

NORTHERN TERRITORY OF AUSTRALIA

MEDICAL ACT

As in force at 1 May 1997

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 May 1997

MEDICAL ACT

An Act to provide for the registration and licensing of persons as medical practitioners, and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Medical Act*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Interpretation

(1) In this Act, unless the contrary intention appears:

approved means approved by the Board.

Australian Medical Council means the association incorporated in the Australian Capital Territory by the name of the Australian Medical Council Incorporated.

Board means the Medical Board of the Northern Territory established by section 4.

certificate of registration means the certificate of registration issued under section 30 to a person who has been granted registration, including interim registration, under section 28 or 29.

Chairman means the Chairman of the Board and includes the Deputy Chairman, or other member presiding at a meeting of the Board under section 12(3)(b), while exercising the powers and performing the functions of the Chairman.

Chief Health Officer means the Chief Health Officer appointed under the *Public Health Act*.

Committee means the Impaired Practitioners Committee established under section 49(1).

conditional registration means the category of registration under this Act where the medical practitioner complies with the criteria for eligibility specified in section 26, together with other requirements for registration.

general registration means the category of registration under this Act where the medical practitioner complies with the criteria for eligibility specified in section 25, together with other requirements for registration.

hearing means a hearing held by the Tribunal under Part 6.

inquiry means an inquiry carried out by the Board under Parts 5 and 6.

investigation means an investigation carried out by the Committee under Part 6.

licence means a licence to practise medicine issued under section 31(1).

medical company means a company authorised by its memorandum or articles of association to practise medicine and, where it does so practise, will do so by way of a medical practitioner.

member means a member of the Board.

practise medicine means to give or perform, for a fee or reward, a medical or surgical service, attendance, operation or advice.

register means the register of medical practitioners kept and maintained under section 19.

Registrar means the Registrar of the Board appointed under section 18(1).

registration means registration, whether general registration or conditional registration, as a medical practitioner under this Act.

Tribunal means the Medical Practitioners Appeals Tribunal established by section 45(1).

- (2) For the purposes of this Act, unless the contrary intention appears, medical practitioner includes a medical company.

- (3) For the purposes of section 16(e) and Parts 5 and 6, unless the contrary intention appears, **medical practitioner** includes a person who:
- (a) the Board has reasonable grounds to suspect is practising as a medical practitioner in the Territory but has no entitlement to do so; or
 - (b) was registered to practise medicine in the Territory but has surrendered his or her licence or failed to renew his or her licence, or has otherwise ceased to be entitled to practise medicine.

Part 2 Administration

Division 1 Board

4 Establishment of Board

- (1) There is established by this Act the Medical Board of the Northern Territory.
- (2) The Board:
- (a) is a body corporate with perpetual succession;
 - (b) shall have a common seal; and
 - (c) is capable, in its corporate name, of acquiring, holding and disposing of real (including leasehold) and personal property and of suing and being sued.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Board affixed to a document and shall assume that it was duly affixed.

5 Composition of Board

- (1) The Board shall consist of:
- (a) the Chief Health Officer; and
 - (b) 5 other members appointed by the Minister by instrument in writing of whom:
 - (i) 4 shall be persons who are medical practitioners and who have been entitled to practise medicine without restriction in a State or Territory of the Commonwealth for not less than 5 years; and

- (ii) one shall be a person who is not a graduate in medicine and who has not, at any time, been registered as being entitled to practise medicine, and shall be appointed to represent the public interest.
- (2) The exercise of a power or the performance of a function by the Board is not affected by reason only of there being a vacancy in the membership of the Board.

6 Period of appointment

- (1) Subject to this Act, a member (other than the Chief Health Officer) holds office until the expiration of such period, not exceeding 3 years, as is specified in the instrument of appointment, but is eligible for re-appointment.
- (2) Where a period of appointment is not specified in the instrument of appointment of a member referred to in subsection (1), the member holds office, subject to this Act, for 3 years.

7 Acting appointment

- (1) Where a member (other than the Chief Health Officer) is or is expected to be absent from duty or from the Territory, the Minister may appoint a person, with the same qualification specified in section 5(1)(b) as the absent member, to act in place of the absent member during his or her absence.
- (2) The Minister may, at any time, terminate an appointment made under subsection (1).
- (3) The validity of a decision of the Board shall not be questioned in any proceedings on a ground arising from the fact that the occasion for the appointment of a person under subsection (1) had not arisen or that an appointment under subsection (1) had ceased to have effect.

8 Chairman and Deputy Chairman

- (1) The Board shall elect one of its members from among the Chief Health Officer and those members appointed under section 5(1)(b)(i) to be its Chairman and another to be its Deputy Chairman.
- (2) In the absence of the Chairman from the Territory or from duty, or when the Chairman is otherwise unable to perform his or her functions, the Deputy Chairman may exercise the powers and shall perform the functions of the Chairman under this Act.

- (3) Subject to subsection (4), a member elected under this section to be the Chairman or Deputy Chairman, while the person remains a member, holds office for a period not exceeding 3 years and is eligible for re-election.
- (4) The Board may at any time, by resolution, elect a new Chairman or Deputy Chairman and, on the passing of such a resolution, the person who held the office immediately before the resolution was passed ceases to hold the office.

9 Resignation of members

A member (other than the Chief Health Officer) may resign office by writing signed by him or her and given to the Minister.

10 Dismissal of members

- (1) The Minister may terminate the appointment of a member (other than the Chief Health Officer) for inability, inefficiency, misbehaviour or physical or mental incapacity.
- (2) If a member (other than the Chief Health Officer):
 - (a) is absent, except by leave of the Board, from 2 consecutive meetings of the Board;
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (c) ceases, if appointed under section 5(1)(b)(i), to be entitled to practise medicine as a medical practitioner,

the Minister shall terminate the appointment of the member.

11 Disclosure of interest

- (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of his or her interest at a meeting of the Board.
- (2) A disclosure under subsection (1) shall be recorded in the minutes of the Board and, unless the Board otherwise determines, the member:
 - (a) shall not, while he or she has that interest, (otherwise than as a member of, and in common with the other members of, an

incorporated company consisting of not less than 25 persons and of which he or she is not a director) take part after the disclosure in a deliberation or decision of the Board; and

- (b) shall be disregarded for the purpose of constituting a quorum of the Board,

in relation to the matter.

- (3) For the purpose of the making of a determination by the Board under subsection (2) in relation to a member who has made a disclosure under subsection (1), that member shall not:

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

12 Meetings of Board

- (1) The Chairman shall call such meetings of the Board as are necessary for the exercise of its powers and the performance of its functions.
- (2) The Minister may, at any time, direct the Chairman to call a meeting of the Board and the Chairman shall comply with the direction.
- (3) At a meeting of the Board:
 - (a) 3 members constitute a quorum;
 - (b) the Chairman shall preside at all meetings of the Board at which he or she is present and, in the absence of the Chairman from a meeting, the Deputy Chairman shall preside and, if both the Chairman and Deputy Chairman are not present, the members present may appoint one of their number who is eligible to be elected Chairman or Deputy Chairman under section 8(1) to preside at the meeting and that person shall exercise the powers and perform the functions of the Chairman for the duration of that meeting;
 - (c) questions arising shall be determined by a majority of the votes of the members present and voting and, in the event of an equality of votes, the Chairman or other member presiding at the meeting shall have, in addition to his or her deliberative vote, a casting vote; and
 - (d) subject to this Act, the Board shall determine the procedure to be followed at or in connection with the meeting.

- (4) The Board shall cause records of its meetings to be kept.

13 Confidentiality

Subject to this Act, the Chairman, a member or the Registrar shall not disclose information obtained in the course of his or her duties as Chairman, member or Registrar, unless the disclosure is made in the course of those duties.

Penalty: \$5,000.

14 Protection of members, &c.

No right of action in a civil proceeding shall lie against the Chairman, a member or the Registrar for or in respect of an act or thing done or omitted to be done in good faith by the person in his or her capacity as Chairman, member or Registrar.

15 Delegation by Board

- (1) The Board may, by instrument in writing, delegate to a person, or the holder from time to time of a particular designation or office, any of its powers and functions under this Act, other than this power of delegation.
- (2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Board.
- (3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Board.

16 Functions of Board

The functions of the Board are to:

- (a) establish a register for the purpose of registering persons as medical practitioners;
- (b) register medical practitioners;
- (c) issue licences to medical practitioners;
- (d) issue guidelines for the professional conduct of medical practitioners;
- (e) conduct inquiries under this Act;
- (f) perform any other functions conferred on it by this or any other Act; and

- (g) do such other things as are necessary or convenient to be done for the due and proper administration of this Act and the Regulations.

17 Powers of Board

The Board has power to do all things necessary or convenient to be done for or in connection with, or incidental to the performance of, its functions.

Division 2 Registrar, &c.

18 Registrar

- (1) The Minister may appoint a person to be the Registrar of the Board.
- (2) The Registrar has such powers and functions as are conferred on him or her by or under this Act.
- (3) In the exercise or performance of his or her powers and functions the Registrar is subject to the directions of the Board.
- (4) The Registrar shall be the custodian of the records of the Board, the registrar and custodian of the records of the Tribunal and the Committee, and the custodian of the register.
- (5) The Registrar may provide approved information in respect of matters dealt with under Part 6 to registration authorities in a State or another Territory of the Commonwealth, to the Australian Medical Council for the purpose of maintaining the National Compendium of Medical Registers or to such other authorities as the Board directs.

19 Register

- (1) The Registrar shall keep and maintain a register of medical practitioners.
- (2) The register shall be in an approved form (including an electronic form) or combination of forms and shall contain particulars in relation to approved matters, including registration, cancellation and suspension of registration and licences.
- (3) The:
 - (a) registration of a person as a medical practitioner in the Territory;
 - (b) cancellation or suspension of a person's entitlement to practise medicine in the Territory; and

- (c) restoration of a person's entitlement to practise medicine in the Territory,

are constituted by the entry in the approved manner in the register of the person's name, approved particulars and other relevant information.

- (4) A person may, during the normal business hours of the Registrar, free of charge, inspect the register and may, on payment of the prescribed fee, obtain a copy of or extract from the register.

20 Register may be altered

A medical practitioner, who obtains or already possesses a higher degree or a qualification other than the qualification in respect of which he or she is registered, may apply to have the higher degree or additional qualification recorded in the register, without payment of a fee, and the Registrar shall make the appropriate entry.

21 Changes, &c., to be notified and register altered

- (1) A medical practitioner who changes his or her address shall, without delay, give notice in writing of the new address to the Registrar.

Penalty: \$2,000.

- (3) The Registrar may make such alterations and amendments in the register as he or she thinks necessary.

22 Fees

- (1) The Minister may, on the recommendation of the Board, by notice in the *Gazette*, prescribe the fee payable for a matter or thing under this Act.

- (2) The Board may, in a particular case, waive the whole or part of a prescribed fee.

Part 3 Qualifications and registration

23 Application for registration

A person may, in an approved form accompanied by the prescribed fee, apply to the Board for registration in a category of general registration or conditional registration.

24 Qualifications for general registration

A person who:

- (a) immediately before 1 January 1993, held both the degrees of Bachelor of Medicine and Bachelor of Surgery or equivalent degrees of a medical school of a university in Australia or New Zealand;
- (b) graduated in a course of study approved by the Australian Medical Council from a medical school so approved; or
- (c) has successfully completed the relevant examinations conducted by the Australian Medical Council,

is qualified for general registration.

25 Eligibility for general registration

A person:

- (a) qualified under section 24 for general registration;
- (b) who has completed a period of approved internship or approved supervised training; and
- (c) whose registration or entitlement to practise medicine is not subject to conditions or limitations imposed by a registering authority in a State or another Territory of the Commonwealth or in another country,

may apply under section 23 for general registration.

26 Eligibility for conditional registration

- (1) A person who is not eligible under section 25 to apply for general registration may apply under section 23 for conditional registration.
- (2) The Board may, in considering an application by a person for conditional registration, take into account the circumstances of the applicant, including whether the person:
 - (a) has certain qualifications obtained outside Australia or New Zealand and is seeking to undertake postgraduate training;
 - (b) has qualifications for general registration but eligibility for registration is incomplete in so far as the person has not undertaken a period of internship or supervised training referred to in section 25(b);

- (c) is a candidate for the relevant examination conducted by the Australian Medical Council and is seeking the Board's approval to undertake supervised training;
- (d) is applying for a teaching or research position and the Board is satisfied that his or her qualifications and experience are appropriate for registration;
- (e) is seeking registration where the Board is satisfied that it is in the public interest to grant registration or that the person is suitable to meet a community need;
- (f) has specialist qualifications and is seeking registration:
 - (i) to practise in the speciality where the qualification is assessed to the satisfaction of an approved specialist college and certified by the Australian Medical Council as comparable to the standard required of a specialist trained in Australia; or
 - (ii) to undergo further specialist training or examination by an approved specialist college before being finally assessed by that college; or
- (g) has had conditions or limitations placed on his or her registration or licence to practise medicine elsewhere for disciplinary, health or other reasons.

27 Requirements of application

- (1) An application under section 23 shall be accompanied by a declaration that:
 - (a) the person's registration or entitlement to practise in a State or another Territory of the Commonwealth or in another country is not cancelled or suspended as a result of disciplinary action;
 - (b) the person is not suffering from a mental or physical disability that would prevent him or her from practising medicine efficiently;
 - (c) there are no complaints outstanding or under-takings given in another jurisdiction, whether in a State or another Territory of the Commonwealth or in another country, relating to the practice of medicine, that constitute an impediment to the person's registration; and

- (d) sets out the conditions or limitations, if any, imposed on a person's registration or entitlement to practise medicine in another jurisdiction, whether in a State or another Territory of the Commonwealth or in another country.
- (2) An applicant under section 23 shall, unless exempted by the Board, appear in person before a nominee appointed by the Board and shall satisfy the Board as to the following matters:
- (a) his or her identity;
 - (b) his or her qualifications and experience;
 - (c) that he or she is of good fame and character;
 - (d) that he or she has an adequate command of the English language; and
 - (e) that he or she resides or intends to reside in the Territory.

28 Grant or refusal of registration

- (1) The Board may, if it is satisfied that an applicant under section 23 satisfies the requirements under sections 24 to 27 inclusive, register the applicant.
- (2) Registration:
- (a) shall be in the category of general registration or conditional registration, as appropriate; and
 - (b) may be subject to such conditions as the Board thinks fit and as are recorded in the register and on the licence issued under section 31.
- (3) Where the Board refuses to register an applicant, it shall, if requested by the applicant, give as soon as practicable to the applicant its reasons in writing for so refusing.
- (4) Where the Board gives its reasons under subsection (3), the applicant may, not later than 28 days after the date on which the reasons were given, appeal to the Tribunal against the refusal.

29 Chairman or Registrar may grant interim registration

- (1) Where the Chairman or the Registrar is satisfied that registration will be granted by the Board as the result of an application under section 23, he or she may, on payment by the applicant of the prescribed fee, grant to the applicant interim registration in a category of general registration or conditional registration.

- (2) Subject to subsection (3), interim registration granted under subsection (1) may be subject to such conditions, if any, as the Chairman or Registrar thinks fit and records in the register and on the certificate of registration in respect of the interim registration.
- (3) The Board shall, in accordance with this Part, determine as soon as practicable the application for registration of a person who has been granted interim registration under subsection (1) and the interim registration remains in force for such period (if any) as the Chairman or Registrar records in the register and on the certificate of registration, not exceeding 3 months, or until the Board makes the determination, whichever first occurs.
- (4) Where the Board has not determined an application for registration before the expiration of interim registration granted under subsection (1), the Chairman or Registrar shall grant the applicant further interim registration under this section.
- (5) The registration by the Board of a person who has been granted interim registration under this section has effect from the commencement of the interim registration.
- (6) A person granted interim registration under subsection (1) is entitled to practise medicine in the Territory, without holding a current licence, while the interim registration is in force.

Part 4 Registration, &c.

30 Issue of registration certificate

The Registrar shall issue a certificate of registration, in an approved form, to a person registered under section 28 or 29.

31 Medical practitioner to apply for licence

- (1) A medical practitioner shall, in the approved form accompanied by the prescribed fee, not later than one month after being granted registration (not being interim registration under section 29) apply to the Registrar, in an approved form, for a licence, and the Registrar shall issue a licence to the medical practitioner.
- (2) Where a medical practitioner fails to apply for a licence in accordance with subsection (1), the Registrar shall cancel his or her registration.

32 Expiry, &c., of licences

- (1) Subject to this Act, a licence expires:
 - (a) on the date specified in the licence; or
 - (b) if no such date is specified, on 30 September next after the issue of the licence.
- (2) Where a person's registration has been cancelled under this Act, the person's licence is, by force of this section, cancelled.
- (3) Where the entitlement of a person to practise medicine in the Territory is suspended under this Act, his or her licence is, by force of this section, cancelled.
- (4) A person referred to in subsection (2) or (3) shall, not later than 7 days after receipt of notice of the cancellation or suspension, either personally or by post, deliver his or her licence to the Registrar.

Penalty: \$2,000.

- (5) Where the entitlement of a person referred to in subsection (3) to practise medicine in the Territory is restored:
 - (a) before the date on which the licence that was cancelled under subsection (3) would have expired, the Registrar shall issue a replacement licence; or
 - (b) after the date on which such a licence would have expired, the Registrar shall, on application to him or her in the approved form accompanied by the prescribed fee, issue a licence,

to the person.
- (6) Where a person does not make an application under subsection (5)(b) accompanied by the prescribed fee for the issue of a licence within one month after the date his or her entitlement to practise medicine is restored, the Registrar shall cancel his or her registration.

33 Renewal of conditional registration

- (1) Where a medical practitioner who has been granted conditional registration subject to a condition that specifies the period for which the conditional registration is to remain in force, he or she may, not less than one month before it expires, or within such other period as the Board allows, apply to the Board for the renewal of that registration and, if the Board is satisfied that the medical

practitioner satisfies the requirements for renewal under this section, the Board may renew the conditional registration of the medical practitioner.

- (2) An application for the renewal of conditional registration under subsection (1) shall:
 - (a) be in an approved form and accompanied by the prescribed fee;
 - (b) comply with section 27(1); and
 - (c) set out reasons for the renewal of the registration.
- (3) In considering an application for renewal of conditional registration, the Board shall comply with section 26(2).
- (4) The conditional registration the subject of an application for renewal under this section and the licence of the applicant in force at the time of making the application remain in force until the Board determines the application for renewal.

34 Renewal of licences, &c.

- (1) A medical practitioner may apply to the Registrar for the renewal of a licence before the date of its expiry and the Registrar shall renew the medical practitioner's licence.
- (2) An application under subsection (1) shall be in an approved form accompanied by the prescribed fee.
- (3) Where a medical practitioner fails to apply under subsection (1) for renewal of his or her licence, the Registrar shall cancel his or her registration one month after the date of the expiration of the licence.
- (4) A person whose licence has expired may, before the expiration of 12 months after the licence expired, apply to the Registrar in the approved form accompanied by the prescribed fee for restoration of:
 - (a) his or her licence; or
 - (b) where the person's registration has been cancelled under subsection (3), his or her registration and licence,

and the Registrar shall restore the person's licence, or the person's registration and licence, as the case may be.

- (5) Where the Registrar restores a licence or registration on application made under subsection (4), the person is deemed to have continually held a licence or to have been continually registered as a medical practitioner, as the case may be.

35 Application for registration following cancellation

- (1) A person whose registration is cancelled under this Act, other than a person to whom section 44(2) applies, may apply for general or conditional registration under section 23.
- (2) Where the person's registration was cancelled under section 36 or 43(1), an application under subsection (1) shall set out the change of circumstances in respect of which the application is made and the reasons that the applicant considers sufficient for his or her registration to be restored.

Part 5 Conduct of medical practice

36 Medical practitioner shall observe conditions of registration

- (1) Where a medical practitioner does not observe the conditions imposed on his or her registration, the Board may, by notice in writing to the medical practitioner, cancel the registration.
- (2) A person whose registration is cancelled under subsection (1) shall, not later than 7 days after receipt of notice of the cancellation, return his or her licence to the Registrar.

Penalty: \$2,000.

- (3) A person may, not later than 28 days after the date of the notice of cancellation of his or her registration under subsection (1), appeal to the Tribunal against the cancellation.

37 Minister may direct Board to carry out inquiry

Where the Minister is of the opinion that the professional conduct of a medical practitioner should be investigated, the Minister may direct the Board in writing to carry out an inquiry to investigate that conduct.

38 Grounds of complaint against medical practitioner

- (1) A person may make a complaint in writing to the Registrar against a medical practitioner on the ground that the medical practitioner:
- (a) has obtained registration by fraud or misrepresentation;

- (b) does not possess a qualification by reason of which he or she obtained registration;
 - (c) has been found guilty of an offence that renders him or her unfit to practise medicine;
 - (d) has been taken into custody under the *Mental Health Act*;
 - (e) is suffering from a mental or physical disability that prevents him or her from practising medicine efficiently;
 - (f) by addiction to intoxicating liquor or drugs, has rendered himself or herself unfit to practise medicine;
 - (g) has practised medicine in a manner that demonstrates a lack of adequate knowledge, skill, judgment or care in the practice of medicine; or
 - (h) is guilty of any other unprofessional conduct.
- (2) For the purposes of subsection (1)(h), unprofessional conduct includes:
- (a) the practice of advertising to procure patients or to increase a practice, or sanctioning or being associated with or employed by a person who sanctions such an advertisement; or
 - (b) the practice of canvassing or employing an agent or canvasser to procure patients or to increase a practice, or sanctioning or being associated with or employed by a person who sanctions such canvassing or employment.

39 Procedure in respect of complaint

- (1) The Registrar may require a complaint under section 38 to be verified by a statutory declaration.
- (2) The Registrar shall, as soon as practicable, bring a complaint under section 38 to the attention of the Board.

40 Board to carry out inquiry

- (1) The Board:
 - (a) may, where it considers there are grounds for doing so, carry out an inquiry of its own motion; or
 - (b) shall:
 - (i) on being directed under section 37 by the Minister;

(ii) on a complaint being brought to its attention by the Registrar; or

(iii) on receipt of a recommendation of the Committee in pursuance of section 52,

consider the Minister's direction, the complaint or the recommendation, as the case may be, and, where it is satisfied there are grounds for carrying out an inquiry, carry out an inquiry.

- (2) The Board may, where it is satisfied at any time after deciding to carry out an inquiry that there may be a risk to public safety by reason of the medical practitioner the subject of the inquiry continuing to practise medicine, suspend (for such period as the Board sees fit), or impose conditions on, the medical practitioner's registration until the completion of the inquiry.

Part 6 Inquiries and appeals, &c.

Division 1 Inquiries by Board

41 Conduct of inquiry

- (1) Schedule 1 applies to and in relation to an inquiry under this Division.
- (2) Subject to this Division and Schedule 1, the procedure at an inquiry shall be as determined by the Board.

42 Board to give reasons for inquiry

The Board shall, not later than 14 days before holding an inquiry, give written notice of the nature of, and the grounds for, the inquiry to the medical practitioner the subject of the inquiry.

43 Disciplinary action after inquiry

- (1) After conducting an inquiry under this Division, the Board may take the action it considers appropriate, being any one or more of the following:
- (a) dismiss the matter the subject of the inquiry and, where the registration or licence of the medical practitioner concerned has been suspended, become subject to conditions, was not renewed or was surrendered, direct the Registrar to restore as soon as practicable his or her registration or issue a replacement licence;

- (b) require the medical practitioner to attend before the Board for counselling;
 - (c) reprimand the medical practitioner;
 - (d) impose conditions on the medical practitioner's registration or licence;
 - (e) require a written undertaking by the medical practitioner as to his or her future conduct;
 - (f) fine the medical practitioner an amount not exceeding \$10,000; or
 - (g) cancel or suspend for such period as the Board thinks fit the registration of the medical practitioner.
- (2) A fine imposed under subsection (1) is a debt due and payable by the medical practitioner to the Board.
- (3) The Registrar shall, as soon as practicable after the determination of an inquiry under this Division, notify the registration authorities in a State or another Territory of the Commonwealth of the Board's decision, including the conditions or undertakings, if any, imposed or required.

44 Surrender of licence and reissue, &c.

- (1) A person whose registration or licence is cancelled, suspended or made subject to conditions (as the case may be) under section 43(1) shall, not later than 7 days after receipt of notice from the Registrar requiring the return of his or her licence to the Registrar, deliver or send the licence accordingly.

Penalty: \$2,000.

- (2) Where a medical practitioner:
- (a) fails to give an undertaking required under section 43(1)(e); or
 - (b) fails to pay a fine imposed under section 43(1)(f),

within 7 days after the date of receipt of notice of the Board's decision, or such further period as the Board allows, the Registrar shall cancel his or her registration.

(3) The Registrar may, with the approval of the Board, restore the registration of, or issue a replacement licence to, a medical practitioner who has been the subject of an inquiry under this Division where:

- (a) the medical practitioner has given the written undertaking required under section 43(1)(e); or
- (b) the medical practitioner has paid the fine imposed under section 43(1)(f),

as the case may be.

Division 2 Medical Practitioners Appeals Tribunal

45 Medical Practitioners Appeals Tribunal

(1) There is established by this Act a Tribunal to be known as the Medical Practitioners Appeals Tribunal.

(2) The Tribunal shall consist of:

- (a) the Chief Magistrate, or another magistrate nominated by the Chief Magistrate, who shall be the Chairman of the Tribunal; and
- (b) 2 assessors (who shall be medical practitioners of not less than 10 years standing) appointed by the Minister on the recommendation of the Board, after consultation by the Board with the Northern Territory Branch of the Australian Medical Association, to hear a particular appeal.

(3) A medical practitioner appointed as an assessor in respect of an appeal may be reappointed to hear a subsequent appeal.

46 Appeal to Tribunal

(1) A person aggrieved by a decision of the Board may, not later than 28 days after the date of the decision or such longer time as this Act or the Tribunal allows, appeal in writing against the decision to the Tribunal.

(2) On an appeal being lodged with the Registrar, the Registrar shall promptly request:

- (a) the Chief Magistrate to nominate the Chairman of the Tribunal in accordance with section 45(2)(a); and
- (b) the Minister to appoint 2 assessors in accordance with section 45(2)(b),

and the Chief Magistrate and the Minister shall, as soon as practicable, give written notification to the Registrar of the name of the Chairman of the Tribunal and the names of the assessors respectively.

- (3) Where the Registrar has received notification of the names of the Chairman of the Tribunal and the assessors, he or she shall advise the appellant of the constitution of the Tribunal.

47 Determination of questions

- (1) Schedule 1 applies to and in relation to an appeal under this Division.
- (2) Subject to this Division and Schedule 1, the procedure at the hearing of an appeal under this Division shall be as determined by the Tribunal.
- (3) A question of law or procedure arising before the Tribunal shall be determined by the Chairman of the Tribunal and all other questions shall be determined by a majority decision of the members of the Tribunal.
- (4) The Tribunal shall, in determining a matter before it:
 - (a) act without regard to technicalities and legal forms; and
 - (b) keep records of its proceedings.
- (5) The Tribunal may, in the discretion of the Chairman of the Tribunal, be constituted by the Chairman of the Tribunal alone for the purpose of:
 - (a) the giving of directions for the conduct of the hearing of an appeal, including general practice directions or directions in relation to a particular appeal; or
 - (b) the adjournment of any proceedings of the Tribunal.
- (6) In determining an appeal, the Tribunal may, in such manner as it thinks fit:
 - (a) dismiss the appeal;
 - (b) revoke or vary the decision of the Board; or
 - (c) remit the matter to the Board for re-hearing.

- (7) The Tribunal may make an order for costs against a party to proceedings if it is satisfied that the party's conduct in relation to the proceedings was frivolous, vexatious or calculated to cause delay or that the party has, in the circumstances, acted unreasonably.
- (8) At the conclusion of proceedings, the Tribunal shall give to the parties a written statement of the reasons for its decision.

48 Appeal from Tribunal

- (1) A person who is aggrieved by a decision of the Tribunal may, on a question of law, appeal to the Supreme Court.
- (2) An appeal under subsection (1) shall be filed in the Supreme Court not later than 28 days after the decision appealed against was made or such longer period as the Supreme Court allows.
- (3) In determining an appeal under subsection (1), the Supreme Court may, in such manner as it thinks fit:
 - (a) dismiss the appeal;
 - (b) revoke or vary the decision of the Tribunal; or
 - (c) remit the matter to the Tribunal for re-hearing,

and, in exercising such a power, the Supreme Court may make such orders as the Tribunal could have made in determining the matter.

- (4) Notwithstanding subsection (3), the Supreme Court may, in an appeal under this section, make such orders as to costs as it thinks fit.

Division 3 Impaired Practitioners Committee

49 Impaired Practitioners Committee

- (1) The Board may establish a committee, to be known as the Impaired Practitioners Committee, to carry out investigations concerning particular medical practitioners.
- (2) The Board may, from time to time, appoint 2 medical practitioners to the Committee to carry out an investigation in respect of a particular medical practitioner.
- (3) A medical practitioner appointed under subsection (2) is eligible for re-appointment.

- (4) The Committee shall investigate information or a complaint referred to it by the Board concerning whether the medical practitioner is:
 - (a) addicted to drugs or intoxicating liquor;
 - (b) suffering from a mental or physical disability; or
 - (c) in a state of health that may affect his or her ability to practise medicine.
- (5) The procedure of an investigation conducted by the Committee shall be as determined by it but nevertheless shall be conducted with a view to assessing the circumstances of the medical practitioner and, if the Committee thinks fit, rehabilitating him or her.
- (6) The Committee shall, in conducting an investigation, act without regard to technicalities and legal forms, and is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.
- (7) Throughout the course of an investigation by the Committee, a person is not entitled to be represented by a legal practitioner or other representative.
- (8) The Committee shall, before making its recommendation on a matter referred to it for investigation, give the medical practitioner a reasonable opportunity to make oral or written submissions to it, unless it is satisfied that immediate action is necessary to avoid a risk to public safety.
- (9) If the Committee decides that the ability of a medical practitioner to practise medicine is affected to such an extent that it is desirable in the public interest that limitations be placed on the medical practitioner, the Committee shall conclude its investigation.
- (10) The Committee shall cause a record to be kept of its proceedings in carrying out an investigation.
- (11) Sections 11, 13 and 14 apply as if a reference in those sections to:
 - (a) the Board includes a reference to the Committee; and
 - (b) a member includes a reference to a medical practitioner appointed to the Committee.

50 Obligation to report unfitness

- (1) Where a medical practitioner is treating a patient (who is a medical practitioner) in relation to an illness that, in the opinion of the first-mentioned medical practitioner, has resulted in or is likely to result

in mental or physical incapacity that seriously impairs or may seriously impair the patient's ability to practise medicine, the first-mentioned medical practitioner shall give to the Board a written report stating:

- (a) the reasons for and nature of the impairment;
- (b) the views of any other medical practitioner in relation to the matters that are known to the first-mentioned medical practitioner; and
- (c) any other relevant information.

Penalty: \$5,000.

- (2) The person in charge of a mental health facility approved by the Minister who admits a medical practitioner as a patient (whether as a voluntary or an involuntary patient) shall immediately give to the Board notice in writing of the admission.
- (3) The Board shall refer a report made under subsection (1) or a notice under subsection (2) to the Committee for investigation.

51 Power to require person to submit to examination, &c.

- (1) For the purpose of inquiring into the mental or physical capacity of a medical practitioner, the Committee may direct the medical practitioner:
 - (a) to attend for counselling before:
 - (i) the Committee or a member of the Committee; or
 - (ii) another person nominated by the Committee who the Committee considers is suitably qualified to counsel the medical practitioner; or
 - (b) to submit to an examination by a medical practitioner nominated by the Committee.
- (2) A failure by a medical practitioner, without reasonable excuse, to comply with a direction under subsection (1) is, for the purposes of this Division or an inquiry or appeal under this Part, prima facie evidence that the medical practitioner has an addiction or a disability that renders him or her unfit to practise medicine or unable to practise medicine efficiently.

- (3) The Board may suspend the registration of a medical practitioner who fails to comply with a direction under subsection (1) and the suspension remains in force until the medical practitioner attends for counselling or submits to an examination.

52 Report by Committee

- (1) On concluding an investigation, the Committee shall make recommendations, in the form of a report of the investigation, to the Board in relation to the medical practitioner.
- (2) The Committee shall, as soon as practicable after making the report under subsection (1) to the Board, give to the medical practitioner a notice in writing advising him or her of the report and the reasons for its recommendations.

Division 3 General

53 Persons to answer questions

A person is not excused from answering a question when required to do so under this Part on the ground that the answer might tend to incriminate him or her or make him or her liable to a penalty, but the answer is not admissible in any court proceedings against the person other than proceedings for offences against this Act or for giving false evidence.

Part 7 Miscellaneous

Division 1 Medical companies

54 Medical companies

- (1) A medical practitioner may, with one or more other medical practitioners, form a medical company by incorporation under the Corporations Law.
- (2) Notwithstanding subsection (1), an individual medical practitioner may, with one other person who is not a medical practitioner, form a medical company by incorporation under the Corporations Law.
- (3) A medical company shall not be incorporated except under a memorandum and articles of association, and a name, approved by the Board.

Penalty: \$5,000.

- (4) A medical company shall not alter its memorandum or articles of association or name approved under subsection (3) unless it has submitted the proposed alteration to the Board and the alterations have been approved.

Penalty: \$5,000.

- (5) The Board may request a medical company to make reasonable alterations within a reasonable time to its memorandum and articles of association and the medical company shall comply with the request.

- (6) A medical company which does not comply with a request of the Board under subsection (5) is guilty of an offence.

Penalty: \$5,000.

- (7) An application for approval under this section shall be accompanied by the prescribed fee.

- (8) The shareholders of a medical company who are medical practitioners shall be jointly and severally responsible for the liabilities, and shall jointly and severally guarantee the debts, of the medical company.

- (9) In this section, **shareholders** includes persons for whose benefit a share in the medical company is being held in trust and the trustee of the share.

Division 2 Offences, &c.

55 Offence to contribute to unprofessional conduct

A person who directly or indirectly contributes to unprofessional conduct by a medical practitioner is guilty of an offence.

Penalty: \$10,000.

56 Person not to practise, &c., without licence

- (1) Subject to subsection (2), a person, other than a medical practitioner to whom section 29, 31(1) or 34(3) applies, shall not:

(a) practise medicine;

(b) hold himself or herself out as being, or in any manner pretend to be, or take or use the name or title (alone or in conjunction with any other title, word or letter) of, a physician, doctor of medicine, licentiate in medicine or surgery, master in surgery, bachelor of medicine or surgery, doctor, surgeon, medically

qualified, registered or licensed practitioner or other medical or surgical name or title; or

- (c) hold himself or herself out, directly or indirectly, by a name, word, letter, title or designation, whether expressed in words or by letters, or partly in one and partly in the other, either alone or in conjunction with any other word or words, or by any other means, as being entitled or qualified, able or willing to practise medicine,

unless he or she holds a current licence.

Penalty: \$25,000 or imprisonment for 5 years.

- (2) Subsection (1) does not apply to a person who is registered as a medical practitioner, however described, and entitled to practise medicine in a State or another Territory of the Commonwealth who gives or performs, for a fee or reward, a medical or surgical service, attendance, operation or advice:
 - (a) for the purpose of escorting a patient to or from the Territory;
 - (b) for the purpose of a surgical operation, being an organ retrieval or transplant by a member of an organ transplant service recognised by the hospital at which the operation takes place;
 - (c) for the purpose of participation in neonatal or adult intensive care transfers;
 - (d) for the purpose of compliance with a law in force in the Territory;
 - (e) for the purpose of proceedings in a court; or
 - (f) in the case of an emergency.

57 Person not to practise except in own name

A medical practitioner shall not practise medicine except in his or her own name or in the name of a medical company.

Penalty: \$5,000.

58 Unregistered persons not to hold medical appointments

A person, other than a medical practitioner, shall not hold an appointment:

- (a) as a physician, surgeon or other medical officer in:
 - (i) a hospital, infirmary or dispensary, or in a public institution for affording medical relief in sickness, mental illness, infirmity or old age;
 - (ii) a health centre, or welfare, natal, or industrial clinic or other centre or clinic for the promotion of public health by the prevention or early diagnosis or the treatment of disease; or
 - (iii) a prison within the meaning of the *Prisons (Correctional Services) Act* or a detention centre within the meaning of the *Juvenile Justice Act*; or
- (b) as a Medical Officer of Health within the meaning of the *Public Health Act*.

Penalty: \$10,000.

59 Signing death certificates, &c.

A person, other than a medical practitioner, shall not sign:

- (a) a certificate required by a law of the Territory from a physician, surgeon, licentiate in medicine or surgery, medical practitioner or from a Medical Officer of Health within the meaning of the *Public Health Act*; or
- (b) a medical certificate of the cause of death of a person.

Penalty: \$5,000.

60 Failure of person to appear before Board or Tribunal, &c.

- (1) A person who has been served with a notice referred to in clause 2(1)(a) of Schedule 1 to attend as a party or to give evidence, or to produce books, papers and documents, before the Board or Tribunal (as the case may be) and fails, without reasonable excuse, to comply with the notice is guilty of an offence.

Penalty: \$5,000.

(2) A person who, in the course of the conduct of an inquiry by the Board or a hearing by the Tribunal:

- (a) misbehaves before the Board or Tribunal;
- (b) wilfully insults a member of the Board or Tribunal; or
- (c) without lawful excuse, interrupts the proceedings of the Board or Tribunal,

is guilty of an offence.

Penalty: \$5,000.

(3) A person who attends before the Board or Tribunal during the course of the conduct of an inquiry or hearing, as the case may be, and who refuses:

- (a) to make an oath or affirmation; or
- (b) to answer a relevant question when required to do so by the Board or Tribunal,

is guilty of an offence.

Penalty: \$5,000.

61 Institution of proceedings

Proceedings for offences against this Act or the Regulations may be instituted in any court of competent jurisdiction by the Chairman or, in the case of proceedings for offences against section 60 in respect of the Tribunal, the Chairman of the Tribunal.

Division 3 Miscellaneous

62 Medical practitioner may sue for fees, &c.

(1) A medical practitioner shall be entitled to sue in a court of competent jurisdiction for the recovery of his or her fees or other remuneration for professional services, whether medical or surgical, and it shall be sufficient to state in the particulars of demand the words "for medical services" which shall include every demand for medical or surgical aid, including medicines, when supplied by the plaintiff to the defendant.

- (2) A person who is not a medical practitioner shall not sue or counterclaim for, set off or recover a charge or remuneration for a medical or surgical advice, attention, service or operation or for any medicine that he or she has both prescribed and supplied.

Penalty: \$5,000.

63 Service of notices

A notice or document required under this Act to be served on, posted, given or sent to a person shall be deemed to be served, posted, given or sent if it is sent by prepaid post addressed to the last known address of the person.

64 Surrender of licence

- (1) A medical practitioner may surrender his or her licence by returning the licence together with the approved form to the Registrar.
- (2) On receipt of a licence and the approved form referred to in subsection (1), the Registrar shall cancel the registration of the medical practitioner concerned.

65 Certificate of Good Standing

- (1) The Registrar may, at the request of a medical practitioner, on payment of the prescribed fee, issue a Certificate of Good Standing in an approved form.
- (2) A certificate under subsection (1) is prima facie evidence that at the date of the certificate:
- (a) the medical practitioner named in the certificate has the qualifications set out in the certificate;
 - (b) the medical practitioner is registered in the Territory; and
 - (c) no disciplinary proceedings under this Act are pending or contemplated against the medical practitioner.

66 Effect of cancellation in a State or another Territory

- (1) Where the Board ascertains that a medical practitioner's registration or entitlement to practise in a State or another Territory of the Commonwealth:
- (a) has been cancelled or suspended; or
 - (b) has been made subject to a condition,

on disciplinary grounds or as a result of or in anticipation of criminal, civil or disciplinary proceedings, the medical practitioner's registration in the Territory is affected in the same way and the Board shall, as soon as practicable, notify (in writing) the medical practitioner.

- (2) The Board may, in relation to a cancellation, suspension or imposition of a condition referred to in subsection (1), take such action as it thinks fit including revoking the cancellation, suspension or condition.

67 Regulations

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the Regulations may provide for and in relation to:
- (a) the regulation and control of the professional conduct of medical practitioners and the practice of the profession;
 - (b) the regulation, restriction or prohibition of the publication of advertisements by or on behalf of medical practitioners;
 - (c) the requirements to be observed by medical companies; and
 - (d) the imposition of penalties, not exceeding a fine of \$10,000, for the contravention of or failure to comply with a regulation.

68 Repeal

The Acts specified in Schedule 2 are repealed.

Part 8 Transitional and saving

69 Definitions

In this Part:

commencement means the commencement of this Act.

former Board means the Board established under the repealed Act.

former Tribunal means the Tribunal established under the repealed Act.

former register means the register maintained under the repealed Act.

repealed Act means the *Medical Practitioners Registration Act* as in force immediately before the commencement.

70 Former Board Members

- (1) Subject to this Act, a member of the former Board immediately before the commencement shall continue in office after the commencement as a member of the Board established under this Act until the term of that member under the repealed Act expires by effluxion of time.
- (2) The Chief Health Officer shall continue to be the Chairman of the Board until the election of a Chairman under this Act.
- (3) The person who was, immediately before the commencement, elected to be the Deputy Chairman shall, on the commencement, continue to be the Deputy Chairman until a Deputy Chairman is elected under this Act.

71 Former Tribunal

Where the former Tribunal was constituted to hear an appeal which, immediately before the commencement, had not been determined, the Tribunal shall continue to be so constituted under this Act in respect of that appeal until its determination.

72 Assets and liabilities, &c., of the former Board; pending matters

- (1) On the commencement all assets, including funds, and liabilities of the former Board are, by force of this section, the assets and liabilities of the Board.
- (2) Any proceedings that, immediately before the commencement, might have been brought or continued by or against the former Board may be brought or continued by or against the Board.
- (3) Any matter pending before the former Board, the former Tribunal or the Supreme Court before the commencement shall be continued before the Board, the Tribunal or the Supreme Court, as the case may be, as if this Act had not commenced.

73 Registrar

The person holding office as Registrar immediately before the commencement shall, on the commencement, be the Registrar of the Board for the purposes of this Act as if appointed under section 18.

74 Register

Subject to this Act, the former register shall, on the commencement, become part of the register under this Act.

75 Persons registered under repealed Act

Subject to this Act, a person who immediately before the commencement was registered under the repealed Act, is, on the commencement, registered under this Act in the same capacity, on the same terms and for the period that applied to his or her registration under the repealed Act.

76 Registration certificate issued under repealed Act

Subject to this Act, a registration certificate issued under the repealed Act remains in effect, at the commencement, as a certificate of registration issued for the purposes of this Act until the time when that registration certificate would have expired under the repealed Act.

77 Licence issued under repealed Act

Subject to this Act, a licence issued under the repealed Act remains in effect, at the commencement, as a licence issued for the purposes of this Act until the time when that licence would have expired under the repealed Act.

Schedule 1

sections 41 and 47

INQUIRIES AND TRIBUNAL HEARINGS

1. NOT BOUND BY RULES OF EVIDENCE

Unless the Board or the Tribunal determines otherwise, neither the Board at an inquiry nor the Tribunal at a hearing is bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.

2. WITNESSES, &c.

(1) The Board or the Tribunal may, for the purposes of an inquiry or hearing before it:

(a) by written notice signed on behalf of it by a member, the Registrar or the Chairman of the Tribunal, require:

(i) the attendance of a person before the Board or Tribunal to appear as a party to the proceedings or to give evidence in relation to the inquiry or hearing; or

(ii) the production before the Board or Tribunal of any relevant books, papers or documents;

(b) inspect any books, papers or documents produced before it and retain them for such reasonable period as it thinks fit, and make copies of any of them or their contents;

(c) require a person to make an oath or affirmation to answer truthfully all questions put by a member of the Board or Tribunal, or a person appearing before the Board or Tribunal, relevant to the determination of a matter before it; or

(d) require a person giving evidence before the Board or Tribunal to answer a relevant question put by a member of the Board or Tribunal or a person appearing before it (as the case may be).

(2) A person who appears as a witness before the Board or Tribunal has the same obligations and protection as a witness in proceedings before the Supreme Court.

(3) The Registrar shall give the parties to proceedings before the Board or Tribunal not less than 14 days notice in writing of the time, date and place of the proceedings.

- (4) A party is entitled to appear before the Board or Tribunal personally or to be represented by a legal practitioner or other representative.
- (5) A legal practitioner or other representative appearing before the Board or Tribunal has the same liabilities, protection and immunity as a legal practitioner has in appearing for a party in proceedings before the Supreme Court.
- (6) A party shall be allowed a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Board or Tribunal.
- (7) A witness shall, unless the Board or Tribunal otherwise determines, be allowed witness fees as if a witness in civil proceedings in the Local Court.
- (8) The Board or Tribunal may make a determination in proceedings in the absence of a party to the proceedings if satisfied that the party was given reasonable opportunity to appear but failed to do so.

Schedule 2

section 68

REPEALED ACTS

<i>Medical Practitioners Registration Ordinance 1935</i>	No. 1, 1935
<i>Medical Practitioners Registration Ordinance 1945</i>	No. 5, 1945
<i>Medical Practitioners Registration Ordinance 1957</i>	No. 4, 1957
<i>Medical Practitioners Registration Ordinance 1961</i>	No. 3, 1962
<i>Medical Practitioners Registration Ordinance 1962</i>	No. 5, 1963
<i>Medical Practitioners Registration Ordinance 1967</i>	No. 45, 1967
<i>Medical Practitioners Registration Ordinance 1971</i>	No. 31, 1971
<i>Medical Practitioners Registration Ordinance 1972</i>	No. 73, 1972
<i>Medical Practitioners Registration Ordinance 1976</i>	No. 67, 1976
<i>Medical Practitioners Registration Act 1980</i>	No. 45, 1980
<i>Medical Practitioners Registration Amendment Act 1983</i>	No. 26, 1983
<i>Medical Practitioners Registration Amendment Act 1984</i>	No. 29, 1984
<i>Medical Practitioners Registration Amendment Act 1993</i>	No. 3, 1993

ENDNOTES
1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION***Medical Act 1995 (Act No. 5, 1995)***

Assent date	10 April 1995
Commenced	1 June 1995 (<i>Gaz</i> S21, 1 June 1995)

Statute Law Revision Act 1995 (Act No. 14, 1995)

Assent date	26 June 1995
Commenced	26 June 1995

Births, Deaths and Marriages Registration (Consequential Amendments) Act 1996 (Act No. 27, 1996)

Assent date	28 June 1996
Commenced	1 January 1997 (s 2, s 2 <i>Births, Deaths and Marriages Registration Act 1996</i> (Act No. 26, 1997) and <i>Gaz</i> G49, 4 December 1996, p 5)

Statute Law Revision Act 1997 (Act No. 17, 1997)

Assent date	11 April 1997
Commenced	s 16: 10 December 1997; rem: 1 May 1997 (<i>Gaz</i> G17, 30 April 1997, p 2)

3 LIST OF AMENDMENTS

s 3	amd No. 17, 1997, s 17
ss 5 – 10	amd No. 17, 1997, s 17
s 21	amd No. 27, 1996, s 7
s 56	amd No. 14, 1995, s 12
s 70	amd No. 17, 1997, s 17