

1993

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**MEDICAL PRACTITIONERS REGISTRATION (AMENDMENT) BILL 1993**

**EXPLANATORY MEMORANDUM**

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**Wayne Berry MLA**

## MEDICAL PRACTITIONERS REGISTRATION (AMENDMENT) BILL 1993

### EXPLANATORY MEMORANDUM

#### Outline

The Medical Practitioners Registration (Amendment) Bill 1993 ("the Bill") amends the *Medical Practitioners Registration Act 1930* ("the Act") for the purpose of ensuring that the registration and certain other provisions of the Act are consistent with the requirements for registration of medical practitioners as recommended by the Australian Health Ministers' Advisory Council (AHMAC) and agreed to by the Australian Health Ministers' Conference and is the first in a series of Bills to amend the A.C.T.'s legislation regulating health professions for a similar purpose.

#### *The Medical Practitioners Registration Act 1930*

The Act regulates the registration of persons as medical practitioners and in particular Parts III and IV, respectively, set out the qualifications and requirements for registration as a medical practitioner and provide that disciplinary action may be taken by the Medical Board established under Part II of the Act in respect of the conduct of a registered medical practitioner.

#### *The Medical Practitioners Registration (Amendment) Bill 1993*

The Bill amends the Act to ensure that the provisions relating to registration of medical practitioners and disciplinary action which may be taken under the Act comply with the approach to these matters which has been agreed between the States and Territories.

In particular the Bill recognises the entitlement of a person who is registered as a medical practitioner in a State or another Territory to registration in the ACT and provides for conditions which may be imposed upon a practitioner's registration in another jurisdiction or disciplinary action taken against a practitioner in another jurisdiction to be applied in respect of the person's registration in the Territory.

These provisions are intended to be consistent with the mutual recognition principle relating to occupations as set out in section 17 of the Commonwealth *Mutual Recognition Act 1992*.

The application of that principle to the Territory and to other jurisdictions necessitates the adoption of agreed minimum requirements for registration as a medical practitioner. Unless all jurisdictions where mutual recognition applies have the same standard for registration of a person as a medical practitioner, a jurisdiction with a lower standard will provide a means for a person who satisfies that standard, but not the higher standards required in the other jurisdictions, to gain registration in those other jurisdictions under the mutual recognition principle.

#### **Financial implications**

There are no financial implications arising from the Bill.

Details of the Bill are included in the Attachment.

## MAIN AMENDMENTS

### *Clause 9- Registration of medical practitioners*

**Clause 9** repeals sections 19, 22, 22A and 22B of the Act and divides Part III of the Act into four new Divisions. Section 19 requires the keeping of a register of medical practitioners by the Board and sections 22, 22A and 22B set out the qualifications and other general registration requirements for registration as a medical practitioner.

These provisions are replaced with proposed new sections 19, 20, 21, 22, 22A, 22B, 22C, 22D, 22E, 22F, 22G, 22H, 22J, 22K and 22L dealing with requirements for registration including registration procedure.

### *Registration based on qualifications and training*

**New section 19** deals with the requirements for registration as a medical practitioner where the applicant relies upon his or her qualifications and training.

**New subsection 19(1)** entitles a person to registration as a medical practitioner if he or she has recognised medical qualifications and has successfully completed a period of internship or supervised training as required by the Board.

**New subsection 19(2)** establishes the meaning of the term 'recognised medical qualifications' for the purposes of **new section 19**.

**New subsection 19(3)** specifies that registration granted under **new section 19** is unconditional registration.

### *Registration for interns*

**New section 20** is intended to allow for the registration of persons for the purposes of enabling them to complete a period of internship or supervised training.

**New subsection 20(1)** entitles a person to be registered as a medical practitioner, subject to conditions, where the person would be entitled to registration under **new section 19** but for the fact that he or she has not completed a period of internship or supervised training as required by the Board.

**New subsection 20(2)** authorises the Board to impose such conditions as it considers appropriate upon the registration of a person registered under **new subsection 20(1)** for the purpose of enabling that person to complete his or her internship or training.

*Registration under mutual recognition principle*

**New section 21** entitles a person who is licensed or registered as a medical practitioner in a State or another Territory that is a participating jurisdiction within the meaning of the Mutual Recognition Act, which is defined by the insertion in section 4 of the Act of a new definition to mean the Commonwealth *Mutual Recognition Act 1992*, to registration as a medical practitioner under the Act.

**New subsection 21(2)** entitles such a person to unconditional registration under this Act where that person's registration in the State or other Territory is unconditional.

**New subsection 21(3)** qualifies the right of such a person to be registered under this Act by restricting registration under this Act to registration subject to the same conditions (if any) as apply to the person's registration in the other jurisdiction where the person is registered.

*Registration at the discretion of the Board*

**New section 22** provides the Board with a discretion to register a person, in a range of circumstances, notwithstanding that the person is not entitled to registration pursuant to **new sections 19, 20 or 21**. **New subsection 22(9)** enables the Board to impose such conditions as it thinks appropriate upon the registration of a person under this section.

**New subsection 22(1)** enables the Board to grant temporary registration to a person who is a graduate in medicine from an institution which is not accredited by the Australian Medical Council Incorporated, for the purpose of enabling the person to undertake postgraduate training in medicine approved by the Board.

**New subsection 22(2)** enables the Board to grant registration to a candidate for an examination held by the Australian Medical Council Incorporated where the candidate has been approved by the Council to undertake a period of supervised training approved by the Board prior to sitting the examination.

**New subsection 22(3)** enables the Board to register a person as a medical practitioner for the purposes of enabling the person to fill a teaching or research position, where the Board considers that the person has appropriate qualifications for that purpose.

**New subsection 22(4)** enables the Board to register a person as a medical practitioner for the purpose of filling an unmet area of need provided the Board is satisfied that the person has suitable qualifications and experience to practice in that unmet area of need.

**New subsection 22(5)** enables the Board to register as a medical practitioner a person with specialist qualifications and experience in medicine recognised by the relevant Australian specialist college or institution for the purpose of enabling the person to practise within that specialty.

**New subsection 22(6)** enables the Board to register a person as a medical practitioner if the Board is satisfied that the person has specialist qualifications and experience in medicine obtained outside Australia, which qualifications are not recognised by the relevant Australian specialist college or institution, for the purpose of enabling the person to undergo specialist training or examination before being assessed for recognition by the college or institution.

**New subsection 22(7)** enables the Board to register a person as a medical practitioner under new section 22 even though the person does not satisfy the requirements of new paragraph 22E(1)(b) requiring a person to have an adequate command of the English language before the Board will register him or her as a medical practitioner.

**New subsection 22(8)** enables the Board to register a person as a medical practitioner on a temporary basis where the Board is satisfied that it is in the public interest to do so.

#### *Interim registration*

**New section 22A** provides for the interim registration of an applicant for registration.

**New subsection 22A(1)** enables the interim registration of an applicant for registration -

- in the case of a person entitled to registration under **new section 19**, where it is not practicable to wait for the Board to consider the application; or
- where a person would be entitled to registration as an intern under **new section 20** but for the fact that a degree or award to which the person is entitled has not yet been conferred or granted by the institution concerned.

**New subsection 22A(2)** enables a person authorised by the Board to grant interim registration to an applicant for registration, in accordance with this section. However **new subsection 22A(7)** treats interim registration as having been granted by the Board.

**New subsection 22A(3)** provides that interim registration remains in force until the person to whom it is granted is given written notice that -

- registration has been granted;
- registration has been refused; or
- the interim registration has been cancelled.

**New subsection 22A(4)** gives the Board the discretion to cancel a person's interim registration for any reason it considers proper and requires the Board to immediately notify a person, in writing, of the cancellation of his or her interim registration.

The effect of **new subsection 22A(5)** is that a person who holds interim registration is taken to be a registered medical practitioner.

The effect of **new subsection 22A(6)** is to backdate the commencement of a person's registration to the date upon which interim registration was granted, where a person who is granted interim registration is subsequently registered as a medical practitioner.

#### *Conditions of registration in cases of impairment*

**New section 22B** deals with conditions which may be imposed upon the registration of a person as a medical practitioner where the person suffers from an impairment. The term impairment is defined in **new section 4B** to encompass physical or mental impairment, a disability or condition or disorder which detrimentally affects, or is likely to detrimentally affect, a person's physical or mental capacity to practise medicine, and it includes habitual drunkenness or addiction to a deleterious drug.

**New subsection 22B(1)** enables the Board to impose conditions upon a person's registration where the Board is satisfied that the person suffers from an impairment and the conditions are reasonable having regard to the impairment.

**New subsection 22B(2)** entitles a medical practitioner upon whose registration such conditions are imposed to apply to the Board for a review of those conditions.

**New subsection 22B(3)** permits the Board to decline to review the conditions if the application is made within 12 months of the previous review under this section.

**New subsection 22B(4)** permits the Board, on a review of the conditions, to alter or remove conditions or to impose new conditions.

*Refusal of registration where applicant convicted of offence*

**New section 22C** gives the Board a discretion to refuse to register an applicant for registration if the applicant has been convicted of an offence in the Territory or convicted in a court elsewhere of an act or omission which, had it taken place in the Territory, would have constituted an offence where the Board is of the opinion that the conviction renders the person unfit, in the public interest, to practise medicine.

**New subsection 22C(2)** requires the Board to have regard to the nature of the offence and the circumstances in which it was committed in making its decision.

In order to be consistent with the provisions of subsection 23(1) of the Mutual Recognition Act, relating to refusal of registration, **new subsection 22C(3)** specifies that **new subsection 22C(1)** does not apply in relation to a person who is entitled to registration pursuant to that Act and who has lodged a notice with the Board pursuant to section 19 of that Act.

*Refusal or registration where applicant deregistered outside Territory*

**New section 22D** gives the Board a discretion to refuse to register an applicant for registration if the applicant's name has been removed from the medical register kept under the law of another country, State or another Territory for any reason relating to the conduct of the person amounting to professional misconduct within the meaning of the Act or on any basis relating to the person's physical or mental capacity to practise.

The term "professional misconduct" is defined in new subsection 30(3).

In order to be consistent with the provisions of subsection 23(1) of the Mutual Recognition Act, relating to refusal of registration, new subsection 22D(3) specifies that new subsection 22D(1) does not apply in relation to a person who is entitled to registration pursuant to that Act and who has lodged a notice with the Board pursuant to section 19 of that Act.

*Applicant to be competent and of good character*

New section 22E prohibits the Board from registering a person as a medical practitioner unless the person -

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

However, in order to be consistent with the provisions of subsection 23(1) of the Mutual Recognition Act, relating to refusal of registration, new subsection 22E(2) specifies that new subsection 22E(1) does not apply in relation to a person who is entitled to registration pursuant to that Act and who has lodged a notice with the Board pursuant to section 19 of that Act.

*Restriction on registration of deregistered or suspended persons*

New section 22F restricts the registration of persons whose registration has been cancelled or suspended. Other than a person whose registration has been cancelled pursuant to section 27, that is, as a consequence of cancellation of the person's registration in another jurisdiction, or pursuant to new subsection 29B(2) for non-payment of a fee or whose registration has been suspended pursuant to section 31(2) pending the outcome of an inquiry, a person may not apply for re-registration or termination of the suspension, other than by applying to the Board pursuant to section 30B.

However, in order to be consistent with the provisions of subsection 23(1) of the Mutual Recognition Act, relating to refusal of registration, new subsection 22F(2)

specifies that new subsection 22F(1) does not apply in relation to a person who is entitled to registration pursuant to that Act and who has lodged a notice with the Board pursuant to section 19 of that Act.

*Applications for registration*

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

New subsection 22G(2) requires that an application for registration be in a form approved by the Board and be accompanied by the prescribed fee.

*Applications to be considered and determined*

New section 22H requires the Board to consider and determine all applications for registration under new section 22G and that determination of applications is to be by either registering the applicant, unconditionally or otherwise, or by refusing the application.

*Registration of applicants*

New section 22J requires that where a person who is applying for registration other than under the Mutual Recognition Act applies for registration in accordance with new section 22G and appears personally before the Board if required to do so, and is entitled to registration in accordance with the Act, the Board shall register the applicant as a medical practitioner.

*Fee for registration pursuant to Mutual Recognition Act*

New section 22K requires an applicant for registration pursuant to the Mutual Recognition Act to pay the prescribed fee.

*Conditions of registration*

New section 22L provides that the conditions which the Board may impose upon registration at the time of registration relate to the duration of registration, the aspects of practice in which the person who is registered may be engaged and such other matters as the Board thinks appropriate.

### *Register*

**New section 22M** requires the Board to keep a register of medical practitioners and provides that the Register may be kept in an electronic form.

#### *Clause 10 - Particulars to be entered in the Register*

**Clause 10** amends section 23 of the Act, which provides that registration is effected by the entering of certain particulars in the Register, by adding the requirement that particulars of any condition to which a person's registration is subject be entered in the Register and by removing the requirement that an entry in the Register be signed by the Chairperson or Deputy Chairperson of the Board.

#### *Clause 11 - Certificate of Registration*

**Clause 11** amends section 24 of the Act dealing with certificates of registration.

**Paragraph 11(a)** amends the section by inserting a new subsection (1A) to require that a certificate of registration indicates the provision of the Act by virtue of which the certificate holder is entitled to be registered and any conditions to which that person's registration is subject.

**Paragraph 11(b)** effects a technical amendment to subsection 24(2) to bring the language of the provision into accord with modern drafting practice.

**Paragraph 11(c)** amends subsection 24(4) of the Act, which requires the holder of a certificate who is advised by the Board of the cancellation of his or her registration to return the certificate to the Board, to extend that requirement to apply when the holder of a certificate is advised by the Board that his or her registration has been suspended.

**Paragraph 11(d)** inserts new subsections (5A), (5B) and (5C).

**New subsection (5A)** requires, where a person whose registration has been suspended delivers his or her certificate of registration to the Board, that the Board retain the certificate for the duration of the suspension and to return it to the person at the expiration of the period of suspension unless the person's registration is sooner cancelled.

**New subsection (5B)** enables the Chairperson of the Board to request in writing that a certificate be delivered to the Board for the purpose of endorsing the certificate to indicate that conditions have been imposed upon the registration of the person to whom the certificate was issued or that conditions imposed upon the registration of that person have been varied.

**New subsection (5C)** makes it an offence for a person to fail to comply with a request under **new subsection (5B)** and provides for a penalty of a maximum fine of \$500.

**Paragraph 11(e)** amends subsection 24(6) of the Act, which provides for the means of service of a notice requesting the delivery of a certificate to the Board where the registration of the person to whom the certificate was issued has been cancelled or suspended, to provide that the same means of service applies in respect of a notice requesting the delivery of a certificate to the Board for endorsement in respect of conditions applying to such a person's registration.

**Paragraph 11(f)** amends subsection 24(7) of the Act, which provides that it is a defence to prosecution in respect of a person's failure to deliver his or her certificate to the Board where it has been requested following the cancellation or suspension of that person's registration, where the certificate has been destroyed or is unable to be found following a diligent search, to extend that defence to apply in respect of a person's failure to deliver a certificate to the Board where it has been requested for the purpose of endorsing the certificate in respect of conditions applying the person's registration.

***Clause 12- Repeal of section 24A***

**Clause 12** repeals section 24A of the Act providing for the payment of annual fees and notification of the Board by a registered medical practitioner of his or her address. New provisions for the payment of annual fees by registered medical practitioners are inserted in the Act by **clause 15**.

***Clause 14 - Alteration of the Register***

**Clause 14** amends section 26 of the Act providing for the amendment of the Register to include the requirement that the name of a registered medical practitioner must be removed from the Register where the practitioner's registration has been cancelled and by omitting a reference from subsection 26(5) to the registration

effected under section 23 as registration is now effected in accordance with new section 22H or the Mutual Recognition Act.

***Clause 15 - Repeal of sections 28A, 29, 29A and 29B and substitution of new provisions***

***Clause 15*** repeals sections 28A, 29, 29A and 29B of the Act dealing with special registration, provisional registration, temporary registration and the effect of those forms of registration as those forms of registration are dealt with in new sections 22 and 22A.

***Clause 15*** inserts new sections 27, 28, 29, 29A, 29B and 29C.

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

New section 27 provides for the deregistration of a person where that person's name has been removed from a register or roll of medical practitioners kept under a law of a State or another Territory or a law of another country.

New subsection 27(1) requires that the Board cancel the registration of a person where the Board is satisfied that the name of the person has been removed from a register or roll kept under a law of a State or another Territory for any reason relating to -

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

Where a person whose registration has been cancelled under new subsection 27(1) has his or her name restored to the register or role for the removal from which the person's registration was cancelled and the person applies for re-registration, new subsection 27(2) requires the Board to re-register the person.

New subsection 27(3) gives the Board a discretion to cancel the registration of a person where the Board is satisfied that the name of the person has been removed from a register or roll kept under a law of a place outside Australia for any reason relating to -

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

**New subsection 27(4)** gives the Board a discretion to re-register a person whose registration has been cancelled under **new subsection 27(3)** where the Board is satisfied that it is appropriate in the circumstances to re-register the person.

*Imposition of conditions under foreign law*

**New section 28** provides for the imposition of conditions upon the registration of a person where conditions are imposed upon the registration of that person in another jurisdiction.

**New subsection 28(1)** requires that where conditions are imposed upon the registration of a person as a medical practitioner under the law of a State or another Territory the Board must impose similar conditions upon the registration of the person under this Act.

**New subsection 28(2)** gives the Board a discretion to impose conditions similar to those it is satisfied have been imposed upon the registration of a person as a medical practitioner under the law of a place outside Australia.

*Cessation of registration*

**New section 29** provides that a person ceases to be registered as a medical practitioner -

- when the Board gives the person notice that his or her registration has been cancelled in accordance with this Act; or
- if registration is conditional and the period of registration is specified in the condition - when that period expires.

*Annual fee payable*

**New section 29A** provides for the payment of an annual fee by registered medical practitioners.

**New subsection 29A(1)** requires that on or before 30 September each year a registered medical practitioner pay to the Board the prescribed fee.

**New subsection 29A(2)** requires that the Board send to each registered medical practitioner, at least one month before the due date for payment, a notice requiring the practitioner to pay the fee by the due date.

**New subsection 29A(3)** precludes a medical practitioner from relying upon a failure of the Board to send such a notice as a basis for avoiding liability to pay the fee by the due date. As the date for the payment of the annual fee is fixed and will be known to practitioners it is not reasonable that the failure of the Board to send a notice requesting the payment of the fee be used as a means of a medical practitioner avoiding liability to pay the fee.

*Practitioner's registration may be cancelled for non payment*

**New section 29B** provides for the cancellation of a medical practitioner's registration where the practitioner fails to pay the annual fee.

**New subsection 29B(1)** requires that where a medical practitioner fails to pay the prescribed fee by the due date the Board must send the practitioner a notice requiring him or her to pay the fee by a day specified in the notice and advising him or her that if the fee is not paid by that later date his or her registration will be cancelled.

**New subsection 29B(2)** requires the Board to cancel the registration of a medical practitioner who fails to pay the fee by the day specified in the notice under **new subsection 29B(1)**.

*Entitlement to re-registration on payment of fees*

**New section 29C** provides for the re-registration of a person where the person pays the prescribed fee.

**New subsection 29C(1)** entitles a person whose name has been removed from the Register for failure to pay the annual fee to re-registration if he or she applies in accordance with the requirements of the section and pays the prescribed fee.

**New subsection 29C(2)** requires that an application for re-registration be in a form approved by the Board and be accompanied by the prescribed fee.

**New subsection 29C(3)** qualifies the entitlement of a person to re-registration by limiting it to a right to re-registration on the same terms and conditions (if any) as applied to the person's registration immediately prior to the removal of the person's name from the Register.

**New subsection 29C(4)** gives the Board a discretion to refuse re-registration to a person where the Board is satisfied that the person is not competent to practise medicine or is not of good character.

**New subsection 29C(5)** provides that a person's right to re-registration under new section 29C is subject to the other provisions of the Act.

***Clause 16 - Repeal of sections 30 and 30A and substitution of new provisions***

**Clause 16** repeals sections 30 and 30A of the Act dealing with the cancellation and suspension of registration and inserts new sections 30, 30A, 30AB, 30AC, 30AD and 30AE.

***Interpretation***

**New section 30** is an interpretation provision which defines the term "unsatisfactory professional conduct".

**New subsection 30(1)** provides that in Part IV of the Act the term includes a reference to -

- conduct demonstrating a lack of adequate knowledge, skill, judgment or care by the practitioner in the practise of medicine;
- a contravention of the Act or the regulations;
- a contravention of a condition to which a practitioner's registration is subject;
- conduct resulting in a conviction for an offence against certain provisions of the *Health Insurance Act 1973* of the Commonwealth;
- subject to subsection 30(2) permitting an assistant employed by the practitioner who is not a registered medical practitioner to attend, treat or perform an operation on a patient in respect of matters requiring professional discretion or skill;

- subject to subsection 30(2) knowingly enabling a person who is not a registered medical practitioner to -
  - perform operative surgery on a patient in respect of a matter requiring professional discretion or skill; or
  - issue or procure the issue of a certificate, notification report or similar document, or to engage in professional practise as if the person were a registered medical practitioner;
- using a document, title, status or description in relation to himself or herself or in the practice of medicine other than -
  - a document, title, status or description, recorded in the Register in respect of the practitioner or used by the practitioner before the commencement of this section;
  - the description 'doctor', 'medical practitioner' or another expression recognised by the Board generally or in an appropriate case for the purposes of this paragraph;
- failing to render urgent professional attention to a person where the practitioner has reasonable cause to believe the person is in urgent need of attention unless the practitioner has taken all reasonable steps to ensure that another registered medical practitioner attends instead;
- advertising, otherwise than in accordance with the regulations;
- canvassing or employing an agent or canvasser;
- any other improper or unethical conduct relating to the practise of medicine.

**New subsection 30(2) exempts from the definition of the term "unsatisfactory professional conduct" conduct involving -**

- permitting an assistant employed by the practitioner who is not a registered medical practitioner to attend, treat or perform an operation on a patient in respect of matters requiring professional discretion or skill; or
- knowingly enabling a person who is not a registered medical practitioner to -

- perform operative surgery on a patient in respect of a matter requiring professional discretion or skill; or
- issue or procure the issue of a certificate, notification report or similar document, or to engage in professional practise as if the person were a registered medical practitioner,

where that conduct takes place in connection with -

- . proper training and instruction of medical or other students;
- . lawful employment of dressers, nurses, dispensers, surgery attendants, technicians or skilled mechanics, under the immediate supervision of the practitioner; or
- . collaborating in experimental research or work in medicine with a person who holds a university degree in science or another degree recognised by the Board generally or in a particular case for the purposes of paragraph (2)(c).

**New subsection 30(3)** is an interpretation provision which establishes that in Part IV of the Act a reference to "professional misconduct" means unsatisfactory professional conduct of a sufficiently serious nature to justify suspension of the practitioner from practising or the removal of the practitioner's name from the Register.

*Cancellation or suspension of registration*

**New section 30A** deals with the cancellation and suspension of registration and gives the Board a discretion to cancel the registration of a person or order the suspension of the person's registration where the Board is satisfied that -

- . the registration of the person was obtained by fraud or misrepresentation;
- . the medical qualification of the person has been withdrawn or cancelled by the body which granted it;
- . the person has contravened a condition of his or her registration;
- . the person has been convicted of an offence punishable by imprisonment for more than one year or any offence which in the opinion of the Board renders the person unfit to practise;
- . the person is guilty of habitual drunkenness or drug addiction;
- . the person is guilty of professional misconduct; or
- . the person is not competent to practise medicine.

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

**New section 30AB** deals with the cancellation, suspension or restriction of a person's right to practise on health grounds.

**New subsection 30AB(1)** requires that subject to the provisions of **new subsection 30AB(2)** the Board must cancel or order the suspension of the registration of a person where it is satisfied that the mental or physical condition of the person renders him or her unfit to practise.

**New subsection 30AB(2)** gives the Board the option of, instead of cancelling or suspending the registration of a person, directing by order, that the person not give or perform specified medical services where the Board is satisfied that the person remains fit to give or perform some medical services.

**New subsection 30AB(3)** deems a person upon whom the Board has served an order of suspension or restriction of practising rights and who gives or performs a medical service in contravention of such an order to be other than a registered medical practitioner.

*Practising when registration suspended*

**New subsection 30AC** gives the Board a discretion to cancel or order the further suspension of a person whose registration has been suspended and who is convicted of an offence of practising medicine or of signing certain certificates required by law to be signed by a registered medical practitioner whilst the person is deemed to be other than a registered medical practitioner.

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

**New section 30AD** provides the Board with a range of disciplinary or counselling options in addition to the options of cancellation, suspension or restriction of practising rights.

It permits the Board to do one or more of the following in relation to the conduct of a registered medical practitioner -

- caution or reprimand the person;
- order the person to seek and undergo medical or psychiatric treatment or counselling;

- . impose appropriate conditions upon the practitioner's practise of medicine;
- . order the practitioner to complete specified educational courses;
- . order the practitioner to report on his or her medical practice to persons specified by the Board; and
- . order that the practitioner seek and follow advice regarding the management of his or her medical practice from persons specified by the Board.

However, in order to be consistent with the provisions of paragraph 20(4)(b) of the Mutual Recognition Act, new subsection 30AD(2) specifies that **new paragraph 30AD(1)(d)**, enabling the Board to order a medical practitioner to complete specified educational courses, does not apply to a person who has obtained registration pursuant to that Act.

*Power of Board to impose fines*

**New section 30AE** provides the Board with a power to impose a fine upon a registered medical practitioner.

**New subsection 30AE(1)** enables the Board to impose a fine where the Board finds that a medical practitioner has failed to comply with an order of the Board under **new section 30AD**. However, this power is qualified by the operation of **new subsection 30AE(2)** which prohibits the Board from imposing a fine in respect of conduct for which a court has already imposed a fine or other penalty.

**New subsection 30AE(3)** requires that a fine be paid to the Territory within the time specified in the order imposing the fine and **new subsection 30AE(4)** empowers the Board to cancel or order the suspension of the registration of a medical practitioner where the registered medical practitioner fails to comply with the order imposing the fine.

*Clause 18 - Inquiry by Board*

**Clause 18** amends section 31 of the Act to extend the application of the present requirement that the Board conduct an inquiry before taking certain disciplinary action to require that the Board hold an inquiry prior to making an order under **new section 30AD** and to provide for an order for suspension of registration, pending the holding of an inquiry, to be served on the person to whom the inquiry relates.

***Clause 19 - Publication of notice of decision***

**Clause 19** amends section 31B of the Act which enables the publication in the *Gazette* of a notice in respect of certain decisions of the Board and the reasons for such decisions, where an appeal is lodged with the Administrative Appeals Tribunal in relation to such a decision.

The amendment extends the application of the provision to decisions concerning disciplinary or counselling action which may be taken by the Board under **new section 30AD** and the imposition of a fine under **new section 30AE**.

***Clause 21 - Repeal of sections 38A and 38B and substitution of new provisions***

**Clause 21** repeals sections 38A and 38B of the Act which provide for the appointment of approved qualified persons as medical officers in a hospital. This provision enables a medical graduate to undertake his or her internship in a hospital. These provisions are no longer necessary as this matter is now dealt with in **new section 20**.

***Clause 22 - Repeal of sections 39C and 39D and substitution of new provisions***

**Clause 22** repeals sections 39C and 39D of the Act dealing with appeals and the notification of decisions to affected persons and substitutes new sections dealing with these matters which reflect the altered discretionary powers of the Board.

***Review of decisions***

**New section 39C** enables a person to apply to the ACT Administrative Appeals tribunal in respect of a decision of the Board to -

- . impose conditions upon registration;
- . cancel interim registration;
- . decline to review conditions upon registration;
- . refuse to alter or remove conditions imposed upon registration;
- . impose new conditions upon registration;
- . refuse to register a person;
- . cancel registration;
- . refuse to re-register a person;
- . suspend the registration of a person;

- direct a person not to give or perform specified medical services;
- take one of the forms of disciplinary or counselling action under **new section 30AD** in relation to a registered medical practitioner;
- impose a fine on a practitioner;
- refuse to terminate the suspension of registration of a person;
- certify the amount which the Board believes is a reasonable amount of fees or remuneration for a medical service; or
- refuse to extend beyond 6 months the period during which the executor or executrix of a deceased registered medical practitioner's estate or the administrator or administratrix or trustee of such an estate may continue the business of the practitioner;
- fix a period longer than 6 months during which the executor or executrix of a deceased registered medical practitioner's estate or the administrator or administratrix or trustee of such an estate may continue the business of the practitioner.

#### *Notification of decisions*

**New section 39D** deals with the notification of persons affected by decisions of the Board.

**New subsection 39D(1)** requires the Board to give written notice of particular decisions of the Board, in respect of which an appeal may be made to the ACT Administrative Appeals Tribunal, to the person affected by the relevant decision.

**New subsection 39D(2)** requires that a notice to a person of a decision required under **new subsection 39D(1)** or under **new subsection 22(4)** advising of the cancellation of interim registration or a notice under section 31 of the *Health Professions Boards (Procedures) Act 1981* include a statement advising the person of his or her right to appeal to the Administrative Appeals Tribunal and of his or her rights in respect of the provision of a statement of reasons for the decision to the person.

**New subsection 39D(3)** imposes a similar requirement in respect of a notice to a person in relation to an order suspending the person's registration, restricting the person's right to practise medicine or fining the person.

**New subsection 39D(4)** prevents the validity of a decision of the Board dealt with in **new subsections 39D(2) and (3)** from being affected by a failure to comply with the notification requirements of **new section 39D**.

## TRANSITIONAL PROVISIONS

### *Clause 25 - Register*

The effect of *clause 25* is to make the register of medical practitioners required to be kept under new section 22M a continuation of the register of medical practitioners required to be kept under repealed section 19.

### *Clause 26 - Continuation of registration*

*Clause 26* preserves the registration of persons who were registered, immediately before the commencement of the provisions of the Bill, under those provisions of the Act which are repealed by the Bill and replaced with new registration provisions.

### *Clause 27 - Provisional registration*

*Clause 27* has the effect of converting the provisional registration held by a person immediately prior to the repeal of section 29 and the commencement of new section 22A to interim registration under new section 22A.

### *Clause 28 - Approved medical officers*

*Clause 28* preserves the entitlement of persons approved as medical officers pursuant to section 38A, which is repealed by the Bill, to perform the functions and duties of a medical officer in a hospital approved by the Board and in the performance of those functions to sign certain certificates which may only be signed by a registered medical practitioner.

### *Clause 29 - Failure to pay annual fee under repealed provisions*

*Clause 29* has the effect of converting a failure to pay an annual fee under provisions which are repealed by the Bill to a failure to pay under the equivalent new provisions inserted in the Act.

*Subclause 29(1)* treats a failure to pay the annual fee under section 24A, which is repealed by the Bill, as a failure to pay the annual fee under new section 29A.

**Subclause 29(2)** treats the cancellation of a medical practitioner's registration for a failure to pay an annual fee under section 24A, which is repealed by the Bill, as a cancellation of registration for failure to pay an annual fee under the provisions of **new section 29A**, thus entitling the person to apply for re-registration under the provisions of **new section 29C**.

**Clause 30 - Applications for registration**

**Clause 30** treats an application for registration, under the provisions of the Act repealed by the Bill, which had not been determined prior to the commencement of the new registration provisions as an application for registration under the new provisions and authorises any inquiry or investigation for the purposes of the application to be continued or completed.

**Clause 31 - Continuation of inquiries and reviews**

**Subclause 31(1)** preserves the application of the provisions of the Act in force immediately prior to the commencement of the amendments effected by the Bill, in relation to any inquiry or review commenced under the Act and pending immediately before the commencement of the amendments.

**Subclause 31(2)** treats an order, decision or determination resulting from an inquiry or review under the Act immediately prior to its amendment by the Bill to be an order, decision or determination made under the Act as amended by the Bill and to have effect accordingly.

**Clause 32 - Complaints relating to previous conduct**

**Subclause 32(1)** enables the holding of an inquiry under the Act, as amended by the Bill, with respect to conduct or any other matter or thing that occurred before, or partly before or partly after, the commencement of the amendments.

However **subclause 32(2)** qualifies this provision by providing that such an inquiry may only be held if it is an inquiry which could have been held under the Act prior to the commencement of the amendments.

**Clause 33 - Existing orders**

**Clause 33** converts an order which has effect under a provision of the Act repealed by the Bill to an equivalent order under the Act as amended.

**Clause 34 - Interpretation**

**Clause 34** is an interpretation provision which defines the term "foreign medical practitioner" for the purpose of Division 2 of Part III of the Act and explains what is meant by a reference to a medical practitioner who was unconditionally registered in Australia at a particular time.

**Subclause 34(1)** defines the term "foreign medical practitioner" to mean a medical practitioner who is not a graduate of a Medical School accredited by the Australian Medical Council Incorporated and who has not passed an examination set by the Australian Medical Council Incorporated for the purposes of registration as a medical practitioner.

**Subclause 34(2)** establishes that a reference to a medical practitioner who was unconditionally registered in Australia at a particular time means a reference to a medical practitioner who was registered at that time under the Act or the law of a State or another Territory, without any condition or limitation on the person's entitlement to practise medicine.

**Clause 35 - Grounds for deregistration**

**Clause 35** makes a foreign medical practitioner liable to deregistration unless the practitioner -

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

was, immediately prior to the commencement of the amendments effected by the Bill, registered under the Act by reason of holding a qualification or qualifications referred to in an item in Part B of the Schedule to the Act.

***Clause 36 - Board to deregister certain foreign practitioners***

**Clause 36** requires the Board to cancel the registration of a foreign practitioner who is liable to deregistration unless it considers that there is good reason why the practitioner's registration should not be cancelled.

**Subclause 36(1)** requires that where the Board considers that a foreign medical practitioner is or may be liable to deregistration the Board must serve written notice on the practitioner requiring him or her to establish that he or she is not liable to deregistration.

**Subclause 36(2)** requires the Board to cancel the registration of a foreign medical practitioner where a practitioner upon whom a notice under **subclause 36(1)** has been served fails to satisfy the Board that he or she is not liable to deregistration unless the Board considers that there is good reason why the practitioner's registration should not be cancelled.

**Subclause 36(3)** requires the Board to give a foreign medical practitioner who is liable to deregistration an opportunity to make submissions to the Board on the question of whether his or her registration should be cancelled and to consider such submissions.

***Clause 37 - Duration of practise necessary to establish practise during a period***

**Clause 37** provides that where a registered medical practitioner has practised medicine for at least 4 days a month he or she will be taken to have practised for the whole of that month. However, if the practitioner has practised medicine for less than 4 days during a month he or she will be taken not to have practised at all during that month.

***Clause 38 - Foreign medical practitioners de-registered for non-payment of fees***

**Clause 38** denies a foreign medical practitioner whose registration has been cancelled for failure to pay the annual fee either under section 24A, which is

repealed by the Bill, or under new section 29A an entitlement to re-registration under new section 29C of the Act unless the practitioner satisfies the Board that -

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

***Clause 39 - Review of decisions***

***Clause 39*** makes decisions of the Board in respect of the deregistration of a foreign medical practitioner subject to a right of appeal to the Administrative Appeals Tribunal.

***Subclause 39(1)*** provides for application to be made for a review of a decision -

- . to cancel the registration of a foreign medical practitioner; or
- . that a foreign medical practitioner whose registration has been cancelled for non-payment of a fee is not entitled to re-registration.

***Subclause 39(2)*** requires that where the Board makes such a decision the Board must give written notice, within 28 days of the decision, and in accordance with ***subclause 39(3)*** the notice must include a statement advising the person of his or her right to appeal to the Administrative Appeals Tribunal and of his or her rights in respect of the provision of a statement of reasons for the decision to the person.

***Subclause 39(4)*** prevents the validity of a decision of the Board dealt with in ***subclause 39(1)*** from being affected by a failure to comply with the notification requirements of ***subclause 39(3)***.

**FORMAL, TECHNICAL AND CONSEQUENTIAL PROVISIONS**

***Clauses 1 and 2 - formal provisions***

***Clauses 1 and 2*** are formal provisions dealing with the short title and commencement of the Act, respectively.

***Clauses - 3, 4, 5, 6, 7, 8, 20, 24 and 40 - technical provisions***

***Clause 3*** is an interpretation provision which defines the term "Principal Act" to mean the *Medical Practitioners Registration Act 1930*.

***Clauses 4 and 5*** amend the long and short titles of the Act to reflect the ambit of the Act which deals with more than the registration of medical practitioners.

***Clause 6*** inserts definitions for the new term "Mutual Recognition Act" and replaces the existing definition of "registered medical practitioner" in section 4 of the Act. The new definition of "registered medical practitioner" recognises that a person may be deemed to be registered under the Act by virtue of the operation of section 25 of the Mutual Recognition Act.

***Clause 6*** also repeals subsection 4(3) of the Act which exempts certain medical practitioners who practise medicine in the performance of their duties as public servants and Defence Force personnel from the application of the Act. This subsection is repealed as it is intended that the Act bind the Crown in right of the Territory, as provided for in new section 4C, and there is no need for a provision to the effect that the Crown in right of the Commonwealth is not bound by the requirements of the Act.

***Clause 7*** inserts new sections 4A, 4B and 4C in the Act which, respectively -

- establish what is meant by the expression "to be competent to practise medicine";
- establish what is meant by the expression "to suffer from an impairment"; and
- provide that the Crown is bound by the Act.

***Clause 8*** amends the heading to Part III of the Act to better reflect the ambit of that Part.

***Clause 20*** amends section 35 of the Act to replace a sexist term with a gender neutral expression.

- remove sexist language;
- substitute a reference to the repealed section of the Act under which the Register was required to be kept with a reference to the new section under which the Register is required to be kept; and
- increase various penalties under the Act.

*Clause 40* provides for the renumbering of the Act as amended by the Bill. As a consequence of the numerous previous amendments made to the Act and the considerable number of amendments effected by the Bill the numbering of the provisions of the Act has become significantly disrupted. *Clause 40* renumbers the sections of the Act in a single series so that they bear consecutive numbers making the legislation more understandable to persons who use it.

*Clauses 13, 17 and 23 - consequential provisions*

*Clause 13* amends section 24B of the Act by removing a reference to section 24A which is repealed by the Bill.

*Clause 17* amends section 30B of the Act by -

- removing a reference to a provision of the Act which is repealed by the Bill and substituting a reference to the new provision which replaces that repealed provision of the Act; and
- omitting a redundant reference to subsection 30A(1).

*Clause 23* repeals the Schedule to the Act. The Schedule sets out qualifications which are recognised by the Board for the purpose of registration as a medical practitioner under provisions of the Act which are repealed by the Bill. With the repeal of those provisions the Schedule has no further application.