

FIRST PRINT

CHIROPRACTORS AND OSTEOPATHS BILL 1991

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to regulate the practice of chiropractic and osteopathy and to provide for the registration of chiropractors and osteopaths.

The Bill repeals and re-enacts the Chiropractic Act 1978 with the following modifications:

- (a) the title of the legislation has been changed to reflect the fact that it applies to both chiropractors and osteopaths;
- (b) the membership of the Registration Board is reconstituted to be comprised of:
 - (i) 4 chiropractors; and
 - (ii) 1 osteopath; and
 - (iii) 4 other persons (of various professions),
nominated by the Minister for Health.
- (c) it will be an offence for a person to practise spinal manipulation (whether for fee or reward or not) unless the person is a chiropractor, osteopath, medical practitioner or physiotherapist (currently it is only an offence if practised for fee or reward);
- (d) power is given to the Board to grant provisional, temporary and conditional registration;
- (e) Professional Standards Committees and a Chiropractors and Osteopaths Tribunal are to be established to inquire into and determine complaints about registered chiropractors and osteopaths;
- (f) the range of sanctions which may be imposed for professional misconduct are increased;
- (g) a Chiropractic and Osteopathy Education and Research Account is to be established to fund education and research relating to the practice of chiropractic and osteopathy out of registration and roll fees paid by registered practitioners;

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- (h) the Board may establish advisory committees to assist it to exercise its functions, and in particular, may establish an education advisory committee to advise on chiropractic and osteopathy education;
 - (i) numerous modifications of a minor nature are made.
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PART 1—PRELIMINARY

- Clause 1 specifies the short title of the proposed Act.
- Clause 2 provides for the commencement of the proposed Act.
- Clause 3 defines expressions used in the proposed Act.

PART 2—REQUIREMENT FOR REGISTRATION

Clause 4 prohibits the practice of chiropractic or osteopathy by anyone other than registered chiropractors, osteopaths, medical practitioners, physiotherapists, certain trainees or anyone exempted by the regulations.

Clause 5 prevents a person from using the title chiropractor or osteopath unless the person is registered under the Act. It also prohibits a chiropractor or osteopath from implying that he or she is a medical practitioner unless that is the case.

PART 3—REGISTRATION

Clauses 6, 7 and 8 specify the circumstances in which a person is registered under the Act as:

- a chiropractor
- an osteopath
- a chiropractor and osteopath.

Clauses 9, 10 and 11 specify the qualifications required for registration as a chiropractor, osteopath or chiropractor and osteopath.

Clause 12 specifies the circumstances in which the Board may refuse to register a person under the Act.

Clause 13 provides for provisional registration under the Act for persons who are entitled to the relevant diploma (required for registration) but have not had the diploma conferred on them.

Clause 14 provides for temporary registration under the Act in certain circumstances.

Clause 15 specifies the qualifications required for temporary registration.

Clause 16 provides for conditional registration under the Act for a person who has been the subject of disciplinary proceedings or who is conditionally registered outside New South Wales.

Clause 17 provides for the establishment of:

- a register of chiropractors
- a register of osteopaths
- a register of chiropractors and osteopaths.

Clause 18 provides for the payment of a roll fee by practitioners registered under the Act.

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Clause 19 provides for the restoration of a name to the register.

Clause 20 provides for the removal of a person's name from the register if that person has died or has ceased to be qualified to be registered.

PART 4—THE REGISTRATION BOARD

Clause 21 constitutes the Chiropractors and Osteopaths Registration Board.

Clause 22 specifies the functions of the Board.

Clause 23 provides for the membership of the Board.

Clause 24 provides for the appointment of a Registrar and other staff necessary to enable the Board to exercise its functions.

Clause 25 enables the Board to establish committees to assist it to exercise its functions.

Clause 26 gives effect to Schedules 1 and 2 which contain further provisions relating to the membership and procedure of the Board.

PART 5—COMPLAINTS AND DISCIPLINARY PROCEEDINGS

Division 1—Complaints

Clause 27 enables the Board to establish professional codes of conduct for registered practitioners of chiropractic and osteopathy.

Clause 28 provides for the making of complaints about registered practitioners to or by the Board or the Director-General of the Department of Health.

Clause 29 provides for the referral of complaints to a Committee or the Tribunal by the Board. The Board must refer any complaint which may warrant the suspension or deregistration of a registered practitioner to the Tribunal, but may also refer complaints involving the health of practitioners to a Committee.

Clause 30 provides for the referral of complaints to the Board, a Committee or the Tribunal by the Director-General. The Director-General must refer any complaint which may warrant the suspension or deregistration of a registered practitioner to the Tribunal, but may also refer complaints involving the health of practitioners to the Board.

Clause 31 requires the Board to refer certain complaints to the Director-General for investigation and the Director-General to investigate such complaints as well as any complaint referred by the Director-General to the Board, a Committee or the Tribunal.

Clause 32 empowers the Board to suspend (for a period not exceeding 30 days), or impose conditions on, a registered practitioner if it is satisfied that such action is necessary for the purpose of protecting the life, or the physical or mental health, of any person. If the Board takes such action, the matter must be referred to the Tribunal or in cases involving the health of a practitioner it may be referred to a Committee. A period of suspension may be extended for periods of up to 30 days, but only with the written approval of the Chairperson or a Deputy Chairperson of the Tribunal.

Clause 33 gives a person affected by a suspension or conditions imposed under clause 32 a right to appeal to the Tribunal.

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Division 2—Hearing of complaints by Professional Standards Committees

Clauses 34 and 35 provide for Professional Standards Committees. For the purposes of hearing a complaint, a Committee will consist of 2 registered practitioners appointed by the Board and a lay person nominated by the Minister who may or may not be members of the Board. More than one Committee may be constituted at one time so as to enable more than one matter to be heard at one time.

Clause 36 provides that proceedings before a Committee are to be held in the absence of the public, unless the Committee otherwise directs, and that the Committee may conduct the proceedings as it thinks fit.

Clause 37 enables a registered practitioner about whom a complaint is made and a complainant to be accompanied, but not represented, by a barrister or solicitor or another adviser in an inquiry before a Committee.

Clause 38 requires a Committee to terminate an inquiry and refer a complaint to the Tribunal if at any time the Committee forms the opinion that a complaint may provide grounds for the suspension or deregistration of a registered practitioner or becomes aware that the complaint or another complaint about the same person has been referred to the Tribunal.

Clause 39 sets out the powers of a Committee if it finds the subject-matter of a complaint to have been proved.

Clause 40 enables a Committee, in a case involving the health of a practitioner, to recommend to the Chairperson or a Deputy Chairperson of the Tribunal that the practitioner concerned be suspended or deregistered. The Chairperson or Deputy Chairperson may act on the recommendation and there is a right of appeal to the Tribunal under clause 42.

Clause 41 provides for the making of decisions by a Committee and requires it to make its reasons for its decisions available to the complainant, the registered practitioner concerned and such other persons as it thinks fit.

Clause 42 gives a registered practitioner or a complainant a right to appeal to the Tribunal against a finding of or the exercise of a power by a Committee. Appeals will be dealt with by way of rehearing.

Clause 43 provides for appeals with respect to a point of law, whether or not an inquiry has concluded.

Division 3—Hearing of matters by the Chiropractors and Osteopaths Tribunal

Clause 44 constitutes the Chiropractors and Osteopaths Tribunal. For the purposes of conducting an inquiry or hearing an appeal, the Tribunal will consist of the Chairperson or a Deputy Chairperson, 2 registered practitioners appointed by the Board and a lay person nominated by the Minister, who may or may not be members of the Board. More than one group of persons constituting the Tribunal may sit at one time so as to enable more than one matter to be heard at one time.

Clause 45 provides for District Court judges and experienced legal practitioners to be appointed as the Chairperson and Deputy Chairpersons of the Tribunal.

Clause 46 provides that proceedings before the Tribunal are to be held in public, unless the Tribunal otherwise directs, and that the Tribunal may conduct the proceedings as it thinks fit.

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Clause 47 enables a complainant or a registered practitioner about whom a complaint is made to be represented by a barrister or solicitor or another adviser in proceedings before the Tribunal.

Clause 48 prohibits the Chairperson or a Deputy Chairperson who has decided a question in a matter from sitting on an inquiry or appeal concerning the matter in which the decision was made.

Clause 49 sets out the powers of the Tribunal if it finds the subject-matter of a complaint to have been proved. It also provides that the Tribunal may award costs to or against any party to the proceedings.

Clause 50 makes provision in relation to suspended practitioners.

Clause 51 provides for the making of decisions by the Tribunal and requires it to make its reasons for its decisions available to the complainant, the registered practitioner concerned and such other persons as it thinks fit.

Clause 52 gives to a complainant or a registered practitioner a right to appeal to the Supreme Court from a decision of the Tribunal with respect to a point of law or against the exercise of a power by the Tribunal. Appeals with respect to a point of law may be made whether or not an inquiry has concluded.

Clause 53 gives the Tribunal power, on application by a person who has been suspended from practising or deregistered, to end the suspension or to have the person registered.

Clause 54 removes any doubt as to whether an inquiry may be conducted into a complaint about a registered practitioner before any relevant criminal or civil proceedings are completed.

PART 6—MISCELLANEOUS

Clause 55 requires the Board, the President or an authorised member of the Board to provide a written statement of the reasons for certain decisions.

Clause 56 makes it an offence to make a false entry in the register or, by fraud, to procure such an entry or to assert as true before the Board a document which is false.

Clause 57 provides that certain matters need not be proved in proceedings.

Clause 58 provides for certain documents under the hand of the Registrar and entries in the register to be evidence in proceedings.

Clauses 59 and 60 provide for fees collected under the Act to be paid to the Health Administration Corporation or the Chiropractic and Osteopathy Education and Research Account (established for education and research in chiropractic and osteopathy).

Clause 61 provides for the taking of summary proceedings under the proposed Act and regulations.

Clause 62 provides for the appointment and powers of inspectors.

Clause 63 enables an inspector to apply for a search warrant to enter premises in order to investigate contraventions of the proposed Act and regulations.

Clause 64 provides that certain persons given functions under the proposed Act do not incur personal liability for things done in good faith in exercising those functions.

Clause 65 provides for the making of regulations under the proposed Act.

Clause 66 amends the Search Warrants Act 1985 as a consequence of the powers conferred on inspectors by clause 63.

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Clause 67 repeals the Chiropractic Act 1978.

Clause 68 repeals the Chiropractic Regulation 1979.

Clause 69 is a formal provision giving effect to Schedule 4.

SCHEDULES

Schedule 1 contains provisions relating to the members of the Board.

Schedule 2 contains provisions relating to the procedure of the Board.

Schedule 3 contains the following provisions relating to proceedings before a Committee or the Tribunal:

Clause 1 (Proceedings generally) states that a Committee and the Tribunal are not bound to observe the rules of law governing the admission of evidence.

Clause 2 (Power to summon witness and take evidence) sets out the powers of a Committee and the Tribunal in relation to compelling the attendance of witnesses and the giving of evidence at an inquiry or appeal.

Clause 3 (Power to obtain documents) sets out the powers of a Committee and the Tribunal to require documents to be produced.

Clause 4 (Evidence of other proceedings) allows a Committee and the Tribunal to admit as evidence the result of or evidence given in the course of proceedings in other courts or tribunals (whether or not in New South Wales).

Clause 5 (Additional complaints) provides for inquiries to be conducted by a Committee or the Tribunal into more than one complaint and for a Committee or the Tribunal to deal with additional matters arising during proceedings as if a complaint had been made in respect of them.

Clause 6 (Release of information) empowers a Committee and the Tribunal to direct that the name or address of a complainant, a registered practitioner or a witness in proceedings, that evidence given in proceedings or that the subject-matter of a complaint not be published, except in a professional publication. It will be an offence with a maximum fine of 20 penalty units (\$2,000) to contravene such a direction.

Clause 7 (Authentication of documents by a Committee or the Tribunal) sets out the manner in which documents of a Committee or the Tribunal may be authenticated.

Clause 8 (Nominal complainant) provides for the Director-General or a person appointed by the Director-General to act as nominal complainant in proceedings before a Committee or the Tribunal.

Clause 9 (Intervention by Director-General) empowers the Director-General to intervene in proceedings before a Committee or the Tribunal.

Clause 10 (Expedition of inquiries and appeals) imposes a duty on a Committee and the Tribunal to hold and determine inquiries and appeals as soon as practicable after a complaint or matter is referred to the Committee or the Tribunal, or an appeal or application is made to the Tribunal, as the case may be.

Clause 11 (Certain complaints may not be heard) enables a Committee and the Tribunal to decide not to commence or to terminate certain proceedings.

Schedule 4 contains savings and transitional provisions consequent on the enactment of the proposed Act.

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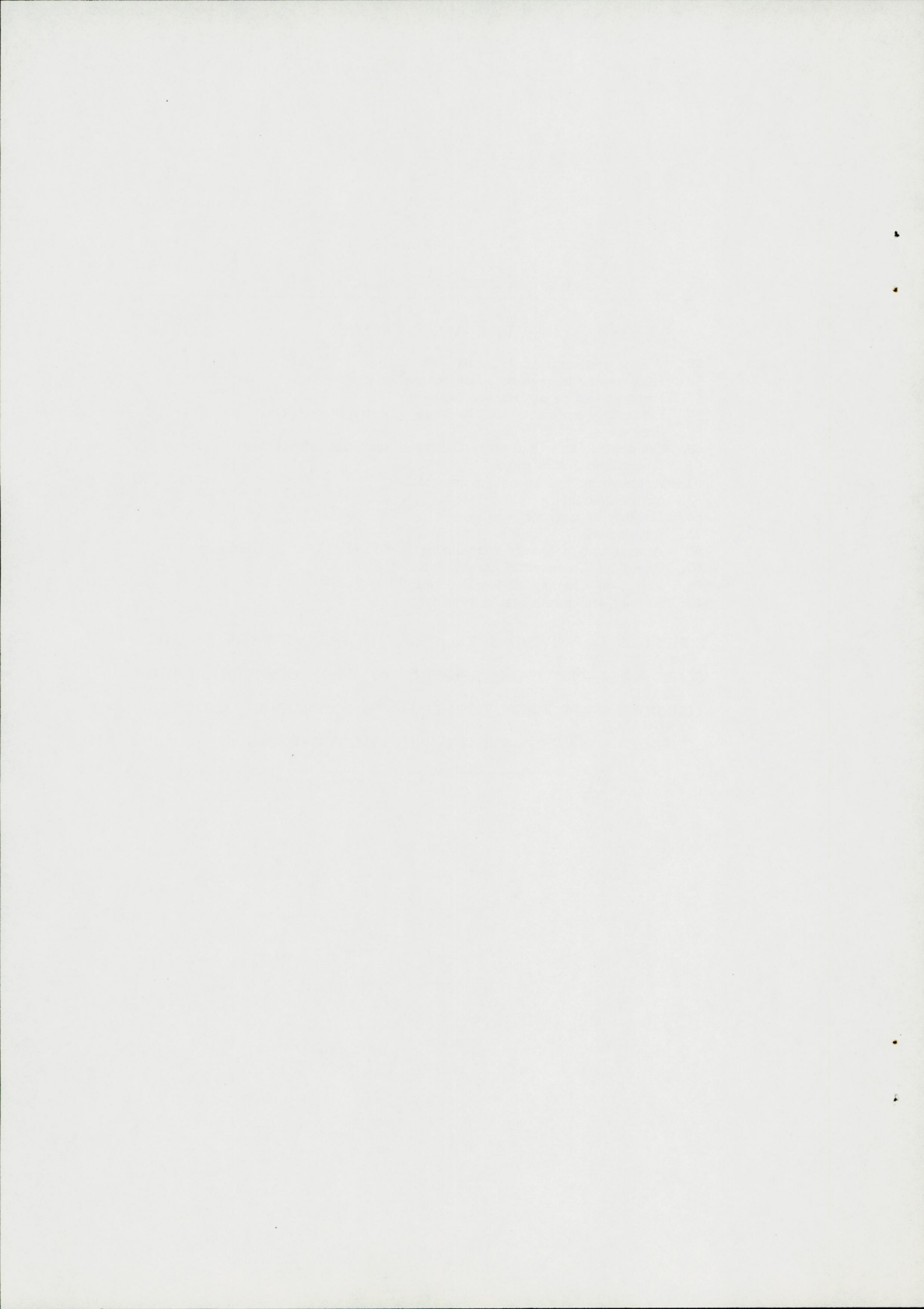
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CHIROPRACTORS AND OSTEOPATHS BILL 1991

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No. , 1991

A BILL FOR

An Act to regulate the practice of chiropractic and osteopathy and to repeal the Chiropractic Act 1978.

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The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Chiropractors and Osteopaths Act 1991.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.

(2) Part 1, section 69 and Schedule 4 commence on the date of assent to this Act.

Definitions

3. (1) In this Act:

“**Board**” means the Chiropractors and Osteopaths Registration Board;

“**Chairperson**” means the Chairperson of the Tribunal;

“**Committee**” means a Professional Standards Committee referred to in section 34;

“**conduct**” means any act or omission;

“**Corporation**” means the Health Administration Corporation constituted under the Health Administration Act 1982;

“**Deputy Chairperson**” means a Deputy Chairperson of the Tribunal;

“**Director-General**” means the Director-General of the Department of Health;

“**member**” means a member of the Board;

“**President**” means the President of the Board;

“**professional misconduct**”, in relation to a registered practitioner, includes any of the following:

(a) any conduct that demonstrates a lack of adequate:

(i) knowledge; or

(ii) experience; or

(iii) skill; or

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(iv) judgment; or

(v) care,

by the practitioner in the practice in which the practitioner is registered;

- (b) a contravention by the practitioner of a provision of this Act or the regulations;
- (c) a failure by the practitioner to comply with a condition of registration;
- (d) the practitioner holding himself or herself out as having qualifications in chiropractic or osteopathy other than those recorded in the register in respect of the practitioner;
- (e) any other improper or unethical conduct relating to the practice of chiropractic or osteopathy;

“register” means the register kept by the Board under section 17;

“registered chiropractor” means a person registered as a chiropractor or a chiropractor and osteopath under Part 3;

“registered osteopath” means a person registered as an osteopath or a chiropractor and osteopath under Part 3;

“registered practitioner” means a registered chiropractor or a registered osteopath;

“Registrar” means the Registrar of the Board;

“Tribunal” means the Chiropractors and Osteopaths Tribunal constituted under section 44.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

PART 2—REQUIREMENT FOR REGISTRATION

Chiropractic and osteopathy not to be practised by unregistered person

4. A person must not manipulate the joints of the human spinal column, including its immediate articulations, for therapeutic purposes unless:

- (a) the person is registered under this Act as a chiropractor, osteopath or chiropractor and osteopath; or

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- (b) the person does so in the ordinary course of his or her practice as a registered medical practitioner or physiotherapist registered under the Physiotherapists Registration Act 1945; or
- (c) the person does so in connection with a course of training referred to in section 9 (a) or 10 (a); or
- (d) the person does so in connection with an examination arranged by the Board pursuant to section 9 (b) or 10 (b); or
- (e) the person is exempted from the operation of this section by the regulations.

Maximum penalty: 50 penalty units.

Use of title of chiropractor, osteopath etc.

5. (1) A person must not indicate that the person:

- (a) practises chiropractic or osteopathy; or
- (b) is qualified to practise chiropractic or osteopathy,

unless the person is registered to so practise under this Act.

(2) Without limiting the ways in which a person may be taken to have indicated that he or she so practises or is qualified to so practise, a person is taken to have so indicated if the person uses:

- (a) any name, initials, word, title, addition, symbol or description which, having regard to the circumstances in which it is used:
 - (i) indicates; or
 - (ii) is capable of being understood to indicate; or
 - (iii) is calculated to lead a person to infer,

that the person practises chiropractic or osteopathy or is qualified to practise chiropractic or osteopathy; or

- (b) any name, title or description prescribed by the regulations.

(3) A registered practitioner must not use any certificate, diploma, membership, degree, licence, letters, testimonial or other title, status, documents or description:

- (a) in relation to himself or herself; or

(b) in the practice in which the practitioner is registered under this Act, other than those for which particulars are recorded in the register in respect of the practitioner.

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(4) A registered practitioner must not use any name, initials, word, title, addition, symbol or description which, having regard to the circumstances in which it is used:

- (a) indicates; or
- (b) is capable of being understood to indicate; or
- (c) is calculated to lead a person to infer,

that the person is a medical practitioner unless the person is registered as a medical practitioner under the Medical Practitioners Act 1938.

Maximum penalty: 20 penalty units.

PART 3—REGISTRATION

Registration as chiropractor

6. (1) A person is registered under this Act as a chiropractor if his or her name is entered in the register of chiropractors.

(2) A person who is granted one of the following certificates is taken to be a registered chiropractor while the certificate has effect:

- (a) a certificate of provisional registration as a chiropractor;
- (b) a certificate of temporary registration as a chiropractor;
- (c) a certificate of conditional registration as a chiropractor.

(3) A person ceases to be registered as a chiropractor if his or her name (for whatever reason) is removed from the register.

(4) A person whose registration as a chiropractor is suspended is taken not to be a registered chiropractor during the period of the suspension, except for the purposes of Part 5.

Registration as osteopath

7. (1) A person is registered under this Act as an osteopath if his or her name is entered in the register of osteopaths.

(2) A person who is granted one of the following certificates is taken to be a registered osteopath while the certificate has effect:

- (a) a certificate of provisional registration as an osteopath;
- (b) a certificate of temporary registration as an osteopath;
- (c) a certificate of conditional registration as an osteopath.

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(3) A person ceases to be registered as an osteopath if his or her name (for whatever reason) is removed from the register.

(4) A person whose registration as an osteopath is suspended is taken not to be a registered osteopath during the period of the suspension, except for the purposes of Part 5.

Registration as chiropractor and osteopath

8. (1) A person is registered under this Act as a chiropractor and osteopath if his or her name is entered in the register of chiropractors and osteopaths.

(2) A person who is granted one of the following certificates is taken to be a registered chiropractor and osteopath while the certificate has effect:

- (a) a certificate of temporary registration as a chiropractor and osteopath;
- (b) a certificate of conditional registration as a chiropractor and osteopath.

(3) A person ceases to be registered as a chiropractor and osteopath if his or her name (for whatever reason) is removed from the register.

(4) A person whose registration as a chiropractor and osteopath is suspended is taken not to be a registered chiropractor and osteopath during the period of the suspension, except for the purposes of Part 5.

Qualification for registration as chiropractor

9. A person who is of good character and is of or above the age of 18 years is entitled, on payment of the prescribed fee, to be registered as a chiropractor if the person:

- (a) has undertaken a course of training prescribed by the regulations and has received a diploma, certificate or other academic award for the successful completion of that course; or
- (b) has, at an examination arranged by the Board, satisfied the Board that he or she is fit to practise chiropractic in New South Wales; or
- (c) is registered elsewhere in Australia as a chiropractor in accordance with a law prescribed by the regulations providing for the registration of chiropractors.

Qualification for registration as osteopath

10. A person who is of good character and is of or above the age of 18 years is entitled, on payment of the prescribed fee, to be registered as an osteopath if the person:

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- (a) has undertaken a course of training prescribed by the regulations and has received a diploma, certificate or other academic award for the successful completion of that course; or
- (b) has, at an examination arranged by the Board, satisfied the Board that he or she is fit to practise osteopathy in New South Wales; or
- (c) is registered elsewhere in Australia as an osteopath in accordance with a law prescribed by the regulations providing for the registration of osteopaths.

Qualification for registration as chiropractor and osteopath

11. A person is entitled to be registered as a chiropractor and osteopath if the person is entitled to be registered under sections 9 and 10 and pays the prescribed fee.

Board may refuse registration

12. (1) The Board may refuse to register a person who is otherwise entitled to be registered under this Part if:

- (a) the person has been convicted either in or outside New South Wales of an offence which, from the circumstances under which it was committed, renders the person unfit in the public interest to practise chiropractic or osteopathy; or
- (b) the person's name has been removed from any register or roll established or kept under any law in any country providing for the registration or certification of chiropractors or osteopaths; or
- (c) the person is an habitual drunkard or addicted to any deleterious drug.

(2) The Board may not refuse to register a person under this section on the grounds that the person's name has been removed from another register or roll unless:

- (a) the reason for the removal was an act or omission of a nature affecting the person's conduct in a professional respect; and
- (b) the act or omission, if done or omitted to be done in New South Wales, would have authorised the removal of the person's name from the register under Part 5 (if the person were registered in the register).

Provisional registration

13. (1) The President may grant to a person a certificate of provisional registration as a chiropractor if the person:

- (a) is entitled to a diploma, certificate or other academic award referred to in section 9 (a); and

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- (b) will have the diploma, certificate or other award conferred or granted in due course according to the practice of the body, association or institution conferring or granting the diploma, certificate or other award; and
 - (c) is of good character; and
 - (d) applies to be registered as a chiropractor and pays the fee prescribed by the regulations.
- (2) The President may grant to a person a certificate of provisional registration as an osteopath if the person:
- (a) is entitled to a diploma, certificate or other academic award referred to in section 10 (a); and
 - (b) will have the diploma, certificate or other award conferred or granted in due course according to the practice of the body, association or institution conferring or granting the diploma, certificate or other award; and
 - (c) is of good character; and
 - (d) applies to be registered as an osteopath and pays the fee prescribed by the regulations.
- (3) The President is to set an expiry date, not later than 6 months after the certificate takes effect, for each certificate of provisional registration granted by the President.
- (4) The Board may, at any time before the date of expiry, for such cause as to it seems proper, cancel a certificate of provisional registration without prejudice to any application for registration of the person who was the holder of the certificate.
- (5) A certificate of provisional registration has effect until it is cancelled or expires.
- (6) If a person to whom a certificate of provisional registration has been granted becomes registered under this Act during the currency of the certificate, the person's registration dates from the granting of the certificate, unless otherwise decided by the Board.

Temporary registration

14. (1) The Board may grant to a person a certificate of temporary registration under this Part if the person:

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- (a) applies for temporary registration and is not normally resident in New South Wales; and
- (b) is entitled under section 15 to a certificate of the kind applied for; and
- (c) pays the fee prescribed by the regulations.

(2) A certificate of temporary registration may be granted for such term (not exceeding 6 months) as the Board determines.

(3) The Board may, at any time before the date of expiry, for such cause as to it seems proper, cancel a certificate of temporary registration without prejudice to any application for registration of the person who was the holder of the certificate.

(4) A certificate of temporary registration has effect until it is cancelled or expires.

(5) The Board may impose such conditions as it thinks fit on the temporary registration of a person and may remove or vary those conditions.

Qualification for temporary registration

15. (1) A person is entitled to a certificate of temporary registration as a chiropractor if the person:

- (a) is registered as a chiropractor in accordance with a law in force in the person's normal place of residence providing for the registration of chiropractors; or
- (b) holds such qualifications and has such experience in the practice of chiropractic as the Board considers satisfactory for the granting of temporary registration.

(2) A person is entitled to a certificate of temporary registration as an osteopath if the person:

- (a) is registered as an osteopath in accordance with a law in force in the person's normal place of residence providing for the registration of osteopaths; or
- (b) holds such qualifications and has such experience in the practice of osteopathy as the Board considers satisfactory for the granting of temporary registration.

(3) A person is entitled to a certificate of temporary registration as a chiropractor and osteopath if the person is entitled to a certificate of temporary registration under subsections (1) and (2).

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Conditional registration

16. (1) A person entitled to be registered under section 6, 7 or 8 may be so registered subject to such conditions relating to the duration of the registration, the aspects of the practice in which the person who is registered may be engaged, and any other matters, as the Board thinks fit.

(2) The Board may impose conditions under this section only if:

- (a) the person has been the subject of disciplinary proceedings as a result of which conditions are required to be placed on his or her registration; or
- (b) the person is or has been registered as a chiropractor or osteopath or both outside New South Wales and the registration is or was subject to conditions.

Register

17. (1) The Board is to keep a register divided as follows:

- (a) the register of chiropractors;
- (b) the register of osteopaths;
- (c) the register of chiropractors and osteopaths.

(2) The Board, on the application of a person and on being satisfied that the person is entitled to be registered under this Part, is to enter in the appropriate division of the register the following information:

- (a) the person's full name and address;
- (b) the date of registration;
- (c) particulars of the qualification or qualifications in respect of which the registration is granted;
- (d) such other particulars and matters as are directed by this Act or the regulations to be entered in the register.

(3) The Board may, in relation to a practitioner registered under this Act, also enter in the register, on payment of the prescribed fee:

- (a) particulars of such further or additional qualifications possessed by the practitioner which the Board decides are appropriate to be entered in the register; and
- (b) particulars of any certificate, diploma, membership, degree, licence, letters, testimonial or other title, status, document or description which the practitioner is authorised by the Board to use as a registered practitioner or in the practice of chiropractic or osteopathy.

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(4) The Board is to supply a person with such extracts from the register as the person may require, on payment of the fee prescribed by the regulations.

(5) The register is to be open to inspection at the office of the Board, at all times when that office is open for business, by any person on payment of the fee prescribed by the regulations.

Annual roll fee

18. (1) A registered practitioner (other than a person who holds a certificate of temporary registration) must, on or before the prescribed date in each year, pay to the Board a roll fee of such amount as may be prescribed by the regulations for the following year.

(2) Together with the roll fee, the practitioner is to furnish particulars of his or her address for entry in the register.

(3) If any practitioner required by this section to pay a prescribed roll fee does not pay the fee for the following year before the prescribed date in any year, the Board is required to notify the practitioner that if the fee is not paid by the prescribed date the practitioner's name will be removed from the register.

(4) Notification may be given to the practitioner by letter addressed to the practitioner at the address appearing in the register.

(5) The Board must remove the practitioner's name from the register if the practitioner has been so notified and fails to pay the fee on or before the due date.

(6) The Board is required to restore the practitioner's name to the register on the application of the practitioner and payment of the prescribed fee.

(7) A practitioner whose name has been removed from the register for more than 5 years may not have his or her name restored to the register under this section unless the Board is satisfied:

- (a) that the practitioner is of good character; and
- (b) that the practitioner is able to demonstrate (whether by passing an examination arranged by the Board, or otherwise) that he or she possesses the requisite skills to practise as a chiropractor or osteopath or both.

(8) The regulations may provide for the waiver of the whole or such part of the fees as the Board may in a particular case think proper.

(9) In this section, "year" means a year ending on 30 June or on such other day as may be specified by the regulations.

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Restoration of name to register

19. (1) The name of a practitioner removed from the register at the direction of the Board is not to be again entered in the register, except by direction of the Board or by order of a court of competent jurisdiction.

(2) The Board may, if it thinks fit in any case, direct the Registrar to restore to the register a name removed from it.

(3) The Board may, as a condition of restoration, require a person to pay such fee, not exceeding the prescribed registration fee, as it may from time to time direct.

(4) The Registrar is to restore a name to the register on being directed to do so by the Board.

Removal of name of deceased person etc.

20. (1) The Board is to cause to be removed from the register the names of:

- (a) every practitioner who has died; and
- (b) every practitioner who has ceased to possess or does not possess the qualifications in respect of which the person was registered.

(2) The Board may cause the name of a practitioner to be removed from the register if the practitioner so requests.

PART 4—THE REGISTRATION BOARD**Constitution of the Board**

21. There is constituted by this Act a body corporate under the corporate name of the Chiropractors and Osteopaths Registration Board.

Functions of the Board

22. The Board has the following functions:

- (a) to promote and maintain high standards of chiropractic and osteopathic practice in New South Wales;
- (b) to advise the Minister on matters relating to the registration of chiropractors and osteopaths, standards of chiropractic and osteopathic practice and any other matters arising under or related to this Act or the regulations;
- (c) to consult with professional and educational bodies on matters affecting chiropractors and osteopaths, where the Board considers it appropriate to do so;

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- (d) to publish and distribute information concerning this Act and the regulations to chiropractors and osteopaths and other interested persons;
- (e) to exercise the functions conferred or imposed on it by or under this or any other Act.

Membership of the Board

23. (1) The Board is to consist of 9 members nominated by the Minister and appointed by the Governor.

(2) Of the members:

- (a) 1 is to be an officer of the Department of Health, or an employee of an area health service or an employee of an incorporated hospital or separate institution mentioned in the Second or Third Schedule to the Public Hospitals Act 1929;
- (b) 1 is to be a registered chiropractor who has experience in chiropractic education;
- (c) 3 are to be registered chiropractors nominated by the New South Wales Branch of the Chiropractors Association of Australia;
- (d) 1 is to be a registered osteopath nominated by the New South Wales Branch of the Australian Osteopathic Association;
- (e) 1 is to be a person nominated to represent the community;
- (f) 1 is to be a registered medical practitioner;
- (g) 1 is to be a barrister or solicitor.

(3) If a body referred to in subsection (2) (c) or (d) does not nominate a chiropractor within such time or in such manner as may be specified by the Minister by notice in writing to the body, the Governor may instead appoint to be a member a chiropractor nominated by the Minister.

Staff

24. A Registrar and such other staff as may be necessary to enable the Board to exercise its functions are to be employed under the Health Administration Act 1982 by the Corporation.

Advisory committees

25. (1) The Board may establish committees to assist it in connection with the exercise of any of its functions.

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(2) The Board may establish (without limiting the generality of subsection (1)) an education advisory committee to advise the Board on:

- (a) chiropractic and osteopathy education (including further education for registered practitioners); and
- (b) education for any public purpose connected with the practice of chiropractic or osteopathy.

(3) It does not matter that any or all of the members of a committee are not members of the Board.

(4) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings may be determined by the Board or (subject to any determination of the Board) by the committee.

Other provisions relating to the Board

26. (1) Schedule 1 has effect with respect to the members of the Board.

(2) Schedule 2 has effect with respect to the procedure of the Board.

PART 5—COMPLAINTS AND DISCIPLINARY PROCEEDINGS

Division 1—Complaints

Codes of professional conduct

27. The Board may establish:

- (a) codes of professional conduct setting out the rules of conduct which should be observed by registered chiropractors in carrying out the practice of chiropractic; and
- (b) codes of professional conduct setting out the rules of conduct which should be observed by registered osteopaths in carrying out the practice of osteopathy.

Complaints

28. (1) A complaint may be made that a registered practitioner:

- (a) has been convicted either in or outside New South Wales of an offence which, from the circumstances in which it was committed, renders the chiropractor or osteopath unfit in the public interest to practise chiropractic or osteopathy; or
- (b) is an habitual drunkard or is addicted to any deleterious drug; or
- (c) has been guilty of professional misconduct; or

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(d) does not have sufficient physical or mental capacity to practise chiropractic or osteopathy; or

(e) is not of good character.

(2) A complaint may be made by any person:

(a) to the Board; or

(b) to the Director-General,

or may be made by the Board or the Director-General.

(3) A complaint made to the Board (other than a complaint made by the Director-General) or to the Director-General must:

(a) be in writing; and

(b) contain particulars of the allegations on which it is founded; and

(c) be verified by statutory declaration; and

(d) if made to the Board, be lodged with the Registrar; and

(e) if made to the Director-General, be lodged at an office of the Department of Health.

(4) The Director-General and the Board are each to inform the other when a complaint is made to or by either of them.

(5) The Board or the Director-General may require the complainant to provide further particulars of a complaint.

(6) A complaint about a registered practitioner may be dealt with even though the practitioner has ceased to be registered and, for that purpose, references in this Part and Schedule 3 to a registered practitioner include references to a person who has ceased to be registered.

(7) A complaint that a registered practitioner has been guilty of professional misconduct may be dealt with even though the professional misconduct occurred during a period in which the practitioner's name had been removed from the register under section 18.

Referral or dismissal of complaints by the Board

29. (1) The Board must, as soon as practicable after a complaint is lodged with the Registrar or the Board has decided to make a complaint:

(a) refer the complaint to a Committee or the Tribunal (which is to be constituted in accordance with this Act to deal with the complaint), as the Board thinks fit, despite any previous action taken by the Board or the Director-General; or

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- (b) direct the registered practitioner concerned to attend for counselling; or
- (c) determine that no further action should be taken, except where the Board has decided to make the complaint.

(2) The Board must refer a complaint to the Tribunal if the Board is of the opinion that the subject-matter of the complaint (not being, in the Board's opinion, a frivolous or vexatious complaint), if substantiated, may provide grounds for the suspension or deregistration of the registered practitioner.

(3) The Board may refer a complaint to a Committee even though, if substantiated, it may provide grounds for the suspension or deregistration of the practitioner, if:

- (a) the complaint is made under section 28 (1) (d), or the Board has decided to make the complaint under section 28 (1) (d); and
- (b) the Board is of the opinion that no other complaint under any other provision of section 28 relating to the registered practitioner concerned should be referred to the Tribunal.

(4) Two or more members of the Board may be appointed by the Board for the purpose of carrying out the functions of the Board under this section, and in this Act and the regulations a reference to the referral of a complaint by the Board is taken to include a reference to a referral of a complaint by those members.

(5) The Board may, before taking any action under this section, require the registered practitioner concerned, by notice in writing given personally or by post to the practitioner, to undergo at the Board's expense a medical examination:

- (a) by a registered medical practitioner; and
- (b) at any reasonable time and place,

specified in the notice.

(6) A failure by a registered practitioner, without reasonable cause, to comply with:

- (a) a direction under this section to attend for counselling; or
- (b) a notice given under this section to undergo a medical examination,

is, for the purposes of this Part or any inquiry or appeal under this Part, evidence that the practitioner does not have sufficient physical and mental capacity to practise chiropractic or osteopathy.

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- (7) The Board:
- (a) is not to refer a complaint about a registered practitioner who has died; and
 - (b) may decide not to refer a complaint:
 - (i) if the complainant fails to provide further particulars requested under section 28; or
 - (ii) if the registered practitioner concerned ceases to be registered.

Referral or dismissal of complaints by the Director-General

30. (1) The Director-General must, as soon as practicable after a complaint is lodged with the Director-General or the Director-General has decided to make a complaint:

- (a) refer the complaint to the Board, or, after consultation with the Board, to a Committee or the Tribunal (which is to be constituted in accordance with this Act to deal with the complaint), as the Director-General thinks fit despite any previous action taken by the Director-General or the Board; or
- (b) determine that no further action should be taken, except where the Director-General has decided to make the complaint.

(2) The Director-General must refer a complaint to the Tribunal if the Director-General is of the opinion that the subject-matter of the complaint (not being, in the Director-General's opinion, a frivolous or vexatious complaint), if substantiated, may provide grounds for the suspension or deregistration of the registered practitioner.

(3) The Director-General may refer a complaint to the Board even though, if substantiated, it may provide grounds for the suspension or deregistration of the practitioner if:

- (a) the complaint is made under section 28 (1) (d), or the Director-General has decided to make the complaint under section 28 (1) (d); and
- (b) the Director-General is of the opinion that no other complaint under any other provision of section 28 relating to the registered practitioner concerned should be referred to the Tribunal.

(4) The Director-General is to inform the Board if he or she refers a complaint to a Committee or the Tribunal.

(5) The Director-General:

- (a) is not to refer a complaint about a registered practitioner who has died; and

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(b) may decide not to refer a complaint:

- (i) if the complainant fails to provide further particulars requested under section 28; or
- (ii) if the registered practitioner concerned ceases to be registered.

Investigation of complaints

31. (1) The Board must, at or before the time it refers a complaint to a Committee or the Tribunal, also refer the complaint to the Director-General for investigation.

(2) The Director-General must investigate the complaint or cause it to be investigated.

(3) The Director-General must investigate a complaint (or cause it to be investigated) if the Director-General refers the complaint to the Board, a Committee or the Tribunal.

Suspension etc. by the Board

32. (1) The Board may at any time:

- (a) by its order suspend a registered practitioner from practising for such period (not exceeding 30 days) as is specified in the order; or
- (b) impose on a registered practitioner's registration such conditions, relating to the practitioner's practice, as it considers appropriate,

if it is satisfied that such action is necessary for the purpose of protecting the life, or the physical or mental health, of any person.

(2) The Board may take action under this section whether or not a complaint has been made to the Board about the registered practitioner.

(3) The Board must, at or before the time it takes action under this section, refer:

- (a) any complaint about the registered practitioner; and
- (b) particulars of the action taken and the Board's reasons for taking the action,

to the Tribunal, or, if the matter is one which could be referred to a Committee under section 29 (3), it may refer it to a Committee, and the matter is taken to be a complaint referred to the Tribunal or the Committee by the Board.

(4) The Tribunal or a Committee is to be constituted in accordance with this Act to deal with a matter referred to it under this section.

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(5) The Board is to inform the Director-General when it takes any action under this section.

(6) A period of suspension imposed by the Board under this section may be extended, from time to time, by the Board by its order for a further period or further periods, each of not more than 30 days, if:

- (a) the extension has been approved in writing by the Chairperson or a Deputy Chairperson; and
- (b) the complaint about the registered practitioner has not been disposed of.

(7) A person suspended from practising by an order under this section is, except in the application to the person of a provision of Part 3 or this Part, taken not to be a registered practitioner, while the order is in force.

(8) On the expiry of such a period of suspension, the person's rights and privileges as a registered practitioner are revived, subject to any order made by the Tribunal.

(9) Conditions imposed under subsection (1) (b) following the making of a complaint about a practitioner have effect until such time as the complaint is disposed of.

Appeals against suspension etc. by the Board

33. (1) A person:

- (a) who has been suspended by the Board from practising; or
- (b) on whom conditions have been imposed under section 32,

may appeal to the Tribunal against the suspension or conditions or any extension under that section of the period of suspension.

(2) An appeal under this section is to be lodged with the Registrar who is to refer it to the Tribunal (which is to be constituted in accordance with this Act to deal with the appeal).

(3) An appeal under this section against an order made or conditions imposed under section 32 is to be lodged not later than 7 days after notice of the order or notice of the imposition of the conditions is given to the affected person.

(4) On an appeal under this section, the Tribunal may by its order:

- (a) terminate, vary or confirm the period of suspension; or
- (b) revoke, vary or confirm the conditions,

as it thinks proper, but only so that the order does not have effect beyond the day on which any related complaint about the person is disposed of.

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(5) An appeal under this section does not affect any suspension or conditions with respect to which it has been made until an order is made under subsection (4).

Division 2—Hearing of complaints by Professional Standards Committees

Professional Standards Committees

34. (1) There are to be Professional Standards Committees.

(2) The Committees are to have and may exercise the jurisdiction and functions conferred or imposed on them by or under this Act.

(3) When the Board decides to refer a complaint or is informed by the Director-General of his or her decision to refer a complaint to a Committee, the Board is to appoint 3 persons to sit as the Committee for the purpose of conducting an inquiry into the complaint.

Constitution of Committees

35. (1) For the purposes of conducting an inquiry into a complaint against a registered chiropractor, a Committee consists of:

- (a) 2 registered chiropractors having such qualifications as may be prescribed; and
- (b) 1 lay person (that is, a person who is neither a chiropractor nor an osteopath) appointed from among a panel of lay persons for the time being nominated by the Minister.

(2) For the purposes of conducting an inquiry arising from a complaint against a registered osteopath, a Committee consists of:

- (a) 2 registered osteopaths having such qualifications as may be prescribed; and
- (b) 1 lay person (that is, a person who is neither an osteopath nor a chiropractor) appointed from among a panel of lay persons for the time being nominated by the Minister.

(3) For the purposes of conducting an inquiry arising from a complaint against a registered chiropractor and osteopath, a Committee consists of:

- (a) 1 registered chiropractor having such qualifications as may be prescribed; and
- (b) 1 registered osteopath having such qualifications as may be prescribed; and
- (c) 1 lay person (that is, a person who is neither a chiropractor nor an osteopath) appointed from among a panel of lay persons for the time being nominated by the Minister.

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(4) The Board is to appoint one of the members of a Committee as a chairperson of the Committee.

(5) A person may be appointed to sit on a Committee whether or not the person is a member of the Board, but not if the person has previously dealt with the particular matter before the Committee in his or her capacity as such a member.

(6) One or more Committees may conduct more than one inquiry at the same time.

(7) A member of a Committee, while sitting on the Committee, is entitled to be paid by the Board in accordance with the regulations.

Proceedings before a Committee

36. (1) A Committee appointed under section 34 is to conduct an inquiry into any complaint referred to it.

(2) On appointment under section 35, the chairperson of a Committee is to fix a time and place for conducting an inquiry by the Committee into the complaint and is to give not less than 7 days' notice of the inquiry to:

- (a) the registered practitioner concerned; and
- (b) the complainant, if any; and
- (c) the Director-General and the Board.

(3) In conducting an inquiry, a Committee:

- (a) is, unless it otherwise directs, to sit in the absence of the public; and
- (b) may conduct the proceedings as it thinks fit.

(4) A Committee may be assisted by a legally qualified officer appointed by the Registrar for that purpose on the request of the Committee.

(5) Schedule 3 has effect with respect to any inquiry conducted by a Committee.

Representation before a Committee

37. (1) At an inquiry conducted by a Committee:

- (a) the registered practitioner concerned; and
- (b) the complainant, if any,

are entitled to attend and to be accompanied by a barrister or solicitor or another adviser, but are not entitled to be represented at the inquiry by the barrister or solicitor or other adviser.

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(2) A Committee may grant leave for any other person (not being a barrister or solicitor or another adviser representing any person) to appear at an inquiry if the Committee is satisfied that it is appropriate for that person to appear.

Referral of certain matters to the Tribunal

38. (1) A Committee must forthwith terminate an inquiry if, before or during the inquiry, the Committee:

- (a) forms the opinion that the complaint (not being a complaint referred under section 29 (3)) may provide grounds for the suspension or deregistration of a registered practitioner; or
- (b) becomes aware that the Board or the Director-General has referred the complaint or another complaint about the registered practitioner concerned to the Tribunal.

(2) The Committee must refer the complaint to the Tribunal unless it has already been referred to the Tribunal.

(3) The Tribunal to which the complaint is referred may be the Tribunal as already constituted to deal with another complaint or the Tribunal as constituted in accordance with this Act to deal with the referred complaint.

(4) A Committee is to inform the Board when it takes any action under this section.

Determinations of Committees

39. (1) A Committee may make one or more of the following determinations if it finds the subject-matter of a complaint made against a person to have been proved:

- (a) caution or reprimand the person;
- (b) order that the person seek medical or psychiatric treatment or counselling;
- (c) direct that such conditions, relating to the person's practice, as it considers appropriate be imposed on the person's registration;
- (d) order that the person complete such educational courses as are specified by the Committee;
- (e) order that the person report on his or her practice at the times, in the manner and to the persons specified by the Committee;
- (f) order that the person seek and take advice, in relation to the management of his or her practice, from such persons as are specified by the Committee;

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- (g) by its order impose a fine on the person of an amount, not exceeding 50 penalty units, specified in the order.
- (2) A power conferred by subsection (1) (b)–(f) may not be exercised unless the person concerned is registered.
- (3) An order may be made by a Committee that a person who is not registered may be registered subject only to compliance with an order made under subsection (1) (b), (d), (e) or (f) or conditions that might, if the person were registered, be imposed under subsection (1) (c).
- (4) The Board may refer to the Tribunal any failure by a person to comply with the following orders or conditions imposed by a Committee:
- (a) an order under subsection (1) (b), (d), (e) or (f);
 - (b) conditions imposed under subsection (1) (c); or
 - (c) an order under subsection (3).
- (5) The Tribunal may, if it finds the failure to have been proved:
- (a) exercise any power that the Tribunal may exercise under section 49 (1) or (5) (if the person is a registered practitioner); or
 - (b) make any order that the Tribunal may make under section 49 (2) or (5) (if the person is not registered).
- (6) An order made by a Committee or the Tribunal under this section takes effect on the day on which the order is made or on such later day as is specified in the order.
- (7) A Committee may impose a fine on a person only if it finds the person to have been guilty of professional misconduct (other than conduct in respect of which a fine or other penalty has already been imposed by a court).
- (8) A Committee is to inform the Registrar of the exercise of any power under this section by the Committee.
- (9) A power of a Committee is taken to have been exercised by the Committee if any person other than the Committee exercises the power under this section.

Complaints relating solely to physical and mental capacity

40. (1) If a complaint concerning physical or mental capacity, is referred under section 29 (3) to a Committee and the Committee finds the subject-matter of the complaint made against a person to have been proved, the Committee may, in addition to any other power it may exercise under section 39, refer the matter to the Chairperson, or a Deputy Chairperson nominated by the Chairperson, with a recommendation that:

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- (a) the person be suspended from practising for such period as it specifies; or
 - (b) the name of the person be removed from the register, or if the person has ceased to be registered, that the person not be registered until after a specified time.
- (2) On receipt of a recommendation under this section, the Chairperson or a Deputy Chairperson is:
- (a) to make an order in the terms recommended; or
 - (b) to make such other order as to the suspension or registration of the person concerned as the Chairperson or Deputy Chairperson thinks proper or exercise any power of a Committee under section 39.
- (3) In any case where, by an order under this section, the Chairperson or Deputy Chairperson directs that the name of a person be removed from the register or a person has ceased to be registered:
- (a) the Chairperson or Deputy Chairperson may by that order fix a time after which the person may apply to be registered; and
 - (b) where a time has been so fixed, the person is not entitled to be registered before that time despite Part 3.
- (4) An order made by the Chairperson or a Deputy Chairperson under this section takes effect on the day on which the order is made or on such later day as is specified in the order.

Decisions of a Committee

41. (1) A decision supported by at least 2 members of a Committee on any question arising during an inquiry is the decision of the Committee.

(2) A Committee must, within 30 days of making the decision resulting from any such inquiry, make available to the complainant, the registered practitioner concerned and such other persons as it thinks fit, a written statement of the decision.

(3) A written statement of a decision must:

- (a) set out any findings on material questions of fact; and
- (b) refer to any evidence or other material on which the findings were based; and
- (c) give the reasons for the decision.

(4) A Committee is not required to include confidential information in any such statement (despite any other provision of this section), and if a

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statement would be false or misleading if it did not include the confidential information, the Committee is not required to provide the statement.

(5) If, because of subsection (4), confidential information is not included or such a statement is not provided, a Committee must, within 30 days of the decision, give notice in writing to the person indicating that:

- (a) the confidential information is not included; or
- (b) the statement will not be provided,

as appropriate, and giving the reasons why the confidential information is not included or the statement will not be provided.

(6) In this section:

“confidential information” means information that:

- (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared; and
- (b) relates to the personal or business affairs of a person, other than a person to whom a Committee is required (or would, but for subsection (4), be required) to provide a written statement of a decision; and
- (c) is information:
 - (i) that was supplied in confidence; or
 - (ii) the publication of which would reveal a trade secret; or
 - (iii) that was provided in compliance with a duty imposed by an enactment; or
 - (iv) the provision of which by a Committee would be in breach of any enactment.

(7) Nothing in this section affects the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.

Appeals against decisions of a Committee etc.

42. (1) A registered practitioner about whom a complaint is referred to a Committee, or the complainant, may appeal to the Tribunal against:

- (a) a finding of the Committee; or
- (b) the exercise by the Committee of any power under section 39; or
- (c) the exercise by the Chairperson or a Deputy Chairperson of any power under section 40,

within the prescribed time.

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(2) The appeal is to be lodged with the Registrar who is to refer it to the Tribunal (which is to be constituted in accordance with this Act to deal with the appeal).

(3) The appeal is to be dealt with by way of rehearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the inquiry, may be given.

(4) On the appeal, the Tribunal may:

(a) dismiss the appeal; or

(b) make any finding or exercise any power that the Tribunal could have made or exercised if the complaint had been originally referred to the Tribunal.

(5) The appeal does not affect any finding or exercise of power with respect to which it has been made until an order is made under subsection (4) (b).

Appeals with respect to points of law

43. (1) A registered practitioner about whom a complaint is referred to a Committee, or the complainant, may appeal to the Chairperson, or a Deputy Chairperson nominated by the Chairperson, with respect to a point of law.

(2) The appeal may be made in accordance with the regulations during the inquiry conducted by the Committee or within the prescribed time.

(3) The inquiry by the Committee is not to continue until the appeal has been disposed of (if the inquiry has not been completed).

(4) The Committee, on recommending the inquiry, is not to make any decision that is inconsistent with the Chairperson's or Deputy Chairperson's determination with respect to the point of law.

Division 3—Hearing of matters by the Chiropractors and Osteopaths Tribunal**The Chiropractors and Osteopaths Tribunal**

44. (1) There is to be a Chiropractors and Osteopaths Tribunal.

(2) The Tribunal has and may exercise the jurisdiction and functions conferred or imposed on it by or under this or any other Act.

(3) The Board must inform the Chairperson and appoint 3 other persons to sit on the Tribunal when:

(a) the Board decides to refer a complaint to the Tribunal; or

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(b) the Board is informed by a Committee or the Director-General of a decision by the Committee or Director-General to refer a complaint or another matter to the Tribunal; or

(c) an appeal or application under section 53 to the Tribunal is lodged with the Board.

(4) On being informed of a complaint, matter, appeal or application under this section, the Chairperson is to nominate:

(a) himself or herself; or

(b) a Deputy Chairperson,

to sit on the Tribunal for the purpose of conducting an inquiry into the complaint, matter or application or hearing the appeal.

(5) For the purpose of conducting an inquiry or hearing an appeal, the Tribunal is to consist of:

(a) the Chairperson or a Deputy Chairperson;

(b) 2 registered practitioners having such qualifications as may be prescribed, appointed by the Board; and

(c) one lay person (that is, a person who is not a registered practitioner) appointed by the Board from among a panel of lay persons for the time being nominated by the Minister.

(6) A person may be appointed to sit on the Tribunal whether or not the person is a member of the Board, but not if the person has previously dealt with the particular matter before the Tribunal in his or her capacity as such a member.

(7) The Tribunal, as constituted by different persons or the same persons, may conduct or hear more than one inquiry or appeal at the same time.

(8) A member of the Tribunal (other than the Chairperson or a Deputy Chairperson), while sitting on the Tribunal, is entitled to be paid in accordance with the regulations.

(9) The Tribunal is to have a seal of which all courts and persons acting judicially are to take judicial notice.

Chairperson and Deputy Chairpersons of the Tribunal

45. (1) The Governor may appoint:

(a) a prescribed legal practitioner as Chairperson of the Tribunal; and

(b) one or more prescribed legal practitioners as Deputy Chairpersons of the Tribunal.

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(2) The Chairperson and each Deputy Chairperson hold office for such period not exceeding 7 years as may be specified in the instrument of appointment as Chairperson or Deputy Chairperson, but are eligible (if otherwise qualified) for re-appointment.

(3) A Deputy Chairperson may be appointed by the Governor for the purpose only of conducting or hearing a particular inquiry or appeal described in the instrument of appointment of the Deputy Chairperson (without limiting the generality of this section).

(4) A Deputy Chairperson, while sitting on the Tribunal, has and may exercise all the functions conferred or imposed on the Chairperson by this Act (other than those conferred by section 44 (4)).

(5) The Chairperson or a Deputy Chairperson sitting on the Tribunal is entitled to be paid in accordance with the regulations.

(6) The Governor may appoint a Deputy Chairperson to act in the office of Chairperson during the illness or absence of the Chairperson.

(7) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of the Chairperson or a Deputy Chairperson.

(8) In this section, "prescribed legal practitioner" means any of the following:

- (a) a Judge of the District Court;
- (b) a barrister of not less than 5 years' standing;
- (c) a solicitor of not less than 7 years' standing; or
- (d) a barrister or a solicitor of less than 5 years' or 7 years' standing respectively, where at all times during a continuous period of not less than 7 years he was on the roll of solicitors when he was not on the roll of barristers or on the roll of barristers when he was not on the roll of solicitors.

Proceedings before the Tribunal

46. (1) The members of the Tribunal nominated and appointed under section 44 are to conduct an inquiry into any complaint, matter or application and are to hear any appeal referred to it.

(2) On nomination under section 44, the Chairperson or a Deputy Chairperson is to fix a time and place for the conducting of the inquiry or the hearing of the appeal by the Tribunal and is to give not less than 7 days' notice of the inquiry or appeal to the following persons:

- (a) the registered practitioner concerned;
- (b) the complainant, if any;

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- (c) the Director-General and the Board;
- (d) the chairperson of the relevant Committee, if appropriate.

(3) In conducting an inquiry or hearing an appeal, the Tribunal is, unless it otherwise directs, to be open to the public and may conduct the proceedings as it thinks fit.

(4) Schedule 3 has effect with respect to any inquiry conducted or appeal heard by the Tribunal.

Representation before the Tribunal

47. (1) At an inquiry conducted or appeal heard by the Tribunal:
- (a) the registered practitioner concerned; and
 - (b) the complainant, if any,

are entitled to attend and to be represented by a barrister or solicitor or another adviser.

(2) The Tribunal may grant leave for any other person to appear (whether in person or by a barrister or solicitor or another adviser) at an inquiry or appeal if the Tribunal is satisfied that it is appropriate for that person to appear.

Chairperson or Deputy Chairperson not to review own decisions

48. The Chairperson or Deputy Chairperson must not sit on the Tribunal for the purpose of conducting any inquiry or hearing any appeal relating to a particular matter before the Tribunal if a decision has been made by the Chairperson or Deputy Chairperson in relation to the matter.

Determinations of the Tribunal

49. (1) The Tribunal may make one or more of the following determinations if it finds the subject-matter of a complaint made against a person to have been proved:

- (a) caution or reprimand the person;
- (b) order that the person seek medical or psychiatric treatment or counselling;
- (c) direct that such conditions, relating to the person's practice, as it considers appropriate be imposed on the person's registration;
- (d) order that the person complete such educational courses as are specified by the Tribunal;
- (e) order that the person report on his or her practice at the times, in the manner and to the persons specified by the Tribunal;

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(f) order that the person seek and take advice, in relation to the management of his or her practice, from such persons as are specified by the Tribunal;

(g) by its order:

(i) suspend the person from practising for such period as it specifies; or

(ii) direct that the person's name be removed from the register;

(h) by its order impose a fine on the person of an amount, not exceeding 50 penalty units, specified in the order.

(2) A power conferred by subsection (1) (b)–(g) may not be exercised unless the person is registered, but an order may be made by the Tribunal that a person who is not registered may be registered only subject to compliance with an order under subsection (1) (b), (d), (e) or (f) or conditions that might, if the person were registered, be imposed under subsection (1) (c).

(3) If the Board has reason to believe that a person in respect of whom the Tribunal has:

(a) made an order under subsection (1) (b), (d), (e) or (f); or

(b) imposed conditions under subsection (1) (c); or

(c) made an order under subsection (2),

has failed to comply with the order or conditions, the Board may refer the matter to the Tribunal.

(4) The Tribunal may, if it finds the failure to have been proved:

(a) exercise any power that it may exercise under subsection (1) or (5) (if the person is a registered practitioner); or

(b) make any order that the Tribunal may make under subsection (2) or (5) (if the person is not registered).

(5) If the Tribunal makes an order under subsection (1) (g) (ii) or the Tribunal finds the subject-matter of a complaint against a person who has ceased to be registered to be proved:

(a) the Tribunal may by its order fix a time after which the person whose name is removed from the register, or a person who has ceased to be registered, may apply to be registered; and

(b) where a time has been so fixed, the person is not entitled to be registered before that time despite Part 3.

(6) The Tribunal may award costs.

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(7) An order made by the Tribunal under this section takes effect on the day on which the order is made or on such later day as is specified in the order.

(8) The Tribunal may impose a fine on a person only if it finds the person to have been guilty of professional misconduct (other than conduct in respect of which a fine or other penalty has already been imposed by a court).

(9) The Tribunal is to inform the Board of the exercise of any power under this section by the Tribunal.

(10) A power of the Tribunal exercised by the Supreme Court under this section is taken to have been exercised by the Tribunal, except for the purposes of any appeal.

Suspension orders

50. (1) A person subject to a suspension order is taken not to be a registered practitioner, except in the application to the person of a provision of Part 3 or this Part.

(2) On the expiry of such a period of suspension the person's rights and privileges as a registered practitioner are revived.

(3) In this section, "suspension order" means an order suspending a person from practising under section 39, 49, or 52 which is in force.

Decisions of the Tribunal

51. (1) The decision of the Chairperson, or a Deputy Chairperson, on any question of law or procedure arising during an inquiry or appeal at which the Chairperson or Deputy Chairperson presides is the decision of the Tribunal for the purposes of the inquiry or appeal.

(2) A decision supported by at least 3 members of the Tribunal with respect to a question (other than with respect to a point of law or procedure) arising during an inquiry or appeal before the Tribunal is the decision of the Tribunal or, if 2 members support the decision and 2 members oppose the decision, the decision of the Chairperson or Deputy Chairperson presiding is the decision of the Tribunal.

(3) The Tribunal must, within 30 days of making the decision resulting from any such inquiry or appeal, make available to the complainant, the registered practitioner concerned and such other persons as it thinks fit a written statement of the decision.

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(4) A written statement of a decision must:

- (a) set out any findings on material questions of fact; and
- (b) refer to any evidence or other material on which the findings were based; and
- (c) give the reasons for the decision.

(5) The Tribunal is not required to include confidential information in any such statement (despite any other provision of this section) and if a statement would be false or misleading if it did not include the confidential information, the Tribunal is not required to provide the statement.

(6) If, because of subsection (5), confidential information is not included or such a statement is not provided, the Tribunal must, within 30 days of the decision, give notice in writing to the person indicating that:

- (a) the confidential information is not included; or
- (b) the statement will not be provided,

as appropriate, and giving the reasons why the confidential information is not included or the statement will not be provided.

(7) In this section:

“confidential information” means information that:

- (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared; and
- (b) relates to the personal or business affairs of a person, other than a person to whom the Tribunal is required (or would, but for subsection (5), be required) to provide a written statement of a decision; and
- (c) is information:
 - (i) that was supplied in confidence; or
 - (ii) the publication of which would reveal a trade secret; or
 - (iii) that was provided in compliance with a duty imposed by an enactment; or
 - (iv) the provision of which by the Tribunal would be in breach of any enactment.

(8) Nothing in this section affects the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.

Appeals against decisions of the Tribunal

52. (1) A person about whom a complaint is referred to the Tribunal under section 29, 30 or 38, or the complainant, may appeal to the Supreme Court against:

- (a) a decision of the Tribunal with respect to a point of law; or
- (b) the exercise of any power under section 49 by the Tribunal, within the prescribed time.

(2) The Supreme Court may stay any order made by the Tribunal, on such terms as the Court sees fit, until such time as the Court determines an appeal made under this section.

(3) In determining an appeal under this section, the Supreme Court may:

- (a) dismiss the appeal; or
- (b) make such order as it thinks proper having regard to the merits of the case and the public welfare and, in doing so, may exercise any one or more of the powers of the Tribunal under section 49.

(4) In any case where the Supreme Court dismisses an appeal against an order directing that the name of a registered practitioner be removed from the register or a person has ceased to be registered:

- (a) the Court may by its order fix a time after which the person whose name is removed from the register, or the person who has ceased to be registered, may apply to be registered; and
- (b) where a time has been so fixed, the person is not entitled to be registered before that time despite Part 3.

(5) An appeal under this section with respect to a point of law may be made during an inquiry conducted by the Tribunal or within the prescribed time.

(6) The inquiry before the Tribunal is not to continue until the appeal with respect to the point of law has been disposed of (if the inquiry has not been completed).

(7) The Tribunal, on recommencing the inquiry, is not to make any decision that is inconsistent with the Supreme Court's determination with respect to the point of law.

Review of suspension or deregistration by the Tribunal

53. (1) A person:

- (a) who is suspended from practising under section 39 (5) or 49; or

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- (b) whose name has been removed from the register under section 39 (5), 49 or 52,
may apply to the Tribunal for a review of the suspension or removal.
- (2) An application under this section is to be lodged with the Registrar who is to refer it to the Tribunal (which is to be constituted in accordance with this Act to deal with the application).
- (3) An application under this section:
- (a) may not be made by a person while the person is subject to an order fixing a time after which the person may apply to be registered; and
- (b) may not be made if an appeal to the Supreme Court in respect of the same matter under section 52 has not been disposed of.
- (4) On an application being made under this section, the Tribunal may, after such inquiry as it thinks fit:
- (a) dismiss the application; or
- (b) by its order, terminate any suspension; or
- (c) order:
- (i) that a person whose name has been removed from the register be registered under the provision of this Act under which the person was registered immediately before the person ceased to be registered or under any equivalent provision of this Act; and
- (ii) that such conditions, if any, as the Tribunal may impose on the person's registration and as are specified in the order be imposed on the person's registration.
- (5) The Tribunal may award costs.
- (6) A person registered pursuant to an order referred to in subsection (4) (c) (i) is taken to be registered pursuant to a determination made by the Board under Part 3.
- (7) A condition imposed pursuant to an order referred to in subsection (4) (c) (ii) is taken to be a condition that has been imposed by the Board under section 16.

Inquiries etc. where other proceedings

54. A complaint may be referred to a Committee or the Tribunal, and dealt with by the Committee or Tribunal, even though the registered practitioner about whom the complaint is made is the subject of proposed or current criminal or civil proceedings relating to the subject-matter of the complaint.

PART 6—MISCELLANEOUS**Written statement of decisions**

55. (1) If the Board, the President or a member authorised by the Board makes a decision in relation to a person under any provision of this Act, other than Part 5, the person may request in writing that the Board, President or member provide the person with a written statement of the decision.

(2) Any such request is to be made no later than 60 days after the decision to which it relates.

(3) The Board, the President or the member is to provide a written statement of the decision within 30 days of receiving such a request.

(4) A written statement of a decision must:

- (a) set out any findings on material questions of fact; and
- (b) refer to any evidence or other material on which the findings are based; and
- (c) give the reasons for the decision.

(5) Despite any other provision of this section, the Board, the President or the member is not required to include confidential information in any such statement, and if a statement would be false or misleading if it did not include the confidential information, the Board, the President or the member is not required to provide the statement.

(6) If, because of subsection (5), confidential information is not included in a written statement of a decision or such a statement is not provided to a person, the Board, the President or the member must within 30 days of receipt of a request under subsection (1), give notice in writing to the person, indicating that:

- (a) the confidential information is not included; or
- (b) the statement will not be provided,

as appropriate, and giving the reasons why the confidential information is not included or the statement will not be provided.

(7) In this section:

“confidential information” means information that:

- (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared; and
- (b) relates to the personal or business affairs of a person, other than a person to whom the Board, the President or the member

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is required (or would, but for subsection (5), be required) to provide a written statement of a decision; and

(c) is information:

- (i) that was supplied in confidence; or
- (ii) the publication of which would reveal a trade secret; or
- (iii) that was provided in compliance with a duty imposed by an enactment; or
- (iv) the provision of which by the Board, the President or the member would be in breach of any enactment.

(8) Nothing in this section affects the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.

False entries in register, misrepresentation etc.

56. A person who:

- (a) wilfully makes or causes to be made any false entry in or falsification of the register; or
- (b) wilfully procures or attempts to procure himself or herself or any other person to be registered under this Act by making or producing, or causing to be made or produced, any false or fraudulent representation or declaration, either verbally or in writing; or
- (c) aids or assists a person to commit an act referred to in paragraph (a) or (b); or
- (d) utters or attempts to utter, or asserts as true, before the Board any false, forged or counterfeit certificate, diploma, licence, letter, testimonial or other document or writing,

is guilty of an offence and is liable on conviction to be imprisoned for a period not exceeding 12 months.

Proof of certain matters not required

57. In any legal proceedings, proof is not required (until evidence is given to the contrary) of:

- (a) the constitution of the Board; or
- (b) any resolution of the Board; or
- (c) the appointment of, or the holding of office by, any member of the Board; or
- (d) the presence of a quorum at any meeting of the Board.

Evidentiary certificates and evidence of entry in register

58. (1) A document purporting to be a certificate signed by the Registrar to the effect that:

- (a) a person specified in the certificate was or was not a registered practitioner at a time or during a period so specified; or
- (b) the name of a person specified in the certificate was removed from the register at a time so specified; or
- (c) a person specified in the certificate was suspended from practising from a time so specified and for a period so specified; or
- (d) a condition, particulars of which are set out in the certificate, was, at a time or during a period so specified:
 - (i) imposed on the registration of a person so specified; or
 - (ii) revoked or not in force,

is admissible in any proceedings and is evidence of the fact or facts stated in it.

(2) An entry in the register is admissible in any proceedings and is evidence of the fact or facts stated in it.

(3) A document purporting to be a copy of an entry in the register, purportedly signed by the Registrar, is admissible in any proceedings and is evidence of the fact or facts stated in it.

Fees etc.

59. The Registrar is required to transmit to the Corporation for payment into an account established under section 13A of the Health Administration Act 1982 all money received by the Board (whether for fees or otherwise), not being fines or penalties or money which is required to be dealt with in some other manner.

Chiropractic and Osteopathy Education and Research Account

60. (1) The Board is to establish a Chiropractic and Osteopathy Education and Research Account.

(2) Such amounts as are determined by the Minister from time to time are to be paid by the Board from fees payable under this Act or the regulations into the Account.

(3) Money in the Account may be expended by the Board for or towards any one or more of the following:

- (a) chiropractic or osteopathy education;
- (b) education or research for any public purpose connected with the practice of chiropractic or osteopathy;

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(c) the publication and distribution of information concerning this Act and the regulations;

(d) meeting administrative expenditure incurred with respect to the Account and the purposes for which it is used,

or any related purpose.

(4) An expenditure of money under this section is not to be made unless it is authorised by a resolution supported by at least 6 members.

Proceedings for offences

61. Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Appointment and powers of inspectors

62. (1) The Director-General may appoint members of staff of the Board as inspectors for the purposes of this Act.

(2) The Director-General is to provide an inspector with a certificate of authority and, on applying for admission to any premises which the inspector is empowered by this section to enter, the inspector must, if requested to do so, produce the certificate to the person apparently in charge of the premises.

(3) For the purpose of ascertaining:

(a) whether any provision of this Act or of the regulations has been or is being contravened by any registered practitioner; or

(b) whether a registered practitioner is so conducting himself or herself as to be guilty of professional misconduct,

an inspector may enter any premises in which the registered practitioner is carrying on the practice and may make such inquiries as the inspector thinks fit.

(4) An inspector is not entitled to enter a part of premises used for residential purposes, except:

(a) with the consent of the occupier; or

(b) under the authority of a search warrant.

(5) A person must not wilfully delay or obstruct an inspector in the exercise of the inspector's powers under this section.

Maximum penalty: 5 penalty units.

Search warrants

63. (1) A person appointed under section 62 as an inspector may apply to an authorised justice for the issue of a search warrant if the inspector believes on reasonable grounds that a provision of this Act or the regulations is being or has been contravened on any premises.

(2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant:

- (a) to enter the premises; and
- (b) to exercise any function of an inspector under this Act.

(3) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) In this section:

“authorised justice” means a Magistrate or a justice of the peace employed in the Attorney General’s Department.

Liability of members etc.

64. No matter or thing done by:

- (a) the Board or a member of the Board; or
- (b) the Registrar or any other officer of the Board; or
- (c) a Professional Standards Committee or a member of such a Committee,

subjects the member, or the Registrar, or the person so acting, personally to any action, liability, claim or demand, if the matter or thing was done in good faith for the purposes of executing this or any other Act, or the exercise, or intended exercise, of any of his or her functions.

Regulations

65. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to:

- (a) the proceedings of the Board; and
- (b) any kinds of certificates of registration under this Act; and
- (c) the manner in which any notice under this Act may be served; and

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- (d) the procedure to be followed at and any matters incidental to the holding of an inquiry or appeal by a Committee or the Tribunal and prescribing matters relating to the custody and use of the seal of the Tribunal; and
- (e) the courses of study and training for persons desiring to be registered under this Act; and
- (f) the conduct and the standard of examinations and the remuneration of examiners; and
- (g) the forms to be used for the purposes of this Act and the regulations; and
- (h) the fees to be paid under this Act; and
- (i) the manner in which and the extent to which a chiropractor or osteopath is authorised to advertise; and
- (j) the conduct of chiropractic or osteopathy in a patient's home; and
- (k) standards relating to premises in which chiropractic or osteopathy is practised.

(3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

Amendment of Search Warrants Act 1985 No. 37, s. 10 (Definitions)

66. The Search Warrants Act 1985 is amended by inserting in the definition of "search warrant" in section 10 in alphabetical order of Acts the following matter:

section 63 of the Chiropractors and Osteopaths Act 1991;

Repeal of Chiropractic Act 1978 No. 132

67. The Chiropractic Act 1978 is repealed.

Repeal of Chiropractic Regulation 1979

68. The Chiropractic Regulation 1979 is repealed.

Savings and transitional provisions

69. Schedule 4 has effect.

**SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS
OF THE BOARD**

(Sec. 26 (1))

President and Deputy President of the Board

1. (1) Of the members of the Board, one who is a registered chiropractor is (in and by the relevant instrument of appointment as such a member, or by another instrument executed by the Minister) to be appointed as President of the Board and one (who need not be a registered chiropractor) is to be so appointed as Deputy President of the Board.

(2) The Minister may remove a member from the office of President or Deputy President.

(3) A person who is the President or Deputy President vacates office as President or Deputy President if the person:

- (a) is removed from that office by the Minister; or
- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to be a member.

Acting members and acting President

2. (1) The Governor may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, has all the functions of the member and is taken to be a member.

(2) The Deputy President of the Board may act in the office of President during the illness or absence of the President, and while so acting has all the functions of the President and is taken to be the President.

(3) The Minister may, from time to time, appoint a member to act in the office of President during the illness or absence of both the President and Deputy President, and the member, while so acting, has all the functions of the President and is taken to be the President.

(4) The Governor may remove any person from any office to which the person was appointed under this clause by the Governor and the Minister may remove any person from any office to which the person was appointed under this clause by the Minister.

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SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS
OF THE BOARD—*continued*

(5) A person while acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(6) For the purposes of this clause, a vacancy in the office of a member, the President or the Deputy President is taken to be an absence from office of the member, President or Deputy President.

Terms of office

3. Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

4. A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Vacancy in office of member

5. (1) The office of a member becomes vacant if the member:
- (a) dies; or
 - (b) completes a term of office and is not re-appointed; or
 - (c) resigns the office by instrument in writing addressed to the Minister; or
 - (d) is removed from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988; or
 - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings; or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (g) becomes a mentally incapacitated person; or

*Chiropractors and Osteopaths 1991***SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS
OF THE BOARD—*continued***

- (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Governor may remove a member from office at any time.
- (3) Without affecting the generality of subclause (2), the Governor may remove from office a member who contravenes the provisions of clause 7.

Filling of vacancy in office of member

6. If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Disclosure of pecuniary interests

7. (1) If:
- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board; and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a member at a meeting of the Board that the member:

- (a) is a member, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this clause.

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**SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS
OF THE BOARD—*continued***

(3) Particulars of any disclosure made under this clause are to be recorded by the Board in a book kept for the purpose and that book is to be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:

- (a) be present during any deliberation of the Board with respect to the matter; or
- (b) take part in any decision of the Board with respect to the matter.

(5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Board for the purpose of making the determination; or
- (b) take part in the making by the Board of the determination.

(6) A contravention of this clause does not invalidate any decision of the Board.

(7) This clause does not apply to or in respect of an interest of a member in a matter which arises merely because the member is a chiropractor, osteopath or medical practitioner.

(8) A reference in this clause to a meeting of the Board includes a reference to a meeting of a committee of the Board.

Effect of certain other Acts

8. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member.

(2) If by or under any other Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

Chiropractors and Osteopaths 1991

**SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS
OF THE BOARD—*continued***

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

**SCHEDULE 2—PROVISIONS RELATING TO THE
PROCEDURE OF THE BOARD**

(Sec. 26 (2))

General procedure

1. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings, subject to this Act and the regulations, is to be as determined by the Board.

Quorum

2. The quorum for a meeting of the Board is 5 members.

Presiding member

3. (1) The President or, in the absence of the President, the Deputy President of the Board or in the absence of both of them, another member of the Board elected to chair the meeting by the members present, is to preside at a meeting of the Board.

(2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

4. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

Minutes

5. The Board must cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.

**SCHEDULE 3—PROCEEDINGS BEFORE A COMMITTEE
AND THE TRIBUNAL**

(Secs. 36, 46)

Proceedings generally

1. In proceedings before it, a Committee or the Tribunal is not bound to

Chiropractors and Osteopaths 1991

SCHEDULE 3—PROCEEDINGS BEFORE A COMMITTEE AND
THE TRIBUNAL—*continued*

observe the rules of law governing the admission of evidence, but may inform itself of any matter in such manner as it thinks fit.

Power to summon witness and take evidence

2. (1) A member of a Committee or the Tribunal may summon a person to appear in proceedings before the Committee or the Tribunal, to give evidence and to produce such documents (if any) as are referred to in the summons.

(2) The person presiding at the proceedings may require a person appearing in the proceedings to produce a document.

(3) A Committee or the Tribunal may, in proceedings before it, take evidence on oath or affirmation and, for that purpose a member of the Committee or the Tribunal:

(a) may require a person appearing in the proceedings to give evidence either to take an oath or to make an affirmation in a form approved by the person presiding; and

(b) may administer an oath to or take an affirmation from a person so appearing in the proceedings.

(4) A person served with a summons to appear in any such proceedings and to give evidence must not, without reasonable excuse:

(a) fail to attend as required by the summons; or

(b) fail to attend from day to day unless excused, or released from further attendance, by a member of a Committee or the Tribunal.

(5) A person appearing in proceedings to give evidence must not, without reasonable excuse:

(a) when required to be sworn or affirm—fail to comply with the requirement; or

(b) fail to answer a question that the person is required to answer by the person presiding; or

(c) fail to produce a document that the person is required to produce by this clause.

Maximum penalty (subclauses (4) and (5)): 20 penalty units.

Power to obtain documents

3. (1) A member of a Committee or the Tribunal may, by notice in writing served on a person, require the person:

Chiropractors and Osteopaths 1991

SCHEDULE 3—PROCEEDINGS BEFORE A COMMITTEE AND
THE TRIBUNAL—*continued*

- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Committee or the Tribunal or a person authorised by the Committee or the Tribunal in that behalf; and
 - (b) to produce, at that time and place, to the person so specified a document specified in the notice.
- (2) A person who fails, without reasonable excuse, to comply with a notice served on the person under this clause is guilty of an offence.
- Maximum penalty: 20 penalty units.

Evidence of other proceedings

4. A Committee or the Tribunal may receive and admit on production, as evidence in any proceedings:

- (a) the judgment and findings of any court (whether civil or criminal and whether or not of New South Wales) or tribunal; or
- (b) the verdict or findings of a jury of any such court; or
- (c) a certificate of the conviction of any person; or
- (d) a transcript of the depositions or of shorthand notes, duly certified by the Registrar or clerk of the court or tribunal as correct, of the evidence of witnesses taken in any such court or tribunal,

where the Committee or the Tribunal is of the opinion that the judgment, findings, verdict, certificate or evidence is relevant to the proceedings.

Additional complaints

5. (1) A Committee or the Tribunal may in proceedings before it deal with one or more complaints about a registered practitioner.

(2) If, during any such proceedings, it appears to a Committee or the Tribunal that, having regard to any matters that have arisen, another complaint could have been made against the registered practitioner concerned:

- (a) whether instead of or in addition to the complaint which was made; and
- (b) whether or not by the same complainant,

the Committee or the Tribunal may take that other complaint to have been referred to it and may deal with it in the same proceedings.

Chiropractors and Osteopaths 1991

SCHEDULE 3—PROCEEDINGS BEFORE A COMMITTEE AND
THE TRIBUNAL—*continued*

(3) If another complaint is taken to have been referred to a Committee or the Tribunal under subclause (2), the complaint may be dealt with after such an adjournment (if any) as is, in the opinion of the Committee or the Tribunal, just and equitable in the circumstances.

Release of information

6. (1) The person presiding in proceedings before a Committee or the Tribunal may, on the request of a complainant, the registered practitioner concerned or any other person, if the person presiding thinks it appropriate in the particular circumstances of the case:

- (a) direct that the name of any witness is not to be disclosed in the proceedings; or
- (b) direct that all or any of the following matters:
 - (i) the name and address of any witness;
 - (ii) the name and address of a complainant;
 - (iii) the name and address of a registered practitioner;
 - (iv) any specified evidence;
 - (v) the subject-matter of a complaint,

are not to be published, except in a publication intended primarily for the use of members of the legal, chiropractic or osteopathic profession.

(2) A direction may be amended or revoked at any time by the person presiding.

(3) A direction may be given before or during proceedings, but is not to be given before the proceedings unless notice is given to:

- (a) the person who requested the direction; and
- (b) the complainant or the registered practitioner concerned, as appropriate; and
- (c) such other persons as the person presiding thinks fit,

of the time and place appointed by the person presiding for consideration of the request.

(4) A person who contravenes a direction given under this clause is guilty of an offence.

Maximum penalty: 20 penalty units.

Chiropractors and Osteopaths 1991

SCHEDULE 3—PROCEEDINGS BEFORE A COMMITTEE AND
THE TRIBUNAL—*continued*

Authentication of documents by a Committee or the Tribunal

7. Every document requiring authentication by a Committee or the Tribunal may be sufficiently authenticated:

- (a) in the case of a Committee, if signed by the chairperson of that Committee or by a member of that Committee authorised to do so by that chairperson; or
- (b) in the case of the Tribunal, without the seal of the Tribunal, if signed by the Chairperson of the Tribunal or by a member of the Tribunal authorised to do so by the Chairperson.

Nominal complainant

8. In any proceedings before a Committee or the Tribunal, the Director-General or an officer of the Department of Health appointed by the Director-General:

- (a) may, with the consent of a complainant, act as the nominal complainant; and
- (b) when so acting, is, for the purposes of this Act and the regulations, taken to be the person who made the complaint.

Intervention by Director-General

9. Without limiting the operation of clause 8, the Director-General may intervene in any proceedings before a Committee or the Tribunal, and has a right to be heard:

- (a) personally or by an officer of the Department of Health; and
- (b) also, in the case of any proceedings before the Tribunal, by a barrister or solicitor who is not an officer of the Department of Health.

Expedition of inquiries and appeals

10. (1) It is the duty of a Committee and the Tribunal to hear inquiries and appeals under this Act and to determine those inquiries and appeals as soon as is reasonably practicable.

(2) Without affecting the generality of subclause (1), a Committee or the Tribunal may postpone or adjourn proceedings before it as it thinks fit.

*Chiropractors and Osteopaths 1991***SCHEDULE 3—PROCEEDINGS BEFORE A COMMITTEE AND
THE TRIBUNAL—*continued*****Certain complaints may not be heard**

11. (1) A Committee or the Tribunal may decide not to conduct an inquiry, or at any time to terminate an inquiry or appeal, if:

- (a) a complainant fails to comply with a requirement made of the complainant by the Committee or the Tribunal; or
- (b) the person about whom the complaint is made ceases to be a registered practitioner.

(2) A Committee or the Tribunal is not to conduct or continue any inquiry or any appeal if the registered practitioner concerned dies.

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 69)

PART 1—PRELIMINARY**Definitions**

1. In this Schedule:

“**new Board**” means the Chiropractors and Osteopaths Registration Board constituted by section 21;

“**old Board**” means the Chiropractors Registration Board under the 1978 Act;

“**the 1978 Act**” means the Chiropractic Act 1978.

Regulations

2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later day.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of the publication.

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS—
*continued***PART 2—PROVISIONS CONSEQUENT ON ENACTMENT
OF THIS ACT****Members of old Board**

3. (1) A person who, immediately before the repeal of the 1978 Act, held office as a member of the old Board:

- (a) ceases to hold office as such on that repeal; and
- (b) is eligible (if otherwise qualified) to be appointed as a member of the new Board.

(2) A person who ceases to hold office as a member of the old Board because of the operation of this Act is not entitled to be paid any remuneration or compensation because of ceasing to hold that office.

Continuity of Board

4. Anything done by or in relation to the old Board is taken to have been done by or in relation to the new Board.

Appointments etc. before commencement

5. For the purpose only of enabling the new Board to be constituted in accordance with this Act on or after (but not before) the commencement of section 21, appointments may be made under this Act, and anything else may be done, before that commencement, as if the whole of this Act commenced on the date of assent, but so that no appointment as a member of the new Board as so constituted takes effect before that commencement.

First meeting of new Board

6. The Minister is to call the first meeting of the new Board in such manner as the Minister thinks fit.

The secretary and other officers

7. A person holding office as the secretary or other officer under the 1978 Act immediately before the repeal of that Act is, on the commencement of section 24 of this Act, taken to have been appointed as the Registrar or other officer, as the case requires, under this Act and to

Chiropractors and Osteopaths 1991

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

have been appointed subject to the same terms and conditions as applied to the appointment immediately before that repeal.

The register

8. The register referred to in section 14 of the 1978 Act is taken to be the register referred to in section 17 of this Act.

Registration as chiropractor

9. A person who, immediately before the repeal of the 1978 Act, was registered as a chiropractor under that Act is, on the commencement of section 6 of this Act, taken to be a registered chiropractor under this Act.

Registration as osteopath

10. A person who, immediately before the repeal of the 1978 Act, was registered as an osteopath under that Act is, on the commencement of section 7 of this Act, taken to be a registered osteopath under this Act.

Registration as chiropractor and osteopath

11. A person who, immediately before the repeal of the 1978 Act, was registered as a chiropractor and osteopath under that Act is, on the commencement of section 8 of this Act, taken to be a registered chiropractor and osteopath under this Act.

Fees

12. A fee paid or which remains unpaid under a provision of the 1978 Act immediately before its repeal is taken, on commencement of the relevant provisions of this Act, to have been paid or to remain unpaid under the provision of this Act which corresponds to that provision and is taken to have been so paid or to so remain unpaid for or in relation to the same period as that which applied to the fee under the 1978 Act.

Applications for registration

13. An application for registration under the 1978 Act which had not been determined by the old Board before the repeal of that Act is taken to be an application for registration under this Act.

Chiropractors and Osteopaths 1991

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS—
*continued***Appeals to the District Court**

14. (1) An appeal to the District Court under section 24 of the 1978 Act pending immediately before the repeal of that Act is to be continued and disposed of as if, except as provided by subclause (2), this Act had not been enacted.

(2) The decision of the District Court on any such appeal is to be final, is to be binding upon the new Board and the appellant and for the purposes of this Act is taken to be the final decision of the new Board.

Complaints

15. An inquiry under section 20 of the 1978 Act which had not been completed before the repeal of that Act is, on the commencement of Part 5 of this Act, taken to be a complaint made to the Board under section 28 of this Act and is to be dealt with accordingly.

Construction of certain references

16. A reference in any other Act, in any instrument made under any Act or in any other instrument of any kind:

- (a) to the old Board is, on the commencement of section 21 of this Act, to be read as a reference to the new Board; and
- (b) to the secretary under the 1978 Act is, on the commencement of section 24 of this Act, to be read as a reference to the Registrar under this Act; and
- (c) to an inspector under the 1978 Act is, on the commencement of section 62 of this Act, to be read as a reference to an inspector under this Act; and
- (d) to the register referred to in section 14 of the 1978 Act is, on the commencement of section 17 of this Act, to be read as a reference to the register referred to in section 17 of this Act; and
- (e) to the registration of a person as a chiropractor under the 1978 Act is, on the commencement of section 6 of this Act, to be read as a reference to the registration of the person as a chiropractor under this Act; and
- (f) to the registration of a person as an osteopath under the 1978 Act is, on the commencement of section 7 of this Act, to be read as a reference to the registration of the person as an osteopath under this Act; and

Chiropractors and Osteopaths 1991

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

- (g) to the registration of a person as a chiropractor and osteopath under the 1978 Act is, on the commencement of section 8 of this Act, to be read as a reference to the registration of the person as a chiropractor and osteopath under this Act.
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LEGISLATIVE COUNCIL

CHIROPRACTORS AND OSTEOPATHS BILL 1991

MR PRESIDENT, I MOVE THAT THIS BILL BE NOW READ A SECOND TIME.

THE PURPOSE OF THIS BILL IS TO REGULATE THE PRACTICE OF CHIROPRACTIC AND OSTEOPATHY AND TO PROVIDE FOR THE REGISTRATION OF CHIROPRACTORS AND OSTEOPATHS. THE BILL REPEALS AND RE-ENACTS ~~THE~~ CHIROPRACTIC ACT 1978 WITH A NUMBER OF MODIFICATIONS DESIGNED TO UPDATE THE ACT AND TO BRING IT IN LINE WITH OTHER HEALTH PROFESSIONAL REGISTRATION ACTS.

AT PRESENT, THE CHIROPRACTIC ACT 1978 PROVIDES FOR THE REGISTRATION AND CONTROL OF CHIROPRACTORS AND OSTEOPATHS IN NEW SOUTH WALES. AS AT 31 DECEMBER 1990, THE NUMBER OF CHIROPRACTORS AND OSTEOPATHS REGISTERED UNDER THE ACT WAS:

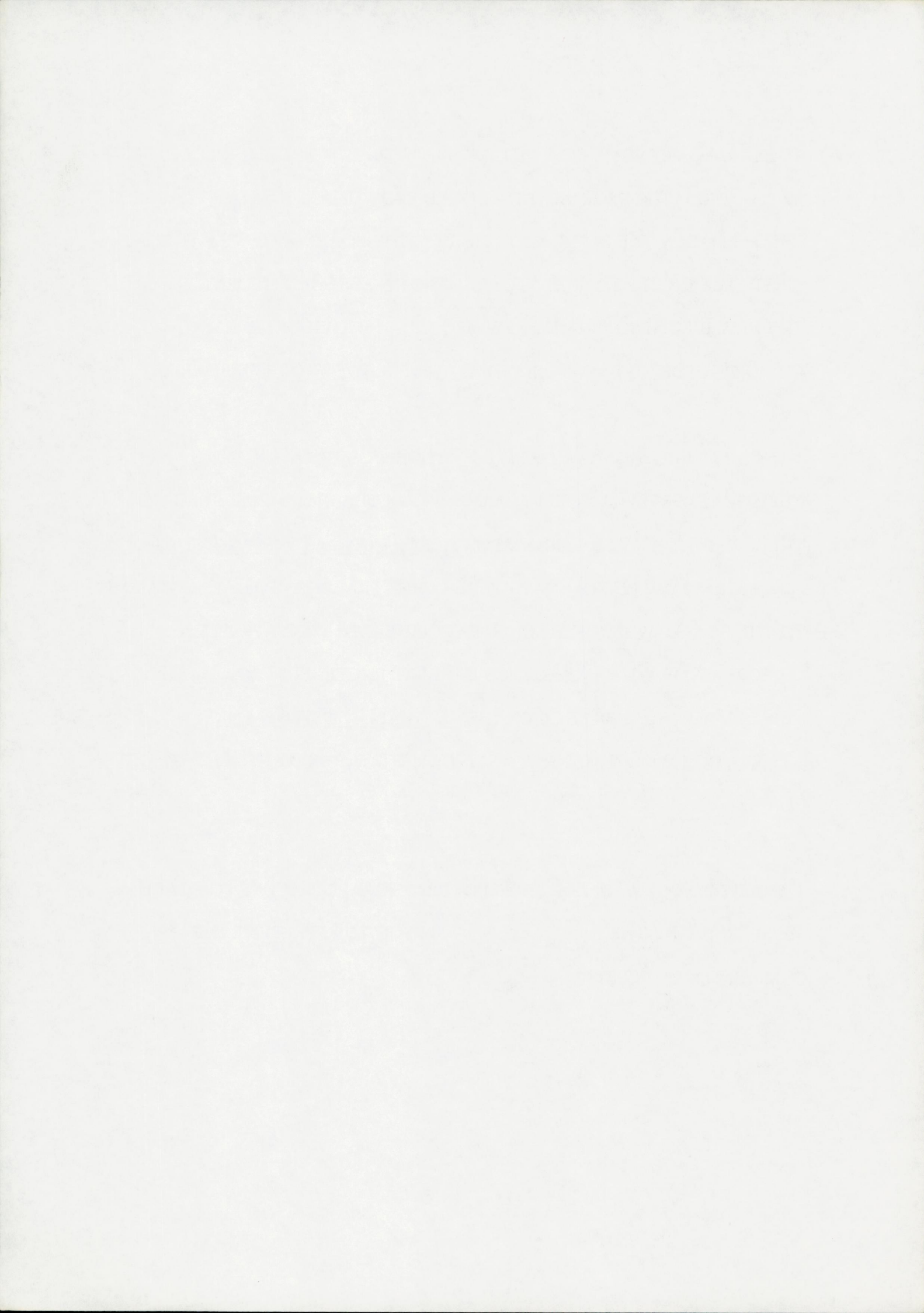
CHIROPRACTORS	740
OSTEOPATHS	164
<u>CHIROPRACTORS AND OSTEOPATHS</u>	<u>89</u>
<u>TOTAL</u>	<u>993</u>

WITH THE INTRODUCTION OF THE CHIROPRACTORS AND OSTEOPATHS BILL, THE TITLE OF THE LEGISLATION WILL, FOR THE FIRST TIME, REFLECT THE TWO PROFESSIONAL GROUPS REGISTERED UNDER THE ACT.

SIMILARLY, AMENDMENTS TO THE COMPOSITION OF THE CHIROPRACTORS AND OSTEOPATHS REGISTRATION BOARD PROVIDED FOR UNDER CLAUSE 23 WILL BROADEN THE REPRESENTATION ON THE BOARD AND WILL FOR THE FIRST TIME INCLUDE AN IDENTIFIED POSITION FOR AN OSTEOPATH. THE NEW BILL ALSO BREAKS NEW GROUND IN PROVIDING FOR A CHIROPRACTOR TO BE APPOINTED AS THE PRESIDENT OF THE BOARD.

WITH A COMBINED TOTAL OF FIVE POSITIONS, OSTEOPATHS AND CHIROPRACTORS WILL FORM A MAJORITY ON THE NINE MEMBER BOARD. THE NEW SOUTH WALES BRANCH OF THE CHIROPRACTORS' ASSOCIATION OF AUSTRALIA WILL NOMINATE THREE CHIROPRACTORS FOR APPOINTMENT TO THE BOARD, WHILE THE MINISTER FOR HEALTH WILL APPOINT A CHIROPRACTOR WITH EXPERIENCE IN CHIROPRACTIC EDUCATION. THE NEW SOUTH WALES BRANCH OF THE AUSTRALIAN OSTEOPATHIC ASSOCIATION WILL NOMINATE AN OSTEOPATH FOR APPOINTMENT TO THE BOARD.

THE NEW BOARD WILL ALSO REFLECT MODERN APPROACHES TO BOARD MEMBERSHIP BY THE INCLUSION OF A PERSON TO REPRESENT THE COMMUNITY INTEREST.



THE FUNCTIONS OF THE CHIROPRACTORS AND OSTEOPATHS BOARD WILL ALSO BE SPECIFIED FOR THE FIRST TIME. AS INDICATED IN CLAUSE 22 OF THE BILL, THE FUNCTIONS OF THE BOARD WILL INCLUDE:

- . TO PROMOTE AND MAINTAIN HIGH STANDARDS OF CHIROPRACTIC AND OSTEOPATHIC PRACTICE IN NSW;
- . TO ADVISE THE MINISTER ON MATTERS RELATING TO THE REGISTRATION OF CHIROPRACTORS AND OSTEOPATHS, STANDARDS OF CHIROPRACTIC AND OSTEOPATHIC PRACTICE AND ANY OTHER MATTERS ARISING UNDER OR RELATED TO THIS ACT OR THE REGULATIONS;
- . TO CONSULT WITH PROFESSIONAL AND EDUCATIONAL BODIES ON MATTERS AFFECTING CHIROPRACTORS AND OSTEOPATHS, WHERE APPROPRIATE; AND
- . TO PUBLISH AND DISTRIBUTE INFORMATION CONCERNING THIS ACT AND THE REGULATIONS TO CHIROPRACTORS AND OSTEOPATHS AND OTHER INTERESTED PERSONS.

IN ORDER TO ASSIST IT TO FULFIL THESE FUNCTIONS, THE BOARD WILL BE EMPOWERED TO ESTABLISH ADVISORY COMMITTEES, INCLUDING AN EDUCATION ADVISORY COMMITTEE. A CHIROPRACTIC AND OSTEOPATHY EDUCATION AND RESEARCH ACCOUNT IS ALSO TO BE ESTABLISHED TO FUND EDUCATION AND RESEARCH RELATING TO THE PRACTICE OF THESE MODALITIES. THE NECESSARY FUNDS WILL BE DERIVED FROM REGISTRATION AND ROLL FEES PAID BY REGISTERED PRACTITIONERS.

THE CHIROPRACTORS AND OSTEOPATHS REGISTRATION BOARD WILL HAVE GREATER FLEXIBILITY AND CONTROL WITH RESPECT TO APPLICATIONS FOR REGISTRATION IN NEW SOUTH WALES. CLAUSES 13 TO 16 WILL ENABLE THE BOARD TO GRANT TEMPORARY, PROVISIONAL AND CONDITIONAL REGISTRATION TO APPLICANTS WHO DO NOT MEET THE REQUIREMENTS FOR REGISTRATION.

UNDER THESE NEW PROVISIONS THE BOARD WILL BE ABLE TO GRANT TEMPORARY REGISTRATION FOR PERIODS OF UP TO SIX MONTHS TO OVERSEAS PRACTITIONERS WHO ARE ON A LECTURE CIRCUIT BUT WHO DO NOT MEET THE REQUIREMENTS FOR REGISTRATION. PROVISIONAL REGISTRATION WILL ALSO BE AVAILABLE FOR PERSONS WHO ARE ENTITLED TO A RELEVANT DIPLOMA OR DEGREE REQUIRED FOR REGISTRATION BUT WHO HAVE NOT YET FORMALLY RECEIVED THAT QUALIFICATION.

IN ADDITION, THE BOARD WILL BE ABLE TO GRANT FULL REGISTRATION TO CHIROPRACTORS AND OSTEOPATHS REGISTERED IN OTHER STATES AND TERRITORIES OF AUSTRALIA UNDER GRANDFATHER OR EXAMINATION PROVISIONS OF EQUIVALENT CHIROPRACTIC AND OSTEOPATHY LEGISLATION. THIS NEW PROVISION IS IMPORTANT FOR THE IMPLEMENTATION OF RECIPROCITY BETWEEN THE STATES.



MR PRESIDENT, THE EXISTING DISCIPLINARY PROVISIONS UNDER THE CHIROPRACTIC ACT EMPOWER THE BOARD TO DEAL DIRECTLY OR IN OPEN COURT, WITH A COMPLAINT AGAINST A CHIROPRACTOR OR OSTEOPATH. PART 5 OF THE NEW BILL ALTERS THE DISCIPLINARY STRUCTURE SO THAT PROFESSIONAL STANDARDS COMMITTEES AND A CHIROPRACTORS AND OSTEOPATHS TRIBUNAL MAY BE ESTABLISHED TO HEAR COMPLAINTS AGAINST REGISTERED PRACTITIONERS.

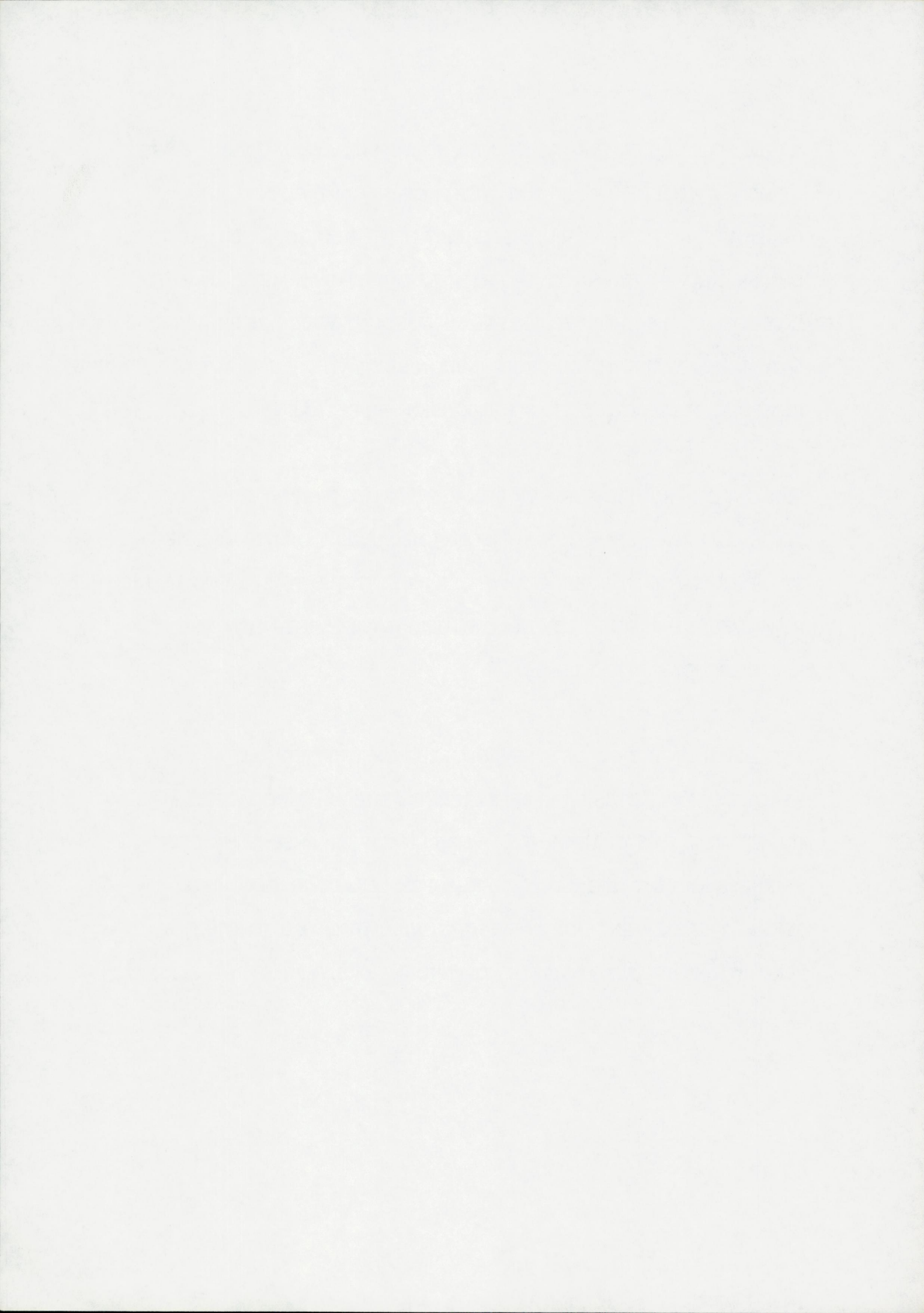
AT THE SAME TIME, THE DEFINITION OF PROFESSIONAL MISCONDUCT IS TO BE EXPANDED TO BRING IT IN LINE WITH OTHER HEALTH PROFESSIONAL ACTS, AS ARE THE RANGE OF SANCTIONS AVAILABLE ON A FINDING OF PROFESSIONAL MISCONDUCT.

UNDER THE NEW DISCIPLINARY STRUCTURE, THE CHIROPRACTORS AND OSTEOPATHS REGISTRATION BOARD WILL BE EMPOWERED TO DISMISS MATTERS OF PROFESSIONAL MISCONDUCT, TO REFER MATTERS OF PROFESSIONAL MISCONDUCT TO A PROFESSIONAL STANDARDS COMMITTEE OR TRIBUNAL FOR HEARING, OR TO DIRECT A CHIROPRACTOR OR OSTEOPATH WHO IS THE SUBJECT OF A COMPLAINT TO ATTEND FOR COUNSELLING.

WHILE MATTERS INVOLVING SERIOUS PROFESSIONAL MISCONDUCT WILL BE DEALT WITH BY A TRIBUNAL, THE PROFESSIONAL STANDARDS COMMITTEE IS TO BE RESPONSIBLE FOR THE HEARING OF COMPLAINTS OF LESSER GRAVITY OR INVOLVING PROFESSIONAL IMPAIRMENT. THIS INCLUDES CASES OF PROFESSIONAL MISCONDUCT WHICH, IF PROVEN, WOULD NOT WARRANT DE-REGISTRATION BUT RATHER ATTRACT A REMEDIAL MEASURE SUCH AS SUPERVISION OR RETRAINING.

PERSONS THE SUBJECT OF A TRIBUNAL INVESTIGATION WILL BE ENTITLED TO LEGAL REPRESENTATION. PERSONS THE SUBJECT OF A PROFESSIONAL STANDARDS COMMITTEE INQUIRY WILL BE ENTITLED TO BE ACCOMPANIED BY A BARRISTER, SOLICITOR OR ANOTHER ADVISER BUT NOT TO BE REPRESENTED BY THAT PERSON.

THIS DISCIPLINARY STRUCTURE MODELLED ON THE MEDICAL PRACTITIONERS ACT IS FAR PREFERABLE TO THE EXISTING MODEL, MAINLY ON NATURAL JUSTICE GROUNDS. A TRIBUNAL WILL ENSURE PROCEDURAL FAIRNESS AND IMPARTIALITY WHERE A PERSON'S LIVELIHOOD IS AT STAKE. THE EXISTENCE OF A TRIBUNAL WILL ALSO ADD TO THE PUBLIC'S PERCEPTION OF A STRONG AND INDEPENDENT ARBITER OF PROFESSIONAL STANDARDS.



MR PRESIDENT, THIS DISCIPLINARY STRUCTURE IS TO FORM THE BASIS FOR THE CONVENING OF HEALTH PROFESSIONAL TRIBUNALS UNDER OTHER REGISTRATION ACTS.

AT PRESENT, SECTION 26 OF THE CHIROPRACTIC ACT PROHIBITS PERSONS REGISTERED THEREUNDER FROM USING A TITLE OR DESCRIPTION OTHER THAN CHIROPRACTOR, OSTEOPATH, OR CHIROPRACTOR AND OSTEOPATH. CLAUSE 5 OF THE NEW BILL IS DESIGNED TO RELAX THIS PROVISION TO ALLOW CHIROPRACTORS AND OSTEOPATHS THE SAME RIGHT TO USE TITLES, INITIALS AND SO ON AS OTHER REGISTERED HEALTH PROFESSIONALS.

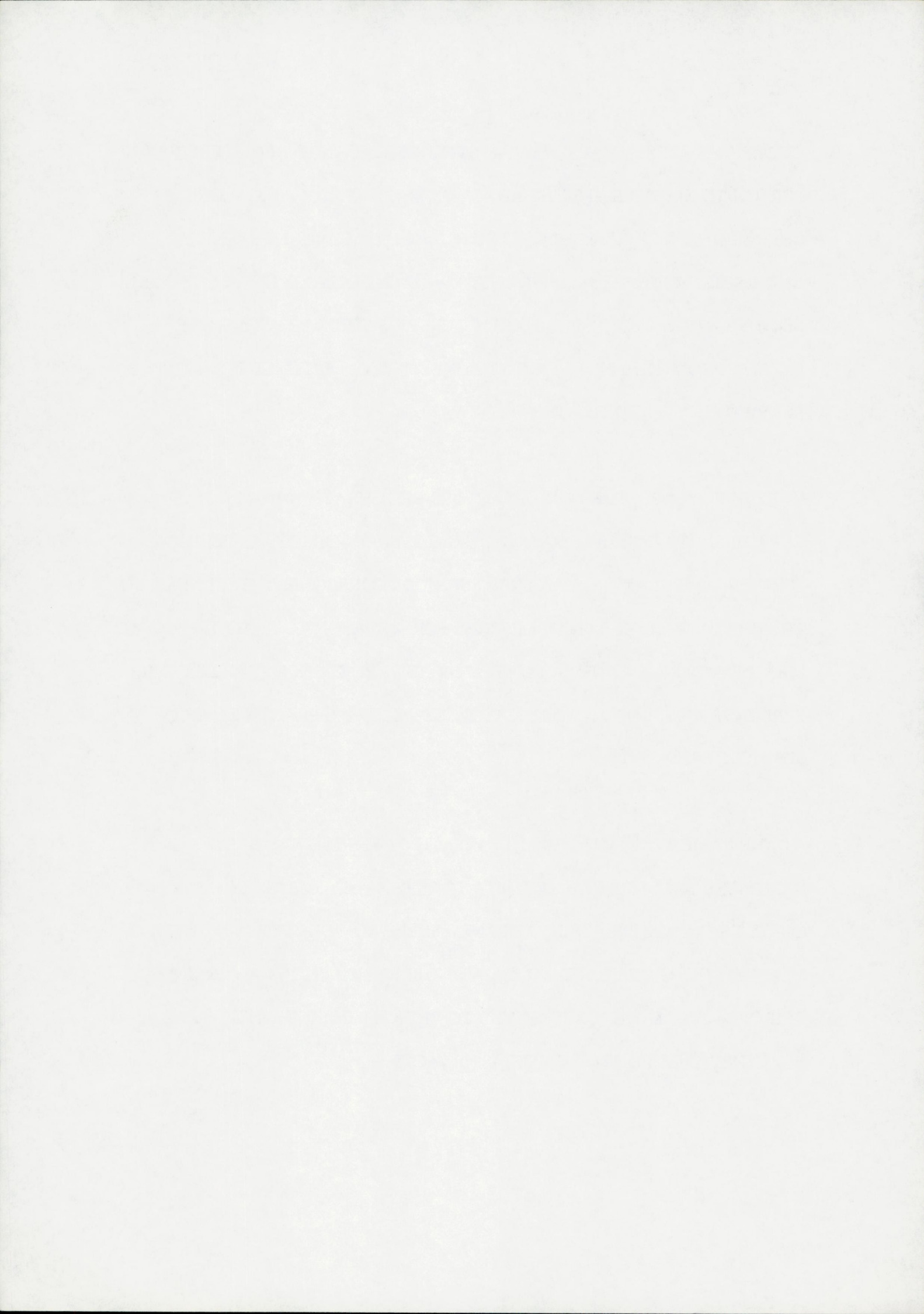
RELAXATION OF THE TITLES PROVISIONS WILL NOT, HOWEVER, EXTEND TO THE USE OF THE COURTESY TITLE 'DOCTOR'. ALLOWING CHIROPRACTORS AND OSTEOPATHS TO ADOPT THAT TITLE WOULD CREATE THE RISK OF HEALTH CONSUMERS BEING MISLED INTO BELIEVING THAT THEY ARE A MEDICAL PRACTITIONER. THE CURRENT PROHIBITION ON THE USE OF THE TITLE 'DOCTOR' BY CHIROPRACTORS AND OSTEOPATHS WILL THEREFORE BE MAINTAINED.

THE PENALTY FOR UNREGISTERED PERSONS HOLDING THEMSELVES OUT TO BE A CHIROPRACTOR OR OSTEOPATH HAS SIMULTANEOUSLY BEEN INCREASED FROM 5 PENALTY UNITS TO 20 PENALTY UNITS.

UNDER THE PRESENT ACT IT IS AN OFFENCE FOR AN UNREGISTERED PERSON TO MANIPULATE THE JOINTS OF THE HUMAN SPINAL COLUMN FOR THERAPEUTIC PURPOSES. LEGALLY QUALIFIED MEDICAL PRACTITIONERS AND REGISTERED PHYSIOTHERAPISTS WHO UNDERTAKE SPINAL MANIPULATION IN THE ORDINARY COURSE OF THEIR PRACTICE ARE EXEMPT FROM THIS PROVISION. THE KEY TO THIS OFFENCE IS THAT THE SERVICE IS OFFERED FOR FEE OR REWARD.

IN RECENT YEARS, THE CHIROPRACTORS REGISTRATION BOARD HAS EXPRESSED ITS CONCERN ABOUT UNREGISTERED PERSONS OFFERING SPINAL MANIPULATION AS A FREE SERVICE. CONSEQUENTLY, CLAUSE 4 OF THE NEW BILL MAKES IT AN OFFENCE FOR A PERSON TO PRACTISE SPINAL MANIPULATION - WHETHER FOR FEE OR REWARD OR NOT - UNLESS THE PERSON IS A CHIROPRACTOR, OSTEOPATH, MEDICAL PRACTITIONER OR PHYSIOTHERAPIST.

AT THE SAME TIME, THE PENALTY FOR THIS OFFENCE HAS BEEN INCREASED FROM 5 PENALTY UNITS TO 50 PENALTY UNITS. IN CONCLUSION, MR PRESIDENT, THE NEW BILL PROVIDES FOR A NUMBER OF MODIFICATIONS DESIGNED TO UPDATE THE LEGISLATION GOVERNING CHIROPRACTORS AND OSTEOPATHS TO BRING IT IN LINE WITH OTHER HEALTH PROFESSIONAL REGISTRATION ACTS.



MR PRESIDENT, I BELIEVE THAT THE NEW CHIROPRACTORS AND OSTEOPATHS BILL WILL, WHEN IMPLEMENTED, GREATLY BENEFIT CHIROPRACTORS AND OSTEOPATHS IN THIS STATE BY PROVIDING THE BOARD WITH GREATER FLEXIBILITY AND CONTROL OVER REGISTRATION, BY ENSURING PROCEDURAL FAIRNESS IN THE HEARING OF COMPLAINTS OF PROFESSIONAL MISCONDUCT, AND BY CLEARLY DELINEATING THE FUNCTIONS OF THE REGISTRATION BOARD AND ITS RELATIONSHIP WITH REGISTERED PRACTITIONERS.

GREATER PROTECTION WILL ALSO BE AFFORDED TO THE PUBLIC'S HEALTH BY ENSURING THAT ONLY THOSE PERSONS WITH THE APPROPRIATE QUALIFICATIONS AND SKILLS CAN LEGALLY PRACTISE SPINAL MANIPULATION.

MR PRESIDENT, IN RESPONSE TO CONCERNS RAISED BY THE CHIROPRACTORS REGISTRATION BOARD AND THE CHIROPRACTIC ASSOCIATIONS, THE MINISTER FOR HEALTH HAS DIRECTED THAT AN INDEPENDENT REVIEW BE UNDERTAKEN OF THE UNDERGRADUATE TRAINING OF PHYSIOTHERAPISTS AND MEDICAL PRACTITIONERS IN ORDER TO DETERMINE WHETHER IT IS SUFFICIENT TO ENABLE THEM TO PROVIDE SPINAL MANIPULATION AS A SERVICE. THE REVIEW WILL ALSO INCLUDE AN EXAMINATION OF THE TRAINING OF CHIROPRACTORS. ALL PROFESSIONAL GROUPS AFFECTED WILL BE CONSULTED DURING THE COURSE OF THE REVIEW.

THE CHIROPRACTORS' ASSOCIATION OF AUSTRALIA HAS RECOMMENDED THAT CLAUSE 4 OF THE BILL RELATING TO THE PRACTISE OF SPINAL MANIPULATION BY UNREGISTERED PERSONS BE AMENDED. UNDER THE ASSOCIATION'S PROPOSAL, PHYSIOTHERAPISTS AND MEDICAL PRACTITIONERS WOULD ONLY BE EXEMPT FROM THIS OFFENCE PROVISION IF THEY HAVE MET THE PREREQUISITE MINIMUM STANDARDS FOR SPINAL MANIPULATION AS ESTABLISHED BY THEIR RESPECTIVE REGISTRATION BOARDS.

THE MINISTER FOR HEALTH HAS ADVISED ME THAT HE DOES NOT SUPPORT THIS PROPOSAL AS IT WOULD HAVE THE EFFECT OF BRINGING THESE TWO PROFESSIONAL GROUPS WITHIN THE SCOPE OF THE CHIROPRACTIC LEGISLATION. HOWEVER, IT IS SUGGESTED THAT THE ASSOCIATION MAY WISH TO MAKE A SUBMISSION RECOMMENDING A SIMILAR AMENDMENT TO BOTH THE MEDICAL PRACTITIONERS ACT AND THE PHYSIOTHERAPISTS REGISTRATION ACT FOR CONSIDERATION DURING THE REVIEW OF TRAINING IN SPINAL MANIPULATION.

FOR THE INFORMATION OF HONOURABLE MEMBERS, I HAVE TABLED A DETAILED EXPLANATION OF THE BILL AND SEEK ITS INCORPORATION IN HANSARD.

I COMMEND THE BILL TO THE HOUSE.

CHIROPRACTORS AND OSTEOPATHS ACT 1991 No. 7

NEW SOUTH WALES



TABLE OF PROVISIONS

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CHIROPRACTORS AND OSTEOPATHS ACT 1991 No. 7

Date of last reprint: not yet reprinted

Amendments not included in current print

Made by	Provisions affected
Statute Law (Miscellaneous Provisions) Act 1992 No. 34	ss. 39; 49; 64
Statute Law (Miscellaneous Provisions) Act (No. 3) 1992 No. 111	ss. 4; 13; 33A; 33B
Legal Profession Reform Act 1993 No. 87	s. 45
Health Care Complaints Act 1993 No. 105	ss. 3; 28; 29–32; 34; 36; 38; 44; 46; 63; Sch. 3

AMENDMENTS ARE SHOWN IRRESPECTIVE OF WHETHER THEY ARE IN FORCE AT THE DATE OF ISSUE OF THIS SHEET. FOR FURTHER INFORMATION ABOUT THE EXACT STATUS OF LEGISLATION ETC. PLEASE CONSULT THE MONTHLY ACTS TABLES OR CONTACT THE LEGISLATION INFORMATION SERVICE AT THE PARLIAMENTARY COUNSEL'S OFFICE ON (02) 228 7139.









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SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS—
*continued***Appeals to the District Court**

14. (1) An appeal to the District Court under section 24 of the 1978 Act pending immediately before the repeal of that Act is to be continued and disposed of as if, except as provided by subclause (2), this Act had not been enacted.

(2) The decision of the District Court on any such appeal is to be final, is to be binding upon the new Board and the appellant and for the purposes of this Act is taken to be the final decision of the new Board.

Complaints

15. An inquiry under section 20 of the 1978 Act which had not been completed before the repeal of that Act is, on the commencement of Part 5 of this Act, taken to be a complaint made to the Board under section 28 of this Act and is to be dealt with accordingly.

Construction of certain references

16. A reference in any other Act, in any instrument made under any Act or in any other instrument of any kind:

- (a) to the old Board is, on the commencement of section 21 of this Act, to be read as a reference to the new Board; and
- (b) to the secretary under the 1978 Act is, on the commencement of section 24 of this Act, to be read as a reference to the Registrar under this Act; and
- (c) to an inspector under the 1978 Act is, on the commencement of section 62 of this Act, to be read as a reference to an inspector under this Act; and
- (d) to the register referred to in section 14 of the 1978 Act is, on the commencement of section 17 of this Act, to be read as a reference to the register referred to in section 17 of this Act; and
- (e) to the registration of a person as a chiropractor under the 1978 Act is, on the commencement of section 6 of this Act, to be read as a reference to the registration of the person as a chiropractor under this Act; and
- (f) to the registration of a person as an osteopath under the 1978 Act is, on the commencement of section 7 of this Act, to be read as a reference to the registration of the person as an osteopath under this Act; and

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SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

- (g) to the registration of a person as a chiropractor and osteopath under the 1978 Act is, on the commencement of section 8 of this Act, to be read as a reference to the registration of the person as a chiropractor and osteopath under this Act.

*[Minister's second reading speech made in—
Legislative Assembly on 13 March 1991
Legislative Council on 16 April 1991]*

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS—
*continued***PART 2—PROVISIONS CONSEQUENTIAL ON ENACTMENT
OF THIS ACT****Members of old Board**

3. (1) A person who, immediately before the repeal of the 1978 Act, held office as a member of the old Board:

- (a) ceases to hold office as such on that repeal; and
- (b) is eligible (if otherwise qualified) to be appointed as a member of the new Board.

(2) A person who ceases to hold office as a member of the old Board because of the operation of this Act is not entitled to be paid any remuneration or compensation because of ceasing to hold that office.

Continuity of Board

4. Anything done by or in relation to the old Board is taken to have been done by or in relation to the new Board.

Appointments etc. before commencement

5. For the purpose only of enabling the new Board to be constituted in accordance with this Act on or after (but not before) the commencement of section 21, appointments may be made under this Act, and anything else may be done, before that commencement, as if the whole of this Act commenced on the date of assent, but so that no appointment as a member of the new Board as so constituted takes effect before that commencement.

First meeting of new Board

6. The Minister is to call the first meeting of the new Board in such manner as the Minister thinks fit.

The secretary and other officers

7. A person holding office as the secretary or other officer under the 1978 Act immediately before the repeal of that Act is, on the commencement of section 24 of this Act, taken to have been appointed as the Registrar or other officer, as the case requires, under this Act and to

Chiropractors and Osteopaths 1991

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

have been appointed subject to the same terms and conditions as applied to the appointment immediately before that repeal.

The register

8. The register referred to in section 14 of the 1978 Act is taken to be the register referred to in section 17 of this Act.

Registration as chiropractor

9. A person who, immediately before the repeal of the 1978 Act, was registered as a chiropractor under that Act is, on the commencement of section 6 of this Act, taken to be a registered chiropractor under this Act.

Registration as osteopath

10. A person who, immediately before the repeal of the 1978 Act, was registered as an osteopath under that Act is, on the commencement of section 7 of this Act, taken to be a registered osteopath under this Act.

Registration as chiropractor and osteopath

11. A person who, immediately before the repeal of the 1978 Act, was registered as a chiropractor and osteopath under that Act is, on the commencement of section 8 of this Act, taken to be a registered chiropractor and osteopath under this Act.

Fees

12. A fee paid or which remains unpaid under a provision of the 1978 Act immediately before its repeal is taken, on commencement of the relevant provisions of this Act, to have been paid or to remain unpaid under the provision of this Act which corresponds to that provision and is taken to have been so paid or to so remain unpaid for or in relation to the same period as that which applied to the fee under the 1978 Act.

Applications for registration

13. An application for registration under the 1978 Act which had not been determined by the old Board before the repeal of that Act is taken to be an application for registration under this Act.

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SCHEDULE 3—PROCEEDINGS BEFORE A COMMITTEE AND
THE TRIBUNAL—*continued*

Authentication of documents by a Committee or the Tribunal

7. Every document requiring authentication by a Committee or the Tribunal may be sufficiently authenticated:

- (a) in the case of a Committee, if signed by the chairperson of that Committee or by a member of that Committee authorised to do so by that chairperson; or
- (b) in the case of the Tribunal, without the seal of the Tribunal, if signed by the Chairperson of the Tribunal or by a member of the Tribunal authorised to do so by the Chairperson.

Nominal complainant

8. In any proceedings before a Committee or the Tribunal, the Director-General or an officer of the Department of Health appointed by the Director-General:

- (a) may, with the consent of a complainant, act as the nominal complainant; and
- (b) when so acting, is, for the purposes of this Act and the regulations, taken to be the person who made the complaint.

Intervention by Director-General

9. Without limiting the operation of clause 8, the Director-General may intervene in any proceedings before a Committee or the Tribunal, and has a right to be heard:

- (a) personally or by an officer of the Department of Health; and
- (b) also, in the case of any proceedings before the Tribunal, by a barrister or solicitor who is not an officer of the Department of Health.

Expedition of inquiries and appeals

10. (1) It is the duty of a Committee and the Tribunal to hear inquiries and appeals under this Act and to determine those inquiries and appeals as soon as is reasonably practicable.

(2) Without affecting the generality of subclause (1), a Committee or the Tribunal may postpone or adjourn proceedings before it as it thinks fit.

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SCHEDULE 3—PROCEEDINGS BEFORE A COMMITTEE AND
THE TRIBUNAL—*continued*

Certain complaints may not be heard

11. (1) A Committee or the Tribunal may decide not to conduct an inquiry, or at any time to terminate an inquiry or appeal, if:

- (a) a complainant fails to comply with a requirement made of the complainant by the Committee or the Tribunal; or
- (b) the person about whom the complaint is made ceases to be a registered practitioner.

(2) A Committee or the Tribunal is not to conduct or continue any inquiry or any appeal if the registered practitioner concerned dies.

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 69)

PART 1—PRELIMINARY

Definitions

1. In this Schedule:

“**new Board**” means the Chiropractors and Osteopaths Registration Board constituted by section 21;

“**old Board**” means the Chiropractors Registration Board under the 1978 Act;

“**the 1978 Act**” means the Chiropractic Act 1978.

Regulations

2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later day.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of the publication.

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 SCHEDULE 3—PROCEEDINGS BEFORE A COMMITTEE AND THE TRIBUNAL—*continued*

- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Committee or the Tribunal or a person authorised by the Committee or the Tribunal in that behalf; and
 - (b) to produce, at that time and place, to the person so specified a document specified in the notice.
- (2) A person who fails, without reasonable excuse, to comply with a notice served on the person under this clause is guilty of an offence.

Maximum penalty: 20 penalty units.

Evidence of other proceedings

4. A Committee or the Tribunal may receive and admit on production, as evidence in any proceedings:

- (a) the judgment and findings of any court (whether civil or criminal and whether or not of New South Wales) or tribunal; or
- (b) the verdict or findings of a jury of any such court; or
- (c) a certificate of the conviction of any person; or
- (d) a transcript of the depositions or of shorthand notes, duly certified by the Registrar or clerk of the court or tribunal as correct, of the evidence of witnesses taken in any such court or tribunal,

where the Committee or the Tribunal is of the opinion that the judgment, findings, verdict, certificate or evidence is relevant to the proceedings.

Additional complaints

5. (1) A Committee or the Tribunal may in proceedings before it deal with one or more complaints about a registered practitioner.

(2) If, during any such proceedings, it appears to a Committee or the Tribunal that, having regard to any matters that have arisen, another complaint could have been made against the registered practitioner concerned:

- (a) whether instead of or in addition to the complaint which was made; and
- (b) whether or not by the same complainant,

the Committee or the Tribunal may take that other complaint to have been referred to it and may deal with it in the same proceedings.

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SCHEDULE 3—PROCEEDINGS BEFORE A COMMITTEE AND
THE TRIBUNAL—*continued*

(3) If another complaint is taken to have been referred to a Committee or the Tribunal under subclause (2), the complaint may be dealt with after such an adjournment (if any) as is, in the opinion of the Committee or the Tribunal, just and equitable in the circumstances.

Release of information

6. (1) The person presiding in proceedings before a Committee or the Tribunal may, on the request of a complainant, the registered practitioner concerned or any other person, if the person presiding thinks it appropriate in the particular circumstances of the case:

- (a) direct that the name of any witness is not to be disclosed in the proceedings; or
- (b) direct that all or any of the following matters:
 - (i) the name and address of any witness;
 - (ii) the name and address of a complainant;
 - (iii) the name and address of a registered practitioner;
 - (iv) any specified evidence;
 - (v) the subject-matter of a complaint,

are not to be published, except in a publication intended primarily for the use of members of the legal, chiropractic or osteopathic profession.

(2) A direction may be amended or revoked at any time by the person presiding.

(3) A direction may be given before or during proceedings, but is not to be given before the proceedings unless notice is given to:

- (a) the person who requested the direction; and
- (b) the complainant or the registered practitioner concerned, as appropriate; and
- (c) such other persons as the person presiding thinks fit,

of the time and place appointed by the person presiding for consideration of the request.

(4) A person who contravenes a direction given under this clause is guilty of an offence.

Maximum penalty: 20 penalty units.

*Chiropractors and Osteopaths 1991***SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS
OF THE BOARD—*continued***

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

**SCHEDULE 2—PROVISIONS RELATING TO THE
PROCEDURE OF THE BOARD**

(Sec. 26 (2))

General procedure

1. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings, subject to this Act and the regulations, is to be as determined by the Board.

Quorum

2. The quorum for a meeting of the Board is 5 members.

Presiding member

3. (1) The President or, in the absence of the President, the Deputy President of the Board or in the absence of both of them, another member of the Board elected to chair the meeting by the members present, is to preside at a meeting of the Board.

(2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

4. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

Minutes

5. The Board must cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.

**SCHEDULE 3—PROCEEDINGS BEFORE A COMMITTEE
AND THE TRIBUNAL**

(Secs. 36, 46)

Proceedings generally

1. In proceedings before it, a Committee or the Tribunal is not bound to

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SCHEDULE 3—PROCEEDINGS BEFORE A COMMITTEE AND
THE TRIBUNAL—*continued*

observe the rules of law governing the admission of evidence, but may inform itself of any matter in such manner as it thinks fit.

Power to summon witness and take evidence

2. (1) A member of a Committee or the Tribunal may summon a person to appear in proceedings before the Committee or the Tribunal, to give evidence and to produce such documents (if any) as are referred to in the summons.

(2) The person presiding at the proceedings may require a person appearing in the proceedings to produce a document.

(3) A Committee or the Tribunal may, in proceedings before it, take evidence on oath or affirmation and, for that purpose a member of the Committee or the Tribunal:

- (a) may require a person appearing in the proceedings to give evidence either to take an oath or to make an affirmation in a form approved by the person presiding; and
- (b) may administer an oath to or take an affirmation from a person so appearing in the proceedings.

(4) A person served with a summons to appear in any such proceedings and to give evidence must not, without reasonable excuse:

- (a) fail to attend as required by the summons; or
- (b) fail to attend from day to day unless excused, or released from further attendance, by a member of a Committee or the Tribunal.

(5) A person appearing in proceedings to give evidence must not, without reasonable excuse:

- (a) when required to be sworn or affirm—fail to comply with the requirement; or
- (b) fail to answer a question that the person is required to answer by the person presiding; or
- (c) fail to produce a document that the person is required to produce by this clause.

Maximum penalty (subclauses (4) and (5)): 20 penalty units.

Power to obtain documents

3. (1) A member of a Committee or the Tribunal may, by notice in writing served on a person, require the person:

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SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS
OF THE BOARD—*continued*

- (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Governor may remove a member from office at any time.
- (3) Without affecting the generality of subclause (2), the Governor may remove from office a member who contravenes the provisions of clause 7.

Filling of vacancy in office of member

6. If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Disclosure of pecuniary interests

7. (1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board; and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a member at a meeting of the Board that the member:

- (a) is a member, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this clause.

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SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS
OF THE BOARD—*continued*

(3) Particulars of any disclosure made under this clause are to be recorded by the Board in a book kept for the purpose and that book is to be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:

- (a) be present during any deliberation of the Board with respect to the matter; or
- (b) take part in any decision of the Board with respect to the matter.

(5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Board for the purpose of making the determination; or
- (b) take part in the making by the Board of the determination.

(6) A contravention of this clause does not invalidate any decision of the Board.

(7) This clause does not apply to or in respect of an interest of a member in a matter which arises merely because the member is a chiropractor, osteopath or medical practitioner.

(8) A reference in this clause to a meeting of the Board includes a reference to a meeting of a committee of the Board.

Effect of certain other Acts

8. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member.

- (2) If by or under any other Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

**SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS
OF THE BOARD**

(Sec. 26 (1))

President and Deputy President of the Board

1. (1) Of the members of the Board, one who is a registered chiropractor is (in and by the relevant instrument of appointment as such a member, or by another instrument executed by the Minister) to be appointed as President of the Board and one (who need not be a registered chiropractor) is to be so appointed as Deputy President of the Board.

(2) The Minister may remove a member from the office of President or Deputy President.

(3) A person who is the President or Deputy President vacates office as President or Deputy President if the person:

- (a) is removed from that office by the Minister; or
- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to be a member.

Acting members and acting President

2. (1) The Governor may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, has all the functions of the member and is taken to be a member.

(2) The Deputy President of the Board may act in the office of President during the illness or absence of the President, and while so acting has all the functions of the President and is taken to be the President.

(3) The Minister may, from time to time, appoint a member to act in the office of President during the illness or absence of both the President and Deputy President, and the member, while so acting, has all the functions of the President and is taken to be the President.

(4) The Governor may remove any person from any office to which the person was appointed under this clause by the Governor and the Minister may remove any person from any office to which the person was appointed under this clause by the Minister.

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SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS
OF THE BOARD—*continued*

(5) A person while acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(6) For the purposes of this clause, a vacancy in the office of a member, the President or the Deputy President is taken to be an absence from office of the member, President or Deputy President.

Terms of office

3. Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

4. A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Vacancy in office of member

5. (1) The office of a member becomes vacant if the member:
- (a) dies; or
 - (b) completes a term of office and is not re-appointed; or
 - (c) resigns the office by instrument in writing addressed to the Minister; or
 - (d) is removed from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988; or
 - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings; or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (g) becomes a mentally incapacitated person; or

Search warrants

63. (1) A person appointed under section 62 as an inspector may apply to an authorised justice for the issue of a search warrant if the inspector believes on reasonable grounds that a provision of this Act or the regulations is being or has been contravened on any premises.

(2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant:

- (a) to enter the premises; and
- (b) to exercise any function of an inspector under this Act.

(3) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) In this section:

“authorised justice” means a Magistrate or a justice of the peace employed in the Attorney General’s Department.

Liability of members etc.

64. No matter or thing done by:

- (a) the Board or a member of the Board; or
- (b) the Registrar or any other officer of the Board; or
- (c) a Professional Standards Committee or a member of such a Committee,

subjects the member, or the Registrar, or the person so acting, personally to any action, liability, claim or demand, if the matter or thing was done in good faith for the purposes of executing this or any other Act, or the exercise, or intended exercise, of any of his or her functions.

Regulations

65. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to:

- (a) the proceedings of the Board; and
- (b) any kinds of certificates of registration under this Act: and
- (c) the manner in which any notice under this Act may be served; and

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- (d) the procedure to be followed at and any matters incidental to the holding of an inquiry or appeal by a Committee or the Tribunal and prescribing matters relating to the custody and use of the seal of the Tribunal; and
 - (e) the courses of study and training for persons desiring to be registered under this Act; and
 - (f) the conduct and the standard of examinations and the remuneration of examiners; and
 - (g) the forms to be used for the purposes of this Act and the regulations; and
 - (h) the fees to be paid under this Act; and
 - (i) the manner in which and the extent to which a chiropractor or osteopath is authorised to advertise; and
 - (j) the conduct of chiropractic or osteopathy in a patient's home; and
 - (k) standards relating to premises in which chiropractic or osteopathy is practised.
- (3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

Amendment of Search Warrants Act 1985 No. 37, s. 10 (Definitions)

66. The Search Warrants Act 1985 is amended by inserting in the definition of "search warrant" in section 10 in alphabetical order of Acts the following matter:

section 63 of the Chiropractors and Osteopaths Act 1991;

Repeal of Chiropractic Act 1978 No. 132

67. The Chiropractic Act 1978 is repealed.

Repeal of Chiropractic Regulation 1979

68. The Chiropractic Regulation 1979 is repealed.

Savings and transitional provisions

69. Schedule 4 has effect.

Evidentiary certificates and evidence of entry in register

58. (1) A document purporting to be a certificate signed by the Registrar to the effect that:

- (a) a person specified in the certificate was or was not a registered practitioner at a time or during a period so specified; or
- (b) the name of a person specified in the certificate was removed from the register at a time so specified; or
- (c) a person specified in the certificate was suspended from practising from a time so specified and for a period so specified; or
- (d) a condition, particulars of which are set out in the certificate, was, at a time or during a period so specified:
 - (i) imposed on the registration of a person so specified; or
 - (ii) revoked or not in force,

is admissible in any proceedings and is evidence of the fact or facts stated in it.

(2) An entry in the register is admissible in any proceedings and is evidence of the fact or facts stated in it.

(3) A document purporting to be a copy of an entry in the register, purportedly signed by the Registrar, is admissible in any proceedings and is evidence of the fact or facts stated in it.

Fees etc.

59. The Registrar is required to transmit to the Corporation for payment into an account established under section 13A of the Health Administration Act 1982 all money received by the Board (whether for fees or otherwise), not being fines or penalties or money which is required to be dealt with in some other manner.

Chiropractic and Osteopathy Education and Research Account

60. (1) The Board is to establish a Chiropractic and Osteopathy Education and Research Account.

(2) Such amounts as are determined by the Minister from time to time are to be paid by the Board from fees payable under this Act or the regulations into the Account.

(3) Money in the Account may be expended by the Board for or towards any one or more of the following:

- (a) chiropractic or osteopathy education;
- (b) education or research for any public purpose connected with the practice of chiropractic or osteopathy;

- (c) the publication and distribution of information concerning this Act and the regulations;
- (d) meeting administrative expenditure incurred with respect to the Account and the purposes for which it is used,

or any related purpose.

(4) An expenditure of money under this section is not to be made unless it is authorised by a resolution supported by at least 6 members.

Proceedings for offences

61. Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Appointment and powers of inspectors

62. (1) The Director-General may appoint members of staff of the Board as inspectors for the purposes of this Act.

(2) The Director-General is to provide an inspector with a certificate of authority and, on applying for admission to any premises which the inspector is empowered by this section to enter, the inspector must, if requested to do so, produce the certificate to the person apparently in charge of the premises.

(3) For the purpose of ascertaining:

- (a) whether any provision of this Act or of the regulations has been or is being contravened by any registered practitioner; or
- (b) whether a registered practitioner is so conducting himself or herself as to be guilty of professional misconduct,

an inspector may enter any premises in which the registered practitioner is carrying on the practice and may make such inquiries as the inspector thinks fit.

(4) An inspector is not entitled to enter a part of premises used for residential purposes, except:

- (a) with the consent of the occupier; or
- (b) under the authority of a search warrant.

(5) A person must not wilfully delay or obstruct an inspector in the exercise of the inspector's powers under this section.

Maximum penalty: 5 penalty units.

PART 6—MISCELLANEOUS**Written statement of decisions**

55. (1) If the Board, the President or a member authorised by the Board makes a decision in relation to a person under any provision of this Act, other than Part 5, the person may request in writing that the Board, President or member provide the person with a written statement of the decision.

(2) Any such request is to be made no later than 60 days after the decision to which it relates.

(3) The Board, the President or the member is to provide a written statement of the decision within 30 days of receiving such a request.

(4) A written statement of a decision must:

- (a) set out any findings on material questions of fact; and
- (b) refer to any evidence or other material on which the findings are based; and
- (c) give the reasons for the decision.

(5) Despite any other provision of this section, the Board, the President or the member is not required to include confidential information in any such statement, and if a statement would be false or misleading if it did not include the confidential information, the Board, the President or the member is not required to provide the statement.

(6) If, because of subsection (5), confidential information is not included in a written statement of a decision or such a statement is not provided to a person, the Board, the President or the member must within 30 days of receipt of a request under subsection (1), give notice in writing to the person, indicating that:

- (a) the confidential information is not included; or
- (b) the statement will not be provided,

as appropriate, and giving the reasons why the confidential information is not included or the statement will not be provided.

(7) In this section:

“confidential information” means information that:

- (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared; and
- (b) relates to the personal or business affairs of a person, other than a person to whom the Board, the President or the member

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is required (or would, but for subsection (5), be required) to provide a written statement of a decision; and

- (c) is information:
- (i) that was supplied in confidence; or
 - (ii) the publication of which would reveal a trade secret; or
 - (iii) that was provided in compliance with a duty imposed by an enactment; or
 - (iv) the provision of which by the Board, the President or the member would be in breach of any enactment.

(8) Nothing in this section affects the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.

False entries in register, misrepresentation etc.

56. A person who:

- (a) wilfully makes or causes to be made any false entry in or falsification of the register; or
- (b) wilfully procures or attempts to procure himself or herself or any other person to be registered under this Act by making or producing, or causing to be made or produced, any false or fraudulent representation or declaration, either verbally or in writing; or
- (c) aids or assists a person to commit an act referred to in paragraph (a) or (b); or
- (d) utters or attempts to utter, or asserts as true, before the Board any false, forged or counterfeit certificate, diploma, licence, letter, testimonial or other document or writing,

is guilty of an offence and is liable on conviction to be imprisoned for a period not exceeding 12 months.

Proof of certain matters not required

57. In any legal proceedings, proof is not required (until evidence is given to the contrary) of:

- (a) the constitution of the Board; or
- (b) any resolution of the Board; or
- (c) the appointment of, or the holding of office by, any member of the Board; or
- (d) the presence of a quorum at any meeting of the Board.

Appeals against decisions of the Tribunal

52. (1) A person about whom a complaint is referred to the Tribunal under section 29, 30 or 38, or the complainant, may appeal to the Supreme Court against:

- (a) a decision of the Tribunal with respect to a point of law; or
- (b) the exercise of any power under section 49 by the Tribunal, within the prescribed time.

(2) The Supreme Court may stay any order made by the Tribunal, on such terms as the Court sees fit, until such time as the Court determines an appeal made under this section.

(3) In determining an appeal under this section, the Supreme Court may:

- (a) dismiss the appeal; or
- (b) make such order as it thinks proper having regard to the merits of the case and the public welfare and, in doing so, may exercise any one or more of the powers of the Tribunal under section 49.

(4) In any case where the Supreme Court dismisses an appeal against an order directing that the name of a registered practitioner be removed from the register or a person has ceased to be registered:

- (a) the Court may by its order fix a time after which the person whose name is removed from the register, or the person who has ceased to be registered, may apply to be registered; and
- (b) where a time has been so fixed, the person is not entitled to be registered before that time despite Part 3.

(5) An appeal under this section with respect to a point of law may be made during an inquiry conducted by the Tribunal or within the prescribed time.

(6) The inquiry before the Tribunal is not to continue until the appeal with respect to the point of law has been disposed of (if the inquiry has not been completed).

(7) The Tribunal, on recommencing the inquiry, is not to make any decision that is inconsistent with the Supreme Court's determination with respect to the point of law.

Review of suspension or deregistration by the Tribunal

53. (1) A person:

- (a) who is suspended from practising under section 39 (5) or 49; or

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(b) whose name has been removed from the register under section 39 (5), 49 or 52,
may apply to the Tribunal for a review of the suspension or removal.

(2) An application under this section is to be lodged with the Registrar who is to refer it to the Tribunal (which is to be constituted in accordance with this Act to deal with the application).

(3) An application under this section:

(a) may not be made by a person while the person is subject to an order fixing a time after which the person may apply to be registered; and

(b) may not be made if an appeal to the Supreme Court in respect of the same matter under section 52 has not been disposed of.

(4) On an application being made under this section, the Tribunal may, after such inquiry as it thinks fit:

(a) dismiss the application; or

(b) by its order, terminate any suspension; or

(c) order:

(i) that a person whose name has been removed from the register be registered under the provision of this Act under which the person was registered immediately before the person ceased to be registered or under any equivalent provision of this Act; and

(ii) that such conditions, if any, as the Tribunal may impose on the person's registration and as are specified in the order be imposed on the person's registration.

(5) The Tribunal may award costs.

(6) A person registered pursuant to an order referred to in subsection (4) (c) (i) is taken to be registered pursuant to a determination made by the Board under Part 3.

(7) A condition imposed pursuant to an order referred to in subsection (4) (c) (ii) is taken to be a condition that has been imposed by the Board under section 16.

Inquiries etc. where other proceedings

54. A complaint may be referred to a Committee or the Tribunal, and dealt with by the Committee or Tribunal, even though the registered practitioner about whom the complaint is made is the subject of proposed or current criminal or civil proceedings relating to the subject-matter of the complaint.

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(7) An order made by the Tribunal under this section takes effect on the day on which the order is made or on such later day as is specified in the order.

(8) The Tribunal may impose a fine on a person only if it finds the person to have been guilty of professional misconduct (other than conduct in respect of which a fine or other penalty has already been imposed by a court).

(9) The Tribunal is to inform the Board of the exercise of any power under this section by the Tribunal.

(10) A power of the Tribunal exercised by the Supreme Court under this section is taken to have been exercised by the Tribunal, except for the purposes of any appeal.

Suspension orders

50. (1) A person subject to a suspension order is taken not to be a registered practitioner, except in the application to the person of a provision of Part 3 or this Part.

(2) On the expiry of such a period of suspension the person's rights and privileges as a registered practitioner are revived.

(3) In this section, "**suspension order**" means an order suspending a person from practising under section 39, 49, or 52 which is in force.

Decisions of the Tribunal

51. (1) The decision of the Chairperson, or a Deputy Chairperson, on any question of law or procedure arising during an inquiry or appeal at which the Chairperson or Deputy Chairperson presides is the decision of the Tribunal for the purposes of the inquiry or appeal.

(2) A decision supported by at least 3 members of the Tribunal with respect to a question (other than with respect to a point of law or procedure) arising during an inquiry or appeal before the Tribunal is the decision of the Tribunal or, if 2 members support the decision and 2 members oppose the decision, the decision of the Chairperson or Deputy Chairperson presiding is the decision of the Tribunal.

(3) The Tribunal must, within 30 days of making the decision resulting from any such inquiry or appeal, make available to the complainant, the registered practitioner concerned and such other persons as it thinks fit a written statement of the decision.

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(4) A written statement of a decision must:

- (a) set out any findings on material questions of fact; and
- (b) refer to any evidence or other material on which the findings were based; and
- (c) give the reasons for the decision.

(5) The Tribunal is not required to include confidential information in any such statement (despite any other provision of this section) and if a statement would be false or misleading if it did not include the confidential information, the Tribunal is not required to provide the statement.

(6) If, because of subsection (5), confidential information is not included or such a statement is not provided, the Tribunal must, within 30 days of the decision, give notice in writing to the person indicating that:

- (a) the confidential information is not included; or
- (b) the statement will not be provided,

as appropriate, and giving the reasons why the confidential information is not included or the statement will not be provided.

(7) In this section:

“confidential information” means information that:

- (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared; and
- (b) relates to the personal or business affairs of a person, other than a person to whom the Tribunal is required (or would, but for subsection (5), be required) to provide a written statement of a decision; and
- (c) is information:
 - (i) that was supplied in confidence; or
 - (ii) the publication of which would reveal a trade secret; or
 - (iii) that was provided in compliance with a duty imposed by an enactment; or
 - (iv) the provision of which by the Tribunal would be in breach of any enactment.

(8) Nothing in this section affects the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.

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(c) the Director-General and the Board;

(d) the chairperson of the relevant Committee, if appropriate.

(3) In conducting an inquiry or hearing an appeal, the Tribunal is, unless it otherwise directs, to be open to the public and may conduct the proceedings as it thinks fit.

(4) Schedule 3 has effect with respect to any inquiry conducted or appeal heard by the Tribunal.

Representation before the Tribunal

47. (1) At an inquiry conducted or appeal heard by the Tribunal:

(a) the registered practitioner concerned; and

(b) the complainant, if any,

are entitled to attend and to be represented by a barrister or solicitor or another adviser.

(2) The Tribunal may grant leave for any other person to appear (whether in person or by a barrister or solicitor or another adviser) at an inquiry or appeal if the Tribunal is satisfied that it is appropriate for that person to appear.

Chairperson or Deputy Chairperson not to review own decisions

48. The Chairperson or Deputy Chairperson must not sit on the Tribunal for the purpose of conducting any inquiry or hearing any appeal relating to a particular matter before the Tribunal if a decision has been made by the Chairperson or Deputy Chairperson in relation to the matter.

Determinations of the Tribunal

49. (1) The Tribunal may make one or more of the following determinations if it finds the subject-matter of a complaint made against a person to have been proved:

(a) caution or reprimand the person;

(b) order that the person seek medical or psychiatric treatment or counselling;

(c) direct that such conditions, relating to the person's practice, as it considers appropriate be imposed on the person's registration;

(d) order that the person complete such educational courses as are specified by the Tribunal;

(e) order that the person report on his or her practice at the times, in the manner and to the persons specified by the Tribunal;

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(f) order that the person seek and take advice, in relation to the management of his or her practice, from such persons as are specified by the Tribunal;

(g) by its order:

(i) suspend the person from practising for such period as it specifies; or

(ii) direct that the person's name be removed from the register;

(h) by its order impose a fine on the person of an amount, not exceeding 50 penalty units, specified in the order.

(2) A power conferred by subsection (1) (b)–(g) may not be exercised unless the person is registered, but an order may be made by the Tribunal that a person who is not registered may be registered only subject to compliance with an order under subsection (1) (b), (d), (e) or (f) or conditions that might, if the person were registered, be imposed under subsection (1) (c).

(3) If the Board has reason to believe that a person in respect of whom the Tribunal has:

(a) made an order under subsection (1) (b), (d), (e) or (f); or

(b) imposed conditions under subsection (1) (c); or

(c) made an order under subsection (2),

has failed to comply with the order or conditions, the Board may refer the matter to the Tribunal.

(4) The Tribunal may, if it finds the failure to have been proved:

(a) exercise any power that it may exercise under subsection (1) or (5) (if the person is a registered practitioner); or

(b) make any order that the Tribunal may make under subsection (2) or (5) (if the person is not registered).

(5) If the Tribunal makes an order under subsection (1) (g) (ii) or the Tribunal finds the subject-matter of a complaint against a person who has ceased to be registered to be proved:

(a) the Tribunal may by its order fix a time after which the person whose name is removed from the register, or a person who has ceased to be registered, may apply to be registered; and

(b) where a time has been so fixed, the person is not entitled to be registered before that time despite Part 3.

(6) The Tribunal may award costs.

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- (b) the Board is informed by a Committee or the Director-General of a decision by the Committee or Director-General to refer a complaint or another matter to the Tribunal; or
 - (c) an appeal or application under section 53 to the Tribunal is lodged with the Board.
- (4) On being informed of a complaint, matter, appeal or application under this section, the Chairperson is to nominate:
- (a) himself or herself; or
 - (b) a Deputy Chairperson,
- to sit on the Tribunal for the purpose of conducting an inquiry into the complaint, matter or application or hearing the appeal.
- (5) For the purpose of conducting an inquiry or hearing an appeal, the Tribunal is to consist of:
- (a) the Chairperson or a Deputy Chairperson;
 - (b) 2 registered practitioners having such qualifications as may be prescribed, appointed by the Board; and
 - (c) 1 lay person (that is, a person who is not a registered practitioner) appointed by the Board from among a panel of lay persons for the time being nominated by the Minister.
- (6) A person may be appointed to sit on the Tribunal whether or not the person is a member of the Board, but not if the person has previously dealt with the particular matter before the Tribunal in his or her capacity as such a member.
- (7) The Tribunal, as constituted by different persons or the same persons, may conduct or hear more than one inquiry or appeal at the same time.
- (8) A member of the Tribunal (other than the Chairperson or a Deputy Chairperson), while sitting on the Tribunal, is entitled to be paid in accordance with the regulations.
- (9) The Tribunal is to have a seal of which all courts and persons acting judicially are to take judicial notice.

Chairperson and Deputy Chairpersons of the Tribunal

45. (1) The Governor may appoint:
- (a) a prescribed legal practitioner as Chairperson of the Tribunal; and
 - (b) 1 or more prescribed legal practitioners as Deputy Chairpersons of the Tribunal.

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(2) The Chairperson and each Deputy Chairperson hold office for such period not exceeding 7 years as may be specified in the instrument of appointment as Chairperson or Deputy Chairperson, but are eligible (if otherwise qualified) for re-appointment.

(3) A Deputy Chairperson may be appointed by the Governor for the purpose only of conducting or hearing a particular inquiry or appeal described in the instrument of appointment of the Deputy Chairperson (without limiting the generality of this section).

(4) A Deputy Chairperson, while sitting on the Tribunal, has and may exercise all the functions conferred or imposed on the Chairperson by this Act (other than those conferred by section 44 (4)).

(5) The Chairperson or a Deputy Chairperson sitting on the Tribunal is entitled to be paid in accordance with the regulations.

(6) The Governor may appoint a Deputy Chairperson to act in the office of Chairperson during the illness or absence of the Chairperson.

(7) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of the Chairperson or a Deputy Chairperson.

(8) In this section, "**prescribed legal practitioner**" means any of the following:

- (a) a Judge of the District Court;
- (b) a barrister of not less than 5 years' standing;
- (c) a solicitor of not less than 7 years' standing; or
- (d) a barrister or a solicitor of less than 5 years' or 7 years' standing respectively, where at all times during a continuous period of not less than 7 years he was on the roll of solicitors when he was not on the roll of barristers or on the roll of barristers when he was not on the roll of solicitors.

Proceedings before the Tribunal

46. (1) The members of the Tribunal nominated and appointed under section 44 are to conduct an inquiry into any complaint, matter or application and are to hear any appeal referred to it.

(2) On nomination under section 44, the Chairperson or a Deputy Chairperson is to fix a time and place for the conducting of the inquiry or the hearing of the appeal by the Tribunal and is to give not less than 7 days' notice of the inquiry or appeal to the following persons:

- (a) the registered practitioner concerned;
- (b) the complainant, if any;

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statement would be false or misleading if it did not include the confidential information, the Committee is not required to provide the statement.

(5) If, because of subsection (4), confidential information is not included or such a statement is not provided, a Committee must, within 30 days of the decision, give notice in writing to the person indicating that:

- (a) the confidential information is not included; or
- (b) the statement will not be provided,

as appropriate, and giving the reasons why the confidential information is not included or the statement will not be provided.

(6) In this section:

“confidential information” means information that:

- (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared; and
- (b) relates to the personal or business affairs of a person, other than a person to whom a Committee is required (or would, but for subsection (4), be required) to provide a written statement of a decision; and
- (c) is information:
 - (i) that was supplied in confidence; or
 - (ii) the publication of which would reveal a trade secret; or
 - (iii) that was provided in compliance with a duty imposed by an enactment; or
 - (iv) the provision of which by a Committee would be in breach of any enactment.

(7) Nothing in this section affects the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.

Appeals against decisions of a Committee etc.

42. (1) A registered practitioner about whom a complaint is referred to a Committee, or the complainant, may appeal to the Tribunal against:

- (a) a finding of the Committee; or
- (b) the exercise by the Committee of any power under section 39; or
- (c) the exercise by the Chairperson or a Deputy Chairperson of any power under section 40,

within the prescribed time.

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(2) The appeal is to be lodged with the Registrar who is to refer it to the Tribunal (which is to be constituted in accordance with this Act to deal with the appeal).

(3) The appeal is to be dealt with by way of rehearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the inquiry, may be given.

(4) On the appeal, the Tribunal may:

(a) dismiss the appeal; or

(b) make any finding or exercise any power that the Tribunal could have made or exercised if the complaint had been originally referred to the Tribunal.

(5) The appeal does not affect any finding or exercise of power with respect to which it has been made until an order is made under subsection (4) (b).

Appeals with respect to points of law

43. (1) A registered practitioner about whom a complaint is referred to a Committee, or the complainant, may appeal to the Chairperson, or a Deputy Chairperson nominated by the Chairperson, with respect to a point of law.

(2) The appeal may be made in accordance with the regulations during the inquiry conducted by the Committee or within the prescribed time.

(3) The inquiry by the Committee is not to continue until the appeal has been disposed of (if the inquiry has not been completed).

(4) The Committee, on recommending the inquiry, is not to make any decision that is inconsistent with the Chairperson's or Deputy Chairperson's determination with respect to the point of law.

**Division 3—Hearing of matters by the Chiropractors and
Osteopaths Tribunal**

The Chiropractors and Osteopaths Tribunal

44. (1) There is to be a Chiropractors and Osteopaths Tribunal.

(2) The Tribunal has and may exercise the jurisdiction and functions conferred or imposed on it by or under this or any other Act.

(3) The Board must inform the Chairperson and appoint 3 other persons to sit on the Tribunal when:

(a) the Board decides to refer a complaint to the Tribunal; or

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(g) by its order impose a fine on the person of an amount, not exceeding 50 penalty units, specified in the order.

(2) A power conferred by subsection (1) (b)–(f) may not be exercised unless the person concerned is registered.

(3) An order may be made by a Committee that a person who is not registered may be registered subject only to compliance with an order made under subsection (1) (b), (d), (e) or (f) or conditions that might, if the person were registered, be imposed under subsection (1) (c).

(4) The Board may refer to the Tribunal any failure by a person to comply with the following orders or conditions imposed by a Committee:

- (a) an order under subsection (1) (b), (d), (e) or (f);
- (b) conditions imposed under subsection (1) (c); or
- (c) an order under subsection (3).

(5) The Tribunal may, if it finds the failure to have been proved:

- (a) exercise any power that the Tribunal may exercise under section 49 (1) or (5) (if the person is a registered practitioner); or
- (b) make any order that the Tribunal may make under section 49 (2) or (5) (if the person is not registered).

(6) An order made by a Committee or the Tribunal under this section takes effect on the day on which the order is made or on such later day as is specified in the order.

(7) A Committee may impose a fine on a person only if it finds the person to have been guilty of professional misconduct (other than conduct in respect of which a fine or other penalty has already been imposed by a court).

(8) A Committee is to inform the Registrar of the exercise of any power under this section by the Committee.

(9) A power of a Committee is taken to have been exercised by the Committee if any person other than the Committee exercises the power under this section.

Complaints relating solely to physical and mental capacity

40. (1) If a complaint concerning physical or mental capacity, is referred under section 29 (3) to a Committee and the Committee finds the subject-matter of the complaint made against a person to have been proved, the Committee may, in addition to any other power it may exercise under section 39, refer the matter to the Chairperson, or a Deputy Chairperson nominated by the Chairperson, with a recommendation that:

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- (a) the person be suspended from practising for such period as it specifies; or
 - (b) the name of the person be removed from the register, or if the person has ceased to be registered, that the person not be registered until after a specified time.
- (2) On receipt of a recommendation under this section, the Chairperson or a Deputy Chairperson is:
- (a) to make an order in the terms recommended; or
 - (b) to make such other order as to the suspension or registration of the person concerned as the Chairperson or Deputy Chairperson thinks proper or exercise any power of a Committee under section 39.
- (3) In any case where, by an order under this section, the Chairperson or Deputy Chairperson directs that the name of a person be removed from the register or a person has ceased to be registered:
- (a) the Chairperson or Deputy Chairperson may by that order fix a time after which the person may apply to be registered; and
 - (b) where a time has been so fixed, the person is not entitled to be registered before that time despite Part 3.
- (4) An order made by the Chairperson or a Deputy Chairperson under this section takes effect on the day on which the order is made or on such later day as is specified in the order.

Decisions of a Committee

41. (1) A decision supported by at least 2 members of a Committee on any question arising during an inquiry is the decision of the Committee.

(2) A Committee must, within 30 days of making the decision resulting from any such inquiry, make available to the complainant, the registered practitioner concerned and such other persons as it thinks fit, a written statement of the decision.

(3) A written statement of a decision must:

- (a) set out any findings on material questions of fact; and
- (b) refer to any evidence or other material on which the findings were based; and
- (c) give the reasons for the decision.

(4) A Committee is not required to include confidential information in any such statement (despite any other provision of this section), and if a

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(4) The Board is to appoint one of the members of a Committee as a chairperson of the Committee.

(5) A person may be appointed to sit on a Committee whether or not the person is a member of the Board, but not if the person has previously dealt with the particular matter before the Committee in his or her capacity as such a member.

(6) One or more Committees may conduct more than one inquiry at the same time.

(7) A member of a Committee, while sitting on the Committee, is entitled to be paid by the Board in accordance with the regulations.

Proceedings before a Committee

36. (1) A Committee appointed under section 34 is to conduct an inquiry into any complaint referred to it.

(2) On appointment under section 35, the chairperson of a Committee is to fix a time and place for conducting an inquiry by the Committee into the complaint and is to give not less than 7 days' notice of the inquiry to:

- (a) the registered practitioner concerned; and
- (b) the complainant, if any; and
- (c) the Director-General and the Board.

(3) In conducting an inquiry, a Committee:

- (a) is, unless it otherwise directs, to sit in the absence of the public; and
- (b) may conduct the proceedings as it thinks fit.

(4) A Committee may be assisted by a legally qualified officer appointed by the Registrar for that purpose on the request of the Committee.

(5) Schedule 3 has effect with respect to any inquiry conducted by a Committee.

Representation before a Committee

37. (1) At an inquiry conducted by a Committee:

- (a) the registered practitioner concerned; and
- (b) the complainant, if any,

are entitled to attend and to be accompanied by a barrister or solicitor or another adviser, but are not entitled to be represented at the inquiry by the barrister or solicitor or other adviser.

(2) A Committee may grant leave for any other person (not being a barrister or solicitor or another adviser representing any person) to appear at an inquiry if the Committee is satisfied that it is appropriate for that person to appear.

Referral of certain matters to the Tribunal

38. (1) A Committee must forthwith terminate an inquiry if, before or during the inquiry, the Committee:

- (a) forms the opinion that the complaint (not being a complaint referred under section 29 (3)) may provide grounds for the suspension or deregistration of a registered practitioner; or
- (b) becomes aware that the Board or the Director-General has referred the complaint or another complaint about the registered practitioner concerned to the Tribunal.

(2) The Committee must refer the complaint to the Tribunal unless it has already been referred to the Tribunal.

(3) The Tribunal to which the complaint is referred may be the Tribunal as already constituted to deal with another complaint or the Tribunal as constituted in accordance with this Act to deal with the referred complaint.

(4) A Committee is to inform the Board when it takes any action under this section.

Determinations of Committees

39. (1) A Committee may make one or more of the following determinations if it finds the subject-matter of a complaint made against a person to have been proved:

- (a) caution or reprimand the person;
- (b) order that the person seek medical or psychiatric treatment or counselling;
- (c) direct that such conditions, relating to the person's practice, as it considers appropriate be imposed on the person's registration;
- (d) order that the person complete such educational courses as are specified by the Committee;
- (e) order that the person report on his or her practice at the times, in the manner and to the persons specified by the Committee;
- (f) order that the person seek and take advice, in relation to the management of his or her practice, from such persons as are specified by the Committee;

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(5) The Board is to inform the Director-General when it takes any action under this section.

(6) A period of suspension imposed by the Board under this section may be extended, from time to time, by the Board by its order for a further period or further periods, each of not more than 30 days, if:

- (a) the extension has been approved in writing by the Chairperson or a Deputy Chairperson; and
- (b) the complaint about the registered practitioner has not been disposed of.

(7) A person suspended from practising by an order under this section is, except in the application to the person of a provision of Part 3 or this Part, taken not to be a registered practitioner, while the order is in force.

(8) On the expiry of such a period of suspension, the person's rights and privileges as a registered practitioner are revived, subject to any order made by the Tribunal.

(9) Conditions imposed under subsection (1) (b) following the making of a complaint about a practitioner have effect until such time as the complaint is disposed of.

Appeals against suspension etc. by the Board

33. (1) A person:

- (a) who has been suspended by the Board from practising; or
- (b) on whom conditions have been imposed under section 32,

may appeal to the Tribunal against the suspension or conditions or any extension under that section of the period of suspension.

(2) An appeal under this section is to be lodged with the Registrar who is to refer it to the Tribunal (which is to be constituted in accordance with this Act to deal with the appeal).

(3) An appeal under this section against an order made or conditions imposed under section 32 is to be lodged not later than 7 days after notice of the order or notice of the imposition of the conditions is given to the affected person.

- (4) On an appeal under this section, the Tribunal may by its order:
 - (a) terminate, vary or confirm the period of suspension; or
 - (b) revoke, vary or confirm the conditions,

as it thinks proper, but only so that the order does not have effect beyond the day on which any related complaint about the person is disposed of.

(5) An appeal under this section does not affect any suspension or conditions with respect to which it has been made until an order is made under subsection (4).

Division 2—Hearing of complaints by Professional Standards Committees

Professional Standards Committees

34. (1) There are to be Professional Standards Committees.

(2) The Committees are to have and may exercise the jurisdiction and functions conferred or imposed on them by or under this Act.

(3) When the Board decides to refer a complaint or is informed by the Director-General of his or her decision to refer a complaint to a Committee, the Board is to appoint 3 persons to sit as the Committee for the purpose of conducting an inquiry into the complaint.

Constitution of Committees

35. (1) For the purposes of conducting an inquiry into a complaint against a registered chiropractor, a Committee consists of:

- (a) 2 registered chiropractors having such qualifications as may be prescribed; and
- (b) 1 lay person (that is, a person who is neither a chiropractor nor an osteopath) appointed from among a panel of lay persons for the time being nominated by the Minister.

(2) For the purposes of conducting an inquiry arising from a complaint against a registered osteopath, a Committee consists of:

- (a) 2 registered osteopaths having such qualifications as may be prescribed; and
- (b) 1 lay person (that is, a person who is neither an osteopath nor a chiropractor) appointed from among a panel of lay persons for the time being nominated by the Minister.

(3) For the purposes of conducting an inquiry arising from a complaint against a registered chiropractor and osteopath, a Committee consists of:

- (a) 1 registered chiropractor having such qualifications as may be prescribed; and
- (b) 1 registered osteopath having such qualifications as may be prescribed; and
- (c) 1 lay person (that is, a person who is neither a chiropractor nor an osteopath) appointed from among a panel of lay persons for the time being nominated by the Minister.

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- (7) The Board:
- (a) is not to refer a complaint about a registered practitioner who has died; and
 - (b) may decide not to refer a complaint:
 - (i) if the complainant fails to provide further particulars requested under section 28; or
 - (ii) if the registered practitioner concerned ceases to be registered.

Referral or dismissal of complaints by the Director-General

30. (1) The Director-General must, as soon as practicable after a complaint is lodged with the Director-General or the Director-General has decided to make a complaint:

- (a) refer the complaint to the Board, or, after consultation with the Board, to a Committee or the Tribunal (which is to be constituted in accordance with this Act to deal with the complaint), as the Director-General thinks fit despite any previous action taken by the Director-General or the Board; or
- (b) determine that no further action should be taken, except where the Director-General has decided to make the complaint.

(2) The Director-General must refer a complaint to the Tribunal if the Director-General is of the opinion that the subject-matter of the complaint (not being, in the Director-General's opinion, a frivolous or vexatious complaint), if substantiated, may provide grounds for the suspension or deregistration of the registered practitioner.

(3) The Director-General may refer a complaint to the Board even though, if substantiated, it may provide grounds for the suspension or deregistration of the practitioner if:

- (a) the complaint is made under section 28 (1) (d), or the Director-General has decided to make the complaint under section 28 (1) (d); and
- (b) the Director-General is of the opinion that no other complaint under any other provision of section 28 relating to the registered practitioner concerned should be referred to the Tribunal.

(4) The Director-General is to inform the Board if he or she refers a complaint to a Committee or the Tribunal.

(5) The Director-General:

- (a) is not to refer a complaint about a registered practitioner who has died; and

(b) may decide not to refer a complaint:

- (i) if the complainant fails to provide further particulars requested under section 28; or
- (ii) if the registered practitioner concerned ceases to be registered.

Investigation of complaints

31. (1) The Board must, at or before the time it refers a complaint to a Committee or the Tribunal, also refer the complaint to the Director-General for investigation.

(2) The Director-General must investigate the complaint or cause it to be investigated.

(3) The Director-General must investigate a complaint (or cause it to be investigated) if the Director-General refers the complaint to the Board, a Committee or the Tribunal.

Suspension etc. by the Board

32. (1) The Board may at any time:

- (a) by its order suspend a registered practitioner from practising for such period (not exceeding 30 days) as is specified in the order; or
- (b) impose on a registered practitioner's registration such conditions, relating to the practitioner's practice, as it considers appropriate,

if it is satisfied that such action is necessary for the purpose of protecting the life, or the physical or mental health, of any person.

(2) The Board may take action under this section whether or not a complaint has been made to the Board about the registered practitioner.

(3) The Board must, at or before the time it takes action under this section, refer:

- (a) any complaint about the registered practitioner; and
- (b) particulars of the action taken and the Board's reasons for taking the action,

to the Tribunal, or, if the matter is one which could be referred to a Committee under section 29 (3), it may refer it to a Committee, and the matter is taken to be a complaint referred to the Tribunal or the Committee by the Board.

(4) The Tribunal or a Committee is to be constituted in accordance with this Act to deal with a matter referred to it under this section.

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- (d) does not have sufficient physical or mental capacity to practise chiropractic or osteopathy; or
- (e) is not of good character.

(2) A complaint may be made by any person:

- (a) to the Board; or
- (b) to the Director-General,

or may be made by the Board or the Director-General.

(3) A complaint made to the Board (other than a complaint made by the Director-General) or to the Director-General must:

- (a) be in writing; and
- (b) contain particulars of the allegations on which it is founded; and
- (c) be verified by statutory declaration; and
- (d) if made to the Board, be lodged with the Registrar; and
- (e) if made to the Director-General, be lodged at an office of the Department of Health.

(4) The Director-General and the Board are each to inform the other when a complaint is made to or by either of them.

(5) The Board or the Director-General may require the complainant to provide further particulars of a complaint.

(6) A complaint about a registered practitioner may be dealt with even though the practitioner has ceased to be registered and, for that purpose, references in this Part and Schedule 3 to a registered practitioner include references to a person who has ceased to be registered.

(7) A complaint that a registered practitioner has been guilty of professional misconduct may be dealt with even though the professional misconduct occurred during a period in which the practitioner's name had been removed from the register under section 18.

Referral or dismissal of complaints by the Board

29. (1) The Board must, as soon as practicable after a complaint is lodged with the Registrar or the Board has decided to make a complaint:

- (a) refer the complaint to a Committee or the Tribunal (which is to be constituted in accordance with this Act to deal with the complaint), as the Board thinks fit, despite any previous action taken by the Board or the Director-General; or

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- (b) direct the registered practitioner concerned to attend for counselling; or
- (c) determine that no further action should be taken, except where the Board has decided to make the complaint.

(2) The Board must refer a complaint to the Tribunal if the Board is of the opinion that the subject-matter of the complaint (not being, in the Board's opinion, a frivolous or vexatious complaint), if substantiated, may provide grounds for the suspension or deregistration of the registered practitioner.

(3) The Board may refer a complaint to a Committee even though, if substantiated, it may provide grounds for the suspension or deregistration of the practitioner, if:

- (a) the complaint is made under section 28 (1) (d), or the Board has decided to make the complaint under section 28 (1) (d); and
- (b) the Board is of the opinion that no other complaint under any other provision of section 28 relating to the registered practitioner concerned should be referred to the Tribunal.

(4) Two or more members of the Board may be appointed by the Board for the purpose of carrying out the functions of the Board under this section, and in this Act and the regulations a reference to the referral of a complaint by the Board is taken to include a reference to a referral of a complaint by those members.

(5) The Board may, before taking any action under this section, require the registered practitioner concerned, by notice in writing given personally or by post to the practitioner, to undergo at the Board's expense a medical examination:

- (a) by a registered medical practitioner; and
- (b) at any reasonable time and place,

specified in the notice.

(6) A failure by a registered practitioner, without reasonable cause, to comply with:

- (a) a direction under this section to attend for counselling; or
 - (b) a notice given under this section to undergo a medical examination,
- is, for the purposes of this Part or any inquiry or appeal under this Part, evidence that the practitioner does not have sufficient physical and mental capacity to practise chiropractic or osteopathy.

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- (d) to publish and distribute information concerning this Act and the regulations to chiropractors and osteopaths and other interested persons;
- (e) to exercise the functions conferred or imposed on it by or under this or any other Act.

Membership of the Board

23. (1) The Board is to consist of 9 members nominated by the Minister and appointed by the Governor.

(2) Of the members:

- (a) 1 is to be an officer of the Department of Health, or an employee of an area health service or an employee of an incorporated hospital or separate institution mentioned in the Second or Third Schedule to the Public Hospitals Act 1929;
- (b) 1 is to be a registered chiropractor who has experience in chiropractic education;
- (c) 3 are to be registered chiropractors nominated by the New South Wales Branch of the Chiropractors Association of Australia;
- (d) 1 is to be a registered osteopath nominated by the New South Wales Branch of the Australian Osteopathic Association;
- (e) 1 is to be a person nominated to represent the community;
- (f) 1 is to be a registered medical practitioner;
- (g) 1 is to be a barrister or solicitor.

(3) If a body referred to in subsection (2) (c) or (d) does not nominate a chiropractor within such time or in such manner as may be specified by the Minister by notice in writing to the body, the Governor may instead appoint to be a member a chiropractor nominated by the Minister.

Staff

24. A Registrar and such other staff as may be necessary to enable the Board to exercise its functions are to be employed under the Health Administration Act 1982 by the Corporation.

Advisory committees

25. (1) The Board may establish committees to assist it in connection with the exercise of any of its functions.

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(2) The Board may establish (without limiting the generality of subsection (1)) an education advisory committee to advise the Board on:

- (a) chiropractic and osteopathy education (including further education for registered practitioners); and
- (b) education for any public purpose connected with the practice of chiropractic or osteopathy.

(3) It does not matter that any or all of the members of a committee are not members of the Board.

(4) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings may be determined by the Board or (subject to any determination of the Board) by the committee.

Other provisions relating to the Board

26. (1) Schedule 1 has effect with respect to the members of the Board.

(2) Schedule 2 has effect with respect to the procedure of the Board.

PART 5—COMPLAINTS AND DISCIPLINARY PROCEEDINGS

Division 1—Complaints

Codes of professional conduct

27. The Board may establish:

- (a) codes of professional conduct setting out the rules of conduct which should be observed by registered chiropractors in carrying out the practice of chiropractic; and
- (b) codes of professional conduct setting out the rules of conduct which should be observed by registered osteopaths in carrying out the practice of osteopathy.

Complaints

28. (1) A complaint may be made that a registered practitioner:

- (a) has been convicted either in or outside New South Wales of an offence which, from the circumstances in which it was committed, renders the chiropractor or osteopath unfit in the public interest to practise chiropractic or osteopathy; or
- (b) is an habitual drunkard or is addicted to any deleterious drug; or
- (c) has been guilty of professional misconduct; or

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(4) The Board is to supply a person with such extracts from the register as the person may require, on payment of the fee prescribed by the regulations.

(5) The register is to be open to inspection at the office of the Board, at all times when that office is open for business, by any person on payment of the fee prescribed by the regulations.

Annual roll fee

18. (1) A registered practitioner (other than a person who holds a certificate of temporary registration) must, on or before the prescribed date in each year, pay to the Board a roll fee of such amount as may be prescribed by the regulations for the following year.

(2) Together with the roll fee, the practitioner is to furnish particulars of his or her address for entry in the register.

(3) If any practitioner required by this section to pay a prescribed roll fee does not pay the fee for the following year before the prescribed date in any year, the Board is required to notify the practitioner that if the fee is not paid by the prescribed date the practitioner's name will be removed from the register.

(4) Notification may be given to the practitioner by letter addressed to the practitioner at the address appearing in the register.

(5) The Board must remove the practitioner's name from the register if the practitioner has been so notified and fails to pay the fee on or before the due date.

(6) The Board is required to restore the practitioner's name to the register on the application of the practitioner and payment of the prescribed fee.

(7) A practitioner whose name has been removed from the register for more than 5 years may not have his or her name restored to the register under this section unless the Board is satisfied:

- (a) that the practitioner is of good character; and
- (b) that the practitioner is able to demonstrate (whether by passing an examination arranged by the Board, or otherwise) that he or she possesses the requisite skills to practise as a chiropractor or osteopath or both.

(8) The regulations may provide for the waiver of the whole or such part of the fees as the Board may in a particular case think proper.

(9) In this section, "year" means a year ending on 30 June or on such other day as may be specified by the regulations.

Restoration of name to register

19. (1) The name of a practitioner removed from the register at the direction of the Board is not to be again entered in the register, except by direction of the Board or by order of a court of competent jurisdiction.

(2) The Board may, if it thinks fit in any case, direct the Registrar to restore to the register a name removed from it.

(3) The Board may, as a condition of restoration, require a person to pay such fee, not exceeding the prescribed registration fee, as it may from time to time direct.

(4) The Registrar is to restore a name to the register on being directed to do so by the Board.

Removal of name of deceased person etc.

20. (1) The Board is to cause to be removed from the register the names of:

- (a) every practitioner who has died; and
- (b) every practitioner who has ceased to possess or does not possess the qualifications in respect of which the person was registered.

(2) The Board may cause the name of a practitioner to be removed from the register if the practitioner so requests.

PART 4—THE REGISTRATION BOARD**Constitution of the Board**

21. There is constituted by this Act a body corporate under the corporate name of the Chiropractors and Osteopaths Registration Board.

Functions of the Board

22. The Board has the following functions:

- (a) to promote and maintain high standards of chiropractic and osteopathic practice in New South Wales;
- (b) to advise the Minister on matters relating to the registration of chiropractors and osteopaths, standards of chiropractic and osteopathic practice and any other matters arising under or related to this Act or the regulations;
- (c) to consult with professional and educational bodies on matters affecting chiropractors and osteopaths, where the Board considers it appropriate to do so;

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- (a) applies for temporary registration and is not normally resident in New South Wales; and
 - (b) is entitled under section 15 to a certificate of the kind applied for; and
 - (c) pays the fee prescribed by the regulations.
- (2) A certificate of temporary registration may be granted for such term (not exceeding 6 months) as the Board determines.
- (3) The Board may, at any time before the date of expiry, for such cause as to it seems proper, cancel a certificate of temporary registration without prejudice to any application for registration of the person who was the holder of the certificate.
- (4) A certificate of temporary registration has effect until it is cancelled or expires.
- (5) The Board may impose such conditions as it thinks fit on the temporary registration of a person and may remove or vary those conditions.

Qualification for temporary registration

15. (1) A person is entitled to a certificate of temporary registration as a chiropractor if the person:
- (a) is registered as a chiropractor in accordance with a law in force in the person's normal place of residence providing for the registration of chiropractors; or
 - (b) holds such qualifications and has such experience in the practice of chiropractic as the Board considers satisfactory for the granting of temporary registration.
- (2) A person is entitled to a certificate of temporary registration as an osteopath if the person:
- (a) is registered as an osteopath in accordance with a law in force in the person's normal place of residence providing for the registration of osteopaths; or
 - (b) holds such qualifications and has such experience in the practice of osteopathy as the Board considers satisfactory for the granting of temporary registration.
- (3) A person is entitled to a certificate of temporary registration as a chiropractor and osteopath if the person is entitled to a certificate of temporary registration under subsections (1) and (2).

Conditional registration

16. (1) A person entitled to be registered under section 6, 7 or 8 may be so registered subject to such conditions relating to the duration of the registration, the aspects of the practice in which the person who is registered may be engaged, and any other matters, as the Board thinks fit.

(2) The Board may impose conditions under this section only if:

- (a) the person has been the subject of disciplinary proceedings as a result of which conditions are required to be placed on his or her registration; or
- (b) the person is or has been registered as a chiropractor or osteopath or both outside New South Wales and the registration is or was subject to conditions.

Register

17. (1) The Board is to keep a register divided as follows:

- (a) the register of chiropractors;
- (b) the register of osteopaths;
- (c) the register of chiropractors and osteopaths.

(2) The Board, on the application of a person and on being satisfied that the person is entitled to be registered under this Part, is to enter in the appropriate division of the register the following information:

- (a) the person's full name and address;
- (b) the date of registration;
- (c) particulars of the qualification or qualifications in respect of which the registration is granted;
- (d) such other particulars and matters as are directed by this Act or the regulations to be entered in the register.

(3) The Board may, in relation to a practitioner registered under this Act, also enter in the register, on payment of the prescribed fee:

- (a) particulars of such further or additional qualifications possessed by the practitioner which the Board decides are appropriate to be entered in the register; and
- (b) particulars of any certificate, diploma, membership, degree, licence, letters, testimonial or other title, status, document or description which the practitioner is authorised by the Board to use as a registered practitioner or in the practice of chiropractic or osteopathy.

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- (a) has undertaken a course of training prescribed by the regulations and has received a diploma, certificate or other academic award for the successful completion of that course; or
- (b) has, at an examination arranged by the Board, satisfied the Board that he or she is fit to practise osteopathy in New South Wales; or
- (c) is registered elsewhere in Australia as an osteopath in accordance with a law prescribed by the regulations providing for the registration of osteopaths.

Qualification for registration as chiropractor and osteopath

11. A person is entitled to be registered as a chiropractor and osteopath if the person is entitled to be registered under sections 9 and 10 and pays the prescribed fee.

Board may refuse registration

12. (1) The Board may refuse to register a person who is otherwise entitled to be registered under this Part if:

- (a) the person has been convicted either in or outside New South Wales of an offence which, from the circumstances under which it was committed, renders the person unfit in the public interest to practise chiropractic or osteopathy; or
- (b) the person's name has been removed from any register or roll established or kept under any law in any country providing for the registration or certification of chiropractors or osteopaths; or
- (c) the person is an habitual drunkard or addicted to any deleterious drug.

(2) The Board may not refuse to register a person under this section on the grounds that the person's name has been removed from another register or roll unless:

- (a) the reason for the removal was an act or omission of a nature affecting the person's conduct in a professional respect; and
- (b) the act or omission, if done or omitted to be done in New South Wales, would have authorised the removal of the person's name from the register under Part 5 (if the person were registered in the register).

Provisional registration

13. (1) The President may grant to a person a certificate of provisional registration as a chiropractor if the person:

- (a) is entitled to a diploma, certificate or other academic award referred to in section 9 (a); and

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- (b) will have the diploma, certificate or other award conferred or granted in due course according to the practice of the body, association or institution conferring or granting the diploma, certificate or other award; and
 - (c) is of good character; and
 - (d) applies to be registered as a chiropractor and pays the fee prescribed by the regulations.
- (2) The President may grant to a person a certificate of provisional registration as an osteopath if the person:
- (a) is entitled to a diploma, certificate or other academic award referred to in section 10 (a); and
 - (b) will have the diploma, certificate or other award conferred or granted in due course according to the practice of the body, association or institution conferring or granting the diploma, certificate or other award; and
 - (c) is of good character; and
 - (d) applies to be registered as an osteopath and pays the fee prescribed by the regulations.
- (3) The President is to set an expiry date, not later than 6 months after the certificate takes effect, for each certificate of provisional registration granted by the President.
- (4) The Board may, at any time before the date of expiry, for such cause as to it seems proper, cancel a certificate of provisional registration without prejudice to any application for registration of the person who was the holder of the certificate.
- (5) A certificate of provisional registration has effect until it is cancelled or expires.
- (6) If a person to whom a certificate of provisional registration has been granted becomes registered under this Act during the currency of the certificate, the person's registration dates from the granting of the certificate, unless otherwise decided by the Board.

Temporary registration

14. (1) The Board may grant to a person a certificate of temporary registration under this Part if the person:

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(4) A registered practitioner must not use any name, initials, word, title, addition, symbol or description which, having regard to the circumstances in which it is used:

- (a) indicates; or
- (b) is capable of being understood to indicate; or
- (c) is calculated to lead a person to infer,

that the person is a medical practitioner unless the person is registered as a medical practitioner under the Medical Practitioners Act 1938.

Maximum penalty: 20 penalty units.

PART 3—REGISTRATION

Registration as chiropractor

6. (1) A person is registered under this Act as a chiropractor if his or her name is entered in the register of chiropractors.

(2) A person who is granted one of the following certificates is taken to be a registered chiropractor while the certificate has effect:

- (a) a certificate of provisional registration as a chiropractor;
- (b) a certificate of temporary registration as a chiropractor;
- (c) a certificate of conditional registration as a chiropractor.

(3) A person ceases to be registered as a chiropractor if his or her name (for whatever reason) is removed from the register.

(4) A person whose registration as a chiropractor is suspended is taken not to be a registered chiropractor during the period of the suspension, except for the purposes of Part 5.

Registration as osteopath

7. (1) A person is registered under this Act as an osteopath if his or her name is entered in the register of osteopaths.

(2) A person who is granted one of the following certificates is taken to be a registered osteopath while the certificate has effect:

- (a) a certificate of provisional registration as an osteopath;
- (b) a certificate of temporary registration as an osteopath;
- (c) a certificate of conditional registration as an osteopath.

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(3) A person ceases to be registered as an osteopath if his or her name (for whatever reason) is removed from the register.

(4) A person whose registration as an osteopath is suspended is taken not to be a registered osteopath during the period of the suspension, except for the purposes of Part 5.

Registration as chiropractor and osteopath

8. (1) A person is registered under this Act as a chiropractor and osteopath if his or her name is entered in the register of chiropractors and osteopaths.

(2) A person who is granted one of the following certificates is taken to be a registered chiropractor and osteopath while the certificate has effect:

- (a) a certificate of temporary registration as a chiropractor and osteopath;
- (b) a certificate of conditional registration as a chiropractor and osteopath.

(3) A person ceases to be registered as a chiropractor and osteopath if his or her name (for whatever reason) is removed from the register.

(4) A person whose registration as a chiropractor and osteopath is suspended is taken not to be a registered chiropractor and osteopath during the period of the suspension, except for the purposes of Part 5.

Qualification for registration as chiropractor

9. A person who is of good character and is of or above the age of 18 years is entitled, on payment of the prescribed fee, to be registered as a chiropractor if the person:

- (a) has undertaken a course of training prescribed by the regulations and has received a diploma, certificate or other academic award for the successful completion of that course; or
- (b) has, at an examination arranged by the Board, satisfied the Board that he or she is fit to practise chiropractic in New South Wales; or
- (c) is registered elsewhere in Australia as a chiropractor in accordance with a law prescribed by the regulations providing for the registration of chiropractors.

Qualification for registration as osteopath

10. A person who is of good character and is of or above the age of 18 years is entitled, on payment of the prescribed fee, to be registered as an osteopath if the person:

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(iv) judgment; or

(v) care,

by the practitioner in the practice in which the practitioner is registered;

- (b) a contravention by the practitioner of a provision of this Act or the regulations;
- (c) a failure by the practitioner to comply with a condition of registration;
- (d) the practitioner holding himself or herself out as having qualifications in chiropractic or osteopathy other than those recorded in the register in respect of the practitioner;
- (e) any other improper or unethical conduct relating to the practice of chiropractic or osteopathy;

“register” means the register kept by the Board under section 17;

“registered chiropractor” means a person registered as a chiropractor or a chiropractor and osteopath under Part 3;

“registered osteopath” means a person registered as an osteopath or a chiropractor and osteopath under Part 3;

“registered practitioner” means a registered chiropractor or a registered osteopath;

“Registrar” means the Registrar of the Board;

“Tribunal” means the Chiropractors and Osteopaths Tribunal constituted under section 44.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

PART 2—REQUIREMENT FOR REGISTRATION

Chiropractic and osteopathy not to be practised by unregistered person

4. A person must not manipulate the joints of the human spinal column, including its immediate articulations, for therapeutic purposes unless:

- (a) the person is registered under this Act as a chiropractor, osteopath or chiropractor and osteopath; or

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- (b) the person does so in the ordinary course of his or her practice as a registered medical practitioner or physiotherapist registered under the Physiotherapists Registration Act 1945; or
- (c) the person does so in connection with a course of training referred to in section 9 (a) or 10 (a); or
- (d) the person does so in connection with an examination arranged by the Board pursuant to section 9 (b) or 10 (b); or
- (e) the person is exempted from the operation of this section by the regulations.

Maximum penalty: 50 penalty units.

Use of title of chiropractor, osteopath etc.

5. (1) A person must not indicate that the person:

- (a) practises chiropractic or osteopathy; or
- (b) is qualified to practise chiropractic or osteopathy,

unless the person is registered to so practise under this Act.

(2) Without limiting the ways in which a person may be taken to have indicated that he or she so practises or is qualified to so practise, a person is taken to have so indicated if the person uses:

- (a) any name, initials, word, title, addition, symbol or description which, having regard to the circumstances in which it is used:
 - (i) indicates; or
 - (ii) is capable of being understood to indicate; or
 - (iii) is calculated to lead a person to infer,

that the person practises chiropractic or osteopathy or is qualified to practise chiropractic or osteopathy; or

- (b) any name, title or description prescribed by the regulations.

(3) A registered practitioner must not use any certificate, diploma, membership, degree, licence, letters, testimonial or other title, status, documents or description:

- (a) in relation to himself or herself; or
- (b) in the practice in which the practitioner is registered under this Act, other than those for which particulars are recorded in the register in respect of the practitioner.

CHIROPRACTORS AND OSTEOPATHS ACT 1991 No. 7

NEW SOUTH WALES



Act No. 7, 1991

An Act to regulate the practice of chiropractic and osteopathy and to repeal the Chiropractic Act 1978. [Assented to 26 April 1991]

Chiropractors and Osteopaths 1991

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Chiropractors and Osteopaths Act 1991.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.

(2) Part 1, section 69 and Schedule 4 commence on the date of assent to this Act.

Definitions

3. (1) In this Act:

“**Board**” means the Chiropractors and Osteopaths Registration Board;

“**Chairperson**” means the Chairperson of the Tribunal;

“**Committee**” means a Professional Standards Committee referred to in section 34;

“**conduct**” means any act or omission;

“**Corporation**” means the Health Administration Corporation constituted under the Health Administration Act 1982;

“**Deputy Chairperson**” means a Deputy Chairperson of the Tribunal;

“**Director-General**” means the Director-General of the Department of Health;

“**member**” means a member of the Board;

“**President**” means the President of the Board;

“**professional misconduct**”, in relation to a registered practitioner, includes any of the following:

(a) any conduct that demonstrates a lack of adequate:

(i) knowledge; or

(ii) experience; or

(iii) skill; or

Chiropractors and Osteopaths 1991

PART 6—MISCELLANEOUS

55. Written statement of decisions
56. False entries in register, misrepresentation etc.
57. Proof of certain matters not required
58. Evidentiary certificates and evidence of entry in register
59. Fees etc.
60. Chiropractic and Osteopathy Education and Research Account
61. Proceedings for offences
62. Appointment and powers of inspectors
63. Search warrants
64. Liability of members etc.
65. Regulations
66. Amendment of Search Warrants Act 1985 No. 37, s. 10 (Definitions)
67. Repeal of Chiropractic Act 1978 No. 132
68. Repeal of Chiropractic Regulation 1979
69. Savings and transitional provisions

SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS OF THE BOARD

SCHEDULE 2—PROVISIONS RELATING TO THE PROCEDURE OF THE BOARD

SCHEDULE 3—PROCEEDINGS BEFORE A COMMITTEE AND THE TRIBUNAL

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

RECEIVED BY THE SECRETARY OF THE BOARD OF DIRECTORS OF THE BANK OF AMERICA AND TRUST COMPANY OF NORTH CAROLINA

THIS RECEIPT IS VALID ONLY IF SIGNED BY THE SECRETARY OF THE BOARD OF DIRECTORS OF THE BANK OF AMERICA AND TRUST COMPANY OF NORTH CAROLINA

THE BANK OF AMERICA AND TRUST COMPANY OF NORTH CAROLINA

100 WALL STREET, NEW YORK, N. Y. 10038



