



New South Wales

# Dental Practice Act 2001 No 64

## Contents

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	Page
<b>Part 1 Preliminary</b>	
1 Name of Act	2
2 Commencement	2
3 Object of Act	2
4 Definitions	2
5 Notes	4
6 Mutual Recognition laws	4
<b>Part 2 Registration of dentists</b>	
7 Registration necessary for certain representations	5
8 Qualifications for registration	5
9 Competence	6
10 Impairment as a dentist	6
11 Full registration	6
12 Provisional registration	7
13 Temporary registration	8
14 Limited registration	9
15 Power to refuse or impose conditions on full registration	10
16 Cancellation and suspension of registration	11

Contents

---

	Page
17 Restrictions on registration of deregistered persons	11
18 Appeals concerning registration	11
<b>Part 3 Registration of dental auxiliaries</b>	
19 Classes of dental auxiliary	13
20 Registration necessary for certain representations	13
21 Qualifications for registration	14
22 Competence	15
23 Impairment	15
24 Full registration	15
25 Provisional registration	15
26 Temporary registration	16
27 Power to refuse or impose conditions on full registration	17
28 Cancellation and suspension of registration	18
29 Restrictions on registration of deregistered persons	18
30 Appeals concerning registration	19
<b>Part 4 Practice of dentistry and dental auxiliary activities</b>	
<b>Division 1 Conduct of practice</b>	
31 Use of titles by dentists	21
32 Use of titles by dental auxiliaries	21
33 Restrictions on dental auxiliaries	22
34 Incorporated practices	22
35 Codes of professional conduct	23
<b>Division 2 Returns and information</b>	
36 Annual return to be submitted	24
37 Notification of convictions, criminal findings and charges	26
38 Courts to provide information on convictions	26
39 Referral of mental health matters to Registrar	27
<b>Part 5 Complaints and disciplinary proceedings</b>	
<b>Division 1 Interpretation</b>	
40 Meaning of "professional misconduct"	28
41 Meaning of "unsatisfactory professional conduct"—dentists	28
42 Meaning of "unsatisfactory professional conduct"—dental auxiliaries	29
43 Application of Part to incorporated practices	30

---

	Page
<b>Division 2      Complaints</b>	
44 Grounds for complaints	30
45 Complaint can be made even if person no longer registered	31
46 Who can make a complaint	31
47 Complaints to be made to the Board	31
48 Form of complaint	32
49 Board to notify Commission of complaints	32
50 Board to notify person against whom complaint is made	32
51 Investigation of complaint by Board	33
52 Role of the Commission	33
53 How complaints are dealt with	33
54 Serious complaints must be referred to Tribunal	34
55 Medical examination of dental care provider	35
56 Notification of orders to employer and others	36
<b>Division 3      Referral of complaints to Dental Care Assessment Committee</b>	
57 Kinds of complaints that can be referred to Committee	37
58 How complaints are dealt with	37
59 Skills testing of dental care provider	38
60 Recommendations of the Committee	39
61 No legal representation for parties appearing before the Committee	39
<b>Division 4      Dealing with complaint by inquiry at a meeting of the Board</b>	
62 Procedures for dealing with complaint at meeting	40
63 General procedure	40
64 Conduct of meeting	40
65 Making submissions to inquiry	40
66 Decision of the Board	41
67 Admissibility of Board's findings	42

---

	Page
<b>Division 5     Disciplinary powers of Board and Tribunal</b>	
68 Powers may be exercised if complaint proved or admitted	43
69 General powers of the Board	43
70 Power of the Board to recommend suspension or cancellation of registration	44
71 Powers of the Tribunal	44
<b>Division 6     Powers of the Board for the protection of the public</b>	
72 Suspension or conditions to protect the public	45
73 Power to remove or alter conditions	46
74 Referral of matter to Commission	46
75 Special provisions—impairment	46
76 Tribunal to be notified of suspensions	47
77 Extension of suspension	48
78 Expiration of suspension	48
79 Duration of conditions—complaint matters	48
80 Duration of conditions—impairment matters	48
<b>Part 6     Impairment</b>	
81 Referral of impairment matters concerning dental care providers or students	50
82 Persons may notify Board of impairment matters concerning dental care providers or students	50
83 Commission may refer impairment matters to Board	50
84 Panel to inquire into matters referred to it	50
85 Panel not to take action while Commission investigating	51
86 Board to give notice of proposed inquiry	51
87 Dental care provider or student entitled to make representations	51
88 Board may require student to undergo medical examination	51
89 Assessment, report and recommendations by Panel	52
90 Voluntary suspension or conditions on registration	52
91 Review of conditions	53
92 Some matters to be dealt with as complaints	53
93 Prohibition or conditions on student	54
94 Appeal by student against order	54
95 Confidentiality of Panel's report	55

---

	Page
<b>Part 7 Appeals and review of disciplinary action</b>	
<b>Division 1 Appeals against actions of the Board</b>	
96 Appeals against actions of the Board on a complaint	56
97 Appeal against suspension or imposition of conditions by Board—impairment matters	57
98 Appeal on point of law	58
<b>Division 2 Appeals against actions of Tribunal</b>	
99 Preliminary appeal on point of law	58
100 Appeal against Tribunal's decisions and actions	59
101 Powers of Court on appeal	59
<b>Division 3 Review of suspension, cancellation or conditions</b>	
102 Right of review	59
103 Appropriate review body	60
104 Powers on review	60
105 Nature of review	61
<b>Part 8 Dental Board</b>	
106 Constitution of the Board	62
107 Functions of the Board	62
108 Membership of the Board	62
109 Staff	63
110 Committees	63
111 Delegation of functions	64
112 Other provisions relating to the Board	64
<b>Part 9 Dental Care Assessment Committee</b>	
113 Constitution of the Dental Care Assessment Committee	65
114 Functions of the Committee	65
115 Membership of the Committee	65
116 Other provisions relating to the Committee	65
<b>Part 10 Impaired Registrants Panels</b>	
117 Impaired Registrants Panels	66
118 Board to constitute Panel when required	66
119 Decisions of a Panel	66

---

	Page
<b>Part 11 Dental Tribunal</b>	
<b>Division 1 Constitution of the Tribunal</b>	
120 The Dental Tribunal	67
121 Chairperson and Deputy Chairpersons of the Tribunal	67
122 Tribunal to be constituted to deal with complaints etc	68
123 Effect of vacancy on Tribunal	69
124 Payment of non-legal Tribunal members	69
125 Seal of the Tribunal	69
<b>Division 2 Proceedings of the Tribunal</b>	
126 Decisions of the Tribunal	69
127 Time when orders take effect	70
128 Powers of Tribunal exercised by Supreme Court	70
129 Registrar to be informed of disciplinary action	70
<b>Division 3 Inquiries, appeals etc before the Tribunal</b>	
130 Jurisdiction	70
131 Notice of time and place of inquiry or appeal	70
132 Conduct of proceedings	71
133 Representation before the Tribunal	71
134 Chairperson or Deputy Chairperson not to review own decisions	71
135 Adjournments and interlocutory orders	71
136 Tribunal to provide details of its decision	72
137 Statement need not contain confidential information	72
<b>Part 12 Miscellaneous</b>	
138 Student registration	74
139 Approval for employment of dentists by non-dentists	74
140 Exemption from restrictions on representations for dental technicians and dental prosthetists	74
141 Carrying on practice of deceased dentist	75
142 Civil liability of directors of incorporated practices	75
143 Application of Criminal Records Act	76
144 How notice is to be given	76
145 Service of documents on Board	76
146 Written statement of decisions	76
147 Notice of disciplinary action to other Boards	78

Dental Practice Act 2001 No 64

Contents

---

	Page
148 False or misleading entries and statements	79
149 Evidentiary certificates and evidence of entry in Registers	79
150 Authentication of certain documents	80
151 Fees	80
152 Dental Education and Research Account	80
153 Appointment and powers of inspectors	81
154 Search warrants	83
155 Liability of officers and members	83
156 Offences by corporations	84
157 Proceedings for offences	84
158 Regulations	84
159 Amendments	86
160 Repeals	86
161 Savings and transitional provisions	86

**Schedules**

1 Registration procedures	87
2 Provisions relating to the members of the Board	97
3 Provisions relating to the procedure of the Board	103
4 Provisions relating to the Committee	105
5 Proceedings before the Tribunal	108
6 Amendments	114
7 Savings and transitional provisions	119



New South Wales

## Dental Practice Act 2001 No 64

Act No 64, 2001

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An Act to provide for the registration of dentists and dental auxiliaries; to repeal the *Dentists Act 1989*; and for other purposes. [Assented to 11 October 2001]

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**The Legislature of New South Wales enacts:**

**Part 1 Preliminary**

**1 Name of Act**

This Act is the *Dental Practice Act 2001*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Object of Act**

The object of this Act is to protect the health and safety of members of the public by providing mechanisms to ensure that:

- (a) dentists are fit to practise dentistry, and
- (b) dental auxiliaries are fit to carry out dental auxiliary activities, and
- (c) dental students are fit to undertake dental studies and clinical placements.

**4 Definitions**

In this Act:

***Australian Dental Council*** means the body incorporated in Victoria for the purpose of advising on standards for the registration of dentists, called the Australian Dental Council.

***Board*** means the Dental Board constituted under this Act.

***Chairperson*** means the Chairperson of the Tribunal.

***Commission*** means the Health Care Complaints Commission constituted under the *Health Care Complaints Act 1993*.

***Committee*** means the Dental Care Assessment Committee constituted under this Act.

***competence to carry out dental auxiliary activities*** has the meaning given by section 22.

***competence to practise dentistry*** has the meaning given by section 9.

**complaint** means a complaint against a dental care provider under Part 5 (Complaints and disciplinary proceedings).

**conduct** means any act or omission.

**criminal finding** means a finding by a court that a person is guilty of an offence without proceeding to conviction.

**Note.** Section 143 makes special provision with respect to the application for the purposes of this Act of the *Criminal Records Act 1991* in respect of criminal findings.

**Dental Auxiliaries Register** means the Register of Dental Auxiliaries kept by the Board under this Act.

**dental auxiliary activity** means an activity prescribed under section 19 as an authorised activity for a class of dental auxiliary.

**dental auxiliary student** means a student enrolled in a course of study recognised by the Board for the purposes of section 21 (Qualifications for registration).

**dental care provider** means a dentist or a dental auxiliary.

**dental student** means a dentistry student or a dental auxiliary student.

**dentistry student** means a student enrolled in a course of dental study at a Dental School in Australia accredited by the Australian Dental Council, being a course of study recognised by the Board for the purposes of section 8 (Qualifications for registration).

**Dentists Register** means the Register of Dentists kept by the Board under this Act.

**Deputy Chairperson** means a Deputy Chairperson of the Tribunal.

**Director-General** means the Director-General of the Department of Health.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**health registration Act** has the same meaning as in the *Health Care Complaints Act 1993*.

**Impaired Registrants Panel** means an Impaired Registrants Panel constituted under this Act.

**impairment as a dental auxiliary** has the meaning given by section 23.

**impairment as a dentist** has the meaning given by section 10.

***incorporated practice*** means a corporation that complies with section 34.

***Mutual Recognition laws*** means the *Mutual Recognition Act 1992* of the Commonwealth and the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth.

***professional misconduct*** is defined in Part 5 (Complaints and disciplinary proceedings).

***public health organisation*** has the same meaning as in the *Health Services Act 1997*.

***registered*** means registered under this Act.

***Registrar*** means the Registrar of the Board.

***registration authority*** has the same meaning as in the *Health Care Complaints Act 1993*.

***restricted dental practice*** has the same meaning as in section 10AF of the *Public Health Act 1991*.

***sex/violence criminal finding*** means a criminal finding for a sex/violence offence.

***sex/violence offence*** means an offence involving sexual activity, acts of indecency, child pornography, physical violence or the threat of physical violence.

***Tribunal*** means the Dental Tribunal constituted under this Act.

***unsatisfactory professional conduct*** is defined in Part 5 (Complaints and disciplinary proceedings).

## 5 Notes

Notes included in this Act are explanatory notes and do not form part of this Act.

## 6 Mutual Recognition laws

This Act does not limit or otherwise affect the operation of the Mutual Recognition laws.

## Part 2 Registration of dentists

### 7 Registration necessary for certain representations

- (1) A person who is not a registered dentist must not indicate that the person practises dentistry or is qualified to practise dentistry.

Maximum penalty: 50 penalty units.

- (2) Without limiting the ways in which a person may be taken to have indicated that the person is qualified to practise dentistry or that the person practises dentistry, a person is taken to have so indicated if the person uses:

- (a) any name, initials, word, title, symbol or description that (having regard to the circumstances in which it is used) indicates, or is capable of being understood to indicate, or is calculated to lead a person to infer, that the person is qualified to practise dentistry or that the person practises dentistry, or
- (b) the titles “dentist”, “dental surgeon” or any other name, title or description prescribed by the regulations.

**Note.** Section 10AF of the *Public Health Act 1991* prohibits the carrying out of restricted dental practices by persons who are not registered dentists, medical practitioners or certain other persons in specified circumstances (including dental auxiliaries).

### 8 Qualifications for registration

- (1) A person has the necessary qualifications for registration as a dentist if the person:

- (a) has such qualifications as may be prescribed by the regulations for the purposes of this paragraph, or
- (b) has successfully completed a course of study that is recognised by the Board as meeting criteria prescribed by the regulations for the purposes of this paragraph, or
- (c) has such qualifications as may be approved by the Board on the recommendation of an accreditation body recognised by the Board for the purposes of this section, or
- (d) has passed an examination arranged or approved by the Board to assess the person’s competence to practise dentistry.

- (2) An educational or training institution may apply to the Board for the recognition by the Board (under subsection (1) (b)) of a course of study offered by the institution. The institution may make application to the Administrative Decisions Tribunal for a review of the decision of the Board on the application.
- (3) In determining for the purposes of subsection (1) (b) whether a particular course of study meets the criteria prescribed by the regulations, the Board may have regard to and rely on any findings made on an assessment prepared for the Board in respect of the course of study.
- (4) In this section:  
*qualification* means a degree, diploma, certificate or other academic award conferred or awarded for the successful completion of a course of training in dentistry.

## **9 Competence**

For the purposes of this Act, a person is competent to practise dentistry only if the person has sufficient physical capacity, mental capacity and skill to practise dentistry and has sufficient communication skills for the practice of dentistry, including an adequate command of the English language.

## **10 Impairment as a dentist**

- (1) For the purposes of this Act, a person suffers from an impairment as a dentist if the person suffers from any physical or mental impairment, disability, condition or disorder that detrimentally affects or is likely to detrimentally affect the person's physical or mental capacity to practise dentistry.
- (2) For the purposes of this Act, a person who habitually abuses alcohol or is addicted to a deleterious drug is taken to suffer from an impairment as a dentist.

## **11 Full registration**

- (1) A person is entitled to registration as a dentist if the Board is satisfied that the person has the necessary qualifications for registration as a dentist and is of good character.
- (2) Registration under this section is *full registration* as a dentist.

- (3) An entitlement to full registration does not prevent conditions being imposed on that registration in accordance with this Act.
- (4) Schedule 1 (Registration procedures) has effect with respect to full registration.

**Note.** Under section 20 of the *Mutual Recognition Act 1992* of the Commonwealth a person is entitled to be registered as a dentist if the person is registered in another State or a Territory for an equivalent occupation (if that State or Territory participates in the mutual recognition scheme). The entitlement arises once the person lodges a notice under section 19 of that Act and, until registered under this Act, the person is then deemed (by section 25 of that Act) to be registered. See also the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth.

## 12 Provisional registration

- (1) Registration as a dentist may be granted:
  - (a) to a person entitled to full registration as a dentist, pending the Board's determination of the person's application for full registration, or
  - (b) to a person who will be entitled to full registration as a dentist when a degree, diploma, certificate or other academic award to which the person is entitled is granted or conferred, pending its grant or conferral.
- (2) Registration under this section is *provisional registration* as a dentist.
- (3) Provisional registration is granted by the Board or the President. In the President's absence it can be granted by any member of the Board authorised by the Board to do so. Provisional registration is granted by the grant of a certificate of provisional registration.
- (4) A person granted provisional registration is a registered dentist until the registration expires or is cancelled. Provisional registration expires on the date stated in the certificate or such later date as may be fixed by the Board.
- (5) The Board may impose such conditions as it thinks fit on a person's provisional registration and may at any time remove, add to or vary those conditions by notice in writing to the registered person.
- (6) The Board may cancel a person's provisional registration for any reason that the Board considers proper. Cancellation does not affect any application for registration by the person.

- (7) If a person granted provisional registration is granted full registration before the person's provisional registration expires, the person's full registration dates from the granting of provisional registration, unless the Board decides otherwise.

### **13 Temporary registration**

- (1) Registration for a limited period as a dentist may be granted to a person who is not normally resident in New South Wales, for the purpose of enabling the person to carry out educational or research activities or such other activities as the Board considers to be in the public interest.
- (2) Registration under this section is *temporary registration* as a dentist.
- (3) Temporary registration as a dentist can only be granted to a person:
- (a) who is registered as a dentist in accordance with a law in force in the person's normal place of residence providing for the registration or certification of dentists, or
  - (b) who holds such qualifications or has such experience in the practice of dentistry as the Board considers satisfactory for the purposes of temporary registration.
- (4) Temporary registration is granted by the Board by the grant of a certificate of temporary registration.
- (5) A person granted temporary registration is a registered dentist until the temporary registration expires or is cancelled. Temporary registration expires on the date stated in the certificate unless the period of temporary registration is extended.
- (6) The Board may extend and further extend a period of temporary registration by the issue of a further certificate of temporary registration.
- (7) The Board may cancel a person's temporary registration for any reason that the Board considers proper. Cancellation does not affect any application for full registration by the person.
- (8) The Board may impose such conditions as it thinks fit on the temporary registration of a person and may at any time remove, add to or vary those conditions by notice in writing to the registered person.

**14 Limited registration**

- (1) The Board may, with the concurrence of the Minister, grant registration as a dentist to a person who is not entitled to full registration as a dentist if the Board is satisfied that the person:
  - (a) is of good character, and
  - (b) has a qualification conferred or awarded for a course of training in dentistry of 4 years or more duration conducted by an educational institution in another jurisdiction outside the State, (either in Australia or elsewhere), and
  - (c) is or was entitled to be registered or to practise dentistry in that jurisdiction.
- (2) Registration under this section is *limited registration* as a dentist.
- (3) A person who has limited registration as a dentist may practise dentistry only:
  - (a) under the supervision of a registered dentist employed in an approved health institution, or
  - (b) in such part of the State or in the service of such an approved health institution as the Minister may direct.
- (4) Limited registration is granted by the grant of a certificate of limited registration. Limited registration is granted for the period, not exceeding 12 months, specified in the certificate.
- (5) A person granted limited registration is a registered dentist until the limited registration expires or is cancelled. Limited registration expires on the date specified in the certificate.
- (6) A certificate of limited registration may be renewed by the Board from time to time for a period not exceeding 12 months on the application of the person granted limited registration.
- (7) The Board may impose such conditions as it thinks fit on a person's limited registration and may at any time remove, add to or vary those conditions by notice in writing to the registered person.
- (8) The Board may cancel a person's limited registration for any reason that the Board considers proper. Cancellation does not affect any application for full registration by the person.

(9) In this section:

***approved health institution*** means:

- (a) a public health organisation, or
- (b) any other body or organisation, including a government department, approved by the Minister for the purposes of this section.

***qualification*** means a degree, diploma, certificate or other academic award conferred or awarded for the successful completion of a course of training in dentistry.

#### **15 Power to refuse or impose conditions on full registration**

- (1) The Board may refuse to register a person who would otherwise be entitled to full registration as a dentist if:
  - (a) the Board is of the opinion, following an inquiry under Schedule 1, that the person is not competent to practise dentistry or suffers from an impairment, or
  - (b) the person has been convicted of or made the subject of a criminal finding for an offence, either in or outside the State, and the Board is of the opinion that the circumstances of the offence are such as to render the person unfit in the public interest to practise dentistry, or
  - (c) the person's registration under a health registration Act has been cancelled or suspended because of conduct that would (if the person were a registered dentist) authorise cancellation or suspension of the person's registration under this Act, or
  - (d) the person's registration or certification under a dentists registration law has been cancelled or suspended because of conduct that would (if it occurred in New South Wales and the person were a registered dentist) authorise cancellation or suspension of the person's registration under this Act.
- (2) As an alternative to refusing to register a person under subsection (1), the Board may grant the person registration subject to conditions if the Board considers that refusal of registration is not warranted and that the person should be granted registration subject to appropriate conditions.

- (3) Conditions of registration may relate to the duration of registration, the aspects of the practice in which the person may be engaged, and any other matters, as the Board thinks appropriate.

**Note.** The Mutual Recognition laws also provide for the imposition of conditions on registration. Conditions can also be imposed on a person's registration as a result of disciplinary proceedings to which the person has been subject.

- (4) In this section:

*dentists registration law* means any law of a place outside the State that provides for the registration or certification of dentists.

## 16 Cancellation and suspension of registration

- (1) A person ceases to be registered as a dentist if the person's name is removed from the Dentists Register. A reference in this Act to the cancellation of a dentist's registration is a reference to the removal of the dentist's name from the Dentists Register.
- (2) A person whose registration as a dentist is suspended is taken not to be a registered dentist during the period of the suspension, except for the purposes of Part 5 (Complaints and disciplinary proceedings).

## 17 Restrictions on registration of deregistered persons

- (1) A person cannot apply for registration as a dentist (and any such application must be rejected) if:
- (a) the person's registration is cancelled pursuant to an order of the Chairperson or a Deputy Chairperson, the Tribunal or the Supreme Court, or
  - (b) the Chairperson or a Deputy Chairperson, the Tribunal or the Supreme Court orders that the person not be re-registered.
- (2) The only way such a person can again be registered is on a review under Division 3 of Part 7 of the order by which the person's registration was cancelled.

## 18 Appeals concerning registration

- (1) A person who is aggrieved by any of the following decisions of the Board may appeal to the Tribunal against the decision:
- (a) the Board's refusal to grant the person full registration as a dentist,
  - (b) the Board's refusal to grant the person temporary registration as a dentist,

- (c) the Board's refusal to grant the person limited registration as a dentist,
  - (d) the Board's decision to refuse to register the person under section 15 or to grant the person registration subject to conditions under that section,
  - (e) the Board's cancellation of the person's provisional registration as a dentist, temporary registration as a dentist or limited registration as a dentist,
  - (f) the Board's refusal to register the person under clause 28 (Entitlement to re-registration if fee paid) of Schedule 1.
- (2) An appeal must be made within 28 days (or such longer period as the Chairperson may allow in a particular case) after notice of the decision is given to the person. The appeal is to be lodged with the Registrar who is to refer it to the Tribunal.
- (3) If the decision in respect of which an appeal is made was made as a consequence of an inquiry held by the Board, the appeal is to be dealt with by way of rehearing and fresh evidence or evidence in addition to or in substitution for the evidence received at the inquiry may be given.
- (4) An appeal does not affect any determination with respect to which it is made until the appeal is determined.
- (5) When it determines an appeal, the Tribunal may dismiss the appeal or order that the decision of the Board be revoked and replaced by a different decision made by the Tribunal and specified in the order. The Tribunal may also make such ancillary orders as it thinks proper.
- (6) The Tribunal's decision is taken to be a decision of the Board (but this does not confer a right of appeal under this section in respect of the Tribunal's decision).
- (7) No appeal lies under this Act against a decision of the Board under the Mutual Recognition laws in relation to its functions under that Act.

**Note.** The Mutual Recognition laws provide that a person may, subject to the *Administrative Appeals Tribunal Act 1975* of the Commonwealth, apply to the Administrative Appeals Tribunal for a review of a decision of a local registration authority in relation to its functions under the Mutual Recognition laws. Those functions include registration, the imposition or waiver of conditions on registration and the postponement, refusal or reinstatement of registration.

## **Part 3 Registration of dental auxiliaries**

### **19 Classes of dental auxiliary**

- (1) There are to be the following classes of dental auxiliary:
  - (a) dental hygienists,
  - (b) dental therapists,
  - (c) such other classes as may be prescribed by the regulations.
- (2) A reference in this Act to registration as a dental auxiliary is a reference to registration as a dental auxiliary in one or more of the classes of dental auxiliary.
- (3) The regulations are to prescribe activities as authorised activities for each class of dental auxiliary. An activity can only be prescribed as such an authorised activity if it constitutes a restricted dental practice.

### **20 Registration necessary for certain representations**

- (1) A person must not indicate that the person carries out dental auxiliary activities or is qualified to carry out dental auxiliary activities unless the person is registered as a dental auxiliary of a class for which those activities are prescribed by the regulations as authorised activities.  
Maximum penalty: 50 penalty units.
- (2) Without limiting the ways in which a person may be taken to have indicated that the person is qualified to carry out dental auxiliary activities or that the person carries out dental auxiliary activities, a person is taken to have so indicated if the person uses:
  - (a) any name, initials, word, title, symbol or description that (having regard to the circumstances in which it is used) indicates, or is capable of being understood to indicate, or is calculated to lead a person to infer, that the person is qualified to carry out dental auxiliary activities or that the person carries out dental auxiliary activities, or
  - (b) the titles “dental therapist”, “dental hygienist”, “dental auxiliary” or any name, title or description prescribed by the regulations either generally or for a class of dental auxiliaries.

- (3) This section does not apply to a registered dentist.

**Note.** Section 10AF of the *Public Health Act 1991* prohibits the carrying out of restricted dental practices by persons who are not registered dentists, medical practitioners or certain other persons in specified circumstances (including dental auxiliaries).

## 21 Qualifications for registration

- (1) A person has the necessary qualifications for registration as a dental auxiliary of a particular class if the person:
- (a) has such qualifications as may be prescribed by the regulations for that class of dental auxiliaries, or
  - (b) has successfully completed a course of study that is recognised by the Board as meeting criteria prescribed by the regulations for that class of dental auxiliaries for the purposes of this paragraph, or
  - (c) has such qualifications as may be approved by the Board for that class of dental auxiliaries on the recommendation of an accreditation body recognised by the Board for the purposes of this section, or
  - (d) has passed an examination arranged or approved by the Board to assess the person's competence to carry out dental auxiliary activities prescribed as authorised activities for that class of dental auxiliaries.
- (2) An educational or training institution may apply to the Board for the recognition by the Board (under subsection (1) (b)) of a course of study offered by the institution. The institution may make application to the Administrative Decisions Tribunal for a review of the decision of the Board on the application.
- (3) In determining for the purposes of subsection (1) (b) whether a particular course of study meets the criteria prescribed by the regulations, the Board may have regard to and rely on any findings made on an assessment prepared for the Board in respect of the course of study.
- (4) In this section:
- qualification** means a degree, diploma, certificate or other academic award conferred or awarded for the successful completion of a course of training in dental auxiliary activities.

## 22 Competence

For the purposes of this Act, a person is competent to carry out dental auxiliary activities only if the person has sufficient physical capacity, mental capacity and skill to carry out dental auxiliary activities and has sufficient communication skills for the carrying out of dental auxiliary activities, including an adequate command of the English language.

## 23 Impairment

- (1) For the purposes of this Act, a person suffers from an impairment as a dental auxiliary if the person suffers from any physical or mental impairment, disability, condition or disorder that detrimentally affects or is likely to detrimentally affect the person's physical or mental capacity to carry out dental auxiliary activities.
- (2) For the purposes of this Act, a person who habitually abuses alcohol or is addicted to a deleterious drug is taken to suffer from an impairment as a dental auxiliary.

## 24 Full registration

- (1) A person is entitled to registration as a dental auxiliary if the Board is satisfied that the person has the necessary qualifications for registration as a dental auxiliary and is of good character.
- (2) Registration under this section is *full registration*.
- (3) An entitlement to full registration does not prevent conditions being imposed on that registration in accordance with this Act.
- (4) Schedule 1 (Registration procedures) has effect with respect to full registration.

**Note.** Under section 20 of the *Mutual Recognition Act 1992* of the Commonwealth a person is entitled to be registered as a dental auxiliary if the person is registered in another State or a Territory for an equivalent occupation (if that State or Territory participates in the mutual recognition scheme). The entitlement arises once the person lodges a notice under section 19 of that Act and, until registered under this Act, the person is then deemed (by section 25 of that Act) to be registered. See also the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth.

## 25 Provisional registration

- (1) Registration as a dental auxiliary may be granted:
  - (a) to a person entitled to full registration, pending the Board's determination of the person's application for full registration, or

- (b) to a person who will be entitled to full registration when a degree, diploma, certificate or other academic award to which the person is entitled is granted or conferred, pending its grant or conferral.
- (2) Registration under this section is *provisional registration*.
- (3) Provisional registration is granted by the Board or the President. In the President's absence it can be granted by any member of the Board authorised by the Board to do so. Provisional registration is granted by the grant of a certificate of provisional registration.
- (4) A person granted provisional registration is a registered dental auxiliary until the registration expires or is cancelled. Provisional registration expires on the date stated in the certificate or such later date as may be fixed by the Board.
- (5) The Board may impose such conditions as it thinks fit on a person's provisional registration and may at any time remove, add to or vary those conditions by notice in writing to the registered person.
- (6) The Board may cancel a person's provisional registration for any reason that the Board considers proper. Cancellation does not affect any application for registration by the person.
- (7) If a person granted provisional registration is granted full registration before the person's provisional registration expires, the person's full registration dates from the granting of provisional registration, unless the Board decides otherwise.

## **26 Temporary registration**

- (1) Registration as a dental auxiliary for a limited period may be granted to a person who is not normally resident in New South Wales, for the purpose of enabling the person to carry out educational or research activities or such other activities as the Board considers to be in the public interest.
- (2) Registration under this section is *temporary registration*.
- (3) Temporary registration can only be granted to a person:
  - (a) who is registered as a dental auxiliary in accordance with a law in force in the person's normal place of residence providing for the registration or certification of dental auxiliaries, or

- (b) who holds such qualifications or has such experience in the provision of dental auxiliary activities as the Board considers satisfactory for the purposes of temporary registration.
- (4) Temporary registration is granted by the Board by the grant of a certificate of temporary registration.
- (5) A person granted temporary registration is a registered dental auxiliary until the temporary registration expires or is cancelled. Temporary registration expires on the date stated in the certificate unless the period of temporary registration is extended.
- (6) The Board may extend and further extend a period of temporary registration by the issue of a further certificate of temporary registration.
- (7) The Board may cancel a person's temporary registration for any reason that the Board considers proper. Cancellation does not affect any application for full registration by the person.
- (8) The Board may impose such conditions as it thinks fit on the temporary registration of a person and may at any time remove, add to or vary those conditions by notice in writing to the registered person.

## **27 Power to refuse or impose conditions on full registration**

- (1) The Board may refuse to register a person who would otherwise be entitled to full registration if:
  - (a) the Board is of the opinion, following an inquiry under Schedule 1, that the person is not competent to carry out dental auxiliary activities or suffers from an impairment, or
  - (b) the person has been convicted of or made the subject of a criminal finding for an offence, either in or outside the State, and the Board is of the opinion that the circumstances of the offence are such as to render the person unfit in the public interest to carry out dental auxiliary activities, or
  - (c) the person's registration under a health registration Act has been cancelled or suspended because of conduct that would (if the person were a registered dental auxiliary) authorise cancellation or suspension of the person's registration under this Act, or

- (d) the person's registration or certification under a dental auxiliaries registration law has been cancelled or suspended because of conduct that would (if it occurred in New South Wales and the person were a registered dental auxiliary) authorise cancellation or suspension of the person's registration under this Act.
- (2) As an alternative to refusing to register a person under subsection (1), the Board may grant the person registration subject to conditions if the Board considers that refusal of registration is not warranted and that the person should be granted registration subject to appropriate conditions.
- (3) Conditions of registration may relate to the duration of registration, the aspects of the practice in which the person may be engaged, and any other matters, as the Board thinks appropriate.

**Note.** The Mutual Recognition laws also provide for the imposition of conditions on registration. Conditions can also be imposed on a person's registration as a result of disciplinary proceedings to which the person has been subject.

- (4) In this section:  
*dental auxiliaries registration law* means any law of a place outside the State that provides for the registration or certification of dental auxiliaries.

## **28 Cancellation and suspension of registration**

- (1) A person ceases to be registered as a dental auxiliary if the person's name is removed from the Dental Auxiliaries Register. A reference in this Act to the cancellation of a dental auxiliary's registration is a reference to the removal of the dental auxiliary's name from the Dental Auxiliaries Register.
- (2) A person whose registration as a dental auxiliary is suspended is taken not to be a registered dental auxiliary during the period of the suspension, except for the purposes of Part 5 (Complaints and disciplinary proceedings).

## **29 Restrictions on registration of deregistered persons**

- (1) A person cannot apply for registration as a dental auxiliary (and any such application must be rejected) if:
- (a) the person's registration as a dental auxiliary is cancelled pursuant to an order of the Chairperson or a Deputy Chairperson, the Tribunal or the Supreme Court, or

- (b) the Chairperson or a Deputy Chairperson, the Tribunal or the Supreme Court orders that the person not be re-registered.
- (2) The only way such a person can again be registered is on a review under Division 3 of Part 7 of the order by which the person's registration was cancelled.

### **30 Appeals concerning registration**

- (1) A person who is aggrieved by any of the following decisions of the Board may appeal to the Tribunal against the decision:
  - (a) the Board's refusal to grant the person full registration as a dental auxiliary,
  - (b) the Board's refusal to grant the person temporary registration as a dental auxiliary,
  - (c) the Board's decision to refuse to register the person under section 27 or to grant the person registration subject to conditions under that section,
  - (d) the Board's cancellation of the person's provisional registration or temporary registration,
  - (e) the Board's refusal to register the person under clause 28 (Entitlement to re-registration if fee paid) of Schedule 1.
- (2) An appeal must be made within 28 days (or such longer period as the Chairperson may allow in a particular case) after notice of the decision is given to the person. The appeal is to be lodged with the Registrar who is to refer it to the Tribunal.
- (3) If the decision in respect of which an appeal is made was made as a consequence of an inquiry held by the Board, the appeal is to be dealt with by way of rehearing and fresh evidence or evidence in addition to or in substitution for the evidence received at the inquiry may be given.
- (4) An appeal does not affect any determination with respect to which it is made until the appeal is determined.
- (5) When it determines an appeal, the Tribunal may dismiss the appeal or order that the decision of the Board be revoked and replaced by a different decision made by the Tribunal and specified in the order. The Tribunal may also make such ancillary orders as it thinks proper.
- (6) The Tribunal's decision is taken to be a decision of the Board (but this does not confer a right of appeal under this section in respect of the Tribunal's decision).

Section 30            Dental Practice Act 2001 No 64

Part 3                Registration of dental auxiliaries

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- (7) No appeal lies under this Act against a decision of the Board under the Mutual Recognition laws in relation to its functions under that Act.

**Note.** The Mutual Recognition laws provide that a person may, subject to the *Administrative Appeals Tribunal Act 1975* of the Commonwealth, apply to the Administrative Appeals Tribunal for a review of a decision of a local registration authority in relation to its functions under the Mutual Recognition laws. Those functions include registration, the imposition or waiver of conditions on registration and the postponement, refusal or reinstatement of registration.

## Part 4 Practice of dentistry and dental auxiliary activities

**Note.** Section 10AF of the *Public Health Act 1991* prohibits the carrying out of restricted dental practices by persons who are not registered dentists, medical practitioners, or certain other persons in specified circumstances (including dental auxiliaries).

### Division 1 Conduct of practice

#### 31 Use of titles by dentists

A registered dentist must not use any certificate, diploma, membership, degree, licence, letters, testimonial or other title, status, document or description in relation to himself or herself as a dentist or the practice of dentistry other than those (if any) that the Board from time to time authorises the dentist to use.

Maximum penalty: 10 penalty units.

#### 32 Use of titles by dental auxiliaries

- (1) A registered dental auxiliary must not use the title “doctor” in the course of carrying out dental auxiliary activities unless the dental auxiliary is the holder of a qualification conferred by a university that entitles the dental auxiliary to use that title and that qualification is a recognised qualification at the time the dental auxiliary uses the title.

Maximum penalty: 10 penalty units.

- (2) A registered dental auxiliary must not use the title of a particular class of dental auxiliary unless the person is registered as a dental auxiliary of that class.

- (3) In this section:

**recognised qualification** means:

- (a) a qualification that is prescribed by the regulations as a recognised qualification, or
- (b) when no qualification is prescribed under paragraph (a), a qualification that is for the time being recognised by the Board for the purposes of this section.

**Note.** See also section 105 (Use of misleading titles etc) of the *Medical Practice Act 1992*.

### 33 Restrictions on dental auxiliaries

- (1) A registered dental auxiliary must not carry out a dental auxiliary activity unless the person:
- (a) is a registered dental auxiliary of a class for which the activity is prescribed by the regulations as an authorised activity, and
  - (b) carries out the activity subject to the practice oversight of a registered dentist in accordance with guidelines approved by the Director-General from time to time.
- (2) A registered dental therapist must not carry out dental auxiliary activities except as an officer or employee of, or pursuant to an agreement or other arrangement with, the Department of Health, a public health organisation or a body or organisation prescribed by the regulations for the purposes of this section.

### 34 Incorporated practices

- (1) A registered dentist may practise dentistry as the director or employee of a corporation if:
- (a) all the shareholders and directors of the corporation are either:
    - (i) registered dentists, or
    - (ii) family members of the registered dentist or dentists concerned, and
  - (b) the controlling interest in the corporation is held by a person who is a registered dentist, or persons who are registered dentists.
- (2) In this section:
- de facto partner*** of a registered dentist means a person with whom the dentist has a de facto relationship (within the meaning of the *Property (Relationships) Act 1984*).
- family member*** of a registered dentist means:
- (a) a spouse, de facto partner, parent, child, brother or sister of the dentist, or
  - (b) a person who has a relationship with the director that is prescribed by the regulations for the purposes of this definition.

**35 Codes of professional conduct**

- (1) The Board may establish codes of professional conduct setting out guidelines that should be observed by registered dentists or registered dental auxiliaries in their professional practice. The Board may from time to time amend or replace a code of professional conduct.
- (2) The Minister may require the Board to develop guidelines relating to any conduct of registered dentists or registered dental auxiliaries that the Minister considers should be the subject of a code of professional conduct.
- (3) For that purpose, the Minister may:
  - (a) direct the Board to establish a code of professional conduct, or
  - (b) direct the Board to amend or replace a code of professional conduct,so that the code includes guidelines relating to that conduct.
- (4) The Board is to comply with any such direction of the Minister.
- (5) The provisions of a code of professional conduct are a relevant consideration in determining for the purposes of this Act what constitutes proper and ethical conduct by a dentist or dental auxiliary.
- (6) The procedure for the establishment of a code of professional conduct is as follows:
  - (a) the Board is to prepare a proposed code in draft form and is to prepare an impact assessment statement for the proposed code in accordance with such requirements as the Minister may from time to time determine,
  - (b) the draft code and impact assessment statement are to be publicly exhibited for a period of at least 21 days,
  - (c) the Board is to seek public comment on the draft code during the period of public exhibition and public comment may be made during the period of public exhibition and for 21 days (or such longer period as the Board may determine) after the end of that period,
  - (d) the Board is to submit the draft code to the Minister for approval together with a report by the Board giving details of public comment received during the period allowed for public comment and the Board's response to it,

Section 35	Dental Practice Act 2001 No 64
Part 4	Practice of dentistry and dental auxiliary activities
Division 1	Conduct of practice

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- (e) the Board is not to establish the draft code as a code of professional conduct unless the Minister approves the draft.
- (7) The procedure for the amendment or replacement of a code of professional conduct is the same as for the establishment of the code unless the Minister otherwise directs in respect of a particular amendment.

## **Division 2 Returns and information**

### **36 Annual return to be submitted**

- (1) A registered dental care provider must, on or before the return date in each year, furnish in writing to the Board in a form approved by the Board a return for the return period specifying the following information:
  - (a) details of any conviction of the dental care provider for an offence in this State or elsewhere during the return period (together with details of any penalty imposed for the offence),
  - (b) details of the making of a sex/violence criminal finding against the dental care provider for an offence, in this State or elsewhere, during the return period (together with details of any penalty imposed for the offence),
  - (c) details of the making of a criminal finding against the dental care provider for an offence committed in the course of the practice or purported practice of dentistry, or the carrying out or purported carrying out of dental auxiliary activities, in this State or elsewhere, during the return period (together with details of any penalty imposed for the offence),
  - (d) details of any criminal proceedings pending against the dental care provider at the end of the return period, in this State or elsewhere, for a sex/violence offence alleged to have been committed in the course of the practice or purported practice of dentistry, or the carrying out or purported carrying out of dental auxiliary activities,

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- (e) details of any criminal proceedings pending against the dental care provider at the end of the return period, in this State or elsewhere, for a sex/violence offence alleged to have been committed against a minor or to involve child pornography (whether or not alleged to have been committed in the course of the practice or purported practice of dentistry, or the carrying out or purported carrying out of dental auxiliary activities),
  - (f) details of any significant illness (physical or mental) from which the dental care provider suffered at any time during the return period and that may reasonably be thought likely to detrimentally affect the dental care provider's physical or mental capacity to practise dentistry or to carry out dental auxiliary activities,
  - (g) details of any suspension of, cancellation of, or imposition of conditions on, the registration of the dental care provider as a dentist or a dental auxiliary in another jurisdiction (either within Australia or elsewhere) during the return period,
  - (h) details of any suspension of, cancellation of, or imposition of conditions on, any registration of the dental care provider under a health registration Act during the return period,
  - (i) a statement as to whether the dental care provider is registered under a health registration Act as at the date of the return,
  - (j) a statement as to whether the dental care provider has been refused registration as a dentist or dental auxiliary in another jurisdiction (either within Australia or elsewhere) during the return period,
  - (k) details of any continuing professional education and development undertaken by the dental care provider during the return period,
  - (l) such other information as may be prescribed by the regulations.
- (2) The Board may require a return under this section to be verified by statutory declaration.
- (3) The regulations may provide that subsection (1) (a) does not apply in respect of particular offences.
- (4) In this section:
- return date** means the date in a particular year notified to a dental care provider by the Board in writing at least 1 month in advance.

***return period*** means the period of 12 months ending 2 months before the return date in a year.

**37 Notification of convictions, criminal findings and charges**

- (1) A registered dental care provider must notify the Board in writing within 7 days after:
  - (a) the dental care provider is convicted of an offence or made the subject of a sex/violence criminal finding for an offence, in this State or elsewhere, giving details of the conviction or criminal finding and any penalty imposed for the offence, or
  - (b) criminal proceedings are commenced against the dental care provider, in this State or elsewhere, in respect of a sex/violence offence alleged to have been committed in the course of the practice or purported practice of dentistry, or the carrying out or purported carrying out of dental auxiliary activities, or
  - (c) criminal proceedings are commenced against the dental care provider, in this State or elsewhere, in respect of a sex/violence offence alleged to have been committed against a minor or to involve child pornography (whether or not alleged to have been committed in the course of the practice or purported practice of dentistry, or the carrying out or purported carrying out of dental auxiliary activities).
- (2) The regulations may provide that subsection (1) (a) does not apply in respect of particular offences.

**38 Courts to provide information on convictions**

- (1) As soon as practicable after a registered dental care provider is convicted of an offence or a sex/violence criminal finding is made against a registered dental care provider, the Clerk or other proper officer of the court must (if the court is aware that the person is a registered dental care provider) notify the Board of the conviction or criminal finding together with details of any penalty imposed for the offence.
- (2) The regulations may provide that this section does not apply in respect of particular offences.

### **39 Referral of mental health matters to Registrar**

If a registered dental care provider becomes a mentally incapacitated person, the person prescribed by the regulations must cause notice of that fact to be given to the Registrar in accordance with the regulations.

## Part 5 Complaints and disciplinary proceedings

### Division 1            Interpretation

#### 40    Meaning of “professional misconduct”

For the purposes of this Act, *professional misconduct*, in relation to a registered dental care provider, means unsatisfactory professional conduct of a sufficiently serious nature to justify suspension or cancellation of the dental care provider’s registration.

#### 41    Meaning of “unsatisfactory professional conduct”—dentists

- (1) For the purposes of this Act, *unsatisfactory professional conduct*, in relation to a registered dentist, includes any of the following:
- (a) any conduct by the dentist that demonstrates a lack of adequate knowledge, skill, judgment or care in the practice of dentistry,
  - (b) a contravention by the dentist of a provision of this Act or the regulations or of a condition of the dentist’s registration,
  - (c) practising dentistry for remuneration in the course of employment by, or in association with, a non-dentist,
  - (d) a failure without reasonable excuse by the dentist to comply with a direction by the Board to provide information with respect to a complaint under this Part against the dentist,
  - (e) a failure by the dentist to comply with an order made or a direction given by the Board or the Tribunal under this Act,
  - (f) carrying on the business of providing dental services under a name other than the dentist’s own name, unless:
    - (i) the dentist’s own name is used in conjunction with the other name and the other name is that of an incorporated practice of which the dentist is a director, or
    - (ii) the dentist’s own name is used in conjunction with the other name and the other name is a registered business name of the dentist or of an incorporated practice of which the dentist is a director, or
    - (iii) the dentist is acting as the locum tenens of another dentist,

- (g) allowing the dentist's name to be used in carrying on the business of providing dental services at premises at which the dentist, or a locum tenens of the dentist, is not in regular attendance for the purposes of practice and supervision during the hours in which the premises are open for the practice of dentistry,
- (h) any other improper or unethical conduct by a dentist in the course of the practice or purported practice of dentistry.

(2) For the purposes of subsection (1) (c):

**non-dentist** means a person or body who is not a registered dentist, but does not include any of the following:

- (a) the Crown,
- (b) a public health organisation or a charitable or philanthropic institution,
- (c) a local council,
- (d) an incorporated practice,
- (e) a registered health benefits organisation within the meaning of the *National Health Act 1953* of the Commonwealth,
- (f) a friendly society within the meaning of the *National Health Act 1953* of the Commonwealth,
- (g) any person or body that has been approved by the Board for the purposes of this paragraph.

**Note.** Section 139 provides for the granting of approvals by the Board for the purposes of paragraph (g).

Section 141 provides for circumstances in which a dentist may practice dentistry as or for the legal personal representative of a deceased dentist.

#### 42 Meaning of “unsatisfactory professional conduct”—dental auxiliaries

For the purposes of this Act, **unsatisfactory professional conduct**, in relation to a registered dental auxiliary, includes any of the following:

- (a) any conduct by the dental auxiliary that demonstrates a lack of adequate knowledge, skill, judgment or care in the carrying out of dental auxiliary activities,
- (b) a contravention by the dental auxiliary of a provision of this Act or the regulations or of a condition of the dental auxiliary's registration,

Section 42            Dental Practice Act 2001 No 64

Part 5                Complaints and disciplinary proceedings  
Division 1            Interpretation

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- (c) a failure without reasonable excuse by the dental auxiliary to comply with a direction by the Board to provide information with respect to a complaint under this Part against the dental auxiliary,
- (d) a failure by the dental auxiliary to comply with an order made or a direction given by the Board or the Tribunal under this Act,
- (e) any other improper or unethical conduct by a dental auxiliary in the course of the carrying out or purported carrying out of dental auxiliary activities.

#### **43 Application of Part to incorporated practices**

For the purposes of this Part, an act or omission by an incorporated practice is taken to be an act or omission by each director of the incorporated practice who:

- (a) is a registered dentist, and
- (b) knowingly authorised or permitted the act or omission.

This Part applies accordingly to such acts or omissions.

**Note.** A complaint against an incorporated practice as such may be made to the Commission. See also section 142 (Civil liability of directors of incorporated practices).

## **Division 2            Complaints**

#### **44 Grounds for complaints**

- (1) A complaint may be made under this Act concerning:
  - (a) the professional conduct of a registered dental care provider, or
  - (b) the provision of a dentistry service by a registered dentist, or
  - (c) the provision of a dental auxiliary service by a registered dental auxiliary.

**Note.** Subsection (1) ensures consistency between this Act and the *Health Care Complaints Act 1993* with respect to the kinds of complaints that can be made about registered dental care providers.

- (2) Without limiting the generality of subsection (1), a complaint may be made that a registered dental care provider:
- (a) has, either in or outside New South Wales, been convicted of or made the subject of a criminal finding for an offence, and the circumstances of the offence are such as to render the dental care provider unfit in the public interest to be registered as a dental care provider, or
  - (b) is guilty of unsatisfactory professional conduct or professional misconduct, or
  - (c) in the case of a dentist—is not competent to practise dentistry, or
  - (d) in the case of a dental auxiliary—is not competent to carry out dental auxiliary activities, or
  - (e) suffers from an impairment, or
  - (f) is not of good character.
- (3) A complaint need not be made in terms that are strictly in accordance with the terminology of this section.
- (4) In determining for the purposes of this Act whether a dental care provider is of good character regard may be had to conduct of the dental care provider before becoming registered as a dental care provider.

#### **45 Complaint can be made even if person no longer registered**

A complaint about a registered dental care provider may be made and dealt with even though the dental care provider has ceased to be registered. For that purpose, a reference in this Part to a dental care provider or registered dental care provider includes a reference to a person who has ceased to be registered or whose registration is suspended.

#### **46 Who can make a complaint**

Any person (including the Board) can make a complaint.

#### **47 Complaints to be made to the Board**

Complaints are to be made to the Board and are to be lodged with the Registrar.

**Note.** Complaints may also be made to the Commission.

**48 Form of complaint**

- (1) A complaint must be in writing, must identify the complainant and must contain particulars of the allegations on which it is founded.
- (2) A complaint must be verified by statutory declaration unless the complaint is made by:
  - (a) a judicial officer within the meaning of the *Judicial Officers Act 1986*, or
  - (b) a coroner, or
  - (c) the Minister, or
  - (d) the Director-General, or
  - (e) the chief executive officer (however described) of a public health organisation, or
  - (f) the Commission, or
  - (g) a person or body prescribed by the regulations.
- (3) The Board may consider and investigate a complaint even if it does not comply with the requirements of this section (except the requirement that it identify the complainant) but must not proceed to deal with the complaint under this Part until they are complied with.
- (4) The Board may require the complainant to provide further particulars of a complaint.

**49 Board to notify Commission of complaints**

The Board must notify the Commission of any complaint made under this Part and this is to be done as soon as practicable after the complaint is made.

**50 Board to notify person against whom complaint is made**

- (1) Written notice of the making of a complaint, the nature of the complaint and the identity of the complainant is to be given by the Board to the registered dental care provider against whom the complaint is made, as soon as practicable after the complaint is made.
- (2) Notice is not required to be given if the Commission is handling the complaint.
- (3) Notice is not required to be given if the giving of the notice will or is likely to:
  - (a) prejudice the investigation of the complaint, or

- (b) place the health or safety of a person at risk, or
- (c) place the complainant or another person at risk of intimidation or harassment.

### **51 Investigation of complaint by Board**

The Board may make such inquiries concerning a complaint as it thinks fit.

### **52 Role of the Commission**

- (1) Before the Board deals with or refers a complaint under this Part, the Board and the Commission must consult in order to see if agreement can be reached between them as to the course of action to be taken concerning a complaint.
- (2) Division 2 of Part 2 of the *Health Care Complaints Act 1993* applies to the consultation and the outcomes of the consultation.

### **53 How complaints are dealt with**

- (1) When a complaint is made, the Board may at any time decide:
  - (a) to refer the complaint for investigation by the Commission, or
  - (b) to refer the complaint for conciliation in accordance with section 13 (2) of the *Health Care Complaints Act 1993*, or
  - (c) to refer the complaint to the Dental Care Assessment Committee under Division 3, or
  - (d) to refer the matter to an Impaired Registrants Panel under Part 6, or
  - (e) to deal with the complaint by inquiry at a meeting of the Board under Division 4, or
  - (f) to refer the complaint to the Tribunal, or
  - (g) to deal with the complaint by directing the dental care provider to attend counselling, or
  - (h) to deal with the complaint by providing advice or making recommendations to the dental care provider, or
  - (i) to decline to deal with or dismiss the complaint.

- (2) If the Commission recommends to the Board in accordance with the *Health Care Complaints Act 1993* that a complaint (whether made under that Act or this Act) be dealt with by inquiry at a meeting of the Board under Division 4, the Board must comply with that recommendation (but only if the complaint is of a kind that can be made under this Act).
- (3) The Board may decline to deal with a complaint if the dental care provider concerned has ceased to be registered.
- (4) The Board may decline to deal with a complaint if the complainant fails to provide further particulars required by the Board.
- (5) A complaint may be withdrawn by the complainant at any time. The Board and the Commission are to consult as to whether the complaint should be proceeded with in the public interest.
- (6) The Board is to notify the dental care provider of any action taken by the Board under this section.

**54 Serious complaints must be referred to Tribunal**

- (1) Both the Board and the Commission are under a duty to refer a complaint to the Tribunal if at any time either forms the opinion that it may, if substantiated, provide grounds for the suspension or cancellation of the dental care provider's registration.
- (2) However, either the Board or the Commission may decide not to refer the complaint to the Tribunal if of the opinion that the allegations on which the complaint is founded (and on which any other pending complaint against the dental care provider is founded) relate solely or principally to the physical or mental capacity of the dental care provider:
  - (a) in the case of a dentist—to practise dentistry, or
  - (b) in the case of a dental auxiliary—to carry out dental auxiliary activities.
- (3) If the Board decides not to refer the complaint to the Tribunal, the Board must instead deal with the complaint at a meeting of the Board under Division 4. If the Commission decides not to refer the complaint to the Tribunal, the Commission must instead refer the complaint to the Board.

- (4) This section does not require the Board or the Commission to refer a complaint that the Board or Commission thinks is frivolous or vexatious.

### **55 Medical examination of dental care provider**

- (1) The Board may, before or while taking any action under this Part or Part 6 (Impairment), by notice to the dental care provider concerned, require the dental care provider to undergo an examination at the Board's expense by a medical practitioner, or other appropriate health professional, specified in the notice, at any reasonable time and place specified in the notice.
- (2) A failure by a dental care provider, without reasonable cause, to comply with a notice given under this section to undergo an examination is, for the purposes of this Part or any inquiry or appeal under this Part, evidence that the dental care provider does not have sufficient physical and mental capacity:
- (a) in the case of a dentist—to practise dentistry, or
  - (b) in the case of a dental auxiliary—to carry out dental auxiliary activities.
- (3) A medical practitioner or other health professional who conducts an examination under this section is to report to the Board on the results of the examination. The Board is to provide a copy of the report to the dental care provider.
- (4) A person must not directly or indirectly make a record of or divulge to any person any information contained in a report to the Board under this section that has come to the person's notice in the exercise of the person's functions under this Act, except for the purpose of exercising functions under this Act.

Maximum penalty: 50 penalty units.

- (5) A person cannot be required in civil proceedings in any court to produce or permit access to any report made to the Board under this section or to divulge the contents of any such report.
- (6) In this section:
- court** includes any tribunal, authority or person having power to require the production of documents or the answering of questions but does not include the Tribunal.

**report** includes a copy, reproduction and duplicate of the report or any part of the report, copy, reproduction or duplicate.

**56 Notification of orders to employer and others**

- (1) The Board is required to give notice of any order made in respect of a registered dental care provider under this Act, or the placing of conditions on the registration of a registered dental care provider, to the following persons:
  - (a) the employer (if any) of the dental care provider concerned,
  - (b) the chief executive officer (however described) of any public health organisation in respect of which the dental care provider concerned is a visiting practitioner or is otherwise accredited,
  - (c) the chief executive officer (however described) of any private hospital or day procedure centre (within the meaning of the *Private Hospitals and Day Procedure Centres Act 1988*) in respect of which the dental care provider concerned is accredited,
  - (d) the chief executive officer (however described) of any nursing home (within the meaning of the *Nursing Homes Act 1988*) in respect of which the dental care provider concerned is accredited.
- (2) The notice is to be given within 7 days after:
  - (a) in the case of an order made or conditions imposed by the Board—the date the order is made or the conditions are imposed, or
  - (b) in any other case—the date the Board is given a copy of the decision of the body that made the order or imposed the conditions.
- (3) The notice is to include such information as the Board considers appropriate.

### **Division 3      Referral of complaints to Dental Care Assessment Committee**

#### **57    Kinds of complaints that can be referred to Committee**

- (1) The Board may refer a complaint to the Committee only if the Commission has decided not to investigate the complaint.
- (2) A complaint may not be referred to the Committee if it is a complaint that the dental care provider is not of good character or has been convicted of or made the subject of a criminal finding for an offence.
- (3) This section does not operate to limit the Committee in the exercise of its functions under this Division in respect of any matter that arises in the course of the Committee's investigation of a complaint.

#### **58    How complaints are dealt with**

- (1) When a complaint is referred to the Committee, the Committee is to investigate the complaint and may in any particular case encourage the complainant and the dental care provider against whom the complaint is made to settle the complaint by consent.
- (2) The Committee may obtain such dental, medical, legal, financial or other advice as it thinks necessary or desirable to enable it to exercise its functions.
- (3) Any such advice obtained by the Committee may not, unless otherwise ordered by the Board, be admitted or used in any civil proceedings before a court and a person may not be compelled to produce the advice or to give evidence in relation to the advice in any such civil proceedings.
- (4) The Committee may not determine a complaint referred to it except by settlement by consent.
- (5) The Committee is to make a report to the Board on a complaint referred to it whether or not it is able to effect settlement of the complaint by consent.

**59 Skills testing of dental care provider**

- (1) The Committee is to, at the request of the Board, by notice to the dental care provider who is the subject of a complaint referred to the Committee, require the dental care provider to undergo skills testing at the Board's expense by an appropriately qualified person specified in the notice, at any reasonable time and place specified in the notice.
- (2) A failure by a dental care provider, without reasonable cause, to comply with a notice given under this section to undergo skills testing is, for the purposes of this Part or any inquiry or appeal under this Part, evidence that the dental care provider does not have sufficient skill:
  - (a) in the case of a dentist—to practise dentistry, or
  - (b) in the case of a dental auxiliary—to carry out dental auxiliary activities.
- (3) The person who conducts skills testing under this section is to report to the Committee on the results of the examination. The Committee is to provide a copy of the report to the dental care provider.
- (4) A person must not directly or indirectly make a record of or divulge to any person any information contained in a report to the Committee under this section that has come to the person's notice in the exercise of the person's functions under this Act, except for the purpose of exercising functions under this Act.

Maximum penalty: 50 penalty units.

- (5) A person cannot be required in civil proceedings in any court to produce or permit access to any report made to the Committee under this section or to divulge the contents of any such report.
- (6) In this section:

***court*** includes any tribunal, authority or person having power to require the production of documents or the answering of questions but does not include the Tribunal.

***report*** includes a copy, reproduction and duplicate of the report or any part of the report, copy, reproduction or duplicate.

**60 Recommendations of the Committee**

- (1) The Committee's report to the Board may include such recommendations with respect to the complaint as the Committee considers appropriate, including (without being limited to) any of the following recommendations:
  - (a) a recommendation that the Board deal with the complaint by inquiry at a meeting of the Board as a complaint of unsatisfactory professional conduct,
  - (b) a recommendation that the Board direct the dental care provider to attend counselling,
  - (c) a recommendation that the Board dismiss the complaint.
- (2) The Board is to provide the dental care provider and the Commission with a copy of the Committee's report and recommendations as soon as practicable after the report is made.
- (3) The Board must comply with a recommendation of the Committee that the Board deal with the complaint by inquiry at a meeting of the Board as a complaint of unsatisfactory professional conduct.
- (4) Otherwise the Board is to allow the Commission and the dental care provider at least 21 days after they have been provided with a copy of the Committee's report and recommendations to make submissions in respect of the report and recommendations.
- (5) After considering the Committee's report and recommendations and any submissions made by the dental care provider or the Commission in respect of the report or recommendations, the Board is to proceed to deal with the complaint as provided by section 53.
- (6) This section is subject to section 54 (Serious complaints must be referred to Tribunal).

**61 No legal representation for parties appearing before the Committee**

A complainant and the dental care provider against whom the complaint is made are not entitled to be legally represented at any appearance before the Committee.

Section 62	Dental Practice Act 2001 No 64
Part 5	Complaints and disciplinary proceedings
Division 4	Dealing with complaint by inquiry at a meeting of the Board

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## **Division 4      Dealing with complaint by inquiry at a meeting of the Board**

### **62    Procedures for dealing with complaint at meeting**

- (1) If the Board decides to deal with a complaint by inquiry at a meeting of the Board, the meeting is to be held in accordance with Schedule 3 and this Division.
- (2) The Board may be assisted by a legal practitioner when dealing with a complaint at a meeting of the Board.
- (3) The Board is to provide the Commission with a copy of any submission made to the Board by the dental care provider in respect of the complaint or in respect of any recommendation of the Committee concerning the complaint.

### **63    General procedure**

The procedure for the calling of a meeting to deal with a complaint and for the conduct of the meeting is, subject to this Act and the regulations, to be as determined by the Board.

### **64    Conduct of meeting**

At a meeting to deal with a complaint, the Board:

- (a) may inform itself on any matter in such manner as it thinks fit, and
- (b) may receive written or oral submissions, and
- (c) is to proceed with as little formality and technicality, and as much expedition, as the requirements of this Act and the proper consideration of the complaint permit, and
- (d) is not bound by rules of evidence, and
- (e) may proceed to deal with the complaint in the absence of the dental care provider.

### **65    Making submissions to inquiry**

- (1) The dental care provider is entitled to attend the meeting during the course of the Board's inquiry and to make submissions to the Board.

- (2) The Committee may, if the Board so requires, make a submission to the Board with respect to the complaint and may for that purpose attend the meeting during the course of the Board's inquiry.
- (3) The Board is to afford the Commission the opportunity to make a submission to the Board with respect to the complaint and the Commission may for that purpose attend the meeting during the course of the Board's inquiry.
- (4) The Committee or the Commission may not be present at the meeting except while actually making a submission in accordance with this section, unless the Board otherwise determines.
- (5) Despite subsection (4), the Commission is to be present throughout the Board's inquiry where the complaint is the subject of a recommendation of the Commission under section 53 (2) that it be dealt with by inquiry at a meeting of the Board under this Division.
- (6) The dental care provider is not entitled to be legally represented at the inquiry but may be accompanied by a support person. The support person can be a legal practitioner.
- (7) The Commission is not entitled to be legally represented at the inquiry.

## **66 Decision of the Board**

- (1) The Board must, within 30 days of making its decision on a complaint, make available to the complainant, the dental care provider concerned and such other persons as it thinks fit, a written statement of the decision.
- (2) If the Commission made a submission to the Board with respect to the complaint, the Board is to provide the Commission with a copy of the written statement of the decision.
- (3) The written statement of a decision must give the reasons for the decision.
- (4) The Board is not required to include confidential information in any such statement. If a statement would be false or misleading if it did not include the confidential information, the Board is not required to provide the statement.
- (5) When confidential information is not included in the statement of a decision provided to a person or the statement is not provided to a person because of subsection (4), the Board must give a confidential information notice to the person.

Section 66	Dental Practice Act 2001 No 64
Part 5	Complaints and disciplinary proceedings
Division 4	Dealing with complaint by inquiry at a meeting of the Board

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- (6) A ***confidential information notice*** is a notice that indicates that confidential information is not included or that the statement will not be provided (as appropriate) and gives the reasons for this. The notice must be in writing and must be given within one month after the decision is made.
- (7) This section does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.
- (8) In this section:  
***confidential information*** means information that:
- (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared, and
  - (b) relates to the personal or business affairs of a person, other than a person to whom the Board is required (or would, but for subsection (4), be required) to provide a written statement of a decision, and
  - (c) is information:
    - (i) that was supplied in confidence, or
    - (ii) the publication of which would reveal a trade secret, or
    - (iii) that was provided in compliance with a duty imposed by an enactment, or
    - (iv) the provision of which by the Board would be in breach of any enactment.

#### **67 Admissibility of Board's findings**

A finding of the Board under this Division is admissible as evidence in any legal proceedings.

## **Division 5      Disciplinary powers of Board and Tribunal**

### **68   Powers may be exercised if complaint proved or admitted**

- (1) The Board or the Tribunal may exercise any power or combination of powers conferred on it by this Division if the Board (pursuant to an inquiry at a meeting of the Board under Division 4) or the Tribunal finds the subject-matter of a complaint of a kind referred to in section 44 (2) to have been proved or the person admits to it in writing to the Board or the Tribunal.
- (2) In addition, the Board may exercise any power conferred on it by section 69 (1) (b) if the Board (after considering a report from the Committee) finds the subject-matter of a complaint to have been proved or the person admits to it in writing to the Board, whether or not the complaint is of a kind referred to in section 44 (2).

### **69   General powers of the Board**

- (1) The Board may do any one or more of the following:
  - (a) caution or reprimand the person,
  - (b) make an order for the withholding or refunding of part or all of the payment with respect to the fees to be charged or paid for the dental care services that are the subject of the complaint,
  - (c) order that the person seek and undergo medical or psychiatric treatment or counselling,
  - (d) direct that such conditions relating to the person's practice of dentistry or carrying out of dental auxiliary activities as it considers appropriate be imposed on the person's registration,
  - (e) order that the person complete a specified educational course or courses,
  - (f) order that the person report on his or her dentistry practice or dental auxiliary practice at specified times, in a specified manner and to specified persons,
  - (g) order that the person seek and take advice, in relation to the management of his or her dentistry practice or dental auxiliary practice, from a specified person or persons.

Section 69	Dental Practice Act 2001 No 64
Part 5	Complaints and disciplinary proceedings
Division 5	Disciplinary powers of Board and Tribunal

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- (2) If the person is not registered, an order or direction can still be given under this section but has effect only so as to prevent the person being registered unless the order is complied with or to require the conditions concerned to be imposed when the person is registered, as appropriate.

#### **70 Power of the Board to recommend suspension or cancellation of registration**

- (1) The Board may recommend that the registration of a dental care provider be suspended for a specified period or cancelled if the Board is satisfied (when it finds on a complaint about the dental care provider) that the dental care provider does not have sufficient physical and mental capacity:
- (a) in the case of a dentist—to practise dentistry, or
  - (b) in the case of a dental auxiliary—to carry out dental auxiliary activities.
- (2) If the dental care provider is not registered, a recommendation can be made under this section that the dental care provider not be re-registered.
- (3) The Board makes its recommendation by referring the matter with its recommendation to the Chairperson or to a Deputy Chairperson nominated by the Chairperson.
- (4) The Chairperson or Deputy Chairperson may then make an order in the terms recommended or may make such other order as to the suspension or registration of the dental care provider as the Chairperson or Deputy Chairperson thinks proper based on the findings of the Board.
- (5) An order may also provide that an application for review of the order under Division 3 of Part 7 may not be made until after a specified time.
- (6) Instead of making an order under this section, the Chairperson or Deputy Chairperson may exercise any power or combination of powers of the Board under this Division.

#### **71 Powers of the Tribunal**

- (1) The Tribunal may exercise any power that the Board can exercise under this Division, except a power conferred on the Board by section 68 (2).

- (2) The Tribunal may by order suspend a person's registration for a specified period or direct that a person's registration be cancelled if the Tribunal is satisfied (when it finds on a complaint about the person):
- (a) that the person is not competent:
    - (i) in the case of a dentist—to practise dentistry, or
    - (ii) in the case of a dental auxiliary—to carry out dental auxiliary activities, or
  - (b) that the person is guilty of professional misconduct, or
  - (c) that the person has been convicted of or made the subject of a criminal finding for an offence, either in or outside New South Wales, and the circumstances of the offence are such as to render the person unfit in the public interest:
    - (i) in the case of a dentist—to practise dentistry, or
    - (ii) in the case of a dental auxiliary—to carry out dental auxiliary activities, or
  - (d) that the person is not of good character.
- (3) An order that a person's registration be cancelled is an order that the person's name be removed from the Dentists Register or the Dental Auxiliaries Register or (if the person has already ceased to be registered) that the person not be re-registered.
- (4) An order may also provide that an application for review of the order under Division 3 of Part 7 may not be made until after a specified time.

## **Division 6 Powers of the Board for the protection of the public**

### **72 Suspension or conditions to protect the public**

- (1) The Board must, if at any time it is satisfied that such action is necessary for the purpose of protecting the life or physical or mental health of any person:
- (a) by order suspend the registration of a registered dental care provider for such period (not exceeding 8 weeks) as is specified in the order, or
  - (b) impose on:
    - (i) a registered dentist's registration such conditions, relating to the dentist's practising dentistry, as it considers appropriate, or

Section 72	Dental Practice Act 2001 No 64
Part 5	Complaints and disciplinary proceedings
Division 6	Powers of the Board for the protection of the public

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- (ii) a registered dental auxiliary's registration such conditions, relating to the dental auxiliary's carrying out of dental auxiliary activities, as it considers appropriate.
- (2) The Board may take such action:
  - (a) whether or not a complaint has been made or referred to the Board about the dental care provider, and
  - (b) whether or not proceedings in respect of such a complaint are before the Tribunal.

**73 Power to remove or alter conditions**

The Board may at any time alter or remove conditions imposed under this Division.

**74 Referral of matter to Commission**

- (1) The Board must, as soon as practicable after taking any action under section 72 and, in any event, within 7 days after taking that action, refer the matter to the Commission for investigation.
- (2) The matter is to be dealt with by the Commission as a complaint made to the Commission against the dental care provider concerned.
- (3) The Commission is to investigate the complaint or cause it to be investigated and, as soon as practicable after it has completed its investigation, refer the complaint to the Tribunal or to the Board to be dealt with by inquiry at a meeting of the Board under Division 4.
- (4) Section 54 (Serious complaints must be referred to Tribunal) applies in respect of any such action by the Commission.
- (5) This section does not apply if the Board takes action against a registered dental care provider under section 72 because the Board is of the opinion that the dental care provider suffers from an impairment.

**75 Special provisions—impairment**

- (1) This section applies if the Board takes action against a registered dental care provider under section 72 because the Board is of the opinion that the dental care provider suffers from an impairment.
- (2) The Board must, as soon as practicable after taking that action and, in any event, within 7 days after taking that action, notify the Commission that it has taken that action.

- (3) The Board is to consult with the Commission to see if agreement can be reached as to whether the matter should be:
  - (a) dealt with as a complaint against the dental care provider, or
  - (b) referred to an Impaired Registrants Panel.
- (4) The matter is to be dealt with as a complaint against the dental care provider only if, following that consultation:
  - (a) the Board and the Commission agree that it should be dealt with as a complaint, or
  - (b) either the Board or the Commission is of the opinion that the matter should be dealt with as a complaint.
- (5) In such a case, the Board is to refer the matter to the Commission and the matter is to be dealt with by the Commission as a complaint made to the Commission against the dental care provider concerned.
- (6) The Commission is to investigate the complaint or cause it to be investigated and, as soon as practicable after it has completed its investigation, refer the complaint to the Tribunal or to the Board to be dealt with by inquiry at a meeting of the Board under Division 4.
- (7) Section 54 (Serious complaints must be referred to Tribunal) applies in respect of any such action by the Commission.
- (8) If subsection (4) does not apply, the Board is to refer the matter to an Impaired Registrants Panel.
- (9) A matter may be referred to an Impaired Registrants Panel under this section even though the dental care provider has been suspended under section 72. Part 6 applies in respect of such a referral as if the dental care provider were a registered dental care provider.

## **76 Tribunal to be notified of suspensions**

If the Board suspends the registration of a registered dental care provider under section 72, the Board must notify the Chairperson that it has taken that action as soon as practicable after making the order and, in any event, within 7 days.

**77    Extension of suspension**

A period of suspension imposed by the Board under this Division may be extended, from time to time, by the Board by order for a further period or further periods, each of not more than 8 weeks, but only if:

- (a)    the extension has been approved in writing by the Chairperson or a Deputy Chairperson, and
- (b)    the complaint about the dental care provider has not been disposed of.

**78    Expiration of suspension**

On the expiration of a period of suspension imposed under this Division, the person's rights and privileges as a registered dental care provider are revived, subject to any order of the Tribunal on the complaint that is referred to the Tribunal.

**79    Duration of conditions—complaint matters**

- (1) This section applies if the Board imposes conditions on the registration of a registered dental care provider under section 72 and the matter is dealt with as a complaint against the dental care provider.
- (2) The conditions imposed by the Board have effect until the complaint about the dental care provider is disposed of, or the conditions are removed by the Board, whichever happens first.
- (3) This section:
  - (a)    does not prevent conditions being imposed under another provision of this Act, and
  - (b)    is subject to anything done by the Tribunal on an appeal under section 97.

**80    Duration of conditions—impairment matters**

- (1) This section applies if the Board imposes conditions on the registration of a registered dental care provider under section 72 and the matter is referred to an Impaired Registrants Panel.
- (2) The conditions imposed by the Board have effect until:
  - (a)    the complaint about the dental care provider is disposed of if the matter is subsequently dealt with by the Board as a complaint, or

- (b) the conditions are removed by the Board, whichever happens first.
- (3) The Board is not required to alter or remove conditions imposed under this Division merely because a dental care provider agrees to the imposition of conditions on the dental care provider's registration pursuant to the recommendations of an Impaired Registrants Panel (as referred to in section 90).
- (4) A registered dental care provider who agrees to the imposition of conditions on the dental care provider's registration pursuant to the recommendations of an Impaired Registrants Panel may, by notice in writing to the Board, request that the conditions imposed under this Division be removed or altered.
- (5) On receipt of such a request, the Board is to review the matter, and may:
  - (a) refuse to remove or alter any of the conditions, or
  - (b) remove or alter the conditions.
- (6) The Board is to give the dental care provider concerned notice in writing of its decision in respect of the request.
- (7) The Board may specify in the notice a period in which a further request by the dental care provider under this section is not permitted. The Board may reject a request that the conditions be removed or altered if it is made during that period.
- (8) This section:
  - (a) does not prevent conditions being imposed under another provision of this Act, and
  - (b) is subject to anything done by the Tribunal on an appeal under section 97.

## **Part 6 Impairment**

### **81 Referral of impairment matters concerning dental care providers or students**

- (1) The Board may refer any matter to an Impaired Registrants Panel if the Board considers that the matter indicates that a registered dental care provider or dental student suffers from an impairment. This is not limited to matters that are the subject of a complaint to the Board.
- (2) If the Board is aware that a complaint has been made to the Commission about a dental care provider who is the subject of a referral to an Impaired Registrants Panel, the Board is to notify the Commission of the referral.

### **82 Persons may notify Board of impairment matters concerning dental care providers or students**

A person may notify the Board of any matter that the person thinks indicates that a registered dental care provider or dental student suffers or may suffer from an impairment.

### **83 Commission may refer impairment matters to Board**

- (1) If the Commission becomes aware of any matter that the Commission considers indicates that a registered dental care provider or dental student suffers or may suffer from an impairment, the Commission may refer the matter to the Board.
- (2) This section does not affect the functions of the Board in relation to a complaint made to the Commission or a matter referred to the Commission for investigation.

### **84 Panel to inquire into matters referred to it**

- (1) An Impaired Registrants Panel is to inquire into any matter referred to it and may obtain reports and other information concerning the matter from any source it considers appropriate.
- (2) The Panel may request a registered dental care provider or dental student who is the subject of a matter referred to the Panel by the Board, to attend before the Panel for the purpose of enabling the Panel to obtain information on the matter and make an assessment.

**85 Panel not to take action while Commission investigating**

An Impaired Registrants Panel is not to investigate or take any other action in relation to any matter if the Panel is aware that the matter is the subject of an investigation by the Commission, while the investigation is being conducted.

**86 Board to give notice of proposed inquiry**

The Board is to give notice to a registered dental care provider or dental student of any proposed inquiry by an Impaired Registrants Panel concerning the dental care provider or student. The notice is to include sufficient details of the matters to which the inquiry is to relate.

**87 Dental care provider or student entitled to make representations**

- (1) A registered dental care provider or a dental student who is the subject of any inquiry by an Impaired Registrants Panel is entitled to make oral or written representations to the Panel with respect to the matters being or to be the subject of the inquiry.
- (2) This section does not prevent the Panel from conducting an inquiry in the absence of the registered dental care provider or dental student to whom it relates, as long as the dental care provider or student has been given notice of the inquiry under section 86.

**88 Board may require student to undergo medical examination**

- (1) The Board may by notice given to a dental student who is the subject of a matter referred or proposed to be referred to an Impaired Registrants Panel direct the student to undergo a medical examination by a specified registered medical practitioner at a specified time and place.
- (2) A dental student must not be directed to undergo a medical examination unless it is reasonable to require the examination, given the nature of the matter that is the subject of the referral or proposed referral. The time and place specified for the examination must be reasonable and the examination is to be at the expense of the Board.
- (3) If a dental student fails, without reasonable excuse, to comply with a direction to undergo a medical examination, the Board may by order in writing prohibit the student undertaking clinical studies, or undertaking a clinical placement in a public health organisation, until the student complies with the direction.

- (4) The Board's order takes effect when a copy of it is served on the educational institution responsible for the clinical studies or clinical placement of the student.
- (5) A dental student is not permitted to undertake clinical studies or a clinical placement in a public health organisation contrary to the terms of the order.

**Note.** Section 55 provides for medical examinations of registered dental care providers.

#### **89 Assessment, report and recommendations by Panel**

- (1) An Impaired Registrants Panel is to make an assessment in respect of each referral to it, based on the results of its inquiry into the matter.
- (2) On the basis of its assessment, the Panel may do any one or more of the following things:
  - (a) counsel the dental care provider or student concerned or recommend that he or she undertake specified counselling,
  - (b) recommend that the dental care provider concerned agree to conditions being imposed on his or her registration or to having his or her registration suspended for a specified period,
  - (c) make recommendations to the Board as to any action that the Panel considers should be taken in relation to the matter.
- (3) The Panel is to report in writing to the Board on each referral to the Panel. The report is to detail the results of the Panel's inquiries and assessment in respect of the referral and any action taken by the Panel under this Part in relation to it.

#### **90 Voluntary suspension or conditions on registration**

The Board may place conditions on a registered dental care provider's registration or suspend the dental care provider's registration if:

- (a) an Impaired Registrants Panel has recommended that the Board do so, and
- (b) the Board is satisfied that the dental care provider has voluntarily agreed to the recommendation.

**91 Review of conditions**

- (1) A registered dental care provider who agrees to conditions being imposed on his or her registration or to having his or her registration suspended may, by notice in writing to the Board, request:
  - (a) that those conditions be removed or altered, or
  - (b) that the suspension be terminated or shortened.
- (2) On receipt of such a request, the Board is to require an Impaired Registrants Panel to review the matter and report in writing to the Board on the results of its review.
- (3) If the Panel recommends that the Board refuse to remove or alter any of the conditions, or refuse to terminate or shorten the suspension, the Board may do so.
- (4) The Board is to give the dental care provider concerned notice in writing of its decision in respect of the request.
- (5) The Board may specify in the notice a period in which a further request by the dental care provider under this section is not permitted. The Board may reject a request that the conditions be removed or altered, or that the suspension be terminated or shortened, if it is made during that period.

**92 Some matters to be dealt with as complaints**

- (1) If an Impaired Registrants Panel recommends that a registered dental care provider agree to conditions being imposed on his or her registration or to having his or her registration suspended and the dental care provider fails to agree in accordance with the recommendation, the Board is to deal with the matter that was the subject of the referral to the Panel as a complaint against the dental care provider.
- (2) If the Panel recommends that a matter referred to it be dealt with as a complaint, the Board is to deal with the matter as a complaint against the dental care provider concerned.
- (3) In any other case that the Board thinks it appropriate to do so, the Board may treat a matter that has been referred to a Panel as grounds for a complaint under this Act and may deal with the matter accordingly.

**93 Prohibition or conditions on student**

- (1) An Impaired Registrants Panel that investigates a matter concerning a dental student may recommend to the Board that it is in the public interest that the Board:
  - (a) prohibit the student from undertaking clinical studies or from undertaking a clinical placement in a public health organisation, or
  - (b) impose specified conditions on the undertaking of clinical studies or a clinical placement by the student.
- (2) If the Panel makes such a recommendation and the Board is satisfied that it is in the public interest to do so, the Board may by order in writing:
  - (a) prohibit the student undertaking clinical studies or a clinical placement in a public health organisation, or
  - (b) impose specified conditions on the undertaking of clinical studies or a clinical placement by the student.
- (3) An order under this section takes effect when notice of it is served on the educational institution responsible for the conduct of the clinical studies or the patronage of the clinical placement of the student.
- (4) A dental student is not to be permitted to undertake clinical studies or a clinical placement in a public health organisation contrary to the terms of an order in force under this section.
- (5) An order remains in force for the period (up to 2 years) specified in the order unless it is revoked by the Board. The Board may issue further orders in respect of a student but only on the recommendation of an Impaired Registrants Panel.

**94 Appeal by student against order**

- (1) A person may appeal to the Tribunal against a decision of the Board to issue an order:
  - (a) prohibiting the person from undertaking clinical studies or a clinical placement in a public health organisation, or
  - (b) imposing conditions on the undertaking of clinical studies or a clinical placement by the person.
- (2) The appeal must be lodged with the Registrar who is to refer it to the Tribunal.

- (3) The appeal must be made within 28 days (or such longer period as the Registrar may allow in a particular case) after notice of the Board's decision is given to the person.
- (4) On an appeal, the Tribunal may by order terminate, vary or confirm the order, as it thinks proper. The Board is to give effect to the Tribunal's order.

#### **95 Confidentiality of Panel's report**

- (1) A report by an Impaired Registrants Panel to the Board may not be admitted or used in any civil proceedings before a court.
- (2) A person may not be compelled to produce the report or to give evidence in relation to the report or its contents in any such civil proceedings.
- (3) A person must not directly or indirectly make a record of or disclose to any person any information contained in a report by an Impaired Registrants Panel to the Board that has come to the person's notice in the exercise of the person's functions under this Act, except for the purposes of exercising functions under this Act.

Maximum penalty: 50 penalty units.

- (4) This section does not prevent the disclosure of such a report to the Commission.
- (5) In this section:

***court*** includes any tribunal, authority or person having power to require the production of documents or the answering of questions, but does not include the Tribunal or the Board, or the Supreme Court (in respect of appeal proceedings under this Act).

***report*** includes a copy, reproduction and duplicate of the report or any part of the report, copy, reproduction or duplicate.

## **Part 7 Appeals and review of disciplinary action**

### **Division 1            Appeals against actions of the Board**

#### **96 Appeals against actions of the Board on a complaint**

- (1) When a complaint has been dealt with at a meeting of the Board under Division 4 of Part 5, the dental care provider or the Commission may appeal to the Tribunal against:
  - (a) a finding of the Board, or
  - (b) the exercise of any power by the Board under Division 5 (Disciplinary powers of Board and Tribunal) of Part 5.
- (2) An appeal must be made within 28 days (or such longer period as the Chairperson may allow in a particular case) after:
  - (a) the Board's written statement of the decision by which the Board's finding is made is made available to the appellant, or
  - (b) the exercise of the power against which the appeal is made.
- (3) The appeal must be lodged with the Registrar who is to refer it to the Tribunal.
- (4) The appeal is to be dealt with by way of rehearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the meeting of the Board, may be given.
- (5) The Tribunal may:
  - (a) dismiss the appeal, or
  - (b) make any finding or exercise any power or combination of powers that the Tribunal could have made or exercised if the complaint had been originally referred to the Tribunal.
- (6) An appeal under this section does not affect any finding or exercise of power with respect to which it has been made until the Tribunal makes an order on the appeal.

**97 Appeal against suspension or imposition of conditions by Board—impairment matters**

- (1) A person may appeal to the Tribunal:
  - (a) against a suspension or extension of a suspension by the Board under Division 6 (Powers of the Board for the protection of the public) of Part 5, or
  - (b) against conditions imposed by the Board on the person's registration under Division 6 of Part 5 or Part 6 or any alteration of those conditions by the Board, or
  - (c) against a refusal by the Board to alter or remove conditions imposed by the Board under Division 6 of Part 5 in accordance with a request made by the person under section 80, or
  - (d) against a refusal by the Board to remove or alter conditions imposed on the person's registration, or to shorten or terminate a suspension, imposed under Part 6 in accordance with a request made by the person under section 91.
- (2) An appeal may not be made in respect of a request by a person that is rejected by the Board because it was made during a period in which the request was not permitted under section 80 or 91.
- (3) An appeal must be made within 28 days (or such longer period as the Chairperson may allow in a particular case) after notice of the action taken by the Board, or the Board's refusal, is given to the person.
- (4) An appeal is to be lodged with the Registrar who is to refer it to the Tribunal.
- (5) On an appeal, the Tribunal may, by order, do any of the following:
  - (a) dismiss the appeal,
  - (b) remove or alter the conditions to which the dental care provider's registration is subject (including by imposing new conditions on the dental care provider's registration),
  - (c) terminate or shorten the period of the suspension concerned.
- (6) The Tribunal's order must not cause a suspension or conditions imposed by the Board to have effect beyond the day on which any related complaint about the person is disposed of.
- (7) An appeal under this section does not affect any suspension or conditions with respect to which it has been made until the Tribunal makes an order on the appeal.

Section 98	Dental Practice Act 2001 No 64
Part 7	Appeals and review of disciplinary action
Division 1	Appeals against actions of the Board

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### **98 Appeal on point of law**

- (1) When a complaint is dealt with at a meeting of the Board under Division 4 of Part 5, the dental care provider or the Commission may appeal with respect to a point of law to the Chairperson or a Deputy Chairperson nominated by the Chairperson.
- (2) An appeal may be made in accordance with the regulations during the meeting of the Board to deal with the complaint or within the period after the date of giving of notice of the meeting and before the commencement of the meeting.
- (3) If the meeting of the Board to deal with the complaint has not been completed when an appeal is made, the Board must not continue to deal with the complaint until the appeal has been disposed of.
- (4) The Board must not make any decision that is inconsistent with the Chairperson's or Deputy Chairperson's determination with respect to the point of law.

## **Division 2 Appeals against actions of Tribunal**

### **99 Preliminary appeal on point of law**

- (1) An appeal with respect to a point of law may be made to the Supreme Court by the dental care provider or the complainant during an inquiry on a complaint conducted by the Tribunal or after the complaint is referred to the Tribunal and before the commencement of the inquiry, but can only be made with the leave of the Chairperson or a Deputy Chairperson.
- (2) If an inquiry conducted by the Tribunal has not been completed when an appeal with respect to a point of law is made, the inquiry before the Tribunal is not to continue until the appeal has been disposed of.
- (3) The Tribunal must not make any decision that is inconsistent with the Supreme Court's determination with respect to the point of law when it recommences the inquiry.

**100 Appeal against Tribunal's decisions and actions**

- (1) A dental care provider about whom a complaint is referred to the Tribunal, or the complainant, may appeal to the Supreme Court against:
  - (a) a decision of the Tribunal with respect to a point of law, or
  - (b) the exercise of any power by the Tribunal under Division 5 (Disciplinary powers of Board and Tribunal) of Part 5.
- (2) The appeal must be made within 28 days (or such longer period as the Court may allow in a particular case) after the Tribunal's written statement of the decision by which the Tribunal's finding is made is made available to the appellant.
- (3) The Supreme Court may stay any order made by the Tribunal, on such terms as the Court sees fit, until such time as the Court determines the appeal.

**101 Powers of Court on appeal**

- (1) In determining the appeal, the Supreme Court may:
  - (a) dismiss the appeal, or
  - (b) make such order as it thinks proper having regard to the merits of the case and the public welfare, and in doing so may exercise any one or more of the powers of the Tribunal under this Act.
- (2) If the Court dismisses an appeal against an order of the Tribunal, the Court may by order direct that the Tribunal's order is to be taken to include provision that an application for its review under Division 3 may not be made until after a specified time.

**Division 3 Review of suspension, cancellation or conditions****102 Right of review**

- (1) A person may apply to the appropriate review body for a review of an order of the Board, the Chairperson or a Deputy Chairperson, the Tribunal or the Supreme Court:
  - (a) that the registration of the person is suspended, or
  - (b) that the person's name be removed from the Dentists Register or the Dental Auxiliaries Register or that the person not be re-registered, or

Section 102	Dental Practice Act 2001 No 64
Part 7	Appeals and review of disciplinary action
Division 3	Review of suspension, cancellation or conditions

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- (c) that conditions be imposed on the person's registration.
- (2) A person may also apply to the appropriate review body for a review of an order made under this Division.
- (3) An application for review of an order may not be made:
  - (a) while the terms of the order provide that an application for review may not be made, or
  - (b) while an appeal under this Part to the Tribunal or the Supreme Court in respect of the same matter is pending.

### 103 Appropriate review body

- (1) The *appropriate review body* is the Tribunal except in a case where the order being reviewed provides that it may be reviewed by the Board, in which case the Board is the appropriate review body.
- (2) An application for review must be lodged with the Registrar who is to refer it to the appropriate review body.

### 104 Powers on review

- (1) The appropriate review body is to conduct an inquiry into an application for review and may then do any of the following:
  - (a) dismiss the application,
  - (b) by its order terminate or shorten the period of the suspension concerned,
  - (c) make a reinstatement order,
  - (d) make an order altering the conditions to which the person's registration is subject (including by imposing new conditions).
- (2) A *reinstatement order* is an order that the person be registered subject to the same conditions and limitations (if any) to which the person's registration was subject immediately before the person ceased to be registered. The appropriate review body may also impose conditions on the person's registration or alter the conditions to which the person's registration is to be subject under the reinstatement order.
- (3) The Commission is entitled to make submissions in respect of the application at the inquiry into the application.
- (4) The Board is to take such action as may be necessary to give effect to a reinstatement order.

- (5) The order on a review under this section may also provide that the order is not to be reviewed under this Division until after a specified time.

**105 Nature of review**

- (1) A review under this Division is a review to determine the appropriateness, at the time of the review, of the order concerned.
- (2) The review is not to reconsider the decision to make the order or any findings made in connection with the making of that decision, unless significant fresh evidence is produced that was not previously available for consideration and the appropriate review body is of the opinion that, in the circumstances of the case, that decision or any such finding should be reconsidered.

## **Part 8 Dental Board**

### **106 Constitution of the Board**

There is constituted by this Act a body corporate under the corporate name of the Dental Board.

### **107 Functions of the Board**

- (1) The Board has the following functions:
  - (a) such functions as are conferred or imposed on the Board by or under this or any other Act,
  - (b) to promote and maintain standards of dental practice in New South Wales,
  - (c) to advise the Minister on matters relating to the registration of dentists, dental auxiliaries, standards of dental practice and any other matter arising under or related to this Act or the regulations,
  - (d) to publish and distribute information concerning this Act and the regulations to dentists, dental auxiliaries, consumers and other interested persons.
- (2) The Board is to exercise its functions in a manner that is consistent with the object of this Act.

### **108 Membership of the Board**

- (1) The Board is to consist of 12 members appointed by the Governor, of whom:
  - (a) 5 are to be registered dentists elected in accordance with the regulations by registered dentists, and
  - (b) 7 are to be appointed by the Governor in accordance with subsection (2).
- (2) The appointed members are to be:
  - (a) 1 person nominated by the Minister, being an officer of the Department of Health or an employee of a public health organisation,
  - (b) 1 registered dentist nominated by the Minister, being a registered dentist involved in the tertiary education of persons for qualification in New South Wales as dentists,

- (c) 1 registered dentist nominated by the Minister of the Minister's own choosing,
- (d) 1 registered dental auxiliary nominated by the Minister of the Minister's own choosing,
- (e) 2 persons (not being registered dental care providers) nominated by the Minister to represent the community,
- (f) 1 legal practitioner nominated by the Minister.

**109 Staff**

- (1) The Board may:
  - (a) employ a Registrar and such other staff as may be necessary to enable the Board to exercise its functions, and
  - (b) arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department, an administrative office or a public or local authority, and
  - (c) engage such consultants as it requires to exercise its functions.
- (2) The Board may, with the concurrence of the Health Administration Corporation, fix the salaries, wages, allowances and conditions of employment of any such staff in so far as they are not fixed by or under another Act or law.

**110 Committees**

- (1) The Board may establish committees to assist it in connection with the exercise of any of its functions.
- (2) It does not matter that any or all of the members of a committee are not members of the Board.
- (3) A member of a committee, while sitting on the committee, is entitled to be paid by the Board such amount as the Minister from time to time determines in respect of the member.
- (4) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings may be determined by the Board or (subject to any determination of the Board) by the committee.

**111    Delegation of functions**

- (1) The Board may delegate any of its functions (other than this power of delegation and the function of authorising by resolution the expenditure of money from the Dental Education and Research Account) to:
  - (a) the President, or
  - (b) the Deputy President, or
  - (c) a committee consisting of 2 or more members of the Board, or
  - (d) the Registrar or any other member of staff of the Board.
- (2) The Board must not delegate any of its functions under Part 5 (Complaints and disciplinary proceedings) to the Registrar or any other member of the staff of the Board.
- (3) The Registrar may delegate to a member of the staff of the Board the exercise of:
  - (a) any of the functions of the Registrar under this Act, other than this power of delegation, or
  - (b) any functions delegated to the Registrar by the Board, unless the Board otherwise provides in its instrument of delegation to the Registrar.

**112    Other provisions relating to the Board**

- (1) Schedule 2 has effect with respect to the members of the Board.
- (2) Schedule 3 has effect with respect to the procedure of the Board.

## **Part 9 Dental Care Assessment Committee**

### **113 Constitution of the Dental Care Assessment Committee**

There is constituted by this Act the Dental Care Assessment Committee.

### **114 Functions of the Committee**

The Committee has the functions conferred or imposed on it by or under this or any other Act.

### **115 Membership of the Committee**

- (1) The Committee is to consist of 5 members appointed by the Minister.
- (2) Of the members:
  - (a) two are to be registered dentists nominated by the Board, and
  - (b) two are to be registered dentists appointed from a panel of names furnished to the Minister by the Board, and
  - (c) one is to be a person appointed by the Minister to be a representative of consumers.
- (3) If the Board does not furnish a panel of names within such time or in such manner as may be specified by the Minister by notice in writing to the Board, the Minister may instead appoint to be members 2 registered dentists determined by the Minister.
- (4) A person cannot be a member of the Committee while the person is a member of the Board.

### **116 Other provisions relating to the Committee**

Schedule 4 has effect with respect to the members and the procedure of the Committee.

## **Part 10 Impaired Registrants Panels**

### **117 Impaired Registrants Panels**

There are to be Impaired Registrants Panels for the purposes of this Act. An Impaired Registrants Panel has and may exercise the jurisdiction and functions conferred or imposed on it by or under this or any other Act.

### **118 Board to constitute Panel when required**

- (1) When the Board decides to refer a matter to an Impaired Registrants Panel it is to appoint 2 persons, at least one of whom is a registered dentist, to sit as the Panel for the purpose of dealing with the matter.
- (2) If the matter relates to a dental auxiliary, the Board is to appoint an additional person, who is to be a registered dental auxiliary, to sit with the persons appointed under subsection (1) as the Panel for the purpose of dealing with the matter.
- (3) A person may be appointed to sit on an Impaired Registrants Panel whether or not the person is a member of the Board, but not if the person has previously dealt with the particular matter before the Panel in his or her capacity as a member of the Board.
- (4) A member of an Impaired Registrants Panel, while sitting on the Panel, is entitled to be paid by the Board at the rate determined by the Minister from time to time.

### **119 Decisions of a Panel**

- (1) A decision supported unanimously by the members of a Panel is the decision of the Panel.
- (2) If the members of an Impaired Registrants Panel disagree as to any matter that is dealt with by the Panel, the Panel's report to the Board is to include details of the disagreement and the reasons for it.

## **Part 11 Dental Tribunal**

### **Division 1 Constitution of the Tribunal**

#### **120 The Dental Tribunal**

- (1) There is to be a Dental Tribunal for the purposes of this Act.
- (2) The Tribunal is to be constituted in accordance with this Act to deal with a matter referred to it or an appeal or application made to it under this Act.
- (3) The Tribunal has and may exercise the jurisdiction and functions conferred or imposed on it by or under this or any other Act.

#### **121 Chairperson and Deputy Chairpersons of the Tribunal**

- (1) The Governor may appoint a legal practitioner of at least 7 years' standing as Chairperson of the Tribunal and may appoint one or more legal practitioners of at least 7 years' standing as Deputy Chairpersons of the Tribunal.
- (2) The Chairperson and each Deputy Chairperson hold office for such period not exceeding 7 years as may be specified in the instrument of appointment as Chairperson or Deputy Chairperson, but are eligible (if otherwise qualified) for re-appointment.
- (3) A Deputy Chairperson can be appointed by the Governor for the purpose of conducting or hearing a particular inquiry or appeal, as described in the instrument of appointment of the Deputy Chairperson.
- (4) A Deputy Chairperson, while sitting on the Tribunal, has and may exercise all the functions conferred or imposed on the Chairperson by this Act (other than those conferred by section 122 (2)).
- (5) The Chairperson or a Deputy Chairperson sitting on the Tribunal is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of each of them.
- (6) The Governor may appoint a Deputy Chairperson to act in the office of Chairperson during the illness or absence of the Chairperson and the Deputy Chairperson, while so acting, has and may exercise all the functions of the Chairperson and is taken to be the Chairperson.

- (7) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of the Chairperson or a Deputy Chairperson.

**122 Tribunal to be constituted to deal with complaints etc**

- (1) The Board is to inform the Chairperson and appoint 3 other persons to sit on the Tribunal when:
- (a) a complaint or other matter is referred to the Tribunal, or
  - (b) the Commission decides, in accordance with the *Health Care Complaints Act 1993*, to prosecute a complaint before the Tribunal, or
  - (c) an appeal or application under this Act to the Tribunal is lodged with the Registrar.
- (2) The Chairperson is then to nominate himself or herself or a Deputy Chairperson to sit on the Tribunal for the purpose of conducting an inquiry into the complaint, matter or application or hearing the appeal.
- (3) For the purpose of conducting an inquiry or hearing an appeal, the Tribunal is to consist of:
- (a) the Chairperson or a Deputy Chairperson, and
  - (b) 2 registered dental care providers having such qualifications as may be prescribed, appointed by the Board, and
  - (c) one lay person (that is, a person who is not a registered dental care provider) appointed by the Board from a panel of lay persons for the time being nominated by the Minister.
- (4) A person may not be appointed to sit on the Tribunal if the person is a member of the Board.
- (5) A person may not be appointed to sit on the Tribunal if the person has previously dealt with the particular matter before the Tribunal in his or her capacity as a member of the Board or the Committee.
- (6) The Tribunal, as constituted by different persons or the same persons, may conduct or hear more than one inquiry or appeal at the same time.

### **123 Effect of vacancy on Tribunal**

- (1) If one of the members (other than the Chairperson or Deputy Chairperson) constituting the Tribunal for the purpose of conducting a hearing vacates office for any reason before an inquiry or appeal is completed or a decision is made in respect of an inquiry or appeal, the inquiry or appeal may be continued and a determination made by the remaining members of the Tribunal.
- (2) If more than one of the members vacate office or the Chairperson or Deputy Chairperson vacates office for any reason before the Tribunal has completed an inquiry or appeal or made a determination in respect of an inquiry or appeal, the inquiry or appeal is terminated.
- (3) When an inquiry or appeal is terminated, the Tribunal may be reconstituted in accordance with this Part for the purposes of conducting a new inquiry or appeal in respect of the matter concerned.

### **124 Payment of non-legal Tribunal members**

A member of the Tribunal (other than the Chairperson or a Deputy Chairperson) is while sitting on the Tribunal entitled to be paid by the Board at the rate determined by the Minister from time to time.

### **125 Seal of the Tribunal**

The Tribunal is to have a seal of which all courts and persons acting judicially are to take judicial notice.

## **Division 2 Proceedings of the Tribunal**

### **126 Decisions of the Tribunal**

- (1) The decision of the Chairperson or a Deputy Chairperson on any question of law or procedure arising during an inquiry or appeal at which the Chairperson or Deputy Chairperson presides is the decision of the Tribunal for the purposes of the inquiry or appeal.
- (2) A decision supported by at least 3 members of the Tribunal with respect to a question (other than with respect to a point of law or procedure) arising during an inquiry or appeal before the Tribunal is the decision of the Tribunal.

- (3) If 2 members support the decision and 2 members oppose the decision, the decision of the Chairperson or Deputy Chairperson presiding is the decision of the Tribunal.

**127 Time when orders take effect**

An order of the Tribunal under this Act takes effect on the day on which the order is made or on such later day as is specified in the order.

**128 Powers of Tribunal exercised by Supreme Court**

A power of the Tribunal exercised under this Act by the Supreme Court is, except for the purposes of any appeal, taken to have been exercised by the Tribunal.

**129 Registrar to be informed of disciplinary action**

The Tribunal is to inform the Registrar of the exercise of any power under Part 5 (Complaints and disciplinary proceedings) by the Tribunal.

**Division 3      Inquiries, appeals etc before the Tribunal**

**130 Jurisdiction**

- (1) The members of the Tribunal are to conduct an inquiry into any complaint, matter or application and are to hear any appeal referred to it.
- (2) No inquiry need be conducted into a complaint if the dental care provider who is the subject of the complaint admits the subject-matter of the complaint in writing to the Tribunal.

**131 Notice of time and place of inquiry or appeal**

The Chairperson or a Deputy Chairperson nominated to sit on the Tribunal is to fix a time and place for the conducting of the inquiry or the hearing of the appeal by the Tribunal and is to give not less than 14 days' notice of the inquiry or appeal to each of the following:

- (a) the dental care provider concerned,  
(b) the complainant, if any,  
(c) the Director-General and the Board,

- (d) in the case of an appeal or an inquiry into a complaint, the Commission.

**132 Conduct of proceedings**

- (1) The Tribunal is to conduct proceedings on an inquiry or appeal as it thinks fit.
- (2) Proceedings of the Tribunal are to be open to the public except when the Tribunal otherwise directs.
- (3) The Tribunal is not to direct that proceedings are to be closed to the public unless satisfied that it is desirable to do so in the public interest for reasons connected with the subject-matter of the inquiry or appeal or the nature of the evidence to be given.
- (4) The Tribunal may proceed to determine an inquiry or appeal in the absence of the dental care provider.
- (5) Schedule 5 has effect with respect to any inquiry conducted or appeal heard by the Tribunal.

**133 Representation before the Tribunal**

- (1) At an inquiry conducted or appeal heard by the Tribunal, the registered dental care provider and any complainant concerned are entitled to attend and to be represented by a legal practitioner or another adviser.
- (2) The Tribunal may grant leave for any other person to appear (whether in person or by a legal practitioner or another adviser) at an inquiry or appeal if the Tribunal is satisfied that it is appropriate for that person to appear.

**134 Chairperson or Deputy Chairperson not to review own decisions**

The Chairperson or Deputy Chairperson must not sit on the Tribunal for the purpose of conducting any inquiry or hearing any appeal relating to a particular matter before the Tribunal if a decision has been made by the Chairperson or a Deputy Chairperson in relation to the matter.

**135 Adjournments and interlocutory orders**

- (1) The Tribunal may adjourn proceedings for any reason it thinks fit.

- (2) The Tribunal may, during any proceedings, exercise any power or combination of powers conferred on the Tribunal by section 71 (Powers of the Tribunal), except the power to caution or reprimand.

**136 Tribunal to provide details of its decision**

- (1) The Tribunal must provide a written statement of a decision on an inquiry or appeal to the complainant, to the dental care provider concerned and to the Board, and must do so as soon as practicable after the decision is made (bearing in mind the public welfare and seriousness of the matter).
- (2) The statement of a decision must:
  - (a) set out any findings on material questions of fact, and
  - (b) refer to any evidence or other material on which the findings were based, and
  - (c) give the reasons for the decision.
- (3) The Tribunal may also provide the statement of a decision to such other persons as the Tribunal thinks fit.
- (4) The Board may disseminate the statement of a decision provided to it under this section as the Board thinks fit, unless the Tribunal has ordered otherwise.

**137 Statement need not contain confidential information**

- (1) The Tribunal is not required to include confidential information in the statement of a decision. If a statement would be false or misleading if it did not include the confidential information, the Tribunal is not required to provide the statement.
- (2) When confidential information is not included in the statement of a decision provided to a person or the statement is not provided to a person because of subsection (1), the Tribunal must give a confidential information notice to the person.
- (3) A *confidential information notice* is a notice that indicates that confidential information is not included or that the statement will not be provided (as appropriate) and gives the reasons for this. The notice must be in writing and must be given within one month after the decision is made.

- (4) This section does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.
- (5) In this section:  
*confidential information* means information that:
- (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared, and
  - (b) relates to the personal or business affairs of a person, other than a person to whom the Tribunal is required (or would, but for subsection (1), be required) to provide a written statement of a decision, and
  - (c) is information:
    - (i) that was supplied in confidence, or
    - (ii) the publication of which would reveal a trade secret, or
    - (iii) that was provided in compliance with a duty imposed by an enactment, or
    - (iv) the provision of which by the Tribunal would be in breach of any enactment.

## **Part 12 Miscellaneous**

### **138 Student registration**

- (1) A person is not entitled:
  - (a) to undertake a course of dental study recognised by the Board for the purposes of section 8 at a Dental School in the State accredited by the Australian Dental Council unless the person is registered with the Board as a dentistry student, or
  - (b) to undertake a course of study recognised by the Board for the purposes of section 21 unless the person is registered with the Board as a dental auxiliary student.
- (2) A person is entitled to be registered with the Board as a dentistry student or a dental auxiliary student if the Board is satisfied that the person genuinely requires that registration for the purposes of enabling the person to undertake such a course of training or study.
- (3) No fee is payable for registration as a dentistry student or a dental auxiliary student.

### **139 Approval for employment of dentists by non-dentists**

- (1) The Board must not grant approval under paragraph (g) of the definition of *non-dentist* in section 41 (2) unless it is satisfied that it is in the public interest (not including the interests of registered dentists) to do so.
- (2) The Board may impose any conditions that it thinks fit on an approval under that subsection and may vary or revoke any such approval, or any condition imposed on any such approval.

### **140 Exemption from restrictions on representations for dental technicians and dental prosthetists**

- (1) Sections 7 and 20 do not apply to a person who is:
  - (a) a dental technician, whether or not the person is a dental prosthetist, in respect of the person indicating that the person undertakes, or is qualified to undertake, technical work, or in respect of the person doing anything that the person is not prohibited from doing by section 28 (Use of certain titles etc prohibited) of the *Dental Technicians Registration Act 1975*, or

(b) a dental prosthetist, in respect of the person indicating that the person undertakes, or is qualified to undertake, a practice of dental prosthetics.

(2) In this section:

*dental prosthetist* has the same meaning as in section 5 (1) of the *Dental Technicians Registration Act 1975*.

*dental technician* means a person registered as a dental technician under the *Dental Technicians Registration Act 1975*.

*practice of dental prosthetics* has the same meaning as in section 5 (3) of the *Dental Technicians Registration Act 1975*.

*technical work* has the same meaning as in section 5 (1) of the *Dental Technicians Registration Act 1975*.

#### **141 Carrying on practice of deceased dentist**

A registered dentist is not guilty of unsatisfactory professional conduct under section 41 if:

- (a) the dentist practices dentistry as or for the legal personal representative of a deceased dentist who before death carried on that practice, and
- (b) the period of practice does not extend beyond 12 months following the date of death of the deceased dentist, or such further period as the Board may allow in writing.

#### **142 Civil liability of directors of incorporated practices**

- (1) Any claim or action which may be made, or any proceedings which may be taken, against an incorporated practice in relation to any civil liability of the incorporated practice arising out of or in the course of the practice of dentistry may be made or taken against each director of the incorporated practice who is a registered dentist.
- (2) Any damages, compensation, costs or other amount which may be awarded against the incorporated practice in relation to any such liability may be awarded against any such director.

#### **143    Application of Criminal Records Act**

For the purposes of the application of this Act in respect of a criminal finding, the *Criminal Records Act 1991* applies in respect of a criminal finding as if section 8 (2) and (4) of that Act were omitted.

**Note.** Section 8 (2) and (4) of the *Criminal Records Act 1991* make special provision for when criminal findings become “spent” under that Act. The omission of those subsections will mean that in determining when a criminal finding becomes spent for the purposes of this Act, criminal findings will be treated as ordinary convictions and the relevant crime-free period will be as provided by section 9 of that Act.

#### **144    How notice is to be given**

- (1) A requirement of this Act that a person be given notice is a requirement that the person be given notice in writing either personally or by post.
- (2) For the purposes of section 76 of the *Interpretation Act 1987*, a notice served by post on a person for the purposes of this Act is to be treated as being properly addressed if it is addressed to the address of the person last known to the Registrar or last recorded in the Dentists Register or the Dental Auxiliaries Register.

#### **145    Service of documents on Board**

A document (other than a complaint made under Part 5) may be served on the Board by leaving it at or sending it by post to any office of the Board. This section does not affect the operation of any provision of a law or of the rules of a court authorising a document to be served on the Board in any other manner.

#### **146    Written statement of decisions**

- (1) If the Board, the Board’s President or a member authorised by the Board makes a decision concerning a person under any provision of this Act, the person may request in writing that the Board, President or member provide the person with a written statement of the decision.
- (2) Any such request is to be made no later than 60 days after the decision to which it relates.
- (3) The Board, the President or the member is to provide a written statement of the decision within 30 days after receiving such a request.
- (4) A written statement of a decision must give the reasons for the decision.

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- (5) The Board, the President or the member is not required to include confidential information in the statement of a decision. If a statement would be false or misleading if it did not include the confidential information, the Board, the President or the member is not required to provide the statement.
- (6) When confidential information is not included in the statement of a decision provided to a person or the statement is not provided to a person because of subsection (5), the Board, the President or the member must give a confidential information notice to the person.
- (7) A ***confidential information notice*** is a notice that indicates that confidential information is not included or that the statement will not be provided (as appropriate) and gives the reasons for this. The notice must be in writing and must be given within one month after the decision is made.
- (8) This section does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.
- (9) In this section:
- confidential information*** means information that:
- (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared, and
  - (b) relates to the personal or business affairs of a person, other than a person to whom the Board, the President or the member is required (or would, but for subsection (5), be required) to provide a written statement of a decision, and
  - (c) is information:
    - (i) that was supplied in confidence, or
    - (ii) the publication of which would reveal a trade secret, or
    - (iii) that was provided in compliance with a duty imposed by an enactment, or
    - (iv) the provision of which by the Board, the President or the member would be in breach of any enactment.

**147 Notice of disciplinary action to other Boards**

- (1) When the registration of a dental care provider is suspended or cancelled or any condition is imposed on the registration of a dental care provider:
  - (a) the Board must without delay notify particulars of that action to the local registration authority of each neighbouring jurisdiction, and
  - (b) the Board may notify particulars of that action to the local registration authority of any other jurisdiction.
- (2) When the registration of a dental care provider is suspended or cancelled or any condition is imposed on the registration of a dental care provider, and the Board is aware that the dental care provider is registered under a health registration Act, the Board must without delay notify particulars of that action to the registration authority under that Act.
- (3) The Board is required or authorised to act under this section despite any law relating to secrecy or confidentiality.
- (4) This section does not affect any obligation or power to provide information under the Mutual Recognition laws.
- (5) In this section:

*local registration authority* of a jurisdiction means the person or authority in the jurisdiction having the function conferred by legislation of registering persons in connection with the carrying on of dentistry or the carrying out of dental auxiliary activities in the jurisdiction.

*neighbouring jurisdiction* means each Australian State, the Australian Capital Territory, the Northern Territory and New Zealand.

*registration* includes the licensing, approval, admission, certification (including by way of practising certificates), or any other form of authorisation, of a person required by or under legislation for the carrying on of the practice of dentistry or dental auxiliary practice.

**148 False or misleading entries and statements**

A person must not:

- (a) make or cause to be made in the Dentists Register or the Dental Auxiliaries Register an entry that the person knows to be false or misleading or alter an entry in such a Register with intent to render the entry false or misleading, or
- (b) for the purposes of obtaining registration as a dental care provider either for that person or for anyone else, make a statement, whether orally or in writing, that the person knows to be false or misleading.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

**149 Evidentiary certificates and evidence of entry in Registers**

- (1) A certificate purporting to have been signed by the Registrar to the effect that:
  - (a) a person specified in the certificate was or was not a registered dental care provider at a time or during a period so specified, or
  - (b) the name of a person specified in the certificate was removed from the Dentists Register or the Dental Auxiliaries Register at a time so specified, or
  - (c) the registration of a person specified in the certificate was suspended from a time so specified and for a period so specified, or
  - (d) a condition, particulars of which are set out in the certificate, was, at a time or during a period so specified:
    - (i) imposed on the registration of a person so specified, or
    - (ii) revoked or not in force,

is, without proof of the signature of the person by whom the certificate purports to have been signed, admissible in any proceedings and is prima facie evidence of the matter certified in it.

- (2) An entry in the Dentists Register or the Dental Auxiliaries Register is admissible in any proceedings and is prima facie evidence of the matter stated in it.

- (3) A document purporting to be a copy of an entry in the Dentists Register or the Dental Auxiliaries Register, purportedly signed by the Registrar, is admissible in any proceedings and is prima facie evidence of the matter stated in it.

**150 Authentication of certain documents**

Every certificate, summons, process, demand, order, notice, statement, direction or other document requiring authentication by the Board may be sufficiently authenticated without the seal of the Board if signed by:

- (a) the President or the Registrar, or
- (b) any officer of the Board authorised to do so by the Registrar.

**151 Fees**

- (1) All money received by the Board (whether for fees or otherwise) that is not required by this Act to be dealt with in some other manner is to be paid into an account or accounts established by the Board.
- (2) The Board may at any time waive payment of part or all of a fee payable under this Act, whether in a particular case or in a class of cases.
- (3) The power to waive payment of fees extends to any fee payable in relation to registration as a dental care provider under the Mutual Recognition laws.

**152 Dental Education and Research Account**

- (1) The Board is to establish a Dental Education and Research Account.
- (2) Such amounts as are determined by the Board from time to time are to be paid into the Account by the Board from fees payable under this Act or the regulations.
- (3) Money in the Account may be expended by the Board for any one or more of the following:
  - (a) dental education,
  - (b) education or research for any public purpose connected with the practice of dentistry,
  - (c) the publication and distribution of information concerning this Act and the regulations,

- (d) meeting administrative expenditure incurred with respect to the Account and the purposes for which it is used,  
or any related purpose.
- (4) An expenditure of money under this section is not to be made unless it is authorised by a resolution supported by at least 7 members of the Board.

### **153 Appointment and powers of inspectors**

- (1) The Director-General may appoint any person as an inspector for the purposes of this Act. The Director-General is to provide an inspector with a certificate of authority.
- (2) An inspector may exercise the powers conferred by this section for the purpose of:
  - (a) ascertaining whether the provisions of this Act or the regulations are being complied with or have been contravened, or
  - (b) ascertaining whether section 10AF (Restricted dental practices) of the *Public Health Act 1991* has been contravened, or
  - (c) investigating a complaint made or intended to be made under Part 5.
- (3) An inspector may, with the approval of the Board given on the particular occasion, enter and inspect at any reasonable time any premises that the inspector believes on reasonable grounds are being used for the carrying on of the practice of dentistry or dental auxiliary activities.
- (4) While on premises entered under this section or under the authority of a search warrant under section 154, an inspector may do any one or more of the following:
  - (a) require any person on those premises to produce any records in the possession or under the control of that person relating to the carrying on of the practice of dentistry or dental auxiliary activities or a contravention of a provision of this Act or the regulations or of section 10AF of the *Public Health Act 1991*,
  - (b) inspect, take copies of, or extracts or notes from, any such records and, if the inspector considers it necessary to do so for the purpose of obtaining evidence, seize any such records,

- (c) examine and inspect any apparatus or equipment used or apparently used in the course of the practice of dentistry,
  - (d) take such photographs, films and audio, video and other recordings as the inspector considers necessary,
  - (e) require any person on those premises to answer questions or otherwise furnish information in relation to the carrying on of the practice of dentistry or a contravention of a provision of this Act or the regulations or of section 10AF of the *Public Health Act 1991*,
  - (f) require the owner or occupier of those premises to provide the inspector with such assistance and facilities as is or are reasonably necessary to enable the inspector to exercise the functions of an inspector under this section.
- (5) An inspector is not entitled to enter a part of premises used for residential purposes, except:
- (a) with the consent of the occupier of the part, or
  - (b) under the authority of a search warrant.
- (6) An inspector must, when exercising on any premises any function of the inspector under this section, produce the inspector's certificate of authority to any person apparently in charge of the premises who requests its production.
- (7) A person must not:
- (a) without reasonable excuse, refuse or fail to comply with any requirement made or to answer any question asked by an inspector under the authority of this section, or
  - (b) wilfully delay, hinder or obstruct an inspector in the exercise of the inspector's powers under this section, or
  - (c) furnish an inspector with information knowing it to be false or misleading in a material particular.

Maximum penalty: 5 penalty units.

- (8) If an inspector seizes any records under this section, they may be retained by the inspector until the completion of any proceedings (including proceedings on appeal) in which they may be evidence but only if the person from whom the records were seized is provided, within a reasonable time after the seizure, with a copy of the records certified by an inspector as a true copy.

- (9) A copy of records provided under subsection (8) is, as evidence, of equal validity to the records of which it is certified to be a copy.

#### **154 Search warrants**

- (1) A person appointed under this Act as an inspector may apply to an authorised justice for the issue of a search warrant for premises if the inspector believes on reasonable grounds:
- (a) that a provision of this Act or the regulations, or of section 10AF of the *Public Health Act 1991*, is being or has been contravened on the premises, or
  - (b) that there is on the premises evidence of a contravention of a provision of this Act or the regulations.
- (2) A person appointed under this Act as an inspector must not apply for a search warrant unless the person or the Director-General has caused the President of the Board to be notified of the application.
- (3) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant:
- (a) to enter and inspect the premises, and
  - (b) to exercise on the premises any function of an inspector under section 153.
- (4) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.
- (5) In this section, *authorised justice* has the same meaning as in the *Search Warrants Act 1985*.

#### **155 Liability of officers and members**

No matter or thing done or omitted to be done by:

- (a) the Board or a member of the Board, or
- (b) the Registrar or any other officer of the Board, or
- (c) the Committee or a member of the Committee, or
- (d) an Impaired Registrants Panel or a member of an Impaired Registrants Panel, or
- (e) the Tribunal or a member of the Tribunal, or
- (f) a nominal complainant,

subjects the member, or the Registrar, or officer, or nominal complainant, personally to any action, liability, claim or demand, if the matter or thing was done in the exercise, or intended exercise, of any of his or her functions or done in good faith for the purpose of executing this or any other Act.

**156 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

**157 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.
- (2) Despite anything in any other Act, proceedings for an offence against this Act or the regulations may be instituted within the period of 12 months after the act or omission alleged to constitute the offence.

**158 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following:
  - (a) the proceedings of the Board,
  - (b) any kinds of certificates of registration under this Act,
  - (c) the registration of dental students,

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- (d) the manner in which any notice under this Act may be served,
  - (e) the procedure to be followed at and any matters incidental to the holding of an inquiry or appeal by the Committee or the Tribunal, and matters relating to the custody and use of the seal of the Tribunal,
  - (f) the procedure before an Impaired Registrants Panel,
  - (g) the establishment by the Board of standards for the conduct and marking of examinations and the remuneration of examiners,
  - (h) the setting of fees by the Board in relation to examinations conducted by it,
  - (i) the forms to be used for the purposes of this Act and the regulations,
  - (j) the fees to be paid under this Act,
  - (k) the carrying out of dental auxiliary activities by registered dental auxiliaries, or particular classes of registered dental auxiliaries,
  - (l) the manner in which, and the extent to which, a registered dentist or other person may advertise dentistry practices,
  - (m) the manner in which, and the extent to which, a registered dental auxiliary or other person may advertise dental auxiliary activities,
  - (n) the manner in which, and the extent to which, a person or body referred to in section 41 (2) (d)–(g) may advertise the dental services available from it,
  - (o) requiring a dental care provider to disclose specified information to a person to whom the dental care provider provides dentistry services or dental auxiliary services, including information disclosing any pecuniary interest of the dental care provider in any business or service provider to whom the dental care provider refers such a person,
  - (p) the inspection by or on behalf of the Board of dentistry practices or dental auxiliary practices,
  - (q) the making and keeping of records by registered dental care providers and the obligations of dental care providers to allow release of, access to or inspection of those records,

- (r) information to be provided by institutions in relation to dentists who have limited registration and are practising dentistry in that institution,
  - (s) the duties of officers under this Act,
  - (t) the furnishing to the Board by a registered dental care provider or an applicant for registration of evidence of the date of the person's birth,
  - (u) prohibiting or regulating the use of any anaesthetic, or an anaesthetic of a specified kind or description, by dental care providers,
  - (v) providing for the application of the provisions of this Act to incorporated practices and the modification of those provisions in their application,
  - (w) infection control standards to be followed by persons in the practice of dentistry or the carrying out of dental auxiliary activities.
- (3) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

**159 Amendments**

Each Act and Regulation specified in Schedule 6 is amended as set out in that Schedule.

**160 Repeals**

The *Dentists Act 1989* is repealed.

**161 Savings and transitional provisions**

Schedule 7 has effect.

## **Schedule 1 Registration procedures**

(Sections 11 and 24)

### **Part 1 Applying for registration**

#### **1 Form of application**

An application for registration must be in a form approved by the Board and must be lodged with the Registrar.

#### **2 Application fee**

- (1) The application is to be accompanied by the fee determined by the Minister in consultation with the Board.
- (2) Different fees may be determined in respect of different types of applications.
- (3) The Board is entitled to refuse to determine an application until the fee is paid.
- (4) The Board may in a particular case waive the requirement for a fee or reduce a fee.

#### **3 Material to accompany application**

The application is to be accompanied by such evidence and other information as the Board requires.

#### **4 Disclosure of convictions and charges**

- (1) The Board may require an applicant for registration to disclose:
  - (a) details of any offence for which the applicant has been convicted or made the subject of a criminal finding in this State or elsewhere (together with details of any penalty imposed for the offence), other than an offence prescribed by the regulations as not being relevant for the purposes of this clause, and
  - (b) details of any criminal proceedings pending against the applicant in this State or elsewhere for a sex/violence offence.
- (2) The Board may require a disclosure for the purposes of this clause to be in the form of a statutory declaration.

- (3) Any power of the Board to require disclosure of a conviction or criminal finding for an offence or to have regard to the conviction of or the making of a criminal finding in respect of an applicant for registration for an offence extends to a conviction or criminal finding for an offence committed before the commencement of this clause.

#### **5 Time within which application to be determined**

- (1) For the purposes of an appeal under this Act, the Board is taken to have determined that an applicant for registration is not entitled to be registered and to have refused the application if the Board does not consider and determine the application within 3 months after the application is lodged with the Registrar.
- (2) The Board and the applicant may agree on a longer period than 3 months for the purposes of this clause, in which case the agreed longer period applies.

### **Part 2 Dealing with applications**

#### **6 Applications to be considered and determined**

The Board is to consider and determine all applications for registration. The Board determines an application by either registering the applicant or refusing the application.

#### **7 Notice to applicant of decision on application**

- (1) The Board is to give an applicant for registration notice of the Board's decision on the application as soon as practicable after the decision is made.
- (2) If the decision is to grant registration, the Board is to issue to the applicant a certificate of registration in a form approved by the Board and stating such particulars as the Board determines.

#### **8 How a person is registered**

The Board registers a person by recording the person's name in the Register of Dentists or the Register of Dental Auxiliaries together with such particulars as the Board considers appropriate.

## **Part 3 Inquiries**

### **9 Board may hold inquiry into eligibility**

- (1) The Board may hold an inquiry, in such cases as it considers appropriate, into the eligibility of an applicant to be registered as a dentist or as a dental auxiliary.
- (2) The inquiry may include an inquiry into the applicant's competence to practise dentistry or to carry out dental auxiliary activities.

### **10 Commission to be notified of inquiry**

- (1) The Board must give the Commission at least 7 days' notice in writing before the Board holds an inquiry under this Part.
- (2) The Commission may appear and be heard at an inquiry under this Part.

### **11 Applicant to be notified of inquiry**

The President is to fix a time and place for the holding of an inquiry and is to cause the applicant concerned to be given at least 14 days' notice in writing of the time and place for the inquiry.

### **12 Powers etc of the Board in an inquiry**

For the purposes of an inquiry conducted by the Board under this Part, the Board has the same functions that the Tribunal has under this Act. However, proceedings on an inquiry conducted by the Board are not to be open to the public.

### **13 Dental care provider entitled to attend**

- (1) The person in relation to whom an inquiry is being held is entitled to attend and to be accompanied by a legal practitioner or another adviser, but is not entitled to be represented by a legal practitioner or other adviser.
- (2) This clause does not prevent the Board from proceeding with an inquiry in the absence of the applicant so long as the applicant has been given notice of the inquiry in accordance with clause 11.

**14 Provisions concerning witnesses etc**

Schedule 5 applies to and in respect of a person or witness appearing or evidence given at an inquiry in the same way as it applies to a person or witness appearing or evidence given before the Tribunal.

**15 Constitution of Board for inquiry**

- (1) If the Board decides to hold an inquiry, the Board is to appoint 3 persons to conduct the inquiry.
- (2) The persons appointed to conduct the inquiry need not be members of the Board.
- (3) The persons appointed to conduct an inquiry are taken to be members of the Board and to constitute the Board for the purposes of the inquiry and, accordingly, may exercise the functions of the Board in relation to the inquiry.

**16 Director-General may intervene at inquiry**

The Director-General may intervene in any inquiry before the Board and is entitled to be heard personally or by being represented by an officer of the Department of Health.

**17 Preliminary medical examinations of applicants for registration**

- (1) Before or during an inquiry under this Part, the Board may require the applicant for registration, by notice in writing given personally or by post to the applicant, to undergo at the Board's expense a medical examination by a registered medical practitioner specified in the notice, at any reasonable time and place so specified.
- (2) A failure by an applicant, without reasonable cause, to comply with such a notice is, for the purposes of this Part (including any inquiry or appeal under this Act) evidence that the applicant does not have sufficient physical and mental capacity to practise dentistry or to carry out dental auxiliary activities.

**18 Decisions of the Board in an inquiry**

A decision supported by at least 2 of the 3 persons appointed to conduct an inquiry under this Part on an inquiry, or on any question arising during an inquiry, is a decision of the Board.

**19 Details of decision to be supplied to applicant**

- (1) The Board must provide a written statement of a decision on an inquiry to the person in relation to whom the inquiry was held and must do so within one month after the decision is made.
- (2) The statement of a decision must:
  - (a) give the reasons for the decision, and
  - (b) include information about any appeal rights the person has under section 18 or section 30.
- (3) The Board may also provide the statement of a decision to such other persons as the Board thinks fit.

**20 Statement need not contain confidential information**

- (1) The Board is not required to include confidential information in the statement of a decision. If a statement would be false or misleading if it did not include the confidential information, the Board is not required to provide the statement.
- (2) When confidential information is not included in the statement of a decision provided to a person or the statement is not provided to a person because of subclause (1), the Board must give a confidential information notice to the person.
- (3) A *confidential information notice* is a notice that indicates that confidential information is not included or that the statement will not be provided (as appropriate) and gives the reasons for this. The notice must be in writing and must be given within one month after the decision is made.
- (4) This clause does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.
- (5) In this clause:

*confidential information* means information that:

  - (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared, and

- (b) relates to the personal or business affairs of a person, other than a person to whom the Board is required (or would, but for subclause (1), be required) to provide a written statement of a decision, and
- (c) is information:
  - (i) that was supplied in confidence, or
  - (ii) the publication of which would reveal a trade secret, or
  - (iii) that was provided in compliance with a duty imposed by an enactment, or
  - (iv) the provision of which by the Board would be in breach of any enactment.

## **Part 4 Keeping and alteration of the Dentists Register and the Dental Auxiliaries Register**

### **21 Board is to keep Registers**

- (1) The Board is to keep 2 registers, being:
  - (a) a register called the Register of Dentists for New South Wales, and
  - (b) a register called the Register of Dental Auxiliaries for New South Wales.
- (2) A Register is to be kept in such form as the Board determines.
- (3) A Register must be available for inspection by any person:
  - (a) in person at the office of the Board at all reasonable times, and
  - (b) by such other means (such as Internet access) and at such other times as the Board determines.
- (4) The Board may charge a fee for an inspection of a Register, not exceeding such amount as may be prescribed by the regulations.
- (5) The Board may carry out searches of a Register on a person's behalf and may charge such fee as it determines for the search.
- (6) The Register of Dental Auxiliaries is to be divided into parts, so as to provide a separate part for each class of dental auxiliaries.

## **22 Information to be recorded in Registers**

- (1) The Board is to record in the relevant Register such particulars of the registration of each registered dentist or registered dental auxiliary as the Board considers appropriate, subject to the regulations. The regulations may make provision for or with respect to the information to be recorded in each Register.
- (2) The Board is to record in the Dentists Register in respect of a registered dentist particulars of any certificate, diploma, membership, degree, licence, letters, testimonial or other title, status, document or description that the Board has from time to time authorised the dentist to use under section 31.
- (3) Any conditions to which a dentist's or dental auxiliary's registration is subject must be recorded in the relevant Register.
- (4) The Board may, on application by a registered dentist or registered dental auxiliary and payment of the prescribed fee, record in the relevant Register any particulars in addition to those required to be recorded in that Register, as the Board approves.
- (5) The Board must make such other recordings in each Register as may be necessary for the purpose of maintaining the Registers as an accurate record of the particulars relating to each registered dentist and registered dental auxiliary.

## **23 Method of removal from the Registers**

- (1) The name of a registered dentist or registered dental auxiliary is removed from the relevant Register by the making in that Register of such recording as the Board directs.
- (2) The Board must cause a person to be given notice that the person's name has been removed from the relevant Register unless the person's name was removed in accordance with an order of the Chairperson, a Deputy Chairperson, the Tribunal or the Supreme Court under this Act.

## **24 Surrender of certificates**

- (1) The Board may by notice require a person who has ceased to be registered to furnish to the Board within a time specified in the notice a certificate issued to the person under this Act in respect of that registration.

- (2) A person on whom such a notice has been served must not, without reasonable cause, fail to comply with the requirements of the notice.

Maximum penalty: 10 penalty units.

**25 Making a recording in a Register—extended meaning**

A reference in this Act to the making of a recording in a Register includes a reference to amending, cancelling or deleting a recording in that Register.

## **Part 5 Annual registration fees**

**26 Annual registration fee payable**

- (1) A registered dentist or registered dental auxiliary must, on or before a date notified by the Board in writing to the dentist or dental auxiliary at least 1 month in advance, pay to the Board the annual registration fee determined by the Minister in consultation with the Board.
- (2) Different fees may be determined for the purposes of this clause in respect of different classes of registration.

**27 Dentist's or dental auxiliary's name may be removed from Register for non-payment**

- (1) The Board is to notify a registered dentist or registered dental auxiliary who does not pay the annual registration fee on or before the due date that if the fee is not paid on or before a later date specified in the notification the dentist's or dental auxiliary's name will be removed from the relevant Register.
- (2) The Board may cause to be removed from a Register the name of any registered dentist or registered dental auxiliary who has been so notified and fails to pay the fee on or before that later date.

**28 Entitlement to re-registration if fee paid**

- (1) A person whose name has been removed from a Register for failure to pay the annual registration fee is entitled to re-registration if the person pays to the Board any unpaid annual registration fee or fees together with any applicable late payment fee.

- (2) A late payment fee is applicable when more than 3 months have elapsed since the person's name was removed from the relevant Register. The late payment fee is such amount as the Board determines.
- (3) The Board may waive payment of a late payment fee in a particular case if the Board thinks it appropriate to do so.
- (4) The entitlement to re-registration is an entitlement to registration on the same terms and subject to the same conditions (if any) as applied to the person's registration immediately before the removal of his or her name from the relevant Register.
- (5) The Board may refuse to register a person under this clause if the Board is of the opinion, following an inquiry under Part 3 of this Schedule, that the person is not of good character or:
  - (a) in the case of a dentist—is not competent to practise dentistry, or
  - (b) in the case of a dental auxiliary—is not competent to carry out dental auxiliary activities.
- (6) A person registered pursuant to an entitlement to re-registration under this clause is taken to have been so registered on and from the day the person's name was removed from the relevant Register or on and from such later day as the Board determines and notifies to the person.
- (7) An entitlement to re-registration under this clause does not override any other provision of this Act pursuant to which a person's name is authorised or required to be removed from the relevant Register.

#### **29 Board may waive registration fee**

The Board may, for such reason as it considers proper, waive the requirement that an annual registration fee be paid by a registered dentist or registered dental auxiliary in any particular year.

### **Part 6 Removal from and alteration of Registers**

#### **30 Removal of person wrongfully registered**

- (1) The Board may remove the name of any person from a Register who has been registered by reason of any false or fraudulent representation or declaration or by reason of a mistake.

- (2) A person whose name has been removed from a Register under this clause may appeal to the Tribunal against the Board's decision.
- (3) An appeal must be made within 28 days (or such longer period as the Chairperson may allow in a particular case) after notice of the decision is given to the person. The appeal is to be lodged with the Registrar who is to refer it to the Tribunal.
- (4) An appeal does not affect the decision with respect to which it is made until the appeal is determined.
- (5) When it determines an appeal, the Tribunal may dismiss the appeal or order that the decision of the Board be revoked and replaced by a different decision made by the Tribunal and specified in the order. The Tribunal may also make such ancillary orders as it thinks proper.
- (6) The Tribunal's decision is taken to be a decision of the Board (but this does not confer a right of appeal under this clause in respect of the Tribunal's decision).

**31 Removal on death or at own request**

The Board must remove the name of a registered dentist or registered dental auxiliary from the relevant Register if the dentist or dental auxiliary has died or has requested the Board to remove his or her name.

**32 Removal or amendment pursuant to disciplinary order**

- (1) The Board must remove the name of a person from the relevant Register if removal of the person's name is required by any order under this Act of the Chairperson, a Deputy Chairperson, the Tribunal or the Supreme Court.
- (2) The Board is to make such recordings in the relevant Register as may be necessary to give effect to any order under this Act of the Board, the Chairperson, a Deputy Chairperson, the Tribunal or the Supreme Court as to the conditions to be imposed on a person's registration.

**33 Dentist or dental auxiliary to be notified of action**

The Board must give the dentist or dental auxiliary concerned notice of action taken by the Board under this Part.

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## **Schedule 2 Provisions relating to the members of the Board**

(Section 112)

### **1 Definitions**

In this Schedule:

*appointed member* means a member of the Board appointed by the Governor under section 108 (1) (b).

*elected member* means a member of the Board elected under section 108 (1) (a).

### **2 President and Deputy President of the Board**

- (1) Of the members of the Board:
  - (a) one who is a registered dentist is to be appointed as President of the Board, and
  - (b) one is to be appointed as Deputy President of the Board.
- (2) Those appointments may be made in and by the instrument of appointment of the relevant member as member or by another instrument executed by the Governor.
- (3) The Governor may remove a member from the office of President or Deputy President.
- (4) A person who is the President or Deputy President vacates office as President or Deputy President if the person:
  - (a) is removed from that office by the Governor, or
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be a member.

### **3 Acting members and acting President**

- (1) The Governor may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, has all the functions of the member and is taken to be the member.

- (2) The Deputy President of the Board may act in the office of President during the illness or absence of the President, and while so acting has all the functions of the President and is taken to be the President.
- (3) The Governor may, from time to time, appoint a member to act in the office of President during the illness or absence of both the President and Deputy President, and the member, while so acting, has all the functions of the President and is taken to be the President.
- (4) The Governor may remove any person from any office to which the person was appointed under this clause.
- (5) A person while acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (6) For the purposes of this clause, a vacancy in the office of a member, the President or the Deputy President is taken to be an absence from office of the member, President or Deputy President.

#### **4 Terms of office**

- (1) Subject to this Schedule:
  - (a) an appointed member holds office for such period (not exceeding 4 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment, and
  - (b) an elected member holds office for 4 years from the date of the member's election, but is eligible (if otherwise qualified) for re-election.
- (2) A person may not be appointed or elected to serve more than 3 consecutive terms of office as a member of the Board.

#### **5 Remuneration**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

#### **6 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or

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- (b) completes a term of office and is not re-appointed (in the case of an appointed member) or re-elected (in the case of an elected member), or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Governor under this clause or under Part 8 of the *Public Sector Management Act 1988*, or
  - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (i) in the case of an appointed member referred to in section 108 (2) (a), the member ceases to be an officer or employee referred to in that paragraph, or
  - (j) in the case of an elected member or an appointed member referred to in section 108 (2) (b)–(d), the member’s registration under this Act is suspended or cancelled, or the member’s name is for any reason removed from the Register in which it is recorded, or
  - (k) in the case of an appointed member referred to in section 108 (2) (f), the member ceases to be a legal practitioner.
- (2) The Governor may remove a member from office at any time.
- (3) Without affecting the generality of subclause (2), the Governor may remove from office a member who contravenes the provisions of clause 8.

## **7 Filling of vacancy in office of member**

- (1) If the office of an appointed member becomes vacant, the Governor may appoint a person nominated in the same way and having the same qualifications (if any) as the member whose office was vacated.
- (2) In the case of a vacancy in the office of an elected member, the Governor may appoint a person nominated by the Australian Dental Association, New South Wales Branch. The person appointed is taken to be an elected member.
- (3) A person appointed to fill a casual vacancy under this clause holds office for the balance of the term of office of the member whose office was vacated, and is eligible for re-appointment or re-election to the Board.

## **8 Disclosure of pecuniary interests**

- (1) If:
  - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

- (2) A disclosure by a member at a meeting of the Board that the member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this clause.

- (3) Particulars of any disclosure made under this clause are to be recorded by the Board in a book kept for the purpose and that book is to be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:
  - (a) be present during any deliberation of the Board with respect to the matter, or
  - (b) take part in any decision of the Board with respect to the matter.
- (5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Board for the purpose of making the determination, or
  - (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.
- (7) This clause does not apply to or in respect of an interest of a member in a matter that arises merely because the member is a dental care provider.
- (8) A reference in this clause to a meeting of the Board includes a reference to a meeting of a committee of the Board.

## **9 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any other Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

Dental Practice Act 2001 No 64

Schedule 2 Provisions relating to the members of the Board

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- (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

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## **Schedule 3 Provisions relating to the procedure of the Board**

(Section 112)

### **1 First meeting of Board**

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

### **2 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

### **3 Quorum**

The quorum for a meeting of the Board is 7 members.

### **4 Presiding member**

- (1) The President or, in the absence of the President, the Deputy President or, in the absence of both of them, another member of the Board elected to chair the meeting by the members present, is to preside at a meeting of the Board.
- (2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **5 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

### **6 Minutes**

The Board must cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.

**7 Proof of certain matters not required**

In any legal proceedings, proof is not required (until evidence is given to the contrary) of:

- (a) the constitution of the Board, or
- (b) any resolution of the Board, or
- (c) the appointment of, or the holding of office by, any member of the Board, or
- (d) the presence of a quorum at any meeting of the Board.

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## **Schedule 4 Provisions relating to the Committee**

(Section 116)

### **Part 1 The Members**

#### **1 Chairperson of the Committee**

One of the members referred to in section 115 (2) (a) is to be appointed by the Minister as the Chairperson of the Committee.

#### **2 Term of office**

Subject to this Schedule, a member of the Committee holds office for such period, not exceeding 4 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

#### **3 Remuneration**

A member of the Committee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

#### **4 Filling of vacancy in office of member**

If the office of any member of the Committee becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

#### **5 Casual vacancies**

- (1) A member of the Committee is to be taken to have vacated office if the member:
- (a) dies, or
  - (b) absents himself or herself from 4 consecutive meetings of the Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings, or

- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (d) becomes a mentally incapacitated person, or
  - (e) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (f) resigns the office by instrument in writing addressed to the Minister, or
  - (g) is removed from office by the Minister under subclause (3).
- (2) Without limiting the generality of subclause (1), a member who is appointed under section 115 (2) (a) or (b) and who ceases to be a registered dentist is to be taken to have vacated office.
- (3) The Minister may remove a member from office.

## **Part 2 Procedure of the Committee**

### **6 General procedure**

The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Committee.

### **7 Quorum**

The quorum for a meeting of the Committee is 3 members.

### **8 Voting**

A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present is the decision of the Committee.

**9 Presiding member**

- (1) The Chairperson of the Committee or, in the absence of the Chairperson, another member of the Committee elected to chair the meeting by the members present, is to preside at a meeting of the Committee.
- (2) The person presiding at any meeting of the Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **Schedule 5 Proceedings before the Tribunal**

(Section 132)

### **1 Proceedings generally**

In proceedings before it, the Tribunal is not bound to observe the rules of law governing the admission of evidence, but may inform itself of any matter in such manner as it thinks fit.

### **2 Power to summon witnesses and take evidence**

- (1) The Chairperson or Deputy Chairperson may summon a person to appear in proceedings before the Tribunal, to give evidence and to produce such documents (if any) as are referred to in the summons.
- (2) The person presiding at the proceedings may require a person appearing in the proceedings to produce a document.
- (3) The Tribunal may, in proceedings before it, take evidence on oath or affirmation and, for that purpose a member of the Tribunal:
  - (a) may require a person appearing in the proceedings to give evidence either to take an oath or to make an affirmation in a form approved by the person presiding, and
  - (b) may administer an oath to or take an affirmation from a person so appearing in the proceedings.
- (4) A person served with a summons to appear in any such proceedings and to give evidence must not, without reasonable excuse:
  - (a) fail to attend as required by the summons, or
  - (b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Tribunal.
- (5) A person appearing in proceedings to give evidence must not, without reasonable excuse:
  - (a) when required to be sworn or to affirm—fail to comply with the requirement, or
  - (b) fail to answer a question that the person is required to answer by the person presiding, or

- (c) fail to produce a document that the person is required to produce by this clause.

Maximum penalty: 20 penalty units.

### **3 Power to obtain documents**

- (1) A member of the Tribunal may, by notice in writing served on a person, require the person:
  - (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Tribunal or a person authorised by the Tribunal in that behalf, and
  - (b) to produce, at that time and place, to the person so specified a document specified in the notice.
- (2) A person who fails, without reasonable excuse, to comply with a notice served on the person under this clause is guilty of an offence.

Maximum penalty: 20 penalty units.

### **4 Evidence of other proceedings**

The Tribunal may receive and admit on production, as evidence in any proceedings, such of the following as the Tribunal considers relevant to the proceedings:

- (a) the judgment and findings of any court (whether civil or criminal and whether or not of New South Wales) or tribunal,
- (b) the verdict or findings of a jury of any such court,
- (c) a certificate of the conviction of or the making of a criminal finding in respect of any person,
- (d) a transcript of the depositions or of shorthand notes, duly certified by the Registrar or clerk of the court or tribunal as correct, of the evidence of witnesses taken in any such court or tribunal.

### **5 Additional complaints**

- (1) The Tribunal may in proceedings before it deal with one or more complaints about a registered dental care provider.

- (2) If, during any such proceedings, it appears to the Tribunal that, having regard to any matters that have arisen, another complaint could have been made against the dental care provider concerned:
  - (a) whether instead of or in addition to the complaint that was made, and
  - (b) whether or not by the same complainant,the Tribunal may take that other complaint to have been referred to it and may deal with it in the same proceedings.
- (3) If another complaint is taken to have been referred to the Tribunal under subclause (2), the complaint may be dealt with after such an adjournment (if any) as is, in the opinion of the Tribunal, just and equitable in the circumstances.

## **6 Release of information**

- (1) The person presiding in proceedings before the Tribunal may, if the person presiding thinks it appropriate in the particular circumstances of the case (and whether or not on the request of a complainant, the dental care provider concerned or any other person):
  - (a) direct that the name of any witness is not to be disclosed in the proceedings, or
  - (b) direct that all or any of the following matters are not to be published:
    - (i) the name and address of any witness,
    - (ii) the name and address of a complainant,
    - (iii) the name and address of a dental care provider,
    - (iv) any specified evidence,
    - (v) the subject-matter of a complaint.
- (2) A direction may be amended or revoked at any time by the person presiding.
- (3) A direction may be given before or during proceedings, but must not be given before the proceedings unless notice is given of the time and place appointed by the person presiding for consideration of the matter to:
  - (a) a person who requested the direction, and
  - (b) the complainant or the dental care provider concerned, as appropriate, and
  - (c) such other persons as the person presiding thinks fit.

- (4) A person who contravenes a direction given under this clause is guilty of an offence.

Maximum penalty: 150 penalty units in the case of a body corporate and 20 penalty units in any other case.

#### **7 Authentication of documents by the Tribunal**

Every document requiring authentication by the Tribunal may be sufficiently authenticated without the seal of the Tribunal, if signed by the Chairperson or by a member of the Tribunal authorised to do so by the Chairperson.

#### **8 Nominal complainant**

- (1) In any proceedings before the Tribunal, a person appointed by the Commission:
- (a) may act as nominal complainant in place of the actual complainant, and
  - (b) when so acting, is, for the purposes of this Act and the regulations, to be taken to be the person who made the complaint.
- (2) A reference in this Act to a complainant includes a reference to a nominal complainant.

#### **9 Intervention by Director-General and Commission**

- (1) Without limiting the operation of clause 8, the Director-General personally (or an officer of the Department of Health appointed by the Director-General) or a person appointed by the Commission may intervene, and has a right to be heard, in any proceedings before the Tribunal.
- (2) The Director-General and the Commission may be represented by a legal practitioner.

#### **10 Expedition of inquiries and appeals**

- (1) It is the duty of the Tribunal to hear inquiries and appeals under this Act and to determine those inquiries and appeals expeditiously.
- (2) Without affecting the generality of subclause (1), the Tribunal may postpone or adjourn proceedings before it as it thinks fit.

### **11 Evidentiary certificate**

A certificate, purporting to have been signed by the Registrar, to the effect that:

- (a) a person specified in the certificate was or was not a registered dental care provider at a time or during a period so specified, or
- (b) the name of a person specified in the certificate was removed from the Dentists Register or the Dental Auxiliaries Register at a time so specified, or
- (c) the registration of a person specified in the certificate was suspended from a time so specified and for a period so specified, or
- (d) a condition, particulars of which are set out in the certificate, was, at a time or during a period so specified, imposed on the registration of a person so specified or revoked or not in force,

is, without proof of the signature of the person by whom the certificate purports to have been signed, to be received by the Tribunal and all courts as evidence of that fact.

### **12 Certain complaints may not be heard**

- (1) The Tribunal may decide not to conduct an inquiry, or at any time to terminate an inquiry or appeal, if:
  - (a) a complainant fails to comply with a requirement made of the complainant by the Tribunal, or
  - (b) the person about whom the complaint is made ceases to be a registered dental care provider.
- (2) The Tribunal must not conduct or continue any inquiry or any appeal if the dental care provider concerned dies.

### **13 Tribunal can award costs**

- (1) The Tribunal may order the complainant, if any, the registered dental care provider concerned, or any other person entitled to appear (whether as of right or because leave to appear has been granted) at any inquiry or appeal before the Tribunal to pay such costs to such person as the Tribunal may determine.

- (2) When an order for costs has taken effect, the Tribunal is, on application by the person to whom the costs have been awarded, to issue a certificate setting out the terms of the order and stating that the order has taken effect.
- (3) The person in whose favour costs are awarded may file the certificate in the District Court, together with an affidavit by the person as to the amount of the costs unpaid, and the Registrar of the District Court is to enter judgment for the amount unpaid together with any fees paid for filing the certificate.

## Schedule 6 Amendments

(Section 159)

### 6.1 Dental Technicians Registration Act 1975 No 40

**[1] Section 5 Definitions**

Omit the definition of *dentist* from section 5 (1).

**[2] Section 6 Constitution of Dental Technicians Registration Board**

Omit “within the meaning of the *Dentists Act 1989*” from section 6 (1) (a).

**[3] Section 6 (1) (b)**

Omit “constituted under the *Dentists Act 1934*”.

Insert instead “constituted under the *Dental Practice Act 2001*”.

**[4] Section 27 Restrictions on dental technicians**

Omit “the form referred to in section 57 (4) (h) of the *Dentists Act 1989*”.

Insert instead “a form prescribed under the *Dental Practice Act 2001*”.

### 6.2 Health Care Complaints Act 1993 No 105

**Section 4 Definitions**

Omit “*Dentists Act 1989*” from the definition of *health registration Act*.

Insert in alphabetical order:

*Dental Practice Act 2001*

### 6.3 Interpretation Act 1987 No 15

#### Section 21 Meaning of commonly used words and expressions

Insert in alphabetical order in section 21 (1):

*registered dentist* and each of the following expressions means a dentist registered under the *Dental Practice Act 2001*:

- (a) dentist,
- (b) legally (or duly) qualified dentist,
- (c) qualified dentist.

### 6.4 Poisons and Therapeutic Goods Regulation 1994

#### Appendix E Supply by wholesale

Omit clause 8 (2). Insert instead:

- (2) In this clause, *dental therapist* means a registered dental therapist under the *Dental Practice Act 2001*.

### 6.5 Public Health Act 1991 No 10

#### Section 10AF

Insert as section 10AF:

##### 10AF Restricted dental practices

- (1) A person must not carry out a restricted dental practice unless the person is:
  - (a) a registered dentist, or
  - (b) a registered medical practitioner, or
  - (c) a registered dental student undertaking clinical studies, or undertaking a clinical placement at a public health organisation, or

- (d) a registered dental auxiliary who is carrying out dental auxiliary activities subject to the practice oversight of a registered dentist, or
- (e) a person performing radiographic work at a public health organisation, or on the order or at the request of a registered medical practitioner or registered dentist, or
- (f) a dental prosthetist carrying out a practice of dental prosthetics, or
- (g) a dental technician carrying out technical work on the written order of a registered dentist or of a dental prosthetist.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) Proceedings for an offence against this section may be instituted within 12 months after the act or omission alleged to constitute the offence.
- (3) For the purpose of ascertaining whether the provisions of this section are being complied with, an authorised officer has and may exercise all the functions that the authorised officer has under the officer's Act for the purpose of ascertaining whether a provision of that Act is being complied with, and for that purpose:
  - (a) those functions of the authorised officer under the officer's Act apply in respect of premises on which a person carries out restricted dental practices in the same way as those functions apply in respect of premises on which a person engages in professional practice under the officer's Act, and
  - (b) those functions of the authorised officer under the officer's Act apply in respect of the carrying out of restricted dental practices in the same way as they apply in respect of professional practice engaged in under the officer's Act, and
  - (c) the provisions of the officer's Act with respect to the functions of an inspector (including any provision that creates an offence in connection with the functions of an inspector) extend to apply in respect of the exercise of functions of an authorised officer under this section.

(4) In this section:

**authorised officer** means an inspector, authorised officer or authorised person under any of the following Acts:

- (a) *Dental Practice Act 2001*,
- (b) *Dental Technicians Registration Act 1975*,
- (c) *Medical Practice Act 1992*.

**dental auxiliary activities** has the same meaning as in the *Dental Practice Act 2001*.

**dental prosthetist** has the same meaning as in the *Dental Technicians Registration Act 1975*.

**dental technician** means any of the following:

- (a) a person registered as a dental technician under the *Dental Technicians Registration Act 1975*,
- (b) a person approved by the Dental Technicians Registration Board under section 13 (2) (f) of the *Dental Technicians Registration Act 1975*,
- (c) a person undergoing in good faith training in technical work under the supervision of a registered dentist or of a person referred to in paragraph (a), or
- (d) a person employed as a probationary apprentice within the meaning of the *Industrial and Commercial Training Act 1989* by a person referred to in paragraph (a), or by a person employing a person referred to in paragraph (a).

**officer's Act**, in relation to an authorised officer, means the Act under which the authorised officer is appointed as an inspector, authorised officer or authorised person.

**practice of dental prosthetics** has the same meaning as in section 5 (3) of the *Dental Technicians Registration Act 1975*.

**practice oversight** means oversight by a registered dentist in accordance with guidelines approved by the Director-General from time to time.

**public health organisation** has the same meaning as in the *Health Services Act 1997*.

**registered dental student** means a registered dental student under the *Dental Practice Act 2001*.

***restricted dental practice*** means any of the following practices:

- (a) the performance of any operation on the human teeth or jaws or associated structures,
- (b) the correction of malpositions of the human teeth or jaws or associated structures,
- (c) the performance of radiographic work in connection with the human teeth or jaws or associated structures,
- (d) the mechanical construction or the renewal or repair of artificial dentures or restorative dental appliances,
- (e) the performance of any operation on, or the giving of any treatment or advice to, any person as preparatory to or for the purpose of the fitting, insertion, adjusting, fixing, constructing, repairing or renewing of artificial dentures or restorative dental appliances.

***technical work*** has the same meaning as in section 5 (1) of the *Dental Technicians Registration Act 1975*.

***written order*** means an order:

- (a) in a form prescribed for the purposes of issuing directions to dental technicians under the *Dental Practice Act 2001*, or
- (b) in a form prescribed for the purposes of section 27 (b) (ii) of the *Dental Technicians Registration Act 1975*.

## 6.6 Search Warrants Act 1985 No 37

### Section 10 Definitions

Omit “section 59 of the *Dentists Act 1989*” from the definition of ***search warrant***.

Insert instead in alphabetical order of Acts:

section 154 of the *Dental Practice Act 2001*,

## Schedule 7 Savings and transitional provisions

(Section 161)

### Part 1 Preliminary

#### 1 Definitions

In this Schedule:

*new Board* means the Dental Board constituted by this Act.

*old Board* means the Dental Board constituted by the 1989 Act.

*the 1989 Act* means the *Dentists Act 1989*.

#### 2 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
this Act
- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

## **Part 2 Provisions consequent on enactment of this Act**

### **3 Members of old Board**

- (1) A person who, immediately before the repeal of the 1989 Act, held office as a member of the old Board:
  - (a) ceases to hold office as such on that repeal, and
  - (b) is eligible (if otherwise qualified) to be appointed as a member of the new Board.
- (2) A person who ceases to hold office as a member of the old Board because of the operation of this Act is not entitled to be paid any remuneration or compensation because of ceasing to hold that office.

### **4 Continuity of Board**

Unless the regulations otherwise provide, anything done by or in relation to the old Board and having effect immediately before the dissolution of the old Board is taken to have been done by or in relation to the new Board.

### **5 Appointments and other action before commencement**

For the purpose only of enabling the new Board to be constituted in accordance with this Act on or after (but not before) the commencement of section 106 (Constitution of the Board), elections may be held and appointments may be made under this Act, and anything else may be done, before that commencement, as if the whole of this Act commenced on the date of assent, but so that no appointment as a member of the new Board as so constituted takes effect before the commencement of section 106.

### **6 The Register of Dentists**

As soon as practicable after the commencement of this clause, the new Board is to compile the Register of Dentists from the relevant information and particulars entered in the Register kept under section 12 of the 1989 Act in respect of persons registered as dentists immediately before that commencement.

## **7 The Register of Dental Auxiliaries**

- (1) As soon as practicable after the commencement of this clause, the new Board is to compile the Register of Dental Auxiliaries.
- (2) For this purpose, the Board may obtain such information as is necessary to compile the Register.

## **8 Registration as dentist**

- (1) A person who is a registered dentist under the 1989 Act immediately before the commencement of this clause is on that commencement taken to be a registered dentist under this Act. Registration under this Act is subject to the same conditions (if any) as the person's registration under the 1989 Act was subject immediately before that commencement.
- (2) A certificate of provisional registration as a dentist in force under the 1989 Act immediately before the commencement of this clause is taken, on that commencement, to have been granted under this Act.
- (3) A licence to practise dentistry in force under the 1989 Act immediately before the commencement of this clause is taken, on that commencement, to be a certificate of limited registration granted under this Act.

## **9 Registration as dental auxiliary**

- (1) A person who, immediately before the commencement of this clause, had the prescribed training referred to in section 57 (4) (c) or (e) of the 1989 Act is taken to be registered as a dental therapist under this Act during the transition period applicable to the person.
- (2) A person who, immediately before the commencement of this clause, had the prescribed training referred to in section 57 (4) (f) of the 1989 Act is taken to be registered as a dental hygienist under this Act during the transition period applicable to the person.
- (3) The transition period applicable to a person is the period that begins on the commencement of this clause and ends when the person actually becomes registered as a dental auxiliary under this Act or 6 months (or such longer period as may be prescribed by the regulations) after that commencement, whichever is sooner.

## **10 Registration as dental student**

- (1) A person who, immediately before the commencement of this clause, was undertaking a course of study referred to in section 138 (1) (a) is taken to be registered as a dentistry student under this Act during the transition period applicable to the person.
- (2) A person who, immediately before the commencement of this clause, was undertaking a course of study referred to in section 138 (1) (b) is taken to be registered as a dental auxiliary student under this Act during the transition period applicable to the person.
- (3) The transition period applicable to a person is the period that begins on the commencement of this clause and ends when the person actually becomes registered as a dental student under this Act or 12 months after that commencement, whichever is sooner.

## **11 Use of titles by dentists**

Any certificate, diploma, membership, degree, licence, letters, testimonial or other title, status, document or description that was, immediately before the commencement of this clause, authorised to be entered in connection with a dentist's name in the Register under the 1989 Act is taken to be authorised for use by the dentist under section 31 of this Act (until the Board ceases to authorise its use by the dentist).

## **12 Fees**

A fee paid or which remains unpaid under a provision of the 1989 Act immediately before its repeal is taken, on commencement of the relevant provision of this Act, to have been paid or to remain unpaid under the provision of this Act that corresponds to that provision and is taken to have been so paid or to so remain unpaid for or in relation to the same period as that which applied to the fee under the 1989 Act.

## **13 Applications for registration**

An application for registration as a dentist under the 1989 Act which had not been determined by the old Board before the repeal of that Act is taken to be an application for registration under this Act.

#### **14 Appeals to the Supreme Court**

- (1) An appeal to the District Court under section 51 of the 1989 Act relating to a registered dentist that was pending immediately before the repeal of that Act is to be continued and disposed of as if, except as provided by subclause (2), this Act had not been enacted.
- (2) The decision of the Court on any such appeal is final, and binding on the new Board and the appellant and for the purposes of this Act is taken to be the final decision of the new Board.

#### **15 Complaints**

- (1) A complaint made to the old Board concerning the conduct of a registered dentist under the 1989 Act and pending immediately before the repeal of that Act is, to the extent that the conduct concerned could be the subject of a complaint under this Act, to be dealt with as a complaint under this Act, except as provided by this clause.
- (2) If a complaint pending under the 1989 Act on the commencement of this clause is the subject of an inquiry by a Professional Standards Committee or an inquiry by or appeal before the Dental Tribunal under that Act immediately before that commencement:
  - (a) the complaint or appeal is to continue to be dealt with and determined under the 1989 Act as if the 1989 Act had not been repealed, and
  - (b) any finding, order, direction, decision or determination arising from or in connection with the determination of the complaint or appeal under the 1989 Act has effect for the purposes of the corresponding provision of this Act, and
  - (c) the 1989 Act continues to apply as if it had not been repealed for the purposes of any appeal against any such order, direction, decision or determination.
- (3) This clause applies for the purposes of this Act and for the purposes of the *Health Care Complaints Act 1993* (including any conciliation under that Act) in its application to any complaint or investigation pending under the 1989 Act immediately before the repeal of the 1989 Act.

**16 Complaints relating to previous conduct**

A complaint or investigation may be made under this Act with respect to conduct or any other matter or thing that occurred before, or partly before and partly after, the commencement of the provisions of this Act under which the complaint or investigation is made.

**17 Approval of employment by non-dentists**

An approval under section 5 (4) (f) of the 1989 Act in force immediately before the commencement of this clause is taken, on that commencement, to be an approval under paragraph (g) of the definition of *non-dentist* in section 41 (2) of this Act.

**18 Continuity of disciplinary action under 1989 Act**

Any finding, order, direction, decision or determination under Part 6 (Complaints and disciplinary proceedings) of the 1989 Act is, to the extent that it had any operation immediately before the commencement of this clause, taken to have been made under the corresponding provision of this Act and is to be given effect to accordingly.

**19 Dental Education and Research Account**

Money standing to the credit of the Education and Research Account under the 1989 Act immediately before the commencement of this clause is to be paid to the credit of the Dental Education and Research Account under this Act.

**20 Construction of certain references**

Unless the regulations otherwise provide, on and from the commencement of this clause, a reference in any other Act, in any instrument made under any Act or in any other instrument of any kind:

- (a) to the old Board is to be read as a reference to the new Board, and
- (b) to the Registrar under the 1989 Act is to be read as a reference to the Registrar under this Act, and
- (c) to the Register referred to in section 12 of the 1989 Act is to be read as a reference to the Register of Dentists under this Act, and

- (d) to the registration of a person as a registered dentist under the 1989 Act is to be read as a reference to the registration of the person as a dentist under this Act.

[Minister's second reading speech made in—  
Legislative Assembly on 4 September 2001  
Legislative Council on 25 September 2001]