

MEDICAL AMENDMENT ACT 1983

No. 37 of 1983

TABLE OF PROVISIONS

- | | |
|---|--|
| <p>1. Short title.</p> <p>2. Commencement.</p> <p>3. Principal Act.</p> <p>4. Amendment of section 3 of Principal Act (Interpretation).</p> <p>5. Amendment of section 4 of Principal Act (Medical Council).</p> <p>6. Amendment of section 9A of Principal Act (Power of Council to appoint committees of assessors for certain purposes).</p> <p>7. Insertion in Principal Act of new Part IIIA.</p> <p style="text-align: center;">PART IIIA</p> <p>BODIES CORPORATE PROVIDING MEDICAL SERVICES</p> <p style="text-align: center;"><i>Division 1—Preliminary</i></p> <p>23A—Interpretation: Part IIIA.</p> <p><i>Division 2—Approvals in respect of medical services companies and related matters</i></p> <p>23B—Obligation on medical services company to obtain approval of Council.</p> <p>23C—Applications for grant of approvals by Council.</p> <p>23D—Grant of approvals.</p> <p>23E—Effect of approval.</p> <p>23F—List of approved medical services companies.</p> | <p>23G—Evidentiary provision with respect to the list.</p> <p>23H—Renewal of approvals.</p> <p>23I—Surrender of approval.</p> <p>23J—False and misleading statements.</p> <p>23K—Appeal against refusal of application for grant of approval.</p> <p>23L—Appeal against refusal of application for renewal of approval.</p> <p style="text-align: center;"><i>Division 3—Miscellaneous</i></p> <p>23M—Restrictions on provision of medical services by approved medical services companies.</p> <p>23N—Records to be kept by medical services companies.</p> <p>23O—Power of Council to require medical services companies to provide it with information from records kept under section 23N.</p> <p>23P—Alteration to memorandum or articles of association of medical services company.</p> <p>23Q—Restrictions on the production, &c., to the National Companies and Securities Commission or its staff of case histories and other records.</p> |
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- 23R—Power of Council to establish committees with respect to medical services companies.
- 23S—Provisions relating to committees established under section 23R (1).
- 23T—Personal liability of registered medical practitioners in respect of medical services authorized or performed by them on behalf of medical services companies.
- 23U—Offences by medical services companies.
- 23V—Service of instruments by the Council.
8. Renumbering of Part IIIA of Principal Act (DISCIPLINARY AND OTHER PROCEDURES).
 9. Insertion in Principal Act of new section 24A.

24A—Power to Council to suspend registration of medical practitioners charged with certain offences.
 10. Amendment of section 25 of Principal Act (Professional misconduct).
 11. Amendment of section 29D of Principal Act (Subsidiary disciplinary powers).
 12. Insertion in Principal Act of new section 29DA.

29DA—Disciplinary powers of Council in respect of approved medical services companies.
 13. Amendment of section 29E of Principal Act (Procedure on charges, &c.).
 14. Insertion in Principal Act of new section 29FA.

29FA—Right of Council to recover costs of exercising certain of its powers.
 15. Amendment of section 29G of Principal Act (Appeals to Supreme Court).
 16. Insertion in Principal Act of new section 29HA.

29HA—Restoration to the list.
 17. Insertion in Principal Act of new section 29JA.

29JA—Effect of removal from list.
 18. Substitution of section 29K of Principal Act.

29K—Notice of removal from register, &c., to other authorities.
 19. Amendment of section 30 of Principal Act (Unregistered person not to use medical title, &c.).
 20. Substitution of section 31 of Principal Act.

31—Prescriptions.
 21. Substitution of section 32 of Principal Act.

32—Entitlement of registered medical practitioner and approved medical services companies to sue for fees.
 22. Amendment of section 34 of Principal Act (Evidence).
 23. Amendment of section 36 of Principal Act (Fees).
 24. Amendment of section 37 of Principal Act (Medical practitioner to notify Council if he signs medical recommendation, &c., under the *Mental Health Act* 1963 in respect of registered person, &c.).
 25. Amendment of section 40 of Principal Act (Regulations).
 26. Amendment of third Schedule to Principal Act (MATTERS IN RESPECT OF WHICH FEES MAY BE PRESCRIBED).
 27. Transitional provision.

**MEDICAL AMENDMENT ACT 1983**

No. 37 of 1983

AN ACT to amend the Medical Act 1959 to provide that companies the sole object of which is the provision of medical services are required to obtain the approval of the Medical Council of Tasmania to the provision of those services by those companies and to make other amendments of a consequential or ancillary nature, to make further provision with respect to the disciplinary and other procedures with respect to registered medical practitioners contained in that Act, to strengthen the restrictions on the use of medical titles by persons who are not registered under that Act, to authorize the Council to recover the costs and out-of-pocket expenses incurred by it when it exercises certain of its powers under Part III B of that Act, to increase the amount of the penalties and fines that may be imposed under that Act, and for other purposes.

[Royal Assent 10 August 1983]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Medical Amendment Act 1983*. Short title.

Commence-
ment.

2—(1) This section and section 1 shall commence on the day on which this Act receives the royal assent.

(2) Except as provided in subsection (1), the several provisions of this Act shall commence on such day or days as may be fixed by proclamation.

Principal Act.

3—In this Act, the *Medical Act 1959** is referred to as the Principal Act.

Amendment of
section 3 of
Principal Act
(Interpre-
tation).

4—Section 3 of the Principal Act is amended as follows:—

(a) by inserting the following definition before the definition of “committee of assessors”:

“approved medical services company” means a medical services company that holds an approval granted and in force under Part IIIA;

(b) by inserting the following definitions after the definition of “Council”:

“executive officer”, in relation to a medical services company, has the meaning assigned to that expression in the *Companies (Tasmania) Code*;

“functions” includes duties;

(c) by inserting the following definition after the definition of “jurisdiction”:

“list” means the list of medical services companies required to be kept under section 23F;

(d) by inserting the following definitions after the definition of “medical call service”:

“medical services company” means a body corporate the sole object of which is the provision of medical services;

“medical services” means any medical or surgical advice or attendances or other medical or surgical services, and includes—

(a) the performance of surgical acts or operations, the prescription of medicines, and the supply of medicines; and

* No. 80 of 1959. For this Act, as amended to 1966, see Appendix A to the Annual Volume of Statutes for 1966. Subsequently amended by No. 24 of 1967, No. 52 of 1968, No. 30 of 1972, Nos. 21 and 61 of 1973, No. 16 of 1974, No. 98 of 1977, No. 36 of 1978, and Nos. 40 and 43 of 1982.

(b) the performance of any act or thing related to, or arising out of, the provision of medical services within the meaning of the foregoing provisions of this definition;

“ officer ”, in relation to a medical services company, means any director, secretary, or executive officer of the company;

(e) by omitting “ force.” from the definition of “ registered medical practitioner ” and substituting “ force;”;

(f) by inserting the following definition after the definition of “ registered medical practitioner ”:—

“ the regulations ” means regulations made and in force under this Act.

5—Section 4 (5) of the Principal Act is amended as follows:—

Amendment of section 4 of Principal Act (Medical Council).

(a) by omitting “ The functions and duties ” and substituting “ The functions and powers ”;

(b) by omitting paragraphs (f) and (g) and substituting the following paragraphs:—

(f) the investigation of cases where complaints and charges are made relating to the conduct of registered medical practitioners in a professional respect and the power to impose penalties on those practitioners when those charges are proved; and

(g) the other functions and powers imposed or conferred on the Council by this Act.

6—Section 9A of the Principal Act is amended by inserting the following subsections after subsection (2):—

Amendment of section 9A of Principal Act (Power of Council to appoint committees of assessors for certain purposes).

(2A) Where a committee of assessors is appointed to make a determination under this section with respect to a person, the committee may exercise both or either of the following powers:—

(a) it may require that person to attend a meeting of the committee for the purpose of giving such evidence as the committee considers is necessary to enable it to make that determination;

(b) it may require that person to give to it evidence of a kind to which paragraph (a) applies otherwise than at a meeting of the committee.

(2B) The following provisions apply to a requirement made under subsection (2A) by a committee of assessors:—

- (a) the requirement shall be made by notice in writing;
- (b) a notice for the purposes of paragraph (a) of this subsection shall be served on the person to whom it relates—
 - (i) by delivering it to him personally; or
 - (ii) by sending it by post addressed to that person at his place of residence or practice last known to the Council;
- (c) in the case of a requirement made under subsection (2A) (a), the notice for the purposes of paragraph (a) of this subsection shall be served on the person to whom it relates at least 7 days before the date of the relevant meeting of the committee;
- (d) in the case of a requirement made under subsection (2A) (b), the notice for the purposes of paragraph (a) of this subsection may provide that the person on whom it is served shall comply with the requirement contained in the notice within such period as is specified in it.

(2C) Where a person fails, without good or sufficient reason, to comply with a requirement under subsection (2A) made in accordance with subsection (2B) by a committee of assessors appointed to make a determination under this section with respect to him, the committee may—

- (a) in the case of a person who is an applicant for registration, refuse to make the determination until he so complies; or
- (b) in the case of a person who is a registered medical practitioner, make the determination, notwithstanding his failure to comply with that requirement.

7—After section 23 of the Principal Act, the following Part is inserted:—

PART IIIA

BODIES CORPORATE PROVIDING MEDICAL SERVICES

Division 1—Preliminary

23A—In this Part, except in so far as the context or subject-matter otherwise indicates or requires, “approval” means an approval under section 23D.

Insertion in
Principal Act
of new
Part IIIA.

Interpretation:
Part IIIA.

*Division 2—Approvals in respect of medical services
companies and related matters*

23B—(1) A medical services company shall not provide any medical services unless it is the holder of an approval granted by the Council under section 23D authorizing the company to provide those services.

Obligation on medical services company to obtain approval of Council.

Penalty: \$5 000.

(2) Where a body corporate which is not a medical services company provides free medical services or free first-aid services for its employees, nothing in this Part shall be construed as requiring the body corporate to obtain an approval referred to in subsection (1).

23c—(1) An application for the grant of an approval by the Council shall—

Applications for grant of approvals by Council.

- (a) be in writing in a form provided by the Council;
- (b) be made on behalf of the applicant by a person who is concerned in the management of the applicant;
- (c) specify—
 - (i) the name of the applicant;
 - (ii) the registered office of the applicant within Tasmania;
 - (iii) the place or places where the applicant proposes to carry on business; and
 - (iv) the names and addresses of the members and officers of the applicant;
- (d) contain such particulars relating to the provision by the applicant of medical services as may be directed by the form; and
- (e) be accompanied by—
 - (i) a copy of the memorandum and articles of association of the applicant certified by a statement by the secretary or an executive officer of the applicant to be a true copy of those memorandum and articles;
 - (ii) any other document prescribed in the regulations; and
 - (iii) the fee prescribed in the regulations.

(2) If the Council is not satisfied as to the particulars provided in an application under this section, the Council may serve on the applicant an instrument in writing requiring it to provide the Council, within such period as is specified in the instrument or such further period as the Council may allow, with a statement in writing by a person who is concerned in the management of the applicant containing such further particulars in relation to the application as the Council specifies.

(3) Where, as a result of not being satisfied as to the particulars provided in an application under this section, the Council serves an instrument under subsection (2) requiring the applicant to provide it with a statement of further particulars in respect of the application, the Council may decline to consider the application until the applicant has provided it with such a statement and, where any such statement is so provided, the Council may refuse to grant the approval applied for until it is satisfied as to the particulars contained in the statement.

Grant of approvals.

23D—(1) Where an application is made under section 23C for the grant of the Council's approval, the Council shall, if—

- (a) the application is in accordance with that section and is accompanied by a copy of the documents and the fee referred to in subsection (1) (e) of that section;
- (b) the applicant has complied with any requirement under subsection (2) of that section made in respect of the application; and
- (c) the memorandum and articles of association of the medical services company to which the application relates comply with the prescribed requirements,

grant an approval to the company authorizing it to provide medical services.

(2) For the purposes of subsection (1) (c), the memorandum of a medical services company to which an application under section 23C relates shall be deemed to comply with the prescribed requirements if the memorandum—

- (a) provides that the sole object of the company is the provision of medical services by the company; and

(b) includes provisions that are otherwise appropriate to a body corporate formed for the purpose of providing medical services.

(3) For the purposes of subsection (1) (c), the articles of association of a medical services company to which an application under section 23C relates shall be deemed to comply with the prescribed requirements if the articles—

(a) provide—

(i) that, in the case of a company with more than 2 members, every member of the company shall be a registered medical practitioner;

(ii) that, in the case of a company with only 2 members—

(a) both shall be registered medical practitioners; or

(b) one member shall be a registered medical practitioner and the other member shall be a legal practitioner or barrister, an accountant who is a member of The Institute of Chartered Accountants in Australia or the Australian Society of Accountants, or such other person, not being a registered medical practitioner, as is approved by the Council;

(iii) that, in the case of a company with only 2 members one of whom is not a registered medical practitioner—

(a) the member of the company who is a registered medical practitioner shall take and hold at least 2 shares in the capital of the company;

- (b) the member of the company who is not a registered medical practitioner shall take not more than one share in that capital, being a share in respect of which there is no right to vote at a general meeting of members of the company, and which shall be held in trust by him for the member of the company who is a registered medical practitioner; and
- (c) the member of the company who is not a registered medical practitioner cannot be the chairman of the company;
- (iv) that every director of the company shall be a registered medical practitioner, except in the case of a company with only 2 members, one of whom is a registered medical practitioner;
- (v) in the case of a company with more than 2 members, for the transmission of the shares of a deceased member of the company to a registered medical practitioner;
- (vi) in the case of a company with only 2 members, for the transmission of the share or shares of a deceased member of the company in such a way that paragraph (a) (ii) and (iii) are complied with; and
- (vii) that the total voting rights exercisable at a meeting of the members of the company shall be held by registered medical practitioners who are directors or members of the company; and

(b) include provisions that are otherwise appropriate to a body corporate formed for the purpose of providing medical services.

(4) In subsection (3) (a) (ii) (b), "legal practitioner" means a practitioner within the meaning of the *Legal Practitioners Act 1959*.

(5) An approval under this section by the Council shall be—

(a) in writing; and

(b) sent by the Council to the medical services company by which the application for the approval was made.

(6) Where, on an application under section 23c, the Council refuses to grant an approval to the applicant, the Council—

(a) shall serve on the applicant a notice in writing of the refusal and the reasons for it; and

(b) where payment of the fee referred to in section 23c (1) (e) has been made, shall, unless the applicant agrees in writing to the amount of the fee being held in credit for it, refund that amount to the applicant.

23E—An approval granted to a medical services company— Effect of approval.

(a) authorizes the company to provide medical services; and

(b) is in force on and from the date specified in the approval as the date for the approval to come into force for a period of 12 months from that date, unless the approval ceases to be in force earlier,

and such an approval may, in accordance with section 23H, be renewed for successive periods of 12 months.

23F—(1) The Council shall keep a list of medical services companies in respect of which it has granted approvals.

(2) The list shall be in the form prescribed in the regulations or in such other form as the Council determines.

List of approved medical services companies.

(3) Where the Council grants an approval, the Council shall cause to be entered in the list—

(a) the name of the medical services company to which the approval relates; and

(b) particulars of the following matters:—

- (i) the registered office of the company within Tasmania;
- (ii) the place or places where the company proposes to carry on business;
- (iii) the names and addresses of the members and officers of the company;
- (iv) such other matters (if any) as the Council considers appropriate or as may be prescribed in the regulations for the purposes of this subsection.

(4) In addition to the particulars referred to in subsection (3) (b), the Council shall cause to be entered in the list particulars of the cancellation of an approval under section 29DA (1) (e) and of the date of the cancellation.

(5) The Council may from time to time cause to be made in the list such alterations as it considers to be necessary.

(6) The Council shall cause a copy of the list, as existing on 1st March in each year, to be given to the Minister on or before 31st March in that year.

(7) The Minister shall, immediately after he has, pursuant to subsection (6), been given a copy of the list, cause it to be published in the *Gazette*.

Evidentiary
provision
with respect
to the list.

23G—The production of a copy of the *Gazette* purporting to contain a copy of the list is evidence in any proceedings of the existence of the approvals of the medical services companies indicated in the list and that no other such approvals exist and shall, unless the contrary is established, be evidence of those matters.

23H—(1) Subject to this section, a medical services company which holds an approval may, at any time before the expiry of the approval, apply to the Council for the renewal of the approval for a further period of 12 months. Renewal of approvals.

(2) An application by a medical services company under this section shall—

- (a) be in writing in a form provided by the Council;
- (b) be made on behalf of the applicant by a person who is concerned in the management of the applicant;
- (c) specify—
 - (i) the name of the applicant;
 - (ii) the registered office of the applicant within Tasmania;
 - (iii) the place or places where the applicant carries on business; and
 - (iv) the names and addresses of the members and officers of the applicant;
- (d) contain such particulars relating to the provision by the applicant of medical services as may be directed by the form; and
- (e) be accompanied by the fee prescribed in the regulations.

(3) If the Council is not satisfied as to the particulars provided in an application under this section, the Council may serve on the applicant an instrument in writing requiring it to provide the Council, within such period as is specified in the instrument or such further period as the Council may allow, with a statement in writing by a person who is concerned in the management of the applicant containing such further particulars in relation to the application as the Council specifies.

(4) Where, as a result of not being satisfied as to the particulars provided in an application under this section, the Council serves an instrument under subsection (3) requiring the applicant to provide it with a statement of further particulars in respect of the application, the Council may decline to consider the application until the applicant has provided

it with such a statement and, where any such statement is so provided, the Council may refuse to renew the approval, and the requirement shall be deemed not to have been complied with until the Council is satisfied as to the particulars contained in the statement.

(5) Subject to subsection (6), where an application is made under subsection (1) for the renewal of an approval, the Council shall, if—

(a) the application is in accordance with this section and is accompanied by the fee referred to in subsection (2) (e); and

(b) the applicant has complied with any requirement under subsection (3) made in respect of the application,

grant to the applicant the renewal of the approval applied for unless the application is withdrawn.

(6) The Council may refuse to grant to an applicant the renewal of the approval applied for if the applicant has contravened section 23P.

(7) Subject to this Act, where an application for the renewal of an approval is made before the date on which the approval would, but for this subsection, have ceased to be in force (which date is, in this subsection, referred to as “the date of expiry”) and—

(a) the renewal is granted before the date of expiry—
on the grant of the renewal, the approval shall be in force for a period of 12 months commencing on the date of expiry; or

(b) the renewal is not granted before the date of expiry and the application is not withdrawn before the date of expiry—

(i) the approval shall be deemed to continue to be in force on and from the date of expiry until the renewal is granted, the application is withdrawn, or the renewal is refused, whichever first occurs; and

- (ii) on the grant of the renewal, the approval shall be in force for the remaining portion of the period of 12 months commencing on the date of expiry, and the renewal shall be expressed to have taken effect on and from that date.

(8) The renewal under this section of an approval shall be—

- (a) in writing; and
 (b) sent by the Council to the medical services company by which the application for the renewal was made.

(9) Where, on an application under subsection (1) for the renewal of an approval, the Council refuses to renew the approval, the Council—

- (a) shall serve on the applicant a notice in writing of the refusal and the reasons for it; and
 (b) where payment of the fee referred to in subsection (2) (e) has been made, shall, unless the applicant agrees in writing to the amount of the fee being held in credit for it, refund that amount to the applicant.

23I—The holder of an approval may, at any time, by notice in writing to the Council, inform the Council that it wishes to surrender the approval, and on receipt by the Council of the notice and the approval, the approval shall cease to be in force.

Surrender of approval.

23J—(1) A person who—

- (a) makes an application under section 23C or 23H; or
 (b) in a statement provided by a medical services company pursuant to an instrument under section 23C (2) or 23H (3), makes a representation,

which is false or misleading in a material respect is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$500.

False and misleading statements.

(2) It is a defence to a charge under subsection (1) if it is proved that, at the time when the application or representation was made, the defendant believed on reasonable grounds that it was neither false nor misleading.

Appeal against refusal of application for grant of approval.

23K—(1) Where, on an application for the grant of an approval, the Council refuses to grant the approval, the medical services company which made the application may, within 21 days after the service on the company of a notice of refusal under section 23D (6) (a), appeal to the Supreme Court against the refusal.

(2) If, on the hearing of an appeal under subsection (1), the Supreme Court is satisfied that in all the circumstances of the case an approval ought to have been granted, it shall make an order directing that, subject to the payment of the fee for the approval, an approval be granted to the appellant to be in force on and from such date as is specified in the order.

(3) The Council shall give effect to any order made by the Supreme Court under subsection (2).

(4) Subject to this section, an appeal under subsection (2) shall be instituted, heard, and determined in accordance with rules of court of the Supreme Court.

Appeal against refusal of application for renewal of approval.

23L—(1) Where, on an application for the renewal of an approval, the Council refuses to renew the approval, the applicant for renewal may, within 21 days after the service on the applicant of a notice of refusal under section 23H (9) (a), appeal against the refusal to the Supreme Court.

(2) The provisions of section 23K (2) to (4), with any necessary modifications, apply to and in respect of an appeal under subsection (1) of this section in the same way as they apply to and in respect of an appeal against a refusal to grant an approval.

Division 3—Miscellaneous

Restrictions on provision of medical services by approved medical services companies.

23M—An approved medical services company shall not provide a medical service for a person or cause or permit a medical service to be so provided unless the provision of that service is—

(a) authorized on its behalf by a registered medical practitioner; or

(b) performed on its behalf by a registered medical practitioner.

Penalty: \$1 000.

23N—(1) A medical services company shall—

Records to
be kept by
medical
services
companies.

(a) keep in a form and manner approved by the Council records of—

- (i) the name and address of each person for whom it provides a medical service;
- (ii) the nature of the service provided for that person;
- (iii) the date on which, and the time at which, that service is provided;
- (iv) the name of each registered medical practitioner who authorized the provision of, or who performed, that service; and
- (v) such other matters (if any) as the Council considers appropriate or as may be prescribed in the regulations for the purposes of this subsection; and

(b) preserve each of those records for a period of 7 years after the last entry was made in it.

(2) A medical services company shall—

(a) notify the secretary of the Council in writing of the address of the place in Tasmania at which the records which it is required to keep under subsection (1) are kept or proposed to be kept—

- (i) if the company is providing medical services at the commencement of this Part—within 2 months after that commencement; or
- (ii) if it is not providing those services at the commencement of this Part—within 2 months after it commences to provide those services; and

(b) where the place at which the records are kept is subsequently changed to another place in Tasmania—notify the Council in writing of the address of the new place at which the records are kept within 14 days after the change takes place.

(3) A medical services company which fails to comply with subsection (1) or (2) is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$1 000.

(4) This section does not apply so as to require the preservation of records—

(a) in respect of which the Council has notified a medical services company that preservation is not required; or

(b) of a medical services company which has gone into liquidation and which has been finally dissolved.

Power of Council to require medical services companies to provide it with information from records kept under section 23N.

23O—(1) Subject to subsection (2), the Council may serve on a medical services company an instrument in writing requiring it to provide the Council, within such period as is specified in the instrument or such further period as the Council may allow, a statement in writing by a person who is concerned in the management of the company containing particulars of the information in the records kept by the company under section 23N, being a statement relating to such period as is specified in the instrument.

(2) Except with the consent of a patient or his legal guardian, information contained in a statement provided by a medical services company pursuant to an instrument under subsection (1) shall not include any clinical details of the symptoms, signs, diagnosis, or treatment of the patient.

(3) Where a medical services company on which an instrument is served under subsection (1) fails to—

(a) provide the Council with a statement as required by the instrument; or

(b) provide the Council with such a statement within such period as is specified in the instrument or such further period as the Council may allow,

the company is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$5 000.

(4) A person who, in a statement provided by a medical services company pursuant to an instrument under subsection (1), makes a representation which is false or misleading in a material respect is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$500.

(5) It is a defence to a charge under subsection (4) if it is proved that, at the time when the representation was made, the defendant believed on reasonable grounds that it was neither false nor misleading.

23P—(1) A medical services company shall not make an alteration to its memorandum or articles of association unless the proposed alteration has been submitted to, and approved by, the Council.

Alteration to memorandum or articles of association of medical services company.

(2) An alteration to the memorandum or articles of association of a medical services company made in contravention of subsection (1) has no force or effect.

23Q—(1) Notwithstanding anything in the *Companies (Tasmania) Code*, any other Code, or any enactment, the Commission or a member of the staff of the Commission is not entitled to require a medical services company to produce for the purposes of the inspection by it or him, to inspect, or take possession of—

Restrictions on the production, &c., to the National Companies and Securities Commission or its staff of case histories and other records.

(a) the case history or similar medical record of a person for whom the company has provided a medical service (not being a record to which paragraph (b) applies); or

(b) any records kept by the company under section 23N, unless the Supreme Court has made an order authorizing the Commission or that member to do so.

(2) The Supreme Court may, on the application of the Commission, make an order authorizing the Commission or a member of the staff of the Commission to do all or any of the acts mentioned in subsection (1).

(3) On the making of an order under subsection (2), the Supreme Court may make such orders, including an order relating to the payment of costs, as it thinks fit.

(4) In this section—

“ Commission ” means the National Companies and Securities Commission established by the Commission Act;

“ Commission Act ” means the *National Companies and Securities Commission Act 1979* of the Commonwealth;

“ member of the staff of the Commission ” means—

(a) an employee of the Commission;

(b) a person whose services are available to the Commission by virtue of arrangements made under section 24 (1) or (2) of the Commission Act; or

(c) a person engaged under section 25 (1) of the Commission Act.

Power of Council to establish committees with respect to medical services companies.

23R—(1) The Council may, by instrument in writing, establish committees each of which comprises 2 members of the Council.

(2) The Council may delegate to a committee established under subsection (1) the exercise or performance of such of the powers and functions of the Council under this Act (other than Part III B) relating to medical services companies as are specified in the instrument establishing the committee.

(3) The instrument establishing a committee under subsection (1) may contain such conditions or limitations as to the exercise or performance of any of the powers or functions delegated to the committee, or as to time or circumstance, as are specified in the resolution.

(4) Notwithstanding the establishment of a committee under subsection (1) to exercise or perform any of the powers and functions of the Council referred to in subsection (2), the Council may continue to exercise or perform any of those powers and functions.

(5) Any act or thing done by or to a committee established under subsection (1) while acting in the exercise or performance of the powers and functions delegated to it in the instrument establishing the committee shall have the same force and effect as if the act or thing had been done by or to the Council and shall be deemed to have been done by or to the Council.

23s—(1) A member of a committee established under section 23R (1)—

Provisions relating to committees established under section 23R (1).

(a) shall—

- (i) be appointed by the Council for such period as the Council thinks fit; and
- (ii) hold and vacate office in accordance with the terms of his appointment or re-appointment;

(b) may be removed from office by the Council by notice in writing addressed and delivered to that member; and

(c) may at any time resign his office by notice in writing addressed and delivered to the Council.

(2) A committee established under section 23R (1) shall elect one of its members to be chairman and may, subject to any directions by the Council, regulate its procedure with respect to the calling and conduct of meetings in such manner as it thinks fit.

(3) On the expiration of any period of appointment or re-appointment, a member of a committee established under section 23R (1) may be re-appointed for a further period.

(4) If a member of a committee established under section 23R (1) is unable for any reason to carry out his duties as such a member for any period, the Council may appoint another member of the Council to act in place of that member of the committee during that period, and that person shall, for that period, be deemed to be a member of that committee.

23T—(1) Notwithstanding any law to the contrary, where a registered medical practitioner authorizes or performs a medical service on behalf of a medical services company for a person, that medical practitioner is personally liable to that person in respect of the authorization or performance of that medical service or any matter or thing arising out of the authorization or performance of that medical service, whether the contract for the carrying out of that medical service was entered into between that medical practitioner and that person or not.

Personal liability of registered medical practitioners in respect of medical services authorized or performed by them on behalf of medical services companies.

(2) Where more than one registered medical practitioner authorizes or performs a medical service on behalf of a medical services company for a person, those medical practitioners are jointly and severally personally liable to that person as provided in subsection (1).

(3) Where one or more registered medical practitioners are, pursuant to subsection (1) or (2), personally liable to a person in respect of the authorization or performance of a medical service on behalf of a medical services company or any matter or thing arising out of the authorization or performance of such a medical service, nothing in either of those subsections prevents that person from bringing an action in respect of the authorization or performance of that medical service or that matter or thing against the medical services company in addition to, or instead of, bringing the action against one or more of those medical practitioners.

Offences by
medical
services
companies

23U—(1) Where an offence against this Act is committed by a medical services company, every person concerned in the management of the company shall be deemed also to have committed the offence and may be convicted of the offence, unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

(2) A person referred to in subsection (1) may be convicted of an offence under that subsection whether or not the medical services company is charged with or convicted of the offence.

Service of
instruments
by the
Council.

23V—(1) Any notice or other instrument required or authorized by this Part to be served by the Council on a medical services company may be served on the company—

- (a) by delivering it to the secretary of the company personally;
- (b) by leaving it at the registered office of the company or at the place or principal place of business of the company in Tasmania with a person apparently employed there, being a person who has or apparently has attained the age of 16 years; or
- (c) by sending it by post to the registered office of the company or to the place or principal place of business of the company in Tasmania.

(2) A reference in subsection (1) to the registered office of a medical services company includes a reference to a registered office that is outside Tasmania.

(3) The provisions of this section are in addition to the provisions of section 528 of the *Companies (Tasmania) Code*.

8—Part IIIA of the Principal Act (being the Part dealing with disciplinary and other procedures) is renumbered as Part IIIB of that Act.

Renumbering of Part IIIA of Principal Act (DISCIPLINARY AND OTHER PROCEDURES).

9—After section 24 of the Principal Act, the following section is inserted:—

Insertion in Principal Act of new section 24A.

24A—(1) Subject to subsection (2), where the Council becomes aware that a registered medical practitioner has been charged with—

Power to Council to suspend registration of medical practitioners charged with certain offences.

(a) an offence under the *Criminal Code*;

(b) an offence under the *Poisons Act 1971*; or

(c) an offence under any Act relating to, or connected with, the consumption of intoxicating liquor, the Council may suspend his registration for such period, not exceeding 3 months, as it thinks fit.

(2) The Council shall not, pursuant to subsection (1) (c), suspend the registration of a medical practitioner unless it forms the opinion that, having regard to the circumstances of the case, the medical practitioner may, either generally or at certain times, be incapable of performing adequately the functions of a medical practitioner or of assuming the full responsibilities of a medical practitioner.

(3) The Council may, at any time before the expiry of a period of suspension under subsection (1), extend that period for such further period not exceeding 3 months as the Council thinks fit if the hearing of the charge to which the suspension relates has not been concluded at that time.

(4) Where, during the period of the suspension under this section of the registration of a medical practitioner, the practitioner is acquitted of the charge to which the suspension relates, the Council shall immediately cancel the suspension.

(5) Subject to subsection (4), the Council may, at any time, cancel a suspension under this section.

(6) Where, pursuant to subsection (4) or (5), the Council cancels the suspension under this section of the registration of a medical practitioner, the Council shall serve on the practitioner a notice informing him that the suspension has been cancelled.

(7) A notice under subsection (6) shall be served on the medical practitioner to whom it relates—

- (a) by delivering it to him personally; or
- (b) by sending it by post addressed to that practitioner at his place of residence last known to the Council.

Amendment of section 25 of Principal Act (Professional misconduct).

10—(1) Section 25 of the Principal Act is amended by omitting subsection (6) and substituting the following subsections:—

(6) Without prejudice to the generality of the expression “professional misconduct”—

- (a) negligence or incompetence in practice on the part of a registered medical practitioner;
- (b) the authorization or performance of a medical service by a medical practitioner on behalf of a company that is not an approved medical services company;
- (c) the giving of a certificate by a registered medical practitioner in his capacity as a registered medical practitioner that, to his knowledge, contains a statement that is false or misleading as to a material particular; or
- (d) the conviction under an Act of the Commonwealth, whether in Tasmania or elsewhere, of a registered medical practitioner of an offence with respect to—
 - (i) a medical service performed, or claimed to have been performed, by that medical practitioner; or
 - (ii) the payment to him, pursuant to that Act, for a medical service performed, or claimed to have been performed, by that medical practitioner,

amounts to professional misconduct.

(6A) Without prejudice to the generality of the expression “improper conduct in a professional respect”, it is, subject to subsection (7), improper conduct in a professional respect for a registered medical practitioner to put on his name-plate or stationery or use in any other way in connection with his practice a qualification relating to competence in practice that is not shown as his in the register.

(2) Section 25 (7) of the Principal Act is amended by inserting “by a registered medical practitioner” after “use”.

11—Section 29D (1) of the Principal Act is amended as follows:—

Amendment of section 29D of Principal Act (Subsidiary disciplinary powers).

(a) by omitting paragraph (b) and substituting the following paragraph:—

(b) order him to pay a fine of such amount, not exceeding \$2 500, as it thinks proper or order him to pay such a fine and require him to give to the Council an undertaking under this section;

(b) by omitting paragraph (d) and substituting the following paragraph:—

(d) reprimand him, or reprimand him and require him to give to the Council an undertaking under this section.

12—After section 29D of the Principal Act, the following section is inserted:—

Insertion in Principal Act of new section 29DA.

29DA—(1) Where—

Disciplinary powers of Council in respect of approved medical services companies.

(a) on the hearing of a charge under section 25, the Council finds that a registered medical practitioner who is a member or an officer of an approved medical services company is guilty of infamous conduct in a professional respect or improper conduct in a professional respect; or

(b) an approved medical services company is convicted of an offence against any regulations made under section 40 (2) (d) with respect to the advertising of the provision of medical services by medical services companies,

the Council may—

(c) order the company to pay a fine of such amount, not exceeding \$10 000, as it thinks proper or order it to pay such a fine and require it to give to the Council an undertaking under this section;

(d) require the company to give to the Council an undertaking under this section; or

(e) cancel any approval held by the company under Part IIIA and remove its name from the list.

(2) An undertaking given to the Council under this section is an undertaking—

- (a) to comply, during such period as the Council specifies, with such conditions as it may specify; and
- (b) that a person concerned in the management of the relevant approved medical services company will, at any time within that period, appear before the Council when required by it to do so.

(3) A condition referred to in subsection (2) may, without limiting the generality of that subsection, be a condition that the Council considers it necessary or desirable to impose, in the public interest, on the relevant medical services company.

(4) Where the Council is satisfied that an approved medical services company has failed to comply with an undertaking given by it under this section, the Council may—

- (a) exercise in relation to that company any of the powers under this section which it could have exercised if it had not required the company to enter into the undertaking; or
- (b) require the terms of the undertaking to be varied.

(5) Where the Council requires an approved medical services company to enter into an undertaking under this section, or requires the terms of such an undertaking to be varied, and, within such time as the Council may allow, that undertaking is not given or so varied, the Council may exercise, in relation to the company, any of the powers under this section it could have exercised if it had not required the undertaking to be entered into or varied.

(6) Where the Council exercises any of its powers under this section in respect of an approved medical services company, the Council may, by action in a court of competent jurisdiction, recover from the company, as a debt due to the Council, any legal and other costs and any out-of-pocket expenses incurred by it in the exercise of the power.

13—(1) Section 29E (2) of the Principal Act is amended as follows:—

Amendment of section 29E of Principal Act (Procedure on charges, &c.).

- (a) by omitting “section twenty-four” and substituting “section 24 or 24A”;
- (b) by omitting “person” and substituting “registered medical practitioner”.

(2) Section 29E of the Principal Act is further amended by inserting the following subsection after subsection (2):—

(2A) Where the Council proceeds to determine whether it should exercise any of the powers conferred on it by section 29DA in respect of an approved medical services company, the following provisions apply:—

- (a) the Council shall, by summons, summon the company to appear before it;
- (b) that summons shall state that the Council intends so to proceed and specify the matter in relation to which it so intends to proceed;
- (c) the company may appear before the Council by a member or an officer of the company authorized for that purpose by the company.

(3) Section 29E (3) of the Principal Act is amended as follows:—

- (a) by omitting “person” and substituting “registered medical practitioner or an approved medical services company”;
- (b) by inserting “or it” after “he”.

(4) Section 29E of the Principal Act is further amended by omitting subsections (4) and (5) and substituting the following subsections:—

(4) A summons under this section shall be sealed with the common seal of the Council and—

- (a) in the case of a summons required to be served on a registered medical practitioner, be served on him—
 - (i) by delivering it to him personally; or
 - (ii) by sending it by post addressed to that practitioner at his place of residence or practice last known to the Council; or

(b) in the case of a summons required to be served on an approved medical services company, be served on it—

- (i) by delivering it to the secretary of the company personally;
- (ii) by leaving it at the registered office of the company or at the place or principal place of business of the company in Tasmania with a person apparently employed there, being a person who has or apparently has attained the age of 16 years; or
- (iii) by sending it by post to the registered office of the company or to the place or principal place of business of the company in Tasmania.

(4A) The provisions of subsections (2) and (3) of section 23v apply, with the necessary modifications, to the service of a summons on an approved medical services company under this section as they apply to the service of an instrument on a medical services company under Part IIIA.

(5) If—

(a) when served with a summons under this section—

(i) a registered medical practitioner fails to appear in accordance with the summons; or

(ii) an approved medical services company fails to appear in accordance with the summons by a person to whom subsection (2A) (c) applies; or

(b) having so appeared, that medical practitioner or the person appearing on behalf of the company absents himself from the hearing of the charge or other matter to which the summons relates,

the Council may proceed as if the medical practitioner were present or, in the case of a medical services company, as if a person appearing on behalf of the company were present.

(5) Section 29E (6) of the Principal Act is amended by omitting “any person appearing before” and substituting “a registered medical practitioner appearing before, or a person appearing on behalf of an approved medical company before.”

(6) Section 29E (7) of the Principal Act is amended as follows:—

(a) by omitting from paragraph (a) “ registration; or ” and substituting “ registration;”;

(b) by inserting the following paragraph after paragraph (a):—

(ab) its power under section 24A (3) to extend a period of suspension under section 24A (1); or

(7) Section 29E of the Principal Act is further amended by inserting the following subsection after subsection (7):—

(7A) Where the Council exercises any of its powers under section 29DA in respect of an approved medical services company, the Council shall express its decision in the form of an order which shall be served on, or notified to, the company by the Council in the same way as a summons under this section.

14—After section 29F of the Principal Act, the following section is inserted:—

Insertion in Principal Act of new section 29FA.

29FA—Where the Council exercises in respect of a registered medical practitioner—

Right of Council to recover costs of exercising certain of its powers.

(a) its power under this Part to remove his name from the register or to suspend his registration; or

(b) any of its other powers under section 29D,

the Council may, by action in a court of competent jurisdiction, recover from the medical practitioner, as a debt due to the Council, any legal and other costs and any out-of-pocket expenses incurred by it in the exercise of the power.

15—Section 29G of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:—

Amendment of section 29G of Principal Act (Appeals to Supreme Court).

(1) A medical practitioner who is aggrieved by a decision of the Council—

(a) under this Part removing his name from the register or suspending his registration; or

(b) exercising any of its other powers under section 29D, may appeal to the Supreme Court.

(1A) A medical services company which is aggrieved by a decision of the Council exercising any of its powers under section 29DA may appeal to the Supreme Court.

(1B) On the hearing of an appeal under subsection (1) or (1A), the Supreme Court, unless it dismisses the appeal, may, by order, quash or vary the decision to which the appeal relates or make such decision in the case as the Council could have made.

Insertion in
Principal Act
of new
section 29HA.

16—After section 29H of the Principal Act, the following section is inserted:—

Restoration
to the list.

29HA—(1) Where the name of a medical services company has been removed from the list pursuant to section 29DA (1) (e), the Council may, on the application of that company, restore its name to the list if it considers it proper to do so.

(2) An application under subsection (1) for the restoration of the name of a medical services company to the list shall—

(a) not be made to the Council—

(i) before the expiration of 12 months from the date of the removal of the company's name from the list; or

(ii) before the expiration of 12 months from the date on which such an application was previously made; and

(b) be made on behalf of the applicant by a person who is concerned in the management of the applicant.

(3) Where a medical services company makes an application under subsection (1), the Council may require a person who is concerned in the management of the company to attend personally before the Council for the purpose of proving facts on which the application depends.

Insertion in
Principal Act
of new
section 29JA.

17—After section 29J of the Principal Act, the following section is inserted:—

Effect of
removal
from list.

29JA—Where the name of a medical services company is removed from the list, the approval granted to it under Part IIIA that was in force immediately before its name was so removed ceases to have effect, but again has effect if and when its name is restored to the list pursuant to section 29HA.

18—Section 29κ of the Principal Act is repealed and the following section is substituted:—

Substitution of section 29κ of Principal Act.

29κ—Where a registered medical practitioner has had—

- (a) his name removed from the register; or
- (b) his registration suspended,

Notice of removal from register, &c., to other authorities.

under this Part, the Council may give notice of the removal or suspension and its cause to—

- (c) any authority outside Tasmania and within the Commonwealth by which medical practitioners are registered;
- (d) any authority outside the Commonwealth by whom he is registered as a medical practitioner, if he is so registered by such an authority; and
- (e) any university or other body that has granted him a qualification that may be registered under this Act.

19—(1) Section 30 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

Amendment of section 30 of Principal Act (Unregistered person not to use medical title, &c.).

(1) A person shall not—

- (a) take or use any name, word, initials, title, addition, description, or symbol which, having regard to the circumstances in which it is used, indicates or is capable of being understood to indicate, or is calculated to lead persons to infer, that he possesses a degree, diploma, or other qualification of a nature which would entitle him to be registered under this Act or that he is so registered;
- (b) take or use the name or title of doctor in connection with the making of a medical diagnosis in respect of a person or the giving of medical advice or medical treatment, or any other advice or treatment in respect of any matter relating to the health or illness of a person; or
- (c) for fee or reward, or in expectation of receiving a fee or reward—
 - (i) practise as a physician or surgeon;

- (ii) prescribe any medicine to be taken by a person or administer any medicine to a person;
- (iii) administer to a person an anaesthetic by the inhalation, ingestion, or injection of a drug or any other substance, not being intoxicating liquor; or
- (iv) perform a surgical act or surgical operation for or in respect of a person, unless he is registered under this Act.

Penalty: For a first offence, \$2 000; for a subsequent offence, \$2 000 or imprisonment for a term of 12 months or both.

(2) Section 30 of the Principal Act is further amended by omitting subsection (2) and substituting the following subsections:—

(2) Nothing in subsection (1) makes it an offence for a person who is lawfully engaged in the occupation of a dentist, veterinary surgeon, chiropractor, or osteopath or who is lawfully engaged in any other occupation prescribed in the regulations to adopt the title of doctor if, when he uses that title on a name-plate or in printed form, his name is followed by—

- (a) the word “Dentist” or the words “Dental Surgeon”, in the case of a person who is engaged in the occupation of a dentist; or
- (b) the title of his occupation, in the case of a person who is engaged in any other occupation to which this subsection relates.

(2A) Notwithstanding subsection (1) (c), a medical services company may demand or claim a fee or reward for a medical service rendered in its name or on its behalf by or on the authority of a registered medical practitioner.

(2B) A person who is registered as a medical practitioner under this Act otherwise than by reason of holding a doctorate shall, when he uses the title of doctor on a name-plate or in printed form after the expiration of 6 months after the commencement of this subsection, cause his name to be followed by—

- (a) the qualification, as entered in the register, by virtue of which he is so registered; or
- (b) a word or phrase approved by the Council which, in its opinion, indicates that he is a medical practitioner.

(2c) A registered medical practitioner to whom subsection (2b) applies who fails to comply with that subsection is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$500.

(2d) A person shall not sign a certificate of cause of death, required by section 34 of the *Registration of Births and Deaths Act 1895* to be given by a medical practitioner, unless he is a person registered under this Act.

Penalty: \$2 000.

(3) Section 30 (3) of the Principal Act is amended by omitting "Minimum, one hundred dollars; maximum, four hundred dollars" and substituting "\$500".

(4) Section 30 (6) of the Principal Act is amended by omitting "Minimum, fifty dollars; maximum, four hundred dollars" and substituting "\$500".

20—Section 31 of the Principal Act is repealed and the following section is substituted:—

Substitution of section 31 of Principal Act.

31—(1) Where a registered medical practitioner writes a prescription, he shall—

Prescriptions.

- (a) include in the prescription the date on which it is written; and
- (b) sign it with his usual signature, including his surname.

(2) A registered medical practitioner who fails to comply with subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$100.

21—Section 32 of the Principal Act is repealed and the following section is substituted:—

Substitution of section 32 of Principal Act.

32—(1) A registered medical practitioner is entitled to sue in a court of competent jurisdiction for the recovery of his fees or other remuneration for medical services performed by him on his own account.

Entitlement of registered medical practitioner and approved medical services companies to sue for fees.

(2) A medical services company is entitled to sue in a court of competent jurisdiction for the recovery of its fees or other remuneration for a medical service rendered in its name or on its behalf by or on the authority of a registered medical practitioner.

(3) In an action for the recovery of fees or other remuneration pursuant to subsection (1) or (2), it is sufficient to state in the particulars of claim or demand the words "for medical services".

(4) A person is not entitled to recover a fee or other remuneration for any medical service provided by that person, unless—

- (a) in the case of a medical service provided by a medical practitioner, he proves that he is registered in accordance with the provisions of this Act; or
- (b) in the case of a medical service provided by a medical services company, it proves that it is a medical services company approved by the Council under Part IIIA.

Amendment of
section 34 of
Principal Act
(Evidence).

22—(1) Section 34 (1) of the Principal Act is amended as follows:—

- (a) by inserting the following paragraphs after paragraph (a) :—
 - (ab) determining the application of a medical services company for the grant of an approval under Part IIIA or for the restoration of its name to the list;
 - (ac) investigating a statement provided by a medical services company pursuant to an instrument under section 230 (1);
- (b) by omitting from paragraph (b) "twenty-five" and substituting "25 or proceedings under section 29D";
- (c) by omitting from paragraph (c) "twenty-five A" and substituting "section 27 or 28".

(2) Section 34 of the Principal Act is further amended by omitting subsection (3) and substituting the following subsection:—

(3) The Council may examine on oath, to be administered by the president—

- (a) a person applying for registration or for the restoration of his name to the register;
- (b) a person applying on behalf of a medical services company for the grant of an approval or the renewal of an approval under Part IIIA;
- (c) a person applying on behalf of a medical services company for the restoration of the name of that company to the list; and
- (d) a witness attending for a purpose mentioned in subsection (1).

23—Section 36 (2) (b) of the Principal Act is amended by inserting “ or 29DA ” after “ section 29D ”.

Amendment of section 36 of Principal Act (Fees).

24—Section 37 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:—

Amendment of section 37 of Principal Act (Medical practitioner to notify Council if he signs medical recommendation, &c., under the Mental Health Act 1963 in respect of registered person, &c.).

(2) A legally-qualified medical practitioner who fails to comply with subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$500.

25—(1) Section 40 (2) of the Principal Regulations is amended as follows:—

Amendment of section 40 of Principal Act (Regulations).

- (a) by omitting from paragraph (b) “ used; and ” and substituting “ used;”;
- (b) by omitting from paragraph (c) “ efficiently.” and substituting “ efficiently; and ”;
- (c) by inserting the following paragraph after paragraph (c):—
 - (d) the manner in which a registered medical practitioner may advertise the practice of his profession, the manner in which an approved medical services company may advertise the provision of medical services by it, and the contents of any such advertisement.

(2) Section 40 of the Principal Act is further amended by omitting subsection (3) and substituting the following subsections:—

(3) Regulations under subsection (1) may be made subject to such conditions, or be made so as to apply differently according to such factors, as may be specified in the regulations or according to such limitations or restrictions, whether as to time or circumstance or otherwise, as may be so specified.

(4) Regulations under subsection (1) may provide that it is an offence, punishable on summary conviction, for a person to contravene, or fail to comply with, any of the regulations and may provide in respect of any such offence for the imposition of a penalty not exceeding \$2 500.

(5) A regulation under subsection (1) may authorize any matter or thing to be from time to time determined, applied, or regulated by any person or body specified in the regulation.

Amendment
of third
Schedule to
Principal Act
(MATTERS
IN RESPECT
OF WHICH
FEES MAY BE
PRESCRIBED).

26—The third Schedule to the Principal Act is amended by inserting the following paragraphs after paragraph 8:—

9. Grant of approvals under section 23D to medical services companies.

10. Renewal of approvals under section 23H to medical services companies.

Transitional
provision.

27—(1) During the period of 3 months commencing on the proclaimed day, section 23B (1) of the Principal Act (as inserted by this Act) does not apply to a medical services company which has provided medical services before that day and which intends to provide those services on and after that day.

(2) In subsection (1)—

“medical services company” and “medical services” have the same respective meanings as in section 3 of the Principal Act (as amended by this Act);

“proclaimed day” means the day fixed by proclamation under section 2 (2) of this Act for the commencement of Part IIIA of the Principal Act, as inserted by this Act.