

[Act 2001 No 16]



New South Wales

Osteopaths Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Chiropractors Bill 2001*.

Overview of Bill

The object of this Bill is to provide for the registration of osteopaths.

The Bill re-enacts the provisions of the *Chiropractors and Osteopaths Act 1991* relating to the regulation of osteopaths with the following modifications:

- (a) a statement of the object of the Act is included,
 - (b) additional mechanisms are provided for the accreditation and recognition of qualifications entitling a person to registration as an osteopath,
 - (c) competence becomes an express requirement for registration and the Osteopaths Registration Board (*the Board*) is given power to inquire into competence,
 - (d) a mechanism for establishing a code of professional conduct is provided for and the operation of a code is clarified,
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- (e) registered osteopaths are required to submit an annual return to the Board detailing matters that establish their continuing competence and good character,
- (f) registered osteopaths are required to notify the Board of convictions and conviction findings (findings of guilt without proceeding to a conviction) for various offences, and courts are required to notify the Board of certain convictions and conviction findings against registered osteopaths,
- (g) definitions of unsatisfactory professional conduct and professional misconduct are introduced,
- (h) a complaint against an osteopath can be made and dealt with even if the osteopath has ceased to be registered,
- (i) the Board is required to notify an osteopath of a complaint made against the osteopath,
- (j) the Osteopathy Care Assessment Committee is established to inquire into less serious complaints about osteopaths and to make recommendations to the Board with respect to the determination of those complaints,
- (k) the Osteopathy Care Assessment Committee will be able to conduct skills testing of a registered osteopath about whom a complaint is made,
- (l) mechanisms are provided to enable the Board to monitor and manage osteopaths who are impaired in their ability to practise,
- (m) determination of complaints by Professional Standards Committees is replaced with determination by a hearing of the Board,
- (n) complaints are authorised to be made about the fees charged for osteopathy services and the Board is authorised to make orders with respect to those fees when determining a complaint,
- (o) the Board is to have 7 members (comprising 4 osteopaths, an officer of the Department of Health or a public health service, a person to represent the community, and a legal practitioner) and members are limited to serving 3 consecutive 4-year terms,
- (p) the Board is given power to delegate its functions,
- (q) the operation of the *Criminal Records Act 1991* is modified to facilitate the reporting of and consideration of conviction findings affecting applicants for registration and osteopaths,
- (r) the Board is required to notify other osteopathy registration authorities of disciplinary action taken against an osteopath,
- (s) proceedings for an offence under the Act will be able to be taken within 12 months after the offence,

(t) any conditions on an osteopath's registration will be recorded in the Register. The Bill also enacts consequential savings and transitional provisions and makes consequential amendments to other Acts.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 sets out the object of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act.

Clause 5 provides that notes in the proposed Act are explanatory only and do not form part of the Act.

Clause 6 provides that the proposed Act does not limit or otherwise affect the operation of the Mutual Recognition laws of the Commonwealth.

Part 2 Registration

Clause 7 prohibits a person from indicating that the person practises, or is qualified to practise, osteopathy unless the person is registered under the proposed Act.

Clause 8 specifies the qualifications required for registration as an osteopath.

Clause 9 defines competence to practise for the purposes of the proposed Act.

Clause 10 defines impairment for the purposes of the proposed Act.

Clause 11 specifies the circumstances in which a person is entitled to be registered as an osteopath under the proposed Act.

Clause 12 provides for provisional registration under the proposed Act for persons who are entitled to registration but whose applications for registration have not been dealt with by the Board, and for persons entitled to the qualification required for registration who have not yet had the qualification conferred on them.

Clause 13 provides for temporary registration under the proposed Act in certain circumstances.

Clause 14 specifies the circumstances in which the Board may refuse to register a person under the proposed Act.

Clause 15 specifies the effect of the removal of a person's name from the Register and the suspension of a person's registration as an osteopath.

Clause 16 restricts the re-registration of deregistered persons and certain other persons.

Clause 17 provides for an appeal to the Osteopaths Tribunal where the Board has refused to grant registration or cancelled registration and in certain other cases.

Part 3 Practice of osteopathy

Division 1 Conduct of practice

Clause 18 prohibits registered osteopaths from using the title "doctor" unless the osteopath holds a recognised university qualification entitling the osteopath to use that title.

Clause 19 provides that the Board may establish a code of professional conduct and provides for the use of, and procedure for the establishment of, that code.

Division 2 Returns and information

Clause 20 provides that registered osteopaths must furnish annual returns to the Board containing specified information. The Board may require the return to be verified by statutory declaration.

Clause 21 provides that a registered osteopath must notify the Board within 7 days if the osteopath is convicted of an offence or made the subject of a sex/violence criminal finding for an offence or certain criminal proceedings are commenced against the osteopath.

Clause 22 provides for the Courts to notify the Board, as soon as is practicable, of the conviction of a registered osteopath of an offence or the making of a sex/violence criminal finding against an osteopath.

Clause 23 requires notice to be given to the Registrar in accordance with the regulations when a registered osteopath becomes a mentally incapacitated person.

Part 4 Complaints and disciplinary proceedings

Division 1 Interpretation

Clause 24 defines “professional misconduct”.

Clause 25 defines “unsatisfactory professional conduct”.

Division 2 Complaints

Clause 26 sets out the grounds for the making of complaints about registered osteopaths.

Clause 27 allows a complaint to be made even if the osteopath has ceased to be registered.

Clause 28 provides that any person (including the Board) may make a complaint.

Clause 29 provides that complaints are to be made to the Board and lodged with the Registrar.

Clause 30 sets out the form in which a complaint is to be made.

Clause 31 provides that the Board is to notify the Health Care Complaints Commission of complaints under this Part of the proposed Act.

Clause 32 sets out the manner that notice of the complaint is to be given to the osteopath against whom the complaint is made and the circumstances where notice is not required to be given.

Clause 33 provides that the Board may make inquiries concerning the complaint as it sees fit.

Clause 34 requires the Board to consult with the Health Care Complaints Commission before dealing with a complaint or referring it to another body under this Part of the proposed Act.

Clause 35 sets out how complaints are to be dealt with.

Clause 36 provides that serious complaints should be referred to the Tribunal. In general, the Board must refer any complaint which may warrant the suspension or deregistration of a registered osteopath to the Tribunal.

Clause 37 allows the Board to require a registered osteopath to undergo a medical examination.

Clause 38 sets out the persons to whom the Board must give notice of any order made relating to a registered osteopath.

Division 3 Referral of complaints to Osteopathy Care Assessment Committee

Clause 39 provides for the kinds of complaints that can be referred to the Committee.

Clause 40 provides that the Committee is to investigate complaints referred to it and may encourage the settlement of the complaint by consent and authorises the Committee to obtain such osteopathy, medical, legal, financial or other advice as it thinks necessary or desirable to enable it to carry out its functions.

Clause 41 provides that the Committee may require a registered osteopath to undergo specified skills testing.

Clause 42 provides for the Committee to report and make recommendations to the Board.

Clause 43 provides that a complainant and osteopath against whom the complaint is made are not entitled to be legally represented at any appearance before the Committee.

Division 4 Dealing with complaint by inquiry at a meeting of the Board

Clause 44 provides that if the Board is to deal with a complaint at a meeting of the Board, that complaint is to be dealt with in accordance with this Division and Schedule 3 (Provisions relating to the procedure of the Board).

Clause 45 allows the procedure for the calling of a meeting to deal with a complaint and for the conduct of the meeting, subject to the proposed Act and the regulations made under it, to be determined by the Board.

Clause 46 sets out certain provisions relating to the conduct of the meeting.

Clause 47 deals with the making of submissions to the meeting of the Board by the osteopath about whom the complaint has been made, the Committee and the Health Care Complaints Commission.

Clause 48 provides that the Board must, within 30 days of making its decision on a complaint, make available to the complainant, the osteopath concerned and such other persons as it sees fit, a written statement of the decision.

Clause 49 provides that a finding of the Board under this Division of the proposed Act is admissible as evidence in any legal proceedings.

Division 5 Disciplinary powers of Board and Tribunal

Clause 50 allows the Board or the Tribunal to exercise any of the powers or combination of powers conferred under this Division of the proposed Act if it finds the subject-matter of a complaint proved or the osteopath concerned admits to the complaint in writing to the Board or Tribunal.

Clause 51 sets out the general disciplinary powers of the Board.

Clause 52 provides for the making of a recommendation by the Board for the suspension or deregistration of an osteopath on the grounds that the osteopath does not have sufficient physical and mental capacity to practise osteopathy.

Clause 53 sets out the disciplinary powers of the Tribunal.

Division 6 Powers of the Board for the protection of the public

Clause 54 empowers the Board to suspend from practice (for not more than 8 weeks), or impose conditions on the registration of, a registered osteopath 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.

Clause 55 provides that the Board may at any time alter or remove conditions imposed under this Division of the proposed Act.

Clause 56 requires the Board to refer the matter to the Health Care Complaints Commission for investigation after taking any action under clause 54. The Commission is to investigate the matter and then refer it as a complaint to the Tribunal or to the Board to be dealt with by inquiry at a meeting of the Board.

Clause 57 sets out special provisions to be followed if the Board imposes conditions on the registration of a registered osteopath under clause 54 because the Board is of the opinion that the osteopath suffers from an impairment.

Clause 58 requires the Board to notify the Chairperson of the Tribunal if the Board has suspended a registered osteopath under clause 54.

Clause 59 provides that a period of suspension may be extended for a period or further period of not more than 8 weeks but only if the extension has been approved in writing by the Chairperson or a Deputy Chairperson of the Tribunal and the complaint about the osteopath has not been disposed of.

Clause 60 deals with the rights and privileges of persons on the expiration of their period of suspension as a registered osteopath.

Clause 61 deals with conditions imposed on a registered osteopath under clause 54 where the matter is dealt with as a complaint against the osteopath.

Clause 62 deals with conditions imposed on a registered osteopath under clause 54 where the matter is referred to an Impaired Registrants Panel.

Part 5 Impairment

Clause 63 provides for matters to be referred to an Impaired Registrants Panel.

Clause 64 allows a person to notify the Board of any matter that the person thinks indicates that a registered osteopath suffers from or may suffer from an impairment.

Clause 65 allows the Health Care Complaints Commission to refer to the Board any matter that indicates that a registered osteopath suffers from or may suffer from an impairment.

Clause 66 provides that an Impaired Registrants Panel is to inquire into any matter referred to it. The Panel may request that the registered osteopath concerned attend before the Panel for the purpose of enabling it to obtain information on the matter and make an assessment.

Clause 67 provides that an Impaired Registrants Panel is not to investigate or take any other action if it is aware that the matter is the subject of an investigation by the Health Care Complaints Commission.

Clause 68 requires the Board to notify the registered osteopath of any proposed inquiry by an Impaired Registrants Panel.

Clause 69 allows a registered osteopath who is the subject of a matter referred to an Impaired Registrants Panel to make oral or written representations to the Panel.

Clause 70 provides that an Impaired Registrants Panel is to make an assessment in respect of each referral to it based on its inquiry and may counsel the osteopath concerned or require that he or she undertake counselling, recommend that the osteopath consent to conditions being placed on his or her registration or to his or her suspension for a specified period or make other recommendations to the Board.

Clause 71 allows the Board to place conditions on the registration of a registered osteopath or suspend the registered osteopath if an Impaired Registrants Panel has recommended it and the Board is satisfied that the osteopath has voluntarily consented to that recommendation.

Clause 72 deals with the review of conditions placed on the registration of a registered osteopath or the suspension of the registered osteopath where the osteopath had voluntarily consented to the conditions or suspension.

Clause 73 provides that certain matters referred to an Impaired Registrants Panel are to be dealt with as complaints against the osteopath concerned.

Clause 74 deals with the confidentiality of reports by an Impaired Registrants Panel to the Board.

Part 6 Appeals and review of disciplinary action

Division 1 Appeals against actions of the Board

Clause 75 deals with appeals to the Tribunal against any finding of the Board or any exercise of any power of the Board under Division 5 of Part 4 of the proposed Act (Disciplinary powers of Board and Tribunal).

Clause 76 deals with appeals to the Tribunal relating to suspensions of, or impositions of conditions on, the registration of osteopaths.

Clause 77 allows an appeal with respect to a point of law to be made to the Chairperson of the Tribunal, or a Deputy Chairperson nominated by the Chairperson, when a complaint is dealt with at a meeting of the Board.

Division 2 Appeals against actions of Tribunal

Clause 78 allows a preliminary appeal (during an inquiry on a complaint by the Tribunal or before the commencement of the inquiry but after the complaint has been referred to the Tribunal) with respect to a point of law to be made to the Supreme Court by the osteopath concerned or the complainant, but only with the leave of the Chairperson or a Deputy Chairperson.

Clause 79 deals with appeals to the Supreme Court by the osteopath about whom a complaint has been referred to the Tribunal or the complainant regarding a decision of the Tribunal as to a point of law or the exercise of any power of the Tribunal under Division 5 of Part 4 of the proposed Act (Disciplinary powers of Board and Tribunal).

Clause 80 sets out the powers of the Supreme Court in determining an appeal.

Division 3 Review of suspension, cancellation or conditions

Clause 81 deals with the right of a person to apply for a review of an order of the Board, the Chairperson or a Deputy Chairperson, the Tribunal or the Supreme Court that the registration of the person be suspended, that the person's name be removed from the Register or not be re-registered, or that conditions be placed on the person's registration.

Clause 82 provides that the *appropriate review body* to deal with an application for review is the Tribunal except where the order being reviewed provides that it may be reviewed by the Board, in which case the Board is the appropriate review body.

Clause 83 deals with the powers of the appropriate review body on undertaking a review.

Clause 84 deals with the nature of the review.

Part 7 Osteopaths Registration Board

Clause 85 constitutes the Osteopaths Registration Board.

Clause 86 specifies the functions of the Board.

Clause 87 provides for the membership of the Board.

Clause 88 provides for the appointment of a Registrar and other staff necessary to enable the Board to exercise its functions.

Clause 89 enables the Board to establish committees to assist it to exercise its functions.

Clause 90 provides for the delegation of the Board's and the Registrar's functions.

Clause 91 gives effect to Schedules 2 and 3 which contain further provisions relating to the membership and procedure of the Board.

Part 8 Osteopathy Care Assessment Committee

Clause 92 constitutes the Osteopathy Care Assessment Committee.

Clause 93 specifies the functions of the Committee.

Clause 94 provides for the membership of the Committee.

Clause 95 gives effect to Schedule 4 which contains further provisions relating to the membership and procedure of the Committee.

Part 9 Impaired Registrants Panels

Clause 96 provides for the establishment of Impaired Registrants Panels for the purposes of the proposed Act. The Panels are to have, and may exercise, such jurisdiction and functions as are conferred or imposed on them by or under the proposed Act or any other Act.

Clause 97 requires the Board, when it decides to refer a matter to an Impaired Registrants Panel, to appoint 2 persons to sit as the Panel.

Clause 98 provides that only decisions supported by both members of an Impaired Registrants Panel are to be considered decisions of the Panel. Disagreements between members of a Panel are to be reported to the Board.

Part 10 Osteopaths Tribunal

Division 1 Constitution of the Tribunal

Clause 99 provides for the establishment of the Osteopaths Tribunal. The Tribunal is to be constituted in accordance with the proposed Act to deal with a matter referred to it or an appeal or application made to it under the proposed Act.

Clause 100 provides for experienced legal practitioners to be appointed as the Chairperson and Deputy Chairpersons of the Tribunal.

Clause 101 deals with the appointment of persons to sit on the Tribunal when a complaint or other matter is referred to the Tribunal, the Health Care Complaints Commission decides to prosecute a complaint before the Tribunal under the *Health Care Complaints Act 1993* or an appeal or application under the proposed Act to the Tribunal is lodged with the Registrar.

Clause 102 provides that the Tribunal may continue and come to a determination despite a vacancy in its membership which occurs when a matter is part-heard. This provision does not apply if it is the Chairperson or a Deputy Chairperson who vacates office, or more than one vacancy occurs.

Clause 103 deals with payment of non-legal Tribunal members.

Clause 104 provides for a seal of the Tribunal of which courts and persons acting judicially are to take notice.

Division 2 Proceedings of the Tribunal

Clause 105 provides that the decision of the Chairperson or a Deputy Chairperson on any question of law or procedure arising during an inquiry or appeal at which that person presides is the decision of the Tribunal for the purposes of the inquiry or appeal. All other decisions must be supported by at least 3 members of the Tribunal. In cases where 2 members support and 2 oppose a decision, the decision of the Chairperson or Deputy Chairperson presiding prevails.

Clause 106 deals with the time at which orders of the Tribunal take effect.

Clause 107 provides that a power of the Tribunal exercised under the proposed Act by the Supreme Court (except for the purposes of any appeal) is taken to have been exercised by the Tribunal.

Clause 108 requires the Tribunal to inform the Registrar of the exercise of any power under Part 4 of the proposed Act (Complaints and disciplinary proceedings).

Division 3 Inquiries, appeals etc before the Tribunal

Clause 109 deals with the jurisdiction of the Tribunal to conduct an inquiry into any complaint, matter or application and to hear any appeal referred to it.

Clause 110 provides for the fixing of the time and place for the conduct of an inquiry or the hearing of an appeal and the notice that must be given of that time and place.

Clause 111 deals with the conduct of proceedings before the Tribunal.

Clause 112 enables a complainant or a registered osteopath about whom a complaint is made to be represented by a legal practitioner or another adviser in proceedings before the Tribunal.

Clause 113 prohibits the Chairperson or a Deputy Chairperson from sitting on an inquiry or appeal concerning a matter on which he or she has already made a decision.

Clause 114 provides for adjournments and interlocutory orders.

Clause 115 requires the Tribunal to provide a written statement of its decision on an inquiry or appeal to the complainant, the osteopath concerned and the Board. The statement must set out any findings on material questions of fact, refer to any evidence or other material on which findings were based and give the reasons for the decision.

Clause 116 provides that the Tribunal is not required to include confidential information in its statement of a decision. If the statement would be false or misleading without the confidential information the Tribunal is not required to provide the statement. However, a confidential information notice must then be provided indicating that confidential information is not given or the statement will not be provided.

Part 11 Miscellaneous

Clause 117 deals with the application of the *Criminal Records Act 1991*.

Clause 118 provides for the service of notices.

Clause 119 provides for the service of documents on the Board.

Clause 120 requires the Board, the President or an authorised member of the Board to provide on request a written statement of the reasons for a decision.

Clause 121 requires the Board to notify various health professional registration authorities of the taking of disciplinary action against an osteopath.

Clause 122 makes it an offence to make a false entry in the Register (or, by fraud, to procure such an entry) or to make a false statement to obtain registration. The offence carries a maximum penalty of 50 penalty units (\$5,500) or 12 months imprisonment, or both.

Clause 123 provides for certain documents under the hand of the Registrar and entries in the Register to be evidence in proceedings.

Clause 124 provides for the authentication of official documents of the Board by signature instead of seal.

Clause 125 provides for the disbursement of money received by the Board and empowers the Board to waive the payment of fees.

Clause 126 requires the Board to establish an Osteopathy Education and Research Account (for education and research in osteopathy). The clause provides for money to be paid into the Account and specifies the purposes for which that money may be expended.

Clause 127 provides for the appointment and powers of inspectors.

Clause 128 enables an inspector to obtain a search warrant.

Clause 129 provides that certain persons given functions under the proposed Act do not incur personal liability for things done in good faith in carrying out those functions.

Clause 130 provides that if a corporation contravenes any provision of the proposed Act or the regulations, each director or other person concerned in the management of the corporation is also taken to have contravened the provision.

Clause 131 provides that proceedings for offences against the proposed Act and regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone. Such proceedings are to be instituted within 12 months of the act or omission alleged to constitute the offence.

Clause 132 provides for the making of regulations under the proposed Act.

Clause 133 is a formal provision giving effect to Schedule 6 to amend certain other Acts set out in that Schedule.

Clause 134 is a formal provision giving effect to Schedule 7 (Savings and transitional provisions).

Schedules

Schedule 1 contains provisions relating to the making of applications for registration, procedures for dealing with applications, inquiries concerning entitlement to and eligibility for registration, the keeping and alteration of the Register, annual registration fees and removal from and alteration of the Register.

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

Schedule 3 contains provisions relating to the procedure of the Board.

Schedule 4 contains provisions relating to the members and procedure of the Committee.

Schedule 5 contains provisions relating to proceedings before the Tribunal.

Schedule 6 makes consequential amendments to various Acts.

Schedule 7 contains savings and transitional provisions consequent on the enactment of the proposed Act.