INTRODUCTION

This Bill provides for the registration and regulation of medical practitioners.

It implements the recommendations of the Review of the Medical Act 1894 that was provided to the Minister for Health in June 2001.

The Bill also contains the provisions necessary for Western Australia to implement a scheme of portability for general and specialist registrants that was agreed to by the Australian Health Ministers Conference in April 2006.

Long Title

The long title sets out the purpose of the Bill, which is to provide for regulation of the practice of medicine and registration of persons as medical practitioners, to repeal the Medical Act 1894 and to make consequential amendments to various Acts.

Part 1 – Preliminary

This part contains the title of the Act, the relevant commencement provisions, definitions of the terms used within the Bill and the application of the Act to the practice of other health professionals.

Clause 1 Short Title

This clause provides the short title of the Act.

Clause 2 Commencement

This clause provides for the Act to come into operation on a day fixed by proclamation. Different days may be fixed for different provisions.

Clause 3 Objects of Act

This clause provides that the objects of the Act are to protect consumers of medical services by regulating the practice of medicine and ensuring that medical practitioners are properly qualified and maintain suitable standards.

Clause 4 Terms used in this Act

Contains the definitions required for the purposes of the Act. In particular:

“complaint” is defined to includes a complaint lodged with the Board, a matter the Board decides to deal with as though it were a complaint, a matter where a practitioner has
requested conditions be imposed on his or her registration but the conditions to be imposed are not agreed and complaints referred by the Director of the Office of Health Review;

“corresponding law” is the law of another State or Territory that provides for general or specialist registration of medical practitioners. A law must be prescribed to become a corresponding law;

“impairment” is defined as a mental disability, injury or physical illness. Although dependence on drugs or alcohol is not included in the definition of impairment such dependence may be treated as an “impairment matter”;

“interstate practitioner” is a medical practitioner who is registered under a corresponding law and taken to be registered in accordance with Division 5;

“regulatory authority” is the Board, the State Administrative Tribunal and any Board or Tribunal in another jurisdiction that performs similar functions in relation to medical practitioners under a corresponding law;

“sexual misconduct” is defined to include sexual intercourse or other forms of physical sexual relations between a medical practitioner and a patient as well as touching, behaviour or remarks of a sexual nature by a medical practitioner of or towards a patient.

Clause 5 Application

This clause provides that the Act does not apply to, or affect the practice of other health professionals who are subject to registration requirements in Western Australia.

Part 2 – Medical Board and committees

This part provides for the establishment of the Medical Board of Western Australia. It sets out the composition of the Board’s membership, functions and powers and the Board’s relationship with the Minister.

Division 1 – The Board

Clause 6 Board established

The Medical Board of Western Australia is a body corporate with perpetual succession and a common seal. The Board is not an agent of the Crown.

Clause 7 Membership of Board

The Board will consist of 12 natural persons to be appointed by the Minister. There are to be 8 medical practitioners, one of whom is to be a member of the academic staff of a medical school accredited by the Australian Medical Council and one of whom is to be nominated by the Director General of the Department of Health and working in the public sector. The remaining members are to be one legal practitioner, two consumer representatives and the Director General of the department that administers the Consumer Affairs Act 1971 or his of her nominee.
Clause 8  Presiding member and deputy presiding member

This clause provides for the election of a presiding member and deputy presiding member.

Clause 9  Constitution and proceedings

This clause provides that the constitution and proceedings of the Board are set out in Schedule 1.

Clause 10  Remuneration

The Minister may determine remuneration for a member of the Board or of a committee on the recommendation of the Minister for Public Sector Management, ensuring that members are paid in accordance with current Government policy.

Division 2  Functions and Powers

Clause 11  Functions of Board

The Board advises the Minister on matters relating to the Act, administers the scheme of registration, manages the processing of dealing with complaints about medical practitioners and plays an active role within the profession in terms of maintaining standards and promoting education. The functions of the Board are set out in general terms.

Clause 12  Powers

The Board has powers necessary to carry out its functions under the Act. They are generic powers, similar to those of other registration boards.

Clause 13  Delegation by Board

This provision gives the Board the flexibility to delegate functions to Board members, committees or committee members. This allows for effective administration of the Board’s functions. The Board is not able to delegate power in relation to decisions on registration or decisions about actions to be taken in respect of complaints about a medical practitioner.

Division 3  Relationship of Board with Minister

Clause 14  Directions by Minister

The Minister can, following consultation with the Board, give written directions to the Board regarding its functions and administration. Any direction must be laid before both Houses of Parliament and included in the Board’s annual report. The Minister cannot give directions in relation to a particular person, qualification, application, complaint or proceeding. There are similar provisions in other health professional registration Acts.

Clause 15  Minister to have access to information

The Minister has access to and, where relevant, may make copies of Board information with the exception of information in a form that may disclose the identity of a person involved.
The Board must comply with any request by the Minister for information. There are similar provisions in other registration Acts.

**Division 4 Committees**

**Clause 16 Committees**

The Board has the power to establish committees in addition to the complaints assessment committee, the professional standards committee and the impairment review committee that are required under Part 6 of the Bill. This will assist the effectiveness and efficiency of the Board. A committee established under this provision is required to comply with directions given by the Board and report on performance of functions at the request of the Board.

**Clause 17 Provisions relating to committees**

This clause provides for membership and procedures of a committee. The Board may appoint any natural person to a committee and may remove committee members and reconstitute or discharge a committee. Committees may determine their own procedures and are to ensure that accurate records of meetings are kept. Persons with special knowledge or experience can be invited to act in an advisory capacity to committees with the Board’s approval.

**Division 5 Registrar and other staff**

**Clause 18 Registrar**

The Board is to engage or employ a person to be the registrar to perform functions conferred under the Act or as directed by the Board. The registrar acts as the main employee of the Board and provision is made for the registrar to delegate any powers or duties of the registrar to another person employed or engaged by the Board. The registrar is not to be employed as a member of the Public Service.

**Clause 19 Other staff**

The Board can engage or employ staff to provide such assistance as the Board considers necessary in performing its functions. Staff are not to be employed as members of the Public Service.

**Clause 20 Use of other government staff etc.**

This provision allows the Board to make arrangements with a public sector agency to use staff or facilities of the agency on agreed terms. This is to allow greater flexibility for the Board.
Division 6  General

Clause 21  Duty not to make improper use of information

It is an offence for a member or former member of the Board or a committee to make improper use of any information acquired to gain an advantage for his or her self or any other person. There are similar provisions in other registration Acts.

A penalty of a fine of $5,000 is provided.

Clause 22  Meetings

Board meetings are to be closed to the public unless the Board orders otherwise.

Clause 23  Execution of documents by Board

The Board executes a document if it is signed on behalf of the Board by authorised person(s) and the common seal of the Board is affixed. The protocol for affixing the common seal is specified and the legal status of documents and related evidentiary matters set out.

Clause 24  Recovery of penalties, costs and expenses required to be paid to the Board

A fine imposed by the Board or an order for the payment of costs is a debt due to the Board.

Part 3 – Finance and Reports

Part 3 describes the funds of the Board, how they may be applied, and the requirements relating to accounts and reports.

Clause 25  Funds of the Board

Clause 25 describes what constitutes the funds of the Board and specifies for what purposes they may be applied. The funds may be used for any purpose that enables the Board to perform its functions or to carry out the objectives of the Act. The Board derives its operating revenues from fees paid by registered medical practitioners and may receive funds from other sources specified in the clause.

Clause 26  Accounts

The Board is to keep accounts and records and prepare financial statements on an accrual basis in accordance with Australian Accounting Standards.

Clause 27  Audit

Accounts and financial statements are to be audited at least once a year by the Auditor General, who may, under section 82 of the Financial Administration and Audit Act 1984 appoint another person to carry out all or part of the audit.
Clause 28  Annual report and other reports

The Board is to submit to the Minister an annual report containing specified information along with a copy of its financial statements and the auditor’s report of those statements by 30 September in each year. The Minister is required to table the annual report, financial statements and auditor’s report before each House of Parliament within 14 sitting days after receipt.

The Board is also to prepare quarterly reports containing specified information and to ensure that copies of these reports are available for inspection at the Board’s offices.

Part 4 – Registration of medical practitioners

Part 4 provides for the registration of natural persons and the keeping of the register.

Division 1  Registration

Clause 29  Natural persons may be registered

This clause provides that only natural persons may be registered.

Clause 30  General Registration

Clause 30 sets out the requirements that must be met in order for a person to be registered as a general registrant. An applicant must be a fit and proper person, be competent to practise medicine, have a sound knowledge of the English language, have recognised qualifications and completed a period of internship or supervised clinical practice approved by the Board. The qualifications that are recognised for the purposes of general registration are graduation from a medical school accredited by the Australian Medical College (the AMC), successfully completing examinations held by the AMC or being certified by the AMC as having an equivalent qualification. The Board may impose such conditions on registration under this clause as are reasonably required to ensure the competent and safe practice of medicine and may vary or revoke those conditions.

Clause 31  Conditional registration for internship or supervised clinical practice

This clause provides for the conditional registration of an applicant who has completed all the requirements for registration other than the completion of a period of internship or supervised clinical practice. The Board may impose such conditions on registration under this clause as are reasonably required to enable the person to complete a period of internship or supervised clinical practice and may vary or revoke those conditions. Conditional registration can be cancelled at any time.

Clause 32  Provisional registration

The Board may provisionally register an applicant for 3 months while awaiting the production of evidence to satisfy the Board that the applicant meets the requirements for registration under clause 30, 31, 34 or 38. The Board may impose conditions on the provisional registration as are reasonably required to ensure the competent and safe practice
of medicine and may vary or revoke those conditions. Provisional registration can be cancelled at any time.

**Clause 33 Conditional registration for general practice in remote and rural WA**

This clause gives effect to a scheme for the conditional registration of applicants who have qualifications and experience in general practice obtained outside Australia. Registration is subject to the condition that the person may only practise as a general practitioner in areas determined by the Minister to be rural and remote areas of WA. The person is also required to complete the requirements to become a fellow of the Royal Australian College of General Practitioners or another similar prescribed body within 2 years of initial registration unless the Board varies this condition. The Board may impose additional conditions on registration that it considers necessary to ensure the competent and safe practice of medicine and may vary or revoke such conditions. Conditional registration can be cancelled at any time.

**Clause 34 Special purpose conditional registration**

This clause allows a person who is fit and proper and competent to practise medicine but who does not have Australian medical qualifications to be registered for certain purposes. The purposes for which a person may be registered are:

- To allow the person to undertake postgraduate training approved by the Board;
- To facilitate visiting lecturers and academics eminent in the field of medicine who need to practise medicine in order to teach it or to undertake medical research;
- To allow the person who has suitable qualifications to practise in an area that has been determined by the Minister to be an area of unmet need;
- To allow a person who has specialist qualifications to undergo further training or examination approved by the Board;
- Where it is in the public interest.

The Board may impose conditions on the registration as appropriate for the activity or purpose for which the registration is granted and may revoke or vary such conditions. Special purpose conditional registration can be cancelled at any time.

**Clause 35 Non-practising registration**

This clause allows a person who has recognised medical qualifications but who does not intend to practise to be registered. Registration under this clause is subject to a condition that the person is not to practise medicine. This provision allows medical practitioners who choose to be out of the medical workforce for a period to retain their connections with the profession. A medical practitioner wishing to return to practice following a period of non-practising registration would need to meet the requirements for registration in one of the other categories of registration.

**Clause 36 Voluntary change in registration**

This clause allows a person who is a general registrant (registered under clause 30) and who is not the subject of disciplinary, competency or impairment proceeding to apply to the Board to have his or her registration changed to special purpose conditional registration (other than the category of registration in the public interest) and for the Board to grant such an application.
Clause 37  **Specialities to be prescribed**

This clause provides for branches of medicine that are considered to be specialties to be prescribed. The Board is required to seek advice from the Australian Medical Council about whether or not a branch of medicine should be prescribed as a specialty and to have regard to that advice.

Clause 38  **Registration of specialists**

This clause provides for the registration of specialists.

A general registrant (ie registered under clause 30) who has specialist qualifications that are prescribed, or which the Board considers to be equivalent to the prescribed qualifications may be registered in a prescribed specialty.

A person who is not a general registrant but who has specialist qualifications that are prescribed, or which the Board considers to be equivalent to the prescribed qualifications, may be registered in a prescribed specialty. Applicants in this category are also required to meet similar requirements to those required for general registration such as being fit, proper and competent to practise and having sound knowledge of the English language. The Board may require a period of supervised clinical practice before registration as a specialist. This category of specialist registration is subject to the condition that the specialist can only practise within the specialty for which they are registered. This category of registration covers overseas trained medical practitioners who have recognised specialist qualifications and experience.

A third category of specialist registration is provided to allow existing practitioners within a newly prescribed specialty to be registered if the Board considers they are competent to practise in the specialty and have sufficient knowledge and experience.

The Board may impose conditions on the registration to ensure the safe and competent practise of the specialty and may revoke or vary such conditions.

Clause 39  **Review of condition imposed under section 30(5), 33(6), 34(4) or 38(6)**

If the Board attaches a condition to registration under a provision that allows conditions that are to ensure safe and competent practise to be imposed, it is to specify a time within which the person may not apply for a review of the condition. After this period, a registrant may apply for review of the conditions and the Board is to determine the application within 2 months.

Clause 40  **Professional indemnity insurance**

The Board may impose a condition on registration that the registrant is covered by professional indemnity insurance that meets minimum terms and conditions approved by the Board. Such a condition may be imposed in respect of all categories of registration other than non-practising registration. It would be open to the Board to impose this condition on all persons registered under particular categories of registration. A condition that is imposed under this clause may be imposed indefinitely or for a specified time and may be revoked or
varied. The capacity to ensure that practitioners are covered by professional indemnity insurance is important having regard to the interests of health consumers.

Clause 41 Application

Applications for registration (including renewal of registration), for voluntary change in registration or for a condition imposed on registration to be revoked or varied are to be made in writing in a form approved by the Board. Application fees are prescribed by the regulations and must accompany the application. The Board may require further information and attendance before the Board in respect of an application and may request an applicant’s consent for the Board to seek further information from relevant bodies such as educational or registration bodies in another jurisdiction. The Board may also require an applicant to undergo a physical or mental examination, submit to an oral or written examination, or to perform a clinical examination of patients under supervision if reasonably required in relation to any requirement for registration. An application for renewal of registration must include details of any professional development undertaken in the previous period of registration.

Clause 42 Board may request consent to undertake a criminal record check

The Board may request that an applicant for registration consent to undertake a criminal record check and to meet the cost of such a check. Both the request and the consent must be in writing. If the applicant does not consent to a criminal record check and pay any fee specified, the Board may refuse the application. A request for an applicant to consent to criminal record checking is not limited to Australian jurisdictions.

Clause 43 Criminal record check

This clause provides that the Board may ask the Commissioner of Police or the Commissioner of the Australian Federal Police, or of a police force of another State or Territory or country to advise if an applicant who has consented under clause 42 has a criminal record. If the applicant has a criminal record the Board may ask for details of the criminal record and information about the circumstances of a conviction or charge mentioned in the criminal record. An authorised person in the police service may comply with the Board’s request.

Clause 44 Effect of registration

Registration allows the person registered to practise medicine in Western Australia under the title “medical practitioner”.

Clause 45 Duration of registration

Registration has effect for the period prescribed in the regulations for the category of registration. Registration may be renewed in accordance with the regulations.

Clause 46 Renewal of registration

This clause provides that the Board may refuse an application for the renewal of registration or place conditions on registration if the applicant does not have sufficient practical experience or has not maintained adequate knowledge and skills. The fees for renewal of
registration are to be prescribed and if fees are not paid on or before the due date, registration ceases and the person’s name is removed from the register. Subject to otherwise meeting the requirements in the Act, payment of fees in arrears entitles a person to registration renewal and restoration of their name to the register.

For the purposes of proceedings in relation to a complaint, a person whose name is restored to the register after payment of fees in arrears will be taken to have been registered during the period their name was removed from the register under this clause.

The Board is required to give the medical practitioner written notice of the renewal fee at least 42 days before the fees fall due.

**Clause 47 Application for registration by a person whose registration has been cancelled under section 116(1)(k)**

If a person’s registration is cancelled and their name removed from the register by an order of the State Administrative Tribunal (SAT) they are considered to be a disqualified person. A disqualified person may not apply for registration for a period of 2 years from the date their registration was cancelled.

The Board must not, without the approval of the SAT, grant an application for registration by a person whose registration was cancelled by the SAT.

**Division 2 The register**

**Clause 48 The register**

A register of medical practitioners is to be maintained by the Board and is to record details specified in this clause, including details of any conditions applying to the registration and details of any exercise of powers in respect of the person on the basis of disciplinary, competency or impairment matters.

**Clause 49 Inspection of register**

The register is available for inspection by the general public during normal office hours. A fee is payable for a certified copy of a part of the register. The register may be published on an internet website maintained by the Board.

**Clause 50 Certificate of registration**

This clause provides for the Board to issue a certificate in an approved form. When issued, the certificate serves as evidence of registration. It also provides for the issue of a new certificate to ensure that the particulars on the certificate are the same as those recorded on the register.

**Clause 51 Replacement of certificate of registration**

If the Board is satisfied that a certificate of registration has been lost, stolen, damaged or destroyed, it may issue a duplicate certificate of registration. A prescribed fee attaches to the issue of a duplicate certificate.
**Clause 52  Voluntary removal from register**

A person may request in writing that his or her name be removed from the register. This does not apply to interstate practitioners whose names are not on the WA register. The Board may not approve the removal from the register where a registered person is the subject of an investigation under the Act or a proceeding before the State Administrative Tribunal.

**Clause 53  Amendment of particulars**

If it considers it proper to do so, the Board may amend the particulars on the register in relation to a medical practitioner on the written application of the practitioner. A prescribed fee attaches to the application.

**Clause 54  Removal of names in certain circumstances**

The registrar is to remove the name of a medical practitioner from the register if the person has been convicted of providing false or misleading information or documents in relation to an application for registration.

**Clause 55  Removal of names of deceased persons**

The registrar is to remove the name of a deceased medical practitioner from the register.

**Clause 56  Suspension or cancellation of registration in another State or a Territory**

This clause allows the Board to suspend or cancel the registration of a medical practitioner whose registration has been suspended or cancelled in another jurisdiction. The Board may revoke the suspension or restore the person’s registration in WA if the suspension ends or the person’s registration is restored in the other jurisdiction.

**Clause 57  Effect of removal of name from register**

If the name of a person is removed from the register the person ceases to be registered.

**Division 3  Notifications to Board**

**Clause 58  Change of address**

Written advice must be provided to the Board no later than 30 days after any change of address that is recorded in the register. This is to ensure timely accuracy of the register.

A penalty of a fine of $1,000 is provided.

**Clause 59  Loss of qualifications**

If a registered person loses the qualifications that enabled him or her to be registered under this Act he or she must notify the Board in writing no later than 14 days after the loss.

A penalty of a fine of $1,000 is provided.
Clause 60  Insolvency

This clause provides that a medical practitioner must advise the registrar if he or she becomes insolvent. The occurrence of insolvency by itself does not entitle the Board to take disciplinary action against the insolvent practitioner or to de-register the practitioner. This clause is to ensure the Board is kept informed so that the Board can satisfy itself that financial difficulties do not have a negative impact on the standard and level of service provided by a medical practitioner.

A penalty of a fine of $5,000 is provided.

Clause 61  Civil or criminal proceedings

This clause is designed to ensure the Board is informed and kept informed of civil and criminal proceedings that may be relevant to the practice of a medical practitioner. Notification is not required until legal proceedings are served on the practitioner. The practitioner is also required to notify the Board when any proceedings have been finalised. It is not intended that the practitioner would be required to provide the Board with details of a confidential settlement of a civil matter.

A penalty of a fine of $5,000 is provided.

Clause 62  Information about professional indemnity insurance

If professional indemnity insurance is a condition of a person’s registration, written advice must be provided, within 14 days, if the insurance is cancelled or the terms or conditions are changed.

A penalty of a fine of $1,000 is provided.

Clause 63  Notification of cancellation or suspension of registration elsewhere

A medical practitioner registered in WA who has had his or her registration cancelled or suspended in another State or Territory is to give written notice to the registrar within 7 days.

A penalty of a fine of $5,000 is provided.

Clause 64  Notification of condition impose on registration elsewhere

A medical practitioner registered in WA who has had conditions imposed or varied on registration in another State or Territory is to give written notice to the registrar within 7 days.

A penalty of a fine of $5,000 is provided.
Division 4  Defence force medical officers

Clause 65  Medical officer of a defence force of the Commonwealth

The effect of this clause is that medical officers employed in the Australian defence forces, who are registered as medical practitioners in another State or Territory, can be approved to provide services to members of the defence forces without being formally registered in WA. As they will be taken to be registered in WA they are required to comply with all laws that relate to medical practitioners.

Clause 66  Medical officer of visiting forces

The effect of this clause is that medical practitioners attached to naval, military or air forces that are in WA by arrangement with the Commonwealth Minister for Defence can be approved to provide services to members of the defence forces without being formally registered in WA. As they will be taken to be registered in WA they are required to comply with all laws that relate to medical practitioners.

Part 5 – Interstate practitioners

Part 5 provides for the scheme of portable registration for general and specialist registrants between Australian jurisdictions. It gives effect to an agreement by the Australian Health Minister’s Conference in April 2006.

Division 1  Preliminary

Clause 67  Terms used in this Part

This clause defines the terms that are used in this Part.

The definitions of “corresponding law”, “interstate practitioner” and “regulatory authority” in clause 4 are particularly relevant to this Division.

Division 2  Practice by an interstate practitioner

Clause 68  Persons who are to be taken to be registered under section 30 or 38

This clause provides that certain medical practitioners are taken to be registered under the Act without having to apply for registration, or notify the Board. It applies to practitioners who are either general or specialist registrants under a corresponding law in another State or Territory and whose principal place of practice is in another State or Territory. A person whose principal place of practice of medicine or a specialty is Western Australia will be required to register in WA. As the interstate practitioners will be taken to be registered in WA they are required to comply with all laws that relate to medical practitioners.

Clause 69  Practising in this State

All interstate practitioners who practise in WA are required to be covered by professional indemnity insurance.
If conditions have been imposed on registration elsewhere, the practitioner is required to notify the Board before commencing or continuing the practice of medicine in WA. His or her practice in WA is subject to any conditions that have been imposed on registration in another State or Territory. The Board may, on reasonable grounds, vary a condition imposed elsewhere. This may be necessary to modify conditions in such a way as to make them applicable in WA.

**Clause 70  Interstate practitioner not to be taken to be registered in some circumstances**

If the medical or specialist practice of an interstate practitioner is suspended in any other jurisdiction the person will not be regarded as being registered in WA during the period of the suspension.

**Clause 71  Effect of suspension under this Act**

If the medical or specialist practice of an interstate practitioner is suspended by the State Administrative Tribunal the person will not be regarded as being registered in WA during the period of the suspension. The Board may revoke a suspension with the approval of the SAT.

**Division 3  Complaints about interstate practitioners**

**Clause 72  Referral of complaint to regulatory authority in another State or a Territory**

This clause provides that the Board may refer a complaint about an interstate practitioner to the medical board in another jurisdiction to be dealt with, or be investigated by that board. This allows for a complaint about an interstate practitioner to be dealt with in the most appropriate jurisdiction.

**Clause 73  Dealing with matters referred by a regulatory authority in another State or a Territory**

The Board may deal with a matter involving an interstate practitioner that has been referred to it by a medical board in another jurisdiction. The conduct of a practitioner may be investigated regardless of where the conduct is alleged to have occurred.

**Division 4  Miscellaneous**

**Clause 74  Interstate practitioner disqualified in another State or a Territory**

A medical practitioner who has been disqualified for a specified period in another State or Territory, may not apply for registration in WA during that period.

**Clause 75  Interstate certificate**

This clause provides that an interstate certificate of registration is evidence of the matters stated in it.
Part 6 – Disciplinary, competency and impairment matters

This Part sets out the procedures for dealing with complaints about the professional conduct of medical practitioners and identifies those matters that constitute disciplinary, competency and impairment matters.

Division 1 Preliminary

Clause 76 Disciplinary matters

Causes for disciplinary action are specified.

Disciplinary action can be taken where a practitioner has contravened a condition on the person’s registration, has breached the Act or has failed to comply with an undertaking given to the Board. A contravention of a provision of the Act would constitute a disciplinary matter based on a breach of the Act without a requirement for the practitioner to have been convicted of an offence under the Act.

Disciplinary action can also be taken in respect of careless, incompetent or improper behaviour in the course of practise as a medical practitioner. Provision is made for incompetency on the basis or lack of knowledge or skills to be dealt through a separate process set out in Division 6 of Part 6, but there may be circumstances where the nature of the behaviour makes it more appropriate for incompetency to be dealt with as a disciplinary matter.

Over-servicing is included as a separate category of disciplinary action, although in some cases this issue may be more appropriately addressed through investigation by the Health Insurance Commission, under the Commonwealth’s Health Insurance Act 1973.

The conviction of an offence that renders the person unfit to practise medicine is a disciplinary matter. An offence does not have to have been committed in connection with the practice of medicine, but must relate to fitness to practice.

Disciplinary matters also include professional conduct that falls short of the standard that a member of the public or the medical profession would expect of a medical practitioner. This is intended to broadly encompass behaviour that may bring the medical profession into disrepute and could include issues such as practice management (including financial management of a practice) and the way in which the practitioner communicates with patients, staff or professional colleagues.

Sexual misconduct in relation to a patient has been included as a separate category of disciplinary action in response to consumer concerns. Sexual misconduct is defined in clause 4 to include sexual intercourse or other forms of physical sexual relations between a medical practitioner and a patient as well as touching, behaviour or remarks of a sexual nature by a medical practitioner of or towards a patient. There may be other behaviour of a practitioner towards a patient or a former patient that has a sexual element which is not covered by this definition, but which could still form the basis of disciplinary action because it is behaviour which is improper.
Clause 77  Competency matters

A competency matter relates to a person who does not have sufficient knowledge or skills to safely practise medicine or a specialty.

Clause 78  Impairment matters

This clause defines what constitutes an impairment matter. Impairment, in relation to health practitioner legislation, occurs when a practitioner is affected mentally, physically, by injury or by the use of drugs or alcohol to such an extent that their ability to practise is, or is likely to be, affected adversely.

Division 2  Committees

Clause 79  Complaints assessment committee

This clause provides for the Board to establish a complaints assessment committee of up to 4 persons and consequential administrative matters. The complaints assessment committee is to undertake specific roles in assessing and investigating complaints against medical practitioners (see clauses 54 and 59). This structure permits the initial assessment and investigation of complaints to be carried out in a cost effective manner while maintaining the Board’s accountability. Meetings of the complaints assessment committee are not to be held in public.

Clause 80  Professional standards committee

This clause provides that the Board may establish a three person professional standards committee and consequential administrative arrangements.

The professional standards committee is to undertake roles in investigating disciplinary and competency matters and making recommendations to the Board about action that should be taken in relation to those matters as set out in Part 6 Division 5 and 7. Specific provision is made for the appointment of a medical practitioner to the professional standards committee. In general, meetings of the professional standards committee are not to be held in public, but the committee may decide that a meeting or part of a meeting is to be open to the public. All matters dealing with sexual misconduct are not to be open to the public.

Clause 81  Impairment review committee

This clause provides that the Board may establish a two person impairment review committee and consequential administrative matters. The establishment of an impairment review committee provides for a separate approach to deal with matters of impairment that affect a practitioner’s ability to practise.

The impairment review committee is to undertake roles in investigating impairment matters and making recommendations to the Board about action that should be taken in relation to those matters as set out in Part 6 Division 6. Specific provision is made for the appointment of a medical practitioner to the impairment review committee.
**Clause 82  Panel**

The clause provides for the Minster to select a panel of persons who are suitable to be appointed to either the professional standards committee or the impairment review committee.

**Division 3  Complaints**

**Clause 83  Complaints**

This clause provides for any person to make a complaint to the Board about a medical practitioner. The Board may also investigate disciplinary, competency or impairment matters in the absence of a complaint. The Board may reject a complaint if the identity of the complainant is not established.

The Board may refer the complaint to a regulatory authority in another State or Territory. This allows flexibility in dealing with complaints in the most appropriate jurisdiction.

The Board is to refer a complaint that is not referred to a regulatory authority in another jurisdiction to the complaints assessment committee.

**Clause 84  Action by complaints assessment committee**

When a complaint is referred to the complaints assessment committee, the committee is required to advise the respondent of the complaint, to provide information about the role of the committee and give the respondent an opportunity to provide a written submission to the committee. The committee is not required to notify the respondent if it believes that this would prejudice the investigation or result in a risk to the safety or health of a patient or a risk that a complainant or other person may be intimidated or harassed.

**Clause 85  Complaints assessment committee to determine action required**

This clause empowers the complaints assessment committee to make a preliminary assessment of the complaint following appropriate inquiries and to provide advice to the Board about the action that should be taken. The recommendations that the committee may make to the Board are to:

- reject the complaint if it is frivolous, vexatious or without substance;
- make an interim order in relation to activities that may pose an imminent risk of harm to a person;
- refer the complaint for investigation as either a disciplinary matter, a competency matter or an impairment matter;
- refer the matter for conciliation (with the consent of the complainant);
- make an allegation to the SAT.

The effect of this clause is that the complaints assessment committee is responsible for “sifting” complaints and making recommendations to the Board about appropriate action. This provides a cost effective mechanism for preliminary investigation of complaints and provides some distance between the preliminary assessment and the Board’s responsibility for decision making.
Clause 86  Role of Board

On receipt of a recommendation by the complaints assessment committee, the Board is to either act on the recommendation, or take action of a kind that the committee could have recommended. If the Board decides to reject the complaint it is required to notify the complainant and provide reasons for the decision.

Division 4  –  Summary orders of Board

Clause 87  Interim orders by Board

If an activity involves an imminent risk to the physical or mental health of a person, the Board may make an interim order for a medical practitioner to cease the activity or may place an interim restriction on practice. An interim order may be made for a period of up to 30 days. An order must advise that within 14 days of making the order, the Board will revoke the order or make an allegation about the matter to the SAT.

The Board may deal with a complaint under this clause, even though the impairment review committee, the professional standards committee, the complaints assessment committee or the Office of Health Review is already handling the same or a similar complaint.

Clause 88  Complaint dealt with summarily to be referred to the State Administrative Tribunal

This clause provides that within 14 days of making an order under clause 88, the Board will revoke the order or make an allegation about the matter to the SAT. The Tribunal may, in addition to any other order it may make, affirm, revoke or extend the time period of application for an order under made under clause 88.

Division 5  –  Disciplinary matters

Clause 89  Action by Board

If the Board decides to deal with a complaint as a disciplinary matter, the Board is required to advise the respondent, to provide information about the disciplinary procedures and refer the matter to the professional standards committee. The Board is not required to notify the respondent if it believes that this would prejudice the investigation or result in a risk to the safety or health of a patient or a risk that a claimant or other person may be intimidated or harassed.

Clause 90  Investigator

This clause provides that the Board may appoint an investigator to investigate a complaint relating to a disciplinary matter and provide a report to the Board. The Board is to issue a certificate of appointment to the investigator, which is evidence of the appointment.
Clause 91  Report of investigator

An investigator must, within a period required by the Board, prepare a report on the investigation and provide a copy of the report to the Board. The investigator must return the certificate of appointment to the Board at the time of providing the report.

Clause 92  Powers of investigator

This clause outlines the powers of an investigator for the purposes of an investigation. It gives the investigator the power to fully investigate complaints. An investigator may enter and inspect premises at which the respondent practises medicine or stores documents in accordance with a warrant issued under clause 95. The investigator may also enter and inspect premises with the consent of the respondent or occupier, or without the consent of the respondent or occupier if 5 days written notice has been given. The investigator may inspect equipment used in a medical practitioner’s practice, require documents or information to be provided and inspect and copy documents. The clause provides for the circumstances under which an investigator may require the production of documents or require a person to give information or answer questions. Document is defined in clause 4 as including any tape, disc or other device or medium on which information is recorded or stored.

Clause 93  Warrant to enter premises

If the Board is satisfied an investigator has reasonable grounds for believing entry to a premises is necessary to substantiate a complaint that may involve a threat to the physical or mental health of a person or is serious enough to warrant suspension or cancellation of registration, the investigator can apply to a magistrate for a search warrant. The application for a search warrant must include a notice in writing from the Board stating that the Board has determined that the investigator has reasonable grounds for the application. Information given to the magistrate must be verified on oath or affirmation, or by affidavit.

Clause 94  Issue of warrant

This clause authorises a magistrate to issue a warrant if satisfied that a warrant is necessary for the purposes outlined in clause 93. A warrant authorises the investigator to enter and inspect premises, to require the person on the premises to answer the questions or produce documents or other things concerning the investigation, and to inspect and copy documents and other things produced. The purpose, the name of the person to whom the warrant is issued and a description of the premises that may be entered must be stated in the warrant. The magistrate must make a record of the particulars relied on to justify the issue of the warrant.

Clause 95  Execution of warrant

A warrant must be produced by the person executing it, if asked by the occupier or person in charge of the premises. A warrant ceases to have effect one month after its issue, unless withdrawn or executed earlier.
Clause 96  Role of professional standards committee

This clause provides for the professional standards committee to investigate a complaint referred to it by the Board as a disciplinary matter. The committee is required to give the respondent an opportunity to provide written or oral submissions and is to consider any report provided by an investigator appointed by the Board. On completion of an investigation the professional standards committee is to report to the Board on its findings and is to make a recommendation to the Board about how the complaint should be dealt with. The recommendations that the committee may make to the Board are that the Board:

- take no further action;
- deal with the matter as an impairment or competency matter;
- make an interim order in relation to activities that may pose an imminent risk of harm to a person;
- caution or reprimand the practitioner or attach conditions to the practitioner’s registration;
- require the practitioner to undertake to provide or pay for further services to a patient;
- require the respondent to undertake counselling, seek advice on practice management or report at intervals to a nominated medical practitioner about his or her practice;
- require the respondent to pay to the Board a penalty of up to $5,000;
- make an allegation to the SAT.

Clause 97  Role of Board

The Board is to consider the recommendation of the professional standards committee and can act on the recommendation or alternatively choose another option that the professional standards committee could have recommended under clause 95. If the Board proposes to take action that is different to that recommended by the Board it is to give the respondent an opportunity to make further submissions or representations to the Board before taking that action. The Board is required to advise the complainant and respondent of its decision and the reasons for the decision.

Division 6  Impairment matters

Clause 98  Request by medical practitioner for imposition of condition

A medical practitioner who believes that his or her ability to practise is affected by an impairment may ask the Board to impose a condition on his or her registration. If the Board and the medical practitioner do not agree on the condition to be imposed, the Board is to refer the matter to the impairment review committee for investigation.

Clause 99  Revocation of condition

This clause allows the revocation of a condition imposed on registration that has been requested by a medical practitioner if the Board is satisfied that the person’s ability to practise medicine is no longer affected because of the impairment.

Clause 100  Action by Board

If the Board decides to deal with a complaint as an impairment matter, the Board is required to advise the respondent, to provide information about the impairment procedures and refer
the matter to the impairment review committee. The Board may make an allegation to the SAT rather than referring a matter to the impairment review committee if the Board considers that the subject matter of the complaint is serious enough to warrant suspension or cancellation of registration.

**Clause 101  Medical examination of medical practitioner**

The Board may require a medical practitioner to undergo a medical examination at the Board’s expense. The nature of the examination is to be reasonable having regard to the subject matter of the complaint. The practitioner is to be given written notice of the details of the required examination and the name of the medical practitioner nominated by the Board to undertake the examination.

The examiner is to report to the Board at the completion of the examination. The registrar of the Board is to give a copy of the report to the impairment review committee and the respondent, unless it decides that it would be appropriate to make an allegation to the SAT.

The respondent can ask the Board to review the decision to require a medical examination and the Board may revoke, amend or confirm the requirement following consideration of a report from the impairment review committee.

If the medical practitioner fails to comply with the requirement to undergo a medical examination, the Board may make an allegation to the State Administrative Tribunal.

**Clause 102  Role of the impairment review committee**

This clause provides for the impairment review committee to investigate a complaint referred to it by the Board. The committee is required to give the respondent an opportunity to provide written or oral submissions and is to consider any report provided by a medical practitioner appointed by the Board to undertake a medical examination. On completion of an investigation the impairment review committee is to report to the Board on its findings and is to make a recommendation to the Board about how the complaint should be dealt with. The recommendations that the committee may make to the Board are that the Board:

- take no further action;
- deal with the matter as a disciplinary or competency matter;
- attach conditions to the practitioner’s registration;
- require the respondent to undertake counselling;
- with the consent of the practitioner suspend the practitioner’s registration for a period not exceeding 2 years;
- make an allegation to the SAT.

**Clause 103  Role of Board**

On the receipt of the report of a medical examination ordered by the Board, the Board may make an allegation to the SAT and withdraw the matter from the impairment review committee.

The Board is to consider the recommendation of any report received from the impairment review committee and can act on the recommendation or alternatively choose another option that the impairment review committee could have recommended under clause 102. If the
Board proposes to take action that is different to that recommended, the Board is to give the respondent an opportunity to make further submissions or representations to the Board before taking that action. The Board is required to advise the complainant and respondent of its decision and the reasons for the decision.

**Division 7 – Competency matters**

**Clause 104 Action by Board**

If the Board decides to deal with a complaint as a competency matter, the Board is required to advise the respondent, to provide information about the competency procedures and refer the matter to the professional standards committee. The Board may make an allegation to the SAT rather than referring a matter to the impairment review committee if the Board considers that the subject matter of the complaint is serious enough to warrant suspension or cancellation of registration.

**Clause 105 Assessment of medical practitioner**

The Board may require a medical practitioner to undergo an assessment that may include a simulated clinical situation. The nature of the assessment is to be reasonable having regard to the subject matter of the complaint. The practitioner is to be given written notice of the details of the required assessment and the name of the assessor.

The assessor is to report to the Board at the completion of the assessment. The registrar of the Board is to give a copy of the report to the professional standards committee and the respondent.

The respondent practitioner is to pay for the assessment and report.

If the medical practitioner fails to comply with the requirement to undergo assessment, the Board may make an allegation to the SAT.

**Clause 106 Assessor**

This clause provides that the Board may appoint one or more medical practitioners to conduct an assessment of a medical practitioner in relation to a competency matter. The Board is to issue a certificate of appointment to the assessor, which is evidence of the appointment.

**Clause 107 Powers of assessor**

This clause outlines the powers of an investigator for the purposes of conducting an assessment. It gives the assessor the power to fully investigate complaints. An assessor may enter non-residential premises at which the respondent practises medicine or stores documents with the consent of the respondent or occupier, or without the consent of the respondent or occupier if 5 days written notice has been given. The assessor may inspect equipment used in a medical practitioner’s practice, require medical supplies, documents, or information to be produced and inspect and copy documents. The clause provides for the circumstances under which an assessor may require the production of documents or require a person to give information or answer questions. Document is defined in clause 4 as including any tape, disc or other device or medium on which information is recorded or stored.
Clause 108  Role of the professional standards committee

This clause provides for the professional standards committee to investigate a complaint referred to it by the Board as a competency matter. The committee is required to give the respondent an opportunity to provide written or oral submissions and is to consider any report provided by an assessor appointed by the Board. On completion of an investigation the professional standards committee is to report to the Board on its findings and is to make a recommendation to the Board about how the complaint should be dealt with. The recommendations that the committee may make to the Board are that the Board:

- take no further action;
- deal with the matter as a disciplinary or impairment matter;
- attach conditions to the practitioner’s registration;
- require the respondent to undertake counselling, complete a specified educational course, seek advice on practice management or report at intervals to a nominated medical practitioner about his or her practice;
- make an allegation to the SAT.

Clause 109  Role of Board

On the receipt of the report of an assessment ordered by the Board, the Board may make an allegation to the SAT and withdraw the matter from the professional standards committee.

The Board is to consider the recommendation of any report received from the professional standards committee and can act on the recommendation or alternatively choose another option that the professional standards committee could have recommended under clause 108. If the Board proposes to take action that is different to that recommended, the Board is to give the respondent an opportunity to make further submissions or representations to the Board before taking that action. The Board is required to advise the complainant and respondent of its decision and the reasons for the decision.

Division 8  – Conciliation

Clause 110  Conciliation process

Assisted communication between the complainant and the respondent can often resolve complaints in an informal and inexpensive way. If the Board considers a matter is appropriate to be resolved by conciliation it can refer the complaint to the complaints assessment committee for conciliation.

The complaints assessment committee can arrange conferences between the parties, give advice and make recommendations to assist in reaching an agreement and require the appearance of the parties before the committee. Conciliation conferences are to presided over by a person appointed in accordance with regulations.

If the parties resolve the complaint by conciliation the Board can, by order, give effect to the negotiated outcome. Orders made by consent can include any action that may be ordered by the State Administrative Tribunal and are binding on the parties.
Evidence of things lawfully said or done during the conciliation process are not to be used in relation to further consideration of the complaint by the Board or in subsequent civil proceedings.

Clause 111  Action if conciliation fails

This clause provides that if agreement is not reached or the conciliation is not progressing satisfactorily the Board can resume control of the conduct of a complaint.

Division 9  Medical Students

Clause 112  Impaired ability to participate in clinical activity

The approach that has been adopted in relation to the regulation of the involvement of medical students in clinical activities is to provide that the Board has a role only where the issue cannot be appropriately dealt with by the Dean of the medical school that the student attends.

If the Board believes that a medical student’s involvement in clinical activities may be adversely affected by an impairment or the use of drugs or alcohol the Board is to refer the matter to the Dean of the medical school that the student attends. If satisfactory conditions on the involvement of the student in clinical activity cannot be agreed the Dean may refer the matter to the Board.

The Board can order that the medical student be medically examined, and may make an allegation to the SAT if the medical student fails to comply with the order.

Clause 113  Referral to impairment review committee

After receiving a medical report about a medical student, the Board may refer the matter to the impairment review committee.

The impairment review committee is to investigate a complaint referred to it by the Board. The committee is required to give the respondent an opportunity to provide written or oral submissions and is to consider any report provided by a medical practitioner appointed by the Board to undertake a medical examination. On completion of an investigation the impairment review committee is to report to the Board on its findings and is to make a recommendation to the Board about how the complaint should be dealt with. The recommendations that the committee may make to the Board are that the Board:
  ➢  take no further action;
  ➢  impose conditions on the student’s participation in clinical activities;
  ➢  require the student to undertake counselling;
  ➢  require the student to cease participating in clinical activities for a period of time;
  ➢  make an allegation to the SAT.

The Board is to consider the recommendation of any report received from the impairment review committee and can act on the recommendation or alternatively choose another option that the impairment review committee could have recommended.
**Clause 114  Revocation of prohibition**

The Board can revoke a prohibition on the involvement of a medical student in clinical activity with the approval of the SAT.

**Division 10 – Constitution and powers of the State Administrative Tribunal**

**Clause 115  Constitution of the State Administrative Tribunal**

The SAT is to be constituted by 4 members specified by the President of the Tribunal when dealing with matters under the Act. One member is to be legally qualified, two are to be experienced medical practitioners and one is to be a person who is not a medical practitioner. An additional non-medical member may be appointed if the President considers this would be appropriate.

**Clause 116  Powers of the State Administrative Tribunal in relation to a disciplinary matter**

This clause provides that the SAT has jurisdiction to deal with disciplinary matters against a registered person on an allegation made by the Board. The SAT will in general hear and determine more serious matters. The SAT has a wider range of penalties and orders available to it than the Board. The SAT may decline to make any order or may make or do any of the following:

- order amendment of particulars entered in the register;
- caution or reprimand the practitioner;
- require the provision of further patient services at no cost to the patient or a reduction or refund of fees in relation to services provided to a patient;
- impose conditions on the practitioner’s registration;
- require the practitioner to undertake counselling or to report on his or her medical practice to a medical practitioner nominated by the Board;
- require the person to undertake to obtain and implement advice in relation to the management of his or her medical practice;
- impose a fine of up to $25,000;
- order the cancellation of registration and removal of the name of the practitioner from the register;
- order the person be suspended from the practice of medicine for up to 2 years.

If the person was registered when the alleged disciplinary matter occurred, but is no longer registered, the SAT may caution or reprimand the person, require payment for further services to be provided to a patient, reduce or refund fees in respect of a service provided or impose a fine.

**Clause 117  Powers of the State Administrative Tribunal in relation to an impairment matter**

This clause provides that the SAT has jurisdiction to deal with impairment matters against a registered person on an allegation made by the Board. The SAT may:

- decline to make an order;
- impose conditions on registration;
- require the practitioner to seek and undergo counselling; or
- order that the person be suspended from practice either generally or in relation to some aspect of practice for up to 2 years
- order the cancellation of registration and removal of the name of the practitioner from the register.

**Clause 118  Powers of the State Administrative Tribunal in relation to a competency matter**

This clause provides that the SAT has jurisdiction to deal with competency matters against a registered person on an allegation made by the Board. The SAT may:
- decline to make an order;
- impose conditions on registration;
- require the practitioner to complete educational courses, to report on his or her practice to another medical practitioner, or obtain advice on the management of his or her medical practice; or
- order that the person be suspended from practice either generally or in relation to some aspect of practice for up to 2 years;
- order the cancellation of registration and removal of the name of the practitioner from the register.

**Clause 119  Powers of the State Administrative Tribunal in relation to a medical student**

This clause provides that the SAT has jurisdiction to deal with impairment matters against a medical student on an allegation made by the Board. The SAT may prohibit the student from participation in clinical activity for a period specified in the order or indefinitely.

**Clause 120  Ancillary powers of the State Administrative Tribunal**

This provision allows the SAT to order that a medical practitioner undergo a medical examination by a medical practitioner or an assessment by an assessor.

**Division 11 — Miscellaneous**

**Clause 121  Release of information: professional standards committee and impairment review committee**

This allows for the presiding member or chairperson of a professional standards committee or an impairment review committee to direct that specified information about a complaint must not be published. A penalty of $5,000 for an individual or $10,000 in other cases is provided for contravention of a direction.

**Clause 122  Suspension**

This clause provides that if a person is suspended from the practice of medicine, he or she is regarded as not being registered during the period of suspension. The Board may revoke a suspension order either completely or in part, but cannot revoke a suspension that was imposed by the SAT without the approval of the SAT.
**Clause 123 Costs**

This clause provides that, in addition to, or instead of, other action that it may take in relation to a disciplinary matter, the Board can order a respondent to pay the Board’s expenses in relation to the matter.

**Part 7 – Offences**

Part 7 specifies conduct that constitutes an offence under the Act. It deals with offences relating to practising medicine without being registered, with the provision of false or misleading information by applicants for registration and in relation to compliance with provisions in the Act, with the obstruction of the investigatory process and with influencing the practice of medicine by a practitioner.

**Clause 124 Persons who may practise medicine**

It is an offence to practise medicine unless registered under the Act.

For an individual, a penalty of a fine of $5,000 and a daily penalty of $200 is provided for a first offence. Those penalties are doubled for a second or subsequent offence. The penalties are doubled for other than individuals.

**Clause 125 Persons who may be employed or engaged to practise medicine**

It is an offence to employ or engage a person to practise medicine unless the person is registered under the Act.

For an individual, a penalty of a fine of $5,000 and a daily penalty of $200 is provided for a first offence. Those penalties are doubled for a second or subsequent offence. The penalties are doubled for other than individuals.

**Clause 126 Exceptions to section 124 and 125**

This clarifies that a student practising under the immediate personal supervision of a medical practitioner, or a person who employs a medical practitioner is not practising medicine.

**Clause 127 Use of title “medical practitioner” or a title of a specialist, or pretending to be registered**

This clause provides protection of title for the title “medical practitioner” and for the titles that are prescribed for specialist registration. Only a person who is registered can use the titles. A person who is not registered is prohibited from advertising or holding out that the person is registered or entitled to practise as a medical practitioner.

The prohibition in relation to the use of a specialist title does not apply for a period of 6 months following the prescribing of a new specialty to allow for existing practitioners to become registered in that specialty.

A penalty of a fine of $2,500 and a daily penalty of $100 is provided for a first offence. Those penalties are doubled for a second or subsequent offence.
**Clause 128  Medical services provided by a person registered elsewhere**

A person who is registered in another State or Territory may show as a defence in proceedings under clauses 124 and 127, that he or she was practising medicine, or using a restricted title in an emergency or for the purpose of removing tissue or organs for transplantation.

**Clause 129  Medical practitioners to arrange consultation in certain cases**

A medical practitioner is to arrange for a second opinion about a patient’s medical condition to be obtained, if requested to do so by the patient or a relative of the patient.

A penalty of a fine of $2,500 for a first offence and a fine of $5,000 for a second or subsequent offence is provided.

**Clause 130  Restriction on administration of anaesthetics in certain cases**

A general anaesthetic is not to be administered by a medical practitioner who is operating on the patient, or by a person who is not a medical practitioner, except in emergencies.

A penalty of a fine of $2,500 for a first offence and a fine of $5,000 for a second or subsequent offence is provided.

**Clause 131  Offences related to advertising medical services**

Advertising for services provided by a medical practitioner must not be false or misleading, create an unjustified expectation of beneficial treatment, promote unnecessary use of medical services, compare services provided other than on the basis of scientific comparison, refer to testimonials or offer a discount, gift or inducement unless the terms of the offer are included in the advertisement.

For an individual, a penalty of a fine of $5,000 and a daily penalty of $200 is provided for a first offence. Those penalties are doubled for a second or subsequent offence. The penalties are doubled for other than individuals.

**Clause 132  Failure to comply with disciplinary action**

This clause provides for an offence of failing to comply with an order of the Board made in relation to a disciplinary matter, a competency matter or an interim order.

A penalty of a fine of $5,000 for an individual or $10,000 in other cases is provided.

**Clause 133  False or misleading information**

This clause provides that it is an offence to make false or misleading statements or provide false or misleading information in relation to any application, any requirement to give information to Board, a committee or the registrar, or any attempt at conciliation under the Act.
A penalty of a fine of $24,000 or two years imprisonment is provided. The effect of section 40 of the Sentencing Act 1995 is that the maximum penalty for a body corporate is a fine or 5 times the amount specified.

**Clause 134  Confidentiality**

A medical practitioner who carries out a medical examination or an assessor who carries out an assessment in accordance with a requirement under the Act is to use information obtained only for the purposes of the Act, as required or allowed by any other written law, or with the consent of the person examined.

A penalty of a fine of $5,000 is provided.

**Clause 135  Offences in relation to assessment or investigation**

This clause provides that it is an offence for a person not to give information, answer questions or produce documents or things if required to do so by an investigator or assessor appointed under the Act. It is also an offence to provide false or misleading information. A number of defences are provided covering failure by the investigator or assessor to comply with procedural requirements.

A penalty of a fine of $5,000 for an individual or $10,000 for a body corporate is provided.

**Clause 136  Obstruction of assessor or investigator**

This clause provides that it is an offence to obstruct an investigator or assessor appointed under the Act in the exercise of his or her powers under the Act.

A penalty of a fine of $5,000 for an individual or $10,000 for a body corporate is provided.

**Clause 137  Impersonating an investigator or assessor**

This clause provides that it is an offence to impersonate an investigator or assessor appointed under the Act.

A penalty of a fine of $5,000 for an individual or $10,000 for a body corporate is provided.

**Clause 138  Information relating to certain business structures**

This clause provides that if a medical practitioner practises under a business structure that includes persons who are not medical practitioners, the business is to provide the Board with a written notice containing prescribed details. This is to ensure that the Board is aware of the businesses that are operating in the area of provision of medical services. Changes in particulars are to be provided to the Board within 14 days.

A penalty of a fine of $1,000 is provided for either a failure to give written notice, or a failure to advice of change in particulars.
Clause 139  Undue influence

It is an offence to cause or induce a medical practitioner to engage in conduct that would constitute a disciplinary matter. Such conduct includes over-servicing, or receiving payment or benefit in connection with referrals.

A penalty of a fine of $50,000 is provided for.

Clause 140  Payment, or acceptance of payment, for referrals prohibited

It is an offence for a medical practitioner or business associate of a medical practitioner to receive or offer payment or benefit in connection with referrals.

A penalty of a fine of $50,000 is provided for.

Clause 141  Persons may be prohibited from supplying health services etc.

This clause provides that a person (including a corporation) that has been convicted of an offence under clause 139 or 140 can be prohibited from involvement in a business providing health services for a specified period.

For an individual, a penalty of a fine of $10,000 and a daily penalty of $400 is provided. The penalties are quadrupled for other than individuals.

Clause 142  Assistance to execute warrant

This clause provides that all reasonable assistance is to be provided by a medical practitioner, his or her staff or employers, or other person with whom he or she practises to an investigator executing a warrant at premises named in the warrant.

A penalty of a fine of $2,500 for an individual or $5,000 for a body corporate is provided.

Clause 143  Surrender of certificate

Where a person’s registration is cancelled or his or her practice suspended, the person is to surrender their certificate of registration to the Board within 14 days. A certificate that has been replaced with a corrected certificate is also to be surrendered.

A penalty of a fine of $1,000 is provided.

It is a defence to show that the failure to surrender was due to the loss or destruction of the certificate.

Clause 144  Incriminating information, questions, or documents

During the course of an investigation, a person is not excused from answering a question or providing a document or thing because it may incriminate the person. However, an answer given, or a document or thing produced is not admissible in evidence in civil or criminal proceedings, other than proceedings for providing false or misleading information to an investigator appointed under the Act.
**Clause 145  Legal professional privilege**

This clause protects the right of a person to refuse to answer a question, provide information or produce a document or other thing in respect of which legal professional privilege is claimed. Provision is made for an application to be made to the Supreme Court for a declaration that legal professional privilege does or does not apply to an answer, information, document or thing.

A penalty of a fine of $5,000 for an individual or $10,000 otherwise is provided where a claim for legal professional privilege is false, misleading or without substance.

**Part 8 – Codes of practice, rules and regulations**

Part 8 provides for the making of codes of practice and for rules and regulations necessary for giving effect to the Act.

**Clause 146  Codes of practice**

This clause provides that the Board may, with the approval of the Minister, issue codes of practice. Codes of practice contribute to the protection of the public by promoting standards of practice and conduct. This is relevant to the Board’s registration and disciplinary proceedings. The codes of practice may adopt the provisions of other publications. The Minister cannot approved a code of practice unless he or she is satisfied that there has been appropriate public consultation as set out in the clause and has been provided with a report of the submissions received and an impact assessment statement.

A breach of the code of practice does not in its elf constitute grounds for disciplinary action against a medical practitioner, but such a breach may be taken into consideration by the Board in determining questions that arise in respect to disciplinary proceedings.

A code of practice is to be published in the *Gazette*, tabled in Parliament and subject to disallowance procedures.

**Clause 147  Rules**

The Board, with the confirmation of the Governor, may make rules as permitted by the Act. Rules may also be made regulating the keeping and disposal of patient records and dealing with sterilisation of equipment and infection control.

Rules are subsidiary legislation and must be published in the *Gazette*, tabled in Parliament and subject to disallowance procedures.

Rules may provide for an offence with a penalty of up to $5,000.

**Clause 148  Regulations**

The Governor may make regulations for all matters necessary to give effect to the Act and for any matter on which the Board may make rules (see clause 147). Such purposes include, but are not limited to:
regulating the conduct of the business of the Board and committees;
regulating the issue, display and use of certificates of registration;
regulating conduct of conciliation conferences, including the appointment of persons
to preside at conciliation conferences;
regulating the manner of making complaints;
regulating the conduct of investigations;
prescribing fees;
prescribing returns and notices to be provided to the Board;
providing that information supplied to the Board may be required to be verified by
statutory declaration.

Where a regulation is inconsistent with a rule, the regulation prevails to the extent of the
inconsistency.

Regulations may provide for an offence with a penalty of up to $5,000.

Clause 149 Forms

This clause provides that forms may be either prescribed by regulations or rules, or approved
by the Board.

Part 9 – Miscellaneous

Part 9 provides for miscellaneous items such as legal proceedings, liability of officers of a
body corporate and the review of the Act.

Clause 150 Protection

This clause provides protection against an action in tort for a person carrying out a function
under the Act in good faith. This protection is also extended to the Crown. Persons involved
in investigations of complaints under the Act have the same protection and immunity as if the
matter was before the Supreme Court.

Clause 151 Notice of decision to be given

This clause provides that for specified decisions, the Board is to record the grounds on which
the decision was made and to provide written notice of the decision and the grounds for the
decision to the person to whom the decision relates. The decisions to which this requirement
relates are decisions to refuse registration, to place conditions on registration or to remove a
person’s name from the register.

Clause 152 Review

This clause provides that persons may apply to the SAT for a review of specified decisions by
the Board.


Clause 153 Publication of proceedings etc.

This clause protects the Board, members and staff of the Board and committees, registration authorities in other States and journalists who, in good faith, communicate or publish findings, reasons or decision of the Board, a committee or the SAT.

The Board may publish or give notice of a finding, reason or decision to other specified bodies that have an interest in the matter.

Clause 154 Furnishing information

This allows for the sharing of information with medical boards from other States and Territories if requested in connection with complaints.

Clause 155 Legal proceedings

This clause sets out provisions relating to proceedings for offences under the Act. All offence proceedings under the Act are to be heard in a court of summary jurisdiction constituted by a magistrate.

The clause also provides for certain documentation about registration to be evidence of matters included in the documentation and for presumptions in relation to the signature of notices and appointment signed on behalf of the Board or a committee.

Clause 156 Liability of certain officers of body corporate: offences

This clause deals with the relationship between a body corporate and officers of a body corporate in relation to offences under the Act. Officers of a body corporate have the same responsibility as a body corporate unless an offence was committed without the officer’s consent or if the officer had taken all reasonable steps to prevent the commission of the offence.

Clause 157 Confidentiality of certain reports

This clause provides that reports of a committee that have been prepared in relation to impairment and competency matters cannot be used in civil proceedings, other than in connection with proceedings under the Act.

Clause 158 Assessment and medical report

This clause provides that assessment and medical reports prepared in accordance with the Act can only be used in civil proceedings with the consent of the person who prepared the report and the person who was the subject of the report.

Clause 159 Review of Act

This is a standard clause for all new legislation. The Minister is to review the operation of the Act in five years from its commencement and every fifth anniversary of that date to determine the effectiveness and continuation of the Board and any other matters relating to the effectiveness of the Act.
Clause 160  Repeals

The *Medical Act 1894* and the *Medical Rules 1987* are repealed.

Clause 161  Savings and transitional provisions

This clause provides that transitional provisions are set out in Schedule 2.

Clause 162  Consequential amendments

This clause provides that consequential amendments are set out in Schedule 3.

Schedule 1 – Constitution and proceedings of the Board

Schedule 1 presents general provisions in relation to the proceedings of the Board such as terms of office for Board members, deputy members, resignation or removal of members, election of chairperson, calling of meetings and meeting quorums, voting, minutes, and Board committees.

Division 1 – General provisions

Clause 1  Term of office

Board members are to hold office for three years, not exceeding more than 9 years consecutively, unless approved by the Minister for special reasons.

Clause 2  Functions of deputy presiding member

This clause provides for the circumstances in which the deputy presiding member may perform the functions of the presiding member.

Clause 3  Deputy members

This clause provides that the Minister may appoint deputies for members and for the circumstances in which a deputy may perform the functions of a member.

Clause 4  Vacation of office by member

A Board member may resign by notice in writing given to the Minister. A member of the Board may be removed from office by the Minister for a number of reasons including mental of physical disability, insolvency, extended absences without leave or loss of qualification or position that was required for the appointment.
Clause 5  General procedure concerning meetings
A quorum for a meeting of the Board is 5 members at least 3 of whom are medical practitioners.

Clause 6  Voting
A decision of the majority of members at which a quorum is present is a decision of the Board. Where votes are equally divided, the presiding member is to have the casting vote.

Clause 7  Holding meetings remotely
A person may attend a Board meeting by telephone or other means of instantaneous communication.

Clause 8  Resolution without meeting
Resolutions in writing signed or assented to by each Board member have effect as if they had been passed at a Board meeting.

Clause 9  Minutes
The Board is to ensure that accurate records are kept.

Division 2  Disclosure of interests etc.

Clause 10  Meaning of “member”
Defines a “member” as a member of the Board or of a committee.

Clause 11  Disclosure of interests
Members must disclose material personal interests in a matter before the Board or an offence is committed.
A penalty of a fine of $5,000 is provided for failure to disclose a relevant interest.

Clause 12  Exclusion of interested member
A member who has a material personal interest in a matter before the Board must not vote on the matter and must not be present when the matter is being considered.

Clause 13  Board or committee may resolve that clause 12 inapplicable
The Board may declare clause 12 inapplicable if it is satisfied the interest should not disqualify the member from voting.
Clause 14  Quorum where clause 12 applies

If a member is disqualified under clause 12, a quorum will be 3 members. The Minister may deal with a matter if there are not 3 members of the Board entitled to vote on the matter.

Clause 15  Minister may declare clauses 12 and 14 inapplicable

The Minister may declare clauses 12 and 14 inapplicable and, if so, must cause a copy of the declaration to be laid before each House of Parliament.

Schedule 2 – Savings and transitional provisions

Schedule 2 provides transitional provisions for the introduction of the new Act relating to the continuation of the Board, membership of the Board, the Registrar and other staff, registered persons and certificates under the repealed Act, for applications for registration not finalised before commencement of the new Act, suspension of persons under the repealed Act and complaints and investigations dealt with by the former Board.

Clause 1  Terms used in this Schedule

Describes the terms used in this schedule.

Clause 2  Interpretation Act 1984 not affected

This schedule does not affect the terms of the Interpretation Act 1984.

Clause 3  The Medical Board continues

The Board continues as a body corporate and all references to the former Board are to be taken to be a reference to the new Board.

Clause 4  Board members

This clause provides for the old Board members to cease office when the new Act commences. Half of the members of the new Board to be appointed for a period of up to 18 months to allow for the staggering of changes to the Board membership.

Clause 5  The registrar and other staff

The registrar and officers of the old Board will continue as registrar and officers of the new Board.

Clause 6  Natural persons registered under the repealed Act

All persons registered under the old Act continue to be registered under the new Act. General registrants will be registered until 30 September in the year following commencement of the Act. Other registrants will be registered for the same period as
covered by registration under the old Act subject to a requirement to pay annual registration fees.

**Clause 7 Provisional registration**

A person who was provisionally registered under the repealed Act is taken to be provisionally registered under the new Act.

**Clause 8 Certificates of registration issued under the repealed Act**

Certificates of registration for natural persons under the old Act continue as certificates of registration under the new Act.

**Clause 9 Suspensions**

If a person has been suspended under the repealed Act, the person is take to have been suspended by the SAT under the new Act and any orders of the Tribunal will apply.

**Clause 10 Undertakings under the repealed Act**

Undertakings under provisions in the repealed Act continue under the new Act and breach of an undertaking can be dealt with under the new Act.

**Clause 11 Matters referred to the professional standards committee under section 13 of the repealed Act**

The professional standards committee established under the repealed Act is to continue to deal with matters referred to it for investigation before the commencement day.

**Clause 12 Investigation**

Investigators are to continue investigations commenced under the repealed Act as if he or she had been appointed under the new Act.

**Clause 13 Failure to comply with an order made under the repealed Act**

A failure to comply with orders under the repealed Act can be dealt with under the new Act.

**Clause 14 Medical call services**

An approval under the repealed Act for a medical call service ceases to be registered on the commencement day.

**Clause 15 Annual report for part of a year**

The former Board is to report on its proceedings, but limited to the period from 31 December preceding the commencement day.
Clause 16 Powers in relation to transitional provisions

If there is no specific schedule for dealing with a transitional matter the Governor may make regulations prescribing all required matters.

Schedule 3 – Consequential amendments

Schedule 3 provides for consequential amendments to 61 Acts of Parliament. The amendments are to update the definitions of “medical practitioner” to refer to a person registered under the new Medical Practitioners Act 2006, to replace references to the Medical Act 1894 with references to the Medical Practitioners Act 2006 and to replace references to the Medical Board with references to the Medical Board of Western Australia.