

**1994**

**AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY**

**PODIATRISTS BILL 1994**

**EXPLANATORY MEMORANDUM**

**Circulated by Authority of the Minister for Health**

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## **PODIATRISTS BILL 1994**

The Podiatrists Bill 1994 provides for the regulation of the practise of podiatry in the Territory. This Bill provides for the registration of podiatrists which is consistent with the approach adopted in other States.

The main features of the Bill are as follows:

- . the establishment of a Podiatrists Board to administer the registration of podiatrists and to keep a Register of Podiatrists.
- . procedures for registering appropriately qualified persons as podiatrists including registration under the mutual recognition arrangements with other participating Australian jurisdictions;
- . procedures for taking disciplinary action in respect of a registered podiatrist where a podiatrist 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 podiatry 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 podiatrist under clause 12 of the Bill.

## PART II - ADMINISTRATION

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

*Clause 6* establishes the Podiatrists Board.

*Clause 7* provides that the Board is to consist of five members. The Chairperson and three other members will be registered podiatrists 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 paragraph 7(1)(b) is included as the Dental Technicians and Dental Prosthetists Board under that Act is not covered by the *Health Professions Boards (Procedures) Act 1981*.

## PART III - REGISTRATION

Part III sets out the various methods by which a person may be registered as a podiatrist in the Territory. Registration will be on the basis of a person's qualifications and training or on the basis of registration as a podiatrist 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 podiatrists 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.

*Clause 9* provides for registration on the basis of the Mutual Recognition Act. Any person who is registered as a podiatrist 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 with an overseas qualification for the purposes of undertaking further training before the person is given unconditional registration under 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 podiatrist 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 podiatrist 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 podiatrist unless satisfied that the person is competent to practise podiatry 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 39). Cancellation of registration under subclause 28(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 47.

*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 of the registration of a person as a podiatrist.

*Clause 22* provides for a Register of Podiatrists 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 podiatrist.

*Clause 24* provides that the Board will issue a certificate of registration to persons registered as podiatrists under the Act. The certificate of registration is evidence that the podiatrist 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 25* requires a registered podiatrist 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.

*Clause 26* provides for the alteration of the Register as required. Where such alterations are made at the request of a person a determined fee must be paid.

*Clause 27* requires an annual fee to be paid by persons registered as podiatrists under the Act.

*Clause 28* provides for the cancellation of the registration of a podiatrist who does not pay the annual fee by the due date specified in clause 27.

*Clause 29* 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.

#### **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 podiatrist.

*Clause 31* provides for the cancellation of a person's registration as a podiatrist 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 Australia 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 podiatry. 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 podiatry services. Clause 34 also has a mechanism for making orders that a podiatrist 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 41 then the Board may, in addition to the penalty under clause 41, cancel the person's registration or impose a further period of suspension. This clause needs to be read in conjunction with both clause 40 and 41. Clause 40 provides that a person whose registration has been suspended is deemed not to be registered during the period of the suspension. Clause 41 establishes the offences relating to practising podiatry when the person is not a registered podiatrist. The effect of clause 40 is to bring a person whose registration has been suspended under the offence provisions in clause 41.

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

*Clause 37* gives the Board a power to impose fines on a podiatrist where the podiatrist 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 podiatrist. The procedures for inquiries are specified in the *Health Professions Boards (Procedures) Act 1981*.

*Clause 39* 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 40* provides that a person whose registration has been suspended is deemed not to be registered. This clause should be read in conjunction with clause 41.

*Clause 41* establishes the offences related to practising podiatry while not a registered podiatrist. This clause covers the actual provision of podiatry services and the advertising aspects of providing podiatry services.



*Clause 42* extends the effect of section 41 to companies that provide podiatry services.

*Clause 43* provides that fees for a podiatry service may not be recovered unless the person seeking to recover the fees has complied with clause 43.

*Clause 44* provides a process for the Board to review an account for fees for a podiatry service which has been issued under clause 43.

*Clause 45* provides that where a registered podiatrist dies then the executors of the estate of the podiatrist may continue the business of the podiatrist for 6 months or, with the approval of the Board, for a longer period of time.

*Clause 46* 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.

#### **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 47* sets out those decisions of the Board which may be reviewed by the Administrative Appeals Tribunal.

*Clause 48* provides for the notification of decisions to the person affected by the decision.

*Clause 49* provides that the contents of the notice referred to in clause 48 must comply with the Code of Practice in force under the *Administrative Appeals Tribunal Act 1989*.

#### **PART VI - MISCELLANEOUS**

*Clause 50* provides for a person to inspect an entry in of the Register of Podiatrists 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 51* requires the Board to publish annually a list of podiatrists registered in the Territory.

*Clause 52* 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 53* 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 first Board members and for initial registration of podiatrists.

*Clause 56* provides a six month delay in the operation of the offence provisions for persons who have practised podiatry in the Territory for periods amounting to 3 years out of the 5 years immediately preceding the commencement of the Act. This provision is designed to allow podiatrists who are currently practising in the Territory adequate time to become registered. Clause 56 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 podiatry in the Territory who do not hold qualifications which would entitle them to registration under the provisions of clause 8 or under any similar legislation in another State. Notwithstanding this, those persons may be quite competent to practice podiatry and there is no reason why they should be denied the right to practice podiatry. The Board, however, may impose such conditions on a person's registration under these provisions as it considers appropriate.

*Clause 57* provides for review of decisions of the Board under clause 56 to refuse to register a person or to impose conditions on the registration of a person under the provisions of clause 56.

*Clause 58* 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 podiatrists. Given that this is a new Act there are no podiatrists 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 58(1) if the person fails to gain registration under the Act within six months.