

South Australia

## **Medical Practice Act 2004**

An Act to protect the health and safety of the public by providing for the registration of medical practitioners and medical students; to regulate the provision of medical treatment for the purpose of maintaining high standards of competence and conduct by the persons who provide it; to repeal the *Medical Practitioners Act 1983*; and for other purposes.

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**The Parliament of South Australia enacts as follows:**

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Medical Practice Act 2004*.

### 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

### 3—Interpretation

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

*appropriate register* means—

- (a) the general register; or
- (b) the specialist register; or
- (c) the medical student register,

as the case may require;

*beneficiary* includes an object of a discretionary trust;

*Board* means the Medical Board of South Australia;

*corporate or trustee medical services provider*—see subsection (5);

*director* of a body corporate means a member of the board or committee of management of the body corporate, whether validly appointed or not;

*equipment* includes appliances, instruments, dressings or substances used for the purposes of medical treatment;

*exempt provider* means—

- (a) a recognised hospital, incorporated health centre or private hospital within the meaning of the *South Australian Health Commission Act 1976*; or

- (b) any other person declared by the regulations to be an exempt provider for the purposes of this Act;

**general register**—see Part 4 Division 1;

**inspector** means a person authorised by the Board to exercise the powers of an inspector under this Act;

**legal practitioner** means a person admitted and enrolled as a practitioner of the Supreme Court of South Australia;

**medical practitioner** means a person who is registered on the general register or on both the general register and the specialist register;

**medical services provider** means a person (not being a medical practitioner) who provides medical treatment through the instrumentality of a medical practitioner or medical student but does not include an exempt provider;

**medical student** means a person who is registered on the medical student register;

**medical student register**—see Part 4 Division 1;

**medical treatment** includes all medical or surgical advice, attendances, services, procedures and operations;

**nominated contact address** of a registered person means an address nominated by the person for the purpose of service of notices and documents under this Act;

**nurse** means a person who is registered as a nurse under the *Nurses Act 1999*;

**provide**, in relation to medical treatment, means provide treatment personally or through the instrumentality of another, and includes offer to provide;

**psychologist** means a person who is registered as a psychologist under the *Psychological Practices Act 1973*;

**record** means—

- (a) a documentary record; or
- (b) a record made by an electronic, electromagnetic, photographic or optical process; or
- (c) any other kind of record;

**register** means a register kept under this Act;

**registered person** means a person who is registered on a register kept under this Act;

**Registrar**—

- (a) in the case of a reference in Part 5 Division 4—means the person holding or acting in the office of Registrar of the Tribunal;
- (b) in any other case—means the person holding or acting in the office of Registrar of the Board;

**repealed Act** means the *Medical Practitioners Act 1983*;

**representative body** means a body that is declared by the regulations to be a representative body for the purposes of this Act;

**specialist** means a person who is registered on the specialist register;

**specialist register**—see Part 4 Division 1;

**specialty** means a branch of medicine declared by the Board, by notice in the Gazette, to be a specialty;

**Tribunal** means the Medical Professional Conduct Tribunal;

**unprofessional conduct** includes—

- (a) improper or unethical conduct in relation to professional practice; and
  - (b) incompetence or negligence in relation to the provision of medical treatment; and
  - (c) a contravention of or failure to comply with—
    - (i) a provision of this Act; or
    - (ii) a code of conduct or professional standard prepared or endorsed by the Board under this Act; and
  - (d) conduct that constitutes an offence punishable by imprisonment for 1 year or more under some other Act or law.
- (2) A reference in this Act to **unprofessional conduct** extends to—
- (a) unprofessional conduct committed before the commencement of this Act; and
  - (b) unprofessional conduct committed within or outside South Australia or the Commonwealth.
- (3) A reference in this Act to **engaging in conduct** includes a reference to failing or refusing to engage in conduct.
- (4) Without limiting the generality of the expression, a person who is not a medical practitioner will, unless exempted by the regulations, be taken to **provide medical treatment through the instrumentality of a medical practitioner** if the person, in the course of carrying on a business, provides services to the practitioner for which the person is entitled to receive a share in the profits or income of the practitioner's medical practice.
- (5) For the purposes of this Act—
- (a) a **corporate medical services provider** is a medical services provider that is a body corporate and a person occupies a **position of authority** in such a provider if the person—
    - (i) is a director of the body corporate; or
    - (ii) exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs; or
    - (iii) manages, or is to manage, the business of the body corporate that consists of the provision of medical treatment; or
    - (iv) where the body corporate is a proprietary company—is a shareholder in the body corporate; and
  - (b) a **trustee medical services provider** is a person acting as a medical services provider in the capacity of trustee of a trust and a person occupies a **position of authority** in such a provider if the person is a trustee or beneficiary of the trust.

- (6) For the purposes of this Act, a person occupies a *position of authority* in a body corporate other than a corporate medical services provider if the person—
- (a) is a director of the body corporate; or
  - (b) exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs; or
  - (c) where the body corporate is a proprietary company—is a shareholder in the body corporate.
- (7) However—
- (a) a minor who is a shareholder in a proprietary company, or a beneficiary under a trust, is not, for that reason, to be regarded as a person occupying a *position of authority*; and
  - (b) a charitable organisation that is a beneficiary of a trust is not, for that reason, to be regarded as occupying a *position of authority*.
- (8) For the purposes of this Act, a person who holds more than 10 per cent of the issued share capital of a public company will be regarded as a person occupying a *position of authority* in that company.

#### **4—Medical fitness to provide medical treatment**

A person or body must, in making a determination under this Act as to a person's medical fitness to provide medical treatment, have regard to the question of whether the person is able to provide medical treatment personally to a patient without endangering the patient's health or safety.

## **Part 2—Medical Board of South Australia**

### **Division 1—Establishment of Board**

#### **5—Establishment of Board**

- (1) The Medical Board of South Australia is established.
- (2) The Board—
  - (a) is a body corporate; and
  - (b) has perpetual succession and a common seal; and
  - (c) is capable of suing and being sued in its corporate name; and
  - (d) has all the powers of a natural person that are capable of being exercised by a body corporate; and
  - (e) has the functions and powers assigned or conferred by or under this Act.
- (3) If a document appears to bear the common seal of the Board, it will be presumed, in the absence of proof to the contrary, that the common seal of the Board was duly affixed to the document.

## Division 2—Board's membership

### 6—Composition of Board

- (1) The Board consists of 12 members appointed by the Governor of whom—
  - (a) 7 must be medical practitioners of whom—
    - (i) 1 is to be nominated by the Minister; and
    - (ii) 1 is to be selected by the Minister from a panel of 3 medical practitioners jointly nominated by the Councils of The University of Adelaide and The Flinders University of South Australia or, if the Councils are unable to agree as to the persons to be nominated, from panels of 3 medical practitioners nominated by each Council; and
    - (iii) 2 are to be selected by the Minister from a panel of 5 medical practitioners nominated by the Australian Medical Association (South Australia) Incorporated; and
    - (iv) 3 are to be chosen at an election conducted in accordance with the regulations; and
  - (b) 1 must be a legal practitioner nominated by the Minister; and
  - (c) 1 must be a nurse nominated by the Minister; and
  - (d) 3 must be persons nominated by the Minister who are not eligible for appointment under a preceding provision of this subsection.
- (2) Every medical practitioner is entitled to vote at an election under subsection (1)(a)(iv).
- (3) If an election for the purposes of subsection (1)(a)(iv) fails for any reason, the Governor may appoint a medical practitioner, and the person so appointed will be taken to have been appointed after due election under this section.
- (4) The Minister must, when nominating or selecting medical practitioners for appointment as members of the Board, seek to ensure that, as far as practicable, the membership of the Board includes—
  - (a) at least 1 medical practitioner who works in the public health system; and
  - (b) at least 1 medical practitioner who works in the private health system; and
  - (c) at least 1 medical practitioner who is registered on the general register (but not also on the specialist register); and
  - (d) at least 4 medical practitioners who are currently practising medicine.
- (5) A body referred to in subsection subsection (1)(a)(ii) or (iii) must, in constituting a panel for the purposes of that subsection, nominate at least 1 woman and 1 man.
- (6) At least 3 of the members of the Board nominated by the Minister must be women and at least 3 must be men.
- (7) The Governor may appoint a person to be a deputy of a member and a person so appointed may act as a member of the Board in the absence of the member.
- (8) The requirements of qualification and nomination made by this section in relation to the appointment of a member extend to the appointment of a deputy of that member.

## 7—Terms and conditions of membership

- (1) A member of the Board will be appointed on conditions determined by the Governor and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (2) However, a member of the Board may not hold office for consecutive terms that exceed 9 years in total.
- (3) The Governor may remove a member of the Board from office—
  - (a) for breach of, or non-compliance with, a condition of appointment; or
  - (b) for misconduct; or
  - (c) for failure or incapacity to carry out official duties satisfactorily.
- (4) The office of a member of the Board becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) ceases to satisfy the qualification by virtue of which the member was eligible for appointment to the Board; or
  - (e) is removed from office under subsection (3).
- (5) If a member of the Board is a member constituting the Board for the purposes of any proceedings under Part 5 and the member's term of office expires, or the member resigns, before those proceedings are completed, the member may, for the purpose of continuing and completing those proceedings, continue to act as a member of the Board.

## 8—Presiding member and deputy

The Minister must, after consultation with the Board, appoint a member who is a medical practitioner (the *presiding member*) to preside at meetings of the Board and another member who is a medical practitioner (the *deputy presiding member*) to preside at meetings of the Board in the absence of the presiding member.

## 9—Vacancies or defects in appointment of members

An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

## 10—Remuneration

A member of the Board is entitled to remuneration, allowances and expenses determined by the Governor.

## Division 3—Registrar and staff of Board

### 11—Registrar of Board

- (1) There will be a Registrar of the Board.
- (2) The Registrar will be appointed by the Board on terms and conditions determined by the Board.

## **12—Other staff of Board**

- (1) There will be such other staff of the Board as the Board thinks necessary for the proper performance of its functions.
- (2) A member of the staff of the Board is not, as such, a member of the Public Service, but the Board may employ a person who is on leave from employment in the Public Service or with an instrumentality or agency of the Crown.
- (3) The Board may, with the approval of the Minister administering an administrative unit of the Public Service, make use of the services, facilities or officers of that unit.

## **Division 4—General functions and powers**

### **13—Functions of Board**

- (1) The functions of the Board are as follows:
  - (a) to regulate the practice of medicine in the public interest;
  - (b) to approve, after consultation with authorities considered appropriate by the Board, courses of education or training that provide qualifications for registration on the general register or the specialist register under this Act;
  - (c) to determine, after consultation with authorities considered appropriate by the Board, the requirements necessary for registration under this Act;
  - (d) to establish and maintain the registers contemplated by this Act;
  - (e) to prepare or endorse, subject to the approval of the Minister, codes of conduct or professional standards for registered persons or codes of conduct for medical services providers;
  - (f) to prepare or endorse guidelines on continuing medical education for medical practitioners;
  - (g) to establish administrative processes for handling complaints received against registered persons, medical services providers or persons who occupy positions of authority in corporate or trustee medical services providers (which may include processes under which the registered person, provider or person who occupies the position voluntarily enters into an undertaking);
  - (h) to provide advice to the Minister as the Board considers appropriate;
  - (i) to carry out other functions assigned to the Board by or under this Act, or by the Minister.
- (2) The Board must perform its functions under this Act with the object of protecting the health and safety of the public by achieving and maintaining high professional standards both of competence and conduct in the provision of medical treatment in this State.
- (3) If—
  - (a) a code of conduct or professional standard prepared or endorsed by the Board is approved by the Minister; or
  - (b) guidelines are prepared or endorsed by the Board,the Board must—

- (c) cause a copy of the code, standard or guidelines to be published in the Gazette; and
- (d) take reasonable steps to send a copy of the code, standard or guidelines to each registered person or medical services provider to whom it applies; and
- (e) ensure that a copy of the code, standard or guidelines is published on the internet and kept available for public inspection without charge during normal office hours at the principal office of the Board,

(although proof of compliance with paragraphs (c), (d) and (e) is not necessary for the purposes of any proceedings that involve an alleged contravention of or failure to comply with a code of conduct or professional standard).

- (4) The administrative processes established by the Board for handling complaints received against registered persons, medical services providers or persons who occupy positions of authority in corporate or trustee medical services providers must be designed—
  - (a) to be fair to both the aggrieved person and the respondent; and
  - (b) to keep both the aggrieved person and the respondent properly informed about the steps taken by the Board in response to the complaint; and
  - (c) to provide, where appropriate, opportunities for the clarification of any misapprehension or misunderstanding between the aggrieved person and the respondent; and
  - (d) to keep both the aggrieved person and the respondent properly informed about the outcome of the processes; and
  - (e) to take into account the needs of particular classes of persons who may otherwise suffer disadvantage in the conduct of those processes.

#### **14—Committees**

- (1) The Board may establish committees—
  - (a) to advise the Board or the Registrar on any matter; or
  - (b) to carry out functions on behalf of the Board.
- (2) The membership of a committee will be determined by the Board and may, but need not, consist of, or include, members of the Board.
- (3) The Board will determine who will be the presiding member of a committee.
- (4) The procedures to be observed in relation to the conduct of the business of a committee will be—
  - (a) as determined by the Board; and
  - (b) insofar as a procedure is not determined under paragraph (a)—as determined by the committee.

#### **15—Delegations**

- (1) The Board may delegate any of its functions or powers under this Act other than—
  - (a) this power of delegation; and
  - (b) the power to hear and determine proceedings under Part 5.

- (2) A delegation—
  - (a) may be made—
    - (i) to a member of the Board, the Registrar or an employee of the Board;  
or
    - (ii) to a committee established by the Board; and
  - (b) may be made subject to conditions and limitations specified in the instrument of delegation; and
  - (c) is revocable at will and does not derogate from the power of the Board to act in a matter.

## **Division 5—Board's procedures**

### **16—Board's procedures**

- (1) Subject to this Act, 7 members constitute a quorum of the Board.
- (2) A meeting of the Board (other than for the purposes of hearing and determining proceedings under Part 5) will be chaired by the presiding member or, in his or her absence, by the deputy presiding member and, in the absence of both the presiding member and the deputy presiding member, the members present at a meeting of the Board must choose one of their number to preside at the meeting.
- (3) A decision carried by a majority of the votes cast by members of the Board at a meeting is a decision of the Board.
- (4) Each member present at a meeting of the Board has one vote on any question arising for decision and, except in hearing and determining proceedings under Part 5, the member presiding at the meeting may exercise a casting vote if the votes are equal.
- (5) A conference by telephone or other electronic means between the members of the Board will, for the purposes of this section, be taken to be a meeting of the Board at which the participating members are present if—
  - (a) notice of the conference is given to all members in the manner determined by the Board for the purpose; and
  - (b) each participating member is capable of communicating with every other participating member during the conference.
- (6) A proposed resolution of the Board becomes a valid decision of the Board despite the fact that it is not voted on at a meeting of the Board if—
  - (a) notice of the proposed resolution is given to all members of the Board in accordance with procedures determined by the Board; and
  - (b) a majority of the members express concurrence in the proposed resolution by letter, telegram, telex, facsimile transmission, electronic mail or other written communication setting out the terms of the resolution.
- (7) However, subsections (5) and (6) do not apply in relation to the hearing and determination of proceedings under Part 5 by the Board as constituted for the purposes of proceedings under that Part.
- (8) The Board must have accurate minutes kept of its meetings.

- (9) Subject to this Act, the Board may determine its own procedures.

### **17—Conflict of interest etc under Public Sector Management Act**

A member of the Board will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector Management Act 1995* by reason only of the fact that the member has an interest in the matter that is shared in common with medical practitioners generally or a substantial section of medical practitioners in this State.

### **18—Powers of Board in relation to witnesses etc**

- (1) For the purposes of proceedings before the Board (including an application for registration or reinstatement of registration), the Board may—
- (a) by summons signed on behalf of the Board by a member of the Board or the Registrar, require the attendance before the Board of any person whom the Board thinks fit to call before it; or
  - (b) by summons signed on behalf of the Board by a member of the Board or the Registrar, require the production of any relevant documents, records or equipment and, in the case of a document or record that is not in the English language, require the production of—
    - (i) a written translation of the document or record into English; and
    - (ii) a certificate signed by a translator approved by the Board certifying that the translation accurately reproduces in English the contents of the document or record; or
  - (c) inspect any documents, records or equipment produced before it, and retain them for such reasonable period as it thinks fit, and make copies of the documents or records or their contents; or
  - (d) require any person to make an oath or affirmation (which may be administered by any member of the Board) to answer truthfully questions put by any member of the Board or any person appearing before the Board; or
  - (e) require any person appearing before the Board (whether summoned to appear or not) to answer any questions put by any member of the Board or by any person appearing before the Board.
- (2) On the receipt of an application for the issue of a summons under this section, a member or the Registrar may, without referring the matter to the Board, issue a summons on behalf of the Board.
- (3) A person who—
- (a) fails without reasonable excuse to comply with a summons issued to attend, or to produce documents, records or equipment, before the Board; or
  - (b) having been served with a summons to produce—
    - (i) a written translation of the document or record into English; and
    - (ii) a certificate signed by a translator approved by the Board certifying that the translation accurately reproduces in English the contents of the document or record,fails, without reasonable excuse, to comply with the summons; or

- (c) misbehaves before the Board, wilfully insults the Board or 1 or more of the members in the exercise of the members' official duties, or wilfully interrupts the proceedings of the Board; or
- (d) refuses to be sworn or to affirm, or refuses or fails to answer truthfully a relevant question when required to do so by the Board,

is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 6 months.

- (4) A person who appears as a witness before the Board has the same protection as a witness in proceedings before the Supreme Court.

### **19—Principles governing proceedings**

- (1) In any proceedings before the Board under this Act, the Board—
  - (a) is not bound by the rules of evidence and may inform itself on any matter as it thinks fit; and
  - (b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.
- (2) In any proceedings before the Board under this Act, the Board must keep the parties to the proceedings properly informed as to the progress and outcome of the proceedings.

### **20—Representation at proceedings before Board**

A party to proceedings before the Board (including an applicant for registration or reinstatement of registration) is entitled to be represented at the hearing of those proceedings.

### **21—Costs**

- (1) The Board may award such costs against a party to proceedings before it as the Board considers just and reasonable.
- (2) A party who is dissatisfied with the amount of the costs awarded by the Board may request a Master of the District Court to tax the costs and, after taxing the costs, the Master may confirm or vary the amount of the costs awarded by the Board.
- (3) Costs awarded by the Board under this section may be recovered as a debt.

## **Division 6—Accounts, audit and annual report**

### **22—Accounts and audit**

- (1) The Board must keep proper accounting records in relation to its financial affairs, and must have annual statements of account prepared in respect of each financial year.
- (2) The accounts must be audited at least once in every year by an auditor approved by the Auditor-General and appointed by the Board.
- (3) The Auditor-General may at any time audit the accounts of the Board.

## 23—Annual report

- (1) The Board must, on or before 30 September in each year, deliver to the Minister a report on the administration of this Act and the work of the Board during the financial year ending on the preceding 30 June.
- (2) The report must—
  - (a) include the following information in relation to the relevant financial year:
    - (i) the number and nature of complaints received by the Board against registered persons, medical services providers and persons who occupy positions of authority in corporate or trustee medical services providers;
    - (ii) the number and nature of voluntary undertakings given to the Board by registered persons, medical services providers and persons who occupy positions of authority in corporate or trustee medical services providers;
    - (iii) the outcomes of proceedings before the Board under Part 5;
    - (iv) information prescribed by the regulations; and
  - (b) incorporate the audited accounts of the Board for the relevant financial year.
- (3) The Minister must, within 12 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

## Part 3—Medical Professional Conduct Tribunal

### 24—Continuation of Tribunal

The Medical Practitioners Professional Conduct Tribunal continues in existence as the *Medical Professional Conduct Tribunal*.

### 25—Composition of Tribunal

- (1) The Tribunal consists of 13 members of whom—
  - (a) 1 (the **President**) must be the Chief Judge of the District Court or a Judge of that Court nominated by the Chief Judge; and
  - (b) 8 must be medical practitioners appointed by the Governor, and of these—
    - (i) 6 are to be nominated by the Minister; and
    - (ii) 2 are to be selected by the Minister from a panel of 5 medical practitioners nominated by the Australian Medical Association (South Australia) Incorporated; and
  - (c) 4 must be persons appointed by the Governor, on the nomination of the Minister, being persons who are not eligible for appointment under a preceding provision of this subsection.
- (2) The body referred to in subsection (1)(b)(ii) must, in constituting a panel for the purposes of that subsection, nominate at least 1 woman and 1 man.
- (3) At least 4 appointed members of the Tribunal must be women and at least 4 must be men.

- (4) The Governor may appoint a person to be a deputy of a member and a person so appointed may act as a member of the Tribunal in the absence of the member.
- (5) The requirements of qualification and nomination made by this section in relation to the appointment of a member extend to the appointment of a deputy of that member.

## **26—Terms and conditions of appointed members**

- (1) A member of the Tribunal appointed by the Governor will be appointed on conditions determined by the Governor and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (2) The Governor may remove an appointed member of the Tribunal from office—
  - (a) for breach of, or non-compliance with, a condition of appointment; or
  - (b) for misconduct; or
  - (c) for failure or incapacity to carry out official duties satisfactorily.
- (3) The office of an appointed member of the Tribunal becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) ceases to satisfy the qualification by virtue of which the member was eligible for appointment to the Tribunal; or
  - (e) is removed from office under subsection (2).
- (4) If an appointed member of the Tribunal is a member constituting the Tribunal for the purposes of any proceedings under Part 5 and the member's term of office expires, or the member resigns, before those proceedings are completed, the member may, for the purpose of continuing and completing those proceedings, continue to act as a member of the Tribunal.

## **27—Vacancies or defects in appointment of members**

An act or proceeding of the Tribunal is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

## **28—Remuneration**

A member of the Tribunal is entitled to remuneration, allowances and expenses determined by the Governor.

## **29—Registrar of Tribunal**

- (1) There will be a Registrar of the Tribunal.
- (2) The Registrar of the Tribunal will be the person for the time being holding or acting in the office of Registrar of the District Court.

## **30—Protection from personal liability**

- (1) No personal liability is incurred for an act or omission by—
  - (a) a member of the Tribunal; or

- (b) the Registrar of the Tribunal,  
in good faith in the performance or purported performance of functions or duties under this Act.
- (2) A civil liability that would, but for subsection (1), lie against a person lies instead against the Crown.

## **Part 4—Registration and practice**

### **Division 1—Registers**

#### **31—Registers**

- (1) The Registrar must keep the following registers:
  - (a) a medical student register;
  - (b) a general register;
  - (c) a specialist register;
  - (d) a register of persons who have been removed from the medical student register, the general register, the specialist register or a particular specialty under this Act or any other Act or law or former Act or law and who have not been reinstated to that register or specialty.
- (2) A person cannot be registered on the specialist register unless the person is also registered on the general register.
- (3) The medical student register, general register or specialist register must include, in relation to each person on the register—
  - (a) the person's full name and nominated contact address; and
  - (b) the qualifications for registration held by the person; and
  - (c) in the case of a specialist, the specialty in which the person is registered; and
  - (d) particulars of any condition of registration or limitation that affects or restricts the person's right to provide medical treatment; and
  - (e) information prescribed by the regulations,and may include other information as the Board thinks fit.
- (4) A registered person must, within 1 month after changing his or her name or nominated contact address, inform the Registrar in writing of the change.  
Maximum penalty: \$250.
- (5) The register referred to in subsection (1)(d)—
  - (a) must not include any person who is dead; and
  - (b) must include, in relation to each person on the register, a statement of—
    - (i) the register or specialty from which the person was removed; and
    - (ii) the reason for removal of the person; and
    - (iii) the date of removal; and

- (iv) if the removal was consequent on suspension—the duration of the suspension; and
    - (v) if the person has been disqualified from being registered on a register—the duration of the disqualification; and
  - (c) must have deleted from it all information relating to any person who has been reinstated on each register or specialty from which the person was removed.
- (6) The Registrar is responsible to the Board for the form and maintenance of the registers.
- (7) The Registrar must correct an entry in a register that is not, or has ceased to be, correct.
- (8) The registers must be kept available for inspection by any person during ordinary office hours at the office of the Registrar and the registers or extracts of the registers may be made available to the public by electronic means.
- (9) A person may, on payment of the prescribed fee, obtain a copy of any part of a register kept under this Act.
- (10) A certificate stating that a person was, or was not, registered on a particular register or in a particular specialty under this Act at a particular date or during a particular period and purporting to be signed by the Registrar will, in the absence of proof to the contrary, be accepted in legal proceedings as proof of the registration, or of the fact that the person was not so registered, on the date or during the period stated in the certificate.

### **32—Authority conferred by registration**

Subject to any restrictions, limitations or conditions imposed under this Act—

- (a) registration on the general register authorises the person to provide medical treatment;
- (b) registration on the specialist register authorises the person to provide medical treatment in the specialty in which he or she is so registered;
- (c) registration on the medical student register authorises the person to provide medical treatment in prescribed circumstances.

## **Division 2—Registration**

### **33—Registration of natural persons on general or specialist register**

- (1) Subject to this Act, a natural person is eligible for registration on the general register, and a person registered on the general register is eligible for registration on the specialist register in a particular specialty, if the person, on application to the Board, satisfies the Board that he or she—
- (a) has qualifications approved or recognised by the Board for the purposes of registration on the register or in the specialty to which the application relates; and
  - (b) has met the requirements determined by the Board to be necessary for the purposes of registration on that register or in that specialty; and

- (c) is medically fit to provide medical treatment of the kind authorised by registration on that register; and
  - (d) is, unless exempted by the Board, insured or indemnified in a manner and to an extent approved by the Board against civil liabilities that might be incurred by the person in connection with the provision of medical treatment as a medical practitioner or proceedings under Part 5 against the person; and
  - (e) is a fit and proper person to be registered on that register or in that specialty.
- (2) If a person who applies for registration, or reinstatement of registration, on a particular register or in a particular specialty—
- (a) does not, in the opinion of the Board, have the necessary qualifications or experience required for registration on that register or in that specialty; or
  - (b) is not, in the opinion of the Board, medically fit to provide medical treatment of the kind authorised by registration on that register; or
  - (c) is not, in the opinion of the Board, a fit and proper person to be registered on that register or in that specialty,

the Board may register the person on that register or in that specialty in pursuance of this subsection (*limited registration*)—

- (d) in order to enable the person—
    - (i) to do whatever is necessary to become eligible for full registration under this Act; or
    - (ii) to teach or to undertake research or study in this State; or
    - (iii) in the case of an applicant who has obtained qualifications for the practice of medicine under the law of a place outside of Australia—to practise in a part of the State or at a place that the Minister and the Board consider is in urgent need of the services of a medical practitioner; or
  - (e) if, in its opinion, it would otherwise be in the public interest to do so.
- (3) In registering a person under subsection (2) the Board may impose one or more of the following conditions on the registration:
- (a) a condition restricting the places or times at which the practitioner may provide medical treatment;
  - (b) a condition limiting the kind of medical treatment that the practitioner may provide;
  - (c) a condition limiting the period during which the registration will have effect;
  - (d) a condition requiring that the practitioner be supervised in the provision of medical treatment by a particular person or by a person of a particular class;
  - (e) such other conditions as the Board thinks fit.

### 34—Registration of medical students

- (1) A person is not entitled to—
  - (a) undertake a course of study that provides qualifications for registration on the general register under this Act; or
  - (b) provide medical treatment as part of a course of study related to medicine being undertaken by the person in a place outside the State,unless the person is registered under this section as a medical student.
- (2) A person is eligible for registration as a medical student on the medical student register if the person, on application to the Board, satisfies the Board that he or she—
  - (a) genuinely requires registration on that register—
    - (i) to enable the person to undertake a course of study that provides qualifications for registration on the general register under this Act; or
    - (ii) to enable the person to provide medical treatment as part of a course of study related to medicine being undertaken by the person in a place outside the State; and
  - (b) is medically fit to provide medical treatment of the kind authorised by registration on the medical student register; and
  - (c) is a fit and proper person to be registered on the medical student register.
- (3) If a person who applies for registration, or reinstatement of registration, on the medical student register is not, in the opinion of the Board, medically fit to provide medical treatment of the kind authorised by registration on that register, the Board may register the person on that register in pursuance of this subsection (*limited student registration*) and impose one or more of the following conditions on the registration:
  - (a) a condition limiting the kind of medical treatment that the person may provide;
  - (b) a condition limiting the period during which the registration will have effect;
  - (c) a condition requiring that the person be supervised in the provision of medical treatment by a particular person or by a person of a particular class;
  - (d) such other conditions as the Board thinks fit.

### 35—Application for registration and provisional registration

- (1) An application for registration must—
  - (a) be made to the Board in the manner and form approved by the Board; and
  - (b) be accompanied by the registration fee fixed under this Act.
- (2) An applicant for registration must, if the Board so requires, provide the Board with specified information to enable the Board to determine the application.

- (3) The Board may require an applicant for registration—
  - (a) to submit a medical report or other evidence acceptable to the Board as to the applicant's medical fitness to provide medical treatment of the kind authorised by registration on the register to which the application relates; or
  - (b) to obtain additional qualifications or experience specified by the Board before the Board determines the application.
- (4) If it appears likely to the Registrar that the Board will grant an application for registration, the Registrar may provisionally register the applicant (*provisional registration*).
- (5) Provisional registration remains in force until the Board determines the application.
- (6) The registration by the Board under this Act of a person who was provisionally registered has effect from the commencement of the provisional registration.

### **36—Removal from register or specialty**

- (1) The Registrar must, on application by a registered person, remove the person from the appropriate register or specialty to which the application relates.
- (2) The Registrar must remove from the appropriate register or specialty a person—
  - (a) who dies; or
  - (b) who ceases to hold a qualification required for registration on that register or in that specialty; or
  - (c) who ceases for any other reason to be entitled to be registered on that register or in that specialty; or
  - (d) who completes, or ceases to be enrolled in, the course of study that formed the basis for the person's registration on the medical student register; or
  - (e) whose registration on that register or in that specialty has been suspended or cancelled under this Act.
- (3) If a person who is on the specialist register is removed from the general register, the person must also be removed from the specialist register.
- (4) The Registrar may act under subsection (2) or (3) without giving prior notice to the relevant person.

### **37—Reinstatement on register or in specialty**

- (1) A person who has been removed from a register or specialty under this Act—
  - (a) on his or her application; or
  - (b) on account of failure to pay the annual practice fee or to furnish the return required under section 38; or
  - (c) on account of failure to pay a fine imposed on the person by the Board or Tribunal under this Act; or
  - (d) on account of the person—
    - (i) ceasing to hold a qualification required for registration on that register or in that specialty or otherwise ceasing to be entitled to be registered on that register or in that specialty; or

- (ii) ceasing to be enrolled in the course of study that formed the basis for the person's registration on the medical student register,
- may apply to the Board at any time for reinstatement on that register or in that specialty.
- (2) A person whose registration on a register or in a specialty has been suspended may apply to the Board for reinstatement on that register or in that specialty (but not, in the case of an order for suspension for a specified period made in disciplinary proceedings, until after the expiry of that period).
- (3) A person who has been disqualified from being registered on a register or in a specialty under this Act may, subject to the terms of the order for disqualification, apply to the Board for reinstatement on that register or in that specialty.
- (4) An application for reinstatement must—
- (a) be made to the Board in the manner and form approved by the Board; and
  - (b) be accompanied by the reinstatement fee fixed under this Act.
- (5) An applicant for reinstatement must, if the Board so requires, provide the Board with specified information to enable the Board to determine the application.
- (6) The Board may require an applicant for reinstatement of registration—
- (a) to submit a medical report or other evidence acceptable to the Board as to the applicant's medical fitness to provide medical treatment of the kind authorised by registration on the register to which the application relates; or
  - (b) to obtain additional qualifications or experience specified by the Board before the Board determines the application.
- (7) Subject to this section, the Board must reinstate on the appropriate register or in a specialty an applicant under this section if satisfied that the applicant is eligible for registration on that register or in that specialty.
- (8) The Board may refuse to reinstate the applicant on the appropriate register or in a specialty until all complaints (if any) laid against the applicant under this Act have been finally disposed of.
- (9) If a person's registration has been suspended by reason of his or her failure to reside in Australia, the Board may make the person's registration, after reinstatement, subject to such conditions relating to residence as the Board thinks fit.

### **38—Fees and returns**

- (1) Subject to this Act, a person will not be registered, nor will a registration be reinstated, until the registration or reinstatement fee, and the annual practice fee, fixed under this Act have been paid.
- (2) A registered person must, in each calendar year before the date fixed for that purpose by the Board—
- (a) pay to the Board the annual practice fee fixed under this Act; and

- (b) furnish the Board with a return, in a form approved by the Board, containing all information specified in the return relating to the provision of medical treatment, or the undertaking of any course of continuing medical education, by the person during the preceding year or to any other matter relevant to the person's registration under this Act.
- (3) The Board may, without further notice, remove from the appropriate register a person who fails to pay the annual practice fee or furnish the required return by the due date.

### **Division 3—Special provisions relating to medical services providers**

#### **39—Information to be given to Board by medical services providers**

- (1) A medical services provider must—
  - (a) in the case of a person who was a medical services provider immediately before the commencement of this section—within 60 days of that commencement; and
  - (b) in any other case—within 60 days of becoming a medical services provider, give written notice to the Board of—
    - (c) the provider's full name and business or registered address; and
    - (d) the address of the premises at which the provider provides medical treatment; and
    - (e) the full names and nominated contact addresses of the medical practitioners and medical students through the instrumentality of whom the provider is providing medical treatment; and
    - (f) in the case of a corporate or trustee medical services provider—the full names and addresses of all persons who occupy a position of authority in the provider.
- (2) The provider must, within 30 days of any change occurring in the particulars required to be given under subsection (1), inform the Board in writing of the change.
- (3) A person who contravenes or fails to comply with this section is guilty of an offence. Maximum penalty: \$10 000.
- (4) The Board must keep a record of information provided to the Board under this section available for inspection, on payment of the prescribed fee, by any person during ordinary office hours at the office of the Board and may make the record available to the public by electronic means.

### **Division 4—Restrictions relating to provision of medical treatment**

#### **40—Illegal holding out as registered person**

- (1) A person must not hold himself or herself out as a registered medical student, medical practitioner, specialist or a specialist of a particular class, or permit another person to do so, unless registered on the appropriate register and, in the case of a specialist of a particular class, in the specialty relevant to that class. Maximum penalty: \$50 000 or imprisonment for 6 months.

- (2) A person must not hold out another as a registered medical student, medical practitioner, specialist or a specialist of a particular class unless the other person is registered on the appropriate register and, in the case of a specialist of a particular class, in the specialty relevant to that class.

Maximum penalty: \$50 000 or imprisonment for 6 months.

#### **41—Illegal holding out concerning limitations or conditions**

- (1) A person whose registration is limited or subject to a condition under this Act must not hold himself or herself out as having a registration that is not limited or not subject to a condition or permit another person to do so.

Maximum penalty: \$50 000 or imprisonment for 6 months.

- (2) A person must not hold out another whose registration is limited or subject to a condition under this Act as having a registration that is not limited or not subject to a condition.

Maximum penalty: \$50 000 or imprisonment for 6 months.

#### **42—Use of certain titles or descriptions prohibited**

- (1) A person who is not registered on the appropriate register or in the relevant specialty must not use a prescribed word, or its derivatives, to describe himself or herself or a service that he or she provides.

Maximum penalty: \$50 000.

- (2) A person must not, in the course of advertising or promoting a service that he or she provides (being a service involving the provision of medical treatment), use a prescribed word, or its derivatives, to describe a person who is engaged in the provision of the service but is not registered on the appropriate register or in the relevant specialty.

Maximum penalty: \$50 000.

- (3) In this section—

*prescribed word* means—

- (a) in relation to registration on the medical student register—registered medical student; or
- (b) in relation to registration on the general register or specialist register—medical practitioner; or
- (c) in relation to registration in a specialty—the words comprising the name of the specialty; or
- (d) any other word or expression prescribed by the regulations.

#### **43—Restrictions on provision of medical treatment by unqualified persons**

- (1) A person—

- (a) must not provide medical treatment of a prescribed kind; and
- (b) cannot recover a fee or other charge, or any part of such a fee or charge, for medical treatment provided by the person,

unless, at the time the treatment was provided—

- (c) the person was a qualified person; or
  - (d) the person provided the treatment through the instrumentality of a qualified person.
- (2) A person who contravenes subsection (1)(a) is guilty of an offence.  
Maximum penalty: \$50 000 or imprisonment for 6 months.
  - (3) Subsection (1) does not apply in relation to medical treatment provided by an unqualified person in prescribed circumstances or pursuant to an exemption under subsection (4).
  - (4) The Governor may, by proclamation, exempt a person from subsection (1) if of the opinion that good reason exists for doing so in the particular circumstances of the case.
  - (5) An exemption under subsection (4) may be subject to such conditions as the Governor thinks fit and specifies in the proclamation.
  - (6) A person who contravenes, or fails to comply with, a condition of an exemption under this section is guilty of an offence.  
Maximum penalty: \$50 000.
  - (7) The Governor may, by proclamation, vary or revoke a proclamation under this section.
  - (8) In this section—  
*qualified person*, in relation to medical treatment, means a person authorised by or under this Act or any other Act to provide that treatment.

#### **44—Board's approval required where medical practitioner or medical student has not practised for 3 years**

- (1) A registered person who has not provided medical treatment of the kind authorised by his or her registration for a period of 3 years or more must not provide any such medical treatment without first obtaining the approval of the Board.  
Maximum penalty: \$20 000.
- (2) The Board—
  - (a) may, before granting its approval under subsection (1), require the applicant to obtain qualifications or experience specified by the Board and for that purpose may require the applicant to undertake a specified course of instruction and training in medicine; and
  - (b) may impose 1 or more of the following conditions on the applicant's registration:
    - (i) a condition restricting the places and times at which the applicant may provide medical treatment;
    - (ii) a condition limiting the kind of medical treatment that the applicant may provide;
    - (iii) a condition requiring that the applicant be supervised in the provision of medical treatment by a particular person or by a person of a particular class;
    - (iv) such other conditions as the Board thinks fit.

## Part 5—Investigations and proceedings

### Division 1—Preliminary

#### 45—Interpretation

In this Part—

- (a) a reference to *medical services provider* includes a reference to a person who is not but who was, at the relevant time, a medical services provider;
- (b) a reference to *occupier of a position of authority* includes a reference to a person who is not but who was, at the relevant time, the occupier of a position of authority;
- (c) a reference to *registered person* includes a reference to a person who is not but who was, at the relevant time, a registered person under this Act or the repealed Act.

#### 46—Cause for disciplinary action

- (1) There is proper cause for disciplinary action against a registered person if—
  - (a) the person's registration was improperly obtained; or
  - (b) the person is guilty of unprofessional conduct; or
  - (c) the person is for any reason no longer a fit and proper person to be registered on the appropriate register or in a particular specialty.
- (2) There is proper cause for disciplinary action against a medical services provider if—
  - (a) the provider has contravened or failed to comply with a provision of this Act; or
  - (b) there has been, in connection with the provision of medical treatment by the provider, a contravention or failure to comply with a code of conduct under this Act applying to the provider; or
  - (c) the provider or any person employed or engaged by the provider has, in connection with the provision of medical treatment by the provider, engaged in conduct that would, if the person were a registered person, constitute unprofessional conduct; or
  - (d) the provider is for any reason not a fit and proper person to be a medical services provider; or
  - (e) in the case of a corporate or trustee medical services provider, an occupier of a position of authority in the provider—
    - (i) has contravened or failed to comply with a provision of this Act; or
    - (ii) has, in connection with the provision of medical treatment by the provider, engaged in conduct that would, if the person were a registered person, constitute unprofessional conduct; or
    - (iii) is for any reason not a fit and proper person to occupy a position of authority in a corporate or trustee medical services provider.

- (3) There is proper cause for disciplinary action against the occupier of a position of authority in a corporate or trustee medical services provider if—
- (a) the person has contravened or failed to comply with a provision of this Act; or
  - (b) the person has, in connection with the provision of medical treatment by the provider, engaged in conduct that would, if the person were a registered person, constitute unprofessional conduct; or
  - (c) the person is for any reason not a fit and proper person to occupy a position of authority in a corporate or trustee medical services provider; or
  - (d) —
    - (i) the provider has contravened or failed to comply with a provision of this Act; or
    - (ii) there has been, in connection with the provision of medical treatment by the provider, a contravention or failure to comply with a code of conduct under this Act applying to the provider; or
    - (iii) the provider, or any person employed or engaged by the provider, has, in connection with the provision of medical treatment by the provider, engaged in conduct that would, if the provider or the person were a registered person, constitute unprofessional conduct,unless it is proved that the person could not, by the exercise of reasonable care, have prevented the contravention, failure to comply or conduct.

## **Division 2—Investigations**

### **47—Powers of inspectors**

- (1) If there are reasonable grounds for suspecting—
- (a) that there is proper cause for disciplinary action against a person; or
  - (b) that a medical practitioner or medical student is medically unfit to provide medical treatment; or
  - (c) that a person is guilty of an offence against this Act,
- an inspector may investigate the matter.
- (2) For the purposes of an investigation, an inspector may—
- (a) at any reasonable time, enter and inspect premises of a registered person or premises on which the inspector reasonably suspects an offence against this Act has been or is being committed; or
  - (b) with the authority of a warrant issued by a magistrate or in circumstances in which the inspector reasonably believes that immediate action is required, use reasonable force to break into or open any part of, or anything in or on any premises referred to in paragraph (a); or
  - (c) while on premises entered under paragraph (a) or (b), seize and retain anything found on the premises that the inspector reasonably believes may afford evidence relevant to the matters under investigation; or

- (d) require any person who has possession of documents or records relevant to the matters under investigation to produce those documents or records for inspection, including written records that reproduce in a readily understandable form information kept by computer, microfilm or other process; or
  - (e) inspect any documents or records produced to the inspector and retain them for such reasonable period as the inspector thinks fit, and make copies of the documents or records; or
  - (f) require any person who is in a position to provide information relevant to the matters under investigation to answer any question put by the inspector in relation to those matters; or
  - (g) take photographs, films or video or audio recordings; or
  - (h) if the inspector reasonably suspects that an offence against this Act has been or is being committed, require the suspected offender to state his or her full name and address.
- (3) An inspector must not exercise the power conferred by subsection (2)(a) in relation to any residential premises except with the permission of the occupier of the premises or on the authority of a warrant issued by a magistrate.
- (4) A magistrate must not issue a warrant under this section unless satisfied, by information given on oath, that the warrant is reasonably required in the circumstances.
- (5) The person in charge of premises at the relevant time must give an inspector such assistance and provide such facilities as are necessary to enable the powers conferred by this section to be exercised.

Maximum penalty: \$5 000.

#### **48—Offence to hinder etc inspector**

A person who—

- (a) hinders or obstructs an inspector in the exercise of powers conferred by this Act; or
- (b) uses abusive, threatening or insulting language to an inspector; or
- (c) refuses or fails to comply with a requirement of an inspector under this Act; or
- (d) when required by an inspector to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or
- (e) falsely represents, by words or conduct, that he or she is an inspector,

is guilty of an offence.

Maximum penalty: \$10 000.

### **Division 3—Proceedings before Board**

#### **49—Obligation to report medical unfitness or unprofessional conduct of medical practitioner or medical student**

- (1) If any of the following persons, namely—
- (a) a health professional who has treated, or is treating, a patient who is a medical practitioner or medical student; or
  - (b) a person who provides medical treatment through the instrumentality of a medical practitioner or medical student; or
  - (c) a hospital that has entered into an arrangement with a medical practitioner under which the medical practitioner provides medical treatment at the hospital to his or her patients; or
  - (d) the person in charge of an educational institution at which a medical student is enrolled in a course of study providing qualifications for registration on the general register under this Act,

is of the opinion that the practitioner or student is or may be medically unfit to provide medical treatment, the person must submit a written report to the Board setting out his or her reasons for that opinion and any other information required by the regulations.

Maximum penalty: \$10 000.

- (2) If a medical services provider or exempt provider is of the opinion that a medical practitioner or medical student through whom the provider provides medical treatment has engaged in unprofessional conduct, the provider must submit a written report to the Board setting out the provider's reasons for that opinion and any other information required by the regulations.

Maximum penalty: \$10 000.

- (3) The Board must cause a report made under this section to be investigated.
- (4) In this section—

*health professional* means—

- (a) a medical practitioner; or
- (b) a psychologist; or
- (c) any other person who belongs to a profession, or who has an occupation, declared by the Board, by notice in the Gazette, to be a profession or occupation within the ambit of this definition.

#### **50—Medical fitness of medical practitioner or medical student**

If—

- (a) on the application of—
  - (i) the Registrar; or
  - (ii) the Minister; or
  - (iii) a representative body; or

- (b) after an investigation under section 49 has been conducted, the Board is satisfied, after due inquiry, that a medical practitioner or medical student is medically unfit to provide medical treatment and that it is desirable in the public interest that an order be made under this section, the Board may, by order—
- (c) suspend the person's registration until further order of the Board or for a specified period determined by the Board; or
  - (d) impose conditions on the person's registration restricting the person's right to provide medical treatment; or
  - (e) impose conditions on the person's registration requiring the person to undergo counselling or treatment or to enter into any other undertaking.

### **51—Inquiries by Board as to matters constituting grounds for disciplinary action**

- (1) A complaint setting out matters that are alleged to constitute grounds for disciplinary action against a person may be laid before the Board (in a manner and form approved by the Board) by—
  - (a) the Registrar; or
  - (b) the Minister; or
  - (c) a representative body; or
  - (d) a person who is aggrieved by the conduct of the person or, if the person aggrieved is a child or is suffering from a mental or physical incapacity, by a person acting on his or her behalf.
- (2) If a complaint is laid under this section, the Board must inquire into the subject matter of the complaint unless the Board—
  - (a) considers that the complaint is frivolous or vexatious; or
  - (b) lays a complaint before the Tribunal relating to matters the subject of, or arising out of, the complaint laid before the Board.
- (3) If a complaint has been laid under this section by or on behalf of an aggrieved person and the Board is satisfied that the complaint arose from a misapprehension on the part of the complainant or from a misunderstanding between the parties, it may, before proceeding further with the hearing of the complaint, require the parties to attend before the Registrar in order to clarify the misapprehension or misunderstanding.
- (4) Before the Board inquires into the subject matter of a complaint, the Board must give the respondent an opportunity to elect to have the matter dealt with by the Tribunal and, if the respondent so elects, the Board must lay a complaint before the Tribunal relating to matters the subject of, or arising out of, the complaint.
- (5) If, in the course of conducting an inquiry under this section, the Board considers that the allegations or evidence against the respondent are sufficiently serious or that it is otherwise appropriate to do so, it may terminate the proceedings under this section and itself lay a complaint against the respondent before the Tribunal in relation to those allegations or that evidence.

- (6) If, after conducting an inquiry under this section, the Board is satisfied on the balance of probabilities that there is proper cause for taking disciplinary action against the respondent, the Board may, by order, do one or more of the following:
- (a) censure the respondent;
  - (b) require the respondent to pay to the Board a fine not exceeding \$5 000;
  - (c) if the respondent is a registered person—
    - (i) impose conditions on the person's registration restricting the respondent's right to provide medical treatment;
    - (ii) suspend the respondent's registration on a specified register or in a specified specialty for a period not exceeding 1 month.
- (7) If—
- (a) a person has been found guilty of an offence; and
  - (b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,
- the person is not liable to a fine under this section in respect of conduct giving rise to the offence.
- (8) The Board may—
- (a) fix a period within which a fine imposed under this section must be paid;
  - (b) on application by a person liable to pay a fine imposed under this section, extend the period within which the fine must be paid.
- (9) A fine imposed under this section is recoverable by the Board as a debt.
- (10) The Board may, without further notice, remove from the appropriate register a person who fails to pay a fine imposed under this section.

## **52—Variation or revocation of conditions imposed by Board**

- (1) The Board may, at any time, on application by a registered person, vary or revoke a condition imposed by the Board in relation to the person's registration under this Act.
- (2) The Registrar, the Minister and representative bodies are entitled to appear and be heard on an application under this section.

## **53—Suspension of registration of non-residents**

The Board may, on the application of the Registrar, by order, suspend until further order of the Board the registration of a medical practitioner if satisfied that he or she has not resided in Australia for the period of 12 months immediately preceding the application.

## **54—Constitution of Board for purpose of proceedings**

- (1) The Board will, for the purpose of hearing and determining proceedings under this Division, be constituted of 5 members selected by the presiding member (or, in the absence of the presiding member, the deputy presiding member), of whom—
  - (a) 3 will be members who are medical practitioners; and
  - (b) 2 will be members who are not medical practitioners.

- (2) The presiding member of the Board (or, in the absence of the presiding member, the deputy presiding member) will appoint 1 of the members of the Board, as so constituted for the purposes of any particular proceedings, to preside over those proceedings.
- (3) If a member of the Board as constituted under this section (other than the member presiding over the proceedings) dies or is for any other reason unable to continue with the proceedings, the Board constituted of the remaining members may, if the member presiding over the proceedings so determines, continue and complete the proceedings.
- (4) The Board constituted of the member presiding over the proceedings may, sitting alone—
  - (a) deal with—
    - (i) preliminary, interlocutory or procedural matters; or
    - (ii) questions of costs; or
    - (iii) questions of law; or
  - (b) enter consent orders,and may, for that purpose or as a consequence, while sitting alone, make any determination or order (including a final order) that the member considers appropriate.
- (5) Any questions of law or procedure arising before the Board will be determined by the member presiding over the proceedings and any other questions by unanimous or majority decision of the members.

### **55—Provisions as to proceedings before Board**

- (1) Subject to this Act, the Board must give to all of the parties to proceedings before the Board under this Division at least 14 days written notice of the time and place at which it intends to conduct the proceedings, and must afford to the parties a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Board.
- (2) However—
  - (a) the Board may, if it thinks special reasons exist for doing so, give a lesser period of written notice under subsection (1); and
  - (b) the Board may, if of the opinion that it is necessary to do so to protect the health and safety of the public—
    - (i) suspend the registration of the person the subject of the proceedings; or
    - (ii) impose conditions on the person's registration restricting the person's right to provide medical treatment,pending hearing and determination of the proceedings.
- (3) The requirement to give written notice under subsection (1) does not extend to adjournments.
- (4) If a party to whom notice has been given under subsection (1) does not attend at the time and place fixed by the notice, the Board may proceed to hear and determine the matter in the absence of that party.

- (5) A person who is aggrieved by the conduct of a person that is the subject-matter of proceedings before the Board under this Division is, subject to any direction of the Board to the contrary, entitled to be present at the hearing of the proceedings.
- (6) In the course of proceedings before the Board under this Division, the Board may—
  - (a) receive in evidence a transcript of evidence taken in proceedings before a court, tribunal or other body constituted under the law of South Australia or of any other State or a Territory of Australia or of another country, and draw any conclusions of fact from the evidence that it considers proper;
  - (b) adopt, as in its discretion it considers proper, any findings, decision, judgment, or reasons for judgment, of any such court, tribunal or body that may be relevant to the proceedings.
- (7) The Board should conduct proceedings under this Division as expeditiously as possible.

## **Division 4—Proceedings before Tribunal**

### **56—Constitution of Tribunal for purpose of proceedings**

- (1) The Tribunal will, for the purpose of hearing and determining proceedings, be constituted of—
  - (a) the President or a Judge of the District Court nominated by the President to preside over the proceedings; and
  - (b) 2 members of the Tribunal who are medical practitioners; and
  - (c) a member of the Tribunal who is not a medical practitioner.
- (2) The members of the Tribunal referred to in subsection (1)(b) and (c) will, for the purposes of any particular proceedings, be selected by the person presiding over the proceedings.
- (3) The Tribunal, separately constituted in accordance with this section, may sit simultaneously for the purpose of hearing and determining separate proceedings.
- (4) If a member of the Tribunal as constituted under this section (other than the person presiding over the proceedings) dies or is for any other reason unable to continue with the proceedings before the Tribunal, the Tribunal constituted of the remaining members may, if the person presiding over the proceedings so determines, continue and complete the proceedings.
- (5) The Tribunal constituted of the person presiding over the proceedings may, sitting alone—
  - (a) deal with—
    - (i) preliminary, interlocutory or procedural matters; or
    - (ii) questions of costs; or
    - (iii) questions of law; or
  - (b) enter consent orders,and may, for that purpose or as a consequence, while sitting alone, make any determination or order (including a final order) that the person considers appropriate.

- (6) Any questions of law or procedure arising before the Tribunal will be determined by the person presiding over the proceedings and any other questions by unanimous or majority decision of the members (unless there is an equal division of opinion, in which case, the decision of the person presiding over the proceedings will be the decision of the Tribunal).

### **57—Inquiries by Tribunal as to matters constituting grounds for disciplinary action**

- (1) If the Board lays before the Tribunal a complaint setting out matters that are alleged to constitute grounds for disciplinary action against a person, the Tribunal must, unless it considers the complaint frivolous or vexatious, inquire into the subject matter of the complaint.
- (2) If, after conducting an inquiry under this section, the Tribunal is satisfied on the balance of probabilities that there is proper cause for taking disciplinary action against the respondent, the Tribunal may, by order, do 1 or more of the following:
- (a) censure the respondent;
  - (b) require the respondent to pay to the Board a fine not exceeding \$20 000;
  - (c) if the respondent is a registered person—
    - (i) impose conditions on the respondent's registration restricting the respondent's right to provide medical treatment;
    - (ii) suspend the respondent's registration on a specified register or in a specified specialty for a period not exceeding 1 year;
    - (iii) cancel the respondent's registration on a specified register or in a specified specialty;
    - (iv) disqualify the respondent from being registered on a specified register or in a specified specialty;
  - (d) prohibit the respondent from carrying on business as a medical services provider;
  - (e) prohibit the respondent from occupying a position of authority in a corporate or trustee medical services provider.
- (3) The Tribunal may—
- (a) stipulate that a disqualification or prohibition under subsection (2) is to apply—
    - (i) permanently; or
    - (ii) for a specified period; or
    - (iii) until the fulfilment of specified conditions; or
    - (iv) until further order;
  - (b) stipulate that an order relating to a person is to have effect at a specified future time and impose conditions as to the conduct of the person or the person's business until that time.

- (4) If—
  - (a) a person has been found guilty of an offence; and
  - (b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

the person is not liable to a fine under this section in respect of conduct giving rise to the offence.
- (5) A fine imposed under subsection (2) is recoverable by the Board as a debt.
- (6) The Board may, without further notice, remove from the appropriate register a person who fails to pay a fine imposed under this section.

### **58—Variation or revocation of conditions imposed by Tribunal**

- (1) The Tribunal may, at any time, on application by a registered person, vary or revoke a condition imposed by the Tribunal in relation to the person's registration under this Act.
- (2) The Board is entitled to appear and be heard on an application under this section.

### **59—Provisions as to proceedings before Tribunal**

- (1) Subject to this Act, the Tribunal must give to all of the parties to proceedings before the Tribunal at least 14 days written notice of the time and place at which it intends to conduct the proceedings, and must afford to the parties a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Tribunal.
- (2) However—
  - (a) the Tribunal may, if it thinks special reasons exist for doing so, give a lesser period of written notice under subsection (1); and
  - (b) the Tribunal may, if of the opinion that it is necessary to do so to protect the health and safety of the public, suspend the registration of the person the subject of the proceedings pending hearing and determination of the proceedings.
- (3) The requirement to give written notice under subsection (1) does not extend to adjournments.
- (4) If a party to whom notice has been given under subsection (1) does not attend at the time and place fixed by the notice, the Tribunal may proceed to hear and determine the matter in the absence of that party.
- (5) A party to proceedings before the Tribunal is entitled to be represented at the proceedings.
- (6) The Tribunal—
  - (a) is not bound by the rules of evidence and may inform itself on any matter as it thinks fit; and
  - (b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.
- (7) Subject to this Act, the procedure at an inquiry will be as determined by the Tribunal.

## **60—Powers of Tribunal**

- (1) For the purposes of an inquiry under this Division, the Tribunal may—
- (a) by summons signed on behalf of the Tribunal by a member of the Tribunal or the Registrar, require the attendance before the Tribunal of any person whom the Tribunal thinks fit to call before it; or
  - (b) by summons signed on behalf of the Tribunal by a member of the Tribunal or the Registrar, require the production of any relevant documents, records or equipment and, in the case of a document or record that is not in the English language, require the production of—
    - (i) a written translation of the document or record into English; and
    - (ii) a certificate signed by a translator approved by the Board certifying that the translation accurately reproduces in English the contents of the document or record; or
  - (c) inspect any documents, records or equipment produced before it, and retain them for such reasonable period as it thinks fit, and make copies of the documents or records or their contents; or
  - (d) require any person to make an oath or affirmation (which may be administered by any member of the Tribunal) to answer truthfully questions put by any member of the Tribunal or any person appearing before the Tribunal; or
  - (e) require any person appearing before the Tribunal (whether summoned to appear or not) to answer any questions put by any member of the Tribunal or by any person appearing before the Tribunal.
- (2) A person who—
- (a) fails without reasonable excuse to comply with a summons issued to attend, or to produce documents, records or equipment, before the Tribunal; or
  - (b) having been served with a summons to produce—
    - (i) a written translation of the document or record into English; and
    - (ii) a certificate signed by a translator approved by the Board certifying that the translation accurately reproduces in English the contents of the document or record,fails, without reasonable excuse, to comply with the summons; or
  - (c) misbehaves before the Tribunal, wilfully insults the Tribunal or 1 or more of the members in the exercise of the members' official duties, or wilfully interrupts the proceedings of the Tribunal; or
  - (d) refuses to be sworn or to affirm, or refuses or fails to answer truthfully a relevant question when required to do so by the Tribunal,
- is guilty of an offence.
- Maximum penalty: \$10 000 or imprisonment for 6 months.
- (3) A person who appears as a witness before the Tribunal has the same protection as a witness in proceedings before the Supreme Court.

- (4) If a person summoned under subsection (1) fails to produce any books or equipment or to appear before the Tribunal as required by the summons or, having appeared, refuses to be sworn or to affirm, or to answer a relevant question when required to do so by the Tribunal, a certificate of the failure or refusal, signed by a member of the Tribunal or by the Registrar, may be filed in the Supreme Court.
- (5) If a certificate has been filed under subsection (4), a party requiring the production of books or equipment or the appearance of a person before the Tribunal may apply (either *ex parte* or on notice) to the Supreme Court for an order directing the production of the books or equipment or that person attend, or be sworn or affirm, or answer questions (as the case may require) and on that application the Court may make such orders as it thinks fit (including orders for costs).
- (6) In the course of an inquiry under this Division, the Tribunal may—
  - (a) receive in evidence a transcript of evidence taken in proceedings before a court, tribunal or other body constituted under the law of South Australia or of any other State or a Territory of Australia or of another country, and draw any conclusions of fact from the evidence that it considers proper;
  - (b) adopt, as in its discretion it considers proper, any findings, decision, judgment, or reasons for judgment, of any such court, tribunal or body that may be relevant to the proceedings.

## **61—Costs**

- (1) The Tribunal may award costs (to be fixed by the Tribunal or taxed by a Master of the District Court) against a party to proceedings before the Tribunal as it thinks fit.
- (2) Costs awarded by the Tribunal under this section may be recovered as a debt.

## **62—Contravention of prohibition order**

- (1) If a person carries on business as a medical services provider in contravention of an order of the Tribunal, the person is guilty of an offence.  
Maximum penalty: \$75 000 or imprisonment for 6 months.
- (2) If a person occupies a position of authority in a corporate or trustee medical services provider in contravention of an order of the Tribunal, the person and the provider are each guilty of an offence.  
Maximum penalty: \$75 000 or imprisonment for 6 months.
- (3) If a person contravenes or fails to comply with a condition imposed by the Tribunal as to the conduct of the person or the person's business, the person is guilty of an offence.  
Maximum penalty: \$75 000 or imprisonment for 6 months.

## **63—Register of prohibition orders**

- (1) The Registrar must keep a register of persons who have been prohibited by order of the Tribunal under this Division from carrying on business as a medical services provider or occupying a position of authority in a corporate or trustee medical services provider.
- (2) The register—
  - (a) must not include any person who is dead;

- (b) must include, in relation to each person on the register—
  - (i) the person's full name and business address; and
  - (ii) particulars of the order.
- (3) The Registrar is responsible to the Tribunal for the form and maintenance of the register.
- (4) The Registrar must correct an entry in the register that is not, or has ceased to be, correct.
- (5) The register must be kept available for inspection by any person during ordinary office hours at the office of the Registrar and the register may be made available to the public by electronic means.
- (6) A person may, on payment of the prescribed fee, obtain a copy of any part of the register.
- (7) In legal proceedings, a document apparently certified by the Registrar to be a copy of the register must be accepted as such in the absence of proof to the contrary.

#### **64—Power of Tribunal to make rules**

The Tribunal constituted of the President and 2 other members selected by the President may make rules—

- (a) regulating the practice and procedure of the Tribunal; or
- (b) making any other provision that is necessary or expedient for carrying into effect the provisions of this Division relating to the Tribunal.

### **Part 6—Appeals**

#### **65—Right of appeal to Supreme Court**

- (1) An appeal lies to the Supreme Court against—
  - (a) a refusal by the Board to register, or reinstate the registration of, a person under this Act; or
  - (b) the imposition by the Board of conditions on a person's registration under this Act; or
  - (c) a decision made by the Board or Tribunal in proceedings under Part 5.
- (2) The appeal lies—
  - (a) in the case of an appeal against a decision made by the Tribunal—to the Full Court; or
  - (b) in any other case—to the Court constituted of a single Judge.
- (3) An appeal under subsection (1)(c) against a decision may be instituted by the complainant or the respondent in the proceedings in which the decision was made.
- (4) An appeal must be instituted within 1 month of the date of the decision appealed against but the Court may, if satisfied that it is just and reasonable in the circumstances to do so, extend that period (whether or not it has already expired).

- (5) The Court must, on an appeal under this section, examine the decision of the original decision-maker on the evidence or material before the original decision-maker but the Court may, as it thinks fit, allow further evidence or material to be presented to it.
- (6) The Court, on an appeal under this section—
  - (a) is not bound by the rules of evidence but may inform itself as it thinks fit; and
  - (b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; and
  - (c) must give due weight to the decision being appealed against and the reasons for it and not depart from the decision except for cogent reasons.
- (7) The Court may, on after hearing an appeal under this section—
  - (a) affirm the decision appealed against;
  - (b) rescind the decision and substitute a decision that the Court considers appropriate;
  - (c) remit matters to the original decision-maker for consideration or further consideration in accordance with any directions or recommendations of the Court;
  - (d) make any order as to costs or as to any other matter that the case requires.

#### **66—Operation of order may be suspended**

- (1) Where an order has been made by the Board or the Tribunal, and the Board or the Tribunal (as the case may be) or the Supreme Court is satisfied that an appeal against the order has been instituted, or is intended, it may suspend the operation of the order until the determination of the appeal.
- (2) Where the Board or the Tribunal has suspended the operation of an order under subsection (1), the Board or the Tribunal (as the case may be) may terminate the suspension, and where the Supreme Court has done so, the Court may terminate the suspension.

#### **67—Variation or revocation of conditions imposed by Court**

- (1) The Supreme Court may, at any time, on application by a registered person, vary or revoke a condition imposed by the Court in relation to the person's registration under this Act.
- (2) The Board, the Minister and representative bodies are entitled to appear and be heard on an application under this section.

### **Part 7—Miscellaneous**

#### **68—Interpretation**

In this Part—

*health product* means—

- (a) a pharmaceutical product; or
- (b) any other product declared by the regulations to be a health product for the purposes of this Part;

*health service* means—

- (a) hospital, nursing home or aged care facility services; or
- (b) medical, dental or pharmaceutical services; or
- (c) physiotherapy, psychology, podiatric, optometry, occupational therapy, chiropractic or osteopathy services; or
- (d) any other service declared by the regulations to be a health service for the purposes of this Part;

*prescribed relative*, in relation to a registered person, means a parent, spouse, child, grandchild, brother or sister of the registered person;

*putative spouse*, in relation to a registered person, means a person who is cohabiting with the registered person as the husband or wife *de facto* of the registered person and—

- (a) who has so cohabited continuously over the last preceding period of 5 years, or for periods aggregating 5 years over the last preceding period of 6 years; or
- (b) who has had sexual relations with the registered person resulting in the birth of a child;

*spouse* includes a putative spouse.

#### **69—Offence to contravene conditions of registration**

A person who contravenes, or fails to comply with, a condition imposed under this Act on the person's registration is guilty of an offence.

Maximum penalty: \$75 000 or imprisonment for 6 months.

#### **70—Offence to practise medicine while deregistered**

- (1) If a person who has been removed from a register under this Act and not been reinstated provides medical treatment for fee or reward, the person is guilty of an offence.

Maximum penalty: \$75 000 or imprisonment for 6 months.

- (2) This section does not apply in relation to a person who is the subject of an exemption under section 44 and who provides medical treatment in accordance with the exemption.

#### **71—Registered person etc must declare interest in prescribed business**

- (1) A registered person or prescribed relative of a registered person who has an interest in a prescribed business must—
  - (a) in the case of an interest that came into existence before the commencement of this section—within 1 month after the commencement of this section; or
  - (b) in any other case—within 1 month after the interest comes into existence,give to the Board prescribed information relating to the interest and the manner in which it arose.

Maximum penalty: \$20 000.

- (2) A registered person or prescribed relative of a registered person who has an interest in a prescribed business must, within 1 month after a change in the nature or extent of the interest, give to the Board prescribed information relating to the change.

Maximum penalty: \$20 000.

- (3) If a registered person or prescribed relative of a registered person has an interest in a prescribed business, the registered person must not—

- (a) refer a patient to, or recommend that a patient use, a health service provided by that business; or
- (b) prescribe, or recommend that a patient use, a health product manufactured, sold or supplied by that business,

unless the registered person has informed the patient, in writing, of the interest of the registered person or prescribed relative of the registered person in that business.

Maximum penalty: \$20 000.

- (4) Subject to subsection (5), a person has an interest in a prescribed business for the purposes of this section if the person is likely to derive a financial benefit, whether directly or indirectly, from the profitable conduct of the business.

- (5) For the purposes of subsection (4)—

- (a) a financial benefit is not derived by a registered person if the benefit consists solely of reasonable fees payable to the registered person for treatment provided to patients by the registered person; and
- (b) a person does not have an interest in a prescribed business that is carried on by a public company if the interest consists only of a shareholding in the company of less than 5 per cent of the issued share capital of the company.

- (6) It is a defence to proceedings for an offence against subsection (3) and to a charge of unprofessional conduct for failure to comply with that subsection for the defendant to prove that he or she did not know and could not reasonably have been expected to know that a prescribed relative had an interest in the prescribed business to which the referral, recommendation or prescription that is the subject of the proceedings relates.

- (7) In this section—

*prescribed business* means a business consisting of or involving—

- (a) the provision of a health service; or
- (b) the manufacture, sale or supply of a health product.

## **72—Offence to give, offer or accept benefit for referral or recommendation**

- (1) A person must not give, or offer to give, a registered person or a prescribed relative of a registered person a benefit as an inducement, consideration or reward for the registered person—

- (a) referring a patient to, or recommending that a patient use, a health service provided by the person; or
- (b) prescribing, or recommending that a patient use, a health product manufactured, sold or supplied by the person.

Maximum penalty: \$75 000.

- (2) A registered person or a prescribed relative of a registered person must not accept from any person a benefit offered or given as an inducement, consideration or reward for the registered person—
- (a) referring a patient to, or recommending that a patient use, a health service provided by that person; or
  - (b) prescribing, or recommending that a patient use, a health product manufactured, sold or supplied by that person.

Maximum penalty: \$75 000.

- (3) In this section—

*benefit* means money, property or anything else of value.

### **73—Improper directions to medical practitioners or medical students**

- (1) If a person who provides medical treatment through the instrumentality of a medical practitioner or medical student directs or pressures the practitioner or student to engage in unprofessional conduct, the person is guilty of an offence.

Maximum penalty: \$75 000.

- (2) If a person who occupies a position of authority in a corporate or trustee medical services provider directs or pressures a medical practitioner or medical student through whom the provider provides medical treatment to engage in unprofessional conduct, the person and the provider are each guilty of an offence.

Maximum penalty: \$75 000.

### **74—Procurement of registration by fraud**

A person who, by fraud or any other dishonest means, procures registration or reinstatement of registration under this Act (whether for himself or herself or for another person) is guilty of an offence.

Maximum penalty: \$20 000 or imprisonment for 6 months.

### **75—Statutory declarations**

If a person is required under this Act to furnish information to the Board, the Board may require that the information be verified by statutory declaration and, in that event, the person will not be taken to have furnished the information as required unless it has been verified in accordance with the requirements of the Board.

### **76—False or misleading statement**

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Act.

Maximum penalty: \$20 000.

**77—Medical practitioner or medical student must report his or her medical unfitness to Board**

If a medical practitioner or medical student becomes aware that he or she is or may be medically unfit to provide medical treatment, the practitioner or student must forthwith give written notice of that fact to the Board.

Maximum penalty: \$10 000.

**78—Report to Board of cessation of status as student**

- (1) The person in charge of an educational institution must, if a medical student completes, or ceases to be enrolled in, a course of study at that institution providing qualifications for registration on the general register under this Act, cause written notice of that fact to be given to the Board.

Maximum penalty: \$5 000.

- (2) A person registered on the medical student register who completes, or ceases to be enrolled in, the course of study that formed the basis for that registration must cause written notice of that fact to be given to the Board.

Maximum penalty: \$1 250.

**79—Registered persons and medical services providers to be indemnified against loss**

- (1) A registered person or medical services provider must not, unless exempted by the Board, provide medical treatment unless insured or indemnified in a manner and to an extent approved by the Board against civil liabilities that might be incurred by the registered person or medical services provider, as the case may be, in connection with the provision of any such treatment or proceedings under Part 5 against the registered person or medical services provider.

Maximum penalty: \$10 000.

- (2) The Board may, subject to such conditions as it thinks fit, exempt a person, or a class of persons, from the requirements of this section and may, whenever it thinks fit, revoke an exemption or revoke or vary the conditions under which an exemption operates.

**80—Information relating to claim against registered person or medical services provider to be provided**

- (1) If a person has claimed damages or other compensation from a registered person or other person for alleged negligence committed by the registered person in the course of providing medical treatment, the person against whom the claim is made must—
  - (a) within 30 days after the claim is made; and
  - (b) within 30 days after any order is made by a court to pay damages or other compensation in respect of that claim or any agreement has been entered into for payment of a sum of money in settlement of that claim (whether with or without a denial of liability),

provide the Board with prescribed information relating to the claim.

Maximum penalty: \$10 000.

- (2) If a person has claimed damages or other compensation from a medical services provider for alleged negligence committed by the medical services provider in connection with the provision of medical treatment, the medical services provider must—
- (a) within 30 days after the claim is made; and
  - (b) within 30 days after any order is made by a court to pay damages or other compensation in respect of that claim or any agreement has been entered into for payment of a sum of money in settlement of that claim (whether with or without a denial of liability),

provide the Board with prescribed information relating to the claim.

Maximum penalty: \$10 000.

## 81—Victimisation

- (1) A person commits an act of victimisation against another person (the *victim*) if he or she causes detriment to the victim on the ground, or substantially on the ground, that the victim—
- (a) has disclosed or intends to disclose information; or
  - (b) has made or intends to make an allegation,
- that has given rise, or could give rise, to proceedings against the person under this Act.
- (2) An act of victimisation under this Act may be dealt with—
- (a) as a tort; or
  - (b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*, but, if the victim commences proceedings in a court seeking a remedy in tort, he or she cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* and, conversely, if the victim lodges a complaint under that Act, he or she cannot subsequently commence proceedings in a court seeking a remedy in tort.
- (3) Where a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.
- (4) In this section—
- detriment* includes—
- (a) injury, damage or loss; or
  - (b) intimidation or harassment; or
  - (c) discrimination, disadvantage or adverse treatment in relation to the victim's employment or business; or
  - (d) threats of reprisal.

## 82—Self-incrimination

If a person is required to provide information or to produce a document, record or equipment under this Act and the information, document, record or equipment would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless provide the information or produce the document, record or equipment, but the information, document, record or equipment so provided or produced will not be admissible in evidence against the person in proceedings for an offence, other than an offence against this or any other Act relating to the provision of false or misleading information.

## 83—Punishment of conduct that constitutes an offence

If conduct constitutes an offence and is also a ground for disciplinary action under this Act, the taking of disciplinary action under this Act is not a bar to conviction and punishment for the offence, nor is conviction and punishment for the offence a bar to disciplinary action under this Act.

## 84—Vicarious liability for offences

If a corporate or trustee medical services provider or other body corporate is guilty of an offence against this Act, each person occupying a position of authority in the provider or body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the person could not, by the exercise of reasonable care, have prevented the commission of the principal offence.

## 85—Application of fines

A fine imposed for an offence against this Act must be paid to the Board.

## 86—Board may require medical examination or report

- (1) The Board may, for any purpose associated with the administration or operation of this Act, require a medical practitioner or medical student, or a person who is applying for registration or reinstatement of registration to—
  - (a) submit to an examination by a health professional, or by a health professional of a class, specified by the Board; or
  - (b) provide a medical report from a health professional, or from a health professional of a class, specified by the Board,(including an examination or report that will require the person to undergo some form of medically invasive procedure).
- (2) If a person fails to comply with a requirement made under subsection (1), the Board may suspend the person's registration until further order of the Board.
- (3) In this section—

**health professional** means—

  - (a) a medical practitioner; or
  - (b) a psychologist; or
  - (c) any other person who belongs to a profession, or who has an occupation, declared by the Board, by notice in the Gazette, to be a profession or occupation within the ambit of this definition.

### **87—Ministerial review of decisions relating to courses**

- (1) If the Board—
  - (a) refuses to approve a course of education or training for the purposes of this Act; or
  - (b) revokes an approval of a course of education or training under this Act, the provider of the course may apply to the Minister for a review of that decision.
- (2) The Minister may determine the application as the Minister thinks fit and, if the Minister finds in favour of the applicant, grant or preserve the approval (as appropriate).

### **88—Confidentiality**

- (1) A person engaged or formerly engaged in the administration of this Act or the repealed Act must not divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—
  - (a) as required or authorised by or under this Act or any other Act or law; or
  - (b) with the consent of the person to whom the information relates; or
  - (c) in connection with the administration of this Act or the repealed Act; or
  - (d) to an authority responsible under the law of a place outside this State for the registration or licensing of persons who provide medical treatment, where the information is required for the proper administration of that law; or
  - (e) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions.

Maximum penalty: \$10 000.

- (2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.
- (3) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—
  - (a) the person to whom the information was disclosed; or
  - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$10 000.

### **89—Service**

- (1) A notice or document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may—
  - (a) be given to the person personally; or
  - (b) be posted in an envelope addressed to the person at the person's last known nominated contact, residential, business or (in the case of a corporation) registered address; or

- (c) be left for the person at the person's last known nominated contact, residential, business or (in the case of a corporation) registered address with someone apparently over the age of 16 years; or
  - (d) be transmitted by facsimile transmission or electronic mail to a facsimile number or electronic mail address provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).
- (2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

### 90—Evidentiary provision

- (1) In proceedings for an offence against this Act or in disciplinary proceedings under Part 5, an allegation in the complaint—
- (a) that a person named in the complaint is or is not, or was or was not on a specified date, a qualified person;
  - (b) that a person named in the complaint is or is not, or was or was not on a specified date, registered on the medical student register, the general register, the specialist register or in a specified specialty;
  - (c) that the registration of a person named in the complaint is, or was on a specified date, subject to specified conditions;
  - (d) that a person named in the complaint is, or was on a specified date, a medical services provider or exempt provider;
  - (e) that a person named in the complaint is, or was on a specified date, occupying a position of authority in a corporate or trustee medical services provider;
  - (f) that a person named in the complaint is, or was on a specified date, an inspector,

must be accepted as proved in the absence of proof to the contrary.

- (2) In legal proceedings, a document apparently certified by the Registrar to be a copy of a register under this Act, or a copy of a code of conduct or professional standard prepared or endorsed by the Board under this Act, must be accepted as such in the absence of proof to the contrary.

### 91—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) prescribe, or empower the Board to fix—
    - (i) fees or charges for the purposes of this Act;
    - (ii) fees or charges for services provided by the Board in the exercise of its functions under this Act,

- and may provide for the recovery of a fee or charge so prescribed;
- (b) exempt any person or class of persons from the obligation to pay a fee or charge so prescribed;
  - (c) regulate, or otherwise make provision with respect to, the education of medical practitioners for the purposes of this Act, including by making provision with respect to the approval of courses that may lead to registration;
  - (d) make any provision with respect to the keeping of a register;
  - (e) prescribe penalties, not exceeding \$5 000, for breach of, or non-compliance, with a regulation.
- (3) The regulations may—
- (a) refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time; and
  - (b) be of general or limited application; and
  - (c) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
  - (d) provide that a specified provision of this Act does not apply, or applies with prescribed variations, to any person, circumstance or situation (or person, circumstance or situation of a prescribed class) specified by the regulations, subject to any condition to which the regulations are expressed to be subject; and
  - (e) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Board or another prescribed authority.
- (4) If a code, standard or other document is referred to or incorporated in the regulations—
- (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during normal office hours, at an office or offices specified in the regulations; and
  - (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

## **Schedule 1—Repeal and transitional provisions**

### **1—Repeal of *Medical Practitioners Act 1983***

The *Medical Practitioners Act 1983* is repealed.

### **2—Transitional provisions relating to Board and Tribunal**

- (1) The Medical Board of South Australia is the same body corporate as the Medical Board established under the repealed Act.

- (2) On the commencement of this clause—
  - (a) all members of the Board then in office vacate their respective offices so that fresh appointments may be made to the Board under this Act; and
  - (b) all members of the Tribunal then in office vacate their respective offices so that fresh appointments may be made to the Tribunal under this Act.
- (3) If appointments are to be made to the Board pursuant to the *Acts Interpretation Act 1915* prior to the commencement and for the purposes of section 6—
  - (a) a reference in that section to *medical practitioner* will, for those purposes, be taken to be a reference to a person who is a registered medical practitioner under the repealed Act at the relevant time; and
  - (b) despite section 14C(3) of the *Acts Interpretation Act 1915*, such an appointment takes effect on the commencement of the section for the purposes of which it was made and not before.

### **3—Transitional provisions relating to registration**

- (1) The registers maintained under the repealed Act continue in existence as the relevant appropriate registers under this Act.
- (2) The Registrar will, on the commencement of this Act, remove from the relevant register any company that was registered as a medical practitioner under the repealed Act.
- (3) A person who is on the general register or the specialist register immediately following the commencement of this clause will be taken to be registered under this Act on the relevant register and any restrictions, limitations or conditions that applied to the registration of the person under the repealed Act immediately before that commencement will be taken to continue to apply to the registration of the person under this Act as if they had been imposed by the Board under this Act.
- (4) If a person who was removed from a register under the repealed Act for any reason and who had not, before the commencement of this Act, been reinstated on that register, applies for registration under this Act, the Board may deal with the application as though it were an application for reinstatement on the appropriate register under this Act.

### **4—Transitional provision relating to medical students**

A person who was, immediately before the commencement of this clause, enrolled in an undergraduate course, or prescribed postgraduate course, of medical study at a Medical School in the State accredited by the Australian Medical Council, is, on due application to the Board, entitled to full registration on the medical student register.

### **5—Transitional provision relating to declaration of interests in hospitals**

- (1) A medical practitioner or prescribed relative of a medical practitioner who has an interest in a hospital (as defined in section 71 of the repealed Act) that arose before the commencement of section 71(1) of this Act is not required to comply with that subsection in relation to the interest if, before that commencement, the medical practitioner or prescribed relative had complied with section 71(1) of the repealed Act in relation to the interest.

- (2) In subclause (1)—

*prescribed relative* has the same meaning as in Part 7.

## **6—Regulations**

The regulations may make other provisions of a savings or transitional nature consequent on the enactment of this Act.

## **Schedule 2—Further provisions relating to Board**

### **1—Duty of members of Board with respect to conflict of interest**

- (1) A member of the Board who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the Board—
- (a) must, as soon as reasonably practicable, disclose in writing to the Board full and accurate details of the interest; and
  - (b) must not take part in any discussion by the Board relating to that matter; and
  - (c) must not vote in relation to that matter; and
  - (d) must be absent from the meeting room when any such discussion or voting is taking place.

Maximum penalty: \$20 000.

- (2) If a member of the Board makes a disclosure of interest and complies with the other requirements of subclause (1) in respect of a proposed contract—
- (a) the contract is not liable to be avoided by the Board; and
  - (b) the member is not liable to account to the Board for profits derived from the contract.
- (3) If a member of the Board fails to make a disclosure of interest or fails to comply with any other requirement of subclause (1) in respect of a proposed contract, the contract is liable to be avoided by the Board or the Minister.
- (4) A contract may not be avoided under subclause (3) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.
- (5) Where a member of the Board has or acquires a personal or pecuniary interest, or is or becomes the holder of an office, such that it is reasonably foreseeable that a conflict might arise with his or her duties as a member of the Board, the member must, as soon as reasonably practicable, disclose in writing to the Board full and accurate details of the interest or office.

Maximum penalty: \$20 000.

- (6) A disclosure under this clause must be recorded in the minutes of the Board and reported to the Minister.

- (7) If, in the opinion of the Minister, a particular interest or office of a member of the Board is of such significance that the holding of the interest or office is not consistent with the proper discharge of the duties of the member, the Minister may require the member either to divest himself or herself of the interest or office or to resign from the Board (and non-compliance with the requirement constitutes misconduct and hence a ground for removal of the member from the Board).
- (8) Without limiting the effect of this clause, a member of the Board will be taken to have an interest in a matter for the purposes of this clause if an associate of the member has an interest in the matter.
- (9) This clause does not apply in relation to a matter in which a member of the Board has an interest while the member remains unaware that he or she has an interest in the matter, but in any proceedings against the member the burden will lie on the member to prove that he or she was not, at the material time, aware of his or her interest.
- (10) In this clause—  
*associate* has the same meaning as in the *Public Corporations Act 1993*.

## **2—Protection from personal liability**

- (1) No personal liability is incurred for an act or omission by—
  - (a) a member of the Board; or
  - (b) a member of a committee of the Board; or
  - (c) the Registrar of the Board; or
  - (d) any other person engaged in the administration of this Act,in good faith in the performance or purported performance of functions or duties under this Act.
- (2) A civil liability that would, but for subclause (1), lie against a person, lies instead against the Crown.

## **3—Expiry of Schedule**

This Schedule will expire on the commencement of section 6H of the *Public Sector Management Act 1995* (as inserted by the *Statutes Amendment (Honesty and Accountability in Government) Act 2003*).