

# **Explanatory Memorandum**

## ***Osteopaths Bill 2005***

### **INTRODUCTION**

This Bill assists in delivering the State Government's commitment to National Competition Policy principles to review legislation regulating the osteopathy profession.

As part of the Western Australian State Government's obligations under the Competition Principles Agreement and its commitment to review antiquated health practitioner legislation, the Department of Health completed the *National Competition Policy Review of Western Australian Health Practitioner Legislation*, and the *Report of the Review of Western Australian Health Practitioner Legislation*, after an extensive period of stakeholder consultation.

Cabinet approved the drafting of new health practitioner Bills based on the recommendations in these two review reports. The effect of this approval was that replacement legislation be developed for the *Osteopaths Act 1997* and for health professions regulated under the following Acts: *Chiropractors Act 1964*, *Dental Act 1939*, *Dental Prosthetists Act 1985*, *Nurses Act 1992*, *Optometrists Act 1940*, *Occupational Therapists Registration Act 1980*, *Physiotherapists Act 1950*, *Podiatrists Registration Act 1984* and the *Psychologists Registration Act 1976*. The result will be that all registration legislation for health professionals in Western Australia will be modelled on consistent, modern and standardised provisions.

As well as satisfying competition policy objectives, this Bill provides an updated version of an Act dating back to 1997, delivering more appropriate legislation for today's health professionals. The Bill provides for effective registration of osteopaths. It controls the use of the title "osteopath" and seeks to prevent conduct from non-osteopaths that may be misleading to consumers and the general public. Importantly the Bill adequately identifies members of the osteopathy profession, enabling the consumers of osteopathy services to make informed decisions when engaging a practitioner.

### ***Long Title***

The long title sets out the purpose of the Bill, which is to provide for regulation of the practice of osteopathy and registration of persons as osteopaths, to repeal the *Osteopaths Act 1997*, to make consequential amendments to various Acts, and for related purposes.

### **Part 1 – Preliminary**

This part contains the title of the Act, the relevant commencement provisions and definitions of the terms used within the Bill and the application of exclusions from the provisions of the Bill.

***Clause 1      Short Title***

Short title of the Act.

***Clause 2      Commencement***

Provides for the Act to come into operation on a day fixed by proclamation. The date the Act will commence will be dependent upon the making of any necessary rules and regulations.

***Clause 3      Terms used in this Act***

Contains the definitions required for the purposes of the Act. The definition of “osteopathy” in the *Osteopaths Act 1997* has been carried forward in the Bill.

***Clause 4      Application***

Registered medical practitioners, physiotherapists and chiropractors are excluded from the provisions of the Bill on the basis that they will have the qualifications to perform aspects of osteopathy and are regulated in that practice by their own Acts.

This avoids duplication in registration, etc, and is consistent with similar exemptions in other health registration legislation.

**Part 2 – Osteopaths Registration Board and committees**

This part provides for the continuation of the role of the Osteopaths Board of Western Australia. It sets out the composition of the Board’s membership, functions and powers and the Board’s relationship with the Minister.

**Division 1 – The Board**

***Clause 5      Board established***

The Osteopaths Registration Board is a body corporate. Clause 3 of Schedule 2 provides that the Board established under this Act is a continuation of the existing Board created under the repealed Act. The Board is not an agent of the Crown.

***Clause 6      Membership of the Board***

The Board will consist of 6 natural persons to be appointed by the Minister. The number of Board members remains the same and the composition includes consumer and legal representation.

***Clause 7      Presiding member and deputy presiding member***

This clause is self-explanatory.

***Clause 8      Constitution and proceedings***

This clause is self-explanatory.

#### ***Clause 9      Remuneration and allowances***

The Minister may determine remuneration for a member of the Board or a committee on the recommendation of the Minister for Public Sector Management ensuring that members are paid in accordance with current Government policy.

### **Division 2      Functions and Powers**

#### ***Clause 10      Functions***

The Board advises the Minister on matters relating to the Act, administers the scheme of registration and plays an active role within the profession in terms of maintaining standards and promoting education. The functions of the Board are set out in general terms.

#### ***Clause 11      Powers***

The Board has powers necessary to carry out its functions under the Act. They are generic powers, similar to those of other registration Boards.

#### ***Clause 12      Delegation by Board***

This provision gives the Board the flexibility to delegate functions to Board members, committees or committee members or the registrar. This is necessary for administrative expediency.

### **Division 3      Relationship of Board with Minister**

#### ***Clause 13      Directions by Minister***

The Minister can give written directions to the Board regarding its functions and administration. Any direction must be laid before both Houses of Parliament. The Minister cannot give directions in relation to a particular person, qualification, application, complaint, investigation or proceeding. There are similar provisions in other registration Acts.

#### ***Clause 14      Minister to have access to information***

The Minister has access to and, where relevant, may make copies of Board information with the exception of information in a form that may disclose the identity of a person involved. The Board must comply with any request. There are similar provisions in other registration Acts.

### **Division 4      Committees**

#### ***Clause 15      Committees***

The Board will have the power to establish committees in addition to the complaints assessment committee and the impairment review committee. This will assist in increasing

the effectiveness and efficiency of the Board. The Board can require the committee to comply with directions and report on performance.

#### ***Clause 16      Provisions relating to committees***

The Board may remove committee members and reconstitute or discharge a committee. Committees are to ensure that accurate records of meetings are kept. Persons with special knowledge or experience can be invited to act in an advisory capacity to committees on the Board's approval.

### **Division 5      Registrar and other staff**

#### ***Clause 17      Registrar***

The Board is to engage or employ a person to be the registrar to perform functions conferred under the Act or as directed by the Board. The Registrar acts as the main employee of the Board.

#### ***Clause 18      Other staff***

The Board can engage or employ staff to provide such assistance, as the Board considers necessary in performing its functions.

### **Division 6      General**

#### ***Clause 19      Duty not to make improper use of information***

It is an offence if a member or former member of the Board or a committee makes improper use of any information acquired to gain an advantage for them self or any other person. There are similar provisions in other registration Acts.

#### ***Clause 20      Meetings and minutes of meetings***

It is important that the actions of the Board are subject to public scrutiny to avoid the perception amongst members of the public that Boards act in the best interests of the members of the profession rather than in the best interests of the community as a whole. For this reason Board meetings are open to the public except in limited circumstances where confidentiality is appropriate.

#### ***Clause 21      Execution of documents by the Board***

The Board executes a document if it is signed on behalf of the Board by authorised person(s) and the common seal of the Board is affixed. The protocol for affixing the common seal is specified.

## **Part 3 – Finance and Reports**

Part 3 describes the funds of the Board, how they may be applied, and the requirements relating to accounts and reports.

## ***Clause 22 Funds of the Board***

Clause 22 describes what constitutes the funds of the Board and specifies for what purposes they may be applied. The funds may be used for any purpose that enables the Board to perform its functions or to carry out the objectives of the Act. The Board derives its operating revenues from fees paid by registered osteopaths.

## ***Clause 23 Accounts***

The Board is to keep accounts and records and prepare financial statements in accordance with Australian Accounting Standards.

## ***Clause 24 Audit***

Accounts and financial statements are to be audited at least once a year by a registered company auditor.

## ***Clause 25 Annual report and other reports***

The Board is to submit to the Minister an annual report of its proceedings along with a copy of its financial statements and the auditor's report of those statements. The Board is to report on matters that have been referred to the State Administrative Tribunal.

# **Part 4 – Registration of Osteopaths**

Part 4 provides for the registration of natural persons and the keeping of the register.

## **Division 1 Registration**

### ***Clause 26 Natural persons may be registered***

This clause ensures that only natural persons will be registered.

### ***Clause 27 Registration***

Clause 27 ensures that only applicants who are fit to practise and who possess appropriate levels of qualifications and experience can be registered. The Board may impose such conditions on registration under this clause as are reasonably required to ensure the competent and safe practice of osteopathy.

### ***Clause 28 Provisional registration***

The Board may provisionally register an applicant for 3 months while awaiting the production of evidence to satisfy the Board that the applicant meets the requirements of clause 27. The Board may impose conditions on the applicant as are reasonably required to ensure the competent and safe practice osteopathy. Provisional registration can be cancelled.

### ***Clause 29 Conditional registration at the discretion of the Board***

This clause gives the Board the flexibility to provide a person who is fit to practice with registration for a period of up to 12 months, if the Board is satisfied of certain requirements. For example, conditional registration facilitates visiting lecturers and academics eminent in the field of osteopathy that need to practise osteopathy in order to teach it and osteopaths who accompany sports people visiting Western Australia from overseas to participate in sporting events. Conditions maybe imposed, revoked or varied. Conditional registration can be cancelled at any time or renewed for a further 12 months if required.

***Clause 30 Professional indemnity insurance***

The Board may require that a person has professional indemnity insurance that meets minimum terms and conditions approved by the Board as a condition of registration under clause 27, 28 or 29. This is important having regard to the interests of health consumers.

***Clause 31 Application***

Applications for registration are to be made in writing in a form approved by the Board. Application fees are prescribed by the regulations and must accompany the application. The Board may require further information and attendance before the Board in respect of an application.

***Clause 32 Effect of registration***

Registration allows the person registered to carry on the practice of osteopathy in Western Australia under the title “osteopath”.

***Clause 33 Duration of registration***

Registration has effect for the period as prescribed in the regulations and may be renewed in accordance with the regulations.

***Clause 34 Renewal of registration***

Renewal of registration occurs on an annual basis, subject to a renewal fee. If fees are not paid in accordance with this clause, registration ceases and the person’s name is removed from the register. Payment of fees in arrears entitles a person to registration renewal and restoration of their name to the register.

For the purposes of disciplinary proceedings only, a person whose name is restored to the register after payment of fees in arrears will be taken to have been registered during the period their name was removed from the register.

***Clause 35 Application for registration by a person whose registration has been cancelled under section 78(1)(i)***

If a person’s registration is cancelled and their name removed from the register by an order of the State Administrative Tribunal they are considered to be a disqualified person. A disqualified person may not apply for registration for a period of 2 years from when their registration was cancelled.

The Board must apply to the State Administrative Tribunal before granting an application for registration by a disqualified person.

## **Division 2     The register**

### ***Clause 36     The Register***

A register of osteopaths is to be maintained by the Board.

### ***Clause 37     Inspection of register***

The register is available for inspection by the general public. A fee is payable for a certified copy of a part of the register. The register may be published on an internet website maintained by the Board.

### ***Clause 38     Certificate of registration***

This clause is self-explanatory.

### ***Clause 39     Voluntary removal from register and cancellation of registration***

A person's name may be removed from the register upon a request in writing. The Board will not approve the removal from the register where a registered person is the subject of an investigation under the Act or a proceeding before the State Administrative Tribunal.

### ***Clause 40     Removal of name and cancellation of registration of person in certain circumstances***

This clause gives the Board the power to ensure that all registered osteopaths maintain current knowledge and skills at an approved level. The Board cannot cause the removal from the register of the name of an osteopath who has not practised osteopathy for 5 years or more if that person has maintained current knowledge and skills.

### ***Clause 41     Effect of removal of name from register***

If a name is removed from the register the person ceases to be registered.

## **Division 3     Notifications to Board**

### ***Clause 42     Change of address***

Written advice must be provided to the Board no later than 30 days after any change of address that is recorded in the register. This is to ensure timely accuracy of the register.

### ***Clause 43     Loss of qualifications***

If a registered person loses the qualifications that enabled them to be registered under this Act they must notify the Board in writing no later than 90 days after the loss. This will ensure all registered persons are appropriately qualified at all times and any person who has lost the required qualifications can immediately be removed from the register under clause 40.

#### ***Clause 44      Insolvency***

To comprehensively carry out its functions the Board must be informed of developments in the industry, including the insolvency of registered persons. It is notable that the occurrence of insolvency does not entitle the Board to take disciplinary action against the insolvent practitioner or to de-register the practitioner. This section is to keep the Board informed so that the Board can satisfy itself that financial difficulties do not have a negative impact on the standard and level of service provided by an osteopath.

#### ***Clause 45      Civil or criminal proceedings***

The Bill lists a number of disciplinary matters (refer clause 47). This clause is designed to ensure the Board is informed and kept informed of matters that may constitute disciplinary matters.

#### ***Clause 46      Information about professional indemnity insurance***

If professional indemnity insurance is a condition of a person's registration, written advice must be provided, within 30 days, if the insurance is cancelled or the terms or conditions are changed.

### **Part 5 – Disciplinary and impairment matters**

This Part provides the basis for professional conduct of osteopaths and a foundation for disciplinary proceedings.

#### **Division 1      Preliminary**

##### ***Clause 47      Disciplinary matters***

Causes for disciplinary action are specified, including the provision of excessive or unnecessary services.

##### ***Clause 48      Impairment matters***

This clause defines what constitutes an impairment matter. Impairment, in relation to health practitioner legislation, occurs when a practitioner is affected mentally or physically to such an extent that they are unfit to practise.

#### **Division 2      Committees**

##### ***Clause 49      Complaints assessment committee***

The role of the complaints assessment committee is to process complaints at first instance. This structure, while maintaining the Board's representation and accountability, will permit the Board to carry out its disciplinary functions in an objective manner, freed from the time consuming task of initial assessment of complaints.

##### ***Clause 50      Impairment review committee***



Taking into account the trend in other jurisdictions and the purpose of impairment procedures it is considered appropriate that separate procedures are provided for in the Bill to assess matters of a disciplinary nature and matters of impairment that affect a practitioner's ability to practise.

The impairment review committee investigates complaints referred to it by the complaints assessment committee or the Board. Specific provision is made for the appointment of a medical practitioner to the impairment review committee.

### **Division 3      Complaints**

#### ***Clause 51      Complaints***

This clause permits any person to make a complaint to the complaints assessment committee. Additionally, the Director of the Office of Health Review may refer a complaint to the committee. It also provides for the complaints assessment committee to investigate where a disciplinary or impairment matter may have occurred, or exists, in the absence of a complaint.

#### ***Clause 52      Complaints assessment committee to determine action required***

This clause empowers the complaints assessment committee to make a preliminary assessment of a complaint and to:

- refer it to the Board for an interim order;
- reject the complaint if it is frivolous, vexatious or without substance (refer clause 53);
- investigate the complaint;
- refer the complaint to the impairment review committee;
- if the complaint relates to a failure to comply with an undertaking given to the Board, to recommend to the Board that it make an allegation to the State Administrative Tribunal.

The complaints assessment committee is responsible for “sifting” complaints, ensuring that Board time is not consumed by this task and distancing the Board from the preliminary investigations so that the Board is able make appropriate interim orders (refer clause 54).

#### ***Clause 53      Complaints assessment committee may reject certain complaints***

This clause is self-explanatory.

### **Division 4 — Summary orders of Board**

#### ***Clause 54      Interim orders by Board***

If an activity involves an imminent risk to the physical or mental health of a person, for a period of not more than 30 days, the Board may make an interim order for the osteopath to cease the activity or place an interim restriction on the practice. An order must advise that within 14 days of making the order, the Board will revoke the order or make an allegation about the matter to the State Administrative Tribunal.

The Board may deal with a complaint, even though the impairment review committee or the complaints assessment committee or the Office of Health Review is handling the same or a similar complaint.

***Clause 55      Complaint dealt with summarily to be referred to the State Administrative Tribunal***

This clause provides that within 14 days of making an order under clause 54, the Board will revoke the order or make an allegation about the matter to the State Administrative Tribunal. The Tribunal may, in addition to any other order it may make, affirm or revoke or extend the period of application for an order under clause 54.

***Clause 56      Complaint not dealt with summarily to be referred to relevant committee***

If the Board does not deal with a complaint summarily (under clause 54), the complaint is to be referred to the complaints assessment committee or the impairment review committee.

**Division 5 – Disciplinary matters**

***Clause 57      Investigation and recommendation***

On completion of an investigation the complaints assessment committee is to make a recommendation to the Board regarding the complaint. The Board has a range of options in dealing with the complaint. The Board can make a summary order; provide a copy of the complaint to the Director of the Office of Health Review; attempt to settle the matter by conciliation; caution or reprimand or accept an undertaking from the person the subject of the complaint; make an allegation to the State Administrative Tribunal or take no further action.

***Clause 58      Role of the Board***

The Board is to consider the recommendation of the complaints assessment committee and can act on the recommendation or alternatively choose another option under clause 57. The Board is not to attempt conciliation unless it is satisfied that the matter can be dealt with informally.

***Clause 59      Alternative to making an allegation to the State Administrative Tribunal***

If the Board decides not to make an allegation to the State Administrative Tribunal, this clause enables the Board to exercise a summary jurisdiction in dealing with less serious disciplinary matters. The Board can:

- amend the register in relation to their particulars (for registered osteopaths);
- require an undertaking in relation to future conduct or to comply with conditions (for registered osteopaths);
- caution or reprimand;
- order a penalty not exceeding \$2500.

An order can be made to pay costs and expenses incidental to the proceedings, recoverable as a debt due to the Board. Written notice, with short particulars, of any decision in this clause must be provided to both the person making a complaint and the person who is the subject of the complaint.

## **Division 6 – Impairment matters**

### ***Clause 60 Request by osteopath for imposition of condition***

An osteopath who believes they are impaired (refer clause 48 for definition of impairment) may ask the Board to impose a condition on their registration. If the Board and the osteopath do not agree on the condition, the Board is to refer the matter to the impairment review committee.

### ***Clause 61 Revocation of condition***

This clause is self-explanatory.

### ***Clause 62 Investigation***

The impairment review committee is to investigate a complaint referred to it.

### ***Clause 63 Osteopath to be notified about investigation***

The impairment review committee must give written notice to an osteopath to whom the complaint relates. The notice must advise of the nature of the impairment to be investigated and provide a summary of the effect of the impairment review clauses in this Bill.

The impairment review committee can request the osteopath to agree to undergo an examination relating to the impairment matter.

### ***Clause 64 Examination***

The impairment review committee and the osteopath are to agree on the examining medical practitioner. If the committee and the osteopath are not able to agree, then the Board is to appoint a medical practitioner. The Board is to pay for the examination.

If the osteopath does not agree to the examination, the impairment review committee is to recommend to the Board that an allegation be made to the State Administrative Tribunal.

### ***Clause 65 Report of examination***

The examining practitioner must provide a report of the examination to the impairment review committee and the committee is to provide a copy of the report to the practitioner within 7 days. If, in the opinion of the committee, the disclosure of the report's contents may adversely affect the mental welfare of the practitioner, the report is to be provided to a medical practitioner or peer osteopath. The osteopath or the medical practitioner or peer osteopath may make written representations to the committee.

### ***Clause 66 Role of the impairment review committee***

The impairment review committee is to decide whether further action should be taken and if so requests that the osteopath consent to conditions on their registration; being suspended from practice for up to 2 years or to undergo counselling.

If no further action is taken, the committee has to advise the Board, the complainant (if there is one) and the osteopath in writing.

***Clause 67      Recommendation***

If the osteopath does not consent to a request in clause 66, the impairment review committee is to recommend to the Board that an allegation be made to the State Administrative Tribunal within 10 days. The committee is to recommend to the Board any action to which the osteopath consented.

***Clause 68      Role of the Board***

On consideration of the recommendation of the impairment review committee the Board can:

- not take any action;
- take action to which the osteopath consented (as outlined in this clause);
- make an allegation to the State Administrative Tribunal.

The Board must give written notice of this decision within 7 days.

**Division 7 – Investigator’s role and powers**

***Clause 69      Interpretation***

The Board or the complaints assessment committee can appoint an investigator.

***Clause 70      Investigator***

The Board or the complaints assessment committee may appoint a person to investigate any matter relevant to the performance of the Board’s functions in the Bill and report to the Board. A certificate of appointment is to be issued to each investigator appointed, which is evidence in any court of the appointment to which the certificate relates.

***Clause 71      Report of investigator***

An investigator must, within a period required by the Board or the complaints assessment committee, prepare a report on the investigation and immediately after preparing the report, provide the Board or the complaints assessment committee with a copy of the report. The investigator must return the certificate of appointment at the time the Board or the complaints assessment committee is provided with copy of the report.

***Clause 72      Powers of investigator***

This clause outlines the powers of an investigator for the purposes of an investigation. It gives the investigator the power to fully investigate complaints. An investigator may inspect equipment used in an osteopath’s practice as well as records and documents. Document is defined in clause 3 as including any tape, disc or other device or medium on which information is recorded or stored.

***Clause 73      Warrant to enter premises***

If the Board is satisfied an investigator has reasonable grounds for believing entry to a premises is necessary to substantiate a complaint that may involve a threat to the physical or mental health of a person the investigator can apply to a magistrate for a search warrant.

***Clause 74      Issue of warrant***

This clause outlines a warrant, authorises the investigator to enter and inspect premises, to require the person on the premises to answer the questions or produce documents or other things concerning the investigation, and to inspect documents and other things. The purpose and name of the person to whom the warrant is issued and a description of the premises that may be entered must be stated in the warrant.

***Clause 75      Execution of warrant***

A person executing a warrant must produce it for inspection if asked by the occupier or person in charge of the premises. It is notable that a warrant has a maximum term of one month.

**Division 8 – Conciliation**

***Clause 76      Conciliation process***

Assisted communication between the complainant and the respondent can often resolve complaints in an informal and inexpensive way. If the Board considers a complaint can be resolved by conciliation it can refer the complaint back to the complaints assessment committee to pursue resolution by conciliation. The regulations can provide for the complaints assessment committee to appoint a person to preside over a conciliation conference. If the parties resolve the complaint by conciliation the Board can, by order, give effect to the negotiated outcome.

***Clause 77      Action if conciliation fails***

This clause ensures the Board can resume control of the conduct of a complaint that is subject to conciliation if the conciliation process is not working.

**Division 9 – Role of State Administrative Tribunal**

***Clause 78      Powers of the State Administrative Tribunal on dealing with a disciplinary matter***

The State Administrative Tribunal has assumed jurisdiction over more serious disciplinary matters that were previously referred to the Board where the Board held formal inquiries. The Board may allege to the Tribunal that there is a proper cause for disciplinary action against a registered person. The Tribunal will hear and determine more serious matters and where appropriate hand down a disciplinary action. Disciplinary action against a registered person may be one or more of the following:

- amendment of particulars entered in the register;
- caution or reprimand;
- provision of further patient services at no cost;

- payment of further services by another osteopath;
- reduction or refund of fees paid in respect of services;
- condition imposed on practice;
- completion of education, training or professional development;
- a period of practising under supervision;
- obtaining and implementing advice in relation to the person's practice of osteopathy;
- a penalty up to \$25 000;
- cancellation of registration and removal of name from the register;
- suspension of practice for up to 2 years.

If the person is no longer registered after the proceedings are commenced the Tribunal may caution or reprimand, require payment of further services, reduce or refund fees or order the penalty.

***Clause 79 Powers of the State Administrative Tribunal on dealing with an impairment matter***

In relation to impairment matters the State Administrative Tribunal has the power to decline to make an order, impose conditions on registration, require medical treatment or counselling, and order suspension from practice for up to 2 years.

**Division 10 – Miscellaneous**

***Clause 80 Suspension***

Generally, if a person is suspended from practice, they are regarded as not being registered during the period of suspension. The Board cannot revoke a suspension that was imposed by the State Administrative Tribunal, unless it has applied to and received the Tribunal's approval to do so.

***Clause 81 Costs and recovery***

This clause ensures that the Board can recover the costs and expenses arising from investigation and exercise of that power from a respondent.

**Part 6 – Offences**

Part 6 specifies conduct by non-osteopaths that constitutes an offence under the Act. It deals with the provision of false or misleading information by applicants for registration and in relation to compliance with provisions in the Act and also with the obstruction of the investigatory process.

***Clause 82 Persons who may practise osteopathy***

This clause restricts the practice of osteopathy to persons who are registered. Students are exempted under clause 84.

***Clause 83 Persons who may be employed or engaged to practise osteopathy***

This clause prohibits persons from employing or engaging persons to practise osteopathy unless that person is a registered osteopath (or a student under clause 84).

***Clause 84      Exceptions to sections 82 and 83***

This clause provides that students are exempted from the operation of clauses 82 and 83.

***Clause 85      Use of title “osteopath” or pretending to be registered***

A person who is not registered cannot use the title “osteopath” or hold out or imply that they are entitled to provide osteopathy services unless registered.

***Clause 86      Failure to comply with disciplinary action***

This clause is self-explanatory.

***Clause 87      False or misleading information***

A person must not make a statement or provide any information they know to be false or misleading or with disregard to whether it is false or misleading, in relation to any application, requirement, or attempt at conciliation under the Act.

***Clause 88      Offences in relation to investigation***

This clause provides that it is an offence if a person is required to provide information, answer questions or produce documents or things, without reasonable excuse, fails to provide information, documents or things or gives false information. A number of defences are provided.

***Clause 89      Obstruction of investigation***

This clause is self-explanatory.

***Clause 90      Assistance to execute warrant***

All reasonable assistance is to be provided to investigators by osteopaths and persons employing or engaging osteopaths, at premises named in warrants.

***Clause 91      Surrender of certificate***

Where a person’s registration is cancelled or their practice suspended, the person is to surrender their certificate of registration to the Board.

***Clause 92      Incriminating information, questions, or documents***

During the course of an investigation, a person cannot decline to answer a question or provide a document or thing on the basis of incrimination. However, what is provided is not admissible in evidence in civil or criminal proceedings.

***Clause 93      Legal professional privilege***

This clause is self-explanatory. It preserves legal professional privilege as against the investigator, the complaints assessment committee, the impairment review committee and the Board.

## **Part 7 – Codes of practice, rules and regulations**

Part 7 provides for the making of codes of practice and for rules and regulations necessary for giving effect to the Act.

### ***Clause 94      Codes of practice***

This clause provides that the Board may, with the approval of the Minister, issue codes of practice. This provides for a new initiative in the Act. Codes of practice contribute to the protection of the public by promoting standards of practice and conduct. This is clearly relevant to the Board's registration and disciplinary proceedings. The codes of practice may adopt the provisions of other publications. Unlike subsidiary legislation, it is not intended to be prescriptive.

A breach of the code of practice does not itself constitute grounds for disciplinary action against an osteopath, but such a breach may be taken into consideration by the Board in determining questions that arise in respect to disciplinary proceedings.

### ***Clause 95      Rules***

The Board, with confirmation of the Governor, may make rules to provide for training and qualifications, holding examinations, regulating the practice of osteopathy and advertising.

### ***Clause 96      Regulations***

The Governor may make regulations for all matters necessary to give effect to the Act and for any matter on which the Board may make rules (refer clause 95). Such purposes include, but are not limited to:

- conduct of the business of the Board and committees;
- registration;
- accuracy of the register;
- use of certificates of registration;
- manner of making complaints;
- conduct of investigations;
- conduct of conciliation conferences;
- prescribing fees;
- returns and notices provided to the Board;
- information supplied to the Board to be verified by statutory declaration.

Where a regulation is inconsistent with a rule, the regulation prevails to the extent of the inconsistency.

### ***Clause 97      Forms***

This clause is self-explanatory.



## **Part 8 – Miscellaneous**

Part 8 provides for miscellaneous items such as legal proceedings, liability of officers of body corporate, review of the Act and repeal of the Act and rules.

### ***Clause 98      Protection***

This clause provides protection against legal proceedings for persons who perform functions in good faith in the performance of a function under the Act. Accordingly, the Crown is relieved of liability that it might have had for that person.

### ***Clause 99      Notice of decision to be given***

This clause is self-explanatory.

### ***Clause 100      Review***

This clause provides that persons may apply to the State Administrative Tribunal for a review of a decision by the Board when registration is refused or an interim or summary order of the Board is made.

### ***Clause 101      Publication of proceedings etc.***

This clause governs to whom the Board can provide publications of proceedings. This can include Board committees, registration authorities in other States and journalists.

### ***Clause 102      Legal proceedings***

This clause is self-explanatory. All offence proceedings under the Act are to be heard in a court of summary jurisdiction constituted by a magistrate.

### ***Clause 103      Liability of certain officers of body corporate: offences***

Officers of a body corporate charged with an offence under the Act may also be charged with the same offence. If an officer is charged with the same offence, and the body corporate is convicted, the officer is taken to have also committed the offence unless it can be proved it was committed with the officer's consent.

### ***Clause 104      Review of Act***

This is a standard clause for all new legislation. The Minister is to review the operation of the Act in five years from its commencement to determine the effectiveness and continuation of the Board and any other matters relating to the effectiveness of the Act.

### ***Clause 105      Osteopaths Act 1997 repealed***

This clause provides for the repeal of the *Osteopaths Act 1997*.

### ***Clause 106      Osteopaths Rules 1999 repealed***

This clause provides for the repeal of the *Osteopaths Rules 1999*. As the rules will need to be significantly changed in accordance with the new Act, the current rules will be repealed and replaced with new rules and regulations as required.

***Clause 107 Transitional and savings provisions***

This clause is self-explanatory.

***Clause 108 Consequential amendments***

This clause is self-explanatory.

**Schedule 1 – Constitution and proceedings of the Board**

Schedule 1 presents general provisions in relation to the proceedings of the Board such as terms of office for Board members, deputy members, position vacancy, resignation or removal of members, election of chairperson, calling of meetings and meeting quorums, voting, minutes, and Board committees.

**Division 1 – General provisions**

***Clause 1 Term of Office***

Board members are to hold office for three years, not exceeding more than 9 years consecutively, unless approved by the Minister for special reasons.

***Clause 2 Functions of deputy presiding member***

This clause is self-explanatory.

***Clause 3 Deputy members***

This clause is self-explanatory.

***Clause 4 Vacation of office by member***

A Board member may resign by notice in writing given to the Minister. A member of the Board may be removed from office by the Minister for a number of reasons including mental or physical disability, insolvency and extended absences of leave.

***Clause 5 General procedure concerning meetings***

A quorum for a meeting of the Board is 4 members.

***Clause 6 Voting***

A decision of the majority of members at which a quorum is present is a decision of the Board. Where votes are equally divided, the presiding member is to have the casting vote.

***Clause 7      Holding meetings remotely***

A person may attend a Board meeting by telephone or other means of instantaneous communication.

***Clause 8      Resolution without meeting***

Resolutions in writing signed by each Board member have effect as if they had been passed at a Board meeting.

***Clause 9      Minutes***

This clause is self-explanatory.

**Division 2 — Disclosure of interests etc.**

***Clause 10      Meaning of “member”***

A member of the Board or of a committee.

***Clause 11      Disclosure of interests***

Members must disclose material personal interests in a matter before the Board or an offence is committed.

***Clause 12      Exclusion of interested member***

A member who has a material personal interest in a matter before the Board must not vote on the matter and must not be present when the matter is being considered.

***Clause 13      Board or committee may resolve that clause 12 inapplicable***

The Board may declare clause 12 inapplicable if it is satisfied the interest should not disqualify the member from voting.

***Clause 14      Quorum where clause 12 applies***

If a member is disqualified under clause 12, a quorum will be considered as 3 members. The Minister may deal with a matter if the Board is unable to with only 3 members present, such as for a decision on registration.

***Clause 15      Minister may declare clauses 12 and 14 inapplicable***

The Minister may declare clauses 12 and 14 inapplicable and, if so, must cause a copy of the declaration to be laid before each House of Parliament.

**Schedule 2 — Transitional and savings**

Schedule 2 provides transitional provisions for the introduction of the new Act relating to the continuation of the Board, membership of the Board, the Registrar and other staff, registered

persons and certificates under the repealed Act, for applications for registration not finalised before commencement of the new Act, suspension of persons under the repealed Act and complaints and investigations dealt with by the former Board.

**Clause 1      *Terms used in this schedule***

Describes the terms used in this schedule.

**Clause 2      *Interpretation Act 1984 not affected***

This schedule does not affect the terms of the *Interpretation Act 1984*.

**Clause 3      *The Physiotherapists Registration Board continues***

The Board continues as a body corporate and all references to the former Board are to be taken to be a reference to the new Board.

**Clause 4      *Board members***

This clause provides for the old Board members to cease office when the new Act commences. Transitional provisions are provided with staggered appointments to ensure all appointments do not fall due at the same time.

**Clause 5      *The registrar and other staff***

The registrar and officers of the old Board will continue as registrar and officers of the new Board.

**Clause 6      *Persons registered under the repealed Act***

All persons registered under the old Act continue to be registered under the new Act.

**Clause 7      *Register***

The register under the old Act continues as the register under the new Act.

**Clause 8      *Certificates of certain names to the register***

Certificates of registration for natural persons under the old Act continue as certificates of registration under the new Act.

**Clause 9      *Restoration of certain names to the register***

If a persons name has been removed from the register under the repealed Act following disciplinary proceedings, then the Board will need to apply to the State Administrative Tribunal to grant an application for registration and restoration of the name to the register.

**Clause 10      *Suspensions***

If a person has been suspended under the repealed Act, the person is take to have been suspended by the State Administrative Tribunal under the new Act and any orders of the Tribunal will apply.

***Clause 11      Undertakings under the repealed Act***

Undertakings under provisions in the repealed Act continue under the new Act.

***Clause 12      Matters being dealt with by the complaints assessment committee***

The complaints assessment committee established under the repealed Act continues.

***Clause 13      Complaints being dealt with by the Board***

Complaints under the repealed Act, if not alleged to the State Administrative Tribunal are to be dealt with as if they had been referred to the complaints assessment committee under the new Act.

***Clause 14      Investigation***

Investigators are to continue investigations under the new Act.

***Clause 15      Disciplinary proceedings***

If an allegation was made to the State Administrative Tribunal under the repealed Act, then the matter continues as if the allegation was made under the new Act.

***Clause 16      Failure to comply with an order made under the repealed Act***

Failure to comply orders under the repealed Act, continue under the new Act.

***Clause 17      Registered body corporate***

A body corporate registered under the repealed Act ceases to be registered on the commencement day.

***Clause 18      Annual report for part of a year***

The former Board is to report on its proceedings, but limited to the period from 31 December preceding the commencement day.

***Clause 19      Powers in relation to transitional provisions***

If there is no specific schedule for dealing with a transitional matter the Governor may make regulations prescribing all required matters.

**Schedule 3 – Consequential amendments**

Schedule 3 provides for consequential amendments to the *Civil Liability Act 2002*, the *Constitution Acts Amendment Act 1899*, the *Health Professionals (Special Events Exemption)*

*Act 2000, the Health Services (Conciliation and Review) Act 1995, the Mental Health Act 1996, the State Administrative Tribunal Act 2004 and the State Administrative Tribunal Regulations 2004.*

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