

CONCURRENCE COPY

MEDICAL PRACTITIONERS (AMENDMENT) BILL, 1982

EXPLANATORY NOTE

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

The disciplinary tribunal constituted under the Medical Practitioners Act, 1938 ("the Act"), comprises a chairman, who is a Judge of the District Court appointed by the Governor, and 4 or more members of the New South Wales Medical Board ("the Board").

The objects of this Bill are to amend the Act so as to—

- (a) provide that 2 members only of the Board shall sit on an inquiry by the disciplinary tribunal (Schedule 1 (1) (a));
- (b) provide for the appointment by the Board, or by the President of the Board, of 2 members of the Board (being medical practitioner members) to sit on each inquiry by the disciplinary tribunal (Schedule 1 (1) (c)—proposed section 28 (2A));
- (c) provide for the appointment of Judges of the District Court to act as deputy chairmen of the disciplinary tribunal, including provision for the making of such an appointment for the purpose of a particular inquiry (Schedule 1 (1) (c)—proposed section 28 (2B) and (2E));
- (d) enable a deputy chairman and 2 members of the Board to exercise the functions of the disciplinary tribunal (Schedule 1 (1) (c)—proposed section 28 (2C) and (2D));
- (e) enable the remuneration paid to persons constituting the disciplinary tribunal to be determined by the Minister instead of being prescribed by regulation (Schedule 1 (1) (d));
- (f) allow the appointment of a Judge of the District Court as acting chairman of the disciplinary tribunal in the absence of the chairman (Schedule 1 (1) (e) and (f));
- (g) allow the chairman to nominate himself or appoint a deputy chairman as the person to preside at an inquiry (Schedule 1 (1) (i));
- (h) remove the requirement that the Governor may make certain regulations only on the recommendation of the Board (Schedule 1 (2)); and

MEDICAL PRACTITIONERS (AMENDMENT) BILL, 1982

No. , 1982.

A BILL FOR

An Act to amend the Medical Practitioners Act, 1938, to make further provisions in relation to the disciplinary tribunal constituted under that Act, and for certain other purposes.

[MR BRERETON—1 *April*, 1982.]

Medical Practitioners (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 Short title.

1. This Act may be cited as the "Medical Practitioners (Amendment) Act, 1982".

Principal Act.

2. The Medical Practitioners Act, 1938, is referred to in this Act as the
10 Principal Act.

Schedules.

3. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 2.—SAVINGS AND TRANSITIONAL PROVISIONS.

15 Amendment of Act No. 37, 1938.

4. The Principal Act is amended in the manner set forth in Schedule 1.

Savings and transitional provisions.

5. Schedule 2 has effect.

Medical Practitioners (Amendment).

SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT.

(1) (a) Section 28 (1), (1A)—

5 Omit section 28 (1), insert instead:—

(1) In this section, except in so far as the context or subject-matter otherwise indicates or requires—

“acting chairman” means an acting chairman appointed under subsection (4);

10 “chairman” means the chairman of the disciplinary tribunal appointed under subsection (2);

“deputy chairman” means a deputy chairman appointed under subsection (2B);

15 “member” means a member of the Board appointed to sit on the disciplinary tribunal under subsection (2A).

(1A) Subject to this section, the disciplinary tribunal shall consist of the chairman and 2 members.

(b) Section 28 (2)—

20 Omit “judge of the District Court (in this section referred to as ‘the chairman’) to act”, insert instead “Judge of the District Court”.

(c) Section 28 (2A)–(2F)—

After section 28 (2), insert:—

25 (2A) Where an inquiry is to be heard by the disciplinary tribunal under this section—

(a) the Board; or

30 (b) where the Board has, either generally or in respect of the inquiry, approved of the president making appointments under this subsection on its behalf—the president,

shall appoint 2 members of the Board (not being members referred to in section 5 (3) (a) or (b)) to sit on the tribunal for the purpose of hearing the inquiry.

Medical Practitioners (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2B) The Governor may—

5 (a) appoint a Judge of the District Court as a deputy chairman; or

(b) appoint 2 or more Judges of the District Court as deputy chairmen,

of the disciplinary tribunal.

10 (2C) Subject to this section, a deputy chairman and 2 members may exercise the functions of the disciplinary tribunal and, when exercising those functions, shall be deemed to be the disciplinary tribunal.

15 (2D) A deputy chairman, while sitting on the disciplinary tribunal, shall have and may exercise and perform all the powers, authorities, duties and functions conferred or imposed upon the chairman by this Act (subsection (5A) excepted).

(2E) Subject to subsections (2F) and (4A), an appointment of a deputy chairman—

20 (a) may be for such term, not exceeding 7 years, as is specified in the instrument of appointment of the deputy chairman; or

(b) may be made for the purpose of hearing a certain inquiry, particulars of which are specified in the instrument of appointment of the deputy chairman.

25 (2F) Subject to subsection (4A), where neither a term of appointment is, nor particulars of a certain inquiry are, specified in the instrument of appointment of a deputy chairman, the deputy chairman's term of office shall expire 7 years after his appointment as a deputy chairman.

Medical Practitioners (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 28 (3)—

Omit the subsection, insert instead:—

- 5 (3) The chairman, or any acting chairman or deputy chairman, and a member sitting on the disciplinary tribunal are 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.

10 (e) Section 28 (4)—

Omit “a deputy of the chairman, who shall be a judge of the District Court”, insert instead “an acting chairman, who shall be a Judge of the District Court”.

(f) Section 28 (4)—

- 15 Omit “whilst acting as such deputy”, insert instead “while so acting”.

(g) Section 28 (4A)—

Omit “or deputy of the chairman”, insert instead “or acting chairman or as a deputy chairman”.

20 (h) Section 28 (4A)—

Omit “judge”, insert instead “Judge”.

(i) Section 28 (5A)—

After section 28 (5), insert:—

- 25 (5A) Subject to subsection (2E) (b), the chairman shall, where there is a deputy chairman, or there are 2 or more deputy chairmen, available to sit on the disciplinary tribunal for the purpose of hearing an inquiry under this section, either—

(a) nominate himself; or

Medical Practitioners (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- 5 (b) appoint that deputy chairman or one of those deputy
chairmen, as the case may require,
as the person who is to preside at the inquiry.
- (j) Section 28 (8)—
After “chairman” where firstly occurring, insert “, and any acting
chairman or deputy chairman,”.
- 10 (k) Section 28 (8)—
After “chairman” where thirdly occurring, insert “, or any acting
chairman or deputy chairman,”.
- (l) Section 28 (9) (a)—
Omit the paragraph, insert instead:—
15 (a) The decision of the chairman, or any acting chairman or
deputy chairman, upon any question of law or procedure which
may arise in any inquiry at which he presides shall be the
decision of the disciplinary tribunal for the purposes of the
inquiry.
- (2) Section 53 (2)—
20 Omit the subsection.

SCHEDULE 2.

(Sec. 5.)

SAVINGS AND TRANSITIONAL PROVISIONS.

Appointment of chairman of disciplinary tribunal.

- 25 1. (1) The amendments made by this Act to the Principal Act do not affect an
appointment of a Judge of the District Court to act as chairman of the disciplinary
tribunal constituted under the Principal Act as in force before the commencement of
this Act, being an appointment in force immediately before that commencement.

Medical Practitioners (Amendment).

SCHEDULE 2—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

(2) An appointment referred to in subclause (1) shall continue as if it had been made under the Principal Act as amended by this Act.

5 Disciplinary tribunal inquiries or other proceedings.

2. (1) Any inquiry by, or other proceeding of, the disciplinary tribunal constituted under the Principal Act as in force before the commencement of this Act, being an inquiry or other proceeding which has commenced but has not been finally determined as at that commencement, shall continue as if this Act had not been enacted.

10 (2) For the purposes of subclause (1), an inquiry or other proceeding shall be deemed to have commenced if the chairman of the disciplinary tribunal constituted under the Principal Act as in force before the commencement of this Act has, under that Act as then in force, fixed a time and place for the hearing of that inquiry or other proceeding.

15 Remuneration of members of disciplinary tribunal.

3. The remuneration that a member of the disciplinary tribunal constituted under the Principal Act is entitled to receive under section 28 (3) of the Principal Act, as amended by this Act, shall, until determined by the Minister, be the fees which were, immediately before the commencement of this Act, prescribed for the purposes of
20 section 28 (3) of the Principal Act, as in force immediately before that commencement.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1982

MEDICAL PRACTITIONERS (AMENDMENT) ACT, 1982, No. 51

New South Wales



ANNO TRICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. 51, 1982.

An Act to amend the Medical Practitioners Act, 1938, to make further provisions in relation to the disciplinary tribunal constituted under that Act, and for certain other purposes. [Assented to, 6th May, 1982.]

Medical Practitioners (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Medical Practitioners (Amendment) Act, 1982".

Principal Act.

2. The Medical Practitioners Act, 1938, is referred to in this Act as the Principal Act.

Schedules.

3. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 2.—SAVINGS AND TRANSITIONAL PROVISIONS.

Amendment of Act No. 37, 1938.

4. The Principal Act is amended in the manner set forth in Schedule 1.

Savings and transitional provisions.

5. Schedule 2 has effect.

Medical Practitioners (Amendment).

SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT.

(1) (a) Section 28 (1), (1A)—

Omit section 28 (1), insert instead:—

(1) In this section, except in so far as the context or subject-matter otherwise indicates or requires—

“acting chairman” means an acting chairman appointed under subsection (4);

“chairman” means the chairman of the disciplinary tribunal appointed under subsection (2);

“deputy chairman” means a deputy chairman appointed under subsection (2B);

“member” means a member of the Board appointed to sit on the disciplinary tribunal under subsection (2A).

(1A) Subject to this section, the disciplinary tribunal shall consist of the chairman and 2 members.

(b) Section 28 (2)—

Omit “judge of the District Court (in this section referred to as ‘the chairman’) to act”, insert instead “Judge of the District Court”.

(c) Section 28 (2A)–(2F)—

After section 28 (2), insert:—

(2A) Where an inquiry is to be heard by the disciplinary tribunal under this section—

(a) the Board; or

(b) where the Board has, either generally or in respect of the inquiry, approved of the president making appointments under this subsection on its behalf—the president,

shall appoint 2 members of the Board (not being members referred to in section 5 (3) (a) or (b)) to sit on the tribunal for the purpose of hearing the inquiry.

Medical Practitioners (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2B) The Governor may—

- (a) appoint a Judge of the District Court as a deputy chairman; or
- (b) appoint 2 or more Judges of the District Court as deputy chairmen,

of the disciplinary tribunal.

(2C) Subject to this section, a deputy chairman and 2 members may exercise the functions of the disciplinary tribunal and, when exercising those functions, shall be deemed to be the disciplinary tribunal.

(2D) A deputy chairman, while sitting on the disciplinary tribunal, shall have and may exercise and perform all the powers, authorities, duties and functions conferred or imposed upon the chairman by this Act (subsection (5A) excepted).

(2E) Subject to subsections (2F) and (4A), an appointment of a deputy chairman—

- (a) may be for such term, not exceeding 7 years, as is specified in the instrument of appointment of the deputy chairman; or
- (b) may be made for the purpose of hearing a certain inquiry, particulars of which are specified in the instrument of appointment of the deputy chairman.

(2F) Subject to subsection (4A), where neither a term of appointment is, nor particulars of a certain inquiry are, specified in the instrument of appointment of a deputy chairman, the deputy chairman's term of office shall expire 7 years after his appointment as a deputy chairman.

Medical Practitioners (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 28 (3)—

Omit the subsection, insert instead:—

(3) The chairman, or any acting chairman or deputy chairman, and a member sitting on the disciplinary tribunal are 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.

(e) Section 28 (4)—

Omit “a deputy of the chairman, who shall be a judge of the District Court”, insert instead “an acting chairman, who shall be a Judge of the District Court”.

(f) Section 28 (4)—

Omit “whilst acting as such deputy”, insert instead “while so acting”.

(g) Section 28 (4A)—

Omit “or deputy of the chairman”, insert instead “or acting chairman or as a deputy chairman”.

(h) Section 28 (4A)—

Omit “judge”, insert instead “Judge”.

(i) Section 28 (5A)—

After section 28 (5), insert:—

(5A) Subject to subsection (2E) (b), the chairman shall, where there is a deputy chairman, or there are 2 or more deputy chairmen, available to sit on the disciplinary tribunal for the purpose of hearing an inquiry under this section, either—

(a) nominate himself; or

Medical Practitioners (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) appoint that deputy chairman or one of those deputy chairmen, as the case may require, as the person who is to preside at the inquiry.

(j) Section 28 (8)—

After “chairman” where firstly occurring, insert “, and any acting chairman or deputy chairman,”.

(k) Section 28 (8)—

After “chairman” where thirdly occurring, insert “, or any acting chairman or deputy chairman,”.

(l) Section 28 (9) (a)—

Omit the paragraph, insert instead:—

(a) The decision of the chairman, or any acting chairman or deputy chairman, upon any question of law or procedure which may arise in any inquiry at which he presides shall be the decision of the disciplinary tribunal for the purposes of the inquiry.

(2) Section 53 (2)—

Omit the subsection.

SCHEDULE 2.

(Sec. 5.)

SAVINGS AND TRANSITIONAL PROVISIONS.

Appointment of chairman of disciplinary tribunal.

1. (1) The amendments made by this Act to the Principal Act do not affect an appointment of a Judge of the District Court to act as chairman of the disciplinary tribunal constituted under the Principal Act as in force before the commencement of this Act, being an appointment in force immediately before that commencement.

Medical Practitioners (Amendment).

SCHEDULE 2—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

(2) An appointment referred to in subclause (1) shall continue as if it had been made under the Principal Act as amended by this Act.

Disciplinary tribunal inquiries or other proceedings.

2. (1) Any inquiry by, or other proceeding of, the disciplinary tribunal constituted under the Principal Act as in force before the commencement of this Act, being an inquiry or other proceeding which has commenced but has not been finally determined as at that commencement, shall continue as if this Act had not been enacted.

(2) For the purposes of subclause (1), an inquiry or other proceeding shall be deemed to have commenced if the chairman of the disciplinary tribunal constituted under the Principal Act as in force before the commencement of this Act has, under that Act as then in force, fixed a time and place for the hearing of that inquiry or other proceeding.

Remuneration of members of disciplinary tribunal.

3. The remuneration that a member of the disciplinary tribunal constituted under the Principal Act is entitled to receive under section 28 (3) of the Principal Act, as amended by this Act, shall, until determined by the Minister, be the fees which were, immediately before the commencement of this Act, prescribed for the purposes of section 28 (3) of the Principal Act, as in force immediately before that commencement.

In the name and on behalf of Her Majesty I assent to this Act.

J. A. ROWLAND,
Governor.

*Government House,
Sydney, 6th May, 1982.*

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