

South Australia

Occupational Therapists Act 1974

An Act to provide for the registration of occupational therapists, and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Occupational Therapists Act 1974*.

3—Definitions

In this Act, unless the contrary intention appears—

the Board means the Occupational Therapists Registration Board of South Australia;

medical practitioner means a legally qualified medical practitioner;

member, in relation to the Board, means a member of the Board, and includes the member who is, for the time being, the chairman of the Board;

occupational therapist means a person who initiates, supervises or controls any therapeutic activity of a kind commonly prescribed or recommended by medical practitioners or other professional workers concerned with health care for the amelioration or alleviation of physical or mental disorders or disabilities; and **occupational therapy** has a corresponding meaning;

register means the register kept pursuant to section 9 of this Act;

registered means registered under this Act; and **registration** has a corresponding meaning;

Registrar means the person for the time being holding, or acting in, the office of Registrar.

4—Establishment of the Board

- (1) There shall be a Board entitled the *Occupational Therapists Registration Board of South Australia*.
- (2) The Board—
 - (a) shall be a body corporate with perpetual succession and a common seal; and
 - (b) subject to this Act, shall be capable of acquiring, taking or letting out on lease, holding, selling and otherwise disposing of real and personal property; and
 - (c) may in its corporate name and capacity sue and be sued; and
 - (d) shall have all the powers, duties, functions and authorities conferred, imposed or prescribed by or under this Act.
- (3) Where a document purporting to bear the common seal of the Board is produced before any court or person acting judicially that court or that person, as the case may be, shall, unless the contrary is proved, presume—
 - (a) that the document bears the common seal of the Board; and
 - (b) that the common seal was duly affixed.

5—Membership of the Board

The Board will consist of seven members appointed by the Governor, of whom—

- (a) one, (the presiding officer) will be a legal practitioner nominated by the Minister; and
- (b) one will be a medical practitioner nominated by the Minister; and
- (c) one will be a registered occupational therapist nominated by the Minister; and

- (d) one will be a registered occupational therapist nominated by the Council of the South Australian Institute of Technology; and
- (e) two will be registered occupational therapists nominated by the Australian Association of Occupational Therapists South Australian Division Incorporated; and
- (f) one will be a person, nominated by the Minister, who is neither a legal practitioner, a medical practitioner nor an occupational therapist.

6—Terms and conditions of office

- (1) Subject to this Act, a member of the Board shall be appointed for such term of office, not exceeding three years, as the Governor may determine and specifies in the instrument of his appointment, and, upon the expiration of his term of office, shall be eligible for reappointment.
- (2) If a member of the Board is unable, or fails, for any reason to act in his capacity as a member, the Governor may appoint a suitable person to be a deputy of the member, and such a person, while so acting, shall be deemed to be a member of the Board, and shall have all the powers, authorities, duties and obligations of the member of whom he has been appointed a deputy.
- (3) The Governor may remove a member of the Board from office for—
 - (a) mental or physical incapacity; or
 - (b) neglect of duty; or
 - (c) dishonourable conduct; or
 - (d) any other cause considered sufficient by the Governor.
- (4) The office of a member of the Board shall become vacant if—
 - (a) he dies; or
 - (b) his term of office expires; or
 - (c) he resigns by written notice addressed to the Minister; or
 - (d) he is removed from office by the Governor pursuant to subsection (3) of this section.
- (5) Upon the office of a member of the Board becoming vacant, a person shall be appointed, in accordance with this Act, to the vacant office, but where the office of a member becomes vacant before the expiration of the term for which he was appointed, a person appointed in his place shall be appointed only for the balance of the term of his predecessor.

7—Quorum etc of the Board

- (1) Three members of the Board shall constitute a quorum of the Board, and no business shall be transacted at a meeting unless a quorum is present.
- (2) The presiding officer will preside at meetings of the Board at which he or she is present.
- (3) In the absence of the presiding officer from a meeting of the Board, the members present shall elect one of their number to preside at that meeting.

- (4) Each member present at a meeting of the Board shall be entitled to one vote on any matter arising for decision at that meeting, and the member presiding at the meeting shall, in addition to a deliberative vote, have a second or casting vote.
- (5) A decision carried by a majority of votes cast by the members present at a meeting of the Board shall be a decision of the Board.
- (6) Subject to this Act, the business of the Board shall be conducted in such manner as the Board determines.

8—Validity of acts etc of the Board

- (1) No act or proceeding of the Board shall be invalid on the ground only of any vacancy in the office of any member or of any defect in the appointment of any member and any such act or proceeding shall be as valid and effectual as it would have been if the vacancy or defect had not existed.
- (2) No liability shall attach to a member of the Board or the Registrar for any act or omission by him, or by the Board, 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.

9—Registrar etc

- (1) The Board may appoint a person approved by the Minister to be Registrar of the Board and may appoint, with the approval of the Minister, such other employees as it considers necessary for the administration of this Act.
- (2) The Registrar shall keep a register in which the names of all registered occupational therapists shall be entered.

9A—Delegation

- (1) The Board may delegate any of its functions or powers except those relating to proceedings under section 14.
- (2) A delegation under this section—
 - (a) may be made—
 - (i) to a member of the Board or to the Registrar; or
 - (ii) to a committee established by the Board; and
 - (b) may be made subject to such conditions as the Board thinks fit; and
 - (c) is revocable at will and does not derogate from the power of the Board to act in any matter itself.
- (3) A person to whom functions or powers are delegated under this section and a member of a committee to which functions or powers are delegated under this section are disqualified from acting in pursuance of the delegation in relation to any matter in which the delegate, or the member, has a personal interest or a direct, or indirect, pecuniary interest.

10—Funds etc

- (1) The assets of the Board shall consist of—
 - (a) all money received by way of fees; and

- (b) all gifts, devises and bequests made to the Board; and
 - (c) all money or property which is acquired by the Board for any of the purposes of this Act.
- (2) The Board may apply any of its funds—
- (a) in payment of the expenses incurred by the Board in the administration of this Act, including the remuneration of the members of the Board, the Registrar, and other employees of the Board; and
 - (b) in the furtherance of education and research in occupational therapy; and
 - (c) in the acquisition and maintenance of property which is necessary for the purposes of the Board.
- (3) The Board shall cause proper accounts to be kept of its financial affairs.
- (4) The Auditor-General may at any time, and shall at least once in each year, audit the accounts of the Board.
- (5) The provisions of section 41 of the *Audit Act 1921* shall apply and have effect as if the Board were a public corporation referred to in that section.

11—Entitlement to registration

- (1) A person who proves to the satisfaction of the Board—
- (a) that he is of good character; and
 - (b) that he is competent in the use of the English language; and
 - (c) that he—
 - (i) holds any of the prescribed qualifications for registration; or
 - (ii) was engaged in the practice of occupational therapy in this State for at least thirty-six months (which may be continuous or discontinuous) during the period of four years last preceding the commencement of this Act; or
 - (iii) holds qualifications in occupational therapy obtained in another country, which are recognised by the Board; and
 - (d) that he is competent in the practice of occupational therapy,
- and has paid the prescribed fee to the Board is entitled, subject to this Act, to be registered under this Act as an occupational therapist.
- (2) The Board shall not consider any application in which the applicant seeks to prove to the satisfaction of the Board that he has experience in the practice of occupational therapy in accordance with subparagraph (ii) of paragraph (c) of subsection (1) of this section unless that application is made within six months after the commencement of this Act.

11A—Limited registration for the purpose of gaining experience or teaching etc

- (1) Where a person who applies for registration under this Act does not have the necessary qualifications or does not fulfil the other requirements prescribed by this Act, the Board may register that person in pursuance of this section—
 - (a) in order to enable that person—
 - (i) to acquire the experience and skill required for full registration under this Act; or
 - (ii) to teach or to undertake research or study in South Australia; or
 - (b) if, in its opinion, that person's registration is in the public interest.
- (2) Where an applicant for registration fails to prove to the satisfaction of the Board that he or she is of good character, the Board may register the applicant in pursuance of this section.
- (3) When granting an application referred to in this section the Board may—
 - (a) restrict the places and times at which the applicant may provide occupational therapy; or
 - (b) limit the kind of occupational therapy that the applicant may provide; or
 - (c) limit the period during which the registration will have effect; or
 - (d) impose such other conditions as the Board thinks fit.

11B—Provisional registration

- (1) Where a person has applied for registration under this Act and the Registrar is of the opinion that the Board is likely to grant the application, the Registrar may provisionally register the applicant.
- (2) The provisional registration of a person registered pursuant to subsection (1) remains in force until the Board determines the application.
- (3) The registration by the Board under this Act of a person who was provisionally registered under this section has effect from the commencement of the provisional registration.

12—Renewal of registration

- (1) Subject to this Act, registration shall remain in force until the first day of July next ensuing after the grant of the registration.
- (2) An application for the renewal of registration under this Act must be made in the prescribed form and must be accompanied by the prescribed fee.
- (3) The application should be delivered to the Registrar not later than the last day of May preceding the expiry of the registration but the Board may, if it thinks fit, accept and deal with an application notwithstanding that it is delivered out of time.
- (4) Where due application is made for the renewal of registration, the Board shall renew the registration for a period of twelve months expiring on the first day of July next ensuing after the expiration of the previous period of registration.

13—Registrar's powers of investigation

- (1) The Registrar may of his own motion and shall at the direction of the Board, make any investigation that he or the Board considers necessary or expedient for the purpose of determining any application, or other matter before the Board.
- (2) The Registrar shall make a written report upon every such investigation to the Board.

14—Inquiry by Board as to unprofessional conduct

- (1) A complaint alleging unprofessional conduct—
 - (a) on the part of a registered occupational therapist; or
 - (b) on the part of a person who was at the relevant time a registered occupational therapist,may be laid before the Board by—
 - (c) the Registrar; or
 - (d) the Minister; or
 - (e) the Australian Association of Occupational Therapists South Australian Division Incorporated.
- (2) Where a complaint has been laid under this section, the Board will inquire into the subject matter of the complaint.
- (3) If, after conducting an inquiry under this section, the Board is satisfied that the registered occupational therapist or the person who was formerly registered under this Act is guilty of the unprofessional conduct alleged—
 - (a) it may, in the case of a registered occupational therapist, by order, exercise one or more of the following powers:
 - (i) reprimand the occupational therapist;
 - (ii) order the occupational therapist to pay a fine not exceeding \$5 000;
 - (iii) impose conditions restricting the right of the occupational therapist to practise;
 - (iv) suspend the registration of the occupational therapist by removing his or her name from the register for a period not exceeding one year;
 - (v) cancel the registration of the occupational therapist; or
 - (b) it may, in the case of a person formerly registered under this Act, order that person to pay a fine not exceeding \$5 000.

14A—Incapacity of registered person

Where, on the application of—

- (a) the Registrar; or
- (b) the Minister; or
- (c) the Australian Association of Occupational Therapists South Australian Division Incorporated,

the Board is, after inquiring into the matter, satisfied that the ability of a registered occupational therapist to practise occupational therapy is impaired by mental or physical incapacity to such an extent that it is desirable, in the public interest, that an order be made under this section, the Board may, by order, exercise one or both of the following powers:

- (d) suspend that person's registration until he or she has recovered from the incapacity or for such lesser period as the Board determines; or
- (e) impose conditions restricting that person's right to practise.

14B—Obligation to report unfitness

Where a medical practitioner is treating a patient who is a registered occupational therapist in relation to an illness that, in the opinion of the medical practitioner, has resulted in or is likely to result in mental or physical incapacity that seriously impairs, or may seriously impair, the patient's ability to practise occupational therapy, the medical practitioner shall submit a written report to the Registrar stating—

- (a) the reasons for that opinion; and
- (b) the views of any other medical practitioner in relation to the matter that are known to him or her; and
- (c) all other prescribed information.

Penalty: \$1 000.

14C—Power to require registered person to submit to examination

- (1) For the purpose of inquiring into the mental or physical capacity of a registered occupational therapist, the Board may (without derogation from its other powers under this Act) order the occupational therapist to submit to an examination by a medical practitioner appointed by the Board.
- (2) The Board may suspend the registration of a person who fails to submit to an examination ordered by the Board under subsection (1) and that suspension will remain in force until the occupational therapist submits to the examination.

15—Procedure in relation to inquiry

- (1) The Board shall give to the registered occupational therapist who is the subject of an inquiry and to any person upon whose application an inquiry is to be held, not less than seven days notice of the time and place at which it intends to conduct the inquiry and shall afford any such person a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Board.
- (2) If a person to whom notice has been given pursuant to subsection (1) of this section does not attend at the time and place fixed by the notice, the Board may hold the inquiry in his absence.
- (3) The procedure at an inquiry shall be determined by the Board.
- (4) A registered occupational therapist who is the subject of an inquiry conducted by the Board may be represented by counsel at the inquiry.

16—Powers of Board on hearing complaints

- (1) For the purposes of an inquiry the Board may—
 - (a) by summons signed on behalf of the Board by a member of the Board, require the attendance before the Board of any person whom the Board thinks fit to call before it; and
 - (b) by summons signed on behalf of the Board by a member of the Board, require the production of any books, papers or documents; and
 - (c) inspect any books, papers or documents produced before it, and retain them for such reasonable period as it thinks fit, and make copies of any of them or of any of their contents; and
 - (d) require any person to make an oath or affirmation that he will truly answer all questions put to him by the Board relevant to any matter being inquired into by the Board, which oath or affirmation may be administered by any member of the Board; and
 - (e) require any person appearing before the Board including the person whose conduct is the subject of the inquiry (whether he has been summoned to appear or not) to answer any relevant questions put to him by any member of the Board or by any other person appearing before the Board.
- (2) Subject to subsection (3) of this section, if any person—
 - (a) who has been served with a summons to attend before the Board neglects or fails to attend in obedience to the summons; or
 - (b) who has been served with a summons to produce any books, papers or documents, neglects or fails to comply with the summons; or
 - (c) misbehaves himself before the Board, wilfully insults the Board or any member thereof, or interrupts the proceedings of the Board; or
 - (d) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Board,he shall be guilty of an offence and liable to a penalty not exceeding \$5 000.
- (3) A person shall not be obliged to answer a question put to him by the Board if the answer to that question would tend to incriminate him or to produce any books, papers or documents if their contents would tend to incriminate him.
- (4) In the course of an inquiry the Board may—
 - (a) receive in evidence any transcript of evidence in proceedings before a court and draw any conclusions of fact therefrom that it considers proper; or
 - (b) adopt, as in its discretion it considers proper, any findings or judgment of a court that may be relevant to the proceedings.

17—Fines and costs

- (1) The Board may, upon the determination of an inquiry under this Act, make such orders as to costs as the Board thinks just and reasonable.

- (2) Where the Board makes an order for the payment of a fine or costs against a person registered under this Act and the fine or costs are not paid within the time fixed by the Board, the Board may suspend the registration of that person until the fine or costs are paid, or for such period as the Board thinks fit.
- (3) Where the Board has ordered the payment of a fine or costs, the fine or costs shall be recoverable summarily.

18—Appeal

- (1) A right of appeal to the Supreme Court shall lie against any order of the Board made in the exercise or purported exercise of any of its powers or functions under this Act.
- (2) The appeal must be instituted within one month of the making of the order appealed against but the Supreme Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be so instituted.
- (3) The Supreme Court may, on the hearing of the appeal, do one or more of the following, according to the nature of the case:
 - (a) affirm, vary or quash the order appealed against, or substitute, or make in addition, any order that should have been made in the first instance;
 - (b) remit the subject matter of the appeal to the Board for further hearing or consideration;
 - (c) make any further or other order as to costs or any other matter that the case requires.
- (4) The Board shall, if so required by any person against whom an order has been made, state in writing the reasons for its order.
- (5) If the reasons of the Board are not given in writing at the time of making an order and the appellant then requested the Board to state its reasons in writing, the time for instituting the appeal shall run from the time when the appellant receives the written statement of those reasons.

19—Operation of order may be suspended

- (1) Where an order has been made by the Board and the Board or the Supreme Court is satisfied that an appeal against the order has been instituted, it may suspend the operation of the order until the determination of the appeal.
- (2) Where the Board has suspended the operation of an order under subsection (1) of this section the Board may terminate the suspension, and where the Supreme Court has done so, the Supreme Court may terminate the suspension.

19A—Variation of conditions imposed by Board

- (1) The Board and the Supreme Court may, at any time, on application by a registered occupational therapist, vary or revoke a condition imposed by the Board or the Court (as the case requires) under this Act in relation to that person's right to practise.
- (2) The Registrar, the Minister and the Australian Association of Occupational Therapists South Australian Division Incorporated are entitled to appear and be heard on an application under this section.

20—Offences

- (1) After the expiration of the third month next following the commencement of this Act, a person, who is not for the time being a registered occupational therapist, shall not—
 - (a) assume, either alone or in combination with any other words or letters, the name or title of "occupational therapist"; or
 - (b) use any name, title or description likely to cause any person reasonably to believe that he is registered under this Act.

Penalty: \$5 000.

- (2) Nothing in subsection (1) of this section shall be held to prohibit the use of the name or title "student occupational therapist" by any person undergoing a prescribed course of training.

21—Summary proceedings

Proceedings for offences against this Act shall be disposed of summarily.

22—Regulations

The Governor may, upon the recommendation of the Board, make such regulations as he deems necessary or expedient for the purposes of giving effect to the provisions and objects of this Act, and, without limiting the generality of the foregoing, those regulations may—

- (a) prescribe any form for the purposes of this Act; or
- (b) prescribe, and provide for the recovery of, fees for the purposes of this Act; or
- (c) prescribe a code of professional ethics to be observed by all registered occupational therapists; or
- (d) prescribe penalties not exceeding \$2 000 for contravention of, or failure to comply with, any regulation.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes.

Repeal of Act

The *Occupational Therapists Act 1974* was repealed by Sch 1 cl 1 of the *Occupational Therapy Practice Act 2005* on 31.8.2006.

Principal Act and amendments

| Year | No | Title | Assent | Commencement |
|------|-----|-------------------------------------------------------|-----------|---------------------------------------------|
| 1974 | 120 | <i>Occupational Therapists Act 1974</i> | 5.12.1974 | 1.6.1976 (<i>Gazette 27.5.1976 p2754</i>) |
| 1976 | 76 | <i>South Australian Health Commission Act 1976</i> | 2.12.1976 | Sch 1 (Pt 3)—uncommenced |
| 1987 | 26 | <i>Occupational Therapists Act Amendment Act 1987</i> | 23.4.1987 | 2.7.1987 (<i>Gazette 2.7.1987 p2</i>) |

Provisions amended since 3 February 1976

Entries that relate to provisions that have been deleted appear in italics.

| Provision | How varied | Commencement |
|----------------|--------------------------------------------------------------------|--------------|
| s 2 | <i>omitted under Legislation Revision and Publication Act 2002</i> | § |
| s 5 | substituted by 26/1987 s 3 | 2.7.1987 |
| s 7 | | |
| s 7(2) | substituted by 26/1987 s 4(a) | 2.7.1987 |
| s 7(3) | amended by 26/1987 s 4(b) | 2.7.1987 |
| s 8 | | |
| s 8(2) | amended by 26/1987 s 5 | 2.7.1987 |
| s 9A | inserted by 26/1987 s 6 | 2.7.1987 |
| ss 11A and 11B | inserted by 26/1987 s 7 | 2.7.1987 |
| s 14 | substituted by 26/1987 s 8 | 2.7.1987 |
| ss 14A—14C | inserted by 26/1987 s 8 | 2.7.1987 |
| s 15 | | |
| s 15(1) | amended by 26/1987 s 9(a) | 2.7.1987 |
| s 15(4) | substituted by 26/1987 s 9(b) | 2.7.1987 |
| s 16 | | |
| s 16(2) | amended by 26/1987 s 10 | 2.7.1987 |
| s 19A | inserted by 26/1987 s 11 | 2.7.1987 |
| s 20 | | |

| | | |
|---------|-------------------------|----------|
| s 20(1) | amended by 26/1987 s 12 | 2.7.1987 |
| s 22 | amended by 26/1987 s 13 | 2.7.1987 |