

Podiatrists Registration Bill

EXPLANATORY MEMORANDUM

OUTLINE

The purpose of this Bill is to make provision for the registration of podiatrists and to establish the Podiatrists Registration Board of Victoria ("the Board").

The Board will be incorporated by this Act. It will consist of 7 members, one of whom will be a lawyer, 2 will be lay persons, and 4 will be podiatrists.

The Bill will—

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

Note—The term "chiropodist" and the term "podiatrist" mean, in general, the same thing. In modern usage the term podiatrist is used more frequently than the term chiropodist. Persons registered under the **Chiropodists Act 1968** were referred to as chiropodists and persons to be registered under this Act will be referred to as podiatrists. However, in the Explanatory Memorandum the term podiatrist is used throughout and refers to a person registered under either Act.

PART 1—PRELIMINARY

Clause 1 set out the main purpose of this Act.

Clause 2 is the commencement provision. Sections 1 and 2 are to come into operation on Royal Assent. The rest of the Act comes into operation on a date to be proclaimed but not later than 1 December 1998.

Clause 3 defines various terms used in this Act.

PART 2—REGISTRATION

Division 1—Procedure for obtaining registration

- Clause 4 provides for applications to the Board for registration as a podiatrist.
- 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 this 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 specific 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 of its decision and to provide the applicant with certain information in relation to the decision.
- Clause 10 sets out the period of registration as being the period between the date of registration and the next 31 December.
- Clause 11 provides for the renewal of registration that is not specific, and the removal of a name from the register if, 3 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 Board to recognise post-graduate qualifications which it considers to be of relevance to the practise of podiatry and provides that the Board may note on the register that a registered podiatrist is the holder of one or more of these qualifications.

- Clause 13 provides for the restoration of a podiatrist's name to the register where, after expiry of registration, a name had been removed from the register.
- Clause 14 sets out the effect of suspension of registration, that is, it deems the suspended podiatrist as not being registered during suspension.
- Clause 15 requires the Board to conduct a hearing where it believes that a podiatrist's registration is obtained by fraud or misrepresentation or where the podiatrist's qualifications have been withdrawn. If the Board determines there has been fraud, misrepresentation or withdrawal of qualifications it must cancel the podiatrist's registration.

Division 2—The Register

- Clause 16 describes the Register of Podiatrists, 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 17 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 a podiatrist whose registration is cancelled or suspended must return the certificate to the Board.
- Clause 18 states that a certificate signed by the President of, or any two members of, the Board may be used as evidence of the facts stated on it.
- Clause 19 requires a podiatrist to notify the Board of a change of address within 14 days of that change.

PART 3—INVESTIGATIONS INTO REGISTERED PODIATRISTS

Division 1—Preliminary Investigation into Professional Conduct

- Clause 20 provides that a person may complain to the Board about a registered podiatrist.
- 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, when the Board is required to conduct a preliminary investigation and gives the Board the power to delegate its power to conduct any such investigation.
- Clause 23 requires an investigation 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 podiatrist on its own motion without conducting a preliminary investigation.
- Clause 25 gives the Board the power to suspend the registration of a podiatrist 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 podiatrists

- Clause 26 provides that if the Board believes that a podiatrist's capacity to practise is affected due to certain circumstances it may appoint one of its members to conduct a preliminary investigation into the matter.
- Clause 27 requires the Board to notify a podiatrist whose health is to be investigated and describes the notice required to be given to the podiatrist.
- Clause 28 sets out the process for obtaining and paying for a medical examination where a podiatrist 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 investigating member and, within seven days following, to the podiatrist who is the subject

of the report. It provides that that member may decide not to inform the podiatrist of the contents of the report in certain circumstances. It also requires that member to discuss the report with the podiatrist in question and to report to the Board on the contents of the report.

- Clause 30 describes the agreement that a podiatrist may reach with the Board after the Board has considered the reports prepared by the appointed investigating member and the examining medical practitioner.
- Clause 31 provides for the referral to a formal hearing of a podiatrist 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 investigating member and the examining medical practitioner, or not abiding by an agreement reached with the Board.
- Clause 32 states that a podiatrist may request the Board to impose conditions, limitations or restrictions on his or her practice and, if there is not a 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 a podiatrist if the podiatrist satisfies the Board that his or her ability to practise is no longer affected.
- Clause 34 states that where a matter about a physical and mental health of a podiatrist has been referred to a formal hearing, the Board may, if it is of the opinion that to permit that podiatrist to continue to practise will endanger the health and safety of the public, suspend immediately the registration of that podiatrist.

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 a podiatrist.
- 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 podiatrist 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 podiatrist 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 a podiatrist's conduct. It also provides that the Board has the power to suspend the registration of a podiatrist 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 a podiatrist'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, specifies 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 provides that, where a panel has made certain determinations, the Board must give notice of the determinations 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. It also provides that, where 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 a complainant or a witness in the hearing unless the complainant or witness consents 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 a 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.

Clause 60 makes it an offence for any person, whether a natural person or corporate body, to advertise a podiatry practice or podiatry 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 Podiatrists 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 registered podiatrists 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 any 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 a means, or combination of means, as may be 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 immunity for Board members and the person keeping the register for actions done in good faith 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 Podiatrists Registration Board Fund and describes the money that must be paid into the fund and the expenses that the Board must pay out of the fund.
- Clause 78 sets out the Board's investment powers in relation to the fund.
- 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. That person must produce the 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 apply 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 the fees in certain cases and requires that any fees fixed by the Board are published in the Government Gazette.

PART 9—MISCELLANEOUS

- 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 this Act.

PART 10—SAVINGS, TRANSITIONALS AND AMENDMENTS

- Clause 89 defines words and phrases used in this Part.
- Clause 90 repeals the **Chiropodists Act 1968**.
- Clause 91 provides for the Podiatrists Registration Board of Victoria (as defined earlier "the Board") to succeed the Chiropodists Registration Board of Victoria ("the old Board") which is abolished, that the Board succeeds the old Board as a party to proceedings, contracts, agreements or arrangements, that the

Board may continue a matter or thing commenced by or against or in relation to the old Board.

- Clause 92 provides that proceedings under the **Chiropodists Act 1968** before the old Board may be completed by the old Board and the Board is to give effect to decisions of the old Board regarding podiatrists as if they were decisions of the Board.
- Clause 93 provides that this Act will apply to the conduct of a podiatrist that occurred before the operation of this Act if proceedings have not been commenced under the **Chiropodists Act 1968** before the coming into operation of Part 3 of this Act.
- Clause 94 deems persons registered under the **Chiropodists Act 1968** to be registered 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 95 provides for references in an Act or in a subordinate instrument to a chiropodist registered under the **Chiropodists Act 1968** who is deemed to be registered as a podiatrist under this Act to mean a person registered as a podiatrist under this Act, and references to the old Board to mean the Board.
- Clause 96 provides for the Board to prepare annual reports for the old Board during the transitional arrangements.
- Clause 97 provides for minor consequential amendments to other Acts as set out in the Schedule to the Act.

