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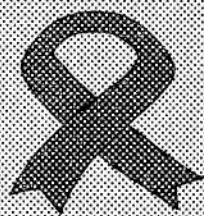
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JUNIE 2000

No. 21292

We all have the power to prevent AIDS

AIDS
affects
us all



A
new
struggle

Prevention is the cure

**AIDS
HELPLINE**

0800 012 322

DEPARTMENT OF HEALTH

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GENERAL NOTICE

NOTICE 2234 OF 2000

DEPARTMENT OF HEALTH

CHIROPRACTORS, HOMEOPATHS AND ALLIED HEALTH SERVICE PROFESSIONS AMENDMENT BILL, 2000

The Minister of Health intends to table the Chiropractors, Homeopaths and Allied Health Service Professions Amendment Bill, 2000 in Parliament during this year.

Interested persons are invited to submit any substantiated comments or representations on the Chiropractors, Homeopaths and Allied Health Service Professions Amendment Bill, 2000 to the Director-General of Health: Private Bag X828, Pretoria, 0001 (for the attention of Prof Gumbi) within one month of the date of publication of this notice

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments

 Words underlined with the solid line indicate insertions in existing enactments

BILL

To amend the Chiropractors, Homoeopaths and Allied Health Service Professions Act, 1982, so as to insert certain definitions, to provide for the establishment of professional boards; to democratically restructure the relationship between the Chiropractors, Homeopaths and Allied Health Service Professions Interim Council and its professional boards, their powers and functions; and for matters relating to the responsibility, accountability, democratisation and transparency of the new Allied Health Professions Council of South Africa and its professional boards.

BE IT ENACTED by Parliament of the Republic of South Africa, as follows: -

Amendment of section 1 of Act 63 of 1982 as amended by section 1 of Act 108 of 1985, section 1 of Act 10 of 1990, section 1 of Act 63 of 1993, sections 1 and 9(b) of Act 40 of 1995

1. Section 1 of the Chiropractors, Homeopaths and Allied Health Service Professions Act, 1982 (hereinafter referred to as "the principal Act), is amended by –

- (a) the insertion before the definition of "annual fees" of the following definition:

"acupuncturist" means a person registered as such under this Act;

- (b) the substitution for the definition of "allied health service profession" of the following definition:

"allied health [service] profession" means [any] the profession of ayurveda, chinese medicine and acupuncture, chiropractic, homoeopathy, massage therapy, naturopathy, osteopathy, phytotherapy, therapeutic aromatherapy, therapeutic reflexology or any other health profession registered in terms of this Act and referred to in section 16;

- (c) the insertion after the definition of "annual fees" of the following definitions:

"ayurveda and chinese medicine professional board" means the professional board for the professions of ayurveda and chinese medicine and acupuncture;

'ayurveda practitioner' means a person registered as such under this Act;

'chairperson' means a person registered as such under this Act;

'chiropractor' means a person registered as such under this Act;

'complementary professions board' means the professional board for the professions of

homoeopathy, naturopathy and phytopathy;

- (d) the substitution for the definition of "council" of the following definition:

"'council' means the **[Chiropractors, Homeopaths and] Allied Health [Service] Professions [Interim] Council of South Africa** established by section 2;";

- (e) the insertion after the definition of "Director-General" of the following definition:

"'educational institution' means any university or technikon established by an Act of Parliament and approved by the council to offer training in any profession for which a register has been established in terms of this Act or any private school registered with the Department of Higher Education and approved by the council to offer such training;

'examining authority' means any person or group of persons approved by the council to conduct examinations in any subject falling under any profession registered in terms of the Act;";

- (f) the substitution in the definition of "former council" for the expression "1995" of the expression "2000";

- (g) the insertion of the following definitions after the definition of "former council":

"'homoeopath' means a person registered as such under this Act;

'impaired' means a mental or physical condition, or the abuse of or the

dependence on chemical substances which affects the competence, attitude, judgement or performance of a student or a person registered in terms of this Act;

'integrated health professions board' means the professional board for the professions of massage therapy, therapeutic aromatherapy and therapeutic reflexology;

'intern' means a person registered as such in terms of section 19A;

'manipulative professions board' means the professional board for the professions of chiropractic and osteopathy;

'massage therapist' means a person registered as such under this Act";

(h) the substitution in the definition of "medical practitioner" for the expression "Medical, Dental and Supplementary Health Services Professions Act," of the expression "Health Professions Act,";

(i) by the insertion after the definition of "Minister" of the following definitions:

"naturopath' means a person registered as such under this Act;

'osteopath' means a person registered as such under this Act;

'phytotherapist' means a person registered as such under this Act";

(j) by the deletion of the definition of "profession";

(k) by the substitution in the definition of "professional board" for the expression "10A(3)" of the expression "10A";

(l) by the substitution in the definition of "regulation" for the expression "section 38" of the expression "this Act";

(m) by the insertion after the definition of "regulation" of the following definitions:

"scheduled substance' means a scheduled substance as defined in section 1 of the Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965);

'rule' means any rule made under this Act;

'student-intern' means a person registered as such in terms of section 19A;

'therapeutic aromatherapist' means a person registered as such under this Act;

'therapeutic reflexologist' means a person registered as such under this Act;";

(n) by the substitution for the definition of "this Act" of the following definition:

"this Act' includes the regulations[.], rules, and any proclamation or order issued or made under this Act;";

(o) by the insertion after the definition of "this Act" of the following definitions;

"unprofessional conduct' means improper, disgraceful, dishonourable or unworthy conduct or conduct which, when regard is had to the profession of a person who is registered in terms of this Act, is improper or disgraceful or dishonourable or unworthy;

'vice-chairperson' means the vice-chairperson of the council."

**Substitution of heading of Chapter 1 of Act 63 of 1982,
as amended by section 2 of Act 63 of 1993 and section
3 of Act 40 of 1995**

2. The following heading is hereby substituted for the heading of Chapter 1 of the principal Act:

**"THE [CHIROPRACTORS, HOMEOPATHS AND]
ALLIED HEALTH [SERVICE] PROFESSIONS
COUNCIL OF SOUTH AFRICA: ESTABLISHMENT,
OBJECTS AND FUNCTIONS".**

**Substitution of section 2 of Act 63 of 1982, as amended
by section 3 of Act 63 of 1993 and section 3 of Act 40 of
1995**

3. The following section is substituted for section 2 of the principal Act:

**"Establishment of Allied Health Professions
Council of South Africa**

2. (1) There is hereby established a juristic person to be known as the **[Chiropractors, Homeopaths and] Allied Health [Service] Professions [Interim] Council of South Africa** and the first meeting shall be convened by the **[Director-General] Registrar.**
- (2) the head office of the council shall be situated in Pretoria."

**Substitution of section 3 of Act 63 of 1982, as amended
by section 4 of Act 40 of 1995 and section 1 of Act 91 of
1997**

4. The following section is hereby substituted for section 3 of the principal Act:

"Objects of the council –

3. The objects of the council shall be -

- (a) to assist in the promotion and protection of the health of the population of the Republic;
- (aA) to govern, administer and set policy relating to the professions registered with the Council;
- (b) to control the practice of the professions and to investigate in accordance with the provisions of this Act complaints relating to the affairs of practitioners and students;
- (c) to control the registration of persons in respect of any profession and to set standards for the training of intending practitioners;
- (d) to advise the Minister on any matter falling within the scope of the Act as it relates [relating] to the professions registered with the council;
- [(e) to make recommendations to the Minister on the constitution of a new council within a period not exceeding 36 months calculated as from the date of commencement of the Chiropractors,**

**Homeopaths and Allied Health Service
Professions Amendment Act, 1995; and]**

- (f) to advise the Minister on the amendment or adaptation of this Act so as to place greater emphasis on professional practice, democracy, transparency, equity, accessibility and community involvement[.];
and
- (g) to communicate to the Minister information on matters of public importance acquired by the council in the course of the performance of its functions under this Act."

Substitution of section 4 of Act 63 of 1982, as amended by section 2 of Act 10 of 1990, section 4 of Act 63 of 1993 and section 5 of Act 40 of 1995

5. The following section is hereby substituted for section 4 of the principal Act:

"General powers of the council -

4. (1) The council may -
- (a) publish the contents of the registers;
 - (b) make extracts from the registers upon payment of the prescribed fees;
 - (c) in **[accordance with the provisions of]** such circumstances as may be prescribed, or where otherwise authorised by this Act, cause any name to be added to the register or to be removed from the register or, upon

- payment of the prescribed fees, cause any such name to be restored thereto;
- (d) in consultation with the relevant professional board appoint examiners and moderators, conduct examinations and award certificates, and charge the prescribed fees in respect of such examinations and the issue of such certificates;
- (e) acquire, hire or dispose of property, borrow money against security of the assets of the council, accept any donation or accept and administer any trust;
- (eA) consult with the relevant professional board on matters pertaining to a registered profession;
- (f) consider any matter affecting the professions and make representations or take such action in connection therewith as the council may deem necessary;
- (g) conduct or arrange courses for the continuing professional development **[supplementary training]** of practitioners **[and render financial assistance in respect of such courses];**
- (gA) approve any clinic established by any practitioner or group of practitioners or university or technikon or other training institution after consultation with the

relevant professional board:

- (h) perform such other functions as may be prescribed, and generally do all such things as it may deem necessary or expedient for the purpose of achieving the objects of this Act.”.

Substitution of section 5 of Act 63 of 1982, as amended by section 6 of Act 40 of 1995 and section 2 of Act 91 of 1997

6. The following section is substituted for section 5 of the principal Act:

“Constitution of council -

5. (1) The council shall consist of the following members namely -

- (a) ten persons elected in the prescribed manner –
 - (i) one person who is registered in terms of the Act as a ayurveda practitioner and who has been elected in the prescribed manner by the ayurveda and chinese medicine professional board from amongst the members of such professional board. This person shall serve on the council and on the professional board concerned;
 - (ii) one person who is registered in

terms of the Act as a practitioner of chinese medicine and acupuncture and who has been elected in the prescribed manner by the ayurveda and chinese medicine professional board from amongst the members of such professional board to serve on the council. This person shall serve on the council and on the professional board concerned;

(iii) one person who is registered in terms of the Act as a chiropractor and who has been elected in the prescribed manner by the manipulative professions board from amongst the members of such professional board to serve on the council. This person shall serve on the council and on the professional board concerned;

(iv) one person who is registered in terms of the Act as a homoeopath and who has been elected in the prescribed manner by the complementary professions board from amongst the members of such professional board to serve on the council. This person shall serve on the council and on the professional board concerned;

(v) one person who is registered in terms of the Act as a massage therapist and who has been elected in the prescribed manner by the integrated health professions board from amongst the members of such professional board to serve on the council. This person shall serve on the council and on the professional board concerned;

(vi) one person who is registered in terms of the Act as a naturopath and who has been elected in the prescribed manner by the complementary professions board from amongst the members of such professional board to serve on the council. This person shall serve on the council and on the professional board concerned;

(vii) one person who is registered in terms of the Act as an osteopath and who has been elected in the prescribed manner by the manipulative professions board from amongst the members of such professional board to serve on the council. This person shall serve on the council and on the professional board concerned;

(viii) one person who is registered in terms of the Act as a phytotherapist and who has been elected in the prescribed manner by the complementary professions board from amongst the members of such professional board to serve on the council. This person shall serve on the council and on the professional board concerned;

(ix) one person who is registered in terms of the Act as a therapeutic aromatherapist and who has been elected in the prescribed manner by the integrated health professions board from amongst the members of such professional board to serve on the council. This person shall serve on the council and on the professional board concerned; and

(x) one person who is registered in terms of the Act as a therapeutic reflexologist and who has been elected in the prescribed manner by the integrated health professions board from amongst the members of such professional board to serve on the council. This person shall

- serve on the council and on the professional board concerned;
- (b) six persons appointed by the Minister—
- (i) one person representing the Department of Health;
 - (ii) one person appointed on account of his or her knowledge of the law;
 - (iii) one community representative to serve on the council and the ayurveda and chinese medicine professional board;
 - (iv) one community representative to serve on the council and the complementary professions board;
 - (v) one community representative to serve on the council and the integrated health professions board; and
 - (vi) one community representative to serve on the council and the manipulative professions board.
- (2) The Minister shall appoint the community representatives referred to in subsection (1)(b)(iii) to (vi) after the registrar has obtained nominations in the prescribed manner.
- (3) After the Minister appointed the community representatives referred to in subsection (1)(b)(iii) to (vi), the Minister shall inform the registrar in writing of the names of such

community representatives.

- (4) The community representatives referred to in subsection (1)(b)(iii) to (vi) should be persons who are not registered under this Act and who have expertise in the fields of health, education and welfare. Each of the community representatives appointed to the council by the Minister shall also serve as the community representative on one of the professional boards established in terms of this Act.
- (5) The names of the members of the council and the date of commencement of their period of office shall be published by the Registrar in the *Gazette* as soon as possible after the constitution of the council.
- (6) Subject to the provisions of section 6, a member of the council shall hold office for a period of five years, but shall be eligible for re-election for one more term.
- (7) Not less than six months prior to the date of expiry of the term of office of the members of the council, the persons and bodies referred to in subsection (1), except the Minister, shall inform the registrar in writing of the names of the persons to be designated or appointed by them in terms of that subsection.
- (8) As soon as possible after the process referred to in subsection (7), the Minister shall inform the registrar of the names of the persons appointed by the Minister in terms

of subsection (1)(b).

- (9) If any of the persons or bodies referred to in subsection (1), except the Minister, fails to make a designation or an appointment or to inform the registrar in terms of subsection (3) of the names of the persons to be designated or appointed by them, the Minister shall make the necessary designation or appointment, and any designation or appointment so made by the Minister shall be deemed to have been properly made in terms of the appropriate paragraph in subsection (1).

Amendment of section 6 of Act 63 of 1982, as amended by section 7 of Act 40 of 1995

7. Section 6 of the principal Act is hereby amended –

- (a) by the substitution for its heading with the following heading:

“Disqualification for appointment as member, vacation of office by members and filling of vacancies of the council”

- (b) in subsection (1) by the substitution for paragraph (b) of the following paragraph:

“(b) who in terms of this Act or the **[Medical, Dental and Supplementary] Health [Service] Professions Act, 1974 (Act No. 56 of 1974)**, is disqualified from practising his or her profession;”;

- (c) by the substitution for subsection (2) of the following subsection:

"(2) A member of the council shall vacate his or her office if –

(a) he or she becomes subject to any disqualification contemplated in subsection (1);

(b) he or she ceases to hold any qualification necessary for his or her appointment;

(c) he or she has been absent from more than two consecutive ordinary meetings of the council without the council's leave;

(d) he or she was appointed by the Minister and tenders his or her resignation in writing to the Minister and the Minister accepts his or her resignation;

(dA) he or she was elected by a professional board and tenders his or her resignation to the council and the council accepts his or her resignation;

(e) he or she becomes a patient or **[President's] State** patient as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973);

(f) he or she is convicted in the Republic or elsewhere of an offence for which he or she is sentenced to imprisonment without the option of a fine; **[or]**

(g) the Minister in the public interest terminates his or her membership; or

(h) he or she becomes impaired to the extent that he or she is unable to carry out his or her duties as a member of the council."

(d) by the substitution for subsection (3) of the following subsection:

"(3) **[Any vacancy on the council arising from a circumstances referred to in subsection (2) or caused by the death of a member shall be filled by appointment by the Minister of a person in the vacancy, and every member appointed in terms of this subsection shall hold office for the unexpired portion of the period of office of the member whose office became vacant]** Vacancies that occur on the council during the five year term of office of the council shall be filled for the remaining period of the term of office of the current council as prescribed."

Substitution of section 7 of Act 63 of 1982

8. The following section is hereby substituted for section 7 of the principal Act:

"Office-bearers

7. (1) The council shall in the prescribed manner elect a **[chairman]** chairperson and **[vice-chairman]** a vice-chairperson.

(2) The **[chairman]** chairperson or **[vice-**

chairman] vice-chairperson of the council may vacate his or her office as **[chairman]** chairperson or **[vice-chairman]** vice-chairperson without terminating his or her membership of the council.

(3) The chairperson and vice-chairperson shall be elected on an annual basis.

(4) The chairperson and vice-chairperson shall be eligible for re-election at such an election: Provided that the chairperson or vice-chairperson may be re-elected for one further term of office."

Amendment of section 8 of Act 63 of 1982

9. Section 8 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

"(a) The **[chairman]** chairperson may at any time convene a special meeting of the council, to be held on such date and at such place as he or she may determine, and he or she shall, upon the written request of the Minister or a written request signed by a majority of the members of the council, convene a special meeting, to be held within 30 days after the date of receipt by him or her of the request, on such date and at such place as he or she may determine."

Substitution of section 10A of Act 63 of 1982

10. The following section is hereby substituted for section

10A of the principal Act:

"Establishment of professional boards

10A. (1) The Minister may, on the recommendation

of the council and by notice in the Gazette, establish a professional board with regard to any profession in respect of which a register is kept in terms of this Act, or with regard to two or more such professions.

(2) The Minister may, on the recommendation of the council, change the professional boards with regard to the professions for which the boards have been established, and establish other professional boards.

(3) Before making a recommendation as contemplated in subsection (2), the council shall consult with any body which is or persons who are in the opinion of the council representative of the majority of persons to be affected by such change or establishment.

(4) Four professional boards are established in terms of this Act –

- (i) ayurveda and chinese medicine professional board which shall consist of 8 members;
- (ii) complementary professions board which shall consist of 8 members;
- (iii) integrated health professions board which shall consist of 8 members; and
- (iv) manipulative professions board which

shall consist of 8 members.

- (5) The Minister may, on the recommendation of the council, make regulations relating to the constitution, functions, functioning and term of office of a professional board.
- (6) Regulations relating to the constitution, functions and functioning of a professional board shall at least provide for –
 - (a) the majority of the members of a professional board to be elected by the persons registered in the profession involved;
 - (b) one person representing the community who is not registered in terms of this Act, to be appointed to each professional board by the Minister and such person to also serve on the council;
 - (c) the establishment by a professional board of such committees as it may deem necessary, each consisting of so many persons appointed by the professional board as such professional board may determine, but including at least one member of the board who shall be the chairperson of such committee;
 - (d) the procedure to be followed for the appointment and election, as the case may be, of members of a professional board;
 - (e) the election of a chairperson and vice-

chairperson by the members of a professional board and the powers and functions of such a chairperson and vice-chairperson; and

(f) the term of office of the members of a professional board.

(7) A professional board established under this section shall, in addition to the performance of any function prescribed under subsection (5), report to the council on any matter affecting the profession in respect of which such professional board has been established and on any matter referred to it by the council.

(8) When a report referred to in subsection (7) is considered by the council, the chairperson of the professional board concerned shall be present at the meeting at which such report is considered by the council, shall have the right to address the council concerning any matter dealt with in such report, shall have the right to vote if any vote is taken at such meeting in respect of such matter and shall have all the rights and duties of a member of the council attending such meeting.

(9) Any professional board established under this section may make representations to the council for the making, amendment or withdrawal of any regulation or rule which shall apply or applies to such professional board or the profession in respect of which

such professional board was established.

Insertions of section 10B, 10C and 10D in Act 63 of 1982

11. The following sections are hereby inserted after section 10A of the principal Act:

"Disqualification for appointment as member, vacation of office by members and filling of vacancies for professional boards

10B.(1) No person -

- (a) who is an unrehabilitated insolvent;
- (b) who in terms of the Health Professions Act, 1974 (Act No. 56 of 1974), is disqualified from practising his or her profession;
- (c) who is not a South African citizen permanently resident in the Republic;

shall be a member of a professional board.

(2) A member of a professional board shall vacate his or her office if -

- (a) he or she becomes subject to any disqualification contemplated in subsection (1);
- (b) he or she ceases to hold any qualification necessary for his or her appointment;
- (c) he or she has now been absent from more than two consecutive ordinary meetings of the professional board

concerned without such professional board's leave;

(d) he or she tenders his or her resignation in writing to the chairperson of the professional board;

(e) he or she becomes a patient or State patient as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973);

(f) he or she is convicted in the Republic or elsewhere of an offence wherefor he or she is sentenced to imprisonment without the option of a fine; or

(g) he or she becomes impaired to the extent that he or she is unable to carry out his or her duties as a member of the professional board.

(3) Every vacancy on a professional board arising from a circumstance referred to in subsection (2) and every vacancy caused by the death of a member, shall be filled as prescribed by regulation and every member appointed in terms of this subsection shall hold office for the unexpired portion of the period for which the vacating member was appointed.

Objects of professional boards

10C (1) The objects of a professional board are -

(a) to advise the council on any matter

falling within the scope of this Act as it relates to any profession falling within the ambit of the professional board in order to support the universal norms and values of the profession, with emphasis on professional practice, democracy, transparency, equity, accessibility and community involvement;

- (b) to consult and liaise with other professional boards on matters affecting the professional board;
- (c) to advise the council in respect of all matters affecting the training of persons in, and the manner of the exercise of the practices pursued in connection with, any profession falling within the ambit of the professional board;
- (d) to promote liaison in the field of education and training contemplated in paragraph (c) and to promote the standards of such training in the Republic and elsewhere;
- (e) to communicate to the council information on matters of public importance acquired by the professional board in the course of the performance of its functions under this Act;
- (f) to maintain and enhance the dignity of the profession and the integrity of the

persons practising the profession; and

- (g) to guide the professions and to protect the public.

General powers of a professional board -

10D (1) A professional board may –

- (a) in such circumstances as may be prescribed, recommend to the council that any name be removed from a register or, upon payment of the prescribed fee, that such name be restored thereto, or that a registered person be suspended from practising his or her profession pending the institution of a formal inquiry in terms of section 22;
- (b) recommend to the council the appointment of examiners and moderators;
- (c) conduct examinations and grant certificates, and charge such fees in respect of such examinations or certificates as may be prescribed;
- (d) subject to prescribed conditions, recommend to the council the approval of training schools;
- (e) report to the council on any matter affecting the profession in respect of which such professional board has been established and on any matter referred to it by the council: Provided

that when such a report is considered by the council, the chairperson of the professional board concerned shall be present at the meeting at which such report is considered by the council, and shall have the right to address the council concerning any matter dealt with in such report, shall have the right to vote if any vote is taken at such meeting in respect of such matter and shall have all the rights and duties of a member of the council attending such meeting;

(f) make representations to, or by the mediation of, the council for the making, amendment or withdrawal of any regulation or rule which shall apply or applies to such professional board or the profession in respect of which such professional board was established; and

(g) perform such other function as may be prescribed, and generally, do all such things as the professional board deems necessary or expedient to achieve the objects of this Act in relation to a profession falling within the ambit of the professional board.

(2) The council shall not be divested of any power so delegated and may amend or set aside any decision of any professional board made in the exercise of any such

power.

Amendment of section 11 of Act 63 of 1982

12. Section 11 of the principal Act is hereby amended by -

- (a) the substitution for subsection (2) of the following subsection:

“(2) The registrar shall act as secretary to the council and of each professional board and shall in that capacity perform, in addition to such functions as may otherwise be assigned to him by or under this Act, such functions as may from time to time be assigned to him by the council.”; and

- (b) the insertion of the following subsection after subsection (2):

“(3) The registrar and staff members shall not be persons registered in professions regulated by this Act.”.

Amendment of section 12 of Act 63 of 1982

13. Section 12 of the principal Act is hereby amended by the addition of the following subsections after subsection (2):

- “(3) The council may, where it deems necessary, make financial grants from its own funds to assist in the financial operation of a professional board if it is convinced that such a professional board cannot be adequately financed by its registered practitioners.

- (4) All professional boards shall submit audited

income and expenditure statements to the council on an annual basis.”.

Amendment of section 15 of Act 63 of 1982, as amended by section 4 of Act 108 of 1985 and section 6 of Act 63 of 1993

14. Section 15 of the principal Act is amended by –

- (a) the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

“Any person who desires to be registered as a **[chiropractor, homeopath or]** practitioner of **[a]** an allied health **[service]** profession in terms of this Act, shall in the prescribed manner apply to the council for registration, and such application shall be accompanied by –“;

- (b) the substitution for subsection (3) of the following subsections:

“(3) **[If the council after consideration of]** The council may request the relevant professional board to consider an application in terms of subsection (1) and if after such investigation and enquiries as [it] the relevant professional board may deem necessary, it is satisfied that the applicant concerned may be registered in terms of this Act, [it] such professional board shall [approve the application] recommend to council the approval or disapproval of such an application.

(3A) If the council is satisfied that an applicant may be registered in terms of the Act, it shall approve the application and the registrar shall thereupon register the applicant by -

- (a) issuing an appropriate certificate of registration to him; and
- (b) entering the prescribed particulars in respect of him in the appropriate register.”;

(c) the substitution for subsection (5) of the following subsection:

“(5) Any person who is registered or deemed to be registered in terms of this Act shall, in the practice of his or her profession, only state particulars of those degrees, diplomas or certificates entered in the appropriate register against his or her name and/or any other qualification recommended by the professional board and approved by the council.”.

Amendment of section 16 of Act 63 of 1982, as amended by section 5 of Act 108 of 1985 and section 7 of Act 63 of 1993

15. The following section is hereby substituted for section 16 of the principal Act:

“Allied health [service] professions

16. (1) The Minister may, at the request of the

council, by notice in the *Gazette* declare the provisions of this Act to be applicable to any profession which has as its object the promotion of health, the treatment, prevention or relief of physical defects, illnesses or deficiencies in man, excluding **[the profession of a chiropractor or homeopath or]** any profession referred to in subsection (1A) or any profession to which the provisions of the Pharmacy Act, 1974 (Act No. 53 of 1974), the **[Medical, Dental and Supplementary] Health [Service] Professions Act, 1974** (Act No. 56 of 1974), the Nursing Act, 1978 (Act No. 50 of 1978), or the Dental Technicians Act, 1979 (Act No. 19 of 1979), apply.

(1A) The provisions of this Act shall apply to –

- (a) the professions of ayurveda, chiropractic and homoeopathy;
- (b) the professions of naturopathy, osteopathy and phytotherapy for which professional registers shall be re-established with effect from the date of implementation of this Act; and
- (c) the professions of Chinese medicine and acupuncture, massage therapy, therapeutic aromatherapy and therapeutic reflexology for which professional registers shall be established with effect from the date of implementation of the Chiropractors, Homoeopaths and Allied Health

Service Professions Amendment Act,
2000.

(2) The Minister may, on the recommendation of the council, by regulation define the scope of any allied health [service] profession by specifying the acts which shall for the purposes of the application of this Act be deemed to be acts pertaining to that profession: Provided that such regulation shall not be made unless the professional board concerned which has been established in terms of section 10A[(3)] in respect of any allied health [service] profession and may in the opinion of the Minister be affected by such regulation, has been given an opportunity of submitting, through the council, representations as to the definition of the scope of the profession concerned: Provided further that if there is a difference of opinion between the council and such professional board as to the definition of the scope of the profession concerned, the council shall mention such fact in its recommendation.”.

(3) Subject to the provisions of the Medicines and Related Substances Control Act, 1965 and subject to the approval of the Medicines Control Council, the Minister may, on the recommendation of the council, by regulation define the access to and availability of medicines relative to the professions registered in terms of this Act.

(4) (a) Subject to the provisions of the Medicines and Related Substances Control Act, 1965, every practitioner whose name has been entered in the register of dispensing practitioners contemplated in subsection (b) shall, on such conditions as the council may, after consultation with the relevant professional board, determine in writing in general or in a particular case, be entitled to personally compound or dispense medicine prescribed by himself or herself or by any other practitioner with whom he or she is in partnership or with whom he or she is associated as principal or assistant or locum tenens, for use by a patient under treatment of such practitioner or of such other practitioner: Provided that he or she shall not be entitled to keep an open shop or pharmacy.

(b) The registrar shall keep a register of practitioners who have the right in terms of this section to dispense scheduled substances in which he or she shall enter, at the direction of the council, the name and such other particulars as the council may determine of a practitioner –

(i) who within three months after the
ent of the

Chiropractors, Homoeopaths and Allied Health Service Professions Amendment Act, 2000, submit proof to the satisfaction of the registrar that at such commencement he or she compounded or dispensed medicine as contemplated in subsection (4)(a) in the practice of his or her profession; or

- (ii) who informs the registrar in the prescribed manner of his or her intention to compound or dispense medicine in the practice of his or her profession as contemplated in subsection (4)(a)

(5) The council may, after an investigation conducted by the council into the activities of a practitioner with regard to the compounding or dispensing of medicine and in consultation with the relevant professional board, direct that the name of any person be removed from the register contemplated in subsection 4(b), or prohibit him or her for a specific period from making use of the right contemplated in subsection (4).

(6) The council may determine fees by regulation to be paid for the entering or re-entering of a name in the register contemplated in subsection (4)(b) and (5)."

Amendment of section 16A of Act 63 of 1982, as amended by section 6 of Act 108 of 1985 and section 93 of Act 88 of 1996

16. The following section is hereby substituted for section 16A of the principal Act:

“Control over training

16A (1) Notwithstanding anything to the contrary in any law contained, no person or educational institution, [excluding a university or technikon established by or under an Act of Parliament], shall offer or provide any education or training [which is intended to qualify any person for the practising of any] in any allied health profession to which the provisions of this Act apply, whether or not such training is intended to lead to registration under this Act in the profession concerned, unless such education or training has been considered and recommended by the relevant professional board and thereafter approved by the council.

(2) Any person or institution wishing to offer or to provide the education or training referred to in subsection (1) shall, before offering or providing such education or training, apply to the council in writing for its approval of such education or training and shall furnish particulars regarding such education or

- training as the council may require. The registrar shall submit such application to the professional board concerned for consideration of the application and to make a recommendation to the council thereon.
- (3) The council may, after consultation with the professional board referred to in subsection (2), grant or refuse any application made in terms of subsection (2) and may, if it has granted such application, prescribe such conditions and requirements as it may deem fit subject to which the education and training in question may be provided.
- (4)
- (4A) Any decision made by the council in terms of subsection (3) shall be final.
- (5) Any person who contravenes or fails to comply with any provision of this section, or any condition or requirement prescribed thereunder, shall be guilty of an offence and liable on conviction to a fine as prescribed **[not exceeding two thousand rand]** or to imprisonment for a period **[not exceeding six months]** or to both such fine and such imprisonment.
- (6) The council may appoint a person to attend at the examinations in any allied health profession regulated in terms of this Act, conducted by any examining authority approved by the council on recommendation of the professional board in terms of subsection (1)."

Amendment of section 16B of Act 63 of 1982, as amended by section 6 of Act 108 of 1985 and section 8 of Act 63 of 1993

17. The following section is hereby substituted for section 16B of the principal Act:

"Prescribing of qualifications

16B (1) Subject to the provisions of subsection (2), the Minister may from time to time, on the recommendation of the council after consultation with the relevant professional board, prescribe the qualifications obtained by virtue of examinations conducted by a university, technikon or other examining authority which, when held singly or conjointly with any other qualification, **[shall]** may entitle any holder thereof to registration under this Act as a **[chiropractor, homeopath or]** practitioner of an allied health **[service]** profession, **[as the case may be]** if he or she has, before or in connection with or after the acquisition of the qualification in question, complied with such conditions or requirements as may be so prescribed.

(2) No qualification obtained by virtue of examinations conducted by a university or other examining authority situated outside the Republic shall be prescribed under this section unless –

- (a) such qualification entitles the holder thereof to practise as a [chiropractor, homeopath or] practitioner of an allied health [service] profession, [as the case may be,] in the country or state in which such university or other examining authority is situated; and
- (b) the council is satisfied that possession of such qualification indicates a standard of professional training not lower than that prescribed in respect of the training of practitioners of [chiropractors, homeopaths, or] allied health [service] professions within the Republic.”.

Amendment of section 16C of Act 63 of 1982, as amended by section 6 of Act 108 of 1985, section 3 of Act 10 of 1990, section 9 of Act 63 of 1993 and section 8 of Act 40 of 1995

18. Section 16C is hereby amended by -

- (a) The substitution for subsections (1) and (2) of the following subsections:

“(1) The council may accept a qualification other than a qualification referred to in section 16B, for the purpose of registration under this subsection, if such qualification, in the opinion of the council, after consultation with the relevant professional board, indicates a satisfactory standard of professional education, and may[,] subject

to the provisions of subsection[s] (2) [and (3)] and section 15(1) and (2), register any person as a [chiropractor, homeopath or] practitioner of an allied health [service] profession who possesses such qualification and who, in the opinion of the council, possesses sufficient professional knowledge and ability and is proficient in at least one of the official languages of the Republic.

(2) A person referred to in subsection (1), if he or she has been granted temporary registration, may only practise as a [chiropractor, homeopath or] practitioner of an allied health [service] profession [as the case may be] as prescribed -

(a) for such period or periods as the council may determine [and before the expiration of which he shall satisfy the council that -

(i)

(ii) he is conversant with the laws of the Republic relating to chiropractic, homeopathy or the practice of an allied health service profession and the practising of [the profession of a chiropractor or homeopath or an allied health profession, as the case may be] ; and

(b) subject to such conditions as the council may determine.”.

(b) by the substitution for subsection (5) of the following subsection:

“(5) If at the expiration of the period referred to in subsection (2)(a), the council is satisfied that a person registered in terms of subsection (1) complies with the requirements of subsection (2)(a)[(ii)], it shall exempt such person from all restrictions imposed in respect of him or her under this section, and if the council is not so satisfied, it shall remove the name of such person from the register.”.

Amendment of section 16D of Act 63 of 1982, as amended by section 6 of Act 108 of 1985.

19. Section 16D of the principal Act is amended by the substitution in subsection (2) for the words “not exceeding R100” of the words “as prescribed by the Minister from time to time.”.

Amendment of section 16E of Act 63 of 1982, as amended by section 6 of Act 108 of 1985 and section 10 of Act 63 of 1993.

20. Section 16E of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) For the purposes of promoting education or training in [chiropractic, homeopathy or] any allied health [service] profession registered in terms of this Act, the council may[,] after

consultation with the professional board concerned and notwithstanding the provisions of this Act, register any person not permanently resident within the Republic in the profession in which he or she gives education or training, for such period as the council may determine.”.

Amendment of section 18 of Act 63 of 1982, as amended by section 7 of Act 108 of 1985 and section 12 of Act 63 of 1993.

21. Section 18 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person who **[desires to be registered]** enrolls as a student in **[chiropractic, homeopathy or]** an allied health **[service]** profession shall in writing apply **[therefor]** to the council for registration as a student, and such application shall be accompanied by the prescribed particulars and registration fee.”.

Insertion of section 19A in Act 63 of 1982

22. The following section is hereby inserted after section 19 of the principal Act:

“Registration of interns –

19A (1) Any person who graduates within or outside the Republic after the date of implementation of this Act in a profession

that has been established in terms of the Act and who wishes to practise such profession in the Republic, shall apply to the council for registration in the prescribed manner.

(2) A person referred to in subsection (1) may, on the recommendation of the professional board concerned, be registered as an intern and on such registration may be required to complete a prescribed internship programme prior to registration as a practitioner of the profession concerned.

(3) The council may, after liaison with a professional board, register a person who has not yet graduated in a profession that has been established in terms of the Act as a student intern and may permit such student to commence with an internship program as prescribed.

(4) A person referred to in subsections (2) and (3) shall not be registered by the council as a practitioner of the profession concerned prior to graduation and completion of the prescribed internship.

(5) The duration, requirements, conditions and rules pertaining to such internship shall be as prescribed.

Amendment of section 21 of Act 63 of 1982, as amended by section 10 of Act 108 of 1985, section 13 of Act 63 of 1993

23. Section 21 is hereby amended by –

(a) the substitution in paragraph (f) in subsection (1) for the word “fraud.” of the word “fraud; or”;

(b) insertion in subsection (1) of the following paragraph after paragraph (f):

“(g) has become mentally or physically impaired
and is unable to practise the profession for which he or she is registered in terms of this Act.”;

(c) the substitution for subsection (5) of the following subsection:

“(5) The council shall not under subsection (1) instruct that the name of any person be removed from any register kept under section **[15(3)(b)] 14** unless the council has consulted with the professional board **[(if any)]** established in respect of the profession concerned.”

Amendment of section 23 of Act 63 of 1982 as amended by section 11 of Act 108 of 1985 and section 14 of Act 63 of 1993

24. Section 23 is hereby amended by –

(a) the substitution for subsection (1) of the following subsections:

“(1) The council may, in respect of **[chiropractors or homeopaths, and a**

professional board may in the case of a practitioner practising an associated health service profession in respect of which such professional board has been established] a practitioner registered in any allied health profession in terms of the Act, institute an inquiry into any written complaint, charge or allegation of [improper or disgraceful] unprofessional conduct against [any] such practitioner.

(1A) The council may refer allegations of such conduct referred to in subsection (1) to the relevant professional board and delegate to such board the right to investigate such complaint and to hold an inquiry in the prescribed manner.

(1B) When requested to hold an inquiry, the professional board concerned may seek information from any person, including the practitioner against whom the complaint, charge or allegation was lodged and shall have the right to investigate the matter fully before holding an inquiry.

(1C) The council or the professional board may on finding the practitioner concerned guilty of such conduct, in the case of the council, impose any of the penalties referred to in section 24(1) or, in the case of a professional board, recommend the imposition of any such penalty in terms of subsection (3): Provided that in the case of a complaint, charge or allegation which

forms or is likely to form the subject of criminal proceedings, the council or the professional board concerned, as the case may be, may postpone the holding of an inquiry until those proceedings have been disposed of."

(b) by the substitution in subsection (3), wherever it appears for the words "improper or disgraceful" of the word "unprofessional";

(c) by the substitution for paragraph (a) of subsection (6) of the following paragraph:

"(a) to the **[chairman]** chairperson of the council shall be deemed to be a reference to the **[chairman]** chairperson of such professional board;"

Amendment of section 24 of Act 63 of 1982 as amended by section 12 of Act 108 of 1985 and section 15 of Act 63 of 1993

25. Section 24 of the principal Act is hereby amended –

(a) by the substitution in subsection (1), wherever it appears in the introduction sentence for the words "improper or disgraceful" of the word "unprofessional";

(b) by the substitution for paragraph (d) in subsection (1) of the following paragraph:

"(d) a fine **[not exceeding R10 000]** as prescribed by the Minister from time to time; or;

(c) by the substitution in subsection (2) for the word "chairman" of the word "chairperson";

- (d) by the substitution for paragraph (a) of subsection (3) of the following paragraph:

"(a) Where the **[The]** council or any committee of the council, **[where any such committee]** or relevant professional board holds an inquiry under powers delegated to it by the council, it may for the purposes of any such inquiry take evidence and may, under the hand of the **[chairman]** chairperson of the council or the **[chairman]** chairperson of any such committee or the secretary of the council, summon any witness and require the production of any book, record, document or article, and may through the **[chairman]** chairperson concerned administer the oath to or accept an affirmation from any witness, and may examine any book, record, document or article which a witness has been so required to produce."

- (e) by the substitution in subparagraph (ii) of paragraph (c) of subsection (3) for the word "chairman" of the word "chairperson";

- (f) by the substitution for the words following subparagraph (iv) of paragraph (c) of subsection (3) of the following words:

"shall be guilty of an offence and on conviction liable to a fine as prescribed by the Minister from time to time, or to imprisonment **[for a period not exceeding three months]**: Provided that a person so summoned shall be entitled to all the

privileges to which a witness subpoenaed to give evidence before a provincial division of the **[Supreme]** High Court is entitled.”

- (g) by the substitution for subsection (4) of the following subsection:

“(4) The **[chairman]** chairperson of the council, where the council itself or a professional board holds any such inquiry, or the **[chairman]** chairperson of any committee of the council holding any such inquiry, may appoint a person with adequate experience in the administration of justice as an assessor at the inquiry to advise the council or the committee concerned, as the case may be, on matters of law, procedure or evidence.”.

- (h) the insertion of the word “and” after the end of paragraph (a) of subsection (7);
- (i) by the substitution in subsection (9) for the words “not exceeding R2 500” of the words “as prescribed by the Minister from time to time” and for the words “improper or disgraceful” of the word “unprofessional”.

Amendment of section 29 of Act 63 of 1982 as amended by section 16 of Act 108 of 1985 and section 18 of Act 63 of 1993

- 26.** Section 29 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) Any rule contemplated in paragraph (a) referring to an allied health **[service]** profession shall only be made after consultation with the professional board concerned **[(if any)]**."

Amendment of section 30 of Act 63 of 1982 as amended by section 17 of Act 108 of 1985

27. Section 30 of the principal Act is hereby amended –

(a) by the substitution for the words following paragraph (b) of subsection (1) of the following words:

"the council shall cause the matter to be investigated and may, if it deems it necessary, refer it to the professional board concerned to hold an inquiry in respect of that practitioner *mutatis mutandis* in accordance with the provisions of section 24 and the regulations made under section 38(1)[(q)](o);

(b) by the substitution for the words preceding paragraph (a) of subsection (2) of the following subsection:

"(2) If the council or professional board concerned, after holding an inquiry under subsection (1), finds that any circumstance referred to in that subsection exists in respect of the practitioner concerned, **[it]** the council may by order –"; and

(c) the substitution in subsection (6) for the words "not exceeding R100" of the words "as prescribed by the Minister from time to time."

Amendment of section 31 of Act 63 of 1982 as amended by section 18 of Act 108 of 1985 and section 19 of Act 63 of 1993

28. The following is hereby substituted for section 31 of the principal Act:

"Offences by unregistered persons, and penalties

- 31.** (1) Subject to the provisions of subsection (2) of this section and section 41, any person who is not registered as a practitioner in a particular profession and who –
- (a) for gain practises any such profession;
 - (b) for gain performs any act specially pertaining to any such profession;
 - (c) pretends, or by any means whatsoever holds himself out, to be any such practitioner, whether or not purporting to be registered; or
 - (d) uses the title of acupuncturist, ayurvedic practitioner, chiropractor, [herbalist], homoeopath, massage therapist, naturopath, osteopath, phytotherapist, therapeutic aromatherapist, therapeutic reflexologist or of any other profession registered in terms of this Act, or any other title or any name, description or symbol indicating, or calculated to lead persons to infer, that he holds the qualifications of [a] an acupuncturist, ayurveda practitioner, chiropractor, [herbalist], homoeopath, massage

therapist, naturopath, osteopath, phytotherapist, therapeutic aromatherapist, therapeutic reflexologist or of any other profession registered in terms of this Act.

shall be guilty of an offence and on conviction liable to a fine **[not exceeding R500]** prescribed by the Minister from time to time or to imprisonment **[for a period not exceeding six months]** or to both **[that]** such fine and **[that]** such imprisonment.”;

- (2) The provisions of subsection (1) shall not prohibit –
- (a) any person exercising a profession to which the provisions of the Pharmacy Act, 1974 (Act No. 53 of 1974), the **[Medical, Dental and Supplementary]** Health **[Service]** Professions Act, 1974 (Act No. 56 of 1974), the Nursing Act, 1978 (Act No. 50 of 1978), or the Dental Technicians Act, 1979 (Act No. 19 of 1979), apply, from performing any act pertaining to his or her profession, as contemplated in the appropriate Act, which may lawfully be performed by him;
 - (b) a **[chiropractor or homeopath]** practitioner in any allied health profession performing any act pertaining to an allied health **[service]** profession, if such act is an act which also pertains to the profession of **[a chiropractor or homeopath, as the case may be]** any of

the allied health professions.

(3) The council after a disciplinary inquiry was held in terms of Chapter 4 of this Act and if the practitioner who has been charged is found guilty of unprofessional conduct, may in addition to any penalty imposed by the council in terms of this section order that the cost to the council or the professional board of conducting such inquiry or such portion thereof as the council may determine shall be paid by the practitioner concerned.

(4) The imposition of a penalty shall have the effect of a civil judgement of the magistrate's court of the district in which the disciplinary inquiry took place."

Amendment of section 32 of Act 63 of 1982 as amended by section 20 of Act 63 of 1993

29 Section 32 of the principal Act is hereby amended –

(a) the substitution for subsection (1) of the following subsection:

"(1) A practitioner or a student who is not registered as a medical practitioner in terms of the Health Professions Act, 1974 (Act No. 56 of 1974) shall not –

(i) pretend, or by any means whatsoever hold himself out, to be a medical practitioner, or make use of the title of medical practitioner or any other title or any name, description or symbol indicating, or

calculated to lead persons to infer, that he or she holds the qualifications of a medical practitioner; or

- (ii) perform any act which does not fall within his or her prescribed scope of practice.”.

- (b) Substitution for subsection (2) of the following subsection:

“(2) A practitioner or student who contravenes any provision of subsection (1), shall be guilty of an offence and on conviction liable to a fine **[not exceeding R500]** as prescribed by the Minister from time to time or to imprisonment **[not exceeding six months]** or to both that fine and that imprisonment.”; and

- (c) by the deletion of subsection (4).

Amendment of section 33 of Act 63 of 1982 as amended by section 19 of Act 108 of 1985

- 30. Section 33 of the principal Act is hereby amended by the insertion at the end of paragraph (c) of the word “and”.

Amendment of section 34 of Act 63 of 1982 as amended by section 20 of Act 108 of 1985

- 31. Section 34 of the principal Act is hereby amended by the insertion of the words “at those proceedings” after the “words” on its mere production”.

Amendment of section 35 of Act 63 of 1982 as amended by section 20 of Act 108 of 1985

32. Section 35 of the principal Act is hereby amended by the substitution in subsection (3) for the words "Medical, Dental and Supplementary Health Service Professions Act" of the words "Health Professions Act"; and

Substitution of section 36 of Act 63 of 1982

33. The following section is hereby substituted for section 36 of the principal Act:

"Limitation of liability

36. The registrar or the council or a committee of the council or a professional board or any member or officer of the council or of a committee of the council or a member of a professional board shall not be liable for any act done in good faith or duly performed under this Act."

Amendment of section 38 of Act 63 of 1982, as amended by section 22 of Act 108 of 1985, section 27 of Act 94 of 1991 and section 21 of Act 63 of 1993

34. Section 38 of the principal Act is hereby amended by the deletion in subsection (4) of the words "not exceeding three months".

Amendment of section 38 of Act 63 of 1982, as amended by section 23 of Act 108 of 1985, section 45 of Act 23 of 1993 and section 94 of Act 88 of 1996

- 35.** Section 38A of the principal Act is hereby amended by the substitution in subsection (2) for the words "section 32 of the Medical Schemes Act, 1967 (Act No. 72 of 1967)" of the words "section 59 of the Medical Schemes Act, 1998 (Act No. 131 of 1998)".

Amendment of section 38B of Act 63 of 1982, as amended by section 22 of Act 63 of 1993

- 36.** Section 38B of the principal Act is hereby amended –

- (a) by the insertion at the end of paragraph (b) of subsection (1) of the word "and";
- (b) the substitution for subsection (2) of the following subsection:

"(2) Any appeal committee referred to in subsection (1), **[shall] may** be appointed by the Minister and consist of –

- (a) a magistrate **[with no fewer than ten years experience as a magistrate,]** who shall be the **[chairman]** chairperson; and

- (b) two practitioners who practise the same profession as the appellant concerned, who have no direct interest in the affairs of the appellant **[or]**, are not in the employment of the appellant and who are not members of the council or professional board

concerned.”.

Amendment of section 41 of Act 63 of 1982

38. Section 41 of the principal Act is hereby amended by the substitution for the words “Medical, Dental and Supplementary Health Service Professions Act” of the words “Health Professions Act”.

Substitution of section 43 of Act 63 of 1982

39. The following section is hereby substituted for section 43 of the principal Act:

“Short title and commencement

43. This Act shall be called the **[Chiropractors, Homeopaths and Allied Health Service Professions Act, 1982]** Allied Health Professions Act, 1982, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.”.

Substitution of long title of Act 63 of 1982

40. The following long title is hereby substituted for the long title of the principal Act:

“ACT

To provide for the control of the practice of **[the professions of chiropractor and]** allied health professions,

and for that purpose to establish [a] an [Chiropractors, Homeopaths and] Allied Health [Service] Professions [Interim] Council and to determine its functions; and for matters connected therewith."

Savings

41. (1) Any proclamation, notice, regulation, authorisation, rule or order issued, made, granted or done in terms of a provision of the principal Act or that is deemed to have been issued, made, granted or done in terms of the principal Act, shall stay in force until cancelled or repealed by the Allied Health Professions Council of South Africa, established under section 2 of the principal Act (in this section referred to as "the council").
- (2) Any inquiry conducted by the Chiropractors, Homeopaths and Allied Health Service Professions Interim Council, including any preliminary investigation undertaken to determine whether *prima facie* evidence exists which would justify such inquiry, into alleged unprofessional conduct by any person, and which has not been concluded at the date of the first meeting of the council, shall be continued and concluded by the council.
- (3) The council shall have the power to institute and conclude disciplinary proceedings against any person who, at any time prior to the first meeting of the council, is alleged to have committed an act which constituted unprofessional conduct.

- (4) Any person employed by the Chiropractors, Homeopaths and Allied Health Service Professions Interim Council immediately prior to the date on which the said Council is abolished in terms of section 41A of the principal Act, shall be deemed to have been appointed by the council.
- (5) In this section, "Chiropractors, Homeopaths and Allied Health Service Professions Interim Council" shall mean the Chiropractors, Homeopaths and Allied Health Service Professions Interim Council as defined in section 1 of the principal Act.

Short title and commencement

42. (1) This Act shall be called the Chiropractors, Homeopaths and Allied Health Service Professions Amendment Act, 2000 and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.
- (2) Different dates may be fixed in terms of subsection (1) in respect of different provisions of this Act.

**MEMORANDUM ON THE OBJECTS OF THE CHIROPRACTORS, HOMOEOPATHS AND
ALLIED HEALTH SERVICE PROFESSIONS
AMENDMENT BILL, 2000**

1 SCOPE OF BILL

The Bill proposes amendments to the Chiropractors, Homoeopaths and Allied Health Service Professions Act, 1982 (Act No. 63 of 1982) (hereinafter referred to as "the Act").

2 AMENDMENTS

(1) Amendment of section 1 of the Act: Definitions

(a) Amendment of definition of "allied health service profession"

(i) Current position

The Act is currently applicable to the professions of ayurveda, chiropractic, herbalism, homoeopathy, naturopathy and osteopathy. With the exception of chiropractic and homoeopathy, these professions are not listed in the definition of "allied health service profession" and persons practising these professions are not defined in section 1 of the Act.

(ii) New approach

The definition of "allied health service profession" is amended to list the professions to which the Act will apply if Parliament approves the Bill, namely:

- ayurveda;
- chinese medicine and acupuncture;
- chiropractic;
- homoeopathy;
- massage therapy;
- naturopathy;
- osteopathy;
- phytotherapy;
- therapeutic aromatherapy;
- therapeutic reflexology; and
- any other health profession registered in terms of this Act

(iii) Reason

When the decision was made, prior to 1982, to close the registers for herbalism, naturopathy and osteopathy, part of the motivation was that the chiropractic and homoeopathy courses incorporated elements of herbalism, naturopathy and osteopathy, and separate registers were not necessary. It was also felt at the time that the demand for these professions did not warrant registers. These registers were then closed.

The Act currently provides for the establishment of a statutory health council to control the two remaining professions with open registers, namely chiropractic and

homoeopathy. On 14 October 1994 a notice (No. 1766) was published declaring that the provisions of the Act were now also applicable to the profession of ayurveda.

There has recently been a world-wide trend away from allopathy and towards alternate, less invasive, more "natural" healing methods. As a result, these professions have grown in recognition and stature, with a corresponding growth in practitioner and patient numbers. Patients' and practitioners' demand for official recognition of these professions has grown, leading to the need to:

- (i) establish academic standards and criteria for registration and the right to practise such professions;
- (ii) uphold ethical standards and protect the public; and
- (iii) negotiate medical aid scheme recognition.

The professional associations for the professions resorting under the closed registers "naturopathy", "osteopathy" and "phytotherapy" (previously "herbalism") approached the Chiropractors, Homoeopaths and Allied Health Service Professions Council of South Africa (hereinafter referred to as "the council") with the request that these registers be re-opened. At the same time the professional associations for chinese medicine and acupuncture, massage therapy, therapeutic aromatherapy and therapeutic reflexology applied to the council for the Act to be amended to include registers for these professions.

- (b) **Insertion of definitions for the words "acupuncturist", "ayurveda and chinese medicine professional board", "ayurveda practitioner", "chairperson", chiropractor, "complementary professions board", "educational institution", examining authority", "homoeopathy", "impaired", "integrated health professions board", "intern", "manipulative professions board", "massage therapist", "naturopath", "osteopath", "phytotherapist", "scheduled substance", "rule", "student-intern", "therapeutic aromatherapist", "therapeutic reflexologist" and "vice-chairperson"**

(i) **Current position**

The Act does not provide definitions for the above-mentioned expressions which are already used in the Act or which will be used in the Act if Parliament approves the Bill.

(ii) **New approach**

The Act is amended to provide definitions for the above-mentioned expressions. The defining of the professions consequently results in the deletion of the definition of "profession".

(iii) **Reason**

The council wishes to include definitions for these expressions to prevent any misinterpretations.

- (c) **Insertion of definition of "unprofessional conduct"**

(i) **Current position**

The Act does not provide for a definition of the words "unprofessional conduct".

(ii) New approach

Section 1 of the Act is amended to provide for a definition of the words "unprofessional conduct".

(iii) Reason

The words "unprofessional conduct" are used in sections 23 and 24 of the Act.

(d) Insertion of definition of "chairperson" and "vice-chairperson"

(i) Current position

The Act does not provide for definitions for the words "chairperson" and vice-chairperson".

(ii) New approach

Section 1 of the Act is amended to provide for definitions for the words "chairperson" and vice-chairperson".

(iii) Reason

The definitions are inserted for purposes of clarification and to prevent any misunderstanding. The words "chairperson" and "vice-chairperson", which replace the words "chairman" and "vice-chairman", are also more gender friendly.

<p>(2) Substitution of heading of Chapter 1 of the Act and section 2 of the Act: Establishment of Chiropractors, Homoeopaths and Allied Health Service Professions Interim Council</p>

(a) Establishment of the Allied Health Professions Council of South Africa

(i) Current position

The Act provides for a statutory council for the professions of ayurveda, chiropractic, herbalism, homoeopathy, naturopathy and osteopathy of which the professions of chiropractic and homoeopathy were the primary professions and therefore indicated in the name of the council and in the heading of Chapter 1 of the Act.

(ii) New approach

The heading of Chapter 1 of the Act and the name of the council are amended by substituting the words "Chiropractors, Homoeopaths and Allied Health Service Professions" with the words "Allied Health Professions".

(iii) Reason

As the Act will be applicable to more professions in terms of the Bill –

- registers for ten professions will be established;
- the name of the heading of Chapter 1 of the Act is amended; and
- the name of the council in section 2 of the Act is amended.

As more professions will be subject to the provisions of the Act, the council deems it appropriate not to specify the names of certain professions in the name of the Act or in the name of the council.

Note: Wherever the words "Chiropractors, Homoeopaths and Allied Health Service Professions Act" are used in the Act, they are replaced with the words "Allied Health Professions Act".

(b) Convenor of the first meeting of the new council

(i) Current position

Section 2 of the Act determines that the Director-General shall convene the first meeting of the council.

(ii) New approach

Section 2 of the Act is amended to provide that the Registrar shall convene the first meeting of the new council and not the Director-General.

(iii) Reason

At the time when the Act was promulgated in 1982, a registrar for the council had not yet been appointed. As the council now has a registrar in service, it is no longer necessary for the Director-General to convene the meeting.

(c) Site of the council

(i) Current position

The Act does not determine where the council should be situated.

(ii) New approach

A new section 2(2) is inserted in the Act which determines that the head office of the council shall be situated in Pretoria.

(iii) Reason

All the statutory health councils are situated in Pretoria and their statutes also determine where their head offices are situated.

(3) Amendment of section 3 of the Act: Objects of the council
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(a) Section 3(a) of the Act

(i) Current position

Section 3(a) of the Act does not provide for an object of the council to be "... to protect the public".

(ii) New approach

Section 3(a) of the Act is amended to determine that the council's object shall be to promote and protect the health of the population of the Republic.

(iii) Reason

All statutory health councils have been established to *inter alia* protect the public and this object must also be stipulated in the Act.

(b) Insertion of new paragraph (aA)

(i) Current position

The Act does not provide for the object of the council namely "to govern, administer and set policy relating to the professions registered with the council".

(ii) New approach

Section 3 of the Act is amended by the insertion of paragraph (aA) which provides for this object of the council.

(iii) Reason

One of the council's objects is "to govern, administer and set policy relating to the professions registered with the council". The council deems it necessary to provide for this object in section 3 of the Act just as the other objects of the councils are provided for in section 3 of the Act.

(c) Deletion of paragraph (e)

(i) Current position

Section 3(e) of the Act provides for the council to make recommendations to the Minister regarding the constitution of a new council.

(ii) New approach

Paragraph (e) of section 3 is deleted.

(iii) Reason

Paragraph (e) is no longer necessary, as the Bill provides for the constitution of a new council.

(d) Insertion of new paragraph (g)

(i) Current position

Section 3 of the Act does not provide that an objective of the council is to communicate to the Minister information on matters of public importance acquired by the council in the course of the performance of its functions under this Act.

(ii) New approach

A new paragraph (g) is inserted to provide for this object of the council.

(ii) Reason

The council deems it necessary to provide for this object in section 3 of the Act just as the other objects of the councils are provided for in section 3 of the Act.

(4) Amendment of section 4 of the Act: General powers of the council**(a) Section 4(1)(c) of the Act****(i) Current position**

Section 4(1)(c) of the Act determines that a person's name may be removed from the register in accordance with the provisions of the Act.

(ii) New approach

Section 4(1)(c) of the Act is amended to provide that in such circumstances as may be prescribed, or where otherwise authorised by the Act, the council may add or remove a person's name from the register.

(iii) Reason

The council is of the opinion that it should also have the power to add a name to the register and that the conditions under which a name can be added to or removed from the register should be determined by regulations where they are not yet determined by the Act.

(b) Section 4(1)(d) of the Act and insertion of new paragraph (eA)**(i) Current position**

Section 4(1)(d) of the Act determines that the council may appoint examiners and moderators, conduct examinations and award certificates, and charge the prescribed fees in respect of such examinations and the issue of such certificates.

(ii) New approach

Section 4(1)(d) of the Act is amended to provide that the relevant professional board be consulted by the council prior to appointing examiners, conducting examinations etc.

Section 4 is further amended by the insertion of paragraph (eA) determining that the council may consult with the relevant professional board on matters pertaining to a registered profession.

(iii) Reason

The council is of the opinion that professional boards should be consulted in all matters pertaining to professions relating to them, provided that the final decision and accountability remain with the council. All stakeholders are in agreement with this amendment.

(c) Section 4(1)(g) of the Act**(i) Current position**

Section 4(1)(g) of the Act determined that the council may conduct or arrange courses for the supplementary training of practitioners and render financial assistance in respect of such courses.

(ii) New approach

Section 4(1)(g) of the Act is amended by substituting the words "supplementary training" with the words "continuing professional development" and by the deletion of the words "and render financial assistance in respect of such courses".

(iii) Reason

The words "supplementary training" are replaced with the words "continuing professional development" because the latter words are used in other health legislation for example the Pharmacy Act, 1974

The council is not able to finance continued professional development (hereinafter referred to as "CPD") due to financial constraints. The council cannot increase the annual subscription fees in order to finance CPD, as the practitioners already pay high subscription fees, compared to professions falling under other councils. The council will strive to make CPD cost effective and accessible to all practitioners.

(d) Section 4(1)(gA) of the Act**(i) Current position**

Section 4(1)(gA) of the Act determines that council may approve any clinic established by a university or technikon or other training institution.

(ii) New approach

Section 4(1)(gA) of the Act is amended to provide that council may also approve a clinic established by a practitioner or a group of practitioners and that such approval is subject to the council consulting the relevant professional board first.

(iii) Reason

The council wishes to exercise control over clinics established by practitioners or groups of practitioners in order to protect the public. The council is of the opinion that the professional boards should be consulted in all matters pertaining to the professions, provided that the final decision and accountability remain with the council.

(5) Amendment of section 5 of the Act : Constitution of the council.**(a) New section 5(1) of the Act****(i) Current position**

Section 5 of the Act determines the constitution of the current council.

(ii) New approach

Section 5 of the Act is replaced by a new section 5. In terms of the new section 5(1) the council will consist of 16 members, being 1 member per registered profession, nominated by the professional boards from amongst their democratically elected members and the following six members appointed by the Minister:

- (i) one person appointed on account of his or her knowledge of the law;
- (ii) four persons who are not registered practitioners, one per professional board, to represent the community; and
- (iii) one person to represent the Department of Health.

The four community representatives and the ten elected professional representatives shall also serve on the relevant professional boards.

(iii) Reason

In accordance with the Minister's instruction that a new, transparent council be constituted in accordance with democratic principles, the council held several workshops to obtain broad consensus on an acceptable model. Eventually, broad consensus was reached and the National Homoeopathic Forum (previously known as the Homoeopathic Forum), the grouping that had opposed the suggested model in favour of a model that provided for a larger number of chiropractors and homoeopaths on the council, agreed that the model be accepted and implemented for a trial period. However, they retained their right to submit a separate recommendation to the Minister regarding their alternate model.

(b) New section 5(5) of the Act

(i) Current position

Section 5(5) of the Act provides for the Director-General to publish the names of council members in the *Gazette*.

(ii) New approach

In terms of the new section 5(5) the Registrar shall publish the names of council members in the *Gazette*.

(iii) Reason

At the time when the Act was promulgated, a registrar for the council had not yet been appointed. As the council now has a registrar in service, it is not necessary for the Director-General to publish the names in the *Gazette*.

(c) New section 5(6) of the Act

(i) Current position

Section 5(6) of the Act determines that the members of the council shall hold office for a period not exceeding 36 months (3 years).

(ii) New approach

In terms of the new section 5(6) a member of the council shall hold office for a period of five years, provided that he or she may be re-elected or re-appointed for one further five-year term of office.

(iii) Reason

The council approved this amendment, as:

- a) the longer period would promote stability and continuity in the council;
- b) the stakeholders supported the amendment; and
- c) the council, as a result of the small number of registered practitioners and the limited finances at its disposal, noted that the amendment would eliminate frequent expensive election processes.

(d) New section 5(7) to (9) of the Act**(i) Current position**

Section 5 of the Act does not determine what happens after the new council's term of office expires in five years' time.

(ii) New approach

The new section 5(7) to (9) determine what process should be initiated at least six months before the term of office of each council expires:

- The registrar shall call, as prescribed, for nominations of persons to be elected and/or appointed by the Minister;
- the registrar shall submit the nominations received to the Minister with the request that the appointments be made;
- the registrar shall hold the election as prescribed and inform the Minister of the outcome of such election; and
- the registrar shall inform all nominees and all existing members of the persons elected/appointed.

(iii) Reason

In order to ensure a smooth transition from the existing council to a new council every five years, it is necessary to determine by regulation the procedure to be followed.

(6) Amendment of section 6 of the Act: Disqualification for appointment as member, vacation of office by members and filling of vacancies**(a) Heading of section 6 of the Act****(i) Current position**

The heading of section 6 does not specify whether the circumstances for disqualification, vacation of office or filling of vacancies is related to a member of the council or a professional board.

(ii) New approach

The heading is amended by inserting the words "for the council" at the end of the heading.

(iii) Reason

A new section 10B, which deals with the circumstances for disqualification, vacation of office or filling of vacancies relating to a member of a professional board, is inserted into the Act by the Bill.

For purposes of clarification and differentiation between section 6 and the new section 10B, the words "for the council" are inserted at the end of the heading to indicate that the circumstances mentioned in section 6 deal only with members of the council.

(b) Insertion of new paragraph (dA) in section 6(2) of the Act**(i) Current position**

Section 6(2)(d) of the Act provides that a member of the council shall vacate his office if he tenders his resignation in writing to the Minister and the Minister accepts his resignation.

(ii) New approach

Section 6(2)(d) is amended by indicating that if a person was appointed by the Minister as a member of the council he or she can tender his or her resignation in writing to the Minister and the Minister can accept his or her resignation.

Section 6(2)(dA) is inserted to provide that if a person was elected by a professional board as a member of the council he or she can tender his or her resignation in writing to the council and the council can accept his or her resignation.

(iii) Reason

Due to the fact that some members of the council are elected by professional boards and some are appointed by the Minister in terms of the new section 5 as provided by the Bill, differentiation must be made between them where it comes to whom a letter of resignation must be submitted.

(c) Section 6(2)(e) of the Act**(i) Current position**

Section 6(2)(e) of the Act provides that a member of the council who becomes a President's patient shall vacate his office

(ii) New approach

The words "President's patient" is replaced with the words "State patient".

(iii) Reason

The correct term used in the Mental Health Act, 1973 is "State patient" and not "President's patient". The wording in section 6(2)(e) of the Act is rectified accordingly.

(d) New paragraph (h) in section 6(2) of the Act**(i) Current position**

Section 6 of the Act does not provide that a member of the council who becomes impaired shall vacate his or her office.

(ii) New approach

A new paragraph (h) is inserted in section 6(2) of the Act to provide that if a member of the council becomes impaired to the extent that he or she is unable to carry out his or her duties as a member of the council, he or she shall vacate his or her office.

(iii) Reason

The council is of the opinion that its important to insert this paragraph in order to protect the council if a member of the council becomes impaired to the extent that he or she is unable to carry out his or her duties as a member of the council.

(e) Substitution of section 6(3) of the Act**(i) Current position**

Section 6(3) of the Act determines any vacancy on the council arising from a circumstances referred to in subsection (2) or caused by the death of a member shall be filled by appointment by the Minister of a person in the vacancy, and every member appointed in terms of this subsection shall hold office for the unexpired portion of the period of office of the member whose office became vacant.

(ii) New approach

Section 6(3) of the Act is amended to determine that vacancies that occur on the council during the five year term of office of the council shall be filled for the remaining period of the term of office of the current council as prescribed.

(iii) Reason

The council is of the opinion that the procedure for filling a vacancy for the remaining period of the term of office should be determined by regulation.

(7) Amendment of section 7: Office bearers**(a) Section 7(1) and (2) of the Act****(i) Current position**

Section 7 of the Act uses the words "chairman" and "vice-chairman".

(ii) New approach

The words "chairman" and "vice-chairman" are replaced in this section and wherever they appear, with the words "chairperson" and "vice-chairperson".

(iii) Reason

The words "chairperson" and "vice-chairperson" are more gender friendly than the words "chairman" and vice-chairman".

(b) Insertion of new subsection (3) and (4)**(i) Current position**

Section 7 of the Act does not –

- determine the term of office of the chairperson and vice-chairperson; or
- provide that such chairperson and vice-chairperson may be re-elected for one further term.

(ii) New approach

The new subsection (3) determines that the chairperson and vice-chairperson shall be elected on an annual basis.

The new subsection (4) determines that a chairperson or vice-chairperson is eligible for re-election for one further term of office.

(iii) Reason

The council deems it necessary to stipulate the term of office of the chairperson and vice-chairperson in the Act. The council deems a one year or two year period appropriate in the case of the chairperson and vice-chairperson, as the council requires the chairpersonship to rotate. This will prevent any one profession being advantaged over another profession and will establish the equality of all members of the council.

(8) Amendment of section 10A: Establishment of professional boards

(a) Section 10A(4) of the Act**(i) Current position**

Section 10A(3) determines that the Minister may, by notice in the *Gazette*, establish a professional board.

Section 10A(5) of the Act determines the amount of members a professional board shall consist of.

(ii) New approach

The new section 10A(4) determines the professional boards to be established in terms of the Act and also the amount of members each professional board shall consist of.

(iii) Reason

The council deems it appropriate to determine the professional boards in the Act itself as well as the amount of members each professional board shall consist of. This is in line with the new section 6 of the Act ("Constitution of council") which also determines the amount of members the council shall consist of.

(b) Section 10A(5) and (6) of the Act**(i) Current position**

Section 10A(4) of the Act determines that the powers and duties of a professional board must be determined by regulation.

Section 10A(5) of the Act determines the constitution of a professional board.

(ii) New approach

In the new section 10A(5) and (6) the words "powers and duties" are replaced with the words "function and functioning".

The new section 10A(5) determines that the constitution, functions, functioning and term of office of a professional board will in future be determined by regulation.

The new section 10A(6) indicates the provisions which the regulations regarding the constitution, functions and functioning of a professional board shall at least provide for.

(iii) Reason

The council is of the opinion that the powers and the duties of the council as stated in the current Act do not go far enough. The council is of the opinion that "functions" and "functioning" are more encompassing terms and that the new regulations will make this clear.

In the case of the Health Professions Council of SA, regulations also determine the constitution, function and functioning of a professional board.

(9) Insertion of a new section 10B, 10C and 10D in the Act – dealing with issues related to a professional board

(a) Insertion of new section 10B: Disqualification for appointment as member, vacation of office by members and filling of vacancies of professional boards

(i) Current position

The Act does provide for disqualification for appointment as a member, vacation of office by members and filling of vacancies for members of the council (section 6), but not for members of professional boards.

(ii) New approach

A new section 10B is inserted with similar grounds for disqualification as those applicable to members of the council.

(iii) Reason

The council and all the stakeholders agreed that provision has to be made in the Act for the disqualification-grounds for members of a professional board, just as they are provided for in the Act with regard to members of a council.

(b) Insertion of new section 10C: Objects of professional boards

(i) Current position

The Act provides for the establishment of professional boards, but does not provide for the objects of a professional board.

(ii) New approach

A new section 10C is inserted which determines the objects of a professional board.

(iii) Reason

The council and all the stakeholders agreed that provision has to be made in the Act for the objects of professional boards just as provision is made in the Act for the objects of the council (section 3 of the Act).

(c) Insertion of new section 10D: General powers of a professional board**(i) Current position**

The Act provides for the establishment of professional boards, but does not provide for the general powers of a professional board

(ii) New approach

A new section 10D is inserted which determines the general powers of a professional board.

(iii) Reason

The council and all the stakeholders agreed that provision has to be made in the Act for the general powers of professional boards just as provision is made in the Act for the general powers of the council (section 4 of the Act).

(10) Amendment of section 11 of the Act: Appointment of registrar and staff**(a) Section 11(2) of the Act****(i) Current position**

The Act provides for the registrar to be the secretary of the council, but not the secretary of a professional board.

(ii) New approach

Section 11(2) of the Act is amended, to provide for the registrar to be the secretary to the council and of each professional board.

(iii) Reason

The council agreed that the office of the registrar should also act as the secretariat of each professional board.

(b) Insertion of new subsection (3)**(i) Current position**

The Act does not determine that the registrar and staff members shall not be persons registered in professions regulated by the Act.

(ii) New approach

A new subsection (3) is inserted which determines that the registrar and staff members shall not be persons registered in professions regulated by the Act.

(iii) Reason

The council agreed that the office of the registrar should be absolutely objective and fair to all the registered professions.

(11) Amendment of section 12 of the Act: Funds of the council**(a) Insertion of new subsections (3) and (4)****(i) Current position**

Section 12 of the Act does not provide that the council may finance a professional board.

(ii) New approach

A new subsection (3) is inserted to provide for the council, where it deems it necessary, to make financial grants from its own funds to assist in the financial operation of a professional board if it is convinced that such a professional board cannot be adequately financed by its own registered practitioners.

A new subsection (4) is inserted which determines that all professional boards shall submit audited income and expenditure statements to the council on an annual basis.

(iii) Reason

The professional boards will in due course become self-sufficient. In the meantime professional boards may need financial assistance and such assistance must be provided for in the Act.

The purpose of professional boards submitting audited income and expenditure statements to the council on an annual basis is to control the expenditure of such funds.

(12) Amendment of section 15 of the Act: Registration of practitioners**(a) Section 15(3) of the Act****(i) Current position**

Section 15 of the Act does not provide that the professional boards be consulted regarding the registration of practitioners.

(ii) New approach

Section 15(3) of the Act is amended to provide that the council may request the relevant professional board to consider an application and that such professional board, if satisfied that the applicant concerned may register in terms of the Act, recommend to the council the approval or disapproval of such an application.

(iii) Reason

The council is of the opinion that the professional board has the expertise to evaluate and make recommendations regarding an application for registration and should be required to assist the council. However, the final decision and accountability should remain with the council.

(b) Insertion of a new subsection (3A)**(i) Current position**

Section 15 of the Act does not provide that after the council is satisfied that an applicant may be registered in terms of the Act, the council shall approve the application and the registrar register the applicant by –

- issuing an appropriate certificate of registration; and
- entering the prescribed particulars in the appropriate register.

(ii) New approach

A new subsection (3A) is inserted to provide that after the council is satisfied that an applicant may be registered in terms of the Act, the council shall approve the application and the registrar register the applicant by –

- issuing an appropriate certificate of registration; and
- entering the prescribed particulars in the appropriate register.

(iii) Reason

The new subsection (3A) has been inserted for completeness. It describes the procedure that currently takes place.

(c) Section 15(5) of the Act**(i) Current position**

Section 15(5) of the Act determines that a person who is registered in terms of the Act, shall, in the practice of his or her profession, only state particulars of those degrees, diplomas or certificates entered in the appropriate register against his or her name.

(ii) New approach

Section 15(5) of the Act is amended to provide that such a person may also state other qualifications recommended by the professional board and approved by the council

(iii) Reason

The council considered the request received from representatives of the professions to be registered in terms of the Act and agreed that a practitioner may reflect other qualification(s) (for example, an MBA qualification) than his or her registered qualification (in terms of the Act) on his or her professional stationery if such permission is recommended by the relevant professional board and approved by the council.

(13) Amendment of section 16 of the Act: Allied health professions**(a) Insertion of new subsection (1A)****(i) Current position**

The Act does not provide that the existing, but currently closed, professional registers for naturopathy, osteopathy and phytotherapy (previously "herbalism") be re-opened for the registration of practitioners.

The Act also does not provide for professional registers for chinese medicine and acupuncture, massage therapy, therapeutic aromatherapy and therapeutic reflexology to be established for the registration of practitioners

(ii) New approach

A new subsection (1A) is inserted to provide for the re-opening of the closed professional registers and for the establishment of new registers.

(iii) Reason

The stakeholders of the council have supported the re-opening of the registers for the professions naturopathy, osteopathy and phytotherapy (previously "herbalism"). Although an application by the council direct to the Minister to re-open the registers could be launched, as these registers are mentioned in the Act, the council decided to request the re-opening of these registers by means of providing therefore in the Bill.

Most of the stakeholders of the council have supported the establishment of the registers for the professions chinese medicine and acupuncture, massage therapy, therapeutic aromatherapy and therapeutic reflexology. The only continued objection against the last three professions has come from the Hairdressing and Cosmetology Services Industry Education and Training Board (HCSIETB) which objects to separate registers for massage therapy, therapeutic aromatherapy and therapeutic reflexology, as they are concerned that persons who currently fall under the control of their Board may, as a result of the Bill, be compelled to register with the Council.

The Council has assured HCSIETB that only if such professionals make a therapeutic claim for what they are doing, i.e. if their therapists are seeing "patients" and not "clients" will they have to be properly trained and registered. In order to meet the HCSIETB, the council agreed to amend the names of two of these professions to "therapeutic aromatherapy" (aromatherapy), massage therapy (remains as is) and "therapeutic reflexology" in order to emphasise the distinction between therapeutic and non-therapeutic use of the therapies.

The HCSIETB has requested that a suitable disclaimer be inserted into the Act. The council will reconsider the request when the regulations are drawn up. The HCSIETB has dissolved and now forms part of the Services Sector Education and Training Authority (hereinafter referred to as "the Authority"). It is not clear whether the Authority will persist with the objection lodged by the HCSIETB.

(b) Insertion of new subsection (3)

(i) Current position

The Act does not provide for practitioners registered in the various professions in terms of the Act to have access to or dispense appropriate medication.

(ii) New approach

A new subsection (3) is inserted which determines that subject to the provisions of the Medicines and Related Substances Control Act, 1965 and subject to the approval of the Medicine Control Council, the Minister may, on the recommendation of the council, by regulation define the access to and availability of medicines relative to the professions registered in terms of the Act.

(iii) Reason

The new South African Medicines and Medical Devices Regulatory Authority Act, 1998 (hereinafter referred to as "the SAMMDRA Act"), when it is implemented and replaces the existing Medicines and Related Substances Control Act, 1965, is expected to define the access to and availability of medicines relative to the professions registered in terms of the Act. The council wishes to ensure that our professions provided for in the new SAMMDRA Act and that the right to dispense where appropriate is retained by our practitioners.

(c) Insertion of new subsection (4)(a)**(i) Current position**

The Act does not provide for a practitioner to personally compound or dispense medicines prescribed by himself or herself or by other practitioner with whom he or she is in partnership or with whom he or she is associated as principal or assistant or locum tenens, for use by a patient under treatment of such practitioner or such other practitioner.

(ii) New approach

A new subsection (4)(a) is inserted to provide for a practitioner, subject to the provisions of the Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965), to personally compound or dispense medicines prescribed by himself or herself or by other practitioner with whom he or she is in partnership or with whom he or she is associated as principal or assistant or locum tenens, for use by a patient under treatment of such practitioner or such other practitioner.

(iii) Reason

Practitioners of the relevant professions provided for in terms of the Act (e.g. ayurveda, chinese medicine and acupuncture, homoeopathy, phytotherapy and therapeutic aromatherapy) have traditionally dispensed the medications relevant to these professions. The Bill makes provision for such right to dispense to continue.

(d) Insertion of new subsection (4)(b)**(i) Current position**

The Act does not provide for the registrar to keep a register on practitioners –

- who within three months after commencement of the Bill submit proof that at such commencement he or she compounded or dispensed medicine in the practice of his profession; or
- inform the registrar in the prescribed manner of his or her intention to compound or dispense medicine in the practice of his or her profession.

(ii) New approach

A new subsection (4)(b) is inserted which determines that the registrar shall keep a register on practitioners –

- who within three months after commencement of the Bill submit proof that at such commencement he or she compounded or dispensed medicine in the practice of his profession; or

- inform the registrar in the prescribed manner of his or her intention to compound or dispense medicine in the practice of his or her profession.

(iii) Reason

Council wishes to provide for the control of dispensing practitioners. Only persons who can prove to the satisfaction of the council that they have the necessary knowledge, proficiency and expertise to dispense appropriately and safely, will be permitted by the council to dispense. When the SAMMDRA Act is implemented, a suitable dispensing course will be mandatory for all practitioners who wish to dispense.

(e) Insertion of a new subsection (5)

(i) Current position

The Act does not provide for the council to direct that the name of any person be removed from the register or prohibit him or her for a specified period from making use of the right contemplated in subsection (4).

(ii) New approach

A new subsection (5) is inserted which determines that the council may direct that the name of any person be removed from the register or prohibit him or her for a specified period from making use of the right contemplated in subsection (4)

(iii) Reason

The council has a duty to protect the public. If the council is of the opinion that a practitioner is unable or unwilling to dispense medicine in a manner that is safe for his or her patients, the council will suspend the right to dispense for a period and will require that the practitioner concerned provide proof to the satisfaction of the council of his or her ability to dispense safely.

(f) Insertion of a new subsection (6)

(i) Current position

The Act does not provide for the council to determine fees to be paid for the entering of a name in the register

(ii) New approach

A new subsection (6) is inserted which determines that the council may determine fees to be paid for the entering of a name in the register.

(iii) Reason

The registration process entails administration, postage, etc. The council wishes to recover these costs. The amount concerned will be prescribed.

(14) Amendment to section 16A of the Act: Control over training**(a) Amendment of section 16A(1) of the Act****(i) Current position**

Section 16A(1) of the Act excludes universities and technikons from having to obtain approval from the council for purposes of offering or providing education or training.

(ii) New approach

Section 16A(1) of the Act is amended to provide that every person and institution must obtain approval from the council in order to offer or provide education and training

(iii) Reason

Private training providers are increasingly offering their courses under the auspices of South African tertiary institutions. Although the council supports tertiary training for the professions that are registerable in terms of the Act, if such training providers are not required to submit their courses to the council for approval, any learner who obtains such qualification will not necessarily be registered to practise. Even when a course has been approved by the Department of Higher Education and registered on the National Qualifications Framework by SAQA, the course content could be inappropriate for practising the profession concerned.

(b) Amendment of section 16A(2) and (3) of the Act**(i) Current position**

Section 16A(2) of the Act provides for a person or institution who wants to provide education or training to apply in writing to the council for approval of such education or training.

(ii) New approach

Section 16A(2) of the Act is amended by inserting a provision stating that such application will be submitted by the registrar to the relevant professional board for consideration and to make a recommendation to the council.

The amendment to section 16A(3) results from the amendment to section 16A(2)

(iii) Reason

The most expertise regarding the individual professions will be situated within the professional boards, as only one person will represent each profession on the council. It therefore makes sense for the relevant professional board to be consulted prior to the final decision being taken by the council.

(c) Amendment to section 16A(5) of the Act**(i) Current position**

Section 16A(5) of the Act imposes a penalty not exceeding R2 000 for contravention of this section.

(ii) New approach

Section 16A(5) of the Act is amended to provide for the Minister to determine the amount of maximum fines from time to time by regulation.

(iii) Reason

With time, fines become ineffective. The amending of a fine determined in the Act takes a lot longer than when it is determined by regulation. By transferring this and other monetary penalties to the regulations, amendment thereof is simplified.

(d) Insertion of new subsection (6)**(i) Current position**

The Act does not provide for council to monitor examinations.

(ii) New approach

A new subsection (6) is inserted to provide for the council to appoint a person to attend at the examinations conducted by any person or institution approved by the council.

(iii) Reason

By monitoring examinations conducted by any person or institution approved by the council, the council can monitor academic standards and ensure the upholding of academic standards.

(15) Amendment of section 16B of the Act: Prescribing of qualifications
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(a) Amendment of section 16B(1) of the Act**(i) Current position**

Section 16B(1) of the Act does not provide that the council must first consult with the relevant professional board before making recommendations to the Minister regarding qualifications to be prescribed.

(ii) New approach

Section 16B(1) is amended to provide that the council must first consult with the relevant professional board before making recommendations to the Minister regarding qualifications to be prescribed.

(iii) Reasons

The most expertise regarding the individual professions will be situated within the professional boards, as only one person will represent each profession on the council. It therefore makes sense for the relevant professional board to be consulted prior to the final decision being taken by the council.

(16) Amendment of section 16C of the Act: Temporary registration**Amendment to section 16C(1) of the Act****(i) Current position**

Section 16C(1) of the Act determines that the council may accept a qualification other than a qualification referred to in section 16B, for the purpose of registration, if such qualification in the opinion of the council indicates a satisfactory standard of professional education.

(ii) New approach

Section 16C(1) of the Act is amended to provide that the council must first consult the relevant professional board for purposes of determining if such qualification indicates a satisfactory standard.

(iii) Reason

The most expertise regarding the individual professions will be situated within the professional boards, as only one person will represent each profession on the council. It therefore makes sense for the relevant professional board to be consulted prior to the final decision being taken by the council.

(17) Amendment of section 16D of the Act: Investigation of matters relating to education or training of certain classes of persons**(i) Current position**

Section 16D(2) determines that the maximum amount of a fine is R100.

(ii) New approach

Section 16D(2) is amended to provide that the amount of the fine will be determined by regulation.

(iii) Reason

With time, fines become ineffective. The amending of a fine determined in the Act takes a lot longer than when it is determined by regulation. By transferring this and other monetary penalties to the regulations, amendment thereof is simplified.

(18) Amendment of section 16E of the Act: registration of certain persons so as to enable them to give education or training**(i) Current position**

Section 16E(1) of the Act provides that for purposes of promoting education or training, the council may register a person not permanently resident within the republic in the profession in which he gives education or training, for such period as the council may determine.

(ii) New approach

Section 16E(1) of the Act is amended to provide that the council must first consult with the relevant professional board before registering such a person.

(iii) Reason

The most expertise regarding the individual professions will be situated within the professional boards, as only one person will represent each profession on the council. It therefore makes sense for the relevant professional board to be consulted prior to the final decision being taken by the council.

(19) Amendment of section 18 of the Act: Registration of students**(i) Current position**

Section 18(1) of the Act determines that a person who desires to be registered as a student, shall apply to the council.

(ii) New approach

Section 18(1) of the Act is amended to determine that a person who enrols as a student shall apply to the council for registration as a student.

(iii) Reason

All students in professions for which registers are established in terms of the Act should be required to register with the council as students. The previous wording gives the student the choice of registering or not registering.

(20) Insertion of new section 19A: Registration of interns**(a) (i) Current position**

The Act does not provide for undergraduate or graduate internships.

(ii) New approach

Section 19A is inserted to –

- provide for a person who graduates within or outside the Republic and wishes to practise such profession in South Africa, to apply for registration [section 19A(1)];
- provide for such person to be registered as an intern and be required to complete a prescribed internship programme prior to registration as a practitioner [section 19A(2)];
- provide for the registration of a person not yet graduated in a profession, as a student intern and to commence with an internship program as prescribed [section 19A(3)];
- determine that such person shall not be registered by the council as a practitioner prior to graduation and completion of the prescribed internship [section 19A(4)]; and
- provide for the duration, requirements, conditions and rules pertaining to such internship to be determined by regulation [section 19A(5)].

(iii) Reason

It is essential for particularly chiropractic and homoeopathy graduates to undergo a year-long period of internship prior to being registered and starting out in private practice. All stakeholders agree that the Act should provide for internships. The council has inserted a new section 19A enforcing internship for graduates and enabling the commencement of internship for undergraduates, in accordance with the requirements of the relevant professional board, as to be prescribed in the regulations.

(21) Amendment of section 21: Removal of names from, or restoration thereof to the register**(i) Current position**

Section 21 of the Act does not provide for the removal from the register of the name of a practitioner who becomes mentally or physically impaired.

(ii) New approach

A new paragraph (g) is inserted in section 21(1) to provide for such removal.

(iii) Reason

It is essential for the council to have the power to de-register a person who has become mentally or physically impaired to such an extent that he or she is unable to uphold the usual standards of practice and is considered by the council to constitute a danger to the public.

(22) Amendment of section 23: Inquiry into alleged misconduct**(a) Insertion of new subsection (1A)****(i) Current position**

Section 23 of the Act does not provide for the council to refer allegations of misconduct to the relevant professional board and to delegate to such professional board the right to investigate and to hold an inquiry in the prescribed manner.

(ii) New approach

Section 23 of the Act is amended by inserting new subsection (1A) to provide for such referral and delegation of the right to investigate and hold an inquiry.

(iii) Reason

The council wishes to delegate matters such as disciplinary inquiries to the professional boards to investigate, the reason being that most expertise regarding the individual professions will be situated within the professional boards, as only one person will represent each profession on the council. It therefore makes sense for the relevant professional board to be consulted prior to the final decision being taken by the council.

(b) Insertion of a new subsection (1B)**(i) Current position**

Section 23 of the Act does not provide that when a professional board is holding an inquiry, it can seek information from any person and investigate a matter fully

(ii) New approach

Section 23 of the Act is amended by inserting a new subsection (1B) to provide for the professional board to seek information and investigate a matter fully.

Note: the new subsection (1B) flows from the new subsection (1A)

(iii) Reason

The insertion of subsection (1B) is essential in order to empower the professional board to obtain the information it deems necessary to investigate the matter properly.

(c) Insertion of a new subsection (1C)**(i) Current position**

Section 23 of the Act does not provide for the professional board, after finding a practitioner guilty, to recommend the imposition of a penalty and for the council to then impose such penalty.

(ii) New approach

Section 23 of the Act is amended by inserting a new subsection (1C) to provide for the professional board, after finding a practitioner guilty, to recommend the imposition of a penalty and for the council to then impose such penalty.

(iii) Reason

When an inquiry is held, the professional board should conclude the matter by finding a practitioner guilty or not guilty of the charge against him or her. The professional board should then make a recommendation to the Council regarding an appropriate penalty (if any) to be imposed. The most expertise regarding the individual professions will be situated within the professional boards, as only one person will represent each profession on the council. It therefore makes sense for the relevant professional board to be consulted prior to the final decision being taken by the council.

(d) Amendment of subsections (1) and (3)**(i) Current position**

Section 23(1) and (3) of the Act uses the expressions "improper or disgraceful conduct".

(ii) New approach

Section 23(1) and (3) is amended by substituting the words "improper and disgraceful conduct" with the words "unprofessional conduct".

(iii) Reason

The substitution of the words "improper and disgraceful conduct" with the words "unprofessional conduct" is due to the new definition of "unprofessional conduct" which is inserted by the Bill in section 1 of the Act.

(23) Amendment of section 24: Penalties for misconduct at inquiry by council**(a) Amending of subsections (1), (3) and (9) of the Act****(i) Current position**

Section 24 determines the amounts of the fines in the Act.

(ii) New approach

Section 24(1)(d), (3)(c)(iv) and (9) of the Act are amended by providing that the amount of the fine will be determined by regulation.

(iii) Reason

With time, fines become ineffective. The amending of a fine determined in the Act takes a lot longer than when it is determined by regulation. By transferring this and other monetary penalties to the regulations, amendment thereof is simplified.

(b) Amendment of subsections (1) and (9)**(i) Current position**

Section 24(1) and (9) of the Act uses the expressions "improper or disgraceful conduct".

(ii) New approach

Section 24(1) and (9) is amended by substituting the words "improper and disgraceful conduct" with the words "unprofessional conduct".

(iii) Reason

The substitution of the words "improper and disgraceful conduct" with the words "unprofessional conduct" is due to the new definition of "unprofessional conduct" which is inserted by the Bill in section 1 of the Act.

(24) Amendment of section 30 of the Act: Restriction in, or suspension from, practise of profession by practitioner**(a) Amendment of section 30(1) of the Act****(i) Current position**

Section 30(1) of the Act determines that the council shall after investigating a matter, if it deems it necessary, hold an inquiry.

(ii) New approach

Section 30(1) of the Act is amended to determine that the council can refer a matter to the relevant professional board to hold an inquiry.

(iii) Reason

The most expertise regarding the individual professions will be situated within the professional boards, as only one person will represent each profession on the council. It therefore makes sense for the relevant professional board to be consulted prior to the final decision being taken by the council.

(b) Amendment of section 30(6) of the Act

(i) Current position

Section 30(6) of the Act provides for a maximum fine of R100.

(ii) New approach

Section 30(6) of the Act is amended to provide that the fine be determined by regulation.

(iii) Reason

With time, fines become ineffective. The amending of a fine determined in the Act takes a lot longer than when its determined by regulation. By transferring this and other monetary penalties to the regulations, amendment thereof is simplified.

(25) Amendment of section 31: Offences by unregistered persons, and penalties
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(a) Insertion of new subsections (3) and (4)

(i) Current position

Section 31 of the Act does not provide for practitioners found guilty during disciplinary inquiries to be required, at the discretion of the council, to bear part or all of the cost to the council of holding such inquiry.

(ii) New approach

Section 31 is amended by inserting a new subsection (3) to provide for such requirement.

(iii) Reason

If practitioners are required to contribute to the costs of holding disciplinary inquiries, the council would have more funds available. Disciplinary inquiries are very expensive to hold and it is unfair that the annual registration fees paid by all practitioners be utilised to conduct these inquiries. The Health Professions Council has inserted a similar requirement into their legislation.

(26) Amendment of section 32: Offences by practitioners and students, and penalties**(i) Current position**

The Act provides for a fine not exceeding R500 for practitioners or students found guilty in terms of this section.

(ii) New approach

Section 32 has been amended to provide that the amount of the fine be determined by the Minister from time to time by regulation.

(iii) Reason

With time, fines become ineffective. They cannot be raised if they are specified in the Act without amending the Act, which is a long process. By transferring this and other monetary penalties to the regulations, amendment thereof is simplified.

(27) Amendment of section 36: Limitation of liability**(i) Current position**

Section 36 of the Act does not provide that a professional board or its members shall not be liable for any act done in good faith under the Act.

(ii) New position

Section 36 of the Act is amended to provide that a professional board or its members shall not be liable for any act done in good faith under the Act.

(iii) Reason

This amendment is necessary to protect members of professional boards who act in good faith, where such act leads to litigation.

(28) Amendment of section 38A: Charges by registered persons**(i) Current position**

Section 38A(2) of the Act refers to "section 32 of the Medical Schemes Act, 1967 (Act 72 of 1967)".

(ii) New approach

Section 38A(2) of the Act is amended by replacing the words "section 32 of the Medical Schemes Act, 1967 (Act 72 of 1967)" with the words "section 59 of the Medical Schemes Act, 1998 (Act No. 131 of 1998)".

(iii) Reason

The Medical Schemes Act, 1967 has been replaced by the Medical Schemes Act, 1998.

(29) Amendment of section 38B of the Act: Appeal**(i) Current position**

Section 38B of the Act provides for an appeal committee appointed by the Minister to be chaired by a magistrate with at least ten years experience as a magistrate.

(ii) New approach

Section 38B of the Act is amended to delete the requirement of 10 years of experience as a magistrate.

(iii) Reason

As a result of staffing problems experienced by the Department of Justice, it has become extremely difficult to find a suitable person to chair such appeals. The council proposes removing the prescriptive phrase ".... With at least ten years of experience as a magistrate...." and leaving the matter in the hands of the Minister.

3 FINANCIAL IMPLICATIONS

The Bill does not have any financial implications for the State.

4 COMMUNICATION IMPLICATIONS

The Bill has no communication implications in addition to the commencement of the Bill as an Act of Parliament being published in the *Government Gazette*.

5 ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The Bill has no organisational or personnel implications for the State.

6 CONSULTATION

The following were consulted

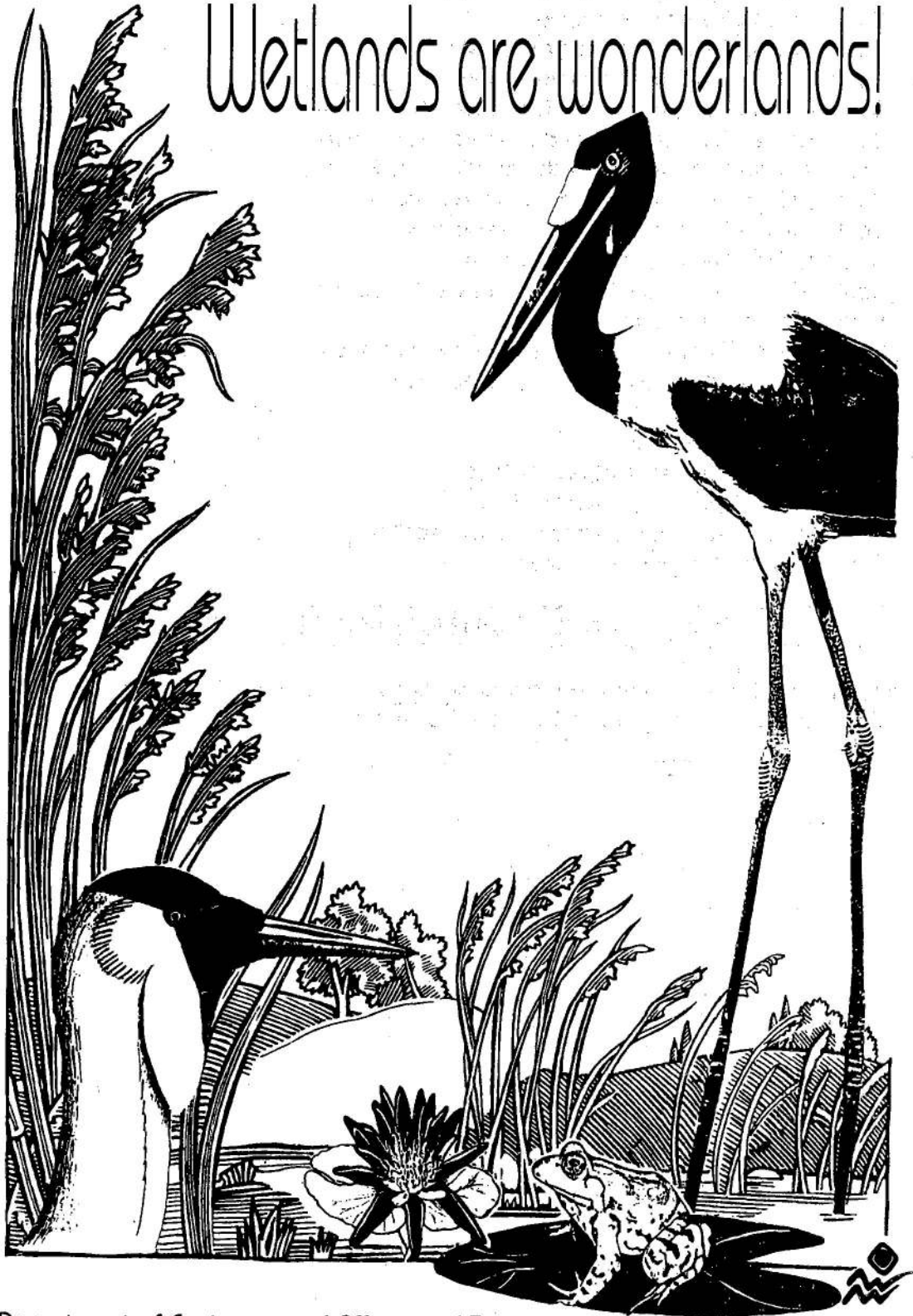
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- Aryan Benevolent Home Council
- Association of Aromatherapists South Africa
- Ayurvedic Medical Association
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- Chiropractic Association of South Africa
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- Homoeopathic Medical Association of South Africa
- Homoeopathic Practitioners Association of South Africa
- Industrial Training Board for Hairdressers and Cosmetologists
- International Association of Health and Beauty
- Massage Therapy Association of South Africa

- Osteopathic Association of South Africa
- Society of Chinese Traditional Medicine and Acupuncture
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- South African Vitalistic Chiropractors Association
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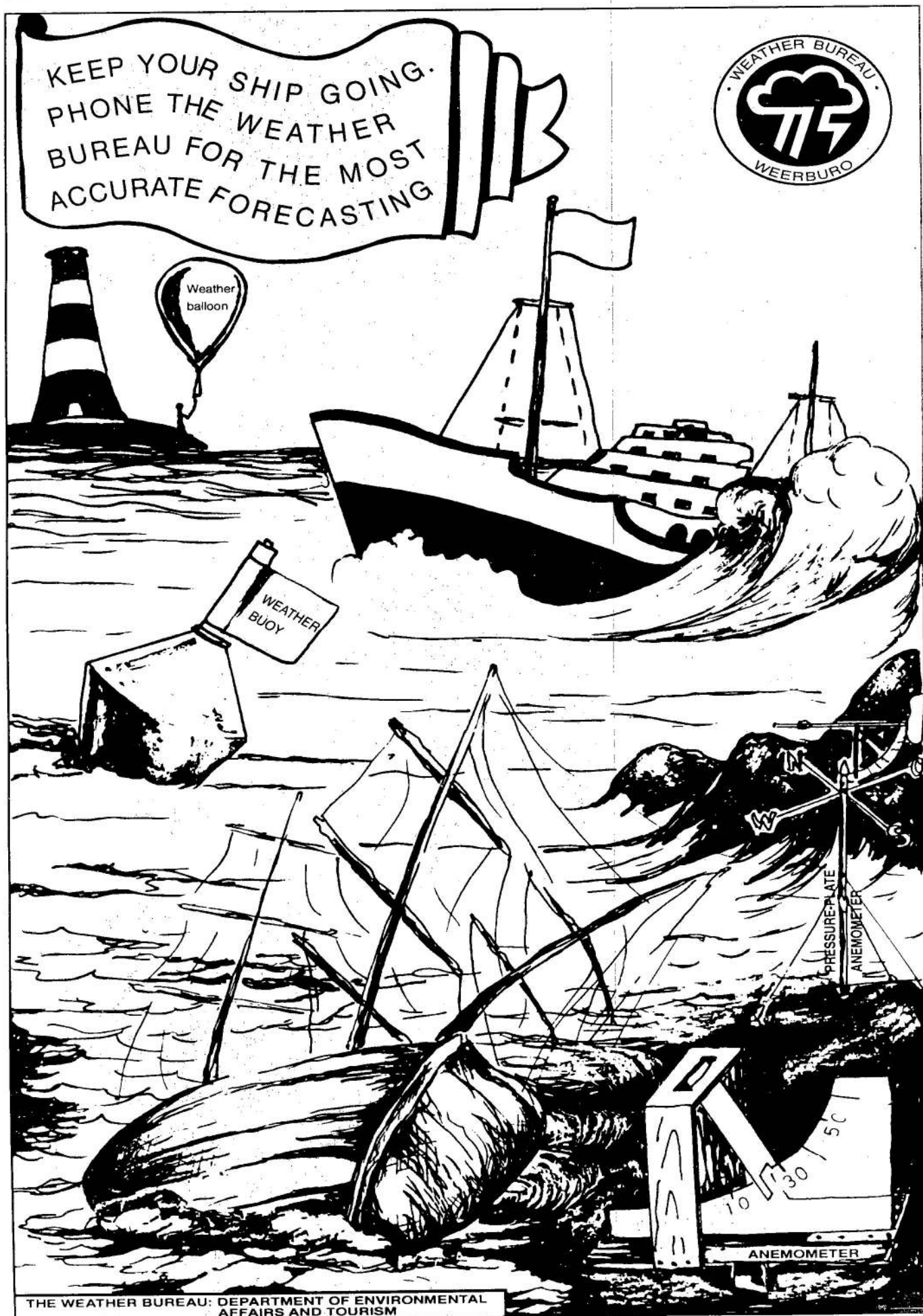
7 PARLIAMENTARY PROCEDURE

The State Law Advisors and the Department of Health are of the opinion that the Bill must be dealt with in accordance with section 75 of the Constitution.

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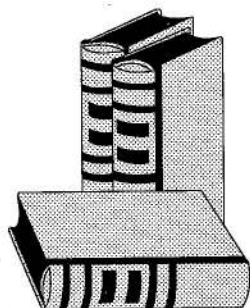
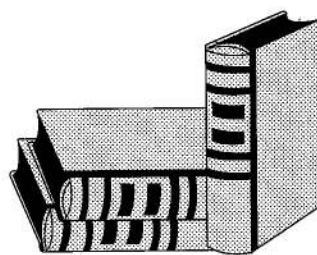


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THE WEATHER BUREAU: DEPARTMENT OF ENVIRONMENTAL AFFAIRS & TOURISM

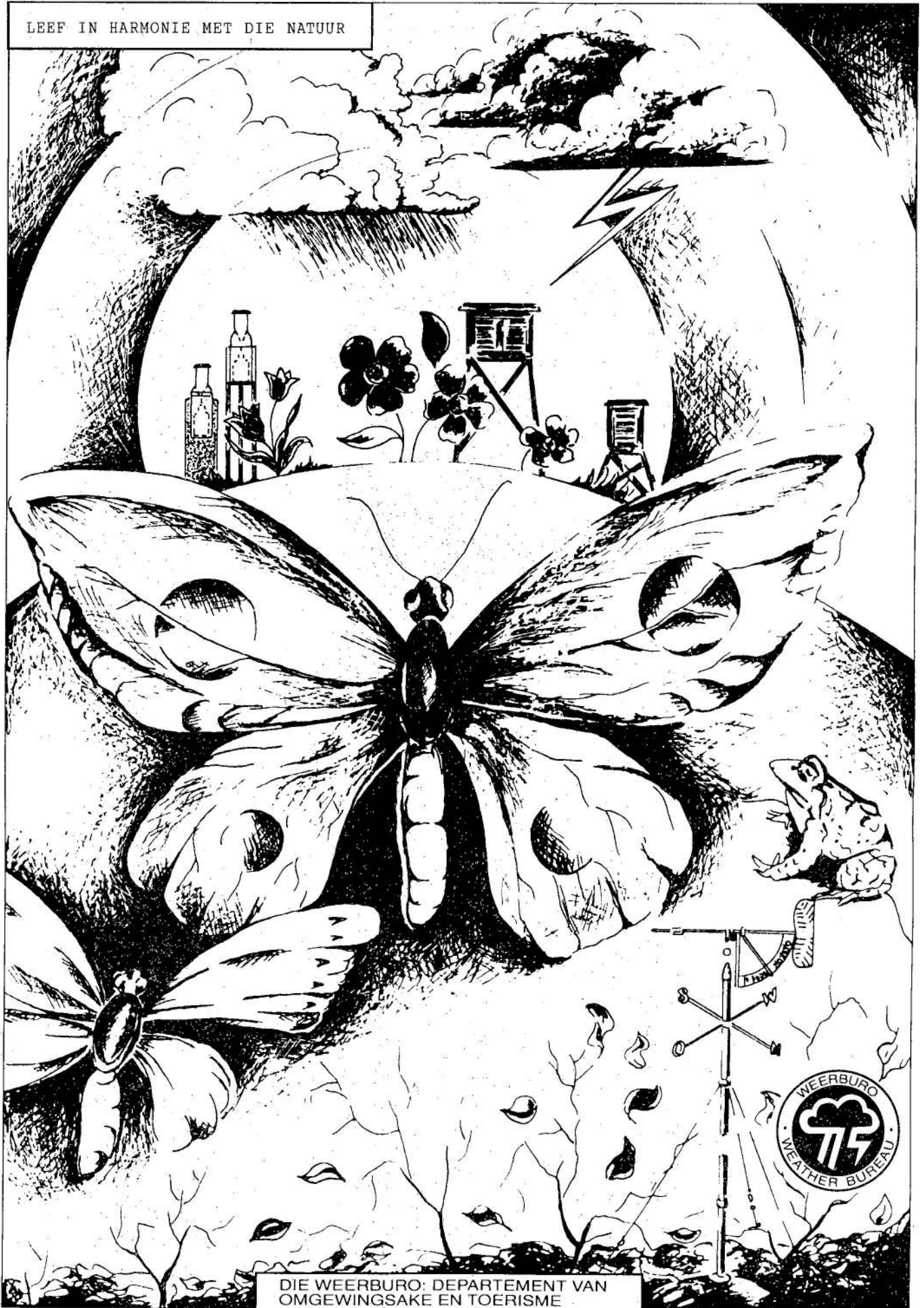
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