

Explanatory Memorandum

Medical Radiation Technologists Bill 2005

INTRODUCTION

This Bill provides for the registration and regulation of medical radiation technologists.

The Bill is modelled on the standardised provisions in health practitioner Bills that are to regulate other health practitioner groups including chiropractors, dentists, dental prosthetists, nurses, optometrists, occupational therapists, physiotherapists, podiatrists and psychologists.

This Bill provides for effective registration of medical radiation technologists. It controls the use of the title “medical radiation technologist” and other restricted titles associated with different areas of medical radiation technology. It provides for disciplinary or impairment action to be taken against medical radiation technologists if necessary.

The Bill also amends the *Radiation Safety Act 1975* to provide for the circumstances in which medical radiation technologists may use radioactive substance or radiation to assist in diagnosis and treatment of disease.

Long Title

The long title sets out the purpose of the Bill, which is to provide for regulation of the practice of medical radiation technology and registration of persons as medical radiation technologists, to amend the *Radiation Safety Act 1975*, to make consequential amendments to various Acts, and for related purposes.

Part 1 – Preliminary

This part contains the title of the Act, the relevant commencement provisions and definitions of the terms used within the Bill.

Clause 1 Short Title

This clause provides the short title of the Act.

Clause 2 Commencement

Provides for the Act to come into operation on a day fixed by proclamation. Different provisions may come into effect on different days. The date the Act will commence will be dependent upon the appointment process for members of the Board established under the Act and the making of any necessary rules and regulations.

Clause 3 *Terms used in this Act*

Contains the definitions required for the purposes of the Act. Medical radiation technology is defined to include the three areas of medical radiation technology, being medical imaging technology, nuclear medicine technology and radiation therapy. Restricted title is defined to include the titles that are restricted to persons registered within the three areas of medical radiation technology.

Part 2 – Medical Radiation Technologists Registration Board and committees

This part provides for the establishment of the Medical Radiation Technologists 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 4 *Board established*

The Medical Radiation Technologists Registration 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 5 *Membership of Board*

The Board will consist of 8 natural persons to be appointed by the Minister. The composition of the Board includes representation from each of the three areas of medical radiation technology and consumer and legal representation.

Clause 6 *Presiding member and deputy presiding member*

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

Clause 7 *Constitution and proceedings*

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

Clause 8 *Remuneration and allowances*

The Minister may determine remuneration for a member of the Board or 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 9 Functions

The Board advises the Minister on matters relating to the Act, administers the scheme of registration 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 10 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 11 Delegation by Board

This provision gives the Board the flexibility to delegate functions to Board members, committees or committee members or the registrar. This allows for effective administration of the Board's functions.

Division 3 Relationship of Board with Minister

Clause 12 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. The Minister cannot give directions in relation to a particular person, qualification, application, complaint, investigation or proceeding. There are similar provisions in other registration Acts.

Clause 13 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. There are similar provisions in other registration Acts.

Division 4 Committees

Clause 14 Committees

The Board will have the power to establish committees in addition to the complaints assessment committee and the impairment review committee. 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 15 Provisions relating to committees

The Board may remove committee members and reconstitute or discharge a committee. Committees 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 16 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 power or duty to another person employed or engaged by the Board.

Clause 17 Other staff

The Board can engage or employ staff to provide such assistance as the Board considers necessary in performing its functions.

Division 6 General

Clause 18 Notifications to the Radiological Council

The Board is to provide the Radiological Council (established under the *Radiation Safety Act 1975*) with written advice about cancellation or suspension of the registration of a medical radiation technologist, about variations of any conditions on the registration of a medical radiation technologist, or if an allegation about a registrant is made to the State Administrative Tribunal.

Clause 19 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 20 Meetings and minutes of meetings

It is important that the actions of the Board are subject to public scrutiny to avoid the perception amongst members of the public that Boards act in the best interests of the members of the profession rather than in the best interests of the community as a whole. For this reason Board meetings are open to the public except in limited circumstances where confidentiality is appropriate.

Clause 21 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.

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 22 Funds of the Board

Clause 22 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 radiation technologists and may receive funds from other sources specified in the clause.

Clause 23 Accounts

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

Clause 24 Audit

Accounts and financial statements are to be audited at least once a year by a registered company auditor approved by the Minister.

Clause 25 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 31 December 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.

Part 4 – Registration of medical radiation technologists

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

Division 1 Registration

Clause 26 Natural persons may be registered

This clause provides that only natural persons will be registered.

Clause 27 Registration

Clause 27 ensures that only applicants who are fit to practise and who possess appropriate levels of qualifications and experience can be registered. The Board may impose such conditions on registration under this clause as are reasonably required to ensure the competent and safe practice of medical radiation technology. A medical radiation technologist may be registered in one or more of the three areas of medical radiation technology.

Clause 28 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 of clause 27. The Board may impose conditions on the applicant as are reasonably required to ensure the competent and safe practice medical radiation technology. Provisional registration can be cancelled. A medical radiation technologist may be provisionally registered in one or more of the three areas of medical radiation technology.

Clause 29 Conditional registration at the discretion of the Board

This clause gives the Board the flexibility to provide a person who is fit to practice with registration for a period of up to 12 months, if the Board is satisfied of certain requirements. For example, conditional registration facilitates visiting lecturers and academics eminent in the field of medical radiation technology that need to practise medical radiation technology in order to teach it and medical radiation technologists who accompany sports people visiting Western Australia from overseas to participate in sporting events. Conditions may be imposed, revoked or varied. Conditional registration can be cancelled at any time or renewed for a further 12 months if required. A medical radiation technologist may be conditionally registered in one or more of the three areas of medical radiation technology.

Clause 30 Professional indemnity insurance

The Board may require that a person is covered by professional indemnity insurance that meets minimum terms and conditions approved by the Board as a condition of registration under clause 27, 28 or 29. This is important having regard to the interests of health consumers.

Clause 31 Application

Applications for registration 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.

Clause 32 Effect of registration

Registration allows the person registered to carry on the practice of medical radiation technology in Western Australia under the title “medical radiation technologist” or another restricted title. A registered medical radiation technologist is also subject to the requirements in the *Radiation Safety Act 1975* in relation to the use of irradiating apparatus and radioactive substances.

Clause 33 Duration of registration

Registration has effect for the period as prescribed in the regulations and may be renewed in accordance with the regulations.

Clause 34 *Renewal of registration*

Renewal of registration occurs on an annual basis, subject to a renewal fee. If fees are not paid in accordance with this clause, registration ceases and the person's name is removed from the register. Payment of fees in arrears entitles a person to registration renewal and restoration of their name to the register.

For the purposes of disciplinary proceedings only, 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.

Clause 35 *Application for registration by a person whose registration has been cancelled under section 79(1)(i)*

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.

Clause 36 *Conflict or inconsistency between conditions imposed under the Radiation Safety Act 1975 and this Act*

If there is any conflict or inconsistency between a condition imposed on the registration of a person as a medical radiation technologists and a condition imposed on a licence issued under the *Radiation Safety Act 1975*, the condition on the licence is to prevail. This recognises the role of the *Radiation Safety Act 1975* in regulating the keeping and use of radioactive substances and irradiating apparatus.

Division 2 *The register*

Clause 37 *The register*

A register of medical radiation technologists is to be maintained by the Board and is to record details specified in this clause, including details of the area or areas in which a person is registered.

Clause 38 *Inspection of register*

The register is available for inspection by the general public. 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 39 *Certificate of registration*

This clause is provides for the Board to issue a certificate in an approved form, that when issued serves as evidence of registration. It also provides for the issue of a new certificate if a

person's registration is cancelled in one area but not all areas of medical radiation technology.

Clause 40 Voluntary removal from register and cancellation of registration or cancellation of area or areas of medical radiation technology

A person's name may be removed from the register or from registration in an area of medical radiation technology upon a request in writing. The Board will 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 41 Removal of name and cancellation of registration of person in certain circumstances

This clause gives the Board the power to ensure that all registered medical radiation technologists maintain current knowledge and skills at an approved level in each area in which they are registered. The Board can cause the removal from name of a practitioner from the register in respect of an area in which the person has not practiced for 5 years or more unless he or she has maintained current knowledge and skills.

Clause 42 Effect of removal of name from register

If the name of a person is removed from the register in one or more areas of medical radiation technology the person ceases to be registered in that area or those areas.

Division 3 Notifications to Board

Clause 43 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 44 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 90 days after the loss. This will ensure all registered persons are appropriately qualified at all times and any person who has lost the required qualifications can immediately be removed from the register under clause 41.

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

Clause 45 Insolvency

To comprehensively carry out its functions the Board must be informed of developments in the industry, including the insolvency of registered persons. It is notable that the occurrence of insolvency 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 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 radiation technologist.

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

Clause 46 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 radiation technologist.

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

Clause 47 Information about professional indemnity insurance

If professional indemnity insurance is a condition of a person's registration, written advice must be provided, within 30 days, if the insurance is cancelled or the terms or conditions are changed.

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

Part 5 – Disciplinary and impairment matters

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

Division 1 Preliminary

Clause 48 Disciplinary matters

Causes for disciplinary action are specified. These include contravention of conditions on the person's registration, breaches of the Act or the *Radiation Safety Act 1975* or acting carelessly, incompetently or improperly.

Clause 49 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 or by the use of drugs or alcohol to such an extent that their ability to practise is affected.

Division 2 Committees

Clause 50 Complaints assessment committee

This clause provides for the Board to establish a three person complaints assessment committee and consequential administrative matters. The complaints assessment committee is to undertake specific roles in assessing and investigating complaints against medical radiation technologists (see clauses 53 and 58). 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.

Clause 51 Impairment review committee

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

The impairment review committee investigates complaints referred to it by the complaints assessment committee or the Board (see clauses 53 and 63). Specific provision is made for the appointment of a medical practitioner to the impairment review committee.

Division 3 Complaints

Clause 52 Complaints

This clause provides for any person to make a complaint to the complaints assessment committee about a medical radiation technologist. Complaints referred to the Board by the Director of the Office of Health Review are to be referred to the committee. The complaints assessment committee may also investigate disciplinary or impairment matters in the absence of a complaint.

Clause 53 Complaints assessment committee to determine action required

This clause empowers the complaints assessment committee to make a preliminary assessment of a complaint and to:

- refer it to the Board for an interim order;
- reject the complaint if it is frivolous, vexatious or without substance (see clause 54);
- investigate the complaint (see clause 58);
- refer the complaint to the impairment review committee;
- if the complaint relates to a failure to comply with an undertaking given to the Board, to recommend to the Board that it make an allegation to the State Administrative Tribunal.

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 54 Complaints assessment committee may reject certain complaints

This clause sets out the circumstances in which the complaints assessment committee can reject a complaint and notification requirements if a complaint is rejected. A complaint can be rejected if the committee considers that it is frivolous, vexatious or without substance.

Division 4 – Summary orders of Board

Clause 55 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 the medical radiation technologist 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 State Administrative Tribunal.

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

Clause 56 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 55, the Board will revoke the order or make an allegation about the matter to the State Administrative Tribunal. The Tribunal may, in addition to any other order it may make, affirm or revoke or extend the period of application for an order under clause 55.

Clause 57 Complaint not dealt with summarily to be referred to relevant committee

If the Board does not make an summary order under clause 55 in respect of a complaint referred to it by the complaints assessment committee the Board is to refer the complaint to either the complaints assessment committee or the impairment review committee.

Division 5 – Disciplinary matters

Clause 58 Investigation and recommendation

This clause provides for the complaints assessment committee to investigate a complaint. On completion of an investigation the complaints assessment committee 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:

- make a summary order;
- provide a copy of the complaint to the Director of the Office of Health Review;
- attempt to settle the matter by conciliation;
- caution or reprimand the practitioner;
- accept an undertaking from the person the subject of the complaint;
- make an allegation to the State Administrative Tribunal; or
- take no further action.

Clause 59 Role of Board

The Board is to consider the recommendation of the complaints assessment committee and can act on the recommendation or alternatively choose another option that the complaints assessment committee could have recommended under clause 58. The Board is not to attempt conciliation unless it is satisfied that the matter can be dealt with informally.

Clause 60 Alternative to making allegation to the State Administrative Tribunal

This clause provides that the Board may exercise jurisdiction in less serious disciplinary matters where the medical radiation technologist who is the subject of a complaint chooses not to have the matter dealt with by the State Administrative Tribunal. The penalties that are available to the Board are:

- to order amendment of particulars on the register;
- to require an undertaking in relation to future conduct or to comply with conditions;
- to caution or reprimand the medical radiation technologist;
- to order that the medical radiation technologist pay to the Board a penalty not exceeding \$2,500.

The Board may also make an order for the medical radiation technologist who is the subject of the complaint to pay costs and expenses incidental to the proceedings, recoverable as a debt due to the Board.

Written notice, with short particulars, of any decision made under this clause must be provided to both the person making a complaint and the person who is the subject of the complaint.

Division 6 – Impairment matters

Clause 61 Request by medical radiation technologist for imposition of condition

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

Clause 62 Revocation of condition

This clause allows the revocation of a condition imposed on registration that has been requested by a medical radiation technologist if the Board is satisfied that the person's ability to practice is no longer affected because of the impairment.

Clause 63 Investigation

The impairment review committee is to investigate a complaint referred to it.

Clause 64 Medical radiation technologist to be notified about investigation

The impairment review committee must give written notice of an investigation to a medical radiation technologist to whom the complaint relates. The notice must advise of the nature of the impairment to be investigated and provide a summary of the impairment review processes under the Act. The impairment review committee can request the medical radiation technologist to agree to undergo an examination relating to the impairment matter.

Clause 65 *Examination*

If the medical radiation technologist agrees to undergo an examination, the person is to be examined by a medical practitioner agreed on by the impairment review committee and the medical radiation technologist. If the committee and the medical radiation technologist are not able to agree, then the Board is to appoint a medical practitioner. The Board is to pay for the examination.

If the medical radiation technologist does not agree to the examination, or does not undergo the examination within the agreed time, the impairment review committee is to recommend to the Board that an allegation be made to the State Administrative Tribunal.

Clause 66 *Report of examination*

The medical practitioner who examines the practitioner must provide a report of the examination to the impairment review committee. The committee is to provide a copy of the report to the practitioner within 7 days of receipt of the report.

If, in the opinion of the committee, the disclosure of the report's contents may adversely affect the mental welfare of the practitioner, the report is to be provided to a medical practitioner or peer medical radiation technologist nominated by the practitioner, or selected by the impairment review committee in the absence of a nomination.

The medical radiation technologist may make written representations to the impairment review committee with respect to the report within 7 days of the report being provided by the committee.

Clause 67 *Role of the impairment review committee*

The impairment review committee is to decide whether further action should be taken in respect of a matter referred to it. If the committee decides that further action should be taken the committee is to request that the medical radiation technologist consent to the further action. The action that the committee may request the medical radiation technologist to consent to is:

- imposition of conditions on registration;
- suspension from practice for up to 2 years or
- to undergo counselling specified by the committee.

If the committee decides that no further action should be taken, it is to advise the Board, the complainant (if there is one) and the medical radiation technologist in writing.

Clause 68 *Recommendation*

If the medical radiation technologist does not consent to a request in clause 67 within 10 days of the request being made, the impairment review committee is to recommend to the Board that an allegation be made to the State Administrative Tribunal. If the medical radiation technologist consents to the further action requested by the committee, the committee is to recommend that the Board take the action to which the medical radiation technologist consented. A recommendation from the committee to the Board must be in writing and set out details of the committee's investigations.

Clause 69 Role of Board

On consideration of the recommendation of the impairment review committee the Board can decide to:

- not take any action;
- take any action to which the medical radiation technologist consented following a request under clause 67;
- make an allegation to the State Administrative Tribunal.

The Board must give written notice of its decision and the reasons for the decision to the medical radiation technologist and the complainant (if any) within 7 days.

Division 7 – Investigator’s role and powers

Clause 70 Interpretation

This clause defines “appointing body” as the Board or the complaints assessment committee that appoints an investigator.

Clause 71 Investigator

This clause provides that the Board or the complaints assessment committee may appoint a person to investigate a complaint and report to the Board or committee. The appointing body is to issue a certificate of appointment to the investigator appointed, which is evidence in any court of the appointment.

Clause 72 Report of investigator

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

Clause 73 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 in accordance with a warrant issued under clause 75, inspect equipment used in an medical radiation technologist’s practice, require documents or information to be provided and inspect and copy documents. Document is defined in clause 3 as including any tape, disc or other device or medium on which information is recorded or stored. 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.

Clause 74 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 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 75 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 74. 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 76 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.

Division 8 – Conciliation

Clause 77 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 disciplinary 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 be 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 78 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 – Role of the State Administrative Tribunal

Clause 79 Powers of the State Administrative Tribunal on dealing with a disciplinary matter

This clause provides that the State Administrative Tribunal (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 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 complete education, training or professional development or to practice under supervision for a specified time;
- require the person to obtain and implement advice in relation to the person's practice of medical radiation technology;
- 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 practice 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 80 Powers of the State Administrative Tribunal on dealing with 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 undergo medical treatment or 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.

The SAT may determine that an allegation in respect of an impairment matter should be dealt with as a disciplinary matter.

Division 10 – Miscellaneous

Clause 81 Suspension

This clause provides that if a person is suspended from practice or from an area of practice, they are regarded as not being registered in that area or areas 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 82 Costs and recovery

This clause provides that the Board can order a respondent to pay the Board's expenses in relation to a complaint. Any costs or expenses ordered are a debt due to the Board.

Part 6 – Offences

Part 6 specifies conduct by non-medical radiation technologists that constitutes an offence under the Act. It deals with the provision of false or misleading information by applicants for registration and in relation to compliance with provisions in the Act and also with the obstruction of the investigatory process.

Clause 83 Use of title “medical radiation technologist” or a restricted title or pretending to be registered

This clause provides protection of title for the various titles that are associated with the areas of medical radiation technology. Only a person who is registered in the appropriate area can use certain titles. A person who is not registered is prohibited from advertising or holding out that the person is registered or entitled to practice as a medical radiation technologist.

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

Clause 85 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, compliance with a requirement to give the Board or register information, or attempt at conciliation under the Act.

A penalty of a fine or \$24,000 or two years imprisonment is provided.

Clause 86 Offences in relation to investigator

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 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 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 87 Obstruction of investigation

This clause provides that it is an offence to obstruct an investigator in the exercise of his 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 88 Assistance to execute warrant

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

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

Clause 89 Surrender of certificate

Where a person's registration is cancelled or their practice suspended, the person is to surrender their certificate of registration to the Board within 14 days.

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

Clause 90 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 91 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.

Part 7 – Codes of practice, rules and regulations

Part 7 provides for the making of codes of practice and for rules and regulations necessary for giving effect to the Act.

Clause 92 Application of Part

This clause clarifies that the Board is not able to issue a code of practice or make a rule or regulation in respect of matters that fall within the ambit of the *Radiation Safety Act 1975*.

Clause 93 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 clearly relevant to the Board's registration and disciplinary proceedings. The codes of practice may adopt the provisions of other publications.

A breach of the code of practice does not in itself constitute grounds for disciplinary action against a medical radiation technologist, 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 94 Rules

The Board, with the confirmation of the Governor, may make rules as permitted by the Act, and in particular the rules may prescribe training and qualifications for persons to be registered, evidence of qualifications that will be recognised by the Board, the holding of examinations, the practice of medical radiation technology, and advertising by medical radiation technologists.

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

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

Clause 95 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 94). Such purposes include, but are not limited to:

- regulating the conduct of the business of the Board and committees;
- making provisions relating to registration, including applications;
- maintaining the accuracy of the register;
- regulating the issue, display and use of certificates of registration;
- regulating the manner of making complaints;
- regulating the conduct of investigations;
- regulating conduct of conciliation conferences, including the appointment of persons to preside at conciliation conferences;
- 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 an offence for contravention of a regulation with a penalty of up to \$5,000.

Clause 96 Forms

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

Part 8 – Miscellaneous

Part 8 provides for miscellaneous items such as legal proceedings, liability of officers of a body corporate and the review of the Act.

Clause 97 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 98 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 99 Review

This clause provides that persons may apply to the SAT for a review of a decision by the Board when registration is refused or an interim or summary order of the Board is made.

Clause 100 Publication of proceedings etc.

This clause protects the Board, members and staff of the Board and committees, the Radiological Council, 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 101 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 a complaints assessment committee or impairment review committee.

Clause 102 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 103 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 to determine the effectiveness and continuation of the Board and any other matters relating to the effectiveness of the Act.

Clause 104 Transitional provisions

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

Clause 105 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, position vacancy, 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 a deputy for each member and for the circumstances in which the deputy may perform the functions of the 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 or physical disability, insolvency, extended absences of 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.

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 by each Board member have effect as if they had been passed at a Board meeting.

Clause 9 Minutes

This clause is self-explanatory.

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 \$10,000 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 4 members. The Minister may deal with a matter if there are not 4 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 – Transitional provisions

Clause 1 *Term used in this Schedule*

This clause defines commencement day as the day on which the Act comes into operation.

Clause 2 *Transitional provision for persons practicing medical radiation technology*

This clause provides for persons currently practicing medical radiation technology to be treated as though registered for a period of up to 6 months during which time the Board would consider an application for registration. This clause is necessary because medical radiation technologists have not previously been subject to registration requirements.

Clause 3 *Persons practicing medical radiation technology but not eligible for registration under Part 4*

This clause allows the Board to register a practicing medical radiation technologist who does not have the prescribed qualifications. The Board can only register a person under this transitional arrangement if the application is made within 6 months of commencement of the Act and the Board is satisfied that the person meets all other registration criteria. This provision allows experienced practitioners who may have acquired skills and expertise on the job rather than through formal qualifications to continue to work in the field.

Clause 4 *Membership of Board*

This clause allows the Minister to make the first appointments of members of the Board if satisfied that the persons appointed as medical radiation technologists are eligible for registration.

Schedule 3 – Consequential amendments

Schedule 3 provides for consequential amendments to the *Civil Liability Act 2002*, the *Constitution Acts Amendment Act 1899*, the *Health Professionals (Special Events Exemption)*

Act 2000, the Health Services (Conciliation and Review) Act 1995, the Radiation Safety Act 1975 and the State Administrative Tribunal Act 2004.

Clause 1 *Civil Liability Act 2002 amended*

This clause amends the *Civil Liability Act 2002* to include medical radiation technologists in the definition of “health professionals” for the purposes of provisions relating to professional negligence.

Clause 2 *Constitution Acts Amendment Act 1899 amended*

This clause has the effect of requiring a member of the Board to vacate that position if he or she is elected to the Western Australian Parliament.

Clause 3 *Health Professionals (Special Events Exemption) Act 2000 amended*

The clause has the effect of including visiting medical radiation technologists in the category of visiting health professionals who may be allowed to provide health care services to visitors to the State in connection with special events.

Clause 4 *Health Services (Conciliation and Review) Act 1995 amended*

This clause includes the Board as a registration board for the purposes of the *Health Services (Conciliation and Review) Act 1995*.

Clause 5 *Radiation Safety Act 1975 amended*

This clause amends the *Radiation Safety Act 1975* to:

- Define a medical radiation technologist as a person who is registered under the *Medical Radiation Technologists Act 2005*.
- Provide for an additional member of the Radiological Council who is to be a medical radiation technologist.
- Provide that the Radiological Council is to advise the Board in relation to suspension, revocation, surrender or variation in respect of a licence issued to a medical radiation technologist, and that such notification does not breach the secrecy requirements in the *Radiation Safety Act 1975*.
- Provide that a medical radiation technologist must be licensed and acting in accordance with a written request of a medical practitioner or other specified health practitioner if he or she uses radiation or irradiating apparatus on a person.
- Provide that a medical radiation technologist whose registration requires that his or her practice must be supervised is to practice under direction and supervision of a licensed person and not as the holder of a licence.

Clause 6 *State Administrative Tribunal Act 2004 amended*

This clause has the effect of allowing a right to appeal a decision of the State Administrative Tribunal on questions of law and fact where the State Administrative Tribunal’s decision arises from a review a decision of the Board.