

CONCURRENCE COPY

MEDICAL PRACTITIONERS (AMENDMENT) BILL, 1983

EXPLANATORY NOTE

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

The object of this Bill is to amend the Medical Practitioners Act, 1938 ("the Act"), so as—

- (a) to provide that those members of the New South Wales Medical Board ("the Board") who are presently appointed on the nomination of certain bodies shall be selected from panels of registered medical practitioners nominated by those bodies (Schedule 1 (1) (a)–(c));
- (b) to enable the Minister administering the Act to nominate a registered medical practitioner for appointment to the Board in cases where the appropriate body fails to nominate a panel of registered medical practitioners for selection (Schedule 1 (1) (d));
- (c) to provide that 5 members of the Board shall constitute a quorum at any inquiry held by the Board under section 30 of the Act (Schedule 1 (4) (b));
- (d) to provide for the appointment of a secretary to the investigating committee constituted under the Act (Schedule 1 (6));
- (e) to exempt certain medical officers from the requirements of the Act relating to registration fees (Schedule 1 (7)) and roll fees (Schedule 1 (8)—proposed section 24 (2));
- (f) to empower the Board to remove from the Register of Medical Practitioners for New South Wales ("the Register") the name of any registered medical practitioner who fails to pay a required roll fee (Schedule 1 (8)—proposed section 24 (4));
- (g) to provide that a person whose name has, on account of his failure to pay a required roll fee, been removed from the Register does not lose his entitlement to be registered pursuant to the provision of the Act pursuant to which he was registered before his name was so removed (Schedule 1 (8)—proposed section 24 (5));
- (h) to require a registered medical practitioner to notify the secretary to the Board of any change in his name or address within 3 months after the change occurs (Schedule 1 (9));

- (i) to provide that complaints to the investigating committee constituted under the Act be lodged with the secretary to that committee (Schedule 1 (10) (a));
- (j) to exempt public servants from the requirements of the Act relating to the verification of complaints by statutory declaration (Schedule 1 (10) (b)-(d));
- (k) to provide that the functions of the disciplinary tribunal constituted under the Act may be exercised by the chairman of the tribunal (or a deputy chairman of the tribunal) and not less than 2, but not more than 4, members of the Board (Schedule 1 (12));
- (l) to enable any 2 members of the Board (each being a registered medical practitioner) to instigate an inquiry into the professional competence of a registered medical practitioner (Schedule 1 (14) (a));
- (m) to empower a member of the Board (being a registered medical practitioner) authorised by the Board in that behalf to suspend a registered medical practitioner from practising medicine, for a period not exceeding 21 days, in certain cases where he considers the suspension necessary to protect the life, or the physical or mental health, of any person (Schedule 1 (14) (c));
- (n) to provide that the members of the Medical Practitioners Charges Committee constituted under the Act shall be appointed by the Minister (Schedule 1 (16) (a));
- (o) to enable regulations to be made under the Act providing for the payment of costs in respect of the holding of an inquiry by the disciplinary tribunal constituted under the Act (Schedule 1 (20) (b)); and
- (p) to make other provisions of a minor, consequential or ancillary nature.

The Bill also contains certain savings and transitional provisions (Schedule 2).

MEDICAL PRACTITIONERS (AMENDMENT) BILL, 1983

No. , 1983.

A BILL FOR

An Act to amend the Medical Practitioners Act, 1938, in relation to the constitution and powers of the New South Wales Medical Board, the disciplinary tribunal constituted under that Act and the investigating committee constituted under that Act, and in relation to other matters.

[MR BRERETON—22 *March*, 1983.]

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, 1983".

Principal Act.

2. The Medical Practitioners Act, 1938, is referred to in this Act as 10 the 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 5 (3) (c), (c1)—

5 Omit section 5 (3) (c), insert instead:—

(c) a registered medical practitioner nominated by the Minister;

10 (c1) a registered medical practitioner selected by the Minister from a panel of 3 registered medical practitioners nominated by the Ethnic Affairs Commission of New South Wales;

(b) Section 5 (3) (d)—

After “practitioners”, insert “selected by the Minister from a panel of 9 registered medical practitioners”.

15 (c) Section 5 (3) (e)–(n)—

After “practitioner” wherever occurring, insert “selected by the Minister from a panel of 3 registered medical practitioners”.

20 (d) Section 5 (4)—

Omit the subsection, insert instead:—

25 (4) Where, for the purposes of this section or section 9, a body referred to in subsection (3) (c1)–(n) does not nominate a panel of registered medical practitioners within the time or in the manner specified by the Minister in a notice served by post on that body, the Governor may appoint a registered medical practitioner, nominated by the Minister, to be a member instead of a registered medical practitioner required to be selected by the Minister from a panel nominated by that body.

Medical Practitioners (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) Section 7 (2)—

At the end of section 7, insert:—

5 (2) For the purposes of subsection (1) (f), a member becomes disqualified for office if—

- 10 (a) in the case of the member referred to in section 5 (3) (a)
—he ceases to be an officer of the Department of Health;
- (b) in the case of the member referred to in section 5 (3) (b)
—he ceases to be a barrister or solicitor; or
- (c) in the case of a member referred to in section 5 (3) (c)–
(n)—he ceases to be a registered medical practitioner.

(3) Section 9 (2)—

Omit the subsection, insert instead:—

15 (2) A person appointed to a vacant office—

- (a) shall have the same qualification for appointment as his predecessor; and
- (b) shall—
- 20 (i) except as provided by subparagraph (ii)—be appointed in the same manner as his predecessor; or
- (ii) in the case of the office of a member referred to in section 5 (3) (d)—be selected by the Minister from a panel of 3 registered medical practitioners nominated by the body referred to in that paragraph.
- 25

(4) (a) Section 10 (1)—

After “Board”, insert “and at any inquiry of the Board under section 18 or 19”.

Medical Practitioners (Amendment).

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

(b) Section 10 (1A)—

After section 10 (1), insert:—

- 5 (1A) At any inquiry of the Board under section 30, 5 members shall constitute a quorum.

(5) (a) Section 13 (1)—

Omit the subsection, insert instead:—

- 10 (1) A secretary to the Board shall be appointed and employed under and subject to the Public Service Act, 1979.

(b) Section 13 (2)—

Omit “issued”, insert instead “or notice issued or given”.

(6) Section 13A (2)—

At the end of section 13A, insert:—

- 15 (2) A secretary to the investigating committee shall be appointed and employed under and subject to the Public Service Act, 1979.

(7) Section 19 (2A)—

After section 19 (2), insert:—

- 20 (2A) Subsection (2) (b) does not require an application to be accompanied by a fee where the application is made by a person who—

(a) is registered as a medical practitioner in accordance with the law in force in some State (other than New South Wales) or Territory of the Commonwealth; and

Medical Practitioners (Amendment).

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

5 (b) satisfies the Board that he does not intend to practise medicine in New South Wales, during the period of 12 months next following the date on which the application is made, otherwise than in the course of his employment as—

10 (i) a medical officer in the service of the Crown in right of the Commonwealth; or

(ii) a resident medical officer of a hospital or separate institution mentioned in the Second, Third or Fifth Schedule to the Public Hospitals Act, 1929.

(8) Section 24—

Omit the section, insert instead:—

15 **Annual roll fee.**

24. (1) A registered medical practitioner shall, on or before 30th June in each year, pay to the secretary to the Board such annual roll fee as may be prescribed.

20 (2) Subsection (1) does not require a registered medical practitioner to pay an annual roll fee in any year if—

(a) he—

(i) has attained the age of 70 years; and

25 (ii) satisfies the Board that he does not intend to practise medicine in New South Wales during the period of 12 months next following 30th June in that year;

(b) where he is, or intends to become, a medical officer in the service of the Crown in right of the Commonwealth—

30 (i) he is registered as a medical practitioner in accordance with the law in force in some State (other than New South Wales) or Territory of the Commonwealth; and

Medical Practitioners (Amendment).

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

- 5 (ii) he satisfies the Board that he does not intend to practise medicine in New South Wales, during the period of 12 months next following 30th June in that year, otherwise than in the course of his employment as such a medical officer; or
- 10 (c) where he is, or intends to become, a resident medical officer of a hospital or separate institution mentioned in the Second, Third or Fifth Schedule to the Public Hospitals Act, 1929—
- 15 (i) he is registered as a medical practitioner in accordance with the law in force in some State (other than New South Wales) or Territory of the Commonwealth;
- 20 (ii) he satisfies the Board that he does not intend to practise medicine in New South Wales, during the period of 12 months next following 30th June in that year, otherwise than in the course of his employment as such a medical officer; and
- (iii) he was first registered in New South Wales as a medical practitioner during the period of 12 months ending on 30th June in that year.
- (3) Where—
- 25 (a) a registered medical practitioner has, by the operation of subsection (2), been exempted from having to pay an annual roll fee in any year; and
- (b) having been so exempted—
- 30 (i) on the grounds referred to in subsection (2) (a) (i) and (ii)—he practises medicine in New South Wales during the period of 12 months next following 30th June in that year;

Medical Practitioners (Amendment).

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

5 (ii) on the grounds referred to in subsection (2) (b) (i) and (ii)—he practises medicine in New South Wales, during the period of 12 months next following 30th June in that year, otherwise than in the course of his employment as a medical officer in the service of the Crown in right of the Commonwealth; or

10 (iii) on the grounds referred to in subsection (2) (c) (i), (ii) and (iii)—he practises medicine in New South Wales, during the period of 12 months next following 30th June in that year, otherwise than in the course of his employment as a resident medical officer of a hospital or separate institution mentioned in the Second, Third or Fifth Schedule to the Public Hospitals Act, 1929,

20 he shall, within 14 days after commencing so to practise, pay to the secretary to the Board an amount equal to the annual roll fee which he would, but for his having been so exempted, have been required to pay to the secretary pursuant to subsection (1).

(4) The Board may cause to be removed from the Register the name of any registered medical practitioner who fails to comply with subsection (1) or (3).

25 (5) For the purposes of any application for registration made under section 19 (2) by a person whose name has been removed from the Register pursuant to subsection (4)—

(a) that person shall—

30 (i) if he satisfies the Board that he is of good character; and
(ii) if he pays to the secretary to the Board an amount equal to the annual roll fee as at the last preceding 30th June,

35 be entitled to be registered pursuant to the provision of this Act pursuant to which he was registered immediately before his name was so removed; and

Medical Practitioners (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (b) the Board may, for such reason as it considers proper, waive the requirement of section 19 (2) (b) that the application be accompanied by the fee referred to in that paragraph.

(9) Section 25 (5)—

After section 25 (4), insert:—

10 (5) A registered medical practitioner shall, within 3 months after there is any change in his name or address, give written particulars of that change to the secretary to the Board.

Penalty for an offence against this subsection: \$50.

(10) (a) Section 27—

Omit “to the Board” wherever occurring, insert instead “to the investigating committee”.

15 (b) Section 27 (1A) (b), (1B)—

Omit “, verified by statutory declaration,” wherever occurring.

(c) Section 27 (1A) (b)—

20 After “founded”, insert “, which particulars shall (except where the complaint is made by an officer or temporary employee of the Public Service) be verified by statutory declaration”.

(d) Section 27 (1B)—

25 Omit “in respect of the complaint as it thinks fit”, insert instead “as it thinks fit in respect of the complaint, which particulars shall (except where the complaint has been made by an officer or temporary employee of the Public Service) be verified by statutory declaration”.

Medical Practitioners (Amendment).

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

(11) (a) Section 27A (2B)—

After section 27A (2A), insert:—

5 (2B) For the purposes of any investigation conducted by it, the investigating committee may conduct the investigation in such manner as it thinks fit and is not bound to observe rules of law governing the admission of evidence, but may inform itself of any matter in such manner as it thinks fit.

10 (b) Section 27A (5)—

Omit “section 28”, insert instead “sections 28 and 29”.

(12) Section 28 (1A), (2A), (2C)—

Omit “2” wherever occurring, insert instead “not less than 2, but not more than 4”.

15 (13) Section 29 (7) (b) (i)—

Omit “, immediately before his name was so removed, registered”, insert instead “registered immediately before his name was so removed”.

(14) (a) Section 30 (2A)—

20 After section 30 (2), insert:—

(2A) Subject to subsection (3), the Board shall hold an inquiry in relation to the competence of a registered medical practitioner to practise medicine if notice is given to the secretary to the Board by any 2 members (each being a registered medical practitioner) requiring the Board to hold the inquiry.

25

Medical Practitioners (Amendment).

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

(b) Section 30 (3), (4)—

Omit the subsections, insert instead:—

5 (3) Except with the consent of the applicant for registration
or registered medical practitioner with respect to whom an in-
quiry under subsection (2) or (2A) is to be held, the Board
shall not hold the inquiry unless the secretary to the Board has
10 caused at least 14 days' notice of the time and place for the
inquiry to be given, personally or by post, to that applicant or
registered medical practitioner.

15 (4) Before the Board holds an inquiry under subsection (2)
or (2A) with respect to an applicant for registration or a
registered medical practitioner, any member (being a registered
medical practitioner) authorised by the Board in that behalf
may, by notice in writing given to the applicant or registered
20 medical practitioner, personally or by post, require him to under-
go, at the expense of the Board, a medical examination by such
registered medical practitioner as the member nominates, at any
reasonable time and place specified in the notice.

(c) Section 30 (5A), (5B), (5C)—

After section 30 (5), insert:—

25 (5A) Where, pursuant to subsection (2) or (2A), an inquiry
is required to be held with respect to a registered medical prac-
titioner, any member (being a registered medical practitioner)
authorised by the Board in that behalf may, by order, suspend
the registered medical practitioner from practising medicine for
such period (not exceeding 21 days) as is specified in the order
30 if the member is satisfied that the suspension is necessary for the
purpose of protecting the life, or the physical or mental health,
of any person.

35 (5B) An order made under subsection (5A) has effect when
written notice of the order has been personally served on the
registered medical practitioner to whom the order purports to
apply.

Medical Practitioners (Amendment).

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

5 (5C) Where an order has been made under subsection (5A) in relation to a registered medical practitioner with respect to whom an inquiry is required to be held pursuant to subsection (2) or (2A), a further order shall not be made under subsection (5A) in relation to him before that inquiry is held, otherwise than for the purpose of revoking the firstmentioned order.

(d) Section 30 (6)—

10 After “subsection (2)”, insert “or (2A)”.

(e) Section 30 (9)—

After “subsection”, insert “(5A) or”.

(f) Section 30 (12)—

After section 30 (11), insert:—

15 (12) For the purposes of any application for registration made under section 19 (2) by a person whose name has been removed from the Register pursuant to subsection (6) (b) (ii)—

20 (a) that person shall, if he satisfies the Board that he is of good character, be entitled to be registered pursuant to the provision of this Act pursuant to which he was registered immediately before his name was so removed; and

25 (b) the Board may, for such reason as it considers proper, waive the requirement of section 19 (2) (b) that the application be accompanied by the fee referred to in that paragraph.

(15) Section 32—

Omit the section.

Medical Practitioners (Amendment).

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

- (16) (a) Section 34 (1)—
5 After “Committee”, insert “, the members of which shall be appointed by the Minister”.
- (b) Section 34 (2) (a)—
 Omit “nominated”, insert instead “selected”.
- (17) (a) Section 40 (1) (a)—
 Omit “public”.
- 10 (b) Section 40 (1) (a)—
 Omit “within the meaning of”, insert instead “mentioned in the Second, Third or Fifth Schedule to”.
- (18) Section 48—
 Omit “Revenue”.
- 15 (19) (a) Section 50A—
 After “secretary to the Board”, insert “or the investigating committee, an inspector or officer appointed under section 13A (1)”.
- (b) Section 50A—
20 Before “person so appointed”, insert “the inspector, the officer or”.
- (20) (a) Section 53 (1) (b)—
 Omit “or charge”.

Medical Practitioners (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 53 (1) (c1)—

After section 53 (1) (c), insert:—

5 (c1) providing for the payment of costs in respect of the holding of an inquiry by the disciplinary tribunal;

(c) Section 53 (2B)—

Omit the subsection, insert instead:—

(2B) A provision of a regulation may—

10 (a) apply generally or be limited in its application by reference to specified exceptions or factors;

(b) apply differently according to different factors of a specified kind; or

15 (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

SCHEDULE 2.

(Sec. 5.)

20 SAVINGS AND TRANSITIONAL PROVISIONS.

Interpretation.

1. In this Schedule—

“Board” means the New South Wales Medical Board constituted under section 5 of the Principal Act;

Medical Practitioners (Amendment).

SCHEDULE 2—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

“commencement” means the date of assent to this Act;

5 “investigating committee” means the investigating committee constituted under section 27A of the Principal Act.

Saving of certain appointments.

2. Any person who was, immediately before the commencement, a member of the Board appointed pursuant to section 5 or 9 of the Principal Act shall, on the commencement, be deemed to be a member of the Board appointed pursuant to section 10 5 or 9 of the Principal Act, as amended by this Act, as the case may require.

Saving of regulation prescribing fees.

3. Any provision of a regulation which, immediately before the commencement, prescribed a roll fee for the purposes of section 24 (1) of the Principal Act shall, on the commencement, be deemed to prescribe an annual roll fee for the purposes 15 of section 24 (1) of the Principal Act, as amended by this Act.

Saving of certain qualifications.

4. Any person whose name was, before the commencement, removed from the Register of Medical Practitioners for New South Wales pursuant to section 24 (3) of the Principal Act and who was not, immediately before the commencement, registered 20 pursuant to the provision of that Act pursuant to which he was, immediately before his name was so removed, registered shall, on the commencement, be deemed to have had his name removed from that Register pursuant to section 24 (4) of the Principal Act, as amended by this Act.

Saving of certain complaints, certificates and transcripts.

25 5. (1) Any complaint made to the investigating committee in accordance with section 27 (1A) of the Principal Act, being a complaint in respect of which a decision had not, before the commencement, been given under section 27A (4B) of that Act, shall, on the commencement, be deemed to have been made to the investigating committee in accordance with section 27 (1A) of the Principal Act, as amended by this 30 Act.

Medical Practitioners (Amendment).

SCHEDULE 2—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

- 5 (2) Any certificate of conviction or transcript of evidence furnished to the secretary to the Board pursuant to section 27 (1D) or (1E) of the Principal Act before the commencement shall, on the commencement, be deemed to have been furnished to the secretary to the investigating committee pursuant to section 27 (1D) or (1E) of the Principal Act, as amended by this Act, as the case may require.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1983

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