

Medical Practitioners (Amendment) Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 13 March 1991

(Brought in by Mr Kennan and Mr Roper)

A BILL

to amend the **Medical Practitioners Act 1970** and for other purposes.

Medical Practitioners (Amendment) Act 1991

The Parliament of Victoria enacts as follows:

1. Purpose

5 The purpose of this Act is to make various amendments
to the **Medical Practitioners Act 1970** about the
membership of the Board, the registration of and
disciplinary proceedings against medical practitioners and
other matters.

2. Commencement

- 10 (1) This Act, other than sections 4 and 12, comes into
operation on the day on which it receives the Royal Assent.
- (2) Sections 4 and 12 of this Act come into operation on a
day or days to be proclaimed.

Section headings appear in bold italics and are not part of the Act
(see **Interpretation of Legislation Act 1984**).

No. 8061.
Reprinted to
No. 10132 and
subsequently
amended by
Nos 10244,
10262,
59/1986,
110/1986,
83/1987 and
49/1988.

3. Principal Act

In this Act the **Medical Practitioners Act 1970** is called the Principal Act.

4. Increase in membership of Medical Board

- (1) In section 4 of the Principal Act— 5
 - (a) for sub-section (2) **substitute—**
 - “(2) The Board is to be appointed by the Governor in Council and is to consist of—
 - (a) 9 legally qualified medical practitioners, one of whom is to be appointed by the Governor in Council to be President of the Board and another of whom is to be appointed to be Deputy President to act as chairman in the absence of the President; and 10
 - (b) two persons who are not legally qualified medical practitioners, of whom one is to be qualified as a barrister and solicitor of the Supreme Court of Victoria.”; and 15 - (b) in sub-section (9), for “three” **substitute** “4”. 20
- (2) The Medical Board of Victoria as constituted after the commencement of sub-section (1) is to be taken to be the same body as the Board constituted immediately before that commencement, and no act matter or thing is affected by the reconstitution of the Board. 25

5. Practitioners employed by Commonwealth to pay fees

In section 5 of the Principal Act, sub-section (2) is **repealed.**

6. Form of register

In section 8 (1) of the Principal Act, for “prescribed form”
substitute “form determined by the Board”.

7. Grounds for refusing to register

5 In section 9 of the Principal Act—

(a) in sub-section (1) after paragraph (c) insert—

”; or

(d) is, in the opinion of the Board, unfit to be
registered.”; and

10 (b) after sub-section (2) insert—

“(3) The Board must not refuse to register a person
under sub-section (1) (d) unless the Board
conducts an inquiry into the matter before
doing so.”.

15 **8. Insertion of new section 15C**

After section 15B of the Principal Act insert—

“15C. Temporary registration

20 (1) If a medical practitioner who is registered in
another State or Territory of Australia, is
required to practice in Victoria for an urgent
reason, that medical practitioner is to be taken
to be registered in Victoria for the purposes of
that reason only.

25 (2) The Board may temporarily register a medical
practitioner visiting Victoria, if the Board is
satisfied that that person has an outstanding
international reputation as a medical
practitioner.

30 (3) A person registered under sub-section (2)—
(a) may be registered for a period of up to 1
month; and

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(b) may be registered either on his own application or at the motion of the Board.”.

9. Amendment of disciplinary proceedings

In section 17 of the Principal Act— 5

(a) in sub-section (6), for “or (h)” substitute “, (h) or (i)”;

(b) after sub-section (11) insert—

“(11A) If the Board imposes a fine on a person under sub-section (4), the Board may determine— 10

(a) that the fine be paid before a specified date; and

(b) that if the fine is not paid, the registration of the practitioner is suspended on and after that date until the fine is paid; and 15

(c) that if the fine is not paid before the expiration of a specified period after the specified date, the registration of the practitioner is cancelled. 20

(11B) A person upon whom a fine has been imposed by the Board must pay that fine.

Penalty: 10 penalty units.”.

10. New section 17C inserted 25

After section 17B of the Principal Act insert—

“17C. Suspension or removal from register without inquiry

(1) Where—

(a) a person is registered as a medical practitioner in Victoria and is or has been registered in another State or Territory; and 30

(b) the registration board of the other State or Territory has held an inquiry into the conduct of the medical practitioner; and

(c) as a result of that inquiry—

(i) the registration of the medical practitioner in the other State or Territory has been suspended or the practitioner's name has been removed from the register of medical practitioners (whether before or after the commencement of this section); and

(ii) the practitioner's name has not been restored to the register in the other State or Territory; and

(d) if the Board had held an inquiry into that conduct of the medical practitioner under section 17, the Board would have been authorised under this Act to suspend the practitioner's registration or remove the practitioner's name from the register of medical practitioners—

the Board may without inquiry—

(e) suspend the practitioner's registration as a medical practitioner in Victoria for the remainder of the period of suspension in the other State or Territory; or

(f) remove the practitioner's name from the register of medical practitioners.

(2) Where an appeal has been brought under section 11 (2) against a decision of the Board under this section, the decision of the Board does not take effect, unless the court otherwise orders, until the appeal has been determined in favour of the Board.

(3) If under this section—

(a) the Board suspends a practitioner's registration or removes a practitioner's name from the register; and

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(b) the practitioner’s name is subsequently restored to the register in the other State or Territory—

the Board must restore the practitioner’s name to the register.”.

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11. *New sections 18B to 18H inserted*

After section 18A of the Principal Act insert—

“18B. *Preliminary consideration of fitness to practice*

(1) If the Board receives information that a person’s fitness to practise as a legally qualified medical practitioner is seriously impaired because of his or her physical or mental condition, it may appoint a legally qualified medical practitioner who may be one of its members as an assessor to make a preliminary assessment of the information. 10 15

(2) Despite sub-section (1), the Board may begin an informal or formal inquiry into the physical or mental health of the practitioner if there are several complaints of a similar nature about the practitioner, or if there are any other special circumstances. 20

(3) Despite sub-section (1), the Board need not appoint a assessor if it considers the complaint to be frivolous or vexatious. 25

18C. *Notice*

If after a preliminary assessment, the assessor decides that the information received indicates that the practitioner may not be fit to practise, the assessor must give a written notice to the practitioner— 30

(a) stating that a question as to the person’s fitness to practise has arisen and giving details of the circumstances; and

- 5
- (b) listing the medical practitioners approved by the Board to conduct medical examinations and inviting the practitioner—
- (i) to be examined by a person of his or her choosing from the list; or
- (ii) to be examined by another medical practitioner acceptable to the practitioner and the assessor; and
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- (c) stating that the medical examination must take place within the period fixed in the notice; and
- (d) containing the prescribed information.

18D. *Medical examinations and reports*

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- (1) A medical examination conducted for the purposes of section 18C—
- (a) must be taken to have been requested by the assessor; and
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- (b) must include an assessment of the practitioner's fitness to practise.
- (2) The examining medical practitioner does not need to obtain the consent of the practitioner examined to disclose the results of the medical examination to the assessor and is not liable to
- 25
- any action or proceeding because of that disclosure.
- (3) The examining medical practitioner must—
- (a) report to the assessor upon the physical and, if the case so requires, the mental condition of the person examined; and
- 30
- (b) give a copy of the report to the person examined within 7 days after he or she reports to the assessor.

18E. *Voluntary action after discussion*

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- (1) The assessor must consider any report on a medical examination conducted for the purposes

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- of section 18C and may invite the medical practitioner examined to discuss it.
- (2) On completion of the preliminary assessment the assessor must report the conclusions and proposed actions to the Board. 5
- (3) If the Board approves, the assessor and the practitioner may agree that the practitioner will give a written undertaking to the Board to do one or more of the following:
- (a) to limit his or her practice in a particular way; 10
 - (b) to stop practising for an agreed period;
 - (c) to receive treatment from an approved medical practitioner who must report at stated intervals to the assessor. 15
- (4) A practitioner who gives an undertaking may withdraw it by giving written advice of this to the Board.

18F. *Compliance monitoring*

The assessor may determine that the practitioner's compliance with any undertaking given is to be regularly monitored and that the results of the monitoring are to be reported to the assessor and the Board. 20

18G. *Action where undertaking not given etc.* 25

If—

- (a) the practitioner when invited by the assessor—
 - (i) refuses to be medically examined; or
 - (ii) does not submit to a medical examination within the times fixed in the notice; or 30
- (b) the assessor decides that information raises an issue of fitness to practise and the practitioner— 35

- 5
- (i) does not discuss the matter with the assessor within a reasonable time after being invited to do so; or
 - (ii) does not give an undertaking during discussions with the assessor; or
 - (iii) withdraws an undertaking; or
 - (c) the practitioner does not comply with an undertaking given to the assessor; or
 - (d) does not agree to or comply with compliance monitoring—
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- the Board must hold an inquiry under section 18.

18H. Practitioner fit to resume

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If at any time the assessor concludes that the practitioner is fit to resume practice, the assessor must report the conclusion and reasons to the Board and the Board may act upon that decision or may determine that it should conduct a further inquiry.”.

20 **12. Qualifications for registration**

In section 19 (1) of the Principal Act—

(a) for paragraph (a) substitute—

25 “(a) if the person is a graduate of a university, college or other body accredited by the Australian Medical Council; or”; and

(b) after paragraph (b) insert—

“; or

(c) if the person—

30 (i) has been registered to practise continuously without restriction as a medical practitioner in another State or Territory of Australia for the 5 years immediately before applying for registration in Victoria; and

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(ii) holds a current Certificate of Good Standing issued by the Medical Board of that State or Territory.”.

13. Evidence of authority to commence proceedings

In section 36 of the Principal Act— 5

(a) after “36.” insert “(1)”; and

(b) at the end of the section insert—

“(2) A certificate appearing to be signed by the President, Deputy President or Secretary of the Board is evidence and, in the absence of evidence to the contrary, is proof that the person nominated in the certificate has been authorised to take proceedings on behalf of the Board.”. 10

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