



Western Australia

Occupational Therapists Registration Act 1980

Compare between:

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Western Australia

Occupational Therapists Registration Act 1980

An Act to make provision for the regulation of the practice of occupational therapy, the registration and training of persons as occupational therapists and for related purposes and to repeal the *Occupational Therapists Act 1957*.

Part I — Preliminary

1. Short title

This Act may be cited as the *Occupational Therapists Registration Act 1980*¹.

2. Commencement

This Act shall come into operation on a date to be fixed by proclamation¹.

3. Interpretation

In this Act, unless the contrary intention appears —

“Board” means the Occupational Therapists Registration Board of Western Australia established under section 7;

“certificate of registration” means a certificate of registration granted under section 14;

“chairman” means the chairman of the Board;

“member” means a member of the Board and includes the chairman;

“occupational therapist” means a person who is registered as an occupational therapist under this Act and whose name is entered in the Register;

“occupational therapy” means the art and science of improving an individual’s skills and behaviour by directing his participation in selected tasks in order to integrate, reinforce, and enhance newly learned techniques necessary for remedying any impairment to his skills or behaviour caused by aging, disability, or developmental or mental deficits and carrying out such adjustments to his immediate environment as are necessary to assist him or selecting an appropriate environment for that purpose;

“Register” means the register referred to in section 13;

“Registrar” means the person holding or acting in the office of Registrar under section 10;

“section” means a section of this Act;

“subsection” means a subsection of the section wherein that term is used.

4. Application of this Act

- (1) This Act does not apply to anything done by a medical practitioner.
- (2) A teacher or student in the course of his teaching studies or research in any university or other prescribed educational establishment may teach or practise occupational therapy or any branch of occupational therapy in so far as that is necessary or required for the purpose of such teaching, studies or research, but not otherwise, although not registered as an occupational therapist under this Act and to that extent section 40 does not apply to any such person.
- (3) This Act shall not be construed so as to prevent anything being done —
 - (a) by a person acting under the direction of a registered occupational therapist;
 - (b) by a teacher, or a teacher of handicrafts, giving instructions to sick or convalescent persons; or
 - (c) by a person giving instructions in the skills of his usual occupation to sick or convalescent persons.

Part II — Occupational Therapists Registration Board of Western Australia

5. Establishment of Board

- (1) There shall be established for the purposes of this Act a Board to be known as the Occupational Therapists Registration Board of Western Australia.
- (2) The Board when so established —
 - (a) shall be a body corporate;
 - (b) shall have an official seal;
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued in its corporate name.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Board affixed to a document and shall presume that it was duly affixed.
- (4) The provisions of the Schedule to this Act shall have effect in relation to the Board.

6. Board does not represent the Crown

The Board does not represent, and is not an agent or servant of, the Crown.

7. Composition of the Board

- (1) The Board shall consist of 6 persons appointed by the Governor, of whom —
 - (a) one shall be the chief executive officer ² or a person who is nominated by the chief executive officer ²;
 - (b) one shall be a medical practitioner nominated for appointment by the Minister;
 - (c) one shall be a person nominated for appointment by the Council of the Curtin University of Technology ³

established under the *Curtin University of Technology Act 1966*⁴;

- (d) 3 shall be persons nominated for appointment by the Minister from a panel of names submitted by the body known as The Western Australian Association of Occupational Therapists (Inc.).
- (2) The performance of the functions or the exercise of the powers of the Board is not affected by reason of there being a vacancy or vacancies in the membership of the Board.
- (3) The appointment of a member is not invalidated, and shall not be called in question, by reason of a defect or irregularity in connection with his nomination.
- (4) The office of member of the Board may be held in conjunction with any other appointment or office in the Public Service of the State.

[Section 7 amended by No. 63 of 1981 s. 4; No. 28 of 1984 s. 81.]

8. Functions of the Board

- (1) Subject to subsection (4), the Board shall carry out the administration of this Act.
- (2) The functions of the Board are —
 - (a) to advise the Minister as to the general administration of this Act;
 - (b) to administer the scheme of registration established under this Act; and
 - (c) to carry out such other functions as are conferred upon the Board under this Act.
- (3) The Board has power to do all such things as are necessary or convenient for or in connection with the performance of its functions.

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- (4) The Minister may from time to time give directions to the Board with respect to its functions, powers, and duties, either generally or with respect to a particular matter, and the Board shall give effect to those directions.

9. Rules

- (1) The Board may, subject to the approval of the Governor, from time to time make such rules as the Board determines to be necessary for all or any of the following purposes —
- (a) regulating the meetings and proceedings of the Board and the conduct of its business;
 - (b) enabling the Board to constitute committees of the Board, which may consist of members of the Board or persons who are not members but so that in every case one member of the Board shall be a member of the committee and the committee shall be required to report to the Board on its activities at such times as the Board determines, and for regulating the proceedings of such committees;
 - (c) determining the evidence to be produced and conditions to be fulfilled by any person applying for registration under this Act;
 - (d) regulating the manner of keeping and the form of the Register;
 - (e) prescribing the fees to be paid in relation, to the grant, amendment or renewal of registration, and the fees or charges that shall be payable in relation to other matters under this Act other than for commencing a proceeding before the State Administrative Tribunal;
 - (f) prescribing the forms to be used for the purposes of this Act, including a requirement that information, supplied may be required to be verified by statutory declaration;
 - (g) regulating the manner of making to the Board any complaint against or concerning any occupational therapist;

- (h) regulating the practice of occupational therapy by persons registered under this Act and the conduct of that practice; and
 - (i) generally to give effect to the objects of this Act.
- (2) Rules made under this section may confer on any person a discretionary authority.
- (3) Failure to comply with rules made under this section in relation to the practice of occupational therapy may be deemed to constitute improper conduct as an occupational therapist on the part of a registered occupational therapist.
- (4) Nothing in this section prevents any matter not dealt with in the rules formulated under this section from being treated for the purposes of this Act as improper conduct as an occupational therapist.

[Section 9 amended by No. 55 of 2004 s. 807.]

10. Registrar and staff

The Board shall appoint a Registrar and such other staff as they consider necessary for the purposes of carrying out the provisions of this Act and the remuneration of such persons shall be paid out of the funds of the Board.

Part III — Registration of occupational therapists

11. Qualifications

- (1) A person who satisfies the Board —
- (a) that he is of good character and reputation;
 - (b) that he is resident in the State of Western Australia; and
 - (c) that he holds an approved educational qualification,
- shall, subject to this Act and upon payment of the prescribed fee, be registered under this Act and the Board shall cause his name to be entered in the Register accordingly.
- (2) For the purposes of this section, a person who has “**an approved educational qualification**” means a person who has gained by examination a qualification recognised by the Board granted by a tertiary educational institution recognised by the Board.

12. Applications

- (1) An application for registration under this Act shall be made in writing and in a manner and form determined by the Board in respect of such an application.
- (2) In respect of any particular application for registration the applicant shall furnish the Board with such further information as the Board determines, verified by statutory declaration if the Board so requires.
- (3) The Board may require any applicant for registration to attend personally before the Board and, if the applicant fails so to attend, may refuse the application.

13. The Register

- (1) Subject to this Act, the Board shall cause to be compiled and maintained a Register in a form showing in respect of each application for registration applied for under this Act or the renewal thereof such particulars as may be prescribed.

- (2) Where the Board has authorised the grant of a certificate of registration to any person there shall be entered in the Register —
 - (a) the name of that person;
 - (b) the address of that person;
 - (c) particulars of the qualifications of that person; and
 - (d) such other particulars as are prescribed,
- (3) Where the name of any person is entered in the Register that person may at any time apply to the Board for the amendment of the relevant particulars entered in the Register, and if the Board is satisfied that the amendment may properly be made the Board shall, on payment of the prescribed fee, amend those particulars accordingly.
- (4) As soon as may be after the name of a person has been struck off the Register, the Board shall cause notice of that event to be published in the *Gazette*.
- (5) The Register shall be kept in the office of the Registrar, and shall at all reasonable times be open to inspection by any person without fee.
- (6) The Register may be kept or prepared —
 - (a) by making entries in or on a bound or loose leaf book; or
 - (b) by recording or storing the matters required by this Act to be entered in the Register by means of a mechanical, electronic or other device but so that the matters so recorded or stored will remain in the form in which they were originally recorded or stored and will be capable of being reproduced in written form in the English language.

14. Certificates of registration

- (1) The Board shall on the grant of registration issue a certificate of registration in the prescribed form to the applicant which shall, subject to this Act, have effect —

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- (a) in the case of temporary registration, for the period specified therein; and
 - (b) in any other case, for the period expiring on 31 December of the year in which the registration is granted.
- (2) Subject to this Act, registration of a person as an occupational therapist may, on payment to the Board of the prescribed fee, be renewed from time to time for a further period of 12 months.

15. Conditions on registration and certificates of registration

- (1) The Board may grant registration subject to such conditions as it thinks fit, and may from time to time after consultation with the holder of the certificate of registration vary or add to any such conditions.
- (1aa) The Board cannot revoke or vary a condition that gives effect to an order of the State Administrative Tribunal unless it has applied for, and obtained, the approval of the State Administrative Tribunal to do so.
- (2) The terms of any condition, other than the condition referred to in subsection (3), imposed by the Board shall be entered in the Register and a reference thereto shall be endorsed on the relevant certificate of registration, which shall, if the Registrar so requires, be returned by the holder to him for that purpose.
- (3) Every certificate of registration shall be conditional upon the holder complying with the provisions of this Act.
- (4) The holder of a certificate of registration shall comply with any condition to which that certificate of registration is made subject pursuant to this section.

[Section 15 amended by No. 55 of 2004 s. 808.]

16. Effect of registration

Subject to this Act, registration under this Act confers on the holder of a valid certificate of registration the right to carry out

in the State the practice of occupational therapy under the title of “occupational therapist” in accordance with the conditions, restrictions or limitations (if any) indicated on that certificate but not otherwise.

17. Resignation

- (1) A person registered under this Act, and whose conduct as an occupational therapist is not the subject of investigation or proceedings in the State Administrative Tribunal, may give notice in writing under his hand addressed and delivered to the Registrar, requesting that his name be removed from the Register, and he shall thereupon cease to be registered as an occupational therapist under this Act.
- (2) A person whose name has been removed from the Register pursuant to subsection (1) may at any time thereafter make application in the prescribed form to the Board for the restoration of his name to the Register.
- (3) The Board shall direct the Registrar, upon payment by the applicant to the Board of the prescribed fee, to restore the name of the applicant to the Register and the Registrar shall comply with the direction of the Board.

[Section 17 amended by No. 55 of 2004 s. 809.]

18. Registrar to remove names of deceased persons from Register

When any person who is registered under this Act dies, the Registrar shall, upon being satisfied as to the death of that person, remove the name of the person from the Register.

19. Registrar to amend Register to ensure accuracy

Subject to the directions of the Board, the Registrar shall, from time to time, as the occasion requires, make such amendments, additions, alterations and corrections in the Register as may be necessary to make the Register an accurate record of the

prescribed particulars of all persons registered under this Act as occupational therapists.

20. Effect of striking off

Where the name of a person is struck off the Register pursuant to this Act, that person ceases to be registered as, and is disqualified from practising as, an occupational therapist, unless and until his name is restored to the Register.

21. Name of person struck off may be restored

- (1) A person whose name has been struck off the Register pursuant to an order of the State Administrative Tribunal under this Act may, after period of not less than 12 months, apply to the Board in the prescribed manner to have his name restored to the Register.
- (1aa) The Board cannot grant an application under subsection (1) unless it has applied for, and obtained, the approval of the State Administrative Tribunal to do so.
- (2) The Board may refuse any application made under subsection (1).
- (3) When the Board grants the application it shall direct the Registrar, on payment by the applicant to the Board of the prescribed fee, to restore the name of the applicant to the Register, and the Registrar shall comply with the direction of the Board.

[Section 21 amended by No. 55 of 2004 s. 810.]

22. Registration fees

- (1) Every registered occupational therapist shall pay on the grant or renewal of the certificate of registration a registration fee to the Board of such amount as is prescribed, and the amount of that registration fee shall be recoverable by the Board in any court of competent jurisdiction.

- (2) The Board may remove from the Register the name of any person who has failed to pay the registration fee payable by him.
- (3) Any person whose name is removed from the Register pursuant to this section may at any time thereafter pay to the Board all fees which are in arrear, or which would be in arrear if he had continued to be registered, together with the prescribed fee, and shall thereupon be entitled to have his name restored to the Register.
- (4) Any person to whom this section applies may make representations to the Board with the object of obtaining remission of fees in arrear, and the Board may, if it thinks fit, remit those fees in whole or in part.

23. Suspension

- (1) Where a person is suspended from the practice of occupational therapy generally that person shall be deemed not to be registered as, and shall be disqualified from practising as, an occupational therapist under this Act during the period for which the suspension subsists.
- (2) Where a person is suspended from the practice of occupational therapy in relation to any specified circumstances or service that person shall be deemed not to be registered as, and shall be disqualified from practising as, an occupational therapist under this Act during the period for which the suspension subsists in relation to the circumstances or the performance of the service specified in the order for his suspension.
- (3) 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.
- (4) The Board cannot to any extent revoke a suspension that was imposed to give effect to an order of the State Administrative Tribunal unless it has applied for, and obtained, the approval of the State Administrative Tribunal to do so.

[Section 23 amended by No. 55 of 2004 s. 811.]

24. Temporary registration

- (1) A person who is in Western Australia or proposes to come to Western Australia and who satisfies the chairman that —
 - (a) he is a person of good character;
 - (b) he proposes to engage in practice in the State as an occupational therapist in special circumstances and that hardship would be occasioned by any delay in the grant or registration; and
 - (c) he possesses qualifications and experience appropriate to that purpose,

may, upon application in the prescribed form to the Board, be granted by the chairman a temporary registration for that purpose and may be granted a certificate of temporary registration, and the grant of any such certificate shall be notified by the chairman to the Board as soon as is practicable.

- (2) Where, on the consideration of an application for registration, the Board is of the opinion that it would grant registration if satisfactory evidence were produced, and that it is likely that the requisite evidence will be produced, the Board may, on payment of the prescribed fee, grant a certificate of temporary registration.
- (3) The Board may grant temporary registration on a honorary basis for specified periods to persons of eminence within the field of occupational therapy, so recognised by the Board, who may visit the State to teach or demonstrate methods and techniques of occupational therapy.
- (4) A certificate of temporary registration has effect, unless earlier terminated by the Board, for such period not exceeding 3 months as is specified therein but may be renewed by the Board for a period or periods of not more than 12 months in respect of each such application.

- (5) Temporary registration granted under this section may be made subject to such limitations and restrictions upon the practice of occupational therapy by the applicant as the Board in any particular case specifies and such limitations and restrictions shall be indicated on the certificate of temporary registration granted to the applicant.
- (6) The Board may at any time cancel any temporary registration granted or renewed under this section, or may vary any limitation or restriction to which it was made subject.
- (7) Every person in respect of whom temporary registration is granted shall, while the registration remains in force and so long as he does not infringe the restrictions or limitations to which it was made subject, be deemed to be registered as an occupational therapist under this Act, and his name and such other particulars as the Board considers to be material shall be entered in the Register as a person to whom a temporary registration has been granted.

Part IV — Finance and reports

25. Funds of the Board

- (1) The funds of the Board shall consist of —
 - (a) such prescribed fees as may be received by the Board;
and
 - (b) all other money or property lawfully received by the Board in respect of the performance of its functions.
- (2) The funds of the Board may be applied for the purposes for the administration and enforcement of this Act, for the furtherance of education and research in occupational therapy, and for any other purpose that the Board may recommend and the Minister may approve to enable the Board to perform their powers and duties under this Act and facilitate the carrying out of the purposes of this Act.

26. Accounts

- (1) The Board shall cause to be kept proper accounts and records of the transactions and affairs of the Board and shall prepare financial statements in accordance with Australian Accounting Standards.
- (2) The financial statements shall be prepared on an accrual basis unless the Board determines otherwise.

[Section 26 inserted by No. 77 of 1987 s. 3.]

27. Audit

The accounts and financial statements of the Board shall be audited at least once a year, at the expense of the Board, by an auditor appointed by the Board with the prior approval of the Minister.

[Section 27 inserted by 77 of 1987 s. 3.]

27A. Annual report

- (1) The Board shall on or before 30 June in each year make and submit to the Minister an annual report of its proceedings for the preceding year ending on 31 December together with a copy of the financial statements and the auditor's report.
- (1a) The Board's annual report is to include details of —
 - (a) the number, nature, and outcome, of —
 - (i) investigations and inquiries undertaken by, or at the direction of, the Board; and
 - (ii) matters that have been brought before the State Administrative Tribunal by the Board;
 - (b) the number and nature of matters referred to in paragraph (a) that are outstanding;
 - (c) any trends or special problems that may have emerged;
 - (d) forecasts of the workload of the Board in the year after the year to which the report relates; and
 - (e) any proposals for improving the operation of the Board.
- (2) The Minister shall cause a copy of each annual report, financial statements and 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.

[Section 27A inserted by No. 77 of 1987 s. 3; amended by No. 55 of 2004 s. 812.]

Part IVA — Investigation

[Heading inserted by No. 55 of 2004 s. 813.]

27B. Investigator

- (1) The Board may appoint a person to investigate a complaint or any other matter relevant to the Board's functions and report to the Board.
- (2) The Board 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 evidence in any court of the appointment to which the certificate purports to relate.

[Section 27B inserted by No. 55 of 2004 s. 813.]

27C. Report of investigator

- (1) An investigator must —
 - (a) within such period as the Board requires prepare a report on the investigation, and make recommendations as to the manner in which the matter should be dealt with; and
 - (b) immediately after preparing the report, provide the Board with a copy of the report.
- (2) The investigator must return his certificate of appointment at the time the Board is provided with a copy of the report.

[Section 27C inserted by No. 55 of 2004 s. 813.]

27D. Powers of investigator

- (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 27F(1), and exercise the powers referred to in section 27F(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;

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- (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 the 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 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.

[Section 27D inserted by No. 55 of 2004 s. 813.]

27E. Warrant to enter premises

- (1) If the Board has determined in a particular case that an investigator has reasonable grounds for believing that entry to premises is necessary for the purpose of investigating a matter 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 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 Board 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 investigating a matter 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.
- (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.

[Section 27E inserted by No. 55 of 2004 s. 813.]

27F. Issue of warrant

- (1) A magistrate to whom an application is made under section 27E 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) authorises 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).

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- (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.

[Section 27F inserted by No. 55 of 2004 s. 813.]

27G. Execution of warrant

- (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.

[Section 27G inserted by No. 55 of 2004 s. 813.]

27H. Incriminating information, questions, or documents

Without prejudice to the provisions of section 11 of the *Evidence Act 1906*, where under section 27D a person is required to —

- (a) give any information;
- (b) answer any question; or
- (c) produce any document,

he shall not refuse to comply with that requirement on the ground that the information, answer, or document may tend to incriminate the person or render the person liable to any penalty, but the information or answer given, or document produced, by

the person shall not be admissible in evidence in any proceedings against the person other than proceedings in respect of an offence against section 27I(1)(b).

[Section 27H inserted by No. 55 of 2004 s. 813.]

27I. Failure to comply with investigation

- (1) Where under section 27D a person is required to give any information, answer any question, or produce any document and that person, without reasonable excuse (proof of which shall lie on him) —
- (a) fails to give that information or answer that question at or within the time specified in the requirement;
 - (b) gives any information or answer that is false in any particular; or
 - (c) fails to produce that document at or within the time specified in the requirement,

the person commits an offence.

Penalty: \$2 000.

- (2) It is a defence in any proceeding for an offence under subsection (1)(a) or (c) for the defendant to show —
- (a) that, in the case of an alleged offence arising out of a requirement made orally under section 27D, the investigator did not, when making the requirement, inform the defendant that he was required under this Act to give the information or answer the question, as the case may be;
 - (b) that, in the case of an alleged offence arising out of a requirement made by notice in writing under section 27D, the notice did not state that he was required under this Act to give the information, answer the question, or produce the document or thing, as the case may be;

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- (c) that the time specified in the requirement did not afford the defendant sufficient notice to enable him to comply with the requirement; or
- (d) that, in any case, the investigator did not, before making the requirement, have reasonable grounds to believe that compliance with the requirement would materially assist in the investigation being carried out.

[Section 27I inserted by No. 55 of 2004 s. 813.]

27J. Obstruction of investigator

A person shall not prevent or attempt to prevent an investigator from entering premises or otherwise obstruct or impede an investigator in the exercise of his powers under section 27D.

Penalty: \$2 000.

[Section 27J inserted by No. 55 of 2004 s. 813.]

Part V — Disciplinary proceedings

28. Disciplinary powers

(1) Where the Board is satisfied —

- (a) that the registration of a person was obtained by fraud or misrepresentation;
- (b) that a person has been convicted of an offence which, in the opinion of the Board, renders him unfit to practise as an occupational therapist;
- (c) that as a result of a finding of any board or authority outside the State charged with regulating the registration and supervision of occupational therapists the name of a person has ceased to appear in the register of occupational therapists or other record kept by that board or authority and that person has been at any time and in the opinion of the Board should continue to be disqualified from carrying on practice as an occupational therapist;
- (d) that a person is addicted to alcohol or any deleterious drug or suffers from any mental or physical disorder to a degree that renders him unfit to carry on the practice of occupational therapy; or
- (e) that a person is guilty of improper conduct as an occupational therapist by reason of carelessness, incompetence, impropriety, infamous behaviour, or a breach of the provisions of this Act,

the Board may allege to the State Administrative Tribunal that there are grounds for the Tribunal to make an order under this section and the Tribunal may order that his name shall be struck off the Register.

(2) Where the Tribunal considers that a matter does not in the public interest require that the name of the person concerned should be struck off the Register the Tribunal may —

- (a) order that the person be suspended from the practice of occupational therapy, either generally or in relation to any specified circumstances or service, for a period not exceeding 12 months specified in the order;
 - (b) order that person to pay a penalty of such an amount, not exceeding \$250, as the Tribunal thinks fit; or
 - (c) deal with that person in any of the ways referred to in subsection (3).
- (3) Where the Board is of the opinion that an allegation about a matter to the State Administrative Tribunal is not warranted by the nature of the matter, after affording the person concerned the opportunity of giving an explanation to the Board either in person or in writing and, where the Board is not satisfied by that explanation, may —
 - (a) order that the particulars entered in the Register in relation to that person be amended;
 - (b) censure that person;
 - (c) require that person to give an undertaking, either with or without security, for such period as the Board thinks necessary —
 - (i) in relation to his future conduct as an occupational therapist; or
 - (ii) to comply with such conditions as the Board may impose in relation to his practice;or
 - (d) order that person to pay to the Board a penalty not exceeding \$100.
- (4) The Board may, in any case, in addition to or in lieu of imposing any one or more of the penalties specified in this section, order the person concerned to pay such costs and expenses of or incidental to the proceedings as the Board thinks fit.

- (5) Where any penalty, costs or expenses are ordered by the Board to be paid under this section the amount ordered to be paid shall be recoverable in any court of competent jurisdiction as a debt due to the Board.

[Section 28 amended by No. 55 of 2004 s. 814.]

28A. Suspension of licence by State Administrative Tribunal

- (1) Where the State Administrative Tribunal makes an order against an occupational therapist and payment is not made in accordance with the order or the order is otherwise not complied with or is breached, the State Administrative Tribunal may order that the person be suspended from the practice of occupational therapy until the payment is made, or for such period or upon such event occurring as the State Administrative Tribunal thinks fit.
- (2) The power conferred on the State Administrative Tribunal by subsection (1) is in addition to, and does not derogate from, the powers conferred on it by this Act or by the *State Administrative Tribunal Act 2004*.

[Section 28A amended by No. 55 of 2004 s. 815.]

29. Breach of undertaking

- (1) Where the Board is satisfied that a person who has given an undertaking to the Board required of him pursuant to disciplinary proceedings under this Act has at any time during the currency of the undertaking been in breach of that undertaking, or failed to comply with any condition imposed, the Board, after giving to the person concerned an opportunity to show cause why he should not so be dealt with, may in addition to or in lieu of proceeding against him in accordance with the undertaking, make an allegation under section 28 to the State Administrative Tribunal about the matter that gave rise to the undertaking being given to the Board.

[(2) repealed]

[Section 29 amended by No. 55 of 2004 s. 816.]

30. Evidence of facts found in other proceedings

- (1) Any finding of fact relating to the conduct of a registered occupational therapist made in any proceedings to which he is a party in a court (whether in this State or elsewhere) is evidence of that fact in any disciplinary proceedings under this Act.
- (2) Where a qualification held by a registered occupational therapist is suspended, withdrawn, cancelled, or revoked by the body or authority by whom it was awarded or granted, or where any punishment has been imposed on a registered occupational therapist any finding of fact relating to the conduct of that occupational therapist made in the proceedings as a consequence of which that qualification was so suspended, withdrawn, cancelled, or revoked or that penalty was imposed that is notified to the Board by that body or authority is sufficient evidence of that fact in any disciplinary proceedings under this Act.

[31. Repealed by No. 55 of 2004 s. 817.]

32. Records of Board decisions

Where the Board —

- (a) refuses an application for the registration of a person;
- (b) imposes, otherwise than by agreement with that person, any limitation, restriction or condition on the practice of occupational therapy by any person; or
- (c) makes any order against a person in the exercise of its disciplinary powers under section 28(3),

the Board shall record the finding on which the decision was based, and its reasons, and shall as soon as is practicable communicate its decision to that person.

[Section 32 amended by No. 55 of 2004 s. 818.]

33. Review

A person aggrieved by an order of the Board, or by the refusal of an application to the Board for registration or restoration to the Register, or as to any limitation, restriction or condition imposed, may apply to the State Administrative Tribunal for a review of the order, refusal, limitation, restriction or condition.

[Section 33 inserted by No. 55 of 2004 s. 819.]

34. Reciprocal enforcement

- (1) Subject to subsection (2), where a board or authority outside the State charged with regulating the registration and supervision of occupational therapists makes an order against a person similar in kind to an order which the Board or the State Administrative Tribunal has power to make under this Act the Board may, without further inquiry, make a like order to take effect in the State for a period not extending beyond the period of the order made by the first mentioned authority.
- (2) For the purposes of subsection (1) the Board may inquire of a board or authority outside the State charged with regulating the registration and supervision of occupational therapists 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 thereon.

[Section 34 amended by No. 55 of 2004 s. 820.]

35. Publication of proceedings

- (1) Without limiting the operation of section 43, no action, claim or demand lies against —
 - (a) the Board, any member of the Board, the Registrar or any officer of the Board;

- (b) any board or authority outside the State charged with regulating the registration and supervision of occupational therapists, or any officer, employee or agent thereof; or
- (c) the proprietor, editor, printer or publisher of any newspaper, journal or periodical,

in respect of the publication, in good faith, of the whole or any part of a report of any proceedings, inquiry or findings before or by the Board concerning any matter touching the practice of occupational therapy.

(2) Where —

- (a) the name of a person is struck off the Register; or
- (b) the registration of a person is suspended,

under this Act, the Board may notify the striking off, or suspension, and the cause thereof, to —

- (c) any board or authority outside the State by which he is registered as an occupational therapist;
- (d) any body that has granted him a qualification that may be registered under this Act;
- (e) the body known as The Western Australian Association of Occupational Therapists (Inc.); and
- (f) any person by whom he is employed as an occupational therapist or any person with whom he practises occupational therapy in partnership.

36. Certificates to be surrendered by persons whose names are struck off the Register, etc.

(1) Where —

- (a) the name of a person is struck off the Register; or
- (b) the registration of a person is suspended,

under this Act, that person shall, within 7 days after the date on which he was notified by the Board the name was struck off or

the registration was suspended, surrender to the Board the certificate of registration currently issued to him under this Act.

- (2) A person who fails to surrender a certificate as required by subsection (1) is liable to a penalty of \$100, but it is a defence to a prosecution for an offence against this subsection if the accused satisfies the court that the failure to surrender the certificate was due to its loss or destruction.
- (3) The striking off of the name of a person from the Register or the suspension of the registration of a person is effective, notwithstanding his failure to surrender any certificate issued to him under this Act.

[Section 36 amended by No. 84 of 2004 s. 82.]

37. Provision for continuing business after death of occupational therapist

Where any registered occupational therapist, who carried on the practice of occupational therapy at the time of his death, dies then notwithstanding anything in this Act any executor or administrator of the estate of that occupational therapist may continue the business of that occupational therapist for a period of 12 months from the date of death or for such longer time as the Board permits if the business so continued is *bona fide* conducted by a registered occupational therapist.

38. Offences as to registration

A person who —

- (a) makes, or causes to be made, any falsification in any matter relating to the Register;
- (b) presents, or causes to be presented, to the Board or the Registrar any forged, false or counterfeit document or other evidence as to his qualifications or experience;
- (c) personates, or wrongfully represents himself as being, the person referred to in any document presented to the Board or the Registrar or in any certificate granted under this Act; or

- (d) makes or produces, or causes to be made or produced, any false or fraudulent statement or representation, either verbally or in writing, for the purpose of procuring registration, whether for himself or for any other person under this Act or upon any application, examination, or disciplinary proceedings held by or on behalf of the Board under this Act,

commits an offence and is liable on conviction to a fine not exceeding \$250.

[Section 38 amended by No. 55 of 2004 s. 821.]

39. Offences as to disqualified persons

Any person who, without the written consent of the Board, or otherwise than in accordance with such conditions as the Board may impose, knowingly employs or remunerates, in connection with the practice of occupational therapy, any person whose name is removed from the Register or who is suspended from practice, commits an offence.

40. Offences relating to the practice of occupational therapy

- (1) Subject to the provisions of this section and except as otherwise provided in this Act, a person who, not being a person who is registered as an occupational therapist under this Act and is thereby authorised so to do in relation to the circumstances in question in any manner holds himself out as or pretends to be or makes use of any words or any name, title, addition, or description implying or tending to the belief that he is an occupational therapist or is entitled, either alone or with others, to practise or teach occupational therapy commits an offence, Penalty: \$250.
- (2) Subsection (1) does not prohibit the use of any title or description necessarily assumed by any public educational institution recognised by the Board for the purpose of education in occupational therapy.

- (3) No registered occupational therapist shall carry on the practice of occupational therapy under any name other than his own, unless he has the approval of the Board.
- (4) No registered occupational therapist shall authorise or permit a person who is not registered as an occupational therapist to carry out any occupational therapy for or on his behalf, except in such cases and in such manner and to such extent as is authorised or permitted by the regulations.
- (5) No registered occupational therapist shall in relation to occupational therapy use or notify on any name-plate or sign or in any advertisement or notice published by or for him any title, words, letters, addition, or description, either in full, or in abbreviation or in combination, other than that or those shown in the Register in relation to his registration.

41. General penalty

- (1) A person who acts in contravention of or fails to comply in any respect with any provision of this Act commits an offence against this Act.
- (2) A person who commits an offence against this Act for which no penalty is provided elsewhere than in this section is liable to a fine of \$100.

42. Legal proceedings

- (1) Any proceedings in respect of an offence against this Act may be taken in the name of the Board by the Registrar or any other person authorised in that behalf by the Board.
- (2) A court of summary jurisdiction dealing with an offence under this Act is to be constituted by a magistrate.
- (3) No proof shall be required of the appointment of any member of the Board, or any person to take proceedings in the name of the Board, but an averment in the prosecution notice that the person is so authorised shall be deemed to be proved in the absence of evidence to the contrary.

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- (4) It shall not be necessary in any proceedings for an offence against this Act for the prosecution to prove that the accused received any remuneration or reward in connection with the Act, matter, or thing complained of, or that any offence was committed with a view to enabling the accused to practise occupational therapy or to claim the privileges conferred by this Act on a registered occupational therapist.
- (5) When any person is charged under this Act with doing any act or thing, or performing any service, which it is unlawful for him to perform it shall be sufficient for the prosecution to allege that the person is not entitled under this Act to do that act or thing, or to perform that service, and the burden of proof that he is so entitled rests on the accused.
- (6) In all courts and before all persons and bodies authorised to receive evidence —
 - (a) a certificate in the prescribed form purporting to be issued on behalf of the Board and stating that any person was or was not registered, or that the registration of a person was suspended, on any date or dates or during any period mentioned in the certificate, is evidence of the matters so stated;
 - (b) a copy of or extract from the Register, or any writing that purports to reproduce matters entered in the Register and recorded or stored by means of mechanical, electronic or other device, certified as a true copy or as a true extract by the Registrar, is evidence of the facts appearing therein;
 - (c) judicial notice shall be taken of the signature on the certificate and on the copy of or extract from the Register, which shall be presumed to have been duly authorised, and of the fact that the person by whom the signature was given was so authorised at the time of signing.
- (7) Where a body corporate is convicted of an offence against this Act, every person who at the time of the commission of the

offence was a director or member of the governing authority of the body corporate or an officer concerned in the management of it and who authorised or permitted the commission of the offence is guilty of the like offence.

- (8)⁷ A person referred to in subsection (7) may, on the request of the prosecutor, be convicted on the proceedings on which the body corporate is convicted if the court is satisfied that the person had reasonable notice that the prosecutor intended to make that request.

[Section 42 amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 80 and 82.]

Part VI — Miscellaneous

43. Indemnity

No liability attaches to a member of the Board, the Board, or the Registrar or any officer of the Board for any act or omission, by him or on his part or by the Board or on the part of the Board, that occurred in good faith and in the exercise, or purported exercise, of his or its powers, or in the discharge, or purported discharge, of his or its duties under this Act.

Part VII — Repeal, savings, transitional, validation

44. Repeal

The *Occupational Therapists Act 1957* is repealed.

45. Savings and transitional

- (1) In this section and section 46 —
 “former Board” means the Board constituted under the repealed Act;
 “pending proceedings” means any proceeding before the former Board which was commenced prior to the coming into operation of this Act;
 “the repealed Act” means the Act repealed by section 44.
- (2) A certificate of registration in force under the repealed Act immediately prior to the coming into operation of this Act shall continue in force as if granted under this Act.
- (3) Notwithstanding anything in this Act, for the purposes of completing and determining pending proceedings —
 - (a) the former Board shall continue;
 - (b) if the office of any member of the former Board becomes vacant whether by effluxion of time or not the Governor may —
 - (i) continue that person in office; or
 - (ii) appoint another person to that office,but any person holding office pursuant to this subsection is subject to the provisions of the repealed Act.
- (4) Except as provided by this section nothing in this section affects the operation of the *Interpretation Act 1918* ⁵.

46. Validation

Any person who before the coming into operation of this Act purportedly held office as a member of the former Board

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pursuant to a nomination of the body known as the Occupational Therapists (W.A. Branch) and who was appointed by the Governor is hereby declared to have been validly appointed under and subject to the repealed Act and his term in that office shall be deemed to have commenced on the date on which he purportedly commenced to hold office pursuant to that nomination and appointment.

Schedule

[Section 5]

Provisions as to Board

1. Chairman

The chairman of the Board shall be the person appointed as a member under section 7(1)(a).

2. Nomination for appointment

- (1) Prior to the first occasion on which an appointment is to be made to an office of member referred to in section 7(1)(c) or section 7(1)(d), and on each occasion thereafter when such an office becomes vacant by the effluxion of time, the Minister shall, in writing, request the body referred to in the appropriate paragraph to submit to him, in writing, a panel containing the names of not fewer than 3 persons willing to act as members of the Board.
- (2) Where a body has been requested, pursuant to paragraph (a), to submit a panel of not fewer than 3 names to the Minister, the Minister —
 - (a) shall, if such a panel is submitted within 21 days of the body receiving the request, nominate one or 2 of the names, as the case requires, of the persons whose names appear on the panel for appointment to the office of member; and
 - (b) may, if default is made within that time in submitting such a panel to him, nominate for appointment to the office of member such person or persons as he thinks fit.

3. Terms of office

- (1) Subject to this item, a member shall hold office for such period not exceeding 3 years as is specified in his instrument of appointment and is eligible for re-appointment.
- (2) The Governor may remove a member appointed —
 - (a) pursuant to section 7(1)(a) if —
 - (i) being the person holding or acting in the office of chief executive officer ² the member ceases to hold or act in that office;

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- (ii) being an officer nominated by the chief executive officer² the nomination of the chief executive officer² of that person is withdrawn;
 - (b) pursuant to section 7(1)(c), if the nomination of the Curtin University of Technology³ of that person as member is withdrawn.
- (3) A member may resign his office at any time by notice in writing delivered to the Minister.

4. Termination of appointment

- (1) This item does not apply to a member appointed pursuant to section 7(1)(a).
- (2) The Governor may terminate the appointment of a member by reason of the misbehaviour, or the physical or mental incapacity, of the member.
- (3) The Governor shall terminate the appointment of a member if that member —
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
 - (b) absents himself, except with the leave of the Board, from 3 consecutive meetings of the Board.

5. Meetings of the Board

- (1) The Board shall hold such meetings as are necessary for the performance of its functions.
- (2) The chairman may convene a meeting of the Board at any time and shall in any event ensure that not more than 6 months elapse between meetings of the Board.
- (3) The chairman shall, on request in writing by the Minister or by 3 members of the Board, convene a meeting of the Board before the expiration of 30 days after the receipt of the request.
- (4) The quorum for a meeting of the Board shall be 4 of the members for the time being holding office.

- (5) The chairman shall preside at all meetings of the Board at which he is present.
- (6) If the chairman is absent from a meeting of the Board the members who are present shall appoint one of their number to preside at that meeting.
- (7) Questions arising at a meeting of the Board shall be determined by a majority of the votes of the members of the Board present and voting.
- (8) The member of the Board presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (9) The Board shall cause to be kept a record of the proceedings of their meetings.
- (10) Subject to this Act, the Board may regulate their own procedure.

6. Remuneration

- (1) A member of the Board shall be entitled to be paid from the funds of the Board such remuneration and to such travelling and other allowances as are determined in his case by the Minister on the recommendation of the Minister for Public Sector Management ⁶.
- (2) Acceptance of or acting in the office of member shall not of itself render the provisions of Part 3 of the *Public Sector Management Act 1994* or any other Act applying to persons as officers of the Public Service applicable to that member or affect or prejudice the application to him of those provisions if they applied to him at the time of the acceptance of or acting in that office.

[Schedule amended by No. 28 of 1984 s. 82; No. 32 of 1994 s. 3(2).]

Notes

- ¹ This is a compilation of the *Occupational Therapists Registration Act 1980* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Occupational Therapists Registration Act 1980</i>	89 of 1980	9 Dec 1980	11 Dec 1981 (see s. 2 and <i>Gazette</i> 11 Dec 1981 p. 5053)
<i>Acts Amendment (Statutory Designations) and Validation Act 1981 s. 4</i>	63 of 1981	13 Oct 1981	13 Oct 1981
<i>Health Legislation Amendment Act 1984 Pt. XVII</i>	28 of 1984	31 May 1984	1 Jul 1984 (see s. 2 and <i>Gazette</i> 15 Jun 1984 p. 1629)
<i>Acts Amendment (Financial provisions of regulatory bodies) Act 1987 s. 3</i>	77 of 1987	26 Nov 1987	1 Jan 1988 (see s. 2)
<i>Acts Amendment (Public Sector Management) Act 1994 s. 3(2)</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
Reprint of the <i>Occupational Therapists Registration Act 1980</i> as at 6 Dec 2002 (includes amendments listed above)			
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 89⁹</i>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80 and 82</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<u>This Act was repealed by the <i>Occupational Therapists Act 2005</i> (No. 42 of 2005) s. 106 as at 1 Aug 2007 (see s. 2 and <i>Gazette</i> 31 Jul 2007 p. 3789)</u>			

- ^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in

this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and Year	Assent	Commencement
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 142 ⁸	59 of 2004	23 Nov 2004	To be proclaimed (see s. 2)
<i>Occupational Therapists Act 2005</i> s. 106 ¹⁰	42 of 2005	19 Dec 2005	To be proclaimed (see s. 2)

- ² Under the *Acts Amendment (Public Service) Act 1987* s. 31(1)(f) a reference in a written law to “Permanent Head” is, unless the contrary intention appears, to be construed as if it had been amended to be a reference to “chief executive officer”. This reference was amended under the *Reprints Act 1984* s. 7(5)(a).
- ³ Formerly referred to the Western Australian Institute of Technology the name of which was changed to the Curtin University of Technology by the *Western Australian Institute of Technology Amendment Act 1986* s. 5. The reference was changed under the *Reprints Act 1984* s. 7(3)(h).
- ⁴ Formerly referred to the *Western Australian Institute of Technology Act 1966* the short title of which was changed to the *Curtin University of Technology Act 1966* by the *Western Australian Institute of Technology Amendment Act 1986* s. 11. The reference was changed under the *Reprints Act 1984* s. 7(3)(gb).
- ⁵ Repealed by the *Interpretation Act 1984*.
- ⁶ Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to the Public Service Board is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management (as defined in the *Interpretation Act 1984*). This reference was amended under the *Reprints Act 1984* s. 7(5)(a).
- ⁷ This subsection was renumbered under the *Reprints Act 1984* s. 7(5)(c)(ii). Act No. 74 of 2003 s. 88 which came into operation after that renumbering sought to make the same change.
- ⁸ On the date as at which this compilation was prepared, the *Courts Legislation Amendment and Repeal Act 2004* s. 142, which gives effect to Sch. 2, had not come into operation. It reads as follows:

“

142. Other amendments to various Acts

Each Act listed in Schedule 2 is amended as set out in that Schedule immediately below the short title of the Act.

”.

Schedule 2 cl. 35 reads as follows:

“

Schedule 2 — Other Amendments to Acts

35. Occupational Therapists Registration Act 1980

s. 33(2)	In each provision delete “Local Court” and insert instead
s. 33(3)	— “ Magistrates Court ”.
s. 33(4)	Delete “Local Court hearing” and insert instead — “ Magistrates Court on hearing ”.

”.

⁹ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

¹⁰ On the date as at which this compilation was prepared, the *Occupational Therapists Act 2005* s. 106 had not come into operation. It reads as follows:

“

106. Occupational Therapists Registration Act 1980 repealed

The Occupational Therapists Registration Act 1980 is repealed.

”.