

1994

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

PSYCHOLOGISTS BILL 1994

EXPLANATORY MEMORANDUM

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Terry Connolly MLA

PSYCHOLOGISTS BILL 1994

The Psychologists Bill 1994 provides for the regulation of the practise of psychology in the Territory. This Bill provides for the registration of psychologists which is consistent with the approach adopted in other States.

The main features of the Bill are as follows:

- . the establishment of a Psychologists Board to administer the registration of psychologists and to keep a Register of Psychologists.
- . procedures for registering appropriately qualified persons as psychologists including registration under the mutual recognition arrangements with other participating Australian jurisdictions;
- . procedures for taking disciplinary action in respect of a registered psychologist where a psychologist engages in certain kinds of conduct; and
- . a mechanism for the review of decisions of the Board in relation to registration, impairment and disciplinary matters.

The costs of administering this legislation will be met from within existing resources.

Details of the Bill are as follows.

PART I - PRELIMINARY

This Part deals with the formal matters of citation, commencement and interpretation of the Bill.

Clause 1 provides for the citation of the Bill once enacted.

Clause 2 provides for the commencement of the Act.

Clause 3 is the interpretation section of the Act.

Clause 4 is also an interpretative provision. The notion of competence to practise psychology is provided as a pre-condition to registration under subclause 15(1) and as one of the grounds for suspension or cancellation of registration under clause 33.

Clause 5 is another interpretative provision. The clause specifies the circumstances in which a person shall be taken to suffer from an impairment for the purposes of the Act. The notion of impairment is relevant to whether conditions need to be placed on a person's registration as a psychologist under clause 12 of the Bill.

PART II - ADMINISTRATION

This Part establishes the Psychologists Board and sets out the manner in which the Board will be constituted. This Part should be read in conjunction with the *Health Professions Boards (Procedures) Act 1981*.

Clause 6 establishes the Psychologists Board.

Clause 7 provides that the Board is to consist of seven members. The Chairperson and five other members will be registered psychologists and the fifth member must be a person who is not entitled to be registered by a Board within the meaning of the *Health Professions Boards (Procedures) Act 1981*. The specific reference to the *Dental Technicians and Dental Prosthetists Act 1988* in subparagraph 7(1)(b)(i) is included as the Dental Technicians and Dental Prosthetists Board under that Act is not covered by the *Health Professions Boards (Procedures) Act 1981*. The criteria in paragraph 7(1)(b) are intended to ensure that the member is a "community" member.

PART III - REGISTRATION

Part III sets out the various methods by which a person may be registered as a psychologist in the Territory. Registration will be on the basis of a person's qualifications and training or on the basis of registration as a psychologist in another jurisdiction. In the latter case the person is entitled to registration under the *Mutual Recognition Act 1992* of the Commonwealth (the Mutual Recognition Act). The operation of the Mutual Recognition Act is such that registration on the basis of

qualifications will be consistent with other States registration requirements because of the "lowest common denominator" effect of that Act. There is also provision for restricted registration in certain limited circumstances. This Part also specifies the administrative arrangements for registration.

Clause 8 provides for registration of persons as psychologists on the basis of their qualifications and training. Where the person has obtained qualifications outside Australia then the Board may require further criteria to be satisfied before granting a person registration under this provision. The criteria in clause 8 contemplate that a person will need to have a period of supervised experience in the practice of psychology before being entitled to unconditional registration.

Clause 9 provides for registration on the basis of the Mutual Recognition Act. Any person who is registered as a psychologist in another State is entitled to registration in the Territory under this clause. A person who is registered under this section will be registered on the same basis as they are registered in the other State. That is, if there are any conditions on the person's registration then those conditions will become conditions on their registration in the Territory.

Clause 10 provides the Board with a discretion to register a person for a specified purpose where that person may not otherwise be entitled to registration under the Act. This clause could be used, for example, to register a person for the purposes of enabling the person to undertake a period of supervised practice as required by clause 8.

Clause 11 provides for interim registration on the basis that a person would be otherwise entitled to registration under clause 8. This clause allows for interim registration where there is a delay before the Board convenes to consider an application or where the applicant has completed a relevant course referred to in paragraph 8(1)(a) but the award or degree has not yet been conferred.

Clause 12 provides that the Board may impose conditions on a person's registration as a psychologist if the person is suffering from an impairment. This clause should be read in conjunction with clause 5 of the Bill. The Board may also alter or remove conditions under this provision if satisfied

that the person no longer suffers from the impairment or if the impairment has lessened.

Clause 13 provides that the Board may refuse to register a person as a psychologist if the person has been convicted of certain offences. This provision does not apply where the applicant is seeking registration under the Mutual Recognition Act on the basis that if the offence were such as to warrant refusal of registration then this would have occurred in the State or Territory in which the person is already registered.

Clause 14 provides that the Board may refuse to register a person who has been deregistered for misconduct or physical or mental incapacity in another State or Territory or a place outside Australia. Again, this provision does not apply where a person is seeking registration under the Mutual Recognition Act.

Clause 15 provides that the Board may not register a person as a psychologist unless satisfied that the person is competent to practise psychology and is of good character. This clause does not apply to applications for registration under the Mutual Recognition Act.

Clause 16 puts a restriction on applications for re-registration. The effect of clause 16 is that an application for re-registration may only be made on the grounds that there has been a change in circumstances since the cancellation or suspension such as would warrant re-registration (clause 40). Cancellation of registration under subclause 26(2) or clause 31 and suspension of registration under subclause 38(2) have been excluded from this provision as those provisions have specific re-registration procedures. The provision also does not apply to registration under the Mutual Recognition Act.

Clause 17 provides for the manner in which applications for registration may be made.

Clause 18 requires the Board to consider all applications for registration and either register an applicant unconditionally, register the applicant subject to conditions or refuse to register the applicant. A decision of the Board to register the applicant subject to conditions or to refuse to register the

applicant is subject to review by the Administrative Appeals Tribunal under the provisions of clause 48.

Clause 19 provides that the Board shall register an applicant under clause 17 provided they comply with the provisions of clause 17 and appear personally before the Board or a person nominated by the Board if required to do so.

Clause 20 provides for the payment of a fee where a person is registered in the Territory under the Mutual Recognition Act. Such a person is entitled to registration because of the operation of the Mutual Recognition Act and clause 9.

Clause 21 provides for the type of conditions that the Board may impose on the registration of a person as a psychologist.

Clause 22 provides for a Register of Psychologists to be kept by the Board. The Register may be kept by electronic means.

Clause 23 sets out the details that are to be entered in the Register concerning the registration of a person as a psychologist.

Clause 24 provides for the Board to amend the Register where details on the Register are no longer correct. Where such alterations are made at the request of a person a determined fee must be paid.

Clause 25 requires an annual fee to be paid by persons registered as psychologists under the Act.

Clause 26 provides for the cancellation of the registration of a psychologist who does not pay the annual fee by the due date specified in clause 25.

Clause 27 sets out the entitlement of a person to re-registration if they have been removed from the Register for non-payment of the annual fee.

Clause 28 provides that the Board will issue a certificate of registration to persons registered as psychologists under the Act. The certificate of registration is evidence that the psychologist was registered on the date specified. As a result of the evidentiary value of the registration certificate

the provision also specifies procedures for alterations to the details on the certificate and for the surrender of the certificate where a person's registration has been suspended or cancelled. It also sets a penalty for the failure of a person to surrender their certificate of registration where requested to do so by the Board.

Clause 29 requires a registered psychologist to notify the Board where a change of address occurs which is different from the one shown in the Register. It also sets a penalty for failure of the person to do so.

PART IV - THE CONDUCT OF THE PRACTICE OF PODIATRY

Clause 30 provides the means by which it may be established when a person ceases to be a registered psychologist.

Clause 31 provides for the cancellation of a person's registration as a psychologist where the person's registration is cancelled for disciplinary reasons under a law of a State or another Territory or under a law of a place outside Australia. This clause is complementary to clause 14. The provision differentiates between de-registration under a State or Territory law and a law of a place outside Australian because of the weight that is given to the mutual recognition arrangements between the States and Territories.

Clause 32 is similar to clause 31. It provides for the imposition of conditions where conditions are imposed on a person's registration outside the Territory. Again, there is a differential treatment to conditions that are imposed on registration in a State or another Territory and conditions that are imposed on registration in a place outside Australia.

Clause 33 sets out grounds for the Board to cancel or suspend the registration of a person under the Act. These grounds are related to matters of fraud, withdrawal of qualification, convictions for an offence, inappropriate behaviour and competence.

Clause 34 provides that the Board may take certain actions where the mental or physical condition of a person renders her or him unfit to practise psychology. The Board may cancel or suspend the registration of such a person or the Board may simply make an order that the person not perform

certain psychology services. Clause 34 also has a mechanism for making orders that a psychologist not do certain things and for reviewing any such orders.

Clause 35 provides that where a person whose registration is suspended is convicted of the offence against section 42 then the Board may, in addition to any penalty that may be imposed under clause 42, cancel the person's registration or impose a further period of suspension. This clause needs to be read in conjunction with both clause 41 and 42. Clause 41 provides that a person whose registration has been suspended is deemed not to be registered during the period of the suspension. Clause 42 establishes the offences relating to practising psychology when the person is not a registered psychologist. The effect of clause 41 is to bring a person whose registration has been suspended under the offence provisions in clause 42.

Clause 36 specifies the disciplinary and remedial powers of the Board in relation to the conduct of a registered psychologist. These powers are additional to the powers to cancel or suspend a psychologists registration.

Clause 37 gives the Board a power to impose fines on a psychologist where the psychologist has failed to comply with an order of the Board under clause 36. The power to impose a fine is not available where a court has already imposed a penalty on the person. The Board has powers to suspend or cancel a person's registration where the fine is not paid in accordance with this clause.

Clause 38 requires the Board to hold an inquiry before taking any disciplinary action in respect of a person's registration as a psychologist. The procedures for inquiries are specified in the *Health Professions Boards (Procedures) Act 1981*.

Clause 39 provides for the publication of a notice in the Gazette of a decision of the Board (or of the Administrative Appeals Tribunal where the Tribunal has reviewed a decision of the Board) in certain circumstances.

Clause 40 places a restriction on applications for re-registration where a person was de-registered. Except for de-registration under the specified provisions, a person may only apply for re-registration on the basis of a specified change in circumstances such as would justify the re-registration.

Clause 41 provides that a person whose registration has been suspended is deemed not to be registered. This clause should be read in conjunction with clause 42.

Clause 42 establishes the offences related to practising psychology while not a registered psychologist.

Clause 43 prevents a person from advertising contrary to section 42.

Clause 44 extends the effect of section 42 to companies that provide psychology services.

Clause 45 provides that fees for a psychology service may not be recovered unless the person seeking to recover the fees has complied with clause 45.

Clause 46 provides a process for the Board to review an account for fees for a psychology service which has been issued under clause 45.

Clause 47 provides that where a registered psychologist dies then the executors of the estate of the psychologist may continue the business of the psychologist for 6 months or, with the approval of the Board, for a longer period of time.

PART V - APPEALS

This Part provides for appeals to the Administrative Appeals Tribunal against decisions of the Board under the Act. These are standard appeal provisions and should be read in conjunction with the *Administrative Appeals Tribunal Act 1989*.

Clause 48 sets out those decisions of the Board which may be reviewed by the Administrative Appeals Tribunal.

Clause 49 provides for the notification of decisions to the person affected by the decision.

Clause 50 provides that the contents of the notice referred to in clause 49 must comply with the Code of Practice in force under the *Administrative Appeals Tribunal Act 1989*.

PART VI - MISCELLANEOUS

Clause 51 provides for a person to inspect an entry in the Register of Psychologists or to obtain a certified copy of an entry in the Register on payment of a fee. It also requires the Board to provide a certified copy of an entry in the Register to another registration authority without payment.

Clause 52 requires the Board to publish annually a list of psychologists registered in the Territory.

Clause 53 is a standard evidentiary provision to establish the state of mind of person or a body corporate in relation to offences under the Act.

Clause 54 provides that where an offence is committed by a body corporate then the court may impose a maximum pecuniary penalty that is five times that is otherwise provided for the offence in the Act.

Clause 54 is a standard provision for the Minister to determine fees for the purposes of the Act.

Clause 55 is a regulation making power for the purposes of the Act.

PART VII - TRANSITIONAL

This Part provides for the appointment of the first Board members and for the registration of psychologists who might not otherwise be entitled to registration under clause 8.

Clause 57 provides a six month delay in the operation of the offence provisions for persons who are currently practising psychology. This provision is designed to allow psychologists who are currently practising in the Territory adequate time to become registered. Clause 57 also provides for a special registration process where these persons may not meet the registration requirements in Part III of the Act. This recognises, for example, that there are persons who may currently be practising psychology who do

not hold qualifications which would entitle them to registration under the provisions of clause 8. Notwithstanding this, those persons may be quite competent to practice psychology and there is no reason why they should be denied the right to continue to practice psychology. The Board, however, may impose such conditions on a person's registration under these provisions as it considers appropriate.

Clause 58 provides for review of decisions of the Board under clause 57 to refuse to register a person or to impose conditions on the registration of a person under the provisions of clause 57.

Clause 59 provides a means by which the first Board members may be appointed. Subclause 7(2) requires that members referred to in subclause 7(1)(a) to be registered psychologists. Given that this is a new Act there are no psychologists registered under the Act and this transitional provision provides the mechanism for appointing the first Board members notwithstanding that they are not registered under the Act. The provision also gives the Minister power to remove from office a person who is appointed to the Board under subsection 59(1) if the person fails to gain registration under the Act within six months.