

CONCURRENCE COPY

MEDICAL PRACTITIONERS (FURTHER 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 for the reconstitution of the New South Wales Medical Board ("the Board") so as to consist of 11 members, 2 of whom may be selected by the Minister to represent the interests of patients as consumers of medical services (Schedule 1 (1) (a), (b));
- (b) to enable the secretary to the Board to delegate certain powers of the secretary under the Act and to provide immunities for action lawfully undertaken by such a delegate (Schedule 2 (1), (8) (d), (11) (a), (c), (12), (14));
- (c) to provide for the removal from the Register of the names of certain registered medical practitioners who have not practised medicine for a certain period of time or are not domiciled in Australia (Schedule 2 (4), (5)—proposed sections 18 (4) and 18A);
- (d) to provide that the annual roll fee shall be payable in respect of the calendar year commencing 1st October (Schedule 2 (6) (a));
- (e) to enable the Board to waive payment of the annual roll fee (Schedule 2 (6) (b));
- (f) to provide that nominees of the Board may sit on the disciplinary tribunal appointed under section 28 of the Act ("the disciplinary tribunal") for the purposes of hearing an inquiry under that section (Schedule 2 (8) (c));
- (g) to provide that an order of the disciplinary tribunal shall take effect on the making of that order unless the order is stayed by the Supreme Court (Schedule 2 (9));
- (h) to provide for the suspension, for a period of not more than 3 years, of a registered medical practitioner who commits, on 2 or more occasions, offences against section 129 of the Health Insurance Act 1973 of the Commonwealth and to make similar provision with respect to certain other prescribed offences against Acts of the Commonwealth (Schedule 2 (10)—proposed section 29A);

- (i) to enable a registered medical practitioner suspended for a period under proposed section 29A to apply to the disciplinary tribunal for a review of that suspension (Schedule 2 (10)—proposed section 29B);
- (j) to enable a coroner to recommend that the Board hold an inquiry under section 30 of the Act with respect to the competence of a person to practise medicine (Schedule 2 (11));
- (k) to enable persons authorised by the Secretary of the Department of Health to exercise powers of entry, search and seizure, provided, in certain circumstances, a search warrant is first obtained (Schedule 2 (13)—proposed sections 39 and 39AA);
- (l) to enable the making of regulations to provide for the payment of annual roll fees on a biennial or triennial basis (Schedule 2 (15) (a)); and
- (m) to enable the making of regulations, on the recommendation of the Board, with respect to the practice of medicine or surgery by registered medical practitioners (Schedule 2 (15) (d)).

The Bill also contains provisions of a minor, consequential, transitional or ancillary nature.

**MEDICAL PRACTITIONERS (FURTHER AMENDMENT)
BILL, 1983**

No. , 1983.

A BILL FOR

An Act to amend the Medical Practitioners Act, 1938, in relation to the Register of Medical Practitioners for New South Wales, the constitution of the New South Wales Medical Board, the roll fees payable under the Act and the regulation of standards of practice of registered medical practitioners, and in relation to other matters.

[MR BRERETON—9 *November*, 1983.]

Medical Practitioners (Further 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 (Further Amendment) Act, 1983”.

Commencement.

2. (1) Except as provided by subsections (2) and (3), this Act shall
10 commence on the date of assent to this Act.

(2) Section 5 shall, in its application to a provision of Schedules 1 and 2, commence on the day on which the provision commences.

(3) Schedules 1, 2 (2)–(5) and (7) (c) shall commence on such day
15 or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

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

Schedules.

20 **4.** This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
THE CONSTITUTION OF THE BOARD.

SCHEDULE 2.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL
ACT.

25 SCHEDULE 3.—SAVINGS AND TRANSITIONAL PROVISIONS.

Medical Practitioners (Further Amendment).

Amendment of Act No. 37, 1938.

5. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

Savings and transitional provisions.

5 6. Schedule 3 has effect.

SCHEDULE 1.

(Sec. 5.)

**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION
OF THE BOARD.**

10 (1) (a) Section 5 (2)—

Omit "17", insert instead "11".

(b) Section 5 (3)—

Omit the subsection, insert instead:—

(3) The members of the Board shall be—

- 15 (a) an officer of the Department of Health, appointed for the time being as such a member by order of the Minister;
- (b) a barrister or solicitor nominated by the Minister;
- (c) a registered medical practitioner selected by the Minister from a panel of 3 registered medical practitioners nominated by The New South Wales Branch of the Australian Medical Association;
- 20 (d) 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;
- 25

Medical Practitioners (Further Amendment).

SCHEDULE 1—continued.**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION OF THE BOARD—continued.**

- 5 (e) a registered medical practitioner selected by the Minister from panels of 3 registered medical practitioners nominated respectively by—
- (i) the Senate of the University of Sydney;
 - (ii) the Council of the University of New South Wales; and
 - 10 (iii) the Council of the University of Newcastle;
- (f) 3 registered medical practitioners selected by the Minister from panels of 3 registered medical practitioners nominated respectively by—
- 15 (i) The Royal Australasian College of Physicians, New South Wales State Committee;
 - (ii) The Australian College of Obstetricians and Gynaecologists, New South Wales State Committee;
 - (iii) The Royal Australasian College of Surgeons, New South Wales State Committee;
 - 20 (iv) The Royal Australian College of General Practitioners, New South Wales Faculty;
 - (v) The Royal Australian College of Medical Administrators, New South Wales State Committee;
 - 25 (vi) The Royal Australian and New Zealand College of Psychiatrists, New South Wales Branch;
 - (vii) The Royal College of Pathologists of Australasia; and
 - 30 (viii) The Royal Australasian College of Radiologists;
- (g) a registered medical practitioner nominated by the Minister; and
- (h) 2 persons nominated by the Minister who, in the opinion of the Minister, are conversant with the interests of patients as consumers of medical services.
- 35

Medical Practitioners (Further Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION OF
THE BOARD—*continued.*

(c) Section 5 (4)—

- 5 Omit “subsection (3) (c1)–(n)”, insert instead “subsection
 (3) (c)–(f)”.

(2) Section 7 (2) (c)—

Omit “section 5 (3) (c)–(n)”, insert instead “section 5 (3) (c)–
(g)”.

10 (3) Section 9 (2)—

Omit the subsection, insert instead:—

(2) A person appointed to a vacant office shall have the same
qualification for appointment, and be appointed in the same manner,
as the predecessor of the person.

15 (4) Section 10 (1)—

Omit “9”, insert instead “6”.

(5) Section 10 (1A)—

Omit “5 members”, insert instead “3 members, being members other
than a member referred to in section 5 (3) (h),”.

Medical Practitioners (Further Amendment).

SCHEDULE 2.

(Sec. 5.)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 13 (3)—

5 After section 13 (2), insert:—

(3) The secretary to the Board may, by instrument in writing, authorise a person, either generally or in a particular case or class of cases—

- 10 (a) to sign any certificate or notice on behalf of the secretary;
- (b) to exercise an authority given under subsection (2), while the authority remains in force, from time to time and in accordance with the terms of the authority; and
- (c) in the absence of the secretary—
 - 15 (i) to accept or give any notice required to be given to or by the secretary; and
 - (ii) to convene meetings and record any proceedings or decision required to be convened or recorded by the secretary under this Act.

(2) Section 15 (1)—

20 Omit “A person”, insert instead “Subject to section 18 (3), a person”.

(3) Section 17 (c)—

After “is”, insert “, subject to section 18 (3),”.

(4) (a) Section 18 (1)—

25 Omit “Where”, insert instead “Except as provided by subsection (4), where”.

(b) Section 18 (1), (3)—

Omit “section 16 or 17 (d)” wherever occurring, insert instead “section 15, 16 or 17 (c) or (d)”.

(c) Section 18 (4), (5)—

30 After section 18 (3), insert:—

(4) Nothing in subsection (1) applies to a person who—

(a) is an Australian citizen; or

Medical Practitioners (Further Amendment).

SCHEDULE 2—continued.**MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—continued.**

- 5 (b) is a person resident in Australia and whose continued presence in Australia is not subject to any limitation as to time imposed by or in accordance with law.
- (5) Nothing in subsection (1) applies to a prescribed person within the meaning of section 18A, other than a person whose name is removed under that section.

(5) Section 18A—

- 10 After section 18, insert:—

Removal of names of prescribed persons from Register.

- 15 18A. (1) In this section, “prescribed person” means a person deemed to be registered pursuant to section 15 by virtue of the operation of clause 3 (1) of Part 1 of Schedule 6 to the Medical Practitioners (Amendment) Act, 1981.

(2) Where, after the commencement of this section, the Board has reason to believe that a prescribed person—

- (a) is not domiciled in Australia; or
- 20 (b) has not practised medicine in New South Wales during the greater part of the 3 year period immediately preceding that commencement,

- 25 the Board may, within 3 months after that commencement, cause the person to be sent notice, personally or by post, that unless the person makes an objection in writing, lodged with the secretary to the Board, showing cause why the name should not be removed from the Register, the Board may, on the expiration of 6 months from the date of issue of the notice, remove the name of the person from the Register.

Medical Practitioners (Further Amendment).

SCHEDULE 2—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) Subject to subsection (4), where, after the expiration of the period of 6 months from the date of issue of a notice under subsection (2) sent to a prescribed person, the Board is not satisfied that the person—

(a) is domiciled in Australia; or

(b) has practised medicine in New South Wales during the greater part of the 3 year period immediately preceding the commencement of this section,

the Board shall cause the name of the person to be removed from the Register, notwithstanding any condition imposed by the Board upon the duration of the registration of the person under section 21 (3) (a) or 30, and clause 3 (1) of Part 1 of Schedule 6 to the Medical Practitioners (Amendment) Act, 1981, ceases to apply to that person.

(4) The Board shall consider any objection made to it under subsection (2) and may grant an exemption from the operation of subsection (3) if, in the opinion of the Board, sufficient cause is shown why the name of the person should not be removed from the Register and may at any time revoke an exemption so granted.

(5) Nothing in subsection (3) applies to a person who—

(a) is an Australian citizen; or

(b) is a person resident in Australia and whose continued presence in Australia is not subject to any limitation as to time imposed by or in accordance with law.

(6) (a) Section 24—

Omit “30th June” wherever occurring, insert instead “30th September”.

(b) Section 24 (6)—

After section 24 (5), insert:—

(6) Notwithstanding subsection (1), the Board may, for such reason as it considers proper, waive the requirement that an annual roll fee be paid by a registered medical practitioner in any particular year.

Medical Practitioners (Further Amendment).

SCHEDULE 2—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(7) Section 27 (1E)—

Omit “indicates”, insert instead “may indicate”.

5 (8) (a) Section 28 (1), definition of “member”—

Omit “member of the Board”, insert instead “person”.

(b) Section 28 (2A)—

Omit “members of the Board (not being members referred to in section 5 (3) (a) or (b))”, insert instead “persons”.

10 (c) Section 28 (2AA)—

After section 28 (2A), insert:—

15 (2AA) A person may not be appointed under subsection (2A) unless the person is a member of the Board (other than a member referred to in section 5 (3) (a), (b) or (h)), or a registered medical practitioner who is not a member of the Board, and in the case of a person who is a registered medical practitioner, but not a member of the Board, may not be appointed by the president unless the person is, or is one of a group, nominated by the Board.

20 (d) Section 28 (10)—

After “Board”, insert “, or a person authorised, under section 13 (3), to act on behalf of the secretary,”.

(9) Section 29 (5), (5A)—

Omit section 29 (5), insert instead:—

25 (5) An order made by the disciplinary tribunal pursuant to this section shall take effect on the day on which the order is made or on such later day as is specified in the order.

Medical Practitioners (Further Amendment).

SCHEDULE 2—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(5A) Notwithstanding subsection (5), the Supreme Court may, where a registered medical practitioner or former registered medical practitioner appeals against an order made by the disciplinary tribunal pursuant to this section, stay the order upon such terms as the court sees fit, until such time as the court determines that appeal.

(10) Sections 29A, 29B—

After section 29, insert:—

Suspension of registered medical practitioner for certain offences.

29A. (1) In this section—

“notification” means—

(a) in respect of a conviction for a prescribed offence within New South Wales—a certificate of conviction furnished in respect of a person under subsection (3); and

(b) in respect of a conviction for a prescribed offence elsewhere than in New South Wales—a notification furnished to the secretary to the Board by an officer of the Department of Health of the Commonwealth;

“prescribed offence” means an offence committed, after the commencement of this section, against section 129 of the Health Insurance Act 1973 of the Commonwealth or any offence against an Act of the Commonwealth prescribed for the purposes of this section.

(2) Where a registered medical practitioner commits, on 2 or more occasions, in New South Wales or elsewhere, a prescribed offence of which the registered medical practitioner is convicted, the Board shall, on receipt of notification of the conviction, make an order suspending the registered medical practitioner from practising medicine for a period not exceeding 3 years.

Medical Practitioners (Further Amendment).

SCHEDULE 2—continued.**MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—continued.**

5 (3) Where a registered medical practitioner is convicted in New South Wales of a prescribed offence, the court shall cause a certificate of conviction in respect of the person to be furnished to the secretary to the Board.

10 (4) Except as provided by subsection (5), nothing in this section affects in any way the operation of section 27 (1) (c), and proceedings under this section or under section 27 (1) (c), or under both section 27 (1) (c) and this section, may be taken in respect of the one conviction.

15 (5) The Board shall not, while an order made pursuant to section 29 (1) (b) (i) is in force in relation to a person for a conviction, make an order suspending the person pursuant to this section in respect of the same conviction.

20 (6) Where a person has been suspended under this section for a period from practising medicine, the Board shall, for the purposes of this section, thereafter disregard any prescribed offence for which the person was convicted before the commencement of that period.

25 (7) While any order of suspension from practising medicine under this section remains in force, the person to whom the order relates shall, except in the application to the person of a provision of this Part (other than section 23B), be deemed not to be a registered medical practitioner, but forthwith on the expiry of the order the person's rights and privileges as a registered medical practitioner shall be revived as from the date of expiry.

Review of suspension.

30 29B. (1) Where the Board has made an order suspending a person from practising medicine for a period under section 29A (2), the person may apply to the disciplinary tribunal for a review of the period of suspension.

Medical Practitioners (Further Amendment).

SCHEDULE 2—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) An application made under subsection (1) shall be lodged with the secretary to the investigating committee who shall refer the application to the disciplinary tribunal.

(3) The disciplinary tribunal shall review any application made under subsection (1) and may make such order in respect of the duration of the period of suspension as it thinks proper having regard to the merits of the case and the public welfare, but so that the period of suspension does not exceed 3 years.

(4) An order of suspension made by the Board under section 29A has effect subject to any relevant order made by the disciplinary tribunal under subsection (3).

(11) (a) Section 30 (2A)—

After “to the Board”, insert “, or to a person authorised, under section 13 (3), to accept such a notice on behalf of the secretary,”.

(b) Section 30 (2B)—

After section 30 (2A), insert:—

(2B) Where a coroner has reasonable grounds to believe that evidence given in any proceedings before the coroner indicates that an inquiry under subsection (2) in relation to the competence of a registered medical practitioner to practise medicine should be held, the coroner may cause a transcript of that evidence to be furnished to the secretary to the Board together with a recommendation that the Board hold an inquiry under subsection (2).

(c) Section 30 (3)—

After “to the Board”, insert “, or a person authorised, under section 13 (3), to give such a notice on behalf of the secretary,”.

Medical Practitioners (Further Amendment).

SCHEDULE 2—continued.**MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—continued.****(12) Section 31—**

5 After “Board”, insert “, or by a person authorised to sign a certificate on behalf of the secretary under section 13 (3),”.

(13) Sections 39, 39AA—

Before section 39A, insert:—

Powers of entry, search and seizure.

39. (1) In this section—

10 (a) “authorised person” means a person authorised as referred to in subsection (2); and

 (b) a reference to—

 (i) a function includes a reference to a power, authority and duty; and

15 (ii) the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

 (2) Any person authorised for the purpose in writing by the Secretary of the Department of Health may, for the purpose of ascertaining whether the provisions of this Act or any regulation
20 are being complied with—

 (a) at any reasonable time, enter and inspect any premises which the authorised person reasonably believes are used by a registered medical practitioner in connection with his or her professional practice;

25 (b) 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;

 (c) require the production of and inspect any stocks of any substance or drugs in or about those premises;

Medical Practitioners (Further Amendment).

SCHEDULE 2—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (d) require any person within those premises to produce any accounts, records, books or other documents in the possession or under the control of that person relating to the carrying out of that professional practice;

(e) take copies of, or extracts or notes from, any such accounts, records, books or other documents;

10 (f) require any person at those premises to answer questions or otherwise furnish information in relation to the carrying out of that professional practice; and

15 (g) 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,

20 but nothing in this subsection empowers an authorised person to enter any premises without the consent of the owner or occupier of the premises except under the authority of a search warrant issued under section 39AA.

(3) Any person who—

(a) prevents an authorised person from exercising any function conferred or imposed on the authorised person by this section;

25 (b) hinders or obstructs an authorised person in the exercise of any such function;

(c) without reasonable excuse, refuses or fails to comply with any requirement made or to answer any question of an authorised person asked in accordance with this section; or

30 (d) furnishes an authorised person with information knowing that it is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding \$200.

Medical Practitioners (Further Amendment).

SCHEDULE 2—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (4) It is sufficient defence to a prosecution for an offence arising under subsection (3) (c) by reason of the failure of a defendant to answer a question of 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.

10 (5) A person is not excused from answering any question of an authorised person under this section on the ground that the answer might tend to incriminate the person and make the person liable to a penalty, but the information furnished by the person shall not be admissible against the person in any proceedings except proceedings for an offence against subsection (3).

15 (6) Any person who personates or falsely represents that the person is an authorised person shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding \$200.

20 (7) Every authorised person shall be provided with a certificate of authorisation in a form approved by the Secretary of the Department of Health, and the authorised person on exercising in any place any function conferred on the authorised person by this section shall, if so requested by a person apparently in charge of the place, produce the certificate to that person.

(8) If a person discloses any information obtained pursuant to this section and the disclosure is not made—

25 (a) with the consent of—

(i) in the case of information relating to a patient of a registered medical practitioner—the patient; and

(ii) in any other case—the person from whom the information was obtained;

30 (b) in connection with the administration or execution of this Act;

(c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings; or

Medical Practitioners (Further Amendment).

SCHEDULE 2—continued.**MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—continued.**

(d) with other lawful excuse,

5 that person shall be guilty of an offence and shall be liable, on conviction by a court of summary jurisdiction, to a penalty not exceeding \$1,000 or to imprisonment for a term not exceeding 6 months.

Search warrant.

10 39AA. Upon a complaint made by a person authorised under section 39 (in this section referred to as “the authorised person”) on oath before a stipendiary magistrate stating that the authorised person suspects or believes that an offence against this Act or the regulations has been or is being committed within any premises, the stipendiary
15 magistrate may, if satisfied that there are reasonable grounds for that suspicion or belief, by warrant authorise the authorised person, together with any other persons specified in the warrant, to enter, using such force as is reasonably necessary, the premises so specified for the purpose of exercising the functions of the authorised person under section 39.

20 (14) (a) Section 50A—

After “secretary to the Board or the investigating committee,” insert “a person authorised to act on behalf of the secretary to the Board under this Act,”.

(b) Section 50A—

25 Omit “the secretary, the”, insert instead “the secretary, the person so authorised,”.

(15) (a) Section 53 (1) (e1)—

After section 53 (1) (e), insert:—

30 (e1) without limiting the generality of paragraph (e), providing for the payment of annual roll fees on a biennial or triennial basis;

Medical Practitioners (Further Amendment).

SCHEDULE 2—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 53 (1) (h)—

Omit “prescribed; or”, insert instead “prescribed;”.

5 (c) Section 53 (1) (i)—

Omit “thereof.”, insert instead “thereof; or”.

(d) Section 53 (1) (j)—

After section 53 (1) (i), insert:—

10 (j) on the recommendation of the Board, with respect to regulating the practice of medicine or surgery in any of its branches, or the giving or performance of any medical or surgical advice, service, attendance or operation, by any registered medical practitioner, including—

- 15 (i) the provision of adequate staff and equipment;
(ii) administration of anaesthetic; and
(iii) the precautions to be taken for the safety and welfare of the patient.

SCHEDULE 3.

(Sec. 6.)

20

SAVINGS AND TRANSITIONAL PROVISIONS.

Interpretation.

1. In this Schedule—

“appointed day” means the day appointed and notified under section 2 (3) as the day on which Schedule 1 commences;

25 “Board” means the New South Wales Medical Board.

Medical Practitioners (Further Amendment).

SCHEDULE 3—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.***Fees.**

5 2. (1) Any provision of a regulation which, immediately before the date of assent to this Act, prescribed an annual roll fee for the purposes of section 24 (1) of the Principal Act shall, on the date of assent to this Act, be deemed to prescribe an annual roll fee for the purposes of section 24 (1) of the Principal Act, as amended by this Act.

10 (2) For the purposes of section 24 (1) of the Principal Act, as amended by this Act, the payment, pursuant to section 24 (1) of the Principal Act as in force immediately before the date of assent to this Act, by a registered medical practitioner of the annual roll fee for the year next following 30th June, 1983, and ending on 30th June, 1984, shall be regarded as payment of the annual roll fee for the year ending on 30th September, 1984, as well as for the period of 3 months commencing on 1st July, 1983.

15 (3) For the purposes of section 24 (2) and (3) of the Principal Act, as amended by this Act, a reference to the period of 12 months next following 30th September in the year next following 30th September, 1983, shall be deemed to be a reference to the period of 15 months next following 30th June, 1983, and ending on 30th September, 1984.

20 Board.

3. (1) A person who, immediately before the appointed day, held office as a member of the Board—

- (a) shall cease to hold office as such on the appointed day; and
 - (b) is eligible, if otherwise qualified, to be appointed as a member of the Board
- 25 as constituted in accordance with section 5 of the Principal Act on or after the appointed day.

(2) For the purpose only of enabling the Board to be constituted in accordance with section 5 of the Principal Act, as amended by this Act, on or after (but not before) the appointed day, nominations may be obtained, selections may be made and

30 any other act, matter or thing may be done, before that day as if the whole of Schedule 1 commenced on the date of assent to this Act.

(3) A person who was a member of the disciplinary tribunal under section 28 of the Principal Act immediately before the appointed day for the purposes of an inquiry shall, if the person ceases to be a member of the Board by virtue of subclause

35 (1), be deemed to be a person appointed to the disciplinary tribunal by the Board under section 28 (2AA) of the Principal Act, as amended by this Act, for the purposes of that inquiry.

Medical Practitioners (Further Amendment).

SCHEDULE 3—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

Orders of disciplinary tribunal.

4. An order made, under section 29 of the Principal Act, before the date of assent
5 to this Act shall take effect in accordance with section 29 (5) of the Principal Act
as in force immediately before that date.

BY AUTHORITY

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

(80c)

**MEDICAL PRACTITIONERS (FURTHER AMENDMENT)
ACT, 1983, No. 177**

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 177, 1983.

An Act to amend the Medical Practitioners Act, 1938, in relation to the Register of Medical Practitioners for New South Wales, the constitution of the New South Wales Medical Board, the roll fees payable under the Act and the regulation of standards of practice of registered medical practitioners, and in relation to other matters. [Assented to, 31st December, 1983.]

Medical Practitioners (Further 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 (Further Amendment) Act, 1983".

Commencement.

2. (1) Except as provided by subsections (2) and (3), this Act shall commence on the date of assent to this Act.

(2) Section 5 shall, in its application to a provision of Schedules 1 and 2, commence on the day on which the provision commences.

(3) Schedules 1, 2 (2)–(5) and (7) (c) shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

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

Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION OF THE BOARD.

SCHEDULE 2.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 3.—SAVINGS AND TRANSITIONAL PROVISIONS.

Medical Practitioners (Further Amendment).

Amendment of Act No. 37, 1938.

5. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

Savings and transitional provisions.

6. Schedule 3 has effect.

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION
OF THE BOARD.

(1) (a) Section 5 (2)—

Omit "17", insert instead "11".

(b) Section 5 (3)—

Omit the subsection, insert instead:—

(3) The members of the Board shall be—

- (a) an officer of the Department of Health, appointed for the time being as such a member by order of the Minister;
- (b) a barrister or solicitor nominated by the Minister;
- (c) a registered medical practitioner selected by the Minister from a panel of 3 registered medical practitioners nominated by The New South Wales Branch of the Australian Medical Association;
- (d) 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;

Medical Practitioners (Further Amendment).

SCHEDULE 1—*continued.*

**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION OF
THE BOARD—*continued.***

- (e) a registered medical practitioner selected by the Minister from panels of 3 registered medical practitioners nominated respectively by—
 - (i) the Senate of the University of Sydney;
 - (ii) the Council of the University of New South Wales; and
 - (iii) the Council of the University of Newcastle;
- (f) 3 registered medical practitioners selected by the Minister from panels of 3 registered medical practitioners nominated respectively by—
 - (i) The Royal Australasian College of Physicians, New South Wales State Committee;
 - (ii) The Australian College of Obstetricians and Gynaecologists, New South Wales State Committee;
 - (iii) The Royal Australasian College of Surgeons, New South Wales State Committee;
 - (iv) The Royal Australian College of General Practitioners, New South Wales Faculty;
 - (v) The Royal Australian College of Medical Administrators, New South Wales State Committee;
 - (vi) The Royal Australian and New Zealand College of Psychiatrists, New South Wales Branch;
 - (vii) The Royal College of Pathologists of Australasia; and
 - (viii) The Royal Australasian College of Radiologists;
- (g) a registered medical practitioner nominated by the Minister; and
- (h) 2 persons nominated by the Minister who, in the opinion of the Minister, are conversant with the interests of patients as consumers of medical services.

Medical Practitioners (Further Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION OF
THE BOARD—*continued.*

(c) Section 5 (4)—

Omit “subsection (3) (c1)–(n)”, insert instead “subsection (3) (c)–(f)”.

(2) Section 7 (2) (c)—

Omit “section 5 (3) (c)–(n)”, insert instead “section 5 (3) (c)–(g)”.

(3) Section 9 (2)—

Omit the subsection, insert instead:—

(2) A person appointed to a vacant office shall have the same qualification for appointment, and be appointed in the same manner, as the predecessor of the person.

(4) Section 10 (1)—

Omit “9”, insert instead “6”.

(5) Section 10 (1A)—

Omit “5 members”, insert instead “3 members, being members other than a member referred to in section 5 (3) (h),”.

Medical Practitioners (Further Amendment).

SCHEDULE 2.

(Sec. 5.)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 13 (3)—

After section 13 (2), insert:—

(3) The secretary to the Board may, by instrument in writing, authorise a person, either generally or in a particular case or class of cases—

- (a) to sign any certificate or notice on behalf of the secretary;
- (b) to exercise an authority given under subsection (2), while the authority remains in force, from time to time and in accordance with the terms of the authority; and
- (c) in the absence of the secretary—
 - (i) to accept or give any notice required to be given to or by the secretary; and
 - (ii) to convene meetings and record any proceedings or decision required to be convened or recorded by the secretary under this Act.

(2) Section 15 (1)—

Omit “A person”, insert instead “Subject to section 18 (3), a person”.

(3) Section 17 (c)—

After “is”, insert “, subject to section 18 (3),”.

(4) (a) Section 18 (1)—

Omit “Where”, insert instead “Except as provided by subsection (4), where”.

(b) Section 18 (1), (3)—

Omit “section 16 or 17 (d)” wherever occurring, insert instead “section 15, 16 or 17 (c) or (d)”.

(c) Section 18 (4), (5)—

After section 18 (3), insert:—

- (4) Nothing in subsection (1) applies to a person who—
 - (a) is an Australian citizen; or

Medical Practitioners (Further Amendment).

SCHEDULE 2—continued.**MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—continued.**

(b) is a person resident in Australia and whose continued presence in Australia is not subject to any limitation as to time imposed by or in accordance with law.

(5) Nothing in subsection (1) applies to a prescribed person within the meaning of section 18A, other than a person whose name is removed under that section.

(5) Section 18A—

After section 18, insert:—

Removal of names of prescribed persons from Register.

18A. (1) In this section, "prescribed person" means a person deemed to be registered pursuant to section 15 by virtue of the operation of clause 3 (1) of Part 1 of Schedule 6 to the Medical Practitioners (Amendment) Act, 1981.

(2) Where, after the commencement of this section, the Board has reason to believe that a prescribed person—

(a) is not domiciled in Australia; or

(b) has not practised medicine in New South Wales during the greater part of the 3 year period immediately preceding that commencement,

the Board may, within 3 months after that commencement, cause the person to be sent notice, personally or by post, that unless the person makes an objection in writing, lodged with the secretary to the Board, showing cause why the name should not be removed from the Register, the Board may, on the expiration of 6 months from the date of issue of the notice, remove the name of the person from the Register.

Medical Practitioners (Further Amendment).

SCHEDULE 2—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) Subject to subsection (4), where, after the expiration of the period of 6 months from the date of issue of a notice under subsection (2) sent to a prescribed person, the Board is not satisfied that the person—

- (a) is domiciled in Australia; or
- (b) has practised medicine in New South Wales during the greater part of the 3 year period immediately preceding the commencement of this section,

the Board shall cause the name of the person to be removed from the Register, notwithstanding any condition imposed by the Board upon the duration of the registration of the person under section 21 (3) (a) or 30, and clause 3 (1) of Part 1 of Schedule 6 to the Medical Practitioners (Amendment) Act, 1981, ceases to apply to that person.

(4) The Board shall consider any objection made to it under subsection (2) and may grant an exemption from the operation of subsection (3) if, in the opinion of the Board, sufficient cause is shown why the name of the person should not be removed from the Register and may at any time revoke an exemption so granted.

(5) Nothing in subsection (3) applies to a person who—

- (a) is an Australian citizen; or
- (b) is a person resident in Australia and whose continued presence in Australia is not subject to any limitation as to time imposed by or in accordance with law.

(6) (a) Section 24—

Omit “30th June” wherever occurring, insert instead “30th September”.

(b) Section 24 (6)—

After section 24 (5), insert:—

(6) Notwithstanding subsection (1), the Board may, for such reason as it considers proper, waive the requirement that an annual roll fee be paid by a registered medical practitioner in any particular year.

Medical Practitioners (Further Amendment).

SCHEDULE 2—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(7) Section 27 (1E)—

Omit “indicates”, insert instead “may indicate”.

(8) (a) Section 28 (1), definition of “member”—

Omit “member of the Board”, insert instead “person”.

(b) Section 28 (2A)—

Omit “members of the Board (not being members referred to in section 5 (3) (a) or (b))”, insert instead “persons”.

(c) Section 28 (2AA)—

After section 28 (2A), insert:—

(2AA) A person may not be appointed under subsection (2A) unless the person is a member of the Board (other than a member referred to in section 5 (3) (a), (b) or (h)), or a registered medical practitioner who is not a member of the Board, and in the case of a person who is a registered medical practitioner, but not a member of the Board, may not be appointed by the president unless the person is, or is one of a group, nominated by the Board.

(d) Section 28 (10)—

After “Board”, insert “, or a person authorised, under section 13 (3), to act on behalf of the secretary,”.

(9) Section 29 (5), (5A)—

Omit section 29 (5), insert instead:—

(5) An order made by the disciplinary tribunal pursuant to this section shall take effect on the day on which the order is made or on such later day as is specified in the order.

Medical Practitioners (Further Amendment).

SCHEDULE 2—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(5A) Notwithstanding subsection (5), the Supreme Court may, where a registered medical practitioner or former registered medical practitioner appeals against an order made by the disciplinary tribunal pursuant to this section, stay the order upon such terms as the court sees fit, until such time as the court determines that appeal.

(10) Sections 29A, 29B—

After section 29, insert:—

Suspension of registered medical practitioner for certain offences.

29A. (1) In this section—

“notification” means—

- (a) in respect of a conviction for a prescribed offence within New South Wales—a certificate of conviction furnished in respect of a person under subsection (3); and
- (b) in respect of a conviction for a prescribed offence elsewhere than in New South Wales—a notification furnished to the secretary to the Board by an officer of the Department of Health of the Commonwealth;

“prescribed offence” means an offence committed, after the commencement of this section, against section 129 of the Health Insurance Act 1973 of the Commonwealth or any offence against an Act of the Commonwealth prescribed for the purposes of this section.

(2) Where a registered medical practitioner commits, on 2 or more occasions, in New South Wales or elsewhere, a prescribed offence of which the registered medical practitioner is convicted, the Board shall, on receipt of notification of the conviction, make an order suspending the registered medical practitioner from practising medicine for a period not exceeding 3 years.

Medical Practitioners (Further Amendment).

SCHEDULE 2—continued.**MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—continued.**

(3) Where a registered medical practitioner is convicted in New South Wales of a prescribed offence, the court shall cause a certificate of conviction in respect of the person to be furnished to the secretary to the Board.

(4) Except as provided by subsection (5), nothing in this section affects in any way the operation of section 27 (1) (c), and proceedings under this section or under section 27 (1) (c), or under both section 27 (1) (c) and this section, may be taken in respect of the one conviction.

(5) The Board shall not, while an order made pursuant to section 29 (1) (b) (i) is in force in relation to a person for a conviction, make an order suspending the person pursuant to this section in respect of the same conviction.

(6) Where a person has been suspended under this section for a period from practising medicine, the Board shall, for the purposes of this section, thereafter disregard any prescribed offence for which the person was convicted before the commencement of that period.

(7) While any order of suspension from practising medicine under this section remains in force, the person to whom the order relates shall, except in the application to the person of a provision of this Part (other than section 23B), be deemed not to be a registered medical practitioner, but forthwith on the expiry of the order the person's rights and privileges as a registered medical practitioner shall be revived as from the date of expiry.

Review of suspension.

29B. (1) Where the Board has made an order suspending a person from practising medicine for a period under section 29A (2), the person may apply to the disciplinary tribunal for a review of the period of suspension.

Medical Practitioners (Further Amendment).

SCHEDULE 2—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) An application made under subsection (1) shall be lodged with the secretary to the investigating committee who shall refer the application to the disciplinary tribunal.

(3) The disciplinary tribunal shall review any application made under subsection (1) and may make such order in respect of the duration of the period of suspension as it thinks proper having regard to the merits of the case and the public welfare, but so that the period of suspension does not exceed 3 years.

(4) An order of suspension made by the Board under section 29A has effect subject to any relevant order made by the disciplinary tribunal under subsection (3).

(11) (a) Section 30 (2A)—

After “to the Board”, insert “, or to a person authorised, under section 13 (3), to accept such a notice on behalf of the secretary,”.

(b) Section 30 (2B)—

After section 30 (2A), insert:—

(2B) Where a coroner has reasonable grounds to believe that evidence given in any proceedings before the coroner indicates that an inquiry under subsection (2) in relation to the competence of a registered medical practitioner to practise medicine should be held, the coroner may cause a transcript of that evidence to be furnished to the secretary to the Board together with a recommendation that the Board hold an inquiry under subsection (2).

(c) Section 30 (3)—

After “to the Board”, insert “, or a person authorised, under section 13 (3), to give such a notice on behalf of the secretary,”.

Medical Practitioners (Further Amendment).

SCHEDULE 2—continued.**MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—continued.****(12) Section 31—**

After “Board”, insert “, or by a person authorised to sign a certificate on behalf of the secretary under section 13 (3),”.

(13) Sections 39, 39AA—

Before section 39A, insert:—

Powers of entry, search and seizure.**39. (1) In this section—**

- (a) “authorised person” means a person authorised as referred to in subsection (2); and
- (b) a reference to—
 - (i) a function includes a reference to a power, authority and duty; and
 - (ii) the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(2) Any person authorised for the purpose in writing by the Secretary of the Department of Health may, for the purpose of ascertaining whether the provisions of this Act or any regulation are being complied with—

- (a) at any reasonable time, enter and inspect any premises which the authorised person reasonably believes are used by a registered medical practitioner in connection with his or her professional practice;
- (b) 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;
- (c) require the production of and inspect any stocks of any substance or drugs in or about those premises;

Medical Practitioners (Further Amendment).

*SCHEDULE 2—continued.**MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—continued.*

- (d) require any person within those premises to produce any accounts, records, books or other documents in the possession or under the control of that person relating to the carrying out of that professional practice;
- (e) take copies of, or extracts or notes from, any such accounts, records, books or other documents;
- (f) require any person at those premises to answer questions or otherwise furnish information in relation to the carrying out of that professional practice; and
- (g) 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,

but nothing in this subsection empowers an authorised person to enter any premises without the consent of the owner or occupier of the premises except under the authority of a search warrant issued under section 39AA.

(3) Any person who—

- (a) prevents an authorised person from exercising any function conferred or imposed on the authorised person by this section;
- (b) hinders or obstructs an authorised person in the exercise of any such function;
- (c) without reasonable excuse, refuses or fails to comply with any requirement made or to answer any question of an authorised person asked in accordance with this section; or
- (d) furnishes an authorised person with information knowing that it is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding \$200.

Medical Practitioners (Further Amendment).

SCHEDULE 2—continued.**MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—continued.**

(4) It is sufficient defence to a prosecution for an offence arising under subsection (3) (c) by reason of the failure of a defendant to answer a question of 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.

(5) A person is not excused from answering any question of an authorised person under this section on the ground that the answer might tend to incriminate the person and make the person liable to a penalty, but the information furnished by the person shall not be admissible against the person in any proceedings except proceedings for an offence against subsection (3).

(6) Any person who personates or falsely represents that the person is an authorised person shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding \$200.

(7) Every authorised person shall be provided with a certificate of authorisation in a form approved by the Secretary of the Department of Health, and the authorised person on exercising in any place any function conferred on the authorised person by this section shall, if so requested by a person apparently in charge of the place, produce the certificate to that person.

(8) If a person discloses any information obtained pursuant to this section and the disclosure is not made—

(a) with the consent of—

(i) in the case of information relating to a patient of a registered medical practitioner—the patient; and

(ii) in any other case—the person from whom the information was obtained;

(b) in connection with the administration or execution of this Act;

(c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings; or

Medical Practitioners (Further Amendment).

SCHEDULE 2—continued.**MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—continued.**

(d) with other lawful excuse,

that person shall be guilty of an offence and shall be liable, on conviction by a court of summary jurisdiction, to a penalty not exceeding \$1,000 or to imprisonment for a term not exceeding 6 months.

Search warrant.

39AA. Upon a complaint made by a person authorised under section 39 (in this section referred to as “the authorised person”) on oath before a stipendiary magistrate stating that the authorised person suspects or believes that an offence against this Act or the regulations has been or is being committed within any premises, the stipendiary magistrate may, if satisfied that there are reasonable grounds for that suspicion or belief, by warrant authorise the authorised person, together with any other persons specified in the warrant, to enter, using such force as is reasonably necessary, the premises so specified for the purpose of exercising the functions of the authorised person under section 39.

(14) (a) Section 50A—

After “secretary to the Board or the investigating committee,” insert “a person authorised to act on behalf of the secretary to the Board under this Act,”.

(b) Section 50A—

Omit “the secretary, the”, insert instead “the secretary, the person so authorised,”.

(15) (a) Section 53 (1) (e1)—

After section 53 (1) (e), insert:—

(e1) without limiting the generality of paragraph (e), providing for the payment of annual roll fees on a biennial or triennial basis;

Medical Practitioners (Further Amendment).

SCHEDULE 2—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 53 (1) (h)—

Omit “prescribed; or”, insert instead “prescribed;”.

(c) Section 53 (1) (i)—

Omit “thereof.”, insert instead “thereof; or”.

(d) Section 53 (1) (j)—

After section 53 (1) (i), insert:—

(j) on the recommendation of the Board, with respect to regulating the practice of medicine or surgery in any of its branches, or the giving or performance of any medical or surgical advice, service, attendance or operation, by any registered medical practitioner, including—

- (i) the provision of adequate staff and equipment;
- (ii) administration of anaesthetic; and
- (iii) the precautions to be taken for the safety and welfare of the patient.

SCHEDULE 3.

(Sec. 6.)

SAVINGS AND TRANSITIONAL PROVISIONS.

Interpretation.

1. In this Schedule—

“appointed day” means the day appointed and notified under section 2 (3) as the day on which Schedule 1 commences;

“Board” means the New South Wales Medical Board.

Medical Practitioners (Further Amendment).

SCHEDULE 3—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.***Fees.**

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

(2) For the purposes of section 24 (1) of the Principal Act, as amended by this Act, the payment, pursuant to section 24 (1) of the Principal Act as in force immediately before the date of assent to this Act, by a registered medical practitioner of the annual roll fee for the year next following 30th June, 1983, and ending on 30th June, 1984, shall be regarded as payment of the annual roll fee for the year ending on 30th September, 1984, as well as for the period of 3 months commencing on 1st July, 1983.

(3) For the purposes of section 24 (2) and (3) of the Principal Act, as amended by this Act, a reference to the period of 12 months next following 30th September in the year next following 30th September, 1983, shall be deemed to be a reference to the period of 15 months next following 30th June, 1983, and ending on 30th September, 1984.

Board.

3. (1) A person who, immediately before the appointed day, held office as a member of the Board—

- (a) shall cease to hold office as such on the appointed day; and
- (b) is eligible, if otherwise qualified, to be appointed as a member of the Board as constituted in accordance with section 5 of the Principal Act on or after the appointed day.

(2) For the purpose only of enabling the Board to be constituted in accordance with section 5 of the Principal Act, as amended by this Act, on or after (but not before) the appointed day, nominations may be obtained, selections may be made and any other act, matter or thing may be done, before that day as if the whole of Schedule 1 commenced on the date of assent to this Act.

(3) A person who was a member of the disciplinary tribunal under section 28 of the Principal Act immediately before the appointed day for the purposes of an inquiry shall, if the person ceases to be a member of the Board by virtue of subclause (1), be deemed to be a person appointed to the disciplinary tribunal by the Board under section 28 (2AA) of the Principal Act, as amended by this Act, for the purposes of that inquiry.

Medical Practitioners (Further Amendment).

SCHEDULE 3—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

Orders of disciplinary tribunal.

4. An order made, under section 29 of the Principal Act, before the date of assent to this Act shall take effect in accordance with section 29 (5) of the Principal Act as in force immediately before that date.

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

L. W. STREET,
*By Deputation from
His Excellency the Governor.*

*Government House,
Sydney, 31st December, 1983.*

