

South Australia



ANNO QUINQUAGESIMO
ELIZABETHAE II REGINAE
A.D. 2001

DENTAL PRACTICE ACT 2001

No. 24 of 2001

[Assented to 21 June 2001]

An Act to protect the health and safety of the public by providing for the registration of dental practitioners and dental students; to regulate the provision of dental treatment for the purpose of maintaining high standards of competence and conduct by persons registered under this Act; to repeal the Dentists Act 1984; and for other purposes.

SUMMARY OF PROVISIONS

PART 1 PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Medical fitness to provide dental treatment

PART 2 DENTAL BOARD OF SOUTH AUSTRALIA

DIVISION 1—CONTINUATION OF BOARD

5. Continuation of the Board

DIVISION 2—THE BOARD'S MEMBERSHIP

6. Composition of the Board
7. Terms and conditions of membership
8. Presiding member and deputy
9. Vacancies or defects in appointment of members
10. Remuneration

DIVISION 3—REGISTRAR AND STAFF OF THE BOARD

11. Registrar of the Board
12. Other staff of the Board

DIVISION 4—GENERAL FUNCTIONS AND POWERS

13. Functions of the Board
14. Committees
15. Delegations

DIVISION 5—THE BOARD'S PROCEDURES

16. The Board's procedures
17. Disclosure of interest
18. Powers of the Board in relation to witnesses, etc.
19. Principles governing hearings
20. Representation at proceedings before the Board
21. Costs

DIVISION 6—ACCOUNTS, AUDIT AND ANNUAL REPORT

22. Accounts and audit
23. Annual report

PART 3 THE DENTAL PROFESSIONAL CONDUCT TRIBUNAL

24. Continuation of the Tribunal
25. Composition of the Tribunal
26. Terms and conditions of membership
27. Vacancies or defects in appointment of members

- 28. Remuneration
- 29. Constitution of the Tribunal for the purpose of proceedings

**PART 4
REGISTRATION**

DIVISION 1—THE REGISTERS

- 30. The registers
- 31. Authority conferred by registration on a register

DIVISION 2—REGISTRATION

- 32. Registration of natural persons as dental practitioners
- 33. Registration of companies
- 34. Registration of dental students
- 35. Application for registration
- 36. Removal from register
- 37. Reinstatement on register
- 38. Fees

DIVISION 3—SPECIAL OBLIGATIONS OF COMPANY PRACTITIONERS

- 39. Returns by companies
- 40. Notice of appointment of directors, etc.
- 41. Alterations to memorandum or articles of association of registered company

**DIVISION 4—RESTRICTIONS RELATING TO THE PROVISION OF DENTAL
TREATMENT**

- 42. Illegal holding out as registered person
- 43. Illegal holding out concerning restrictions or conditions
- 44. Use of certain titles or descriptions prohibited
- 45. Restriction on provision of dental treatment by unqualified persons
- 46. Board's approval required where dental practitioner or dental student has not practised for 5 years
- 47. Companies not to practise in partnership
- 48. Employment of registered persons by company

**PART 5
INVESTIGATIONS AND PROCEEDINGS**

DIVISION 1—PRELIMINARY

- 49. Interpretation
- 50. Cause for disciplinary action

DIVISION 2—INVESTIGATIONS

- 51. Powers of inspectors
- 52. Offence to hinder, etc., inspector
- 53. Offences by inspectors

DIVISION 3—PROCEEDINGS BEFORE THE BOARD

- 54. Obligation to report medical unfitness of dental practitioner or dental student
- 55. Medical fitness of dental practitioner or dental student
- 56. Inquiries by Board as to matters constituting grounds for disciplinary action

- 57. Variation or revocation of conditions imposed by Board
- 58. Suspension of registration of non-residents
- 59. Provisions as to proceedings before the Board under this Part

DIVISION 4—PROCEEDINGS BEFORE THE TRIBUNAL

- 60. Inquiries by Tribunal as to matters constituting grounds for disciplinary action
- 61. Variation or revocation of conditions imposed by Tribunal
- 62. Provisions as to proceedings before the Tribunal
- 63. Powers of Tribunal
- 64. Costs
- 65. Power of Tribunal to make rules

PART 6 APPEALS

- 66. Right of appeal to Supreme Court
- 67. Operation of order may be suspended
- 68. Variation or revocation of conditions imposed by Court

PART 7 MISCELLANEOUS

- 69. Interpretation
- 70. Improper directions to dental practitioners or dental students
- 71. Offence to contravene conditions of registration
- 72. Offence to give, offer or accept benefit for referral or recommendation
- 73. Procurement of registration by fraud
- 74. False or misleading statement
- 75. Dental practitioner, etc., must declare interest in prescribed business
- 76. Dental practitioner or dental student must report his or her infection to Board
- 77. Dental School must report cessation of a student's enrolment
- 78. Dental practitioners to be indemnified against loss
- 79. Information relating to claim against registered person to be provided
- 80. Victimisation
- 81. Self-incrimination and legal professional privilege
- 82. Punishment of conduct that constitutes an offence
- 83. Vicarious liability for offences
- 84. Joint and several liability of companies
- 85. Board may require medical examination or report
- 86. Ministerial review of decisions relating to courses
- 87. Confidentiality
- 88. Protection from personal liability
- 89. Service
- 90. Evidentiary provision
- 91. Regulations

SCHEDULE

Repeal and transitional provisions

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Dental Practice Act 2001*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

"appropriate register" means—

- (a) the register of dentists; or
- (b) the register of specialists; or
- (c) the register of dental prosthetists; or
- (d) the register of advanced dental prosthetists; or
- (e) the register of dental hygienists; or
- (f) the register of dental therapists; or
- (g) the register of dental technicians; or
- (h) the register of dental students,

as the case may require;

"Board" means the *Dental Board of South Australia*;

"dental practitioner" or "practitioner" means—

- (a) a registered dentist; or
- (b) a registered specialist; or
- (c) a registered dental prosthetist; or
- (d) a registered advanced dental prosthetist; or
- (e) a registered dental hygienist; or
- (f) a registered dental therapist; or
- (g) a registered dental technician;

"dental student" means a person whose name is registered on the register of dental students;

"dental treatment" means—

- (a) advice, attendances, services, procedures and operations relating to the treatment of human teeth, gums, jaws and proximate tissue; and
- (b) the fitting of, and the taking of impressions or measurements for the purpose of fitting, dental prostheses; and
- (c) the making of dental prostheses,

but does not include any treatment excluded from this definition by the regulations;

"director" of a body corporate means a member of the board or committee of management of the body corporate, whether validly appointed or not;

"equipment" includes appliances, instruments, dressings or substances used for the purposes of dental treatment;

"health professional" means—

- (a) a medical practitioner; or
- (b) a registered psychologist; or
- (c) any other person who belongs to a profession, or who has an occupation, declared by the Board, by notice in the *Gazette*, to be a profession or occupation within the ambit of this definition;

"inspector" means a person authorised by the Board to exercise the powers of an inspector under this Act;

"legal practitioner" means a person admitted and enrolled as a practitioner of the Supreme Court of South Australia;

"medical practitioner" means a person who is registered in this State as a medical practitioner;

"prescribed communicable infection" means infection with HIV or any other viral or bacterial infection prescribed by the regulations;

"prescribed relative", in relation to a dental practitioner, means a parent, spouse, child or grandchild of the dental practitioner;

"provide", in relation to dental treatment, means provide treatment personally or through the instrumentality of another, and includes offer to provide;

"**putative spouse**", in relation to a dental practitioner, means a person who is cohabitating with the dental practitioner as the husband or wife *de facto* of the practitioner and—

- (a) who has so cohabited continuously over the last preceding period of 5 years, or for periods aggregating 5 years over the last preceding period of 6 years; or
- (b) who has had sexual relations with the dental practitioner resulting in the birth of a child;

"**record**" means—

- (a) a documentary record; or
- (b) a record made by an electronic, electromagnetic, photographic or optical process; or
- (c) any other kind of record;

"**register**" means a register kept under this Act;

"**registered**" means registered on the appropriate register under this Act;

"**Registrar**" means the person holding the office of Registrar of the Board under this Act;

"**repealed Act**" means the *Dentists Act 1984*;

"**spouse**" includes a putative spouse;

"**Tribunal**" means the *Dental Professional Conduct Tribunal*;

"**unprofessional conduct**" includes—

- (a) improper or unethical conduct in relation to professional practice; and
- (b) incompetence or negligence in relation to the provision of dental treatment; and
- (c) a contravention of or failure to comply with—
 - (i) a provision of this Act; or
 - (ii) a code of conduct or professional standards prepared or endorsed by the Board under this Act; and
- (d) conduct that constitutes an offence punishable by imprisonment for 1 year or more under some other Act or law.

(2) A reference in this Act to unprofessional conduct extends to—

- (a) unprofessional conduct committed before the commencement of this Act; and
- (b) unprofessional conduct committed within or outside South Australia or the Commonwealth.

(3) Without limiting the generality of the expression, a person who is not a dental practitioner will, unless exempted by the regulations, be taken to **provide dental treatment through the instrumentality of a dental practitioner** if the person, in the course of carrying on a business, provides services to the practitioner for which the person is entitled to receive a share in the profits or income of the practitioner's dental practice.

Medical fitness to provide dental treatment

4. A person or body must, in making a determination under this Act as to a person's medical fitness to provide dental treatment, have regard to the question of whether the person is able to provide dental treatment personally to a patient without endangering the patient's health or safety and, for that purpose, may have regard to the question of whether the person has a prescribed communicable infection.

PART 2
DENTAL BOARD OF SOUTH AUSTRALIA
DIVISION 1—CONTINUATION OF BOARD

Continuation of the Board

5. (1) The *Dental Board of South Australia* continues in existence.

(2) The Board—

- (a) is a body corporate; and
- (b) has perpetual succession and a common seal; and
- (c) is capable of suing and being sued in its corporate name; and
- (d) has all the powers of a natural person that are capable of being exercised by a body corporate; and
- (e) has the functions and powers assigned or conferred by or under this Act.

(3) If a document appears to bear the common seal of the Board, it will be presumed, in the absence of proof to the contrary, that the common seal of the Board was duly affixed to the document.

DIVISION 2—THE BOARD'S MEMBERSHIP

Composition of the Board

6. (1) The Board consists of 13 members appointed by the Governor of whom—

- (a) 6 must be registered dentists of whom—
 - (i) 3 are to be nominated by the Minister; and
 - (ii) 2 are to be chosen at an election conducted in accordance with the regulations; and
 - (iii) 1 is to be nominated by the Council of The University of Adelaide; and
- (b) 4 must be dental practitioners nominated by the Minister of whom—
 - (i) 1 must be a registered advanced dental prosthetist or registered dental prosthetist; and
 - (ii) 1 must be a registered dental hygienist; and
 - (iii) 1 must be a registered dental therapist; and
 - (iv) 1 must be a registered dental technician; and
- (c) 1 must be a legal practitioner nominated by the Minister; and

(d) 2 (not being dental practitioners) must be persons nominated by the Minister who are not eligible for appointment under a preceding paragraph.

(2) At least 4 of the members of the Board nominated by the Minister must be women and at least 4 must be men.

(3) Every registered dentist is entitled to vote at an election under subsection (1)(a)(ii).

(4) The Governor may appoint a person to be a deputy of a member and a person so appointed may act as a member of the Board in the absence of the member.

(5) The requirements of qualification and nomination made by this section in relation to the appointment of a member extend to the appointment of a deputy of that member.

Terms and conditions of membership

7. (1) A member of the Board will be appointed on conditions determined by the Governor and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.

(2) The Governor may remove a member of the Board from office—

(a) for breach of, or non-compliance with, a condition of appointment; or

(b) for misconduct; or

(c) for failure or incapacity to carry out official duties satisfactorily.

(3) The office of a member of the Board becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice to the Minister; or

(d) ceases to satisfy the qualification by virtue of which the member was eligible for appointment to the Board; or

(e) is removed from office under subsection (2).

(4) If a member of the Board is a member constituting the Board for the purposes of any proceedings under Part 5 and the member's term of office expires before those proceedings are completed, the member may, for the purpose of continuing and completing those proceedings, continue to act as a member of the Board.

Presiding member and deputy

8. The Minister must, after consultation with the Board, appoint a member who is a registered dentist (the presiding member) to preside at meetings of the Board and another member (the deputy presiding member) to preside at meetings of the Board in the absence of the presiding member.

Vacancies or defects in appointment of members

9. An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

Remuneration

10. A member of the Board is entitled to remuneration, allowances and expenses determined by the Governor.

DIVISION 3—REGISTRAR AND STAFF OF THE BOARD**Registrar of the Board**

11. (1) There will be a Registrar of the Board.

(2) The Registrar will be appointed by the Board on terms and conditions determined by the Board.

Other staff of the Board

12. (1) There will be such other staff of the Board as the Board thinks necessary for the proper performance of its functions.

(2) A member of the staff of the Board is not, as such, a member of the Public Service, but the Board may employ a person who is on leave from employment in the Public Service or with an instrumentality or agency of the Crown.

(3) The Board may, with the approval of the Minister administering an administrative unit of the Public Service, make use of the services, facilities or officers of that unit.

DIVISION 4—GENERAL FUNCTIONS AND POWERS**Functions of the Board**

13. (1) The functions of the Board are as follows:

- (a) to regulate the practice of dentistry in the public interest;
- (b) to approve courses of education or training that provide qualifications for registration as a dental practitioner under this Act;
- (c) to determine the requirements necessary for registration under this Act;
- (d) to establish and maintain registers of persons qualified to provide dental treatment in accordance with this Act;
- (e) to prepare or endorse codes of conduct and professional standards for dental practitioners and dental students; and
- (f) to prepare or endorse guidelines on continuing dental education for dental practitioners; and
- (g) to provide advice to the Minister as to the making of regulations for the purposes of section 31; and
- (h) to provide such other advice to the Minister as may be appropriate; and

- (i) to carry out other functions assigned to the Board by or under this Act, or by the Minister.

(2) The Board must exercise its functions under this Act with the object of protecting the health and safety of the public by achieving and maintaining the highest professional standards both of competence and conduct in the provision of dental treatment in this State.

(3) If the Board prepares or endorses a code of conduct, professional standard or guidelines under subsection (1), the Board must—

- (a) cause a copy of the code, standard or guidelines to be published in the *Gazette*; and
- (b) take reasonable steps to send a copy of the code, standard or guidelines to each dental practitioner, or dental student, as the case may require; and
- (c) ensure that a copy of the code, standard or guidelines is kept available for public inspection, without charge and during normal office hours, at the principal office of the Board,

(although proof of compliance with paragraphs (a), (b), and (c) is not necessary for the purposes of any proceedings that involve an alleged contravention of or failure to comply with a code of conduct or professional standard).

Committees

14. (1) The Board may establish committees—

- (a) to advise the Board on any matter; or
- (b) to carry out functions on behalf of the Board.

(2) The membership of a committee will be determined by the Board and may, but need not, consist of, or include, members of the Board.

(3) The Board will determine who will be the presiding member of a committee.

(4) The procedures to be observed in relation to the conduct of the business of a committee will be—

- (a) as determined by the Board;
- (b) insofar as a procedure is not determined under paragraph (a)—as determined by the committee.

Delegations

15. (1) The Board may delegate any of its functions or powers under this Act other than—

- (a) this power of delegation; and
- (b) the power to hear and determine proceedings under Part 5.

(2) A delegation—

(a) may be made—

- (i) to a member of the Board, the Registrar or an employee of the Board; or
- (ii) to a committee established by the Board; and

(b) may be made subject to conditions and limitations specified in the instrument of delegation; and

(c) is revocable at will and does not derogate from the power of the delegator to act in a matter.

DIVISION 5—THE BOARD'S PROCEDURES

The Board's procedures

16. (1) Subject to this Act, 7 members constitute a quorum of the Board.

(2) A meeting of the Board (other than for the purposes of hearing and determining proceedings under Part 5) will be chaired by the presiding member or, in his or her absence, by the deputy presiding member, and, in the absence of both the presiding member and the deputy presiding member, the members present at a meeting of the Board must choose one of their number to preside at the meeting.

(3) A decision carried by a majority of the votes cast by members of the Board at a meeting is a decision of the Board.

(4) Each member present at a meeting of the Board has one vote on any question arising for decision and, except in hearing and determining proceedings under Part 5, the member presiding at the meeting may exercise a casting vote if the votes are equal.

(5) A conference by telephone or other electronic means between the members of the Board will, for the purposes of this section, be taken to be a meeting of the Board at which the participating members are present if—

- (a) notice of the conference is given to all members in the manner determined by the Board for the purpose; and
- (b) each participating member is capable of communicating with every other participating member during the conference.

(6) A proposed resolution of the Board becomes a valid decision of the Board despite the fact that it is not voted on at a meeting of the Board if—

- (a) notice of the proposed resolution is given to all members of the Board in accordance with procedures determined by the Board; and
- (b) a majority of the members express concurrence in the proposed resolution by letter, telegram, telex, facsimile transmission or other written communication setting out the terms of the resolution.

(7) However, subsections (5) and (6) do not apply in relation to the hearing and determination of proceedings under Part 5 by the Board as constituted for the purposes of proceedings under that Part.

(8) The Board must have accurate minutes kept of its meetings.

(9) Subject to this Act, the Board may determine its own procedures.

Disclosure of interest

17. (1) A member of the Board who has a direct or indirect pecuniary or personal interest in a matter under consideration by the Board—

(a) must, as soon as he or she becomes aware of the interest, disclose the nature and extent of the interest to the Board; and

(b) must not take part in any deliberations or decision of the Board on the matter.

Maximum penalty: \$10 000.

(2) A member of the Board will not be taken to have a direct or indirect interest in a matter for the purposes of this section by reason only of the fact that the member has an interest in the matter that is shared in common with the public, dental practitioners generally or a substantial section of the public or of dental practitioners in this State.

(3) A disclosure under this section must be recorded in the minutes of the Board.

Powers of the Board in relation to witnesses, etc.

18. (1) For the purposes of proceedings before the Board (including an application for registration or reinstatement of registration), the Board may—

(a) by summons signed on behalf of the Board by a member of the Board or the Registrar, require the attendance before the Registrar of any person whom the Board thinks fit to call before it; or

(b) by summons signed on behalf of the Board by a member of the Board or the Registrar, require the production of any relevant records, documents or equipment and, in the case of a document or record that is not in the English language, require the production of a written statement in the English language of the contents of the document or record; or

(c) inspect any documents, records or equipment produced before it, and retain them for such reasonable period as it thinks fit, and make copies of the documents or records or their contents; or

(d) require any person to make an oath or affirmation (which may be administered by any member of the Board) to answer truthfully questions put by any member of the Board or any person appearing before the Board; or

(e) require any person appearing before the Board (whether summoned to appear or not) to answer any questions put by any member of the Board or by any person appearing before the Board.

(2) On the receipt of an application for the issue of a summons under this section, a member or the Registrar may, without referring the matter to the Board, issue a summons on behalf of the Board.

(3) A person who—

- (a) fails without reasonable excuse to comply with a summons issued to attend, or to produce documents, records or equipment, before the Board; or
- (b) having been served with a summons to produce a written statement of the contents of a document or record in the English language fails, without reasonable excuse, to comply with the summons or produces a statement that he or she knows, or ought to know, is false or misleading in a material particular; or
- (c) misbehaves before the Board, wilfully insults the Board or one or more of the members in the exercise of the member's official duties, or interrupts the proceedings of the Board; or
- (d) refuses to be sworn or to affirm, or refuses or fails to answer truthfully a relevant question when required to do so by the Board,

is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 6 months.

(4) A person who appears as a witness before the Board has the same protection as a witness in proceedings before the Supreme Court.

Principles governing hearings

19. In any proceedings before the Board under this Act—

- (a) the Board is not bound by the rules of evidence and may inform itself on any matter as it thinks fit; and
- (b) the Board must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

Representation at proceedings before the Board

20. A party to proceedings before the Board (including an applicant for registration or reinstatement of registration) is entitled to be represented at the hearing of those proceedings.

Costs

21. (1) The Board may award such costs against a party to proceedings before it as the Board considers just and reasonable.

(2) A party who is dissatisfied with the amount of the costs fixed by the Board may request a master of the Supreme Court to tax the costs and, after taxing the costs, the master may confirm or vary the amount of the costs fixed by the Board.

(3) Subject to this section, costs awarded by the Board under this section may be recovered as a debt.

DIVISION 6—ACCOUNTS, AUDIT AND ANNUAL REPORT**Accounts and audit**

22. (1) The Board must keep proper accounting records in relation to its financial affairs, and must have annual statements of account prepared in respect of each financial year.

(2) The accounts must be audited at least once in every year by an auditor approved by the Auditor-General and appointed by the Board.

(3) The Auditor-General may at any time audit the accounts of the Board.

Annual report

23. (1) The Board must, on or before 30 September in each year, deliver to the Minister a report on the administration of this Act and the work of the Board during the financial year ending on the preceding 30 June.

(2) The report must incorporate the audited accounts of the Board for the relevant financial year.

(3) The Minister must, within 12 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

PART 3
THE DENTAL PROFESSIONAL CONDUCT TRIBUNAL

Continuation of the Tribunal

24. The *Dental Professional Conduct Tribunal* continues in existence.

Composition of the Tribunal

25. (1) The Tribunal consists of 11 members appointed by the Governor of whom—

(a) 1 (the presiding member) must be—

- (i) a person holding judicial office under the *District Court Act 1991* who has been nominated by the Chief Judge; or
- (ii) a magistrate nominated by the Chief Magistrate; or
- (iii) a legal practitioner of at least 10 years' standing nominated by the Minister; and

(b) 7 must be dental practitioners nominated by the Minister of whom—

- (i) 3 are to be registered dentists; and
- (ii) 1 is to be a registered advanced dental prosthetist or registered dental prosthetist; and
- (iii) 1 is to be a registered dental hygienist; and
- (iv) 1 is to be a registered dental therapist; and
- (v) 1 is to be a registered dental technician; and

(c) 3 (not being dental practitioners) must be persons nominated by the Minister who are not eligible for appointment under a preceding paragraph.

(2) At least 3 members of the Tribunal must be women and at least 3 must be men.

(3) The Governor may appoint a person to be a deputy of a member and a person so appointed may act as a member of the Tribunal in the absence of the member.

(4) The requirements of qualification and nomination made by this section in relation to the appointment of a member extend to the appointment of a deputy of that member.

Terms and conditions of membership

26. (1) A member of the Tribunal will be appointed on conditions determined by the Governor and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.

(2) The Governor may remove a member of the Tribunal from office—

- (a) for breach of, or non-compliance with, a condition of appointment; or
- (b) for misconduct; or

- (c) for failure or incapacity to carry out official duties satisfactorily.
- (3) The office of a member of the Tribunal becomes vacant if the member—
 - (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice to the Minister; or
 - (d) ceases to satisfy the qualification by virtue of which the member was eligible for appointment to the Tribunal; or
 - (e) is removed from office under subsection (2).

(4) If a member of the Tribunal is a member constituting the Tribunal for the purposes of any proceedings under Part 5 and the member's term of office expires before those proceedings are completed, the member may, for the purpose of continuing and completing those proceedings, continue to act as a member of the Tribunal.

Vacancies or defects in appointment of members

27. An act or proceeding of the Tribunal is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

Remuneration

28. A member of the Tribunal is entitled to remuneration, allowances and expenses determined by the Governor.

Constitution of the Tribunal for the purpose of proceedings

29. (1) The Tribunal will, for the purpose of hearing and determining proceedings, be constituted of—

- (a) the presiding member; and
- (b) a member of the Tribunal who is a registered dentist; and
- (c) if the proceedings relate to a dental practitioner who is not a registered dentist—a member of the Tribunal who is a dental practitioner of the same class as that dental practitioner (a dental prosthetist and an advanced dental prosthetist are to be regarded as of the same class for the purposes of this paragraph); and
- (d) a member of the Tribunal who is not a dental practitioner.

(2) The members of the Tribunal referred to in subsection (1)(b), (c) and (d) will, for the purposes of any particular proceedings, be selected by the presiding member.

(3) If a member of the Tribunal (not being the presiding member) dies or is for any other reason unable to continue with any proceedings before the Tribunal, the Tribunal constituted of the remaining members may, if the presiding member so determines, continue and complete the proceedings.

(4) The Tribunal constituted of the presiding member may, sitting alone, deal with—

- (a) preliminary, interlocutory or procedural matters; or
- (b) questions of costs; or
- (c) questions of law,

and may, for that purpose or as a consequence, while sitting alone, make any determination or order (including a final order) that the presiding member considers appropriate.

(5) Any questions of law or procedure arising before the Tribunal will be determined by the presiding member and any other questions by unanimous or majority decision of the members.

**PART 4
REGISTRATION**

DIVISION 1—THE REGISTERS

The registers

30. (1) The Registrar must keep a separate register for each class of registered person under this Act.

(2) A register must include, in relation to each person on the register—

- (a) the person's full name, personal address and business address or registered address; and
- (b) the qualifications for registration held by the person; and
- (c) particulars of any condition or limitation that affects or restricts the person's right to provide dental treatment; and
- (d) information prescribed by the regulations,

and may include other information as the Board thinks fit.

(3) The Registrar must also keep a register of the names of persons whose names have been removed for any reason (whether under this Act or any other Act or law or former Act or law) from a register referred to in subsection (1) and have not been reinstated.

(4) The register referred to in subsection (3)—

- (a) must not include the name of any person who is dead;
- (b) must include, in relation to each person on the register, a statement of—
 - (i) the reason for removal of the person's name; and
 - (ii) the date of removal; and
 - (iii) in the case of removal consequent on suspension or disqualification—the duration of the suspension or disqualification;
- (c) must have deleted from it all information relating to any person whose name is reinstated on the appropriate register.

(5) The Registrar is responsible to the Board for the form and maintenance of the registers.

(6) A registered person must, within 3 months after changing his or her personal, business or registered address, inform the Registrar in writing of the change.

Maximum penalty: \$250.

(7) The Registrar may correct an entry in a register that is not, or has ceased to be, correct.

(8) The registers must be kept available for inspection, on payment of the prescribed fee, by members of the public during ordinary office hours at the office of the Registrar and may be made available to the public by electronic means.

(9) A member of the public may, on payment of the prescribed fee, obtain a copy of any part of a register kept under this Act.

(10) A certificate stating that a person was, or was not, registered on a particular register under this Act at a particular date or during a particular period and purporting to be signed by the Registrar will, in the absence of proof to the contrary, be accepted in legal proceedings as proof of the registration, or of the fact that the person was not registered, on the date or during the period stated in the certificate.

Authority conferred by registration on a register

31. Subject to any restrictions, limitations or conditions imposed by or under this Act—

- (a) registration on the register of dentists authorises the dentist to provide any kind of dental treatment;
- (b) registration on the register of specialists authorises the specialist to provide dental treatment in the prescribed branch of dentistry in respect of which he or she is so registered;
- (c) registration on the register of dental prosthetists authorises the prosthetist to provide dental treatment consisting of the fitting of, and taking impressions or measurements for the purposes of fitting, a denture to a jaw—
 - (i) in which there are no natural teeth or parts of natural teeth or implants; and
 - (ii) where the jaw, gums and proximate tissue are not abnormal, diseased or suffering from a surgical wound,and the manufacture of dental prostheses;
- (d) registration on the register of advanced dental prosthetists authorises the prosthetist to provide dental treatment consisting of the fitting of, and taking impressions or measurements for the purposes of fitting, a denture to a jaw—
 - (i) in which there are no implants; and
 - (ii) where the jaw, gums and proximate tissue are not abnormal, diseased or suffering from a surgical wound,and the manufacture of dental prostheses;
- (e) registration on the register of dental hygienists authorises the hygienist to provide dental treatment of the prescribed kind in prescribed circumstances;
- (f) registration on the register of dental therapists authorises the therapist to provide dental treatment of the prescribed kind in prescribed circumstances;
- (g) registration on the register of dental technicians authorises the technician to provide dental treatment consisting of the manufacture of dental prostheses;

- (h) registration on the register of dental students authorises the student to provide dental treatment of the prescribed kind in prescribed circumstances.

DIVISION 2—REGISTRATION

Registration of natural persons as dental practitioners

32. (1) Subject to this Act, a natural person is eligible for registration as a dental practitioner on the appropriate register if the person, on application to the Board, satisfies the Board that he or she—

- (a) has qualifications approved or recognised by the Board for the purposes of registration on the register to which the application relates; and
- (b) has met the requirements determined by the Board to be necessary for the purposes of registration on that register; and
- (c) is medically fit to provide the dental treatment authorised by registration on that register; and
- (d) is, unless exempted by the Board, insured in a manner and to an extent approved by the Board against civil liabilities that might be incurred by the person in the course of providing dental treatment; and
- (e) is a fit and proper person to be registered on that register.

(2) If a person who applies for registration, or reinstatement of registration, on a particular register—

- (a) does not, in the opinion of the Board, have the necessary qualifications or experience required for registration on that register; or
- (b) is not, in the opinion of the Board, medically fit to provide the dental treatment authorised by registration on that register; or
- (c) is not, in the opinion of the Board, a fit and proper person to be registered on that register,

the Board may register the person on that register in pursuance of this subsection ("**limited registration**")—

- (d) in order to enable the person—
 - (i) to do whatever is necessary to become eligible for full registration under this Act; or
 - (ii) to teach or to undertake research or study in this State; or
- (e) if, in its opinion, it would be in the public interest to do so.

(3) In registering a person under subsection (2) the Board may impose one or more of the following conditions on the registration:

- (a) a condition restricting the places or times at which the practitioner may provide dental treatment;
- (b) a condition limiting the kind of dental treatment that the practitioner may provide;
- (c) a condition limiting the period during which the registration will have effect;
- (d) a condition requiring that the practitioner be supervised in the provision of dental treatment by a particular person or by a person of a particular class;
- (e) such other conditions as the Board thinks fit.

Registration of companies

33. (1) This section applies only in relation to registration of a company as a dentist, advanced dental prosthetist, dental prosthetist or dental technician.

(2) Subject to this Act, a company is eligible to be registered on the appropriate register if, on application to the Board for registration on that register, the company satisfies the Board that—

- (a) the memorandum and articles of association of the company contain stipulations to the following effect:
 - (i) the sole object of the company is to provide dental treatment of a kind that registration on that register authorises; and
 - (ii) the directors of the company must be natural persons who are dental practitioners who are registered on that register (but where there are only 2 directors, one may be such a practitioner and the other may be a prescribed relative of that practitioner); and
 - (iii) no share issued by the company, and no right to participate in the distribution of the profits of the company, is to be owned beneficially otherwise than by a dental practitioner who is registered on that register and is a director or employee of the company, or by a prescribed relative of that practitioner; and
 - (iv) the total voting rights exercisable at a meeting of the members of the company must be held by dental practitioners who is registered on that register and are directors or employees of the company; and
 - (v) a director of the company must not, without the approval of the Board, be a director of any other company that is registered under this section; and
 - (vi) if the right of a practitioner and of his or her prescribed relatives to hold shares in the company ceases by virtue of that person ceasing to be a director or employee of the company, his or her shares and those of his prescribed relatives will be redeemed by the company, distributed among the remaining members of the company, or transferred to a practitioner who is to become a director or employee of the company, in accordance with the memorandum and articles of association of the company; and

(vii) the shares of a person who is a shareholder by virtue of being the spouse of a dental practitioner of the relevant class will—

(A) on dissolution or annulment of his or her marriage with that person; or

(B) in the case of a putative spouse—on cessation of cohabitation with that person,

be redeemed by the company, or distributed among the remaining members of the company, in accordance with the memorandum and articles of association of the company; and

(b) the memorandum and articles of association are otherwise appropriate to a company formed for the purpose of providing dental treatment of a kind that registration on that register authorises; and

(c) the company is, unless exempted by the Board, insured in a manner and to an extent approved by the Board against civil liabilities that might be incurred by the company in the course of providing dental treatment.

(3) If one or more of the stipulations required by this Act to be included in the memorandum and articles of association of a company registered under this Act are not complied with, the company must, within 14 days, report the non-compliance to the Board.

Maximum penalty: \$1 250.

(4) After receiving a report under subsection (3), the Board may give such directions as are necessary to secure compliance with those stipulations.

(5) The registration of a company that has received a direction from the Board under subsection (4) must, if the company has not satisfied the Board that it has complied with the direction, be suspended from the expiration of the time allowed by the Board for compliance with the direction and must remain suspended until the company satisfies the Board that it has complied with the direction.

(6) The Governor may, by proclamation, exempt a company from a requirement of this section.

(7) An exemption under subsection (6) may be subject to such conditions as the Governor thinks fit.

(8) The Governor may, by proclamation, vary or revoke a proclamation under this section.

Registration of dental students

34. (1) A person is not entitled to undertake a course of study that provides qualifications for registration as a dental practitioner under this Act (other than as a specialist or an advanced dental prosthetist) unless the person is registered under this section as a dental student.

(2) A person is eligible for registration as a dental student on the appropriate register if the person, on application to the Board, satisfies the Board that he or she—

- (a) genuinely requires registration on that register for the purpose of enabling the person to undertake a course of study that provides qualifications for registration as a dental practitioner under this Act (other than as a specialist or an advanced dental prosthetist); and
- (b) is medically fit to provide the dental treatment authorised by registration on that register; and
- (c) is a fit and proper person to be registered on that register.

(3) If a person who applies for registration, or reinstatement of registration, on the register of dental students is not, in the opinion of the Board, medically fit to provide the dental treatment that would be authorised by his or her registration on that register, the Board may register the person on that register in pursuance of this subsection ("**limited registration**") and impose one or more of the following conditions on the registration:

- (a) a condition limiting the kind of dental treatment that the person may provide;
- (b) a condition limiting the period during which the registration will have effect;
- (c) a condition requiring that the person be supervised in the provision of dental treatment by a particular person or by a person of a particular class;
- (d) such other conditions as the Board thinks fit.

Application for registration

35. (1) An application for registration must—

- (a) be made to the Board in the manner and form approved by the Board; and
- (b) be accompanied by the registration fee fixed under this Act.

(2) An applicant for registration must, if the Board so requires—

- (a) provide the Board with specified information to enable the Board to determine the application; and
- (b) verify, by statutory declaration, information furnished for the purposes of the application.

(3) The Board may require an applicant under this section—

- (a) to submit a medical report or other evidence acceptable to the Board as to the applicant's medical fitness to provide dental treatment of the kind authorised by registration on the register to which the application relates;
- (b) to obtain additional qualifications or experience specified by the Board before the Board determines the application.

(4) If it appears likely to the Registrar that the Board will grant an application for registration, the Registrar may provisionally register the applicant.

(5) Provisional registration remains in force until the Board determines the application.

(6) The registration by the Board under this Act of a person who was provisionally registered has effect from the commencement of the provisional registration.

Removal from register

36. (1) The Registrar must, on application by a registered person, remove the person's name from the register to which the application relates.

(2) The Registrar must remove from the appropriate register the name of a person—

- (a) who dies;
- (b) who ceases to hold a qualification required for registration on that register; or
- (c) who ceases for any other reason to be entitled to be registered on that register; or
- (d) who ceases to be enrolled in a course of study that provides qualifications for registration as a dental practitioner under this Act (other than as a specialist or an advanced dental prosthetist); or
- (e) whose registration on that register has been suspended or cancelled under this Act.

(3) The Registrar may act under subsection (2) without giving prior notice to the relevant person.

Reinstatement on register

37. (1) A person whose name has been removed from a register under this Act—

- (a) on his or her application; or
- (b) on account of failure to pay the annual practice fee or to furnish information required by the Board under section 38; or
- (c) on account of failure to pay a fine imposed on the person by the Board or Tribunal under this Act; or
- (d) on account of the person—
 - (i) ceasing to hold a qualification required for registration on that register or otherwise ceasing to be entitled to be registered on that register; or
 - (ii) ceasing to be enrolled in a course of study that provides qualifications for registration as a dental practitioner under this Act (other than as a specialist or an advanced dental prosthetist),

may apply to the Board at any time for the reinstatement of his or her name on the appropriate register.

(2) A person whose registration has been suspended may apply to the Board for the reinstatement of his or her name on the appropriate register (but not, in the case of an order for suspension for a specified period made in disciplinary proceedings, until after the expiry of that period).

(3) A person who has been disqualified from being registered under this Act may, subject to the terms of the order for disqualification, apply to the Board for reinstatement of the person's name on the appropriate register.

(4) An application for reinstatement must—

(a) be made to the Board in the manner and form approved by the Board; and

(b) be accompanied by the reinstatement fee fixed under this Act.

(5) An applicant for reinstatement must, if the Board so requires—

(a) provide the Board with specified information to enable the Board to determine the application; and

(b) verify, by statutory declaration, information furnished for the purposes of the application.

(6) The Board may require an applicant under this section—

(a) to submit a medical report or other evidence acceptable to the Board as to the applicant's medical fitness to provide dental treatment of the kind authorised by registration on the register to which the application relates;

(b) to obtain additional qualifications or experience specified by the Board before the Board determines the application.

(7) Subject to this section, the Board must reinstate on the appropriate register the name of an applicant under this section if satisfied that the applicant is eligible for registration on that register.

(8) The Board may refuse to reinstate the name of the applicant on the appropriate register until all complaints (if any) laid against the applicant under this Act have been finally disposed of.

(9) If a person's registration has been suspended by reason of his or her failure to reside in Australia, the Board may make the person's registration, after reinstatement, subject to such conditions relating to residence as the Board thinks fit.

Fees

38. (1) Subject to this Act, a person will not be registered, nor will a registration be reinstated, until the registration or reinstatement fee, and the annual practice fee, fixed under this Act have been paid.

(2) A registered person must, in each calendar year before the date fixed for that purpose by the Board, pay to the Board the annual practice fee fixed under this Act.

(3) The Board may, by notice in writing, require a registered person to furnish the Board, when paying his or her annual practice fee, with specified information relating to the provision of dental treatment, or the undertaking of any course of continuing dental education, by the person during the preceding year or any other matter relevant to the person's registration under this Act.

(4) The Board may, without further notice, remove from the appropriate register the name of a person who fails to pay the annual practice fee or furnish the required information by the due date.

DIVISION 3—SPECIAL OBLIGATIONS OF COMPANY PRACTITIONERS

Returns by companies

39. A company registered as a dental practitioner under this Act must, on or before 31 July in each year, lodge with the Board a return in the prescribed form setting out—

- (a) the full name and usual residential address of every person who, on the preceding 30 June—
 - (i) was a director or a member of the company; or
 - (ii) had a right to participate in the distribution of the profits of the company; and
- (b) the number of shares in the company held by a person referred to in paragraph (a) and the number of votes that he or she is entitled to cast at a meeting of members of the company; and
- (c) in relation to each member of the company—the qualification by virtue of which he or she is entitled to be a member of the company; and
- (d) such other information as is prescribed.

Maximum penalty: \$2 500.

Notice of appointment of directors, etc.

40. A company registered under this Act must, within one month after a person becomes or ceases to be a director or member of the company, lodge with the Board a notice stating the full name and usual residential address of that person and the fact that he or she has become or ceased to be a director or member of the company.

Maximum penalty: \$2 500.

Alterations to memorandum or articles of association of registered company

41. A company registered under this Act must not alter its memorandum or articles of association unless the proposed alteration has been submitted to and approved by the Board.

Maximum penalty: \$1 250.

DIVISION 4—RESTRICTIONS RELATING TO THE PROVISION OF DENTAL TREATMENT**Illegal holding out as registered person**

42. (1) A person must not hold himself or herself out as a registered person of a particular class or permit another person to do so unless registered on the appropriate register.

Maximum penalty: \$50 000 or imprisonment for 6 months.

(2) A person must not hold out another as a registered person of a particular class unless the other person is registered on the appropriate register.

Maximum penalty: \$50 000 or imprisonment for 6 months.

Illegal holding out concerning restrictions or conditions

43. (1) A person whose registration is restricted or subject to a limitation or condition under this Act must not hold himself or herself out as having a registration that is unrestricted or not subject to a limitation or condition or permit another person to do so.

Maximum penalty: \$50 000 or imprisonment for 6 months.

(2) A person must not hold out another whose registration is restricted or subject to a limitation or condition under this Act as having a registration that is unrestricted or not subject to a limitation or condition.

Maximum penalty: \$50 000 or imprisonment for 6 months.

Use of certain titles or descriptions prohibited

44. (1) A person who is not registered on the appropriate register must not use a prescribed word, or its derivatives, to describe himself or herself or a service that he or she provides.

Maximum penalty: \$50 000.

(2) A person who is not registered on the register of advanced dental prosthetists or the register of dental prosthetists must not use the expression "clinical dental technician" or its derivatives to describe himself or herself or a service that he or she provides.

Maximum penalty: \$50 000.

(3) A person must not, in the course of advertising or promoting a dental treatment service that he or she provides, use a prescribed word, or its derivatives, to describe a person who is engaged in the provision of the service but is not registered on the appropriate register.

Maximum penalty: \$50 000.

(4) A person must not, in the course of advertising or promoting a dental treatment service that he or she provides, use the expression "clinical dental technician" or its derivatives, to describe a person who is engaged in the provision of the service but is not registered on the register of advanced dental prosthetists or register of dental prosthetists.

Maximum penalty: \$50 000.

Restriction on provision of dental treatment by unqualified persons

45. (1) A person must not provide dental treatment for fee or reward unless—

- (a) the person is a qualified person; and
- (b) —
 - (i) in the case of a natural person—he or she provides the treatment personally; or
 - (ii) in any other case—the treatment is personally provided by a natural person who is a qualified person.

Maximum penalty: \$50 000 or imprisonment for 6 months.

(2) Subsection (1) does not apply in relation to—

- (a) dental treatment provided by a qualified person through the instrumentality of another qualified person; or
- (b) dental treatment provided by an unqualified person through the instrumentality of a qualified person in prescribed circumstances.

(3) The Governor may, by proclamation, exempt a person from subsection (1) if of the opinion that good reason exists for doing so in the particular circumstances of the case.

(4) An exemption under subsection (3) may be subject to such conditions as the Governor thinks fit.

(5) A person who contravenes, or fails to comply with, a condition of an exemption under this section is guilty of an offence.

Maximum penalty: \$50 000.

(6) The Governor may, by proclamation, vary or revoke a proclamation under this section.

(7) In this section—

"qualified person", in relation to dental treatment, means a person authorised by or under this Act or any other Act to provide that treatment.

Board's approval required where dental practitioner or dental student has not practised for 5 years

46. (1) A dental practitioner or dental student who has not provided dental treatment of the kind authorised by his or her registration for a period of 5 years or more must not provide any such dental treatment without first obtaining the approval of the Board.

Maximum penalty: \$20 000.

(2) The Board—

- (a) may, before granting its approval under subsection (1), require the applicant to obtain qualifications or experience specified by the Board and for that purpose may require the applicant to undertake a specified course of instruction and training in dentistry; and

- (b) may impose one or more of the following conditions on the applicant's registration:
- (i) a condition restricting the places and times at which the applicant may provide dental treatment;
 - (ii) a condition limiting the kind of dental treatment that the applicant may provide;
 - (iii) a condition limiting the period during which the registration will have effect;
 - (iv) a condition requiring that the applicant be supervised in the provision of dental treatment by a particular person or by a person of a particular class;
 - (v) such other conditions as the Board thinks fit.

Companies not to practise in partnership

47. A company registered under this Act must not practise as a dental practitioner in partnership with any other person unless it has been authorised to do so by the Board.

Maximum penalty: \$1 250.

Employment of registered persons by company

48. (1) A company registered under this Act as a dental practitioner of a particular class must not, for the purpose of its dental practice, employ a number of dental practitioners of that class greater than twice the number of directors of the company.

Maximum penalty: \$1 250.

(2) In determining the number of dental practitioners in the employment of a company for the purposes of subsection (1), persons who are both employees and directors of the company must be disregarded.

PART 5
INVESTIGATIONS AND PROCEEDINGS

DIVISION 1—PRELIMINARY

Interpretation

49. In this Part, a reference to "registered person" includes a reference to a person who was, at the relevant time, a registered person under this Act or the repealed Act.

Cause for disciplinary action

50. There is proper cause for disciplinary action against a registered person if—

- (a) the person's registration was improperly obtained; or
- (b) the person is for any reason no longer a fit and proper person to be registered on the appropriate register; or
- (c) the person is guilty of unprofessional conduct; or
- (d) in the case of a company that is a dental practitioner, a director or former director of the company is guilty of unprofessional conduct.

DIVISION 2—INVESTIGATIONS

Powers of inspectors

51. (1) If there are reasonable grounds for suspecting—

- (a) that there is proper cause for disciplinary action against a registered person; or
- (b) that a dental practitioner or dental student is medically unfit to provide dental treatment of a particular kind; or
- (c) that a person other than a registered person is guilty of an offence against this Act,

an inspector may investigate the matter.

(2) For the purposes of an investigation, an inspector may—

- (a) at any reasonable time, enter and inspect premises of a registered person or premises on which the inspector reasonably suspects an offence against this Act has been or is being committed; or
- (b) with the authority of a warrant issued by a magistrate or in circumstances in which the inspector reasonably believes that immediate action is required, use reasonable force to break into or open any part of, or anything in or on, any premises referred to in paragraph (a); or
- (c) while on premises entered under paragraph (a) or (b), seize and retain anything found on the premises that the inspector reasonably believes may afford evidence relevant to the matters under investigation; or
- (d) require any person who has possession of records or documents relevant to the matters under investigation to produce those records or documents for inspection; or

- (e) inspect any records or documents produced to the inspector and retain them for such reasonable period as the inspector thinks fit, and make copies of the records or documents; or
- (f) require any person who is in a position to provide information relevant to the matters under investigation to answer any question put by the inspector in relation to those matters; or
- (g) take photographs, films or video or audio recordings; or
- (h) if the inspector reasonably suspects that an offence against this Act has been or is being committed, require the suspected offender to state his or her full name and address.

(3) An inspector must not exercise the power conferred by subsection (2)(a) in relation to any residential premises except with the permission of the occupier of the premises or on the authority of a warrant issued by a magistrate.

(4) A magistrate must not issue a warrant under this section unless satisfied, by information given on oath, that the warrant is reasonably required in the circumstances.

(5) The person in charge of premises at the relevant time must give an inspector such assistance and provide such facilities as are necessary to enable the powers conferred by this section to be exercised.

Maximum penalty: \$5 000.

Offence to hinder, etc., inspector

52. A person who—

- (a) hinders or obstructs an inspector in the exercise of powers conferred by this Act; or
- (b) uses abusive, threatening or insulting language to an inspector; or
- (c) refuses or fails to comply with a requirement of an inspector under this Act; or
- (d) when required by an inspector to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or
- (e) falsely represents, by words or conduct, that he or she is an inspector,

is guilty of an offence.

Maximum penalty: \$10 000.

Offences by inspectors

53. An inspector who, in the course of exercising powers under this Act—

- (a) addresses offensive language to another person; or
- (b) without lawful authority, hinders or obstructs or uses or threatens to use force in relation to another person,

is guilty of an offence.

Maximum penalty: \$10 000.

DIVISION 3—PROCEEDINGS BEFORE THE BOARD**Obligation to report medical unfitness of dental practitioner or dental student**

54. (1) If a medical practitioner is treating a patient who is a dental practitioner or dental student and the medical practitioner diagnoses that the practitioner or student has a prescribed communicable infection, the medical practitioner must submit a written report of the diagnosis to the Board.

Maximum penalty: \$10 000.

(2) If any of the following persons, namely—

- (a) a health professional who has treated, or is treating, a patient who is a dental practitioner or dental student; or
- (b) a person (including a hospital) who provides dental treatment through the instrumentality of a dental practitioner or dental student; or
- (c) the person in charge of an educational institution in which a dental student is enrolled in a course of study that provides qualifications for registration as a dental practitioner under this Act (other than as a specialist or an advanced dental prosthetist),

is of the opinion that the practitioner or student is or may be medically unfit to provide dental treatment, the person must submit a written report to the Board setting out his or her reasons for that opinion and any other information required by the regulations.

Maximum penalty: \$10 000.

(3) The Board must cause a report made under this section to be investigated.

Medical fitness of dental practitioner or dental student

55. If—

- (a) on the application of—
 - (i) the Registrar; or
 - (ii) the Minister; or
 - (iii) an association that represents the interests of any class of dental practitioner; or

(b) after an investigation under section 54 has been conducted,

the Board is, after due inquiry, satisfied that a dental practitioner or dental student is medically unfit to provide dental treatment and that it is desirable in the public interest that an order be made under this section, the Board may, by order—

- (c) suspend the person's registration until further order of the Board or for a period determined by the Board; or
- (d) impose conditions restricting the person's right to provide dental treatment; or
- (e) impose conditions requiring the person to undergo counselling or treatment or to enter into any other undertaking.

Inquiries by Board as to matters constituting grounds for disciplinary action

56. (1) A complaint setting out matters that are alleged to constitute grounds for disciplinary action against a registered person may be laid before the Board by—

- (a) the Registrar; or
- (b) the Minister; or
- (c) an association that represents the interests of any class of dental practitioner; or
- (d) a person who is aggrieved by conduct of the registered person or, if the person aggrieved is a child or is suffering from a mental or physical incapacity, by a person acting on his or her behalf.

(2) If a complaint is laid under this section the Board must inquire into the subject matter of the complaint unless the Board—

- (a) considers that the complaint is frivolous or vexatious; or
- (b) lays a complaint before the Tribunal relating to matters the subject of, or arising out of, the complaint laid before the Board.

(3) If a complaint has been laid under this section by or on behalf of an aggrieved person and the Board is satisfied that the complaint arose from a misapprehension on the part of the complainant or from a misunderstanding between the parties, it may, before proceeding further with the hearing of the complaint, require the parties to attend before the Registrar in order to clarify the misapprehension or misunderstanding.

(4) If, in the course of conducting an inquiry under this section, the Board considers that the allegations or evidence against the respondent are sufficiently serious, it may terminate the proceedings under this section and itself lay a complaint against the respondent before the Tribunal in relation to those allegations or that evidence.

(5) If, after conducting an inquiry under this section, the Board is satisfied on the balance of probabilities that there is proper cause for taking disciplinary action against the respondent and the respondent consents to the Board exercising its powers under this subsection, the Board may, by order, do one or more of the following:

- (a) censure the respondent;
- (b) require the respondent to pay to the Board a fine not exceeding \$5 000;
- (c) impose conditions restricting the respondent's right to provide dental treatment;
- (d) suspend the respondent's registration for a period not exceeding 1 month.

(6) However, if the respondent does not consent to the Board exercising its powers under subsection (5), the Board must terminate the proceedings under this section and lay a complaint against the respondent before the Tribunal in respect of the matter.

(7) If—

- (a) a person has been found guilty of an offence; and
- (b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

the person is not liable to a fine under this section in respect of conduct giving rise to the offence.

(8) A fine imposed under subsection (5) is recoverable by the Board as a debt.

(9) The Board may, without further notice, remove from the appropriate register the name of a person who fails to pay a fine imposed under this section.

Variation or revocation of conditions imposed by Board

57. (1) The Board may, at any time, on application by a registered person, vary or revoke a condition imposed by the Board in relation to his or her registration under this Act.

(2) The Registrar, the Minister and any association that represents the interests of any class of dental practitioner are entitled to appear and be heard on an application under this section.

Suspension of registration of non-residents

58. The Board may, on the application of the Registrar, suspend until further order of the Board, the registration of a dental practitioner if satisfied that he or she has not resided in Australia for the period of 12 months immediately preceding the application.

Provisions as to proceedings before the Board under this Part

59. (1) The Board will, for the purpose of hearing and determining proceedings under this Part, be constituted of 5 or more members, selected by the presiding member (or, in the absence of the presiding member, the deputy presiding member), of whom—

- (a) at least 2 will be members who are registered dentists;
- (b) if the proceedings relate to a dental practitioner who is not a registered dentist—1 will be a member who is a dental practitioner of the same class as that dental practitioner (a dental prosthetist and an advanced dental prosthetist are to be regarded as of the same class for the purposes of this paragraph);
- (c) at least 1 will be a member who is not a dental practitioner or legal practitioner.

(2) The presiding member (or, in the absence of the presiding member, the deputy presiding member) of the Board will appoint one of the members of the Board, as so constituted for the purposes of any particular proceedings, to preside over those proceedings.

(3) If a member of the Board as constituted under this section (other than the member presiding over the proceedings) dies or is for any other reason unable to continue with the proceedings, the Board constituted of the remaining members may, if the member presiding over the proceedings so determines, continue and complete the proceedings.

(4) The person presiding over any particular proceedings may, sitting alone, deal with—

- (a) preliminary, interlocutory or procedural matters; or
- (b) questions of costs; or
- (c) questions of law,

and may, for that purpose or as a consequence, while sitting alone, make any determination or order (including a final order) that the person considers appropriate.

(5) Any questions of law or procedure arising before the Board will be determined by the member presiding over the proceedings and any other questions by unanimous or majority decision of the members.

(6) Subject to this Act, the Board must give to all of the parties to proceedings under this Part at least 14 days' written notice of the time and place at which it intends to conduct the proceedings, and must afford to the parties a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Board.

(7) However—

- (a) the Board may, if it thinks special reasons exist for doing so, give a lesser period of written notice under subsection (6); and
- (b) the Board may, if of the opinion that it is necessary to do so to protect the health and safety of the public, suspend the registration of the person the subject of the proceedings pending hearing and determination of the proceedings.

(8) The requirement to give written notice under subsection (6) does not extend to adjournments.

(9) If a party to whom notice has been given pursuant to subsection (6) does not attend at the time and place fixed by the notice, the Board may proceed to hear and determine the matter in the absence of that party.

(10) In the course of proceedings the Board may—

- (a) receive in evidence a transcript of evidence taken in proceedings before a court, tribunal or other body constituted under the law of South Australia or of any other State or of another country, and draw any conclusions of fact from the evidence that it considers proper;

- (b) adopt, as in its discretion it considers proper, any findings, decision, judgment, or reasons for judgment, of any such court, tribunal or body that may be relevant to the proceedings.

(11) The Board should conduct proceedings under this Part as expeditiously as possible.

DIVISION 4—PROCEEDINGS BEFORE THE TRIBUNAL

Inquiries by Tribunal as to matters constituting grounds for disciplinary action

60. (1) If the Board lays before the Tribunal a complaint setting out matters that are alleged to constitute grounds for disciplinary action against a person, the Tribunal must, unless it considers the complaint frivolous or vexatious, inquire into the subject matter of the complaint.

(2) If, after conducting an inquiry under this section, the Tribunal is satisfied on the balance of probabilities that there is proper cause for taking disciplinary action against the respondent, the Tribunal may, by order, do one or more of the following:

- (a) censure the respondent;
- (b) require the respondent to pay to the Board a fine not exceeding \$20 000;
- (c) impose conditions restricting the respondent's right to provide dental treatment;
- (d) suspend the respondent's registration on a specified register for a period not exceeding 1 year;
- (e) cancel the respondent's registration on a specified register;
- (f) disqualify the respondent from being registered on a specified register.

(3) The Tribunal may—

- (a) stipulate that a disqualification under subsection (2) is to apply—
 - (i) permanently; or
 - (ii) for a specified period; or
 - (iii) until the fulfilment of specified conditions; or
 - (iv) until further order;
- (b) stipulate that an order relating to a person is to have effect at a specified future time and impose conditions as to the conduct of the person or the person's business until that time.

(4) If a person contravenes or fails to comply with a condition imposed by the Tribunal as to the conduct of the person or the person's business, the person is guilty of an offence.

Maximum penalty: \$75 000 or imprisonment for 6 months.

(5) If—

- (a) a person has been found guilty of an offence; and
- (b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

the person is not liable to a fine under this section in respect of conduct giving rise to the offence.

(6) A fine imposed under subsection (2) is recoverable by the Board as a debt.

(7) The Board may, without further notice, remove from the appropriate register the name of a person who fails to pay a fine imposed under this section.

Variation or revocation of conditions imposed by Tribunal

61. (1) The Tribunal may, at any time, on application by a registered person, vary or revoke a condition imposed by the Tribunal in relation to the person's registration under this Act.

(2) The Board is entitled to appear and be heard on an application under this section.

Provisions as to proceedings before the Tribunal

62. (1) Subject to this Act, the Tribunal must give to all of the parties to proceedings under this Division at least 14 days' written notice of the time and place at which it intends to conduct the proceedings, and must afford to the parties a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Tribunal.

(2) However—

- (a) the Tribunal may, if it thinks special reasons exist for doing so, give a lesser period of written notice under subsection (1); and
- (b) the Tribunal may, if of the opinion that it is necessary to do so to protect the health and safety of the public, suspend the registration of the person the subject of the proceedings pending hearing and determination of the proceedings.

(3) The requirement to give written notice under subsection (1) does not extend to adjournments.

(4) If a party to whom notice has been given pursuant to subsection (1) does not attend at the time and place fixed by the notice, the Tribunal may proceed to hear and determine the matter in the absence of that party.

(5) A party to proceedings before the Tribunal is entitled to be represented at the proceedings.

(6) The Tribunal—

- (a) is not bound by the rules of evidence and may inform itself on any matter as it thinks fit; and
- (b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

(7) Subject to this Act, the procedure at an inquiry will be as determined by the Tribunal.

Powers of Tribunal

63. (1) For the purposes of an inquiry under this Division, the Tribunal may—

- (a) by summons signed on behalf of the Tribunal by a member of the Tribunal, require the attendance before the Tribunal of any person whom the Tribunal thinks fit to call before it; or
- (b) by summons signed on behalf of the Tribunal by a member of the Tribunal, require the production of any relevant records, documents or equipment and, in the case of a document or record that is not in the English language, require the production of a written statement in the English language of the contents of the document or record; or
- (c) inspect any documents, records or equipment produced before it, and retain them for such reasonable period as it thinks fit, and make copies of the documents or records or their contents; or
- (d) require any person to make an oath or affirmation (which may be administered by any member of the Tribunal) to answer truthfully questions put by any member of the Tribunal or any person appearing before the Tribunal; or
- (e) require any person appearing before the Tribunal (whether summoned to appear or not) to answer any questions put by any member of the Tribunal or by any person appearing before the Tribunal.

(2) A person who—

- (a) fails without reasonable excuse to comply with a summons issued to attend, or to produce documents, records or equipment, before the Tribunal; or
- (b) having been served with a summons to produce a written statement of the contents of a document or record in the English language fails, without reasonable excuse, to comply with the summons or produces a statement that he or she knows, or ought to know, is false or misleading in a material particular; or
- (c) misbehaves before the Tribunal, wilfully insults the Tribunal or one or more of the members in the exercise of the member's official duties, or interrupts the proceedings of the Tribunal;
- (d) refuses to be sworn or to affirm, or refuses or fails to answer truthfully a relevant question when required to do so by the Tribunal,

is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 6 months.

(3) A person who appears as a witness before the Tribunal has the same protection as a witness in proceedings before the Supreme Court.

(4) If a person summoned under subsection (1) fails to produce any books or equipment or to appear before the Tribunal as required by the summons or, having appeared, refuses to be sworn or to affirm, or to answer a relevant question when required to do so by the Tribunal, a certificate of the failure or refusal, signed by a member of the Tribunal, may be filed in the Supreme Court.

(5) If a certificate has been filed under subsection (4), a party requiring the production of books or equipment or the appearance of a person before the Tribunal may apply (either *ex parte* or on notice) to the Supreme Court for an order directing the production of the books or equipment or that that person attend, or be sworn or affirm, or answer questions (as the case may require) and on that application the Court may make such orders as it thinks fit (including orders for costs).

(6) In the course of an inquiry under this Division, the Tribunal may—

- (a) receive in evidence a transcript of evidence taken in proceedings before a court, tribunal or other body constituted under the law of South Australia or of any other State or Territory of Australia or of another country, and draw any conclusions of fact from the evidence that it considers proper;
- (b) adopt, as in its discretion it considers proper, any findings, decision, judgment, or reasons for judgment, of any such court, tribunal or body that may be relevant to the proceedings.

Costs

64. (1) The Tribunal may award such costs against a party to proceedings before the Tribunal as the Tribunal considers just and reasonable.

(2) A party who is dissatisfied with the amount of the costs fixed by the Tribunal may request a master of the Supreme Court to tax the costs and, after taxing the costs, the master may confirm or vary the amount of the costs fixed by the Tribunal.

(3) Subject to this section, costs awarded by the Tribunal under this section may be recovered as a debt.

Power of Tribunal to make rules

65. The Tribunal may make rules—

- (a) regulating the practice and procedure of the Tribunal; or
- (b) making any other provision that is necessary or expedient for carrying into effect the provisions of this Division relating to the Tribunal.

**PART 6
APPEALS**

Right of appeal to Supreme Court

66. (1) An appeal lies to the Supreme Court against—

- (a)* a refusal by the Board to register, or reinstate the registration of, a person under this Act; or
- (b)* the imposition by the Board of conditions in respect of the registration of a person under this Act; or
- (c)* a decision made by the Board or Tribunal in proceedings under Part 5.

(2) An appeal under subsection (1)(c) against a decision may be instituted by the complainant or the respondent in the proceedings in which the decision was made.

(3) An appeal must be instituted within one month of the date of the decision appealed against but the Court may, if satisfied that it is just and reasonable in the circumstances to do so, extend that period (whether or not it has already expired).

(4) The Court must, on an appeal under this section, examine the decision of the original decision-maker on the evidence or material before the original decision-maker but the Court may, as it thinks fit, allow further evidence or material to be presented to it.

(5) The Court, on an appeal under this section—

- (a)* is not bound by the rules of evidence but may inform itself as it thinks fit; and
- (b)* must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; and
- (c)* must give due weight to the decision being appealed against and the reasons for it and not depart from the decision except for cogent reasons.

(6) The Court may, after hearing an appeal under this section—

- (a)* affirm the decision appealed against;
- (b)* rescind the decision and substitute a decision that the Court considers appropriate;
- (c)* remit matters to the original decision-maker for consideration or further consideration in accordance with any directions or recommendations of the Court;
- (d)* make any order as to costs or as to any other matter that the case requires.

Operation of order may be suspended

67. (1) Where an order has been made by the Board or the Tribunal, and the Board or the Tribunal (as the case may be) or the Supreme Court is satisfied that an appeal against the order has been instituted, or is intended, it may suspend the operation of the order until the determination of the appeal.

(2) Where the Board or the Tribunal has suspended the operation of an order under subsection (1), the Board or the Tribunal (as the case may be) may terminate the suspension, and where the Supreme Court has done so, the Court may terminate the suspension.

Variation or revocation of conditions imposed by Court

68. (1) The Supreme Court may, at any time, on application by a registered person, vary or revoke a condition imposed by the Court in relation to the person's registration under this Act.

(2) The Board, the Minister and any association that represents the interests of any class of dental practitioner are entitled to appear and be heard on an application under this section.

PART 7
MISCELLANEOUS

Interpretation

69. (1) In this Part—

"**beneficiary**" includes an object of a discretionary trust;

"**health product**" means—

- (a) a pharmaceutical product; or
- (b) any other product declared by the regulations to be a health product for the purposes of this Part;

"**health service**" means—

- (a) hospital services; or
- (b) medical, dental or pharmaceutical services; or
- (c) any other service declared by the regulations to be a health service for the purposes of this Part;

"**trust**"—a trust is considered for the purposes of this Part as a single entity consisting of the trustees and the beneficiaries;

"**trust or corporate entity**" means a trust or a body corporate.

(2) For the purposes of this Part, a person occupies a position of authority in a trust or corporate entity if the person—

- (a) in the case of a body corporate—
 - (i) is a director of the body corporate; or
 - (ii) exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs; or
 - (iii) manages, or is to manage, the business of the body corporate that consists of the provision of dental treatment; or
 - (iv) where the body corporate is a proprietary company—is a shareholder in the body corporate; or
- (b) in the case of a trust—is a trustee or beneficiary of the trust.

(3) However—

- (a) a minor who is a shareholder in a proprietary company, or a beneficiary under a trust, is not, for that reason, to be regarded as a person occupying a position of authority; and

(b) a charitable organisation that is a beneficiary of a trust is not, for that reason, to be regarded as occupying a position of authority in the trust.

(4) For the purposes of this Part, a person who holds more than 10 per cent of the issued share capital of a public company will be regarded as a person occupying a position of authority in that company.

Improper directions to dental practitioners or dental students

70. (1) If a person who provides dental treatment through the instrumentality of a dental practitioner or dental student directs or pressures the practitioner or student to act unlawfully, improperly, negligently or unfairly in relation to the provision of dental treatment, the person is guilty of an offence.

Maximum penalty: \$75 000.

(2) If a person who occupies a position of authority in a trust or corporate entity that provides dental treatment through the instrumentality of a dental practitioner or dental student directs or pressures the practitioner or student to act unlawfully, improperly, negligently or unfairly in relation to the provision of dental treatment, the person and the entity are each guilty of an offence.

Maximum penalty: \$75 000.

Offence to contravene conditions of registration

71. A person who contravenes, or fails to comply with, a condition imposed by or under this Act in relation to his or her registration under this Act is guilty of an offence.

Maximum penalty: \$75 000 or imprisonment for 6 months.

Offence to give, offer or accept benefit for referral or recommendation

72. (1) A person must not give, or offer to give, a dental practitioner or a prescribed relative of a dental practitioner a benefit as an inducement, consideration or reward for the dental practitioner—

- (a) referring a patient to, or recommending that a patient use, a health service provided by the person; or
- (b) prescribing, or recommending that a patient use, a health product manufactured, sold or supplied by the person.

Maximum penalty: \$75 000.

(2) A dental practitioner or a prescribed relative of a dental practitioner must not accept from any person a benefit offered or given as an inducement, consideration or reward for the dental practitioner—

- (a) referring a patient to, or recommending that a patient use, a health service provided by that person; or
- (b) prescribing, or recommending that a patient use, a health product manufactured, sold or supplied by that person.

Maximum penalty: \$75 000.

(3) In this section—

"benefit" means money or any property that has a monetary value.

Procurement of registration by fraud

73. A person who, by fraud or any other dishonest means, procures registration or reinstatement of registration under this Act (whether for himself or herself or for another person) is guilty of an offence.

Maximum penalty: \$20 000 or imprisonment for 6 months.

False or misleading statement

74. A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Act.

Maximum penalty: \$20 000.

Dental practitioner, etc., must declare interest in prescribed business

75. (1) A dental practitioner or prescribed relative of a dental practitioner who has an interest in a prescribed business must—

- (a) in the case of an interest that came into existence before the commencement of this section—within 1 month after the commencement of this section; or
- (b) in any other case—within 1 month after the interest comes into existence,

give to the Board prescribed information relating to the interest and the manner in which it arose.

Maximum penalty: \$20 000.

(2) A dental practitioner or prescribed relative of a dental practitioner who has an interest in a prescribed business must, within 1 month after a change in the nature or extent of the interest, give to the Board prescribed information relating to the change.

Maximum penalty: \$20 000.

(3) If a dental practitioner or prescribed relative of a dental practitioner has an interest in a prescribed business, the dental practitioner must not—

- (a) refer a patient to, or recommend that a patient use, a health service provided by that business; or
- (b) prescribe, or recommend that a patient use, a health product manufactured, sold or supplied by that business,

unless the dental practitioner has informed the patient, in writing, of the interest of the practitioner or prescribed relative of the practitioner in that business.

Maximum penalty: \$20 000.

(4) Subject to subsection (5), a person has an interest in a prescribed business for the purposes of this section if the person is likely to derive a financial benefit, whether directly or indirectly, from the profitable conduct of the business.

(5) For the purposes of subsection (4)—

- (a) a financial benefit is not derived by a dental practitioner if the benefit consists solely of reasonable fees or charges payable to the dental practitioner for dental treatment provided to patients by the practitioner; and
- (b) a person does not have an interest in a prescribed business that is carried on by a public company if the interest consists only of a shareholding in the company of less than 5 per cent of the issued share capital of the company.

(6) It is a defence to proceedings for an offence against subsection (3) and to a charge of unprofessional conduct for failure to comply with that subsection for the defendant to prove that he or she did not know and could not reasonably have been expected to know that a prescribed relative had an interest in the prescribed business to which the referral, recommendation or prescription that is the subject of the proceedings relates.

(7) In this section—

"prescribed business" means a business consisting of or involving—

- (a) the provision of a health service; or
- (b) the manufacture, sale or supply of a health product.

Dental practitioner or dental student must report his or her infection to Board

76. If a dental practitioner or dental student becomes aware that he or she has a prescribed communicable infection, the practitioner or student must forthwith give written notice of that fact to the Board.

Maximum penalty: \$10 000.

Dental School must report cessation of a student's enrolment

77. The person in charge of an educational institution must, if a dental student ceases to be enrolled at that institution in a course of study providing qualifications for registration as a dental practitioner under this Act (other than as a specialist or an advanced dental prosthetist), cause written notice of that fact to be given to the Board.

Maximum penalty: \$5 000.

Dental practitioners to be indemnified against loss

78. (1) A dental practitioner must not provide dental treatment for fee or reward unless insured in a manner and to an extent approved by the Board against civil liabilities that might be incurred by him or her in the course of providing any such treatment.

Maximum penalty: \$10 000.

(2) The Board may, subject to such conditions as it thinks fit, exempt a person, or a class of persons, from the requirements of this section and may, whenever it thinks fit, revoke an exemption or revoke or vary the conditions under which an exemption operates.

Information relating to claim against registered person to be provided

79. If a person has claimed damages or other compensation from a registered person or other person for alleged negligence committed by the registered person in the course of providing dental treatment, the registered person must—

- (a) within 30 days after the claim is made; and
- (b) within 30 days after any order is made by a court to pay damages or other compensation in respect of that claim or any agreement has been entered into for payment of a sum of money in settlement of that claim (whether with or without a denial of liability),

provide the Board with prescribed information relating to the claim.

Maximum penalty: \$10 000.

Victimisation

80. (1) A person commits an act of victimisation against another person ("the victim") if he or she causes detriment to the victim on the ground, or substantially on the ground, that the victim—

- (a) has disclosed or intends to disclose information; or
- (b) has made or intends to make an allegation,

that has given rise, or could give rise, to proceedings against the person under this Act.

(2) An act of victimisation under this Act may be dealt with—

- (a) as a tort; or
- (b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*,

but, if the victim commences proceedings in a court seeking a remedy in tort, he or she cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* and, conversely, if the victim lodges a complaint under that Act, he or she cannot subsequently commence proceedings in a court seeking a remedy in tort.

(3) Where a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.

(4) In this section—

"detriment" includes—

- (a) injury, damage or loss; or
- (b) intimidation or harassment; or
- (c) discrimination, disadvantage or adverse treatment in relation to the victim's employment or business; or

- (d) threats of reprisal.

Self-incrimination and legal professional privilege

81. (1) It is not an excuse for a person to refuse or fail to answer a question or to produce a document as required under this Act on the ground that to do so might tend to incriminate the person, or make the person liable to a penalty, or on the ground of legal professional privilege.

(2) If a person objects to answering a question or to producing a document on the ground that the answer or document might tend to incriminate the person or make the person liable to a penalty, then—

- (a) in the case of a person who is required to produce a document—the fact of production of the document (as distinct from the contents of the document); or

- (b) in any other case—the information furnished in compliance with the requirement,

is not admissible in evidence against the person in proceedings (other than proceedings in respect of the making of a false or misleading statement or perjury) in which the person might be found guilty of an offence or liable to a penalty.

(3) If a person objects to answering a question or to producing a document on the ground of legal professional privilege, the answer or document will not be admissible in civil or criminal proceedings against the person who would, but for this section, have the benefit of the legal professional privilege.

Punishment of conduct that constitutes an offence

82. If conduct constitutes an offence and is also a ground for disciplinary action under this Act, the taking of disciplinary action under this Act is not a bar to conviction and punishment for the offence, nor is conviction and punishment for the offence a bar to disciplinary action under this Act.

Vicarious liability for offences

83. If a trust or corporate entity is guilty of an offence against this Act, each person occupying a position of authority in the entity is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the person could not, by the exercise of reasonable care, have prevented the commission of the offence by the entity.

Joint and several liability of companies

84. A civil liability incurred by a company registered as a dental practitioner under this Act is enforceable jointly and severally against the company and the persons who were directors of the company at the time the liability was incurred.

Board may require medical examination or report

85. (1) The Board may, for any purpose associated with the administration or operation of this Act, require a dental practitioner or dental student, or a person who is applying for registration or reinstatement of registration as a dental practitioner or dental student to—

- (a) submit to an examination by a health professional, or by a health professional of a class, specified by the Board; or

- (b) provide a medical report from a health professional, or from a health professional of a class, specified by the Board,

(including an examination or report that will require the person to undergo some form of medically invasive procedure).

(2) If a person fails to comply with a requirement made under subsection (1), the Board may suspend the person's registration until further order of the Board.

Ministerial review of decisions relating to courses

86. (1) If the Board—

- (a) refuses to approve a course of education or training for the purposes of this Act; or
- (b) revokes an approval of a course of education or training under this Act,

the provider of the course may apply to the Minister for a review of that decision.

(2) The Minister may determine the application as the Minister thinks fit and, if the Minister finds in favour of the applicant, grant or preserve the approval (as appropriate).

Confidentiality

87. (1) A person engaged or formerly engaged in the administration of this Act or the repealed Act must not divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—

- (a) as required or authorised by or under this Act or any other Act or law; or
- (b) with the consent of the person to whom the information relates; or
- (c) in connection with the administration of this Act or the repealed Act; or
- (d) in accordance with a request of an authority responsible under the law of a place outside this State for the registration or licensing of persons who provide dental treatment, where the information is required for the proper administration of that law.

Maximum penalty: \$10 000.

(2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.

(3) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—

- (a) the person to whom the information was disclosed; or
- (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$10 000.

Protection from personal liability

88. (1) No personal liability is incurred for an act or omission by—

- (a) a member of the Board; or

- (b) the Registrar or another member of the Board's staff; or
- (c) an inspector; or
- (d) a member of the Tribunal,

in good faith in the performance or purported performance of functions or duties under this Act.

(2) A civil liability that would, but for this section, lie against a person lies instead against the Crown.

Service

89. A notice or document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may—

- (a) be given to the person personally; or
- (b) be posted in an envelope addressed to the person at the person's last known residential, business or registered address; or
- (c) be left for the person at the person's last known residential, business or registered address with someone apparently over the age of 16 years; or
- (d) be transmitted by facsimile transmission to a facsimile number provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).

Evidentiary provision

90. (1) In proceedings for an offence against this Act or in disciplinary proceedings under Part 5, an allegation in the complaint—

- (a) that a person named in the complaint is, or was on a specified date, registered on a specified register or is not, or was not on a specified date, so registered;
- (b) that the registration of a person named in the complaint is, or was on a specified date, subject to specified conditions;
- (c) that a person named in the complaint is, or was on a specified date, occupying a position of authority in a trust or corporate entity;
- (d) that a person named in the complaint is, or was on a specified date, an inspector,

must be accepted as proved in the absence of proof to the contrary.

(2) In legal proceedings, a document apparently certified by the Registrar to be a copy of a register under this Act, or a copy of a code of conduct or professional standards prepared or endorsed by the Board under this Act, must be accepted as such in the absence of proof to the contrary.

Regulations

91. (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) prescribe the branches of dentistry in respect of which a person may be registered as a specialist;
 - (b) prescribe, or empower the Board to fix—
 - (i) fees or charges for the purposes of this Act;
 - (ii) fees or charges for services provided by the Board in the exercise of its functions under this Act,and may provide for the recovery of a fee or charge so prescribed;
 - (c) exempt any person or class of persons from the obligation to pay a fee or charge so prescribed;
 - (d) regulate, or otherwise make provision with respect to, the education of dental practitioners for the purposes of this Act, including by making provision with respect to the approval of courses that may lead to registration;
 - (e) prescribe information that must be included on a register, and make any provision with respect to the keeping of a register;
 - (f) prescribe procedures associated with any process or proceedings under this Act;
 - (g) prescribe forms for the purposes of this Act;
 - (h) prescribe penalties, not exceeding \$5 000, for breach of, or non-compliance, with a regulation.
- (3) The regulations may—
- (a) refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time; and
 - (b) be of general or limited application; and
 - (c) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
 - (d) provide that a specified provision of this Act does not apply, or applies with prescribed variations, to any person, circumstance or situation (or person, circumstance or situation of a prescribed class) specified by the regulations, subject to any condition to which the regulations are expressed to be subject; and
 - (e) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Board or another prescribed authority.

- (4) If a code, standard or other document is referred to or incorporated in the regulations—
- (a) a copy of the code, standard or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations; and
 - (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

SCHEDULE*Repeal and transitional provisions***Repeal of Dentists Act 1984**

1. The *Dentists Act 1984* is repealed.

Transitional provisions relating to the Board

2. (1) On the commencement of this clause, all members of the Board then in office vacate their respective offices so that fresh appointments may be made to the Board under this Act.

(2) Despite section 6—

- (a) the first appointment to the Board under subsection (1)(b)(iii) will be of a person nominated by the Minister as a suitable person to represent the interests of dental therapists;
- (b) the first appointment to the Board under subsection (1)(b)(iv) will be of a person nominated by the Minister as a suitable person to represent the interests of dental technicians.

(3) Nothing in this clause affects the operation of section 16 of the *Acts Interpretation Act 1915*.

Transitional provisions relating to the Tribunal

3. (1) On the commencement of this clause, all members of the Tribunal then in office vacate their respective offices so that fresh appointments may be made to the Tribunal under this Act.

(2) Despite section 25—

- (a) the first appointment to the Tribunal under subsection (1)(b)(iv) will be of a person nominated by the Minister as a suitable person to represent the interests of dental therapists;
- (b) the first appointment to the Tribunal under subsection (1)(b)(v) will be of a person nominated by the Minister as a suitable person to represent the interests of dental technicians.

(3) For the purposes of section 29(1)(c), a person appointed to the Tribunal under subclause (2) will be taken to be a dental practitioner of the relevant class.

(4) Nothing in this clause affects the operation of section 16 of the *Acts Interpretation Act 1915*.

Transitional provisions relating to registration

4. (1) The registers maintained under the repealed Act continue in existence under this Act, with the following modifications:

- (a) the general register under the repealed Act becomes the register of dentists under this Act; and
- (b) the register of clinical dental technicians under the repealed Act becomes the register of dental prosthetists under this Act (and, accordingly, a person who was, immediately before the commencement of this Act, a registered clinical dental technician will, on that commencement, be taken to be a registered dental prosthetist).

(2) A person registered on the specialist register under the repealed Act immediately before the commencement of this clause will, on that commencement, be taken to be registered on the register of dentists under this Act as well as the specialist register.

(3) If a person whose name was removed from a register under the repealed Act for any reason and whose name had not, before the commencement of this Act, been reinstated on that register, applies for registration under this Act, the Board may deal with the application as though it were an application for reinstatement on the appropriate register under this Act.

(4) The Registrar will make all necessary entries in and alterations of the appropriate registers for the purposes of implementing this clause.

Transitional provisions relating to dental therapists and dental technicians

5. (1) A person who has, at some time during the period of 3 years preceding the commencement of this clause, been employed as a dental therapist by the South Australian Dental Service Incorporated pursuant to section 85 of the repealed Act is, on due application to the Board, entitled to be registered as a dental therapist.

(2) A natural person who, at some time during the period of 3 years preceding the commencement of this clause, has carried on a business of making dental prostheses or has been employed in making dental prostheses is, on due application to the Board, entitled to be registered as a dental technician.

Transitional provision relating to dental students

6. A person who was, immediately before the commencement of this clause, enrolled in a course of study that provides qualifications for registration as a dental practitioner under this Act (other than as a specialist or an advanced dental prosthetist) is, on due application to the Board, entitled to full registration as a dental student.

Regulations

7. The regulations may make other provisions of a savings or transitional nature consequent on the enactment of this Act.