

AUSTRALIAN CAPITAL TERRITORY

No. 46 of 1981

HEALTH PROFESSIONS BOARDS (PROCEDURES) ORDINANCE 1981

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No. 46 of 1981

AN ORDINANCE

Relating to the procedures of certain professional registration boards

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated this third day of December 1981.

ZELMAN COWEN
Governor-General

By His Excellency's Command,

MICHAEL MACKELLAR
Minister of State for Health

HEALTH PROFESSIONS BOARDS (PROCEDURES)
ORDINANCE 1981

PART I—PRELIMINARY

1. This Ordinance may be cited as the *Health Professions Boards (Procedures) Ordinance 1981*.* Short title

2. The provisions of this Ordinance shall not apply to, or in relation to, a Board until the date fixed by the Minister, by notice in the *Gazette*, as the date on and after which the provisions of this Ordinance are to apply to, and in relation to, that Board. Application

3. In this Ordinance, unless the contrary intention appears— Interpretation
“ barrister and solicitor ” has the same meaning as in the *Legal Practitioners Ordinance 1970*;

“ Board ” means—

- (a) the Dental Board established under the Dentists Ordinance;
- (b) the Medical Board established under the Medical Practitioners Ordinance;
- (c) the Nurses Registration Board established under the Nurses Ordinance;
- (d) the Optometrists Board established under the Optometrists Ordinance;

* Notified in the *Commonwealth of Australia Gazette* on 9 December 1981.

- (e) the Pharmacy Board established under the Pharmacy Ordinance;
- (f) the Physiotherapists Board established under the Physiotherapists Ordinance; or
- (g) the Veterinary Surgeons Board established under the Veterinary Surgeons Ordinance;

“Chairman” means the Chairman of a Board;

“Dentists Ordinance” means the *Dentists Registration Ordinance* 1931;

“Deputy Chairman” means the Deputy Chairman of a Board;

“Election Ordinance” means the *Health Professions Boards (Elections) Ordinance* 1980;

“Medical Practitioners Ordinance” means the *Medical Practitioners Registration Ordinance* 1930;

“member” means a member of a Board, and includes the Chairman;

“Nurses Ordinance” means the *Nurses Registration Ordinance* 1933;

“Optometrists Ordinance” means the *Optometrists Ordinance* 1956;

“Pharmacy Ordinance” means the *Pharmacy Ordinance* 1931;

“Physiotherapists Ordinance” means the *Physiotherapists Registration Ordinance* 1977;

“proceeding” means—

- (a) in relation to the Dental Board—an inquiry by the Board under section 31 of the Dentists Ordinance;
- (b) in relation to the Medical Board—an inquiry by the Board under section 31 of the Medical Practitioners Ordinance;
- (c) in relation to the Nurses Registration Board—an inquiry by the Board under section 28J or 31 of the Nurses Ordinance;
- (d) in relation to the Optometrists Board—an inquiry by the Board under section 24 of the Optometrists Ordinance;
- (e) in relation to the Pharmacy Board—an inquiry by the Board under section 33 of the Pharmacy Ordinance;

- (f) in relation to the Physiotherapists Board—
 - (i) an inquiry by the Board under section 29 of the Physiotherapists Ordinance; or
 - (ii) a review by the Board of an order made under section 27 of that Ordinance; or
- (g) in relation to the Veterinary Surgeons Board—an inquiry by the Board under section 22 of the Veterinary Surgeons Ordinance;

“Veterinary Surgeons Ordinance” means the *Veterinary Surgeons Registration Ordinance 1965*.

PART II—STATUS AND MEMBERSHIP OF BOARDS

4. (1) Each Board—

Status of
Boards

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal; and
- (c) may sue and be sued in its corporate name.

(2) All courts, judges and persons acting judicially shall take judicial notice of the seal of a Board affixed to a document and shall presume that it was duly affixed.

5. (1) The Chairman and each member of a Board, other than a member of that Board elected pursuant to the Election Ordinance, shall be appointed by the Minister.

Appointment
of Chairman
and members

(2) The Minister shall cause a notice of each appointment made under sub-section (1) to be published in the *Gazette*.

6. (1) The members of a Board shall, from time to time, as occasion requires, elect one of their number to be the Deputy Chairman of that Board.

Deputy
Chairman

(2) Forthwith after the election of a Deputy Chairman of a Board, the Chairman of that Board shall—

- (a) inform the Minister in writing of the election of the Deputy Chairman; and
- (b) cause a notice of the election of the Deputy Chairman to be published in the *Gazette*.

(3) A Deputy Chairman holds office for a period of 12 months from the date of his election, unless he sooner ceases to be a member, and is eligible for re-election.

(4) The Deputy Chairman of a Board may resign his office of Deputy Chairman by writing signed by him and delivered to the Chairman of that Board.

(5) Subject to this Ordinance, a Deputy Chairman has, and may exercise, all the powers and may perform all the functions of the Chairman.

Acting members

7. (1) The Minister may appoint a person to act as a member of a Board (otherwise than as Chairman)—

- (a) during a vacancy in an office of a member, whether or not an appointment has previously been made, or a person has previously been elected, to the office; or
- (b) during any period, or during all periods, when a member is absent from duty or from the Territory or, for any other reason, is unable to perform the functions of this office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) The Minister shall not appoint a person to act as a member of a Board in accordance with sub-section (1) unless the person is eligible for appointment by the Minister as a member of that Board.

(3) The Minister may at any time terminate the appointment of a person appointed to act in accordance with sub-section (1).

(4) A person appointed under this section may resign his appointment by writing signed by him and delivered to the Minister.

(5) While a person is acting as a member of a Board in accordance with this section, he has, and may exercise, all the powers and may perform all the functions of a member.

(6) The validity of anything done by a person purporting to act in accordance with this section shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

Term of office of appointed members

8. (1) Subject to this Ordinance, a member appointed by the Minister shall hold office for such period, not exceeding 3 years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

(2) A person who has attained the age of 65 years shall not be appointed or re-appointed as a member and a person shall not be appointed or re-appointed as a member for a period that extends beyond the date on which he will attain the age of 65 years.

(3) This section does not apply to or in relation to the Chairman of the Veterinary Surgeons Board established under the Veterinary Surgeons Ordinance.

Term of office of elected members

9. (1) Subject to this Ordinance, an elected member shall hold office for such period as is determined in accordance with this section, but is eligible for re-election.

(2) If an elected member attains the age of 65 years before the day on which his term of office would, but for this sub-section, expire, his term of office shall expire on the day on which he attains that age.

(3) The term of office of an elected member shall commence—

(a) if the member was elected at the first election of members—
on a date to be determined by the Minister; and

(b) in any other case—

(i) on the day on which the member is declared elected;
or

(ii) if that day occurs before the expiration of the term of office of the previously elected members, on the day after the expiration of that term.

(4) The term of office of an elected member shall expire—

(a) 3 years after the day on which his term of office commenced;

(b) if the member was elected at an election held immediately succeeding an election in respect of which the number of candidates elected was less than the number of candidates required to be elected—on the day on which the term of office of a member who was elected at that last-mentioned election expires;

(c) if the member was elected in pursuance of Part VI of the Election Ordinance—on the day on which his term of office would have expired if he had been declared elected in accordance with sub-section 12 (1) or 25 (1) of that Ordinance, as the case required; or

(d) if the member was elected at an election held for the purpose of filling the office of a member that had become vacant by virtue of the operation of sub-section (2) or section 10 or 11—on the day on which the term of office of the other member would, but for the operation of that sub-section or section, as the case may be, have expired.

(5) In this section, “elected member” means a person elected as a member of a Board in accordance with the Election Ordinance.

10. A Chairman or other member may resign his office of Chairman or member, as the case may be, by writing signed by him and delivered to the Minister. Resignation

11. (1) The Minister may at any time remove a member from office for misbehaviour or physical or mental incapacity. Vacation of office

(2) If a member—

(a) becomes bankrupt, applies to take the benefit of a law for

the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;

- (b) is convicted in Australia of an offence punishable by imprisonment for one year or longer;
- (c) is absent without leave granted under section 12 from 3 consecutive meetings of the Board of which he is a member; or
- (d) ceases to be a registered practitioner,

the Minister shall remove the member from office.

(3) Where a person who has been elected as a member in accordance with the Election Ordinance ceases to be a registered practitioner before the day on which the term of office of the person as a member would, but for this sub-section, commence, the office to which the person has been elected shall, on that day, become vacant.

(4) In this section, "registered practitioner" means—

- (a) in relation to a member of the Dental Board—a person registered as a dentist under the Dentists Ordinance;
- (b) in relation to a member of the Medical Board—a person registered as a medical practitioner under the Medical Practitioners Ordinance;
- (c) in relation to a member of the Nurses Registration Board—a person registered as a nurse under the Nurses Ordinance;
- (d) in relation to a member of the Optometrists Board—a person registered as an optometrist under the Optometrists Ordinance;
- (e) in relation to a member of the Pharmacy Board—a person registered as a pharmacist under the Pharmacy Ordinance;
- (f) in relation to a member of the Physiotherapists Board—a person registered as a physiotherapist under the Physiotherapists Ordinance; and
- (g) in relation to a member of the Veterinary Surgeons Board—a person registered as a veterinary surgeon under the Veterinary Surgeons Ordinance.

Leave of
absence

12. (1) The Minister may grant leave of absence to a Chairman upon such terms and conditions as the Minister determines.

(2) The Chairman of a Board may grant leave of absence to a member of that Board for such period, not exceeding one year, and upon such terms and conditions as the Chairman determines.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

13. (1) Subject to this section, a member is not entitled to be paid in respect of any duties or functions performed by him in his capacity as a member. Remuneration

(2) A member is entitled to reimbursement for any expenses reasonably incurred by him in the performance of his duties or functions in his capacity as a member.

14. The performance of the functions, or the exercise of the powers of a Board is not affected by reason only of there being a vacancy or vacancies in the membership of the Board. Vacancy in membership

15. No action or suit shall be brought or maintained against a member of a Board for or in respect of any act or thing done in good faith by the member in his capacity as a member. Protection of members

PART III—MEETINGS OF BOARDS

16. (1) A Board shall hold such meetings as are necessary for the performance of its functions. Meetings of Boards

(2) The Chairman of a Board may, at any time, by notice in writing to the other members of that Board, convene a meeting of that Board at the time and place specified in the notice.

(3) The Minister may, by notice in writing to each member of a Board, direct that a meeting of that Board be held at the time and place specified in the notice.

(4) Where, at any time, a majority of the members of a Board requests the Chairman in writing to convene a meeting of that Board, the Chairman shall convene a meeting of that Board in accordance with the request.

(5) A Board may invite a person to attend a meeting of the Board for the purpose of advising or informing the Board on any matter.

17. (1) The Chairman of a Board shall preside at all meetings of that Board at which he is present. Presiding member

(2) In the absence of the Chairman from any meeting, the Deputy Chairman shall preside.

(3) In the absence of the Chairman and the Deputy Chairman from any meeting, the members present and constituting a quorum shall elect one of their number to preside at the meeting.

18. (1) At a meeting of a Board, a quorum consists of the member presiding at the meeting and such number of other members as, together with the member so presiding, constitute a majority of that Board. Quorum

(2) In this section, "majority" in relation to a Board means a majority of members calculated on the basis of the total membership of that Board, including any vacancies in the membership.

Voting

19. (1) Subject to this section, questions arising at a meeting of a Board shall be determined by a majority of the votes of the members present and voting.

(2) At a meeting of a Board at which he is presiding, the Chairman or the Deputy Chairman has a deliberative vote, and, in the event of equality of voting, a casting vote.

(3) If, at a meeting of a Board at which the Chairman or the Deputy Chairman is not presiding, the members present differ upon a question, the determination of that question shall be postponed until the next meeting of the Board.

(4) Voting at a meeting of a Board shall be by show of hands or, if a vote by ballot is called for by a member present at the meeting, by ballot.

Records

20. (1) Each Board shall keep records of its meetings, proceedings and decisions.

(2) Upon the signing of the record of any meeting of a Board by the member presiding at a subsequent meeting of the Board, that record shall be treated by the Board as binding and conclusive.

Motions and resolutions

21. (1) A motion shall not be proposed at a meeting of a Board unless notice in writing of the motion has been given to the Chairman at least 7 days before the date fixed for holding the meeting.

(2) The Chairman shall cause a motion of which notice has been given to him under sub-section (1) to be included in the notice convening the meeting.

(3) No resolution passed, or any act, matter or thing done or authorized to be done, by or at any meeting of a Board, shall be rescinded, amended, cancelled or revoked at any subsequent meeting unless a notice of the proposed rescission, amendment, cancellation or revocation has been given in the notice convening that meeting.

Boards may determine procedures

22. Subject to this Ordinance, the procedure for the purposes of a meeting of each Board shall be as that Board determines.

PART IV—PROCEEDINGS BEFORE BOARDS

Conduct of proceedings

23. (1) The Chairman of a Board or, in the absence of the Chairman, the Deputy Chairman of that Board, shall preside at a hearing of a proceeding before that Board.

(2) A Board shall not conduct a hearing of a proceeding unless the number of members present for the purpose of conducting that hearing, together with the Chairman or the Deputy Chairman presiding at the hearing, constitutes a majority of the members of that Board.

24. (1) A Board shall not begin the hearing of a proceeding unless the Chairman has caused a notice in writing to be served on each party to the proceeding. Notice of proceeding

(2) A notice under sub-section (1) shall—

- (a) state the date, time and place of the hearing of the proceeding;
- (b) identify the provisions of the Ordinance under which the proceeding is instituted;
- (c) contain, where practicable, a statement of the matters to be considered at the hearing of the proceeding; and
- (d) be served on each party to the proceeding a reasonable time before the date referred to in paragraph (a).

(3) A notice under sub-section (1) may be served on a person by delivery to that person personally or by post addressed to that person at his professional or residential address last known to the Chairman or the Deputy Chairman.

25. (1) In a proceeding before a Board— Procedure of Boards

- (a) the proceeding shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Ordinance and of every other relevant enactment and a proper consideration of the matters before the Board permit; and
- (b) the Board is not bound by the rules of evidence but may inform itself of any matter in such manner as it thinks appropriate.

(2) The Chairman or Deputy Chairman presiding at a hearing of a proceeding before a Board may, in respect of a matter not dealt with by this Ordinance, give direction as to the procedure to be followed at or in connection with the hearing.

(3) In this section, "enactment" means—

- (a) an Act;
- (b) an Ordinance of a Territory; or
- (c) an instrument (including rules, regulations or by-laws) made under an Act or an Ordinance,

and includes an enactment as amended by another enactment.

26. (1) Subject to this section, the hearing of a proceeding before a Board shall be in public. Proceedings to be in public

(2) Where a Board is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, the Board may—

- (a) direct that a hearing or part of a hearing shall take place in private and give directions as to the persons who may be present;

- (b) give directions prohibiting or restricting the publication of evidence given before the Board, whether in public or in private, or of matters contained in documents lodged with the Board or received in evidence by the Board; and
- (c) give directions prohibiting or restricting the disclosure to some or all of the parties to a proceeding of evidence given before the Board, or of the contents of a document lodged with the Board, in relation to the proceedings.

Boards may inspect documents

27. A Board may inspect any books, documents or writings that are relevant to a proceeding before the Board, and may retain such books, documents or writings, and may make copies of such parts of them as it thinks fit for the purposes of that proceeding.

Powers of Boards

- 28.** (1) A Board may for the purposes of a proceeding before it—
- (a) take evidence on oath or affirmation;
 - (b) proceed in the absence of a party who has had reasonable notice of the proceeding; and
 - (c) adjourn the proceeding from time to time.

(2) The Chairman of a Board may, for the purposes of the hearing of a proceeding before that Board—

- (a) summon a person to appear before the Board at that hearing to give evidence and to produce such documents (if any) as are referred to in the summons;
- (b) require a person appearing before the Board at that hearing to give evidence either to take an oath or to make an affirmation; and
- (c) administer an oath or affirmation to a person so appearing before the Board.

(3) A summons under this section may be served on a person by delivery to that person personally or by post addressed to that person at his professional or residential address last known to the Chairman or the Deputy Chairman.

Representation before Boards

29. (1) At the hearing of a proceeding before a Board, a party to the proceeding may appear in person or may be represented by some other person.

(2) A person summoned to appear before a Board under section 28 may request that he be represented by some other person and, upon such request being made, the Board may allow such person to be so represented.

Opportunity to make submissions

30. Subject to section 26, a Board shall ensure that every party to a proceeding before the Board is given a reasonable opportunity to

present his case and, in particular, to inspect any documents to which the Board proposes to have regard in reaching a decision in the proceeding and to make submissions in relation to those documents.

31. (1) Where a Board has concluded the hearing of a proceeding before it, the Board shall make a decision and shall prepare and furnish to each party to the proceeding a statement in writing setting out the decision, the findings on material questions of fact, referring to the evidence or other material on which those findings were based, and giving the reasons for the decision. Decisions of Boards

(2) Where the members of a Board are divided in opinion as to the decision to be made—

- (a) if there is a majority of the one opinion—the decision shall be made according to the opinion of the majority; or
- (b) in any other case—the decision shall be made according to the opinion of the Chairman.

32. The Attorney-General may appoint a barrister and solicitor to assist a Board in a proceeding before it. Assistance for Boards

33. (1) A person who represents a party in proceedings before a Board has the same protection and immunity as a barrister and solicitor has in appearing for a party in proceedings in the Supreme Court. Protection of witnesses, &c.

(2) A witness in proceedings before a Board has the same protection as a witness in proceedings in the Supreme Court.

34. (1) A person who attends for the purpose of giving evidence before a Board is entitled to receive such fees and travelling expenses in accordance with the scale in the Second Schedule to the Public Works Committee Regulations as in force from time to time under the *Public Works Committee Act 1969* as the Chairman of that Board determines. Allowances to witnesses

(2) Subject to this section, fees and expenses payable to a person in accordance with sub-section (1) are payable—

- (a) in the case of a person who attends before a Board, whether on summons or not, by reason of a request by a person other than an officer of the Capital Territory Health Commission—by the person at whose request the first-mentioned person attended; or
- (b) in any other case—by the Capital Territory Health Commission.

(3) Where, in a case to which paragraph (2) (a) applies, it was, in the opinion of the Board, reasonable for the request by reason of which the person attended before the Board to have been made, the Board may order that the fees and expenses of the person shall be paid, in whole or in part, by the Capital Territory Health Commission.

(4) Where a Board makes an order under sub-section (3) for the payment of fees and expenses, the fees and expenses are payable by the Capital Territory Health Commission.

Failure of
witness to
attend

35. A person served with a summons to appear as a witness before a Board shall not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report himself from day to day unless excused, or released from further attendance, by a member.

Penalty: \$1,000 or imprisonment for 6 months.

Refusal to
be sworn or
to answer
questions

36. (1) A person appearing as a witness before a Board shall not, without reasonable excuse—

- (a) when required in pursuance of section 28 either to take an oath or make an affirmation—refuse or fail to comply with the requirement;
- (b) refuse or fail, except as provided by section 57 of the *Evidence Ordinance* 1971, to answer a question that he is required to answer by the Chairman presiding at the proceeding; or
- (c) refuse or fail to produce a document that is relevant to the proceeding before the Board and that he was required to produce by a summons served on him under this Ordinance.

Penalty: \$1,000 or imprisonment for 6 months.

(2) A statement or disclosure made before a Board by a witness is not, except in proceedings for giving false testimony at the hearing of a proceeding by the Board, admissible in evidence against him in civil or criminal proceedings in a court.

PART V—MISCELLANEOUS

Annual
reports

37. The Chairman of each Board shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report of the operations of the Board during the year ending on that date.

Evidence

38. (1) A document that purports to be signed by a Chairman or a Deputy Chairman shall be taken to be so signed unless the contrary is proved.

(2) A document that purports to be a record of the terms of a decision of a Board, and to be certified by the Chairman or Deputy Chairman of the Board to be a true record of the decision is, in any proceedings, *prima facie* evidence of the decision.

39. (1) A member of a Board who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by that Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board. Disclosure of pecuniary interest

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Board and the member shall not, unless the Minister or the Board otherwise determines—

- (a) be present during any deliberation of the Board with respect to that matter; or
- (b) take part in any decision of the Board with respect to that matter.

(3) For the purpose of the making of a determination by a Board under sub-section (2) in relation to a member of that Board who has made a disclosure under sub-section (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not—

- (a) be present during any deliberation of the Board for the purpose of making the determination; or
- (b) take part in the making by the Board of the determination.

(4) Where a member fails, without reasonable excuse, to comply with this section, the Minister shall remove the member from office.

40. A person shall not—

- (a) insult a member of a Board in or in relation to the exercise of his powers or functions as a member;
- (b) interrupt the proceedings of a Board; or
- (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where a Board is sitting.

Penalty: \$1,000 or imprisonment for 6 months.

41. A Chairman or other member of a Board shall not be subject to the direction of any other person in respect of any act or thing done in his capacity as Chairman or other member of that Board. Impartiality of Boards

42. The Second Schedule to the *Seat of Government (Administration) Ordinance 1930* is amended by inserting in Part 2—

“ *Health Professions Boards (Procedures) Ordinance 1981* ”

after—

“ *Health Professions Boards (Elections) Ordinance 1980* ”.

Amendment of *Seat of Government (Administration) Ordinance 1930*