

CONTROLLING THE 'INVASION': THE COMMONWEALTH ALIEN DOCTORS BOARD AND MEDICAL MIGRANTS IN AUSTRALIA, 1942–46

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In the 1930s, authorities that represented and registered Australia's medical profession sought to prevent doctors who had escaped Nazi-occupied Europe and immigrated to Australia from practising medicine. Doctors John Newman-Morris, Robert Wade and John Cumpston played prominent roles in those bodies. In 1942, however, these men were appointed to the Commonwealth Alien Doctors Board ('CADB'), a statutory authority that was created to grant so-called 'alien doctors' licences to practise medicine during World War II. Nevertheless, this article argues that the CADB and its work did not reflect a significant change in the dominant, protectionist attitude towards alien doctors. The licensing system was a mechanism for using alien doctors to address wartime shortages of medical services, but also tightly controlling their practice to ensure they did not appropriate Australian doctors' work. This article provides the first detailed examination of the CADB and considers lessons from this historical episode.

I INTRODUCTION

European medical practitioners who fled from the Nazi regime sought to pursue their profession elsewhere. In 1937, Dr John Newman-Morris informed Dr George Anderson that the 'invasion by refugee doctors ... has given the whole profession in Australia a nasty bump'.¹ Anderson was secretary of the British Medical Association ('BMA'), the peak body for the medical profession in the British Empire.² Newman-Morris was president of the BMA's Victorian branch and vice-president of its Federal Council (an Australian body that addressed matters of national concern), and a member of the Medical Board of Victoria ('MBV'), one of Australia's state-based statutory authorities that registered doctors to practise

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1 Letter from John Newman-Morris to George Anderson, 30 August 1937, archived at Wellcome Collection, SA/BMA/A.36.

2 'Obituary: Dr GC Anderson' (1944) 1(4331) *British Medical Journal* 62 <<https://doi.org/10.1136/bmj.1.4331.62>>; Terence J Johnson and Marjorie Caygill, 'The British Medical Association and Its Overseas Branches: A Short History' (1973) 1(3) *Journal of Imperial and Commonwealth History* 303, 303–7 <<https://doi.org/10.1080/03086537308582380>>.

medicine.³ In those roles, together with other prominent doctors, Newman-Morris sought to prevent European medical migrants – officially termed ‘alien doctors’ – from obtaining registration.⁴ Nevertheless, in 1942, Newman-Morris was appointed to the Commonwealth Alien Doctors Board (‘CADB’), a statutory authority created to grant alien doctors licences to practise medicine during World War II.⁵ Moreover, the CADB endorsed the licensees’ post-War registration.⁶

Yet this article argues that the CADB and its work did not represent a major shift in the dominant, protectionist attitude towards alien doctors of bodies that represented and registered Australia’s medical profession.⁷ The CADB’s other appointees were also enmeshed in those authorities and, like Newman-Morris, had attempted to inhibit alien doctors’ opportunities to practise medicine. Dr John Cumpston was an official in the BMA’s Victorian branch and vice-president of its Section of Public Health, chair of the Medical Board of the Australian Capital Territory (‘ACT’), and the Commonwealth Director-General of Health.⁸ Sir Robert Wade was president of the BMA’s New South Wales (‘NSW’) branch and the Medical Board of NSW (‘MBN’).⁹ This triumvirate sought to deploy alien doctors to address wartime shortages of medical services, but also restrict their medical practice to ensure they did not appropriate Australian doctors’ work. In short, the licensing system was a mechanism for using medical migrants and controlling their perceived invasion. The CADB’s exercise of its discretion occasionally reflected some compassion for and flexibility in its treatment of individual alien doctors, but, in each instance, this coincided with its pursuit of these objectives. Even the CADB’s proposal to register the licensees after the War ended was driven at least partly by the expedience and protectionism that had characterised the licensing system.

Drawing on sources located in the National Archives of Australia, New South Wales State Archives, Queensland State Archives, Public Record Office Victoria

- 3 Johnson and Caygill (n 2) 316; ‘Obituary: Sir John Newman-Morris’ (1957) 1(18) *Medical Journal of Australia* 621, 621 <<https://doi.org/10.5694/j.1326-5377.1957.tb57542.x>> (‘Obituary’).
- 4 Gabrielle Wolf, ‘Moritz Meyer and the Medical Board: Preventing Refugee Doctors from Practising Medicine in Victoria, Australia, 1937–58’ (2018) 26(1) *Journal of Law and Medicine* 61 (‘Meyer’) 76; Gabrielle Wolf, ‘Machinations of the British Medical Association: Excluding Refugee Doctors from Queensland’s Medical Profession, 1937–42’ (2019) 59(4) *American Journal of Legal History* 513 <<https://doi.org/10.1093/ajlh/njz020>> (‘Machinations’); Gabrielle Wolf, ‘The Law and Politics of Registering Doctors: Lessons from New South Wales, 1937–42’ (2020) 43(4) *University of New South Wales Law Journal* 1521 (‘The Law’).
- 5 *National Security (Alien Doctors) Regulations 1942* (Cth) reg 4 (‘Regulations’).
- 6 Commonwealth Alien Doctors Board, ‘Minutes of Commonwealth Alien Doctors Board Meeting’ (Minutes, 23 October 1943) (‘23 October 1943 Minutes’), archived at National Archives of Australia, series number A1928, control symbol 652/17/1 section 3, item barcode 143383 (‘item barcode 143383’).
- 7 See Part II below.
- 8 ‘Obituary for JHL Cumpston’ (1954) 2(4896) *British Medical Journal* 1111; Dominic Nagle, ‘More Than Just a Union: A History of the AMA’, *Australian Medical Association* (Media Release, 4 July 2012) 40 <https://ama.com.au/sites/default/files/documents/a_history_of_the_ama.pdf>; Michael Roe, ‘Cumpston, John Howard Lidgett (1880–1954)’, *Australian Dictionary of Biography* (Web Page, 2006) <<https://adb.anu.edu.au/biography/cumpston-john-howard-lidgett-5846>>; *Medical Practitioners Registration Ordinance 1930* (ACT) s 6(3).
- 9 CRB Blackburn, ‘Sir Robert Blakeway Wade (1874–1954)’, *Australian Dictionary of Biography* (Web Page, 2006) <<http://adb.anu.edu.au/biography/wade-sir-robert-blakeway-8941>>.

and Wellcome Collection, this article undertakes the first detailed examination of the CADB. The article also considers lessons from this historical episode for the regulation of the medical profession today. Australia is one of several developed countries that still rely on international medical graduates ('IMGs') to ameliorate deficiencies in medical services.¹⁰ Laws governing medical registration are short-sighted if they do not facilitate IMGs' provision of safe, vital medical services and also reward them for their valuable contribution by enabling them to fulfil their career ambitions.

This study contributes to three intersecting areas of legal and historical scholarship. First, it builds on historians' investigation of the treatment of alien doctors by governments, medical registration authorities and the BMA in the British Empire before, during and after World War II. Responses in policy and law to alien doctors in Britain, New Zealand and Scotland have been explored by Paul Weindling, John Weaver, Derek Dow and Kenneth Collins,¹¹ and in Australia by Egon Kunz, Fallon Mody, Suzanne Rutland, Weaver, Peter Winterton and this author.¹² This article expands on the brief consideration of the CADB by the latter group of scholars (except Kunz).¹³

Second, this article's discussion of the CADB's powers provides a case study of the role of law in reinforcing the medical profession's dominance during this period. This phenomenon in Australia has been analysed by James Gillespie, Milton Lewis, Tony Pensabene and Evan Willis, and in the United States of

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- 10 Belinda O'Sullivan et al, 'Reviewing Reliance on Overseas-Trained Doctors in Rural Australia and Planning for Self-Sufficiency: Applying 10 Years' MABEL Evidence' (2019) 17(8) *Human Resources for Health* 1, 2, 4, 7 <<https://doi.org/10.1186/s12960-018-0339-z>>; Kanchan Marcus, Farah Purwaningrum and Stephanie Short, 'Towards More Effective Health Workforce Governance: The Case of Overseas-Trained Doctors' (2021) 29(1) *Australian Journal of Rural Health* 52, 53 <<https://doi.org/10.1111/ajr.12692>>; Vicki Adele Pascoe, *Australia's Toxic Medical Culture: International Medical Graduates and Structural Power* (Springer, 2018) 126 <<https://doi.org/10.1007/978-981-13-2426-0>>.
 - 11 Paul Weindling, 'Medical Refugees and the Modernisation of British Medicine, 1930–1960' (2009) 22(3) *Social History of Medicine* 489 <<https://doi.org/10.1093/shm/hkp054>> ('Medical Refugees'); Paul Weindling, 'Restricted Refuge: Medical Refugees in New Zealand, 1933–1945' in Swen Steinberg and Anthony Greville (eds), *Refugees From Nazi-Occupied Europe in British Overseas Territories* (Brill Rodopi, 2020) 100; John Weaver, 'Pathways of Perseverance: Medical Refugee Flights to Australia and New Zealand, 1933–1945' in Laurence Monnais and David Wright (eds), *Doctors Beyond Borders: The Transnational Migration of Physicians in the Twentieth Century* (University of Toronto Press, 2016) 42; Derek Dow, 'Jewish Doctors in New Zealand' in Leonard Bell and Diana Morrow (eds), *Jewish Lives in New Zealand: A History* (Random House, 2012) 284; Kenneth Collins, 'European Refugee Physicians in Scotland, 1933–1945' (2009) 22(3) *Social History of Medicine* 513 <<https://doi.org/10.1093/shm/hkp059>>.
 - 12 Egon Kunz, *The Intruders: Refugee Doctors in Australia* (Australian National University Press, 1975); Fallon Mody, 'Doctors Down Under: European Medical Migrants in Victoria (Australia), 1930–60' (PhD Thesis, University of Melbourne, 2018); Suzanne D Rutland, 'An Example of "Intellectual Barbarism": The Story of "Alien" Jewish Medical Practitioners in Australia, 1933–1956' (1987) 18 *Yad Vashem Studies* 233, 245 ('An Example'); Weaver (n 11); Peter Winterton, 'Alien Doctors: The Western Australian Medical Fraternity's Reaction to European Events 1930–50' (2005) 17(1) *Health and History* 67 <<https://doi.org/10.2307/40111515>>; Wolf, 'Meyer' (n 4); Wolf, 'Machinations' (n 4); Wolf, 'The Law' (n 4).
 - 13 Mody (n 12) 167–9; Rutland, 'An Example' (n 12) 245; Weaver (n 11) 61–3; Winterton (n 12) 75; Wolf, 'Meyer' (n 4) 72; Wolf, 'Machinations' (n 4) 537–8; Wolf, 'The Law' (n 4) 1542.

America ('USA') by Eliot Freidson and Paul Starr.¹⁴ As the CADB's members were prominent in the BMA, this article supplements historians' research into this lobby group's influence on the profession's ascendancy, including in Australia,¹⁵ where a majority of registered doctors belonged to it.¹⁶

Third, this article's examination of the CADB and lessons we can learn from it expands international scholarship on administrative law, specifically the past and current regulation (including licensing) of professionals.¹⁷ For example, histories of the regulation of the medical profession in the USA have been written by Samuel Baker, Richard Shyrock, and David Johnson and Humayun Chaudhry, and in Canada by Rainer Baehre.¹⁸ This article adds to the study, including by Vicki

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- 14 James A Gillespie, *The Price of Health: Australian Governments and Medical Politics 1910–1960* (Cambridge University Press, 1991) <<https://doi.org/10.1017/CBO9780511470189>>; Milton J Lewis, *The People's Health: Public Health in Australia, 1788–1950* (Praeger, 2003); Tony S Pensabene, *The Rise of the Medical Practitioner in Victoria* (Australian National University Press, 1980); Evan Willis, *Medical Dominance: The Division of Labour in Australian Health Care* (George Allen & Unwin, 1989); Eliot Freidson, *Professional Dominance: The Social Structure of Medical Care* (Atherton Press, 1970); Paul Starr, *The Social Transformation of American Medicine* (Basic Books, 1982).
 - 15 Peter Bartrip, *Themselves Writ Large: The British Medical Association 1832–1966* (BMJ Publishing Group, 1996); Harry Eckstein, *Pressure Group Politics The Case of the British Medical Association* (George Allen & Unwin Ltd, 1960); Elston Grey-Turner and FM Sutherland, *History of the British Medical Association Volume II 1932–1981* (British Medical Association, 1982); Amy G McGrath, 'The History of Medical Organisation in Australia' (PhD Thesis, University of Sydney, 1975); Diane Mackay, 'Politics of Reaction: The Australian Medical Association as a Pressure Group' in Heather Gardner (ed), *The Politics of Health: The Australian Experience* (Churchill Livingstone, 1989) 277; Thelma Hunter, 'Pressure Groups and the Australian Political Process: The Case of the Australian Medical Association' (1980) 18(2) *Journal of Commonwealth and Comparative Politics* 190 <<https://doi.org/10.1080/14662048008447356>>; Gillespie (n 14); Johnson and Caygill (n 2).
 - 16 Gillespie (n 14) 195.
 - 17 See, eg, Tracey L Adams, *Regulating Professions: The Emergence of Professional Self-Regulation in Four Canadian Provinces* (University of Toronto Press, 2018) <<https://doi.org/10.3138/9781487515447>>; Michael Burrage, *Revolution and the Making of the Contemporary Legal Profession: England, France, and the United States* (Oxford University Press, 2006) <<https://doi.org/10.1093/acprof:oso/9780199282982.001.0001>>; James T Casey, Carswell, *The Regulation of Professions in Canada* (at 2003 – Release 1); Morris M Kleiner, *Licensing Occupations: Ensuring Quality or Restricting Competition?* (WE Upjohn Institute for Employment, 2006) <<https://doi.org/10.17848/9781429454865>>; Kathleen Leslie et al, 'Regulating Health Professional Scopes of Practice: Comparing Institutional Arrangements and Approaches in the US, Canada, Australia and the UK' (2021) 19 *Human Resources for Health* 15:1–12 <<https://doi.org/10.1186/s12960-020-00550-3>>; David Price, 'Legal Aspects of the Regulation of the Health Professions' in Judith Allsop and Mike Saks (eds), *Regulating the Health Professions* (Sage Publications, 2002) 47 <<https://doi.org/10.4135/9781446220047.n4>>; Deborah Rhode and Alice Woolley, 'Comparative Perspectives on Lawyer Regulation: An Agenda for Reform in the United States and Canada' (2012) 80(6) *Fordham Law Review* 2761; Terry Johnson, Gerry Larkin and Mike Saks (eds), *Health Professions and the State in Europe* (Routledge, 1995); Laurel S Terry, Steve Mark and Tahlia Gordon, 'Trends and Challenges in Lawyer Regulation: The Impact of Globalization and Technology' (2012) 80(6) *Fordham Law Review* 2661; David Thomas, 'The Co-regulation of Medical Discipline: Challenging Medical Peer Review' (2004) 11 *Journal of Law and Medicine* 382.
 - 18 Samuel L Baker, 'Physician Licensure Laws in the United States, 1865–1915' (1984) 39(2) *Journal of the History of Medicine and Allied Sciences* 173 <<https://doi.org/10.1093/jhmas/39.2.173>>; David Johnson and Humayun Chaudhry, *Medical Licensing and Discipline in America: A History of the Federation of State Medical Boards* (Lexington Books, 2012); Richard Harrison Shyrock, *Medical Licensing in America, 1650–1965* (Johns Hopkins Press, 1967); Rainer Baehre, 'The Medical Profession in Upper Canada Reconsidered: Politics, Medical Reform, and Law in a Colonial Society' (1995) 12(1) *Canadian Bulletin of Medical History* 101 <<https://doi.org/10.3138/cbmh.12.1.101>>.

Pascoe and Neville Yeomans, of IMGs' experiences of Australia's contemporary system of regulating medical practitioners.¹⁹

The next part of the article provides historical context for the CADB's formation. Part III analyses the alien doctors licensing system and the CADB's work. Part IV of the article explores lessons we might learn from the past.

II BACKGROUND TO THE ESTABLISHMENT OF THE COMMONWEALTH ALIEN DOCTORS BOARD

A Agitation to Preclude Alien Doctors' Medical Practice

When alien doctors arrived in Australia, many medical practitioners were insecure about their income. Private practice was limited during the Depression: indigent patients obtained free treatment in public hospitals and doctors reluctantly worked for 'friendly societies', which subsidised members' medical services.²⁰ Competition to provide fee-for-service consultations in wealthy suburbs remained intense in the late 1930s.²¹ There were more medical graduates, particularly following the establishment in 1936 of Queensland University's medical school.²² Many of them, often still bearing debts from study loans, could not easily afford to establish a medical practice or acquire an existing one.²³ The ambitions of Cumpston and other public health leaders to create a state-run health service that employed doctors and focused on 'preventive' rather than 'curative' medicine generated anxiety about future constraints on private practice.²⁴ Also perturbing was an agreement that the Federal Council negotiated with the Federal Government for a national health insurance scheme (doctors considered the proposed remuneration too low and services excluded from the scheme, for which they could charge fees, too few).²⁵

Historians have observed that, in this climate, the prevailing (though not universal) attitude towards alien doctors was unashamedly protectionist.²⁶ Medical

19 Pascoe (n 10); Neville Yeomans, 'They Came to Heal: Australia's Medical Immigrants, 1960 to the Present' (Honours Thesis, University of Melbourne, 2018).

20 Gillespie (n 14) 4, 7–11, 24–5; Lewis (n 14) 250.

21 Gillespie (n 14) 7.

22 James Waghorne, 'Growth and Specialisation: The Medical Profession in Interwar Australia' in Kate Darian-Smith and James Waghorne (eds), *The First World War, the Universities and the Professions in Australia 1914–1939* (Melbourne University Press, 2019) 24, 28.

23 Gillespie (n 14) 4, 6.

24 Ibid 32–3, 36, 39; Lewis (n 14) 183; JHL Cumpston, 'Presidential Address: The New Preventive Medicine' (1920) 2(10) *Medical Journal of Australia* 218, 223 <<https://doi.org/10.5694/j.1326-5377.1920.tb61600.x>> ('Preventive Medicine'); JHL Cumpston, 'The Nationalization of Medicine' (1919) 2(7) *Medical Journal of Australia* 125, 127 <<https://doi.org/10.5694/j.1326-5377.1919.tb52370.x>>; British Medical Association, 'Resolutions of the BMA's Victorian Branch Convention' (Document, 11–12 June 1943), archived at National Archives of Australia, series number CP94/1, bundle 46, item barcode 359497 ('item barcode 359497').

25 Gillespie (n 14) 93–5; Mody (n 12) 163, 170.

26 See, eg, Hilary Rubinstein, *Chosen, the Jews in Australia* (Allen & Unwin, 1987) 178 ('Chosen'); Michael Blakeney, *Australia and the Jewish Refugees 1933–1948* (Croom Helm Australia, 1985) 188, 191; Suzanne Rutland, *Edge of the Diaspora: Two Centuries of Jewish Settlement in Australia* (Brandt & Schlesinger, 2nd ed, 1997) 190, 267 ('Edge'); Weaver (n 11) 44, 47.

practitioners wanted to safeguard their practices from alien doctors,²⁷ as they could potentially treat the few patients who were able to pay for consultations. These concerns were consistent with widespread fears of migrants' competition with the Australian workforce, which prompted Members of Parliament ('MPs') and non-government organisations (such as the Australian Natives Association) to endorse immigration restrictions.²⁸ In the aftermath of the Depression and with still limited employment, migrants were accused of working for rates and paying other workers below industrial awards.²⁹ European dentists, lawyers and musicians, like doctors, faced opposition to their pursuit of their professions in Australia.³⁰

Protectionism in the medical profession manifested in denigration of alien doctors' professional and ethical standards.³¹ These allegations implied that alien doctors were unsafe to practise medicine, but their professional competence had not been assessed in Australia.³² Moreover, while Australian doctors may have been unfamiliar with European medical courses and had difficulty during the War obtaining information about their training,³³ they knew that a high proportion of their graduates were specialists.³⁴ The BMA maintained that, for this reason, alien doctors were unsuited to much Australian medical work, which demanded general practice skills.³⁵ Yet, given their training, alien doctors could have potentially competed for work with local specialists and general practitioners ('GPs'). Specialist practice was highly prized, but few Australian doctors could afford overseas postgraduate study or access honorary hospital work, which were prerequisites for it.³⁶ Further, most specialists still needed to operate general practices to sustain a living and vied with GPs to perform work excluded from friendly societies' services.³⁷

27 See, eg, TW Lipscomb, 'Refugee Doctors' (1941) 2(12) *Medical Journal of Australia* 339 <<https://doi.org/10.5694/j.1326-5377.1941.tb54060.x>>; W Maxwell, 'The Refugee Doctors' (1939) 2(25) *Medical Journal of Australia* 919 <<https://doi.org/10.5694/j.1326-5377.1939.tb128540.x>>.

28 Suzanne D Rutland, 'Australian Responses to Jewish Refugee Migration before and after World War II' (1985) 31(1) *Australian Journal of Politics and History* 29, 40–2 <<https://doi.org/10.1111/j.1467-8497.1985.tb01320.x>> ('Australian Responses'); Rubinstein, *Chosen* (n 26) 169, 178; Blakeney (n 26) 193–5; Paul R Bartrop, *Australia and the Holocaust 1933–45* (Australian Scholarly Publishing, 1994) x–xi, 26.

29 Rutland, 'Australian Responses' (n 28) 40–2.

30 Blakeney (n 26) 193; 'Refugees. Professions' Attitude. Jobs in Sydney. Conflict in Views', *The Sydney Morning Herald* (Sydney, 29 July 1938) 13.

31 Blakeney (n 26) 191–2; Rutland, 'An Example' (n 12) 237–8; Lipscomb (n 27); Maxwell (n 27); A Graduate of Sydney, 'Influx of European Practitioners' (1934) 1(9) *Medical Journal of Australia* 322, 322–3 <<https://doi.org/10.5694/j.1326-5377.1934.tb42543.x>>.

32 Mody (n 12) 29.

33 Moira Salter, 'Prejudice in the Professions' in FS Stevens (ed), *Racism: The Australian Experience* (Australian and New Zealand Book Company, 2nd ed, 1974) vol 1, 67, 73.

34 Blakeney (n 26) 192; Kunz (n 12) 39, 62, 67; Mody (n 12) 29; George Weisz, *Divide and Conquer: A Comparative History of Medical Specialization* (Oxford University Press, 2006) 88.

35 Kunz (n 12) 60.

36 Gillespie (n 14) 6, 16, 18; Robert Evans, 'The Transformation of Australian Hospitals Between the 1940s and the 1970s' (2005) 7(2) *Health and History* 101, 108 <<https://doi.org/10.2307/40111614>>; Pensabene (n 14) 166.

37 Gillespie (n 14) 18, 20–2, 105; Waghorne (n 22) 30; Charles Bickerton Blackburn, 'The Growth of Specialism in Australia during Fifty Years and Its Significance for the Future' (1951) 1(1) *Medical Journal of Australia* 20, 24 <<https://doi.org/10.5694/j.1326-5377.1951.tb55457.x>>.

Derision of alien doctors' capabilities and attempts to prevent them from practising medicine might have been attributable to prejudice in addition to protectionism.³⁸ Those who agitated for alien doctors' exclusion from medical practice frequently mentioned German Jewish doctors.³⁹ Some contended that Germans would remain loyal to Australia's enemy, even if they had escaped persecution there.⁴⁰ Further, many of the alien doctors were Jewish,⁴¹ and antisemitism increased in certain sectors during this period in which ambitions for a racially pure nation burgeoned.⁴² Jews were regarded as a race that did not fit neatly into a White Australia.⁴³ Their whiteness was seemingly ambivalent and dependent on their assimilability, which was considered especially challenging for those from Eastern Europe.⁴⁴ Cumpston was in fact a prominent advocate for boosting the nation's racial vitality.⁴⁵ Influenced by American progressivism, British Fabianism and eugenics, he was confident that, through public health reforms, quarantine and immigration restrictions that excluded 'certain races of aliens',⁴⁶ Australia could become 'a paradise of physical perfection'.⁴⁷ Cumpston informed the 1920 Australasian Medical Congress, '[i]t is all very well to have a white Australia, but it must be kept white. There must be immaculate cleanliness'.⁴⁸ Such racial views influenced government policies.⁴⁹ At the 1938 Inter-Governmental Conference on Refugees in Evian, Colonel TW White, Australia's Minister for Trade and Customs, asserted that Australia wanted to avoid 'importing' a 'racial

38 Weaver (n 11) 43, 63–4.

39 See, eg, Federal Council, 'Minutes' (Minutes, 19 August 1937), archived at Wellcome Collection, SA/BMA/A.34 ('19 August 1937 Minutes').

40 See, eg, WJ McCristal, 'Refugee Doctors' (1940) 1(3) *Medical Journal of Australia* 105 <<https://doi.org/10.5694/j.1326-5377.1940.tb53696.x>>; Lipscomb (n 27); Klaus Neumann, *Across the Seas: Australia's Response to Refugees: A History* (Black Inc, 2015) 58.

41 Weaver (n 11) 64.

42 Andrew Markus, 'Jewish Migration to Australia 1938–49' (1983) 7(13) *Journal of Australian Studies* 18, 20–1 <<https://doi.org/10.1080/14443058309386871>>; Blakeney (n 26) 53, 55; Rutland, *Edge* (n 26) 197.

43 Markus (n 42) 20–1; Bartrop (n 28) 52.

44 Jon Stratton, 'The Colour of Jews: Jews, Race and the White Australia Policy' (1996) 20 *Journal of Australian Studies* 51, 58–60 <<https://doi.org/10.1080/14443059609387278>>; Bartrop (n 28) 16, 51–2.

45 Gillespie (n 14) 32–3; Warwick Anderson, *The Cultivation of Whiteness: Science Health and Racial Destiny in Australia* (Melbourne University Press, 2005) 140–1.

46 John Cumpston, 'Cleanliness' (Document) archived at National Library of Australia, Cumpston Papers, MS 613, Box 7, quoted in Alison Bashford, 'At the Border: Contagion, Immigration, Nation' (2002) 33(120) *Australian Historical Studies* 344, 349 <<https://doi.org/10.1080/10314610208596224>>.

47 Cumpston, 'Preventive Medicine' (n 24) 218; Michael Roe, 'The Establishment of the Australian Department of Health: Its Background and Significance' (1976) 17(67) *Australian Historical Studies* 176, 183–6 <<https://doi.org/10.1080/10314617608595546>>; Stephen Garton, 'Eugenics in Australia and New Zealand: Laboratories of Racial Science' in Alison Bashford and Philippa Levine (eds), *The Oxford Handbook of the History of Eugenics* (Oxford University Press, 2010) 243; Anderson (n 45) 140–1; Michael Roe, *Nine Australian Progressives: Vitalism in Bourgeois Social Thought 1890–1960* (University of Queensland Press, 1984) 14; Gillespie (n 14) 31, 33.

48 John Cumpston, 'Tropical Australia: Discussion' in Australasian Medical Congress, *Transactions of the Eleventh Session Held in Brisbane, Queensland, 21st–28th August, 1920* (Anthony James Cumming, 1921) 49, quoted in Anderson (n 45) 139.

49 Markus (n 42) 18–21.

problem' through immigration.⁵⁰ In response to escalating persecution of Jews and international pressure, the Federal Government agreed to accept some refugees, but imposed a quota on the number of Jews who could immigrate.⁵¹

It is nonetheless possible that alien doctors would have met this response whatever their religious or cultural background, but because a high number of them were Jews and some came from Germany, they were targeted.⁵² Some historians consider that xenophobia generally (rather than antisemitism in particular) largely underlay antagonism towards migrants in this era.⁵³ Regardless of whether they were antisemitic, owing to assumptions about Britain and white Australia's shared cultural and racial heritage, many Australians preferred that British people rather than Europeans immigrated to Australia.⁵⁴ For the same reasons, BMA representatives favoured British medical migrants.⁵⁵

Historians have documented the BMA's hostility towards alien doctors.⁵⁶ This article identifies the CADB members' contributions to its efforts to prevent them from practising medicine in Australia. In 1933, the Federal Council considered 'any influx of European practitioners ... would be very detrimental to the interests of Australian medical men who have been having a very difficult time'.⁵⁷ The following year, it requested the Federal Cabinet's 'help', implicitly by refusing 'German Jewish' doctors' admission to Australia.⁵⁸ In granting European doctors qualifications after a year's postgraduate study ('TQ'), the Triple Qualification Board of three extramural Scottish Royal Colleges of Medicine fuelled fears of alien doctors flooding Australia.⁵⁹ Doctors with the TQ were eligible for registration

50 Intergovernmental Committee on Refugees, *Proceedings of the Intergovernmental Committee Evian, July 6th to 15th, 1938, Verbatim Record of the Plenary Meetings of the Committee, Resolutions and Reports* (Imp Réunies Chambéry, 1938) 20; Blakeney (n 26) 130.

51 Markus (n 42) 19, 21; Bartrop (n 28) 52, 248; Rubinstein, *Chosen* (n 26) 170.

52 Rubinstein, *Chosen* (n 26) 178.

53 See, eg, Bartrop (n 28) 15, 17–18.

54 James Jupp, *From White Australia to Woomera: The Story of Australian Immigration* (Cambridge University Press, 2nd ed, 2007) 16–17 <<https://doi.org/10.1017/CBO9780511720222>>; Ruth Balint and Zora Simic, 'Histories of Migrants and Refugees in Australia' (2018) 49(3) *Australian Historical Studies* 378, 379, 381 <<https://doi.org/10.1080/1031461X.2018.1479438>>; Michele Langfield, 'To Restore British Migration: Australian Population Debates in the 1930s' (1995) 41(3) *Australian Journal of Politics and History* 408, 411 <<https://doi.org/10.1111/j.1467-8497.1995.tb01269.x>>.

55 Salter (n 33) 72. Similarly, the Federal Council confirmed that it 'was in favour of preference to British nationality over aliens in determining the quotas for entering the medical course at Australian universities': Federal Council, 'Meeting Minutes' (Minutes, 23–26 August 1943), archived at National Archives of Australia, series number AWM54, control symbol 213/2/19, item barcode 458390 ('item barcode 458390').

56 See, eg, Weindling, 'Medical Refugees' (n 11) 493, 506; Kunz (n 12) 46; Rubinstein, *Chosen* (n 26) 178.

57 Letter from CHE Lawes, General Secretary, Federal Council, to JH Starling, Secretary, Commonwealth Department of External Affairs, 8 March 1934, archived at National Archives of Australia, series number A981, control symbol MIG46, item barcode 178846 ('item barcode 178846').

58 Ibid.

59 Conference of Commonwealth and State Ministers for Health, December 1943, archived at National Archives of Australia, series number AWM54, control symbol 883/5/21, item barcode 45407 ('item barcode 45407'); HM Dingwall, 'The Triple Qualification Examination of the Scottish Medical and Surgical Colleges, 1884–1993' (2010) 40(3) *Journal of the Royal College of Physicians of Edinburgh* 269, 270, 273 <<https://doi.org/10.4997/JRCPE.2010.317>>; Collins (n 11) 513, 516–19.

by the United Kingdom's ('UK') General Council of Medical Education and Registration ('GMC'), and doctors with GMC registration were entitled to practise medicine in the dominions, subject to local laws.⁶⁰ Cumpston asked Australia's medical boards whether they had 'adopted a definite policy in respect of exclusion or otherwise' concerning 'German Jewish doctors' with GMC registration.⁶¹ The Tasmanian and Western Australian ('WA') boards confirmed their 'anxiety' and 'alarm', respectively, at 'the possibility of an influx' of them.⁶² This response intensified in 1936 when the UK's Home Office decided that European doctors could only remain in the UK for medical study on the basis that they would be unable to practise in and would leave the UK upon completing it.⁶³ The Federal Council requested Australian governments to 'take [similar] action'.⁶⁴

The BMA asked the MBV whether it was contemplating restricting 'the eligibility for registration of German doctors' with the TQ.⁶⁵ Newman-Morris subsequently moved that the MBV refuse to register Anna Lewin who had German qualifications and the TQ.⁶⁶ Cumpston had nonetheless 'expressed doubt' about this 'interpretation' of the MBV's governing legislation: the *Medical Act 1928* (Vic).⁶⁷ Cumpston 'suggested' amending this statute 'to clarify' that alien doctors would only be eligible for registration in Victoria if they obtained qualifications following a medical course of at least five years' duration in a country that had 'reciprocity' with Victoria.⁶⁸

Previously, qualifications for licensed medical practice had been circumscribed and the reciprocity principle applied to suppress competition, including from IMGs, and to protect the public.⁶⁹ The formation of statutory medical licensing and standards bodies (the GMC in 1858 followed by medical boards throughout the Empire) realised the BMA's objectives of uniting doctors trained in scientific medicine, eradicating practices of quacks and unorthodox health practitioners,

60 Conference of Commonwealth and State Ministers for Health, December 1943 (n 59); 'Registration of Foreign Practitioners in Great Britain and the Dominions and Colonies' (1937) (Supp) 2(4003) *British Medical Journal* S199, S199 <<https://doi.org/10.1136/bmj.2.4003.S197>> ('Registration'); *Medical Act 1886*, 49 & 50 Vict, c 48, s 6; Weaver (n 11) 47–8.

61 Letter from John Cumpston to Australian Medical Boards, 16 March 1934, archived at National Archives of Australia, series number A1928, control symbol 652/17 section 1, item barcode 143372 ('item barcode 143372').

62 Senior Medical Officer (Untitled Document, 23 April 1934), archived at National Archives of Australia, item barcode 143372 (n 61); Letter from Medical Board of Western Australia to Director-General of Health, 9 April 1934, archived at National Archives of Australia, item barcode 143372 (n 61).

63 'Registration' (n 60); Letter from JG Hunter to Department of External Affairs, 21 April 1937, archived at National Archives of Australia, item barcode 178846 (n 57).

64 'British Medical Association News: Meeting of the Federal Council' (1937) 1(8) *Medical Journal of Australia* 303, 304 <<https://doi.org/10.5694/j.1326-5377.1937.tb99653.x>>.

65 Medical Board of Victoria, 'Minutes' (Minutes, 7 January 1937), archived at Public Record Office Victoria, series number VPRS 16389, consignment number P0001, Unit 5.

66 Medical Board of Victoria, 'Minutes' (Minutes, 3 March 1937), archived at Public Record Office Victoria (n 65).

67 Letter from John Cumpston to Medical Board of Victoria, 17 February 1937, archived at National Archives of Australia, item barcode 143372 (n 61).

68 Ibid.

69 Anne Crichton, *Slowly Taking Control? Australian Governments and Health Care Provision, 1788–1988* (Allen & Unwin, 1990) 17; Salter (n 33) 70; Willis (n 14) 79.

and instituting ethical and professional conduct standards for medical practice.⁷⁰ Often with BMA representatives at their helm,⁷¹ these authorities were empowered to determine which applicants met the qualifications for entry to the registers of 'medical practitioners' they maintained and could therefore use this protected title.⁷² Initially, Australian boards could register doctors who had obtained Australian medical degrees or other qualifications that the GMC recognised, for example, from Britain and Ireland.⁷³

IMGs with qualifications obtained in countries outside the UK, often after shorter courses than the five-year Australian medical degrees, also applied for registration.⁷⁴ The boards faced the difficulty of establishing the authenticity and standard of their qualifications, and feared their competition for work with Australian doctors who were prohibited from practising medicine in some IMGs' countries of origin.⁷⁵ The inclusion of the reciprocity principle in some of the boards' governing legislation in the early 20th century (and extension of the duration of courses that qualified for registration) addressed these issues.⁷⁶ Only IMGs with qualifications from the UK, British possessions or reciprocating countries – where doctors, by virtue of their registration in Australia, were entitled to practise medicine – were eligible for registration.⁷⁷ The boards could therefore exclude from registered medical practice IMGs with qualifications from countries that did not have reciprocity agreements with the UK, which extended to Australia, without assessing them, unless the IMGs undertook further training.⁷⁸ As only one European country had reciprocity with Australia – Italy (though the agreement terminated when Italy entered the War) – reinforcement and application of this principle in the 1930s would reduce the number of alien doctors who would be eligible for registration.⁷⁹ In 1934, the Federal Council thus resolved, 'in view of the adequate supply of medical practitioners who are graduates of British Universities, it is undesirable to admit graduates of alien countries unless reciprocity of registration exists'.⁸⁰

70 Willis (n 14) 5, 79, 202; Bartrip (n 15) 70–1, 74–6, 97; McGrath (n 15) 4–7; Johnson and Caygill (n 2) 304.

71 Gillespie (n 14) 5.

72 Crichton (n 69) 17; Bartrip (n 15) 97.

73 Crichton (n 69) 17–18; Johnson and Caygill (n 2) 315; Salter (n 33) 69–70, 72–3. Once the General Council of Medical Education and Registration ('GMC') recognised qualifications from the Australian medical schools, this system secured Australian graduates' eligibility for GMC registration and access to postgraduate training and careers in the UK: Salter (n 33) 72–3; Crichton (n 69) 18.

74 Pensabene (n 14) 127; Crichton (n 69) 17.

75 Crichton (n 69) 17; Pensabene (n 14) 127–8. Concerns especially about American graduates were reflected in the British Medical Association's allegation that the diploma obtained in Illinois by Australian Victor Ratten, who practised as a surgeon in Tasmania, were fraudulent (a 1918 Royal Commission found this unproven): Gordon Rimmer, 'Ratten, Victor Richard (1878–1962)', *Australian Dictionary of Biography* (Web Page, 2006) <<https://adb.anu.edu.au/biography/ratten-victor-richard-8160>>.

76 Pensabene (n 14) 127–8; Salter (n 33) 71; Willis (n 14) 73.

77 Salter (n 33) 70.

78 Ibid 69–71; Pensabene (n 14) 128; Weaver (n 11) 46.

79 Blakeney (n 26) 189; Gillespie (n 14) 5; Salter (n 33) 70–1; Weaver (n 11) 56–7.

80 External Affairs (Cth), 'Memo' (Memorandum, 24 May 1934), archived at National Archives of Australia, item barcode 178846 (n 57).

In June 1937, Moritz Meyer, who had German qualifications and the TQ, successfully appealed the MBV's decision to deny him registration to the Supreme Court of Victoria.⁸¹ At Newman-Morris's suggestions, the MBV informed other medical boards of its appeal to the High Court of Australia,⁸² and the Federal Council resolved to request the Scottish Colleges' Conjoint Board to grant qualifications entitling the recipient to GMC registration only to those who completed 'at least three years' study in the British Empire'.⁸³ The Federal Council also decided to request the GMC not to register foreign graduates after a year's study, and all state governments to amend medical boards' governing legislation 'to prevent registration of German Jewish practitioners'.⁸⁴

The MBV lost its appeal.⁸⁵ Newman-Morris told Anderson that, 'as a result', the MBV would be 'compelled to register people' with the TQ, and the BMA in Britain should 'dissuade these men from coming to Australia'.⁸⁶ Representatives of Australia's medical profession and boards (including Wade) convened, and 'urged that amending legislation should be passed to give the boards power to refuse registration'.⁸⁷ On Newman-Morris's motion, they affirmed the need to apply the reciprocity principle in all states.⁸⁸ The MBV, represented by Newman-Morris and its president, Dr Alexander Joske, persuaded Victoria's Parliament to amend the *Medical Act 1928* (Vic) so IMGs were only eligible for registration if they completed a medical course of at least five years' duration in Victoria, the UK or a country that had reciprocity with Victoria.⁸⁹ Some other states' legislatures, influenced by the BMA, followed Victoria's lead.⁹⁰

Wade was consulted during drafting of legislation that restricted alien doctors' opportunities for registration in NSW.⁹¹ Section 18(6) of the *Medical Practitioners Act 1938* (NSW) limited the MBN to registering eight people who were 'not natural born British subjects' annually. Doctors were only registrable based on completion of a medical course 'in some part of the British Empire' if the course was at least five years long, so they could not rely on the TQ for registration.⁹² Doctors were eligible for registration based on qualifications obtained outside

81 *Meyer v Medical Board (Vic)* [1937] VLR 237; Wolf, 'Meyer' (n 4) 63–6.

82 Medical Board of Victoria, 'Minutes' (Minutes, 7 April 1937), archived at Public Record Office Victoria (n 65); Medical Board of Victoria, 'Minutes' (Minutes, 7 July 1937), archived at Public Record Office Victoria (n 62).

83 Federal Council, '19 August 1937 Minutes' (n 39).

84 Ibid.

85 *Medical Board of Victoria v Meyer* (1937) 58 CLR 62; Wolf, 'Meyer' (n 4) 66–7.

86 Letter from John Newman-Morris to George Anderson, 30 August 1937 (n 1).

87 Medical Board of Victoria, 'Minutes' (Minutes, 1 September 1937), archived at Public Record Office Victoria (n 65) ('1 September 1937 Minutes'); 'Brief Items of News', *The Argus* (Melbourne, 3 September 1937) 14.

88 Medical Board of Victoria, '1 September 1937 Minutes' (n 87).

89 Medical Board of Victoria, 'Minutes' (Minutes, 19 November 1937), archived at Public Record Office Victoria (n 65); Medical Board of Victoria, 'Minutes' (Minutes, 22 July 1938), archived at Public Record Office Victoria (n 65); *Medical Act 1928* (Vic) s 14, as amended by *Medical Act 1938* (Vic) s 2(1).

90 Gillespie (n 14) 5; Blakeney (n 26) 189.

91 Medical Board of New South Wales, 'Minutes of Proceedings' (Minutes, 2 February 1938), archived at New South Wales State Archives, item number NRS-9871-2, reel 2658.

92 *Medical Practitioners Act 1938* (NSW) s 17(1)(b).

the British Empire if: they obtained them in countries that had reciprocity with NSW and passed the final three years' exams of Sydney University's medical course;⁹³ they held year-long certificates of 'regional registration' for five years;⁹⁴ or the MBN recommended to the Minister of Health that they had 'such special qualifications' and 'experience' in medical practice to justify waiving usual registration requirements.⁹⁵ On Wade's motion, the MBN interpreted 'special qualifications' and 'experience' narrowly.⁹⁶ Despite the Government's clarification that the provision was intended to apply simply to 'an expert in his speciality',⁹⁷ between 1939 and 1942, the MBN recommended to the Minister just nine of 53 refugee doctors who applied under it.⁹⁸ Also under Wade's leadership, the MBN suggested to the Government that 'preference be given to British born subjects' in appointing doctors to 'country districts'.⁹⁹

Cumpston discussed with the ACT board the possibility of amending its governing legislation to preclude eligibility for registration based on the TQ unless the applicant obtained it after five or more years' study in Scotland.¹⁰⁰ This change was effected in 1939 by amendments to the *Medical Practitioners Registration Ordinance 1930* (ACT), which also only permitted registration of alien doctors with qualifications from countries that had reciprocity with Australia.¹⁰¹ As Director-General of Health, Cumpston discouraged IMGs from immigrating, claiming that 'competition' in Australia's medical profession was 'keen' and 'openings for practice are more than filled by local graduates'.¹⁰²

In 1938, the Commonwealth Government decided to refuse admission to Australia of alien doctors who sought to practise medicine, but were ineligible for registration.¹⁰³ Notwithstanding this, the medical profession's protectionism – and specifically its concern to maintain Australian doctors' monopoly over private practice – intensified after the War began. The Federal Council requested the

93 Ibid ss 17(1)(c), proviso.

94 Ibid ss 17(1)(e), 21A, as inserted by *Medical Practitioners (Amendment) Act 1939* (NSW) ss 3(a)–(b).

95 *Medical Practitioners Act 1938* (NSW) s 17(2).

96 Medical Board of New South Wales, 'Minutes of Proceedings' (Minutes, 25 November 1939), archived at NSW State Archives (n 91) ('25 November 1939 Minutes').

97 Medical Board of New South Wales, 'Minutes of Proceedings' (Minutes, 18 January 1940), archived at NSW State Archives (n 91).

98 Medical Board of New South Wales, 'Minutes of Proceedings' (Minutes, 6 September 1939–4 February 1942), archived at NSW State Archives (n 91); Conference of Commonwealth and State Ministers for Health, December 1943 (n 59).

99 Medical Board of New South Wales, 'Minutes of Proceedings' (Minutes, 5 May 1939), archived at NSW State Archives (n 91).

100 Letter from John Cumpston to Medical Board of Victoria, 17 February 1937 (n 67).

101 *Medical Practitioners Registration Ordinance 1939* (ACT) s 2, amending *Medical Practitioners Registration Ordinance 1930* (ACT) s 22(d).

102 Letter from John Cumpston to High Commissioner's Office, 12 January 1933, archived at National Archives of Australia, item barcode 143372 (n 61); Memo from John Cumpston to Department of the Interior, 27 March 1934, archived at National Archives of Australia, item barcode 143372 (n 61); Letter from John Cumpston to Leo Feuchtwanger, 13 May 1937, archived at National Archives of Australia, item barcode 143372 (n 61); Letter from John Cumpston to Walter Lurje, 28 May 1937, archived at National Archives of Australia, item barcode 143372 (n 61).

103 Conference of Commonwealth and State Ministers for Health, December 1943 (n 59).

'Government to take steps to protect the practice of men called up for service in the armed forces ... by stopping the influx of alien practitioners'.¹⁰⁴ The MBN and the Queensland Medical Board lobbied state governments to pass legislation rendering alien doctors ineligible for registration during the War.¹⁰⁵ Yet, especially after Japan entered the War and general mobilisation was ordered,¹⁰⁶ organisers of wartime medical services realised that disregarding alien doctors' expertise was an unaffordable indulgence.¹⁰⁷

B Creation of the Commonwealth Alien Doctors Board

Resistance to involving alien doctors in medical practice persisted despite the increasingly pressing need for more doctors.¹⁰⁸ As Gillespie observed, the BMA attempted to influence the wartime administration of medical services to reduce alien doctors' work opportunities.¹⁰⁹ Newman-Morris and Sir Henry Newland, Federal Council President, served on the Central Medical Co-ordination Committee ('CMCC'), which allocated medical services for the army and civil population.¹¹⁰ It is thus unsurprising that the CMCC did not embrace the suggestion of Professor Lyndhurst Giblin, Chairman of the Commonwealth Advisory Committee on Finance and Economic Policy, that Australia emulate Britain by registering alien doctors to address shortages of doctors to meet civilian needs (though Giblin also recommended, like Britain, denying them 'the right to engage in private practice').¹¹¹ CMCC Chairman, Major-General Frederick Maguire, deemed the proposal 'very dangerous', as he considered that alien doctors could 'enter practice in competition with' serving doctors.¹¹²

104 Federal Council, 'Meeting Minutes' (Minutes, 6–7 September 1939), archived at National Archives of Australia, item barcode 458390 (n 55).

105 Medical Board of New South Wales, '25 November 1939 Minutes' (n 96); Queensland Medical Board, 'Minutes' (Minutes, 14 March 1940), archived at Queensland State Archives, agency ID 1381 Medical Board of Queensland, series ID 9217 Minutes, item ID 294721.

106 DM McWhae, 'The Medical Profession of Australia and the War' (1948) 2(13) *Medical Journal of Australia* 337, 338 <<https://doi.org/10.5694/j.1326-5377.1948.tb27938.x>>.

107 Conference of Commonwealth and State Ministers for Health, December 1943 (n 59).

108 Weaver (n 11) 61; 'Not Enough Doctors', *The Herald* (Melbourne, 17 April 1941) 9.

109 Gillespie (n 14) 128–9.

110 'Obituary' (n 3) 621; Neville Hicks and Elisabeth Leopold, 'Newland, Sir Henry Simpson (1873–1969)', *Australian Dictionary of Biography* (Web Page, 2006) <<https://adb.anu.edu.au/biography/newland-sir-henry-simpson-7826>>; 'Organisation' (Document), archived at National Archives of Australia, item barcode 458390 (n 55); 'Summary of the Regulations under the *National Security Act* 1939–40' (Document), archived at National Archives of Australia, item barcode 458390 (n 55); McWhae (n 106) 338.

111 Letter from Lyndhurst Giblin to PC Spender, 3 April 1941, archived at National Archives of Australia, series number MP508/1, control symbol 65/701/123, item barcode 379147 ('item barcode 379147'); Frederick Maguire, 'Minute Paper' (Minutes, 19 May 1941), archived at National Archives of Australia, item barcode 379147 (n 111) ('19 May 1941 Minutes'). The Federal Council similarly opposed registration of alien doctors: Central Medical Co-ordination Committee, 'Meeting Minutes' (Minutes, 22–24 September 1941), archived at National Archives of Australia, item barcode 458390 (n 55).

112 Maguire, '19 May 1941 Minutes' (n 111).

Maguire fulfilled his promise to the Federal Council to ‘do all in his power to conserve the practices of men who relinquished practice for the war service’.¹¹³ He informed the War Cabinet that alien doctors lacked sufficient knowledge and experience for civilian practice, registering them would give them ‘privileges’ denied to Australian graduates in their home countries, and deficits of doctors in country districts could be ameliorated by subsidising Australian doctors to work there and transporting patients to towns with medical services.¹¹⁴ Maguire forwarded petitions from medical officers serving in the Middle East and Malaya expressing ‘disappointment and alarm’ about Giblin’s proposal, which they perceived as a ‘threat’ to their practices.¹¹⁵ They preferred ‘a system’ whereby alien doctors worked ‘under licence or government contract’, ‘stipulated directions and for specified periods’.¹¹⁶

Given the shrinking ratio of doctors to civilians as the War progressed, the CMCC adopted this recommendation, suggesting a ‘war measure’ that would ‘utilise’ alien doctors’ ‘services’.¹¹⁷ The CMCC’s measure would also deny alien doctors autonomy and a future medical career in Australia. Of three ‘safeguards’ it proposed, only one concerned alien doctors’ competence: the Government ‘constitute an Examining Medical Board to investigate [their] characters, qualifications, knowledge and skill’.¹¹⁸ The other safeguards would protect serving doctors’ ‘legitimate interests’: the Government could license alien doctors ‘to practise medicine for the duration of the war and twelve months thereafter’; and licensees ‘should be employed in hospitals, institutions, or Services not involving ... private practice’.¹¹⁹ In December 1941, the War Cabinet decided to implement this proposal, but to meet population needs, also permitted issuing licences ‘for medical work in localities lacking adequate medical service’.¹²⁰ Prime Minister John Curtin was assured there was ‘no constitutional objection’ to the proposal.¹²¹ Nevertheless, the Victorian Government declared it ‘contrary’ to its ‘policy’ of not

113 Federal Council, ‘Meeting Minutes’ (Minutes, 30 April 1941), archived at National Archives of Australia, item barcode 359497 (n 24) (‘30 April 1941 Minutes’).

114 Frederick Maguire, ‘Appreciation by Central Medical Co-ordination Committee’ (Document, 4 September 1941) (‘Appreciation by Central Medical Co-ordination Committee’), archived at National Archives of Australia, series number A472, control symbol W5733, item barcode 100850 (‘item barcode 100850’).

115 Australian Imperial Force Malaya, Unit 10th AGH, ‘Petition’ (Petition, 22 July 1941), archived at National Archives of Australia, item barcode 100850 (n 114).

116 *Ibid.*

117 *Ibid.*; Conference of Commonwealth and State Ministers for Health, December 1943 (n 59); Weaver (n 11) 62.

118 Maguire, ‘Appreciation by Central Medical Co-ordination Committee’ (n 114).

119 *Ibid.*

120 War Cabinet, ‘Minutes’ (Minutes, 22 December 1941), archived at National Archives of Australia, item barcode 100850 (n 114).

121 Memorandum from Prime Minister’s Department to Attorney-General’s Department, 2 January 1942, archived at National Archives of Australia, item barcode 100850 (n 114); Memorandum from Attorney-General’s Department to Prime Minister’s Department, 5 January 1942, archived at National Archives of Australia, item barcode 100850 (n 114).

favouring 'a relaxation of the conditions on which alien doctors may' practise,¹²² and Tasmania's Government would only allow licensees to practise as GPs in 'country centres'.¹²³

To implement the proposal, the *National Security (Alien Doctors) Regulations 1942* (Cth) ('*Regulations*') were made under the *National Security Act 1939–1940* (Cth).¹²⁴ Regulation 4 established the CADB, comprising the Director-General of Health as Chairman and two members appointed by the Minister for Health, who were intended to be the MBN and MBV presidents.¹²⁵ Newman-Morris was appointed due to his 'wide experience in questions of medical registration' and Joske's advanced age, though Newman-Morris took over as MBV president in 1945.¹²⁶ The *Regulations* empowered the CADB to grant licences to practise 'in all' or 'one or more' specified 'branches of medical science' and limit licences 'to any institution, service or area', or refuse to grant licences, and the Minister for Health to determine the 'locality or place' of licensees' practice.¹²⁷ The CADB's licences nonetheless stated that licensees were 'authorised to practise medicine in places as directed by the State Medical Co-ordination Committee' ('MCC') because, as Cumpston noted, the MCCs had 'full knowledge of the circumstances in each State'.¹²⁸ Comprising representatives of the BMA, military and state health departments, the MCCs controlled the Emergency Medical Service ('EMS'), which ensured all regions had essential medical services.¹²⁹

III THE COMMONWEALTH ALIEN DOCTORS BOARD'S WORK

A Operation of the Alien Doctors Licensing System

As the CADB, three men who formerly opposed alien doctors practising medicine, licensed them to do so. Yet, unsurprisingly given the fears of migrants' economic competition, the objectives of the CADB were expedient and protectionist. It was proposed to treat alien doctors as a means to an end. Giving a few alien doctors medical work could respond to and potentially reduce calls to permit them to practise medicine.¹³⁰ In addition, a draft press statement indicated

122 Letter from Albert Dunstan to John Curtin, 16 January 1942, archived at National Archives of Australia, item barcode 100850 (n 114).

123 Letter from Robert Cosgrove to John Curtin, 19 January 1942, archived at National Archives of Australia, item barcode 100850 (n 114).

124 Conference of Commonwealth and State Ministers for Health, December 1943 (n 59).

125 Letter from John Cumpston to Edward Holloway, 2 February 1942, archived at National Archives of Australia, series number A1928, control symbol 652/17/1, item barcode 143381 ('item barcode 143381').

126 Ibid; 'Obituary' (n 3) 621.

127 *Regulations* (n 5) regs 10(1)–(3), 14.

128 Memorandum of John Cumpston, approved by Edward Holloway, 5 May 1942, archived at National Archives of Australia, item barcode 100850 (n 114).

129 McWhae (n 106) 338; 'Summary of the Regulations under the *National Security Act 1939–40*' (n 110); Gillespie (n 14) 117, 127–8.

130 Rutland, 'An Example' (n 12) 242; Weaver (n 11) 52; 'Foreign Medical Practitioners' (29 June 1939) *Medical Journal of Australia* 190 <<https://doi.org/10.5694/j.1326-5377.1939.tb116234.x>>; Hilary

that the Government intended on 'using as far as possible the services of these doctors to overcome the present shortage of medical men, and to release Australian practitioners who desired to enlist'.¹³¹ Alien doctors would thus be relied upon to assist the civilian population and Australia's War effort, and securing some benefit for alien doctors from this arrangement was of no consideration. Indeed, to protect local doctors' interests, the scheme would restrict alien doctors' work and, in particular, ensure they did not set up practices to provide private consultations to paying patients in affluent areas. In certain instances, the CADB demonstrated some flexibility and compassion in its treatment of alien doctors, but only where this approach aligned with its pursuit of these goals.

Wade was initially reluctant to serve on the CADB because he believed licensees could have 'unlimited rights', engage in 'private practice', and thus 'prejudice' the 'living' of 'Australians on war service'.¹³² Cumpston assured him that, as the CADB could impose 'any conditions' and 'restrictions' on licences, it could 'completely control the question of any prejudice to the interests of Australians'.¹³³ At its first meeting, the CADB confirmed its understanding that the licensing 'system' 'aimed to obviate the possibility of any doctor settling ... in any locality to the detriment of any Australian doctor who had left his practice' and 'country' and 'industrial areas being drained of medical men who might be attracted to more lucrative ... centres where medical men were away at the war'.¹³⁴ In this system, licensees needed to 'report their address at fixed periods' and answer the CADB's questions.¹³⁵ Further, the CADB could suspend or cancel licences,¹³⁶ which Cumpston envisaged might occur if licensees 'engaged in any undesirable' 'activity'.¹³⁷

The Government and CADB attempted to maximise the number of alien doctors addressing Australia's wartime needs. Anyone legally 'qualified to practise medicine' in 'any country outside Australia' could apply to the CADB for a licence.¹³⁸ Newspapers advertised this opportunity,¹³⁹ Cumpston asked MPs and

Rubinstein, 'Sir James Barrett (1862–1945): Australian Philo-semitic' (1993) 12(1) *Journal of the Australian Jewish Historical Society* 91, 97–9.

131 John Cumpston, 'Draft Press Statement' (Press Statement, 9 February 1942), archived at National Archives of Australia, item barcode 143381 (n 125).

132 Letter from Robert Wade to John Cumpston, 9 March 1942, archived at National Archives of Australia, item barcode 143381 (n 125).

133 Letter from John Cumpston to Robert Wade, 11 March 1942, archived at National Archives of Australia, item barcode 143381 (n 125).

134 Memorandum from John Cumpston to Crown Solicitor, 11 December 1943, archived at National Archives of Australia, series number A1928, control symbol 652/17/1 section 4, item barcode 143384 ('item barcode 143384').

135 'Memorandum Concerning the Licensing of Alien Doctors' (Memorandum, undated), archived at National Archives of Australia, item barcode 100850 (n 114).

136 *Regulations* (n 5) regs 12(1)–(2): a decision of the Commonwealth Alien Doctors Board ('CADB') to suspend or cancel a licence could be appealed to the Minister for Health.

137 Letter from John Cumpston to Henry Newland, 12 March 1942, archived at National Archives of Australia, item barcode 143381 (n 125).

138 *Regulations* (n 5) reg 7(1).

139 See, eg, 'Federal Alien Doctors' Board', *The Herald* (Melbourne, 16 February 1942) 3.

public servants for names of alien doctors,¹⁴⁰ and by 7 March 1942, 141 had been contacted.¹⁴¹ Cumpston encouraged Oswald May, ear, nose and throat specialist, and Clara Lazar Geroe, specialist in 'nervous diseases', to attend licence examinations despite their concern that they might fail a general medicine component.¹⁴² Cumpston also interpreted the *Regulations* broadly to permit Hans-Joachim Austerlitz to be examined, though he was not 'qualified to practise medicine'.¹⁴³ After passing final medical examinations at Berlin University, Austerlitz commenced his practical study year, but, as he told Cumpston, 'a new regulation suddenly barred all the Jews from obtaining the degree' and registration.¹⁴⁴ Cumpston stated that he was 'anxious to be just' in Austerlitz's 'case', given his 'unfortunate position', previous work in British colonies' hospitals and voluntary service in Australia's army.¹⁴⁵ Yet Austerlitz's success in an examination would also boost the number of licensees. The CADB may have failed to exhibit the same compassion in interpreting the *Regulations* in response to a Polish doctor's inquiry about obtaining a licence because, unlike Austerlitz, he was already legally treating civilians. Registered in Victoria owing to his Italian qualifications, Dr Walker was practising in Mitiamo when his wife died and he needed relatives in Sydney to care for his infant.¹⁴⁶ Walker was seemingly ineligible for registration in NSW and Cumpston advised that the 'intention behind the alien practitioners' licensing system' did not include 'personal hardship quite unrelated to war conditions'.¹⁴⁷ Wade agreed, asserting that Walker's "'*ad misericordiam*" appeal' fell outside the CADB's 'scope'.¹⁴⁸

Despite the demand for doctors, the CADB denied many other applicants licences because they failed exams conducted by the Examining Medical

140 See, eg, Letter from John Cumpston to John Gaha, 10 February 1942, archived at National Archives of Australia, item barcode 143381 (n 125); Letter from John Cumpston to Raphael Cilento, 7 February 1942, archived at National Archives of Australia, item barcode 143381 (n 125).

141 'National Security (Alien Doctors Regulations) Records as at 7th March, 1942' (Document, 7 March 1942), archived at National Archives of Australia, item barcode 143381 (n 125).

142 Letter from Oswald May to John Cumpston, 25 June 1942, archived at National Archives of Australia, series number A1928, control symbol 652/17/4 section 1, item barcode 143394 ('item barcode 143394'); Letter from John Cumpston to Oswald May, 29 June 1942, archived at National Archives of Australia, item barcode 143394 (n 139); Letter from Clara Geroe to John Cumpston, undated, archived at National Archives of Australia, A1928, 652/17/B section 1, item barcode 143379 ('item barcode 143379'); Letter from John Cumpston to Clara Geroe, 13 April 1942, archived at National Archives of Australia, item barcode 143379 (n 142).

143 Letter from John Cumpston to Crawford Mollison, 13 July 1942, archived at National Archives of Australia, item barcode 143394 (n 142).

144 Letter from Hans-Joachim Austerlitz to John Cumpston, 25 May 1942, archived at National Archives of Australia, item barcode 143379 (n 142); Letter from John Cumpston to Crawford Mollison, 28 July 1942, archived at National Archives of Australia, item barcode 143379 (n 142); Letter from Hans-Joachim Austerlitz to Edward Holloway, 20 July 1942, archived at National Archives of Australia, item barcode 143379 (n 142).

145 Letter from John Cumpston to Crawford Mollison, 28 July 1942, archived at National Archives of Australia, item barcode 143394 (n 142).

146 Letter from John Cumpston to Robert Wade and John Newman-Morris, 24 August 1943, archived at National Archives of Australia, item barcode 143383 (n 6).

147 Ibid.

148 Letter from Robert Wade to John Cumpston, 25 August 1943, archived at National Archives of Australia, item barcode 143383 (n 6).

Committees ('Committees'), which had been formed in the states with medical schools: NSW, Queensland, South Australia ('SA') and Victoria.¹⁴⁹ In 1942, 107 doctors applied for licences and 95 attended examinations, mostly in Melbourne and Sydney.¹⁵⁰ After reviewing the Committees' reports, the CADB granted just 40 licences (to 26 GPs and 14 specialists).¹⁵¹ By December 1943, 15 more doctors had been examined and 54 in total were licensed (26 to practise in all branches of medical science, 10 in all branches of medicine in an institution under supervision, 9 in an approved speciality, and 9 in an approved speciality in an institution under supervision).¹⁵²

Various factors may account for the exams' high failure rate, but protectionism cannot be excluded. Alluding to this risk, in 1946, Victorian MP Thomas Tunnecliffe claimed that one examiner 'often' publicly expressed his opposition to alien doctors' registration.¹⁵³ Tunnecliffe queried why applications of 'doctors with degrees from very wellknown [sic] European universities' and 'many years postgraduate work' and 'private practice' were unsuccessful.¹⁵⁴ Arthur Metcalfe – then Acting Director-General of Health – attributed their failure to, as he described it, 'the narrow specialization early in' some European medical courses.¹⁵⁵

The Committees needed to assess applicants' 'knowledge and skill for the efficient practise, as a specialist, of one of the special branches of medical science'.¹⁵⁶ Yet May and Geroe's fears were well-founded because the CADB required all licensees to demonstrate 'the knowledge of an Australian graduate'.¹⁵⁷ Consequently, regardless of whether applicants applied as specialists or GPs, Committees also assessed their 'knowledge and skill for the efficient practise of medicine, surgery and obstetrics according to the standards in force at any Australian University'.¹⁵⁸ Many of the applicants who passed the exams qualified in Germany and Austria, some of whose medical courses, a contemporary analysis

149 *Regulations* (n 5) regs 5(1), 8; 'Memorandum Concerning the Licensing of Alien Doctors' (Memorandum, January 1942), archived at National Archives of Australia, item barcode 45407 (n 59) ('Memorandum Concerning the Licensing of Alien Doctors January 1942'): applicants in Tasmania and Western Australia needed to attend examinations at their own expense in Victoria and South Australia respectively.

150 Conference of Commonwealth and State Ministers for Health, December 1943 (n 59).

151 *Ibid.*

152 *Ibid.*

153 Letter from Thomas Tunnecliffe to Arthur Metcalfe, 12 November 1946, archived at National Archives of Australia, series number A1928, control symbol 652/17/4 section 4, item barcode 143397 ('item barcode 143397').

154 *Ibid.*

155 Letter from Arthur Metcalfe to Thomas Tunnecliffe, 22 November 1946, archived at National Archives of Australia, item barcode 143397 (n 153).

156 *Regulations* (n 5) reg 9(c).

157 Letter from John Cumpston to Ludwig Ehrmann, 25 February 1942, archived at National Archives of Australia, item barcode 143381 (n 125); 'Alien Doctors' Licences Forty to be Given', *The Sydney Morning Herald* (Sydney, 6 May 1942) 9.

158 *Regulations* (n 5) reg 9(b); Letter from Howard Boyd Graham to John Cumpston, 19 April 1945, archived at National Archives of Australia, series number A1928, control symbol 652/17/4 section 3, item barcode 143396 ('item barcode 143396').

found, were 'practically identical in length and content' to Australian degrees.¹⁵⁹ Nevertheless, due to differences between Australian and other European countries' medical education and work, European specialists may have lacked the 'general background of sound clinical knowledge' that Cumpston deemed a precondition for a specialist licence.¹⁶⁰ For instance, Dr Howard Boyd Graham, Executive Officer of Victoria's MCC, believed that Italian 'surgical specialists', Vincenzo Costero and Fausto Tesio, failed licence examinations because, Graham asserted, they had no 'opportunity to bring their knowledge of medical subjects, other than surgery, to the required standard'.¹⁶¹ Conversely, while Australian GPs performed some surgical procedures and provided midwifery services, surgery and obstetrics were specialties in Europe, so alien doctors might not have received training in these areas of practice if they had not specialised in them.¹⁶² Indeed, NSW's MCC was 'perturbed over the lack of obstetric experience among the alien doctors'.¹⁶³

The Committees may have lacked expertise to assess some specialists. Each Committee comprised the Professor of Medical Jurisprudence as Chairman and Professors of Medicine, Surgery and Obstetrics.¹⁶⁴ Cumpston informed the Committees that the 'onus' was 'thrown' onto them to assess 'specialists' and 'no formal provision has been made to co-opt specialist consultants to assist' them.¹⁶⁵ Cumpston nonetheless stated that their medical schools' 'teaching hospitals' could 'provide opportunities for any consultation' they 'may desire'.¹⁶⁶

The Committees' latitude in other respects would also have influenced examination outcomes.¹⁶⁷ They could, like the CADB, require applicants to answer questions orally or in writing,¹⁶⁸ and Cumpston advised that 'there is no desire to regiment the [examination] procedure'.¹⁶⁹ The different exam methods the Committees adopted might have suited only some applicants, but an applicant rejected by a Committee in one state could not apply in another.¹⁷⁰ For instance, the Queensland Committee considered that 'the best and fairest method' involved applicants taking histories from patients in 'actual cases', and diagnosing and

159 'Alien Doctors', *The Sydney Morning Herald* (Sydney, 22 December 1939) 8; Conference of Commonwealth and State Ministers for Health, December 1943 (n 59).

160 Letter from John Cumpston to Samuel Burston, 17 June 1944, archived at National Archives of Australia, series number A1928, control symbol 652/17/4 section 2, item barcode 143395 ('item barcode 143395').

161 Letter from Howard Boyd Graham to Central Medical Co-ordination Committee, 30 October 1944, archived at National Archives of Australia, item barcode 143396 (n 158).

162 Letter from Howard Boyd Graham to John Cumpston, 19 May 1942, archived at National Archives of Australia, item barcode 143394 (n 142); Weisz (n 34) 155, 196–7, 203–4, 207, 209; Mody (n 12) 164.

163 Letter from John Cumpston to Raphael Cilento, 29 January 1943, archived at National Archives of Australia, item barcode 143383 (n 6).

164 *Regulations* (n 5) reg 5(1).

165 Circular letter from John Cumpston to Medical Co-ordination Committees, 11 February 1942, archived at National Archives of Australia, item barcode 143381 (n 125).

166 *Ibid.*

167 Mody (n 12) 168.

168 *Regulations* (n 5) reg 8(2).

169 Circular letter from John Cumpston to Medical Co-ordination Committees, 11 February 1942 (n 165).

170 'Memorandum Concerning the Licensing of Alien Doctors January 1942' (n 149).

communicating their prognoses to them.¹⁷¹ By contrast, examinees of the Victorian Committee needed to answer general questions such as, ‘what conditions may give rise to severe shock ... during labour?’¹⁷²

The Committees could ‘record’ ‘conditions’ ‘applicable to [their] finding’.¹⁷³ Yet their willingness to suggest granting licences to practise under supervision to applicants who met some of the stipulated competencies was inconsistent. Moreover, certain Committees’ decisions to fail applicants, rather than make this recommendation, seem inexplicable. Dr Crawford Mollison claimed that, where applicants were ‘reasonably conversant with main principles’, even if they ‘had never practised medicine’, the Victorian Committee that he chaired recommended them ‘for some specialised type of work under supervision in an institution’ to ‘preserve their dignity and morale’.¹⁷⁴ Nevertheless, this Committee did not recommend granting Carl Ernst Baer a licence for general practice at all, let alone a licence under supervision, though he had already worked in general practice in Germany (the Committee simply recorded that Baer was not ‘up to the standard in force in Australian Universities’).¹⁷⁵

Certain applicants probably faced personal obstacles. Alien doctors and their advocates claimed that some were unprepared for and ‘extremely nervous’ during the exams, as they had been unable to practise medicine and/or undertake further education for a considerable time and they lacked experience of Australia’s ‘hospital system’.¹⁷⁶ Some alien doctors’ poor performance in the exams may have been attributable to their unfamiliarity with aspects of Australian medical practice (such as commonly prescribed medication, medical technology and models of patient care) that differed from European medical services during this period.¹⁷⁷ Alien doctors may also have struggled to demonstrate in the brief period of the examination that they possessed ‘knowledge of the English language adequate for the conduct of medical practice’, which the Committees needed to evaluate.¹⁷⁸ It is possible, too, that some alien doctors simply did not meet the high standards that

171 Letter from Raphael Cilento to John Cumpston, 27 April 1942, archived at National Archives of Australia, item barcode 143383 (n 6).

172 University of Melbourne, ‘*National Security (Alien Doctors) Regulations: Obstetrics*’ (Examination, 29 July 1942), archived at National Archives of Australia, item barcode 143394 (n 142).

173 ‘Memorandum Concerning the Licensing of Alien Doctors January 1942’ (n 149).

174 Letter from Crawford Mollison to John Cumpston, 18 November 1942, archived at National Archives of Australia, item barcode 143383 (n 6).

175 Victorian Committee, *Licence Application of Carl Ernst Baer* (Report, 26 March 1942), archived at National Archives of Australia, item barcode 143379 (n 142).

176 Letter from G Fleming to John Cumpston, 20 October 1942, archived at National Archives of Australia, item barcode 143383 (n 6); Letter from Frances Barkman to John Cumpston, 12 October 1942, archived at National Archives of Australia, item barcode 143383 (n 6); Letter from Ludwig Ehrmann to John Cumpston, 20 February 1942, archived at National Archives of Australia, item barcode 143381 (n 125).

177 Robyn Iredale, ‘Luring Overseas Trained Doctors to Australia: Issues of Training, Regulating and Trading’ (2009) 47(4) *International Migration* 31, 33 <<https://doi.org/10.1111/j.1468-2435.2009.00563.x>>.

178 *Regulations* (n 5) reg 9(a). Some applicants were refused a licence including for failing to meet this ground: see, eg, Letter from Arthur Metcalfe to Thomas Tunnecliffe, 22 November 1946 (n 155); *Report of NSW Committee Regarding Gerhard Boehm* (Report, 12 August 1942), archived at National Archives of Australia, item barcode 143379 (n 142).

Australian universities expected of domestic students as well (it appears many Australian students failed university courses at this time).¹⁷⁹

Cumpston 'assumed' and Committee members professed that they 'observed' 'principles of equity and justice'.¹⁸⁰ Dr Stratford Sheldon maintained that the examinations of the NSW Committee, which he chaired, were 'extremely reasonable and quite fair'.¹⁸¹ Mollison considered that his Committee was 'fully appreciative of the tragic circumstances which may have ... resulted in alien doctors arriving in this country'.¹⁸² Mollison stated that, while the Committee could not allow 'sympathy with the individual ... to outweigh' its 'grave responsibility' to advise whether applicants were 'qualified' for practice, he believed it 'exhibited as much leniency as was compatible with the trust imposed upon it'.¹⁸³ Dr Stewart Cowen was a member of the Victorian Committee, which Cumpston thanked for its 'personal consideration extended' to 'candidates'.¹⁸⁴ Cowen reported that he found applicants' 'poor average quality' 'most disappointing', and it 'rather distressing to have to fail so many, when ... the need for their services was urgent'.¹⁸⁵ Edward Holloway, Minister for Health, claimed that he investigated and found no 'justification' for complaints about the Committees' 'unsympathetic or unfair treatment' of applicants.¹⁸⁶

Yet Sheldon's arguments for resisting political pressure to permit 59 failed candidates to work in Australian hospitals and then attend a 'supplementary exam',¹⁸⁷ suggested that protectionism may have influenced some of his examinations. Sheldon noted the 'difficulty of arranging' re-examinations.¹⁸⁸ He also opined, however, that 'a shortage of [GPs]', if it existed, was 'only very temporary and will soon be remedied' by new graduates, and 'at the termination of the war there will be great difficulty in finding scope for all the young men who will be available

179 Gwilym Croucher and James Waghorne, *Australian Universities: A History of Common Cause* (University of New South Wales Press, 2020) 120–1: students especially failed the first years of their courses, which was attributed to them commencing their degrees immediately after finishing school and enrolling on a part-time basis, and to the limited support for students.

180 Letter from John Cumpston to Ludwig Ehrmann, 25 February 1942 (n 157).

181 Letter from Stratford Sheldon to Robert Wade, 20 October 1942, archived at National Archives of Australia, item barcode 143383 (n 6).

182 Letter from Crawford Mollison to John Cumpston, 18 November 1942 (n 174).

183 Ibid.

184 Letter from John Cumpston to Stewart Cowen, 17 December 1943, archived at National Archives of Australia, item barcode 143395 (n 160).

185 Letter from Stewart Cowen to John Cumpston, 24 December 1943, archived at National Archives of Australia, item barcode 143395 (n 160).

186 Letter from Edward Holloway to F Brown, 24 June 1942, archived at National Archives of Australia, series number A1928, control symbol 652/17/5 section 1, item barcode 143398 ('item barcode 143398'); Letter from Edward Holloway to Brian Fitzpatrick, 20 July 1942, archived at National Archives of Australia, item barcode 143394 (n 142).

187 Letter from John Cumpston to Crawford Mollison, 30 October 1942, archived at National Archives of Australia, item barcode 143383 (n 6); Letter from John Cumpston to G Fleming, 15 October 1942, archived at National Archives of Australia, item barcode 143383 (n 6); Letter from Frances Barkman to John Cumpston, 12 October 1942 (n 176); Letter from John Cumpston to Vice-Chancellor, Melbourne University, 5 September 1942, archived at National Archives of Australia, item barcode 143394 (n 142).

188 Letter from Stratford Sheldon to Robert Wade, 20 October 1942 (n 181).

for practice'.¹⁸⁹ Sheldon described the examinations as a 'concession', 'privilege and advantage' granted to alien doctors and considered that re-examinations might 'allow' some 'to slip in through a side door', which he believed was 'unfair' to alien doctors who undertook an Australian medical course.¹⁹⁰

Conscious of his 'responsibility to utilise every competent medical man', Cumpston initially supported the proposal for re-examinations.¹⁹¹ Deviating from his previous attitude to alien doctors' practice, Newman-Morris also stated that he could not 'help but respond sympathetically to' justifications for reassessing the failed candidates.¹⁹² Yet Wade maintained that, given the failed candidates' 'gross lack of knowledge', 'nothing short' of 'three years' University training would be likely to render them fit to treat the public'.¹⁹³ To substantiate his claim that there was 'no proof of an acute shortage of doctors', Wade highlighted that NSW's MCC had 'placed' only one licensee in 'general practice in the country'.¹⁹⁴ Other MCCs similarly posted very few licensees to work as GPs in country areas (by December 1943, only 11 were working in that capacity).¹⁹⁵ Nevertheless, this appeared to reflect their desire to protect local doctors' practices (they even subsidised Australian doctors' incomes so they would remain in rural medical services), rather than an ample supply of doctors.¹⁹⁶ The CADB ultimately rejected the proposal, maintaining that the failed candidates' attendance at re-examinations after undertaking 'special courses or individual tuition' was unreasonable and impracticable.¹⁹⁷ Further, the CADB considered that it could give them an 'advantage' over alien doctors who completed an Australian medical course.¹⁹⁸

The CADB sought to address the failed candidates' predicament, but its proposed solution epitomised the expedience and protectionism that characterised the licensing system. Its plan might have benefited Australian medical services, but not alien doctors, and in fact would have ensured that most of them did not compete for work with local medical practitioners. The CADB asked the medical schools whether they would admit these doctors to the final three years of their courses, so they could 'acquire' the requisite 'knowledge' and obtain a certificate

189 Ibid.

190 Ibid.

191 Letter from John Cumpston to G Fleming, 15 October 1942 (n 187); Letter from John Cumpston to Robert Wade and John Newman-Morris, 15 October 1942, archived at National Archives of Australia, item barcode 143383 (n 6).

192 Letter from John Newman-Morris to John Cumpston, 22 October 1942, archived at National Archives of Australia, item barcode 143383 (n 6).

193 Letter from Robert Wade to John Cumpston, 23 October 1942, archived at National Archives of Australia, item barcode 143383 (n 6).

194 Ibid.

195 Conference of Commonwealth and State Ministers for Health, December 1943 (n 59). By 1946, only three of 19 licensees in Victoria were working as general practitioners in country districts: Victoria, *Parliamentary Debates*, Legislative Assembly, 22 October 1946, 2616 (Richard Brose).

196 Gillseppe (n 14) 128–9; Letter from Brian Fitzpatrick to Edward Holloway, 17 July 1942, archived at National Archives of Australia, item barcode 143394 (n 142).

197 Commonwealth Alien Doctors Board, 'Minutes of CADB Meeting' (Minutes, 28 August 1942), archived at National Archives of Australia, item barcode 143383 (n 6) ('28 August 1942 Minutes').

198 Ibid.

entitling them to reapply for a licence.¹⁹⁹ Yet it was prohibitively expensive for many alien doctors to undertake this study,²⁰⁰ and, even if they did, most would be prevented from practising medicine in Australia indefinitely or at all. When, or at most 12 months after, the War ended, the licensing system would lapse and any licences granted, including on the basis of this study, would become invalid.²⁰¹ Candidates might have commenced, but not completed the course by that time. If they completed the final three years of the medical course in SA and Queensland, they would be entitled to registration in those states.²⁰² Nevertheless, it seems that most of the failed candidates resided in NSW and Victoria where they could only become eligible for registration by completing the entire medical course.²⁰³

In any event, the universities had been and remained reluctant to admit alien doctors to their medical courses, and thus continued to restrict their opportunities to practise medicine in Australia.²⁰⁴ The universities had refused to confer *ad eundem gradum* degrees (degrees of the same rank as the original degrees) on alien doctors with qualifications from countries that did not have reciprocity with Australia.²⁰⁵ Further, especially given the limits on and competition for enrolment in their medical courses, universities prioritised admitting to them local students over alien doctors who wished to retrain.²⁰⁶ Before the War, the universities had attempted to lower the number of medical students to reduce the supply of doctors and thereby address perceived 'overcrowding' in the profession.²⁰⁷ During the War, the Government required the universities to enrol a certain quota of students in their medical courses to ensure they produced enough graduates for the War effort,

199 Commonwealth Alien Doctors Board, '28 August 1942 Minutes' (n 197); Commonwealth Alien Doctors Board, '23 October 1943 Minutes' (n 6).

200 Letter from Frances Barkman to John Cumpston, 12 October 1942 (n 176).

201 Letter from John Cumpston to Hugh Devine, 12 March 1943, archived at National Archives of Australia, item barcode 143383 (n 6).

202 Commonwealth Alien Doctors Board, '28 August 1942 Minutes' (n 197).

203 Letter from G Fleming to John Cumpston, 20 October 1942 (n 176); Letter from John Cumpston, undated, archived at National Archives of Australia, item barcode 143395 (n 160); Letter from John Foster to John Cumpston, 6 February 1943, archived at National Archives of Australia, item barcode 143395 (n 160); Letter from John Cumpston to Registrar, Melbourne University, 18 March 1943, archived at National Archives of Australia, item barcode 143395 (n 160); Letter from G Fleming to Frank McCallum, 9 October 1945, archived at National Archives of Australia, series number A1928, control symbol 652/17/3 section 5, item barcode 143392 ('item barcode 143392').

204 Letter from John Cumpston to Crawford Mollison, 17 March 1942, archived at National Archives of Australia, item barcode 143395 (n 160); Commonwealth Alien Doctors Board, '23 October 1943 Minutes' (n 6); Letter from Harold Dew to John Cumpston, 24 September 1942, archived at National Archives of Australia, item barcode 143383 (n 6); Letter from John Medley to John Cumpston, 25 September 1942, archived at National Archives of Australia, item barcode 143383 (n 6); Letter from Adelaide University to John Cumpston, 6 October 1942, archived at National Archives of Australia, item barcode 143383 (n 6); Letter from Queensland University to John Cumpston, 7 October 1942, archived at National Archives of Australia, item barcode 143383 (n 6).

205 Kunz (n 12) 47; Pensabene (n 14) 130.

206 See, eg, Letter from Harold Dew to John Cumpston, 24 September 1942 (n 204).

207 Willis (n 14) 84–6.

but did not deprive the military of enlistments.²⁰⁸ The medical schools received more applications than they had places.²⁰⁹

Adelaide, Sydney and Queensland Universities had permitted a small number of alien doctors to complete the final three years of their medical courses, whereas Melbourne University generally required them to undertake its entire course.²¹⁰ Ironically, however, in response to this proposal, only Melbourne University agreed to admit some failed candidates to the fourth year of its medical course.²¹¹ Nevertheless, it imposed stringent conditions, including that the CADB confirm the doctors' 'bona fides'.²¹² The CADB was willing to comply with this request.²¹³ Given suspicions especially about enemy aliens, it referred all licence applications to the Commonwealth Investigation Branch ('CIB') (which investigated European immigrants).²¹⁴ (If an applicant's 'bona-fides' or 'loyalty' was reported to be dubious, the CADB could refuse to grant a licence despite a Committee's 'favourable recommendation').²¹⁵ Melbourne University emphasised that subjects completed by candidates admitted to the course under these arrangements could not be credited towards a medical degree.²¹⁶ It also clarified that if 'hostilities [ceased] during the progress of their instruction', they would need to undertake 'the whole course', repeating any subjects they had already passed, to obtain a 'normal qualification'.²¹⁷ The CADB indicated that it was 'unable to accept any responsibility for any candidates' status at the end of the war'.²¹⁸ Unsurprisingly, none of the 23 failed candidates who resided or had been examined in Victoria and whom the CADB notified of this opportunity applied for it.²¹⁹

Notwithstanding this arrangement, before and after it was reached, the CADB assisted at least three alien doctors to obtain further experience and attend second

208 Croucher and Waghorne (n 179) 54, 58–60; PD Tannock and IK Birch, 'Defining the Limits of Commonwealth Education Power: The Drummond Case, the Federal Government and the Universities' (1973) 15(1) *Critical Studies in Education* 163, 163–5 <<https://doi.org/10.1080/17508487309556063>>.

209 Croucher and Waghorne (n 179) 62–4. John Drummond, whose application for admission to Sydney University's medical and dentistry courses was rejected, successfully challenged the validity of regulation 16(1) of the *National Security (Universities Commission) Regulations 1943* (Cth), pursuant to which the Director-General of Manpower limited the number of enrolments in university faculties: *R v University of Sydney; ex parte Drummond* (1943) 67 CLR 95; Tannock and Birch (n 208) 169–70.

210 'Alien Doctor Policies: Uniformity Desired', *The Argus* (Melbourne, 22 August 1939) 4; Weaver (n 11) 52.

211 Letter from John Foster to John Cumpston, 6 February 1943 (n 203).

212 Ibid.

213 Letter from John Cumpston to Hugh Devine, 12 March 1943 (n 201).

214 Ibid; David Dutton, 'The Commonwealth Investigation Branch and the Political Construction of the Australian Citizenry, 1920–40' (1998) 75 *Labour History* 155, 164–9 <<https://doi.org/10.2307/27516607>>.

215 Letter from John Cumpston to Stratford Sheldon, 11 February 1942, archived at National Archives of Australia, item barcode 143384 (n 134); 'Memorandum Concerning the Licensing of Alien Doctors January 1942' (n 149).

216 Letter from John Foster to John Cumpston, 6 February 1943 (n 203).

217 Ibid.

218 Circular letter from John Cumpston, 15 March 1943, archived at National Archives of Australia, item barcode 143395 (n 160).

219 Letter from John Cumpston to Registrar, Melbourne University, 18 March 1943 (n 203); Commonwealth Alien Doctors Board, '23 October 1943 Minutes' (n 6).

examinations.²²⁰ While this was a generous gesture, the CADB recognised that their expertise could be advanced in a short timeframe to improve their usefulness to Australian medical services. The NSW Committee reported that Robert Loebel and Otto Lucas, who applied for licences as specialists in internal medicine, were not 'up to consultant standard', but recommended they be granted 'limited licences'.²²¹ The CADB permitted them to attend re-examinations so the Committee could assess more closely their competence generally and in obstetrics, and thus enable them to apply for licences to practise as GPs.²²² In response to the Committee's reports, the CADB agreed to grant Loebel and Lucas licences if they attended at a women's hospital for three months and 'satisfied' Sydney University's Professor of Obstetrics that they possessed 'the necessary practical knowledge of obstetrics to general practice standards'.²²³

The NSW Committee failed Anna Winkler in medicine, but reported that, given her 'general knowledge', 'knowledge of obstetrics and gynaecology' and 'evident clinical experience', she might be employed 'in some minor capacity under supervision' in a women's hospital.²²⁴ The CADB confirmed that it 'did not feel justified in granting her a licence', but Cumpston, in his 'capacity as Director-General of the [EMS]', asked NSW's MCC to arrange for Winkler to perform 'clinical duties under supervision at the Lewisham Hospital', and the MCC also organised for her to attend obstetrics classes at Sydney University.²²⁵ Despite, as Cumpston described it, the CADB's 'policy of refusing any supplementary examination for candidates' whom it 'rejected' based on a Committee's report, Cumpston considered that Winkler '[warranted] specially sympathetic consideration of a re-examination', as she submitted positive testimonials of her work at the hospital.²²⁶ At the CADB's request, Winkler attended a 'further viva-voce'.²²⁷

220 Letter from John Cumpston to Stratford Sheldon, 28 December 1943, archived at National Archives of Australia, series number A1928, control symbol 652/17/3 section 3, item barcode 143390 ('item barcode 143390'). These instances were nonetheless exceptions. The CADB even denied Carl Baer a re-examination despite intense lobbying on his behalf by the Lancefield community and positive reviews of his work as an army medical officer: see Letter from Lieutenant-Colonel Mechanisation Experimental Establishment, 4 September 1944, archived at National Archives of Australia, item barcode 143396 (n 158); Letter from Frank McCallum to Carl Baer, 24 October 1944, archived at National Archives of Australia, item barcode 143396 (n 158); Letter from John Cumpston to Rupert Downes, 24 August 1945, archived at National Archives of Australia, item barcode 143395 (n 160); Letter from F Harvie to Edward Holloway, 9 December 1942, archived at National Archives of Australia, item barcode 143395 (n 160).

221 Letter from John Cumpston to Robert Wade, 26 January 1943, archived at National Archives of Australia, item barcode 143390 (n 220).

222 Ibid.

223 Ibid.

224 Letter from John Cumpston to Stratford Sheldon, 28 December 1943 (n 220).

225 Letter from AM McIntosh to John Cumpston, 17 August 1943, archived at National Archives of Australia, item barcode 143390 (n 220).

226 Letter from John Cumpston to John Newman-Morris, 3 December 1943, archived at National Archives of Australia, item barcode 143390 (n 220); Letter from John Cumpston to Stratford Sheldon, 28 December 1943 (n 220).

227 Letter from John Cumpston to Stratford Sheldon, 28 December 1943 (n 220); Letter from John Cumpston to Anna Winkler, 6 January 1944, archived at National Archives of Australia, item barcode 143390 (n 220).

The CADB exhibited similar flexibility in broadening the scope of or liberally interpreting constraints on some alien doctors' licences, but this was intended to facilitate their assistance to registered doctors. Moreover, the CADB still denied those licensees autonomy in their work. It thereby protected patients: the CADB sought to ensure that licensees did not endanger the public by practising unsupervised outside their areas of expertise.²²⁸ Yet it also safeguarded the registered doctors' practices in case the licensees were tempted to encroach upon them. Freda Pose, Martha Renth, Charlotte Wolff and Mejer Mirski were licensed 'to practise medicine in all branches of medical science in an institution under supervision'.²²⁹ As Cumpston noted, 'family responsibilities' hindered the women's capacity to work in hospitals, and Victoria's MCC therefore queried whether they could be employed 'as day-time assistants to private practitioners'.²³⁰ Cumpston permitted this construction of the terms of their licences, provided the MCC guaranteed that the practitioners would 'maintain' 'supervision' of the licensees 'as far as possible under conditions of day-time general practice'.²³¹ The CADB extended Mirski's licence to working also 'as an Assistant under the supervision of a medical practitioner'.²³² Graham believed Mirski could 'be used as an assistant in private practice'.²³³ The Medical Superintendent at the Austin Hospital, where Mirski was posted, reported that he was 'a capable physician, with a good general knowledge of medicine'.²³⁴ Further, after meeting Mirski, Newman-Morris wrote to Cumpston that he 'impressed' him as being 'a very good type'.²³⁵ Ironically, Mirski then worked as an assistant to Moritz Meyer.²³⁶

Graham was atypical of those involved in the operation of this licensing system for not viewing alien doctors principally in terms of their utility. For instance, he asked Dr George Bell, Executive Officer of NSW's MCC, whether he could give Hugo Goldberg 'an opportunity to do some professional work', 'because he is a nice old man and I feel very sorry indeed for his present predicament'.²³⁷ Goldberg was licensed to practise ophthalmology under supervision in an institution.²³⁸ Yet Graham told Bell that the Victorian Eye and Ear Hospital indicated it could not even

228 Conference of Commonwealth and State Ministers for Health, December 1943 (n 59); Letter from John Cumpston to Raphael Cilento, 29 January 1943 (n 163).

229 Letter from John Cumpston to Robert Wade, 16 November 1942, archived at National Archives of Australia, item barcode 143395 (n 160); 'CADB Licence of Mejer Mirski' (Licence, 1 January 1944), archived at National Archives of Australia, item barcode 143395 (n 160).

230 Letter from John Cumpston to Robert Wade, 16 November 1942 (n 229).

231 Ibid.

232 Letter from John Cumpston to John Newman-Morris, 5 August 1944, archived at National Archives of Australia, item barcode 143395 (n 160).

233 Letter from John Newman-Morris to John Cumpston, 26 July 1944, archived at National Archives of Australia, item barcode 143395 (n 160).

234 Letter from John Cumpston to John Newman-Morris, 21 July 1944, archived at National Archives of Australia, item barcode 143395 (n 160).

235 Letter from John Newman-Morris to John Cumpston, 26 July 1944 (n 233).

236 Victorian Medical Co-ordination Committee, 'List of Licensed Alien Doctors in Victoria' (Document, 1944), archived at National Archives of Australia, item barcode 143396 (n 158).

237 Letter from Howard Boyd Graham to George Bell, Executive Officer, NSW Medical Co-ordination Committee, undated, archived at National Archives of Australia, item barcode 143396 (n 158).

238 Ibid.

'use him in some capacity', as his 'methods' were 'inefficient' and outdated, and he was 'too old to learn new ones'.²³⁹ In contrast to Graham's attitude, Cumpston highlighted to Cowen and Mollison two benefits of the licensing system: it had 'smoothed over' 'the political difficulties created by the "refugee doctor" problem'; and 'at the same time given us' practitioners, 'most of whom are really rendering useful service' and making 'a useful contribution to our share of the war effort'.²⁴⁰

B Prosecution of Unlicensed and Unregistered Alien Doctors

Concern for upholding practice standards, but also protectionism, motivated the CADB in a self-appointed aspect of its work: preventing alien doctors who lacked registration or licences from practising medicine. The CADB observed that, due to 'loopholes in state legislation', especially in NSW, alien doctors who were ineligible for registration and had not applied for or had been refused a licence were 'practising openly'.²⁴¹ This practice was legal provided the doctors did not engage in certain activities, including holding themselves out as being registered or indicating that they possessed qualifications entitling them to registration (some alien doctors thus advertised that they were 'European consultants' and 'not registered'), and issuing or signing death and sick certificates and prescriptions for some medication.²⁴² The CADB 'recommended that a new regulation be issued prohibiting under heavy penalty' all forms of medical practice 'by any unlicensed or unregistered person who is neither a naturalised or natural-born British subject'.²⁴³

The CADB justified its proposal by alluding to the potential for these practitioners to endanger the public and obtain an advantage over licensees, but also to compete with Australian doctors and usurp their practices. Cumpston maintained that doctors who failed the Committees' exams, but who continued to practise medicine would compromise the 'high medical standards' required in wartime and possibly 'exploit the public'.²⁴⁴ A memorandum he sent to the Crown Solicitor stated that their results were 'disquieting' and some candidates' 'low marks' were inconsistent with their 'paper records of high qualifications and wide experience', making their 'identity as graduates' 'questionable'.²⁴⁵ This memorandum and the CADB also commented that the licensees were 'worse off' than these doctors, as

239 Ibid.

240 Letter from John Cumpston to Crawford Mollison, 17 December 1943, archived at National Archives of Australia, item barcode 143395 (n 160); Letter from John Cumpston to Stewart Cowen, 17 December 1943 (n 184).

241 Memorandum from John Cumpston to Crown Solicitor, 11 December 1943 (n 134).

242 See, eg, Letter from AH O'Connor to Director-General of Health, 26 October 1942, archived at National Archives of Australia, item barcode 143383 (n 6); *Medical Practitioners Act 1938* (NSW) ss 40–3; *Medical Act 1928* (Vic) s 17; *Dangerous Drugs Regulations 1930* (Vic) reg 13(a); 'Alien Doctors Problem', *The Sun* (Sydney, 26 November 1938) 3; 'Doctors Warned', *The Sun* (Sydney, 10 October 1942) 3.

243 Commonwealth Alien Doctors Board, 'Commonwealth Alien Doctors Board Resolutions' (Document, 1–2 May 1942), archived at National Archives of Australia, item barcode 100850 (n 114).

244 Letter from John Cumpston to Edward Holloway, approved by Edward Holloway on 5 May 1942, archived at National Archives of Australia, item barcode 100850 (n 114); Memorandum from John Cumpston to Crown Solicitor, 11 December 1943 (n 134).

245 Memorandum from John Cumpston to Crown Solicitor, 11 December 1943 (n 134).

they were ‘under control’, whereas the unlicensed were free to practise ‘where and how they liked’.²⁴⁶

On 19 August 1942, regulation 16 was inserted into the *Regulations* on the CADB’s recommendation.²⁴⁷ It provided that unregistered and/or unlicensed ‘aliens’ could not ‘perform, for fee or reward, any medical or surgical service’ or ‘hold’ themselves out ‘as being entitled, or qualified, able or willing to practise medicine or surgery’. Also at the CADB’s suggestion, regulation 16(2) created an offence for a licensee to ‘cover’ (assist to practise) an ‘unlicensed alien’.²⁴⁸ Those who failed the Committees’ exams were informed of these prohibitions,²⁴⁹ and, in October, Cumpston noted that ‘several prosperous unregistered practices have been stopped’ under regulation 16.²⁵⁰

Eager to discontinue any recalcitrant alien doctors’ practice, the CADB endorsed instituting legal proceedings if the Attorney-General deemed ‘the evidence sufficient’ to establish a breach of regulation 16.²⁵¹ When NSW’s MCC received a report and notified the CMCC and CADB about Jacob Gonzwa, to accumulate such evidence, Cumpston requested the CIB to investigate whether this Polish doctor was ‘practising medicine or holding himself out as “entitled or qualified, able or willing to practise”’.²⁵² As Gonzwa admitted to CIB officers that he was practising medicine, though he had failed a licence exam and was unregistered, Cumpston engaged the Crown Solicitor to commence proceedings against him.²⁵³ In response, Gonzwa brought an action in the High Court of Australia against the Government and CADB, seeking a declaration that regulation 16 was invalid and ultra vires, and an injunction restraining the CADB from enforcing proceedings based on it.²⁵⁴ On turning 70, Wade resigned from the MBN and wished also to resign from the CADB.²⁵⁵ Yet, seemingly confident of Wade’s support in pursuing contraventions of regulation 16, Cumpston gratefully accepted Wade’s offer to continue serving on the CADB until it

246 Ibid; Commonwealth Alien Doctors Board, ‘Commonwealth Alien Doctors Board Resolutions’ (n 243).

247 Memorandum from John Cumpston to Attorney-General’s Department, 7 May 1942, archived at National Archives of Australia, item barcode 100850 (n 114); *Regulations* (n 5) reg 16, as inserted by *National Security (Alien Doctors) Regulations (Amendment) 1942* (Cth) reg 3.

248 Memorandum from John Cumpston to Attorney-General’s Department, 7 May 1942 (n 247); Letter from John Cumpston to Edward Holloway, approved by Edward Holloway on 5 May 1942 (n 244).

249 Memorandum from John Cumpston to Commonwealth Investigation Branch, 14 October 1943, archived at National Archives of Australia, item barcode 143390 (n 220).

250 Letter from John Cumpston to William Upjohn, 29 October 1942, archived at National Archives of Australia, item barcode 143395 (n 160).

251 Commonwealth Alien Doctors Board, ‘23 October 1943 Minutes’ (n 6).

252 Memorandum from John Cumpston to Commonwealth Investigation Branch, 14 October 1943 (n 249).

253 Letter from John Cumpston to Minister for Health, 16 November 1943, archived at National Archives of Australia, item barcode 143384 (n 134); Letter from John Cumpston to Robert Wade, 20 June 1944, archived at National Archives of Australia, item barcode 143384 (n 134). Newman-Morris informed Cumpston that he approved of this ‘action’: Letter from John Newman-Morris to John Cumpston, 22 June 1944, archived at National Archives of Australia, item barcode 143384 (n 134).

254 *Gonzwa v The Commonwealth* (1944) 68 CLR 469, 469–72 (‘Gonzwa’).

255 Letter from Robert Wade to John Cumpston, 8 February 1944, archived at National Archives of Australia, item barcode 143384 (n 134).

could, Cumpston stated, 'decide, in the light of the findings of the Gonzwa case, just what our official attitude must be in connexion with these cases'.²⁵⁶

After the High Court allowed the Commonwealth's demurrer (alleging that Gonzwa's plea was misconceived in law),²⁵⁷ the CADB instituted proceedings against Gonzwa, and a magistrate convicted and fined him for breaching regulation 16.²⁵⁸ Although prosecutions of other alleged contraventions of regulation 16 were thwarted, this did not reflect any waning of the CADB's enthusiasm for commencing them. Cumpston requested the Attorney-General's Department to enquire 'into the activities of Rolf Doctor and Ernst Kaufmann', whom Committees had not recommended for licences in their specialities of dermatology and venereal diseases (though Kaufmann was recommended for a licence to practise in an institution under supervision), and who admitted on their licence applications that they were practising medicine.²⁵⁹ Nevertheless, the Minister for Health stated that he was 'unwilling to authorize prosecution' of Kaufmann, as he was attending Sydney University and 'misunderstood ... remarks attributed to [the Minister] that he could attend patients to pay for his course'.²⁶⁰ It appears the CADB was encouraged to refrain from pursuing Doctor, too. A report for the Deputy Director-General of Manpower commented that Doctor was 'making a contribution to the health of the population in Sydney and should not be removed from his present work for service with the Civil Aliens Corps unless his professional qualifications can be used in that corps'.²⁶¹

In response to a police report that William Mynssen was holding himself out as a 'Neo Homeopath' and consulting patients in Sydney, Cumpston sought relevant information from the Director-General of Security so that the Minister for Health could consider taking action.²⁶² Though Mynssen had studied medicine in Holland, but not completed the degree, the Minister was reluctant to prosecute him, advising the Police Commissioner that 'his case is a matter of consultation between my

256 Letter from John Cumpston to Robert Wade, 15 February 1944, archived at National Archives of Australia, item barcode 143384 (n 134).

257 *Gonzwa* (n 254) 484 (Williams J).

258 Letter from HFE Whitlam to John Cumpston, 25 October 1944, archived at National Archives of Australia, item barcode 143384 (n 134); Letter from John Cumpston to Robert Wade, 20 June 1944 (n 253).

259 Letter from John Cumpston to Robert Wade, 20 June 1944 (n 253); Letter from John Cumpston to AM McIntosh, 13 December 1943, archived at National Archives of Australia, item barcode 143384 (n 134); Ernst Kaufmann, 'Licence Application' (Application, 9 March 1942), archived at National Archives of Australia, item barcode 143379 (n 142); *Committee Report Regarding Ernst Kaufmann* (Report, 25 April 1942), archived at National Archives of Australia, item barcode 143379 (n 142); Rolf Doctor, 'Licence Application' (Application, 2 March 1942), archived at National Archives of Australia, item barcode 143379 (n 142); *Committee Report Regarding Rolf Doctor* (Report, 25 April 1942), archived at National Archives of Australia, item barcode 143379 (n 142).

260 Letter from Minister for Health to Mackay, Commissioner of Police, 7 December 1942, archived at National Archives of Australia, item barcode 143390 (n 220).

261 Letter from JG Thornton to Deputy Director General of Manpower (NSW), 23 October 1943, archived at National Archives of Australia, item barcode 143384 (n 134).

262 Letter from John Cumpston to Director-General Security Service, 27 November 1942, archived at National Archives of Australia, item barcode 143390 (n 220).

Department and Manpower authorities and Security Service'.²⁶³ Cumpston also informed the Minister that Hans Heydemann, who failed a licence examination and advertised his 'establishment of modern orthopaedics', had contravened regulation 16.²⁶⁴ Nevertheless, CIB investigations found no evidence that Heydemann 'practised as a doctor'.²⁶⁵ Rutland noted that for 18 years before the MBV finally registered Heydemann in 1956, he made orthopaedic shoes and calipers.²⁶⁶

C Registration of Licensees

As the licensing system was 'a wartime measure', the *Regulations* stipulated that all licences would 'lapse and be no longer valid on the day on which the *National Security Act 1939–1940* (Cth) ceases to be in force', which was anticipated to be at most a year after the War ended.²⁶⁷ In 1943, the CADB recommended that Commonwealth and State Health Ministers consider 'giving permanent recognition to those alien doctors who have proved suitable for general registration and generally satisfactory'.²⁶⁸ The Ministers agreed to suggest to their Cabinets post-War 'registration of alien doctors who have been licensed'.²⁶⁹ The MCCs' executive officers supported this recommendation.²⁷⁰ In 1946, Parliaments in NSW, SA, Tasmania and Victoria amended relevant legislation so that licensees who had been practising in those jurisdictions were eligible for registration.²⁷¹ Legislative amendment in WA permitted the periods for which licensees had practised 'in all branches of medical science' to be credited towards the seven years' regional registration that entitled doctors to registration in that State.²⁷² Queensland did not enact amending legislation because its one licensee was undertaking its university's

263 Letter from Minister for Health to Mackay, Commissioner of Police, 7 December 1942 (n 260); Letter from Director General of Security to Director-General of Health, 16 December 1942, archived at National Archives of Australia, item barcode 143390 (n 220).

264 Letter from John Cumpston to Minister for Health, 23 March 1943, archived at National Archives of Australia, item barcode 143395 (n 160); Letter from Central Medical Co-ordination Committee to John Cumpston, 22 March 1943, archived at National Archives of Australia, item barcode 143395 (n 160); Letter from John Cumpston to Director Commonwealth Investigation Branch, 12 October 1942, archived at National Archives of Australia, item barcode 143395 (n 160); Letter from John Cumpston to Director Commonwealth Investigation Branch, 21 October 1942, archived at National Archives of Australia, item barcode 143395 (n 160).

265 Letter from Roland Browne, Inspector, Commonwealth Investigation Branch, to John Cumpston, 5 December 1942, archived at National Archives of Australia, item barcode 143395 (n 160).

266 Rutland, 'An Example' (n 12) 250.

267 Conference of Commonwealth and State Ministers for Health, December 1943 (n 59); *Regulations* (n 5) reg 15; Circular letter from John Curtin to all Australian states, 6 January 1942, archived at National Archives of Australia, item barcode 100850 (n 114).

268 Commonwealth Alien Doctors Board, '23 October 1943 Minutes' (n 6).

269 Commonwealth Alien Doctors Board, 'Minutes of Commonwealth Alien Doctors Board Meeting' (Minutes, 20 October 1944), archived at National Archives of Australia, item barcode 143384 (n 134).

270 Ibid.

271 *Medical Practitioners (Amendment) Act 1946* (NSW) s 2, inserting *Medical Practitioners Act 1938–9* (NSW) s 17B (the cap on registering eight non-natural born British subjects annually did not apply to the licensees); *Medical Practitioners' Registration Act 1946* (Vic) s 2, amending *Medical Act 1928* (Vic) s 13; *Medical Practitioners Act Amendment Act 1946* (SA) s 3, inserting *Medical Practitioners Act 1919–1935* (SA) s 19(1)(d); *Medical Act 1946* (Tas) s 2, amending *Medical Act 1918* (Tas) s 15.

272 *Medical Act Amendment Act 1946* (WA) s 2, inserting *Medical Act 1894–1940* (WA) s 11(3).

medical course.²⁷³ Though inconsistent with pre-War attempts to prevent alien doctors from practising medicine, endorsement of the licensees' registration was inspired at least partly, like the licensing system, by expedience and protectionism.

The CMCC recognised that after the War ended there would be insufficient experienced local doctors to meet civilian demand even in metropolitan locations, which the licensees' continued practice would address. By December 1943, the ratio of doctors to population had dropped from 1 to 1,244 at the outbreak of War to 1 to 1,777, and only 3,000 GPs remained from the 5,000 practising doctors in Australia before the War.²⁷⁴ Some demobilised medical officers were expected to move to the UK or USA.²⁷⁵ At the CMCC's request, medical courses had been shortened to accelerate graduations and, in 1945, the CMCC opposed the universities' request to restore the courses' length due to 'the still urgent need for doctors in the services' and 'civil community'.²⁷⁶ Sir Samuel Burston, CMCC Chairman, speculated that, as a consequence of this measure, 70% of the doctors who returned to Australia would have had 'no experience of civil practice except 9–12 months in hospital' and, while 50% would 'have had considerable experience in general [army] hospitals', they lacked exposure to 'important branches of medicine'.²⁷⁷ Burston predicted that, of the 2,000 demobilised medical officers, 700 would 'need refresher courses', 700 would require 'at least three months' residence in a general hospital plus special instruction', and 1,500 would need training in obstetrics and paediatrics.²⁷⁸ Cumpston agreed that many medical officers should be encouraged to undertake further study before commencing civil practice.²⁷⁹

The CADB and MPs recognised that the licensees' competence had been established, first through the Committees' exams and then by the MCCs' reports.²⁸⁰ They could therefore be trusted to ameliorate the continued dearth of expert medical services. Indeed, the licensees were potentially safer than registered doctors whose skills had not been evaluated. Empowered to specify the duration of licences,²⁸¹ the CADB issued year-long licences, and reviewed the MCCs' reports on licensees in deciding whether to renew licences for a further year.²⁸² The CADB confirmed that, in the system's first year, it received 'no complaint of improper or unprofessional

273 Arthur Metcalfe, Memorandum to Attorney General's Department, 23 September 1946, archived at National Archives of Australia, item barcode 100850 (n 114).

274 'Summaries of Minutes of Federal Council and Central Medical Co-ordination Committee Meetings' (Document, 1939–43), archived at National Archives of Australia, item barcode 458390 (n 55).

275 Ibid.

276 Ibid; Federal Council, '30 April 1941 Minutes' (n 113); Croucher and Waghorne (n 179) 54.

277 'Summaries of Minutes of Federal Council and Central Medical Co-ordination Committee Meetings' (n 274).

278 Ibid.

279 Ibid.

280 Conference of Commonwealth and State Ministers for Health, December 1943 (n 59); Commonwealth Alien Doctors Board, '23 October 1943 Minutes' (n 6); Victoria, *Parliamentary Debates*, Legislative Assembly, 22 October 1946, 2616 (Richard Brose).

281 *Regulations* (n 5) reg 10(4).

282 Commonwealth Alien Doctors Board, '23 October 1943 Minutes' (n 6); Letter from John Cumpston to Howard Boyd Graham, 14 September 1943, archived at National Archives of Australia, item barcode 143395 (n 160); Letter from John Cumpston to Howard Graham, 2 December 1943, archived at National Archives of Australia, item barcode 143395 (n 160).

conduct' or 'incompetence', and the MCCs advised that the licensees had 'settled down to give useful service' and their 'standards of knowledge and skill, as assessed by the' Committees were 'maintained in practice'.²⁸³ With the exception of six doctors, the licensees' 'willingness to co-operate and to undertake work as desired by' the MCCs was deemed 'noteworthy'.²⁸⁴ (The licensees were considered more co-operative than registered alien doctors, though there was no incentive for the latter to practise in less lucrative areas).²⁸⁵ Although some licensees lacked 'competence in specialist fields', such as midwifery, this was attributed to 'limited experience' and they were 'given an opportunity of special hospital practice under supervision'.²⁸⁶ The MCCs commented favourably on individual doctors, noting, for instance, their 'satisfactory' work and English (for example, Robert Gruenfeld), as well as their pleasant temperament (Georg Rechelmann).²⁸⁷ Some doctors' contributions were recognised as exceptional, such as Arthur Schuller's 'outstanding ability in head neurology', and Rachela Jakobowicz's 'important work in connection with blood grouping for Red Cross purposes' at the Walter and Eliza Hall Institute.²⁸⁸

Subsequent assessments of the licensees were also generally positive.²⁸⁹ Some reports of less than satisfactory service (for instance, Freda Pose), competence (such as Charlotte Wolff) and co-operativeness (radiologist, Felix Leaser, for example, conflicted with Grafton Base Hospital over his leave entitlements) were anomalous.²⁹⁰ After the War ended, it was initially unclear when the *Regulations* would lapse, so the CADB needed to consider whether to renew licences that would expire on 31 December 1945.²⁹¹ Frank McCallum, who took over from Cumpston on his retirement in 1945 as Director-General of Health and Chairman of the CADB, sought the MCCs' views.²⁹² All the respondents approved of renewing the licences of alien doctors in their jurisdictions, except for Queensland's MCC,

283 Conference of Commonwealth and State Ministers for Health, December 1943 (n 59); Commonwealth Alien Doctors Board, '23 October 1943 Minutes' (n 6).

284 Conference of Commonwealth and State Ministers for Health, December 1943 (n 59).

285 Ibid; Commonwealth Alien Doctors Board, 'Agenda for Commonwealth Alien Doctors Board Meeting' (Agenda, 23 October 1943), archived at National Archives of Australia, item barcode 143383 (n 6).

286 Conference of Commonwealth and State Ministers for Health, December 1943 (n 59).

287 Victorian Medical Co-ordination Committee, *Report on Licensees* (Report, undated), archived at National Archives of Australia, item barcode 143395 (n 160).

288 Letter from George Bell to John Cumpston, 30 September 1943, archived at National Archives of Australia, item barcode 143390 (n 220).

289 See, eg, Victorian Medical Co-ordination Committee, *Report on Licensees* (Report, 1944), archived at National Archives of Australia, item barcode 143396 (n 158).

290 Victorian Medical Co-ordination Committee, *Report on Licensees* (Report, undated) (n 287); Letter from George Bell to Frank McCallum, 16 November 1945, archived at National Archives of Australia, item barcode 143392 (n 203).

291 Letter from Frank McCallum to Medical Co-ordination Committees' Executive Officers, 5 November 1945, archived at National Archives of Australia, series number A1928, control symbol 652/17/1 section 5, item barcode 143385 ('item barcode 143385').

292 Ibid.

which stated that, after granting Paula Schubert 'sick leave', she 'failed to comply with [its] direction to continue practising in' Townsville Hospital.²⁹³

Registering the licensees was also useful as it would subdue and pre-empt further anticipated public pressure to permit their ongoing practice. At its first meeting, the CADB 'recognised as inevitable' that 'there would be a demand for' the licensees' registration when the system 'lapsed' 'at the end of the war'.²⁹⁴ As Cumpston expected that doctors who had been licensed to practise in all branches of medicine would 'almost certainly have a case' for 'full registration rights', he only agreed to extend licences for this practice if doctors demonstrated 'full competence in obstetrics'.²⁹⁵ By the end of the War, it was clear that the public depended on the licensees. Even the BMA agreed with the Victorian Government that, if the licensees' practice discontinued, 'a great deal of hardship will be caused ... to the communities for whose medical welfare they have been responsible'.²⁹⁶ Various bodies had begun agitating for the licensees to be permitted to continue working especially in country areas. Due to past difficulties in attracting doctors to work in 'small communities in remote areas', the Bush Nursing Hospital and Tongala Red Cross advocated for registration of licensees who were practising there (such as Max Suss, the full-time EMS practitioner in Tongala).²⁹⁷ Sensing the mood, Victorian MPs also acknowledged that it was 'right and proper that, since we availed ourselves of [alien doctors'] services, we should recognize their right to practise here'.²⁹⁸

By supporting, or at least not contesting, the licensees' eligibility for registration, representatives of the Australian medical profession counteracted actual or perceived public censure of their previous attempts to impede alien doctors' practice. The BMA's Victorian branch indicated that it did 'not oppose

293 Letter from Executive Officer, Western Australian Medical Co-ordination Committee, to Frank McCallum, 19 November 1945, archived at National Archives of Australia, item barcode 143385 (n 291); Letter from JG Wagner, Executive Officer, Queensland Medical Co-ordination Committee, to Frank McCallum, 18 November 1945, archived at National Archives of Australia, item barcode 143385 (n 291); Letter from JHB Walch, Assistant to Executive Officer, Tasmanian Medical Co-ordination Committee, to Frank McCallum, 8 November 1945, archived at National Archives of Australia, item barcode 143385 (n 291); Letter from George Bell to Frank McCallum, 14 November 1945, archived at National Archives of Australia, item barcode 143385 (n 291); Letter from CT Piper, Executive Officer, South Australian Medical Co-ordination Committee, to Frank McCallum, 8 November 1945, archived at National Archives of Australia, item barcode 143385 (n 291). It appears that a response from Howard Boyd Graham is not extant. Townsville Hospital's Medical Superintendent previously reported that Schubert's medical work was 'highly satisfactory': Letter from GH Moore to JG Wagner, 27 September 1943, archived at National Archives of Australia, item barcode 143398 (n 186).

294 Commonwealth Alien Doctors Board, '23 October 1943 Minutes' (n 6).

295 Letter from John Cumpston to Raphael Cilento, 29 January 1943 (n 163).

296 Victoria, *Parliamentary Debates*, Legislative Council, 13 November 1946, 3167 (Percy Clarey, Minister of Labour).

297 Letter from NH Boase, Honorary Secretary, Bush Nursing Hospital, to John McDonald, 11 December 1945, archived at National Archives of Australia (n 291); Letter from Elizabeth Hitchens, Honorary Secretary, Tongala Red Cross, to John McDonald, 10 December 1945, archived at National Archives of Australia, item barcode 143385 (n 291).

298 Victoria, *Parliamentary Debates*, Legislative Assembly, 13 November 1946, 3167 (William Beckett). See also Victoria, *Parliamentary Debates*, Legislative Assembly, 22 October 1946, 2616 (Richard Brose).

the [licensees'] proposed registration'.²⁹⁹ It appears the BMA may have sought to whitewash its earlier response to alien doctors. In 1940, the Federal Council resolved that registered doctors should be admitted to the BMA 'irrespective of nationality'.³⁰⁰ Newman-Morris's support for the licensees' registration was consistent with his personal reputation as a 'humanitarian'.³⁰¹ He worked extensively for the Red Cross and, in his delivery of the 12th Stawell oration in 1945, extolled its 'principles' of providing 'succour for all victims of war' and 'brotherly help' regardless of 'national, religious and social differences'.³⁰²

Some MPs expressed concern that, if permitted to continue practising medicine, the licensees would compete with local doctors who returned from War.³⁰³ Nevertheless, MPs supporting their registration emphasised that this risk was negligible; there were so few licensees – still just 54 in 1946 – that their ongoing work would 'make little difference'.³⁰⁴ Moreover, most had been working in country areas, laboratories and hospitals,³⁰⁵ so probably few, if any, would move into metropolitan general practice. Indeed, in 1946, in endorsing giving 'full licences' to alien doctors who had been granted 'limited licences for special work', Wade observed, 'it is unlikely that they will become [GPs] but will tend to keep their specialised work' and 'any of our specialists who wished could go into general practice'.³⁰⁶ Further, as 56% of the licensees in 1943 were aged between 40 and 50,³⁰⁷ it might have been presumed that some of them were not far from retirement.

In addition to addressing ongoing shortages of doctors, making only the licensees eligible for registration would protect the local profession from other alien doctors' potential competition.³⁰⁸ Already in 1941, a post-War 'influx' of alien doctors was anticipated,³⁰⁹ and, in 1946, Metcalfe sought to discourage immigration of foreign doctors in the interests of demobilised Australian doctors who would 'be seeking

299 Victoria, *Parliamentary Debates*, Legislative Assembly, 22 October 1946, 2616 (Richard Brose).

300 Federal Council, 'Minutes of Federal Council Meeting' (Minutes, 29 February 1940), archived at National Archives of Australia, item barcode 458390 (n 55).

301 ML Verso, 'Newman-Morris, Sir John (1879–1957)', *Australian Dictionary of Biography* (Web Page, 2006) <<https://adb.anu.edu.au/biography/newmanmorris-sir-john-7832>>.

302 John Newman-Morris, 'Medical Aspects of Red Cross in the Second World War' (JC Stephens, 1945) 23–4; 'Sir John Newman Morris Dies', *The Argus* (Melbourne, 4 January 1957) 3.

303 New South Wales, *Parliamentary Debates*, Legislative Council, 18 December 1945, 2115–16 (Norman Kater and William Robson).

304 Victoria, *Parliamentary Debates*, Legislative Assembly, 22 October 1946, 2616–17 (Richard Brose); New South Wales, *Parliamentary Debates*, Legislative Council, 18 December 1945, 2110 (Robert Downing, Minister of Justice).

305 Ibid.

306 Letter from Robert Wade to Arthur Metcalfe, 18 January 1946, archived at National Archives of Australia, item barcode 143385 (n 291).

307 Conference of Commonwealth and State Ministers for Health, December 1943 (n 59).

308 Indeed, Mody argues that the decision to make the licensees eligible for registration 'did not represent a change in official policy', but merely 'a softening of official attitudes towards this particular group': Mody (n 12) 169.

309 'Summary of Minutes of Federal Council Meeting' (Document, 4 September 1941), archived at National Archives of Australia, item barcode 458390 (n 52).

practices'.³¹⁰ Metcalfe even opposed the suggestion of Newman-Morris and Graham to license one, or according to Newman-Morris's proposal two, alien doctors serving in the Australian army without an examination so they could obtain registration under Victoria's amended legislation.³¹¹ Metcalfe opined, 'it would be wrong in principle for the alien doctors regulations to be used to permit a person to enter the medical profession by the backdoor'.³¹² State medical boards would not be required to allow alien doctors generally to practise medicine if just the licensees were registered and the preconditions for other IMGs' eligibility for registration remained unaltered. In endorsing their respective bills, Victorian and NSW MPs assured the legislatures that they would 'not open registration to a flood' of alien doctors.³¹³

IV LESSONS FROM THE PAST

Australia is among several developed countries, including Ireland, New Zealand and Norway, that continue to rely heavily on medical migrants to address shortages of doctors, especially in rural and regional areas.³¹⁴ History can teach us important lessons about how to shape laws governing the practice of these vital constituents of the medical workforce. In particular, we can learn from the 1940s that the medical registration and regulatory system should facilitate IMGs to provide valuable medical services, but also reward them for their contributions with opportunities to fulfil their career aspirations.

The past cautions us to ensure that registration authorities' decisions to allow IMGs to practise medicine are informed by rigorous and fair evaluation of their abilities. In requiring alien doctors to pass an examination, the licensing system diverged from other laws during that period that governed IMGs' medical practice.³¹⁵ At that time, whether the country in which they obtained their qualifications had reciprocity with Australia was often the principal determinant of their eligibility for registration. By contrast, the examiners needed to ascertain if licence candidates

310 Memorandum from Arthur Metcalfe to Secretary, Department of Immigration, 7 March 1946, archived at National Archives of Australia, series number A1928, control symbol 652/17 section 6, item barcode 143377 ('item barcode 143377'); Memorandum from Arthur Metcalfe to Secretary, Department of

External Affairs, 5 July 1946, archived at National Archives of Australia, item barcode 143377 (n 310).

311 Letter from John Newman-Morris to Arthur Metcalfe, 24 June 1946, archived at National Archives of Australia, item barcode 143385 (n 291); Letter from Howard Boyd Graham to Arthur Metcalfe, 3 July 1946, archived at National Archives of Australia, item barcode 143385 (n 291); Letter from Arthur Metcalfe to Howard Boyd Graham, 5 July 1946, archived at National Archives of Australia, item barcode 143385 (n 291).

312 Letter from Arthur Metcalfe to Howard Boyd Graham, 5 July 1946 (n 311).

313 Victoria, *Parliamentary Debates*, Legislative Assembly, 2 October 1946, 2232 (William Barry, Minister of Health). See also Victoria, *Parliamentary Debates*, Legislative Council, 13 November 1946, 3166 (Percy Clarey, Minister of Labour); New South Wales, *Parliamentary Debates*, Legislative Council, 18 December 1945, 2117–19 (Robert Downing, Minister of Justice).

314 Marcus, Purwaningrum and Short (n 10) 53; O'Sullivan et al (n 10) 2, 4; Doug Hendrie, 'RACGP Welcomes Fast-Tracked IMG Visas to Tackle Rural Workforce Issues', *Royal Australian College of General Practitioners* (online, 16 October 2020) <<https://www1.racgp.org.au/news/gp/professional/racgp-welcomes-fast-tracked-img-visas-to-tackle-ru>>.

315 Mody (n 12) 168.

could practise medicine safely and competently, and regulation 16 prohibited practice by those whom they deemed unable to do so. Although assessing IMGs' knowledge was a significant advance, the Committees' examination processes were inconsistent, assessors did not necessarily have relevant expertise to evaluate certain specialists, and their substantial discretion allowed bias and protectionism potentially to influence their recommendations. Therefore, regulation 16 may have targeted alien doctors who failed Committee examinations, but were capable of practising medicine proficiently (though it also fulfilled the aim of reducing alien doctors' competition with local graduates).

Today, a national statutory authority – the Medical Board of Australia ('MBA') – registers doctors in all Australian jurisdictions and only permits IMGs to practise medicine following a favourable assessment of their qualifications, knowledge, experience and skills.³¹⁶ Bodies that are independent of the MBA – the Australian Medical Council and specialist medical colleges – undertake these evaluations,³¹⁷ and IMGs must 'provide proof of English language proficiency' before applying for this assessment.³¹⁸ Yet these organisations can heed lessons from the past to perform their roles uniformly and impartially, and take into account the challenges that IMGs may still experience in undertaking examinations in particular.³¹⁹

This historical episode also highlights that, where assessments of IMGs identify deficiencies in their knowledge and/or skills, giving them opportunities to demonstrate and improve their competencies can enable them to provide beneficial medical services. Trained in different medical systems and, in certain cases, prevented from completing their medical education, it appears that some alien doctors were unprepared for the idiosyncrasies of Australian medical practice. The CADB exercised its discretion flexibly and compassionately to give a few individuals a chance to prove their abilities (though this also served expedient objectives). For instance, the CADB permitted Austerlitz, whose path to medical practice was impeded by discriminatory measures, to attend an examination and thus potentially work as a doctor in Australia. Further, the CADB arranged for certain alien doctors (such as Loebel, Lucas and Winkler) to undertake practical training and other education that was tailored to redressing their shortcomings. In addition, MCCs reported that, through hospital experience and medical practitioners' supervision of them, several licensees developed their proficiencies.

316 See, eg, *Health Practitioner Regulation National Law Act 2009* (Qld) sch ss 31(1), 35(1)(a), (d)–(e), 53, 58, 62, 65 ('*National Law*'). Queensland passed the substantive legislation establishing the MBA and the National Registration and Accreditation Scheme, which commenced in 2010, and other states and territories adopted, in some instances modified, and applied the *National Law* as a law of their jurisdictions.

317 'About the AMC', *Australian Medical Council Limited* (Web Page) <<http://www.amc.org.au/about/about-2/about/>>; 'Standards, Reports and Resources', *Medical Board of Australia* (Web Page) <<https://www.medicalboard.gov.au/registration/international-medical-graduates/specialist-pathway/guides-and-reports/>>.

318 'English Language Proficiency', *Australian Medical Council Limited* (Web Page) <<https://www.amc.org.au/assessment/elp/>>.

319 Pascoe (n 10) 79, 81; Neville D Yeomans et al, 'Demographics and Performance of Candidates in the Examinations of the Australian Medical Council, 1978–2019' (2021) 214(2) *Medical Journal of Australia* 54, 54, 57–8 <<https://doi.org/10.5694/mja2.50800>>.

The licensees were smoothly integrated into the local workforce and their progress was regularly monitored to ensure that high professional standards were maintained (though some reviews focused on licensees' industrial disputes rather than their medical practice).

In other instances, however, alien doctors were denied a chance to participate in educational activities that focused on aspects of their knowledge and/or skills that they seemingly needed to enhance in order to meet the demands of Australian medical practice. Most doctors who failed the Committees' exams were unable to observe or undertake tasks in a supervised hospital environment and attend a re-examination. If they wished to practise medicine, they needed to complete an Australian medical course or three years of it, at least some of which may have been unnecessary for them to undertake given their experience and training. Moreover, undertaking the final three years of an Australian course did not guarantee that they would be permitted to practise medicine. The public was therefore deprived of more medical practitioners and these alien doctors could not pursue the profession for which they had trained.

The World Health Organization ('WHO') has recognised that, still today, training IMGs and giving them meaningful work experience can benefit the countries to which they migrate, but also their countries of origin if they return to them.³²⁰ In light of many health practitioners' movement from low- and middle-income countries to high-income countries, in 2010, the WHO issued the *Global Code of Practice on the International Recruitment of Health Personnel* ('Code').³²¹ While respecting 'the freedom of health personnel ... to migrate to countries that wish to admit and employ them',³²² the *Code* recommends that Member States 'discourage active recruitment of health personnel from developing countries facing critical shortages of health workers'.³²³ Further, where health personnel do move countries, even if only temporarily, the *Code* suggests that Member States 'ensure' that they 'enjoy opportunities ... to strengthen their professional education, qualifications and career progression' and are 'offered appropriate induction and orientation programmes that enable them to operate safely and effectively'.³²⁴

At present, IMGs who wish to provide medical services in Australia are often required to undertake supervised medical practice.³²⁵ IMGs may be granted 'provisional registration' to enable them to complete the period of supervised

320 WHO *Global Code of Practice on the International Recruitment of Health Personnel*, WHO Doc WHA63.16 (30 May 2010) art 5.3 <https://cdn.who.int/media/docs/default-source/health-workforce/migration-code/code_en.pdf?sfvrsn=367f7d35_7&download=true> ('*WHO Global Code*').

321 David Silvestri et al, 'Medical and Nursing Students' Intentions to Work Abroad or in Rural Areas: A Cross-Sectional Survey in Asia and Africa' (2014) 92(10) *Bulletin of the World Health Organization* 750, 750 <<https://doi.org/10.2471/BLT.14.136051>>.

322 WHO *Global Code* (n 320) art 3.4.

323 Ibid art 5.1.

324 Ibid art 4.6.

325 See, eg, 'Competent Authority Pathway', *Medical Board of Australia* (Web Page) <<https://www.medicalboard.gov.au/Registration/International-Medical-Graduates/Competent-Authority-Pathway.aspx>> ('Competent Authority Pathway'); 'Standard Pathway', *Medical Board of Australia* (Web Page) <<https://www.medicalboard.gov.au/registration/international-medical-graduates/standard-pathway.aspx>>; Pascoe (n 10) 68–9.

practice that they require to become eligible for general registration.³²⁶ If IMGs obtain 'limited registration', for example to practise in an 'area of need', they also must practise under supervision.³²⁷ IMGs seeking to specialise may need to undertake supervised practice, too.³²⁸ The MBA considers 'work performance reports' from IMGs' supervisors to determine whether they are 'suitable for ongoing registration'.³²⁹ 'Good supervision', the MBA advises, will 'enable' IMGs to 'develop and enhance their knowledge, skills and professionalism'.³³⁰ Nevertheless, many IMGs are compelled to work in remote locations that lack many locally-trained doctors, and some have reported their isolation in those environments and a dearth of opportunities to improve their skills and advance their careers.³³¹

Indeed, the past illustrates the risk for laws designed to address shortages of doctors to permit expedient treatment of IMGs that disregards their professional ambitions. As the introduction of the alien doctors licensing system highlighted, it is crucial that medical registration laws can be adapted to respond to public demand for medical services. Nevertheless, influenced by a protectionist agenda, alien doctors' right to practise in this system was conditional and controlled. Alien doctors were used to fill gaps in medical practice, but were often prevented from working independently and in areas of practice, institutions and geographical locations of their choice, even where they had proven their competence. Yet, while it was also prompted partly by expedience and protectionism, the decision to make licensees eligible for registration in some states after the War ended rewarded them for their contribution to public health with freedom to practise autonomously and wherever they liked in those jurisdictions.

Pursuant to current Australian laws governing IMGs' medical practice, they can still be treated expediently. Some IMGs may be confined to practising medicine in a remote area that has a shortage of doctors for a long time even if they obtain general registration, which can impede their career progression.³³² Under the *Health Insurance Act 1973* (Cth), in order to access Commonwealth Government subsidies for private medical services through Medicare (Australia's health insurance scheme), IMGs, once registered, must complete the so-called '10-year moratorium'.³³³ IMGs who are GPs need to work in a 'Distribution Priority Area' and IMGs who are specialists in a 'District of Workforce Shortage' (though they can reduce the time for which they must work in these areas by practising

326 'Competent Authority Pathway' (n 325); *National Law* (n 254) s 62; Medical Board of Australia, 'Guidelines: Supervised Practice for International Medical Graduates' (Guidelines, 4 January 2016) 2 ('Guidelines'); Pascoe (n 10) 70.

327 Medical Board of Australia, 'Guidelines' (n 326) 2; *National Law* (n 313) sch s 67; Pascoe (n 10) 69.

328 Pascoe (n 10) 70.

329 Medical Board of Australia, 'Guidelines' (n 326) 2.

330 Ibid.

331 Marcus, Purwaningrum and Short (n 10) 53, 56, 58; O'Sullivan et al (n 10) 7.

332 Iredale (n 177) 33.

333 *Health Insurance Act 1973* (Cth) s 19AB; Department of Health and Aged Care, 'Section 19AB Restricted Doctors and Access to Medicare', *Australian Government* (Web Page) <<https://www.health.gov.au/health-topics/health-workforce/medicare-billing-restrictions/section-19ab>>.

in more remote locations for certain periods, and some specialists can work in any location).³³⁴ IMGs' moratorium continues after 10 years unless and until they obtain permanent residency or citizenship.³³⁵

V CONCLUSION

In 1943, Winkler wrote to Cumpston, 'try as I might I could not get rid of the stabbing thought of being wiped out as to my profession' and 'I feel that in these times I could be of some service to the country I owe so much'.³³⁶ Before the advent of the alien doctors licensing system, the professional careers of many doctors who had, like Winkler, escaped from Nazi Europe and immigrated to Australia, were effectively 'wiped out'. Prominent members of the BMA and state medical boards, including Cumpston, Newman-Morris and Wade, expended considerable effort in seeking to prevent alien doctors from practising medicine. Yet between 1942 and 1946, as the CADB, these men permitted 54 alien doctors to contribute valuably to the nation that gave them refuge. As the licensees were eligible for registration after the War ended, they could continue pursuing their profession.

Notwithstanding this, many other alien doctors, whose professional opportunities in Europe had been thwarted by discrimination and persecution, were denied this opportunity. Moreover, the licensing system and the CADB's work did not reflect a dramatic change to the prevailing, protectionist attitude towards alien doctors. The introduction of this system was not inspired by a generous desire to assist the doctors to establish medical careers in Australia. The medical profession did not want, but recognised it needed alien doctors' help and Australian governments turned to them in desperation to address shortages of doctors during and after the War. While the CADB used alien doctors to meet gaps in medical services, they tightly controlled their practice to preclude them from competing with local medical practitioners. Even the decision to amend relevant legislation so that the licensees were eligible for registration when the War ended was driven, at least partly, by expedient and protectionist motives. It was clear that Australia continued to depend on their medical services. The few licensees' ongoing practice would not pose a threat to Australian doctors' work. Further, registering the licensees would suppress public pressure to permit them to continue practising medicine, while enabling the medical boards to refuse to register other alien doctors who were predicted to arrive in Australia.

We can learn valuable lessons from this history about how to craft laws that govern the medical practice of IMGs on whom countries may depend to address shortages of doctors. Despite some continued opposition to immigration in Australia

334 See above n 333; O'Sullivan et al (n 10) 3.

335 Department of Health and Aged Care (n 333).

336 Letter from Anna Winkler to John Cumpston, 29 April 1943, archived at National Archives of Australia, item barcode 143390 (n 220).

today,³³⁷ this country still relies on IMGs. It is vital that IMGs have a chance to prove their capability, but that they are only permitted to practise medicine if consistent, rigorous and fair evaluations have confirmed their safety and competence to do so. Where such assessments reveal gaps in IMGs' knowledge and/or skills, giving them opportunities to undertake training that specifically addresses these issues can lead to them providing high-quality, much needed medical services. It has proven important that laws regulating IMGs' practice can be modified in order to respond to public demand for medical services. Nevertheless, it is equally imperative that such laws do not permit treatment of IMGs solely in terms of their usefulness. These laws should also enable IMGs to be compensated for their contribution to public health with the chance to fulfil their career ambitions.

337 See, eg, Helen Davidson, 'Almost Half of Australians Believe Immigration Should Be Reduced', *The Guardian* (online, 3 May 2019) <<https://www.theguardian.com/world/2019/may/02/almost-half-of-australians-believe-immigration-should-be-reduced-poll-finds>>.