

Explanatory note

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

Overview of Bill

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

(a) to provide that the protection of the health and safety of the public is to be the paramount consideration in the administration of each Act, and

(b) to make provision with respect to contraventions of the *Medical Practice Act 1992* or the regulations under that Act that constitute unsatisfactory professional conduct, and

(c) to make provision with respect to:

(i) the circumstances in which the New South Wales Medical Board (**the Board**) may exercise its powers under section 66 of the *Medical Practice Act 1992*, and

(ii) action that may be taken in the exercise of those powers and the subsequent termination or variation of the effects of such action, and

(d) to require registered medical practitioners to furnish reports to the Board in relation to misconduct by other registered medical practitioners, and

(e) to confer certain immunities on complainants under Part 4 of the *Medical Practice Act 1992* and on other persons who have provided complainants with information or otherwise been concerned in the making of complaints, and

(f) to enable a Professional Standards Committee (**a Committee**) or the Medical Tribunal (**the Tribunal**), when imposing an order or condition of registration on a medical practitioner, to provide that a contravention of the order or condition is to result in deregistration of the practitioner, and

(g) to require that a review of the suspension, deregistration or placing of conditions on registration of a medical practitioner must consider any complaints made about the person (whether before or after the order being reviewed was made), and

(h) to require the audio recording of certain meetings of the Board, and

(i) to authorise the Board:

(i) to require any person to provide it with certain information, records or evidence, and

(ii) to require a registered medical practitioner to provide details of the practitioner's employment, and

(iii) to provide information obtained in connection with its functions to the Health Care Complaints Commission (**the Commission**), and

(iv) to notify any person or body the Board considers it appropriate to notify of certain disciplinary action taken by the Board, and

(j) to provide a registered medical practitioner affected by certain disciplinary action taken by the Board with a right:

(i) to have the decision to take the action reconsidered, and

(ii) to appeal to the Tribunal on a point of law, and

(k) to enable the Board to have regard to other relevant complaints against a practitioner in the exercise of its disciplinary and complaint-related functions, and

(l) to enable a Committee or the Tribunal:

(i) to take into account the judgment or findings of a professional standards committee or tribunal constituted under a health registration Act when making certain findings relating to the conduct of a registered medical practitioner, and

(ii) to have regard to the totality of the evidence before it when dealing simultaneously with more than one complaint about a practitioner, and

(m) to enable the Commission to take into account associated complaints about a

health practitioner or health organisation, or other relevant findings, decisions, reports or recommendations relating to a health practitioner when assessing a complaint, and

(n) to provide that consultation between the Commission and a registration authority or the Registrar on dealing with a complaint is to include consultation on any relevant associated complaint, and to allow a discontinued or terminated associated complaint to be reopened as a result of the consultation, and

(o) to make provision with respect to the concurrent investigation and prosecution of associated complaints, and

(p) to require:

(i) a Committee or the Tribunal to list as soon as practicable an inquiry or appeal relating to action taken by the Board under section 66 of the *Medical Practice Act 1992*, and

(ii) the Commission to deal as quickly as practicable with matters referred to it following such action, or action taken by another health registration board under equivalent powers under a health registration Act, and

(q) to require that proceedings of a Committee are to be open to the public unless the Committee otherwise directs in the public interest, and

(r) to provide for the Board to make a decision of a Committee publicly available unless the Committee otherwise orders, and

(s) to provide for the appointment of an additional member of a Committee who is to be legally qualified and is to be appointed as chairperson of the Committee, and

(t) to make minor miscellaneous and consequential amendments.

Outline of provisions

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

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

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

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

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

Schedule 1 Amendment of Medical Practice Act 1992

Principle of administration of Act

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

Suspension or conditions to protect the public

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

Schedule 1 [8] substitutes section 66 to:

(a) enable the Board, with the concurrence of the Commission, to impose a condition on a registered medical practitioner's registration requiring the practitioner to participate in an assessment of the practitioner's professional performance, and

(b) make it clear that the Board must exercise its section 66 powers if the Board is satisfied such action is appropriate for the protection of the health or safety of any person or persons or if satisfied that the action is otherwise in the public interest, and

(c) require that if the Board delegates any function of the Board under section 66 to a group of persons, at least one member of the group must be a person who is not a registered medical practitioner.

Schedule 1 [10] enables the Board:

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

Schedule 1 [16] makes a consequential amendment.

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

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

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

- (a) at which the registered medical practitioner concerned, or the practitioner's adviser, is present, or
- (b) that a person other than a member or staff member of the Board attends in order to give the Board oral information relevant to the exercise, or proposed exercise, of its powers.

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

Reportable misconduct

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

Protection of complainants and other persons

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

Deregistration for breach of orders or conditions of registration

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

Schedule 1 [8] (proposed section 66 (2)) provides that the Board must suspend a medical practitioner from practising medicine if satisfied that the practitioner has

contravened a critical compliance order or condition and must then refer the matter to the Tribunal as a complaint.

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

Obtaining and disclosing information

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

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

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

Applications for reconsideration, inquiries and appeals

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

(a) a right to apply to the Board to have the decision to take the action reconsidered (**Schedule 1 [11]**), and

(b) a right of appeal to the Tribunal on a point of law (**Schedule 1 [20] and [24]**).

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

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

Amendments relating to disciplinary bodies

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

Schedule 1 [34] enables a Committee or the Tribunal to admit as evidence in any proceedings any finding, decision or determination of a professional standards committee or a tribunal constituted under a health registration Act. **Schedule 1 [37]** enables a Committee or the Tribunal to take any such evidence (or other evidence currently admissible, such as the judgment or findings of a court) into account for the purposes of its disciplinary powers or the making of a finding that a practitioner is guilty of unsatisfactory professional conduct or professional misconduct.

Schedule 1 [36] makes a consequential amendment. **Schedule 1 [3]** amends the definition of **professional misconduct** to make it clear that a finding of professional misconduct can be made on the basis of a series of instances of unsatisfactory professional conduct that, taken together, are of sufficient seriousness to justify the finding.

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

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

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

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

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

Miscellaneous amendments

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

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

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

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

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

Schedule 2 Amendment of Health Care Complaints Act 1993

Principle of administration of Act

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

Associated complaints and other matters

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

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

- (a) any associated complaint,
- (b) if the complaint relates to a health practitioner:
 - (i) any previous finding or determination of a professional standards committee or a tribunal constituted under a health registration Act in

respect of the practitioner, and

(ii) any recommendation or statement made as a consequence of an assessment of the practitioner's professional performance under Part 5A of the *Medical Practice Act 1992*.

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

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

Miscellaneous amendments

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

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

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