

1994

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

PHYSIOTHERAPISTS (AMENDMENT) BILL 1994

EXPLANATORY MEMORANDUM

Circulated by authority of the Minister for Health

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Outline

The *Physiotherapists (Amendment) Bill 1994* ("the Bill") amends the *Physiotherapists Registration Act 1977* ("the Act") for the purpose of ensuring that the registration and certain other provisions of the Act are consistent with the requirements for registration of physiotherapists as recommended by the Australian Health Ministers' Advisory Council (AHMAC) and agreed to by the Australian Health Ministers' Conference and is one of a series of Bills to amend the ACT's legislation regulating health professions for a similar purpose.

The Physiotherapists Registration Act 1977

The Act regulates the registration of persons as physiotherapists and, in particular, Parts III and IV set out the qualifications and requirements for registration as a physiotherapist and provide that disciplinary action may be taken by the Physiotherapists Board established under Part II of the Act in respect of the conduct of a registered physiotherapist.

The Physiotherapists (Amendment) Bill 1994

The Bill amends the Act to enable a person to be registered as a physiotherapist, according to the qualifications held by the person, and to otherwise ensure that the provisions relating to registration of physiotherapists and disciplinary action which may be taken under the Act comply with the approach to these matters which has been agreed between the States and Territories.

In particular the Bill recognises the entitlement of a person who is registered as a physiotherapist in a State or another Territory to registration in the ACT and provides for conditions which may be imposed upon a physiotherapist's registration in another jurisdiction or disciplinary action taken against a physiotherapist in another jurisdiction to be applied in respect of the person's registration in the Territory.

These provisions are intended to be consistent with the mutual recognition principle relating to occupations as set out in section 17 of the Commonwealth *Mutual Recognition Act 1992*.

The application of that principle to the Territory and to other jurisdictions has given rise to the desirability of adopting agreed minimum requirements for registration as a physiotherapist. Unless all jurisdictions where mutual recognition applies have the same standard for registration of a person as a physiotherapist, a jurisdiction with a lower standard will provide a means for a person who satisfies that standard, but not the higher standards required in other jurisdictions, to gain registration in those other jurisdictions under the mutual recognition principle.

Financial implications

There are no financial implications arising from the Bill.

Details of the Bill are included in the Attachment.

PHYSIOTHERAPISTS (AMENDMENT) BILL 1993

Explanatory Memorandum

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MAIN AMENDMENTS

Clause 7- Repeal of Part III and insertion of new registration provisions

Clause 7 repeals Part III of the Act dealing with registration of physiotherapists and inserts proposed new sections 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 dealing with requirements for registration as a physiotherapist, including registration procedure, payment of an annual fee and the certificate of registration.

Registration based on qualifications and training

New section 6 deals with the requirements for registration as a physiotherapist where the applicant relies upon his or her qualifications and training.

New section 6 entitles a person to registration as a physiotherapist if he or she -

- is a graduate of a course of education or training in physiotherapy offered by an Australian institution (being a course that is accredited by the Board or by a registration authority of a State or another Territory) and has undertaken such further education or training (up to a maximum of 6 months) as the Board determines; or

- has completed a course of education or training (being a course substantially equivalent to an accredited Australian course) in a place outside Australia that qualifies the person to practise in that place and has undertaken such further education or training, gained such experience in practising physiotherapy (up to a maximum of 12 months) as the Board determines and passed such examinations as the Board requires.

Registration pursuant to new section 6 is unconditional registration.

Registration under mutual recognition principle

New section 7 entitles a person who is registered as a physiotherapist in a State or another Territory that is a participating jurisdiction within the meaning of the Mutual Recognition Act, which is defined by the insertion in section 3 of the Act of

a new definition to mean the Commonwealth *Mutual Recognition Act 1992*, to registration as a physiotherapist under the Act.

New subsection 7(2) entitles such a person to unconditional registration under the Act where that person's registration in the other State or Territory is unconditional.

New subsection 7(3) qualifies the right of such a person to be registered under the Act by restricting registration under the Act to registration subject to the same conditions (if any) as apply to the person's registration in the other jurisdiction where the person is registered.

Registration at the discretion of the Board

New section 8 provides the Board with a discretion to register a person, in a range of circumstances, notwithstanding that the person is not entitled to registration pursuant to **new sections 6 or 7**.

New subsection 8(1) allows the Board to register a person who is a graduate of a course in physiotherapy, other than an accredited or approved course, for the purpose of enabling the person to undertake a course of education or training approved by the Board or to gain experience in practising physiotherapy.

New subsection 8(2) enables the Board to register a person for the purpose of enabling an unmet area of need to be met. The Board may only register a person pursuant to this provision where the Board is satisfied that the person has suitable qualifications and experience to practise in the unmet area of need.

New subsection 8(3) enables the Board to register a person for the purpose of enabling the person to fill a teaching or research position provided that the person has the qualifications and experience that the Board considers appropriate for the purpose and the person's application is supported, in writing, by the institution by which it is proposed that the person be engaged in the teaching or research position.

New subsection 8(4) enables the Board to register a person as a physiotherapist, on a temporary basis, where the Board is satisfied that it is in the public interest to do so.

New subsection 8(5) provides that the Board may impose such conditions upon registration under this section as the Board considers appropriate.

Interim registration

New section 9 provides for the interim registration of an applicant for registration.

New subsection 9(1) enables the interim registration of an applicant -

- . in the case of a person entitled to registration under **new section 6**, where it is not practicable to wait for the Board to consider the application; or
- . where a person would be entitled to registration under **new section 6** but for the fact that a degree or award to which the person is entitled has not yet been conferred or granted by the institution concerned.

New subsection 9(2) enables a person authorised by the Board to grant interim registration to an applicant for registration, on payment of the determined fee and in accordance with **new section 9**.

New subsection 9(3) provides that interim registration remains in force until the person to whom it is granted is given written notice that -

- . registration has been granted;
- . registration has been refused; or
- . the interim registration has been cancelled.

New subsection 9(4) gives the Board the discretion to cancel a person's interim registration for any reason it considers proper and requires the Board to immediately notify a person, in writing, of the cancellation of his or her interim registration.

The effect of **new subsection 9(5)** is that a person who holds interim registration is taken to be a registered physiotherapist.

Conditions of registration in cases of impairment

New section 10 deals with conditions which may be imposed upon the registration of a person as a physiotherapist where the person suffers from an impairment. The term impairment is defined in **new section 3B** to encompass physical or mental impairment, a disability or condition or disorder which detrimentally affects, or is likely to detrimentally affect, a person's physical or mental capacity to practise

physiotherapy, and it includes habitual drunkenness or addiction to a deleterious drug.

New section 10 enables the Board to impose conditions upon a person's registration where the Board is satisfied that the person suffers from an impairment and the conditions are reasonably required having regard to the impairment.

Refusal of registration where applicant convicted of offence

New section 11 gives the Board a discretion to refuse to register an applicant for registration if the applicant has been convicted of an offence in the Territory or convicted in a court elsewhere of an act or omission which, had it taken place in the Territory, would have constituted an offence, where the Board is of the opinion that the conviction renders the person unfit, in the public interest, to practise physiotherapy.

New subsection 11(2) requires the Board to have regard to the nature of the offence and the circumstances in which it was committed in making its decision.

In order to be consistent with the provisions of subsection 23(1) of the Mutual Recognition Act, relating to refusal of registration, **new subsection 11(3)** specifies that **new subsection 11(1)** does not apply in relation to a person who is entitled to registration pursuant to that Act and who has lodged a notice with the Board pursuant to section 19 of that Act.

Refusal of registration where applicant deregistered outside Territory

New section 12 gives the Board a discretion to refuse to register an applicant for registration if the applicant's name has been removed from a register of physiotherapists kept under the law of another country, State or another Territory for any reason relating to conduct of the physiotherapist or on any basis relating to the person's physical or mental capacity to practise physiotherapy.

In order to be consistent with the provisions of subsection 23(1) of the Mutual Recognition Act, relating to refusal of registration, **new subsection 12(3)** specifies that **new subsection 12(1)** does not apply in relation to a person who is entitled to registration pursuant to that Act and who has lodged a notice with the Board pursuant to section 19 of that Act.

Applicants to be competent and of good character

New section 13 prohibits the Board from registering a person as a physiotherapist unless the person is competent to practise physiotherapy and is of good character.

What is meant by "competent to practise" is set out in **new section 3A**.

However, in order to be consistent with the provisions of subsection 23(1) of the Mutual Recognition Act, relating to refusal of registration, **new subsection 13(2)** specifies that **new subsection 13(1)** does not apply in relation to a person who is entitled to registration pursuant to that Act and who has lodged a notice with the Board pursuant to section 19 of that Act.

Restriction on registration of deregistered or suspended persons

New section 14 restricts the registration of persons whose registration has been cancelled or suspended. A person whose registration has been cancelled other than pursuant to **new subsection 24(2)** for non-payment of a fee or pursuant to **new section 29**, that is, as a consequence of cancellation of the person's registration in another jurisdiction, or whose registration has been suspended other than pursuant to **new subsection 30F(2)**, pending the outcome of an inquiry, may not apply for re-registration or termination of the suspension, other than by applying to the Board pursuant to **new section 30G**.

However, in order to be consistent with the provisions of subsection 23(1) of the Mutual Recognition Act, relating to refusal of registration, **new subsection 14(2)** specifies that **new subsection 14(1)** does not apply in relation to a person who is entitled to registration pursuant to that Act and who has lodged a notice with the Board pursuant to section 19 of that Act.

Applications for registration

New section 15 applies to applications for registration other than applications by persons who are entitled to registration pursuant to the Mutual Recognition Act and who lodge with the Board a notice under section 19 of that Act.

New subsection 15(2) requires that an application for registration be in a form approved by the Board, accompanied by the determined fee and lodged with a person authorised by the Board for the purposes of section 15.

Applications to be considered and determined

New section 16 requires the Board to consider and determine all applications for registration under new section 15 and that the determination of applications is to be by either registering the applicant, unconditionally or otherwise, or by refusing the application.

Registration of applicants

New section 17 requires that where a person who is applying for registration other than under the Mutual Recognition Act applies for registration in accordance with new section 15 and appears personally before the Board or a nominee of the Board, if required to do so, and is entitled to registration in accordance with the Act, the Board shall register the applicant as a physiotherapist.

Fee for registration pursuant to Mutual Recognition Act

New section 18 requires an applicant for registration pursuant to the Mutual Recognition Act to pay the determined fee.

Conditions of registration

New section 19 provides that the conditions which the Board may impose upon registration at the time of registration relate to the duration of registration, the aspects of practice in which the person who is registered may be engaged and such other matters as the Board considers appropriate.

Register of Physiotherapists

New section 20 of the Act requires the Board to keep a register of physiotherapists and provides that the register may be maintained by electronic means.

Particulars to be entered in the Register

New section 21 provides that registration of a physiotherapist is effected by the entering of certain particulars in the Register including particulars relating to the identity and address of the applicant, the qualifications of the applicant, the date of registration and registration number of the applicant and any conditions imposed upon the applicant's registration.

Alteration of the Register

New section 22 requires the Board to remove from the Register the name of a registered physiotherapist who has died or whose registration has been cancelled.

In addition, **new subsection 22(1)** enables the Board to agree to a request from a person to alter particulars in the Register, provided any determined fee in relation to the alteration has been paid.

Annual fee payable

New section 23 provides for the payment of an annual fee by a registered physiotherapist.

New subsection 23(1) requires that on or before 1 September each year a registered physiotherapist pay to the Board the determined fee.

New subsection 23(2) requires that the Board send to each registered physiotherapist, at least one month before the due date for payment, a notice requiring the person to pay the fee by the due date.

New subsection 23(3) precludes a physiotherapist from relying upon a failure of the Board to send such a notice as a basis for avoiding liability to pay the fee by the due date.

Registration to be cancelled for non-payment

New section 24 provides for the cancellation of the registration of a physiotherapist where the physiotherapist fails to pay the annual fee.

New subsection 24(1) requires that where a physiotherapist fails to pay the determined fee by the due date the Board must send the physiotherapist a notice requiring him or her to pay the fee by a day specified in the notice and advising him or her that if the fee is not paid by that later date his or her registration will be cancelled.

New subsection 24(2) requires the Board to cancel the registration of a physiotherapist who fails to pay the fee by the day specified in the notice under **new subsection 24(1)**.

Entitlement to re-registration on payment of fees

New section 25 provides for the re-registration of a person where the person pays the determined fee.

New subsection 25(1) entitles a person whose name has been removed from the Register for failure to pay the annual fee to re-registration if he or she applies in accordance with the requirements of the section and pays the determined fee.

New subsection 25(2) qualifies the entitlement of a person to re-registration by limiting it to a right to re-registration on the same terms and conditions (if any) as applied to the person's registration immediately prior to the removal of the person's name from the Register.

New subsection 25(3) gives the Board a discretion to refuse re-registration to a person where the Board is satisfied that the person is not competent to practise physiotherapy or is not of good character.

New subsection 25(4) provides that a person's right to re-registration under **new section 25** is subject to the other provisions of the Act.

Certificate of registration

New section 26 deals with certificates of registration for physiotherapists.

New subsection 26(1) requires the issue of a certificate of registration, signed by the Chairperson or the Deputy Chairperson, to a person who is registered as a physiotherapist.

New subsection 26(2) requires that the certificate indicate the provision of the Act by virtue of which the certificate holder is entitled to be registered and any conditions to which the person's registration is subject.

New subsection 26(3) provides that a certificate of registration is evidence of the registration as a physiotherapist of the person to whom the certificate is issued.

New subsection 26(4) requires that where a person's certificate of registration has been lost or destroyed the Board must issue a duplicate to the person, provided the determined fee is paid.

New subsection 26(5) requires that the Board request the delivery to the Board of the certificate of a person whose registration as a physiotherapist has been suspended or cancelled.

New subsection 26(6) requires that where a person whose registration has been suspended delivers his or her certificate of registration to the Board the Board retain the certificate for the duration of the suspension and return it to the person at the expiration of the period of suspension unless the person's registration is sooner cancelled.

New subsection 26(7) enables the Board to request in writing that a certificate be delivered to the Board for the purpose of endorsing the certificate to indicate that conditions have been imposed upon the registration of a person or that conditions imposed upon the registration of the person have been varied.

New subsection 26(8) makes it an offence for a person to fail to comply with a request under new subsections 26(5) or (7) and provides a maximum penalty of \$500.

Change of address to be notified

New section 27 requires a registered physiotherapist to notify the Board within one month of either a change of address of the physiotherapist, as shown in the Register, or the establishment or cessation of a professional address in the Territory, by the physiotherapist and provides a penalty of \$500 for failure to comply.

Clause 8 - Insertion

Clause 8 inserts new sections 28, 29, 30, 30A, 30B, 30C, 30D, 30E, 30F, 30G and 30H dealing with matters including cessation of registration, cancellation and suspension of registration, restriction of practising rights on health grounds, cautions, reprimands and fines, inquiries by the Board and re-registration.

Cessation of registration

New section 28 provides that a person ceases to be registered as a physiotherapist -

- when the Board gives the person notice that his or her registration has been cancelled in accordance with the Act; or
- if registration is conditional and the period of registration is specified in the condition - when that period expires.

Deregistration on basis of disciplinary action under foreign law

New section 29 provides for the deregistration of a person where that person's name has been removed from a register of physiotherapists kept under a law of a State or another Territory or a law of another country.

New subsection 29(1) requires that the Board cancel the registration of a person where the Board is satisfied that the name of the person has been removed from a register kept under a law of a State or another Territory for any reason relating to conduct of the person or on any basis relating to the physical or mental capacity of the person to practise physiotherapy.

Where a person whose registration has been cancelled under **new subsection 29(1)** has his or her name restored to the register for the removal from which the person's registration was cancelled and the person applies for re-registration, **new subsection 29(2)** requires the Board to re-register the person.

New subsection 29(3) gives the Board a discretion to cancel the registration of a person where the Board is satisfied that the name of the person has been removed from a register kept under a law of a place outside Australia for any reason relating to conduct of the person or on any basis relating to the physical or mental capacity of the person to practise physiotherapy.

New subsection 29(4) gives the Board a discretion to re-register a person whose registration has been cancelled under **new subsection 29(3)** where the Board is satisfied that it is appropriate in the circumstances to re-register the person.

Imposition of conditions imposed under foreign law

New section 30 provides for the imposition of conditions upon the registration of a person where conditions are imposed upon the registration of that person in another jurisdiction.

New subsection 30(1) requires that where conditions are imposed upon the registration of a person as a physiotherapist under the law of a State or another Territory the Board must impose similar conditions upon the registration of the person under this Act.

New subsection 30(2) gives the Board a discretion to impose conditions similar to those it is satisfied have been imposed upon the registration of a person as a physiotherapist under the law of a place outside Australia.

Cancellation or suspension of registration

New section 30A deals with the cancellation and suspension of registration and gives the Board a discretion to cancel the registration of a person or order the suspension of the person's registration where the Board is satisfied that -

- the registration of the person was obtained by fraud or misrepresentation;
- the physiotherapy qualification of the person has been withdrawn or cancelled by the body which granted it;
- the person has contravened the Act or the regulations;
- the person has contravened a condition of his or her registration;
- the person has been convicted of an offence punishable by imprisonment for more than one year or any offence which in the opinion of the Board renders the person unfit to practise;
- the person is guilty of habitual drunkenness or addiction to a deleterious drug that renders the person unfit to practise as a physiotherapist;
- the person has engaged in conduct, whether in the practise of physiotherapy or not, that adversely affects the practise of physiotherapy by the person;
- the person has engaged in any improper or unethical conduct relating to practising physiotherapy;
- the person has failed to exercise adequate judgment or care in practising physiotherapy; or
- the person is not competent to practise physiotherapy.

Cancellation, suspension or restriction of right of practise on health grounds

New section 30B deals with the cancellation, suspension or restriction of a person's right to practise on health grounds.

New subsection 30B(1) requires that subject to the provisions of **new subsection 30B(2)** the Board must cancel the registration, or order the suspension of, the registration of a person where it is satisfied that the mental or physical condition of the person renders him or her unfit to practise.

New subsection 30B(2) gives the Board the option of, instead of cancelling or suspending the registration of a person, directing by order, that the person not give or perform specified physiotherapy services, where the Board is satisfied that the person remains fit to give or perform some services.

New subsection 30B(3) enables the Board, where it is requested to do so, to review the order and, where it is satisfied that the mental or physical condition of the person in respect of whom the order was made has changed, the Board may amend or remove the order.

New subsection 30B(4) deems a person upon whom the Board has served an order suspending or restricting practising rights and who provides a physiotherapy service in contravention of such an order to be other than a registered physiotherapist.

Practising when registration suspended

New subsection 30C gives the Board a discretion to cancel or order the further suspension of a person whose registration has been suspended and who is convicted of an offence of practising physiotherapy or holding himself or herself out to be a physiotherapist whilst the person is deemed to be other than a registered physiotherapist.

Power of Board to caution, reprimand, etc.

New section 30D provides the Board with a range of disciplinary or counselling options in addition to the options of cancellation, suspension or restriction of practising rights.

It permits the Board to do one or more of the following in relation to the conduct of a registered physiotherapist -

- . caution or reprimand the physiotherapist;
- . order the physiotherapist to seek and undergo medical or psychiatric treatment or counselling;
- . impose appropriate conditions relating to the practise of physiotherapy;
- . order that the physiotherapist seek and follow advice, in relation to the management of his or her physiotherapy practice, from persons specified by the Board;
- . order that the physiotherapist complete specified educational courses.

However, in order to be consistent with the provisions of paragraph 20(4)(b) of the Mutual Recognition Act, new subsection 30D(2) specifies that new paragraph 30D(1)(e), enabling the Board to order a person to complete specified educational courses, does not apply to a person who has obtained registration pursuant to that Act.

Power of Board to impose fines

New section 30E provides the Board with a power to impose a fine upon a registered physiotherapist.

New subsection 30E(1) enables the Board to impose a fine where the Board finds that a person has failed to comply with an order of the Board under new section 30D. However, this power is qualified by the operation of new subsection 30E(2) which prohibits the Board from imposing a fine in respect of conduct for which a court has already imposed a fine or other penalty.

New subsection 30E(3) requires that a fine be paid to the Territory within the time specified in the order imposing the fine and new subsection 30E(4) empowers the Board to cancel or order the suspension of the registration of a person where the person fails to comply with the order imposing the fine.

Inquiry by Board

New section 30F requires that before the Board may -

- cancel a person's registration, other than for failure to pay the annual fee or deregistration consequential upon the person's deregistration in another jurisdiction;
- suspend a person's registration;
- direct that a physiotherapist not provide a specified service; or
- take action under new section 30D,

the Board must first hold an inquiry.

New subsection 30F(2) enables the Board to suspend a person's registration temporarily, pending the holding of an inquiry.

Application for re-registration

New section 30G enables a person whose registration has been cancelled other than because of his or her de-registration in another jurisdiction or for non-payment of an annual fee or suspended otherwise than pending an inquiry by the Board, to apply for re-registration or termination of the suspension, as the case may be, on the ground that by reason of a specified change in circumstances that has occurred since the date of the cancellation or suspension, it is just that the person should be re-registered or his or her suspension should be terminated.

New subsection 30G(2) gives the Board a discretion to order the re-registration of such a person or the termination of the suspension of registration of such a person where the Board is satisfied that by reason of the change of circumstances the person should be re-registered or his or her suspension be terminated, as the case may be.

Effect of suspension and conditions

New section 30H deals with the effect of suspension of registration and the imposition of conditions on registration.

New subsection 30H(1) deems a physiotherapist whose registration is suspended to not be a physiotherapist for the duration of the period of the suspension.

New subsection 30H(2) similarly deems a physiotherapist who provides a physiotherapy service in contravention of a condition imposed on the person's registration to be other than a registered physiotherapist in the provision of that service.

Clause 9 - Persons who may practise physiotherapy

Clause 9 amends section 31, which prohibits a person other than a registered physiotherapist from practising physiotherapy, by increasing the penalty for contravention of that provision from \$1000 to \$5000 or 6 months imprisonment or both.

In addition the clause amends the penalty for a registered physiotherapist who practises other than under the name under which the physiotherapist is registered from \$250 to \$5000.

Clause 10 - Use of title of physiotherapist

Clause 10 amends section 32, which prohibits a person other than a registered physiotherapist from holding himself or herself out as a physiotherapist, by increasing the penalty for contravention of that provision from \$1000 to \$5000 or 6 months imprisonment, or both.

Clause 11 - Insertion of new section - Visiting physiotherapists

Clause 11 inserts new section 32A the effect of which is to exempt, from the application of subsection 31(1) and section 32 of the Act, a person who is visiting the Territory and who provides a physiotherapy service to a member of a visiting sporting body or similar organisation. Such a person will not, therefore, commit an offence by providing that physiotherapy service or holding himself or herself out as a physiotherapist, even though the person is not registered as a physiotherapist under the Act.

However, the new section 32A only applies where the person providing the physiotherapy service does so for the purpose of assisting a member of a visiting sporting team to participate in a sporting activity and if the service could have been lawfully provided by the person in the person's place of residence.

Clause 13 - Repeal of section 35 and substitution of new sections

Clause 13 repeals section 35 of the Act which provides for appeals against particular decisions of the Board. This provision is replaced by new section 35. In addition

new section 35AA is inserted to set out requirements concerning notification of decisions.

Review of decisions

New section 35 enables a person to apply to the ACT Administrative Appeals Tribunal in respect of a decision of the Board to -

- . impose conditions upon registration;
- . cancel interim registration;
- . decline to review conditions imposed on a person's registration;
- . alter, or to refuse to alter or remove conditions on a person's registration;
- . impose new conditions on a person's registration;
- . refuse to register a person;
- . refuse to re-register a person;
- . cancel the registration of a person;
- . suspend the registration of a person;
- . make an order directing a person not to give or perform a specified physiotherapy service;
- . refuse to review, amend or revoke an order directing a person not to give or perform a specified physiotherapy service;
- . amend an order directing a person not to give or perform a specified physiotherapy service;
- . take one of the forms of disciplinary or counselling action under **new section 30D** in relation to a registered physiotherapist;
- . fine a physiotherapist;
- . refuse to terminate the suspension of the registration of a person;
- . certify an amount of fees or remuneration for a physiotherapy service;
- . refuse to extend beyond 6 months the period during which the executor or executrix of a deceased registered physiotherapist's estate or the administrator or administratrix or trustee of such an estate may continue the business of the physiotherapist; and
- . fix a period longer than 6 months during which the executor or executrix of a deceased registered physiotherapist's estate or the administrator or administratrix or trustee of such an estate may continue the business of the physiotherapist.

Notification of decisions

New section 35AA deals with the notification of persons affected by decisions of the Board.

New subsection 35AA(1) requires the Board to give written notice of particular decisions of the Board, in respect of which an appeal may be made to the ACT Administrative Appeals Tribunal, to the person affected by the relevant decision.

New subsection 35AA(2) requires that a notice to a person of a decision referred to in **new subsection 35AA(1)** or under **new subsection 9(4)**, advising of the cancellation of interim registration, or a notice under section 31 of the *Health Professions Boards (Procedures) Act 1981* include a statement advising the person of his or her right to appeal to the Administrative Appeals Tribunal and of his or her rights in respect of the provision of a statement of reasons for the decision to the person.

New subsection 35AA(3) imposes a similar requirement in respect of a notice to a person in relation to a suspension of the person's registration, an order restricting the person's right to practise physiotherapy, or the imposition of a fine.

New subsection 35AA(4) prevents the validity of a decision of the Board dealt with in **new subsections 35AA(2)** and **(3)** from being affected by a failure to comply with the notification requirements of **new section 35AA**.

Clause 14 - Publication of notice of decision

Clause 14 amends section 35A of the Act which enables the publication in the *Gazette* of a notice in respect of decisions of the Board or of the Administrative Appeals Tribunal, where the Tribunal reviews a decision of the Board.

The amendment extends the application of the provision to decisions -

- . directing a physiotherapist to refrain from providing a specified physiotherapy service;
- . imposing conditions on a person's registration;
- . ordering disciplinary or counselling action pursuant to **new section 30D**; and
- . fining a person.

Clause 16 - Insertion

Clause 20 inserts new section 41 enabling the Minister, by notice in writing published in the *Gazette*, to determine fees.

TRANSITIONAL PROVISIONS**Clause 18 - Continuation of registration**

Clause 18 preserves the registration of persons who were registered, immediately before the commencement of the provisions of the Bill, under those provisions of the Act which are repealed by the Bill and replaced with new registration provisions.

Clause 19 - Provisional registration

Clause 19 has the effect of converting the provisional registration held by a person immediately prior to the repeal of section 21 and the commencement of new section 9 to interim registration under new section 9.

Clause 20 - Temporary registration

Clause 20 has the effect of converting the temporary registration held by a person immediately prior to the repeal of section 22 and the commencement of new subsection 8(4) to interim registration under new subsection 8(4).

Clause 21 - Failure to pay annual fee under repealed provisions

Clause 21 has the effect of converting a failure to pay an annual fee under provisions which are repealed by the Bill to a failure to pay under the equivalent new provisions inserted in the Act.

Subclause 21(1) treats a failure to pay the annual fee under section 18, which is repealed by the Bill, as a failure to pay the annual fee under new section 23.

Subclause 21(2) treats the cancellation of a physiotherapist's registration for a failure to pay an annual fee under section 18, which is repealed by the Bill, as a cancellation of registration for failure to pay an annual fee under the

provisions of **new section 24**, thus entitling the person to apply for re-registration under the provisions of **new section 25**.

Clause 22 - Applications for registration

Clause 22 treats an application for registration, under the provisions of the Act repealed by the Bill, which application had not been determined prior to the commencement of the new registration provisions, as an application for registration under the new provisions and authorises any inquiry or investigation for the purposes of the application to be continued or completed.

Clause 23 - Continuation of inquiries and reviews

Subclause 23(1) preserves the application of the provisions of the Act in force immediately prior to the commencement of the amendments effected by the Bill in relation to any inquiry or review commenced under the Act and pending immediately before the commencement of the amendments.

Subclause 23(2) treats an order, decision or determination resulting from an inquiry or review under the Act immediately prior to its amendment by the Bill as an order, decision or determination made under the Act as amended by the Bill and as having effect accordingly.

Clause 24 - Complaints relating to previous conduct

Subclause 24(1) enables the holding of an inquiry under the Act, as amended by the Bill, with respect to conduct or any other matter or thing that occurred before, or partly before or partly after, the commencement of the amendments.

However **subclause 24(2)** qualifies this provision to the effect that such an inquiry may only be held if it is an inquiry which could have been held under the Act prior to the commencement of the amendments.

Clause 25 - Existing orders

Clause 25 converts an order which has effect under a provision of the Act repealed by the Bill to an equivalent order under the Act as amended.

FORMAL, TECHNICAL AND CONSEQUENTIAL PROVISIONS

Clauses 1 and 2 - Short title and commencement

Clauses 1 and 2 are formal provisions dealing with the short title and commencement of the Act, respectively.

Clause 3 - Principal Act

Clause 3 is an interpretation provision which defines the term "Principal Act" to mean the *Physiotherapists Registration Act 1977*.

Clause 4 - Short title

Clause 4 is a consequential provision which amends section 1 of the Act to better reflect the ambit of the Act.

Clause 5 - Interpretation

Clause 5 effects consequential and technical amendments to section 3, an interpretation provision of the Act.

Paragraph 5(a) amends the definition of "Register" consequentially upon the replacement of existing section 13 with new section 20, dealing with the Register;

Paragraph 5(b) modifies the definition of "registered" by removing unnecessary words from the definition;

Paragraph 5(c) omits definitions for a number of terms and ***paragraph 5(d)*** inserts new definitions for a number of these terms in addition to definitions for other terms used in the Bill;

Paragraph 5(e) omits subsection 3(3) of the Act which exempts certain physiotherapists who practise physiotherapy in the performance of their duties as public servants and Defence Force personnel from the application of the Act. This subsection is repealed as the Act binds the Crown in right of the Territory and there is no need for a provision to the effect that the Crown in right of the Commonwealth is not bound by the requirements of the Act.

Paragraph 5(f) amends subsection 3(4) consequentially upon the insertion of a new provision setting out the requirements for registration as a physiotherapist.

Clause 6 - Insertion

Clause 6 is an interpretation provision which inserts new sections 3A and 3B in the Act which, establish what is meant by the expressions "competent to practise" and "to suffer from an impairment", respectively.

Clause 12 - Heading to Part V

Clause 12 omits the heading to Part V of the Act and substitutes a new heading - "Part V - Appeals" to better reflect the ambit of the provisions in that part.

Clause 15 - Inspection of Register

Clause 15 amends section 36 of the Act relating to the inspection of the Register by substituting the term "determined fee" for "prescribed fee" and consistent with modern drafting practice.

Clause 17 - Further amendments

Clause 17 is a technical provision which amends the Act in accordance with the Schedule. The Schedule amends various provisions of the Act -

- to replace references to a "prescribed fee" with references to a "determined fee";
- to remove sexist language; and
- otherwise amend the language used in the Act to reflect modern drafting practice.

Clause 26 - Renumbering of provisions

Clause 26 is a technical provision which effects the renumbering of the Act as amended by the Bill. As a consequence of previous amendments made to the Act and the considerable number of amendments effected by the Bill the numbering of the provisions of the Act has become significantly disrupted. *Clause 26* renumbers

· the sections of the Act in a single series so that they bear consecutive numbers making the provisions of the legislation easier to follow.