10 The regulation of the medical profession

To practise medicine in Australia, doctors must be registered with the Medical Board of Australia. This chapter sets out the medical registration framework in Australia and includes a summary of the powers of the Medical Board and explains its processes. The chapter defines unprofessional conduct, describes the handling of complaints and allegations of misconduct or poor professional performance and outlines how potentially impaired doctors are assessed and managed.

10.1 Historical background

The process of identification and registration of persons with qualifications entitling them to be 'legally qualified medical practitioners' was first established in the British colonies of Van Diemen's Land (Tasmania) and New South Wales in 1837 and 1838, respectively. Thus, the Medical Council of Tasmania predated the General Medical Council of the United Kingdom by some 21 years. In those early years, the medical boards' functions were limited to registering doctors; additional functions such as powers to discipline doctors, investigate complaints from the public and respond to ill or impaired doctors were progressively added.

Until 2010, the regulation of the medical profession was a matter for individual Australian states or territories. Each legislature passed a medical practice act or similar act to establish a state medical board, initially made up solely of medical practitioners appointed by the government of the day. Throughout the 1980s and 1990s, legislation was gradually amended across the jurisdictions to allow for legally qualified members and lay or community members to be appointed. Thus began a process of change to the concept of the profession being fully self-regulating.

Also during the 1980s and 1990s, concerns were expressed over the costs incurred and obstacles encountered when a doctor registered in one state wished to practise in another jurisdiction. These concerns were partly met when each jurisdiction agreed, by new legislation, to a process of 'mutual recognition' whereby a doctor who was registered without any conditions was eligible for registration in another state so long as minor administrative requirements were met. However, doctors still had to pay full fees in each state where they were registered. Negotiations between the state medical boards in the early 2000s, fostered by

the Australian Medical Council (see section 10.11), to find a means to reduce the payment of duplicate fees were unsuccessful. This failure became one of the reasons that state and federal governments agreed on dramatic changes to medical registration. As workforce mobility was an issue for other health professions, the changes that were introduced also applied to them.

10.2 The change to a national system of medical registration

From July 2010, the registration process for most health professionals in Australia became national. The starting point for this change was an agreement reached in June 2004 that the Council of Australian Governments (COAG) would commission 'a paper on health workforce issues, including supply and demand pressures over the next 10 years' [1]. The task was given to the Australian Productivity Commission (PC), which published *Australia's health workforce* in December 2005 [1]. The terms of reference for the PC inquiry were broad, as were the recommendations that emerged, covering workforce planning, health-care funding mechanisms, health care in remote and rural areas, the health of Aboriginal and Torres Strait Islander Australians, accreditation of providers of health-care education and a new national registration scheme.

In regard to the new national registration scheme, the arguments in favour of what was termed 'a consolidated national registration agency' were summarised thus:

> Current state-based regime leads to variations in standards; involves duplication of effort; impedes professional mobility; imposes costs on those practising in more than one jurisdiction' and a 'professions-based approach can reinforce workplace rigidities [1].

The PC envisaged a single national registration board and although this recommendation was accepted by COAG, the system that resulted 5 years later was somewhat different.

In July 2006, COAG agreed to establish a single national registration scheme for health professionals and a single national accreditation scheme for health education and training. In March 2008, COAG announced more details of the new system, which then included the establishment of a single new national agency to cover both registration and accreditation; a series of national profession specific boards with local (state) committees of each board; and