably believes records relating to the carrying out of professional practice by a registered medical practitioner are kept.
- (3) On premises entered on the basis that they are used by a registered medical practitioner in connection with his or her professional practice, the authorised person has the following powers:
  - (a) power to examine, seize, detain or remove any equipment that the authorised person reasonably believes is, has or may be used in connection with that professional practice,
  - (b) power to require the production of and inspect any stocks of any substance or drugs in or about those premises,

- (c) power to require any person within 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,
  - (d) power to take copies of, or extracts or notes from, any such records,
  - (e) power to require any person on those premises to answer questions or otherwise furnish information in relation to the carrying out of that professional practice,
  - (e1) power to take such photographs, films and audio, video and other recordings as the authorised person considers necessary,
  - (f) power to require the owner or occupier of those premises to provide the authorised person with such assistance and facilities as is or are reasonably necessary to enable the authorised person to exercise the functions of an authorised person under this section.
- (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, the authorised person 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.

## **121 Offences**

- (1) A person must not:
- (a) prevent an authorised person from exercising any function conferred or imposed on the authorised person under this Part, or
  - (b) hinder or obstruct an authorised person in the exercise of any such function, or
  - (c) without reasonable excuse, refuse or fail to comply with any requirement made or to answer any question asked by an authorised person under the authority of this Part, or
  - (d) furnish an authorised person 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) or (d)—20 penalty units.

- (2) It is a sufficient defence to a prosecution for the offence of failing to answer a question asked by an authorised person if the defendant satisfies the court that the defendant did not know, and could not with reasonable diligence have ascertained, the answer to the question.

## **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.

## **123 Offence of impersonating authorised person**

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

Maximum penalty: 50 penalty units.

## **124 Authorised persons to have certificate of authority**

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

## **125 Search warrant**

- (1) An authorised person may apply to an authorised officer for a search warrant if the

person has reasonable grounds for believing:

- (a) that a provision of this Act or the regulations has been or is being contravened in or on any premises, or
  - (b) that entry into or onto any premises is necessary for the purpose of investigating a complaint made or intended to be made under Part 4 that, if substantiated, may provide grounds for the suspension or deregistration of a registered medical practitioner.
- (2) An authorised person must not apply for a search warrant unless the person or the Director-General has caused the President to be notified of the application.
  - (3) An authorised officer to whom the application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised person named in the warrant:
    - (a) to enter the premises, and
    - (b) to exercise in the premises the functions of the authorised person under this Part.
  - (4) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
  - (5) In this section:

**authorised officer** has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

## **126 Records to be kept**

- (1) The regulations may make provision for or with respect to requiring registered medical practitioners and corporations engaged in the provision of medical services to make and keep specified records. A provision of such a regulation may impose a penalty not exceeding 20 penalty units for a contravention of the provision.
- (2) A person who makes or keeps a record under the regulations must ensure that when the record is disposed of it is disposed of in a manner that will preserve the confidentiality of any information it contains relating to patients.

Maximum penalty: 100 penalty units.

- (3) The Board may grant exemptions from some or all of the requirements of regulations made under this section and may impose conditions on any such exemption.

## **127 Medical services corporation to appoint practitioner to be responsible for record keeping**

- (1) A corporation required to make and keep records under the regulations must, by

notice in writing to the Board, appoint a registered medical practitioner to be responsible for record keeping by the corporation. There must be such an appointment in force at all times, otherwise the corporation is guilty of an offence.

Maximum penalty: 50 penalty units.

- (2) To be effective the notice of appointment must be accompanied by a notice of acceptance of the appointment signed by the appointed person.
- (3) An appointment may be revoked by notice in writing to the Board given either by the corporation or by or on behalf of the appointed person. The appointment is automatically revoked if the person appointed ceases to be a registered medical practitioner.
- (4) If a corporation contravenes a provision of the regulations made for the purposes of section 126, the person appointed under this section to be responsible for record keeping by the corporation at the time of the contravention is taken to have contravened the provision that the corporation contravened.
- (5) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or convicted.
- (6) This section does not affect any liability imposed on a corporation for an offence committed by the corporation.

#### **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.

(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 (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.

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

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

- (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.
- (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:
  - (a) details of any employer of the practitioner during the period or periods specified in the notice,
  - (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,
  - (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,
  - (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.
- (3) A registered medical practitioner must not:
  - (a) without reasonable excuse, fail to comply with a requirement under this section, or

- (b) in purported compliance with a requirement under this section, provide information knowing it to be false or misleading in a material particular.

Maximum penalty: 20 penalty units.

### **128 Practitioners and students to notify change of name or address**

When a change occurs in the name or address last notified to the Board of a registered medical practitioner or registered medical student, he or she must give written particulars of that change to the Board within 3 months after the change occurs.

Maximum penalty: 1 penalty unit.

## **Part 10 The New South Wales Medical Board**

### **Division 1 The Board**

#### **129 Board constituted as a corporation**

- (1) There is constituted by this Act a corporation under the corporate name of the New South Wales Medical Board.
- (2) The Board is a continuation of, and the same legal entity as, the New South Wales Medical Board constituted under the *Medical Practitioners Act 1938*.

#### **130 Membership**

- (1) The Board is to consist of 20 members who are to be appointed by the Governor.
- (2) Of the members:
  - (a) 1 is to be a registered medical practitioner who is an officer of the Department of Health or an employee of a public health organisation within the meaning of the *Health Services Act 1997* (not being a person nominated under any other paragraph), and
  - (b) 1 is to be an Australian lawyer nominated by the Minister, and
  - (c) 2 are to be registered medical practitioners nominated by the Australian Medical Association (NSW) Limited, and
  - (d) 1 is to be a person nominated by the Community Relations Commission, and
  - (e) 1 is to be a registered medical practitioner nominated jointly by the Senate of the University of Sydney, the Council of the University of New South Wales and the Council of the University of Newcastle, and
  - (f) 8 are to be registered medical practitioners nominated respectively by the following bodies:

- The Royal Australasian College of Physicians, New South Wales State Committee,
- The Royal Australian College of Obstetricians and Gynaecologists, New South Wales State Committee,
- The Royal Australasian College of Surgeons, New South Wales State Committee,
- The Royal Australian College of General Practitioners, New South Wales Faculty,
- The Royal Australian College of Medical Administrators, New South Wales State Committee,
- The Royal Australian and New Zealand College of Psychiatrists, New South Wales Branch,
- The Royal College of Pathologists of Australasia,
- The Royal Australasian College of Radiologists, and

(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.

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

### **131 Nominations for membership**

- (1) If a body from whom a nomination is required under section 130 does not nominate a registered medical practitioner within such time and in such manner as may be specified by the Minister by notice in writing to the body, the Governor may instead appoint to be a member a registered medical practitioner nominated by the Minister.
- (2) A registered medical practitioner is not eligible to be nominated by the Minister under this section instead of a practitioner nominated by a medical body unless the practitioner nominated by the Minister is a member of that body.

### **132 Functions of the Board**

- (1) The Board has and may exercise the functions conferred or imposed on it by or under this or any other Act.
- (2) In addition, the Board has the following functions:
  - (a) to promote and maintain high standards of medical practice in New South Wales,
  - (b) to advise the Minister on matters relating to the registration of medical practitioners, standards of medical practice and any other matter arising under or related to this Act or the regulations,

- (c) to publish and distribute information concerning this Act and the regulations to registered medical practitioners and other interested persons,
- (d) to provide counselling services for registered medical practitioners and medical students.

### **133 Committees**

- (1) The Board may establish committees to assist it in connection with the exercise of any of its functions.
- (2) The members of a committee need not be members of the Board.
- (3) The procedure for the calling of meetings of any such committee and for the conduct of business at those meetings is as determined by the Board or (subject to any determination of the Board) by the committee.

### **134 Board's complaint functions may be exercised by 2 or more members**

The Board may appoint any 2 or more members of the Board to exercise the functions of the Board under Division 3 (How complaints are to be dealt with) of Part 4. The referral of a complaint by the members appointed is taken to be a referral by the Board.

### **135 Annual report**

- (1) An annual report prepared by the Board under the *Annual Reports (Statutory Bodies) Act 1984* must include particulars of:
  - (a) all complaints received by the Board during the year to which it relates or received by the Board before that year but which (in the opinion of the Board) had not, at the commencement of that year, been finally disposed of, and
  - (b) the action taken during that year in relation to complaints received by the Board and the results of that action up to the end of that year, 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.
- (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.

**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.

**136 Delegation by Board and Registrar**

- (1) The Board may delegate to a person the exercise of any of its functions, other than this power of delegation.
- (2) The Registrar may delegate to a person the exercise of:
  - (a) any of the functions of the Registrar under this Act, other than this power of delegation, or
  - (b) any functions delegated to the Registrar by the Board, unless the Board otherwise provides in its instrument of delegation to the Registrar.
- (3) In this section, a reference to a person includes a reference to a group of persons, including a committee established under section 133.

**137 Service of documents on Board**

A document (other than a complaint made under Part 4) may be served on the Board by leaving it at or sending it by post to any office of the Board. This does not affect the operation of any provision of a law or of the rules of a court authorising a document to be served on the Board in any other manner.

**138 Authentication of certain documents**

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

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

**139 Recovery of charges etc by the Board**

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

#### **140 Proof of certain matters not required**

In any legal proceedings, proof is not required (until evidence is given to the contrary) of:

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

### **Division 1A Proceedings of the Board**

#### **140A Other matters to be taken into account**

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:

- (a) any other complaint about the practitioner that has been made or notified to the Board, including a complaint:
  - (i) in respect of which the Board or the Commission has determined no further action should be taken, and
  - (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,
- (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,
- (c) any written report made by an assessor following an assessment of the practitioner's professional performance under Part 5A,
- (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.

#### **140B Exercise of functions with consent**

- (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.
- (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.

- (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.

## **Division 2 Administration**

### **141 Registrar**

- (1) A Registrar of the Board is to be employed by the Board as a member of the staff of the Board.
- (2) The Registrar:
  - (a) is responsible, as the chief executive officer of the Board, for the management of the affairs of the Board subject to and in accordance with any directions of the Board, and
  - (b) has and may exercise such other functions as are conferred or imposed on the Registrar by or under this or any other Act.
- (3) The Registrar must maintain the Register so as to give effect to any decision relating to the Register made by the Board, a Committee, the Tribunal or the Supreme Court.
- (4) The Registrar must cause a record to be kept of all proceedings and decisions of Committees and the Tribunal and of all inquiries held by the Board.
- (5) The Board may, from time to time, appoint a person to act as Registrar during the illness or absence of the Registrar, and the person, while so acting, has and may exercise all the functions of the Registrar and is taken to be the Registrar.

### **142 Staff of the Board**

- (1) The Board may:
  - (a) employ such staff as may be required to enable the Board to exercise its functions, and
  - (b) arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department, an administrative office or a public or local authority, and
  - (c) engage such consultants as it requires to exercise its functions.
- (2) The Board may, with the concurrence of the Director-General, fix the salaries, wages, allowances and conditions of employment of the Board's staff in so far as they are not fixed by or under another Act or law.

### **143 Consultants**

The Board may engage persons (including a person who is a member of the Board) on such basis as the Board thinks fit to provide services to the Board in respect of the assessment of applications for registration and the provision of counselling services to registered medical practitioners and medical students.

## **Division 3 Finance**

### **144 Financial provisions**

- (1) The fees payable to the Board under this Act and the regulations, and any other money received by the Board, are to be paid into an account or accounts established by the Board.
- (2) The following amounts are to be paid from the account or accounts established by the Board:
  - (a) amounts required to meet the expenses of the administration or execution of this Act (other than expenses incurred by the Director-General or the Department of Health in relation to the investigation of complaints and nominal complainants),
  - (b) such amounts as are, in the opinion of the Board, necessary to meet expenses relating to the Medical Services Committee established under the [Health Administration Act 1982](#),
  - (c) amounts for such other purposes as are set out in regulations made for the purposes of this section on the recommendation of the Board.
- (3) The Board may appropriate amounts from an account or accounts established under this section for or towards the expenses of the Australian Medical Council.
- (4) An appropriation under subsection (3) must not be made unless it is authorised by a resolution supported by at least 10 members of the Board.

### **145 Medical Education and Research Account**

- (1) The Board is to establish a Medical Education and Research Account.
- (2) Such amounts as are determined by the Board from time to time are to be paid by the Board from registration and annual registration fees received by the Board into the Medical Education and Research Account.
- (3) The Board may appropriate amounts from the Medical Education and Research Account for or towards any one or more of the following:
  - (a) medical education,
  - (b) education or research for any public purpose connected with the practice of medicine,



- (c) the publication and distribution of information concerning this Act and the regulations, or
  - (d) meeting administrative expenditure incurred with respect to the Account and the purposes for which it is used,
  - (e) any related purpose.
- (4) An appropriation must not be made unless it is authorised by a resolution supported by at least 10 members of the Board.

## **Part 11 The Medical Tribunal**

### **Division 1 Constitution of the Tribunal**

#### **146 The Medical Tribunal**

- (1) There is to be a Medical Tribunal for the purposes of this Act. The Tribunal is to be constituted in accordance with this Act to deal with a matter referred to it or an appeal or application made to it under this Act.
- (2) The Tribunal has and may exercise the jurisdiction and functions conferred or imposed on it by or under this or any other Act.

#### **147 Tribunal to be constituted to deal with complaints etc**

- (1) The Board is to inform the Chairperson and appoint 3 other persons to sit on the Tribunal when a complaint is referred to the Tribunal or an application or appeal is made to the Tribunal in accordance with this Act.
- (2) The Chairperson is then to nominate himself or herself or a Deputy Chairperson to sit on the Tribunal for the purpose of conducting an inquiry into the complaint, matter or application or hearing the appeal.
- (3) For the purpose of conducting an inquiry or hearing an appeal, the Tribunal is to consist of:
  - (a) the Chairperson or a Deputy Chairperson, and
  - (b) 2 registered medical practitioners having such qualifications as may be prescribed, appointed by the Board, and
  - (c) one lay person (that is, a person who is not a registered medical practitioner) appointed by the Board from among a panel of lay persons for the time being nominated by the Minister.
- (4) A person is not to be appointed to sit on the Tribunal if the person is a member of the Board.

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

#### **148 Chairperson and Deputy Chairpersons of the Tribunal**

- (1) The Governor may appoint a qualified person as Chairperson of the Tribunal and may appoint one or more qualified persons as Deputy Chairpersons of the Tribunal.
- (2) The Chairperson and each Deputy Chairperson hold office for such period not exceeding 7 years as may be specified in the instrument of appointment as Chairperson or Deputy Chairperson, but is eligible (if otherwise qualified) for re-appointment.
- (3) A Deputy Chairperson may be appointed by the Governor for the purpose only of conducting or hearing a particular inquiry or appeal described in the instrument of appointment of the Deputy Chairperson.
- (4) A Deputy Chairperson, while sitting on the Tribunal, has and may exercise all the functions conferred or imposed on the Chairperson by this Act.
- (4A) If the period of a person's appointment as Chairperson or a Deputy Chairperson expires while the person is sitting on the Tribunal for the purposes of an inquiry or an appeal, the person may, despite that expiry, continue to sit on the Tribunal for the purpose of that inquiry or appeal (the **continuing inquiry or appeal**).
- (4B) For the purposes of the conduct or hearing of the continuing inquiry or appeal (and any provision of this Act or the regulations with respect to such an inquiry or an appeal), the person referred to in subsection (4A):
- (a) is taken to be a Deputy Chairperson, and
  - (b) has and may exercise only the functions conferred or imposed on a Deputy Chairperson under this Act, and
  - (c) may exercise those functions only in respect of the continuing inquiry or appeal.
- (5) The Chairperson or a Deputy Chairperson sitting on the Tribunal is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of each of them.
- (6) The Governor may appoint a Deputy Chairperson to act in the office of Chairperson during the illness or absence of the Chairperson and the Deputy Chairperson, while so acting, has and may exercise all the functions of the Chairperson and is taken to be the Chairperson.
- (7) If a person who is the Chairperson or a Deputy Chairperson ceases to be a qualified person, the person also ceases to hold office as Chairperson or Deputy Chairperson.

- (8) The amendment of this section by Schedule 17 to the *Courts and Crimes Legislation Amendment Act 2008* does not affect the validity of any appointment in force immediately before the commencement of the amendment.
- (9) In this section, **qualified person** means a Judge of the Supreme Court (or a Judge or other person having the same status as a Judge of the Supreme Court) or a Judge of the District Court.

#### **149 Effect of vacancy on Tribunal**

- (1) If one of the members (other than the Chairperson or Deputy Chairperson) constituting the Tribunal for the purpose of conducting a hearing vacates office for any reason before an inquiry or appeal is completed or a decision is made in respect of an inquiry or appeal, the inquiry or appeal may be continued and a determination made by the remaining members of the Tribunal.
- (2) If more than one of the members vacate office or the Chairperson or Deputy Chairperson vacates office for any reason before the Tribunal has completed an inquiry or appeal or made a determination in respect of an inquiry or appeal, the inquiry or appeal is terminated.
- (3) When an inquiry or appeal is terminated, the Tribunal may be reconstituted in accordance with this Part for the purposes of conducting a new inquiry or appeal in respect of the matter concerned.

#### **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.

#### **151 Protections and immunities of judicial members**

A judicial member of the Tribunal has, in the exercise of his or her functions under this Part, the same protection and immunity as a Judge of the Supreme Court.

#### **152 Seal of the Tribunal**

The Tribunal is to have a seal of which all courts and persons acting judicially are to take judicial notice.

#### **153 Medical Tribunal Registry**

There is to be established in the Registry of the District Court at Sydney a Registry for the Medical Tribunal to provide registry services for the Tribunal.

## **Division 2 Proceedings of the Tribunal**

### **154 Decisions of the Tribunal**

- (1) The decision of the Chairperson or a Deputy Chairperson on any question of law or procedure arising during an inquiry or appeal at which the Chairperson or Deputy Chairperson presides is the decision of the Tribunal for the purposes of the inquiry or appeal.
- (2) A decision supported by at least 3 members of the Tribunal with respect to a question (other than with respect to a point of law or procedure) arising during an inquiry or appeal before the Tribunal is the decision of the Tribunal. If 2 members support the decision and 2 members oppose the decision, the decision of the Chairperson or Deputy Chairperson presiding is the decision of the Tribunal.

### **155 Time when orders take effect**

An order of the Tribunal under this Act takes effect on the day on which the order is made or on such later day as is specified in the order.

### **156 Powers of Tribunal exercised by Supreme Court**

A power of the Tribunal exercised under this Act by the Supreme Court is, except for the purposes of any appeal, taken to have been exercised by the Tribunal.

### **157 Registrar to be informed of disciplinary action**

The Tribunal is to inform the Registrar of the exercise of any power under Part 4 (Complaints etc about medical practitioners) by the Tribunal.

### **158 Rules of practice and procedure for the Tribunal**

- (1) A rule committee consisting of the Chairperson and Deputy Chairperson of the Tribunal may make rules, not inconsistent with this Act, governing the practice and procedure of the Tribunal.
- (2) A rule made under this section is a rule of court for the purposes of the [Interpretation Act 1987](#).

## **Division 3 Inquiries, appeals etc before the Tribunal**

### **159 Jurisdiction**

The members of the Tribunal are to conduct an inquiry into any complaint, matter or application and are to hear any appeal referred to it. No inquiry need be conducted into a complaint if the registered medical practitioner who is the subject of the complaint admits the subject-matter of the complaint in writing to the Tribunal.

### **160 Notice of time and place of inquiry or appeal**

The Chairperson or a Deputy Chairperson nominated to sit on the Tribunal is to fix a time and place for the conducting of the inquiry or the hearing of the appeal by the Tribunal and is to give not less than 14 days' notice of the inquiry or appeal to each of the following:

- (a) the practitioner concerned,
- (b) the complainant, if any,
- (c) the Director-General and the Board,
- (c1) in the case of an inquiry into a complaint, the Commission,
- (d) the chairperson of the relevant Committee, if appropriate.

### **161 Conduct of proceedings**

- (1) The Tribunal is to conduct proceedings on an inquiry or appeal as it thinks fit.
- (2) Proceedings of the Tribunal are to be open to the public except when the Tribunal otherwise directs.
- (3) The Tribunal 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 appeal or the nature of the evidence to be given.
- (4) Schedule 2 has effect with respect to the conduct of any inquiry and the hearing of any appeal by the Tribunal.

### **162 Representation before the Tribunal**

- (1) At an inquiry conducted or appeal heard by the Tribunal, the registered medical practitioner and any complainant concerned are entitled to attend and to be represented by an Australian legal practitioner or another adviser.
- (2) The Tribunal may grant leave for any other person to appear (whether in person or by an Australian legal practitioner or another adviser) at an inquiry or appeal if the Tribunal is satisfied that it is appropriate for that person to appear.
- (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.

### **163 Chairperson or Deputy Chairperson not to review own decisions**

The Chairperson or Deputy Chairperson must not sit on the Tribunal for the purpose of conducting any inquiry or hearing any appeal relating to a particular matter before the

Tribunal if a decision has been made by the Chairperson or a Deputy Chairperson in relation to the matter.

**164 Adjournments and interlocutory orders**

- (1) The Tribunal may adjourn proceedings for any reason it thinks fit.
- (2) The Tribunal may, during any proceedings, exercise any power or combination of powers conferred on the Tribunal by section 61 (General powers to caution, reprimand, counsel etc.), except the power to caution or reprimand.
- (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.

**165 Tribunal to provide details of its decision**

- (1) The Tribunal must provide a written statement of a decision on an inquiry or appeal to the complainant, to the practitioner concerned and to the Board, and must do so as soon as practicable after the decision is made (bearing in mind the public welfare and seriousness of the matter).
- (2) The statement of a decision must:
  - (a) set out any findings on material questions of fact, and
  - (b) refer to any evidence or other material on which the findings were based, and
  - (c) give the reasons for the decision.
- (3) The Tribunal may also provide the statement of a decision to such other persons as the Tribunal thinks fit.
- (4) The Board:
  - (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
  - (b) may disseminate any other statement of a decision as the Board thinks fit, unless the Tribunal has ordered otherwise.

**166 Statement need not contain confidential information**

- (1) The Tribunal 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 Tribunal 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 Tribunal 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.

## **Part 12 Professional Standards Committees**

### **Division 1 Constitution of Committees**

#### **167 Professional Standards Committees**

- (1) There are to be Professional Standards Committees for the purposes of this Act. A Committee is to be constituted in accordance with this Act to deal with a matter referred to it under this Act.
- (2) A Committee has and may exercise the jurisdiction and functions conferred or imposed on it by or under this Act.

#### **168 Board to constitute Committee when required**

- (1) The Board is to constitute a Committee when a complaint is referred to a Committee or an application for registration that is required to be dealt with by a Committee is made.
- (2) The Board constitutes a Committee by appointing 4 persons to sit as the Committee for the purpose of conducting an inquiry into the complaint or considering and determining the application.

#### **169 Membership of Committee**

- (1) A Committee is to consist of:
  - (a) 2 registered medical practitioners having such qualifications as may be prescribed, and
  - (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
  - (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.
- (2) (Repealed)

- (3) A person who is a member of the Board may not be appointed to sit on a Committee.
- (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.

## **Division 2 Proceedings of Committees**

### **170 Multiple inquiries**

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

### **171 How a Committee decides**

A decision supported by at least 3 members of a Committee on any question arising during an inquiry is the decision of the Committee.

### **172 Time when orders take effect**

An order of the Committee under this Act takes effect on the day on which the order is made or on such later day as is specified in the order.

### **173 Committee to inform Registrar of its actions under disciplinary provisions**

A Committee is to inform the Registrar of the exercise of any power by the Committee under Division 4 (Disciplinary powers of Committees and Tribunal) of Part 4.

### **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.

## **Division 3 Inquiries before Committees**

### **175 Committee to hold inquiry into complaint**

- (1) A Committee is to hold an inquiry into any complaint referred to it. No inquiry need be conducted into a complaint if the registered medical practitioner who is the subject of the complaint admits the subject-matter of the complaint in writing to the Committee.
- (2) On appointment, the chairperson of a Committee must fix a time and place for the holding of an inquiry by the Committee into the complaint and must give not less than



14 days' notice of the inquiry to:

- (a) the practitioner concerned, and
- (b) the complainant, if any, and
- (c) the Director-General and the Board, and
- (d) the Commission.

### **176 Procedure for inquiry**

- (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.
- (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.
- (3) A Committee may be assisted by a legally qualified officer of the Board appointed by the Registrar for that purpose on the request of the Committee.
- (4) Schedule 2 has effect with respect to the conduct of any inquiry by a Committee.

### **177 Representation at inquiry**

- (1) At an inquiry conducted by a Committee, the practitioner concerned and any complainant are entitled to attend and to be accompanied by an Australian legal practitioner or another adviser, but are not entitled to be represented at the inquiry by the Australian legal practitioner or other adviser, except as provided by subsection (2).
- (2) An adviser (other than an Australian legal practitioner) of a practitioner may represent the practitioner before the Committee at an inquiry.
- (2A) Subsection (2) does not prevent the Committee from addressing questions directly to the practitioner.
- (3) A Committee may grant leave for any other person (except an Australian legal practitioner or another adviser representing any person) to appear at an inquiry if the Committee is satisfied that it is appropriate for that person to appear.
- (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.

### **178 Adjournments and interlocutory orders**

- (1) A Committee may adjourn proceedings for any reason it thinks fit.
- (2) A Committee may, during any proceedings, exercise any power or combination of

powers conferred on a Committee by section 61 (General powers to caution, reprimand, counsel etc.), except the power to caution or reprimand.

**179 Committee must refer certain matters to the Tribunal**

- (1) A Committee must immediately terminate an inquiry if before or during the inquiry the Committee:
  - (a) forms the opinion that the complaint, if substantiated, may provide grounds for the suspension or deregistration of a registered medical practitioner, or
  - (b) becomes aware that the Board or the Commission has referred the complaint or another complaint about the practitioner concerned to the Tribunal.
- (2) Subsection (1) (a) does not apply to a complaint that the Board decided not to refer to the Tribunal because the allegations on which it and any other pending complaint against the practitioner was founded related solely or principally to the practitioner's physical or mental capacity to practise medicine.
- (3) When the Committee terminates an inquiry, it must refer the complaint to the Tribunal unless it has already been referred to the Tribunal.
- (4) The Tribunal to which the complaint is referred may be the Tribunal as already constituted to deal with another complaint or the Tribunal as constituted to deal with the referred complaint.
- (5) A Committee is to inform the Board when it takes any action under this section.

**180 Committee to provide details of its decision**

- (1) A Committee must provide a written statement of a decision on an inquiry to the complainant, to the practitioner concerned and to the Board, and must do so within one month after the decision is made.
- (2) The statement of a decision must:
  - (a) set out any findings on material questions of fact, and
  - (b) refer to any evidence or other material on which the findings were based, and
  - (c) give the reasons for the decision.
- (3) A Committee may also provide the statement of a decision to such other persons as the Committee thinks fit.
- (4) The Board:
  - (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

(b) may disseminate any other statement of a decision as the Board thinks fit, unless the Committee that provided the statement has ordered otherwise.

### **181 Statement need not contain confidential information**

- (1) A Committee 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 Committee 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 Committee 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.

## **Part 13 Impaired Registrants Panels**

### **182 Impaired Registrants Panel**

There are to be Impaired Registrants Panels for the purposes of this Act. An Impaired Registrants Panel has and may exercise the jurisdiction and functions conferred or imposed on it by or under this or any other Act.

### **183 Board to constitute Panel when required**

- (1) When the Board decides to refer a matter to an Impaired Registrants Panel it is to appoint 2 persons, at least one of whom is a registered medical practitioner, to sit as the Panel for the purpose of dealing with the matter.
- (2) A person may be appointed to sit on an Impaired Registrants 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.
- (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.

### **184 Decisions of Panel**

- (1) A decision supported by both members of an Impaired Registrants Panel is the decision of the Panel.
- (2) If the members of an Impaired Registrants Panel disagree as to any matter that is dealt with by the Panel, the Panel's report to the Board is to include details of the disagreement and the reasons for it.

## **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.

**Part 14 Miscellaneous**

**185 Act binds Crown**

This Act binds the Crown.

**186 Student registration**

- (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.
- (2) A person is entitled to be registered with the Board as a medical student if the Board is satisfied that the person genuinely requires that registration for the purposes of enabling the person to undertake such a course of study or clinical placement.
- (3) No fee is payable for registration as a medical student.

**187 Offences by corporations**

- (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.

- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or convicted.
- (3) This section does not affect any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.
- (4) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular intention, is evidence that the corporation had that intention at that time.

### **188 Penalties for false statements etc**

A person must not:

- (a) make or cause to be made any falsification in the Register or in any matter relating to the Register, or
- (b) make any statement upon any examination before the Board, a Committee, a Performance Review Panel or the Tribunal or in any document to be used in evidence before or to be submitted to the Board, a Committee, a Performance Review Panel or the Tribunal knowing the statement to be false or misleading in a material particular, or
- (c) utter or put forward or attempt to utter or put forward, as true before the Board any false, forged or counterfeit degree, diploma, licence, certificate, or other document or writing, or
- (d) procure or attempt to procure himself or herself or any other person to be registered by making or producing or causing to be made or produced, any false or fraudulent statement, declaration, or representation, either verbal or in writing, or
- (e) impersonate or represent himself or herself as being the person referred to in any degree, diploma, licence, certificate, document, or writing presented to the Board, or in any certificate issued under this Act, or
- (f) fraudulently or by false representation procure himself or herself or any other person to be registered, or obtain any certificate under this Act, or

- (g) forge, alter, or counterfeit any such certificate, or
- (h) utter or use or attempt to utter or use any such forged certificate knowing it to have been forged, or
- (i) falsely advertise or publish himself or herself as having obtained any such certificate, or as being registered, or permit any such advertisement or publication, or
- (j) aid or assist in the commission of any such offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

### **189 Protection from liability**

No matter or thing done or omitted to be done by a person as:

- (a) the Registrar, or
- (b) the Board, or
- (c) an Impaired Registrants Panel, or
- (c1) a Performance Review Panel, or
- (c2) an assessor, or
- (c3) an authorised person, or
- (d) a Committee, or
- (e) the Tribunal, or
- (f) any member of the Board, an Impaired Registrants Panel, a Performance Review Panel, a Committee or the Tribunal or a person acting under the direction of the Board, an Impaired Registrants Panel, a Performance Review Panel, a Committee or the Tribunal, or
- (g) nominal complainant for the purposes of clause 8 of Schedule 2,

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

### **190 Confidentiality**

A person must not disclose any information obtained in connection with the administration or execution of this Act unless the disclosure is made:

- (a) in the case of information relating to a patient of a registered medical practitioner—with the consent of the patient, or

- (b) in any other case—with the consent of the person to whom the information relates or from whom the information was obtained, or
- (c) in connection with the administration or execution of this Act, or
- (d) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
- (e) with other lawful excuse, or
- (f) in such other circumstances as may be prescribed.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

### **190A Reports of medical or health practitioners**

- (1) This section applies to a report made in connection with an examination of a person by a registered medical practitioner or a registered health practitioner (a **health or 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, or
  - (c) a request made by the person to his or her treating practitioner in connection with a matter being dealt with by an Impaired Registrants Panel.
- (2) Such a health or 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 health or medical report or to give evidence in relation to the report or its contents in any such civil proceedings.
- (4) Such a health or 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 health or medical reports (as referred to in section 190A), reports by an Impaired Registrants Panel to the Board and reports by assessors.

### **191 Notification of certain matters to other States**

The Board must give medical registration authorities such notice and details of the following matters as the Board thinks necessary or desirable in the particular case:

- (a) any complaint made against a registered medical practitioner under this Act, unless it is determined that no further action should be taken in respect of the complaint,
- (b) any order made under this Act in respect of such a complaint,
- (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,
- (c) any report made to the Board by an Impaired Registrants Panel in respect of a registered medical practitioner,
- (d) the removal of the name of a person from the Register and the reasons for that removal,
- (e) the placing of conditions on a person's registration.

#### **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 [Public Health Act 1991](#)) in respect of which the practitioner concerned is accredited.

(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.

(2) A notice under subsection (1) 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) A notice under this section is to include such information as the Board considers appropriate.

(4) A reference in this section to the employer of a practitioner:

- (a) is a reference to the employer at the time of the relevant conduct of the practitioner concerned that gave rise to the order made or conditions imposed by the Board, and
  - (b) includes a reference to any subsequent employer of the practitioner that the Board considers appropriate.
- (5) A reference in this section to a body in respect of which a practitioner is accredited:
- (a) is a reference to the body in respect of which the practitioner concerned was accredited at the time of the relevant conduct of the practitioner that gave rise to the order made or conditions imposed by the Board, and
  - (b) includes a reference to any body in respect of which the practitioner is subsequently accredited that the Board considers appropriate.
- (6) The Board may, in a particular case, dispense with the giving of notice under this section if the Board considers that the exceptional circumstances of the case warrant that decision.
- (7) In this section, **employer** of a practitioner includes any person who engages the practitioner to perform work (whether or not under a contract of employment).

**191C Cancelled registrations to be publicly available**

- (1) The Board is to make publicly available:
- (a) the name of each person who is subject to an order of the Tribunal or the Supreme Court that the person's name be removed from the Register or that the person not be re-registered, and
  - (b) such other information about the person as may be prescribed by the regulations.
- (2) The Board is to ensure that the information required to be made publicly available under subsection (1) is provided to the Commission.
- (3) The Board is not required to make publicly available information about a person:
- (a) who is deceased, or
  - (b) who belongs to a class of persons prescribed by the regulations for the purposes of this section.

**191D Protection from liability for certain publications**

- (1) A publication in good faith under section 165 or 191C does not subject a protected person to any liability (including liability in defamation).
- (2) In this section:

**protected person** means:

- (a) the Board or Tribunal or a member of the Board or Tribunal, or
- (b) the proprietor, editor or publisher of a newspaper, or
- (c) the proprietor or broadcaster of a radio or television station or the producer of a radio or television show, or
- (d) an internet service provider or internet content host, or
- (e) a member of staff of or a person acting at the direction of any person or entity referred to in this definition, or
- (f) any person, or person belonging to a class of persons, prescribed by the regulations for the purposes of this section.

## **192 How notice is to be given under this Act**

- (1) A requirement of this Act that a person be given notice is a requirement that the person be given notice in writing either personally or by post or by such other means as may be prescribed by the regulations.
- (2) For the purposes of section 76 of the *Interpretation Act 1987*, a notice served by post on a person for the purposes of this Act is to be treated as being properly addressed if it is addressed to the last address of the person known to the Registrar.

## **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.

### **193 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations are to be disposed of in a summary manner before:
  - (a) the Local Court, or
  - (b) the Supreme Court in its summary jurisdiction.
- (2) The maximum pecuniary penalty that may be imposed by the Local Court in proceedings for an offence under this Act or the regulations is 100 penalty units.

### **194 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the Governor may make regulations for or with respect to the matters set out in Schedule 4.
- (3) On the recommendation of the Board, the Governor may make regulations for or with respect to regulating the practice of medicine or surgery in any of its branches, or the giving or performance of any medical or surgical advice, service, attendance or operation, by any registered medical practitioner, including:
  - (a) the provision of adequate staff and equipment, and
  - (b) administration of anaesthetic, and
  - (c) the precautions to be taken for the safety and welfare of the patient.

- (4) A provision of a regulation may create an offence punishable by a penalty not exceeding 10 penalty units.
- (5) A regulation may apply, adopt or incorporate any publication as in force from time to time.

### **195 Repeals**

The following Acts are repealed:

- [Medical Practitioners Act 1938 No 37](#)
- *Medical Practitioners (Amendment) 1981 No 55*
- *Medical Practitioners (Amendment) 1982 No 51*
- *Medical Practitioners (Amendment) 1987 No 127*

### **196, 197 (Repealed)**

### **198 Savings and transitional provisions**

Schedule 5 has effect.

### **199 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Registration procedure**

(Section 22)

### **Part 1 Applying for registration**

#### **1 Form etc of application**

An application for registration must be in a form approved by the Board and must be lodged with the Registrar.

#### **2 Application fee**

- (1) The application is to be accompanied by the fee determined by the Board. Different fees may be determined in respect of different types of applications.

(2) The Board may waive the requirement for a fee in any particular case.

### **3 Evidence to accompany application**

The application is to be accompanied by such evidence as the Board requires.

#### **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).

### **4 Time within which application to be determined**

(1) For the purposes of an appeal under this Act, the Board is taken to have determined that an applicant for registration is not entitled to be registered and to have refused the application if the Board does not consider and determine the application within 3 months after the application is lodged with the Registrar.

(2) The Board and the applicant may agree on a longer period than 3 months for the purposes of this clause, in which case the agreed longer period applies.

## **Part 2 Dealing with applications**

### **5 Applications to be considered and determined**

The Board is to consider and determine all applications for registration. The Board determines an application by either registering the applicant (unconditionally or subject to conditions) or refusing the application.

## **6 Notice to applicant of decision on application**

- (1) The Board is to give an applicant for registration notice of the Board's decision on the application as soon as practicable after the decision is made.
- (2) If the decision is to grant registration, the Board is to issue to the applicant a certificate of registration in a form approved by the Board and stating the particulars recorded in the Register with respect to the applicant.

## **7 How a person is registered**

The Board registers a person by recording in the Register such particulars as the Board considers appropriate and any conditions to which the registration is subject.

## **8 Conditions on registration**

The conditions that may be imposed on registration in accordance with this Act at the time of registration include conditions relating to the duration of registration, the aspects of the practice in which the person who is registered may be engaged and conditions relating to any other matters that the Board thinks fit.

# **Part 3 Inquiries**

## **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.

## **10 Board must hold inquiry in certain cases**

If the Board is not satisfied as to the eligibility of an applicant to be registered after considering the application for registration, the Board is to hold an inquiry under this Part for the purpose of satisfying itself as to eligibility.



### **11 Applicant to be notified of inquiry**

The Registrar is to fix a time and place for the holding of an inquiry and is to cause the applicant concerned to be given at least 14 days' notice in writing of the time and place for the inquiry.

### **12 Powers etc of the Board in an inquiry**

For the purposes of an inquiry conducted by the Board under this Part, the Board has the same functions that a Committee has under this Act.

### **13 Practitioner entitled to attend**

- (1) The person in relation to whom an inquiry is being held is entitled to attend and to be accompanied by an Australian legal practitioner or another adviser, but is not entitled to be represented by an Australian legal practitioner or other adviser.
- (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.

### **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.

### **14 Provisions concerning witnesses etc**

Schedule 2 applies to and in respect of a person or witness appearing or evidence given at an inquiry in the same way as it applies to a person or witness appearing or evidence given before a Committee.

### **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.

#### **16 Director-General may intervene at inquiry**

The Director-General may intervene in any inquiry before the Board and is entitled to be heard personally or by being represented by an officer of the Department of Health.

#### **17 Preliminary examinations of applicants for registration**

- (1) Before or during an inquiry under this Part, the Board may require the applicant for registration, by notice in writing given personally or by post to the applicant, to undergo at the Board's expense an examination by a specified registered medical practitioner or a specified registered health practitioner specified in the notice, at any reasonable time and place so specified.
- (2) A failure by an applicant, without reasonable cause, to comply with such a notice is, for the purposes of this Part (including any inquiry or appeal under this Act) evidence that the applicant does not have sufficient physical and mental capacity to practise medicine.

### **Part 3A Decisions of Board**

#### **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.

#### **19 Details of decision to be supplied to applicant**

- (1) The Board must provide a written statement of a decision on an inquiry held under Part 3 to the person in relation to whom the inquiry was held 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 the statement of a decision to such other persons as the Board thinks fit.

#### **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.

## **20 Statement need not contain confidential information**

- (1) The Board is not required to include confidential information in a statement of a decision. If a statement would be false or misleading if it did not include the confidential information, the Board 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 subclause (1), the Board 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 clause 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.

## **Part 4 Keeping and alteration of the Register**

### **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.

## **23 Method of removal from the Register**

- (1) The name of a registered medical practitioner is removed from the Register by the making in the Register of such recording as the Board directs.
- (2) The Board must cause a person to be given notice that the person's name has been removed from the Register unless the person's name was removed in accordance with an order of the Chairperson, a Deputy Chairperson, the Tribunal or the Supreme Court under this Act.

## **24 Surrender of certificates**

- (1) The Board may by notice require a person who has ceased to be registered to furnish to the Board within a time specified in the notice a certificate issued to the person under this Act in respect of that registration.
- (2) A person on whom such a notice has been served must not, without reasonable cause, fail to comply with the requirements of the notice.

Maximum penalty (subclause (2)): 1 penalty unit.

## **25 Making a recording in the Register—extended meaning**

A reference in this Act to the making of a recording in the Register includes a reference to amending, cancelling or deleting a recording in the Register.

## **Part 5 Annual registration fees**

### **26 Annual registration fee payable**

A registered medical practitioner must, on or before a date notified in writing to the practitioner at least 1 month in advance, pay to the Board the annual registration fee determined by the Board and approved by the Minister.

## **27 Practitioner's name may be removed from Register for non-payment**

- (1) The Board is to notify a registered medical practitioner who does not pay the annual registration fee on or before the due date that if the fee is not paid on or before a later date specified in the notification the practitioner's name will be removed from the Register.
- (2) The Board may cause to be removed from the Register the name of any registered medical practitioner who has been so notified and fails to pay the fee on or before that later date.

## **28 Entitlement to re-registration if fee paid**

- (1) A person whose name has been removed from the Register for failure to pay the annual registration fee is entitled to re-registration if the person pays to the Board any unpaid annual registration fee or fees together with any applicable late payment fee.
- (2) A late payment fee is applicable when more than 3 months have elapsed since the person's name was removed from the Register. The late payment fee is \$50 for each month or part of a month after the first 3 months since the person's name was removed from the Register.
- (3) The Board may waive payment of a late payment fee in a particular case if the Board thinks it appropriate to do so.
- (4) The entitlement to re-registration is an entitlement to registration on the same terms and subject to the same conditions (if any) as applied to the person's registration immediately before the removal of his or her name from the Register.
- (5) The Board may refuse to register a person under this clause if satisfied that the person is not competent to practise medicine or is not of good character.
- (6) A person registered pursuant to an entitlement to re-registration under this clause is taken to have been so registered on and from the day the person's name was removed from the Register or on and from such later day as the Board determines and notifies to the person.
- (7) An entitlement to re-registration under this clause does not override any other provision of this Act pursuant to which a person's name is authorised or required to be removed from the Register.

## **29 Board may waive registration fee**

The Board may, for such reason as it considers proper, waive the requirement that an annual registration fee be paid by a registered medical practitioner in any particular year.

## **Schedule 2 Proceedings before a Committee or the Tribunal**

(Sections 161, 176)

### **1 Proceedings generally**

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

### **2 Power to summon witnesses and take evidence**

- (1) The chairperson of a Committee and the Chairperson or Deputy Chairperson of the Tribunal may summon a person to appear in proceedings before the Committee or the Tribunal, to give evidence and to produce such documents (if any) as are referred to in the summons.
- (2) The person presiding at the proceedings may require a person appearing in the proceedings to produce a document.
- (3) A Committee or the Tribunal may, in proceedings before it, take evidence on oath or affirmation and, for that purpose a member of the Committee or the Tribunal:
  - (a) may require a person appearing in the proceedings to give evidence either to take an oath or to make an affirmation in a form approved by the person presiding, and
  - (b) may administer an oath to or take an affirmation from a person so appearing in the proceedings.
- (4) A person served with a summons to appear in any such proceedings and to give evidence 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 a Committee or the Tribunal.
- (5) A person appearing in proceedings to give evidence must not, without reasonable excuse:
  - (a) when required to be sworn or affirm—fail to comply with the requirement, or
  - (b) fail to answer a question that the person is required to answer by the person presiding, or
  - (c) fail to produce a document that the person is required to produce by this clause.

Maximum penalty: 20 penalty units.

### 3 Power to obtain documents

- (1) A member of a Committee or the Tribunal may, by notice in writing served on a person, require the person:
  - (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Committee or the Tribunal or a person authorised by the Committee or the Tribunal in that behalf, and
  - (b) to produce, at that time and place, to the person so specified a document specified in the notice.
- (2) A person who fails, without reasonable excuse, to comply with a notice served on the person under this clause is guilty of an offence.

Maximum penalty: 20 penalty units.

### 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*.

#### **4 Evidence of other proceedings**

- (1) A Committee or the Tribunal may receive and admit on production any of the following, as evidence in any proceedings:
  - (a) the judgment and findings of any court (whether civil or criminal and whether or not of New South Wales) or tribunal,
  - (b) the verdict or findings of a jury of any such court,
  - (b1) a finding, decision or determination of a professional standards committee constituted under a health registration Act,
  - (c) a certificate of the conviction of or the making of a criminal finding in respect of any person,
  - (d) a transcript of the depositions or of shorthand notes, duly certified by the Registrar or clerk of the court or tribunal as correct, of the evidence of witnesses taken in any such court or tribunal,

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

- (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:
  - (a) making a finding that a registered medical practitioner is guilty of unsatisfactory professional conduct or professional misconduct, or
  - (b) exercising any of its powers under Division 4 of Part 4.

#### **5 Additional complaints**

- (1) A Committee or the Tribunal may in proceedings before it deal with one or more complaints about a registered medical practitioner.
- (2) If, during any such proceedings, it appears to a Committee or the Tribunal that, having regard to any matters that have arisen, another complaint could have been made against the practitioner concerned:
  - (a) whether instead of or in addition to the complaint which was made, and
  - (b) whether or not by the same complainant,the Committee or the Tribunal may take that other complaint to have been referred to



it and may deal with it in the same proceedings.

(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:

- (a) a finding on a question of fact in relation to the conduct of a registered medical practitioner,
- (b) a finding that a registered medical practitioner is guilty of unsatisfactory professional conduct or professional misconduct.

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

## **6 Release of information**

(1) The person presiding in proceedings before a Committee or the Tribunal may, if the person presiding thinks it appropriate in the particular circumstances of the case (and whether or not on the request of a complainant, the practitioner concerned or any other person):

(a) direct that the name of any witness is not to be disclosed in the proceedings, or

(b) direct that all or any of the following matters are not to be published:

- the name and address of any witness,
- the name and address of a complainant,
- the name and address of a registered medical practitioner,
- any specified evidence,
- the subject-matter of a complaint.

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

(3) A direction may be given before or during proceedings, but must not be given before the proceedings unless notice is given of the time and place appointed by the person presiding for consideration of the matter to:

(a) a person who requested the direction, and

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

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

(3A) For the purposes of this clause, a reference to the name of any person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.

(4) A person who contravenes a direction given under this clause is guilty of an offence.

Maximum penalty: 150 penalty units in the case of a corporation, and 20 penalty units in any other case.

## **7 Authentication of documents by a Committee or the Tribunal**

Every document requiring authentication by a Committee or the Tribunal may be sufficiently authenticated:

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

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

## **8 Nominal complainant**

(1) In any proceedings before a Committee or the Tribunal, a person appointed by the Commission:

(a) may act as nominal complainant in place of the actual complainant, and

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

(2) A reference in this Act to a complainant includes a reference to a nominal complainant.

## **9 Intervention by Director-General and Commission**

(1) Without limiting the operation of clause 8, the Director-General personally (or an officer of the Department of Health appointed by the Director-General) or a person appointed by the Commission may intervene, and has a right to be heard, in any proceedings before a Committee or the Tribunal.

(2) In the case of proceedings before the Tribunal, the Director-General and the Commission may be represented by an Australian legal practitioner.

## **10 Expedition of inquiries and appeals**

- (1) It is the duty of a Committee and the Tribunal to hear inquiries and appeals under this Act and to determine those inquiries and appeals expeditiously.
- (2) Without affecting the generality of subclause (1):
  - (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
  - (b) a Committee or the Tribunal may postpone or adjourn proceedings before it as it thinks fit.

## **11 (Repealed)**

## **12 Certain complaints may not be heard**

- (1) A Committee or the Tribunal may decide not to conduct an inquiry, or at any time to terminate an inquiry or appeal, if:
  - (a) a complainant fails to comply with a requirement made of the complainant by the Committee or the Tribunal, or
  - (b) the person about whom the complaint is made ceases to be a registered medical practitioner, or
  - (c) the complaint before the Committee or the Tribunal is withdrawn.
- (2) A Committee or the Tribunal must not conduct or continue any inquiry or any appeal if the practitioner concerned dies.
- (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.

## **13 Tribunal can award costs**

- (1) The Tribunal may order the complainant, if any, the registered medical practitioner concerned, or any other person entitled to appear (whether as of right or because leave to appear has been granted) at any inquiry or appeal before the Tribunal to pay such costs to such person as the Tribunal may determine.
- (2) When an order for costs has taken effect, the Tribunal is, on application by the person to whom the costs have been awarded, to issue a certificate setting out the terms of the order and stating that the order has taken effect.
- (3) The person in whose favour costs are awarded may file the certificate in the District Court, together with an affidavit by the person as to the amount of the costs unpaid, and the Registrar of the District Court is to enter judgment for the amount unpaid

together with any fees paid for filing the certificate.

## **Schedule 3 Provisions relating to the members and procedure of the Board**

(Section 130)

### **Part 1 Members of the Board**

#### **1 President and Deputy President of the Board**

- (1) One of the members of the Board is to be appointed as President of the Board and one is to be appointed as Deputy President of the Board.
- (2) The appointment is to be made in and by the relevant instrument of appointment as a member of the Board, or by another instrument executed by the Governor.
- (3) A person who is the President or Deputy President vacates office as President or Deputy President if the person:
  - (a) is removed from that office by the Governor under subclause (4),
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be a member.
- (4) The Governor may remove a member from the office of President or Deputy President.

#### **2 Acting members and acting President**

- (1) The Governor may, from time to time, appoint a person to act in the office of a member of the Board during the illness or absence of the member, and the person, while so acting, has and may exercise all the functions of the member and is taken to be a member.
- (2) The Deputy President may act in the office of President during the illness or absence of the President, and while so acting has and may exercise all the functions of the President and is taken to be the President.
- (3) The Governor may, from time to time, appoint a member to act in the office of President during the illness or absence of both the President and Deputy President, and the member, while so acting, has and may exercise all the functions of the President and is taken to be the President.
- (4) A person is not eligible to be appointed under subclause (1) to act in the office of a member of the Board required to be a registered medical practitioner nominated by a particular body unless the person is a member of that body.
- (5) The Governor may remove any person from any office to which the person was

appointed under this clause.

- (6) A person while acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (7) For the purposes of this clause, a vacancy in the office of a member, the President or the Deputy President is taken to be an absence from office of the member, President or Deputy President.

### **3 Terms of office**

- (1) Subject to this Schedule, a member of the Board holds office for such period, not exceeding 4 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person may not hold office as a member of the Board for consecutive terms of office totalling more than 12 years.

### **4 Remuneration**

- (1) A member of the Board is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Board may from time to time determine in respect of the member.
- (2) A member of the Board is, while sitting on an inquiry, entitled to be paid at a rate determined by the Board.
- (3) The Board may pay a member of the Board who performs any service for the Board such amount as the Board considers appropriate.

### **5 Filling of vacancy in office of member**

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

### **6 Casual vacancies**

- (1) A member of the Board vacates office if the member:
  - (a) dies, or
  - (b) absents himself or herself from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings, or
  - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt

or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or

- (d) becomes a mentally incapacitated person, or
- (e) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (f) ceases to have any qualification necessary for his or her appointment as a member, other than the nomination of a particular person or body, or
- (g) resigns the office by instrument in writing addressed to the Minister, or
- (h) is removed from office by the Governor under subclause (2) or (3).

(2) The Governor may remove a member from office.

(3) Without affecting the generality of subclause (2), the Governor may remove from office a member who contravenes the provisions of clause 7.

## **7 Disclosure of pecuniary interests**

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

(a) in a matter that is being considered, or is about to be considered, at a meeting of the Board, or

(b) in a thing being done or about to be done by the Board,

must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

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

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or a specified person,

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

(3) The Board is to cause particulars of any disclosure made under this clause to be recorded in a book kept for the purpose and that book must be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined

by the Board from time to time.

- (4) After a member has, or is taken to have, disclosed the nature of an interest in any matter or thing pursuant to this clause, the member must not, unless the Board otherwise determines:
  - (a) be present during any deliberation of the Board, or take part in any decision of the Board, with respect to that matter, or
  - (b) exercise any functions under this Act with respect to that thing.
- (5) Even if a member contravenes the provisions of this clause, the contravention does not invalidate any decision of the Board or the exercise of any function under this Act.
- (6) This clause does not apply to or in respect of an interest of a member in a matter or thing which arises merely because the member is a registered medical practitioner.
- (7) A reference in this clause to a meeting of the Board includes a reference to a meeting of a committee of the Board.

## **8 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member of the Board and a member is not, as a member, subject to that Act.
- (2) If by or under any other Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,that provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.
- (3) The office of a member is not for the purposes of any Act, an office or place of profit under the Crown.

## **Part 2 Procedure of the Board**

### **9 General procedure**

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

## **10 Quorum**

Except as otherwise provided by this Act, the quorum for a meeting of the Board is 11 members.

## **11 Presiding member**

- (1) The President or, in the absence of the President, the Deputy President or in the absence of both of them, another member of the Board elected to chair the meeting by the members present, is to preside at a meeting of the Board.
- (2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **12 Voting**

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

## **13 Minutes**

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

# **Schedule 3A Provisions relating to performance assessments**

(Section 865)

## **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 to 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 an Australian legal practitioner or other adviser, but is not entitled to be represented by the Australian 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](#).

## Schedule 4 Regulations

(Section 194)

### 1 Procedure of Committee or Tribunal

The procedure to be followed at and any matters incidental to the holding of an inquiry or appeal by a Committee or the Tribunal (including providing for the payment of costs in respect of the holding of an inquiry of the Tribunal).

### 2 Seal of the Tribunal

The custody and use of the seal of the Tribunal.

### 3 Panel procedure

The procedure before an Impaired Registrants Panel or a Performance Review Panel.

### 4 The Register

Regulating the manner of keeping and the form of the Register.

### 5 Forms

Providing for the payment of annual registration fees on a biennial or triennial basis.

### 6 Service of notices

Prescribing additional means by which any notice or notification under this Act may be served.

### 7 Charges for medical services

(1) Prohibiting any registered medical practitioner demanding payment of or collecting the charge or remuneration for any medical or surgical advice, service, attendance or



operation rendered or performed by any other registered medical practitioner except in such circumstances and subject to such conditions as may be prescribed.

- (2) Prohibiting any registered medical practitioner sharing or agreeing to share the charge or remuneration for any medical or surgical advice, service, attendance or operation rendered or performed by the practitioner with any other registered medical practitioner except in such circumstances and subject to such conditions as may be prescribed.

## **8 Publications**

Regulating or prohibiting the exhibition or publication of any matter that relates to the practice of medicine or any branch of medicine or part of that practice.

## **9 After-hours medical services**

Regulating after-hours medical services and medical deputising services, including (without limiting the generality of this power) regulations as to the following:

- (a) the management and ownership of those services,
- (b) the employment of persons in those services,
- (c) the hours of operation and premises to be provided by those services,
- (d) the advertising of those services.

## **10 Infection control standards**

The infection control standards to be followed by medical practitioners in the practice of medicine. Before a regulation is made for or with respect to any such matter, the Minister is to give the Board an opportunity to comment on the proposal concerned.

# **Schedule 5 Savings and transitional provisions**

(Section 198)

## **Part 1 Preliminary**

### **1 Definitions**

In this Schedule:

**new Board** means the Medical Board constituted by this Act.

**old Board** means the Medical Board constituted under the 1938 Act.

**the 1938 Act** means the *Medical Practitioners Act 1938*.

## 2 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

the *Health Legislation Amendment Act 1995*

*Medical Practice Amendment Act 2000*

*Health Legislation Amendment (Unregistered Health Practitioners) Act 2006* (but only to the extent that it amends this Act)

*Medical Practice Amendment Act 2008* (but only to the extent that it amends this Act)

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of the publication.

## Part 2 Provisions consequent on enactment of this Act

### 3 The Medical Tribunal

The persons holding office as Chairperson and Deputy Chairperson of the Medical Tribunal immediately before the repeal of the 1938 Act continue to hold office as the Chairperson and Deputy Chairperson, respectively, of the Medical Tribunal under this Act for the remainder of the period specified in their original instruments of appointment.

### 4 The Medical Board

- (1) A person who, immediately before the repeal of the 1938 Act, held office as a member of the old Board holds office as a member of the new Board on that repeal for the remainder of the person's term.
- (2) The person holding office under section 5 (4) (e) of the 1938 Act is taken to have been nominated as referred to in section 130 (2) (e) of this Act.

## **5 The Registrar and other officers**

A person holding office as the Registrar or other officer under the 1938 Act immediately before the repeal of that Act is, on that repeal, taken to have been appointed as the Registrar or other officer, as appropriate, under this Act and to have been appointed subject to the same terms and conditions as applied to the appointment immediately before that repeal.

## **6 The Medical Education and Research Account**

The Medical Education and Research Account under this Act is a continuation of the account of the same name kept under the 1938 Act.

## **7 The Register**

The Register under this Act is a continuation of the Register kept under the 1938 Act.

## **8 Registration as medical practitioner**

- (1) A person who was registered as a medical practitioner under the 1938 Act immediately before the repeal of that Act is taken to be registered under this Act.
- (2) The person's registration under this Act is taken to be subject to the same limitations (as to time or otherwise) and conditions, if any, to which it was subject immediately before the repeal of the 1938 Act.

## **9 Fees**

- (1) An annual roll fee paid under the 1938 Act immediately before its repeal is taken to have been paid as an annual registration fee under this Act and is taken to have been so paid for or in relation to the same period as that which applied to the fee under the 1938 Act.
- (2) A failure by a registered medical practitioner to pay the annual roll fee under the 1938 Act is taken to be a failure to pay the annual registration fee under this Act.
- (3) A registered medical practitioner who was not registered under the 1938 Act immediately before its repeal because his or her name had been removed from the Register for failure to pay the annual roll fee is taken to have had his or her name removed from the Register under this Act for failure to pay the annual registration fee.

## **10 Applications for registration**

An application for registration under a provision of the 1938 Act which had not been determined by the old Board before the repeal of this Act is taken to be an application for registration under the corresponding provision of this Act and any inquiry or investigation for the purposes of such an application may be continued and completed.

### **11 Continuation of complaints, inquiries and appeals**

- (1) The provisions of the 1938 Act continue to apply to and in respect of a complaint made, or an inquiry or appeal commenced, under that Act and pending immediately before the repeal of that Act.
- (2) Any order, decision or determination resulting from an inquiry or appeal to which this clause applies is taken to have been made under the corresponding provisions of this Act and is to have effect accordingly.

### **12 Complaints relating to previous conduct**

- (1) A complaint or investigation may be made under this Act with respect to conduct or any other matter or thing that occurred before, or partly before and partly after, the commencement of the provisions of this Act under which the complaint or investigation is made.
- (2) Such a complaint or investigation may only be made if it is a complaint or investigation that could have been made before the commencement of those provisions.

### **13 Orders under 1938 Act**

- (1) An order (***the original order***) having effect under the 1938 Act immediately before the repeal of that Act is by this clause converted to the equivalent order under this Act and is taken to have been made under this Act. This includes an order by which a person's name was required to be removed from the Register under the 1938 Act.
- (2) If the original order fixed a time after which a person may apply to be registered, the order is instead taken to provide that an application for review of the order by which the person's name was removed from the Register may not be made until after the time so fixed.
- (3) If the original order fixed a time after which a person may apply to be registered but the person's name was not ordered to be removed from the Register (because the person had already ceased to be registered), the order is also taken to provide that the person not be re-registered.

### **14 Construction of certain references**

On and from the repeal of the 1938 Act, a reference in any other Act, in any instrument made under any Act or in any other instrument of any kind:

- (a) to the old Board is to be read as a reference to the new Board, and
- (b) to the Registrar under the 1938 Act is to be read as a reference to the Registrar under this Act, and

- (c) to the Register under the 1938 Act is to be read as a reference to the Register under this Act, and
- (d) to the registration of a person as a medical practitioner under the 1938 Act is to be read as a reference to the registration of the person as a medical practitioner under this Act.

### **Part 3**

#### **15-19 (Repealed)**

### **Part 4 Provisions consequent on enactment of the [Health Legislation Amendment Act 1995](#)**

#### **20 Definition**

In this Part, **the Act** means the [Health Legislation Amendment Act 1995](#).

#### **21 Suspension or deregistration**

- (1) A finding referred to in section 64 (1) (c) and made after the commencement of Schedule 1 (1) to the Act authorises the making of an order under section 64 (1) even if:
  - (a) the finding is made in relation to an offence that was committed, or
  - (b) the complaint concerned was made, before that commencement.
- (2) However, subclause (1) does not apply if the offence concerned was committed on or after 1 July 1993 (the date of the repeal of the [Medical Practitioners Act 1938](#)) and before the date of the commencement of Schedule 1 (1) to the Act.
- (3) A finding referred to in section 64 (1) (d) does not authorise the making of an order under section 64 (1) if the complaint concerned was made before the commencement of Schedule 1 (1) to the Act.

### **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.

## **Part 6 Provisions consequent on enactment of Health Legislation Amendment (Unregistered Health Practitioners) Act 2006**

### **32 Definition**

In this Part:

**amending Act** means the *Health Legislation Amendment (Unregistered Health Practitioners) Act 2006*.

### **33 Prohibition orders**

The Tribunal may make a prohibition order under section 64 (2A) with respect to either or both of the following:

- (a) conduct or any other matter or thing that occurred before, or partly before and partly after, that subsection was inserted by the amending Act,
- (b) a complaint that has been made but not fully dealt with before that subsection was inserted by the amending Act.

### **34 Decisions of the Tribunal**

Section 165 (4), as substituted by the amending Act, applies only in respect of a statement of a decision that is given after the commencement of that subsection.

### **35 Cancelled registrations to be publicly available**

Section 191C, as inserted by the amending Act, extends to a person who was, immediately before the commencement of that section, subject to an order of the Tribunal or the Supreme Court that the person's name be removed from the Register or that the person not be re-registered.

## **Part 7 Provisions consequent on enactment of Health Legislation Amendment Act 2007**

### **36 Delegations by Board**

Anything done or purported to be done under section 136 before the commencement of amendments to that section by the *Health Legislation Amendment Act 2007* that would have been validly done had those amendments been in force when it was done is validated.

## **Part 8 Provisions consequent on enactment of Medical Practice Amendment Act 2008**

### **37 Definition**

In this Part:



**amending Act** means the *Medical Practice Amendment Act 2008*.

**38 Definition of “professional misconduct”**

Section 37, as substituted by the amending Act, extends to instances of unsatisfactory professional conduct occurring before the section is substituted.

**39 Changes to conditions or suspension of registration**

An amendment made by the amending Act to section 66A extends to action taken by the Board before the commencement of the amendment.

**40 Review of Board decisions**

Section 66AB extends to decisions of the Board made before the commencement of that section.

**41 Provision of information to Commission**

Sections 66B (1A) and 66BA (3) extend to information obtained by the Board before the commencement of those subsections.

**42 Extension of suspension**

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.

**43 Appeal on point of law**

Section 95A extends to action taken by the Board before the commencement of that section.

**44 Matters to be taken into account by Board**

Section 140A extends to authorise the Board to have regard to matters occurring before the commencement of that section.

**45 Notification of orders to employers etc**

An amendment of section 191B by the amending Act extends to the giving of notice of action taken before the commencement of the amendment.

**46 Matters to be taken into account by Committee or Tribunal**

An amendment made by the amending Act to Schedule 2 extends to:

- (a) any judgment, finding, decision, determination, verdict, certificate or evidence made or given before the commencement of the amendment, and
- (b) proceedings pending before the Committee or the Tribunal on the commencement of

the amendment.

#### **47 Matters to be taken into account on inquiry into review application**

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.

#### **48 Delegation by Board**

Section 66 (6) as inserted by the amending Act does not extend to a delegation made before the commencement of that subsection.

#### **49 Professional Standards Committees**

- (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.
- (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.

## **Dictionary**

### **1 Defined expressions**

In this Act:

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

**Australian Medical Council** means the body incorporated in the Australian Capital Territory, for the purpose of advising on standards for the registration of medical practitioners, called the Australian Medical Council Incorporated.

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

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

**Chairperson** means the Chairperson of the Tribunal.

**Commission** means the Health Care Complaints Commission constituted under the [Health Care Complaints Act 1993](#).

**Committee** means a Professional Standards Committee constituted under this Act.

**competent** has the meaning given by clause 2.

**complainant** includes a person acting as a nominal complainant in accordance with this Act.

**conduct** means any act or omission.

**confidential information** has the meaning given by clause 4.

**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](#).

**Deputy Chairperson** means a Deputy Chairperson of the Tribunal.

**Deputy President** means the Deputy President of the Board.

**Director-General** means Director-General of the Department of Health.

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

**exercise** of a function includes, where the function is a duty, performance of the duty.

**function** includes power, authority and duty.

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

**health registration Act** has the same meaning as in the [Health Care Complaints Act 1993](#).

**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.

**impairment** has the meaning given by clause 3.

**medical registration authority** means a body established under the law of another State or Territory having functions similar to the functions of the Board under this Act.

**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.

**medicine** includes surgery.

**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.

**President** means the President of the Board.

**private hospital** has the meaning given by the [Private Hospitals and Day Procedure Centres Act 1988](#).

**professional misconduct** has the meaning given by section 37.

**prohibition order** has the same meaning as in section 64 (2A).

**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](#).

**record** means any book, account, document, paper and other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means.

**Register** means the Register of Medical Practitioners kept under this Act.

**registered** means registered as a medical practitioner under this Act.

**registered health practitioner** means a person registered under a health registration Act.

**registered medical practitioner** means a person who is for the time being registered as a medical practitioner under this Act.

**registered medical student** means a person who is for the time being registered as a medical student under this Act.

**Registrar** means the Registrar of the Board.

**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.

**Tribunal** means the Medical Tribunal constituted under this Act.

**unsatisfactory professional conduct** has the meaning given by section 36.

**visiting practitioner** has the meaning given by the [Health Services Act 1997](#).

## 2 Competence to practise medicine

A person is **competent** to practise medicine only if the person:

- (a) has sufficient physical capacity, mental capacity and skill to practise medicine, and
- (b) has sufficient communication skills for the practice of medicine, including an adequate command of the English language.

## 3 Impairment

A person is considered to suffer from an impairment if the person suffers from any physical or mental impairment, disability, condition or disorder which detrimentally affects or is likely to detrimentally affect the person's physical or mental capacity to practise medicine. Habitual drunkenness or addiction to a deleterious drug is considered to be a physical or mental disorder.

## 4 Confidential information

Information is **confidential information** for the purposes of a statement of a decision under this Act if it falls into any of the following categories:

- (a) has not previously been published or made available to the public when the statement of the decision to which it is or may be relevant is being prepared,
- (b) it relates to the personal or business affairs of a person other than a person to whom the statement is required to be provided or would be required to be provided but for the fact that it contains confidential information,
- (c) it was supplied in confidence,
- (d) its publication would reveal a trade secret,
- (e) it was provided in compliance with a duty imposed by an enacted law,
- (f) its inclusion in the statement would be a breach of any enacted law,
- (g) it is a protected report or would reveal the contents of a protected report.