

Osteopaths Registration Bill

EXPLANATORY MEMORANDUM

OUTLINE

The purpose of this Bill is to make provision for the registration of osteopaths and to establish the Osteopaths Registration Board of Victoria.

The Board will be incorporated by the Act. It will consist of seven members, one of whom will be a lawyer, two will be lay persons, and four will be osteopaths.

The Bill will—

- (a) protect the public by providing for the registration of osteopaths and investigation into the professional conduct and fitness to practise of registered osteopaths, and
- (b) establish the Osteopaths Registration Board of Victoria and the Osteopaths Registration Board Fund of Victoria; and
- (c) regulate the conduct of osteopaths and advertising of osteopathic services.

PART 1—PRELIMINARY

Clause 1 sets out the purpose of the Act.

Clause 2 is the commencement provision. Sections 1 and 2 are to come into operation on Royal Assent. The rest of the Act will come into operation on a date to be proclaimed but no later than 1 July 1997.

Clause 3 defines various terms used in the Act.

PART 2—REGISTRATION

Division 1—Procedure for Obtaining Registration

Clause 4 provides for applications to the Board for registration as an osteopath.

Clause 5 sets out the qualifications for general registration.

- Clause 6 provides for granting general registration by the Board. If specific registration does not apply, the Board must register an applicant if the applicant is qualified and the applicant has paid a fee set by the Board and the applicant has not previously been refused registration on any ground on which registration under the Act can be refused by the Board.
- Clause 7 gives the Board a capacity to grant specific registration in certain circumstances. It also gives the Board power to impose conditions, limitations or restrictions upon such registration and to amend vary or revoke those conditions, limitations or restrictions.
- Clause 8 sets out an applicant's entitlement to make submissions to the Board where the Board proposes to refuse an application for registration.
- Clause 9 requires the Board to notify an applicant for registration of the application and to provide the applicant with certain information in relation to its decision.
- Clause 10 sets out the period of registration as twelve months after the grant or renewal of registration.
- Clause 11 provides for the renewal of registration that is not specific, the removal of a name from the register, if three months after registration expires, an application to renew is not made and for the refusal to renew registration on any of the grounds on which registration can be refused.
- Clause 12 provides for the restoration of an osteopath's name to the register where after expiry of registration a name had been removed from the register.
- Clause 13 sets out the effect of suspension of registration—deems the suspended osteopath as not being registered during suspension.
- Clause 14 requires the Board to conduct a hearing where an osteopath's registration is obtained by fraud or misrepresentation or where the osteopath's qualifications have been withdrawn. If the Board determines there has been fraud, misrepresentation or withdrawal of qualifications it must cancel the osteopath's registration.

Division 2—The Register

- Clause 15 describes the register, the particulars which are to be included on the register, and describes how a person may have access to the information contained in the register.

- Clause 16 states that the Board must provide all registered persons with a certificate upon registration and upon renewal of registration and describes the particulars which are to be included on the certificate, and that an osteopath whose registration is cancelled or suspended must return the certificate.
- Clause 17 states that a certificate signed by the President or any two members of the Board may be used as evidence of the facts included on it.
- Clause 18 requires an osteopath to notify the Board of a change of address within fourteen days of that change.
- Clause 19 provides for notification by the Registrar of Births, Deaths, Marriages and Names of the death of an osteopath to the Board, and for the removal of a deceased osteopaths' name from the register.

PART 3—INVESTIGATIONS INTO REGISTERED OSTEOPATHS

Division 1—Preliminary investigations into professional conduct

- Clause 20 provides that a person may complain to the Board about an osteopath's professional conduct.
- Clause 21 states when complaints are to be dealt with by the Health Services Commissioner and not by the Board, and provides for referral of those complaints to the Health Services Commissioner.
- Clause 22 states when complaints may be investigated by the Board, requires the Board to conduct a preliminary investigation and gives the Board the power to delegate its power to conduct any such investigation.
- Clause 23 requires an investigator to make recommendations to the Board at the conclusion of the preliminary investigation and requires the Board to determine whether or not it will act on those recommendations.
- Clause 24 provides that the Board may determine to conduct a formal or informal hearing into the professional conduct of a registered osteopath on its own motion without conducting a preliminary investigation.
- Clause 25 gives the Board the power to suspend the registration of an osteopath pending the conduct of a preliminary investigation or formal or informal hearing where necessary for the health and safety of the public, and requires that the Board ensure that the investigation or hearing into the matter is investigated as soon as possible after the suspension.

Division 2—Preliminary investigation into the health of registered osteopaths

- Clause 26 provides that if the Board believes that an osteopath's capacity to practise is affected as a result of certain circumstances it may appoint one of its members to conduct a preliminary investigation into the matter.
- Clause 27 requires the Board to notify an osteopath whose health is to be investigated and describes the notice required to be given.
- Clause 28 sets out the process for obtaining and paying for a medical examination where an osteopath agrees to be medically examined as part of a preliminary investigation.
- Clause 29 requires the examining medical practitioner to give a report of the examination to the appointed member, and within seven days after that, to the osteopath who is the subject of the report. It provides that the appointed member may decide not to give the osteopath a copy of the report in certain circumstances. It also requires the appointed member to discuss the report with the osteopath who is the subject of the report and to report to the Board on the contents of the report.
- Clause 30 describes the agreement that an osteopath may reach with the Board after the Board has considered the reports prepared by the appointed member and the examining medical practitioner.
- Clause 31 provides for the referral of an osteopath not agreeing to undergo a medical examination, not attending an agreed medical examination, not reaching an agreement with the Board following the Board considering the reports prepared by the appointed member and the examining medical practitioner, or not abiding by an agreement reached with the Board to a formal hearing.
- Clause 32 states that an osteopath may request the Board to impose conditions, limitations or restrictions on his or her practice and, if there is not an agreement about a condition, limitation or restriction, the matter be referred to a preliminary investigation.
- Clause 33 provides for the Board to revoke any condition, limitation, restriction or a suspension imposed on the registration of an osteopath if the osteopath satisfies the Board that his or her ability to practise is no longer affected.
- Clause 34 states that where a matter about the physical and mental health of an osteopath has been referred to a formal hearing, the Board may, if it is of the opinion that to permit that osteopath to continue to practise will endanger the health and safety of the public, suspend the registration of that osteopath.

Division 3—Formal and Informal hearings

- Clause 35 sets out what the Board must do if it determines that an informal hearing is to be held into the professional conduct of an osteopath.
- Clause 36 sets out the constitution of a panel for an informal hearing and provides for the Governor in Council to appoint alternate members.
- Clause 37 states what must be included in a notice about an informal hearing.
- Clause 38 provides for the conduct of an informal hearing.
- Clause 39 sets out what the findings and determinations of the panel may be at an informal hearing.
- Clause 40 provides for changing an informal hearing to a formal hearing in certain circumstances.
- Clause 41 states that the osteopath may request a review of the findings and determinations of the informal hearing by a formal hearing.
- Clause 42 provides for certain things to be done by the Board where the Board determines that there will be a formal hearing, the osteopath requests a formal hearing, or the Board or an informal hearing panel has referred a matter to a formal hearing.
- Clause 43 sets out the constitution of a panel for a formal hearing and provides for the Governor in Council to appoint alternate members.
- Clause 44 states what must be included in a notice about a formal hearing.
- Clause 45 provides for the conduct of a formal hearing.
- Clause 46 sets out what the findings and determinations of the panel may be at a formal hearing into an osteopath's conduct. It also provides that the Board has the power to suspend the registration of an osteopath who does not comply with certain determinations made at a formal hearing.
- Clause 47 sets out what the findings and determinations of the panel may be at a formal hearing into an osteopath's ability to practise.

Division 4—General Provisions relating to Investigations

- Clause 48 sets out the procedure to be followed at formal and informal hearings.

- Clause 49 provides for a formal panel to have the powers given under sections 14, 15, 16 and 21A of the **Evidence Act 1958**.
- Clause 50 provides that a determination of a panel is to have the effect as if it were a determination of the Board, and a fine imposed by a panel may be recovered by the Board as a debt due to the Board.
- Clause 51 states that where the Board imposed a condition, limitation, restriction or suspension pending the completion of a formal hearing, that condition, limitation, restriction or suspension must be removed if the panel determines it should be removed.
- Clause 52 states that the Board or panel must give reasons for its determinations, states who may apply to the Board or panel for reasons and gives time limits for the application and the giving of the reasons.
- Clause 53 requires notification and provides that where a panel has made certain determinations the Board must give notice of the determination in the Government Gazette, and to certain bodies or persons. No action for defamation lies against the Board or its members for the giving of such notice. If a complaint has been made to the Board, the Board must notify the complainant of whether or not a hearing will be conducted into the matter and the nature of that hearing, whether the complainant can make submissions, and the findings and determinations of the hearing.
- Clause 54 makes it an offence to publish or broadcast, or to cause to be published or broadcast, a report about a formal hearing which contains information enabling identification of the complainant or a witness in the hearing unless the complainant or witness consented to this before the publication or broadcast.
- Clause 55 provides for the terms and conditions of appointment of panel members.

PART 4—REVIEW BY THE ADMINISTRATIVE APPEALS TRIBUNAL

- Clause 56 provides for review by the Administrative Appeals Tribunal (AAT) of a decision of the Board, and sets out the circumstances in which a person aggrieved by a decision of the Board may apply to the AAT for review of the Board's decision.
- Clause 57 requires that where a decision of the Board has been reviewed and changed by the AAT, the Board must notify certain bodies or persons.

PART 5—OFFENCES

- Clause 58 creates a number of offences in relation to claims by persons as to registration.
- Clause 59 makes it an offence to obtain registration or procure registration for any person by fraud or by false representation, or to forge or alter any certificate of registration under this Act, or to aid in the commission of any of these offences.
- Clause 60 makes it an offence for any person, whether a natural person or corporate body, to advertise an osteopathic practice or osteopathic services in certain circumstances. If a corporate body contravenes this section, any person concerned in, or who takes part in, the management of that corporate body is liable for the penalty applicable to a natural person. Persons who place such advertisements in good faith on behalf of another person are not guilty of an offence under this section.

PART 6—ADMINISTRATION

- Clause 61 establishes the Osteopaths Registration Board of Victoria as a body corporate.
- Clause 62 sets out the powers, functions and consultation requirements of the Board.
- Clause 63 sets out the membership of the Board.
- Clause 64 sets out the term of office of Board members.
- Clause 65 provides for the resignation and removal of Board members.
- Clause 66 provides for the appointment by Governor in Council of the President and Deputy President of the Board who are to be osteopaths, and provides for the resignation and removal of those office bearers.
- Clause 67 states that the Governor in Council may, in accordance with certain terms and conditions, appoint an acting member of the Board.
- Clause 68 provides for the fixing of, and the payment of, fees and allowances to Board members.
- Clause 69 sets out the procedure of the Board.
- Clause 70 requires a member of the Board to disclose an interest in any matter to be considered by the Board and states to what extent the member may then take part in the meeting.

- Clause 71 provides that resolutions of the Board may be made without the Board having to meet.
- Clause 72 provides that not less than two thirds of the Board members may agree to hold a meeting of the Board by any means or combination of means approved by the President of the Board.
- Clause 73 provides that an act or decision of the Board is not invalid in certain circumstances.
- Clause 74 provides an indemnity for Board members and the person keeping the register for actions done in good faith, and which are not negligent, in the exercise of a power under this Act.
- Clause 75 provides for employment of staff by the Board.
- Clause 76 sets out the power of the Board to delegate its powers and functions under this Act and the restrictions on that power.

PART 7—REPORTING AND FINANCIAL PROVISIONS

- Clause 77 establishes the Osteopaths Registration Board Fund and describes what money must be paid into this fund and what expenses the Board must pay out of this fund.
- Clause 78 sets out the Board's investment powers.
- Clause 79 provides for the repayment into the Public Account of money advanced to the Board to establish the Board.

PART 8—ENFORCEMENT AND SUPPLEMENTARY POWERS

- Clause 80 provides for certain persons to take proceedings under this Act in the name of the Board.
- Clause 81 provides that the Board must issue an identification card to each person appointed by the Board to obtain or execute a search warrant and that person must produce that identification card in performing his or her function when requested to produce the card.
- Clause 82 gives the Board the power to appoint a person to make application to a magistrate for the issue of a search warrant in specified circumstances.
- Clause 83 provides for an announcement of entry immediately before executing a warrant.

Clause 84 states that the person or persons named in the warrant must identify themselves to the occupier of the premises and give the occupier a copy of the execution copy of the warrant.

Clause 85 requires the provision of copies of or receipts for things seized under a warrant.

Clause 86 requires the Board to fix its fees for a period of 12 months, permits the Board to vary fees in certain cases and requires that any fees fixed by the Board are published in the Government Gazette.

PART 9—REGULATIONS

Clause 87 limits the jurisdiction of the Supreme Court to have defamation actions referred to in section 53 brought before it.

Clause 88 provides the Governor in Council with the power to make regulations for the purposes of the Act.

PART 10—SAVINGS AND TRANSITIONAL

Clause 89 defines words and phrases used in this Part.

Clause 90 provides that the Minister may determine what rights, assets, liabilities and obligations of the Chiropractors and Osteopaths Registration Board will become rights, assets, liabilities and obligations of the Osteopaths Registration Board. It states that in making that determination the Minister must take into consideration the number of osteopaths deemed to be registered under this Act compared to the number of chiropractors and osteopaths registered under the old Act.

Clause 91 provides that proceedings before the old Chiropractors and Osteopaths Registration Board regarding a person deemed to be registered under the Act as an osteopath may be completed by the old Board, and the new Osteopaths Registration Board is to give effect to decisions of the old Board regarding osteopaths as if they were decisions of the new Board.

Clause 92 provides that this Act will apply to conduct of an osteopath that occurred before the operation of this Act if proceedings have not been commenced under the **Chiropractors and Osteopaths Act 1978** before the coming into operation of this Act.

Clause 93 provides for "osteopaths" or "chiropractors and osteopaths" whose registration was endorsed as "osteopath" by the old Board to be deemed to be registered as

osteopaths with the new Osteopaths Registration Board. It provides that persons whose registration was endorsed as both "chiropractor" and "osteopath" are able to make an election to have general registration under this Act. Persons with temporary registration with the old Board are deemed to have specific registration under this Act. It also provides that where a person is deemed to have registration under this Act, that registration will be subject to the same conditions, limitations, restrictions or suspension as existed immediately before the commencement of this Act.

Clause 94 provides for changes to references to osteopaths registered under the old Act and to the old Act.

Clause 95 amends the **Health Services (Conciliation and Review) Act 1987** to include the Osteopaths Registration Board in the Schedule.

Clause 96 makes consequential amendment to the **Medical Practice Act 1994**.