

MEDICAL PRACTICE ACT 1992 No. 94

NEW SOUTH WALES



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MEDICAL PRACTICE ACT 1992 No. 94

NEW SOUTH WALES



Act No. 94, 1992

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.
[Assented to 2 December 1992]

See also Nurses (Amendment) Act 1992.

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

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

Commencement

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

Definitions

3. 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.

PART 2—REGISTRATION

Division 1—Qualifications etc. for registration

Entitlement to general registration based on qualifications and training

4. (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 is a graduate of a Medical School (whether within or outside Australia) accredited by the Australian Medical Council or has successfully completed examinations held by that Council for the purposes of registration as a medical practitioner.

- (3) The entitlement under this section is an entitlement to general registration (that is, registration not subject to any condition).

Entitlement to conditional registration for interns

5. (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.

Entitlement to general or conditional registration based on registration elsewhere in Australia

6. (1) A person who is licensed or registered as a medical practitioner under the law in force in another State or Territory is entitled to be registered as a medical practitioner under this Act.

(2) If the person's licence or registration in the other State or Territory is not subject to any condition or restriction, the person's entitlement to registration under this Act is an entitlement to general registration (that is, registration not subject to any condition).

(3) If the person's licence or registration in the other State or Territory is subject to any condition or restriction, the person's entitlement to registration under this Act is an entitlement to registration subject to the conditions to which that licence or registration is subject or conditions appropriate to give effect to any restriction to which that licence or registration is subject.

Conditional registration at the discretion of the Board

7. (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

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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 practise of medicine but only if the Board thinks that registration is appropriate in the circumstances.

Interim registration available in certain cases

8. (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;

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(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.

Non-practising registration

9. 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.

Conditions may be imposed in cases of impairment

10. (1) The Board may impose conditions on a person's registration 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.

Entitlement to registration does not prevent conditions being imposed

11. An entitlement to registration under this Act does not prevent conditions being imposed on that registration in accordance with this Act.

Division 2—Grounds for refusing registration

Registration may be refused despite entitlement or eligibility

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

Applicants must be competent and of good character

13. 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.

Restrictions on registration of deregistered persons

14. (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.

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Registration may be refused if applicant convicted of offence

15. (1) The Board may refuse an application for registration if:

- (a) the applicant has been convicted in New South Wales of an offence or has been convicted elsewhere than in New South Wales by a court for or in respect of an act or omission that would, had it taken place in New South Wales, have constituted an offence; and
- (b) the Board is of the opinion that the conviction renders the person 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.

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

16. (1) The Board may refuse an application for registration if the applicant's name has been removed from a foreign medical register for any reason relating to conduct of the person amounting to professional misconduct (within the meaning of this Act) or on any basis relating to the person's physical or mental capacity to practise medicine.

(2) A person's name is taken to have been removed from a foreign medical register if it is removed or erased from any register or roll established or kept under any law of any country, State or Territory providing for the registration, licensing or certification of medical practitioners under an Act.

Division 3—Appeals

Right of appeal

17. (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.

Appeal to be lodged with Registrar

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

Appeal from inquiry decision to be by way of rehearing

19. 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.

Pending appeal does not affect Board's determination

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

Determination of appeal

21. (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**Machinery provisions**

22. 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.

Some applications for registration to be dealt with by Committee

23. (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.

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(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.

How registration ceases

- 24.** 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

Removal of person wrongfully registered

25. 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.

Amendment of incorrect particulars concerning qualifications

26. (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.

Removal on death or at own request

27. 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.

Removal or amendment pursuant to disciplinary order

28. (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

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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.

Appeal

29. (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.

Practitioner to be notified of action

30. 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.

Division 2—Powers resulting from action under foreign law**Meaning of "foreign law"**

31. 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.

Deregistration on basis of disciplinary action under foreign law

32. (1) This section applies when it is proved to the satisfaction of the Board that the name of a person has, after the person was registered under this Act, been removed from any register or roll under a foreign law:

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- (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.

Imposition of conditions imposed under foreign law

33. (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.

Practitioner to be notified of action

34. 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.

Appeal

35. (1) A person may appeal to the Tribunal against a decision of the Board to remove the person's name from the Register 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

Meaning of “unsatisfactory professional conduct”

36. For the purposes of this Act, unsatisfactory professional conduct of a registered medical practitioner includes each of the following:

Lack of skill etc.

Any conduct that demonstrates a lack of adequate knowledge, skill, judgment or care, by the practitioner in the practice of medicine.

Contravention of Act or regulations

Any contravention by the practitioner (whether by act or omission) of a provision of this Act or the regulations.

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.

Special medical treatment

Any conduct which results in the conviction of the practitioner for an offence under section 204 of the Mental Health Act 1990, section 20B of the Children (Care and Protection) Act 1987 or section 35 of the Disability Services and Guardianship Act 1987 (which relate to restrictions on special medical treatment).

Health Insurance Act convictions

Any conduct which results in the conviction of the practitioner for an offence under section 128A, 128B, 129, 129AA or 129AAA of the Health Insurance Act 1973 of the Commonwealth.

Disclosure of pecuniary interests to patients

Any conduct which results in the conviction of the practitioner for an offence under section 46 of the Private Hospitals and Day Procedure Centres Act 1988 or section 43 of the Nursing Homes Act 1988 (which relate to disclosure of pecuniary interests to patients).

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. Section 38 provides for exceptions to this.

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:

- (a) 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
- (b) 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.

Section 38 provides for exceptions to this.

False qualifications

Using any certificate, diploma, membership, degree, licence, letters, testimonial or other title, status, document or description in relation to himself or herself or in the practice of medicine, other than those which are recorded in the Register in respect of the practitioner, except:

- (a) a certificate, diploma, membership, degree, licence, letters, testimonial or other title, status, document or description lawfully used by the practitioner before the commencement of this Act; or
- (b) the description "doctor", "medical practitioner", "general practitioner" or another expression recognised by the Board generally or in a particular case for the purposes of this paragraph.

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.

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Other improper or unethical conduct

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

Meaning of "professional misconduct"

37. For the purposes of this Act, "professional misconduct" of a registered medical practitioner means unsatisfactory professional 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.

Conduct not constituting unsatisfactory professional conduct

38. A registered medical practitioner is not guilty of unsatisfactory professional conduct described under the heading "Supervision of assistants" or "Assisting unregistered practitioners" in section 36 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.

Division 2—Making a complaint

Grounds for a complaint

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

Criminal conviction

A complaint that the practitioner has been convicted in New South Wales of an offence or has been convicted outside New South Wales in respect of an act or omission that would, if it had taken place in New South Wales, have constituted an offence.

Unsatisfactory professional conduct or professional misconduct

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

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).

Impairment

A complaint that the practitioner suffers from an impairment.

Character

A complaint that the practitioner is not of good character.

Complaint can be made even if person no longer registered

40. 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.

Who can make a complaint

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

Complaints to be made to the Board or the Director-General

42. Complaints are to be made to the Board or the Director-General.

Complaints to be in writing etc.

43. (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 Director-General 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.

Where to lodge complaints

44. A complaint made to the Board is to be lodged with the Registrar. A complaint made to the Director-General is to be lodged at an office of the Department of Health.

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Further particulars may be required from complainant

45. The Board or the Director-General may require the complainant to provide further particulars of a complaint.

Board and Director-General to notify each other of complaints

46. (1) The Board and the Director-General 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 Director-General 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 Director-General.

Board to notify person against whom complaint is made of complaint

47. (1) Written notice of the making of a complaint, the nature of the complaint and the identity of the complainant is to be given to the person against whom the complaint is made, as soon as practicable after the complaint is made.

(2) The notice is to be given by the Board (in the case of a complaint made to or by the Board) or by the Director-General (in the case of a complaint made to or by the Director-General).

(3) Notice is not required to be given if the giving of the notice will or is likely to:

- (a) prejudice the investigation of the complaint; or
- (b) place the health or safety of a patient at risk; or
- (c) place the complainant at risk of intimidation or harassment.

Division 3—How complaints are to be dealt with

Complaints to be dealt with expeditiously

48. All complaints are to be dealt with expeditiously.

Board and Director-General to consult on complaint

49. Before any action is taken on a complaint, the Board and the Director-General 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.

Courses of action available to the Board on a complaint

50. (1) The following courses of action are available to the Board in respect of a complaint made to the Board or that the Board has decided to make:

- the Board may refer the complaint to an Impaired Registrants Panel, a Committee or the Tribunal, as the Board thinks fit;
- the Board may direct the practitioner concerned to attend counselling;
- 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 Director-General for investigation.

(3) The Director-General must, on receipt of a complaint referred by the Board for investigation, investigate the complaint or cause it to be investigated.

Courses of action available to the Director-General on a complaint

51. (1) The following courses of action are available to the Director-General in respect of a complaint made to the Director-General or that the Director-General has decided to make:

- the Director-General may refer the complaint to the Board or, after consultation with the Board, to a Committee or the Tribunal (but may not refer it to an Impaired Registrants Panel);
- the Director-General may determine that no further action should be taken in respect of the complaint.

(2) If the Director-General refers a complaint to a Committee or the Tribunal, the Director-General is to inform the Board accordingly.

(3) If the Director-General refers a complaint to the Board, a Committee or the Tribunal, the Director-General is to investigate the complaint or cause it to be investigated.

Serious complaints must be referred to Tribunal

52. (1) Both the Board and the Director-General are under a duty to refer a complaint to the Tribunal if of 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 Director-General 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

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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 Director-General decides not to refer the complaint to the Tribunal, the Director-General must instead refer the complaint to the Board.

(4) This section does not require the Board or the Director-General to refer a complaint that the Board or Director-General thinks is frivolous or vexatious.

Complaint cannot be referred without statutory declaration by complainant

53. Neither the Board nor the Director-General may refer a complaint under this Division unless and until the complainant (other than the Board or the Director-General) has verified the complaint by statutory declaration.

Board may require practitioner to undergo medical examination

54. (1) The Board may by notice given to a registered medical practitioner against whom a complaint has been made direct the practitioner to undergo a medical examination by a specified registered medical practitioner at a specified time and place.

(2) A practitioner must not be directed to undergo a medical examination unless it is reasonable to require the examination, given the nature of the 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.

Result of failure to attend counselling or medical examination

55. A failure by a person, without reasonable cause, to comply with a direction under this Division to attend counselling or undergo a medical 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.

Inquiries etc. not prevented by other proceedings

56. 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.

Complaint not to be referred if practitioner dead

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

Complaint need not be referred if practitioner no longer registered

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

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

59. The Board or the Director-General 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 Director-General.

Division 4—Disciplinary powers of Committees and Tribunal**Powers may be exercised if complaint proved or admitted**

60. 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.

General powers to caution, reprimand, counsel etc.

61. (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.

Power to fine in certain cases

62. (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.

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

63. (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.

(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.

Tribunal can suspend or deregister in certain cases

64. (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.

(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.

(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.

Board may refer breach of disciplinary order to the Tribunal

65. (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

Suspension or conditions to protect life etc.

66. (1) The Board may at any time, if it is satisfied that such action is necessary for the purpose of protecting the life or the physical or mental health of any person:

- (a) by order suspend a registered medical practitioner from practising medicine for such period (not exceeding 30 days) as is specified in the order; or
- (b) impose on a registered medical practitioner's registration such conditions, relating to the practitioner's practising medicine, as it considers appropriate.

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(2) The Board may take such action whether or not a complaint has been made to the Board about the practitioner.

(3) The Board must make a complaint under this Part in respect of any matter that is the subject of action or proposed action under this section and must do so before or at the same time as taking that action.

(4) The Board is to treat the complaint as one to which section 52 (Serious complaints must be referred to Tribunal) applies and accordingly must refer the complaint to the Tribunal or (if that section permits) to a Committee, together with details of any action taken by the Board under this section.

(5) The Board must, at or before the time it takes action under this section, refer the matter to the Director-General for investigation. The Director-General is to investigate the matter or cause it to be investigated.

Extension of suspension

67. 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 30 days, but only if:

- (a) the extension has been approved in writing by the Chairperson or a Deputy Chairperson; and
- (b) the complaint about the practitioner has not been disposed of.

Expiration of suspension

68. On the expiry 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 order of the Tribunal on the complaint that is referred to the Tribunal.

Effect of conditions imposed

69. Conditions imposed under this Division have effect until the complaint about the practitioner is disposed of. This section does not prevent conditions being imposed under another provision of this Act.

Division 6—Duty of courts etc. to refer matters to Registrar**Referral of mental health matters to Registrar**

70. If a registered medical practitioner 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.

Referral of matters by courts

71. (1) A court in New South Wales before which a person is convicted of an offence (other than an offence prescribed by the regulations) is to cause a certificate of conviction in respect of the person to be sent to the Registrar if the court has reasonable grounds to believe 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 certificate of conviction 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 certificate or transcript relates.

PART 5—ALTERNATIVES TO DISCIPLINARY PROCEDURES

Referral of impairment matters concerning practitioners or students

72. (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 Director-General about a practitioner who is the subject of a referral to a Panel, the Board is to notify the Director-General of the referral.

Persons may notify Board of impairment matters concerning practitioners or students

73. 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.

Director-General may refer impairment matters to Board

74. (1) If the Director-General becomes aware of any matter that the Director-General considers indicates that a registered medical practitioner

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or medical student suffers or may suffer from an impairment, the Director-General 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 Director-General or a matter referred to the Director-General for investigation.

Panel to inquire into matters referred to it

75. (1) A 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.

Panel not to take action while Director-General investigating

76. A 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 Director-General, while the investigation is being conducted.

Board to give notice of proposed inquiry

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

Practitioner or student entitled to make representations

78. A registered medical practitioner or medical student who is the subject of any inquiry by a 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.

Board may require student to undergo medical examination

79. (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 a Panel direct the student to undergo a medical examination by a specified registered medical practitioner at a specified time and place.

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(2) A medical student must not be directed to undergo a medical examination unless it is reasonable to require the examination, given the nature of the matter that is the subject of the referral or proposed referral. The time and place specified for the examination must be reasonable and the examination is to be at the expense of the Board.

(3) If a medical student fails, without reasonable excuse, to comply with a direction to undergo a medical examination, the Board may by order in writing prohibit the student undertaking clinical studies 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 conduct of the clinical studies that the student undertakes.

(5) A medical student is not to be permitted to undertake clinical studies contrary to the terms of the order.

Assessment, report and recommendations by Panel

80. (1) A 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 consent 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.

Voluntary suspension or conditions on registration

81. (1) The Board may place conditions on a registered medical practitioner's registration or suspend the practitioner from practising medicine if a Panel has recommended that the Board do so and the Board is satisfied that the practitioner has voluntarily consented to the recommendation.

(2) Because the practitioner's action is voluntary, he or she is entitled at any time to have those conditions removed or altered or the suspension lifted or shortened by requesting the Board in writing to do so.

(3) However, the Panel which made the recommendation for the conditions or suspension must then review the matter and report in writing to the Board on the results of its review.

(4) The Panel may recommend in its report that no further action be taken in respect of the matter, or may recommend that the matter be dealt with as a complaint against the practitioner (in which case the Board must deal with it as a complaint).

Some matters to be dealt with as complaints

82. (1) If a Panel recommends that a registered medical practitioner consent to conditions being placed on his or her registration or to the removal of his or her name from the Register and the practitioner fails to comply 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 a Panel as grounds for a complaint under this Act and may deal with the matter accordingly.

Prohibition or conditions on student undertaking clinical studies

83. (1) A Panel which investigates a matter concerning a medical student may recommend to the Board that it is in the public interest that the Board prohibit the student from undertaking clinical studies or impose specified conditions on the undertaking of clinical studies 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 prohibit the student undertaking clinical studies or impose specified conditions on the undertaking of clinical studies 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 that the student undertakes.

(4) A medical student is not to be permitted to undertake clinical studies contrary to the terms of an order in force under this section.

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(5) An order remains in force for the period (up to 2 years) specified in the order unless it is revoked earlier by the Board. The Board may issue further prohibition orders in respect of a student but only on the recommendation of a Panel.

Appeal by student against order

84. (1) A person may appeal to the Tribunal against a decision of the Board to issue an order prohibiting the person from undertaking clinical studies or imposing conditions on the undertaking of clinical studies by him or her.

(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.

Confidentiality of Panel's report to the Board

85. (1) A person must not directly or indirectly make a record of or divulge to any person any information contained in a report by a Panel to the Board which has come to the person's notice in the exercise of the person's functions under this Act, except for the purpose of exercising functions under this Act.

Maximum penalty: 50 penalty units.

(2) A person cannot be required in civil proceedings in any court to produce or permit access to any report made by a Panel to the Board or to divulge the contents of any such report.

(3) 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 or a Committee.

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

86. (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 a Panel concerning any matter involving the person (including any recommendations made in the report);
 - (b) any failure by the person to attend before a 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 6—APPEALS AND REVIEW OF DISCIPLINARY ACTION

Division 1—Appeals against actions of a Committee

Appeals against decisions of a Committee

87. (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.

Appeals on points of law

88. (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 in accordance with the regulations during an inquiry conducted by a Committee or within the period after the date of giving of notice of the inquiry and before the commencement 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**Preliminary appeal on point of law**

89. (1) An appeal with respect to a point of law may be made to the Supreme Court during an inquiry conducted by the Tribunal or after the complaint is referred to the Tribunal and before the commencement of the inquiry, but can only be made with the leave of the Chairperson or Deputy Chairperson.

(2) If an inquiry conducted by the Tribunal has not been completed when an appeal with respect to a point of law is made, the inquiry before the Tribunal is not to continue until the appeal has been disposed of.

(3) 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.

Appeal against Tribunal's decisions and actions

90. (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.

(2) The appeal 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.

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(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.

Powers of Court on appeal

91. (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

Right of review

92. (1) A person may apply to the appropriate review body for a review of an order of a Committee, 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.

The appropriate review body

93. (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 who is to refer it to the appropriate review body.

Powers on review

94. (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).

(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.

Division 4—Appeal against suspension by Board**Right of appeal**

95. (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 under Part 4 on the person's registration.

(2) An appeal against action by the Board must be made within 7 days (or such longer period as the Registrar may allow in a particular case) after notice of the order by which the action is taken is given to the affected person.

Appeal to be lodged with Registrar

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

Tribunal's powers on appeal

97. (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.

Appeal does not stay order

98. 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.

PART 7—THE PRACTICE OF MEDICINE**Division 1—Registered practitioners****Entitlement to practise medicine**

99. (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.

Effect of suspension

100. (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.

Registered practitioner entitled to recover fees

101. 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.

Fees cannot be sued for until 3 months after bill given

102. (1) An action or suit for the recovery of fees or remuneration for professional services of any kind rendered or performed by a registered medical practitioner cannot be commenced until the expiration of 3 months after a bill has been served personally or by post on the person to be charged with the amount.

(2) The bill must set out the amount claimed and contain a brief statement indicating the nature of the professional services in respect of which the amount is claimed.

(3) This section does not apply in the case of any costs of medical or related treatment within the meaning of Division 3 of Part 3 of the Workers Compensation Act 1987, being medical or related treatment for which compensation is payable under that Act.

Emergency measures authorising practise of medicine

103. (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**Fees cannot be recovered for medical service provided by unregistered person**

104. A person (including a corporation) is not entitled to sue or counter-claim for or to set-off or otherwise recover any charge or remuneration for any medical or surgical advice, service, attendance or operation given or performed by a person unless it was given or performed by a registered medical practitioner.

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Use of misleading titles etc.

105. (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 corps, in relation to the lawful exercise of his or her functions or duties as a member of the association or corps.

(5) Proceedings for an offence against this section may be commenced at any time within 2 years after the alleged commission of the offence.

Causing or permitting use of misleading titles etc.

106. 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

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- (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.

Business document and advertising with misleading titles etc.

107. (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.

Prohibition against advertising cures for certain diseases

108. (1) This section applies to any disease prescribed as a disease to which this section applies.

(2) A person (including a body corporate) must not hold himself or herself out, or hold another person out, to be entitled, qualified, able or willing to cure, or offer any service in the nature of a cure for, any disease to which this section applies.

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

(3) This section does not apply to any conduct by or on behalf of a registered medical practitioner.

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(4) Proceedings for an offence against this section may be commenced at any time within 2 years after the alleged commission of the offence.

Cancer treatments not to be given or offered by unregistered persons

109. (1) A person (including a body corporate) must not sell or supply to or give any person any substance or article in respect of which there is a prohibited representation by the manufacturer, seller, supplier or giver of the substance or article.

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

(2) A "prohibited representation" is a representation that indicates expressly or impliedly that the substance or article has or is likely to have curative or alleviating powers when taken or used in the treatment of, or may be taken or used for the prevention of, cancer.

(3) This section does not apply to the sale, supply or giving of a substance or article to or on behalf of a person who has been expressly authorised by a registered medical practitioner to take or use the substance or article.

(4) In this section:

"representation" includes advertisement, recommendation, statement or document and any circular, label, notice, wrapper or any announcement made orally or by means of producing or transmitting light or sound;

"sell" includes offer or attempt to sell or have in possession for sale or expose for sale;

"substance" includes drug, mixture, medicine, compound or device.

(5) Proceedings for an offence against this section may be commenced at any time within 2 years after the alleged commission of the offence.

Unregistered person not to sign certain certificates

110. (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.

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(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.

Other health care professionals not affected

111. (1) Nothing in this Act prejudices or affects the lawful occupation, trade, or business of any registered pharmacist, registered dentist, registered nurse, registered optometrist, registered psychologist, registered veterinary surgeon, 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.

Medical service rendered by persons registered elsewhere

112. (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.

PART 8—ADVERTISING**What constitutes advertising of medical services**

113. 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.

No advertising except in accordance with the regulations

114. (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.

Appointment of person to be responsible for advertising by corporation

115. (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.

Liability of person responsible for advertising

116. (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 9—SUPERVISION AND ENFORCEMENT POWERS

Part extends to former and suspended practitioners

117. 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.

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

118. 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.

Authorisation of persons to exercise powers

119. 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.

Powers of entry, search and seizure

120. (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;
- (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.

Offences

121. (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

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- (d) furnish an authorised person with information knowing it to be false or misleading in a material particular.

Maximum penalty: 5 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.

Self-incrimination

122. 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, but any information furnished by the person in answering the question is not admissible against the person in any proceedings except proceedings for an offence against section 188 (Penalties for false statements etc.).

Offence of impersonating authorised person

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

Maximum penalty: 2 penalty units.

Authorised persons to have certificate of authority

124. (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.

Search warrant

125. (1) An authorised person may apply to an authorised justice for a search warrant if the person has reasonable grounds for believing:

- (a) that a provision of this Act or the regulations has been or is being contravened in or on any premises; or
- (b) that entry into or onto any premises is necessary for the purpose of investigating a complaint made or intended to be made under Part 4 that, if substantiated, may provide grounds for the suspension or deregistration of a registered medical practitioner.

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(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 justice 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) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(5) In this section:

“authorised justice” has the same meaning as in the Search Warrants Act 1985.

Records to be kept

126. (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.

Medical services corporation to appoint practitioner to be responsible for record keeping

127. (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.

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(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.

Practitioners and students to notify change of name or address

128. 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

Board constituted as a corporation

129. (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.

Membership

130. (1) The Board is to consist of 18 members who are to be appointed by the Governor.

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(2) Of the members:

- (a) 1 is to be a registered medical practitioner who is an officer of the Department of Health, an employee of an area health service constituted under the Area Health Services Act 1986 or an employee of an incorporated hospital or separate institution within the meaning of the Public Hospitals Act 1929 (not being a person nominated under any other paragraph); and
- (b) 1 is to be a barrister or solicitor nominated by the Minister; and
- (c) 2 are to be registered medical practitioners nominated by The New South Wales Branch of the Australian Medical Association; and
- (d) 1 is to be a registered medical practitioner nominated by the Ethnic Affairs Commission of New South Wales; 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) 4 are to be persons nominated by the Minister not less than 2 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.

Nominations for membership

131. (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.

Functions of the Board

132. (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.

Committees

133. (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.

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

134. 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.

Annual report

135. (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.

(2) This section does not require the identity of any complainant, any person about whom a complaint is made or any other person to be disclosed in an annual report.

Delegation by Board and Registrar

136. (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.

Service of documents on Board

137. 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.

Authentication of certain documents

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

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

Recovery of charges etc. by the Board

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

Proof of certain matters not required

140. 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 2—Administration**Registrar**

141. (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.

Staff of the Board

142. (1) The Board may:

- (a) employ such staff as may be required to enable the Board to exercise its functions; and

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- (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 Health Administration Corporation, 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.

Assessors and counsellors

143. 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**Financial provisions**

144. (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.

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Medical Education and Research Account

145. (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****The Medical Tribunal**

146. (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.

Tribunal to be constituted to deal with complaints etc.

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

(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.

Chairperson and Deputy Chairpersons of the Tribunal

148. (1) The Governor may appoint a Judge of the District Court as Chairperson of the Tribunal and may appoint one or more Judges of the District Court 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.

(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 Judge of the District Court, the person also ceases to hold office as Chairperson or Deputy Chairperson.

Effect of vacancy on Tribunal

149. (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.

Payment of non-judicial Tribunal members

150. 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 the same rate as a witness who gives expert evidence in the Supreme Court.

Protections and immunities of judicial members

151. 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.

Seal of the Tribunal

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

Medical Tribunal Registry

153. 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**Decisions of the Tribunal**

154. (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.

Time when orders take effect

155. 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.

Powers of Tribunal exercised by Supreme Court

156. 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.

Registrar to be informed of disciplinary action

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

Rules of practice and procedure for the Tribunal

158. (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) Part 6 of the Interpretation Act 1987 applies to a rule made under this section in the same way as it applies to a statutory rule within the meaning of that Act.

Division 3—Inquiries, appeals etc. before the Tribunal**Jurisdiction**

159. 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.

Notice of time and place of inquiry or appeal

160. 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; and
- (d) the chairperson of the relevant Committee, if appropriate.

Conduct of proceedings

161. (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 any inquiry conducted or appeal heard by the Tribunal.

Representation before the Tribunal

162. (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 a barrister or solicitor or another adviser.

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

Chairperson or Deputy Chairperson not to review own decisions

163. 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.

Adjournments and interlocutory orders

164. (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.

Tribunal to provide details of its decision

165. (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 may provide a copy of the statement of a decision provided to it under this section to such persons as the Board thinks fit, unless the Tribunal has ordered otherwise.

Statement need not contain confidential information

166. (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.

PART 12—PROFESSIONAL STANDARDS COMMITTEES

Division 1—Constitution of Committees

Professional Standards Committees

167. (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.

Board to constitute Committee when required

168. (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 3 persons to sit as the Committee for the purpose of conducting an inquiry into the complaint or considering and determining the application.

Membership of Committee

169. (1) A Committee is to consist of:

- (a) 2 registered medical practitioners having such qualifications as may be prescribed; and

(b) one lay person (that is, a person who is not a registered medical practitioner) appointed from among a panel of lay persons for the time being nominated by the Minister.

(2) One of the members of a Committee is to be appointed by the Board as chairperson of that Committee.

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

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

Division 2—Proceedings of Committees

Multiple inquiries

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

How a Committee decides

171. A decision supported by at least 2 members of a Committee on any question arising during an inquiry is the decision of the Committee.

Time when orders take effect

172. 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.

Committee to inform Registrar of its actions under disciplinary provisions

173. 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.

Exercise of Committee's powers by Chairperson or Deputy Chairperson

174. A power of a Committee exercised under this Act by the Chairperson or a Deputy Chairperson of the Tribunal is taken to have been exercised by a Committee.

Division 3—Inquiries before Committees**Committee to hold inquiry into complaint**

175. (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.

Procedure for inquiry

176. (1) In conducting an inquiry, a Committee is to sit in the absence of the public unless the Committee otherwise directs. The Committee may conduct the proceedings as it thinks fit.

(2) A Committee is not to direct that its proceedings are to be open 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 proceedings 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 any inquiry conducted by a Committee.

Representation at inquiry

177. (1) At an inquiry conducted by a Committee, the practitioner concerned and any complainant are entitled to attend and to be accompanied by a barrister or solicitor or another adviser, but are not entitled to be represented at the inquiry by the barrister or solicitor or other adviser.

(2) A Committee may grant leave for an adviser (other than a barrister or solicitor) of a practitioner to address the Committee on behalf of the practitioner at an inquiry if the Committee determines that it is appropriate.

(3) A Committee may grant leave for any other person (except a barrister or solicitor or another adviser representing any person) to appear at an inquiry if the Committee is satisfied that it is appropriate for that person to appear.

Adjournments and interlocutory orders

178. (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.

Committee must refer certain matters to the Tribunal

179. (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 Director-General 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.

Committee to provide details of its decision

180. (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.

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- (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 may provide a copy of the statement of a decision provided to it under this section to such persons as the Board thinks fit.

Statement need not contain confidential information

181. (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.

PART 13—IMPAIRED REGISTRANTS PANELS**Impaired Registrants Panels**

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

Board to constitute Panel when required

183. (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 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.

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

Decisions of a Panel

184. (1) A decision supported by both members of a Panel is the decision of the Panel.

(2) If the members of a 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 14—MISCELLANEOUS

Act binds Crown

185. This Act binds the Crown.

Student registration

186. (1) A person is not entitled to undertake a course of medical study at a Medical School in the State 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.

(3) No fee is payable for registration as a medical student.

Offences by corporations

187. (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or a person concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

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(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.

Penalties for false statements etc.

188. 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 or the Tribunal or in any document to be used in evidence before or to be submitted to the Board, a Committee 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

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(j) aid or assist in the commission of any such offence.

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

Protection from liability

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

(a) the Registrar; or

(b) the Board; or

(c) a Panel; or

(d) a Committee; or

(e) the Tribunal; or

(f) any member of the Board, a Panel, a Committee or the Tribunal or a person acting under the direction of the Board, a 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.

Confidentiality

190. 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 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.

Notification of certain matters to other States

191. 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:

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- (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;
- (c) any report made to the Board by a 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.

How notice is to be given under this Act

192. (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.

Proceedings for offences

193. (1) Proceedings for an offence against this Act or the regulations are to be disposed of in a summary manner before:

- (a) a Local Court constituted by a Magistrate sitting alone; or
- (b) the Supreme Court in its summary jurisdiction.

(2) The maximum pecuniary penalty that may be imposed by a Local Court in proceedings for an offence under this Act or the regulations is 100 penalty units.

Regulations

194. (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

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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 5 penalty units.

Repeals

195. 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

Consequential amendment of Defamation Act 1974 No. 18

196. The Defamation Act 1974 is amended:

- (a) by omitting section 17FA (1) and by inserting instead the following subsection:
 - (1) There is a defence of absolute privilege:
 - (a) for a publication to or by:
 - (i) the New South Wales Medical Board; or
 - (ii) an Impaired Registrants Panel; or
 - (iii) a Professional Standards Committee; or
 - (iv) the Medical Tribunal; or
 - (v) a member of any of those bodies as such a member, for the purpose of the assessment or referral of a complaint or other matter or the holding of any inquiry or investigation or any appeal under the Medical Practice Act 1992; and
 - (b) for a publication by a body or person referred to in paragraph (a) of a report of a decision or determination in respect of a complaint or other matter or any inquiry, investigation or appeal, and of the reasons for that decision or determination.
- (b) by omitting from clauses 2 (14A) and 3 (3A) in Schedule 2 the words "Medical Practitioners Act 1938" wherever occurring and by inserting instead the words "Medical Practice Act 1992".

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Consequential amendment of Interpretation Act 1987 No. 15

197. The Interpretation Act 1987 is amended by inserting in section 21 (1) in alphabetical order the following definition:

“registered medical practitioner” and each of the following expressions means a medical practitioner registered under the Medical Practice Act 1992:

- medical practitioner
- legally (or duly) qualified medical practitioner
- qualified medical practitioner;

Savings and transitional provisions

198. Schedule 5 has effect.

Review of Act

199. (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

(Sec. 22)

Part 1—Applying for registration**Form etc. of application**

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

Application fee

2. (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.

Evidence to accompany application

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

Time within which application to be determined

4. (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**Applications to be considered and determined**

5. 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.

SCHEDULE 1—REGISTRATION PROCEDURE—*continued***Notice to applicant of decision on application**

6. (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.

How a person is registered

7. 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.

Conditions on registration

8. 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**Board may hold inquiry into eligibility**

9. (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) The inquiry may include an inquiry into the applicant's competence to practise medicine.

Board must hold inquiry in certain cases

10. 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.

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SCHEDULE 1—REGISTRATION PROCEDURE—*continued*

Applicant to be notified of inquiry

11. The President 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.

Powers etc. of the Board in an inquiry

12. 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.

Practitioner entitled to attend

13. The person in relation to whom an inquiry is being held is entitled to attend and to be accompanied by a barrister or solicitor or another adviser, but is not entitled to be represented by a barrister or solicitor or other adviser.

Provisions concerning witnesses etc.

14. 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.

Constitution of Board for inquiry

15. For the purposes of conducting an inquiry under this Part, the Board is to consist of 3 members of the Board appointed by the President for the purpose of conducting the inquiry.

Director-General may intervene at inquiry

16. 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.

Preliminary medical examinations of applicants for registration

17. (1) Before or during an inquiry under this Part, the Board may require the applicant for registration, by notice in writing given personally

SCHEDULE 1—REGISTRATION PROCEDURE—*continued*

or by post to the applicant, to undergo at the Board's expense a medical examination by a registered medical 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.

Decisions of the Board in an inquiry

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

Details of decision to be supplied to applicant

19. (1) The Board must provide a written statement of a decision on an inquiry 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) 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 Board may also provide the statement of a decision to such other persons as the Board thinks fit.

Statement need not contain confidential information

20. (1) The Board 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 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

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SCHEDULE 1—REGISTRATION PROCEDURE—*continued*

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**Board is to keep the Register**

21. (1) The Board is to keep a register, called the Register of Medical Practitioners for New South Wales.

(2) The Register must at all reasonable times be made available for inspection at the office of the Board by any person on payment of the fee determined by the Board, not exceeding such amount as may be prescribed.

(3) The Board may carry out searches of the Register on a person's behalf and is entitled to charge such fee as it determines for such a search.

Additional information may be recorded in Register

22. (1) 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.

(2) 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.

Method of removal from the Register

23. (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.

SCHEDULE 1—REGISTRATION PROCEDURE—*continued***Surrender of certificates**

24. (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.

Making a recording in the Register—extended meaning

25. 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**Annual registration fee payable**

26. 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.

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

27. (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.

Entitlement to re-registration if fee paid

28. (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

SCHEDULE 1—REGISTRATION PROCEDURE—*continued*

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.

Board may waive registration fee

29. 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

(Secs. 161, 176)

Proceedings generally

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

**SCHEDULE 2—PROCEEDINGS BEFORE A COMMITTEE OR
THE TRIBUNAL—*continued*****Power to summon witnesses and take evidence**

2. (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.

Power to obtain documents

3. (1) A member of a Committee or the Tribunal may, by notice in writing served on a person, require the person:

SCHEDULE 2—PROCEEDINGS BEFORE A COMMITTEE OR THE TRIBUNAL—*continued*

- (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.

Evidence of other proceedings

4. A Committee or the Tribunal may receive and admit on production, as evidence in any proceedings:

- (a) the judgment and findings of any court (whether civil or criminal and whether or not of New South Wales) or tribunal;
- (b) the verdict or findings of a jury of any such court;
- (c) a certificate of the conviction of any person; or
- (d) a transcript of the depositions or of shorthand notes, duly certified by the Registrar or clerk of the court or tribunal as correct, of the evidence of witnesses taken in any such court or tribunal,

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

Additional complaints

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

(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.

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**SCHEDULE 2—PROCEEDINGS BEFORE A COMMITTEE OR
THE TRIBUNAL—*continued***

(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.

Release of information

6. (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.

(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.

Authentication of documents by a Committee or the Tribunal

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

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**SCHEDULE 2—PROCEEDINGS BEFORE A COMMITTEE OR
THE TRIBUNAL—*continued***

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

Nominal complainant

8. (1) In any proceedings before a Committee or the Tribunal, the Director-General or an officer of the Department of Health appointed by the Director-General:

- (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.

Intervention by Director-General

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

- (a) personally or by being represented by an officer of the Department of Health; and
- (b) also, in the case of any proceedings before the Tribunal, by a barrister or solicitor (whether or not an officer of the Department of Health).

Expedition of inquiries and appeals

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

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

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**SCHEDULE 2—PROCEEDINGS BEFORE A COMMITTEE OR
THE TRIBUNAL—*continued***

Evidentiary certificate

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

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

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

Certain complaints may not be heard

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

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

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

Tribunal can award costs

13. (1) The Tribunal may order the complainant, if any, the registered medical practitioner concerned, or any other person granted leave to appear 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.

**SCHEDULE 2—PROCEEDINGS BEFORE A COMMITTEE OR
THE TRIBUNAL—*continued***

(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**

(Sec. 130)

Part 1—Members of the Board**President and Deputy President of the Board**

1. (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.

Acting members and acting President

2. (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.

**SCHEDULE 3—PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE BOARD—*continued***

(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.

Terms of office

3. (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.

Remuneration

4. (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.

*Medical Practice Act 1992 No. 94***SCHEDULE 3—PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE BOARD—*continued*****Filling of vacancy in office of member**

5. 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.

Casual vacancies

6. (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 penal servitude or 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.

Disclosure of pecuniary interests

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

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**SCHEDULE 3—PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE BOARD—*continued***

(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.

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**SCHEDULE 3—PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE BOARD—*continued***

Effect of certain other Acts

8. (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

General procedure

9. 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.

Quorum

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

Presiding member

11. (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.

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**SCHEDULE 3—PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE BOARD—*continued***

Voting

12. 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.

Minutes

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

SCHEDULE 4—REGULATIONS

(Sec. 194)

Procedure of Committee or Tribunal

1. 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).

Seal of the Tribunal

2. The custody and use of the seal of the Tribunal.

Panel procedure

3. The procedure before an Impaired Registrants Panel.

The Register

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

Forms

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

Service of notices

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

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SCHEDULE 4—REGULATIONS—*continued***Charges for medical services**

7. (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.

Publications

8. 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.

After-hours medical services

9. 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.

SCHEDULE 5—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 198)

Part 1—Preliminary**Definitions**

1. In this Schedule:

“new Board” means the Medical Board constituted by this Act;

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**SCHEDULE 5—SAVINGS AND TRANSITIONAL PROVISIONS—
*continued***

“old Board” means the Medical Board constituted under the 1938 Act;

“the 1938 Act” means the Medical Practitioners Act 1938.

Regulations

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

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act 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**The Medical Tribunal**

3. 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.

The Medical Board

4. (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.

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**SCHEDULE 5—SAVINGS AND TRANSITIONAL PROVISIONS—
*continued*****The Registrar and other officers**

5. 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.

The Medical Education and Research Account

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

The Register

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

Registration as medical practitioner

8. (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.

Fees

9. (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

**SCHEDULE 5—SAVINGS AND TRANSITIONAL PROVISIONS—
*continued***

have had his or her name removed from the Register under this Act for failure to pay the annual registration fee.

Applications for registration

10. 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.

Continuation of complaints, inquiries and appeals

11. (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.

Complaints relating to previous conduct

12. (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.

Orders under 1938 Act

13. (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

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*continued***

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.

Construction of certain references

14. 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—Deregistration of certain foreign practitioners**Meaning of "foreign medical practitioner"**

15. In this Part:

"foreign medical practitioner" means a medical practitioner who is not a graduate of a Medical School accredited by the Australian Medical Council and who has not passed the examination set by the Australian Medical Council for the purposes of section 16 of the 1938 Act.

Grounds for deregistration

16. (1) For the purposes of this Part, a foreign medical practitioner is liable to deregistration unless the practitioner:

- (a) was unconditionally registered in Australia on 31 January 1992 and practised medicine in Australia for at least 6 months during the period from 1 January 1992 to 1 September 1992; or

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**SCHEDULE 5—SAVINGS AND TRANSITIONAL PROVISIONS—
*continued***

- (b) was unconditionally registered and practising medicine in Australia for one or more periods totalling at least 6 years at any time before 31 January 1992; or
 - (c) was unconditionally registered and practising medicine in Australia for a period of, or for periods totalling, at least 3 years during the period of 6 years preceding 31 January 1992.
- (2) A registered medical practitioner is considered to have been unconditionally registered in Australia at a particular time if he or she is or was registered at that time under this Act or the 1938 Act, or licensed or registered as a medical practitioner under the law in force in another State or Territory, without any condition or limitation on the entitlement to practise medicine.

Board's duty to deregister practitioners liable to deregistration

17. (1) If the Board is of the opinion that a foreign medical practitioner is or may be liable to deregistration, the Board is to require the practitioner (by notice in writing to the practitioner) to establish to the satisfaction of the Board that he or she is not liable to deregistration.

(2) The Board must remove the name of the practitioner from the Register if the practitioner fails to satisfy the Board that he or she is not liable to deregistration, unless the Board is of the opinion that there is good reason why the practitioner's name should not be removed.

(3) The Board is to give a foreign medical practitioner who is liable to deregistration an opportunity to make submissions to the Board on the question of whether his or her name should be removed from the Register and the Board is to consider any such submissions.

Duration of practice necessary to constitute practice during a period

18. If a registered medical practitioner practises medicine for at least 4 days during a month, the practitioner is taken to have practised throughout the whole of that month. Conversely, if the practitioner practises for less than 4 days during a month, the practitioner is taken not to have practised during that month.

Special provision for practitioners removed for non-payment of fees

19. (1) This clause applies to a foreign medical practitioner whose name has been removed from the Register for failure to pay the annual

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continued

registration fee (or for failure to pay the annual roll fee under the 1938 Act).

(2) Such a practitioner does not have the entitlement to be re-registered that would otherwise be conferred by payment of the unpaid fees (together with any late payment fee that is payable), unless he or she satisfies the Board that:

- (a) he or she is not liable to deregistration; or
- (b) there is good reason why the practitioner should not lose the entitlement to re-registration.

DICTIONARY**Defined expressions****1. In 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;

Board means the New South Wales Medical Board constituted by this Act;

Chairperson means the Chairperson of the Tribunal;

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;

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;

exercise of a function includes, where the function is a duty, performance of the duty;

function includes power, authority and duty;

DICTIONARY—*continued*

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 student enrolled in a course of medical study at a Medical School in Australia accredited by the Australian Medical Council;

medicine includes surgery;

Panel means an Impaired Registrants Panel constituted under this Act;

President means the President of the Board;

professional misconduct has the meaning given by section 37;

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 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;

Tribunal means the Medical Tribunal constituted under this Act;

unsatisfactory professional conduct has the meaning given by section 36.

Competence to practise medicine

2. 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.

DICTIONARY—*continued***Impairment**

3. 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.

Confidential information

4. 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.

[Minister's second reading speech made in—
Legislative Assembly on 24 September 1992
Legislative Council on 25 November 1992]

