

IMPORTANT NOTICE



New Legislation Affecting WA Medical Practitioners

The Medical Practitioners Act 2008 (WA)
Children and Community Services Amendment
(Reporting of Sexual Abuse of Children) Act 2008



The Medical Practitioners Act 2008 (WA)

The *Medical Practitioners Act 2008* ("the Act") came into force in WA on 1 December 2008, significantly altering the law governing the practice of medicine in the State. The Act replaces its dated predecessor the *Medical Act 1894*.

The Act's stated purpose¹ is to protect consumers of medical services provided by Medical Practitioners in WA by:

- a) ensuring that only properly qualified and competent persons practise medicine;
- b) regulating the practise of medicine by those persons; and
- c) establishing, maintaining and promoting suitable standards of knowledge and skills among Medical Practitioners.

The areas where significant changes have been made to how Medical Practitioners now practise in WA are:

- Constitution and powers of the Medical Board.
- Registration.
- Disciplinary, competence and impairment proceedings.
- Additional requirements under the Act.

Constitution and Powers of the Medical Board

The newly constituted Board will consist of 12 members, comprising:

- 6 Medical Practitioners;
- 1 Medical Practitioner who is a full-time academic staff member of an accredited medical school;
- 1 Medical Practitioner who is a Public Service Officer, or a salaried staff member of a Public Authority;
- The CEO (or nominee) of the Department responsible for the *Consumer Affairs Act 1971*;
- 2 consumer representatives; and
- 1 Legal Practitioner.

The Board will continue to be responsible for administering the system of registration, disciplinary, competency and impairment matters, and for the promotion and encouragement of continuing medical education.

The Act empowers the Board to delegate its power and establish further committees, in addition to the three existing permanent committees², to exercise functions on its behalf.³

Registration

In order to be generally registered under the Act, the Medical Practitioner must show that he/she:

- a) is a "fit and proper person" to be registered as a Medical Practitioner;
- b) has not been convicted of an offence, the nature of which renders the person unfit to practise medicine;
- c) is competent to practise medicine (that is, the person has sufficient physical capacity, mental capacity and skill to practise medicine);
- d) has a sound knowledge of the English language and possesses sufficient skill in the expression of that language, both written and oral, for the practise of medicine;
- e) has a recognised medical qualification;
- f) has successfully completed a period of internship or supervised clinical practise approved by the Board in writing or prescribed by the rules.

In order to be registered as a "Specialist" under the Act, the Medical Practitioner must also show that he/she:

- a) meets the requirements to be generally registered (above);
- b) has an Australian or New Zealand qualification in the speciality that is prescribed by the regulations for the speciality; or
- c) has a qualification in a speciality that the Board considers is substantially equivalent to, or based on similar competencies to, a qualification prescribed under the regulations.

A Medical Practitioner whose principal place of practise of medicine is in another State or Territory, and who is registered to practise medicine under a corresponding law, is taken to be registered by the Board.⁴

Whilst the Board has the power to impose various conditions on a Medical Practitioner's registration, the Act also specifically provides the Board with the power to require a Medical Practitioner to take out Professional Indemnity Insurance.

The Board has advised that the publicly accessible register will now include the business address of Medical Practitioners, along with details of any conditions or orders relating to their practise of medicine.

With effect from the 2009/2010 registration renewal, the Board has advised that⁵:

- A failure to pay the renewal fee by 30 September 2009, will result in immediate removal from the register - there will be no second reminders after the initial renewal notice.
- Upon renewal, Medical Practitioners must provide details to the Board of development or educational activities related to the practise of medicine, undertaken during the period of registration (obviously this requires a review of current continuing medical education activity, to ensure a basis for reporting in the 2009/2010 renewal process).
- There will be new renewal notices for completion by all Medical Practitioners, including notification obligations.
- The implementation of a "Specialist's Register".

¹ See s3.

² Being the Complaints Assessment Committee, the Professional Standards Committee and the Impairment Review Committee.

³ See s16.

⁴ See s68

⁵ See information sheet entitled "The Medical Practitioners Act 2008 and Registration Renewal" on the Board's website.

⁶ s79 of the Act

⁷ s86(1) of the Act

Disciplinary, Competency and Impairment Proceedings

There have been significant changes in how the Board assesses and characterises the conduct of Medical Practitioners.

Like its predecessor, the Act retains the roles of the State Administrative Tribunal in determining more significant disciplinary matters, and the Professional Standards Committee in dealing with less significant disciplinary matters.

The Act introduces the Complaints Assessment Committee⁶, which is charged with investigating complaints and making recommendations to the Board. The Board then has a range of options open to it, depending on the circumstances, including:

- Rejecting the complaint⁷;
- Making summary orders regarding a Medical Practitioner's practise⁸;
- Appointing an investigator who has broad powers to investigate the matter further⁹;
- Referring the matter to:
 - the PSC or the SAT for determination;
 - the Impairment Review Committee (allowing for examination and assessment of the Medical Practitioner in respect of any impairment)¹⁰; or
 - an Assessor(s) (allowing for examination and assessment to assess the Medical Practitioner's competency)¹¹.

The Act allows the Board to more clearly distinguish three distinct streams of inquiry, being disciplinary matters, competency assessments and impairment assessments.

Disciplinary Matters

Disciplinary matters are more broadly defined¹² to include:

- contravening a condition which has been applied;
- acting carelessly;
- acting incompetently;
- acting improperly;
- breaching the Act;
- breaching an undertaking to the Board;
- over-servicing;
- conviction of an offence, rendering the Medical Practitioner unfit to practise;
- engaging in conduct falling short of the standard expected by the public or fellow Medical Practitioners; and
- sexual misconduct.

Competency Assessments

Competency matters concern a Medical Practitioner not having sufficient knowledge or skill to practise generally, or in their specialist area¹³.

Impairment Assessments

Impairment matters arise where a Medical Practitioner¹⁴:

- is affected by the use of or dependence on alcohol or other drugs that affect their ability to practise medicine; or
- suffers from an impairment generally which affects their ability to practise medicine.

Additional Requirements Under the Act

A number of additional requirements arise under the Act, including the following obligations:

- **Change of Address** - A Medical Practitioner must give the registrar written advice of any change to the address that is recorded in the register in relation to the person no later than 30 days after the change to the address.¹⁵
- **Loss of Qualification** - A Medical Practitioner must give the registrar written advice within 7 days if a qualification that enabled the person to be registered is withdrawn or cancelled by the body that conferred the qualification.¹⁶
- **Insolvency** - A Medical Practitioner must, within 14 days of becoming an insolvent, advise the registrar of the Board.¹⁷
- **Civil or Criminal Proceedings**¹⁸ - A Medical Practitioner must give the registrar written advice of any of the following matters within 14 days after the legal process commencing:
 - Any civil proceedings claiming damages or other compensation arising out of the practise of medicine (note: this is not required until legal proceedings have been formally served on the Medical Practitioner).
 - Any criminal proceedings for an offence arising out of the practise of medicine or an offence against the *Health Insurance Act 1973*.
 - Further, a Medical Practitioner must give the registrar written advice if any of the above mentioned matters are settled, withdrawn or determined by a court or tribunal.
- **Cancellation, Suspension or Conditions imposed on Registration elsewhere** - A Medical Practitioner must advise the Board within 7 days.¹⁹

In summary, the new Medical Practitioners Act provides more structure, scope and power to the Medical Board to regulate the practice of Medical Practitioners in Western Australia; WA Medical Practitioners are encouraged to familiarise themselves with the provisions of the new Act.

⁶ Part 6, division 4 of the Act

⁷ s90 of the Act

⁸ s102 of the Act

⁹ s105 of the Act

¹² s76 of the Act

¹³ s77 of the Act

¹⁴ s78 of the Act

¹⁵ s58 of the Act - penalty for failure = \$1000

¹⁶ s59 of the Act - penalty for failure = \$1000

¹⁷ s60 of the Act - penalty for failure = \$5000

¹⁸ s61 of the Act - penalty for failure = \$5000

¹⁹ s63 & 64 of the Act - penalty for failure = \$5000

Children and Community Services Amendment (Reporting of Sexual Abuse of Children) Act 2008

Legislation that requires doctors to report child sexual abuse will come into effect in Western Australia on 1 January 2009. The legislation that governs the mandatory reporting of child sexual abuse is the *Children and Community Services Amendment (Reporting of Sexual Abuse of Children) Act 2008* and, from 1 January 2009, this Amendment will become part of the *Children and Community Services Act 2004*.

Under this legislation, doctors, nurses, midwives, teachers and police officers are mandatory reporters. Mandatory reporters must report to the Department for Child Protection a belief, formed on reasonable grounds in the course of their work, paid or unpaid, that a child has been the subject of sexual abuse, or is the subject of ongoing sexual abuse.

A child is defined in the Act as a person who is 'under 18 years of age, and in the absence of positive evidence of age, means a person apparently under 18 years of age'. The legislation states that 'sexual abuse', in relation to a child, includes sexual behaviour in circumstances where:

- the child is the subject of bribery, coercion, a threat, exploitation or violence;
- the child has less power than another person involved in the behaviour; or
- there is a significant disparity in the developmental function or maturity of the child and another person involved in the behaviour.

Mandatory reporters must report the belief that a child is the subject of ongoing sexual abuse, or has been the subject of sexual abuse, as soon as practicable to the Department for Child Protection's Mandatory Reporting Service. Failure to make a report can result in a fine of up to \$6,000.

The legislation provides legal protection for a person who makes a mandatory report. Reporters who act in good faith will be protected from:

- civil or criminal liability;
- breach of a duty of confidentiality; and
- breach of professional ethics, standards, codes of conduct or from engaging in unprofessional conduct, which would normally arise from the actions involved in making a mandatory report.

To make a verbal report, mandatory reporters can telephone the Mandatory Reporting Service on 1800 708 704. It operates 24 hours a day, seven days a week. A written report must follow a verbal report as soon as practicable. A form for mandatory reporters, **Mandatory Report - Sexual Abuse**, is available on the Department for Child Protection's website at: www.mandatoryreporting.dcp.wa.gov.au.

Mandatory reporting of child abuse now exists in all Australian States and Territories, although the types of abuse that must be reported and the age for mandatory reporting varies across Australian jurisdictions. Members are encouraged to contact MDA National's medico-legal advisory service if they have any questions or concerns about their obligations as mandatory reporters.

Further information pertaining to the new legislation affecting WA Medical Practitioners can be found online at:

<http://www.medicalboard.com.au/pdfs/Medical%20Practitioners%20Act%202008.pdf>

<http://www.mandatoryreporting.dcp.wa.gov.au>

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