**Chinese Medicine Registration Act 2000**

Act No. 18/2000

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SCHEDULE—Amendments  

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V
Chinese Medicine Registration Act
2000†

[Assented to 16 May 2000]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purposes

The main purposes of this Act are—

(a) to protect the public by providing for the registration of practitioners of Chinese medicine and dispensers of Chinese herbs and investigations into the professional conduct and fitness to practise of registered
practitioners of Chinese medicine and dispensers of Chinese herbs; and

(b) to regulate the advertising of Chinese medicine and Chinese herbal dispensing services; and

(c) to establish the Chinese Medicine Registration Board of Victoria and the Chinese Medicine Registration Board Fund; and

(d) to amend the Drugs, Poisons and Controlled Substances Act 1981; and

(e) to make amendments to other Acts regulating health practitioners; and

(f) to provide for other related matters.

2. Commencement

(1) Subject to sub-section (2), the provisions of this Act (including the items in the Schedule) come into operation on a day or days to be proclaimed.

(2) If a provision referred to in sub-section (1) does not come into operation before 1 December 2002, it comes into operation on that day.

3. Definitions

In this Act—

"alcoholic" has the same meaning as in the Alcoholics and Drug-dependent Persons Act 1968;

"Board" means the Chinese Medicine Registration Board of Victoria established under Part 6;

"Chinese herb" includes Chinese herbal substances, any mixture of Chinese herbs or Chinese herbal substances and any mixture
of Chinese herbs and Chinese herbal substances;

"division", in relation to the register, means a division of the register;

"drug-dependent person" has the same meaning as in the Alcoholics and Drug-dependent Persons Act 1968;

"Fund" means the Chinese Medicine Registration Board Fund established under Part 7;

"Health Services Commissioner" means the Health Services Commissioner within the meaning of the Health Services (Conciliation and Review) Act 1987;

"lawyer" means a person admitted to practise as a barrister and solicitor of the Supreme Court;

"professional indemnity insurance" includes insurance against civil liability in connection with the practice of Chinese medicine or the dispensing of Chinese herbs and an agreement or arrangement for discretionary indemnity in respect of that liability;

"register" means the Register of Chinese Medicine kept under Part 2;

"registered Chinese herbal dispenser" means a person registered as a Chinese herbal dispenser under Part 2, whether the registration is general or specific;

"registered Chinese medicine practitioner" means a person registered as a Chinese medicine practitioner under Part 2, whether as a Chinese herbal medicine practitioner or as an acupuncturist or both and whether the registration is general or specific;
"registered medical practitioner" means a registered medical practitioner within the meaning of the Medical Practice Act 1994;

"registered practitioner" means a person registered as a Chinese medicine practitioner or a Chinese herbal dispenser under Part 2, whether the registration is general or specific;

"unprofessional conduct" means all or any of the following—

(a) professional conduct which is of a lesser standard than that which the public might reasonably expect of a registered practitioner; or

(b) professional conduct which is of a lesser standard than that which might reasonably be expected of a registered practitioner by his or her peers; or

(c) professional misconduct; or

(d) infamous conduct in a professional respect; or

(e) providing a person with health services of a kind that is excessive, unnecessary or not reasonably required for that person's well-being; or

(f) influencing or attempting to influence the conduct of a Chinese medicine practitioner or the practice of a Chinese herbal dispenser in such a way that patient care may be compromised; or

(g) the failure to act as a Chinese medicine practitioner or Chinese herbal dispenser when required under an Act or regulations to do so; or
(h) the contravention of or failure to comply with a condition, limitation or restriction on the registration or on an endorsement of the registration of a Chinese medicine practitioner or Chinese herbal dispenser imposed by or under this Act; or

(i) a finding of guilt of—

(i) an indictable offence in Victoria, or an equivalent offence in another jurisdiction; or

(ii) an offence if the registered practitioner's ability to continue to practise is likely to be affected because of the finding of guilt or if it is not in the public interest to allow the practitioner to continue to practise because of the finding of guilt; or

(iii) an offence under this Act or the regulations; or

(iv) an offence as a Chinese medicine practitioner or Chinese herbal dispenser under any other Act or regulations.
PART 2—REGISTRATION

Division 1—Procedure for Obtaining Registration

4. Application for registration

(1) A natural person may apply to the Board for registration as all or any of the following—

(a) a Chinese herbal medicine practitioner;

(b) an acupuncturist;

(c) a Chinese herbal dispenser.

(2) An application must—

(a) be in writing and contain the prescribed information; and

(b) specify the type of registration applied for; and

(c) be accompanied by evidence of the qualifications which the applicant claims entitle him or her to the type of registration applied for; and

(d) be accompanied by the fee fixed by the Board.

(3) The Board may require—

(a) the applicant to provide—

(i) evidence that the applicant will, at the time of commencing to practise Chinese medicine or dispense Chinese herbs, be covered by professional indemnity insurance that meets the minimum terms and conditions set out in the guidelines of the Board in connection with that practice or dispensing;
(ii) details of any information required by section 21;

(iii) an English translation of any document that accompanies his or her application;

(iv) a postal address for the applicant that will appear on the register;

(v) further information or material in respect of the application;

(b) that the information in the application be verified by a declaration under section 107 of the Evidence Act 1958;

(c) proof of identity of the person making the application.

5. Qualifications for general registration

A person is qualified for general registration as a Chinese medicine practitioner or a Chinese herbal dispenser if that person—

(a) has successfully completed a course of study approved by the Board; or

(b) in the opinion of the Board, has a qualification that is substantially equivalent or is based on similar competencies to a course of study approved by the Board; or

(c) has passed an examination set by or on behalf of the Board; or

(d) has a qualification that is recognised in another State or Territory of the Commonwealth for the purposes of undertaking work of a similar nature to that which a person, holding a qualification to which paragraph (a), (b) or (c) applies, is qualified to undertake.
6. General registration

(1) The Board must grant general registration as a Chinese medicine practitioner or a Chinese herbal dispenser to an applicant if—

(a) the applicant is qualified for registration under section 5; and

(b) in the case of an applicant who has not been registered under this section before, the applicant completed the course of study, obtained the qualification or passed the examination referred to in section 5 within the 5 years preceding the application; and

(c) in the case of an applicant who has been registered under this section before, the applicant has, within the 5 years preceding the application, had experience in the practice of Chinese medicine or the dispensing of Chinese herbs that is appropriate for the type of registration applied for; and

(d) there are no grounds under sub-section (2) under which the Board may refuse to grant registration to the applicant; and

(e) the circumstances are such that section 7 does not apply; and

(f) the applicant has provided the information required under section 4; and

(g) the applicant has paid the fee required by section 4(2)(d).

(2) The Board may refuse to grant registration to an applicant on any one or more of the following grounds—
(a) that the character of the applicant is such that it would not be in the public interest to allow the applicant to practise as a registered practitioner;

(b) that the applicant is unfit to practise as a registered practitioner because he or she is an alcoholic or drug-dependent person;

(c) that the applicant has been found guilty of an indictable offence in Victoria or an equivalent offence in another jurisdiction;

(d) that the applicant has been found guilty of an offence where the ability of the applicant to practise is likely to be affected because of the finding of guilt or where it is not in the public interest to allow the applicant to practise because of the finding of guilt;

(e) that the applicant has previously been registered under this Act and during the course of that registration has had proceedings under Part 3 brought against him or her and those proceedings have never been finalised;

(f) that, in the opinion of the Board, the applicant is unfit to be registered because he or she has a physical or mental incapacity which significantly impairs his or her ability to practise as a registered practitioner;

(g) that the applicant's competency in speaking or otherwise communicating in English is not sufficient for that person to practise as a registered practitioner;

(h) that the applicant has previously held a right to practise as a practitioner in another State or Territory or another country, being the equivalent of registration as a practitioner
under this Act, and that right has been cancelled or suspended and not restored because of conduct which, if committed within Victoria, would entitle the Board to suspend or cancel the registration;

(i) that, in the opinion of the Board, the applicant does not have adequate arrangements for professional indemnity insurance that meet the minimum terms and conditions set out in the guidelines of the Board.

(3) The Board may impose any condition, limitation or restriction it thinks appropriate on registering a person including a condition that—

(a) the person must hold professional indemnity insurance in connection with the practice of Chinese medicine or the dispensing of Chinese herbs; or

(b) the practice of Chinese medicine by the person or the dispensing of Chinese herbs by the person must be covered by professional indemnity insurance in connection with the practice of Chinese medicine or the dispensing of Chinese herbs; or

(c) the person must be specified or referred to in professional indemnity insurance in connection with the practice of Chinese medicine or the dispensing of Chinese herbs, whether by name or otherwise, as a person to whom the insurance cover or indemnity extends, even though the person is not a party to the insurance.
(4) A condition referred to in sub-section 3(a), (b) or (c) may require professional indemnity insurance that meets the minimum terms and conditions set out in the guidelines of the Board.

(5) The Board may, upon application by the registered practitioner, amend, vary or revoke any condition, limitation or restriction imposed under sub-section (3).

(6) The Board must not refuse to grant registration to a person on the basis that the person's arrangements for professional indemnity insurance are in the form of insurance or a discretionary indemnity if the person's arrangements otherwise meet the minimum terms and conditions set out in the guidelines of the Board.

7. Specific registration

(1) The Board may grant or refuse to grant specific registration as a practitioner to an applicant who holds qualifications in Chinese medicine or Chinese herbal dispensing which do not qualify that applicant for general registration—

(a) to enable that applicant to undertake supervised study or training or a course approved by the Board at a tertiary institution; or

(b) to enable that applicant to fill a teaching or research position in Chinese medicine or Chinese herbal dispensing at a tertiary institution approved by the Board; or

(c) to enable an applicant from another country to practise in Victoria if that applicant has exchanged practice with a registered practitioner for a limited period with the prior permission of the Board; or
(d) if the Board is satisfied that, in order to meet an identified need for a Chinese medicine practitioner or Chinese herbal dispenser, it is necessary for a person having qualifications in the nature of the applicant's to provide Chinese medicine services or Chinese herbal dispensing services.

(2) The Board may refuse to grant registration to an applicant if, in the opinion of the Board, the applicant does not have adequate arrangements for the professional indemnity insurance that meet the minimum terms and conditions set out in the guidelines of the Board.

(3) The Board must not refuse to grant registration to an applicant on the basis that the applicant's arrangements for professional indemnity insurance are in the form of insurance or a discretionary indemnity cover if the arrangements otherwise meet the minimum terms and conditions set out in the guidelines.

(4) A grant of specific registration under this section continues in force for the period, not exceeding 12 months, that is specified by the Board and is subject to any condition, limitation or restriction imposed by the Board under sub-section (5).

(5) The Board may impose any condition, limitation or restriction it thinks appropriate on granting specific registration including a condition that—

(a) the person must hold professional indemnity insurance in connection with the practice of Chinese medicine or the dispensing of Chinese herbs during the course of that practice; or
(b) the practice of Chinese medicine by the person or the dispensing of Chinese herbs by the person must be covered by professional indemnity insurance in connection with the practice of Chinese medicine or the dispensing of Chinese herbs; or

(c) the person must be specified or referred to in professional indemnity insurance in connection with the practice of Chinese medicine or the dispensing of Chinese herbs, whether by name or otherwise, as a person to whom the insurance or indemnity extends, even though the person is not a party to the insurance.

(6) A condition referred to in sub-section 5(a), (b) or (c) may require professional indemnity insurance that meets the minimum terms and conditions set out in guidelines of the Board.

(7) The Board may, upon application by the registered practitioner, amend, vary or revoke any condition, limitation or restriction imposed under sub-section (5).

8. **Endorsement of registration**

(1) If the Board is satisfied that a Chinese medicine practitioner has satisfactorily completed a course of study or training which, in the opinion of the Board, qualifies the Chinese medicine practitioner to obtain and to have in his or her possession and to use, sell or supply Schedule 1 poisons within the meaning of the *Drugs, Poisons and Controlled Substances Act 1981*, the Board may endorse the registration of the Chinese medicine practitioner to the effect that the Chinese medicine practitioner is qualified to obtain and to have in his or her possession and to use, sell or supply Schedule 1 poisons.
(2) If the Board is satisfied that a Chinese herbal dispenser has satisfactorily completed a course of study or training which, in the opinion of the Board, qualifies the Chinese herbal dispenser to obtain and to have in his or her possession and to use, sell or supply Schedule 1 poisons within the meaning of the *Drugs, Poisons and Controlled Substances Act 1981*, the Board may endorse the registration of the Chinese herbal dispenser to the effect that the Chinese herbal dispenser is qualified to obtain and to have in his or her possession and to use, sell or supply Schedule 1 poisons.

(3) The Board may impose any condition, limitation or restriction on an endorsement under this section including a condition, limitation or restriction relating to the form or state of the poison or whether the poison is manufactured or packaged or not.

(4) An applicant for registration or a registered person may apply to the Board for an endorsement under this section.

(5) An application must be—

(a) in writing in the prescribed form and accompanied by evidence of the qualifications which the applicant claims qualify him or her for the endorsement applied for; and

(b) accompanied by the fee determined by the Board.

(6) The Board—

(a) may require the applicant to provide further information or material in respect of the application; and
(b) may require that the information in the application be verified by a declaration under section 107 of the Evidence Act 1958.

9. Entitlement of applicant to make submissions

If the Board is proposing to refuse an application for registration or endorsement of registration or to impose conditions, limitations or restrictions on the registration or the endorsement the Board must not do so until—

(a) it has given the applicant notice of this proposal; and

(b) it has given the applicant an opportunity to make submissions to the Board about the proposal.

10. Notification of outcome of application

(1) Upon determining an application for registration or endorsement of registration under this Part, the Board must notify the applicant as to whether or not the registration or endorsement of registration has been granted to the applicant.

(2) A notice under sub-section (1) must include the following information—

(a) if the registration has been granted—

(i) the type of registration granted; and

(ii) whether or not any condition, limitation or restriction has been imposed on the registration and, if so, the reasons for imposing the condition, limitation or restriction; or

(b) if the registration has not been granted—

(i) the reasons why it has not been granted; and
(ii) a statement that the applicant has a right to obtain a review of the decision not to grant registration; or

(c) if the endorsement has been granted whether or not any condition, limitation or restriction has been imposed on the endorsement and, if so, the reasons for imposing the condition, limitation or restriction; or

(d) if the endorsement has not been granted—
   (i) the reasons why it has not been granted; and
   (ii) a statement that the applicant has a right to obtain a review of the decision not to endorse the registration.

11. Duration and renewal of registration

(1) The registration of a practitioner which is not specific or the renewal of such registration continues in force until 31 December next following the grant or renewal of registration.

(2) The specific registration of a practitioner or the renewal of such registration continues in force for 12 months following the grant or renewal of that registration.

12. Application for renewal of and refusal to renew registration

(1) An application for renewal of registration—
   (a) must be made to the Board before the existing registration expires; and
   (b) must be accompanied by—
      (i) evidence that the applicant will be covered by professional indemnity insurance that meets the minimum
terms and conditions set out in the guidelines of the Board; and

(ii) the fee fixed by the Board; and

(iii) if required by the Board, details of any information required by section 21.

(2) If a person does not apply for renewal of registration before the end of the existing registration period, the Board may renew that person's registration if the application is made within 3 months after the end of the registration period and if the applicant pays an additional renewal fee fixed by the Board which must not be more than 50% of the original fee.

(3) If a person's registration has expired without being renewed that person is deemed to be registered for a period of 3 months after that expiry, and if, at the end of that period of 3 months, that person has not renewed his or her registration, the Board must remove that person's name from the register.

(4) The Board may refuse to renew the registration of an applicant under this Part—

(a) if the Board is satisfied that the applicant for renewal has not had sufficient experience in the practice of Chinese medicine or the dispensing of Chinese herbs in the division of registration applied for in the preceding 5 years to be able to practise as a Chinese medicine practitioner or Chinese herbal dispenser in that division; or

(b) on any ground on which the Board might refuse to grant registration.

13. Post graduate qualifications

(1) The Board, from time to time, may recognise any post graduate qualification that the Board
considers to be relevant to the practice of Chinese medicine or the dispensing of Chinese herbs.

(2) An applicant for registration or a registered person may apply to the Board to have particulars of a post graduate qualification that is recognised by the Board in addition to those approved for registration noted on the register against the name of that practitioner.

(3) An application must be in writing and be accompanied by the fee for the application fixed by the Board together with evidence of the post graduate qualifications that the applicant wants to have noted on the register in addition to those approved for registration purposes.

(4) The Board must publish a list of the post graduate qualifications recognised under this section at least once a year in a publication circulating among registered practitioners generally and make the list available for inspection during normal business hours at the office of the Board without charge.

14. **Restoration of name to the register**

If a person whose name has been removed from the register under section 12(3)—

(a) applies to the Board within 2 years from the date of that removal to have his or her name restored to the register; and

(b) pays to the Board the fee fixed by the Board for that purpose within that period—

the Board may restore that person's name to the register.

15. **Effect of suspension of registration**
For the purposes of this Act, a practitioner whose registration is suspended is deemed to be not registered for the period of that suspension.

16. Registration obtained by fraud

(1) If the Board believes that the registration or endorsement of registration of a practitioner has been obtained by fraud or misrepresentation or that the qualifications upon which the registered practitioner relied for registration or endorsement of registration have been withdrawn, the Board must conduct a hearing into the matter.

(2) The Board must give notice of the time and place of the hearing to the registered practitioner.

(3) The provisions applying to the conduct of a formal hearing under Part 3 apply to a hearing under this section as if the hearing under this section were a formal hearing.

(4) If, at the end of the hearing, the Board determines that the registration or endorsement of registration of the practitioner has been obtained by fraud or misrepresentation or that the qualifications upon which the registered practitioner has relied for registration or endorsement of registration have been withdrawn, the Board must cancel the registration or endorsement of registration (as the case may be) of the practitioner.

Division 2—Other Requirements

17. The register

(1) The Board must cause to be kept a register of all Chinese medicine practitioners and Chinese herbal dispensers to whom the Board has granted registration under this Act.
(2) The register is to be called the Register of Chinese Medicine.

(3) The register is to include 3 divisions as follows—

(a) the division of Chinese herbal medicine practitioners, which is to be a list of the names of every person registered as a Chinese herbal medicine practitioner under this Part;

(b) the division of acupuncturists, which is to be a list of the names of every person registered as an acupuncturist under this Part;

(c) the division of Chinese herbal dispensers, which is to be a list of the names of every person registered as a Chinese herbal dispenser under this Part.

(4) The following particulars must be included on the register against the name of the registered practitioner to whom they apply—

(a) a description of the division of registration;

(b) a description of any endorsement under section 8;

(c) any current suspension of the registration of the practitioner;

(d) any current condition, limitation or restriction imposed on the registration or endorsement of registration of the practitioner;

(e) any post graduate qualifications recognised by the Board in addition to those approved for registration purposes;
(f) the postal address where the registered practitioner can be contacted by mail;

(g) the prescribed information.

(5) The register may be inspected at the office of the Board by any person during ordinary office hours without charge.

(6) A person may obtain a copy of or an extract from the register on payment of the fee fixed by the Board.

(7) A registered practitioner's private address must not appear on that part of the register which is open to the public for inspection, unless—

(a) the private address is also the postal address nominated by the registered practitioner; or

(b) the registered practitioner so authorises.

18. Certificates

(1) Upon—

(a) granting registration to a person under this Part; or

(b) renewing the registration of a person under this Part—

the Board must issue a certificate of registration to that person.

(2) The following particulars must be included on a certificate of registration—

(a) any endorsement of registration under section 8;

(b) any condition, limitation or restriction imposed on the registration or endorsement of registration;
(c) any post graduate qualifications recognised by the Board in addition to those approved for registration purposes;

(d) the prescribed information.

(3) If a registered practitioner's registration under this Part has been suspended or cancelled, an endorsement of the registration has been cancelled or a condition, limitation or restriction has been imposed on the registration or endorsement of registration, the practitioner must return his or her current certificate of registration to the Board.

Penalty: 20 penalty units.

19. Use of certificate as evidence

A certificate purporting to be signed by the President or any two members of the Board to the effect that—

(a) a practitioner is or is not or was or was not, at any specified date, registered; or

(b) the registration of the practitioner is or is not or was or was not, at any specified date, endorsed under section 8; or

(c) any disciplinary or other action is or is not or was or was not, at any specified date, being taken against the practitioner—

is evidence, and, in the absence of evidence to the contrary, is proof of the matters stated in it.

20. Requirement to notify the Board of address

A registered practitioner must notify the Board in writing of any change of the address of the practitioner which appears on the register within 14 days after that change.

Penalty: 1 penalty unit.

21. Provision of information
(1) If a person has claimed damages or other compensation from a registered practitioner for alleged negligence in the course of practising Chinese medicine or dispensing Chinese herbs, the practitioner must provide the Board with information about the amount of damages or other compensation that the practitioner is ordered by a court to pay within 30 days after the order is made.

(2) Sub-section (1) does not apply if—
   (a) the amount is less than the amount fixed by the Board for the purposes of this section; or
   (b) the court orders that the terms of the order should not be disclosed.

(3) If a registered practitioner has in respect of an indictable offence—
   (a) been committed for trial; or
   (b) been convicted or found guilty of the offence—

   the practitioner must notify the Board within 30 days after that commitment, conviction or finding of guilt.

(4) An applicant for registration or renewal of registration as a practitioner must ensure that details of any of the matters referred to in this section are set out in the application.
PART 3—INVESTIGATIONS INTO REGISTERED PRACTITIONERS

Division 1—Preliminary investigations into professional conduct

22. Complaints about the professional conduct of practitioners

(1) A person may make a complaint about a registered practitioner to the Board.

(2) A person may make a complaint to the Board about a person who was a registered practitioner but has ceased to be a registered practitioner if the complaint relates to conduct of the other person at a time when the other person was a registered practitioner.

23. When complaints about professional conduct are to be investigated by Health Services Commissioner

(1) If the Board receives a complaint about a registered practitioner, and the complaint is of a kind which may be made under the Health Services (Conciliation and Review) Act 1987, the Board must notify the Health Services Commissioner and give a copy of the complaint to the Health Services Commissioner as soon as possible after it has received the complaint.

(2) The Board, in consultation with the Health Services Commissioner, must determine whether or not the complaint is to be dealt with by the Commissioner or the Board.

(3) The Health Services (Conciliation and Review) Act 1987 applies to a complaint made under this Part which is to be dealt with by the Health Services Commissioner as if the complaint were made under Part 3 of that Act.
(4) The Board must not deal further with a complaint made under this Part that is to be dealt with by the Health Services Commissioner unless the Health Services Commissioner refers the matter back to the Board under section 19(6) of the Health Services (Conciliation and Review) Act 1987.

(5) If a complaint has been referred to and is being dealt with by the Health Services Commissioner, the Commissioner must advise the Board, when the matter is completed, of the outcome of the matter.

24. **When complaints about professional conduct are to be investigated by the Board**

(1) The Board must investigate a complaint concerning the professional conduct of a registered practitioner unless—

   (a) the complaint is to be dealt with by the Health Services Commissioner under section 23; or

   (b) the Board has determined the complaint to be frivolous or vexatious.

(2) In order to determine whether or not it is necessary to conduct a formal or informal hearing into a complaint, the Board must conduct a preliminary investigation into the complaint.

(3) The Board may, in writing, delegate to—

   (a) an officer of the Board; or

   (b) an investigator retained by the Board; or

   (c) a member of the Board or a number of members not exceeding 3—

its power to conduct a preliminary investigation into a complaint, other than its power to make determinations upon a preliminary investigation.
25. **Outcome of preliminary investigation**

(1) Upon completing a preliminary investigation, the person or persons conducting the investigation may make one of the following recommendations—

(a) that the investigation into the matter should not proceed further; or

(b) that an informal or formal hearing should be held into the matter.

(2) The Board must determine whether or not to act on the recommendations of any person conducting the preliminary investigation.

26. **Board may institute a hearing into professional conduct**

The Board may, of its own motion, determine to conduct a formal or informal hearing into the professional conduct of a registered practitioner without conducting a preliminary investigation.

27. **Suspension of registration upon commencement of investigation**

(1) The Board, upon making a determination—

(a) to conduct a preliminary investigation into a complaint made to the Board about the professional conduct of a registered practitioner; or

(b) to conduct a formal or informal hearing into the professional conduct of a registered practitioner without preliminary investigation—

may suspend the registration of the practitioner until any investigation and any hearing into the matter is completed if the Board is of the opinion that it is necessary to do so because there is a
serious risk that the health and safety of the public will be endangered.

(2) If the Board has suspended the registration of a practitioner under sub-section (1), it must—

(a) immediately notify the practitioner of that suspension; and

(b) ensure that the matter is investigated as soon as possible after that suspension.

**Division 2—Preliminary investigation into the health of registered practitioners**

28. **Commencement of preliminary investigation**

If the Board believes the ability of a registered practitioner to practise Chinese medicine or dispense Chinese herbs may be affected because—

(a) of the physical or mental health of the practitioner; or

(b) the practitioner has an incapacity; or

(c) the practitioner is an alcoholic or drug-dependent person—

the Board may appoint one of its members or a member of the staff of the Board to conduct a preliminary investigation into the matter.

29. **Notification to practitioner**

(1) The person appointed to investigate the matter must give notice of the preliminary investigation to the registered practitioner to be investigated.

(2) A notice under sub-section (1) must—

(a) be in writing; and
(b) be sent by registered post as soon as possible after the Board's decision has been made; and

(c) advise the practitioner of the nature of the matter to be investigated; and

(d) ask the practitioner to advise the Board as to whether or not he or she will agree to undergo a medical examination within 28 days after receiving the notice; and

(e) advise the practitioner of the procedures that can be taken under this Part.

30. Medical examination

(1) If the registered practitioner agrees to undergo a medical examination within 28 days, the registered practitioner must be examined by a registered medical practitioner who is agreed upon by the Board and the practitioner being investigated.

(2) If the Board and the practitioner being investigated are unable to agree upon a registered medical practitioner to conduct the examination, the Minister must appoint a registered medical practitioner to perform the examination.

(3) The Board must pay for the examination.

31. Report of examination

(1) The examining medical practitioner must give a report of his or her examination to the person appointed to investigate the matter, and, not more than 7 days later, to the practitioner being investigated.

(2) The person appointed to investigate the matter must discuss the report with the practitioner being investigated, and, in the case of an adverse finding
in the report, the possible ways of dealing with that finding.

(3) After discussing the report with the practitioner being investigated, the person appointed to investigate the matter must report to the Board.

(4) Despite sub-section (1), if the report contains information of a medical or psychiatric nature concerning the practitioner being investigated, and it appears to the person appointed to conduct the investigation that the disclosure of that information to the practitioner might be prejudicial to the physical or mental health or well being of the practitioner, the investigator may decide not to give that information to the practitioner but to give it instead to a registered medical practitioner and to a registered practitioner who are nominated by the practitioner who is being investigated.

(5) Before acting under sub-section (4), the investigator must report to the Board and, if the investigator is not a registered practitioner and the Board is of the opinion that it is necessary for the investigation of the matter to be continued by a registered practitioner, the Board may appoint a registered practitioner to continue the investigation.

32. **Outcome of preliminary investigation**

(1) If, after considering the reports given under section 31, the Board decides that further action should be taken, the Board must ask the registered practitioner whether or not he or she is prepared to agree to—
(a) alter the way in which he or she practises Chinese medicine or dispenses Chinese herbs; or
(b) the imposition of conditions, limitations or restrictions on his or her registration or endorsement of registration; or
(c) the suspension of his or her registration for the period of time specified by the Board.

(2) The Board may take any action that is necessary to implement an agreement under sub-section (1).

33. **Referral to formal hearing**

If a registered practitioner who is the subject of a preliminary investigation under this Division—

(a) does not agree to undergo a medical examination or does not abide by an agreement to undergo a medical examination; or

(b) does not reach an agreement with the Board under section 32 or does not abide by an agreement reached with the Board under section 32—

the Board may refer the matter to a formal hearing.

34. **Request for suspension of registration or conditions, limitations or restrictions**

(1) A registered practitioner who believes that his or her ability to practise Chinese medicine or to dispense Chinese herbs is affected because—

(a) of his or her physical or mental health; or

(b) he or she has an incapacity; or

(c) he or she is an alcoholic or drug-dependent person—
may ask the Board to suspend the practitioner's registration or to impose a condition, limitation or restriction on his or her practice.

(2) If the Board and the practitioner agree upon the suspension of registration or the condition, limitation or restriction to be imposed, the Board may suspend the registration or impose the condition, limitation or restriction.

(3) If the practitioner and the Board do not agree on the suspension of registration or the condition, limitation or restriction to be imposed, the Board must refer the matter to a preliminary investigation.

35. Revocation of suspension of registration or condition, limitation or restriction imposed on registration

The Board may revoke a condition, limitation or restriction imposed on the registration or endorsement of registration of a registered practitioner or the suspension of a registered practitioner's registration, if the practitioner satisfies the Board that his or her ability to practise Chinese medicine or dispense Chinese herbs is no longer affected.

36. Immediate suspension of registration

(1) If the Board has referred a matter to a formal hearing under this Division, the Board may suspend the registration of the practitioner until the hearing is completed, if the Board is of the opinion that the ability of the practitioner to practise Chinese medicine or dispense Chinese herbs is affected to such an extent that to allow the practitioner to continue to practise would pose a
serious risk that the health and safety of the public will be endangered.

(2) If the Board has suspended the registration of a practitioner under sub-section (1), it must—

(a) immediately notify the practitioner of that suspension; and

(b) ensure that the matter is investigated as soon as possible after that suspension.

Division 3—Formal and Informal Hearings

37. Establishment and notification of an informal hearing

If the Board has determined that an informal hearing be held into the professional conduct of a registered practitioner under section 25 or 26, the Board must—

(a) appoint a panel to hold the hearing; and

(b) fix a time and place for the hearing to be held; and

(c) by registered post, serve a notice on the practitioner which complies with section 39; and

(d) serve notice on any complainant by registered post under section 56(4)(a) and (b).

38. Constitution of a panel for an informal hearing

(1) A panel appointed under section 37 is to consist of not more than 3 persons—

(a) who are to be members of the Board; and
(b) of whom, at least 1 is to be a practitioner registered in the same division as the practitioner being investigated.

(2) If—

(a) the Board is unable to appoint a panel because there are not enough members available to sit on it; or

(b) the Board is of the opinion that a person with special expertise is required for the hearing—

the President or, in the absence of the President, the Deputy President may fill the vacant positions on the panel by appointing persons who are not members of the Board from a list of persons approved by the Governor in Council under sub-section (4).

(3) A person who has undertaken a preliminary investigation of the matter is not entitled to be a member of the panel.

(4) The Governor in Council, on the recommendation of the Minister, may approve persons who are not members of the Board to be available to be appointed to a panel under sub-section (2).

39. Notice of an informal hearing

A notice of an informal hearing under section 37 must—

(a) state the nature of the hearing and the allegations made against the practitioner; and

(b) give the time and place of the hearing; and

(c) state that the practitioner may choose to have the matter determined by a formal hearing and state the differences between a formal and informal hearing; and
(d) state that there is no right to legal representation at the informal hearing, but that the practitioner is entitled to be present and to make submissions and to be accompanied by another person; and

(e) state that the informal hearing is not open to the public; and

(f) list the possible findings the panel can make or determinations the panel can make.

40. **Conduct of an informal hearing**

At an informal hearing—

(a) the panel must hear and determine the matter before it; and

(b) the practitioner who is the subject of the hearing is entitled to be present, to make submissions and to be accompanied by another person but is not entitled to be represented; and

(c) the proceedings of the hearing must not be open to the public.

41. **Findings and determinations of an informal hearing**

(1) After considering all the submissions made to the hearing the panel may find either—

(a) that the practitioner has, whether by act or omission, engaged in unprofessional conduct which is not of a serious nature; or

(b) that the practitioner has not engaged in unprofessional conduct.
(2) If the panel finds that the practitioner has, whether by act or omission, engaged in unprofessional conduct which is not of a serious nature, the panel may make one or more of the following determinations—

(a) that the practitioner undergo counselling;
(b) that the practitioner be cautioned;
(c) that the practitioner be reprimanded;
(d) that the practitioner undertake further education of the kind stated in the determination and complete it within the period specified in the determination.

42. Change of informal hearing to formal hearing during course of hearing

If, before the end of the hearing—

(a) the practitioner who is the subject of the hearing fails to attend the hearing without good cause; or
(b) the practitioner requests that a formal hearing be held; or
(c) the panel is of the opinion that a formal hearing should be held—

the panel must abandon the informal hearing and refer the matter to a formal hearing.

43. Request for formal hearing upon completion of informal hearing

Upon the completion of an informal hearing, the practitioner who was the subject of the hearing may request that a formal hearing be held to review any findings and determinations of the informal hearing.

44. Establishment and notification of formal hearing
If—

(a) the Board has determined that a formal hearing be held under section 25 or 26 or has referred a matter to a formal hearing under section 33; or

(b) a practitioner has requested a formal hearing under section 43; or

(c) a panel has referred a matter to a formal hearing under section 42—

the Board must—

(d) appoint a panel to hold the hearing; and

(e) fix a time and place for the hearing to be conducted; and

(f) serve a notice on the practitioner by registered post which complies with section 46; and

(g) serve a notice on any complainant by registered post under section 56(4)(a) and (b).

45. Constitution of a hearing panel for a formal hearing

(1) A panel appointed under section 44 must consist of not less than 3 persons—

(a) who are to be members of the Board; and

(b) of whom 1 is to be a lawyer and at least 1 is to be a practitioner registered in the same division as the practitioner being investigated.

(2) If—

(a) the Board is unable to appoint a panel because there are not enough members available to sit on it; or
(b) the Board is of the opinion that a person with special expertise is required for the hearing—

the President or, in the absence of the President, the Deputy President may fill the vacant positions on the panel by appointing persons who are not members of the Board from a list of persons approved by the Governor in Council under sub-section (4).

(3) The following people are not entitled to be members of a panel for a formal hearing—

(a) a person who has undertaken a preliminary investigation of the matter which is the subject of the hearing;

(b) a person who has been a member of a panel which held an informal hearing into the matter.

(4) The Governor in Council, on the recommendation of the Minister, may approve persons who are not members of the Board to be available to be appointed to a panel under sub-section (2).

46. Notice of a formal hearing

A notice of a formal hearing under section 44 must—

(a) state the nature of the hearing and the allegations made against the practitioner; and

(b) give the time and place of the hearing; and

(c) state that there is a right to make submissions and to be represented, that the hearing is open to the public, list the possible findings the panel can make and state that there is a right to apply for a review of the panel's findings.

47. Conduct of a formal hearing
At a formal hearing—

(a) the hearing panel must hear and determine the matter before it; and

(b) the practitioner who is the subject of the hearing is entitled to be present, to make submissions and to be represented; and

(c) if the hearing arises out of a complaint, the identity of the complainant is not to be published or broadcast and the complainant—

(i) in the case of a proceeding which has not been closed under paragraph (d), is entitled to be present; and

(ii) if not called as a witness, may make submissions with the permission of the panel; and

(d) the proceedings are to be open to the public unless the panel determines that the proceedings should be closed because the hearing is taking evidence of intimate, personal or financial matters; and

(e) if the panel has determined that the proceedings are closed, the panel may determine that the identity of any witness giving evidence in the proceedings is not to be published or broadcast; and

(f) the panel may determine that any information that might enable the registered practitioner who is the subject of the hearing to be identified must not be published or broadcast if the panel considers it necessary to do so to avoid prejudicing the administration of justice or for any other reason in the interests of justice.
48. **Findings and determinations of a formal hearing into conduct**

(1) After considering all the submissions made to a formal hearing into the professional conduct of a registered practitioner the panel may find that—

(a) the practitioner has, whether by act or omission, engaged in unprofessional conduct of a serious nature; or

(b) the practitioner has, whether by act or omission, engaged in unprofessional conduct which is not of a serious nature; or

(c) the practitioner has not engaged in unprofessional conduct.

(2) If the panel finds that the practitioner has, whether by act or omission, engaged in unprofessional conduct of a serious nature, the panel may make one or more of the following determinations—

(a) require the practitioner to undergo counselling;

(b) caution the practitioner;

(c) reprimand the practitioner;

(d) require the practitioner to undertake further education of the kind stated in the determination and to complete it within the period specified in the determination;

(e) impose conditions, limitations or restrictions on the registration or endorsement of registration of the practitioner;

(f) impose a fine on the practitioner of not more than $10 000;

(g) suspend the registration of the practitioner for the period specified in the determination;
(h) cancel the registration or an endorsement of the registration of the practitioner.

(3) If the panel finds under sub-section (1)(b) that the practitioner has, whether by act or omission, engaged in unprofessional conduct which is not of a serious nature, the panel may make any determination which a panel at an informal hearing is able to make upon making such a finding.

(4) The panel must not impose a fine where the conduct which is the subject of the finding has resulted in a fine being imposed by another tribunal or court of law.

(5) If the panel has made an order under sub-section (2)(a), (d) or (f) and the practitioner has not complied with the order within the time specified in the order, the Board may suspend the practitioner’s registration until the order is complied with.

49. Findings and determinations of a formal hearing into ability to practise

(1) After considering all the submissions made to a formal hearing into the ability to practise of a registered practitioner, the panel may find that—

(a) the ability of the practitioner to practise is affected because—

   (i) of the physical or mental health of the practitioner; or

   (ii) the practitioner has an incapacity; or

   (iii) the practitioner is an alcoholic or drug-dependent person; or

(b) the ability of the practitioner is not affected.
(2) If the panel makes a finding under sub-section (1)(a), the panel may make one or more of the following determinations—

(a) to impose conditions, limitations or restrictions on the registration or endorsement of registration of the practitioner;

(b) to suspend the registration of the practitioner for the period and subject to the conditions, limitations and restrictions, if any, specified in the determination.

Division 4—General Provisions relating to Investigations

50. Investigation may continue even if person no longer registered

(1) The Board may—

(a) conduct an investigation into a complaint referred to in section 22(2) and make a finding or determination under this Part;

(b) conduct a hearing and make a finding or determination under this Part in relation to a complaint referred to in section 22(2)—

as if the person referred to in that complaint were a registered practitioner.

(2) The Board may—

(a) conduct or continue to conduct an investigation into the professional conduct of a person who has ceased to be a registered practitioner but who was a registered practitioner at the time a complaint was made or the Board had determined to conduct an investigation into the conduct and make a finding or determination under this Part;
(b) conduct or continue to conduct a hearing and make a finding or determination under this Part in relation to a person who has ceased to be a registered practitioner but who was a registered practitioner at the time the Board had determined to conduct a hearing into the conduct—

as if the person were a registered practitioner.

51. Procedure at formal and informal hearings

At a formal or informal hearing—

(a) subject to this Part, the procedure of a panel is in its discretion; and

(b) the proceedings must be conducted with as little formality and technicality as the requirements of this Act and the proper consideration of the matter permit; and

(c) a panel is not bound by rules of evidence but may inform itself in any way it thinks fit; and

(d) a panel is bound by the rules of natural justice.

52. Powers of panel conducting a formal hearing

Sections 14, 15, 16 and 21A of the Evidence Act 1958 apply to a panel in the conduct of a formal hearing as if it were a Board or the Chairman of a Board appointed by the Governor in Council.

53. Determinations

(1) A determination made by a panel on a hearing comes into operation on its making or at any later time stated in the determination.

(2) A determination of a panel is to have effect as if it were a determination of the Board.
Act No. 18/2000
Chinese Medicine Registration Act 2000

(3) If a fine is imposed by a panel it may be recovered by the Board as a debt due to the Board.

54. Removal of suspension, condition, limitation or restriction

(1) If the Board has suspended the registration of a practitioner until the completion of a hearing, and at the completion of the hearing the panel determines that the suspension should be removed, the Board must remove the suspension.

(2) If a condition, limitation or restriction has been imposed on the registration or endorsement of registration of a practitioner, and, at the completion of a hearing, the panel determines that the condition, limitation or restriction should be removed, the Board must remove that condition, limitation or restriction.

55. Reasons for determinations of panel

A panel must give reasons for a determination made under this Part, to the practitioner who was the subject of the determination within 28 days after the making of the determination.

56. Notifications

(1) If a determination has been made by a panel—

(a) imposing conditions, limitations or restrictions on the registration of a practitioner; or

(b) suspending the registration of a practitioner; or

(c) cancelling the registration of a practitioner—

the Board must give notice of the determination—

(d) in the Government Gazette; and
(e) to the Chinese medicine registration authorities in all other States or Territories of the Commonwealth and in New Zealand; and

(f) to the Health Services Commissioner; and

(g) if the practitioner is an employee, to his or her employer; and

(h) if the Board has received a request for information about the person in respect of whom the determination has been made from a Chinese medicine registration authority outside Australia or New Zealand, that authority.

(2) Notice under sub-section (1) must be given as soon as possible after the determination has been made.

(3) No action for defamation lies against the Board or its members for giving a notice under this section.

(4) If a complaint has been made to the Board, the Board must notify the complainant—

(a) of whether or not a formal or informal hearing is to be conducted into the matter and, if so, of the time and place of the hearing and, in the case of a formal hearing, of the fact that the complainant's identity is not to be published or broadcast; and

(b) in the case of a formal or informal hearing, of whether or not the complainant has any right to make submissions at the hearing; and

(c) of the findings and determinations of any hearing arising from that complaint and the reasons for those findings and determinations, within 28 days after their having been made.
57. **Offence to disclose information identifying complainant, witness or practitioner**

A person must not publish or broadcast or cause to be published or broadcast any report of a formal hearing under this Part which contains information which would enable—

(a) the complainant to be identified; or

(b) if the panel has made a determination prohibiting the publication or broadcast of the identity of a witness, that witness to be identified; or

(c) if the panel has made a determination prohibiting the publication or broadcast of the identity of a registered practitioner, that practitioner to be identified —

unless the complainant, witness or practitioner has, before publication or broadcast, consented to this.

Penalty: 50 penalty units for a natural person or 100 penalty units for a body corporate.

58. **Terms and conditions of appointment of panel members**

(1) A member of a panel is appointed on the terms and conditions determined by the Board for that member.

(2) A member of a panel, other than a member who is an employee under Part 3 of the *Public Sector Management and Employment Act 1998*, is entitled to receive the fees that are fixed from time to time by the Governor in Council for members of panels.

(3) A member of a panel is entitled to receive the allowances that are fixed from time to time by the Governor in Council.
(4) In fixing fees under sub-section (2), the Governor in Council may fix different fees for different classes of cases.
PART 4—REVIEW BY VICTORIAN CIVIL AND
ADMINISTRATIVE TRIBUNAL

59. Review by VCAT

(1) A person whose interests are affected by the relevant decision, finding or determination may apply to the Victorian Civil and Administrative Tribunal for review of—

(a) a decision to refuse a person's application for registration, endorsement of registration or renewal of registration; or

(b) a decision to impose conditions, limitations or restrictions on a person's registration or endorsement of registration; or

(c) a decision of the Board to suspend the registration of a person, if the Board has not instituted an investigation into the professional conduct or ability to practise of that person within 28 days after having suspended that registration; or

(d) a finding or determination made at a formal hearing under Part 3.

(2) The application must be made within—

(a) 60 days after the date on which the Board gives notice of a decision referred to in subsection (1)(c); or

(b) 28 days after the date on which the Board gives notice of any other decision, finding or determination to the person concerned.

(3) If a finding has been made at a formal hearing under Part 3 but no final determination has been made at that hearing, an application for review under this section can only be made with the leave of the Tribunal.
60. **Notification**

If a decision, finding or determination has been reviewed by the Victorian Civil and Administrative Tribunal, the Board must notify any person who was notified of the original decision, finding or determination of any change to that decision, finding or determination by the Victorian Civil and Administrative Tribunal.
PART 5—OFFENCES

61. Claims by persons as to registration

(1) A person who is not registered under section 6 or 7 as a practitioner must not—

(a) take or use the title of registered acupuncturist, registered Chinese medicine practitioner, registered Chinese herbal medicine practitioner, registered Chinese herbalist, registered Chinese herbal dispenser or registered Oriental medicine practitioner, whether in English or any other language, or any other title, whether in English or any other language, calculated to induce a belief that the person is registered as a practitioner under this Act; or

(b) claim to be registered under this Act or hold himself or herself out as being registered as a practitioner under this Act; or

(c) carry out any act which is required to be carried out by or under an Act by a person registered as a practitioner under this Act; or

(d) claim to be qualified to practise as a Chinese medicine practitioner, a Chinese herbal medicine practitioner, an acupuncturist or a Chinese herbal dispenser.

Penalty: 50 penalty units.

(2) A person who is not registered as a Chinese herbal medicine practitioner under this Act must not use the title Chinese herbal medicine practitioner, Chinese herbalist, Chinese medicine practitioner, Oriental medicine practitioner or Chinese herbal dispenser, whether in English or any other language.
(3) A person who is not registered as an acupuncturist under this Act must not use the title acupuncturist, Chinese medicine practitioner or Oriental medicine practitioner, whether in English or any other language.

Penalty: 50 penalty units.

(4) A person who is not a registered Chinese herbal dispenser must not use the title Chinese herbal dispenser, whether in English or any other language.

Penalty: 50 penalty units.

(5) A registered practitioner must not—

(a) claim to be registered under this Act in a division of the register in which he or she is not registered or hold himself or herself out as being registered in a division of the register if the person is not registered in that division; or

(b) claim to be qualified to practise as a practitioner in a division of the register in which he or she is not registered.

(6) A registered practitioner must not—

(a) claim to have an endorsement of registration under section 8 or hold himself or herself out as having an endorsement of registration under section 8 if the person does not have his or her registration endorsed under section 8; or

(b) claim to be qualified to practise as a registered practitioner with an endorsement
under section 8 if he or she is not so registered.

Penalty: 50 penalty units.

(7) A registered practitioner whose registration is specific must not—

(a) take or use any title calculated to induce a belief that the practitioner's registration is not specific; or

(b) claim to have or hold himself or herself out as having general registration.

Penalty: 50 penalty units.

(8) A registered practitioner whose registration is subject to a condition, limitation or restriction must not—

(a) take or use any title calculated to induce a belief that the practitioner's registration is not subject to any condition, limitation or restriction; or

(b) claim to have or hold himself or herself out as having a registration which is not subject to any condition, limitation or restriction.

Penalty: 50 penalty units.

(9) A person must not hold out another person as being registered under this Act if the person knows or ought reasonably to know that the other person is not so registered.

Penalty: 50 penalty units.

(10) If a body corporate contravenes sub-section (1), any person who is concerned in or takes part in the management of that body corporate who was, in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence also commits an
offence under sub-section (1) and is liable for the penalty applicable to a natural person for that offence.

(11) The provisions of sub-sections (1)(c) and (d), (2), (3) and (4) do not apply to a person who is registered under an Act referred to in the Schedule as in force at the commencement of section 111 who is acting in accordance with an endorsement or notation of the person’s registration by the Board established under that Act.

(12) The provisions of sub-section (3) do not apply to a veterinary practitioner registered under the Veterinary Practice Act 1997 using the title acupuncturist in relation to the practice of veterinary surgery or veterinary medicine by that practitioner in accordance with his or her registration under that Act.

62. Fraud, forgery etc.

A person must not—

(a) fraudulently or by false representation or declaration (either orally or in writing) obtain registration under this Act; or

(b) fraudulently or by false representation (either orally or in writing) procure any person to be registered under this Act; or

(c) forge, counterfeit or alter any certificate of registration under this Act or any degree, diploma or other evidence of qualifications for registration under this Act.

Penalty: 240 penalty units or imprisonment for a period of 2 years or both.

63. Advertising
(1) A person must not advertise a Chinese medicine practice, Chinese medicine services or Chinese herbal dispensing services in a manner which—

(a) is or is intended to be false, misleading or deceptive; or

(b) offers a discount, gift or other inducement to attract patients to a Chinese medicine practitioner, a Chinese medicine practice or a Chinese herbal dispensing service unless the advertisement also sets out the terms and conditions of that offer; or

(c) refers to, uses or quotes from testimonials or purported testimonials; or

(d) creates an unreasonable expectation of beneficial treatment.

Penalty: 50 penalty units for a natural person or 100 penalty units for a body corporate.

(2) If a body corporate contravenes sub-section (1), any person who is concerned in or takes part in the management of that body corporate who was, in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence also commits an offence under sub-section (1) and is liable for the penalty applicable to a natural person for that offence.

(3) A person who, in good faith, publishes or prints an advertisement which contravenes sub-section (1) on behalf of another person, is not guilty of an offence under that sub-section.

(4) Despite section 26 of the **Magistrates’ Court Act 1989**, proceedings for an offence against this section may be commenced within 3 years after the commission of the alleged offence.
(5) A person who advertises a Chinese medicine practitioner's practice, a Chinese medicine practitioner's services or Chinese herbal dispensing services in a manner otherwise than in compliance with this section is guilty of a continuing offence and may be convicted in respect of each day on which the offence continues.

64. Advertising guidelines

(1) The Governor in Council may, on the recommendation of the Board, by notice published in the Government Gazette, issue guidelines about the minimum standards acceptable to the Board for or with respect to the advertising of Chinese medicine practitioner's and herbal dispensing services.

(2) The Board must consult with any person nominated by the Minister in formulating guidelines for the purposes of this section.

(3) The Board must ensure that any guidelines that it has formulated for recommendation to the Governor in Council have been notified with a request for public comment in the Government Gazette, a newspaper circulating generally throughout Victoria and in any professional magazine, newsletter or journal circulating amongst Chinese medicine practitioners and Chinese herbal dispensers in Victoria at least 60 days before the recommendation is given to the Governor in Council.

(4) The Board must have regard to any comments received pursuant to a notice under this section in making a recommendation to the Governor in Council.
(5) The Board must have regard to any guidelines issued by the Governor in Council under this section.

(6) A court may have regard to any guidelines issued by the Governor in Council under this section.

65. **Power of the courts to require corrective advertising**

If, on the application of the Minister, a court is satisfied that there has been a contravention of section 63(1)(a), (b), (c) or (d) the court may make either or both of the following orders—

(a) an order requiring any person involved in the contravention to disclose any information which is in the person's possession or to which the person has access, which is information or of a class of information specified in the order—

(i) to the public or any person or class of persons specified in the order; and

(ii) in the manner specified in the order;

(b) an order requiring any person involved in the contravention to publish an advertisement in the terms specified or determined in accordance with the order—

(i) at the expense of the person; and

(ii) in the manner and at the times specified in the order.

66. **Exemptions**

Nothing in section 61 applies to the giving or performance of any Chinese medicine advice, service, attendance or operation by a person registered as a Chinese medicine practitioner under the law in force in another State or Territory or New Zealand in an emergency if no registered Chinese medicine practitioner is available.
PART 6—ADMINISTRATION

67. Establishment of Board

(1) There is established a Board to be called the Chinese Medicine Registration Board of Victoria.

(2) The Board—

(a) is a body corporate with perpetual succession; and

(b) has a common seal; and

(c) may sue and be sued in its corporate name; and

(d) may acquire, hold and dispose of real and personal property; and

(e) may do and suffer all acts and things that a body corporate may, by law, do and suffer.

(3) The common seal must be kept as directed by the Board and must not be used except as authorised by the Board.

(4) All courts must take judicial notice of the seal of the Board on a document and, until the contrary is proved, must presume that the document was properly sealed.

68. Powers, functions and consultation requirements

(1) The Board has the following functions—

(a) to register persons who comply with the requirements of this Act as to registration so that they may hold themselves out as registered Chinese medicine practitioners or registered Chinese herbal dispensers;

(b) to approve courses of study which provide qualifications for registration as Chinese
(c) to approve courses of study or training which provide qualification for endorsement of registration under section 8;

(d) to regulate the standards of practice of Chinese medicine and the dispensing of Chinese herbs in the public interest;

(e) to investigate the professional conduct or fitness to practise of registered practitioners and impose sanctions where necessary;

(f) to issue and publish guidelines about the minimum terms and conditions of professional indemnity insurance in connection with the practice of Chinese medicine and the dispensing of Chinese herbs;

(g) to recognise post graduate courses in Chinese medicine and the dispensing of Chinese herbs in addition to those required for registration;

(h) to issue and publish Codes for the guidance of registered practitioners about standards recommended by the Board relating to the practise of Chinese medicine and the prescribing, labelling, storage, dispensing and supply of Chinese herbs including Schedule 1 poisons within the meaning of the Drugs, Poisons and Controlled Substances Act 1981;

(i) to initiate, promote or participate in programs that the Board considers will protect the public from practitioners whose ability to practise medicine may be affected by any matter referred to in section 28;
(j) to advise the Minister on any matters relating to its functions;

(k) when so requested by the Minister, to give to the Minister any information reasonably required by the Minister;

(l) any other functions conferred on the Board by this Act.

(2) The Board has all the powers necessary to enable it to perform its functions.

(3) The Board must consult with the Minister and have regard to the Minister's advice in carrying out its functions and exercising its powers.

(4) The Board must consult with registered practitioners before formulating any Codes referred to in sub-section (1)(h).

(5) If there is an inconsistency between any practice recommended under a guideline or a Code published by the Board and a provision of this Act or the regulations or any other Act or regulations the provision of the Act or the regulations prevails.

69. Membership of the Board

(1) The Board consists of 9 members nominated by the Minister and appointed by the Governor in Council.

(2) Of the persons appointed to the Board—

(a) 6 must be registered practitioners and each of those practitioners must have had at least 5 years practice as a Chinese medicine practitioner or a Chinese herbal dispenser; and

(b) one must be a lawyer; and
(c) 2 must be persons who are not registered practitioners.

(3) At least 2 members of the Board must be able to communicate in English and either Mandarin or any other Chinese dialect.

70. Terms of office

(1) A member of the Board holds office for not more than 3 years from the date of his or her appointment.

(2) A member of the Board is eligible for reappointment.

(3) The Public Sector Management and Employment Act 1998 (except in accordance with Part 7 of that Act) does not apply to a member in respect of the office of member.

71. Resignation and removal

(1) A member of the Board ceases to be a member if he or she is absent, without leave first being granted by the Board, from 3 consecutive meetings of which reasonable notice has been given to that member, either personally or by post.

(2) A member of the Board may resign the office of member by writing signed by the member and addressed to the Governor in Council.

(3) The Governor in Council may at any time remove a member of the Board from office.

(4) If a member of the Board dies, resigns or is removed from office, the Governor in Council may, in accordance with this Act, on the recommendation of the Minister, fill the vacant office.

(5) A member appointed under sub-section (4) holds office for the rest of the term of appointment of the member whose place he or she fills.
72. President and Deputy President

(1) The Governor in Council may appoint members of the Board to be President and Deputy President of the Board.

(2) A person appointed to an office under sub-section (1) holds office for the term specified in his or her instrument of appointment and is eligible for reappointment.

(3) A person appointed to an office under sub-section (1) may resign that office by writing signed by the person and addressed to the Governor in Council.

(4) The Governor in Council may at any time remove a person appointed under sub-section (1) from office.

(5) A person appointed to an office under sub-section (1) ceases to hold that office on ceasing to be a member of the Board.

73. Acting member

(1) If a member of the Board is unable to perform the duties or functions of the office, the Governor in Council may appoint a person qualified to be appointed as that member to act as the member during the period of inability.

(2) The Governor in Council—

(a) subject to this Act, may determine the terms and conditions of appointment of an acting member; and

(b) may at any time terminate the appointment.

(3) While the appointment of an acting member remains in force, the acting member has and may exercise all the powers and perform all the duties and functions of the member.
74. Payment of members

(1) A member or acting member of the Board, other than a member who is an employee under Part 3 of the Public Sector Management and Employment Act 1998, is entitled to receive the fees that are fixed from time to time by the Governor in Council for that member.

(2) Each member or acting member of the Board is entitled to receive the allowances that are fixed from time to time by the Governor in Council.

75. Procedure of Board

(1) The President or, in the absence of the President, the Deputy President must preside at a meeting of the Board at which he or she is present.

(2) If neither the President nor Deputy President are present at a meeting the members present may elect a member to preside at the meeting.

(3) The person presiding at a meeting has a deliberative vote and a second or casting vote.

(4) A majority of the members of the Board currently holding office constitutes a quorum.

(5) Subject to this Act the Board may regulate its own proceedings.

76. Member's interests

(1) A member who has a pecuniary or other interest in any matter in which the Board is concerned must—

(a) if the member is present at a meeting of the Board at which the matter is to be considered, disclose the nature of the interest immediately before the consideration of that matter; or
(b) if the member is aware that the matter is to be considered at a meeting of the Board at which the member does not intend to be present, disclose the nature of the interest to the President or Deputy President of the Board before the meeting is held.

(2) The member—

(a) may take part in the discussion in the meeting; and

(b) must leave the meeting while any vote is taken on a question relating to the matter.

77. Resolutions without meetings

(1) If—

(a) the Board has taken reasonable steps to give notice to each member setting out the terms of a proposed resolution; and

(b) a majority of the members for the time being sign a document containing a statement that they are in favour of the resolution in the terms set out in the document—

a resolution in those terms is deemed to have been passed at a meeting of the Board held on the day on which the document is signed or, if the members referred to in paragraph (b) do not sign it on the same day, on the day on which the last of those members signs the document.

(2) If a resolution is, under sub-section (1), deemed to have been passed at a meeting of the Board, each member must as soon as practicable be advised of the matter and given a copy of the resolution.

(3) For the purposes of sub-section (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or
more members, are deemed to constitute one document.

(4) The majority of members referred to in sub-section (1)(b) must not include a member who, because of section 76, is not entitled to vote on the resolution.

(5) This section does not apply to any resolution of the Board relating to a matter being considered under Part 3.

78. Approved methods of communication for Board

(1) If not less than two-thirds of the members of the Board for the time being holding office so agree, a meeting of the Board may be held by means of a method of communication, or by means of a combination of methods of communication, approved by the President of the Board for the purposes of that meeting.

(2) For the purposes of this Part, a member of the Board who participates in a meeting held as permitted by sub-section (1) is present at the meeting even if he or she is not physically present at the same place as another member participating in the meeting.

(3) This section—

(a) applies to a meeting or a part of a meeting;

(b) does not apply to a meeting conducted for the purposes of Part 3.

79. Effect of vacancy or defect

An act or decision of the Board is not invalid only because—

(a) of a vacancy in its membership; or

(b) of a defect or irregularity in the appointment of any of its members; or
80. **Immunity**

(1) A member of the Board or person responsible for keeping the register is not personally liable for anything done or omitted to be done in good faith—

(a) in the exercise of a power or the discharge of a duty under this Act; or

(b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act.

(2) Any liability resulting from an act or omission that would but for sub-section (1), attach to a member of the Board or the person responsible for keeping the register, attaches instead to the Board.

81. **Staff**

The Board may employ a person to be responsible for maintaining the register and any other persons that are necessary for the purposes of administering this Act.

82. **Delegation**

The Board may, in writing, delegate to—

(a) a member of the Board; or

(b) the person responsible for maintaining the register or any other member of the staff of the Board—

its powers and functions under this Act, other than—

(c) the power to refuse to grant registration or endorsement of registration or to refuse to renew registration; or
(d) the power to impose or to amend, vary or revoke conditions, limitations or restrictions on registration or endorsement of registration; or

(e) the power to conduct any hearing or to make any determination under Part 2 or Part 3; or

(f) this power to delegate.
PART 7—REPORTING AND FINANCIAL PROVISIONS

83. Chinese Medicine Registration Board Fund

(1) The Board must establish and keep a Chinese Medicine Registration Board Fund.

(2) All fees, fines and penalties paid or recovered by the Board under this Act must be paid into the Fund.

(3) The Board must pay any other money received by it into the Fund, including income from the investments of the Fund.

(4) Out of the Fund, the Board must pay—
   (a) the expenses incurred by it in carrying out its functions, powers and duties; and
   (b) any other expenses incurred in the administration of this Act; and
   (c) any payments to be made to members of the Board under this Act and any payments to be made to other persons under this Act; and
   (d) any other payments recommended by the Board and approved by the Minister.

84. Investment powers

The Board may invest money credited to the Fund that it does not immediately require—
   (a) in any manner in which money may be invested under the Trustee Act 1958; or
   (b) in any other manner that the Minister approves.

85. Repayment of advances

(1) The Board must pay into the public account the amounts that the Minister administering section 14 of the Financial Management Act 1994, in
consultation with the Treasurer, determines are required to repay advances from the Public Account for the establishment and operation of the Board, including costs incurred before the establishment of the Board to ensure that, when established, it can operate in a fully effective way.

(2) Payments under sub-section (1) must be made in accordance with any other terms and conditions from time to time determined by the Minister administering section 14 of the Financial Management Act 1994 in consultation with the Treasurer.

(3) The Board must, as and when directed to do so by the Minister administering section 14 of the Financial Management Act 1994, provide a plan for the repayment of advances referred to in sub-section (1).

(4) The Board must, at least once in each period of 6 months after the commencement of this section, and at any other time that the Minister administering section 14 of the Financial Management Act 1994 directs it to do so, report to that Minister in writing on its progress in making payments under sub-section (1).
PART 8—ENFORCEMENT AND SUPPLEMENTARY POWERS

86. Proceedings for offences

(1) The person responsible for maintaining the register or any other officer authorised by the Board may take proceedings under this Act in the name of the Board.

(2) Any prosecution instituted in the name of the Board must, in the absence of evidence to the contrary, be taken to have been instituted by the Board.

87. Identification

(1) The Board must issue an identification card to each person appointed by the Board to apply for or execute search warrants for the purposes of this Act.

(2) A person appointed by the Board must, in the course of performing his or her functions under this Act, produce his or her identification card to any person who requests its production.

88. Powers of entry with warrant

(1) A person appointed for that purpose by the Board may apply to a magistrate for the issue of a search warrant in relation to particular premises if that person believes, on reasonable grounds—

(a) that there is or has been a contravention of this Act or the regulations on the premises; or

(b) that entry into or onto the premises is necessary for the purpose of investigating a complaint made under this Act which, if substantiated, may provide grounds for the
(2) If a magistrate is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for suspecting that there is on the premises a particular thing that may be evidence of the commission of an offence against this Act or the regulations or of grounds for the suspension or cancellation of the registration of a practitioner, the magistrate may issue a search warrant authorising any person named in the warrant—

(a) to enter the premises or the part of the premises named or described in the warrant; and

(b) to search for and seize a thing named or described in the warrant; and

(c) to bring the thing before the Court so that the matter may be dealt with according to law.

(3) In addition to any other requirement, a search warrant issued for the purposes of this section must state—

(a) the offence or grounds of suspension or cancellation suspected; and

(b) the premises to be searched; and

(c) the name or a description of the thing to be searched for; and

(d) any conditions to which the warrant is subject; and

(e) whether entry is authorised to be made at any time or during stated hours; and

(f) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
(4) A search warrant must be issued in accordance with the Magistrates' Court Act 1989 and in a form prescribed under that Act.

(5) The rules to be observed with respect to search warrants mentioned in the Magistrates' Court Act 1989 extend and apply to warrants under this section.

89. Announcement before entry

(1) Immediately before executing a search warrant, a person named in the warrant must announce that he or she is authorised by the warrant to enter the premises.

(2) The person need not comply with sub-section (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure the safety of any person or that the effective execution of the search warrant is not frustrated.

90. Copy of warrant to be given to occupier

If the occupier or another person who apparently represents the occupier is present at premises when a search warrant is being executed, the person or persons named in the warrant must—

(a) identify themselves to that person by producing their identification card for inspection by that person; and

(b) give to that person a copy of the execution copy of the warrant.

91. Copies or receipts to be given

(1) If a person seizes—

(a) a document, disk or tape or other thing that can be readily copied; or
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(b) a storage device the information in which can be readily copied—

under a warrant the person, on request by the occupier, must give a copy of the thing or information to the occupier as soon as practicable after the seizure.

(2) If a person seizes a thing under a warrant and has not provided a copy of the thing or information under sub-section (1) the person must provide a receipt for that thing as soon as practicable after the seizure.

92. Powers of Board in relation to fees

(1) The Board may fix any fee that is required or permitted to be fixed by the Board by this Act.

(2) In the case of any fee which the Board is empowered to fix under this Act—

(a) the Board must fix the fee for a period of 12 months and may amend or vary the fee at the end of that period; and

(b) the Board may fix a different fee for a different case and may allow for the reduction, waiver or refund, in whole or in part, of any fee; and

(c) the Board must publish any fee it has fixed in a newspaper circulating generally throughout Victoria and in the Government Gazette.

(3) In fixing fees under this Act the Board is entitled to ensure that the amount of money collected in fees under this Act is sufficient to cover the cost to the Board of administering this Act.

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PART 9—REGULATIONS

93. Regulations

(1) The Governor in Council may make regulations for or with respect to—

(a) registration, including periods of registration, and renewal of registration, and applications for registration and endorsement of registration, and renewal of registration;

(b) the register, including particulars to be noted on the register and the manner of keeping the register;

(c) forms for the purposes of this Act;

(d) time limits for the purposes of this Act;

(e) penalties, not exceeding 10 penalty units, for breaches of the regulations;

(f) any matter or thing required or permitted to be prescribed or necessary to be prescribed to give effect to this Act.

(2) The regulations—

(a) may be of general or limited application; and

(b) may differ according to differences in time, place or circumstance; and

(c) may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method, formulated, issued, prescribed or published by any person whether—

(i) wholly or partially or as amended by the regulations; or
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(ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or

(iii) as formulated, issued, prescribed or published from time to time; and

(d) may confer a discretionary authority on a specified person.
PART 10—AMENDMENTS AND TRANSITIONAL

Division 1—Transitional

94. Existing qualifications

(1) Despite section 5, the Board may register a person who applies for registration under this Act within 3 years after the commencement of this section who does not have the qualifications required by section 5 if—

(a) the Board is satisfied that the person—

(i) has obtained a qualification or undergone training in Chinese herbal medicine, acupuncture or herbal dispensing whether in Victoria or elsewhere that is considered by the Board to be adequate for the purposes of this section; or

(ii) has obtained a qualification or undergone training in Chinese herbal medicine, acupuncture or herbal dispensing whether in Victoria or elsewhere and undergone any further study, training or supervised practice required by the Board for the purposes of this section; or

(iii) has carried on the practice of Chinese herbal medicine, acupuncture or herbal dispensing at any time within 10 years before the commencement of this section for a consecutive period of 5 years or for any periods the aggregate of which is 5 years; and
(b) the person has satisfied the Board that he or she is professionally competent as a practitioner in the division of registration applied for; and

(c) if required by the Board, the person has satisfactorily completed an examination conducted by or on behalf of the Board; and

(d) the person has satisfied the other requirements of this Act as to registration.

(2) The following provisions do not apply to or in relation to an acupuncturist practising acupuncture if that acupuncturist is registered by a Board established under an Act referred to in the Schedule, as in force on the commencement of section 111, until the day that is 3 years after the commencement of section 61—

(a) section 61(c);

(b) section 61(d) relating to claims to be qualified to practise as a Chinese medicine practitioner or an acupuncturist;

(c) section 61(2) relating to the use of the titles "Chinese medicine practitioner" and "Oriental medicine practitioner".

95. First appointments to the Board

Despite section 69(2)(a), in the case of the first appointments of the 6 members of the Board under that provision that are to take effect on or after the commencement of section 69, those members may be persons that the Minister considers would be qualified to be granted general registration under section 6.
96. New definitions

(1) In section 4(1) of the Drugs, Poisons and Controlled Substances Act 1981 insert the following definitions—

"authorised practitioner" means—

(a) a registered medical practitioner whose registration has been endorsed by the Medical Practitioners Board of Victoria under section 66 of the Medical Practice Act 1994 as qualified to obtain, possess, use, sell or supply Schedule 1 poisons;

(b) a pharmacist whose registration has been endorsed by the Pharmacy Board of Victoria under section 5 of the Pharmacists Act 1974 as qualified to obtain, possess, use, sell or supply Schedule 1 poisons;

"registered Chinese herbal dispenser" means a registered Chinese herbal dispenser within the meaning of the Chinese Medicine Registration Act 2000;

"registered Chinese medicine practitioner" means a registered Chinese medicine practitioner within the meaning of the Chinese Medicine Registration Act 2000.

(2) After section 4(2) of the Drugs, Poisons and Controlled Substances Act 1981, insert—

'(3) A reference in this Act to "manufacture" does not include a reference to the process of refining, manipulating and mixing a Schedule 1 poison, where the process is
carried out by a registered Chinese medicine practitioner, a registered Chinese herbal dispenser or an authorised practitioner in the lawful practice of his or her profession for the purposes of use, sale or supply by that practitioner or dispenser.'.

97. Amendment to heading to the Poisons List

In the Table to section 12A of the Drugs, Poisons and Controlled Substances Act 1981, for the item relating to Schedule Number 1 substitute—

"1. Poisons of plant, animal or mineral origin that in the public interest should be available only from a person registered under the Chinese Medicine Registration Act 2000 or authorised under another Act."

98. Minister's powers to amend Poisons List in respect of Schedule 1 poisons

After section 12E(1A) of the Drugs, Poisons and Controlled Substances Act 1981, insert—

"(1B) The Minister may, at any time, amend the Poisons Code to—

(a) specify the substances to be included in Schedule 1 in the Poisons List; and

(b) amend, revoke, substitute or insert substances in Schedule 1 in the Poisons List."

99. Authorisation to have possession etc. of Schedule 1 poisons

(1) In section 13(1)(a) of the Drugs, Poisons and Controlled Substances Act 1981, after "substance" insert "(other than a Schedule 1 poison)".
(2) In section 13(1) of the **Drugs, Poisons and Controlled Substances Act 1981**, after paragraph (c) insert—

"; and

(d) any registered Chinese medicine practitioner whose registration is endorsed under section 8 of the **Chinese Medicine Registration Act 2000** is hereby authorised to obtain and have in his or her possession and to use, sell or supply any Schedule 1 poison in accordance with the endorsement in the lawful practice of his or her profession as a registered Chinese medicine practitioner; and

(e) any registered Chinese herbal dispenser whose registration is endorsed under section 8 of the **Chinese Medicine Registration Act 2000** is hereby authorised to obtain and have in his or her possession and to use, sell or supply any Schedule 1 poison in accordance with the endorsement in the lawful practice of his or her profession as a registered Chinese herbal dispenser.".

(3) After section 13(3) of the **Drugs, Poisons and Controlled Substances Act 1981**, insert—

"(3A) If a registered Chinese herbal dispenser sells or supplies by wholesale a Schedule 1 poison to—

(a) any other registered Chinese herbal dispenser in accordance with an endorsement of that other dispenser's registration under section 8 of the **Chinese Medicine Registration Act 2000**; or
(b) an authorised practitioner in accordance with an endorsement of the practitioner's registration—

for use by the other registered Chinese herbal dispenser or the authorised practitioner in the lawful practice of his or her profession as a registered Chinese herbal dispenser or as an authorised practitioner, the sale or supply shall for the purposes of sub-section (1) be regarded as a sale or supply in the lawful practice of his or her profession by the first-mentioned registered Chinese herbal dispenser."

(4) After section 13(4) of the Drugs, Poisons and Controlled Substances Act 1981, insert—

"(5) Despite sub-section (1)(a), a registered medical practitioner or pharmacist who is—

(a) also registered as a Chinese medicine practitioner or Chinese herbal dispenser with an endorsement with respect to Schedule 1 poisons is authorised to obtain and have in his or her possession and to use, sell or supply Schedule 1 poisons in accordance with that endorsement in the lawful practice of his or her profession as a registered medical practitioner or pharmacist; or

(b) an authorised practitioner acting in accordance with an endorsement of his or her registration, is authorised to obtain and have in his or her possession and to use, sell or supply Schedule 1 poisons in the lawful practice of his or her profession as a registered medical practitioner or pharmacist.".

100. New section 13A inserted
After section 13 of the *Drugs, Poisons and Controlled Substances Act 1981*, insert—

"13A. **Chinese medicine practitioners and herbal dispensers must establish therapeutic need**

(1) A registered Chinese medicine practitioner or an authorised practitioner must not administer, prescribe, sell or supply a Schedule 1 poison unless—

(a) the poison is for the therapeutic use of a person who has consulted the practitioner; and

(b) the practitioner has taken all reasonable steps to ensure that the person has a therapeutic need for the Schedule 1 poison.

Penalty: 100 penalty units.

(2) A registered Chinese herbal dispenser or an authorised practitioner must not sell or supply a Schedule 1 poison to a person unless—

(a) the sale or supply is on production of and in accordance with the original written prescription or order of a registered Chinese medicine practitioner or an authorised practitioner; and

(b) the dispenser or authorised practitioner has taken reasonable steps to ensure that the prescription or order is in accordance with any endorsement of the registration of the registered Chinese medicine practitioner or that authorised practitioner.

Penalty: 100 penalty units.".
101. Special provision for Chinese medicine practitioners and herbal dispensers

After section 14 of the Drugs, Poisons and Controlled Substances Act 1981, insert—

"(2) If the Chinese Medicine Registration Board of Victoria established under the Chinese Medicine Registration Act 2000 has imposed in relation to the practice of a practitioner registered under that Act a condition, limitation or restriction prohibiting the prescription, ordering or dispensing of any Schedule 1 poison, that registered practitioner for the purposes of this Act and the regulations is deemed to be not authorised to obtain and have in his or her possession or to use sell or supply in the lawful practice of his or her profession the Schedule 1 poison to which the condition, limitation or restriction relates.".

102. Authorities for wholesalers

After section 20(4) of the Drugs, Poisons and Controlled Substances Act 1981, insert—

"(5) A person who sells or supplies by wholesale or manufactures and sells or supplies by wholesale any Schedule 1 poison is authorised to do so without obtaining a licence under this section.".

103. Wholesalers

In section 24 of the Drugs, Poisons and Controlled Substances Act 1981, after "other than a" insert "Schedule 1 poison, a".
104. Exemptions for labelling requirements

After section 27A(3) of the **Drugs, Poisons and Controlled Substances Act 1981**, insert—

"(4) Nothing in this section applies to a Schedule 1 poison that is sold or supplied by—

(a) a registered Chinese medicine practitioner or registered Chinese herbal dispenser in accordance with the endorsement of that person’s registration under section 8 of the **Chinese Medicine Registration Act 2000**; or

(b) an authorised practitioner acting in accordance with an endorsement of that practitioner's registration.”.

105. Consequential amendments relating to Schedule 1 poisons

In the **Drugs, Poisons and Controlled Substances Act 1981**—

(a) in section 38, omit "any Schedule 1 poison or”;

(b) in section 40, omit "any Schedule 1 poison or”;

(c) in section 70(2), after "section 4(2)" insert "and (3)".

106. Regulations

(1) In section 129 of the **Drugs, Poisons and Controlled Substances Act 1981**—

(a) in sub-section (1), for "Schedule 4 poisons" substitute "Schedule 1 poisons, Schedule 4 poisons";
(b) in sub-section (1)(a), after "medical practitioners," **insert** "registered Chinese medicine practitioners,;"

(c) in sub-section (1)(aa) after "medical practitioners," **insert** "registered Chinese medicine practitioners;"

(d) in sub-section (1)(ab) after "pharmacists" **insert** "or registered Chinese herbal dispensers;"

(e) in sub-section (2) after "medical practitioner," **insert** "registered Chinese medicine practitioner or registered Chinese herbal dispenser,;".

(2) In section 132(q) of the **Drugs, Poisons and Controlled Substances Act 1981**—

(a) after "pharmacist" **insert** "or registered Chinese herbal dispenser;"

(b) after "medical practitioner," **insert** "registered Chinese medicine practitioner,;".

107. **Old transitional references**

After section 134(2) of the **Drugs, Poisons and Controlled Substances Act 1981**, **insert**—

"(3) Despite sub-section (2), on or after the commencement of section 97 of the **Chinese Medicine Registration Act 2000**, a reference in Column 2 in the Table to a Schedule 1 poison is not to be taken to be a reference to a Schedule 1 poison within the meaning of this Act as amended by the **Chinese Medicine Registration Act 2000**.".
Chinese Medicine Registration Act 2000

Act No. 18/2000

Division 3—Other Amendments

108. Amendment of Health Act 1958

(1) In section 270A of the Health Act 1958, after sub-section (2) insert—

"(3) Nothing in sub-section (2) applies to the preparation of a Schedule 1 poison that is sold or supplied by—

(a) a registered Chinese medicine practitioner or a registered Chinese herbal dispenser in accordance with the endorsement of that person’s registration under section 8 of the Chinese Medicine Registration Act 2000; or

(b) an authorised practitioner within the meaning of the Drugs, Poisons and Controlled Substances Act 1981 acting in accordance with an endorsement on that practitioner’s registration.”.

(2) In section 366C of the Health Act 1958, for sub-section (2) substitute—

"(2) A person is exempt from compliance with sub-section (1)—

(a) if the person is registered as an acupuncturist under the Chinese Medicine Registration Act 2000 or is authorised in accordance with section 61(11) of that Act with respect to the practice of acupuncture; or

(b) if the person conducts a business which is prescribed by the regulations as an exempt business.”.

109. Amendment of Pharmacists Act 1974
After section 33(4) of the **Pharmacists Act 1974** insert—

"(5) Sub-section (1) does not apply to a Chinese medicine practitioner or a Chinese herbal dispenser who is registered under the **Chinese Medicine Registration Act 2000** and acting in accordance with an endorsement of his or her registration under that Act."

**110. Health Services (Conciliation and Review) Act 1987**

In the **Health Services (Conciliation and Review) Act 1987**—

(a) in section 3(1), in the definition of "health service" after paragraph (k) insert—

"(ka) services provided by Chinese herbal medicine practitioners, acupuncturists and Chinese herbal dispensers;";

(b) in the Schedule after the Heading insert—

"The Chinese Medicine Registration Board of Victoria".

**111. Other amendments**

On the coming into operation of an item in the Schedule, the Act specified in the heading to that item is amended as set out in that item.
SCHEDULE

Section 111

AMENDMENTS

1. Chiropractors Registration Act 1996

1.1 After section 7 insert—

"7A. Endorsement

(1) If the Board is satisfied that a chiropractor has satisfactorily completed a course of study or training which, in the opinion of the Board, qualifies the chiropractor to practise Chinese medicine the Board may endorse the registration of the chiropractor to the effect that the chiropractor is qualified to be exempt from all or any of the specified provisions of section 61(1)(c) and (d), (2), (3) and (4) of the Chinese Medicine Registration Act 2000.

(2) The Board may impose any condition, limitation or restriction on an endorsement under sub-section (1).

(3) The Board may refuse to endorse the registration of the chiropractor under sub-section (1) if the Board is not satisfied that the chiropractor has the appropriate qualifications or training required by the Board.

(4) An applicant for registration under section 6 or a person registered under section 6 may apply to the Board for an endorsement under this section.

(5) An application must be—

(a) in writing in the prescribed form and accompanied by evidence of the qualifications or training which the applicant claims qualify him or her for the endorsement applied for; and

(b) accompanied by the fee determined by the Board."

1.2 After section 15(3)(b) insert—

"(ba) any current endorsement referred to in section 7A;"

1.3 After section 16(2)(a) insert—
"(ab) any current endorsement referred to in section 7A; and".

1.4 After section 56(1)(b) insert—
"(ba) a decision to refuse to endorse the registration of the chiropractor under section 7A; or".

2. Dental Practice Act 1999

2.1 After section 8 insert—
"8A. Endorsement

(1) If the Board is satisfied that a dental care provider (other than a registered dental prosthetist) has satisfactorily completed a course of study or training which, in the opinion of the Board, qualifies the dental care provider to practise Chinese medicine the Board may endorse the registration of the dental care provider to the effect that the dental care provider is exempt from all or any of the specified provisions of section 61(1)(c) and (d), (2), (3) and (4) of the Chinese Medicine Registration Act 2000.

(2) The Board may impose any condition, limitation or restriction on an endorsement under sub-section (1).

(3) The Board may refuse to endorse the registration of the dental care provider under sub-section (1) if the Board is not satisfied that the dental care provider has the appropriate qualifications or training required by the Board.

(4) An applicant for registration under section 6 or a person registered under section 6 may apply to the Board for an endorsement under this section.

(5) An application must be—
(a) in writing in the prescribed form and accompanied by evidence of the qualifications or training which the applicant claims qualify him or her for the endorsement applied for; and
(b) accompanied by the fee determined by the Board.".

2.2 After section 16(6)(b) insert—
"(ba) any current endorsement referred to in section 8A;".
2.3 After section 58(1)(b) insert—

"(ba) a decision to refuse to endorse the registration of the
dental care provider under section 8A; or”.


3.1 After section 9 insert—

"9A. Endorsement

(1) If the Board is satisfied that a medical practitioner has
satisfactorily completed a course of study or training
which, in the opinion of the Board, qualifies the
medical practitioner to practise Chinese medicine, the
Board may endorse the registration of the medical
practitioner to the effect that the medical practitioner
is exempt from all or any of the specified provisions
of section 61(1)(c) and (d), (2), (3) and (4) of the

(2) If the Board is satisfied that a medical practitioner has
satisfactorily completed a course of study or training
which, in the opinion of the Board, qualifies the
medical practitioner to obtain and have in his or her
possession and to use, sell or supply Schedule 1
poisons within the meaning of the Drugs, Poisons
and Controlled Substances Act 1981, the Board
may endorse the registration of the medical
practitioner to the effect that he or she is qualified to
obtain and have in his or her possession and to use,
sell or supply Schedule 1 poisons within the meaning
of the Drugs, Poisons and Controlled Substances
Act 1981, subject to that Act and the regulations
made under that Act.

(3) The Board may impose any condition, limitation or
restriction on an endorsement, under this section
including a condition, limitation or restriction on an
endorsement under sub-section (2) relating to the
form or state of the Schedule 1 poison or whether the
poison is manufactured or packaged or not.

(4) The Board may refuse to endorse the registration of
the medical practitioner under this section if the
Board is not satisfied that the medical practitioner has
the appropriate qualifications or training required by
the Board.
(5) An applicant for registration under section 7 or a person registered under section 7 may apply to the Board for an endorsement under this section.

(6) An application must be—

(a) in writing in the prescribed form and accompanied by evidence of the qualifications or training which the applicant claims qualify him or her for the endorsement applied for; and

(b) accompanied by the fee determined by the Board.”.

3.2 After section 17(3)(b) insert—

"(ba) any current endorsement referred to in section 9A;".

3.3 After section 18(2)(a) insert—

"(ab) any current endorsement referred to in section 9A; and".

3.4 After section 60(1)(b) insert—

"(ba) a decision to refuse to endorse the registration of the medical practitioner under section 9A; or".

4. Nurses Act 1993

4.1 After section 8 insert—

"8A. Endorsement

(1) If the Board is satisfied that a nurse has satisfactorily completed a course of study or training which, in the opinion of the Board, qualifies the nurse to practise Chinese medicine the Board may endorse the registration of the nurse to the effect that the nurse is qualified to be exempt from all or any of the specified provisions of section 61(1)(c) and (d), (2), (3) and (4) of the Chinese Medicine Registration Act 2000.

(2) The Board may impose any condition, limitation or restriction on an endorsement under sub-section (1).

(3) The Board may refuse to endorse the registration of the nurse under sub-section (1) if the Board is not satisfied that the nurse has the appropriate qualifications or training required by the Board.

(4) An applicant for registration under section 7 or a person registered under section 7 may apply to the Board for an endorsement under this section."
(5) An application must be—
   (a) in writing in the prescribed form and accompanied by evidence of the qualifications or training which the applicant claims qualify him or her for the endorsement applied for; and
   (b) accompanied by the fee determined by the Board.

4.2 After section 17(3)(b) insert—
   "(ba) any current endorsement referred to in section 8A;".

4.3 After section 18(2)(a) insert—
   "(ab) any current endorsement referred to in section 8A; and".

4.4 After section 58(1)(b) insert—
   "(ba) a decision to refuse to endorse the registration of the nurse under section 8A; or".

5. Optometrists Registration Act 1996

5.1 After section 8 insert—

   "8A. Notation

   (1) If the Board is satisfied that an optometrist has satisfactorily completed a course of study or training which, in the opinion of the Board, qualifies the optometrist to practise Chinese medicine the Board may note the registration of the optometrist to the effect that the optometrist is exempt from all or any of the specified provisions of section 61(1)(c) and (d), (2), (3) and (4) of the Chinese Medicine Registration Act 2000.

   (2) The Board may impose any condition, limitation or restriction on the notation of registration under sub-section (1).

   (3) The Board may refuse to note the registration of the optometrist under sub-section (1) if the Board is not satisfied that the optometrist has the appropriate qualifications or training required by the Board.

   (4) An applicant for registration under section 6 or a person registered under section 6 may apply to the Board for a notation of registration under this section.

   (5) An application must be—
(a) in writing in the prescribed form and accompanied by evidence of the qualifications or training which the applicant claims qualify him or her for the notation applied for; and

(b) accompanied by the fee determined by the Board."

5.2 After section 17(3)(b) insert—

"(ba) any current notation of registration referred to in section 8A:"

5.3 After section 18(2)(a) insert—

"(ab) any current notation of registration referred to in section 8A; and"

5.4 After section 58(1)(b) insert—

"(ba) a decision to refuse to note the registration of the optometrist under section 8A; or"

6. Osteopaths Registration Act 1996

6.1 After section 7 insert—

"7A. Endorsement

(1) If the Board is satisfied that an osteopath has satisfactorily completed a course of study or training which, in the opinion of the Board, qualifies the osteopath to practise Chinese medicine the Board may endorse the registration of the osteopath to the effect that the osteopath is exempt from all or any of the specified provisions of section 61(1)(c) and (d), (2), (3) and (4) of the Chinese Medicine Registration Act 2000.

(2) The Board may impose any condition, limitation or restriction on an endorsement under sub-section (1).

(3) The Board may refuse to endorse the registration of the osteopath under sub-section (1) if the Board is not satisfied that the osteopath has the appropriate qualifications or training required by the Board.

(4) An applicant for registration under section 6 or a person registered under section 6 may apply to the Board for an endorsement under this section.

(5) An application must be—
(a) in writing in the prescribed form and accompanied by evidence of the qualifications or training which the applicant claims qualify him or her for the endorsement applied for; and

(b) accompanied by the fee determined by the Board.”.

6.2 After section 15(3)(b) insert—

"(ba) any current endorsement referred to in section 7A;".

6.3 After section 16(2)(a) insert—

"(ab) any current endorsement referred to in section 7A; and".

6.4 After section 56(1)(b) insert—

"(ba) a decision to refuse to endorse the registration of the osteopath under section 7A; or".

7. Pharmacists Act 1974

7.1 After section 16 insert—

"16A. Endorsement

(1) If the Board is satisfied that a pharmacist has satisfactorily completed a course of study or training which, in the opinion of the Board, qualifies the pharmacist to practise Chinese medicine, the Board may endorse the registration of the pharmacist to the effect that the pharmacist is exempt from all or any of the specified provisions of section 61(1)(c) and (d), (2), (3) and (4) of the Chinese Medicine Registration Act 2000.

(2) If the Board is satisfied that a pharmacist has satisfactorily completed a course of study or training which, in the opinion of the Board, qualifies the pharmacist to obtain and have in his or her possession and to use, sell or supply Schedule 1 poisons within the meaning of the Drugs, Poisons and Controlled Substances Act 1981, the Board may endorse the registration of the pharmacist to the effect that he or she is qualified to obtain and have in his or her possession and to use, sell or supply Schedule 1 poisons within the meaning of the Drugs, Poisons and Controlled Substances Act 1981, subject to that Act and the regulations made under that Act.
(3) The Board may impose any condition, limitation or restriction on an endorsement under this section including a condition, limitation or restriction on an endorsement under sub-section (2) relating to the form or state of the Schedule 1 poison or whether the poison is manufactured or packaged or not.

(4) The Board may refuse to endorse the registration of the pharmacist under this section if the Board is not satisfied that the pharmacist has the appropriate qualifications or training required by the Board.

(5) An applicant for registration under section 12 or a person registered under section 12 may apply to the Board for an endorsement under this section.

(6) An application must be—
   
   (a) in writing in the prescribed form and accompanied by evidence of the qualifications or training which the applicant claims qualify him or her for the endorsement applied for; and
   
   (b) accompanied by the fee determined by the Board.

8. Physiotherapists Registration Act 1998

8.1 After section 7 insert—

"7A. Endorsement

(1) If the Board is satisfied that a physiotherapist has satisfactorily completed a course of study or training which, in the opinion of the Board, qualifies the physiotherapist to practise Chinese medicine the Board may endorse the registration of the physiotherapist to the effect that the physiotherapist is exempt from all or any of the specified provisions of section 61(1)(c) and (d), (2), (3) and (4) of the Chinese Medicine Registration Act 2000.

(2) The Board may impose any condition, limitation or restriction on an endorsement under sub-section (1).

(3) The Board may refuse to endorse the registration of the physiotherapist under sub-section (1) if the Board is not satisfied that the physiotherapist has the appropriate qualifications or training required by the Board."
(4) An applicant for registration under section 6 or a person registered under section 6 may apply to the Board for an endorsement under this section.

(5) An application must be—

(a) in writing in the prescribed form and accompanied by evidence of the qualifications or training which the applicant claims qualify him or her for the endorsement applied for; and

(b) accompanied by the fee determined by the Board.

8.2 After section 15(3)(b) insert—

"(ba) any current endorsement referred to in section 7A;".

8.3 After section 16(2)(a) insert—

"(ab) any current endorsement referred to in section 7A; and".

8.4 After section 55(1)(b) insert—

"(ba) a decision to refuse to endorse the registration of the physiotherapist under section 7A; or".
NOTES

Legislative Assembly: 6 April 2000

Legislative Council: 3 May 2000

The long title for the Bill for this Act was "to make provision for the registration of and investigations into the professional conduct and fitness to practise of registered practitioners of Chinese medicine and dispensers of Chinese herbs, to regulate Chinese medicine and herbal dispensing services, to regulate the advertising of Chinese medicine and herbal dispensing services, to establish a Chinese Medicine Registration Board of Victoria and a Chinese Medicine Registration Board Fund and for other purposes."

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# Chinese Medicine Registration Act 2000

**Act No. 18/2000**

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