

WESTERN AUSTRALIA

OSTEOPATHS ACT 1997

(No. 58 of 1997)

ARRANGEMENT

Page

PART 1 — PRELIMINARY

1.	Short title	2
2.	Commencement	2
3.	Interpretation	2
4.	Application	4

**PART 2 — OSTEOPATHS REGISTRATION BOARD
AND COMMITTEES**

5.	Board established	5
6.	Membership of Board	5
7.	Presiding member and deputy presiding member	6
8.	Constitution and proceedings	6
9.	Remuneration	6

Osteopaths Act 1997

10.	Functions of Board	6
11.	Delegation by Board	7
12.	Directions by Minister	7
13.	Disclosure of interests	8
14.	Duty not to make improper use of information	9
15.	Meetings and minutes of meetings	9
16.	Complaints assessment committee	11
17.	Other committees	12
18.	Provisions relating to committees	13
19.	Registrar and staff	13

PART 3 — REGISTRATION OF OSTEOPATHS

Division 1 — Registration and renewal

20.	Registration of natural person	15
21.	Registration of body corporate	16
22.	Registration based on registration elsewhere in Australia	16
23.	Conditional registration at the discretion of the Board	17
24.	Application	18
25.	Effect of registration	19
26.	Renewal of registration	19
27.	Occupational liability insurance	20

Division 2 — The register

28.	The register	21
29.	Inspection of register	21
30.	Certificate of registration	22
31.	Voluntary removal from register	22
32.	Amendment of particulars	23
33.	Removal of names of deceased persons and defunct bodies corporate	23
34.	Removal of name of person who has not practised, or trained, for 5 years	23
35.	Effect of removal or striking off from register	24
36.	Restoration of name to register	24
37.	Suspension	25

Osteopaths Act 1997

Division 3 — Notifications to Board

38.	Insolvency	25
39.	Civil or criminal proceedings	26
40.	Notices and returns by registered body	27

PART 4 — FINANCE AND REPORTS

41.	Funds of the Board	28
42.	Accounts	29
43.	Audit	29
44.	Annual report and other reports	29
45.	Minister to have access to information	30

PART 5 — DISCIPLINARY PROCEEDINGS

Division 1 — Preliminary

46.	Disciplinary matters	31
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Division 2 — Complaints

47.	Complaints	32
48.	Medical or psychiatric examination of osteopath	32
49.	Committee to determine action required	33
50.	Investigation and recommendation	34
51.	Committee may reject certain complaints	34
52.	Role of Board	35

Division 3 — Interim orders of Board

53.	Board may deal with matter	35
54.	Order to cease activity or interim restriction on practice	36
55.	Formal inquiry with respect to section 54 order	37

Osteopaths Act 1997

Division 4 — Investigation

56.	Interpretation	38
57.	Investigator	38
58.	Report of investigator	38
59.	Powers of investigator	39
60.	Warrant to enter premises	41
61.	Issue of warrant	42
62.	Execution of warrant	43

Division 5 — Conciliation

63.	Conciliation process	43
64.	Action if conciliation fails	45

Division 6 — Formal inquiry

65.	Board to hold formal inquiry	45
66.	Hearings generally not to be public	46
67.	Representation of persons involved	46
68.	Procedure and evidence	47
69.	Power to summons etc.	47
70.	Disciplinary powers of Board	48
71.	Costs and recovery	50
72.	Failure to comply with order	50
73.	Transcript	51
74.	Reciprocal enforcement	51
75.	Surrender of certificate	52

PART 6 — OFFENCES

76.	Only registered person may practise osteopathy	53
77.	Use of title “osteopath” or pretending to be registered	54
78.	Name in which practice may be carried on	55
79.	Failure to comply with order	56
80.	False statements	56
81.	Failure to attend, take oath etc.	56
82.	Obstruction of investigator	57

Osteopaths Act 1997

83.	Misbehaviour	57
84.	Execution of warrant	58
85.	Information that may be withheld	58
86.	Legal professional privilege	58

PART 7 — MISCELLANEOUS

87.	Protection	59
88.	Decisions to be notified	59
89.	Appeals	60
90.	Publication of proceedings etc.	61
91.	Legal proceedings	62
92.	Liability of officers	63
93.	Common seal and execution of documents by Board	64
94.	Rules	65
95.	Regulations	67
96.	Transitional	68
97.	Consequential amendments	68
98.	Review of Act	68

**SCHEDULE 1 — CONSTITUTION AND PROCEEDINGS
OF BOARD**

1.	Term of office	69
2.	Functions of deputy presiding member	69
3.	Deputy members	69
4.	Vacation of office by member	70
5.	General procedure concerning meetings	70
6.	Voting	71
7.	Telephone and video meetings	71
8.	Resolution may be passed without meeting	71
9.	Minutes	72

**SCHEDULE 2 — REQUIREMENTS FOR REGISTRATION
OF BODY CORPORATE** 73

Osteopaths Act 1997

SCHEDULE 3 — TRANSITIONAL

1.	Interpretation	75
2.	Transitional provision for persons practising osteopathy	75
3.	Persons practising osteopathy but not eligible for registration under Part 3	75
4.	Membership of Board	76

SCHEDULE 4 — CONSEQUENTIAL AMENDMENTS 77

WESTERN AUSTRALIA

OSTEOPATHS ACT 1997

No. 58 of 1997

AN ACT to provide for the regulation of the practice of osteopathy and registration of persons as osteopaths, and for related purposes.

[Assented to 15 December 1997.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Osteopaths Act 1997*.

Commencement

2. This Act comes into operation on such day as is fixed by proclamation.

Interpretation

3. In this Act, unless the contrary intention appears —

“approved” means approved by the Board in writing;

“Board” means the Osteopaths Registration Board established under section 5;

“certificate of registration” means a certificate of registration issued under section 30;

“committee” means a committee established by the Board under this Act;

“complaint” means —

- (a) a complaint lodged under section 47 (1);
- (b) a complaint referred under section 47 (2); and
- (c) a matter the complaints assessment committee has determined under section 47 (3) to deal with as if it were a complaint;

“complaints assessment committee” means the committee established under section 16;

“document” includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

“formal inquiry” means an inquiry referred to in section 65;

“investigator” means a person appointed under section 57;

“legal practitioner” means a practitioner as defined in section 3 of the *Legal Practitioners Act 1893*;

“medical practitioner” means a medical practitioner registered under the *Medical Act 1894*;

“member of the Board” includes a person acting under clause 3 of Schedule 1;

“osteopath” means a person who is registered;

“osteopathy” means the static and dynamic assessment of human bio-mechanics, the diagnosis of somatic dysfunction, and the alleviation of somatic dysfunction by the application of manual treatments complemented by health education, but does not include the use of drugs or operative surgery;

“presiding member” means the presiding member of the Board referred to in section 7;

“register” means the register referred to in section 28;

“registered” means registered under a provision of Part 3;

“registered body” means a body corporate registered under section 21;

“registrar” means the person engaged to be registrar under section 19;

s. 4

“respondent” means a person about whom or which a complaint is made, taken to be made or referred under this Act;

“rules” means rules made under section 94;

“somatic dysfunction” means impaired or altered function of related skeletal, arthroidial and myofascial structures of the somatic system (body framework), including associated vascular, lymphatic and neural elements.

Application

4. Nothing in this Act extends or applies to, or in any manner affects the practice of his, her or its profession by, or any rights or privileges of, a medical practitioner, a physiotherapist registered under the *Physiotherapists Act 1950* or a chiropractor registered under the *Chiropractors Act 1964*.

PART 2 — OSTEOPATHS REGISTRATION BOARD AND COMMITTEES

Board established

5. (1) A body called the Osteopaths Registration Board is established.

(2) The Board —

- (a) is a body corporate;
- (b) has perpetual succession and a common seal; and
- (c) may sue and be sued in its corporate name.

(3) The Board does not represent, and is not an agent of, the Crown.

Membership of Board

6. (1) The Board consists of 6 members appointed by the Minister, of whom —

- (a) 3 are to be osteopaths chosen by the Minister from a panel of 6 names submitted by the Australian Osteopathic Association (Western Australian Division);
- (b) one is to be a person who has knowledge of and experience in representing the interests of consumers;
- (c) one is to be an osteopath chosen by the Minister; and
- (d) one is to be a legal practitioner chosen by the Minister from a panel of 3 names submitted by the Law Society of Western Australia (Inc.).

(2) Each member of the Board is to be a natural person.

(3) If within 30 days of a request to do so, the body referred to in subsection (1) (a) or (d) fails to submit a panel of names in accordance with the Minister's request, the Minister may make an appointment for the purpose of that provision as the Minister thinks fit.

Presiding member and deputy presiding member

7. The presiding member and the deputy presiding member of the Board are to be elected by the Board from amongst its members.

Constitution and proceedings

8. Schedule 1 has effect with respect to the constitution and proceedings of the Board.

Remuneration

9. A member of the Board or of a committee is entitled to such remuneration and allowances as the Minister from time to time determines on the recommendation of the Minister for Public Sector Management.

Functions of Board

10. (1) The functions of the Board are to —
- (a) advise the Minister on matters to which this Act applies;
 - (b) administer the scheme of registration under Part 3;

- (c) support and promote public education and research in relation to the practice of osteopathy;
- (d) monitor education in osteopathy, and provide advice on that education to the Minister and to any other person or body involved in that education; and
- (e) perform the disciplinary and other functions that are conferred on the Board by this Act.

(2) The Board may do all things that are necessary or convenient to be done for, or in connection with, its functions.

Delegation by Board

11. (1) The Board may, by instrument, delegate the performance of any of its functions, except this power of delegation and the power to conduct a formal inquiry, to a member of the Board, a committee or a member of a committee.

(2) A function performed by a delegate is taken to be performed by the Board.

(3) A delegate performing a function under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

Directions by Minister

12. (1) Subject to subsection (2) the Minister may, after consulting with the Board, give directions in writing to the Board with respect to the performance of its functions either generally or in relation to a particular matter, and the Board is to give effect to any such direction.

(2) The Minister must not under subsection (1) direct the Board with respect to the performance of its functions of registration or discipline in respect of —

- (a) a particular person;

s. 13

- (b) a particular qualification; or
 - (c) a particular application, complaint or proceeding.
- (3) The text of a direction given under subsection (1) is to be —
- (a) laid before each House of Parliament within 14 sitting days of that House after the direction is given; and
 - (b) included in the annual report submitted by the Board under section 44 (1).

Disclosure of interests

13. (1) A member of the Board who has a direct or indirect interest, other than as a member, in a matter before the Board —

- (a) must, as soon as possible after the person is aware of the matter, disclose the nature of the interest to the Board; and
- (b) must not unless the Board otherwise determines take part in a deliberation or decision of the Board with respect to the matter.

Penalty: \$5 000.

(2) A member of a committee, or a person referred to in section 18 (5), who has a direct or indirect interest, other than as a member or adviser, in a matter before the committee —

- (a) must, as soon as possible after the person is aware of the matter, disclose the nature of the interest to the committee; and

- (b) must not unless the committee otherwise determines take part in a deliberation or decision of the committee with respect to the matter.

Penalty:

- (a) in the case of an individual, \$5 000;
- (b) in any other case, \$10 000.

(3) For the purposes of making a determination under subsection (1) (b) or (2) (b) in relation to a person who has made a disclosure of an interest, the person who made the disclosure must not —

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

(4) A disclosure made by a person under this section is to be recorded in the minutes of the Board or the committee.

Duty not to make improper use of information

14. A member or former member of the Board or a member or former member of a committee must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as such to gain, directly or indirectly, an advantage for himself or herself or for any other person.

Penalty: \$5 000.

Meetings and minutes of meetings

15. (1) Subject to this section, every meeting of the Board is to be open to members of the public.

(2) Notwithstanding subsection (1) —

- (a) the Board may of its own initiative order that in any particular case a meeting, or part of a meeting, of the Board is to be closed; and
- (b) where a meeting of the Board concerns disciplinary proceedings under Part 5, a person to whom the disciplinary proceedings relate may request that the meeting, or part of the meeting, be closed.

(3) The Board is to consider a request under subsection (2) (b) and may order that the meeting, or part of the meeting, be closed if it is of the opinion that such an order is in the best interests of the parties involved or the maintenance of professional standards.

(4) The minutes of a meeting of the Board are to be open for inspection at its principal place of business by members of the public during normal office hours without fee, but this subsection does not apply to minutes relating to —

- (a) disciplinary proceedings under Part 5; or
- (b) a matter determined to be confidential under subsection (6).

(5) A person may, on payment of the prescribed fee, if any, obtain a copy of any minutes of the Board available for inspection under subsection (4).

(6) The Board may determine that a matter is confidential if it considers that its disclosure is likely to infringe the reasonable privacy of any person.

(7) In this section —

“meeting of the Board” does not include a formal inquiry.

Complaints assessment committee

16. (1) The Board is to establish a committee to be known as the complaints assessment committee.

(2) The complaints assessment committee is to consist of the following persons appointed in writing by the Board from time to time —

- (a) an osteopath;
- (b) a person who is not an osteopath and is not qualified to be registered as an osteopath; and
- (c) such other persons, if any, as the Board considers appropriate.

(3) Without limiting subsection (2) the Board may —

- (a) appoint any member of the Board who is an osteopath as a member of a complaints assessment committee under subsection (2) (a); and
- (b) appoint any member of the Board or any osteopath as a member of a complaints assessment committee under subsection (2) (c),

if it considers it appropriate to do so.

(4) The Board is to appoint one of the persons appointed under subsection (2) to be the chairperson of the complaints assessment committee.

(5) The complaints assessment committee is to submit an annual report to the Board as soon as is practicable after 30 June in each year in respect of the functions performed by the committee during the year that ended on that day.

(6) A notice or appointment authorized by this Act to be given or made by the complaints assessment committee is taken

to have been given by the committee if it is signed on behalf of the committee —

- (a) by the chairperson of the committee; or
- (b) by some other person authorized by the committee to sign the notice or appointment.

(7) A notice or appointment purporting to be signed by the chairperson or a person referred to in subsection (6) (b) is to be presumed to be duly signed until the contrary is shown.

Other committees

17. (1) In addition to the complaints assessment committee the Board may from time to time establish any other committee.

(2) The Board may —

- (a) determine the functions, membership, and constitution;
- (b) appoint such members and other persons as it thinks fit to be members; and
- (c) give directions with respect to the functions and procedures,

of a committee established under this section.

(3) A committee is to comply with a direction given to it under subsection (2) (c).

(4) A committee established under this section is to submit a report to the Board in respect of the functions performed by the committee as and when required by the Board.

Provisions relating to committees

18. (1) Each member of a committee is to be a natural person.

(2) The Board may remove a person from membership of a committee and may reconstitute or discharge a committee established by the Board.

(3) A committee is to ensure that an accurate record is kept and preserved of the proceedings of each meeting of the committee and of each resolution passed by the committee.

(4) Subject to this Act, a committee may determine its own procedures.

(5) A person with special knowledge or experience may be invited to act in an advisory capacity to a committee if the committee is of the opinion that the person will assist the committee in the performance of its functions and the Board has approved the invitation.

Registrar and staff

19. (1) The Board is to engage a registrar under a contract for services.

(2) The registrar —

(a) has the functions that are conferred by this Act or directed to be performed by the Board; and

(b) may be a natural person or a body corporate.

(3) The registrar may perform the functions of the Board under sections 23, 24 and 26 (2).

s. 19

(4) The registrar may by instrument delegate —

- (a) to a person engaged by the Board; or
- (b) if the registrar is a body corporate, with the approval of the Board to a person employed or engaged by the body corporate,

either generally or as otherwise provided by the instrument, any of the registrar's functions under this Act, other than this power of delegation.

(5) A function performed by —

- (a) the registrar under subsection (3) is taken to be performed by the Board; or
- (b) a delegate under subsection (4) is taken to be performed by the registrar.

(6) A delegate performing a function under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(7) The Board may engage persons under contracts for services or other arrangements to provide such professional, technical or other assistance that the Board considers necessary to enable it to perform its functions.

PART 3 — REGISTRATION OF OSTEOPATHS

Division 1 — Registration and renewal

Registration of natural person

20. (1) A natural person who applies to the Board and satisfies it that he or she complies with the requirements of subsection (2) is, subject to this Act and on payment of the prescribed registration fee, to be registered under this section.

(2) The requirements referred to in subsection (1) are that the person —

- (a) is a fit and proper person to be registered as an osteopath and has not been convicted of an offence the nature of which renders the person unfit to practise as an osteopath;
- (b) has adequate knowledge of the English language both written and oral;
- (c) has sufficient physical capacity, mental capacity and skill to practise osteopathy;
- (d) subject to subsection (3), has —
 - (i) practised as an osteopath within the 5 years preceding the application; or
 - (ii) satisfied the Board that the person has acquired such knowledge and has such practical experience in osteopathy as in the opinion of the Board is sufficient to enable that person to perform efficiently the duties of an osteopath;

and

s. 21

- (e) holds a qualification prescribed as a qualification for registration as an osteopath or a qualification that in the opinion of the Board is equivalent to the prescribed qualification.

(3) Subsection (2) (d) does not apply to a person who, having been awarded a qualification referred to in subsection (2) (e) within the 5 years preceding the application, is applying to the Board, for the first time, for registration under subsection (1).

(4) Except to the extent that conditions or restrictions may be imposed by the Board under section 27, 36 (5) or 70 (1), the registration of a person under this section, and as renewed from time to time, is not to be subject to conditions or restrictions.

Registration of body corporate

21. (1) A body corporate that applies to the Board and satisfies it that the requirements set out in Schedule 2 are complied with in respect of that body corporate is, on payment of the prescribed registration fee, to be registered under this section.

(2) Registration of, and the practice of osteopathy by, a body corporate may be made subject to such conditions and restrictions as the Board in any particular case specifies.

Registration based on registration elsewhere in Australia

22. (1) A person registered as an osteopath under the law in force in another State or Territory who applies to the Board and satisfies it that, having regard to the requirements set out in section 20 (2) or Schedule 2, as the case requires, that person is a suitable person to be registered, is, on payment of the prescribed registration fee, to be registered under this section.

(2) If the person's registration in the other State or Territory is not subject to any condition or restriction, the person's

registration under this Act is not to be subject to any conditions or restrictions.

(3) If the person's registration in the other State or Territory is subject to any condition or restriction, the person's registration under this section is to be subject to the conditions and restrictions to which that other registration is subject or such other or further conditions and restrictions as the Board specifies.

(4) This section does not have effect in respect of an individual while the State is a participating jurisdiction within the meaning of the *Mutual Recognition Act 1992* of the Commonwealth.

Conditional registration at the discretion of the Board

23. (1) The Board may, on payment of the prescribed fee, grant a natural person conditional registration as an osteopath if —

- (a) the Board is satisfied that the person meets the requirements of section 20 (2) (a), (b) and (c); and
- (b) the Board is satisfied that —
 - (i) the person meets the requirements of section 20 (2) (d) and that the requisite evidence is likely to be produced to enable the Board to be satisfied as to the matters set out in section 20 (2) (e);
 - (ii) the person, recognized by the Board as being a person of eminence within the field of osteopathy, desires registration for the purpose of enabling the person to teach and demonstrate methods and techniques of osteopathy; or

(iii) the person desires registration to enable the person to undertake particular duties of osteopathy of limited duration.

(2) Conditional registration —

(a) has effect until the day specified in the certificate of registration (unless registration is earlier cancelled by the Board) but that day is in no case to be later than 12 months after the issue of the certificate; and

(b) is not renewable.

(3) Conditional registration, and the practice of osteopathy by an osteopath registered under this section may be made subject to such conditions and restrictions as the Board, in any particular case, specifies.

(4) The Board may at any time cancel a conditional registration and may revoke or vary a condition or restriction imposed under subsection (3).

Application

24. (1) An application for registration is to be —

(a) in writing;

(b) made in an approved manner and form; and

(c) accompanied by the prescribed application fee.

(2) The applicant is to provide the Board with such further information as the Board requires, in any particular case, and if required by the Board is to verify the information by statutory declaration.

(3) Where it has good cause for doing so, the Board may, in writing, require —

- (a) an applicant for registration who is a natural person;
or
- (b) a member or director of a body corporate that is an applicant for registration,

to attend before the Board for the purpose of satisfying the Board as to a matter relevant to the application and, if the person fails so to attend, may refuse the application.

Effect of registration

25. Subject to this Act, registration under this Part confers on the person registered the right to carry on in the State the practice of osteopathy under the title of “osteopath”.

Renewal of registration

26. (1) Subject to this Act, registration has effect for the period prescribed and may be renewed in accordance with the rules for a further prescribed period.

(2) The Board may, in writing, require an osteopath to —

- (a) give information to the Board for the purpose of satisfying the Board as to a matter relevant to the renewal of registration; and
- (b) verify the information by statutory declaration.

(3) The Board may refuse to renew the registration of an osteopath who does not comply with subsection (2).

(4) An osteopath is to pay to the Board a prescribed fee for the renewal of registration, and if the fee is not paid on or before the day on which it falls due under the rules —

- (a) the person ceases to be registered; and
- (b) the person's name is to be removed from the register.

(5) A person whose name is removed from the register under subsection (4) may at any time pay to the Board all fees that are in arrear, and all fees that would be in arrear if the person had continued to be registered, together with any additional amount prescribed for the purposes of this subsection, and is then to be entitled, subject to this Act, to have the name restored to the register.

(6) For the purposes of Part 5, the registration of a person whose name is restored to the register under subsection (5) is taken to have continued during the period that the person's name was removed from the register under subsection (4).

(7) The Board is to give written notice of the renewal fee to an osteopath, sent to that osteopath's address as recorded in the register, at least 28 days before the fee falls due under the rules.

(8) A person may apply to the Board for the remission of fees payable by the person under this section that are in arrear, and the Board may remit those fees in whole or in part.

Occupational liability insurance

27. (1) The Board may impose as a condition of registration, or renewal of registration, of a person that the person is required to hold insurance against civil liability arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted by that person acting in the performance of osteopathy.

(2) The Board may set standards with which the insurance must comply.

Division 2 — The register

The register

28. (1) The Board is to cause to be kept a register in such manner and form as the Board determines.

(2) When a person is registered, the Board is to cause to be entered in the register —

- (a) the name of that person;
- (b) the business address of that person;
- (c) in the case of a natural person, particulars of all of the osteopathy qualifications recognized by the Board and held by that person;
- (d) in the case of a registered body, particulars of all of the osteopathy qualifications recognized by the Board and held by those members and directors of the registered body who are registered;
- (e) the provision of this Act under which the person is registered;
- (f) any conditions or restrictions applying to the registration;
- (g) details of the exercise of any power under Part 5 in respect of that person; and
- (h) such other information, if any, as is prescribed.

Inspection of register

29. (1) The register is to be kept in the office of the registrar.

s. 30

(2) The register is to be available for inspection by members of the public during normal office hours.

(3) A person may, on application to the registrar in respect of the register or an entry in the register, and payment of the prescribed fee, obtain a certified copy of the register or the entry.

(4) No fee is payable under subsection (3) if the application is made —

- (a) by an officer of the department of the Public Service principally assisting the Minister in the administration of this Act; and
- (b) for the purpose of carrying out the functions of an officer of that department.

Certificate of registration

30. (1) On the registration of a person the Board is to issue to that person a certificate of registration in an approved form.

(2) In the absence of evidence to the contrary a certificate of registration is evidence that the person to whom the certificate is issued is registered.

Voluntary removal from register

31. (1) An osteopath who is not the subject of disciplinary proceedings under Part 5 may in writing request the registrar to remove the name of that osteopath from the register.

(2) Upon receipt of a request under subsection (1) the registrar is to refer the request to the Board and may, if the Board so approves, remove the name of the osteopath from the register.

Amendment of particulars

32. An osteopath may at any time apply to the Board for the amendment of the particulars entered in the register relating to that osteopath, and if the Board is satisfied that the amendment may properly be made, the Board, on payment of the prescribed fee, is to cause those particulars to be amended.

Removal of names of deceased persons and defunct bodies corporate

33. (1) The registrar, on being satisfied of the death of an osteopath, is to remove the name of the osteopath from the register.

(2) The registrar, on being satisfied that a registered body no longer exists, is to remove the name from the register.

Removal of name of person who has not practised, or trained, for 5 years

34. (1) Subject to subsections (2) and (3), the Board is to direct the registrar to remove from the register the name of an osteopath if the Board is satisfied that the osteopath —

- (a) has not practised osteopathy in the preceding period of 5 years; and
- (b) has not maintained current knowledge and skills in osteopathy at an approved level.

(2) If the Board proposes to give a direction under subsection (1), the Board is to give the osteopath written notice of the proposal and the reasons for the proposal.

(3) A notice given under subsection (2) is to state that within 28 days after the notice is given, the osteopath to whom it is given may make written representations to the Board concerning

the proposal, and the Board is not to give the direction without considering any representations received within that period.

Effect of removal or striking off from register

35. (1) If —

- (a) a person's name is removed from the register under this Act; or
- (b) it is ordered that the name of a person is to be struck off the register under section 70 (1) (k),

that person ceases to be registered.

(2) If it is ordered that the name of a person is to be struck off the register under section 74, that person ceases to be registered for the period specified in the order made under that section.

Restoration of name to register

36. (1) A person whose name has been removed from the register under section 31 or 34 may at any time make application in the approved form to the Board for the restoration of the name to the register.

(2) If an applicant under subsection (1) pays the prescribed fee to the Board and satisfies the Board of the relevant matters referred to in section 20 or 21, as the case may be, the name of the applicant is to be restored to the register.

(3) A person whose name has been struck off from the register under section 70 (1) (k) may, after a period of not less than 2 years, apply to the Board in the approved manner to have the person's name restored to the register.

(4) If the Board, in its discretion, grants an application under subsection (3), it is, on payment by the applicant to the Board of the prescribed fee, to cause the name of the applicant to be restored to the register.

(5) Registration of, and the practice of osteopathy by, an applicant under subsection (3) may be made subject to such conditions and restrictions as the Board in any particular case specifies.

Suspension

37. (1) Where a person is suspended under section 54, 70 (1) (l) or 74 —

- (a) from the practice of osteopathy generally, the person is taken not to be registered during the period of the suspension;
- (b) from the practice of osteopathy in relation to any specified circumstances or service, the person is taken not to be registered during the period of the suspension in relation to the circumstances or the performance of the service specified in the order for suspension.

(2) The Board may, by notice in writing, revoke a suspension, either generally or to a specified extent, and may direct in the notice that the revocation has effect from a date specified in the notice.

Division 3 — Notifications to Board

Insolvency

38. (1) An osteopath, and any member or director of a registered body, must, within 7 days of the osteopath, member or director becoming an insolvent, notify the Board of the insolvency.

Penalty: \$1 000.

s. 39

(2) In subsection (1) —

“insolvent” means —

- (a) in the case of a natural person — a person who is an insolvent under administration within the meaning of the Corporations Law; or
- (b) in the case of a body corporate — a body corporate that is an externally-administered corporation within the meaning of the Corporations Law.

Civil or criminal proceedings

39. (1) An osteopath must give the Board notice within 14 days after —

- (a) any civil proceedings claiming damages or other compensation arising out of the practice of osteopathy; or
- (b) any criminal proceedings for an offence arising out of the practice of osteopathy,

are commenced against that osteopath or, if the osteopath is a registered body, any member or director of the registered body.

Penalty: \$1 000.

(2) An osteopath must give the Board notice within 14 days after —

- (a) any proceedings of a kind referred to in subsection (1) commenced against that osteopath or, if the osteopath is a registered body, any member or director of the registered body, are withdrawn or settled; or

- (b) any such proceedings are determined by a court or other tribunal.

Penalty: \$1 000.

Notices and returns by registered body

- 40.** (1) A registered body must —
- (a) within one month after any person becomes or ceases to be a director or member of the registered body lodge with the Board a notice stating the full name and usual residential address of that person and the fact that the person has become or ceased to be such a director or member; and
 - (b) in the month of July in each year lodge with the Board a return in the prescribed form.

Penalty: \$1 000.

- (2) The annual return must state —
- (a) the full name and usual residential address of every person who on 30 June preceding the lodging of the return was a director or member of the registered body;
 - (b) the number of shares in the registered body held by each such person and the number of votes that the person is entitled to cast at a meeting of members of the registered body;
 - (c) in relation to each member, the qualification by virtue of which the person is entitled to be a member of the registered body; and
 - (d) any other prescribed matter.

PART 4 — FINANCE AND REPORTS

Funds of the Board

- 41.** (1) The funds of the Board consist of —
- (a) fees received by the Board;
 - (b) grants (if any) by the State, and all gifts and donations made to the Board, but subject to any trusts declared in relation to the grants, gifts or donations;
 - (c) pecuniary penalties, costs and expenses received under sections 70 and 71; and
 - (d) other money or property lawfully received by the Board in connection with the performance of its functions.
- (2) The funds of the Board may be applied —
- (a) for the purposes of the administration and enforcement of this Act, including the remuneration of members of the Board and committees and of the registrar and other persons engaged under this Act;
 - (b) for the furtherance of education, including public education, and research in relation to the practice of osteopathy;
 - (c) by way of contribution to professional osteopathy bodies for the furtherance of osteopathic standards; and
 - (d) for any other purpose that the Board may recommend and the Minister may approve to enable the Board to perform its functions.

Accounts

42. (1) The Board is to cause to be kept proper accounts and records of the transactions and affairs of the Board and is to prepare financial statements in accordance with Australian Accounting Standards.

(2) The financial statements are to be prepared on an accrual basis unless the Board determines otherwise.

Audit

43. The accounts and financial statements of the Board are to be audited at least once a year, at the expense of the Board, by a registered company auditor (as defined in paragraph (b) of the definition of that term in the Corporations Law) appointed by the Board with the prior approval of the Minister.

Annual report and other reports

44. (1) The Board, not later than 31 December in each year, is to make and submit to the Minister an annual report of its proceedings for the preceding year ending on 30 June together with a copy of its financial statements for that year and the auditor's report on those statements.

(2) The Minister is to cause a copy of the Board's annual report and financial statements and of the auditor's report submitted under subsection (1) to be laid before each House of Parliament within 14 sitting days of that House after receipt of the report by the Minister.

(3) The Board is to ensure that after subsection (2) has been complied with copies of the reports and statements referred to in that subsection are available on request for inspection at its principal place of business.

s. 45**Minister to have access to information**

- 45.** (1) The Minister is entitled —
- (a) to have information in the possession of the Board; and
 - (b) if the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
- (a) request the Board to furnish information to the Minister;
 - (b) request the Board to give the Minister access to information;
 - (c) for the purposes of paragraph (b) make use of the staff of the Board to obtain the information and furnish it to the Minister.
- (3) The Board is to comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) The Minister is not entitled to have information under this section in a form that —
- (a) discloses the identity of a person involved in a complaint; or
 - (b) might enable the identity of any such person to be ascertained,
- unless that person has consented to the disclosure.

- (5) In this section —

“information” means information specified, or of a description specified, by the Minister that relates to the functions of the Board.

PART 5 — DISCIPLINARY PROCEEDINGS

Division 1 — Preliminary

Disciplinary matters

46. For the purposes of this Part the following are disciplinary matters —

- (a) that a person is affected by a dependence on alcohol or an addiction to a deleterious drug or substance;
- (b) that a person suffers from a mental or physical illness to such an extent that the ability of the person to practise as an osteopath is or is likely to be affected;
- (c) that a person is guilty of contravening a condition or restriction imposed by the Board with respect to registration or the practice of osteopathy by that person;
- (d) that a person has engaged in misconduct as an osteopath by reason of —
 - (i) carelessness;
 - (ii) incompetence;
 - (iii) impropriety;
 - (iv) a breach of this Act;
 - (v) a failure to comply with an undertaking given to the Board under this Act;
- (e) that a person has been convicted of an offence the nature of which indicates that the person is unfit to practise as an osteopath.

Division 2 — Complaints

Complaints

47. (1) Subject to the rules, a person may lodge with the complaints assessment committee a complaint that a disciplinary matter exists or has occurred, or may exist or have occurred, in respect of a person who is an osteopath or who was an osteopath at the relevant time.

(2) If the Director of the Office of Health Review refers a complaint to the Board under section 31 or 43 (3) of the *Health Services (Conciliation and Review) Act 1995*, the Board is to refer the complaint to the complaints assessment committee.

(3) Notwithstanding that a complaint has not been made to the complaints assessment committee, the complaints assessment committee may determine, if it is of the opinion that there is cause to investigate whether a disciplinary matter exists or has occurred in respect of a person who is an osteopath or who was an osteopath at the relevant time, to deal with the matter as if it were a complaint lodged with the committee.

Medical or psychiatric examination of osteopath

48. (1) The Board may —

- (a) if it is of the opinion that the physical or mental health of an osteopath may be affected to such an extent that the osteopath's ability to practise as an osteopath is affected or is likely to be affected; and
- (b) on the request of the complaints assessment committee, or of its own motion in the course of a formal inquiry,

order the osteopath to submit himself or herself, within the time specified by the Board, to an examination by a medical practitioner nominated by the Board.

(2) A medical practitioner who carries out an examination for the purposes of subsection (1) is to provide a copy of the report of the examination to the osteopath and to the Board.

(3) If the examination was ordered —

- (a) on the request of the complaints assessment committee, the report of the examination is to be given by the Board to the committee for consideration; or
- (b) in the course of a formal inquiry, the Board is to have regard to the report in making a decision.

Committee to determine action required

49. (1) The complaints assessment committee is to decide in respect of a complaint —

- (a) if the committee is of the opinion that the complaint requires action under Division 3, to refer it to the Board for action under that Division;
- (b) to reject the complaint under section 51; or
- (c) to deal with the complaint under subsection (3) or section 50.

(2) To enable the complaints assessment committee to make a decision under subsection (1) the committee may make such inquiries as it considers appropriate.

(3) If the complaint relates to a disciplinary matter referred to in section 46 (d) (v), the complaints assessment committee may recommend to the Board that it hold a formal inquiry into the complaint that gave rise to the undertaking.

Investigation and recommendation

50. (1) If the complaints assessment committee has made a decision to deal with a complaint under this section or has had a complaint referred back to it under section 54 (4), the complaints assessment committee is to investigate the complaint.

(2) On completion of the investigation the complaints assessment committee is to make a recommendation to the Board to —

- (a) make an interim order under Division 3 (unless the complaint has been referred to the committee under section 54 (4));
- (b) attempt to settle the complaint by conciliation;
- (c) caution or reprimand the respondent;
- (d) accept an undertaking from the respondent to take or refrain from action specified in the recommendation;
- (e) institute a formal inquiry; or
- (f) take no further action.

(3) The complaints assessment committee must not make a recommendation under subsection (2) (b) unless it is satisfied that the matter can be satisfactorily dealt with by informal procedures.

(4) The complaints assessment committee may recommend to the Board that it take action under both subsection (2) (c) and (d) in respect of a complaint.

Committee may reject certain complaints

51. (1) The complaints assessment committee may at any time before making a recommendation to the Board under

section 50, by notice in writing addressed to the complainant, reject a complaint if it is of the opinion that the complaint is frivolous, vexatious or without substance.

(2) The complaints assessment committee, in a notice under subsection (1), is to advise the complainant of the reason for rejecting the complaint.

Role of Board

52. (1) The Board is to consider the recommendation of the complaints assessment committee and may either —

- (a) act on the recommendation of the complaints assessment committee; or
- (b) take action of a kind referred to in section 50 (2) other than that recommended by the complaints assessment committee.

(2) The Board is to notify the complainant and the respondent of the action proposed to be taken by the Board under subsection (1) together with short particulars of the reasons for its decision.

Division 3 — Interim orders of Board

Board may deal with matter

53. The Board may deal under this Division with a complaint notwithstanding that —

- (a) the Board or the complaints assessment committee is already dealing with the complaint, or a complaint including elements of the first-mentioned complaint, under this Act; or

s. 54

- (b) the same complaint, or a complaint including elements of the complaint before the Board, has been made under the *Health Services (Conciliation and Review) Act 1995* or is being treated as a complaint that was made under that Act.

Order to cease activity or interim restriction on practice

54. (1) If the Board is of the opinion that an activity of an osteopath involves or will involve —

- (a) a risk of imminent injury or harm to the physical or mental health of any person; or
- (b) a contravention or likely contravention of a provision of this Act,

the Board may, without further inquiry, do any or all of the following —

- (c) deliver to the osteopath who is carrying on that activity an order prohibiting the carrying on of the activity;
- (d) deliver to the osteopath an order to comply with such conditions and restrictions as the Board thinks fit in relation to the practice of osteopathy by that osteopath; or
- (e) deliver to the osteopath an order suspending the person from the practice of osteopathy, either generally or in relation to any specified circumstances or service, for a period of not more than 30 days.

(2) An order made under subsection (1) must —

- (a) state that the Board is of the opinion that the activity of the osteopath involves or will involve a risk of imminent injury or harm to the physical or mental

health of any person or a contravention or likely contravention of a provision of this Act ;

- (b) specify the activity that in the Board's opinion involves or will involve the risk or contravention and the matters that give or will give rise to the risk or contravention; and
- (c) advise that a formal inquiry in respect of the matter will be commenced within 14 days of the making of the order.

(3) The Board may, by order given to the person to whom the order made under subsection (1) was given, revoke or vary an order made under subsection (1) at any time before commencing a formal inquiry into the matter under section 55.

(4) If the Board decides not to make an order under subsection (1), the Board is to refer the matter back to the complaints assessment committee for further determination by that committee.

Formal inquiry with respect to section 54 order

55. (1) Within 14 days of making an order under section 54, if that order is not revoked under section 54 (3), the Board must —

- (a) commence a formal inquiry into the matter in respect of which the order was made; and
- (b) order that any other proceedings commenced under this Part in respect of the matter before the making of the order be discontinued.

(2) A formal inquiry is commenced by the giving of notice under section 65 (2).

Division 4 — Investigation

Interpretation

56. In this Division —

“**appointing body**”, in relation to an investigator, means the Board or the complaints assessment committee, whichever appointed the investigator.

Investigator

57. (1) The Board or the complaints assessment committee may appoint a person to investigate a complaint and report to the Board or committee.

(2) An appointing body is to issue to each investigator it appoints a certificate of appointment in an approved form.

(3) A certificate purporting to have been issued under this section is, without proof of the appointing body’s signature, evidence in any court of the appointment to which the certificate purports to relate.

Report of investigator

58. (1) An investigator must —

(a) within such period as the appointing body requires prepare a report on the investigation, and make recommendations as to the manner in which the complaint should be dealt with; and

(b) immediately after preparing the report, provide the appointing body with a copy of the report.

(2) The investigator must return his or her certificate of appointment at the time the appointing body is provided with a copy of the report.

Powers of investigator

59. (1) An investigator may for the purposes of an investigation —

- (a) enter and inspect the premises of a person named in a warrant issued under section 60, and exercise the powers referred to in section 61 (2) (b) and (c);
- (b) require a person to produce to the investigator any document or other thing concerning the investigation that is in the possession or under the control of the person;
- (c) inspect any document or other thing produced to the investigator and retain it for such reasonable period as the investigator thinks fit, and make copies of a document or any of its contents;
- (d) require a person —
 - (i) to give the investigator such information as the investigator requires; and
 - (ii) to answer any question put to that person, in relation to the matter the subject of the investigation; and
- (e) exercise other powers conferred on an investigator by the regulations.

- (2) A requirement made under subsection (1) (b) —
- (a) must be made by notice in writing given to the person required to produce the document or other thing;
 - (b) must specify the time at or within which the document or other thing is to be produced;
 - (c) may, by its terms, require that the document or other thing required be produced at a place and by means specified in the requirement; and
 - (d) where the document required is not in a readable format, must be treated as a requirement to produce —
 - (i) the document itself; and
 - (ii) the contents of the document in a readable format.
- (3) A requirement made under subsection (1) (d) —
- (a) may be made orally or by notice in writing served on the person required to give information or answer a question, as the case may be;
 - (b) must specify the time at or within which the information is to be given or the question is to be answered, as the case may be; and
 - (c) may, by its terms, require that information or answer required —
 - (i) be given orally or in writing;
 - (ii) be given at or sent or delivered to a place specified in the requirement;

(iii) in the case of written information or answers be sent or delivered by means specified in the requirement; and

(iv) be verified by statutory declaration.

(4) If under subsection (1) (d) an investigator requires a person to give information or answer a question, the investigator must inform that person that the person is required under this Act to give the information or answer the question.

(5) An investigator must produce his or her certificate of appointment if requested to do so by a person in respect of whom the investigator has exercised, or is about to exercise, a power under this section.

Warrant to enter premises

60. (1) If the appointing body has determined in a particular case that an investigator has reasonable grounds for believing that entry to premises is necessary for the purpose of substantiating a complaint that may involve a threat to the physical or mental health of a person the investigator may apply to a magistrate for a warrant to be issued under this section in respect of those premises.

(2) An application for a warrant must —

(a) be in writing;

(b) be accompanied by a notice in writing from the appointing body stating that it has determined in the particular case that the investigator has reasonable grounds for believing that entry to premises is necessary for the purpose of substantiating a complaint that may involve a threat to the physical or mental health of a person;

(c) set out the grounds for seeking the warrant; and

(d) describe the premises that are to be entered.

s. 61

(3) A magistrate to whom an application is made under this section must refuse it if —

- (a) the application does not comply with the requirements of this Act; or
- (b) when required to do so by the magistrate, the investigator does not give to the magistrate more information about the application.

(4) The information in an application or given to a magistrate under this section must be verified before the magistrate on oath or affirmation or by affidavit, and the magistrate may for that purpose administer an oath or affirmation or take an affidavit.

Issue of warrant

61. (1) A magistrate to whom an application is made under section 60 may issue a warrant, if satisfied that there are reasonable grounds for believing that entry and inspection of the premises are necessary for the purpose referred to in that section.

(2) A warrant under subsection (1) authorizes the investigator —

- (a) to enter and inspect the premises named in the warrant;
- (b) to require a person on the premises to answer questions or produce documents or other things in the person's possession concerning the investigation; and
- (c) to inspect documents and other things, and take copies of or extracts from documents, produced in compliance with a requirement made under paragraph (b).

(3) There must be stated in a warrant —

- (a) the purpose for which the warrant is issued;
- (b) the name of the person to whom the warrant is issued;
and
- (c) a description of the premises that may be entered.

(4) A magistrate who issues a warrant must cause a record to be made of particulars of the grounds that the magistrate has relied on to justify the issue of the warrant.

Execution of warrant

62. (1) If asked by the occupier or a person in charge of the premises, the person executing a warrant must produce it for inspection.

(2) A warrant ceases to have effect —

- (a) at the end of the period of one month after its issue;
- (b) if it is withdrawn by the magistrate who issued it; or
- (c) when it is executed,

whichever occurs first.

Division 5 — Conciliation

Conciliation process

63. (1) If the Board decides to act on a recommendation to attempt to settle a complaint by conciliation, the Board is to refer the complaint to the complaints assessment committee for conciliation.

s. 63

(2) The complaints assessment committee is to commence conciliation procedures within 14 days of the complaint being referred to it under subsection (1) and may for that purpose —

- (a) cause conferences of the persons concerned, or their representatives, to be arranged and to be presided over by a person appointed in accordance with the rules;
- (b) give advice and make recommendations to assist in the reaching of settlement; and
- (c) cause the persons concerned, or any of them, either separately or together, to appear before the complaints assessment committee.

(3) The Board may, with the consent of each of the parties to that settlement, by order give effect to a settlement negotiated under this Division.

(4) If the Board makes an order under subsection (3) —

- (a) the terms of the settlement reached between the parties referred to in the order are final and binding on those parties; and
- (b) the order may include any matter that might have been ordered by the Board under section 70.

(5) Evidence of anything lawfully said or done, or any record prepared and produced for the purpose of conciliation, by a person in the course of the conciliation process is not to be used in any subsequent consideration of the complaint by the Board nor, unless that person waives the right to object, is it admissible in evidence against that person in any subsequent civil proceedings concerning the subject matter of the complaint.

Action if conciliation fails

64. If —

- (a) the conciliation process fails to result in the settlement of the complaint between the complainant or other person affected by the conduct of the respondent and the respondent;
- (b) the Board is satisfied that the parties are not co-operating with the conciliation process; or
- (c) the Board is not satisfied with the result of the conciliation process,

the Board is to —

- (d) make an interim order under Division 3;
- (e) investigate the matter; or
- (f) institute a formal inquiry.

Division 6 — Formal inquiry

Board to hold formal inquiry

65. (1) A formal inquiry instituted by the Board is to be held under this Division.

(2) Where a formal inquiry is to be held the Board must give to the person to whom the matter relates —

- (a) at least 14 days' notice of the time and place at which the inquiry is to be held; and
- (b) sufficient details of the matters to be inquired into to enable the person to prepare his or her case.

s. 66

(3) It is sufficient if a notice under subsection (2) is sent by prepaid registered letter to the person's address entered in the register.

(4) The Board may appoint a legal practitioner to appear in a formal inquiry to assist the Board.

(5) A member of the Board who, as a member of the complaints assessment committee, has dealt with a matter in respect of which a formal inquiry is to be held must not take part in that formal inquiry.

Hearings generally not to be public

66. (1) Subject to this section, a formal inquiry is not to be held in public.

(2) The Board in a particular case, or as to particular aspects of a particular matter, may determine —

- (a) that any proceedings in a formal inquiry to be conducted before it are to be conducted in public; and
- (b) who, other than such persons or their advisers as this Act may require or authorize, may be present before the Board.

Representation of persons involved

67. (1) A party to a formal inquiry may —

- (a) appear personally or, in the case of a body corporate, be represented by a director or member of the body corporate; or
- (b) be represented by —
 - (i) a legal practitioner; or
 - (ii) a representative approved by the presiding member.

(2) A representative who is not a legal practitioner is not entitled to make a charge for that service, but may be reimbursed for out of pocket expenses.

Procedure and evidence

68. In proceedings under this Division the Board —

- (a) must proceed with as little formality and technicality and as speedily as the requirements of this Act and proper hearing of the matter permit;
- (b) is not bound by the rules of evidence but may inform itself in any manner it considers just;
- (c) may, upon its own motion or upon the application of any party, adjourn a formal inquiry on such terms and conditions as it thinks fit or, if it considers that a complaint should not be dealt with by way of formal inquiry, decline to continue a formal inquiry; and
- (d) subject to this Act and the rules of natural justice, may determine its own procedure.

Power to summons etc.

69. (1) For the purposes of conducting a formal inquiry the Board may —

- (a) by notice signed by the registrar and given to the witness require the attendance of a witness at a time and place specified in the notice;
- (b) by notice signed by the registrar and given to a person require the person to produce any document or other thing that is in the possession or under the control of the person and is relevant to the matter before the Board; and
- (c) examine witnesses on oath or affirmation.

s. 70

(2) The presiding member may —

- (a) require a person who appears to take an oath or make an affirmation; and
- (b) administer an oath or affirmation to the person.

(3) The Board may inspect a document or other thing produced and retain it for such reasonable period as it thinks fit, and make copies of the document or any of its contents.

Disciplinary powers of Board

70. (1) The Board may, on the hearing and determination of a matter under this Division in respect of an osteopath, do any one or more of the following —

- (a) decline to make an order under this Division;
- (b) order the registrar to amend the particulars entered in the register in respect of the person;
- (c) caution or reprimand the person;
- (d) require the person —
 - (i) if the patient agrees, to provide further services to a patient at no cost or at an amount determined by the Board;
 - (ii) to pay, wholly or in part, for further services to be provided to a patient by another osteopath; or
 - (iii) to reduce or refund the amount of any fees paid in respect of services provided to a patient, to such an extent as is determined by the Board;
- (e) require the person, or in the case of a registered body a person who is a member or director of it, to seek and take medical or psychiatric treatment or counselling specified by the Board;

- (f) require the person, or in the case of a registered body a person who is a member or director of it, to comply with such conditions and restrictions as the Board may impose on the registration of that person;
- (g) in the case of a registered body, impose conditions and restrictions under section 21 or amend or add to the conditions and restrictions specified under that section;
- (h) require the person, or in the case of a registered body a person who is a member or director of it, to complete such educational or clinical courses or both as are specified by the Board or to practise under such supervision as is specified by the Board for a period specified by the Board;
- (i) require the person, or in the case of a registered body a person who is a member or director of it, to seek and implement, within a period specified by the Board, advice from a person or persons specified by the Board in relation to the management and conduct of the person's osteopathy practice, or the specific part or aspect of the practice specified by the Board;
- (j) order the person to pay to the Board a penalty not exceeding \$5 000 in the case of an individual or \$10 000 in any other case;
- (k) order that the name of the person be struck off the register;
- (l) suspend the person from the practice of osteopathy, either generally or in relation to any specified circumstances or service, for a period not exceeding 2 years.

(2) The Board may, on the hearing and determination of a matter under this Division in respect of a person who is no longer an osteopath, exercise one or more of its powers under subsection (1) (a), (c), (d) (ii) and (iii) and (j).

Costs and recovery

71. (1) The Board may, in addition to or instead of exercising a power under section 70, order the respondent to pay such costs and expenses of or arising from the formal inquiry as the Board thinks fit.

(2) Subsection (1) does not apply unless there has been a finding that a disciplinary matter described in section 46 exists or has occurred in respect of the respondent.

(3) Any monetary penalty, costs or expenses ordered to be paid under this section or section 70 (1) (j) are recoverable by the Board in a court of competent jurisdiction as a debt due to the Board.

Failure to comply with order

72. (1) If the Board is satisfied that a person who is subject to an order of the Board has failed to comply with that order, the Board may, in addition to or instead of proceeding against that person under section 79 —

- (a) make a further order under section 70 in respect of the matter as a consequence of which the original order was made; and
- (b) make a further order under section 70 in relation to the conduct or omission giving rise to the failure to comply with the original order.

(2) The Board must not make an order under subsection (1) unless it has given the person concerned an opportunity to show cause why a further order should not be so made.

Transcript

73. (1) If a respondent to whom a formal inquiry relates so requests, a transcript is to be made of the formal inquiry and of any proceedings of the Board in which it makes an order under section 70 or 71 in respect of that respondent.

(2) A respondent who requests a copy of a transcript referred to in subsection (1) is liable for the cost of making the copy.

Reciprocal enforcement

74. (1) Subject to subsection (2), where a board or authority outside the State charged with regulating the registration and supervision of osteopaths has made an order against a person —

- (a) similar in kind to an order that the Board has power to make under this Part, the Board may, without further inquiry, make a like order; or
- (b) of a kind that the Board does not have power to make under this Part, the Board may, after due inquiry, make an order against that person that it considers appropriate and has power to make under section 70,

to take effect in the State for a period not extending beyond the period of the order made by the first-mentioned board or authority.

(2) For the purposes of subsection (1), the Board may inquire of a board or authority referred to in that subsection as to the circumstances giving rise to a finding made against a person and may accept the report of that board or authority as to the truth of those circumstances on being satisfied that the person against whom the finding was made had been given an opportunity to make representations in respect of the matter and had failed to satisfy the board or authority in respect of the matter.

s. 75

(3) This section does not have effect in respect of an individual while the State is a participating jurisdiction within the meaning of the *Mutual Recognition Act 1992* of the Commonwealth.

Surrender of certificate

75. (1) Where —

(a) the name of a person is struck off the register; or

(b) a person is suspended from the practice of osteopathy,

under this Division or section 54, the person is, within 14 days after the day on which the person is notified by the Board of the striking off or suspension, to surrender to the Board his or her certificate of registration.

Penalty:

(a) in the case of an individual, \$2 500;

(b) in any other case, \$5 000.

(2) The Board may direct in writing that a person who is suspended from the practice of osteopathy under section 54 is not obliged to comply with subsection (1) and, in that case, the subsection does not apply to that person.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant satisfies the court that the failure to surrender the certificate was due to its loss or destruction.

PART 6 — OFFENCES

Only registered person may practise osteopathy

76. (1) Except as provided under this Act, a person must not —

(a) practise osteopathy unless that person —

- (i) is an osteopath; or
- (ii) is a student practising osteopathy, with the approval of the Board, under the immediate personal supervision of a natural person who is an osteopath;

or

(b) employ a person, or pay a person remuneration, to practise osteopathy if the first-mentioned person knows that the person —

- (i) is not registered; and
- (ii) is not a student practising osteopathy, with the approval of the Board, under the immediate personal supervision of a natural person who is an osteopath.

Penalty:

(a) in the case of an individual —

- (i) for a first offence, \$2 500; and a daily penalty of \$100;
- (ii) for a second or subsequent offence, \$5 000; and a daily penalty of \$200;

(b) in any other case —

- (i) for a first offence, \$5 000; and a daily penalty of \$200;
- (ii) for a second or subsequent offence, \$10 000; and a daily penalty of \$400.

(2) For the purposes of subsections (1) (a) (ii) and (b) (ii) a person is not to be taken to be under the immediate personal supervision of an osteopath if the osteopath is supervising more than one person.

(3) In this section —

“student” means a person who is enrolled as a student and is studying for a prescribed qualification for registration.

Use of title “osteopath” or pretending to be registered

77. (1) A person must not —

- (a) use the title “osteopath” unless the person is registered; or
- (b) subject to this Act, advertise or otherwise hold out or imply, that the person is registered or entitled, either alone or with others, to practise osteopathy, unless that person is so registered or entitled.

Penalty:

(a) in the case of an individual —

- (i) for a first offence, \$2 500; and a daily penalty of \$100;
- (ii) for a second or subsequent offence, \$5 000; and a daily penalty of \$200;

- (b) in any other case —
 - (i) for a first offence, \$5 000; and a daily penalty of \$200;
 - (ii) for a second or subsequent offence, \$10 000; and a daily penalty of \$400.

(2) This section does not prohibit the use of a title or description necessarily assumed by an educational institution recognized by the Board for the purpose of education in osteopathy.

Name in which practice may be carried on

78. An osteopath must not carry on the practice of osteopathy under a name other than the name of the person as recorded in the register, unless the osteopath —

- (a) has the written approval of the Board to do so; and
- (b) complies with any conditions and restrictions imposed by the Board.

Penalty:

- (a) in the case of an individual —
 - (i) for a first offence, \$2 500; and a daily penalty of \$100;
 - (ii) for a second or subsequent offence, \$5 000; and a daily penalty of \$200;
- (b) in any other case —
 - (i) for a first offence, \$5 000; and a daily penalty of \$200;
 - (ii) for a second or subsequent offence, \$10 000; and a daily penalty of \$400.

Failure to comply with order

79. A person must not contravene or fail to comply with an order made under Part 5.

Penalty:

- (a) in the case of an individual, \$5 000;
- (b) in any other case, \$10 000.

False statements

80. A person must not give information orally or in writing —

- (a) in respect of an application for registration or renewal of registration or a request to amend the register;
- (b) to an investigator or otherwise for the purposes of an investigation under section 50 or 64; or
- (c) at a formal inquiry,

that the person knows to be false or misleading in a material respect or likely to deceive in a material way.

Penalty:

- (a) in the case of an individual, \$5 000;
- (b) in any other case, \$10 000.

Failure to attend, take oath etc.

81. (1) A person must not, without lawful excuse, refuse or fail —

- (a) to attend; or
- (b) to produce a document or other thing,

as required by a notice under section 59 or 69.

(2) A person must not, without lawful excuse, refuse or fail —

- (a) to be sworn or make an affirmation when required to do so under section 69; or
- (b) to give information or answer a question when required to do so under section 59 or 69.

Penalty:

- (a) in the case of an individual, \$2 500;
- (b) in any other case, \$5 000.

Obstruction of investigator

82. A person must not obstruct or hinder an investigator in the performance of a function under this Act.

Penalty:

- (a) in the case of an individual, \$2 500;
- (b) in any other case, \$5 000.

Misbehaviour

83. A person must not —

- (a) misbehave during a formal inquiry;
- (b) wilfully insult the Board or a member of the Board; or
- (c) wilfully interrupt the proceedings of a formal inquiry.

Penalty:

- (a) in the case of an individual, \$2 500;
- (b) in any other case, \$5 000.

s. 84**Execution of warrant**

84. An osteopath and an osteopath's members, officers, employees and agents must give to an investigator executing a warrant issued under section 61 all the assistance that the investigator needs and they are able to give to help the investigator to execute that warrant.

Penalty:

- (a) in the case of an individual, \$2 500;
- (b) in any other case, \$5 000.

Information that may be withheld

85. (1) If a person is required to answer a question, provide information or produce a document or other thing under Part 5, or under a warrant issued under that Part or a requirement made in executing a warrant the person must not refuse to comply with that requirement on the ground that the answer, information, document or thing may tend to incriminate the person or render the person liable to a penalty.

(2) Notwithstanding subsection (1) an answer or information given or document or other thing produced under Part 5, or under a warrant issued under that Part or a requirement made in executing a warrant is not admissible in evidence in any proceedings against the person other than proceedings in respect of an offence against section 80.

Legal professional privilege

86. Nothing in Part 5 or this Part prevents a person from refusing to answer a question, provide information or produce a document or other thing because the answer or information would relate to, or the document or thing contains, information in respect of which the person claims legal professional privilege.

PART 7 — MISCELLANEOUS

Protection

87. (1) A person is not liable in civil proceedings for anything done, or omitted to be done, in good faith, by that person in the course of carrying out, or purporting to carry out, any provision of this Act.

(2) A person who, in relation to any investigation, inquiry or hearing under Part 5 —

(a) performs any function under that Part; or

(b) is otherwise concerned in proceedings under that Part,

has, in respect of any such function or concern, the same protection and immunity as a member or officer of the Supreme Court, or a witness or party before the Supreme Court, would have in respect of a function or concern of a like nature related to the jurisdiction of the Supreme Court.

Decisions to be notified

88. (1) Where the Board makes a decision to which this subsection applies, it is to record the grounds on which the decision was based, and its reasons, and is as soon as is practicable, but in any case not later than 30 days after making the decision, to notify its decision, together with those grounds and reasons, to —

(a) the person to whom the decision relates; and

(b) the complainant, if any.

(2) Subsection (1) applies to —

(a) any decision or order made under section 70, 71, 72 or 74;

s. 89

- (b) the refusal of an application to the Board for registration, renewal of registration or restoration to the register;
- (c) the removal of a name from the register under section 34; or
- (d) the imposition of a restriction or condition under section 21 (2), 22 (3), 23 (3) or 36 (5), otherwise than by consent.

Appeals

89. (1) A person who is aggrieved by an order under section 54 or a decision or order referred to in section 88 (2) may appeal to the Supreme Court.

(2) An appeal under this section —

- (a) is to be in the nature of a rehearing;
- (b) is to be heard and determined by a single judge of the Supreme Court; and
- (c) must be instituted within the time, and in accordance with the procedure, prescribed by rules of the Supreme Court.

(3) The operation of an order under section 54 to which the appeal relates is not affected by the commencement of an appeal unless, on application by the appellant to the Supreme Court, the Court orders otherwise.

(4) An application under subsection (3) is to be heard and determined by a single judge of the Supreme Court.

(5) Upon the hearing of an appeal, the Supreme Court may —

- (a) allow or dismiss the appeal;

- (b) affirm, vary or quash the order subject to the appeal;
and
- (c) make any incidental or ancillary order.

(6) The Board is to give effect to the decision of the Supreme Court in an appeal under this section.

Publication of proceedings etc.

90. (1) Without limiting the operation of section 87, no action, claim or demand lies against a person to whom this subsection applies in respect of the communication or publication in good faith of any finding, or reasons or decision of the Board or complaints assessment committee.

(2) Subsection (1) applies to —

- (a) the Board, any member of the Board, the registrar or any officer or delegate of the Board or registrar;
- (b) any committee or any member of a committee or person referred to in section 18 (5);
- (c) any board or authority outside the State charged with regulating the registration and supervision of osteopaths or any officer, employee or agent of the board or authority;
- (d) the proprietor or any person concerned in the publication or operation of any newspaper or periodical or of any electronic medium; and
- (e) any other person who, in the opinion of the Board, should be made aware of the finding, reasons or decision.

s. 91

(3) The Board may notify a finding, reason or decision of the Board or the complaints assessment committee in respect of a person to —

- (a) any person referred to in subsection (2) (c), (d) or (e);
- (b) any registered body of which the person is a member or director;
- (c) any body that has granted the person a qualification that is entered in the register;
- (d) any relevant professional association or trade union of which the person is a member; and
- (e) any person by whom the person is employed or remunerated as an osteopath or any person with whom the person practises osteopathy in partnership,

and may publish notice of the finding, reason or decision in the *Gazette* or in such other manner as the Board thinks fit.

Legal proceedings

91. (1) Any proceedings for an offence against this Act may be taken in the name of the Board by the registrar or any other person authorized in that behalf by the Board.

(2) All proceedings for offences against this Act are to be heard by a court of summary jurisdiction constituted by a magistrate.

(3) In any proceedings no proof is required of —

- (a) the appointment of a member or deputy of a member of the Board or a member of a committee; or

- (b) the authorization of a person under subsection (1),

but an averment in a complaint that the person is so appointed or authorized is to be taken to be proved in the absence of evidence to the contrary.

(4) In all courts and before all persons and bodies authorized to receive evidence, in the absence of evidence to the contrary —

- (a) a certificate purporting to be issued on behalf of the Board and stating that a person was or was not registered by the Board, the conditions or restrictions to which a registration was subject, or that a person was suspended from the practice of osteopathy, on any day or days or during a period mentioned in the certificate, is evidence of the matters so stated;
- (b) a copy of or extract from a register or any statement that purports to reproduce matters entered in the register that is certified by the registrar as a true copy, extract or statement, is evidence of the facts appearing in that copy, extract or statement;
- (c) judicial notice is to be taken of the fact that a person is the holder of the office of registrar and of the signature of the registrar on a certificate purporting to be issued under paragraph (b).

Liability of officers

92. (1) In this section —

“**officer**” has the same meaning as in the Corporations Law but —

- (a) does not include an employee of the body corporate unless the employee was concerned in the management of the body corporate; and
- (b) if the affairs of the corporation are managed by its members, includes a member of the body corporate.

s. 93

(2) If a body corporate commits an offence against this Act, and it is proved that —

- (a) the offence was committed with the consent or connivance of an officer of the body corporate; and
- (b) the officer failed to exercise such due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the officer's functions and to all other circumstances,

the officer commits the same offence.

(3) An officer may be proceeded against and convicted of an offence against this Act by virtue of subsection (2) whether or not the body corporate has been proceeded against and convicted of the offence.

(4) Any civil liability in connection with the practice of osteopathy incurred by a registered body is enforceable jointly and severally against the body corporate and any person who at the time that the liability was incurred was an osteopath who was a member or director of the body corporate.

Common seal and execution of documents by Board

93. (1) A document is duly executed by the Board if —

- (a) the common seal of the Board is affixed in accordance with subsections (2) and (3); or
- (b) it is signed on behalf of the Board by a member or members authorized by the Board to do so.

(2) The common seal of the Board is not to be affixed to a document except by resolution of the Board.

(3) The common seal of the Board is to be affixed to a document in the presence of any 2 members and each of them is to sign the document to attest that the common seal was so affixed.

(4) The common seal of the Board is —

- (a) to be in a form determined by the Board;
- (b) to be kept in such custody as the Board directs; and
- (c) not to be used except as authorized by the Board.

(5) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.

(6) When a document is produced bearing a seal purporting to be the common seal of the Board, it is to be presumed that the seal is the common seal of the Board until the contrary is shown.

(7) All courts and persons acting judicially are to take notice of the common seal of the Board.

Rules

94. (1) The Board may, with the approval of the Governor, make rules prescribing all matters required or permitted by this Act to be prescribed by rules or necessary or convenient to be prescribed for carrying out this Act.

(2) Without limiting the generality of subsection (1), rules may be made for all or any of the following purposes —

- (a) regulating the meetings and proceedings of, and the conduct of business by, the Board or a committee;

s. 94

- (b) making provisions relating to registration, including applications for and the amendment or renewal of registration;
- (c) maintaining the accuracy of the register;
- (d) regulating the issue, display and use of certificates of registration;
- (e) prescribing the courses of study and training, including practical experience, to be undertaken, and the examinations to be passed, by persons desiring to be registered under this Act, and determining the qualifications to be held by persons wanting to study osteopathy;
- (f) regulating the holding of examinations and the appointment of examiners and for the issue of diplomas or certificates to persons passing the examinations;
- (g) regulating the manner of making to the complaints assessment committee any complaint against or concerning a person who is, or was registered, and who may make such a complaint;
- (h) regulating the conduct of investigations under Part 5;
- (i) regulating the conduct of conciliation conferences under section 63 and the appointment of persons to preside over those conferences;
- (j) regulating the practice of osteopathy by osteopaths and the manner of carrying on that practice;
- (k) prescribing what diplomas, degrees or certificates of schools of osteopathy or other evidence of qualification will be recognized and accepted by the Board as a substitute for the examinations of the Board, and whether immediately or after further training;

- (l) prescribing the fees to be paid for the purposes of this Act and the persons liable for payment;
- (m) prescribing forms to be used for the purposes of this Act;
- (n) prescribing returns and notices that are to be given to the Board, and the manner in which they are to be given;
- (o) providing that information supplied to the Board may be required to be verified by statutory declaration;
- (p) regulating the manner in which osteopaths may advertise or display or publicize their practice of osteopathy, including the manner in which 2 or more osteopaths practising together may advertise or display or publicize that group practice.

(3) A rule made under this section may provide for a penalty for contravention of the rule or a provision of the rule not exceeding a fine of \$5 000.

(4) Before making rules the Board may consult any national advisory body on osteopathy.

Regulations

95. (1) The Governor may make regulations —

- (a) prescribing all matters that are required or permitted by the Act to be prescribed by regulation; and
- (b) with respect to any matter on which the Board may make rules.

(2) Where a regulation is inconsistent with a rule the former prevails to the extent of the inconsistency.

Transitional

96. Schedule 3 has effect.

Consequential amendments

97. The Acts referred to in the first column of Schedule 4 are amended in the manner set out in the second column of that schedule.

Review of Act

98. (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 5 years from its commencement, and in the course of that review the Minister is to consider and have regard to —

- (a) the effectiveness of the operations of the Board;
- (b) the need for the continuation of the functions of the Board; and
- (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.

(2) The Minister is to prepare a report based on the review made under subsection (1) and as soon as is practicable after the preparation of the report, cause it to be laid before each House of Parliament.

**SCHEDULE 1 — CONSTITUTION AND PROCEEDINGS
OF BOARD**

[Section 8]

Term of office

1. Subject to clause 4 a member holds office for such term, not exceeding 3 years, as is specified in the member's instrument of appointment, and is eligible for reappointment.

Functions of deputy presiding member

2. (1) The deputy presiding member is to perform the functions of the presiding member when the presiding member is unable to do so by reason of illness, absence or other cause, or when the office of presiding member is vacant.

(2) No act or omission of the deputy presiding member acting as presiding member is to be questioned on the ground that the occasion for his or her so acting had not arisen or had ceased.

Deputy members

3. (1) The Minister may appoint an eligible person to be a deputy of a member and may terminate such an appointment at any time.

(2) The provisions of section 6 that apply to and in relation to the appointment of a member apply, with any necessary modification, to and in relation to the appointment of the deputy of that member.

(3) A deputy of a member may perform the functions of the member when the member is unable to do so by reason of illness, absence or other cause.

(4) Notwithstanding anything in this Act a deputy of a member may continue to act as a member, after the occasion for so acting has ceased, for the purpose of completing any function.

(5) A deputy of a member, while acting as a member, has all the functions of and all the protection given to a member.

(6) No act or omission of a person acting in place of another under this clause is to be questioned on the ground that the occasion for so acting had not arisen or had ceased.

Sch. 1**Vacation of office by member**

4. (1) A member of the Board may resign from office by notice in writing delivered to the Minister.

(2) A member who resigns under subclause (1) is to deliver a copy of the notice of resignation to the registrar.

(3) A member of the Board may be removed from office by the Minister —

- (a) for mental or physical disability, incompetence, neglect of duty or misconduct that impairs the performance of the member's duties;
- (b) if the member is an insolvent under administration, as that term is defined in the Corporations Law;
- (c) if the member is absent without leave of the Board from 3 consecutive meetings of the Board of which the member has had notice; or
- (d) for any other act or omission that in the opinion of the Minister may cause prejudice or injury to the Board.

(4) A member of the Board is to be removed from office by the Minister if the member ceases to hold a position or qualification by virtue of which the member was appointed or elected or if, in the case of a member who is an osteopath, the registration of the member under this Act is suspended.

General procedure concerning meetings

5. (1) At a meeting of the Board —

- (a) the presiding member, or in his or her absence the deputy presiding member, is to preside; or
- (b) in the absence of both of those members, a member elected by the members present is to preside.

(2) A quorum —

- (a) for a meeting of the Board other than a formal inquiry is 4 members; and
- (b) for a formal inquiry is 3 members.

(3) The procedure for convening meetings of the Board and the conduct of business at those meetings is, subject to this Act, to be as determined by the Board.

(4) The first meeting of the Board is to be convened and presided over by a member of the Board nominated in writing by the Minister.

(5) A presiding member and deputy presiding member are to be elected by the Board at the first meeting of the Board.

Voting

6. (1) A decision of the majority of members at a meeting of the Board at which a quorum is present is the decision of the Board.

(2) If the votes of members present at a meeting and voting are equally divided the member presiding at the meeting is to have a casting vote in addition to a deliberative vote.

Telephone and video meetings

7. Despite anything in this Schedule, a communication between members constituting a quorum under clause 5 (2) by telephone or audio-visual means is a valid meeting of the Board, but only if each participating member is capable of communicating with every other participating member instantaneously at all times during the proceedings.

Resolution may be passed without meeting

8. (1) If a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed is sent or given to all members of the Board and is assented to by not less than 4 members that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the Board.

(2) For the purposes of subclause (1) —

(a) the meeting is to be taken as having been held —

(i) if the members assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a member; or

(ii) if the members assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a member;

(b) 2 or more separate documents in identical terms each of which is assented to by one or more members are to be taken to constitute one document; and

Sch. 1

- (c) a member may signify assent to a document by signing the document or by notifying the Board of the member's assent in person or by post, facsimile transmission, telephone or other method of written, audio or audio-visual communication.

(3) Where a member signifies assent to a document otherwise than by signing the document, the member must by way of confirmation sign the document at the next meeting of the Board attended by that member, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.

(4) Where a document is assented to in accordance with subclause (1), the document is to be taken as a minute of a meeting of the Board.

Minutes

9. The Board is to ensure that an accurate record is kept and preserved of the proceedings at each meeting of the Board and of each resolution passed by the Board.

**SCHEDULE 2 — REQUIREMENTS FOR REGISTRATION
OF BODY CORPORATE**

[Sections 21 (1) and 22 (1)]

1. The body corporate is to be a proprietary company.
2. Each member and director of the body corporate is to be a natural person.
3. Where the body corporate has —
 - (a) only one member, that member is to be an osteopath;
 - (b) more than 2 members, all of the members are to be osteopaths;
 - (c) only 2 members, one member is to be an osteopath and the other need not be an osteopath but must be related to the first person in the manner prescribed for the purposes of this clause.
4. Where the body corporate has —
 - (a) only one director, that director is to be an osteopath;
 - (b) more than 2 directors, all of the directors are to be osteopaths;
 - (c) only 2 directors, one director is to be an osteopath and the other need not be an osteopath but must be related to the first person in the manner prescribed for the purposes of this clause.
5. Any person who has a relevant interest (as defined in the Corporations Law) in any securities (as defined in the Corporations Law) issued or made available by the body corporate is to be an osteopath or related to an osteopath in the manner prescribed for the purposes of this clause.
6. The total voting rights exercisable at a meeting of the members of the body corporate must be held by osteopaths who are directors or employees of the body corporate.
7. The body corporate is to have a place of business within the State.

Sch. 2

- 8.** The executive officer, within the meaning of the Corporations Law, of the body corporate is to be an osteopath.
- 9.** Full personal professional responsibility for the conduct of the affairs of the body corporate in relation to the practice of osteopathy is to remain an obligation of each member of the body corporate who is registered and no person other than an osteopath may have authority over professional matters.
- 10.** Proper and adequate provision is to be made for disclosure to the Board of the affairs of the body corporate, on request in writing by the Board to any director of the body corporate who is an osteopath, or an undertaking to that effect is to be given to and accepted by the Board.
- 11.** The memorandum and articles of association of the body corporate are to contain provisions to the effect that the sole object of the body corporate is to practise osteopathy.
- 12.** The memorandum and articles of association of the body corporate are to be acceptable to the Board and contain a provision that the Board be notified of any intention to amend the memorandum or articles and be furnished with a copy of any proposed resolution or other form of proposal to give effect to that intention.
- 13.** The name by which the body corporate is incorporated is to be acceptable to the Board.
- 14.** The Board is to be satisfied that there are no other grounds upon which the application for registration ought to be refused.

SCHEDULE 3 — TRANSITIONAL

[Section 96]

Interpretation

1. In this Schedule —

“**commencement day**” means the day of the commencement of this Act.

Transitional provision for persons practising osteopathy

2. (1) A person who would otherwise be required to be registered for the purposes of this Act is to be treated as if he or she were registered under Part 3 —

- (a) until the expiry of 6 months after the commencement day;
or
- (b) until —
 - (i) registration of that person is refused by the Board;
and
 - (ii) the time for appeal against the refusal under section 89 has expired without an appeal being brought or an appeal has been brought but has been unsuccessful,

whichever happens first.

(2) For the purposes of subclause (1) (b) (ii) an appeal is unsuccessful if it is dismissed, withdrawn or discontinued.

Persons practising osteopathy but not eligible for registration under Part 3

3. (1) Despite anything else in this Act, a person practising as an osteopath before the commencement day may continue to do so if registered under this clause.

(2) The Board, on payment of the prescribed registration fee, is to register a person under this clause if —

- (a) the person applies to the Board for registration under this clause within 6 months after the commencement day; and

Sch. 3

- (b) the Board is satisfied that the person meets the requirements of section 20 (2) (a), (b) and (c) and —
 - (i) has practised as an osteopath within the 5 years immediately preceding the application; and
 - (ii) during that period of time has derived his or her primary source of income from that practice; or
 - (iii) has acquired such knowledge and has such practical experience in osteopathy as in the opinion of the Board is sufficient to enable that person to perform efficiently the duties of an osteopath.

(3) For the purposes of this Act a person who is registered under this clause is to be taken to be registered under Part 3.

Membership of Board

4. A person is taken to be an osteopath for the purposes of the first appointments of members under section 6 (1) (a) and (c) if, in the opinion of the Minister, that person is eligible under section 20 (2) (a), (b), (c) and (d) (i) to be registered.

SCHEDULE 4 — CONSEQUENTIAL AMENDMENTS

[Section 97]

1. *Constitution Acts Amendment Act 1899* In Part 3 of Schedule V by inserting after the item commencing “The Optometrists Registration Board” the following —

“ The Osteopaths Registration Board established under the *Osteopaths Act 1997* ”.
2. *Juries Act 1957* In item 2 of Part II of the Second Schedule by inserting after the item commencing “Pharmaceutical chemists” the following —

“ O s t e o p a t h s registered under the *Osteopaths Act 1997* if actually practising. ”.
3. *Health Services (Conciliation and Review) Act 1995* After item 6 of Schedule 1 add the following —

“ 6a. Osteopaths Registration Board under the *Osteopaths Act 1997*. ”.