



AUSTRALIAN CAPITAL TERRITORY

# Medical Practitioners Registration (Amendment) Act 1993

No. 21 of 1993

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AUSTRALIAN CAPITAL TERRITORY

# Medical Practitioners Registration (Amendment) Act 1993

No. 21 of 1993

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## An Act to amend the *Medical Practitioners Registration Act 1930* and for related purposes

[Notified in ACT Gazette S47: 5 April 1993]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

### PART I—PRELIMINARY

#### Short title

1. This Act may be cited as the *Medical Practitioners Registration (Amendment) Act 1993*.

#### Commencement

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

### **Principal Act**

3. In this Act, “Principal Act” means the *Medical Practitioners Registration Act 1930*.<sup>1</sup>

## **PART II—AMENDMENTS OF THE MEDICAL PRACTITIONERS REGISTRATION ACT 1930**

### **Long title of Principal Act**

4. The long title of the Principal Act is amended by adding at the end “, and for other purposes”.

### **Short title of Principal Act**

5. Section 1 of the Principal Act is amended by omitting “*Registration*”.

### **Interpretation**

6. Section 4 of the Principal Act is amended—

(a) by inserting in subsection (1) the following definition:

“ ‘Mutual Recognition Act’ means the *Mutual Recognition Act 1992* of the Commonwealth;”;

(b) by omitting the definition of “registered medical practitioner” and substituting the following definition:

“ ‘registered medical practitioner’ means a person who is—

(a) registered under this Act; or

(b) to be deemed to be registered under this Act by virtue of section 25 of the *Mutual Recognition Act*;”;

(c) by omitting subsection (3).

### **Insertion**

7. After section 4 of the Principal Act the following sections are inserted in Part I:

#### **Competence to practise medicine**

“4A. For the purposes of this Act, a person shall be taken to be competent to practise medicine only if the person—

- (a) has sufficient physical capacity, mental capacity and skill to practise medicine; and
- (b) has sufficient communication skills for the practise of medicine, including an adequate command of the English language.

#### **Impairment**

“4B. (1) For the purposes of this Act, a person shall be taken to suffer from an impairment if the person suffers from any physical or mental impairment, disability, condition or disorder which detrimentally affects, or is likely to detrimentally affect, the person’s physical or mental capacity to practise medicine.

“(2) For the purposes of subsection (1), habitual drunkenness or addiction to a deleterious drug shall be taken to be a physical or mental disorder.

#### **Position of Crown**

“4C. This Act binds the Crown.”

#### **Heading to Part III**

8. The heading to Part III of the Principal Act is amended by omitting “AND QUALIFICATIONS”.

#### **Substitution**

9. Sections 19, 22, 22A and 22B of the Principal Act are repealed and the following Divisions, Division heading and section substituted:

##### ***“Division 1—Qualifications for registration***

#### **Entitlement to unconditional registration based on qualifications and training**

“19. (1) A person is entitled to be registered as a medical practitioner if he or she has recognised medical qualifications and has successfully completed a period of internship or supervised training as required by the Board.

“(2) For the purposes of this section, a person has recognised medical qualifications if the person is a graduate of a Medical School (whether within or outside Australia) accredited by the Australian Medical Council Incorporated or has successfully completed examinations held by that Council for the purposes of registration as a medical practitioner.

“(3) The entitlement under this section is an entitlement to registration that is not subject to any condition.

#### **Entitlement of interns to conditional registration**

“20. (1) A person is entitled to be registered as a medical practitioner subject to conditions imposed by the Board if the person would be entitled to registration under section 19 except for the fact that he or she has not completed a period of internship or supervised training required by the Board.

“(2) The conditions of registration that the Board may impose under subsection (1) are such conditions as the Board considers appropriate for the purpose of enabling the person to complete that internship or training.

#### **Registration under mutual recognition principle**

“21. (1) A person who is licensed or registered as a medical practitioner under the law in force in a State or another Territory that is a participating jurisdiction within the meaning of the Mutual Recognition Act is entitled to be registered as a medical practitioner under this Act.

“(2) If the person’s licence or registration in the State or other Territory is not subject to any condition or restriction, the person’s entitlement to registration under this Act is an entitlement to registration that is not subject to any condition.

“(3) If the person’s licence or registration in the State or other Territory is subject to any condition or restriction, the person’s entitlement to registration under this Act is an entitlement to registration subject to the conditions to which that licence or registration is subject or conditions appropriate to give effect to any restriction to which that licence or registration is subject.

#### **Registration at discretion of Board**

“22. (1) Where a person is a graduate in medicine from an institution which is not accredited by the Australian Medical Council Incorporated, the Board may register the person as a medical practitioner on a temporary basis to enable him or her to undertake a period of postgraduate training in medicine approved by the Board.



“(2) Where a person is a candidate for an examination held by the Australian Medical Council Incorporated and has been approved by that Council to undertake a period of supervised training approved by the Board before sitting for the examination, the Board may register the person as a medical practitioner for the purpose of enabling him or her to undertake that training.

“(3) The Board may register a person as a medical practitioner for the purpose of enabling the person to fill a medical teaching or research position if the person has qualifications that the Board considers appropriate for that purpose.

“(4) The Board may register a person as a medical practitioner for the purpose of enabling an unmet area of need to be met if the Board is satisfied that the person has suitable qualifications and experience to practise medicine in that area of need.

“(5) The Board may register a person as a medical practitioner if the Board is satisfied that he or she has specialist qualifications and experience in medicine recognised by the relevant Australian specialist college or institution and registration is for the purpose of enabling him or her to practise within that specialty.

“(6) The Board may register a person as a medical practitioner if the Board is satisfied that he or she has specialist qualifications and experience in medicine obtained outside Australia, being qualifications which are not recognised by the relevant Australian specialist college or institution, and registration is for the purpose of enabling him or her to undergo further specialist training or examination before being assessed for recognition by that college or institution.

“(7) Notwithstanding section 22E, the Board may register a person as a medical practitioner under this section although he or she does not have a command of the English language that is adequate for the practise of medicine if the Board considers that registration is appropriate in the circumstances.

“(8) The Board may register a person as a medical practitioner on a temporary basis if it is satisfied that it is in the public interest to do so.

“(9) The Board may impose such conditions on the registration of a person as a medical practitioner under this section as it considers appropriate.

**Interim registration**

“22A. (1) An applicant for registration may be granted interim registration where—

- (a) the person is entitled to registration under section 19 but it is not practicable to wait until the Board can consider the application; or
- (b) the person would be entitled to registration under section 20 except for the fact that a degree or award to which the applicant is entitled has not yet been conferred or granted by the institution concerned.

“(2) A person authorised by the Board for the purposes of this section may grant an applicant for registration interim registration in accordance with this section.

“(3) Interim registration granted to a person under this section remains in force from the time at which it is granted until the person is given notice in writing that the Board has—

- (a) granted him or her registration;
- (b) refused his or her application for registration; or
- (c) cancelled the interim registration.

“(4) The Board may cancel a person’s interim registration for any reason that it considers proper and shall immediately give the person notice in writing of the cancellation.

“(5) A person who holds interim registration is for all purposes to be taken to be a registered medical practitioner.

“(6) Where a person who is registered as a medical practitioner held interim registration at the time of being so registered, the person’s registration as a medical practitioner shall be taken to have occurred on the day on which he or she was granted interim registration.

“(7) Interim registration under this section shall be taken to have been granted by the Board.

**Conditions of registration in cases of impairment**

“22B. (1) The Board may impose conditions on a person’s registration if the Board is satisfied that the person suffers from an impairment and the conditions are reasonably required having regard to the impairment.

“(2) A registered medical practitioner who has had conditions imposed on his or her registration under this section (including conditions imposed on a review under this section) may apply to the Board for a review of the conditions.

“(3) The Board may decline to review the conditions if the application is made within 12 months after the conditions were last reviewed under this section.

“(4) On a review of conditions the Board may alter or remove conditions or impose new conditions, as it thinks appropriate.

#### **Refusal of registration where applicant convicted of offence**

“22C. (1) Subject to subsection (3), the Board may refuse an application for registration if—

- (a) the applicant has been convicted in the Territory of an offence or has been convicted outside the Territory by a court for or in respect of an act or omission that would, had it taken place in the Territory, have constituted an offence; and
- (b) the Board is of the opinion that the conviction renders the person unfit in the public interest to practise medicine.

“(2) The Board shall have regard to the nature of an offence and the circumstances in which it was committed in making a decision under subsection (1).

“(3) Subsection (1) does not apply in relation to a person who is entitled to registration pursuant to the Mutual Recognition Act and who has lodged with the Board a notice under section 19 of that Act.

#### **Refusal of registration where applicant deregistered outside Territory**

“22D. (1) Subject to subsection (3), the Board may refuse an application for registration if the applicant’s name has been removed from a foreign medical register for any reason relating to conduct of the person amounting to professional misconduct (within the meaning of Part IV) or on any basis relating to the person’s physical or mental capacity to practise medicine.

“(2) A person’s name shall be taken to have been removed from a foreign medical register if it is removed from any register or roll established or kept under any law of any country, State or other Territory providing for the registration, licensing or certification of medical practitioners under an Act.

“(3) Subsection (1) does not apply in relation to a person who is entitled to registration pursuant to the Mutual Recognition Act and who has lodged with the Board a notice under section 19 of that Act.

### **Applicants to be competent and of good character**

“22E. (1) Subject to subsection (2), the Board shall not register a person as a medical practitioner unless it is satisfied that the person—

- (a) has the physical capacity, mental capacity and skill required to competently practise medicine;
- (b) has sufficient communication skills for the practise of medicine including an adequate command of the English language; and
- (c) is of good character.

“(2) Subsection (1) does not apply in relation to a person who is entitled to registration pursuant to the Mutual Recognition Act and who has lodged with the Board a notice under section 19 of that Act.

### **Restriction on registration of deregistered or suspended persons**

“22F. (1) Subject to subsection (2), where the registration of a person under this Act has been cancelled (otherwise than under section 27 or subsection 29B (2)) or suspended (otherwise than under subsection 31 (2)) the person may not apply for re-registration or termination of the suspension, as the case may be, otherwise than under section 30B.

“(2) Subsection (1) does not apply in relation to a person who is entitled to be re-registered pursuant to the Mutual Recognition Act and who has lodged with the Board a notice under section 19 of that Act.

### ***“Division 2—Registration procedure***

#### **Applications for registration**

“22G. (1) This section applies to applications for registration other than applications by persons who are entitled to registration pursuant to the Mutual Recognition Act and who lodge with the Board a notice under section 19 of that Act.

“(2) An application for registration to which this section applies shall—

- (a) be in a form approved by the Board; and
- (b) be accompanied by the prescribed fee.

### **Applications to be considered and determined**

“22H. The Board shall consider each application under section 22G and shall determine the application by—

- (a) registering the applicant unconditionally or subject to conditions;  
or
- (b) refusing the application.

### **Registration of applicants**

“22J. Where a person who is applying for registration otherwise than under the Mutual Recognition Act—

- (a) complies with section 22G;
- (b) appears personally before the Board or a nominee of the Board in support of his or her application if required by the Board to do so;  
and
- (c) is entitled to registration in accordance with this Act;

the Board shall, subject to this Act, cause the applicant to be registered.

### **Fee for registration pursuant to Mutual Recognition Act**

“22K. A person who applies for registration under this Act pursuant to the Mutual Recognition Act shall pay the prescribed fee.

### **Conditions of registration**

“22L. The conditions that the Board may impose on registration at the time of registration include conditions relating to the duration of registration, the aspects of practice in which the person who is registered may be engaged and conditions relating to any other matters the Board considers appropriate.

## ***“Division 3—Register of Medical Practitioners***

### **Register**

“22M. (1) The Board shall keep a register called ‘The Register of Medical Practitioners’.

“(2) The Register may be maintained by electronic means.”.

### **Particulars to be entered in Register**

**10.** Section 23 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (e) “and”;

- (b) by omitting paragraph (1) (f) and substituting the following paragraphs:
  - “(f) any condition to which the person’s registration is subject;  
and
  - (g) such other particulars, if any, as are prescribed.”; and
- (c) by omitting subsection (2).

**Certificate of registration**

11. Section 24 of the Principal Act is amended—

- (a) by inserting after subsection (1) the following subsection:

“(1A) A certificate of registration shall state the provision by virtue of which the person specified in the certificate is entitled to be registered under this Act and any conditions to which his or her registration is subject.”;
- (b) by omitting from subsection (2) “issued under subsection (1)”;
- (c) by inserting in paragraph (4) (a) “suspended or” before “cancelled”;
- (d) by inserting after subsection (5) the following subsections:

“(5A) Where a person whose registration has been suspended delivers his or her certificate of registration to the Board, the Board shall retain the certificate during the period of the suspension and return it to the person at the expiration of that period unless the person’s registration has sooner been cancelled.

“(5B) Where, after a certificate of registration has been issued to a person—

  - (a) conditions are imposed on the registration of the person;  
or
  - (b) conditions imposed on the registration of the person are varied;

the Chairperson may, by notice in writing given to the person, require the person to deliver his or her certificate of registration to the Chairperson within 14 days to enable a statement of the conditions imposed, or the conditions as varied, to be endorsed on the certificate.

“(5C) A person who fails to comply with a notice under subsection (5B) is guilty of an offence punishable, on conviction, by a fine not exceeding \$500.”;

- (e) by inserting in subsection (6) “or subsection (5B)” after “paragraph (4) (a)”; and
- (f) by inserting in subsection (7) “or (5B)” after “subsection (4)”.

### **Repeal**

12. Section 24A of the Principal Act is repealed.

### **Change of address to be notified**

13. Section 24B of the Principal Act is amended by omitting from paragraph (a) “or notified to the Board under section 24A”.

### **Alteration of Register**

14. Section 26 of the Principal Act is amended—

- (a) by omitting from subsection (1) all the words after “name” and substituting the following:
  - “of—
  - (a) a registered medical practitioner who has died; or
  - (b) a registered medical practitioner whose registration has been cancelled.”; and
- (b) by omitting from subsection (5) “23” and substituting “22H or the Mutual Recognition Act.”.

### **Substitution**

15. Sections 28A, 29, 29A and 29B of the Principal Act are repealed and the following sections substituted:

### **Deregistration on basis of disciplinary action under foreign law**

“27. (1) Where the Board is satisfied that the name of a person who is registered under this Act has been removed from any register or roll kept under a law of a State or another Territory for any reason relating to—

- (a) conduct of the person that would constitute professional misconduct under Part IV; or
- (b) the physical or mental capacity of the person to practise medicine;

the Board shall cancel the registration of the person.

“(2) Where—

- (a) the name of a person whose registration has been cancelled under subsection (1) is restored to the register or roll referred to in that subsection; and

(b) the person applies to the Board to be re-registered under this Act; the Board shall re-register the person.

“(3) Where the Board is satisfied that the name of a person who is registered under this Act has been removed from any register or roll kept under a law of a place outside Australia for any reason relating to—

(a) conduct of the person that would constitute professional misconduct under Part IV; or

(b) the physical or mental capacity of the person to practise medicine; the Board may cancel the registration of the person.

“(4) The Board may re-register a person whose registration has been cancelled under subsection (3) if the Board is satisfied that it is appropriate in the circumstances to do so.

#### **Imposition of conditions imposed under foreign law**

“28. (1) Where the Board is satisfied that after a person has been registered under this Act a condition has been imposed on the registration of the person as a medical practitioner under a law of a State or another Territory, the Board shall impose a similar condition on the registration of the person under this Act.

“(2) Where the Board is satisfied that after a person has been registered under this Act a condition has been imposed on the registration of the person as a medical practitioner under a law of a place outside Australia, the Board may impose a similar condition on the registration of the person under this Act.

#### **Cessation of registration**

“29. A registered medical practitioner ceases to be registered—

(a) when the Board gives the person notice that his or her registration has been cancelled in accordance with this Act; or

(b) if registration is conditional and the period of registration is specified in a condition—when that period expires.

#### ***“Division 4—Annual fees***

#### **Annual fee payable**

“29A. (1) A registered medical practitioner shall, on or before 30 September in each year, pay the Territory the prescribed fee.



“(2) The Board shall cause to be sent to each registered medical practitioner, not less than 1 month before 30 September in each year, a notice requiring him or her to comply with subsection (1).

“(3) The liability of a registered medical practitioner for a fee payable by him or her under subsection (1) is not affected by a failure of the Board to comply with subsection (2).

**Practitioner’s registration may be cancelled for non-payment**

“29B. (1) Where a registered medical practitioner does not comply with subsection 29A (1), the Board shall cause to be sent to the medical practitioner a notice requiring him or her to pay the fee due under that subsection by a day specified in the notice and advising him or her that if the fee is not paid on or before that day his or her registration will be cancelled.

“(2) The Board shall cancel the registration of a medical practitioner to whom a notice has been sent under subsection (1) and who has not paid the fee due by the day specified in the notice.

**Entitlement to re-registration on payment of fees**

“29C. (1) A person whose name has been removed from the Register for failure to pay an annual fee is entitled to be re-registered if he or she makes application in accordance with this section and pays the prescribed fee.

“(2) An application for re-registration under this section shall—

- (a) be in a form approved by the Board; and
- (b) be accompanied by the prescribed fee.

“(3) The entitlement of a person to re-registration under this section is an entitlement to registration on the same terms and subject to the same conditions (if any) as applied to the person’s registration immediately before the removal of his or her name from the Register.

“(4) The Board may refuse to re-register a person under this section if it is satisfied that the person is not competent to practise medicine or is not of good character.

“(5) An entitlement to re-registration under this section is subject to the provisions of this Act pursuant to which a person’s name is authorised or required to be removed from the Register.”.

**Substitution**

16. Sections 30 and 30A of the Principal Act are repealed and the following sections substituted:

**Interpretation**

“30. (1) In this Part, a reference to unsatisfactory professional conduct, in relation to a registered medical practitioner, shall be read as including a reference to—

- (a) any conduct that demonstrates a lack of adequate knowledge, skill, judgment or care by the practitioner in the practise of medicine;
- (b) a contravention by the practitioner of this Act or the regulations;
- (c) a contravention by the practitioner of a condition to which his or her registration is subject;
- (d) any conduct that results in the conviction of the practitioner for an offence against section 128A, 128B, 129, 129AA or 129AAA of the *Health Insurance Act 1973* of the Commonwealth;
- (e) subject to subsection (2), permitting an assistant who is employed by the practitioner in connection with the practitioner’s professional practice, but who is not a registered medical practitioner, to attend, treat or perform operations on patients in respect of matters requiring professional discretion or skill;
- (f) subject to subsection (2), by the practitioner’s presence, countenance, advice, assistance or co-operation, knowingly enabling a person who is not a registered medical practitioner to—
  - (i) perform an act of operative surgery (not being an act that consists wholly of manipulative surgery) on a patient in respect of a matter requiring professional discretion or skill; or
  - (ii) issue or procure the issue of any certificate, notification, report or other similar document, or to engage in professional practice, as if the person were a registered medical practitioner;

- (g) using any certificate, diploma, membership, degree, licence, letters, testimonial or other title, status, document or description in relation to himself or herself or in the practice of medicine, other than—
  - (i) a certificate, diploma, membership, degree, licence, letters, testimonial or other title, status, document or description—
    - (A) recorded in the Register in respect of the practitioner; or
    - (B) used by the practitioner before the commencement of this section; or
  - (ii) the description ‘doctor’, ‘medical practitioner’ or another expression recognised by the Board generally or in an appropriate case for the purposes of this paragraph;
- (h) refusing or failing, without reasonable excuse, to attend (within a reasonable time after being requested to do so) on a person for the purpose of rendering professional services in the capacity of a registered medical practitioner in any case where the practitioner has reasonable cause to believe that the person is in need of urgent attention by a registered medical practitioner unless the practitioner has taken all reasonable steps to ensure that another registered medical practitioner attends instead within a reasonable time;
- (j) advertising, otherwise than as permitted by the regulations, for the purpose of procuring patients or practice, or sanctioning, or being associated with or employed by a person who sanctions, such an advertisement;
- (k) canvassing, or employing an agent or canvasser, for the purpose of procuring patients or practice, or sanctioning, or being associated with or employed by a person who sanctions, the employment of an agent or canvasser for that purpose;
- (m) any other improper or unethical conduct relating to the practice of medicine; and
- (n) any conduct by the practitioner, whether occurring in the practise of medicine or not, that adversely affects the practise of medicine by the practitioner or brings the medical profession into disrepute.

“(2) In this Part, a reference to unsatisfactory professional conduct in relation to a medical practitioner shall not be read as including conduct of the kind referred to in paragraph (1) (e) or (f) where that conduct takes place in connection with—

- (a) the proper training and instruction of registered medical students or other students;
- (b) the lawful employment of dressers, nurses, dispensers, surgery attendants, technicians or skilled mechanics, under the immediate personal supervision of the practitioner; or
- (c) collaborating in experimental or research work in medicine with a person who is the holder of a university degree in science or another degree recognised by the Board generally or in a particular case for the purposes of this paragraph.

“(3) In this Part, a reference to professional misconduct in relation to a medical practitioner shall be read as a reference to unsatisfactory professional conduct of a sufficiently serious nature to justify suspension of the practitioner from practising medicine or for the removal of the practitioner’s name from the Register.

### **Cancellation or suspension of registration**

“30A. The Board may—

- (a) cancel the registration of a person; or
- (b) by order served on the person, suspend the registration of the person for such period as the Board thinks fit;

if it is satisfied—

- (c) that the registration of the person was obtained by fraud or misrepresentation;
- (d) that the medical qualification of the person has been withdrawn or cancelled by the body which granted it;
- (e) that the person has contravened a condition to which his or her registration under this Act is subject;
- (f) that the person has been convicted in the Territory or elsewhere of an offence punishable by imprisonment for more than 1 year or any offence that, in the opinion of the Board, renders him or her unfit to practise as a medical practitioner;
- (g) that the person is guilty of habitual drunkenness or addiction to drugs;

- (h) that the person is guilty of professional misconduct; or
- (j) that the person is not competent to practise medicine.

**Cancellation, suspension or restriction of right of practise on health grounds**

“30AB. (1) Subject to subsection (2), the Board shall, when it is satisfied that the mental or physical condition of a person who is registered as a medical practitioner renders him or her unfit to practise medicine—

- (a) cancel the registration of the person; or
- (b) by order served on the person, suspend the registration of the person for such period as the Board thinks fit.

“(2) The Board may, instead of cancelling or suspending the registration of a person, where it is satisfied that the person is fit to give or perform some medical services and that it would not be contrary to the public interest to make an order under this subsection, by order served on the person direct the person not to give or perform the medical services specified, whether individually or otherwise, in the order.

“(3) A person on whom an order under paragraph (1) (b) or subsection (2) has been served who gives or performs a medical service in contravention of that order shall, in giving or performing the service, be deemed to be a person other than a registered medical practitioner.

**Practising when registration suspended**

“30AC. Where a person whose registration as a medical practitioner has been suspended is convicted of an offence against section 34 or 38, the Board may—

- (a) cancel the registration of the person; or
- (b) by order served on the person, suspend the registration of the person for such further period as the Board thinks fit.

**Power of Board to caution, reprimand etc.**

“30AD. (1) Subject to subsection (2), the Board may do any one or more of the following in relation to the conduct of a registered medical practitioner:

- (a) caution or reprimand the practitioner;
- (b) order that the practitioner seek and undergo medical or psychiatric treatment or counselling;
- (c) impose on the practitioner’s registration such conditions relating to the practise of medicine as the Board considers appropriate;

- (d) order that the practitioner complete specified educational courses;
- (e) order that the practitioner report on his or her medical practice at the times, in the manner and to the persons specified by the Board;
- (f) order that the practitioner seek and follow advice, in relation to the management of his or her medical practice, from persons specified by the Board.

“(2) Paragraph (1) (d) does not apply in relation to a registered medical practitioner who obtained registration under this Act pursuant to the Mutual Recognition Act.

#### **Power of Board to impose fines**

“30AE. (1) Subject to subsection (2), where the Board finds that a registered medical practitioner has failed to comply with an order of the Board under section 30AD it may, by order served on the practitioner, impose on him or her a fine not exceeding \$1,000.

“(2) The Board shall not impose a fine under subsection (1) in respect of conduct for which a court has already imposed a fine or other penalty.

“(3) A fine imposed under this section shall be paid to the Territory within the time specified in the order imposing the fine.

“(4) Where a practitioner on whom the Board has imposed a fine under subsection (1) fails to pay the fine by the time specified in the order, the Board may—

- (a) cancel the registration of the practitioner; or
- (b) by order served on the practitioner, suspend the registration of the practitioner for such period as the Board thinks fit.”.

#### **Application for re-registration**

**17.** Section 30B of the Principal Act is amended—

- (a) by omitting from subsection (1) “subsection 24A (4)” and substituting “subsection 29B (2)”; and
- (b) by omitting from subsection (1) “30A (1) or”.

#### **Inquiry by Board**

**18.** Section 31 of the Principal Act is amended—

- (a) by omitting paragraph (1) (ba) and substituting the following word and paragraph:
  - “or (c) taking any action under section 30AD.”; and

- (b) by omitting from subsection (2) all the words after “may” (first occurring) and substituting “, by order served on the person to whom the inquiry relates, suspend temporarily the registration of the person.”.

#### **Publication of notice of decision**

**19.** Section 31B of the Principal Act is amended by omitting paragraphs (1) (b) and (c) and substituting the following paragraphs:

- “(b) suspending, otherwise than under subsection 31 (2), the registration of a person;
- (c) taking any action in respect of a person under section 30AD; or
- (d) imposing a fine on a person under section 30AE;”.

#### **Advertising**

**20.** Section 35 of the Principal Act is amended by inserting “or herself” after “himself”.

#### **Repeal**

**21.** Sections 38A and 38B of the Principal Act are repealed.

#### **Substitution**

**22.** Sections 39C and 39D of the Principal Act are repealed and the following sections substituted:

#### **Review of decisions**

“39C. Application may be made to the Tribunal for review of a decision of the Board—

- (a) under subsection 20 (1), 22 (9), 22B (1) or 28 (2) to impose conditions on the registration of a person;
- (b) under subsection 22A (4) to cancel the interim registration of a person;
- (c) under subsection 22B (3) to decline to review conditions imposed on the registration of a person;
- (d) under subsection 22B (4) to refuse to alter or remove conditions imposed on the registration of a person;
- (e) under subsection 22B (4) to impose new conditions on the registration of a person;
- (f) under section 22H to refuse to register a person;

- (g) under section 30A, subsection 30AB (1), section 30AC or subsection 30AE (4) to cancel the registration of a person;
- (h) under subsection 27 (4), section 29C or subsection 30B (2) to refuse to re-register a person;
- (j) under section 30A, subsection 30AB (1), section 30AC or subsection 30AE (4) or 31 (2) to suspend the registration of a person;
- (k) under subsection 30AB (2) to direct a person not to give or perform specified medical services;
- (m) under subsection 30AD (1) to take any action of a kind specified in that subsection in relation to a registered medical practitioner;
- (n) under subsection 30AE (1) to impose a fine on a registered medical practitioner;
- (p) under subsection 30B (2) to refuse to terminate the suspension of the registration of a person;
- (q) under subsection 39B (2) to certify the amount which, in the opinion of the Board, is a reasonable amount of fees or remuneration for a medical service;
- (r) under section 39BA to refuse to extend beyond 6 months the period during which the executor or executrix of the will of a deceased medical practitioner, or the administrator, administratrix or trustee of the estate of a deceased medical practitioner, may continue the business of the practitioner; or
- (s) under section 39BA to fix a period longer than 6 months during which the executor or executrix of the will of a deceased medical practitioner, or the administrator, administratrix or trustee of the estate of a deceased medical practitioner, may continue the business of the practitioner.

### **Notification of decisions**

“39D. (1) Where a decision of the kind referred to in paragraph 39C (a), (c), (d), (e), (f), (g), (h), (m), (p), (q), (r), or (s) is made, the Board shall, within 28 days after the date of the decision, give notice in writing of the decision—

- (a) in the case of a decision referred to in paragraph 39C (a)—to the person on whose registration conditions have been imposed;
- (b) in the case of a decision referred to in paragraph 39C (c) or (d)—to the person whose registration is subject to the conditions;



- (c) in the case of a decision referred to in paragraph 39C (e)—to the person on whose registration the new conditions are imposed;
- (d) in the case of a decision referred to in paragraph 39C (f)—to the person whose application for registration has been refused;
- (e) in the case of a decision referred to in paragraph 39C (g)—to the person whose registration has been cancelled;
- (f) in the case of a decision referred to in paragraph 39C (h)—to the person whose application for re-registration has been refused;
- (g) in the case of a decision referred to in paragraph 39C (m)—to the registered medical practitioner in relation to whom the action has been taken;
- (h) in the case of a decision referred to in paragraph 39C (p)—to the person whose registration has been suspended;
- (j) in the case of a decision referred to in paragraph 39C (q)—to the person who requested the review of the account; or
- (k) in the case of a decision referred to in paragraph 39C (r) or (s)—to the executor or executrix of the will of the deceased medical practitioner or the administrator, administratrix or trustee of the estate of the deceased practitioner.

“(2) A notice under subsection 22A (4) or subsection (1) of this section, or under section 31 of the *Health Professions Boards (Procedures) Act 1981*, shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Administrative Appeals Tribunal for a review of the decision to which the notice relates; and
- (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement under section 26 of that Act.

“(3) An order under paragraph 30A (b) or 30AB (1) (b), subsection 30AB (2), paragraph 30AC (b), subsection 30AE (1), paragraph 30AE (4) (b) or subsection 31 (2) shall—

- (a) have endorsed on it or attached to it a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Administrative Appeals Tribunal for a review of the decision to make the order; and

- (b) except where subsection 26 (11) of the *Administrative Appeals Tribunal Act 1989* applies—have endorsed on it or attached to it a statement to the effect that a person whose interests are affected by the decision may request a statement under section 26 of that Act.

“(4) The validity of a decision referred to in subsection (2) or (3) is not to be taken to be affected by a failure to comply with that subsection.”.

### **Repeal**

23. The Schedule to the Principal Act is repealed.

### **Further amendments**

24. The Principal Act is amended as set out in the Schedule.

## **PART III—TRANSITIONAL PROVISIONS**

### *Division 1—Savings*

### **Register**

25. The register to be kept under section 22M of the Principal Act as amended by this Act is a continuation of the register kept under section 19 of the Principal Act before the commencement of this Act.

### **Continuation of registration**

26. A person who, immediately before the commencement of this Act, was registered as a medical practitioner under the Principal Act continues to be registered under the Principal Act as amended by this Act on the same terms and subject to the same conditions as applied to his or her registration immediately before the commencement of this Act.

### **Persons granted provisional registration**

27. A person who, immediately before the repeal of section 29 of the Principal Act by this Act, held provisional registration under that section shall, on the commencement of this Act, be taken to be a person who has been granted interim registration in accordance with section 22A of the Principal Act as amended by this Act.

### **Approved medical officers**

**28.** Where, before the repeal of section 38A of the Principal Act by this Act, the Board had approved a qualified person for the purposes of that section, nothing in Part IV of the Principal Act makes it unlawful for that person to hold an appointment as, and to perform the functions and duties of, a medical officer in a hospital approved by the Board for the time being for the purposes of this section and, in the performance of those functions and duties, to sign a certificate to which section 38 applies.

### **Failure to pay annual fee under repealed provisions**

**29. (1)** A failure by a registered medical practitioner to pay a fee that became payable by him or her under section 24A of the Principal Act as in force before the commencement of this Act shall be taken to be a failure to pay a fee that became payable under section 29A of the Principal Act as amended by this Act.

**(2)** A medical practitioner who was not registered under the Principal Act immediately before the commencement of this Act because his or her registration was cancelled for a failure by the practitioner to pay a fee that had become payable by him or her under section 24A of the Principal Act as in force before the commencement of this Act shall be taken to have had his or her registration cancelled for a failure to pay a fee which had become payable by him or her under section 29A of the Principal Act as amended by this Act.

### **Applications for registration**

**30.** An application for registration under the Principal Act as in force before the commencement of this Act that had not been determined before the commencement of this Act shall be taken to be an application for registration under the Principal Act as amended by this Act and any inquiry or investigation for the purposes of the application may be continued or completed.

### **Continuation of inquiries and reviews**

**31. (1)** The provisions of the Principal Act as in force immediately before the commencement of this Act continue to apply in relation to an inquiry or review commenced under the Principal Act and pending immediately before the commencement of this Act.

**(2)** Any order, decision or determination resulting from an inquiry or review to which this section applies shall be taken to have been made under the Principal Act as amended by this Act and to have effect accordingly.

**Complaints relating to previous conduct**

**32. (1)** Subject to subsection (2), an inquiry may be held under the Principal Act as amended by this Act with respect to conduct or any other matter or thing that occurred before, or partly before and partly after, the commencement of this Act.

**(2)** An inquiry referred to in subsection (1) may only be held if it is an inquiry that could have been held before the commencement of this Act.

**Existing orders**

**33.** An order having effect under a provision of the Principal Act repealed by this Act is, by this section, converted to an equivalent order under the Principal Act as amended by this Act.

***Division 2—Deregistration of certain foreign practitioners*****Interpretation**

**34. (1)** In this Division—

“foreign medical practitioner” means a medical practitioner who is not a graduate of a Medical School accredited by the Australian Medical Council Incorporated and who has not passed the examination set by the Australian Medical Council Incorporated for the purpose of registration as a medical practitioner.

**(2)** In this Division, a reference to a medical practitioner who was unconditionally registered in Australia at a particular time shall be read as a reference to a medical practitioner who was registered at that time under this Act, or under the law in force in a State or another Territory, without any condition or limitation on his or her entitlement to practise medicine.

**Grounds for deregistration**

**35.** For the purposes of this Division, a foreign medical practitioner is liable to deregistration unless the practitioner—

- (a) was domiciled and unconditionally registered in Australia on 31 January 1992 and practised medicine in Australia for not less than 3 months during 1992;
  - (b) was unconditionally registered and practising medicine in Australia for a period of not less than 6 years, or for periods totalling not less than 6 years, at any time before 31 January 1992;
- or

- (c) was unconditionally registered and practising medicine in Australia for a period of not less than 3 years, or for periods totalling not less than 3 years, during the period of 6 years ending on 31 January 1992.

### **Board to deregister certain foreign practitioners**

**36. (1)** If the Board considers that a foreign medical practitioner is, or may be, liable to deregistration, it shall, by notice in writing served on the practitioner, require him or her to establish that he or she is not liable to deregistration.

**(2)** Where a foreign medical practitioner who has been served with a notice under subsection (1) fails to establish, to the satisfaction of the Board, that he or she is not liable to deregistration, the Board shall cancel the registration of the practitioner unless it considers that there is good reason why the practitioner's registration should not be cancelled.

**(3)** The Board shall give a foreign medical practitioner who is liable to deregistration an opportunity to make submissions to the Board on the question of whether his or her registration should be cancelled and the Board shall consider any submissions made by the practitioner.

### **Duration of practise necessary to establish practise during a period**

**37. (1)** If a registered medical practitioner has practised medicine for at least 4 days during a month, he or she shall be taken to have practised throughout the whole of that month.

**(2)** If a registered medical practitioner has practised medicine for less than 4 days during a month, he or she shall be taken not to have practised during that month.

### **Foreign medical practitioners deregistered for non-payment of fees**

**38. (1)** This section applies to a foreign medical practitioner whose registration has been cancelled—

- (a) for failure to pay a fee that became payable by him or her under section 24A of the Principal Act as in force before the commencement of this Act; or
- (b) for failure to pay a fee that became payable by him or her under section 29A of the Principal Act as amended by this Act.

(2) A foreign medical practitioner to whom this section applies does not have an entitlement to re-registration under section 29C of the Principal Act as amended by this Act unless he or she satisfies the Board that—

- (a) he or she is not liable to deregistration; or
- (b) there is good reason why the practitioner should not lose the entitlement to re-registration.

### **Review of decisions**

39. (1) Application may be made to the Administrative Appeals Tribunal for review of a decision by the Medical Board—

- (a) under section 36 (2) to cancel the registration of a foreign medical practitioner; or
- (b) under subsection 38 (2) that a foreign medical practitioner whose registration has been cancelled for non-payment of a fee is not entitled to re-registration under section 29C of the Principal Act as amended by this Act.

(2) Where a decision of a kind referred to in subsection (1) is made, the Board shall, within 28 days after the date of the decision, give notice in writing of the decision to the foreign medical practitioner.

(3) A notice under subsection (2) shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Administrative Appeals Tribunal for a review of the decision to which the notice relates; and
- (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement under section 26 of that Act.

(4) The validity of a decision referred to in subsection (1) is not to be taken to be affected by a failure to comply with subsection (3).

## **PART IV—MISCELLANEOUS**

### **Renumbering of provisions**

40. (1) The amended Act is further amended as provided by this section.

(2) The sections of the amended Act are renumbered in a single series so that they bear consecutive Arabic numerals.

(3) Any provision of the amended Act that refers to a section of that Act that has been renumbered by subsection (2) is amended by omitting that reference and substituting a reference to the section as so renumbered.

(4) A reference in a provision of a law of the Territory made before the commencement of this section (whether or not that provision has commenced), or in any instrument or document, to a section of the amended Act that has been renumbered by subsection (2) shall be construed as a reference to that section as so renumbered.

(5) In this section, “amended Act” means the Principal Act as amended by this Act.

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**SCHEDULE**

Section 24

**FURTHER AMENDMENTS****Subsection 4 (1) (definitions of “the Chairman” and “the Deputy Chairman”)—**

Omit “Chairman” (wherever occurring), substitute “Chairperson”.

**Subsection 4 (1) (definition of “the Register”)—**

Omit “19”, substitute “22M”.

**Paragraph 4 (4) (a)—**

(a) Insert “or she” after “he”.

(b) Insert “or her” after “his”.

**Paragraph 4 (4) (b)—**

Insert “or her” after “him” (twice occurring).

**Paragraph 4 (4) (c)—**

Insert “or she” after “he”.

**Paragraph 6 (1) (a)—**

Omit “Chairman”, substitute “Chairperson”.

**Paragraph 6 (2) (a)—**

Insert “or she” after “he”.

**Paragraph 6 (2) (b)—**

(a) Insert “or she” after “he”.

(b) Insert “or her” after “his”.

**Subsection 6 (3)—**

Omit “Chairman”, substitute “Chairperson”.

**Paragraph 23 (1) (b)—**

(a) Insert “or she” after “he”.

(b) Insert “or her” after “his”.

**Subsection 24 (1)—**

(a) Insert “or her” after “him”.

(b) Omit “Chairman” (twice occurring), substitute “Chairperson”.



**SCHEDULE**—continued

**Paragraph 24 (4) (a)**—

Insert “or her” after “his”.

**Subsection 24 (4)**—

- (a) Insert “or her” after “his”.
- (b) Omit “Chairman”, substitute “Chairperson”.

**Subsection 24 (5)**—

Omit “\$100”, substitute “\$500”.

**Subsection 24 (6)**—

- (a) Insert “or her” after “him”.
- (b) Insert “or her” after “his”.
- (c) Omit “Chairman”, substitute “Chairperson”.

**Section 24B**—

- (a) Omit “subsection 23 (1)”, substitute “section 23”.
- (b) Omit “one”, substitute “1”.
- (c) Omit “Chairman”, substitute “Chairperson”.

**Section 24B, penalty at foot**—

Omit “\$100”, substitute “\$500”.

**Subsection 26 (3)**—

Omit “his”, substitute “its”.

**Subsection 30B (1)**—

- (a) Insert “or she” after “he”.
- (b) Omit “his”, substitute “that his or her”.

**Subsection 30B (2)**—

Insert “or her” after “his” (twice occurring).

**Subsection 31B (1)**—

- (a) Omit “Chairman”, substitute “Chairperson”.
- (b) Insert “or she” after “he”.

**Section 33**—

Insert “or she” after “he”.

**SCHEDULE**—continued**Section 33, penalty at foot—**

Omit “\$250”, substitute “\$5,000”.

**Paragraph 34 (1) (b)—**

Insert “or herself” after “himself”.

**Paragraph 34 (1) (c)—**

Insert “or herself” after “himself”.

**Subsection 34 (2)—**

Insert “or herself” after “himself”.

**Subsection 34 (2), penalty at foot—**

Omit “\$1,000”, substitute “\$5,000 or imprisonment for 6 months, or both”.

**Section 35, penalty at foot—**

Omit “\$500”, substitute “\$5,000”.

**Subsection 36 (1), penalty at foot—**

Omit “\$2,000”, substitute “\$25,000”.

**Subsection 36 (2), penalty at foot—**

Omit “\$500”, substitute “\$25,000”.

**Subsection 39B (2)—**

Omit “Chairman” (twice occurring), substitute “Chairperson”.

**Section 39BA—**

- (a) Insert “or her” after “his” (first occurring).
- (b) Omit “, administrator or trustee of his estate”, substitute “or executrix of the will of the deceased practitioner, or an administrator, administratrix or trustee of the estate of the deceased practitioner,”.
- (c) Omit “administrator” (second occurring), substitute “executrix, administrator, administratrix”.

**SCHEDULE**—continued

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**NOTE**

1. Reprinted as at 31 August 1991.

*[Presentation speech made in Assembly on 23 February 1993]*

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