



**GOVERNMENT RESPONSE
TO THE
FINAL RECOMMENDATIONS OF THE
MEDICAL ACT REVIEW**

July 2003

GOVERNMENT RESPONSE TO THE MEDICAL ACT REVIEW

BACKGROUND

The *Medical Act 1894* is the oldest extant medical practitioner legislation in Western Australia. It establishes the Medical Board of Western Australia and confers two principal statutory functions on the Board, namely registration and the regulation of doctors.

The Act has been the subject of two reviews over the last 15 years. The first did not result in legislative change. The second review, which commenced in 1997 was tasked with producing proposals for a new Medical Act, taking account of the first review and also of the State's national competition policy obligations.

The second review was undertaken by a Working Party, chaired by Professor Bryant Stokes, with members drawn from the Medical Board, Health Consumers' Council, the medical profession and the Department of Health. Public consultation on proposals for reform attracted significant interest from medical and health consumer groups, which informed the development of the Working Party's final recommendations to Government. The Government appreciates the time and effort that many stakeholders and interested parties devoted to providing comprehensive submissions to the review.

The review report is a considerable body of work that provides detailed recommendations for new legislation to replace the *Medical Act*. The review report is available in full from, www.health.wa.gov.au/publications.

I am pleased to present the Government's response to the review of the *Medical Act 1894*.

GOVERNMENT'S RESPONSE

The recommendations of the *Medical Act* review provide the basis for the development of comprehensive new medical practitioner legislation for Western Australia. A copy of a summary of the recommendations is attached. The recommendations are based on extensive review of comparable legislation in other States and Territories and New Zealand, and have been informed by significant stakeholder input through the public consultation process followed in 2000.

The Government has accepted the recommendations made by the *Medical Act* review as providing the basis for the drafting of new medical practitioner legislation subject to the following:

- (a) The disciplinary machinery recommended by the *Medical Act* review should be implemented through a *Medical Practitioners Registration Bill* subject to:

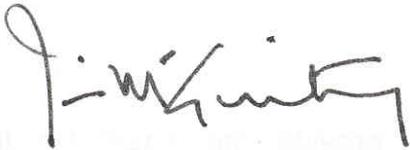
- i. The functions identified by the *Medical Act* review for the proposed independent Medical Tribunal (ie appellate jurisdiction in relation to Medical Board decisions, original jurisdiction in relation to serious complaints against doctors) being assigned to the State Administrative Tribunal¹ (SAT).
 - ii. The *Medical Practitioners Registration Bill* and legislation establishing the SAT being as consistent as possible.
- (b) The recommendations of the *Medical Act* review relating to the regulation of corporate involvement in the provision of medical services are not accepted. However, further consultation on this issue will occur with medical and consumer groups and representatives of corporate owners/managers of businesses providing medical services.

This further consultation will have regard to legislative developments in other jurisdictions and their known impacts.

The Government will also be consulting broadly on the issue of creating linkages between registration and the holding of medical indemnity insurance under the new Act.

A Bill based on the recommendations will now be drafted.

The Government is grateful to Professor Bryant Stokes, who chaired the Working Party and other members of the review team who have been instrumental in the development of the recommendations for new medical practitioner legislation.



**JIM MCGINTY MLA
ATTORNEY GENERAL
MINISTER FOR HEALTH**

¹ For more information regarding the SAT see the Attorney-General's website, www.ministers.wa.gov.au.

SUMMARY OF FINAL RECOMMENDATIONS

REPORT OF THE REVIEW OF THE MEDICAL ACT 1894 FINAL RECOMMENDATIONS TO THE MINISTER FOR HEALTH

Introduction

The following provides a summary of the Working Party's final recommendations for new medical practitioner legislation for Western Australia.

Preliminary matters

The Working Party's final report recommends that:

1. The new Medical Act should be entitled the *Medical Practitioners Registration Act* to better indicate its purpose and subject matter (*final recommendation 1*).
2. The *Medical Practitioners Registration Act* should incorporate a statement of objective, which makes clear that the purpose of the legislation is to protect the public (*final recommendation 2*).
3. There should be no definition of medical practice in the *Medical Practitioners Registration Act*.

The regulation of medicine, and other regulated health practices in Western Australia, should be focused on the identification of core harmful practices (known as core practice regulation).

The current prohibition on the practising of medicine and surgery by non-registrants should be retained for a period of 3 years pending completion of a review of core practices relevant to each regulated health profession. A further review and report to Parliament on this issue should be undertaken if core practice regulation has not been implemented at the end of 3 years (*final recommendation 3*).²

Medical Board of Western Australia

The Working Party's final report recommends that:

4. The *Medical Practitioners Registration Act* should incorporate a statement of the functions of the Medical Board (*final recommendation 5*).

² The Department of Health is undertaking a review to identify core harmful practices relevant to each regulated health profession in consultation with professional and consumer groups.

5. The Medical Board should comprise 12 persons – 8 medical practitioners (including nominees of the Director General of the Department of Health and the Vice Chancellor of UWA), 1 legal practitioner, 2 representatives of consumers, and the Director General of the Department of Consumer and Employment Protection (or nominee) (*final recommendation 6*).
6. Grounds for the removal of appointed members should be specified and provision made for the appointment of deputies to the appointed members of the Medical Board in the *Medical Practitioners Registration Act* (*final recommendations 8 & 9*).
7. Appointment of the Presiding and Deputy Presiding members and general procedure should be determined by the Medical Board (*final recommendations 10 & 11*).
8. Remuneration of Medical Board and Board committee members should be determined by the Minister for Health on advice from the Minister for Public Sector Management (*final recommendation 12*).
9. The Medical Board should be subject to an express, but caveated and accountable, power of direction by the Minister for Health (*final recommendation 14*).
10. Medical Board and Board committee members should be required to disclose interests in matters under consideration by the Board (or committee) and not to make improper use of information to which they become privileged (*final recommendations 15 & 16*).
11. The Medical Board should be required to publish a quarterly summary of matters dealt with at Medical Board meetings, including a summary of complaints received and action taken in response (*final recommendation 17*).
12. A new power for the Medical Board to issue codes of professional conduct for the purpose of guiding medical practitioners, health consumers, and others in relation to the subject matter of the *Medical Practitioners Registration Act* should be included in the new legislation (*final recommendation 20*).

Registration of medical practitioners

The Working Party's final report recommends that:

13. The distinction between general and conditional forms of registration should be retained in the new Act with the criteria for registration remaining largely unchanged³ (*final recommendations 22 - 24*).

³ Categories of registration available under the *Medical Act 1894* were substantially updated in 1994 when Western Australia adopted nationally consistent registration categories and criteria in the context of the advent of mutual recognition legislation.

14. Provision should be made in the *Medical Practitioners Registration Act* for the commencement of registration by medical specialty (*final recommendations 25 - 27*).
15. The Medical Board should have increased powers when assessing applications for initial, and renewal of, registration and to respond to concerns about the continuing competence of registered medical practitioners (*final recommendations 28 - 30*).
16. Provision should be made in the *Medical Practitioners Registration Act* for registration to be granted for a prescribed period of up to 3 years in most cases (*final recommendation 29*).
17. The Medical Board should have a broader ability to attach conditions to registration in the interests of ensuring the safe and competent practice of medicine, subject to appropriate review and appeal procedures (*final recommendations 32 - 34*).
18. As the principal effects of registration, the *Medical Practitioners Registration Act* should:
 - (a) Retain the prohibition on non-registrants practising medicine pending completion of the review of core practices;
 - (b) Make it an offence for a non-registrant to use the title “registered medical practitioner” or any other title calculated to induce a belief that the person is a registered medical practitioner;
 - (c) Make it an offence for a non-registrant otherwise to advertise or hold himself or herself out as being entitled or qualified to be a registered medical practitioner (*final recommendation 35*).
19. Further consideration should be given to the Medical Board having a role in setting standards for professional indemnity insurance under cover of which medicine is practised, and enforcing compliance with these standards through registration, as occurs in Victoria and NSW (*final recommendation 36*).
20. Provision should be made in the *Medical Practitioners Registration Act* to deem the registration of doctors who are registered in another State or Territory and who provide medical assistance in emergency situations or in connection with organ retrieval whilst in Western Australia (*final recommendation 41*).
21. The Medical Board should continue to be required to maintain a Medical Register and to issue certificates of registration to registered medical practitioners. Circumstances in which the Board is authorised to remove a person’s name from the Register should be set out in the *Medical Practitioners Registration Act*, as well as procedures for restoration (*final recommendations 42 - 46*).

22. Registered medical practitioners should be required to notify the Medical Board about certain matters, eg receipt of writ of summons alleging medical negligence (*final recommendation 47*).
23. The *Medical Practitioners Registration Act* should incorporate a broad right of appeal to the proposed Medical Tribunal arising from registration decisions of the Medical Board (*final recommendation 48*).

Regulation of corporate providers of medical services

The Working Party's final report recommends that:

24. The *Medical Practitioners Registration Act* should require corporations and other legal entities wishing to carry on a business involving the provision of medical services by registered medical practitioners to obtain prior authorisation from the Medical Board. This requirement should not apply to the Crown, entities with which the Crown contracts for the provision of hospital services, or activities which are subject to the private sector licensing provisions of the *Hospitals and Health Services Act 1927* (*final recommendations 50 -51*).
25. The Medical Board should be able to refuse to grant authorisation if it has reason to believe that the clinical autonomy of registered medical practitioners is likely in any particular case to be compromised to the detriment of patient care (*final recommendation 53*).
26. The Medical Board should have the ability to grant authorisation subject to conditions, eg requirement to establish a Medical Advisory Committee; compliance with code of practice dealing with permitted uses of patient records (*final recommendation 54*).
27. The following new offences should be including in the *Medical Practitioners Registration Act*.
 - (a) Where a legal entity or a person in a position of authority in a legal entity that is a corporation directs or incites a registered medical practitioner to engage in conduct that would be grounds for the Medical Board taking action against the practitioner for unsatisfactory professional conduct, eg over-servicing.
 - (b) Where a person, legal entity, or person in a position of authority in a legal entity, offers or accepts a benefit as an inducement or reward for patients being referred to particular registered medical practitioners or recommended to use particular health services (*final recommendation 57*).
28. The proposed Medical Tribunal should have the ability to review and revoke the authorisation granted to a legal entity in certain circumstances (*final recommendations 58 & 59*).

29. There should be a right of appeal to the proposed Medical Tribunal against a decision by the Medical Board to refuse authorisation or to grant authorisation subject to conditions (*final recommendation 63*).

Medical students

30. The Working Party's final report recommends that the *Medical Practitioners Registration Act* should provide the Medical Board with a limited jurisdiction to deal with medical students who may be suffering from an impairment that affects their involvement in clinical activities.
31. The Board's involvement would be limited to students who are referred to it by UWA's Faculty of Medicine & Dentistry (*final recommendation 64*).

Financial management

The Working Party's final report recommends that:

32. The *Medical Practitioners Registration Act* should identify the sources of funds available to the Medical Board and the purposes for which these funds may be used (*final recommendation 65*).
33. The Medical Board should continue to be required to maintain its financial accounts in accordance with Australian Accounting Standards and to prepare and submit to the Minister an annual report of its activities.

The Board's annual report should include information about the complaints it has received and the action it has taken in response (*final recommendation 66*).

34. The Auditor General should be nominated in the *Medical Practitioners Registration Act* as the Medical Board's auditor, with annual audits of the Board's finances being undertaken at the Board's expense either by the Office of Auditor General or by auditors engaged by the Auditor General (*final recommendation 66*).
35. The *Medical Practitioners Registration Act* should enable the Minister to access information that is in the possession of the Medical Board, other than information that would enable the identity of a person who is involved in a complaint to be ascertained (*final recommendation 67*).

Regulation of medical practice

The Working Party's final report recommends that:

36. The *Medical Practitioners Registration Act* should distinguish between the processes, investigative powers, and options for action that should be available to the Medical Board when addressing concerns about:

- (a) The impact of a medical practitioner's physical or mental health on his or her practice of medicine (**impairment process**);
- (b) The continuing competence of a medical practitioner to practise medicine (**competence process**); and
- (c) The professional conduct of a medical practitioner (**unsatisfactory professional conduct process**)

(final recommendations 68 – 70).

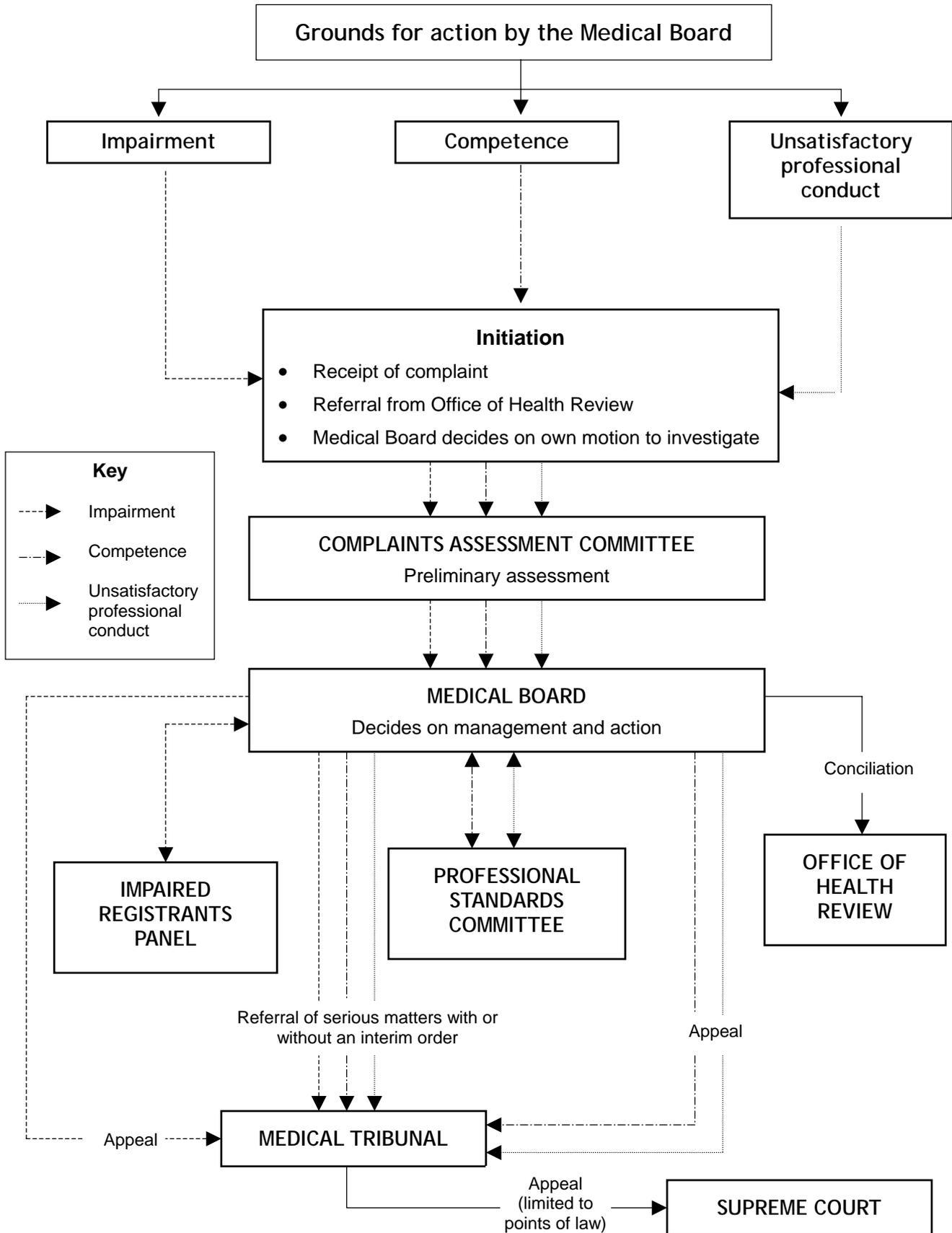
Chart 1 summarises these processes.

37. The Medical Board should retain primary responsibility for deciding on the action that should be taken in response to complaints about medical practitioners following assessment and investigation under the *Medical Practitioners Registration Act*.

The Board will be supported in discharging this responsibility by:

- (a) A Complaints Assessment Committee to conduct preliminary inquiries into complaints and to advise the Board on complaint management (*final recommendations 72, and 88 – 92*);
- (b) An Impaired Registrants Panel to inquire into concerns about the possible impact of his or her health on a medical practitioner's practice of medicine (*final recommendations 76, and 93 – 100*); and
- (c) A Professional Standards Committee to inquire into issues of competence and professional conduct (*final recommendations 75, and 101 – 122*).

CHART 1: OVERVIEW OF RECOMMENDED REGULATORY STRUCTURE FOR THE MEDICAL PRACTITIONERS REGISTRATION ACT



38. A Medical Tribunal should be established for Western Australia to have:
- (a) Primary jurisdiction to hear serious complaints or matters of concern where the option of suspension or cancellation of registration may be warranted;
39. Appellate jurisdiction arising from decisions of the Medical Board in relation to its principal responsibilities for registering medical practitioners and regulating medical practice (*final recommendation 73*).
40. Sexual exploitation of patients by medical practitioners should be identified in the new Act as unsatisfactory professional conduct (*final recommendation 70*).
41. When dealing with allegations of sexual abuse, proceedings of the Medical Tribunal or Professional Standards Committee, as relevant, must be conducted in closed session if this is requested by the person who has brought the complaint (*final recommendation 77*).
42. The Medical Tribunal, Professional Standards Committee and Impaired Registrants Panel should have power to prohibit the publication of information relating to proceedings (*final recommendation 77*).
43. Parties in proceedings before the Medical Tribunal may elect to be represented by a legal practitioner. Parties in proceedings before a Professional Standards Committee should be able to be accompanied (but not represented by) a legal practitioner. A medical practitioner appearing before an Impaired Registrants Panel may be accompanied by another medical practitioner. A complainant may be accompanied in proceedings by a support person (*final recommendation 81*).
44. Except on questions of law (which should be reserved for the determination of the Chairperson of the Medical Tribunal) decision-making in the Tribunal and the Professional Standards Committee should be by majority voting.
- A decision by an Impaired Registrants Panel must be supported by both members of the panel (*final recommendation 84*).
45. Regulatory action under the *Medical Practitioners Registration Act* should be initiated on receipt of a complaint, on referral from the Director of the Office of Health Review or if the Medical Board decides on its own motion to initiate action (*final recommendation 86*).
46. The Medical Board should have power under the *Medical Practitioners Registration Act* to:
- (a) Issue an interim order imposing restrictions on a medical practitioner before the outcome of an inquiry by the Medical Tribunal is known if the Board has reason to believe that the activities of the medical practitioner pose a significant threat to the life or physical or mental health of a person (*final recommendations 94, 102 & 112*);

- (b) Order a medical practitioner or medical student to undergo a medical examination under the proposed impairment process (*final recommendation 95*);
 - (c) Order a medical practitioner to undergo a competence assessment under the proposed competence process (*final recommendation 103*);
 - (d) Appoint an investigator to investigate complaints relating to the professional conduct of a medical practitioner (*final recommendations 113 – 116*).
47. Options for action that may be ordered by the Medical Board or the Medical Tribunal at the conclusion of the impairment, competence and unsatisfactory professional conduct processes should be appropriately tailored (*final recommendations 98, 108 & 119*).
48. Where the Medical Tribunal makes an adverse finding against a medical practitioner on grounds of unsatisfactory professional conduct (but not impairment or competence), the Tribunal (but not the Medical Board) should be required to publish:
- (a) The practitioner's name;
 - (b) The Tribunal's findings;
 - (c) The Tribunal's decision and the reasons for its decision; and
 - (d) The sanction imposed (*final recommendation 121*).
49. The Minister for Health should seek the Attorney General's advice on the question of whether information and reports etc that are generated for the purposes of the impairment and competence processes should be made inadmissible in civil proceedings, as they are in NSW (*final recommendation 124*).
50. Appeals from the Medical Tribunal should lie to the Supreme Court and should be limited to points of law only (*final recommendation 128*).

Miscellaneous matters

The Working Party's final report recommends that the *Medical Practitioners Registration Act* should:

- 51. Prohibit certain advertising of services provided by registered medical practitioners, but otherwise discontinue the prescriptive restrictions on advertising found in the *Medical Rules 1987* (*final recommendations 130 – 131*).

52. Give statutory recognition to the Medical Board's role in accrediting positions for the training of interns in hospitals and other health care settings (*final recommendation 132*).
53. Continue to provide protection from liability for members and staff of the Medical Board who administer the Act, discharge statutory functions, and exercise powers under the Act in good faith (*final recommendation 133*).
54. Provide that proceedings for offences may be initiated and taken in the name of the Medical Board by the Board's Registrar or other authorised persons and continue to provide that fines, penalties etc paid or recovered under the new Act shall be credited to the Medical Board (*final recommendation 134*).
55. Make provision for the Medical Board to have and use a common seal (*final recommendation 135*).
56. Incorporate provision to make subsidiary legislation as appropriate (*final recommendation 136 – 137*).
57. Retain the requirement that the new Act be subject to 5-yearly statutory reviews (*final recommendation 138*).