



Medical Amendment Bill 2000

Explanatory memorandum

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HEALTH DEPARTMENT
OF WESTERN AUSTRALIA

MEDICAL AMENDMENT BILL 2000

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PURPOSE

The Medical Amendment Bill 2000 (**“the Bill”**) makes two principal amendments to the Medical Act 1894.

The purpose of these amendments is:

- (a) to create a new category of conditional registration that better accommodates a scheme to attract suitably qualified overseas trained doctors (OTDs) to provide general practitioner services in remote and rural parts of the State (**“the scheme”**); and
- (b) to enable a second legal practitioner to be appointed to the Medical Board of Western Australia (**“the Board”**).

The background to each of these measures follows.

NEW CATEGORY OF CONDITIONAL REGISTRATION

On 26 April 1999, the Minister for Health announced jointly with the Federal Minister for Health and Aged Care details of a scheme to address the shortage of doctors in remote and rural parts of Western Australia.¹

Doctor shortages in the bush result from:

- The unwillingness of a sufficient number of Australian medical graduates to enter general practice in remote and rural areas; and
- Restrictions on the registration of OTDs and their participation in Medicare.

The scheme addresses the second of these issues. It combines action at State and Commonwealth levels and in essence involves:

- Registration under the Medical Act 1894 of OTDs who are accepted into the scheme (**“scheme participants”**);
- The granting of provider numbers by the Health Insurance Commission to enable scheme participants to participate in Medicare; and

¹ New ways found on recruiting overseas doctors to rural WA. Media statement by the Minister for Health, 26 April 1999.

- The prospect of permanent migration and continuing entitlement to practise medicine in Australia for scheme participants who satisfy certain requirements.

Overseas trained doctors and Medicare

In 1996, the Commonwealth Government amended the Health Insurance Act 1973 (Cth) to place a 10 year moratorium on the payment of Medicare benefits for professional services provided by OTDs.²

As a consequence, services provided by OTDs who entered Australia after 1 January 1997 do not attract Medicare benefits until 10 years after the OTDs became registered with a State or Territory Medical Board.

However, the moratorium does not apply to:

- OTDs who are granted an exemption by the Federal Minister for Health and Aged Care under section 19AB(3) of the Health Insurance Act 1973 (Cth); and
- Temporary resident doctors (TRDs) in respect of whom a determination has been made and is in force under section 3J of the Health Insurance Act 1973 (Cth).³

OTDs who are accepted to participate in the scheme are granted a section 19AB(3) exemption by the Federal Minister enabling them to participate in Medicare.

This exemption is granted on condition that scheme participants practise in remote and rural areas for a period of 5 years and attain Fellowship of the Royal Australian College of General Practitioners (FRACGP).

Medicare provider numbers are granted to scheme participants by the Health Insurance Commission consistent with the Federal Minister's exemption.⁴

² Section 19AB, Health Insurance Act 1973 (Cth).

³ Section 3J determinations enable OTDs who are resident in Australia on a temporary basis to fill areas of unmet need. TRDs have been, and remain, an important part of the response to medical workforce shortages in Western Australia.

⁴ For the 5 years during which scheme participants must practise in remote and rural areas, the Medicare provider numbers allocated to them restrict the geographical area within which the medical services they provide are eligible for Medicare benefits.

Registration of overseas trained doctors under the Medical Act 1894

The registration of medical practitioners in Australia is a State/Territory responsibility. The Medical Act 1894 (“**the Act**”) is the relevant Western Australian legislation.

The Act provides for the granting by the Medical Board of general (ie unconditional) and conditional forms of registration to medical practitioners.

General registration is available to Australian and New Zealand medical graduates. It is also available to OTDs who pass a competency examination administered by the Australian Medical Council (AMC). Applicants must also satisfy other requirements for general registration.⁵

Conditional registration is available at the discretion of the Medical Board for the specific purposes set out in section 11AF of the Act. Broadly these purposes are:

- To enable foreign medical graduates to undertake postgraduate or other further training;
- To fill medical teaching/medical research positions;
- To fill unmet areas of need; and
- To enable foreign trained specialists to practise within their specialty.

The Medical Board may also grant temporary registration on a conditional basis if it is satisfied that it is in the public interest to do so.

Implementation of the scheme has proceeded under the Act with the majority of scheme participants having been granted conditional registration under the unmet area of need category (section 11AF(1)D, Medical Act 1894).

The new category of conditional registration that clause 8 of the Bill proposes to insert into the Act better accommodates key features of the scheme:

- **Continuity of registration** – the scheme involves OTDs who fulfil the requirement to practise medicine in remote and rural areas for 5 years, and to attain the FRACGP within 2 years, having a continuing entitlement to practise medicine. This involves establishing continuing access to a Medicare provider number under the Health Insurance Act 1973 (Cth) and continuing registration under the Medical Act 1894.

⁵ Other criteria to be satisfied by a person seeking general registration as a medical practitioner is that he/she has successfully completed a period of internship or supervised clinical practice (section 11(1)) and that the Medical Board is satisfied that he/she is competent to practise medicine, has knowledge and skill in the English language, and is of good character (section 11AA, Medical Act 1894).

The new category of conditional registration created by the Bill – proposed section 11AG of the Act – provides that the registration of scheme participants who meet the 5 years remote/rural practice and FRACGP requirements will continue. This continuation of registration will be subject to scheme participants confining their practice of medicine to the specialty of general practice and complying with provisions of the Act which apply equally to all registered medical practitioners.

- **Cancellation of registration** – it is intended that scheme participants who fail to meet the 5 years remote/rural practice and FRACGP requirements may be denied registration and the ability to continue participating in Medicare. In so far as registration is concerned, the new category of registration set out in the Bill clarifies the Medical Board's ability to cancel the registration of scheme participants who fail to comply with the relevant requirements without recourse to the Act's disciplinary procedures. Because the Board is to have this ability it is important to specify in the Act the particular conditions that scheme participants are subject to, failure to comply with which may result in cancellation of registration. These conditions are described in section 11AG(2) in clause 8 of the Bill.

It is also important to specify the particular matters in relation to which the Medical Board must be satisfied when granting registration to enable OTDs to participate in the scheme.

These matters are set out in section 11AG(1) in clause 8 of the Bill. The possession by scheme participants of relevant overseas qualifications and experience in general practice and the assessment of their competence to practise as general practitioners in Western Australia are particularly relevant in the context of the scheme.

The registrations of OTDs who enter the scheme prior to the commencement of the Bill are proposed to be transferred to the new category of conditional registration. This is achieved by clause 10 of the Bill.

SECOND LEGAL PRACTITIONER MEMBER FOR THE MEDICAL BOARD

Provision for the appointment of a second legal practitioner member of the Medical Board of Western Australia is made by clause 4 of the Bill following a request from the Board to have increased access to legal expertise among its membership.

This request reflects the fact that the number of disciplinary inquiries initiated by the Board under section 13 of the Act is increasing. In 1996-97 the Board held 5 disciplinary inquiries, whereas in 1999-2000 12 such inquiries were held.

While the number of inquiries in each of these years is relatively small, Medical Board inquiries can involve complex matters relating to issues of professional competence and medical ethics.

Section 4(1a) of the Act provides that one of 11 members of the Medical Board must be a legal practitioner.

It is not a requirement of the Act for the Board to involve the legal practitioner member in all disciplinary inquiries. The composition of the Board at a disciplinary inquiry need only conform with the quorum requirements for meetings of the Board. Section 4(2) of the Act provides that quorum is established by 5 members of the Board of whom not less than 3 must be medical practitioners.

However, it is the Board's practice to involve its legal practitioner member in all disciplinary inquiries. The legal practitioner advises other members of the Board on the conduct of inquiries and prepares orders of the Board and reasons for Board decisions. Disciplinary decisions of the Board can be appealed to the Supreme Court of Western Australia pursuant to section 13(8) of the Act.

This practice, combined with the increase in Board inquiries, is placing an unreasonable demand on the time and services of the existing legal practitioner member.

The Crown Solicitor's Office (CSO) was asked to advise on the Board's request. Having canvassed relevant caselaw and having regard to principles of procedural fairness, CSO advised that it is preferable that legal advice relied upon by the Medical Board at a disciplinary inquiry be provided by a legal practitioner who is a member of the Board constituted for the purposes of the inquiry.

The Government supports the Medical Board in taking a proactive approach to its regulatory responsibilities and, having regard to this support and to CSO's advice, has agreed to provide in the Bill for the appointment of a second legal practitioner member of the Board.

It is important to place this decision in the context of a review of the Medical Act 1894 which is currently in progress. This review has produced proposals for a new Medical Act for Western Australia which were released for public comment in January 2000.

A key recommendation of the review is that the new Medical Act should provide for the establishment of an independent Medical Tribunal to hear serious complaints against doctors. This proposal draws on developments in a number of other jurisdictions (eg NSW, Queensland and South Australia) and has been broadly welcomed as part of the consultation on the proposals for a new Act.

If this particular proposal forms part of the new Medical Act, the need for a second legal practitioner member of the Board would be obviated because much of the Board's currently disciplinary role would, under the new Act, be undertaken by the proposed Medical Tribunal.

This point is made to emphasise that provision for the appointment of a second legal practitioner member and the consequential alteration of the Board's composition should be viewed as an interim measure pending completion of the Medical Act Review and Parliament's consideration of proposals for a new Medical Act. The composition of the Board in the new Medical Act will necessarily be determined by the functions specified for the Board under that Act.

OTHER AMENDMENT

The opportunity has also been taken to clarify the application of section 11AA of the Act to the granting of conditional registration by the Medical Board.

Section 11AA of the Act prevents the Board registering someone as a medical practitioner unless the Board is satisfied that the person:

- Is competent to practise medicine (that is, the person has sufficient physical capacity, mental capacity and skill to practise medicine);
- Has a sound knowledge of the English language and possesses sufficient skill in the expression of that language, both written and oral, for the practice of medicine; and
- Is of good character.

In practice the Medical Board has regard to each of these matters when deciding whether to grant conditional registration under the Act.

The amendments contained in clauses 5, 6 and 7 of the Bill make clear that the Board is required to be satisfied that applicants for both general and conditional forms of registration meet each of the requirements stated in section 11AA of the Act.

CLAUSE NOTES

Explanatory notes on each of the clauses contained in the Bill are attached.

MEDICAL AMENDMENT BILL 2000 – NOTES ON CLAUSES

CLAUSES 1, 2 & 3	NOTES
<p>1. Short title</p> <p>This Act may be cited as the <i>Medical Amendment Act 2000</i>.</p>	<p>Clause 1</p> <p>Self explanatory</p>
<p>2. Commencement</p> <p>(1) Sections 1 to 4 come into operation on the day on which this Act receives the Royal Assent.</p> <p>(2) Sections 5 to 10 come into operation on a day fixed by proclamation.</p>	<p>Clause 2</p> <p>This clause provides for clauses 1 – 4 of the Bill to come into operation on Royal Assent, and for the balance of the Bill to be brought into operation on a date fixed by proclamation.</p> <p>Different commencement dates are necessary to accommodate the need for the Minister to make a determination of the parts of the State that are “remote and rural WA” before the proposed new section 11AG is brought into operation.</p>
<p>3. The Act amended</p> <p>The amendments in this Act are to the <i>Medical Act 1894</i>*.</p> <p><i>[*Reprinted as at 25 February 2000.]</i></p>	<p>Clause 3</p> <p>Self explanatory</p>

CLAUSES 4, 5 & 6	NOTES
<p>4. Section 4 amended</p> <p>Section 4(1a) is amended as follows:</p> <p>(a) by deleting “11” and inserting instead – “12”;</p> <p>(b) by deleting paragraph (c) and inserting the following paragraph instead – “(c) 2 persons appointed by the Minister who are legal practitioners”.</p>	<p>Clause 4</p> <p>Section 4(1a) of the Medical Act 1894 provides that the membership of the Medical Board of Western Australia comprises:</p> <ul style="list-style-type: none"> • the Commissioner of Health (or a medical practitioner in the public service nominated by the Commissioner if he or she is not a medical practitioner); • 7 medical practitioners appointed by the Minister; • 1 legal practitioner appointed by the Minister; • the Chief Executive Officer of the Ministry of Fair Trading (or nominee); • 1 person appointed by the Minister who is not a medical practitioner. <p>The effect of clause 4 is to increase from 1 to 2 the number of persons appointed to the Board who are legal practitioners. This change increases the size of the Board from 11 to 12 members.</p>
<p>5. Section 11AA amended</p> <p>Section 11AA is amended by inserting after “section 11” – “and sections 11AC, 11AD, 11AF and 11AG”.</p>	<p>Clauses 5 – 7</p> <p>Clauses 5 – 7 amend sections 11AA, 11AC, 11AD, 11AF of the Medical Act to make it clear that the Medical Board must be satisfied in relation to the matters specified in section 11AA when granting conditional registration under sections 11AC, 11AD, 11AF and the proposed new section 11AG. The matters specified in section 11AA are that an applicant for registration:</p>
<p>6. Sections 11AC and 11AD amended</p> <p>Sections 11AC(1) and 11AD(1) are amended by deleting “The” and inserting instead – “Subject to section 11AA, the”.</p>	<ul style="list-style-type: none"> • Is competent to practise medicine; • Has a sound knowledge of the English language and possesses sufficient skill in the expression of that language, both written and oral, for the practice of medicine; and • Is of good character.

CLAUSES 7 & 8	NOTES
<p>7. Section 11AF amended</p> <p>Section 11AF(1) is amended by deleting “The” and inserting instead –</p> <p>“Subject to section 11AA, the”.</p>	<p>Clauses 5 – 7</p> <p>As above</p>
<p>8. Section 11AG inserted</p> <p>After section 11AF the following section is inserted –</p> <p>“11AG Conditional registration for general practice in remote and rural WA</p> <p>(1) Subject to section 11AA, the Board may register a person as a medical practitioner if –</p> <p>(a) The Board is satisfied that the person –</p> <ul style="list-style-type: none"> (i) has qualifications and experience in general practice obtained outside Australia; (ii) is competent, having regard to the person’s qualifications and experience, to practise as a general practitioner in this State; and (iii) has undertaken to comply with the conditions imposed by subsection (2); 	<p>Clause 8</p> <p>Clause 8 inserts a new section 11AG into the Medical Act 1894. This section creates a new category of conditional registration that better accommodates implementation of a scheme to attract suitably qualified overseas trained doctors to help fill doctor shortages in remote and rural parts of the State (“the scheme”).</p> <p>This new category builds on the discretion the Medical Board has under section 11AF of the Medical Act to grant conditional registration for specific purposes.</p> <p>Section 11AG(1)(a) sets out the matters in relation to which the Medical Board must be satisfied when deciding whether to grant registration under this new category.</p>

CLAUSE 8 (continued)	NOTES
<p>8. Section 11AG inserted</p> <p>(b) the person pays to the Board together with his or her application for registration such registration fee as is prescribed, together with the annual practice fee prescribed for the purposes of section 16A.</p> <p>(2) The registration of a person under this section is subject to the following conditions –</p> <p>(a) that the person practise only as a general practitioner;</p> <p>(b) that the person must practise in remote and rural WA for 5 years after being registered; and</p> <p>(c) if the person is not a Fellow of the Royal Australian College of General Practitioners at the time of registration under this section, that he or she must become such a fellow within 2 years of being so registered.</p> <p>(3) The Board may impose such other conditions as it thinks appropriate on the registration of a person under this section, but a condition under this subsection must not restrict the parts of the State in which the person may practise after the expiration of the 5 years referred to in subsection (2)(b).</p>	<p>Clause 8</p> <p>Section 11AG(1)(b) requires applicants for registration in the new category to pay registration and annual practice fees which all other categories of registrant are required to pay to the Medical Board.</p> <p>Section 11AG(2) places the following conditions on the registration of a person under section 11AG (“the registrant”):</p> <ul style="list-style-type: none"> • That the registrant confine his or her practice of medicine to the specialty of general practice; • That the registrant practise in an area or areas designated by the Minister to be remote and rural WA for a period of 5 years; and • That the registrant become a Fellow of the Royal Australian College of General Practitioners (RACGP) with 2 years. <p>This latter condition does not apply to registrants who became Fellows of the RACGP before being registered under section 11AG.</p> <p>Section 11AG(3) allows the Medical Board to place other conditions on registrants. This is comparable to the discretion the Board has under section 11AF of the Medical Act to impose conditions on all other categories of conditionally registered medical practitioners.</p> <p>However, the Board cannot impose a geographical restriction on a registrant’s practice of medicine after the condition limiting the registrant’s practice to remote and rural WA for 5 years has been fulfilled.</p>

CLAUSE 8 (continued)	NOTES
<p>8. Section 11AG inserted</p> <p>(4) If a person who is registered under this section satisfies the Board that there is a good reason why he or she should not be required to comply with the condition imposed by subsection (2)(b) or (c) the Board may vary that condition as the Board thinks appropriate.</p> <p>(5) If the Board is satisfied that a person registered under this section has failed to comply with a condition imposed by subsection (2) the Board may, without an inquiry, remove the name of the person from the register.</p> <p>(6) Subject to subsection (5) and sections 10(5), 13, 13A and 16A(2), the Board shall not remove the name of a person registered under this section from the register or suspend the registration of a person so registered after the person has complied with the conditions imposed by subsection (2)(b) and (c).</p>	<p>Clause 8</p> <p>Section 11AG(4) provides the Medical Board with a discretion to vary the conditions requiring registrants to confine their practice to remote or rural WA for 5 years and to attain Fellowship of the RACGP within 2 years. This is intended to provide some flexibility for the Board to deal with exceptional situations.</p> <p>Section 11AG(5) enables the Medical Board to cancel the registration of a registrant under section 11AG who fails to comply with a condition of registration imposed by section 11AG(2).</p> <p>The effect of section 11AG(6) is to require the Medical Board to continue the registration of a registrant who fulfils conditions of registration relating to practising for 5 years in remote and rural WA and attaining Fellowship of the RACGP.</p> <p>This continuation of registration is subject to provisions of the Medical Act which authorise the removal of names of registered persons from the Medical Register by the Board for the following reasons:</p> <ul style="list-style-type: none"> • Section 10(5) – failure to respond to written communication from the Registrar of the Medical Board; • Section 13 – suspension or cancellation of registration as a result of disciplinary action by the Medical Board; • Section 13A – suspension or cancellation of registration by the Medical Board following disciplinary action by the Medical Board of another State and or of the Territories; • Section 16A(2) – failure to pay the prescribed annual practice fee.

CLAUSE 8 (continued), CLAUSE 9	NOTES
<p>8. Section 11AG inserted</p> <p>(7) In this section –</p> <p>“practise as a general practitioner” means practise as a medical practitioner engaged in primary, continuing, comprehensive, whole-patient care of individuals, families and their community;</p> <p>“remote and rural WA” means any part of the State, outside the Perth metropolitan area, determined by the Minister to be remote and rural WA for the purposes of this section.</p>	<p>Clause 8</p> <p>Section 11AG(7) contains two defined terms relevant to the interpretation of section 11AG.</p> <p>The definition of “practising as a general practitioner” is included to provide guidance on the key characteristics of the specialty of general practice within which registrants are required by section 11AG(2) to confine their practice.</p> <p>The definition is based on one which appears in the <i>Health Insurance (Vocational Registration of General Practitioners) Regulations</i> which are made under the <i>Health Insurance Act 1973</i> (Cth). Its use in the Bill is acceptable to the Royal Australian College of General Practitioners.</p> <p>The definition of “remote and rural WA” allows the Minister to determine the parts of the State in which registrants will be required to practise for 5 years. This is comparable to the role the Minister has under section 11AF of the Medical Act in determining unmet areas of need.</p>
<p>9. Section 12B amended</p> <p>Section 12B(1) and (4) are amended by deleting “or 11AF(1)” and inserting instead –</p> <p>“11AF(1) or 11AG”.</p>	<p>Clause 9</p> <p>Clause 9 amends section 12B of the Medical Act 1894 to accommodate the creation of section 11AG.</p> <p>Section 12B provides for the granting of provisional certificates of registration to applicants for registration pending a decision by the Medical Board on the outcome of the application.</p> <p>The effect of the amendment is to enable provisional certificates of registration to be issued to applicants for registration under section 11AG.</p>

CLAUSE 10	NOTES
<p>10. Transfer of certain existing registrations</p> <p>(1) On the commencement of this section the Board is to register under section 11AG all eligible persons.</p> <p>(2) For the purpose of calculating any period of time in relation to a condition imposed by section 11AG(2), an eligible person is taken to have been registered under section 11AG on the day on which the State Interview Panel assessed the person as being suitable to be a general practitioner in remote and rural WA.</p> <p>(3) In this section –</p> <p> “eligible person” means a person –</p> <p> (a) who is registered as a medical practitioner under section 11AF;</p> <p> (b) who was so registered on or after 26 April 1999 but before the commencement of this Act; and</p> <p> (c) who has been assessed by the State Interview Panel as being suitable to be a general practitioner in remote and rural WA.</p> <p> “remote and rural WA” has the same meaning as in section 11AG;</p> <p> “section” means a section of the <i>Medical Act 1894</i>;</p> <p> “State Interview Panel” means the panel established by the Western Australian Centre for Remote and Rural Medicine for the purposes of assessing, and advising the Board as to, the suitability of overseas trained persons to be general practitioners in remote and rural WA.</p>	<p>Clause 10</p> <p>Clause 10:</p> <ul style="list-style-type: none"> • Requires the Medical Board to register under section 11AG all overseas trained doctors who are participating in the scheme at the point that the clause commences and who are able to do so having been registered under section 11AF of the Medical Act; • Provides that periods of time that a registrant participates in the scheme prior to commencement are to count towards the calculation of the relevant periods of time for the purposes of the conditions imposed by section 11AG(2). <p>The reference to 26 April 1999 is to the date on which details of the scheme were announced by the Minister for Health.</p> <p>The membership of the State Interview Panel comprises representatives of:</p> <ul style="list-style-type: none"> • The Western Australian Centre for Remote and Rural Medicine (WACRRM); • The Royal Australian College of General Practitioners (Western Australian Faculty); and • The Australian College of Remote and Rural Medicine (Western Australian branch).

