

TASMANIA

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**MEDICAL PRACTITIONERS  
REGISTRATION AMENDMENT BILL 2004**

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**CONTENTS**

1. Short title
2. Commencement
3. Principal Act
4. Section 3 amended (Interpretation)
5. Section 5 amended (Continuation of Council)
6. Section 6 amended (Membership of Council)
7. Section 7 amended (Functions of Council)
8. Section 8 amended (Powers of Council)
9. Section 10 substituted
  10. Delegation
10. Section 11 substituted
  11. Committees
11. Section 14 amended (Protection from liability)
12. Section 16 amended (Audit)
13. Section 17 amended (Accounts)
14. Section 18 amended (Annual report)
15. Section 19 substituted
  19. General registration

16. Section 20 amended (Conditional registration to undergo supervised training, &c.)
17. Section 21 amended (Conditional registration for special purposes)
18. Section 22 substituted
  22. Non-practising registration
19. Section 23 amended (Application requirements)
20. Section 24 amended (Entitlement to registration)
21. Section 25 amended (Interim registration)
22. Section 26 substituted
  26. Assessment of entitlement
23. Section 27 amended (Recommendation of assessment committee)
24. Section 28 amended (Determination of application)
25. Section 29 amended (Special grounds for refusing to grant registration)
26. Section 30 substituted
  30. Duration of registration
27. Section 31 amended (Certificates of registration)
28. Section 33 amended (Register)
29. Section 34 amended (Correction of register)
30. Section 35 amended (Additional particulars and qualifications)
31. Section 36 amended (Inspection of register)
32. Section 37 amended (Publication of register, &c.)
33. Section 38 amended (Protection of private information)
34. Section 39 amended (Annual registration fees)
35. Section 39A inserted
  - 39A. Adding conditions
36. Section 40 amended (Removal from register)
37. Section 42 substituted
  42. Restoring name to register
38. Section 43 amended (Evidentiary provisions)

39. Part 3, Division 5 inserted  
*Division 5 – Review of registration conditions*  
 43A. Review of registration conditions
40. Part 4: Heading amended
41. Part 4, Division 1: Heading amended
42. Section 44 substituted  
 44. Making complaints
43. Section 45 amended (Specific matters of complaint)
44. Section 46 amended (Complaints procedure)
45. Sections 47, 48 and 49 substituted  
*Division 1A – Dealing with complaints*  
*Subdivision 1 – Complaints to which Division applies*  
 47. Application of Division  
*Subdivision 2 – Preliminary investigation of complaints*  
 48. Complaint to be referred to investigator  
 48A. Council may refer other matters to investigator  
 48B. Investigator to report and make recommendation  
*Subdivision 3 – Action to be taken following preliminary investigation*  
 49. Council to consider and act on investigator’s report  
 49A. Dismissal of complaint  
 49B. No disciplinary action to be initiated on complaint  
 49C. Referral of complaint to Health Complaints Commissioner  
 49D. Informal inquiry into complaint  
 49E. Formal inquiry into complaint
46. Section 50 amended (Establishment and constitution of Tribunal, &c.)
47. Section 50A inserted  
 50A. Alternate permanent members
48. Section 51 substituted  
 51. Tribunal to hold formal inquiry into referred complaint
49. Part 4, Division 3: Heading amended

50. Section 52 amended (Actions that may be taken by Tribunal)
51. Section 53 amended (Costs and expenses of formal inquiry)
52. Section 54 amended (Notice of decision)
53. Section 55 amended (Suspension of registration)
54. Sections 57 and 58 substituted
  57. Evidence of facts found in other proceedings
  58. Inspectors
  - 58A. Role of inspectors
55. Section 59 amended (Power of inspectors)
56. Section 60 amended (Specific inspectorial powers)
57. Section 60A inserted
  - 60A. Complaints may be dealt with despite other proceedings
58. Section 61 amended (Right of appeal)
59. Section 62 substituted
  62. Hearing of appeal
60. Part 6, Division 1: Heading amended
61. Section 65 amended (Unauthorised use of certain titles)
62. Section 66 repealed
63. Section 68 amended (Failure to notify Council of civil claims)
64. Section 69 amended (Improper disposal of medical records)
65. Section 70 substituted
  70. Improper directions and inducements
66. Part 6, Division 3: Heading amended
67. Section 71 amended (Offences of dishonesty)
68. Section 73 substituted
  73. Offences relating to formal inquiries, &c.
  - 73A. Compellability of witnesses in formal inquiries
69. Section 74 amended (Failure to comply with orders)

70. Sections 75 and 76 substituted
  75. Medical practitioners' notices relating to fitness to practise
  76. Provision of information by medical services providers
71. Section 77 substituted
  77. Service of documents
72. Section 78 amended (Council seal)
73. Section 79 amended (Presumptions)
74. Section 80 amended (Appropriation of fees, penalties and fines)
75. Section 81 amended (No right of recovery by unregistered person, &c.)
76. Section 82 amended (Punishment of conduct constituting an offence)
77. Section 84 amended (Act does not prohibit certain practices)
78. Section 85 amended (Regulations)
79. Section 85A inserted
  - 85A. Professional indemnity insurance guidelines
80. Sections 88, 89 and 90 repealed
81. Schedule 1 amended (Provisions with respect to membership of Council)
82. Schedule 2 amended (Provisions with respect to meetings of Council)
83. Schedule 3 substituted
  - Schedule 3 – Powers and procedures of assessment committees and investigators
84. Schedule 4 amended (Provisions with respect to membership of Tribunal)
85. Schedule 5 substituted
  - Schedule 5 – Provision with respect to powers and procedures of Tribunal
86. Schedule 6 amended (Provisions with respect to inspection warrants)

**87. Schedules 8 and 9 repealed**

**88. Transitional provisions**

**Schedule 1 – Transitional provisions**

**MEDICAL PRACTITIONERS  
REGISTRATION AMENDMENT BILL 2004**

*(Brought in by the Minister for Health and Human  
Services, the Honourable David Edward Llewellyn)*

**A BILL FOR**

**An Act to amend the *Medical Practitioners  
Registration Act 1996* and to provide for  
consequential transitional matters**

Be it enacted by His Excellency the Governor of Tasmania,  
by and with the advice and consent of the Legislative  
Council and House of Assembly, in Parliament assembled,  
as follows:

**Short title**

**1.** This Act may be cited as the *Medical Practitioners  
Registration Amendment Act 2004*.

**Commencement**

**2.** This Act commences on a day to be proclaimed.

**Principal Act**

3. In this Act, the *Medical Practitioners Registration Act 1996\** is referred to as the Principal Act.

**Section 3 amended (Interpretation)**

4. Section 3 of the Principal Act is amended as follows:

- (a) by omitting the definitions of “assessment”, “Australian Medical Council” and “business address” from subsection (1) and substituting the following definitions:

“**AMC**” means the body incorporated in the Australian Capital Territory under the name “Australian Medical Council Incorporated”;

“**assessment**” means an assessment carried out by an assessment committee;

“**assessment committee**” means a committee established under section 11(1)(a);

“**business address**” means the address that a medical practitioner uses for the purposes of his or her practice;

- (b) by omitting “section 31 or 39” from the definition of “certificate of registration” in subsection (1) and substituting “section 31, 39 or 42”;

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\*No. 2 of 1996



- (c) by omitting the definitions of “committee of assessors” and “complaint” from subsection (1) and substituting the following definitions:

**“complaint”** includes part of a complaint;

**“contact address”** means an address, other than a business address, at which a medical practitioner may be contacted by the Council;

- (d) by omitting the definition of “defendant” from subsection (1) and substituting the following definition:

**“defendant”** means the registered medical practitioner, or former registered medical practitioner, who is the subject of a formal inquiry;

- (e) by inserting the following definition after the definition of “foreign medical law” in subsection (1):

**“formal inquiry”** means proceedings under Division 2 of Part 4;

- (f) by inserting the following definitions after the definition of “functions” in subsection (1):

**“Health Complaints Commissioner”** means the person for the time being holding or acting in the appointment referred to in section 5 of the *Health Complaints Act 1995*;

**“informal inquiry”** means proceedings under section 49D;

- (g) by omitting the definition of “inquiry” from subsection (1) and substituting the following definition:

**“inspection”** means an inspection carried out by a person holding an appointment under section 58;

- (h) by inserting the following definitions after the definition of “interim certificate of registration” in subsection (1):

**“investigation”** means an investigation into a complaint carried out under Subdivision 2 of Division 1A of Part 4;

**“investigator”** means a person or committee appointed by the Council to carry out an investigation;

- (i) by inserting “, or of New Zealand,” after “Commonwealth” in the definition of “medical registration authority” in subsection (1);

- (j) by inserting the following definition after the definition of “medical registration authority” in subsection (1):

**“medical services provider”** means a partnership, corporation or other entity that provides medical services or causes or allows medical services to be provided in its name or on its behalf;

- (k) by omitting the definition of “medical services company” from subsection (1);
- (l) by inserting the following definition after the definition of “member” in subsection (1):

**“nominal removal”** means making an entry in the register about an unregistered person to the effect that if the person’s name had in fact been in the register at the relevant time it would have been removed;

- (m) by inserting the following definition after the definition of “President” in subsection (1):

**“professional premises”** means the place at or from which a medical practitioner practises, whether it be –

- (a) a building; or
  - (b) a tent or other demountable structure; or
  - (c) a car, caravan or other vehicle;
- (n) by omitting subsection (2).

### **Section 5 amended (Continuation of Council)**

**5.** Section 5(1) of the Principal Act is amended by omitting “and a common seal”.

**Section 6 amended (Membership of Council)**

**6.** Section 6 of the Principal Act is amended as follows:

- (a) by omitting subsection (4);
- (b) by inserting the following subsection after subsection (6):

**(7)** Except as otherwise provided by this Act, the Council may determine its own procedure.

**Section 7 amended (Functions of Council)**

**7.** Section 7(c) of the Principal Act is amended by omitting “for inquiry”.

**Section 8 amended (Powers of Council)**

**8.** Section 8 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “Australian Medical Council” and substituting “AMC”;
- (b) by omitting paragraph (d) and substituting the following paragraph:

(d) hold or arrange examinations; and

- (c) by inserting the following paragraphs after paragraph (e):

(ea) be a member of any national or other body, program or forum concerned with medical practitioners; and

- (eb) participate in the establishment of a body, program or forum of the kind referred to in paragraph (ea); and

**Section 10 substituted**

**9.** Section 10 of the Principal Act is repealed and the following section is substituted:

**Delegation**

**10. (1)** The Council may delegate any of its functions or powers, other than this power of delegation, to a member of the Council, the Registrar or a committee.

**(2)** The Registrar may, with the Council's approval, delegate any of the Registrar's functions or powers to another employee of the Council.

**Section 11 substituted**

**10.** Section 11 of the Principal Act is repealed and the following section is substituted:

**Committees**

**11. (1)** The Council may from time to time establish –

- (a) assessment committees to assess whether a person is eligible or entitled to be registered or to assess other registration matters as provided for by this Act; and

- (b) such other committees as the Council considers expedient for the purpose of assisting it in the performance of any of its functions or the exercise of any of its powers or advising it on any matter relating to this Act.

(2) Assessment committees are to consist of 3 registered medical practitioners appointed by the Council and other committees are to consist of such persons as the Council appoints.

(3) A member of the Council may be a member of any committee.

(4) A member of a committee is entitled to be paid such remuneration, including travelling and subsistence allowances, as the Council may from time to time determine and any such remuneration is to be paid by the Council.

(5) The Council may give a committee written directions consistent with this Act and the committee must comply with those directions.

(6) A committee is to keep accurate minutes of its proceedings.

(7) Schedule 3 has effect in relation to the powers and procedures of assessment committees.

(8) Except as otherwise provided in this Act, a committee may determine its own procedure.

### **Section 14 amended (Protection from liability)**

**11.** Section 14 of the Principal Act is amended by omitting subsection (2).

**Section 16 amended (Audit)**

**12.** Section 16(2) of the Principal Act is amended by omitting “must” and substituting “is to”.

**Section 17 amended (Accounts)**

**13.** Section 17 of the Principal Act is amended by omitting “must” and substituting “is to”.

**Section 18 amended (Annual report)**

**14.** Section 18 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “must, not later than 31 August after the end of each financial year,” and substituting “, not later than 31 August after the end of each financial year, is to”;
- (b) by omitting from subsection (6) “must” and substituting “is to”.

**Section 19 substituted**

**15.** Section 19 of the Principal Act is repealed and the following section is substituted:

**General registration**

**19.** A person may apply to the Council to be registered as a medical practitioner if he or she –

- (a) has medical qualifications gained as a graduate of an institution accredited by the AMC or holds a certificate issued by

the AMC in evidence that he or she has passed the AMC's examinations; and

- (b) has, to the Council's satisfaction, completed the approved period of supervised training.

**Section 20 amended (Conditional registration to undergo supervised training, &c.)**

**16.** Section 20 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) "training as an intern." and substituting "supervised training.";
- (b) by omitting subsection (2) and substituting the following subsection:

**(2)** A person may apply to the Council to be registered as a medical practitioner on appropriate conditions if he or she –

- (a) has medical qualifications gained as a graduate of an institution accredited by the AMC or holds a certificate issued by the AMC in evidence that he or she has passed the AMC's examinations; and
- (b) is about to start the approved period of supervised training.



**Section 21 amended (Conditional registration for special purposes)**

**17.** Section 21(2) of the Principal Act is amended as follows:

- (a) by omitting “section 19 or 20” and substituting “section 19”;
- (b) by omitting “subject to” and substituting “on”;
- (c) by omitting from paragraph (a) “Australian Medical Council” and substituting “AMC”;
- (d) by omitting paragraph (b).

**Section 22 substituted**

**18.** Section 22 of the Principal Act is repealed and the following section is substituted:

**Non-practising registration**

**22. (1)** If a person who is eligible to apply for registration under this Division does not intend to practise, he or she may apply to the Council for registration that does not confer a right of practice (“non-practising registration”).

**(2)** Non-practising registration, if granted, is not capable of being converted to practising registration.

**(3)** If a person who holds non-practising registration subsequently wishes to practise –

- (a) the person must apply for practising registration in the same manner as

someone who has never held registration of any kind; but

- (b) despite section 19, the person is eligible to apply for the practising registration even if the institution from which the person gained his or her medical qualifications is no longer, or has never been, accredited by the AMC.

### **Section 23 amended (Application requirements)**

**19.** Section 23 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “a form approved by the Council” and substituting “an approved form”;
- (b) by omitting from subsection (1)(c) “prescribed” second occurring;
- (c) by omitting from subsection (3) “the payment of all or part of the prescribed application fee or prescribed annual registration fee.” and substituting “all or part of the fees.”.

### **Section 24 amended (Entitlement to registration)**

**20.** Section 24 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “be so registered” and substituting “make the application”;
- (b) by inserting the following subsection after subsection (1):

**(1A)** Despite subsection (1) –

- (a) an entitlement to practising registration does not prevent conditions from being imposed on that registration under this Act; and
- (b) the Council may determine that an applicant is not entitled to practising registration if, having regard to any relevant Ministerial guidelines, it is not satisfied that the applicant will have adequate professional indemnity insurance on commencing to practise.
- (c) by omitting from subsection (2) “subject to the condition referred to in section 22” and substituting “on the condition that he or she does not practise”;
- (d) by omitting from subsection (2)(a) “be so registered” and substituting “make the application”.

**Section 25 amended (Interim registration)**

**21.** Section 25 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “for practising registration”;
- (b) by omitting from subsection (1)(a) “be registered under section 19 or 21” and substituting “make an application under section 19, 21 or 22”;
- (c) by omitting paragraph (b) from subsection (1) and substituting the following paragraph:

- (b) is eligible to make an application under section 20 but has not yet been formally awarded the medical qualifications or, if applicable, the certificate referred to in that section.
- (d) by omitting subsections (2) and (3) and substituting the following subsections:
- (2)** The interim registration of an applicant under section 19 may be granted unconditionally or on such conditions as the Registrar considers appropriate.
- (3)** The interim registration of an applicant under section 20 or 21 is to be granted subject to such conditions as the Registrar considers appropriate.
- (e) by omitting from subsection (4) “must” and substituting “is to”;
- (f) by omitting from subsection (5) “The” and substituting “Subject to subsection (5A), the”;
- (g) by inserting the following subsection after subsection (5):
- (5A)** The Registrar is to ensure that an interim certificate of registration issued to an applicant under section 22 specifies that the interim registration is non-practising.
- (h) by omitting from subsection (6) “is in force subject to” and substituting “continues in force, on”;
- (i) by omitting subsections (7), (8), (9) and (10) and substituting the following subsections:

**(7)** The Council may cancel a person's interim registration for any reason it considers sufficient.

**(8)** If the Council decides to cancel a person's interim registration it is to give the person notice of its decision and the reasons for its decision.

**(9)** A person's interim registration continues in force from the date on which it is granted until the date on which the person is given notice by the Council that it has –

- (a) registered the person; or
- (b) refused to register the person; or
- (c) cancelled the interim registration.

### **Section 26 substituted**

**22.** Section 26 of the Principal Act is repealed and the following section is substituted:

#### **Assessment of entitlement**

**26. (1)** The Council may get an assessment committee to assess an applicant's entitlement to practising registration.

**(2)** If subsection (1) applies, the Registrar is to give the applicant and the Secretary notice of –

- (a) the reasons for holding the assessment;  
and
- (b) the date, time and place set for the assessment.

**(3)** A notice under subsection (2) is to be given to the applicant at least 14 days before the date, or first date, set for the assessment.

**Section 27 amended (Recommendation of assessment committee)**

**23.** Section 27 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “a committee of assessors must provide the Council with” and substituting “an assessment committee is to give the Council”;
- (b) by omitting from subsection (1)(a) “subject to” and substituting “on”;
- (c) by omitting from subsection (1)(b) “Committee” and substituting “committee”;
- (d) by omitting from subsection (1)(b) “subject to” and substituting “on”;
- (e) by omitting from subsection (2) “a committee of assessors must provide the Council with” and substituting “an assessment committee is to give the Council”;
- (f) by inserting the following subsection after subsection (2):

**(2A)** If an assessment committee considers that an applicant is not entitled to be granted the practising registration that he or she has applied for but may be entitled to be granted practising registration of another kind, the committee may include appropriate recommendations to that effect in its report to the Council.

**Section 28 amended (Determination of application)**

**24.** Section 28 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “subject to” and substituting “on”;
- (b) by omitting from subsection (3) “subject to” and substituting “on”;
- (c) by omitting from subsection (4) “subject to” and substituting “on”;
- (d) by omitting from subsection (5) “must give notice to the applicant of –” and substituting “is to give the applicant notice of –”;
- (e) by omitting from subsection (5)(b) “conditions that the registration is subject to” and substituting “registration conditions”;
- (f) by inserting the following subsection after subsection (6):

**(6A)** Notwithstanding section 24(1)(b), the Council is not entitled to refuse practising registration to an applicant by reason only that the person suffers from some form of physical or mental incapacity unless the Council is satisfied on reasonable grounds that it would not be possible for the incapacity to be accommodated or managed, without compromising patient care, by the imposition of appropriate registration conditions.

- (g) by omitting subsection (8) and substituting the following subsections:

**(8)** If subsection (6) or (7) applies, the Council is to –

- (a) give the applicant notice of the refusal, the reasons for the refusal and the applicant's right of appeal; and
- (b) refund the annual registration fee that accompanied the application.

**(9)** For the purposes of this section, where the relevant assessment committee has made a recommendation under section 27(2A) the Council may treat an applicant for one kind of practising registration as being an applicant for another kind of practising registration.

**(10)** The Council's power under subsection (9) is only exercisable if the applicant consents.

**Section 29 amended (Special grounds for refusing to grant registration)**

**25.** Section 29 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c) "of the applicant's habitual taking of intoxicating liquors or harmful drugs." and substituting "the applicant habitually misuses alcohol or drugs; or";
- (b) by inserting the following paragraph after paragraph (c):
  - (d) in the case of an applicant who has previously held such registration but has not actively practised in the 5-year period



preceding the making of the application, the Council is not satisfied that he or she still has the appropriate level of skill and knowledge.

**Section 30 substituted**

**26.** Section 30 of the Principal Act is repealed and the following section is substituted:

**Duration of registration**

**30.** Except as otherwise provided by this Act, registration continues in force indefinitely subject only to the annual payment of fees under section 39.

**Section 31 amended (Certificates of registration)**

**27.** Section 31 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “must” and substituting “is to”;
- (b) by omitting paragraph (b) from subsection (2) and substituting the following paragraph:
  - (b) specify the conditions, if any, of the registration.
- (c) by omitting from subsection (3)(b) “subject to” and substituting “on”;
- (d) by inserting in subsection (4) “, damaged” after “lost”.

**Section 33 amended (Register)**

**28.** Section 33 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “must” and substituting “is to”;
- (b) by omitting from subsection (2) “must” and substituting “is to”;
- (c) by inserting in subsection (2)(b) “or contact” after “business”;
- (d) by omitting from subsection (2)(e) “registration;” and substituting “registration.”;
- (e) by omitting paragraph (f) from subsection (2);
- (f) by omitting from subsection (3) “must” and substituting “is to”;
- (g) by omitting from subsection (4) “must” and substituting “is to”;
- (h) by omitting paragraph (c) from subsection (4) and substituting the following paragraph:
  - (c) the conditions, if any, of a person’s registration and any modification of those conditions;
- (i) by inserting in subsection (4)(d) “or nominal removal” after “removal”;
- (j) by inserting in subsection (4)(h) “or contact” after “business”;
- (k) by omitting from subsection (6) “or business address,” and substituting “, business address or contact address,”.

**Section 34 amended (Correction of register)**

**29.** Section 34 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “an application under subsection (1).” and substituting “the application.”;
- (b) by omitting from subsection (3) “an applicant under subsection (1)” and substituting “the applicant”.

**Section 35 amended (Additional particulars and qualifications)**

**30.** Section 35 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “that are related” and substituting “relating”;
- (b) by inserting the following subsection after subsection (2):
  - (2A)** The Council may waive all or part of the fee.
- (c) by omitting from subsection (5) “must” and substituting “is to”.

**Section 36 amended (Inspection of register)**

**31.** Section 36(3) of the Principal Act is amended by omitting “the payment of all or part of the prescribed fee for inspecting or obtaining a copy of or extract from the register.” and substituting “all or part of a fee.”.

**Section 37 amended (Publication of register, &c.)**

**32.** Section 37 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(b) “to which the registration has been made subject; or” and substituting “imposed on the registration and any modification of those conditions; or”;
- (b) by omitting from subsection (3) “the payment of all or part of the prescribed fee.” and substituting “all or part of the fee.”.

**Section 38 amended (Protection of private information)**

**33.** Section 38(c) of the Principal Act is amended by omitting “*Gazette*.” and substituting “*Gazette* without the person’s consent.”.

**Section 39 amended (Annual registration fees)**

**34.** Section 39 of the Principal Act is amended as follows:

- (a) by omitting subsections (3), (4) and (5) and substituting the following subsections:

**(3)** A registered medical practitioner who pays the prescribed annual registration fee after but within 30 days of the due date must pay a prescribed late fee.

**(4)** The Council may waive all or part of the annual registration fee or late fee.

**(5)** Subject to subsections (7) and (8), the Council is to issue a new certificate of

registration immediately to each registered medical practitioner who, in any year –

- (a) pays the prescribed annual registration fee on or before the due date; or
  - (b) pays the prescribed annual registration fee and late fee after but within 30 days of the due date.
- (b) by omitting paragraph (a) from subsection (7) and substituting the following paragraph:
- (a) in the case of a medical practitioner who holds practising registration –
    - (i) the Council is not satisfied that the medical practitioner complies with the requirements specified in section 24(1)(b), (c) and (e); or
    - (ii) the Council, having regard to any relevant Ministerial guidelines, is not satisfied that the medical practitioner has adequate professional indemnity insurance; or
- (c) by omitting from subsection (7)(b) “of section 24(2)” and substituting “specified in section 24(2)(b) and (c)”;
- (d) by omitting subsections (8) and (9) and substituting the following subsections:

**(8)** The Council must not issue a new certificate of registration to a medical practitioner who holds practising registration but has not actively practised in the 5-year period immediately preceding the due date unless it is satisfied that the medical practitioner complies with the requirements of section 24(1)(b), (c) and (e).

**(8A)** For the purposes of subsection (7) or (8), the Council may get an assessment committee to carry out an assessment.

**(9)** The name of a registered medical practitioner who in any year fails to pay the prescribed annual registration fee on or before the due date or the prescribed annual registration fee and late fee within 30 days of the due date is to be removed from the register in accordance with section 40.

- (e) by inserting in subsection (10) “in accordance with section 40” after “register”;
- (f) by omitting from subsection (11) “give the person notice of the person’s right of appeal.” and substituting “, if applicable, the late fee.”;
- (g) by inserting the following subsection after subsection (12):

**(13)** For the purposes of this section, other than subsection (11), a person whose obligation to pay a fee has been wholly or partially waived is nonetheless taken to have paid that fee.

**Section 39A inserted**

**35.** After section 39 of the Principal Act, the following section is inserted in Division 4:

**Adding conditions**

**39A. (1)** The Council may, in conjunction with the exercise and performance of its powers and functions under section 39, impose conditions or further conditions on the registration of any medical practitioner.

**(2)** In deciding whether to exercise its power under subsection (1) in any case, the Council may have regard to all or any of the following:

- (a) any change in the physical capacity, mental capacity or skill of the medical practitioner;
- (b) any changes or advances in medical knowledge or technology relevant to the medical practitioner's field of practice;
- (c) the nature of the complaints, if any, that have been made against the medical practitioner in preceding years;
- (d) any actions taken in respect of the medical practitioner under this Act or a foreign medical law;
- (e) the suitability and efficacy of any existing registration conditions;
- (f) such other matters as the Council, taking into account the objectives specified in section 9, considers relevant.

**(3)** If the Council uses its power under subsection (1) it is to –

- (a) give the medical practitioner concerned notice of the conditions or further conditions and the medical practitioner's rights of appeal and review in respect of those conditions; and
- (b) ensure that those conditions are specified in the new certificate of registration that is issued to the medical practitioner under section 39.

**(4)** For the purposes of subsection (1), the Council may get an assessment committee to carry out an assessment.

### **Section 40 amended (Removal from register)**

**36.** Section 40 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “from the register the name of a person who” and substituting “a person's name from the register if he or she”;
- (b) by omitting from subsection (1)(a)(i) “subject to which the person is registered; or” and substituting “of his or her registration; or”;
- (c) by omitting from subsection (1)(a)(ii) “on the person”;
- (d) by inserting in subsection (1)(a)(ii) “or costs or expenses ordered to be paid under section 53(1)” after “(c)”;



- (e) by omitting from subsection (1)(a)(iii) “made of that person”;
- (f) by inserting in subsection (1)(a)(iv) “Council or” after “the”;
- (g) by omitting from subsection (1)(b) “from the register the name of a person” and substituting “a person’s name from the register if he or she”;
- (h) by omitting from subsection (1)(b)(i) “who”;
- (i) by omitting subparagraphs (ii), (iii) and (iv) from subsection (1)(b) and substituting the following subparagraphs:
  - (ii) requests its removal; or
  - (iii) ceases to be registered under section 39(9); or
  - (iv) ceases to be registered under section 39(10); or
- (j) by omitting from subsection (1)(b)(v) “who”;
- (k) by omitting subparagraph (vi) from subsection (1)(b) and substituting the following subparagraph:
  - (vi) has his or her authority to practise under a foreign medical law cancelled for professional misconduct or physical or mental incapacity; or
- (l) by omitting from subsection (1)(b)(vii) “who”;

- (m) by omitting from subsection (1)(b)(vii) “declaration.” and substituting “declaration; and”;
- (n) by inserting the following paragraph after paragraph (b) in subsection (1):
  - (c) the Council must remove or, if applicable, nominally remove a person’s name from the register if the Tribunal so orders under section 52(1)(a).
- (o) by omitting from subsection (2) “first affording that” and substituting “giving the”;
- (p) by omitting subsection (3) and substituting the following subsection:
  - (3)** If the Council removes a living person’s name from the register it must immediately give the person notice of –
    - (a) the removal; and
    - (b) unless subsection (1)(b)(ii) applies, the reason for the removal; and
    - (c) unless subsection (1)(b)(ii) or (iii) or subsection (1)(c) applies, the person’s right of appeal.
- (q) by omitting subsection (4);
- (r) by omitting subsection (5) and substituting the following subsection:
  - (5)** Subject to section 54(3), a person ceases to be a registered medical practitioner when the notice is given.

**Section 42 substituted**

**37.** Section 42 of the Principal Act is repealed and the following section is substituted:

**Restoring name to register**

**42. (1)** A person whose name has been removed from the register pursuant to section 40(1)(b)(ii) or (iii) may apply to have it restored to the register.

**(2)** The application is to be –

- (a) in an approved form; and
- (b) lodged with the Registrar; and
- (c) supported by such information or evidence as the Council requires; and
- (d) accompanied by the prescribed restoration fee and annual registration fee.

**(3)** The Council may waive all or part of the fees.

**(4)** The Council must approve the application if –

- (a) it is satisfied that the applicant complies with the relevant requirements specified in section 24 (excluding subsection (1)(a) and subsection (2)(a) of that section); and
- (b) in the case of practising registration, it is satisfied, having regard to any relevant Ministerial guidelines, that the applicant has adequate professional indemnity insurance.

**(4A)** For the purposes of subsection (4), the Council may get an assessment committee to carry out an assessment.

**(5)** If the Council approves the application it is to –

- (a) restore the applicant's name to the register (on the same conditions, if any, as applied to the person's registration immediately before the date of removal); and
- (b) give the applicant notice of the approval and issue the applicant with a fresh certificate of registration.

**(6)** If the Council refuses the application it is to give the applicant notice of –

- (a) the refusal and the reasons for the refusal; and
- (b) the applicant's right of appeal.

**(7)** If a person applies to have his or her name restored to the register within 12 months of the date of its removal and the application is approved, the restoration takes effect on the day on which the application was lodged with the Registrar.

**(8)** In the case of any other application approved under this section, the restoration takes effect on –

- (a) the day on which the applicant is issued with a fresh certificate of registration; or
- (b) such later day as the Council determines.

**Section 43 amended (Evidentiary provisions)**

**38.** Section 43(2) of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) and substituting the following paragraph:
  - (b) a person specified in the certificate was, on a date or for a period specified in the certificate, registered on conditions specified in the certificate;
- (b) by inserting in paragraph (c) “totally or partially” after “was”;
- (c) by inserting in paragraph (d) “or nominally removed” after “removed”.

**Part 3, Division 5 inserted**

**39.** After section 43 of the Principal Act, the following Division is inserted in Part 3:

***Division 5 – Review of registration conditions*****Review of registration conditions**

**43A. (1)** A medical practitioner may, at intervals of not less than 12 months each, apply to the Council to review a condition that has been imposed on the practitioner’s registration under section 28(2) or (3), section 39A or section 51(5).

**(2)** Subsection (1) is additional to the right that the medical practitioner has under section 61(1)(b).

(3) The application is to be –

- (a) in an approved form; and
- (b) lodged with the Registrar.

(4) The Council on its own motion may at any time review a condition that has been imposed on a medical practitioner's registration under section 28(2) or (3), section 39A or section 51(5).

(5) For the purposes of this section, the Council may get an assessment committee to carry out an assessment.

(6) After it has reviewed a condition of a medical practitioner's registration under this section, the Council may –

- (a) leave the condition in place; or
- (b) modify the condition so as to make it less onerous; or
- (c) remove the condition.

(7) As soon as practicable after it has carried out a review under this section, the Council is to give the medical practitioner concerned notice of the outcome of the review.

#### **Part 4: Heading amended**

**40.** Part 4 of the Principal Act is amended by omitting “**DISCIPLINE**” from the heading to that Part and substituting “**COMPLAINTS AND OVERSIGHT**”.

**Part 4, Division 1: Heading amended**

**41.** Division 1 of Part 4 of the Principal Act is amended by inserting in the heading to that Division “*to Council*” after “*Complaints*”.

**Section 44 substituted**

**42.** Section 44 of the Principal Act is repealed and the following section is substituted:

**Making complaints**

**44. (1)** Any person may make a complaint to the Council about a registered medical practitioner.

**(2)** The right to make the complaint to the Council does not derogate from the right to make the complaint to the Health Complaints Commissioner.

**(3)** A person who makes a complaint to the Council in good faith does not incur any personal liability for any loss, damage or injury that another person may suffer as a consequence of the making of the complaint.

**(4)** A complaint may be made to and dealt with by the Council even though the person who is the subject of the complaint has ceased to be a registered medical practitioner and, for that purpose, a reference in this Part to a registered medical practitioner includes a reference to a person who has ceased to be registered or whose registration is suspended.

**(5)** A complaint may be made to and dealt with by the Council even though the registration of

the person who is the subject of the complaint was suspended at the relevant time.

**Section 45 amended (Specific matters of complaint)**

**43.** Section 45 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “the matters in respect of which a complaint may be made, a person may complain” and substituting “the generality of section 44(1), a person may complain to the Council”;
- (b) by inserting the following paragraph after paragraph (d) in subsection (1):
  - (da) is not of good fame and character;  
or
- (c) by omitting from subsection (2)(c) “subject to which the medical practitioner is registered” and substituting “of his or her registration”;
- (d) by inserting in subsection (2)(d) “or costs or expenses ordered to be paid under section 53(1)” after “(c)”;
- (e) by inserting in subsection (2)(f) “Council or” after “the”;
- (f) by omitting paragraph (h) from subsection (2) and substituting the following paragraphs:
  - (h) behaves in a deceptive or misleading manner in the practice of medicine; or



- (i) engages in conduct that is capable of bringing the medical profession into disrepute; or
- (j) advertises his or her practice or services in an inappropriate or fraudulent way; or
- (k) fails, without reasonable excuse and within a reasonable time, to comply with a request by the Council to provide it with information; or
- (l) practises while his or her registration is wholly suspended; or
- (m) practises, while his or her registration is partially suspended, in the area of practice to which the partial suspension relates; or
- (n) tries, by means of any threat or inducement, to stop a person from making or proceeding with a complaint against that medical practitioner.

**Section 46 amended (Complaints procedure)**

**44.** Section 46 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “to the Council” after “A complaint”;
- (b) by omitting paragraph (c) from subsection (1) and substituting the following paragraph:

- (c) identify, if possible, the registered medical practitioner against whom the complaint is being made or set out such information relating to the identity of the registered medical practitioner as is known to the complainant; and
- (c) by omitting from subsection (1)(d) “person making the complaint” and substituting “complainant”;
- (d) by inserting in subsection (2) “to the Council” after “a complaint”;
- (e) by omitting subsection (3) and substituting the following subsection:
  - (3) The Registrar –**
  - (a) is to keep a record of each complaint made to the Council and note the date on which it is lodged; and
  - (b) may, before taking any further action on the complaint, require the complainant to furnish any further particulars that the Registrar reasonably considers may be necessary to facilitate an investigation into the complaint.
- (f) by omitting subsection (4).

**Sections 47, 48 and 49 substituted**

**45.** Sections 47, 48 and 49 of the Principal Act are repealed and the following Division is substituted:

***Division 1A – Dealing with complaints  
Subdivision 1 – Complaints to which Division  
applies***

**Application of Division**

**47.** This Division applies to –

- (a) complaints about registered medical practitioners that are made to the Council pursuant to Division 1 and not referred to the Health Complaints Commissioner; and
- (b) complaints about registered medical practitioners that are referred to the Council by the Health Complaints Commissioner.

***Subdivision 2 – Preliminary investigation of  
complaints***

**Complaint to be referred to investigator**

**48. (1)** The Council, in the first instance, is to refer a complaint to an investigator for preliminary investigation.

**(2)** The investigator is to be a person or committee that has been appointed by the Council to –

- (a) investigate the specific complaint; or
- (b) investigate complaints generally.

**(3)** Any of the following may be appointed as an investigator:

- (a) a member of the Council;
- (b) the Registrar or another employee of the Council;
- (c) another person who, in the opinion of the Council, has appropriate expertise or experience;
- (d) a committee.

(4) The investigator may, at any time during the investigation, give the registered medical practitioner concerned notice of the complaint and such other matters as the investigator considers appropriate.

(5) Schedule 3 has effect in relation to the powers and procedures of the investigator.

(6) Except as otherwise provided in this Act, the investigator may determine the investigator's own procedure.

### **Council may refer other matters to investigator**

**48A. (1)** The Council may, on its own motion, refer any matter that it considers could constitute grounds for a complaint against a registered medical practitioner to an investigator.

(2) For the purposes of this Division, a matter referred to an investigator under this section is taken to be, and is to be dealt with as, a complaint to the Council that has not been referred to the Health Complaints Commissioner.

**(3)** Subsections (4) and (5) of section 44 have the same application to a matter referred to in subsection (1) as they have to a complaint made to the Council.

**Investigator to report and make recommendation**

**48B. (1)** Following the investigation, the investigator is to report to the Council and make one of the following recommendations:

- (a) that the complaint be dismissed;
- (b) that no disciplinary action be initiated in respect of the complaint at that time;
- (c) that the complaint be referred to or, if applicable, back to the Health Complaints Commissioner;
- (d) that an informal inquiry be instituted into the complaint;
- (e) that a formal inquiry be instituted into the complaint.

**(2)** For the purposes of subsection (1), the following guidelines apply:

- (a) a recommendation under subsection (1)(a) will be appropriate if the investigator is satisfied that the complaint is frivolous or vexatious or, though apparently legitimate, is groundless or trivial;
- (b) a recommendation under subsection (1)(b) will be appropriate if

the investigator is satisfied that the complaint is not capable of being substantiated (whether for want of evidence, the incapacity of prospective witnesses or some other reason);

- (c) a recommendation under subsection (1)(c) will be appropriate if the investigator is satisfied, having regard to the nature of the complaint and the relevant legislation, that the complaint is properly a matter for the Health Complaints Commissioner;
- (d) a recommendation under subsection (1)(d) will be appropriate if the investigator is satisfied that the complaint, though apparently legitimate, is not of a serious kind;
- (e) a recommendation under subsection (1)(e) will be appropriate if the investigator is satisfied that the complaint is legitimate and, in terms of the objectives in section 9, of a serious kind.

**(3)** Notwithstanding subsections (1) and (2), the investigator may –

- (a) make any of the recommendations referred to in subsection (1) if the investigator is satisfied that there are reasonable grounds for making the recommendation; and
- (b) add, to a recommendation under subsection (1)(a) or (b), a further recommendation that the complaint be

referred to or, if applicable, back to the Health Complaints Commissioner.

**(4)** If the investigator considers that a recommendation might not be accepted by the Council or there are other reasonable grounds for so doing, the investigator may make a secondary recommendation.

**(5)** In the report, the investigator is to –

- (a) set out the reasons for a recommendation; and
- (b) include or identify any evidence or information on which a recommendation is based; and
- (c) indicate whether the investigator has given the medical practitioner concerned notice of the complaint; and
- (d) mention any other matters that the investigator considers relevant.

**(6)** If for any reason the investigator feels unable to make a recommendation in its report, or is uncertain which recommendation to make, the investigator is to notify the Council accordingly.

**(7)** If subsection (6) applies, the Council may, according to the circumstances –

- (a) give the investigator assistance and advice; or
- (b) issue directions to the investigator; or
- (c) having regard to the findings, if any, of the investigator, make a determination

under section 49(1) without a recommendation; or

- (d) appoint a new investigator.

***Subdivision 3 – Action to be taken following preliminary investigation***

**Council to consider and act on investigator’s report**

**49. (1)** After it has considered the report of an investigator into a complaint, the Council may decide to –

- (a) dismiss the complaint; or
- (b) not initiate disciplinary action on the complaint at that time; or
- (c) refer the complaint to or, if applicable, back to the Health Complaints Commissioner; or
- (d) institute an informal inquiry into the complaint; or
- (e) institute a formal inquiry into the complaint.

**(2)** In making its decision, the Council is to have regard to –

- (a) the investigator’s recommendation; and
- (b) the guidelines in section 48B(2).

**(3)** The Council is not obliged to accept the investigator’s recommendation but it should not



reject the recommendation unless satisfied that there are compelling grounds for so doing.

**(4)** For the purposes of considering an investigator's report or recommendation, the Council may require the investigator to provide it with further information or evidence.

### **Dismissal of complaint**

**49A. (1)** If section 49(1)(a) applies, the Council is to –

- (a) give the complainant notice that the complaint has been dismissed, together with such explanation as the Council considers appropriate; and
- (b) if the medical practitioner concerned had formal notice of the complaint, give the medical practitioner notice that the complaint has been dismissed, together with such explanation as the Council considers appropriate.

**(2)** The Council may give a medical practitioner notice that a complaint against the medical practitioner has been made and dismissed even if the medical practitioner had no formal notice of the complaint.

**(3)** If section 49(1)(a) applies, the Council may also refer the complaint to or, if applicable, back to the Health Complaints Commissioner and may give such notice of the referral as it thinks fit.

**No disciplinary action to be initiated on complaint**

**49B. (1)** If section 49(1)(b) applies, the Council is to –

- (a) give the complainant notice that no disciplinary action is to be initiated in respect of the complaint at that time, together with such explanation as the Council considers appropriate; and
- (b) if the medical practitioner concerned had formal notice of the complaint, give the medical practitioner notice that no disciplinary action is to be initiated in respect of the complaint at that time, together with such explanation as the Council considers appropriate.

**(2)** Subsection (1) does not prevent the Council from –

- (a) reconsidering or initiating disciplinary action on the complaint at a later time if, owing to a change in circumstances, the Council considers it appropriate to do so; or
- (b) taking the complaint into account at a later time as being indicative of a pattern of behaviour or practice.

**(3)** The Council may give a medical practitioner notice that a complaint against the medical practitioner has been made and that no disciplinary action is to be initiated in respect of the complaint at that time even if the medical practitioner had no formal notice of the complaint.

**(4)** If section 49(1)(b) applies, the Council may also refer the complaint to or, if applicable, back to the Health Complaints Commissioner and may give such notice of the referral as it thinks fit.

### **Referral of complaint to Health Complaints Commissioner**

**49C. (1)** If section 49(1)(c) applies, the Council is to –

- (a) refer the complaint to or, if applicable, back to the Health Complaints Commissioner; and
- (b) give the complainant notice that the complaint has been so referred, together with such explanation as the Council considers appropriate; and
- (c) if the medical practitioner concerned had formal notice of the complaint, give the medical practitioner notice that the complaint has been so referred, together with such explanation as the Council considers appropriate.

**(2)** Subsection (1) does not prevent the Council from taking the complaint into account at a later time as being indicative of a pattern of behaviour or practice.

**(3)** The Council may give a medical practitioner notice that a complaint against the medical practitioner has been made and referred to or, if applicable, back to the Health Complaints Commissioner even if the medical practitioner had no formal notice of the complaint.

**(4)** The Council may provide the Health Complaints Commissioner with any information or evidence in its possession regarding a complaint that it refers to, or back to, the Commissioner.

### **Informal inquiry into complaint**

**49D. (1)** If section 49(1)(d) applies, the Council is to institute the informal inquiry and give the complainant notice to that effect.

**(2)** The Council institutes an informal inquiry into a complaint by giving the medical practitioner concerned a notice to that effect and requiring him or her to –

- (a) appear before the Council to give an explanation; or
- (b) provide the Council with a written explanation.

**(3)** In determining whether to require a personal appearance or a written explanation, the Council may have regard to the complexity of the complaint, the cooperativeness of the medical practitioner, travelling hardship and such other factors as it considers appropriate.

**(4)** A notice under subsection (2)(a) is to –

- (a) set out particulars of the complaint; and
- (b) specify the date, time and place at which the medical practitioner is required to appear; and
- (c) inform the medical practitioner that, before that date, he or she may request

in writing that the complaint be dealt with by way of a formal inquiry; and

- (d) inform the medical practitioner of the other circumstances in which the complaint may become the subject of a formal inquiry; and
- (e) state that the appearance before the Council is not open to the public; and
- (f) state that the medical practitioner is entitled to make submissions when appearing before the Council; and
- (g) state that the medical practitioner is not entitled to be represented when appearing before the Council but is entitled to be accompanied by a legal practitioner or other person.

**(5)** A notice under subsection (2)(b) is to –

- (a) set out particulars of the complaint; and
- (b) specify a date by which the medical practitioner is required to provide the written explanation; and
- (c) inform the medical practitioner that, before that date, he or she may request in writing that the complaint be dealt with by way of a formal inquiry; and
- (d) inform the medical practitioner of the other circumstances in which the complaint may become the subject of a formal inquiry.

**(6)** A notice under subsection (2) may contain such other information as the Council considers appropriate.

**(7)** The date specified under subsection (4)(b) or subsection (5)(b) is to be not less than 14 days after the date of giving the notice.

**(8)** If, after considering an explanation given to it under this section, the Council is not satisfied that a complaint has been substantiated, it is to –

- (a) dismiss the complaint; and
- (b) give the complainant and the medical practitioner concerned notice of the dismissal, together with such explanation as it considers appropriate.

**(9)** If, after considering an explanation given to it under this section, the Council is satisfied that a complaint has been substantiated but that it is not sufficiently serious to warrant a formal inquiry, the Council may do either or both of the following:

- (a) caution or reprimand the medical practitioner concerned;
- (b) require and accept an undertaking from the medical practitioner concerned to take or refrain from taking specified action.

**(10)** Except in a case to which section 49E(2)(e) applies, the Council is, as soon as practicable, to give the complainant notice of its finding and the action taken, together with such explanation as the Council considers appropriate.

**(11)** A meeting of the Council convened for the purposes of this section is not open to the public.

### **Formal inquiry into complaint**

**49E. (1)** If section 49(1)(e) applies, the Council is to institute the formal inquiry.

**(2)** The Council is also required to institute a formal inquiry into a complaint if –

- (a) the medical practitioner concerned fails to appear before the Council as required by a notice under section 49D(2)(a) or, before the date of appearance specified in the notice, requests in writing that the complaint be dealt with by way of a formal inquiry; or
- (b) the medical practitioner concerned fails to provide the Council with a written explanation as required by a notice under section 49D(2)(b) or, before the date on which the explanation is required to be provided, requests in writing that the complaint be dealt with by way of a formal inquiry; or
- (c) in the course of giving an explanation to the Council under section 49D the medical practitioner concerned requests, orally or in writing, that the complaint be dealt with by way of a formal inquiry; or
- (d) after or in the course of considering an explanation under section 49D the Council determines that the complaint is

sufficiently serious to warrant a formal inquiry; or

- (e) if section 49D(9) applies, the medical practitioner concerned does one or more of the following:
  - (i) disputes that the complaint has been substantiated;
  - (ii) refuses to accept the caution or reprimand;
  - (iii) refuses to give, or purports to retract, the required undertaking.

**(3)** The Council institutes a formal inquiry into a complaint by –

- (a) referring the complaint to the Tribunal; and
- (b) giving the medical practitioner concerned, and the complainant, notice that the inquiry has been instituted.

**(4)** For the purposes of subsection (3), a summons to appear before the Tribunal to answer a complaint constitutes sufficient notice to the medical practitioner concerned.

**Section 50 amended (Establishment and constitution of Tribunal, &c.)**

**46.** Section 50 of the Principal Act is amended as follows:

- (a) by omitting from subsection (4) “in respect of each inquiry” and substituting “for any formal inquiry”;



- (b) by omitting from subsection (5) “an inquiry” and substituting “a formal inquiry”;
- (c) by omitting from subsection (6) “inquiry in respect of” and substituting “formal inquiry for”;
- (d) by omitting subsection (8) and substituting the following subsection:
  - (8)** The Council is to provide the Tribunal with adequate secretarial support.
- (e) by omitting subsection (10);
- (f) by omitting from subsection (12) “proceedings” and substituting “powers and procedures”;
- (g) by inserting the following subsection after subsection (12):

- (13)** Except as otherwise provided in this Act, the Tribunal may determine its own procedure.

### **Section 50A inserted**

**47.** After section 50 of the Principal Act, the following section is inserted in Division 2:

#### **Alternate permanent members**

**50A. (1)** For the purposes of this Division, the Council is to appoint an alternate member for each permanent member of the Tribunal.

**(2)** Appointments of alternate members are to be made –

- (a) as soon as practicable after the commencement of the *Medical Practitioners Registration Amendment Act 2004*; and
- (b) if subsequently there is a vacancy in the office of a member or alternate member.

**(3)** For the purposes of subsection (2), the office of an alternate member is vacant when he or she dies or if he or she is incapable of acting as such a member.

**(4)** An alternate member is to act as a member of the Tribunal only if the permanent member for whom he or she is an alternate dies or only while that permanent member –

- (a) is absent from a meeting or proceeding of the Tribunal; or
- (b) is incapable of acting as a member.

**(5)** Where an alternate member acts as a member of the Tribunal –

- (a) he or she may exercise all the powers of the permanent member for whom he or she is an alternate member; and
- (b) all things done or omitted to be done by the alternate member are as valid, and have the same consequences, as if they had been done or omitted to be done by the permanent member for whom he or she is an alternate member.

**(6)** A person is not eligible to be appointed as an alternate member unless he or she has the same

qualifications as the permanent member for whom he or she would be an alternate.

### **Section 51 substituted**

**48.** Section 51 of the Principal Act is repealed and the following section is substituted:

#### **Tribunal to hold formal inquiry into referred complaint**

**51. (1)** The Tribunal is to hold a formal inquiry into each complaint referred to it under section 49E.

**(2)** Pending the completion of the formal inquiry the Tribunal, having regard to the nature of the complaint, may request the Council to –

- (a) suspend the defendant's registration pursuant to section 55; or
- (b) impose a condition on the defendant's registration.

**(3)** The Tribunal is to give the Council notice of its reasons for making the request and –

- (a) if subsection (2)(a) applies, a recommendation whether the suspension should be total or partial; or
- (b) if subsection (2)(b) applies, a recommendation as to the required condition.

**(4)** The Council must not refuse to comply with the Tribunal's request unless it is satisfied that there are reasonable grounds for so doing.

(5) If the Council agrees to a request under subsection (2)(b), it has power to impose the condition but it must –

- (a) give the defendant notice of the condition and the defendant's right of appeal and review in respect of the condition; and
- (b) issue the defendant with a new certificate of registration incorporating the condition.

**Part 4, Division 3: Heading amended**

**49.** Division 3 of Part 4 of the Principal Act is amended by omitting “*inquiry*” from the heading to that Division and substituting “*formal inquiry*”.

**Section 52 amended (Actions that may be taken by Tribunal)**

**50.** Section 52 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “On concluding an inquiry,” and substituting “After it has held a formal inquiry”;
- (b) by omitting paragraphs (a) and (b) from subsection (1) and substituting the following paragraphs:
  - (a) order that the defendant's name be removed or, if applicable, nominally removed from the register;

- (b) suspend the defendant's registration, either totally or partially, for a period not exceeding 12 months;
- (c) by omitting paragraph (d) from subsection (1) and substituting the following paragraph:
  - (d) impose a condition on the defendant's registration;
- (d) by omitting from subsection (1)(g) "or, in a case to which section 47(3) applies, clear the defendant";
- (e) by omitting subsection (2) and substituting the following subsection:

**(2)** In the case of a formal inquiry relating to a matter referred to in section 45(1)(b), the Tribunal must at least take the action specified in subsection (1)(a) unless it decides to dismiss the complaint.
- (f) by omitting from subsection (3) "imposes" and substituting "decides to impose";
- (g) by inserting the following subsection after subsection (3):

**(3A)** If the Tribunal decides to impose a condition on the defendant's registration, section 43A has the same application to that condition as it has to a condition imposed at the time of registration or under section 39A.
- (h) by omitting from subsection (4)(d) "practice." and substituting "practice;"

- (i) by inserting the following paragraphs after paragraph (d) in subsection (4):
  - (e) undergo specified training in conjunction with, or before resuming, his or her practice;
  - (f) carry out specified work or actions in relation to his or her professional premises.

**Section 53 amended (Costs and expenses of formal inquiry)**

**51.** Section 53 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “inquiry as the Tribunal thinks fit.” and substituting “formal inquiry, and any preceding investigation or informal inquiry, as the Tribunal thinks fit within such period of time as the Tribunal by the order allows.”;
- (b) by omitting from subsection (2) “against the defendant or, in a case to which section 47(3) applies, clear the defendant”;
- (c) by omitting from subsection (3) “or, in a case to which section 47(3) applies, clear the defendant,”;
- (d) by omitting from subsection (3) “inquiry.” and substituting “formal inquiry and any preceding investigation or informal inquiry.”;
- (e) by inserting the following subsection after subsection (3):

**(3A)** For the purposes of this section, the costs of an investigation may be taken to include any costs incurred under section 58A, 59 or 60.

- (f) by omitting from subsection (5) “recoverable as a debt due to the Council.” and substituting “payable to, and may be recovered as a debt due to, the Council.”.

### **Section 54 amended (Notice of decision)**

**52.** Section 54 of the Principal Act is amended as follows:

- (a) by omitting subsections (1), (2), (3) and (4) and substituting the following subsections:

**(1)** When the Tribunal has decided what action to take under section 52, the chairperson must inform the defendant of –

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) when the decision takes effect; and
- (d) unless section 52(1)(g) applies, the defendant’s right of appeal.

**(2)** The chairperson may comply with subsection (1) by means of –

- (a) a notice alone; or
- (b) if the defendant is present at the relevant time, an announcement followed by a notice.

**(3)** Unless the Tribunal determines otherwise, the decision takes effect as soon as the defendant is first informed of it pursuant to subsection (1).

**(4)** The Council must take such actions as may be necessary or expedient to give effect to the Tribunal's decision.

**(4A)** When a decision under section 52(1)(b) takes effect, the defendant ceases –

- (a) in the case of a total suspension of registration, to be registered until the period of suspension expires; or
  - (b) in the case of a partial suspension of registration, to be entitled to practise in the areas of practice to which the partial suspension applies until the period of suspension expires.
- (b) by omitting from subsection (5) “If” and substituting “When”;
- (c) by omitting from subsection (5)(a) “Australian Medical Council” and substituting “AMC”.

### **Section 55 amended (Suspension of registration)**

**53.** Section 55 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “the registration of a registered medical practitioner” and substituting “a medical practitioner's registration”;



- (b) by omitting from subsection (1)(a) “subject to which the medical practitioner is registered” and substituting “of the registration”;
- (c) by omitting from subsection (1)(b) “has been” and substituting “is”;
- (d) by inserting in subsection (1)(c) “or costs or expenses ordered to be paid under section 53(1)” after “(c)”;
- (e) by inserting in subsection (1)(e) “Council or” after “to the”;
- (f) by omitting from subsection (1)(f) “inquiring into” first occurring and substituting “investigating”;
- (g) by omitting from subsection (1)(f) “inquiring into” second occurring and substituting “investigating on its own motion”;
- (h) by omitting from subsection (1)(g) “registration.” and substituting “registration; or”;
- (i) by inserting the following paragraphs after paragraph (g) in subsection (1):
  - (h) the Council is requested to do so by the Tribunal under section 51(2)(a); or
  - (i) the Council considers that the medical practitioner’s professional premises are of an unsatisfactory kind or standard having regard to the nature of his or her practice.

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

**(1A)** The suspension of registration may be –

- (a) a total suspension of registration;  
or
- (b) a partial suspension of registration, being suspension that applies only in relation to certain areas of practice specified by the Council.

- (k) by inserting the following paragraph after paragraph (a) in subsection (4):

(ab) in the case of a partial suspension, the areas of practice to which the suspension applies; and

- (l) by omitting subsection (5) and substituting the following subsections:

**(5)** When the giving of the notice is effected in the case of a total suspension of registration, the medical practitioner ceases to be registered until the period of suspension specified in the notice expires or the suspension is revoked by the Council.

**(5A)** When the giving of the notice is effected in the case of a partial suspension of registration, the medical practitioner's entitlement to practise in those areas of practice specified under subsection (1A)(b) is suspended until the period of suspension specified in the notice expires or the suspension is revoked by the Council.

**(5B)** Subsections (5) and (5A) have effect subject to any orders of the Supreme Court made on appeal.

- (m) by omitting from subsection (6) “suspended” and substituting “totally or partially suspended”;
- (n) by omitting subsection (7) and substituting the following subsection:

**(7)** If the Council suspends a medical practitioner’s registration under this section it has and may exercise, if it considers that it is in the public interest to do so, the same power to give notice of the suspension as it has under section 54(5) in relation to a decision to which that section applies.

### **Sections 57 and 58 substituted**

**54.** Sections 57 and 58 of the Principal Act are repealed and the following sections are substituted:

#### **Evidence of facts found in other proceedings**

**57. (1)** In this section –

**“tribunal”** includes a medical registration authority in so far as it may exercise powers of a quasi-judicial nature.

**(2)** A finding of fact relating to the conduct of a registered medical practitioner made by a court or other tribunal in any proceedings to which that medical practitioner is a party, whether in this State or elsewhere, is evidence of that fact in any proceedings under this Part.

**Inspectors**

**58. (1)** The Council may appoint persons as inspectors for the purposes of this Act.

**(2)** An inspector –

- (a) holds office on the conditions contained in his or her instrument of appointment; and
- (b) has the powers set out in this Division.

**(3)** The Council is to issue an inspector with an identity card, in an approved form, being a card bearing at least a recent photograph of the inspector and the inspector's name and signature.

**(4)** A person must, within 5 days of ceasing to be an inspector, return the person's identity card to the Council.

Penalty: Fine not exceeding 5 penalty units.

**Role of inspectors**

**58A.** If the Council or an investigator reasonably suspects that –

- (a) an unregistered person may be practising medicine; or
- (b) there may be grounds for a complaint against a registered medical practitioner; or
- (c) there may be grounds for removing a person's name from the register or suspending a person's registration; or

- (d) a registered medical practitioner may lack the physical capacity, mental capacity or skill to practise medicine –

the Council or investigator may direct an inspector to carry out an inspection.

### **Section 59 amended (Power of inspectors)**

**55.** Section 59 of the Principal Act is amended as follows:

- (a) by omitting subsection (1);
- (b) by omitting from subsection (2) “An” and substituting “For the purposes of carrying out an inspection, an”;
- (c) by omitting from subsection (3) “examination” and substituting “inspection”;
- (d) by omitting from subsection (4)(a) “examination” and substituting “inspection”;
- (e) by omitting from subsection (8) “examination” and substituting “inspection”.

### **Section 60 amended (Specific inspectorial powers)**

**56.** Section 60 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(j) “reasonably”;
- (b) by omitting from subsection (2) “for legitimate reasons a person needs access to” and substituting “a person has a legitimate need to access”;

- (c) by omitting from subsection (2) “in its discretion”.

**Section 60A inserted**

**57.** After section 60 of the Principal Act, the following section is inserted in Division 5:

**Complaints may be dealt with despite other proceedings**

**60A.** Complaints may be made and dealt with under this Part even if the medical practitioner concerned is the subject of proposed or current criminal or civil proceedings relating to the subject matter of the complaint.

**Section 61 amended (Right of appeal)**

**58.** Section 61(1) of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) and substituting the following paragraph:
  - (b) the imposition under section 28(2) or (3), section 39A or section 51(5) of a condition on the person’s registration, whether or not the condition has been modified under section 43A;
- (b) by omitting from paragraph (c) “section 40(1)(b)(ii) or (iii);” and substituting “section 40(1)(b)(ii) or (iii) or section 40(1)(c);”;

- (c) by omitting from paragraph (f) “that” and substituting “the”;
- (d) by omitting from paragraph (g) “that” and substituting “the”;
- (e) by omitting from paragraph (g) “section 39(6) or (7);” and substituting “section 39(7) or (8);”;
- (f) by omitting paragraph (h) and substituting the following paragraph:
  - (h) a decision made by the Tribunal under section 52(1)(a), (b), (c), (d), (e) or (f) in respect of the person.

**Section 62 substituted**

**59.** Section 62 of the Principal Act is repealed and the following section is substituted:

**Hearing of appeal**

**62. (1)** On the hearing of an appeal, the Supreme Court may –

- (a) affirm the decision of the Council or Tribunal; or
- (b) vary the decision of the Council or Tribunal; or
- (c) quash the decision of the Council or Tribunal.

**(2)** If subsection (1)(c) applies, the Court may, according to the circumstances of the case –

- (a) substitute, for the decision it has quashed, any decision that the Council

or Tribunal would have had jurisdiction to make in those circumstances; or

- (b) remit the matter to the Council or Tribunal, with or without directions, for further hearing or consideration or for rehearing or reconsideration.

(3) The Court may make any further order that it considers just in the circumstances.

**Part 6, Division 1: Heading amended**

**60.** Division 1 of Part 6 of the Principal Act is amended by omitting “*Protection of the profession*” from the heading to that Division and substituting “*Public and professional safeguards*”.

**Section 65 amended (Unauthorised use of certain titles)**

**61.** Section 65 of the Principal Act is amended by omitting paragraph (f) and substituting the following paragraph:

- (f) a prescribed title.

**Section 66 repealed**

**62.** Section 66 of the Principal Act is repealed.

**Section 68 amended (Failure to notify Council of civil claims)**

**63.** Section 68 of the Principal Act is amended as follows:



- (a) by omitting from subsection (1) “14 days” and substituting “60 days”;
- (b) by omitting from subsection (2) “14 days” and substituting “60 days”.

**Section 69 amended (Improper disposal of medical records)**

**64.** Section 69(3) of the Principal Act is amended as follows:

- (a) by omitting “any” first occurring and substituting “either”;
- (b) by omitting paragraph (b);
- (c) by omitting from paragraph (c) “medical services company” and substituting “medical services provider”.

**Section 70 substituted**

**65.** Section 70 of the Principal Act is repealed and the following section is substituted:

**Improper directions and inducements**

**70. (1)** In this section –

“**induce**” means induce by making a threat or offering approval, encouragement or a reward.

**(2)** A person must not direct, induce, assist or allow a registered medical practitioner to engage in any conduct if the person knows, or reasonably ought to know, that the conduct constitutes, or is

reasonably likely to constitute, professional misconduct for the purposes of Part 4.

Penalty: Fine not exceeding 50 penalty units.

### **Part 6, Division 3: Heading amended**

**66.** Division 3 of Part 6 of the Principal Act is amended by omitting “*General offences*” from the heading to that Division and substituting “*General offences and contempts*”.

### **Section 71 amended (Offences of dishonesty)**

**67.** Section 71(1) of the Principal Act is amended by omitting paragraphs (a) and (b) and substituting the following paragraphs:

- (a) an application or assessment; or
- (b) an investigation; or
- (c) a formal or informal inquiry; or
- (d) an inspection.

### **Section 73 substituted**

**68.** Section 73 of the Principal Act is repealed and the following sections are substituted:

#### **Offences relating to formal inquiries, &c.**

**73. (1)** A person must not, without reasonable excuse –

- (a) fail to attend a formal inquiry as required by summons; or
- (b) fail in a formal inquiry to comply with the requirement to affirm or be sworn; or
- (c) fail to produce a document when required by the Tribunal to do so; or
- (d) fail to answer questions required by the Tribunal to be answered.

Penalty: Fine not exceeding 25 penalty units and a daily fine not exceeding 2.5 penalty units.

**(2)** In a formal inquiry, a person may be required by the Tribunal to answer a question or produce a document notwithstanding that the answer to the question or the contents of the document may tend to incriminate that person.

**(3)** If in a formal inquiry a person objects to answering a question or producing a document on the grounds that to do so may tend to incriminate that person, the answer to the question or the contents of the document are not admissible in evidence in any other proceedings in respect of the person, other than proceedings in respect of an offence under section 71 or in respect of an appeal under Part 5.

### **Compellability of witnesses in formal inquiries**

**73A. (1)** If –

- (a) the Tribunal has summonsed a person to appear before it to give evidence or to

produce a document or other thing specified in the summons; and

- (b) the person fails, without giving the Tribunal a reasonable excuse or any explanation at all, to attend before the Tribunal or to produce that document or thing –

the Tribunal may apply to a magistrate for a warrant to have the person apprehended and brought before the Tribunal.

**(2)** A magistrate to whom an application under subsection (1) is made may issue a warrant if satisfied that the person who is the subject of the application –

- (a) has been summonsed by the Tribunal to appear before it to give evidence or to produce a document or other thing specified in the summons; and
- (b) has failed, without giving the Tribunal reasonable excuse or any explanation at all, to attend before the Tribunal or to produce that document or thing.

**(3)** A warrant issued under this section authorises any police officer to –

- (a) apprehend the person named in the warrant and bring that person before the Tribunal; and
- (b) detain that person in custody to secure the person's attendance before the Tribunal.

**(4)** A police officer executing a warrant issued under this section is, for that purpose, authorised to enter and search any place, building, vehicle or vessel, using such force and assistance as is reasonably necessary.

**(5)** A person who is apprehended and detained in custody pursuant to a warrant issued under this section may apply to a judge of the Supreme Court to be released from custody.

**(6)** The release of a person from custody under this section may be made subject to any conditions the judge considers appropriate.

**Section 74 amended (Failure to comply with orders)**

**69.** Section 74 of the Principal Act is amended as follows:

(a) by omitting subsection (1) and substituting the following subsection:

**(1)** A person must not –

- (a) fail to leave a hearing held in the course of a formal inquiry when ordered to do so by the Tribunal; or
- (b) fail to leave a Council meeting when ordered to do so by the Council.

Penalty: Fine not exceeding 25 penalty units.

(b) by omitting subsection (2);

s. 70

No.

*Medical Practitioners Registration  
Amendment*

2004

- (c) by inserting in subsection (3) “report or otherwise disclose” after “must not”;
- (d) by omitting from subsection (3)(a) “report or otherwise disclose”;
- (e) by omitting from subsection (3)(b) “report or otherwise disclose”.

**Sections 75 and 76 substituted**

**70.** Sections 75 and 76 of the Principal Act are repealed and the following sections are substituted:

**Medical practitioners’ notices relating to fitness to practise**

**75.** A registered medical practitioner who signs an order under the *Mental Health Act 1996* or a medical recommendation within the meaning of the *Alcohol and Drug Dependency Act 1968* in relation to a person who the registered medical practitioner knows or believes is also registered as a medical practitioner under this Act must, as soon as practicable after signing the order or recommendation, give the Council notice of that fact.

Penalty: Fine not exceeding 5 penalty units.

**Provision of information by medical services providers**

**76. (1)** In this section –

“**reasonable period**” means a period, of not less than 21 days, determined by the Council;

**“relevant information”** means information that the Council reasonably considers it necessary or expedient to have for the purpose of exercising its powers or performing its functions.

**(2)** The Council may, by notice, require a medical services provider to give the Council –

- (a) any relevant information about the medical services provider’s legal or business structure, management, staff or operations; and
- (b) if applicable, any relevant information about the medical services provider’s membership or shareholdings; and
- (c) if applicable, a copy of the medical services provider’s memorandum or articles of association.

**(3)** A medical services provider must comply with a notice under subsection (2) within such reasonable period as is specified in the notice.

Penalty: Fine not exceeding 50 penalty units and a daily fine not exceeding 5 penalty units.

**(4)** The Council may, by notice, require a registered medical practitioner to give it any relevant information about his or her involvement with a medical services provider.

**(5)** A registered medical practitioner must comply with a notice under subsection (4) within such reasonable time as is specified in the notice.

s. 71

No.

*Medical Practitioners Registration  
Amendment*

2004

Penalty: Fine not exceeding 25 penalty units  
and a daily fine not exceeding 2.5  
penalty units.

**Section 77 substituted**

**71.** Section 77 of the Principal Act is repealed and the following section is substituted:

**Service of documents**

**77. (1)** In this section –

**“Council”** includes –

- (a) an assessment committee or other committee; and
- (b) an investigator.

**(2)** A document may be given to the Council or the Tribunal by –

- (a) leaving it at, or sending it by post to, the Council’s or Tribunal’s address; or
- (b) faxing it to the Council’s or Tribunal’s facsimile number; or
- (c) emailing it to the Council’s or Tribunal’s email address.

**(3)** A document may be given to another person by –

- (a) in the case of an individual –
  - (i) handing it to the person; or



- (ii) leaving it at, or sending it by post to, the person's postal or residential address or place of business or employment last known to the giver of the document; or
  - (iii) faxing it to the person's facsimile number; or
  - (iv) emailing it to the person's email address; and
- (b) in the case of another person –
- (i) leaving it at, or sending it by post to, the person's principal or registered office or principal place of business; or
  - (ii) faxing it to the person's facsimile number; or
  - (iii) emailing it to the person's email address.

**(4)** A document that is posted to a person is taken to have been given to the person when it is delivered in the ordinary course of post.

**Section 78 amended (Council seal)**

**72.** Section 78 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsection:

(1) The Council may have a seal and, if it does, the seal is to be kept and used as authorised by the Council.

- (b) by omitting from subsection (2) “common”.

### **Section 79 amended (Presumptions)**

73. Section 79 of the Principal Act is amended by omitting paragraphs (c) and (d) and substituting the following paragraphs:

- (c) the presence of a quorum at any meeting of the Council, the Tribunal or a committee; or
- (d) the appointment of any member of the Council, the Tribunal or a committee; or
- (e) the appointment of any investigator or inspector.

### **Section 80 amended (Appropriation of fees, penalties and fines)**

74. Section 80 of the Principal Act is amended as follows:

- (a) by omitting from subsection (3) “may be recovered as a debt due to the Council.” and substituting “is payable to, and may be recovered as a debt due to, the Council.”;
- (b) by inserting the following subsection after subsection (3):

(4) Any costs or expenses ordered to be paid under section 53(1) are payable to, and may be recovered as a debt due to, the Council.

**Section 81 amended (No right of recovery by unregistered person, &c.)**

**75.** Section 81 of the Principal Act is amended by omitting subsection (3).

**Section 82 amended (Punishment of conduct constituting an offence)**

**76.** Section 82 of the Principal Act is amended by omitting “section 49” and substituting “section 49D”.

**Section 84 amended (Act does not prohibit certain practices)**

**77.** Section 84(2) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “employed; or” and substituting “employed.”;
- (b) by omitting paragraphs (c) and (d).

**Section 85 amended (Regulations)**

**78.** Section 85 of the Principal Act is amended as follows:

- (a) by omitting subsection (2) and substituting the following subsection:

**(2)** Without limiting the generality of subsection (1), the regulations may make provision for or in relation to –

- (a) infection control standards to be followed by medical practitioners; and
  - (b) the continuing professional education of medical practitioners.
- (b) by omitting from subsection (3) “Regulations made under this Act” and substituting “The regulations”;
  - (c) by omitting from subsection (4) “Regulations made under this Act” and substituting “The regulations”;
  - (d) by omitting from subsection (5) “Regulations made under this Act” and substituting “The regulations”;
  - (e) by inserting in subsection (5) “or the *Medical Practitioners Registration Amendment Act 2004*” after “Act”;
  - (f) by inserting in subsection (6) “in respect of the enactment of this Act” after “subsection (5)”;
  - (g) by inserting the following subsection after subsection (6):

(7) A provision of a regulation made pursuant to subsection (5) in respect of the enactment of the *Medical Practitioners Registration Amendment Act 2004* may, if the regulation so provides, take effect on the day referred to in section 2 of that Act or a later day.

**Section 85A inserted**

**79.** After section 85 of the Principal Act, the following section is inserted in Division 2:

**Professional indemnity insurance guidelines**

**85A. (1)** The Minister may issue guidelines relating to the levels of professional indemnity insurance that are appropriate for medical practice in this State.

**(2)** The guidelines may be of general application or distinguish between different categories or circumstances of medical practice.

**(3)** In formulating the guidelines, the Minister may –

- (a) seek submissions from the Council; and
- (b) consult such providers of medical indemnity insurance, such bodies as represent the interests of medical practitioners and such other interested persons as the Minister considers appropriate; and
- (c) take into account such considerations as the Minister considers relevant.

**(4)** The Minister is to give a copy of the guidelines to the Council and may publish them as he or she sees fit.

**(5)** The Minister must, on application, provide a copy of the guidelines to any person but may charge a fee to recover the cost of doing so.

**(6)** The guidelines are not statutory rules for the purposes of the *Rules Publication Act 1953*.

**Sections 88, 89 and 90 repealed**

**80.** Sections 88, 89 and 90 of the Principal Act are repealed.

**Schedule 1 amended (Provisions with respect to membership of Council)**

**81.** Schedule 1 to the Principal Act is amended as follows:

- (a) by omitting from clause 1(1) “period” and substituting “term of office”;
- (b) by omitting subclauses (2) and (3) from clause 1 and substituting the following subclauses:

**(2)** If eligible, a member may be appointed for further terms of office.

**(3)** Despite subclause (2), a member is not eligible to be appointed for a further term of office that, if served in full, would result in the member having been in office continuously for more than 10 years.

**(4)** Subclause (3) does not apply to a member referred to in section 6(1)(a) if the member is to be appointed as President for the further term of office.

- (c) by omitting from clause 2 “under any Act” and substituting “by the terms of his or her employment”;
- (d) by omitting clause 5 and substituting the following clause:

**Filling of vacancies**

5. If the office of a member becomes vacant, the Governor may appoint a person to the vacant office for the remainder of that member's term of office.

**Schedule 2 amended (Provisions with respect to meetings of Council)**

**82.** Schedule 2 to the Principal Act is amended as follows:

- (a) by omitting from clause 6(1) "section 49" and substituting "section 49D";
- (b) by omitting clause 7 and substituting the following clause:

**Participation in meetings**

7. (1) The Council may permit members to participate in a particular meeting or all meetings by –

- (a) telephone; or
- (b) video conference; or
- (c) any other means of communication approved by the Council.

(2) A member who participates in a meeting under a permission granted under subclause (1) is taken to be present at the meeting.

(3) The Council may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

### **Schedule 3 substituted**

**83.** Schedule 3 to the Principal Act is repealed and the following Schedule is substituted:

#### **SCHEDULE 3 – POWERS AND PROCEDURES OF ASSESSMENT COMMITTEES AND INVESTIGATORS**

Section 11(7) and section 48(5)

### **Interpretation**

1. In this Schedule –

**“proceedings”** means –

- (a) an assessment; or
- (b) an investigation;

**“responsible entity”** means –

- (a) for an assessment, the assessment committee carrying out the assessment; and
- (b) for an investigation, the investigator carrying out the investigation;

**“responsible person”** means –

- (a) for a responsible entity that is a committee, the chairperson of the committee or the Registrar; and



- (b) for a responsible entity that is not a committee, the responsible entity or the Registrar.

### **Powers**

#### **2. (1) A responsible entity –**

- (a) may, by notice, request any person to appear before it to give evidence or to produce a document or other thing specified in the notice; and
- (b) may receive evidence, orally or in writing; and
- (c) may take evidence on oath or affirmation; and
- (d) may adjourn its proceedings from time to time and from place to place.

**(2)** For the purpose of subclause (1)(c), the responsible person may administer an oath or affirmation.

**(3)** A responsible entity may, in its discretion, conduct its proceedings in public or in private.

### **Procedures**

#### **3. (1) A responsible entity –**

- (a) must conduct its proceedings with as little formality and with as much expedition as a proper consideration of the matter before it permits; and

- (b) is not bound by the rules of evidence;  
and
- (c) may inform itself on any matter in any  
way it considers appropriate; and
- (d) must observe the rules of natural  
justice.

**(2)** A responsible entity's report to Council on  
any matter is to –

- (a) contain any findings on questions of fact  
and the evidence or other material on  
which those findings are based; and
- (b) set out the reasons for any  
recommendation.

**(3)** Before an assessment is carried out, the  
relevant assessment committee or the Registrar is to  
give the subject of the assessment notice of –

- (a) the reasons for holding the assessment;  
and
- (b) the date, time and place set for the  
assessment.

### **Medical examinations**

**4. (1)** In this clause –

**“medical examination”** includes an examination  
of the physical, psychological and mental  
capacities of a person.

**(2)** A responsible entity may, by notice,  
require the medical practitioner who is the subject of

its proceedings to have a medical examination if the responsible entity reasonably considers that the medical practitioner's medical condition may be a relevant consideration in those proceedings.

**(3)** The Council must pay for the medical examination.

**(4)** The notice requiring the medical examination is to specify –

- (a) the name of the registered medical practitioner or other health care professional who is to carry out the examination; and
- (b) the date, time and place of the examination.

**(5)** The time and place specified for the medical examination must be reasonable.

**(6)** The medical practitioner who carries out the medical examination is to give a written report of the results of the examination to –

- (a) the responsible entity; and
- (b) the person examined or, if the responsible entity so directs, a representative of that person nominated by the responsible entity.

**(7)** The responsible entity is not to give a direction under subclause (6)(b) unless it is reasonably satisfied that it may be harmful to or otherwise not in the best interests of the person examined to be given the report.

**(8)** A person nominated under subclause (6)(b) is to be someone who, in the reasonable opinion of the responsible entity, best represents or is capable of best representing the interests of the person examined for the purposes of the proceedings.

### **Representation**

**5.** A person who is the subject of any proceedings is not entitled to be represented in those proceedings but he or she is entitled, at any hearing held during the proceedings, to be accompanied by a legal practitioner or any other person.

### **Schedule 4 amended (Provisions with respect to membership of Tribunal)**

**84.** Schedule 4 to the Principal Act is amended as follows:

- (a) by omitting the definition of “meeting” from clause 1 and substituting the following definition:

**“meeting”** includes a hearing held in the course of a formal inquiry;

- (b) by omitting from clause 2(1) “period” and substituting “term”;
- (c) by omitting from clause 2(1) “2” and substituting “5”;
- (d) by omitting subclause (2) from clause 2 and substituting the following subclause:

**(2)** If eligible, a permanent member may be appointed for further terms.

- (e) by omitting from clause 3 “under any Act” and substituting “by the terms of his or her employment”;
- (f) by omitting from clause 5(2)(a) “to deal with a particular inquiry” and substituting “for the purposes of a particular formal inquiry”;
- (g) by omitting from clause 5(2)(a) “the purposes of”;
- (h) by omitting from clause 5(2)(b) “to deal with the inquiry” and substituting “for the purposes of the formal inquiry”;
- (i) by omitting from clause 5(2)(b) “the purposes of”.

**Schedule 5 substituted**

**85.** Schedule 5 to the Principal Act is repealed and the following Schedule is substituted:

**SCHEDULE 5 – PROVISION WITH RESPECT  
TO POWERS AND PROCEDURES OF  
TRIBUNAL**

Section 50(12)

**PART 1 – GENERAL PROCEDURES**

**Main procedural obligations, &c.****1. The Tribunal –**

- (a) must conduct its proceedings with as little formality and with as much expedition as a proper consideration of the matter before it permits; and

- (b) is not bound by the rules of evidence but may inform itself on any matter in any way it considers appropriate; and
- (c) must observe the rules of natural justice.

### **Proceedings to be open to public**

**2. (1)** Except as provided by this clause, the proceedings of the Tribunal are to be open to the public.

**(2)** During any proceedings the Tribunal may, on the application of a party to the proceedings or on its own motion, do either or both of the following if it considers that there are compelling grounds to do so:

- (a) make an order excluding any person from the proceedings;
- (b) make an order prohibiting the reporting or other disclosure of all or any of the proceedings or prohibiting the reporting or other disclosure of particular information in respect of the proceedings.

**(3)** Without limiting the range of grounds that may be relevant for the purposes of subclause (2), the Tribunal may exercise its power under that subclause if –

- (a) it is dealing with privileged information or information that has been communicated to the Council or the Tribunal in confidence; or

- (b) it is dealing with information concerning the personal affairs, finances or business arrangements of a registered medical practitioner; or
- (c) the disclosure of the proceedings or the information may be unfairly prejudicial to the reputation of a registered medical practitioner or any other person.

**(4)** Nothing in this clause is to be taken as preventing the Tribunal from –

- (a) meeting in camera for the purpose of preparing for any proceedings or any stage of any proceedings; or
- (b) meeting in camera for the purposes of reaching a finding on any matter in the course of, or at the conclusion of, any proceedings.

### **Representation, &c.**

**3. (1)** A defendant in a formal inquiry is entitled be represented in that formal inquiry by a legal practitioner or any other person.

**(2)** The Council, at its own expense, may appoint a legal practitioner to help the Tribunal conduct a formal inquiry.

**(3)** The Secretary may –

- (a) become a party to a formal inquiry; and
- (b) be represented in that formal inquiry by an employee of the Department.

**Convening the Tribunal**

4. The Tribunal, as constituted for any formal inquiry, may be convened by –

- (a) the chairperson; or
- (b) a permanent member and a special member; or
- (c) 2 special members.

**Constitution of Tribunal and effect of vacancies**

5. (1) Subject to this clause, the Tribunal is not competent to take any action in a formal inquiry unless each of the 2 permanent members, and each of the 3 special members appointed for that inquiry, is present.

(2) If one of the members, other than the chairperson, constituting the Tribunal for a formal inquiry vacates office for any reason before that inquiry is completed, the inquiry may be continued and completed by the remaining 4 members regardless of whether, in the case of a vacancy in the office referred to in section 50(2)(b), any other person is appointed to the vacant office.

(3) If more than one of the members constituting the Tribunal for a formal inquiry vacates office for any reason before that inquiry is completed, the inquiry is terminated.

(4) If a formal inquiry is terminated by virtue of subclause (3), the Tribunal may be reconstituted for the purposes of conducting a new formal inquiry on the same matter.



**(5)** For the purposes of this clause, a formal inquiry is taken to have been completed once the Tribunal has taken an action under section 52.

### **Chairperson**

**6.** The chairperson is to preside over all proceedings of the Tribunal.

### **Minutes**

**7.** The Tribunal is to keep –

- (a) accurate minutes of its meetings; and
- (b) a verbatim record of each hearing held in the course of a formal inquiry.

## **PART 2 – FACILITATION OF PROCEEDINGS**

### **Practice directions**

**8. (1)** The chairperson may –

- (a) issue such practice directions in relation to the practice and procedure of the Tribunal as the chairperson thinks fit; and
- (b) vary or revoke any such practice directions; and
- (c) publish any such practice directions as the chairperson thinks fit.

**(2)** The practice and procedure of the Tribunal is to be in accordance with the practice directions

from time to time in force unless the provisions of any Act or the provisions of any rules or other statutory instruments made under an Act provide otherwise.

### **Specific determinations and directions**

**9. (1)** Before the first hearing is held in a formal inquiry, the chairperson may –

- (a) determine any question of law or procedure that is expected to arise later in the proceedings; and
- (b) determine any other question that the chairperson considers necessary or convenient to determine in order to ensure that the remainder of the proceedings will be conducted fairly and expeditiously; and
- (c) give such directions, consistent with the practice directions issued under clause 8, as the chairperson thinks fit for the purposes of resolving any issue or matter that he or she considers necessary or convenient to resolve for the remainder of the proceedings.

**(2)** At any time during a formal inquiry, the Tribunal may –

- (a) determine any question of law or procedure that is expected to arise later in the proceedings; and
- (b) determine any other question that it considers necessary or convenient to

determine in order to ensure that the remainder of the proceedings will be conducted fairly and expeditiously; and

- (c) give such directions, consistent with the practice directions issued under clause 8, as it thinks fit for the purposes of resolving any issue or matter that it considers necessary or convenient to resolve for the remainder of the proceedings.

### **PART 3 - VOTES AND DECISIONS**

#### **Voting**

**10. (1)** Questions arising for determination by the Tribunal are to be determined by a majority of votes of the members present and voting.

**(2)** In the event of an equality of votes on a question arising for determination by the Tribunal, the question stands adjourned until it is next convened.

**(3)** The vote of a special member is equal to the vote of a permanent member.

#### **Announcement of decisions**

**11. (1)** At the conclusion of a formal inquiry, the Tribunal may announce its decision.

**(2)** The announcement may be made by –

- (a) the Tribunal sitting together; or
- (b) the chairperson sitting alone.

(3) An announcement is to be in addition to, and not in substitution for, a notice under section 54.

**Tribunal may take other matters into account in making its decision**

**12. (1)** In making its decision in a formal inquiry, the Tribunal may take into account any evidence that has been given in the formal inquiry concerning any matter that the Tribunal is satisfied could constitute grounds for a further complaint against the defendant.

(2) Subclause (1) has effect whether or not any person has made a complaint about the matter that the Tribunal takes into account.

(3) Subclause (1) does not prevent –

- (a) a person from making a complaint about the matter that the Tribunal takes into account; or
- (b) the Council from taking action under section 48A about the matter that the Tribunal takes into account.

**PART 4 - POWERS**

**General powers**

**13.** The Tribunal may –

- (a) by summons, require any person to appear before it to give evidence or to produce any document or other thing specified in the summons; and

- (b) require any person appearing before it to produce any document; and
- (c) require any person appearing before it to give evidence on oath or affirmation; and
- (d) require any person appearing before it to answer questions; and
- (e) proceed with and determine any proceedings notwithstanding the absence of a person who has been summonsed to appear; and
- (f) adjourn any proceedings from time to time and place to place.

### **Power to require medical examinations**

**14. (1)** In this clause –

**“medical examination”** includes an examination of the physical, psychological and mental capacities of a person.

**(2)** The Tribunal may, by notice, require the defendant in a formal inquiry to have a medical examination if the Tribunal reasonably considers that the defendant’s medical condition may be a relevant consideration in that formal inquiry.

**(3)** Unless the Tribunal under section 53 orders otherwise, the Council must pay for the medical examination.

**(4)** The notice requiring the medical examination is to specify –

- (a) the name of the registered medical practitioner or other health care professional who is to carry out the examination; and
- (b) the date, time and place of the examination.

(5) The time and place specified for the medical examination must be reasonable.

(6) The medical practitioner who carries out the medical examination is to give a written report of the results of the examination to –

- (a) the Tribunal; and
- (b) the defendant or, if the Tribunal so directs, a representative of the defendant nominated by the Tribunal.

(7) The Tribunal is not to give a direction under subclause (6)(b) unless it is reasonably satisfied that it may be harmful to or otherwise not in the best interests of the defendant to be given the report.

(8) A person nominated under subclause (6)(b) is to be someone who, in the reasonable opinion of the Tribunal, best represents or is capable of best representing the interests of the defendant for the purposes of the formal inquiry.

**Schedule 6 amended (Provisions with respect to inspection warrants)**

**86.** Schedule 6 to the Principal Act is amended by inserting in the heading to that “**INSPECTION**” after “**TO**”.

2004

*Medical Practitioners Registration  
Amendment*

No.

**s. 87**

**Schedules 8 and 9 repealed**

**87.** Schedules 8 and 9 to the Principal Act are repealed.

**Transitional provisions**

**88.** The transitional provisions set out in Schedule 1 have effect.

**SCHEDULE 1 – TRANSITIONAL PROVISIONS**

**Section 88**

**Interpretation**

1. In this Schedule –

“**commencement day**” means the day on which this Act commences;

“**new Act**” means the Principal Act as amended by this Act;

“**old Act**” means the Principal Act as in force immediately before the commencement day.

**Assessments**

2. (1) A committee of assessors that was carrying out an assessment under the old Act immediately before the commencement day continues as an assessment committee under the new Act.

(2) Any assessment in progress under the old Act immediately before the commencement day may be continued under the new Act.

**Disciplinary proceedings**

3. (1) Any prescribed matter that was in the process of being dealt with by the Council under section 49 of the old Act immediately before the commencement day is taken to constitute, and may be continued as, an informal inquiry under the new Act.



2004

*Medical Practitioners Registration  
Amendment*

No.

**sch. 1**

(2) Any inquiry in progress under the old Act immediately before the commencement day is taken to constitute, and may be continued as, a formal inquiry under the new Act.