

**MEDICAL PRACTITIONERS (AMENDMENT) ACT, 1983,
No. 41**

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 41, 1983.

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.
[Assented to, 22nd April, 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:—

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 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 5 (3) (c), (c1)—

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

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

(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”.

(c) Section 5 (3) (e)–(n)—

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

(d) Section 5 (4)—

Omit the subsection, insert instead:—

(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.

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

(2) Section 7 (2)—

At the end of section 7, insert:—

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

- (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:—

(2) A person appointed to a vacant office—

- (a) shall have the same qualification for appointment as his predecessor; and
- (b) shall—
 - (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.

(4) (a) Section 10 (1)—

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

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 10 (1A)—

After section 10 (1), insert:—

(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:—

(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:—

(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:—

(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

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

- (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—
- (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:—

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.

(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
 - (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—
 - (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.*

- (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
 - (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—
 - (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;
 - (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—
- (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—
 - (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;

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

(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

(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,

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).

(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—

(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,

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.*

(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:—

(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”.

(b) Section 27 (1A) (b), (1B)—

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

(c) Section 27 (1A) (b)—

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)—

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”.

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

(11) (a) Section 27A (2B)—

After section 27A (2A), insert:—

(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.

(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,”.

(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)—

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.

Medical Practitioners (Amendment).

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

(b) Section 30 (3), (4)—

Omit the subsections, insert instead:—

(3) Except with the consent of the applicant for registration or registered medical practitioner with respect to whom an inquiry under subsection (2) or (2A) is to be held, the Board shall not hold the inquiry unless the secretary to the Board has 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.

(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 medical practitioner, personally or by post, require him to undergo, 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:—

(5A) Where, pursuant to subsection (2) or (2A), an inquiry is required to be held with respect to a registered medical practitioner, 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 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.

(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.

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

(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)—

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

(e) Section 30 (9)—

After “subsection”, insert “(5A) or”.

(f) Section 30 (12)—

After section 30 (11), insert:—

(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)—

- (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
- (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.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (16) (a) Section 34 (1)—
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”.
- (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”.
- (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—
Before “person so appointed”, insert “the inspector, the officer or”.
- (20) (a) Section 53 (1) (b)—
Omit “or charge”.

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

(b) Section 53 (1) (c1)—

After section 53 (1) (c), insert:—

- (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—

- (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
- (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.)

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;

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

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

“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 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 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 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.

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 Act.

Medical Practitioners (Amendment).

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

(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.
